

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH
COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

Docket No. CR17000428

MARK M. WHITAKER,

Defendant.

In Re: Subpoena Issued to Scott Daugherty

MOTION TO QUASH SUBPOENA

NOW COME The Virginian-Pilot and Scott Daugherty, by counsel, and move this Court to quash the subpoena issued for his appearance on behalf of the Commonwealth of Virginia. The reasons for this Motion are more particularly set forth in the Memorandum in Support of Motion to Quash Subpoena, which is being filed simultaneously herewith and is hereby incorporated by reference. Affidavits of Scott Daugherty and Jeff Reece are attached hereto as **Exhibits A and B.**

THE VIRGINIAN-PILOT and
SCOTT DAUGHERTY

By: 
Of Counsel

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Counsel for Scott Daugherty

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2018, a true and correct copy of the foregoing was served via electronic transmission on the following:

Andrew M. Robbins, Deputy Commonwealth's Attorney
Office of the Commonwealth's Attorney
107 Nort Kent Street
Winchester, VA 22601

Don Scott, Esq.
Don Scott Law Firm
355 Crawford Street, Suite 602
Portsmouth, VA 23704

and

Jon M. Babineau, Esq.
Jon M. Babineau, PC
109 East Main Street, Suite 413
Norfolk, VA 23510
Counsel for Defendant



Conrad M. Shumadine

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AFFIDAVIT OF SCOTT DAUGHERTY

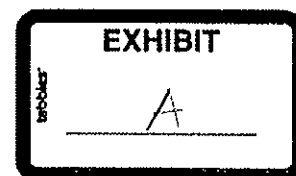
COMMONWEALTH OF VIRGINIA,

CITY OF NORFOLK, to-wit:

This day personally appeared before me, a Notary Public in and for the jurisdiction aforesaid, Scott Daugherty, who made oath and stated that the following facts are true:

1. I am a journalist employed as a reporter by The Virginian-Pilot. I was assigned by my editors to report to the public on the felony indictments issued by the Special Grand Jury against Mark Whitaker and all matters related to those indictments and Mark Whitaker's trial on those charges.

2. Because Mark Whitaker is a member of the City Council of the City of Portsmouth and because claims have been made that these criminal charges were politically motivated and the result of a flawed investigation, my editors have directed me to give special attention to the matters involved in this case. If a member of City Council committed 20 felonies, this is a matter of enormous public importance. If the charges are frivolous and were the result of official misconduct based on political motivations, this is an equally serious and important story.



3. From the time The Virginian-Pilot learned of the investigation into Mark Whitaker, I have written at least 15 stories which have been published in the newspaper related to these charges and the public discussion of these charges.

4. Mark Whitaker agreed to an interview with me because he wanted the public to know that he claimed he did nothing wrong, and to express his view that the charges were frivolous and politically motivated.

5. On October 31, 2017, The Virginian-Pilot published an article online I wrote reflecting that interview. It was published the next day in the newspaper's print edition. The article is attached hereto as **Exhibit 1** to this Affidavit.

6. As the article states, Mark Whitaker said he was not guilty and that he did not know who executed the document on which the charges were based. As the article reflects, Mark Whitaker claimed the charges were politically motivated even going so far as to compare Sheriff Watson's role in his indictment to the role of King Herod in the crucifixion of Jesus.

7. If Mark Whitaker had provided me with any information suggesting or tending to suggest that he was admitting that he was guilty of the offenses, I would have included it in the article I wrote about the interview since any such admission would have been highly newsworthy.

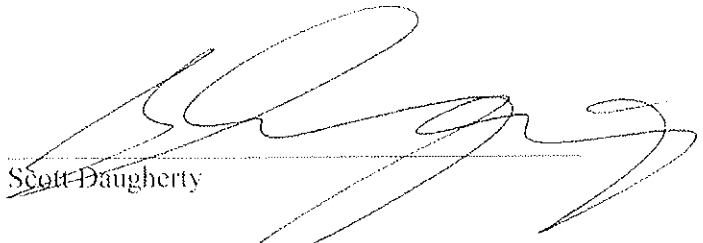
8. As far as I am aware, Mark Whitaker said nothing in the interview that suggested or tended to suggest that he was guilty of any criminal offense.

9. As a journalist, I feel an obligation to provide the public both the position of a criminal defendant as well as what is stated in the indictment. If I am not allowed to cover criminal trials on any occasion where I interview a defendant and publish his protestations of innocence, this creates a substantial impediment to my being able to provide the public with both

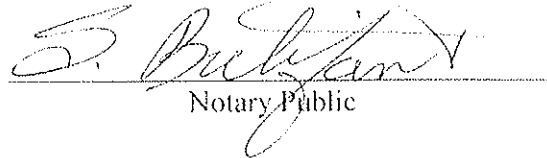
sides. This is especially significant in a case involving a sitting public official who vigorously denies guilt and who has asserted from day one that the charges are frivolous and politically motivated and where his position that the charges are politically motivated has been championed by others in the community.

10. I did not maintain any notes from my interview of Mark Whitaker, and I have no independent recollection of any relevant details of the interview different from or in addition to the information disclosed in the story I wrote.

And further the affiant sayeth not.

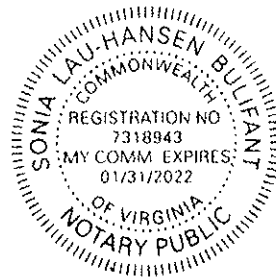

Scott Daugherty

The foregoing Affidavit was acknowledged before me this 20th day of March, 2018, by Scott Daugherty, an individual known unto me or who has produced sufficient and appropriate identification.


Notary Public

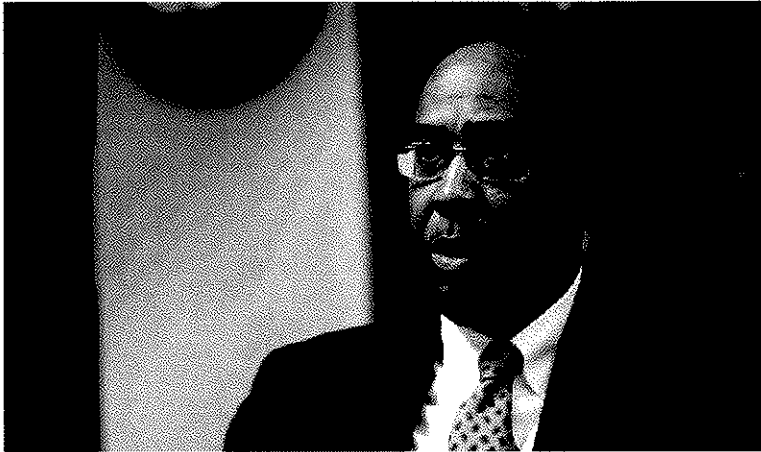
My Commission expires: 1/31/22

My Registration No.: 7318943



Councilman did nothing wrong, two of his alleged victims say

BY SCOTT DAUGHERTY
THE VIRGINIAN-PILOT



L. TODD SPENCER
THE VIRGINIAN-PILOT

Portsmouth Councilman Mark Whitaker, who faces 20 felony charges, said the investigation was a setup and lashed out at the city's sheriff and commonwealth's attorney.

PORTSMOUTH

An unlikely pair have stepped forward to help Councilman Mark Whitaker clear his name as he prepares for trial this month on 20 felony fraud and forgery charges.

Two of the three victims named in Whitaker's indictment say he did nothing wrong. They signed affidavits over the summer indicating they gave the assistant pastor of New Bethel Baptist Church permission to sign their names on checks.

"If Mark Whitaker signed my name to any documents, he did so with my permission," said Malinda Starkley, chair of the church's Trustee Ministry and listed as a victim on 14 charges.

Caroline Larosiliere, Whitaker's sister and the victim on a single count, echoed Starkley's comment in her own affidavit and in an interview.

"I have never been a victim of my brother," she said.



Defense attorneys Jon Babineau and Don Scott asked the court this week to dismiss the 15 counts involving the two women, arguing there was insufficient evidence. In a motion mailed Monday to the office of the Portsmouth Circuit Court clerk, they noted the two affidavits and that the prosecution can't prove its case without Starkley and Larosiliere. They requested an evidentiary hearing.

Special prosecutor Andrew Robbins declined to comment, citing court rules governing pretrial publicity. Sheriff Bill Watson, however, defended the investigation that was conducted by two of his employees with the assistance of the U.S. Treasury Department.

"This shows they have nothing," Watson said. "They are grasping at straws."

Whitaker, 52, is set to stand trial Nov. 27 on 11 counts of forgery, seven counts of passing forged checks and two counts of identity fraud.

The charges, handed down in April by a special grand jury in Portsmouth, stem from an investigation instigated by Watson into Whitaker's church, its development company and its now-defunct credit union.

Whitaker and his father, James, are pastors at the Greenwood Drive church and are involved in its development company. Whitaker also headed the credit union before it was liquidated in August 2015.

Court documents reveal little about the government's case, except to identify Starkley, Larosiliere and Kevin Blount as victims. Blount, president of Valor Contracting in Portsmouth, declined to comment.

In an interview Monday with The Virginian-Pilot, Whitaker cast additional light on the transactions at the heart of the case. He said they revolve around seven loans that members of his church took out in 2013 from the credit union to help with a stalled redevelopment project next door. He said the loans totaled \$35,000, and all of it was paid back with interest.

"There's no loss," he said.

The loans, he said, were necessary because the church's development company had to clean up a demolished apartment complex. The company purchased the

property about eight years earlier with plans to redevelop the land, but financing dried up.

Whitaker said the credit union's board, of which he was only one vote, signed off on the seven \$5,000 loans in accordance with its policies. He said he took out one of them in his name.

What happened next, Whitaker said, is the subject of the 14 charges involving Starkley. He said the credit union typically used a stamp with her name on it to sign the checks. The investigators say he wrongly used it.

The defense attorneys claimed in their motion that the investigators have no proof Whitaker "executed any document." And when asked by The Pilot, Whitaker said he didn't know who stamped the checks in question.

"The checks were pre-stamped," he said, explaining that at least three credit union employees regularly used the stamp. "As long as the board approved it, it didn't matter (who used the stamp.)"

Regarding the liquidation of the church credit union, Whitaker stressed that "all loans were paid. All member shares were paid."

The two affidavits from the alleged victims and the defense motion also offer additional insight into the underlying investigation.

Larosiliere, a pediatric dentist in Maryland, said investigators talked to her for only about 10 minutes in April, and that they seemed more interested in the size of her home than her brother. Starkley said she felt intimidated and afraid when they showed up at her house.

The defense attorneys claimed the investigators misled Starkley about the case before she testified to the special grand jury and provided her untrue information upon which she relied.

Larosiliere added that she never even testified before the grand jury.

"I think it was all a setup," Whitaker said of the investigation.

The defense motion comes less than a week after Whitaker's attorneys asked retired Hampton Circuit Judge William Andrews III to toss all 20 charges on the

grounds that the special grand jury process was mishandled.

They attacked the indictments on two fronts: First, that Portsmouth Circuit Judge William Moore Jr. should have recused himself before impaneling the grand jury, not after. Second, that Moore never should have assigned Capt. Lee Cherry and Investigator Brett Johnson of the Portsmouth Sheriff's Office to assist the grand jury, in part because Cherry and his boss had previously spoken out against their client.

The defense also asked for Robbins to be removed from the case, arguing he should have prevented Cherry and Johnson from providing the grand jury with "false, misleading or otherwise untrue evidence."

In his interview, Whitaker lashed out at Watson and Portsmouth Commonwealth's Attorney Stephanie Morales – not Robbins. He argued Morales, who cited a conflict of interest and recused herself from the case early on, was in league with Watson. He claimed she agreed to step aside and request the special prosecutor in exchange for Watson's political support.

"She should not have allowed her office to be used for political gain," he said, arguing she knew of Watson's history with former Mayor Kenny Wright and his decision to charge him with felony eluding after the sheriff confronted him over an expired inspection sticker and followed him on a slow-speed chase. He said she should have turned away his investigators when they came to her with their findings.

Whitaker, who has a master's degree from Pennsylvania State University and a law degree from Ohio State University, noted that he turned down lucrative job offers in order to return to Portsmouth and work with his father. He said he was "deeply troubled and saddened" when he learned of the investigation.

Whitaker went on to recount the crucifixion of Jesus and compare Morales to Pontius Pilate and Watson to King Herod.

"She washed her hands of it like Pontius Pilate washed his hands of Jesus," he said. "An innocent man."

Watson denied collaborating with Morales and stressed he was not endorsing her or her challenger, defense attorney T.J. Wright. He called Whitaker "full of

crap” and argued he should go to prison simply because he has not been standing during the pledge of allegiance at recent City Council meetings.

In a lengthy statement, Morales also defended her decision to step aside when presented with the evidence against Whitaker. She said politics played no role, and she would do it again.

“I reviewed the facts of the conflict and far from washing my hands, I proactively upheld justice by requesting approval from the circuit court’s chief judge for recusal due to the existing conflict,” she said, noting that the City Council exerts some control over her budget. “The citizens of Portsmouth can count on me to recuse myself anytime I have a conflict of interest so that a fair and independent prosecutor can be brought in .”

Scott Daugherty, 757-446-2343 , scott.daugherty@pilotonline.com

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AFFIDAVIT OF JEFF REECE

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

This day personally appeared before me, a Notary Public in and for the jurisdiction aforesaid, Jeff Reece, who made oath and stated that the following facts are true:

1. I am the senior editor of The Virginian-Pilot and, in that capacity, I assigned Scott Daugherty to cover all matters relating to the indictments of Mark Whitaker and his trial.
2. Because Mark Whitaker is a public official and because there are allegations that the charges are politically motivated, this trial is a matter of enormous public importance.
3. One of the reasons I wanted Mr. Daugherty to cover this case was so that he could develop the background and expertise to provide the most comprehensive and accurate coverage to the public. If The Virginian-Pilot is forced to assign a new reporter with no background in the case to cover this trial, it will not be able to provide as comprehensive, complete and accurate reportage as it would be able to provide if Mr. Daugherty were allowed to cover the trial. There is no way any other reporter can duplicate what Mr. Daugherty has learned over his months of investigation.
4. The Virginian-Pilot feels that it has a public responsibility to provide as much information about a criminal trial as it can possibly obtain. It believes it has a responsibility to the public to allow a defendant who protests his innocence to make that assertion public. It feels



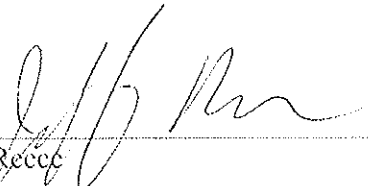
that it does not fulfill journalistic responsibility by reporting only on that which is contained in the indictment.

5. If The Virginian-Pilot had obtained any information indicating or tending to suggest that Mark Whitaker was guilty of these crimes, it would have been included in the published articles. The newspaper's responsibility is not to favor the prosecution or the defense but is to provide the public with the most complete and accurate information possible.


6. If the result of interviewing a criminal defendant is that the newspaper's ability to cover the criminal trial is significantly impaired because it loses the ability to utilize its reporter in coverage, this creates a significant deterrent to the newspaper's being able to provide balanced information to the public. The newspaper is faced with the Hobson's choice of allowing the interview to be conducted by a reporter with no background and thus no ability to conduct a full and appropriate interview or to lose the ability to utilize the reporter with the background and expertise in the coverage of the trial.

7. This criminal trial and the outcome will be one of the most important stories we publish this year. Either a public official will be convicted of felonies or a public official will be exonerated in circumstances where he alleges improperly asserted politically motivated charges.

And further the affiant sayeth not.


Jeff Reece

The foregoing Affidavit was acknowledged before me this 20th day of March, 2018, by Jeff Reece, an individual known unto me or who has produced sufficient and appropriate identification.


Notary Public

My Commission expires: 1/31/22

My Registration No.: 7318943

