

**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA**

**C. D., Jr., a minor, by his mother and next friend, Amber Reel,** )

**Plaintiff,** )

**v.** )

**Steve T. Descano, in his individual capacity, as Attorney for the Commonwealth for Fairfax County, Virginia,** )

**Defendant.** )

**Case No.**

**JURY TRIAL DEMANDED**

**VERIFIED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (42 U.S.C. § 1983)**

**INTRODUCTION**

1. At all times relevant to this Complaint, the Defendant was acting under the color of the law of the Commonwealth of Virginia, although this Complaint is filed against Defendant in his individual capacity only.
2. Defendant deprived Plaintiff of rights guaranteed by the United States Constitution and federal law.
3. As a direct and proximate result of Defendant’s actions, the Plaintiff suffered severe emotional distress and fears for his physical safety.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 (federal question)

and 28 U.S.C. § 1343(a)(3) because this action arises under 42 U.S.C. § 1983 (violation of civil rights). Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims in this action occurred in the judicial district where this action is brought.

### **PARTIES**

5. Plaintiff is C.D., Jr., a minor child and a victim of vicious sexual assaults that occurred between July 4 – July 7, 2021, by Ronnie Keen Reel, aka Ronnie Keene Reels (hereinafter “Reel”).
6. Defendant in this Complaint is the elected Fairfax County Commonwealth’s Attorney, Steve T. Descano, whose office prosecuted Reel for the sexual assaults.
7. Plaintiff is filing this Complaint against Defendant, Steve T. Descano, in his individual capacity only.

### **GENERAL ALLEGATIONS**

8. Reel was arrested on July 13, 2021, and charged with Object Sexual Penetration, Forcible Sodomy, and Aggravated Sexual Battery against the Plaintiff, a minor child. See Warrants of Arrest marked as **Plaintiff’s Exhibits A, B, and C**.
9. On February 22, 2022, Reel was indicted by a grand jury on one count of Sodomy and one count of Aggravated Sexual Battery. See Indictments marked as **Plaintiff’s Exhibit D**.
10. The case was set for a two-day jury trial on September 12, 2022, and September 13, 2022.
11. On March 18, 2022, the Fairfax County Circuit Court entered an Order directing Defendant’s office to produce discovery to Reel’s attorney by April 29, 2022. See Order marked as **Plaintiff’s Exhibit E**.

12. Defendant's office did not comply with the Order.
13. On September 2, 2022, Reel's attorney filed a motion asking the court to dismiss Reel's case due to a discovery order violation. See Notice And Motion To Dismiss With Prejudice Due To Discovery Order Violation marked as **Plaintiff's Exhibit F**.

#### **FIRST DISCOVERY VIOLATION**

14. After hearing argument, the judge decided "to limit the Commonwealth's evidence at trial due to discovery violations," and ruled that "any evidence that was not provided pursuant to the discovery order by April 29, 2022, is inadmissible." See Order marked as **Plaintiff's Exhibit G**.
15. At that hearing, the judge indicated that the discovery deadlines were "woefully, woefully, missed in this case, which is just a disservice to the victim in this case and is very concerning to the Court that this case was not taken as much responsibility as it should have been." See Transcript of Court Proceedings marked as **Plaintiff's Exhibit H**.
16. On September 13, 2022, Reel entered a plea of guilty to an amended charge of Assault and Battery, a Class 1 misdemeanor in Virginia, and the felony sodomy charge was dismissed. See attached "Plea of Guilty to a Misdemeanor" marked as **Plaintiff's Exhibit I**.
17. Reel was released from custody later that day. See Custody Record marked as **Plaintiff's Exhibit J**.

#### **SECOND DISCOVERY VIOLATION**

18. Alex Joshy (hereinafter "Joshy") had four indictments pending in the Fairfax County Circuit Court stemming from an alleged computer solicitation of a minor.
19. The case was set for trial on July 18, 2022.

20. On June 25, 2021, the Fairfax County Circuit Court entered an Order directing Defendant's office to produce discovery to Joshy's attorney by January 14, 2022. See Discovery and Inspection Order marked as **Plaintiff's Exhibit K**.
21. Defendant's office did not comply with the Order.
22. On July 15, 2022, the attorney for Joshy filed a motion asking the court to dismiss the charges against Joshy due to a discovery violation. See Notice and Motion to Dismiss with Prejudice Due to Discovery Order Violation marked as **Plaintiff's Exhibit L**.
23. As a result of the discovery violation, Joshy's criminal cases were dismissed.

#### **PHONE CALL**

24. Following his arrest, in November 2021, Reel contacted the Plaintiff's mother by phone.
25. Because the Plaintiff was present, he was terrified having to recall the horrific events of being sexually assaulted by Reel.
26. This incident prompted the Plaintiff's family to obtain a Protective Order against Reel and to notify Defendant's office.
27. The Plaintiff's family also asked Defendant's office to notify them of any plea offers as required by the Virginia Crime Victim and Witness Rights Act. See letter to the Commonwealth marked as **Plaintiff's Exhibit M**.

#### **MEDIA STATEMENT**

28. In a statement shared with media outlets, Defendant's Office stated that his office "acted immediately to this novel ruling [referring to the discovery violation in Reel's case]." See News Article published on September 29, 2022, and marked as **Plaintiff's Exhibit N**.
29. But stating that the ruling related to discovery in Reel's case is "novel" was misleading

because in Joshy's case, the same violation had occurred, and Defendant knew about it.

30. Still, after the court dismissed Joshy's cases due to a discovery violation, Defendant continued to condone the same practice and maintained a position of deliberate indifference.

31. Following the conclusion of all judicial proceedings related to Reel's case, Defendant's office revealed that it had received and turned down "multiple pleas" after consultation with the Plaintiff in this case, C.D., Jr. and the Plaintiff's family.

32. Defendant's statement regarding plea offers added insult to injury because neither the Plaintiff nor the Plaintiff's family was ever contacted or consulted regarding any plea offers.

33. By not notifying or discussing plea offers with the Plaintiff as required by law, and in spite of a written request, Defendant failed to comply with Virginia Code § 19.2-11.01.

#### **SUPERVISORY LIABILITY (42 U.S.C. § 1983)**

34. Defendant maintained and was responsible for overseeing, supervising, and regulating all conduct engaged in and undertaken by the personnel in his office while such personnel were engaged in the judicial proceedings, including that of Plaintiff.

35. Defendant's official duties are set forth in Virginia Code § 15.2-1627 (B), but when Plaintiff was deprived of rights guaranteed by the United States Constitution and federal law, Defendant, individually, and as the final policy and decision maker in his office, was responsible.

36. In a media statement, Defendant acknowledged but still defended—even after the dismissal of Joshy's cases—the practice of non-compliance with court-ordered discovery leading to multiple discovery violations. In defending such practice, Defendant stated that the judge's ruling was "indeed confounding to us and inconsistent with precedent." See News Article

published on September 19, 2022, and marked as **Plaintiff's Exhibit O**.

37. Defendant knew of the existing practice leading to discovery violations because in the Commonwealth's response to Joshy's Motion to Dismiss, Defendant's office admitted that "it did not comply with the letter of the Circuit Court Discovery Order." See Commonwealth's Memorandum in Opposition to Defendant's Motion to Dismiss marked as **Plaintiff's Exhibit P**.

38. Furthermore, the Chief Judge of the Fairfax County Circuit Court stated on the record that "[i]t's very concerning to the Court-and unfortunately, this is not the first time I've had this motion in the past few months." See Transcript of Court Proceedings marked as **Plaintiff's Exhibit Q**.

39. Defendant also knew that the act of condoning non-compliance with discovery orders would cause unreasonable risk and result in the deprivation of the rights secured to Plaintiff by the Fourth and Fourteenth Amendments to the United States Constitution and by virtue of 42 U.S.C. § 1983. For example, the discovery order entered in Reel's case with a deadline of April 29, 2022, directed Defendant's office to produce statements including recorded confessions, witness list, exculpatory, and Giglio materials. These requests demand the attention of any licensed attorney given the constitutional implications.

40. In fact, the presiding judge in Reel's case specifically highlighted the constitutionality of the discovery process and stated that "the reason discovery orders are in place is to ensure that there's no trial by ambush and the defendant's due process rights are protected. It is also necessary so that the victim [Plaintiff] in cases gets a voice." The judge went further to find that Defendant's office failed to follow the law: "[t]he Court has to follow the law and the

order, even if the Commonwealth did not.” See Transcript of Court Proceedings marked as **Plaintiff’s Exhibit R.**

41. As a result of the discovery violations, Defendant directly and proximately caused Plaintiff to be deprived of rights guaranteed by the United States Constitution and federal law.
42. Plaintiff was caused and will continue to undergo and endure severe mental anguish and fear for his safety.
43. The Defendant’s deliberate indifference represents egregious conduct that is shocking to the conscience.

**COUNT I**  
**VIOLATION OF 42 U.S.C. § 1983-DEPRIVATION OF DUE PROCESS RIGHTS**  
**UNDER THE FOURTEENTH AMENDMENT-STATE CREATED DANGER**

44. Plaintiff restates and re-alleges the allegations contained in Paragraphs 1 through 43 as if full set forth herein.
45. The United States Constitution guarantees equal protection to all citizens.
46. Given the weight of the evidence in the criminal case against Reel, he would have likely been convicted of sex-related offenses, faced life in prison, and had to register as a sex offender if ever released.
47. However, because the evidence in Reel’s case was excluded due to Defendant’s discovery violations, he is not on probation for this case, nor does have to register as a sex offender, and was released from custody on September 13, 2022, after the conclusion of his criminal case (on the same day).
48. There is no prohibition against proximity to children or working on school property for Reel.

49. Furthermore, Defendant violated subdivision A4d of Virginia Code § 19.2-11.01 by not consulting with the Plaintiff regarding plea offers in spite of a written request delivered to his office.
50. In effect, Defendant created and increased the risk of harm to Plaintiff through his affirmative acts of non-compliance with discovery orders and failure to comply with the Virginia Crime Victim and Witness Rights Act.
51. The Plaintiff was also deprived of protection afforded to him under Virginia Code § 52-35 (Witness Protection Program).
52. Plaintiff lives in fear of the attacker returning to retaliate against him or his family members.
53. Except for a Protective Order that the family secured independently, and a subsequent Protective Order entered by the Chief Judge of the Fairfax County Circuit Court, the Plaintiff has zero protection against Reel.
54. In the Plaintiff's mind, his vulnerability to danger, as compared to before, from Reel returning to assault him or retaliate against his family members is real.
55. In addition to Plaintiff being placed in this dangerous position, Plaintiff will not receive sex offender-related notifications, and was deprived of assistance available to victims of sexual assault.
56. The consequences of Defendant's actions were foreseeable as Defendant's office prosecutes sex crimes in Fairfax County and is familiar with all aspects of sex assault-related protections available to victims including registration for sex offenders, restitution to sexual assault victims, and other victim-related services.

57. Despite the serious consequences and obvious danger to Plaintiff, Defendant still acted affirmatively by directing his personnel to adopt a policy of non-compliance with discovery orders.

**COUNT II**  
**VIOLATION OF 42 U.S.C. § 1983-DEPRIVATION OF FEDERAL RIGHT- LEGAL ASSISTANCE TO VICTIMS OF SEXUAL ASSAULT (34 U.S. Code § 20121)**

58. Plaintiff restates and re-alleges the allegations contained in Paragraphs 1 through 57 as if full set forth herein.

59. This statute is designed to benefit the Plaintiff by giving him the right to access services available to victims of sexual assault.

60. Reel was not convicted of any sex-related offenses.

61. As a result, the Plaintiff was deprived of this right due to Defendant's discovery violations.

**COUNT III**  
**VIOLATION OF 42 U.S.C. § 1983-DEPRIVATION OF FEDERAL RIGHT-SEX OFFENDER REGISTRATION AND NOTIFICATION (34 U.S. Code §20901, §20911-§2032)**

62. Plaintiff restates and re-alleges the allegations contained in Paragraphs 1 through 61 as if full set forth herein.

63. This statute is specifically designed to benefit and protect the Plaintiff from further harm through a nationwide registration process for offenders convicted of sex crimes.

64. Virginia Code § 9.1-900, et seq. (Sex Offender and Crimes Against Minors Registry Act) also affords the Plaintiff similar benefits.

65. The registration under either program would have been mandatory for Reel had he been

convicted of sex-related offenses.

66. But the Plaintiff has been deprived of this right and stripped of a mandatory level protection due to Defendant's discovery violations.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff, C. D., Jr., a minor, by his mother and next friend, Amber Reel, prays for the following relief:

- A. Enter judgment in favor of Plaintiff, C. D., Jr., a minor, by his mother and next friend, Amber Reel, on his claims under 42 U.S.C. § 1983.
- B. Enter judgement against Defendant Steve T. Descano, in his individual capacity.
- C. Award Plaintiff compensatory damages all in such amounts as shall be shown at the time of trial.
- D. Award Plaintiff punitive damages all in such amounts as shall be shown at the time of trial.
- E. That this Court grant final judgment in favor of Plaintiff for all costs and disbursements of this action together with reasonable attorney's fees pursuant to by 42 U.S.C. § 1988.
- F. That this Court grant any such further relief that it deems just and appropriate, and that Plaintiff's cause may require.

### **JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Date: November 20, 2022

Respectfully submitted,

DocuSigned by:

*Rami Zahr*

34603E13463A48F...

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RAMI ZAHR  
EIRENE LAW FIRM, P.L.L.C.  
Virginia State Bar No. 94264  
131 Park Street, NE  
Suite 8-A  
Vienna, Virginia 22180  
(703) 940-1744 (office)  
(703) 940-0043 (fax)  
Rami.zahr@eirenelaw.com  
Counsel for Plaintiff

### VERIFICATION

PURSUANT TO 28 U.S.C. §1746, I VERIFY UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON 11/20/2022.

DocuSigned by:

*Amber Reel*

D869854E443741F...

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C. D., Jr., a minor, by his mother and next friend, Amber Reel,  
Plaintiff



# WARRANT OF ARREST - FELONY

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Fairfax [ ] General District [ ] Criminal [ ] Traffic  
[x] Juvenile and Domestic Relations District Court  
CITY OR COUNTY

### TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about 07/07/2021 did unlawfully and feloniously in violation of Section 18.2-67.1, Code of Virginia: commit forcible sodomy by engaging in anal intercourse with C.D. 11 YO Male, a child less than 13 years of age. The accused was 18 years of age or older at the time of the offense.

CASE NO. JA434320-02-02

ACCUSED: Reel, Ronnie Keene  
LAST NAME, FIRST NAME, MIDDLE NAME

ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	BORN	HT.		WGT.	EYES	HAIR
			FT.	IN.			
B	M		5'	08"	180	BRO	BLK
SSN							
D.L.# <u>A61357489</u>						STATE <u>VA</u>	

[ ] Commercial Driver's License  
[ ] Commercial Motor Vehicle [ ] Hazardous Materials

CLASS U **FELONY**

EXECUTED by arresting the Accused named above on this day:

07/13/2021 9:21 pm  
DATE AND TIME OF SERVICE

Mc Thompson, Arresting Officer

31222 FPD 229  
BADGE NO., AGENCY AND JURISDICTION

for \_\_\_\_\_  
SHERIFF

Attorney for the Accused:

Short Offense Description (not a legal definition):  
**SODOMY CHILD <13 ACCUSED 18 YRS OR OLDER**

Offense Tracking Number:  
**059JM2100031020**

FOR ADMINISTRATIVE USE ONLY  
Virginia Crime Code: **RAP-1153-F9**

# F

07/14/2021  
Hearing Date/Time  
& refused arraignment  
PD appt  
01/21/2022  
1:30 (30)



**RECEIVED**  
JUL 13 2021  
JUVENILE & DOMESTIC RELATIONS DISTRICT COURT  
FAIRFAX COUNTY  
BY: CCM2053D  
I, the undersigned clerk or deputy clerk of the above-named court, authenticate pursuant to VA Code 8.01-391(C) on this date that the document to which this authentication is affixed is a true copy of a record in the above-named court, made in the performance of my official duties.  
12-9-2021 Him  
DATE CLERK/DEPUTY CLERK

**RECEIVED**  
JUL 14 2021  
FAIRFAX J&DR DISTRICT COURT  
FAIRFAX VA - PRECOURT

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

LEVAN, J W 314410 Fairfax County PD, Complainant.

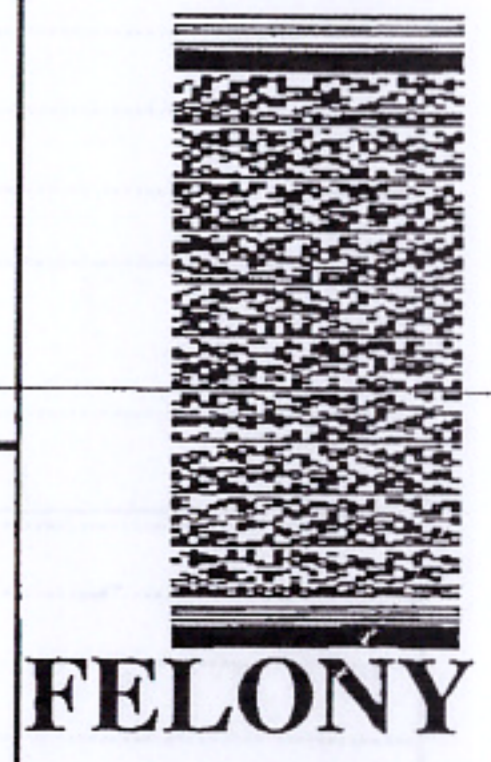
### CCRE/Fingerprinting Required

07/13/2021 11:12 AM  
DATE AND TIME ISSUED

Robert E. Sherfy  
[ ] CLERK [x] MAGISTRATE [ ] JUDGE

FORM DC-312 (MASTER, PAGE ONE OF TWO) 03/21

TAKE BUCCAL SAMPLE IF LIDS SHOWS NO DNA SAMPLE IN DATA BANK  
Check if sample previously taken: \_\_\_\_\_ Check if sample taken for this arrest: \_\_\_\_\_





# WARRANT OF ARREST - FELONY

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Fairfax [ ] General District Court [ ] Criminal [ ] Traffic  
[x] Juvenile and Domestic Relations District Court  
CITY OR COUNTY \*

TO ANY AUTHORIZED OFFICER:  
You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about 07/07/2021 did unlawfully and feloniously in violation of Section 18.2-67.2, Code of Virginia: penetrate the labia majora or anus of a complaining witness or cause such complaining witness to penetrate his or her body with an object or cause a complaining witness to engage in such acts with another person or to penetrate, or to be penetrated, by an animal, and the complaining witness is less than thirteen years of age. The accused was 18 years of age or older at the time of the offense.

Victim C.D. 11 YO Male

**RECEIVED**  
2021 JUL 13 2021  
FAIRFAX COUNTY JUVENILE & DOMESTIC RELATIONS DISTRICT COURT  
BY: Norm  
I, the undersigned clerk or deputy clerk of the above-named court, authenticate pursuant to VA Code § 19.2-391(C) on this date that the document to which this authentication is affixed is a true copy of the original in the above-named court, made in the performance of my official duties.  
12-9-2021  
DATE CLERK/DEPUTY CLERK

**RECEIVED**  
JUL 14 2021  
FAIRFAX J&DR DISTRICT COURT  
FAIRFAX, VA - PRECOURT

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

LEVAN, J W 314410 Fairfax County PD, Complainant.

**CCRE/Fingerprinting Required**

07/13/2021 11:08 AM  
DATE AND TIME ISSUED

RE Shery  
[ ] CLERK [x] MAGISTRATE [ ] JUDGE  
Robert E. Shery

TAKE BUCCAL SAMPLE IF LIDS SHOWS NO DNA SAMPLE IN DATA BANK  
FORM DC-312 (MASTER, PAGE ONE OF TWO) 03/21

Check if sample previously taken:  Check if sample taken for this arrest:

CASE NO. 434320.01.00

ACCUSED:  
Reel, Ronnie Keene  
LAST NAME, FIRST NAME, MIDDLE NAME  
4  
ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	BORN	HT.		WGT.	EYES	HAIR
			FT.	IN.			
B	M	1/1/1990	5'	08"	180	BRO	BLK
SSN		[REDACTED]					
D.L.#		A61357489		STATE		VA	

[ ] Commercial Driver's License  
[ ] Commercial Motor Vehicle [ ] Hazardous Materials

CLASS U FELONY

EXECUTED by arresting the Accused named above on this day:

07/13/2021 9:22 pm  
DATE AND TIME OF SERVICE

ML Thompson, Arresting Officer

3222 FPD 229  
BADGE NO., AGENCY AND JURISDICTION

for \_\_\_\_\_  
SHERIFF

Attorney for the Accused:

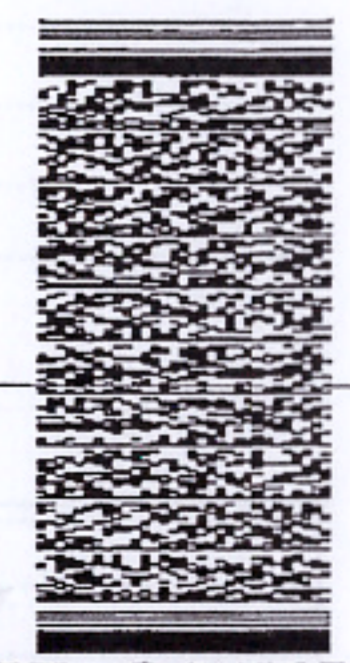
Short Offense Description (not a legal definition):  
**OBJ SEX PEN: VICTIM <13, ACC >18**

Offense Tracking Number:  
**059JM2100031017**

FOR ADMINISTRATIVE USE ONLY  
Virginia Crime Code: **RAP-1154-F9**

# F

07/14/2021  
Hearing Date/Time  
& refused arraignment  
PD app'd  
01/21/2022  
1:30 (30)



# FELONY



# WARRANT OF ARREST - FELONY

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, -72

Fairfax [ ] General District Court [ ] Criminal [ ] Traffic  
[x] Juvenile and Domestic Relations District Court  
CITY OR COUNTY

TO ANY AUTHORIZED OFFICER:  
You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about 07/07/2021 did unlawfully and feloniously in violation of Section 18.2-67.3, Code of Virginia: commit aggravated sexual battery by sexually abusing C. E. 11 YO Male, who was less than 13 years of age.

CASE NO. 2021-1930046  
Ja434320-03-02

ACCUSED:  
Reel, Ronnie Keene  
LAST NAME, FIRST NAME, MIDDLE NAME  
ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	BORN	HT.	WGT.	EYES	HAIR
		MO. DAY YR.	FT. IN.			
B	M		5' 08"	180	BRO	BLK
SSN						
D.L.#				STATE		
A61357489				VA		

[ ] Commercial Driver's License  
[ ] Commercial Motor Vehicle [ ] Hazardous Materials

CLASS U FELONY

EXECUTED by arresting the Accused named above on this day:  
07/13/2021 9:20 pm  
DATE AND TIME OF SERVICE  
Mr. Thompson, Arresting Officer  
31222 FPD 29  
BADGE NO., AGENCY AND JURISDICTION

for \_\_\_\_\_  
SHERIFF

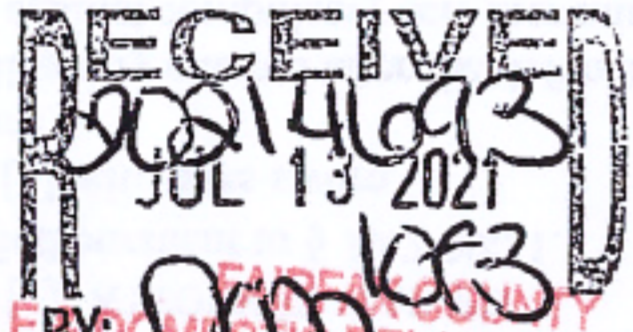
Attorney for the Accused:

Short Offense Description (not a legal definition):  
**AGGRAVATED SEXUAL BATTERY: VICTIM <13 YRS**  
Offense Tracking Number:  
**059JM2100031022**

FOR ADMINISTRATIVE USE ONLY  
Virginia Crime Code: **RAP-1121-F9**

# F

12  
07/14/2021  
Hearing Date/Time  
2 refused arraignment  
PD applied  
01/21/2022  
1:30/3G



JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT  
I, the undersigned clerk or deputy clerk of the above-named court, authenticate pursuant to VA Code 8.01-391(C) on this date that the document to which this authentication is affixed is a true copy of a record in the above-named court, made in the performance of my official duties.  
12-9-2021  
DATE  
[Signature]  
CLERK/DEPUTY CLERK

RECEIVED  
JUL 14 2021  
FAIRFAX J&DR DISTRICT COURT  
FAIRFAX, VA - PRECOURT



I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of \_\_\_\_\_

LEVAN, J W 314410 Fairfax County PD, Complainant.

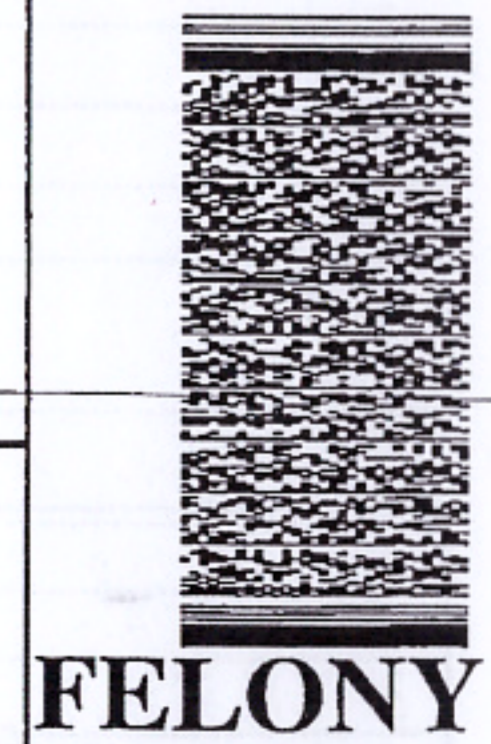
**CCRE/Fingerprinting Required**

07/13/2021 11:14 AM  
DATE AND TIME ISSUED

[Signature]  
[ ] CLERK [x] MAGISTRATE [ ] JUDGE  
Robert E. Sherfy

TAKE BUCCAL SAMPLE IF LIDS SHOWS NO DNA SAMPLE IN DATA BANK

Check if sample previously taken: \_\_\_\_\_ Check if sample taken for this arrest: \_\_\_\_\_





VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

February 22, 2022

COMMONWEALTH OF VIRGINIA	)	
	)	SODOMY AND AGGRAVATED
vs.	)	SEXUAL BATTERY
	)	
RONNIE KEENE REEL	)	

COUNT I

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its January Term, 2022, charges that: On or about the 7th day of July, 2021, in the County of Fairfax, Ronnie Keene Reel did unlawfully and feloniously engage in anal intercourse with C. D., a child less than thirteen (13) years of age.

Va. Code §18.2-67.1  
VCC RAP-1153-F9

COUNT II

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its January Term, 2022, charges that: On or about the 7th day of July, 2021, in the County of Fairfax, Ronnie Keene Reel did unlawfully and feloniously sexually abuse C. D., a child under the age of thirteen (13) years, by intentionally touching his intimate parts or material covering such intimate parts.

Va. Code §18.2-67.3  
VCC RAP-1121-F9

FE-2022-111

A True Bill

X

No True Bill

*Laura C. Giannelli*  
FOREMAN

Witness subpoenaed, sworn and  
Available to testify before the  
Grand Jury:

J. W. Levan (314410), Fairfax County Police Department



VIRGINIA:

IN THE FAIRFAX CIRCUIT COURT

COMMONWEALTH OF VIRGINIA

Case Nos.: FE 2022-111

v.

Trial date: Sept. 12, 2022

RONNIE REEL

**ORDER**

Upon the motion of the defendant, Ronnie Reel, by and through counsel, and with the agreement of the Commonwealth, by and through its counsel, it is hereby,

**DISCOVERY AND INSPECTION**

**Discovery by the Defendant**

ORDERED pursuant to RULE 3A:11, that by no later than April 29, 2022, the Commonwealth shall produce the following:

3/18/22  
C

1. **REPORTS:** The Commonwealth shall permit the defendant to inspect and review any relevant reports prepared by law enforcement officers and made in connection with the particular case, including any written witness statements or written summaries of oral statements contained within such reports, that are known to the Commonwealth's attorney to be in the possession, custody or control of the Commonwealth. Nothing in this Order requires that the Commonwealth provide the defendant with copies of the relevant law enforcement reports, although it may do so in its discretion. This order shall be subject to the provisions of subparts (c)(1) and (c)(2) of Rule 3A:11 regarding redaction and restrictions on "Restricted Dissemination Material."

2. **STATEMENTS:** The Commonwealth shall permit the defendant to inspect, review and copy or photograph any relevant written or recorded statements or confessions, or the substance of

2. **STATEMENTS:** The Commonwealth shall permit the defendant to inspect, review and copy or photograph any relevant written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the defendant to any law enforcement officer, that are known to the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth; written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the defendant to any person other than a law enforcement officer, that the Commonwealth intends to introduce into evidence at trial; written or recorded statements, or the substance of any oral statements, made by a codefendant or co-conspirator that the Commonwealth intends to introduce into evidence at trial.

3. **DEFENDANT'S CRIMINAL RECORD:** The Commonwealth shall allow the defendant through counsel to review a copy of his/her prior criminal record, if any, as is within the possession, custody, or control of the Commonwealth, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Commonwealth.

4. **REPORTS OF EXAMINATIONS:** The Commonwealth shall permit the defendant to inspect, review and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the defendant or the alleged victim made in connection with the particular case, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth.

5. **PHYSICAL ITEMS:** The Commonwealth shall permit the defendant to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Commonwealth, that may be material to the preparation of his/her defense, or that the Commonwealth intends to introduce into evidence at trial. If counsel desires to inspect the physical evidence prior to the date of

trial, counsel shall contact the Commonwealth, in writing, to set a mutually agreeable date and time for said inspection of physical evidence in the possession of the Commonwealth.

**6. EXPERT WITNESSES:** For any witness through which the Commonwealth intends to introduce expert testimony at trial or sentencing, the Commonwealth shall notify the defendant in writing of the Commonwealth's intent to introduce such expert testimony and disclose to the defendant: a) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions; and b) the witness's qualifications and contact information. Pursuant to Rule 3A:11(b)(4)(B) the disclosure requirements under this section shall not render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed, or the expert witness's qualifications disclosed, just because the further explanatory language was not included in the notice and disclosure provided. The Commonwealth shall make the disclosure under this section no later than **28 calendar days** before trial, unless the expert testimony is to be offered in response to a previously-noticed expert of a defendant, in which case the disclosure pursuant to this section must be provided not later than **five calendar days** prior to trial. Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of this section. In an appropriate case, and for good cause shown, either party may move the Court for an Order requesting earlier or later disclosure of expert witness notice and summaries.

**7. WITNESS LIST:** The Commonwealth shall disclose to the defendant no later than **14 calendar days** before trial a list of the names and, if known, the addresses of all persons who are

expected to testify on behalf of the Commonwealth at trial or sentencing. This disclosure is subject to Rule 3A:11(c) and to any protective orders entered by the court.

**8. REDACTIONS AND RESTRICTED DISSEMINATION MATERIAL (“RDM”):** The Commonwealth may make such redactions as are identified in Rule 3A:11(c)(1). Pursuant to Rule 3A:11(c)(2), the Commonwealth may designate disclosed materials as “Restricted Dissemination Material” by visibly marking the materials. Items may only be marked as RDM by agreement with the defendant’s attorney or by providing certification in writing, upon information and belief that the designated materials relate to the statement of a child victim or witness or that the disclosure may result in danger to the safety or security of a witness or victim, danger of a witness being intimidated or tampered with, or a risk of compromising an ongoing criminal investigation or confidential law enforcement technique. RDM may only be disclosed to the attorney for the defendant, or the attorney’s agents or employees, or to an expert witness. The attorney for the defendant may orally disclose the content of the RDM to the defendant or allow the defendant to view the content of the RDM but shall not provide the defendant with copies of the RDM. Disposition of the RDM shall be in accordance with Rule 3A:11(c)(2)(E).

**9. WORK PRODUCT:** This Order does not authorize the discovery or inspection of the work product of the Commonwealth’s attorney, including internal reports, witness statements, memoranda, correspondence, legal research or other internal documents prepared by the office of the Commonwealth’s attorney or its agents in anticipation of trial. Should the Commonwealth seek to withhold from production as “work product” any law enforcement reports that would otherwise be made available for inspection and review pursuant to Section 1 of this Order, the Commonwealth shall notify the defendant in writing, who may seek appropriate relief from the Court.

**Discovery by the Commonwealth**

It is further ORDERED pursuant to Rule 3A:11 that, no later than **14 calendar days** before trial, unless otherwise specified herein:

10. **REPORTS:** The defendant shall permit the Commonwealth to inspect and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath analyses, and other scientific testing within the defendant's possession, custody or control that the defense intends to proffer or introduce into evidence at trial or sentencing.

11. **REPORTS RELATED TO THE DEFENSE OF INSANITY:** The defendant shall permit the Commonwealth to inspect, copy or photograph any results or reports of any written reports of physical or mental examination of the defendant made in connection with the particular case if the defendant intends to rely upon the defense of insanity pursuant to Chapter 11 of Title 19.2; provided, however, that no statement made by the defendant in the course of such an examination disclosed pursuant to this order shall be used by the Commonwealth in its case-in-chief, whether the examination was conducted with or without the consent of the defendant.

12. **ALIBI NOTICE:** The defendant shall disclose to the Commonwealth whether the defendant intends to offer a defense of alibi, and, if so, disclose the place at which the defendant claims to have been at the time the alleged offense was committed.

13. **EXPERT WITNESSES:** For any witness through which the defendant intends to introduce expert testimony at trial or sentencing, the defendant shall notify the Commonwealth in writing of the defendant's intent to introduce such expert testimony and disclose to the Commonwealth: a) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions; and b) the witness's qualifications and contact information. Pursuant to Rule

3A:11(b)(4)(B) the disclosure requirements under this section shall not render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed, or the expert witness's qualifications disclosed, just because the further explanatory language was not included in the notice and disclosure provided. The defendant shall make the disclosure under this section no later than **10 calendar days** before trial. Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of this section. In an appropriate case, and for good cause shown, either party may move the Court for an Order requesting earlier or later disclosure of expert witness notice and summaries.

14. **WITNESS LIST:** The defendant shall disclose to the Commonwealth no later than **5 calendar days** before trial a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the defendant at trial or sentencing. The defendant's attorney may redact the personal identifying information of any witness if so, authorized by a protective order entered by the court, or as required by Virginia Code Section 19.2-11.2.

#### **Protective Order**

15. Any material or evidence disclosed or discovered pursuant to this Rule and filed with the clerk of the court shall be placed under seal until it is either admitted as an exhibit at a trial or hearing or the court enters an order unsealing the specified material or evidence.

16. The parties may move this Court for additional terms of, or relief from, the terms of this Order if such additional terms or relief are necessary for the orderly adjudication of the case or to the fair administration of justice.

**Exculpatory Material**

17. It is further ORDERED that the Commonwealth shall comply with its obligations to promptly produce exculpatory material, including material covered by *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.

**Giglio Materials**

18. It is further ORDERED that, no later than **14 calendar days** before trial, the Commonwealth shall produce to the defendant the *Giglio* materials for the witnesses who will testify in the Commonwealth's case in chief.

**Providing of Copies**

19. In accordance with Rule 3A:11(3), a party may satisfy the requirement to permit the opposing part to inspect and copy or photograph a document, recorded statement or recorded confession by providing an actual duplicate, facsimile or copy of the document, recorded statement or recorded confession to the opposing party in compliance with the applicable time limits and redaction standards set forth in this Order.

Date: 3/18/22

Richard E. Giulini  
Circuit Court Judge

We ask for this:

DMB Monica Tuch  
Dawn M. Butorac c/et/c  
Public Defender

by: Jayla Mats  
Assistant Commonwealth's Attorney



FILED  
CRIMINAL

**VIRGINIA:**

2022 SEP -2 PM 3: 05

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

<b>COMMONWEALTH OF VIRGINIA</b>	:	<b>Case No.:</b>	<b>FE-2022-111</b>
	:		
<b>vs.</b>	:	<b>Charges:</b>	<b>Sodomy, Agg. Sexual Battery</b>
	:		
<b>RONNIE REEL, Accused.</b>	:	<b>Jury Trial:</b>	<b>Sept. 12, 2022</b>

JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**NOTICE AND MOTION TO DISMISS WITH PREJUDICE DUE TO DISCOVERY  
ORDER VIOLATION**

COMES NOW the accused, Ronnie Reel, by counsel, Dawn M. Butorac, and moves this honorable Court to dismiss the case as the Commonwealth has violated Mr. Reel's rights under the Sixth and Fourteenth Amendments, as well as the discovery order of this Court and Virginia Supreme Court Rule 3A:11.

PLEASE TAKE NOTICE that on September 9, 2022 at 10:00 a.m., or as soon thereafter as counsel may be heard, counsel will make argument to the Court in support of this Motion.

**STATEMENT OF FACTS**

Ronnie Reel is charged with one count of sodomy and one count of aggravated sexual battery. It is alleged that Mr. Reel sexually assaulted his nephew on July 7, 2021.

A timeline of how the case progressed is important to demonstrate why Mr. Reel's case should be dismissed. The timeline is as follows:

1. Mr. Reel was arrested on July 13, 2021 and he was held without bond;
2. His phone was seized by the police after his arrest;
3. On July 16, 2021, a search warrant was executed on the phone;
4. On that same date, physical evidence was brought to the Department of Forensic Science for testing;

5. On July 23, 2021, an extraction of the data from Mr. Reel's phone was done;
6. Defense counsel requested a competency evaluation and one was ordered on September 14, 2021;
7. On November 2, 2021, Mr. Reel was deemed incompetent by Dr. Hoffman and restoration was ordered on November 9, 2021. Mr. Reel was sent to Western State Hospital;
8. At that time, the January 21, 2022 preliminary hearing date was converted to a status hearing;
9. On December 13, 2021, doctors at Western State Hospital opined that Mr. Reel was now competent to stand trial;
10. Defense counsel communicated with the Commonwealth regarding the January 21 court date and it was agreed upon by the parties that that date would now be the preliminary hearing date instead of just a status hearing;
11. There was a Covid outbreak on Mr. Reel's block at the jail so he was not brought to court for his preliminary hearing. His hearing was continued to February 8<sup>th</sup>;
12. On February 8, 2022, a preliminary hearing was conducted and the court found probable cause on two charges and one charge was dismissed;
13. Mr. Reel was indicted by the February 22, 2022 grand jury on one count of sodomy and one count of aggravated sexual battery;
14. At term day on the 24<sup>th</sup>, Mr. Reel's trial was set for September 12, 2022;
15. A discovery order was entered on March 18, 2022 and ordered that the Commonwealth must provide discovery by April 29, 2022;
16. The Commonwealth did not provide discovery by April 29, 2022;

17. Defense counsel received an email from Whitney Gregory, the Assistant Commonwealth Attorney assigned to Mr. Reel's case on August 10, 2022 that was titled "CW v. Ronnie Reel-Update from Detective." That email indicated that the detective was going to obtain a search warrant for Mr. Reel's DNA, that he was going to obtain records from the jail regarding Mr. Reel's phone calls and that he had a "phone dump" from the defendant's phone;
18. On that same date, less than 20 minutes after receiving that email, defense counsel responded to the Commonwealth advising that discovery was due in April and inquired as to why discovery had not been previously provided and why the detective was so late doing these very basic tasks for any investigation;
19. The Commonwealth did not reply to that email;
20. Ms. Gregory was out of the office on vacation the week of August 22, 2022;
21. The next correspondence from the Commonwealth was an email from Ms. Gregory on August 31, 2022 indicating that she had now received all of the discovery from the detective and asked that defense counsel provide a hard drive so that the discovery could be put on it. The Commonwealth also indicated that they would be requesting a continuance;
22. Defense counsel responded inquiring again as to why the Commonwealth was so late with discovery and reminded the Commonwealth that Mr. Reel was incarcerated;
23. The Commonwealth's excuse for failing to comply with the discovery order was that they had not received the discovery from the police, its agent, until August;
24. The parties called into calendar control on September 1, 2022. The Commonwealth asserted that they were seeking a continuance because of the outstanding DNA

analysis from the lab. It was at this time it was first discovered that the detective received a certificate of analysis from the lab on April 21, 2022 advising of Y chromosome DNA suitable for testing and requesting a buccal swab for comparison be provided;

25. The detective did not obtain a buccal swab from Mr. Reel until August 22, 2022. The Commonwealth could not provide an explanation for the detective's failure to timely obtain a DNA sample from Mr. Reel;

26. Judge Kassabian denied the Commonwealth's request for a continuance;

27. At approximately 4:55 p.m., Ms. Gregory came to the Public Defender's Office and provided the hard drive that purportedly contains the required discovery;

28. In a review of the discovery, it appears that the Commonwealth provided two certificates of analysis (dated Feb. 14, 2022 and April 21, 2022), 21 phone call recordings from the jail, an updated police report, a Cellbrite report for Mr. Reel's phone, some police notes, a controlled phone call recording, documents related to the forensic interview of the complainant, copies of search warrants, request for lab analysis forms, a SANE report, and a witness list that does not comport with Rule 3A:11.

#### MEMORANDUM OF LAW

**I. The Commonwealth did not comply with the Discovery Order because it did not provide Counsel with discovery until September 1, 2022.**

Virginia Supreme Court Rule 3A:11 allows a criminal defendant to move the Court to order the Commonwealth to produce evidence relating to the evidence the Commonwealth intends to introduce against the defendant. Va. Sup. Ct. R. 3A:11(b).

“When a court orders discovery pursuant to Rule 3A:11, the Commonwealth has a duty

to disclose the materials” in a timely manner. Lomax v. Commonwealth, 228 Va. 168, 173 (1984) (reversing a conviction where the Commonwealth failed to timely comply with the defendant’s discovery request). When the Commonwealth does not provide discovery in a timely manner, the defendant is prejudiced at trial. Id. “And the more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption.” United States v. Bagley, 473 U.S. 667, 682-683 (1985).

In this case, the Commonwealth was ordered to provide discovery no later than April 29, 2022. They did not provide discovery until the end of the day on September 1, 2022. That is 124 days late and a mere 11 days prior to trial. Mr. Reel remains incarcerated on an offense that has a potential life sentence. The Commonwealth’s utter disregard for the court’s order and blatant failure to comply with their obligation is sufficient to warrant a dismissal of these charges.

**II. Because the Commonwealth did not comply with the discovery order, Mr. Reel’s constitutional rights were violated.**

The Constitution of the Commonwealth of Virginia grants the criminally accused an unconditional right to call for evidence in his favor. Va. Const. Art. I; see also Bobo v. Commonwealth, 187 Va. 774, 779 (1948) (holding that “[A]n accused has the unqualified right to ‘call for evidence in his favor.’ This includes the right to prepare for trial which, in turn, includes the right to interview material witnesses and to ascertain the truth”).

Mr. Reel has the right to have effective assistance of counsel, a fair trial, the right to call for evidence on his behalf, and due process. Each of these rights has been violated by the Commonwealth by their blatant disregard for and violation of the Discovery Order in this case. Mr. Reel cannot possibly have a fair trial when the Commonwealth violates a court order by not

turning over any discovery. Mr. Reel is likewise denied the effective assistance of counsel and to call for evidence on his behalf when counsel has not been provided with any of the evidence the Commonwealth intends to introduce against him until days before his trial. For example, until the Commonwealth emailed defense counsel regarding the detective obtaining a search warrant for the defendant's DNA, counsel had absolutely no knowledge that any evidence had even been submitted to DFS. Had the Commonwealth complied with discovery, the defendant could have subpoenaed records from DFS as well as obtained the services of an expert. In sum, the Commonwealth violated Mr. Reels's rights under the under the Sixth and Fourteenth Amendments to the Federal Constitution and the Virginia Constitution.

**III. The remedy for the violations of the discovery order is dismissal.**

Rule 3A:11 requires that, "if at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with this Rule or with an order issued pursuant to this Rule, the court must order such party to permit the discovery or inspection of materials not previously disclosed, and may grant such other relief authorized by Virginia law as it may in its discretion deem appropriate." Rule of Supreme Court 3A:11(h). Virginia Code § 19.2-265.4 further states that, "the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances."

Where a court enters a discovery order in a case, that order governs discovery in that case. Abunaaj v. Commonwealth, 28 Va. App. 47, 53 (1998). When the Commonwealth fails to adequately and fully provide discovery as required by the court's order, "the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the

Commonwealth from introducing the evidence not disclosed, or the court may enter such other order as it deems just under the circumstances.’ The relief to be granted following the late disclosure of evidence is within the trial court’s discretion.” Knight v. Commonwealth, 18 Va. App. 207, 211-212 (1994) (quoting Virginia Code § 19.2-265.4).

In Stotler v. Commonwealth, the Court of Appeals stated that it was the duty and responsibility of the court to deter inappropriate tactics by the Commonwealth seeking to introduce improper or inadmissible evidence “by taking such action, imposing such sanctions, or granting such relief as it deems appropriate.” Stotler v. Commonwealth, 2 Va. App. 481, 484 (1986).

The only appropriate remedy is for the court to dismiss the charges against Mr. Reel. Virginia Code § 19.2-265.4 allows the court to fashion a remedy for a discovery violation deemed appropriate based on the circumstances. “[W]hen the Commonwealth fails to comply with a discovery order, continuance is not always the necessary or proper remedy or sanction. There are other sanctions available to the court, including disciplinary action, for failure to comply with a discovery order.” Harrison v. Commonwealth, 12 Va. App. 581, 586 (1991). (See also, Commonwealth v. Timberlake, 2021 Va. Cir. LEXIS 166 (2021) wherein this court provided a remedy to the defendant of excluding the Commonwealth from introducing expert testimony and Commonwealth v Gonzalez, 2020 Va. Cir. LEXIS 439 where the court’s remedy was a jury instruction explaining the violation and inferences that could be drawn from it.)

What makes this violation so egregious is that Ms. Gregory has already had a case dismissed in July 2022 because of her failure to comply with a discovery order. In that case, discovery was due in January and she realized her error the week before trial. A continuance request was denied and the defense motion to dismiss the charges was granted by the Honorable

Robert J. Smith (Commonwealth v. Alex Joshy).

Adding insult to injury, because of the changes in the Commonwealth Attorney's office in the last few years, failing to comply with discovery is unfathomable. Ever since the Commonwealth held the Fairfax Courts and Fairfax County hostage with their refusal to prosecute misdemeanor offenses due to a "lack of resources," the Fairfax County Board of Supervisors has flooded the Commonwealth Attorney's office with additional staff and funding. The Commonwealth is currently staffed at 54 attorneys, 13 paralegals and a litany of other support staff (they went from 63 employees to 84). Their funding jumped from \$5 million in FY2021 to \$9 million in FY2023. The Commonwealth's Attorney, Steve Descano, repeatedly told the Board of Supervisors that they needed additional staff to be able to comply with their discovery obligations, especially as it related to body worn cameras. Hence, the vast increase in funding, attorneys, and paralegals such that they would be able comply with discovery. What makes it even more galling is that the Public Defender's Office has 25 attorneys, four investigators, three mitigation specialists and seven other administrative staff. The office handles approximately 75% of the criminal caseload in Fairfax County. Yet, we do not repeatedly violate orders of the court without compunction.

In case after case, discovery violations have ground the effective administration of justice in this court to a halt. This is all the more problematic in that the Court's docket has not recovered from the Covid backlog. If conduct like this by the Commonwealth is tolerated by this Court, we will never get out of the Covid logjam, and the problems of 2020 and 2021 will continue through 2022, into 2023, and beyond. That simply cannot be the answer.

The Commonwealth will most likely argue that a continuance is the appropriate remedy. However, Mr. Reel is incarcerated and has been so for nearly 14 months. He has both statutory

and Constitutional speedy trial rights. He should not be required to abandon those rights because of the Commonwealth's incompetence. Mr. Reel is provided a panoply of rights, all of which he is permitted to assert. As such, he is asserting all of them, including his speedy trial rights.

Further, any motion by the Commonwealth to *nolle prosequi* the charges against Mr. Reel should be denied. Virginia Code § 19.2-265.3 provides that *nolle prosequi* shall be entered only in the discretion of the court, upon motion of the Commonwealth with good cause therefor shown. Virginia trial courts properly deny such motions where circumstances “manifest a vindictive intent” resulting in “oppressive and unfair trial tactics.” Duggins v. Commonwealth, 59 Va. App. 785, 790-91 (2012), citing Battle v. Commonwealth, 12 Va. App. 624, 630 (1991) and Harris v. Commonwealth, 258 Va. 576, 584 (1999). Allowing a *nolle prosequi* under these circumstances would result in oppressive and unfair trial tactics as Mr. Reel has been pending trial in the Circuit Court for six and a half months and the Commonwealth has done nothing to prepare or to comply with this court's discovery order. Allowing the Commonwealth to work around the court's order to provide discovery runs afoul of Mr. Reel's due process rights.

Therefore, dismissal with prejudice is the only appropriate sanction. The Commonwealth did not respond until the eve of trial to the discovery order the Commonwealth agreed to in March 2022. This is not a situation where the Commonwealth provided full discovery at or before the deadline and continued to supplement discovery as it received it up until the trial date. Here, the Commonwealth blatantly disregarded and violated this court's order by not filing any discovery response and when the issue of late discovery was brought to their attention, it was ignored.


If the court is not inclined to dismiss the charges, the court should order the exclusion of any evidence that was required to be provided under the discovery order. That would include, but

not be limited to: any witness testimony as the Commonwealth failed to provide witness statements, any certificates of analysis and testing results as the Commonwealth failed to provide those until 11 days before trial, any statement of the defendant as the Commonwealth has only provided a controlled phone call 11 days before trial, any witnesses whatsoever as the witness list fails comply with 3A:11, as well as any other evidence that is covered by the discovery order.

WHEREFORE, Mr. Reel respectfully requests that this Court dismiss the charge due to the violation of the discovery order and Mr. Reel's constitutional rights.

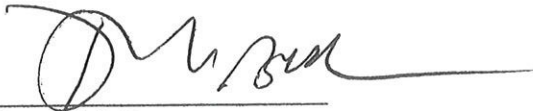
Respectfully submitted,

RONNIE REEL  
By Counsel

  
\_\_\_\_\_  
Dawn M. Butorac  
Public Defender

**Certificate of Service**

I, Dawn M. Butorac, hereby certify that on this 2 day of September, 2022 a true copy of the foregoing motion was hand-delivered to the Office of the Commonwealth Attorney, 4110 Chain Bridge Road, Fairfax, VA 22030.

  
\_\_\_\_\_  
Dawn M. Butorac



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER FE-2022-0000111
VERSUS	)	
RONNIE KEENE REEL	)	INDICTMENT – SODOMY (Count I) and AGGRAVATED SEXUAL BATTERY (Count II)

ORDER

On September 9, 2022, Whitney Gregory, the Assistant Commonwealth's Attorney, RONNIE KEENE REEL, the Defendant, and Dawn Butorac, Counsel for the Defendant, appeared before this Court. The Defendant is indicted with the felonies of SODOMY (Count I) and AGGRAVATED SEXUAL BATTERY (Count II), and he appeared while in custody.

This case came before this Court today for argument on the Defendant's motion to dismiss, which motion the Court, after hearing argument, denied in part.

The Court granted Defendant's motion to limit the Commonwealth's evidence at trial due to discovery violations as stated on the record, therefore it is **ORDERED** that any evidence the Commonwealth intends to offer at trial that was not provided by April 29, 2022, pursuant to the discovery order is inadmissible.

The Defendant was remanded to the custody of the Sheriff.

Entered on September 12, 2022.

  
 \_\_\_\_\_  
 JUDGE PENNEY S. AZCARATE

g/m  
C  
Jail

Court Proceedings  
September 9, 2022

27

1 the deadlines are met. Even if it's an oversight,  
2 that's still -- you didn't do it, and you have those  
3 responsibilities because it's your burden.

4 The defendant does not have any burden, and  
5 he's been deprived his liberty for 14 months pending  
6 innocent until proven guilty, and he's been deprived  
7 that based on the nature of the charges.

8 And for the Commonwealth to be prepared and  
9 ready to go to trial and cover all their deadlines,  
10 which they have woefully, woefully missed in this  
11 case, which is just a disservice to the victim in this  
12 case and is very concerning to the Court that this  
13 case was not taken as much responsibility as it should  
14 have been.

15 And when you have a discovery order that  
16 says discovery is due in April, discovery is due in  
17 April, and you provide discovery at that time, or if  
18 it's later, you work through it. You work out what  
19 you can, but you don't wait four months and then, all  
20 of a sudden say, okay, now we need to do something on  
21 this case that's set for two weeks from now and just  
22 ignore the discovery order from four months earlier.



**PLEA OF GUILTY TO A MISDEMEANOR**

1. My name is **Ronnie Reel**. My date of birth is \_\_\_\_\_, and my age is \_\_\_\_\_ years old.
2. I am represented by Counsel whose name is **Dawn Butorac, Esq.** and I am entirely satisfied with his services as my attorney.
3. I have received a copy of the indictment before being called upon to plead and have read and discussed it with my attorney. I fully understand the charges against me. I am the person named in the indictment. I have discussed the charge and its elements with my lawyer and I understand what the Commonwealth must prove before I may be found guilty. I have had enough time to discuss with my lawyer and possible defenses that I may have had to this charge.
4. I have discussed with my lawyer whether I should plead guilty or not guilty. After that discussion, I decided for myself that I should plead guilty. I am entering the plea of guilty freely and voluntarily. I am entering a plea of guilty because I am in fact guilty of the crime charged.
5. My attorney has advised me that the punishment which the law provides is as follows: **confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.**
6. I understand that by pleading guilty, I am waiving the following rights at trial: (a) the right to a trial by jury; (b) the right not to incriminate myself; (c) the right to confront and cross-examine all witnesses against me; and (d) the right to defend myself including the right to use the power of the court to obtain evidence and the attendance of witnesses on my behalf.
7. I understand that by pleading guilty I may waive my right to an appeal and that the only issue to be decided by the Court is punishment.
8. The following plea agreement is the full and complete agreement between me, my attorney, and the Commonwealth's Attorney:

**The Defendant is pleading guilty and will be found guilty of Assault and Battery § 18.2-57, which is amended from Aggravated Sexual Battery. The Anal Sodomy charge is dismissed. The Commonwealth and the Defendant agree that the Defendant's sentence shall be 12 months with 0 months suspended, with credit for time served. In addition, a permanent protective order will be in place with the victim, C.D., as petitioner. No contact whatsoever and stay 1,000 feet away from C.D. and his family.**

9. No one connected with my arrest and prosecution, such as the police, Commonwealth's Attorney, Sheriff, or any other person, has threatened me or forced me to plead guilty or made any promises concerning my plea of guilty, other than stated in paragraph 8.
10. I understand that the Court may accept or reject the agreement, and may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the pre-sentence report and other evidence.
11. I understand that if I am not a United States citizen, a plea of guilty may result in deportation, the exclusion of admission to this country, the denial of naturalization under federal law, or adverse immigration consequences.
12. After having discussed the matter with my attorney, I do freely and voluntarily plead guilty to the offense of **Assault and Battery**, and waive my right to a trial by jury and request the Court to hear all matters of law and fact.

Signed by me in the presence of my attorney this 13 day of September, 2022.

Ronnie Reel

Defendant



New in VINE

English

Help

QUICK EXIT

VIRGINIA VA

SEARCH

ALERTS

MY INFO

SIGN IN

CREATE ACCOUNT



Sign in or create an account to see date of birth and ID number.

### RONNIE KEENE REEL

Custody Record

Age 30

Gender Male

Race Black

Due to the current status, updates on this record are no longer available. If you have any questions, please contact the facility.

Registration disabled

RECORD DETAILS

GET NOTIFIED

Date of Birth [REDACTED],\*\*\*\*

ID Number 1090\*\*\*

Custody Status Date Sep 13, 2022 02:48 PM EDT

Custody Status Out of Custody

Custody Detail Sentence served

Book Date Dec 17, 2021 12:20 PM EST

Scheduled Release Jun 18, 2022 12:00 AM EDT

#### REPORTING AGENCY

Fairfax County Sheriff's Office

10520 Judicial Dr.

Fairfax, VA 22030

(703) 246-2100



**VIRGINIA :**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

<b>COMMONWEALTH OF VIRGINIA</b>	:	<b>Case No.:</b>	<b>FE-2020-418, -419, -420, -421</b>
	:		
<b>vs.</b>	:	<b>Trial Date:</b>	<b>July 18, 2022</b>
	:		
<b>ALEX JOSHY,</b>	:		
<b>Defendant.</b>	:		

**DISCOVERY AND INSPECTION ORDER**

Upon the motion of the defendant, Alex Joshy, by and through counsel, Negin Farahmand Wood and Gretchen Schumaker, and with the agreement of the Commonwealth, by and through its counsel, it is hereby,

**Discovery by the Defendant**

ORDERED pursuant to RULE 3A:11, that no later than **January 14, 2022**, the Commonwealth shall produce the following:

1. **REPORTS:** The Commonwealth shall permit the defendant to inspect and review any relevant reports prepared by law enforcement officers and made in connection with the particular case, including any written witness statements or written summaries of oral statements contained within such reports, that are known to the Commonwealth's attorney to be in the possession, custody or control of the Commonwealth. Nothing in this Order requires that the Commonwealth provide the defendant with copies of the relevant law enforcement reports, although it may do so in its discretion. This order shall be subject to the provisions of subparts (c)(1) and (c)(2) of Rule 3A:11 regarding redaction and restrictions on "Restricted Dissemination Material."

2. **STATEMENTS:** The Commonwealth shall permit the defendant to inspect, review and copy or photograph any relevant written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the defendant to any law enforcement officer, that are

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known to the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth; written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the defendant to any person other than a law enforcement officer, that the Commonwealth intends to introduce into evidence at trial; written or recorded statements, or the substance of any oral statements, made by a codefendant or co-conspirator that the Commonwealth intends to introduce into evidence at trial.

**3. DEFENDANT'S CRIMINAL RECORD:** The Commonwealth shall allow the defendant through counsel to review a copy of his/her prior criminal record, if any, as is within the possession, custody, or control of the Commonwealth, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Commonwealth.

**4. REPORTS OF EXAMINATIONS:** The Commonwealth shall permit the defendant to inspect, review and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the defendant or the alleged victim made in connection with the particular case, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth.

**5. PHYSICAL ITEMS:** The Commonwealth shall permit the defendant to inspect and copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Commonwealth, that may be material to the preparation of his/her defense, or that the Commonwealth intends to introduce into evidence at trial. If counsel desires to inspect the physical evidence prior to the date of trial, counsel shall contact the Commonwealth, in writing, to set a mutually agreeable date and time for said inspection of physical evidence in the possession of the Commonwealth.

6. **EXPERT WITNESSES:** For any witness through which the Commonwealth intends to introduce expert testimony at trial or sentencing, the Commonwealth shall notify the defendant in writing of the Commonwealth's intent to introduce such expert testimony and disclose to the defendant: a) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions; and b) the witness's qualifications and contact information. Pursuant to Rule 3A:11(b)(4)(B) the disclosure requirements under this section shall not render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed, or the expert witness's qualifications disclosed, just because the further explanatory language was not included in the notice and disclosure provided. The Commonwealth shall make the disclosure under this section no later than **28 calendar days** before trial, unless the expert testimony is to be offered in response to a previously-noticed expert of a defendant, in which case the disclosure pursuant to this section must be provided not later than **five calendar days** prior to trial. Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of this section. In an appropriate case, and for good cause shown, either party may move the Court for an Order requesting earlier or later disclosure of expert witness notice and summaries.

7. **WITNESS LIST:** The Commonwealth shall disclose to the defendant no later than **14 calendar days** before trial a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the Commonwealth at trial or sentencing. This disclosure is subject to Rule 3A:11(c) and to any protective orders entered by the court.

8. **REDACTIONS AND RESTRICTED DISSEMINATION MATERIAL (“RDM”):** The Commonwealth may make such redactions as are identified in Rule 3A:11(c)(1). Pursuant to Rule 3A:11(c)(2), the Commonwealth may designate disclosed materials as “Restricted Dissemination Material” by visibly marking the materials. Items may only be marked as RDM by agreement with the defendant’s attorney or by providing certification in writing, upon information and belief that the designated materials relate to the statement of a child victim or witness or that the disclosure may result in danger to the safety or security of a witness or victim, danger of a witness being intimidated or tampered with, or a risk of compromising an ongoing criminal investigation or confidential law enforcement technique. RDM may only be disclosed to the attorney for the defendant, or the attorney’s agents or employees, or to an expert witness. The attorney for the defendant may orally disclose the content of the RDM to the defendant or allow the defendant to view the content of the RDM but shall not provide the defendant with copies of the RDM. Disposition of the RDM shall be in accordance with Rule 3A:11(c)(2)(E).

9. **WORK PRODUCT:** This Order does not authorize the discovery or inspection of the work product of the Commonwealth’s attorney, including internal reports, witness statements, memoranda, correspondence, legal research or other internal documents prepared by the office of the Commonwealth’s attorney or its agents in anticipation of trial. Should the Commonwealth seek to withhold from production as “work product” any law enforcement reports that would otherwise be made available for inspection and review pursuant to Section 1 of this Order, the Commonwealth shall notify the defendant in writing, who may seek appropriate relief from the Court.

**Discovery by the Commonwealth**

It is further ORDERED pursuant to Rule 3A:11 that, no later than **14 calendar days** before trial, unless otherwise specified herein:

10. **REPORTS:** The defendant shall permit the Commonwealth to inspect and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath analyses, and other scientific testing within the defendant's possession, custody or control that the defense intends to proffer or introduce into evidence at trial or sentencing.

11. **REPORTS RELATED TO THE DEFENSE OF INSANITY:** The defendant shall permit the Commonwealth to inspect, copy or photograph any results or reports of any written reports of physical or mental examination of the defendant made in connection with the particular case if the defendant intends to rely upon the defense of insanity pursuant to Chapter 11 of Title 19.2; provided, however, that no statement made by the defendant in the course of such an examination disclosed pursuant to this order shall be used by the Commonwealth in its case-in-chief, whether the examination was conducted with or without the consent of the defendant.

12. **ALIBI NOTICE:** The defendant shall disclose to the Commonwealth whether the defendant intends to offer a defense of alibi, and, if so, disclose the place at which the defendant claims to have been at the time the alleged offense was committed.

13. **EXPERT WITNESSES:** For any witness through which the defendant intends to introduce expert testimony at trial or sentencing, the defendant shall notify the Commonwealth in writing of the defendant's intent to introduce such expert testimony and disclose to the Commonwealth: a) any written report of the expert witness the setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions; and b) the witness's qualifications and contact information. Pursuant to Rule 3A:11(b)(4)(B) the disclosure requirements under this section shall not render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons

disclosed, or the expert witness's qualifications disclosed, just because the further explanatory language was not included in the notice and disclosure provided. The defendant shall make the disclosure under this section no later than **10 calendar days** before trial. Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of this section. In an appropriate case, and for good cause shown, either party may move the Court for an Order requesting earlier or later disclosure of expert witness notice and summaries.

14. **WITNESS LIST:** The defendant shall disclose to the Commonwealth no later than **5 calendar days** before trial a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the defendant at trial or sentencing. The defendant's attorney may redact the personal identifying information of any witness if so, authorized by a protective order entered by the court, or as required by Virginia Code Section 19.2-11.2.

#### **Protective Order**

15. Any material or evidence disclosed or discovered pursuant to this Rule and filed with the clerk of the court shall be placed under seal until it is either admitted as an exhibit at a trial or hearing or the court enters an order unsealing the specified material or evidence.

16. The parties may move this Court for additional terms of, or relief from, the terms of this Order if such additional terms or relief are necessary for the orderly adjudication of the case or to the fair administration of justice.

#### **Exculpatory Material**

17. It is further ORDERED that the Commonwealth shall comply with its obligations to promptly produce exculpatory material, including material covered by *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.

Giglio Materials

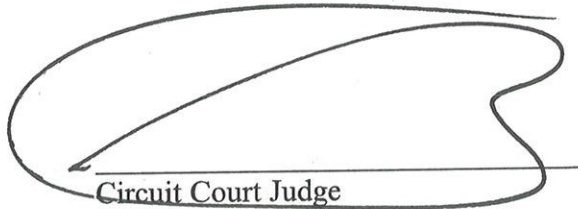
18. It is further ORDERED that, no later than **14 calendar days** before trial, the Commonwealth shall produce to the defendant the *Giglio* materials for the witnesses who will testify in the Commonwealth's case in chief.

Providing of Copies

19. In accordance with Rule 3A:11(3), a party may satisfy the requirement to permit the opposing part to inspect and copy or photograph a document, recorded statement or recorded confession by providing an actual duplicate, facsimile or copy of the document, recorded statement or recorded confession to the opposing party in compliance with the applicable time limits and redaction standards set forth in this Order.

Date:

June 25, 2021

  
Circuit Court Judge

We ask for this:

Gretchen Schumaker  
Counsel for Defendant  
Gretchen Schumaker, VSB # 93757  
Assistant Public Defender  
4103 Chain Bridge Road, Suite 500  
Fairfax, VA 22030  
p. (703) 934-5600 x134  
f. (703) 934-5160  
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Commonwealth's Attorney

by: Whitney Gregory  
Assistant Commonwealth's Attorney

Whitney J. Gregory  
Fairfax Commonwealth's Attorney Office  
4110 Chain Bridge Rd, 114  
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VA Bar. 94772



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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA :

vs. :

ALEX JOSHY,  
Accused. :

Case No.: FE-2020-418; FE-2020-419  
FE-2020-420; FE-2020-421

Jury Trial: July 18, 2022

**NOTICE AND MOTION TO DISMISS WITH PREJUDICE DUE TO DISCOVERY  
ORDER VIOLATION**

COMES NOW the accused, Alex Joshy, by counsel, Negin Farahmand-Wood and Gretchen Schumaker, and moves this honorable Court to dismiss the case as the Commonwealth has violated Mr. Joshy's rights under the Sixth and Fourteenth Amendments, as well as the discovery order of this Court and Virginia Supreme Court Rule 3A:11.

**STATEMENT OF FACTS**

Alex Joshy is pending four indictments in the Fairfax County Circuit Court all stemming from an alleged computer solicitation of a minor. Upon information and belief, the alleged minor is a Fairfax County Detective. There is no victim in this case. Count I of FE-2020-418 charges Mr. Joshy with using a computer to solicit a minor by exposing his genital parts to the minor on March 31, 2020. This charge carries a mandatory minimum sentence of five (5) years if convicted. Count I of FE-2020-419 charges Mr. Joshy with using a computer to solicit a minor on April 1, 2020. This charge also carries a mandatory minimum sentence of five (5) years if convicted. Count I of FE-2020-420 charges Mr. Joshy with using a computer to solicit a minor on April 19, 2020. This charge also carries a five (5) year mandatory minimum sentence if convicted. Finally, Count I of FE-2020-421 charges Mr. Joshy with attempting to take indecent liberties with a minor on April 20, 2020.

Mr. Joshy was indicted with each of these offenses through the November Term, 2020. At term day, trial was set for July 18, 2022. On May 28, 2021, the Office of the Public Defender was appointed to Mr. Joshy's charges. On Monday, June 14, 2021, defense counsel emailed the Assistant Commonwealth's Attorney assigned to the case regarding a proposed discovery order. Counsel proposed discovery be due on October 29, 2021. The Commonwealth asked Counsel for additional time and suggested discovery instead be due in January 2022. Counsel agreed and the parties endorsed and filed an agreed discovery order. The agreed Order was signed by the Court on June 25, 2021 and ordered that the Commonwealth provide discovery by January 14, 2022.

As of the filing of this motion, the Commonwealth has not responded to the Court's Order. On July 13, 2022, the Commonwealth emailed defense counsel indicating the Commonwealth needed to request a continuance of this trial. The Commonwealth requested a continuance in Calendar Control on July 14, 2022 before the Honorable Stephen C. Shannon. Judge Shannon denied that request. The case is still set for trial on July 18, 2022.

### MEMORANDUM OF LAW

#### **I. The Commonwealth did not comply with the Discovery Order because it did not provide Counsel with any discovery.**

Virginia Supreme Court Rule 3A:11 allows a criminal defendant to move the Court to order the Commonwealth to produce evidence relating to the evidence the Commonwealth intends to introduce against the defendant. Va. Sup. Ct. R. 3A:11(b).

"...[W]hen a court so orders discovery pursuant to Rule 3A:11, "the Commonwealth has a duty to disclose the materials" in a timely manner. Lomax v. Commonwealth, 228 Va. 168, 173 (1984) (reversing a conviction where the Commonwealth failed to timely comply with the defendant's discovery request). When the Commonwealth does not provide discovery in a timely manner, the defendant is prejudiced at trial. Id. "And the more specifically the defense

requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption.” United States v. Bagley, 473 U.S. 667, 682-683 (1985).

This Court ordered that discovery be provided by January 14, 2022. The Commonwealth agreed to this date. Discovery pursuant to the Discovery Order was never provided to counsel or filed with the Court. Therefore, the Commonwealth has clearly violated the Court’s discovery order in this case.

**II. Because the Commonwealth did not comply with the discovery order, Mr. Joshy’s constitutional rights were violated.**

The Constitution of the Commonwealth of Virginia grants the criminally accused an unconditional right to call for evidence in his favor. Va. Const. art. I; see also Bobo v. Commonwealth, 187 Va. 774, 779 (1948) (holding that “[A]n accused has the unqualified right to ‘call for evidence in his favor.’ This includes the right to prepare for trial which, in turn, includes the right to interview material witnesses and to ascertain the truth”).

Mr. Joshy has the right to have effective assistance of counsel, a fair trial, the right to call for evidence on his behalf, and due process. Each of these rights has been violated by the Commonwealth by their blatant disregard for and violation of the Discovery Order in this case. Mr. Joshy cannot possibly have a fair trial when the Commonwealth violates a court order by not turning over any discovery. Mr. Joshy cannot possibly have effective assistance of counsel when counsel has not been provided with even the bare minimum of a police report, especially when counsel did not have the benefit of representing Mr. Joshy in the General District Court. Mr. Joshy cannot call for evidence on his behalf when counsel has not been provided with any of the

evidence the Commonwealth intends to introduce against him. In sum, the Commonwealth violated Mr. Joshy's rights under the under the Sixth and Fourteenth Amendments to the Federal Constitution and the Virginia Constitution.

**III. The remedy for the violations of the discovery order is dismissal.**

Rule 3A:11 requires that, "if at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with this Rule or with an order issued pursuant to this Rule, the court must order such party to permit the discovery or inspection of materials not previously disclosed, and may grant such other relief authorized by Virginia law as it may in its discretion deem appropriate." Rule of Supreme Court 3A:11(h). Virginia Code § 19.2-265.4 further states that, "the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances."

Where a court enters a discovery order in a case, that order governs discovery in that case. Abunaaj v. Commonwealth, 28 Va. App. 47, 53 (1998). When the Commonwealth fails to adequately and fully provide discovery as required by the Court's Order, "the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing the evidence not disclosed, or the court may enter such other order as it deems just under the circumstances." The relief to be granted following the late disclosure of evidence is within the trial court's discretion." Knight v. Commonwealth, 18 Va. App. 207, 211-212 (1994) (quoting Virginia Code § 19.2-265.4).

In Stotler v. Commonwealth, the Court of Appeals stated that it was the duty and responsibility of the court to deter inappropriate tactics by a Commonwealth seeking to introduce

improper or inadmissible evidence “by taking such action, imposing such sanctions, or granting such relief as it deems appropriate.” Stotler v. Commonwealth, 2 Va. App. 481, 484 (1986). “[W]hen the Commonwealth fails to comply with a discovery order, continuance is not always the necessary or proper remedy or sanction. There are other sanctions available to the court, including disciplinary action, for failure to comply with a discovery order.” Harrison v. Commonwealth, 12 Va. App. 581, 586 (1991). Here, the Court’s granting of this motion would in effect deter further discovery violations by the Commonwealth, which regularly occurred in cases pending before this Court.

Further, any motion by the Commonwealth to *nolle prosequi* the charges against Mr. Joshy should be denied. Virginia Code § 19.2-265.3 provides that *nolle prosequi* shall be entered only in the discretion of the court, upon motion of the Commonwealth with good cause therefor shown. Virginia trial courts properly deny such motions where circumstances “manifest a vindictive intent” resulting in “oppressive and unfair trial tactics.” Duggins v. Commonwealth, 59 Va. App. 785, 790-91 (2012), citing Battle v. Commonwealth, 12 Va. App. 624, 630 (1991) and Harris v. Commonwealth, 258 Va. 576, 584 (1999). Allowing a *nolle prosequi* after the Court already denied the Commonwealth’s motion to continue on the same basis would essentially allow the Commonwealth a continuance that was denied. Allowing a *nolle prosequi* under these circumstances would result in oppressive and unfair trial tactics as Mr. Joshy has been pending trial in the Circuit Court for over one year and the Commonwealth has done nothing to prepare or to comply with this Court’s discovery Order even as of the filing of this motion. Allowing the Commonwealth to work around both the Court’s Order to provide discovery and the Court’s denial of the continuance request runs afoul of Mr. Joshy’s due process.

Therefore, dismissal with prejudice is the only appropriate sanction. The Commonwealth did not respond whatsoever to the discovery order the Commonwealth agreed to in June 2021. This is not a situation where the Commonwealth provided full discovery at or before the deadline and continued to supplement discovery as it received it up until the trial date. Nor is this a case here the Commonwealth informally provided counsel with discovery prior to the entry of the order. If that were the case, perhaps a continuance or exclusion of the newly supplemented discovery would be appropriate. Here, the Commonwealth blatantly disregarded and violated this Court's order by not filing any discovery response or providing any discovery pursuant to the Discovery Order at any point.

WHEREFORE, Mr. Joshy respectfully requests that this Court dismiss the charge due to the violation of the discover order and Mr. Joshy's constitutional rights.

Respectfully submitted,

ALEX JOSHY

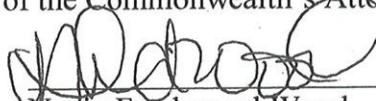
OFFICE OF THE PUBLIC DEFENDER

By: 

Negin Farahmand Wood  
Senior Assistant Public Defender  
4103 Chain Bridge Rd, Suite 500  
Fairfax, Virginia 22030  
(703) 934-5600 x112  
Fax #: (703) 934-5160  
nfarahmandwood@vadefenders.org

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum was hand delivered this 15<sup>th</sup> day of July, 2022, to the Office of the Commonwealth's Attorney, 4110 Chain Bridge Road, Fairfax, Virginia, 22030.

  
Negin Farahmand Wood  
Senior Assistant Public Defender



9516-C Lee Highway  
Fairfax, VA 22031  
O. 703.940.1744  
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Monday, December 13, 2021



Office of the Fairfax Commonwealth's Attorney  
Fairfax County Judicial Center  
4110 Chain Bridge Road, Suite 114  
Fairfax, Virginia 22030

Re: JA 434320-01; JA434320-02; JA434320-03

Dear Sir or Madam:

I represent Ms. Amber Reel, the mother of the victim, a minor child, in the above-referenced cases.

On July 13, 2021, the Defendant was arrested and charged with (1) Object Sexual Penetration; (2) Forcible Sodomy; and (3) Aggravated Sexual Battery against the minor child. Despite being in custody, on November 12, 2021, at approximately 6:36 p.m., the Defendant contacted Ms. Reel by phone. This was a disturbing event beyond words as the victim, the minor child, was present when the unexpected call from an unfamiliar number was received. The minor child was terrified.

As a result of this contact and out of fear of further contact by Defendant, my client has been compelled to seek a Protective Order to protect the minor child's health and safety, herself, and her family members. The next court hearing is set for December 20, 2021, at 10:30 a.m. in the Fairfax County Juvenile and Domestic Relations District Court.

The Defendant should not be allowed to contact the victim or the victim's family members, and no child should have to emotionally suffer or recall such horrific events. I ask that you take immediate action to ensure that the Defendant has zero direct or indirect contact with the victim and the victim's family members. If this requires that your office file an emergency motion to amend the Defendant's pretrial conditions, I ask that you do so immediately using the most expeditious procedure. I also ask that you investigate new violations of law and/or the court's pretrial orders that may have occurred as a result of the Defendant's actions while in custody.



**EIRENE**  
LAW FIRM, P.L.L.C.

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Fairfax, VA 22031  
O. 703.940.1744  
F. 703.940.0043  
Questions@eirenelaw.com  
www.eirenelaw.com

Additionally, and in accordance with Virginia Code §19.2-11.01, I respectfully ask that you:

- (1) Consult and inform me of the contents of any proposed plea agreement and obtain my client's views about the disposition of the cases, as required by subdivision A4d of Virginia Code § 19.2-11.01.
- (2) Notify me and my client of all proceedings in which any plea agreement will be presented to the court.

Thank you,

A handwritten signature in black ink, appearing to read 'Rami Zahr'. The signature is fluid and cursive, with a large initial 'R' and 'Z'.

Rami Zahr  
Attorney  
Eirene Law Firm, P.L.L.C.  
703-940-1744 (phone)  
703-940-0043 (fax)  
[Rami.zahr@eirenelaw.com](mailto:Rami.zahr@eirenelaw.com)

Cc: Detective Jeremy LeVan, Fairfax County Police Department (via electronic email)



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# Court docs shed new light on botched Fairfax Co. sex crimes case

By Lindsay Watts | Published September 29, 2022 | Updated September 30, 2022 | Fairfax County | FOX 5 DC

## Transcript sheds new light on Fairfax Co. sex crimes case

Court transcripts reveal new details about why a man who confessed to molesting a child was offered a plea deal in Fairfax County. FOX 5's Lindsay Watts broke the story and continues to push for answers.

**FAIRFAX COUNTY, Va.** - Court transcripts reveal new details about why a man who confessed to molesting a child was offered a plea deal in Fairfax County.

Ronnie Reel, a convicted felon, was 35 years old when police say he sexually assaulted an 11-year-old boy in Burke.

The boy's mother spoke out last week after Reel, who was facing life in prison on a sodomy charge, walked free from court on time served after pleading to a misdemeanor. He was offered the deal after the circuit court's chief judge ruled the Commonwealth Attorney's Office didn't turn in evidence on time.

"This is my child. This is my baby. And he got no justice," said the boy's mother, Amber, who didn't want to use her last name to protect her son's identity.

Fairfax County Chief Public Defender Dawn Butorac represented Reel. She filed a motion to dismiss the case after the prosecutor missed the court ordered discovery deadline by four months.

**'Overwhelmed and untrained' a Fairfax Co. prosecutor's plea for help**

**Calls for help from a Fairfax Co. prosecutor**

A Fairfax County assistant commonwealth's attorney wrote an email to supervisors saying he was overwhelmed, unprepared, untrained, and making "numerous mistakes" on sex crimes cases, yet continued to try sex crimes cases in the county for months.

According to the court transcript, Butorac told the judge that after she alerted Assistant Commonwealth's Attorney Whitney Gregory in August about the April deadline, three weeks passed with no response.

Butorac said the Commonwealth Attorney's Office has "all the power, the money, the resources."

"They should do what they're told to do," she said. "When my client violates a court order, he goes to jail."

According to the transcript, Chief Judge Penney Azcarate said she was frustrated by the missed deadline.

"It's very concerning to the Court – and unfortunately, this is not the first time I've had this motion in the past few months," Azcarate said, per the transcript. "So, I'm just – it's very frustrating to the Court."

Azcarate went on to say deadlines were "woefully, woefully missed in this case, which is just a disservice to the victim in this case and is very concerning to the Court that this case was not taken as much responsibility as it should have been."

She also criticized the prosecutor for not taking responsibility after Gregory blamed police for being late with DNA evidence.

Both Azcarate and Butorac stated this has happened before.

Ultimately, Azcarate did not dismiss the case, but ruled the prosecution's evidence couldn't be heard at trial, including two confessions by Reel. She also ruled that Gregory could call no witnesses but the child. The prosecution witness list was also turned in late to Butorac.

Once on the stand, there were consistency issues with the boy's testimony.

Commonwealth Attorney Steve Descano again declined to speak about the case.

Spokesman Ben Shnider said the discovery deadline was not missed because most of the discovery was provided earlier in the case when it was still in Juvenile and Domestic Court.

**RELATED: Virginia man who confessed to sexually abusing 11-year-old offered plea deal in Fairfax Co.**

"We acted immediately in response to this novel ruling, and notified all prosecutors that discovery must now be submitted again in Circuit Court – even if it was already conveyed in a lower court," Shnider said.

He said the case should have been delayed and not dismissed because "according to the law, the remedy for such a dispute is a routine continuance – which was sought by our prosecutor and denied."

Butorac said no such law exists.

"The Commonwealth has an obligation to do their job, and they failed in this case," Butorac said. "And then they tried to make excuses for their failure to do their job."

George Washington University law professor Stephen Saltzburg reviewed the transcript and agreed there was a discovery violation by the prosecution.

"It's a shame," Saltzburg said. "The victim is disserved. The public is disserved. But the constitutional rights of this defendant are upheld."

But he said many judges would have handled this differently. Saltzburg suggested sanctioning the prosecutor, freeing the defendant and granting a continuance could be one remedy.

"I have the feeling from reading the transcript that there may have been more here than just this case," Saltzburg said. "I get the sense the judge was sending a message to the Fairfax County prosecutor's office."

#### **Controversy with sex abuse case**

A Virginia man confesses to sexually abusing a young boy and then walks free from court on a plea deal. The victim's mother is speaking out, asking why the Fairfax County justice system failed her son. FOX 5's Lindsay Watts explains how this happened.

The victim's mother said it was difficult to explain to her son what happened in the case. She said when they got home from court, he went to his punching bag in the basement.

"He wasn't even out of his court clothes. He went downstairs, and he just started kicking and punching," she said. "He was heartbroken, I think."

Reel was on probation in Stafford County for grand larceny auto theft and eluding police, according to the Virginia Department of Corrections.

A DOC spokesman said he was arrested last week and is now in the Rappahannock Regional Jail pending a probation revocation hearing.



Watch Live

## Virginia man who confessed to sexually abusing 11-year-old offered plea deal in Fairfax Co.

By Lindsay Watts | Published September 19, 2022 | Fairfax County | FOX 5 DC

### Controversy with sex abuse case

A Virginia man confesses to sexually abusing a young boy and then walks free from court on a plea deal. The victim's mother is speaking out, asking why the Fairfax County justice system failed her son. FOX 5's Lindsay Watts explains how this happened.

**FAIRFAX COUNTY, Va.** - A Virginia man who confessed to sexually abusing an 11-year-old boy was offered a plea deal and able to go free on time served after a judge ruled that prosecutors missed an evidence deadline.

The victim's mother says she wants answers on why the Fairfax County justice system failed her son.

In July 2021, Fairfax County police arrested a man known to the victim's family, Ronnie Reel, accusing him of child sex assault. Reel, 35, was later indicted on charges of sodomy and aggravated sexual battery.

The victim's mother asked only to be identified as Amber to protect her son. She said what happened has been hell on her family and especially her child.

"He's been through counseling. We've been through counseling. He started struggling in school," she said.

As Reel's trial approached this month, she said she was ecstatic that justice would finally be served. She said she had complete faith in the prosecutor's office and

knew evidence in the case included Reel's confession, not only to police but also to her in a recorded phone call.

"He was confessing every little detail that he did, and it was making me sick to my stomach," Amber said. "It was horrible. He literally confessed to me why he did it."

She said the call was 18 minutes long and as difficult as it was, she knew how important it was to the case.

The case was before Judge Penney Azcarate, the chief judge of Fairfax County Circuit Court. As is typical, the judge ordered the Commonwealth's Attorney's Office to turn over its evidence to the defense. A deadline was set for April 29.

### **Fairfax County judge slams prosecutor, dismisses child sex assault case**

But when the case went to trial this month, the judge ruled the prosecutor had missed the deadline and therefore the confessions, other evidence, and most witnesses were barred from the trial.

"My prayers and hopes for it just dropped right there," Amber said.

The case was left hinging on her son's testimony. In a statement Ben Shnider, Chief of Staff for Fairfax Commonwealth's Attorney Steve Descano said:

"Ultimately, once on the stand, the victim denied that one of the charges had taken place and contradicted their prior testimony regarding the circumstances of the remaining charge. Unfortunately, young victims often have difficulty recalling the details of such significant trauma – which is why prosecuting these crimes is uniquely challenging. Following this testimony, we consulted with the family, who agreed that guaranteeing accountability through a plea deal was the right move at that point given how the case had evolved."

Descano refused an interview to talk about the case.

Reel, who was facing life in prison, instead plead guilty to misdemeanor assault and battery and agreed to a one-year prison sentence. He was freed on time served.

When asked about the evidence issues, Shnider disputed the deadline has been missed, stating that evidence had already been shared earlier in the case.

"With regards to the discovery in question, the ruling that discovery was shared *too early* with the defense – which was done as part of our office's effort to go above and beyond in pursuit of equal justice – was indeed confounding to us and inconsistent with precedent," Shnider said.

Judge Azcarate didn't respond to a request for comment Monday.

**RELATED: Alleged sex crimes victim shares concerns after Fairfax Co. judge dismisses case**

Dawn Butorac, the public defender representing Reel, disagreed that evidence was adequately provided.

In an emailed statement she wrote: "The Commonwealth was ordered by the court to provide discovery. They were required to provide all of the information they had about the case such that the defense would be on notice of what the Commonwealth intended to use as evidence at trial; this is done so that every defendant's due process and other constitutional rights are protected. We simply cannot have equal justice when one side controls all of the information and utterly fails to comply with the orders of the court."

Meanwhile, Amber was left trying to explain to her son what happened.

"I was really upset. This is my child, this is my baby," she said through tears. "And he got no justice. So he continues to see me cry and everything. He held his own, he stayed strong. He's always trying to be strong for mom."

She says her son practices martial arts, and he has a punching bag in the basement. His anguish was obvious when they got home from the courthouse.

"He wasn't even out of his court clothes. He went downstairs, and he just started kicking and punching," she said. "He was heartbroken, I think."

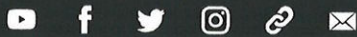
FOX 5 met Amber at her attorney's office Monday. She said her fight for justice isn't over and the family has started a [GoFundMe](#) to handle legal expenses.

She said she feels the case fell apart because people weren't doing their jobs properly.

"I want them to answer for the mistakes they have made," she said.

Reel has a long criminal past and is on probation in an unrelated case in Fredericksburg, according to a spokesman for the Virginia Dept. of Corrections.

The misdemeanor conviction could put him behind bars on a probation violation; however, the new case information out of Fairfax has not yet been processed, according to the spokesman.



VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED  
CRIMINAL  
Fma

COMMONWEALTH OF VIRGINIA



v.

2022 JUL 18 AM 9:46  
FE-2020-418, -419, -420, -421  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

ALEX JOSHY

**COMMONWEALTH'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

COMES NOW the Commonwealth, by her Assistant, and moves this Honorable Court to deny Defendant Alex Joshy's ("Mr. Joshy") Motion to Dismiss, and grant the Commonwealth's Motion to *Nolle Prosequi*, and in support of her position, states the following:

**BRIEF FACTS**

Mr. Joshy was indicted with three computer solicitation of a minor and one attempting to take indecent liberties with a minor charges. The "minor" in the case was an undercover detective with the Fairfax County Child Exploitation Unit.

This was not a direct indictment case. On July 6, 2020, the Office of the Commonwealth's Attorney provided Mr. Joshy's then-counsel, Mr. Manuel Leiva, discovery to include a DVD and the police report. *See CW Ex. 1 (Discovery Letter filed with the J&DR Court 7/7/20)*. Shortly thereafter, the Commonwealth supplemented discovery to Mr. Leiva (e.g., other chats). Preliminary hearing was held in the Juvenile & Domestic Relations Court in October 2020. The charges were bound over, and the Grand Jury returned true bills on all four indictments. Mr. Joshy is not held pending trial.

Both Assistant Commonwealth's Attorneys ("ACA") who were on the case in the district court resigned from the Office. The undersigned ACA was then assigned.

Later, Mr. Leiva withdrew as counsel, and the Office of the Public Defenders was appointed in Circuit Court.

The undersigned ACA was assigned two cases involving a serial rapist (preliminary hearing on the first in September 2021; the second, January 2022). The first case was set for jury trial July 12-19, 2022, which overlapped with Mr. Joshy's jury trial (July 18-19, 2022). Given the complexity and other factors with the serial rapist cases, Mr. Joshy's case was supposed to be reassigned to another ACA.

Defense in the serial rapist case moved to continue the July 12 jury trial, and it was so continued. Thereafter, the undersigned ACA noticed Mr. Joshy's case had not yet been reassigned. The undersigned ACA also noticed a witness list had not yet been provided. The undersigned ACA immediately reached out to Mr. Joshy's counsel about the issue. The parties went to Calendar Control, and the undersigned ACA candidly explained the situation and admitted the Commonwealth's violation of the Discovery Order. The Court ultimately denied the Commonwealth's request for a continuance.

### LAW AND ARGUMENT

While the Commonwealth fully admits it did not comply with the letter of the Circuit Court Discovery Order, it is entirely inaccurate to say discovery was never provided. Mr. Joshy did receive discovery through his prior counsel.

The Commonwealth is not excusing the noncompliance of the Discovery Order, but points out that new counsel could have inquired with prior counsel about obtaining a single CD and report. *See* VA. R. PROF'L CONDUCT 1.16(e).<sup>1</sup> New counsel could have also filed a motion to

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<sup>1</sup> "All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer . . . Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product

compel, as Virginia Rule of Supreme Court 3A:11(h) provides (party must promptly notify the other party). VA. SUP. CT. R. 3A:11(h).

It also does not follow that Mr. Joshy is facing trial by ambush, *because the Commonwealth requested a continuance and explicitly said it is not proceeding to a trial without having complied with the Order, as not fair to him.*

The only substantive term not complied with was the witness list.

The remedy is not dismissal. The remedy is a continuance or a *nolle prosequi*. Dismissal is an extraordinary remedy, especially given the specific facts and posture of this case.

*Duggins v. Commonwealth*, 59 Va. App. 785 (2012) is on point. In that case, the Commonwealth moved for a continuance due to a witness subpoena issue. This Court denied the continuance. The Commonwealth then moved to *nolle prosequi*, and the Court granted it without prejudice. 59 Va. App. at 789. Duggins was later reindicted and found guilty. On appeal, Duggins challenged the trial court's finding of good cause for the *nolle prosequi*. *Id.* at 789-90. The Court of Appeals disagreed. In so ruling, it noted the deference to the Executive and prosecutor, stating:

Such deference remains due even in cases where the prosecution seeks a *nolle prosequi* because of an "oversight" in its pretrial preparations, *Battle [v. Commonwealth]*, 12 Va. App. 624, 630 (1991), or "a lack of adequate foresight and preparation on the part of the Commonwealth's Attorney," *Harris [v. Commonwealth]*, 258 Va. 576, 584 (1999)]. In such circumstances, the interests of justice favor a trial with both sides—prosecution and defense—adequately prepared to address the merits of the case . . . .

Whether or not to continue a case involves a "different calculus" than the one governing the decision to grant or deny a *nolle prosequi* motion. *Id.* at 583 []. A *nolle prosequi* serves merely "to discontinue the prosecution relative to the charges." *Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004). The consequences of *discontinuing* a case are quite different from *continuing* it. "Once the [*nolle prosequi*] motion is granted, the defendant is released from custody or the terms of his bond and is at liberty." *Harris*, 258 Va. at 585. "While

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documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client."

this may provide the Commonwealth with an opportunity to gather more evidence, it does not amount to an ‘unlimited continuance’ because the defendant no longer suffers the consequences of being under indictment.” *Id.* Consequently, a trial court in its discretion could find reasons insufficient for continuing a case to nonetheless be sufficient for discontinuing it. We thus reject Duggins’s assertion that longstanding principles authorizing reprosecution do not apply to him because, in his earlier proceeding, an unsuccessful continuance motion preceded the *nolle prosequi* motion.

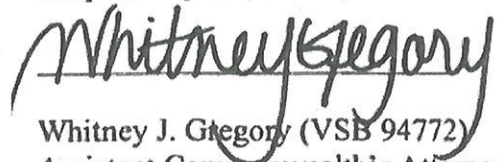
*Id.* at 791, 794-95 (parallel citations omitted) (emphasis in original).

In this case, no bad faith conduct occurred. The noncompliance was due to a reassignment issue. There was no hiding of exculpatory evidence or impeachment information, and there was absolutely no trickery or tactics employed to gain a strategic advantage. Albeit the Commonwealth’s error, one that should not have occurred, the issue is one of Office oversight and not prosecutorial misconduct.

**CONCLUSION**

For the reasons herein stated, and those which may be orally argued at the hearing, the Commonwealth respectfully requests this Honorable Court deny Defendant’s Motion to Dismiss and grant the Commonwealth’s Motion to *Nolle Prosequi*.

Respectfully Submitted,

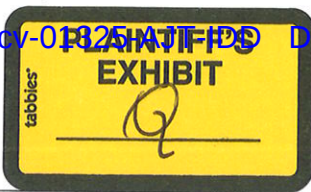


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was delivered to Mrs. Negin Farahmand Wood, counsel for Defendant, via email, this 18th day of July 2022.

  
Whitney J. Gregory  
Assistant Commonwealth's Attorney



Court Proceedings  
September 9, 2022

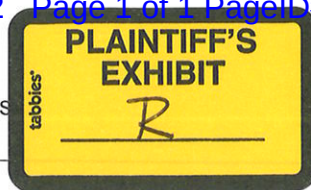
1           When the Commonwealth suggests there's no  
2 appellate case law about dismissal, well, a dismissal  
3 would be appealed. So there would be no appellate  
4 case law to suggest that that's the appropriate  
5 remedy.

6           And so, Your Honor, I think that there's  
7 just way too many problems here that the Commonwealth  
8 has done in this case, and my client has been locked  
9 up for 14 months, and he has every right to be  
10 prepared for his case, and we're set for trial on  
11 Monday at this point, and so I would ask that the case  
12 be dismissed.

13           THE COURT: All right. Thank you.

14           All right. It's very concerning to the  
15 Court -- and unfortunately, this is not the first time  
16 I've had this motion in the past few months. So I'm  
17 just -- it's very frustrating to the Court.

18           The Commonwealth has responsibilities. They  
19 have burdens. You can't shift burdens to detectives.  
20 You can't shift burdens to the defense. The  
21 Commonwealth has the burden to handle the discovery,  
22 handle their case, handle the evidence, make sure all



1 1st.

2 MS. GREGORY: Your Honor, it was available  
3 earlier but I didn't want to leave out a hard drive  
4 containing child sex materials out in the public  
5 wing of the office of the Commonwealth's Attorney.  
6 That's why I hand-delivered it to Ms. Butorac.

7 THE COURT: You could have emailed her the  
8 witness list 14 days ahead of time, correct? And we  
9 wouldn't be in this situation.

10 Let me take a brief recess.

11 (Off the record at 10:10 a.m.)

12 (The Court reconvened at 10:25 a.m.)

13 THE COURT: All right. The reason  
14 discovery orders are in place is to ensure that  
15 there's no trial by ambush and that the defendant's  
16 due process rights are protected. It is also  
17 necessary so that the victim in cases gets a voice.  
18 When a discovery order is violated it puts the Court  
19 in a terrible position.

20 The Court has to follow the law and the  
21 order, even if the Commonwealth did not. The order  
22 requires fourteen day's notice of the Commonwealth's

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.