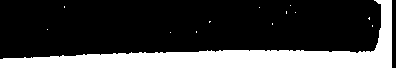
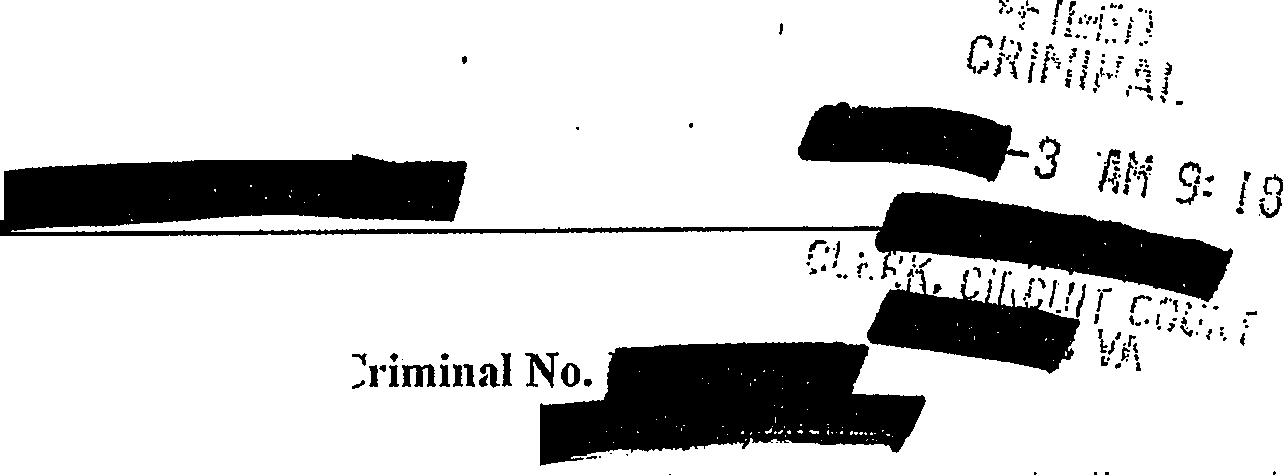


**Defendant.**

**Judge: Hon.** **Motion to Continue Trial to**

**Afford Defendant Full DNA Testing and Opportunity to Investigate the Offense and Evidence in Mitigation of a Death Sentence**



**VID.GINIA:**

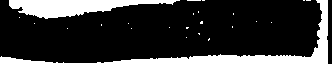
**JN THE CffiCUIT COURT OF COMMONWEALTH OF VID.GJNIA**

**vs.**

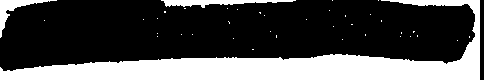
**Hea ·ing:**

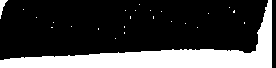
**MOTION TO CONTINUE TRIAL TO AFFORD DEFENDANT FULL DNA TESTING AND OPPORTUNITY TO INVESTIGATE THE OFFENSE AND EVIDENCE** IN **MITIGATIOl'l OF A DEATH SENTENCE**

**COMES NOW,** the Defendant,\_ by counsel, and respectfully moves this Honorable Court to continue the trial in this case currently scheduled to begin on

. Unfortunately, despite the diligent efforts of counsel, the defense needs additional time to prepare for tdal.

Mitochondrial DNA testing conducted thus far has identified that a human hair

belonging to an unknown person-DFS Item No. 38E, Item

No. 3049Q6-was recovered from within the left hand ofthe decedent. Dr.

of- and a DNA expert consulting with the defense each compared the mitochondrial DNA profile ofDFS Item No. 38E to the known mitochondrial DNA profiles of-\_and thdeecedent.-and the decedent are conclusively eliminated as possible contributors to that human hair fragment: DFS Item No. 38E was

left by an unknown person. Previous nuclear DNA testing of various blood and

skin/saliva samples from the crime scene resulted in unknown nuclear DNA profiles.

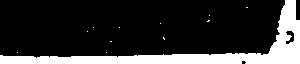
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# The defense needs to conduct additional mitochondrial DNA testing both (1) to evaluate if various samples from the crime scene in which unknown *nuclear* DNA profiles were developed have the same *mitochondrial* DNA profile as DFS Item No. 38E and (2) to

identify other human hairs recovered from the decedent's left hand in DFS Item Numbers

25 and 38 that have the same mitochondrial DNA profile as DFS Item No. 38E.

In addition to the need for additional mitochondrial DNA testing, there is additional mitigation (and fact) investigation to conduct in this case, as detailed below, that cannot be completed in time for trial and that requires a continuance.

**PL.EASE TAKE NOTICE** that on , at 9:00 a.m., or as soon thereafter as counsel may be heard, counsel will argue this Motion to the Court.1

. In making this Motion, --eliesupon his right to be free from crnel and unusual punislunent, his rig)1t to due process oflaw, his right to a fair trial, his right to the effective assistance of counsel, his right to present a defense, his right to confrontation; his right to a reliable sentencing determination, and other rights safeguarded by the Fifth, Sixth, Eighth and Foutteenth Amendments to the United States Constitution, and Article I, §§ 8, 9, and 11 of the Constitution of Virginia, and the other authorities cited herein.

In support of this Motion, - through counsel, states the following:

1. -•s defense will be se\_riously imperiled if this trial is not continued. "[I]f there is no sufficient reason to induce the belief that the alleged ground of the motion is feigned, a continuance should be granted, rather than to seriously imperil

the just determination of the cause by refusing it." *Smith v. Commonwealth,* 155 Va.

1 CoLmsel for **11**■■**- discussed**this request for a continuance with the Conunonwealth and had anticipated noticing this Motion for the **l hearing** date; however, both counsel for the Commonwealth and for the defense believe that it makes sense for the Court to bear the

■■

Motion sooner. Upon the Court's setting a hearing date, counsel is filing this Motion to be heard that same day.

1111, 1117 (1931). The court's discretion in ruling on a motion to continue "must be exercised with due regard to the provisions of the Bill ofllights, which secure to one accused of crime a fair and impartial jury, and to that end safeguard his right 'to call for evidence in his favor."' *Gilchrist v. Commonwealth,* 227 Va. 540, 546 (1984) (quoting

*Creamans v. Con1monwealth,* 104 Va. 860, 863 (1905)). "In deference to that

fundamental .requirement, we cannot sanction a practice which, in 'a capital or criminal. prosecution,' forces the accused into trial in the absence of his witnesses. Such

practice, we conceive, violates both the letter and spirit of the Constitution." *Creamans*

1. *Commonwealth, supra.* Despite the best diligent efforts of defense counsel, counsel cannot and will not provide effective representation if this case goes to trial later this month. Both-and interests of justice deserve better, and for all the reasons set

forth in this Motion, counsel therefore asks this Court to continue this matter.

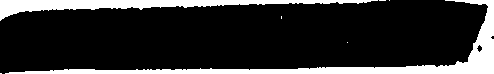
* 1. **Additional Time Is Needed for Additional Mitochondrial DNA Testing.2**

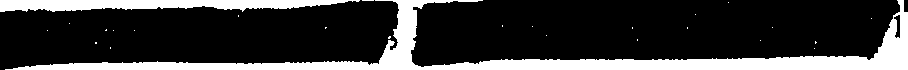
1. The defense seeks to conduct additional mitochondrial ·DNA testing to evaluate if various samples from the crime scene in which unknown *nuclear* DNA profiles were developed have the same *mitochondrial* DNA profile as DPS Item No. 38E and to identify other human hairs recovered from within the decedent's left hand in DFS

Item Numbers 25 and 38 that have the same initochondrial DNA profile as DFS Item No. 38E. Last summer, the defense sought mitochondrial DNA testing of hairs recovered by the police from the decedent's hand as she lay on the ground in her apartment. The Court denied the defense request for the testing of all the hairs and ordered that such for

2 The defense specifically adopts and incorporates the arguments and authority provided in Defendant's Motion for Additional Mitochondrial DNA Testing to Corroborate Evidence of Unknown Person's DNA on the Crime Scene, which is filed contemporaneously with th.is Motion.

# rnitochonddal DNA testing take place incrementally in a graduating series of orders that sent some samples to the Depa1trnent of Forensic Sciences ("DFS") and 5 samples t6

 Although DFS has not yet reported the results of its testing, on

reported the results of its testing.

Tellingly, for *one of those hairs sent to- DFS Item No. 38E, had a mitochondrial DNA pro.file for ·which both the decedent and-(and their maternal relatives) were eliminated as possible contributors.3 Thus a hair from an unknown third person was.found and recovered from within the decedent's left hand*

# A number of DNA results identify unknown nuclear DNA on the crime

scene on items seized/swabbed by the police in the course of \ts investigation.

* Court-ordered nuclear DNA testing at the request of the defense determined that an unknown person left a blood stain in the hallway outside the dece ent' s apartment.
* Court-ordered nuclear DNA testing at the request of the defense determined that an unknown person left blood stains on the balusters in the back stairwell outside the decedent's apa1tment.
* Nuclear DNA testing identified at least one genetic marker for an unknown person on a breast swab sample of the decedent.
* Nuclear DNA testing identified genetic markers for an unknown male on the kitchen implements (frying pan and cooking pot) believed to have

been used by an assailant as weapons against the decedent.

3 Dr. f ■■• and a DNA expert consulting with the defense each compared the mitochondrial DNA profile of DFS Item No. 38E to the known mitochondrial DNA profiles of the decedent. -and the decedent are conclusively eliminated as possible contributors to that hmnan hair fragment. DFS Item No. 38E was left by an unknown

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person.

# Given the results of the recent mitochondrial testing ofDFS Item No. 38E,

-must now obtain mitochondrial DNA testing of the blood stains and other nuclear DNA samples discussed *supra,* that are evidence of the presence of unknown participant. If mitochondrial DNA testing of those sarnples matches the mitochondrial DNA profile of the hair recovered from the decedent's left hand (DPS Item No. 38E), then the probative value of evidence of an unknown third party will be greatly increased. Matching mitochondrial DNA profiles between DFS Item No. 38E and other DNA evidence will substantially undermine any argument by the Commonwealth that the jury .

should disregard DNA evidence of an unknown person as a participant in the death of the·.. decedent on the ground that the presence of such DNA is merely coincidental. 4

1. -alsomust obtain mitochondrial DNA testing of the remaining human hair fragments that have not been tested for mitochondrial DNA testing. If, as is currently the state of the evidence, there is just one hair that eliminates-- and points to a third person, the Co1:nmonwealth may argue -precisely as it did in seeking death in *Prieto* - that the single hair's presence on the scene is coincidental and that the· jury should disregard it. However, the greater the number of unknown-contributor human hairs/hair fragments that match each other - whether 3, 5, 10, or more - the weaker any argument by the Commonwealth that the jury should disregard DNA evidence of an unknown person in the decedent's hand is undermined. Conversely, the more evidence of unknown-contributor human hairs/hair fragment that match each other,

the stronger are the defense arguments to the jury·that there is a reasonable doubt that-

- was a principal in the first-degree and eligible for the death penalty, or, that even

4 The same reasoning applies to any n i ochondrial DNA profiles that elin'linate-and the decedent from the l O samples awa1tmg ·results from DFS.

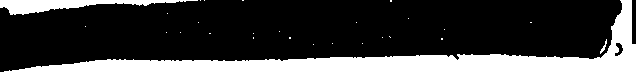
# if the jury concjuded unanimously beyond a reasonable doubt that-was the principal in the first-degree and eligibility is found, a juror should vote for life based upon the potentially mitigating fact that there were two participants in the murder.*5*

* 1. **Additional Time is Needed for Mitigation Investigation**

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# The defense has diligently investigated this.case. For example, since the

appointment of the two mitigation specialists with the



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-have spent the bulk of their time working on \_,s case - including many evenings, weekends, and holidays. All members of the defense team have worked extremely hard in getting the case ready for trial in- Nonetheless, additional time \_. is needed for rni igation investigation to ensure that eceives effective

assistance of counsel and his other constitutional rights.

1. The scope of mitigation investigation is greatly affected by the age of the defendant. It goes without saying that there is less investigation to conduct for a 19-year old teenager who has lived in one state for his life than, as here, a 45-year-old man who has lived in at least 4 states - and different parts of each of those states - over the coUIJ!. - of his life. Similarly\_, the defense needs to investigate allegations of alleged

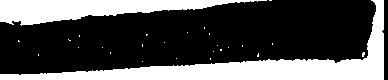
unadjudicated ·criminal conduct from, in certain instances, decades ago.

1. !J.1-'scase, the defense has made contact with over 200 individtials with potentially mitigating information. Those 200 individuals were but a subset of the much greater number of persons who may have had mitigating evidence. In contacting the 200 individuals (and currently focusing on a core group of 40-70 individuals for potential trial testimony), counsel has set priorities in the locating and

*5* Indeed, it is hard to fathom a circumstance ii:i which th Commonwealth could be permitted to make any argmnent seeking to minimize the exculpatory probative value of the DNA evidence if the defense request that all the relevant DNA evidence is tested is denied.

interviewing mitigation witnesses. As is the nature of mitigation investigation, in the course oftlii investigation, the defense has incrementally obtained new information that has led to new priorities that were not previously known. And this investigation has been conducted by a relatively small team of persons working on behalf of\_,who certainly has had far less resources than the Commonwealth\_, which discovery reveals has used at least 87 separate law enforcement officers and Co1mnonwealth agents to conduct its investigation.

1. Along with speaking with witnesses, it is essential to obtain a defendant's

life records. On the defense provided the Commonwealth with a

banker's box full of thousands of pages of...,s records, which had been provided to the defendant's court-appointed clinical psychologist and neuropsychologist and which were being disclosed for provision to the Commonwealth's court-appointed expert. Since then, the defense has continued to investigate and to obtain more records. As the Court can see from the vast number of witnesses whom the defense has contacted and from the records that have been obtained, the defense has been working diligently • and much l1as been done; but more remains.

1. The defense did not start the case knowing the names of all potential witnesses and the identity of all thousands of pages of records. The defense developed that i11fonnation through irivestigation. Mitigation investigations frequently reveal more leads that need to be developed:

Even under the best of circumstances, mitigation investigation is a laborious and time-consuming process. Mitigation investigation consists of both extensive witness interviews and records collection, and both elements require persistence and tenacity. At each level of investigation,

.new records and new witnesses are constantly identified. Furthermore, information is gathered from records and witnesses that must be discussed

with the defendant and crucial family members in order to be contextualized and explained. Thus, "[i]nvestigating the capital client's biography is a sensitive, complex, and cyclical process. It is cyclical, rather than ·linear, because witnesses will need to be re-interviewed when new information has been discovered."

Russell Stetler, *Capital Cases: Mitigation Evidence in Death Penalty Cases,* 23

CHAMPION 35, 40 (1999). That is exactly what is happeriing in this case.

1. By way of example, in



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the defense obtained a

Presentence Report for-that indicated several compelling details about

\_, s childhood and teenaged years that had not previously been reported

in other records or by other witnesses. There is no question that evidence about

-s childhood and teenage years in essential to his defense in this case:

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- suffered from parental abuse and neglect as a child, left his father's home at gunpoint after he confronted his father for sexually molesting his sister, became homeless, and became the victim of adult sexual predators who traded housing for sex.

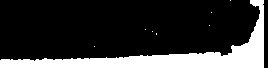
1. In the Presentence Report o?tained in-•there were 5 new

and highly relevant witness names (including treating professionals) and 6 new record locations related to -•s being on juvenile probation in..

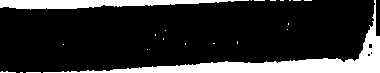
-• his living in foster care, and his receiving mental health treatment. Since then, the defense (lawyers and mitigation specialists), located and spoke with all 5 witnesses, residing in 3 different states. From these witnesses, the defense has learned the names of, and is in the process oflocating, the 8 other witnesses (all non-familial) to the circumstances of...,s childhood. Of the 6 new records locations, the defense has contacted all 6 locations: 3 no longer have

records, and the defense is in continuing efforts to obtain records from the remaining three locations. Telling, from speaking with witnesses thus available, it appears that there are court-appointed professional counseling records from when

* was a teenager in which he discussed with his therapist sexual abuse that occurred n , home and that led him to leave the home for the

streets and discussed the sexual exploitation of the teenaged byan

employer who gave -a place to sleep in·exchange for sexual favo\_rs. There is no question but that the defense needs to view the contents of these counseling records.



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1. As another example, on

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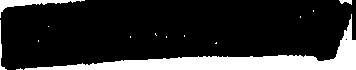
the defense spoke

with a witness associated with a religious organization that provided support to.

-'s family when he was a hild. Among other things, the witness was able to remember the names of 4 other witnesses with potentially mitigatin.g

information about-•s unstable and chaotic family life. The defense located one of those witnesses, who\_, *inter alia,* provided contact infonnation to locate a live-in, ex-boyfriend of\_,,s mother. Another of the 4 names provided is a witness who may have records associated with the church's family support program, and the defense, which previously did not know her name, has requested the records from her.

1. As a third example, on in the defense's *seventh*

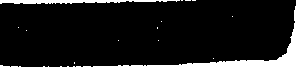


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interview of a witne s, the defense learned the full name of a man who provided home school tutoring to -as a special education teenager. Thls witness had previously not been able to remember or provide the information. \_The

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defense immediately prioritized efforts to identify, locate, and speak with this important mitigation witness.

1. As a fifth example, the defense learned in  that-

-s II-year-old son, who is reportedly bi-polar (a genetic condition, which

- s mental health records show he has previously been diagnosed with), was temporarily institutionalized. The defense is attempting to obtain those records, which should help corroborate a mental illness that may recur\_in

\_ and his family.

1. As a sixth example\_, on the defense learned that - s mother, grandmother, and step-grandfather came to the United States as refugees. The defense is seeking to obtain records of the trauma inflicted on -'smother, who became pregna11t as a teenager and then inflicted trauma on her own children, from the circumstances underlying the refugee status. Additionally, the defense is investigating the physical, emotional, and sexual abuse inflicted on -s mother by her stepfather and step­ grandfather, both in Europe and in the United States.
2. Finally, as a seventh example, a recurring area of mitigation in capital cases is testimony from current jailors who have observed the behavior and attitude of a capital defendant while waitin\_g trial. On information and belief,

-hasengaged in good behavior during his detention at the\_ ADC. His conduct at the ADC will se1ve as evidence for a life sentence, both as affirmative mitigation evidence and as rebuttal to any purported evidence of "future dangerousness" offered by the Commonwealth. -is currently

# being denied access to investigation of-ADC Deputy Sheriffs and Corrections Officers who have had significant contact with him during the time he has spent waiting trial in the ADC. Such access was initially requested from the

Lt.-

ADC on , in a phone conversation between Attorney--

**lllllland** Lieutenant-. The s me r quest ;as made on-

-in the form of a follow-up email from to

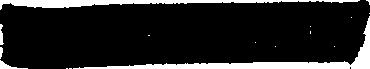
containing a list of 13 ADC officers with whom counsel for-wished to speak. The ADC did not respond to that email. In , defense counsel again contacted the ADC, this time being told that the ADC would not permit the defense to interview its staff

1. The import and materiality of type of good conduct evidence discussed in the above paragraph is indisputable. in fact, in *Skipper v. South Carolina,* 476 U.S. 1, 4 (1986), the United States Supreme Court definitively held

that "the exclusion from the sentencing hearing of [a defendant's] good behavior during the over seven months he spent in jail awaiting trial deprived petitioner of his right to place before the sentencer relevant evidence in mitigation of punishment. It can hardly be disputed that it did." Recognizing that Skipper's death sentence could not stand in light of the fact that his sentencer was deprived of the testimony from Skipper's jailors, the Court reversed his death sentence. In *Skipper,* the Supreme Court held that this evidence was dually relevant as rebuttal to a "foture dangerousness" claim by the State,·and indepen ently as mitigation. *Id* at *5* n. l.

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# Moreover, a constitutiona11y effective penalty phase investigation is not simply about mitigation evidence but also about investigation to rebut the Commonwealth's proposed evidence in aggravation. *See Rompilla,* 545 U.S. at 374 (defense counsel is constitutionally ineffective for failing to investigate and prepare rebuttal against the Commonwealth's aggravating evidence). Here, the Commonwealth has given notice in this case ofits intent to present evidence in aggravation regarding 10 prior convictions an alleged unadjudicated crimes. These alleged crimes are all from the 1980s and 1990s. The Commonwealth

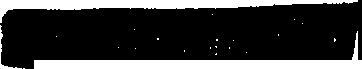
delineated these instances after the  motions hearing, but in

responses to motions to strike and exclude, has steadfastly refused to pare down what alleged offenses it will in fact seek to enter. Thus, over the past year, in addition to conducting mitigation investigation, the defense also been investigating all possible witnesses to each of the 10 acts that the Commonwealth may seek to put into vidence as aggravation. Thus, the defense is investigating 10 additional "crimes" in addition to the murder for which - stands indicted. As recently as , the defense learned of the name of a witness to one of these incidents and is since trying to locate that witness. Other witnesses remain to be identified and interviewed from these incidents.

* 1. **Additional Time is Needed for Fact Investigation in this Matter**

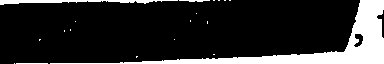
1. The defense investigation in the murder itself continues. Here, too,

the defense has accomplished much of its investigation, and, as represented on

 at the hearing on Defendant's Notice and Motion for Provision of Hours to Allow the Work of the Court-Appointed Fact Investigator, the defense

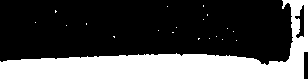
is hopeful·that the domestic U.S. factual investigation can largely be completed

prior to the trial date. On the court-appointed fact



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investigator spoke to·a central witness to the events of the night, after extensive effo1ts to locate the witness, who had left the Commonwealth over a year ago. The defense may seek an out-of-state witness subpoena for that witness. More centrally for purposes of this Motion, that witness provided the name of another person reportedly linking-• the man with-h€ night of his murder, and-s drug use. The defense now needs to locate and interview that witness.

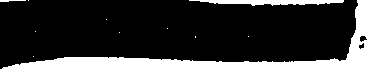
1. The defense continues to try to interview for the

reasons provided in Defendant's Motion for Authorization of Funding for Private

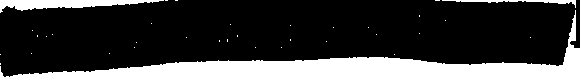
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Fa t Investigator to Travel Abroad to Interview Witness and Attempt to Collect

DNA Sam .6

1. On , having been given notice that the

Coinmo\_nwealth intended to introduce the testimony of Detective-as an expert in blood pattern analysis, defense counsel interviewed Detective- in the presence of a Commonwealth's Attorney. That interview raised substantial questions about the admission ofDet..,s purported expert opinion testimony, based on his very limited experience in such matters, in the scientific underpinnings of his opinion, and on the conclusions he draws. As put by a



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recent report of the of which DFS

* was a signatory contributing member of the committee, "The

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*6* The defense speci:ficaUy adopts and incorporates the content of that motion and the affidavit appended, along with the argtm1ents and authority cited at hearing of that motion on\_,.

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# uncertainties associated with bloodstain pattern analysis are enormous." National Research Council, STRENGTI-lENINGFORENSIC SCIENCE IN TI-IB UNITED STATES

179 (NAS. Press 2009). The defense is in the process of obtaining Det. -

# training and education materials, his prior testimony. More than that, the defense has spoken with a nationaUy'recognized authority in bloodstain pattern evidence and may now seek the appointment of that expert for defense consultation and testimony purposes.

**:0. Reservation of Right to Supplement and Renew this Motion**

1. - and his counsel respectfully reserve the right to supplement and to renew this Motion.
2. **Legal Authority**

24·. The seriousness of a capital murder charge and the defendant's possibility

of a sentence of death are circumstances that must be considered in evaluating whether counsel provides the effective assistance required under the Sixth Amendment. *See Wiggi'f!S v. Smith,* 539 U.S. 510 (2003) (Sixth Amendment right to have counsel investigate potential mitigating evidence in capital case); *Dept. of Corrections v. Clark,* 227 Va. 525, 534 (1984) (constitutional right and need to investigate in capital case). Counsel must conduct a reasonable pretrial investigation in a capital case. *Id.* A thorough defense investigation in a capital case is "vitally impo1tant," *Powell v.*

*Alabama,* 287 U.S. 45, 57 (1932). "Counsel at every stage have an obligation to conduct thorough and *'independent* investigations relating to. the issues of both guilt and penalty." Guideline 10.7, *Guidelines.for the Appointment andPe formance of Defense Counsel in Death Penalty Cases,* Alv:IERICAN BAR ASSOCIATION (2003) (emphasis added)..

1. - has heightened due process rights, through the Eighth Amendment, because this is a capital case. *See e.g., Ca.spari v. Bolden,* 510 U.S. 383, 393 (1994); *Caldwell v. Mississippi,* 472 U.S. 320, 329 n.2 (1985) (quoting *Eddings v.*

*Oklahoma,* 455 U.S. 104, 118 (1981) (O'Connor, J., concurring)); *Beckv. Alabama,* 447

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U.S. 625, 638 (1980); *Woods·on v. North Carolina,* 428 U.S. 280,305 (1976). *See also*

# *Penry v. Linaugh,* 492 U.S. 302 (1989) (capital" sentencer must be able to consider mitigation); *Eddings v. Oklahoma,* 455 U.S. 104 (1982) (capital sentencer may not refuse to consider mitigation); *Lockett v. Ohio,* 43\_8 U.S. 586 (1978) (capital defendant may not be l:>arred from presenting mitigation). If deprived of his right to discover and present evidence of mitigation, -cannot constitutionally be sentenced to death.

1. The right to call witnesses and present evidence in the defe11dant's own defense is a fundamental right of due process protected under both the United States Constitution and the Virginia Constitution. *Washington v Texas,* 338 U.S. 14, 19 (1967). The Sixth Amendment of the U.S. Constitution proclaims that an accused is guaranteed a "corhpulsory process for obtaining witnesses in his favor." U.S. Const. am. VI. Under the Virginia Constitution, an accused has the right to "call evidence in his favpr." Va. Const. a1i. I. sec. 8. Defense counsel must be afforded the ability to "investigate and evaluate the evidence in preparation for trial." *Gilchrist v Commonwealth,* 227 Va. 540, 546 (1984). "[A]n accused has the unqualified right to 'call ror evidence in his favor.'

This includes the right to prepare for trial which, in turn, includes the right to interview

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material witnesses and as,certain the truth." *Warmouth v Commonwealth,* 29 Va. App..

476,485 (1999) *(quotjngBobo v Commonwealth,* 187 Va. 774, 779, (1948), Va. Const.

ati. I, sec. 8).

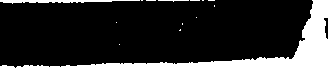
1. - has a due process right to the assistance of experts. *Ake v. Oklahoma,* 470 U.S. 68 (1985); *Husske v. Commonwealth,* 252 Va. 203 (19.96); *R.amdass v Commonwealth,* 246 Va. 413, 437 (1993); *Breeden v Commonwealth,* 15 Va. App. 148, 150 (1992); *Fitzgeraldv Bass,* 6 Va. App. 38, 52-53 (1988).
2. **Conclusion**
3. Here, the conducting of further mitochondrial DNA analysis of evidence t:ecovered from the decedent's body is crucial **to-.rs** defense. There is evidence of another individual- neither-nor the decedent- on the decedent's body. Prior testing ha revealed blood stains from persons other than\_..,n the hallway and stairwell that were swabbed and recovered as evidence by the police in this case, and nuclear genetic profiles from swabs of the decedent and likely weapons in her apartment that cannot be attributed to either - or the decedent. Mitochondrial DNA testing has now revealed that a hair belonging to someone other than-was within the decedent's hand as she lay prone on the ground in her apartment. -

has a right to this testing to develop evidence that excludes - as the contributor of DNA evidence on the decedent's body, in support of a defense to capital murder at the guilt phase of this trial.

1. Additionally,\_ and his defense require more time to adequately and completely conduct mitigation and fact investigation in this matter. Barring reversal on appeal or habea.s corpus, there is only one trial\_- -s defense counsel has worked diligently to have his case ready to be t ied. Substantial mitigation investigation has been completed but great amounts of investigation remain. As set forth above,.

-s defense requires more time to properly and adequately prepare for trial.

1. A continuance would cause no prejudice to the Commonwealth.
2. For these reasons\_,\_respectfully moves this Honorable Court to

continue the trial currently scheduled for  until this summer or as soon thereafter as the case can be heard. *See Cox v. Commonwealth,* 227 Va. 324, 315 S.E.2d

228, 230 (1984) (accused has constitutional right to call for evidence in his favor, \_which includes right to prepare for trial by procuring both testimonial and documentary evidence); *Bobo v. Commonwealth,* 187 Va. 774, 779 (1948) (unqualified "right to

prepare for trial which, in turn, includes the right to interview material witnesses and to

ascertain the truth").; *Anthony v. Commonwealth,* 179 Va.. 303, 310 (1942) (noting that,

*[*

although "[t]he desire of the trial court to prevent undue delay of the trial of the case is

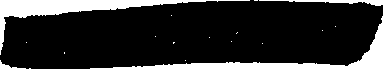
commendable[,][] this should not compel the court to force a litigant into trial in the absence of material witnesses"). With additional time, defense counsel will be able to

provide- the representation that he d\_eserves and that that he is constitutionally

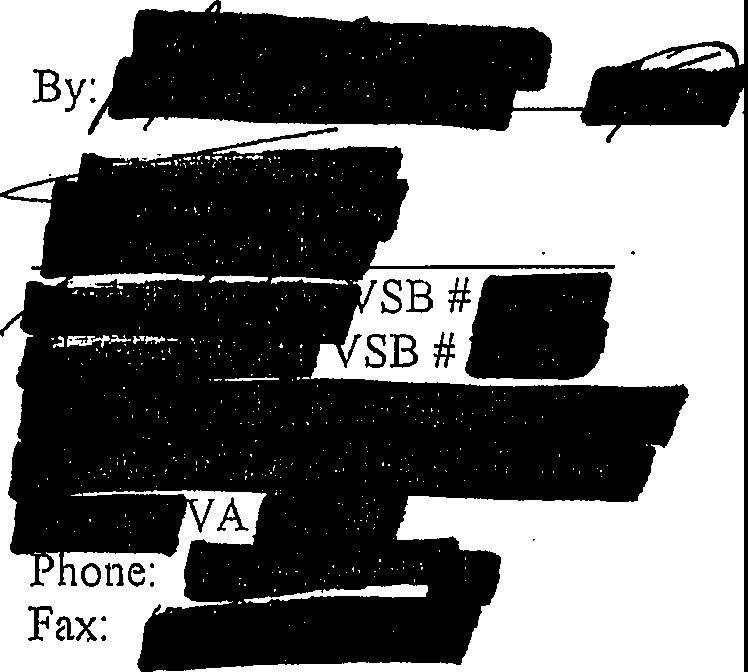
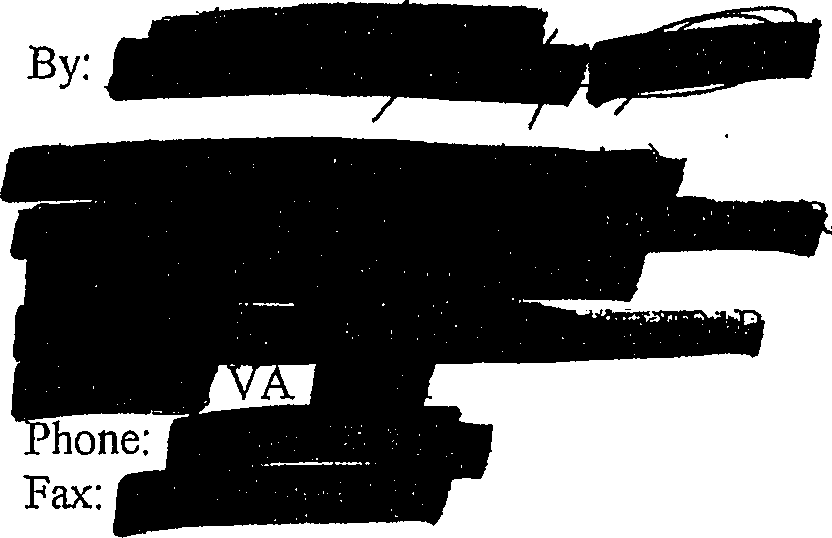
entitled to. Without additional time,\_ will not receive the effective assistance of counsel, a reliable and fair sentencing determination, process, due process, or- a fair trial.

WHEREFORE,-respectfhlly moves this Honorable Court to continue the trial of this case to this summer or as soon thereafter as the case can be heard to allow sufficient time for DNA testing of potentially exculpatory evidence and for the case to be fully and appropriately investigated at both the guilt and penalty phases of the trial.

Respectfully submitted,

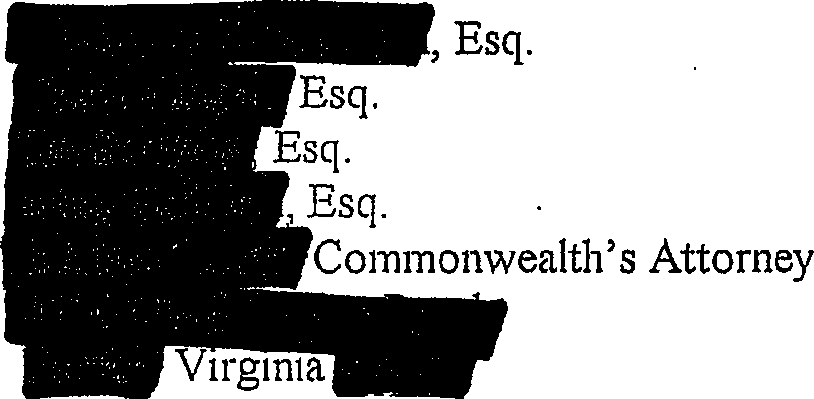


By Counsel

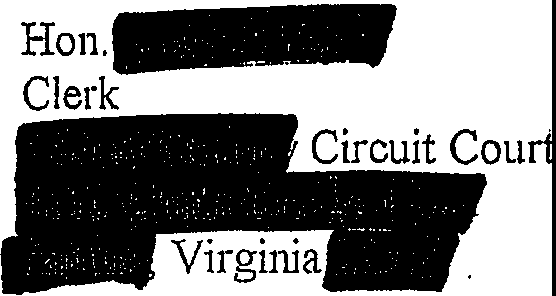
 

**CERTIFICATE OF SERVICE**

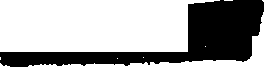
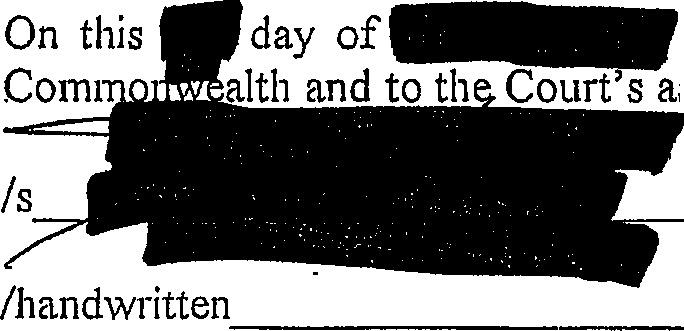
We/I hereby certify that a true copy of the foregoing Motion was delivered and/or mailed, first class mail to:



# And the original was forwarded for filing to:



We further certify that a copy was emailed to. the

1 t s assistant on **\_II** day of .