

# Criminal Law News

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The Newsletter of the Criminal Law Section of the Virginia State Bar

## Vice-Chair's Column

Alison G. Powers, Esquire



Virginia has a crisis: we don't have enough lawyers. And there are fewer in the pipeline than ever before. Large portions of Virginia are becoming legal deserts and it is affecting all areas of the practice. The Virginia State Bar created the Entry,

Growth and Distribution of Virginia Attorneys Study Committee (EGAD VA) under the leadership of president, Chidi James. Pursuant to Pt. I, Article V, Sec. 3. EGAD VA will examine the declining number of lawyers practicing in Virginia, particularly in certain geographic areas identified as "lagging circuits." The Committee is charged with increasing the legal profession's awareness of this issue and making specific recommendations to address the declining population and mitigate impacts of the same. The number of people taking the Virginia Bar has declined by two-thirds in the past 10 years, that is a stunning number.

The shrinking list of attorneys willing to do court appointed criminal work has been well publicized for years. The pay was abysmal and the job has gotten increasingly more time consuming and complex with the expansion of electronic evidence and the explosion of clients with serious mental health and substance use disorders. Fortunately, the General Assembly increased the pay for court appointed counsel in the

2024 session, but this may be too little, too late. In public defender offices, where the pay is salaried, we are also facing a similar crisis, we do not have enough lawyers. And Commonwealth's attorneys offices are no different.

But the problems for our communities extend well past criminal cases. On August 28, 2024, EGAD VA had its first hearing in Warsaw, Virginia. At this hearing community members, advocacy groups, lawyers and judges all spoke about the dire need for lawyers in the Northern Neck. The need ranged from immigration to family law, housing, protective orders and even simple real estate transactions. Those that participated in the hearing said that in the civil realm, the inability to file protective orders online was a real barrier because those types of hearings require so much specific knowledge of the system. In these hearings if one person has an attorney and the other doesn't, the potential damage that is done during the preliminary protective order hearing can be very hard to undo. Others suggested extending public loan forgiveness to attorneys who do the majority of their work as court appointed work, giving incentives to those who practice in legal deserts and/or bringing the Uniform Bar Exam to Virginia.

While providing incentives to those willing to do court appointed work or even pro-bono or low bono work is a step, it ignores the bigger problem - Virginia does not have enough lawyers to even do that.

**SAVE  
THE DATE!**

See page 7 for details

**The 55th Annual Criminal Law Seminar**

**Friday, January 31, 2025** Charlottesville DoubleTree Hotel

**Friday, February 6, 2025** Williamsburg DoubleTree Hotel

## New Board Members

**Judge William W. Eldridge IV** graduated



Magna Cum Laude from The George Washington University with a Bachelor of Arts in International Affairs and minor in Economics. He then graduated Magna Cum Laude from George Mason University School of Law where he finished in the top

5% of his graduating class. In law school, Judge Eldridge served as the Research Editor for the Law Review. Upon graduation, he became an Associate at Dykema Gossett PLLC in Washington D.C., representing clients in government contract litigation matters and white-collar criminal investigations. In 2005, Judge Eldridge moved to Harrisonburg where his practice areas included criminal defense, civil litigation and domestic relations law. Judge Eldridge represented clients charged with a variety of criminal charges, including clients charged with capital murder. Additionally, he represented numerous business owners and members of the community in civil disputes. He began serving as a General District Court Judge for the 26th Judicial District in July 2015. In 2020, Judge Eldridge was elected by the General Assembly to serve as a Circuit Court Judge for the 26 th Judicial Circuit.

**Shemeka Hankins** received her undergraduate



degree from William and Mary, her J.D. from Regent University, and has taken with her one of its mottos that “Law is more than a profession, it’s a calling.” She began her career as a Prosecutor in the Norfolk Commonwealth Attorney’s

Office where she received advanced training in the areas of domestic violence, driving under the influence, and drug offenses. She was also tasked with training her fellow prosecutors and the Norfolk Police Department in the areas of Juvenile Prosecution, Strangulation and Domestic Violence Investigation, DUI Prosecution, and Police Department Recruit

In-Court Testimony Training. After serving nearly 7 years as a Norfolk Prosecutor Shemeka transitioned to being the cornerstone of the Invictus Criminal Defense Team. She has won jury trials for serious felony offenses and routinely gets exceptional results in DUI defense cases, domestic violence cases, and other serious state and federal criminal matters. Recently, Shemeka transitioned back to government work and continues to serve the community as a prosecutor for the Virginia Beach Commonwealth Attorney’s Office. She serves on several legal related boards such as Virginia Women Attorneys Association, South Hampton Roads Bar Association, the Virginia State Bar Diversity Conference, and the Virginia Law Related Education Institute to name a few.

**Benjamin H. Garrison** is a Deputy



Commonwealth’s Attorney for Chesterfield County. After briefly practicing in the private sector, Garrison began criminal prosecution with Hopewell Commonwealth’s Attorney’s Office in 1999. In 2004, Garrison transitioned to Chesterfield County, and

now has over 25 years’ experience in criminal prosecution. Although he prosecutes in all areas of criminal law, Garrison’s primary focus for most of his career has been white collar criminal investigations and narcotics interdiction. He has been assigned as a prosecutor to street drug enforcement teams and has been embedded with a Virginia State Police task force focused on dismantling drug trafficking rings. As a part of this process, he was special counsel to a multi-jurisdictional grand jury designed to investigate drug distribution across central Virginia. He is a member of the Commonwealth Attorneys’ Services Council Curriculum Committee and is on faculty for two specialty trainings. Additionally, he has taught numerous C.L.E.s at annual conferences, to include motions practice, practical uses of the grand jury, traffic law, and ethics. He drafted and proposed a cumulative revision of the statutes pertaining to grand jury practice in Virginia, which

was passed in 2014. He has also written two legal manuals designed specifically for prosecutors, which he updates annually. Garrison graduated from the University of Virginia and from the University of Richmond School of Law [cum laude].

**Anna Lindemann** was raised by an Air Force colonel and a multilingual teacher, and had the incredible fortune to grow up in many states and countries. Her law career began in high school when she competed in her first mock trial competition and followed her first order from a judge: to become a lawyer. For the past ten years, her criminal defense work has taken her throughout Virginia, working



at law firms in Northern Virginia and Spotsylvania before partnering with Cary Bowen, Mackenzie Clements, Peter Bowen, Rebecca Favret Medina, and Catherine Scott in Richmond, Virginia. Anna has also worked as an Assistant Public Defender in Fredericksburg and Stafford, as well as an Assistant Commonwealth’s Attorney in Richmond County. As a resident of the Northern Neck, Anna also serves as the defense attorney for the Northern Neck and Essex Recovery Court. In her free time, Anna likes to visit lighthouses.

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The complex block is a promotional graphic for a fee dispute resolution program. It features a blue and white color scheme. The title 'THE FEE DISPUTE RESOLUTION PROGRAM' is in large, bold, blue capital letters. Below it, the slogan 'IT'S TIME TO HANG UP THE GLOVES.' is in a smaller blue font. To the right is a blue line-art illustration of a pair of boxing gloves. The central focus is a blue circle containing the text '\$20' in white. To the left of the circle, the text 'LOW COST ONE-TIME NON-REFUNDABLE ADMIN FEE:' is stacked in blue. At the bottom, a blue link 'Learn more at https://bit.ly/FeeDispute.' is provided.

## FOURTH CIRCUIT COURT OF APPEALS CRIMINAL LAW AND PROCEDURE DECISIONS

*U.S. v. Brown*, \_\_\_ F.4th \_\_\_ (4th Cir. 2024). Under Va. Code. § 18.2-282(A) it is “unlawful for any person to point, hold or brandish any firearm . . . in such manner as to reasonably induce fear in the mind of another.” Here, the officers’ reasonable suspicion to detain the defendants was based not on the lawful open carry of a firearm but rather on the brandishing firearms when defendants were waving firearms in public and pointing them directly at a surveillance camera. The dissent maintained that: “The Second Amendment secures the individual right of the people to “keep and bear Arms.” This Court has been explicit that “the exercise of this right, without more, cannot justify an investigatory detention.”

*U.S. v. Nkongho*, 107 F.4th 373 (4th Cir. 2024). The Supreme Court has long held that border agents need no warrant, nor any individualized suspicion, to conduct “routine searches of the persons and effects of entrants.” However, given the sheer mass of intimate information available in forensically searching a traveler’s electronic devices “the government may rely on the border search exception to conduct such a search in only limited circumstances. Before we will countenance such a search, the government must show that it “ha[d] individualized suspicion of an offense that bears some nexus to the border search exception’s purposes of protecting national security, collecting duties, blocking the entry of unwanted persons, or disrupting efforts to export or import contraband.”

*U.S. v. Sanders*, 107 F.4th 234 (4th Cir. 2024). The question of whether probable cause is stale, is unique in [the] child pornography context.” That is — due to (1) the tendency of individuals who intentionally access to collect child pornography, and (2) the material’s electronic nature causing evidence of collection to be recoverable long after it is deleted — search warrants can reasonably be sustained “months, and even years, after the events that gave rise to probable cause.”

*U.S. v. Chatrie*, 107 F.4th 319 (4th Cir. 2024). “We hold that the government did not conduct a Fourth Amendment search when it accessed two hours’ worth of Chatrie’s location information that he voluntarily exposed to Google.” Location History is an optional account setting that allows Google to track a user’s location while he carries his mobile devices. If a user opts in, Google keeps a digital log of his movements and stores this data on its servers. Chatrie voluntarily exposed his location information to Google by opting in to Location History.

*U.S. v. Green*, 106 F.4th 368 (4th Cir. 2024). The district court erred when it concluded that defendant lacked a reasonable expectation of privacy in his cousin’s home and yard. A person may have a reasonable expectation of privacy in another’s home, but not every visitor can claim that status. Because mere “presence with the consent of the householder” is not enough, defendants have the burden of establishing that they are the kind of visitor who has an objectively reasonable expectation of privacy in a residence that is not his own. While “the overnight aspect of a visit” is a key “factor” in the analysis, what matters most is the social as opposed to commercial nature of a relationship and visit, and not whether the visit includes an overnight stay. Here the defendant had a deep and familial relationship with the homeowner in question. That kind of social connection can give rise to the requisite “mutual trust” between visitor and host. Also, defendant was a regular visitor to the property over a long period of time, and his visits were exclusively social in nature. And while defendant never spent the night, he had “free rein of the house,” with the ability to enter all portions of the property and to bring friends with him when he visited. Taken together, these factors indicate precisely the “degree of acceptance into the household,” that generates a reasonable expectation of privacy for a social guest.

*U.S. v. Dunlap*, 104 F.4th 544 (4th Cir. 2024). We hold that when the record is ambiguous as to whether the district court accepted or rejected the parties’ plea agreement, we construe that ambiguity in the defendant’s favor. This approach aligns with our general practice, in a related context, of construing ambiguities in plea agreements in favor of the defendant, rather than the government. This rule recognizes the government’s greater power throughout the plea process compared to that of the defendant.



## VIRGINIA SUPREME COURT CRIMINAL LAW AND PROCEDURE DECISIONS

**Thomas v Commonwealth**, 303 Va. 188, 901 S.E.2d 44 (2024). “We hold that parties are free to modify or renegotiate plea agreements when a trial court has not yet accepted the agreement. ... Pending acceptance of a plea agreement, trial courts have no authority to enforce an agreement and may not participate in the plea negotiation process.” The court also held that evidence that a person “actively encouraged, aided, or countenanced” a mob assault is probative of membership, but not required.

**Bland-Henderson v. Commonwealth**, 303 Va. 211, 902 S.E.2d 51 (2024). Defendant waived his right to jury sentencing by failing to file his request at least 30 days prior to trial as is mandatory under Code § 19.2-295. The court also held that when the jury will not be sentencing the defendant, questioning the jury panel about the mandatory minimum sentence is prohibited because it is irrelevant to a juror’s fitness to serve.



## VIRGINIA COURT OF APPEALS CRIMINAL LAW AND PROCEDURE DECISIONS

**Roberts v. Commonwealth**, Va.App. (9/17/2024). “We hold that it was reasonable under the emergency-aid exception for Officer Shetler to have made a warrantless entry into the vehicle to secure the gun that an apparently intoxicated or impaired Roberts was holding in his lap. ... Roberts appeared dazed and disoriented, he failed to answer the officer’s questions, and the parking lot was known for its history of drug “overdoses. The gun that Roberts was holding in his lap could have been

fired—whether on purpose or accidentally—risking injury or death to Roberts, Shetler, or any of the bystanders in the parking lot.”

**Barnes v Commonwealth**, Va.App. (9/3/2024). “While every piece of [the accomplices’] testimony may not have been corroborated, that was not required. The testimony that was corroborated sufficed to show defendant’s occasion and opportunity to commit the crime. It was also ‘sufficient to warrant the jury in crediting the truth of the accomplice[s]’ testimony.’ Accordingly, the trial court did not err in refusing the cautionary instruction” about the danger of convicting a person based on the “uncorroborated” testimony of an accomplice.

**Seat v Commonwealth**, Va.App. (9/3/2024). Commercial sex trafficking Code § 18.2-357.1(A) proscribes conduct that falls short of causing a completed act of prostitution. It includes soliciting, encouraging, or attempting to cause prostitution.

**Bell v. Commonwealth**, 81 Va. App. 616 (2024). The Court invoked the ends of justice exception to overturn defendant’s summary contempt conviction. “Summary adjudication of contempt is only proper in instances of direct contempt, when the contemptuous conduct is committed in the presence of the court.” After his conviction the defendant sent a letter to the jury panel, but such conduct “did not occur “in” or “so near” the trial court’s presence as to meet the statutory and constitutional requirements for summary contempt. The letter was not sent to the trial court, and the court did not have personal knowledge that Bell sent letters to members of the jury panel.”

**Sechrist v. Commonwealth**, 81 Va. App. 196, 902 S.E. 759 (2024). “The deputies had consent to enter the residence, had information that Sechrist attempted to kill himself just prior to their arrival, and Sechrist approached the deputies with a weapon in plain view. Based on this evidence, the deputies did not offend the Fourth Amendment by conducting a limited pat-down search to ensure everyone’s safety. Therefore, we affirm the trial court’s denial of Sechrist’s motion to suppress.”

**Newsome v. Commonwealth**, 81 Va. App. 43, 901 S.E.2d 492 (2024). Upheld convictions for assault and battery by mob, disorderly conduct, and

participating in a riot. Every person composing a mob is criminally culpable under Code § 18.2-42. Criminal accountability flows from the membership itself, “regardless of whether the member aids and abets in the assault and battery.” The evidence established that appellant was not merely present

during the attack; it showed that he, together with another person, grabbed the victim’s arms while a third participant attacked her. Moreover, he was part of a group of approximately 15-20 people who used unlawful force to prevent the victim from fleeing from the attack.

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Recent Developments and Criminal Law Update

•

§19.2-271.6 & §19.2-303.6: Making Use of Experts and Their Reports

•

The Download: Cell Phone Technology

•

Authentication and Admissibility of Electronic Evidence in Virginia

•

The Ethical Attorney: How to Avoid the “Personal and Confidential” Letter

Friday, Jan. 31, 2025 ~ Charlottesville

DoubleTree by Hilton

Register to attend in Charlottesville at

[www.vacle.org/product/55th-annual-criminal-law-seminar-1-31-2025](http://www.vacle.org/product/55th-annual-criminal-law-seminar-1-31-2025)

Friday, Feb. 7, 2025 ~ Williamsburg

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8:15 a.m. – 4:30 p.m.

6.5 CLE hours *pending*  
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# Criminal Law News



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