

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 SEPTEMBER 27, 2018 HEARING

On September 27, 2018, Robert McClain, the Assistant Commonwealth's Attorney, DARWIN MARTINEZ TORRES, the Defendant, Joseph Flood, Daniel Goldman, 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 #81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, and 95; for a status hearing regarding Juan Antonio Torres Martinez, a material witness in this case; and to address jury selection protocol.

At a bench conference, Defense Counsel's prior motion for certain scheduling accommodations during trial was addressed. Counsel for the Defendant advised the Court that the requested accommodations were no longer necessary as the issue had been resolved.

Defense Motion #81, Renewed *Ex Parte* Motion for Forensic Testing was **granted** by separate order, after a brief *ex parte* hearing.

The Court, after hearing argument and a proffer by Counsel for the Defendant, **granted** Defense #82, Motion for Appointment of Neurologist, and an order was entered. The Court **denied** the Defendant's request to handle the identity of the neurologist as an *ex parte* matter.

The Court provided the parties with a suggested protocol for jury selection. The Court **granted** Defense #85, Motion for Juror Questionnaire, over the objection of the Commonwealth's Attorney. Counsel for the Defendant advised they had provided the Commonwealth's Attorney with a proposed questionnaire

for their review and stated that the questionnaire, the Commonwealth's objections and/or proposals, and alternative questions would be filed. The matter was carried over to the October 25th motions hearing for the resolution of the contents of the juror questionnaire; Counsel shall follow the typical filing schedule.

The Court addressed Defense #87, Motion for a Preliminary Instruction. The Court will draft and provide to the parties proposed language for every phase of juror selection and argument will be heard at the October 25th hearing.

After hearing argument, the Court **granted in part and denied in part** Defense #88, Motion to Alternate *Voir Dire*. The Court **ORDERED** that the *voir dire* of the jurors in the death qualified phase alternate, with the Commonwealth initially conducting *voir dire* in the first round and the Defense initially conducting *voir dire* in the next round and continuing in that manner until that phase of *voir dire* has been completed. In all other respects the motion was **denied**.

The Court **granted** Defense #89, Motion for Jury Panel List. The list shall be available to both parties fourteen (14) calendar days in advance of trial. The court clerk shall advise Counsel of the date the list will be available and how it will be provided to them.

The Court, without objection, **granted** Defense #91, Motion for Additional Hours for Court-Appointed Neurotoxicologist, by separate order.

Defense #92, Motion for Expedited Transcription, was **granted** by separate order, without objection by the Commonwealth's Attorney.

An order on Defense #62, Motion for Appointment of An Immigration Attorney to Assist the Defense in Obtaining and Maintaining Foreign National Witnesses was entered, *nunc pro tunc* to the date it was initially approved by the Court, without objection.

The Court was advised that Defense #94, Motion to Suppress Fruits of Illegal Stop, was set for an evidentiary hearing and argument on November 29, 2018 at 10:00 a.m. The Commonwealth shall file an opposition on or before October 25, 2018 and the response of the Defense shall be filed on or before November 8, 2018.

After hearing argument, Defense #90, Motion for Discovery of Juror Information, was **granted** as stated on the record. Counsel for the Defendant shall prepare an order reflecting the Court's ruling and present it at the next hearing.

The Court, after hearing all of the evidence presented on Defense #93, *Motion to Bar the Death Penalty Because the Statutory Assessment of "Future Dangerousness" and the Factors the Jury Must Consider are Unreliable*, and argument of Counsel, **denied** the motion, for the reasons stated on the record.

After hearing argument on Defense #95, Motion to Allow Evidence of the Effect of Execution on Mr. Martinez Torres's Family and Loved Ones, the Court **denied it in part and reserved it in part** for resolution during trial, as stated on the record.

The Court addressed matters related to jury selection. The suggested protocol for jury selection was made a part of the record as a discussion document.

After hearing Counsel's statements regarding the time frame for the various stages of trial, the Court stated that it will make it clear to the jurors in the preliminary instructions that the several weeks will be consumed by *voir dire*, during which the jurors will need to be available but will not necessarily be reporting daily.

The Court, without objection, **ORDERED** that three hundred (300) jurors be summoned for trial in this case, one hundred (100) on each of three (3) consecutive days. The Court and Counsel addressed the phases of *voir dire* and questionnaire completion procedure outlined in the suggested protocol. Counsel for the Defendant moved the Court to allow for a "consent strike" process after questionnaire completion. The Commonwealth's Attorney stated an objection and the Court **denied** the motion, for the reasons stated on the record.

The proposed procedures for Phases 2 and 3 were reviewed.

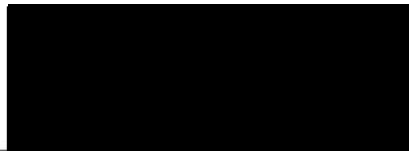
The Court, after hearing argument on Defense #86, Motion for Individual Sequestered Voir Dire, **ORDERED** that the *voir dire* be conducted with groups of four (4) jurors during the final phase of questioning, for the reasons stated on the record. The motion may be renewed at any point if Counsel wish to do so.

The Court heard argument regarding the number of alternate jurors. In consideration, the Court **ORDERED** that four (4) alternate jurors be seated.

The status hearing in case number KM-2018-374, material witness Juan Torres Martinez, is hereby continued to **October 25, 2018 at 1:00 p.m.**

The Defendant was remanded to the custody of the Sheriff.

Entered on October 2, 2018.



JUDGE RANDY I. BELLOWES