

**VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF
PORTSMOUTH**

COMMONWEALTH OF VIRGINIA, : **CASE NOS: GC20002894-00 & -95-00**
 :
 :
 :

v. :

LAKEESHA SHONTE ATKINSON. :

COMMONWEALTH OF VIRGINIA, : **CASE NOS: GC20002900-00 & -91-00**
 :
 :
 :

v. :

AMIRA MICHELLE BETHEA: :

COMMONWEALTH OF VIRGINIA, : **CASE NOS: GC20002904-00 & -05-00**
 :
 :
 :

v. :

JAMES PATRICK BOYD: :

COMMONWEALTH OF VIRGINIA, :

:

CASE NOS: GC20002893-00

v. :

CHARGES: 18.2-137

:

RAYMOND BROTHERS :

:

COMMONWEALTH OF VIRGINIA, :

:

CASE NOS: GC20002906-00

v. :

CHARGES: 18.2-137

:

:

MEREDITH ANN CRAMER :

:

COMMONWEALTH OF VIRGINIA, :

:

CASE NOS: GC20002902-00 & -03-00

v. :

CHARGES: 18.2-22 & 18.2-137

:

:

LOUIE PERRY GIBBS, JR. :

:

COMMONWEALTH OF VIRGINIA, :

:

CASE NOS: GC20002898-00 & -99-00

v. :

CHARGES: 18.2-22 & 18.2-137

:

:

LAKESHA KEARNEY HICKS: :

:

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002909-00 & -10-00
CHARGES: 18.2-22 & 18.2-137**

v. :

LILLIE LOUISE LUCAS: :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002911-00
CHARGES: 18.2-137**

v. :

HANAH RENAE RIVERA :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002907-00
CHARGES: 18.2-137**

v. :

BRENDA CHERYL SPRY: :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002908-00
CHARGES: 18.2-137**

v. :

ALEXANDRA STEPHENS :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002912-00 & -13-00
CHARGES: 18.2-22 & 18.2-137**

:

v. :

:

KIMBERLY MARIE WIMBISH :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002914-00
CHARGES: 18.2-137**

:

v. :

:

BRENDAN TYLER WOODARD :

COMMONWEALTH OF VIRGINIA :

**CASE NOS: GC20002896-00 & -97-00
CHARGES: 18.2-22 & 18.2-137**

:

v. :

:

DANA LOUISE WORTHINGTON :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002915-00
CHARGES: 18.2-137**

:

v. :

:

HANNIAH LEANNE CUEVAS :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20002972-00
CHARGES: 18.2-22 & 18.2-137**

:

v. :

:

HARMONY YVONNE HARRIS :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20003196-00
CHARGES: 18.2-137**

:

v. :

:

RAQUEL LEAH AMMONS :

COMMONWEALTH OF VIRGINIA, :

**CASE NOS: GC20003087-00
CHARGES: 18.2-137**

:

v. :

:

LAUREN PATRISSE JONES :

COMMONWEALTH'S MOTION TO DISMISS WARRANT(S)

COMES NOW the Commonwealth and moves this Honorable Court to dismiss the warrants charging the above named individuals. In support of its motion, the Commonwealth represents the following unto the Court:

1. The individuals listed above were charged on August 17, 2020, and August 26, 2020, with felony destruction of property valued at \$1,000 or more under Va. Code § 18.2-137 and/or Conspiracy to Commit a Felony under Va. Code § 18.2-22 for alleged incidents occurring on June 10, 2020, involving a Confederate monument located in the City of Portsmouth.

Sufficiency of the Evidence and Ability to Satisfy Elements

2. To substantiate a charge for felony destruction of property, the Commonwealth must prove that: (1) The defendant intended to cause damage, (2) the damage was done to real or personal property, of another,¹ (3) the value of such destruction was over \$1,000; and (4) the incident occurred within the City of Portsmouth. Va. Code Ann. § 18.2-137 (2020).
3. To substantiate a charge for Principal in the Second Degree, the Commonwealth must prove that: (1) the charged individuals' presence at the crime's commission, (2) there was an overt act such as inciting, encouraging, advising, or assisting in the commission of the crime; or (3) the defendant shared in the perpetrator's intent. Va. Code Ann. § 18.2-18 (2020).
4. To substantiate a charge for felony conspiracy to commit destruction of property, the Commonwealth must prove that: (1) The defendant intended to enter into an agreement, with one or more persons, (2) the parties did enter into an agreement, (3) the agreement was to commit felony destruction of property, (4) both parties intended to commit felony

¹ An essential element as to the destruction of property is that another person, other than the defendant, owns the property. There has been litigation within the City of Portsmouth in an attempt to establish ownership of the Confederate monument (CL17003425-00), located at the intersection of Court and High Street of Portsmouth, Virginia. It is unclear whether the City of Portsmouth is the true owner or the Sons of the Confederate Veterans. The case file received, as it relates to these cases, was void of a deed, document, or any subpoenaed witness who could testify as to the actual ownership.

destruction of property, and (5) the agreement or an overt act in furtherance of an agreement, occurred within the City of Portsmouth. Va. Code Ann. § 18.2-22 (2020).

5. Based on the file information and correspondence to the Commonwealth by the Portsmouth Police Department over the course of a month, all of which have been timely provided to defense counsel, Counsel for the Commonwealth has determined that the elements of each charge are not properly met. There is no proper evidence that the alleged actions of those charged in the instant cases rise to the level of felony destruction of property or conspiracy.

a. The case file evidence and correspondence with the investigating officer have proven that no actual investigation to ascertain the value of damages in the instant cases was conducted prior to probable cause being sworn to the magistrate.

i. In fact, the Portsmouth Police Department attempted on October 8, 2020, over two months after charges were filed and nearly four months after the incident, to investigate regarding the value of damages. Still, no evidence as to the value of the damage to the monument itself by each person individually or collectively, or as to the cost of repair exists to date in the instant cases.

1. The only evidence of value that exists at all pertains to an unrelated case from years ago, which only serves to provide notice that the monument was previously damaged, with no evidence that it was repaired, raising additional questions which cannot be answered by the investigative file, about value.

ii. After full review of the investigative file and all correspondence, Counsel for the Commonwealth have been unable to determine how the investigating

officer could in good faith render probable cause as to the value of damage attributed to each charged individual in the instant cases, which resulted in the issuance felony warrants by the magistrate.

- b. Nothing in the case file or correspondence with the investigating officer provides evidence that any of the individuals in the instant case intentionally came together to commit an actual felony.
6. The Commonwealth has wide discretion in bringing and pursuing charges based on just outcomes. "[I]t is well established that the choice of offenses for which a criminal defendant will be charged is within the discretion of the Commonwealth's Attorney. Indeed, 'the institution of criminal charges, as well as their order and timing, are matters of prosecutorial discretion.'" Barrett v. Commonwealth, 41 Va. App. 377 (2003) quoting Kauffmann v. Commonwealth, 8 Va. App. 400, 410, 382 S.E.2d 279, 284, 6 Va. Law Rep. 42 (1989) and Bradshaw v. Commonwealth, 228 Va. 484, 492, 323 S.E.2d 567, 572 (1984)). Further, under Virginia State Bar Rule 3.8(a), "[A prosecutor] shall not [. . .] maintain a charge that the prosecutor knows is not supported by probable cause."
 - a. In the instant cases, the probable cause summary appears to be riddled with inaccuracies and conclusions drawn based upon the opinions of the investigating officers and not based solely on or even supported by evidence.
 - b. The instant charges are not supported by probable cause.

Authentication of Video Footage and Photographic Evidence, and Identification of Persons Depicted Therein

7. Upon review of the case file and related documents, the evidence of the charged individuals' actions on June 10, 2020, consists of various videos and photographs taken either from (1) body camera/drone footage from officers on scene; (2) videos retrieved

from various Facebook sites by private citizens, the Portsmouth Police Department, or the Virginia State Police, and recorded by several individuals; (3) photographs retrieved from public Facebook and/or Instagram profiles by either private citizens, the Portsmouth Police Department, or the Virginia State Police.

8. In order to introduce video and photographic evidence, as with any other evidence, the Commonwealth must authenticate it as a condition precedent to admissibility. The Rules of the Supreme Court of Virginia state that “[t]he requirement of authentication or identification...is satisfied by evidence sufficient to support a finding that the thing in question is what its proponent claims.” Va. Sup. Ct. R. 2:901.
9. While the body camera footage could be authenticated by the officer who wore the body camera, if the individual officer can testify the same is a fair and accurate representation of what he or she actually viewed, see, e.g., Ferguson v. Commonwealth, 212 Va. 745, 746, 187 S.E.2d 189, 191 (1972), other videos and photographs of the Charged individuals’ actions were either submitted by private citizens through the Evidence.com citizen portal, or were retrieved by law enforcement officers from Facebook or other social media sites. The citizen-provided photographs are “screen shots” of other individuals’ or entities’ Facebook pages.
10. Regarding the remaining videos and photographs, the investigative case file does not identify the individuals who actually captured the evidence, nor does it properly indicate who was present when the evidence was created. It only notes the individuals who submitted the files to the Portsmouth Police Department or retrieved them from online. These individuals cannot testify that the photographs or videos fairly and accurately depict

the scene they purport to show. Bailey v. Commonwealth, 259 Va. 723, 739, 529 S.E. 2d 570, 579 (2000).

11. In the absence of such firsthand witnesses, the only other method available to the Commonwealth is to prove that the process or system used to create the evidence produced an accurate result. This category of witnesses generally includes experts (e.g. forensic computer technicians who testify that images copied from a hard drive are the same as the original) or custodians of records (e.g. business managers who provide video evidence who can testify that the retrieval of business surveillance footage produced unaltered footage from the business's video system). See Ferguson, 212 Va. at 745, 187 S.E.2d at 189 (court approved entry of a photograph taken by a Regiscope based on testimony of the store manager and representative of the Regiscope company that the process used to create the photograph was accurate), and Midkiff v. Commonwealth, 280 Va. 216, 694 S.E.2d 576 (2010)(proper foundation was laid for digital images and motion pictures by a technician who copied them directly from the appellant's computer hard drives and testified that the reproduction was identical to the original).
12. Regarding the images and videos here, however, the Commonwealth is not even aware of the device used to record each piece of digital evidence, nor whether it was transferred to several devices before being retrieved from its online location. No witness has been identified who could also testify that the digital evidence was unaltered or that the process used to create it was reliable.
13. Several of the charged individuals were identified solely utilizing a combination of Facebook profile research, LexisNexis Accurant (a paid information service), LInX (a law enforcement information sharing service), prior arrest records, and Department of Motor

Vehicle (DMV) records, and “an anonymous Crime Line caller.” The only witnesses indicated who will testify to this research are detectives with the Portsmouth Police Department.²

14. One of the fundamental rules for the introduction of evidence is that “[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” Va. Sup. Ct. R. 2:602. It is clear that the detectives of the Portsmouth Police Department do not have personal knowledge necessary to identify the individuals listed above, and seen in the various video evidence and photographs, as the individuals that have been charged and will be present in court. Their basis for that knowledge would be information collected by other entities, and any testimony based on that knowledge would be proffered to prove the charged persons’ identities. As such, their anticipated testimony fits the classic definition of hearsay. See Va. Sup. Ct. R. 2:801(c). No evidence contained in the case file indicates that any law enforcement officer obtained personal information (e.g. date of birth, social security number, name) from any of the charged individuals while on scene, even if those officers interacted with them.

The Prosecution of These Charges Constitutes a Violation of the Charged individuals’ Due Process Rights

15. United States Supreme Court jurisprudence interpreting the Due Process Clause of the Fourteenth Amendment make clear that law enforcement officials may not punish conduct

² The Commonwealth was not provided with the records referenced here. When these sources were identified in the investigative case file, the Commonwealth requested further information via letters to Sgt. Kevin McGee of the Portsmouth Police Department on October 23, 2020, October 27, 2020, and October 30, 2020. Sgt. McGee responded by providing prepared documents attempting to identify sources, but not providing the actual records. He also confirmed that the majority of the records were not retained after the search concluded, and that the anonymous caller was not identified. Correspondence between the Commonwealth’s Attorney’s Office and the Portsmouth Police Department is attached hereto as Appendix I.

which they endorsed, either expressly or impliedly. In Raley v. Ohio, 360 U.S. 423, 425-33 (1959), the first case discussing this point, convictions for four individuals were overturned as violations of the Due Process Clause of the Fourteenth Amendment when a Commissioner of the State erroneously advised individuals that they may invoke their rights against self-incrimination when testifying before a commission notwithstanding an Ohio statute indicating that such information could not be used against them in a criminal proceeding. The Commissioner during the hearing never advised them of the immunity and the appellants were subsequently indicted and convicted for failure to answer questions during said inquiry.

16. The court in Raley found that “the Chairman of the Commission, who clearly appeared to be the agent of the State in a position to give such assurances, apprised three of the appellants that the privilege in fact existed, and by his behavior toward the fourth obviously gave the same impression.” Id. at 360 U.S. at 437 (1959). Further, “[w]hile there is no suggestion that the Commission had any intent to deceive the appellants, we repeat that to sustain the judgment of the Ohio Supreme Court on such a basis after the Commission had acted as it did would be to sanction the most indefensible sort of entrapment by the State — convicting a citizen for exercising a privilege which the State clearly had told him was available to him.” Id. at 438.

17. Later, the Supreme Court expanded that rationale to include *implied* grants of authority to citizens. In Cox v. Louisiana, 379 U.S. 559(1965), a demonstration leader was convicted of picketing near a courthouse. The officials on scene were aware of the demonstration and told the leader that the demonstration could be held on the far side of the street opposite the courthouse. The Supreme Court noted that “the highest police officials of the city, in

the presence of the Sheriff and Mayor, in effect told the demonstrators that they could meet where they did, 101 feet from the courthouse steps.” Id. At 572. The Court further noted, “[t]he record shows that at no time did the police recommend, or even suggest, that the demonstration be held further from the courthouse than it actually was. The police admittedly had prior notice that the demonstration was planned to be held in the vicinity of the courthouse. They were prepared for it at that point and so stationed themselves and their equipment as to keep the demonstrators on the far side of the street. As Cox approached the vicinity of the courthouse, he was met by the Chief of Police and other officials. At this point not only was it not suggested that they hold their assembly elsewhere, or disband, but they were affirmatively told that they could hold the demonstration on the sidewalk of the far side of the street, 101 feet from the courthouse steps. This area was effectively blocked off by the police and traffic rerouted.” Id. at 570.

18. “A criminal ant may assert an entrapment-by-estoppel defense when the government affirmatively assures him that certain conduct is lawful, the defendant thereafter engages in the conduct in reasonable reliance on those assurances, and a criminal prosecution based upon the conduct ensues.” U.S. v. Aquino-Chacon, 109 F.3d 936, 938-39 (4th Cir. 1997); See Raley, 360 U.S. at 438-39. The decisions of cases like Raley, Cox and their progeny make it abundantly clear that due process prohibits individuals from sustaining a criminal conviction when they engage in specific conduct based on the apparent permission granted by a governmental authority. This is the exact case with regard to the incident that occurred at the monument located at 400 Court Street in the City of Portsmouth on June 10, 2020. A number of city officials had given permission both expressly, as well as impliedly by the conduct of all governmental officials who were present on the scene at

the time the incident began. Additionally, a number of officers with the Portsmouth Police Department remained present on scene while observing various persons inflict damage on the monument and failed to intervene for several hours. It was only at the point where an injury was sustained that law enforcement intervened. It is clear that the failure to act on part of the police department is as a result of decisions made by the City Attorney and Police Chief. Specifically, the City Attorney and Police Chief Green indicated that they were concerned with the preservation of life, *not* the preservation of property. Notwithstanding this sentiment, all individuals charged with the instant offenses are charged with the destruction of property.

19. Specifically, the “[a]ppellant was led to believe that his demonstration on the far side of the street violated no statute.” *Id.* Just as it is the case in Cox, the demonstrators in this case were led to believe that they had the authority to engage in certain conduct. The August 24, 2020 letter from Chief Greene also reflects the same sentiment, stating specifically that “Mr. Ashby instructed me at this point it is preservation of life and not property. I advised my officers of the same and proceeded back to my office as I could not take any legal action without a victim. If the property holders, city leaders, determined citizens could damage same, then I don’t have a crime. . . Therefore, I had no other alternative but to await confirmation or denial from city leaders in order to prevent false arrest or incite the crowd . . . so citizens assumed they were acting without criminal intent.” As such the Due Process Clause of the Fourteenth Amendment requires that these matters be dismissed against all charged individuals with prejudice.
20. Based on video evidence, numerous accounts of the alleged incident, and the unwillingness of the Portsmouth Police Department to intervene against the protestors, a reasonable and

colorable argument exists that the charged individuals in the instant cases did not act with the requisite criminal intent to destroy valuable property. Rather, based on the fact that on-scene law-enforcement officers failed to intervene during the defacing of the monument up until hours after the monument was defaced, it is likely that the charged individuals, understood the monument to be effectually abandoned by the City of Portsmouth, and thereby acted under the reasonable belief that city law enforcement officials had given their implicit endorsement to the same effect.

21. Finally, it is a violation of the charged individuals' Due Process rights under the United States Constitution to punish them for conduct that was done under circumstances where law enforcement either explicitly or implicitly misled them to believe that such conduct was lawful. "The due process argument is, in essence, 'that the criminal statute under which the warrants were issued cannot constitutionally be applied to the defendants without violating due process of law, where government officials have misled the defendant into believing that [their] conduct was not prohibited.'" Miller v. Commonwealth, 25 Va. App. 727 (1997)(internal citations omitted). "The defense [. . .] applies where a defendant has reasonably relied upon affirmative assurances that certain conduct is lawful, when those assurances are given by a public officer or body charged by law with responsibility for defining permissible conduct with respect to the offense at issue. The defense is a due process defense [. . .] grounded in 'traditional notions of fairness inherent in our system of criminal justice.'" Miller at 736 (internal citations omitted).


WHEREFORE, in consideration of the foregoing, the Commonwealth respectfully requests that the Court dismiss the warrant(s) in these matters with prejudice.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA

By: 

*Teressa R. Murrell, Esq., VSB # 71308
Chief Deputy Commonwealth's Attorney*


*Shaniqua L. Clark Nelson, Esq., VSB #81297
Deputy Commonwealth's Attorney*


*Ryan S. Marion, Esq., VSB # 80647
Deputy Commonwealth's Attorney*


*CaShea C. Coleman, Esq., VSB # 92010
Sr. Asst. Commonwealth's Attorney*

Portsmouth Commonwealth's Attorney's Office
1345 Court Street, Suite 105
Portsmouth, Virginia 23704
T: (757) 393-8581
F: (757) 393-5135

CERTIFICATE

I certify that a true and accurate copy of this document was delivered via e-mail and hand delivered to Sonya Weaver Roots, Esquire; Bassel Khalaf, Esquire; Jason Dunn, Esquire; Gregory Copeland, Esquire; Douglas Ramseur, Esquire; Lenard Myers, Esquire; David P. Baugh, Esquire; Patrick L. Maurer, Esquire; Jeremy C. Mason, Esquire; Sara Gaborik, Esquire; Steven L. Washington, Esquire; Michael J. Massie, Esquire; Nathan Chapman, Esquire; Julie McConnell, Esquire; Don Scott, Esquire; and Verbena Askew, Esquire, counsels for the Defendants, on this 16th day of November, 2020.



Ryan S. Marion, Esquire
Deputy Commonwealth's Attorney

APPENDIX I

Correspondence

Portsmouth Commonwealth's Attorney's Office and Portsmouth Police Department

Post Initial Hearing Date

October 5, 2020

From: Morales, Stephanie
Sent: Monday, October 05, 2020 3:46 PM
To: Burke, Scott
Cc: Pace, LaVoris ·
Coleman, CaShea
Subject: File Production Request

Shewmake, Tamara

Good afternoon Chief Burke,

Pursuant to the attached order entered today in court, please immediately produce all case files and other materials as specified in the order, pertaining to every case style, right away.

Please let us know when our office can expect the delivery of the aforementioned items. If you wish to provide them electronically, you may send them to Ms. Coleman, who is copied in this email.

Thank you for your assistance in this matter.

Sincerely,

Stephanie Morales
Commonwealth's Attorney
City of Portsmouth

(13)

**COMMONWEALTH OF VIRGINIA,
Plaintiff**

v.

**BRENDAN TYLER WOODARD
Defendant.**

Case No.: 20002914-00

Charge: 18.2-137

(14)

**COMMONWEALTH OF VIRGINIA,
Plaintiff**

v.

**DANA LOUISE WORTHINGTON
Defendant.**

Case Nos.: 20002896-00 & 97-00

Charges: 18.2-22 & 18.2-137

(15)

**COMMONWEALTH OF VIRGINIA,
Plaintiff**

v.

**HANNIAH LEANNE CUEVAS
Defendant.**

Case No.: 20002915-00

Charge: 18.2-137

(16)

**COMMONWEALTH OF VIRGINIA,
Plaintiff**

v.

**HARMONY YVONNE HARRIS
Defendant.**

Case No.: 20002972-00

Charge: 18.2-137

(17)
COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

RAQUEL LEAH AMMONS
Defendant.

: Case No.: 20003196-00

: Charge: 18.2-137

(18)
COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

LAUREN PATRISSE JONES
Defendant.

: Case No.: 20003087-00

: Charge: 18.2-137

ORDER

It is hereby ORDERED that all written and/or recorded records and all other discoverable material in the possession of the Portsmouth Police Department relating to the charges arising out of the above-styled cases occurring on June 10, 2020 in the City of Portsmouth, Virginia be immediately furnished to the Portsmouth's Commonwealth Attorney's Office.

ENTERED: 10-5-2020



Claire Cardwell, Substitute Judge

I ASK FOR THIS:



Stephanie N. Morales
Commonwealth's Attorney

VIRGINIA:
IN THE PORTSMOUTH GENERAL DISTRICT COURT

(1)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
 :
v. :
 :
LAKEESHA SHONTE ATKINSON :
Defendant. :

Case Nos.: 20002894-00 & 95-00
Charges: 18.2-22 & 18.2-137

(2)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
 :
v. :
 :
AMIRA MICHELLE BETHEA :
Defendant. :

Case Nos.: 20002900-00 & 91-00
Charges: 18.2-22 & 18.2-137

(3)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
 :
v. :
 :
JAMES PATRICK BOYD :
Defendant. :

Case Nos.: 20002904-00 & 05-00
Charges: 18.2-22 & 18.2-137

(4)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
 :
v. :
 :
RAYMOBND BROTHERS :
Defendant. :

Case No.: 20002893-00
Charge: 18.2-137

I certify that the document to which this authentication is affixed is a true copy of a record in the Portsmouth General District Court, that I have custody of the record, and that I am the custodian of that record.

10-5-20
Date
 Deputy Clerk
 Clerk

2020 OCT -5 AM 11:14
PORTSMOUTH GENERAL DISTRICT COURT

(5)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
v. :
MEREDITH ANN CRAMER :
Defendant. :

Case No.: 20002906-00
Charge: 18.2-137

(6)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
v. :
LOUIE PERRY GIBBS, JR. :
Defendant. :

Case Nos.: 20002902-00 & 03-00
Charges: 18.2-22 & 18.2-137

(7)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
v. :
LAKESHA KEARNEY HICKS :
Defendant. :

Case Nos.: 20002898-00 & 99-00
Charges: 18.2-22 & 18.2-137

(8)
COMMONWEALTH OF VIRGINIA, :
Plaintiff :
v. :
LILLIE LOUISE LUCAS :
Defendant. :

Case Nos.: 20002909-00 & 10-00
Charges: 18.2-22 & 18.2-137

(9)
COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

HANAH RENAE RIVERA
Defendant.

Case No.: 20002911-00

Charge: 18.2-137

(10)
COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

BRENDA CHERYL SPRY
Defendant.

Case No.: 20002907-00

Charge: 18.2-137

(11)
COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

ALEXANDRA STEPHENS
Defendant.

Case No.: 20002908-00

Charge : 18.2-137

(12)
COMMONWEALTH OF VIRGINIA,
Plaintiff

v.

KIMBERLY MARIE WIMBISH
Defendant.

Case Nos.: 20002912-00 & 13-00

Charges: 18.2-22 & 18.2-137

From: McGee, Kevin
Sent: Monday, October 5, 2020, 3:46 PM
To: Morales, Stephanie
Cc: Burke, Scott; Greene, Angela; Blystone, Scott; Springer, Richard; Boyd, Michael
Subject: Monument case

Good afternoon Mrs. Morales,

Attached you will find a summary of the facts of the investigation as well as a request for a special prosecutor for you to take into consideration.

I will work to provide any requested information as quickly as possible so you have time to review it prior to the discovery deadline. My intent is to get everything possible into 1 digital file to expedite sharing with your office and the defense.

I am still working on completing the case file, particularly as it pertains to each individual person's involvement, and I estimate it may take until October 14th at the earliest due to the volume of people involved. Currently there are 134 videos that total approximately 50 hours that have been reviewed and indexed and can probably be shared by the end of the day tomorrow, they comprise most of the evidence in this case. There are also several hours of drone video and other digital evidence that still needs to be reviewed but don't appear to contain much useful information that isn't captured elsewhere already. There are over 300 items of digital evidence in total.

Please let me know what additional information you may require and how you wish to proceed with the case from here.

Thank you,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit



**PORTSMOUTH POLICE DEPARTMENT
PROPERTY CRIMES UNIT**

711 Crawford Street, Portsmouth VA 23704
Phone (757) 393-8814 ext. 7181

Sgt. Kevin McGee

October 5, 2020

Stephanie N. Morales
Commonwealth's Attorney
1345 Court St
Portsmouth, VA 23704

Dear Mrs. Morales,

I am writing to you regarding the monument case. Our position remains that you are a material witness and we request that you recuse yourself and request a special prosecutor.

I would like to begin by apologizing for the manner this issue was handled. I incorrectly assumed that you would have recognized our concerns from the beginning however now I understand that you did not have enough information to make an informed decision on the matter. That was a mistake on my part and not intended as a commentary on you or your office or an attempt to subvert your authority.

The primary reason we believe you are a material witness in the case is due to statements made to police by attorneys from the Public Defender's Office after Senator Lucas told police that the protesters were going to paint the monument but just prior to any damage actually occurring. Public Defenders Stephens and Cramer told the officers that you made an announcement that you were not going to prosecute anyone. When another Public Defender questioned if that meant trespassing rather than painting, Attorney Stephens and Attorney Cramer said emphatically that you were not going to prosecute "any of this". The same Public Defenders had earlier told the officer that their intent was to get arrested for trespassing "for the symbolism" of it. While it is certainly plausible that a trained attorney would commit a misdemeanor trespass to make a statement, especially if they believed they wouldn't be prosecuted, it is highly illogical to think one would commit a felony in broad daylight while being video taped if they did not have some basis to think they would not be prosecuted for that as well.

I have no reason to believe that you in anyway condoned the destruction of property that took place or had knowledge of the protesters plans to deface it, but based on their statements alone it is unfathomable that their defense strategy would not involve a claim that they believed your office wouldn't prosecute them. This creates serious issues if your office is prosecuting the case and are in a position where neither the prosecution or the defense can question you about what was said and to whom.

The second issue concerns the text messages and conversations you had with Chief Green regarding prosecution of trespassers and non-prosecution of trespassing at the monument, your position not to have any threat of prosecution associated with your office, and how that may relate to the other crimes that were committed on June 10th, 2020. Once again it seems very likely that a defense attorney would want to question both Chief Greene and you about what was said which is not possible if your office is prosecuting the case.


Other issues not directly related to the events of June 10th but that have been brought to my attention that also warrant your consideration involve contributions made to your campaign by Senator Lucas and a Facebook exchange between you and Senator Lucas from 2015. Additionally, in 2016 you recused yourself from another case involving James Boyd and Louie Gibbs who are also defendants in this case. I understand that these are not issues that would automatically require you to recuse yourself, but they do raise serious concerns and certainly could give the appearance of a conflict of interest.

Contrary to what has been portrayed in the media by the defendants, their supporters, and others on social media there is not a behind the scenes conspiracy trying to manipulate the legal system or sideline your office from involvement in the case for some political reason or any other purpose.

The request for a special prosecutor is based solely with the goal of a fair and impartial trial for everyone involved and to avoid any potential for the appearance of impropriety, mistrial, or miscarriage of justice.

Thank you for your consideration in this matter.

Sincerely,



Sgt. Kevin McGee
Property Crimes Unit
Portsmouth Police Department

**Portsmouth Police Department
Property Crimes Unit
Investigation Summary
2020-007099**

This is a summary of the events leading up to the destruction of property that occurred at the Portsmouth confederate monument on June 10th, 2020. This is not all inclusive nor is it a final investigative report and is meant only as a summary of the investigation

On June 9th, 2020 around 11:00 pm protesters including Portsmouth NAACP leaders James Boyd, Louie Gibbs, and others gathered at the confederate monument in the 400 Block of Court St in the City of Portsmouth and were trespassing inside the fenced area which is off limits to the public. The Police Department received information that the group intended to damage the monument, and the protesters told police that the City Council had given permission earlier in the evening. Police Chief Greene tried unsuccessfully to contact City Manager Patton, so she then contacted City Attorney Ashby who advised the Chief that nobody had been given permission to cover or deface the monument.

As the protest continued over the next several hours the protesters advised police that they just wanted to cover the statues with bags which could be later removed without causing damage. Around 2:00 am after consulting with City Attorney an agreement was reached that the protesters could cover the statues for the night without causing any damage, with the understanding the coverings would be removed the following morning. The statues were covered with bags and sheets and the protesters left the area a short time later.

Early the following morning a white male citizen entered the fenced area at the monument and removed the coverings at a time when no police were present. Shortly after that two of the protesters, James Boyd and Louie Gibbs, returned to the monument and again covered one of the statues with a cloth cover.

Around 8:50 am June 10th, 2020 the Chief Greene returned to the monument and advised the protesters that they were trespassing and asked them to leave or face arrest. The protesters indicated they would not leave and acknowledged the possibility of arrest. The protesters disputed the Police Departments authority to enforce trespass based on prior disputes over the ownership of the monument.

Chief Greene consulted the City Manager Patton and City Attorney Ashby and advised them of the situation. The City Attorney advised that the City of Portsmouth had control of the monument and he would testify in court regarding the issue and enforcement of trespassing on the property.

At approximately 9:20 am Chief Greene advised the City Attorney that the individuals were refusing to leave voluntarily so the City Attorney requested the phone number for the protesters attorney in order to attempt to resolve the situation. The protest, and negotiations to resolve the situation without arrests continued for two hours.

The Police Chief, City Manager, and City Attorney discussed the situation again, as well as information received about another protest planned for the same location at 7:30 pm that evening, and information received that there was an intent to paint the monument at that event. It was determined that the current protesters, James Boyd and Louie Gibbs would need to be removed as soon as possible in order to prepare and protect the monument for the event planned later in the evening.

At 11:30 am police spoke to the protestors again and gave final trespass warnings. The protestors advised they would have to be arrested and they refused to sign a summons in lieu of arrest. The protesters were arrested and transported to Police Headquarters where they were again given an opportunity to sign a

**Portsmouth Police Department
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summons instead of being taken before a magistrate. The protesters now agreed, and both Boyd and Gibbs signed a summons for trespass and were released from custody.

While those protesters were still at Police Headquarters, Commonwealth Attorney Morales contacted the Chief Greene by text message and questioned the arrest of the protesters after they had earlier been given permission to be on the property the night before. Commonwealth Attorney Morales asked for their names so her office could intercept the charges so that the protesters would not be incarcerated.

Chief Greene called Commonwealth Attorney Morales on the phone and explained the entire situation up to that point. The Commonwealth Attorney told the Police Chief that since the white male who was on the property earlier in the day that removed the coverings was not arrested, she would be dismissing the charges against the protesters arrested for trespassing who were black. Chief Greene explained that there were no officers present when the white male was on the property earlier and that had officers been there, he would have first been asked to leave prior to arrest, just as was done with the protesters who were arrested later.

During the time the protesters were being released from custody, and while the Police Chief and Commonwealth Attorney had been communicating earlier, city workers installed no trespassing signs on the fence around the monument. At approximately 1:55 pm as the signs were being installed the Commonwealth Attorney contacted the Police Chief by text message again and stated she would like the reference to trespassers being prosecuted removed from the signs because she did not want the Commonwealth Attorney's Office associated with a threat of prosecution for trespassing on the monument.

When James Boyd and Louie Gibbs were released from custody they immediately went outside and began live streaming video to social media along with Kimberly Wimbish and Lakesha Hicks, and called for others to get to the monument, implying that because they had been arrested for trespassing that the result of what was to come next was on the city.

While that video was being broadcast the protesters still at Police Headquarters another protester in the group, Lakesha Atkinson, was broadcasting another livestream at the monument where several people had remained, police stood by, and the situation was calm. Lakesha Atkinson told viewers that it was "not going to be a good look for Portsmouth" or for the monument now, and that it was "about to be a hostile environment". She continued by saying the city has now made the citizens mad and that it was "not going to be good", which she repeated several times. She concluded by telling people to get down to the monument because it was "about to get crazy out here".

All the protesters then returned to the monument and continued live streaming, calling on others to get to the monument, while James Boyd and Louie Gibbs addressed other protesters who had already begun to gather.

The protesters then told each other to cut their livestreams and had a meeting during which Kimberly Wimbish was on the phone and can be heard saying to the person on the phone "Ok Senator, James said"(the rest of the conversation is unclear). Immediately following the meeting and phone conversation Amira Bethea walked down the street and got a backpack full of spray paint cans which she gave to Lakesha Atkinson who put it on. Lakesha Hicks, who had been unarmed up to that point, and Kimberly Wimbish also walked away from the area after the meeting. Senator Lucas arrived at the scene a few minutes later and met with the other protesters on the corner of Court St and High St.

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After meeting with the protesters Senator Lucas approached the police officers and told them that she had just talked to Mayor Rowe and City Manager Patton, she identified herself as Senator Lucas, and told police that the protesters were going to put some paint on the monument, that they could not be arrested, and that police should contact the City Manager. Police Sergeant Johnson told Senator Lucas that she couldn't tell the protesters they could do that and Senator Lucas reiterated that the police could not arrest the protesters and that she had already talked to the City Manager and that two City Council members were on their way to the scene.

Kimberly Wimbish and Lakesha Hicks returned to the scene and were immediately told by Lakesha Atkinson that "She said it's a go, the Senator already talked to the police" and Senator Lucas continued by saying "I've already talked to Dr. Patton, and two council members. Vice Mayor Burke and (Councilman) Shannon Glover are on their way down here." Lakesha Hicks was now openly carrying a handgun in a holster on her hip.

Senator Lucas walked away to talk to a reporter and then walked back to the officers and took off her face covering and said "'I just got through talking to (Mayor) Jon Rowe and (City Manager) Dr. Patton. The Vice Mayor (Lucas-Burke) and Shannon Glover are on their way down here right now. This is city property and John Rowe knows it, Dr. Patton knows it. And if they'd have listened to the Vice Mayor and Shannon Glover when they introduced this thing to the city council in the first place, they could have put a tarp over this thing, and all this would have been resolved. It wouldn't even have been necessary. So, if the city had done what they were supposed to do, these citizens wouldn't have to do it. So, there you've got it.", Senator Lucas walked away again.

While Senator Lucas continued talking, members of the group begin shaking up cans of paint. Louie Gibbs told them to take the cans out and shake them because "that's intimidating" them, meaning the police. Amira Bethea gave a can of yellow paint to Dana Worthington but Lakesha Atkinson said she needed a black one so Lakesha Hicks gave Worthington a can of black paint instead. Dana Worthington then asked what she was supposed to paint and was told by both Hicks and Atkinson to write "Black Lives Matter". Lakesha Hicks then held up and shook the can of yellow paint for her viewers and said, "We're about to get busy" and "Senator Louise Lucas told everybody they better not arrest us".

Officer Siniscalchi was standing a distance away speaking to several attorneys from the Portsmouth Public Defenders Office at the time Senator Lucas told the other officers the group was going to paint the monument. Officer Atkinson walked over and told him what the Senator had said was going to happen, including painting the monument. Public Defenders Stephens and Cramer told the officers that Commonwealth Attorney Morales made an announcement that she was not going to prosecute anyone. When another Public Defender questioned if that meant trespassing rather than painting, Attorney Stephens and Attorney Cramer said emphatically that the Commonwealth Attorney was not going to prosecute "any of this". The same Public Defenders had earlier told the officer that their intent was to get arrested for trespassing "for the symbolism" of it.

Lakesha Hicks began livestreaming again, telling viewers the Senator told Police that they could not arrest the protesters. She then told them that if the city had done their job that they wouldn't have to do it for them, while she continued to shake up a can of paint. She said that if the city had done what they were supposed to do then the citizens wouldn't have to do it for them and that they were there with the support of the Senator.

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Amira Bethea asked Kimberly Wimbish if it was "a go" because "You the one that's been communicating with her and Wimbish replied "She said yes." Bethea then said that "she said she's waiting for somebody to come down here, that's why I'm asking." Senator Lucas then told Kimberly Wimbish "5 minutes" and Wimbish told the others that she said "wait for Lisa (Lucas-Burke) and Shannon (Councilman Glover). 5 minutes". Senator Lucas then approached them and said, "And the only reason I'm saying that is because Lisa and Shannon both are on the council and they both know this is city property just like I do". Wimbish then told the others "They did it in Richmond, they did it everywhere else, I don't see nobody arrested"

Chief Greene was notified that the Senator was on scene and that she had told officers the protesters were going to paint the monument. The Chief called the City Manager and informed her of the situation. The City Manager then called Councilman Glover on another phone while still on the line with the Police Chief. City Manager Patton indicated that Councilman Glover had been on an earlier phone call between the City Manager and Senator Lucas and said that she did not tell the Senator that anyone could damage the monument. Councilman Glover did not respond either way as to what had been said in the earlier conversation while on the current call between the Chief, City Manager, and himself. The City Manager asked both the Chief and Councilman to go to the scene.

Lakesha Hicks continued to livestream and said that because two of the members were arrested earlier the Senator came down to the scene so that no one else would be arrested and now they were just waiting on the Vice Mayor and Council member. She said they were non-violent, but since the city tried to intimidate them by arresting their members for trespass that they now had to move "by any means necessary". She said that since they had the Senator and Vice Mayor standing with them that they had every right to express their artistry and spray paint it.

Vice Mayor Lucas-Burke arrived and addressed the protesters, explaining the process the city was taking to have the monument legally and safely removed after July 1st, 2020 when it would be legal to do so. She also asserted that because the city had been maintaining the property that it was now city property. Vice Mayor Lucas-Burke went on to explain that there would be a special meeting of the city council later that day to discuss covering and removing the monument. Vice Mayor Lucas-Burke asked the crowd to give the city time to have the meeting that day to have the monument covered. Senator Lucas cut off Vice Mayor Lucas-Burke and announced to the crowd "This is city property, anybody that pays taxes in this city has a right to be on their property, to hell with city council!" A citizen asked the Vice Mayor about the no-trespassing signs that had been put up. Senator Lucas told the crowd (incorrectly) that they cannot put up no-trespassing signs on city property.

Vice Mayor Burke told the crowd that most of the council wanted the monument covered and that she wanted to see it covered today. Senator Lucas the said "The city has had three years to cover it, let them cover it!" Lakeshia Hicks and others said, "You heard Senator Louise Lucas" and others began shouting "Cover it!" and the protesters began to move around to the back of the monument.

Chief Greene arrived at the scene as the Vice Mayor was addressing the crowd. The Chief began speaking with two of the protest organizers, James Boyd and Louie Gibbs and were discussing the reason for the earlier arrest and that no one was allowed on the property. Boyd and Gibbs, who had earlier argued they could not be arrested because the city did not own the monument now shifted their argument to the basis that it *was* actually city property and thus, they could not be arrested for going on city property.

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As Chief Greene tried to explain that there could be restrictions placed on access to city property, she was interrupted by Senator Lucas who told the Chief that they had now been given permission from the City Manager via herself. The Chief disagreed with the Senator and reiterated that she had just spoken to the City Manager and that no one was allowed on the property. The Senator told the Chief again that it is city property and they have a right to go on it because they pay taxes. Vice Mayor Lucas-Burke then questioned the Chief how the no trespassing signs, which were now clearly posted, came about.

At approximately 2:25 pm, while the conversation between the Police Chief, Senator, and Vice Mayor was taking place, the protesters had moved around to the back of the monument and began spray painting it. They were quickly joined by others, two include two juveniles, while the other protesters walked around videoing. One of the organizers, Lakesha Hicks, who was filming was openly carrying a firearm and Amira Bethea mentioned she had her gun in her bag, which she also later began openly carrying in a holster on her hip.

Chief Greene attempted to contact the City Manager but was unsuccessful. Vice Mayor Lucas-Burke then told the Chief that the city was not spending any more money on it (the monument). Chief Greene responded that she must enforce the laws and that if she is told they are trespassing the police must enforce it. Senator Lucas then told the Chief that the City Manager is not going to tell her that, and to trust her.

Having been unable to reach the City Manager to get clarification on the information she has been told, the Chief next called City Attorney Ashby and advised him of what she had been told by the Senator and her claim that they had been given permission by the City Manager to be on the property and do whatever they wanted, and also that the monument was currently being painted by protesters. The Chief also advised the City Attorney that the Vice Mayor and a Councilman Glover were also present. City Attorney Ashby advised the Police Chief to protect life and not property at that point.

The Chief determined that there was insufficient police manpower to safely intervene in the destruction of property taking place at that point due to the juveniles' being present, the number of protesters involved, and firearms involved. The statements made by the Commonwealth Attorney that she would not prosecute anyone for trespassing also created significant issues and liability concerns for officers. The statements made by Senator Lucas and the participation of attorneys from the Public Defender's Office created a high degree of uncertainty about what was actually true, or if for some reason the City Council had decided to allow the painting of the monument because neither Vice Mayor Lucas-Burke or Councilman Glover who were present with the Chief spoke up or contradicted anything the Senator said. Chief Greene instructed officers to protect life and not property based on advice from the City Attorney and assessment of the totality of the situation until clarification from the City Manager could be obtained and while other law enforcement assets were being brought in to assist.

While the Police Chief had been attempting to contact the other officials, and while the monument was being painted by protesters Senator Lucas asked James Boyd if they had enough "cover" and he said they were going to buy some more and "we are going to put Black Lives Matter probably around the front of it". Senator Lucas told him "I just wanted to come down here and make sure nobody else got arrested" and Boyd responded "you know jail ain't nothing but a thing" to which Senator Lucas replied "ain't nothing but another thing to put on a piece of paper."

Numerous protesters took part in painting the monument as officers kept the peace between protesters and counter-protesters that had arrived. At approximately 3:30 pm Chief had received no further

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information or clarification from the City Manager or City Attorney. She sent a text message to the City Manager advising that situation remained the same but remained non-violent and that the mission of officers would continue to be the protection of life until further instructions were received. The City Managers response was to keep everyone safe.

Protesters continued painting the monument and helping others over the sharp pointed metal fence. After the monument had been painted extensively there was a brief lull in activity in which there were no protesters inside the fence. Sgt. McGee asked protest organizers James Boyd and Louie Gibbs at that point if they could keep other protesters from over the fence any more so that no one get hurt. They refused and said if they were given a key there wouldn't be a problem. No key was provided.

The crowd of protesters continued to grow and many of them arrived carrying firearms, both openly and concealed, at some point the lock was broken off of the gate allowing easier access to many more individuals who eventually began to actively try to destroy the monument. Counter protesters had also arrived, and police officers separated several scuffles between them and escorted several intoxicated agitators out of the area.

At approximately 8:45 pm City Manager Patton called Chief Greene and told her that police needed to stop people from breaking pieces off the monument. Due to the number of involved armed protesters the police had requested mutual aid from neighboring jurisdictions which had not yet arrived.

Chief Greene attempted to contact three of protest organizers to request assistance stopping protesters from breaking off parts of the monument, but her calls went unanswered. She reached a fourth and was hung up on.

At approximately 9:07 pm as police were waiting for enough resources to take action to disperse the crowd one of the statues on the monument was pulled down and struck a protester causing a critical injury. At that point the protest and property damage came to a halt as officers on scene provided immediate aid to the injured person and one of the organizers called the Police Chief requesting assistance, the Police Chief advised her that assistance was already on the way and that they need to shut down the protest immediately. Police medics moved in to evacuate the injured protester to an ambulance as Chief Greene arrived back on scene and met with the protest organizers and told them to make an announcement that the event was over and to disperse or police would move in and disperse them. Police established a crime scene as the protest organizers made announcements to the crowd to leave the area and they dispersed without further incident and police were able to secure the area.

The police departments Major Crime Unit was called in to investigate the circumstances of the injured protester as his injuries were critical and he was not expected to survive. The Major Crimes Unit and Forensics unit began to investigate however a short time later the police command staff decided that considering all the circumstances involved it would be best to turn request another agency to take over the investigation.

The Virginia State Police were contacted, and they agreed to respond and assume the investigation into the circumstances surrounding the injuries sustained by the injured person. At 11:47 pm Chief Greene notified City Manager Patton that the Virginia State Police would be conducting the criminal investigation into the injured person. Once State Police arrived the crime scene and any evidence collected was turned over the Portsmouth Police Department had no further involvement into the injured

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person investigation but continued to provide crime scene security and maintained a presence at the monument to prevent further damage for several days.

At some point in time after the incident Chief Greene spoke to Commonwealth Attorney Morales and asked her if she would be requesting a special grand jury to investigate the destruction of property. The Commonwealth Attorney told the Chief she would not do that because she had never done that in any other case.

On July 22nd 2020 Chief Greene met with the Portsmouth Police Department Property Crimes Unit chain of command staff including Captain Springer, Lieutenant Blystone, and Sgt. McGee to discuss the incident and determine if the Portsmouth Police Department should and/or could open an investigation into the destruction of property at this point in time without a conflict with the Virginia State Police investigation into the injured person. The Police Chief also asked that the investigators research similar incidents nationwide and how other agencies had handled them, and determine which state, local, or federal laws were most appropriate, and if another agency could or should conduct the investigation. All in attendance agreed that the situation would not have occurred without the distraction and misinformation given to police by Senator Lucas and that at the event did not appear to be a spontaneous protest, but rather that it appeared to have been an organized destruction of property, and that the only appropriate action to take was a thorough investigation into the event and to take out the appropriate charges if there was probable cause.

Investigators determined that Virginia State Police would be unable to initiate an investigation into the case without an order from the Governor, Attorney General, or a grand jury due to state law governing state police investigations of certain elected officials, in this case a state Senator. They also determined that there was no such prohibition on local police which are governed by a different section of the Code of Virginia.

Portsmouth investigators met with the Virginia State Police investigator conducting the investigation into the injured person and discussed the case with the investigator. The Virginia State Police investigator advised that their investigation was only into the events immediately surrounding the injury and they had not investigated the entire event that occurred on June 10th. The investigator advised their preliminary investigation was complete and that while they were not yet ready to turn over anything to the Commonwealth Attorney, and had not determined if they in fact would be turning anything over, that there would be no conflicts that would affect their case if Portsmouth began an investigation into the destruction of property.

Portsmouth investigators determined that there were no applicable federal laws that would apply to this incident because several required elements were missing from any possible federal codes, the primary one being that no federal property was involved. Investigators also met with representatives from the FBI Norfolk Field Office to discuss the case and verified the lack of any apparent federal jurisdiction in the case.

After determining that the Virginia State Police Could not investigate, and the lack of any federal nexus to the case the Portsmouth Police Department began a thorough investigation into the case. The investigation consisted primarily of a review of many hours of police body camera videos and hours of videos recorded by the protesters themselves as well as video recorded by local news stations and other video found on social media.

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The conclusion reached by investigators was that this was an organized conspiracy by several of the protesters to damage the monument with paint to make a political statement and central to that plan was the distraction and misinformation provided by Senator Lucas which gave them the opportunity to begin painting the monument. Others involved, namely the Public Defenders, apparently started out with the intent to get arrested by the police for trespass which they believed they would not be prosecuted for, however when they learned of the plan to damage the property a few of them committed what they should have known to be a felony without hesitation and with an apparent belief that they would not be prosecuted by the Commonwealth Attorney.

Investigators determined that the Commonwealth Attorney is a material witness in the case because whomever would ultimately prosecute the case would most likely want to question her about what she did communicate to the Public Defenders or others involved. It was also determined that it was very likely that the basis for any defense would be that the Commonwealth Attorney told them they would not be prosecuted for anything, as stated by the Public Defenders.

Investigators determined there was more than enough probable cause to charge the protest organizers with conspiracy to commit a felony and destruction of property and destruction of property as either principal in the first or second degree. There was also probable cause to charge several others with destruction of property.

Because the Commonwealth Attorney is believed to be a material witness and refused to request a special grand jury, the only course of action was to secure warrants from the magistrate and request assistance from the public with the identification of others involved. The fact that Senator Lucas was scheduled to attend a special session of the General Assembly was discussed, as well as the optics of taking out charges at that time. The conclusion reached was that regardless of when charges were taken out there would be claims that the police were trying to prevent her attendance at the session if taken out before it began, interfere with her attendance if taken out during the session, or would appear to be retaliatory if taken out after the session. Investigators knew based on the specific charges that the Senator and most, if not all, of the other others involved would be released on their own recognizance regardless of when they were charged and that it would be best to take the charges out as soon as possible so they could be addressed by those involved with the least amount of disruption and would also allow investigators to continue the investigation without risk of it becoming public knowledge prematurely and some sort of obstruction occurring before warrants could be secured.

On August 17th, 2020 warrants were secured for 14 individuals involved in the conspiracy and destruction of property. Following further investigation and assistance from the public five more individuals were charged with destruction of property on August 26th, 2020.

From: Morales, Stephanie
Sent: Monday, October 05, 2020 4:02 PM
To: Burke, Scott
Cc: Pace, LaVoris
Coleman, CaShea
Subject: 2020-007099 CA Witness letter.pdf

Shewmake, Tamara

Good afternoon again Chief Burke,

As I was sending my request to you, I received an email from Sgt. McGhee containing the attached letter and a probable cause summary. Additionally, there is an indication that Sgt. McGhee has plans to gradually turn over investigative results, prior to this office's discovery, which will not suffice.

The Court's order requires the immediate release of the case information. Sgt. McGhee's proposed timeline does not comply with the Court's order. We again request it all now. These matters transpired in June and were charged months later, after your Department's investigation, so there should be no further delay.

Further, Angela Greene, who I understand is on administrative leave, has been copied in Sgt. McGhee's correspondence, which I find inappropriate. Please let us know when we can expect this to be properly addressed.

Best,

Stephanie Morales
Commonwealth's Attorney
City of Portsmouth

From: Morales, Stephanie
Sent: Monday, October 05, 2020 4:14 PM
To: Prince, Renado
Cc: Pace, LaVoris ; Shewmake, Tamara
Coleman, CaShea ; Murrell, Teressa
Subject: Fwd: Monument case

Good afternoon Chief Prince,

I understand you are working on this matter in Chief Burke's stead today. Thank you for your prompt attention to this matter.

I wanted to be sure to forward you Sgt. McGhee's correspondence in the email below. He has included Angela Greene, who I understand to be on administrative leave, in his correspondence.

Please send all file information to Chief Deputy Teressa Murrell and Senior Assistant Commonwealth's Attorney CaShea Coleman. Thank you again for your assistance.

Sincerely,

Stephanie Morales
Commonwealth's Attorney
City of Portsmouth

From: Morales, Stephanie
Sent: Monday, October 05, 2020 4:22 PM
To: Burke, Scott <
Subject: Fwd: Monument case

FYI.

From: Morales, Stephanie
Sent: Monday, October 5, 2020, 4:14 PM
To: Prince, Renado
Cc: Pace, LaVoris; Shewmake, Tamara; Coleman, CaShea; Murrell, Teresa
Subject: Fwd: Monument case

Good afternoon Chief Prince,

I understand you are working on this matter in Chief Burke's stead today. Thank you for your prompt attention to this matter.

I wanted to be sure to forward you Sgt. McGhee's correspondence in the email below. He has included Angela Greene, who I understand to be on administrative leave, in his correspondence.

Please send all file information to Chief Deputy Teresa Murrell and Senior Assistant Commonwealth's Attorney CaShea Coleman. Thank you again for your assistance.

Sincerely,

Stephanie Morales
Commonwealth's Attorney
City of Portsmouth

From: Prince, Renado
Sent: Monday, October 5, 2020, 5:13 PM
To: Pace, LaVoris; Burke, Scott; Morales, Stephanie
Subject: Request

CA Morales

You will receive the link for video evidence tomorrow morning. You will have all associated documents by noon tomorrow.

Thank you for your time and patience.

Renado Prince

Assistant Chief of Police
City of Portsmouth Police Department
206 High St, Portsmouth VA, 23704
Office: (757) 233-1100
Fax: (757) 233-1100

From: Morales, Stephanie
Sent: Monday, October 05, 2020 5:16 PM
To: Prince, Renado
Scott
Subject: Re: Request

; Pace, LaVoris

; Burke,

Chief Prince,

Thank you very much.

Sincerely,

Stephanie Morales
Commonwealth's Attorney
City of Portsmouth

October 6, 2020

From: McGee, Kevin
Sent: Tuesday, October 06, 2020 10:53 AM
To: Murrell, Teresa
Cc: Blystone, Scott
Prince, Renado
Subject: Monument case videos

Coleman, CaShea
; Springer, Richard
Burke, Scott

Good morning,

The evidence.com link has been shared and an index of the videos and markers is attached. Please keep in mind this is still a work in progress and it may be updated as I finish putting the case file together and error checking the information.

I will have the rest of the documents to you shortly.

Please let me know if there are any questions or I can assist in any way.

Thank you,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit

From: Prince, Renado
Sent: Tuesday, October 6, 2020 12:54 PM
To: McGee, Kevin
Coleman, CaShea
Cc: Blystone, Scott
Burke, Scott
Subject: RE: Monument case file

Murrell, Teresa

Springer, Richard

Does this include had written notes, etc?

From: McGee, Kevin
Sent: Tuesday, October 6, 2020 12:51 PM
To: Murrell, Teresa
Cc: Blystone, Scott
Prince, Renado
Subject: Monument case file

: Coleman, CaShea
Springer, Richard
Burke, Scott

Good afternoon,

Attached is a draft copy of the file information that is current as of today. To the best of my knowledge there are no other documents or evidence in our possession at this time.

I must reiterate, this is still a work in progress and more documentation with more specific details on several individuals will be forthcoming as soon as possible next week. However, I believe anything that would be discoverable is already readily identified and included, I'm just trying to make it easier to sort it all out.

Thank you,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit

From: McGee, Kevin

Sent: Tuesday, October 06, 2020 1:05 PM

To: Prince, Renado

Murrell, Teresa

Coleman, CaShea

Cc: Blystone, Scott

Springer, Richard

Burke, Scott

Subject: RE: Monument case file

Sir,

Everything is included, the majority of the case involved transcribing videos into word documents. There was one interview with a defendant that was recorded on video and an included ROI, I don't know if there were any other notes taken during that interview that may have been written down at this time.

From: Prince, Renado

Sent: Tuesday, October 6, 2020 1:48 PM

To: McGee, Kevin

Murrell, Teresa

Coleman, CaShea

Cc: Blystone, Scott

Springer, Richard

Burke, Scott

Subject: RE: Monument case file

I appreciate your attention on this. It is imperative that you ensure that all materials related to these cases are released to the CA's office. Please make a final check with all involved to ensure that you have collected and released everything concerning the case to the CA's office. Once you have completed surveying personnel involved in the investigation, send me a final email verifying that all associated materials, documents and or recordings have been released to the CA's office.

Thank you for your hustle and quick response on this.

Assistant Chief Prince

From: Prince, Renado
Sent: Tuesday, October 06, 2020 1:51 PM
To: Morales, Stephanie
Subject: FW: Monument case file

I will copy you in on the final answer as well.

From: McGee, Kevin
Sent: Tuesday, October 06, 2020 4:09 PM
To: Prince, Renado ; Murrell, Teresa
Coleman, CaShea ·
Cc: Blystone, Scott · ; Springer, Richard
Burke, Scott ·
Subject: RE: Monument case file

Well I hate to admit it, but I did miss a file in the rush, and a rather important one at that.

Please add the attached transcripts (which still may have additional information added later) from the videos.

My apologies for the delay.

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit

From: Prince, Renado
Sent: Tuesday, October 06, 2020 4:50 PM
To: Morales, Stephanie
Subject: FW: Monument case videos

All yours,

From: McGee, Kevin
Sent: Tuesday, October 6, 2020 10:53 AM
To: Murrell, Teresa ; Coleman, CaShea
Cc: Blystone, Scott ; Springer, Richard
Prince, Renado ; Burke, Scott
Subject: Monument case videos

Good morning,

The evidence.com link has been shared and an index of the videos and markers is attached. Please keep in mind this is still a work in progress and it may be updated as I finish putting the case file together and error checking the information.

I will have the rest of the documents to you shortly.

Please let me know if there are any questions or I can assist in any way.

Thank you,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit

October 21, 2020

From: McGee, Kevin
Sent: Wednesday, October 21, 2020 4:19 PM
To: Murrell, Teresa < >; Coleman, CaShea < >
Clark, Shaniqua < >; Marion, Ryan < >
Cc: Prince, Renado < >; Springer, Richard < >
Blystone, Scott < >
Subject: Monument case file

Good afternoon,

I have completed and attached the case file. The only additions to what was previously sent is a list of who identified each defendant (page 77 of the PDF) and a video list by defendant (page 11 of the PDF). Additionally, footnotes were added to the investigation summary with references to which video captured the particular action or statements. There is no change to the factual information, the intent is to make it easier to follow because the videos for the most part are not in order and in many cases several different videos need to be viewed to get the complete picture.

Regarding the videos labeled as "unknown" as to who may have actually recorded the video, I need to know which specific video you have questions about. Quite a few videos were submitted by the public in response to crime line requests via the evidence.com public portal however I don't believe any of those are actually need or of evidentiary value, or they may have also been captured elsewhere by a known source and be redundant. Please contact me with the specific ones in question so I can clear it up.

Please contact me with any other questions and let me know when you are available to meet to discuss any other issues. My primary concern now is the lack of a damage estimate (of course based on the prior case the damage done is clearly over the felony threshold).

Thank you,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit

October 23, 2020

October 23, 2020

From: Marion, Ryan

Sent: Friday, October 23, 2020 3:59 PM

To: McGee, Kevin

Cc: Murrell, Teresa

Coleman, CaShea

Prince, Renado

Subject: Letter re: 2020-007099

Clark, Shaniqua
Morales, Stephanie <
Burke, Scott >

Dear Sgt. McGee:

Please see attached.

Thank you.

Sincerely,

Ryan S. Marion
Deputy Commonwealth's Attorney
Commonwealth's Attorney's Office
City of Portsmouth

COMMONWEALTH of VIRGINIA



OFFICE OF THE COMMONWEALTH'S ATTORNEY CITY OF PORTSMOUTH



Main Number: (757) 393-8581 · Fax: (757) 393-5135

VIA E-MAIL | _____

October 23, 2020

Sgt. Kevin McGee
Property Crimes Unit
Portsmouth Police Department
801 Water Street
Portsmouth, Virginia 23704

Re: Portsmouth Police Department No. 2020-007099

Dear Sgt. McGee:

On October 5, 2020, the presiding judge in the above referenced matters entered an order requiring the immediate submission of the Portsmouth Police Department's investigative file to this office. On that date, our office requested that the file be immediately provided in its entirety. As our office has reviewed the file and prepared it for discovery disclosure, we have identified issues with missing information.

On October 20, 2020, our office notified the police department of problematic areas that needed to be remedied immediately. We advised your department of the non-disclosure of the names of material witnesses, specifically those who identified all who were charged in the above referenced matters. The following day, our office received an e-mail which attached a document entitled "2020-007099 Case File – Complete.pdf" and still failed to identify the witness information.

To be clear, those who are accused are entitled to the identifying information for these individuals. The names may not be withheld. If the Portsmouth Police Department and investigating officers failed to document who identified those who are charged, we require that information in writing. The department may not refuse to disclose potentially exculpatory information and that which is undoubtedly of evidentiary value. Additionally, the creators of every video submitted and uploaded to Evidence.com must be identified. For the same reasons as mentioned above, the names must not be withheld.

Please immediately provide all of the requested information pursuant to the Court's Order.

Stephanie N. Morales, Commonwealth's Attorney
Portsmouth Judicial Center · 1345 Court Street, Suite 105
Portsmouth, Virginia 23704

Sincerely,



Teresa Murrell, Esq.
Chief Deputy Commonwealth's Attorney



Shaniqua Clark Nelson, Esq.
Deputy Commonwealth's Attorney



Ryan S. Marion, Esq.
Deputy Commonwealth's Attorney



CaShea C. Coleman, Esq.
Sr. Asst. Commonwealth's Attorney

cc: Acting Chief Scott Burke (*via e-mail*)
Assistant Chief Renado Prince (*via e-mail*)

October 26, 2020

October 26, 2020

From: McGee, Kevin

Sent: Monday, October 26, 2020 12:25 PM

To: Marion, Ryan

Cc: Murrell, Teressa

Coleman, CaShea

Prince, Renado

Scott

; Clark, Shaniqua

; Morales, Stephanie

; Burke, Scott

Springer, Richard

Blystone,

Subject: RE: Letter re: 2020-007099

Dear Mr. Marion,

Good afternoon. I'm sorry I was off duty Friday and unable to respond until now.

Please see the attached and let me know what I can do to assist.

Thank you,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit



**PORTSMOUTH POLICE DEPARTMENT
PROPERTY CRIMES UNIT**

711 Crawford Street, Portsmouth VA 23704
Phone (757) 393-8814 ext. 7181

By Email. 10-26-20

Sgt. Kevin McGee

October 26, 2020

Ryan S. Marion Esq.
Deputy Commonwealth's Attorney
1345 Court St
Portsmouth, VA 23704

Dear Mr. Marion,

This is in response to your October 23rd letter to me regarding missing information in the case file.

The allegation that the names of those who identified the individuals charged is somehow being withheld is false. As indicated on my email October 21st that information can be found on page 77 of the PDF version of the file. It lists who identified each individual and how they were identified. I don't know how I can make it any clearer, but I will make every attempt to do so if you can clarify what exactly it is you are looking for.

Regarding the identity of who created or uploaded specific videos, as stated in my email October 21st, that information has been provided to the best of my ability. If you can provide specific examples, I may be able to research and clarify any questions, but the broad generalizations mentioned are impossible to address with any degree of certainty without some kind of specific question.

On October 5th, 2020 prior to becoming aware of the judges' order, I sent Mrs. Morales a full summary of the investigation and a request for her consideration of a special prosecutor. I also asked for her to let me know what additional information was required and instructions on how she wished to proceed with the case. To date no one from your office has contacted me to discuss the case.

I did not become aware of the judges' order for the immediate submission of all documents to your office until after working hours on October 5th. When I returned to work on October 6th, 2020 all documents in existence were turned over to your office (Mrs. Murrell and Mrs. Coleman specifically) and I also indicated that the investigation was incomplete, and more work needed to be done. I also said to let me know if there were any questions or if I could assist in any way. Once again no one from your office has contacted me to discuss the case.

On October 8th, 2020 Lt. Blystone attempted to get further required information for the case file from the city regarding the damage estimates for the monument and at that time we were told that our investigation was concluded and I was unable to do any further investigation.

On October 20th, 2020 I was made aware of the concerns regarding the identity of the individuals who identified the suspects that were charged and videos that were labeled as "unknown". I was out injured on October 20th so I was unable to respond that day. I did respond the following day and provided the information requested regarding the identification of the suspects and I asked for clarification on which specific videos labeled as "unknown" were causing an issue so I could address them.

Once again nobody from your office has contacted me or made any attempt to discuss the case. This is an extremely simple case which is made extremely complicated and convoluted by the number of individuals involved and and volume of video evidence. In order to successfully proceed with the case, we need to communicate either face to face, by phone, or even email. There a still quite a few issues that need to be worked out or identified, the primary one being who to subpoena as witnesses because that requires discussion with the prosecutor.

Information was withheld prior to October 5th, 2020 because it was then and is now my belief that Mrs. Morales should be considered a material witness due to her interactions with Chief Greene and the involvement and statements made by the public defenders. However, when the judge decided not to issue the subpoena and ordered the turnover of information, I have provided everything possible to the best of my ability and will continue to do so unless a judge orders me not to.

I understand that everyone in the Commonwealth Attorney's Office is extremely busy and has many other responsibilities besides this case, so do I. However, the only communication I have received thus far has been through multiple layers and seems to be hostile to me and my integrity and has implied I am withholding information when nothing could be further from the truth.

The fact of the matter is that I have received no communication or cooperation from your office since October 5th, 2020 other than the email received via Assistant Chief Prince on October 20th and your letter repeating the same thing on October 23rd. Both of which in my opinion were intentionally framed to create a paper trail to make it appear that I am withholding information or attempting to obstruct your office from doing your job which is completely inaccurate. I have attached copies of all communication I have received or sent to your office regarding this case.

Once again, please let me know what I can do to assist with the successful prosecution of this case. I suggest a meeting or at least a phone call between everyone involved in the prosecution, at a minimum you all free to call or email with specific questions at any time.

Sincerely,



Sgt. Kevin McGee
Property Crimes Unit
Portsmouth Police Department

October 27, 2020

From: Marion, Ryan

Sent: Tuesday, October 27, 2020 11:56 AM

To: McGee, Kevin

Cc: Murrell, Teresa

Coleman, CaShea

Prince, Renado

Scott

Clark, Shaniqua

Morales, Stephanie

Burke, Scott

; Springer, Richard

Blystone,

Subject: RE: Letter re: 2020-007099

Sgt. McGee,

Please see attached in response to your letter from yesterday.

Thank you.

Sincerely,

RSM

COMMONWEALTH of VIRGINIA



OFFICE OF THE COMMONWEALTH'S ATTORNEY CITY OF PORTSMOUTH



Main Number: (757) 393-8581 · Fax: (757) 393-5135

VIA E-MAIL _____

October 27, 2020

Sgt. Kevin McGee
Property Crimes Unit
Portsmouth Police Department
801 Water Street
Portsmouth, Virginia 23704

Re: Portsmouth Police Department No. 2020-007099

Dear Sgt. McGee:

As a courtesy, we will advise you that your department has been communicated with, in writing, since October 5, 2020. The purpose of such communication is to ensure that the entirety of the investigative file and every document, video, etc. was immediately provided to our office, in compliance with the Court's order. Our office will continue to correspond at the command level, when appropriate, and we trust that the message will reach you, as we know it has thus far. We have been in constant communication with the appropriate command level to ensure that we have all the necessary information to fully evaluate these cases.

To reiterate, those who are accused and charged with crimes in the instant cases are entitled to the identifying information for every individual who participated in the identification process. The names may not be withheld.

On page 77, your completed case file indicates that individuals are identified either via "prior contact," "DMV or police records," "social media," "citizen tip," or "prior arrest." However, this information is insufficient. We require the following information: 1) the nature of the prior contact to include any specific date(s), time(s), or location(s) of said contact, 2) the specific DMV or police records relied on for the identification, 3) the contents of the social media accounts which create the basis of the identification, including the source and identity of who provided you these accounts, 4) any identifying information to determine the source of the citizen tip and relevant contact information, 5) details concerning any prior arrests, to include any and all police case files and relevant information used by any officer as the basis of the identification.

As to the videos, we must trace - and have a duty to trace - every video to its origin. This requires the disclosure of every video in addition to providing the source of all the

Stephanie N. Morales, Commonwealth's Attorney
Portsmouth Judicial Center · 1345 Court Street, Suite 105
Portsmouth, Virginia 23704

videos. In your October 21, 2020, email you specifically stated that “[q]uite a few videos were submitted by the public in response to the crime line requests via the evidence.com public portal however I don’t believe any of those are actually need[ed] *sic* or of evidentiary value, or they may have also been captured elsewhere by known source and be redundant.” Your opinion on the evidentiary value of videos does not negate the obligation to provide this information in compliance with the Court’s order and to fulfill our discovery response requirements.

Please immediately provide all of the requested information pursuant to the Court’s Order. Your comments containing your personal sentiments about the nature of this case and your opinions about the lack of complexity on cases that will undoubtedly impact people’s lives, are inappropriate at best. Further, your references to paper trails, perceived hostility, thoughts about a lack of integrity and obstruction on your part, have come entirely from you. These matters, and our work to obtain all information to comply with our discovery obligations and our desire to serve the public to the best of our abilities are simply not about you. We ask that you please redirect your attention away from your personal sentiments and back to the work. We have remained and will remain professional and unbiased throughout the duration of our engagement with this matter and we remind you of your responsibility to do the same.

Sincerely,



Teressa R. Murrell, Esq.
Chief Deputy Commonwealth's Attorney



Shamqua Clark Nelson, Esq.
Deputy Commonwealth's Attorney



Ryan S. Marion, Esq.
Deputy Commonwealth's Attorney



CaShea C. Coleman, Esq.
Senior Assistant Commonwealth's Attorney

cc: Interim Chief Scott Burke (*via e-mail*)
Assistant Chief Renado Prince (*via e-mail*)

October 29, 2020

October 29, 2020

From: McGee, Kevin

Sent: Thursday, October 29, 2020 3:27 PM

To: Marion, Ryan

Clark, Shaniqua

Cc: Blystone, Scott

Prince, Renado

; Murrell, Teresa

Coleman, CaShea

; Springer, Richard

Burke, Scott

Subject: Monument defendant identification details

Good afternoon,

The requested details on the identification of the individuals charged is attached. Please attach it to the case file previously sent.

I will send updated information on the videos and other digital evidence when completed.

Thank you,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit

From: McGee, Kevin

Sent: Thursday, October 29, 2020 8:05 PM

To: Marion, Ryan

; Murrell, Teresa

Clark, Shaniqua

; Coleman, CaShea

Cc: Blystone, Scott

Springer, Richard

Prince, Renado

Burke, Scott

Subject: Monument video source identification details

Good evening,

The (known) requested details of video and digital evidence uploaded to evidence.com is attached. Please attach it to the case file previously sent.

Thank you,

Sgt. Kevin McGee

Portsmouth Police Department

Property Crimes Unit

From: McGee, Kevin

Sent: Thursday, October 29, 2020 8:11 PM

To: Marion, Ryan < > Murrell, Teresa < >

Clark, Shaniqua < > Coleman, CaShea < >

Cc: Blystone, Scott < > Springer, Richard < >

Prince, Renado < > Burke, Scott < >

Subject: RE: Monument video source identification details

Apologies, please disregard the copy that was just sent, I forgot to add one piece of information.

Please use this copy instead.

October 30, 2020

From: Marion, Ryan
Sent: Friday, October 30, 2020 6:26 PM
To: McGee, Kevin
Cc: Murrell, Teresa <> Clark, Shaniqua
Coleman, CaShea <> ; Morales, Stephanie <>
Burke, Scott <> ; Prince, Renado <>
Subject: Letter re: 2020-007099 - ID & Digital Evidence Documents

Dear Sgt. McGee:

Please see attached in response to your correspondence from yesterday.

Thank you.

Sincerely,

Ryan S. Marion

DEPUTY COMMONWEALTH'S ATTORNEY

CITY OF PORTSMOUTH

Telephone: (757) 393-8581, ext.

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COMMONWEALTH of VIRGINIA



OFFICE OF THE COMMONWEALTH'S ATTORNEY CITY OF PORTSMOUTH



Main Number: (757) 393-8581 · Fax: (757) 393-5135

VIA E-MAIL | _____

October 30, 2020

Sgt. Kevin McGee
Property Crimes Unit
Portsmouth Police Department
801 Water Street
Portsmouth, Virginia 23704

Re: Portsmouth Police Department No. 2020-007099

Dear Sgt. McGee:

We have received and reviewed your document, titled "Suspect Identification 2020-007099," sent yesterday at 3:27 p.m. In our letter of October 27, 2020, we requested, among other information, "the specific DMV or police records relied on for the information" used to identify the persons charged. This document is not responsive to that request. While it recounts several sources of those records, i.e. DMV records, LiNX, LexisNexis Accurint, PPD records, the actual records used for identification are not provided. Additionally, regarding Ms. Ammons, you state that an "anonymous Crime Line caller" provided her information, as well as that of her juvenile nephews.

We request that you provide the above records and information immediately. If the Portsmouth Police Department does not have the records used to identify each person at the time of the identification, or the identity of the crime line caller who provided Ms. Ammons's information, provide an explanation as to why these records were not maintained in the investigative case file.

Additionally, we have received and reviewed "Digital evidence source index 2020-007099.pdf," sent yesterday evening at 8:05 p.m., and again at 8:11 p.m. with an additional piece of information. Upon that review, we note that nine of the entries were recorded by "[a]nonymous citizens." Several others in the "Recorded By" column mention being placed on various Facebook sites, but with no indication as to who recorded them.

We likewise request that this information be provided immediately. If the Portsmouth Police Department does not have the information regarding the remaining sources of the digital evidence, provide a written explanation as to why their names were not documented by the investigating officers who retrieved these videos and photographs.

[Signatures on next page]

Stephanie N. Morales, Commonwealth's Attorney
Portsmouth Judicial Center · 1345 Court Street, Suite 105
Portsmouth, Virginia 23704

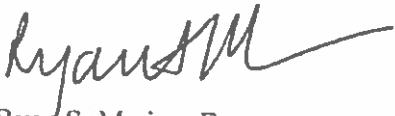
Sincerely,



Teresa R. Murrell, Esq.
Chief Deputy Commonwealth's Attorney



Shaniqua Clark Nelson, Esq.
Deputy Commonwealth's Attorney



Ryan S. Marion, Esq.
Deputy Commonwealth's Attorney



CaShea C. Coleman, Esq.
Sr. Asst. Commonwealth's Attorney

cc: Interim Chief Scott Burke (*via e-mail*)
Assistant Chief Renado Prince (*via e-mail*)

November 2, 2020

From: McGee, Kevin
Sent: Monday, November 02, 2020 11:12 AM
To: Marion, Ryan
Cc: Murrell, Teresa ; Clark, Shaniqua
Coleman, CaShea ; Morales, Stephanie
Burke, Scott ; Prince, Renado ; Springer,
Richard < >; Blystone, Scott
Subject: RE: Letter re: 2020-007099 - ID & Digital Evidence Documents

Good morning,

In response to your letter dated October 30th, 2020 all known information was already provided.

DMV information obtained through VCIN was not retained beyond the purpose for which it was obtained in accordance with the VCIN user manual which states "The DMV information, including images will not be retained or used for any purpose other than the intended purpose for which it was obtained." The purpose for which it was obtained was to verify the correct information was used to obtain warrants, after the information was verified it was no longer needed and destroyed.

I do not have or maintain any records related to searches on LInX, LexisNexis, PPD records, etc. Those services were used to conduct *online* searches to verify information or view booking photos. To the best of my memory nothing was printed from LInX however if something was, those items would have been destroyed as well because the LInX user agreement states "LInX documents may not be copied or sent outside of your law enforcement organization or incorporated into any official case file. LInX documents must be properly destroyed (hardcopies burned or shredded and electronic copies permanently deleted) within 72 hours of being obtained, or when they are no longer of value to the investigation, whichever comes first."

I do not have the name of the **anonymous** Crime Line caller that initially provided the name of Mrs. Ammons, because it was anonymous when it was provided. That information was used only as an investigative lead. Mrs. Ammons video confession posted by her on her Facebook page and the numerous videos of her at the incident were used to confirm her involvement. If the identity of the anonymous Crime Line caller was known Virginia Code 15.2-1713.1 B and 2.2-3706 would apply and release of that information would be prohibited. It is a moot point however because the information is unknown and was not provided to the call taker.

Additionally, the noted entries listed as "anonymous citizens" were in fact provided by anonymous citizens through the evidence.com public portal. If they did not provide their name, I have no way to know what it might be. Those items ultimately added little or no value to the investigation (because the individuals involved in criminal activity had been identified through other means first) and were provided in the interest of full disclosure of information.

Finally, you mention that several others in the "Recorded by" column mention being "placed" on various Facebook sites, but with no indication as to who recorded them. Generally, the information downloaded from the defendants Facebook pages were recorded by the defendants themselves. I don't understand what you are asking, please clarify what you mean and which specific items you are referring to.

Sincerely,

Sgt. Kevin McGee
Portsmouth Police Department
Property Crimes Unit