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VIRGINIA: CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA)	
)	RECORD
v)	
)	CR12-816
CAMERON PAUL CROCKETT,)	
Defendant.)	

Before Hon. Frederick B. Lowe, judge
 Virginia Beach, Virginia
 December 17, 2012

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APPEARANCES: Commonwealth's Attorney's Office
 (Ms. Tabitha B. Anderson and
 Ms. Kari A. Kopnick), attorneys
 for the Commonwealth.

Adrienne L. Bennett, P.C.
 (Ms. Adrienne L. Bennett), attorneys
 for the defendant.

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Hoover, S.	63	68		
Wales, E.	69	83		
Firestone, A.S.	103			
Birch, B.	106			
Palmer, J.	109			
Crockett, C.P.	119	129		

EXHIBITS	DESCRIPTION	REC'D
Defendant's 1	Facebook posting	82

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1 THE COURT: This is the matter of the
2 Commonwealth of Virginia versus Cameron Paul
3 Crockett. To review where we stand --

4 MS. BENNETT: Your Honor, my client's not
5 out here yet.

6 THE COURT: I know. I'm sure he'll be
7 here in a minute.

8 MS. BENNETT: Your Honor, I do have one
9 witness that I would like to release.

10 THE COURT: I'm sorry?

11 MS. BENNETT: I do have one witness that
12 I'd like to release, a professional witness. May
13 I do so?

14 THE COURT: Sure.

15 MS. BENNETT: Thank you.

16 (The defendant was escorted into the
17 courtroom.)

18 THE COURT: All right. As indicated, what
19 I want to do at this point is to review where we
20 stand with respect to the -- to this case.

21 Today was the day -- or is the day that's
22 scheduled for sentencing with respect to, number
23 one, a finding of guilt by a jury previously
24 to what was originally a charge of aggravated
25 involuntary manslaughter in which the jury

1 returned a verdict of not guilty of aggravated
2 involuntary manslaughter but guilty of voluntary
3 manslaughter. Subsequent thereto, the jury upon
4 sentencing determined that the appropriate
5 sentence was one of five years.

6 Subsequent thereto, Mr. Crockett has
7 entered before this court a plea of guilty to a
8 felony charge of failure to appear. So initially
9 we were before the court as -- today for
10 sentencing with respect not only to the charge of
11 involuntary manslaughter but also to the charge
12 of felony failure to appear. And those matters
13 were referred for a presentence report. And the
14 presentence report has been filed with the court.

15 Most recently counsel for Mr. Crockett has
16 filed with the court under a cover letter dated
17 December the 14th of 2012 two motions, one which
18 is entitled Notice and Motion for a New Trial and
19 another which is described in the cover letter by
20 counsel as a motion prepared by Mr. Crockett that
21 was requested to be filed also.

22 It strikes me that the second motion,
23 which I've just mentioned, is essentially in the
24 nature of a petition for a writ of habeas corpus
25 essentially, I assume, for claims of ineffective

1 assistance of counsel.

2 The other motion filed by Ms. Bennett,
3 counsel for Mr. Crockett, sets forth various
4 statements and contains various attachments with
5 respect to the defendant's motion for a new
6 trial.

7 It strikes me that it would be appropriate
8 at this point to hear whatever is to be offered
9 with respect to the two motions and thereafter,
10 depending upon the outcome of those motions, to
11 proceed with sentencing in the case if
12 appropriate.

13 With that having been said, Ms. Bennett,
14 are you ready to proceed?

15 MS. BENNETT: Yes, Your Honor. I am ready
16 to proceed.

17 THE COURT: All right.

18 Is the Commonwealth ready to proceed?

19 MS. KOPNICKY: Yes, Your Honor.

20 THE COURT: All right.

21 MS. BENNETT: Yes, sir. I do have a
22 motion to exclude the witnesses.

23 THE COURT: All right.

24 Any -- I don't know who the witnesses are.
25 So whoever's here who expects to testify perhaps

1 in this case, please, stand and raise your right
2 hands.

3 (The witnesses were sworn.)

4 THE COURT: All right. Everyone who
5 intends to testify or may be called as a witness
6 in this case, please, remain outside until your
7 name is called.

8 (The witnesses were excluded from the
9 courtroom.)

10 THE COURT: All right. Ms. Bennett.

11 MS. BENNETT: Your Honor, first and
12 foremost, we have some stipulations with respect
13 to Detective --

14 MS. KOPNICKY: Well, Judge, I don't mean
15 to be rude to Ms. Bennett but I think, first, we
16 need to get all on the same playing field here.
17 One, what specific case law she's relying on for
18 her motion for a new trial. And she cites none
19 in her written motion. And, two, I think the
20 court -- we're well past the point of hearing
21 evidence. The evidence portion of the trial has
22 closed. If she is going to make a proffer to the
23 court that there is newly discovered evidence,
24 then there is a whole other procedure for that.
25 We're here today for sentencing. This is not a

1 now third bite at the apple for Mr. Crockett and
2 his defense counsel to present evidence.

3 THE COURT: Well, I think to the -- to the
4 extent that the nature of the motion is that it's
5 based upon after discovered evidence, I have a
6 tendency to agree, Ms. Kopnick, with what you're
7 saying. And there does need to be some proffer
8 as to what the alleged after discovered evidence
9 is and also some argument with respect to whether
10 or not the alleged after discovered evidence is,
11 indeed, in fact, after discovered evidence that
12 was not available to the defense at the time of
13 trial.

14 All right.

15 MS. BENNETT: And, Your Honor, I had set
16 forth in my motion for a new trial three bases
17 regarding an after discovered evidence argument.

18 The first argument pertains to the fact
19 that -- since I've gotten into the case and based
20 on the court's order that was entered on December
21 7th of 2012, Your Honor had ordered that I be
22 permitted to have an expert test the seatbelt
23 mechanism of the vehicle. We do have a report
24 back from that expert. And he is here today to
25 testify. And his report is attached to the

1 motion which was not received until the evening
2 of December the 13th, which is the delay in my
3 filing of my motion -- that, in fact, the
4 seatbelt mechanism was in use at the time of the
5 accident.

6 THE COURT: I think, having read the
7 report, which you've filed as an exhibit to your
8 motion --

9 MS. BENNETT: Yes, sir.

10 THE COURT: -- if I recall the exact
11 language used in the report, the individual who
12 did this testing, I believe, said that what he
13 discovered suggests that the seatbelt was in use.
14 Is that essentially where we are?

15 MS. BENNETT: Well, what I have from his
16 conclusions is that one section of the driver's
17 seatbelt when he had cupping. This cupping was
18 consistent with loading from occupant forces
19 during the collision. And it does say, And
20 suggested that the seatbelt was being worn by the
21 driver at the time of the collision.

22 The order that was entered on December the
23 7th of 2012 did identify Dr. Pape as an expert.
24 And that order was entered without objection to
25 that portion of the -- that statement within the

1 order.

2 And, Your Honor, I guess -- I attached the
3 report so the court could see the direction that
4 we were going in. But I submit to the court that
5 he's going to very easily be qualified as an
6 expert, if he hasn't already. My argument is
7 that he has already by virtue of that order. And
8 he will be able to state very emphatically and
9 clearly that that cupping on the lap belt is
10 consistent to a reasonable degree of engineering
11 certainty that it was a significant collision
12 that resulted in that cupping and that there is
13 absolutely no other way that that cupping would
14 have occurred on that lap belt but for someone
15 being belted in that seatbelt at the time of the
16 collision. A minor fender bender is not going to
17 result in that type of cupping. It's going to
18 have to be a significant collision that, in
19 essence, results in a total -- a total
20 destruction of the vehicle. It is that
21 significant and that clear. And that's what I
22 anticipate his testimony to be based on
23 conversations that I've had with him as a result
24 of the report that he prepared for me. That's
25 significant evidence in this case.

1 If you recall, Your Honor -- and this kind
2 of loops into the second portion of my motion
3 which is that we received from the Commonwealth
4 original witness statements that were made right
5 after the accident. And in these witness
6 statements, somewhat consistent with the
7 testimony, but certainly to a greater degree of
8 clarification. I can read directly from the
9 witness testimony or just -- you know, just
10 provide a summary.

11 But both James Kelly Reid as well as
12 Pamela Patrick stated very clearly to the
13 detectives that interviewed them that my client
14 was found in the back window of the vehicle.
15 And, in fact, one of them, Ms. Patrick, and as
16 well as Ms. Kelly [sic], described him as being
17 curled in the back window of the vehicle with
18 they being the first ones that arrived on the
19 scene of the accident, that his feet are on top
20 of the -- on top of the driver's seat leveled
21 with the window. That's where they -- that's the
22 position that he was originally found in.

23 So what we have here, Your Honor, is
24 certainly very exculpatory evidence that there
25 was somebody else driving that vehicle because

1 Cameron Crockett, based on the position that he
2 was found in that vehicle, could not possibly
3 have been the belted driver.

4 And I know that Your Honor's heard a lot
5 of evidence about there being another person that
6 was likely the driver of that vehicle. Certainly
7 that fits into the theme of the case and evidence
8 that was presented with the case. This is not a
9 new theory of innocence but it certainly is new
10 evidence of innocence that was not discovered at
11 trial.

12 What I'm anticipating from prior argument
13 that was offered by the Commonwealth when I was
14 attempting to have this motion -- this order
15 entered into the form of a motion to secure this
16 expert to come out and evaluate the seatbelt
17 mechanism is that they're going to argue that
18 this is something that was discoverable at the
19 time of trial. And in that response, Your Honor,
20 I have evidence to put on to the court that my
21 client did everything he could to convince his
22 counsel at that time that seatbelt mechanism
23 testing needed to be done. And it's not just my
24 client's testimony. It's the testimony of Al
25 Donker who was the investigator at the time, the

1 testimony of Bob Bagnell, who's previously
2 testified in this case that they -- and I've got
3 e-mails, historical e-mails, to corroborate that
4 time and time again efforts were made to secure
5 someone to examine the seatbelt mechanism.

6 Now, Mr. Hooker had hired an individual by
7 the name of Chewning to come out and look at the
8 vehicle. And Mr. Hooker had an order entered
9 with regard to what extent Mr. Chewning could
10 perform an examination of the vehicle. And I
11 have shown this order to my expert. And my
12 expert indicated that based on what is contained
13 in this order there is no possible way that
14 Mr. Chewning could have had access to the vehicle
15 to the extent necessary to do seatbelt mechanism
16 testing.

17 Chewning who did -- I'm sorry. Not
18 Chewning. But Ron Kirk, who did testify in the
19 hearing, he did go out and look at the vehicle
20 but he did not do seatbelt mechanism testing.
21 And I've got evidence from -- by way of e-mails
22 as well as direct testimony from Mr. Donker, the
23 investigator, that Mr. Chewning had suggested a
24 referral out for seatbelt testing because
25 apparently he couldn't do it; for whatever

1 reason, I don't know. And then I've got
2 subsequent e-mails from Mr. Donker to Mr. Sacks
3 stating the urgency of getting this done. And it
4 never got done. So -- and my client will testify
5 that it was urgent to him and it was his
6 understanding that when both of these experts
7 were hired they should have been examining the
8 seatbelt mechanism.

9 What I learned when I went out to look at
10 the vehicle after November the 19th -- after the
11 November 19th hearing when Your Honor didn't
12 enter an order but indicated that Your Honor
13 would enter an order allowing for the seatbelt
14 mechanism testing I went out to look at the
15 vehicle myself for the purpose of evaluating what
16 the condition of the vehicle was to report back
17 to the expert. Ms. Kopnicky was kind enough to
18 very quickly meet me out there. We looked in the
19 vehicle. I could not see all portions of the
20 seatbelt mechanism. The reason for that is is
21 there was -- I don't know what type of clothing
22 it was but it was a large piece of soggy clothing
23 that was on top of the latching system in the
24 front seat of the vehicle. I requested to move
25 that so I could take a picture of it to make sure

1 that we had all systems in the vehicle or all
2 portions of the seatbelt in the vehicle for
3 testing purposes so as not to waste anybody's
4 time or anybody's money. I was told I could not
5 move it. They wanted to keep the condition of
6 the vehicle as it was in the impound lot as it
7 has been for the past four years.

8 The top of the vehicle -- the roof of the
9 vehicle is smushed down on top of the vehicle.
10 It is very difficult to get any sort of a view of
11 what is going on inside of that vehicle with the
12 roof on top of the vehicle. Never has the roof
13 of that vehicle been removed for seatbelt
14 examination until Your Honor entered the order on
15 December the 7th that entailed every aspect of
16 investigation that my expert, Dr. David Pape,
17 indicated he would need to do to make a finding
18 regarding the seatbelt mechanism testing.

19 Dr. Pape will testify that it is not
20 possible for anybody else, whether other experts
21 went out there and looked at the vehicle or not,
22 it's not possible to reach a conclusion regarding
23 that seatbelt mechanism with the state of the
24 vehicle as it was when he went out to the scene,
25 which was the roof of the vehicle collapsed on

1 top of the inside of the car and not being able
2 to move anything in the vehicle.

3 So Ms. Kopnicky had warned me at that time
4 that, you know, prior expert had been out there
5 and was not permitted to move anything in the
6 vehicle. And that's what prompted me, Your
7 Honor, to file -- or to come before Your Honor
8 for entry of an order with all the specific
9 details as it laid out in terms of what the
10 expert was able to do. That order is in the
11 court's file. And I can certainly provide Your
12 Honor a copy of it as well now. And it's very
13 detailed in terms of the access that Dr. Pape was
14 to have to the vehicle. And I can just summarize
15 briefly.

16 THE COURT: I have it up here.

17 MS. BENNETT: Okay. But I think Your
18 Honor recalled that it was very detailed. And it
19 included removing, photographing. And you can
20 see in the report that I filed that Dr. Pape did
21 remove some items out of the vehicle,
22 photographed it. And he certainly has
23 documentation of what he did.

24 I think it's very compelling testimony and
25 very conclusive testimony that the driver of that

1 vehicle was belted. And we know from the facts
2 as they have been presented at trial and in
3 addition to the clarifying information that I
4 received in this -- these statements that were
5 made by the original witnesses at the scene, that
6 there is no possible way that Cameron Crockett
7 was in that vehicle.

8 Ms. Kopnicky had asked my expert -- or had
9 made the statement, Well, maybe he just slipped
10 out of the vehicle. Or maybe he just slipped out
11 of the seatbelt, meaning Cameron --

12 THE COURT: Well, we do know the backseat
13 was totally collapsed.

14 MS. BENNETT: The backseat was -- I don't
15 know that you can say --

16 THE COURT: I mean, the front seat, the
17 back of the front seat -- driver's seat was
18 totally collapsed.

19 MS. BENNETT: I would not say, based on my
20 observations with the roof off the top of the
21 vehicle, that the seat was totally collapsed to
22 the back. It was bending off its hinges and
23 leaning to the back. But the testimony, if you
24 recall, and the statements that are contained in
25 my motion from James Kelly Reid and Pamela

1 Patrick are that he was found in the rear window
2 of the vehicle with his arm hanging out of the
3 vehicle, not -- that he was in the backseat
4 essentially, but in the back of the vehicle with
5 his arm hanging out of the window. And it's
6 quite possible, I would argue, Judge, that he was
7 sitting in the back of the vehicle, the impact
8 occurs, he falls to the back of the vehicle, and
9 everything collapses as it does and his feet
10 simply fall down on top of the seat of the car
11 because that's how he was found, with his feet on
12 top of the driver's seat of the car. And it
13 appears from the statements that it's on the
14 headrest area of the driver's seat of the car,
15 that back part that had collapsed, not that he's
16 in the driver's compartment or that he's in the
17 center console, but he is unconscious in the back
18 window with his arm on top of the vehicle. And
19 it's very clarifying to read those witness
20 statements that I never -- the letter is dated
21 December the 3rd but they were not received until
22 December the 7th. But I would argue that those
23 statements are highly exculpatory as it relates
24 to the seatbelt issue. And based on the position
25 that he was found in it raises new issues about

1 the seatbelt issue itself.

2 So the argument's going to be, of course,
3 whether or not Mr. Crockett pursued due diligence
4 with his efforts to obtain this seatbelt
5 information. And I will certainly argue that he
6 did.

7 There is case, United States of America
8 versus Robert Lawhorn which is, of course, a
9 federal case but it's the closest one on point
10 that I have that states that, A defendant who has
11 acted diligently in apprising counsel, in this
12 case of juror misconduct, and the attorney failed
13 to bring that up before the court, that he should
14 not be held accountable for his lawyer's lack of
15 diligence in protecting the defendant's
16 constitutional rights. In that case it was juror
17 misconduct. In this case it's physical evidence
18 that exonerates my client was not pursued. And,
19 as I've stated before, we do have witnesses that
20 will establish that to the court. There's
21 efforts that were made by my client, e-mails and
22 so forth, that would be presented through our
23 evidence.

24 Now, as it relates to the statements that
25 we received with respect to the December 3rd

1 letter from the Commonwealth -- and they were the
2 statements of Antoine Smith, the statements of
3 Pamela Patrick, and the statements of James Kelly
4 Reid. What makes these so important, Your Honor,
5 is that -- and I don't have my transcript in
6 front of me. I'm probably going to have to reach
7 around and grab that in just a minute.

8 What makes it so significant particularly
9 as to it relates to Antoine Smith's testimony is
10 that her testimony at trial is not just
11 inconsistent with what she tells the detective
12 initially. It is completely contradictory to
13 what she tells the detective. And she is a key
14 witness, the only eyewitness to the accident.

15 And if I may just grab my transcript,
16 Judge. I apologize.

17 MS. KOPNICKY: Judge, maybe it would be a
18 good idea to take these in sections, you know,
19 let her argue, you know, the seatbelt issue and
20 let me respond to that rather than I respond to
21 all three at the same time.

22 THE COURT: Is this pertaining to the
23 seatbelt issue or is this another issue?

24 MS. BENNETT: Well, Your Honor, I think it
25 all ties -- I think it's all one big cumulative

1 picture, but yes, it is another issue within the
2 motion that I had filed.

3 THE COURT: All right. Well, go ahead.
4 And then, I think I'll give the Commonwealth an
5 opportunity to respond.

6 MS. BENNETT: Yes, Your Honor. If I can
7 just have a moment to open back up to my motion.

8 And, Your Honor, specifically I attached
9 to the motion the statements of Antoine Smith who
10 for the very first time we learned some
11 information about her that could have helped us
12 obtain her identity and interview her.

13 There was an interview, from what I
14 understand, with a Mr. Donker in a room -- you
15 know, one of the conference rooms over here. But
16 I had hired an expert -- not an expert -- a
17 private investigator who had worked diligently to
18 find Antoine Smith. But we learned from the
19 statement that she used to work at Cash
20 Converters. That gave us a lead. I offered this
21 only to show the diligence that we're trying to
22 put forth here.

23 But Antoine Smith -- Antoine Smith tells
24 Officer Godwin that -- that he hit his brakes,
25 slammed on his brakes, lost control of the car.

1 It turned sideways and it slid across the street,
2 slid and hit the curb and the grass. She said, I
3 got up on the sidewalk and I looked at the
4 vehicle, that I just got up on the sidewalk and
5 stopped walking because he was coming. I was
6 just going to stay where I was. I wasn't going
7 to walk or move or anything. I was just going to
8 watch him pass by. And she's asked specifically,
9 After he hit the tree did you see the driver get
10 out of the vehicle? Did you see what he looked
11 like? And she says, Nope. I didn't go over
12 there at all. And then she starts talking about
13 the lady that came out of her house. And she
14 told her son or whoever the male figure was to
15 call 911. This is a house that's across the
16 street from the accident scene. So she was
17 watching this woman come out of the house. Went
18 over to look, and I think -- she went over to
19 look. And I think the neighbor next to that
20 house where the tree and the car has come out and
21 told somebody to hurry up and rush.

22 Now, when she testifies -- and, Your
23 Honor, I apologize. I only have this transcript
24 from the 2011 trial. I did not represent
25 Mr. Crockett at that time, but my understanding

1 is is that she testified fairly consistently with
2 her 2011 statement with some exception. And I
3 will address that in a minute.

4 So in 2000 and -- May of 2011 she
5 testified that, All of sudden it just slammed on
6 the brakes and it spun twice. Not slid, but spun
7 twice. Did you watch the entire time from when
8 you first saw it and it impacted? She said, Yes,
9 I did. Did you see where it impacted? It hit a
10 huge tree that was sitting in the yard next to
11 the Christmas decorations. And were you able to
12 estimate how fast it was going?

13 At any rate, Your Honor, the gist of her
14 testimony is is that she tells -- she tells us in
15 her testimony from May of 2011 as well as her
16 testimony in February of 2012 that her eyes are
17 on the vehicle all the time. She's asked
18 specifically questions about did she see certain
19 people come out of their houses. And she said,
20 Yes, but I always had the vehicle in my
21 peripheral vision. But that's not consistent
22 with her testimony -- her statement that she
23 gives to Officer Godwin soon after the incident.

24 And unfortunately this transcript of the
25 recorded interview is not dated. Oh, I'm sorry.

1 It just says eighteen hours, Officer Godwin.

2 At any rate, we then received the
3 statement of Pamela Patrick. Ms. Patrick -- and,
4 again, I'm referring to the statements that were
5 just received on December the 7th.

6 Ms. Patrick references seeing -- seeing
7 Ms. Smith out on the street. But what's
8 interesting -- she says, No. I saw the other
9 lady, the other witness. She -- when I came out
10 she was hysterical. And I really didn't -- and I
11 really didn't know what was going on. And I
12 said, Are you okay? I said, You weren't in the
13 car, were you? And she said, no, she was walking
14 down the street and heard something coming. Got
15 up on the sidewalk. And then she told me she had
16 also seen them slide, but she was really shaken
17 up and I couldn't figure out what's going on.

18 So what we have here, Judge, is testimony
19 from a key witness with respect to her direct
20 observation of this accident. And what we have
21 is unreliability with respect to what Antoine
22 Smith has offered into testimony. And I think
23 that's significant. It's exculpatory. It should
24 have been turned over to us prior to trial,
25 particularly the second trial. I'm not

1 suggesting that the Commonwealth should have
2 anticipated in 2011 that she was going to be
3 untruthful, but it was well established in the
4 2012 trial that she, in fact, was untruthful. My
5 client went to the extent of hiring an expert to
6 discount her testimony that she was able to see
7 the light at the corner of First Colonial -- not
8 First Colonial Road -- the light at Great Neck
9 and Wolfsnare Road.

10 She indicated that she was able to see the
11 light from 2140 Wolfsnare Road, which is
12 physically impossible. And I don't think we need
13 an expert to say that, but he went that far to
14 establish that it was just untruthful. And then
15 she went on to say that she saw the light in a
16 reflection on some sort of puddle on the ground.
17 That's not possible. It was proven to be
18 untruthful. This is exculpatory evidence that
19 was used at trial. I certainly believe that it
20 would have resulted in a different outcome. Her
21 testimony was critical for purposes of trial.

22 THE COURT: Of course, all of these
23 things, Ms. Bennett, were things that were argued
24 at the time of trial by counsel.

25 MS. BENNETT: But what we didn't know --

1 but we didn't know that these statements existed.
2 These are exculpatory statements, Your Honor, and
3 could have certainly been used at the time of
4 trial to make a determination or at least to
5 present to the jury. As opposed to my client
6 having to go out and spend thousands of dollars
7 on an expert it would have been -- it would have
8 been appropriate for him to have received those
9 statements from the Commonwealth. And I would
10 suggest that it is a, you know, a violation of
11 the Brady rule, that they --

12 THE COURT: Okay.

13 MS. BENNETT: -- should have been
14 turned -- it was exculpatory.

15 THE COURT: Well, let me give the
16 opportunity to the Commonwealth to respond. But
17 I think that you know and -- we all know what the
18 standard is for after discovered evidence.
19 There's certain rules of law that the court is
20 bound by --

21 MS. BENNETT: Yes, Your Honor.

22 THE COURT: -- that we want to -- have to
23 deal with. But be that as it may, I'll give
24 Ms. Kopnicky an opportunity to respond. Then
25 I'll come back to you.

1 MS. BENNETT: And, Your Honor, I do --
2 there is another issue that we are prepared to
3 present evidence on today --

4 THE COURT: All right.

5 MS. BENNETT: -- that's in the motion.
6 And that has to do with a third party confession.

7 MS. KOPNICKY: Thank you, Your Honor.

8 The first part of the motion talks about
9 newly discovered evidence. Now, not only does it
10 have to be newly discovered and with due
11 diligence could not have been discovered prior to
12 trial but the second prong of the test here is
13 that it would have to produce an opposite
14 outcome. And I don't think Ms. Bennett can say
15 that about anything that she has presented today
16 nor do I think the court can make that finding.

17 As far as the seatbelt issue, it was
18 turned over to prior defense counsel, Mr. Sacks,
19 prior to the first trial, the crash scene report
20 and officer's worksheet. And that was done at
21 the direction of the court as sort of a, well,
22 he's not entitled to it. What's it going to
23 hurt?

24 We did not call Officer Kellogg to the
25 stand. Defense counsel did and put him up at the

1 second trial. But the report that was authored
2 by Kellogg notes that, Condition of the driver
3 yes or no, unbelted, and it is circled yes. At
4 another portion in the same report where --
5 excuse me -- couple pages deeper into the report,
6 Seatbelt in use for driver, yes. So it's the
7 Commonwealth position that this is not a newly
8 discovered issue.

9 The car has been available to all three
10 defense counsel now. At any time they have
11 called us we have made arrangements to have an
12 officer open the impound lot. We've allowed
13 inspections. We've allowed photographs. We've
14 opened the trunk at their request to see if
15 everything -- anything was in there that might
16 shed some light on their defense. We did that
17 with a crowbar with his prior counsel and their
18 investigator.

19 So I don't think at this point they have
20 met the burden on newly discovered evidence as
21 far as the seatbelt, Judge, because they knew
22 that.

23 Now, Mr. Sacks hired several experts at
24 the prior trial. I think the court has to chalk
25 this up to trial strategy. Mr. Sacks is a very

1 skilled defense attorney. He is an extremely
2 well-versed cross-examiner. He has brought out
3 all the issues in trial that he thought were
4 pertinent.

5 Now, Ms. Bennett does not have the benefit
6 of having been present at the second trial but
7 the court and both the Commonwealth attorneys
8 were there. And the issues that she brings up as
9 far as issues for cross-examination were, in
10 fact, cross-examined on by Mr. Sacks.

11 And excuse me, Judge. One more thing as
12 far as the vehicle issue goes.

13 Prior to beginning both of our jury trials
14 there's a colloquy that the court conducts with
15 the defendant. Are you satisfied with the
16 services of your defense attorney who's been
17 retained to represent you? Mr. Crockett's answer
18 in both trials was yes.

19 There's another question that the court
20 asked is, Are all the witnesses that you need for
21 trial subpoenaed and present and ready to go
22 today? Mr. Crockett's response was yes. So for
23 now for him to be dissatisfied with the outcome
24 of that trial and claim that things were not
25 discoverable to him or his attorney at this

1 point, Judge, we feel that he has had every
2 opportunity as far as evidence for the vehicle.

3 Regarding Antoine Smith, her address was
4 always known to defense counsel. Her subpoena
5 returns were filed with the court. She was
6 cross-examined at two trials now by defense
7 counsel. I'm now hearing that Mr. Donker
8 interviewed her prior to one of the trials. She
9 was never asked by any of our investigators, the
10 police, or -- excuse me -- Officer Kellogg or
11 Officer Godwin about the streetlight. The fact
12 that she's not asked a question that she was
13 asked at trial does not make her testimony
14 inconsistent. She pointed out the -- seeing the
15 light versus seeing the reflection at the trial.
16 She was cross-examined at length by Mr. Sacks
17 extensively at the second trial.

18 Slid versus spun, Judge, it's not so
19 material that the outcome of the trial would be
20 opposite than what it was. Does she think it's
21 inconsistent? Sure. The Commonwealth's position
22 is that it's not inconsistent nor does it
23 materially change what the outcome would have
24 been. Ms. Smith certainly was not untruthful.
25 The court had the opportunity to view all of the

1 witnesses, judge their credibility, as did the
2 jury. I don't think the court can take the
3 position that anybody who might have been
4 slightly inconsistent in lingo only was
5 untruthful.

6 So our position is nothing that
7 Ms. Bennett has stated this morning would alter
8 the outcome of the jury trial. At this point --
9 and it was all available to him and known to him
10 at the date of the trials.

11 You'll remember also that Mr. Sacks
12 cross-examined two Commonwealth's witnesses,
13 Mr. Reid and I believe Ms. Patrick, based on
14 interviews that were done with his own
15 investigator or former investigator, Mr. Powell.
16 And that's noted in the trial transcript, at
17 least from the first trial on Page 105 and 106.
18 Mr. Powell conducted interviews with these
19 witnesses in January of 2009. The date of the
20 interviews that we have turned over to
21 Ms. Bennett, I do believe, were not until March
22 of 2010 -- excuse me -- March of 2009. So,
23 frankly, defense counsel and their investigators
24 had first crack at those witnesses.

25 Again, the Commonwealth's position is,

1 one, none of what she cited is newly discovered.
2 Two, none of which she has cited would have
3 materially altered the outcome of what the jury
4 has heard. They heard evidence that there was
5 potentially another driver. They absolutely
6 rejected it, not once but twice. And it's time
7 to put some closure here, Judge.

8 THE COURT: Ms. Bennett.

9 MS. BENNETT: Your Honor, this matter is
10 still within the breast of the court. Your Honor
11 well knows that. And I don't think that there is
12 any dispute that if evidence had been presented
13 to the jury that there was a belted driver in
14 that vehicle --

15 THE COURT: Well, Mr. Sacks argued that
16 vigorously at the trial, as I recall.

17 MS. BENNETT: He argued -- he may have
18 argued it vigorously but he didn't have the
19 evidence that we have today, Your Honor. And I
20 did provide the report from this expert who is
21 very powerful in his testimony that that belt --
22 the person who was driving that vehicle was
23 belted. And the evidence is crystal clear that
24 Cameron Crockett was not belted at the time of
25 the accident. So the theory of the case hasn't

1 changed but the evidence has evolved
2 substantially. And in the interest of justice,
3 Your Honor, this young man deserves another
4 trial.

5 THE COURT: Tell me how the court can
6 possibly make the leap --

7 MS. BENNETT: Well, Your Honor, if I --

8 THE COURT: -- that this evidence was not
9 available to the defense both prior to and at the
10 time of not only the first trial, which resulted
11 in a mistrial, and the second trial.

12 MS. BENNETT: Well, Your Honor, I would
13 certainly argue, as I've previously stated, that
14 the ability of the -- and I obviously was not
15 privy to conversations with these experts, but it
16 is very clear that they did not test the seatbelt
17 mechanism. And it is very clear that unless you
18 can get in that vehicle, move items and do an
19 examination, you cannot examine the seatbelt.
20 The top of the vehicle was never removed. It's
21 smushed down to the compartment of the car. It
22 just could not have possibly been tested.

23 And I would argue, Your Honor --

24 THE COURT: But that's not the standard,
25 is it?

1 MS. BENNETT: But with all due respect to
2 the Commonwealth --

3 THE COURT: The standard would be whether
4 or not it was there to be done and whether or
5 not --

6 MS. BENNETT: Whether or not it was --

7 THE COURT: -- counsel and the defense
8 determined that that was something they ought to
9 do.

10 MS. BENNETT: It's not -- I would disagree
11 that it's not whether or not it was there to be
12 done. It was whether or not the evidence could
13 have been discovered with due diligence.

14 And in this case, Your Honor, I would
15 argue that there was obstruction from the
16 Commonwealth because there -- although they
17 allowed people out to the scene, the people that
18 went out to the scene to do the investigations
19 were not -- or to do the examinations were not
20 permitted the access to the vehicle that they
21 needed to accomplish those results. And that is
22 something that my expert is here and prepared to
23 testify to today. Why that didn't happen? I
24 don't know. But what I do know -- and, again,
25 I'm relying on the Lawhorn case -- that my

1 client -- we are prepared to present evidence
2 that my client diligently and dutifully sought to
3 obtain the information regarding the seatbelt
4 mechanism and was denied by his counsel the
5 ability to do that.

6 THE COURT: Well, that's a different
7 issue, of course.

8 MS. BENNETT: Well, under the Lawhorn case
9 it falls directly under the issue of due
10 diligence.

11 As I had indicated, a defendant who acted
12 diligently in apprising counsel -- and, again, in
13 this case, of jury misconduct. It wasn't
14 arranged at trial -- that was not challenged at
15 trial. He should not be held accountable for his
16 lawyer's lack of diligence in protecting his
17 rights. And so that's where we come in under
18 that prong in the interest of justice as well,
19 Your Honor.

20 I hear what the Commonwealth's saying, but
21 I think that it is crystal clear in light of the
22 evidence that that -- someone was in that
23 driver's seat at the time that the collision
24 occurred, that we have a situation where there is
25 absolutely no doubt, which is another prong of

1 the test for after discovered trial [sic], is
2 whether or not the evidence is material and as
3 such should produce an opposite result on the
4 merits at another trial.

5 Sure Mr. Sacks argued that there was a
6 belted driver, but there was never the
7 definitive, scientific evidence to present to the
8 jury that Mr. Crockett was right, that there was,
9 in fact, a belted driver in that car. That is
10 very powerful evidence.

11 And even if we allow the Commonwealth
12 attorney's office, the prosecution, to challenge
13 that and say whatever they want to say to
14 challenge my expert, that's not the issue that
15 the trial court should consider at this point in
16 time. The issue is simply that evidence -- with
17 that evidence should it produce an opposite
18 result on the merits at another trial? And I
19 think the answer is unequivocally yes.

20 Cameron Crockett was found in the back of
21 the vehicle by the original witnesses with his
22 arm on top of the vehicle out of the rear window.
23 He was not the belted driver.

24 Now, there is some case law that says in
25 certain circumstances in the interest of justice

1 the rules should be relaxed. And if you can give
2 me just a minute, Your Honor, I can put my hands
3 on that.

4 MS. KOPNICKY: Do you have a copy for us?

5 MS. BENNETT: I'm not even looking at my
6 cases right now, but I can let you look at it.

7 Your Honor, if you can give me just a
8 minute.

9 And it's the Holmes versus Commonwealth
10 case, Your Honor, that states that, The primary
11 object in considering a motion for a new trial on
12 the ground of after discovered evidence is to
13 ascertain if an injustice has been done. And
14 certainly, Your Honor, I would submit we have an
15 injustice here.

16 If the new evidence offered comes within
17 the settled rules applicable thereto -- one of
18 which rules is that such evidence as offered on a
19 new trial very probably would change the result,
20 then the motion should be granted.

21 And, Your Honor, there is another case
22 that I'm -- okay. I'm sorry. I quoted the wrong
23 case. It is the Reiber versus Duncan case which
24 is a Supreme Court case from 1965, 145 S.E.2d,
25 157. Where that case stands for -- it lays out

1 the four requirements that we've talked about for
2 granting of a new trial. And it states, While
3 the above requirements constitute the general
4 rule relating to applications for new trials on
5 the ground of after discovered evidence
6 exceptional cases have arisen. And we have found
7 it necessary to depart from the general rule and
8 grant a new trial when there's grave doubt as to
9 the correctness of the verdict. And I do have a
10 copy of that case, Your Honor, if you would like
11 to see that.

12 And that also cites to two other cases
13 that I have. And that's Independent Cab
14 Association versus LaTouche and Roundtree versus
15 Roundtree which were both motions for a new trial
16 that accepted that reasoning that when there's an
17 exceptional case -- and I would submit this is an
18 exceptional case -- that the Supreme Court has
19 found it necessary to depart from the general
20 rule and grant a new trial. And, Your Honor, I
21 would submit that's what we have here.

22 And, again, in the Independent Cab
23 Association versus LeTouche, which is 89 S.E.2d,
24 320 -- and that's a 1955 case. The Supreme Court
25 states, While the party for moving on a new trial

1 on this ground is held to exacting requirements
2 the rule is somewhat relaxed in its application
3 for the after discovered evidence as in the
4 present case strongly tends to show -- and in
5 this case it was perjured testimony by the
6 plaintiff. It's a civil case -- own points and
7 material in the case were untrue. And this is
8 another case, Your Honor, that stands for the
9 court being given broad discretion to grant a new
10 trial, particularly on circumstances of injustice
11 and the Supreme Court of Virginia citing
12 exceptions where the rules are relaxed.

13 And, Your Honor, I think this is -- this
14 is the case where it would be appropriate for the
15 court to make that leap, as Your Honor said, to
16 relax the rule. And I still submit that that
17 Lawhorn case is something that the court
18 should -- should use to rely on as well in making
19 the determination to order a new trial for my
20 client.

21 But there is one other aspect of the case
22 that I have filed a motion for a new trial and
23 that is a third party confession.

24 We have two individuals here today, Shaun
25 Hoover and Elizabeth Wales, who have both given

1 statements that Jacob Palmer has made statements
2 in their presence that he was the driver of the
3 vehicle. I will tell the court that Shaun Hoover
4 is uncooperative at this point. And I have some
5 reservations about putting him on the stand. But
6 based on statements that he made to me, I felt
7 confident that, you know, that he will -- he will
8 hopefully tell the truth.

9 I do have Elizabeth Wales here who was
10 in -- who was a former student at Cox High School
11 who was in a class with Jacob Palmer where she
12 overheard him making statements to his girlfriend
13 at the end of May. She said it was right around
14 the time -- May of 2011, that she heard him make
15 statements to his girlfriend in the hallway
16 during a photography class where the halls were
17 essentially empty except for the photography
18 students and a few stray students which would be
19 in the case with the girlfriend that he was
20 speaking to where he admits -- or where he states
21 that somebody got away -- I'm sorry -- that he
22 got away with this crime, that somebody else was
23 convicted, and talks about Jack being dead. And
24 this is all around the same time frame that the
25 first conviction took place. And she's prepared

1 to testify to that under oath today, Your Honor.

2 She's not someone that was known to the
3 defense until this summer. She does not know
4 Cameron Crockett. She doesn't know anybody
5 involved in this case, but she eventually came
6 forward because of things that she had heard on
7 the news and made the connection between -- the
8 statement that she heard in the hallway, which
9 she will tell you, Your Honor, impacted her and
10 stuck with her. She will also tell you that it's
11 reasonably -- it was reasonable to believe that
12 nobody else was in the hallway, meaning from
13 Jacob Palmer's perspective, and that she
14 remembers that because of the nature of the
15 conversation and the fact that he was talking
16 about Jack being dead and about the fact that it
17 looks like he had gotten away with a crime. She
18 said that he was laughing about it.

19 The way she was found was she contacted
20 Alexia Decker on her Facebook page and advised
21 her of this information. And I've got a copy of
22 the Facebook page from when she did that with the
23 date.

24 And I apologize, Your Honor, it was -- it
25 looks like it was in April of this year. She

1 stated on her Facebook page to Alexia Decker, I
2 had photo class with Jacob Palmer and I clearly
3 remember him speaking to another kid, of whom I
4 don't know, talking about this and how it was
5 funny that he got someone else convicted of this
6 crime. She says, He admitted it. And she put
7 admitted in capital letters. He did it and I
8 clearly remember him saying it. And I would ask
9 the court for an evidentiary hearing on that as
10 well so the court can judge what her credibility
11 is and make a determination from that point.

12 But I would argue -- Your Honor, even if
13 you want to dismiss my seatbelt argument and the
14 injustice surrounding the conviction when we've
15 got evidence of this nature to put forth before a
16 jury that we didn't have prior to Dr. Pape doing
17 his investigation on -- it was just this past
18 Monday, December the 12th -- December the 10th,
19 rather. Even if you ignore all that, Your Honor
20 can't ignore, I would submit, this third party
21 confession that was overheard by Elizabeth Wales
22 in the hallway at Cox High School. And that
23 alone should be sufficient for the court to order
24 a new trial. And I would very much greatly
25 appreciate the opportunity to have an evidentiary

1 hearing.

2 Your Honor, sitting next to me is an
3 innocent young man and he deserves the
4 opportunity to have a new trial and at a minimum
5 have an evidentiary hearing on this motion.

6 THE COURT: Ms. Kopnicky.

7 MS. KOPNICKY: Judge, I want to clarify
8 cases that the Commonwealth relies on as far as
9 what the standard is for a new trial, Orndorff
10 versus Virginia. It's a Supreme Court case, 279
11 Va. 597. The proper standard for considering a
12 motion for a new trial based on after discovered
13 evidence when the evidence supporting a new trial
14 motion is contradicted by evidence in opposition
15 to the motion is that the circuit court is not
16 permitted to presume that the moving party's
17 evidence is true but is required to weigh all the
18 evidence presented in determining whether the
19 moving party has satisfied the materiality
20 standard acting as a fact finder in determining
21 whether the evidence is such that it would
22 produce an opposite result on the merits of a new
23 trial. So that's the court's standard. You
24 don't take just one piece of evidence that's
25 being offered here today. You take that piece of

1 evidence in light of the thirty other
2 Commonwealth's witnesses and defense witnesses
3 during a five day jury trial and what the
4 potential outcome would have been. And not just
5 that it could have changed the result but that it
6 absolutely would have changed the result.

7 As far as Mr. Hoover goes, the
8 Commonwealth has also interviewed Mr. Hoover. We
9 did that on November the 19th when we were here.
10 We did that in the presence of both
11 our investigator, Patty Munley, and again with
12 just Ms. Anderson, myself, and Ms. Bennett.
13 Mr. Hoover not only is not -- is not
14 uncooperative, he has completely recanted the
15 statement that he provided Ms. Bennett and
16 provided us some insight as to why he recanted
17 the statement to Ms. Bennett. Because he did not
18 want to come in here and lie to the court by
19 saying that someone else confessed to being the
20 driver. That's what he told us. He said he
21 could not come in here and perjure himself. And
22 the reason that he signed those forms was that
23 the defendant's mother showed up to his house
24 with Mr. Donker and a notary and he was
25 intoxicated at the time and he was going to be

1 promised money. That was his reason for signing
2 that.

3 So even if he comes in and says today,
4 yeah, Mr. Palmer confessed to me, I don't think
5 the court could reasonably believe him among all
6 of the other inconsistent statements where
7 he's -- he said, no, that was not the case.

8 Now, as far as this Ms. Wales person, I
9 would note to the court that she was not subbed
10 for the November the 19th trial. So ironic after
11 Ms. Bennett and her client find out that
12 Mr. Hoover will not be testifying in his favor
13 that they've located this other person now. This
14 is the first time on Friday that we've heard
15 Elizabeth Wales' name. I would point out, Judge,
16 I don't think this qualifies as newly discovered
17 evidence as well. And unfortunately I'm going to
18 have to point to Mr. Crockett's own handwritten
19 motion where he points out that Mr. Sacks was
20 well aware of a third party confession prior to
21 trial made by Mr. Palmer but was not utilized at
22 trial.

23 So the fact that the defense knew of a
24 statement potentially where Mr. Palmer made any
25 incriminating statements -- and I'm not --

1 Commonwealth is not conceding that that is, in
2 fact, the case or that those statements would be
3 truthful, but the fact that they're alleging in a
4 motion that they knew of something prior to the
5 trial and didn't use it by default makes it not
6 newly discovered evidence. You cannot have it
7 both ways. You can't claim ineffective
8 assistance of counsel because he didn't use a
9 statement or a witness that you knew of and then
10 say oh, but we have this new witness who wants to
11 tell you the same thing. You don't get it both
12 ways.

13 Unfortunately if he's claiming an
14 ineffective assistance of counsel, Judge, here is
15 not the forum for that claim. That claim has to
16 be done with a habeas petition. It is not done
17 at a motion for a retrial. It is not done at the
18 sentencing motion. And those are very high
19 standards. And, in fact, the court has to
20 presume that he had competent counsel. And that
21 is a very difficult burden to overcome.

22 As far as even introducing the -- this new
23 alleged statement at all, it would be used to
24 impeach a witness. It would be used to
25 potentially prove a bias of a witness that wasn't

1 even called at the first trial. So I don't know
2 how they're entitled to put this evidence on
3 potentially, Judge, or at least get a new trial
4 based on this new evidence if it would
5 potentially be used to impeach what Mr. Palmer
6 may or may not have said if he were called at the
7 last trial.

8 So I think my -- I know my argument's a
9 little bit circular in nature here, Judge, but I
10 think they're putting the cart before the horse
11 here.

12 There's been no evidence, at least
13 reliable evidence, that Jacob Palmer has to
14 anyone that the Commonwealth is aware of or that
15 the defense has brought to light that the
16 defendant absolutely -- or that he absolutely
17 confessed to being in that vehicle that night.

18 And, again, I would point out that the
19 jury, twelve members of this community, rejected
20 the notion that somebody else was driving the
21 vehicle. The evidence before that jury was that
22 Mr. Crockett dangled his keys in front of
23 Mr. Palmer, but he himself never said on that
24 stand that Jacob Palmer was driving the car. He
25 said there was some phantom driver. He doesn't

1 know who it might have been. And in the second
2 trial he gave that phantom driver a voice. But
3 that jury absolutely rejected that there was
4 somebody else in that car that night.

5 So even if out of the woodworks comes
6 somebody from the Crockett camp to say four years
7 later, hey, I heard so and so confess to driving
8 the vehicle, the court cannot possibly find that
9 that is a reliable source of information or in
10 light of all the other evidence find that a jury
11 would have made a different decision having had
12 that in front of them.

13 THE COURT: All right.

14 Anything else, Ms. Bennett? I want to
15 give everybody a full opportunity --

16 MS. BENNETT: Yes, Your Honor.

17 THE COURT: -- to say whatever they want
18 to say.

19 MS. BENNETT: I appreciate that.

20 One of the things that's interesting --
21 and I think based on the argument that
22 Ms. Kopnicky has made, that she has opened the
23 door, Mr. Palmer was interviewed on three
24 different occasions, twice by the Commonwealth
25 and once by Mr. Donker. On each occasion he gave

1 conflicting stories about where he was that
2 night.

3 There was evidence that was submitted at
4 court, at trial, regarding Mr. Palmer's phone
5 records that indicate his statements to the
6 Commonwealth that he stayed at the party all
7 night are totally incorrect. He's texting and
8 calling people at the party for several hours
9 after the time of the accident. He's calling
10 Cameron Crockett's phone, texting Cameron
11 Crockett's phone right around the time of the
12 accident. It's very, very suspicious. And I
13 think that it certainly opens the door to the
14 testimony of these other witnesses that he has,
15 in fact, confessed to the crime.

16 Now, Your Honor must look at the totality
17 of the circumstances, I would submit. We've made
18 this argument based on three bases, but since
19 we're talking about Shaun Hoover, Your Honor --
20 and Ms. Kopnicky has indicated what he said in
21 court. I will tell Your Honor why I think he is
22 a witness that I'm hopeful will get on the stand
23 and tell the truth.

24 When I got involved in this case I was
25 provided a copy of a statement that's attached to

1 the motion dated April the 23rd, 2012 signed by
2 Shaun Hoover and witnessed by Al Donker. I did
3 not substitute into this case until August of
4 2012. I went out on August 24th, 2012 with
5 Ms. Crockett, with an investigator, and with a
6 notary. And when we arrived at the house
7 Mr. Hoover was certainly not very happy we were
8 there. We get out of the vehicle and Mr. Hoover
9 says in my presence, I can't talk to you,
10 Sergeant Palmer knows, Jacob Palmer's father.

11 Shaun Hoover lives next door to Jacob
12 Palmer's mother where Jacob Palmer lived at the
13 time of the accident which just happens to be the
14 neighborhood that's directly behind Wolfsnare
15 Road with the defense's theory that he ran
16 through the woods. That's the neighborhood where
17 he lived. And next door to him lived Shaun
18 Hoover who is here.

19 Mr. Hoover wouldn't talk to us. Tom
20 Collins is my investigator. Tom Collins went out
21 to see him on numerous occasions and he repeated
22 that he wouldn't talk to us, he wouldn't
23 cooperate with us. Never at any time was there
24 an allegation that anybody tried to pay him off
25 or buy him off.

1 I subpoenaed him to the November the 19th
2 trial because I had this information and I needed
3 him to come to court. It prompted a phone call
4 from Mr. Hoover to me where Mr. Hoover cried on
5 the phone about the fear that he has of coming
6 forward and testifying in court, fear because
7 Jacob Palmer has threatened to kidnap his
8 six-year-old son. His girlfriend is angry with
9 him. He doesn't want anything to do with this.

10 A man representing himself to be Jacob
11 Palmer's attorney came out to his home and told
12 him that if he testified he could go to jail
13 because he should have come forward much sooner
14 than he did. The kid was scared. He's a little
15 bit older than these guys, but -- in his mid
16 twenties. And he was scared and he was crying to
17 me on the phone. And he agreed to meet me and my
18 investigator, Tom Collins, at the Subway on the
19 corner of Great Neck and First -- Great Neck and
20 Virginia Beach Boulevard. He came in in a
21 completely different demeanor. Advised me that
22 he talked to an attorney. He knows that he
23 doesn't have to talk to me. And, By the way,
24 Ms. Crockett tried to pay me off. And so now you
25 can't call me as a witness. I know Jacob Palmer

1 did it. I'll do everything I can to try to help
2 you, but I can't testify. And now you can't call
3 me as a witness, was the gist of the statement.

4 I went to Ms. Anderson that weekend and
5 sat down with her and walked her through how we
6 found Shaun Hoover. The way we found Shaun
7 Hoover -- and we've got Beau Birch here as well
8 as Drew Firestone. They are prepared to testify
9 that they were in a vehicle with him on or about
10 April the 18th.

11 They were going to a bank to withdraw some
12 money and that while they were in the vehicle,
13 because of all that had just happened with
14 Cameron's case and the fact that they realized
15 and hadn't realized it before that Shaun Hoover
16 lived directly next door to Jacob Palmer, they
17 began talking about the circumstances and asking
18 Hoover what he thought. Does he think that
19 Cameron did it or does he think that Jacob did
20 it. And in response to that, what they will say
21 is Shaun Hoover told them that he knows that
22 Jacob Palmer did it because Jacob Palmer came
23 over to his house that night and said that he was
24 just in an accident and he thinks somebody's
25 dead.

1 Well, when Shaun Hoover called me he
2 reiterated that to me but he also went on to say
3 that there was at least one other circumstance in
4 which Jacob Palmer discussed the fact that he had
5 been in that vehicle and that the other
6 circumstance was when Jacob Palmer's over at his
7 house and something came on TV about it. And
8 Shaun Hoover asked Jacob Palmer, That's the
9 accident you told me about? And he said, Yes,
10 but I can't talk about it because I'm afraid that
11 I'm going to be charged. And so that was the
12 gist of the conversation with him.

13 Shaun Hoover told me that he knows that
14 the right thing to do is to come forward. And
15 he's crying because he knows that Cameron
16 Crockett shouldn't go to jail for a crime that
17 Jacob Palmer committed. And he told me this from
18 his heart and his soul. And then he comes in
19 three hours later to the Subway. And all of a
20 sudden his demeanor has changed. He's talked to
21 a lawyer. He's not talking. Mama Crockett's
22 tried to pay him off.

23 So, Your Honor, I think by virtue of the
24 fact that I went to the Commonwealth, laid it all
25 out -- I had a recorded statement between -- it

1 was not a recorded statement but Beau Birch, the
2 other individual that was in the vehicle, he was
3 with Alexia Decker one night and they were having
4 a conversation about what he had just heard that
5 Shaun Hoover had told him. He didn't know he was
6 being recorded. He starts telling her -- telling
7 her what I just told Your Honor about the
8 statement in the vehicle about Jacob Palmer
9 coming over to the house that Shaun Hoover had
10 made.

11 Then we also have text messages from April
12 the 18th where Drew Firestone is contacting --
13 Drew Firestone is contacting my client's brother,
14 Colin, and advising Colin that -- well, this is
15 what he said. And I showed this to the
16 Commonwealth.

17 All right. His exact words were -- this
18 is what Drew Firestone texted. His exact words
19 were, Palmer. Colin, I got in an accident last
20 night and I'm pretty sure someone died. That's
21 what the text message said that Colin received on
22 April the 18th of 2012 soon after the last trial.

23 Now, as it relates to Elizabeth Wales,
24 this is not the first time she's been subpoenaed.
25 I, in fact, subpoenaed her in July of this year.

1 And I don't know that I have that return with me
2 but it should be in the court's file, at least in
3 the misdemeanor charges that were nol-prossed by
4 the Commonwealth when we were last in court on
5 November the 19th. I did subpoena her at that
6 time. My subpoena came back not found. Our
7 understanding from her father and some
8 communications that we had had with her is that
9 she had moved to Florida. She contacted me. I
10 guess -- she made contact again with Alexia
11 Decker the week after Thanksgiving. I was out of
12 town. I contacted her when I got back. I spoke
13 with her. She confirmed for me that she's back
14 at her residence. And I subpoenaed her to come
15 to court today. This is not a last ditch effort
16 to get around Shaun Hoover's statement.

17 Your Honor, what I think happened was --
18 there was a lot of information out there after
19 the last hearing. And it did cause people to
20 come forward and it did result in people talking.
21 And Shaun Hoover, I don't know what he'll say if
22 I put him on the stand today, but I sure would
23 like the opportunity to do it. Because based on
24 the conversation that I had with him, this
25 heartfelt conversation where this large, young

1 man is crying on the phone to me because he's
2 scared of Jacob Palmer and Sergeant Palmer. He's
3 scared but he wants to do the right thing. I
4 want to see if he'll do the right thing today.

5 And, in fact, when we were sitting in the
6 room that Ms. Kopnicky refers to, the last time
7 we were in court on November the 19th, he told
8 the Commonwealth he's afraid of Sergeant Palmer.
9 He said at that time, I'm not really afraid of
10 Jacob Palmer but I am afraid of Sergeant Palmer.
11 And that wasn't explored.

12 And I ask you, Judge, if Jacob Palmer --
13 if there was any question -- if we believe
14 Hoover's statement that this didn't really happen
15 and he made it all up because he felt sorry for
16 my client's mother or whatever it is that he's
17 trying to tell us at this point because he
18 doesn't want to testify, if he's believable at
19 that point during his retraction, as the
20 Commonwealth says, he believably retracts his
21 statement.

22 He's also stating at the same time that
23 Jacob Palmer knows. Sergeant Palmer knows. He's
24 afraid of them. He's been threatened. Wouldn't
25 it make sense that Jacob Palmer, who has been

1 here for every hearing but has never been called
2 by the Commonwealth's attorney's office -- he's
3 always down in victim/witness or somewhere but
4 never put on the stand to rebut the testimony
5 that my client has given, the evidence that my
6 client has given. And I understand why. I mean,
7 he's given three different statements about his
8 whereabouts that night. He's certainly not a
9 credible witness in terms of where he was and
10 what he was doing. And I don't believe he has
11 the ability to refute anything of what my client
12 has said. But doesn't it make sense that Jacob
13 Palmer would have gone to the Commonwealth and
14 told them that there are these false allegations
15 out there about him? And that certainly didn't
16 happen, at least as far as I know. It certainly
17 wasn't brought to my attention.

18 But, Your Honor, I would submit to the
19 court that if Your Honor denies my motion for a
20 new trial that there is a grave injustice that
21 certainly, certainly would occur under these
22 circumstances. And it will be an innocent man
23 going to prison.

24 THE COURT: Last word.

25 MS. KOPNICKY: Yes, Your Honor.

1 Judge, we did specifically ask Mr. Hoover
2 about any fear or threats or anything. He denied
3 that anybody has threatened him. He denied that
4 he was fearful of Jacob Palmer. He denied that
5 there had been any threats made to him. And we
6 sat with Ms. Bennett in a room and said, We don't
7 care what the truth is. Just tell us the truth.
8 And we asked him outright, Did anybody else
9 confess to driving the vehicle? And he said no.

10 Now, as far as putting another individual
11 on the stand at any trial, I would point to the
12 court that Mr. Sacks opted to not put on
13 Mr. Palmer at the trial as well. And he had
14 subpoenaed him prior. We had him here at every
15 trial, Judge. We didn't need to put him on to
16 rebut the defendant's story because the
17 defendant's story was so unbelievable. And
18 that's evidenced by a jury finding him guilty not
19 once but twice and sentencing him to five years.

20 They heard about the text messages. They
21 heard about the phone calls. They heard from
22 witnesses who said he may have been absent from
23 the party for a couple minutes. The jury heard
24 all that. This is not new evidence. The fact
25 that Mr. Crockett alleges in his own motion that

1 this hypothetical statement was made but not used
2 makes it not newly discovered. And even if --
3 and I'm not conceding that the statement was
4 made. Even if the court considers that the
5 statement was made I don't think the court could
6 make the finding that it would change absolutely
7 the outcome of the jury verdict because they
8 outright rejected the theory that somebody else
9 was driving the car. And Mr. Sacks hounded and
10 hounded and hounded that there was another
11 driver. And the jury said no, sir. Mr. Crockett
12 was driving that car and nobody else.

13 They have not met their burden for a new
14 trial. They have not met their burden for an
15 evidentiary hearing, Judge. I think it is time
16 for the court to put an end to this.

17 If Mr. Crockett wants to claim that
18 Mr. Sacks was ineffective, today is not the day
19 to do that. And that's the Commonwealth's
20 position, Judge.

21 THE COURT: All right. Let me have the
22 case law that you all have cited in your
23 arguments. I'll take --

24 MS. BENNETT: Yes, Your Honor.

25 THE COURT: -- a little bit of time to

1 read through that. And I'll come back and let
2 you know what the court's decision is.

3 MS. KOPNICKY: Judge, there was one -- I
4 have one case, the Orndorff case. Excuse me.
5 And I have -- I have a copy for Ms. Bennett --

6 MS. BENNETT: I have that.

7 MS. KOPNICKY: -- to read as well.

8 MS. BENNETT: I have that.

9 MS. KOPNICKY: But we'd also be relying
10 also on the Odum case, 225 Va. 123.

11 MS. BENNETT: Your Honor, there are two
12 other cases. I think the Commonwealth is
13 submitting a case that wasn't on the -- correct
14 me if I'm wrong. There are two other cases, the
15 Powell versus Commonwealth and Fout versus
16 Commonwealth of Virginia, that I think are
17 relevant under the circumstances.

18 THE COURT: Okay.

19 MS. BENNETT: If I could submit those. I
20 also submitted Raymond Holmes versus
21 Commonwealth, Reiber versus James Duncan, Jr. and
22 Associates, Independent Cab Association versus
23 LaTouche. And, Your Honor, I think the
24 Whittington case is relevant as well.

25 MS. KOPNICKY: Are these your only copies

1 or do you have copies for us?

2 MS. BENNETT: I don't have copies for
3 y'all. These are the only copies that I have but
4 I can give you the cites. I ran out of paper.

5 Your Honor, I just want to make sure I
6 submitted the Lawhorn case as well. Do you have
7 that?

8 (The court nodded head affirmatively.)

9 THE COURT: All right. Does anyone have
10 anything else they wish to submit?

11 MS. BENNETT: No, sir.

12 MS. KOPNICKY: Just one more. It's the
13 Bly case, B-l-y. Just the standard --

14 THE COURT: Okay.

15 Take a short recess. Thank you.

16 (The hearing recessed at 12:18 p.m. At
17 12:35 p.m., the hearing continued as follows:)

18 THE COURT: All right. Ms. Bennett,
19 specifically and basically you've presented two
20 scenarios with respect to two different motions
21 which are set forth in your notice and motion for
22 a new trial, the first having to do with the
23 examination of the seatbelt and the second having
24 to do with a proffered statement with respect to
25 witnesses having perhaps heard an inculpatory

1 statement made by another individual.

2 First of all, with respect to the seatbelt
3 aspect of your argument, as you know and we know,
4 the rule of law in Virginia is, first of all,
5 that the evidence could not have been obtained
6 for use of trial in the exercise of reasonable
7 diligence, and, number two, that the evidence was
8 material and as such to produce an opposite
9 result on the merits of another trial. It's a
10 two prong test.

11 With respect to your argument, again,
12 having to do with the examination of the seatbelt
13 the court, based upon this principle, cannot find
14 that this is evidence that could not have been
15 obtained for use of trial.

16 With respect, however, to your proffer as
17 to witnesses who allegedly, at least, have come
18 forward with exculpatory evidence on behalf of
19 your client, inculpatory evidence with respect to
20 another individual, the court feels that it
21 cannot make a decision with respect to whether or
22 not, number one, this is evidence that could have
23 been obtained prior to trial, whether or not it
24 might -- or whether or not it would have produced
25 an opposite result. As a consequence of that the

1 court will hear testimony of the witnesses which
2 you've proffered with respect to that particular
3 aspect of your argument.

4 So if you're ready to proceed in that
5 regard I'll listen to those folks and see what
6 they have to say, both.

7 MS. BENNETT: And, Your Honor, if I may,
8 I'd like to lay the foundation.

9 THE COURT: I'm sorry?

10 MS. BENNETT: If I may, I'd like to call
11 witnesses that would also lay the foundation as
12 to how they were discovered after trial leading
13 up to that.

14 THE COURT: Well, no. I -- no. What I'm
15 going to do is hear from these two witnesses that
16 you call.

17 MS. BENNETT: Yes, sir.

18 THE COURT: I think that's what we --

19 MS. BENNETT: Yes, Your Honor.

20 THE COURT: -- need to do at this point.

21 MS. BENNETT: Then with great caution I
22 will call Shaun Hoover.

23 THE BAILIFF: He has been sworn, Your
24 Honor.

25 THE COURT: All right. Thank you.

1 Before we start with this witness, so that
2 you don't forget and we don't forget, with
3 respect to the court's ruling as to the first
4 half of your motion we'll note your objection and
5 exception to the court's ruling.

6 MS. BENNETT: Yes, Your Honor. Thank you.

7 THE COURT: Go ahead.

8 MS. BENNETT: Thank you, Judge.

9
10 -----oOo-----

11
12 SHAUN HOOVER, called as a witness on behalf of the
13 defendant, having been first duly sworn, was examined
14 and testified as follows:

15
16 DIRECT EXAMINATION

17
18 BY MS. BENNETT:

19 Q Sir, could you, please, state your name
20 for the court.

21 A It's Shaun Hoover.

22 Q And, Mr. Hoover, what is your address?

23 A 913 Earl of Essex Court, Virginia Beach,
24 Virginia.

25 Q And what neighborhood is that in?

1 A Wellington Woods.

2 Q Okay. And where's that in relation to
3 Wolfsnare Road?

4 A Wolfsnare Road? Two blocks.

5 Q And did you at one time live -- the
6 neighbor's house to your left is 917 Earl of Essex
7 Court; is that correct?

8 A I believe so. Yes.

9 Q And who resides at that residence?

10 A Jacob Palmer's mother and his sister.

11 Q And he has also resided there; is that
12 correct?

13 A Uh-huh.

14 Q How long have you known Jacob Palmer?

15 A Four years probably. I can't remember the
16 exact time I moved here from Richmond, but ever since
17 I moved from Richmond I've been his next door
18 neighbor.

19 Q Okay. And you have been friendly with
20 Jacob Palmer; is that correct?

21 A Uh-huh.

22 Q And do you know Drew Firestone and Beau
23 Birch?

24 A Know them? No. I know of them. I mean,
25 I've spoken with them but I don't know them. No.

1 Q Do you recall an occasion on or about
2 April 18th when you were in a vehicle with Drew
3 Firestone and Beau Birch?

4 A The exact date, no, but, I mean, I was in
5 a vehicle with them but --

6 Q Is that around that time frame?

7 A I guess, yeah.

8 Q Okay. And at that time did you discuss
9 with them a conversation between you and Jacob Palmer?

10 A That I can't recall. The only thing I can
11 remember from that night was Beau Birch and Drew
12 telling me that Cameron's mother would pay \$15,000 for
13 me to write what I wrote down on that piece of paper
14 that I handed you.

15 THE COURT: Slow down, please.

16 MS. BENNETT: I'm sorry?

17 THE COURT: Lady's got to take this down.

18 A The only thing that I can remember from us
19 talking about was how he told me Cameron's mother
20 would give me fifteen grand for testifying in court
21 against Jacob Palmer.

22

23 BY MS. BENNETT:

24 Q Is this the first time you've told anybody
25 that specifically?

1 A Nope.

2 Q Who did you tell that to specifically?

3 A I told that to you.

4 Q You told me \$15,000?

5 A Uh-huh, the night at Subway I told you.

6 Q Do you recall having a conversation with
7 me prior to meeting you at Subway?

8 A Uh-huh.

9 Q Okay. And can you tell me what you said
10 to me on the telephone regarding statements Jacob
11 Palmer made to you?

12 A It was a lot of things really. Honestly,
13 I can't remember.

14 Q Do you remember crying on the phone?

15 A No.

16 Q Do you remember being very upset?

17 A Of course.

18 Q Do you remember telling me that Jacob
19 Palmer had threatened your six-year-old child?

20 A He never threatened him.

21 Q Threatened to kidnap him?

22 A No.

23 Q Do you remember telling me that you were
24 scared to testify because you were afraid that someone
25 from the Virginia Beach Police Department would put a

1 pound of cocaine in your vehicle --

2 A I could have.

3 Q -- if you came out and testified against
4 one of their --

5 A I could have.

6 Q Do you remember saying that?

7 A I could have. Yes.

8 Q Do you remember telling me the importance
9 of coming forward and telling the truth?

10 A Uh-huh.

11 Q Do you remember telling me that someone
12 representing themselves to be Jacob Palmer's attorney
13 came to your house and warned you you'd go to prison
14 because you did not come forward earlier with the
15 information you had regarding Jacob Palmer?

16 A Yes and no. People came over from both
17 sides telling me to testify to what I wrote on that
18 piece of paper or they were going to lock me up for
19 perjury. And people have come over saying that they
20 were with Jacob and telling me that I better not
21 testify the piece of paper. So it's gone both ways.
22 I've witnessed Ms. Crockett sitting outside my house.

23 Q Do you recall an occasion where I was with
24 Ms. Crockett outside of your house?

25 A Uh-huh.

1 Q And you remember coming up to the car
2 saying, I can't talk to you right now. Sergeant
3 Palmer knows. Remember that?

4 A I don't know.

5 Q And you went very quickly into the house.

6 A Yeah, I went inside. Yeah.

7 Q Do you recall telling me that you're
8 afraid of Sergeant Palmer?

9 A Yeah. Lying on a cop's son, I'm sure he
10 wouldn't take it too light.

11 MS. BENNETT: I don't have anything
12 further of this witness.

13 THE COURT: Ms. Kopnicky.

14

15 CROSS-EXAMINATION

16

17 BY MS. KOPNICKY:

18 Q So long and short of it is as you sit here
19 today the truthful testimony is that Jacob Palmer
20 never told you he was driving that car?

21 A Correct.

22 MS. KOPNICKY: Nothing else, Judge.

23 THE COURT: Anything else of this witness?

24 MS. BENNETT: No, Your Honor.

25 THE COURT: All right. Thank you, sir.

1 You may step down.

2 THE WITNESS: Am I free to leave?

3 THE COURT: What else, Ms. Bennett?

4 MS. BENNETT: I would ask that he remain
5 but not in the courtroom.

6 THE COURT: I'm sorry?

7 MS. BENNETT: I would ask that he remain
8 but not in the courtroom. I'm not -- I do not --

9 THE COURT: Okay.

10 MS. BENNETT: -- want to release him at
11 this time.

12 And, Your Honor, I would call Elizabeth
13 Wales.

14 (Ms. Wales was sworn.)

15

16 -----oOo-----

17

18 ELIZABETH WALES, called as a witness on behalf of
19 the defendant, having been first duly sworn, was
20 examined and testified as follows:

21

22 DIRECT EXAMINATION

23

24 BY MS. BENNETT:

25 Q Ma'am, you are Elizabeth Wales?

1 A Yes, ma'am.

2 Q And can you spell your last name for the
3 court reporter, please.

4 A W-a-l-e-s.

5 Q Okay. And, Ms. Wales, do you know Cameron
6 Crockett?

7 A No.

8 Q Had you ever heard of Cameron Crockett?

9 A No, ma'am.

10 Q And what about Jack Korte? Had you ever
11 heard of Jack Korte?

12 A No, ma'am.

13 Q Did you at some point attend Cox High
14 School?

15 A Yes, ma'am.

16 Q And when did you attend Cox High School?

17 A My sophomore year to senior year.

18 Q And when was that?

19 A 2007, 2008 to 2011.

20 Q And you graduated -- did you graduate in
21 June of 2011?

22 A I actually ended up not finishing the year
23 at Cox. So I went to Landstown --

24 Q Okay.

25 A -- and graduated from Landstown.

1 Q And when did you transfer to Landstown?
2 A 2011.
3 Q In what part of 2011?
4 A It was the 2011, 2012 school year.
5 Q Oh, okay.
6 A Yeah. Yeah.
7 Q So you graduated June of 2012 --
8 A Yes. Yes.
9 Q -- and you were at Cox --
10 A Right.
11 Q -- through the entire school year of 2010.
12 A Yes. And then I switched to Landstown
13 after that year.
14 Q Okay. Now, are you familiar with Jacob
15 Palmer?
16 A Yes. I had photography with him.
17 Q I'm sorry?
18 A I had photography with him.
19 Q Had you ever had any other classes with
20 him?
21 A No.
22 Q That you're aware of?
23 A No.
24 Q Okay. When did you have photography class
25 with him?

1 A I don't remember what day. It was second
2 block.

3 Q Okay. And when is second block?

4 A Between nine o'clock and 10:40.

5 Q Did you go back and look at your school
6 records to confirm --

7 A Yes.

8 Q -- the time of the class?

9 A Oh, no. But I confirmed that it was --
10 that was the time frame.

11 Q Okay. And you were -- were you in
12 photography the whole 2010, 2011 school year?

13 A Yes, ma'am.

14 Q Okay. And can you describe what you would
15 do during photography class. Would you always sit in
16 the classroom?

17 A It was broken up into two semesters. One
18 was more graphic design and the other semester was
19 photography. And the photography portion of it was
20 the latter part of the year. And you took a camera or
21 whatever you were using and you roamed the school or
22 you could go outside on the premises of the school and
23 take pictures. So you were rarely in class.

24 Q Okay. And was there some point in time
25 that you heard some remarks made by Jacob Palmer?

1 A Yes. I had walked outside of photography
2 class. I was going to actually go to the vending
3 machine before I went outside to --

4 Q Well, let me ask you this. There's a
5 point in time where people were capable of roaming the
6 halls?

7 A No, this was during class. Nobody was
8 outside in the hallway.

9 Q But I'm talking about your photography
10 class. You had said that you -- there were times you
11 were permitted to roam the halls and take pictures.

12 A Oh, yes. Yes. Yes.

13 Q Was this one of those times?

14 A Yes.

15 Q Okay. And can you give the court a time
16 frame of when this occurred?

17 A I'd say May.

18 Q Of what year?

19 A 2011.

20 Q Okay. And do you know --

21 A Or '10. I -- yeah.

22 Q Do you remember what part of the school
23 year?

24 A What do you mean?

25 Q When were you in -- when were you in

1 photography?

2 A I took photography for two years. It
3 was -- there's advanced photography and photography.
4 And I had him in both. So I don't remember what year
5 it was.

6 Q You don't remember what year it was?

7 A I had him for two years. I know it was --
8 it was 2010, I think. Okay. I can't remember, but it
9 was May.

10 Q You know it was May time frame --

11 A Yes.

12 Q -- of the school year?

13 A Yes.

14 Q And do you -- do you remember the exact
15 time of the month in May that it was?

16 A It was more towards my father's birthday.
17 That's all I remember. His birthday's at the end of
18 May.

19 Q Okay. And when's your dad's birthday?

20 A May 30th.

21 Q Okay. And do you recall whether or not
22 you soon left your school to go to Landstown after
23 that or did you have another semester at --

24 A Oh, no. That was the end -- that was the
25 end -- what are you -- I'm trying --

1 Q That was the end of what?

2 A I'm not understanding what you're saying.

3 Q After you -- after you overheard this
4 conversation --

5 A Right.

6 Q -- did you have another semester at Cox
7 High School after that?

8 A You mean like the following year?

9 Q Uh-huh.

10 A That I -- that's what I'm unsure of
11 because that was the year that a lot of stuff happened
12 in my life that I didn't complete my senior year. And
13 so I went to Landstown.

14 Q Okay. So was that --

15 A Then yes. I had another year. I had a
16 whole-nother year. That was -- it would be 2010,
17 then, this happened.

18 Q Well, what did you overhear?

19 A I walked out of the classroom and Jacob
20 was talking to a female. At the time I had no idea
21 who she was. And she was --

22 Q Do you know who this person was now?

23 A I do now, but --

24 Q And who was that person?

25 A His girlfriend.

1 Q Do you know her name?

2 A Nicole Vaughan.

3 Q And how did you determine that it was his
4 girlfriend?

5 A Because later on that year he had talked
6 about her and showed her to me.

7 Q Okay. All right. And what did you
8 overhear him -- what did you hear?

9 A He was talking to her about this and I
10 heard him say -- I guess it was close to a case that
11 they had just had. And he was like, I just got free.
12 And he was like, I thought I killed them both. And
13 then he went on talking about how he had -- was just
14 going to go about his life and live like he had done
15 nothing.

16 Q Did he mention anybody's name
17 specifically?

18 A Yes. He mentioned Jack's name but he did
19 not say a last name and he did not mention Cameron.

20 Q Okay. I want you to think about the year.

21 A Okay.

22 Q Can you take a moment to --

23 A Yes.

24 Q -- think about that? All right. Are you
25 confident about the year that you heard this

1 occurring?

2 A I believe the 2010 to 2011 school year
3 because --

4 Q Okay. So May of what year?

5 A 2011.

6 Q Okay. So when you were saying 2010 what
7 did you mean?

8 A That was the beginning of my first year of
9 photography which was not when it was. Because I was
10 dating somebody then and I was not dating somebody
11 during this case. That's the only reason I
12 remembered.

13 Q Okay. So you heard this the latter part
14 of May of what year?

15 A 2011.

16 Q Are you confident about that?

17 A Yes.

18 Q Without any question?

19 A Yes. Yes.

20 Q Do you have any ill will towards Jacob
21 Palmer?

22 A No.

23 Q And can you tell the court -- when did you
24 come forward to anyone connected with Cameron
25 Crockett?

1 A It was the end of -- the end of the school
2 year, last year, the beginning of the summer. I had
3 contacted --

4 Q So would that be 2012?

5 A Yes, ma'am.

6 Q Okay. And when you say the end of the
7 school year beginning of summer --

8 A I would say June -- end of June, beginning
9 of July. I don't remember the exact date.

10 Q Okay. And what did you -- I have a
11 Facebook posting.

12 A Yes.

13 Q Well, actually, let me back up. So how
14 did you come in contact? What did you do?

15 A I was just on Facebook looking around and
16 I saw a page that said something about, Wrongly
17 convicted, Cameron Crockett. And I just went through
18 it. And I saw -- I was like, Oh, you know that seems
19 familiar. I remember hearing something about that,
20 but I hadn't made the connection yet. And once I read
21 further I made the connection. That was the reason
22 why I remembered that conversation from two years ago.
23 So.

24 Q Have you had -- has anybody offered you
25 any money to testify?

1 A No.

2 Q Do you have anything against Jacob Palmer?

3 A No.

4 Q Do you have reason to come forward and
5 help Cameron Crockett?

6 A I don't know him or the family. So.

7 Q Can you tell the court why did you come
8 forward?

9 A I came forward because it was the right
10 thing to do. At first, I didn't know that there was
11 even a trial again. I thought that everything was
12 over with. And I pretty much was, you know, telling
13 Alexia -- I was like, I wish I knew that there was
14 something, you know, going on because, you know, this
15 is what I heard. But I thought everything was done by
16 then -- by that point. I didn't know that it was
17 still something going on.

18 Q Okay. All right. I'm going to show you a
19 Facebook page. Did you reach out to Alexia Decker on
20 Facebook?

21 A Yes, ma'am.

22 Q And that was in 2012?

23 A Yes, ma'am.

24 Q Did you know Alexia Decker?

25 A No.

1 Q Now, did you -- I'll show you the Facebook
2 page. Now, did you -- you were subpoenaed to come to
3 court on October the 10th of this year. Do you recall
4 that?

5 A I was not living here.

6 Q When did -- when you say you were not
7 living here where were you living?

8 A I was living in Pensacola, Florida.

9 Q Okay. And what caused you to move there?

10 A I'm dating somebody that was in the
11 military and they were in school in Pensacola.

12 Q Okay. Were you aware that you were served
13 at your address?

14 A No.

15 Q All right. But you were -- but you had
16 been talking -- you had been talking about this at
17 that point in time?

18 A Yes, ma'am.

19 Q And you have recently moved back to
20 Virginia --

21 A Yes.

22 Q -- is that correct?

23 A Yes, ma'am.

24 Q And when did you move back to Virginia?

25 A November 14th or -- yes.

1 Q Okay. And you reached out again at that
2 point; is that right?

3 A Yes, ma'am.

4 Q Can you tell the court why.

5 A One of the -- I guess, more main reasons
6 was because I was back here. It was, I guess, easier
7 for me to come forward instead of being in Florida.
8 It was easier for me to talk to her and do the right
9 thing then. Because I know if I were in the same
10 situation I would want the same thing.

11 Q All right. I'm going to show you this
12 Facebook page.

13 A Okay.

14 MS. BENNETT: May I approach?

15

16 BY MS. BENNETT:

17 Q Is this the initial message that you sent
18 to Alexia Decker?

19 A Yes, ma'am.

20 Q Okay. And that's what started the
21 conversation?

22 A Yes.

23 Q And nobody had reached out to you prior to
24 that?

25 A No.

1 THE COURT: Any objection?

2 All right. For the purposes of this
3 hearing we'll mark it as Defendant's Exhibit
4 Number 1.

5 (Marked in evidence by the court as
6 Defendant's Exhibit Number 1.)

7

8 BY MS. BENNETT:

9 Q Now, in that conversation that you
10 overheard with Jacob Palmer can you tell the court
11 approximately how far away you were from him and
12 Ms. Vaughan.

13 A I'd say between fifteen and twenty feet
14 away from him, but the halls were quiet. So it
15 wasn't -- probably from, I guess, you and I.

16 Q Okay. And what was his demeanor like when
17 he was speaking to Ms. Vaughan?

18 A Arrogant. Excuse me.

19 Q And you said specifically he said --

20 A That he had thought that he had killed
21 them both, that he got away with his own -- his own
22 crime.

23 MS. BENNETT: All right. Thank you. I
24 don't have anything further.

25 THE COURT: Ms. Kopnick, any questions?

1 Ms. Anderson?

2 MS. KOPNICKY: Yes, Judge. Thank you.

3

4 CROSS-EXAMINATION

5

6 BY MS. KOPNICKY:

7 Q It's pretty -- pretty outrageous if
8 somebody is wrongly convicted, right?

9 A (The witness nodded head affirmatively.)

10 Q Pretty outrageous when you hear somebody
11 say that he might have killed somebody. So when you
12 heard that you didn't go running to any law
13 enforcement, right?

14 A I had no idea what he was talking about.
15 So no.

16 Q But when you hear a kid in a school say
17 kill that's pretty important these days especially.

18 A Yeah. Sure, but I didn't -- I had no idea
19 what was going on. I didn't know if things had
20 already been taken care -- I had no idea what he was
21 referring to.

22 Q He said -- his specific words were, I just
23 got free. I thought I killed them both.

24 A Yes.

25 Q And you didn't know what he was talking

1 about?

2 A No. I had no -- I had no idea of Cameron.
3 I had no idea of anything.

4 Q Okay. I presume you were standing behind
5 him? He didn't see you?

6 A We were pretty much back to back. Yes.

7 Q Back to back. Okay. So how -- tell me
8 how you would make the determination if somebody is
9 arrogant without seeing their facial expressions or
10 their body posture.

11 A The way he was speaking.

12 Q So when you decided to first come forward
13 this was May of 2011?

14 A May -- no.

15 Q Okay. April of 2012?

16 A May of 2012.

17 Q May of 2012?

18 A May or -- no. June or July -- like the
19 first time I came to Alexia about it?

20 Q Uh-huh.

21 A Was just this past summer.

22 Q Okay.

23 A July.

24 Q So well over a year has passed --

25 A Correct.

1 Q -- since you've heard that?

2 A Right.

3 Q And you didn't go running to law
4 enforcement?

5 A No.

6 Q You didn't go running to the
7 Commonwealth's Attorneys office?

8 A No. I had no idea.

9 Q You went running to the defendant's
10 girlfriend?

11 A Sure, because I had no idea what it was in
12 connection to until I saw what had happened.

13 Q Okay. But you at least think that a crime
14 has been committed, right?

15 A Right, but I thought that it had already
16 gone through because he had said that somebody else
17 was charged for it.

18 Q Okay.

19 A So --

20 Q Don't you think it would be important to
21 notify law enforcement?

22 A Absolutely not, because he had -- there
23 had already been -- it was obvious because he had said
24 that there was already somebody taken care of.

25 Q Okay. You don't think it's important to

1 tell the police that they got the wrong guy?

2 A I had no idea what the case was about --

3 Q In that statement --

4 A -- at that point.

5 Q -- that e-mail or note to Ms. Decker you
6 said that you heard him talking to some kid, correct?

7 A Yes.

8 Q You don't say --

9 A I didn't -- I didn't know who it was. I
10 did not know her name.

11 Q Okay. You don't say in there I saw him
12 talking to some girl, right?

13 A No.

14 Q Just a kid?

15 A Right. I didn't say boy either.

16 Q Okay. Ma'am, I'm not trying to trick you.
17 I'm just trying to get to the truth.

18 A No.

19 Q Okay?

20 A I understand that. And I -- that's what
21 I've told you already. I don't --

22 Q This time period between May of 2011 to
23 the time in June or July of 2012 when you contacted
24 Ms. Decker did you talk to anybody else about that?

25 A No.

1 Q Did you talk to your mom?

2 A No.

3 Q Did you talk to anybody at the school
4 because you heard say -- somebody say something about
5 killing in school?

6 A (The witness shook head negatively.)

7 Q So at that point you didn't think it was
8 important at all?

9 A Yeah. I had no idea what was going on. I
10 had nothing to connect it with.

11 MS. KOPNICKY: All right. Thank you.

12 THE COURT: Any redirect?

13 MS. BENNETT: No, Your Honor.

14 THE COURT: Let me make sure I understand
15 your testimony. You heard -- you said you heard
16 admission of having gotten away with something
17 but you didn't know what it was?

18 THE WITNESS: He had said -- I was walking
19 to the vending machines and walked right past
20 him.

21 THE COURT: Uh-huh.

22 THE WITNESS: And I heard him say to her
23 that he had gotten away and that he thought that
24 he had killed them both. And then I heard him
25 talking about Jack, but I did not hear him say

1 anything about Cameron or about Jack's last name.

2 THE COURT: All right.

3 Any questions as a result of those
4 questions, Ms. Bennett?

5 MS. BENNETT: No, Your Honor.

6 THE COURT: All right. Thank you. You
7 may step down.

8 May she be excused?

9 MS. BENNETT: Yes, sir.

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THE COURT: All right. Any argument with
respect to the motion that's now before the
court, having heard the testimony of the
witnesses which were proffered?

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MS. BENNETT: Your Honor, I would say that
I would like the opportunity to lay the
foundation for how she came forth. But if the
court is going to, you know, require me to go
forward without doing that, I think at this point
there's no question that this is after discovered
evidence.

24

25

Prong number one is it appears to have
been discovered subsequent to the trial. Based

1 on her testimony, she did hear the information at
2 the end of the first trial but she did not come
3 forward until well after the second trial in
4 2012. She doesn't know Cameron. She didn't know
5 Jack. She knew Jacob Palmer and she heard what
6 she heard and that statement stuck with her. But
7 we cannot put upon a defendant even with due
8 diligence -- and I will submit to the court, Your
9 Honor, we've got many private investigators that
10 are -- that have tried to locate information for
11 him. He has been diligent that this witness
12 could not have been found.

13 And, again, so the -- the second prong
14 could not have been secured for use at trial in
15 the exercise of reasonable due diligence by the
16 movement. I think we satisfy that prong as well.

17 The third prong is not merely cumulative,
18 corroborative, or collateral. This is a third
19 party confession that was overheard by Ms. Wales
20 in the halls of Cox High School. She didn't know
21 what to do with that information, but it's
22 certainly quite relevant and not corroborative,
23 cumulative, or collateral. It is direct evidence
24 of guilt on the part of Mr. Palmer.

25 And, number four, it is material and

1 should as such produce opposite results on the
2 merits at another trial.

3 Your Honor, a third party confession of
4 this nature, right at the time frame of when
5 Mr. Cameron Crockett is convicted by a jury, soon
6 after -- I don't know whether or not the mistrial
7 had occurred at that point or not. She just
8 testifies it's towards the end of May. Cameron
9 Crockett is convicted of the offense of the
10 manslaughter of his friend Jack Korte. And in
11 the hallway in an area where perceivably
12 Mr. Palmer felt that he had some privacy to talk
13 with Ms. Vaughan he admitted to Ms. Vaughan in a
14 statement that he had gotten away with a crime,
15 that Jack Korte was dead. And that was that. He
16 was arrogant. And I think even just his demeanor
17 in relationship to the statements that he made is
18 another portion of it that is material and should
19 as such produce opposite results on the merits of
20 another trial.

21 There's absolutely no indication before
22 this court that Ms. Wales has any reason to
23 fabricate what she heard. She is confident that
24 what she heard was connected to the unfortunate
25 death of Jack Korte. And certainly it's

1 exculpatory to my client in a very significant
2 way, evidence that was not in the possession of
3 the defendant or anything of this profound nature
4 submitted at trial.

5 The case law is replete, Your Honor, with
6 statements that the court is not to weigh whether
7 or not the testimony is truthful. I would submit
8 that it is, but that's not the proper standard
9 for the court to consider at this point in time.
10 It's the matter of the evidence itself. Is it
11 material and likely to result in a different
12 outcome?

13 I'm certain that the Commonwealth is going
14 to reiterate their argument that many other
15 witnesses were presented, but no witnesses were
16 presented that were able to testify to this
17 evidence that is extremely exculpatory and
18 involves a statement -- that involves a third
19 party confession. So on that basis, Your Honor,
20 I would ask the court to grant a new trial for
21 Mr. Crockett.

22 And for clarification purposes, I didn't
23 get an opportunity to respond. Mr. Crockett did
24 handwrite his own motion to the court.

25 We do have a witness here named Tori

1 Miranda. She provided an audiotaped statement to
2 Cameron's mother as well as to Al Donker, who was
3 the investigator at that time, who is also here,
4 that Nicole Vaughan had stated to her that Jacob
5 Palmer had admitted to the offense of driving
6 this vehicle. We have had that in our possession
7 for quite some time. It was in the possession of
8 the defendant prior to the last trial.
9 Unfortunately Ms. Vaughan would not cooperate and
10 come forward. But that is the statement that
11 Mr. Palmer is referring to in terms of a third
12 party confession which doesn't necessarily rise
13 to that because we don't have direct evidence
14 from Mr. Palmer. It's Mr. Palmer's girlfriend
15 telling Tori Miranda.

16 THE COURT: Ms. Kopnicky.

17 MS. KOPNICKY: Judge, what Ms. Bennett is
18 trying to do is to get a new trial so that she
19 could impeach a witness that wasn't even called
20 at the last trial. And that's not a basis for a
21 new trial.

22 One, every time somebody gets new counsel
23 the plan of attack for a defense can't change or
24 else there would be this perpetual bite at the
25 apple until the end of time. You know, we're at

1 third counsel. This is now her -- a third theory
2 of the case or a third crack at some evidence
3 when Mr. Sacks made a strategical decision not to
4 call Mr. Palmer. And if the court grants a new
5 trial based on what Ms. Wales has said it would
6 be doing so only to allow a defendant to impeach
7 another witness' testimony which is not a basis
8 for granting a new trial.

9 What she said to you was that she heard it
10 in passing. She was walking to a vending
11 machine. Ms. Bennett had to ask her six or seven
12 times specifically what year this took place.
13 She was adamant absolutely it happened 2010. I'm
14 certain it was 2010. I know it was 2010. And
15 then Ms. Bennett says, Well, are you sure about
16 that year, which causes Ms. Wales to think, oh,
17 no. Maybe I'm wrong on the year. Maybe
18 Ms. Bennett wants me to say 2011.

19 The 2011 case was a mistrial. So for them
20 to allege that Palmer went -- hypothetically
21 Palmer went home and said he'd gotten away with
22 it in a public place where people are around is
23 absurd. There was no closure at the end of that
24 May 2011 trial. She's only heard part of a
25 conversation. The statement was -- excuse me. I

1 just got free. I thought I killed them both.
2 There's no indication as to what the other half
3 of that conversation was which presumably she
4 would have heard what this other kid said. In
5 that e-mail she doesn't even identify the sex of
6 the person she's talking about. But today it
7 just so happens to be Mr. Palmer's ex-girlfriend.
8 Might this have been a relaying to Ms. Vaughan
9 what the Crockett camp was saying about
10 Mr. Palmer? That's equally like -- equally a
11 possibility too, Judge.

12 I guess -- we don't think that this meets
13 the second prong of the test in order to grant a
14 new trial because the court has to take this in
15 light of all of the other evidence including the
16 cell phone records, including the eyewitnesses,
17 including Ms. Smith that saw nobody get out of
18 that car, including the individuals who were
19 walking around the vehicle, including the first
20 responders who said nobody else was in there,
21 including Officer Buechner who said he was laying
22 across the front seat, including Mr. Reid who
23 said his body was across the driver's seat that
24 was pressed down in the backseat, including
25 Ms. Patrick that said the back of the driver's

1 seat was pressed down, including Ms. Dixon who
2 said, I walked around the vehicle praying for
3 them and nobody left. There is no possibility,
4 Judge, that anybody else was in that vehicle.
5 And a jury has determined that twice. It's time
6 to put a rest -- it is time for closure for this
7 Korte family.

8 There is absolutely no evidence that --
9 even if what Ms. Wales says is true -- and I do
10 certainly not concede that that is the case --
11 that the outcome of the jury trial would be
12 opposite of what it was.

13 THE COURT: All right.

14 Well, the court, Ms. Bennett, at your
15 request -- as always we want to try to get to the
16 bottom of every case if we possibly can.

17 And the evidence which the court indicated
18 that it would hear, as proffered by the defense,
19 was that there were two witnesses who had
20 allegedly heard some confession made by a third
21 party which coincidentally, as pointed out by
22 Ms. Kopnick, could have been used for
23 impeachment purposes if, in fact, that situation
24 would have arisen. We now hear that one of those
25 denies that he ever made such a statement. And,

1 in fact, it is some rather disturbing information
2 by virtue of his testimony.

3 And the other witness gives some rather
4 vague testimony that supposedly encompassed a
5 statement overheard by her in a hallway some time
6 in either 2010 or 2011 or around May.

7 Having considered all that the court is of
8 the opinion that that evidence, which has been
9 heard by the court at your request, is not such
10 as would produce an opposite result on the merits
11 of another trial.

12 And consequently the court will overrule
13 your motion. Will note your objection and
14 exception to the court's ruling for the record.
15 And I've allowed you to make a good and complete
16 record, I believe.

17 That having been done we will, then, now
18 at this point in time proceed into the sentencing
19 phase of this trial.

20 MS. BENNETT: Yes, Your Honor.

21 And for purposes of the record I do want
22 to clarify my argument that a third party
23 confession is admissible as a statement against
24 interest and not just merely for impeachment
25 purposes. And so I would just ask the court to

1 note my objection on that basis as well.

2 THE COURT: All right.

3 Anything else that either counsel wants to
4 point out at this point?

5 MS. KOPNICKY: No, sir.

6 THE COURT: No?

7 All right. I necessarily would think,
8 Ms. Bennett, that you want to take a few minutes
9 to regroup, shall we say? And are you going to
10 be in a position to present evidence with respect
11 to sentencing in this case?

12 MS. BENNETT: Your Honor, my client
13 intends to testify.

14 THE COURT: I'm sorry?

15 MS. BENNETT: I say my client intends to
16 testify.

17 THE COURT: Okay.

18 MS. BENNETT: At this point that will be
19 our only --

20 THE COURT: Before we get to that, let me
21 make sure that you have had an opportunity to
22 review the presentence report which has been
23 previously filed with the court.

24 MS. BENNETT: I have, Your Honor. It was
25 not received until Wednesday.

1 THE COURT: Any objections or corrections
2 to any of the information contained in the
3 presentence report?

4 MS. BENNETT: No, Your Honor.

5 THE COURT: Commonwealth, have you had an
6 opportunity to review the presentence report?

7 MS. ANDERSON: We have, Judge. There are
8 no changes.

9 THE COURT: Any objections or corrections
10 to any of the information contained in the
11 presentence report?

12 MS. ANDERSON: No, Your Honor.

13 THE COURT: Will there be testimony with
14 respect to sentencing, not only as to the finding
15 of guilty on the voluntary manslaughter charge
16 but also to the failure to appear charge?

17 MS. BENNETT: Yes, Your Honor.

18 THE COURT: Everyone who intends to
19 testify with respect to sentencing with regard to
20 those charges, if you would, if you've not
21 already been sworn, please, stand and raise your
22 right hands.

23 (The witnesses were sworn.)

24 THE COURT: Commonwealth intend to call
25 any witnesses?

1 MS. ANDERSON: Judge, we do not. We do
2 have letters from both Jack's mom and dad that
3 I've shown to counsel. And we ask you to
4 consider the letters.

5 THE COURT: Do you have any objection,
6 Ms. Bennett?

7 MS. BENNETT: Your Honor, I do not. But I
8 do -- before we move on to sentencing --

9 THE COURT: Wait a minute. I'm sorry.
10 Okay.

11 MS. BENNETT: I do not have any objection
12 to that. And I've talked to my client about
13 that. He's perfectly happy for, you know, the
14 family to, you know, submit statements to the
15 court.

16 THE COURT: All right.

17 MS. BENNETT: But, Your Honor, if I may.
18 Just before we move on to that, my client did
19 file a motion before the court. And he would
20 very much like the opportunity to be heard on
21 that motion.

22 THE COURT: The motion which was filed
23 under your letter here is a motion, which we've
24 referred to earlier, which, I think, we probably
25 all know, is a motion essentially seeking a writ

1 of habeas corpus.

2 MS. BENNETT: I understand that, Your
3 Honor. I have explained that to my client. He's
4 asking that the court -- even if Your Honor would
5 not allow him to present evidence with respect to
6 every point that he makes in his motion, he has
7 indicated that he would like to have the
8 opportunity to present --

9 THE COURT: Well, you do understand -- I
10 think you agree with me, Ms. Bennett, this is
11 basically a habeas motion?

12 MS. BENNETT: I do, Your Honor.

13 THE COURT: And you do understand that
14 under the rules that such a motion requires
15 response from the individual alleged to have been
16 ineffective?

17 MS. BENNETT: I understand.

18 THE COURT: And which is all set forth in
19 the rules of procedure that we all know about.
20 So that will come, if appropriate, at another
21 time and at another place.

22 MS. BENNETT: Yes, sir. And if I just
23 may, Your Honor, on behalf of -- I do understand
24 that. And I've talked about it to Mr. Crockett
25 about the habeas issue. He is, I will tell the

1 court, adamant to get Mr. Palmer on the stand so
2 that the court hears the very inconsistent
3 statements that Mr. Palmer has made to the
4 Commonwealth and the investigator, Al Donker.

5 THE COURT: Well, I'm not going to limit
6 whatever he wants to testify to if he chooses to
7 take the stand in this segment of the trial.

8 MS. BENNETT: Yes, sir.

9 THE COURT: All right.

10 If you have the letters there, let me take
11 a look at those first. And then we'll hear from
12 whatever witnesses you have here.

13 MS. BENNETT: And, Your Honor, I would
14 like to take the court up on the opportunity to
15 regroup for a few moments before I call
16 Mr. Crockett as a witness, if Your Honor --

17 THE COURT: All right. We'll take about
18 five minutes or so and let me read through these
19 letters.

20 (The hearing recessed at 1:17 p.m. At
21 1:46 p.m., the hearing continued as follows:)

22 THE COURT: All right. The court will now
23 hear from witnesses, Ms. Bennett, that are
24 relevant to the sentencing phase of this trial.
25 And I would point out that this is the sentencing

1 phase of the trial. Your motions that have been
2 previously filed have been completely argued and
3 the record has been established with respect to
4 all of those motions. We're now in the
5 sentencing phase of the trial. And the evidence
6 presented must be relevant to that aspect of the
7 trial.

8 That having been said, are you ready to
9 call your first witness?

10 MS. BENNETT: Yes, Your Honor. I will
11 call Drew Firestone.

12 THE COURT: All right.

13 THE BAILIFF: He has been sworn, Your
14 Honor.

15 THE COURT: Thank you.

16 All right.

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1 the sentencing on manslaughter --

2 THE COURT: Well, let's wait 'til we get
3 to the question first.

4 MS. ANDERSON: Okay.

5

6 BY MS. BENNETT:

7 Q Was there any conversation between you and
8 Mr. Hoover or Mr. Birch about him being offered any
9 money for his testimony?

10 A No, ma'am.

11 MS. BENNETT: Thank you. I don't have any
12 further questions.

13 THE COURT: All right. Thank you, sir.
14 You may step down.

15 MS. BENNETT: And, Your Honor, I'll call
16 Beau Birch.

17 MS. ANDERSON: Judge, if I can, if this is
18 going to be the same exact question for Mr. Birch
19 it's certainly not relevant for sentencing.
20 Nobody was called to testify in the trial. It
21 doesn't have -- none of those facts came out in
22 the trial. It's not mitigating evidence for
23 sentencing or the failure to appear.

24 THE COURT: Well, it's been indicated that
25 these are witnesses that wish -- that the defense

1 wishes to call. So we'll go ahead -- I don't
2 know what he's going to say.

3 MS. ANDERSON: Okay. Well --

4 THE COURT: I'll allow him to be called.
5 And if the question is appropriate I'll allow it.
6 If it's not appropriate I won't.

7 MS. ANDERSON: Okay. Well, my
8 understanding it's going to be the exact same
9 question.

10 THE COURT: I guess we can't know that --

11 MS. ANDERSON: Okay.

12 THE COURT: -- until we see. All right.

13 MS. BENNETT: Your Honor, and I can just
14 say in response to that. I've advised the court
15 that I was calling Mr. Hoover with great caution
16 today. And the court did comment that it was
17 disturbing information that the court heard. And
18 therefore I would suggest that --

19 THE COURT: As I indicated, Ms. Bennett,
20 I'll let you call whomever you want to call. If
21 it's relevant to sentencing I'll allow it. If
22 it's not, I won't.

23 MS. BENNETT: Yes, Your Honor.

24 THE COURT: That's all I can do.

25 MS. BENNETT: Yes, sir. I will call Beau

1 Birch.

2 THE COURT: All right.

3 THE BAILIFF: He has been sworn, Your
4 Honor.

5 THE COURT: Thank you.

6 All right.

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9

10 BEAU BIRCH, called as a witness on behalf of the
11 defendant, having been first duly sworn, was examined
12 and testified as follows:

13

14 DIRECT EXAMINATION

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16 BY MS. BENNETT:

17 Q Could you, please, state your name for the
18 court reporter, please.

19 A Beau Birch.

20 Q Okay. And, Mr. Birch, do you know
21 Mr. Crockett?

22 A Uh-huh.

23 Q Cameron Crockett? You know his brother
24 Colin too, is that --

25 A (The witness nodded head affirmatively.)

1 THE COURT: You have to answer yes or no.

2 A Yes, ma'am.

3

4 BY MS. BENNETT:

5 Q Okay. And were you part of the group that
6 brought Mr. Hoover to the attention of Colin Crockett?

7 A Uh-huh. Yes, ma'am.

8 Q Okay. And can you tell the court -- at
9 any point in time did Mr. Crockett or anyone else
10 offer any money in exchange for Mr. Hoover's
11 testimony?

12 MS. ANDERSON: It's the same objection,
13 Your Honor.

14 THE COURT: Sustain the objection. Next
15 question.

16 A No. No.

17 MS. BENNETT: And, Your Honor, my only
18 argument would be -- to the objection would be to
19 reiterate what I already stated, that it was
20 pretty damning testimony, I guess, if you will,
21 from Mr. Hoover. I did present him as my
22 witness. I explained to the court what the
23 circumstances were surrounding him and cautiously
24 put him on the stand and just wanted to make sure
25 that the issue was clear to the court.

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THE COURT: All right.

MS. BENNETT: But this was not a
circumstance where money was exchanged or
offered.

THE COURT: Any questions of this witness?

MS. ANDERSON: No, Your Honor.

THE COURT: All right. Thank you, sir.
You may step down.

Who do we have next, Ms. Bennett?

MS. BENNETT: Your Honor, Jacob Palmer.

THE BAILIFF: He has been sworn, Your
Honor.

THE COURT: Thank you.

All right.

MS. BENNETT: Yes, sir.

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1 JACOB PALMER, called as a witness on behalf of the
2 defendant, having been first duly sworn, was examined
3 and testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MS. BENNETT:

8 Q Could you, please, state your name for the
9 court.

10 A Jacob Palmer.

11 Q Okay. How old are you, Mr. Palmer?

12 A Twenty years old.

13 Q And do you know Mr. Crockett?

14 A Yes, ma'am.

15 Q And how long have you known him?

16 A Give or take, ten years.

17 Q Okay. And at one point in time he was
18 your -- he taught you basketball; is that correct?

19 A Yes, ma'am.

20 Q Is that how you came in contact with him?

21 A I've known him a little before that.

22 Q Before basketball?

23 A Yes, ma'am.

24 Q Is he kind of like your basketball coach?

25 A Yeah, at one point, yes, ma'am.

1 Q Okay. Now, going back to the night of
2 December the 28th, 2008, were you at a party with
3 Cameron and Jack Korte?

4 A Yes, ma'am.

5 Q And as a result of being at that party you
6 had -- obviously that's the evening that Jack Korte
7 was unfortunately killed in a car accident. Do you
8 recall that?

9 A Yes, ma'am.

10 Q Do you remember where you were at that
11 time?

12 MS. ANDERSON: Objection, Your Honor.

13 This is not relevant for sentencing.

14 MS. BENNETT: Your Honor, our argument
15 would be that it is absolutely relevant for
16 sentencing purposes and mitigating based on the
17 fact that we've got numerous -- three statements
18 from Mr. Palmer that are inconsistent about his
19 whereabouts and has been submitted through the
20 defense that Mr. Palmer was, in fact, the driver
21 of the vehicle that killed Mr. Korte. And my
22 client would like an opportunity for the evidence
23 to be flushed out regarding --

24 THE COURT: Go ahead. I'll allow the
25 question.

1 MS. BENNETT: I'm sorry, Judge?

2 THE COURT: Go ahead.

3 MS. BENNETT: Okay.

4

5 BY MS. BENNETT:

6 Q So, Mr. Palmer, did you -- did you at any
7 time speak to anyone from the Commonwealth or the
8 police department regarding the accident that occurred
9 on December 28th, 2008?

10 A Yes, ma'am.

11 Q Okay. And when -- who did you speak to?

12 A I had spoke to both of them ladies right
13 in front of me.

14 Q To Ms. Kopnicky and Ms. Anderson?

15 A Yes, ma'am.

16 Q Was there anybody else present when you
17 spoke with them?

18 A I don't remember.

19 Q You don't remember? Do you remember when
20 you spoke with them?

21 A I don't remember.

22 Q Do you remember how many times you spoke
23 with them?

24 A Quite a few.

25 Q Did you speak to them more than two times?

1 A Yes, ma'am.

2 Q How many times?

3 A I don't remember.

4 Q And where did you speak with them?

5 A Over the telephone, in the courthouse.

6 Q Okay. Did you ever go to their office and
7 be interviewed?

8 A Yes, ma'am.

9 Q And how many times were you interviewed in
10 the office?

11 A I think about two times.

12 Q And in addition to those two times did you
13 ever speak with them specifically about any facts
14 related to the accident?

15 A No, ma'am.

16 Q Well, did they question you about any
17 facts other than those two times in relation to the
18 accident?

19 A I don't remember.

20 Q Do you remember where you were that night?

21 A I was at Kevin Rondorff's house.

22 Q And how long were you there?

23 A I don't remember.

24 Q You don't remember how long you were
25 there?

1 A No, ma'am.

2 Q Do you remember -- did you spend the night
3 there?

4 A I don't remember.

5 Q Do you remember telling anybody whether or
6 not you spent the night there?

7 A No, ma'am.

8 Q Do you remember how you learned of Jack
9 Korte's death?

10 MS. ANDERSON: Judge, I'm going to object
11 again. I don't know how he learned of Jack's
12 death, where he remembered staying the night has
13 anything to do -- I think we all know what's
14 going on here. This is completely inappropriate
15 for sentencing.

16 THE COURT: Ms. Bennett, I've allowed you
17 quite a bit of latitude. If it's anything that
18 this witness can testify to relevant to
19 sentencing in this case I'll allow the question,
20 but it has to be with respect to that.

21 MS. BENNETT: Yes, Your Honor.

22 THE COURT: We can't retry the case.

23

24 BY MS. BENNETT:

25 Q Do you recall on that evening whether or

1 not there was a conversation about smoking a blunt
2 with Jack and Cameron?

3 A I don't remember, ma'am. It was almost
4 five years ago now.

5 Q Okay. Do you recall in your first
6 interview stating to the Commonwealth --

7 MS. ANDERSON: Judge, specific statements
8 about what he may or may not have said would have
9 been relevant during the trial if he was called
10 as a witness but are certainly not relevant for
11 sentencing.

12 THE COURT: She's right, Ms. Bennett.

13

14 BY MS. BENNETT:

15 Q Now, that evening did you try to check on
16 Jack and Cameron?

17 A Yes, ma'am.

18 Q Okay. And, in fact -- were you texting
19 them to see if they were okay?

20 MS. ANDERSON: And, Judge, this would have
21 come out in trial. The text records and phone records
22 of both Mr. Palmer and Mr. Crockett were admitted in
23 trial. It's not relevant for sentencing.

24 MS. BENNETT: Well, I think it is relevant
25 for sentencing. It was part --

1 THE COURT: Go ahead.

2

3 BY MS. BENNETT:

4 Q Did you text -- did you send any text
5 messages to Cameron or Jack?

6 A I believe so.

7 Q Okay. And why did you do that?

8 A Because they were gone for a while.

9 Q What did you do after Jack and Cameron
10 left the apartment?

11 MS. ANDERSON: Objection, Judge. What he
12 did after Cameron and Jack left the apartment is
13 not relevant in any way for the sentencing
14 hearing.

15 THE COURT: Sustain the objection.

16 Next question.

17

18 BY MS. BENNETT:

19 Q Now, did you contact Cameron Crockett on
20 January 8th, 2009 after he bonded out of jail?

21 MS. ANDERSON: Judge, anything that
22 happened after the night of the offense, unless
23 it's somehow related to his sentencing, it's
24 certainly not relevant.

25 THE COURT: If it's related to the

1 sentencing I'll allow the question.

2

3 BY MS. BENNETT:

4 Q Did you make contact with him? Did you
5 call him?

6 A I'm sure. We were friends at the time.

7 Q And did you specifically ask him what
8 happened?

9 MS. ANDERSON: Judge, objection again. I
10 mean, I don't want to be disrespectful to
11 Ms. Bennett and I understand what's going on here
12 but this is completely inappropriate.

13 THE COURT: Sustain the objection.
14 Next question.

15 MS. BENNETT: Your Honor, I'd just ask for
16 the ability to ask him specific questions
17 regarding his whereabouts that night as it
18 relates to the fact that my client will testify
19 once he's on the stand regarding his not showing
20 up for the court back in -- on March 5th of 2012.
21 That's directly related to the fact that certain
22 evidence was not presented by trial counsel. And
23 I think that Your Honor should hear what that
24 evidence would be because the strength of that
25 evidence is part and parcel, I believe, in

1 judging Mr. Crockett's decision to not appear in
2 court on March the 5th.

3 MS. ANDERSON: Judge, this is all -- I
4 mean, I think it's obvious this is all an attempt
5 per Mr. Crockett's motion and his habeas motion
6 to get evidence on the record to perhaps build
7 that motion to do what he's claiming he had
8 wanted to do the whole time and yet never did.

9 What Mr. Palmer has told anybody about
10 where he was that night is not relevant. It's
11 not admissible for sentencing. Mr. Crockett can
12 present mitigating evidence but he certainly
13 cannot present evidence that he is not guilty of
14 the crime. I mean, that's certain in the case
15 law. So this is inappropriate and it's
16 inadmissible.

17 THE COURT: Ms. Bennett, I've tried to
18 bend over backwards to allow you as much latitude
19 as I possibly can. We're all here under certain
20 rules that we have to abide by.

21 MS. BENNETT: I understand.

22 THE COURT: You understand that.

23 MS. BENNETT: I do understand that, Your
24 Honor.

25 THE COURT: And --

1 MS. BENNETT: I perfectly and thoroughly
2 understand that.

3 THE COURT: And as such the court is bound
4 by it.

5 MS. BENNETT: I understand that, Your
6 Honor. And as well as an officer of the court --

7 THE COURT: So that having been said, I
8 sustain the objection.

9 MS. BENNETT: Thank you. I don't have any
10 further questions.

11 THE COURT: Any questions of this witness?

12 MS. ANDERSON: No.

13 THE COURT: Thank you, sir. You may step
14 down.

15 Who do we have next, Ms. Bennett?

16 MS. BENNETT: Your Honor, I'll call
17 Cameron Crockett.

18 THE COURT: All right.

19

20 -----oOo-----

21

22

23

24

25

1 CAMERON PAUL CROCKETT, the defendant, called as a
2 witness on his own behalf, having been first duly
3 sworn, was examined and testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MS. BENNETT:

8 Q Mr. Crockett, I'd like for us to first
9 talk about your presentence report. You had made some
10 statements in your presentence report regarding your
11 friend Jack Korte and his life. Could you tell the
12 court how you feel about your friend, Jack Korte.

13 A To put it quite simply, there aren't words
14 for it. Jack was my best friend. And I -- even
15 though I have very strong friends and obviously very
16 strong support in here today the bond that I had with
17 Jack, the short time that I did have it with him, is
18 more special than anything that I have now or will
19 have in the future specifically because in the twenty
20 years that I had lived -- up to that point in time
21 when Jack died we were both twenty -- no one had ever
22 challenged me, intellectually, emotionally,
23 spiritually like he did to succeed in life, to keep
24 improving myself. He was always there. He was always
25 one step ahead of me. Better in everything.

1 Basketball. Didn't matter. School. He was always
2 one step ahead of me. Research, independent studies.
3 One step ahead of me. He always pushed me further and
4 further and further. Always encouraged me. And for
5 that I loved him very much.

6 And he and I, in the last year that he
7 lived, hung out just about every day we had the
8 opportunity to. Even when he was in George Mason
9 University and I was at ODU I made frequent trips up
10 there to visit him because of the fact that I was
11 willing to spend whatever money it took to go spend
12 time with him because I had no comparable friendship
13 here in Norfolk or Virginia Beach.

14 Q And do you recognize the difficulty that
15 these past four years has caused his family?

16 A Absolutely. I hate for them as I hate for
17 my own family.

18 Q And is there anything specific that you'd
19 like to say in that regard in terms of what they've
20 had to suffer and go through --

21 A Absolutely.

22 Q -- over these past four years?

23 A No family should ever have to go through
24 it. No family should.

25 And the fact of the matter is I have never

1 fabricated anything in this case. Jacob Palmer was
2 driving the car on the night of the accident. And
3 that's precisely why when the questions we were
4 allowed to ask him he said, I don't remember. I don't
5 remember. I don't remember.

6 And if you get down to his statements, if
7 you look at it and look at the phone records and look
8 back at what Josh Reddy and Ammarrell Barretto
9 testified to at trial, both trials, you will find that
10 he not only lied about what he did when Jack and I
11 left the -- Jack and I left the party, he stated quite
12 clearly he stayed at the apartment. Why then did Josh
13 Reddy and Ammarrell Barretto both testify that he left
14 the party the exact same time we did? And not only
15 that, directly after, the fact that he asked Josh
16 Reddy what he wanted from the store. Not only that,
17 let's go onto his other statements.

18 He lied in two entirely different ways as
19 to how he first found out about the accident. First
20 and foremost, he stated that he found out --

21 MS. ANDERSON: Objection, Your Honor.

22 First, this is non responsive to the question.

23 THE COURT: I'm going to give him the
24 opportunity to say whatever he wants to say.

25 MS. ANDERSON: Okay.

1 A He stated that he first found out about
2 the accident from a text from Kevin Rondorff that
3 stated, RIP Jack Korte, while he was at Kathleen
4 Fisher's house between 8:30 and 9:00 in the morning on
5 December 29th. A review of his phone records shows a
6 gap of absolutely no incoming or outgoing activity
7 between 7:29 a.m. and 10:46 a.m. That was a lie. He
8 lied to this prosecution when he told them that.

9 And when our investigator interviewed him
10 on April 20th, 2009 when he told our investigator, Al
11 Donker, that my brother texted him on December 29th,
12 2008 and told -- told our investigator that my brother
13 had told him, Oh, hey, the accident happened at 6:00
14 a.m., that's how he first found out, that was a lie.
15 A review of his records also proved that.

16 And then when he changed his story in his
17 third interview and stated, oh, he left the party
18 because he took Lynn Perotti and Annie Haines home,
19 that's also a lie.

20 A review of his records will show that
21 from roughly 4:30 in the morning to 7:30 in the
22 morning he's texting Lynn Perotti back and forth every
23 minute. Every minute. You'll see it. Review the
24 records. And he claimed in that third statement to
25 you two prosecutors that he was sleeping in bed with

1 Lynn Perotti. That's not true.

2 And also, if I may add one last thing,
3 Ms. Bennett. In regards to the seatbelt evidence that
4 was heard today or would have been heard today if
5 Dr. Pape had been allowed to testify, he stated to our
6 investigator, peculiarly enough, that, I always wear
7 my seatbelt, and that he would not be surprised had I
8 not jumped into the backseat after impact. And he
9 also volunteered that I never let anyone drive my car.

10

11 BY MS. BENNETT:

12 Q And did you know Jacob Palmer well enough
13 for him to know whether those attributes about
14 yourself or driving particular areas or details
15 exists?

16 A No. We played basketball together and
17 that was the extent of our relationship. And we
18 occasionally smoked marijuana together.

19 Q Now, going to the issue of the failure to
20 appear, can you explain to the court in your words
21 what was going through your mind.

22 A Absolutely. I will say first and foremost
23 to His Honor Judge Lowe that it was not meant as any
24 sort of disrespect to you personally or to the court.

25 In my mind I believed what Martin Luther

1 King said in his letter from a Birmingham jail. It
2 was very pertinent when he said that an unjust law is
3 no law at all. And the law requiring me to appear on
4 that day is unjust by simple nature of the fact --
5 virtue of the fact that that verdict is incorrect.
6 The verdict of guilty is and always will be incorrect.

7 And as far as I'm concerned, I also believe
8 what Jacques Cousteau wrote in 18th century when he
9 stated that, We as men are obligated to obey powers
10 only that are legitimate. An incorrect verdict is not
11 a legitimate power.

12 And I placed -- you know, for better or
13 for worse, the fact of the matter is I've been honest
14 throughout this entire four year process and I'm not
15 about to start being dishonest now. The fact of the
16 matter is, as far as I was concerned, I placed
17 principles over prudence. And when it comes down to
18 it I was -- in my mind there is nothing more cowardly
19 than to meekly bow down and bend over and accept an
20 injustice. That is just not who I am, not who I was
21 brought up to be, and never will be who I am.

22 Q You had stated in your presentence report
23 that you would still -- you said, quote, I'll still
24 trade my life for Jack's in an instant, but the family
25 enduring -- an endurement awaiting me are Heaven on

1 Earth. Is that how you feel?

2 A Indeed. If I can get my -- if somehow
3 that's possible, if I can trade my life for Jack's,
4 I'd do it in a split second. I would have done it
5 four years ago. I'd do it now. I'd do it fifty years
6 from now.

7 Q And you know that the argument is is
8 that -- and I understand what you're saying about the
9 fabrication -- but that you have fabricated this
10 story, that, you know, this is just your effort to
11 avoid prosecution in any way possible. Do you have
12 anything to say regarding this?

13 A I don't have a thing to say about it. To
14 suggest that is ridiculous. And just on top of that,
15 I fled to avoid jail or prison time is even more
16 ridiculous.

17 As His Honor will recall -- and certainly
18 I stood here for four years of proceedings, which
19 included three bond revocation hearings. Andrew Sacks
20 advised me on each occasion that there was a strong
21 likelihood that my bond would be revoked. I still
22 came in here and still put myself to the test because
23 that was the fact of the matter.

24 However, when it came down to the verdict
25 having been rendered and there was no mistrial and

1 there was finality to it -- and I was hoping today
2 that perhaps that finality would be overturned. But
3 when it came down to it, the argument that I'm just
4 trying to avoid prosecution is ludicrous. I've been
5 here the whole time minus, of course, my decision to
6 flee to Guatemala which, like I said, was principle
7 over prudence.

8 Q And, you know -- let me rephrase that a
9 little bit, though -- or rephrase the assertion that
10 you have presented fabrication in an effort to avoid
11 prosecution. You've maintained your innocence,
12 correct?

13 A Yes.

14 Q And you speak of being principled. Can
15 you tell the court what your inclination would be in
16 terms of taking responsibility if you -- if you were
17 guilty of this offense.

18 A If I were guilty of the offense this would
19 have been over a long time ago. The presentence
20 report, as you know, suggests probation, no
21 incarceration to six months. I have no record. The
22 fact of the matter is if I was guilty of my best
23 friend's death, an accidental death of my best friend,
24 I would have been the first person to stand up and say
25 I'm responsible for it. Give me the time that is

1 necessary, that this court feels is necessary, or a
2 jury feels is necessary, and let's get it in the past.
3 Let's get it over with and try and mend our lives and
4 move on.

5 Q And in the medical records there's an
6 indication that you were suicidal on the night of the
7 accident. Do you recall that?

8 A Yes.

9 Q Can you talk to the court about that.

10 A At that point in time when I was in the
11 hospital none of the recollections that I testified to
12 having had in the days following the accident, none of
13 them had occurred to me at that point in time. And
14 the only knowledge that I had literally, the only
15 knowledge I had of the accident or that night was
16 waking up to Officer Wallace in my face. I didn't
17 know why I was in the hospital. I didn't know what
18 had happened. And as the audiotape interview with him
19 and I preserves to this day, I didn't know I was in an
20 accident. The fact of the matter is I just had no
21 idea what was going on at that point in time.

22 Q Okay. And you were told that your friend
23 Jack had died in the accident. And there's a
24 reference in the -- it's been referenced in different
25 aspects of the media that you had indicated -- your

1 response to the hearing that your friend had passed
2 away, that you said, That figures. Can you explain
3 that to the court.

4 A As I've testified to, I believe, in both
5 trials, that comment goes directly back to what I
6 could do if I -- well, what I would do if I could,
7 rather, in trading my life for Jack's. It would
8 figure to me it would be my luck in life that my best
9 friend perished and had me left here to be held
10 responsible for it.

11 Q Now, Mr. Crockett, can you tell the court
12 what your plans are for the future at this stage of
13 your life.

14 A Excuse me. I find it ironic to consider a
15 future in which I stand convicted wrongly for my best
16 friend's death. I don't consider that a future in any
17 sense of the word. No matter what I go on to do,
18 doesn't matter. Doesn't matter. I can be an
19 acclaimed writer, lawyer, professional basketball
20 player. It doesn't matter. There's no future.

21 Q Mr. Crockett, is there anything else you
22 would like to say to the court at this time?

23 A It would appear to me that this injustice
24 cannot be reversed. I'd like to reiterate I've never
25 fabricated anything in this case. Ms. Kopnick said

1 herself that I testified to a phantom driver. If I
2 were to fabricate something don't you think I would
3 have said, yes, I saw his face? Yes. I remember
4 everything. Yes, it was Jacob Palmer, this that and
5 the other. I would not have come to you with a
6 piecemeal memory and testify to things that I know
7 look shady on the stand. I've been honest all along.

8 And obviously it deeply troubles me that
9 we're at a point in time here where this injustice
10 cannot be reversed. And I can only pray that the
11 court will consider that in sentencing, although,
12 being a man of principles over prudence, it matters
13 very little at this juncture.

14 MS. BENNETT: Thank you, Mr. Crockett. I
15 don't have any further questions. If you could
16 answer the Commonwealth attorney.

17 THE COURT: Any questions, Ms. Anderson?

18 MS. ANDERSON: Yes, Your Honor.

19

20 CROSS-EXAMINATION

21

22 BY MS. ANDERSON:

23 Q Mr. Crockett, you said you and Jack were
24 friends for a short time. How long was that?

25 A We knew each other from middle school

1 onward.

2 Q Okay.

3 A So that would be roughly age thirteen or
4 fourteen to twenty.

5 Q Oh, okay. So you're considering that
6 seven year period a short time?

7 A Yes, considering that he should have lived
8 much longer than twenty years. Yes. You can consider
9 that a short period of time.

10 Q Okay. Now, when was it that you decided
11 to go to Guatemala?

12 A When was it?

13 Q Yeah.

14 A Honestly?

15 Q Preferably.

16 A The second that Judge Lowe had read the
17 verdict.

18 Q Okay. So when court was adjourned and we
19 all decided to come back on Monday you knew at that
20 point that you weren't coming back?

21 A Yes.

22 Q And had you already planned how you were
23 getting to --

24 A No.

25 Q No?

1 A No plans were made.

2 Q So how did you -- how did you get down
3 there?

4 A How did I get down there?

5 Q Yes, sir.

6 A I believe I already --

7 MS. BENNETT: And, Your Honor, I'd object.
8 That goes beyond cross -- direct examination.

9 THE COURT: I let you ask anything you
10 wanted to.

11 Go ahead.

12 A How did I get down there?

13

14 BY MS. ANDERSON:

15 Q Yes, sir.

16 A I took a bus to the border. Okay?

17 Q Okay.

18 A And at the Texas border I crossed by
19 pedestrian on foot.

20 Q Okay.

21 A And from that point in time I took an
22 airplane from Nuevo Laredo to Mexico City. I stayed
23 there one night. And then I took a plane from Mexico
24 City to Guatemala City.

25 Q Okay. And when did you come up with that

1 plan?

2 A On the fly. I had no plan. I had
3 confidence that the evidence would show that I was not
4 guilty.

5 Q Okay.

6 A I had not planned before the trial.

7 Q Okay. So on that Friday that there was no
8 court and then Saturday and Sunday, what day did you
9 get on the bus?

10 A What day did I get on the bus?

11 Q Yes, sir.

12 A I don't recall exactly.

13 Q Okay. But you didn't have a plan? You
14 were just hoping everything would work out?

15 A Yes.

16 Q Okay. You had your passport, though?

17 A Yes, I did.

18 Q Did you get a new one made or did you take
19 that from prior counsel?

20 A I took it from prior counsel.

21 Q And when --

22 A As a matter of fact, I took it from prior
23 counsel when he told me that he would not be calling
24 Jacob Palmer to the stand.

25 Q Okay.

1 A And I knew from previous experience what
2 that renders as far as results were concerned in that
3 jury trial.

4 Q Okay. And how long before the jury
5 rendered a guilty verdict was that?

6 A I don't recall exactly. It was one of the
7 last meetings we had together.

8 Q Okay. So maybe a week before?

9 A I don't recall exactly.

10 Q Okay. And why did you pick Guatemala?

11 A Why Guatemala?

12 Q Yeah.

13 A Because I didn't want to go to Mexico and
14 I speak Spanish fluently.

15 Q Okay. You didn't pick Guatemala because
16 of their extradition?

17 A No, considering that there are at least
18 eight different countries in Latin America that have
19 extradition laws such that extradition is not
20 permissible when it comes to involuntary manslaughter.
21 No, I could have gone to any number of countries.

22 Q Okay. So that wasn't a factor when you
23 picked Guatemala?

24 A No.

25 Q How long did you plan to stay down there?

1 A As long as I could have made it.

2 Q You actually filed some motions in
3 absentia while you were down there, correct?

4 A I did.

5 Q And is there something that would have
6 brought you back voluntarily?

7 A Voluntarily?

8 Q Yeah.

9 A What are -- I don't understand your
10 question.

11 A Would you have come back voluntarily at
12 some point had the Virginia Beach Police Department
13 and the United States Marshal Service gotten a hold of
14 you first?

15 A That's too theoretical. I'm mean, you're
16 asking me to speculate as to what manner of things I
17 don't know that could possibly happen in a theoretical
18 future.

19 MS. ANDERSON: All right. That's all the
20 questions I have.

21 THE COURT: Any additional questions?

22 MS. BENNETT: I do not, Your Honor.

23 THE COURT: I'm sorry?

24 MS. BENNETT: I do not.

25 THE COURT: All right.

1 Thank you, sir. You may step down.

2

3

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4

5 THE COURT: Any other evidence to present?

6

7

MS. BENNETT: No, Your Honor, just
argument.

8

9

THE COURT: Commonwealth have any evidence
to present?

10

11

MS. ANDERSON: Just the letters from
Jack's mom and dad.

12

13

14

THE COURT: All right. I have those up
here marked filed and made a part of the record
in the case.

15

All right. I'll hear any argument.

16

MS. ANDERSON: I'll respond, Judge.

17

THE COURT: Ms. Bennett.

18

MS. BENNETT: Yes, Your Honor.

19

20

21

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25

I must say that this presentence report is
probably one of the most compelling that I've
seen in my career in terms of the fact that we
have a young man that comes before the court with
no prior record of any significance other than a
couple of minor traffic infractions prior to this
incident. He was a college student. He was

1 living his life the right way. This is a very
2 unfortunate set of circumstances that he's found
3 himself in.

4 Your Honor, what I do want to point out to
5 the court -- and I -- Mr. Crockett has already
6 pointed out to the court -- is that had this
7 matter been tried by a court -- by a judge as
8 opposed to a jury, that this would have resulted
9 in probation, no incarceration or incarceration
10 of six months in terms of a recommended guideline
11 amount. And that's including both the failure to
12 appear [sic] as the primary offense and the
13 failure to appear as well.

14 Judge, this is a very difficult case. And
15 certainly I had reservations about getting into
16 it when I saw all that there was.

17 I represented to the court that based on
18 the evidence that was presented today that my
19 client stands before the court a man that is not
20 guilty of the underlying offense of involuntary
21 manslaughter. He's maintained that through
22 sentencing.

23 It would be preferable, I suppose, as
24 defense counsel for a client to come in and
25 apologize and throw themselves at the mercy of

1 the court and tell the court I promise I'll never
2 do it again and I'm sorry I didn't accept
3 responsibility. I'm accepting it now. Please go
4 gentle on me. Please go down below the jury's
5 recommendation. But that's not what Cameron
6 Crockett did today.

7 He got on the stand and talked about how
8 devastating it was for him -- as well as the
9 family of Jack Korte and his family as well -- to
10 be living through this and that he is not guilty
11 and that the things that he's done have not
12 necessarily been because he had criminal intent
13 to fail to appear in court, although he did that
14 fail to appear, he did plead guilty to that
15 offense, but that he did it on principle. He did
16 it because he felt that it was a principled thing
17 to do to not go to prison for a crime that he did
18 not commit, to stand up and say this is not right
19 and to demonstrate the injustice of it.

20 Your Honor, I'm going to ask the court to
21 do something that does rarely ever occur. And I
22 am going to ask the court to follow the guideline
23 recommendations and the presentence report.

24 This is a young man that does have a
25 future. And we can see that based upon how he

1 lived his life prior to this offense and even
2 during the time that he was out on bond, that he
3 does, in fact, have a future. And certainly has
4 the ability -- very intelligent. Has the ability
5 to be a significant contributor to society
6 despite the fact that he feels that his life is
7 over at this point as a result of this
8 conviction.

9 So I would ask Your Honor to, please, in
10 light of -- Your Honor can't ignore the evidence
11 that Your Honor heard today regarding the
12 seatbelt mechanism, the statements. There's a
13 lot of -- there's a lot of concern, I think, that
14 certainly supports -- and a lot of evidence that
15 supports my client coming forward and saying I
16 didn't have a fair -- I didn't have a fair deal
17 with my trial. I didn't get the information in
18 that I wanted to get in. And I saw the writing
19 on the wall. I was convicted by a jury for the
20 second time. I wanted information before the
21 court that didn't come into court. And yes, I
22 left. But at the same time, Judge, I think it
23 would be very difficult to discount all that Your
24 Honor heard, all that Your Honor saw in the
25 motion, the report from the seatbelt expert.

1 We're clearly -- there's no question that
2 Cameron Crockett was not a belted driver in the
3 vehicle. And the evidence that was submitted
4 today as part of the motion supports that whoever
5 was in that driver's seat, whether it was Jacob
6 Palmer or whoever else, was belted in that
7 driver's seat. And that supports my client's
8 theory of innocence. And I also suggest that it
9 supports his statement on the stand today that he
10 didn't commit this offense. He was found guilty
11 but he didn't commit it.

12 And, again, I'd ask Your Honor to, please,
13 depart from the recommendation of the jury and
14 sentence my client in accord with the guidelines.

15 MS. ANDERSON: Judge, Ms. Bennett is
16 absolutely correct. Mr. Crockett does have a
17 future ahead of him. And I'm actually going to
18 suggest it's a fairly good one.

19 He's clearly a bright and intelligent,
20 young man. He has clearly been in pretty much
21 control of every step of this trial. He has been
22 present. He has been alert. He practically
23 directs defense counsel at every step of what to
24 do. And so to suggest that his life is over or
25 that he has no future is without any basis

1 whatsoever. When he serves his time, he will get
2 out. And if you read the presentence report, the
3 things that he wants to do, I have absolutely no
4 doubt he will accomplish those things.

5 But what is unbelievable to the
6 Commonwealth and what seems to become a victim of
7 the trial process is the absolute absence and
8 recollection of the victim's life that was taken.

9 He, Jack, will not have a future. And all
10 we ever do is talk about the defendant and how it
11 affected them and what it means for them and what
12 their past is like and what kind of person
13 they'll be in the future. We hardly ever talk
14 about the person whose life was taken.

15 Jack Korte was a beautiful young man who
16 had a brilliant future ahead of him. He also was
17 a good, decent person who loved his family, whose
18 family loved him, who was in college and was
19 going to change the world. And that will never
20 happen now because of this incident.

21 The jury listened to the evidence. And,
22 if the court recalls, Mr. Crockett had the option
23 of being sentenced by the court which is what the
24 Commonwealth asked. Mr. Crockett did not want to
25 take advantage of that. And so to now ask the

1 court to sentence him after he gets a verdict in
2 a sentence from a jury that he does not like is
3 completely disingenuous.

4 As far as the failure to appear goes, I'm
5 sure the court's aware that there are different
6 types of failures to appear. There can be no
7 more egregious failure to appear than this one.

8 He deliberately stole his passport ahead
9 of time. He consciously made the decision to
10 leave the country. He left Jack's family,
11 everybody in this courtroom, a jury of twelve
12 members, sitting around on a Monday afternoon for
13 hours. His family out in the hallway. Everybody
14 acting like they had no idea where he was. His
15 mom crying. All of that while he's on his way to
16 Guatemala out of not some desire not to go to
17 jail but out of some principled view -- excuse
18 me -- view of the way this process works. This
19 process is what the process is. And there is no
20 better process.

21 This was a long jury trial where evidence
22 was presented on both sides, lots of it. And the
23 jury took their time in deciding what to do. Not
24 only did he leave the country in an effort not to
25 be picked up, but then he blatantly and

1 arrogantly in disrespect of anything that this
2 court stands for sent in motions in absentia.
3 That is an unbelievable slap in the face of this
4 process.

5 So if anybody were to get sentenced to the
6 maximum for a failure to appear it would be
7 Mr. Crockett in this case. And that would be
8 based on everything that he did and not anyone
9 else but himself.

10 THE COURT: All right. Thank you all for
11 your presentations. I'll take a short recess and
12 I'll come back out and we'll announce the
13 sentences. Thank you.

14 (The hearing recessed at 2:27 p.m. At
15 2:59 p.m., the hearing continued as follows:)

16 THE COURT: The court is ready to
17 pronounce its sentence in this case. Before
18 doing so, Mr. Crockett, the court would ask if
19 there's anything further you wish to say?

20 THE DEFENDANT: There is, Your Honor.

21 THE COURT: All right.

22 THE DEFENDANT: And, as a matter of fact,
23 there's plenty that I want to say and at the same
24 time very little I want to say. So given that.

25 They say that victors write history books.

1 I say that's fine. Let the victors write their
2 human history books. But as far as God's
3 concerned, there's one book far more important
4 than any other in human hands and that is the
5 Book of Truth, the Book of Justice. And I've
6 walked before him in truth for four years. And
7 that's the fact of the matter.

8 Nothing further to say, Your Honor.

9 THE COURT: That having been said, the
10 court prior to pronouncing its sentence, will
11 take this opportunity to review to some extent
12 the background in this case.

13 The court would point out, as has been
14 pointed out by counsel for both sides, that this
15 matter has continued on for a long period of
16 time. There have been three separate defense
17 attorneys involved in this case. All of them,
18 quite frankly, are highly experienced and skilled
19 defense attorneys.

20 There have been two jury trials in this
21 case, one which resulted in a verdict of guilty
22 but which -- in which case the jury was unable to
23 decide on an appropriate sentence. Because of
24 that the court was obligated to, under the
25 circumstances, declare a mistrial.

1 There was a second jury trial in this case
2 in which the jury, after hearing all the evidence
3 of a very long trial, found the defendant in the
4 case not guilty of the crime that was charged,
5 which was aggravated involuntary manslaughter,
6 but guilty of a lesser included offense of
7 involuntary manslaughter. That occurred, as I
8 recall, late on a Friday afternoon. And, based
9 upon then defense counsel's promise to the court,
10 having indicated that Mr. Crockett had appeared
11 at every possible hearing prior to that time, the
12 court, against its better judgment, allowed
13 Mr. Crockett to remain on bond pending his return
14 on Monday for sentencing. And, of course, as has
15 been pointed out by counsel, that did not occur.
16 Under the circumstances and under the law, we
17 proceeded on with the sentencing phase of the
18 trial.

19 We have since that time gone through
20 numerous subsequent motions. And the court has
21 attempted to be as liberal as it possibly can to
22 allow third counsel in this case.

23 The court is bound by certain rules that
24 it must follow and is bound by the law that it
25 must follow. And this court believes that it has

1 done so. What perhaps may come at a later time
2 will remain to be seen.

3 But as we stand here now the court will
4 confirm the jury's verdict, find him guilty of
5 involuntary manslaughter, and impose the sentence
6 as set forth in the jury's verdict of five years
7 in the Virginia Department of Corrections.

8 With respect to the felony failure to
9 appear charge the court will -- having heard
10 previously the plea of guilty and the stipulated
11 evidence with respect to the felony failure to
12 appear charge, will enter a finding of guilt to
13 the felony failure to appear charge. And the
14 court has struggled with respect to what would be
15 an appropriate sentence for this particular
16 charge.

17 Indeed, as pointed out by the
18 Commonwealth's attorney, there probably has not
19 been a case of a failure to appear that has quite
20 been as unusual as this one has been. And I've
21 listened to Mr. Crockett's statement both from
22 the witness stand and in allocution just a few
23 moments ago. The court -- the court notes
24 parenthetically that the maximum sentence that
25 can be imposed on a felony failure to appear

1 charge is five years, it being a Class VI felony.
2 And based upon the facts in the case the court
3 feels that Mr. Crockett deserves every day of
4 that five years. But also having thought through
5 this and realizing that the jury verdict of five
6 years for the underlying charge is all that can
7 be imposed and realizing that five years for a
8 failure to appear is all that can be imposed and
9 believing, under the circumstances of this case,
10 that there ought to be some period of supervision
11 subsequent to Mr. Crockett's release.

12 The court with respect to the failure
13 to -- felony failure to appear will impose a five
14 year sentence, will suspend the execution of two
15 of those years conditioned upon good behavior for
16 a period of two years, supervised probation. Of
17 course, the court costs would be required. That
18 having been said, the active sentence imposed is
19 one of eight years.

20 I will advise Mr. Crockett of his right to
21 appeal and to file such post trial motions as may
22 deem to be appropriate under the circumstances.
23 Noting that Mr. Crockett is in custody and not
24 knowing what plans there might be for such an
25 appeal, if it appears that Mr. Crockett is

1 indigent the court will appoint counsel to take
2 such post trial action as it -- counsel may deem
3 appropriate.

4 That having been said, is there anything
5 further that we need to do at this time,
6 Ms. Bennett?

7 MS. BENNETT: No, Your Honor.

8 THE COURT: Ms. Kopnicky?

9 MS. KOPNICKY: No, Your Honor. Thank you.

10 THE COURT: Ms. Anderson?

11 Thank you all very much.

12 (The hearing concluded at 3:07 p.m.)

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CLERK'S CERTIFICATE

I, Tina E. Sinnen, Clerk of the Circuit Court of Virginia Beach, Commonwealth of Virginia, do hereby certify that the foregoing is a true and correct copy of the proceedings had in the case of the Commonwealth of Virginia versus Cameron Paul Crockett, the defendant, and that the same were lodged and filed with me as Clerk of said Court on this ____ day of, _____, 2013.

Clerk of the Circuit Court of the City of Virginia Beach, Virginia.

By _____
Deputy Clerk

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REPORTER'S CERTIFICATE

COMMONWEALTH OF VIRGINIA,
CITY OF VIRGINIA BEACH, to-wit:

I, Tanja S. Eades, certify that the foregoing is a correct transcript of the proceedings had before the said court on the date aforementioned.

Given under my hand this 6th day of March, 2013.

Court Reporter

Notary Registration Number: 364599

My Commission Expires: November 30, 2013

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