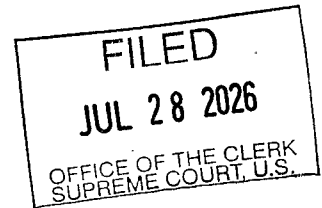


26-5614

No. 25A1626



IN THE
SUPREME COURT OF THE UNITED STATES

JOEL AARON BURRELL — PETITIONER
(Your Name)

vs.

VIRGINIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOEL AARON BURRELL #120708
(Your Name)

3521 WOODS WAY
(Address)

STATE FARM, VA 23160
(City, State, Zip Code)

(276) 523-3310
(Phone Number)

QUESTION(S) PRESENTED

1. Burrell v. Commonwealth, 2024 Va. App. LEXIS isn't a correct verdict pursuant to the guilty beyond a reasonable doubt standard in Jackson v. Virginia, 443 U.S. 307 (1979)?
2. Burrell v. Commonwealth, 2024 Va. App. LEXIS is inconsistent with the principles constituting fabricated evidence and fraud upon the court in Franks v. Delaware, 438 U.S. 154 (1978)?
3. Burrell v. Commonwealth, 2024 Va. App. LEXIS erred in establishing manifest necessity for a declare of mistrial, adversely from the holding in Washington v. Jarvis, 137 Fed. Appx. 543 *; 2005 U.S. App. LEXIS 10016?
4. Commonwealth v. Washington, 263 Va. 298, 559 S.E.2d (2002) is no longer good law pursuant to Washington v. Jarvis, 137 Fed. Appx. 543 *; 2005 U.S. App. LEXIS 10016?
5. The late disclosure of the true records of phone data seized from Verizon Wireless is inapposite of Church v. Commonwealth, 71 Va. App. 269, 373 S.E.2d 477 (2019) prejudicing Petitioner at criminal complaint stage pursuant to Franks v. Delaware, 438 U.S. 154 (1978)?

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:

Joel Aaron Burrell v. Commonwealth of Virginia

Petitioner: Joel Aaron Burrell

Respondents: Ken J. Baldassari (Assistant Attorney General) USB #80099
Jay Jones (Attorney General of Virginia)

Hampton Commonwealth's Attorney: Kevin J. Kulp (Senior Assistant Commonwealth's Attorney); Ryan Zerby

Hampton Circuit Court: Michael A. Gatlen, Judge

CAV Judges: Beales, Causey, and Senior Judge Petty.

RELATED CASES

Commonwealth of Virginia v. Joel Aaron Burrell

Hampton Circuit Court Case Nos. 650CR17MM1239-00; 650CR17MM1239-01

CAV: Joel Aaron Burrell v. Commonwealth of Virginia, Record No. 1318-22-1

Supreme Court of Virginia: Joel Aaron Burrell v. Commonwealth of Virginia
Record Nos. 250057; 250373

Kernan v. Hindyusa, 578 U.S. 412 (2016)

Ylst v. Nunnemaker, 501 U.S. 797 (1991)

Taylor v. Evans-Smith, 513 U.S. 919 (1994)

Washington v. Jarvis, 137 Fed. Appx. 543 (4th Cir. 2005)

Franks v. Delaware, 438 U.S. 154 (1978)

Jackson v. Virginia, 443 U.S. 307 (1979)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ 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 Court of Appeals of Virginia 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.

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 September 4, 2025.
A copy of that decision appears at Appendix _____.

☒ A timely petition for rehearing was thereafter denied on the following date: January 9, 2026, 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 June 8, 2026 (date) on June 2, 2026 (date) in Application No. 25 A 1026.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 14th Amendment - Due Process
2. Fifth Amendment - Double Jeopardy
3. Sixth Amendment - Right To A Fair Trial
4. Va. Code Ann. § 18.2-32
5. Va. Code Ann. § 18.2-53.1
6. Va. Code Ann. § 19.2-324.1
7. Va. Code Ann. § 8.01-361
8. Va. Code Ann. § 8.01-384
9. Va. Code Ann. § 8.01-428 (D)

STATEMENT OF THE CASE

Virginia theory of the homicide is petitioner possessed enough probable cause to certify the case to a grand jury.

On 11/7/2017, Joel Burrell was before the Honorable Jon M. Babineau, Judge of Hampton Juvenile Domestic Relations Court, on three counts, including one count of second-murder in violation of Va. Code § 18.2-32, and one count of use of a firearm in the commission of murder in violation of Va. Code Ann. § 18.2-53.1.

Hampton Police Division former primary detective Sr. Cpl. Randy Mayer filed a criminal complaint dated 10/28/2016 at 3:08 PM and sworn under oath, stated: "Verizon wireless emailed the cell logs and GPS coordinates of Joel Burrell's cellular phone..." However, a search warrant dated 10/11/2016 at 5:37 PM for Verizon filed by affiant Michael Beres didn't request for GPS data.

Based upon reliance of the allegations in that criminal complaint, Rachel E. Welch, Magistrate, issued arrest warrants for violations of Va. Code § 18.2-32, on 10/28/2016 at 3:11 PM and Va. Code § 18.2-53.1, on 10/28/2016 at 3:12 PM. Mayer asserted GPS data was seized from Exhibit 13 through Verizon Wireless, pursuant to a search warrant. See Preliminary Hearing Transcripts "hereinafter PT" Pgs. 73, 78-81, 94, 108-109, 112-113, and 114-115. Defense objected to Mayer's testimony of GPS coordinates without laying proper foundation by custodian. See PT 74-75, 81.

The Tribunal inquires about the Commonwealth's lack of laying a proper foundation to introduce GPS data into evidence. See PT 74, 75, 76, 77. The Commonwealth responded: "The GPS data we're relying upon came from the wireless provider." See PT 76-77. "And in this case we're not using cell tower information. We are using GPS information from the phone." See PT 78.

Contrary to Commonwealth's proffer of GPS coordinates, the Commonwealth's own witness: Andree Mattia - Verizon Wireless Custodian testified: The Verizon records, "shows the tower, um, number and sector that those calls were processed as well as the switching stations where the calls were processed." See Trial Transcripts "hereinafter TT 1" (9/10/2018).

Deon Morrow - Verizon Wireless: Senior Court Analyst testimony of Verizon Records were: "It won't tell you the location of the device. It will tell you the location of the cellular tower."

See TT 2 Pgs. 239-240 (12/13/2021). Morrow acknowledged that Verizon records (Exhibit 6) seized pursuant to a search warrant lacked GPS coordinates and the true nature of the phone data seized was Cell Site Location Information "hereinafter CSLI." See TT 2 Pgs. 239-243 (12/13/2021). Exhibit 6 provides longitude and latitude coordinates of the cell tower, not GPS data of the device. See TT 2 Pgs. 252-253 (12/13/2021).

The Commonwealth's own witness: Trevor Buchanan of Newport News Police Department (Geo-location Expert) testified adversely saying: "Some of the other information, just to fully answer that, that [Verizon] do provide which I will not incorporate. I have not incorporated it today. Is the actual latitude and longitude of where they're estimating that phone is. So, like, GPS coordinates. They are not GPS coordinates. That is an estimate based solely on their estimated distance from tower information." See TT 3 Pg. 124 (12/15/2021). Buchanan reiterated that Exhibit 6 didn't include GPS data. See TT 3 Pg. 136 (12/15/2021).

Prior to trial in Juvenile & Domestic Relations Court the tribunal questioned Mayer:

Court: "Who created the chart with GPS trackings?"

Mayer: "I did that."

Court: "And that was based upon data that was provided to you by a cell phone carrier?"

Mayer: "After the search warrant, yes, sir." See PT Pgs 112-113.

The Commonwealth Opening Statement: "This is the GPS data." See TT 2 Pg. 191 (12/13/2021). The Commonwealth falsified: "That when that door alarm starts pinging after 1:49 AM, the Defendant's phone starts becoming active." See TT 2 Pg. 191 (12/13/2021). It's inapposite to Exhibit 6 records and Buchanan's testimony that "7:20 PM - 7:32 PM is the last RTT record we have for October 6th [2016]. So picking up after midnight. So now we're at 2:44 AM in the morning of October 7th [2016]." See TT 3 Pg. 138

(12/15/2021). Ironically, Exhibit 6 is devoid of a data entry for 2:44 AM on 10/7/2016. See Exhibit 6. During cross-examination between Defense and Buchanan the following colloquy occurred: Hobbs: "Okay. So, in that range between 7:30 on October 6th [2016] and 2 whatever in the morning, we don't know where the phone is?"

Buchanan: "That would be correct." TT3 Pg. 198 (12/15/2021).

The Opening Statement of the Commonwealth continued to falsify the Verizon Wireless records (Exhibit 6) for Exhibit (13), "this phone records put him there. The alarm records show activity there. The alarm records (Exhibit 8) also gives an idea of when - when Donald Burrell died. . . ." TT2 Pg. 197 (12/13/2021). "We have no records of anyone being in that house except for Joel Burrell."

See TT2 Pg. 198 (12/13/2021). The Commonwealth Closing Argument differs from Opening Statement: "I have no video of [appellant] at [victim's] house. I have no pictures of a pellant's dad's house on the 6th. I don't have a witness that says he was at his dad's house on the evening of the 6th. I just have his phone in that area." TT4 Pg. 82 (12/16/2021).

The Commonwealth's theory in Closing Argument: "Whoever killed him had to have been in the house but no one came in the house or over to the house after 2:40 AM on October the 7th [2016]. . . . I think factually we can narrow down pretty well the time of death is between 9:20 PM on the 6th and 2:40 AM on the 7th. And at that same time we believe our evidence shows Joel Burrell being in that area." See TT4 Pg. 47 (12/16/2021). However, this is contrary to Buchanan's testimony states: "I cannot say that that phone was at that location." See TT3 Pg. 202 (12/15/2021). Buchanan testified that he would never testify that a device (Exhibit 13) is inside a house. See TT3 Pg. 205 (12/15/2021).

The Commonwealth concedes the phone data seized isn't GPS data. See TT3 Pg. 146 (12/15/2021). Exhibit 6 disclaimer saying this isn't GPS data. See TT3 Pg. 160 (12/15/2021). CSLI data isn't a depiction of where Exhibit 13 would have to be located, which Long Green Lane is within that boundary. See TT3 Pgs. 197 - 198 (12/15/2021).

Vernon Charles Anderson (Taxi Driver) was dispatched "to pick someone up at 1915 Long Green Lane . . . in Hampton." See TT3

Pg. 100 (12/15/2021). Mr. Anderson didn't remember Petitioner as the passenger picked up from 1915 Long Green Lane. See TT3 Pgs. 105-106 (12/15/2021).

At 1:40 P.M. October 6, 2016 Exhibit 13 connected to cell site 345. See TT3 Pg. 138 (12/15/2021). This Exhibit 6 records conflicts with Exhibit 8 Back Door (Sensor 2) Opened/Closed on October 6, 2016 at 8:39 which there's no opening/closings again until Back Door (Sensor 2) Opened/Closed October 6, 2016 at 15:44 which verifies appellant didn't arrive at 1920 Somerville Drive, nor entered 1920 Somerville Drive.

Buchanan didn't receive call detail records for the victim's phones to perform a geo-location analysis. See TT3 Pg. 198 (12/15/2021).

Morrow authenticated the Verizon records were absent of the name or address of the subscriber. TT2 Pg. 251 (12/13/2021). Morrow testimony was a device can connect to a further cell tower than the nearest cell tower, if that cell tower has a stronger signal, not as congested, or have less interference. See TT2 Pgs. 254-255.

Commonwealth's witnesses: Aaron Brown (Paramedic) testimony of the time of victim's death was "at least a few hours." See TT5 Pgs. 61-62. (12/14/2021). Exhibit 11: Autopsy Report concluded the time/date of injuries are unknown. See Exhibit 11, TT5 Pg. 142 (12/14/2021). Amy Crouch (Master Forensic Specialist) agreed with defense that the victim's death couldn't be narrowed down to a time and date. See TT5 Pgs. 191-192 (12/14/2021). Defense witness Holly Saunders testified that she had witnessed the victim alive between 3:30 - 4:30. See TT3 Pg. 214, 220 (12/15/2021). Defense witness Gregory Covington resided at 1917

[Somerville Drive] was familiar with the victim and testimony corroborated statement to the police, he seen the victim alive between 4 PM - 5 PM October 7, 2016. See TT5 Pg. 15 (12/16/2021). Exhibit 11 pronounces death on 10/9/2016 at 12:38 PM.

The Commonwealth concedes, "Unfortunately, I can't put a gun in Joel Burrell's hand, but I can put him at the scene or as close as anyone else." See TT2 Pg. 199 (12/13/2021). New declared that no gunshot residue test was performed on appellant. See TT5 Pg. 156 (12/14/2021). No Hampton Police Division-Incident Reports of shots being fired within the area of 1920 Somerville Drive. See TT5 Pg. 159 (12/14/2021). Crouch failed to collect DNA or fingerprints. See TT5 Pg. 169 (12/14/2021). "If DNA or fingerprints or GSR were done," it could have developed possible leads. See TT5 Pg. 183

(12/14/2021). Couch confirmed there's no evidence that the victim known his assailant. See TT 5 Pgs. 190-191 (12/14/2021).

On 9/10/2018 Appellant was tried by a jury before presiding Honorable Michael A. Gaten, Judge of the Hampton Circuit Court. Gaten announced the possibility of Hurricane Florence interrupting trial. See TT 6 Pg. 186 (9/10/2018). The Commonwealth raised a motion for mistrial. In his argument for a mistrial he insisted: "We're now on our second day, we're going to get the bulk of our case done, and it's a beautiful sunny day." See TT 7 Pg. 5 (9/11/2018).

Defense objected to the mistrial: "Um, Judge, I adamantly object to that. I mean we have situation where the court is still open. At this point the courts are still open. And so that -- you know, we're anticipating things... Even though the court is not even closed, um, I just -- I feel that's inappropriate. And so I would be objecting to that. See TT 7 Pgs. 8-10. (9/11/2018).

The trial court anticipated a trial closure on Friday (9/14/2018) and Thursday (9/13/2018). See TT 7 Pgs. 11-15, 16-20, 124-125. (9/11/2018).

The Court established that Hurricane Florence isn't in the state of Virginia. "I think [it's] in the Wilmington [North Carolina] area." Judge Gaten then voir dired jurors living in Zone A which the following colloquy occurred:

The Court: "Would you like to comply with that mandatory evacuation?"

Unidentified Juror: "We're not going anywhere."

The Court: "Okay. So you're planning to stay?"

Unidentified Juror: "Yes." See TT 7 Pgs. 11-15. (9/11/2018)

Mr. Kulp asked the Court to notify the jury to return to Court again next week, if the Court was closed on Thursday and Friday. See TT Pgs. 16-20. (9/11/2018).

The Court responded: "So here's -- here's how that would work. If the Court is closed on Thursday and Friday, um, I really got two options, that you would report back here on Mondays and we would pick up the case, and during that time period you are not to discuss the case... and as long as that was upheld, we would resume on Monday." See TT 7 Pgs. 16-20. (9/11/2018).

The Court emphasized: "Flooded streets or something like that ... could have an affect on the rest of you being discharged." See TT 7 Pg. 20. (9/11/2018). The Court emphasized that Zone A residents, "could go to Zone C or D and they would still be in the City of Hampton." See TT 7 Pg. 21. (9/11/2018). The Court clarified: "But it's silly at this point in time when someone could literally go a block and be available for court for me to grant a mistrial." See TT 7 Pgs. 25-26. (9/11/2018). The Court rationalized "That obviously could affect the Court's previous ruling and especially if somehow we're closed tomorrow ..." See TT 7 Pg. 115 (9/11/2018).

Burrell's attorney proffered alternatives to a mistrial. See TT 7 Pg. 116 (9/11/2018). The Court makes a prejudicial comment by stating: "I'm not the judge that's -- I'm -- I'm the petty." See TT 7 Pg. 125. (9/11/2018). Judge Gatlen says: "A half day wouldn't really do us much good. Tomorrow it would have to be a full day." Judge Gatlen continued: "I just don't envision, um, even if two of them are just in the chain, us getting through that between now, um, and now, 'cause even if I extend the jury till -- till 6 o'clock, um, you know." See TT 7 Pgs. 170, 172 (9/11/2018).

Defense argued their position against a mistrial: "Um, here's -- here's where I would be at. Obviously, Judge, you know, we would prefer to just run through as much as we could, and then, you know, um, if the Court gets closed tomorrow, then so be it and then come back and resume when we can." See TT 7 Pgs. 175-176 (9/11/2018).

The Commonwealth's Motion for Mistrial was granted due to a scheduled 5 day jury trial couldn't be concluded by 9/12/2018 at 12 PM, an Act of God, State of Emergency, and mandatory orders to evacuate. See TT 7 Pgs. 180-181, 183-184. (9/11/2018).

On 2/28/2020 a Motion To Dismiss for a Double Jeopardy violation was heard by the Honorable Michael A. Gatlen, Judge of the Hampton Circuit Court. Motion To Dismiss - Double Jeopardy Transcript [hereinafter DJ]. Appellant argued Florence wasn't in the state of Virginia; although, it was a state of emergency the Zone A jurors were voir dired and chose to remain the trier of fact; the Court was still open, and failing to consider alternatives

other than attempting to complete the case quickly, the trial court erred." See DJ Pgs. 11, 12, 15, 19. (2/28/2020). The Court answered: "And can I ask you this, you haven't seen case law that prohibits it, and you haven't seen case law that grants it, correct?" See DJ Pg. 29. (2/28/2020). The Court took an adverse action from its previous ruling: "But all the procedural protections in a trial are for the alleged -- the person who is on the other side of that. So that's what always wins out when it's a close call." See TT 7 Pgs. 178-179. (9/11/2018).

The trial court noted for the record, "the hurricane did not hit as expected." See DJ Pg. 25 (2/28/2020). The Commonwealth revealed their motive behind requesting for a mistrial:

- a) "My primary concern is even if we could get all the witnesses in today, we still have to fly our witnesses out of here, um, and if we -- every time -- every hour we extend that it's going to be more difficult for them to make travel arrangements as we look at potential airline delays." See TT 7 Pg. 173. (9/11/2018)
- b) "Delta has already said that 'Travel arrangements need to be made now otherwise you're not getting out.'" See TT 7 Pg. 173 (9/11/2018)
- c) "I understand that a mistrial would be an undue burden on the Defendant, but, um, you know, I think at this point I cannot see us completing our case and submitting it to the jury by now even if defense puts on no evidence." See TT 7 Pgs. 173-174 (9/11/2018).
- d) "Um, I'm also concerned because before we submit the case to the jury, we have to excuse the alternates." See TT 7 Pg. 174. (9/11/2018)
- e) "I just found my Enterprise person who was working in that store that day." See TT 7 Pg. 174. (9/11/2018)

The Commonwealth concedes other people had opportunity to commit the murder. "Now a lot of people were in the area of 1920 Somerville Drive when Donald Burrell was shot..." See TT Pg. 87 (12/16/2021).

A certificate of analysis determined a minimum of ~~two~~ firearms or maximum of ~~three firearms~~ were used in the homicide. See TT Pgs. 28, 39. (12/16/2021). The Commonwealth agrees there's a possibility of "two shooters." See TT Pg. 120 (12/16/2021).

The Commonwealth agrees "1920 Somerville phone records ... Kind of looked like the ones for 1915 Long Green Lane ... maybe the defendant was actually staying at 1915 Long Green Lane and that's why it looks like he was in the area." See TT Pg. 87 (12/16/2021). Defense Closing Argument: "No one looks into Donald Burrell, Sr. phone data to see if his phone is at that house is at that house at the same time that they claim of Joel Burrell's phone is." See TT Pg. 99 (12/16/2021). The Trial Court erred in citing Edwards v. Commonwealth, 68 Va. App. 284, 299 (2017) as guidance to deny the motion to strike. "The Court will admit that that case had to do largely around opportunity which I think is circumstantial evidence certainly for the trier of fact but also motive. Motive is not so much before the trier of fact in this case so there is distinction there." See TT Pgs. 47-48 (12/16/2021).

The Commonwealth Closing Argument is that "I don't think Ms. Saunders is lying" about her recollection of the date/time when the victim last known alive. See Joint-Appendix [hereinafter JA"] Pg. 3077. Crauch confirmed an incoming call means "that [a] phone has either been answered or possibly a voicemail ...". See TT Pgs. 178-179. (12/14/2021). Exhibit 21. The defense focused on an incoming call dated "October 8, [2016] at 10:25 ... with a duration of two minutes and one second." See TT Pg. 181 (12/14/2021). A phone extraction doesn't verify whose answering the call or whether it went to voicemail. See TT Pg. 181 (12/14/2021). The Commonwealth's Closing Argument concedes: "I mean I can't say that that's a voicemail." See TT Pg. 111 (12/16/2021).

Appellant's counsel made a motion to set aside verdict

because "evidence offered by the Commonwealth" as being "inconsistent with the evidence as presented." See TT Pg. 173 (12/16/2021). The Petitioner renewed his motion to set aside the verdict. See Sentencing Transcript ["hereinafter ST"] Pgs. 4-5 (9/22/2022).

Appellant disputed that Exhibit 6 lacked phone data during the entries/exits of the crime scene (Exhibit 8) during the Commonwealth's theory of the murder — 10/6/2016 @ 9:20 PM - 2:40 AM on 10/7/2016. See ST Pgs. 34-35. (9/22/2022)

Appellant made an oral argument pursuant to Va. Code Ann. § 8.01-428 (b) Fraud Upon The Court. See ST Pg. 42 (9/22/2022). The Court rationalized: "I get what led to the [arrest] warrants, I get what led to [the] probable cause, but you were tried on the indictment issued by the Grand Jury and none of us know what was said to the Grand Jury because it happens in secret." See ST Pg. 45 (9/22/2022).

Appellant argued the trial court erred pursuant to Wilson v. Commonwealth, CL 2021-0003146 (Va. Cir. 2021); See also Gulfstream Bldg. Associates Inc. v. Britt, 239 Va. 178, 186-81, 184 (1990). See ST Pgs. 46-48 (9/22/2022).

Petitioner asserted that Appellee's reliance on Church v. Commonwealth, 71 Va. App. 107, 834 S.E. 2d is misplaced because the late disclosure of the CSLI data did prejudice Petitioner at the criminal complaint stage which probable cause was found to issue arrest warrants:

- a) The phone data seized from Exhibit 6 was a material fact of misrepresented GPS data that the trier of fact relied upon for conviction. See JA 2522, 2865. Presence Investigation Report.
- b) Exhibit 6 records were exculpatory evidence proving Petitioner's whereabouts were unknown for lack of CSLI nor GPS data during the Commonwealth's theory of the homicide. See JA 2879, 2938-2939, 3017.
- c) Exhibit 6 records accuracy cannot be verified by the scientific community. See JA 2886.

On 11/7/2017, Joel Aaron Burrell was brought before the Honorable Jon M. Babineau, Judge of the Hampton Juvenile Domestic Relations Court, on three counts, including one count of second-degree murder in violation of Va. Code § 18.2-32, one count of possession of a firearm by a non-violent felon within 10 years in violation of Va. Code § 18.2-368.2. Preliminary Transcript [hereinafter abbreviated "PT."] Pgs. 3-4, 133-134.

During direct-examination of prosecution witness Randy Mayer, an objection was made to Mayer's testimony of GPS data. See PT Pgs. 74-75, 78-81. The tribunal overruled the objection. See PT Pgs. 78-81. At the conclusion of all the evidence, Burrell's counsel challenged the evidence submitted by the Commonwealth for probable cause. See PT Pgs. 127-128. The trial court rejected the argument and certified the case to the grand jury. See PT Pgs. 133-134.

On 9/10/2018 - 9/11/2018, Burrell was tried by a jury before the Honorable Michael A. Gatlen, Judge of the Hampton Circuit Court, on two counts, including one count of second-degree murder in violation of Va. Code § 18.2-53.1. See Trial Transcript [hereinafter abbreviated "TT"] .

Prior to the introduction of evidence, the Commonwealth requested for a mistrial. See TT Pgs. 6-7. Defense objected to the mistrial. See TT Pgs. 8-10. Judge Gatlen denied the Commonwealth's motion for mistrial. See TT Pgs. 16-20. Appellant's lawyer proffered an alternative to a mistrial. See TT Pgs. 175-176. Judge Gatlen granted the motion for a mistrial. See TT Pgs. 180-181.

On 2/28/2020 a Motion To Dismiss For A Double Jeopardy violation was heard by the Honorable Michael A. Gatlen, Judge of the Hampton Circuit Court [hereinafter abbreviated "DT"] . Appellant argued manifest necessity didn't exist to declare a mistrial. See DT Pgs. 11, 12, 15, 19. The Court denied the motion stating its a case of first impression. See DT Pg. 29. Petitioner's scheduled jury trial was held between 12/13/2021 -

12/16/2021 before the Honorable Michael A. Gaten, Judge of the Hampton Circuit Court, on two counts, one count of second-degree murder and one count of use of a firearm in the commission of murder in violation of Va. Code § 18.2-53d.

Defense objected to Exhibit 8 and voir dire Commonwealth's witness Donald Miles. See TT Pgs. 14-21 (12/14/2021). The tribunal overruled defense's objection to admissibility of Exhibit 8. See TT Pg. 26 (12/14/2021). At the conclusion of all the evidence in the Commonwealth's case-in-chief, Burrell's attorney made a motion to strike the evidence. See TT Pg. 207 (12/15/2021). Judge Gaten denied defense's motion to strike. See TT Pgs. 211-212 (12/15/2021).

At the conclusion of all the evidence, Petitioner renewed the motion to strike. See TT Pgs. 43-44 (12/16/2021). The trial court denied the motion to strike. See TT Pgs. 47-49 (12/16/2021). Burrell's lawyer made a motion to set aside verdict. See TT Pg. 173 (12/16/2021). Upon hearing the motion to set aside the verdict, the tribunal denied the motion to set aside the verdict. See TT Pgs. 173-174 (12/16/2021).

Sentencing was held on 9/22/2022 which the tribunal sentenced appellant to 40 years in prison for the second-degree murder, with no time suspended. On the use of a firearm in the commission of murder, the tribunal sentenced appellant to the mandatory sentence of three years in prison, without suspension of time. Sentencing Transcript [hereinafter abbreviated "ST."] Pg. 54.

Defense renewed the motion to set aside the verdict which was denied. See ST Pgs. 4-5. Petitioner, Pro Se, himself made a motion to set aside the verdict. See ST Pgs. 30-41. The motion to set aside the verdict. See ST Pgs. 50-51.

Petitioner then submitted a written motion accompanied with exhibits followed by an oral argument to the Court. See ST Pgs. 42-47. The Court denied Petitioner's Post-Conviction - State Collateral Attack pursuant to Va. Code Ann. § 8.01-428(d) Fraud Upon The Court. See ST Pgs. 50-51.

The Sentencing Order was entered on 9/22/2022 and Nolle Prosequi of Va. Code Ann. § 18.2-308.2 Possession Of A Firearm By A Non-Violent Felon within 10 years. Prior to that on 9/11/2022, Burrell filed a Pro Se notice of appeal. Charles E. Haden was appointed as stand-by counsel for appellant on appeal. On 9/26/2022 Charles E. Hader filed an amended notice of appeal to the Court of Appeals of Virginia.

On 4/30/2024 the Court of Appeals of Virginia ORDER denying Petitioner's Writ of Certiorari pursuant to Va. Code Ann. § 8.01-675.4. to be awarded, to be directed to the Honorable Linda Batchelor Smith, Clerk of the Circuit Court of the City of Hampton, requiring her to transmit to this Court, certain unsealed documents, including any arrest warrants and criminal complaints, and a USB thumb drive consisting of phone data.

On 5/28/2024 the Court of Appeals of Virginia ORDER sealing the denial of Petitioner's Writ of Certiorari pursuant to Va. Code Ann. § 8.01-675.4 Reconsideration.

On 6/28/2024 the Court of Appeals of Virginia ORDER denying Petitioner's Writ of Certiorari pursuant to Va. Code Ann. § 8.01-675.4 requiring Honorable Linda Batchelor Smith, Clerk of the Circuit Court of the City of Hampton, requiring her to transmit to this Court arrest warrants, criminal complaints, an affidavit for a search warrant for Verizon Wireless subpoena compliance, a post-conviction motion to vacate, and a USB thumb drive consisting of phone data from Verizon. This ORDER conflicts with 4/30/2024 ORDER by stating these documents and the USB thumb drive have already been sent to this Court as part of the paper record. However, these documents and the USB do not appear in the Joint-Appendix for this case.

On or about August 2024 Petitioner received case file in piece meal from Stand-By Counsel: Charles E. Haden that revealed the trier of fact convicted Petitioner due to fabricated GPS data. This was discovered via Presentence Investigation Report. Also Petitioner discovered T-Mobile Phone records for (757) 998-9223 have been altered by Hampton Police Division and the same for Exhibit 8.

Petitioner also discovered Primary Detective Sr. Cpl. Randy Mayer lied about the last known alive date of victim per neighbors. Within Summary of Circumstances pursuant to Exhibit II. And Petitioner discovered that the Hampton Police Division - Incident Report contained interview with neighbors that had seen the victim alive after the Commonwealth's theory of homicide and that original records for Exhibit 8 were never disclosed.

Petitioner renewed his Motion To Vacate For Fraud Upon The Court pursuant to Va Code Ann. § 8.01-428 (D), based upon that newly discovered evidence. Hampton Circuit Court denied the motion on 9/19/2024 and Charles E. Haden was appointed as Appellate Counsel on 10/15/2024.

Petitioner Direct-Appeal was denied in CAV on 11/12/2024. Appealed to the Supreme Court of Virginia and denied on 9/4/2025. A Petition For Rehearing was filed but denied on 1/9/2026.

ASSIGNED ERRORS

1. Guilt Beyond A Reasonable Doubt Standard Isnt Satisfied pursuant to Jackson v. Virginia, 443 U.S. 307 (1979)?

Definition: Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial. See Holbrook v. Flynn, 475 U.S. 560 (1986).

Elements: In determining whether a defendant has been deprived of a fair trial, a court considers three factors: (1) the cumulative effect of the misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative action taken by the district court. United States v. Beal, 430 F.3d 950 (8th Cir. 2005).

Burden of Proof: Due process requires that every element of a crime be proven beyond a reasonable doubt in accordance with the accused's constitutional rights to a fair trial. United States v. Matthews, 246 F. Supp. 2d 137 (2d Cir. 2002).

Standards of Review: The U.S. Court of Appeals for the Fourth Circuit reviews a trial court's determination of whether a defendant's constitutional right to a fair trial has been violated de novo. United States v. Howard, 309 Fed. Appx. 760

Supreme Court of Virginia was silent on the record for their denial of the Direct Appeal from CAV where the last reasoned opinion on the claim of merits is applicable to the conclusion of Direct Appeal. See Kernan v. Hingosa, 578 U.S. 412 (2016); See also Vlsv v. Nunnenmaker, 501 U.S. 797 (1991).

Importantly, the Commonwealth "is not required to disprove every remote possibility of innocence, but is, instead, required only to establish guilt of the accused to the exclusion of a reasonable doubt." See Cantrell v. Commonwealth, 7 Va. App. 269, 289, 373 S.E.2d S.E.2d 328 (1988).

The correct analysis is whether a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." See Jackson v. Virginia, 443 U.S. 307 (1979).

Due to the evidence in the record is completely circumstantial all the chain of circumstances must form an unbroken link, excluding the hypothesis of innocence identifying the perpetrator as Petitioner. See Bishop v. Commonwealth, 313 S.E.2d 390, 227 Va. 164 (1984).

The Commonwealth's theory of the homicide is that it occurred between 10/6/2016 @ 9:20 PM - 2:40 AM on 10/7/2016 at 1920 Somerville Drive Hampton, VA 23669, and allegedly Petitioner's phone records are placing Petitioner at the crime scene. Here's proof that the essential elements of circumstances in a homicide case hasn't been proven such as:

Time and Place:

Exhibit 6: Verizon Wireless Records for Exhibit 13 doesn't have any phone data seized during the Commonwealth's theory of the homicide of 10/6/2016 @ 9:20 PM - 2:40 AM on 10/7/2016. See Exhibit 6, See TT 3 Pg. 138 12/15/2021, TT 4 Pg. 47 (12/16/2021). Therefore, since Exhibit 11: Autopsy Report lists this homicide date/time of injuries unknown and unwitnessed coupled with the absence of phone data during that period renders these circumstances unproven.

In fact, the Commonwealth was relying on CSLI data to prove Petitioner whereabouts at the time of the homicide. This is flawed because Exhibit 6 is devoid of GPS data and CSLI data during their theory of homicide. See TT 4 pg. 82 (12/16/2021), TT 3 Pg. 124 (12/15/2021), TT 3 Pg. 136 (12/15/2021).

For Petitioner to be convicted of this offense Petitioner would have to be at the crime scene during the date/time of homicide. See Betancourt v. Commonwealth, 26 Va. App. 363, 494 S.E.2d 873 (1998); See also Garner v. Commonwealth, 186 Va. 600, 43 S.E.2d 911 (1947); Holland v.

Commonwealth, 190 Va. 32, 55, S.E. 2d 437 (1949); and Stoots v. Commonwealth, 665 S.E. 2d 866, 192 Va. 857 (1957).

Furthermore, the Commonwealth argued that this crime had to be inside the house. Nevertheless, the Commonwealth's Geo-location analysis expert testified "I cannot say that that phone was at that location." See TT3 Pg. 202 (12/15/2021). Nor would he testify Exhibit 6: Verizon Wireless Records placed Exhibit 13 inside a house. See TT3 Pg. 205 (12/15/2021). Additionally, Verizon Wireless Custodian: Andrew Matthan and Senior Court Analyst confirmed that there isn't GPS data of the device but only the cell tower information. See TT2 Pgs. 239-240 (12/13/2021); TT2 Pgs. 239-243 (12/13/2021); TT2 Pgs. 252-253 (12/13/2021). See In re Watford, 809 S.E. 2d 657 (2018) (Requiring reversal of homicide conviction when evidence in the record didn't place Petitioner at the crime scene on day of murder).

The Commonwealth and Primary Detective: Sr. Cpl. Randy Mayer kept misinterpreting the phone data seized as GPS data. See PT Pgs. 73, 78-81, 94, 108-109, 112-13, and 114-115; See TT2 Pg. 191 (12/13/2021); See TT3 Pg. 146 (12/15/2021); See TT3 Pg. 160 (12/15/2021); See TT3 Pgs. 197-198 (12/15/2021). The Commonwealth falsified that Exhibit 6: Verizon Wireless records existed during Exhibit 8: Protection One APT Security System door alarm pings "after 1:49 AM" on [10/7/2016]. See TT2 Pg. 191 (12/13/2021). Therefore, the record consists of evidence lacking proof Petitioner was at the crime scene during the Commonwealth's theory of homicide:

Opportunity: From 7:32 AM (10/6/2016) - 2:40 AM (10/7/2016) a Geo-location analysis couldn't be performed on Exhibit 6 to determine a location. See TT3 Pg. 198 (12/15/2021). See also Sutphin v. Commonwealth, 337 S.E. 2d 897, 1 Va. App. 241 (Va. App. 1985) ("[without] proof of his whereabouts at the time of [offense] ... did not prove opportunity")

The CSLI data prior to 10/6/2016 at 7:32 PM and after 10/7/2016 at 2:40 AM didn't establish Exhibit 13 was in the area of the crime scene during the commission of murder. See Varker v. Commonwealth, 14 Va. App. 446 (1992 Va. App. LEXIS 132) (Defendant's burglary conviction was reversed because his latent handprint near the scene of the crime did not establish his presence when the crime was committed); See also Stoots v. Commonwealth, 665 S.E. 2d 866, 192 Va. 857 (1957).

Furthermore, I'm requesting this Court to make an analysis pursuant

to Hyde v. Commonwealth, 234 S.E. 2d 74 (1977) ("An opportunity [that I] commit the crimes... does not prove that he exercised that opportunity."). Exhibit 6: Verizon Wireless records are inconsistent with Exhibit 8: Protection One ADT Security System records which Back Door (Sensor 2) Opened/Closed on 10/6/2016 at 8:39 AM and there's no opening/closings until Back Door (Sensor 2) Opened/Closed 10/6/2016 at 15:44 verifying appellant didn't arrive at 1920 Somerville Drive, nor entered 1920 Somerville Drive. So, Petitioner couldn't have exercised Opportunity to commit the murder.

The Trial Court erred in applying Edwards v. Commonwealth, 68 Va. App. 284, 299 (2017) in denying Petitioner's motion to strike the evidence because the facts in the case-at-bar differs from Edwards significantly. Buchanan didn't receive call detail records for the victim's phones to perform a geo-location analysis. See TT3 Pgs. 198 (12/15/2021). And Exhibit 6 lacked phone data between 10/6/2016 at 7:32 PM - 2:42 AM 10/7/2016. See TT3 Pgs. 138 (12/15/2021). Additionally, I've definitely proven by facts that the lack of phone data from defense and victim's phones during the Commonwealth's date/time theory of homicide 10/6/2016 at 9:20 PM - 2:40 AM 10/7/2016 eliminates the element of Opportunity. For example, CSLI data isn't a depiction of where Exhibit 13 would have to be located, which Long Green Lane is within that boundary. See TT3 Pgs. 197-198 (12/15/2021). See LaPrade v. Commonwealth, 191 Va. 410, 418, 61 S.E. 2d 313, 316 (1950) ("Nor are we allowed to speculate upon where... [a person] may have been, what may have done.")

Finally, Darley v. Commonwealth, 2018 Va. App. LEXIS 249 supports my position where "Defendant's petit larceny conviction was reversed where, inter alia, the fingerprint evidence only demonstrated that defendant had the opportunity to take the missing items from the household when he installed an air conditioning compressor and was not coupled with other evidence that the print was impressed at a time other than that of the crime."

Means: The Commonwealth concedes that their evidence failed to prove Petitioner had Actual or Constructive Possession of A Firearm pursuant to 1 Virginia Model Jury Instructions - Criminal Instruction No. 18.810. by stating: "Unfortunately, I can't put a gun in Joel Burrell's hand..." See TT 2 Pgs. 199 (12/13/2021).

No ballistics, DNA, fingerprints, nor GSR linked Petitioner to the non-recovered firearms used in this homicide. See TT5 Pg. 156 (12/14/2021), TT5 Pg. 159 (12/14/2021), TT5 Pg. 169 (12/14/2021), TT5 Pg. 183 (12/14/2021).

By this Criminal Instruction — "To knowingly and intentionally possess a firearm means that a person is aware of the presence and character of the firearm and has actual physical possession or constructive possession of it. Constructive possession means that the person has dominion and control over the firearm. Mere proximity is not enough."

The Commonwealth elects to choose the proposition that mere proximity of Exhibit 13 to the crime scene which isn't during the commission of the homicide establishes Actual Possession isn't supported by facts nor law.

"Possession may be proved by acts, declarations or conduct of the defendant from which it may be fairly inferred that he was aware of the presence and character of the firearm at the place found."

Petitioner didn't make a declaration of Possession of A Firearm. See Byers v. Commonwealth, 23, 208 Va. App. 146, 150, 474 S.E. 2d 852 (1996)

Neither did anyone see Petitioner possess nor use a firearm. See Exhibit 11, Betancourt v. Commonwealth, 26 Va. App. 363, 494 S.E. 2d 873 (1998), Bishop v. Commonwealth, 313 S.E. 2d 390, 227 Va. 164 (1984).

There's no self-incrimination statements that Petitioner possessed a firearm. See Powell v. Commonwealth, 268 Va. 233, 662 S.E. 2d 119 (2004), Varborough v. Commonwealth, 247 Va. 2, 5, 441 S.E. 2d 342 (1994)

Logically, Petitioner must actually possess a firearm to commit a murder in the case-at-bar.

Motive: The trial court concedes: "Motive is not so much before the trier of fact in this case so there is distinction there." See TT Pgs. 47-48 (12/16/2021).

Death: Exhibit 11: Autopsy Report determines the Date/Time of victim's injuries and death are unknown. This is Prima Facie evidence of Death pursuant to Va. Code Ann. § 64.2-2204(2);(3). However, Exhibit 11 pronounces the victim's death to be at 12:38 PM on 10/9/2016. Therefore, the Commonwealth's theory that victim was killed between 10/6/2016

at 9:20 PM - 2:40 AM on 10/7/2016 is flawed, pursuant to Va. Code Ann. § 64.2-2204 (4) ("In the absence of prima facie evidence of death under subdivision 2 or 3, the facts of death may be established by clear and convincing evidence, including circumstantial evidence").

Amy Crouch (MFS) corroborated the death of victim couldn't be narrowed down to a time and date. See TT5 Pgs. 191-192 (12/14/2021). Neighbor Holly Saunders testified she had witnessed the victim alive on 10/7/2016 between 3:30 PM - 4:30 AM. See TT3 Pg. 214, 220 (12/15/2021). The Commonwealth's Closing Argument concedes this "I don't think Ms. Saunders is lying about the last known alive date/time of victim."

See JA 3077. Neighbor Gregory Covington also witnessed the victim alive on 10/7/2016 between 4 PM - 5 PM. See TT4 Pg. 15 (12/16/2021).

Finally, Aaron Brown (Paramedic) testimony that victim was dead "at least a few hours" prior to being found motionless by victim at 12:32 AM on 10/9/2016. So the Commonwealth failed to establish the homicide occurred between 10/6/2016 at 9:20 PM - 2:40 AM 10/7/2016 actually or legally. See Thomas v. Commonwealth, 187 Va. 265, 46 S.E. 2d 388 (1948) (Reversal of conviction when the victim was seen alive by reliable witness after the Commonwealth's theory of date/time of homicide).

Identity of the Perpetrator: Buchanan's testimony is that he "cannot say that that phone was at that location," (See TT3 Pg. 202 (12/15/2021)); there's no evidence that CSLI nor GPS data rendered Exhibit 13 inside a house. See TT3 Pg. 205 (12/15/2021). CSLI data isn't a depiction of where Exhibit 13 would have to be located, which Long Green Lane is within that boundary. See TT3 Pgs. 197-198 (12/15/2021).

The Commonwealth agrees "1920 Somerville phone records... Kind of looked the ones for 1915 Long Green Lane... maybe the defendant was actually staying at 1915 Long Green Lane and that's why it looks like he was in the area." See TT Pg. 87 (12/16/2021).

Vernon Charles Anderson (Taxi Driver) was dispatched "to pick someone up at 1915 Long Green Lane... in Hampton." See TT3 Pg. 100 (12/15/2021). Mr. Anderson didn't remember Petitioner as the passenger picked up from 1915 Long Green Lane. See TT3 Pgs. 105-106 (12/15/2021).

* The only evidence in the record is that Exhibit 13 was located at 1915 Long Green Lane not the crime scene which Exhibit 6 didn't belong to Petitioner. Exhibit 6 records failed to provide the subscriber name and address of Verizon Wireless Mobile Phone (410) 200-7977. See Wright v. Commonwealth, 789 S.E. 2d 601 (2016) (When a fact is equally susceptible to guilt or innocence the court cannot adopt the interpretation to be guilt).

So the identity of the perpetrator hasn't been established that's clarified in Exhibit 11. The evidence fails to place Petitioner at 1920 Somerville Drive on 10/6/2016 or 10/7/2016; yet alone between the times of 9:30 PM 10/6/2016 - 2:40 AM (10/7/2016). Exhibit 6, 12, 13, and 14 have no existing phone data for the time period between the Commonwealth's theory of the homicide to even verify if Petitioner and Victim occupied the crime scene during that time frame. See Evans-Smith v. Taylor, 19 F.3d 899; 1994 U.S. App. LEXIS 5155; Taylor v. Evans-Smith, 513 U.S. 919 (1994) (which Petitioner murder conviction was vacated based upon insufficiency of evidence, due to the lack of evidence placing Petitioner at the crime scene during the murder). Petitioner didn't have the means to commit the homicide which is the only feasible way this murder could happen. There's no motive established by the Commonwealth. Unfortunately, the circumstances of time, place, opportunity, means, nor motive have been proven by the evidence in the record forming an unbroken link identifying Petitioner as the perpetrator. See Stover v. Commonwealth, 222 Va. 618 (1981) (The Defendant's murder conviction was reversed because of one broken link, which all of the prosecution's circumstantial evidence was not consistent with guilt). Additionally, the evidence in the record has failed to prove Petitioner's guilt beyond a reasonable doubt standard. See In re Winship, 397 U.S. 358 (1970); See also Jackson v. Virginia, 443 U.S. 307 (1979) (The essential elements of a crime must be proven beyond a reasonable doubt standard).

2. Burrell v. Commonwealth, 2024 Va. App. LEXIS is inconsistent with clearly established Federal law defining fabricated evidence and fraud upon the court pursuant to Frank's v. Delaware, 438 U.S. 154 (1978)?

- i) Hampton Police Division former primary detective Sr. Cpl. Randy Mayer (Complainant) filed a criminal complaint dated: 10/28/2016 at 3:08 PM and sworn under oath, stated: Verizon Wireless emailed the call logs and GPS coordinates of Joel Burrell's cellular phone...
- ii) Affiant Michael Beres search warrant to Verizon Wireless on 10/11/2016 at 5:37 PM didn't request for nor seize GPS data.
- iii) Mayer continued to mischaracterize the phone data seized as GPS data throughout criminal proceedings without authentication.
- iv) The Commonwealth relied upon this fabrication of evidence.

- v) Mayer created fabricated evidence of GPS coordinates in charts that were allegedly seized from Verizon Wireless.
- vi) Verizon Wireless custodians testified that the phone data seized wasn't GPS coordinates but CSLI data.
- vii) The Commonwealth's Geo-location expert witness testified that the Verizon Wireless phone data seized wasn't GPS data, nor was there any existing phone data during the Commonwealth's theory of date / time of homicide.
- viii) Mayer omitted from the criminal complaint the phone data seized were CSLI data, not GPS data.
- ix) Mayer omitted from criminal complaint that Verizon Wireless Mobile Phone (410) 200-7977 lacked phone data from 10/6/2016 @ 7:32 PM - 2:42 AM 10/7/2016.
- x) Petitioner obtained his Presentence Investigation Report after his Sentencing on 9/22/2022 learning that the trier of fact and presiding judge misinterpretation of the phone data seized led to Petitioner's finding of guilt.
- xi) Petitioner filed a Writ of Certiorari to CAV denied on 4/30/2024, 5/28/2024, and 6/28/2024 to include criminal complaint, search warrants, Presentence Investigation Report, and arrest warrants.

1. Due Process . . . is not a technical conception with a fixed content unrelated to time, place and circumstances. [D]ue process is flexible and calls for such procedural protections as the particular situation demands. Matthews v. Eldridge, 424 U.S. 319 (1976)

Elements: A successful procedural due process claim requires a plaintiff to show (1) the deprivation of a liberty or property interest and (2) the absence of due process. Meccer v. United States, 389 Fed. Appx. 775 (10th Cir. 2010)

Burden of Proof: The Due Process Clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with

which he is charged. United States v. Brubst, 558 F.3d 982 (4th Cir. 2018)

Standards of Review: An appellate court reviews claims of due process violations de novo. Estephan Gibran Sarkis v. Holder, 403 Fed. Appx. 184 (4th Cir. 2010)

When reviewing the circuit court's denial of Fraud Upon The Court pursuant to Va. Code Ann. § 8.01-428 (D) CAV "must affirm the trial court's judgment unless it is plainly wrong or without evidence to support it." See Jennings v. Jennings, 26 Va. App. 530, 534 (1998).

"A party alleging fraud must prove by clear and convincing evidence (1) a false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to him." See Thompson v. Bacon, 245 Va. 107, 111 (1993). However, Franks v. Delaware, 438 U.S. 154 (1978) states:

"Where a defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by an affiant in a search warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, U.S. Const. amend. IV requires that a hearing be held at the defendant's request. In the event that at the hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause were lacking on the face of the affidavit."

On 9/22/2022 Petitioner filed a written motion to vacate for fraud upon the court pursuant to Va. Code Ann. § 8.01-428 (D) and orally argued the Post-Conviction Motion, which the trial court denied based upon GPS data not being the basis for the initiation of the criminal proceeding nor conviction.

However, this is untrue because the criminal complaint stated that complainant procured GPS data pursuant to a search warrant from Verizon Wireless Mobile (Phone: (410) 200-7977) that omitted that the true nature of data was CSLI. The complainant also omitted that there's no phone data for the time period of 10/6/2016 at 7:32 PM - 2:42 AM on 10/7/2016, which negate the elements of time, place, and opportunity evidence in a

Circumstantial case inapposite to the Commonwealth's theory that Exhibit 6 records of Exhibit 13 consisted of GPS data placing Petitioner at the crime scene between 10/6/2016 at 9:20 PM - 2:40 AM 10/7/2016.

This is the only evidence used for issuance of arrest warrants and conviction. "I have no video of [appellant] at ... [victim's] house. I have no pictures of appellant's dad house on the 6th. I don't have a witness that says he was at his dad's house on the evening of the 6th. I just have his phone in that area." See TT4 Pg. 82 (12/16/2021) Exhibit 11: Autopsy Report determined date/time of injuries unknown. Additionally, The Commonwealth confirmed "Unfortunately, I can't put a gun in Joel Burrell's hand." See TT2 Pg. 199 (12/13/2021). So this only leaves the fabricated GPS data establishing probable cause to prove elements of time, place, and opportunity.

Furthermore, Complainant omitted that Buchanan didn't receive call detail records for the victim's phones to perform a geo-location analysis. See TT3 Pg. 198 (12/15/2021). Therefore, it wouldn't be futile to deny granting issuance of arrest warrants pursuant to Edwards v. Commonwealth, 68 Va. App. 284, 299 (2017) because the lack of phone data for both the Petitioner's and Victim's phones during the alleged date/time of homicide.

And complainant fabricated evidence of GPS charts he created and presented to JDR court that's not authenticated pursuant to Va. Rules of Evidence: 2:803(6), lacking personal knowledge of pursuant to Va. Rules of Evidence: 2:602, not self-authenticating pursuant to Va. Rules of Evidence: 2:902, nor authenticated pursuant to Va. Rules of Evidence: 2:901. Therefore, this was erroneous pursuant to Va. Code Ann. § 19.2-324.1. See Gulfstream Bldg. Associates Inc. v. Britt, 239 Va. 178, 180-81, 184 (1990).

Afterwards, the trial court erred in Burrell v. Commonwealth, 2024 Va. App. LEXIS 651 by ruling that GPS evidence didn't initiate the issuance of the arrest warrant, nor was it the key evidence in leading in my conviction. Petitioner asserts that this is false because late disclosure of the Presentence Investigation Report revealed that's the key evidence leading to conviction by jury misinterpretation of the evidence.

Nevertheless, the late disclosure prejudice Petitioner at the Criminal Complaint stage. Because the omissions of the true nature of phone data seized, the absence of phone data for both Petitioner's phones and victim's phones, and fabrication of GPS data would

of negated probable cause. Therefore, Virginia's reliance on Church v. Commonwealth, 71 Va. App. 269, 373 S.E.2d 477 (2019) is misplaced. Petitioner asserts excising complainant's fabrication of GPS data and inserting the omitted material facts would of prevented issuance of arrest warrants for lack of probable cause. Why wouldn't a lie constitute fraud?

This case-at-bar is synonymous with Wilson v. Commonwealth, 108 Va. Cir. 97 (2021) (A criminal conviction was reversed where an officer lied in his criminal complaint that were the basis for issuance of arrest warrant and conviction). This is fraud upon the court because it tainted Petitioner's right to a fair trial. See Khanne v. Khanne, 18 Va. App. 356, 359 (1994); See also Bartrany v. Bartrany, 13 Va. App. 441, 412 S.E.2d 721 (1991).

3. Burrell v Commonwealth, 2024 Va. App. LEXIS erred in establishing manifest necessity for a declare of mistrial, adversely from the holding in Washington v. Jarvis, 137 Fed. Appx. 543*; 2005 U.S. App. LEXIS 10016?

The double jeopardy clause of the Fifth Amendment protects a criminal defendant from repeated prosecutions for the same offense. As a part of this protection against multiple prosecutions, the Double Jeopardy Clause affords a criminal defendant a valued right to have his trial completed by a particular tribunal. Oregon v. Kennedy, 456 U.S. 667

Elements: Double Jeopardy Clause bars any subsequent prosecution in which the government, to establish [1] an essential element of an offense charged in that prosecution, will prove [2] conduct that constitutes [3] an offense for which the defendant has already been [4] prosecuted. Ladner v. Smith, 941 F.2d 356

Burden of Proof: 1. [W]hile the defendant has the burden of going forward by putting his double jeopardy claim in issue, once he has made a non-frivolous showing, the burden of persuasion shifts to the government. United States v. Inmon, 568 F.2d 326

2. For a double jeopardy claim, the burden of persuasion shifts to the government to demonstrate by a preponderance of the

evidence that the indictments actually charge separate offenses.

Once the defendant has established a nonfrivolous double jeopardy claim, the burden of persuasion shifts to the government to demonstrate by a preponderance of the evidence that the indictments actually charge separate offenses. United States v. Garcia-Rosa, 876 F.2d 209 (1st Cir. 1989).

Standards of Review: An appellate court reviews *de novo* a district court's ruling on double jeopardy. See United States v. Woods, 216 Fed. Appx. 931 (11th Cir. 2007).

Butrell v. Commonwealth, 2024 Va. App. LEXIS trial court erred in declaring a mistrial pursuant to Va. Code Ann. § 8.01-361 manifest necessity standard. The Defense objected to the mistrial by stating an objection on the record because the court remained open during the next day. See TT 7 Pgs. 8-10 (9/11/2018); See also TT 7 Pg. 116 (9/11/2018); I.E. TT 7 Pgs. 175-176 (9/11/2018).

The Court's reasoning for declaring a mistrial prior to declaring a mistrial is if there's flooded streets and the Court's being closed on 9/12/2018. See TT 7 Pg. 20 (9/11/2018) ("Flooded streets or something like that could have an affect on the rest of you being discharged"); See also TT 7 Pgs. 25-26 (9/11/2018) ("That obviously could affect the Court's previous ruling and especially if we're somehow closed tomorrow.") Quoting TT 7 Pg. 115 (9/11/2018). However, the Hurricane never "hit as expected," quoting DJ Pg. 25 (2/28/2020), nor was the Court's ~~close~~ the next day. Therefore, it's nothing in the record that affected the Court's decision to grant the Commonwealth's mistrial. Defense proffered alternatives such as a continuance until the following Monday if the Court's were closed on Thursday and Friday. See Va. Code Ann. § 8.01-384. In fact, the trial Court cites Commonwealth v. Washington, 263 Va. 298, 559 S.E.2d (2002) as guidance which is inapplicable to the circumstances and facts in this mistrial.

Petitioner raised a specific objection by stating the word I "object" because "the Court's are still open." See TT 7 Pgs. 8-10 (9/11/2018); "Um, here's -- here's where I would be at. Obviously, Judge, you know, we would prefer to just run through as much as we could, and then, you know, um, if the Court gets closed

tomorrow then so be it and then come back and resume when we can." See TT7 Pgs. 175-176 (9/11/2018). Therefore, Petitioner made a contemporaneous objection which only needed to be placed on record once to preserve appellate review. See Va. Code Ann. § 8.01-384, Washington v. Jarvis, 367 F.Supp. 2d 794 (E.D. Va. 2004); and Washington v. Jarvis, 137 Fed. Appx. 543*; 2005 U.S. App. LEXIS 10016.

Furthermore, Commonwealth v. Washington, 263 Va. 298, 559 S.E. 2d (2002) is no longer good law pursuant to Washington v. Jarvis, 367 F. Supp. 2d 794 (E.D. Va. 2004); and Washington v. Jarvis, 137 Fed. Appx. 543*; 2005 U.S. App. LEXIS 10016 that holds Defense only have to put on the record a proffer against a mistrial not specifically in the words "object," but Defense specifically "objecte", satisfied this prong. Also in Washington v. Jarvis, 367 F. Supp. 2d 794 (E.D. Va. 2004) held that a failure to consider a mid-trial continuance instead of expediting a trial isn't manifest necessity. See TT7 Pgs. 16-20 (9/11/2018) ("If the Court is closed on Thursday and Friday, um I really got two options, that you would report back here on Monday, and we would pick up the case, and during that time period you are not to discuss the case") Furthermore, the Court stated: "As long as that was upheld, we would resume on Monday." There's nothing in the record of juror misconduct to not grant a continuance.

The Commonwealth had ulterior motives for requesting a mistrial. See TT7 Pg. 174 (9/11/2018) ("I just found my Enterprise person who was working in that store that day." The trial court abused its discretion by stating: "I'm not the judge that's -- I'm -- I'm the jury." See TT7 Pgs. 125 (9/11/2018).

This is supported by the Judge's own words: "But it's silly at this point in time when someone could literally go a block and be available for court for me to grant a mistrial." See TT7 Pgs. 25-26 (9/11/2018).

Therefore, this doesn't meet the manifest necessity standard. See seminal cases Harris v. Young, 607 F.2d 1081, 1085 (4th Cir. 1979); U.S. v. Shafer, 987 F.2d 1054 (1993).

REASONS FOR GRANTING THE PETITION

1. Is that the essential elements of a 2nd Degree homicide premised on circumstantial evidence haven't been met pursuant to Jackson v. Virginia, 443 U.S. 307 (1979)?
2. The Supreme Court of Virginia erred in not applying Franks v. Delaware, 438 U.S. 154 (1978) when an affiant or complainant falsify material facts or omit material facts from a criminal complaint, that's the basis for issuance of arrest warrants?
3. The trial Court erred in considering Commonwealth v. Washington, 263 Va. 298, 559 S.E.2d (2002) is no longer good law, inapplicable to the facts determined in Burrell v. Commonwealth, 2024 Va. App. LEXIS which no manifest necessity existed to declare a mistrial pursuant to Washington v. Jarvis, 137 Fed. Appx. 543; 2005 U.S. App. LEXIS 10016?

PLEASE REVIEW THE ASSIGNMENT OF ERRORS BEGINNING ON PAGE 13 UNDER STATEMENT OF THE CASE SECTION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joel Aaron Burrell

Date: July 6, 2026