

# SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING  
100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
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## **Granted Appeal Summary**

### **Case**

CITY OF NEWPORT NEWS v. COMMONWEALTH OF VIRGINIA, ET AL.  
(Record Number 210827)

### **From**

Circuit Court of the City of Newport News; M. P. Spencer, Judge.

### **Counsel**

Darlene P. Bradberry and Stephen A. Grim (Office of the City Attorney for Newport News) for appellant.

Brett A. Spain and Bethany J. Fogerty (Wilcox & Savage, P.C.); Brandon T. Wroblewski and Bernadine L. Gerlach (Suffolk Office of the Commonwealth's Attorney); and Timothy G. Clancy and Lisa A. Mallory (Clancy & Walter, P.L.L.C.) for appellees.

### **Assignments of Error**

1. After overruling the City of Newport News's motion to quash the Commonwealth's subpoena and entering an order (1) requiring the City to file under seal the City's confidential records containing compelled statements made by City employees and protected by the U.S. Constitution under *Garrity v. N.J.*, 385 U.S. 493, 87 S. Ct. 616 (1967), and its progeny, and (2) only allowing counsel who were parties to the instant criminal case to access the City's produced records for inspection and use by counsel, which documents "shall not be accessible to any other party" and shall remain under seal until offered into evidence or unsealed by the court pursuant to Rule 3A:12(b)(2), the lower court erred and abused its discretion in refusing to hear, on standing grounds, the City's motions brought pursuant to Rule 3A:12(b)(2) and (3) to protect the City's confidential records from disclosure to a subsequent intervening party, the Media, who argued that the City's sealed records had become judicial records when said documents were referenced in a sealed pleading and were re-filed under seal as an attachment to a pleading, and which sealed records had not been afforded the protections provided by Rule 3A:12(b)(2) and *Kastigar v. United States*, 406 U.S. 441 (1972), and the disclosure of such records would cause undue prejudice to the City.
2. The lower court erred in: (1) entering a Rule 3A:12(b) order that purportedly allowed a party to "use" the City's sealed confidential records; (2) allowing a party to re-file such records under seal in conjunction with its pleadings and reference said records in its pleadings, when

such records had not been admitted into evidence or ordered unsealed by the lower court as required by the Rule; and (3) failing to correct said “use” upon the City’s Rule 3A:12(b)(3) motions asking for relief and showing undue prejudice.