

## COMMONWEALTH OF VIRGINIA



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November 15, 2019

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Re: Commonwealth v. Darcel Murphy  
Motion regarding removal of Robert E. Lee portrait

Dear Counsel:

The Court has taken the time to consider the Defendant's "Motion To Conduct Trial In A Courtroom That Does Not Contain Confederate Symbols, Memorials, And Iconography." As modified at oral argument, the motion seeks the Court to order the removal of the portrait of Robert E. Lee. The Court has considered the substantial evidence presented by the Defendant in support of its motion. The Commonwealth has not taken a position with respect to this issue.

The Louisa County Circuit Courtroom has two primary functions. First, and the function upon which the Court has primarily focused, is its service as a forum for the trial of civil and criminal matters. In the Court's view, the courtroom has served that primary function reasonably well. The Court's efforts with respect to that function have largely focused on matters such as seeking to improve the acoustics of the courtroom and to effect the better presentation of evidence in this digital age.

The second function of the courtroom, and one which I will freely admit the Court has paid little attention to, is its service as a place of honor for those whom the citizens of Louisa County have decided to commemorate over the decades. If my counting is correct, it appears that twenty-eight portraits hang in the courtroom at the present, honoring individuals from Louisa and beyond. If I recall correctly, only two portraits have been hung during my tenure, that of my immediate predecessor, The Honorable F. Ward Harkrader, II and that of John Mercer Langston, the only African-American to be so honored. The Court believes that each of those gentlemen deserved such an honor, and the Court was happy to participate in those proceedings. Beyond those two individuals, the Court has given little consideration to the remaining portraits displayed. While the portraits may not be of primary concern to the Court, the Court certainly recognizes their collective importance to the people of Louisa County.

The Court believes the starting point with respect to this issue is to note that it is a legal motion in a capital murder case. Initially, the Court must determine whether any of the authorities cited by the Defendant compels the removal of the Lee portrait. The Court finds the answer to that question to be no; the removal of the portrait is not compelled by any authority binding upon this Court. The Defendant has cited cases and other authorities commending goals to which the Court aspires. Those include promoting the appearance of justice and fairness to all that come before the Court. The Court agrees with the Defendant that the portrait of Robert E. Lee is prominent. It is substantially larger than any other portrait in the courtroom. It also occupies a place of prominence on the back wall of the courtroom opposite the bench. The portrait, which appears to be substantially faded, depicts Robert E. Lee in uniform, standing in front of a tree. While the Court can imagine Civil War era scenes which could be quite concerning to many, the action, as such, within this portrait is benign. The concern of the Defendant in this case is really not what this portrait depicts, but who it depicts. Setting aside its subject, the portrait does not compromise the fair administration of justice.

The Defendant's case against Robert E. Lee is well set forth in the evidence it presented. While the Court does not profess to having anything more than the average layperson's passing interest in history, suffice it to say, the institution of slavery was, and is, indefensible. Those who played an active role in defending the indefensible face substantial difficulty in escaping the harsh judgment of history.

Conversely, there are many who admire the real or perceived qualities of General Lee. The most significant representation of that admiration is the fact that he is one of the few individuals, Virginian or otherwise, who have received the honor of having a Virginia state holiday observed in their honor. It is difficult for the Court to accept that nothing other than the implied original and continuing racism of the Virginia General Assembly supports that distinction. Being so honored makes a compelling case for the inclusion of the portrait.

The Court, before deciding what should be the proper place for Robert E. Lee in history, and specifically the proper place for his portrait, must first ask who should make such a decision. While historians may debate Robert E. Lee's place in history, the degree to which he should be publicly honored, or maligned, is a political decision. The Defendant cites, and the Court is well aware of, numerous actions taken across the country addressing this issue, including the removal of statues and the renaming of highways,

schools, and other public buildings. Many of these actions relate to Confederate figures such as General Lee, and no doubt, in the future will also address concerns regarding slaveholding presidents, and other public officials such as those involved in the repression of African-American rights during the Jim Crow era and during the Massive Resistance movement.

Such legislative actions have also confronted thorny issues such as whether the historical figure in question deserves to be completely removed from the public sphere, or whether existing concerns could be more appropriately addressed by contextualization. The key thing to note about these actions, however, is to note that, with rare exception, they were undertaken by elected boards of supervisors, city councils, school boards, and other popularly elected bodies, and not judges who were not popularly elected. These actions represented the collective will of the people as to how these public figures should be addressed. The Court sees no basis to proceed any differently here in Louisa County.

The Court reminds every juror who serves in Louisa County that the courtroom belongs to them and that they are always welcome there. Those are not words idly uttered, but words the Court truly believes. Consequently, should the citizens of Louisa County express their collective judgment, via action of their elected Board of Supervisors, that they desire the portrait of Robert E. Lee, or any other portrait exhibited in the courtroom, to be removed, the Court will abide by their wishes, unless the Court is legally prohibited from doing so. Until that time, the motion to remove the portrait of Robert E. Lee is denied, and the Defendant's exception is noted.

A copy of this letter shall be provided to Mr. Christian Goodwin, County Administrator for the County of Louisa for such consideration as deemed appropriate by the Board of Supervisors of Louisa County.

Thank you for your attention to these matters.

Very truly yours,



Timothy K. Sanner, Judge  
Sixteenth Judicial Circuit  
TKS/vc