

Dec 17  
Motions For New Trial

0

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH  
COMMONWEALTH OF VIRGINIA,**

v.

**Case No: CR09000999-01**

**CAMERON PAUL CROCKETT**

**NOTICE AND MOTION FOR A NEW TRIAL**

TAKE NOTICE THAT December 17, 2012 At 9:30 a.m. or as soon thereafter as Counsel may be heard, Cameron Paul Crockett, shall move this Honorable Court to granted a new trial and shows that he has, since the rendition of the verdict of guilty in said case discovered material evidence, not merely cumulative or impeaching in its character, but relating to new and material facts, which will authorize and require a new trial, since it is not due to any want of diligence of the defense, the that the evidence was not acquired sooner and said evidence is so material that it would probably produce a different result.

**COMPELLING EVIDENCE THAT DRIVER'S SEATBELT WAS WORN  
BY THE DRIVER AT THE TIME OF THE COLLISION**

1. The Court granted Defendant's motion to have an expert appointed to test the seatbelt mechanism of the 1998 Honda Accord that is the subject of this matter to make a determination as to whether the driver's side seat belt was being worn by the driver at the time of the collision.
2. The Court entered an order on December 7, 2012 over the objection of the prosecution allowing the expert the necessary access to the vehicle to complete the testing.

3. On December 10, 2012, the expert appointed by the Court, David A. Pape, Ph.D. P.E. Actar #253, Virginia Engineering Number 048346, Principal Consultant for Rimkus Consulting Group, Inc., inspected the vehicle, and after fully completing his investigation reached the following conclusions:
  1. The vehicle damage was consistent with impact with a tree on the right side.
  2. The driver's seatbelt latch and retractor functioned properly at the time of our inspection.
  3. The driver's seatbelt webbing had been cut in two places during the extraction process.
  4. The one section of driver's seatbelt webbing had cupping. This cupping was consistent with loading from occupant forces during the collision and suggested that the seatbelt was being worn by the driver at the time of the collision.
4. A report prepared on December 13, 2012 by David A. Pape, Ph.D., E.D., is attached hereto as "Exhibit A".
5. The "Crash Scene Worksheet" prepared by Office Investigator Thomas M. Kellogg noted that the Defendant was the belted driver of the 1998 Honda Accord., attached hereto as Exhibit B.
5. The initial witnesses to respond to the scene was Pamela Patrick, she stated to Virginia Beach Police Officer Dean Godwin that the Defendant was "up in the back window there was no glass in the back window and his arm was on top of the car and he was not moving." The witness testified consistently with her statement to Detective Godwin and further stated under oath that the Defendant's body was "curved in the back seat with his

hands out of the window on the roof of the car” (May 24, 2011 T.T. pg. 70 lines 16 and 17) and that his legs were level with the window (May 24, 2011 T.T. pg. 71 line 2). The witnesses testimony during the February/March 2012 trial was consistent with her testimony on May 24, 2011; however, the transcripts from the 2012 trial are no available to the defendant because he is indigent and does not have the resources to pay for them.

6. James Kelly Reid was the next witness to respond to the scene of the accident. Reid was interviewed by Virginia Beach Police Officer Thomas Kellogg. Reid reported to Kellogg that he “saw a male laying across the back seat with one arm hanging out of the window”. He was not “coherent and just starting to come to” Reid described to Kellogg that there was no rear window.... If you took the seat and smashed it down completely into the backseat. And then his legs were on top of the part.” Reid further reported to Kellogg that the defendant was conscious and “defiantly” wanted to get out of the car prior to the police arriving on the scene.
7. Virginia Beach Police Officer Kellogg conclusion that the driver of the 1998 Accord at the time of the collision was is belted is consistent with the findings of the court appointed expert David A. Pape, Ph.D. P.E.
8. The manner in which both witnesses, Reid and Patrick, describe the Defendant’s body in the backseat/back window of the vehicle renders it impossible for the Defendant to have been the belted driver at the time of the collision.
9. The evidence involving the seat belt mechanism was obtained after trial. The Defendant exercised due diligence by requesting that prior counsel retain an expert witness to test the seat belt mechanism. Both prior counsel retained purported experts both of which

failed to test or evaluate the seat belt mechanism. Prior counsel's lack of diligence is not attributable to the Defendant.

**EXCULPATORY WITNESS STATEMENTS PROVIDED**  
**BY THE COMMONWEALTH POST TRIAL**

10. On December 7, 2012, the Defendant was provided three witness statements from the Commonwealth Attorney's office that are highly exculpatory in nature and further support the conclusion that Antoine Smith provided perjured testimony at trial, attached hereto as Exhibit C.
11. The Defendant's prior counsel filed a Motion for Exculpatory Evidence requesting in Paragraph 10:

The names, addresses and summary of the substance of any and all statements, whether oral, written or recorded or subsequently reduced to writing or memorialized, of any individual having any knowledge of the case to which this motion relates whose statement is or tends to be inconsistent with any portion of the prosecution's theory of the case, or the defendant's guilt or culpability, or any prosecution witness' credibility or which tends to be inconsistent with the person's own or any prior witness' subsequent statements.

12. Antoine Smith was called by the prosecution and testified under oath on May 23, 2011 and during the trial in February/March of 2012 that the 1998 Honda Accord spun before colliding with a tree. She further testified that she was able to see the stoplight at the

corner of First Colonial Road and Wolfsnare Road turn green. (May 24, 2011, Trial Transcript Page 178, Lines 5 and 6) and that the car “spun twice” . (May 24, 2011 Trial Transcript, Page 24).

13. At the February/March 2012 trial Antoine Smith stated that she did not see the stoplight on the corner of Wolfsnare Road and Great Neck Road but rather saw a reflection of it.
14. The Defendant hired an expert to evaluate and examine the mere possibility that the light could be seen from the position that Witness Smith stated she was in on Wolfsnare Road at the time of the collision. The expert concluded that Antoine Smith could not have possibly seen the light on the corner of Wolfsnare Road and Great Neck Road or its reflection.
15. The witness statement received by the Defendant from the Prosecution no December 7, 2012 provided a transcript of a recorded interview of Antoine Smith by Police Officer Dean Godwin.
16. In said recorded interview, Antoine Smith never stated that she was able to see the stoplight at Wolfsnare and Great Neck Road, either directly see it or a reflection of it.
17. In said recorded interview, Antoine Smith stated that “he slammed on his brakes...it turned sideways and slid across the street in...”
18. Antoine Smith was the prosecutions main eye witness as to how the collision occurred. She provided a statement to the Commonwealth that was contradictory to the testimony that she provided at trial in both 2011 and 2012. The 2012 transcript is unavailable to the Defendant for economic reasons.
19. On May 24, 2011 Antoine Smith was asked of Defense Counsel, “... So if someone got

out the car during those seconds, you couldn't say one way or the other because you cannot say for sure what happened when you weren't looking at the car, right?" (May 24, 2011 Trial Transcript Page 184 , Lines 12-15). Antoine Smith responded, "Yes, I could". (May 24, 2011 Trial Transcript, Page 184, Line 16).

20. On December 7, 2012 the Prosecution provided to the Defendant the transcript of the recorded statement of witness Pamela Patrick.

21. In said statement Pamela Patrick as it relates to her encounter and observation of Antoine Smith stated "No, I saw the other lady the other witness she ah when I came out she was hysterical and I didn't really know what was going on. And I said are you okay? *I said you weren't in the car were you?* And she said no she was walking down the street and heard them coming got up on the sidewalk and heard them slide. But she was really shaken up and I couldn't figure out what was going on?"

22. On December 7, 2012, the prosecution provided the transcript of the recorded witness statement of James Kelly Reid taken by Virginia Beach Police Officer Kellogg.

22. In said statement, James Kelly Reid , clearly establishes that when he first came upon the vehicle he saw "a male laying across the back seat with one arm hanging out of the top of the car just starting to come to... Yeah the whole was in the back seat, the seat, the driver's seat was completely broke down. His body was in the back seat with his left arm on top of the car which was no real[r] windshield on top of the car. And his feet were on top of the if you pulled the seat down his feet were on top of the seat. Ah basically not completely stretched out but ah close."

23. James Kelly Reid further stated to Officer Kellogg in the recorded interview that "What

my observations were when I first got there I told him keep still, don't move, don't try to get up; help is coming, hold tight. Ah kept wanting to come out by the time the police pulled up and one police officer came straight over to him and told him the exact same thing I told him do not move, helps coming don't get up, and that just was not happening. He was bound and determined to get out of the car.”

24. Police Office Ken Boucher testified during trial consistently with the testimony that he offered on May 24, 2011. The Defendant is indigent and unable to afford the transcripts from the February/March 2012 trial. The transcript of Officer Ken Boucher from the May 24, 2011 hearing date, pages 4-38 is attached hereto as Exhibit ②.
25. In contradiction to the recorded statement made by James Kelly Reid, Office Boucher testified the Defendant “He—he appeared unconscious” (May 24, 2011 Trial Transcript, Page 9, line 25).
26. Office Boucher, in contradiction to the statements of James Kelly Reid and Pamela Patrick, testified under oath and gave the same testimony during the February/March trial “that the person on the left side of the car, his feet were in the driver’s compartment near underneath the steering wheel...[h]is waist was on the center console, which was also where the passenger’s head was. (May 24, 2011 Trial Transcript, Page 11 Lines 6-14).
27. James Kelly Reid, in his recorded interview stated that “ ... before the police got there as 4, 4 or 5, 5 tops 4 or 5, minutes I believe somewhere roughly in there not really sure.”
28. The original witness statements made by James Kelly Reid, Antoine Smith and Pamela Patrick are exculpatory in nature and should have been provided to the Defense by the Commonwealth prior to the February/March 2012 trial and they material, not merely

cumulative or impeaching in its character, but relating to new and material facts that were known to the defendant despite his due diligence in obtaining them, which will authorize and require a new trial, since it is not due to any want of diligence of the defense, the that the evidence was not acquired sooner and said evidence is so material that it would probably produce a different result. *shop*

**THIRD PARTY CONFESSIONS** / *allowed to testify*

29. That during the end of the 2010-2011 school year, Elizabeth Whales attended Cox High School with Jacob Palmer. Elizabeth Whales is expected to testify that she was in photography class with Jacob Palmer. That sometime towards the end of the school year in the later part of May or sometime in June 2011, while in photography class she overheard a conversation in the hallway between Jacob Palmer and girl by the last name of "Vaughn". She is expected to testify that she specifically heard Jacob Palmer discuss that someone else had been convicted of his crime and that he no longer had anything to worry about. In the course of the conversation he further spoke of "Jack" having died.
30. The identity of Elizabeth Whales was unknown to the Defendant prior to trial. The evidence was obtained after trial; it could not have been obtained before trial through reasonable diligence; (iii) it was not merely cumulative, corroborative, or collateral and is (iv) and is material and should produce and opposite result at a later trial.
3. On April 23, 2012 at 7:05 p.m., Shawn Hoover of 913 Earl of Essex Court provided a written statement that was witnessed by Alan Donker, Private Investigator for the Defendant, which is attached hereto as Exhibit D. Shawn Hoover wrote:



To Whom it concern:

Jacob Palmer told me (Shawn Hoover) that he was in the car the night to the accident. Accident on Wolfsnare Road. He told me a few days later (after the accident) too place at house at night.

*see Exhibit*

32. The identity of Shawn Hoover was unknown to the Defendant prior to trial. The evidence was obtained after trial; it could not have been obtained before trial through reasonable diligence; (iii) it was not merely cumulative, corroborative, or collateral and is (iv) and is material and should produce and opposite result at a later trial.

*perjured himself  
and stand*

WHEREFORE your Defendant prays that he be granted a new trial as it serves the interest of justice.

CAMERON PAUL CROCKETT

By: *Adrianne L. Bennett*  
Of Counsel

Adrianne L. Bennett, Attorney  
VSB#42595  
Counsel for the Defendant  
999 Waterside Drive, Suite 435  
Norfolk, Virginia 23510  
Tele: 757-425-2300  
Fax: 757-961-1530