

No. 20-5254

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

QUINTIN IRVING BROWN — PETITIONER
(Your Name)

VS.

COMMONWEALTH OF VIRGINIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF VIRGINIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Quintin Irving Brown
(Your Name)

Dillwyn Correctional Center
P.O. Box 670 / 1522 Prison Road
(Address)

Dillwyn, VA 23936-0670
(City, State, Zip Code)

(434) 983-4200
(Phone Number)

Supreme Court, U.S.
FILED

MAY 14 2020

OFFICE OF THE CLERK

QUESTION(S) PRESENTED

I. DID THE COMMONWEALTH OF VIRGINIA TRIAL COURT DENY MR. BROWN HIS CONSTITUTIONAL RIGHT TO JURY TRIAL ON THE MISDEMEANOR CHARGES OF RECEIVING STOLEN PROPERTY AND FALSE IDENTIFICATION AFTER FELONY CONVICTIONS WERE SET ASIDE?

II. DID THE COMMONWEALTH OF VIRGINIA APPELLATE COURT VIOLATE MR. BROWN'S CONSTITUTIONAL RIGHTS IN RULING VOID AB INITIO THE RE-SENTENCING ORDERS OF THE TRIAL COURT WITHOUT DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS WITHOUT A HEARING AFTER AWARDING A WRIT OF CERTIORARI?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

CITY OF RICHMOND and COMMONWEALTH OF VIRGINIA

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	12
CONCLUSION.....	29

INDEX TO APPENDICES

APPENDIX A

February 14th, 2020 Supreme Court Of Virginia appeal decision

APPENDIX B

August 12th, 2019 Supreme Court Of Virginia award of Writ Of Certiorari

APPENDIX C

March 5th, 2019 Supreme Court Of Virginia Void Ab Initio Habeas Corpus

APPENDIX D

February 28th, 2019 Court Of Appeals Of Virginia appeal decision

APPENDIX E

May 14th, 2019 Court Of Appeals Of Virginia appeal rehearing decision

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Sherman v. United States, 356 U.S. 369, 380 (1958) Virginia Appellate and Southeastern Reporter	14 - 29
Sherman v. United States, 78 S.Ct. 819, 825 (1958)	
Sherman v. United States, 2 L.Ed. 2d 848 (1958)	

STATUTES AND RULES	Virginia Code § 18.2 - 11	12
	Virginia Code § 19.2 - 243	4
Virginia Code § 18.2-186.3		
Virginia Code § 46.2-613		
Virginia Code § 46.2-817(B)		17
Supreme Court Of Virginia Rule 1:1		20, 23
Supreme Court Of Virginia Rule 5A:18		42
Supreme Court Of Virginia Rule 5:25		13, 28
		13

OTHER

In 1958, Justice Frankfurter stated what I interpret as "The integrity of the Commonwealth Of Virginia has been abridged, revoked or diluted."

Sherman v. United States (above)

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the ~~highest state court~~ Petition For Writ Of Certiorari granted appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was February 14th, 2020. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing does not appears at Appendix _____.

☒ ~~An extension of time to file the~~ petition for a writ of certiorari was granted to and including August 12th, 2019 (date) on _____ (date) in state Application No. ____ 190774.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Bill Of Rights of the Constitution of the United States Of America
United States Constitution Amendment Five

United States Constitution Amendment Six

United States Constitution Amendment Nine

United States Constitution Amendment Fourteen, Clause One

STATEMENT OF THE CASE

Monday, June 22, 2015, Quintin Irving Brown was arrested on 3 felony charges and 3 misdemeanor traffic offenses in the City Of Richmond, Virginia. On July 28, 2017, he was convicted of all offenses. Prior to trial, Brown mailed a Motion For Withdrawal Of Counsel/(And For) Speedy Trial to the Circuit Court requesting withdrawal of counsel and for trial before the expiration of state statutory speedy trial code § 19.2-243, by July 1, 2017 that was filed June 14, 2017.

Within 21 days of conviction, Brown filed pro per motions to set aside the judgment signed February 20, 2018, and counsel went to another job at the City Attorney's Office. Another court-appointed counsel made appearance at the March 13, 2018 Hearing of the Motion To Set Aside before a replacement judge not familiar with the cases, and there was a rescheduling of the cases for April 23, 2018. At the April 23, 2018 Hearing counsel conceded Brown's speedy trial rights without his consent, in an act of ultimate betrayal to his disbelief. The Motion To Set Aside was granted on the other issues, and without retrial (by jury) the misdemeanor charges became 5 misdemeanors instead of three, yet 3 years supervised probation/suspended sentences were imposed on each of the two new misdemeanor-reduced charges exceeding the maximum state statutory code 12 maximum imposable (§ 18.11).

When heard by the Supreme Court Of Virginia, the record had been falsified to show that trial occurred on June 28, 2017, when in actuality trial occurred on July 28, 2017.

Brown has an estimated release date of July 28, 2020; however, if his credits were properly calculated Brown would be eligible for release on JULY 28, 2019, (NEXT MONTH). Changed to February 1st, 2021, but should be immediately on State Of Emergency Inmate Early Release Plan.

NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW

Quintin Irving Brown, hereafter "Mr. Brown," was charged with one count of felony false identification, second or subsequent offense, CR15F-5106; one count of felony eluding a law enforcement officer, CR15F-5107; one count of felony receiving stolen property CR15F-5052; and numerous traffic misdemeanors and infractions.² Mr. Brown's trial was ultimately set for July 28, 2018, before the Honorable Judge C.N. Jenkins, Jr., of the Richmond City Circuit Court.

Prior to trial on July 28, 2018, Mr. Brown filed a motion to quash the false identification indictment, alleging it was brought by faulty procedure through the General District Court, instead of the Juvenile and Domestic Relations Court. This trial court granted the motion to quash, and quashed the indictment for false identification, second or subsequent at that time. Following a trial on the remaining counts Mr. Brown was convicted, and a sentencing hearing was set.

On September 5, 2017, Mr. Brown was re-indicted with false identification, second or subsequent offense, CR17F-3201. This indictment

² The traffic infractions included failing to obey a highway sign, failing to obey a traffic signal, and a misdemeanor charge of driving with a suspended driver's license. Those convictions are not challenged in this appeal.

alleged the same crime as the indictment quashed prior to trial on July 28, 2017. This second indictment was set for trial prior to sentencing on January 30, 2018.

On January 30, 2018, the Honorable Judge C.N. Jenkins, Jr., presiding, Mr. Brown was convicted of the false identification second or subsequent offense. Mr. Brown was then sentenced on all charges. The trial court sentenced Mr. Brown to a four-year active sentence on the eluding charge; a five year all suspended sentence on the felony receiving stolen property charge; a five year all suspended sentence on the false identification, second or subsequent charge; and a ten day active sentence on the driving on a suspended license charge. Mr. Brown received fines on the remaining traffic infractions. The final sentencing orders in all cases were entered on February 20, 2018.

On March 13, 2018, both sentencing orders were stayed and suspended, pursuant to Rule 1:1 of the Rules of the Supreme Court of Virginia. Mr. Brown filed a motion to set aside the verdict pertaining to his felony receiving stolen property and false identification convictions. These motions were heard, and granted, by Judge Jenkins on April 23, 2018, reducing both felony convictions to misdemeanors convictions. A re-sentencing order was then entered on June 13, 2018, reflecting these

reductions. Mr. Brown was sentenced on these two, new, misdemeanor convictions to 12 months all suspended on each offense. Mr. Brown now appeals his convictions to this Court.

STATEMENT OF FACTS

a. July 28, 2017 Trial: Eluding, Receiving Stolen Property, Traffic Offenses

On June 22, 2015, Capital Police Officer Andrew Sentipal observed a vehicle in the left-hand turning lane at the intersection of North 14th Street and Broad Street in the City of Richmond. TT at 16. Normally, there is an noU-turn sign on the median dividing the six lanes of Broad Street, but at the time of the stop the sign was damaged and attached to a sawhorse where the permanent sign should be. TT 17-18. Officer Sentipal observed a vehicle a car length in front of him in the left lane of this intersection make a U-turn at the red light. TT 18. Mr. Brown was later determined to be the driver of this vehicle. TT 18, 24. Officer Sentipal had a vehicle camera, or a "dash-cam," running that day and that was submitted as Commonwealth's Exhibit #2 at trial. TT 19, 34.

Officer Sentipal initiated a traffic stop, and Mr. Brown promptly pulled over right before the on-ramp to Interstate 95. TT 18, 36. When Officer Sentipal asked him for his license and registration, Mr. Brown told the officer he had neither his license nor registration with him, but he provided

the officer with the name "Willy James," along with a birth date and a Social Security number. TT 25.

When Officer Sentipal went back to his car to verify the information Mr. Brown provided, Mr. Brown drove away onto Interstate 95. TT 25. Officer Sentipal activated his emergency equipment, including his sirens and emergency lights, and pursued Mr. Brown for several miles on the interstate. TT 26. There was heavy traffic on Interstate 95, in the City of Richmond. TT 27. But the traffic lightened as the pursuit continued into New Kent County on Interstate 64. TT 27.

Officer Sentipal described Mr. Brown's driving during the pursuit as "reckless." TT 27. The officer also testified that during the pursuit Mr. Brown had committed multiple lane change violations and occasionally drove on the shoulder of the interstate. TT 27. According to Officer Sentipal, the pursuit caused other motorists to move out of the way, and Mr. Brown had cut off some people since they were not moving out of the way. TT 41. However, Officer Sentipal also testified that he believed most people were getting out of the way "because of [his] lights and sirens." TT 41. Officer Sentipal did not know the speed of the pursuit because he was focused on the road. TT 28. Officer Sentipal only testified to a speed of 120 miles per hour when the pursuit was on Interstate 64, which he had previously

testified to was in New Kent County. TT 28. Officer Sentipal further clarified the lane changes, "and all that stuff," were in Henrico. TT 28-29. The dash-cam video shows Mr. Brown's vehicle changing lanes on Interstate 95, and using the shoulder of the road, but does not show high rates of speed, or vehicles slamming on brakes to avoid Mr. Brown. Commonwealth's Exhibit #2.

After a fifteen-minute pursuit, Mr. Brown voluntarily pulled over on Interstate 64 in New Kent County and exited his vehicle with his hands up. TT 29. Officer Sentipal handcuffed and arrested Mr. Brown, and conducted a search of his person and vehicle with Officer Mulheim. TT 29. Inside the vehicle were three sets of license plates, two of which were temporary paper tags and the other a set of real permanent plates. TT 31. The license plates were in the backseat and trunk of the vehicle. TT 38. The vehicle itself was messy inside. TT 40. The owner of the vehicle also found trash bags of mail and bank statements belonging to Mr. Brown in the trunk of the vehicle. TT 44. There were also two wallets found on Mr. Brown's person—one belonging to him, and the other belonging to Willy James, whom Officer Sentipal later learned was Mr. Brown's brother. TT 30. Officer Sentipal returned Mr. Brown's wallet, but seized Willy James's wallet as well as the license plates not registered to Mr. Brown. TT 31-32. There did

not appear to be any signs of tampering inside the vehicle. TT 31. Officer Sentipal recovered the key to operate the vehicle once Mr. Brown was detained. TT 40.

Officer Sentipal ran all of the license plates and found the two sets of temporary tags came back clear, but the set of permanent plates belonged to a vehicle reported stolen on June 4, 2015. TT 31. The plates physically on the vehicle were registered to Mr. Brown. TT 39. Officer Sentipal also ran Mr. Brown's driving record and noted multiple driving convictions, with at least three driving while suspended convictions. TT 32. Mr. Brown's driving record was introduced, without objection, as Commonwealth's Exhibit #1. TT 33. Officer Sentipal proceeded to cross-reference the VIN associated with the permanent plates, found inside of the car that were connected to a stolen vehicle, with the VIN of the vehicle Mr. Brown drove. TT 32. He found that the VINs matched. TT 32. The vehicle, a 1992 or 1993 Toyota Camry, belonged to a Joshua Meyers. TT 43.

b. January 30, 2018 Trial: Identity Theft

The case tried on January 30, 2018 concerned the charge of identity theft (second offense) against Mr. Brown. Trial Transcript 1/30/2018³ at 5.

³ References to the trial transcript of January 30, 2018 will hereafter be "Tr. 1/30/2018 at ____", and to the trial transcript of April 23, 2018 will be "Tr. 4/23/2018 at ____."

When Officer Sentipal approached Mr. Brown's vehicle following his pursuit, he asked Mr. Brown for his license and registration. Tr. 1/30/2018 at 15-16. Mr. Brown informed the officer that he did not have his license or registration, but that his name was "Willy James" with a date of birth of July 12, 1938 and provided a Social Security number that the officer was later able to link to Mr. Willy James. Tr. 1/30/18 at 17. Once Mr. Brown was arrested, the officer asked what his real name was, at which point Mr. Brown provided the name of Quintin Irving Brown. Tr. 1/30/18 at 18. Following Officer Sentipal's testimony, the Commonwealth moved to enter a certified copy of his prior identity fraud into evidence. Tr. 1/30/2018 at 19. Over Mr. Brown's objection, the Court entered the certified document into evidence. Tr. 1/30/2018 at 19-20. The trial court found Mr. Brown guilty of identity theft to avoid arrest, second offense, in violation of Va Code § 18.2-186.3, subsection D. Tr. 1/30/18 at 24.

On April 23, 2018, Mr. Brown argued a motion to set aside his felony convictions for receiving stolen property and felony false identification. Mtn. Set Aside, filed 4/12/2018. These motions were conceded by the Commonwealth, and the trial court entered new findings of guilt for misdemeanor offenses of receiving stolen property and misdemeanor false identification. Tr. 4/23/2018 at 6-8; Re-Sentencing Order entered 6/13/2018.

REASONS FOR GRANTING THE PETITION

1. Petitioner Quintin Irving Brown, Virginia prisoner number 1146667 would be released from imprisonment ^{now on February 1st 2021, but immediately} on ~~JULY 29, 2019~~ (NEXT MONTH) instead of the July 28, 2020 estimated release date, if the State Of Virginia Department Of Corrections would correctly compute the sentences imposed (4 years, 10 days--Richmond; time served (179 days--Portsmouth, concurrent with Richmond; and 90 days served in New Kent (18-9447 of this Court) without jurisdiction).
2. Petitioner was rendered inadequate, incompetent, ineffective assistance of counsel and denied the opportunity to self-represent at trial when dissatisfied with counsel.
3. The Commonwealth Of Virginia's integrity has been abridged, revoked and diluted by deceit, deception, misrepresentation, extrinsic and intrinsic fraud by exceeding the maximum sentences imposed by law and violating its own speedy trial rights statutes §§ 18.2-11 and § 19.2-243 of Virginia Code.
4. The misdemeanor charges' imposition of 3 years suspended time and supervised probation exceeds the maximum 12 months authorized by law for Commonwealth Of Virginia statutory law § 18.2-11 of the Code Of Virginia 1950.
5. The proper crediting of the sentences would entitle the petitioner to release from incarceration within the next month and a half on JULY 29, 2019, rather than the present estimate of July 28, 2020 because the record does not speak the truth.
6. The judgment of the City Of Richmond Circuit Court was void ab initio and coram non iudice because the Court was without authority to try the cases outside of prosecutorial limitations stated in state statutory law.

ASSIGNMENTS OF ERROR

- I. **The trial court erred in finding Mr. Brown guilty of receiving stolen property as there was insufficient evidence that Mr. Brown knew the vehicle he was driving was stolen.**

This issue was preserved by Mr. Brown's Motion to Strike, Trial Transcript 7/28/2018¹ 48-50, denied by the trial court, TT 52; and by Mr. Brown's Renewed Motion to Strike, TT 55-56, 57-59, denied by the trial court, TT 62.

- II. **The trial court erred in finding Mr. Brown guilty of felony eluding as there was insufficient evidence that Mr. Brown drove in a manner that interfered with, or endangered, the operation of the law-enforcement vehicle or a person, in the City of Richmond.**

This issue can be heard by this Court under the ends of justice exception to Rule 5A:18.

- III. **The trial court erred in convicting Mr. Brown of lesser-included misdemeanor offenses of receiving stolen property, and false identification, following Mr. Brown's Motion to Set Aside the Verdict without determining if Mr. Brown knowingly, and intelligently, waived his right to a jury on those two, new misdemeanor offenses.**

This issue can be heard by this Court under the ends of justice exception to Rule 5A:18, or Rule 5:25,

¹ References to the trial transcript for July 28, 2018 will hereafter be referred to as "TT__."

identification. Tr. 4/23/2018 at 6-8; Re-Sentencing Order, entered 6/13/2018.

ARGUMENT

I. There was insufficient evidence Mr. Brown knew the car he was driving was stolen.

STANDARD OF REVIEW

This Court reviews a challenge to the sufficiency of the evidence in the light most favorable to the Commonwealth, giving them all reasonable inferences. Higginbotham v. Commonwealth, 216 Va. 349, 353, 218 S.E.2d 534, 537 (1975). But this Court must reverse the conviction if it is “plainly wrong or without evidence to support it.” Id.

ARGUMENT

The Commonwealth failed to prove Mr. Brown knew the vehicle he was driving was stolen. In order to convict Mr. Brown of receiving stolen property the Commonwealth was charged with proving that Mr. Brown did unlawfully receive the vehicle, “knowing that the property had been stolen.” R. at 82 (Indictment); Shaver v. Commonwealth, 30 Va. App. 789, 800, 520 S.E.2d 393, 399 (1999). Guilty knowledge is an essential element of receiving stolen property. This requires actual knowledge, not constructive knowledge, that the goods received were stolen. Lewis v. Commonwealth, 225 Va. 497, 503, 303 S.E.2d 890, 893 (1983). As there was no admission

by Mr. Brown he knew the vehicle was stolen, this actual knowledge must necessarily be proved by circumstantial evidence. Id. Circumstantial evidence is only sufficient when it “exclude[s] every reasonable hypothesis except that of guilt.” Shaver, at 801, 520 S.E.2d at 399.

In this case, the Commonwealth could not rely on any “recent possession” presumption regarding Mr. Brown’s knowledge of the vehicle as stolen as the vehicle was stolen ten days prior to when Mr. Brown was found in possession of it. TT 42. Mr. Brown was not in possession of the stolen vehicle “within hours of its theft.” Bynum v. Commonwealth, 23 Va. App. 412, 420, 477 S.E.2d 750, 754 (1996) (noting the defendant’s possession of the stolen vehicle “within hours of its theft” was significant circumstantial evidence to prove he had guilty knowledge of the vehicle as stolen). Or even with a few days of the theft, but rather *ten days* after the fact. TT 42.

There is also no evidence in the record that Mr. Brown purchased the vehicle in a suspicious manner. In Shaver v. Commonwealth, the defendant stated that he purchased the all-terrain vehicle (ATV) for a “patently low price.” Id. at 801, 520 S.E.2d 393 at 399. This Court held that these facts supported the inference that the defendant knew the property was stolen. Id. Here, there is no evidence about how Mr. Brown came into possession

of the vehicle, or that he acquired the vehicle by circumstances that should have made him believe the vehicle was stolen. There was no damage to the car, other than it being rather old. There was also no indicia on the vehicle itself that it had been stolen. Cf. Snow v. Commonwealth, 33 Va. App. 766, 776-777, 537 S.E.2d 6, 11 (2000) (noting popped ignition of the stolen vehicle as factor establishing defendant's guilty knowledge that vehicle was stolen). In fact, Mr. Brown had a key to the vehicle that was recovered by the officer at the scene. TT 40. This certainly indicated Mr. Brown believed he was in rightful possession of the vehicle.

The trial court relied on three circumstances to find Mr. Brown knew the vehicle he was driving was stolen: that he was in possession of the vehicle, the license plates and mail in the vehicle, including those belonging to Mr. Brown, and the fact that Mr. Brown evaded the police. TT 65-66. However, these circumstances do not exclude the reasonable hypothesis of innocence that Mr. Brown did not know the vehicle was stolen. Mr. Brown's actions in eluding police could just as likely be because he lacked a valid driver's license and/or had not registered the vehicle. And the presence of Mr. Brown's own items—including license plates and mail—in the vehicle is as consistent with his innocence as it is with any alleged knowledge of the stolen status of the vehicle.

The fact that Mr. Brown attempted to evade police is not dispositive that he knew the vehicle he was driving was stolen. Mr. Brown's multiple driving convictions suggest that it could be just as likely, if not more so, that he fled to avoid another conviction for driving with a suspended license. This hypothesis of innocence is supported by the fact that when Mr. Brown initially complied with the traffic stop, Mr. Brown provided the name and identifying information of his brother, Willy James. TT 30. This supports an inference that Mr. Brown provided this erroneous information because he knew he did not have a valid driver's license, and was attempting to avoid a new arrest for his driving violation by relying on his brother's identifying information. This is a reasonable hypothesis of innocence that is not excluded by the circumstantial evidence in the case. Additionally, there is also the possibility Mr. Brown evaded police because he had license plates on the vehicle not connected to that vehicle—a traffic infraction.⁴

The presence of the license plates themselves, in the vehicle, and affixed to the vehicle, also fail to be dispositive of whether Mr. Brown had guilty knowledge about the car being stolen. Since there are no facts as to when Mr. Brown received the car, it could also be the case that Mr. Brown simply failed to timely register the car in his name. It could also be the case

⁴ Virginia Code §46.2-613 renders it a Class 2 misdemeanor to affix license plates issued for another vehicle.

that Mr. Brown couldn't afford the DMV's registration fee, given his indigency.⁵ This would explain the license plates being registered to a different vehicle, and the use of old plates on the car itself.

The fact that Mr. Meyers's license plates were inside of the vehicle's trunk is also not necessarily indicative of guilty knowledge. Considering the vehicle's age and condition and the time between the theft and Mr. Brown's arrest, it is not unlikely to find a set of loose license plates in a car that has had multiple owners. The Commonwealth, in other words, has failed to rule out the reasonable hypothesis that Mr. Brown acquired this vehicle in good faith. Certainly, the presence of Mr. Brown's mail and bank statements in the trunk of the vehicle indicated Mr. Brown believed the vehicle to be permanently his, and not illegally obtained. TT. 30. Mr. Brown's personal possessions in the vehicle would be inconsistent with his intent to keep the vehicle only temporarily, or with a knowledge the vehicle was stolen. The circumstantial evidence was insufficient to sustain the element of actual knowledge from Mr. Brown that the vehicle he was driving was stolen, therefore the trial court erred in denying his motions to strike.

⁵ It costs \$40.75 to register a passenger vehicle in the Commonwealth of Virginia. Department of Motor Vehicles, *available at* <https://www.dmv.virginia.gov/webdoc/pdf/dmv201.pdf> (last visited, September 16, 2018).

II. The trial court erred in finding Mr. Brown guilty of felony eluding as there was insufficient evidence that Mr. Brown drove in a manner that interfered with, or endangered, the operation of the law-enforcement vehicle or a person in the City of Richmond.

Standard of Review

This Court reviews a challenge to the sufficiency of the evidence in the light most favorable to the Commonwealth, giving them all reasonable inferences. Higginbotham v. Commonwealth, 216 Va. 349, 353, 218 S.E.2d 534, 537 (1975). But this Court must reverse the conviction if it is “plainly wrong or without evidence to support it.” Id.

Argument

Mr. Brown did not drive in a manner consistent with a conviction of felony eluding. In order to convict an individual of felony eluding, the Commonwealth must prove that Mr. Brown, “drove... in a way that interfered with or endangered the operation of the law enforcement vehicle or in a way that endangered a person.” R. at 81 (Indictment); Jones v. Commonwealth, 64 Va. App. 361, 367-68 768 S.E.2d 270, 273 (2015). The difference between felony eluding and misdemeanor eluding is whether an individual endangered the operation of a law enforcement vehicle or endangered a person. Id. at 367, 768 S.E.2d at 273.

i. Mr. Brown's driving behavior of 120 miles per hour, and multiple lane changes, did not occur in the City of Richmond.

The trial court in this case specifically focused on the finding that Mr. Brown put the officer's life in jeopardy by going at high rates of speed in finding evidence sufficient of felony eluding. TT. 64-65. But this evidence was insufficient to sustain a felony eluding charge, specifically when the high rate of speed of 120 miles per hour by the officer did not occur in the City of Richmond. TT 27, 28. . It is also true that Officer Sentipal testified that Mr. Brown did not conduct the "multiple lane changes" he observed until the chase was in Henrico County. TT 41.

In Thomas v. Commonwealth, this Court addressed a similar scenario where a defendant committed misdemeanor eluding in two contiguous jurisdictions, but did not commit felony eluding in the jurisdiction where he was prosecuted. 38 Va. App. 319, 326, 563 S.E.2d 406, 409 (2002). In Thomas, the accident that caused injury to a driver of another vehicle, occurred in a different jurisdiction.⁶ Here, as well, some the elements that allegedly elevated Mr. Brown's driving behavior to a felony offense did not occur in the City of Richmond: his 120 miles per hour and multiple lane changes. It was error for the trial court to consider these factors in

⁶ Thomas was decided under a previous version of Virginia Code §46.2-817 where bodily injury elevated the offense from a misdemeanor to a felony. See Va. Code 46.2-817 (B) (1999).

convicting Mr. Brown, as they were not properly within the City of Richmond.

ii. Mr. Brown's driving behavior in the City of Richmond did not endanger the officer, or a person, as required under felony eluding.

In Jones v. Commonwealth, the defendant drove away after being stopped by police while both officers were still partially inside of Mr. Jones's vehicle. 64 Va. App. at 364, 768 S.E.2d at 272. As a result, one of the officers was forced to run alongside the car for about twenty feet before ultimately falling onto the road. Id. at 365, 768 S.E.2d at 272. The defendant drove over the curb, and the car "flew in the air." Id. at 365, 768 S.E.2d at 272. This Court held the defendant's conduct supported a conviction of felony eluding, in part, because he endangered the officers by driving away while they were still partially inside of the vehicle and making a number of "unsafe maneuvers." Id. at 369, 768 S.E.2d at 274.

In Tucker v. Commonwealth, a state trooper tried to initiate a traffic stop, but the defendant fled, passed three cars over "double solid lines" on a two-lane highway, ran a red light, lost control of his vehicle, traveled in excess of 105 miles per hour, and crashed into a tree. 38 Va. App. 343, 344-45, 564 S.E.2d 144, 145 (2002). He then got out of his car and ran into the woods. Id. at 145. The court held in Tucker that the defendant's driving

and subsequent collision “clearly endangered” both the Trooper and other motorists. Id. at 344.

Mr. Brown’s case is fundamentally different from Tucker, where the defendant crossed double solid lines to pass three cars on a two-lane highway, lost control, and crashed into a tree, see Tucker, 38 Va. App. at 343, or Jones, where the defendant drove away while law enforcement officers were inside his vehicle. Jones, at 365, 768 S.E.2d at 272. Mr. Brown did not endanger the life of Officer Sentipal or other motorists when he drove away from the police stop.

Rather, what did occur in the City of Richmond is what the dash-cam video shows: Mr. Brown switching lanes, and driving on the shoulder to exit onto Interstate 64. The dash cam does *not* show other cars having to slam on their breaks, or veer aggressively to get out of Mr. Brown’s way. In fact, Officer Sentipal testified that while he observed vehicles get out of Mr. Brown’s way, he believed that was because of his lights and sirens. TT 41. Mr. Brown never drove onto oncoming traffic, nor did he cross any double yellow lines. Officer Sentipal also conceded he could not determine Mr. Brown’s speed initially because he was focused on the road. TT 28. Mr. Brown also never lost control of his vehicle, or caused an accident, either to himself or anyone else. In fact, he voluntarily pulled over on the median of

the interstate after a period of time in New Kent County. TT 29. Given these facts, Mr. Brown's conduct, as it occurred in the City of Richmond, did not endanger the lives of the officers involved or other motorists. Therefore, his conviction for felony eluding must be reversed.

iii. This Court should invoke the ends of justice exception to reach the error in this case.

This Court can consider this issue under the ends of justice exception to Rule 5A:18. Mr. Brown did not argue the sufficiency of the evidence for the eluding charge in the trial court, or that the trial court could not consider the actions by Mr. Brown that did not occur in the City of Richmond. However, endangering a person, or the law enforcement officer, is an element of this offense. Va. Code §46.2-817 (B). And there is affirmative evidence in the record this element did not occur. Redman v. Commonwealth, 25 Va. App. 215, 221-22, 487 S.E.2d 269, 273 (1997) (noting that to invoke the ends of justice exception "the appellant must demonstrate...the record must affirmatively prove that an element of the offense did not occur.").

Here, the Commonwealth was charged with proving that Mr. Brown's actions endangered the operation of the law-enforcement vehicle or endanger a person. The evidence in the record is that, in the City of Richmond, Mr. Brown at worst refused to stop for the pursuing officer,

drove on the shoulder and passed vehicles without using his turn signal. The Officer testified he did not know the speed initially because he was watching the road, TT 28, and when he did estimate the speed at 120 miles per hour this was in New Kent County, not the City of Richmond. TT 27, 28. The Officer further testified that the lane changes occurred in Henrico County, TT 28-29, and that vehicles were getting out of the way because of his lights and sirens not Mr. Brown's driving. TT 41. There was no accident, or aggressive maneuvers by Mr. Brown—nor any that he caused from other drivers. The evidence is that Mr. Brown was eluding police. But there is affirmative evidence in the record he did not endanger or interfere with the law-enforcement officer, or endanger a person. Therefore, the ends of justice exception is appropriately applied in this case to fix this error, and find the evidence insufficient to convict Mr. Brown of a felony eluding.

III. The trial court denied Mr. Brown his constitutional right to a jury trial on the misdemeanor charges of receiving stolen property, and false identification.

Standard of Review

Constitutional arguments are reviewed *de novo* by this Court as questions of law. Shivaee v. Commonwealth, 270 Va. 112, 119, 613 S.E.2d 570, 574 (2005).

Argument

Both the Virginia and United States Constitution guarantee a defendant the right to a trial by jury. U.S. CONST. AMEND VI; Va. Const. Art. I, §8. In this case, Mr. Brown waived his right to a jury trial for the receiving stolen property felony charge, as well as the eluding charge and accompanying traffic offenses.⁷ Following his convictions for those charges, as well as the re-indicted false identification second charge, Mr. Brown filed a Motion to Set Aside the Verdict. Motion to Set Aside, filed 4/12/2018. In the Motion Mr. Brown asked the trial court to “set aside his convictions” for the receiving stolen property, and false identification second offense. Id. At the motions hearing the Commonwealth’s Attorney conceded Mr. Brown’s motion to set aside, stating the prior conviction for false identification was faulty and did not qualify as a predicate conviction, and that the evidence of value of the allegedly stolen vehicle was insufficient. Tr. 4/23/2018 at 4-5. Mr. Brown agreed that the two charges should be reduced to misdemeanor charges. Tr. 4/23/2018 at 5-6. And Mr. Brown did ask specifically for such reduction in charges. Tr. 4/23/2018 at 5-6, 7.

⁷ The record does not show that Mr. Brown ever affirmatively waived his right to a jury for the September 5, 2017 re-indictment of the false identification second offense.

At no time following this reduction, however, did Mr. Brown enter a plea, of either guilty or not guilty, to the amended misdemeanor charges, nor was he specifically found guilty by the trial court of the amended misdemeanor charges. Mr. Brown also did not waive his right to enter a not guilty plea and be tried by a jury for these two misdemeanor charges. This Court faced a similar situation in Fitzgerald v. Commonwealth, 31 Va. App. 739, 525 S.E.2d 604 (2000). In Fitzgerald a defendant was convicted of object sexual penetration after a jury trial. Fitzgerald, 31 Va. App. at 740, 525 S.E.2d at 605. The defendant filed a motion to set aside the verdict, and the trial court set aside the object sexual penetration conviction, and *sua sponte* entered a conviction for misdemeanor assault and battery, over the defendant's objection. Id. at 741, 525 S.E.2d at 605. This Court reversed the misdemeanor assault conviction, holding the trial court "exceeded its authority" by failing to order a new trial on the lesser offense. Id. at 605, 525 S.E.2d at 742.

The same scenario is presented here. The fact that Mr. Brown did not initially ask for a jury trial on the original felony charges is of no import, as he certainly had the right to demand a jury on the amended, and therefore new, misdemeanor charges. This is similar to when this Court reverses a conviction for a felony based on insufficient evidence, but finds there is

sufficient evidence to sustain a conviction on a lesser-included, misdemeanor offense. This Court does not, *sua sponte*, convict the defendant of the lesser offense, but rather remands the case for a new trial on that lesser offense. See Gorham v. Commonwealth, 15 Va. App. 673, 678-79, 426 S.E.2d 493, 496-97 (1993).

Mr. Brown did not invite this error. Mr. Brown never asked the trial court to find him guilty of the misdemeanor offense. Cf. Manns v. Commonwealth, 13 Va. App. 677, 679, 414 S.E.2d 613, 615 (1992) (holding defendant could not claim error for misdemeanor conviction on appeal when, at sentencing, both defense counsel and defendant specifically asked for the misdemeanor conviction). Defense counsel stated she did not contest the Commonwealth's position that the identification theft second offense "would then be reduced to first offense identity theft, which is a misdemeanor." Tr. 4/23/2018 at 5. And defense counsel asked the trial court to "reduce that [receiving stolen property] to a misdemeanor as well." Tr. 4/23/2018 at 6. At no time, however, did defense counsel, or Mr. Brown, request the trial court enter a *conviction* for a misdemeanor. Rather, in the written Motion to Set Aside Mr. Brown requested that his convictions be set aside, *not* that he be found guilty of lesser-included offenses. Motion to Set Aside, filed 4/12/2018.

Defense counsel, the trial court, and the Commonwealth's discussions about the appropriate sentence do not amount to invited error in this case. The sentencing discussion simply highlights the trial court's implicit finding of guilt on the two lesser-included misdemeanors. This discussion does indicate that Mr. Brown did not contemporaneously object to this finding of guilt, and the denial of his constitutional right to a jury trial. As such Mr. Brown is arguing this Court invoke the ends of justice exception to Rule 5A:18 to reach the merits of this issue.

The ends of justice does apply here. Rule 5A:18 . Mr. Brown was denied a number of essential, constitutional rights when the trial court entered guilty findings to the two misdemeanors without his consent. Mr. Brown was denied the constitutional right to a jury trial, primarily, which incorporated his Fifth Amendment right to testify-or not testify-in his own defense. Denial of essential rights is a factor appellate courts should consider in applying the ends of justice. See Cooper v. Commonwealth, 205 Va. 883, 889, 140 S.E.2d 688, 692 (1965) (invoking the ends of justice exception where a defendant's confession was admitted at trial in violation of the defendant's constitutional rights). Here, the denial of Mr. Brown's right to trial was absolute and egregious, and therefore a manifest injustice. This Court should invoke the ends of justice exception to Rule 5A:18 and/or Rule 5:25. and grant to Quentin Irving Brown relief and

reverse Mr. Brown's convictions for receiving stolen property, and false identification, remanding those matters to the trial court for a new trial.

CONCLUSION

For the reasons stated above, Mr. Brown respectfully requests this Court grant his petition for appeal and reverse and dismiss his convictions, and/or reverse his convictions and remand the case for further proceedings. The petition for a writ of certiorari should be granted.

Respectfully submitted,

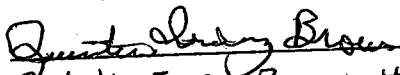
QUINTIN IRVING BROWN

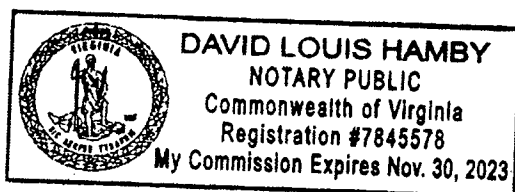
By: 

Lauren Whitley, VSB #75562
Deputy Public Defender
Office of the Public Defender
701 East Franklin Street—6th Floor
Richmond, Virginia 23219
Telephone: (804) 225-4330 x 111
Facsimile: (804) 371-4908
Email: lwhitley@ric.idc.virginia.gov

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 7th DAY OF May, 2020

NOTARY PUBLIC


Quintin Irving Brown, #1146667
Dillwyn Correctional Center
Date: Thursday, May 7th, 2020



City/County of Buchings
Commonwealth of Virginia
The foregoing instrument was acknowledged
before me this 7 day of May, 2020
by Quintin Irving Brown
Notary Public's Signature David Hamby
Reg# 7845578 Commission Expires Nov 30 2023

