



## NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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November 9, 2022

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Re: *Commonwealth of Virginia v. Megan Hargan*, Case No. FE-2018-1575

Dear Counsel:

The Commonwealth of Virginia indicted Megan Hargan under a four-count indictment alleging the Murder of her mother, Pamela Hansen Hargan and her youngest sister, Helen Hargan under VA Code § 18.2-32 and the Use of a Firearm in the Commission of each of the murders under VA Code § 18.2-53.1. The Defendant pled not guilty. The Court tried this case on March 7, 2022, for eleven days and impaneled four alternate jurors in the waning midst of the early spring covid pandemic. The trial was bifurcated with a guilt and sentencing phase to be determined by a jury at the Defendant's request. On March 24, 2022, the jury returned guilty verdicts of first-degree murder for each murder and for each firearm. After a sentencing hearing, the jury returned the maximum sentence of life imprisonment on the murder of Pamela Hargan and Helen Hargan and the mandatory sentence of three years and five years for Use of a Firearm. The Court set sentencing for October 28, 2022.

On October 12, 2022, the Defendant filed a Motion to Subpoena Juror to Testify Regarding Possible Juror Misconduct along with an attached affidavit and an accompanying

**OPINION LETTER**

Motion to Set Aside the Verdict. The Court directed the Commonwealth to file a responsive pleading. On October 21, 2022, the Court received the Commonwealth's opposition. Upon review, the Court summonsed Juror #82 to appear to give testimony on November 9, 2022 and hear argument on the motions. The Court continued the sentencing to November 18, 2022. For the following reasons the Court **grants** the Defendant's Motion to Set Aside the Verdict.

The case law on juror misconduct is unequivocal. "In considering a motion to set aside when juror misconduct is alleged, the trial court has the affirmative duty to investigate the charges and to ascertain whether or not as a matter of fact the jury was guilty of misconduct." Evans v. Commonwealth 39 VA. App 229, 237 (2002) (citation omitted).

Moreover, a juror may not properly receive any information about a case he is hearing except in open court and in the manner provided by law. The reception of any evidence by the jury, especially in a criminal case, in addition to that produced at trial is ground for setting aside the verdict whenever there is sufficient ground to believe that ... an accused in a criminal case, has been prejudiced by receipt of the information. Brittle v. Commonwealth, 227 VA 518, 522 (1981).

Furthermore, and more compelling, in a criminal case a defendant does not have to prove actual prejudice; but only the possibility of prejudice. "And that test in a criminal case is not whether the jurors were actually prejudiced by the extraneous matter, but whether they might have been so prejudiced. If they might have been so prejudiced, then the purity of the verdict is open to serious doubt and the verdict should be set aside and a new trial awarded." Brittle v. Commonwealth 222 VA 518, 522 (1981).

In the case at bar, the Commonwealth's theory of culpability in this double homicide was compelling; but also entirely circumstantial. The Defendant's theory of reasonable doubt was that her younger sister killed her mother and then killed herself. Whether the Commonwealth could exclude that reasonable hypothesis of innocence was based upon many things, to include: the believability of the Defendant's denial of responsibility; motive; deceit; opportunity; the actual firearm, which was introduced into evidence; the length of the firearm; the length of the trigger to the butt of the rifle; the position of the decedents body; the location and track of the wound including the entry; blood spatter; and limited expert testimony subject to a cross-examination by the Defendant who had every reason not to suspect that the scope of cross-examination had to anticipate the maneuvers and positioning of a juror at home using her own rifle.

The Court concludes that the juror engaged in misconduct, albeit well intended. Contrary to the repeated and ad nauseam instructions of the Court to decide this case based upon what was presented within the four walls of the courtroom, the juror maneuvered her own shotgun as opposed to the murder weapon in at best a reenactment and at worst an experiment without evidentiary foundations and to see if it were possible to shoot herself at an angle described in the trial testimony. She concluded independently of the trial testimony and exhibits, that it was not. The conduct took place after summation in the guilt phase but before the jury concluded deliberations and delivered its guilty verdict. The Court found the juror's testimony incredible

that she had already decided guilt before taking the improper action because if truthful, there would be no reason to do so. Regardless, she disclosed her conclusions to the other jurors. She compounded the misconduct by not ever disclosing same by denying the parties the ability to replace her with an alternate juror, who was readily available. Defendant's cross-examination of the Commonwealth's expert and objections made to the expert during her direct examination certainly could have been conducted differently had the Defendant been made aware of the juror's conduct and inexplicably not moved to dismiss her. Her decision to disclose her out of court demonstrations during deliberations exacerbated her misconduct and possibly infected the other jurors, who presumably followed the Court's mandatory and unequivocal orders.

Contrary to the arguments of the Commonwealth, these actions were not as benign as familiarity with a rifle or x-rays or even lawfully using the firearm during recesses. After all, jurors are instructed that they may use their common sense in judging any testimony and making credibility determinations. "A juror is not expected to check his common sense at the courthouse door."<sup>1</sup> Moreover, this was not a juror merely reflecting upon evidence presented during recesses. This instead was at a minimum, a reenactment performed at home by a solitary juror with her own rifle as opposed to the firearm in evidence, with none of the foundational conditions necessary to allow the reenactment at trial to reach a conclusion at the very heart of this case. The reenactment and conclusions were then shared with the remaining jurors during deliberations prior to returning a guilty verdict.

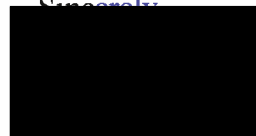
### Conclusion

The Court concludes that Juror #82 engaged in juror misconduct, albeit well intended and that there is sufficient grounds to believe that the extraneous information might have prejudiced the jurors. Confidence in the reliability of the verdict being based solely upon the admission of evidence and the sanctity of that verdict outweigh the finality of it and the significant emotional and economic costs and uncertainty of a new trial.

The Court **grants** Defendant's Motion to Set Aside the Verdict and to set a new trial date.

The parties are directed to appear for the purpose of setting a trial date on November 18, 2022 at 10:00 a.m.

Sincerely,



Brett A. Kassabian  
Judge, Fairfax County Circuit Court

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<sup>1</sup> A summation oft argued by the late Honorable Robert F. Horan, Jr., legendary former Fairfax County Commonwealth's Attorney and since parroted by countless others.