IN THE

Supreme Court of Virginia

RECORD NO. 092064

LINDSAY ALAN BLY,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

OPENING BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

1. The trial court erred in not granting the defendant a new trial when it was discovered that exculpatory evidence was not disclosed to the defendant prior to trial.

NATURE OF THE CASE AND PROCEEDINGS BELOW

On March 24, 2005, Lindsay A. Bly was tried and convicted in a bench trial of distribution of an imitation controlled substance and distribution of methamphetamine in violation of Virginia Code Section 18.2-248. Mr. Bly retained Mr. Stuart J. Pearson, Esquire, who represented him at trial. The Honorable Humes J. Franklin, Jr. conducted the trial in the Circuit Court for Buena Vista. Judge Franklin ordered a pre sentence report and the case was continued for sentencing.

On November 28, 2005, Judge Franklin appointed the office of the public defender to represent Bly. On March 2, 2006, Assistant Public Defender Ross S. Haine filed a Motion for New Trial. At a hearing on March 30, 2006, Judge

Franklin took the Motion for New Trial under advisement and ordered Bly into supervised probation.

On September 13, 2007 Probation Officer Kristy A. Zirkle sent a letter titled Request for Violation Hearing concerning Lindsay A. Bly to Judge Franklin. At a hearing held on October 24, 2007, Judge Franklin denied Bly's Motion for a New Trial and the case was continued for sentencing. At the sentencing hearing on December 6, 2007, Judge Franklin sentenced Bly to 5 years in prison on each charge to run concurrently, all suspended but 7 months, 5 years supervised probation.

Bly petitioned for an appeal to this Court and by order dated May 21, 2008 the petition was granted. After briefing and oral argument, a 3 judge panel of this Court in a 2 to 1 decision reversed Bly's convictions and remanded the case to the trial court in an unpublished decision dated January 13, 2009.

On January 22, 2009 the Appellee filed a Petition for Panel Rehearing or Rehearing En Banc. In a decision dated

February 20, 2009 the Petition for Rehearing was denied. That same day the Petition for Rehearing En Banc was granted.

In a published opinion entered on September 15, 2009 the *en banc* Virginia Court of Appeals, in a 7 to 6 vote, denied Bly's appeal and affirmed his convictions. On October 13, 2009 Bly filed his Notice of Appeal in the Virginia Court of Appeals and his Petition for Appeal in the Virginia Supreme Court. On November 5, 2009 the Commonwealth filed a Brief in Opposition and Assignment of Cross Error. In an order dated March 26, 2010 this Court granted Bly's Petition for Appeal and awarded the appeal of the Commonwealth's Assignment of Cross Error. This brief timely follows.

QUESTION PRESENTED

Did the trial court err in not granting the defendant a new trial when it was discovered that exculpatory evidence

was not disclosed to the defendant prior to trial? [Preserved at 3-30-06 H.Tr., pp.3-11, 3-27-07 H.Tr., pp.4-7].[1]

STATEMENT OF FACTS

At trial on March 24, 2005 Investigator Darryl W. Slagle of the local drug task force testified that they used an informant, Robert Hoyle, to try to set up a drug buy from Bly at 1805 Walnut Avenue in Buena Vista, apartments owned by Bly's parents. [T.Tr., pp.8-10]. Slagle and other officers of the task force met with Hoyle at 6:15 p.m. on May 17, 2004, searched him, gave him $50.00 in marked money and a digital recorder, and drove him near the Walnut Avenue location. [T.Tr., pp. 9-11]. Slagle could see the back entrance to the apartment building. [T.Tr., p.11]. Slagle testified that he saw Hoyle go into the back entrance of the apartment complex, and that he thought this was the day that he saw Bly on the back porch of the complex. Slagle

[1] Citations designated "T.Tr." are to pages of the trial transcript, citations designated "H.Tr." are to the pages of the hearing transcripts and citations designated "S.Tr. are to pages of the sentencing transcript.

testified that he dropped Hoyle off at 6:34 p.m., Hoyle was in the apartment complex for approximately 3 minutes, and that he came back to the task force car and turned over a small bag of white powder to Investigator McFadden. [T.Tr., p.12]. The Virginia lab analyzed the white powder and found no controlled substance. Slagle testified that he had no idea what the substance was. [T.Tr., p.13]. The commonwealth presented no evidence as to what became of the recording of the alleged transaction.

Slagle testified that Bly was arrested on October 12, 2004. After Slagle read Bly his Miranda warnings, he interrogated Bly at the police station. According to Slagle, Bly stated that he did buy drugs but did not sell drugs and that he smoked "weed". He stated that he knew drugs were being dealt at the apartments and that he, as landlord, was trying to clean that up. [T.Tr., p.15]. This interrogation was not recorded.

On cross examination, Slagle testified that he did not strip search Hoyle and that it was possible that Hoyle could

have had something hidden on him. [T.Tr., p.17]. From his position, Slagle could not see Hoyle go into any of the apartments; he could only see him go into the back door of the apartment complex. [T.Tr., pp.19-20]. Slagle had also been present on other buys at the apartment complex that did not involve Bly. [T.Tr., pp. 21-22]. The $50.00 in marked funds was never recovered. [T.Tr., p.23].

Deputy William E. Mays, Jr. of the Rockbridge County Sheriff's Office and also a member of the local task force testified about the June 3, 2004 charge. [T.Tr., pp. 23-24]. Mays and Lieutenant Conner met with Hoyle at approximately 11:05 a.m., searched him, gave him $100.00 in marked task force money and a recorder, and instructed him to buy one gram of methamphetamine from Lindsay Bly. [T.Tr., p.24]. Mays searched Hoyle in the task force vehicle. [T.Tr., p.25]. Mays and Conner drove Hoyle to within "several blocks" of the 1805 Walnut Avenue apartment complex and watched Hoyle walk toward the complex. They could not see the complex from where they

dropped Hoyle. [T.Tr., p.25]. After Hoyle got out, they drove to another location where they could see the complex and watched Hoyle walk into the back door of the complex at 11:13 a.m. A couple of minutes later, Hoyle returned to the vehicle, gave "a small baggie of rock-like substance" to Conner and stated that he had bought it from Bly. [T.Tr., p.26].

On cross examination, Mays testified that Hoyle was wearing baggy clothes when he was searched prior to going to the apartment complex and that it was possible that Hoyle had the substance actually hidden on him while he was sitting in the task force car. [T.Tr., p.28]. Mays testified that Hoyle was in the complex for 7 minutes and that he was not able to see Hoyle for this period of time. [T.Tr., p.30].

Lieutenant Conners testified that he searched Hoyle after he returned from the residence and found nothing on him. Conners could not see what Hoyle did inside the building, and the marked $100.00 was never recovered.

[T.Tr., p.32]. Hoyle gave the recorder back to Mays and Conners. [T.Tr., p.31].

Hoyle testified next for the Commonwealth. Hoyle testified that he used to stay in the apartment complex at 1805 Walnut Avenue. [T.Tr., p.35]. Hoyle stated that on May 17, 2004 he was searched by the drug task force officers and given a recorder that he put in his pocket. [T.Tr., pp.35-36]. According to Hoyle, he went into Bly's apartment. He testified that Bly and his wife were in the apartment, but he didn't remember if their daughter was there or not. [T.Tr., pp.37-38]. Hoyle testified that "...I asked him did he have it, and got it, and left, and handed him – I'm not even sure how much I purchased the first time – if it was $50.00 or $100.00". Hoyle testified that "It's on the tape, I think, if – if they need to review the tapes. It's on there. Everything's on there". [T.Tr., p.38]. The tape was never played or introduced as evidence at the trial.

Hoyle testified that he went back to the same apartment on another date after this date, that Bly was

outside the house and that they walked in together. Hoyle stayed about 2 or 3 minutes and left. [T.Tr., p.40]. Hoyle testified that he gave Bly money and that he "...got meth" on that date. [T.Tr., pp.40-41]. Although he remembered Bly being outside the house, he didn't remember whether other people were outside and he didn't remember whether Bly's wife was there: "I don't really recall. It's been...Like I said, it's been a long time." [T.Tr., p.41].

On cross examination, Hoyle testified that when he first went into the apartment complex, he went upstairs to Eugene Jordan's door and knocked on it: "...I was going to say 'What's up' to him and then leave." According to Hoyle, no one was there, so he came back down the steps, made the purchase, and left. [T.Tr., pp.43-44].

Hoyle testified that he got paid $50.00 for every purchase he made in that building, but that "...I wouldn't get paid if I didn't – if – if there was nothing in the building. If there were no drugs to buy, then I probably wouldn't make no money...I have to buy something; yeah. They give me

the money and a recorder. And they have the recorders if – if you want to review those." [T.Tr., pp.44-45]. The recorders were never played in court and they were never introduced into evidence.

Pamela Lidick, Bly's mother, testified for the defense. She stated that she asked her son to come home from California to live in the apartment building she owned at 1805 Walnut Avenue and act as landlord. She wanted help with problems she was having with the tenants and with repairs to the building. Bly helped get the problem tenants out of the building and things were better with her son living there. [T.Tr., pp.48-50].

Bly testified on his own behalf. Bly stated that on May 17, 2004 he was getting an eviction notice because of a problem with a tenant. The receipt showing payment for the notice was put into evidence. [T.Tr., pp.52-53]. Bly testified that he knew Hoyle and had told him to stay away from the apartment complex. [T.Tr., pp.53-54]. Bly denied ever selling drugs to Hoyle or having any contact with him after

he told him to stay away from the property. [T.Tr., pp.53-56]. Bly testified that he thought Hoyle had a grudge against him for ordering him to stay away from the apartment complex. [T.Tr., p.56]. Bly, a 39 year old man who had never gotten so much as a traffic ticket before in his life, was convicted of both felony charges. [3-30-06 H.Tr., p.10, T.Tr. p.64].

After the trial, but before sentencing, Bly discovered that Hoyle had been lying to members of the drug task force, including Investigator McFaddin who was present with Hoyle and other members of the drug task force when the alleged sale was made on May 17, 2004 by Bly to Hoyle. McFaddin was the chief investigator for the local drug task force and was involved in all prosecutions involving Hoyle in Lexington, Rockbridge County and Buena Vista. At the time of the alleged sale by Hoyle to Bly on May 17, 2004, McFaddin knew that Hoyle had lied about purchasing drugs and/or imitation drugs from defendants. As early as November 12, 2004, over 4 months prior to the first event

involving Bly, McFaddin knew that Hoyle had lied about selling drugs to an individual named Jeffrey Breeden. [3-2-06 Motion for New Trial with attachment].

On or about November 12, 2004 Breeden had been arrested for allegedly selling drugs to Robert Hoyle at Breeden's home on June 15 and 16 in Rockbridge County. McFaddin confirmed that Breeden was in the Rockbridge County Jail on June 15 and 16, 2004 and so could not have possibly sold drugs to Robert Hoyle on two separate days at Breeden's home. The direct indictments against Breeden were nolle prossed by Rockbridge Commonwealth Attorney Robert Joyce without Breeden's knowledge, without a hearing, and prior to Breeden being appointed an attorney. [3-2-06 Motion for New Trial with attachment].

McFaddin, at the time of Bly's trial, also knew that Hoyle was claiming to have bought drugs from an individual in Buena Vista at the same time that another task force officer had seen the individual in another location. The task force sent Hoyle back to the location of the alleged sale to

confirm the identification of the alleged seller, but Hoyle reported that no one came to the door. No charges were ever brought against this individual. None of this exculpatory evidence was disclosed to Bly's attorney prior to trial. [3-30-06 H.Tr., pp.3-6]. (See, also Motion for New Trial with attachment).

Finally, in another case alleging that Hoyle made a sale of imitation drugs to a man named Jeffrey Tomlin at Tomlin's home, the defendant had a time card showing that he had clocked in and was working at the time of the alleged sale by Hoyle to Tomlin. The date of this alleged sale attacked by Tomlin as impossible was May 17, 2004, the same date as the alleged sale of imitation drugs by Bly to Hoyle. [Motion for New Trial with attachment].

Bly didn't have so much as a parking ticket on his record prior to these convictions. The trial judge expressed concern that "...we're getting ready to hang two felonies on him, on the word of a man that, you know, we dismissed some cases." [AP, p. 93].

ARGUMENT

The trial court erred in not granting the defendant a new trial when it was discovered that exculpatory evidence was not disclosed to the defendant prior to his trial.

Lindsay Bly is innocent of the charges for which he stands convicted. He was wrongfully convicted based solely on the trial testimony of a paid confidential informant. Why did the informant testify falsely against Bly? He testified falsely from the basest of all motivations: money.

Robert Hoyle was the paid informant. He was normally given $50.00 or $100.00 in buy money every deal. Hoyle could keep this money if he turned in imitation drugs that he had on his person and tell the task force that he bought them from the targeted individual. He was normally paid $50.00 just to make a buy, but he was paid only if he told the officers he bought from the targeted individual. Finally, he was paid additional "expense" money for appearing at trial but only after testifying against the defendant at trial.

The only direct evidence linking Bly to the sale of drugs or imitation drugs was the testimony of Hoyle, the paid informant. Snitch testimony is notoriously unreliable and a most precarious foundation upon which to sustain a conviction. Snitch testimony is a leading cause of wrongful convictions. In a study done in 2000, the Innocence Project, headed by Barry Scheck and Peter Neufeld, reconstructed seventy four exonerations in the United States and found that nineteen percent of these wrongful convictions resulted from untruthful snitch testimony.[2] Because of past problems resulting from wrongful convictions based on snitch testimony, Canadian courts now presume snitch testimony to be unreliable.[3]

Bly was convicted solely on the testimony of the paid informant, Robert Hoyle. We know that Hoyle did not make at least some of the buys from the individuals that he claimed to have made. When there is no way to distinguish

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[2] Actual Innocence, Sheck, Barry and Neufeld, Peter (New American Library, 2003), p. 318.

[3] Ibid, p.203

which drug deals were fabricated by Hoyle and which might not have been fabricated, and Hoyle's testimony is the only direct evidence in support of the convictions, then justice is reduced to a game of Russian Roulette. The bullet that struck Bly was a timing bullet. Had the exculpatory information in his case been timely disclosed to his trial attorney, or had Bly's trial been scheduled after the date the exculpatory information was disclosed, then Bly's charges would have been dismissed. The trial judge stated this concern at Bly's hearing on his Motion for a New Trial: "...[W]e're getting ready to hang two felonies on him, on the word of a man that, you know, we dismissed some cases." [3-30-06 S.Tr., p.10]. Had Bly's trial come after the disclosures about Hoyle, his case would have been among those dismissed.

In the four decades since Brady v. Maryland, 373 U.S. 83 (1963), the United States Supreme Court has reaffirmed and clarified the important class of due process rights now commonly referred to as the Brady doctrine. In that series

of cases, the Court has uniformly condemned the suppression of exculpatory evidence by the prosecution, recognizing that such suppression undermines the defendant's "basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.'" Crane v. Kentucky, 476 U.S. 683, 690-691 (1986)(quoting United States v. Cronic, 466 U.S. 648, 656 (1984)).

Brady is essentially a truth-seeking doctrine, and acts to ensure that justice is carried out in our courts. When the mandates of Brady and its progeny are not followed by the state, there can be no confidence that the outcome of the criminal law process will reflect that justice has been done.

1. The prosecutor has a duty to disclose evidence that is exculpatory or impeaching and material to the defense.

In Strickler v. Greene, 527 U.S. 263 (1999), the United States Supreme Court revisited Brady and its progeny,

clarifying and refining the Brady doctrine. The Court declared: "There are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Id. at 282. The court then elaborated on the components that comprise a violation:

> In Brady, this Court held 'that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.' 373 U.S. at 87. We have since held that the duty to disclose such evidence is applicable even though there has been no request by the accused, United States v. Agurs, 427 U.S. 97, 107(1976), and that the duty encompasses impeachment evidence as well as exculpatory evidence, United States v. Bagley, 473 U.S. 667, 676(1985). Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.' Id. at 682; *see also* Kyles v. Whitley, 514 U.S. 419, 433-434 (1995). Moreover, the rule encompasses evidence 'known only to police investigators and not to the prosecutor.' Id., at

> 438. In order to comply with Brady, therefore, 'the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in this case, including the police.' Id., at 437.

2. The evidence was favorable to the accused.

The prosecution suppressed two items of evidence favorable to Bly, the Breeden incident and the alleged misidentification incident. In the Breeden incident, confidential informant Hoyle undeniably lied to the police when he said he made two drug purchases from Breeden at a time when Breeden was in the Rockbridge County Jail. In the other incident, Hoyle at the very least provided police officers with misinformation that cast doubt on Hoyle's reliability and credibility. Because Hoyle told the police he had made a buy from an individual at that person's home at a time when another task force officer said he had seen the individual in another part of the county, and because Hoyle, when sent back to the house to confirm the sale, told the

police that he knocked on the door and nobody answered, that individual was never charged.

The only direct evidence of Bly's sales to Hoyle was Hoyle's testimony. The evidence withheld was favorable to Bly to impeach Hoyle's credibility. In Bagley the U. S. Supreme Court held that impeachment evidence as well as exculpatory evidence is encompassed by the duty of the prosecutor to disclose evidence under Brady. Bagley, 473 U.S. 667, 676.

3. The evidence was suppressed by the state.

The prosecutor has a duty, under Brady, to learn of "any favorable evidence known to others acting on the government's behalf in this case, including the police." Kyles, 514 U.S., at 437. Investigator McFaddin knew of the Breeden incident as early as November 12, 2004, more than four months prior to the first event involving Bly. The Commonwealth conceded that the Breeden incident "should

have been disclosed" but was not. [3-30-06 H.Tr., p.6]. Task force officers were aware of at least one other occasion in which Hoyle either lied or provided them with misinformation. As stated previously, that was the alleged buy that resulted in no charges brought against the individual Hoyle stated sold him the drugs, because a task force member saw the same individual in another location at the time of the supposed buy. All of this information was known by McFaddin who, as chief investigator of the local drug task force, was involved in all the prosecutions involving Hoyle in the cities of Lexington and Buena Vista and Rockbridge County. The information was solely under control of the Commonwealth, which did not disclose the events in question to Bly. Without disclosure by the Commonwealth, Bly could not have discovered evidence of Hoyle's unreliability.

4. Prejudice ensued.

Prejudice is "a reasonable probability that the outcome of the proceeding would have been different had the evidence been disclosed to the defense." Deville v. Commonwealth, 47 Va. App. 754, 756-57, 627 SE2d 530, 532 (2006) (quoting Muhammad v. Commonwealth, 269 Va. 451, 510, 619 SE2d 16, 50 (2005). A reasonable probability is shown "when the government's evidentiary suppression undermines confidence in the outcome of the trial." Kyles v Whitley, 514 US 419, 434. In other words, the question for the reviewing court is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Id. at 435.

The light cast by the impeachment evidence withheld by the prosecution in this case shines harshly on Hoyle's credibility, exposing serious flaws formerly unknown and unknowable to the defense. The only evidence connecting

Bly to the substances turned in by Hoyle was Hoyle's testimony. The police did not witness the deals; they did not even have firsthand knowledge that Bly was present during the alleged transactions. No audio recording of the transaction was entered into the record. No fingerprints linked Bly to the plastic bags of whatever substances Hoyle gave to the task force members. Bly had no criminal history at the time of the trial. The Commonwealth's case against Bly relied solely on Hoyle's credibility.

There is more than a reasonable probability that, in the first alleged sale on May 17, 2004 Hoyle kept the task force buy money and turned over imitation drug material to the drug task force. Significantly, this alleged sale occurred the same day as Hoyle's alleged sale to a man named Tomlin. That sale was alleged to have occurred at Tomlin's home at a time when Tomlin had a time card showing that he was at work. Hoyle, in both instances, was keeping the buy money and turning in baggies of imitation drugs probably kept in his crotch area. Hoyle didn't get paid unless he alleged sales

from the targeted individuals. In at least Bly's case, he kept an additional $50.00 in buy money. And again he was paid his expenses, as determined by the drug task force, for testifying in court against Bly.

There is more than a reasonable probability that, in the second instance, the alleged sale of methamphetamine by Bly to Hoyle on June 3 2004, Hoyle actually made the buy but he bought the methamphetamine from Eugene Jordan upstairs in the apartment building. Why else go upstairs and see Jordan when he was sent to buy from Bly? Bly told Investigator Darryl Slagle that he knew Jordan dealt drugs and he was "...trying to clean that part of it up..." [T.Tr., p.15]. Hoyle would not get paid unless he told the task force that he made the buy from the targeted individual, Lindsay Bly

Case law supports the assertion that suppressed impeachment evidence regarding a key witness of the state meets Brady doctrine materiality requirements. *See* Workman v. Commonwealth, 272 Va. 633, 636 S.E.2d 368

(2006) (Commonwealth's suppression of impeachment evidence regarding one of the state's key witnesses was material). *See also* Monroe v. Angelone, 323 F. 3d 286 (4th Cir. 2003)(Commonwealth's suppression of "several evidentiary items that would have severely damaged the credibility" of a "crucial" witness constituted Brady error and rendered the defendant's trial unfair, even though other evidence unfavorable to the accused had been introduced at trial).

Cases finding that Brady-type exculpatory evidence is not material generally occur when other evidence overwhelmingly shows the defendant committed the crime. In Strickler, the court pointed to "ample, independent evidence of guilt," notwithstanding the impeachment evidence suppressed by the prosecution. 527 U.S., at 290. *See also* Brown v. French, 147 F. 3d 307 (4th Cir. 1998) (exculpatory evidence withheld was only immaterial in light of overwhelming physical evidence that tended to show the defendant committed the crime).

The Commonwealth's entire case for conviction rested on Hoyle's credibility. If Hoyle's credibility had been brought into question using the undisclosed exculpatory evidence, there is a reasonable probability that the charges would have been dismissed prior to trial, or that the outcome of the trial would have been different. The evidence in this case fulfills all three components of a true Brady violation: the evidence at issue is favorable to the accused because it is impeaching, it was suppressed by the state and prejudice to the accused ensued.

The exculpatory evidence withheld from Bly's trial attorney would have led to reputation evidence of Hoyle's untruthfulness. It requires no great leap to accept that after disclosure of Hoyle's untruthfulness in other alleged drug transactions, substantial evidence could be presented as to Hoyle's reputation for untruthfulness in the community. It is simply neither logical nor rational to believe such evidence could not have been presented. That's what reputation for

truthfulness evidence is all about: Does he tell the truth in the community? The answer is no.

In addition, the evidence if timely disclosed would have altered the outcome of the proceedings because there is a reasonable probability that Bly's case would have been dismissed prior to going to trial, as others were. As the trial judge stated, "[Bly] doesn't have anything, and we're getting ready to hang two felonies on him, on the word of a man that, you know, we dismissed some cases." [3-30-06 H.Tr., p.10]. "Evidence may be material under Brady even though it is inadmissible. When assessing the materiality of inadmissible evidence, we apply the general Brady test and '...ask only...whether the disclosure of that evidence would have created a reasonable probability that the result of the proceeding would have been different'." Workman, 272 Va. at 647-648, 636 S.E.2d at 376 (quoting United States v. Sipe, 388 F.3d 471,485 (5th Cir. 2004)). The question is whether "...the favorable evidence could reasonably be taken to put the whole case in such a different light as to

undermine confidence in the verdict." Kyles, 514 U.S. at 435.

Although most legal analyses under this holding lead to discussions of future admissibility of evidence, the holding does not limit the analysis to admissibility. In considering only whether the disclosure would have created a reasonable probability that the outcome would have been different, eventual admissibility is not the only consideration. In this case there is a reasonable probability that if the exculpatory evidence had been timely disclosed, Bly's case would have been among those "some cases" dismissed.

CONCLUSION

WHEREFORE, the petitioner, Lindsay A. Bly, respectfully requests this Honorable Court to remand this case to the trial court for a new trial.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that Rule 5:26(d) of the Rules of the Supreme Court of Virginia has been complied with on this 5th day of May, 2010.

Ross S. Haine
Assistant Public Defender