

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 13th day of May, 2022.

Michael Joseph Formica, Appellant,

against Record No. 211161
Circuit Court Nos. CR12-130:133 &
CR12-135:137

Commonwealth of Virginia, Appellee.

From the Circuit Court of Greene County

Finding that the order appealed from is not an appealable order, the Court dismisses the petition for appeal filed in the above-styled case.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By: *Muriel Theresa Pitney*

Deputy Clerk

VIRGINIA: IN THE CIRCUIT COURT OF GREENE COUNTY

COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

CASE NUMBER: CL 12-130-133
12-135-137

MICHAEL JOSEPH FORMICA,
Defendant.

ORDER

This matter comes before the Court on Defendant's Motion For Reconsideration To Preserve Evidence and/or Prevent Destruction of Evidence.

The Court hereby denies Defendant's Motion for Reconsideration.

The Clerk shall mail a copy of this Order to the Plaintiff and to the Defendant. Pursuant to Rule 1:13, the Court dispenses with endorsement of this Order by either party.

This case is ended and shall be stricken from the Circuit Court's docket.

ENTER: Claude V. Womack, Jr.
Judge
DATE: 5/25/21

WITNESS MY SIGNATURE AS CLERK OF THIS COURT THIS 26th
DAY OF May, 2021
TESTE, Susan E. Bickhead, CLERK
Susan E. Bickhead, DEPUTY CLERK

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF GREENE

COMMONWEALTH OF VIRGINIA

V.

CASE NUMBER: CR12-130:133
& CR12-135:137

MICHAEL JOSEPH FORMICA

ORDER

On this 20TH day of April, 2021 came the Attorney for the Commonwealth, Edwin Consolvo, and the defendant in person with his previous court appointed attorney, S. Braxton Puryear, for a post sentencing motion.

The Court, after hearing from the defendant, finds there is nothing before the court to rule on; therefore, the Court dismisses the defendant's motion.

ENTER: Leander V. Ward, Jr.
JUDGE

DATE: 4/26/21

VIRGINIA: GREENE COUNTY CIRCUIT COURT, GREENE COUNTY,
COMMONWEALTH OF VIRGINIA, THE JUDICIAL BRANCH OF GOVERNMENT
IS APPOINTED CLERK OF THE CIRCUIT COURT OF GREENE COUNTY
CIRCUIT COURT, GREENE COUNTY, COMMONWEALTH OF VIRGINIA AND THAT
I AM THE CLERK OF THE RECORD.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 5
DAY OF May 2021
TESTE: Suzanne E. Buckhead CLERK
BY: _____ DEPUTY CLERK

ORIGINAL 1

1 VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GREENE

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4 COMMONWEALTH OF VIRGINIA,

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Plaintiff,

6 v.

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MICHAEL JOSEPH FORMICA,

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Defendant.

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COURT PROCEEDING

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Taken on

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April 20, 2021

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1 APPEARANCES:

2 Edwin Consolvo, Esq.
3 P.O. Box 1028
3 Stanardsville, VA 22973
4 Attorney for CommonwealthBraxton S. Puryear, Esq.
121 S. Main Street
Madison, VA 22727
Attorney for Defendant

5 BEFORE: The Honorable Claude V. Worrell, II

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1 April 20, 2021

3 MR. PURYEAR: Judge, I'm glad to sit in counsel's
4 chair in this matter, it's not my motion. As far as I un-
5 derstand, my representation of Mr. Formica ended a long
6 time ago. I'm more than glad to sit in the second chair,
7 and for Mr. Formica, if he's here, to be able to argue his
8 motion. I defer to the Court as what's appropriate.

15 MR. FORMICA: I'm just---I'm brand new, I don't
16 know what's going on. I did file a motion. I didn't know
17 I was being brought to court.

18 | THE COURT: Well---

19 MR. FORMICA: But thank you.

20 THE COURT: Okay. So, are there any other mo-
21 tions that you filed?

22 MR. FORMICA: I've been filing motions for a long
23 time, multiple motions.

24 THE COURT: Right. I have a motion to preserve
25 evidence that was previously denied---

1 MR. FORMICA: Yes.

2 THE COURT: ---April of 2018.

3 MR. FORMICA: Okay.

4 THE COURT: Then another motion to preserve evi-
5 dence came in in January of 2020. So---

6 MR. FORMICA: The same case? Okay.

7 THE COURT: Yeah. And that's as far as I know
8 what we're here for.

9 MR. FORMICA: Yeah. I've---I've been filing mo-
10 tions since 2012.

11 THE COURT: Yes, sir. So what do you want to
12 tell me about your motion?

13 MR. FORMICA: Well, on this particular motion I
14 believe it's to preserve evidence. During the trial that I
15 had at that time I had two lawyers, one I believe---can you
16 give me the case numbers to make sure that I'm referring to
17 the right case?

18 THE COURT: So this is 12-130.

19 MR. FORMICA: 12-130. So that's you. You're
20 that Puryear?

21 MR. PURYEAR: I'm Colt Puryear, yes.

22 MR. FORMICA: Yeah, this guy. Okay. Yeah, this
23 is---

24 MR. PURYEAR: Judge, I represented Mr. Formica
25 originally, there was a plea agreement. And then

1 subsequently there was a retraction on Mr. Formica's part
2 of the plea agreement, and other counsel was appointed to
3 represent him at that juncture, I believe.

4 MR. FORMICA: We've got a serious issue right
5 now, sir. ~~This guy didn't help me at all, and he lied to~~
6 ~~me about the law,~~ so we've got really serious issues. So
7 I've got a habeas against him basically. Yeah.

8 THE COURT: So, he's here because the Court ad-
9 vised him that this was coming up.

10 MR. FORMICA: Okay. This started off---this
11 started off---back in 2012 I was---here, I've got the war-
12 rants. Okay, I was---I was arrested---I was arrested for
13 assault, sir. Ms. Davis came in, told the magistrate that
14 I assaulted her. I did not assault her. What happened was
15 I notified her husband, or fiancé at the time, that we were
16 having an extramarital affair, so she decided to press
17 charges against me filing frivolous assault. I asked Mr.
18 Puryear to go and talk to Ms. Davis, and to the---to the
19 county sheriff's department to find out what this assault
20 was about, because I didn't---I didn't get any---I didn't
21 assault her. Mr. Puryear refused to talk to the DA. He
22 refused to talk to the detective. He refused to talk to
23 any sheriff department. Refused to talk to the victim, and
24 refused to talk to Mr. John Lawson, and at that time he---
25 that was---I didn't know his name. I asked him to go find

1 out his name, okay. ~~Now at my trial in 2014, Mr. Wilder~~
2 ~~gives me Brady evidence.~~ Basically this is---this is---now
3 he might want a copy of this, but saying that she wasn't
4 assaulted. Okay? Now she came in and told the Court, the
5 magistrate, and Ms. Compton that I assaulted her.

6 MR. CONSOLVO: Your Honor, forgive me for inter-
7 rupting, but it sounds like Mr. Formica wants to relitigate
8 a matter that has been well-settled, both at the trial
9 court and at the appeals court level. His motion is to
10 preserve evidence, which has nothing to do with his under-
11 lying convictions, other than the fact that he's requesting
12 that the Court order a preservation of evidence. Quite
13 frankly, there are rules that govern that as it relates to
14 record retention and the Commonwealth Attorney's offices,
15 as well as---as it relates to defense counsel's require-
16 ments under the Virginia State Bar. Given everything be-
17 fore the Court, I don't think there's any need to go back
18 into relitigating whether Mr. Formica believes he's guilty
19 or not, and we just---the Court should rule on the motion.
20 I've asked the Court to deny it and for us to move on.

21 THE COURT: Mr. Formica, keep going.

22 MR. FORMICA: Okay. Okay, so if you would like
23 to see this information, I can show it to you. So, at that
24 time, I came into general district court, I was supposed to
25 have a order---they---they ordered me before---before the

1 assault they gave me a protection order, okay. Within fifteen (15) days I'm supposed to have my hearing, okay, by law, okay. I did not have this hearing, okay. I asked for Mr. Puryear to file for bail. He refused to file for bail for me. Okay, he had thirty (30) letters sent to him asking him, please do this, please do this, please do this, please do this.

8 MR. PURYEAR: Judge, I apologize, I don't like to
9 interrupt.

10 THE COURT: So, Mr. Formica, let me just say
11 something to you.

12 MR. FORMICA: I'm sorry?

13 THE COURT: This isn't---this isn't about whether
14 or not Mr. Puryear was effective or not, this is merely
15 your request to preserve evidence.

16 MR. FORMICA: Right. And the reason why---

17 THE COURT: So---

18 MR. FORMICA: ---I want the evidence preserved is
19 because I'm in the Supreme Court against Harold Clark for a
20 habeas against him.

21 THE COURT: Okay.

22 MR. PURYEAR: Your Honor, if it please the Court,
23 I'm here. I was noticed by the Court for a motion to pre-
24 serve evidence. I have a--an extensive file, an entire
25 banker's box with information related to my representation

1 of Mr. Formica. I haven't purged files in thirty (30)
2 years, and I have no objection to maintaining that file.

3 THE COURT: Okay.

4 MR. PURYEAR: And I'm pretty sure that I gave Mr.
5 Formica a copy of all or most of the documents that are in
6 that file.

7 MR. FORMICA: Okay, but the problem is not what
8 he has and what he has. The problem is that he never did
9 anything to preserve any---~~get any evidence for me~~

10 MR. PURYEAR: And that's not in the motion today,
11 Judge?

12 MR. FORMICA: And so I was trying to preserve---
13 because I know there's a statute of limitations, which they
14 can---they can dis---I'm sorry, I had a stroke, because of
15 a heart problem. They can---when they---I don't want them
16 to---let's say if my---my court comes back and they make
17 you retry me, if he makes you retry me, he says, oh, well,
18 we---we got rid of your evidence, sir, so we don't have it
19 anymore. It's a he said, she said case. He said, she said
20 case. The only reason why I plead guilty, because
21 he didn't get any evidence... He didn't talk to the police...
22 He didn't talk to the detective. He didn't talk to
23

24 THE COURT: Did you plead guilty---so the start
25 of this was that you entered a guilty plea?

1 MR. FORMICA: I---I---well, I entered a guilty
2 plea because two reasons. He didn't---he didn't file for a
3 discovery.

4 THE COURT: So it doesn't matter to me at the mo-
5 ment. But you entered a guilty plea?

6 MR. FORMICA: Right.

7 THE COURT: And then after that process and col-
8 loquy with the Court, the Court found you guilty---

9 MR. FORMICA: Right.

10 THE COURT: ---and imposed an appropriate sen-
11 tence, I assume that was lawful. And what I mean with that
12 is, that it was within the range of punishment permitted---

13 MR. FORMICA: Correct.

14 THE COURT: ---in the Commonwealth of Virginia
15 for the crime you committed?

16 MR. FORMICA: Correct, and then I filed a motion
17 to withdraw.

18 THE COURT: Right.

19 MR. FORMICA: Because he wasn't---he wasn't help-
20 ing me.

21 THE COURT: And were you able to withdraw your
22 guilty plea?

23 MR. FORMICA: No.

24 THE COURT: Okay.

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1 MR. FORMICA: He was---he was not letting---he
2 sent me a letter that he was no longer representing me.

3 THE COURT: And so, what we have then is your
4 guilty plea, and you are now seeking to contest that plea--

5 -

6 MR. FORMICA: Correct.

7 THE COURT: ---and finding upon what basis, Mr.
8 Formica?

9 MR. FORMICA: Because ~~it was an involuntary plea.~~
10 ~~He gave me inappropriate evidence. He misled me. I asked~~
11 ~~him to go out to court and to get the case continued, be-~~
12 ~~cause he was forcing me to go to trial that day, basically.~~
13 Not in a physical way, but---

14 THE COURT: So, Mr. Formica, based on what Mr.
15 Puryear has told the Court with regard to your file, the
16 Court's going to order that Mr. Puryear maintain his file
17 for you until further order of the Court.

18 MR. FORMICA: Right.

19 THE COURT: Okay?

20 MR. FORMICA: ~~Mr. Puryear has no evidence, he~~
21 ~~never saw any evidence.~~

22 THE COURT: That doesn't have anything to do with
23 your request, right? You're just asking the Court to make
24 sure that the evidence, whatever is in his file, doesn't
25 get purged or destroyed, right?

1 MR. FORMICA: I'm asking them to---because he
2 didn't---he didn't---he never filed---

3 THE COURT: Who's them?

4 MR. FORMICA: ---discovery. I'm asking them to
5 hold the evidence.

6 THE COURT: You mean the Commonwealth? Your mo-
7 tion, as it relates to the Commonwealth, was already denied
8 by Judge Bouton in 2018.

9 MR. FORMICA: Correct.

10 THE COURT: So the only thing as far as I'm able
11 to determine, ~~because it concerned the Commonwealth's evi-~~
12 ~~dence in 2018, that issue, for me, has been decided. The~~
13 ~~only question now is whether or not the Court should order~~
14 Mr. Puryear not to destroy his file.

15 MR. FORMICA: Well, he doesn't---he doesn't have
16 any evidence. He didn't---he didn't---

17 THE COURT: So then that's not---so you're not
18 asking the Court to order that Mr. Puryear maintain his
19 file?

20 MR. FORMICA: No, I'm asking them to---

21 THE COURT: Fair enough then.

22 MR. FORMICA: I mean he doesn't have any evi-
23 dence.

24 THE COURT: Then I think then the motion is re-
25 solved. There isn't anything else before me that I can

1 rule upon then, Mr. Formica, so your motion is now dis-
2 missed. Thank you, sir.

3 MR. PURYEAR: Judge, what I understood the Court
4 originally to say is that I was ordered to maintain my file
5 until further order of the Court. Now I understand the
6 Court to have said that I'm not ordered to maintain my file
7 for the Court?

8 THE COURT: No, because Mr. Formica said, just a
9 moment ago, that's not what he was asking the Court to do.

10 MR. PURYEAR: Yes, sir.

11 THE COURT: So, I didn't grant him that relief,
12 because that---that---he said that's not what he wanted.

13 MR. PURYEAR: Yes, sir.

14 THE COURT: Thank you, Mr. Puryear,

15 MR. PURYEAR: Judge, thank you.

16 HEARING CONCLUDED

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1 STATE OF VIRGINIA AT LARGE:

2 I, Brittany L. Herring, Notary Public in and for
3 the State of Virginia at Large, having been so duly commis-
4 sioned and qualified, do certify that the foregoing court
5 proceeding was so duly taken at the time and place speci-
6 fied in the caption hereof.

7 I do further certify that said court proceeding
8 was correctly taken by mechanical methods and that the same
9 was accurately written out in full and transcribed into the
10 English language and that said transcript is a true, accu-
11 rate and correct record.

12 I further certify that I am neither attorney nor
13 counsel for or related to or employed by any of the parties
14 to the action in which this court proceeding was taken and,
15 further, that I am not a relative or employee of any attor-
16 ney or counsel employed by the parties hereto or finan-
17 cially interested in this action.

18 My commission expires November 30, 2023.

19 Given under my hand and seal this 21st day of Oc-
20 tober, 2021.

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23



24 Notary Public - 7388881

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