

20-6937

No: 20-6180(L)

(1:20-CV-00050-LO-TCB)

IN THE SUPREME COURT OF THE UNITED STATES

DARRIS ALTONY NEWSOME - PETITIONER

VS.

HAROLD CLARKE - RESPONDENT(S)

CASE NUMBER:

JAN 14 2021

(To be supplied by clerk)

Supreme Court, U.S.
FILED

OFFICE OF THE CLERK

No: 20-6674

(1:20-CV-00050-LO-TCB)

DARRIS ALTONY NEWSOME - PETITIONER

VS.

HAROLD CLARKE - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DARRIS ALTONY NEWSOME

LAWRENCEVILLE CORRECTIONAL CENTER

1607 PLANTERS ROAD

LAWRENCEVILLE, VIRGINIA 23868

RECEIVED

JAN 25 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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JARRIS ATHONY NEWSOME-PETITIONER

CASE NUMBER:

VS.

(To be supplied by clerk)

HAROLD CLARKE-RESPONDENT(s)

REQUEST FOR EVIDENTIARY HEARING

PETITIONER HEREBY MOVES FOR AN EVIDENTIARY HEARING TO THE EXTENT NECESSARY TO RESOLVE ANY MATERIAL FACTS WHICH ARE OR MAY BE IN DISPUTE. VIRGINIA CODE 8.01-654(B)(4) STATES THAT IF THE HABEAS CLAIMS "CAN BE FULLY DETERMINED ON THE BASIS OF RECORDED MATTERS, THE COURT MAY MAKE ITS DETERMINATION WHETHER SUCH WRIT SHOULD ISSUE ON THE BASIS OF THE RECORD." IN THE PRESENT MATTER, THE HABEAS CLAIMS CANNOT BE FULLY DETERMINED ON THE BASIS OF THE RECORD. FURTHERMORE, UNLESS THE RESPONDENT ACCEPTS ALL OF THE PETITIONER'S FACTUAL PROFFERS, THERE WILL BE MATERIAL FACTUAL IN DISPUTE AND THESE DISPUTES CANNOT BE RESOLVED BY A SIMPLE REVIEW OF THE RECORD. THUS, THE RESOLUTION OF ANY SUCH DISPUTES MUST INCLUDE AN EVALUATION OF THE EVIDENCE WHERE BOTH SIDES HAVE AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF THEIR RESPECTIVE POSITIONS AND CHALLENGE THE ASSERTIONS THOSE WHO DISAGREE. THE PETITIONER RESPECTFULLY REPRESENTS THAT AN EVIDENTIARY HEARING IS NECESSARY TO RESOLVE ANY FACTUAL DISPUTES WHICH MAY ARISE AND TO PROVIDE PETITIONER THE OPPORTUNITY TO PROVE THE STATED GROUNDS FOR HABEAS RELIEF. SEE UNITED STATES V. MARCUM, 16 F. 3d 599, 603 N.4 (4th CIR. 1994) OBSERVING THAT CLAIMS OF INEFFECTIVENESS

ORDINARILY CANNOT BE RESOLVED WITHOUT AN EVIDENTIARY HEARING);
SEE ALSO UNITED STATES V. MAGINI, 973 F.2d 261, 264 (4th Cir. 1992)
("A COURT IN A HABEAS PROCEEDING MUST HOLD AN EVIDENTIARY HEARING
WHEN THE PETITIONER ALLEGES FACTS WHICH, IF TRUE WOULD ENTITLE HIM
TO RELIEF").

AS THE UNITED STATES SUPREME COURT HAS DECLARED, "THERE IS NO
HIGHER DUTY OF A COURT UNDER OUR CONSTITUTIONAL SYSTEM, THAN THE
CAREFUL PROCESSING AND ADJUDICATION OF PETITIONS FOR WRIT OF HABEAS
CORPUS, FOR IT IS IN SUCH PROCEEDINGS THAT A PERSON IN CUSTODY CHARGES
THAT ERROR, NEGLIGENCE, OR EVIL PURPOSE HAS RESULTED IN HIS UNLAWFUL
CONFINEMENT AND THAT HE IS DEPRIVED OF HIS FREEDOM CONTRARY TO LAW."
HARRIS V. NELSON, 394 U.S. 268, 292 (1969), IN SHORT AN EVIDENTIARY HEARING
IS NECESSARY TO A FAIR AND JUST DETERMINATION OF PETITIONER'S HABEAS
CLAIMS.

Respectfully Submitted;
Janis Anthony Newsome

REQUEST FOR ORAL ARGUMENT

PETITIONER REQUEST TO PRESENT ORAL ARGUMENT ON THE MOTIONS PENDING BEFORE THIS HONORABLE COURT, DUE TO NO PARTY SHALL BE DEPRIVED OF THE OPPORTUNITY TO PRESENT ITS POSITION ON THE MERITS OF A MOTION TO ASSURE FAIRNESS TO ALL PARTIES.

THIS APPEAL CONCERNS THE ISSUES OF THE COMMONWEALTH LACKED PROBABLE CAUSE TO INITIATE CRIMINAL PROCEEDING, AND FAILED TO WITHDRAW ARREST WARRANTS AFTER LEARNING THAT NO CRIME HAD BEEN COMMITTED. COMMONWEALTH PRESENTED PERJURY TESTIMONY OF THE ALLEGED VICTIM, BUT FAILED TO CORRECT IT, WHICH HAD AN EFFECT ON THE JUDGMENT OF THE COURT PROCEEDING, BECAUSE IT INVOLVED A CORRUPTION OF THE TRUTH SEEKING FUNCTION OF THE TRIAL PROCESS.

COMMONWEALTH KNEW PETITIONER WAS ARRESTED ON RAPE/AGGRAVATED SEXUAL BATTERY CHARGES NINETEEN YEARS EARLIER, AND DROPPED ALL CHARGES, DUE TO CONFLICTING DATES OF OFFENSE, AND THE FACT THAT WHEN DATES WERE FINALLY FIXED IT WAS DETERMINED THAT PETITIONER WAS INCARCERATED DURING THAT PARTICULAR TIME.

TRIAL COUNSEL FAILED TO INTERVIEW AND CALL KNOWN WITNESSES THAT WOULD DISCREDITED CS TESTIMONY AND PHYSICAL EVIDENCE AGAINST PETITIONER.

TRIAL COURT ERRED BY DENIED PETITIONER MOTION FOR A MISTRIAL. PETITIONER CLAIM NOT GUILTY OF CHARGES, AND ORAL ARGUMENT WOULD ASSIST THE COURT IN DETERMINING THE MERITS OF THE ISSUES.

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CASES

QUESTIONS PRESENTED

1. Did the Courts ERRED in the opinion that petitioner's writ of habeas corpus was dismissed as UNAUTHORIZED AND SUCCESSIVE AND DENIED RELIEF?
2. The Double Jeopardy Clause of the Fifth Amendment states that NO PERSON shall be subject for the SAME OFFENSE to be twice put in jeopardy of life or limb. Did petitioner indictments violate his FIFTH AMENDMENT right of double jeopardy?
3. The Fourth Amendment to the United States Constitution stipulates that NO WARRANT shall issue, but upon probable cause. The verdict of the jury should be set aside, due to the convictions lack probable cause. WAS petitioner DENIED his Fourth Amendment right?
4. Trial Court ERRED in denying petitioner motion for a mistrial in the context of improperly admitted evidence AFTER the victim testified petitioner "had went to jail". WAS Trial Court WRONG as a matter of law, when the rights of petitioner were so indelibly prejudiced?
5. Trial Counsel Failed to interview or call as a known witnesses Ms. Joyce Tiede, Research Specialist, Central Criminal Records from the Virginia Department of Corrections, and Ms. Joyce Staton Carter the victim's mother. These witnesses were clearly identified, easily accessible, and willing to provide information that would have discredited CS testimony against petitioner. A defendant is entitled to have trial counsel interview

AND CALL AVAILABLE WITNESSES FOR HIS DEFENSE, WAS PETITIONER DENIED EFFECTIVE ASSISTANCE OF COUNSEL?

6. JURIES SHALL BE INSTRUCTED AS A MATTER OF LAW, ON THE ABOLITION OF PAROLE FOR NON-CAPITAL FELONY OFFENSES COMMITTED ON OR AFTER JANUARY 1, 1995 PURSUANT TO VIRGINIA CODE ANN. 53.1-165.1. DID TRIAL COURT ERRED IN PETITIONER'S NON-CAPITAL FELONY TRIAL IN REFUSING TO INSTRUCT THE JURY THAT PAROLE WAS ABOLISHED IN VIRGINIA PURSUANT TO VA. CODE ANN. 53.1, AND HIS SENTENCE SHOULD BE VACATED, AND A NEW SENTENCING HEARING SHOULD BE GRANTED?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

INDEX TO APPENDICES

Appendix A - United States Court of Appeals For The Fourth Circuit
MANDATE TAKES EFFECT today.

Appendix B - United States Court of Appeals For The Fourth Circuit
ORDER DENIES THE PETITION FOR REHEARING AND REHEARING EN BANC.

Appendix C - United States Court of Appeals For The Fourth Circuit
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Appendix H - United States District Court For The Eastern District of
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Appendix I - United States Court of Appeals For The Fourth Circuit
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Appendix J - United States Court of Appeals For The Fourth Circuit
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Appendix K - United States Court of Appeals For The Fourth Circuit
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Appendix L - United States Court of Appeals For The Fourth Circuit
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Appendix M - United States Court of Appeals For The Fourth Circuit
DENIED CERTIFICATE OF APPEALABILITY AND DENIED APPEAL

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 ~~D~~ E

☐ IS UNPUBLISHED

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT
APPENDIX H

☐ IS UNPUBLISHED

JURISDICTION

☒ FOR CASES FROM FEDERAL COURT:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED
MY CASE WAS AUGUST 31, 2020

☒ A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES
COURT OF APPEALS ON THE FOLLOWING DATE: OCTOBER 14, 2020 AND A COPY
OF THE ORDER DENYING REHEARING APPEARS AT APPENDIX ~~D~~ C

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. 1254 (1)

STATEMENT OF FACTS

ON the 4th of October, 2012 JARRIS Altony NEWSOME, was tried by a JURY BEFORE the HONORABLE Judge JONES. The COMMONWEALTH's MAIN witness, WAS ALSO the ALLEGED victim, who WAS QUESTIONED FIRST by the COMMONWEALTH. Ms. FULLER who described the locations at which she lived throughout her childhood, AND during the time of first instance of UNUSUAL SEXUAL CONTACT between herself AND I. IN other testimony, the ALLEGED victim indicated that she had INFORMED her mother AND a school guidance counselor about the ALLEGED MOLESTATION, AND that later a police officer came to her house. ON CROSS EXAMINATION by the DEFENSE, it WAS BROUGHT to the ATTENTION of the ALLEGED victim that she had ORIGINALLY told INVESTIGATOR in 1991 that she told her mother about the behavior, but that nothing WAS DONE. IN her testimony during trial, the ALLEGED victim testified that the incidents began OCCURRING when she WAS ELEVEN years old. DURING CROSS EXAMINATION the witness WAS CONFRONTED with a copy of a 2010 police report in which she stated to Detective MAYER that All of the ALLEGED incident OCCURRED when she lived at 3820 Victoria Blvd. in 1990 AND 1991 when she WAS 13 AND 14 year-old. The witness ACKNOWLEDGED memory of making that 2010 statement, said statement in 2010 CONTRARY to her testimony UNDER DIRECT EXAMINATION that the ALLEGED incidents began at SINCLAIR GARDENS, Id at 94 AND 119. The INCONSISTENCIES AMONG the ALLEGED victim's statements to police in 2010 AND her testimony at trial DURING CROSS EXAMINATION WAS ALSO REVEALED AS A SERIES of LIES. DURING OR BEFORE MR. NEWSOME's trial Ms. FULLER WAS obviously DEEMED to be CREDITABLE AND fit for trial by the COURT AS WELL AS the COMMONWEALTH. BEING that she WAS DEEMED COMPETENT to testify AGAINST MR. NEWSOME AND SWORE to tell the

truth under oath, we must take her at her word. In her own words Ms. Fuller stated, "that all of the alleged incidents occurred when she was 13 and 14 years of age in 1990-1991. Unfortunately, this is impossible. Mr. Newsome was incarcerated at or during that time frame. So, if the alleged incidents occurred in 1990-1991 and Mr. Newsome was in the custody of the Department of Corrections from May 4, 1990 through July 15, 1991, he couldn't have been in her home committing these alleged offenses. The police report was never approved by a supervisor, and this is because the police knew that the witness was lying to them about the incident, exhibit 4, 9

STANDARD OF REVIEW REGARDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL

IN THE CRIMINAL LAW CONTEXT THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS AMONG THOSE IMMUTABLE PRINCIPLES OF JUSTICE WHICH INHERE IN THE VERY IDEA OF FREE GOVERNMENT. THE UNITED STATES SUPREME COURT HELD THAT THE SIXTH AMENDMENT RIGHT TO COUNSEL WAS SO FUNDAMENTAL AND ESSENTIAL TO A FAIR TRIAL, AND SO TO DUE PROCESS OF LAW THAT IT IS MADE OBLIGATORY UPON THE BY THE FOURTEENTH AMENDMENT. PETITIONER RESTED ON THE OBVIOUS TRUTH THAT LAWYERS ARE NECESSITIES NOT LUXURIES IN OUR ADVERSARIAL SYSTEM OF CRIMINAL JUSTICE. THE VERY PREMISE OF OUR ADVERSARY SYSTEM OF CRIMINAL JUSTICE IS THAT PARTISAN ADVOCACY ON BOTH SIDES OF A CASE WILL BEST PROMOTE THE ULTIMATE OBJECTIVE THAT THE GUILTY BE CONVICTED AND THE INNOCENT GO FREE. PETITIONER'S LIBERTY DEPENDS ON HIS ABILITY TO PRESENT HIS CASE IN THE FACE OF THE INTRICACIES OF THE LAW AND THE ADVOCACY OF THE PUBLIC PROSECUTOR. A CRIMINAL TRIAL IS THUS NOT CONDUCTED IN ACCORD WITH DUE PROCESS OF LAW UNLESS THE PETITIONER HAS COUNSEL TO REPRESENT HIM. THE SUPREME COURT ANNOUNCED A TWO-PART TEST TO DETERMINE IF COUNSEL'S ASSISTANCE WAS INEFFECTIVE. FIRST, THE DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT. THIS REQUIRES SHOWING THAT COUNSEL MADE ERRORS SO SERIOUS THAT COUNSEL WAS NOT FUNCTIONING AS THE "COUNSEL" GUARANTEED THE PETITIONER BY THE SIXTH AMENDMENT. THIS PERFORMANCE IS TO BE JUDGED BY AN OBJECTIVE STANDARD OF REASONABLENESS. SECOND THE PETITIONER MUST SHOW PREJUDICE FROM COUNSEL'S PERFORMANCE. THE QUESTION IS WHETHER THERE IS A REASONABLE PROBABILITY, THAT ABSENT THE ERRORS THE FACT FINDER WOULD HAVE HAD A REASONABLE DOUBT RESPECTING GUILT. PUT ANOTHER WAY THE PETITIONER MUST SHOW THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS,

THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME. THE PHRASE "REASONABLE PROBABILITY" DESPITE ITS LANGUAGE SHOULD NOT BE CONFUSED WITH "PROBABLE" OR "MORE LIKELY" THAN NOT. IN FACT THE PHRASE REASONABLE PROBABILITY SEEMS TO DESCRIBE A FAIRLY LOW STANDARD OF PROBABILITY, AS STATED BY THE UNITED STATES SUPREME COURT IN STRICKLAND AND OTHER CASES. THE RESULT OF A PROCEEDING CAN BE RENDERED UNRELIABLE, AND HENCE THE PROCEEDING ITSELF UNFAIR EVEN IF THE ERRORS OF COUNSEL CANNOT BE SHOWN BY A PREPONDERANCE OF THE EVIDENCE TO HAVE DETERMINED THE OUTCOME. A PETITIONER NEED NOT ESTABLISH THAT THE ATTORNEY'S DEFICIENT PERFORMANCE MORE LIKELY THAN NOT ALTERED THE OUTCOME IN ORDER TO ESTABLISH PREJUDICE UNDER STRICKLAND. FURTHERMORE, THE SUPREME COURT HAS COUNSELED THAT THESE PRINCIPLES DO NOT ESTABLISH MECHANICAL RULES. THE FOCUS OF THE INQUIRY SHOULD BE ON THE FUNDAMENTAL FAIRNESS OF THE TRIAL AND WHETHER DESPITE THE STRONG PRESUMPTION OF RELIABILITY, THE RESULT IS UNRELIABLE, BECAUSE OF A BREAK DOWN OF THE ADVERSARIAL PROCESS. IN THE PRESENT MATTER THE PETITIONER IS ENTITLED TO A WRIT OF HABEAS CORPUS BASED ON THE FOLLOWING GROUND(S) FOR RELIEF: COUNSEL VIOLATED PETITIONER 5TH, 6TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, ARTICLE 1 SECTION 8 OF THE VIRGINIA CONSTITUTION. PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS FOLLOWS: COUNSEL FAILED TO CALL AND INTERVIEW KNOWN WITNESSES MS. JOYCE TIEDE, FAILED TO PRESENT TRANSFER HISTORY DOCUMENT, ALLOW COMMONWEALTH TO ESTABLISH PROBABLE CAUSE WHEN PETITIONER WAS INCARCERATED AT THE TIME IN QUESTION, AND ALLOWED ALLEGED VICTIM CS TO TESTIFY FALSLY, BUT FAILED TO CORRECT IT, WHICH AFFECTED THE JUDGMENT OF THE JURY, BECAUSE IT INVOLVED A CORRUPTION OF THE TRUTH SEEKING FUNCTION OF THE TRIAL PROCESS.

1. Did the Courts ERRED in the opinion that petitioner's writ of habeas corpus was dismissed as unauthorized and successive and denied relief?

PETITIONER ARGUE his 28 U.S.C. 2254 petition was timely filed challenging his convictions that was dismissed as successive, and without prejudice, due to petitioner use his first 2254 writ of habeas corpus claim solely to REINSTATE his right to direct appeal. ALLEGES, such as INEFFECTIVE ASSISTANCE OF COUNSEL, Virginia Code 8.01-229(D), AND COMMONWEALTH using PERJURED testimony at trial and failed to correct it.

PETITIONER ARGUE his petition was timely filed, due to Ms. Carol Jenkins and Ms. Myrtle Martin who investigated and research my convictions and on or between September 2018 I received documents, and the one year for filing his petition for writ of habeas corpus began to run from the date he learned defendant's actions of obstruction the filing of his actions. The Court(s) NEVER applied the limitation period for filing petition for habeas corpus relief. Exhibit 1, 2. Evidence supporting

Ms. Carol Jenkins, and Ms. Myrtle Martin was obtained from Detective Randy Mayer and the internet. The Virginia Department of Corrections does not provide any prisoner with access to the internet. The Virginia Freedom of Information Act excludes anyone who is incarcerated in local, state, or federal institution from utilizing the act to obtain my information. The United States Supreme Court noted that while confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turn on evidence outside trial record.

PETITIONER ALSO ARGUE that his petition was timely filed under Code of Virginia 8.01-229(D) and is not a successive habeas, due to obstruction of filing by defendants using any other direct or indirect means to obstruct

the Filing of an Action. Then the time that such obstruction has continued shall not be counted as any part of the period within which the Action must be brought.

The Commonwealth as the responding party knowingly used perjured testimony at trial and failed to correct it, which affected the judgment of the jury. When at jury trial on the 4th of October, 2012 the alleged victim testified that the incidents began occurring when she was eleven years old and living in Sinclair Gardens and Cherry Acres. Id at 94. During cross examination the witness was confronted with a copy of a 2010 police report in which she stated to Detective Mayer that all of the alleged incidents occurred when she lived at 3620 Victoria Boulevard in 1990 and 1991 when she was 13 and 14 years old. TT at 117-118, exhibit 3, 4, 5, 6 statement to Detective Mayer in 2010 that the first incident occurred at Victoria Boulevard, said statement in 2010 contrary to her testimony under direct examination that the alleged incidents began at Sinclair Garden. Id at 94 and 119.

At preliminary hearing; the alleged victim testified under direct examination that she was thirteen (13) years old and that she was living on Victoria Boulevard when the first incident occurred.

Preliminary hearing transcript at 42, exhibit 7 which was in contradiction to her direct examination testimony. TT at 121. The

alleged victim admitted that all of the incident occurred within a few

weeks of each and that she was living at the address on Victoria Boulevard, which was contradictory to her testimony under direct examination

at trial. TT at 122-123. Commonwealth knowingly uses perjured testimony, and failure to correct it qualifies as obstruction by the defendant that prevent the filing of the claim for the purpose of the statutory limitations tolling provision for situations where a defendant's actions obstructed the filing

OF ANY ACTION.

PETITIONER CLAIM FOR HABEAS RELIEF BASED ON A BRADY VIOLATION BY THE COMMONWEALTH FAILURE TO DISCLOSE EXCULPATORY EVIDENCE. DISCLOSURE OF EXCULPATORY EVIDENCE IS AN AFFIRMATIVE DUTY NOT DEPENDENT ON A REQUEST FROM THE ACCUSED APPLYING TO IMPEACHMENT AS WELL AS AFFIRMATIVE EVIDENCE, AND THIS DUTY IS VIOLATED WHETHER THE FAILURE TO PRODUCE THE EXCULPATORY INFORMATION WAS INTENTIONAL OR INADVERTENT.

COMMONWEALTH HAD ACCESS TO THE ALLEGED VICTIM CS 1991 AND 2010 POLICE REPORTS. IT HAD ACCESS TO ALL COURT RECORDS OF PETITIONER ARREST, AND A COPY OF A CERTIFY AND AUTHENTICATED TRANSFER HISTORY DOCUMENT FROM THE VIRGINIA DEPARTMENT OF CORRECTIONS TO CONFIRM ALL OF PETITIONER INCARCERATION DATES.

COMMONWEALTH KNEW THE ALLEGED VICTIM CS ON NOVEMBER 25, 1991 REPORTED TO MS. BARBARA STEWART OF THE HAMPTON SOCIAL SERVICES, CHILD PROTECTION THAT SHE WAS SEXUALLY MOLESTED BY HER MOTHER'S BOYFRIEND. EXHIBIT 3

ON DECEMBER 24, 1991 OFFICER TOOK DARRIS ALTONY NEWSOME INTO CUSTODY WHERE THESE WARRANTS FOR RAPE/AGGRAVATED SEXUALLY BATTERY CHARGES WERE SERVED. EXHIBIT 3.

ALLEGED VICTIM CS REPORTED SEVERAL INSTANCES OF HIM COMING INTO HER ROOM GETTING UNDER THE COVERS WITH HER, PARTING HER LEGS WITH HIS FROM BEHIND RUBBING HIS PENIS ON HER VAGINA, AND FINALLY INSERTING ONLY THE TIP OF HIS PENIS. EXHIBIT 8

COMMONWEALTH DROPPED ALL CHARGES, DUE TO CONFLICTING DATES OF OFFENSE, AND THE FACT THAT WHEN DATES WERE FINALLY FIXED IT WAS DETERMINED PETITIONER WAS INCARCERATED DURING THAT PARTICULAR TIME.

COMMONWEALTH FAILED TO GIVE DEFENSE THE ONLY EVIDENCE, WHICH MIGHT BE EXPECTED TO PLAY A SIGNIFICANT ROLE IN PETITIONER CASE, WHICH IS A VIOLATION OF HIS DUE PROCESS, BECAUSE THE EXCULPATORY VALUE OF THE EVIDENCE WAS APPARENT BEFORE IT WAS MISPLACED AND THAT THE EVIDENCE IS OF SUCH

A NATURE THAT PETITIONER CANNOT OBTAIN COMPARABLE EVIDENCE. THIS EVIDENCE COULD HAVE BEEN ADMISSIBLE, AND WOULD HAVE HAD A STRONG TENDENCY TO CHANGE THE OUTCOME OF TRIAL.

COMMONWEALTH IS A PUBLIC OFFICER WITH A MAJOR DUTY TO TRUTH AND JUSTICE, AND HAS A GENERAL DUTY TO PRESERVE EVIDENCE. COMMONWEALTH KNOWINGLY USES OF PERJURY TESTIMONY AND EVIDENCE FATALLY TAINTED THE WHOLE TRIAL PROCESS.

IN THE PRESENT CASE THE COMMONWEALTH KNEW PETITIONER WAS INCARCERATED IN THE VIRGINIA DEPARTMENT OF CORRECTIONS, AND HIS CERTIFY AND AUTHENTICATED TRANSFER HISTORY DOCUMENT WOULD CONFIRM PETITIONER WAS INCARCERATED WHEN THE COMMONWEALTH ESTABLISHED A WRONGFUL PROBABLE CAUSE TO INITIATE CRIMINAL PROCEEDING. AFTER LEARNING THAT NO CRIME HAD BEEN COMMITTED THE COMMONWEALTH FAILED TO WITHDRAW ARREST WARRANTS, WHICH IS SAID TO HAVE OCCURRED WHILE PETITIONER WAS INCARCERATED. THIS FACT CONSTITUTES OBSTRUCTION, EXHIBIT 9.

COMMONWEALTH KNEW PETITIONER WAS ARRESTED DECEMBER 24, 1991 FOR RAPE/AGGRAVATED SEXUALLY BATTERY CHARGES, AND COMMONWEALTH COULD NOT PROVE A RATIONAL TIER OF FACT WOULD HAVE FOUND PROOF OF GUILT BEYOND A REASONABLE DOUBT, AND COMMONWEALTH DROPPED ALL CHARGES, DUE TO CONFLICTING DATES OF OFFENSE, AND THE FACT THAT WHEN DATES WERE FINALLY FIXED IT WAS DETERMINED PETITIONER WAS INCARCERATED DURING THAT PARTICULAR TIME, BUT FAILED TO GIVE DEFENSE THIS EVIDENCE, WHICH IS A BRADY VIOLATION AND OBSTRUCTION. EVIDENCE DEMONSTRATED PETITIONER COULD NOT BE CONVICTED. PETITIONER ARGUE A MISCARRIAGE OF JUSTICE HAS OCCURRED, AND ARGUE THIS HONORABLE COURT SHOULD INVOKE THE EXCEPTIONS OF RULE 5A:18 TO MEET THE ENDS OF JUSTICE, BECAUSE THE EVIDENCE ESTABLISHED THAT NO ELEMENT OF THE CRIME OCCURRED AND THE COMMONWEALTH CANNOT SUSTAIN A CONVICTION UNDER VIRGINIA CODE 18.2.61 AND WITHOUT PROBABLE CAUSE.

2. The Double Jeopardy Clause of the Fifth Amendment states that no person shall be subject for the same offense to be twice put in jeopardy of life or limb. Did petitioner indictments violate his Fifth Amendment right of double jeopardy?

Double jeopardy protection applies to every indictment or information charging party with crime or misdemeanor. The Fourteenth Amendment Due Process Clause extends the double jeopardy clause protection to state prosecution.

In the present matter the alleged victim CS on November 25, 1991 reported to Ms. Barbara Steward of the Hampton Social Services, Child protection that she was sexually molested by her mother's boy friend. Ms. Steward passed on the information to the Hampton Police Department. Report Number: 91-13869.

On December 24, 1991 officer took Jarris Anthony Newsome into custody for driving while suspended and found a sexually abuse warrants. Mr. Newsome was taken to lock up where these warrants were served.

Petitioner was arrested on rape/aggravated sexual battery charges Report Number: 91-13869; Date of incident: Summer 1988 through November 25, 1991. Alleged victim CS report several instances of him coming into her room getting under the covers with her parting her legs with his from behind rubbing his penis on her vagina and finally inserting only the tip of his penis.

Commonwealth dropped all original charges, due to conflicting dates of offense, and the fact that when dates were finally fixed it was determined that petitioner was incarcerated during that particular time. Exhibit 3

Commonwealth did not believe the statement/testimony of CS. It was very improbable that any offense was committed against

CS, due to the nature of things could not have occurred in the manner and circumstances, due to petitioner was incarcerated therefore, is not sufficient evidence to establish beyond a reasonable doubt. The record did not establish the essential element of rape beyond a reasonable doubt.

Commonwealth failed to preserve the only evidence which might be expected to play a significant role in petitioner case, which is a violation of his due process, because the exculpatory value of the evidence was apparent, before its destruction, or misplaced and that evidence is of such a nature that petitioner cannot obtain comparable evidence.

Commonwealth's duty in a criminal prosecution is to seek justice, and may not knowingly present false testimony, and has a duty to correct testimony that they knew to be untrue. Commonwealth in this case failed to correct the alleged victim testimony.

Commonwealth had access to all court records of petitioner arrest, had access to the alleged victim CS 1991 and 2010 police reports, and a copy of a certified and authenticated transfer history document from the Virginia Department of Corrections to confirm all of petitioner's incarceration dates.

Commonwealth after nineteen (19) years on the 4th of October 2012 tried petitioner on indictments covering the same time period in which the Commonwealth could not establish probable cause, due to petitioner was incarcerated and no rational trier of fact would have found petitioner guilty beyond a reasonable doubt.

Indictment number: 1011-069 charges that on or between January 1, 1988 through December 31, 1988. CS date of birth is January 30, 1977 Exhibit 10. Petitioner was arrested on March 10, 1988 on break and enter a dwelling house in the nighttime with the intention to commit larceny, and had revocation of suspension of sentence hearing Exhibit 11-17. On December 24, 1991 petitioner was arrested for

RAPE / AGGRAVATED SEXUAL BATTERY CHARGES; REPORT NUMBER: 91-13869;

TIME OF OCCURRENCE: SUMMER 1988 THROUGH NOVEMBER 25, 1991 / EXHIBIT 3

IN CS TESTIMONY DURING TRIAL THE ALLEGED VICTIM TESTIFIED THAT THE INCIDENT BEGAN OCCURRING WHEN SHE WAS ELEVEN (11) YEARS OLD AND LIVING IN SINCLAIR GARDENS AND CHERRY ACRES. Id AT 94.

DURING CROSS EXAMINATION, THE WITNESS WAS CONFRONTED WITH A COPY OF A 2010 POLICE REPORT IN WHICH SHE STATED TO DETECTIVE MAYER THAT ALL OF THE ALLEGED INCIDENTS OCCURRED WHEN SHE LIVED AT VICTORIA BOULEVARD IN 1990 AND 1991 WHEN SHE WAS 13 AND 14 YEARS OLD. TRIAL TRANSCRIPT, AT 117/118

THE EVIDENCE, FACTS, AND EXHIBIT REVEALED THAT THE COMMONWEALTH KNOWINGLY AT TRIAL INTRODUCE PERJURED TESTIMONY TO GO UNCORRECT, WHICH HAD AN EFFECT ON THE JUDGMENT OF THE JURY, BECAUSE IT INVOLVED A CORRUPTION OF THE TRUTH SEEKING FUNCTION OF THE TRIAL PROCESS, AND THAT PETITIONER CONVICTIONS MUST BE SET ASIDE. CS GAVE FALSE TESTIMONY CONCERNING A MATERIAL MATTER, WITH THE WILLFUL INTENT TO DECEIVE, RATHER THAN AS A RESULT OF CONFUSION OR MISTAKE.

INDICTMENT NUMBER: 1011-070 CHARGES THAT ON OR BETWEEN JULY 15, 1991 THROUGH OCTOBER 31, 1991, CS ORIGINAL STATEMENT / TESTIMONY THE RECORD CONTAIN NO EVIDENCE OF PETITIONER GUILT. THERE WERE NO WITNESSES WHO TESTIFIED THAT THE ALLEGED INCIDENTS EVER OCCURRED. THERE WAS NO PHYSICAL EVIDENCE THAT A CRIME EVER HAPPENED. CS TESTIMONY WAS CONTRARY TO HUMAN EXPERIENCE AND SO INHERENTLY INCREDIBLE. AT PRELIMINARY HEARING COMMONWEALTH LACKED PROBABLE CAUSE TO INITIATE CRIMINAL PROCEEDING AGAINST PETITIONER, DUE TO A CERTIFY AND AUTHENTICATED TRANSFER HISTORY DOCUMENT FROM VIRGINIA DEPARTMENT OF CORRECTIONS CLEARLY SHOWS PETITIONER WAS INCARCERATED.

COMMONWEALTH ALLEGED THE DATES, BUT NEVER PRESENTED ANY NEW EVIDENCE

OR ELICITED NEW TESTIMONY FROM CS TO SUPPORT THAT ALL INCIDENTS OCCURRED WHEN YOU WERE THIRTEEN AND FOURTEEN YEARS OLD, TRIAL TRANSCRIPT pg. 116-117.

IN THE PRESENT MATTER THE COMMONWEALTH AFTER NINETEEN (19) YEARS TRIED INDICTMENT COVERING THE SAME TIME PERIOD IN WHICH THE COMMONWEALTH COULD NOT ESTABLISH PROBABLE CAUSE, DUE TO PETITIONER WAS INCARCERATED, AND COULD NOT PROVE BEYOND A REASONABLE DOUBT, AND THE EVIDENCE WAS CONTRARY TO HUMAN EXPERIENCE, AND SO INHERENTLY INCREDIBLE WHEN PHYSICAL FACTS DEMONSTRATE SUCH EVIDENCE TO BE UNTRUE, WITH THE VERDICT TO BE UNJUST AND UNSUPPORTED IN LAW AND FACTS, EXHIBIT

9, 18 AN UNREASONABLE PERIOD OF NINETEEN (19) YEARS PAST CAST SUSPICION AND DOUBT ON THE TRUTHFULNESS OF THE STORY OF CS, WHICH VIOLATED PETITIONER FUNDAMENTAL CONCEPTION OF JUSTICE.

ON THE 4TH OF OCTOBER, 2012 PETITIONER WAS TRIED BY A JURY AND CONVICTED AFTER COMMONWEALTH DID NOT BELIEVE CS AND DROPPED ALL ORIGINAL CHARGES, DUE TO CONFLICTING DATES OF OFFENSE. EXHIBIT 8, 10, 18.

COMMONWEALTH AS AN OFFICER OF THE COURT IS SWORN TO ENSURE THAT JUSTICE IS DONE, NOT SIMPLY TO OBTAIN AN INDICTMENT.

3. THE FOURTH AMENDMENT to the UNITED STATES Constitution stipulates that NO WARRANT shall issue, but upon PROBABLE CAUSE. THE VERDICT of the jury should be set ASIDE, due to the CONVICTIONS LACKED PROBABLE CAUSE, WAS DEFENDANT DENIED his FOURTH AMENDMENT right?

THIS HONORABLE COURT is NOT REQUIRED to believe the testimony of CS. It is VERY improbable that ANY OFFENSE was COMMITTED AGAINST CS. THE VERDICT of the jury is CONTRARY to HUMAN EXPERIENCE, AND the LAW of NATURE, due to RAPE is UNLAWFUL SEXUAL ACTIVITY CARRIED OUT FORCIBLY OR UNDER THREAT of INJURY AGAINST the will, OR with a person who is BENEATH A CERTAIN AGE.

IN the PRESENT MATTER ON October 18, 2010 PRELIMINARY HEARING; DIRECT EXAMINATION, AND CROSS EXAMINATION of ALLEGED VICTIM CS TESTIMONY, UNDER OATH. QUESTION: DID THERE EVER COME A TIME WHEN he HAD SOME UNUSAL CONTACT with you?

ANSWER: YES. QUESTION: AND WHEN WAS THAT? ANSWER: IT WAS ON VICTORIA BOULEVARD.

QUESTION: OKAY, HOW OLD WERE YOU? ANSWER: THIRTEEN. PRELIMINARY HEARING pg.

42, EXHIBIT 7 QUESTION: AND THESE THREE INCIDENTS THAT YOU RECALL FROM THE TIME YOU WERE THIRTEEN YEARS OLD, WERE THERE ANY OTHER INCIDENTS? ANSWER: I CAN'T

QUESTION: NOT THAT YOU CAN RECALL? ANSWER: NO, PRELIMINARY HEARING pg. 47 EXHIBIT 19

QUESTION: AND THESE INCIDENTS YOU TESTIFIED ABOUT, WAS YOUR MOTHER PRESENT IN THE HOUSE? ANSWER: YES. QUESTION: I THINK I UNDERSTOOD YOU TO SAY, EACH TIME THE

COMMONWEALTH ASKED YOU ABOUT WHAT HAPPENED NEXT, THAT IT WAS A FEW WEEKS LATER, SO WERE ALL THESE INCIDENTS WITHIN A FEW WEEKS OF EACH OTHER? ANSWER:

A FEW WEEKS. THE LAST ONE WAS A LITTLE LONGER. QUESTION: OKAY. FROM HOW LONG WOULD YOU ESTIMATE WAS THE TIME BETWEEN THE FIRST INCIDENT THAT YOU TESTIFIED

ABOUT AND THE LAST INCIDENT? ANSWER: HOW LONG BETWEEN? QUESTION: YES.

ANSWER: I'M NOT SURE. QUESTION: HOW OLD WERE YOU DURING THIS PERIOD? ANSWER:

THIRTEEN. PRELIMINARY HEARING pg. 49-50, EXHIBIT 20, 21. AFTER DIRECT EXAMINATION

AND CROSS EXAMINATION OF CS TESTIMONY THE COMMONWEALTH MOTION THE COURT WITH REGARD TO THE YEAR. THE COURT: WHAT CHANGES DO YOU WANT TO MAKE? MS. MAW:

The '91 should be '90, From my math. And I'm not great at math, but if I add 13 to '77 it should be 1990. The Court: Let's see. All matters involving CS involve dates in 1991 amend them to 1990, same specific dates other than just changing 1991 to 1990? Ms. MAW: yes, Sir. The Court: I'm amending all the 1991 offense dates to 1990, and those involve 16-00, 17-00, 21-00, 22-00, 14-00, and 15-00 matters. Ms. MAW: That would be the Commonwealth's case on probable cause, preliminary hearing pg. 54 exhibit 2:2

It is legal impossible for the Commonwealth to establish probable cause to be found medically or scientifically, wherein the alleged victim CS named petitioner as the person who when she was thirteen (13) years old committed the alleged criminal act against her.

This court is not required to believe the testimony of CS. It is very improbable that any offense was committed against CS. This Honorable Court should not believe that which is contrary to human experience, and which is known to be incredible, and not to be compelled to accept as true what in nature of things could not have occurred in the manner and under the circumstances CS testified.

Court documents of petitioner arrest, and a certify and authenticated transfer history document from the Virginia Department of Corrections clearly shows petitioner was pick-up on warrant February 2, 1989, then was transfer to the Hampton City Jail, until transfer to the Powhatan Reception and Classification Center on May 4, 1990 then transfer to Chatham Correctional Center on June 12, 1990 then transfer to New Kent Correctional Unit on November 7, 1990 until parole on July 15, 1991. Therefore petitioner could not commit the alleged criminal act of rape.

The act to constitute rape must have been committed both by force and against the will of the victim. Both elements are essential ingredients of the crime.

The verdict of the jury should be set aside, because it is contrary to the law and the evidence and is without credible evidence to support it.

Commonwealth lacked probable cause to initiate criminal proceeding against petitioner, and cannot maintain a charge unsupported by probable cause.

The Fourth Amendment to the United States Constitution stipulates that no warrant shall issue, but upon probable cause.

Commonwealth acted as officer of the court in failing to withdraw arrest warrants after learning that no crime had been committed by petitioner, which constituted an unconstitutional arrest, and depriving petitioner of his right guaranteed under the due process clause of the constitution, and fourth amendment against unreasonable seizures and arrest.

Commonwealth also had a reckless disregard for the truth after learning the alleged victim CS made uncorroborated accusations. There was no physical evidence, no DNA evidence, and no eye witness testimony, thereby making the credibility of the alleged victim of the utmost importance. CS testimony was misleading, and undermined the confidence in the outcome of the proceeding.

Evidence in the hands of the Commonwealth may be innocently incorrect, but even if the Commonwealth did not know of the falsity at the time evidence was introduced, the failure to correct it upon awareness thereafter is an error equal to deliberate use.

Due to the impossible of petitioner being in two places at the same time, and counsel(s) failure to present court records, transfer history document that was in order for discovery and inspection, and in addition to other mitigating evidence to confirm petitioner alibi evidence to prove his innocence, which has resulted in a miscarriage of justice, an unjust and unconstitutional preliminary hearing. exhibit 9

Petitioner argue this Honorable Court to apply the ends of justice exceptions to Rule 5:25, due to the Commonwealth knowingly uses perjured testimony, and

THE FALSE TESTIMONY AFFECTED THE JUDGMENT OF THE JURY.

Court records and petitioner transfer history document from the Virginia Department of Corrections would have clearly shown CS testimony to be inherently incredible, or so contrary to human experience as to render it unworthy of belief, and therefore unreliable. There would have been created a reasonable probability of a different outcome, had the true facts been presented at preliminary hearing.

Petitioner have shown the Commonwealth could not establish probable cause on October 18, 2010, knew or should have known through court document, and transfer history document petitioner was incarcerated, and should have known the perjury testimony of CS, but failed to correct it, which had an effect on the judgment of the court, because it involved a corruption of the truth seeking function of the trial process.

4. TRIAL COURT ERRED IN DENYING PETITIONER MOTION FOR A MISTRIAL IN THE CONTEXT OF IMPROPERLY ADMITTED EVIDENCE AFTER THE VICTIM TESTIFIED PETITIONER "HAD WENT TO JAIL." WAS TRIAL COURT WRONG AS A MATTER OF LAW, WHEN THE RIGHTS OF PETITIONER WERE SO INDELIBLY PREJUDICED?

"TRIAL COURTS DENIAL OF A MOTION FOR A MISTRIAL WILL NOT BE REVERSED ON APPEAL UNLESS THERE EXISTS A MANIFEST PROBABILITY AS A MATTER OF LAW THAT THE IMPROPER EVIDENCE PREJUDICED THE ACCUSED."

THE PROBABILITY OF PREJUDICE EXISTS WHEN THE EVIDENCE IS SO IMPRESSIVE THAT IT PROBABLY REMAINED ON THE MINDS OF THE JURY AND INFLUENCED THEIR VERDICT.

IN THE PRESENT MATTER PETITIONER WAS CHARGED WITH TWO COUNT OF RAPE. THE OCCURRENCE DATE FOR THE FIRST CHARGE WAS THE YEAR 1988, AND THE OCCURRENCE DATE FOR THE SECOND CHARGE WAS JULY 15, 1991 THROUGH OCTOBER 31, 1991. THE VICTIM LIVED IN THE CHERRY ACRES NEIGHBORHOOD IN 1988 AND ON VICTORIA BOULEVARD IN 1991. AFTER CS TESTIFIED AS TO THE TWO INCIDENTS, THE COMMONWEALTH ASKED, "WAS THERE A BIG LAPSE IN THE TIME BETWEEN WHAT HAPPENED AT CHERRY ACRES AND WHAT HAPPENED AT VICTORIA BOULEVARD?" CS WAS ANSWERING A QUESTION REGARDING WHY SHE WAS NOT SEXUALLY ABUSED DURING A CERTAIN PERIOD. RESPONDED, YES THERE WAS. HE HAD WENT SIC TO JAIL. I DON'T KNOW WHAT FOR. PETITIONER OBJECTED, BECAUSE HIS CRIMINAL HISTORY HAD BEEN IMPERMISSIBLY BROUGHT OUT, THE COMMONWEALTH ASKED FOR A CURATIVE INSTRUCTION. THE TRIAL JUDGE DENIED THE MOTION FOR A MISTRIAL. THE TRIAL JUDGE INSTRUCTED THE COMMONWEALTH TO "MOVE PAST" THE ISSUE AND IF PETITIONER WANTED AN INSTRUCTION, SHE WOULD GIVE ONE. TRIAL COUNSEL RESPONDED, "I THINK THAT WOULD BE APPROPRIATE AT THIS POINT." AFTER THE JURY RETURNED, A CURATIVE INSTRUCTION WAS NOT GIVEN.

CURATIVE INSTRUCTION MEANING A COURT'S INSTRUCTION TO THE JURY TO DISREGARD SOMETHING THAT SHOULD NOT HAVE HAPPENED IN COURT.

TRIAL JUDGE AGREED TO GIVE A CURATIVE INSTRUCTIVE, BUT FOR AN UNKNOWN REASON ONE WAS NOT GIVEN WHEN THE JURY RETURNED.

TRIAL COUNSEL FAILED TO OBJECTED TO THE FAILURE TO GIVE THE INSTRUCTION, AND DID NOT REQUEST TO APPROACH THE BENCH TO SPEAK WITH THE TRIAL JUDGE AFTER THE INSTRUCTION WAS NOT GIVEN.

TRIAL JUDGE AGREED TO GIVE A CURATIVE INSTRUCTION, BUT WHEN THE HONORABLE JUDGE JONES AGREED, BUT WHEN SHE FAILED TO DO SO TRIAL COUNSEL COULD HAVE REQUESTED A BENCH CONFERENCE TO REMIND THE TRIAL JUDGE TO GIVE A CURATIVE INSTRUCTION.

TRIAL COUNSEL ARGUE ON APPEAL THAT HE DID NOT REMIND THE TRIAL JUDGE, BECAUSE IT WOULD HAVE HIGHLIGHTED THE VICTIM'S USE OF THE WORD "JAIL". BY TRIAL COUNSEL FAILING TO REMIND THE TRIAL JUDGE TO GIVE A CURATIVE INSTRUCTION, PETITIONER WAIVED HIS RIGHT TO A CURATIVE INSTRUCTION BY TRIAL COUNSEL ACTIONS.

TRIAL JUDGE CONSIDERED PETITIONER'S MOTION FOR A MISTRIAL ON THE MERITS, AND THE PROPER STANDARD WAS APPLIED. THE DETERMINATION OF THE TRIAL JUDGE DID NOT ENCOMPASS WHAT CONCEIVABLE PREJUDICIAL THOUGHTS ANY OF THE JURORS MAY HAVE HAD, AND WHAT EFFECT IF ANY, IT HAD ON THEIR DETERMINATION DURING THE PRESENTATION OF EVIDENCE.

PETITIONER ARGUE THERE WAS A PROBABILITY OF PREJUDICE EXIST WHEN THE IMPROPER INADMISSIBLE EVIDENCE AFTER VICTIM TESTIFIED "PETITIONER" HAD WENT TO JAIL. REMAINED ON THE MINDS OF THE JURY AND INFLUENCE THEIR VERDICT. PETITIONER "HAD WENT TO JAIL" HAD BEEN FIRMLY PLANTED IN THE JURY'S MIND. CS STATEMENT HAD SOME CONCEIVABLE EFFECT ON PETITIONER PRESUMPTION OF INNOCENCE. THE PRESUMPTION OF INNOCENCE ALTHOUGH NOT ARTICULATED IN THE CONSTITUTION IS A BASIC COMPONENT FOR A FAIR TRIAL UNDER OUR SYSTEM OF CRIMINAL JUSTICE.

DUE TO TRIAL COUNSEL FAILURE TO REMIND THE TRIAL JUDGE TO GIVE A CURATIVE INSTRUCTION PETITIONER WAS DENIED HIS RIGHT TO A CURATIVE INSTRUCTION. ABSENT EVIDENCE THAT THE TRIAL POSSESSED THE INNATE ABILITY TO READ THE MINDS OF EACH AND EVERY JUROR, IT IS IMPOSSIBLE TO CONCLUDE THAT CS STATEMENT DID NOT PREJUDICE PETITIONER. THIS PRESENTS A COLD RECORD, WHICH IS ATTRIBUTED

to COUNSEL RENDERING INEFFECTIVE ASSISTANCE, ON THE BASIS OF A COLD RECORD, THE DIFFICULTIES OF ESTIMATING PREJUDICE AFTER THE FACT ARE EXACERBATED BY THE POSSIBILITY THAT EVIDENCE OF INJURY TO PETITIONER MAY BE MISSING FROM THE RECORD PRECISELY, BECAUSE OF THE INCOMPETENCE OF TRIAL COUNSEL.

TRIAL COUNSEL FAILURE TO REMIND THE TRIAL JUDGE TO GIVE A CURATIVE INSTRUCTION WAS DEFICIENT PERFORMANCE MUCH EMPHASIS HAS BEEN PLACED ON THE FACT THAT TRIAL COURT AGREED TO GIVE A CURATIVE INSTRUCTION WHEN THE JURY RETURN. WHETHER OR NOT TO OFFER A CURATIVE INSTRUCTION WAS NOT CONTINGENT UPON TRIAL COUNSEL ACCEPTANCE OR REJECTION OF THAT OFFER. CERTAINLY IF DISCRETION LIED WITH THE COURT WHETHER TO GRANT OR DENY THE MOTION FOR A MISTRIAL OR NEW TRIAL, THEN EQUALLY THE COURT HAD DISCRETION TO OFFER A CURATIVE INSTRUCTION SUA SPONTE OUT OF A ABUNDANCE OF CAUTION.

C.S. STATEMENT "HE HAD WENT SIC TO JAIL" LINGERED IN THE JURY'S MIND THROUGHOUT THE ENTIRE TRIAL, DUE TO; 1) TRIAL COUNSEL FAILED TO REMIND THE TRIAL JUDGE TO GIVE A CURATIVE INSTRUCTION; 2) TRIAL JUDGE TO GIVE A CURATIVE INSTRUCTION WHEN THE JURY RETURNED, BUT FOR AN UNKNOWN REASON ONE WAS NOT GIVEN WHEN THE JURY RETURNED; 3) WHICH HAD SOME CONCEIVABLE EFFECT ON PETITIONER PRESUMPTION OF INNOCENCE.

PETITIONER ARGUE HE WAS PREJUDICE WHEN THE IMPROPER INADMISSIBLE EVIDENCE, WHEN CS TESTIFIED "HE HAD SIC WENT TO JAIL".

5.

Trial Counsel failed to interview or call as known witnesses Ms. Joyce

Tiede, Re search specialist, Central Criminal Records from the Virginia

Department of Corrections and Ms. Joyce station Carter the victim's

Mother. These witnesses were clearly identified, easily accessible,

and willing to provide information that would have disclosed CS

testimony against petitioner. A defendant is entitled to have trial counsel

interview and call available witnesses for his defense. Was petitioner

denied effective assistance of counsel?

Petitioner is entitled to have trial counsel interview and call available witnesses

for the defense. The right to present the defendant's version of the facts

as well as the Commonwealth's to the jury, so it may decide where

the truth lies. Just as an accused have a right to confront the

prosecution's witnesses for the purpose of challenging their testimony.

Exhibit 23

In the present matter on December 24, 1991 petitioner

was arrested on rape/aggravated sexually battery charges. CS reported

several instances of petitioner coming into her bedroom getting under the

covers with his parting her legs with his from behind rubbing his penis

on her vagina, and finally inserting only the tip of his penis. Commonwealth

dropped all charges due to conflicting dates of offense and the fact that

when dates were finally fixed it was determined that petitioner was

incarcerated during that particular time. Exhibit 8

On October 18, 2010 preliminary hearing CS testimony under oath. Question:

What is your date of birth? Answer: January 30, 1977. Question: Did there ever

come a time when he had some unusual contact with you? Answer: yes.

Question: And when was that? Answer: It was on Victoria Boulevard. Question:

Okay. How old were you? Answer: Thirteen. Question: And these three

incidents that you recall from the time you were thirteen years old, were

there any other incidents? Answer: I can't. Question: Not that you can

RECALL? QUESTION: Not that you CAN RECALL? ANSWER: NO. PRELIMINARY HEARING pg. 41, 42, 47. Exhibit 7, 10, 19 CROSS EXAMINATION OF CS TESTIMONY; QUESTION: I think I understood you to say each time THE COMMONWEALTH ASKED you about what happened next, that it was A FEW WEEKS LATER. SO WERE ALL THESE INCIDENTS WITHIN A FEW WEEKS OF EACH OTHER? ANSWER: A FEW WEEKS. THE LAST ONE WAS A LITTLE LONGER. QUESTION: OKAY. FROM HOW LONG WOULD YOU ESTIMATE WAS THE TIME BETWEEN THE FIRST INCIDENT THAT YOU TESTIFIED ABOUT AND THE LAST INCIDENT? ANSWER: HOW LONG BETWEEN? QUESTION: YES. ANSWER: I'M NOT SURE. QUESTION: HOW OLD WERE YOU DURING THIS PERIOD? ANSWER: THIRTEEN. QUESTION: THIRTEEN THE ENTIRE TIME THEN? ANSWER: THIRTEEN AND THEN FOURTEEN. PRELIMINARY HEARING pg. 49, 50, Exhibit 20, 21

HAD MS. JOYCE STATON CARTER BEEN CALLED AS A WITNESS MS. JOYCE STATON CARTER THE VICTIM'S MOTHER, WHO REPORTED AND SIGNED THE CRIME REPORT ON NOVEMBER 25, 1991, WOULD HAVE COME TO COURT EXERCISED HER RIGHT TO TESTIFY. MS. JOYCE STATON CARTER WOULD HAVE TESTIFY THAT WHEN PETITIONER WAS ARRESTED ON DECEMBER 24, 1991 ON RAPE/AGGRAVATED SEXUALLY BATTERY CHARGES, DUE TO CS STATEMENT TO MS. BARBARA STEWART, SOCIAL SERVICES, CHILD PROTECTION AND HAMPTON CITY POLICE THAT WAS UNTRUE, BECAUSE PETITIONER WAS INCARCERATED IN THE DEPARTMENT OF CORRECTION WHEN CS WAS THIRTEEN YEARS OLD. THEREFORE HE WAS NEVER IN THE HOUSE, NEVER HAD A OPPORTUNITY TO COMMIT SUCH A CRIME, AND COULD NOT BE IN TWO (2) PLACES AT THE SAME TIME, THAT WAS WHY THE COMMONWEALTH DROPPED ALL THE CHARGES. MS. JOYCE STATON CARTER TESTIMONY WOULD HAVE CREATED A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME HAD THE TESTIMONY AND EVIDENCE BEEN RECEIVED, BECAUSE MS. JOYCE STATON CARTER TESTIMONY WOULD HAVE UNDERMINED THE CONFIDENCE IN THE OUTCOME. ON OCTOBER 18, 2010 PRELIMINARY HEARING OF CS TESTIMONY AFTER DIRECT EXAMINATION AND CROSS EXAMINATION THE COMMONWEALTH MOTION THE COURT

With REGARD to YEAR, THE COURT: What changes do you want to make?

MS. MAW: The '91 should be '90, From my math, And I'm not great at math, but if I add 13 to '77, it should be 1990. THE COURT: Let's see. All matters involving CS involve dates in 1991, AMEND them to 1990. SAME SPECIFIC dates other than just changing 1991 to 1990? MS. MAW: YES, SIR. THE COURT: I'm AMENDING all the 1991 OFFENSE dates to 1990, AND those involve 16-00, 17-00, 21-00, 22-00, 14-00, AND 15-00, MATTERS. MS MAW: That would be the COMMONWEALTH'S CASE ON PROBABLE CAUSE. EXHIBIT 22 PRELIMINARY HEARING pg. 54

It is legal impossible FOR the COMMONWEALTH to establish probable cause to be FOUND MEDICALLY OR SCIENTIFICALLY, WHEREIN the ALLEGED VICTIM CS NAMED PETITIONER AS the PERSON who when she was THIRTEEN (13) YEARS old RAPE her.

COMMONWEALTH LACKED PROBABLE CAUSE to initiate CRIMINAL PROCEEDING against PETITIONER, AND CANNOT MAINTAIN A CHARGE UNSUPPORTED by probable cause, due to the FOURTH AMENDMENT to the UNITED STATES CONSTITUTION stipulates that "NO WARRANT" shall issue, but upon probable cause. PETITIONER ARGUE that he is being illegal detain.

Court document of PETITIONER ARRESTS, A CERTIFY AND AUTHENTICATED TRANSFER history document FROM the VIRGINIA DEPARTMENT OF CORRECTIONS clearly shows PETITIONER was pick-up ON WARRANT FEBRUARY 2, 1989 then transfer to the HAMPTON CITY JAIL, until transfer to the POWHATAN RECEPTION AND CLASSIFICATION CENTER ON MAY 4, 1990, then transfer to CHATHAM CORRECTIONS CENTER ON JUNE 12, 1990, then transfer to NEW KENT CORRECTIONAL UNIT ON NOVEMBER 7, 1990 until PAROLE JULY 15, 1991. EXHIBIT 9 This is the TIME FRAME within the COMMONWEALTH WAS ALLOWED to WRONGFULLY establish A PROBABLE CAUSE to CERTIFY charges to the GRAND JURY.

TRIAL COUNSEL FAILED to INTERVIEW AND call AS AN REQUESTED KNOWN WITNESS MS. JOYCE TIEDE, RESEARCH SPECIALIST, CENTRAL CRIMINAL RECORD FROM the VIRGINIA DEPARTMENT OF CORRECTIONS, who would HAVE EXERCISED her right to testify.

HAD MS. JOYCE TIEDE BEEN CALLED AS A WITNESS MS. JOYCE TIEDE WOULD HAVE COME TO COURT, AND INTRODUCE INTO EVIDENCE PETITIONER'S CERTIFY AND AUTHENTICATED TRANSFER HISTORY DOCUMENT FROM THE DEPARTMENT OF CORRECTIONS TO CONFIRM ALL OF PETITIONER'S INCARCERATIONS DATES AFTER THE COURT AMENDED ALL THE 1991 OFFENSE DATES TO 1990, MS. MAW; THAT WOULD BE THE COMMONWEALTH'S CASE ON PROBABLE CAUSE, PRELIMINARY HEARING 79.54 EXHIBIT 22

HAD MS. JOYCE TIEDE BEEN CALL AS A WITNESS MS. JOYCE TIEDE WOULD HAVE SHOWN THE ALLEGED VICTIM CS TESTIMONY TO BE INHERENTLY INCREDIBLE, AND CONTRARY TO HUMAN EXPERIENCE, AND THE LAW OF NATURE, AND COMPLETELY ELIMINATED THE VICTIM'S TESTIMONY THAT SHE WAS RAPED BY PETITIONER WHEN SHE WAS THIRTEEN YEARS OLD, DUE TO PETITIONER WAS IN THE VIRGINIA DEPARTMENT OF CORRECTION.

MS. JOYCE TIEDE TESTIMONY WOULD HAVE CREATED A REASONABLE PROBABILITY OF A DIFFERENT OUTCOME HAD THE TESTIMONY AND EVIDENCE BEEN PRESENTED, WHICH CAUSE AN UNJUST AND UNFAIR TRIAL FOR PETITIONER, BECAUSE IT HAD AN EFFECT ON THE JUDGMENT OF THE JURY, DUE TO IT INVOLVED A CORRUPTION OF THE TRUTH SEEKING FUNCTION OF THE TRIAL PROCESS.

ON THE 4TH DAY OF OCTOBER, 2012 DURING JURY TRIAL, THE COMMONWEALTH'S MAIN WITNESS WAS THE ALLEGED VICTIM CS. DURING CROSS EXAMINATION; THE WITNESS WAS CONFRONTED WITH A COPY OF A 2010 POLICE REPORT IN WHICH SHE STATED TO DETECTIVE MAYER THAT ALL OF THE ALLEGED INCIDENTS OCCURRED WHEN SHE LIVED AT 3820 VICTORIA BOULEVARD IN 1990 AND 1991 WHEN SHE WAS 13 AND 14 YEARS OLD. TTAT 117-118. THE ALLEGED VICTIM TESTIFIED THAT ALL OF THE INCIDENTS OCCURRED WITHIN A FEW WEEKS OF EACH OTHER AND THAT SHE WAS LIVING AT THE ADDRESS ON VICTORIA BOULEVARD DURING THE TIME OF ALL OF THE ALLEGED INCIDENTS. ID AT 49.

TRIAL COUNSEL FAILED TO SEEK A CONTINUANCE IN ORDER TO PRESENT WITNESSES MS. JOYCE TIEDE TO CONFIRM ALL OF PETITIONER'S INCARCERATIONS DATES IN THE VIRGINIA DEPARTMENT OF CORRECTIONS, AND JOYCE STANON CARTER THE VICTIM'S MOTHER. HAD

THE WITNESSES BEEN CALLED A WITNESSES, THEY WOULD HAVE REBUTTED THE COMMONWEALTH'S KEY WITNESS CS WHERE EVIDENCE IN THE HANDS OF THE COMMONWEALTH MAY BE INNOCENTLY INCORRECT, BUT IF THE COMMONWEALTH KNEW OR SHOULD HAVE KNOWN OF THE FALSITY, THE RULES OF MOONEY ARE IMPLICATED. THE RULE OF MOONEY REQUIRES REVERSAL IF THERE WAS ANY REASONABLE LIKELIHOOD THAT THE FALSE INFORMATION AFFECTED THE JUDGMENT OF THE JURY. AS IS IN THIS CASE, EVEN IF THE COMMONWEALTH DID NOT KNOW OF THE FALSITY AT THE TIME EVIDENCE WAS INTRODUCED, THE FAILURE TO CORRECT IT UPON AWARENESS THEREAFTER IS AN ERROR EQUAL TO DELIBERATE USE,

TRIAL COUNSEL FAILURE TO CALL MS. JOYCE TIEDE AND MS. JOYCE STATON CARTER RESULTED IN THE FORFEITURE OF THE OPPORTUNITY TO DIRECT EXAMINATION AND CROSS EXAMINATION, WHICH WOULD HAVE SERVED TO FURTHER IMPEACH THE TESTIMONY OF THE ALLEGED VICTIM CS. BEING WITNESSES WERE REQUESTED FOR TRIAL.

ON 4TH OF OCTOBER, 2012 WHEN THE TRIAL WAS HELD MS. JOYCE STATON CARTER THE ALLEGED VICTIM MOTHER WAS A AVAILABLE WITNESS IN COURT, BUT WAS NOT CALLED TO TESTIFY. MS. JOYCE STATON CARTER HAD BEEN SUMMONED BY THE COMMONWEALTH AND REQUESTED BY THE DEFENSE. MS. JOYCE STATON CARTER WAS IN FACT IN COURT ON THE DAY OF TRIAL CONFERRING WITH THE COMMONWEALTH, AND REMAIN IN COURT DURING THE ENTIRE TRIAL, AND YET MS. JOYCE STATON CARTER WAS NOT CALLED UPON TO TESTIFY.

THE ALLEGED VICTIM INDICATED THAT SHE HAD INFORMED HER MOTHER AND A SCHOOL GUIDANCE COUNSELOR ABOUT THE ALLEGED MOLESTATION, ID AT 105-106, AND THAT LATER THAT NIGHT, A POLICE OFFICER CAME TO HER HOUSE, ID AT 106. ON CROSS EXAMINATION BY THE DEFENSE; IT WAS BROUGHT TO THE ATTENTION OF THE ALLEGED VICTIM THAT SHE HAD ORIGINALLY TOLD INVESTIGATORS IN 1991 THAT SHE TOLD HER MOTHER ABOUT THE BEHAVIOR, BUT THAT NOTHING WAS DONE, ID AT 112.

MS. JOYCE STATON CARTER WAS IN FACT THE PERSON WHO SIGN THE POLICE REPORT ON NOVEMBER 25, 1991. MS. JOYCE STATON CARTER IF HAD BEEN CALLED AS A WITNESS TO TESTIFY WOULD HAVE BEEN SHE DIDN'T DROPPED THE CHARGES, DUE TO CS TESTIMONY

WAS UNTRUE, BECAUSE PETITIONER WAS INCARCERATED IN THE VIRGINIA DEPARTMENT OF CORRECTIONS, THEREFORE PETITIONER COULD NOT HAVE COMMITTED THE ALLEGED OFFENSE OF RAPE, BECAUSE PETITIONER WAS NEVER AT THE HOUSE.

NO EXPLANATION WAS OFFERED TO CLEAR UP THIS UNUSUAL SITUATION, WHEN IT APPEARED THAT NEITHER PARTY WOULD CALL MS. JOYCE STATON CARTER AS A WITNESS. MS. JOYCE STATON CARTER SHOULD HAVE BEEN CALLED BY THE COURT AS A WITNESS.

BY IMPENDING PETITIONER FROM BEING ABLE TO CALL THE WITNESS PETITIONER'S DUE PROCESS WAS HINDERED BY THE COURT, AS WELL AS PETITIONER ABILITY TO HAVE A FAIR TRIAL BEFORE THE TRIER OF FACT. PETITIONER RIGHT TO FULLY LITIGATE AT TRIAL. ALL OF HIS WITNESSES HINDERED HIS DEFENSE, THAT PETITIONER WAS ENTITLED TO ASSERT. EXHIBIT 23

6. JURIES shall BE INSTRUCTED AS A MATTER OF LAW, ON THE ABOLITION OF PAROLE FOR NON-CAPITAL FELONY OFFENSES COMMITTED ON OR AFTER JANUARY 1, 1995 PURSUANT TO VIRGINIA CODE ANN. 53.1-165.1. Did TRIAL COURT ERRED IN PETITIONER'S NON-CAPITAL FELONY TRIAL IN REFUSING TO INSTRUCT THE JURY THAT PAROLE WAS ABOLISHED IN VIRGINIA PURSUANT TO VA. CODE ANN. 53.1-165.1, AND HIS SENTENCE SHOULD BE VACATED, AND A NEW SENTENCING HEARING SHOULD BE GRANTED.

A JURY IS REQUIRED TO DETERMINE A SPECIFIC TERM OF CONFINEMENT THAT IT CONSIDERS TO BE AN APPROPRIATE PUNISHMENT UNDER ALL THE CIRCUMSTANCES REVEALED BY THE EVIDENCE IN A CASE. A JURY SHOULD NOT BE REQUIRED TO PERFORM THIS CRITICAL AND DIFFICULT RESPONSIBILITY WITHOUT THE BENEFIT OF ALL SIGNIFICANT AND APPROPRIATE INFORMATION THAT WOULD AVOID THE NECESSITY THAT IT SPECULATE OR ACT UPON MISCONCEPTIONS CONCERNING THE EFFECT OF ITS DECISION.

FOR EVERY PERSON CONVICTED OF A NON-CAPITAL FELONY OFFENSE COMMITTED ON OR AFTER JANUARY 1, 1995, THE PROVISIONS OF VA. CODE ANN. 53.1-40.01, 53.1-207.2 ET. SEQ. ARE IMPLICATED AND CONDITIONALLY PROVIDE FOR FORMS OF EARLY RELEASE AND SENTENCE REDUCTION, WHICH REQUIRED TO ESTABLISH THE CRITERIA UPON WHICH A PERSON SHALL BE DEEMED TO HAVE EARNED OR FORFEITED SENTENCE CREDITS.

IN THE PRESENT MATTER ON DECEMBER 24, 1991 PETITIONER WAS ARRESTED ON RAPE/AGGRAVATED SEXUALLY BATTERY CHARGES. CS REPORTED SEVERAL INSTANCES OF HIM COMING INTO HER ROOM GETTING UNDER THE COVERS WITH HER, PARTING HER LEGS WITH HIS FROM BEHIND, RUBBING HIS PENIS ON HER VAGINA, AND FINALLY INSERTING ONLY THE TIP OF HIS PENIS. COMMONWEALTH DROPPED ALL THE ORIGINAL CHARGES DUE TO CONFLICTING DATES OF OFFENSE AND THE FACT THAT WHEN DATES WERE FINALLY FIXED, IT WAS DETERMINED THAT PETITIONER WAS INCARCERATED DURING THAT PARTICULAR TIME. EXHIBIT 8

A FORM OF EARLY RELEASE, GOOD BEHAVIOR CREDIT AND A FORM OF SENTENCE REDUCTION WAS AVAILABLE TO A PRISONER UNDER THE ADMINISTRATION OF THE EXECUTIVE BRANCH OF GOVERNMENT.

COMMONWEALTH NINETEEN YEARS LATER BROUGHT INDICTMENTS COVERING THE

SAME TIME PERIOD IN WHICH THE COMMONWEALTH COULD NOT ESTABLISH PROBABLE CAUSE, OR NO RATIONAL FIER OF FACT WOULD HAVE PROOF OF GUILTY BEYOND A REASONABLE DOUBT.

ON 4th OF OCTOBER, 2012 PETITIONER WAS CHARGED WITH TWO COUNT OF RAPE. THE OCCURRENCE DATE FOR THE FIRST CHARGE WAS THE YEAR 1988, AND THE OCCURRENCE DATE FOR THE SECOND CHARGE WAS JULY 15, 1991 THROUGH OCTOBER 31, 1991. PETITIONER WAS TRIED BY A JURY AND CONVICTED. EXHIBIT 9, 18

TRIAL COURT FAILED TO INSTRUCT THE JURY ON THE ABOLITION OF PAROLE. IT IS AXIOMATIC THAT IT BELONGS TO THE TRIAL COURT TO INSTRUCT THE JURY AS TO THE LAW, WHENEVER THEY REQUIRE INSTRUCTION, OR EITHER REQUIRE IT TO BE GIVEN.

THERE CAN BE NO GUARANTEE THAT A DEFENDANT WILL EARN SOME FORM OF STATUTORILY PERMITTED EARLY RELEASE FROM THE PUNISHMENT FIXED BY THE JURY, AND YET THE JURY MAY ATTEMPT TO FACTOR SOME FORM OF ANTICIPATED EARLY RELEASE INTO ITS DETERMINATION OF PUNISHMENT.

JURORS OF REASON AGREE THAT THEY CONVICTED PETITIONER, BUT HE IS NOT ELIGIBLE FOR PAROLE, AND THE JURORS DID NOT CONSIDER THAT IN 1988, AND 1991 PETITIONER COULD RECEIVE EARLY PAROLE THROUGH GOOD TIME, BUT THAT THE JURORS WAS IMPROPER OR NOT INFORMED PAROLE WAS ABOLISHED, THEREFORE A FORM OF EARLY RELEASE, GOOD BEHAVIOR CREDIT, AND A FORM OF SENTENCE REDUCTION SHOULD BE GRANTED.

REASONS FOR GRANTING THE PETITION

FAILURE TO CONSIDER PETITION WOULD RESULT IN A GRAVE INJUSTICE.

GEORGIA V. COMMONWEALTH. PETITIONER IS ASKING THIS HONORABLE COURT TO APPLY THE GRAVE INJUSTICE EXCEPTIONS IN RULE 5:25 TO VIRGINIA CODE 8.01-654

(4)(3). PETITIONER HAS VEHEMENTLY OBJECTED TO THE NUMEROUS VIOLATIONS OF HIS CONSTITUTIONAL RIGHTS FROM THE INCEPTION OF THE COMMONWEALTH AGAINST HIM.

PETITIONER HAS ALLEGED WITH SPECIFICITY THAT HE DID NOT RECEIVE A FAIR TRIAL.

FOR EXAMPLE; 1) COMMONWEALTH HAD ACCESS TO THE ALLEGED VICTIM CS 1991 AND 2010 POLICE REPORT; 2) COMMONWEALTH DROPPED ALL CHARGES OF DECEMBER 24, 1991, DUE TO CONFLICTING DATES OF OFFENSE, AND THE FACT THAT WHEN DATES WERE FINALLY FIXED IT WAS DETERMINED PETITIONER WAS INCARCERATED DURING THAT PARTICULAR TIME; 3) COMMONWEALTH HAD MATERIAL AND FAILED TO DISCLOSE TO DEFENSE VIOLATES PETITIONER DUE PROCESS; 5) VIOLATE BRADY VIOLATION; 6) CS DESCRIBED IN DETAIL WHAT SHE ALLEGED TO HAVE HAPPEN, BUT PETITIONER WAS INCARCERATED; 7) COMMONWEALTH FAILED TO RECALL THE EVIDENCE, WHICH ESTABLISHES BOTH THAT THE EVIDENCE WAS AVAILABLE PRIOR TO JUDGMENT, WHICH FATALLY TAINTS THE WHOLE TRIAL PROCESS FOR PETITIONER; 8) IT IS CLEAR THAT THE PERJURED TESTIMONY PROFFERED BY THE ALLEGED VICTIM CS UNDERMINED CONFIDENCE IN THE OUTCOME OF THE TRIAL; 9) COMMONWEALTH LACKED PROBABLE CAUSE TO INITIATE CRIMINAL PROCEEDING AND MY FOURTH AMENDMENT WAS VIOLATED; 10) TRIAL COUNSEL FAILED TO CALL KNOWN WITNESSES MS. JOYCE TIEDE, AND MS.

JOYCE STATION CARTER; 11) TRIAL COURT DENIAL MOTION FOR MISTRIAL; 12) COUNSEL(S) WAS AWARE OF PETITIONER'S TRANSFER HISTORY DOCUMENT EXISTENCE AND CONTENT, BUT ALLOWED CHARMAINE TO TESTIFY FALSELY THAT ALL THREE INCIDENTS THAT YOU RECALL FROM THE TIME YOU WERE 13 YEARS OLD WEEKS

APART; 14) JURY RELIANCE ON FALSE TESTIMONY; 15) PETITIONER HAS BEEN

REPRESENTED BY THE SAME ATTORNEY FROM TRIAL THROUGH APPEAL AND POST-CONVICTION PLEADING AND THAT IT WOULD BE UNREALISTIC TO EXPECT THE

LAWYER TO ADVOCATE HIS OWN INEFFECTIVENESS. THE ALLEGED FACTUAL ERRORS AND OMISSIONS WERE THE OF SUCH A MAGNITUDE THAT A FUNDAMENTAL miscarriage of justice would result were the court not to ENTERTAIN THE CONSTITUTIONAL CLAIM ON IT MERIT OF THIS petition.

CONCLUSION

THE petition FOR A WRIT OF CERTIORARI should be GRANTED.

Respect Fully submitted,
Jarvis Attorney Newsome

JANUARY 12, 2021

CERTIFICATE OF COMPLIANCE

No: 20-6180(L)

No: 20-6674

(1:20-CV-00050-LO-TCB)

(1:20-CV-00050-LO-TCB)

DARRIS ALTONY NEWSOME - PETITIONER

VS.

HAROLD CLARKE - RESPONDENT(S)

As required by SUPREME COURT RULE 33.1(h), I CERTIFY THAT THE PETITION FOR A WRIT OF CERTIORARI CONTAINS 5,262 WORDS, EXCLUDING THE PARTS OF THE PETITION THAT ARE EXEMPTED BY SUPREME COURT RULE 33.1(d).

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON JANUARY 12, 2021

Darris Altony Newsome

No. 20-6180(L)

No. 20-6674

(1:20-CV-00050-LO-TCB)

(1:20-CV-00050-LO-TCB)

IN THE SUPREME COURT OF THE UNITED STATES

DARRIS ALTONY NEWSOME - PETITIONER

VS.

HAROLD CLARKE - RESPONDENT(S)

CERTIFICATE OF SERVICE

I, DARRIS ALTONY NEWSOME, do SWEAR OR DECLARE THAT ON THIS DATE JANUARY 12, 2021 AS REQUIRED BY SUPREME COURT RULE 29 I HAVE SERVED THE ENCLOSED MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, AND PETITION FOR A WRIT OF CERTIORARI ON EACH PARTY TO THE ABOVE PROCEEDING OR THAT PARTY'S COUNSEL AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED BY DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENTS AND EXHIBITS IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF THEM AND WITH FIRST-CLASS POSTAGE PREPAID.

THE NAME AND ADDRESS OF THOSE SERVED ARE AS FOLLOWS:

OFFICE OF THE ATTORNEY GENERAL AT 202 N. 9th STREET RICHMOND,
VIRGINIA 23219

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND ACCURATE COPY OF PETITION FOR WRIT OF CERTIORARI.

Darris Altony Newsome