

**Complaint against Brenda C. Spry, Esq.
Alleging Violations of Virginia Indigent
Defense Commission Standards of Practice**

Summary of Allegations

Prepared by Brandon T. Wroblewski

Filed in an Individual/Personal Capacity

January 12, 2020

Brenda Cheryl Spry (“Spry”)— a public defender for thirty-one years, an employee of the Virginia Indigent Defense Commission (“VIDC”), and the chief Public Defender for the city of Portsmouth—violated the Virginia State Bar Rules of Professional Conduct and the VIDC’s Standards of Practice during her representation of a juvenile, Will Patterson, Jr. (“Patterson”), in one of the highest-profile cases that has been tried in the city of Portsmouth in recent times.

With Spry as his lead counsel, Patterson was tried and convicted of Attempted Capital Murder of a Law-Enforcement Officer¹ (and nine other violent felonies and misdemeanors) by a jury on April 13, 2018. Only after Patterson was convicted did Spry claim—for the first time—that she believed Patterson was incompetent during his trial. **Spry admitted to constitutionally ineffective assistance of counsel, and when a Portsmouth judge reversed Patterson’s convictions and ordered a new trial, the judge cited Spry’s confession to ineffective assistance of counsel as the sole reason for granting the new trial.** The public perception of Spry’s ability to competently represent clients is irreparably compromised by this confession alone.

Brenda Spry procured a reversal of Patterson’s conviction for reasons unrelated to the facts or the law. By falling on her sword and saying the “magic words” that it was her own fault, she appeared to be radically honest. Upon closer examination, she appears to have played a Portsmouth Circuit Court judge and the public at large for fools. Spry knew or should have known that she needed to request a pretrial competency evaluation in this case, because the VIDC Standards of Practice² charge Spry with knowledge of all clients’ needs for pretrial competency evaluations.

¹ Patterson is an avowed member of the criminal street gang “300” who shot a uniformed, on-duty police officer four to five times in her lower extremities as she was trying to take him home to his parents after being truant from school. Patterson’s shooting of the officer was partially captured on body camera video, and the officer testified under oath at the jury trial that Patterson shot her several times. The officer wept on the stand during her testimony as she recalled how she asked the Portsmouth Police sergeant who was tying a tourniquet around her leg to tell her mother she loved her. The evidence of Patterson’s guilt of these offenses is ironclad and indisputable.

² Brenda Spry appears to have violated the following VIDC Standards while representing Patterson: Performance Standard 2 (Training and Experience of Juvenile Defense Counsel); Standard 2.2 (Initial Interview); Standard 3.3 (Continuing Responsibility to Raise Issue of Client’s Incompetence); Standard 6.1 (Plea Negotiation Process and

Spry's duty to learn about and litigate Patterson's competency issue before trial was unavoidable.

The list of contradictory circumstances surrounding Spry's claim about Patterson's competence to stand trial is lengthy:

1. Months before first claiming Patterson was incompetent, Spry and her colleague engaged the Commonwealth's Attorney's Office for the City of Portsmouth in pretrial plea negotiations on behalf of Patterson. The prosecutors rejected the public defenders' request that Patterson be allowed to plead guilty to every charge except attempted capital murder of a police officer. Incompetent defendants cannot plead guilty, and lawyers who railroad them through the plea process when they cannot understand it are a clear and present danger to a criminal defendant's constitutional rights.
2. Brenda Spry's own office previously represented Patterson on felony charges when he was twelve years old; that representation involved a competency evaluation being requested for Patterson, and a finding of adjudicative competence to stand trial. While Spry's less-experienced associate previously identified Patterson's competency issue before Patterson went to trial, 31-year-veteran Spry either did not review that file, or otherwise appears to have overlooked it.
3. Patterson's own mother told the local news media that she informed Spry about Patterson's competency and mental health concerns prior to the trial. Spry failed to act on this information, and she publicly declined to comment when questioned about whether Patterson's mother's claims were true.
4. Jail phone call recordings exist in which Patterson told his mother the ways he planned

Duties of Counsel); Standard 6.2 (Contents of Negotiation); Standard 7.1 (General Trial Preparation); Performance Standard 6 (Juvenile Defense Counsel's Duty: Competency); and, Performance Standard 17 (Juvenile Defense Counsel's Duty during Transfer or Certification Hearings under Virginia Code § 16.1-269 et seq.). Accessed at <http://www.vadefenders.org/wp-content/uploads/2018/04/SOP-4-10-18.pdf>.

on faking incompetence. Brenda Spry is and was aware of these recordings.

5. Spry spent months and many hours pretrial discussing the case with Patterson and observing his level of competence, yet allegedly failed to notice his 'incompetence' until after his conviction.
6. Before Patterson's trial, Spry and her office created a "mental health docket" in the Portsmouth General District Court where she and her attorneys made pretrial motions for competency for petty misdemeanor defendants as a matter of course. Veteran indigent defender Spry, who spearheaded the creation of a court docket for the sole purpose of identifying pretrial competency issues for petty defendants, is now claiming that she innocently failed to identify a pretrial competency issue for one of the highest-profile clients she has represented.

These circumstances surrounding Spry's claim are not only contradictory, but they raise difficult questions about whether Spry has committed ethical misconduct and violations of the VIDC Standards. The conclusion here is inescapable: Spry either knew that Patterson was competent and hid it, or she was so incompetent herself that she failed to realize that the highest-profile defendant in Portsmouth could not understand his own court case.

A VIDC employee's admission to incompetent performance has resulted in real fallout, including the wasting of taxpayer dollars, the re-victimization of a wounded police officer, and a blow to observers' confidence in the efficacy of the justice system. There may be innocent explanations for each of the suspicious and contradictory circumstances listed in this Complaint, but the VIDC should investigate further to rule out any possibility of impropriety.

Certification

I certify that the allegations in this Complaint are made in good faith and an honest belief in their truth and accuracy. I further certify that while this Complaint references occurrences from years past, it has been filed at this time because the full scope of the injury to the administration of justice in the Patterson case only became apparent when the convictions were reversed in late October 2020. I further certify that this Complaint has been prepared and filed in my personal capacity, and that it has not been prepared or filed at the instruction of or upon the advice of any other person or entity.

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I. Preliminary Statement

This Complaint to the Virginia Indigent Defense Commission (“VIDC”) alleges that Brenda Cheryl Spry (“Spry”)—a licensed Virginia attorney, a public defender for thirty-one years, an employee of the Virginia Indigent Defense Commission, and the Public Defender for the city of Portsmouth—appears to have violated eight of the VIDC Standards of Practice in one of the highest-profile cases tried in the city of Portsmouth in recent times.

The Petitioner is a former Deputy Commonwealth’s Attorney and Public Information Officer for the Portsmouth Commonwealth’s Attorney’s Office. Brenda Spry was the Public Defender for the duration of my employment there. The allegations in this complaint concern Spry’s conduct during Commonwealth v. Will Patterson Jr., a criminal case initiated in 2017 and tried in 2018 while I was a Portsmouth prosecutor. Spry and her colleague Lakishi Stevenson represented Will Patterson Jr. [hereinafter “Patterson”], who was a juvenile at the time, in this trial. The Petitioner developed personal knowledge of the allegations herein asserted while assisting with the prosecution of Commonwealth v. Patterson (2018) and attending the jury trial.

The issue with Spry’s representation of Patterson revolves primarily around Patterson’s competence to stand trial. With Spry as his lead counsel, Patterson was tried and convicted of Attempted Capital Murder of a Law-Enforcement Officer (and nine other violent felonies and misdemeanors) by a jury of his peers on April 13, 2018. After Patterson was convicted, Spry claimed for the first time to a judge of the Portsmouth Circuit Court that she now believed Patterson was incompetent to stand trial, and that Patterson had been incompetent during his trial. Extensive litigation ensued regarding Patterson’s competence to stand trial, and a judge of the Portsmouth Circuit Court reversed Patterson’s convictions and ordered a new trial in October 2020. The judge memorialized Spry’s constitutionally ineffective assistance of counsel in his order reversing

Patterson's convictions.

The primary claim of this Complaint is that Spry knew or should have known, or else may have intentionally misrepresented, that Patterson's competency to stand trial was at issue well before his 2018 jury trial. Spry, a competent and tenacious litigator, possessed the ability and information required to litigate Patterson's adjudicative competence before Patterson's trial. Spry's failure to do so arguably violated multiple VIDC Standards of Practice.

This complaint is not about Brenda Spry's office, the VIDC at large, or defense attorneys generally. Rather, this complaint is about how a single VIDC employee represented a client in arguable violation of eight VIDC Standards of Practice, and in so doing, derailed a significant high-profile case at significant taxpayer expense.

II. Summary of the Facts of Commonwealth v. Patterson (2018)

Since October 2017, Spry has represented Patterson for shooting a uniformed, on-duty Portsmouth Police Officer multiple times on November 6, 2017. Officer Baaklini detained Patterson during school hours because Patterson was roaming the streets of Portsmouth while he was supposed to be at school. Patterson then shot Officer Angela Baaklini five to six times in her lower extremities as she was trying to take him home to his parents. The shooting was partially captured on body camera video, and Officer Baaklini testified under oath at the jury trial that Patterson shot her several times. Patterson was arrested after fleeing a short distance away from where Officer Baaklini lay bleeding from her femoral artery in the street, and Patterson still had Officer Baaklini's handcuffs attached to one of his wrists when he was arrested.

Incidentally, the Portsmouth Police Department had briefed its officers shortly before Officer Baaklini's encounter with Patterson to inform the officers that Patterson was a member of the Portsmouth criminal street gang called "300," that he was the suspect in multiple violent felony

crimes in Portsmouth, and that he was to be considered dangerous. Patterson's involvement in the 300 gang was not disputed and is evidenced in other sources. Patterson was tried and convicted of Attempted Capital Murder of a Law-Enforcement Officer, along with nine other violent felonies and misdemeanors, by a jury of his peers on April 13, 2018.

III. Summary of Facts Regarding Patterson's Competence to Stand Trial

Shortly after Patterson's conviction, Brenda Spry alleged that she had realized only then that Patterson was incompetent to stand trial. Many months of litigation over Patterson's competency status ensued, but in late October 2020, Spry finally succeeded in causing the judge who presided over Patterson's jury trial, Portsmouth Circuit Court Judge William S. Moore, Jr., to believe that Spry had committed constitutionally ineffective representation of Patterson by failing to recognize Patterson's incompetence. Judge Moore did not make this finding reluctantly or over Spry's protestations; Spry admitted she was constitutionally ineffective, and Judge Moore readily and fully included Spry's failings in his order of reversal.

Judge Moore made concrete and specific findings of fact about your employees' failures in a court order.³ The order memorialized Spry's claim that Patterson "was incompetent throughout all stages of trial preparation, as well as throughout all stages of trial[.]" Judge Moore found that "the expert testimony that Defendant did not understand his trial and was unable to assist his counsel greatly concerns the Court." Judge Moore further found from the expert testimony that Patterson did not exhibit competency until February 2020, and that he was too developmentally immature to assist his counsel during the 2018 trial. The order vacated Patterson's

³ A copy of Judge Moore's order is available at <https://www.wavy.com/wp-content/uploads/sites/3/2020/10/SNews-Scann20102614320.pdf>; it is also on file in the Portsmouth Circuit Court Clerk's Office, upon information and belief. The order vacating Patterson's convictions appears to have been drafted by one of the parties, most likely Spry's office, given that it is signed by Judge Moore but refers to Judge Moore in the third person as opposed to "the Court." As is customary after motions hearings, the trial judge usually instructs the prevailing party to prepare an order memorializing the Court's ruling. Brenda Spry succeeded in getting Patterson's conviction overturned, so it stands to reason that she prepared the order vacating Patterson's conviction.

convictions solely due to Spry's failure to diagnose her client's alleged incompetence to stand trial: "A defendant unable to assist in the preparation of his defense cannot equip his lawyer to be effective on his behalf, and the failure of Defendant's attorneys to adequately investigate their client's mental state and insist on a competency evaluation constitutes a violation of Defendant's right to effective assistance of counsel." **Judge Moore specifically found that Spry and Stevenson violated Patterson's constitutional right to due process and to effective assistance of counsel.**

Despite Spry's after-the-fact claim about Patterson's incompetence, Patterson knew the seriousness and consequences of what he had done to Officer Baaklini from the day he was first arraigned in November 2017 in Portsmouth Juvenile & Domestic Relations Court:

The 15-year-old stood before a judge, crying as [the judge] explained the severity of the charges against him. . . . He wiped away tears with his shoulder. . . . At Wednesday's court hearing, Judge Alotha Willis said Patterson will be tried as an adult if his case advances to Circuit Court.⁴

Patterson initially wept in Portsmouth Juvenile and Domestic Relations Court when he realized the magnitude of what he had done to Officer Baaklini, but this behavior soon lapsed. Patterson did not like being subject to pretrial detention as an accountability measure for his violent behavior, and he let the staff of the juvenile detention facility know about it:

Disciplinary reports from the Chesapeake Juvenile Services detention center filed in Circuit Court paint a different picture of Patterson. The reports allege Patterson refused to do as he was told, twice threatened staff members and talked about how it sounds when you shoot a gun. He told the staff Nov. 24 that they would have to call for help "so ya'll can see what I am made of," according to one report. During a separate incident Nov. 26, staff claimed he threw some water on his floor in an attempt to make more work for them and then warned against opening his door. "Watch when y'all open this door," he said, according to the report. "Imma hit one of y'all." Each time, staff ordered Patterson confined to his room for either 24 or 48 hours.

⁴ See "Teen charged with shooting Portsmouth police officer will be tried as an adult if case advances, judge says," by Margaret Matray (November 8, 2017), available at https://www.pilotonline.com/news/crime/article_28ea37af-ca3a-54f9-b0ba-85cdee127c24.html.

At the time he tried to murder Officer Baaklini, Patterson was also involved in a host of other violent criminal activity in the city of Portsmouth:

A 15-year-old boy charged last month with shooting a Portsmouth police officer also is awaiting trial on charges he participated in at least two of a series of robberies that targeted users of online marketplaces. A judge ruled last week there was enough evidence to send Will Patterson Jr. to trial on six felonies, including two counts of robbery, one count of attempted malicious wounding and two firearm charges. . . . He will be tried as an adult.⁵

Patterson also knew he could fake incompetence, withhold the faking until after the trial, and sabotage the case against him if he did not succeed the first time. In fact, Patterson got caught trying to practice the story of how he would fake his incompetence in a recorded jail phone call with his mother: “[A] prosecutor noted recordings of phone calls Patterson made from the Hampton Roads Regional Jail, including one in which he said he planned to tell his probation officer he was seeing and hearing things.”⁶ The recorded jail call(s) of Patterson plotting about how to fake his incompetence with his mother, Wilmesha Speller,⁷ were filed as evidence in the Portsmouth Circuit Court.

Patterson’s conduct demonstrated a familiarity with and hatred for law-enforcement officers. Patterson was also familiar with the Portsmouth JDR Court, the juvenile justice system, and pretrial competency evaluations. Patterson was not a mentally deficient, incompetent, helpless child, as Spry succeeded in convincing the judges of the Portsmouth Circuit Court in 2020. Patterson had been charged in criminal court before, *and he had previously gone through a*

⁵ See “Boy charged with shooting Portsmouth police officer now also charged with 2 OfferUp robberies,” by Scott Daugherty (December 15, 2017), *available at* https://www.pilotonline.com/news/crime/article_8fa10ff4-fba3-5016-a50b-49872460a9e4.html.

⁶ See “Prosecutor: Teen’s conviction for shooting Portsmouth officer should stand despite mental health questions,” by Scott Daugherty, July 10, 2018, *available at* https://www.pilotonline.com/news/crime/article_1549c498-8462-11e8-98b5-93d8c79f1842.html (emphasis added).

⁷ Upon information and belief, Wilmesha Speller still lives in Portsmouth, Virginia. Patterson’s mother spent most of her son’s case posting comments on her personal Facebook page such as “Fuck PPD” (referring to the Portsmouth Police Department) and “fuck da Portsmouth Police Chief.”

*competency evaluation and restoration while represented by Spry's own Assistant Public Defender.*⁸

In 2014, one of Brenda Spry's assistant attorneys represented Patterson in a juvenile felony case where Patterson underwent a competency evaluation and was found to be competent to stand trial. Patterson was roughly twelve years old at the time he allegedly committed these other felonies. Patterson was shepherded through the pretrial competency evaluation process by Spry's subordinate, and he was found to be competent to stand trial. This information was publicly filed in court documents by counsel and evaluators between 2018 and 2020, and its disclosure here is not a violation of any confidentiality laws.

Putting aside Patterson's past pretrial competency evaluation by Spry's own office, Spry and Stevenson conclusively demonstrated their pretrial belief that their client was competent when Stevenson engaged the Portsmouth Commonwealth's Attorney's Office in pretrial plea negotiations on behalf of Patterson. Months before the April 2018 jury trial, Stevenson asked the prosecutors to allow Patterson to plead guilty to every charge he faced except Attempted Capital Murder of a Law-Enforcement Officer. The prosecutors declined.

What's more, after Patterson's conviction and Spry's assertion that she only became aware of Patterson's "incompetence" after the trial, Patterson's mother disproved Spry's assertion in a public statement made outside of the courtroom to the *Virginian-Pilot*, a local newspaper:

Outside the courtroom, Patterson's mother said his attorneys should have challenged his competency prior to trial. "It should have been from the beginning," Wilmesha Speller said. *When asked if she told the lawyers about her concerns, she said "it was brought up."* District Public Defender Brenda Spry declined to comment on the allegation.⁹

In the face of all this information, Spry's post-trial claim that she did not realize Patterson

⁸ Years before the case at issue, Patterson had been sentenced on juvenile felonies and placed on juvenile probation.

⁹ *See id.* (emphasis added).

was incompetent to stand trial was weak at best, and yet somehow became the law of the case in *Commonwealth v. Patterson* (2018).

IV. Argument

Brenda Spry's claim that Patterson was incompetent to stand trial only after he was convicted places her at odds with many of the VIDC's Standards of Practice. When Spry's performance is compared to those Standards, the shortcomings are obvious.

a. Spry Arguably Violated Eight VIDC Standards of Practice

As an employee of the VIDC, Spry is subject to clear, unambiguous performance standards to which her representation of indigent clients, especially indigent juvenile clients, must adhere. These duties bind Spry in a similar way as prosecutors' *Brady/Workman/Giglio* duties. The VIDC's "Standards of Practice for Indigent Defense Counsel in Non-Capital Cases at the Trial Level"¹⁰ imposed many obligations and performance standards on Spry's representation of Patterson. These standards will be hereinafter referred to as "the Standards."¹¹

1. Spry Arguably Violated VIDC Standard 2.2: "Initial Interview"

Spry should have learned of Patterson's past adjudicative incompetence issues and alleged current developmental maturity issues before and during her initial interview of Patterson. Subsection 2.2 of Standard 2 imputed a duty to Spry to gather evidence of Patterson's competence

¹⁰ Accessed at <http://www.vadefenders.org/wp-content/uploads/2018/04/SOP-4-10-18.pdf>.

¹¹ In 2004, the Virginia General Assembly determined that the health of the criminal justice public policy of the Commonwealth of Virginia required that uniform standards for the representation of indigent defendants be implemented. The VIDC Standards themselves provide that "Virginia's Standards of Practice for Indigent Defense Counsel are legislatively mandated under Section 19.2-163.01(A)(4). Court appointed counsel and public defenders must comply with these Standards and the Rules of Professional Conduct, which the Standards referentially incorporate."

The VIDC Standards also provide that "[t]hese Standards should not serve as a benchmark for ineffective assistance of counsel claims or attorney discipline hearings. Rather, they should serve as standards of practice for court appointed counsel and public defenders providing indigent defense in Virginia." The VIDC Standards contain mandates phrased both as "Standards" and "Performance Standards," so the presence or absence of the word "Performance" in the below-listed references is intentional.

and mental state prior to her first pretrial interview with Patterson for Commonwealth v. Patterson (2018). VIDC Standard 2.2 directed Spry as follows (with added emphasis in bold):

3. Information counsel should acquire [at the initial client interview] includes, but is not limited to:

...

c. The client's physical and mental health, educational and armed services records;

...

e. The client's past criminal record, if any, including adult criminal convictions and juvenile adjudications and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges, whether the client is on probation or parole, and the client's past or present performance under supervision . . .

...

C. Supplemental Information: Whenever possible, counsel should use the initial interview to gather additional information relevant to defense preparation. Such information may include, but is not limited to:

...

7. Where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including the client's releases for any records for mental health treatment or testing for mental retardation.

If Spry failed to review any of her office's past client files on Patterson wherein Patterson's competence to stand trial was at issue, she violated Standard 2.2(B)(3)(e). Such a file exists in Spry's office, the Portsmouth Commonwealth's Attorney's Office, and the Portsmouth JDR Court Clerk's Office, upon information and belief. I have personally seen the version that existed in the Portsmouth Commonwealth's Attorney's Office. This file was a juvenile felony case for Patterson from 2014, but it has been referenced in public filings, and it is no longer confidential due to Patterson having been certified for prosecution as an adult.

2. Spry Arguably Violated VIDC Standard 3.3: "Continuing Responsibility to Raise Issue of Client's Incompetence"

VIDC Standard 3.3 obligates your employee Spry to, "[w]henever [she] has a good-faith doubt regarding [a] client's competence to proceed in [a] criminal case . . . consider the client's capacity to stand trial or to enter a plea . . . Where competency is at issue, counsel has a continuing

duty to review and prepare the case for all court proceedings.” Patterson’s prior competency evaluation in a case handled by Spry’s own office placed Spry on notice that competency might be at issue in Commonwealth v. Patterson (2018). Patterson’s mother also told Spry about her son’s competence and mental health status before the case went to trial. This imputed and actual pretrial knowledge would have caused any reasonable criminal defense attorney to make a pretrial competency evaluation motion for a client such as Patterson. It raises the question of whether, in the face of all this imputed and actual knowledge, Spry voluntarily chose not to request a competency evaluation.

3. Spry Arguably Violated VIDC Standard 6.1: “Plea Negotiation Process and Duties of Counsel”

When Spry and her colleague Stevenson asked the prosecutors before trial to allow Patterson to plead guilty under certain terms, Standard 6.1 kicked in:

(A) Counsel shall discuss with the client the possibility and potential desirability of reaching a negotiated disposition of the charges rather than proceeding to trial. In doing so, counsel shall fully explain the rights the client would waive by entering a guilty or nolo contendere plea and not proceed to trial.

(B) Ongoing tentative plea negotiations with the prosecution should not prevent or delay counsel’s investigation of the facts of the case and preparation of the case for future proceedings.

(C) Counsel shall keep the client fully informed of any plea discussions and negotiations and shall convey to the accused the prosecution’s offers for a negotiated settlement.

(D) Counsel may not accept any plea agreement without the client’s express authorization.

The plea negotiations in this case were initiated by Spry and Stevenson pretrial, and Spry has asserted that Patterson was incompetent pretrial. This begs the following questions: How could incompetent Patterson have understood what it meant to waive constitutional rights? How could incompetent Patterson have knowingly, intentionally, and voluntarily pled guilty? If the VIDC

accepts Spry's assertion that Patterson was incompetent pretrial and during trial, this means that Spry and her colleague were planning to force a waiver of an inalienable constitutional right out of an incompetent person who could not have knowingly, intentionally, and voluntarily done so. By requesting a plea offer, Spry and her co-counsel appear to have initially represented to the prosecutors months before trial that Patterson was competent to stand trial and plead guilty. Spry now appears to have gone back on that assertion by claiming Patterson was retroactively incompetence during trial, going so far as to assert that Patterson was incompetent during the entire pretrial phase. These are mutually exclusive propositions. Both cannot be true.

4. Spry Arguably Violated VIDC Standard 6.2: "Contents of Negotiation"

When Spry and Stevenson requested that the prosecutors allow Patterson to plead guilty to certain charges, Standard 6.2 kicked in to govern the contents of that plea negotiation:

In developing a negotiation strategy, counsel should be completely familiar with:

1. Concessions client may offer the prosecution as part of a negotiated settlement, including, but not limited to: a. Not to proceed to trial on the merits of the charges; b. Decline from asserting or litigating any particular pretrial motions; c. Agree to fulfill specified restitution conditions and/or participation in community work, service programs, supervised probation, rehabilitation, or other programs; d. Assist in prosecution or investigation of the present case or other alleged criminal activity; e. Foregoing appellate remedies; f. Asset forfeiture; g. Active jail time or other concession in exchange for an alternative charge or sentence with lesser immigration consequences . . .

Benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement: a. That the prosecution will not oppose the client's release on bail pending sentencing or appeal; b. That, with the consent of the Commonwealth, the client may enter a conditional plea to preserve the right to litigate and contest certain issues affecting the validity of a conviction; c. To dismiss or reduce one or more of the charged offenses either immediately or upon completion of a deferred prosecution agreement; d. That the client will not be subject to further investigation or prosecution for certain uncharged alleged criminal conduct; e. That the client will receive, with the agreement of the court, a specified sentence or sanction, or that the prosecution will not argue for a sentence or sanction greater than that recited in the plea agreement . . .

Spry was obligated to consult Patterson about this lengthy, complex list of plea negotiation

factors before her colleague approached the prosecutors. When Spry and her colleague asked the prosecutors to allow Patterson to plead guilty to certain charges, they implicitly represented that they had complied with Standard 6.2 and that Patterson could competently go through a guilty plea colloquy. Spry's post-trial claim that Patterson was incompetent during trial preparation casts severe doubt on whether Patterson knew about, consented to, or understood the plea negotiation. Did incompetent Patterson communicate to Spry or understand what "concessions" he might offer to the prosecution? Could Spry ever become "completely familiar" with incompetent Patterson's grasp of the twelve plea negotiation factors listed above?

Spry appears to have initially represented to the prosecutors that she was completely familiar with Patterson's understanding of what considerations went into pleading guilty. She now appears to have gone back on that assertion by claiming his retroactive inability to understand the proceedings or assist his attorney in his own defense. These are mutually exclusive propositions. Both cannot be true.

5. Spry Arguably Violated VIDC Standard 7.1: "General Trial Preparation"

When Patterson elected to exercise his federal constitutional right to a jury trial, VIDC Standard 7.1 kicked in: "The decision to proceed to trial, with or without a jury, ultimately rests with the client. Counsel should discuss the relevant strategic considerations of this decision with the client. Counsel has an obligation to advise the Court of the client's decision in a timely manner." Spry's post-trial claim that Patterson was retroactively incompetent to stand trial casts severe doubt on whether Patterson understood the "relevant strategic considerations" of the pretrial decision to demand a jury trial. It also casts doubt on Spry's ability to detect whether her apparently incompetent client could knowingly, intelligently, and voluntarily exercise his right to a jury trial.

6. Spry Arguably Violated VIDC Performance Standard 2: "Training and Experience of Juvenile Defense Counsel"

VIDC Performance Standard 2 (contained in the Standards for Juvenile Defense Counsel) obligated Spry to be adequately trained to represent juvenile defendants, including training on child and adolescent development and juvenile competency laws. Performance Standard 2 provides that "Counsel should not handle juvenile cases without the adequate experience and knowledge necessary to represent the client zealously and competently." Subsection 2.2 of this standard obligated Spry to "be knowledgeable about and seek ongoing training in at least the following areas: a. Child and adolescent development . . . e. Mental health issues and common childhood diagnoses . . . f. Competency and immaturity laws, issues and defenses . . ." Spry tacitly admitted that she was insufficiently knowledgeable in "mental health issues and common childhood diagnoses" and "competency issues and defenses" by failing to ask for a pretrial competency evaluation on Patterson's behalf and confessing to ineffective assistance of counsel.

7. Spry Arguably Violated VIDC Performance Standard 6: "Juvenile Defense Counsel's Duty: Competency"

VIDC Performance Standard 6 (contained in the Standards for Juvenile Defense Counsel) provides the following in subsections 6.1 and 6.2: "Counsel should be familiar with the procedures for a determination of competency under Virginia Code §§ 16.1-356 through 16.1-361 . . . If at any time the client's behavior or mental ability indicates that he or she may not be competent, or may be mentally retarded, counsel should make a motion for a competency evaluation."

Spry convinced a judge that despite sitting next to Patterson in court for countless hours, despite visiting Patterson in jail and interviewing and conferring with him in private, and despite reviewing the Commonwealth's discovery answers with him at length, she failed to recognize that Patterson's "behavior or mental ability indicate[d] that he . . . may not be competent" until after

trial and conviction. Spry was charged with a continuing duty to raise and litigate Patterson's incompetence, and because she allegedly failed to notice Patterson's incompetence through months of pretrial litigation and the five-day jury trial, she herself is apparently incompetent to recognize clients' adjudicative incompetence and litigate it appropriately.

8. Spry Arguably Violated VIDC Performance Standard 17: "Juvenile Defense Counsel's Duty during Transfer or Certification Hearings under Virginia Code § 16.1-269 et seq."

Patterson's case originated on warrants taken out by the Portsmouth Police Department, and he had a transfer/certification hearing in Portsmouth Juvenile & Domestic Relations Court (Honorable Alotha C. Willis, presiding) where the Commonwealth moved to certify Patterson to the Portsmouth Circuit Court for adult prosecution. Judge Willis granted the Commonwealth's motion after hearing the evidence. Spry and her subordinate attorney Stevenson represented Patterson during this time.

Spry's duties under VIDC Performance Standard 17 (contained in the Standards for Juvenile Defense Counsel) kicked in during the transfer/certification hearing. Performance Standard 17 provides that "[a] new, inexperienced juvenile defense counsel should not handle a transfer hearing without the supervision or assistance of a more experienced juvenile defender. A transfer or certification hearing, while not a hearing on the merits of the case, could result in the loss of the protections afforded in juvenile court. Therefore, counsel should prepare in the same way and with as much care as for an adjudicatory hearing, in accordance with all previous performance standards."

Subsection 17.5 of the same Performance Standard further provides that "[c]ounsel should be prepared to present evidence and testimony to prevent transfer or certification, including testimony by people who can provide helpful insight into the client's character, such as teachers,

counselors, psychologists, community members, probation officers, religious affiliates, employers, DJJ personnel, or other persons with a positive personal and/or professional view of the defendant.

If the competency of the client to participate in the proceedings is in question, that issue should be pursued.”

Spry was obligated to treat Patterson’s transfer/certification hearing before the Honorable Alotha Willis as if it were a full juvenile adjudicatory hearing. Spry was further directed by this Standard to pursue the issue of Patterson’s competence if it was in question. Spry’s apparent failure to recognize that Patterson’s competence was in question while his case was in juvenile court calls into question her ability to make any such diagnosis for a future client.

Spry should have consulted with Patterson’s previous juvenile probation officer before his certification hearing, as provided by Performance Standard 17.5. If she had done so, she would have undoubtedly learned that Patterson had a previous competency evaluation in an older juvenile felony case. Upon learning this, Spry would have certainly made an identical motion for a pretrial competency evaluation in Patterson’s shooting of Officer Baaklini. Additionally, Performance Standard 17.5 obligated Spry to consult with Patterson’s mother (a person who could provide “helpful insight into the client’s character”) before his certification hearing so that she could contest Patterson’s certification for adult prosecution. Spry apparently did so, because Patterson’s mother stated that Spry was made aware of Patterson’s ‘incompetence’ and mental health issues before trial.

b. Spry’s Confession to Ineffective Assistance of Counsel is Public Knowledge, as is Patterson’s Apparent Fabrication of his Incompetence

The Virginian-Pilot reported on August 7, 2018 on the status of Patterson’s competency, and Spry’s failure to recognize Patterson’s alleged incompetence:

Spry said her client shouldn't be punished for her mistake. “I myself realize I should

have asked for an evaluation prior to trial,” she said. Spry offered to step aside from the case, but changed her mind after speaking with her client and his family. She said they wanted her to stay on. To date, Spry has not asked the court to set aside the jury's verdict. But she has said she plans to make that request at some point, arguing that if Patterson is incompetent to stand trial now he was probably incompetent in April.¹²

Prosecutors also produced evidence that Patterson was fabricated competency issues. As the *Virginian-Pilot* reported¹³:

Prosecutors say a 16-year-old boy convicted of trying to kill a Portsmouth police officer is faking mental health problems in order to delay trials in two robbery cases. And they say they have recordings of phone calls Will Patterson Jr. made from the Hampton Roads Regional Jail to prove it. “The defendant has been planning this for quite some time,” Portsmouth prosecutor Carmen Cabrero said while opposing a defense request to postpone a trial that was set to start Monday morning. She said Patterson said in a phone call a month ago that he planned to tell his probation officer he was seeing and hearing things. She called it a “malingering tactic.” Despite the recordings, Circuit Judge Joel Crowe postponed the trial so Patterson could undergo a mental health evaluation. He said that even if Patterson made the comments Cabrero cited, it was appropriate to order the evaluation because a probation officer had requested one.

The claims of prosecutors are not the law, and they were apparently rejected by a judge in this case. But your employee's admission that she failed in her duty to detect and litigate Patterson's competence to stand trial was transcribed by a court reporter, written down by Spry in court filings to which she signed her name as your employee, and reported on by the largest regional newspaper in the Hampton Roads area, the *Virginian-Pilot*.

Competency evaluations and restorations generally do not take very long when the client does not “malingering” and attempt to delay the inevitable. A matter of weeks or even months while undergoing evaluation and restoration to competency is a short stitch in time when a juvenile client

¹² See “Teen who shot Portsmouth officer will get another mental evaluation,” by Scott Daugherty, August 7, 2018, available at https://www.pilotonline.com/news/crime/article_7aaf0100-9a55-11e8-9eb6-975e229fe8ba.html.

¹³ See “Teen who shot Portsmouth officer is faking mental health problems, prosecutors say,” by Scott Daugherty, May 7, 2018, available at https://www.pilotonline.com/news/crime/article_0606d23a-5205-11e8-add0-173c406f7802.html

is charged as an adult and faces an adult punishment of up to multiple life sentences in prison. Spry should have requested a competency evaluation for Patterson as a matter of course in Commonwealth v. Patterson (2018) while the case was still pending in Portsmouth Juvenile and Domestic Relations Court. Spry had a further continuing duty to review and prepare an incompetent client's case for all court proceedings, and because she failed to recognize and diagnose Patterson's incompetence before certification or even trial, it is unlikely that she can be trusted to make any such diagnosis for any future clients.

The prosecutors also filed a motion to disqualify your employee Spry, as well as her entire office, from representing Patterson due to repeated allegations of ethical misconduct by Spry during her representation of Patterson. This motion was denied by the Portsmouth Circuit Court, but it represented Spry's last, best chance to disengage from Patterson.

c. Spry and Stevenson's Pretrial Attempt to Negotiate a Guilty Plea for Patterson Conflicts with and Logically Disproves Spry's Allegation that Patterson was Incompetent Before and During Trial

A particular Rule of the Supreme Court of Virginia prevents the introduction of plea negotiations into court proceedings, but this Complaint is not a court proceeding, and at this point, public disclosure of normally confidential plea negotiations is moot: Patterson was convicted after a public (and highly publicized) trial, and he should have already been sentenced. The evidence that Patterson tried to murder a police officer was and is overwhelming, and Spry stood little chance of securing an acquittal or reduction of charges. She tacitly conceded to the same when her subordinate attorney Stevenson tried to induce the prosecutors into allowing Patterson to plead guilty to multiple violent felonies. Stevenson attempted to negotiate a guilty plea to every charge against Patterson except Attempted Capital Murder of a Law-Enforcement Officer.

The VIDC should know that before the trial of this case, its employees talked out of one

side of their mouths to try to get a beneficial plea, acting as if their client was competent to stand trial and plead guilty. A guilty plea, of course, is a trial by stipulated evidence. Those same employees, after being denied the benefit of a favorable plea deal, talked out of the other side of their mouths to claim their client was incompetent to even be tried, or much less enter a plea of guilty or not guilty. And it worked. Spry and Patterson got a free preview of the Commonwealth's case and learned exactly what the prosecutors' strategies and theory were. Now Spry knows exactly how to attack the Commonwealth's case during a retrial. This type of opportunism is certainly not taught at the VIDC annual conference.

d. Attempting to Plead an Allegedly Incompetent, High-Profile Juvenile Client Guilty is a Separate and Distinct Potential Constitutional Violation

The Petitioner understands that defense attorneys sometimes "test the waters" to see what the prosecutors will allow their client to plead guilty to. This type of exploratory negotiation does not necessarily occur with the client's blessing or consent, and it enables defense attorneys to give the client a fuller picture of the prosecutors' beliefs in the value and strength of their case. The Petitioner does not know if Spry and Stevenson obtained any assurances from Patterson before requesting that Patterson be allowed to plead guilty under certain terms. But the mere fact that Stevenson and Spry asked if the prosecutors would allow Patterson to plead guilty under any terms indicates that the defense attorneys knew he was competent to plead guilty, or that they were going to convince Patterson to take the best deal they could get for him, regardless of whether he fully understood it.

If the prosecutors had agreed to allow Patterson to plead guilty under the defense attorneys' requested terms, Spry and Stevenson would have then been required to obtain Patterson's knowing, intelligent, and voluntary consent to plead guilty. This begs the question of how an incompetent client would have been able to convince two top VIDC employees that he understood the

intricacies of a guilty plea.

The attempt to plead Patterson guilty to serious, violent felony offenses while Patterson was apparently incompetent to stand trial is further evidence that either 1) Spry and her office were so incompetent in their representation of Patterson that they would have convinced him to plead guilty despite his own adjudicative incompetence; or, 2) Spry and her office knew Patterson was not incompetent and that he could have knowingly, intelligently, and voluntarily pled guilty.

e. If True, the Logical Extension of Spry's Post-Trial Claim about Patterson's Incompetence Means that a Disturbing Injustice Was Perpetrated against Patterson

The full, logical extension of Spry's claim that she did not realize Patterson's incompetence until after Patterson was convicted is patently terrifying. If true, it means that your employee and her subordinate attorney Stevenson tried to negotiate a plea agreement on behalf of someone who could never have understood the nature and consequences of the constitutional rights he would be waiving by pleading guilty. Without a competency evaluation, Patterson would have gone into court unable to understand what was happening. He would have taken an oath under penalty of perjury that he may not have fully understood, and he would have then probably lied to the judge, on the advice of counsel, claiming that he understood each of the questions the court asked him in the guilty plea colloquy.

If Spry's claim of retroactive discovery of Patterson's incompetence is true, she essentially ramrodded an aloof, unaware juvenile through five days of a jury trial while he had no idea what was going on—and while she, the top Public Defender in Portsmouth, also had no idea that Patterson had no idea what was going on.

Patterson must have been terrified by the stern man in the black robe. Who were the twelve judgmental strangers sitting in a special box watching his every move? Patterson lacked

adjudicative competence, so he would have had little idea what a jury was or how court worked. Also, Patterson probably did not understand why he was in jail if he was too mentally ill, immature, or developmentally delayed to be competent.

If Patterson actually did not understand that he had to go to court for committing the demonstrably evil act of attempted murder of a police officer, your employee Spry would have known immediately at his first intake interview. Out of compassion for her client, she would have moved to protect his competency rights. And your employee Brenda Spry knows how to move to protect her clients' competency rights.

f. Spry and Her Office Regularly Invoke Less Serious Defendants' Pretrial Competency Rights as a Matter of Course

I personally participated in litigation in multiple cases against Spry wherein she requested pretrial competency evaluations for misdemeanor and petty felony defendants charged with drug possession, theft, trespassing, destruction of property, littering, and other such crimes. Every other Friday in Portsmouth General District Court Judge Douglas B. Ottinger's courtroom, both before and after Patterson's 2018 jury trial, I watched Spry, her co-counsel Lakishi Stevenson, and the rest of their office fill a General District Court docket with pretrial competency and insanity evaluations for these petty crimes.

The "mental health docket" is an asset to the Portsmouth community. In creating the mental health docket, your employee Spry had the important foresight to move for pretrial competency evaluations for her clients while their cases were still at the lower-court level. Spry and her office made these pretrial competency evaluation motions for petty misdemeanor and felony clients in as many cases as possible where the client's adjudicative competence was even remotely in question. I understood and agreed with this strategy, because it is absolutely necessary to secure prompt

pretrial help for defendants whose mental states might decompensate by remaining incarcerated¹⁴.

There must be accountability for crime, but never at the cost of mental decompensation or death.

I personally handled many of the “mental health” dockets on behalf of the Portsmouth Commonwealth’s Attorney’s Office. Shaniqua Nelson, one of the prosecutors in Commonwealth v. Patterson (2018), was primarily responsible for managing this “mental health” docket with Spry and her office. On countless “mental health” docket days, I watched Spry and her attorneys give thorough, well-reasoned, and fully serious expositions of the factual circumstances as to why a person with 26 prior public intoxication convictions should get the benefit of pretrial state-funded psychiatric treatment when they were finally arrested on the 27th violation, which became a Class 1 misdemeanor.

Brenda Spry knows how to fight for the pretrial competency rights of even the most minimally charged defendant. Well before Patterson’s 2018 trial, Spry proved that she and her attorneys were well-trained in ensuring that their clients would not be railroaded through trial while they were incompetent. Spry’s conduct while representing Patterson bore no resemblance to her vigorous advocacy in other incompetent clients’ cases.

Patterson was visibly oriented to the courtroom and exhibited no confusion when Spry whispered in his ear during the trial. I watched him come into the courtroom and smile and acknowledge his mother and his family who came to support him many times during the trial.

¹⁴ I wrote a report in 2018 about Jamycheal Mitchell, who was charged with theft of candy from a Portsmouth 7-Eleven in 2015. See “Federal Court Approves \$3 Million Settlement for Death of Virginia Jail Prisoner Jamycheal Mitchell,” by Scott Grammer (June 5, 2019), available at <https://www.prisonlegalnews.org/news/2019/jun/5/federal-court-approves-3-million-settlement-death-virginia-jail-prisoner-jamycheal-mitchell/>; see also “Report of Investigation – In-Custody Death of Jamycheal Mitchell,” available at <https://static1.squarespace.com/static/544f8488e4b0e1372c1c476a/t/5c6d4f3bb208fc802a823c4a/1550667582780/Mitchell+Release+Final+Draft+-+MASTER.pdf>. Mitchell was left in jail and forgotten while his competency evaluation order was lost in a clerk’s drawer. Mitchell was delusional, irrational, and seriously mentally ill, and he died while waiting for competency and mental health treatment. This is of course the worst-case scenario, but I mention it to say that even as a prosecutor, I know the picture of a truly incompetent defendant and have compassion for that person.

When the Commonwealth played Officer Baaklini's body-camera video for the jury, I will never forget how much of a show Spry and Stevenson made of handing tissues to poor Patterson as he shed many tears in front of the jury. Everyone in the courtroom was shocked to see a crystal clear video of Patterson trying to murder a police officer on the television screen right in front of them¹⁵, but even the defendant wept when they made him watch the video of what he did. These circumstances give rise to the possibility that Patterson knew what was going on at his trial, and that Spry knew that Patterson knew what was going on.

g. Spry's Representation of Patterson was Marred by a Host of Unusual Circumstances Beyond her Arguable Violations of the VIDC Standards

It is shocking for a top VIDC employee like Spry to publicly admit to ineffective assistance of counsel as she did, but even stranger things happened in this case. The gun that Spry's client used to shoot a police officer has been forensically linked to the shooting of a Navy sailor and his pregnant wife;¹⁶ this shooting occurred nine days before Patterson tried to murder Officer Baaklini. Observers watched in confusion as Spry and her co-counsel Stevenson put up barely a whisper of a defense for Patterson during the jury trial. It was as if Spry knew that no matter the outcome at trial, she had an ironclad post-trial vehicle with which to reverse her client's convictions.

During the jury trial, Spry and Stevenson declined to cross-examine many of the Commonwealth's witnesses, and any cross-examination they actually conducted was extremely limited. The defense case consisted mostly of brief examinations of some police officers about issues tangentially related to the investigation of the case. Patterson did not testify.

One of Spry's arguments appeared to be a suggestion that Officer Baaklini deserved what

¹⁵ The video of Patterson shooting Officer Baaklini was recorded by local news media and can be viewed at https://www.youtube.com/watch?v=_AFjyauoW9E.

¹⁶ See "Gun used to shoot Portsmouth officer linked to unsolved shooting of sailor and his pregnant wife," by Scott Daugherty, Jan. 19, 2018, available at https://www.pilotonline.com/news/crime/article_b5d9c4ce-19b0-11e9-baeb-af7d3c9105e3.html.

she got because Patterson accidentally bumped into the back of her police car with his bicycle. Spry tried to make it look like Officer Baaklini intentionally hit Patterson, an argument the jury correctly rejected. Spry's other arguments to the jury about Patterson's guilt or innocence were a plea for mercy based on Patterson's age, and a claim that the Commonwealth had overcharged poor young Patterson. The Portsmouth jury again rejected these arguments, and instead convicted poor young Patterson of every single crime he had been charged with.

After tendering a scant jury trial defense for high-profile client Patterson, your employee claimed post-trial that she had allegedly failed to notice that the person sitting beside her for five straight days had "mental health issues" that affected him so severely that he did not understand, and had not understood, what had been going on in his own case. This was tough to wrap one's mind around, since your employee Spry and her co-counsel Stevenson were observed in court, by the media and the public which packed the courtroom, having frequent, whispered conversations with Patterson throughout the entire trial.

What was Spry talking to her mentally ill, incompetent client about during the trial? The weather? The fact that tax day was quickly approaching? It would appear from Spry's post-trial allegation that Patterson was incompetent during the trial, so Patterson could not possibly have assisted your employee in defending him or understood the proceedings against him. Was your employee Spry actually having whispered tactical discussions with a competent client and explaining court to a young man who understood what was going on?

h. Spry Has Continued to Represent Patterson after Confessing to Ineffective Assistance of Counsel

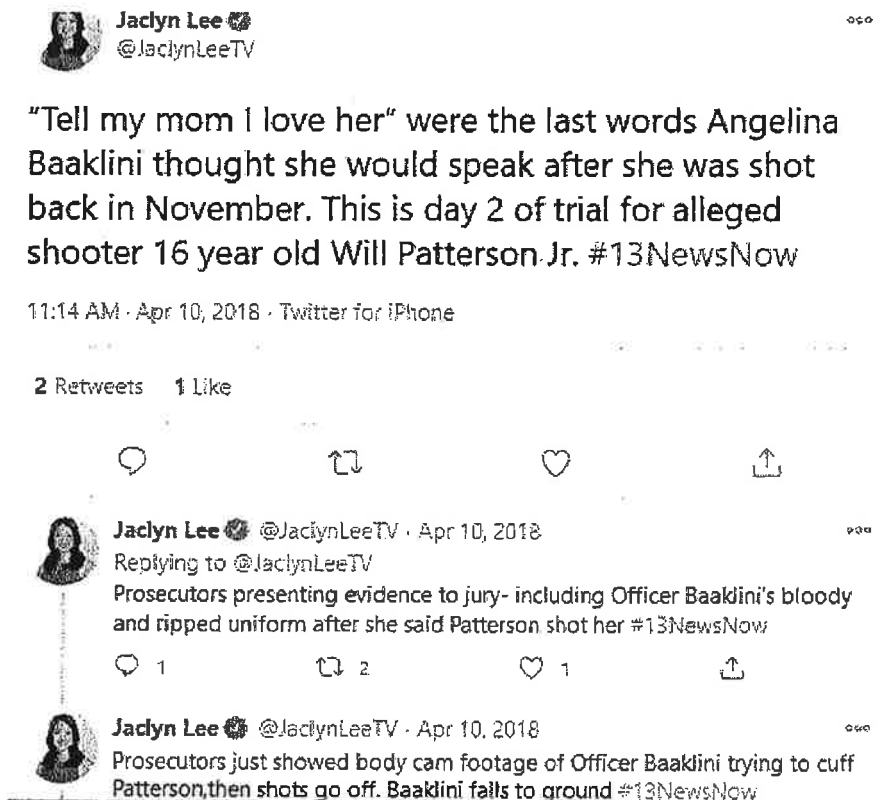
Spry confessed to ineffective assistance of counsel in this case, got her client's conviction reversed for her trouble, and is still representing the same client for his retrial as I write this Complaint. As mentioned earlier, Spry has been quoted in open court as having allegedly received

consent from Patterson and his mother to remain on the case after his conviction. It is unclear how Patterson and his mother could have had confidence in Spry's continued representation of Patterson after Spry admitted to representing Patterson in a constitutionally ineffective manner.

i. Spry's Admittedly Incompetent Representation of Patterson has Irreparably Harmed the Commonwealth of Virginia and Officer Angelina Baaklini

The VIDC is certainly aware of the level of preparation that is required to competently defend a client against ten indictments and a five-day jury trial. Proving that case beyond a reasonable doubt places a much higher logistical and strategic load on the prosecutors. Because of Spry's conduct, hundreds of attorney hours and tens of thousands taxpayer dollars were wasted when his convictions were reversed.

Furthermore, a young police officer with roughly one year of experience was forced to take the stand and relive how she almost died. At the time, she actually thought she would die:



This victim then had to repeat, under direct examination, how she asked two of her fellow police officers to tell her mother she loved them before she expired due to massive blood loss from her femoral artery. Understandably, she was elated to see justice served when Patterson was convicted. Now that the conviction has been overturned, she will be made to relive all these horrible experiences yet again. She must feel that the system has failed her now that Patterson's factually-sufficient, fully lawful conviction has been overturned for reasons completely unrelated to the facts or the law.

Your employee's errors in this case were highly publicized and are not a secret within the Portsmouth legal community or the community at large. Her deficient representation of Patterson was the direct, sole, and proximate cause of the reversal of Patterson's convictions. Spry's failures prejudiced the Commonwealth of Virginia, which must now go to the time and expense of retrying Patterson. Spry also prejudiced the victim of Patterson's violent crimes, who must now tear off the bandage a second time, in public, on the witness stand once again. This victim already had to go through the brutality of telling 12 strangers how she almost died, and the feeling of exposure that resulted when her dying words were broadcast across public news reports throughout Hampton Roads. It is difficult to imagine that the VIDC forecast this type of "collateral damage" from representing its clients.

I visited Officer Angelina Baaklini in Sentara Norfolk General Hospital before court on November 7, 2017. Angelina had been in surgery through the night, and she was in critical but stable condition. The wound to her left femoral artery was visible as she lay in her ICU bed; it was deep red and jagged. She was barely conscious and was apparently emerging from general anesthetic or a medically-induced coma. Her platoon-mate, Portsmouth Police Officer Randy Pierce, was there too, but Angelina was surprised to see me. She was intubated and couldn't speak,

so she wrote on a piece of paper, "Did they get him?" I told Angelina they had gotten him. I told her I was proud of her for fighting. And I told her they found Patterson with one of her handcuffs around her wrist. I held her hand for several minutes and prayed thanksgiving to God for the doctors who saved her from death, and for her continued healing.

Angelina recovered from her wounds, underwent months (and now years) of counseling to try to put the psychological demons to rest, and fought back tears and post-traumatic stress to give public testimony about her would-be killer. Through her admitted professional incompetence, your employee Spry has re-opened Angelina's wounds and improperly delayed the justice to which she was lawfully entitled.

V. Conclusion

Spry has already admitted to constitutionally ineffective assistance of counsel in this case. It is one thing for an attorney to commit ineffective assistance by failing to timely notify their client about applicable appeal deadlines, but another matter entirely for an attorney's admitted ineffective assistance to hijack and derail the trial and conviction that were lawfully conducted and secured in a significant, high-profile criminal case.

The Virginia Code establishes 26 Public Defender officers in the Commonwealth of Virginia. As the chief Public Defender for the City of Portsmouth, Spry is therefore presumed to be one of the 26 most competent indigent criminal defense attorneys in this Commonwealth. There could be innocent explanations for the allegations contained herein, but without answers, it is hard to believe that your employee did not realize that her juvenile client needed a competency evaluation until after she was able to:

- represent Patterson through a full certification hearing in juvenile court;
- go through months of pretrial preparation and individual interviews with Patterson;

- sit next to Patterson during the trial, whisper often into his ear, and observe how Patterson reacted to her legal advice;
- put the wounded victim through cross-examination;
- see how the jurors reacted to her arguments; and,
- test the full strength of the Commonwealth's case in multiple levels of court and using multiple types of pretrial motions.

As the chief Portsmouth Public Defender, Spry knew the VIDC Standards on competency evaluations. Spry knew or should have known that Patterson needed a competency evaluation long before she first raised the issue after Patterson's conviction, and she obtained an improper tactical advantage for her client by failing to disclose this information to the prosecutors or the Court.

The Petitioner recognizes that the issue of whether to request a competency evaluation for Patterson remained in Spry's discretion and/or judgment, and possibly subject to the prosecutors' observations of any potential competency issues. The Petitioner further recognizes that based on the individual circumstances of a case, defense attorneys sometimes make tactical decisions not to request competency evaluations for certain clients.

However, in my small amount of experience as a criminal law practitioner, I have learned that criminal defense attorneys do not play around with competency evaluations. If there is a hint of a competency issue, past or present, with any defendant, the gold standard for criminal defense attorneys is to avoid professional discipline and err on the side of requesting the pretrial competency evaluation. It would follow that when a client receives significant pretrial publicity for his alleged crimes, and the client is in the putatively vulnerable status of a juvenile facing multiple life sentences as an adult, the gold standard of requesting a pretrial competency evaluation is the only standard.

I have personally experienced the greatest measure of professional growth by participating in contested trials against VIDC attorneys. I believe that public defenders are infinitely more important for the preservation of individual rights and good government than prosecutors and police. This is evidenced by the fact that there is nothing written directly into the Bill of Rights about how prosecutors should act. The only explicit proscription in our Constitution protecting us from governmental tyranny in the criminal justice system is the right to counsel and the right to a speedy jury trial by our peers. It is uncontested that public defenders try the vast majority of those juries in Virginia. Public defenders directly and intimately influence the lives of tens of thousands of Virginians annually, and in far greater numbers than prosecutors.

Being a public defender requires a noble calling and unshakable attorney ethics. Public defenders protect vulnerable clients from corrupt and unethical policing tactics, and they have the ability to hold unscrupulous prosecutors to account. These are not desirable tasks. Holding those with power to account for their actions takes a toll on any person. But Brenda Spry's admitted failures in *Commonwealth v. Patterson* (2018) are a significant and unusually prominent lapse in adherence to the calling and ethics required of public defenders and Virginia attorneys. Because of the widely publicized nature of Spry's confession to professional failures, the VIDC should compel Spry to respond in writing to these allegations, and it should conduct a full investigation that compels Spry to preserve and turn over all emails, internal correspondence, and file notes regarding *Commonwealth v. Patterson* (2018) and Patterson's prior competency evaluation.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA,

v.

Case No: CR17-1383

WILL PATTERSON, JR.,

Defendant,

FINAL ORDER

In the above styled case, comes now the Defendant, Will Patterson Jr., to be heard upon the MOTION TO VACATE AND SET ASIDE THE VERDICT filed by the Defendant's counsel, Brenda C. Spry, Esq. and Lakishi D. Stevenson, Esq.

The instant motion is styled as a Motion to Vacate and Set Aside the Verdict. On April 13, 2018, Defendant was convicted of Attempted Capital Murder, Malicious Injury to Law Enforcement Officer, four (4) counts of Shoot in Public with Bodily Injury, two (2) counts of Use of a Firearm in the Commission of a Felony, Carry Concealed Weapon, and Possession of Firearm by a Minor. Defendant was convicted by a jury after pleading not guilty. Defense counsel now alleges that Defendant was incompetent at the time of the trial, and that they were made aware of his mental health issues subsequent to the jury verdict but prior to sentencing.

In the summer of 2018, Defendant was evaluated by Dr. Weare A. Zwemer, Ph.D. and Dr. Lena S. Kessler, Ph.D. Both doctors determined that Defendant was incompetent to stand trial, and the Honorable Judge Moore found that Defendant was incompetent to be sentenced on October 18, 2018. He ordered that Defendant undergo restoration services, and Dr. Margaret A. Fahy, Ph.D. determined that Defendant was competent to be sentenced on February 20, 2020.

Specifically, Defendant contends that because he was incompetent throughout all stages of trial preparation, as well as throughout all stages of trial, his right to due process and his right to effective assistance of counsel were violated. The Due Process Clause of the Fourteenth Amendment prohibits the criminal prosecution of a defendant who is not competent to stand trial. Due process requires that states provide criminal defendants access to procedure for making a competency evaluation. *Dang v. Commonwealth*, 287 Va. 132 (2014). The standard articulated by the U.S. Supreme Court is “whether the defendant has ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ and has ‘a rational as well as factual understanding of the proceedings around him.’” *Dusky v. States*, 362 U.S. 402 (1960). Each of the three aforementioned doctors provided reports and testimony that Defendant’s incompetence was due to “developmental immaturity” and that it would be impossible for Defendant to have been competent before and during his trial. These doctors affirmed Defendant’s incompetence during his trial at a hearing on August 7, 2020. The due process right to competence during trial is not subject to waiver, and the expert testimony that Defendant did not understand his trial and was unable to assist his counsel deeply concerns the Court.

Defendant’s counsel did not raise the issue of his competency until after the trial. This failure to request an evaluation prior to trial cannot be waived. *McLaughlin v. Royster*, 346 F. Supp. 297 (1972); *Pate v. Robinson*, 383 U.S. 375, 384 (1966). “[A]lthough the right to assistance of counsel may be waived like most constitutional rights . . . the waiver and the plea itself may be impeached by a showing of the defendant’s incompetency. *Thomas v. Cunningham*, 313 F.2d 934 (1963). It is clear from the three experts’ reports and testimony that Defendant took until February 20, 2020 to show competency, and that he was not developmentally mature enough to assist in his own defense during the April 2018 trial. A defendant unable to assist in

the preparation of his defense cannot equip his lawyer to be effective on his behalf, and the failure of Defendant's attorneys to adequately investigate their client's mental state and insist on a competency evaluation constitutes a violation of Defendant's right to effective assistance of counsel.

The Court, having thoroughly considered the Motion and upon review of this case and the applicable law, determines that Defendant was not competent during his trial, and that his right to due process and right to effective assistance of counsel were violated. Defendant's Motion to Vacate and Set Aside the Verdict is **GRANTED** and a new trial is ordered.

Pursuant to Rule 1:13 the endorsements of counsel are waived and a copy of this order shall, upon entry, be mailed to Defendant at his listed address.

It is so **ORDERED**.

ENTERED this 21ST day of September, 2020.

William S. Moore
The Honorable William S. Moore, Judge
Portsmouth Circuit Court

2020 SEP 22 AM 9:07
CRYSTINA P. JACKSON
CIRCUIT COURT CLERK

Virginia Indigent Defense Commission
Standards of Practice of Indigent Defense Counsel Complaint Form

Under Code of Virginia, §19.2-163.01(4), the VIDC is responsible for establishing the official standards of practice for court-appointed counsel and public defenders to follow in representing their clients, and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments.

A finding of a violation of the Standards of Practice will not affect the outcome of your case but may result in the removal of the attorney from the list of certified attorneys qualified to accept court appointments in criminal indigent cases. If you are seeking other outcomes with regards to your case, you may need to seek other remedies.

NOTE: Copy of all complaints may be provided to the attorney.

A complaint will be dismissed without further review unless it meets all of the following filing requirements:

1. Must be in writing and provided on this form;
2. Complainant cannot be anonymous;
3. Filed within twelve months of the conclusion of the case, including any appeals
4. Reference a specific case;
5. Involve a court-appointed attorney or public defender in an indigent defense case;
6. Allege violation(s) of specific Standards of Practice; and
7. Be inherently credible.

Complainant Information:

YOUR NAME: Brandon Thomas Whoblesks
First Middle Last

ADDRESS: _____
Street

Virginia Beach VA 23452
City State Zip Code

Phone number at which you can be best reached Email Address

Are you the person that was represented by the court-appointed lawyer or public defender? yes no

If no, please provide the following information of the client:

NAME: Will Rasheem Patterson Jr.
First Middle Last

ADDRESS: Hampton Roads Regional Jail
Street

Portsmouth VA
City State Zip Code

()
Phone number at which you can be best reached Email Address

Have you filed a bar complaint about this matter? yes no

If yes, state the outcome if available: Pending as of 1-12-2021

Have you read the brochure describing the complaint process? yes no

Virginia Indigent Defense Commission Standards of Practice of Indigent Defense Counsel Complaint Form

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6. Allege violation(s) of specific Standards of Practice; and
7. Be inherently credible.

Complainant Information:

YOUR NAME: Brandon Thomas Wholesks
First Middle Last

ADDRESS: 209 Great Hill Court
Street

Virginia Beach VA 23452
City State Zip Code

(404) 819 6728 btwa@fastmail.com
Phone number at which you can be best reached Email Address

Are you the person that was represented by the court-appointed lawyer or public defender? yes no

If no, please provide the following information of the client:

NAME: Will Rasheem Patterson Jr.
First Middle Last

ADDRESS: Hampton Roads Regional Jail
Street

Portsmouth VA
City State Zip Code

()
Phone number at which you can be best reached Email Address

Have you filed a bar complaint about this matter? yes no

If yes, state the outcome if available: Pending as of 1-12-2021

Have you read the brochure describing the complaint process? yes no

Court-Appointed Attorney/Public Defender Information:

ATTORNEY'S

NAME:

Brend
First

Cheryl
Middle

Spry
Last

ATTORNEY'S

ADDRESS:

Portsmouth Public Defender's office
Name of Firm

1 Guardian Court
Street

Portsmouth
City

VA
State

23704
Zip Code

(757) 396 6840
Phone number

b.spry@vadefenders.org
Email/Address

Case Information:

Is the client a juvenile? yes no In what county/city was the case heard? Portsmouth

On what charge(s) was the attorney appointed to provide representation?

Attempted Capital murder of Law-Enforcement officer + 9 others

Please provide the case number(s) if available:

CR17001383-01 through -10

In which court did the case begin? Portsmouth JTDR In which court did the case end? Remains pending in

When was the case resolved? NA / NA / NA

Portsmouth Circuit Court

If the case resulted in a conviction, was the case appealed? yes no N/A

If so, did the same attorney named above handle the appeal? yes no N/A

State your complaint: Please write neatly and give as much detail about the facts surrounding your complaint including any witness names and contact information. Please include copies of any court documents or other papers supporting your complaint that you have in your possession. You must adequately describe the facts or circumstances of the specific violation of the Standards of Practice of which you complain. Refer to www.vadefenders.org to view the Standards of Practice.

Please see attached

(Continue on the back or a separate page if you need more space)

The information I have provided is accurate and true to the best of my knowledge.

[Signature]
Signature

1-12-2021
Date

Please return to:
Virginia Indigent Defense Commission
Attn: Standards of Practice
Enforcement Attorney
1604 Santa Rosa Road, Suite 200
Richmond, Virginia 23229