

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA)	CRIMINAL NUMBER FE-2017-1245
VERSUS)	
DARWIN MARTINEZ TORRES)	INDICTMENT - CAPITAL MURDER

ORDER FROM JULY 26, 2018 HEARING

On July 26, 2018, Raymond Morrogh, the Commonwealth's Attorney, Casey Lingan and Robert McClain, the Assistant Commonwealth's Attorneys, DARWIN MARTINEZ TORRES, the Defendant, Daniel Goldman, Joseph Flood, and Joni Robin, Counsel for the Defendant, and Lindsay Wilhelm and Jaime de Castellvi, Interpreters fluent in the Spanish language, appeared before this Court. The Defendant is indicted for the felonies of CAPITAL MURDER IN THE COMMISSION OF ABDUCTION (COUNT I), ABDUCTION (COUNT II), CAPITAL MURDER IN THE COMMISSION OF RAPE (COUNT III), RAPE (COUNT IV), CAPITAL MURDER IN THE COMMISSION OF OBJECT SEXUAL PENETRATION (COUNT V and COUNT VII) and OBJECT SEXUAL PENETRATION (COUNT VI and COUNT VIII) and he appeared while in custody.

This case came before the Court this date for argument on the Defense motions #54, 54S, 60, 61, 62, 63, 64, and 65, and for a review of the status of Kevin Alexander Cardona Torres, a material witness in this case.

Counsel advised the Court that their estimate of the length of the trial in this case is eight (8) to ten (10) weeks. Counsel for the Defendant moved the Court for certain scheduling accommodations during trial. The Court, after hearing argument, deferred the matter.

The Court, after hearing argument, **granted** Defense #65, Motion for Appointment of DNA Expert, by separate order.

After hearing argument, the Court **granted** Defense #64, Motion for Appointment of Expert in Crime Scene Analysis, and an order was entered.

The Court heard argument on Defense #62, Motion for Appointment of an Immigration Attorney to Assist the Defense in Obtaining and Maintaining Foreign National Witnesses. The Court **granted** the

motion. The Commonwealth objected to the appointment of the proposed expert due to a potential conflict. In the event that Counsel for the Defendant elects to proceed with the appointment of a different immigration attorney, that attorney's resume should be provided to the Commonwealth's Attorney. Absent an objection by the Commonwealth, Counsel for the Defendant may submit a proposed order to the Court. Otherwise, should Counsel for the Defendant maintain their motion to appoint the expert proposed in the motion, it will be necessary to schedule a hearing on the issue of the appointment.

The Court addressed Case Number KM-2018-229, the material witness. Kevin Alexander Cardona Torres, the material witness, and Che Rogers, his Counsel, were present in the courtroom. The Court, after hearing argument on Defense #60, Defendant's Briefing with Respect to the Continued Detention of Material Witness Kevin Torres, and Defendant #61, Motion to Take Pre-Trial Testimony of Material Witness Kevin Torres, continued the matter to August 31, 2018 at 1:00 p.m. The material witness was remanded to the custody of the Sheriff and his attorney was excused.

At a bench conference, the Court heard further argument on Counsel for the Defendant's motion for certain scheduling accommodations during trial. The Court **ORDERED** that the matter be revisited at the motions hearing set on October 26, 2018. The Court further **ORDERED** that the portion of the hearing transcript covering the bench conference be filed separately and **UNDER SEAL**.

The Court heard argument on Defense #54, Motion to Authorize Funds for Witness Video Depositions and Defense #54S, Supplement to Motion to Authorize Funds for Witness Video Depositions. The Court **granted** the motion and authorized funds for a videographer, notary, and interpreter. The Court stated it expresses no view regarding whether such depositions would be admissible at trial. Further, the Court does not make any order concerning whether the Commonwealth should or must participate in the depositions, leaving that issue up to the Commonwealth. Counsel for the Defendant was instructed to submit a proposed order.

The Court, after hearing some argument regarding Defense #63, *Ex Parte* Motion for Forensic Testing, cleared the courtroom for an *ex parte* hearing on the matter, as provided by statute. The Court **ORDERED** that the transcript of this portion of the hearing be filed separately and placed **UNDER SEAL** and shall only be available to the Court and to Counsel for the Defendant. After hearing argument by Counsel for the Defendant, the Court **granted** the motion but reserved the issue of whether a list of the items sent for testing, and/or the nature of the testing, would be available to the Commonwealth.

The Commonwealth's Attorney was recalled to the courtroom and was advised that the Court had granted the Defendant's request for forensic testing and that Counsel for the Defendant reserved the right to

withdraw the motion for testing on all or some of the items in the event that the Court orders the disclosure of the items to be tested and/or the nature of the testing. The Court directed Counsel to provide research on the issue of whether the order should be *ex parte* on or before August 2, 2018 at 4:00 p.m. and the Court will then decide the matter and issue an order. In the event the Court determines that all or part of the order should not be *ex parte*, the Court will provide the Defendant an opportunity to withdraw the motion.

The Defendant was remanded to the custody of the Sheriff.

Entered on July 27, 2018.



JUDGE RANDY I. BELLOWS