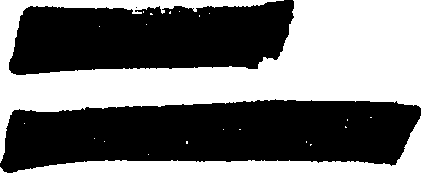
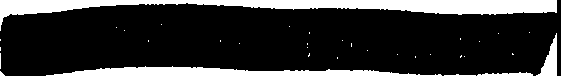
VIllGINIA:

INTHE cmcmTCOURTOF ,

CO:MMONWEALm OF VIRGINIA

vs.

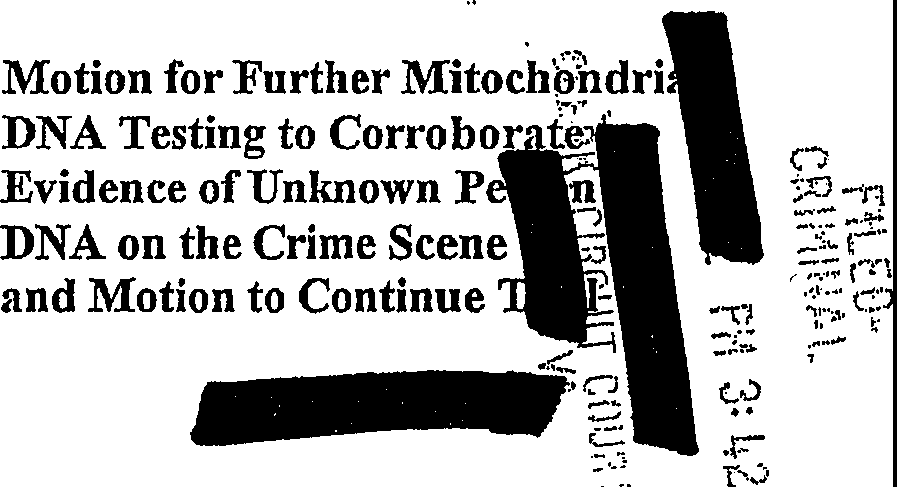


Defendant.

.

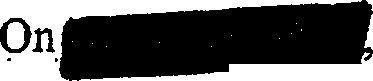
··•

Criminal No. Judge: .Hon•



Hearing:

RENEWED MOTION FOR ADDITIONAL MITOCHONDRIAL DNA TESTING TO ,CORROBATE EVIDENCE OF UNKNOWN PERSON'S DNA ON THE CRIME SCENE AND RENEWED MOTION TO CONTINUE TRIAL TO ALLOW SUCH TESTING AND OTHER NECESSARY INVESTIGATION

 Virginia Attorney General Ken Cuccinelli said:

"I would not make the kind of a statement along the lines that there's never been a mistake in a death penalty case where someone's been executed. I would frankly be rather surprised if that were true, just as a statistical matter. ·I was an engineer before I went to the dark side and went to law school, and I still have that sort of a left-brain, statistical, numbers approach. I just have a hard time imagining that through all the different states andthe federal system, that there hasn't been a mistake made in that kind of a case. One of the things that scientific evidence, forensic evidence, **does** for us, is it does provide the opportunity for greater certainty in terms of some of our conclusions.

Forensic advances that have been made in the last 10, 20, 30, 40 years, have really enabled us, I think, in some respects, to be more confident in the certainty of some of our conclusions, That doesn't appear in **every** case, you know, It's not available in **every** case, but where it is available, it certainly allows us to draw stronger conclusions. And where it's available and wasn't used and suddenly becomes available, *I certainly would not expect Virginia under my leadership, as long as I have a say in it, to be blocking people's ability to test that evidence,"*

*Cuccinelli Disagrees with Scalia on Death Penalty Assertions: Va. Attorney General "Would Frankly be Rather Surprised" if No Death Penalty Case Had Ever Resulted in*

I

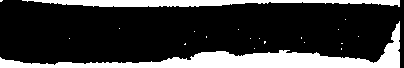
*Wrongful Execution,* [www.amu.org/about/press/11/cuccinelli.php](http://www.amu.org/about/press/11/cuccinelli.php) (including a link to the radio conversation - [http://thediancerehmshow.org/shows/2011-01-06/wrongful­](http://thediancerehmshow.org/shows/2011-01-06/wrongful) convictions-and-dna-evidence) (emphasis added).

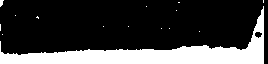
One day after Mr. Cuccinelli' s recognition that where there is known DNA

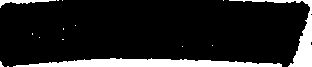
·· e idence it must be tested i order to avoid rongful xec tions, this Court-denied­

.\_ s pretrial motion to test known, available biological evidence directly connected

to this murder on the ground that "[t]here simply must come a time when a case moves

forward, even a case of this magnitude. The resources provided to the Defendant, although extensive in this case, cannot be limitless." Letter from 

Judge to Counsel 

As the defense stated at thehearing on the initial motion for a continuance and for DNA testing *to* link items of crime scene exculpatory evidence, the defense agrees that "[t]here *simply* must come a time when a case moves forward, even a

case of this magnitude." With respect to a desire to move a case forward and to clear the calendar, that time is most certainly not now. The time that a case moves forward to trial is when the existing forensic evidence is tested. To move the case forward without testing the existing forensic evidence causes the trial to be one of show, not of substance. The Court's denial of...,s right to test DNA evidence *to* demonstrate evidence of a third party's participation in this capital murder in which-*is* facing the prospect of a death sentence, and to meet the force of the Commonwealth's arguments

. that the hair found in the victim's hand is just coincidental and the blood stains in the

--J

investigation. Although■ and ere appointed to this case **onW-** ■■■ the

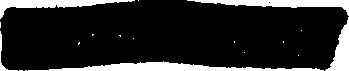
1 Inits letter, tlle Court wrote that the defense has had twentyMtwo months of pretrial preparation and

• • •

Commonwealth did not complete its DNA testing, which necessarily had to be concluded before the defense could start its testing, until- The Capital Defender Office was appointed to this casein

hallway and stairwell outside the victim's apartment are irrelevant will render a trial in this matter that is fundamentally unfair and an injustice of the highest order.

COMES NOW, the Defendant, by counsel, pursuant to his



,

right to be free from cruel and unusual punishment, his right to due process, his right to

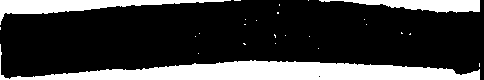
. .

notice, his right to a fair trial, his right to couns\_el, his right to present a defense, and his right t a reliable sentencing detennination, guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 8, 9, and 11 of the Constitution of Virginia, and other authorities cited herein, respectfully moves this

Court to order additional mitochondrial DNA testing, based on the uncontested fact that

Q

mitochondrial DNA testing conducted thus far has identified that a human hair belonging

to an unknownperson-DFS Item No. 38E,

* was recovered from the left hand of the decedent·.

ItemNo. 3049Q6

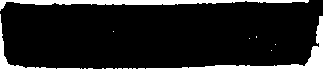
The defense seeks to conduct additional mitochondrial DNA testing to evaluate if various samples from the crime scene in which unknown *nuclear* DNA profiles were developed have the same *mitochondrial* DNA profile as DFS Item No. 38E and to identify other human hairs recovered from the victim's left hand in DFS Item Numbers *25* and 38 that have the same mitochondrial .DNA profile as DFS Item No. 38E.

Additionally, the defense seeks a continuance to allow this essential testing, to allow the completion of necessary mitigation investigation, and to allow the fact

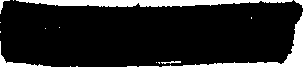
investigatio into the knowledge about and participation in this murder on L 4

1£

2 This Motion specifically adopts and incorporates the authority, arguments, and factual assertions in Renewed Motion, Based Upon New Information for Authorization of Funding for Private Fact Investigator to Travel Abroad to Interview Witness and Attempt to Collect DNA Sample, Motion to Continue Trial to Afford Defendant Full DNA Testing and Oru,ortunity to Investigate the

**PLEASE TAKE NOTICE** that on , at 10:00 a.m., or as soon thereafter as counsel may be heard, counsel will argue this Motion to the Court.

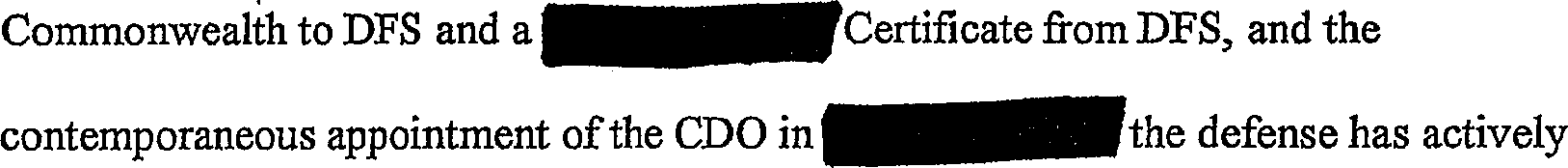
In support of this otion, -through counsel, states the following:

* 1. Since receipt in . of the last round of the Commonwealth's

...

DNA Testing, which had concluded with a request from the



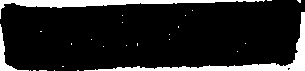


been requesting DNA testing in regular fashion to develop scientific evidence of the participation of another person to the murder. *Tellingly,* - *has been eliminated.­ as a contributor to every single piece of evidence that has been tested by the Court.*

Rather than generate inculpatory evidence, all the DNA testing has generated exculpatory evidence. *e.g.,* DNA testing of blood in the hallway is of an unknown person; DNA

testing of blood in the stairwell is of an unknown person; DNA testing of a hair in the victim's hand is of an unknown person.

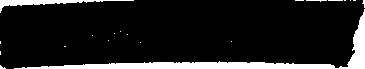
The defense did not go fishing and seek to test everything at the conclusion of the

Commonwealth's testing in . Such a request would have fallen on deaf ears as not making out a particularized need. Rather, the defense has, with the Court's

Offense and Evidence in Mitigation of a Death Sentence, Motion for Additional Mitochondrial DNA Testing to Corroborate Evidence of Unknown Person's DNA on the Crime Scene, Notice and Motion for Provision of Hours to Allow the Work of the Court-Appointed Fact Investigator, Motion for Authorization of Funding for Private Fact Investigator to Travel Abroad to Interview Witness and Attem t to Collect DNA Sam le Defendant's Notice of Filing of Mitochondrial DNA Test Re ort and Invoice from Motion for Mitochondrial DNA Testing by Private Laboratory of Human Hair Fragments Recovered in Item 25 and Item 38, Notice, Defendant's Notice of Expert Testimony, Motion for Additional Nuclear DNA Testing of a Blood Sample, and Microscopic Hair Comparison and Mitochondrial DNA Testing ofHair Samples, Notice and Motion for Testing of Recovered Evidence, Memorandum of Points and Authorities in Su1mort of Defendant's Motion to Continue, Notice and Motion for Continuance of Trial, Motion to Continue, Notice and Motion for Testing of Recovered Evidence, Notice and Motion for Access to Crime Scene and Witnesses, as well as all exhibits to, and arguments made in support at all hearings concerning, those motions.

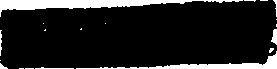
consistent approval until the denial, methodically presented a particularized need for subsequent DNA testing each time DNA tests come back with exculpatoi:y information. And the finding of a human hair that belongs to an unknown person in the victim's hand demonstrates the particularized need for the testing requested

here.

1. Four and a half months ago - on

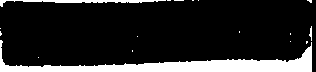
- the defense moved

the Court to test the hairs recovered from the victim's left hand. At that time, the Commonwealth contended that such hairs were likely animal hairs from the victim's cat. The Court deferred the defense's request for testing of the hairs and instead ordered the interim step that DFS determine whether there were human hairs contained among the hairs in the victim's.**1**eft hand.

1. While there were some animal hairs collected, DFS concluded that there were approximately 100 human hairs in the victim's left hand- in DFS Item Nos. 25 and
2. In  the defense reiterated its motion for the Court to order the testing of each of those hairs. The Court \_denied the request for testing of all the hairs and instead

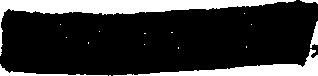
ordered the interim step thatDFS test a small selection of those hairs.

* 1. Upon getting the case file notes that underlie DFS' microscopic hair analysis, the defense immediately noted that the small selection of hairs that the Court had ordered to be tested did-not account for distinctions that DFS itself had made among

the hairs by microscopic analysis. For the third time, now in the

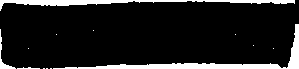
defense asked that all the hairs be tested, with samples being sent out from DFS if it was not practicable for DFS to conduct and conclude all the testing by the trial date.· Again, the court denied the request. Instead, just before the

court ordered that a small number of additional hairs be tested - 2 by DFS and *5* by a private laboratory.

* 1. In late  the results came in frorn the private laboratory -
* *one of the hairs that the Court had, a month before, ordered to be tested in fact came from an unknown person.* The pattern of exculpatory DNA evidence that had started with the nuclear DNA analysis of blood stains in the hallway and stairwell outside the victim's

apartment continued, and the need for :further mitochondrial DNA testing became apparent.

* 1. The defense therefore moved - for the fourth time - for the Court to order the testing of all the·human hairs recovered from the victim's left hand, as contained in·

DFS Item Nos. 25 and 38. On , the Court again denied the defense the

testing; in doing so, the Court denied the access to this evidence and made -s trial unfair.

* 1. The finding that mitochondrial DNA testing demonstrated that a hair that did not match the victim or the defendant was in the·victim's left hand became cause for the testing of additional samples. Previously, there had been no reason to seek to develop mitochondrial DNA profiles of the blood stain in the hallway, the blood stains in the stairwell, the mixture profile on the victim's breast that evidence the presence of an unknown third person, and the mixture profiles on the handles of the putative murder weapons - a frying pan and a pot. All those items of evidence had nuclear DNA profiles that suggested the presence and participation of an unknown person. There had been no basis to conduct mitochondrial DNA testing.
  2. With the mitochondrial DNA finding about the hair, the situation changed dramatically. Mitochondrial DNA testing of the blood stains and other nuclear DNA samples that are evidence of the presence of unknown participant (discussed in paragraph 8, *supra)* can demonstrate a link between those items of evidence and the hair recovered from the victim's hand. Each of those samples has a different nuclear DNA profile. If

mitochondrial DNA testing of any of those samples matches the mitochondrial DNA profile of the hair recovered from the victim's left hand (DPS Item No. 38E), then the probative value of evidence of an unknown third party will be greatly increased.

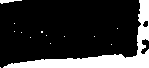
Matching mitochondrial DNA profiles between DFS Item No. 38E and other DNA

evidence will also substantially undermine any argument by the Commonwealth that the jury should disregar 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.

* 1. This is precisely the power of forensic DNA evidence: to link items of

evidence together to help understand who was involved in a crime. Thus, because evidence of matching mitochondrial DNA profiles linking the foreign hair to exculpatory

stains and swabbings would be conclusive evidence of another perpetrator, as s the Court to ordei; mitochondrial DNA testing of the following five samples:

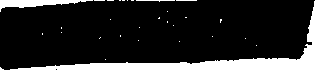
* + blood stain in the hallway outside the victim's apartment that had nuclear DNA profile that eliminated the victim and-
  + blood stains on the balusters in the back stairwell outside the decedent's apartment that had nuclear DNA profile that eliminated the victim and-

7

*f* .

* + breast swab sample of the victim that nuclear DNA testing identified as having at least one genetic marker for an unknown person;
  + swab of handle of frying pan believed to have been used by an assailant as weapons against the victim that nuclear DNA testing identified as having at least one genetic marker for an unknown person; and
  + swab of handle of pot believed to have been used by an assailant as weapons against the victim that nuclear DNA testing identified as having at least one genetic marker for an unknown person.

1. - also seeks mitochondrial DNA testing of the remaining human· hair fragments that have not been tested for mitochondrial DNA testing. DPS identified approximately 100 human hairs from within the victim's left hand in Item #25 and #38.

Upon receipt of a  DFS Certificate last night,3 as of today's date, 15 of those hairs have been tested for mitochondrial DNA Twelve of the hairs matched the

mitochondrial DNA profile of the victim and 2 of the hairs had insufficient material to

develop a mitochondrial DNA profile. *The current state of the evidence is that there is*

.

\

*one hair that eliminates--and points to a third person.* Under the current state of the evidence, the Commonwealth may argue- as it precisely did in seeking death in

**,c•••r-** that the single hair;s presence on the scene is coincidental and that the jury

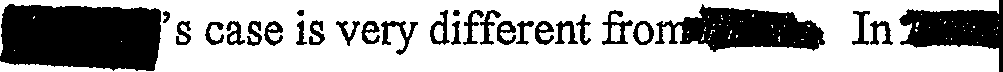
should disregard it. The Commonwealth may further seek to argue that the untested hairs are likely the victim's, given that the majority of the tested hairs came back to matching her. The greater the number of unknown-contributorhuman hairs/hair fragments that match each other - whether 3, 5, 10, or more - the more any argument by the



3 Although dated the Certificate was received by email attachment shortly after 5:00 p.m. on The case file was not received, and the defense may have further representations and arguments based upon review of the case file.

Commonwealth that the jury should disregard DNA evidence of an unknown person in the victim's hand is undermined and the stronger is a defense argument to the jury of reasonable doubt **th,11:S L** vas a principal in the first-degree and eligible for the death penalty and that the presence of multiple persons serves as a mitigating factor against imposition of the death penalty. Accordingly, -respectfully requ sts that the Court order the testing of the remaining human hairs from Items 25 and 38 - or at least that subset of those hairs that are of sufficient quality and quantity to be tested.4

1. It is important to note that, in terms of what is available to be tested,.

 ·· the Commonwealth had lost 2 · hairs that were obtained during the victim's pubic hair combings. Here the items of

biological evidence are present to be tested. There was a judicial determination that the loss of hairs fo § **K·'ras** not in bad faith. Given.that finding, the court allowed the

Commonwealth to argue that the foreign hairs could have resulted from coincidental transference unrelated to the murder and allowe,,.-.tnargue that evidence of foreign.

'·

hairs supported his argument that there must have been another perpetrator on the scene.

Unsurprisingly, without being able to link the hairs to other evidence connected with the murder, the jury did not consider the hairs alone to be sufficient and..,was convicted and sentenced to death. Unlike-- here we have the crime scene samples and hairs to be tested and to be compared to link evidence associated with the murder. To not test

4 Although the defense reiterates its preference that a private laboratory conduct the independent DNA testing for the defense in this case, in light of the Court's prior rulings denying such requests, the defense moves that the a.bove requested testing is, pursuant to Va. Code. Sec. 19.2- 264.3:l.3, conducted either by DFS, or, if it is not practicable for DFS to conduct all the testing, a contracting forensic DNA laboratory- most likely · n- or

in ••• given that each laboratory has conducted wq,rk in this case already.

■■■

them is a denial to the defense of the essential tools of the defense and of the defense's right to call evidence and witnesses in its favor. Instead of producing evidence, the defense is left without lqiowing the results ofDNA testing. No matter how strong the desire to move this case to trial, that simply cannot be acceptable to any court, judicial officer, or officer of the court sworn to uphold the Constitution of the United States and the Virginia Constitution. In this country and in this Commonwealth, we do not ignore available evidence when deciding whether a man may live or die. The jury should be able to have full, complete, and accurate information to make its decision.

1. · The Court's denial of-'srequest for pretrial DNA testing is particularly astonishing and prejudicial given that the criminal trial is the fulcrum around which the rest of the criminal justice system operates. Denying access to sucli evidence, where it impose no cost on the Commonwealth and can assist the jury in deciding whether a man lives or dies, is patently unfair. Here, in Virginia, when the defendant has demonstrated a particularized need for testing, such testing is to be ordered.

*Commonwealth v. Sanchez,* 268 Va. 161, 165 (2004). "While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when evidence is at issue." *District Attorney's Office v. Osborne,* 129\_ S. Ct. 2308, 2316 (2009). "Given the persuasiveness of such evidence in the eyes of the jury, it is important that it be presented in a fair and reliable manner." *McDaniel v. Brown,* 130 S. Ct. 665, 675 (2010). Rather than wait for the post-conviction context, like in Osborne and Brown, -simply seeks "his day in court armed with his expert's testimony," 268 Va. at 169 (Koontz & Lacy, dissenting), about *all* relevant PNA results so that the jury can resolve the issues

surrounding the import of the evidence and the presence of another participant in th murder. Indeed, the great power of DNA evidence is the very reason why Virginia has established a dght to post-conviction DNA testing where such testing was not available pretrial. *See* Va. Code, sec. 19.2-327.1 (Motion by a convicted felon for scientific analysis of newly discovered or previously discovered untested scientific evidence). This case should not be worked back words - from post-conviction testing to trial. The testing should be conducted pretrial.

1. As previously found by other authorities, the Due Process principles underlying *Brady v. Maryland-* particularly in light of a capital case in which due process is heightened - support-s right to DNA testing in the pretrial context. Criminal defendants have a Due Process interest in "evidentiary material of which no more can be said that it could have been subjected to tests, the results of which might have exonerated the defendant." *Arizona v. Youngblood,* 488 U.S. 51, 57 (1988). "DNA evidence :fundamentally alters the traditional Due Process calculus. In cases where DNA evidence could have exculpated a defendant and was not utilized at trial, one can longer describe the earlier adjudication as deciding guilt or innocence 'within the limits of human fallibility.' *Herrera,* 506U.S. at401." *Wade v. Brady,* 460 F. Supp.2d 226,248 (D. Mass. 2006).
2. A similar circumstance to • case was presented in *United*

*States v. McAllister,* 64 M.J. 248, 249 (C.A.A.F. 2007) *(McAllister II),* in which the

appella.te court ruled that the military trial judge had erred by denying the defendant's request to re-test certain evidence for the presence of DNA in order to rebut the

prosecution's contention that the DNA evidence before the jury (which did not include

the DNA testing sought by the defense and denied by the trial judge) demonstrated the

defendant's guilt. Just like in this case, DNA evidence was the linchpin of the

'

prosecution's case, and just like in this case, the denial of DNA testing for

"was to deny him the right to present a defense - a defense to ''the linchpin of the prosecution case." United States v. McAllister, 55 M.J. 270, 276 (C.A.A.F. 2001), *quoted in id* at 252.

1. The right to call witnesses and present evidence in the defendant'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 6111 Amendment of the U.S. Constitution proclaims that an accused is guaranteed a "compulsory process for obtaining witnesses in his favor." U.S. Const. am. VI. Under the Virginia Co stitution, an "accused has the right to "call evidence in his favor." Va. Const. art. I. sec. 8. Defense counsel must be afforded the ability to "investigat 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 for evidence in his favor.

This includes the right to prepare for trial which, in turn, includes the right to interview material witnesses and ascertain the truth." *Warmouth v Commonwealth,* 29 Va. App. 476,485 (1999) (quoting *Bobo v Commonwealth,* 187 Va. 774, 779, (1948), Va. Const.

art. I, sec. 8).

1. The Supreme Court of Virginia has established that a defendant is entitled to inspect potential evidence upon a plausible showing that the material might have exculpatory relevance1 *see Ramdassv Commonwealth,* 246 Va. 413,437 (1993), and impeachment value alone may make the information exculpatory. *Fitzgerald v Bass,* 6

Va. App. 38, 52-53 (1988). Furthermore, the Court of Appeals has ruled that a failure on the part of the Commonwealth to conduct a particular form of investigative testing, which potentially could provide exculpatory evidence, requires dismissal. *Breeden v Commonwealth,* 15 Va. App. 148, 150 (1992).

1. .AJiy barriers imposed on the defense's investigation of the physical evidence in this case will render-s counsel constitutionally ineffective. 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 Dept. of Corrections v.*

*Clark,* 227 Va. *525,* 534 (1984). Counsel must conduct a reasonable pretrial investigation in a capital case. *Id.* A thorough defense investigation in a capital case is . "vitally important," *Powell v. Alabama,* 287 U.S. 45, 57 (1932). "Counsel ·at every stage have an obligation to conduct thorough and *independent* investigations relatin to the issues of both guilt and penalty." Guideline 10.7, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases,* ABA (2003) (emphasis added).

1. -hasa due process right to the as istance of experts and the tools to present an effective defense. Without the requested DNA evidence, he is without such tools. *Ake v. Oklahoma,* 470 U.S. 68 (1985); *Husske v. Commonwealth,* 252 Va. 203 (1996). -hasheightened due process rights, through the Eighth Amendment, because this is a capital case. *See e.g., Caspari 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 U.S. 625, 638 (1980); *Woodson v. North Carolina,* 428 U.S. 280, 305 (1976).
2. Here, the conducting of further mitochondrial DNA analysi\_s of evidence recovered from the decedent's body is crucial to\_,s defense. There is evidence of another individual - neither - nor the victim - on the body. Prior t sting has revealed blood stains from persons other than-in the hallway and stairwell

that were swabbed and recovered as evidence by the police in this case. Mitochondrial

'

DNA testing has now revealed that a hair belonging to someone other than-

was in the victim'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 victim's body, in support of a defense to death-eligibility and imposition of a death sentence.

1. Should this Court deny the request for DNA testing and the motion to continue, -moves to bar imposition of the death penalty in this case because he is being deprived access to evidence that can demonstrate that he is not the principal in the first degree of the offense and/or that the jury is being deprived mitigating evidence

of a second perpetrator. The defense believes that Commonwealth would still be able to proceed forward on capital murder charges with the maximum penalty being life in prison.

1. Alternatively, the defense moves for the Court to limit the prosecutor from

arguing that the foreign hair recovered from the victim's hand could have gotten there in

a manner unrelated to the offense and from arguing that the blood stains in the hallway

and stairway may be unrelated to the ffense. And -moves for a jury "'

instruction that he sought mitochondrial DNA testing of all the hairs *in* the victim's hand in order to develop that evidence and present it to the jury.

1. Finally,\_ seeks a continuance to allow for the additional DNA testing (and to allow for the necessary investigation that was detailed in the previous motion that is specifically incorporated in, and therefore is not repeated in, this Motion).

-'s defense will be seriously imperiled if this trial is not continued. "[I]fthere

. . . .

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. 1111, 1117 (i 931). The court's discretion in ruling on a motion to continue "must be exercised with due regard to the provisions of the Bill of Rights, 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.*

*Commonwealth,* 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

con eive, violates both the letter and spirit of the Constitution." *Creamans v.*

*Commonwealth, supra.* Despite the best diligent efforts of defense counse 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.

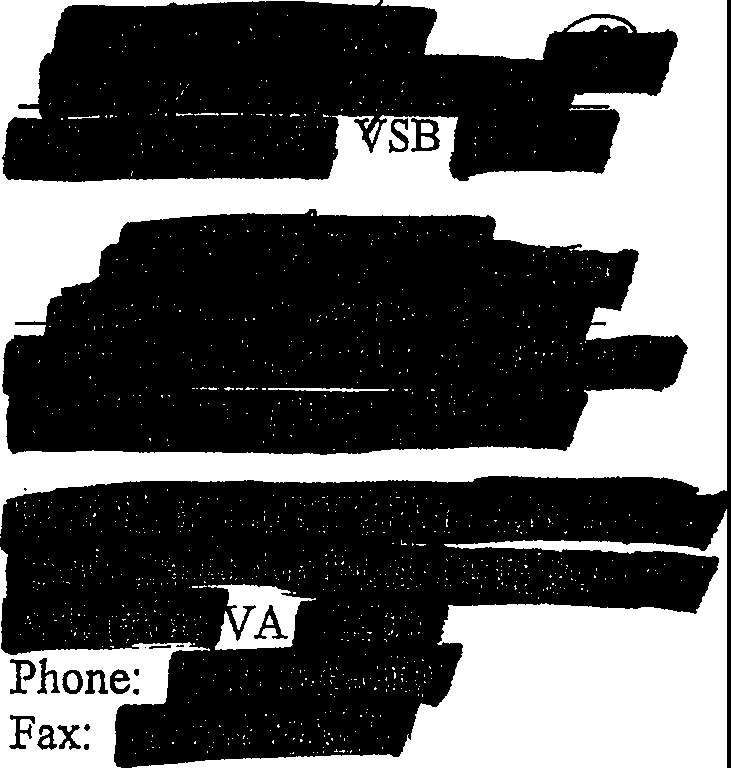
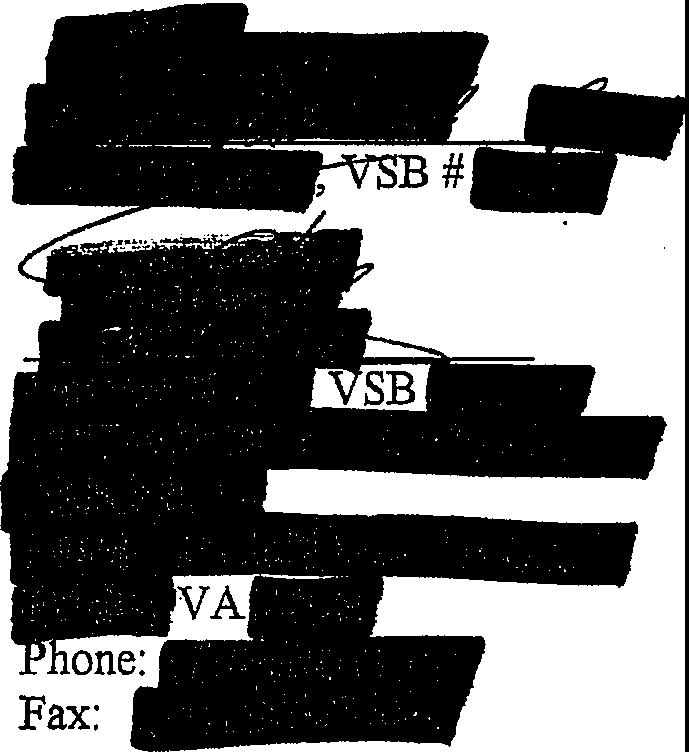
WHEREFORE,\_, by counsel, respectfully requests that this Court enter

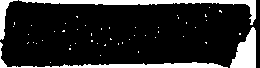
(1) an order that requires the Commonwealth to order mitochondrial DNA testing and development of mitochondrial DNA profiles for the blood stain from the hallway outside

\,.

the victim's apartment that had a nuclear DNA profile of an unknown person, the blood stains from the balusters of the stairwell outside the victim's apartment that had a nuclear DNA profile of an unknown person, the swab of the victim's breast that had a nuclear DNA profile of an unknown person, the swabs of the handles of the frying pan and pot than had nuclear DNA profiles of an unknown person, and all remaining human hair fragments that are suitable for mitochondrial DNA testing but have not yet been tested for mitochondrial DNA; (2) continue his trial; and (3) provide such alternative relief as heretofore requested in the motion and at oral argument on the motion.

Respectfully submitted,



***Co-counsel for ***

**CERTIFICATE OF SERVICE**

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

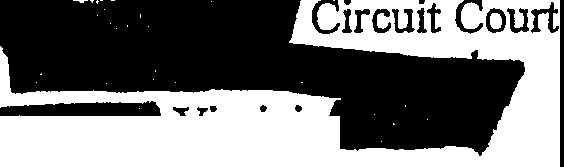
, Esquire



and the original was forwarded for filing to:

Hon ,,,,

Clerk



**llllfVirginia**

On this ,y of 

