IN THE

COURT OF APPEALS OF VIRGINIA

Record No. 0361-21-2

TERRENCE RICHARDSON,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF ACTUAL INNOCENCE BASED ON NON-BIOLOGICAL EVIDENCE AND IN OPPOSITION TO THE COMMONWEALTH'S SUPPLEMENTAL BRIEF

Jarrett Adams, Esq.
Sarah A. Hensley, Esq.
The Law Offices of Jarrett Adams, PLLC
40 Fulton Street, Floor 23
New York, NY 10038
Telephone: (646) 880-9707
Facsimile: (646) 880-9707
Email: jadams@jarrettadamslaw.com
Email: sarah@jarrettadamslaw.com
Counsel for Petitioner

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INTRODUCTION

On November 21, 2021, the Commonwealth of Virginia agreed that "*considered against the entire record, Mr. Richardson is entitled to a writ of actual innocence based upon non-biological evidence*." Answer at p. 76 (emphasis added). On February 28, 2022, the Commonwealth purported to change its mind, filing a document it deceptively entitled a "supplemental" brief in which it reversed course, asking the Court to dismiss Mr. Richardson's Petition. Even if the Commonwealth's filing was lawful—it is not[1]—it relies on inaccurate legal analysis based on outdated law, and a perverse misunderstanding of the relevance of Mr. Richardson's tainted guilty plea, *Brady* allegations, substantiated police misconduct and federal acquittal.

The only change that occurred between the Commonwealth's November 1, 2021, Answer and its February 28, 2022, "supplemental" pleading is the election of a new "tough-on-crime" Attorney General, who campaigned on a promise that the Commonwealth would "put victims before criminals."[2] Within days of assuming political office, Attorney General Miyares terminated the entire Conviction Integrity

[1] *See* Argument section I, *infra*. The Commonwealth's brief also fails to comport with this Court's rules regarding word count limit for reply briefs, to which its pleading is most akin. At 11,798 words, it is more than 3 times this Court's 3500-word limit. *See* Rule 5A:19(a); *see also* Rule 5A:4.

[2] *See* https://vpm.org/news/articles/28791/jason-miyares-wants-to-be-virginias-chief-crime-fighter (last visited Mar. 16, 2022).

Unit[3] and, with it, all institutional knowledge of this case—knowledge based on a months' long thorough review of the entire state record, the federal record, and interviews with law enforcement, legal personnel, and eyewitnesses. It's no wonder, then, that the Commonwealth's entire "supplemental" pleading—filed mere days after purportedly reviewing the case file—offers not new facts but improper legal argument.

Courts of law are not fora for party politics. And parties in this Court—regardless of whether they are a defendant or the government—are bound by common law doctrines dictating what they can and cannot argue. The lives of those innocent and incarcerated should not, and cannot, depend on which way the political wind is blowing. The Commonwealth's latest brief should, therefore, be stricken. With the support of the Commonwealth's Answer, Mr. Richardson contends he has provided this Court with sufficient evidence to issue a writ of actual innocence.

ARGUMENT

I. The Commonwealth may not approbate and reprobate.

Virginia law bars the Commonwealth from "taking successive positions in the course of litigation that are either inconsistent with each other or mutually contradictory." *Rowe v. Commonwealth*, 277 Va. 495, 502, 675 S.E.2d 161, 164

[3] *See, e.g.*, https://www.dailymail.co.uk/news/article-10411913/New-tough-crime-Virginia-DA-fires-30-staffers-including-entire-civil-rights-division.html (last visited Mar. 16, 2022).

(2009) (internal citations omitted); *Vay v. Commonwealth*, 67 Va. App. 236, 263–64, 795 S.E.2d 495, 508 (2017) (the Supreme Court repeatedly has held that a party is confine[d] "to the position that she first adopted" (internal citations and punctuation omitted)). This bar against approbating and reprobating, which applies to both factual and legal assertions, "precludes litigants from 'playing fast and loose' with the courts, . . . or 'blowing hot and cold' depending on their perceived self-interests." *Babcock & Wilcox Co. v. Areva NP, Inc.*, 292 Va. 165, 204–05, 788 S.E.2d 237, 258–59 (2016).

Though tasked with ensuring justice for all Virginians, the Commonwealth boldly ignores this "basic tenet of fair play." *Wooten v. Bank of Am., N.A.*, 290 Va. 306, 310, 777 S.E.2d 848, 850 (2015) ("No one should be permitted, in the language of the vernacular, to talk through both sides of his mouth."). In attempting to withdraw its earlier Answer, Suppl. Br. at 9, the Commonwealth provides the Court no authority—nor does any exist—that places it above centuries of Virginia jurisprudence binding it to the initial position it asserted. *See, e.g.*, *In re Commonwealth of Virginia*, 278 Va. 1, 13, 677 S.E.2d 236, 241 (Va. 2009) ("The Commonwealth will not be allowed to approbate and reprobate."). The only lawful remedy for the Commonwealth's unlawful attempt to reverse course, is to strike the Commonwealth's Supplemental Brief and confine it to the position that it first adopted: that Mr. Richardson should be granted a writ of actual innocence. *See*

Matthews v. Matthews, 277 Va. 522, 528, 675 S.E.2d 157, 160 (2009); *Hurley v. Bennett*, 163 Va. 241, 252, 176 S.E. 171, 175 (1934) ("The first election, if made with knowledge of the facts, is itself binding.").[4]

II. The Commonwealth's Supplemental Brief misconstrues the facts and law that apply to this case.[5]

In an abundance of caution and to ensure the record is clear, Mr. Richardson will now address the glaring factual and legal errors in the Commonwealth's latest pleading.

A. The record establishes Mr. Richardson's innocence despite his guilty plea.

Recognizing that innocent people sometimes plead guilty, in 2020, the General Assembly adopted two significant changes to the applicable actual innocence statutes. *See* 2020 Va. Acts ch. 993. First, it eliminated the requirement of a not guilty plea in the original trial. *Id.* Second, it lowered a petitioner's burden of proof from "clear and convincing" to "preponderance of the evidence." *Id.* These changes received bipartisan support, though, notably, then-Delegate Jason Miyares

[4] Should the Commonwealth persist in its refusal to abide by the law, Mr. Richardson moves this Court to allow former Attorney General Mark Herring to present argument in support of the Commonwealth's Answer to this Court.

[5] Contrary to the Commonwealth's assertion, *see* Suppl. Br. at 7, Mr. Richardson declined to participate in the Commonwealth's letter motion practice, which is inconsistent with this Court's briefing rules. He therefore did not file a written response to the Commonwealth's February 7, 2022, Motion. *See* Feb. 18, 2022, Order ¶ 2.

voted against the measures. The changes in the law significantly impact the lens through which this Court must evaluate petitions before it.

The Commonwealth acknowledges the changes to the actual innocence statutory scheme, Suppl. Br. at 10, and then spends much of its brief insisting that this Court disregard the changes to the law—as well as the *Brady* allegations, substantiated police misconduct, and the federal acquittal—and rely instead on Mr. Richardson's tainted guilty plea to uphold his conviction. The Commonwealth's argument ignores not only the pre- and post-plea factual record, but also clear precedent rejecting this exact argument, which preceded these amendments, and this Court's mandate to interpret the law as amended. *See In re Watford*, 295 Va. 114, 126–27, 809 S.E.2d 651, 658 (2018) [6] ("[A] guilty plea cannot be dispositive of whether a writ of actual innocence will issue[.]"); *Holloway v. Commonwealth*, 72 Va. App. 370, 377, 846 S.E.2d 19, 22 (2020) ("[A]ppellate courts 'must assume that the General Assembly chose, with care, the words it used in enacting the statute, and [they] are bound by those words when [they] apply the statute.'").

In filing this Petition, Mr. Richardson has affirmed that had he been privy to the Gay Handwritten Statement, the Newby Photo Array and the 911 Tip ("New Exculpatory Evidence") law enforcement concealed from him, he would not have

[6] *In re Watford* involved biological evidence of innocence, and the statutes governing such a petition did not require a non-guilty plea as a prerequisite to filing a petition. *See* Va. Code §§ 19.2-327.2–19.2-327.6.

pleaded guilty. He also explained, in detail, why he felt forced to plead guilty in the first place. *See, e.g.*, Pet. Ex. J at 153:25–155:15.

Mr. Richardson's trial lawyer, David Boone, affirmed that, had he been privy to the New Exculpatory Evidence, he would not have encouraged Mr. Richardson to plead guilty. *See* Pet. Ex. J ¶ 11 ("If I had information that someone else was identified . . . "it would have definitely changed my defense of Mr. Richardson."); Answer Ex. N at 1 (confirming that he did not receive the New Exculpatory Evidence). Further, his contemporaneous notes and letters support his affidavit, reflecting a lack of knowledge of the New Exculpatory Evidence, and thereby refuting the Commonwealth's suggestion, Suppl. Br. at 28–30, that memory loss makes his affidavit unreliable. *See, e.g.*, Pet. Ex. B; Ex. L.[7]

Commonwealth's Attorney David Chappell likewise affirmed that he was unaware of and did not share the New Exculpatory Evidence with Mr. Richardson's counsel. *See* Pet. Ex. K ¶¶ 6–8; Answer Ex. M; *cf. Kyles v. Whitley*, 514 U.S. 419, 420 (1995) (holding that a prosecutor's duty to disclose under *Brady* "remains regardless of any failure by the police to bring favorable evidence to the prosecutor's attention"); *Workman v. Commonwealth*, 272 Va. 633, 644, 636 S.E.2d 368, 374 (2006) (granting a new trial and finding evidence subject to *Brady* disclosure even

[7] Exhibits L–Q are attached.

where prosecutor represented he was not aware of such evidence).[8] Indeed, even in its latest pleading, the Commonwealth conceded "that the record of the investigation of this case is irregular and confusing, and that there are allegations of law-enforcement misconduct." Suppl. Brief at 49.

These affirmations and admissions—which benefit from a more complete understanding of the record—must have more weight than a plea that occurred because law enforcement unconstitutionally withheld crucial information from Mr. Richardson, his counsel, and Commonwealth's Attorney Chappell. Mr. Richardson's guilty plea—a direct result of this misconduct and concealment of exculpatory evidence—should not be given any weight, much less the total weight the Commonwealth now demands. *Compare* Suppl. Br. at 9–15 *with Watford*, 295 Va. at 126 (allowing guilty pleas to be dispositive would render actual innocence statutes "meaningless"), *and Parson v. Commonwealth*, Record No. 0762-21-2 __ Va. App. __, 14 n.8 (Mar. 22, 2022) ("[A]n individual's decision to enter a guilty plea may be influenced by many different factors, and we are not establishing an

[8] Despite the Commonwealth's present implications otherwise, Suppl. Brief at 27–28, nothing in Attorney Chappell's affidavit is inconsistent with his lack of knowledge of the New Exculpatory Evidence. More important, even lacking that knowledge, Attorney Chappell thought his case was too weak to secure a conviction at the time of Mr. Richardson's plea. *See, e.g.*, Ex. M and section B.iii, *infra.*

inflexible rule as to how a rational fact finder would interpret a defendant's guilty plea in every factual situation.").

B. No rational trier of fact would have found Mr. Richardson guilty beyond a reasonable doubt.

In determining whether to issue a writ of actual innocence, this Court must consider "all of the evidence in the aggregate" and determine whether a hypothetical jury would convict. *See Watford*, 295 Va. at 125; Va. Code § 19.2-327.11(vii). As the federal acquittal demonstrated, the government lacks any reliable evidence to convict Mr. Richardson of Officer Gibson's murder. The New Exculpatory Evidence,[9] discovered *after* the acquittal, is not merely competing testimony for this Court to consider; when aggregated with the Commonwealth's problematic evidence, it is determinative proof of Mr. Richardson's innocence. *Compare Bush v.*

[9] The Commonwealth's baseless authentication challenge to these documents lacks any legal support. There is no serious debate that the statement or photo array are anything but what they claim to be. *See* Rule 2:901. The exhibits have initials of several members of law enforcement and were verified by Assistant United States Attorney David Novak during the course of the federal trial, *see* Answer at 43. And photocopies satisfy the best evidence rule. *See* Rule 2:1005. Moreover, Mr. Richardson offers the New Exculpatory Evidence not to prove that Leonard Newby committed this crime, but to establish that the Commonwealth had a viable alternate suspect clearly identified within days of Officer Gibson's homicide and withheld this information from Mr. Richardson. As such, the original New Exculpatory Evidence need not be produced to make it admissible. *See Turner v. Commonwealth*, 65 Va. App. 312, 328, 777 S.E.2d 569, 577 (2015) ("Even where the contents of a document are in question, if those contents are only collaterally related to the issues, the document need not be produced to warrant the admission of secondary evidence.").

Commonwealth, 68 Va. App. 797, 810, 813 S.E.2d 582, 588 (2018) (awarding writ where new evidence consisted of a confession from a previously unknown individual), *and Dennis v. Commonwealth*, 297 Va. 104, 130, 823 S.E.2d 490, 503 (2019) (awarding evidentiary hearing where new evidence from disinterested third parties contradicted trial evidence), *with Tyler v. Commonwealth*, 73 Va. App. 445, 470, 861 S.E.2d 79, 92 (2021) (cumulative affidavit presenting evidence substantially similar to that which a factfinder already rejected not a sufficient basis for awarding writ), *and Parson*, *supra* (co-conspirator's affidavit insufficient basis for writ where physical evidence found under Parson's driver's seat corroborated Parson's guilty plea and Parson still liable under concert of action theory).

i. The Commonwealth's alleged eyewitnesses are incredible.

This Court's "clear authority" to decide this petition based on the record includes the power to make factual findings regarding witness credibility, without an evidentiary hearing, when such credibility is apparent from the record. *See Dennis*, 297 Va. at 130; *Haas v. Commonwealth*, 283 Va. 284, 291, 721 S.E.2d 479, 481 (2012). Here, the Commonwealth's "star" witnesses are both criminals who repeatedly changed their narratives regarding Officer Gibson's death.

a. Shawn Wooden

As the Commonwealth acknowledged in its Answer, Mr. Wooden is an admitted liar, who has provided "conflicting information" concerning Officer

Gibson's death. Answer at 10, 17; *see* Ex. M at 1 ("Chappell said . . . the prosecution's 'star' witness had a prior felony record and had given inconsistent accounts of critical facts about the shooting."). Mr. Wooden created a story about Mr. Richardson shooting Officer Gibson to satisfy law enforcement only after law enforcement rejected his honest recollection of events and support of Mr. Richardson's alibi. *See, e.g.*, Pet Ex. B at 2; Answer at 10.

But the record supports Mr. Wooden's initial version of events: Mr. Richardson and Mr. Wooden were at the home of Mr. Wooden's former girlfriend, Javona Jones, when Officer Gibson was shot, and then left Jones' home to "be nosey," after learning about Officer Gibson's murder. *See* Ex. N (Grand Jury Testimony of Ms. Jones) at 11–21, 23, and 25–27. Though Ms. Jones' story changed—at the behest of Mr. Wooden, *see id.* at 31, 47—this critical fact remained consistent: Mr. Wooden and Mr. Richardson were at her apartment on the morning of Officer Gibson's murder. *See, e.g., id.* a 46:23–24 ("I'm saying they were there. They were there when I got up."). As both the Commonwealth and Mr. Richardson concur that Mr. Wooden's subsequent testimony is untrustworthy, *see, e.g.*, Pet Ex. B at 2; Answer at 10, this Court can give it the weight it deserves: none.

b. Evette Newby

Evette Newby is alternate-suspect Leonard Newby's sister. According to at least one witness she lied to investigators about Officer Gibson's murder to protect

"her boyfriend and her brother because they are the individuals who really killed the police officer and not the other two individuals who had been arrested." *See* Ex. O at 2. Ms. Newby initially told investigators she did not witness Officer Gibson's demise. Answer at 25. In fact, her version of the events of that day changed numerous times, most notably after she spoke with Detective Cheeks. *See id.* at 23–27; *cf.* Pet. Ex. B at 1 (Newby stated "that she had been pressured to say what she did to authorities under a threat of bodily harm"); Pet. Ex. K at 3 ¶ 11; Ex. M at 2 ("One woman in the apartment complex claimed to have witnessed the shooting, Chappell said, but she changed her story so many times that he decided she was not a credible witness."). As her statements lack consistency, this Court need not give them any credence.

ii. Officer Gibson's description does not match Mr. Richardson.

In his last moments, Officer Gibson described his attackers: two black males, one tall and skinny with "dreadlocks," a white t-shirt and an "old blue baseball cap," and the other as medium build who was short and balding. Pet. Ex. A at 15, 19. At 5' 8", Mr. Richardson could not be described as "the tall one" grappling for the gun, when Officer Gibson was 3 inches taller than Mr. Richardson. *See* Pet. Ex. B. at 3; *cf. Kyles v. Whitley*, 514 U.S. 419, 441–42, (1995) (eyewitness "would have had trouble explaining how he could have described Kyles, 6–feet tall and thin, as a man more than half a foot shorter with a medium build" and Kyles could have

compellingly argued the eyewitness's description pointed to an alternate suspect the police concealed from Kyles); *Juniper v. Zook*, 876 F.3d 551, 570–71 (4th Cir. 2017) (evidence of an alternate suspect important not only because it provides an alternate perpetrator, but it also allows the defense to raise doubts "about the thoroughness of the investigation" and the reasons law enforcement chose not to pursue a viable lead).

The New Exculpatory Evidence additionally supports Officer Gibson's description of his assailants. *See* Pet. Exs. G, H, and I. At the time of the shooting, Leonard Newby wore his hair in dreadlocks, matching the description provided by Officer Gibson and the Gay Handwritten Statement; Newby was also on bond for gun possession, *see* Exs. P and Q; and had a sister who lived in an apartment directly above where the shooting occurred. Moreover, almost immediately after the shooting, Ms. Gay identified Mr. Newby as Officer Gibson's killer in a photo lineup, after giving a statement accurately describing him, and the anonymous 911 Tip corroborated her identification.[10]

[10] If this Court needs further factual development to reach its decision, Mr. Richardson and the Commonwealth agree it "should err on the side of ordering a circuit court evidentiary hearing." *See Dennis*, 297 Va. at 130; Va. Code § 19.2-327.12; Answer at 76–77.

iii. The Commonwealth's plea offer shows its lack of faith in the case.

The Commonwealth's offer of a five-year sentence to involuntary manslaughter reflects the unreliability of the evidence it had against Mr. Richardson. *Cf. Watford*, 295 Va. at 127 (observing that Watford's light sentence for a "heinous" crime supported Watford's assertion that he pleaded guilty because he was pressured to do so, not because he committed the crime). The Commonwealth's contemporaneous assessment reveals the case "was crippled from the start by the emotional behavior of the Waverly police chief at the crime scene" (which destroyed fingerprint evidence) and by the "sparse evidence [that] never afforded a clear picture of exactly what happened in the woods." *See* Ex. M (at the time of trial, Attorney Chappell thought "an acquittal was extremely likely"). The New Exculpatory Evidence transforms this case from one "astronomical[ly]" risky for the Commonwealth, *see id.* at 1, to one impossible to win.

iv. The federal jury acquitted Mr. Richardson.

In this unusual case, this Court need not speculate as to whether a rational trier of fact would acquit. The Court has definitive proof that even *without* the New Exculpatory Evidence—but with more evidence than was presented during the state court proceeding—the government could not convince a rational trier of fact to convict Mr. Richardson of Officer Gibson's murder. *Accord* Answer at 70. The import of the federal acquittal is not that it is new evidence of innocence, *contra*

Suppl. Br. at 16–24, but that it allows Mr. Richardson to meet his statutory burden to assure this Court that a rational trier of fact would not convict. *See Watford*, 295 Va. at 128–29 (finding no rational trier of fact would convict where the Commonwealth cannot point to credible evidence of presence at the crime scene, much less guilt); *Bush*, 68 Va. App. at 807–09. This verdict—in addition to the lack of *any* physical evidence connecting Mr. Richardson to the crime; the Commonwealth's incredible witnesses; the Officer Gibson's descriptions of the assailants not matching Mr. Richardson; the unreliable guilty plea that arose from substantiated police misconduct and concealment of evidence in violation of *Brady*; and the New Exculpatory Evidence—satisfies the preponderance standard and demonstrates Mr. Richardson's innocence is "more probable than not." *See Tyler*, 73 Va. App. at 461; Va. Code § 19.327-11(vii).

CONCLUSION

The Commonwealth's desire to seek justice for Officer Gibson's family could have been served by further developing the thorough investigation already begun in this case. Instead, the Commonwealth chose to act outside the confines of centuries of jurisprudence, filing an unfounded "supplemental" pleading, in what appears to be a desperate effort to re-conceal the truths it uncovered and uphold a patent injustice. While this may superficially satisfy a tough-on-crime political base,

allowing unreliable guilty pleas to stand while the innocent languish in prison serves neither justice nor victims.

Mr. Richardson therefore respectfully requests that this Court strike the Commonwealth's Supplemental Brief and grant his Petition. Alternatively, should the Court believe further factual development is necessary, Mr. Richardson requests that his case be remanded to the Circuit Court for an evidentiary hearing as Virginia Code § 19.2-327.12 contemplates, and afford him any additional relief it deems necessary.

Respectfully Submitted,

Terrence Jerome Richardson

By: */s/Jarrett Adams*

Jarrett Adams. Esquire *(NY LIC #5455712)*
(Pro Hac Vice)
Sarah A. Hensley (*VSB # 73032*)
The Law Offices of Jarrett Adams, PLLC
40 Fulton Street, Floor 17
New York, NY 10038
Telephone: (646) 880-9707
Facsimile: (646) 880-9707
Email: jadams@jarrettadamslaw.com
Email: sarah@jarrettadamslaw.com
Counsel for Petitioner

Michael HuYoung, Esquire (*VSB # 22095*)
Barnes & Diehl, P.C.
6806 Paragon Place, Ste. 110
Richmond, VA 23230
Telephone: (804) 414-1602
Facsimile: (804) 762-9652
Email: mhuyoung@barnesfamilylaw.com

Local Counsel for Petitioner

WORD COUNT AND ORAL ARGUMENT CERTIFICATE

In accordance with Virginia Supreme Court Rules 5A:4(d) and 5A:22, I hereby certify that the foregoing Reply to the Supplemental Brief in Opposition to Petition for Writ of Actual Innocence contains 3,476 words. Mr. Richardson does not waive oral argument.

/s/Jarrett Adams
Jarrett Adams

CERTIFICATE OF SERVICE

On March 28, 2022, a copy of the foregoing Reply to the Supplemental Brief in Opposition to Petition for Writ of Actual Innocence, and the Exhibits attached thereto, was filed with the Clerk of this Court using the VACES system pursuant to Rules 1:17 and 5A:1(c), and contemporaneously emailed to Jason S. Miyares, Attorney General, jmiyares@oag.state.va.us, and Brandon T. Wrobleski, Special Assistant to the Attorney General for Investigations, bwrobleski@oag.state.va.us, counsel for the Commonwealth of Virginia.

/s/Jarrett Adams
Jarrett Adams

EXHIBIT L

LAW OFFICES

BOONE, BEALE, COSBY & LONG

27 NORTH 17TH STREET
RICHMOND, VIRGINIA 23219-3607
CABLE ADDRESS: BOONECO
TELEPHONE (804) 780-1729
FAX (804) 648-6211

DAVID E. BOONE, P.C.
J. BURKHARDT BEALE, P.C.
CHARLES C. COSBY, JR., P.C.
ANDREA C. LONG, P.C.
STACY F. GARRETT, III
W. EDWARD RILEY, IV, L.L.C.

WOODBRIDGE, VIRGINIA
SUITE H
4391 RIDGEWOOD CENTER DRIVE
22192-5399
TELEPHONE (703) 690-1222
FAX (703) 680-0559

January 18, 2000

FOR YOUR INFORMATION

Mr. Terence J. Richardson
c/o South Hampton Jail
Post Office Box 70
Courtland, Virginia 23837

Re: **Commonwealth of Virginia v. Terence Jerome Richardson**

Dear Mr. Richardson:

I am in receipt of and thank you for your letter of January 13, 2000. Although you ramble somewhat in your letter, I get the distinct impression that you wish you had never entered a plea of guilty to involuntary manslaughter. As I explained to you earlier by telephone, there is a procedure by which you can move the court to withdraw your guilty plea. If you wish for me to file such a motion, please notify me ***immediately***. I anticipate that the trial judge will grant such a motion and you will then be tried for capital murder. If this is what you want, I will be more than happy to comply with your wishes. I want to caution you, however, that if you do withdraw your guilty plea, there is an excellent chance that you may receive life in prison. Please keep in mind that your alibi witness is the star witness for the Commonwealth and he not only puts you at the scene of the crime, but he also will testify as he has in the past that you confessed to him minutes after the shooting. His girlfriend will corroborate this in the sense that she will testify that the two (2) of you left that morning, he came back alone, and then you came back minutes later out of breath. If the judge or jury trying you believes his testimony, you will be found guilty. You have no defense because your alibi defense rests with this individual. Accordingly, you are caught between a rock and a hard place. It was my advice on December 8 and it is my advice today that you go with the involuntary manslaughter charge. Even if you are given a ten (10) year sentence, this is much better than risking your life in

prison. I wish to emphasize that the trial judge may very well impose a ten (10) year sentence. You certainly saw the outcry from the community after you were allowed to plead guilty to the reduced offense of involuntary manslaughter. You should assume you will receive a ten (10) year sentence in making a decision as to whether to withdraw your guilty plea.

Additionally, you indicate in your letter that you did not know that you were going to be tried on December 8. This is pure hogwash. I made it very clear to you from the very beginning of my representation back in June of 1998 that I was going to attempt to convince the prosecutor to allow you to plead guilty to a lesser included offense. When we were ultimately successful in reaching this agreement with the prosecutor, I thoroughly discussed it with you months before we went to court. In fact, I discussed it in my law office with you and your relatives. Of course, when we had these conversations, we did not yet have the agreement in hand. Nevertheless, this agreement was reached days before the trial and you came by my office and the two (2) of us discussed it. The only thing that changed was that when we got to court, I advised you to plead guilty straight up instead of an Alford Plea. The reason for this change was because Judge Luke advised me in chambers that he would not accept a plea agreement. It was his opinion that the case should go forward on capital murder. After discussing the matter in chambers for approximately one (1) hour, Judge Luke learned that we had an agreement with the prosecutor which I felt the prosecutor should stand behind. Ultimately, Judge Luke agreed. However, if you had entered an Alford Plea, Judge Luke then would have had the discretion not to accept your plea which would put us back to square one. Accordingly, I suggested and encouraged you to enter a straight up guilty plea so that Judge Luke would have absolutely no discretion in the matter. My strategy worked.

With reference to the prosecutor's comments to the newspaper a few days later in which he stated that the case was weak for the Commonwealth, you should be smart enough to realize that these comments were self serving. The prosecutor was being blasted by the media as well as the community. He was doing his best to put himself in a good light. Although I agree that the Commonwealth's case is weak against you, it is strong enough to stand up on appeal if the jury convicts you. Nothing has changed with regard to that.

Lastly, you seem to welcome an investigation by the Federal Government. You are misguided if you believe the Federal Government is going to vindicate you. The Federal Prosecutor investigating your case has already told me that some witnesses have come forward before the Grand Jury and testified that you have made statements to them indicating you committed the killing. The Government is looking at no one but you and intends to indict you, not someone else. The Government intends to take a hair and saliva sample from you shortly to do a DNA analysis. The Government hopes to lock you up for a very long time. How can you possibly imagine that the investigation currently being conducted by the Federal Government will in any way help you?

By copy of this letter to your aunt, I am bringing her up to date as to strategy involved in your case. If your relatives wish to meet with me, I will be more than happy to conduct such a meeting. However, the ultimate decision as to whether a motion should be filed with the Sussex County Circuit Court to withdraw your guilty plea must be made by you, and you alone. Once you reach such a decision, please communicate the same to me in ***writing***. I will certainly follow your decision.

Very truly yours,

(ORIGINAL SIGNED BY DAVID E. BOONE)

David E. Boone

DEB/vmm

cc: Ms. Sheila McNair

EXHIBIT M

RISKS IN GOING TO TRIAL TOO HIGH; SUSSEX PROSECUTOR STRUGGLED OVER CASE

Richmond Times Dispatch (Virginia)

December 10, 1999, Friday,

CITY EDITION

Section: AREA/STATE,

Length: 1367 words

Byline: Bill Geroux; Times-Dispatch Staff Writer

Dateline: SUSSEX

Body

Commonwealth's Attorney J. David Chappell said he made an agonizing decision to offer plea bargains to two men in the killing of a ***Waverly*** police officer Wednesday because "the risks in going to trial with a jury were just astronomical."

The Sussex County prosecutor said in an interview yesterday he knew from the start that reducing capital murder charges all the way down to involuntary manslaughter and a misdemeanor would upset the dead officer's family and some police officers.

But the murder case was crippled from the start by the emotional behavior of the ***Waverly*** police chief at the crime scene, Chappell said, and because the prosecution's "star" witness had a prior felony record and had given inconsistent accounts of critical facts about the shooting.

Chappell said the most reliable evidence in the case was the dying statement of Officer Allen W. Gibson Jr., who said his gun "just went off" as he and one of the defendants fought for control of it. "A fair reading of that statement is, 'It was an accident,'" Chappell said.

The prosecutor said he struggled for months over how to handle the case one source said Chappell tried to withdraw the plea offer minutes before it was to be finalized in court. But Chappell said he ultimately was satisfied he handled the case properly.

"We got convictions on both [defendants]," he said, "and if you look at the evidence we had, I think the convictions reflect it."

Chappell, whose single term as commonwealth's attorney of rural Sussex County ends this month, discussed the case in detail for the first time yesterday in an interview with the Richmond Times-Dispatch.

He said he avoided commenting on the plea agreements Wednesday, when he slipped out of the courthouse through a rear door, because he wanted to wait for "some of the emotion to die down." In his absence, members of the dead officer's family called him "a coward" for not taking the case to trial and "insensitive" for not keeping them informed about the case.

Some law-enforcement officers, including Sussex County Sheriff Stuart Kitchen, left court shaking their heads at the idea that the killing of a police officer in the line of duty had brought such modest penalties.

The man who admitted shooting Gibson, 28-year-old Terrance Jerome Richardson, of Richmond, pleaded guilty to involuntary manslaughter. He faces a maximum penalty of 10 years in prison, but he has no prior record and could receive less time than that.

The other defendant, 23-year-old Ferrone Claiborne, pleaded guilty to a misdemeanor charge of being an accessory after the fact of the killing. He faces a maximum sentence of 12 months in jail and already has served nine months while awaiting trial.

Sussex Circuit Judge James A. Luke is to sentence both men March 8. The judge noted on Wednesday that the crimes to which the men pleaded guilty were a far cry from capital murder.

Chappell said yesterday that the problems with the case began almost immediately after Gibson was shot on the morning of April 25, 1998, in a patch of woods behind a ***Waverly*** apartment complex. Gibson had rushed into the woods to break up what he thought was a drug deal and gotten into a scuffle with two men, one of whom got hold of Gibson's gun and shot him once in the abdomen.

One of the first officers to reach the scene was Gibson's boss, ***Waverly*** Police Chief ***Warren Sturrup***. Sturrup later acknowledged he had been so upset that he had unthinkingly picked up Gibson's gun - the homicide weapon - from the ground and held onto it while angrily challenging a crowd of onlookers to tell him who had shot Gibson.

Chappell said yesterday that he understood Sturrup had been "beside himself" over the killing, but that Sturrup's handling of the gun had wiped out any usable fingerprints that might have been on it.

Gibson stayed alive where he fell long enough to give police a general description of his assailants. After learning of that description, Sturrup and two other officers - whom he identified as a state trooper and a Sussex sheriff's deputy - rushed across town and seized a young man whom they suspected was involved. They handcuffed the man and hustled him through the startled crowd to where Gibson lay, in the hope that Gibson could identify him before he died. But Gibson could no longer see at that point, and soon afterward, police realized the handcuffed man was innocent and released him.

Chappell said yesterday that had the case gone to trial, defense attorneys would have used that incident to suggest police had been desperate to arrest someone, anyone, for the killing.

"It just made the whole case cloudier, murkier," Chappell said.

The defense, in fact, had planned to call Sturrup as a witness. The police chief had told people in Sussex he thought the shooting was an assassination attempt meant for him, and that the wrong men had been arrested.

Chappell said he believed the Sussex Sheriff's Office, which investigated the case, had worked hard and well to overcome the initial chaos and arrest the right men. But amassing enough evidence to substantiate capital murder charges proved impossible, he said.

One woman in the apartment complex claimed to have witnessed the shooting, Chappell said, but she changed her story so many times that he decided she was not a credible witness. In fact, she, too, ended up on the defense's witness list.

The prosecution's chief witness - the only witness tying the defendants to the killing - was an acquaintance of Richardson's who said Richardson had admitted to him that he "accidentally" shot Gibson. But the acquaintance was a convicted felon, Chappell said, and had previously denied knowing anything about the killing.

Given the quality of the evidence, the prosecutor said, "I thought if we went to trial, an acquittal was extremely likely." Lawyers in the case had been discussing possible plea agreements for months.

But pressure from police and Gibson's family to go to trial was intense, Chappell said, and he wavered back and forth. "The past few months, it was a roller coaster for all of us," he said.

In October, defense lawyers thought a plea agreement was imminent, only to see a trial scheduled instead, to begin Wednesday. But the day before Tuesday - Chappell telephoned Gibson's family to tell them he was offering plea agreements instead.

On Wednesday morning, the Gibson family and Sheriff Kitchen vigorously lobbied Chappell to withdraw the plea deals and try the case. Gibson's mother, Suzette Gibson, told reporters Chappell listened silently, with a troubled expression and "his head in his hands."

The court proceedings were delayed, and one source said Chappell tried at the last minute to withdraw the deal but was told by Judge Luke it was too late. Neither the judge nor Chappell nor Claiborne's lawyer, Michael Morchower, would discuss what went on. Morchower would say only that the plea agreement was briefly in doubt that morning.

Chappell disputed the Gibson family's claim that he had stonewalled them on the case. He said he had spoken to family members several times, once traveling to Roanoke to meet them closer to their homes in Big Stone Gap. But he said he had to limit what he disclosed about the case in order to stanch the flow of sensitive information, and the spread of wild rumors, in close-knit Sussex.

The Gibson family said Chappell should have taken the risk and put the case before a jury, and perhaps have gotten help from a more experienced prosecutor.

Several police officers said they found the idea that the shooting was accidental difficult to accept. State Trooper T.J. Williams, Gibson's best friend and one of the officers who found him dying in the woods, said, "If you don't mean to shoot an officer, why grab his gun?"

Chappell said the sparse evidence never afforded a clear picture of exactly what happened in the woods. And what made the case even more difficult, he said, was that he considered Gibson a friend, too.

"This is the first time I've ever had a fatality case where the victim was a friend, and it was an agonizing, a difficult case," Chappell said. "Sometimes you've got to step away from the emotion and the hurt, and try to give an objective reading to the evidence you have in front of you."

Load-Date: December 11, 1999

End of Document

EXHIBIT N

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

PAGES 48+ Cert.

UNITED STATES OF AMERICA

V.

TERRENCE RICHARDSON

FERRONE CLAIBORNE

GRAND JURY 00-2

TESTIMONY OF JAVONA JONES

BEFORE A FULL QUORUM OF THE GRAND JURY

ON MARCH 22, 2000

Assistant U.S. Attorney: David J. Novak

Reporter: Diane Gaynier

JAVONA JONES, AFTER HAVING BEEN DULY SWORN, WAS CALLED AND SAID AS FOLLOWS:

EXAMINATION BY MR. NOVAK:

Q Ma'am, would you please state your full name spelling both your first and last names.

A Javona Leigh Jones. J-A-V-O-N-A J-O-N-E-S.

Q Ms. Jones, you've been subpoenaed to appear in front of this grand jury which is conducting an investigation into the murder of a police officer, that being Alan Gibson, on April 25, 1998.

As a witness in front of this grand jury you have certain rights. One is that you may refuse to answer any question if a truthful answer to the question would tend to incriminate you personally. Also, anything you do say could be used against you by the grand jury or in a subsequent legal proceeding. And lastly, if you hired an attorney the grand jury is going to permit you a reasonable opportunity to step outside the grand jury to consult with your attorney if you so desire. Do you understand that?

A Yes.

Q Now, I've had a chance to speak to

you a couple times outside; is that right?

A Yes.

Q I stressed to you the requirement of telling the truth in front of this grand jury; is that right?

A Yes.

Q You understand that if you were not to tell the truth in front of this grand jury you could be punished by up to five years imprisonment and up to $250,000 fine. Do you understand that?

A Uh-huh (Yes).

Q Do you want to tell us what your date of birth is.

A 9/7/70.

Q Okay. You've got to speak up because we got to hear you. Okay?

A 9/7/70.

Q What's your Social Security number?

A 231-90-5840.

Q What's your current address?

A 3032 Williams Street, Newport News, Virginia.

Q Okay. You're getting quiet again on me.

A 3032 Williams Street, Newport News,

Virginia.

Q What's the zip code there?

A 23607.

Q Okay. What's your telephone number down there?

A 245-1547.

Q Okay. What's that area code down there?

A 757.

Q All right. Are you employed?

A Yes.

Q Where do you work at?

A Quality Inn, Historical Williamsburg.

Q Okay. What do you do there?

A Housekeeping.

Q What's your phone number there?

A 220-2327.

Q Okay. Do you know Ms. Westbrook that just testified here before, Ms. Annie Westbrook?

A Yes.

Q Do you work for her at the same hotel?

A No. She used to work at the hotel.

Q Okay. Did you know her when she

worked back then?

A Yes. Not like talking to her, but I know her.

Q Okay. But it's a different hotel that you work at now; is that right?

A No, it's the same hotel that she used to work at.

Q Okay. She works at a different hotel now though?

A Yeah.

Q Okay. The hotel that she works at, where is that in relation to your hotel?

A None that I know of.

Q I mean where is it?

A Oh.

Q I mean is it down the street or is it--

A I think it's down the street. I'm not quite sure which hotel it is that she works at.

Q Okay.

A I know she's in Williamsburg.

Q Okay. You don't have regular contact with her then; is that right?

A No.

Q Do you have any contact with her?

A No.
Q Now, do you know a Sean Woodin?
A Yes.
Q How do you know Sean Woodin?
A I used to go with him.
Q Do you have any children by him?
A Yes.
Q How many children do you have by him?
A One.
Q What's your child's name?
A Sean Woodin, Jr.
Q How old is Sean Woodin, Jr.
A One.
Q When did you meet Sean Woodin?
A It's been like four years, I think.
Q Okay.
A Four years, three years.
Q You got to keep your voice up because they want to hear what you've got to say. Okay?
A It's like three years or four years ago.
Q How did you meet him?
A At the hotel.

Q Okay. The Quality Inn?
A Yes.
Q Who introduced you to him?
A I think maybe we just introduced ourselves. I'm not sure.
Q Okay. How long after you met him did you start dating him?
A A couple of weeks, I think.
Q Please speak up. I don't mean to keep saying that to you, but you've got to talk louder.
A A couple a weeks.
Q Did you start living with him then?
A I think about May.
Q May of when?
A '97. I'm not sure '97, '96, I'm not quite sure which year it was.
Q Okay. At some point did you learn that Sean was involved in selling drugs?
A No, not really.
Q Did you--
A I knew he was involved in drugs as in using them.
Q Okay. A what kind of drugs?
A Crack.

Q How did you found out he was involved in using crack?
A I think his parents told me at one point in time, and then he used to go in the bathroom.
Q Okay. Did you realize he was using drugs in the bathroom?
A Yes.
Q Did you ever use drugs with him?
A No.
Q Did you ever see, personally see him with drugs like in your house?
A Uh-huh (Yes).
Q Is that a yes?
A Yes.
Q Where were you living at when you first moved in with him?
A Spring Road.
Q When was it that you moved in with him?
A I think it was in May when I moved in May.
Q May of '97?
A Yeah, I think that was it.
Q How long did you live there at that address?

A I think we stayed in that address I think almost I like, like until like September, October.

Q Of '97 or '98?

A November. November. I think the same year.

Q Of '97?

A Yes.

Q Then where did you move to after that?

A Waverly, Virginia.

Q Okay. Where did you live in Waverly?

A 229 Wilkins Avenue.

Q Okay. How long did you live there?

A Probably a year.

Q Who did you live with there?

A Me Sean and my kids, two kids.

Q Who are those two kids?

A Niyosha Jones and Taniqua Jones.

Q Why don't you spell those for us.

A N-I-Y-O-S-H-A T-A-N-I-Q-U-A.

Q Sean's not the father of those kids?

A No.

Q And who is the father of those kids?

A Jamari Moore and Kermit Brown.
Q Okay. And they have nothing to do with this case; is that right?
A No.
Q Now, so when you moved to Waverly do you know a fellow named Joe Mack?
A Yes.
Q Okay. Who is Joe Mack?
A He stayed across the yard from us in a trailer.
Q Okay. Would he ever come over to your house?
A Yes.
Q Would you all ever get any telephone calls for him at your house for him?
A Yeah.
Q Did you know his girlfriend?
A I met her, but I ain't really know her like that.
Q What was her name?
A All I know was "Nuke".
Q "Nuke"?
A Uh-huh (Yes).
Q And would "Nuke" call over there sometimes?

A Yes.
Q Now, you know Terrence Richardson?
A Yes.
Q How do you know Terrence Richardson?
A Through Sean.
Q Okay. And when did you meet Terrence Richardson?
A I guess probably about, I guess when we moved to Waverly.
Q Which would have been when? November '97?
A Yeah.
Q All right. How often would you see Terrence Richardson with Sean?
A Well, Terrence I just really-- Terrence started hanging with Sean I say a couple days or the week before the incident happened.
Q Okay. And at some point did Terrence start staying with you all?
A Yes.
Q How long before the murder happened?
A I think he stayed with us for like a couple of days or either a week.
Q Do you know if Terrence was involved in drugs?

A I heard he was. I don't know how true it is though.
Q Okay. Well, who told you that he was?
A Sean.
Q Okay. What did he tell you about him?
A That he just smoked too.
Q All right. So he's a crack user as well?
A Yes.
Q Anything about the way that he acted when he was living with you all that made you think that that was true?
A Huh-uh (No).
Q Is that a no?
A No.
Q Do you know Ferrone Claiborne?
A No.
Q All right. Now at the time of this murder back on April 25, 1998, was Sean Woodin working? Was he working back then?
A Say that again. Can you repeat that please.
Q At the day of the murder--

A Oh, I don't think so, No, he wasn't working.

Q All right. Do you know if Terrence Richardson was working?

A No, he wasn't working.

Q Did you ever see Terrence Richardson wearing a T-shirt that had a marijuana leaf on it, a big imprint on it?

A I know I seen him with a white T-shirt on, but I know there was a print on it, but I can't recall what print was on the front of that T-shirt.

Q Okay. Is it possible that the print was a marijuana leaf?

A It might have been, yes.

Q Okay. And when did you see him wear that T-shirt?

A I think it might have been the same day or the night before the police officer got killed.

Q Okay. And he stayed over at your house; is that right?

A Yeah.

Q So the next morning that was the shirt that he had; is that right?

A Yeah.

Q So now let's go to the day of the murder, do you know what time you woke up that day?
A It was between 10:00 and 12:00.
Q Okay. How do you know that?
A Because I know it was before 12:00.
Q How do you know that, that's what I'm asking you.
A Because I looked at the clock. I'm not sure.
Q Well, that's what I'm asking you. Did you look at the clock?
A Yes, I knew it was before 12:00.
Q Okay. How early before 12:00?
A I think it might have been 30 minutes or 35 minutes. It might have been 30 minutes, like 35, 40 I'm not quite sure.
Q All right. And was Sean with you when you woke up?
A Yes.
Q Where was he at?
A In the bed.
Q Okay. Where was Terrence Richardson?
A I couldn't see him.
Q If you know.

A After I got up?
Q Right.
A Oh, he was in the front room with the girls.
Q Well, now let me ask you this: You were asleep continuously until what time?
A I guess until about 11:30.
Q All right. You didn't wake up at all until then; is that right?
A No, I never got up. I had woke up when my girls asked to go watch TV or whatever.
Q Okay. When did your girls ask you to go watch TV?
A I would say that would have been after or before 8:00 in the morning, not after 8:00.
Q Do you know-- I mean, my point is, do you know that it was around 8:00 or are you guessing it was around 8:00?
A I'm guessing it was around 8:00. I don't know the exact time.
Q Okay.
A But I just know it was either going on eight or it was already after eight.
Q Okay. It's very important to us to know what you're guessing about and what you know for

a fact.

A Well, I'm saying--

Q I don't want to you to say I'll say--

A Okay.

Q If you're not sure I mean, you can say you around eight o'clock, but I'm not sure, but you need to tell us that so we know whether you saw the time because you looked at a clock or some other reason or if you're just estimating. Are you going to estimate a time, is that what you're going to do?

A Well, I say around about eight o'clock. I mean, after eight. I'm not sure though.

Q Okay. That's what we want to know, Ms. Jones?

A Okay.

Q We pride ourselves on accuracy around here.

A Okay.

Q We also want to make sure you don't get in any trouble by saying something that's not anything that's true here. Okay?

A Okay.

Q All right. So you're Estimating your girls woke you up; right?

A Yeah.
Q What do they do, you're laying in bed with Sean; is that right?
A Yes.
Q What do they come in and say mamma, can we watch TV?
A Well, they-- No, they hollered and asked can they watch TV.
Q Okay. So you don't get out of bed; is that right?
A Right.
Q All right. When they do that you wake up a little bit, is that right, and then you went back to sleep?
A I went back to sleep. I heard them got rowdy.
Q Okay. Well, hold on a second let's stick with the want to watch TV routine. So they don't come into the bedroom; is that right?
A No.
Q Is there a door between your bedroom and the living room?
A There's two doors.
Q Okay. Do they holler through the doors to you or do they open up the door?

A Oh, no, the door wasn't closed.
Q Okay.
A My bedroom door wasn't closed.
Q All right. That's what I'm asking you.
A Okay.
Q So do you see your little girls or just recognize them from their voice?
A Voice recognize them.
Q Okay. All right, so are you still kind of like half asleep?
A Yes.
Q For those of us who are parents we know what it's like when kids are hollering and you're half a sleep in the morning.
A Yeah.
Q So you're kind of half a sleep and laying in bed; is that right?
A Yes.
Q What's Sean doing at that time? Is he still conked out or not?
A Yes. He's still beside me on the bed.
Q Okay. So they say, momma, can we catch TV? You say it's okay; is that right?

A Yes.
Q Where's Terrence Richardson at that time, do you know?
A As far as I know he's still in the living room.
Q You know that because that's where he slept the night before; is that right?
A Yes.
Q But you don't know that because you didn't go out and see him there; is that right?
A Right.
Q So you're just guessing that he's still in the living room at that point?
A Yes.
Q Okay. Now you go back to sleep while your kids are watching cartoons?
A Yes.
Q What's the next thing that happens?
A They ask me what time Spiderman come on? I don't recall if-- I don't-- I'm not sure, I'm not sure I think Terrence calls me.
Q Okay.
A And asked what time Spiderman came on and I said I did not know.
Q Okay. So he hollers through the

EXHIBIT O

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 01/15/2001

Larry Johnson, born November 19, 1977, Social Security Account Number 231-15-1861, of Richmond, Virginia, was interviewed at the Federal Correctional Facility in Petersburg, Virginia. Special Agent Michael Talbert of the Bureau of Alcohol, Tobacco, and Firearms was present during the interview. After being advised of the identity of the interviewing agent and the nature of the interview, he provided the following information:

Johnson was arrested on February 2, 2000, on Federal Exile charges (Possession of a Firearm and Cocaine). Johnson was subsequently convicted and sentenced to 15 years incarceration. While awaiting sentencing, Johnson was housed at the Piedmont Regional Jail from February 2, 2000, until mid December, 2000. While at Piedmont, Johnson's cell mate from August until December was Calvin Stith. In December, Johnson was transferred to the Northern Neck Regional Jail, Warsaw, Virginia, to await transportation to Federal Correctional Institution (FCI) Petersburg. While at Northern Neck Regional Jail, Johnson's cell mate was Otis Warren. Both Warren and Stith are from Wakefield, Virginia, and were arrested in an August 8, 2000, drug sweep in Waverly and Wakefield, Virginia, as part of the ongoing investigation into the death of Officer Alan Gibson of the Waverly Police Department.

Stith did not discuss Gibson's death or the circumstances of his arrest with Johnson in great detail. Stith did tell Johnson that he believed that the two subjects arrested by the Sussex, Virginia, Sheriff's Department for killing Alan Gibson were not the right subjects. Johnson was not very interested in the case at the time so he asked Stith very few questions.

When Johnson was transferred to Northern Neck Regional Jail, he found out that Otis Warren also knew Calvin Stith. Warren began to discuss the Gibson case with Johnson. Johnson did not ask Warren any questions because he did not feel that it was appropriate and Warren might think he was a snitch.

Warren told Johnson that he had been arrested on drug charges and that investigators wanted him to talk about the Gibson homicide but he would not unless they dropped the charges against

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Investigation on 01/12/01 at Petersburg, Virginia

File # 184A-RH-48252 Date dictated 01/15/01

by Robert B. Ritchie, Jr.

him. Warren told Johnson that the key witness in the case, Evette Newby, had lied to investigators about Gibson's homicide. According to Johnson, Warren told him that Newby was protecting her boyfriend and her brother because they are the individuals who really killed the police officer and not the other two individuals who had been arrested.

Warren told Johnson that the police officer followed Newby's brother and boyfriend into the woods. A struggle ensued and they shot the police officer. Newby's brother and boyfriend ran back to Newby's apartment where Newby's brother proceeded to cut off his dred's and her boyfriend later moved to Newport News, Virginia. Both efforts were to help avoid being implicated as suspects. Evette Newby then called the police and implicated Claiborne and Richardson to draw attention away from her brother and boyfriend.

Warren knew this information because he is close friends with the Newby family. Warren knows that no one will testify against the Newbys because they are afraid of them. Both Warren and Stith told Johnson that Evette Newby was also paid $3,000 to testify against Claiborne and Richardson. Warren told Johnson that Sheriff's Deputies wanted Claiborne and Richardson in jail.

EXHIBIT P

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Newport News Circuit - Criminal Division

Case Details

Case Number: CR98038403-00	**Filed:** 04/13/1998	**Commenced by:** Indictment	**Locality:** COMMONWEALTH OF VA
Defendant: NEWBY, LEONARD	**Sex:** Male	**Race:** Black	**DOB:** 04/27/****
Address:			
Charge: CRIM HIST/PURCHASE F/A	**Code Section:** 18.2-308.2:2	**Charge Type:** F	**Class:** O
Offense Date: 12/29/1997	**Arrest Date:** 01/04/1998		

Hearings

#	Date	Time	Type	Room	Plea	Duration	Jury	Result
1	04/13/1998	9:30AM	Grand Jury					True Bill
2	05/14/1998	10:00AM	Trial	2	Guilty			Sentenced

Final Disposition

Disposition Code: Guilty	**Disposition Date:** 05/14/1998	**Concluded By:** Guilty Plea
Amended Charge:	**Amended Code Section:**	**Amended Charge Type:**

Jail/Penitentiary: Penitentiary	**Concurrent/Consecutive:**	**Life/Death:**
Sentence Time: 5 Year(s)0 Month(s)0 Day(s)	**Sentence Suspended:** 5 Year(s)0 Month(s)0 Day(s)	**Operator License Suspension Time:**
Fine Amount:	**Costs:** $668.05	**Fines/Cost Paid:** Yes
Program Type:	**Probation Type:** Supervised	**Probation Time:** 1 Year(s)
Probation Starts: Probation To Begin Upon Sentencing	**Court/DMV Surrender:**	**Driver Improvement Clinic:**

Surry General District C

Surry General District Court

Traffic/Criminal Case Details

Case/Defendant Information

Case Number :	GC11001104-00	**Filed Date :**	09/12/2011	**Locality :**	COMMONWEALTH OF VA
Name :	NEWBY, LEONARD	**Status :**	Custody	**Defense Attorney :**	
Address :	SPRING GROVE,, VA 23881	**AKA1 :**		**AKA2 :**	
Gender :	Male	**Race :**	Black	**DOB :**	04/27/****

Charge Information

Charge : ASSAULT: (MISDEMEANOR)

Code Section :	18.2-57	**Case Type :**	Misdemeanor	**Class :**	1
Offense Date :	09/11/2011	**Arrest Date :**	09/11/2011	**Complainant :**	DEPUTY S. SWITZER
Amended Charge :		**Amended Code :**		**Amended Case Type :**	

Hearing Information

Date	Time	Result	Hearing Type	Courtroom	Plea	Continuance Code
09/13/2011	08:30 AM	Finalized	Arraignment			

Service/Process

Disposition Information

Final Disposition : Transferred To Another Jurisdiction/Court

Sentence Time :	00Months 000Days 00Hours	**Sentence Suspended Time :**	00Months 000Days 00Hours		
Probation Type :		**Probation Time :**	00Years 00Months 000Days	**Probation Starts :**	
Operator License Suspension Time :	00Years 00Months 000Days	**Restriction Effective Date :**			
Operator License					

Hampton General Distri

Hampton General District Court

Traffic/Criminal Case Details

Case/Defendant Information

Case Number :	GC12043739-00	**Filed Date :**	11/26/2012	**Locality :**	HAMPTON
Name :	NEWBY, LEONARD	**Status :**	Released On Recognizance	**Defense Attorney :**	
Address :	SURRY COUNTY VA 23881	**AKA1 :**		**AKA2 :**	
Gender :	Male	**Race :**	Black	**DOB :**	04/27/****

Charge Information

Charge : DISTURBING THE PEACE

Code Section :	24-11	**Case Type :**	Misdemeanor	**Class :**	2
Offense Date :	11/24/2012	**Arrest Date :**	11/24/2012	**Complainant :**	TERRILL, J. HPD
Amended Charge :		**Amended Code :**		**Amended Case Type :**	

Hearing Information

Date	Time	Result	Hearing Type	Courtroom	Plea	Continuance Code
12/20/2012	11:00 AM	Continued		C		
02/07/2013	11:00 AM	Finalized		C		

Service/Process

Disposition Information

Final Disposition :	Guilty				
Sentence Time :	00Months 000Days 00Hours	**Sentence Suspended Time :**	00Months 000Days 00Hours		
Probation Type :		**Probation Time :**	00Years 00Months 000Days	**Probation Starts :**	
Operator License Suspension Time :	00Years 00Months 000Days	**Restriction Effective Date :**			
Operator License					

Newport News-Criminal General District Court

Traffic/Criminal Case Details

Newport News-Criminal

Case/Defendant Information

Case Number :	GC15003091-00	**Filed Date :**	05/11/2015	**Locality :**	COMMONWEALTH OF VA
Name :	NEWBY, LEONARD	**Status :**	Released On Summons	**Defense Attorney :**	
Address :	NEWPORT NEWS, VA 23607	**AKA1 :**		**AKA2 :**	
Gender :	Male	**Race :**	Black	**DOB :**	04/27/****

Charge Information

Charge :	PROFANE SWEARING				
Code Section :	18.2-388	**Case Type :**	Misdemeanor	**Class :**	4
Offense Date :	05/09/2015	**Arrest Date :**		**Complainant :**	WALZAK, B.M.,OFC
Amended Charge :		**Amended Code :**		**Amended Case Type :**	

Hearing Information

Date	Time	Result	Hearing Type	Courtroom	Plea	Continuance Code
06/03/2015	09:00 AM	Finalized	Disposition/Sentencing/Revocation Hearing		Tried In Absentia	

Service/Process

Disposition Information

Final Disposition :	Guilty In Absentia				
Sentence Time :	00Months 000Days 00Hours	**Sentence Suspended Time :**	00Months 000Days 00Hours		
Probation Type :		**Probation Time :**	00Years 00Months 000Days	**Probation Starts :**	
Operator License Suspension Time :	00Years 00Months 000Days	**Restriction Effective Date :**			
Operator License Restriction Codes :					
Fine :	$100.00	**Costs :**	$126.00	**Fine/Costs Due :**	
Fine/Costs Paid :		**Fine/Costs Paid Date :**		**VASAP :**	

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Hopewell Circuit - Criminal Division

Case Details

Case Number: CR18000370-00	**Filed:** 12/14/2018	**Commenced by:** Indictment	**Locality:** COMMONWEALTH OF VA
Defendant: NEWBY, LEONARD	**Sex:** Male	**Race:** Black	**DOB:** 04/27/****
Address: HOPEWELL, VA 23860			
Charge: ASSAULT: MALIC; VICTIM INJURED	**Code Section:** 18.2-51.2	**Charge Type:** Felony	**Class:** 2
Offense Date: 10/07/2018	**Arrest Date:** 10/08/2018		

Hearings

#	Date	Time	Type	Room	Plea	Duration	Jury	Result
1	02/12/2019	9:00AM	Grand Jury					True Bill
2	03/27/2019	9:00AM	Trial					Continued Motion Of Prosec. Atty
3	06/26/2019	9:00AM	Trial					Continued Motion Of Prosec. Atty
4	10/16/2019	9:00AM	Trial					Continued Motion Of Defense
5	11/06/2019	9:00AM	Status Hearing					Continued Motion Of Defense
6	12/11/2019	9:00AM	Trial		Not Guilty			Continued
7	02/13/2020	9:00AM	Trial		Alford			Tried
8	07/15/2020	9:00AM	Pre-Sentence Report					

Final Disposition

Disposition Code:	**Disposition Date:**	**Concluded By:**
Amended Charge: MALICIOUS WOUNDING	**Amended Code Section:** 18.2-51	**Amended Charge Type:** Felony

Jail/Penitentiary:	**Concurrent/Consecutive:**	**Life/Death:**
Sentence Time:	**Sentence Suspended:**	**Operator License Suspension Time:**
Fine Amount:	**Costs:**	**Fines/Cost Paid:**
Program Type:	**Probation Type:**	**Probation Time:**
Probation Starts:	**Court/DMV Surrender:**	**Driver Improvement Clinic:**

EXHIBIT Q

CONFIDENTIAL: ATTORNEY/CLIENT PRIVILEGED INFORMATION

Investigative Action

Prepared by: *Rod Budd, Private Investigator*
Date of report: *June 4, 2020*
Subject matter: ***Criminal History Research/Leonard Newby***
Prepared for: *Jarrett Adams*

Review of the Virginia Judiciary Online Case Information (Case Status and Information) data base disclosed the following criminal records for Leonard NEWBY, dob 4/27/xxxx. Other data base inquiries confirmed NEWBY is associated with the Evette NEWBY, of Waverly, VA. The following details the known criminal record. Pertinent copies from the online service will be provided via separate correspondence.

- Arrested 1/4/1998 for an incident that occurred on 12/29/1997. NEWBY was charged in Newport News Circuit Court with **crim hist/purchase f/a**. NEWBY pled guilty to this charge on 5/14/1998 and received a 5-year sentence (suspended)
- Arrested on 9/11/2011 and charged in Surry General District Court with **assault (misdemeanor)**. The complainant was Deputy S. SWITZER
- Arrested on 11/24/2012 and charged in Hampton General District Court with **disturbing the peace**. The complainant was HPD officer J. TERRILL
- Arrested/summoned on 5/9/2015 and charged in Newport News General District Court with **profane swearing.** The complainant is Ofc. B.M. WALZAK
- Arrested on 10/8/2018 and charged in Hopewell Circuit Court with **assault; malicious wounding, victim injured**. NEWBY entered an Alford plea on 2/13/2020. A pre-sentence hearing is scheduled for 7/15/2020.

Virginia Vinelink and Riverside Regional Jail, North Prince George, VA did not report that NEWBY was currently incarcerated.