

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Roger M. Young, Circuit Court Judge

THE STATE,

V.

ROBERT T. KRONBERG,

APPELLANT

APPELLATE CASE NO. 2014-002682

RECORD ON APPEAL

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THE FOLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBITS #63 - #67 (PHOTOGRAPHS);
STATE’S EXHIBIT #107 (RECORDED STATEMENT OF DEFENDANT);
COURT’S EXHIBIT #6 (RECORDING OF INTERROGATION ON 2/12/13)

1 shown to exist. This is either by direct evidence or by
2 inference from the facts and circumstances which are
3 proven.

4 Expressed malice is shown when a person
5 speaks words which express hatred or ill will toward
6 another, or when the person prepared beforehand to do the
7 act which was later accomplished. For example, lying in
8 weight for another person or any other acts of preparing
9 going to show that the deed was within the defendant's
10 mind would be expressed malice. Malice may be inferred
11 from conduct showing a total disregard for human life.

12 Now, if you find that the State has failed to
13 prove beyond a reasonable doubt that the defendant
14 committed murder, you may consider whether the State has
15 proved beyond a reasonable doubt that the defendant
16 committed voluntary manslaughter. To prove voluntary
17 manslaughter, the State must prove beyond a reasonable
18 doubt that the defendant took the life of another in the
19 sudden heat of passion based upon sufficient legal
20 provocation.

21 Both heat of passion and sufficient legal
22 provocation must be present at the time of the killing to
23 constitute voluntary manslaughter. Sudden heat of
24 passion may, for a time, affect the person's self-control
25 and temporarily disturb a person's reason. The sudden

1 heat of passion must be the type that would make an
2 ordinary person unable to clearly reflect on his actions
3 and would produce an uncontrollable impulse to do
4 violence. Sufficient legal provocation must be the type
5 that would make an ordinary person -- or make a person of
6 ordinary reason and caution become enraged and to lose
7 control temporarily.

8 The provocation needed for voluntary
9 manslaughter must come from some act of or related to the
10 victim. Words alone, however vulgar or insulting, are
11 not enough to be legal provocation. Where death is
12 caused by the use of a deadly weapon, the words must be
13 accompanied by some overt act, threatening act, or by
14 some overt threatening act which could have produced the
15 heat of passion.

16 The exercise of a legal right, no matter how
17 offensive it is to another, is never sufficient legal
18 provocation for voluntary manslaughter. If the heat of
19 passion had cooled, or if there was enough time between
20 the provocation, if any, and the killing for the passion
21 of a reasonable person to cool, the killing would not be
22 voluntary manslaughter. In deciding whether a reasonable
23 person would have had enough time to cool off, you should
24 consider all the circumstances surrounding the killing.

25 You may consider the nature of the

1 provocation, if any, the defendant's mental and physical
2 case, and the circumstances and relationships between the
3 parties.

4 Now, as to the charge of possession of a
5 weapon during the commission of a violent crime, the
6 State must prove beyond a reasonable doubt that the
7 defendant was in possession of a firearm or visibly
8 displayed what appeared to be a firearm or visibly
9 displayed a knife during the commission of a violent
10 crime. A knife means an instrument or tool with a sharp
11 cutting blade, whether or not fastened to a handle, which
12 can be used to inflict the cut, slash, or wound.

13 In order to find the defendant guilty of
14 possession of a weapon during the commission of a violent
15 crime, you must first find the defendant guilty of either
16 committing the violent crime -- or committing a violent
17 crime or attempting to commit a violent crime. Murder
18 and voluntary manslaughter are both violent crimes. The
19 State must prove beyond a reasonable doubt that the
20 weapon furthered, advanced, or helped in the commission
21 of the crime.

22 Finally, I want to instruct you that in
23 determining your verdict of guilty or not guilty, you
24 cannot consider any possible penalty for any particular
25 crime. The punishment for a crime is a matter for me to

1 determine and should never be considered by you in any
2 way whatsoever in arriving at a verdict of guilty or not
3 guilty. And then, finally, your verdict must be
4 unanimous.

5 Now, Mr. Foreman, this is where you have some
6 actual duties, and they basically are to conduct the jury
7 deliberations, let everybody have their say, whatever
8 they want to say, and then once the jury unanimously
9 decides the verdict, you write what that verdict is on
10 the indictments, and, as I told you at the beginning of
11 the trial, these are the only two pieces of paper that
12 will go back that aren't considered evidence. The sole
13 reason they're going back is for you to be able to write
14 the verdict on the back.

15 Now, on the indictment for murder, you'll see
16 that little -- in red where it says true bill? Well,
17 right below that it says verdict. As to this indictment,
18 you have a possibility of up to four verdicts: You first
19 consider murder, and your verdict could be guilty or not
20 guilty. If you find the defendant is guilty of murder,
21 then you will write guilty, okay?

22 THE FOREPERSON: Yes, sir.

23 THE COURT: On the other hand, if you find
24 that he is not guilty of murder, then you consider
25 voluntary manslaughter, and if you find that the

1 defendant is guilty of voluntary manslaughter, you write
2 guilty of voluntary manslaughter.

3 On the other hand, if you have found him not
4 guilty of both murder and of voluntary manslaughter, then
5 you write not guilty down there, and that will mean that
6 you have found him not guilty of murder and of voluntary
7 manslaughter.

8 Okay?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: All right. Now, as to the
11 indictment for possession of a weapon during the
12 commission of a violent crime, same thing on the back.

13 You'll see the little stamp where it says
14 true billed, and underneath where it says verdict, there
15 is only two possible verdicts in this one, guilty or not
16 guilty, so whatever the jury unanimously decides, you'll
17 write either guilty or not guilty.

18 Once the jury has reached a unanimous verdict
19 on these, you sign it, date it, and let the bailiffs know
20 you have reached a verdict.

21 Now, I'm going to send you back to the jury
22 room. Hold on on beginning your deliberations for a
23 moment or two until I send word back with the bailiffs to
24 begin your deliberations. I have to give the lawyers the
25 opportunity to let me know if I misstated something, and

1 then we get the evidence, make sure it's all together,
2 and send it back.

3 Once I send word back with the bailiffs for
4 you to begin your deliberations, begin your deliberations
5 at that point. I'll send with him also the indictments
6 and the jury charges, but just hold off on this for a few
7 minutes until I send that back.

8 I'm told your lunches are here, so you can
9 have your lunch and eat during your deliberations, if you
10 want to. If you want to eat first and begin your
11 deliberations, it's completely up to you as to how you
12 want to conduct those. All right?

13 Again, go back. Don't begin deliberations
14 until I send word back with the bailiffs.

15 (In open court, jury not present.)

16 THE COURT: All right. Is there anything
17 from the State?

18 MS. BALDWIN: Nothing regarding your charges,
19 Your Honor, only that the 911 call that was introduced
20 into evidence -- actually, that particular CD has several
21 different calls on it, so we've made a clean copy with
22 just the one call. I believe Mr. Cochran is fine with us
23 sending this version back to the jury.

24 MR. COCHRAN: That's fine.

25 THE COURT: All right. Very well.

1 (State's Exhibit No. 108-B was marked for
2 identification and admitted into evidence.)

3 Anything from the defense?

4 MR. COCHRAN: Just renew all objections
5 previously made.

6 THE COURT: Those are denied.

7 Okay. Did y'all get a chance to go through
8 everything here?

9 MR. SIMPSON: Yes, sir.

10 THE COURT: Everything is in place?

11 MR. COCHRAN: Yes, Your Honor.

12 THE COURT: All right. Y'all go ahead and
13 load that up, and then I will discharge the alternate.
14 Don't wander off too far. Let us know where you're at so
15 we can get ahold of you if we have any questions or when
16 we get a verdict.

17 (At 1:17 p.m., the jury retired to deliberate
18 the verdict.)

19 (Court's Exhibit No. 1 was marked for
20 identification and admitted into evidence.)

21 THE COURT: Put on the record that I
22 discharged the alternate.

23 (Recess taken.)

24 (In open court, jury not present.)

25 THE COURT: They want a copy of the

1 confession taken at MUSC and a copy of Paul Polensky's
2 testimony, and they want to take a smoke break. You have
3 the audio?

4 MS. BALDWIN: It should be back there.

5 THE COURT: There is a laptop?

6 MS. BALDWIN: There is a laptop there.

7 THE COURT: And you can queue up what Paul
8 Polensky's is, and just go back there and play that for
9 them. Okay?

10 (Court's Exhibit No. 2 was marked for
11 identification and admitted into evidence.)

12 (In open court, jury present.)

13 THE COURT: There should be a CD with the
14 audio of the confession for you to play in the laptop you
15 have. I am sending the court reporter back to play back
16 the testimony you requested. Do not discuss the
17 testimony in her presence. She will play all of it.
18 Tell her when you would like her to stop. She will play
19 it as often as you request.

20 (Recess taken.)

21 (In open court, jury not present.)

22 THE COURT: All right. Well, I understand
23 the jury has reached a verdict. So we got everybody
24 here? Bring the jury in.

25 (In open court, jury present.)

1 THE COURT: All right. Mr. Foreman, I
2 understand the jury has reached a verdict; is that
3 correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: As to both counts?

6 THE FOREPERSON: Yes, sir.

7 THE COURT: Unanimous as to both?

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Would you hand that to the
10 bailiff, please. All right. The defendant will rise.

11 Indictment 2013-GS-10-2456, the indictment
12 for murder, the verdict is guilty. On 2013-GS-10-2457,
13 possession of a weapon during the commission of a violent
14 crime, the verdict is guilty.

15 If, in fact, this is your verdict, would you
16 please indicate that by raising your right hand? Let the
17 record reflect all the jurors have raised their right
18 hand.

19 Do you wish to have the jury polled?

20 MR. COCHRAN: Yes, Your Honor.

21 THE COURT: All right. Have a seat.
22 Mr. Clerk, poll the jury.

23 (Whereupon, the jury was polled, and all
24 jurors indicated their agreement with the verdict.)

25 THE CLERK: Your Honor, the jury has been

1 (December 9, 2014.)

2 THE COURT: All right. We are back on State
3 versus Kronsberg.

4 Last week Mr. Kronsberg got convicted of
5 murder and possession of a firearm during the commission
6 of a violent crime. We deferred sentencing until today
7 so Mr. Pennington could join us, and so I believe we're
8 left with -- we did hear, I guess, it was from the
9 victim's mother, and is there anything else the State
10 would like to present?

11 MR. SIMPSON: Yes, Your Honor. I know you've
12 sat through the trial. You heard all the facts, the
13 brutal facts, so we won't belabor that point. I would
14 like to give you his record. He has a 2002 open
15 container and 2004 intoxicated and disruptive and
16 trespass out of North Carolina.

17 Your Honor, as horrific as this case is, what
18 is almost as upsetting is the lack of appreciation the
19 defendant seems to have exhibited for what happened and,
20 we'll say, scorn, that he's shown towards the victim's
21 family and fends. The State obtained jail tapes, jail
22 recordings of his phone calls, and we did, of course,
23 turn those over to defense, and in those phone calls, he
24 makes several statements.

25 And we're not going to replay those

1 statements, but I would like to summarize them briefly.
2 It shows only a concern for himself and his situation.
3 He mentions one month, basically, after this incident
4 occurred that he's upset because he's in jail on St.
5 Patrick's Day and he can't go out drinking with his
6 friends. He also at one point is joking with his friend
7 Paul Polensky, who we heard testify, about Paul's brother
8 being incarcerated for burglary, and he's joking, At
9 least he's not in here for killing somebody.

10 And there are several instances similar to
11 that where they make light of what has happened. There
12 are actually some more recent phone calls to another one
13 of his friends around time he was on the first trial
14 docket where he shows some scorn for the victim's family.
15 He's upset because he's being made the poster child for
16 domestic violence.

17 He calls the victim's mother a derogatory
18 name, and there are just several instances such as that
19 that really, I think, lend themselves to showing that he
20 has no appreciation for what he's done. I believe that
21 some of the victim's family would like to address the
22 Court, Your Honor.

23 THE COURT: Certainly.

24 THE WITNESS: My name is Jackie Maloney. I'm
25 the grandmother of Tasha Lucia.

1 Your Honor, I'm going to try to say what I
2 can. My comments are directed to Tilghman.

3 The last Christmas we spent with Tasha was
4 2012. It was one of the best Christmases at a family
5 gathering with Tasha. The day after, we had an oyster
6 roast for the entire family at my house, at our house,
7 family, and you were invited, and you came. Tasha asked
8 if she could bring a friend, and I said sure, Tasha.

9 I also invited her friends as well. You
10 joined us for the oyster roast. We had a wonderful time.
11 You thanked us for the time that we allowed you to share
12 that time with us, and I thought you were okay. I didn't
13 know you, and I always check out the boyfriends, the
14 husbands, everybody, give them the third degree. That's
15 my role.

16 And I really thought you were a pretty good
17 guy, kind of -- had the most beautiful blue eyes when you
18 stared at me in the kitchen and thanked us, the whole
19 nine yards, and then to know that you turned into a
20 monster? I have no idea what happened, and to this day,
21 I can't understand why you would want to take her life.

22 I can see all activities that y'all did. You
23 could argue; you could fight; you could do the whole nine
24 yards, but you don't have to kill anybody.

25 Your life is gone. Your family's life is

1 gone. Our family's life is gone. We've lost someone we
2 loved very much, and I'm sure your family loves you too,
3 but I am so sorry that you've taken this path.

4 You didn't have to do it. From our family,
5 from my heart, I hope God has mercy on your soul because
6 I know in the years to come, to forgive you, to forgive
7 the incident that has happened, is very hard for me. At
8 this time my pastor has talked to me, but I can't forgive
9 you right now. I will, in time, but I hope you know, and
10 I hope you understand someday what you've done and come
11 to sense that you're sorry. And I'm sorry doesn't cut it
12 right now, but I do hope you have some remorse someday.
13 God bless you.

14 MR. SIMPSON: Your Honor, I would just like
15 to State that the victim's mother is present in the
16 courtroom today. She addressed the Court last week, and
17 she doesn't wish to speak again, but the State's position
18 is -- based on all of the facts and circumstances and
19 what I've just said to you, the State would ask that you
20 impose a life sentence in this case.

21 THE COURT: All right. Who would like to
22 speak on behalf of the defendant?

23 MR. COCHRAN: Your Honor, if you would allow
24 myself and Mr. Pennington to speak and address the Court,
25 and I do thank you for allowing us time to get this

1 presentation together.

2 I would actually like to start by responding
3 to victim's grandmother who just spoke, and, Your Honor,
4 I think that -- I have to tell you, I guarantee you that
5 what her grandmother just said affected Tilghman, and he
6 has brought up to me, specifically, Tasha's grandmother
7 and his remorse for what he's done to her family, and I
8 think that Tilghman would gladly do a life sentence if he
9 knew that that would give true closure to Tasha's family.
10 I think he would.

11 He is that type of person, and it's my effort
12 right now to convey to you and to his family, because I
13 think it's so important, that Tilghman does understand
14 what he's done. He does understand the consequences for
15 everybody involved, and he has true remorse.

16 Over the last two years, or almost two years
17 that he's been incarcerated, we have been talking very
18 frequently, and I have related to him in a way that I
19 obviously don't relate to a lot of clients because we're
20 a very similar age. I think we're pretty similar in
21 background.

22 I'm actually one day older than Tilghman, and
23 we have talked at length about coping, not just with his
24 incarceration and not just with the future of his case
25 but with what he's done, coping with the harm he's

1 caused, and he is genuine. This would have been much,
2 much more difficult for me if I had been talking to a
3 brick wall emotionally, if I had been talking to somebody
4 who had no conception of what he had done. This would
5 have been much more difficult for me, and I can tell you
6 that that made it, my job, a lot easier, that I was able
7 to talk to him on that level of true emotional
8 understanding in this case.

9 Your Honor, five years ago, Tilghman's
10 brother died. Four years ago his father died, and I've
11 spoken with his mother and his surviving brother who
12 related to me the impact that that had on Tilghman and
13 the effect it has in terms of his spiraling out of
14 control with drugs and alcohol and how his personality
15 did become more volatile, his personal issues became much
16 deeper after those deaths. His mother is here, his
17 brother is here, and he has other family in here to
18 support him.

19 Your Honor, one other thing that has happened
20 while Tilghman has been incarcerated and that he has
21 spoken to me at length about is a sort of irony that his
22 relationship with his mother has grown and become much
23 more meaningful since his incarceration, and he feels
24 terribly that the loss of the relationship between Tasha
25 and her mother and her family had to result for that to

1 be -- for him to be given that gift, and he understands
2 that. And I just want -- I say this in an effort to
3 express to you and to his family that if it in any way
4 helps give closure to this situation, some good has come
5 from it and his understanding in what has happened.

6 Your Honor, Tilghman has not shown a lot of
7 emotion visibly during this trial and during this
8 process. I do want to point out he is heavily medicated
9 at the jail, and he has talked to me about the
10 medications that he has been administered at the jail
11 severely affect his ability to show emotion. I don't
12 even know if it's physically possible for him to cry with
13 the medications he's on, but, Your Honor, I can tell you
14 that he is feeling it inside, and I have had lengthy
15 discussions with him about this.

16 We spoke for a long time, for almost a full
17 day, down in the holding cell the first time this case
18 was called for trial because Tilghman was seriously
19 considering a plea, and knowing that going forward with
20 the plea there is a very real likelihood that he could
21 get life. There was no offer from the State, and he --
22 the things he took into consideration in wanting to take
23 a plea was not wanting his mother to go through the
24 trial, not wanting Tasha's family to go through the
25 trial, and he truly wants -- the only reason he's ever

1 given me for why he would want a sentence that he could
2 survive is that Tilghman has a daughter.

3 Tilghman has a daughter who lives in Texas.
4 Tilghman lived with the mother of his daughter for the
5 first year of his daughter's life, and they broke up,
6 amicably, and his girlfriend moved to Texas, where she
7 was from, and Tilghman even moved to Texas briefly later
8 on to try to give their relationship a second chance, try
9 to be a father who was present. Things didn't work out,
10 but he kept in touch with them, and he has actually been
11 in touch with his child's mother since -- she's two years
12 old -- since he's been incarcerated.

13 And -- I'm sorry. She's not two years, she's
14 older than that, but since he's been incarcerated, he's
15 had contact with his daughter's mother, and she hasn't
16 decided whether or not she's going to allow her child to
17 come see Tilghman, but she said that when -- when their
18 daughter is 18, she will leave that up to her, and, you
19 know, obviously, we know for a fact that Tilghman will be
20 incarcerated through his daughter's 18th birthday, and he
21 has a real desire to have a relationship with her.

22 He wants her to come visit him, and he wants
23 to have a sentence that he could survive so that he could
24 have that relationship, and that is with the
25 understanding of all of the obvious retorts to that, that

1 he has taken away that relationship between Tasha and her
2 mother, but, Your Honor, I say this in an effort to
3 convey to you the real human compassion that Tilghman has
4 in this case. Tilghman is not as bad as the worst thing
5 that he's done. I think he is better than the worst
6 thing that he has done.

7 This is the kind of case that makes you think
8 about what could have happened, how different things
9 could have been. You know, if Tilghman had wrecked the
10 moped on the way back to his apartment that night, I
11 think that he would have gone the rest of his life
12 without ever committing a crime that was even close to
13 being this severe. It was one of those nights.

14 I think it was an aberration, and I think
15 that that is also important to understand. He was not
16 bent on committing some crime like this. It was just one
17 of those nights, Your Honor.

18 With that said, I'll turn it over to Ashley,
19 and, Your Honor, what we're asking for in this case is a
20 sentence of 35 years, with the five years for the weapons
21 charge suspended, so that it would be a 35-year sentence,
22 followed by five years' of probation. That's what we're
23 asking for, Your Honor, and I'll turn it over to Ashley.

24 Thank you.

25 THE COURT: Mr. Pennington?

1 MR. PENNINGTON: Thank you, Your Honor.

2 Before I speak to the kind of sentence and
3 apply the factors I think would be relevant to the
4 sentencing, I think it would be important for the Court
5 to hear from family members who are better informed than
6 I about who he is, so I've asked his mother, Jane, first,
7 if there was something she wished to address the Court
8 on.

9 THE WITNESS: Thank you, Your Honor. I had
10 some prepared statements, but I do have to say that I
11 have spent hours with Tilghman at the jail, and if there
12 is anything that he does have, it's deep in body remorse,
13 and we've cried. The first day I saw him, he cried for
14 30 minutes and said, I cannot believe what I've done.
15 And we went on -- we've gone on and on this way for
16 almost two years, so I really actually take offense that
17 the prosecution would say that he does not have any
18 remorse because nothing could be further from the truth,
19 nothing, and that's just a blatant falsehood.

20 That does not mitigate the horrible thing
21 that happened, and my heart goes out to the family, and
22 the family has not heard from me because I was advised
23 that I could not reach out to the family until this was
24 over. So you will be hearing from me, and I apologize if
25 we've come off as seeming uncaring. We're not. We're

1 all shocked; we're all traumatized. You know, it will
2 never be the same, ever.

3 Tilghman has had to struggle for his whole
4 life. It is kind of well-established it's been a long
5 term struggle. He's always been very sensitive and he
6 was bullied some in school and could not connect with his
7 peers for a -- no apparent reason. I think that he
8 just had a hard time connecting with other children. He
9 did have some friends, but it's always been very hard,
10 and then he just started shutting down emotionally in
11 order to protect himself.

12 And that led to the drug and alcohol
13 problems, and we have -- there is alcoholism on my side
14 of the family, so he has the genes for it, and he did
15 become an alcoholic probably when he was about 14 or 15,
16 very young age. We took him to see therapists. At the
17 time he did not want to cooperate because most people
18 know people cannot be diagnosed if they're on drugs or
19 alcohol, so he chose not to do that.

20 So it has been many years of struggle, but of
21 all the things that I tried to prepare myself for -- and
22 I was always afraid he would die from drugs or alcohol.
23 All the scenarios I could think of, like a drug dealer
24 would kill him because he wouldn't have money to pay him
25 or whatever it would be, this was just so shocking. This

1 was just not in his character. This is a total departure
2 from any sort of thing that he would do.

3 I -- we still can't comprehend it, and he
4 really can't comprehend it. He would not look at the
5 autopsy photos for a long time, and, finally, we said,
6 You have to look.

7 When he looked, he was so shocked and
8 horrified that he said to me, I have to think about what
9 sort of person I am. I just had no idea I was capable of
10 anything like this. I'm just totally shocked. He said,
11 It's just the worst thing I've ever seen, and he made me
12 promise not to look at the photos because he said if I
13 did that he was afraid I would never speak to him again,
14 so I left the room when you had those in the trial.

15 I don't know what to say. Obviously, I love
16 him. He's my son, and I love him. It's a horrible
17 waste. What he's facing -- it's a horrible waste of
18 Tasha being the one. I liked Tasha a lot. I spent a
19 little bit of time with her with Tilghman. We would go
20 out to dinner, go to lunch, and I always really liked her
21 a lot. And Tilghman tells me that he's still in love
22 with her and he tells me he dreams of her and that makes
23 him happy because when he's dreaming of her, she's alive.

24 Thank you, Your Honor.

25 MR. PENNINGTON: Your Honor, Edward

1 Kronsberg, who is Tilghman's older brother, half brother,
2 the son of Avram, their father, is going to address the
3 Court.

4 THE WITNESS: I'll put my statement down
5 also. Good morning, Your Honor. If I can, I'm going to
6 look down so I can sort of hold it together.

7 On behalf of the family, please know that our
8 hearts go out to you, Tasha, and, as Jane said, we really
9 cared about Tasha, and we're so, so, so very sorry for
10 the incredible loss.

11 Your Honor, Tilghman is my little brother. I
12 love him. I've watched him grow. I baby-sat for him. I
13 played with him. We shared our family memories together.
14 I have known a wonderful, happy child, a funny, smiling
15 boy, and, not so long ago, a young man beaming with love
16 and pride the day his daughter Lynn was born.

17 But lately, mostly what we've shared is
18 tragedy and loss. Our family, though blessed in many
19 ways, have battled addiction, depression, substance
20 abuse. Alcoholism is on both sides of our family. My
21 father battled it for 19 years. My older brother
22 overdosed on drugs. They're both gone.

23 Tilghman has spent his life battling this
24 debilitating disease. First alcoholism, then drug abuse,
25 have robbed him of his childhood, his opportunities, his

1 daughter, his loved ones, and now his freedom.

2 Tilghman is not an evil person. He is not a
3 monster. He's not cold, he's not calculating. He has
4 been lost and confused, devastated by the deaths of our
5 older brother and our father, who he idolized. He's
6 depressed, and he's been self-medicating.

7 I witnessed a good, funny, bright boy become
8 a young man tormented by addiction, debilitated by
9 depression. Tilghman is young, intelligent, and now
10 clear-headed. He has had -- he has something to give
11 back. He asks God every day to grant him serenity,
12 courage, and wisdom. No matter how many times he gotten
13 knocked down he's gotten back up.

14 Now Tilghman faces many years in prison. He
15 has to live with what he's done. He has to maintain his
16 sobriety, and he has to achieve what the last two months
17 in jail have provided him.

18 Tilghman has spent -- will spend the next few
19 decades in a 60 foot square cell, 23 hours a day, 7 days
20 a week, with limited access to anything, the media,
21 books, to any human contact. Prison is a punishment, but
22 it's also a means of rehabilitation.

23 Over the past decade and a half, substance
24 abuse has affected Tilghman emotionally and
25 developmentally. He was 15 when he started to abuse

1 alcohol and drugs, but he's sober now. He's repentant,
2 and he's young. The past two years in jail have allowed
3 him to clean up. He's been prescribed medication for his
4 depression, and he started to work through some of these
5 issues with a trained counselor.

6 Tilghman is a young man who has many friends.
7 As Jane said, he had trouble when he was younger, but now
8 he does, he has friends, true friends. Paul, who
9 appeared on the stand, the last thing he wanted to do was
10 appear on the stand. He still loves Tilghman. Tilghman
11 still loves him. Tilghman is capable of deep love.

12 He has many friends, and he has a loving
13 family. He is not a career felon. This is his first,
14 and only, as you heard from the prosecution -- which was
15 shocking to me. Open container and drunk and disorderly:
16 That's his record. He's not in a gang. He's not a
17 career felon. He hasn't done anything close to this
18 before. He's not accused of anything in his life that in
19 any way is violent and out to kill somebody or to harm
20 somebody. That's not who he is. He's not a violent
21 person.

22 This is a first time felon. This is a first
23 time serious crime, and, as his attorney said, as Charlie
24 said, but for a cross in the road, but for the fact that
25 he is afflicted with a disease, which alcohol and

1 substance abuse is, he may -- at that crossroads he went
2 from being whatever he could have been, which could have
3 been anything. He could have been a lawyer, a doctor, an
4 accountant; he could have been a businessman. He could
5 have just been a father to his daughter, but because of
6 this disease, because of substance abuse, he took a
7 different path, and that path, he's now hit bottom. You
8 can't hit bottom harder than he's hit, and he's coming
9 back up.

10 He's doing everything he possibly can, and
11 thank God over the last two years he's had a chance to
12 actually have counselling, to have medication, be able to
13 look at his life and see that he has something to give
14 back. He has a reason to live.

15 Prison is a punishment, but it's also a means
16 of rehabilitation. Sending Tilghman to die behind bars
17 with no hope of release is a sentence that denies him the
18 possibility of redemption, every bit as much as strapping
19 my baby brother to a gurney and filling him with poison.

20 Sentencing Tilghman to 35 years, for him,
21 would be a life sentence, more than the life that he's
22 already lived. It is difficult, but he will endure. It
23 would allow him hope, hope to be a part of his daughter's
24 life in 30 years, her family's life.

25 Please allow Tilghman the hope of one day

1 knowing my children, they're good boys, and with them and
2 with his daughter and with the rest of our family. They
3 will all be there for him, and they will help him out and
4 they will love him and they will help him to lead a
5 productive life.

6 Thank you, Your Honor.

7 THE DEFENDANT: I love you, Ed.

8 THE WITNESS: I love you too.

9 MR. PENNINGTON: Dr. Leonard Mulbry is also
10 present in the courtroom. He has been retained in the
11 past by defense lawyers and also by the State to do risk
12 assessments for future dangerousness, and he has some
13 very brief observations about the impact.

14 Clearly, the Court is required to give no
15 less than a 30-year sentence. We know mathematically
16 that, at the very minimum, will require Tilghman to be in
17 prison until he's 60 years old, and we're obviously
18 talking about post -- the post 60-year threshold, and I
19 would ask if the Court would allow Dr. Mulbry to address
20 the Court.

21 THE COURT: Sure.

22 THE WITNESS: Very briefly, sir. Mr.
23 Tilghman's record is clear of violence. There is no
24 violent actions in his past records. His life's pretty
25 much been shaped by drugs and alcohol. That and mental

1 illness are his two major risk factors for future
2 violence. He's sought treatment for both, and, with
3 advancing age and the treatment of these two major risk
4 factors, his risk of violence can be clearly expected to
5 diminish with time and that at such time as he would come
6 out of prison, his risk would be markedly lower than even
7 what we see currently.

8 THE COURT: Thank you. Anything further?

9 MR. PENNINGTON: Yes, sir. Your Honor, I
10 know you are in the business of coming up and crafting
11 sentences, but I want to visit with the Court for just a
12 couple minutes about what are some of the relevant factors
13 that may be important in terms of coming up and
14 structuring a sentence that has proportionality.

15 You see the spectrum of offenders that come
16 in this courtroom and do informal risk assessments all
17 the time. There's no doubt that what we're dealing with
18 here is a horrific crime, one that's had an impact on his
19 family, upon the community.

20 There are brutal and gruesome facts. This
21 was a murder in the sense that there were facts that made
22 it clear that this was a permanently revocable act.

23 I want to also contrast, though, that we see
24 murders that go beyond where we are today where there are
25 aggravating factors where someone sets out on a path to

1 commit a robbery or a rape or a burglary or a home
2 invasion or is carrying a gun involved in a scenario
3 involving law enforcement.

4 We know the tragic circumstances of people
5 who set out on a lifestyle where violence is foreseeable,
6 predictable, and expected, and this case is not that
7 case. We have facts here that suggest that this was not
8 foreseeable by the people that knew these folks.

9 There was no prior arrest for criminal
10 domestic violence. There was no protection order in
11 place. He did not violate any protection orders, and I
12 believe that the evidence is fairly clear that on this
13 particular night when he left Paisano's, he had no agenda
14 planned other than to go back, collect his items, and
15 stay at Paul Polensky's house, and that something
16 horrible escalated spontaneously.

17 Obviously, you've already heard the contrast
18 that we're not dealing with a person who has flaunted or
19 mocked the law in the past. We don't have a history of
20 his being engaged in the Department of Juvenile Justice
21 for delinquency. We don't have an arrest history. We
22 don't have a conviction history of significance. We
23 don't have indications that even domestically, within his
24 own home, there have been people who have been physically
25 attacked.

1 Dr. Mulbry touches on the fact that it is
2 undeniable that the social science research that says as
3 we age, the risk factors for future violence goes down,
4 and what is more interesting is in domestic violence
5 cases, it's very commonly understood that these are the
6 kinds of cases for which the risk of recidivism was very
7 situational and very unlikely to repeat itself.

8 The Court has heard a bit about his
9 disadvantages in life, and I would only put it this way:
10 The thing that resonated with me -- I met Edward
11 Kronsberg when I joined the Charleston Bar in the '80s.
12 He is an attorney. I got to know him a little bit. I
13 also knew he and his family were heirs to the Edwards
14 Department Store fortune and that due to, it turns out,
15 drugs and alcohol and bad decisions, that fortune was
16 essentially lost, and they went from where they've been
17 an economic success to an economic failure at age 12. At
18 age 16, it was a divorce.

19 He took his father's side in the divorce,
20 estranging himself from his mother, which was a mistake
21 because his father had not only an addiction to
22 prescription drugs, but to cocaine, marijuana, and that
23 essentially left him a lonely, isolated boy who was
24 chronically depressed and who began to run with the kids
25 that had a way to treat that, which was the alcohol and

1 drugs.

2 Everyone I've talked to in the Kronsberg
3 family described that Tilghman saw himself as the black
4 sheep, the family failure, particularly in light of the
5 success that Edward had attained. He gained love and
6 acceptance by hanging out in the bar scene, and he found
7 love and acceptance from Tasha, and they -- it was an
8 unusual relationship in that they broke up, which you
9 heard testimony when I was here, that they were on again
10 and off again. They would reconcile repeatedly, that
11 they were united as much by their mutual use of drugs and
12 alcohol and partying as anything.

13 I'm not blaming her at all. This is the
14 lifestyle, but it put them both at risk. What I'm
15 addressing the Court about is that this was a spontaneous
16 act, and as Charlie has alluded to, this Court has to
17 sentence people who are going to live beyond the time of
18 this sentence, who are going to be more than the worst
19 act that they've ever committed, and so I want to point
20 out that it's sometimes elusive when you look at a person
21 and you listen to jail tape excerpts, but there is, I
22 think, strong indications that he spent the first four
23 months of his time in the jail, essentially mourning and
24 crying.

25 At a certain point I think he became somewhat

1 desensitized. There were bond hearings where there were
2 accusations that if he was to be released by this Court
3 he was going to go out and kill again, which he felt were
4 exaggerations and inflammatory exaggerations that were
5 upsetting.

6 He's been -- he was a chronic alcoholic, and
7 so he joked with his friend on the phone about he wished
8 he could be out for St. Paddy's Day. I don't see that as
9 a really relevant revelation in terms of assessing his
10 remorse. My sense is of this man is that now things have
11 changed for him irrevocably. He's been prescribed
12 Depakote and Prozac, which are mood stabilizers.

13 He has accepted and surrendered his life to
14 prison. He knew that when he went to trial that the best
15 he could have possibly hoped for was the voluntary
16 manslaughter conviction with 30 years in prison, the most
17 likely outcome.

18 He has fortunately cultivated his
19 relationship and his mother and his family. He has begun
20 to read. He has attended DAODAS classes, and he has
21 expressed to me in other ways an acute awareness of the
22 people's lives that he's destroyed and damaged.

23 Officer Pope, who is a detention officer, was
24 interviewed and described Tilghman as a quiet inmate who
25 mostly did what he was told. He's not someone who is a

1 regular resident of our correctional system or jails.
2 For him, prison life is going to be torture, not a home.
3 He could have, if he had chosen to, come to this
4 courtroom at his trial and tried to invent a lie, to try
5 to exculpate himself in some manner, if that was his mode
6 of operation, to try to testify and say that he was the
7 only one there and come up with some sort of fiction. He
8 did not do that.

9 After he was arrested, he was -- or, rather
10 before he was arrested, he didn't run off. He was
11 suicidal. He tried to take his own life unsuccessfully,
12 and, as he began to come around, as this Court found, he
13 made a voluntary decision to cooperate with law
14 enforcement and make statements implicating himself in
15 this offense.

16 My conclusion, Your Honor, is as we try to
17 assess the harm that's been done to the community and to
18 impose a proportional sentence on this man as well as the
19 horrific crime that occurred, that there is a place for a
20 measure of hope for him, that good behavior could produce
21 something positive, a path, if you will, for some sort of
22 personal redemption.

23 Our proposal would have him serve no less
24 than 65 years, day for day -- rather, serve until he is
25 65 years, day for day, and my reading of the additional

1 punishment for possession of a knife during the
2 commission of a violent crime suggests under 16-23-490
3 that where there is a larger mandatory minimum sentence
4 of imprisonment that the Court is free to run that
5 sentence consecutively and suspend it, or concurrently.
6 There's no provision in that that limits the Court's
7 natural authority under 24-21-410 to suspend sentences
8 and impose probation.

9 I point that out, not because this is a
10 probation case, but because it could provide the Court
11 with additional supervision beyond the normal community
12 supervision time that one would expect when one maxes out
13 a sentence of the scale that we're talking about.

14 There is no -- a lot of times we think about
15 sentences as sending a message, and a message does need
16 to be sent to Tilghman and to the community. The
17 reality, though, we know, the work that we do, is that
18 sound bites and media memory fades very rapidly, but the
19 people in this room are the ones that are going to know
20 and remember this sentence forever.

21 And I contend that it is a form of just mercy
22 to consider something less than life without parole, and
23 by that I mean less than a sentence that would exceed his
24 70th birthday. It would provide a glimmer, albeit a tiny
25 glimmer, of hope, a motivation for he and his family, and

1 appropriate supervision at the conclusion of that, what
2 could be as long as 35 or 40 years of active
3 imprisonment.

4 Thank you, Your Honor.

5 THE COURT: Mr. Kronsberg, would you like to
6 say anything?

7 THE DEFENDANT: Yeah. I am so sorry that I
8 took her away from you. I swear I loved her very much, I
9 did. That -- I can't believe this happened. I'm so
10 sorry. I know it doesn't matter what I say, and I know
11 it's not going to help you, but at least my incarceration
12 can cover you somehow, or help you bring closure. I
13 don't know. I am so sorry I took her away from you.

14 THE COURT: Anything else?

15 MR. COCHRAN: No, Your Honor.

16 THE COURT: All right. Well, this was my
17 12th year of being a circuit judge, 20 on the bench
18 total, and you see a lot of things, especially in the
19 criminal world.

20 I've done so many murder trials that I have
21 actually lost count. I didn't think that would be
22 possible when I first started doing this, and I know I've
23 probably done at least ten this year. In fact, I ran
24 into the solicitor in Beaufort County yesterday, and he
25 was reminding me of one that I did earlier this year

1 there that I really didn't even remember, but, you know,
2 you get troubled by the fact that when you do something
3 that is so horrific that you forget about it. There's
4 just so many of them you can't carry it around with you
5 all the time.

6 But what did strike me about this case is
7 that -- you know, 95 percent of the murder cases that we
8 process through here are with what people are called
9 thugs, gang bangers, people that are killing over drugs
10 or territory or perceived slights or things that aren't
11 comprehensible to most of us.

12 This isn't really that type of case. This is
13 what, I guess the common vernacular would be, a crime of
14 passion, and I know that the State -- or the defense in
15 their attempt to get the jury to convict on voluntary
16 manslaughter, you know, tried to put that light on the
17 case. The jury didn't buy it, but there is an element of
18 it, I think, that got it started, the initial altercation
19 and the initial violence between these two folks. That
20 was probably a crime of passion.

21 I really only presided over one case that I
22 can think of with a worse set of facts when it comes to
23 the actual murder, and that was in, in fact, a death
24 penalty case, and that was a case where a very, very
25 troubled person committed that offense, not like this

1 one. The problem with this case is that from the
2 beginning it's always come back to that stabbing.

3 If you get to the point where you can get
4 your head around the fact that somebody can provoke you
5 or incite your emotions so much that out of a sudden heat
6 of passion you lose your senses and you kill them, that's
7 one thing, to be able to get your head around that, but
8 in this case there was this moment in time in which you
9 thought she was dead and walked away from it and heard
10 that she was still alive and went back to finish her off,
11 and that just takes this case to an entirely different
12 level.

13 You know, during the trial, one of the things
14 that -- I struggle with trying to understand, in your
15 confession to the police, after you woke up in the
16 hospital, was you admitted that you did it, and you said,
17 Well, we had been doing psychedelic drugs.

18 And I thought, well, that tailors into a
19 sudden heat of passion and sort of a non premeditated
20 story. Why don't you let it in? Why don't you use it?
21 Why don't you tell the jury, he was so out of his mind,
22 under the influence of psychedelic drugs, that he lost
23 control, didn't know what he was doing? And I said, why
24 would you not want to use that?

25 And I couldn't figure it out, until the last

1 morning of the trial when the pathologist testified, and
2 that's when I think I understood why, and that's because
3 there was no evidence of psychedelic drugs in her system,
4 and there was never any evidence that there was any
5 psychedelic drugs in Mr. Kronsberg's system. In other
6 words, it wasn't true.

7 THE DEFENDANT: You need a spinal tap to get
8 that, okay?

9 MR. PENNINGTON: I guess this comes in the
10 form of an objection, in that I didn't realize the Court
11 was going to address this question. I was not present
12 during the testimony, but we asked the pathologist if
13 they screened for mushrooms, and that test was not done.

14 THE COURT: Well, there was never any
15 evidence that it was true, let's put it that way. And I
16 just kept going back to how do you get from arguing that
17 this young lady humiliated you to the point that you were
18 willing to kill her, and then just get back to thinking
19 she was dead and walking out of the room?

20 And, upon hearing that she was still alive,
21 you went back and stabbed her, and you didn't just stab
22 her one time. You stabbed her 11 times, and that is why
23 you got convicted of murder. That was malice, and that,
24 I understood, is why the jury convicted you of murder and
25 not of manslaughter.

1 You essentially wasted the first 30 years of
2 your life. What you do with it from this point on is
3 completely up to you in the sense of how do you make --
4 where you're going, make your life count for something?
5 You know, I remember hearing that I heard -- I talked to
6 a warden one time, and he was pointing out to me as we
7 were walking through one of the maximum security
8 facilities that, you know, That person over there, they
9 were a wild buck when they got here, but over time, they
10 all calm down.

11 And that's what it takes, is time, and you
12 figure out how to adjust to your circumstances and how to
13 make your life worth something. But you're going to be
14 in a difficult situation, but it is a situation that you
15 made, and how you figure out how to accomplish a goal of
16 redemption or making your life worth something, you can
17 do it in those circumstances, but you won't be able to do
18 it like the rest of the people that are walking about the
19 streets.

20 Again, this case, from the beginning, has
21 always come back to the multiple stabbing event that took
22 her life when you thought that she was already dead, and
23 this was to come back and to make sure that she was dead,
24 and those facts are why I have to sentence you to life
25 without parole.

1 THE DEFENDANT: Fuck you very much, Your
2 Honor.

3 THE COURT: That is the sentence of the
4 Court, life without parole.

5 THE DEFENDANT: Cocksucker.

6 THE COURT: Which, all things considered,
7 sounds like it might be appropriate for his conduct as
8 well. The five years will simply run concurrent with
9 this.

10 MR. COCHRAN: Thank you, Your Honor.

11 MR. SIMPSON: Thank you, Your Honor.

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13 (Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 9th of December 2014.

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

March 5, 2015



Circuit Court Reporter

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

2014 DEC -1

JULIE J. ARISTIDE
CLERK OF COURTIN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Case No(s): 2013GS1002456, 2457

Warrant No(s): 2013A1011300006;
2013A1011300007

BY _____ Charge(s): Murder; Poss Weapon During VC

STATE OF SOUTH CAROLINA

vs.

ROBERT TILGHMAN KRONBERG,

Defendant

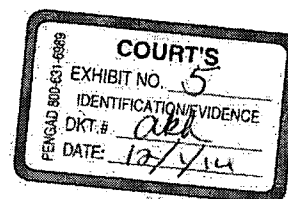
MOTION IN LIMINE

(RE: SUPPRESSION OF STATEMENTS OF
DEFENDANT ON FEBRUARY 13, 2013 AS
VIOLATING 5TH, 6TH AND 14TH
AMENDMENT RIGHTS)

The Defendant, Robert T. Kronsberg, through the Ninth Circuit Public Defender's Office and his attorney Charles W. Cochran, hereby moves to suppress the results of an unconstitutional interrogation of the Defendant which was conducted by the detectives of the Charleston Police Department on February 13, 2013 at approximately 10:30 am while the defendant was hospitalized and sedated.

STATEMENT OF FACTS

The Defendant was taken into custody by police on Sunday February 10, 2013 at approximately 5:00 pm. The defendant was unconscious when he was found. It appeared that he had taken an overdose and cut his wrists. Police were forced to seek medical treatment for the him at the Medical University of South Carolina (MUSC). MUSC treated the defendant at the hospital from Sunday, February 10 to Wednesday, February 13, 2013. The defendant was agitated during his recovery and doctors prescribed medications to reduce his restlessness. On Tuesday, February 12, 2013, detectives with the Charleston police appeared and tried to interview the defendant at the hospital. The detectives tried to read the defendant his Miranda rights. They recorded this proceeding and you can hear a female detective asking the defendant to "stay with them". The defendant indicated clearly that he did not want to talk to the detectives about the case. The detectives decided to stop their questioning. As the detectives were leaving, one detective asked if they could come back the next day and the defendant gave a mumbled "OK" The defendant sounds very drowsy.



Detectives came back to see the defendant at the hospital again on the next morning, Wednesday February 13, 2013. The detectives returned to question the defendant about the same offense that the defendant had refused to discuss the night before. The detectives did not record their initial greeting or discussion with the defendant. MUSC records from Wednesday, February 13 show that the defendant had been medicated for agitation and restlessness with an antipsychotic medication called Haldol. Haldol is a dopamine inhibitor which impairs the executive function of the brain to think clearly. Haldol is not sedating but it impairs the ability to think clearly and make choices and executive decisions. It has the effect of slowing down brain function and making the patient more compliant with his hospitalization or other direction. The drugs have the effect of chemically reducing the vigilance of the patient and making him less able to reason and make self-protective decisions. The defendant was still hospitalized at MUSC on February 13 at 10:30am and drugged up for medical purposes. The defendant did not initiate this conversation. The CPD detectives chose this time and place to re-initiate their questioning. They knew or should have known that the defendant was being medicated by hospital staff from their visit the night before. It was less than twenty four (24) hours after the defendant indicated to them that he did not want to answer their questions about the same subject at the same hospital.

APPLICABLE LAW AND DISCUSSION

When the suspect clearly invokes the right to silence, law enforcement must scrupulously honor that invocation. *Michigan v. Mosley*, 423 U.S. 96, 104 (1975). Once an accused requests counsel, police interrogation must cease unless the accused himself "initiates further communication, exchanges, or conversations with the police." *Edwards v. Arizona*, 451 U.S. 477, 485, 101 S.Ct. 1880, 1885, 68 L.Ed.2d 378, 386 (1981). A suspect may invoke the right to silence by clearly articulating a desire to end the interrogation. *Davis v. United States*, 512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994); *State v. Reed*, 332 S.C.35, 42, 503 S.E. 2d 747,750 (1998).

Interrogation is the express questioning, or its functional equivalent which includes "words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating response." *State v. Sims*, 304 S.C. 409, 417, 405 S.E.2d 377, 381 (1991)

(citing *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1690, 64 L.Ed.2d 297, 308 (1980)).

The burden is on the State to prove by a preponderance of the evidence that the defendant did not invoke his right to remain silent. *State v. Washington*, 296 S.C. 54; 370 S.E.2d 611, 612 (1988); *State v. Neely*, 271 S.C. 33, 40 (1978). There is a presumption against waiver.

The principal constitutional safeguard against police badgering during interrogation is the Fifth Amendment Miranda warnings, as applied to the states under the Fourteenth Amendment. *Maryland v. Shatzer*, 559 U.S. 98 (2010). The protection guaranteed by Miranda secures the right not to be compelled to incriminate yourself by ceaseless interrogation. Once invoked, the Miranda rights must be scrupulously honored by police or they forfeit the use of the statements at trial.

It seems clear that the detectives desired answers from the defendant Tuesday February 12 but they were refused. The next morning they were prepared to sacrifice the admissibility of the responses to reinitiate their questioning and gain information that would help this high publicity murder investigation.

The key here is that the officers had a duty to stop their interrogation when the Defendant asserted his right to stop the questioning. They ignored his invocations thereby nullifying the meaning of the Miranda warnings for this Defendant and came back the very next morning to find a way to continue their questioning. Case law is clear that the police cannot continue the questioning but must "scrupulously honor" the Defendant's invocation of his rights unless he re-initiates the discussion. The fact is that the police never showed a willingness to stop the questioning or wait until the defendant had been released from the hospital. The detectives ignored the boundaries set by Miranda in their zeal to continue to seek more information from this Defendant.

The United States Supreme Court has clarified that the totality of the circumstances analysis does not mean that the duty of the police to halt their interrogation when the defendant has unequivocally asserted his rights is undermined by the fact that a defendant responds to interrogation after he has invoked his right to silence.

On this assertion of the right to remain silent, the facts of this case do not meet the Benjamin test suggested in *State v. Benjamin*, 345 S.C. 470, 549 S.E. 2d 258 (2001). The court

articulates five (5) factors to guide the determination that the right to cut off questioning has been scrupulously honored:

(1) whether the suspect was given Miranda warnings at the first interrogation; (2) whether police immediately ceased the interrogation when the suspect indicated he did not want to answer questions; (3) whether police resumed questioning the suspect only after the passage of a significant period of time; (4) whether police provided a fresh set of Miranda warnings before the second interrogation; and (5) whether the second interrogation was restricted to a crime that had not been a subject [***8] of the earlier interrogation. *Burket v. Angelone*, 208 F.3d 172 (4th Cir. 2000). See also *Roundtree v. Commonwealth*, 2000 Va. App. LEXIS 414, 2000 WL 724026 (Va. [*477] App. 2000); *Wisconsin v. Badker*, 2001 WI App 27, 240 Wis. 2d 460, 623 N.W.2d 142, 2000 WL 1790013 (Wis. App. 2000); *State v. Brooks*, 505 So. 2d 714, 722 (La.), cert. denied, 484 U.S. 947, 108 S. Ct. 337, 98 L. Ed. 2d 363 (1987).

However, the Mosley factors are not exclusively controlling, nor do they establish a test which can be woodenly applied. *State v. Koput*, 134 Wis. 2d 195, 396 N.W.2d 773, 776 (Wis. Ct. App. 1986). Rather, the factors provide a framework for determining whether, under the circumstances, an accused's right to silence was scrupulously honored. *Id.*

In Benjamin, you have a different police agency (SLED), who approached one hour after a Benjamin's informal refusal to talk with the local Sheriff (No Miranda). The SLED agent offered the first set of Miranda warnings which Benjamin waived.

In this case, after the assertion of the right to remain silent on Tuesday in the hospital, the same officers from the same police department returned on Wednesday morning to the same hospital setting. There was no passage of a significant period of time. The defendant was still hospitalized and sedated with a powerful antipsychotic medication. And the detectives began questioning the about the same topic! The defendant's medication had an effect of impairing the the defendant's ability to understand and processes his circumstances. The recorded evidence shows compliance but does not demonstrate a clear knowing, intelligent and voluntary waiver of the right to remain silent which was asserted the night before by the defendant. Instead the detective does not ever directly ask the defendant if he is willing to waive his right to remain silent. Detective Holmes chooses to bypasses that question and he just starts questioning the defendant who is medicated with Haldol. The detectives speak very rapidly when covering the defendant's rights despite knowing that they are talking to someone who is being treated and

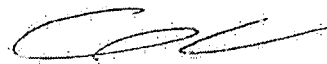
medicated. The recording does not provide evidence of a knowing, intelligent and voluntary waiver by the defendant. The State relies heavily on *Colorado v. Connelly*, 479 U.S. 157; 107 S. Ct. 515, 1986. The reason that Connelly is not controlling is that in *Connelly*, the defendant went looking for and talked with police by choice.

By contrast, the defendant in this case was in custody and confined to a hospital where he was medicated. He told police he did not want to talk about the case the day before but the POLICE came back less than 24 hours later while he is still hospitalized and medicated. They wanted to see if they could get him to talk under those circumstances, rather than waiting a few days as they originally suggested after he would have finished his hospital course of treatment. This was coercive.

Conclusion

For all of the foregoing reasons, and based upon the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and comparable provisions in the South Carolina Constitution, the Defendant hereby moves for this Court to exclude evidence concerning his statements to law enforcement, as specified above, from the trial of his case.

Respectfully submitted,



Charles W. Cochran
Assistant Public Defender
Counsel for Robert T. Kronsberg

Charleston, South Carolina

November 22, 2014

FILED
2014 DEC - 1 AM 8:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



BJPpsych

The British Journal of Psychiatry

Haloperidol in normals.

R H Belmaker and D Wald

BJP 1977, 131:222b-223.

Access the most recent version at DOI: 10.1192/bjp.131.2.222b

References

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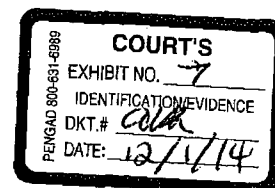
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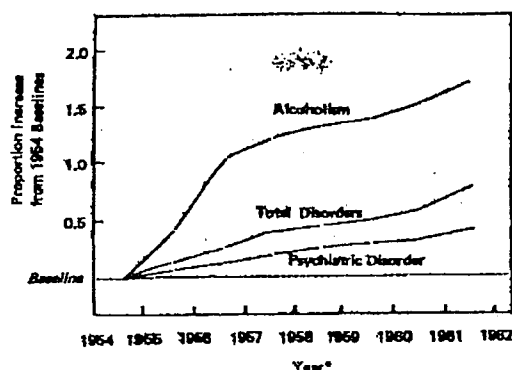


FIG 1.—Proportion increases in male admissions to Sweden Mental Hospitals between 1954 and 1961 calculated from 1954 baselines.

* Data for the year is plotted at the mid-year.

MANAGEMENT OF AFFECTIVE DISORDERS

DEAR SIR,

I found Dr David Shaw's review article on 'The Practical Management of Affective Disorders' (*Journal*, May 1977, 130, pp 432-51) stimulating and full of information. However, there are some points with which I would take issue. It is difficult to know how he justifies giving as many as 14 ECTs in a case of depression. I would have thought if the patient did not respond to a maximum of 8 ECTs, the possibility of improving with further ECT is small. Perhaps he has some basis for his figure of 14, but he does not state it. There is also a conspicuous failure to mention the remarkable effect of ECT given in a brisk, brief course in mania. This would seem to be far safer than the heroic doses of haloperidol which Dr Shaw recommends, namely 10-30 mg i.m. initially and further doses 1-1½ hours later repeated till either hypotension ensues or the mania subsides. There is also no mention of the role of barbiturates, which can be most helpful in the severe sleep impairment of

agitated depression and mania. Nitrazepam and similar compounds are just not adequate in these instances, and while one would rarely prescribe barbiturates otherwise they are surely indicated here. I would applaud Dr Shaw's emphasis on using adequate doses of tricyclic antidepressants, but he makes no reference to work done on the cardiac effects of different tricyclic antidepressant drugs (see the work of Burrows *et al*, *Brit. J. Psychiat.*, 1976, 129, pp 335-41). This work would suggest that doxepin is safer than the other tricyclics in patients with heart disease. Dr Shaw gives the impression of therapeutic zeal, which is refreshing, but I feel that in cases of so-called resistant depression it is important to emphasize re-examining closely one's diagnosis before embarking on a series of drugs, some of which carry significant problems of toxicity.

N. BERYLNE

Oldham and District General Hospital,
Rochdale Road,
Oldham OL1 2JH

HALOPERIDOL IN NORMALS

DEAR SIR,

Haloperidol is an effective antipsychotic agent which is a relatively specific blocker of dopamine transmission in the brain (Anden *et al*, 1970). As part of the preliminary trials in a study of possible dopaminergic mechanism in affective disorder, the two authors each were given haloperidol 5 mg intravenously in a two-minute push. The effect was marked and very similar in both of us: within ten minutes a marked slowing of thinking and movement developed, along with profound inner restlessness. Neither subject could continue work, and each left work for over 36 hours. Each subject complained of a paralysis of volition, a lack of physical and psychic energy. The subjects felt unable to read, telephone or perform household tasks of their own will, but could perform these tasks if demanded to do so. There was no sleepiness or sedation; on the contrary, both subjects complained of severe anxiety.

The present experience was similar to that previously reported of neuroleptic effects in normal subjects (DiMascio *et al*, 1963; Heninger *et al*, 1965), though previous studies used neuroleptics which block both dopamine and noradrenaline receptors (Anden *et al*, 1970). We used a relatively specific dopamine blocker, haloperidol, and experienced profound cognitive and emotional restriction. Dopamine blocking by neuroleptics may function to restrict cognitive and emotional processes in normals as well as in schizophrenics, and thus it is possible

that it does not specifically antagonize schizophrenic pathology. In the presence of psychotic anxiety or delusions, such cognitive or emotional restriction may be desirable and therapeutic. However, the restrictive effect may be a general one, and is certainly useful in mania as well as in schizophrenia (Shopsin *et al*, 1975). The similarity of the above-described state to that of some cases of agitated depression and post-psychotic depression suggests involvement of dopamine in these affective states (Post *et al*, 1976; Gerner *et al*, 1976), as well as in schizophrenia (Snyder *et al*, 1974).

ROBERT H. BELMAKER
DAVID WALD

Department of Research,
Jerusalem Mental Health Centre,
POB 140, Jerusalem, Israel

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LITHIUM AND PSORIASIS

DEAR SIR,

We have recently reported (Skott *et al*, 1977) three patients with bipolar affective disorder who have psoriasis vulgaris and who showed a marked deterioration of their skin disease during lithium treatment. Within the first two months on lithium carbonate or sustained-release lithium sulphate their psoriasis increased heavily and did not respond to conventional means of topical treatment which had earlier been effective. In all cases it was judged inadvisable to

discontinue lithium treatment. Carter (1972) reported exacerbation of psoriasis in three patients on lithium. In his patients lithium treatment was discontinued, which led to prompt improvement of the skin disorder. Voorhees *et al* (1975a) reported three patients, and Bakker and Peppinkhuizen (1975) reported four patients with psoriasis who showed deterioration on lithium.

A possible explanation for the observed effect could be through reduction of cyclic AMP, which is considered to be a stimulus to epidermal proliferation, important in psoriasis. Preliminary data from *in vitro* studies suggest that lithium affects the epidermal cyclic AMP (Voorhees *et al*, 1975b).

Since the completion of our report three similar cases have been referred to us. In one of these cases it was possible to discontinue lithium whereupon the skin disease improved to its previous appearance.

The question whether lithium may actually aggravate psoriasis has practical importance. Further studies are now in progress to confirm this clinical observation.

ANNIKA SKOTT
BRITT-LOUISE MAGNUSSON
HÅKAN MOBÄCKEN
JAN-ERIK STARMARK

Psychiatric Research Centre,
St Jörgen's Hospital,
S-422 03 Hisingen Backa,
Sweden

References

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JBN20130201093

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1302282

ARREST WARRANT NUMBER

2013A1011300006

DATE OF ARREST

February 13, 2013

ACTION OF GRAND JURY

TRUE BILL

J. A. Butler

Foreperson of Grand Jury

Date:

MAY 6 2013

VERDICT

Guilty of MURDER

D. A. Butler

Foreperson of Petit Jury

Date:

12/4/2014

INDICT

DOCKET NO. 2013GS1002456

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2013

THE STATE

vs.

ROBERT T KRONBERG

DOB:

W/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

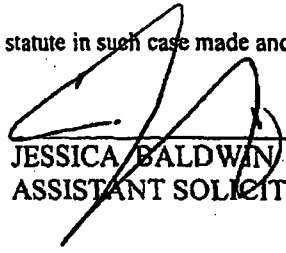
INDICTMENT

At a Court of General Sessions, convened on May 6, 2013 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about February 10, 2013, with malice aforethought, ROBERT T KRONBERG did kill and murder Tasha Lucia by means of hitting the victim in the head with a hammer and stabbing her in the chest several times with a knife; and that Tasha Lucia did die in Charleston County as a proximate result thereof on February 10, 2013; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


JESSICA BALDWIN
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Robert T. Kronsberg

AKA:
 Race: WHITE Sex: M Age: 32
 DOB: SS#:

Address:
 City, State, Zip: Charleston, SC 29412
 DL#: SID#: SC01455339

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder

INDICTMENT/CASE#: 2013GS1002456A/W#: 2013A1011300006Date of Offense: 2/10/2013S.C. Code § : 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Baldwin Jessica76289
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ 75; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea.	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

DEFERRED SENTENCE: (Plus Accrual)

Judge: _____

Date: 12/9/14

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2137Sentence Date: 12/9/14

JBN20130201093

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1302282

ARREST WARRANT NUMBER

2013A1011300007

DATE OF ARREST

February 13, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury ... MAY 6 2013
Date:

VERDICT

Guilty

Foreperson of Petit Jury

12/4/2014
Date:

INDICT

DOCKET NO. 2013GS1002457

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2013

THE STATE

vs.

ROBERT T KRONBERG

DOB:

W/M

Indictment for

Possession Of A Weapon During The
Commission Of A Violent Crime

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

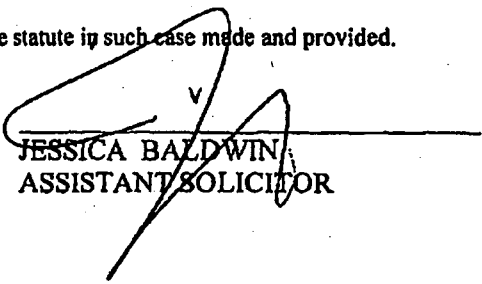
INDICTMENT

At a Court of General Sessions, convened on May 6, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession Of A Weapon During The Commission Of A Violent Crime

That in Charleston County, South Carolina, on or about February 10, 2013, the Defendant, ROBERT T KRONBERG, did possess a hammer and knife or visibly display what appeared to be a hammer and knife during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


JESSICA BALDWIN
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Charleston

VS.

Robert T. Kronsberg

AKA:

Race: WHITE Sex: M Age: 32

DOB: SS#:

Address:

City, State, Zip: Charleston, SC 29412

DL#: SID#: SC01455339

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Possession of a Firearm or Knife During Commission of a Violent Crime

INDICTMENT/CASE#: 2013GS1002457

A/W#: 2013A1011300007

Date of Offense: 2/10/2013

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Baldwin, Jessica

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: LWOP Sentence☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

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PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender Fund

DEFERRED SENTENCE: (If Applicable)

Judge: Date: 12/4/14

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2139Sentence Date: 12/5/14

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 22nd, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
DEC 22 2015
SC Court of Appeals

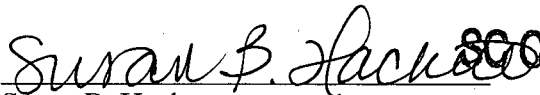
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RECEIVED

December 22nd, 2015

DEC 22 2015


Susan B. Hackett
Appellate Defender

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT