

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

Cameron Paul Crockett, #1464770

*MOVANT*

**VS.**

Circuit Court Case No.: CR09000999-01

Commonwealth of Virginia

*RESPONDENT*

**MOTION FOR PRESERVATION OF BIOLOGICAL EVIDENCE**  
**PURSUANT TO VIRGINIA CODE § 19.2-270.4:1**

COMES NOW Cameron Paul Crockett, *pro se* for the purposes of this motion, and hereby respectfully moves this Court to enter an order providing for the long-term preservation of certain biological evidence arising from the above-cited prosecution.

**PROCEDURAL BACKGROUND**

On December 28<sup>th</sup>, 2008, John “Jack” Korte died in a tragic single-vehicle accident on Wolfsnare Road in Virginia Beach, Virginia. Virginia Beach Police identified Cameron Paul Crockett (“movant”) as the alleged driver of the vehicle, and he was charged with Aggravated Involuntary Manslaughter on December 29<sup>th</sup>, 2008. Mr. Crockett’s first trial in May 2011 resulted in a mistrial when the jury found him guilty of the lesser-included offense of Involuntary Manslaughter but subsequently failed to agree upon a punishment. In Mr. Crockett’s second trial<sup>1</sup>, he was found guilty of Involuntary Manslaughter on March 1<sup>st</sup>, 2012. After the conclusion of the guilt phase, Mr. Crockett fled to Guatemala and failed to appear for sentencing on March 5<sup>th</sup>, 2012. After being returned to the United States in June of 2012, Mr. Crockett obtained new counsel, Ms. Adrienne Bennett, and moved for a new trial based upon after-discovered

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<sup>1</sup> Mr. Crockett was represented at both trials by Mr. Andrew Michael Sacks.

evidence<sup>2</sup> on December 17<sup>th</sup>, 2012. This motion was denied and Mr. Crockett was sentenced to a total active term of eight (8) years in the penitentiary. Judge Frederick B. Lowe, who presided over all relevant proceedings<sup>3</sup>, entered the final order of judgment on January 2<sup>nd</sup>, 2013. Mr. Crockett appealed his conviction to the Court of Appeals of Virginia<sup>4</sup>, which awarded Mr. Crockett an appeal but ultimately affirmed his conviction on July 15<sup>th</sup>, 2014. Mr. Crockett's petition for appeal to the Supreme Court of Virginia, filed on September 11<sup>th</sup>, 2014, is still pending following oral argument on February 10<sup>th</sup>, 2015. At every stage of proceedings, Mr. Crockett's defense has been that one Jacob Anthony Palmer, son of Virginia Beach Police Department veteran Sergeant Anthony Palmer, was the true driver of his vehicle at the time of the accident. This motion comes now as an action entirely independent of the ongoing direct appeal.

#### STATUTORY AUTHORITY

Upon the motion of a convicted felon for the preservation of biological evidence under **Virginia Code Section § 19.2-270.4:1(A)**, the court "shall order the storage, preservation, and retention of [the specified evidence]... for a period of up to 15 years from the time of conviction, unless the court determines, in its discretion, that the evidence should be retained for a longer period of time". Further, "the [movant] may request a hearing for the limited purpose of identifying the human biological evidence or representative samples that are to be [preserved]". "Upon the granting of the motion, the court shall order the clerk of the circuit court to transfer all such evidence to the Department of Forensic Science; [whereupon] [t]he Department of Forensic Science shall store, preserve, and retain such evidence. If the evidence is not within the custody of the clerk at the time the order is entered, the court shall order the governmental entity having custody of the evidence to transfer such evidence to the Department of Forensic Science". Additionally, "The court, upon a finding that the physical evidence is of such a nature, size or quantity that storage, preservation or retention of all of the evidence is

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<sup>2</sup> The motion for a new trial also included as a ground for relief the prosecutorial suppression of evidence favorable to the defense.

<sup>3</sup> On October 28<sup>th</sup>, 2009, all Virginia Beach Circuit Court Judges save Judge Lowe recused from the Crockett case, citing vaguely their relationships with the victim's family.

<sup>4</sup> Mr. Afshin Farashahi was appointed by Judge Lowe to represent Mr. Crockett for the purposes of direct appeal.

impractical, may order the storage of only representative samples of the evidence. The Department of Forensic Science shall take representative samples, cuttings or swabbings and retain them".

**IDENTIFYING THE EVIDENCE TO BE PRESERVED**

In the instant case, your movant seeks to preserve, within the continued custody of the Virginia Beach Police Department, the 1998 Honda Accord (the "accident vehicle") itself as well all of the contents of the vehicle, to be maintained in the state the vehicle and all such contents may currently be found. Movant asks that the vehicle and its contents be preserved for a period no less than ~~five~~<sup>seven (7)</sup> years from the date of any preservation order entered in this matter.

Your movant also seeks to preserve, by means of transfer to the Virginia Department of Forensic Science, the following evidence: (1) the entire driver's side airbag from the accident vehicle; and (2) all components of the driver's side seatbelt assembly from the accident vehicle, which will include but may not be limited to, all sections of webbing, the buckle and latching mechanism, the seatbelt housing, and the retractor mechanism. Movant asks that all of the above-referenced evidence be preserved for a period no less than ten (10) years from the date of any preservation order entered in this matter.

**RELEVANT HISTORY OF THE EVIDENCE TO BE PRESERVED**

The Accident Vehicle: Several hours after the accident, the vehicle was towed away from the accident site on Wolfsnare Road to the fire station on Bayne Drive in Virginia Beach. The victim's body was extricated from the vehicle at that location. Subsequently, the vehicle was transferred to the police impound lot on Leroy Road, where your movant believes it has been held since and is still being held today.

The Driver's Side Airbag: The Virginia Beach Police Department did not pull the airbag from the accident vehicle until February 12<sup>th</sup>, 2009—some two months after

the accident (See Exhibit A, Evidence Voucher No. A120318). The airbag was pulled from the vehicle by Police Forensic Technician Kevin Joseph Kelly.

The Commonwealth's Attorney's Office did not accommodate the defense's requests to view the airbag until January 4<sup>th</sup>, 2012. (See generally, Exhibit B, Mr. Crockett's February 5<sup>th</sup>, 2012 E-Mail to Trial Counsel). The defense made multiple requests for the actual evidence voucher, and the Commonwealth made multiple promises to provide it. However, as late as January 30<sup>th</sup>, 2012, the Commonwealth represented to the defense that it did not know where the voucher was (See generally, Exhibit B, Mr. Crockett's February 5<sup>th</sup>, 2012 E-Mail to Trial Counsel). On February 8<sup>th</sup>, 2012, the defense was forced to file a "Motion to Compel Supplemental Production of Discovery and Potentially Exculpatory Evidence", requesting, *inter alia*, the actual airbag voucher (See Exhibit C, Motion to Compel). The Commonwealth did not disclose the voucher until February 22<sup>nd</sup>, 2012—only five days before the commencement of trial (See Exhibit D, Commonwealth's Responsive Airbag Pleading).

When defense counsel was finally allowed to physically inspect the airbag on January 4<sup>th</sup>, 2012, prosecutors represented to him that the airbag was "not productively testable", and hinted that this was due to the fact that police had left the vehicle (and the airbag, which was still protruding from the steering wheel at the time) exposed to the elements between December 29<sup>th</sup>, 2008 and February 12<sup>th</sup>, 2009 (See generally, Exhibit B, Mr. Crockett's February 5<sup>th</sup>, 2012 E-Mail to Trial Counsel). After consultation with defense expert Robert F. Bagnell, a retired Portsmouth Police Department crime scene investigator and former instructor at the Hampton Roads Criminal Justice Academy, the defense team determined that these explanations were unacceptably nebulous.

Consequently, in the above-referenced motion to compel, the defense specifically asked the Commonwealth to identify *who* determined the airbag was not productively testable and *upon what scientific grounds* the individual made such determination. The Commonwealth never answered these critical inquiries. As a result, to this day, we do not have any reliable concept of what manner of trace DNA samples might still exist on the airbag—an open question made all the more significant in the context of constantly-developing DNA testing technology specializing in the examination of even the most highly degraded biological evidence samples.

As of February 25<sup>th</sup>, 2015, the Virginia Beach Police Department maintains that the airbag is still in the custody of its Property and Evidence Section (See Exhibit E, H.J. Beasley Letter).

The Driver's Side Seatbelt Assembly: Perhaps the most significant thrust of Mr. Crockett's December 17<sup>th</sup>, 2012 motion for a new trial was the after-discovered evidence involving the driver's side seatbelt. By order entered December 7<sup>th</sup>, 2012, Dr. David Anthony Pape of Rinkus Consulting Group was granted access to the accident vehicle to examine the driver's side seatbelt system for evidence that it was in use at the time of the fatal collision (See Exhibit F, Pape Order). Dr. Pape's examination was limited to inspecting the seatbelt system for signs of use and did not include, for example, any sort of presumptive testing for the presence of any prospective DNA samples on any part of the seatbelt assembly. It would be reasonable to conclude that all of the seatbelt components are still resting within the accident vehicle itself.

Movant's Previous Motion to Preserve: It should be noted that your movant has made a previous motion to preserve all of the evidence that he seeks to preserve now in this more proper motion, made this time specifically under **Virginia Code Section § 19.2-270.4:1**. While Mr. Crockett was between the representation of Ms. Adrienne L. Bennett and Mr. Afshin Farashahi, Mr. Crockett filed a handwritten, *pro se* "Notice and Motion" requesting that the accident vehicle, the driver's side airbag, and driver's side seatbelt assembly be preserved "for matters of appeal and the eventual prospect of a new trial". This motion was stamped "filed" by deputy clerk Cathy Garletts on January 15<sup>th</sup>, 2013 (See Exhibit G, Handwritten Preservation Motion). As your movant was unaware of the specific statute under which he presently asks the Court to order the preservation of this evidence, that statute was not mentioned in the previous motion. Ultimately, no action was taken on the motion. Judge Lowe merely scribbled the word "seen", accompanied by his initials, on Mr. Crockett's follow-up letters to the clerk's office (See Exhibit H, Handwritten Follow-Up Letter).

THE EXCULPATORY NATURE OF THE SUBJECT EVIDENCE AND SPECIFICS OF THE PRESERVATION REQUEST

That the evidence to be preserved is of potentially vast exculpatory value is beyond dispute. It is therefore respectfully submitted that the Court should order the requested preservation because the evidence would be required by your movant in any of the following possible future situations: (1) if his conviction is reversed on direct appeal and remanded for a new trial (Supreme Court Record No. 141354); (2) if the full and fair litigation of any eventual petition for a writ of habeas corpus calls for the production, examination, and/or testing of the evidence; or (3) if motion is made to this Court under **Virginia Code Section § 19.2-327.1** to permit post-conviction DNA testing of any or all of the evidence sought to be preserved here.

The accident vehicle, though left exposed to the elements for some time by the Virginia Beach Police Department, was eventually covered effectively with several blue tarps (See Exhibit I, Movant Affidavit). If the vehicle has been left in the same condition since your movant last viewed it in late 2011, then it should still be covered; and if it is still covered, then any trace DNA samples in and around the driver's compartment that may have yet existed after their exposure to the elements should still be present. In fact, even if the vehicle has not been fully covered since then, your movant submits nonetheless that he has objectively concluded, after conducting a significant volume of highly-technical research, that biological evidence samples matching the DNA makeup of Jacob Anthony Palmer might still exist in testable quantities on various surfaces in and around that area of the vehicle. For this reason alone, it would be most reckless to neglect the further preservation of the vehicle. Moreover, movant would like to ensure that the vehicle is still available for any new trial that may be ordered in this case. Movant requests that the vehicle be maintained within the custody of the police because he believes it would be entirely impractical, if not impossible, for the Virginia Department of Forensic Science to store such an unwieldy and cumbersome article of evidence.

The driver's side airbag was deployed during the collision (See Exhibit J, Page One of Police Crash Report). Defense Expert Robert F. Bagnell testified at Mr. Crockett's second trial that the driver's side airbag is "very, very important" in a serious

accident investigation and that it is something that should be taken as evidence "either at the scene or very closely to the scene..." (See Second Trial Transcript for February 29<sup>th</sup>, 2012; Appellant's Court of Appeals Appendix, Pages 866-867). Mr. Bagnell characterized the airbag as "smoking gun"-class evidence because it can, if properly preserved, contribute greatly to identifying the driver of the vehicle. This is because the driver of any accident vehicle, belted or unbelted, will commonly contact the airbag with his chest, face, and arms. Consequently, the driver's blood, saliva, hair, or tissue may transfer to the airbag (See Exhibit K, Missouri State Highway Patrol Article). Being that any biological evidence samples remaining on the driver's side airbag could prove extremely exculpatory insofar as they might exclude movant as the driver and perhaps even definitively identify Jacob Anthony Palmer as the true driver, the evidence must be preserved in expectation of eventual testing.

The driver's side seatbelt assembly should be preserved, if for no other purpose, in order to ensure its availability for any potential new trial, as it is likely to be physically introduced as exculpatory evidence (See Exhibit L, Pape Report) by the defense at such time. Additionally, the seatbelt might also still yield productive biological evidence samples. This is because, in an accident, a belted driver's blood and tissue, particularly his epithelial cells, might transfer onto the webbing or conceivably even the buckle and latching mechanism. As such, the components of the seatbelt assembly should also be preserved for the possibility of future DNA analysis.

Movant expressly objects to the taking of any "representative samples" of the airbag or the seatbelt assembly evidence and insists that the whole of each article of evidence be preserved. Neither the airbag nor the seatbelt assembly are of "such a nature, size or quantity" that "storage, preservation or retention of all of the evidence is impractical". Significantly, with respect to the airbag evidence, it is the policy of both this jurisdiction as well as that of most other jurisdictions nationwide to send *the entirety* of an airbag in to forensics when one is taken as evidence in a serious accident investigation (See Kevin Joseph Kelly Testimony, Second Trial Transcript, February 29<sup>th</sup>, 2012, *found in* Appellant's Court of Appeals Appendix, Page 839; See also Exhibit K). Most importantly, any biological evidence remaining on these items is very likely to be found only in trace amounts. For this final reason, preserving only fractions of the

evidence could actually result in the loss of whatever salvageable DNA (deoxyribonucleic acid) samples that may yet exist on the airbag and seatbelt assembly. Indeed, were some manner of “representative storage” to be ordered, your movant submits that the risk of losing any remaining productive DNA samples would be far too substantial for the Court to conscientiously endorse such an irresponsible course of action. The Court should order that both the airbag and the seatbelt assembly be transferred in whole to the Virginia Department of Forensic Science pursuant to the standards and guidelines alluded to in **Virginia Code Section § 19.2-270.4:1(C)**.

#### **REQUEST FOR HEARING**

As is previously mentioned in the “Statutory Authority” section of this motion, “the [movant] may request a hearing for the limited purpose of identifying the human biological evidence or representative samples that are to be [preserved]”. Here, your movant has clearly identified the evidence he seeks to preserve. Your movant has also specified the term for which each article is to be preserved and has made specific requests as to where and how the evidence is to be preserved. Furthermore, to clarify the importance of the evidence, movant has gone to some length to explain the history and the exculpatory value of each item to be preserved. Therefore, in accordance with the clarity of this preservation request, movant does not seek a formal hearing on this matter.

However, in the interests of ensuring evidentiary integrity, your movant would like a *guardian ad litem* to be appointed for the sole purpose of ~~visually corroborating~~ <sup>proving on or for the State's contribution</sup> that the serial number of the driver's side airbag produced by police matches the serial number of the airbag originally extracted from the steering wheel of the accident vehicle. Movant suggests that Mr. Atshin Farashahi, the counsel of record for movant's direct appeal, be appointed under **Virginia Code Section § 8.01-9** to accomplish this simple subsidiary task.



DISCLOSURE OF CHAIN OF CUSTODY DOCUMENTATION

Pursuant to Virginia Code Section § 19.2-327.1(A)(ii), when a convicted felon makes motion for the scientific analysis of previously untested biological evidence in his case, he is required to show, *inter alia*, that "the evidence is subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way".

In this context, because a movant must demonstrate the integrity of the evidence he seeks to have tested before the Court can order such testing, and because this motion to preserve is an obvious forerunner to a later motion for scientific analysis, your movant submits to the Court that it would only be proper to hereby order the Virginia Beach Police Department to disclose the following pertinent documentation: (1) any and all paperwork of any kind reflecting the chain of custody on each article of evidence identified herein; (2) the complete property and evidence "visitation log" for all visits by any persons to the accident vehicle at the police impound lot; and (3) the complete property and evidence "visitation log" for every occasion upon which any person signed in to view the driver's side airbag while in police storage. These documents, being indispensable to a future illustration that the "evidence is subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way", should be provided to Mr. Crockett, as due process compels such disclosure and Mr. Crockett has no other means of obtaining said documentation.

WHEREFORE, WITH IT BEING IN THE INTERESTS OF TRUTH AND JUSTICE AS WELL AS DUE PROCESS AND STATUTORY ENTITLEMENT TO PRESERVE THE IDENTIFIED EVIDENCE AS OUTLINED HEREIN, YOUR MOVANT HUMBLY ASKS THIS HONORABLE COURT TO ENTER AN ORDER DIRECTING FOR SUCH PRESERVATION IMMEDIATELY.

**Respectfully Submitted,**

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