IN THE

COURT OF APPEALS OF VIRGINIA

RECORD NO. 2070-10-4

NETSANET BESHAH

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF IN OPPOSITION TO PETITION FOR APPEAL

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TO THE HONORABLE JUDGES OF THE COURT OF APPEALS OF VIRGINIA:

COMES NOW the Commonwealth of Virginia, by her Attorneys, Margaret Eastman, Deputy Commonwealth's Attorney for Arlington County and Steven Grist, Assistant Attorney General, and tenders this Brief in Opposition to the Petition for Appeal filed by Appellant, Netsanet Beshah.

STATEMENT OF THE CASE

Netsanet Beshah ("Appellant"), along with 10 other employees of the Potomac Center in Arlington, was indicted by an Arlington County grand jury on July 10, 2009 and charged with four counts of forgery in violation of §18.2-172 of the Code of Virginia. She was represented by Rod Leffler. Leffler, at that time, represented seven of the eleven Potomac Center defendants. Appellant's bench trial in March of 2010 lasted four days, commencing March 16, 2010 and concluding March 22, 2010. The trial court found her guilty on all counts and continued her case to May 28, 2010 for sentencing. In April of 2010, the Commonwealth extended plea offers to two of Leffler's other Potomac Center clients who were themselves charged with related criminal conduct. A short time later, on April 30, 2010, one of Leffler's many clients, (and an acquitted co-defendant of Appellant's), Thomas James, was called before a special grand jury over his counsel's objection to answer questions related to Potomac Center. Leffler represented James during that questioning.[1] On June 2, 2010, the Commonwealth moved the Arlington Circuit Court to make inquiry into counsel's continued representation of Appellant and her co-defendants in view of counsel's conflict of interest stemming from James' testimony before the grand jury, James' potential future testimony against several of Leffler's other clients, and the extension of plea offers requesting the cooperation and testimony of Leffler's clients against his other clients. Two letters containing the plea offers were offered in evidence and accepted by the trial court during the motion. On

[1] The contents of that testimony were unsealed by the Circuit Court when it became clear that James might be called to testify at the trial of his co-defendants' pending cases including Umaru Mansaray, Abdul Sesay, Mamusu Sesay and Netsanet Beshah, all Leffler's clients. James provided testimony adverse to these co-defendants' interests.

June 23, 2010, having taken the motion under advisement, the trial court found a conflict of interest and disqualified Leffler from all of the cases, including Appellant's. On August 27, 2010, Appellant, represented by new counsel, was concurrently sentenced in each case to three years in the penitentiary with two years suspended for a period a three years of supervised probation. From those verdicts and sentences Appellant now appeals.

QUESTIONS PRESENTED

WHETHER THE APPELLANT FAILED TO PRESERVE THE ISSUE OF WHETHER THE PROSECUTORIAL CHARGING DECISION WAS IMPROPER WHERE NO SPECIFIC OBJECTION TO THE SAME WAS TENDERED IN THE TRIAL COURT AND WHERE THE ENDS OF JUSTICE EXCEPTION DOES NOT APPLY

WHETHER THE COMMONWEALTH PROVED THE FORGERY ELEMENTS OF INTENT TO DEFRAUD AND PREJUDICE TO ANOTHER'S RIGHTS AT APPELLANT'S TRIAL

WHETHER APPELLANT'S FORMER COUNSEL WAS PROPERLY DISQUALIFIED FROM REPRESENTING APPELLANT AT HER SENTENCING HEARING WHERE THAT COUNSEL WAS UNABLE TO OVERCOME A CONFLICT OF INTEREST EMANATING FROM HIS JOINT REPRESENTATION OF MULITPLE CO-DEFENDANTS

STATEMENT OF FACTS

John Evans was an elderly patient residing at Potomac Center, a Medicaid-certified skilled nursing facility in Arlington, Virginia. He suffered from, among other things, dementia, chronic obstructive pulmonary disease, respiratory deficiencies and bowel issues. He was cognitively impaired, had little use of his right side and rarely moved from his bed. He was almost completely dependent on others to eat, bathe, and toilet. Because he was bed-bound, he was at high-risk for skin breakdown. Tr., p. 445. His treating physician, Dr. Romaldo DeSouza prescribed a long list of medications and

treatments for Evans. His orders were transcribed onto medical records called medication administration records (MARs) and treatment administration records (TARs). Commonwealth's Exhibits 4, 5, 29, 34. The administration of medications was strictly regimented. Each medication was individually scheduled over the course of the patient's day. Per Potomac Center policy, if medications were not administered within an hour of the authorized time, a medication error was deemed to have occurred. Commonwealth's Exhibit 56. When such errors occurred or when a patient refused his medication or treatment, documentation was required in the clinical chart.[2] Nursing staff recorded the delivery of medications and the provision of treatment on the MARs and TARs and in nursing notes collectively maintained in the patient's clinical chart. Those same records were relied upon by all the care providers attending Evans.[3]

Medication and treatment administration was not the only aspect of Potomac Center that was highly regimented. Due to Potomac Center's Medicaid affiliation,[4] the entire 240-bed facility was subject to regular inspection and audit. Those inspections relied on the patients' clinical records to determine whether the patients at the facility received the care Medicaid was paying for. Consequently, Potomac was required to maintain accurate and complete MARs, TARs and nurse's notes. Commonwealth's

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[2] Potomac policy states "A medication error is defined as a discrepancy between what the physician ordered and what the resident received. Types of errors include: medication omission, wrong dose, route, rate, or time, incorrect preparations, and\or administration technique". Commonwealth's Exhibits 3, 19, 54, 55, 56.

[3] Medical history is as keen a consideration in the provision of care as is the present status of a particular patient. The professional and sound delivery of medical care to Mr. Evans by other medical providers could not be achieved without reference to the care both successfully and unsuccessfully administered to Mr. Evans on prior work shifts. "Continuity of care" therefore depended upon accurate and complete medical documentation. Tr., pp. 99, 351-354.

[4] Commonwealth's Exhibit 1. John Evans was a Medicaid patient.

Exhibit 2, Tr., pp. 76-77, 85. Those same records were also relied on as a source of patient information sent on to the Commonwealth of Virginia for reimbursement purposes. Payment for the care of Medicaid patients was determined through Potomac's submission of Minimum Date Set reports ("MDS"). The MDS reports were compiled by Potomac using data obtained from the patient's clinical records and sent to the Commonwealth who, in turn, relied on the records to "ascertain what care an individual is being provided". Tr., pp. 80-82.

Failing to adhere to the statewide regulatory requirements could bring negative consequences for Medicaid facilities like Potomac Center.[5] Tr., p. 92. Deficiencies at the facility could be met with all manner of sanction, from a demand for correction to monetary penalties and in some cases, to facility closure. Tr., p. 93.

Due to a complaint about the provision of patient care at Potomac, and with the consent of Evans, the Federal Bureau of Investigation installed a covert video surveillance camera in Evans' room in August and September of 2008.[6] The surveillance lasted thirty-four days. During that time, Appellant was one of Evans' care providers. She was a licensed practical nurse (LPN) and one of her primary duties was to administer medications to Evans. Tr., p. 70. As an LPN, she was responsible for accurately charting the medical care she provided to her patients. Failure to provide medically necessary treatment to Potomac's patients while employed would subject her

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[5] Maintaining complete and accurate medical and clinical records for the facility's patients was one such regulation that Potomac was obligated to comply with. Commonwealth's Exhibit 2. Tr., pp. 74-76.

[6] Evans' wife, who was his legal guardian, consented to the surveillance on his behalf. See Commonwealth's Response to Defendant's Motion to Suppress filed in co-defendant's case and made a part of the record in this appeal. Commonwealth v. Abdul Sesay, CR09-982-986; Tr., pp. 22-23, November 19, 2009.

to disciplinary action, up to and including termination. Tr., pp. 95-96. At trial, video and documentary evidence showed that on numerous occasions Appellant made claims in the medical chart that she had provided care to Evans that the video surveillance later proved false.

Among the lies she told was that she had administered medications when she had not, that vitals had been taken from the patient when they had not, that Evans was turned and repositioned every two hours when he was not, and that Evans had received incontinence care when he had not. In total, she fabricated medical records approximately fifty times over only fifteen shifts during the thirty-four day surveillance period.[7] The fabrications involved different drugs, different times, and different treatments.[8] In some cases such as with the vital signs, values were completely made up. All fifty instances were in violation of facility medication policy[9], state facility licensing regulations[10], Board of Nursing regulations[11], nursing professional standards[12] and the Code of Federal Regulations relating to the accuracy of medical documentation for Medicaid facilities.[13]

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[7] Commonwealth's Exhibit 49.

[8] At times she administered some but not all of the medications for a scheduled medication pass. Other times, she was observed in the room speaking with the patient but not giving him his medication.

[9] Commonwealth's Exhibit 56, Tr., p. 458

[10] Commonwealth's Exhibits 55 and 56

[11] Commonwealth's Exhibit 54,Tr., p. 365

[12] Tr., pp. 364-365

[13] Commonwealth's Exhibit 2, Tr., pp 77-78. Code of Federal Regulations impose civil penalties for the falsification of medical records and for causing another to submit such records. 42 CFR § 483.20

ARGUMENT

APPELLANT FAILED TO PRESERVE THE ISSUE OF WHETHER THE PROSECUTORIAL CHARGING DECISION WAS IMPROPER WHERE NO SPECIFIC OBJECTION TO THE SAME WAS TENDERED IN THE TRIAL COURT AND WHERE THE ENDS OF JUSTICE EXCEPTION DOES NOT APPLY

Assignment of Error 1: Prosecutorial charging decision

At trial, Appellant did not make the argument she now makes here. As a result, Appellant failed to preserve the issue in the trial court and the ends of justice exception does not apply. Rule 5A:18 bars the litigation of issues on appeal that have not been first raised in the trial court. Appellant admits that the issue of whether a prosecutor can charge forgery when the subject writing is a medical record was never brought to the trial court's attention, either generally or specifically. Consequently, the Commonwealth was unable to address the present objection to the prosecutorial charging decision in the trial court where it would have been most appropriate. Without an opportunity to hear argument from the parties, the trial court could not rule intelligently on the issue. Andrews v. Commonwealth, 37 Va. App. 479, 599 S.E.2d 401 (2002). Judicial economy is hardly served by permitting a litigant to choose new legal grounds for challenging a conviction on appeal. Kolesnikoff v. Commonwealth, 54 Va. App. 396, 402, 679 S.E.2d 559, 562 (2009) (quoting Ohree v. Commonwealth, 26 Va. App. 299, 308, 494 S.E.2d 484, 488 (1998)).

Appellant next asks this Court to nonetheless determine that the ends of justice exception to Rule 5A:18 should be invoked to save this argument on appeal. Appellant

acknowledges that the ends of justice exception to the rule is "narrow and is to be used sparingly." Bazemore v. Commonwealth, 42 Va. App. 203, 219, 590 S.E.2d 602, 609 (2004)(en banc)(citation and internal quotation marks omitted). And with good reason. The exception is only “necessary to avoid a grave injustice or the denial of essential rights.'" Brown v. Commonwealth, 279 Va. 210, 219-20, 688 S.E.2d 185, 190 (2010)(quoting Charles v. Commonwealth, 270 Va. 14, 17, 613 S.E.2d 432, 433 (2005)). Accordingly, it is invoked in only "rare instances.” Ball v. Commonwealth, 221 Va. 754, 758, 273 S.E.2d 790, 793 (1981). The record from the trial court "must affirmatively show that a miscarriage of justice has occurred, not that a miscarriage might have occurred." Redman v. Commonwealth, 25 Va. App. 215, 221, 487 S.E.2d 269, 272 (1997). Appellant has failed to provide sufficient cause to this Court to justify the application of the ends of justice exception. She has not identified how the error she cites denies any essential rights nor has she distinguished this alleged error as one resulting in a grave injustice. Compared to other more substantial claims of constitutional error refused review by this Court under this exception, this purported error falls short of implicating any essential rights or producing a grave injustice. See Commonwealth v. Hilliard, 270 Va. 42, 53, 613 S.E.2d 579, 586 (2005)(party failed to preserve a Sixth Amendment right to counsel issue and no ends of justice exception applied), West v. Commonwealth, 597 S.E.2d 274, 43 Va. App. 327 (2004)(party failed to preserve double jeopardy issue and no ends of justice exception applied). Since a “miscarriage of justice” has not been affirmatively demonstrated, appellate consideration of this issue should be denied. Redman v. Commonwealth, 25 Va. App. 215, 221, 487 S.E.2d 269, 272 (1997).

THE COMMONWEALTH PROVED THE FORGERY ELEMENTS OF INTENT TO DEFRAUD AND PREJUDICE TO ANOTHER'S RIGHTS AT APPELLANT'S TRIAL

Assignment of Error 2 and 3: Intent to Defraud and Prejudice to Another's Rights

A. Intent to Defraud

"'Intent to defraud' has been defined by this Court as acting "with an evil intent, or with the specific intent to deceive or trick" Campbell v. Commonwealth, 14 Va. App. 988,990, 421 S.E.2d 652, 653 (1992)(en banc), aff'd in part, 246 Va. 174, 431 S.E.2d 648 (1993). Since intent is in the mind of the actor, discerning intent to defraud requires the examination of the facts and circumstances of a case as well as the representations and conduct of the actor. Ridley v. Commonwealth, 219 Va. 834, 252 S.E.2d 313 (1979), Rader v. Commonwealth, 15 Va. App. 325, 423 S.E.2d 207 (1992). "Where the material element of the crime is the fraudulent intent of the accused, both the Commonwealth and the accused are allowed broad scope in introducing evidence with even the slightest tendency to establish or negate such intent" Mughrabi,v. Commonwealth, 38 Va. App. 538, 546, 567 S.E.2d 542 (2002)(quoting Bourgeois v. Commonwealth, 217 Va. 268, 273, 227 S.E.2d 714, 718 (1976)). Such evidence has included false statements (Colonel Klink v. Commonwealth, 12 Va. App. 815, 407 S.E.2d 5 (1991)), existence of other like kind transactions or a pattern of similar activity; (McCary v. Commonwealth, 42 Va. App 119, 590 S.E.2d 110 (2003)); and violation of industry-wide minimum standards of quality and workmanship. (Rader, supra, at 331)

In the case at bar, Appellant fabricated medical records numerous times on each offense date. In addition to these multiple occasions of false statements, eleven other shifts of the defendant were captured in the video surveillance period. When the video and medical records were compared for those dates, a pattern of false charting was observed. Special Agent Litkenhus counted approximately fifty occasions when Appellant wrote that she had provided care when she had not. Commonwealth's Exhibit 49. Such a pattern of false charting over the course of fifteen shifts established that when she fabricated the records, she did so willfully and fraudulently. This same pattern of fabrication also erased any possibility that these medical records were created by mistake or accident.

In addition to the pattern of fraudulent activity presented at trial, however, was the proof that Appellant regularly violated doctor's orders, internal employer protocols, nursing standards, state nursing regulations and federal regulations when she lied. Knowingly and repeatedly conducting oneself in a manner contrary to such accepted and expected practices is certainly probative of intent to defraud. Rader, at 331.

Finally, it should be noted that no plausible excuse could be attributed to Appellant's conduct. She had the time to do her job correctly. She was observed in the patient's room during periods when medication should have been administered, but she was not observed doing so. Tr., pp. 158-159,164. Often, when she was in the patient's room, she administered some, but not all, of the medications.[14]

Appellant claims in her Petition for Appeal that no "benefit" inured to her because the patient was "combative" and often "refused" his medications. This is misleading

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[14] This practice was directly contrary to her claim at trial that she pulled all the medications for a scheduled medication "pass" at the same time. Tr., p. 592

since Evans did not refuse his medication during the fifty or so occasions where fabrication occurred.[15] More significantly, Appellant testified that if her writing indicated that she had administered the medication, then she had in fact done so.[16] Tr., p. 579. In the end, the Appellant did not do the job she was specifically hired to do. Forging the medical records was how she kept that fact from her employer.

Nor is Appellant's knowledge or training in issue. She had prior medical experience and had been adequately trained in professional nursing standards and conduct. She knew how to administer medications properly, how to turn and reposition properly[17] and how to chart properly. Opportunities abounded for her to chart medication errors or to otherwise explain any deviations from protocol. She availed herself of none of these opportunities despite being fully conversant with the relevant charting procedures. Moreover, she agreed maintaining a patient's continuity of care through accurate record keeping was really important. Tr., pp. 582-583. She affirmed that charting refusals was just as important to the continuity of care as charting successful medication passes. Tr., pp. 597-599. Given all of this together with the frequency with which she falsely charted, the trial court had little difficulty concluding that the Appellant acted with fraudulent intent.

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[15] Appellant had the opportunity to chart "refusals" but rarely did.

[16] In order for the Appellant to avail herself of this new "refusal" excuse, she would have to have been observed making an attempt to administer the medications. But that did not happen. Ironically, she would have been equally culpable had she charted "refused" when no refusal occurred and when no attempt was made to administer the medications at all.

[17] Tr., pp 565-567.

B. Prejudice to Another's Rights

"No definition of forgery can be comprehensive enough to include all the crimes that may be committed by simple use of pen, paper and ink." Muhammad v. Commonwealth, 13 Va. App. 194, 198, 409 S.E.2d 818 (1991). Yet, each prosecution for forgery must show that the writing operates to the prejudice of another's rights. In her Petition for Appeal, Appellant suggests that because law-enforcement kept Evans at Potomac Center during the surveillance period, all prejudice to Evans was eliminated. Petition for Appeal, p. 19. In making that argument, Appellant seems to confuse prejudice with actual harm. She also implies that Evans was the only person capable of being prejudiced by Appellant's forgeries, a legal argument unsupported by case law.

As for prejudice, actual harm has never been the standard by which a forgery case is judged. The legal standard is, instead, whether by "*any possibility* [the writing] may operate to the injury of another". Gordon v. Commonwealth, 100 Va. 825, 829, 41 S.E. 746, 748 (1902)(italics added). Turning to the present case, the record demonstrates that Evans' as well as others' rights were prejudiced.

Evans' rights were certainly prejudiced by Appellant's fabrications when he was deprived of his medications on numerous occasions.[18] Her fabrications prevented any other care provider from curing this deprivation since the record she created would lead them to believe that she had given the medications to him already. The same is true for turning and repositioning. However, in this circumstance, and to the extent that turning and repositioning was ordered to prevent the formation of pressure ulcers, the prejudice

[18] Doctor DeSouza believed that the medications he prescribed for Evans were medically necessary for the health and welfare of Evans. Tr., pp. 449-450.

resulting from Appellant's fabrications physically manifested itself with the emergence of a new problem area on Evans' skin in September of 2008.[19]

Similarly, the ability of Appellant's fellow care providers to make important day-to-day medical decisions about Evans' care was compromised when Appellant filled his medical chart with lies. Tr., p. 284-288 [20] Appellant testified to the importance of following the doctor's orders. She knew that the same records she fabricated were relied upon by her co-workers. She confirmed in her testimony the importance of timely and accurate record-keeping, of timely and accurate medication administration and even of turning and repositioning.[21] When asked, she even acknowledged the risks of not doing these things.[22] In other words, she admitted that doing what the trial court concluded she did in falsifying the MARs and TARs and nurse's notes was prejudicial to the patient and to others providing care to him.

Prejudice affected more people than just Evans and the care providers tending him. There were also the state inspectors who pored over the records to check regulatory compliance and adequacy of patient care. There was the facility itself, exposed to sanctions from the Commonwealth because of Appellant's fabrications. The

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[19] Commonwealth's Exhibit 8. September 2008 TAR, p. 6 of 11. Skin assessment entry dated 9\3\0\08.

[20] Dr. Levy testified that omitting information or putting down inaccurate information in the medical records was potentially dangerous because she would be acting upon bad information to try and provide accurate treatment for the patient. Tr., p. 288.

[21] "Turning and Repositioning" was hotly debated at trial. Appellant admitted that she had been trained in standard turning and repositioning techniques but did not employ those for Evans. Her claim that she was given approval for an individualized and quite different turning and repositioning technique for Evans was met with skepticism by the trial court. Even so, the technique she claimed to have used was not observed on the video surveillance tapes.

[22] Appellant acknowledged that Evans was a "high risk" patient for the development of pressure ulcers. Tr., pp. 568-569.

Commonwealth of Virginia and the Federal government was prejudiced in not getting the level of care for Evans at the Potomac Center that they were paying for. Appellant's forgeries even jeopardized those at Potomac who submitted the MDS forms to the State where those MDS forms were based on records Appellant created.[23] Lastly, Potomac paid her to do a job she did not do, a fact deliberately covered up by fabrications. With so many streams of possible prejudice flowing from Appellant's conduct, the trial court did not err in finding that Appellant's false writings were to the prejudice to another's rights.

APPELLANT'S FORMER COUNSEL WAS PROPERLY DISQUALIFIED FROM REPRESENTING APPELLANT AT HER SENTENCING HEARING WHERE THAT COUNSEL WAS UNABLE TO OVERCOME A CONFLICT OF INTEREST EMANATING FROM HIS JOINT REPRESENTATION OF MULTIPLE CO-DEFENDANTS

Assignment of Errors 4 and 5: Conflict of Interest

A. Conflict prior to or during trial

The issue of whether Appellant's former counsel labored under a conflict of interest prior to or during trial was not preserved for appeal. Consequently, the Court should not consider the merits of this issue on appeal. Rule 5A:18. Notably, and for the reasons given below, the facts giving rise to Appellant's counsel's conflict of interest

[23] Commonwealth's Exhibits 16-18: The MDS requires a certification from the persons preparing them. "I understand that this information is used as a basis for ensuring the residents receive appropriate and quality care, and as a basis for payment of federal funds. I further understand that payment of such federal funds and continued participation in the government-funded health care programs is conditioned on the accuracy and truthfulness of this information, and I may be personally subject to or may subject my organization to substantial criminal, civil, and\or administrative penalties for submitting false information."

arose only after the conclusion of her trial. Accordingly, Assignment of Error #4 has no legal or factual support in the record.

B. Conflict of interest pending sentencing

Appellant's sole ground for objecting to the trial court's ruling on her former counsel's disqualification appears to be that the Commonwealth failed to call Appellant's co-defendant Thomas James at her sentencing hearing. She claims this failure rendered her former counsel's disqualification meritless.[24] Appellant attempts to convince this Court that resolving the Thomas James issue resolves the conflict question.[25] She also seems to argue that the Commonwealth promised to call Thomas James as a witness at Appellant's sentencing hearing and that this promise was a precondition for the finding of conflict. Neither position is accurate.

First, the conflict did not arise simply because of Thomas James. That overly-narrow conclusion ignores what the trial court found was the principal reason for the conflict of interest: two written plea offers communicated to Appellant's former counsel in April of 2010, after Appellant's trial and before her sentencing, wherein two of her co-defendants (also jointly represented by her former counsel) were offered certain sentences in exchange for their cooperation and testimony against Appellant and all her other co-defendants.[26] See Attachments A & B. Those letters put Appellant's former counsel in an untenable bind. His obligation to advise his clients who received the plea

[24] It should be repeated that there were eleven defendants charged with having committed crimes observed during the video surveillance. Tr., p. 18, June 23, 2010. Appellant's counsel originally represented seven of them.

[25] It appears undisputed that Thomas James testified, in his counsel's presence, materially differently to Appellant's testimony at her trial.

[26] Those letters were introduced in the trial court on June 2, 2010 by the Commonwealth.

offers was clouded by his duty of loyalty to those clients against whom they would cooperate and testify-including the Appellant.

Second, to the extent that the Commonwealth brought to the trial court's attention the factual disparity between the testimony of the Appellant and the testimony of Thomas James, the damage was done as soon as the trial court learned of this information on June 23, 2010.[27] Had he moved forward in his representation, Appellant's former counsel had few options: he could disparage one client, Thomas James, to protect Netsanet Beshah, or he could discount Beshah's account to explain James' wholly inconsistent testimony. See Johnson v. Commonwealth, 50 Va. App. 600, 603 652 S.E.2d 156 (2007)(where, as here, the court found the Johnson's counsel in an "intractable dilemma.") These two options would not have been made any more palatable by the presence of Thomas James at Appellant's sentencing hearing. Accordingly, given that trial courts are given "substantial latitude" in determining whether an accused has benefit of an effective advocate unaffected by conflict, the trial court below did not err when it found Appellant's former counsel suffered from a conflict of interest and disqualified him from the case. Wheat v. United States, 486 U.S. 153, 108 S.Ct. 1692 (1988). See also Johnson,50 Va. App. at 652.

CONCLUSION

WHEREFORE the Commonwealth respectfully urges the Court to deny the Petition for Appeal.

[27] Appellant does not dispute that Thomas James testified differently than she did concerning an act forming the basis of a forgery charge.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that this Brief in Opposition conforms to Rule 5A:13 and that on this 25th day of February, 2011, a true copy of the foregoing BRIEF IN OPPOSITION TO PETITION FOR APPEAL was mailed, postage prepaid, to counsel for defendant, Todd D. Sanders, P.O. Box 226, Leesburg, Virginia 20178 and prior to said Brief being filed with the Court of Appeals, at Richmond.

____
Margaret Eastman