THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2025-000136

Weldon W. Stewart, Jr., #295095 Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

Weldon W. Stewart, Jr. #295095
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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

01-GS-34-0120, 01-GS-34-0121

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

June 24, 2002
Marlboro, South Carolina

B E F O R E:

The Honorable JAMES E. LOCKEMY, Judge.

'02 SEP 24 A8:33
WILLIAM B. FUNDERBURK
CLERK OF COURT

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

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FOURTH JUDICIAL CIRCUIT
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WALLACE, SC 29596-0597

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Colloquy	04			
DR. PRATAP NARAYAN				
Mr. Blake	08			
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CLERK OF COURT
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NO.	DESCRIPTION	ID.	EV.
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WILLIAM B. FUNDERBURK
CLERK OF COURT

MR. BLAKE: Your Honor, we're here on the matter of State of South Carolina v. Weldon Stewart, Jr. Mr. Stewart has a copy of this report. I do not know if he's stipulating to it or not. As you know ---

THE COURT: Mr. Stewart, stand up if you would, and Mr. Crow advise him as needed. Mr. Stewart, the court reporter knows, cause she was there -- I think you were the one who was there or was Ms. McCall there? Okay -- where we had a hearing.

Mr. Stewart requested that he be able to represent himself, and after examining all the matters -- also I directed at that time that Mr. Crow get a copy of that transcript. Have y'all ordered that from Ms. McCall?

MR. CROW: Yes, sir.

THE COURT: I want to make sure that's given ---

MR. CROW: I faxed you an order last week in Dillon for you to sign authorizing to pay her to transcribe both of these transcripts.

THE COURT: I have not signed that yet. I'll sign that today. Mr. Funderburk, I need for you to do something for me, sir. If in fact 30 days, hence, I want to make sure your office has a copy of the transcript and the hearing regarding Mr. Stewart's motion to represent himself. It occurred in Dillon County the week before last, and I forgot exactly the day.

I want to make sure that transcript is put in the file so everybody has a copy of it. There will be no misunderstanding later on down the line.

MR. CROW: Your Honor, I believe that would be the 14th -- the 14th of June.

MR. BLAKE: And, Your Honor, there was the prior hearing that you wanted the transcript of. That occurred in Marlboro County. I believe that Ms. McCall was also the court reporter on that.

MR. CROW: Ms. McCall was court reporter on both of them.

THE COURT: And that was before Judge Cottingham as I recall.

WILLIAM S. FUNDERBURK CLERK OF COURT '02 SEP 24 A8:04

MR. CROW: Judge Cottingham last September and, of course, Your Honor, last Friday week before.

THE COURT: Now, Mr. Stewart and if you would, Mr. Funderburk, I would just assume that it be in your file there so we'll know that it's part of the official record in case this matter is ever appealed. We'll know at least there is one place where we got a copy of it.

Mr. Stewart, what we're doing today, sir, is the State wants this Court to examine whether or not you are competent to stand trial, whether or not at the time of the alleged offense you met the standards of the McNaughten Test, meaning that you knew right from wrong and you were able to adhere yourself to the right.

And as far as competent to stand trial, meaning are you of such a mental capacity that you understand the nature of the trial, can you participate in your own defense, do you know the roles of all the Court officials, and can you understand your rights to a jury trial and right to a trial and how a trial is conducted.

So that's what the hearing is for today. On July 31, 2001, a Dr. Pamela Crawford signed a finding and with that she referenced what she copied was an examination done by Dr. Pratap Narayan, and I assume he's here today. Dr. Narayan is here today, a forensic psychiatrist as well as a clinical psychiatrist, a Dr. Camilla Tezza.

Now, these matters are here today, and I can review them or I cannot. All depends on whether or not I determine they're appropriate. The doctors are here to testify with them today. Would you object if I consider these matters in my determination of your competency and whether or not you did meet the McNaughten Test at the time of the alleged offense? You have any objection?

MR. STEWART: No, sir.

THE COURT: Did you say, "No, sir?"

MR. STEWART: No, sir.

THE COURT: All right. Did you talk with Mr. Crow and ask him to explain this to you?

MR. STEWART: Yes, sir.

THE COURT: You understand this, sir?

MR. STEWART: Yes, sir.

THE COURT: You may be seated, sir. Then I'll give you an opportunity to question any witnesses or to admit anything you wish, also.

MR. CROW: Your Honor, he's asked me to ask you could he have these handcuffs removed so he can get to his paperwork?

THE COURT: What are the charges here?

MR. CROW: Murder and desecration of a human body.

THE COURT: Where are my officers? If y'all would, if y'all would stand behind him. I have no problem with y'all standing there behind him. Mr. Crow, you don't have a hard copy of this order did you?

MR. CROW: Sir, I had them fax it to you. I'll get it back over here to you during the lunch break.

THE COURT: Well, I'm going to sign it right now, this faxed copy. You haven't signed it. You need to come sign it.

MR. CROW: Sir, I'll sign it later.

THE COURT: Well, I hate to sign one here that you haven't signed. Why don't you step up here and sign this.

MR. CROW: All right, sir.

THE COURT: Mr. Stewart, that is a transcript. I asked him that we get a copy of the transcript that we had the hearing on in Dillon.

All right. Mr. Blake, normally, I just review these

matters and make a finding, but since you have Dr. Pratap here, I just assume hear from him, especially now since we're dealing with this person representing himself. So I'm ready to proceed.

MR. BLAKE: Yes, Your Honor. The State calls Dr. Pratap Narayan to the stand.

THE COURT: Come around, Doctor.

PRATAP NARAYAN, first being duly sworn, testified as follows:

CLERK OF COURT: State your full name, please.

MR. NARAYAN: My name is Pratap; that's P as in Paul, R-A-T as in Tom, A-P as in Paul. Narayan; that's N as in Nancy, A-R-A-Y-A-N as in Nancy.

THE COURT: All right. Mr. Blake.

WILLIAM B. FUNDERBURK
CLERK OF COURT
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DIRECT EXAMINATION BY MR. BLAKE

Q. Dr. Narayan, did you participate in a forensic evaluation of the defendant, Weldon Stewart, Jr. ---

A. Yes.

Q. --- on April 16, 2001?

A. Yes, sir, I did.

Q. Who was with you in that examination?

A. Dr. Tezza, staff psychologist at the William S. Hall Psychiatric Institute in Columbia.

Q. Is that where the interview occurred?

A. Yes, sir.

Q. And did you review documents in addition to interviewing the defendant?

A. Yes, sir, I did.

Q. And a list of documents on Pages 1, 2, and 3 of this report?

A. Yes, they are. The list is there.

Q. Just review the report for the Court. The report mentioned Dr. Crawford. She's the director at William S. Hall?

A. She was the director at that time.

Q. Did she actually participate in this interview?

A. No, sir.

Q. She, simply, is more or less -- was the supervisor?

A. That's correct.

Q. And signed off on it?

A. Yes.

Q. Were these your recommendations and your analysis in terms of the actual report?

A. Yes, they were.

Q. Have you had a chance to talk to the defendant, Weldon Stewart, since this interview?

A. I had the opportunity to speak him within the last hour.

Q. Was that with his permission?

A. Yes, sir.

Q. Okay. Let's go to Page 1 of your report. Could you tell the Court in the diagnoses section what Axis 1, Rule Out Cannabis Abuse means?

A. That means that we are -- we had some information to believe that Mr. Stewart may have had apparent abuse of cannabis that could have been harmful to him but did not actually mean addiction. However, since all of her information was obtained from him, we were not clear as to whether we could, indeed, make an actual diagnosis until we were able to get some collateral information about the rule out part.

Q. And you have there Axis 1, Axis 2, Axis 3. What does that terminology come from?

A. Axis 1 is -- this system is recommended by the Diagnostic and Statistical Manual of Mental Disorders, currently in the fourth edition from the American Psychiatric Association, and this system recommends that Axis One be used to denounce all conditions such as many mental illnesses or mental illnesses that have discrete starting and possibly ending point, or at least a definite onset.

Axis 2 is a axis where categories of diagnosis relating to are usually placed and these have to do with things like mental retardation, and these have to do with things like mental retardation, personality disorders, and learning disabilities, so forth, where an exact onset cannot be

determined, but it is clear that the onset was sometime before the individual became an adult.

Axis 3 is the axis that represents physical illnesses which could be in this case asthma, things like hypertension, diabetes, heart disease and so forth.

Q. So in Axis 1, you would state whether there was a mental illness?

A. Yes, sir. That's correct.

Q. Was it determined that Mr. Stewart had a mental illness?

A. In our opinion, although he did have some disorders, they were qualified for -- where he had some symptoms that were qualified for disorders in the Diagnostic and Statistical Manual, in our clinical opinion, we did not believe he had any major mal-illness or defect.

Q. Could you just talk about Axis 2 there in this case.

A. The particular diagnosis we have?

Q. Yes.

A. The personality disorders that we have mentioned here is based on his report of certain symptoms that characterize an ongoing or at least onset of a pattern of mal-adaptive behavior characterized by things like a failure to plan ahead, a reckless disregard of the safety of self or others, irritable in recollection, deceitfulness, irresponsibility, failure to conform to social norms and so

WILLIAM B. FOLDERBURK
CLERK OF COURT
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forth.

And based on the information he was able to give us, he was able to give us sufficient information to qualify him for this diagnosis. In other words, he gave us an account of symptoms that fit the profile of somebody that is diagnosed with an anti-social personality disorder according to the DSM-4.

That diagnosis is not indicative of a mental illness, per say. It is more a pattern of behavior that clusters into something that is clearly diagnosable.

Q. Just to take a step back, Dr. Narayan, you do work at William S. Hall?

A. That's correct.

Q. And in what capacity?

A. I'm a forensic psychiatrist and I work for the State Department of Mental Health.

Q. And I assume you're licensed to practice medicine in the State of South Carolina?

A. Yes, I am.

Q. How long have you been working at William S. Hall?

A. Just over two years now.

Q. Have you testified as a forensic psychiatrist in any cases?

A. Yes, sir. I have.

MR. BLAKE: I move to qualify Dr. Narayan as an expert in

forensic psychiatry.

THE COURT: Mr. Stewart, you ought to give -- ask him any questions about his qualifications or you have any objection to him giving opinions in the area of forensic psychiatry?

MR. STEWART: No, sir.

THE COURT: All right. You may proceed. I qualify him to give opinion testimony in that area.

MR. BLAKE: Thank you, Your Honor.

Q. (By Mr. Blake): Let's first address the issue of Mr. Stewart's competency to stand trial.

A. Yes, sir.

Q. Could you please review the evidence that you used to make your determination and then give the Court your opinion in that matter.

A. Okay. First of all, let me just state that the findings that we made on April the 16th of 2001 did not differ substantially from the findings I made today in my discussion with Mr. Stewart within the last hour.

First of all, we made sure that Mr. Stewart understood his rights, which are the Miranda Rights. He was able to read them and paraphrase them in his own words, indicating he understood what they meant.

The limits of confidentiality of the report were discussed with him, which essentially included the fact that the report would be sent to the Court with a copy to the

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WILLIAM B. LUNDERBURG
CLERK OF COURT
GREENVILLE COUNTY, S.C.

Solicitor's Office as well.

That information that he divulged to us to be made known to people in the courtroom and also that the information that he was going to provide us as far as we knew that South Carolina laws would be used exclusively for this purpose of this Court order and not necessarily to be used against him in the trial proceedings. And would only be used in that situation if he made an issue of mental illness or if his defense strategy was a mal-illness issue or if it would be used in mitigation.

He also understood all of that. He was advised of the ability to contact his attorney or have him present for the evaluation, which he declined.

Subsequently, we proceeded to ask him about his present charges, specifically, what they meant. He was able to tell us that. He was also able to tell us his understanding of the potential penalties. and he also stated that in his particular case, the death penalty was not an issue as he has not been served notice either then or now.

He was able to tell us the difference pleas that were available to him, and was able to discuss each one of those including the pleas relating to mental illness.

He was, although he didn't really have a full understanding of one of those pleas, which was guilty by mentally ill, he knew pretty much what it meant in overall

terms. He was able to tell us who were the principal participants in the courtroom in his trial, and he was able to tell us the specific roles of the judge, the jury, the defense attorney, the Solicitor, and witnesses.

He was also able to explain what evidence meant and did appropriate examples in showing that he knew the terms. He was also able to define what plea bargain meant and how it worked, and was able to give us enough information about his understanding of probation to signify that he knew what that meant, too.

He was also aware of what constituted appropriate courtroom behavior and the concept of contempt of court. He was able to state a desired outcome in this case. He was able to tell us about what he -- he stated that he knew the -- what evidence the State had against him, as well as the witnesses.

He understood his defense attorney's role and during the first evaluation, was able to discuss with us his relationship with his attorney and concerns he had, based on which we concluded that he could assist his attorney in planning defensive issues if he chose to do so.

That pretty much concluded the evaluation of competency other than the fact that we also assessed his mental status at that time as well as whether he had any mental illnesses and concluded his mental status was pretty much normal and that he did not have any mental illness that would interfere in his

either factual or rational understanding the proceedings against him or ability to consult rationally with his attorney in planning his defense.

Therefore, we concluded that he did have the mental capacity to stand trial then, and he still does have the mental capacity to stand trial at this time.

Q. And your last statement is a result of having talked to the defendant today?

A. Yes, sir. It is.

Q. Could you now address your conclusion and opinion as well as facts surrounding that regarding Mr. Stewart's criminal responsibility at the time of the alleged incident.

A. Mr. Stewart was able to tell us his account of specifically what happened around the time of the alleged offense.

Based on his statements to us, it was pretty clear that he was not suffering from symptoms of any mental illness or disorder; that he understood the difference between moral or legal right and moral or legal wrong. And he also understood the wrongfulness of the behavior as charged if it is proven that he did commit what was charged.

Based on that information, we concluded that he did not lack the criminal responsibility according to the McNaughten standard at the time of the alleged offense.

Q. And then moving on to his capacity to conform his

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CLERK OF COURT
MARLBORO COUNTY, S.C.

conduct.

A. Again, based on the fact that we did not think that Mr. Stewart has a major mental illness or defect, we concluded that he did not lack sufficient capacity to conform his conduct to the requirements of the law because of mental disease or defect.

Q. Dr. Narayan, I know that on Axis 1, your finding was "rule out cannabis abuse." That is where you would say if you believe that the defendant presently had a mental illness?

A. Yes, sir.

Q. Are you saying to the Court that he does not have a mental illness or nor did he at the time of the incident?

A. Based on the information that we have, that is our conclusion. Yes, sir.

Q. The Court has a number of these different documents that were reviewed -- I think there's 27 or 26 different documents. The Court has a list of that. Was there anything else that was used in your evaluation that is not provided in your report?

A. No, sir.

MR. BLAKE: Please answer any questions Mr. Stewart may have.

THE COURT: Okay. Mr. Stewart, would you like to ask him any questions concerning these matters?

MR. STEWART: No, sir. I don't have any questions.

THE COURT: And you feel free about talking to Mr. Crow first or ask me any questions that you don't understand. All right. You may be seated.

Doctor, let me ask you this. I reviewed hundreds of these things over the years and, obviously, as you're probably aware, 99 percent of them are not contested and decisions are made holding that the defendant's competent and that he understood right from wrong and could adhere his conduct to the right which I understand is your opinion today?

A. Yes, Your Honor.

THE COURT: Now, you may not be aware until today, but the defendant has requested to represent himself. Were you aware of that when you talked to him earlier today?

A. Today, yes, I was, Your Honor.

THE COURT: All right. Would the fact that he has requested to represent himself, and I've made a finding that he's made that request freely and voluntarily and intelligently and that he understands the hazards and dangers in representing himself, but that's what he wants to do, and I am basically permitting him to do that.

Would the fact that he's going to represent himself, would that in any way change your mind regarding his competency to stand trial in a mental sense, not in a sense of his knowledge of the law, but in a mental sense?

A. No, Your Honor. It won't because the results of the

testing place him at least with average intelligence, possible higher than average.

THE COURT: I understand one test showed him a 102 IQ and a functional IQ of 91 which 102 is a little better average, isn't it?

A. It's well within the average, the higher end, normally so, therefore, we believe that Mr. Stewart does have the intelligence and does not have any cognitive deficits or inability to comprehend matters or process information.

He's able to communicate and ask specific questions pertaining to the reports today indicating that he had a sense of the proceedings and the courtroom and he did understand the relevance of various aspects of the report.

Again, the fact that he does not have major mental illness or defect, in my opinion, will not constitute, therefore, will not be a significant problem with him in terms of representing himself.

THE COURT: Well, are you saying that it's your opinion that if something is explained to him -- for example, Mr. Crow, I've appointed to consult with him and be there for any type of questions -- answers to any type of questions Mr. Stewart asks, that if something is explained to him he has the intelligence to understand and then to comply with whatever the rules of Courts have once they're explained to him?

A. Yes, Your Honor. That is my opinion.

WILLIAM B. HUDDLESTON
CLERK OF COURT
BERKELEY COUNTY, SC
2024 SEP 24 A 8:34

THE COURT: All right. Now, when you talked with him today, and I assume today is the first time you understood or knew about his attempt to represent himself?

A. I have heard about it when I got the subpoena last week, sir.

THE COURT: Did you discuss that with him today?

A. I did discuss it with him today, and he had indicated that he did not wish for Mr. Crow to represent him in the trial the last time we met. And he said that he had talked with Your Honor about it, and you were inclined to let him proceed in that direction.

And he did tell me that he understood what that meant.

THE COURT: Did he indicate to you that's what he still wanted to do?

A. Yes, sir. That is still what he indicated he wanted to do.

THE COURT: Well, in your opinion as a forensic psychiatrist, did you detect anything in his answers to you in his desire to represent himself that would indicate any mental problems in that regard or any involuntary decisions or decisions made with lack of understanding of the system?

A. No, Your Honor. Mr. Stewart appeared to be reasonably prepared in some of the things he told me, and I do not detect any mental issues that would impede his defending himself.

THE COURT: All right.

A. I also understood from him that that position was entirely voluntarily.

THE COURT: Is that what you felt also in discussing it with him that his decision to represent himself was made voluntary?

A. Yes, Your Honor. It is.

THE COURT: And you've been within the Court system as a forensic psychiatrist for how many years?

A. About five years.

THE COURT: Five years. And is it your opinion that he fully understands these issues, and I'm not sure you discussed with him the dangers of representing himself, but he understood what benefit an attorney could give to him, I assume?

A. I did not specifically address that issue, but he did tell me Mr. Crow would be his standby counsel and would assisting him in the process. But I did not specifically address the risks or dangers of representing himself.

THE COURT: And it's our opinion he's on the higher scale of normal intelligence?

A. Yes, sir. That is my opinion.

THE COURT: All right. Any other questions of Mr. Narayan. Mr. Blake, anything else?

MR. BLAKE: No, Your Honor.

THE COURT: Anything else, Mr. Stewart?

MR. STEWART: No, sir.

THE COURT: All right. Finding then it is your opinion that at the time of the alleged incident, Mr. Stewart knew right from wrong and adheres himself to the right and he's -- his mental capacity at the time of the incident complied with the McNaughten test?

MR. NARAYAN: Yes, sir. According to my findings, he did not lack the mental capacity to understand right from wrong.

THE COURT: And as to his condition today as far as proceeding to trial, is it your opinion that he understands the nature of the Court system, he's able to represent himself, understands the procedures, and can comply with the rules and understand the rules, and is competent to represent himself and to stand trial?

MR. NARAYAN: From a purely mental health perspective, yes, sir, Your Honor.

THE COURT: All right. Good. You may step down, Doctor. Any other evidence from the State regarding these issues?

MR. BLAKE: No, Your Honor.

THE COURT: Any evidence from the Defense regarding these issues?

MR. CROW: If you please, Your Honor ---

THE COURT: Now, Mr. Crow, I have a little concern here. Mr. Stewart is representing himself. I can't go back and

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WILLIAM B. FLINDERS
CLERK OF COURT
MARLBORO COUNTY S.C.

forth.

MR. CROW: I gave him a copy of a letter that I received. I just wanted to offer it to the Court.

THE COURT: Mr. Stewart, you want me to look at this letter?

MR. STEWART: Yes, sir.

THE COURT: All right. Bring it up. Show Mr. Blake a copy of it first. Is this the letter from Bradley Clayton?

MR. CROW: Yes, sir. Dr. Brad Clayton.

THE COURT: I have a copy of it here.

MR. CROW: That's the original.

THE COURT: Mr. Blake, you have any objection.

MR. BLAKE: Excuse me, Your Honor. I was talking to Dr. Narayan.

THE COURT: You have any objection regarding me from seeing this letter from Dr. Bradley Clayton?

MR. BLAKE: No, Your Honor.

THE COURT: Is this someone that you had requested when you represented him, Mr. Crow, to have independent evaluation of Mr. Stewart?

MR. CROW: Yes, sir. And Mr. Stewart cooperated with him fully in an interview for many hours in the presence of myself and his mother.

THE COURT: All right. Put this in as Court Exhibit, if you would. This will be Court Exhibit No. 2. Put the whole

thing with it, yes. I'd rather have you attach it, too.
(COURT EXHIBIT NO. 2, EVALUATION SUMMARY, ADMITTED INTO EVIDENCE.)

THE COURT: Anything further from the State?

MR. BLAKE: No, Your Honor.

THE COURT: From the Defense, anything else?

MR. STEWART: No, Your Honor.

THE COURT: All right. I find after this hearing that at the time of the alleged event, December 6, 2000, that Mr. Stewart was able -- did understand right from wrong and that he was understand -- he understood the nature of the charges at that time.

And that he did have the capacity to conform his conduct to the requirements of the law. Further, this date, and at all times in between, that Mr. Stewart understands the nature of the charges and is able to represent himself in this matter and is mentally competent to do so.

And, therefore, he is competent to stand trial on these matters. I am ready to proceed further. Mr. Blake, anything else you want to do today on this matter?

MR. BLAKE: Your Honor, the Defendant, I believe, has some motions. I have not seen them and -- but, that's from the defendant.

THE COURT: Are these motions in writing or are they oral motions he's going to make?

MR. CROW: Yes, sir. They are in writing. I have not had an opportunity to go over and I've explained to him under the rules that the State has a certain time limit to look at the motions and respond to them.

THE COURT: Mr. Stewart, you made copies of them, sir?

MR. STEWART: Yes, sir.

THE COURT: All right. If you would, you can submit your motions. Mr. Crow, is he ready to give them to the Clerk to be filed?

MR. CROW: I think so. They've already been filed. They're stamped "Certified True Copy."

THE COURT: All right. Then, Mr. Blake, you don't have any? Did he give you copies of it?

MR. BLAKE: Yes, Your Honor. I'd like to be able to review those copies and if possible, we may try to get him back this term of court.

THE COURT: We may just handle those motions this week, but you don't plan to try the case this term?

MR. BLAKE: No, Your Honor.

THE COURT: All right. Then your motions will be heard. I will do my best to make sure we have them this week, Mr. Stewart. Make sure Mr. Crow has an opportunity to review them. This hearing on this matter is adjourned.

Mr. Crow, I want you to request a copy of this transcript also, sir.

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 SEP 24 A8:34

MR. CROW: Yes, sir.

THE COURT: And I'll sign doing it. I want to make sure we have a transcript of every hearing in this matter.

MR. CROW: Yes, sir. He's going to have to get me copies this, and one other matter -- he's asking me and this is not in the trial of the case, but he would like very much to be moved from Bishopville to Dillon. But I know that you tried it and you couldn't get it worked out, and I told him I would bring that up.

THE COURT: What is the problem?

MR. BLAKE: Your Honor, we discussed that at the last hearing, and I then talked to the Governor's Office and Lee Correctional is the only place that safekeeping persons are kept. They cannot be kept at Evans. He is under the safekeeping order until the middle of July, I believe, July 15th.

THE COURT: Safekeeping because of suicide problems or what? What does safekeeping mean here?

MR. BLAKE: Safekeeping in this instance means incidents at the Marlboro County Detention Center where he struck as well as threatened officers. I have talked to Earl Hood, who is standing here about ---

THE COURT: Has he been charged with those crimes?

MR. BLAKE: No. I do not believe he's been charged with them.

THE COURT: But by the middle of July, you think everything will work out, bring him back?

MR. BLAKE: Well, that's ---

THE COURT: I'll do this, you cannot try him unless he has been at the Marlboro County institute -- Marlboro County Detention Center at least two weeks before trial. So, Mr. Crow, I will not let them proceed to try him unless he's there at least two weeks prior to trial.

If there is some specific reason why you need him there other than for him to consult with you, then I'll be glad to consider that, whether it's an ex parte or whatever else, but at this time I will make sure they cannot try him unless he's been, without his consent, unless he's been back in Marlboro for two weeks.

Now, if there is something after July that you want to bring before him or me or Judge Cottingham or Judge Baxley why that rule should be lifted, then I'll be glad to have a hearing on that.

But at this stage, I'm going to say that. That's not in stone. It's just if there is a concrete reason why, but if you're not going to try him this time, it's going to be August before you try him anyway.

MR. BLAKE: We have a term set for July 15th, but we will not be trying him that week.

THE COURT: All right. Then that's my ruling. Okay?

MR. CROW: Yes, sir. We appreciate it.

*** END OF TRANSCRIPT OF RECORD ***

'02 SEP 24 A8:35
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

C E R T I F I C A T E

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth 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 Marlboro County, South Carolina, on the 24th day of June 2002.

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

Hattie O. Gordon

Circuit Court Reporter

'02 SEP 24 A8:35
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

September 8, 2002

Wallace, South Carolina

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

01-GS-34-0120, 01-GS-34-0121

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

July 16, 2002
Marlboro, South Carolina

B E F O R E:

The Honorable PAUL M. BURCH, Judge.

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 SEP 24 A8:31

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

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WELDON STEWART, JR., Pro Se

WADE CROW, Esquire
Standby Attorney for the Defendant

HATTIE O. GORDON
OFFICIAL COURT REPORTER
FOUR [redacted]
WALLACE, SC 29596-0597

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Colloquy	04			
Certificate of Reporter	20			

WILLIAM B. FUNDERBURK
CLERK OF COURT
FILED
'02 SEP 24 A8:31
FLORENCE COUNTY, S.C.

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
C-01	MOTION OBJECTING TO AND REQUESTING DISMISSAL OF DUPLICITOUS INDICTMENTS		04
C-02	MOTION FOR TRANSFER OF CUSTODY		08
C-03	MOTION FOR BOND		10
C-04	MOTION FOR SEVERANCE OF PROCEEDINGS		11
C-05	MOTION FOR DISCLOSURE		15
C-06	MOTION FOR SUPPRESSION OF EVIDENCE - PHOTOGRAPHS		15
C-07	MOTION FOR SUPPRESSION OF EVIDENCE - WRITTEN STATEMENT		18

'02 SEP 24 A8:31
WILLIAM B. FURDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

MR. BLAKE: Your Honor, this is the case of the State v. Weldon Stewart, Jr., Indictment 01-GS-34-0122 for the charge of murder, 01-GS-34-0121, desecration of human body. Weldon Stewart -- Mr. Weldon Stewart, Jr. represents himself; that is to say he is going forward pro se. That matter was handled by Judge Lockemy on June 14, 2002 in a hearing we held in Dillon County.

And then on June 24, 2002, in front of Judge Lockemy, we had a Blair Hearing. He was declared competent to stand trial as well as a finding of sane at the time of the incident and able to control his actions.

Ronnie Crow was originally his attorney, was appointed -- Mr. Stewart in going pro se asked that Mr. Crow be able to leave -- to be able to standby counsel which he is here today.

Mr. Stewart has filed -- currently filed seven different motions. I'm going to hand them up to you one at a time. Mr. Stewart has a copy of the motions that you're looking at. I've labeled them Court Exhibit 1, 2, 3, etc. so we could go forward.

The first one, which is labeled Court Exhibit 1, has to do with a -- it's titled, and this is written by Mr. Stewart, "Motion Objecting to and Requesting Dismissal of Duplicitous Indictments"; that being 01-GS-34-0121, Desecration of Human Remains. I'm passing that up right now.

(COURT'S EXHIBIT NO. 1 ADMITTED INTO EVIDENCE.)

WILLIAM B. FLUDD, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.
SEP 27 A 8:31

THE COURT: I need to look at the indictment.

MR. BLAKE: Your Honor, and the State is not arguing -- I mean, we agree with Mr. Stewart at least if it's treated as a motion to amend the indictment, which the State has the right to do, of course, right up until trial. And it is true that the 0121, the desecration, seems to have some facts in it that are talking about the murder, but in fact, the State plans to amend both of those indictments prior to trial.

As I'm sure Your Honor knows, the making of indictments is often just an administrative process translating the warrant into indictment language, and we don't have the resources to have an attorney review it until later on.

Having reviewed both indictments, I do plan to amend them to conform more both to the facts as well as to the law, and I have no opposition to Mr. Stewart's first motion if it is treated as a motion to amend and not a motion to dismiss.

THE COURT: Mr. Stewart, anything you'd like to be heard on concerning those motions -- that motion. I'm sorry. That motion since the State is agreeing that it will amend?

MR. STEWART: I wanted to object to it being amended, sir, and move for it to be dismissed as I requested in my motion, sir.

CLERK OF COURT: Can you speak up where she can hear you?

MR. BLAKE: Why don't you come forward. Do something so that it's closer up.

CLERK OF COURT: You got to speak up where she can hear you.

MR. STEWART: I wanted to object to it being amended, sir, and move for it to be dismissed as I requested in my motion, sir.

MR. BLAKE: Your Honor, if the defendant is so adamant about having it dismissed, we can certainly do that, re-indict him and start the clock all over again. However, as Your Honor knows if procedurally we have the right to amend the indictment all the way up to trial.

THE COURT: Well, as far as the murder indictment is, I mean, this is pretty clear cut. I mean ---

MR. BLAKE: I mean ---

THE COURT: --- all the elements, it appears appropriate as far as the murder indictment, his motion is denied. Based on what the State has done here, I'm going to grant the State's motion that it can go in and amend this. But remember now, if you change the elements of whatever, which looks like you're going have to some straightening out -- I agree with him to a certain point on this particular indictment that it mentions some things. But you're probably going to have to take it before the Grand Jury, but I don't want to get into that.

MR. BLAKE: Yes, Your Honor, and obviously, re-serve the defendant. Really, all I'm talking about is the numbering

process. If I amend it, I can go back in under the old number and then take it again before the Grand Jury. If I dismiss it, it's going to be an 02 indictment.

THE COURT: I mean, I want you to understand even if I were to grant your motion to dismiss, he can still take it back. So it's just -- what it's doing it keeps from having to duplicate the numbers and the paperwork and all. The end result that it would go back before the Grand Jury anyway. Okay.

MR. STEWART: Yes, sir.

THE COURT: All right.

MR. BLAKE: Your Honor, handing up Court's Exhibit No. 2, which is quite lengthy. It is titled, "Motion For Transfer of Custody." I should just note as a matter of record that Mr. Stewart -- the incident date here is December 6, 2000. He was arrested on that date. He was sent to safekeeping, that means that he went from the Marlboro County Detention Center to Lee Correctional Institute in the prison system. And we can go over the reasons why that happened, but that happened back on February 21st 2001.

That was renewed again June 7, 2001, September 28, 2001, January 8, 2002, and then April 19, 2002. Handing up Court's Exhibit 2, which is in essence Mr. Stewart's motion, and then I have appended records from the jail about what went on when he was at jail.

'02 SEP 24 A 8:33
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

(COURT'S EXHIBIT NO. 2 ADMITTED INTO EVIDENCE.)

Mr. Stewart has a copy of these papers. I don't know if he would object to Your Honor looking at them or what he has to say about them, but he has been provided a copy of that today.

THE COURT: All right. Let me hear from Mr. Stewart. This is on the motion of transfer of custody. Let's see, that was dated July the 8th. It's cut off on my edge here. I think that's July the 9th. Anything you'd like to tell the Court concerning that motion, Mr. Stewart?

MR. STEWART: Well, I would admit that I had some problems at the Marlboro County Detention Center. These were before I got transferred to Lee County, and I was going through a lot of emotionally dealing with my trial and stuff.

I had never been locked up for anything this serious before, and I was just having problems adjusting to it. But as soon as I got to Lee County and stayed there for a while, all these problems were resolved.

And now I represent myself, and it's very difficult for me to get up with my standby counsel and it's very difficult for me to get reference material that I need to represent myself and prepare for my defense.

And I would -- I ask that you grant that I be moved back to Marlboro County Detention Center.

THE COURT: Wouldn't you have more reference materials at

Lee than you would here at the detention center?

MR. STEWART: It's a law library in Lee County, but it is not what it's supposed to be, and these reference materials -- and I would like, through Mr. Crow, to get my mother to bring to me.

MR. CROW: Your Honor, if I please. His mother brought and served me with a copy of that motion, and I wrote Mr. Stewart back a letter which he said he never received. On July -- and told him that the Marlboro County Detention Center, we had no law library at all. We had no resources what soever there, and that maybe he might consider amending his motion to Evans, which is a prison system here.

And he told me back a while ago that he couldn't go to Evans because of some type of security; is that correct?

MR. BLAKE: Your Honor is aware that Lee Correctional is the only place for safekeeping. Your Honor, let me add, I think it's very important -- Judge Lockemy in the last hearing made it an order of the Court that Mr. Stewart would be in the Marlboro Detention Center for at least two weeks prior to his trial.

Now, we were -- the State was ready to go to trial until Mr. Stewart went pro se. That changed things around. We've had things to respond to. As Your Honor knows, I have cases in other counties, but I am ready to try this case on the week of October 14th.

I have a big murder case in Chesterfield County that the month prior to, and that's the first time I can really do it. But we can proceed as of October 14th. That means that per Judge Lockemy's order, Mr. Stewart has to be in the jail by at least October 1st.

What the State would like to do is simply renew the safekeeping order, and in compliance with Judge Lockemy's order, get Mr. Stewart there October 1st or if it can be arranged even somewhat earlier. We're certainly open to compromise.

I will tell you that I don't have somebody here to testify to this effect, but I do understand that there's been continuing problems at Lee Correctional. Your Honor can look at the note of what happened previously at jail. Earl Hood, who is the warden here does not want Mr. Stewart there.

WILLIAM B. FINDEBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
FILED
SEP 29 A 8:33

THE COURT: All right. As a previous order by Judge Lockemy, I am not going to rule on this motion. It may be reviewed by Judge Lockemy if you can find him, Mr. Stewart, but I'm going to leave it as is. You have to abide by that order.

MR. BLAKE: Thank you, Your Honor. Now, reaching, I believe, Court's Exhibit 3, which I believe would be moot, but this is a motion for bond on the part of Mr. Stewart. He's asking for bond in the amount of $25,000.

(COURT'S EXHIBIT NO. 3 ADMITTED INTO EVIDENCE.)

THE COURT: I think that's pretty clear cut. I'm going to deny that motion, however, if this case is not disposed of in October, you may renew this motion. If I'm here, I'm most likely going to set it. This thing needs to be handled and disposed of.

MR. BLAKE: Yes, Your Honor. Now, Your Honor, this is Court's Exhibit 4. It is a motion entitled, "Motion for Severance of Proceedings," and I'm handing it up to you now.

(COURT'S EXHIBIT NO. 4 ADMITTED INTO EVIDENCE.)

And I'm also going to hand up law, which I think is completely on point and relevant. I've given the same law to Mr. Stewart and his standby counsel. Just to paraphrase, and this is really for Mr. Stewart to talk about.

He's asking that there be two separate trials, one for the murder and one for the burning.

THE COURT: Mr. Stewart, anything you'd like to tell me about this?

MR. STEWART: I feel they are two separate indictments with two different elements which constitute each, and I feel that having them tried together would cause bias and prejudice against from the jury. I ask that they be separated.

THE COURT: What was the alleged timing of the two incidents?

MR. BLAKE: Was within an hour or two, was in the exact same location which is Mr. Stewart's backyard or his parent's

backyard where he was residing. We have a statement from Mr. Stewart that ties those two events together, both a written statement given to law enforcement, which he's asking to suppress. But also another letter that he wrote to law enforcement.

Our witnesses tie him to the burning. I think Your Honor is aware, but I'd just like to read if I could from State v. Tucker, just the general rules there, and you know -- "There arise out of a single chain or circumstances are proved by the same evidence are of the same general nature and no real right of the defendant has been prejudiced …".

And State v. Tucker, I think is very illustrative of this particular situation because in the facts in that case, a murder occurred and then the defendant was on the run and committed two different burglaries a day and two days later. All of that was tried at the same time because they were, you know, related like that.

This was not separated by more than an hour or so. His burning of the body is certainly evidence of his, at least, some sense of guilt and to separate the two would be, essentially, to just make it very difficult for the State in as much as the witnesses will be testifying to both instances.

And I will point out, and one of the reasons we are going to amend the indictment, it's not 100 percent clear how the death occurred. The autopsy says there was a blow to the

head, but the body when it was found was in very bad shape and there is a question even with the pathologist about the cause of death.

THE COURT: Based on the same victim, it was within an hour or two of each other, I'll have to deny this motion.

MR. STEWART: Your Honor, sir?

THE COURT: Yes.

MR. STEWART: If I may speak. It wasn't an hour. It was like seven or eight hours between the two incidents.

MR. BLAKE: Your Honor, I'm not really exactly sure on that. I know I meant to find that out. It was my recollection that that's what it was. I can certainly -- we got officers here who know the case who can give you that information.

THE COURT: Seven or eight hours?

MR. STEWART: I have the incident report written by an officer. It states the time of death and the time of the alleged incident, sir.

MR. BLAKE: Your Honor, the incident report could not in any way tell you the time of the death, and the autopsy report basically has some conjecture. And after talking with pathologist whether the cause of death was a blow to the head or it was the actual burning of the body.

The problem being that when a body is burned, the skull bursts and so there is some question. In fact, when the State

amends the murder indictment, we intend to include alternative possibilities as to the actual cause of death.

THE COURT: Well, the Clerk and I were just talking. It doesn't matter if it was 7 or 8 hours, 12 hours, whatever, it's the same victim, and it's the same carry -- I mean it's the same connection.

You know, there is some leadway in here which the Tucker case refers to. I'm still going to have to deny it now. Certainly, Mr. Stewart, if you uncover something that causes you great concern, you can renew this motion with the trial judge. Okay. That will give you a little time to do some research, and Mr. Blake can also do some checking.

So I'm not going to totally cut that one off. I'm going to deny it now, but it may be renewed at trial if you uncover something a little different from what's been presented. Okay?

MR. BLAKE: Yes, and, Judge, before it slips my mind, Judge Lockemy also made an order in these previous hearings that because Mr. Stewart is proceeding pro se, that it be an order of the Court that all of the various hearings we're having prior to trial be transcribed. So we can -- if you're in accordance with that, we can present an order to that affect. But that's been -- that was what Judge Lockemy ordered originally, so ---

THE COURT: All right. Now, this goes back to Mr. Blake.

WILLIAM B. FLOYD, CLERK
CLERK OF COURT
MARLBORO COUNTY, S.C.
2025 SEP 27 A 8:33

MR. BLAKE: Your Honor, the next one is Court's Exhibit 5. It is a motion for disclosure by Mr. Stewart, and essentially, it's the State's position that this is in essence a continuing Rule 5 request that it be dealt with at the time of trial.

(COURT'S EXHIBIT NO. 5 ADMITTED INTO EVIDENCE.)

The State recognizes its continuing duty to disclose certain information as outlined in Rule 5 to the defendant. In this motion, he's asking all of any evidence that has not been presented to him prior be suppressed. I think the rule really puts that more in the discretion of the judge.

I would simply ask that this motion, motion for disclosure, Court's Exhibit 5, be held over until the time of trial for the trial judge to look at and decide at that time.

THE COURT: All right. I won't rule on it. Trial judge will rule on it.

MR. BLAKE: Same thing for Court's Exhibit 6 ---

THE COURT: But I'm doing it, now, and I'm taking that as an assumption that you're assuring the Court that you've turned over everything that you know to this point.

MR. BLAKE: Certainly, Your Honor.

THE COURT: There may be more if it comes about, but if there is a problem with that, I agree, the trial judge should so that.

(COURT'S EXHIBIT NO. 6 ADMITTED INTO EVIDENCE.)

MR. BLAKE: Which does bring up a question that his -- Court's Exhibit 6 is Motion for Suppression of Evidence. That is to say photographs. I would say that there are -- well, of course, there are the autopsy photographs, which ---

THE COURT: That's trial judge.

MR. BLAKE: Okay. But let me just say that, and I do believe it's for the trial judge -- there are also photographs of the burning of the body and then there's photographs of just the general crime scene, and I believe that that's something for the judge, trial judge in camera, to look at and decide.

And I'm certainly, as a part of Rule 5, the State is not eager to be providing Mr. Stewart with photographs of this burning body because other Rule 5 has been presented to Mr. Stewart and they have not really been treated in a very respectful way, shall I say.

So if he is making a motion for these photographs, I would like to have some judge look at them and make a decision as to what actually is going to be provided to him.

THE COURT: Well, I don't agree with you there, now. If there are photographs and there is any possibility you going to use them, he has a right to see them.

MR. BLAKE: Seeing them and copying them are -- yes -- I mean, if I'm ordered to copy them and give him a copy, that's one thing, but he can certainly -- we have no problem with him

looking tat them.

I just wondering about providing a copy because -- Mr. Crow can actually speak to this since he's provided Rule 5 material to the defendant in jail and found it later.

MR. CROW: That was back when he was in Marlboro County Detention Center when he was going through the emotional period that he told you about.

He left some Rule 5 materials on a cell when he was taken out to be carried to Bishopville in an envelope that was retrieved and given back to me. But what he's continually asked me for was any -- and I think he's made this clear in Dillon that there is no SLED photographs or any -- SLED came down and looked at the crime scene, I understand -- but you want SLED photographs or any photographs of the crime scene; isn't that what you want?

WILLIAM BETHUNE ERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 SEP 24 AM 8:33

MR. STEWART: Yes, sir. Any photographs that the prosecution has that they plan to present at trial, sir.

MR. BLAKE: And that's where I get back to -- that's the trial judge's decision as to what's going to be -- he's even allowed trial anyway. We have ---

THE COURT: Well, what comes in is the trial judge, but for right now, if there are any photographs out there and you have access to them and they are going to be used, he needs to have a right to see them.

And I'm not going to sit there without further hearing to

say that you actually got to -- actually got to go get a professional copy of made of them. But go ahead and at least provide him at least a copy machine copy of them at this point.

And if there is some scientific reason or whatever he needs a more detailed copy, then Mr. Stewart you'll need to follow that up with additional motions.

MR. STEWART: Yes, sir.

THE COURT: Okay. Does that solve that problem?

MR. STEWART: Yes, sir.

THE COURT: And be careful where you leave things like that. You don't want just the whole world to be seeing them. Okay?

MR. STEWART: Yes, sir.

MR. BLAKE: And, finally, Your Honor, this is Court's Exhibit No. 7, entitled, "Motion for Suppression of Evidence."

(COURT'S EXHIBIT NO. 7 ADMITTED INTO EVIDENCE.)

That being a written statement, and it would be the State's position that this is proper for a Jackson v. Denno hearing.

There were a number of statements that Mr. Stewart has made and as Your Honor's certainly aware, there has to be an in camera proceeding to see if those are admissible or not.

THE COURT: Mr. Crow, that's going to the trial judge. I don't want to be doing anything to cripple a trial judge's

ability to try the case.

MR. CROW: I understand that, and I wrote him a letter to that affect, but he said he never got the letter. I told him about Jackson v. Denno hearings.

THE COURT: All right. I will not rule on that. That will be for the trial judge.

MR. BLAKE: I thank Your Honor. That's all the motions.

THE COURT: You did a good job on your motions.

MR. STEWART: Thank you, sir.

MR. BLAKE: And we'll prepare an order for the Court.

MR. CROW: Your Honor, his mother is present. I just noticed she's in the courtroom. Could I ask that law enforcement take him back and let him visit with his mother just a minute before he gets carried back?

THE COURT: Keep clear of the metal detectors.

MR. CROW: Yes, sir.

THE COURT: That's fine.

*** END OF TRANSCRIPT OF RECORD ***

C E R T I F I C A T E

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth 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 Marlboro County, South Carolina, on the 16th day of July 2002.

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

Hattie O. Gordon

Circuit Court Repo

WILLIAM S. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 SEP 24 A8:33

September 10, 2002

Wallace, South Carolina

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

01-GS-34-0120, 01-GS-34-0121

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

July 16, 2002
Marlboro, South Carolina

B E F O R E:

The Honorable PAUL M. BURCH, Judge.

WILLIAM B. FURGERSON
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 SEP 24 A8:30

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

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WELDON STEWART, JR., Pro Se

WADE CROW, Esquire
Standby Attorney for the Defendant

HATTIE O. GORDON
OFFICIAL COURT REPORTER
FOURTH JUDICIAL CIRCUIT
[redacted]
WALLACE, SC 29596-0597

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Colloquy	04			
Certificate of Reporter	07			

'02 SEP 24 A8:30
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.

NO EXHIBITS INTRODUCED

'02 SEP 24 A8:30
WILLIAM B. TINDEBOUR
CLERK OF COURT
MARLBORO COUNTY, S.C.

THE COURT: Mr. Stewart?

MR. BLAKE: Judge, we're back on the record. Indictments 01-GS-34-121 and -122, State v. Weldon Stewart, Jr. After the hearing that was held before lunch, I was told that SLED needed some handwriting samples from the defendant, and we may need blood.

I presented this, as you know, as an ex parte order to Mr. Stewart, but I think he really wanted to have Your Honor hear it so he understands what's going on and I'm passing that up to you now. The Scrember Order of taking handwriting and blood from the defendant.

'02 SEP 24 A.8:30
WILLIAM FLOYD BURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

THE COURT: Mr. Stewart ---

MR. STEWART: Yes, sir.

THE COURT: --- anything you like to put on the record about this?

MR. STEWART: I just need clarification about this.

MR. CROW: Your Honor, I tried to explain it to him back there in the presence of his mother, and I told him that this was a matter that Your Honor could sign and he could consent. But he was asking me about it and said, "Give the right to take a handwriting sample, bodily fluids, any hair samples, and that sort of stuff."

MR. BLAKE: More specifically, just asking for handwriting and blood. As I was trying to say ---

THE COURT: This one is limited to handwriting samples

and blood samples. That's the only two things.

MR. BLAKE: Well, I think if I could explain just that the Scrember Order -- it's a United States Supreme Court case that gives the States the right to do that, and says that it's not a violation of their constitutional rights. That's why, normally, it's actually even done without a hearing, but since the defendant is proceeding pro se, I wanted him to have the benefit of your attention.

THE COURT: I sign them every week. Now, if this is something unusual, then -- normally, there is not a whole lot of questions about these that are for blood or for fingerprints or for handwriting. This one doesn't involve fingerprints. It's just a handwriting and a blood sample.

Example of one that can -- that sometimes requires extensive hearing would be one like where there is a bullet fragment under the skin or something where it needs to be medically extracted. Then it gets a little bit more complicated, but anyway, hearing nothing further, I'll sign it.

MR. BLAKE: Thank you, Your Honor.

MR. STEWART: Your Honor, sir, I mean, may I be allowed to speak?

THE COURT: Yes, sir.

MR. STEWART: Is there any way I can get a transcript of the first hearing that we had. I didn't get a chance to ask

'02 SEP 24 A8:30
WILLIAM E. FUSSELBURY
CLERK OF COURT
MARLBORO COUNTY, S.C.

you that?

THE COURT: You will provide Mr. -- Judge Lockemy's order to the court reporter so she'll need that for her records.

MR. BLAKE: Yes, sir. Mr. Crow's been handling that.

MR. CROW: I prepared two orders. Do you want one from Judge Lockemy's hearing or Judge Cottingham's hearing?

MR. BLAKE: You mean the one we did in Dillon?

MR. STEWART: This one ---

MR. BLAKE: Today?

MR. STEWART: --- and the one this morning and the one in Dillon.

MR. BLAKE: We do not yet have those transcripts, but I understand it to be the defendant would like a copy once we do have them, and we will contact the court reporter and make sure that that's done.

THE COURT: Okay.

*** END OF TRANSCRIPT OF RECORD ***

FILED
JILL LAMB, DUNCAN
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 SEP 24 A8:31

C E R T I F I C A T E

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth 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 Marlboro County, South Carolina, on the 16th day of July 2002.

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

Hattie O. Gordon

Circuit Court Reporter

WILLIAM E. FUNNERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

02 SEP 24 A8:31

September 10, 2002

Wallace, South Carolina

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO 02-GS-34-1918, 02-GS-34-1919

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

October 17, 2002
Marlboro, South Carolina

B E F O R E:

The Honorable PAUL M. BURCH, Judge

WILLIAM R. FURGERSON
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 NOV 26 P2:38

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

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WADE CROW, Esquire
Stand-by Attorney for the Defendant

HATTIE O. GORDON
OFFICIAL COURT REPORTER
FOUR [redacted] UIT
WALLACE, SC 29596-0597

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WILLIAM P. FURGERSON
CLERK OF COURT
MARLBORO COUNTY, S.C.

'02 NOV 26 P2:38

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.

NO EXHIBITS INTRODUCED

'02 NOV 26 P 2:38
WILLIAM E. RUNNEBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

MR. BLAKE: Your Honor, this is Weldon Stewart, Jr. Indictment No. 02-GS-34-1918 for desecration of human remains, and 02-GS-34-1919 for murder. These two new indictments have gone before the grand jury. I want to arraignment Mr. Stewart on those, and Mr. Stewart has a couple of motions for the Court.

THE COURT: All right. Are there presently other indictments?

MR. BLAKE: Yes, Your Honor. I will hand those up to you so that you can look at them. We had hearings before several judges, a hearing in front of you back on July 17th, and at that time Mr. Stewart had asked that the amendment that had to do with desecration be amended because it contained elements of murder. And we have had time to talk about the State needing to clean up both indictments which has been done.

WILLIAM E. DUBERRY CLERK OF COURT MARLBORO COUNTY, S.C. NOV 26 '02 P 2 28

You also said at that time that once we had done that and gone before the grand jury his motion for continuance would then be sort of on the table again.

THE COURT: Okay. So you need -- what you're requesting at this time is to go ahead and arraign on those two indictments?

MR. BLAKE: Yes. And let him have his motions as we have trial set next month, November 11th.

THE COURT: And where do you stand?

MR. CROW: I'm stand-by counsel ---

THE COURT: Okay.

MR. CROW: --- and he has a motion relative to one of the proposed new indictments, the terminology that he want to make after he's allowed

THE COURT: After, okay.

MR. CROW: And also he has a motion for bond.

ARRAIGNMENT

MR. BLAKE: Ask the defendant to raise his right hand, please. Are you Weldon Stewart, Jr.?

MR. STEWART: Yes, sir.

MR. BLAKE: You can put your hand down. Indictment No. 02-GS-34-1918 that being desecration for removal of human remains at a court of General Sessions convened in October 2002, the Grand Jury of Marlboro County present upon their oath Weldon Stewart, Jr. in the County of Marlboro on or about December 6, 2000 did willfully and knowingly and without proper legal authority desecrate the human remains of one [redacted] Allen, to wit, by setting her body on fire.

MARLBORO COUNTY, S.C. CLERK OF COURT LINDA D. MUNNERLYN NOV 18 2002 P.M. 3:38

This is in violation of Section 16-16-0600 of the Code of Laws of South Carolina as amended. How do you plead?

MR. STEWART: I plead guilty to that.

MR. BLAKE: You wish to plead guilty to that?

MR. STEWART: Yes, sir.

MR. BLAKE: Let me read the other indictment. This is Indictment 02-GS-34-1919 at a court of General Sessions

convened in October 2002, the Grand Jury of Marlboro County present upon their oath Weldon Stewart, Jr. in the county of Marlboro on or about December 6, 2000 did with malice aforethought kill one [redacted] Allen, to wit, by striking, pushing and or burning her and said [redacted] Allen did die as a proximate result, thereon, on or about the 6th day of December 2000.

This is in violation of Section 16-3-10 of the Code of Laws of South Carolina as amended. How do you plead?

MR. STEWART: Not guilty.

MR. BLAKE: And how will you be tried?

MR. STEWART: By God and my country.

MR. BLAKE: May God grant you good deliverance. Now, Your Honor, we have -- just heard him say he wants to plead guilty to the burning charge. Have you had a chance to discuss that with him?

WILLIAM P. ROGERS CLERK OF COURT MARLBORO COUNTY, S.C. 02 NOV 26 P 2:38

MR. CROW: He just told me he wanted to do that.

MR. BLAKE: Can we just put that aside for one minute and hear his motions.

MOTION - QUASH INDICTMENT

MR. STEWART: Your Honor, I would -- I wish to object to some of the terminology and the murder indictment. It says that "striking, pushing and or burning to cause death." According to the autopsy report, which I have here, death was caused by blunt trauma to the head.

It wasn't -- it was specific about that, but however, it was enough leadway for how the blunt trauma to the head occurred. But that is the only thing that end up -- leadway enough -- no leadway as to how -- what was the cause -- what the cause of death was, and it also stated the body was desecrated hours later.

And I ask that this indictment not be allowed to be brought in the courtroom including burning as a possible cause of death because this contradicts the autopsy report. There was no factual -- there was no factual evidence like that, and as I said before, according to the autopsy report death occurring by the burning of the body is not proper.

MR. BLAKE: Your Honor, I have talked to the pathologist. I think Mr. Stewart is referring to -- at the bottom of the summary page, probable cause of death was blunt force trauma to the head. The pathologist, Dr. Harley, says that it is a possibility that the death was caused by burning.

With response to Mr. Stewart's allegation about the amount of time between the original blow and the burning, that's part of the hearsay that comes in as case history that would not be admissible in court and actually comes primarily from the defendant's mouth.

So it's not a finding of fact on Dr. Harley's part. What Dr. Harley does note is that there is a skull fracture. He also notes that there are full body charring and there are

WILLIAM E. GUNTER, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.
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heat fractures to the skull. So I have talked with him, and the reason for him putting these different alternatives is that the only person that we understand was there is Mr. Stewart, and I would not that this has gone before the grand jury.

I don't know how the defendant can argue with the language of the indictment. He can certainly argue that to the jury. I would understand if he was trying to seek a continuance because this was undue surprise or something. I can hand up the original warrants and the original indictments.

What you'll see there is the original indictments simply mirror the language of the warrants, and that was the reason that the previous hearing that the State talked about needing to clean up the indictments because an attorney had not really dealt with that previously.

THE COURT: All right. Any other motions at this time?

MOTION FOR BOND

MR. STEWART: Yes, sir. A motion for bond that I filed previously, and by order -- by order it was said that this motion would not be heard unless I was not tried by this week.

MR. BLAKE: Your Honor, that has been heard. It was heard in front of Judge Milling last term of court. You have an order concerning that. This also involves -- I'm passing that order up, now. That does concern his safekeeping order.

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CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 NOV 25 P2:38

In other words, Mr. Stewart is not at the Marlboro County Detention Center. He has been in safekeeping and what Judge Milling ordered was that the safekeeping order was to continue. Therefore, there is no bond or issue and that he would be transferred to the jail the week of -- he would transferred to the Marlboro County Detention Center on October 21st if the trial is going to go forward for November 11th.

THE COURT: All right. Any other motions?

MR. STEWART: Your Honor, I feel that bond and safekeeping status are two separate issues and on the least hearing that we had, the judge only heard about my safekeeping status, but we did not have the bond hearing.

THE COURT: Okay.

MR. BLAKE: I think we didn't have a bond hearing in this case because he judge said that issue was moot, but I do think it's important to bring to the Court's attention the last section where it starts, "Fifth," where the judge addresses the defendant's need for his legal material, and it has been told to me this morning that the defendant has not had his legal material; is that correct?

MR. STEWART: I have not had my legal material for an extended period from July the 22nd up until today, well, October 13th. The staff at Lee Correctional Institution had confiscated my legal materials a number of times.

THE COURT: Do you have them now?

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MARLBORO COUNTY, S.C.
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MR. STEWART: Yes, sir. I got them back October 13th.

THE COURT: Okay. All right. Now, the present indictments are these are the ones that ---

MR. BLAKE: The present ones are the small ones, your honor. The ones in your left hand are the old ones.

GUILTY PLEA

THE COURT: Old ones. Mr. Stewart, I need your age.

MR. STEWART: Nineteen, sir. I mean, 21, excuse me.

THE COURT: All right. Mr. Funderburk, if you will get a plea sheet. Be filling in the information as I ask him, please.

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 NOV 26 P2:38

MR. CROW: He wants to comment on the murder indictment.

THE COURT: Sure.

MR. STEWART: The prosecution has stated that the report for the time of death accusation was established by me. This is untrue. It was established by supposed witness as well as law enforcement that the desecration of the, body occurred between 11:00 and 1:00, 2:30, somewhere in between there.

According to the autopsy report at the front it says, "Death occurred within seconds or minutes of the head being traumatized," however that was. I feel that by him adding -- by this burning as a possible cause of death being added in the indictment, it would arouse most of the jury and make them biased and prejudiced against me.

I feel that, as I said before, there was no factual

evidence to support this and I don't understand how this could be bought into an indictment just by mere speculation.

THE COURT: Okay. Let me see. Now, I asked you your age. What is your education, Mr. Stewart?

MR. STEWART: Twelfth grade, sir.

THE COURT: And where did you last work?

MR. STEWART: I'm not sure, sir.

MR. CROW: His mother says Burger King.

THE COURT: Burger King, and you were a cook for them or did you work ---

MR. STEWART: Yes, sir.

THE COURT: All right. Now, you are representing yourself with Mr. Crow as a stand-by -- stand-by counsel as we say. You have indicated to the Court that you wish to enter a plea of guilty to Indictment 2002-1918 to desecration of human remains.

WILLIAM B. TINDERBERRY
CLERK OF COURT
FLORENCE COUNTY, S.C.
2025 NOV 25 P 4:38

The indictment alleges on or about December 6, 2000, did willfully and knowingly without proper legal authority desecrate the human remains of one [redacted] Allen, to wit, by setting her body on fire.

This is in violation of 16-17-60 of the Code of Laws of South Carolina, and I'm looking at that statute now. That can carry up to maximum of ten years and $5,000 fine. I ask you now, do you understand the charge and the possible punishment?

MR. STEWART: Yes, sir.

THE COURT: You understand, now, that you're representing yourself with stand-by counsel. Do you want to go forward with this plea at this time?

MR. STEWART: Yes, sir.

THE COURT: And how do you plead to desecration of human remains, guilty or not guilty?

MR. STEWART: Guilty.

THE COURT: You know by entering such a plea you waive your constitutional right to a jury trial?

MR. STEWART: Yes, sir.

THE COURT: You fully understand that if you went to trial you would have a right to cross examine the State's witnesses and put up your own defense and witnesses.

MR. STEWART: Yes, sir.

THE COURT: Do you understand at trial you could testify in your own behalf, but you'd also have a constitutional right not to testify and if you didn't, it couldn't be held against you and I would even tell the jury that?

MR. STEWART: Yes, sir.

THE COURT: She can't hear you. You need to speak up just a little louder, okay?

MR. STEWART: Yes, sir.

THE COURT: I lost my place. You understand that you are presumed to be innocent and that presumption stays with you throughout any trial?

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WILLIAMSBURG COUNTY, S.C.
2022 NOV 26 P 2:38

MR. STEWART: Yes, sir.

THE COURT: You also understand that at trial that a jury, in order to convict you, all 12 of them would unanimously vote guilty. And if convicted you'd have a right to appeal?

MR. STEWART: Yes, sir.

THE COURT: If a jury did convict you, you understand, you'd have a right to appeal that conviction as long as you did it within ten days?

MR. STEWART: Yes, sir.

THE COURT: You can appeal a plea or a conviction as long as you did it within ten days of sentencing, you understand that?

MR. STEWART: Yes, sir.

THE COURT: Any questions about those rights?

MR. STEWART: No, sir.

THE COURT: You understand your jury trial rights?

MR. STEWART: Yes, sir.

THE COURT: And you do not want a jury trial?

MR. STEWART: No, sir, not for that charge.

THE COURT: Okay. And I'll ask you one more time, now. You want to go forward without -- you want to go forward with this plea and you don't want to have an attorney with you? You want to do this on your own?

MR. STEWART: Yes, sir.

WILLIAM J. TUMBLESON CLERK OF COURT MARLBORO COUNTY, S.C. '02 NOV 26 P2:39

THE COURT: Has anybody promised you anything, held out any hope of reward or threatened you in any manner in order to get you to plead guilty?

MR. STEWART: No, sir.

THE COURT: Are you today under the influence of any drugs, alcohol or medication?

MR. STEWART: No, sir.

THE COURT: Do you suffer from any condition that could be affecting your understanding at this time?

MR. STEWART: No, sir.

THE COURT: Do you, indeed, understand what you're doing?

MR. STEWART: Yes, sir.

THE COURT: Do you have any complaint about anybody mistreating you concerning you entering this plea?

MR. STEWART: No, sir.

THE COURT: Are you entering this plea of your own free will and accord?

MR. STEWART: Yes, sir.

THE COURT: Nobody is making you do this?

MR. STEWART: No, sir.

THE COURT: What are you guilty of?

MR. STEWART: Guilty of desecration of human remains.

THE COURT: I find your decision to enter this plea is freely, voluntarily, and intelligently made. The Court has covered with you the matter of representing yourself. You've

WILLIAM M. FINDLEY, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.
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assured the Court once again that you want to go forward representing yourself with stand-by counsel. And I have watched. Counsel has been by you and has talked with you, so I'm satisfied with the nature of this plea and I'm going to accept it.

All right. With that said, Solicitor, any record?

MR. BLAKE: Your Honor, if you could give me a minute. Let me get his date of birth and Social Security number.

MR. STEWART: [redacted]

MR. BLAKE: Social Security number?

MR. STEWART: [redacted]

THE COURT: Mr. Clerk, if you will check the appropriate guilty box there and let Mr. Stewart sign in the place that he's supposed to. Any record I need to hear about?

MR. BLAKE: The State's a little surprised by the guilty plea. For the trial, we were going to have his juvenile record. He was, I think, it's -- he was 19 when this happened.

His juvenile record would be significant in this regard, however, the State's not prepare to present that because as we know, he has some charges that were dropped as a adult, him being 19 when this offense occurred.

He doesn't have any prior adult record. He does have a juvenile record that I can't present to you at this time.

THE COURT: All right. I guess, now, we need to -- he's

WILLIAM "BILL" ROUNDTREE
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 NOV 26 P12:39

already told me about his plea and I've reviewed the indictment with him, but let me hear about the facts here.

MR. BLAKE: Okay. Your Honor, this happened back in December of 2000. It did occur in the City of Bennettsville. The charge that he is pleading to, he has admitted to the burning in a previous statement. It was after a killing that's not before us today. And you have different statements from Mr. Stewart about that.

Ms. Allen, the victim, of course, I haven't had a chance to notify the victim's family about this particular plea since it just came up. We have been talking to him about the case. It was a long-term girlfriend of his, [redacted] Allen, who was 15 years old at the time.

WILLIAM B. FLOYD, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 NOV 26 P2:39

And there was first the killing and then Mr. Stewart burned the body. I guess he had various reasons for why he did that. It was done in his parent's backyard.

THE COURT: Mr. Stewart, anything you like to tell me at this time?

MR. STEWART: I'd like to explain the relationship.

DECISION OF THE COURT

THE COURT: Mr. Crow, second hand. I know this is his mother, from what you said. In all fairness to him, I tell you what we need to think about doing here. We need to think about deferring sentence on his and let me hear from him later. Is everybody in agreement? Because the victims

haven't been contacted. He still may stand trial on this other case. Let's deter and then I'll hear from everybody at the same time. Okay.

MR. CROW: That will be fine.

THE COURT: Let me put on the record that I accept the plea, but at this point in time in all fairness to Mr. Stewart and also to protect the rights of the victims who have a right to be here, let's defer sentencing.

All right. On your motions, Mr. Stewart, I'm going to go ahead and entertain your motion about the new indictment as a motion to quash. I'll have to deny that, but understand that if you go to trial, and once the facts are developed, this does not prevent you from entering a motion for directed verdict, understand?

WILLIAM P. ROGERS, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.
'02 NOV 26 P2:39

MR. STEWART: Yes.

THE COURT: In other words, if there is a problem with the facts as they develop as compared to the indictment, that can be brought up at that time. So I'm noting your motion on that. You can bring -- Mr. Crow, you keep in mind and ring that up with whoever the trial judge is at that time, okay?

MR. CROW: Yes, sir.

THE COURT: As far as your bond, I am not going to step in here and change or cause any kind of problem with Judge Milling's order except to say this. Since you going to be coming back before me probably somewhere in the circuit after

November, I'm telling everybody right here, right now, if this case is not disposed of in November and we get clear of Judge Milling's order, I'm going to set a bond on him. It will probably be a high bond to ensure appearance. I'm not going to say an exact amount, but it may be as high as $100,000, maybe lower. But if it's not disposed of, I'm going to set a bond. Okay?

MR. STEWART: Yes, sir.

MR. BLAKE: Your Honor, may I ask a question? If the State is ready to go forward with trial and for some reason Mr. Stewart has it continued, does that still ---

THE COURT: Oh, yeah, that will make a diference. That will make a difference, but I'll just have to hear that out. But I don't want to go forward with this plea in fairness to him and also in fairness to the victims as far as sentencing him. Okay? Cause I know his mother wants to be heard. She's already made that clear. And, really, whatever he wants to tell me it ought to be without that pressure of the trial pending on him. Okay?

MR. BLAKE: Yes, sir. Your Honor, every other hearing has been transcribed by the court reporter because Mr. Stewart is appearing pro se. I'd just like to move for that, and I believe Indigent Defense is being billed.

MR. CROW: I'll get the appropriate order and ask them to approve the fee for Ms. Hattie.

FILED 2025 NOV 21 P 2:40 MARLBORO COUNTY, S.C.

THE COURT: Mr. Stewart, you didn't make a motion to continue it, which is just as well you hadn't because I wouldn't have authority to grant it anyway. The chief judge would have to do that because I don't have jurisdiction over the November term yet. In fact, I won't because I'm not even assigned here. Okay. But any motions to continue and all, you need to direct that to Judge Baxley, okay?

MR. STEWART: Okay.

THE COURT: Thank you very much.

*** END OF TRANSCRIPT OF RECORD ***

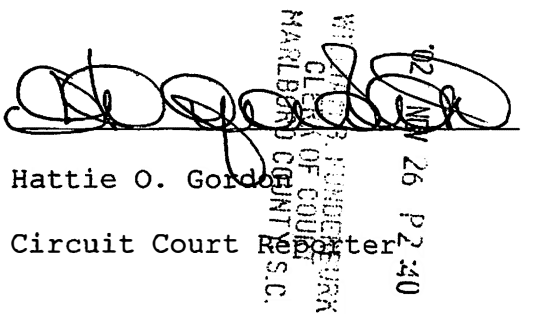
'02 NOV 26 P2:40

WILLIAM KUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

C E R T I F I C A T E

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth 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 Marlboro County, South Carolina, on the 17th day of October 2002.

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



Hattie O. Gordon

Circuit Court Reporter

November 17, 2002

Wallace, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

IN GENERAL SESSIONS COURT

THE STATE OF SOUTH CAROLINA,
PLAINTIFFS

MOTIONS
VS. 01-GS-34-120 & 121

WELDON STEWART, JR.
DEFENDANT

DECEMBER 11, 2002
BENNETTSVILLE, S.C.

BEFORE THE HONORABLE JAMES E. LOCKEMY, JUDGE.

APPEARANCES:

MR. DANIEL L. BLAKE,
ASSISTANT SOLICITOR FOR THE STATE

MR. WADE R. CROW,
PUBLIC DEFENDER FOR THE STATE

MARGARET T. SULLIVAN
COURT REPORTER

MR. CROW: YOUR HONOR, WE ARE ASKING IF HE CAN GET THE HANDCUFFS REMOVED SO HE CAN GET TO HIS PAPERS.

THE COURT: LET ME SEE WHAT KIND OF PAPERS HE NEEDS. WHAT IS THE CHARGE?

MR. BLAKE: YOUR HONOR, MURDER. THE DEFENDANT HAS ALREADY PLED TO THE BURNING OF THE BODY. AND AS I THINK YOUR HONOR MAY RECALL, WE APPEARED BEFORE YOU IN DILLON COUNTY; HAD ABOUT AN HOUR AND A HALF HEARING FOR THE DEFENDANT TO GO PRO SE.

HE HAS HAD, THIS MAY BE HIS 5TH OR 6TH MOTIONS HEARING SINCE THEN. AND JUST LAST TERM, I BELIEVE IT WAS JUDGE COTTINGHAM SET A LIMIT OF DECEMBER 1ST FOR THE REST OF MR. STEWART'S MOTIONS. HE HAS SEVERAL HERE THAT HE WOULD LIKE---

THE COURT: WELL IS HE STILL PRO SE?

MR. BLAKE: HE IS PRO SE.

THE COURT: ARE YOU STILL CONSULTING NOW?

MR. CROW: YES, SIR.

THE COURT: HAVE YOU GOT A LIST OF THE MOTIONS HE HAS?

MR. CROW: YES, SIR.

THE COURT: WHAT ARE THEY?

MR. CROW: ONE OF THE MOTIONS IS A MOTION FOR THE PROSECUTION TO NOTIFY THE DEFENDANT OF THE TRIAL AT LEAST 15 DAYS AHEAD OF TIME.

THE OTHER MOTION IS A MOTION---

MR. BLAKE: YOUR HONOR, THE STATE WOULD CONSENT TO THAT.

THE COURT: I WAS GOING TO ORDER YOU -- OKAY, GOOD. ON MURDER I THINK THAT'S A VERY APPROPRIATE THING. ALL RIGHT, THAT'S GRANTED.

MR. CROW: THIS IS A VERY COMPLICATED MOTION. I MIGHT HAVE TO ASK YOU, THERE'S A MOTION TO LIMIT STATE'S WITNESS' TESTIMONY RELATIVE TO ISSUES WHICH HE FEELS SHOULD BE EXCLUDED BECAUSE THE STATE WITNESS' TESTIMONY WOULD BE PREJUDICIAL BECAUSE HE HAS PLED GUILTY TO THE DESECRATION OF A HUMAN BODY.

THE COURT: WHAT'S YOUR NEXT MOTION?

MR. CROW: THE NEXT MOTION WOULD BE A MOTION TO DISCLOSE PHOTOGRAPHS; PHOTOGRAPHS OF THE CRIME.

THE COURT: HE'S ENTITLED TO THAT UNDER RULE 5.

MR. CROW: WELL HE WANTS PARTICULAR LOCATIONS WHERE THE VICTIM'S EYEGLASSES WERE FOUND.

THE COURT: MR. BLAKE, YOU HAVE NO PROBLEM WITH THAT, DO YOU?

MR. BLAKE: YOUR HONOR, I HAVE NO PROBLEM WITH PROVIDING THE DEFENDANT WITH COPIES OF THE PHOTOGRAPHS. HE ALSO HAS A MOTION THERE, HE WANTS TO TAKE PHOTOGRAPHS OF THE SCENE. IT IS HIS MOTHER'S PROPERTY, SO I DON'T HAVE A PROBLEM WITH THAT EITHER.

THE COURT: OKAY.

MR. BLAKE: SO I CERTAINLY CONSENT TO BOTH OF THOSE.

THE COURT: BUT I AM NOT GOING TO ORDER THE PRISON OFFICIALS TO TAKE HIM THERE THOUGH.

MR. CROW: YES, SIR.

THE COURT: I AM NOT GOING TO ORDER THAT.

MR. CROW: SIR?

THE COURT: I AM NOT GOING TO ORDER THAT.

MR. CROW: BUT COULD HE BE HEARD ON THAT?

THE COURT: SURE.

MR. CROW: HE HAS A MOTION FOR DISMISSAL OF THIS PRESENT INDICTMENT, WHICH HE THINKS VIOLATES THE DOUBLE JEOPARDY CLAUSE, BECAUSE IT INCLUDES PORTIONS IN THE INDICTMENTS FOR BURNING -- THE BURNING OF A POSSIBLE MURDER ELEMENT RAISES THE ISSUE OF BURNING THE BODY, IS THAT CORRECT?

THE COURT: ALL RIGHT, SO THE FIRST MOTION 15 DAYS IS GRANTED. NOW WHAT IS YOUR DISCUSSION, SIR, ABOUT WITNESSES THAT YOU'RE CONCERNED WITH, STATE WITNESSES? WHAT ARE THEY, SIR? JUST TELL ME RIGHT NOW, AND THEN I CAN LET YOU KNOW WHETHER YOU NEED TO GO TO THE FILE. WHAT ARE YOU CONCERNED WITH?

THE DEFENDANT: I AM CONCERNED WITH TESTIMONY BEING INTRODUCED IN THIS MURDER TRIAL THAT IS ONLY RELEVANT TO THE CHARGE OF DESECRATION OF HUMAN REMAINS, BECAUSE I HAVE ALREADY BEEN CONVICTED OF THAT CHARGE.

THE COURT: WHAT SPECIFIC WITNESSES THAT THE STATE, YOU KNOW ABOUT THE STATE IS GOING TO USE, THAT YOU FEEL ARE PREJUDICIAL WITH REGARD TO THAT CHARGE, AND NOT THE MURDER CHARGE?

THE DEFENDANT: I HAVE A STATEMENT FROM ONE WITNESS THAT HIS STATEMENT IS SOLELY ABOUT THE DESECRATION CHARGE. IT HAS NOTHING TO DO WITH ANYTHING ABOUT THE MURDER CHARGE. AND ALSO WITNESS TESTIMONY; THAT ME MENTIONING THE DESECRATION CHARGE. I BELIEVE THAT WOULD HURTFUL.

THE COURT: MR. BLACK, OBVIOUSLY YOU WOULD NOT BE ABLE TO USE ANYTHING IN THE TRIAL THAT JUST GOES TO AGGRAVATION. AGGRAVATION HAS NOTHING TO DO WITH THIS CASE HERE, SINCE YOU'RE NOT SEEKING THE DEATH PENALTY.

SO YOU'RE NOT SEEKING THE DEATH PENALTY, ARE YOU?

MR. BLAKE: NO, YOUR HONOR. THERE HAVE BEEN SEVERAL OTHER MOTIONS WHICH HAVE BEEN PUT OFF, TO BE HEARD BY THE TRIAL JUDGE. ESSENTIALLY WHAT THE DEFENDANT IS SAYING THAT THERE SHOULD BE NO EVIDENCE WHATSOEVER OF THE BURNING. I THINK CASE LAW---

THE COURT: WELL, NO, YOU CAN HAVE EVIDENCE OF THE BURNING IF THE EVIDENCE OF THE BURNING IN ANY WAY ASSISTS YOU IN PROVING HE COMMITTED MURDER. BUT IN THAT REGARD, YOU CAN HAVE THAT. BUT YOU CAN'T HAVE EVIDENCE OF BURNING JUST TO SHOW AGGRAVATION IN THE SENSE OF WHAT -- THAT HE DID THIS AND HE'S A BAD PERSON. HE IS WORSE; JUST SOMEBODY THAT

KILLED SOMEONE BECAUSE THEY DID THAT.

BUT IF YOU WOULD NEED EVIDENCE OF THE BURNING BECAUSE IT IN ANY WAY PROVES, HELPS YOU PROVE YOUR CASE THAT HE COMMITTED THE MURDER, THEN YOU CAN USE THAT. NOW AS TO THE TRIAL JUDGE, MR. BLAKE IS CORRECT, A LOT OF THIS CANNOT BE DEALT WITH UNTIL YOU GET TO TRIAL AND HE MAKES AN EFFORT TO INTRODUCE IT. SO BUT AS FAR AS ANYTHING HE WANTS TO INTRODUCE, IF IT'S ONLY INVOLVED WITH THE DESECRATION AND IT HAS NO CONNECTION WITH HIM -- HIS EFFORTS TO PROVE MURDER, THEN I AM SURE A TRIAL JUDGE WOULD NOT PERMIT. BUT THAT IS SOMETHING THAT NEEDS TO BE ADDRESSED AT TRIAL.

WHAT IS THE OTHER MOTION?

MR. CROW: ONE OTHER MOTION, YOUR HONOR. IT'S A MOTION TO EXCLUDE PHOTOGRAPHS OF THE VICTIM'S BODY.

THE COURT: ONCE AGAIN, THAT IS A TRIAL MATTER. I THINK THE TRIAL JUDGE AT THE TRIAL NEEDS TO LOOK AT IT AND MAKE A DECISION AS TO WHICH PHOTOGRAPHS THE TRIAL JUDGE WOULD PERMIT. IT WOULD UNFAIR FOR ME TO HEREBY LIMIT, SINCE I MAY NOT BE THE TRIAL JUDGE; FOR ME TO LIMIT WHAT THAT TRIAL JUDGE CAN INTRODUCE IN THE CASE. SO I'M NOT GOING TO RULE ON THAT.

MR. CROW: AND ALSO HE HAS A MOTION TO INTERVIEW THE STATE'S EXPERT WITNESS, WHICH IS THE PATHOLOGIST.

MR. BLAKE: WELL THERE ARE SEVERAL STATE WITNESSES, YOUR HONOR, THAT INCLUDE---

THE COURT: HE'S TALKING ABOUT THE PATHOLOGIST.

MR. CROW: HE WANTS TO BE TRANSPORTED TO CHARLESTON TO INTERVIEW THIS PATHOLOGIST, ISN'T THAT CORRECT?

THE DEFENDANT: THAT'S CORRECT.

MR. BLAKE: WELL LET ME FIRST INTERJECT, THE PATHOLOGIST IS IN FLORIDA. THE WAY THEY DO IT AT MUSC IS THROUGH A FELLOWSHIP PROGRAM. THE DOCTOR PERFORMING THE AUTOPSY IS JUST THERE FOR, YOU KNOW, A YEAR OR TWO YEAR STINT. SHE'S IN FLORIDA, AND SHE WILL BE HERE FOR THE TRIAL.

THE DEFENDANT: WELL, YOUR HONOR,---

THE COURT: WHAT PARTICULAR REASON IS THERE? AND WHAT ISSUE IS THERE AND HE'S CONCERNED WITH THE PATHOLOGIST?

MR. CROW: HE'S GOING TO HAVE TO ADDRESS THAT. IT'S ABOUT WHAT'S IN THE PATHOLOGIST'S REPORT.

THE DEFENDANT: IT'S NOT ABOUT WHAT'S IN THE ACTUAL AUTOPSY REPORT, BECAUSE I HAVE RECEIVED A COPY OF THE AUTOPSY REPORT. BUT IN SEVERAL HEARINGS, AND I DO HAVE A TRANSCRIPT. AND MR. BLAKE HAS INDICATED THAT THE PATHOLOGIST WILL BE DEVIATED FROM THE AUTOPSY REPORT IN TRIAL. AND I HAVEN'T RECEIVED THE REPORT TO SHOW THESE DEVIATIONS. I WOULD JUST LIKE TO KNOW WHY WOULD THE PATHOLOGIST DO AN AUTOPSY REPORT THEN SAY SOMETHING TOTALLY DIFFERENT FROM THE REPORT AT TRIAL?

THE COURT: WELL I'LL TELL YOU RIGHT NOW, THE

PATHOLOGIST IS NOT GOING TO BE PERMITTED TO SAY ANYTHING AT TRIAL THAT YOU DON'T KNOW ABOUT, UNLESS MR. BLAKE DOESN'T KNOW ABOUT IT EITHER. SO IF THE PATHOLOGIST HAS INFORMATION THAT HE OR SHE HAS PROVIDED TO THE STATE, AND THE STATE HASN'T PROVIDED IT TO YOU, THAT WOULD NOT BE ADMISSIBLE AT TRIAL.

THE DEFENDANT: BECAUSE, YOUR HONOR, IF I MAY BE ALLOWED TO SPEAK AGAIN. THE AUTOPSY REPORT STATES THAT THE CAUSE OF DEATH IS BLUNT FORCE TRAUMA TO THE HEAD. IT LEAVES NO LEEWAY AS TO OTHER POSSIBLE CAUSES OF DEATH. BUT WHEN I OBJECTED TO SOME OF THE TERMINOLOGY IN THE MURDER INDICTMENT, I OBJECTED TO THE INCLUSION OF BURNING BEING INCLUDED AS A POSSIBLE CAUSE OF DEATH. BECAUSE AS YOU KNOW, I HAVE ALREADY BEEN CONVICTED OF DESECRATION OF HUMAN REMAINS FOR THE ACTUAL BURNING.

SO IT'S ALREADY BEEN ESTABLISHED, BECAUSE 16-17-600 SAYS THAT IT MUST BE DESTROYING THE REMAINS OF A DECEASED HUMAN BEING. SO IT'S ALREADY BEEN ESTABLISHED THAT THE VICTIM WAS DECEASED BEFORE THE ACTUAL BURNING OCCURRED. SO WHEN I OBJECTED TO THE TERMINOLOGY OF THE MURDER INDICTMENT, THAT IS ACTUALLY INCLUDING BURNING AS A POSSIBLE CAUSE OF DEATH. MR. BLAKE INDICATED THAT THE PATHOLOGIST---

THE COURT: WHAT EVIDENCE DO YOU HAVE BURNING WAS THE CAUSE OF DEATH?

THE DEFENDANT: EXCUSE ME?

THE COURT: WHAT EVIDENCE DO YOU HAVE THAT BURNING WAS A CAUSE OF DEATH?

THE DEFENDANT: I HAVE NONE. BUT THAT IS -- THAT IS ON THE---

THE COURT: SO THEN WHAT ARE YOU DISCUSSING IT WITH ME FOR?

THE DEFENDANT: THAT IS ON THE INDICTMENT FOR MURDER.

THE COURT: WHAT IS?

THE DEFENDANT: BURNING AS A -- I HAVE AMENDED---

THE COURT: ARE YOU CHARGING HIM WITH BURNING THE PERSON BY KILLING THEM, MR. BLAKE?

MR. BLAKE: STRIKING, PUSHING OR BURNING.

THE COURT: MR. BLAKE, HOW ARE YOU GOING -- HOW CAN YOU PROVE HE KILLED A PERSON BY BURNING IF HE'S ALREADY BEEN CONVICTED OF -- ARE Y'ALL SAYING THAT HE BURNED SOMEONE AFTER THEY DIED?

THE DEFENDANT: THAT IS MY CONCERN, YOUR HONOR.

MR. BLAKE: THAT IS VERY ASTUTE AND TRICKY OF MR. STEWART; HOWEVER,---

THE COURT: IT'S NOT TRICKY, MR. BLAKE.

MR. BLAKE: WAIT A MINUTE, YOUR HONOR, MAY I?

THE COURT: DON'T YOU TELL ME WAIT A MINUTE, SIR. IT'S NOT TRICKY. IT'S NOT PURPOSEFULLY TRICKY. ALL I AM SAYING IS, THAT'S AN INTERESTING POINT, SO LET'S DISCUSS IT.

MR. BLAKE: IT IS AN INTERESTING POINT. AND THE

PATHOLOGIST SAID THERE IS A POSSIBILITY THAT THE DEATH OCCURRED THROUGH THE BURNING. FIRST OF ALL, HE'S ALWAYS REFERRING TO THE COVER SHEET THAT SAYS, PROBABLE CAUSE OF DEATH; PROBABLE CAUSE OF DEATH: BLUNT FORCE TRAUMA OF THE HEAD. THEY HAVE NO IDEA WHEN THIS PERSON ACTUALLY DIED.

AS, YOUR HONOR, I'M SURE KNOWS, PATHOLOGISTS CANNOT LIKE ON TV SAY IT WAS 4:32 A.M.

THE COURT: LET ME ASK YOU THIS, THOUGH. IS IT YOUR BELIEF THAT EVEN IF THIS JURY FROM THE EVIDENCE, IF THE JURY FINDS AND THE JURY HAS A RIGHT TO FIND. THE JURY FINDS THAT THE VICTIM DIED AS A RESULT OF BURNING, THEN WOULDN'T THAT -- HOW ARE YOU GOING TO COME BACK TO A JEOPARDY QUESTION THAT HE'S ALREADY PLED GUILTY TO BURNING A DECEASED PERSON? SO THEREFORE, THE STATE HAS BASICALLY COME TO THE CONCLUSION THAT THE PERSON WAS DEAD WHEN THEY WERE BURNED. BECAUSE YOU CAN'T BE CONVICTED OF BURNING A LIVE PERSON THROUGH THAT STATUTE, IT HAS GOT TO BE A DECEASED PERSON.

AND IF HE'S ALREADY BEEN CONVICTED OF THAT, WOULD THAT NOT BE JEOPARDY IN A WAY AS FAR AS THE BURNING? I MEAN THAT'S AN INTERESTING POINT THAT YOU MIGHT BETTER START LOOKING AT.

MR. BLAKE: IT IS A VERY INTERESTING---

THE COURT: I WON'T LOOK AT IT AND RULE ON IT TODAY, BUT IT IS SOMETHING YOU MIGHT WANT TO START LOOKING AT.

MR. BLAKE: IT IS CERTAINLY AN INTERESTING POINT.

MR. STEWART, I SAID TRICKY BECAUSE WERE IN THE MIDDLE OF DOING AN ARRAIGNMENT AND MR. STEWART PLED GUILTY TO THIS CHARGE. THE FACTS HAVEN'T YET BEEN DETERMINED AS TO THE MURDER. THAT'S FOR THE JURY TO DO, AND THAT'S FOR EXPERT WITNESSES TO DISCUSS. AND IF WE GET TO THAT POINT, WELL THEN WE WILL HAVE TO DEAL WITH THAT. BUT WE DON'T KNOW WHAT THE CAUSE OF DEATH IS RIGHT NOW.

AND IF IN FACT THE PERSON WAS NOT DEAD WHEN THE BURNING OCCURRED, THEN IT SOUNDS LIKE SOMETHING YOU DO WITH THAT CASE. BUT WE STILL NEED TO GO FORWARD ON THE MURDER, AND THERE ARE MANY OPEN FACTS IN THERE.

THE COURT: I MEAN IT'S SOMETHING THAT I FIND VERY INTERESTING. NOW THE ONLY THING IS NOW, THAT'S WHAT I DON'T UNDERSTAND, SIR, WHY DO YOU NOT WISH AN ATTORNEY TO BE REPRESENTING YOU SO THE ATTORNEY CAN REQUEST FUNDS FROM THE COURT TO GET ANOTHER PATHOLOGIST TO LOOK AT THIS?

THE DEFENDANT: YOUR HONOR, SIR, I HAVE THE AUTOPSY REPORT. BUT THE THING THAT I WAS REFERRING TO IS ON THE LAST PAGE WHEN IT HAS THE OPINION OF THE PATHOLOGIST. IT SAYS THIS OPINION WAS REACHED IN LIGHT OF HISTORICAL INFORMATION, MICROSCOPIC AND TOXICOLOGICAL AUTOPSY FINDINGS. AND IT HAS NOTHING. IT SAYS THE OPINION OF THE PROSECUTORS THAT DECEDENT, KENNETH ALLEN, DIED AS A RESULT OF BLUNT FORCE TRAUMA TO THE HEAD. IT HAS NO POSSIBILITY LISTING THAT THE BURNING CAUSED DEATH.

THE COURT: YOU DIDN'T ANSWER MY QUESTION.

THE DEFENDANT: SIR?

THE COURT: I ASKED YOU, ARE YOU SURE YOU DON'T WANT AN ATTORNEY TO REPRESENT YOU, WHO COULD NOT ONLY INTERVIEW THIS PATHOLOGIST, BUT SEEK OUT ANOTHER PATHOLOGIST?

THE DEFENDANT: I DON'T WANT AN ATTORNEY REPRESENTING ME.

THE COURT: HERE IS MY DECISION. MR. BLAKE, WHEN DO YOU PLAN TO TRY THIS CASE? HAVE YOU SET A TIME YET?

MR. BLAKE: YOUR HONOR, WE HAD IT SET FOR LAST TERM AND MR. STEWART HAD IT CONTINUED; I AM NOT REALLY SURE RIGHT AT THIS POINT. ONE THING I WANTED TO MAKE THE DEFENDANT AWARE OF, THERE WAS A SCHMERBER ORDER SIGNED BACK ON JULY 17TH. WE HAD A HEARING. WE PLAN TO TAKE SOME BLOOD TODAY WHILE MR. STEWART IS AVAILABLE OR SOME DNA TESTING RELATIVE TO THE CRIME SCENE.

THE COURT: OKAY.

MR. BLAKE: I CAN'T CONTROL HOW LONG THAT'S GOING TO TAKE.

THE COURT: WELL HERE'S WHAT I WANT TO DO THOUGH. I THINK AT LEAST 3 WEEKS BEFORE TRIAL, YOU NEED TO MAKE THE PATHOLOGIST AVAILABLE TO HIM BY MAKING SOME ARRANGEMENTS TO GET THE PATHOLOGIST BACK HERE FOR HIM TO INTERVIEW THE PATHOLOGIST. I AM NOT GOING TO HAVE HIM TAKEN TO FLORIDA OR WHEREVER ELSE. WHERE ARE YOU HOUSED?

THE DEFENDANT: LEE COUNTY.

THE COURT: WELL YOU CAN HAVE THE PATHOLOGIST BROUGHT HERE. THEY CAN BRING HIM HERE TO INTERVIEW THE PATHOLOGIST.

MR. BLAKE: YOUR HONOR, COULD THAT BE TELEPHONICALLY?

THE COURT: DO YOU WANT DO IT TELEPHONICALLY?

THE DEFENDANT: NO, SIR.

THE COURT: I THINK HE HAS A RIGHT TO LOOK AT THE PATHOLOGIST. I MEAN, JUST MAKE SOME ARRANGEMENTS TO PAY TO HAVE THE PATHOLOGIST TO COME HERE 3 WEEKS BEFORE -- AT LEAST 3 WEEKS BEFORE TRIAL. THEN IF WANTS TO GO FROM THERE. I WILL BE GLAD TO SIGN AN ORDER SO THAT CAN BE DONE. AND YOU CAN USUALLY GET COUNTY FUNDS OR STATE FUNDS OR WHATEVER. BUT I DO THINK HE HAS THE RIGHT TO INTERVIEW THE PATHOLOGIST.

MR. CROW: ONE OTHER MOTION HE TOLD ME ABOUT. HE WANTS TO INTERVIEW ALL OF THE STATE'S WITNESSES---

THE COURT: THAT'S DENIED.

MR. CROW: ---IN PERSON.

THE COURT: THAT'S DENIED. I'LL MAKE SURE RULE 5 IS COMPLIED WITH. BUT JUST SOME EXPANSIVE DECISION REQUEST LIKE THAT, RULE 5 DOESN'T REQUIRE THE STATE TO PROVIDE HIM EVERY WITNESS.

MR. CROW: BUT HE CAN FILE -- A RULE 5 AND A BRADY MOTION WAS FILED ON THAT.

THE COURT: UNLESS YOU CONSENT TO THAT, MR. BLAKE.

MR. BLAKE: I DON'T THINK SO, YOUR HONOR.

THE COURT: SO THAT WOULD BE DENIED. I WILL ADDRESS ANY RULE 5 MATTERS.

MR. CROW: ANYTHING ELSE?

THE DEFENDANT: YOUR HONOR, SO THE PHOTOGRAPHS, I DO HAVE SOME PHOTOGRAPHS THAT MR. BLAKE DISCLOSED TO ME, BUT THEY'RE ONLY PHOTOCOPIES. AND I WOULD LIKE TO REQUEST THE ACTUAL COPIES OF THE PHOTOGRAPHS SHOWING THE EXACT LOCATION. I HAVE A PHOTOGRAPH SHOWING---

THE COURT: SIR, I WILL BE GLAD TO HAVE THEM GIVE YOU A COPY OF THE PHOTOGRAPH OR HAVE YOU BE ABLE TO LOOK AT PHOTOGRAPHS THEY HAVE. AND YOU CAN REQUEST A COPY OF ANYTHING THEY HAVE. SO AT SOME POINT AND TIME AFTER YOU GET THE BLOOD, SHOW HIM THE PHOTOGRAPHS; EVERY ONE OF THEM. WHATEVER ONES HE REQUESTS A COPY OF, IT DOESN'T COST BUT A DOLLAR OR SO TO COPY, GIVE HIM A COPY OF IT.

THE DEFENDANT: IS THERE ANY WAY I COULD BE TRANSPORTED TO THE CRIME SCENE?

THE COURT: NO, SIR. IF YOU WANT SOMEBODY TO TAKE THE PHOTOGRAPHS, YOU CAN.

THE DEFENDANT: SOMEBODY CAN TAKE PHOTOGRAPHS---

THE COURT: ASK SOMEBODY TO TAKE SOME PHOTOGRAPHS, YES. DON'T YOU HAVE FAMILY RIGHT THERE, THAT LIVES RIGHT THERE? I THOUGHT MR.----

THE DEFENDANT: YES, SIR.

THE COURT: ----BLAKE TOLD ME YOUR MOTHER AND OTHER FAMILY MEMBERS LIVE CLOSE BY HERE.

THE DEFENDANT: YES, SIR.

THE COURT: HAVE THEM TAKE ANY PHOTOGRAPHS YOU WANT. IF THAT'S NOT SUFFICIENT, THEN LET THE COURT KNOW.

THE DEFENDANT: YES, SIR.

THE COURT: OKAY.

MR. BLAKE: YOUR HONOR, ONE FINAL THING. MR. STEWART IS UNDER A SAFEKEEPING ORDER. HE WAS BROUGHT BACK TO THE JAIL ABOUT OH, 5 WEEKS AGO, 6 WEEKS AGO; I AM NOT SURE. BECAUSE INITIALLY YOUR ORDER STATED THAT HE NEEDED TO BE HERE PRIOR TO TRIAL. HE THEN HAD SOME MORE INCIDENTS, AND I THINK THEY COULDN'T GET HIM BACK IN HIS CELL; I DON'T KNOW THE DETAILS. SO HE IS NOW BACK AT LEE CORRECTIONAL. AND I GUESS I AM MAYBE PREMATURE, BUT WHAT DO WE DO ABOUT THE FACT THAT WHEN HE GETS HERE TO THE JAIL AND HE STARTS CAUSING PROBLEMS?

I KNOW HE NEEDS TO BE ABLE TO CONSULT WITH MR. CROW PRIOR TO TRIAL. I AM REALLY ASKING ABOUT THAT PERIOD---

THE COURT: TO ME---

MR. BLAKE: ---PRIOR TO TRIAL.

THE COURT: ---IT'S REALLY THAT SHORT PERIOD OF TIME BEFORE TRIAL. RIGHT NOW YOU DON'T HAVE A TRIAL SET. SO I THINK AT LEAST 10 DAYS PRIOR TO TRIAL YOU NEED TO BRING HIM HERE. IF HE GETS IN TO A DISCIPLINE PROBLEM, THEN I AM SURE

THEY CAN PUT HIM IN AN ISOLATED AREA OF THE COUNTY JAIL TO KEEP HIM ISOLATED. NOW DOES ANYBODY FROM THE COUNTY JAIL WANT TO TELL ME ABOUT PROBLEMS OR SOMETHING? YOU CAN'T HANDLE HIM BY PUTTING HIM IN AN ISOLATED AREA?

CAN EVANS NOT COOPERATE? OR IS THERE NO PLACE AT EVANS THEY CAN KEEP HIM?

MR. BLAKE: NO, THE WAY THE SYSTEM IS SET UP, THE ONLY SAFEKEEPING IS LEE COUNTY.

THE COURT: WHAT IS SAFEKEEPING?

MR. BLAKE: SAFEKEEPING MEANS THAT HE CAUSED PROBLEMS BEFORE; WAS THREATENING PEOPLE, WAS A DANGER. IT KIND OF GOES THROUGH THE GOVERNOR'S OFFICE, AND IT PUTS HIM IN SCDC PRIOR TO TRIAL.

THE COURT: CAPTAIN, LET ME ASK YOU ON THIS GENTLEMAN HERE. IS THERE ANY PROBLEM WITH Y'ALL KEEPING HIM THERE 10 DAYS BEFORE TRIAL? I MEAN, I KNOW HE'S CAUSING PROBLEMS AT THE COUNTY JAIL DOWN THERE.

THE CAPTAIN: THE PROBLEMS, I CAN CHECK INTO IT.

THE COURT: WELL AT ANY RATE, DON'T CHECK INTO IT. I'M GOING TO ORDER YOU TO KEEP HIM 10 DAYS; THAT THE STATE LET YOU KNOW 10 DAYS BEFORE THEY PLAN TO CALL HIM FOR TRIAL. AND OF COURSE, IF YOU PLAN, AND SOMETHING HAPPENS, THEN SOMETHING HAPPENS. BUT 10 DAYS BEFORE THEY CALL HIM FOR TRIAL, KEEP HIM AT THE MARLBORO COUNTY JAIL. IF YOU NEED TO KEEP HIM IN ISOLATION BECAUSE OF PROBLEMS THAT'S Y'ALLS

DECISION, NOT MINE. YOU DO WHAT YOU TO DO TO KEEP ORDER OBVIOUSLY, THAT'S UP TO Y'ALL.

THE CAPTAIN: YES, SIR.

THE COURT: BUT OBVIOUSLY Y'ALL HAVE LOCK DOWN AREAS---

THE CAPTAIN: YES, SIR.

THE COURT: ---AND ISOLATION AREAS AND ALL. SO IF HE CAUSES PROBLEMS, THEN Y'ALL MAKE THOSE DECISIONS TO DO THAT.

THE CAPTAIN: YES, SIR.

THE COURT: BUT 10 DAYS BEFORE TRIAL, I WANT HIM HERE FOR MR. CROW TO BE ABLE TO TALK TO.

THE DEFENDANT: YOUR HONOR,---

THE COURT: DO WE NEED TO DO A FORM ORDER OR WHAT, THAT SAYS HE WILL BE NOTIFIED 15 DAYS BEFORE TRIAL; THAT HE WILL BE ABLE TO LOOK AT ALL THE PHOTOGRAPHS THAT THE STATE HAS, AND THAT THE STATE WILL PROVIDE THE PATHOLOGIST AT LEAST THREE WEEKS BEFORE TRIAL FOR HIM TO INTERVIEW IN THIS? YOU KNOW, BRING THE PATHOLOGIST HERE TO MARLBORO COUNTY. AND YOU CAN BRING HIM HERE TO THE COURTHOUSE IF YOU WANT TO. OR YOU CAN MAKE ARRANGEMENTS IF SHE DOESN'T MIND GOING TO BISHOPVILLE OR EITHER LEE COUNTY AND GO THERE.

BUT I DON'T WANT HER TO FEEL UNCOMFORTABLE THOUGH. SHE MAY FEEL BETTER HERE. SO EITHER ONE YOU CHOOSE. THOSE ARE THE ONLY THINGS I AM RULING. EVERYTHING ELSE IS DENIED AT THIS TIME.

MR. CROW: YES, SIR. AND I WILL GET AN ORDER TO PAY

THIS LADY FOR THE TRANSCRIPT, BECAUSE MONTHS AGO YOU ORDERED IT.

THE COURT: RIGHT.

MR. CROW: THE TRANSCRIPT AND EVERYTHING.

THE COURT: SOMETHING ELSE, SIR?

THE DEFENDANT: COULD I BE GRANTED LEAVE TO RESUBMIT THIS DOUBLE JEOPARDY MOTION WHEN THE DOUBLE JEOPARDY---

THE COURT: IT'S NOT BEEN RULED UPON, SIR.

THE DEFENDANT: OKAY.

THE COURT: IT'S STILL THERE. HAVE YOU FILED IT?

THE DEFENDANT: YES, SIR.

THE COURT: IF IT'S FILED, IT HASN'T BEEN RULED UPON. BECAUSE THIS COURT DOESN'T HAVE ENOUGH INFORMATION TO RULE ON IT EITHER WAY RIGHT NOW. I'LL LET THAT BE CONTINUED; TO BE RULED UPON AT A FUTURE TIME.

---------END OF REQUESTED TRANSCRIPT OF RECORD-------

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR THE THIRD 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 GENERAL SESSIONS COURT ON DECEMBER 11, 2002, MARLBORO COUNTY, BENNETTSVILLE, S.C.

I, DO FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL, KIN NOR INTEREST TO ANY PARTY HERETO.

June 28, 2003
(DATE)

Margaret T. Sullivan

MARGARET T. SULLIVAN
CERTIFIED SHORTHAND REPORTER

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

02-GS-34-1918, 02-GS-34-1919

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON STEWART, JR.)

May 21, 2003
Marlboro, South Carolina

B E F O R E:

The Honorable JOHN M. MILLING, Judge.

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

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WADE CROW, Esquire
Stand-by Attorney for the Defendant

HATTIE O. GORDON
OFFICIAL COURT REPORTER
FOURTH JUDICIAL CIRCUIT
[redacted]
WALLACE, SC 29596-0597

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Colloquy	04			
Certificate of Reporter	18			

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
	NO EXHIBITS INTRODUCED		

MR. BLAKE: Your Honor, we're here on Indictment 2002-GS-34-1918 on the charge of desecration of human remains, which Mr. Stewart has already pled to, and 2002-GS-34-1919 the charge of murder.

Mr. Stewart, Mr. Weldon Stewart, Jr. is the defendant. He is appearing pro se. This was determined by Judge Lockemy in December of last year at a hearing in Dillon. At that time, Judge Lockemy stated that every other hearing with Mr. Stewart was to be transcribed, and we have been doing that.

I things there's maybe still two outstanding, but I'm here today because Mr. Stewart had some motions or things to discuss with the Court. And we do have a trial date set of July 28th; that is a date certain here in Marlboro County with Judge Burch.

And Mr. Stewart does have some motions now, and I believe he has some other motions which I'll take up with Judge Burch on June 2nd in Marlboro County.

THE COURT: Let me have the indictment number again for the murder charge.

MR. BLAKE: Yes, it's 2002-GS-34-1919.

THE COURT: That is the only charge pending against him?

MR. BLAKE: That's correct.

THE COURT: Mr. Stewart, is your name spelled S-T-E-W-A-R-T or S-T-U-A-R-T?

MR. STEWART: S-T-E-W-A-R-T.

THE COURT: And you have some motions?

MR. STEWART: Yes, sir.

THE COURT: Do you have them in written form that I can take a look at while I'm hearing your argument on it or have they not been filed in written form?

MR. STEWART: Haven't been filed in written form.

THE COURT: Very good. Then we will treat it then as a motion being made in open court. You may go forward.

WELDON STEWART, JR., first being duly sworn, testified as follows:

THE COURT: And, Mr. Stewart, what is your motion?

MR. STEWART: First, there have been some problems with preparation of my defense at Lee County. There have been some problems with the preparation of my defense at Lee County.

There are problems communicating with my witnesses because of the visitation schedule that they have set for safekeeping, and the thing is they don't really have anything in policy to address the issue of pro se defendants since all of the inmates within the Department of Corrections have already been convicted.

So I was seeking an order to have my visits with my legal -- with my witnesses considered to be legal visits so that I can get with my witnesses, meet with them, tell them different issues such a hear say and stuff like that, and develop their testimony.

MR. BLAKE: Your Honor, just to clarify, he's in the safekeeping unit at Lee. Obviously, that's for people who should be in jail, but they have been transferred to Lee Correctional before their trial.

THE COURT: Is anyone here on behalf of Department of Corrections from Lee?

MR. BLAKE: No, Your Honor. I did not know the substance of these. The State doesn't have an objection. Obviously, Mr. Stewart needs to prepare for trial. I thought Your Honor might be able to fashion some sort of reasonable ---

THE COURT: Well, I don't know what concerns are that Lee Correctional has about how to adjust your visitations. I can adjust, but I don't know what they are now.

So I don't know what to adjust them to. I can't have every visit made a legal visit. You know, it's not where every time somebody comes to visit with they would they necessarily be coming for purposes of discussing your trial preparation. How many witnesses at this time -- nobody's holding you to a particular number, but how many witnesses at this time do you think you will have in connection with your case? He's looking at you. You are who?

MS. STEWART: I'm his mother. I'm Virginia Stewart. I think maybe, at least, a guesstimation probably about ten.

THE COURT: Ten. And Mr. Stewart and/or Ms. Stewart, what days of the week would these witnesses likely be

available for discussions considering any work schedule? Is this something that needs to be done on the weekends, during the week or ---

MS. STEWART: Some need to be done during the weekend because of the fact people have jobs, but then there are some who are not employed. I'd say at least three or four not employed, so I don't know.

MR. BLAKE: Judge, could I ask a question?

THE COURT: Yes.

MR. BLAKE: When is the regular visitation for you?

MR. STEWART: The regular visitation is set up so that Level 3 -- they have different custody levels, and Level 3 is the highest that you can get. Level 3 has visits twice a month on the weekends.

THE COURT: And how long can you visit at a time?

MR. STEWART: Two hours once they're on your approved visitation list. You got to fill out a form to be approved, and I originally, the request that I'm making today, I originally made this request with the major whose over the Security Management Unit where I'm housed at Lee County.

And her only concerns about it were that policy doesn't cover this, so she said that the only way she could accommodate me would be through a court order.

MR. BLAKE: Is there currently a number -- a restriction on how many people can be on that list?

MR. STEWART: It's not. I think it may be 20. I'm not sure.

MR. BLAKE: So it's a large number?

MS. STEWART: There is a restriction on the number of people that can visit at any given time. There can only be two persons per visit.

THE COURT: And with him at any one time?

MS. STEWART: Now, that's what they're telling us. Not as far as a court order, but when we go to visit, it's like my husband and myself. My daughter is on there, but she can't visit with us. It's me and my daughter or me and him.

THE COURT: That's probably something in connection with security reasons there. Is there a process that they go through once you have given a list of individuals to get them as approved individuals?

MR. STEWART: There was a form they have to fill out to -- for them giving them permission to check their background for felonies and stuff of that nature, and they send that off, I think, to Charleston.

THE COURT: Do you know if any of these proposed witnesses are going to have felony backgrounds?

MR. STEWART: None that I know of.

MS. STEWART: None that I'm aware of, Your Honor.

THE COURT: Court reporter says, Ms. Stewart, you're going to have to speak louder. Why don't you come on down and

join the rest of the crowd. There you go. That will be fine.

MR. STEWART: From what Major Hughes told me, that it would not need to be -- the form would not need to be sent off if I could secure a court order that she would speed the process up for my witnesses being approved for visitation.

THE COURT: Would you be able to sit down and write out the names of those people, those potential witnesses?

MS. STEWART: Do you want those today?

THE COURT: If you can get it to me before you left, yes.

MR. STEWART: I would be able to write out the ones we have at this time, but maybe some added on later.

THE COURT: Rather than have you go with those that could possibly, rather than having to come back and ask that there be additional names added, you know, that push came to shove and you found out a material witness, we could entertain that.

But I would want to have the names down knowing that there were going to be other three or four names as well, I'd rather have a large list and then you not call some of those witnesses than to have a small list and you need to come back.

Mr. Stewart, what I'm sort of thinking about is taking that list of individuals, putting those names in an order and providing that to the Department of Corrections at Lee Correctional Facility starting weekend of June 7th. That's Saturday.

Give you at least four hours on Saturday and four hours

on Sunday for you to talk with people who are on that list. That would be one, two, three, four, five, six weekends between now and you're probably coming back here for trial purposes, which would be 24 hours.

If you got ten witnesses, that would leave -- give you at least two hours of meeting time with each one of them. And I would think, based upon what you would normally anticipate to take place, the shorter witnesses, probably 30 minutes, would be sufficient. An hour to an hour and a half might be sufficient for longer witnesses.

That wouldn't interfere too badly with probably their operations over there, and you and your mother would have to work with getting particular people lined up for particular weekends and get them there.

I hesitate to say between the hours of such and such and such and such, and I'm not sure how that would fit in with witnesses. If I put down between the hours of 10:00 and 2:00, and you had witnesses who can't come until 4:00, then all of a sudden cause problems for them coming.

But I'll be glad to do that and see how that works. If you can get me that list, then I can try to get my law clerk to prepare an order that I can sign to that effect.

MS. STEWART: Thank you.

MR. BLAKE: Your Honor?

THE COURT: Yes.

MR. BLAKE: Other judges have stated that he should come back at least, the period is varied, but I'll say at least two weeks before trial and be hear at the Marlboro County Detention Center, so I would just ask that if in that order, you can include Marlboro County Detention Center since he will be preparing for trial there at the end, too.

THE COURT: The 20th of July would be ---

MR. BLAKE: It's actually the 28th.

THE COURT: --- would be a week a week before you trial date starts. Do you want to be back in Marlboro County for more than a week?

MR. STEWART: Maybe. Could I be brought back maybe ten days before trial?

THE COURT: All right. We can bring you back on the 18th. I'll have to make a little bit of a difference in that. That will cut it back more like five weeks that you would have between trial date that you would be at Lee Correctional.

And I'll put something in there about having access to witnesses or the witnesses going to Marlboro County individuals.

MR. STEWART: Some of them are from out of state.

THE COURT: All right. Are there other matters that you need to have brought before the Court's attention?

MR. STEWART: Yes, sir. I have asked the members of the Bennettsville Police Department if I could interview them, and

they have agreed to be interviewed by me. Is there any way that you can set a specific date for this to be done so I can prepare my cross-examinations?

THE COURT: Well, there are no -- there is no methodology, so to speak, such as depositions for taking information from witnesses in a criminal case. These witnesses can be compelled to come to trial.

If they volunteer to talk with you, they can do so, but if a witness says, "I don't want to talk with the defendant. I don't want to talk with the State," there is not a lot I can do about making them come.

If these witnesses are willing to come to -- how many people with the police department or law enforcement you have you want to talk to?

MR. STEWART: Lieutenant Boston, Detective Gurley, and Officer Crosland.

THE COURT: You can put their names down as potential witnesses in the case. If they'll come over to Lee Correctional to talk to you, that's fine. I can bring you back on July the 16th and put in there that the detention facilities here would provide you with the opportunity upon your return to talk with those officers.

MR. STEWART: Okay.

THE COURT: So that, you know, it may be that they are not in a position to go all the way up to Bishopville to talk

with you, but when you get housed here, that will be you still have some ten days before trial which offers you a chance to interview them.

MR. STEWART: Yes, sir.

THE COURT: Anything else?

MR. STEWART: It was a little dispute about the exact order -- this order, but in the December hearing, I made a motion in front of Judge Lockemy to interview the pathologist, and it was my understanding that his order was that I was to interview the pathologist at least 21 days prior to trial and Mr. Blake can ---

THE COURT: Do we have an order?

MR. BLAKE: I'm not sure if that order is -- I do believe that went on. I don't think the transcript has been transcribed yet. Has it? And I don't know about a written order. I certainly do remember that, and we will comply with that.

MR. CROW: The only ones that I have is the two transcripts, one Ms. McCall did and one lady from Sumter. All Ms. Hattie's have been turned in.

THE COURT: Mr. Blake, what would be your proposed methodology for bringing this about? Who is the pathologist?

MR. BLAKE: Well, it's a M.U.S.C. There were two pathologists. We may end up having the person from -- just coming from Charleston to here or wherever Mr. Stewart is and

meeting with them. I suggested ---

THE COURT: Or picking him up. The Marlboro County Sheriff's deputies would transport him.

MR. BLAKE: Exactly. I suggested doing it by telephone, and Mr. Stewart didn't want to do that.

THE COURT: All right. I'm putting in the order that the pathologist is to be transported to Lee Correctional or Lee or Mr. Stewart be transported to Charleston in order to accomplish that by July 7th, which would be 21 days before trial. Anything else?

MR. STEWART: Yes, sir. Just to ask for clarification. There was a Scrember Order secured by the State in, I think it was July to take blood and handwriting samples from myself. Blood was taken from me, I think it was March of this year, and I would just like some clarification as to why the blood was taken. Nothing was disclosed to me about anything having any blood on it.

THE COURT: Well, the order has been signed. The blood's been taken. Have you gotten the results of that?

MR. BLAKE: No, Your Honor. We have not gotten any results back from SLED yet. Certainly, as soon as I receive the report on that, I will give the copy to Mr. Stewart and that's just standard investigation in a case as serious as this.

THE COURT: Well, it's only standard to show it's

necessary, but I'm assuming that some judge signed a Scrember Order.

MR. BLAKE: Scrember Order has been signed, Your Honor.

THE COURT: Probably call SLED and see where that is for your benefit as well as Mr. Stewart's.

MR. BLAKE: Um-hum.

THE COURT: Okay. Anything else?

MR. STEWART: Last thing. I've raised this issue in previous hearings, but I would just like to raise it again for it to be on the record.

I feel that my murder indictment, Indictment No. 2002-GS-34-1919, and my desecration indictment, desecration of human remains, 2002-GS-34-1918, I feel that they tend to violate the double jeopardy clause due to the fact that the desecration of human remains indictment I'm passing up now is for the victim's body being burned after already being deceased, and the murder indictment has burning included as a possible cause of death.

And I think that tends to violate double jeopardy. I'm also passing that up.

MR. BLAKE: May I respond, Your Honor?

THE COURT: Sure.

MR. BLAKE: First of all, this issue has been addressed by Mr. Stewart before and answered.

Secondly, I certainly have had no advance notice of him

coming back and wanting to deal with double jeopardy issues.

Third, as Your Honor well knows, you can have one incident and several crimes arising from the same incident.

THE COURT: All right. The record will note your position, Mr. Stewart. Quite frankly, it's been ruled on by a trial judge already, and I do not consider it to be something proper for me to come up and rule upon unless there are some brand new grounds that are being asserted that perhaps not been previously asserted by you.

If you're going to the idea of double jeopardy, I do not find that these two indictments automatically constitute double jeopardy. My just have to see what there is in the way of proof in connection with the incident to determine what role, if any, the issue of double jeopardy may play.

You can kill somebody and then you can burn them up, but I understand what you're saying is the method that was employed in the murder. One of the allegations s that it was the burning, but sometimes two acts can constitute a -- or a single act can constitute two crimes.

With armed robbery, you can be guilty of the charge of armed robbery and you can also be guilty of the use of a deadly weapon in the commission of crime of violence, meaning you were armed so that pistol supports the charge of armed robbery, and the pistol supports the charge of possession of a weapon during a crime of violence.

So just on those grounds, I am going to decline your motion and find it has been ruled upon previously.

MR. STEWART: Sir, I make -- my motion for double jeopardy has never been ruled upon. It was continued for, I'm not sure when, but it was continued. Judge Lockemy didn't rule upon it, but the only reason I was addressing this issue today is to have it on the record.

THE COURT: And, Mr. Blake, what do you remember about Judge Lockemy's ruling?

MR. BLAKE: Your Honor, I frankly don't remember. We have the transcripts. This may be the eighth motion hearing we had in this case. I don't the exact number, and there have been a number of motions that the judge who heard it would say, "Well, let's wait for the actual trial of the case and let the trial judge decide this."

So I can't and I would say almost every judge in the circuit has dealt with the motion hearings so far, but I certainly can review the transcripts if you like.

THE COURT: No. All right. My order will specifically reflect that I am denying your motion to quash the indictment on the grounds that there was double jeopardy. Anything else?

MR. STEWART: No, sir.

THE COURT: Oki, doki. Thank you, Mr. Stewart.

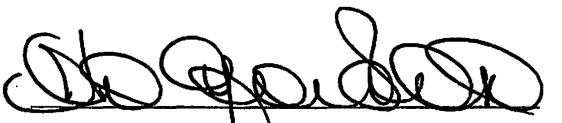
MR. BLAKE: Thank you, Judge.

*** END OF TRANSCRIPT OF RECORD ***

C E R T I F I C A T E

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth 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 Marlboro County, South Carolina, on the 21st day of May 2003.

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



Hattie O. Gordon

Circuit Court Reporter

May 28, 2003

Wallace, South Carolina

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT
ORIGINAL

Appeal from Marlboro County

John M. Milling, Circuit Court Judge

WELDON W. STEWART, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO

02-GS-34-1919

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON W. STEWART, JR.)

July 28 - August 1, 2003
Marlboro, South Carolina
VOLUME 1 OF 5

B E F O R E:

The Honorable PAUL M. BURCH, Judge and a jury.

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

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Attorney for the State

WELDON W. STEWART, JR., Pro Se Defendant

WADE R. CROW, Public Defender
Stand By Attorney for the Defendant

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JOHN ORTUNO, SLED
ROBERT ELVINGTON, SLED
AL STUCKEY, SLED
CECIL BRADSTREET, SLED

HATTIE O. GORDON
CIRCUIT COURT REPORTER
FOUR [redacted]
WALLACE, SC 29596-0597

State's Witnesses (continued)
DALLAS GURLEY, Bennettsville Police Department
JOHN BOSTON, Bennettsville Police Department
JOHN VALDALISO, Bennettsville Police Department
ALVIN WORSLEY, Bennettsville Police Department
SAMMY CROSSLAND, Bennettsville Police Department
DR. RUSSELL HARLEY, Medical University of South Carolina
SORAYA ALLEN, Victim's Mother
TONY ALLEN, Victim's Father
ANTHONY ALLEN, Victim's Brother
DR. RICHARD OWENS, Ophthalmologist
ROBERT MOORE
ANTHONY WATSON
DELORIS WATSON
EBONY WATSON
CLARISSA BRIDGES
STANTON WRIGHT, JR.
MONIQUE BRIGHT
ANDRENNA SUTHERLAND

Defense Witnesses
CARRIE HUGHES
MARY McLAUGHLIN
ANASTASIA LOVE
JAMES ELLERBE
DENEKA HARRINGTON
DALLAS GURLEY, Bennettsville Police Department
VIRGINIA STEWART, Defendant's Mother
WELDON STEWART, SR., Defendant's Father

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(COURT'S EXHIBIT NOS. 1 THROUGH 5 MARKED FOR IDENTIFICATION.)
(DEFENSE EXHIBIT NOS. 1 THROUGH 9 MARKED FOR IDENTIFICATION.)

THE COURT: Solicitor.

MR. BLAKE: The State calls the matter of Weldon Stewart, Jr. Indictment 2002-GS-34-1919. He is indicted for murder. We had a hearing back on July 15th 2003 in Chesterfield County in front of Your Honor. And at that time, the State moved and the Defense did not object to amending the indictment that we're going forward today on trial. I just want to put that on today's record.

The information for the indictment is that Weldon Stewart, Jr. in the County of Marlboro on or about December 6, 2000, did with malice aforethought kill one [redacted] Allen, to wit, by striking her and said [redacted] Allen did die as a proximate result thereof on or about the 6th day of December 2000. This is in violation of Section 16-310 of the Code of Laws of South Carolina as amended.

The State is ready to go forward for trial, but we do have some pre-trial matters. Some of which we can probably take care of this morning. Some of which we probably need to take care of this afternoon.

JACKSON V. DENNO HEARING

The first matter that needs to be heard by the Court has to do with Mr. Stewart's written statement given to law

enforcement on December 6, 2000. In other words, the Jackson v. Denno hearing to determine if the Miranda Rights were properly given and if this statement was given voluntarily. I have Detective, or I should say, Dallas Gurley with the Bennettsville Police Department and Lieutenant Boston, who were part of that interview. And they're available to give testimony on the voluntariness of that written statement.

THE COURT: All right. Well, they're going forward here, Mr. Stewart with the Jackson v. Denno hearing even though you haven't requested it. Do you wish for us to go forward or waive the Denno hearing?

MR. STEWART: I wish to go forward.

THE COURT: All right. You may proceed, Solicitor.

MR. BLAKE: Thank you, Your Honor. State calls Lieutenant Boston to the stand.

JOHN BOSTON, first being duly sworn, testified as follows:

CLERK OF COURT: Have a seat and state your full name, please.

A. John Boston.

DIRECT EXAMINATION BY MR. BLAKE

Q. Where do you work?

A. Bennettsville Police Department.

Q. And what's your position there?

A. I'm lieutenant over criminal narcotics

investigations.

Q. Did you participate in the investigation of this case involving [redacted] Allen, the victim, and Weldon Stewart, the defendant?

A. Yes, sir.

Q. Did you talk with the Defendant, Weldon Stewart, Jr., on December 6, 2000?

A. Yes, sir.

Q. Where did you first speak to him?

A. At the Bennettsville Police Department in my office.

Q. You did not talk to him at the scene?

A. No, sir.

Q. All right. So your first encounter with Mr. Stewart was on December 6th?

MR. BLAKE: May I approach?

THE COURT: Sure.

Q. (BY MR. BLAKE): The first document that I'm handing up, State's Exhibit 1, is entitled "Miranda Warning." Does that document look familiar to you?

A. Yes, sir.

Q. Did you give Mr. Stewart his Miranda Warning?

A. Detective Gurley gave them to him.

Q. But you were present when that happened?

A. Yes, sir.

Q. All right. And what time is noted on that document?

A. 1450, which would be 2:50 in the afternoon.

Q. And the Miranda Warning, was that given -- at what point in the discussion was the Miranda Warning given?

A. At the beginning, we brought him in and Donna talke with him before we took the statement.

Q. Was it before you actually talked to him that you did the Miranda Warning?

A. Yes, sir.

Q. Okay. And you say you took a statement?

A. Yes, sir.

Q. That's a written statement?

A. Yes, sir, a written statement.

Q. Okay. I'm just going to pause a moment to give the court reporter a chance to mark State's Exhibit 2. Handing up State's Exhibit No. 2. Is this the written document that you're talking about?

A. Yes, sir. This is Mr. Stewart's written statement that he gave on December 6, 2000.

Q. And you just told us that the Miranda Warnings were signed at 2:50 in the afternoon?

A. Yes, sir.

Q. And then, could you tell us what happened next in your discussions with Mr. Stewart?

A. Well, after he was Mirandized, we asked him what took place with this incident, and he was telling us what took

place. And after he told us what took place, we asked him was he willing to give us a written statement. And he said he would and gave us a written statement of what occurred on that particular night.

Q. All right. And when this interview took place, could you tell us what the room was like?

A. It's my office. It's a pretty good size office. I have my desk and a table what we use to interview people in.

Q. Is that -- the room is obviously smaller than the courtroom?

A. Yes, sir, smaller than the courtroom.

Q. About how big is it? 10x15 or bigger? Just an approximation.

A. Approximately about as big as the Solicitor's Office back there.

Q. All right. And were there people going in and out or was the door shut?

A. The door was closed.

Q. Door was closed. Who was in the room?

A. Myself, Detective Gurley and Mr. Stewart.

Q. And were you holstered? Did you have your gun?

A. Yes, sir.

Q. Okay. Was he handcuffed?

A. I think he was.

Q. Was he chained to the wall?

A. No, sir.
Q. Did Dallas Gurley have her gun?
A. Yes, sir.
Q. Did you threaten Mr. Stewart?
A. No, sir.
Q. Did you make promises to him, that of a lighter sentence if he was to talk to you?
A. No, sir.
Q. Did you ask him any questions at all?
A. Pertaining to the incident.
Q. Okay. What sort of questions did you ask?
A. What happened and you know, what took place and how did it happen.
Q. All right. Now, was he there at the police department because he was already under arrest?
A. No, sir. He wasn't under arrest at the time. He was taken there for questioning.
Q. Okay. So he was brought down to the station for questioning?
A. Yes, sir.
Q. Did he request to come down to the police station to talk to you?
A. No, sir.
Q. It was part of your investigation?
A. Yes, sir.

Q. And once you got him in the room, gave him his Miranda Warnings, did it take him a long time to give you an answer or talk to you or how did the conversation go?

A. No, sir. It didn't take a long time. He gave us maybe one or two different stories of the incident.

Q. All right. But there was no pressure on your part?

A. No, sir.

Q. You didn't hold a gun to his head?

A. No, sir.

Q. Did you beat him with any chains?

A. No, sir.

Q. Did you blindfold him?

A. No, sir.

Q. Was he in that room for two days?

A. No, sir.

Q. About how long?

A. Maybe a couple of hours.

Q. Did you tell him, "If you don't talk to us, you're not getting out of this room?"

A. No, sir.

Q. Did you give him any kind of threat like that?

A. No, sir.

Q. And were his parents there?

A. No, sir.

Q. Do you remember what his age was at that time?

A. I believe 18, I believe.

MR. BLAKE: Sorry, Your Honor, just one moment.

Q. (BY MR. BLAKE): This occurred back on December 6, 2000?

A. Yes, sir.

Q. And Court's Exhibit 3; is that correct?

COURT REPORTER: State's Exhibit 3.

Q. State's Exhibit 3 is the warrant in this case, and has his date of birth is in [redacted]. This is December 6, 2000, and I believe his birthday is [redacted] Did you have any reason to believe that he was a juvenile and needed his parents present during the questioning?

A. No, sir.

Q. Would you have allowed his parents to be there if that request had been made?

A. Well, that depends on what his age was then. If he was 17, his parents wouldn't have to be present if he was questioned. If he was under 16 and requested his parents during questioning, yes, we would have allowed his parents to be present.

Q. But he was clearly over 16?

A. Yes, sir.

Q. Do you recall if he requested that his parents be there?

A. Not that I recall.

Q. Would you have denied that request?

A. At his age, yes, sir.

Q. So with the Miranda Warnings, State's Exhibit 1, which does have his date of birth on there, [redacted] and appears to be -- not sure whose handwriting it is. You witnessed Ms. Gurley giving the Miranda Warning?

A. Yes, sir.

Q. You did not personally give them to him?

A. No, sir.

Q. As for the written statement, State's Exhibit No. 2, were you actually in the room when he did the written statement?

A. Yes, sir.

Q. Okay. And was there any sort of coercion on your part?

A. No, sir.

Q. Any sort of threats?

A. No, sir.

Q. Any sort of promises?

A. No, sir.

Q. Now, earlier you described the Miranda Warning. The next step was talking to Mr. Stewart?

A. Yes, sir.

Q. Did you take notes at that time?

A. I jotted down a few notes.

Q. Jotted down a few notes. Handing up State's Exhibit 4. Does this appear to be the notes that you took while Mr. Stewart was talking?

A. Yes, sir.

Q. Before he gave his written statement?

A. Yes, sir.

Q. You sure that's your notes?

A. Yes, sir.

Q. You sure that's your handwriting?

A. My handwriting and my name above the date.

Q. Now, just to get things straight, this was your notes you took prior to the written statement?

A. Yes, sir.

Q. Nothing had changed? Nothing dramatic had gone on? This was the same setting in the room with Ms. Gurley present?

A. Yes, sir.

Q. And asking him some general questions?

A. Yes, sir.

MR. BLAKE: State has no further questions for this witness.

THE COURT: Mr. Stewart, any questions for the witness?

CROSS-EXAMINATION BY MR. STEWART

Q. Lieutenant Boston, while you were interviewing me, I, Weldon Stewart, at no time indicated to you that I did not want to write a statement?

A. No, sir. You didn't indicate to us. You didn't indicate that to me. No, sir.

Q. I did not at any time indicate to you that I did not want to talk?

A. No, sir.

Q. How long did the interview with me last?

A. Probably a couple hours or so.

Q. Couple of hours. What was my demeanor during the interview? Was I nervous?

A. No, sir, not really.

Q. Did I maintain eye contact with yourself and other officers?

A. Most of the time, but not all the time.

Q. During the interview, it was only you and Detective Gurley present?

A. Yes, sir.

Q. No other officers were present at any time during the interview?

A. No, sir. Not to my knowledge it wasn't.

Q. Were you present during the entire interview?

A. To my knowledge, I was.

Q. Are you sure?

A. Yes, sir.

Q. And I at no time indicated to you that I did not want to write a statement?

A. No, sir, Mr. Stewart, not to my knowledge you didn't.

Q. Did you at any time tell me what to include on the second page of the statement?

A. Not that I recall.

Q. Did you at any time state to me that the first page of my statement was not enough and that I needed to add more?

A. No, sir, I didn't tell you that.

Q. You deny making that statement?

A. Yes, sir. I don't recall telling you that.

Q. Did you at any time after my interview take me back to the scene for any reason, [redacted]

A. Not that I recall.

Q. Where did I go after my interview?

A. To my knowledge, you went to the Marlboro County Detention Center.

Q. And I was not under arrest while I was being interviewed by the Bennettsville Police?

A. Not in the beginning, no, sir, because I had to obtain a warrant.

Q. When was I placed under arrest?

A. After I obtained the warrant and after your statement.

Q. When did you obtain the warrant?

A. After the statement.

Q. Immediately after the statement?

A. Yes.

Q. Thank you.

MR. BLAKE: That's all the State has for this witness for this hearing.

THE COURT: You may step down.

MR. BLAKE: State calls Detective Gurley to the stand.

DALLAS GURLEY, first being duly sworn, testified as follows:

CLERK OF COURT: Have a seat and state your full name.

A. Dallas Gurley.

DIRECT EXAMINATION BY MR. BLAKE

Q. And where do you work?

A. Bennettsville Police Department.

Q. And where were you working back on December 6, 2000?

A. Bennettsville Police Department.

Q. And it's true that you're the chief investigating officer on this particular case?

A. Yes, sir.

Q. Did you go out to the scene prior to talking to Mr. Stewart at the police department?

A. Yes.

Q. Did you see Mr. Stewart out at the scene?

MR. CROW: Could she cut the microphone on so we can hear better?

CLERK OF COURT: I need to put that on record. The P.A. system was blown up week before last, and they have not fixed it.

THE COURT: Everybody needs to speak up.

Q. Did you see Mr. Stewart at the scene prior to the interview with him at the police department?

A. Yes.

Q. Did you talk with him at the scene?

A. No, I didn't.

Q. Did you take Mr. Stewart back to the scene after the interview?

A. No.

Q. Do you know if anybody did?

A. I'm not for certain.

Q. Well, what we're dealing with here today is the written statement that Mr. Stewart gave. Handing up State's Exhibit 1, the Miranda Warnings. Did you personally give those Miranda Warnings to Mr. Stewart?

A. Yes.

Q. Did you read them to him?

A. Yes.

Q. Do you know if he knows how to read and write and all that good stuff?

A. Yes.

Q. Okay. And I notice there are some initials there in

the left-hand column. What do those initials say?

A. "W.S."

Q. And who initialed that?

A. Weldon.

Q. Mr. Stewart ---

A. Yes.

Q. --- the Defendant?

A. Yes.

Q. And there is an initial after each Miranda Warning. There is a total of five of them; is that correct?

A. Correct.

Q. Now, did you just hand him a piece of paper and say, "Sign this?" Or did you actually read them to him?

A. I advised him of his rights, and then I asked him did he understand his rights as I read them to him. He stated he did. I told him to read each one back to me, and then initial each one after he's read it to make sure I knew he read and he understood them.

Q. In reading from State's Exhibit 1, underneath the five Miranda Warnings, it says, "This is to certify that the above rights have been explained to me and that I understand the rights as they have been explained to me." Did Mr. Stewart sign that?

A. Yes, he did.

Q. Were you present when he signed it?

A. Yes.
Q. Did you force him to sign it?
A. No, I did not.
Q. Did you promise him something?
A. No.
Q. No threats? No coercion? No promises?
A. No, sir.
Q. He signed that Miranda Warnings freely and voluntarily?
A. Yes, he did.
Q. And to the best of your understanding, he understood his right to remain silent, his right for an attorney?
A. Yes.
Q. He did understand those rights?
A. Yes.
Q. But he proceeded to talk to you?
A. Yes.
Q. Now, in this conversation where Lieutenant Boston was in the room, you were in the room, Mr. Stewart was in the room, who was he actually talking to?
A. He was talking to both of us. I think Lieutenant Boston may have asked most of the questions.
Q. Did you take written notes at that interview?
A. No, I didn't.
Q. Okay. Were you aware of Lieutenant Boston taking

notes?

A. No, I wasn't aware of it. He just usually takes notes.

Q. And then after talking with Mr. Stewart, he then gave you a written statement?

A. Yes.

Q. State's Exhibit 2. Handing that up to you. Does that look like a reasonable facsimile of his written statement?

A. Yes, it does.

Q. And were there any promises made if he gave you that written statement?

A. No.

Q. Did he want to talk to you?

A. Yes.

Q. Did he sign that written statement?

A. Yes, he did.

Q. Okay. And what does that say at the bottom, above his signature. Page 2 or Page 1, wherever his signature is?

A. Where it has the date?

MR. BLAKE: Approaching the witness.

Q. (BY MR. BLAKE): And reading from State's Exhibit No. 2, typewritten on it, "I have read each page of the statement consisting of two pages, 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."

In looking at Page 1, are there any corrections on that? Are there any places where something's crossed out, and there is a W.S. initial on there?

A. Yes, it is.

Q. Several times?

A. Yes.

Q. Now, was that done because you told him to do that?

A. No. Only thing I told him was that any place that he made a mistake at, he just needed to initial beside it.

Q. All right. But who wrote that statement?

A. The Defendant.

Q. Mr. Stewart. You didn't write the statement for him?

A. No, sir.

Q. He wrote it and signed it?

A. Yes.

Q. Freely and voluntarily?

A. Yes.

MR. BLAKE: No further questions for this witness.

THE COURT: Mr. Stewart, do you have any questions of this witness?

CROSS-EXAMINATION BY MR. STEWART

Q. Detective Gurley, you were present while I was being interviewed by the Bennettsville Police Department?

A. Yes, I was.
Q. Who else was present?
A. Lieutenant Boston.
Q. Were you present the entire time the interview was being conducted?
A. I probably stepped out. I normally will step out. If I'm doing something, I could have stepped out. I'm not certain.
Q. You said you did not notice Lieutenant Boston was taking notes while the interview was being taken?
A. No. My focus was on you at the time.
Q. Where were you sitting?
A. That was two and a half years ago. I probably was sitting at the side of the table closest to the door.
Q. Do you remember where Lieutenant Boston was sitting?
A. Probably was sitting at his desk at the right of me, which would have been the head of the table.
Q. He was in the room with us?
A. Yes, he was.
Q. How big is the room?
A. An average size room.
Q. What do you consider average?
A. I don't know. I'm not a constructionist. I don't get into what size a room is.
Q. Were there any separate compartments or anything in

the room or was it all just one room?

A. It's all one room.

Q. So we were all in the same area?

A. Yes.

Q. But you did not see Lieutenant Boston taking any notes?

A. No, I did not.

Q. At no time during the interview?

A. No, I wasn't paying attention to that.

Q. So we were all sitting in the same room; myself, you, Lieutenant Boston, small size room, but you did not notice him taking any notes?

A. No. I mean he probably was writing, but I don't know if he was taking notes for this right here.

Q. While you were conducting the interview, you said your focus was on me, is that correct?

A. Correct.

Q. Did you physically inspect face, neck, hands, things like that while you were conducting the interview?

A. I probably did a visual overview, but not come close to you and do a close-up.

Q. Is the answer to that question yes?

A. Yes, I saw it.

Q. Did you see any scratches, bruises, cuts?

A. No, I did not.

Q. Not on my face?

A. No.

Q. Not on my neck?

A. No.

Q. Not on my hands?

A. No.

Q. Thank you.

MR. BLAKE: Your Honor, that's all for this witness. The State would move at this point to get a preliminary hearing on the voluntariness of Mr. Stewart's written statement as well as the statement, in essence, that was taken by Mr. -- Lieutenant Boston's notes.

THE COURT: Anything further from the Defense? Anything else?

MR. STEWART: No, sir.

MR. BLAKE: Your Honor, we have one more.

THE COURT: Just a second. We don't have a statement child situation here, but let me go ahead and find on the record that it appears from the evidence presented on Miranda, all requirements were met. This being a written waiver. Also that it appears to the Court that the Defendant knowingly and intelligently waived his rights and gave the statements.

And I don't see any duress or any intimidation here. It appears that they were voluntary. So I'm going to allow them in or allow those two particular ones in up to this point.

Solicitor.

MR. BLAKE: Thank you, Judge. State calls John Valdaliso.

JOHN VALDALISO, first being duly sworn, testified as follows:

CLERK OF COURT: Come right here and state your full name.

DIRECT EXAMINATION BY MR. BLAKE

Q. Please state your full name for the record.

A. John Valdaliso.

Q. Could you spell your last name for the court reporter?

A. V-A-L-D-A-L-I-S-O.

Q. And where do you work?

A. Bennettsville Police Department.

Q. Where were you working back on December 6, 2000?

A. Bennettsville Police Department.

Q. And did you go to the crime scene?

A. Yes, sir.

Q. All right. Did you talk to the defendant when you were at the crime scene?

A. Yes, sir.

Q. Where was he?

A. In the back of a patrol car.

MR. STEWART: Your Honor, sir, if the witness will speak

up. My stand by counsel cannot hear what he's saying.

THE COURT: Speak a little louder, please.

Q. (BY MR. BLAKE): So he was in a patrol car?

A. Yes, sir.

Q. And you spoke to him?

A. Yes, sir.

Q. Who -- did he approach you? Did you approach him? How did the conversation get started?

A. After I had arrived at the scene, the other officers stated that the subject that had called was in the back of the patrol car. When I walked over to the back of the patrol car, the subject that he needed to speak to me -- that he wanted to talk to me.

Q. And you did have a conversation with him?

A. Yes, sir.

Q. About how long did that conversation -- how long was it?

A. Just a few minutes long, maybe five minutes, six minutes long.

Q. All right. And what did you do after that conversation?

A. I waited for Lieutenant Boston. Lieutenant Boston had arrived. I went and talked to Lieutenant Boston. Several other officers had arrived. I stayed there for a brief amount of time, and I left and went to the police department.

Q. And what did you do there?

A. I went to my office and I wrote down what Mr. Stewart had told me.

Q. Passing up State's Exhibit 5. Does that look familiar?

A. Yes, sir.

Q. Now you said "wrote?"

A. Typed it out on the computer.

Q. Okay. So you entered it into the computer?

A. Yes, sir, typed it up.

Q. Within about what kind of time from when you spoke to Mr. Stewart?

A. No more than about 30 minutes.

Q. All right. And that -- you went back to the police station specifically to do that?

A. Yes, sir.

Q. Now, Mr. Stewart was in custody at this time; is that correct?

A. He was in the back of the patrol car and before he spoke to me I read him his Miranda Warnings because I told him maybe he needed to wait until he got to the police department to speak to Lieutenant Boston.

Q. How did you read him his Miranda Rights?

A. I had a Miranda Rights Card in my pocket, my wallet, and I read it off of the card.

Q. Could you just give us a more literal translation of how the conversation began? What he said to you.

A. He just stated that he needed to tell me what had happened.

Q. This was prior to you asking him any questions?

A. Yes, sir.

MR. BLAKE: No further questions of this witness.

MR. STEWART: Sir, I have no questions for this witness.

THE COURT: You may step down. Thank you.

MR. BLAKE: Your Honor, at this time the State would simply move for a preliminary finding that this was a free and voluntary statement given with Miranda Warnings.

THE COURT: Anything further from the Defense?

MR. STEWART: No, sir.

THE COURT: Let me take a look at the statement. All right. Once again, this is not -- doesn't trigger any requirements by State for a child, but I find on the record that it appears to the Court Miranda Warnings were given before questioning and that the statements are admissible. It was voluntarily given. I don't see any coercion or duress or intimidation or anything like that.

MR. BLAKE: Your Honor, that would be it for the Jackson v. Denno.

THE COURT: What time does the jury come in?

MR. BLAKE: Comes in at 2:15. I guess they get started

at 2:30, and we do have other motions, but, of course, we can do those later this afternoon.

THE COURT: Okay. The next thing will be the jury coming in. We'll have to do a roll call to see who's here. Then we'll have to go through qualifications.

Mr. Stewart, let me take just a brief time here -- well, we'll take whatever time we need as long as with what you're satisfied. You're right here on the brink of trial, and I know that the other judges, and I think even I went into it somewhat when I spoke with you before.

You still wish to go forward representing yourself with the understanding that you do have a right to have counsel?

MR. STEWART: Yes, sir.

THE COURT: And you wish at this time to go forward with this trial and represent yourself?

MR. STEWART: Yes, sir.

THE COURT: All right. So I'll be clear on the record and make sure I'm satisfied with what I'm doing here, did Judge Milling or Judge Baxley or one of the other judges go over all that with you about trial rights?

MR. STEWART: Judge Lockemy.

THE COURT: Judge Lockemy.

MR. STEWART: About representing myself?

THE COURT: Yes, sir.

MR. STEWART: Judge Lockemy in a June 14th 2002 hearing.

MR. BLAKE: And that hearing, Judge probably took an hour and a half, held over in Dillon, and that was actually the time when -- and the Judge who ordered the transcripts to be made, but that was quite an extensive discussion. And then later, Judge Cottingham -- I think Judge Cottingham spent a good 15, 20 minutes on the subject.

THE COURT: I just want to make sure the Court had adequately covered that with him. All right. We'll be back here at 2:30.

(COURT IN RECESS AT 1:12 P.M. AND RECONVENES AT 2:15 P.M.)

JURY QUALIFICATION

Not included in transcript of record.

VOIR DIRE OF THE JURY

Not included in transcript of record.

JURY SELECTION

THE COURT: We will now proceed to seat a jury. Strikes are five for the State. Strikes are ten for the Defendant. We will seat two alternates. The rule on strikes for alternates, one for the State, two for the Defendant per alternate. Okay. Turn the floor over to Mr. Clerk.

As your name is called, you will need to come forward to the Clerk's bench right here in front of the microphone. You need to turn and face both tables where both sides can see you. Please bring any personal belongings with you as you come. Mr. Funderburk.

CLERK OF COURT: As I told you earlier, whenever I call your name, watch you step on the side, and just please come on up to the front, turn around, and I'll tell you what to do. So just relax and we'll get with it. 54, Billy Grooms. What says the State?

MR. BLAKE: Please seat Mr. Grooms.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse Mr. Grooms.

CLERK OF COURT: Return to your seat, please. 114, Tammy Quick. What says the State?

MR. BLAKE: Please seat Ms. Quick.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat Ms. Quick.

CLERK OF COURT: Have a seat in the jury box, ma'am. 57, James Hall. What says the State?

MR. BLAKE: Please seat Mr. Hall.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse Mr. Hall.

CLERK OF COURT: Return to your seat, please. 128, Onda Smith. What says the State?

MR. BLAKE: Please excuse Ms. Smith.

CLERK OF COURT: Return to your seat, please, ma'am. 85, Barbara McCune. What says the State?

MR. BLAKE: Please seat Ms. McCune.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please, ma'am. 20, Sandra Burns. What says the State?

MR. BLAKE: Your Honor, may we approach?

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

SIDE BAR

THE COURT: Ms. Burns, we need some clarification from you. You may know one of the family members?

MS. BURNS: No.

THE COURT: All right. Thank you.

CLERK OF COURT: What says the State?

MR. BLAKE: Please seat Ms. Burns.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: In the jury box, please, ma'am. 19, Samuel Bullard. What says the State?

MR. BLAKE: Please seat Mr. Bullard.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 151, Annette Clark. What says the State?

MR. BLAKE: Please seat Ms. Clark.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please, ma'am. 33, Michael Costner. What says the State?

MR. BLAKE: Please excuse Mr. Costner from the trial of this case.

CLERK OF COURT: Return to your seat, please. 7, Alexander Bethea. What says the State?

MR. BLAKE: Please excuse Mr. Bethea from the trial of this case.

CLERK OF COURT: Return to your seat, please. 24, Lindsay Carter. What says the State?

MR. BLAKE: Please seat Ms. Carter.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 39, Michael Taylor. What says the State?

MR. BLAKE: Please seat Mr. Taylor.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 2, William Alford. What says the State?

MR. BLAKE: Please seat Mr. Alford.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 131, Linda Sports. What says the State?

MR. BLAKE: I know earlier you said something about religious beliefs.

MS. SPORTS: I am really religious, and you know, thou shall not kill. I don't know if that will affect me, you know, like the death penalty, you know, I could not.

THE COURT: The State is not seeking the death penalty.

MS. SPORTS: I'd just like for it to be fair, you know, cause of my religion. I'm religious.

THE COURT: I understand, but I can tell you the State is not seeking the death penalty in this particular case.

MS. SPORTS: Just didn't want it to, you know --- I wanted to be fair.

THE COURT: Only thing I can tell you is to give you direction is that I'm going to instruct you once again as you heard me say, the duty of a juror is to listen and observe the evidence and apply the law of the case and thereafter reach a fair and impartial verdict. That's all we can ask for. What's your name again, please?

MS. SPORTS: Linda Sports.

MR. BLAKE: Please seat Ms. Sports.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 94, Raymond McRae. What says the State?

MR. BLAKE: Please seat Mr. McRae.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 12, Joan Brock. What says the State?

MR. BLAKE: Please seat Ms. Brock.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 25, Eddie Chaplin. What says the State?

MR. BLAKE: Please seat Mr. Chaplin.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 152, Joe Pipkin. What says the State?

MR. BLAKE: Please seat Mr. Pipkin.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 71, Geraldine Johnson.

MS. JOHNSON: Your Honor, may I ask you something for clarification?

THE COURT: Sure.

(A BENCH CONFERENCE WAS HELD ON THE RECORD, BUT OUT OF THE HEARING OF THE JURY.)

MS. JOHNSON: Is this a trial where -- well, my daughter

worked with his mother at [redacted] for one period of time. We have kind of discussed it. It hadn't been lately, but a while back. We kind of discussed it.

THE COURT: Just one question, though. Even though you discussed it with your daughter, if you were seated on this jury, can you give both the State and the Defendant a fair and impartial trial?

MS. JOHNSON: Yes, sir.

THE COURT: Thank you for letting us know that.

MR. STEWART: What did she say?

THE COURT: She and her daughter had discussed the case.

CLERK OF COURT: What says the State?

MR. BLAKE: Please seat Ms. Johnson.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please.

69, Victoria Jacobs. What says the State?

MR. BLAKE: Please seat Ms. Jacobs.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please.

122, Charles Shaw. What says the State?

MR. BLAKE: Please seat Mr. Shaw.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 72, Miranda Johnson. What says the State?

MR. BLAKE: Please seat Ms. Johnson.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please. 18, Tamela Brown. What says the State?

MR. BLAKE: Please excuse the juror from the trial of this case.

CLERK OF COURT: Return to your seat, please.

THE COURT: Hold up a second.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: All right. Go ahead.

CLERK OF COURT: 31, Jerry Cooper. What says the State?

MR. BLAKE: Please seat Mr. Cooper.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 154, Douglas Newton. What says the State?

MR. BLAKE: Please seat Mr. Newton.

CLERK OF COURT: What says the Defendant?

MR. BLAKE: Your Honor, may we approach for just one second, please.

(A BENCH CONFERENCE WAS HELD ON THE RECORD IN THE PRESENCE OF

THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: Mr. Newton, will you step over here, please. You responded to one of the voir dire questions concerning your disapproval of a relationship, I believe?

MR. NEWTON: Yes, sir.

THE COURT: Would that affect your ability to give a fair and impartial trial in this case in any way?

MR. NEWTON: No, sir.

THE COURT: Okay. Mr. Stewart. If you don't mind, who is the relationship?

MR. NEWTON: My daughter.

THE COURT: Your daughter. Okay. Was it an older person?

MR. NEWTON: No, sir. It was a marital relationship.

THE COURT: Did it end in divorce?

MR. NEWTON: Yes, sir. It's pending.

THE COURT: The divorce is pending. How old are they?

MR. NEWTON: My daughter is 35 and her husband is 57.

THE COURT: 35 and 57. Okay.

MR. NEWTON: 35 and 57.

THE COURT: Mr. Blake, any questions?

MR. BLAKE: No, sir.

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 146, Barney Walters. What says the State?

MR. BLAKE: Please seat Mr. Walters.

CLERK OF COURT: Any cause for challenge from the Defendant?

MR. STEWART: May I approach, sir?

(A BENCH CONFERENCE WAS HELD ON THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

MR. STEWART: I would like to challenge for cause. I think that this is one of the jurors who said that a female relative in his family was involved in a relationship that he found that he disapproved of and that is circumstances of my girlfriend. The family strongly disapproved of my relationship. I think that might affect his impartiality.

THE COURT: I do not find that is sufficient grounds for the Court to entertain on that. Obviously, I note that you do have at least one strike left, if I counted right. I will deny that motion for cause. Okay.

CLERK OF COURT: Any cause for challenge from the Defendant?

MR. STEWART: No, sir.

CLERK OF COURT: Have a seat in the jury box, please. Two alternates. 89, Gloria McLaurin. What says the State?

MR. BLAKE: Please seat Ms. McLaurin.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Sir, may I approach, please.

(A BENCH CONFERENCE WAS HELD ON THE RECORD IN THE PRESENCE OF

THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: Ms. McLaurin, your response to my voir dire question about -- on the relationship in your family or did you?

MS. McLAURIN: Would you repeat that.

THE COURT: We were thinking that when I asked the questions a few minutes ago of the jury panel, I asked one about not approving of a relationship within your family. That wasn't you?

MS. McLAURIN: No.

THE COURT: Have you got a daughter between 13 and 18?

MS. McLAURIN: Yes, sir.

THE COURT: I apologize. I had the wrong question in mind. You responded that you had a daughter between 13 and 18?

MS. McLAURIN: Yes, sir.

THE COURT: The fact that you have a daughter between 13 and 18, will that affect your ability to give a fair and impartial trial in this case in any way?

MS. McLAURIN: Maybe.

THE COURT: It may. Okay.

MR. STEWART: For cause challenge.

THE COURT: Motion granted.

MR. STEWART: Motion for cause, sir.

CLERK OF COURT: Return to your seat, please. 118, Jane

Rogers. What says the State?

MR. BLAKE: Please seat Ms. Rogers.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 6, Charles Bailey, Jr. What says the State?

MR. BLAKE: Please seat Mr. Bailey.

CLERK OF COURT: What says the Defendant?

MR. STEWART: May I approach, sir.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 59, Syvilla Harrington. What says the State?

MR. BLAKE: Please seat Ms. Harrington.

CLERK OF COURT: Any cause for challenge from the Defendant?

MR. STEWART: No, sir.

CLERK OF COURT: Have a seat in the top box, please, ma'am. 60, Jerry Hatcher. What says the State?

MR. BLAKE: Please seat Mr. Hatcher.

CLERK OF COURT: What says the Defendant?

MR. STEWART: Please excuse the juror.

CLERK OF COURT: Return to your seat, please. 83, Leroy Lynch. What says the State?

MR. BLAKE: Please seat Mr. Lynch.

CLERK OF COURT: What says the Defendant?

MR. STEWART: May I approach, sir.

(A BENCH CONFERENCE WAS HELD ON THE RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

THE COURT: I think you responded to my question that you had a daughter between 13 and 8?

MR. LYNCH: Yes, sir.

THE COURT: Would the fact that you have a daughter between 13 and 18 affect your ability to give a fair and impartial trial in this case?

MR. LYNCH: I don't know. Not really.

THE COURT: Okay. You may step back.

MR. STEWART: I would like to challenge for cause. His response was uncertain and indicated that he -- the fact that he has a daughter between 13 and 18 will affect his impartiality because he didn't just come straight out and say no. I want a challenge for cause.

THE COURT: Okay. Correct me if I'm wrong. Madam Court Reporter, the response was, "No, not really?"

COURT REPORTER: Yes, sir.

THE COURT: Based on his response, I'm going to have to deny your motion, but you have two strikes left -- you got one strike left. I'm sorry. I don't want to mess you up.

MR. STEWART: Please seat the juror.

CLERK OF COURT: Have a seat in the jury box, please.

THE COURT: Any motions from the State concerning jury draw?

MR. BLAKE: No, sir, Your Honor.

THE COURT: Any motions from the Defense concerning jury draw?

MR. STEWART: No, sir.

THE COURT: Ladies and gentlemen of the jury panel, at this time, I'm going to instruct you do not discuss this case. I'm going to ask you to step back to the jury room, please. Relax a few minutes. All the folks on the jury back here, I need you to step out into the hallway, please. We'll have you back in here in just a few minutes.

(JURY PANEL AND JURY POOL EXCUSED FROM COURTROOM AT 5:17 P.M.)

THE COURT: All right.

MR. BLAKE: Judge, I don't want to belabor the point, but I want to protect the record. In my calculations, Mr. Stewart made 13 strikes. 12 of those were people of Caucasian race, and that seems to be the pattern in terms of striking racially.

However, the State is not making a motion to have a complete Batson hearing. I simply want to put that on the record.

THE COURT: Noted. Well, I always have concerns when a pattern like that develops, but I've been on the bench a long

time, and I can understand this case -- in this particular case why a pattern like that might develop and not violate Batson.

As far as what the Court observed and everything about the jury draw, I don't see any problem where I would step into it. But, I note your motion. All right. Gentlemen, we're going to let this jury go home for the night.

And I did not realize that we were this far into the afternoon, but we're going to have to stop for the evening. We will take up motions in the morning. I haven't forgotten your request. I will make a decision about that before we ever begin this case, Mr. Stewart.

But my problem is I've got an appointment at 6:30 that I cannot break. I try not to make any appointments that will affect Court, but I got one this evening I just cannot break unless it's just absolutely critical, and I don't see that we have any need to continue late into the evening.

So let's have them -- I propose to have them come back at 10:00, and we'll just fire back up at 9:30 and take care of any motions you got and they can just relax until we finish. Okay.

MR. BLAKE: Thank you, Judge.

MR. STEWART: Thank you.

THE COURT: All right. We'll clear the jury. I will certainly encourage both sides if there is any room to

continue any kind of negotiations as far as resolving this case, you certainly have my permission to do so.

MR. BLAKE: Judge, does the jury know when to call back?

CLERK OF COURT: No, they're going to come back in.

THE COURT: Let's let them come back in.

(JURY POOL ENTERS COURTROOM AT 5:21 P.M.)

THE COURT: While this jury is coming back in, let me pose a question to the panel. Does anybody not have a call back number for our call-in system? If you don't, make sure you get it from the bailiff as you leave. Local call, [redacted] and also a long distance one if you need it, [redacted]. We need you to call back in for an update as to when we might need you back, tomorrow after 6 p.m.

Try to call between 6:00 and 7:00 if you can. Okay. Thank y'all for coming and taking part. We appreciate your coming and taking your civil duties to heart and being willing to serve on a jury. Please call back in after 6:00 tomorrow night. Y'all are excused if you can be very quiet and leave so I can take care of the jury.

(JURY POOL EXCUSED FROM COURTROOM AT 5:24 P.M.)

(JURY PANEL ENTERS THE COURTROOM AT 5:25 P.M.)

THE COURT: Ladies and gentlemen of the jury, we're going to stop for the evening. My only instruction to you at this time is do not discuss this case with anyone. Do not even discuss it amongst yourselves until you are asked to at the

end of the case.

During the trial of this case, please avoid any local press coverage, avoid reading any newspapers or any local radio or television. All right. Watch the national news. Sometimes the press can be inaccurate in their reporting. We don't want you influenced in any improper way. So if y'all will avoid any press coverage, media coverage until this case is concluded.

Now, as you've already heard, we will begin this case at 10:00 in the morning, close thereto as possible. I'm going to come back a little earlier and be doing some other matters that will not concern your duties. And we will try our best to get the actual trial started as promptly as we can around 10:00. Okay.

So if y'all will report to the jury room back here. Mr. Bailiff is going to show you the way to come in to get to that jury room cause you already know where it is. Okay.

All right. Y'all have a good night. We'll see you in the morning, and I'll instruct you and give you some information to let you know how we are going to proceed in the morning. Okay.

As far as working hours, we will try our best not to go late in the night or start real early in the morning because I know you got family needs to take care of as well as some of you may have business needs that you can sort of touch base

with, you know, in the mornings and in the evenings. So with that said, y'all have a good night and I'll see you in the morning.

(JURY PANEL EXCUSED AT 5:27 P.M.)

THE COURT: All right. Hearing nothing further, we'll see you at 9:30 in the morning.

MR. STEWART: Yes, sir.

MR. BLAKE: Thank you, Judge.

(COURT IN RECESS AT 5:30 P.M.)

- - - END OF TRANSCRIPT OF RECORD - - -

C E R T I F I C A T E

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth 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 Marlboro County, South Carolina, on the 28th day of July 2003.

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

Hattie O. Gordon

Circuit Court Reporter

September 13, 2003

Wallace, South Carolina

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO 02-GS-34-1919

STATE OF SOUTH CAROLINA)
)
- vs -) TRANSCRIPT OF RECORD
)
WELDON W. STEWART, JR.)

July 28 - August 1, 2003
Marlboro, South Carolina
VOLUME 2 OF 5

B E F O R E:

The Honorable PAUL M. BURCH, Judge and a jury.

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

DANIEL BLAKE, Assistant Solicitor
Attorney for the State

WELDON W. STEWART, JR., Pro Se Defendant

WADE R. CROW, Public Defender
Stand By Attorney for the Defendant

State's Witnesses
GAIL HEATH, SLED
JOHN ORTUNO, SLED
ROBERT ELVINGTON, SLED
AL STUCKEY, SLED
CECIL BRADSTREET, SLED

HATTIE O. GORDON
CIRCUIT COURT REPORTER
FOUR [redacted]
WALLACE, SC 29596-0597

State's Witnesses (continued)
DALLAS GURLEY, Bennettsville Police Department
JOHN BOSTON, Bennettsville Police Department
JOHN VALDALISO, Bennettsville Police Department
ALVIN WORSLEY, Bennettsville Police Department
SAMMY CROSSLAND, Bennettsville Police Department
DR. RUSSELL HARLEY, Medical University of South Carolina
SORAYA ALLEN, Victim's Mother
TONY ALLEN, Victim's Father
ANTHONY ALLEN, Victim's Brother
DR. RICHARD OWENS, Ophthalmologist
ROBERT MOORE
ANTHONY WATSON
DELORIS WATSON
EBONY WATSON
CLARISSA BRIDGES
STANTON WRIGHT, JR.
MONIQUE BRIGHT
ANDRENNA SUTHERLAND

Defense Witnesses
CARRIE HUGHES
MARY McLAUGHLIN
ANASTASIA LOVE
JAMES ELLERBE
DENEKA HARRINGTON
DALLAS GURLEY, Bennettsville Police Department
VIRGINIA STEWART, Defendant's Mother
Weldon Stewart, Sr., Defendant's Father

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NO.	DESCRIPTION	ID.	EV.
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D-11	INTERVIEW BRIEF FORM/OFF. CROSSLAND		
D-12	PHOTOGRAPH		
D-13	PHOTOGRAPH		
D-14	SLED LAB INVENTORY SHEET		
D-15	LETTER TO D. GURLEY FROM W. STEWART		
D-16	COPY OF BOOK OF CALAMITY (4 PGS.)		
D-17	PHOTOGRAPH		
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(COURT IN SESSION AT 9:30 A.M.)

THE COURT: We've talked, and I think we've got a long week ahead of us, so we don't need to waste any time, but we don't want to cut any time that's important because Mr. Stewart's on trial here. It's very important to him as well as the State.

So we're going to move right along. Now the first matter to do is take care of some motions as I understand. The first one -- I'm just going to go down the list that Ms. Gordon passed up to me that's got these listed.

MOTION TO SEQUESTER LAW ENFORCEMENT OFFICERS

We got a motion to sequester law enforcement officers. That is by the Defense. What sayest the State?

MR. BLAKE: Your Honor, the State would join in that motion if that was to include all witnesses.

THE COURT: Well, you know what my philosophy is. What's good for the goose is good for the gander. Mr. Stewart, you want to continue with that motion understanding that if I grant such an order, it's going to include everybody except the lead investigators for the State.

MR. STEWART: Yes, sir.

THE COURT: Okay. And, of course, your family can stay.

MR. STEWART: Yes, sir.

THE COURT: All right.

MR. BLAKE: Your Honor, I'd like to address the issue of

the victims. Each of the victim's family members will be a witness in the case, but they also have the right to be here.

THE COURT: Mr. Stewart probably doesn't have an objection to that. You have any objection to the parents?

MR. STEWART: No, sir.

THE COURT: Okay.

MR. BLAKE: Thank you.

THE COURT: In turn, you don't have any objection to his parents, do you?

MR. BLAKE: No, Your Honor.

MR. STEWART: As long as everyone conducts themselves appropriately.

THE COURT: All right. All witnesses, potential witnesses, the names were called yesterday, I'm granting a motion to sequester. That means you will have to be separated and put in various rooms and that we can find until you are called. You are not to discuss the case with anyone.

Any witnesses testifying that steps down is not to discuss the case with any other potential witness. Both sides will need to talk to their respective witnesses and warn them about what the consequences will be if that order is violated.

MR. BLAKE: I think -- do we have any witnesses currently in the courtroom?

THE COURT: Okay. Sheriff, if you would find some rooms available. If witnesses happen to come in, we need to know.

If y'all will sort of glance over every once in a while.

MR. CROW: Defense witnesses can use the Public Defender's Office.

MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS

THE COURT: Okay. Next motion I have is a motion to exclude the autopsy photographs, and I will not get into that at this time. If they are attempted to be introduced, Mr. Stewart, we will cover that when we get to that bridge. In other words, we'll cross that bridge when we get to it.

MOTION TO EXCLUDE VICTIM BODY PHOTOGRAPHS

Same with the next motion to exclude victim body photographs. I'd rather do that at that time. That way I can go through them. Any of these you care to be heard on, y'all let me know cause I'm just going down the list.

MOTION TO BE RELIEVED FROM STIPULATION

The next one is a motion to be relieved of stipulation. That's your motion?

MR. STEWART: Yes, sir.

THE COURT: What's the State's position on that? That ones concerning, I believe, the handwriting, the written documents?

MR. BLAKE: Yes, Your Honor. The State doesn't object to his requiring us to go ahead and prove these things up, but he's -- the Defense has made allegations of prosecutorial misconduct in that motion. And I don't have any idea what

he's talking about, but I certainly took it personally having spent much time being as fair as possible in this trial. If he wants to go back on his stipulation, the State will agree.

MR. STEWART: Yes, sir.

MOTION TO EXCLUDE EVIDENCE OF DESECRATION OF HUMAN REMAINS

THE COURT: All right. The next one I have is the motion to exclude evidence of destruction of the -- desecration of the -- trying to read here. Hattie, your writing is about like mine. Desecration of human remains, and that would concern the burning of the body. Anything that you would like to add further at this time concerning the motion. I believe that's your motion, Mr. Stewart.

MR. STEWART: I think that the evidence is highly prejudicial. This incident occurred about eight hours after the time of death, approximately. It can prove no element of murder for which I'm being tried. In that in order to be convicted, I did plead guilty to the charge.

In order to be convicted of that offense, 16-17-600, you have to destroy or desecrate the remains of a deceased human being, and the victim was deceased before this happened. And I don't think that it can be used in any way to prove any element of murder.

THE COURT: Solicitor.

MR. BLAKE: Your Honor, I have written a four page memorandum on that situation as I think it bears a lot of

looking into, and just right off, I think Mr. Stewart is incorrect in stating that. It has nothing to do with the elements of the case. The State is either to prove malice aforethought, heat of passion, or as Mr. Stewart contends, accident or involuntary manslaughter.

His state of mind is critical to the case, and the State contends that in fact the burning was covering up any injuries to the victim's body. In other words, the Defendant burned the body and then we are simply left with the Defendant's story.

Now, as for some of the writings that the Defendant has given, one of those or two of them include the burning, which he's pled guilty to. That says he's admitted doing it.

There is a letter that the State will attempt to get into evidence, and I don't think there will be a problem with that, that the Defendant wrote to the victims, wherein he says he did not burn the body. And that puts his credibility at issue.

If Your Honor decides that the burning should not be part of the case, then I cannot bring that evidence which goes directly to Mr. Stewart's credibility. Mr. Stewart is the only eyewitness.

The next point I think is very important. The testimony, the written evidence, it all has elements of the burning and the killing. If nothing can be said about the burning, then

for instance, the arson investigator who collected all the evidence cannot talk.

Mr. Stewart's written statement will need to be redacted because he mentions the burning. And we have a number of lay witnesses. It's very easy for them to say something about a mistrial and we'd have to start all over again.

The pathologist -- I don't see how the pathologist can even talk about it. His report, of course, talks or deals with a charred body. He could not make certain findings because the body was charred. Certainly his pathology report would not come into evidence because it does indicate that there was burning.

Now, second of all, third, or whatever it is, basically, we have a situation where there is DNA evidence of the victim's blood on the Defendant's clothes that he was wearing that night. Well, where did it come from? We can't say it came from a cut on her. We can't say it came from a bruise on her. That simply looks like the State hasn't done its job. It has not properly investigated the case.

And I think that makes a very negative inference for the State given that the jury is expecting television and CSI, that level which is really fiction. I think it would be misleading to the jury.

I already stated about his state of mind being important. And in summary, the issue is rather -- whether or not the

probative value, the evidentiary value is substantially outweighed by unfair prejudice.

This is by its nature bad acts evidence or res gestae evidence. It's going to be prejudicial. And, of course, Your Honor knows there have been a number of cases that allow that sort of evidence in. This evidence is crucial in a number of ways for the State. The State would ask that the motion be denied.

THE COURT: Anything else, Mr. Stewart, concerning this motion?

MR. STEWART: I do not see how something that happened eight hours after another incident could be used to prove my mind state at the time the other incident occurred.

I don't think that's relevant. I think that would mislead the jury and confuse the jury, and make them think that or tend to make them think that because I had pleaded guilty to desecration of human remains and because I committed this offense that I am automatically guilty of murder.

And if I may just go back and talk about how the State tried to include the actual burning in the murder indictment. So false statements about the pathologist used to include that in the indictment, and then the State moved to strike "burning" from the indictment once I made numerous motions objecting to that being included.

It's obvious that the State is trying to use evidence of

desecration of the body to emotionally arouse the jury and to confuse them as to the issues of this case, which is my understanding from reading the autopsy report, that the cause of death was blunt force trauma to the head.

The issue in this case is whether the blunt force trauma to the head was intentionally or unintentionally caused by myself, the Defendant. I do not think evidence of something that happened eight hours after this incident is relevant to proving that issue.

MR. BLAKE: Your Honor, if I can just say one thing. He keeps talking about eight hours. You know, I think that's a matter of proof for the Court. I don't think it was that long. Probably more like six.

As for this allegation of putting false information in an indictment, I talked to the pathologist. When I talked to the pathologist, he did not have his report in front of him. He was talking off the cuff. He said there was a possibility that the burning -- that the burning caused the death. That's why it was in there.

We wanted the pathologist to have a chance to review that report, once I spoke to him, once Mr. Stewart went all the way down to Charleston to speak with him, then that's when I moved to amend the indictment.

THE COURT: All right. I appreciate y'all's statements, and wanted y'all to have the time to put on the record what

you wanted to put. The law is very clear on that. It's not even a close call. But the motion, Mr. Stewart, is going to have to be denied. This comes up all the time.

In a recent death penalty case, it has already been affirmed by the Supreme Court, but I tried where the victim was scalped some time after the actual killing. Clearly, was admissible, and that's just one occasion I can remember of it in recent history and it does come up quite often.

So therefore, we need to make sure I'm clear on the record, that motion is denied. There is also a request. I don't know if it was put in motion form.

Mr. Stewart would like to be sentenced on the desecration of human remains charges he pled guilty to earlier this year, that that be done before we begin -- the beginning of the trial of this case. I'm going to have to deny that, too. I think I would be certainly open to some criticism if I sentenced you on that charge before all the facts develop in this next case. It would be an insult to justice for me to do that.

So I think that cleans everything up. We're going to get ready to go with this trial. Now let me tell both of you something. We're faced with a long week. I'm a very patient person. I'm normally laid back, but I'm also known not to put up with any unnecessary disturbances in the courtroom or unnecessary comments, editorial comments.

We're going to stick with the proper way you try a case. A question be posed -- I want the question posed. I don't want any editorial comments. I don't want any testimony.

We're going to follow the rules. I'm just going to forewarn everybody here. There is no need in a case for questions to be asked more than once unless there is some -- unless there is something that is unclear about the response or there is conflicting testimony, something that would cause someone to have some question about the response and then the second time may be warranted.

And that happens quite often. Normally, on direct, you may have a question answered and then for clarification on cross, you may have the same question posed in the same way or similar way. That, I don't have a problem with that.

But when I hear the same question asked three or four times, we get the same answer three or four times, you're wearing thin on my patience, and I just want to warn y'all about that. Cause as I travel around the state, it seems like it has become a pattern where everybody thinks that they've got to ask that same question over and over and over.

I'm just not going to tolerate it in my court anymore. Any questions concerning that?

MR. BLAKE: Not from the State, Your Honor.

MR. STEWART: No, sir.

MR. BLAKE: Your Honor, there is one other matter, if I

could bring it up. I have on two previous occasions requested a date of birth, Social Security number, NCIC type information on the Defendant's witnesses. As you know, we run NCICs on the witnesses, and they're currently running those for the State's witnesses. I need that information so that I can give that to law enforcement so that I can have that when they testify, and I don't want it, you know, right when they're on the stand. I want a chance to be able to actually look at it beforehand.

The State made this request, initially, in writing June 27th of this year, and then a week later. I've gotten no response.

THE COURT: Mr. Stewart, we got any information to help you with that?

MR. STEWART: This is the first that I've heard of that. Under the rules, it was given to me, but this is the first I've heard of it.

MR. CROW: If it please, Your Honor, the Solicitor's Office gave that information to me. The Solicitor gave me back a copy of the order with the notes -- the names and everything. I in turn gave that information to Mrs. Stewart.

I have on several occasions said we needed that information to provide to law enforcement to do the records search, and Mrs. Stewart, she can speak to that. She told me she didn't have some of that information, and I have no way of

getting it and I've done the best I can. And I have communicated that on several occasions.

THE COURT: All right. Continue to work on it, try to get it and the information that's provided, get it to the Solicitor, and that's going to have to be done before we get to the Defense portion of the case. If you run into a problem with that beforehand, you need to keep me advised of that see if we can or can't obtain that information because you know what the ultimate result is.

If we can't get it, it may not -- the Court may not allow somebody to testify, and I don't want to do that. But if my hand's forced on it, then I will.

MR. BLAKE: Your Honor, just to clarify, Mr. Stewart's probably served 50 subpoenas on witnesses. It's very simple when you talk to the witness to ask them their date of birth, Social Security number, write down their race and sex and you got the information. That's how I get mine.

So I don't see how it's lack of opportunity. He's certainly been talking to these people. They knew the State needs it to be able to adequately prepare.

THE COURT: I'll make sure you have time in case there is a holdup on that.

MR. BLAKE: Did you want -- moving along, did you want to address the law on crime scene issue or should we just hold that? Talking about yesterday.

THE COURT: Mr. Crow, did you have a chance to go look at that log?

MR. CROW: Sir?

THE COURT: Did you have a chance to run out there and look at that log?

MR. CROW: No, sir, I have not. I have not had a chance because I really -- someone's got to show me. I can see it in the pictures if he points it out, but someone has got to show me on the ground where the log is.

MR. BLAKE: Well, I think there is confusion about this anyway because he was talking yesterday about three houses down. There is a path three houses down where this log was. The scene that he showed law enforcement was directly behind his house on the path; that path that runs through there.

And I think the person maybe who took the photographs needs to tell us where that spot is. There seems to be a clear amount of confusion about it. I mean, if it's going to be lifted from where it is and brought into the courtroom, I certainly want to know physically where that log came from.

THE COURT: Who took the photograph?

MR. STEWART: The photographs were taken by SLED. It is not in the path. It is two paths in the backyard area back there. It was not the path that was directly behind the house. It was the path that's further down about two, three houses down, and that was the path that SLED took pictures of.

And that was the path that the Bennettsville Police Department took pictures of. And that was the path that I pointed out.

THE COURT: The Bennettsville Police Department or somebody with them would know which log we're talking about if you identify it on the photograph?

MR. BLAKE: Your Honor, Mss Gurley is here, and she just nodded that she could not.

THE COURT: Ms. Gurley, you know where that log is located?

MS. GURLEY: No, sir.

THE COURT: Can you look at the photograph that was made by SLED and possibly find it?

MS. GURLEY: I'll try, but, Your Honor, my photographs from SLED, I don't have nothing three doors down. They are the same path area that I have. I'll look at them again.

THE COURT: When we take a break, get with Mr. Stewart, Solicitor, Ms. Gurley, get with Mr. Stewart and identify which photographs we're talking about and this evening need to run out there and see what we're dealing with. If it's on somebody else's private property, we may have to, if it's appropriate, get an order to get it in here, but we don't want to violate somebody's property rights. Okay.

Whoever it is, if it's moveable, we may be able to get permission from them to do it. If it's not moveable, then I'm going to have to go to some other alternative. Okay.

MR. BLAKE: And, Your Honor, just for the Court's information, SLED when they come and take photographs, they do a broad spectrum. They just photograph everything and anything. I do -- I wonder about the relevance of this log given that Mr. Stewart did go with law enforcement and show them where this fall occurred. That's not where the log is. So I don't understand the relevance of this log further down and that certainly would be a large part of my cross-examination.

MR. STEWART: May I address the Court?

THE COURT: Yes.

MR. STEWART: I do have pictures of the path -- the path that I pointed out. Pictures taken by both SLED and Bennettsville Police Department and they are part of my exhibits.

THE COURT: Mr. Terry, would you assist in that, trying to find that log and see what we're dealing with, see if it's sizeable to be moved. If not, then I have the alternative. I can carry the jury out there which Mr. Stewart already told me he prefers that not happening. But I need to know exactly what we're dealing with.

MR. TERRY: Yes, sir.

THE COURT: Mrs. Stewart

MRS. STEWART: Your Honor, that's a tree. When you said you wanted to get some idea of the size of the log, it's a

tree.

THE COURT: Okay. Well, Mrs. Stewart, is it a tree that's still alive?

MRS. STEWART: It's a tree that a while back there was a young fellow and he stole somebody's car and wasn't long before this incident happened and he drove up in that area with a car and it knocked a lot of limbs and trees and stuff down in that path. It's like a tree. I mean, it can be moved, but it's a tree.

THE COURT: All right. Check it out, Mr. Terry and see what we're dealing with. We may have to look at other options and can give me some direction as to what you want.

MR. STEWART: Also, may I address the Court?

THE COURT: Yes.

MR. STEWART: I have a couple of issues that I wanted to bring up that I didn't make motions about. First is the 911 call that was made by me to bring law enforcement to the scene on December 6, 2000.

I think that tape from that call is very relevant to proving the state of mind that I was in. That tape, it was about an hour -- not even an hour after the actual desecration that I made that call. And I think that tape would have been very relevant to proving the state of mind that I was in, letting people hear how my voice and the way that I was speaking to the people in trying to get them to the scene.

However, it's my understanding that this evidence was destroyed. I'm not -- I just ---

THE COURT: You already knew it was destroyed, now you're asking me to try to get it for you. Why you asking me that?

MR. STEWART: No, sir. I was just wanting to put that on the record that that evidence ---

THE COURT: You can put whatever you want on the record. If you knew it was destroyed and you're coming in here wanting me to try and get it for you, why you even asking me that, sir?

MR. STEWART: I'm not asking you that. I just -- I received a few different stories about what happened to it, and I just wanted clarification.

THE COURT: Solicitor, you check and see if the 911 call is still available ---

MR. BLAKE: Your Honor ---

THE COURT: --- most departments will destroy those tapes or reuse them if they're not asked for in a reasonable time.

MR. BLAKE: If I can provide the Court with that information. I've checked into it as well as Mr. Crow, and now, as of 2003, they record them on CD ROM, which they can keep those, those stay forever. Previously, it was on tape, and they only kept them for six months. That tape was not requested within six months so, yes, they reused them.

THE COURT: That's all I can do.

MR. BLAKE: And no purposeful action by the State or any of its agents to destroy evidence. The State would have liked that, too. The State subpoenaed the 911 Communications Center here, and that's when I got that information.

THE COURT: You can certainly cross-examine them on why they reuse them or destroy, whatever, but I can't help you with that.

MR. STEWART: Yes, sir.

THE COURT: All right. What else?

MR. STEWART: I have an exhibit that I wanted to use for my opening statement and the State objects.

THE COURT: Go ahead and talk with him about that. I don't need to get involved in that unless y'all disagree.

MR. BLAKE: Your Honor, we are -- we've agreed on what exhibits we'll use during our openings. Mr. Stewart says that he hasn't been provided with the photo of the glasses. Is there another photo? The State -- I will find that. I haven't seen it myself. I don't remember seeing it. We will find that, provide him with a copy of it.

There's been this thing about trying to get the phone records from Bell South. I got the phone records from the jail. I copied those in the last week, gave them to Mr. Stewart. The phone records from Bell South, we have requested it. We have requested it, and Larry Turner of the Bennettsville Police Department is pursuing that right now.

We do not have those records, not from a lack of effort. As soon as we get them, we will make copies and give it to Mr. Stewart.

MR. CROW: And as Your Honor asked me in Chesterfield, the county agreed to advance the funds to pay for those records.

THE COURT: All right. Mr. Crow, is there anything that you want to put on the record?

MR. CROW: Yes, sir. It if please, Your Honor, I'd like to just state for the record that since July of 2002, when I relieved of counsel, I've been acting as stand by. I met Mr. Stewart on many occasions.

I met with his family. I've provided him information that he's asked for, and I provide to -- I got him a copy of the South Carolina Criminal Trials Handbook he's had for some time.

I've given him an outline of how a trial proceeds. I've also given him -- loaned him Judge Ervin's Charge Book as well as Professor Hubbard, I believe, Requested Charges for Criminal Defendants, which he's had in his possession now for several weeks at the county jail.

We have prepared in excess of 50 subpoenas. With the help of law enforcement, we tried to serve several of them. We've got them served. He's had a chance to interview people at the jail.

I've done everything that I know that he's asked me to do, and I will be very brief, but I've also acted as a conduit because Judge Lockemy asked me to and you asked me to a couple of weeks ago in Chesterfield with Mr. Stewart and his family and the Solicitor's Office.

And anything he's communicated and asked me to communicate, I've communicated to them as directed by the Court. I've done everything that I can. I don't know of anything else.

The only other thing that I want to address is that one subpoena we served -- tried to serve in Chesterfield County, she would not accept service on. Her parents would not accept service on, and he says he desperately needs this witness, and we're going to need some direction from the Court to let her know she's got to come and her name is Jessica Knox.

THE COURT: Where does she live?

MR. CROW: In [redacted].

MR. BLAKE: Your Honor, this is the daughter of Larry Knox, and I understand good friends of the victim. Ms. Knox did appear at the jail with the first subpoena and did not wish to speak to Mr. Stewart.

She is now up in orientation at the University of Maryland, and I'm not sure when she gets back, but she's up there this week. The State had a similar interest, but as is often the case, either witnesses are available or not

available.

The State has never talked to this witness either, but that's really sort of the gist of it. And her parents are aware of the situation. Mr. Knox took his daughter down to the jail. Mr. Knox talked to Mr. Stewart, and perhaps, his family at that time, but she did respond to the first subpoena. I have not -- there were -- she ---

THE COURT: Was she subpoenaed to be here this term?

MR. CROW: Yes, sir. I prepared -- last week we prepared subpoenas, filed them in the Clerk's Office. She was one of the subpoenas that was delivered to law enforcement, and I understand delivered to Cheraw Police Department to serve as served all before. And she refused or someone refused to accept it on her behalf.

MS. GURLEY: Your Honor, if I may please the Court with that one. Law enforcement tried to serve that subpoena on her, and it was refused to be accepted. That was the information I got back. I think I was in Court somewhere in Columbia one day myself, and Detective Turner gave me a phone call and let me know that Cheraw tried to ---

THE COURT: She refused it or some family member or friend refused it?

MR. TURNER: Cheraw Police Department called me and advised me they could not locate her. They attempted to serve the subpoena on her and family members refused to accept the

subpoena.

THE COURT: So it was not her. I need your name, please.

MR. TURNER: Larry Turner.

THE COURT: All right. You still want her subpoenaed, Mr. Stewart?

MR. STEWART: Yes, sir. And if I may address the Court about when the young lady came to the county jail, she did request to be allowed to come back to the multi-purpose room and talk to me by herself.

And her father, who came with her, he requested that if she was going to come back to the multi-purpose room, that he be allowed to come with her or if she wanted to talk to me by herself, that we go to the visitation room where there is a glass -- there would be a glass between us.

I did agree to allow him to come into the multi-purpose room with her. Jessica agreed to talk to me. She consented to the interview. I began interviewing her. She then requested that she and I go to the visitation room with glass because she did not want her father present while I was questioning her.

At that time, her father began asking me all types of questions and personal questions concerning Ms. Knox, and she left. But Jessica was willing to allow me to interview her. She was willing to come to the multi-purpose room alone, however, her father -- and he did tell, I believe it was

officers at the county jail that he had a subpoena and the subpoena had not been served on him. And he did make demands, but since that was his daughter, I tried to work with him as best I could with that.

THE COURT: All right. Mr. Funderburk, if you will obtain a subpoena. I will sign it. I will not put that task on you. I will give it to the Sheriff's Department. They're going to go over to [redacted]. I want it dated for her to report Thursday morning at 9:30 a.m.

We'll make every attempt to serve her. That's all the Court can do.

MR. BLAKE: And, Your Honor, just to clarify in terms of personal service on Jessica Knox, she is in [redacted] today. I'm sure of that. Your Honor, may we approach for a moment.

(A BENCH CONFERENCE WAS HELD OFF THE RECORD OUT OF THE PRESENCE OF THE JURY.)

THE COURT: Five minutes now. That jury has been back there since 9:30. I'm not going to allow this all week.

(COURT IN RECESS AT 10:25 A.M. AND RECONVENES AT 10:43 A.M.)

THE COURT: Okay. We're back on the record. Madam Bailiff, I need you to fetch from the jury room juror Joe Pipkin.

Mr. Pipkin, if you can come around to the court reporter's desk. How are you doing this morning?

MR. PIPKIN: Fine.

THE COURT: The Court needs to inquire something because our microphone system is out and I was afraid that people couldn't hear me well yesterday. I got an inquiry I need to make of you. Are you related in any way to Andrenna Sutherland?

MR. PIPKIN: I'm supposed to be, but she's well -- her mother said I'm not. She's supposed to be my daughter.

MR. BLAKE: I thought that he said yesterday "God child."

MR. PIPKIN: Yeah, I did.

MR. BLAKE: And she might be his daughter. Is that what you're saying?

MR. PIPKIN: Um-hum.

THE COURT: Okay. Thank you. You may return to the jury room.

MR. BLAKE: Your Honor, I would move to strike that juror and use an alternate. Andrenna Sutherland is a very crucial witness in this case. She is extremely close to Mr. Stewart. The State is calling her as a witness. Mr. Stewart is calling her as a witness. I think her testimony is critical to the case, and I think there is very -- there is much potential there for bias.

THE COURT: Anything Mr. Stewart?

MR. STEWART: I -- it's my understanding that this juror did stand yesterday and acknowledge that the witness was his god child. And Mr. Blake knew this yesterday when he seated

him, and I would object to him being excused.

THE COURT: Note your objection, but I'm not going to take a chance on perverting this trial with misinformation. I'm not going to sanction him because I can understand a misunderstanding, however, I will remove him from this jury and draw one of the alternates to put in his place.

All right. Mr. Clerk, at this time you will put the two alternate's names in the capsules, put them in the spinner box, spin them, and we will see who is drawn.

MR. BLAKE: Judge, we had heard a hearing earlier. I didn't know if you wanted to put that on the record. It's already part of the numerous transcripts. I didn't know if you wanted to bring that up today.

THE COURT: Didn't I go over that in Chesterfield?

MR. BLAKE: You did.

THE COURT: I have no concern about it.

CLERK OF COURT: The new juror will be 83, Leroy Lynch.

THE COURT: Leroy Lynch. Madam Bailiff, bring Mr. Pipkin back in again.

CLERK OF COURT: No. 52 will be coming out. No. 83 will be going in.

THE COURT: Mr. Pipkin, at this time, I'm going to inform you that I have relieved you of your duties. There is concern about the possible relationship, and I don't want to put you in that bad position nor the attorneys. So I'm going to step

in.

Based on what's before me now, you are off of this case. You are relieved on it, however, I do need you to call in after 6:00. The other panel's been instructed to do that. We will let you know at that time as to when you need to come back or report. So you're free to go at this time. Call that number you have after 6:00. Thank you, sir. Bring the jury in.

(JURY ENTERS COURTROOM AT 10:52 A.M.)

INSTRUCTION TO THE JURY

THE COURT: Ladies and gentlemen, I want to thank you for being patient. We hoped to get started at 10:00. We've been delayed a little bit. We had to take care of some matters of law. I'll explain that procedure to you in just a few minutes because from time to time, I may have to send you in and out.

First of all before I put you under oath, I want to thank all of you for reporting this morning. I want to put on the record that Mr. Walters, who I believe was the last regular juror drawn yesterday, I'm going to appoint you foreperson of this jury.

Before I say anything else and put you under oath, I could see some apprehension on many of your faces yesterday about having to serve on a jury. Whether it's the fact that you're just serving on a jury or the fact of the particular case that you have been chosen on that may have caused any

apprehension, I do not know.

But I do want to reassure you to feel safe in your role as a juror. I have now been your resident circuit judge for over 12 years. I have never had a juror injured. In fact, in 12 years, I can't even recall any of my jurors being intimidated in any way by anyone involved in the case.

We're dealing with real life. Marlboro County is a small county. Just like my county, I know each of you know a lot of other people especially because it is a small county. But I just want to take just a minute or two to tell you that in my experience traveling the state, I have had no incidents where a juror has been injured or intimidated by anyone.

Should that happen, I want you to know that I will use all the necessary power I have as a circuit judge to get it stopped and corrected. Should anybody try to approach you in any way, don't discuss this case with them. Don't have any communication with them, and immediately notify an officer of the Court of any such approach.

I normally don't tell jurors that, but I can see the apprehension on several of your faces yesterday. Of course, I can't look in your mind and know what you're thinking, but I've been on the job long enough. I can get a gut feeling. Some of you weren't real comfortable about this situation.

We all as citizens have a duty to do if called upon just as a lot of those soldiers that got called to go over to Iraq

the other month, they are paid soldiers and they know that duty may be called upon and they may not like it, but they have to do it.

All of us as citizens have to do things sometimes we don't like to do. All right. With that said, I'm going to ask Mr. Clerk if he would to go ahead and put you under oath. And then talk a little bit and give you some explanations as to how we're going to proceed.

(JURY PANEL SWORN IN AT 10:56 A.M.)

THE COURT: Thank you, Mr. Clerk. Your duty as jurors lies essentially in that oath that you just took; that is to well and truly try this case. Once again, I want to reiterate to you. I want you to be comfortable in doing your job.

If there is anything the Court or this bailiff staff can do for you during the progress of this trial, you feel free to let us know. Any needs that you have, you call on us. If you need a Coca Cola or if you need a donut, or whatever, in case you got low blood sugar like I got, let us know and we will send you out and take care of it.

One other thing. In some trials it may take several days, and I need to talk to you about that. We're all human and I know some of you probably got children. You got up early this morning or you may have to stay up late at night looking after family needs or business matters.

Should you become drowsy or sleepy during the progress of

this trial, feel free to raise your hand and say, "Judge, can we take a break. I need some coffee or I want some Coca Cola. I got to have some caffeine." But we do not want anybody to fall asleep.

If that happens, it puts me in a very uncomfortable position because I may have to get on you about it, and I don't want to do that. So the bottom line is if any needs that y'all have, you let us know. If you become sleepy, drowsy, or if you feel like you need a break because you may become queasy or whatever because of anything, you let me know.

Several years ago, I was over in York County, and I had a foreperson on the jury who was seated. It was a civil case, and he didn't let me know he had blood pressure problems and it was in the middle of the trial. And he fainted and fell out in the jury box.

We didn't know. I didn't know whether he had a heart attack, stroke, whatever. Everything turned out all right, but if he would have let me know ahead of time, we could have made some different arrangements. Fortunately, that one turned out all right.

All right. Specifically to this case, you will be the triers of the facts or what we call the finders of the facts in the case. I am the judge of the law. The constitution of the State of South Carolina and our case law provides that as

a trial judge, I cannot comment in any way or become in effect involved in the fact finding of the case.

You the jury are the finders of the facts. I am the judge of the law. To try a case, simply stated, you listen to the evidence and testimony presented, find the facts from that evidence, apply those facts to the law that I will give to you at the conclusion of this case, and thus reach a verdict.

The word "verdict" is a Latin derivative word which means a true saying. So many legal philosophers will tell you that any trial in Court the bottom line is to search for the truth.

Okay. Now, doing your job, you've got to listen and observe the evidence and testimony. Evidence may take different forms. It may be testimony from this witness chair. It may be photographs. It may be documents. It may be other physical type items. Whatever the evidence is, you have a duty to listen and observe.

Now, whether you believe the evidence or what weight you give to the evidence is totally your province. I don't get involved in that, and no one else in this Court will be allowed to weigh the evidence except the 12 of you that will eventually deliberate the case.

Now, this is a criminal case, and under our constitution, a defendant is presumed not guilty of the charge against him no matter the enormity of such charges.

The Defendant has entered a plea of not guilty in this