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Aug 04 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
vs.
April Julian Middleton,
DEFENDANT.

**STATE'S MOTION TO RECONSIDER
SENTENCE**

Arrest Warrant No.: 2022-GS-08-00514

Indictment No.: 2022-GS-08-00514

Assault & Battery Second Degree

COMES NOW, the State of South Carolina, by motion of Assistant Solicitor, Kawohi Morris, and would respectfully ask this Court to reconsider its Mutual Restraining order portion of the defendant's sentence that was imposed on June 22, 2022. This motion is made pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure and is timely submitted within ten (10) days of the imposition of the sentence.

PROCEDURAL HISTORY

On June 23, 2019, April Julian Middleton (Defendant) was arrested and charged with Assault & Battery, Second Degree in violation of S.C. Code Ann. § 16-03-0600(D)(1). On November 13, 2019, a Berkeley County Grand Jury was convened and indicted the defendant for Assault & Battery, Second Degree. The defendant was offered to plea as charged and the State would recommend probation. On May 18, 2021, the defendant rejected the plea offer with notice of the Solicitor Office's intent to directly indict as Assault & Battery, First Degree and bring the case to trial. On March 23, 2022, a Berkeley County Grand Jury was convened and true bill indicted the defendant for Assault & Battery, First Degree in violation of S.C. Code Ann. § 16-03-0600(C)(1). Accordingly, this case was placed on the June 20, 2022 trial docket and on June 22,

2022 JUN 30 AM 10:37
L.F. AMOURY, SUPRE
CLERK OF COURTS
BERKELEY COUNTY, SC

2022, a Berkeley County jury convicted the defendant of Assault & Battery, Second Degree. The Honorable Deadra L. Jefferson sentenced the defendant to three (3) years provided upon three years probation. The conditions of the probation are random drug and alcohol testing, and substance abuse counseling if the defendant tests positive. Co-parenting counseling if the parties agree and consent. All restraining orders are subject to any orders of the family court regarding the minor child. Defendant is also placed on six months intensive probation with GPS and house arrest. Defendant is also to get anger management counseling or conflict resolution counseling. Defendant is to have an appointment for mental health assessment within five (5) days of sentencing and is to have strict compliance with all recommendations. A mutual restraining order to include social media and indirect contact between the defendant and the victim, Lakara Alston was also ordered.

ANALYSIS

Reconsideration hearings are appropriate when a party believes “the Court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. South Carolina Dep’t. of Trans.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The State believes that the Court’s sentence including a mutual restraining order demonstrates that the Court failed to fully consider issues in the case and asks the Court to reconsider the ruling for the following reasons:

1. The restraining order is defective on its face.

A mutual restraining order that is written on a sentencing sheet is on its face defective. In order to enforce a restraining order, law enforcement must first have proof of the service and notice of the restraining order. Law enforcement also requires respondent identifiers to put the restraining order into the National Crime Information Center (NCIC) database. The order also

does not meet the basic statutory requirement that mutual restraining orders include specific findings of fact and that the restraining order conspicuously bear the language, "Violation of this order is a felony criminal offense punishable by up to five years in prison." S.C. Code Ann. §16-3-1910(L) and S.C. Code Ann. §16-3-1920(J).

In this case, the mutual restraining order is described on the defendant's sentencing sheet. *See Exhibit 1.* On the second page of the sentencing sheet, the "Other" box is checked with "Mutual Restraining Order per the parties consent." This sentencing sheet is not provided to law enforcement, nor does it contain proof of service, respondent identifiers, specific findings of fact, and the language regarding violation of the order and its penalties.

Therefore, the State believes that the restraining order is defective on its face and not enforceable.

2. A mutual restraining order is inappropriate in criminal convictions.

S.C. Code Ann. §16-3-1910(C) sets forth the persons that "may seek a permanent restraining order:

- (1) a victim of a criminal offense that occurred in this State;
- (2) a competent adult who resides in this State on behalf of a minor child who is a victim of a criminal offense that occurred in this State; or
- (3) a witness who assisted the prosecuting entity in the prosecution of a criminal offense that occurred in this State."

A victim is defined by S.C. Code Ann. §16-3-1900(6) as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a criminal offense."

The defendant does not fit any of the categories of a person that may seek a permanent restraining order.

Mutual restraining orders are typically used in domestic cases and are called Mutual Orders of Protection. An order of protection is defined in the Protection from Domestic Abuse Act in the S.C. Code Ann. §20-4-20(f) as “an order of protection issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard.”

A mutual restraining order or order of protection would not apply in this case. The defendant and the victim are not household members and thus the only remedy for the victim would be a permanent restraining order based on the defendant’s conviction in General Sessions Court or she can apply for a restraining order through the magistrate’s court. The defendant can seek a restraining order against the victim through magistrate court, however, the defendant would need to meet the minimum requirements.

Additionally, a mutual restraining order in a criminal case implies that the victim is culpable. In this case, the defendant asserted the affirmative defense of self-defense and the jury still found her guilty of Assault & Battery, Second Degree. A mutual restraining order goes against the finding of fact by the jury.

3. The victim was denied due process.

“When a Mutual Order is being considered, the petitioner also becomes a respondent, and therefore is entitled to the same due process as is the respondent in the case.” *See Exhibit 2, lines 17-18.*

The victim lacked full awareness of the potential consequences of being bound by the mutual restraining order. The Court did not advise the victim that she had a right not to agree, advise the victim of her right to consult her attorney, or the potential criminal consequences of agreeing to the mutual restraining order. The State did not have a discussion with the victim regarding the mutual restraining order and its potential consequences. The State only discussed

with the victim a permanent restraining order against the defendant. In reviewing the transcript of the sentencing, the victim did not give verbal consent to the Court. However, even if the victim did give verbal consent, the victim did not provide informed consent.

4. The victim is subject to criminal consequences with the mutual restraining order.

According to S.C. Code Ann. 16-3-1910(O):

law enforcement officers shall arrest a respondent who is acting in violation of a permanent restraining order after service and notice of the order is provided. A respondent who is in violation of a permanent restraining order is guilty of a felony, if the underlying conviction that was the basis for the permanent restraining order was a felony and, upon conviction, must be imprisoned not more than five years. If the underlying conviction that was the basis for the permanent restraining order was a misdemeanor, a respondent who is in violation of a permanent restraining order is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.

If the mutual restraining order is valid and in full effect, the victim of the crime in which the defendant was convicted by a Berkeley County jury is now subjected to potential criminal consequences to include incarceration of up to three years.

5. The mutual restraining order places the victim in further danger.

Chief Justice Jean Hoefler Toal wrote in her 2012 memorandum regarding Mutual

Orders of Protection:

Issuance of a Mutual Order without considering whether both parties are, in fact, entitled to such relief, may have the unintended consequence of placing victims in further danger. Domestic abuse is, in part, a pattern of dominating and coercive behavior and tactics. I have been advised that Mutual Orders can be used by the abuser as a tool in furtherance of the abuse and intimidation of the victim. Once the order is issued, the abuser may threaten to file charges against the victim for violating the order, use the issuance of a Mutual order against the victim in custody or divorce proceedings. I am informed that at times victims have been coerced into non-compliance with the order only to have the abuser summon police for intervention and urge the arrest of the

victim, as Mutual Orders are often difficult for law enforcement to interpret and enforce. *See Exhibit 2, lines 24-32.*

The State requested a permanent restraining order on the victim's behalf. The Court asked and twice received consent from defense counsel to the permanent restraining order. *See Exhibit 3, lines 15-22 and Exhibit 4, lines 5-11.* The defendant, not defense counsel, spontaneously requested a restraining order on the victim. *See Exhibit 5, lines 11-12.* This request by the defendant illustrates her lack of remorse and her vindictive disposition toward the victim. The State has concerns about how the defendant could use a mutual restraining order to cause further harm to the victim and her family.

6. The victim does not have protection against the defendant.

At this time, the victim does not have a valid protection order against the defendant.

CONCLUSION

For these reasons, the State respectfully asks the Court to grant a Motion for Reconsideration of the Sentence and:

1. Amend the sentencing sheet, removing any language regarding the mutual restraining order, and
2. Issue a permanent restraining order to protect the victim, Lakara Alston, from the defendant, April Middleton.

Respectfully Submitted,

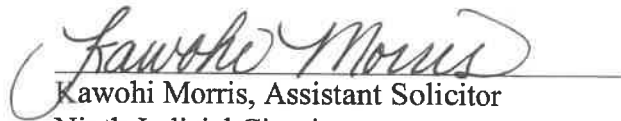

Kawohe Morris, Assistant Solicitor
Ninth Judicial Circuit
300-B California Avenue
Moncks Corner, South Carolina 29461
(843) 719-5032
morrisk@scsolicitor9.org

EXHIBIT 1

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

STATE

JUN 22 2022

INDICTMENT/CASE#: 2022-GS-08-00514

VS.

CASE NO.)
LEAH GUERRY DUPREE)
CLERK OF COURT)
BERKELEY COUNTY, SC)

APRIL JULIAN MIDDLETON

AKA: April Juliann Middleton, April J Middleton)
Race: Black Sex: F Age: 31)
DOB: 08/19/1990 SS#: 250-83-2411)
Address: 190 Riverside Circle)
City, State,)
Zip: Goose Creek, SC 29445)
DL#* 0101065694 SID# SC01899203)

A/W#:)
Date of Offense: 06/23/2019)
S.C. Code §: 16-03-0600(C)(1))
CDR Code #: 3412)

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Assault & Battery, Second Degree

In violation of § 16-03-0600(D)(1) of the S.C. Code of Laws, bearing CDR Code # 3413

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Kawohe Morris 1587
Kawohe Morris, Assistant SC Bar # Defendant Attorney for Defendant SC Bar #
Solicitor

WHEREFORE, the Defendant is committed to the State Department of Correction County Detention Center,

for a determinate term of 3 days/months/years/Time Served Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years/Time Served and or payment

of \$ ___, plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDoc.
days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

JR/0357591
WITNESSES

Summerville Police Department

Det C Strickland

AGENCY CASE NUMBER

2019-044840

ARREST WARRANT NUMBER

2022-GS-08-00514

DIRECT INDICTMENT

DATE OF ARREST

06/24/2019

ACTION OF GRAND JURY

True Bill

Kath Salcedo
For person of Grand Jury

23 MAR 2022
Date:

VERDICT

Guilty

Eric Hill
For person of Petit Jury

June 22, 2022
Date:

DOCKET NO. 2022-GS-08-00514

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

MARCH TERM 2022

THE STATE

VS.

APRIL JULIAN MIDDLETON A.K.A.
April Juliann Middleton, April J Middleton, April Bey
B/F DOB: 08-19-1990

Indictment for

ASSAULT & BATTERY, 1ST DEGREE

SC Code: § 16-03-0600(C)(1)
CDR Code: 3412

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CLERK OF COURT
BERKELEY COUNTY, SC

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened March 2022, the Grand Jurors of Berkeley County present upon their oath:

ASSAULT & BATTERY, 1ST DEGREE

That in Berkeley County, South Carolina, on or about June 23, 2019, the Defendant, April Julian Middleton, did commit an unlawful act of injury upon the victim, Lakara Alston, and the act either: (1) involved nonconsensual touching of the private parts of the victim, either under or above clothing, with lewd and lascivious intent; or (2) occurred during the commission of a robbery, burglary, kidnapping, or theft; or (3) the defendant offered or attempted to injure the victim with the present ability to do so, and the act was accomplished by means likely to produce death or great bodily injury; or occurred during the commission of a robbery, burglary, kidnapping, or theft. This is in violation of Section 16-3-600(C)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JULIE ROCHESTER
ASSISTANT SOLICITOR

FILED
JH

STATE OF SOUTH CAROLINA JUN 22 2022 IN THE COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY) NO) NINTH JUDICIAL CIRCUIT

CASE)
LEAH GUERRY SUPREE)
CLERK OF COURT)
BERKELEY COUNTY, SC)

STATE OF SOUTH CAROLINA,)

VERDICT FORM

vs.)

APRIL JULIAN MIDDLETON,)

Defendant.)

AS TO INDICTMENT NO.: 2022-GS-08-00514

We, the jury, by unanimous consent find the Defendant:

_____ Guilty of Assault & Battery, 1st Degree

OR AS TO THE LESSER INCLUDED OFFENSE

~~X~~ Guilty of Assault & Battery, 2nd Degree

OR AS TO THE LESSER INCLUDED OFFENSE

_____ Guilty of Assault & Battery, 3rd Degree

OR

_____ Not Guilty

Please notify the Bailiff(s) when you have completed your deliberations.

Please sign and date



Foreperson

June 22, 2022

EXHIBIT 2

The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080

MEMORANDUM

TO: Family Court Judges & Magistrate Court Judges

FROM: Jean Hofer Toal

RE: Mutual Orders of Protection

DATE: May 16, 2012

1 It has recently come to my attention that the practice of issuing Mutual Orders of Protection based on
2 the consent of the parties, and without findings of abuse, may be occurring frequently in courtrooms
3 across our State.

4 In South Carolina, both the family and magistrate courts have jurisdiction to issue Orders of
5 Protection, civil remedies to provide relief and protection to victims of abuse by household members.
6 (S.C. Code Ann. § 20-4-10). The Protection from Domestic Abuse Act specifies that a petition for
7 relief must allege the existence of abuse to a household member, as well as state the specific time,
8 place, details of the abuse, and other facts and circumstances upon which relief is sought and must be
9 verified. (S.C. Code Ann. § 20-4-10). The Act also specifies that no mutual order may be granted
10 "unless the court sets forth findings of fact necessitating the mutual order or unless both parties
11 consent to a mutual order." (S.C. Code Ann. § 20-4-60(E)).

12 All 50 states have laws governing the issuance of Mutual Orders of Protection (Mutual Orders).
13 However, only seven, including South Carolina, permit Mutual Orders without a separate petition.
14 Notably, in the six other states that do not require a petition, all require additional safeguards, such as
15 an evidentiary hearing, to protect the Petitioner. The majority of other jurisdictions also require certain
16 evidentiary findings prior to issuance of a protective order.

17 When a Mutual Order is being considered, the petitioner also becomes a respondent, and therefore is
18 entitled to the same due process as is the respondent in the case. Both the Federal and South
19 Carolina Constitutions prohibit state action that would deprive any person of life, liberty, or property
20 without due process of law. The central tenet of due process is that each person who may be deprived
21 of life, liberty, or property by an act of the state has a right to a fair procedure for the consideration of
22 his or her interests prior to any such act. Therefore due process would require both notice and an
23 opportunity to be heard.

24 Issuance of a Mutual Order without considering whether both parties are, in fact, entitled to such relief,
25 may have the unintended consequence of placing victims in further danger. Domestic abuse is, in
26 part, a pattern of dominating and coercive behavior and tactics. I have been advised that Mutual
27 Orders can be used by the abuser as a tool in furtherance of the abuse and intimidation of the victim.

28 Once the order is issued, the abuser may threaten to file charges against the victim for violating the
29 order, use the issuance of a Mutual Order against the victim in custody or divorce proceedings. I am
30 informed that at times victims have been coerced into non-compliance with the order only to have the
31 abuser summon police for intervention and urge the arrest of the victim, as Mutual Orders are often
32 difficult for law enforcement to interpret and enforce.

33 When asked by a judge to consent to such an order, the victim may lack a full awareness of the
34 potential consequences of being bound by an Order of Protection and may consent out of fear of the
35 abuser or a lack of understanding that she or he has a right not to agree. By consenting to a Mutual
36 Order, the Petitioner may inadvertently create negative consequences for themselves relating to
37 employment and housing. Furthermore, the Petitioner, who is in need of protection for themselves as
38 well as their children, loses the privilege of possessing firearms or ammunition under the federal laws.
39 18 U.S.C. 922(g).

40 The Federal Law has recognized the manner in which a Mutual Order may be used to continue the
41 cycle of abuse. For this reason, Federal Law prohibits the enforcement of a foreign Mutual Order of
42 protection against the petitioner unless the respondent filed written pleadings seeking the order
43 against the petitioner and the court issuing the order made specific findings of fact in favor of the
44 respondent against the petitioner. 18 USC 2265. Likewise, South Carolina law requires a petitioner
45 be afforded the same due process protection prior to enforcing a foreign Mutual Order of Protection
46 against the petitioner. SC Code of Laws, §20-4-330(G). Therefore, it appears that the best practice
47 to ensure protection of the petitioner's due process rights is to require that these two criteria are met
48 prior to the issuance of a Mutual Order so that the terms of the order may be enforced throughout the
49 United States.

50 I am, therefore, encouraging the courts to only issue Mutual Orders after the proper motion has been
51 made by the respondent and upon specific findings of fact concerning the abuse and need for
52 protection. In order to assist other states as well as law enforcement in the enforcement of these
53 orders, the written order of the court should contain information regarding the respondent's motion as
54 well as the court's findings of fact. Requiring a counter-petition or motion as well as specific findings
55 of fact will help to ensure that this remedy is being utilized for its intended purpose, to protect
56 individuals from domestic abuse.

57 Due to the potential harm and danger caused to petitioners by the issuance of Mutual Orders of
58 Protection, it is imperative that the decision to issue a Mutual Order be a thoughtful and informed one.

EXHIBIT 3

1 And it's clear to me they believed some of the
2 witnesses, they didn't believe some of it, they believed
3 some of the witnesses' testimony and disregarded other
4 parts of the testimony.

5 So it's clear to me that they were
6 deliberative in their process, and they weighed the
7 evidence, and that the verdict is supported by any
8 evidence. Frankly, there's evidence. If they believed
9 she had the knife, there's sufficient evidence to prove
10 the offense of assault and battery, second degree,
11 and the motion is denied.

12 MR. DAVIS: Thank you, Judge.

13 THE COURT: You're welcome. All right.
14 I'll be glad to hear -- do we have the sentence sheets?

15 MS. MORRIS: I do have the sentencing sheet,
16 Your Honor. I'm just waiting on the permanent
17 restraining order.

18 THE COURT: You're requesting one, I assume.

19 MS. MORRIS: That's correct.

20 THE COURT: I assume y'all have no
21 objection.

22 MR. DAVIS: I consent to that.

23 THE COURT: But it's going to be subject
24 to any orders of the family court regarding visitation
25 with his child. The reality of this situation is

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF GENERAL SESSIONS
2022-GS-08-00514

State of South Carolina)

) TRANSCRIPT OF RECORD

-vs-

)

) June 22, 2022

April Julian Middleton)

) Moncks Corner, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge

A P P E A R A N C E S:

Kawohikukapulani Schaumburg Morris, Esquire
Attorney for the State

Steve Davis, Esquire
Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

CERTIFICATE OF REPORTER

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State of South Carolina)
County of Berkeley)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth 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 trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 22nd of June, 2022.

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

June 27, 2022



Yvestre Torres
Circuit Court Reporter

EXHIBIT 4

1 MS. MORRIS: Yes, the State just needs ---

2 THE COURT: I'm sorry. I can't hear you.

3 MS. MORRIS: The State just needs some
4 information from the Defendant.

5 THE COURT: And that also begs the question,
6 Mr. Davis, do you all have any objection to the
7 permanent restraining order?

8 MR. DAVIS: None.

9 THE COURT: Subject to any orders of the
10 family court regarding visitation.

11 MR. DAVIS: None.

12 THE COURT: And visitation and any
13 co-parenting. But now if you do this permanent
14 restraining order, they're not going to be able to go
15 to any kind of counseling together, unless they consent
16 to that as a part of the permanent restraining order.

17 MR. DAVIS: Family court will control
18 though.

19 THE COURT: Yeah, family court orders will
20 control visitation. But it's up to you whether you
21 consent to it or not to the permanent restraining order,
22 which means you will have no contact with Ms. Alston,
23 direct or indirect.

24 MR. DAVIS: Just her?

25 THE COURT: Just her. And that sort of kind

EXHIBIT 5

1 would be able to go to that. But then I was also given
2 information that any family court order would override.

3 THE COURT: Yeah, but it creates a problem.
4 Like, if she rides in the vicinity of her job -- it
5 becomes really like a baseball bat in a situation -- it
6 becomes a -- it really becomes an impediment to really
7 open communication and counseling. I mean, I can always
8 place a restraining order. I mean, what are the chances
9 of them really coming in contact, other than with this
10 child?

11 THE DEFENDANT: Can I get a restraining
12 order on my end too, please?

13 THE COURT: Ma'am, you would have to --
14 y'all can do a mutual restraining order. If you want,
15 I can write that on the sentence sheet.

16 THE DEFENDANT: Yes, ma'am.

17 MR. DAVIS: Put that on there.

18 THE COURT: Let's see now, you're doing --
19 If she's willing to go to counseling, I think you should
20 be willing to go as well.

21 THE DEFENDANT: Your Honor ---

22 THE COURT: Don't -- yeah, don't. I don't
23 want you to compromise any -- you might want to tell
24 Mr. Davis.

25 MS. MORRIS: And I do understand that