

VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

COMMONWEALTH OF VIRGINIA)

v.)

JESSE L. MATTHEW, JR.)

CR15000052 – CR15000055
CR15000247
Response to Defense Motion No. 0005

FILED

15 AUG 13 PH 1:59

CIRCUIT COURT OF ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____ DC

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION TO BAR TOKENS OR INSIGNIA FROM THE COURTROOM

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and respectfully moves this Court to take the Defense motion under advisement until such time as objectionable behavior may occur. In the alternative, the Commonwealth respectfully moves this Court to deny Defendant's motion in part. In support, the Commonwealth asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014, after an extensive search effort engaging hundreds of volunteers, Hannah's remains were discovered in Albemarle County, Virginia. The Defendant's Motion to Bar Tokens or Insignia from the Courtroom is currently before the Court.

The Virginia Supreme Court has upheld the decision to allow tokens and insignia inside the courtroom during a capital murder trial. Johnson v. Commonwealth, 259 Va. 654 (2000). In Johnson, some members of the gallery had worn "campaign-sized" buttons bearing the victim's photograph. Id at 676. The defense objected at the start of the trial, and the judge ordered that the spectators not display the buttons where the jury could observe them. Id. The court upheld

this ruling, finding no that the defense had made no showing of actual prejudice to the defendant. Id. Likewise, in another trial for capital murder, spectators wore badges of three and five-eighths inches in diameter bearing a photograph of the victim. Cooper v. Commonwealth, 0819-03-4, 2004 WL 1876416 (Va. Ct. App. Aug. 24, 2004) (unpublished). The Court of Appeals did not find that there was anything inherently prejudicial about displaying the buttons, and found that the trial court did not abuse its discretion in allowing them in the courtroom. Id.

Freedom of expression and speech, including the remembrance of the victim in this case, is important to members of the community and is protected by the First Amendment of the United States Constitution. A courthouse is not a public forum, and the Court certainly has the power to restrict expression within the courtroom in order to ensure a fair and orderly trial. However, Defendant has not identified any prejudicial or disorderly expression or displays in the hearings that have occurred in this case. It would be premature to issue a blanket order banning all such expressions or displays within the courtroom before any prejudicial expression has been identified and before a jury has been empaneled.

A bar on all "tokens or insignia that show support for a party" is exceptionally broad and encompasses forms of expression that pose no risk of prejudice to Defendant. The Commonwealth is aware of small lapel pins measuring less than one square inch and bearing the initials "HG." The Commonwealth is also aware of small ribbons worn in remembrance of Hannah Graham and as well as other victims. These items are small, barely visible, and not inherently prejudicial. If the Court grant's the Defendant's broad motion, any ensuing order would be violated, for example, by a member of the public wearing a small, perhaps personally meaningful, but otherwise unobtrusive item on their clothing and would require the Court to investigate the meaning of each and every item displayed by an individual at trial. Additonally,

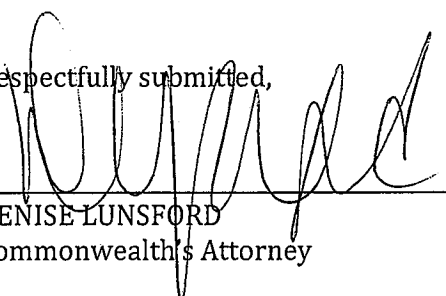
such an order could be violated by the display of the Virginia and United States flags or by members of law enforcement in uniforms and/or badges.

The risk of prejudice to the Defendant from any of these tokens is virtually zero—the jury is unlikely to even notice them, much less understand their significance and hold this against Defendant – and the intrusion required on the part of the Court would be significant. If such tokens become so numerous or obvious as to create a risk of prejudice, the Court may at that point address the issue through ordering removal of the tokens, or by preventing people wearing such tokens from sitting in the first row of the gallery without an infringement on First Amendment rights. There is no need for a blanket order barring all tokens and insignia.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court take the Defendant's motion under advisement, or, in the alternative, deny it in part.

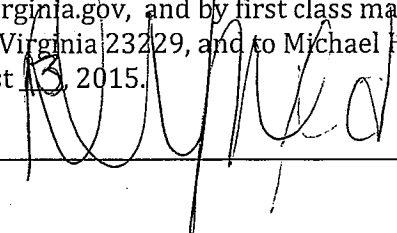
Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing was sent to Douglas A. Ramseur, by electronic mail at dramseur@cde.idc.virginia.gov, and by first class mail, postage pre paid at 1602 Rolling Hills Drive, Suite 212, Henrico, Virginia 23229, and to Michael Hemenway, by electronic mail at hemenwaylaw@aol.com on August 13, 2015.



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COMMONWEALTH OF VIRGINIA)
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CR15000052 – CR15000055
CR15000247
Response to Defense Motion No. 0013

FILED

15 AUG 13 PM 1:59

CIRCUIT COURT CLERK'S OFFICE
ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____ D.C.

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION FOR AN ORDER
PROHIBITING EXTRAJUDICIAL STATEMENTS

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and moves this honorable Court to deny Defendant's motion in part. In support of her response the Commonwealth states as follows:

The Commonwealth is in agreement that all defendants are to be afforded a fair trial. Furthermore, the Commonwealth is aware of the applicable Virginia Rules of Professional Conduct, including Rule 3.6 which states:

- (a) A lawyer participating in or associated with the investigation or the prosecution or the defense of a criminal matter that may be tried by a jury shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that the lawyer knows, or should know, will have a substantial likelihood of interfering with the fairness of the trial by a jury.
- (b) A lawyer shall exercise reasonable care to prevent employees and associates from making an extrajudicial statement that the lawyer would be prohibited from making under this Rule.

To be clear, however, lawyers are not prohibited from making any public comments at all and there is limited authority for such an order. Additionally, a prosecutor while seeking justice and protecting a defendant's right to a fair trial has additional obligations to the community which he or she serves and must balance. In fact the *National Prosecution Standards* issued by

the National District Attorney's Association acknowledge these additional obligations on a prosecutor:

The prosecutor should strive to protect both the rights of the individual accused of a crime and the needs of citizens to be informed about public dangers and the conduct of their government. The prosecutor may provide sufficient information to the public so that citizens may be aware that the alleged perpetrator of a crime has been arrested and that there exists sufficient competent evidence with which to proceed with prosecution.

Subject to Standard 2-14.4 and applicable rules of ethical conduct, information may be released by the prosecution if such release will aid the law enforcement process, promote public safety, dispel widespread concern or unrest, or promote confidence in the criminal justice system. The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose and that serve solely to heighten public condemnation of the accused.

National District Attorney's Association National Prosecution Standards 2-14.2. Additionally Standard 2-14.1 states:

The prosecutor should seek to maintain a relationship with the media that will facilitate the appropriate flow of information to and from the public. An appropriate and professional relationship with the media is necessary to promote public accountability and transparency in government.

The Commonwealth has no intention of making or permitting its agents to make public statements that would hinder a fair trial in this matter. However, the Commonwealth should be allowed to address questions and concerns from the media that do not infringe upon Defendant's right to a fair trial. Comments concerning the status of the case or the rulings of this Court would ensure that the public is adequately and correctly informed about the business of its courts and public officials. The Defense cites no authority indicating otherwise or in which such an order has been granted.

This is not the first high profile case tried by this Commonwealth Attorney's Office or this attorney. The previous high profile cases have been tried without a gag order and have done so without infringing on a fair trial for the defendants involved. As such, there is no need for a

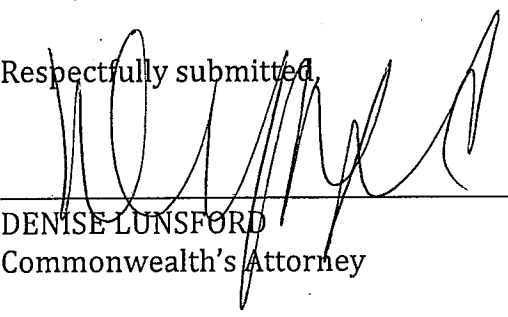
gag order in this case. Furthermore, the Commonwealth is not aware of any "inflammatory or false information" disseminated by anyone associated with the investigation or prosecution of this matter.

Defendant cites only one comment, made by the Albemarle County Sheriff, which he believes to be improper. See Defense Motion No. 13, pg. 1-2. It is important to note that the Albemarle County Sheriff is not involved, and has not been involved, in the investigation of this matter. Additionally, the Attorney for the Commonwealth was not aware of the statement until it was made and broadcast in the media. Accordingly, the Commonwealth does not concede that this statement violated any rules of professional conduct. Finally, the Attorney for the Commonwealth has undertaken to ask law enforcement involved in this case to avoid making any statements to the media after the charging decisions were made and believes that such request has been honored.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant's motion in part.

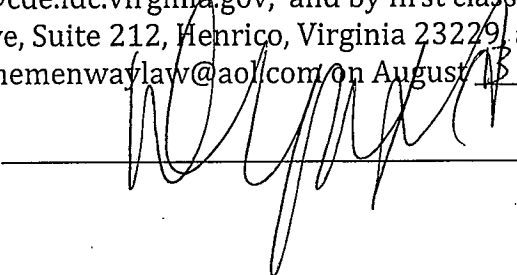
Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

CERTIFICATE

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CR15000247
Response to Defense Motion No. 000

FILED

15 AUG 13 PM 2:00

CIRCUIT COURT CLERK OF THE
ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____

**COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION TO REQUIRE THE
COMMONWEALTH TO PROVIDE A BILL OF PARTICULARS SPECIFYING THE
STATUTORY AGGRAVATOR OR AGGRAVATORS THE COMMONWEALTH
INTENDS TO RELY ON IN THE EVENT OF A CAPITAL SENTENCING
PROCEEDING**

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and respectfully moves this Court to deny Defendant's motion. In support, the Commonwealth asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014, after an extensive search effort engaging hundreds of volunteers, Hannah's remains were discovered in Albemarle County, Virginia. The Defendant's Motion to Require the Commonwealth to Provide a Bill of Particulars Specifying the Statutory Aggravator or Aggravators the Commonwealth Intends to Rely On in the Event of a Capital Sentencing Proceeding is currently before the Court.

Defendant's requested bill of particulars goes far beyond what is provided for by law, and represents an impermissible attempt to bind the Commonwealth to a particular theory of the case at a very early stage in the proceeding, while investigation is ongoing and prior to any

presentation of evidence. The Commonwealth cannot predict with certainty what evidence will be uncovered during continued investigation or adduced at trial, and the theory of punishment it relies on may rest on which evidence is presented and admitted.

The Commonwealth is not required to commit to a theory of punishment by a bill of particulars. According to the Virginia Supreme Court, “[t]he purpose of a bill of particulars is to state sufficient facts regarding the crime to inform an accused in advance of the offense for which he is to be tried. He is entitled to no more.” Swisher v. Commonwealth, 256 Va. 471, 480 (1998) (quoting Hevener v. Commonwealth, 189 Va. 802, 814 (1949)) (emphasis added). Sufficient facts were alleged in the indictment in this case such that Defendant is aware of the crime for which he is charged and no bill of particulars is required. See Morrisette v. Warden of Sussex I State Prison, 270 Va. 188, 613 S.E.2d 551 (2005) (“a defendant charged with capital murder is not entitled to a bill of particulars delineating the Commonwealth's intended aggravating factors when the indictment specifying the crime gives the defendant notice of the nature and character of the offense”); see also Roach v. Commonwealth, 251 Va. 324, 339-340, cert. denied, 519 U.S. 951 (1996); Strickler v. Commonwealth, 241 Va. 482, 490-91, cert. denied, 502 U.S. 944 (1991).

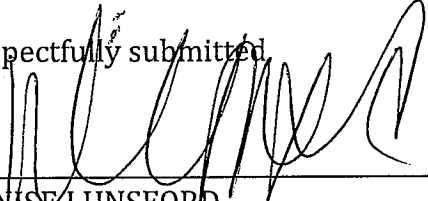
The Virginia Supreme Court has consistently rejected Defendant's argument that a person charged with capital murder is entitled to a bill of particulars specifying aggravating circumstances and proof. It has made clear that “the Commonwealth need only allege the elements of capital murder set forth in Code § 18.2-31 without providing the accused with notice of additional allegations or a bill of particulars regarding aggravating factors.” Juniper v. Commonwealth, 271 Va. 362, 389 (2006); see also Muhammad v. Commonwealth, 269 Va. 451 (2005).

Defendant argues that in order to make constitutional challenges to the vileness
aggravator, he must be informed of which "constituent part" of the aggravator the
Commonwealth intends to prove. See Defense Motion No. 11, pg. 4. This precise argument has
been considered and rejected by the Virginia Supreme Court. Williams v. Commonwealth, 248
Va. 528, 538 (1994) (finding that "due process does not require that the Commonwealth limit
itself to a pretrial construction of the character of [the defendant's] conduct."). At this point the
Commonwealth is not required to restrict its theories of the case.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the
Commonwealth respectfully requests that the Court deny Defendant's motion.

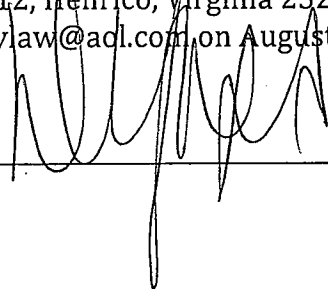
Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

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JESSE L. MATTHEW, JR.)

CR15000052 – CR15000055

CR15000247

Response to Defense Motion No. 0012

FILED

15 AUG 13 PM 2:00

CIRCUIT COURT
ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____ P.C.

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION FOR AN ORDER TO ALLOW DEFENSE COUNSEL TO EXAMINE EVIDENCE OUTSIDE THE PRESENCE OF THE COMMONWEALTH'S ATTORNEY AND CASE INVESTIGATORS

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and respectfully moves this Court to deny Defendant's motion. In support, the Commonwealth asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014, after an extensive search effort engaging hundreds of volunteers, Hannah's remains were discovered in Albemarle County, Virginia. The Defendant's Motion for an Order to Allow Defense Counsel to Examine Evidence Outside the Presence of the Commonwealth's Attorney and Case Investigators is currently before the Court.

It is the established procedure of the Albemarle County Police Department that a sworn law enforcement officer be present while any evidence is being examined and evidence technicians are not equipped to fill this role. Evidence technicians receive sealed evidence containers and are responsible for filing and recording the receipt of those

containers, as well as producing the containers when a lawful request is made. Evidence technicians rarely open sealed evidence containers. They have no personal knowledge of what is inside the containers. They are not generally familiar with the significance of a piece of evidence to the case at hand. They therefore are not equipped to determine whether a piece of evidence is being handled in a way that may damage or alter it, whether intentionally or inadvertently. For these reasons an officer familiar with the case must be present in order to maintain the integrity of the evidence.

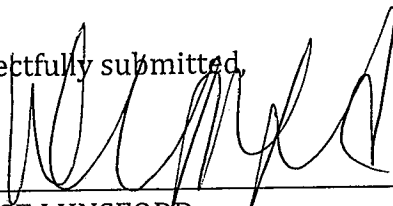
Defendant has identified no legal support for his allegation of a right for his counsel to view the evidence against him in private, and there is a strong public policy interest in having a sworn law enforcement officer familiar with the case present, thereby maintaining the integrity of the evidence. The defense team is able to leave the room where they are examining evidence, confer privately, and return. The defense team is also allowed to photograph the evidence. The Commonwealth disagrees with the contention that the defense team's body language or facial expressions would provide "tremendous insight" into their case strategy. See Defense Motion No. 12, pg 3. Even if this were true, Defendant has not identified a right to view evidence without being observed, nor any special circumstances justifying an exception to the well-established law enforcement procedures regarding the viewing and safeguarding of evidence.

Granting the Defendant's would be highly unusual and unprecedented, never having been ordered in the recollection of this attorney in any case, and would potentially place members of the defense team in the chain of custody. This could result in a situation which would require the defense team or particular members of that team being called as witnesses at trial should anything happen to the evidence for any reason.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant's motion.

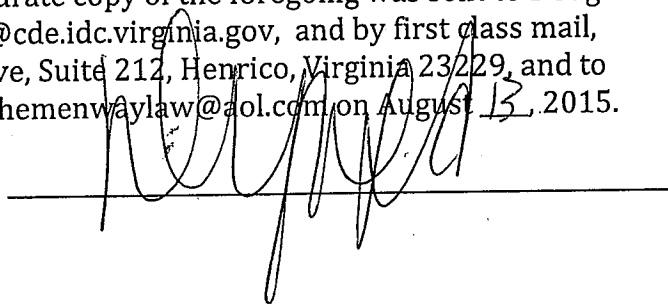
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COMMONWEALTH OF VIRGINIA)

v.)

JESSE L. MATTHEW, JR.)

CR15000052 – CR15000055
CR15000247
Response to Defense Motion No. 0002

FILED

15 AUG 13 PM 2:07

CIRCUIT COURT CLERK
ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____

COMMONWEALTH'S RESPONSE TO DEFENDANT'S ASSERTION OF FOURTH, FIFTH AND SIXTH AMENDMENT RIGHTS AND REVOCATION OF ANY PRIOR WAIVERS

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and responds to Defendant's assertion of certain rights. The Commonwealth responds as follows:

The Defendant was arrested on August 24, 2014 in Galveston, Texas on an outstanding Virginia warrant for Abduction with the Intent to Defile. After the Defendant's arrest and extradition to Virginia, the investigation of this matter continued. In February, 2015, the Defendant was indicted on charges of Abduction with the Intent to Defile and first degree murder. Following additional investigation, the Defendant was indicted in April, 2015 on the charge of Capital Murder. Law enforcement continues its investigation of this matter even today.

The Commonwealth recognizes and respects Defendant's right to counsel under the Fifth and Sixth Amendments and right to be free from unreasonable search and seizure under the Fourth Amendment. However, the Defendant's assertion set forth in Defense Motion No. 2 is inconsistent with the rights provided in the United States Constitution and applicable case authority and is overbroad.

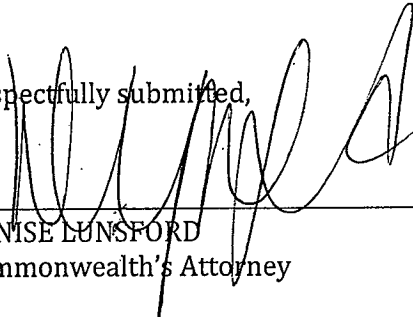
The Sixth Amendment right to counsel is specific to offenses for which the defendant has been formally charged, and does not apply to offenses for which a defendant has not been arrested or charged. Texas v. Cobb, 532 U.S. 162 (2001). Likewise, courts have not recognized anticipatory invocations of the Fifth Amendment right to counsel. See McNeil v. Wisconsin, 501 U.S. 171 (1991). If or when the Commonwealth seeks to interrogate Defendant regarding a particular non-charged offense, he will then be entitled to an advisement of his right to counsel and may himself invoke that right. See Miranda v. Arizona, 384 U.S. 436 (1966). The Commonwealth therefore does not acknowledge any anticipatory invocation of Defendant's right to counsel with respect to any offenses not charged in this case.

With regard to Defendant's anticipatory assertion of his right to be free from unreasonable search and seizures pursuant to the Fourth Amendment, the Commonwealth has similar concerns as those set forth in the previous paragraph. In the event that law enforcement, through its continued investigation of this matter, determines that additional searches are necessary those searches and any ensuing seizures will be pursuant to law and consistent with the United States Constitution, statutory requirements, and applicable case law. It should also be noted that the Defendant has a reduced expectation of privacy as a result of his incarceration.

Defendant is currently in the custody of law enforcement and housed at the Albemarle-Charlottesville Regional Jail. He is transported to and from the ACRJ by the Albemarle County Sheriff's Department. Although paragraph 6 of Defendant's Motion No. 2 asserts Defendant's "rights regarding not speaking with any person on any subject" including members of any law enforcement agency, such assertion is impractical and over reaching. Non-interrogatory communication between Defendant and law enforcement officers or other government officials, such as correctional officers or Sheriff's Deputies, is a necessary and incidental part of the

Defendant's custody. The Commonwealth is not aware of any authority which prohibits such communication. In fact, an instruction to law enforcement officers, specifically Deputies with the Albemarle County Sheriff's Department, to refrain from any communication with Defendant would act to severely restrict if not eliminate the ability of the Sheriff's Department to provide necessary transportation, safety and care to the Defendant during the course of his appearances in Court and to do so in a manner that benefits the Defendant. Notwithstanding the foregoing issues, the Commonwealth will ask that the Albemarle County Sheriff instruct his Deputies to restrict communication with the Defendant to matters which would not violate his rights to counsel.

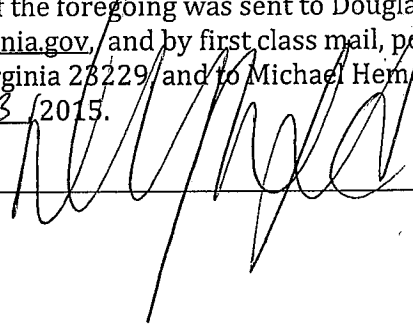
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FILED

15 AUG 13 PM 2:00

CIRCUIT COURT CLERK
ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____ 06

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION FOR JESSE L. MATTEW, JR., TO BE PRESENT

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and requests that Defendant's motion to be present at judicial proceedings be denied in part. In support, the Commonwealth asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014 after an extensive search effort engaging hundreds of volunteers, Hannah's remains were discovered in Albemarle County, Virginia. The Defendant's Motion to be Present at various stages of the proceedings against him is currently before the Court.

The Commonwealth recognizes Defendant's right to be present during judicial proceedings. The Commonwealth objects to Defendant's motion only to the extent that it is exceptionally broad, and may encompass meetings, hearings, and proceedings which the Defendant does not have a recognized right to attend. Defendant asserts the right to be present at "all aspects of this case" including "all other hearings and judicial proceedings of any kind which affects or involves this criminal prosecution." Defense Motion 3, pg. 5. This broad assertion of

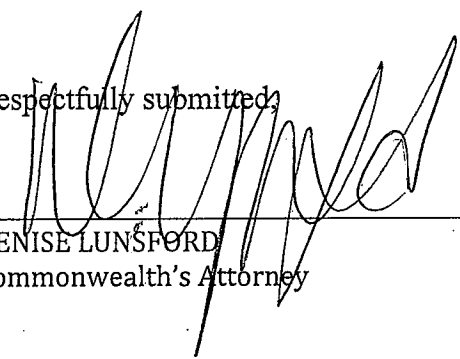
rights appears to encompass proceedings which Defendant does not have a recognized right to attend, including certain attorney meetings, examination of discovery or evidence, or proceedings in other matters which somehow affect this case.

The Commonwealth therefore respectfully requests that any order the Court issues be limited to formal judicial proceedings in this case only.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant's motion in part.

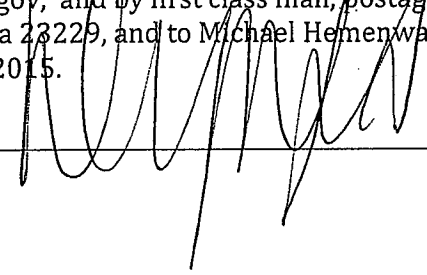
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Response to Defense Motion No. 0004

FILED

15 AUG 13 PM 2:00

CIRCUIT COURT CLERK
ALBEMARLE COUNTY, VA
DEBRA M. SHIFF, CLERK

BY: _____

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION TO PRECLUDE DEFENDANT FROM BEING SHACKLED IN PUBLIC AND TO ALLOW DEFENDANT TO APPEAR IN HIS PERSONAL ATTIRE

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and respectfully moves this Court to deny Defendant's motion in part. In support of this motion, the Commonwealth asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014 after an extensive search effort engaging hundreds of volunteers, Hannah's remains were discovered in Albemarle County, Virginia. The Defendant's Motion to Preclude Defendant From Being Shackled in Public and to Allow Defendant to Appear in his Personal Attire is currently before the Court.

Defendant cites numerous cases for the proposition that a defendant should not appear shackled in front of the jury, and should be allowed to wear court-appropriate personal clothing in front of the jury. The Commonwealth does not object to this request, and agrees that Defendant should not appear before the jury in unreasonable restraints or a jail or prison uniform. The Commonwealth asserts, however, that the Albemarle County Sheriff's Department has certain policies and procedures in place to ensure the safety of Deputies, Court personnel, the

public and the Defendant. Such policies and procedures necessarily include the use of some type of restraint on the Defendant, even if not what might traditionally be thought of as “shackles”, as well as particularized attire whenever he is not within the confines of the Albemarle-Charlottesville Regional Jail. While those policies likely include allowing a Defendant to appear at a jury trial in “street” clothes, the policies with regard to the use of some necessary and discreet restraints must be respected in the interest of safety.

The Commonwealth does object to the motion to preclude the Defendant from generally being shackled in public and the motion that he be allowed to wear personal clothing in public, when he appears outside the view of the jury and at proceedings prior to a trial. Defendant cites no case or law requiring the granting of such a motion. Denying the motion with regard to “public” appearances prior to a jury trial would not prejudice Defendant and granting such a motion would create an unnecessary security risk.

There is no prejudice caused to the defendant when he appears in shackles and a jail or prison uniform outside the view of the jury. Prior to trial, prospective jurors will not view Defendant in person or view images of him taken while in Court. The Court has not allowed photography inside the courtroom. Every effort is made to ensure that inmate transfers to and from the courthouse are made out of the view of the public.

Furthermore, numerous photographs of Defendant wearing shackles and a prison uniform are already widely available, stemming from his arrest and extradition from Texas and his recent trial in Fairfax County. Even in the unlikely event that new photographs emerged of Defendant wearing shackles and a prison uniform, this would not cause Defendant any additional prejudice.

A security risk is created every time a prisoner is released from shackles and identifiable jail or prison clothing. Among other things, the risk of introducing contraband into a secure environment increases. There must be some particular, heightened security risk to justify a

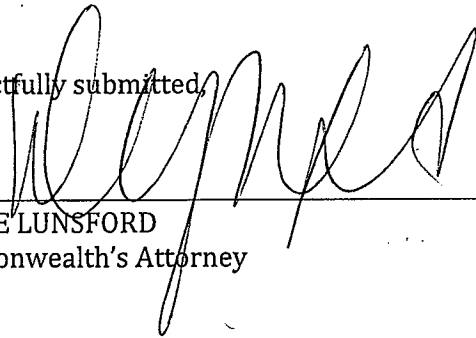
defendant appearing *in front of the jury* in shackles. See Deck v. Missouri, 544 U.S. 622, 629 (2005). However no such requirement exists when the defendant appears at proceedings where the jury is not present. Defendant offers no convincing justification for this increased security risk when Defendant is outside the view of the jury. Additionally, such accommodations are not made for other defendants during the course of routine court appearances.

The Commonwealth therefore requests that the Court require Defendant to be removed from traditional shackles and allowed to wear personal clothing only when appearing before the jury. The Commonwealth requests that at all other appearances the Albemarle County Sheriff's Department be permitted to determine the restraints and attire necessary for the Defendant.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant's motion in part.

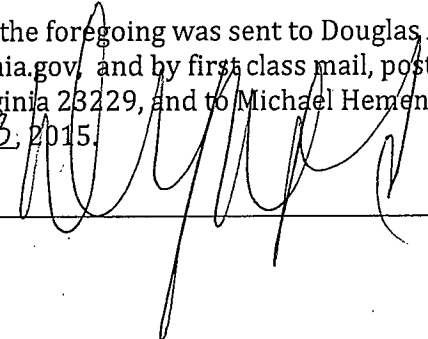
Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

CERTIFICATE

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VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

COMMONWEALTH OF VIRGINIA)
v.)
JESSE L. MATTHEW, JR.)

CR1500052 – CR1500055
CR15000247
Response to Defense Motion No. 0006

FILED

15 AUG 16 PM 2:00

CIRCUIT COURT OF ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____ D.C.

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION FOR AN ORDER DESIGNATING A JUDGE TO HEAR EXPERT FUNDING REQUESTS

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and respectfully requests that the Defense motion be denied. In support, the Commonwealth asserts the following:

By statute, Virginia permits defendants in capital cases to make certain requests for funding or expert assistance *ex parte*. Prior to allowing a defendant to approach any judge *ex parte*, the statute requires a particularized showing. In relevant part, Virginia Code § 19.2-264.3:1.3(A) provides that "No *ex parte* proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made in an adversarial proceeding before the trial judge demonstrating a particularized need for confidentiality." This section applies only to capital cases, so the fact that this is a capital case, standing alone, does not establish a "particularized need for confidentiality." Furthermore, the statute provides that a judge be designated "to hear an *ex parte* request for the appointment of a qualified expert..." Virginia Code § 19.2-264.3:1.3(A).

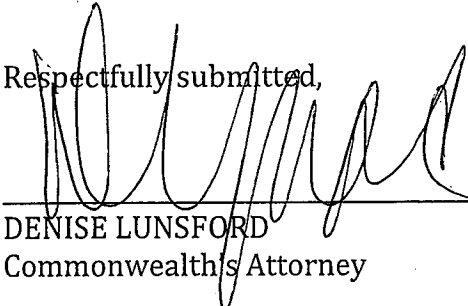
Each motion requesting such assistance must be brought before the Court with some particularity allowing the Court to determine the need for a hearing outside the presence of the Commonwealth and the public. Such requests are to be considered on a case by case basis after notice and an opportunity to be heard by the Commonwealth. The statute does not contemplate the appointment of a judge designate to hear any such request the defense may deem appropriate without an adversarial hearing and a particularized showing of need for confidentiality. Such particularized showing on each such motion serves the interest of providing open and public access to trials.

As the Defendant has not identified the particularized need for confidentiality, the Commonwealth respectfully requests that Defendant's motion be denied.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant's motion.

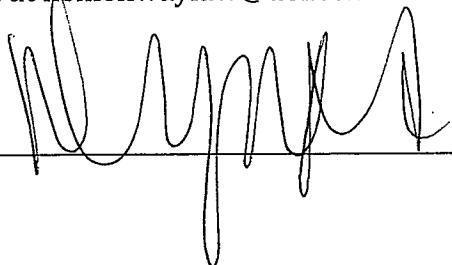
Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

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VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

COMMONWEALTH OF VIRGINIA)
)
v.)
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JESSE L. MATTHEW, JR.)
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)

CR15000052 – CR15000055
CR15000247
Response to Defense Motion No. 0007

FILED

15 AUG 13 PH 2:00

CIRCUIT COURT CLERK
ALBEMARLE COUNTY VA
DEBRA H. SHIPP, CLERK

BY: _____ D P

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION TO PRESERVE ALL EVIDENCE

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and requests that Defendant's motion to preserve all evidence be denied. In support, the Commonwealth asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014 after an extensive search effort engaging hundreds of volunteers, Hannah's remains were discovered in Albemarle County, Virginia. The investigation of this matter has continued uninterrupted since the day Hannah was reported missing. The Defendant's Motion to Preserve All Evidence is before the Court.

The Commonwealth's Attorney's Office requests the preservation of and the law enforcement offices in its jurisdiction routinely preserves evidence collected during the course of an investigation as a matter of practice. As a matter of law, preservation and disclosure of all favorable evidence material to the defendant's guilt or punishment is required. California v. Trombetta, 467 U.S. 479 (1984); see also O'Dell v. Commonwealth, 234 Va. 672 (1988)

(applying Trombetta in a capital murder case). Furthermore, after a conviction for capital murder, the Commonwealth is required under Virginia Code § 192.270.4:1(B) to preserve human biological evidence upon request, when the defense specifically identifies that evidence. Defendant's request goes far beyond the requirements of the law, to the extent that it would be practically impossible to comply with. Defendant cites no authority or special circumstances that directly support this request.

In support of his motion, Defendant contends that this Court should be guided, not by Trombetta, but by United States v. Bohl, 25 F.3d 904 (10th Cir. 1994), and United States v. Cooper, 983 F.2d 928, 931 (9th Cir.1993). However, neither of these cases depart from the holding of Trombetta, and indeed they cite and apply Trombetta extensively and in a straightforward manner. In both cases, the defense requested to preserve or examine *specific items* of evidence, putting the government on notice of their potentially exculpatory nature, and the government subsequently destroyed that evidence. Bohl 25 F.3d at 911; Cooper 983 F.2d at 931. Both courts found the destruction of evidence be a violation of Trombetta, and both indictments were dismissed. Bohl 25 F.3d at 914; Cooper 983 F.2d at 933. These two cases demonstrate that the Trombetta standard and its remedies are adequate and powerful protections of a defendant's rights—no additional court order is required. Moreover, none of these cases are directly applicable to the motion at hand. The defense has not identified specific items of evidence to be preserved, and has not identified any evidence it believes has been destroyed in violation of Trombetta. Defendant asks for a “remedy” without identifying any actual or impending violation of the law.

A federal district court in Alexandria, interpreting Virginia and federal law, considered a defendant's motion to preserve all evidence that could potentially relate to the case, in the

context of a habeas petition after a state conviction for capital murder. Orbe v. True, 201 F. Supp. 2d 671, 677 (E.D. Va. 2002) (Aff'd, 82 Fed. Appx. 802, 4th Cir., Dec. 11, 2003). The court first noted that the motion went far beyond what was required by Trombetta or Va. Code § 19.2.270.4:1(B). Id. at 676. In fact, since the defense failed to identify specific items of evidence to be preserved, the court found that neither Trombetta nor § 19.2.270.4:1(B) applied at all. Id. In denying that motion, the court wrote:

Such an order is so excessively broad and vague as to make it difficult, if not impossible, to ensure compliance. Moreover, in the absence of specific, substantial allegations that exculpatory evidence is being, or may be, destroyed, such a broad and vague order would place an unnecessary and impractical burden on the Commonwealth ... In sum, courts should decline to enter orders directing preservation of evidence where, as here, the requesting party fails to describe with reasonable particularity the evidence to be preserved, its materiality or exculpatory potential, and the identity of the custodian of such evidence. Orbe v. True, 201 F. Supp. 2d 671, 677 (E.D. Va. 2002)

Defendant's request extends to evidence collected and stored in other jurisdictions, of which the Commonwealth has no actual or constructive knowledge or control. See Fitzgerald v. Bass, 6 Va. App. 38, 50 (1988). The request, including for the preservation of "all physical evidence recovered from any place, area, or thing that the defendant, or alleged victim is alleged to have occupied or spent time in close proximity to" could extend to blades of grass and grains of dirt attached to material evidence recovered in other jurisdictions, some outside the Commonwealth of Virginia—the Commonwealth could not possibly comply with such a broad request. See Defense Motion No. 7, pg. 4. Nor is it required to do so.

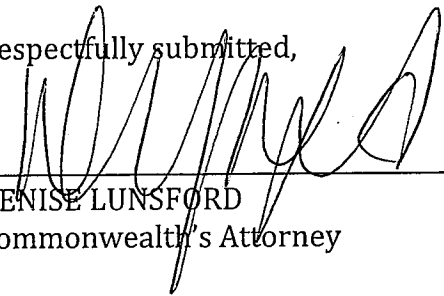
The Commonwealth recognizes and respects its duty under the law to preserve material evidence favorable to the defense, and a court order is not required to ensure compliance with this duty. Defendant does not provide any basis for ordering the Commonwealth to exceed this legal duty. Even if the Court were to broaden this legal duty, Defendant has not named the

evidence to be preserved with sufficient specificity to enable the Commonwealth to comply with the request.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant's motion.

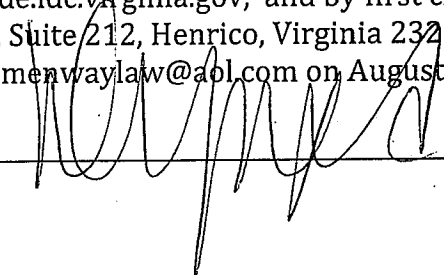
Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

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VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

COMMONWEALTH OF VIRGINIA)

v.)

JESSE L. MATTHEW, JR.)

CR15000052 – CR15000055

CR15000247

Response to Defense Motion No. 0009

FILED

15 AUG 13 PM 2:00

CIRCUIT COURT CLERK OFFICE
ALBEMARLE COUNTY, VA
DEBRA H. SHIPP, CLERK

BY: _____ D P

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION TO PRECLUDE ANY ADDITIONAL STATE TESTING OR EXAMINATION OF EVIDENCE THAT WOULD ALTER, REDUCE, OR DESTROY EVIDENCE WITHOUT NOTICE TO THE DEFENSE AND PRIOR COURT APPROVAL

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and respectfully moves this Court to deny Defendant's motion to preclude additional testing. In support, the Commonwealth asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014, after an extensive search effort engaging hundreds of volunteers, Hannah's remains were discovered in Albemarle County, Virginia. The Defendant's Motion to Preclude Any Additional State Testing or Examination of Evidence That Would Alter, Reduce, or Destroy Evidence Without Notice to the Defense and Prior Court Approval is currently before the Court.

The Commonwealth has an obligation to fully investigate crimes committed in its jurisdiction. The defense has not cited any authority, whether case law or statute, requiring the Commonwealth to seek Court approval and/or requiring an adversarial hearing in order to investigate this matter or test additional evidence currently in its

possession or which may come into its possession – which is essentially what this Motion would require of the Commonwealth. Further, the Defendant has not sufficiently demonstrated that he possesses any right to have specific physical evidence independently tested. Even if such a right exists, which the Commonwealth contests, there is no indication that such a right supersedes the Commonwealth's obligation to investigate the offenses which occurred in its jurisdiction.

The Defendant cites no specific statutory provision or case law which recognizes a right to independently test evidence. Defendant cites only Virginia Code § 9.1-1104, "Rights of Accused Person or his Attorney to Results of Investigation or to Investigation." That section provides that the Defendant is entitled to the results of testing performed by the Department or the Division of Consolidated Laboratory Services. *Id.* It further provides that Defendant may petition the court to have tests performed by the Department or Division of Consolidated Laboratory Services. *Id.* Any request for testing would be redundant and unnecessary if the Commonwealth had already conducted the testing; a simple request for the results of the tests would then be appropriate.

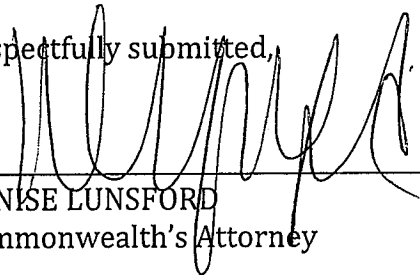
Should this motion be granted and should the Commonwealth deem it necessary to conduct further testing which would reduce, damage or destroy the evidence sample, Defendant does not state what course of action would be available to him. A motion that the evidence not be tested could prevent the discovery of potentially inculpatory or exculpatory evidence. A motion that the evidence be tested by only by a laboratory of Defendant's choosing would have no basis in Virginia statutory or case law — Va. Code § 9.1-1104 gives defendant the right only to request that the Commonwealth conduct testing.

Granting Defendant's motion would only serve to delay the investigation and prosecution of this case.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant's motion.

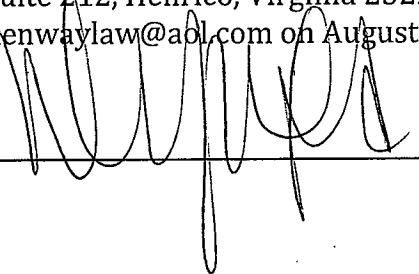
Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

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VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

COMMONWEALTH OF VIRGINIA)

v.)

JESSE L. MATTHEW, JR.)

CR15000052 – CR15000055

CR15000247

Response to Defense Motion No. 00010

FILED

15 AUG 13 PM 2:00

**CIRCUIT COURT OF ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK**

BY: _____ D.F.

COMMONWEALTH’S RESPONSE TO DEFENDANT’S MOTION TO REQUIRE THE COMMONWEALTH TO GIVE WRITTEN NOTICE OF ITS INTENT TO INTRODUCE UNADJUDICATED CRIMINAL CONDUCT IN THE EVENT OF A SENTENCING PROCEEDING

COMES NOW the Commonwealth, through her Commonwealth’s Attorney, and states that it has no objection to Defendant’s motion to require the Commonwealth to give written notice of its intent to introduce unadjudicated criminal conduct. The Commonwealth respectfully requests that the time within which such notice must be filed be established by this Court and, in support thereof, asserts the following:

The Defendant is pending trial for the abduction and subsequent killing of 19 year old Hannah Graham. Hannah Graham was last seen alive in the company of the Defendant in Charlottesville, Virginia on September 13, 2014. On October 18, 2014 after an extensive search effort engaging hundreds of volunteers, Hannah’s remains were discovered in Albemarle County, Virginia. The investigation of this matter has continued uninterrupted since the day Hannah was reported missing. The Defendant’s Motion to Require the Commonwealth To Give Written Notice of Its Intent to Introduce Unadjudicated Criminal Conduct In the Event of a Sentencing Proceeding is before this Court.

The Commonwealth agrees that, on motion by the defense, the Defendant is entitled to written notice of the Commonwealth’s intent to introduce evidence of the Defendant’s

unadjudicated criminal conduct during sentencing. The Commonwealth requests that this Court specify the time by which such notice shall be given. Further, the Commonwealth understands the continuing nature of its obligation and requests leave to amend such notice beyond the time specified by the Court should additional information become available to the Commonwealth.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth has no objection to the Defendant's motion and respectfully requests that the Court specify a time by which such notice shall be given and further that the Commonwealth be permitted to amend such notice should additional information become available.

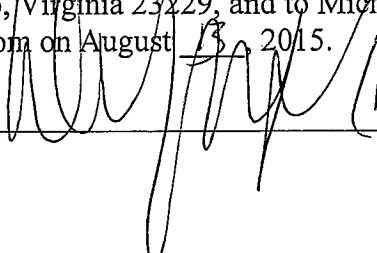
Respectfully submitted,



DEMISE LUNSFORD
Commonwealth's Attorney

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VIRGINIA:

IN THE CIRCUIT COURT OF ALBEMARLE COUNTY

COMMONWEALTH OF VIRGINIA)
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v.)
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JESSE L. MATTHEW, JR.)
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CR15000052 – CR15000055
CR15000247
Response to Defense Motion No. 0000

FILED

15 AUG 03 PM 2:00

CIRCUIT COURT, ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CLERK

BY: _____ D.C.

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION FOR THE PRESERVATION OF LAW ENFORCEMENT NOTES

COMES NOW the Commonwealth, through her Commonwealth's Attorney, and requests that Defendant's motion for the preservation of law enforcement notes be denied. In support, the Commonwealth asserts the following:

The Commonwealth's objections to this Motion are substantially the same as her objections to Defense Motion No. 7. See Commonwealth's Response to Defense Motion No. 7. The cases cited by Defendant in his motion demonstrate that the Commonwealth has existing obligations to preserve and disclose certain pieces of evidence, and that severe sanctions exist to enforce this obligation. Defendant has failed to demonstrate why these well-established obligations to preserve evidence are insufficient in this case. Furthermore, the instant request is so broad and vague as to encompass such *de minimus* notes as lunch orders jotted down by officers during the course of the investigation. Defendant's request again lacks the specificity required to reasonably enable the Commonwealth to comply and essentially amounts to a fishing expedition.

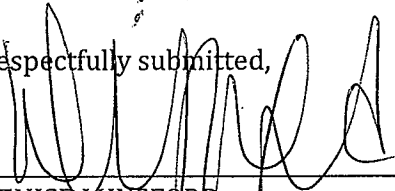
Defendant specifically requests the preservation of all notes and records relating to his arrest. Defendant was arrested in Texas and transported to Virginia by federal agents. It is broadly recognized that constructive knowledge of evidence has "not been attributed to the prosecutor

where the information was in possession of law enforcement officials of different jurisdictions.”
Fitzgerald v. Bass, 6 Va. App. 38, 50 (1988). There may be numerous notes and documents relating to Defendant’s arrest of which the Commonwealth has no actual or constructive knowledge or control, and thus no ability to preserve. Notwithstanding the foregoing, the Commonwealth has made every effort to obtain all information related to Defendant’s arrest in Texas including videos, incident reports, and other documents which are contained in the Commonwealth’s file and available to the Defense pursuant to the office’s Open File Policy.

CONCLUSION

WHEREFORE, for the reasons stated herein and for reasons stated in open court the Commonwealth respectfully requests that the Court deny Defendant’s motion in part.

Respectfully submitted,



DENISE LUNSFORD
Commonwealth's Attorney

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