

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA

v.

Case No. 11-102

GEORGE HUGUELY,

Defendant.

MOTION FOR LEAVE TO INTRODUCE VIDEOTAPED STATEMENTS FROM FAMILY MEMBERS AT ANY SENTENCING PROCEEDING

The defendant, George Huguely ("Mr. Huguely"), by counsel, for his Motion for Leave to Introduce Videotaped Statements from Family Members at Any Sentencing Proceeding, states the following:

1. A number of Mr. Huguely's immediate family members will be called to testify in the event of a conviction on any offense, including his mother, sister, father, step-father, and a number of aunts, uncles, and cousins.
2. At the same time, these same family members wish to remain in the courtroom during the trial.
3. The Court has found that under Virginia Code § 19.2-265.1, even witnesses in the sentencing phase only, would be excluded from attending Mr. Huguely's trial.
4. In the absence of an agreement by the Commonwealth that Mr. Huguely's immediate family be permitted to remain in the courtroom, Mr. Huguely now petitions the Court to permit his family to provide mitigation statements via videotape.

FILED

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 CIRCUIT COURT CLERK'S OFFICE
 CHARLOTTE, VIRGINIA
 PAUL S. CAMPBELL
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5. Generally, the trial court has broad discretion to admit evidence during the sentencing phase before a jury. Runyon v. Commonwealth, 29 Va. App. 573, 576-77 (1999).

6. For purposes of sentencing, the trier of fact can consider hearsay. See, e.g., Wayne R. LaFare, et al., Criminal Procedure, § 26.5 (a), at 802 (3d ed. 2007). "Given the narrow focus of a sentencing hearing, [a party's] inability to cross-examine a hearsay declarant does not undermine the fundamental fairness of the proceeding." Smith v. Commonwealth, 52 Va. App. 26, 30 (2008).

7. Accordingly, videotaped statements can and should be admitted during Mr. Huguely's sentencing hearing.

8. Mr. Huguely seeks a ruling in advance of trial concerning the use of videotaped statements and the presence of his family members during trial.

WHEREFORE the defendant, George Huguely, moves the Court to enter an Order approving the use of videotaped statements at any sentencing proceeding, and to grant him all other relief the Court deems proper and appropriate.

GEORGE HUGUELY

By Counsel

ST. JOHN, BOWLING, LAWRENCE & QUAGLIANA, LLP

By: 

Rhonda Quagliana
VSB# 39522
Francis McQ. Lawrence
VSB# 14754
416 Park Street
Charlottesville, Virginia 22902
434-296-7138 telephone
434-296-1301 facsimile
rq@stlawva.com
Counsel for George Huguely, V

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing was sent by hand delivery this 29th day of November, 2011 to:

Warner D. Chapman
Charlottesville Commonwealth
Attorney's Office
P. O. Box 911
Charlottesville, Virginia 22902


Rhonda Quagliana