IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA

V.

GEORGE HUGUELY



RESPONSE TO SUPPLEMENTAL MOTION TO SET ASIDE VERDICTS

COMES NOW the Commonwealth, by counsel, and hereby responds to the defendant's Supplemental Motion to Set Aside the Verdicts.

The defendant's Supplemental Motion alleges the Commonwealth withheld exculpatory information from the defense relating to witnesses Sharon Love and Lexie Love and the status at the time of trial of any civil proceeding contemplated against the him as a result of the murder of Yeardley Love. The Supplemental Motion alleges that possible impeachment evidence related to a potential civil proceeding against the defendant by, on behalf of, or involving Sharon Love and/or Lexie Love was withheld by the Commonwealth in violation of Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

It is noteworthy that the Supplemental Motion does not suggest that the defendant, either personally or by counsel, was unaware of a potential cause of action against him or that civil proceedings against him were reasonably likely under the circumstances. Similarly, the Supplemental Motion does not suggest that the defendant, either personally or by counsel, was surprised that a civil suit was eventually filed against him or would have been surprised had one been filed against him before the trial began. The Supplemental Motion does not in any respect

address what preparations he made, either personally, through family, or by counsel, to prepare for the eventuality of a civil suit being brought against him as a result of the murder of Yeardley Love.

Neither by written nor oral request before trial did the defendant inquire of the Commonwealth or otherwise express interest in the topic of a potential civil proceeding against him as a result of the murder of Yeardley Love.

This subject matter relates to the issues of witness interest or bias against the defendant. During cross examination of Sharon Love and Lexie Love at trial the defendant did not seek to impeach either witness on the issues of their bias against him or their possible financial interests in the outcome of the proceedings. Neither witness was asked in any manner about possible civil proceedings against the defendant arising from the events surrounding the murder of Yeardley Love. Subject to verification upon receipt of a transcript of the trial proceedings, it is the Commonwealth's position that neither witness was even asked about any hard feelings they held against the defendant as a result of the murder of Yeardley Love.

In preparation for trial the defendant made choices regarding the topics for cross examination of the witnesses in question that were consistent with his pretrial preparations and reflected obvious trial strategy.

(3)

I.

The defendant is not eligible for relief under <u>Brady</u> as a result of his failure to exercise due diligence by interviewing material witnesses in the case.

Without conceding that the information allegedly withheld from the defendant was exculpatory in terms of its potential as impeachment evidence, "where exculpatory information is not only available to the defendant but also lies in a source where a reasonable defendant would have looked, a defendant is not entitled to the benefit of the Brady doctrine." <u>United States v. Wilson</u>, 901 F. 2d 378, 381 (4th Cir. 1990). Brady does not "compel the disclosure of evidence available to the defendant from other sources, including diligent investigation by the defense. <u>Stockton v. Murray</u>, 41 F. 3d 920, 927 (4th Cir. 1994), citing <u>Wilson</u>, 901 F. 2d at 380.

In response to the defendant's Supplemental Motion the Commonwealth states:

- It appears to the Commonwealth that at no time before trial did the defendant by
 counsel or through his investigator seek to interview either Sharon Love or Lexie
 Love about any aspect of the case, including their participation in relevant events
 before or after the homicide or any issue having to do with their interests in the
 outcome of the case or their bias against the defendant;
- 2. At no time before trial did the defendant inquire with the Commonwealth, or through the Commonwealth with Sharon Love or Lexie Love, regarding any preparations for or the likelihood of a civil proceeding against him arising out of the murder of Yeardley Love;

- 3. The defendant failed in this regard to exercise due diligence to investigate the case by interviewing material witnesses, or by requesting information through the Commonwealth, even after the defense was expressly advised that Sharon Love and Lexic Love would testify and that both possessed potential causes of action against the defendant;
- 4. There is no reason to believe that Sharon Love and Lexic Love would have failed to fully and truthfully provide information to the defense regarding any potential civil proceeding against the defendant, regardless of its likelihood at the time of trial;
- 5. It would be inaccurate to say that the defendant could not have discovered information about potential civil proceedings through reasonable diligence. The defense could have learned any information available to the Commonwealth by interviewing the witnesses in question before trial, by making inquiry with them through the Commonwealth, or by cross examining them at trial on the issues of interest or bias;
- 6. Both before trial and after trial the defendant demonstrated the ability and willingness to utilize appropriate and inoffensive means to contact Sharon Love directly. Before trial she was contacted directly in writing on several occasions regarding defense subpoenas for Yeardley Love's medical records. The first such contact was made in 2010 while the case was still at the General District Court level and included contemporaneous contact with the Charlottesville Victim/Witness Coordinator, Margaret Cullinan for assistance in making contact with Sharon Love. See, Attachment A, notice relating to subpoena duces tecum for medical records. Closer

to trial contact with Sharon Love was initiated through the Commonwealth regarding the possibility of participating in a restorative justice process initiated by the defense. See, Attachment B, defense initiated restorative justice. Also before trial the Commonwealth responded to the defense initiative to obtain Sharon Love's participation in the restorative justice process. See, Attachment C, Commonwealth response to defense restorative justice inquiry. After trial the defense resumed the effort at initiating a restorative justice process with Sharon Love. See, Attachment C-1, Cover memo and first page of resume of restorative justice specialist; and,

- 7. Materials submitted by the defendant to the Court before trail, that were collected from the media to illustrate the nature and extent of pretrial publicity, reflect that after Yeardley Love's death and before trial the defendant was aware:
 - a. The Love family was involved in the establishment of a foundation that was formed to honor the memory of Yeardley Love, in part, by donating money for worthy purposes;
 - That this foundation conducted substantial, ongoing fundraising to accomplish its purposes; and,
 - c. Significant information was disseminated publicly regarding the defendant's family status and wealth that would reasonably relate to his potential ability to pay or have paid on his behalf a substantial civil judgment related to his actions in connection with the death of Yeardley Love; and,

See, Attachment D, Defense submitted pretrial publicity.

- 8. Even in the absence of the Commonwealth's notice to the defense regarding a potential cause of action against the defendant the circumstances of the case and the events that took place before trial placed the defendant firmly on notice that a civil proceeding against him was a reasonable possibility, if not a reasonable likelihood or even greater degree of certainty;
- 9. In a post-trial letter to the Commonwealth counsel for the defendant inquired about representations made by an attorney who serves as plaintiff's counsel in civil proceedings against the defendant. In that letter defendant's counsel wrote, "Our decision as to whether and how to cross examine Yeardley's mother and sister would have been influenced by the information we had as to whether or not a civil proceeding, or civil proceedings were imminent and certain." See, Attachment E, 5/18/12 Letter to Commonwealth. Despite counsel's suggestion that the defense would have been influenced by information that civil proceedings were "imminent" and "certain," there is not a scintilla of evidence that the defendant sought from obvious and readily available sources any information whatsoever regarding the imminence or degree of certainty of a civil proceeding against the defendant; and
- 10. The defendant's failure to exercise due diligence in this regard makes him ineligible for relief under <u>Brady</u> on this ground.