

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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CRIMINAL

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COMMONWEATH OF VIRGINIA,

v.

JESSE LEROY MATTHEW, Jr.,

Defendant.

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Criminal No.: FE-2014-1313
Judge David S. Schell

**MEMORANDUM IN SUPPORT OF NEWS MEDIA'S MOTION TO
CONTINUE ELECTRONIC COVERAGE OF PROCEEDINGS**

WUSA-TV, WRC-TV, WJLA-TV, The Associated Press, *The Washington Post*, and WTOP Radio (collectively, the "News Media") move, pursuant to Va. Code § 19.2-266, for leave to continue the placement of one video camera and a single still camera in the courtroom to cover the trial and related proceedings in this matter.

INTRODUCTION

To date, there have been two pretrial proceedings in this case. On October 27, 2014, Mr. Matthew appeared via video link for his initial court appearance. On November 14, 2014, Mr. Matthew appeared in person and entered his not-guilty plea. For both his October 27 and November 14 appearances, the Hon. Dennis J. Smith allowed the News Media to place a single video and still camera in the courtroom. Judge Smith's decision did not impact the proceedings in any way, and the public was able to observe what transpired.

The Court should continue allowing the News Media to place cameras in the courtroom to cover the trial and all related proceedings in this matter. This case is of immense local and national interest. The public interest in the administration of justice supports permitting

electronic coverage. The News Media will jointly cooperate and coordinate a pooling arrangement, as Virginia law, the Virginia Press Association, and the Virginia Association of Broadcasters' Guidelines for Cameras in the Courtroom all require. While the Court has broad discretion to permit electronic coverage, no good cause exists to deny this Motion.

ARGUMENT

I. THE FIRST AMENDMENT PROVIDES THE PUBLIC AND PRESS A PRESUMPTIVE RIGHT TO OBSERVE AND REPORT ON CRIMINAL COURT PROCEEDINGS

There is a First Amendment right of access to criminal proceedings. That right creates the strong presumption that all criminal trials should be open to the press and public. *Press-Enter. v. Superior Court of California*, 478 U.S. 1, 13 (1986); *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 606-07 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (plurality opinion). The presumption of openness "enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Press-Enter. v. Superior Court of California*, 464 U.S. 501, 508 (1984) ("*Press-Enterprise I*"). The presumption of public access to criminal proceedings has existed since our earliest laws were adopted, and access to criminal trials has been held to serve the key purpose of giving the public "assurance that established procedures are being followed and that deviations will become known." *Press-Enterprise I*, 464 U.S. at 505, 508.

Electronic coverage of criminal court proceedings makes it possible for the broader public to be directly informed as to the developments in criminal proceedings and such coverage does not hamper a defendant's right to a fair trial. *Chandler v. Florida*, 449 U.S. 560, 574-75 (1981). Video coverage is the most direct and accurate means available to convey to the public unfiltered information about the judicial process. It has long been the case that "[i]nstead of

acquiring information about trials by firsthand observation . . . people now acquire it chiefly through the print and electronic media.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572-73 (1980). The media – as “surrogates” for the public – require courtroom access “so that they may report what people in attendance have seen and heard,” furthering “public understanding of the rule of law and . . . comprehension of the functioning of the entire criminal justice system.” *Id.* at 572.¹

II. VIRGINIA LAW PROVIDES TRIAL COURTS WITH BROAD DISCRETION TO PERMIT ELECTRONIC COVERAGE OF CRIMINAL PROCEEDINGS

Both the Virginia Supreme Court and the Virginia Court of Appeals consistently apply the First Amendment and Virginia’s long tradition of openness to furnish maximum public access to trials while safeguarding the fair administration of justice. *Daily Press, Inc. v. Commonwealth*, 285 Va. 447, 739 S.E.2d 636, 640 (2013) (affirming underlying constitutional principles affording public access to courts, upholding access to court documents); *Richmond Newspapers, Inc. v. Commonwealth*, 222 Va. 574, 588, 281 S.E.2d 915, 923 (1981) (right of public access to pretrial proceedings); *In re Times-World Corp.*, 25 Va. App. 405, 418, 488 S.E.2d 677, 683 (1997) (right of public access to criminal competency hearings).

Virginia Code § 19.2-266 allows for electronic-media coverage of public judicial proceedings through a carefully prescribed framework to ensure that coverage does not adversely impact court proceedings or the defendant’s rights. Here, no good cause warrants excluding electronic-media coverage.

¹ The Supreme Court has held that electronic coverage of criminal court proceedings does not hamper a defendant’s right to a fair trial. *Chandler v. Florida*, 449 U.S. 560, 574-75 (1981). See also *Novak v. Commonwealth*, 20 Va. App. 373, 390, 457 S.E.2d 402, 410 (1995); see also *Savino v. Commonwealth*, 239 Va. 534, 547 n. 4, 391 S.E.2d 276, 283 (1990); *Fisher v. Commonwealth*, 236 Va. 403, 410 n. 2, 374 S.E.2d 46, 50 (1988).

The News Media has extensive experience covering high-profile criminal proceedings in the local courts without incident. Indeed, during the summer of 2013, the News Media was allowed to place a video camera in a trial in Fairfax County Circuit Court, allowing coverage of the high-profile trial involving the murder of Vanessa Pham. That trial was covered (over the objection of both the defendant and the prosecution) without prejudicing the defendant's right to a fair trial. Cameras have also been permitted – at least so far – in the preliminary proceedings in the murder trial of Charles Severance in Alexandria in 2014. Judge Roush, who presided in the Pham trial and is the presiding judge in the Severance trial, recently opined that she found the camera in the Pham case to be “no more disruptive than a clock on the wall.” *See Still camera allowed in Alexandria murder pre-trial hearings,*

<http://www.wusa9.com/story/news/local/alexandria/2014/10/23/still-camera-allowed-in-chalres-severance-alexandria-murder-pre-trial-hearings/17770059/> (last accessed December 22, 2014).

Cameras have been permitted in all of the preliminary proceedings in this case, without incident.

Circuit Courts throughout Virginia have also repeatedly allowed electronic newsgathering of similar high-profile trials. For example:

- In 2010, a television station was allowed to broadcast multiple days of the trial of Phillip Bay, a teenager convicted of plotting a Columbine-style attack on a local high school, before the Honorable William R. “Buster” O’Brien of the Virginia Beach Circuit Court.
- That same year, a television station presented daily coverage, and frequent updates on its website, of the 2010 murder retrial of local high-school principal Wesley Earnest, before the Honorable James W. Updike, Jr. in the Amherst Circuit Court.
- In 2013, television stations live-streamed on their websites the entire court hearing arising from a citizens’ petition to remove a public official convicted of sexual assault from office, before the Honorable Cheryl V. Higgins in Albemarle Circuit Court.

- In 2013, the arraignment of a prominent local pastor arrested for possessing child pornography before the Honorable Joseph A. Migliozzi, Jr., in the Norfolk General District was covered by a television pool reporter.

In this case, the News Media proposes to place one still and one video camera in the courtroom, as it has in the pretrial proceedings to date, without incident. One station will coordinate a “pooling arrangement” for all the other stations to gain access, thereby offering broad public access to a proceeding of immense local interest without disrupting the trial. The News Media uses extremely modern, relatively small, and essentially noiseless equipment that will not be a distraction in the courtroom. And, in the unlikely event the cameras become a distraction, the Court could quickly and easily order them to be turned off or removed. *See* Va. Code § 19.2-266 (“The presiding judge shall at all times have authority to prohibit, interrupt or terminate electronic media and still photography coverage of public judicial proceedings”).

Any arguments that permitting cameras would be disruptive, impact the defendant’s right to a fair trial, or otherwise impede judicial processes are demonstrably false. Cameras have been permitted in high-profile trials across the country for more than a generation and there is a cable television channel devoted to covering trials. Cameras would not be permitted anywhere if there were any credible evidence that they impede the fair administration of justice. The Court should rely on this indisputable evidence and discount all arguments to the contrary that are based purely on speculation or conjecture. Cameras in courtrooms improve the trial process and they provide a powerful incentive for all trial participants to adhere to the highest standards of behavior.

CONCLUSION

Judges throughout the Commonwealth have permitted gavel-to-gavel coverage of criminal trials for more than 20 years. The public's interest in these proceedings can be easily accommodated without impacting the rights of the accused.

Dated: December 23, 2014

Respectfully submitted,



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