VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA

v. Case No. 11-102

GEORGE HUGUELY,

Defendant.

MOTION TO SET ASIDE THE VERDICT AND FOR A NEW TRIAL

The defendant, George Huguely ("Mr. Huguely"), by counsel, pursuant to Rule 3A:15 of the Rules of the Supreme Court of Virginia, for his Motion to Set Aside the Verdict and for a New Trial, states the following:

Background

1. Mr. Huguely was charged in six indictments alleging: (1) felony murder in violation of Virginia Code § 18.2-32; (2) first degree premeditated murder in violation of Virginia Code § 18.2-32; (3) robbery in violation of Virginia Code § 18.2-58; (4) breaking and entering in violation of Virginia Code § 18.2-89; (5) breaking and entering in violation of Virginia Code § 18.2-91; and (6) grand larceny in violation of Virginia Code § 18.2-95.

2. Following a multi-day jury trial, a jury convicted Mr. Huguely of second degree murder and grand larceny and recommended a sentence of 25 years on the second degree murder conviction and one year on the grand larceny conviction.

3. Mr. Huguely was represented from the time of his arrest, through proceedings in the General District Court, and in the Circuit Court by two attorneys, Francis McQ. Lawrence and Rhonda Quagliana.

4. Throughout the litigation, the attorneys shared equally in the litigation of the case, both arguing a number of pretrial motions and both actively participating in every aspect of the defense.

5. Mr. Huguely never sought any continuances, or in any manner impeded the progress of the litigation, did nothing to interfere with the Court's calendar, and cooperated fully with his attorneys.

6. Prior to trial, the Court heard a number of motions relating to issues in the case surrounding the unprecedented level of pretrial publicity the case had received.

7. The Court took unprecedented measures to accommodate the large number of reporters and media representatives likely to attend the trial.

8. The defense made a number of requests of the Court relating to jury selection because it was evident that seating an impartial jury could be difficult, given the circumstances.

9. Even the Court acknowledged the difficulties likely associated with seating a jury in a small university town, involving a case associated with the University of Virginia (a major employer in Charlottesville), involving numerous controversial issues, and where the defendant and the decedent were both college students.

10. Prior to trial, the Court erred in denying a number of Mr. Huguely's pre-trial motions relating to jury selection, including motions seeking sequestration of the jury and the request for individual sequestered voir dire.

11. In addition, the Court committed error during the trial of the case, for example, by refusing to strike jurors for cause, by depriving Mr. Huguely of his Sixth Amendment right to counsel and to present evidence favorable to him, and by limiting Mr. Huguely's right to question potential jurors to determine whether they harbored any prejudice or bias.

12. Mr. Huguely's convictions were contrary to the law and the evidence.

13. Mr. Huguely moves the Court to set aside the verdict and for a new trial.

A. Violation of Sixth Amendment Right to Counsel of Choice

14. The Court erred by denying Mr. Huguely the right to be represented by the attorney of his choice when the Court refused a reasonable request to temporarily suspend the proceedings to accommodate the unexpected illness of Mr. Huguely's attorney.

15. From the day of his arrest, through the General District Court, and in the Circuit Court proceedings, Mr. Huguely had elected to be represented by two attorneys.

16. Both had participated equally in the litigation and in the trial, both shared equally in the preparation and presentation of the case, and the two

attorneys consulted one another regarding strategic decisions. Neither had been designated as "lead counsel."

17. The Court had scheduled two weeks to conduct the trial.

18. Throughout the case, the Court placed an unyielding emphasis on expeditiousness and the need to finish the case "on time."

19. Unfortunately, an unforeseen illness suffered by Mr. Huguely's attorney required the Court to temporarily suspend the proceedings.

20. Despite the unforeseen circumstances, the Court unreasonably threatened to continue moving forward with the trial in the absence of one of Mr. Huguely's chosen lawyers and, in fact, forced attorney Mr. Lawrence to proceed in the absence of Ms. Quagliana, over Mr. Huguely's objection.

21. The Court failed to make any finding on the record which would have justified proceeding in this fashion. Without making any finding, the Court had no basis for refusing to suspend the proceedings for a short period to accommodate an emergency.

22. By forcing Mr. Huguely to proceed without the attorney of his choosing, the Court placed an unreasoning emphasis on expeditiousness at the expense of Mr. Huguely's constitutional right to counsel.

23. The right to counsel is absolute and when arbitrarily denied, there need be no showing of prejudice.

24. The denial was arbitrary, and grounds to set aside the verdict.

25. Although he need not establish prejudice, in fact, Mr. Huguely was prejudiced by the Court's insistence on proceeding in the absence of one of his chosen attorneys.

26. For example, Mr. Lawrence made clear to the court that he was not prepared to proceed with the examination of expert medical witnesses.

27. The defense had chosen to present the testimony of medical witnesses first and, prior to Ms. Quagliana's illness, had called Dr. Jan Leestma as their first witness.

28. Their next witness would have been Dr. Ronald Uscinski, who was present and prepared to testify on Thursday morning, the day Ms. Quagliana became ill.

29. Rather than delay the proceedings for a reasonable time to accommodate the unexpected event, the Court forced the defense to proceed with other witnesses and threatened to force an unprepared attorney to proceed with the examination of experts on Friday, stating flatly, "we will finish this case tomorrow." By proceeding without Ms. Quagliana on Friday, the Court undermined her ability to present closing argument on sentencing and her standing before the jury. By insisting on finishing on Saturday, the Court denied Ms. Quagliana the opportunity to observe the jury on Friday and prepare normally for Saturday's trial.

30. Mr. Huguely never should have been forced to operate under these circumstances. He should not have been forced to present his witnesses out of

order or have one of his attorneys operating under the pressure of presenting complicated medical testimony he was not prepared to elicit from a witness.

31. The Court had no basis for this unrelenting insistence on maintaining its break-neck schedule, because the Court made absolutely no inquiry about the status of witnesses or any other matter in order to rationally conclude whether a short delay would prejudice either side.

32. Moreover, the Court simply refused to convene a session on Monday, because it was President's Day, even though the Court insisted on proceeding on a weekend.

33. Mr. Huguely was completely without blame and had no role in delaying the proceedings.

34. The Court's mishandling of an unexpected event resulted in prejudice to Mr. Huguely given the enormity of the circumstances and the fact that he faced convictions on offenses that carried a potential life sentence.

B. Failure to Strike Jurors for Cause

35. The Court erred in refusing to strike a number of jurors who should have been struck for cause.

36. The Court must strike for cause any juror about which there is reasonable doubt concerning their impartiality.

37. In light of answers given during voir dire, there was reasonable doubt concerning whether a number of the jurors could be impartial.

38. The Court erred in overruling Mr. Huguely's motions to strike for cause Jurors 32, 35, 31, 36, 72, 211, and 182. Each of these jurors should have been struck in order to maintain public confidence in the judicial system.

39. Because the Court failed or refused to grant legitimate strikes for cause, Mr. Huguely was forced to use at least three peremptory strikes to remove jurors who were not qualified and should have been struck for cause.

40. It is prejudicial error to force a defendant to use peremptory strikes to exclude a venire person from the jury panel if that person is not free from exception. A defendant's use of a peremptory strike for that reason is not harmless error because a defendant has a right to an impartial jury drawn from a panel free from exceptions.

41. A court's erroneous refusal to strike a juror for cause is structural error that requires a new trial regardless of whether the defendant can establish prejudice. In any event, Mr. Huguely clearly incurred such prejudice here. Indeed, Juror 211 was actually seated on the jury, despite extensive connections to the University of Virginia and numerous statements during voir dire that raised reasonable doubts about her impartiality.

C. Impermissible Limitations on Voir Dire

42. The Court improperly truncated the defense voir dire, prohibited Mr. Huguely from asking questions critical to the process of determining whether jurors could be fair and impartial, did so in the middle of jury selection, and

refused a reasonable alternative to the question asked of other jurors prior to an objection by the Commonwealth.

43. Prior to trial, the Court required counsel to submit ten questions to be approved for voir dire.

44. Mr. Huguely complied and, among the ten questions, sought to ask potential jurors whether they would view the defense as "blaming the victim" if the defense offered unflattering evidence or testimony about Ms. Love for the purpose of establishing the nature of her relationship with Mr. Huguely.

45. The Court approved the ten questions including the question that asked about "attacking the victim."

46. The defense asked a number of jurors whether they would feel that the defense was "blaming the victim" if uncomplimentary testimony were elicited concerning Ms. Love's own conduct.

47. A number of potential jurors acknowledged they would view the presentation of such evidence as "blaming the victim," and one of those jurors was struck for cause.

48. During the voir dire, the Commonwealth eventually objected to the question, and the Court sustained the objection midway through jury selection.

49. In granting the objection, the Court improperly characterized the question as one that sought information from jurors about a "trial tactic."

50. In fact, the question sought to elicit information critical to understanding whether potential jurors could be fair and impartial since unflattering evidence developed about Ms. Love was critical to the defense.

51. The Court arbitrarily and without good cause refused to permit counsel to examine potential jurors on the subject.

52. Although the Court has the power to limit the scope of voir dire, the Court abused its discretion in prohibiting counsel from exploring this potential source of bias.

53. The Court also erred in making this ruling midway through voir dire because the questioning of the jurors then lacked a necessary element of consistency.

D. Voir Dire and Jury Selection

54. Prior to trial, Mr. Huguely filed a motion for individual sequestered voir dire, and filed a second renewed written motion requesting individual sequestered voir dire.

55. The reasonable request for individual sequestered voir dire was predicated on the degree of media attention the case had received and the strong likelihood that jurors would be reluctant to provide totally candid answers to questions during jury selection posed to them in open court.

56. The request was also made given the sensitive issues raised by the case concerning subjects such as alcohol use and domestic or dating violence.

57. The Court erred in refusing to grant Mr. Huguely's motion for individual sequestered voir dire.

58. It was clear from the beginning of jury selection that potential jurors understood their responses to questions were subject to publication and circulation in the media.

59. It was evident that questioning in open court would not produce the type of truthful answers required to select an impartial jury.

60. A number of jurors were required to discuss sensitive issues in open court both because of the answers they had given to their questionnaires and because of the disclosures made during voir dire.

61. Courts have recognized that, particularly in cases involving sensitive issues such as domestic violence and alcohol, and in cases receiving intense publicity and media scrutiny, individual sequestered voir dire provides the only means for determining who can actually be fair and impartial.

62. In this case, the Court erred in refusing to conduct individual sequestered voir dire.

E. Failure to Sequester the Jury

63. Prior to trial, Mr. Huguely moved the Court to sequester the jury and provided ample documentation in support of his contention that, absent sequestration, he could not receive a fair trial in light of overwhelming pretrial publicity.

64. The overwhelming presence of the media was evident throughout the trial.

65. The media presence outside the courthouse was unmistakable. Cameras and reporters were set up everywhere and there were media trucks and vans blocking the roads.

66. Such activity could not have been mistaken by jurors who entered and exited the courthouse through the door canvassed by reporters.

67. The reporting on the case was continuous and extensive. Exhibit A to this motion provides summaries of the reporting and the sources of the news, both local and national, that were published or broadcast during the trial.

68. Because the jury was never sequestered, and no means taken to protect them from the extraordinary and very visible media presence outside the courthouse, jurors were inevitably sensitive to the extent to which any decision they made would be reported, and the degree to which they, themselves, would become the targets of media attention and public reprobation.

69. At some point during the trial, for instance, jurors expressed concern about rumors that their names would be published in the Cavalier Daily.

70. The Court announced in the jurors' presence that no jurors' names were to be published and the prosecutor said that anyone who published the names of jurors should be arrested.

71. Though these measures may have been intended to put the jurors at ease concerning the matter of their identity, the fact that the issue came up at all indicated that the jurors were anxious about potential publicity.

72. The failure to sequester affected the overall fairness of the trial; compromised the jury's ability to make reasoned decisions that were not influenced by the overwhelming media presence; and compromised the degree of confidence anyone could have had that Mr. Huguely received a fair trial in the face of the publicity his case received.

F. Refusal of Proper Jury Instruction

73. The Court erred in refusing the jury instruction proffered by the defendant relating to malice.

74. Defendant's proffered instruction "BB" provided important, court-approved clarifying language:

> Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive, including anger, hatred or revenge. ***It is not confined to ill will to any one or more particular persons, but is intended to denote an action flowing from a wicked or corrupt motive, done with an evil mind and purpose and wrongful intention, where the act has been attended with such circumstances as to carry in them the plain indication of a heart regardless of social duty and fatally bent on mischief.*** Malice may be inferred from any deliberate willful and cruel act against another, however sudden.
>
> Heat of passion excludes malice when that heat of passion arises from provocation that reasonably produces an emotional state of mind, such as hot blood, rage, anger, resentment, terror or fear so

> as to demonstrate an absence of deliberate design to kill, or to cause one to act on impulse without conscious reflection. Heat of passion must be determined from circumstances as they appeared to defendant, but those circumstances must be such as would have aroused heat of passion in a reasonable person.
>
> If a person acts upon reflection or deliberation, or after his passion has cooled or there has been a reasonable time or opportunity for cooling, then the act is not attributable to heat of passion.

75. This language was approved by the Court of Appeals in several cases and is a part of Professor Ronald Bacigal's Virginia Practice Jury Instructions.

76. The Court's rejection of a correct jury instruction on the basis that it is not a "model jury instruction" is improper. A proposed jury instruction submitted by a party, which constitutes an accurate statement of the law applicable to the case, should not be withheld from the jury solely for its nonconformance with the model jury instructions.

77. Where evidence tends to sustain both the prosecution's and defense's theory of the case, the trial judge is required to give requested instructions covering both theories.

78. Having received a defective malice instruction, the jury could not reach proper conclusions concerning that element for a finding of second degree murder.

G. Impermissible Limitation of Medical Testimony Evidence

79. The Court erred in limiting the testimony of Dr. Ronald Uscinski, a neurosurgeon, who offered medical testimony on the subject of whether Ms. Love suffered lethal traumatic brain injury.

80. This testimony directly responded to the Commonwealth's medical evidence.

81. During the trial and prior to testifying, Dr. Uscinski received three unedited emails relating to matters discussed in testimony offered by Commonwealth expert witnesses.

82. When it was realized that the emails referenced witnesses by name and testimony rather than appraising defense experts generally about matters concerning in-court testimony, counsel for Mr. Huguely immediately brought the emails to Mr. Chapman's attention and brought the matter to the Court's attention.

83. Mr. Chapman was then provided an opportunity to question Dr. Uscinski about the content of the emails and whether their receipt had affected his opinions.

84. Given the testimony elicited from Dr. Uscinski during voir dire of the witness, the limitations imposed on his testimony were contrary to law.

85. During voir dire of the witness, there was nothing from which it could be reasonably concluded that Dr. Uscinski's testimony was unduly affected by the communications.

86. The limitations imposed violated Mr. Huguely's Sixth Amendment right to present evidence.

H. Sufficiency of Evidence to Support Grand Larceny

87. The evidence was insufficient as a matter of law to support the conviction for grand larceny.

88. The Court erred in refusing to grant the defendant's Motion to Strike the grand larceny charge both at the conclusion of the Commonwealth's evidence and at the conclusion of the defendant's evidence.

89. To sustain a conviction, the Commonwealth was required to produce evidence beyond a reasonable doubt that the computer was valued at more than $200.00.

90. The Commonwealth's evidence fell short of that requirement.

91. Mr. Huguely presented the testimony of an expert to rebut the testimony of the Commonwealth's expert.

92. Following that testimony, the evidence was at least in equipoise and the indictment should have been struck.

I. Sufficiency of Evidence to Support Second Degree Murder

93. The evidence was insufficient to support a conviction for second degree murder.

94. Second degree murder requires a "last identifiable act done by the accused but before the impact on the victim" to be clearly more than reckless and, in fact, the act of "wrongful conduct likely to cause death or great bodily harm."

95. An inadvertent action cannot be malicious while volatile actions can be.

96. There is no evidence that the fatal injury was incurred by anything other than the fall from the bed; there is no evidence that the fall from the bed was anything other than accidental; the defendant's statement cannot be disregarded where it is not inconsistent with other evidence; the broken-in door creates no inference as to the "last identifiable act" or intent by the accused to either kill or inflict serious injury. Likewise, for implied malice the evidence would not show that the defendant willfully or purposively embarked upon a course of "wrongful conduct likely to cause death or great bodily harm."

97. It was clear from the evidence that Mr. Huguely should have been convicted of no more serious offense than manslaughter.

WHEREFORE the defendant, George Huguely, respectfully moves the Court to set aside the verdict and to grant him a new trial, and to grant him all other relief the Court deems proper and appropriate.

GEORGE HUGUELY

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CERTIFICATE

I hereby certify that a true and exact copy of the foregoing was sent by hand delivery this 25th day of May, 2012 to:

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