## ASSIGNMENTS OF ERROR

1. The Court of Appeals and the Trial Court erred in ruling that Defense Motions in Limine numbered nine and ten, and the Defense Ex Parte Motion pursuant to § 19.2-389, Code of Va., regarding criminal record checks, including juvenile criminal records, of prospective Commonwealth witnesses were not required to be furnished to the Defense by the Commonwealth and also in denying the Defense the ability to question such witnesses as to juvenile convictions of felonies or moral turpitude misdemeanors for general impeachment purposes because the 5th Amendment due process guarantee, 6th Amendment right of confrontation and effective assistance of counsel guarantees, and 14th Amendment, as well as similar provisions of the Virginia Constitution, trump any preference for confidentiality of juvenile records.

2. The Court of Appeals and the Trial Court erred in overruling the Defense Motion to Strike at the conclusion of the Commonwealth's Case-in-Chief, the Defense Motion to Strike at the conclusion of all the evidence, the Defense Motion to Set Aside the Verdict, and in granting principal in the second degree and concert of action jury instructions over Defense objection, because the evidence was insufficient to convict Defendant of first degree murder under § 18.2-32, and of use of firearm/murder under § 18.2-53.1, Code of Va.

3. The Court of Appeals and the Trial Court erred in overruling the Defense Motion at the conclusion of the Commonwealth's Case-in-Chief to allow the case to proceed on an accessory after the fact murder theory and in refusing to grant a requested Defense instruction on that theory because the plain language of Va. Code § 19.2-286 and Supreme Court of Virginia Rule 3A:17(c), as well as the legislative history behind Code § 19.2-286, would plainly require a submission in the instant case to the jury on an accessory after the fact theory of liability and because the end result was inconsistent with Appellant's right to a fair trial.

4. The Court of Appeals and the Trial Court erred in denying the Defense Motion to Quash or Dismiss Indictment and in granting, over Defense objection, jury instructions permitting an inference of malice because the law as stated in these jury instructions unlawfully permits a conviction to be had based upon a presumption rather than proof and unlawfully shifts the burden of proof to an accused and are unconstitutional.

5. The Court of Appeals and the Trial Court erred in disallowing Defense proposed voir dire questions numbered 17 and 28 because the same were within Code of Va. § 8.01-358, Virginia Supreme Court Rule 3A:14, and resulted in a denial of due process, equal protection, effective assistance of counsel, and trial by impartial jury in violation of the 5th, 6th, and 14th Amendments of the U.S. Constitution and the equivalent guarantees of the Virginia Constitution.

6. The Court of Appeals and the Trial Court erred in overruling the Defense Motions to Strike for Cause prospective jurors David Heizer and Lois Finch because bias in favor of a government witness is grounds for a challenge for cause; and juror bias, whether presumed or proven, requires automatic reversal; and for the same grounds as set forth in number 5, supra.

7. The Court of Appeals and the Trial Court erred in denying the Defense to refer to punishment ranges as to offenses in voir dire questioning of prospective jurors or in opening or closing argument because neither the Defense nor Prosecution could effectively screen prospective jurors for peremptory or for cause challenges and for the same constitutional grounds as set forth in numbers 5 and 6, supra.

8. The Court of Appeals and the Trial Court erred in overruling the Defense objection to the jury instruction regarding natural and probable consequences of one's acts. The inference in such jury instruction eliminates the burden of proof on the Commonwealth to prove every element of an offense beyond a reasonable doubt, and unconstitutionally shifts the burden of proof regarding a defendant's criminal intent.

9. The Court of Appeals and the Trial Court erred in overruling the Defense objection to the flight instruction and, after deciding to give that instruction, in denying the proffered flight instruction from the Defense because the granting of the proposed Commonwealth flight jury instruction was an improper comment on the evidence, drew specific attention to something in evidence, amounted to the functional equivalent of a directed verdict, and unconstitutionally shifted the burden of proof regarding a defendant's criminal intent.

10. The Court of Appeals and the Trial Court erred in overruling the Defense objection to the testimony of Officer Brian Roberts as to

incriminating statements allegedly made by defendant not within the three written statements or two audio recorded statements furnished by defendant to the police authorities because mitigating or exculpatory portions of statements made by defendant outside the three written statements and two recorded statements did not come into evidence along with the selected portions of such statements being testified to by Officer Roberts, the end result being a fundamental unfairness in trial.

11. The Court of Appeals and the Trial Court erred in denying the Defense request for the assistance of a private investigator because the same resulted in a denial of the 5th, 6th, and 14th Amendments guarantees of the U.S. Constitution and equivalent guarantees of the Virginia Constitution and Va. Code § 10.2-163.

12. The Court of Appeals and the Trial Court erred in not sustaining the Defense request for a pre-trial ruling prohibiting the Commonwealth from using in the jury's presence the word "murder" other than in argument, as the same is conclusive, argumentative, should be properly restricted to only opening or closing arguments, was the ultimate issue with such testimony invading the province of the jury, resulting in fundamental unfairness of the trial.

13. The Court of Appeals and the Trial Court erred in allowing the Commonwealth to display to the jury and introduce into evidence autopsy photographs of the deceased and photographs portraying the condition of the body of the deceased because the prejudicial effect of displaying such photographs outweighed the probative value.

14. The Court of Appeals and the Trial Court erred by allowing statements attributed to the co-defendant, Cardell Avent, into evidence over Defense objection which tended to incriminate or inculpate defendant because the same violated the pre-trial ruling regarding same and resulted in a violation of 5th Amendment due process, 6th Amendment right of confrontation, 14th Amendment, and the equivalent guarantees of the Virginia Constitution.

15. The Court of Appeals and the Trial Court erred in allowing the introduction into evidence by the Commonwealth in its Case-in-Chief and in its first closing argument of an alleged previous assault or assault and battery by appellant against the deceased because the prejudicial effect of

this testimony and this argument outweighed its probative value and the same resulted in a violation of 5th Amendment due process, 6th Amendment right of confrontation and effective assistance of counsel, 14th Amendment, and the equivalent guarantees of the Virginia Constitution.