

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Laurens County
Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case Tracking No. 2012-212013

THE STATE,

Appellant,

vs.

RAYMOND FRANKLIN,

Respondent.

RECORD ON APPEAL

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State of South Carolina) In the Court of General Sessions
) Eighth Judicial Circuit
County of Laurens) 2011-GS-30-1870

State of South Carolina,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
Raymond Franklin,)
)
Defendant.)
)
)
)

May 15, 2012
Laurens, South Carolina

B e f o r e :

The Honorable Eugene C. Griffith, Jr., Judge

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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1 (On the record at 1:57 p.m.)

2 THE COURT: All right, folks. All right. We got some
3 pretrial issues we need to deal with, from the state or the
4 defense?

5 MR. PAULING: Yes, Your Honor. We -- we do have a
6 matter of a -- the *Denno* hearing on two statements that
7 were given by the defendant.

8 THE COURT: All right.

9 MR. PAULING: At this time the state would call Senior
10 Agent Jeff Kindly.

11 JEFF KINDLY, having been first duly sworn,
12 testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. PAULING:

15 Q Agent Kindly, how you doing this afternoon, sir?

16 A Good, sir.

17 Q Would you briefly tell the Court, sir, where you're
18 employed?

19 A I'm an agent with the State Law Enforcement Division,
20 or SLED.

21 Q Okay. How long you been with SLED, sir?

22 A Since 1999, so almost 13 years.

23 Q Okay. And what are your positions and duties with
24 SLED, currently?

25 A I'm an investigator assigned to the Piedmont region,

1 which encompasses the 12 upstate counties in South
2 Carolina.

3 Q Okay. And that would include Laurens County?

4 A Yes, sir.

5 Q Okay. And, sir, back in August of 2010, were you
6 involved in a -- an assault investigation regarding the
7 defendant, Mr. Raymond Franklin?

8 A Yes, sir, I was.

9 Q Okay. And how did that come -- how'd you become
10 involved in that particular investigation?

11 A The sheriff's office requested that SLED conduct the
12 investigation since it involved one of the officers. And I
13 was assigned to take the case.

14 Q And that was the sheriff's office -- the Laurens
15 County Sheriff's Office?

16 A Yes, sir.

17 Q And, in fact, did you have an occasion to actually
18 interview Mr. Franklin in -- in relation to particular
19 allegations?

20 A Yes, sir, I did.

21 Q Okay. And about when was that, sir?

22 A It was August the 6th of 2010.

23 Q Okay. And at that particular time, was -- was he a
24 suspect at that time?

25 A Yes, sir.

1 Q Okay. Where did this -- where did this questioning
2 take place -- this interview?

3 A It was in a -- a small office there at the -- the
4 Laurens Sheriff's Office.

5 Q It was at the Laurens County Sheriff's Office?

6 A Yes, sir.

7 Q Okay. And at that particular time, did you bring him
8 in or did he meet you there or -- or how did that come
9 about -- the meeting, actually?

10 A I got there and he arrived on his own a short time
11 later.

12 Q Okay. So he wasn't in custody at that particular
13 time?

14 A No, sir.

15 Q Okay. And who else was present during that particular
16 interview?

17 A In the room that we were in, it was just he and I. It
18 was a Friday morning, so normal course of business, and
19 people were in and out of the building. But the actual,
20 little office area we were using, it was just he and I.

21 Q Okay. And you said this would've been August 6th. As
22 far as the alleged incident, what was your -- when had that
23 taken place?

24 A It was on August the 2nd, I believe.

25 Q August the 2nd, just a few days earlier?

1 A Yes, sir.

2 Q Okay. And now, at that particular time, did you read
3 Mr. Franklin his Miranda rights?

4 A Yes, sir, I did.

5 Q Okay. And -- and how did you do that?

6 A We have a departmental form that lists all the rights.
7 And then, it has a waiver section at the bottom. And I
8 used that.

9 Q Okay. And did he appear to understand his rights?

10 A Yes, sir, he did.

11 Q Okay. Did he have any difficulty understanding the --
12 the -- the waiver form?

13 A No, sir.

14 Q Okay. And did he sign that waiver form?

15 A Yes, sir.

16 Q Okay. And during that time did he seem to have any
17 mental or physical infirmity that would cause him not to
18 understand the rights as you read them to him?

19 A No, sir.

20 Q Okay. And at that time did he appear to be under the
21 influence of any alcohol or any drugs or prescription drugs
22 that may have affected his ability to understand the rights
23 as you read them to him?

24 A No, sir.

25 Q And did you, in fact, then interview him?

1 A Yes, sir, I did.

2 Q Okay. And just approximately, how long did that
3 interview take place?

4 A An -- less than an hour.

5 Q All right. And during that particular time -- you
6 said it was approximately more than an hour -- at any time
7 did you -- did he ask to take a break?

8 A No, sir.

9 Q Did he ask to consult with an attorney?

10 A No, sir.

11 Q Did he ask to stop the interview?

12 A No, sir.

13 Q Okay. Had he done so -- asked to take a break or
14 consult with an attorney -- would you have allowed him that
15 opportunity to do that?

16 A Yes, sir.

17 Q Okay. And again, he didn't ask for a break or ask for
18 an attorney?

19 A No, sir.

20 Q And during this time when he gave this statement to
21 you -- to you, did he -- did you threaten him in any
22 manner?

23 A No, sir.

24 Q Coerce him in any way to -- to give the statement?

25 A No, sir.

1 Q Did you promise him anything if he -- he -- he -- if
2 he gave a statement as to what happened, did you promise
3 him anything at all?

4 A No, sir.

5 Q Okay.

6 MR. PAULING: (To the court reporter) I just want
7 these marked as Court's exhibits.

8 THE COURT REPORTER: Sir?

9 MR. PAULING: Just want these marked as Court's
10 Exhibits. That would be 1.

11 (Whereupon, Court's Exhibit 1 was marked for
12 identification.)

13 MR. PAULING: And this together will be 2, and just
14 put it on the back.

15 THE COURT REPORTER: You want it marked on the back?

16 MR. PAULING: Yeah. Or if you want to do it on the
17 bottom of the second page.

18 THE COURT REPORTER: Okay.

19 (Whereupon, Court's Exhibit 2 was marked for
20 identification.)

21 MR. PAULING: May I approach the witness, Your Honor?

22 THE COURT: You may.

23 Q Agent Kindly, I'm going to show you what's been
24 marked, as Court's exhibits at this time, Court's Exhibit 1

25 ---

1 A Yes, sir.

2 Q --- and Court's Exhibit No. 2. As to Court Exhibit
3 No. 1, sir, may I ask if you recognize that document?

4 A Yes, sir, I do.

5 Q Okay. And how do you recognize that, sir?

6 A This is a waiver-of-rights form that I filled out and
7 that Mr. Franklin signed.

8 Q Okay. And on that waiver-of-rights form, what are --
9 what are the rights as they are listed there?

10 A Would you like me to read them?

11 Q Yes, sir.

12 A Oh, it starts out: "Before we ask you any questions,
13 you must understand your rights." I'm going to have to get
14 my glasses for this.

15 First line on there says: "You have the right to
16 remain silent." Normally, what I do is ask the person at
17 that point, "Do you understand that line?" Yes, they do.
18 They make their initials there; Mr. Franklin did so.

19 Next line says: "Anything you say can be used in
20 court as evidence against you. Do you understand?" "Yes."
21 And initials by that line.

22 "You're entitled to talk to a lawyer now and have him
23 present now or at any time during questioning." He
24 understood and initialed that one.

25 "If you cannot afford an attorney, one will be

1 appointed for you without cost." He understood and
2 initialed that one.

3 "If you decide to answer questions now without a
4 lawyer present, you still have the right to stop answering
5 at any time. You also have the right to stop answering at
6 any time until you talk to a lawyer." He signed and
7 indicated he understood that one.

8 And then, it says: "Do you understand these rights?"
9 He did, and he initialed. "Do you wish to talk to us at
10 this time?" He indicated that he did and initialed. And
11 then, the waiver portion is at the bottom.

12 Q Okay. And he signed that he understood his rights and
13 was waiving them?

14 A Yes, sir.

15 Q Okay. Now, Agent Kindly, it was my understanding that
16 this statement was taken on August 6th of 2010. It's -- on
17 that waiver form, does the date read August 8th of 2010?

18 A It does.

19 Q Okay. And if you could explain that, sir. Is that a
20 scrivener's error, or how did that come about?

21 A I -- I put that on there, and that was a clerical
22 error that I messed up on that one and ---

23 Q Okay.

24 A --- fixed it on the other forms. So it was just a
25 mistake on my part.

1 Q Okay. But, in fact, the -- the waiver-of-rights form
2 was done on August 6th, the same day that he gave the
3 statement?

4 A Yes, sir.

5 Q Okay. Prior to him giving the statement?

6 A Yes, sir.

7 Q Now, Agent Kindly, you knew the -- the substance of
8 the allegations prior to meeting with Mr. Franklin; is that
9 correct?

10 A Yes, sir.

11 Q Okay. And -- and just briefly, what were those
12 allegations?

13 A Briefly, that he had gone to a beauty shop and met
14 with a victim; there was a conversation about tattoos; that
15 he ended up touching one of the tattoos; and then, the
16 allegations were that he touched underclothing -- touched
17 the victim under her clothing and was kissing her and -- an
18 unconsensual-type-touching situation.

19 Q Okay. And now, as to those allegations, did Mr.
20 Franklin provide you a -- a statement as to those
21 allegations?

22 A Yes, sir, he did.

23 Q Okay. And was that reduced to writing?

24 A Yes, sir.

25 Q Okay. Who wrote the statement?

1 A He did.

2 Q Okay. And was he given an opportunity to make any
3 corrections, additions, or deletions to his statement?

4 A Yes, sir.

5 Q Okay. And did he, in fact, sign that statement?

6 A Yes, sir, he did.

7 Q Okay. And as to Court's Exhibit No. 2, I'm going to
8 ask you if you recognize that particular item.

9 A Yes, sir. That's Mr. Franklin's statement.

10 Q Okay. And I asked if he had an opportunity to make
11 and additions, corrections, or deletions. Did he make any
12 corrections or -- or deletions or additions to the
13 statement?

14 A Yes, sir. There's three or four places in here that
15 he's made a -- an -- a -- a correction and put his initials
16 beside them.

17 Q Okay. And -- and he initialed it?

18 A Yes, sir.

19 Q Okay. Okay. Agent Kindly, what was his statement to
20 you?

21 A Would you like me to read it?

22 Q Yes.

23 A Okay. It says: "On Monday, August the 2nd, I,
24 Raymond Franklin, went to Amy Craig's beauty shop to see
25 about getting a haircut. When I walked, she was on her

1 computer and said, 'Let me get off of here.'

2 "I said, 'No. Finish what you were doing. I'm not in
3 a hurry.'

4 "Amy stopped and closed her computer. We talked a
5 little while about her tattoos. She told me she was going
6 to get the one on her upper arm covered with something else
7 and was going to get some more tattoos.

8 "I said, well, she would have to show me, then. She
9 then said she had one on her back. She stood up and raised
10 her shirt and showed me what she said was a dragon. I said
11 that I did not see a dragon, but she pointed out what she
12 said was his eye. I did touch the spots where she said was
13 the eyes, and that was all.

14 "Amy then got a telephone call telling her that her
15 daughter was sick. Amy asked if she could cut my hair
16 later so she could go get her daughter, and I said that
17 would be fine. Amy then said, 'Let me get my hug before
18 you leave.' We hugged, and she kissed me on my neck. I
19 kissed her back on her neck. When we broke, our lips met
20 and Amy's tongue was stuck into my mouth. Well, I stuck my
21 tongue back into Amy's mouth.

22 "We exchanged a few more of these kisses, and I told
23 Amy I had to go, which she said, yeah, she had to go get
24 her daughter. And about 20 minutes later, she texted me
25 and said that I had upset her. I told her I was sorry if

1 she was upset. She said, 'I thought we were friends.' And
2 I said, 'We are friends,' and that I would like to remain
3 friends."

4 Q Thank you, Agent Kindly. Now, again, after that
5 statement was done, did you inform Mr. Franklin as to
6 whether or not, if he had anything else he needed to add,
7 that he could contact you and -- and -- and add to his
8 statement or make any corrections?

9 A Yes, sir.

10 Q Okay. And is that normal in -- in your process, as
11 far as when you investigate cases, as far as when you get a
12 statement?

13 A Yes, sir. When I get a statement, I always give a
14 contact number. And if there's any additional information
15 someone has, they can call me.

16 Q Now, Agent Kindly, did you have a -- a second
17 opportunity to meet with Mr. Franklin and obtain a
18 statement from him?

19 A Yes, sir.

20 Q Okay. And when and where did that occur?

21 A That was at the Greenville Law Enforcement Center, and
22 it was on August the 25th of 2010.

23 Q Okay. And at that time, prior to you getting a
24 statement, was he Mirandized?

25 A Yes, sir.

1 Q Okay.

2 MR. BRYAN: Your Honor, I object, unless that's
3 firsthand knowledge.

4 THE COURT: Sustained. Ask him how ---

5 Q Well, let me ---

6 THE COURT: You can ask him how he knew.

7 Q Well, let me ask you this: Agent Kindly, at that time
8 was Mr. Franklin in custody?

9 A No, sir.

10 Q Okay. How did he actually -- do you know how he
11 arrived at the Greenville County Sheriff's Office?

12 A Yes, sir. He drove.

13 Q He drove on his own accord?

14 A Yes, sir.

15 Q He wasn't transported by law enforcement?

16 A No, sir.

17 Q He wasn't in handcuffs when you met him?

18 A No, sir.

19 Q Okay. And when you interviewed him, who was present?

20 A The second time when I interviewed him, it was just he
21 and I in a room again.

22 Q Okay. And again, was the interview based on -- or was
23 the interview in relation to the allegations that were made
24 back on August 2nd of 2010?

25 A Yes, sir.

1 Q Okay.

2 MR. PAULING: (To the court reporter) Court's 3, I
3 think.

4 (Whereupon, Court's Exhibit 3 was marked for
5 identification.)

6 MR. PAULING: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q Agent Kindly, I'm going to show you what's been marked
9 at Court's Exhibit 3, sir. I'm going to ask you if you
10 recognize that particular document.

11 A Yes, sir, I do. This is that statement that was taken
12 on August the 25th at the Greenville Law Enforcement
13 Center.

14 Q Now, when you obtained that statement, at any time,
15 did Mr. Franklin ask you to stop your questioning of him?

16 A No, sir.

17 Q Did he ask you to -- or did he tell you that he needed
18 to obtain the services of an attorney?

19 A No, sir.

20 Q And again, had he done that, would you have stopped
21 your interviews?

22 A Yes, sir.

23 Q And allowed him to either take a break or obtain the
24 services of an attorney?

25 A Yes, sir.

1 Q Okay. Now, did you threaten him in any manner to get
2 him to provide that statement?

3 A No, sir.

4 Q Coerce him in any way to get him to provide you that
5 particular statement?

6 A No, sir.

7 Q And once he provided you that statement, did he have
8 an opportunity to make any additions, corrections, or
9 deletions to the statement?

10 A Yes, sir.

11 Q And, if you could tell, did he make any corrections or
12 additions?

13 A Yes, sir. There's at least one place on here where
14 he's made a correction and initialed beside it.

15 Q Okay. Agent Kindly, what was his statement to you?

16 A It says: "I want to add to my statement. After
17 thinking about the situation with Amy, I remembered that
18 after she tongue-kissed me and we broke the kiss, my hand
19 did slide from her back, around her front, and down the
20 side of her right breast. I did not squeeze it or play
21 with it in any manner. My hand just slid down the side of
22 it.

23 "I then left the shop. At no time did I put my hand
24 inside her pants or under her top or her bra. I never
25 touched her bra or panties."

1 Q And was that statement signed by Mr. Franklin on
2 August 25th of 2010?

3 A Yes, sir.

4 Q Okay. And again, when he provided you that statement,
5 was he under the influence of any drugs or alcohol or
6 prescription drugs that would've affected his ability to
7 understand what was going on during that interview?

8 A No, sir.

9 MR. PAULING: Your Honor, that's all I'd have for this
10 witness at this time.

11 THE COURT: Mr. Bryan?

12 CROSS-EXAMINATION

13 BY MR. BRYAN:

14 Q Did -- did you give him his Miranda rights?

15 A On the first occasion I interviewed him? Yes, sir.

16 Q No, sir. On the second occasion.

17 A I did not. No, sir.

18 Q All right. And when you took that statement, did you
19 tell him then he didn't have to make the statement?

20 A Yes, sir.

21 Q At -- you did at that time?

22 A I believe ---

23 Q The second time?

24 A I believe so. Yes, sir.

25 Q And, Agent Kindly, you understand there is a recording

1 of that conversation you had with him, don't you?

2 A Yes.

3 Q You aware of that?

4 Do you recall telling him before he gave a second
5 statement that he didn't have to give the statement?

6 A I spoke to Mr. Franklin when he came in initially.
7 And then I spoke to him after he -- after he gave the
8 statement. At some point during the time that he was
9 there, I told him.

10 Q All right, sir. During approximately a 54-minute
11 questioning of Mr. Franklin, he was never told he had a
12 right to an attorney, was he?

13 A By me?

14 Q By you.

15 A No, sir.

16 Q He was never told he could stop this anytime he
17 wanted, did -- was he?

18 A No, sir.

19 Q In fact, you encouraged him to make that specific
20 statement, didn't you?

21 A The entire statement?

22 Q Well, the basic gist of that statement was from your
23 encouragement, wasn't it?

24 A What I asked him is, "If there's anything else that
25 you wanted to add, we can add that to your statement."

1 Yes, sir.

2 Q Okay. But you were told by someone else he wanted to
3 add something, didn't you -- weren't you?

4 A Yes, sir.

5 Q Mr. Brooks?

6 A Yes, sir.

7 Q Okay. And were you in there during Mr. Brooks's
8 conversation with him?

9 A No, sir.

10 Q You don't know what Mr. Brooks told -- said to him, do
11 you?

12 A No, sir.

13 Q And you walked in the room because Mr. Brooks told you
14 he wanted to make a statement, didn't you?

15 A Yes, sir.

16 Q And you said, "I understand you want to make a
17 statement," and you told him the gist of the statement,
18 didn't you?

19 A I told him that, "I understand you want to make a
20 statement." As far as the gist of it, I'm not sure exactly
21 what you're asking me.

22 Q All right, sir. You -- you -- you got into some -- a
23 little bit of detail about what the statement he was to
24 make was, didn't -- didn't you?

25 A I got into a little detail of the -- "This is what I

1 was told that you wanted to add. If you want to add that,
2 we can put that on your statement." Yes, sir.

3 Q And you gave him this form and told him to write that
4 down, didn't you?

5 A Yes, sir.

6 Q And at no time during this 54-minute questioning was
7 he given any Miranda warnings, told he could have an
8 attorney, told he could stop, was he?

9 A Not by me. No, sir.

10 Q And when he had this 54-minute questioning, he had
11 already been there over two hours, hadn't he?

12 A I -- I -- I suppose so. Yes, sir.

13 Q Are you familiar with Mr. Franklin's health?

14 A No, sir. No, sir. Not off the top of my head.

15 Q Do you know he's had recent heart attacks in the last
16 few years and four stents?

17 A No, sir.

18 Q Did you know the medications he was on that day?

19 A No, sir. But I did receive a doctor's authorization
20 to speak to him.

21 MR. BRYAN: No further questions, Your Honor.

22 MR. PAULING: Just briefly, Your Honor.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. PAULING:

1 Q Again, Agent Kindly, was -- was Mr. Franklin in
2 custody at that time?

3 A No, sir.

4 Q All right. Now, the statement -- did -- did you write
5 that statement?

6 A No, sir.

7 Q Okay. Did you force Mr. Franklin to write that
8 statement?

9 A No, sir.

10 Q Okay. And -- it's in his handwriting; is that
11 correct?

12 A Yes, sir.

13 Q Okay. And he made the corrections -- I believe you
14 stated there were some corrections to the statement?

15 A Yes, sir.

16 Q Okay. He did the -- that on his own; is that correct?

17 A Yes, sir.

18 Q And prior to your interviewing him, were you made
19 aware that Miranda warnings were given?

20 A Yes, sir.

21 Q Okay. And by whom?

22 A By Sgt. Brooks with the sheriff's office.

23 MR. PAULING: Okay. I have no further questions.

24 RECROSS-EXAMINATION

25 BY MR. BRYAN:

1 Q Clarification: You weren't present when any Miranda
2 warnings were given, were you?

3 A No, sir, I was ---

4 Q Okay. And you ---

5 A --- not. No.

6 Q --- didn't hear ---

7 A No, sir.

8 MR. BRYAN: Nothing further, Judge.

9 MR. PAULING: That's all I have, Your Honor.

10 THE COURT: All right. You may step down.

11 (Whereupon, the witness exits the witness stand.)

12 MR. PAULING: At this time, Your Honor, the state
13 would call Sgt. Nate Brooks.

14 THE COURT: All right. Sgt. Brooks, come around and
15 be sworn.

16 NATE BROOKS, having been first duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. PAULING:

20 Q Sgt. Brooks, how are you, sir?

21 A I am fine, sir. How are you?

22 Q Doing well. Sir, where are you currently employed?

23 A I am currently employed with the Greenville County
24 Sheriff's Office in Greenville, South Carolina.

25 Q Okay. And were you employed with the sheriff's office

1 back in August of -- of 2010?

2 A I was.

3 Q Okay.

4 A Or ---

5 Q And ---

6 A --- I am.

7 Q Okay. And in what capacity were you employed with the
8 sheriff's office back in August of 2010?

9 A In August of 2010, I was an investigator with the
10 internal affairs unit with the Greenville County Sheriff's
11 Office. And I'm also a forensic interviewer.

12 Q Okay. And just briefly, could you tell the Court your
13 training in forensic interviewing?

14 A How far do you want me to go back, as far as training?

15 Q Just at least ten years back.

16 A Okay. Ten years back I was employed with the
17 Charleston city before I came to Greenville County.

18 Q Okay.

19 A And that was in August of '97 to '02. I've got
20 extensive training in law enforcement ethics and forensic
21 interviewing, and that would be within the past ten years,
22 briefly.

23 Q Sgt. Brooks, were you involved in -- in some capacity
24 with the assault investigation regarding Mr. Raymond
25 Franklin?

1 A Yes, sir, I was.

2 Q Okay. And if you could tell the Court, sir, how you
3 became involved in -- in this particular investigation.

4 A I was requested by Agent Kindly to assist with this
5 investigation.

6 Q Okay. And did you meet with Mr. Franklin?

7 A Yes, sir, I did.

8 Q Okay. And -- and when and where did that occur?

9 A That occurred on April the 25th, 2010, at the
10 Greenville County Law Enforcement Center.

11 Q Okay. Was that August 25th?

12 A August 25th. That was a -- that's what ---

13 Q All right.

14 A --- I said.

15 Q I wasn't sure if you said "April" or "August." I'm
16 sorry.

17 A Nope. August 25th.

18 Q Okay. And as far as Mr. Franklin's concerned, do you
19 recall how he arrived there?

20 A I do not. He just kind of -- my office is downstairs,
21 and ---

22 Q Okay.

23 A --- he was escorted by Agent Kindly.

24 Q Okay. You say "he was escorted." Was he in
25 handcuffs?

1 A No, sir.

2 Q Okay. And now, when you met with him, what was your
3 purpose of meeting with him?

4 A My purpose of meeting him -- with him was just to
5 conduct an interview in regards to Agent Kindly's
6 investigation.

7 Q Okay. And prior to -- prior to interviewing him, did
8 you advise him of his rights?

9 A I did.

10 Q Okay. And if you could tell the Court: How did you
11 do that, sir?

12 A I used our standard waiver-of-rights form when
13 conducting interviews.

14 Q Okay.

15 MR. PAULING: (To the court reporter) I couldn't
16 remember if that was 4.

17 (Whereupon, Court's Exhibit 4 was marked for
18 identification.)

19 MR. PAULING: Okay. That's 5.

20 (Whereupon, Court's Exhibit 5 was marked for
21 identification.)

22 MR. PAULING: May I approach the witness, Your Honor?

23 THE COURT: Sure.

24 Q Sgt. Brooks, I'm going ---

25 A Uh-huh.

1 Q --- to show you what's been marked as Court's Exhibits
2 4 and 5. I'm going to ask you -- excuse me -- if you
3 recognize Court's Exhibit 4.

4 A I recognize both forms.

5 Q Okay. And Court's 4, is that that standard form that
6 you were referring to?

7 A Yes, sir, it is.

8 Q And Court's 5, is that a redacted version of that --
9 that same form?

10 A Yes, sir, it is.

11 Q Okay. And you indicated that you advised him of his
12 rights?

13 A Yes, sir, I did.

14 Q Okay. How did you go about doing that? What did --
15 what did you do?

16 A I just basically read this off to him and asked him if
17 he understood it, and he said he did. And he initialed
18 beside each section that I read off and then signed it down
19 at the bottom.

20 Q Okay. And what were the rights that you read to him?
21 If -- if you look at Court's 5 -- Exhibit 5.

22 A Okay. Court's Exhibit No. 5, I read that: "I have
23 been advised that I have the right to remain silent; that
24 anything I say may be used in court against me; that I'm
25 entitled to talk to a lawyer now and have him present now

1 or at any time during questioning; that if I cannot afford
2 a lawyer, one will be appointed for me without cost; that
3 if I decide to answer questions now, that I may stop
4 questioning at any time I so choose; that I understand each
5 of these rights, and I wish to waive them."

6 Q Okay. And did he have any trouble understanding those
7 rights as -- as they were read to him?

8 A No, sir. I -- it did -- it did not appear he did.

9 Q Okay. And prior to you advising him of his rights and
10 interviewing him, did you speak with him about his past
11 medical condition -- conditions?

12 A Briefly.

13 Q Okay. And were you presented any information
14 regarding his ability to go through with the interview?

15 A I was.

16 Q Okay. And -- and what was that, exactly?

17 A It was a -- a medical waiver.

18 Q And after receiving that medical waiver, was it your
19 understanding that he was prepared to go through with the
20 interview?

21 A Yes, sir, I was.

22 Q And did you, in fact, interview him?

23 A Yes, sir, I did.

24 MR. PAULING: (To the court reporter) That's Court's

25 6.

1 (Whereupon, Court's Exhibit 6 was marked for
2 identification.)

3 MR. PAULING: May I approach the witness, Your Honor?

4 THE COURT: Yes, sir.

5 Q Agent Brooks, I'm going to show you what's been marked
6 as Court's 6 and ask you, sir: Is that the medical waiver
7 that you were just referring to?

8 A Yes, sir, it is.

9 Q Okay. And was that from his doctor?

10 A From what I was told to be his doctor.

11 Q Okay. And -- and who told you it was his doctor?

12 A He did.

13 Q Okay. And did you conduct an interview of him?

14 A Yes, sir, I did.

15 Q Okay. And during that interview, at any time did he
16 ask you to stop the interview? Did he ask you -- well, did
17 he ask you to stop the interview at any time?

18 A No, sir.

19 Q Okay. Did he ask you to take a break?

20 A No, sir. But they were built in.

21 Q Okay. Breaks were built in?

22 So you -- you -- you had already had these breaks
23 built in?

24 A Yes, sir.

25 Q Now, at any time did he request an attorney?

1 A No, sir, he did not.

2 Q Okay. At any time during the interview, did it appear
3 that he did not understand what was going on at the time?

4 A No, sir, it did not.

5 Q Okay. And after your interview of him, did he speak
6 with Agent Kindly?

7 A Yes, sir, he did.

8 Q Okay. Did you inform Agent Kindly that you had read
9 his Miranda warnings?

10 A Yes, sir. I'm sure I did.

11 Q Okay. Did you already have the waiver form at that
12 time?

13 A Yes, sir. I did the waiver form at the very
14 beginning.

15 Q Okay. And did you provide that to Agent Kindly?

16 A Yes, sir.

17 Q Do you know if he made a statement to Agent Kindly?

18 A I know that he made a statement to Agent Kindly, and
19 that's all I know.

20 Q Okay. You weren't present during that time?

21 A No, sir, I was not.

22 Q Okay. Okay. Now, when you -- and just approximately,
23 from the time that you had -- or rather, that Mr. Franklin
24 had -- had waived his Miranda warnings ---

25 A Uh-huh.

1 Q --- what was the time frame between that and you then
2 -- or -- or -- or, rather, him making a statement to -- to
3 Agent Kindly?

4 A Like -- I'm -- I'm sorry. Repeat that again.

5 Q Okay. I probably didn't ask it artfully.

6 Between the time that you actually -- that he waived
7 his -- his Miranda warnings with you ---

8 A Uh-huh.

9 Q --- and the time that he then spoke with Agent Kindly
10 ---

11 A Uh-huh.

12 Q --- approximately how long was that?

13 A Approximately two hours.

14 Q Okay. All right. Now, were you talking with him the
15 entire two hours?

16 A No, sir, I was not.

17 Q Okay. Because there were breaks built in; is that
18 correct?

19 A Yes, sir, that's correct.

20 Q Okay. Approximately how long were the breaks -- just
21 approximately?

22 A Around five to ten minutes.

23 Q And there was more than one break, I assume?

24 A Yes, sir. I -- I break them out hourly.

25 Q Okay.

1 MR. PAULING: No further questions at this time, Your
2 Honor.

3 THE COURT: Mr. Bryan?

4 CROSS-EXAMINATION

5 BY MR. BRYAN:

6 Q You have the exhibits there?

7 A Yes, sir, I do. Do you need them all?

8 Q Yeah. I -- I believe you indicated that Exhibit No. 5
9 is just ---

10 A Uh-huh.

11 Q --- the bottom half of Exhibit No. 4?

12 A That is correct.

13 Q So what you used was Exhibit No. 4 when you -- that
14 Mr. ---

15 A That's it in ---

16 Q --- Franklin ---

17 A --- its full format. Yes, sir.

18 Q And in reality you talked to him about 2 1/2 hours,
19 wasn't it?

20 A Let's see here. It -- to -- to break it down a little
21 bit more precise, I spoke with him for an hour and 54
22 minutes with a short five- to ten-minute break halfway in
23 the middle. And then after that I spoke with him for an
24 additional 19 minutes.

25 Q All right, sir. And during that 19 minutes, you had

1 discussions and encouraged him to make another statement,
2 didn't you?

3 A What do you mean by "encouraged"?

4 Q Did you tell him he needed to make another statement?

5 A I didn't tell him he needed to make another statement.

6 Q You didn't tell him he needed to add to his statement?

7 A I didn't tell him he needed to add to his statement.

8 Q Did you tell him you needed to clarify anything?

9 A I didn't tell him he needed to clarify anything.

10 Q Did you tell him if he gave another statement, it
11 would be better for him with Sheriff Chastain?

12 A Better for him with Sheriff Chastain? No.

13 Q Did you tell him that being a law enforcement officer,
14 you kind of wanted to help him?

15 A Help him? No, sir.

16 Q And you didn't encourage him to say anything in
17 particular about this case?

18 A I -- I don't understand -- I don't understand your
19 question.

20 Q Did -- did you encourage him to make specific
21 statements about this case?

22 A I didn't encourage him to make any statements.

23 Q Did you suggest he make any statements about this
24 case?

25 A I don't -- I -- clarify your question, please.

1 Q Did you suggest that he make a statement saying
2 something specific, similar to what is in Exhibit No. 3?
3 Have you ever seen Exhibit No. 3?

4 A I have not seen Exhibit No. 3.

5 Q Okay. And when you gave these Miranda rights to him

6 ---

7 A Uh-huh.

8 Q --- was Mr. -- is it -- is it Hindly? -- was Mr.
9 Hindly there -- Kindly there -- excuse me -- Kindly?

10 A No, sir, he was not.

11 Q And when Mr. Kindly actually took this statement from
12 Mr. Franklin, were you present?

13 A When he took that statement, no, sir, I was not
14 present.

15 MR. BRYAN: Your Honor, reserving objections to any
16 issues concerning it, the -- I think the Court was informed
17 that this tape that they gave me yesterday dealt with a
18 polygraph. And I -- I -- I have to question about that.

19 THE COURT: The --we're -- we're in camera. You can
20 do that.

21 Q You gave him a polygraph test for an hour and 54
22 minutes, didn't you?

23 A Yes, sir, I did.

24 Q Then after that was over, you had about, you say, 19
25 minutes -- 19 to 20 or maybe 30-minute conversation one on

1 one with Mr. Franklin, didn't you?

2 A I had a 19-minute conversation ---

3 Q All right.

4 A --- with Mr. Franklin.

5 Q Now, did you ever tell Mr. Franklin he was being
6 recorded at any time?

7 A Yes, sir, I did. It's in our waiver.

8 Q Well, is that the last sentence of that paragraph
9 you're talking about?

10 A Yes, sir, it is.

11 Q All right. Well, read it.

12 A "This examination may be video/audio-recorded for the
13 purposes of quality control and accuracy."

14 Q Okay. Did you ever tell Mr. Franklin it was actually
15 being recorded?

16 A I said it was being recorded for the purposes of
17 quality control and accuracy.

18 Q Well, it says "may." Did you -- did I -- did we
19 misread it?

20 A No, sir. I read it.

21 Q It says: "This examination may be video/audio-
22 recorded . . ."

23 A Uh-huh.

24 Q Did you tell him he was being recorded?

25 A I said, "This polygraph examination may be video-

1 and/or audio-recorded for the purposes of quality control"

2 ---

3 Q Okay.

4 A --- "and accuracy."

5 Q But you never said, "You are being recorded"?

6 A That's what I said.

7 Q Okay.

8 A Okay?

9 Q All right. So it was "may"? And ---

10 MR. PAULING: Your Honor, he's answered it two/three
11 times already.

12 THE COURT: I think that's the first time he's
13 answered it.

14 Q Okay. And this was your wavier for the polygraph;
15 isn't that correct?

16 A That is correct.

17 Q Now, after this polygraph is over, you leave the
18 recording on, don't you?

19 A Yes, sir, I do.

20 Q And then you question him, as a police officer, about
21 this case, don't you?

22 A Yes, sir, I do.

23 Q Okay. And you make statements on here about what's
24 best for him and how you want to help him because you're a
25 police officer too?

1 A I don't ---

2 Q Isn't that ---

3 A --- say that I want to help him.

4 Q And you even make -- go so far as to say, "You would
5 be better off making a statement saying this," don't you?

6 A I didn't say that he would be better off.

7 Q Did you say it would help his case?

8 A I didn't say that it would help his case.

9 Q You've told him to make a statement worded very
10 similar to Exhibit No. 3, didn't you?

11 A I didn't tell him to make a statement. No, sir.

12 Q Did you suggest it, then, Mr. Brooks?

13 A Suggest that he make a statement?

14 Q Yes, sir.

15 A No, sir.

16 Q All right.

17 MR. BRYAN: Your Honor, this is an hour-and-54-minute
18 tape; and then, a 54-minute tape. It clearly shows what
19 this officer did to Mr. Franklin. It clearly shows this
20 was an independent, separate questioning of him. It was
21 suggestive of him. It is a lot of things I think this
22 Court needs to hear, because I think it would help this
23 Court to determine if this was freely and voluntarily
24 given.

25 And I would ask the Court to listen to this tape and,

1 particularly, the 54-minute questioning after the hour-and-
2 54-minute polygraph. I -- I think it clearly shows there
3 were no rights given, no Miranda warnings given. We're
4 talking about over two hours after Mr. Franklin arrived
5 there.

6 And I would submit to the Court that it is very
7 specific in the recommendations he had for Mr. Franklin and
8 Mr. Kindly came in and said, "I understand you want to make
9 this statement," it will -- will clearly say. There --
10 that -- that waiver there, I would submit to the Court, was
11 purely for the polygraph. It has nothing to do with an
12 independent questioning after the fact. And we've got it
13 all here on recording. And I think the Court can made a
14 decision from listening to that recording.

15 MR. PAULING: Your Honor, may I just ask one -- one
16 more question?

17 THE COURT: Sure.

18 MR. PAULING: Okay.

19 REDIRECT EXAMINATION

20 BY MR. PAULING:

21 Q Now, Sgt. Brooks, Mr. Bryan indicates that you
22 suggested that Mr. Franklin make a -- a statement that was
23 -- was the same or similar to this statement in Court's
24 Exhibit 3 -- excuse me -- in Court's Exhibit 3.

25 A Okay. Uh-huh.

1 Q And if you look at Court's Exhibit 3 and Court's
2 Exhibit No. 2 -- I'm sorry ---

3 A Okay.

4 Q --- are those the same statement?

5 A I -- I would have to read them, sir. I've never seen
6 either one of them. I don't ---

7 MR. BRYAN: (To Mr. Pauling) Could I see what you're
8 showing him?

9 MR. PAULING: Sure.

10 Q Okay. I think we ---

11 A I apologize. I just -- here you go.

12 MR. PAULING: That's the first statement; that's the
13 second statement.

14 MR. BRYAN: Yeah. All right. Just want to make sure.

15 THE WITNESS: May I have time to read them, Your
16 Honor?

17 THE COURT: Sure.

18 A All right, sir. I've read it. Can you repeat your
19 question one more time? I just ---

20 Q Yes, sir.

21 A --- want to make sure I understand it correctly.

22 Q Mr. Bryan said that you suggested that he make the
23 same statement or a similar statement to what he had
24 previously made. And my question to you is: Are those the
25 same statements?

- 1 A No, sir, it's not the same -- the same ---
- 2 Q Did ---
- 3 A --- statements.
- 4 Q Did you make any such suggestion?
- 5 A No, sir, I did not.
- 6 Q And if you had, apparently, the suggestion didn't --
- 7 didn't work, did it?
- 8 A I guess ---
- 9 Q Is it ---
- 10 A --- not.
- 11 Q --- part of the same statement?
- 12 A No, sir. These are not the same statements.
- 13 Q Okay. Now, you had answered Mr. Bryan that -- that
- 14 you, after the -- the -- the -- the polygraph, that you
- 15 investigated as a police officer?
- 16 A Okay. Yes, sir.
- 17 Q Okay.
- 18 A That's correct.
- 19 Q Now -- now, again, was he in custody at the time?
- 20 A No, sir, he was not.
- 21 Q Okay. After he gave that -- after -- after the
- 22 polygraph, did you arrest him?
- 23 A No, sir, I did not.
- 24 Q Did you charge him?
- 25 A No, sir, I did not.

1 Q Okay. After the statement that was given to Agent
2 Kindly, did you arrest him or charge him?

3 A I -- I don't know when he gave him that statement, but
4 I -- I've never charged or arrested Mr. Franklin.

5 Q Okay.

6 MR. PAULING: No further question, Your Honor.

7 MR. BRYAN: Just so I may be clear, Your Honor.

8 RE CROSS-EXAMINATION

9 BY MR. BRYAN:

10 Q My question to you earlier: Was the August 25th
11 statement that is Court's Exhibit No. 3 -- my question was:
12 Did you ---

13 A Uh-huh.

14 Q --- make suggestions in your questioning of Mr.
15 Franklin that he make a statement similar to that?

16 A No, sir, I did not.

17 MR. BRYAN: Your Honor, I would ask the Court to
18 listen to the 54-minute section -- section of this. I
19 think it clearly shows what both officers said to him and
20 how -- what went on in that conversation. It clearly shows
21 there's nothing -- or there's coercion there.

22 THE COURT: If y'all want me to listen to that, then I
23 want to do something with the jury. Let's -- how hard is
24 it to find? Is it separate files for the timing on the
25 thing or not?

1 MR. BRYAN: It -- it's two -- two sections. One is
2 the polygraph, which is an hour and 54 minutes. And then,
3 it's an additional 54 minutes, which is the questioning.
4 If you can ---

5 MR. PAULING: Okay.

6 MR. BRYAN: --- click on it, if you -- you have that
7 capacity on your computer?

8 THE COURT: I think I do.

9 MR. PAULING: There broken down in two distinct parts,
10 Your Honor.

11 THE COURT: Okay.

12 MR. BRYAN: And I don't know how many he has or
13 whether we want ---

14 MR. PAULING: We've got -- we have -- we only have one
15 extra one, but ---

16 MR. BRYAN: I would gladly ask him for it back one
17 day.

18 THE COURT: All right.

19 MR. BRYAN: Submit this ---

20 THE COURT: Let's ---

21 MR. BRYAN: --- one to the Court that was given to me.

22 THE COURT: All right.

23 MR. BRYAN: When the two icons come up on the disc,
24 the second one is the 54-minute.

25 THE COURT: All right. If this is going to take 54

1 minutes, do y'all got suggestions what we do with the jury,
2 either of y'all? I don't want them sitting back there for
3 an hour while I listen to this without some kind of
4 comments from the Court.

5 MR. BRYAN: I'm -- if the Court -- whatever the Court
6 says, I'm in agreement with.

7 MR. PAULING: I mean, Your Honor, if -- if -- if -- if
8 you listen, it's -- both parts, that's going to be 2 and a
9 -- almost three hours. And then, I'm sure we'll have a --
10 a -- a few more arguments just to put on the record after
11 you -- after you've heard it.

12 MR. BRYAN: Your Honor, the first part is the
13 polygraph. Part of the questioning is -- the 54 minutes is
14 all I'm asking. I -- I -- I concede that -- wherever it is
15 -- okay. It's this. I concede that the Court's Exhibit
16 No. 4 was signed by Mr. Franklin before he took the
17 polygraph test. And I would ask the Court to read it,
18 because it clearly applies purely to the polygraph test.

19 I just do not concede -- and I believe the Court -- if
20 -- if the Court wants to listen to the entire thing, that's
21 fine. But I -- I would concede that, to save the Court
22 from listening to the two -- two-hour polygraph test, that
23 he signed that at the beginning of it. But the second ---

24 THE COURT: All right. If this takes me an hour to
25 listen to it and y'all got more arguments, we're looking at

1 three-thirty/quarter to four -- maybe close to four
2 o'clock. Do y'all want to deal with this today and bring
3 the jury back tomorrow? I mean, I -- I'm -- I don't know
4 how much this is going to take, and I hate to keep asking
5 that question. But the jury's been back there 40 minutes
6 or so, and they don't have a clue what we're doing here if
7 we do. And y'all tell me where you want to go with this.

8 MR. PAULING: Judge, it -- it's our position we're
9 going to have to deal with this first, because I -- there's
10 nothing we can -- we can't swear the jury before this is
11 taken care of, so ---

12 THE COURT: Okay.

13 MR. BRYAN: I'm at the Court's mercy. Whatever the
14 Court says, I'll do. I don't know how late the Court
15 intended to go. If the Court was going to five o'clock,
16 I'd -- I would say yes, that's -- that's ---

17 THE COURT: Let's -- let's get this done. But I -- I
18 really don't want to start the trial at 4:15 and try to get
19 it all done this afternoon and give it to the jury. I'd
20 just as soon do it tomorrow at one time, because it's --
21 they're going to be herky-jerky them back and forth. And I
22 just don't think that's fair to them.

23 I'm going to tell them to come back in the morning.
24 And I -- I don't -- I don't want to do that, but I just
25 think that's the best thing for their interests to do.

1 Because I don't mind working late, but, I mean, I told them
2 9:30 to 5:30, roughly, and that's not going to be the case
3 if we start -- I don't see us starting at four o'clock and
4 finishing this thing today.

5 Okay. All right. (To the witness) You can step down
6 while I listen to this tape. (To the bailiff) Mr. Bolt, I
7 want you to go convey to Ms. Wells and the jurors that I'd
8 like them to be back tomorrow morning -- 9:30? -- 9:30.

9 THE BAILIFF: Nine-thirty?

10 THE COURT: Uh-huh. And express my apologies that
11 something came up that -- unrelated to the case that I'm
12 having to deal with, and we'll start tomorrow first thing.

13 THE BAILIFF: Nine-thirty?

14 THE COURT: Nine-thirty. All right. Y'all want to
15 stand at ease while I listen to this? Or you want me to go
16 back in the back and listen to it?

17 MR. BRYAN: Your Honor, there is a little bit of
18 language, and you may want to go back and listen to it
19 yourself.

20 THE COURT: All right. I'll step back in the back and
21 listen. I'll be back out here in a minute.

22 (Off the record from 2:45 p.m. until 3:50 p.m.)

23 THE COURT: All right. I've listened to the entire
24 second file, the 54-minute file, the interview between the
25 polygraph examination by Detective Brooks and then the

1 follow-up conversation with the SLED agent. I've listened
2 to both of those. Having done that, let me hear whatever
3 further motion y'all have on these issues.

4 MR. BRYAN: Your Honor, I would ask that the second
5 statement be disallowed because of the context and the
6 content of that conversation that Officer Brooks had with
7 him and then kindly after that. It was far removed from
8 the waiver which was for the polygraph test and not for
9 this. And it is clear that Officer Brooks is doing a
10 investigation; he's turned into a questioner and
11 questioning him on the issues. And it's -- it's not --
12 he's not doing what -- the polygraph. This is far beyond
13 that. And I would ask the Court to disallow the -- this
14 shorter, second statement; that August 25th statement, at
15 least.

16 MR. PAULING: Okay. Your Honor, it's the state's
17 position that -- actually, regardless of these warnings,
18 that the statement -- looking at the totality of the
19 circumstances, this statement is voluntary. Mr. Franklin
20 was not in custody. There's no testimony that he was in
21 custody; that he actually appeared at the Greenville County
22 Sheriff's Office on his own accord for the purpose of
23 meeting with Sgt. Brooks for him to conduct that interview.

24 Being that it's noncustodial, the Miranda warnings are
25 not even triggered. It's the state's position, of course,

1 to -- to actually put those -- below the waiver form in,
2 not the substance of the -- the statement that he gave to
3 Sgt. Brooks, but the Miranda warnings in simply to show
4 that the statement was voluntary. It's the state's
5 position that Sgt. Brooks didn't even have to do that, as
6 it was noncustodial.

7 Also, Your Honor, as far as that time frame is
8 concerned, I point the Court to *State v. Simmons*, 682
9 S.E.2d, 2009 Court of Appeals case. That particular case,
10 there was a -- defendant was charged with armed robbery; it
11 was a home invasion. The Miranda warnings were read.
12 There was no written waiver. The statement was still
13 deemed to be voluntary.

14 During the investigation, there was a four-hour window
15 between the -- the time that the defendant -- the suspect
16 at the time, it was my understanding, was actually -- he
17 was there for some length of time. There was four hours
18 between the time that he was actually -- was able to eat
19 something and actually gave his confession. And it was
20 still rendered -- or -- or deemed to be voluntary.

21 Here in our particular case, Your Honor, we have there
22 -- no threats were made to Mr. Franklin. There were no
23 promises at all made to him. He never invoked his right to
24 counsel. And again, this is after being advised of his
25 Miranda warnings, which, again, the state would say were --

1 were -- were not triggered because it was noncustodial.

2 However, they did give the warnings. Sgt. Brooks did
3 give the warnings. And there's -- there's this -- even if
4 you go with what Mr. Bryan says, there's this two-hour
5 window. Again, Your Honor, it's our position that it does
6 not render the statement involuntary. Again, the Court can
7 look at the totality of the circumstances -- and we're
8 looking at preponderance of the evidence -- as to whether
9 or not the statement is voluntary.

10 Also, *State v. Von Dohlen*, Your Honor, 471 S.E.2d 689,
11 Supreme Court case in 1996, states the fact that the
12 investigator who actually questioned the suspect in that
13 particular case was empathetic to the defendant did not
14 render the defendant's statement involuntary. It appears,
15 at least during arguments, that Mr. Bryan was suggesting
16 that Sgt. Brooks was -- was stating to Mr. Franklin that, I
17 guess, it would help him if he made this particular
18 statement.

19 I also point the Court to *State v. Parker*, 671 S.E.2d
20 619. This is a 2008 Court of Appeals case, Your Honor.
21 That particular case was a 16-year-old suspect charged with
22 armed robbery and murder. The ATF agent was -- was
23 essentially playing the good guy during the investigation.
24 The Court ruled that the ATF agent, playing the good guy
25 with the 16-year-old suspect, did not render the confession

1 inadmissible.

2 Here we don't have a 16-year-old defendant. We have
3 an individual who is former law enforcement -- at least two
4 weeks earlier, was -- was with law enforcement and was with
5 law enforcement for some great length of time. And so, you
6 know, when the Court looks at whether or not the statement
7 is voluntary, obviously, the -- the Court must look at it
8 from the perspective of the suspect at the time. It's the
9 state's position that Mr. Franklin, having been in law
10 enforcement, understood and was well aware of -- of Miranda
11 warnings and the process; was well aware of the fact that
12 although he did go to the Greenville County Sheriff's
13 Department to speak with Sgt. Brooks, that at any time he
14 could walk.

15 Now, Mr. Bryan asked Sgt. Brooks if he told him that
16 he was free to leave. Again, he was provided his Miranda
17 warnings; waived them; signed them; and, in fact, had
18 provided a medical waiver to Sgt. Brooks from his own
19 doctor, indicating that he was going to be able to take
20 part in the interview process. Again, now, when -- when
21 Senior Agent Kindly comes in to take his statement, he's
22 already aware that Sgt. Brooks has Mirandized him.

23 And again, Your Honor -- and the Court exhibits, of
24 course -- that second statement is written by Mr. Franklin.
25 This isn't a statement that Agent Kindly wrote and then had

1 him sign off on, just like the first statement. That was
2 handwritten by Mr. Franklin. It's the state's position, if
3 you -- if -- if the Court, looking at the totality of the
4 circumstances, Your Honor, that both statements -- the
5 statement that was given on August 6th of 2010, as well as
6 the statement that was given August 25th of 2010 -- were
7 both voluntary, Your Honor.

8 In both instances Mr. Franklin was advised of his
9 rights, waived his rights knowingly, and provided
10 statements during this investigation. It's the state's
11 position -- state would request that those -- both those
12 statements be admitted into evidence, Your Honor.

13 MR. BRYAN: And if I may, I would submit that they
14 aren't voluntary; that the -- the inducement of Officer
15 Brooks on the tape and suggestions of what to say -- none
16 of those facts, after a two-hour polygraph, are -- are
17 present in the cases he cited. It's -- he had this -- this
18 waiver he signed was clearly for the polygraph.

19 And then, there is this -- they're in a room -- this
20 room together, just the two of them. And they're -- he's
21 questioning him and interrogating him after all this is
22 over and offering him advice on what he needs to add to it.

23 Here is the key to that: That's the 25th, and the
24 other one is the 6th. They're going to argue: "Look, you
25 weren't telling the truth on the 6th, so you come up and

1 try to add something to it on the 25th -- you know, telling
2 -- you wasn't telling the whole truth here." They're going
3 to use that as cross-examination of him.

4 And this second one was clearly something he wouldn't
5 have come and done had he not been suggested and -- and
6 induced to do it by the conversations with Officer Brooks.
7 And that's -- it's -- it's a statement of, frankly, limited
8 use. I'm not arguing with August the 6th statement; I'm
9 not -- I don't have any problem with that. It's just this
10 second one that I believe should not be allowed because of
11 the involuntariness and the coercion of -- of -- they
12 subjected him to at -- in that second interrogation after
13 the other questioning.

14 MR. PAULING: Just -- just briefly, Your Honor, if I
15 may.

16 THE COURT: Uh-huh.

17 MR. PAULING: Your Honor, of -- of course we're going
18 to use the second statement, along with the first
19 statement. Your -- Your Honor, Mr. Bryan says, "Well, you
20 know, they -- they could, you know -- they want to use it
21 to cross-examine him."

22 Your Honor, as far as the case is concerned, the
23 burden's on the state to prove the case beyond a reasonable
24 doubt. We have to put up our case in chief; present the
25 evidence that we have. Part of the evidence that we have

1 is the statement that was -- was given on August 6th, as
2 well as the one on August 25th. We're talking about cross-
3 examination. Mr. Franklin doesn't even have to get up and
4 testify.

5 So we don't even get to that -- to that point. I
6 mean, cross-examining him doesn't really even come up
7 because he doesn't even have to testify. The burden of
8 proof is on the state. I believe that the state has the
9 right to present its case in full before this jury.

10 And again, Your Honor, looking at the totality of the
11 circumstances, I believe the Court can find -- respectfully
12 hope that the Court -- respectfully request that the Court
13 find that these statements were voluntary and admit them
14 into evidence, Your Honor.

15 MR. BRYAN: Your Honor, not ---

16 THE COURT: What ---

17 MR. BRYAN: --- if I'm -- may I?

18 THE COURT: Sure.

19 MR. BRYAN: Not to belabor the point, but the point is
20 it -- the burden is on them. And it's -- the notion that
21 he won't testify is ridiculous. It's -- this is just two
22 conflicts of testimony. That's what the whole case is
23 about.

24 But the -- the notion that they can induce him and
25 suggest that he write this second statement, then turn

1 around and use that, trying to make it look like he was
2 being untruthful on his first statement and he added this
3 to his later statement -- you know, they're going to -- I
4 -- I know the officer's saying he -- you know, you can come
5 back and -- can -- he told him he could come back and add
6 to his statement anytime he wants. This is not him coming
7 back and adding to it. It's them basically telling him
8 what he ought to say to help him out in this.

9 THE COURT: Well, here's where I've got an issue with
10 the second statement, is the whole conversation with the
11 polygraph examination and the follow-up conversation. If I
12 even leave that alone and get to the -- I'm sorry. I've
13 forgotten the SLED officer's name, gentleman --

14 MR. BRYAN: Kindly.

15 THE COURT: --- the first ---

16 MR. PAULING: Kindly.

17 THE COURT: --- one that testified.

18 MR. BRYAN: Kindly.

19 THE COURT: Kindly. He comes in and -- and talks.
20 There's -- I don't say a suggestion, but a comment along
21 the lines of, "Well, they're going to want to know about
22 this, and you need to put something in there about that."

23 And that just -- that -- that bothers me that you need
24 to put in there the -- the -- where the touching wasn't or
25 where the touching was or what part of the clothing was not

1 gone under. It -- there's suggestions in there, in the
2 Court's view, of what the statement should contained. And
3 for that reason, I'm going to grant your motion.

4 Now, they can't use it in case in chief. But if
5 something comes up during testimony, I'm not saying I'm
6 going to overrule it for impeachment reasons. Okay? Y'all
7 understand?

8 So you can't use Statement 2; you can use Statement 1.
9 Defendant testifies and he contradicts himself, Statement 2
10 may come in. But I'll make that decision then, so grant
11 your motion to that effect.

12 MR. BRYAN: Thank you, Your Honor.

13 MR. PAULING: Thank you, Your Honor.

14 THE COURT: All right.

15 (Whereupon, the proceedings were concluded at 4:03 p.m.)

16 (Court's Exhibit 7 was marked for identification off
17 the record.)

18 --- END OF TRANSCRIPT OF RECORD ---

19

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CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 15th day of May, 2012.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Maryann S. Nevers, CVR-M

Official Court Reporter

Columbia, South Carolina

July 16, 2012

State of South Carolina) In the Court of General Sessions
County of Laurens) Eighth Judicial Circuit
2011-GS-30-1870

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Raymond Franklin,)
Defendant.)

May 16, 2012
Laurens, South Carolina

B e f o r e:

The Honorable Eugene C. Griffith, Jr., Judge

A p p e a r a n c e s:

Curtis A. Pauling, III, Esquire
Jonathan D. Waller, Esquire
O. Warren Mowry, Jr., Esquire
Attorneys for the Plaintiff

James E. Bryan, Jr., Esquire
Attorney for the Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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NO. DESCRIPTION I.D. EVID.

C-7 CD 4

1 (Whereupon, the proceeding resumed at 9:41 a.m.)

2 (Court's Exhibit 7 was marked for identification off
3 the record.)

4 THE COURT: All right. Before I bring the jury in
5 here, any -- any of the parties have something they want to
6 put on the record?

7 MR. WALLER: Yes, Your Honor. First of all, Your
8 Honor, yesterday you listened to a approximately one-hour
9 recording. We would like to make that a Court's exhibit.
10 It's been marked as Court's Exhibit No. 7.

11 Also, Your Honor, in light of your ruling yesterday,
12 the state is going to move for a continuance, due to the
13 fact that the evidence that you suppressed -- the state
14 doesn't feel that it can properly proceed with the trial.
15 I'm also serving on the defendant's attorney a notice of
16 appeal. . And a notice of appeal is -- should be right about
17 now -- being served in the -- in the Court of Appeals of
18 that ruling yesterday.

19 It's my understanding that service on Mr. Bryan
20 triggers the stay of this trial. The jury has not been
21 sworn yet. Everything will stay the same in front of you
22 and -- and for that consideration.

23 THE COURT: All right. Senator Bryan?

24 MR. BRYAN: Your Honor, I -- I'll -- the only -- there
25 are two sections to that tape. One is an hour and 54

1 minutes. Only the second section, which was 54 minutes and
2 some-odd seconds, was submitted to the Court. And I would
3 ask the Court that that be the only part that's part of the
4 record.

5 MR. WALLER: Certainly. That -- that ---

6 THE COURT: Okay.

7 MR. WALLER: --- that's right.

8 THE COURT: And -- and for the record, the -- when the
9 Court listened to it -- opened it up in the computer, there
10 were two files on that DVD. One file was 27,000 or more
11 than 25,000 bits or bytes or whatever the computer space
12 is. And the other one was some 13/14 thousand, about half
13 the size of the larger one. The Court listened to the
14 smaller one of the two files.

15 And so what I am -- was led to believe the interview
16 was -- it was two parts -- Officer Brooks and then followed
17 by Officer Kindly. And that's what the Court heard and --
18 in making its decision as to whether or not the statement
19 provided by the defendant was voluntary or not.

20 And so your motion is granted as to -- the part of the
21 record is only the smaller of the two files on the DVD, is
22 the Court's exhibit. I didn't listen to the longer one,
23 and I don't believe that was done -- made any consideration
24 into my ruling.

25 MR. BRYAN: Your Honor, I find it a bit unusual that a

1 notice of appeal is served on me and a notice of appeal is
2 filed with the Court of Appeals, when the Court has not
3 even ruled on their motion for a continuance. I guess
4 their position is it is automatically continued. I would
5 certainly question that.

6 We're here today in this situation because at two
7 o'clock, I was given notice of a trial at nine. Then it
8 was changed to two. And I was here for trial at two
9 o'clock. This case is two years old. My client certainly
10 has not had a speedy trial in this matter.

11 I sent a Rule 5 motion to them, and I got a stack of
12 papers. I have -- on -- Monday of this week in the
13 afternoon, been given a tape -- a three-hour tape, two
14 years old this August. I was given some other written
15 documents that I've never gotten for discovery.

16 And they have a motion and -- I make a motion and they
17 get a ruling against them that frankly, Judge, doesn't gut
18 their case. It's ridiculous to say. It -- it's just a
19 short statement. It's not -- if -- if that's all the case
20 they got, we are wasting our time to ever be here. It
21 doesn't gut their case.

22 My client has expended money this week on an attorney.
23 He's a retired police officer. He's expended money for
24 attorneys. He will have to expend money on appeals --
25 appeals. And I object to this continuance. It is totally

1 unnecessary.

2 I -- I -- I -- I find it hard to fathom that they
3 could've listened to that tape and not realized they were
4 going to have some problems with that. I think they did
5 because when they had it -- handed it to me, they say, "You
6 may want a *Jackson v. Denno* hearing. So I -- I -- I object
7 to the continuance of the matter.

8 THE COURT: I think that upon the filing of the notice
9 of intent to appeal, that this Court loses jurisdiction,
10 it's my understanding. And so that being the case, I think
11 I am without authority or jurisdiction to make any further
12 rulings in this matter. I've made my ruling on the
13 suppression of the second statement that was gathered or
14 given after the polygraph examination by the investigator
15 for this case. And I don't believe that statement was
16 voluntary.

17 And that was my ruling yesterday, and it's being
18 appealed. And so I'm -- I can't change it. That's what it
19 was. And had a Rule 5 motion been made before we lost
20 jurisdiction, I don't know how I'd have ruled on that. But
21 I've not ruled on a Rule 5 violation. That motion wasn't
22 before me. And so I don't have a -- a ruling on that.

23 Anything else?

24 MR. WALLER: Nothing from the state, Your Honor.

25 THE COURT: All right. I -- I'm -- I think my hands

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



MARK SANFORD
Governor

ROBERT M. STEWART
Chief

MIRANDA RIGHTS

Lawrence's
PLACES Shepherd's Office DATE: Aug 8, 2010 TIME: 9:29 AM

BEFORE WE ASK YOU QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

REF You have the right to remain silent

REF Anything you say can be used in court as evidence against you.

REF You are entitled to talk to a lawyer now and have him present now or at any time during questioning.

REF If you cannot afford an attorney, one will be appointed for you without cost.

REF If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

REF Do you understand these rights?

REF Do you wish to talk to us at this time?

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to talk now without a lawyer present. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Witness: J. K. [Signature]
Witness: _____

Signed: Raymond Franklin

(N-037)



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STATE OF SOUTH CAROLINA

COUNTY OF Laurens

PERSONALLY appeared before me Raymond Eugene Franklin, who states:

My name is Raymond Eugene Franklin. My address is 1544 Southview Drive, Laurens SC

Date of Birth 8-18-47. Social Security Number: N/A. Phone Number 864-872-9550

I completed the 12th grade in school, and can cannot read and write."

I am answering any questions or making any statements I Kindley

Person who identified himself as SLED AGENT

I was warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for an offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made any statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time thereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, without leniency or offer of leniency, by any person or persons whomsoever.

ON Monday August 2nd I, Raymond FRANKLIN WENT TO AMY CRAIG BEAUFORT'S HAIR SALON TO SEE ABOUT GETTING A HAIRCUT. WHEN I WALKED SHE WAS ON HER COMPUTER AND SAID LET ME GET OFF OF HERE. I SAID NO FINISH WHAT YOU ARE DOING I AM NOT IN A HURRY. AMY STOPPED AND CLOSED HER COMPUTER. WE TALKED A LITTLE ABOUT HER TATTOOS. SHE TOLD ME SHE WAS GOING TO GET THE ONE ON HER UPPER ARM COVERED WITH SOMETHING ELSE AND WAS GOING TO GET SOME MORE TATTOOS. I SAID WELL SHE WOULD HAVE TO SHOW ME THEM. SHE THEN SAID SHE HAD ONE ON HER BACK. SHE TOOK UP RAISED HER SHIRT AND SHOWED ME WHAT SHE SAID WAS A DRAGON. I SAID I DID NOT SEE A DRAGON AND SHE POINTED OUT WHAT SHE SAID WAS HIS EYE. I DID TOUCH THE SPOTS WHERE SHE SAID AS THE EYES AND THAT WAS ALL. AMY THEN GOT A TELEPHONE CALL TELLING HER THAT HER DAUGHTER WAS SICK. AMY ASKED IF SHE COULD CUT MY HAIR LATER SO SHE COULD GO GET HER DAUGHTER AND I SAID THAT WOULD BE FINE. AMY THEN SAID LET ME GET MY HUG BEFORE YOU LEAVE. WE HUGGED AND SHE KISSED ME ON MY NECK.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or assistance of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be prepared. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 10:01 M. on the 6th day of August, 2010.

Raymond Franklin
Signature of person giving voluntary statement

FORN TO AND SUBSCRIBED TO BEFORE THIS 6th DAY OF August, 2010

J. Kindley
TAXY PUBLIC FOR SOUTH CAROLINA
Commission Expires: Oct 2015

WITNESS: _____

WITNESS: _____

I certify that I have been given a copy of this statement consisting of 2 pages. Raymond Franklin

VOLUNTARY STATEMENT
SUPPLEMENTAL

Raymond Eugene Franklin

Statement of, Continued.

I KISSED HER BACK ON HER ^{RET} CHEEK, WHEN WE BROKE OUR LIPS MET AND AMY'S ~~F~~ ^{RET} TONGUE WAS STUCK INTO MY MOUTH. WELL I STUCK MY TONGUE BACK INTO AMY'S MOUTH. WE ~~EX~~ ^{RE} EXCHANGED A FEW MORE OF THESE KISSES AND I TOLD AMY I HAD TO GO AND SHE SAID YEAH SHE HAD TO GO GET HER DAUGHTER. THEN ABOUT TWENTY MINUTES LATER SHE TEXTED ME AND SAID THAT I HAD UPSET HER. I TOLD HER I WAS SORRY IF SHE WAS UPSET. SHE SAID I THOUGHT WE WERE FRIENDS. I SAID WE ARE FRIENDS AND THAT I WOULD LIKE TO REMAIN FRIENDS.

Kindly My Com Officer
Oct 4, 2015

Raymond Franklin

Signature of person giving voluntary statement

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

Franklin055

VICTIM/WITNESS STATEMENT

Case Number _____

Date 8-25-10

I, Raymond Franklin, do hereby give freely and voluntarily this statement to J. Knudley and _____ who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 63 years old and I reside at 1546 Southview Dr. Laurens, SC 29360
I WANT TO ADD THIS TO MY STATEMENT. AFTER THINKING ABOUT THE SITUATION WITH AMY I REMEMBERED THAT AFTER SHE TOUNGED KISSED ME AND WE BROKE THE KISS MY HAND DID SLIDE FROM HER BACK AROUND TO HER FRONT AND DOWN THE SIDE OF HER RIGHT BREST. ^{REG} I DID NOT SQUEESE IT OR PLAY WITH IT IN ANY MANNER. MY HAND JUST SLID DOWN THE SIDE OF IT. I THEN LEFT THE SHOP. AT NO TIME DID I PUT MY HAND INSIDE OF HER PANTS OR UNDER HER TOP OR HER BRA. I NEVER TOUCHED HER BRA OR PANTIES. — END —

I have read the above statement of 1 pages and it is true and correct as best as I recall.

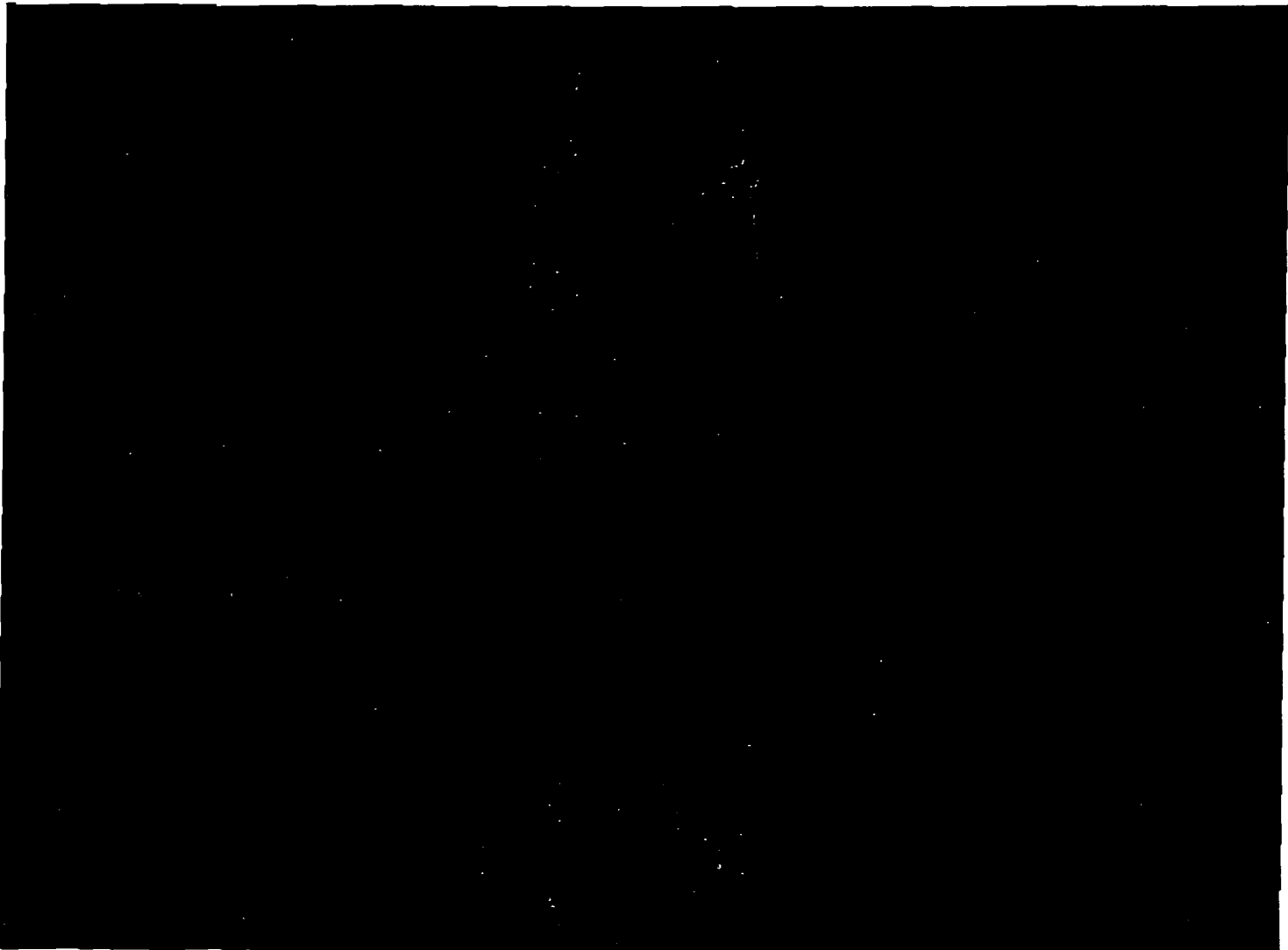
WITNESS:

Raymond Franklin
I have received a copy of this statement.

Raymond Franklin

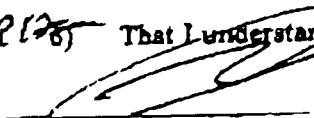
Sworn before me this 25th day of August, 2010

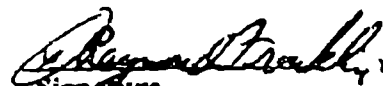
J. Knudley
NOTARY PUBLIC FOR SOUTH CAROLINA
My Comm Expires Oct 14, 2015



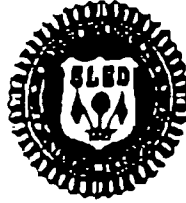
THAT I HAVE BEEN ADVISED:

- RI7-1) That I have the right to remain silent.
- RI7-2) That anything I say may be used in court against me.
- RI7-3) That I am entitled to talk to a lawyer now and have him present now or at any time during questioning.
- RI7-4) That if I cannot afford a lawyer, one will be appointed for me without cost.
- RI7-5) That if I decide to answer questions now, that I may stop the questioning at any time I so choose.
- RI7-6) That I understand each of these rights and I wish to waive them.


Witness


Signature

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



MEDICAL WAIVER

TO: POLYGRAPH DEPARTMENT
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Mr or Ms. Raymond Franklin has been seen
by me, Dr. Shekar Kumar for an anxiety disorder

Mr or Ms. Raymond Franklin is currently taking
the following types of medication: sertraline, tyranex, ativan, aduvin, albuterol,
nitroglycerin tabs, buspirone, edace, metoprolol, tiazin, plavix, hydroxyzine, pravastatin

Additionally, I anticipate neither an adverse reaction nor any health risk associated with this
patient taking a polygraph examination.

Name of Physician

Shekar Kumar, M.D.

CASE # _____ DATE: ____/____/____ EXAMINER _____

DOCUMENT # _____

70

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Laurens County
Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case Tracking No. 2012-212013

THE STATE,

Appellant,

vs.

RAYMOND FRANKLIN,

Respondent.

PROOF OF SERVICE

I, William M. Blitch, Jr., certify that I have served the within Record on Appeal on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Matthew P. Turner, Esquire
Turner & Burney, P.C.
Post Office Box 668
Laurens, South Carolina 29360

I further certify that all parties required by Rule to be served have been served.

This 23rd day of May, 2013.


WILLIAM M. BLITCH, JR.

RECEIVED


MAY 23 2013

SC COURT OF APPEALS

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 
WILLIAM M. BLITCH, JR.
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

May 23, 2013



ALAN WILSON
ATTORNEY GENERAL

May 23, 2013

Matthew P. Turner, Esquire
Turner & Burney, P.C.
Post Office Box 668
Laurens, South Carolina 29360

Re: The State v. Raymond Franklin

Dear Mr. Turner:

Enclosed please find two (2) copies of the Record on Appeal, along with proof of service, in the above-referenced State's appeal.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General

WMB/erd

Enclosures

cc: The Honorable Jenny A. Kitchings (original & 9 copies enclosed)
Victim Services

RECEIVED

MAY 23 2013

SC Court of Appeals