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RETIRED
GEORGE R. ST. JOHN

January 10, 2012

BY HAND DELIVERY

Llezzelle A. Dugger, Clerk
Charlottesville Circuit Court
315 E. High Street
Charlottesville, Virginia 22902

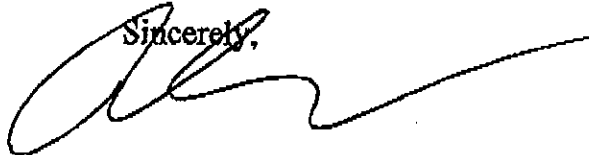
Re: Commonwealth v. George W. Huguely, V

Dear Ms. Dugger:

Enclosed for filing please find Summary of Law in Response to Commonwealth's Objection to Defense Expert Testimony.

Thank you. Please call if you have any questions.

Sincerely,



Rhonda Quagliana

RQ/aes

Enclosure

Cc: W. Davies Chapman, Esquire (by hand delivery)
Francis McQ. Lawrence, Esquire

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF
CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA

v.

Case No. 11-102

GEORGE HUGUELY,

Defendant.

**Summary of Law in Response to Commonwealth's Objection to Defense
Expert Testimony**

The defendant, George Huguely ("Mr. Huguely") submits the following summary of law in response to the Commonwealth's Objection to Defense Expert Testimony, and has complied with the Rule.

Discovery in criminal cases is controlled by the Rules of the Supreme Court. *See Juniper v. Commonwealth*, 271 Va. 362, 394 (2006). Rule 3A:11 requires that the defendant must produce "any written reports" of "scientific tests that may be within the accused's possession, custody or control and which the defense intends to proffer or introduce into evidence at trial or sentencing." Va. S. Ct. R. 3A:11 (c) (1).

As a preliminary matter, this Rule only applies to written reports of scientific tests. The defendant has no need to disclose other information, such as general notes or memoranda that are the basis of a report, *Spencer v. Commonwealth*, 238 Va. 295, 303 (1989), or the substance of an expert's testimony, *Commonwealth v. O'Dell*, 234 Va. 672, 682-83 n. 3 (1988), or any of

FILED
2012 Jan 10 A(B) 4:00
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the expert's opinions that fall outside any written report that the expert has drafted, *Clagett v. Commonwealth*, 252 Va. 79, 91 (1996).

Moreover, the rule applies only to a written report that is already in existence. The rule does not require a party to create such a written report. For example, in *Stewart v. Commonwealth*, the Commonwealth received an "oral report" from a blood spatter expert, and the defendant complained that he was "given no written summary or report of [the expert's] conclusions." 235 Va. 222, 238 (1993). The Court held that under Rule 3A:11, a party is only required to disclose to the other side a written report that has been produced by the expert. *Id.*

The Rule requires such a written report to be created in one instance, and only one instance: when the Commonwealth has "statements or confessions made by the accused," then it must create a summary of the "substance" of those statements. Va. S. Ct. R. 3A:11 (b) (1) (i); see *Meadows v. Commonwealth*, 35 Va. App. 298, 303-04 (2001). When an exception appears in one part of a rule or statute but not in another, then the inference is that the drafters chose to *not* include that exception elsewhere. See *Stewart*, 245 Va. at 238-39 (holding that "were the Rule intended to require [a party] to furnish [the other] with 'the substance of any [of an expert's] oral statements,' it would so state as it does in the instance of an accused's unrecorded statements to a law enforcement officer").

Furthermore, the Rule only requires disclosure of a written report that the defendant intends to proffer into evidence.

Obligations under this Rule are continuing. See Va. S. Ct. R. 3A:11 (g). If any such written report comes into possession that we intend to offer at trial, we will promptly disclose it.

GEORGE HUGUELY

By Counsel

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CERTIFICATE

I hereby certify that a true and exact copy of the foregoing was sent by hand delivery this 10th day of January, 2012 to:

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Charlottesville, Virginia 22902


Rhonda Quagliana