No. _____

In The
Supreme Court of the United States

BENJAMIN FORREST CARTER,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

Andrew M. Sacks
Counsel of Record
Stanley E. Sacks
SACKS & SACKS, P.C.
Town Point Center
150 Boush Street, Suite 505
Norfolk, VA 23510
Telephone: (757) 623-2753
Facsimile: (757) 274-0148
andrewsacks@lawfirmofsacksandsacks.com

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTION PRESENTED

Whether the Supreme Court of Virginia erred in affirming the judgment of the Court of Appeals of Virginia, which affirmed the defendant's convictions in the Circuit Court of the City of Newport News, Virginia, where the Circuit Court erred in admitting victim-witness Jasmine Smith-Aaron's hearsay prior preliminary hearing testimony as substantive evidence in violation of defendant-appellant's Sixth Amendment right of confrontation and then attempting to remedy its own error by subsequently striking the improperly admitted transcript references from the record at a point too late in the trial to cure the earlier constitutional violation?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINIONS AND ORDERS BELOW

The defendant-appellant initially appealed from a final Order entered by the Honorable C. Peter Tench of the Circuit Court for the City of Newport News on April 13, 2018. *See* A10 of the Appendix. The Court of Appeals granted a review by Order entered on February 9, 2019. *See* A3 of the Appendix.

However, the Court of Appeals ultimately denied the appeal and affirmed the defendant-appellant's conviction by Memorandum Opinion of the Court of Appeals of Virginia entered on April 26, 2019. *See* A2 of the Appendix.

The Supreme Court of Virginia then entered an Order on May 20, 2021 denying the defendant-appellant's appeal. *See* A1 of the Appendix.

STATEMENT OF JURISDICTION

Defendant-appellant, Benjamin Forrest Carter, appeals from a final Order of the Supreme Court of Virginia entered on May 20, 2021 denying Defendant-Appellants' appeal, which Order in turn affirmed the Memorandum Opinion of the Court of Appeals of Virginia entered on April 26, 2019, which Memorandum Opinion also in turn affirmed the judgment of conviction and final Order entered by the Honorable C. Peter Tench of the Circuit Court for the City of Newport News on April 13, 2018.

Defendant-appellant (hereinafter referred to as "defendant") now files this Petition For A Writ Of Certiorari.

This Court has jurisdiction under Rule 13.1. of this Court, inasmuch as this is a petition for a writ of

certiorari to review a judgment entered by a state court of last resort.

The undersigned counsel is retained.

Citations to "JA" are to the Joint Appendix filed in the Court of Appeals of Virginia.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment VI of the United States Constitution, which states, in pertinent part, that, "In all criminal prosecutions, the accused shall enjoy the right… to be confronted with the witnesses against him…"

STATEMENT OF THE CASE

The Nature of the Case, the Course of Proceedings, and the Disposition in the Lower Courts

On July 25, 2016, the defendant was indicted in the Circuit Court of the City of Newport News (hereinafter also referred as the "Trial Court") on charges of two counts of abduction by force, felonies in violation of Virginia Code Section 18.2-47; carjacking, a felony in violation of Virginia Code Section 18.2-58.1; and direct indicted on assault and battery, a misdemeanor in violation of Virginia Code Section 18.2-57.

On December 8, 2016, the defendant was arraigned, pleaded not guilty to all charges, and requested trial by the Court. (JA 12-13).

At the conclusion of the trial, the Court found the defendant guilty of all charges. (JA 152-153).

On April 13, 2018, the defendant through counsel moved to set aside the verdicts of guilty; or, in the alternative, to order a new trial. (JA 160).

The Court sentenced the defendant to ten (10) years on the first abduction by force charge, with seven (7) years suspended; ten (10) years on the carjacking charge, with seven (7) years suspended; ten (10) years on the second abduction by force charge, with seven (7) years suspended; and twelve (12) months on the assault and battery charge, all suspended; for a total active sentence of nine (9) years. (JA 200-201). A10.

By Memorandum Opinion dated July 2, 2019, the Court of Appeals of Virgina affirmed the convictions of the Trial Court. A2.

The defendant then timely appealed to the Supreme Court of Virginia, which Court also affirmed the convictions of the Trial Court by Order dated May 20, 2021. A1.

The herein Petition For A Writ of Certiorari Appeal is filed pursuant to Rule 13.1. of this Court from the judgment of the Virginia state court of last resort, *to-wit*, the Supreme Court of Virginia.

STATEMENT OF FACTS

Procedural History

Defendant-appellant has developed the pertinent procedural history under the Statement Of The Case section above, and respectfully incorporates by reference herein as if set forth herein

again in full the development of that procedural history.

Evidence

The pertinent evidence in the Trial Court is as follows:

The defendant and Jasmine Smith-Aaron (Smith-Aaron) were dating in the spring of 2016 and on April 12, 2016 Smith-Aaron went to the defendant's house to visit him.

They left his residence and went first to the store and then to the library on Main Street in Newport News. (JA 71-72.) The defendant was driving Smith-Aaron's car, with her permission, and they also had her infant daughter, Madison Smith (Smith) in the car with them. (JA 72-73).

Smith-Aaron believes that they got to the library around 11p.m. or 12 a.m. and does not recall where they parked but does recall that no one else was there. (JA 21-22). At the library Smith-Aaron got out of the car and tried to call her sister but did not speak with her. (JA 22). When asked if something happened that was the reason for being in Court, Smith-Aaron responded "Oh, gosh. I don't know." (JA 22). The Commonwealth then inquired if Smith-Aaron had spoken with the defendant since the last time she was in Court and she replied yes. She was also asked if it was true that she didn't want anything bad to happen to the defendant to which she responded "I don't want anything bad to happen to anybody." (JA 23).

At this point Smith-Aaron was declared an adverse witness by the Court and the Commonwealth began to cross-examine her

regarding the events of the night of April 13th, 2016. (JA 23). Smith-Aaron indicated that she had called her sister and that this phone call triggered an argument between her and the defendant resulting in the defendant taking the phone away from her to "look at it" and see who she was calling. (JA 24). When asked by the Commonwealth if she got out of the car, she responded "I don't think so" and when asked if she said that she "got out of the car during the argument or else that he dragged you out of the car?" she responded "I don't remember." (JA 24). When asked how the argument ended Smith-Aaron again responded "What do you mean how? I don't remember?" (JA 24).

Smith-Aaron was then shown a transcript dated July 13th, 2016 of her preliminary hearing testimony, asked to read certain passages, and asked if it refreshed her recollection about what happened that night, to which she responded "not really." (JA 25). Smith-Aaron was again questioned about the night of the incident and again responded that she did not really remember. (JA 26). When asked if the defendant had hit her she responded, "I can't say that he did." (JA 26).

The Commonwealth then attempted to introduce the transcript in its entirety as substantive Commonwealth's evidence to which the Court stated he would have to find she was unavailable and would take a recess. (JA 27). After the recess, the Court inquired of Smith-Aaron regarding her inability to remember her previous testimony, the fact that the transcript did not refresh her memory, and that she understood that if he believed she was feigning memory loss that she could be held in contempt of court, and that if held in

contempt he could place her in jail. (JA 27 Smith-Aaron stated she was aware of that but that her mother had just "passed", there has been a lot going on, and that this happened eight months ago, as explanations as to why she could not remember. (JA 28).

The Court again admonished Smith-Aaron but she indicated that even if she were to read the transcript she would just be "telling" what was on the paper rather than having a memory of the exact events. (JA 28). The Court then found her unavailable and the defendant objected based on the fact that her testimony was that she did not remember "in exact detail." (JA 29). The Court then ordered that the Commonwealth should continue to question her and that if she continued to have difficulty that he would find her unavailable. (JA 29).

The Commonwealth resumed questioning, and, again, Smith-Aaron answered "I don't remember." (JA 30). Smith-Aaron continued to answer "I don't know" to multiple questions asked by the Commonwealth to include questions regarding the argument with the defendant over the call to her sister, if he hit her, if she was knocked to the ground, if he hit her specifically in the face, head, back of the head, and back, and if while she was on the ground was when he dropped the keys to the car, to all of which Smith-Aaron responded either "I don't remember" or "I don't know." (JA 30-31). When Smith-Aaron was asked if there was anything that she could recall she stated, "I just remember getting pulled over." (JA 31). The Commonwealth then questioned whether they were "pulled over" or whether the defendant crashed the car and ran

away. Smith-Aaron says that he slowed the car down and got out but that he didn't put the car in park. (JA 32).

After reiterating that Smith-Aaron had no recollection of the events between the time she called her sister and the time they were pulled over, the Commonwealth again asked to admit the transcript as evidence. Again the Judge admonished Smith-Aaron about the possible repercussions to feigning her memory loss and found her unavailable over the objections of defendant through counsel. (JA 33). Defendant raised objections regarding prior statements to the Hampton Police Department that were inconsistent with the transcript, the lack of ability to effectively cross-examine the witness, and the ability to examine the credibility of the witness. (JA 34). The Court then allowed defense counsel to question Smith-Aaron on the inconsistencies of earlier statements to the Hampton police department. Smith-Aaron agreed that she had spoken with Detectives prior to her preliminary hearing testimony. (JA 35-36). Again she had difficulty remembering prior statements and testimony and said that anything she said would be simply what she was reading off of the paper. Again, the trial Court admonished her and ordered her to testify to her recollection of the incident. (JA 39-41). Even after being warned regarding contempt, Smith-Aaron continued to assert that she could not remember, stating that she remembered when they went out, remembered meeting him, and remembered when the police showed up, and nothing else. She was again declared unavailable. (JA 42).

The Commonwealth then moved to admit the transcript as Commonwealth's Exhibit 1, defense

counsel objected and the Trial Court again found her unavailable. (JA 43). Defense counsel then moved to have the Hampton Police Department report admitted but was denied by the Trial Court since it did not meet any of the exceptions under the rules of evidence for hearsay. (JA 44).

The Commonwealth then asked Smith-Aaron about a series of text messages from the defendant after the incident of April 12-13, 2016 showing her a down-load of the texts obtained by the Hampton Police Department. Again, Smith-Aaron had no independent recollection of the texts although she did recognize the defendant's phone number and name on the texts. (JA 48-49) Defense counsel objected under the "Best Evidence" rule and the matter was continued over to December 13, 2016 to allow Smith-Aaron to return with the phone that held the messages. (JA 50-51).

On December 13, 2016 the trial resumed and it was determined that the text messages were no longer available because the screen was cracked on the old phone and that when the Sim Card was transferred to the new phone the messages did not transfer with it and the messages were not stored in any cloud service. (JA 66-71) The Court then ordered the Commonwealth to ascertain if the records could be obtained from the carrier so as to meet the business records exception. (JA 76). The Commonwealth then asked to be allowed to read the transcript into the record since Smith-Aaron had been declared unavailable. Defense counsel asked the Trial Court not to allow that at that time and the Court inquired of Smith-Aaron as to whether she had been contacted by the defendant or his family since the incident to which she responded no. He

also asked her a series of questions to determine if the defendant or his family had asked her not to come to Court, encouraged her not to testify, threatened her in any way and again she responded no to the inquiry. Smith-Aaron again reiterated that she could not remember the case or any specific details of the case even under the threat of contempt. (JA 78). The Trial Court again found her unavailable.

It was then determined that Smith-Aaron was no longer with the same cellular service and that the messages were never on the cloud and as a result the download from the Hampton Police Department met the burden of the "Best Evidence" rule and the text messages were admissible. (JA 85-88). The trial continued and the Commonwealth again asked Smith-Aaron about the text messages indicating that the messages are from the defendant to her, that it is his phone number and her phone number that is used, and that they were sent after the incident occurred. Smith-Aaron was then excused to review the text messages. (JA 90-92). Smith-Aaron again stated that the text messages did not refresh her recollection of what occurs on April 12-13, 2016. The witness was again found unavailable by the Trial Court and defense counsel objected. The Trial Court then allowed defense counsel to cross-examine Smith-Aaron and he inquired as to whether those were text messages between herself and the defendant. Smith-Aaron responded "I have said before that I remember the beginning of the incident, and I remember when you were on the way back to my house and the cops pulled us over. I do not remember the details in between. I remember talking to him after." (JA 93-94).

Smith-Aaron goes on to testify that she remembers texting back and forth and she knows that those are the text messages but that she does not remember the "details" of what happened even though she is authenticating that those are the text messages and those text messages contain some details of what occurred. When questioned if she cannot remember the details how can she authenticate the text, she replied:

> Because I remember speaking with him. I am aware of the situation. I just can't give you details. I remember him texting me days later. I remember him showing up at my house. I remember having to - - I had to get him to come back to my house so that the police could meet him there to arrest him. Otherwise, he would continue to call and text me. Me and him text. I remember speaking with him period.

Defense counsel then asked "does that not jog your memory of the evening?" Smith-Aaron replied no. (JA 95-96).

The Trial Court then questioned her regarding the text and her response was that she could not remember the details of that night. The witness was removed from the stand and defense counsel renewed objections to the transcript being read into the record citing her clarity regarding the time leading up to getting to the library, her ability to authenticate the messages and her clarity after the accident happened. It is only when there is the

point of any possibility for any criminal action that there is confusion. (JA 97-98).

The Trial Court then recalled Smith-Aaron to the stand, held her in contempt, and sentenced her to ten (10) days in jail and ordered the matter continued over. (JA 99). At that time, Smith-Aaron then stated to the Trial Court that she is trying to be completely honest and trying to comply with the Court's Orders but that she just does not remember the details to tell them. When questioned by the Trial Court as to how she could remember the details prior to and after she replied that "he beat my behind for hours. I mean, I don't know. I don't know, I can't tell them. I mean, just the questions that they ask, I cannot give them the answers. I don't know where we went. I don't know. I don't know. I am new to the area. It was in the middle of the night. I don't know." (JA 101-102). The Commonwealth then began to redirect the witness. Smith-Aaron, with the Commonwealth leading, stated that there was an argument over who had called her, that he struck her in the face, that he knocked her to the ground, that this occurred at the library, that he kicked her when she was on the ground, that he was driving when they arrived at the library so he had her keys, and that at some point she saw the keys on the ground. (December JA 103-104). Defense counsel objected to the leading and was sustained.

The Commonwealth then refreshed her memory with the transcript and Smith-Aaron then testified that at some point she got the keys but is not sure how. The Commonwealth then reads into the record from the preliminary hearing transcript that Smith-Aaron got the keys while she was on the

ground after the defendant dropped them while he was kicking her and that the defendant took them off her middle finger while she was trying to hold on to them. (JA 106-107). Smith-Aaron was then asked what happened after he got the keys off and, again, she indicated that she could not remember anything at all. She was asked to read the transcript and again it did not refresh her memory so the Commonwealth read into the record that after he got the keys he told Smith-Aaron to get back in the car, that her daughter was still sleeping in the back of car, and that she got back into the car even though she did not want to get back in the car, and then they left the library, that she asked to get out of the car, that he said he could not let her get out of the car because of her face he would go to jail, that if he was going to jail he was going to make it worth it, that he was going to run the gas up before she could go home, that it all ended in Hampton, began in Newport News, and he was speeding going 60 to 70 miles per hour in both the neighborhoods and on the highway. (JA 109-112).

On cross-examination Smith-Aaron testified that they stopped at the store to get snacks, drinks, and beer before going to the library and that although she placed the call outside of the car the altercation started when she got back in the car. She admitted that she was "swinging back" at the defendant during this time. (JA 115).

Smith-Aaron also indicated that she knew she had the keys but did not remember how she got them and that after she got the keys that she told the defendant he could not drive her car anymore but that she did not testify to that fact at the preliminary hearing. Smith-Aaron could not recall

what the defendant said after she told him he could not drive the car, admitted that she did not have any independent recollection of how he got the keys back from her and did not recall talking to the Hampton police officers but she did recall telling the officers that she tried to stab him with the key. Smith-Aaron did not tell the officers that she told the defendant he could not drive the car or that he took the keys from her but did know that the defendant hit her first, that she was in the car initially and that he choked her but could recall nothing else. (JA 117-118).

On redirect Smith-Aaron went on to state that the Hampton Police report did not refresh her memory as to how the argument started, that she did not remember the defendant stating "tell me the truth, or I'm going to get violent," that she remembered the defendant climbing over the middle console and over her to get out of her side of the car, that she remembered the defendant threatening to kill her more than once, that the defendant stated that they were all going to die, that she got back into the car because he told her to and her 9 month old daughter was still in the car, that she is not sure where her phone was during this time and that this occurred during the nighttime when no one else was around.(JA 119-120,124-126).

Smith-Aaron also indicated that she had texted the defendant in order to get him to her house for the police to arrest him, that during the text he responded to her "That's revenge for beating you up," and another text stating "I'll beat yo ass." (JA 132.). Additionally, she testified that the defendant had contacted her the night of the incident via phone calls, text, and Facebook and that he indicated that

she did not have to mention a name and saying not to mention a name to the police. (JA 136). Smith-Aaron did admit that she did not tell the police nor testify at preliminary hearing that he had threatened to kill her because she did not feel it was necessary. (JA 138).

SUMMARY OF ARGUMENT

During the defendant's non-jury criminal trial in the Circuit Court of the City of Newport News, the prosecution's victim-witness, one Jasmine Smith-Aaron, expressed a lack of recollection or a failure of memory as to numerous and critical aspects of the offenses allegedly committed against her by the defendant.

The Trial Court erroneously allowed the prosecution to utilize as substantive evidence Ms. Smith-Aaron's testimony from an earlier preliminary hearing in the lower Court, which transcript evidence was admitted in violation of the defendant's Sixth Amendment right of confrontation.

Subsequently recognizing later during the trial that it had erred in this regard, the Trial Court ultimately ordered the transcript references be stricken from the record, thereby reversing its earlier decision to admit such references and evidence.

However, while ultimately striking such references, the Trial Court's late action in this regard failed to remedy the constitutional violation that had already occurred by allowing the prosecution to develop a record using constitutionally infirm evidence, which improperly

developed record was still relied upon by the Trial Court to convict the defendant-appellant.

ARGUMENT

In Assignment Of Error I in the Supreme Court of Virgina below, the defendant challenged the following holding of the Court of Appeals of Virginia, which declined to consider the above argument on appeal, holding as follows:

> Carter's assignment of error alleges that the trial court improperly admitted the transcript of Smith-Aaron's preliminary hearing testimony into evidence at the trial. Although the trial court initially admitted the transcript into evidence, it subsequently granted Carter's motion to strike the preliminary hearing transcript from the record. Thus, despite Carter's argument, the preliminary hearing transcript was not admitted into evidence.
> Because the trial court did, in fact, grant Carter's motion to strike, Carter's assignment of error refers to an alleged error corrected by the trial court and does not address the final ruling of the trial court. Consequently, we will not consider this argument on appeal.

Memorandum Opinion dated July 2, 2019 in the Court of Appeals of Virginia at pp. 4-5. A2.

For the reasons stated below, the defendant respectfully submits that the Supreme Court of Virgina erred in affirming the above holding of the Court of Appeals, on the grounds that the Trial Court's initial ruling to admit the preliminary hearing transcript as substantive evidence was constitutional magnitude error that was not otherwise cured by the Trial Court's late recognition of this constitutional error and still comprised a ruling which prejudicially affected the finding of guilty of the defendant-appellant, thereby requiring a new trial in the interests of justice.

When the transcript is used in lieu of testimony extreme limitations are placed on the scope and value of cross-examination. Repeated responses of "I can only say what is on the paper but I can't remember on my own" limits the ability to effectively cross examine or impeach the witness.

This is borne out in this case when cross-examination at the preliminary hearing was limited in scope and defendant was not able to conduct a full and comprehensive cross-examination of Smith-Aaron. (JA 33). The admission of the transcripts, as testimony, limited the Trial Court cross-examination and did not allow for questioning regarding Smith-Aaron's prior inconsistent statements to police. (JA 34). When pressed about inconsistencies in her statement to Hampton, Virginia Police officers and that of her preliminary hearing testimony Smith-Aaron stated "I do not remember. The only thing I can tell you is what - - really, anything I'm going to say is just what you all want me to say at this point, whatever I read. Because I don't - - I don't remember." (JA 41).

Additionally, admission of the transcript as testimony limits cross-examination regarding inconsistencies, if there are any, between preliminary hearing testimony and Trial Court testimony.

As pointed out by the Court of Appeals in its Panel Opinion, while the Trial Court did admit the challenged evidence at one point, after the evidence had been admitted and referenced the Trial Court subsequently reversed itself, sustained the defendant's earlier objection, and struck the challenged evidence from the record.

However, with all due respect to the Court of Appeals' Panel Opinion, while the Trial Court's subsequent reversal was legally correct, it did not cure the legal damage and prejudice already effected by the Trial Court's earlier erroneous admission of the challenged evidence.

More specifically, while the transcript references themselves were stricken, the questions and answers in connection with the witness in question were not stricken, remained in the record, and were infused with the necessary taint resulting from the use of the transcript erroneously to develop that record. Otherwise stated, the error assigned by the defendant to the Trial Court's initial erroneous admission of this evidence, as set forth in Assignment Of Error I below, is challengeable and reviewable on appeal, since the ruling at issue, *to-wit*, the use by the Commonwealth of the later stricken transcript, caused the record to be shaped in a certain way, affected the framing of the questions and answers in connection with the witness, and otherwise resulted in inadmissible testimony that, in effect, is the fruit of the poisonous tree of the actual

initially erroneously admitted transcript itself. Therefore, because the original admission of the transcript evidence was legally incorrect and prejudicially affected the development of the trial record, the defendant's Assignment Of Error I below to such initial ruling to admit raises an argument properly cognizable on appeal, survives the Trial Court's later reversal of that admission, remains a viable and very cogent assignment of error, and constitutes an argument that the Court of Appeals could, and should, have considered on appeal.

Thus, had the Supreme Court of Virginia correctly ruled that the ruling of the Trial Court in admitting the constitutionally defective preliminary hearing transcript evidence was reviewable, as it should have so ruled, the Supreme Court would likewise have to have found, as the Trial Court impliedly acknowledged in reversing its original decision to admit, and as argued in defendant's Assignment of Error II in the Supreme Court of Virginia below, that the original admission violated the Sixth Amendment and, for the reasons discussed immediately above, prejudiced the findings the guilty and ensuing sentences, thereby warranting reversal and a new trial.

In this regard, this Court's Sixth Amendment jurisprudence could not be clearer that the admission of the challenged evidence in the form or prior preliminary hearing testimony violated the defendant's right of confrontation.

In *Davis v. Alaska, 415 U.S. 308, 315-316, 94 S.Ct. 1105, 1110, 39 L.Ed.2d 347, 353 (1974*), this Court said as follows:

> The Sixth Amendment to the Constitution guarantees the right of an accused in a criminal prosecution "to be confronted with the witnesses against him." This right is secured for defendants in state as well as federal criminal proceedings under *Pointer v. Texas,* 380 U. S. 400 (1965). Confrontation means more than being allowed to confront the witness physically. "Our cases construing the [confrontation] clause hold that a primary interest secured by it is the right of cross-examination." *Douglas v. Alabama,* 380 U. S. 415, 380 U. S. 418 (1965). Professor Wigmore stated:
>
> "The main and essential purpose of confrontation is *to secure for the opponent the opportunity of cross-examination.* The opponent demands confrontation not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal putting of questions and obtaining immediate answers."
>
> 5 J. Wigmore, Evidence § 1395, p. 123 (3d ed.1940). (Emphasis in original.)

When measured against the above standards, it is, again, clear beyond cavil that the Trial Court violated this fundamental right of the defendant.

REASONS FOR GRANTING THE WRIT

The defendant respectfully submits that there was a flagrant violation of his Sixth Amendment right of confrontation, constituting clear reversible error in a case where the defendant received a nine-year prison sentence, and therefore this case presents a serious federal question regarding the application of the Sixth Amendment right of confrontation for which a writ should issue.

CONCLUSION

For the foregoing reasons, the defendant respectfully submits that the judgment of the Supreme Court of Virginia affirming the Court of Appeals of Virginia, which in turn affirmed the Trial Court's findings of guilty and sentences should be reversed on the grounds that the actions of the Trial Court in provisionally admitting hearsay preliminary hearing transcript testimony violated the defendant-appellant's Sixth Amendment right of confrontation, thereby requiring a new trial in the interests of justice.

Respectfully submitted,

BENJAMIN FORREST CARTER
By: Andrew M. Sacks
Of counsel

Andrew M. Sacks, Esquire (VSB #20082)
Stanley E. Sacks, Esquire (VSB #04305)
SACKS & SACKS, P.C.
Town Point Center
150 Boush Street, Suite 801
Norfolk, VA 23510
Phone: (757) 623-2753
Fax: (757) 274- 0148
E-mail: andrewsacks@lawfirmofsacksandsacks.com