

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

LOUIS JEFFERSON DUKES, JR.,)
)
 Petitioner,)
)
 v.)
)
 COMMONWEALTH OF VIRGINIA,)
 Serve: Amy Ashworth,)
 Commonwealth's Attorney)
 9311 Lee Avenue, Suite 200)
 Manassas, Virginia 20110)
)
 Respondent.)

Case No: 24 - 4952

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 CIRCUIT COURT CLERKS OFFICE
 PRINCE WILLIAM COUNTY, VA

PETITION TO SET ASIDE AND VACATE

THIS PETITION is filed on behalf of Louis Jefferson Dukes, Jr., by his counsel, pursuant to Va. Code §8.01-428(D), seeking entry of an order setting aside and vacating the judgments of conviction and sentences imposed by the Final Orders dated February 17, 1994, and in support thereof states as follows:

1. Va. Code §8.01-428(D) authorizes a court to relieve a party of a judgment when it is based upon a fraud on the court. Terry v. Commonwealth, 2018 Va. Unpub. LEXIS 6, 10 (2018), and Williams v. Commonwealth, 2011 Va. App. LEXIS 366; and Wilson v. Commonwealth, 2021 Va. Cir. LEXIS 90, 99.
2. There were material misrepresentations made to the Court in the trial of this matter, wherein a fraud was perpetrated in the prosecution of the Petitioner's

cases. See Commonwealth of Virginia v. Louis Jefferson Dukes, Jr., Prince William Circuit Court, Case No (s) 33160; 33161; and 33162.

3. In the above referenced case, the Commonwealth Attorney's Office misrepresented that the serology report introduced into evidence as Commonwealth's Exhibit 30 established that the Petitioner was in close proximity to the deceased Virginia State Trooper at the time of the murder. The Commonwealth argued this was a circumstance to be considered by the Court in this otherwise circumstantial case of principal in the second degree to murder.

4. In fact, the Commonwealth's Attorney knew this was not the victim's blood on the Petitioner's jacket, but he argued to the trial court that this evidence was proof of the Petitioner's role and proximity at the time of the Trooper's murder.

5. Secondly, the Commonwealth's Attorney falsely represented to the Court there was no favorable treatment agreement in effect with regard to a key Commonwealth witness, Christopher Daniels.

6. In fact, Mr. Ebert had promised Christopher Daniels that if he testified against the Petitioner, the Commonwealth's Attorney would provide Daniels with protection during any period he was incarcerated.¹

7. According to testimony of Christopher Daniels, the Commonwealth's Attorney also entered into an additional understanding with Daniels. Mr. Ebert made it known to Daniels that there could be a favorable position taken by the

1. Christopher Daniels was incarcerated in the Prince William County Adult Detention Center on several felonies, which had sentences totaling sixty (6) years, with all but thirty (30) years suspended.

Commonwealth Attorney's Office at Daniels' motion for a "reduced sentence". Mr. Ebert stated to Daniels that his testimony "certainly would not hurt" in Daniels' efforts to seek a sentence reduction.

8. This statement of a possible future cooperation by the Commonwealth Attorney's Office for a sentence reduction was intended to incentivize this witness, without giving him an express promise. This had the clear effect of motivating Daniels to fabricate and provide testimony favorable to the prosecution in order to gain favor with Mr. Ebert for Daniels' own self-interest.

9. This understanding/agreement by Mr. Ebert and the Commonwealth's knowledge the blood was not that of the victim; was exculpatory evidence under the Court's pre-trial orders, which had to be disclosed to the Petitioner's counsel.

10. The failure of the Commonwealth Attorney's Office to disclose this evidence perpetrated a fraud on the Court and was in violation of the Pretrial Orders in effect.

11. After he testified against the Petitioner, Christopher Daniels' sentences were in fact significantly reduced, with the Commonwealth's assistance and cooperation. His sentences were reduced from thirty years to serve in the penitentiary to ten years to serve, and being parole eligible by June 28, 1996.

12. After testifying for the Commonwealth Attorney, Mr. Daniels received the special protective custody in a Texas detention facility, consistent with his agreement with Mr. Ebert.

13. Thirdly, because Daniels was a police agent, his testimony itself was violative of the 5th and 6th Amendment rights of the Petitioner.

14. Prior to Daniels being housed with the Petitioner, Daniels had contacted Prince William County Adult Detention Center officials about providing the Commonwealth's Attorney with incriminating statements purportedly made by the Petitioner's co-defendant, Lonnie Weeks.

15. Thereafter, law enforcement and/or Prince William County Adult Detention Center employees, acting on behalf of the Commonwealth's Attorney's Office, had the Petitioner moved into Daniels' cell at the Prince William Adult Detention Center.

16. By placing the Petitioner into Daniels' cell, after the Petitioner was represented by legal counsel, and knowing Daniels wanted to relate incriminating statements to the prosecutor, any statements and comments made by the Petitioner to Daniels, violated his Fifth and Sixth Amendment rights.

17. Fourthly, because, the Commonwealth, by and through its agents, made Daniels an undercover police agent, it had a duty to provide the Petitioner and his legal counsel any notice that Daniels was a police agent.

18. Therefore, any statements Daniels allegedly obtained from the Petitioner should have been inadmissible under well settled case authority, such as the Wong

Sun² ‘fruit of the poisonous tree’ doctrine. See also, United States v. Henry 447 U.S. 264, 274, 100 S. Ct. 2183, 2188, 65 L Ed. 2d 115 (1980).

19. Given the Court’s pretrial orders, the failure of the Commonwealth’s Attorney’s to make necessary disclosures to Petitioner’s counsel constituted the Commonwealth Attorney’s perpetration of a deceit and misrepresentation upon the trial court.

20. In its filings, the Commonwealth’s Attorney represented to the Court and Petitioner’s counsel that it had complied with Brady and Bagley requirements in its discovery responses to the Petitioner’s counsel; when in fact it had not.

21. Thus, the Commonwealth Attorney misled the trial court and thereby perpetrated a fraud upon the trial court and in the case of Commonwealth v. Louis J. Dukes, Jr. (Case No(s). 33160, 33161, and 33162).

22. The use of false and tainted evidence in this case was critically important and material to this Court’s judgment in a circumstantial evidence case for Murder in the First Degree.

23. The egregious nature of these falsehoods in the aforesaid Petitioner’s cases rendered these orders legally infirm under well-established caselaw.

24. The Commonwealth’s Attorney, Paul Ebert, was previously found to have failed to disclose exculpatory evidence favorable to the defense, by intentionally failing to comport with requirements of Brady.³

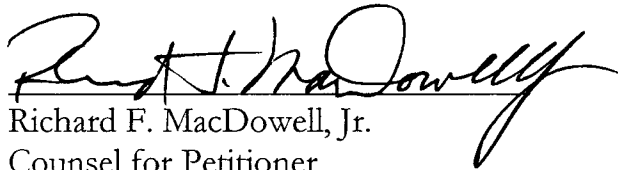
2. Wong Sun v. United States, 371 U.S. 471, 486, 83 S. Ct. 407, 416 9 L. Ed. 2d 441(1963).

25. The above acts by the Commonwealth's Attorney constitute newly discovered evidence of a fraud perpetrated upon this Court. Pursuant to Va. Code §8.01-428 (D), this fraud forms a legal basis to vacate the aforesaid judgments.

WHEREFORE, upon the premises considered, and upon the presentation of evidence in support, the Petitioner requests this Court set aside and vacate his February 17, 1994 convictions, or for such other relief as to this Court seem just and proper.

LOUIS JEFFERSON DUKES, JR.
By Counsel

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3 See the attached July 11, 2015 Article, Prince William County Prosecutor Faulted in Capital Murder Cases. F.Green. (Exhibit A)

https://richmond.com/news/prince-william-county-prosecutor-faulted-in-capital-murder-cases/article_990d13dd-29b4-5797-84c2-3cc00b76971b.html

Prince William County prosecutor faulted in capital murder cases

Frank Green

Jul 11, 2015

He may be the dean of Virginia's prosecutors, but that has not spared Prince William County's Paul B. Ebert from some strident criticism from federal judges in high-profile death cases.

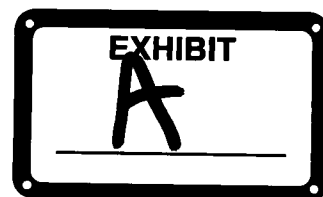
Much of the fault-finding against one of the most accomplished commonwealth's attorneys in the state concerns a legal issue that has cost convictions across the country: the failure to disclose so-called "Brady material" to the defense.

In its 1963 decision *Brady v. Maryland*, the U.S. Supreme Court required prosecutors to disclose to defendants before trial all "exculpatory" evidence: any material favorable to the defense, including evidence that helps refute guilt, undermines the credibility of a government witness, or reduces a potential sentence.

Ebert denies any wrongdoing, but the criticism — and the loss of a capital murder conviction — also loom as a political issue in his bid for re-election this fall.

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Twice in recent years, judges have found that his office withheld Brady material in death penalty cases.

In 2009, he was faulted for doing so in the case of John Allen Muhammad, one of the “Beltway snipers,” but it was decided it would not have altered the trial’s outcome.

Two years later, Justin Wolfe’s capital murder conviction was tossed out by U.S. District Judge Raymond A. Jackson, who cited instances of evidence wrongly withheld by Ebert’s office.

The information included a police report that could have undermined the credibility of Ebert’s key witness, Owen Barber IV, who testified Wolfe hired him to fatally shoot Daniel Petrole Jr.

Upholding Jackson’s ruling, an appeals court noted that the earlier Muhammad case already had put Ebert’s office on notice that when looking for Brady material, it should “err on the side of disclosure, especially when a defendant is facing the specter of execution.”

Several months later, Jackson, a former federal prosecutor, rebuked Ebert again, writing that it “is quite clear that the original prosecuting team did not heed the ... warning.”

For a court to overturn a verdict because of a Brady violation, it must find three things: The undisclosed evidence was favorable to the accused; it was suppressed by the prosecution; and it was “material” — that had it been disclosed, there was “a reasonable probability” it would have led to a different verdict.

It does not matter if Brady material is withheld deliberately or inadvertently. But in the Wolfe case, the appeals court judges wrote: “We feel compelled to acknowledge that the commonwealth’s suppression of ... Brady material was entirely intentional.”

Virginia prosecutors aren't required to disclose nonexculpatory police reports or witness statements against a defendant before trial. But many, if not most, prosecutors disclose more than required.

And out of an abundance of caution, a number of commonwealth's attorneys in Virginia have "open file" policies in which much, if not all, of the case file is available to the defense. Ebert, however, is not among them.

In a recent interview, he insisted he and his assistants did nothing wrong and that the criticism is either unwarranted or the result of misinterpretation or misunderstanding.

"The great majority of attorneys, they're very ethical and they've got to do their job," Ebert said. But he said he does not permit defense lawyers to look through his case files for Brady evidence, because some unethical attorneys have used what they found to falsely fabricate a defense.

In 2012, the 4th U.S. Circuit of Appeals called Ebert's similar explanation to Jackson "flabbergasting." The court also complained that an Ebert assistant admitted that when he considered whether to disclose evidence, he made the decision on whether the evidence was "material" and "credible" — instead of releasing the information and ultimately allowing a jury to decide.

Jackson concluded: "Essentially, in an effort to ensure that no defense would be 'fabricated,' Ebert and (the assistant's) actions served to deprive Wolfe of any substantive defense in a case where his life would rest on the jury's verdict."

The appeals court concluded that Jackson "rightly lambasted that conduct."

Ebert said he did not make himself clear when explaining his position to Jackson. "When I said 'fabricate,' I should have said 'falsely fabricate,'" he said. His concern is that if defendants learn all the evidence, they might falsely change their story to fit the facts.

“I think (Jackson) thought that I was saying that these people would have a good defense if they knew what my case was,” Ebert said. “I think he misinterpreted me.”

Asked if he ever would knowingly withhold evidence of innocence, Ebert said: “There’s no way I’d do that. Most people think I’m pretty fair, more fair than most. There’s no way I would in any way withhold exculpatory evidence.”

He conceded: “Of course, there may be a question of what’s exculpatory and what isn’t.”

That is the same question that concerned Jackson, who complained that Ebert’s decisions on the relevance of potential exculpatory evidence is guided by his contempt for defendants who might fabricate a defense.

A committee appointed by the Virginia Supreme Court has proposed rule changes to help solve such questions.

Ebert said he might favor changes that more clearly spell out what must be disclosed, as long as victims and witnesses are not put at risk or chilled from coming forward.

The police report in the Wolfe case cited by federal judges shows that investigators told Barber he could avoid a death sentence by implicating Wolfe.

Barber since has changed his story a number of times. In a hearing before Jackson, Barber recanted his trial testimony and said he lied about Wolfe to avoid being executed.

After Jackson overturned Wolfe’s convictions, Ebert, an assistant and a detective visited Barber in prison in an effort to get him to change his story back to the original one and again raised the possibility of a death sentence. In the end, Barber’s lawyer said Barber would claim the Fifth Amendment privilege in any retrial of Wolfe.

A split appeals court panel in 2013 said Wolfe could be retried, though in a dissenting opinion, a judge wrote: “The commonwealth’s misconduct has continued far too long, and the cumulative misconduct permeating this case has tainted it in such a way that it is doubtful Wolfe will receive a fair and just trial. Enough is enough.”

Ebert stepped out of the case, and it is in the hands of a special prosecutor. The retrial may not take place until 2017.

Ebert has said the police report on Barber did not matter because the jury knew Barber had lied in the past and changed his stories and that he had escaped the death penalty through a deal with the commonwealth.

At least two complaints have been filed against Ebert with the Virginia State Bar. Richmond lawyer Gerald T. Zerkin, who coauthored one of the complaints after the Wolfe rulings, said, “I have never heard of a state or federal court using language this strong to describe the misconduct of a Virginia prosecutor.”

Ebert’s opponent this fall, Michael C. May, said the Brady violations will be a campaign issue.

“I think we can’t afford having someone who is going to violate the Constitution and risk having the conviction of a dangerous criminal overturned due to mistakes,” May said.

He said he was not in a position to comment on Wolfe’s guilt or innocence. “But even if we assume that he’s guilty, a win-at-all-cost attitude is dangerous because you violate the Constitution and, as we’ve seen, the case gets overturned.”

In the Muhammad case, May said Ebert “got away with it, and thank God he did because heaven forbid that conviction would have been overturned. We all know that guy was guilty.”

Ebert responded: “This office has always followed the law and rules of court as I understand them.

“I will not apologize for being tough on crime.”

Wolfe

Virginia Department of Correctio

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By Frank Green

COVER SHEET FOR FILING CIVIL ACTIONS

COMMONWEALTH OF VIRGINIA

Case No.

(CLERK'S OFFICE USE ONLY)

Prince William County

Circuit Court

LOUIS JEFFERSON DUKES, JR.

v./In re:

Commonwealth of Virginia

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned [] plaintiff [] defendant [X] attorney for [X] plaintiff [] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- [] Claim Impleading Third Party Defendant
[] Monetary Damages
[] No Monetary Damages
[] Counterclaim
[] Monetary Damages
[] No Monetary Damages
[] Cross Claim
[] Interpleader
[] Reinstatement (other than divorce or driving privileges)
[] Removal of Case to Federal Court

Business & Contract

- [] Attachment
[] Confessed Judgment
[] Contract Action
[] Contract Specific Performance
[] Detinue
[] Garnishment

Property

- [] Annexation
[] Condemnation
[] Ejectment
[] Encumber/Sell Real Estate
[] Enforce Vendor's Lien
[] Escheatment
[] Establish Boundaries
[] Landlord/Tenant
[] Unlawful Detainer
[] Mechanics Lien
[] Partition
[] Quiet Title
[] Termination of Mineral Rights

Tort

- [] Asbestos Litigation
[] Compromise Settlement
[] Intentional Tort
[] Medical Malpractice
[] Motor Vehicle Tort
[] Product Liability
[] Wrongful Death
[] Other General Tort Liability

ADMINISTRATIVE LAW

- [] Appeal/Judicial Review of Decision of (select one)
[] ABC Board
[] Board of Zoning
[] Compensation Board
[] DMV License Suspension
[] Employee Grievance Decision
[] Employment Commission
[] Local Government
[] Marine Resources Commission
[] School Board
[] Voter Registration
[] Other Administrative Appeal

DOMESTIC/FAMILY

- [] Adoption
[] Adoption - Foreign
[] Adult Protection
[] Annulment
[] Annulment - Counterclaim/Responsive Pleading
[] Child Abuse and Neglect - Unfounded Complaint
[] Civil Contempt
[] Divorce (select one)
[] Complaint - Contested*
[] Complaint - Uncontested*
[] Counterclaim/Responsive Pleading
[] Reinstatement - Custody/Visitation/Support/Equitable Distribution
[] Separate Maintenance
[] Separate Maintenance Counterclaim

WRITS

- [] Certiorari
[] Habeas Corpus
[] Mandamus
[] Prohibition
[] Quo Warranto

PROBATE/WILLS AND TRUSTS

- [] Accounting
[] Aid and Guidance
[] Appointment (select one)
[] Guardian/Conservator
[] Standby Guardian/Conservator
[] Custodian/Successor Custodian (UTMA)
[] Trust (select one)
[] Impress/Declare/Create
[] Reformation
[] Will (select one)
[] Construe
[] Contested

MISCELLANEOUS

- [] Amend Birth/Death Certificate
[] Appointment (select one)
[] Church Trustee
[] Conservator of Peace
[] Marriage Celebrant
[] Approval of Transfer of Structured Settlement
[] Bond Forfeiture Appeal
[] Declaratory Judgment
[] Declare Driving Privileges
[] Driving Privileges (select one)
[] Reinstatement Pursuant to 46.2-427
[] Restoration - Habitual Offender or 3rd Offense
[] Expungement
[] Firearms Rights - Restoration
[] Forfeiture of Property or Money
[] Freedom of Information
[] Injunction
[] Interdiction
[] Interrogatory
[] Judgment Lien-Bill to Enforce
[] Law Enforcement/Public Official Petition
[] Name Change
[] Referendum Elections
[] Sever Order
[] Taxes (select one)
[] Correct Erroneous State/Local
[] Delinquent
[] Vehicle Confiscation
[] Voting Rights - Restoration
[X] Other (please specify)

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PRINCE WILLIAM COUNTY, VA

[] Damages in the amount of \$ are claimed.

6/4/2024
DATE

Richard F. MacDowell, Jr.
[] PLAINTIFF [] DEFENDANT [X] ATTORNEY FOR [] PLAINTIFF [] DEFENDANT

Richard F. MacDowell, Jr.

PRINT NAME

10500 Sager Ave., Suite F, Fairfax, VA 22030

ADDRESS TELEPHONE NUMBER OF SIGNATOR

703-277-2811 VSB#21083

rfm@lawmacdowell.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

**Civil Action Type Codes
(Clerk's Office Use Only)**

Accounting	ACCT	Ejectment	EJET
Adoption	ADOP	Encumber/Sell Real Estate	RE
Adoption – Foreign	FORA	Enforce Vendor's Lien	VEND
Adult Protection	PROT	Escheatment	ESC
Aid and Guidance	AID	Establish Boundaries	ESTB
Amend Birth/Death Certificate	AVR	Expungement	XPUN
Annexation	ANEX	Forfeiture of Property or Money	FORF
Annulment	ANUL	Freedom of Information	FOI
Annulment – Counterclaim/Responsive Pleading ..	ACRP	Garnishment	GARN
Appeal/Judicial Review		Injunction	INJ
ABC Board	ABC	Intentional Tort	ITOR
Board of Zoning	ZONE	Interdiction	INTD
Compensation Board	ACOM	Interpleader	INTP
DMV License Suspension	JR	Interrogatory	INTR
Employment Commission	EMP	Judgment Lien – Bill to Enforce	LIEN
Employment Grievance Decision	GRV	Landlord/Tenant	LT
Local Government	GOVT	Law Enforcement/Public Official Petition	LEP
Marine Resources	MAR	Mechanics Lien	MECH
School Board	JR	Medical Malpractice	MED
Voter Registration	AVOT	Motor Vehicle Tort	MV
Other Administrative Appeal	AAPL	Name Change	NC
Appointment		Other General Tort Liability	GTOR
Conservator of Peace	COP	Partition	PART
Church Trustee	AOCT	Permit, Unconstitutional Grant/Denial by Locality LUC	
Custodian/Successor Custodian (UTMA)	UTMA	Petition – (Miscellaneous)	PET
Guardian/Conservator	APPT	Product Liability	PROD
Marriage Celebrant	ROMC	Quiet Title	QT
Approval of Transfer of Structured Settlement	SS	Referendum Elections	ELEC
Asbestos Litigation	AL	Reinstatement (Other than divorce or driving	
Attachment	ATT	privileges)	REIN
Bond Forfeiture Appeal	BFA	Removal of Case to Federal Court	REM
Child Abuse and Neglect – Unfounded Complaint ..	CAN	Restore Firearms Rights – Felony	RFRF
Civil Contempt	CCON	Restore Firearms Rights – Review	RFRR
Claim Impleading Third Party Defendant –		Separate Maintenance	SEP
Monetary Damages/No Monetary Damages	CTP	Separate Maintenance – Counterclaim/Responsive	
Complaint – (Miscellaneous)	COM	Pleading	SCRP
Compromise Settlement	COMP	Sever Order	SEVR
Condemnation	COND	Sex Change	COS
Confessed Judgment	CJ	Taxes	
Contract Action	CNTR	Correct Erroneous State/Local	CTAX
Contract Specific Performance	PERF	Delinquent	DTAX
Counterclaim – Monetary Damages/No Monetary		Termination of Mineral Rights	MIN
Damages	CC	Trust – Impress/Declare/Create	TRST
Cross Claim	CROS	Trust – Reformation	REFT
Declaratory Judgment	DECL	Uniform Foreign Country Money Judgments	RFCJ
Declare Death	DDTH	Unlawful Detainer	UD
Detinue	DET	Vehicle Confiscation	VEH
Divorce		Violation – Election Law	VEL
Complaint – Contested/Uncontested	DIV	Voting Rights – Restoration	VOTE
Counterclaim/Responsive Pleading	DICRP	Will Construction	WNST
Reinstatement – Custody/Visitation/Support/		Will Contested	WILL
Equitable Distribution	CVS	Writs	
Driving Privileges		Certiorari	WC
Reinstatement pursuant to § 46.2-427	DRIV	Habeas Corpus	WHC
Restoration – 3 rd Offense	REST	Mandamus	WM
		Prohibition	WP
		Quo Warranto	WQW
		Wrongful Death	WD