

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA)	CRIMINAL NUMBER FE-2015-430
VERSUS)	
CHARLES STANARD SEVERANCE)	INDICTMENT – 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)

ORDER REGARDING ELECTRONIC COVERAGE OF PROCEEDINGS

Before the Court is the motion of various media representatives to place one video camera and a single still camera in the courtroom to cover the trial of the above-entitled matter. For the reasons stated below, the motion is GRANTED in part and DENIED in part.

Background

On October 21, 2014, WRC-TV, WJLA-TV, WUSA-TV, WTOP radio, WAMU radio, the Associated Press and The Washington Post (hereafter the “local news media”) filed a motion pursuant to Virginia Code Section 19.2-266 for leave to place one video camera and a single still camera in the courtroom to cover the trial and related proceedings in this matter. Both the Commonwealth and the Defense objected to the motion.

On October 30, 2014, the Honorable Jane Marum Roush granted in part the motion of the local news media, specifically permitting the media to place a single still camera in the courtroom for pre-trial proceedings except where prohibited by Virginia Code Section 19.2-266. The matter of electronic coverage of the trial by video and still camera was taken under advisement.

On April 9, 2015, the Commonwealth filed a motion to reconsider the presence of a still photographer in the courtroom during pre-trial proceedings. The Defendant joined in the Commonwealth's motion for reconsideration. The Local News Media opposed reconsideration. The motion was taken under advisement by Justice Roush on April 23, 2015 and denied by Justice Roush on May 19, 2015.

On September 3, 2015, the Local News Media renewed its request to allow electronic coverage of the trial. Both the Commonwealth and the Defense remain opposed to allowing such coverage.

On September 17, 2015, the Court heard argument from the parties and counsel for the Local News Media, David Warrington. The Court took the matter under advisement.

The Statute Permitting Electronic Coverage of Trials

Virginia Code Section 19.2-266 states in part:

A court may solely in its discretion permit the taking of photographs in the courtroom during the progress of judicial proceedings and the broadcasting of judicial proceedings by radio or television and the use of electronic or photographic means for the perpetuation of the record or parts thereof in criminal and in civil cases, but only in accordance with the rules set forth hereunder.

The term "solely in its discretion," as used in Virginia Code Section 19.2-266, has been interpreted by the Supreme Court of Virginia in Virginia Broadcasting Corporation v. Commonwealth of Virginia, et al., 286 Va. 239 (2013). "[W]hen the General Assembly changed the statute from one which did not permit cameras in the courtroom to one which did, it clearly intended to give the trial court great discretion in making the initial determination whether to permit still photography or cameras in the courtroom. The General Assembly included the phrase 'solely in its discretion,' a phrase which clearly gives great discretion to a trial court when making its decision." *Id.* at 251. Further, "[t]here is no requirement that evidence be presented to the trial court to support the initial decision, and the trial court is not required to explain its reasons for denying a request." *Id.* at 253. Although still cameras have been permitted in pre-trial proceedings in this case, no decision has previously been made with respect to still photography or video recording/broadcasting in the courtroom during the actual trial of this matter. Therefore, as to these matters, this is an "initial decision" as that term is used in the Virginia Broadcasting Corporation case.

Decision of the Court

The Court has carefully considered the arguments made in support of, and against, electronic coverage of the trial. The Court concludes that still photography electronic coverage of the trial should be, and hereby is, GRANTED, but that broadcast/video electronic coverage of the trial should be, and hereby is, DENIED. This Order in no way impacts on either the public's or the news media's right to attend the trial of this case.

In making this decision, the Court carefully considered the written and oral arguments made by counsel for the Commonwealth and the defendant, each of whom oppose any electronic coverage of the trial, as well as the written and oral arguments made by counsel for the Local News Media in support of electronic coverage. Many of the arguments previously made by the parties against electronic coverage related to pre-trial proceedings, which have largely concluded. The remaining arguments fall into two broad categories, and focus principally on the potential impact of broadcast/video coverage of the trial, as opposed to still photography. First, it is argued that broadcast/video coverage of this trial will potentially have a chilling effect on witnesses, distract them from their obligation as witnesses, and impact on their testimony. Second, it is argued that given the anticipated six week duration of this trial, broadcast/video coverage of the trial may permit witnesses to hear the testimony of those witnesses who have already testified, and undermine the purposes served by the Court's order excluding witnesses from trial proceedings until they have testified and been excused. The Court is persuaded that there is sufficient merit in these arguments to warrant a prohibition on broadcast/video electronic coverage of the trial. However, the Court is not persuaded that still photography should also be prohibited and, therefore, one pool photographer will be permitted in the courtroom, subject to the parameters described below:

1. In accordance with the statute, this Court "shall at all times have authority to prohibit, interrupt or terminate electronic media and still photography coverage" of this proceeding. Further, this Court may restrict coverage as it deems appropriate "to meet the ends of justice." (Rule #1 of Virginia Code Section 19.2-266).
2. There shall be no photography of police informants, minors and undercover agents. (Rule #2 of Virginia Code Section 19.2-266.) In the event that such a witness is

expected to testify, the party putting the witness on the stand shall notify the Court in advance.

3. At oral argument, and in the event the Court permitted any electronic coverage of the trial, the Commonwealth requested the right to request of the Court that several witnesses, who were not named at the time of argument, be excluded from photography in the courtroom. Either party can request the Court for such relief.
4. Photography of jurors shall be prohibited expressly at any stage of the proceedings, including that portion of the trial during which the jury is selected. (Rule #3 of Virginia Code Section 19.2-266) In other words, there may be no photographing of jurors at any stage of the trial.
5. In light of this restriction, there shall be no photography permitted during jury selection, including during the voir dire process.
6. Still photography may occur at the pre-trial hearing scheduled for October 1, 2015, and may resume after the jury is selected, seated and sworn.
7. There shall be no photographing of any exhibit until and unless the exhibit has:
 - a. Been admitted into evidence;
 - b. Has been displayed to the jury; and
 - c. Has not been placed under seal.

In other words, if an exhibit is admitted under seal, it may not be photographed even if it is displayed in open court on the monitor in the gallery or otherwise displayed in the courtroom.

8. There shall be no photographing of any person sitting in the gallery.
9. The Local News Media is permitted to place one still camera in the courtroom, at a location to be designated by court personnel. The Court shall provide the Local News Media a contact person within the court staff.
10. With regard to the equipment employed by the Local News Media and the use of the equipment in the courtroom, all media personnel placing or operating electronic equipment in the courtroom shall familiarize themselves and be governed by the "Location of Equipment and Personnel" and the "Equipment and Personnel" sections of Virginia Code Section 19.2-266.

11. The remaining provisions of Virginia Code Section 19.2-266 apply as well to the electronic coverage authorized under this Order.

12. Each individual designated to be the pool photographer shall be provided a copy of this ORDER and a copy of Virginia Code Section 19.2-266 by the bailiff or other sheriff's personnel.

SO ORDERED, this 22 day of September, 2015.



JUDGE RANDY I. BELLOWS