

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

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

**ORDER REGARDING NEUROLOGICAL TESTING**

On October 23, 2018, Casey Lingan, the Assistant Commonwealth's Attorney, DARWIN MARTINEZ TORRES, the Defendant, Joseph Flood and Daniel Goldman, Counsel for the Defendant, and Lindsay Wilhelm and Pat Rosell, 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 regarding the Order for neurological testing of the Defendant.

By Order entered on October 12, 2018, the Court granted the Defendant's motion to authorize funds for neurological testing and Ordered that the Fairfax Sheriff's Office assist in transporting Mr. Martinez Torres to a local healthcare provider where the testing and imaging would be completed.

During electronic communications with the court clerk regarding the scheduling of the testing, Joni Robin, Counsel for the Defendant, advised the court clerk that she wished to be present for the testing.

On October 19, 2018, the Fairfax County Sheriff's Office advised the court clerk that, because the testing will involve a high-risk transport, no one would be permitted to be present and that the date and time of the testing would not be disclosed. Counsel for the Defendant, after being so advised, stated that they wished to litigate the matter.

The Court heard argument of Counsel for the Defendant that they be permitted to be present for the neurological testing. The Commonwealth's Attorney objected. The Court heard the statement of Second Lieutenant Chad Hinrickson of the Fairfax County Sheriff's Department indicating that for security reasons the Sheriff's Office did not want to provide advance notification of the Defendant's movement for testing. The Court directed that, in the event that testing goes forward, no one from the Sheriff's Office is to question the Defendant about anything related to this case, or any matter other than what is necessary to accomplish the testing.

After hearing further argument, the Court stated it will not order that Defense Counsel be present for the neurological testing given the Sheriff's Office's determination that for security reasons they do not want to advise either the Commonwealth or the Defense as to when the testing is going to take place. The Court defers to the judgment of the Sheriff's Office regarding the security protocol for moving the Defendant for testing. It was noted that Lieutenant Hinrickson indicated that he will instruct the staff making the transport that they are not to question the Defendant about any matter related to this case.

Defense Counsel expressed a concern that something might occur during the testing process that might be relevant to the issue of whether the Defendant is intellectually disabled. The Court stated it was not making any ruling at this time regarding the admissibility of testimony arising out of the neurological testing that might be related to intellectual disability. In the event that the Commonwealth intends to offer testimony at trial on adaptive functioning associated with the neurological testing or blood work, the Commonwealth was instructed to raise it in advance with the Court so that the issue could be litigated.

The Court gave Counsel for the Defendant the opportunity to make the decision whether to proceed with the testing or not and then to advise the Court of their decision within a day or two.

Counsel for the Defendant stated that they did want the testing to go forward and there was a discussion regarding where the blood draw would take place. Counsel for the Defendant moved the Court for disclosure of the names of the Sheriff's Department's personnel involved with the transfer and the names of the technicians that were present, after the testing had been completed.

After hearing argument, the Court **ORDERED** that the Sheriff's Department accomplish the testing as promptly as possible. The Court further **ORDERED**, without objection, that Second Lieutenant Chad Hinrickson maintain a list of the personnel involved in transporting the Defendant to the neurological testing. The Court, without objection, **ORDERED** that in the event that the list is disclosed to the Commonwealth's Attorney, it shall also be disclosed to Counsel for the Defendant and that the list will be under seal. Second Lieutenant Hinrickson stated his understanding of the ruling.

The Defendant was remanded to the custody of the Sheriff.

Entered on October 24, 2018.



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JUDGE RANDY I. BELLOWS