

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

<b>COMMONWEALTH OF VIRGINIA</b>	)	<b>CRIMINAL NUMBER FE-2015-430</b>
<b>VERSUS</b>	)	
<b>CHARLES STANARD SEVERANCE</b>	)	<b>INDICTMENT – CAPITAL MURDER (Counts 1 &amp; 5), USING A FIREARM IN THE COMMISSION OF A FELONY (Counts 2, 4, 6, and 8), MALICIOUS WOUNDING (Count 3), FIRST DEGREE MURDER (Count 7), POSSESSION OF A FIREARM BY A CONVICTED FELON (Counts 9 and 10)</b>

**ORDER**

On September 17, 2015, Bryan Porter, the Commonwealth’s Attorney, David Lord, the Senior Assistant Commonwealth’s Attorney, Marc Birnbaum and James Entas, the Assistant Attorneys General, CHARLES STANARD SEVERANCE, the Defendant, Megan Thomas, Christopher Leibig, and Joseph King, Counsel for the Defendant, and David Warrington, Counsel for “Local News Media”, appeared before this Court. The Defendant is indicted for the felonies of CAPITAL MURDER (Counts 1 & 5), USING A FIREARM IN THE COMMISSION OF A FELONY (Counts 2, 4, 6, and 8), MALICIOUS WOUNDING (Count 3), FIRST DEGREE MURDER (Count 7), POSSESSION OF A FIREARM BY A CONVICTED FELON (Counts 9 and 10) and he appeared while in custody.

This matter came before the Court this date for pre-trial motions. For the reasons stated on the record, the Court enters the following ORDERS:

- 1. Defendant’s Motion for Admission of Mental Health Testimony:** This motion is GRANTED. Dr. William Stejskal is permitted to testify, in accordance with the limitations prescribed by the Court.
- 2. Defendant’s Renewed Motion to Admit Evidence of Third Party Guilt:** This motion is GRANTED with respect to Jim Dunning. This Order reflects no finding or judgment by the Court that Jim Dunning was involved in the murder of Nancy

Dunning. Rather, this Order reflects only a determination by the Court that the defense has met the legal threshold under Weller v. Commonwealth, 16 Va. App. 886 (1993), Ramsey v. Commonwealth, 63 Va. App. 341 (2014), and other cases, for the admission of third party guilt evidence. As the Virginia Court of Appeals stated in Ramsey, 63 Va. App. At 353-354: “The right ‘to call for evidence in [one’s] favor’ is guaranteed by the Virginia Constitution. ‘In Virginia, evidence that a crime was actually committed by someone other than the accused is admissible for the purpose of generating a reasonable doubt of the guilt of the accused.’ Evidence tending to show that someone other than the defendant committed the crime generally raises a factual question for the jury. A defendant is entitled to present his version of the facts along with that of the prosecution so the jury may decide where the truth lies.” (internal citations omitted.) This Order does not resolve the relevance or admissibility of each item of proffered evidence, which shall be decided at trial.

3. **Defense Motion to Bifurcate Defendant’s Arraignment:** This motion is DENIED. The Court previously asked the defense whether the Defendant wished to be arraigned in the presence of the sworn jury or outside the presence of the jury. The Defendant requested to be arraigned in part outside the presence of the jury and in part in the presence of the jury. The Court held that the Defendant’s arraignment would not be bifurcated and that the Defendant could select whether to be arraigned either before the jury or outside the jury’s presence. In light of that ruling, the Defendant requested to be arraigned outside the jury’s presence. By agreement of both parties and the Court, the arraignment shall take place on October 1, 2015.
4. **Defendant’s Motion for Exculpatory Evidence:** This motion is MOOT, in light of the representations made by the parties.
5. **Commonwealth’s Motion to Exclude Expert Testimony from Ben Fornshell and Lars Daniel:** The motion is GRANTED in part and DENIED in part. It is GRANTED to this extent: Neither Mr. Fornshell or Mr. Daniel will be permitted to testify that their review of the Defendant’s internet activity meets the definition of “a troll” or the “act of trolling.” The Court finds that this would invade the province of the jury. It is DENIED to this extent: Either Mr. Fornshell or Mr. Daniel, but not both, will be permitted to define for the jury the term “troll” or “trolling” as that term

is used in internet parlance. Without objection from the Commonwealth, Mr. Daniel will be permitted to testify to his forensic analysis of the digital images of all of the computers and phones seized from the defendant with respect to the absence of searches for specific and relevant search terms. The Court instructed the parties to confer with respect to agreeing upon the relevant search terms and, in the event they are unable to reach agreement, to present the matter to the Court for resolution on October 1.

**6. Commonwealth's Motion to Exclude Expert Testimony from Robert Weigend:**

This motion is GRANTED. The proffer made by the defense would have Mr. Weigend opining that "certain writings of Mr. Severance" are "consistent with game development." The Court finds that this would invade the province of the jury. Mr. Weigend may testify as a fact witness with regard to his personal knowledge of the Defendant's gaming activities, including the Defendant's creation and selling of a game called Mental Disorder. He may also testify to other facts relating to gaming that is relevant in within his personal knowledge. As to the scope of his factual testimony, the Defendant may choose to have this resolved at trial or on October 1.

**7. Commonwealth's Motion to Exclude Expert Testimony from Dr. Deryn Strange:**

This motion is GRANTED in part and DENIED in part. For the reasons stated on the record, the Court will permit expert eyewitness identification testimony with respect to three subjects: (1) the general theory of memory; (2) cross-racial identification; and (3) unconscious transference. Also for the reasons stated on the record, the Court will not permit expert eyewitness identification testimony with respect to seven subjects: (1) The impact of violence, stress, or a weapon on the accuracy of an identification; (2) The significance of a distinctive feature on the accuracy of an eyewitness identification; (3) The fact that memory weakens over time; (4) Best practices in lineups, such as the choice of fillers, double blind procedures, and simultaneous vs. sequential presentation; (5) The correlation between witness confidence and witness accuracy; (6) Response time; and (7) The specific identification procedures used in the instant case. The Court finds that such testimony would involve matters within the common knowledge of the jury and would also invade the province of the jury.

- 8. Defendant's Motion to Quash Subpoena Duces Tecum Filed by the Commonwealth with respect to Lars Daniel and Ann Lee Davis:** This motion is MOOT.
- 9. Defendant's Motion in Limine with Respect to Defense Witness George McKinley, Esq.:** This motion is GRANTED in part and DEFERRED in part. This motion is GRANTED to the extent that, by agreement of the parties, the Commonwealth will not inquire as to the nature of the specific criminal charges for which Mr. McKinley provided representation to the Defendant. This motion is DEFERRED to the extent that the Court will resolve at trial whether the Commonwealth is permitted to cross-examine Mr. McKinley with respect to the fact that his legal representation of the Defendant was in connection with criminal charges.
- 10. Commonwealth's Motion to Amend Expert Witness Notice:** Without objection from the Defendant, this motion is GRANTED.
- 11. Defendant's Motion for Funding of Out-of-State Witnesses:** This motion is GRANTED, in order to permit the Defendant to obtain the presence of out-of-state witnesses at the trial of this matter.
- 12. Defendant's Request for Guidance from the Court with Respect to Scheduling its Witnesses:** The Court advised the defense that it may put its witnesses on call and need not have them appear on the first day of trial.
- 13. Defendant's Motion for Funding with Respect to Copies of the Defendant's Writings:** This motion is DENIED. The Defendant requested funding for six copies of the Defendant's writings for the jury. The Commonwealth opposed the motion, asserting that providing the jury six copies of the Defendant's writings would "improperly... highlight one piece of evidence – his writings – over all other items of evidence that will be submitted to the jury." The Court agrees and the motion is DENIED.
- 14. Commonwealth's Motion to Exclude Testimony of Ann Lee Davis:** This motion is MOOT.

**15. Commonwealth's Motion to Permit Victim Impact Testimony:** In the event that the Defendant is found guilty, the Commonwealth wishes to present Victim Impact Testimony. Without objection from the Defense, this motion is GRANTED.

**16. Commonwealth's Motion to Permit Victims Who are Witnesses to Remain in the Courtroom During the Trial:** For the reasons stated on the record, and in light of Virginia Code Section 19.2-265.01, see also Hernandez-Guerrero v. Commonwealth, 46 Va. App. 366 (2005), this Motion is GRANTED, with the exception of Dorcas Franko, who the Commonwealth indicates may be asked to make an in-court identification of the Defendant. The Commonwealth does not object to the exclusion of Ms. Franko until her guilt phase testimony is complete. Should the defense seek to exclude Ms. Franko subsequent to her testimony in the Commonwealth's case-in-chief, it must renew its motion at the appropriate time.

**17. Jury Selection Plan:** The final jury selection plan is adopted, without objection.

**18. Local News Media's Request for Electronic Coverage of the Trial:** This matter is taken under advisement.

SO ORDERED, this 21 day of September, 2015.

  
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JUDGE RANDY I. BELLOWS