

No. 20-8258

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH ANTHONY DANIELS
(Your Name)

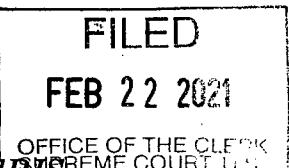
PETITIONER

ORIGINAL

VS.

COMMONWEALTH OF VIRGINIA — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*



The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
_____, or

a copy of the order of appointment is appended.


(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Joseph A. Daniels, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment (<i>Prison Pay</i>)	\$ <u>648.00</u>	\$ <u>N/A</u>	\$ <u>54.00</u>	\$ <u>N/A</u>
Self-employment	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Gifts	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Alimony	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Child Support	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Total monthly income:	\$ <u>54.00</u>	\$ <u>N/A</u>	\$ <u>54.00</u>	\$ <u>N/A</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	\$ <u>N/A</u>
			\$ <u>N/A</u>
			\$ <u>N/A</u>

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	\$ <u>N/A</u>
			\$ <u>N/A</u>
			\$ <u>N/A</u>

4. How much cash do you and your spouse have? \$ N/A
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
<u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
	\$ <u>N/A</u>	\$ <u>N/A</u>
	\$ <u>N/A</u>	\$ <u>N/A</u>

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value N/A

Other real estate
Value N/A

Motor Vehicle #1
Year, make & model N/A
Value N/A

Motor Vehicle #2
Year, make & model N/A
Value N/A

Other assets
Description N/A
Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>N/A</u>	\$ <u>N/A</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>N/A</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>N/A</u>	\$ <u>N/A</u>
Food	\$ <u>N/A</u>	\$ <u>N/A</u>
Clothing	\$ <u>N/A</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>N/A</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>N/A</u>	\$ <u>N/A</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Life	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Health	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Motor Vehicle	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Other: <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Installment payments		
Motor Vehicle	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Credit card(s)	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Department store(s)	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Other: <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Alimony, maintenance, and support paid to others	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Other (specify): <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>
Total monthly expenses:	\$ <u><u>N/A</u></u>	\$ <u><u>N/A</u></u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Destitute

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____ April 9, 2021

Joseph A. Daniels
(Signature)

No. 20-8258

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH ANTHONY DANIELS — PETITIONER
(Your Name)

vs.

ORIGINAL

COMMONWEALTH OF VIRGINIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
FEB 22 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI

Joseph A. Daniels
(Your Name)

901 Corrections Way
(Address)

Tarrant, Virginia
(City, State, Zip Code)

434-535-7000
(Phone Number)

QUESTION(S) PRESENTED

1. Was Daniels's Fourth Amendment rights violated when the State's detective lied, under oath, to obtain a search warrant and arrest warrants for Daniels, which lead to Daniels's convictions?
2. Was Daniels's Fifth Amendment rights violated when the State's detective lied, under oath, to obtain indictments against Daniels, which lead to Daniels's prosecution and convictions?
3. Was Daniels's Fourteenth Amendment rights violated when Daniels was tried and convicted based on warrants and indictments obtained by perjured testimony from state's detectives?
4. Was the Supreme Court of Virginia in error when it denied Daniels's Motion to Vacate, when the Court previously likened motions to vacate criminal convictions as petitions for habeas corpus?

LIST OF PARTIES

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

RELATED CASES

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STATUTES AND RULES

OTHER

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

N/A 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 Henrico County Circuit court 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 5, 2021. 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 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution: "no person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury ..."

Fourth Amendment to the United States Constitution: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourteenth Amendment to the United States Constitution: "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On November 10, 2008, the Grand Jury in the County of Henrico, Virginia, charged that on or about July 12, 2008, Joseph Anthony Daniels, petitioner ("Daniels") did feloniously rob Jacque Bowmaster of United States Currency belonging to CVS, in violation of § 18.2-58 of the Code of Virginia, and issued two (2) indictments as True Bills. (See Appendix's E & F).

On July 22, 2008, police Investigator, Perry J. Lawton, met with Emanuel Lamboy Mayfield, who was alleged to be an accomplice of Daniels in the CVS robberies. Allegedly, Mayfield identified Daniels as a suspect on July 12, 2008.

On July 28, 2008, after interviewing Mayfield for a second time, the Investigator sought arrest warrants for Daniels, using Mayfield's unverified and unreliable accusations against Daniels as probable cause to obtain the warrants, (see Appendix's H & I), though the Investigator had no prior dealing with Mayfield as a confidential informant.

On July 30, 2008, Daniels was taken into custody, then on March 26, 2009, was

Convicted, by jury, of two (2) counts of robbery in the Circuit Court of the County of Henrico, Virginia; Case Nos. CR08-3438-00F and CR08-3439-00F. The jury recommended twenty (20) years on CR08-3438 and twenty-five (25) years on CR08-3439. On June 30, 2009, the Honorable Judge, Burnett Miller, accepted the jury's recommendation and sentenced Daniels to forty-five (45) years, active term, to be served in the Virginia Department of Corrections.

Daniels exhausted all appeal and habeas corpus remedies in State court. Daniels also filed a § 2254 habeas petition in the U.S. District Court for the Eastern District of Virginia, Richmond Division, which was denied on July 7, 2012. Daniels then filed an appeal with the U.S. Court of Appeals, Fourth Circuit. The Court of Appeals denied the appeal on November 27, 2012.

Daniels then filed a Petition for Certiorari in the United States Supreme Court, which the Court denied on April 29, 2013.

On December 26, 2019, Daniels filed a Motion to Vacate Void Judgment in the Circuit Court of the County of Henrico, Virginia, challenging the Court's judgment as being void because it was procured by extrinsic fraud.

The Circuit Court denied the Motion on April 8, 2020. (See Appendix B).

Daniels then filed a Petition for Appeal within the Supreme Court of Virginia, Record number 200869, which the Court denied on February 5, 2021, and now Daniels seeks This Court's review on Certiorari.

REASONS FOR GRANTING THE PETITION

The Fifth Amendment provides, "no person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury ..." Daniels contends that the state detective misrepresented material facts, under oath, to obtain arrest warrants for Daniels and a search warrant for Daniels's property. Daniels also contends that the Grand Jury was provided false testimony under oath to find probable cause to indict Daniels. Lastly, Daniels avers that the trial court did not have proper jurisdiction to try him on indictments obtained through false and perjured testimony.

Daniels contends that when the state procured arrest and search warrants with perjured statements, obtain indictments from a Grand Jury by perjured testimony and evidence, and tried him based on void indictments, Daniels's constitutional rights to due process were violated. Daniels states that the unfairness or corruption of officers in performance of administrative functions in criminal cases in state court is in violation of his due process rights, and the indictments and convictions cannot stand. (See Napue v. Illinois, 360 U.S. 264, 269 (1959))

Mooney v. Holohan, 294 U.S. 103, 79 LED 791 (1935): "The constitutional requirement of due process is safeguarding the liberty of the citizen against deprivation through the action of the state embodies the fundamental conceptions of justice which lie at the base of the civil and political institutions of the United States.

The constitutional requirement of due process is not satisfied where a conviction is obtained by the presentation of testimony known to the prosecuting authorities to be perjured. The action of prosecuting officers on behalf of the state may constitute state action within the purview of the due process clause of the Fourteenth Amendment."

Franks v. Delaware, 438 U.S. 154 (1978): "When defendant establishes by a preponderance of evidence that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by affiant in search warrant affidavit, and, with affidavit's false material set to one side, the affidavit remaining content is insufficient to establish probable cause, search warrant must be voided and fruits of search excluded to the same extent as if probable cause was lacking on the face of the affidavit."

U.S. v. Feurtado, 191 F.3d 420 (1999): The Court ruled an improper testimony could substantially influence a grand jury's decision to indict and if there is doubt that the grand jury's decision was influenced by that testimony, then the defendant is entitled to have the indictment dismissed. The court found that the grand jury's decision to indict was substantially influenced by false testimony and dismissed the indictment against the defendant."

Bank of Nova Scotia v. United States, 487 U.S. 250 (1988): A defendant is entitled to dismissal of an indictment only where

actual prejudice is established. Prejudice must amount either to proof that the grand jury's decision to indict was substantially influenced, or that there is grave doubt that the decision to indict was substantially influenced by testimony which was inappropriate before it."

Illinois v. Gates, 462 U.S. 213 (1983): "An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause for issuance of search warrant. Sufficient information must be presented to the magistrate to allow that official to determine probable cause for issuance of search warrant, his action cannot be a mere ratification of the bare conclusions of others. In order to insure that an abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued. The corroboration of informant's tip through other sources of information must be obtained to reduce the chances of reckless or prevaricating tale.

ARGUMENT

Ground 1: The Investigator misrepresented material facts, under oath, to obtain a search warrant and arrest warrants for Daniels's property and person. Daniels contends that the Investigator intentionally committed extrinsic fraud when the Investigator knowingly and purposely misrepresented facts, under oath, to obtain the search warrant and arrest warrants for Daniels. Daniels asserts,

due to Investigator Lawton's extrinsic fraud, the arrest warrants and search warrant were not obtained legally, and therefore, the arrest of Daniels was an illegal one and all evidence seized, via search warrant, and presented at trial is inadmissible.

Clear and Convincing Evidence of Extrinsic Fraud:

In order to obtain a proper warrant, an applicant must apply, via affidavit, for warrant, and swear, under oath, to: (1) I have personal knowledge of the facts set forth in this affidavit; or (2) I was advised of the facts set forth in this affidavit, in whole or in part, by an informer. This informer's credibility or the reliability of the information may be determined from the following facts: (See *Appendix C*.)

According to Investigator Lawton, he has served as a Henrico County Police Officer for eleven (11) years and is currently assigned to the Criminal Investigation Section, Violent Crimes Robbery Unit. Investigator Lawton asserted that he has experience in developing robbery cases. As such, it can be reasonably concluded that his experience would certainly include obtaining warrants, via affidavits. Thus, Investigator Lawton was fully aware of the requirements to obtain valid arrest warrants and a search warrant for Daniels and his property.

Investigator Lawton checked the box in part 6 which reads, "I have personal knowledge of the facts set forth in this affidavit, instead of the box which reads, "I was advised of the facts set forth in this affidavit, in whole or in part, by an informer. This informer's credibility or the reliability of the information may be

determined from the following facts." Investigator Lawton swore, under oath, that the statements are true and accurate to the best of his knowledge and belief.

When Investigator Lawton checked the box in part 6 that he had personal knowledge of the facts set forth in his affidavit, he affirmatively attested that he gained this knowledge through first-hand observation and experience. However, this attestation was false. Investigator Lawton obtained this information from an informant, who was an alleged accomplice of Daniels, Mayfield as documented in the affidavit part 4, which reads in pertinent part, "On July 22, 2008, the suspect was identified as Joseph Anthony Daniels. His accomplice, Emanual Mayfield, provided the information to police identifying Daniels as the suspect with the knife. Mayfield also implicated Daniels as the suspect in the robbery of a 7/11 store in Chesterfield where he wore a collared shirt, jeans shorts, and white tennis shoes. He also used a knife in that robbery."

Clearly, Investigator Lawton did not obtain the facts set forth in part 4 of his affidavit from personal observation or experience as he swore he did. Investigator Lawton knew, in order to obtain proper warrants, he would have had to check the box in part 6, which reads, " I was advised of the facts set forth ..." Investigator Lawton knew, by checking the appropriate box, it would have allowed the Magistrate to determine whether the information was obtained from a reliable and credible source, and the informant's credibility and reliability would be questioned. (*See Appendix G*)

The Fourth Amendment does not deny law enforcement the support of the usual inferences which reasonable men draw from evidence,

but its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by law enforcement agents. It is not sufficient that the police think there is cause for an arrest or invasion of the privacy of the home. The magistrate must also be convinced. The magistrate must know the evidence on which the police propose to act. The magistrate must make this independent judgment on all the known facts, and the credibility and reliability of how those facts were obtained.

Investigator Lawton did not reveal the informant, Mayfield, because he could not attest to Mayfield's credibility or reliability regarding the information Mayfield offered. Investigator Lawton was aware that Mayfield had been previously convicted of perjury, and therefore, had doubts to Mayfield's credibility. Since Investigator Lawton did not have any other dealings with Mayfield as an informant in the past, he could not attest to Mayfield as an informant with credibility; especially since Mayfield was providing this information to obtain leniency on his current and imminent charges.

In order to circumvent the requirements to reasonably verify Mayfield's information prior to seeking warrants, Investigator Lawton deliberately and intentionally choose to check the box indicating he had personal knowledge of the facts. Investigator Lawton knew his credibility would not be questioned. Therefore, Investigator Lawton materially misrepresented how he obtained the information to seek these warrants, thereby, constituting extrinsic fraud.

Further, the material facts presented in Investigator Lawton's affidavit are false. Investigator Lawton indicated that the victim was injured, ("he cut the victim on the finger as he put the knife to her neck.") This "fact" did not occur and fabricated and misrepresented by Investigator Lawton. The trial record does not contain any notation that the victim was injured or cut. In fact, the trial record clearly reflects that the victim was not injured or cut during the robberies. (Tr. 185) Thus, Investigator Lawton fabricated, without any basis in fact, this event to strengthen his applications for the warrants. (*See Appendix D*)

In addition, Investigator Lawton misrepresented the date of the robberies. Investigator Lawton swore in his affidavit that the robberies occurred on April 12, 2008. (*See Appendix C*) However, the Grand Jury indictments clearly indicate the alleged offense occurred on or about July 12, 2008. (*See Appendix's E & F*) This misrepresentation is pertinent because Investigator Lawton noted in his affidavit that "on July 22, 2008, the suspect was identified as Joseph Anthony Daniels[.] His accomplice, Emanuel Mayfield, provided information to police identifying Daniels as the suspect with the knife."

Clearly, Investigator Lawton did not want to show that he obtained this information ten (10) days after the robberies from an unreliable informant, who he did not want to present or attest to his credibility. Investigator Lawton deliberately and purposely misrepresented the date of the robberies to provide the allusion that he had been investigating this case for sometime and he obtained the information through his due diligence and not from an unreliable informant.

Undoubtedly, Investigator Lawton materially misrepresented the facts and perjured himself to strengthen the application for the warrants. Investigator Lawton knew, without this fraud, there was no probable cause to issue any warrants for Daniels.

No Probable Cause Without Extrinsic Fraud:

Without Mayfield's self serving accusation that implicated Daniels in both robberies at CVS and the misrepresentation of material facts, Investigator Lawton had absolutely no basis to seek any of the warrants for Daniels. The alleged victim did not definitely identify Daniels as the perpetrator, and there was no other evidence to even suggest that Daniels was a suspect in the robberies. Hence, the probable cause provided to the Magistrate was based on extrinsic fraud, and no probable cause existed without that fraud. Therefore, the warrants were obtained illegally and are void.

In Franks v. Delaware, 438 U.S. 154 (1978), the court ruled, "when defendant establishes by a preponderance of evidence that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by affiant in search warrant affidavit, and, with affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, search warrant must be voided ..."

Daniels asserts that he has provided this Honorable Court with clear and convincing evidence of extrinsic fraud, based on the foregoing facts and documents attached herein, and therefore, the warrants, and subsequent conviction are void.

Ground 2: The detective, who testified to the grand jury to obtain the indictments, committed extrinsic fraud when the detective presented false testimony, under oath, to establish probable cause to obtain indictments against Daniels for two robberies. As the detective's testimony was based on a perjured affidavit, that unduly influenced the grand jury to issue the indictments as true bills. Since the indictments were procured by extrinsic fraud, the indictments are void and must be dismissed.

On November 10, 2008, a grand jury was convened to hear testimony to determine whether there was probable cause to believe Daniels committed the offenses as described in the indictments. The Commonwealth presented Officer Guess as its only witness. Guess testified to events and information based on the Investigator's perjured affidavit.

Guess testified that Bowmaster identified Daniels as the perpetrator who robbed her--(CVS). However, Bowmaster did not identify Daniels. Daniels was identified by Mayfield, whose information was considered unreliable and incredible by the Investigator who questioned him. Guess also testified that Daniels injured Bowmaster with a knife during one of the robberies. However, this did not occur and was fabricated by the Investigator.

Considering Guess was the only witness for the Commonwealth, it is obvious that Guess's testimony influenced the grand jury's decision to indict. In Bank of Nova Scotia v. United States, 487 U.S. 250 (1998), the U.S. Supreme Court established that a defen-

dant is entitled to dismissal of an indictment if there is proof that the grand jury's decision to indict was substantially influenced by inappropriate testimony. This ruling has been applied to other cases as well. In U.S. v. Feurtado, 191 F.3d 420 (1999), the court determined that there was an improper testimony that substantially influenced the grand jury's decision to indict, and the court dismissed the defendant's indictment.

In Daniels's case, the evidence is clear and convincing that Guess testified based on the Investigator's perjured affidavit and without the improper testimony the grand jury would not have had probable cause to believe Daniels was involved or committed any offense as described in the indictments. Thus, Daniels is entitled to have the indictments dismissed. As such, Daniels is being held in violation of clearly established law as determined by the U.S. Supreme Court.

Ground 3: The trial court did not have jurisdiction to try Daniels on void indictments, and therefore, Daniels's due process was violated, thus, the judgment of convictions are void.

Daniels contends that, due to extrinsic fraud, Guess was not a competent witness, and therefore, the indictments are so defective that the trial court lacked proper jurisdiction to try Daniels, and Daniels's due process rights were violated. Thus, the judgments of convictions are void.

Ground 4: The Supreme Court of Virginia erred when it failed to adjudicate Daniels Motion to Vacate his criminal conviction, which was procured by Fraud, when the Court previously likened Motion's to vacate as petitions for habeas Corpus.

The Supreme Court of Virginia ruled in *Terry v. Commonwealth*, 2018 WL 1633489, that "this Court previously likened motions to Vacate a conviction to petitions for writs of habeas corpus, noting that [a] petition for habeas corpus and an appeal from a judgment granting the writ both test the legality of the incarceration rather than the guilt or innocence of the prisoner. See, *Lacey v. Palmer*, 93 Va. 159, 163, 24 S.E. 930, 931 (1896).

Based upon the Virginia Supreme Court's previous rulings, the Court should not have denied Daniels attempt to test the legality of his incarceration.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph Anthony Daniels

Date: April 9, 2021