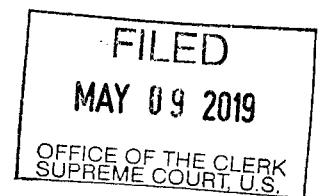


IN THE:
SUPREME COURT OF THE UNITED STATES

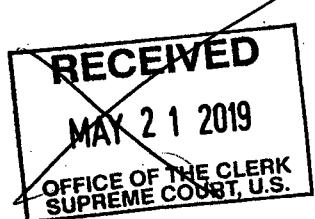


Justin K. Cornell, DCI #1738299, *
Petitioner, pro se *
v. * Docket No. 18-8244
Virginia, *
Respondent *

On Petition for Rehearing for Writ of Certiorari or Grant/
Vacate/Remand in light of Jackson v. Virginia,
443 U.S. 307 (1979)
to the Supreme Court of the United States

PETITION FOR REHEARING

Virginia Counsel of Record	Pro Se Petitioner
Toby J. Heytens	Justin K. Cornell
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202 North Ninth Street	901 Corrections Way
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QUESTION PRESENTED

In addition to the question of criteria used to determine sufficiency of evidence in Docket #18-8244, new evidence of prosecutorial misconduct has come to light. This new evidence was presented in a Supplemental Brief which was denied by this Court without comment while 18-8244 was being distributed. It is presented here in accordance with Rule 44.2.

The question presented is whether the new evidence of prosecutorial misconduct constitutes an intervening circumstance warranting rehearing of the question as to whether the proper standard for determining the sufficiency of the evidence was applied, and if so, if the evidence was sufficient as a matter of law.

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PETITION FOR REHEARING

This request for rehearing is made reluctantly. Since filing the petition for certiorari, and Grant/Vacate/Remand, new evidence has been released to the petitioner. This video evidence, together with the (1) misrepresentation of physical evidence at trial, (2) arguing evidence not in the record, (3) failing to profer specific evidence to be excluded at an in limine hearing, (4) preventing Mr. Cornell from presenting a complete defense, (5) and Brady violations force an allegation of gross prosecutorial misconduct. The vast majority of prosecutors in the nation act with impunity, and integrity for the public good without fail. Only rarely does one lose sight of truth and justice in search of a conviction.

Mr. Cornell respectfully moves this Court for an order vacating the denial of his petition for writ of certiorari, and Grant/Vacate/Remand entered on April 15, 2019, and grant the petition. The prosecutors' misconduct throughout the proceedings, in light of new evidence, "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Juniper v. Zook, 876 F.3d 551, 567 (4th Cir. 2017) (quoting Kyles v. Whitley, 514 U.S. 419, 435 (1995) (cite omitted)). The 4th Circuit has repeatedly rebuked the officials in the Commonwealth's Attorney's Office, and yet the deputies and their assistants continue "to stake out positions plainly contrary to their obligations under the Constitution." Ibid. fn. 7. See also Wolfe v. Clarke, 691 F.3d 410 (4th Cir. 2012), and Muhammad v. Kelly, 575 F.3d 359 (4th Cir. 2009). Perhaps a correction from this Court would serve as bellwether, and aid the public perception of the prosecutor's office as truth-seekers, rather than ~~practitioners of legal gamesmanship~~.

OPINIONS BELOW

The denial of petition for certiorari is found at Appendix A, hereinafter, App. A.

ADDITIONAL CONSTITUTIONAL AND STATUTORY PROVISIONS

See App. B.

STATEMENT OF THE CASE

In this case an arrest was made prematurely. On June 9, 2015, Mr. Cornell was arrested and charged with second degree murder. The autopsy on September 2, 2015, revealed no manner, or mechanism of death. The medical examiner, Dr. Stokes, refused to classify her death as a homicide. App. C.

The prosecutors, Mr. Vachris, Chief Deputy Commonwealth's Attorney, and Mr. Lantz, Assistant Commonwealth's Attorney, had the power to charge either or both the arrestee, and the charge but chose not to do so. Along with having no cause of death, there was no time or date of death, no place, no witnesses, no weapon, and Mr. Cornell had no motive. In order to obtain a conviction, the prosecution needed to focus the jury on Mr. Cornell to the exclusion of all the exculpatory evidence, and an alternative perpetrator.

Since Mr. Cornell's car had no evidence of it being used to transport the decedent's body, the state focused on making the trash found near the body appear as if the accused was responsible for its disposal. In this way Mr. Cornell could be tied to the trash, the trash to the body, and thus, Mr. Cornell to the body. The evidence was far from a homerun, they would have to leg this one out. To achieve this aim, the prosecutors told the jury that all of the trash bags containing Ms. Armstrong's body matched the trash bags taken from Mr. Cornell's home. This was demonstrably false.

The petitioner has refrained from making any claim of misconduct until he possessed the tangible evidence to prove the validity of said misconduct.

1. Misrepresentation of Evidence.

Mr. Lantz in his closing argument stated, "[a]ll those body parts found in the swamp in those black trash bags with red ties." Trial transcript 1096-1097, hereinafter, TT 1096-1097. However, after three years of attempting to see the video of Douglas Road, where the body was found, and taken by the police first on scene, the petitioner finally received from the Circuit Court of Virginia Beach a single three-minute DVD. At 1:06 on the video, a close-up of the top of the bag shows clearly that there are no drawstrings. The bag was not a match to the bags taken from Mr. Cornell's home. App. D.

2. Arguing Evidence Not in the Record.

Mr. Lantz went on to "suggest" and "submit" that the no-slip strips recovered from Douglas Road "were removed from the bathtub [in Mr. Cornell's home]... because that is where the body of Brianna Armstrong was cut up... and those strips... possibly could have contained evidence of what he did to her body in that tub." TT 1097-1098. The state examined Mr. Cornell's home. No blood or DNA belonging to Mrs. Armstrong was found in the tub, or anywhere in Mr. Cornell's bathroom. There was no blood, or DNA on the strips either. No evidence was entered at trial to support Mr. Lantz' submissions. App. E.

The evidence that tied Mr. Cornell most closely to the trash, a white plastic "Thank You" bag with a receipt dated October 17, 2014, had Mr. Cornell's name and address on it. In the same bag was 34 bottles of ginseng supplement. Detective Cole reported Mr. Cornell as having claimed to drink one a day. App. F.

Mr. Lantz, and Mr. Vachris repeatedly implied that Mr. Cornell put the trash, and the body on Douglas Road. However, they entered no evidence to support this claim. All of the evidence supports that it was his trash, but the date on the receipt established the trash to be several months old. No

evidence belied Mr. Cornell's statement to police that he placed the trash in the community dumpster. The dumpster is unsecured, and anyone could have taken the trash, even a jealous husband looking for proof of infidelity, from the dumpster unobserved. App. G.

3. Failure to Profer Evidence to be Excluded.

A hearing was held for the state's Motion to Regulate Alleged Evidence of Third-Party Guilt, on or about May 19, 2016, four days before trial began on May 23, 2016. Mr. Cornell was not present. No court reporter was present. The state submitted a written motion in support, but no evidence was specified, nor grounds upon which said evidence was inadmissible. The state sought and received an order excluding all evidence of an alternative perpetrator. App. H.

This evidence included:

- a. Detective Brenner's report that Mr. Corey Creek and Mrs. Armstrong, his wife, were having problems because she had recently found out about his history as a violent sex offender.
- b. Yet, in the missing person report taken by Officer Spratling, Mr. Corey Creek stated that he and his wife were having no domestic disputes.
- c. Detective Branch's report shows Mr. Corey Creek was unemployed since he lost his job around Thanksgiving, and he was not upset over his wife being missing.
- d. Detective Thomas reported that Mr. Corey Creek and Mrs. Armstrong had a violent break-up, Mr. Corey Creek behaved weird after Mrs. Armstrong ~~went~~ missing, she texted on 12/2/2014 that they were no longer together, and on 12/26/2014 that Mr. Corey Creek refused to get help with his abusive behavior
- e. Multiple witnesses believe Mr. Corey Creek was involved in her disappearance, Mr. Corey Creek acted strangely, avoided eye-contact, suddenly changed

vehicles from a pickup truck to a sedan with handicapped plates when he is not handicapped, Mrs. Armstrong logged on to her Facebook account on Sunday, 5/10/2015, Mr. Corey Creek got rid of her cats weeks before her body was found.

f. Detective Hatchell's report recorded another witness stating that Mrs. Armstrong was moved out and getting a divorce, Mr. Cornell was moving to Florida, and Mr. Corey Creek was abusive.

g. Mr. Corey Creek stated in his missing person report that Mrs. Armstrong was depressed due to the recent loss of her brother and mother [it was Mother's Day weekend], and he was not sure if she was taking any medications for depression.

h. Detective Thomas' report recorded Mr. Corey Creek as being reluctant to allow the police entry, they discover multiple medications in plain sight for depression, anxiety, and pain; Mr. Corey Creek calls his wife a "pathological liar."

App. I.

4. Preventing the Opportunity to Present a Complete Defense.

a. The defense was disallowed to call the multiple witnesses mentioned in Mr. Cornell's favor, nor was he allowed to cross-examine Mr. Corey Creek on his means, motive, and opportunity to commit the crime at issue all readily available in the record. Mr. Cornell was not even allowed to testify on his own behalf that he witnessed Mrs. Armstrong with a black-eye, and bruises. Mr. Cornell told police that he began teaching Ms. Armstrong self-defense after the abuse by Mr. Corey Creek. Sixth Amendment violations.

5. The Commonwealth's Attorney's Office maintained an "open file policy" for the production of discovery as evidenced in their Response to Motion for Discovery and Inspection. Attached documents were "strictly for the convenience of defense counsel." No.s 1 and 2. App. J. Mr. Cornell never received many of the items listed as attached.

REASONS TO GRANT REHEARING

To paraphrase the Honorable Justice Kennedy, by your decisions, you teach.² The lesson explained by the 4th Circuit in Juniper v. Zook, apparently was not minded. The Virginia Commonwealth Attorney's Office still believe that they can withhold documents, and argue evidence not in the record with ~~indiscretion~~, indiscretion. In addition to the question presented in the certiorari petition, "was the proper standard used to determine the sufficiency of evidence, and if so, was there sufficient evidence," petitioner now asks in the light of Holmes v. South Carolina, "the true strength of the prosecution's proof cannot be assessed without considering the reliability of the prosecution's evidence," and "the rule applied in this case is no more logical than its converse would be, i.e., a rule barring the prosecution from introducing evidence of a defendant's guilt if the defendant is able to profer, at a pre-trial hearing, evidence that if believed, strongly supports a verdict of not guilty," does the evidence of an alternative perpetrator that was excluded through prosecutorial misconduct satisfy the requirement of an intervening circumstance of a substantial effect, and if so, can the validity of the verdict be trusted. 547 U.S. 319, 330, 322 (2006).

1. Gross Prosecutorial Misconduct.

Is it more likely than not that the state was aware that telling the jury false information about the bags was a violation of the 14th Amendment?

As Justice Thomas argued in 2011 that Harry Connick Sr. was entitled to assume that the prosecutors involved in the Thompson case were trained in law school, we can safely assume that Mr. Lantz and Mr. Vachris having been trained in law school, were familiar with the Due Process Clause of the 14th

² Lani Guinier, "Forward, Demoprudence through Dissent," Harvard Law Review 122 (2008): 4, 7 (quoting Kennedy in response to a student's question).

Amendment.

Mr. Lantz lied to the jury. He told them the bags containing the body were of the same type as the bags in Mr. Cornell's home, when actually the bags on the video had no drawstrings. We are only discussing the minutia of these bags because, no tool or weapon, no witness or statement ever inculpated Mr. Cornell.

Former Chief Deputy Commonwealth's Attorney Vachris could have dropped the second-degree murder charge when, after the body was examined, no cause of death could be determined. In truth, there is no evidence of a homicide. The decedent's mental health suggested suicide, and reasonable doubt. App. C. p. 2.

Instead, Mr Vachris misrepresented the evidence to point at Mr. Cornell, a man with no criminal record of violence, who was trying to help a woman stuck in an abusive relationship. Mr. Vachris obfuscated the evidence of Mr. Cornell's innocence to obtain a conviction.

Such falsifying of evidence was addressed in 1935, and again in 1967. "The Fourteenth Amendment cannot tolerate a state criminal conviction by the knowing use of false evidence." Miller v. Pate, 386 U.S. 2; 87 S.Ct. 785, 788 (quoting Mooney v. Holohan, 294 U.S. 103 (cite omitted)). In Miller, the prosecutor repeatedly referred to a pair of "bloody shorts" when he knew it was only paint. It is more likely than not, in petitioner's opinion, that Mr. Lantz, and Mr. Vachris had to rely on false evidence when it is considered that there was no evidence that Mr. Cornell willfully embarked upon any behavior likely to cause death to Mrs. Armstrong.

2. Is it more likely than not that Mr. Lantz was aware that arguing evidence in his closing that was not entered during the trial was a violation of the rules of evidence?

Mr. Lantz' closing argument refers to, and relied upon, evidence of DNA, and actions not in the record in direct violation of Federal Rule of Evidence 802 Hearsay. See U.S. v. Maddox, 156 F.3d 1280, 1282 (D.C. Cir. 1998) ("in closing argument counsel may not refer to, or rely upon, evidence unless the trial court has admitted it... The practice disregards, indeed violates, the rules governing the admission of evidence... the attorney's statements amount to blatant hearsay." [Remanded for a new trial]).

At several times during this trial Mr. Lantz objected to witness testimony on grounds of hearsay. Surely he was aware of its inadmissibility.

Mr. Lantz' suggestion to the jury about the no-slip strips, which ~~were~~ free of Mrs. Armstrong's DNA was the exact opposite. Pure hearsay testimony. His submission that Mrs. Armstrong was "cut up" in the tub is without a scintilla of evidence in support anywhere in the record.

Mr. Cornell had a three-month affair with Mrs. Armstrong, ending in February, 2015, another three months before she went missing. The date on the trashed receipt proves that the trash was from the time when Mrs. Armstrong was cheating on Mr. Corey Creek.

3. Failure to Identify Specific Evidence at Issue.

Is it more likely than not that Judge O'Brien would have denied the Motion to Exclude Evidence of Third-Party Guilt if the state, as the moving party, had proffered the specific evidence in a manner consistent with the federal procedure?

The Gregory Rule, cited in Holmes v. South Carolina, *supra*, by Justice Alito's decision, holds third-party guilt evidence to be admissible if it, "raise[s] a reasonable inference or presumption as to [the defendant's] own innocence." At 323.

Mr. Corey Creek's wife was cheating on him with Mr. Cornell. Mr. Corey

Creek had a life insurance policy on Mrs. Armstrong. Mr. Corey Creek stood to inherit a house from her death as well. Mrs Armstrong was seeking a divorce. This alone is more than "a bare suspicion," or "a conjectural inference as to the commission of the crime by" Mr. Corey Creek. Id. at 324.

"A criminal defendant's right to have ""a meaningful opportunity to present a complete defense,""(id. at 331), is "a weighty interest of the accused," and it is infringed upon by 'arbitrary' evidentiary rulings. Id. at 324 (cite omitted). Judge O'Brien's ruling was arbitrary because the prosecutors failed to "identify the particular evidence at issue and articulate with specificity the arguments supporting the position that the particular evidence is inadmissible on any relevant ground." U.S. v. Cline, 188 F.Supp.2d 1287 (2002).

It is more likely than not that the jury would have had a reasonable doubt about Mr. Cornell's involvement had they heard all of the evidence inculpating Mr. Corey Creek. This evidence tends to prove who would kill and defile Mrs. Armstrong's dead body; an angry, jealous husband.

4. Is it more likely than not that Mr. Cornell was prevented from the opportunity to present a complete defense?

That someone else committed the crime is a recognized defense. See Lunberry v. Hornbeak, 605 F.3d 754 (9th Cir. 2010). "That constitutional right is violated by the exclusion of probative admissible evidence that another person may have committed the crime." Id. at 760. Even if the evidence excluded was probative only of motive rather than identity, then by jury instruction #14, "[t]he presence or absence of a motive may be considered in arriving at your verdict," its exclusion was then a violation of Mr. Cornell's constitutional right to due process as it was evidence properly for the jury's consideration. TT 1081. App. K.

5. Is it more likely than not that in 2015 the Chief Deputy Commonwealth's Attorney was familiar with the 1999 Strickler v. Greene ruling that an 'open file policy' was insufficient to satisfy the Brady standard if prejudice can be shown? 527 U.S. 263, 144 L.Ed.2d 286.

The Eastern District Court of Virginia held the Virginia prosecutor's practice of 'open file policy' to be insufficient, and the 4th Circuit was affirmed in its ruling that in Strickler's case, by this Court, that prejudice must be shown. Then in 2009, the 4th Circuit, in Muhammad v. Kelly, advised the Prosecutor's Office to "err on the side of disclosure," in refusing to condone the suppression of evidence. 575 F.3d 359, 370. In 2012, the 4th Circuit went a step further, "[w]e sincerely hope that the Commonwealth Attorney and his assistants have finally taken heed of these rebukes," in referring to evidence "the prosecution obviously should have disclosed prior to [petitioner's] capital murder trial." Wolfe v. Clarke, 691 F.3d 410.

The video evidence was not released to the defendant until after the trial. The cell phone data still has not been released, which contains the GPS data of Mr. Cornell's whereabouts for the month on May, 2015, thus proving he was never anywhere near the Douglas Road crime scene. The evidence is, and was suppressed. The evidence is exculpatory, and thus favorable. The video evidence is impeachment of the closing argument, and theory of the crime put forth by the prosecutors.

The prejudice "inquiry requires a materiality determination, whether "there is a reasonable probability that, had the [videos, and cell phone data] been disclosed, the result of the [trial] would have been different. Id. at 424. (cite omitted). The "'Reasonable probability'" does not mean "more likely than not" received a different verdict, only that the likelihood of a different result is great enough to "undermine[] confidence in the outcome of the trial."
(10)

See Kyles v. Whitley, 115 S.Ct. 1555 (1995) (cite omitted)." Ibid.

The state's entire theory of the crime crumbles with the GPS data proving Mr. Cornell did not put the body on Douglas Road, and the video proving the prosecutors lied about the evidence being linked to Mr. Cornell. No evidence links Mr. Cornell to disposing the trash, and therefore nothing links Mr. Cornell to the disposal of the body.

The core issue is that one's liberty has been stripped away by baseless, Kafka-esque allegations. How does one prove innocence of murder, when no proof of a murder exists? How can one provide an alibi, when no date, time, or place of death has been proven? This is a miscarriage of justice.

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." Olmstead v. United States, 277 U.S. 438; 72 L.Ed 944 (1928) (Justice Louis Brandeis, Dissenting Opinion).

CONCLUSION

"When the law denies a remedy for even persistent and egregious violations, it risks sending the startling and dangerous signal that violating people's rights isn't that big a deal." Tribe, Lawrence, and Matz, Joshua, "Uncertain Justice" (2014) 300. In part, the Constitution was established "in Order to form a more perfect Union, establish Justice... and secure the Blessings of Liberty." App. B.

I pray this Court be moved to act in accordance with these sentiments of Justice and Liberty, to grant certiorari.

Respectfully submitted,



Justin K. Cornell
DCI #1738299
901 Corrections Way
Jarratt, VA 23870
Pro se petitioner

No. 18-8244

IN THE SUPREME COURT OF THE UNITED STATES

Justin Keith Cornell,

Pro se petitioner,

v.

Virginia,

Respondent

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, Justin Keith Cornell, pro se, and certifies that his Petition for Rehearing is made in good faith, and not for delay purposes in compliance with Rule 44.2.

Mr. Cornell states further that this petition is restricted to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." Idem.

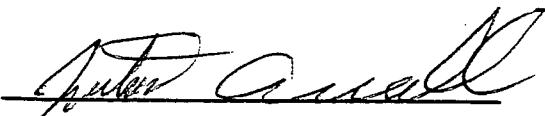
This Court entered its denial of writ of certiorari, or Grant/Vacate/Remand on April 15, 2019. Petitioner's Supplemental Brief/ Request of leave to file Motion for Directed Disposition/ Motion for Directed Disposition was returned on April 1, 2019. The Supplemental Brief, in compliance with Rules 15.8 and 33.2(b) contained some of the newly discovered evidence not made available to the petitioner until March 5, 2019. The newly discovered evidence is presented here, contextually, with other substantial grounds not previously presented.

Until this new evidence, petitioner made allowances for the prosecutor having argued evidence not in the record as non-malicious error. However, in light of current discoveries, it is clear that the state prosecutors did knowingly, and maliciously deceive the jury by misrepresenting the evidence, withholding impeachment evidence, fail to proffer evidence to be excluded, subvert procedure to prevent Mr. Cornell from presenting a complete defense,

and argued evidence not in the record in order to obscure the truth in exchange for a win at trial.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 9 of May, 2019.



Justin Keith Cornell

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

April 15, 2019

Scott S. Harris
Clerk of the Court
(202) 479-3011

Mr. Justin Keith Cornell
Prisoner ID #1738299
Greensville Corr. Ctr.
901 Corrections Way
Jarratt, VA 23870

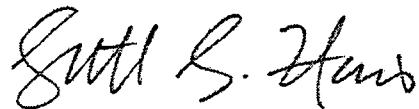
Re: Justin Keith Cornell
v. Virginia
No. 18-8244

Dear Mr. Cornell:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

APPENDIX A

ADDITIONAL CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Preamble

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to... be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor..."

Fourteenth Amendment Section 1.

"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."

Federal Rule of Evidence 802 Hearsay.

"Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress."

MEDICAL HISTORY

none known alcoholism cirrhosis hepatitis drug abuse asthma bronchitis emphysema

seizure disorder (cause) _____ cancer _____ diabetes hypertension atherosclerosis

stroke psychiatric diagnosis (specify) ANXIETY depression / dementia (specify) _____

recent trauma (specify) _____ hip fracture

acute infections (specify) _____ HIV/AIDS COPD obesity tobacco

other (specify):

Treating MD VIVIANA SKANSI, MD

Phone (757) 436-0605

Hospitalizations (when/where)

Medication PER COASTAL COUNSELING CENTER MEDICAL RECORDS (12/3/14): ALPRAZOLAM

Tox requested: YES

Summary of Circumstances:

THE FOLLOWING INFORMATION WAS OBTAINED FROM DETECTIVE THOMAS OF THE CHESAPEAKE POLICE DEPARTMENT AND MY OWN OBSERVATIONS WHILE AT THE SCENE :

A PASSERBY DISCOVERED A BLACK TRASH BAG ALONG THE SIDE OF THE ROAD THAT APPEARED TO HAVE HUMAN REMAINS IN IT. POLICE WERE CALLED. POLICE ARRIVED AND OPENED THIS TRASH BAG. THEY ALSO BELIEVED IT TO BE HUMAN. SEVERAL OTHER TRASH BAGS WERE NOTED IN THE WATER NEXT TO THE ROAD. POLICE CALLED FOR THE MEDICAL EXAMINER'S OFFICE TO RESPOND. MULTIPLE TRASH BAGS WITH VARIOUS BODY PARTS WERE LOCATED .

BRANDY MAGRUDER, D-ABMDI
MEDICOLEGAL DEATH INVESTIGATOR

APPENDIX C

1 ladies and gentlemen? What other reasonable
2 explanation could exist for that information being
3 on his phone?

4 Again, we've got car Brianna's car, cell
5 phone, necklace, all those things found just a
6 short distance away from Mr. Cornell's apartment
7 located by Detectives Brenner and Logan. The
8 vehicle, again, unlocked, keys in the ignition,
9 wallet there, personal effects there. No obvious
10 signs of foul play. All those things found very
11 close to Mr. Cornell's house. The cell phone and
12 necklace found by Mr. Boyd.

13 The trash bags, ladies and gentlemen. The
14 black trash bags with red ties. All those body
15 parts found in the swamp in those black trash bags
16 with red ties. What was found in the defendant's
17 apartment? Black trash bags with red ties. Now,
18 I would agree there's nothing exceptionally unique
19 about them. They're black trash bags with red
20 ties.

21 What else was found in the swamp though?
22 Well, there was a box also found there kind of
23 torn up, but look at it for yourselves. Examine
24 it with your own eyes. Use your own common sense
25 and judgement. You see the brand right there.

1 The same brand of the trash bags that were found
2 in his apartment seized by Detective Thomas. How
3 many coincidences does it take, ladies and
4 gentlemen? How many is one too many?

5 Can we dim the lights?

6 We've got the pictures of the bathtub
7 taken by Ms. Pittman. We've got those white
8 strips that were found out in the swamp. I'm sure
9 Mr. Jones is going to get up here and say, Well,
10 the Commonwealth never brought in an expert
11 witness to tell you about those strips, but the
12 great thing, ladies and gentlemen, you don't need
13 an expert. Look at it with your own eyes.

14 Examine. Use your common sense. Don't let him
15 insult your intelligence by telling you you need
16 an expert to tell you that those strips came from
17 that tub. Look at the marks in the tub. Look at
18 the shape and size of the strips.

19 Now, you may ask yourself why would
20 something like that be pulled out of a bathtub?
21 What I'm going to suggest to you, ladies and
22 gentlemen, may not be pleasant to think about, but
23 I would submit to you that the reason why those
24 things were removed from that bathtub is because
25 that's where that body of Brianna Armstrong was

1 cut up, disarticulated, dismembered, and those
2 strips were pulled out of that tub because they
3 possibly could have contained evidence of what he
4 did to her body in that tub.

5 You got the black pants, men's pants,
6 found in the swamp, size 34/30. Photographs taken
7 by Ms. Pittman of the pants inside the defendant's
8 house. Again, I'm sure Mr. Jones is going to get
9 up and tell you, Well, 34/30, there may be some
10 members of the jury that wear pants that size.
11 Nothing may be particularly unique about them,
12 but, again, how many coincidences does it take,
13 ladies and gentlemen, before there's one too many?

14 The underwear found in the swamp. Starter
15 brand underwear. Again, the photograph of the
16 underwear taken inside the defendant's apartment.
17 The same brand underwear. Again, Mr. Jones would
18 probably submit to you that there are thousands,
19 if not millions, of pairs of Starter underwear
20 floating around in this world. I can't disagree
21 with that.

22 These underwear are a little unique. Why
23 is that? Well, Amy Townley told you, there was
24 some DNA in this underwear. Mr. Cornell could not
25 be eliminated as a contributor to that DNA. I

in the bathroom - several store plastic bags and then places them in a larger bag to go into the trash. Several items found in the residence were located in the trash bag found at the crime scene, to include, but not limited to Christmas tree needles from a fake tree, non-slip decals from the bath tub. After explaining all of the items that were found at the scene Mr. Cornell admitted they all belonged to him and had no idea how or why they ended up at the crime scene. Mr. Cornell was asked if Brianna ever showered at his residence and he responded yes. When asked his pant size he stated it was 32X32, and medium shirt size. Several deep cuts were noted on the kitchen linoleum floor. Mr. Cornell explained that they were there when he moved in and provided a move in checklist where that had been previously documented in June 2014. He was asked about the carpet threshold that had been replaced. He stated the old one kept coming up and he kept snagging his socks on it. Blue gloves were found in the laundry room. Mr. Cornell advised he used those for when he had a cut on his hands because he did not want to freak people out when they got a massage and he had injuries on his hands. Several Ginseng bottles, dental floss and picks were found in his bedroom near the sink. He advised he drinks a Ginseng bottle every day.

Mr. Cornell advised that he was unaware that Brianna was married until he was approached by Corey after Brianna went missing. Corey was looking for Brianna at that time. Brianna had told him that she was divorced and that the break up was violent. He stated he did see a bruise on her face and arm in November 2014. He told her he would teach her some self-defense in case she ever needed it. He stated she would stay at his house a few times a week.

In March 2015, Mr. Cornell stated that Brianna bought a winery package in Williamsburg. They stayed overnight at the bed and breakfast but denied they were intimate. He stated after March, she disappeared and they were just friends. He realized Brianna had been untruthful about simple things. For example the night she came before she disappeared she brought chicken teriyaki on sticks with rice. Brianna went into great detail about how she made some changes to her recipe and wanted to know if he liked it. He stated it was obvious she had bought it at a restaurant and just put it in plastic bowls to bring him.

Mr. Cornell reviewed the last night she was at his house. He had given her a massage in the 2nd bedroom. It was quick because both of them were hungry and they decided to eat. They had been drinking ABC moonshine and wine.

Before leaving, Detective Thomas located a box of black trash bags with red ties. Mr. Cornell gave him permission to take the box and

APPENDIX F

1 Cornell on it. Did you -- you read for the
2 Commonwealth his name. Did you read -- can you see a
3 date on that document?

4 A There's pertinent information, 10/17 of
5 '14.

6 Q October 17th, 2014?)

7 A Yes. At 1:45 p.m.

8 Q And the date of this -- I'm sorry, ma'am?

9 A At 1:45 p.m.

10 Q Okay. So that document has a date on it
11 reflecting October 2014 and that -- by that time your
12 search was in May of 2015; is that right?

13 A May of -- yes. 2015. Yes.

14 Q Okay. So that particular document was
15 depicted on -- is depicted on your crime scene diagram
16 as on -- being on the east side of the road, which is
17 in items -- or near Number 3 and 4?

18 A This is in a bag.

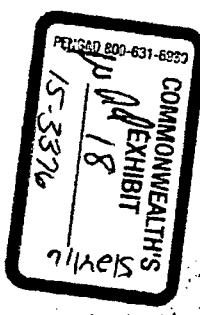
19 Q On the east side of the road --

20 A That's --

21 Q -- in 3 and 4?

22 A In 3 -- on Item Number 4.

23 Q Okay. Now, to be clear, to sum up all of
24 this, it is accurate that the only information you
25 have that has Justin Cornell's name on it is all of



1 were found with the body on the back of that
2 carpet strip? She told you that they were
3 consistent in physical and chemical properties and
4 that they could have originated from the same
5 source or different sources manufactured in the
6 same manner. Now, again, I'm sure Mr. Jones is
7 going to tell you, Well, that's not like DNA.
8 That's not exactly an exact science. All she's
9 saying is they're consistent. Again, ladies and
10 gentlemen, I ask you how many coincidences is one
11 too many?

12 All the knives that were found inside the
13 defendant's home with the search warrant. You
14 heard Dr. Pope's testimony that all these tool
15 marks that were found in the various bones of the
16 body created by a bladed implement, a bladed
17 weapon, nothing serrated. Certainly there was no
18 shortage of those types of things inside the
19 defendant's home. No question about that. They
20 were everywhere. Again, ladies and gentlemen, how
21 many coincidences is one too many?

22 Look at some of the things that were found
23 in the swamp. You've got the receipt with
24 Mr. Cornell's name and address on it found in that
25 bag of trash across the street from the body. How,

1 in the world did that get out there? Why would
2 that be out there? Why would that be out in the
3 swamp directly across the street from where the
4 body's found?

5 Look at the ginseng bottles. Do you
6 recall Detective Thomas' interaction with
7 Mr. Cornell? What did he tell you about that?
8 Well, he drinks those every day. He actually told
9 you when they went through the list of stuff they
10 found in the swamp Mr. Cornell told them, That's
11 all mine. It's all his.

12 Look at the shower curtain and the liner
13 that were found near the body in the swamp there.
14 Why would those items be there? Again, I submit
15 to you that the exact same reason those items are
16 there is why those tub strips were there. Because
17 that shower curtain and that liner were on his tub
18 when he was doing what terrible things he did to
19 that body, disarticulation, dismemberment, cutting
20 her up into pieces. Why else would a shower
21 curtain and liner be out in the swamp along with
22 those tub strips?

23 The clog remover -- the bottle of clog
24 remover that was also found there with the body
25 out in the swamp. Again, I know it's not pleasant

Virginia:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

Commonwealth of Virginia,

Plaintiff

v.

Docket #: CR15-3376

Justin Keith Cornell,

Defendant

MOTION TO REGULATE
ALLEGED EVIDENCE OF THIRD PARTY GUILT

To the extent the defendant wishes to introduce evidence of alleged third party guilt he should be: (1) precluded from introducing evidence that has no other effect than casting a bare suspicion upon another or raises a conjectural inference to the commission of the crime by someone else; and (2) be required prior to introducing testimony of alleged third party guilt, to make a proffer to the Court sufficient to show that there be proof of connection between the third party evidence and the crimes, so as to tend to clearly point out another person as the guilty party.

I. Standard of Review and Basic Evidentiary Framework

The admissibility of circumstantial evidence tending to prove the guilt of a third person is left to the discretion of the trial court. *Weller v. Commonwealth*, 16 Va. App. 886, 890 (1993). The right to present evidence in one's defense does not permit a defendant to introduce evidence that merely suggests or insinuates that the third party may have committed the

Exhibit A | *APPENDIX*
H

crime. *Ramsey v. Commonwealth*, 63 Va. App. 341, 354 (2014) (internal citations omitted). “Such evidence is irrelevant; it tends to confuse and mislead a jury unless evidence has been introduced that points directly to guilt of a third party. Only where there is a trend of facts and circumstances tending clearly to point to some other person as the guilty party, may the defendant introduce any legal evidence which is available tending to prove that another person committed the crime for which he is charged.” *Id.*

In *Ramsey*, a defendant charged with burglary and sexual crimes against a five year-old victim, sought to introduce testimony that while he had committed the burglary, a third party had committed the sexual offenses. *Id.*, at 350. The trial court precluded the defendant from introducing evidence of the third party’s propensity for sexual predation, extraordinary violence and lack of control at the time of the offense. *Id.*, at 354. In upholding the trial court’s decision to exclude this testimony, the Court of Appeals found that the proffered evidence “bore no direct relation to the crimes charged.” *Id.*, at 355. The Court also noted with particularity that beyond the defendant’s own testimony, there were no facts or circumstances tending to show that the third party was guilty. *Id.*

Ramsey built upon a series of other Virginia cases that similarly excluded evidence of third party guilt that did not rest on a sufficient testimonial foundation. *See e.g., Weller*, 16 Va. App. at 890 (upholding the trial court’s order in a robbery and murder case precluding testimony that a

third party owned the same type of gun as the murder weapon, spent extravagantly after the crime, and had previously lived in the victim's neighborhood); *Johnson v. Commonwealth*, 259 Va. 654, 680-681 (2000) (affirming the trial court's exclusion of testimony in a rape and murder case that the victim had received flowers from a third party, that she told other people she wanted nothing to do with him because he was "crazy" and had expressed concern and apprehension shortly before her murder about a person she used to date). Even in cases, where the courts have held that this kind of evidence should be admitted, it is clear that such circumstantial evidence is to be received only after the defendant has presented or proffered testimony that clearly or directly points to the third party's guilt. *See e.g.*, *Oliva v. Commonwealth*, 19 Va. App. 523, 527 (1995); *Karnes v. Commonwealth*, 125 Va. 758 (1919). Here, there is no such evidence.

II. Constitutional Framework

If properly applied, evidentiary rules regulating third party guilt are consistent with the United States Constitution. In *Holmes v. South Carolina*, 547 U.S. 319 (2006), the United States Supreme Court examined a South Carolina evidentiary rule that regulated the introduction of evidence of third party guilt. In *Holmes*, the Supreme Court was critical of how South Carolina had applied the rule, when it precluded a defendant in a rape and robbery trial from introducing testimony that a third party had attacked the victim, admitted to others that the defendant was innocent and that he was

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guilty, and whose alibi could be refuted. *Id.*, at 323. The South Carolina court had excluded this testimony, "in view of the strong evidence of appellant's guilt – especially the forensic evidence." *Id.*, at 328. In reversing, the Supreme Court held that by using such a test the trial court had greatly expanded the rule regulating evidence of third party guilt to focus not on the probative versus prejudicial effect of the defendant's evidence, but rather on the strength of the prosecution's case. *Id.*, at 329. The Court found that the problem with such an approach is that it simply evaluated the strength of only one party's evidence. *Id.*, at 331.

Where such a rule is properly applied, it is constitutional because it falls within the parameter of a court's ability to, "exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury." *Id.*, at 326-327. Moreover, "the Constitution permits judges to exclude evidence that is repetitive, only marginally relevant, or poses an undue risk of harassment, prejudice, or confusion of the issues." *Id.* (internal citations omitted). The Court noted with favor evidentiary rules that preclude an accused from introducing evidence of third party guilt if it "does not sufficiently connect the other person to the crime" or "where the evidence is speculative or remote, or doesn't tend to prove or disprove a material fact in issue at the defendant's trial." *Id.*, at 327.

4
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III. Application to this Case

The Commonwealth does not seek to preclude the defendant from vigorously contesting the government's evidence. It is to be expected that the defendant will aggressively challenge the methodology of the police investigation and the logical and evidentiary soundness of the premises advanced by the prosecution. However, the defendant should not be allowed to attempt to distract the jury and slander third parties by intimating their involvement in a crime based on nothing more than speculation about factors such as motive, without *any* supporting evidence actually tying the third party to the offense. The Commonwealth believes that the ends of justice are best preserved, witnesses are protected from harassment, the trial is kept focused on relevant issues, and the defendant's constitutional rights are adequately protected by entry of an order that: (1) precludes the defendant from introducing evidence that has no other effect than casting a bare suspicion upon another or raises a conjectural inference to the commission of the crime by someone else; and (2) that the defendant be required prior to introducing testimony of third party guilt, to make a proffer to the Court sufficient to show that there is proof of connection between his evidence and the crimes, so as to tend to clearly point out another person as the guilty party.

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Conclusion

For the foregoing reasons and for additional reasons that might be offered during oral argument, the Commonwealth seeks entry of an order consistent with the arguments raised in this motion.

Respectfully Submitted,



Scott C. Vachris, Chief Deputy
Adam J. Lantz, Assistant
Attorneys for the Commonwealth

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true copy of the Motion to Regulate Alleged Evidence of Third Party Guilt to Vaughan C. Jones, Esquire, 1622 West Main Street, Richmond, VA 23220 this 18th day of May, 2016.



Scott C. Vachris
Chief Deputy Commonwealth's Attorney

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6.

16 MAY 19 AM 9:25
THE FAX CENTER
D. L. L.



City of Virginia Beach

POLICE DEPARTMENT
DETECTIVE BUREAU
(757) 385-4101
FAX (757) 385-4746

VBgov.com

MUNICIPAL CENTER
BUILDING 11
2509 PRINCESS ANNE ROAD
VIRGINIA BEACH, VA 23456

INTER-OFFICE MEMORANDUM

DATE: 6/10/15

TO: Detective J. Cole
FROM: Detective D. Brenner
SUBJECT: Brianna Armstrong Homicide

On 5/10/15 I was notified by dispatch that a call had come in from a Corey Creek, calling in reference to a Missing Persons Report he had made for his wife, Brianna Armstrong. Corey was concerned because it had been a day since he made the report and no one had contacted him about his case yet.

I spoke with him about her disappearance. Corey stated that they had been married for about 3 years and recently their relationship had been a bit strained because Bri had found out about his felonious past. Corey stated that Bri was having thoughts about not wanting to stay in the relationship. Later I had found out that Corey was a convicted violent sex offender. His probation had ended in April of this year, according to Pistol.

Corey stated that he last had contact with Bri on Thursday 5/7/15 when they were both fixing up their house. I asked Corey where that was and he gave me the address of 404 Baldwin St Virginia Beach VA. During a later interview with Corey, he clarified that the house they were both at on Thursday 5/7/15, where he last saw her, was Bri's family's house at 2823 Mark Street Chesapeake VA. Bri had told him before they went there that day that they needed to drive separately because she had plans to go over to friend Kim's house later that night. Corey states he arrived at Mark St on Thursday 5/7/15 in the afternoon and did yard work until 1930hrs when he left. Bri stayed at Mark St. until 2030hrs when Corey states Bri called him to let him know she was leaving. Corey states he was visiting his parents at the time she called. Corey states this was the last time he spoke with Bri.

Corey states that Bri's boss, Amy Spurgeon told him the following day, Friday 5/8/15 that Bri was scheduled to work that day for Knuckles and Knots and confirmed it on Thursday 5/7/15 via text but Bri never showed up for work. Amy also

EXHIBIT B
(1)
APPENDIX I (a)

REPORTING OFFICER NARRATIVE

Virginia Beach Police Department

OCA	2015-017721
Date / Time Reported	Sat 05/09/2015 11:47

Victim
ARMSTRONG, BRIANNA LALIEOffense
MISSING PERSON

THE INFORMATION BELOW IS CONFIDENTIAL AND IS FOR USE BY AUTHORIZED PERSONNEL ONLY

CORY CREEK STATES HE HAS NOT HEARD FROM HIS WIFE OF 3 YEARS BRIANNA ARMSTRONG SINCE 5/7/15, BRIANNA IS POSSIBLY SUFFERING FROM DEPRESSION DUE TO A LOSS OF SEVERAL CLOSE FAMILY RELATIVES IN A SHORT SPAN OF TIME. MR. CREEK SAYS THE COUPLE HAVE NO DOMESTIC DISPUTES AND IT IS UNLIKE HER NOT TO CALL HIM.

BRIANNA FREQUENTS THE MYSTIC MOON BAR IN NORFOLK AND HER MOTHER'S GRAVE IN THE CEMETERY NEAR CHESAPEAKE'S CITY HALL. SHE HAS TAKEN OVER HER MOTHER'S CHESAPEAKE HOME LOCATED AT 2823 MARK STREET AND DRIVES A NEWER MODEL GRAY NISSAN SENTRA AND SHE HAS NEVER ATTEMPTED SUICIDE IN THE PAST.

THIS CASE IS PENDING, ACTIVE AND FORWARD TO THE MISSING PERSONS SQUAD.

ENTERED INTO NCIC, NIC/M942610464, VIC/300619294

CLEARED NCIC [05/14/2015 13:09, GFOIST, 7284, VBPD] PER DET.BRENNER



CHESAPEAKE POLICE DEPARTMENT

Detective D.W. Branch

Report #: 15-33030

Victim: Brianna Armstrong

Page 6 of 6



1 recently that Brianna had been missing and remembered Corey hadn't acted upset or
2 even mentioned Brianna was missing on the night they met. They had a normal
3 conversation about other collector's, etc. but he never mentioned a problem with
4 Brianna. He thought that was very "weird".

5

6 In the past they have met at the following locations to make purchases:

7 Gas Station @ Edmonds Corner

8 WAWA @ Lynnhaven Pkwy and VB Blvd

9 Large brick building by K-Mart near Pembroke Mall (Corey's former employer)

10 Denny's off Newtown Road

11 Corey has come to his house on two occasions.

12

13 Corey drives the following vehicles:

14 Large Black Truck – Crew Cab (Drove the night of May 8th)

15 Black Sentra

16 Silver – Maybe a Nissan – thinks it belongs to his wife.

17

18 On the night of May 9th Corey was wearing a white 3 buttons collared shirt with NYPD
19 on it and jeans.

20

21 Mr. Spivey is aware Corey lost his job around Thanksgiving but doesn't know much
22 more about him except that he's married to Brianna. He just thought it was unusual he
23 didn't discuss Brianna that night but he did text him later in the week explaining she had
24 been missing. He just thought the situation was unusual.

25

26 June 9, 2015 @ 5:30 p.m.

27 We arrived @ 516 Peak Court in Virginia Beach with a search warrant. No one was
28 home at the time of our arrival. Det. Thomas called Justin Cornell and asked him to
29 return to the apartment so the search warrant could be served. He was notified @ 5:32
30 p.m. and stated he would be back within 30 minutes.

31

32 June 9, 2015 @ 6:10 p.m.

33 Justin Cornell arrived at the apartment and was advised about the search warrant. He
34 agreed to give us the keys to unlock the front door. Entry was made @ 6:12 p.m. The
35 original entry team consisted of Det. J. Thomas, Det. Diane Branch, CPD ID Tech,
36 Brenda Pittman, VD Det. Justin Cole and VB Det.D. Brenner.

37

CHESAPEAKE POLICE DEPARTMENT

Detective J. G. Thomas

Report #: 15-33030

Page 10 of 17

1 I asked Justin if Brianna had ever told her about being married, he advised he did not
2 know until Corey showed up looking for her and stating she was missing. Brianna had
3 told him she was divorced and the break up was violent. He did remember seeing a
4 bruise on her face and arm late 2014. Justin told her he would teach her some self-
5 defense in case she ever needed it. I asked how often Brianna would stay at his house,
6 he advised a few times a week.

7

8 **June 4, 2015 @ 1620hrs**

9 Met with Jeffery Spivey, he claims to have purchased comic books from Corey Creek in
10 the past and as recent as May 8, 2015. He wanted to come to the police after seeing
11 Brianna was missing and Corey Creek was the husband, he never met Brianna only
12 saw her in the car once, so he advised he cannot identify her. But thought it was weird
13 when he saw Corey that he never said anything about his wife being missing.

14

15

16 **June 09, 2015 @ 1530hrs**

17 Responded to 516 Peak Court, Justin Cornell's house to execute a search warrant.
18 Virginia Beach Police assisted with the execution of the search warrant which lead to
19 the arrest of Justin Cornell.

20

21 **June 22, 2015 @ 1600hrs**

22 Searching the Cell Phone dump of Brianna's phone these are Facebook conversations:

23

24 **From: From: 684049504 Brianna Armstrong**

25 **Timestamp: 12/2/2014 4:33:44 PM(UTC+0) (EST 1233hrs)**

26 **Source App: Facebook Messenger**

27 **Body:**

28 **Oui ! How is tomorrow early afternoon ? Corey and I are no longer together and I
29 have a special friend named Justin. I am looking forward to talking with you.
30 Maybe I will drive up to see you soon !**

31

32 **From: From: 533130110 Cheri Whetzel Dixon**

33 **Timestamp: 12/26/2014 4:25:22 AM(UTC+0)**

34 **Source App: Facebook Messenger**

35 **Body:**

36 **what is going on with you and cory? and why haven't you been home for xmas**

37

38

39

40

41



CHESAPEAKE POLICE DEPARTMENT

Detective J. G. Thomas
Report #: 15-33030
Page 11 of 17



1 **From:** From: 684049504 Brianna Armstrong
2 **Timestamp:** 12/26/2014 4:40:10 AM(UTC+0)
3 **Source App:** Facebook Messenger
4 **Body:**
5 *We really need to catch up. I am at home for Christmas. Just not *his* home :(*
6
7 **From:** From: 533130110 Cheri Whetzel Dixon
8 **Timestamp:** 12/26/2014 4:53:18 AM(UTC+0)
9 **Source App:** Facebook Messenger
10 **Body:**
11 *What you and Cory getting a divorce?*
12
13 **From:** From: 684049504 Brianna Armstrong
14 **Timestamp:** 12/26/2014 6:45:49 AM(UTC+0)
15 **Source App:** Facebook Messenger
16 **Body:**
17 *We need to catch up. Long story. In short, we will likely divorce.*
18
19
20 **From:** From: 684049504 Brianna Armstrong
21 **Timestamp:** 12/26/2014 6:46:59 AM(UTC+0)
22 **Source App:** Facebook Messenger
23 **Body:**
24 *Can't take it anymore.*
25
26 **From:** From: 684049504 Brianna Armstrong
27 **Timestamp:** 12/26/2014 6:47:16 AM(UTC+0)
28 **Source App:** Facebook Messenger
29 **Body:**
30 *He refuses to get help.*
31
32 **From:** From: 684049504 Brianna Armstrong
33 **Timestamp:** 12/26/2014 6:47:40 AM(UTC+0)
34 **Source App:** Facebook Messenger
35 **Body:**
36 *I do spend some nights there but not much.*
37
38 **From:** From: 684049504 Brianna Armstrong
39 **Timestamp:** 5/7/2015 4:45:43 PM(UTC+0)
40 **Source App:** Facebook Messenger
41 **Body:**

CHESAPEAKE POLICE DEPARTMENT

Detective J. G. Thomas
Report #: 15-33030
Page 16 of 17



1 **From: 684049504 Brianna Peaceful Creek**
2 **Timestamp: 5/31/2014 5:01:54 AM(UTC+0)**
3 **Source App: Facebook**
4 **Body:**
5 **Hi Kelly,**
6 **Night 2 of separate rooms. This evening in the alleged guise of making up I'm**
7 **told "if you really understood how men think and why they think the way they do,**
8 **then you wouldn't be so upset" Me: "why is all the responsibility put on women ?**
9 **shouldn't men be responsible/accountable for their behavior ? Him: the strongest**
10 **drive a man experiences is the sex drive and you want men to ignore that. Me: NO**
11 **!! WANT YOU TO BE RESPONSIBLE WITH IT !! Him: you're unrealistic. Me:**
12 **You're an asshole. I made it a point to share daily things I've experienced. Like**
13 **being leered at or cat calls. Talking to my chest and etc. Corey said I was being**
14 **naive and overly sensitive. Just learn to ignore it. I told him that even if his point**
15 **was valid, shouldn't men learn better behavior ? Be more respectful ? Him:**
16 **maybe...but this proves that you don't understand men. Me: actually I think it**
17 **proves that I over estimated your ability to be understanding, loving and**
18 **empathetic. SIGH... I'm not yielding or capitulating on this one. I hope your**
19 **weekend is a good one :) ♥ Hugs, Bri**
20
21 **From: 684049504 Brianna Peaceful Creek**
22 **Timestamp: 2/28/2015 4:48:30 PM(UTC+0)**
23 **Source App: Facebook**
24 **Body:**
25 **Hi Kelly,**
26 **I just wanted to share that I appreciate all of the things you share so openly on**
27 **facebook, especially on behalf of women. Do you remember me messaging you**
28 **last may about my parnter's vehement reaction to #yesallwomen and #notallmen**
29 **? We were in separate bedrooms and now we are divorcing. It seems that making**
30 **a stand, picking a side incited abusive behavior from him and he feels I brought it**
31 **on myself. I am doing everything I can to make a complete and total break. At this**
32 **point I don't care about anything but survival. This proves to me that some**
33 **men...maybe a lot of men carry a dark passenger that is set off by a woman who**
34 **shows she has a back bone. Maybe I somehow overlooked or missed his dark**
35 **side the last 5 years...maybe he was that good at hiding it. I'm not sure. The only**
36 **rthing I am sure of is I deserve better and I am worth more. Thank you again for all**
37 **the positive things you put out there. It make a huge difference in my life.**
38 **Love,**
39 **Brianna**
40
41

told Corey that Bri had a Friday 5/8/15 morning doctor's appointment but didn't know where. Corey believed it was the Laser skin and eye center in Norfolk because that's where Bri's friend, **Jennifer Rothwell** works. Corey called up Jennifer attempting to find out if Bri had made it to her appointment. Jennifer told him that she remembers hearing Bri's voice in the office on Wednesday 5/6/15 and that she overheard her talking about her plans on Thursday night, which consisted of going over to **Justin Cornell's** house so that he could work on her. I verified this information after speaking with Jennifer myself. Justin is a co worker of Brianna's from Knuckles and Knots that she had been having a relationship with. Later in the investigation I found out that Brianna had been telling her coworkers that Corey was an ex boyfriend, possibly used to justify her semi public relationship with Justin. This was the first time Corey had heard about Justin.

Corey then states that he texted Justin and asked him to call and when he did, Justin told him that he did not work on Bri on Thursday but that he was supposed to work on her on Wednesday but didn't.

Corey also stated that Bri had accepted a facebook invite to attend a gathering at Mystic Moon in Norfolk on Monday 5/11/15. Corey showed up and distributed flyers to some of Bri's friends, **Deborah Foley, Sybil Colver and Rachel Harris**

I interviewed Deborah, Sybil and Rachel on 5/14/15. Deborah states that Corey came by with some flyers during a mystic moon event. she claims that he acted very strangely, never looking her in the eyes. Deborah also states that she had Facebook messaged Marcela Kane, Brianna's 18 year old sister who suggested that Bri was in hiding from her ex husband Scott Armstrong. Deborah does not know any other information on Marcela except that her Facebook page says she lives in Florida. Deborah also stated that Creek used to drive a red pickup truck when he suddenly started driving his father's sedan with handicap tags. Deborah also told me that a friend **Aradia Robertson** called her saying that someone had logged into Bri's facebook account on Sunday 5/10/15. I verified this information with Aradia after contacting her by phone. Deborah also states that Bri was known to be a liar.

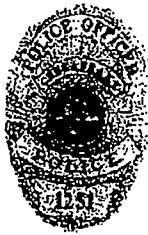
Sybil states that on 5/20/15 Corey called her asking if she would like to have Bri's cats. Sybil believes Corey was assuming Bri was never coming back, otherwise Corey would have kept the cats for when Brianna returned.

Rachel states that Corey used to have a truck until all of a sudden he started driving a car with handicap plates on it.

Deborah, Sybil and Rachel believe that either Scott Armstrong had something to do with Bri's disappearance, or Corey did. They state that Bri was afraid of Scott, and Corey simply acted strangely. Corey states that Bri had a protective order against Scott. I found two reports that Bri had made in Chesapeake at the Mark street address, alleging that a man by the name of Rodriguez had assaulted her. Rodriguez, Bri states in the report, is a friend of Scott's. Both reports however were about the same incident, each having a different account as to what happened.

(2)

APPENDIX I (e)



CHESAPEAKE POLICE DEPARTMENT

Detective R.S. Hatchell II

Report #: 15-28993

**Victim: Armstrong, Brianna Lalie
Title: MISSING PERSON**

1 25. 6/1/2015 1833: Det. Thomas returns with a search warrant for 2823 Mark Street. At
2 1833 hours forced entry is made into the front door of said (Corey wouldn't provide a
3 key to the house). Conducting the search is Det. D. Branch, Det. J. Thomas, Det. R.
4 Hatchell, and ID Technician B. Pittman. *See Det. Thomas' notes detailing the search.*

5

6 26. 6/1/2015 1931: I depart from Mark Street.

7

8 27. 6/2/2015 1410: CLOSED THE CHESAPEAKE MISSING PERSON'S CASE; Bri
9 was removed from the system. Investigation is now deemed a murder. Det. J.
10 Thomas is primary on that investigation.

11

12 28. 6/2/2015 1500: Gave Bri's cell phone to Det. John Spencer. The phone had a
13 passcode lock on it and thus made it inaccessible. Det. Spencer is going to try to get
14 into the phone.

15

16 29. 6/2/2015 1600: Returned call to Tammy Tabor. The following is a
17 synopsis of our phone conversation:

18

19 a. Has known Bri for 18 years (her hair-dresser).
20 b. Bri had told her that she had moved out and was getting a divorce.
21 c. States that she has known for many years that Bri is a "pathological liar" but
22 she enjoys having in her life and would never call her on lies.
23 d. Bri is a hoarder.
24 e. Bri was seeing Justin Cornell and that she was upset with Justin because he
25 was talking of moving to Florida.
26 f. Said that Corey Creek is abusive.

27

28 30. 6/5/2015 1050: Received Bri's phone back from Det. Spencer.

29

30 31. 6/5/2015 1100: Notified Det. Thomas that I had Bri's phone back and that Det.
31 Spencer was able to get it unlocked. I advised that I'll be placing it into evidence.

32

33 32. 6/5/2015 1204: Turned Bri's phone and necklace into property and evidence.

34

The above notes are a true and accurate chronological detail of my involvement with this incident.

Det. R.S. Hatchell
June 27, 2015

APPENDIX I (f)
EXHIBIT I.

15-28993

Supplement No
ORIG

CHESAPEAKE POLICE DEPARTMENT

Narrative

manner as noted above. West Service responded to my location to tow the vehicle to Chesapeake Police to be secured. The tow truck departed with the car at 1737 hours and arrived at Chesapeake Police Property and Evidence at 1806 hours; I followed the tow truck for the entire duration of the trip.

Mr. Creek states that Brianna is possibly suffering from depression due to a loss of several close family members in a relatively short amount of time. He is not sure if she's taken any medication for depression or not. He said that she's never attempted suicide in the past and this behavior is very uncharacteristic.

5/14/15 1946: Received VIC and NIC from Dispatcher Gadow.

VIC:300619762

NIC:M382627367

SP67 was completed and provided to the VCIN Unit.

APPENDIX I(g)

CHESAPEAKE POLICE DEPARTMENT

Detective J. G. Thomas
Report #: 15-33030
Page 4 of 17



1 better searching results. I contacted Detective Branch and she agreed to meet with
2 them on scene at 0700hrs.

3

4 **May 31, 2015 @ 1954hrs**

5 Responded to 401 Baldwin Street in Virginia Beach with Detective Hatchell to attempt to
6 make contact with Corey Creek, the husband of Brianna Armstrong, and the person that
7 reported her missing. I contacted Corey Creek once we arrived at his house and
8 discovered he was not home. I advised him that remains have been found and we
9 needed known DNA samples from Brianna in the form of toothbrush or hairbrush. He
10 advised he will meet us at the house. We waited down the street for Corey to return. We
11 observed Corey come home and walk into his house while a second individual waited
12 outside. We waited a few minutes then drove up to the house. As we exited the vehicle
13 Corey came out of the house with a plastic bag which contained a toothbrush and
14 hairbrush. He then stated is that all you need? I asked if I could go inside to look around
15 and see what we could find that might help us with the investigation into her
16 disappearance, he was reluctant at first then allowed us entry. The subject outside was
17 his father and he waited outside as we searched the house. Once inside I could tell that
18 either he or Brianna had an issue with hoarding, as we walked through the pathways in
19 the house he advised Brianna had a problem with buying "all this junk", and said the
20 house in Chesapeake is worse. When I saw their bedroom there was only space to lay
21 in the bed the room was full of stuff which made it difficult to get around the bed. We
22 then looked in the kitchen and I observed several meds prescribed to Brianna on the
23 shelf over the stove.

24

25 Butalbital - Dr. Michael Hurban
26 Clonazepam - Dr. Viviana Skansi
27 Minocycline - Dr. Larry Legum
28 Cymbalta - Dr. Viviana Skansi
29 Hydrocodone - Dr. Helena Guarda
30 Hydrocodone - Dr. Joseph Dunford
31 Hydrocodone - Dr. Taylor Doyce
32 Condansetron - Dr. Michael Hurban
33 Alprazolam - Dr. Viviana Skansi
34 Doxycycline - Dr. M. Mitsch

35

36 And several others which had been old prescription and empty.

37

38 While speaking with Corey he advised several things which he advised might be helpful
39 for us to know. He said Brianna is a pathological liar about everything and found out that
40 he was her 4th husband and he thought he was the 2nd, he found out that Brianna had a
41 boyfriend named Justin that she hid from him and called him "Kim" and "Sanai". She

13
Virginia:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

Commonwealth of Virginia,

Plaintiff

v.

Docket #: CR15-3376

Justin Keith Cornell,

Defendant

Commonwealth's Response To Motion For Discovery And Inspection

The Commonwealth by Assistant Commonwealth's Attorney, Scott C. Vachris, hereby offers the following as its response to the defendant's motion for discovery and inspection:

1. All books, papers, documents, tangible items and any other material discoverable under Virginia Supreme Court Rule 3A:11(b)(2) and material to this matter are available for inspection and copying by appointment at a time and place convenient to all counsel as well as any person having custody over those items. Any copies of material attached to this discovery response are strictly for the convenience of defense counsel. The Commonwealth will construe defense counsel's failure to make an appointment for inspection of all evidence in advance of trial as a waiver of the right to inspect the evidence regardless of whether it is mentioned in or attached to this response.
2. All written reports of any scientific tests, physical or mental examinations of victim or defendant and any other reports discoverable under Virginia Supreme Court Rule 3A:11(b)(1)(ii) and material to this matter are available for inspection and copying under the same conditions as those enumerated in paragraph one of this response. Any copies of reports attached to this discovery response are strictly for the convenience of defense counsel. The Commonwealth will construe defense counsel's failure to make an appointment for inspection of all reports in advance of trial as a waiver of the right to inspect the reports regardless of whether they are mentioned in or attached to this response.
3. A copy of the Summary section of the case report is attached. (6 pages)
4. A copy of the Chesapeake Police Department Investigative Report is if attached. (13 pages)
5. A copy of the VBPD Incident/Investigative Report is attached. (11 pages)
6. A copy of the Witness List/Interview section of the VBPD case report is attached. (7 pages)
7. Copies of Affidavits/Search Warrants/Sealing Orders are attached. (52 pages)

OFFICE OF THE
COMMONWEALTH'S
ATTORNEY
2425 NIKKO PARKWAY
VIRGINIA BEACH, VIRGINIA
23456-9050
(757) 385-4401

APPENDIX 3

8. Copies of the Warrant & Screening forms are attached. (4 pages)

9. A copy of the Evidence Receipt, Property & Evidence Voucher A186124 and Request for Lab Exam and Certificate of Analysis dated June 19, 2015 are attached. (8 pages)

10. Copies of photos made by members of law enforcement are attached. (31 pages)

11. A copy of the Suspect Interview of the VBPD case report is attached. (6 pages)

12. A copy of the Investigative Timeline and Interoffice Memorandums from Det. Brenner to Det. Cole dated 6/10/15 & are attached. (10 pages)

13. Copies of emails, photos and phone records are attached. (71 pages)

14. Copies of Interoffice Memorandums/email to Det. Cole are attached. (6 pages)

15. Copies of reports from Chesapeake detectives J. G. Thomas, R. S. Hatchell & D. W. Branch are attached. (65 pages)

16. A copy of the VBPD Notice of Vehicle Tow/Impound/Seizure/Abandoned form is attached. (1 page)

17. Copies of Phone Records are attached. (341 pages)

18. Copies of Bank Records for Justin Cornell are attached. (10 pages)

19. Copies of receipts and photos from Target, Food Lion, Home Depot and Rug Doctor are attached. (7 pages)

20. Copies of the VBPD Crime Scene Search Reports are attached. (39 pages)

21. Copies of the VBPD Fingerprint Reports are attached. (6 pages)

22. Copies of Forensic Evidence Summary, Supplemental Forensic Reports including receipts, photos, Forensic Entomology Reports including Climatology Reports are attached. (57 pages)

23. Copies of Forensic Property Receipt/Release Authorization forms are attached. (29 pages)

24. Copies of Evidence Reports, Evidence Receipt and Evidence Vouchers A192432, A192414, A192412, A192412, A192202, A192411, A192425 are attached. (20 pages)

25. Copies of Request for Laboratory Examination forms are attached. (2 pages)

26. A copy of Certificate of Analysis dated June 19, 2015 is attached. (4 pages)

27. Copies of emails to Det. Cole including Facebook and cell tests are attached. (14 pages)

28. A copy of the VBPD Notice of Vehicle Tow/Impound/Seizure/Abandoned form and Documentation Worksheet is attached. (31 pages)

29. Copies of the Request for Laboratory Examination Forms are attached. (3 pages)

OFFICE OF THE
COMMONWEALTH'S
ATTORNEY
2425 NUNNO PARKWAY
VIRGINIA BEACH, VIRGINIA
23456-9050
(757) 365-4401

30. A copy of Property & Evidence Voucher A186124 is attached. (1 page)

31. Copies of the Report of Investigation and Autopsy Report from the Chief Medical Examiner's Office and Certificates of Analysis are attached. (16 pages)

32. Copies of photos made by members of law enforcement are attached. (121 pages)

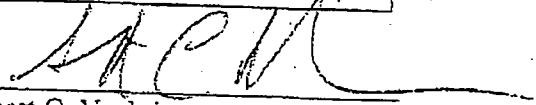
33. Copies of DVDs/CD of Defendant Interview, Phone Records, Chesapeake Crime Scene Photos, Chesapeake Photos (all), Chesapeake Video of Crime Scene, Virginia Beach photos & FB Records are included. (6 DVDs & 1 CD)

34. Summaries of relevant oral statements or confessions made by the accused to law enforcement officers are attached for convenience. Relevant written statements of the accused, if any exist, are also attached for convenience. Other relevant recorded statements, including while in the Virginia Beach Correctional Center, if any exist, are available for inspection at a mutually convenient date and time upon request of counsel for the accused. The Commonwealth will construe defense counsel's failure to make an appointment for inspection of all other relevant recorded statements in advance of trial as a waiver of the right to inspect the relevant statements regardless of whether they are mentioned in or attached to this response.

35. Defendant's criminal record is available for review in this office upon your request and timely notice.

36. Pursuant to §19.2-295.1 Code of Virginia, you are hereby notified that if this case proceeds to a jury trial, the Commonwealth intends to introduce into evidence the certified convictions of the defendant at the sentencing proceeding in this case should defendant be found guilty.

Charge	Conv/Sent date	Jurisdiction
DUI	03/16/2011	Circuit Court, Clearwater, FL


Scott C. Vachris
Chief Deputy Commonwealth's Attorney

CERTIFICATE OF SERVICE

I certify that a true copy of the Foregoing Response to Motion for Discovery and Inspection, together with the specified attachments has been mailed to Vaughan C. Jones, Esquire, 1622 West Main Street, Richmond, VA 23220, on this 6th day of January, 2016.



OFFICE OF THE
COMMONWEALTH'S
ATTORNEY
2425 NIMMO PARKWAY
VIRGINIA BEACH, VIRGINIA
23456-9050
(757) 385-4401

1/32
Virginia:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

Commonwealth of Virginia,

Plaintiff

v.

Docket #: CR15-3376

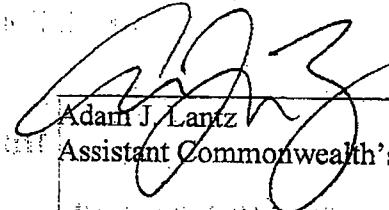
Justin Keith Cornell,

Defendant

Supplemental Response To Motion For Discovery

COMES NOW the Commonwealth and provides the following Supplemental Response to the Defendant's Motion for Discovery:

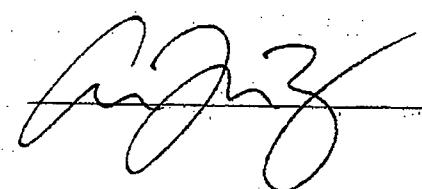
1. Cell phone analysis for iPhone prepared by K.J. Mileski is attached (32 pages) including 1 Blu-ray disc, 1 DVD and 1 CD.


Adam J. Lantz
Assistant Commonwealth's Attorney

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Supplemental Response to Motion for Discovery was mailed to Vaughan C. Jones, Esquire, 1622 West Main Street, Richmond, VA 23220 on this 15th day of April, 2016.

OFFICE OF THE
COMMONWEALTH'S
ATTORNEY
2425 NIMMO PARKWAY
VIRGINIA BEACH, VIRGINIA
23456-9050
(757) 385-4401


Adam J. Lantz
Assistant Commonwealth's Attorney

1 reflection. Heat of passion must be determined
2 from circumstances as they appear to the
3 defendant, but those circumstances must be such as
4 would have aroused the heat of passion in a
5 reasonable person.

6 If a person acts beyond -- upon reflection
7 or deliberation or after his passion is cooled or
8 they've had reasonable time or opportunity to
9 cool, the act is not attributable to heat of
10 passion.

11 Number 14. The court instructs the jury
12 that to prove the charge of murder the
13 Commonwealth does not have to prove a motive for
14 the killing. The presence or absence of a motive
15 may be considered in arriving at your verdict.

16 Number 15. The court instructs the jury
17 that the defendant is charged with the crime of
18 second degree murder. The Commonwealth must prove
19 beyond a reasonable doubt each of the following
20 elements of that crime: One, that the defendant
21 killed Brianna Armstrong; and, two, that that
22 killing was done with malice.

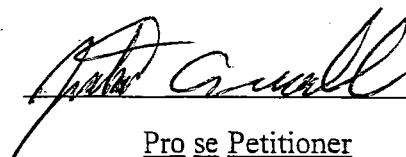
23 If you find from the evidence that the
24 Commonwealth has proved beyond a reasonable doubt
25 each of the above elements of the offense as

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on this 9 day of MAY, 20 19, a true and correct copy of the foregoing notice and petition was served on the named respondent(s), by way of U.S. First Class Mail, to-wit:

Clerk of the Court
Supreme Court of the United States
1 First Street, N. E.
Washington, DC 20543

Toby J. Heytens, Solicitor General
Office of the Attorney General
202 North Ninth Street
Richmond, VA 23219



Pro se Petitioner

STATE OF VIRGINIA:

City/County of Greenville, to-wit:

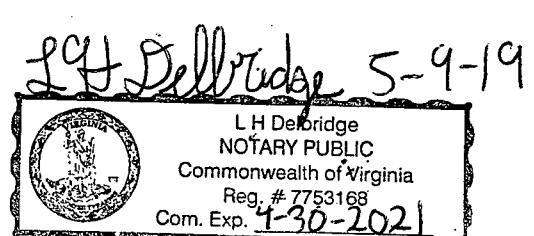
Subscribed and sworn to before me this 9 day of MAY, 20 19.

My commission expires: 4-30-2021



Notary Public

Registration No. 7753168



[Reproducible Notary Seal]