

22388

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2012-GS-07-105

The State.....Respondent,
v.
Robert Jared Prather.....Appellant.

RECORD ON APPEAL
VOLUME III OF III

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MENTAL HEALTH
PRISON HEALTH SERVICES, INC.
SICK CALL REQUEST

EMERGENCY!

Print Name: Phillips, Joshua, Brandon Date of Request: 7-2-07
ID # _____ Date of Birth: 11-7-81 Location: 1A01

Nature of problem or request: I keep making unnecessary noises (clacking, drum beating, humming ect.) I can't stay on task very long (reading a book, drawing ect.) I'm always fidgeting through my box & papers continuously every day. I don't know the difference between reality or fantasy. I don't remember anything Joshua B. Phillips

from the previous day. I keep seeing brown objects Signature
I am ADHD!

DO NOT WRITE BELOW THIS LINE when I turn to look it's not there.
hen I was on the street, I took ADDERAL. It was for stress, anxiety disorder, ect.

Date: / /
Time: AM PM
Allergies:

RECEIVED
Date: _____
Time: _____
Receiving Nurse Initials _____

(S)ubjective:

(O)bjective

(A)ssessment:

(P)lan:

PLEASE SEE
PROTOCOL
SHEET

Refer to: MD/PA Mental Health Dental Daily Treatment Return to Clinic PRN
CIRCLE ONE

Check One: ROUTINE () EMERGENCY ()

If Emergency was PHS supervisor notified: Yes () No ()

Was MD/PA on call notified: Yes () No ()

SIGNATURE AND TITLE

WHITE: INMATES MEDICAL FILE

YELLOW: INMATE RETAINS COPY AFTER NURSE INITIALS RECEIPT

0151000 7/05

01001



MENTAL HEALTH
PRISON HEALTH SERVICES, INC.
SICK CALL REQUEST

Print Name: Phillips, Joshua Brandon Date of Request: 7-20-07
ID # _____ Date of Birth: 11-07-81 Location: 1A07
Nature of problem or request: I need a mental examination by a psychiatrist. Giving me a crazy pill is not the answer. ADHD is not and doesn't mean that I am crazy. I do not wish to be called by the label "CRAZY" when I do have a
disability.

DO NOT WRITE BELOW THIS LINE

I WOULD LIKE TO SET UP AN APPOINTMENT WITH THE

Date: ____/____/____
Time: ____ AM PM
Allergies: _____

RECEIVED
Date: <u>7/23/07</u>
Time: _____
Receiving Nurse Initials <u>JS</u>

(S)ubjective:

(O)bjective

(A)ssessment:

(P)lan:

Refer to: MD/PA Mental Health Dental Daily Treatment Return to Clinic PR
CIRCLE ONE

Check One: ROUTINE () EMERGENCY ()
If Emergency was PHS supervisor notified: Yes () No ()
Was MD/PA on call notified: Yes () No ()

SIGNATURE AND TITLE

WHITE: INMATES MEDICAL FILE
YELLOW: INMATE RETAINS COPY AFTER NURSE INITIALS RECEIPT

MENTAL HEALTH SCREENING AND EVALUATION

INMATE NAME <u>Joshua Brandon Phillips</u>		ID# <u>40252</u>	RACE <u>M</u>	DOB <u>11-07-81</u>
---	--	------------------	------------------	------------------------

SUICIDE POTENTIAL SCREENING		CIRCLE
1 Have you ever attempted suicide? When: <u>long time ago 4 yrs. ago</u> How: <u>Cocaine Drugs & alcohol</u>	☒ YES ☐ NO	
2 Have you recently considered attempting suicide? If YES, explain:	☐ YES ☒ NO	
3 Note circumstances that increase suicide potential:		

PSYCHIATRIC SCREENING	
1 Are you currently taking psychotropic meds? List:	YES ☒ NO ☐
2 History of psychiatric hospitalization? When: _____ Where: _____	YES ☒ NO ☐

CURRENT MENTAL STATUS (✓ All that apply)			
Orientation ☒ Alert, Oriented ☐ Disoriented		Appearance ☐ Neat & Clean ☐ Disheveled ☐ Dirty	
Affect ☒ Appropriate ☐ Inappropriate ☐ Flat		Hallucinations ☒ Visual ☐ Tactile ☐ Auditory ☐ Olfactory	
Mood ☒ Appropriate ☐ Elated ☐ Depressed ☐ Terrified/crying		Activity/ Behavior ☒ Appropriate ☐ Slow ☒ Unable to sit still ☐ No eye contact	
Speech ☒ Appropriate ☐ Pressured ☐ Slurred ☐ Loud ☐ Slowed		Thought Process ☒ Logical ☐ Paranoid ☐ Does not make sense	

3 History of outpatient mental health treatment? When: <u>Don't know</u> Where: _____	YES ☒ NO ☐
4 History of substance abuse/ treatment?	YES ☐ NO ☒
5 History of sex offenses?	YES ☐ NO ☒
6 History of victimization?	YES ☐ NO ☒
7 History of violent behavior?	YES ☐ NO ☒
8 History of cerebral trauma or seizures?	YES ☐ NO ☒

SUMMARY	
☐ No mental health problems	
☒ Mental health problems requiring routine follow-up	
☐ Chronic mental health problem ☐ Mental illness ☐ Developmental disability ☐ Other _____	
☐ Acute mental health problem ☐ Psychosis ☐ Suicidal ☐ Other _____	
☐ Potential withdrawal from substance abuse	

DISPOSITION	
☐ No mental health referral Approved for General Population	
☐ Routine mental health referral Approved for General Population	
☐ Mental Health Referral ASAP Special Housing	
☐ Mental Health Referral ASAP Suicide Precaution Procedures	
☐ Medical Monitoring for Potential Withdrawal	

9 Family Situation (check) ☒ Single ☐ Married ☐ Divorced ☐ Separated ☐ Widowed Family/Sig Other Supportive ☒ YES ☐ NO
10 History of special education? YES ☐ NO ☒
11 Education (highest grade completed): <u>B+</u>
12 Level of Cognitive Functioning (check) ☐ Above Average ☐ Below Average ☒ Average
13 I/M concerned about ability to cope? ☒ YES ☐ NO

COMMENTS: (Comment on all "YES" responses)

SCREENED BY: <u>R. Zimter</u>	DATE: <u>8/25/08</u>	TIME: _____
REVIEWED BY: _____	DATE: _____	TIME: _____

1	State of South Carolina	)	In the Court
2	County of Richland	)	Of General Sessions
3			
4	Indictment No.:		2008-GS-32-02618
5			2008-GS-32-02923
6	State of South Carolina,	)	
7	Plaintiff.	)	
8	vs.	)	Transcript of Record
9		)	
10	Joshua Brandon Phillips,	)	
11	Defendant.	)	
12			
13	December 5, 2012		
14	Lexington, South Carolina		
15	<u>B E F O R E:</u>		
16	The Honorable R. Knox McMahon, Judge.		
17	<u>A P P E A R A N C E S:</u>		
18	Samuel R. Hubbard, III, Assistant Solicitor		
19	D. Shawn Graham, Assistant Solicitor		
20	Eleventh Judicial Circuit		
21	Arie D. Bax, Esquire		
22	Attorney for the Defendant		
23			
24	Brenda J. Sigwald, Circuit Court Reporter		
25	For the Honorable R. Knox McMahon		
	P.O. Box 206, Jackson, South Carolina 29831		

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Certificate of Reporter	

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(There were no exhibits
entered during this hearing.)

GUILTY PLEA

THE CLERK: Indictment 2012-GS-32-2618, State versus Joshua Brandon Phillips, indicted for murder, pleading to voluntary manslaughter; and Indictment 2012-GS-32-2620, the State versus Joshua Brandon Phillips, indicted for armed robbery, pleading as charged. They're both signed and properly attested to. They're both true billed and he is represented by Mr. Arie Bax.

Sir, I need you to stand up and raise your right hand, please.

JOSHUA BRANDON PHILLIPS,

having been duly sworn, testified as follows:

THE COURT: Have him come around, please.

MR. BAX: Yes, sir.

MR. HUBBARD: Your Honor, I did neglect to inform Your Honor that there is a Blair issue.

THE COURT: Step around here, please, Mr. Phillips.

MR. HUBBARD: I apologize for jumping in. I just neglected to inform you. He's been evaluated by DDSM and by Department of Mental Health. Obviously, they found that he's competent and I just wanted to let Your Honor know that and pass these up.

THE COURT: All right. Thank you.

MR. HUBBARD: Thank you, Your Honor.

MR. BAX: For the record, Your Honor, we're not

1 contesting the findings of the government agencies that
2 have examined my client. And we've certainly had plenty of
3 time since those examinations to look at any other opinions
4 if we had desired to. It is my opinion and in my
5 experience and in my contact with my client that that would
6 not be necessary in this case.

7 **THE COURT:** All right. I have reviewed both of
8 these documents. One from the South Carolina Department of
9 Mental Health and one from the South Carolina Department of
10 Disabilities and Special Needs, both indicating that Joshua
11 B. Phillips is competent under the standards as provided by
12 the law. I'm going to have them marked as Court's Exhibits
13 No. 1 and No. 2.

14 (WHEREUPON Court's Exhibits No. 1 and 2 were marked
15 for evidence.)

16 **THE COURT:** All right. Anything, Solicitor?

17 **MR. HUBBARD:** No, sir, not on that issue.

18 **THE COURT:** All right. Mr. Bax, you represent
19 Joshua Brandon Phillips?

20 **MR. BAX:** I do, Your Honor.

21 **THE COURT:** Have you explained to him the charges,
22 the possible punishments, his constitutional rights,
23 including his right to a jury trial?

24 **MR. BAX:** I have, Your Honor, at length.

25 **THE COURT:** In your opinion, does he understand the

1 charges, the possible punishment, and his rights?

2 MR. BAX: I believe that he does, Your Honor.

3 THE COURT: How does the defendant indicate he
4 intends to plea to armed robbery and to voluntary
5 manslaughter?

6 MR. BAX: Guilty, Your Honor. He indicates to me
7 he wishes to plead guilty.

8 THE COURT: Thank you. And we have already covered
9 his order to be evaluated under State versus Blair.

10 Are you Joshua Brandon Phillips?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Before I can accept pleas of guilty,
13 it's necessary for me to determine if these pleas are being
14 given freely and voluntarily. Therefore, I need to ask you
15 some questions concerning them. If you do not understand
16 my questions, please let me know and I'll try to explain
17 them to you. If at any time you wish to talk with your
18 lawyer, please let me know and I'll allow you to do so.
19 You understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How old are you, Mr. Phillips?

22 THE DEFENDANT: Thirty-one, years old.

23 THE COURT: Thirty-one?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How much education do you have.

1 **THE DEFENDANT:** Well, my family helped me out
2 through school. I finished the twelfth grade.

3 **THE COURT:** All right. Did you graduate?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Where did you graduate from?

6 **THE DEFENDANT:** Brooklyn Casey.

7 **THE COURT:** Brooklyn Casey High School?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** What year?

10 **THE DEFENDANT:** It's been a long time ago.

11 **THE COURT:** Okay. Before you were incarcerated,
12 were you employed?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** What type of work do you do?

15 **THE DEFENDANT:** I was working at Red Lobster, being
16 a dishwasher.

17 **THE COURT:** Today are you under the influence of
18 any medication, drugs, or alcohol?

19 **THE DEFENDANT:** No, sir.

20 **THE COURT:** Are you aware of any physical,
21 emotional or nervous problem that keeps you from
22 understanding what you're doing today?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** You heard your attorney, Mr. Bax, tell
25 me that he's explained to you the charges that have been

1 placed against you, the possible punishments and your
2 constitutional rights, including your right to a jury trial
3 and that you understand those things; is that correct?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** I've been handed up two indictments.
6 The first indictment -- I'm going to review them with
7 you -- is 2012-GS-32-02618. It basically reads that you,
8 Joshua Brandon Phillips, along with Robert Jarred Prather,
9 did in Lexington County, on or about April 22, 2005,
10 willfully, feloniously, and with malice aforethought beat
11 Gerald Stewart about the head and body and/or smothered
12 Gerald Stewart and that Gerald Stewart did die in Lexington
13 County on or about that same date, April 22nd, 2005 as a
14 proximate result thereof, in violation of 16-3-10 of the
15 Code of Laws of South Carolina, 1971 as amended. That is
16 an indictment for murder.

17 It appears you are being allowed to enter a guilty
18 plea to voluntary manslaughter for which the maximum
19 potential punishment could be up to thirty years. Do you
20 understand?

21 **THE DEFENDANT:** Yes, sir, Your Honor.

22 **THE COURT:** The next indictment, 2012-GS-32-02620,
23 reads that you did, along with Robert Jarred Prather, in
24 Lexington County, on or about April 22nd, 2005, knowingly
25 and willfully, while armed with a deadly weapon,

1 feloniously take from the person or presence of Gerald
2 Stewart, by means of force, threats, or intimidation, goods
3 or monies described as follows, a Coca-Cola 75th
4 Anniversary Box Set, and/or collectible coins, and/or the
5 victim's wallet and/or U.S. currency, with the intent to
6 deprive the owner of the use of such property in violation
7 of 16-11-338 of the Code of Laws of South Carolina. That
8 is an indictment for armed robbery.

9 It appears you're pleading guilty to armed robbery,
10 for which you could receive a sentence of up to twenty-five
11 years. Do you understand?

12 **THE DEFENDANT:** Yes, sir, Your Honor.

13 **THE COURT:** Now, Mr. Phillips, when you plead
14 guilty, you give up certain very important constitutional
15 rights. First, you give up your right to remain silent.
16 That is your right against self-incrimination, your right
17 to say nothing at all.

18 (WHEREUPON the defendant was conferring with his
19 attorney and there was a pause in the proceedings.)

20 **MR. BAX:** Sorry, Your Honor.

21 **THE COURT:** In other words, you give up your right
22 to keep your mouth shut. You understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Second, you give up your right to have
25 a jury trial. That is your right to have a jury decide

1 whether or not you're guilty beyond a reasonable doubt.

2 You understand that?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Third, you give up your right to
5 confront and be confronted by the witnesses against you.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: You understand those rights as I have
9 enumerated them to you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand that when you plead
12 guilty, you give up these very important constitutional
13 rights?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Is that what you want to do?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you understand that you'll not get a
18 jury trial if you plead guilty?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Understanding then the nature of the
21 charges against you, voluntary manslaughter and armed
22 robbery, how do you wish to plead to voluntary
23 manslaughter? Guilty or not guilty.

24 (WHEREUPON there was a pause in the proceedings.)

25 THE DEFENDANT: Guilty, Your Honor.

1 **THE COURT:** And as to the nature of the charge
2 against you of armed robbery and the consequences of the
3 guilty plea of armed robbery of up to twenty-five years,
4 how do you wish to plea to that charge? Guilty or not
5 guilty?

6 **THE DEFENDANT:** Guilty, Your Honor.

7 **THE COURT:** Do you understand, Mr. Phillips, when
8 you plead guilty, you admit the truth of the charges made
9 against you?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** Now, Mr. Phillips, you may have
12 defenses to these charges. I don't know whether you do or
13 not. You understand that if you plead guilty, you waive,
14 or give up any defenses you may have?

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** You may have given an incriminating
17 statement in this case. I don't know if you did or not.

18 **THE DEFENDANT:** Yes, Your Honor.

19 **THE COURT:** If you plead guilty, you understand
20 that you waive or give up the right to contest or challenge
21 whether that statement was given freely and voluntarily in
22 accordance with your constitutional rights.

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Did you commit the offense of voluntary
25 manslaughter?

1 **THE DEFENDANT:** Your Honor, under the hand of one
2 is the hand of all, yes, Your Honor, I am guilty of that
3 charge.

4 **THE COURT:** All right. Well, now you've brought up
5 the issue of accomplice liability as to voluntary
6 manslaughter; is that correct?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** Mr. Bax, have you fully and completely
9 reviewed the law in the State of South Carolina as to
10 accomplice liability or the theory of the hand of one is
11 the hand of all?

12 **MR. BAX:** Yes, I have, Your Honor. In fact, that
13 has been something we've discussed quite extensively. It
14 is my professional opinion that that law would be charged
15 to the jury and that based on the evidence that I see as
16 being admitted in this case, that that would be a
17 substantial factor in the jury making their decision; and I
18 believe my client understands that because that is the
19 applicable law in South Carolina, that that makes him
20 guilty under our law. Whether he agrees with the law or
21 not, we've had the discussion about the fact that I'm not a
22 legislator and I'm not a Supreme Court justice and neither
23 is he. The law is what it is.

24 **THE COURT:** And neither am I.

25 **MR. BAX:** And neither are you, Your Honor. That it

1 is the law and he understands that. So under the hand of
2 one is the hand of all, he understands that he could be
3 held liable and he believes he's guilty under that law.

4 THE COURT: Do you have any questions you would
5 like to ask me in that regard, Mr. Phillips?

6 THE DEFENDANT: I believe you've got everything
7 taken care of, Your Honor.

8 THE COURT: So you have no questions you would like
9 to ask me as to accomplice liability? When you say you
10 believe you have everything taken care of, you've discussed
11 it fully and completely with your lawyer?

12 THE DEFENDANT: Kind of, I believe, on some things.

13 THE COURT: No.

14 (WHEREUPON the defendant was conferring with his
15 attorney.)

16 THE COURT: Sir?

17 THE DEFENDANT: Everything's good, Your Honor.

18 THE COURT: Well, everything good is not a correct
19 response to my question. It's either yes, I have or no I
20 haven't, whichever way it falls. It's fine with me,
21 Mr. Phillips. Have you discussed it fully and completely
22 with your lawyer?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And I'll cover that a little bit later
25 also.

1 MR. BAX: Thank you, Your Honor.

2 THE COURT: Did you commit the offense of armed
3 robbery?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Solicitor, have there been
6 any plea know negotiations in this case?

7 MR. HUBBARD: Yes, sir, Your Honor. Your Honor, in
8 discussing this case with the victim's family, which is
9 Ms. Nelda Medford, who is here, she's the aunt of the
10 victim, Gerald Stewart, and in talking with Mr. Arie Bax,
11 we have agreed to a negotiated sentence if Your Honor is
12 willing to accept it of twenty years on both charges.

13 THE COURT: Thank you. Thank you, Mr. Hubbard. On
14 both charges?

15 MR. HUBBARD: Yes, sir.

16 THE COURT: The reduction?

17 MR. HUBBARD: Yes, sir.

18 THE COURT: It was reduced from murder to voluntary
19 manslaughter?

20 MR. HUBBARD: Yes, sir, that's correct. That's
21 correct, Your Honor.

22 THE COURT: And the armed robbery and a twenty year
23 concurrent --

24 MR. HUBBARD: Yes, sir, Your Honor.

25 THE COURT: Negotiated?

1 **MR. HUBBARD:** Yes, sir, Your Honor.

2 **THE COURT:** Mr. Bax, has the solicitor correctly
3 and completely stated the negotiations into the record?

4 **MR. BAX:** He has, Your Honor. The only thing I
5 would adjust to protect the record is our agreement any
6 other charges out there are being not pressed as a result
7 of this plea.

8 **MR. HUBBARD:** That's true, Your Honor.

9 **MR. BAX:** That is our understanding, Your Honor.

10 **THE COURT:** Has -- Mr. Phillips has the solicitor
11 fully and completely stated what you understand the plea
12 negotiation to be?

13 (WHEREUPON the defendant was conferring with his
14 attorney.)

15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** In your mind, is there anything more to
17 the plea negotiations?

18 **THE DEFENDANT:** No, Your Honor.

19 **THE COURT:** Do you still wish to plead guilty to
20 the charges?

21 **THE DEFENDANT:** Under the hand of one is the hand
22 of all, yes, Your Honor.

23 **THE COURT:** Mr. Phillips, has anyone promised you
24 anything or held out any hope of reward to get you to plead
25 guilty?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Has anyone threatened you or used force
3 to get you to plead guilty?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Has anyone used any pressure or
6 intimidation to cause you to plead guilty?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Are you pleading guilty of your own
9 free will and accord?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: I'm going to ask you about your lawyer,
12 Mr. Bax. Are you satisfied with the manner in which your
13 lawyer has advised you and represented you?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you talked with your lawyer as
16 often and for as long as you feel necessary for him to
17 properly represent you?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you need anymore time to talk with
20 your lawyer?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Have you understood your talks with
23 your lawyer?

24 THE DEFENDANT: To the best of my ability, yes,
25 Your Honor.

1 THE COURT: What do you mean by that? To my best
2 ability?

3 THE DEFENDANT: As far as what he's telling me,
4 yes.

5 THE COURT: You've understood your talks with him?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Has your lawyer done everything for
8 you, you feel like he could have done or should have done?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Has your lawyer done anything in your
11 case that you feel like he should not have done?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Are you totally and completely
14 satisfied with your lawyer's services?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You have any complaint you want to make
17 about your lawyer, the solicitor's or any police officers
18 involved in your cases?

19 (WHEREUPON the defendant was conferring with his
20 attorney.)

21 THE DEFENDANT: Yes, Your Honor -- oh, no, no.

22 THE COURT: I'll ask you again. You've had an
23 opportunity to talk with your lawyer for a moment. Do you
24 have any complaints you want to make about your lawyer, the
25 solicitor, or any of the police officers involved in the

1 case?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Have you understood my questions?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Is there anything you would like to ask
6 me about what we've just been over?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you understand that you'll have a
9 right to appeal your guilty pleas and the sentence of the
10 Court and that you or your lawyer must do so within ten
11 days?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 Solicitor, if you could give me the facts, please.

15 MR. HUBBARD: Yes, sir, Your Honor. And, Your
16 Honor, just so Your Honor knows how this case came before
17 you today, this charge arose April 22nd of 2005. Back in
18 2009, there was a codefendant, Robert Gerald Prather. He
19 was tried and there was a mistrial. Prior to that time,
20 the State and the defendant's attorney, Mr. Phillips'
21 attorney at that time, Ms. Fullwood, reached agreement and
22 Mr. Phillips actually pled to this armed robbery and to the
23 manslaughter. He ended up not cooperating after giving
24 multiple conflicting statements. He filed a PCR and an
25 appeal and we joined him and brought him back.

1 Last week, we tried Robert Jarred Prather and
2 convicted him of murder and of robbery. He received a
3 thirty-year sentence. Coming into court today, we were
4 planning on going to trial next week and if Mr. Phillips
5 changes his mind at all, we're prepared to try him next
6 week as charged. But the facts are these: April 22, 2005,
7 early morning hours, just after four o'clock in the
8 morning, Mr. Phillips and Mr. Prather showed up at the
9 hospital in Lexington, claiming that Mr. Phillips had been
10 raped and they needed a rape kit.

11 Obviously, that caused some concern at the
12 hospital. They made inquiries as to what happened.
13 Mr. Prather is the one that told them the story of what
14 occurred at a residence in West Columbia. He said Gerald
15 Stewart's house on Decree Avenue. Basically what they said
16 is that Mr. Phillips had passed out.

17 THE COURT: Where is Decree Avenue in West Columbia
18 in relationship to Triangle City?

19 MR. HUBBARD: To Triangle City -- I know it's right
20 of Highway 1 and it is right near -- in fact, if you go
21 right up to Highway 1, it's just a few blocks from Highway
22 1. Callaway's Bar and that shopping center --

23 THE COURT: Yes, sir.

24 MR. HUBBARD: Just probably -- just four or five
25 blocks down the road from there.

1 **THE COURT:** All right. Thank you.

2 **MR. HUBBARD:** They indicated that they'd been at
3 that residence with Gerald Stewart, a man in his mid to
4 late 40's. These gentleman were in their early twenties at
5 the time. They said they'd been drinking at the house, got
6 drunk, everything had been fine and that at some point
7 Mr. Phillips passed out and was placed on the sofa by his
8 friend, Mr. Prather. Mr. Prather left, came back.
9 Mr. Stewart was nude. There was a confrontation because
10 they were wondering what in the world had happened. He had
11 made sexual comments about what had transpired with
12 Mr. Phillips and then there was an altercation and he was
13 beaten to death, basically. That came from Mr. Prather.

14 He pretty much stuck to that story with some
15 variations. Mr. Phillips, that whole time, never really
16 spoke. He submitted to a rape protocol test, which came up
17 negative. No physical signs of rape. Both the doctor and
18 the nurse that evaluated him were saying, we don't see any
19 signs of rape. He was interviewed at the --

20 **THE COURT:** This would have been anal intercourse?

21 **MR. HUBBARD:** Yes, sir -- now, because they never
22 really described what might have happened, so they checked
23 for everything.

24 Officers interviewed Mr. Phillips at the hospital,
25 treating him as a victim. But they were also concerned

1 about what Mr. Prather had said, so they alerted law
2 enforcement, said someone needs to go check Decree Avenue,
3 you may have another victim there. They talked to
4 Mr. Phillips. Mr. Phillips said at that time he'd had
5 about twelve beers, doesn't remember a lot and his friend
6 had awakened him and said something might have happened to
7 him. When law enforcement actually found Mr. Stewart,
8 there was -- it was kind of an odd situation. He was
9 covered up in a blanket, with a pillow on his head. When
10 they pulled that off, he was on his knees, face down in a
11 sofa. There was a sex object placed next to his arm and he
12 had a carving on his -- just above his buttocks and on his
13 buttocks, the word rapist.

14 So they knew, all right, something's definitely,
15 definitely wrong here. Law enforcement asked Mr. Phillips
16 at the hospital, do you know anything about that carving.
17 Initially he denied it. Finally he said, Yeah, I know
18 there's the word rapist on the backside. Well, this rape
19 protocol test took a couple of hours. This interview took
20 maybe thirty minutes. They took him to West Columbia and
21 at that time they had more information about the house, so
22 they Mirandized them. They got a written statement from
23 Mr. Phillips.

24 Mr. Phillips says that what happened was the day
25 before, on the 21st, he and Mr. Prather went over to the

1 house to drink beer and play cards and everything was fine
2 except for an altercation at some point in the day between
3 he and Gerald Stewart. He didn't really elaborate what
4 that was about. But everything was fine and they went back
5 to normal. He says that he told the same story about how
6 he went to sleep on the sofa, woke up in Gerald Stewart's
7 bed. Mr. Prather came in; there was a fight. Mr. Prather
8 used what appeared to be a round board. It was a TV table
9 tray, Judge, like a portable TV tray, used that to beat
10 Mr. Stewart. He said that Mr. Stewart passed out on the
11 sofa, face up and then he was put in the position of being
12 put face down on that sofa by Mr. Prather. Mr. Prather is
13 the one that took the knife out and tried to carve rapist.
14 He said Mr. Prather also attempted to smother Mr. Stewart.

15 While this was going on, Mr. Phillips in his first
16 statement, his first written statement, says I tried to
17 take his pulse twice. The first time it was faint, the
18 second time, there was no pulse. And that was about the
19 time of the carving of rapist. He says after they
20 concluded that Mr. Stewart was dead, that's when
21 Mr. Prather directed him to start stealing stuff, including
22 the wallet, the Coca-Cola box and some coins. Those items,
23 Judge -- the Coca Cola box was found in Mr. Prather's car
24 at the hospital, along with a knife underneath that box
25 that was purportedly used to carve rapist. The board was

1 found near an apartment complex in the woods of an
2 apartment complex where Mr. Phillips was living. And so
3 those items were recovered. And just to let Your Honor
4 know, when the hospital did testing, there were no signs of
5 rape, there are also no signs of alcohol at that point in
6 his blood.

7 And, Your Honor, what I've done, just to show Your
8 Honor kind of the layout of what happened -- and I've shown
9 this to Mr. Bax, I've got a three tab notebook of
10 photographs. Tab one is actually the crime scene. It
11 shows Gerald Stewart. There's two photos of him on his
12 knees, face down on the sofa. You'll see in one of them
13 there's a blue comforter. Law enforcement took that
14 comforter off of Gerald Stewart when they got in there.
15 Otherwise that's how they found him. There's a close up
16 showing something propped up against his shoulder. That's
17 the sex object, Your Honor, that I was referring to. And
18 then the final photo I have is actually from the autopsy
19 showing the word rapist. I do think there's one photo,
20 where you can barely see it at the crime scene, but it's
21 the word rapist. That's all in tab one.

22 Tab two shows items that were actually found in
23 Mr. Phillips' pocket. Primarily of interest are the coins
24 that you see in the photograph in tab two. He ends up
25 admitting he took those from Gerald Stewart's house.

1 There's also the Coca-Cola set -- there's a photo that
2 shows it in the car and then there's a photo that shows it
3 displayed out. Gerald Stewart's dad worked his entire life
4 for Coca-Cola and had a display in the house and that item
5 came from the house, Judge. We have -- Ms. Nelda says she
6 has seen it before. She knows that was Gerald Stewart's.
7 We also have other people that have seen that item before
8 and knew it had come from the house. Those were the items
9 that were stolen. The basis of the armed robbery is in
10 that knife, but also that board that is shown -- that's in
11 tab three, the TV tray top.

12 **THE COURT:** What apartment complex is that now?

13 **MR. HUBBARD:** That's Woodbine Apartments off of
14 Platt Springs Road. It's very close -- just a couple of
15 blocks away from Decree Avenue. You could actually walk.

16 In preparation for trial, the prosecutor who had
17 the case at this time spoke to Mr. Phillips. They spoke in
18 April of '09, April 22nd, in fact. It was actually years
19 to the day of this incident. He gave a statement that was
20 very different from his initial one. He talked about
21 basically having a relationship with Mr. Prather, that
22 Mr. Prather's actions were an act of jealousy. He thought
23 when -- when he walked in, he thought Mr. Phillips and the
24 victim had had relations and that he responded by attacking
25 him. In that statement, he implicates himself by saying

1 that Jarred tried to smother him but they both jumped on
2 him and beat him. A month later, he gave another statement
3 and then in September of '09, he gave yet another
4 statement. He would retract some things and add some
5 things. Each time, though, he implicated himself, his
6 being involved in the death and robbery, armed robbery of
7 Gerald Stewart.

8 The final statement was October 15th of '09. Right
9 on the cusp of the trial of Robert Jarred Prather. He
10 admits at that point -- and Your Honor, this was another
11 incident where we brought law enforcement in, they
12 Mirandized him, he was very emotional. Law enforcement
13 said this is probably the closest thing to the truth, but,
14 Your Honor, we don't really know. We just know he
15 implicates himself again.

16 He says he and Jarred had stolen beer from
17 Mr. Stewart on a previous occasion; that Gerald Stewart had
18 had guns that were stolen from him and he says Mr. Prather
19 had done that on a previous occasion. He said when
20 Jarred -- his partner Jarred Prather, left the house
21 briefly, that's when he and Mr. Stewart, the victim were
22 talking, Phillips and Mr. Stewart were talking about what
23 had transpired, that those guns had been stolen by
24 Mr. Prather. Mr. Phillips says this whole thing at this
25 point was really a planned robbery. They were planning to

1 rob Mr. Stewart. They'd been in the house before, knew he
2 had collectibles, coins, things of that nature, so they
3 planned to take these things. He says, while I'm talking
4 to Mr. Stewart, that's when Robert Prather, Robert Jarred
5 Prather returns to the house. He hears what's going on.
6 That's when the fight ensues. He says, he admits he never
7 passed out from alcohol. The whole bit about passing out
8 on the sofa, that never happened. It was all planned.

9 He says, they -- he said Jarred initially attacked
10 Gerald Stewart using the TV tray, but he says they,
11 including himself, helped prop Gerald Stewart up on the
12 sofa in the position in which he's found. He said he was
13 checking his pulse to make sure -- whether he was alive or
14 not. He said he is the one -- Mr. Phillips is the one that
15 put the pillow over Mr. Stewart's head to smother him. He
16 said Jarred Prather told him to do that. He said there was
17 no need to check his pulse after that because he knew he
18 was dead. He said Mr. Prather gave him a knife and said,
19 Carve the word rapist. He says in that instance he did it.
20 He said they agreed to approach the hospital and act as if
21 there had been a rape, that that was all a cover up. And
22 as far as the blue blanket there, he said he's the one that
23 covered Gerald Stewart's body. He says what they took was
24 the Coca-Cola box set; they took the wallet of Gerald
25 Stewart. They actually furnished that to the people at the

1 hospital to identify Gerald Stewart and he says, I took the
2 coins. He says they go to Callaway's Bar, play pool, get
3 their story straight and then to the hospital. He leaves
4 out that part at Woodbine Apartments in that final
5 interview. The next day, he just sent word back, I'm not
6 talking; everything I've told y'all is a lie. But, Judge,
7 every time he opened his mouth, he implicated himself each
8 time.

9 Your Honor, as I said, we were prepared to go
10 forward and try this case and what we would show at trial
11 too is how Gerald Stewart died. The pathologist said it
12 was a cardiac arrhythmia, where his heart started racing.
13 She said that was due to the stress of being beaten. And
14 she said that stress made his heart rate go up. He had an
15 already weakened heart. It was twice the size of a normal
16 heart and she said basically his heart shut down and he
17 died.

18 But she said something interesting. She said she
19 could not rule out smothering as a contributory factor.
20 And she ruled the manner of death as a homicide. If we had
21 gone to trial, we would have, obviously, gotten into all
22 these statements, all these facts, or at least tried to and
23 presented the evidence of items that were stole and,
24 obviously, Dr. Ross would testify as to the cause of death.
25 Last week we tried Robert Jarred Prather. He was convicted

1 of murder. We're prepared to do so today if Mr. Phillips
2 backs out of this plea. We've done this plea with the hope
3 of resolving this case and with Ms. Nelda Medford's consent
4 and input. And, Your Honor, at the appropriate time, I
5 think she'd like to say a couple of words. Thank you, Your
6 Honor.

7 THE COURT: Prior record?

8 MR. HUBBARD: No, sir.

9 THE COURT: All right. Thank you. I'll be glad to
10 hear from whoever you want me to hear from.

11 MR. HUBBARD: This is Ms. Medford that's coming
12 forward, Your Honor.

13 THE COURT: Good morning. Tell me your name,
14 please.

15 MS. MEDFORD: Nelda Medford.

16 THE COURT: All right. I'll be glad to hear from
17 you. Yes, ma'am?

18 MS. MEDFORD: Your Honor, I would like to thank the
19 Court and these two brilliant attorneys for what they have
20 done. And I do think now that Gerald Stewart has seen
21 justice.

22 THE COURT: Thank you. Thank you very much
23 Ms. Medford. Thank you for being here. Sorry you have to
24 be here.

25 MS. MEDFORD: Thank you.

1 MR. HUBBARD: Thank you, Your Honor.

2 THE COURT: All right. Anything further,
3 Solicitor?

4 MR. HUBBARD: No, sir, Your Honor. Thank you.

5 THE COURT: All right. I find there is a
6 substantial factual basis for those guilty pleas. I find
7 that the defendant's decision to enter these pleas of
8 guilty is free and voluntary, knowingly and intelligently
9 made; that he has had the advice and counsel of a very
10 competent experienced attorney with whom he says he is well
11 and totally satisfied. His plea of guilty to voluntary
12 manslaughter and guilty to armed robbery are therefore
13 accepted.

14 Mr. Bax?

15 MR. BAX: Thank you, very much, Your Honor. We
16 appreciate the Court's time today. We know that the Court
17 was not originally scheduled to take these kind of matters
18 into consideration, but we appreciate Your Honor making the
19 time to resolve this, both for the State and for the
20 defense. Obviously, it's a negotiated plea. We'd ask Your
21 Honor to accept that negotiated plea. I would also ask the
22 Court to be aware and ask the Court to give credit for the
23 time served. Mr. Phillips has been incarcerated since his
24 arrest in April of 2005, continuously without any break.
25 At one point after the initial plea in this case, he was

1 transferred to SCDC. He was taken to R & E and he was then
2 assigned to a couple of institutes. Eventually, he was
3 assigned to Manning Correctional Institute in Columbia, the
4 smaller institute that's in Columbia near I-20. So we
5 would ask that it be -- that he be given credit for all
6 time served. Obviously, that would in April of this coming
7 year amount to eight years by my calculation, Your Honor.
8 So that is a very big part of this and important. And I
9 don't think there's anything -- there's no dispute that he
10 has been incarcerated throughout all this time -- and just
11 on these charges.

12 As Your Honor has heard from the State, he doesn't
13 have any prior record or reasons to be locked up. Because
14 it's negotiated, Your Honor, I don't want to spend a lot of
15 mitigation time because I don't feel it would be necessary
16 as long as Your Honor is inclined or the Court is incline
17 to go with the negotiated sentence. Obviously, you've
18 heard the facts. There was obviously a lot of back and
19 forth about exactly what happened that night. My client in
20 my conversations with him, you know, in talking to him
21 about the law of South Carolina, about the law of the hand
22 of one is the hand of all and about how trial would go as
23 well as how they would be charged on the law and what the
24 law means, my client is pleading guilty freely and
25 voluntarily here today to the deal that we have worked out

1 graciously with the State.

2 I would like to state for Your Honor, Joshua is a
3 great kid, really nice kid. He -- he had trouble in
4 school, but he had -- when he was a very young child, he --
5 his biological mother lost her parental rights based on
6 some things that happened. As a result, these two
7 wonderful people, John and Kathy, who are sitting in the
8 first row -- Phillips -- adopted him around the age of four
9 or five years old, after -- and they have, I think invested
10 more time and love in Joshua and his other brother who was
11 adopted as any human that I've ever seen.

12 They've been here for him throughout this entire
13 process. I have spent the last two years talking with John
14 and Kathy. I just want to point out that they're here in
15 support of their son and we ask this Court to accept the
16 plea in this case, Your Honor.

17 **THE COURT:** Thank you. Thank you very much, Mr.
18 Bax.

19 Anything you'd like to say, Mr. Phillips?

20 **THE DEFENDANT:** No, Your Honor.

21 **THE COURT:** Sir?

22 (WHEREUPON the defendant was conferring with his
23 attorney.)

24 **THE DEFENDANT:** No, Your Honor.

25 **THE COURT:** All right. Thank you. Thank you very

1 much. Anything further, Mr. Bax?

2 MR. BAX: No, Your Honor, thank you very much for
3 the Court's time.

4 MR. HUBBARD: Your Honor, I would have one request.
5 That notebook I handed up, may we make that a Court's
6 Exhibit for purposes of --

7 THE COURT: Yes, sir.

8 MR. HUBBARD: -- so the Court -- if it's ever
9 reviewed, they'll know that you had opportunity to look at
10 it.

11 THE COURT: All right. Certainly. You can have it
12 marked.

13 MR. HUBBARD: Thank you, Your Honor.

14 (WHEREUPON Court's Exhibit No. 3 was marked for
15 evidence.)

16 THE COURT: Did Mr. Prather have a prior criminal
17 history, Solicitor?

18 MR. HUBBARD: No, sir, Your Honor. He had a couple
19 of arrests, but no convictions.

20 THE COURT: What were those arrests for?

21 MR. HUBBARD: One was a simple assault. That was
22 dismissed before it ever made it to court with the victim's
23 consent. The second one was, I believe it was styled as
24 endangering a child. He -- and he was not guilty on that,
25 Your Honor. It was a girlfriend, apparently a girlfriend's

1 child, was found wondering out of the house. He was found
2 inside the house sleeping. He was supposed to be in charge
3 of the child. That was here in the town of Lexington.

4 THE COURT: What age was he?

5 MR. HUBBARD: He was 22 or 23 when this occurred.
6 He's 30 now, so.

7 THE COURT: They were contemporaries.

8 MR. HUBBARD: Yes, sir. They apparently claim to
9 have gone to high school together at, I think, Brooklyn
10 Casey.

11 THE COURT: I believe that's what he said. So he
12 was about 23 -- Mr. Phillips -- when this happened.

13 MR. HUBBARD: Yes, sir.

14 THE COURT: All right.

15 (WHEREUPON there was a pause in the proceedings.)

16 THE COURT: All right. Solicitor, you and
17 Assistant Solicitor Graham have evidently done a fine job
18 in preparing and trying the case last week or the week
19 before, I don't know when, I'm never assigned to criminal
20 court in Lexington anymore. This is the first criminal
21 matter I've handled in about eight months in Lexington
22 County. And obviously, from the State of Ms. Medford,
23 she -- on behalf of the loved one, that she's very
24 appreciative of that.

25 Mr. Bax has done his usually outstanding job and

1 preparing this case. I noticed his paralegal and
2 investigator come in this morning with about two feet of
3 file.

4 MR. BAX: That's a small fraction of the file too.
5 I've got about seven trial notebooks.

6 THE COURT: Mr. Bax has appeared before this Court
7 many times. Obviously, with the conviction of Mr. Prather,
8 Mr. Bax has been very effective in continuing the job he
9 normally does in getting an offer such as this, in my
10 opinion, which I think is an appropriate offer for there to
11 be thing a closure or resolution, although I believe
12 closure is somewhat overrated. That's not relevant to
13 this.

14 If he went to trial, you'd be facing a life
15 sentence.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Thirty year minimum, mandatory,
18 day-for-day sentence, plus potentially a consecutive
19 twenty-five-year sentence. Probably I would have given it
20 to you -- at least a life sentence. Although I can't
21 predict what I would or would not have done nor can I
22 predict what a jury would have done.

23 I commend you, Mr. Bax. Are you appointed?

24 MR. BAX: I am appointed, Your Honor, after
25 Ms. Fullwood was relieved as a result of the PCR, she

1 personally asked me to step in and be appointed by the
2 Court, which was done.

3 **THE COURT:** It never ceases to amaze me how lawyers
4 for both the State and defense, plaintiffs lawyers, civil
5 lawyers get a bad rap. Everyone in the newspapers and on
6 TV and in the press and internet, they always stand up to
7 the plate. They always toe the line whether it's in civil
8 court, criminal court -- I have lawyers that mediate cases
9 for me for free for people that have no money to pay for
10 them. They rebuild houses, step in like Mr. Bax and help
11 the system to move along and hopefully some justice being
12 done.

13 2012-GS-32-2620 and 2012-GS-32-2421, as to Joshua
14 Brandon Phillips on the charge of voluntary manslaughter,
15 the defendant is committed to the State Department of
16 Corrections for a determinate term of twenty years. As to
17 the charge of armed robbery, the defendant is committed to
18 the State Department of Corrections for a determinate term
19 of twenty years. Those sentences are to run concurrent
20 with each other. He is to be given credit under Section
21 24-13-140 for all time served from the time of arrest in
22 April of 2005.

23 Good luck to you, Mr. Phillips. Thank you Mr. Bax.

24 **MR. HUBBARD:** Thank you so much, Your Honor.

25 **THE COURT:** Court will be in recess until 2 p.m.

1 Good Luck to you, Ms. Medford.
2 * * * * * END OF TRANSCRIPT * * * * *
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1 State of South Carolina)

2 County of Aiken)

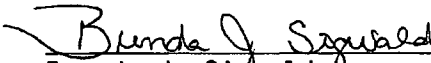
Certificate of Reporter

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6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 5th
11 day of December, 2012.

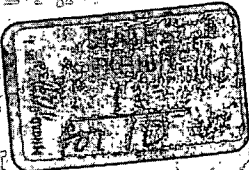
12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 35 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 4th day of March, 2013.
19
20
21

22 
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

Miranda Rights Warning



Date 04-22-05

Time 1103

Case # 0507862

I, Sarah Prather, live at 3205 Woodson Circle
West Columbia, SC 29172. My phone number is 803-791-7112

My date of birth is 9/22/82, and my Social Security Number is 247-71-0579

I have finished the 13 grade in school and I can / cannot read

THE CONSTITUTION REQUIRES THAT YOU BE INFORMED THAT:

- MP 1) You have the right to remain silent.
- MP 2) Anything you say can and will be used in court as evidence against you.
- MP 3) You are entitled to talk to a lawyer now and to have him present now or at any time during questioning.
- MP 4) If you cannot afford a lawyer, one will be appointed for you without cost.
- MP 5) DO YOU UNDERSTAND THESE RIGHTS? YES / NO YES
- MP 6) If you decide to answer questions now without a lawyer present, you will still have the right to stop answering questions at any time. You also have the right to stop answering questions at any time until you talk to a lawyer.

Sarah Prather
Signature of Suspect

WAIVER OF MIRANDA RIGHTS

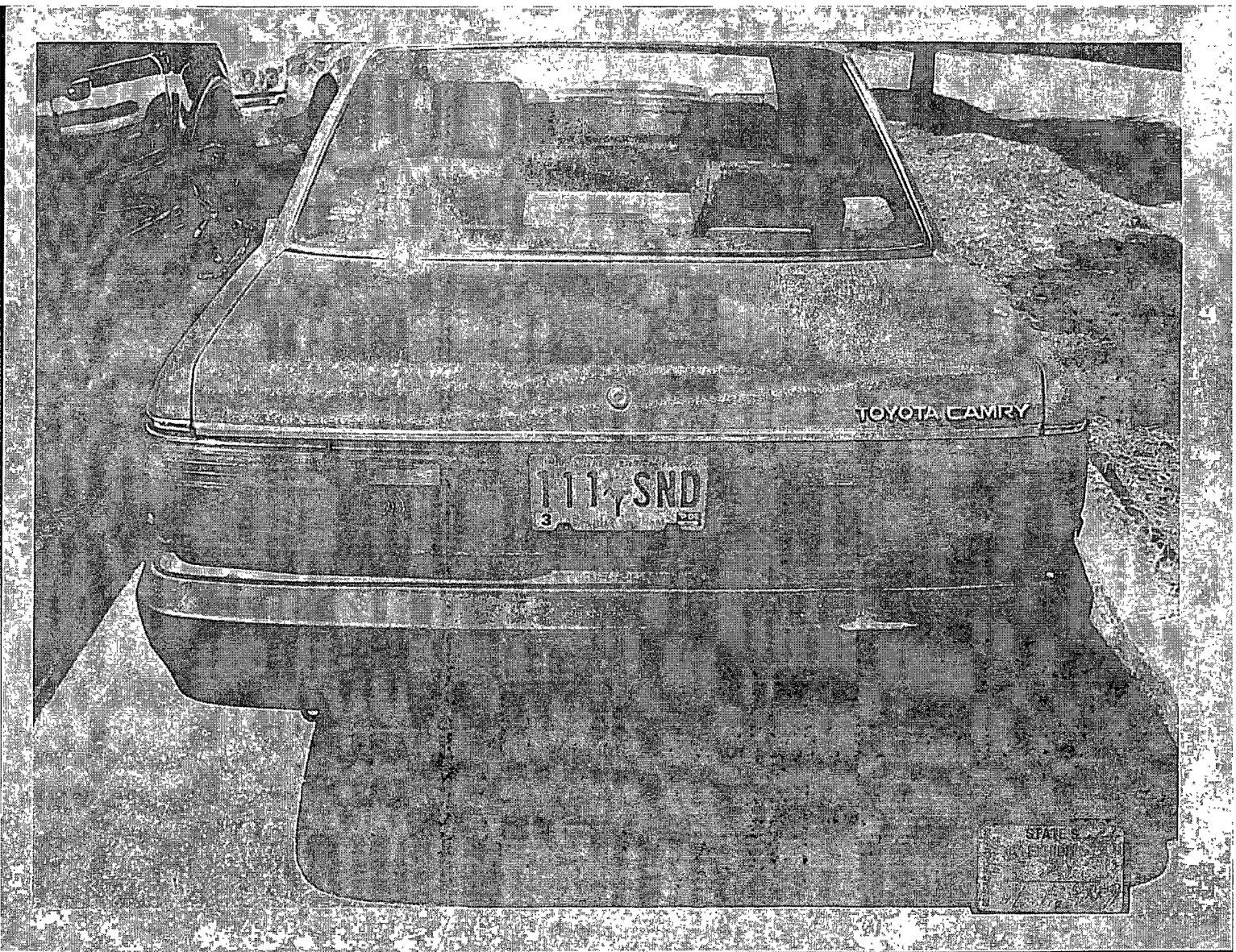
I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

[Signature]
Witness Signature

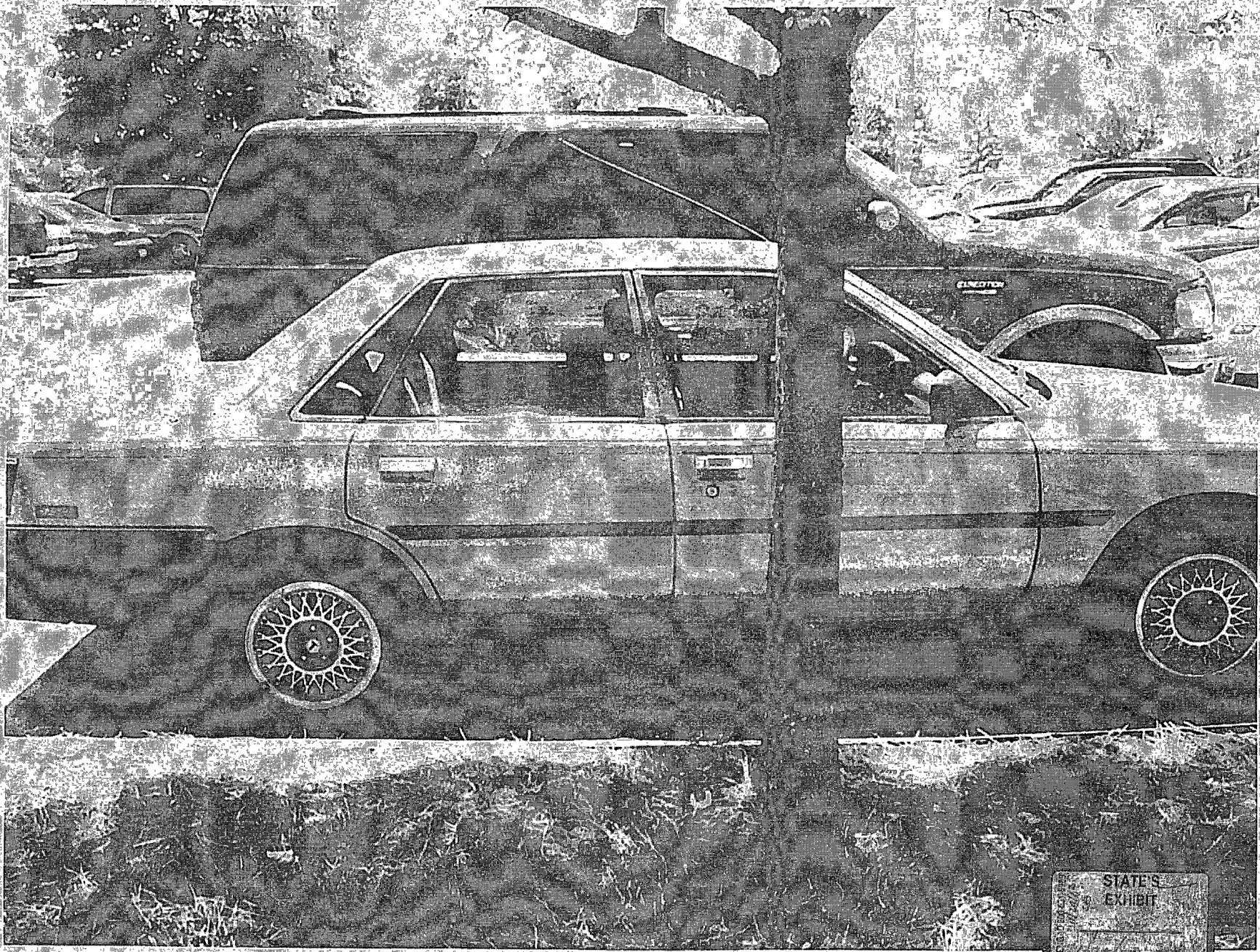
[Signature]
Signature of Suspect

Witness Signature

4/22/05
Date

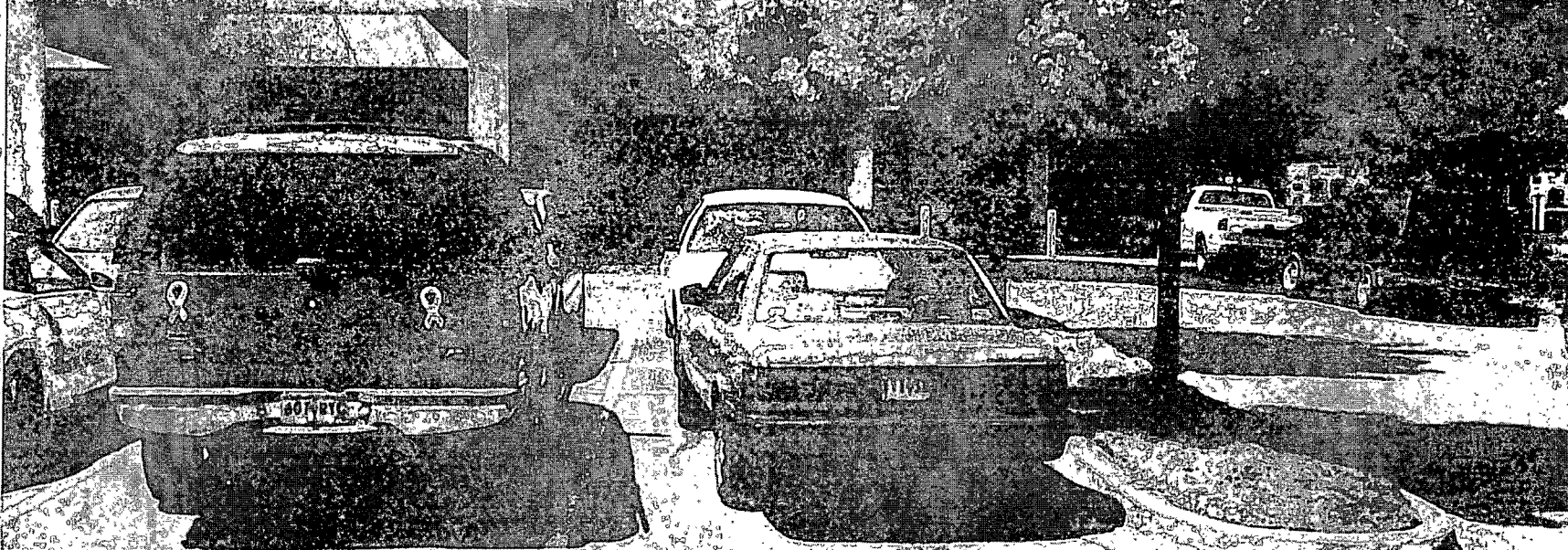


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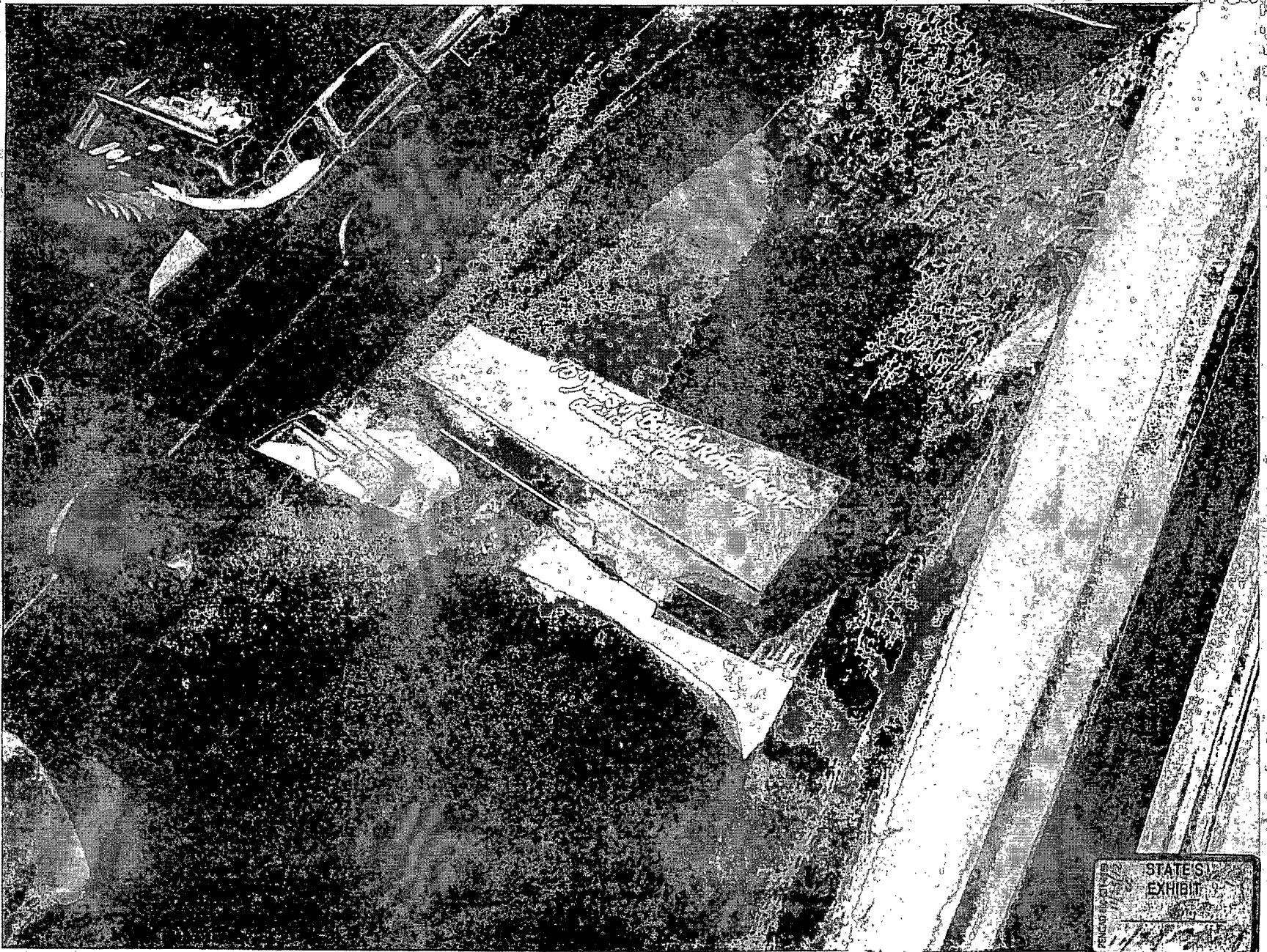


STATE'S
EXHIBIT

EMERGENCY



STATE'S
EXHIBIT 174



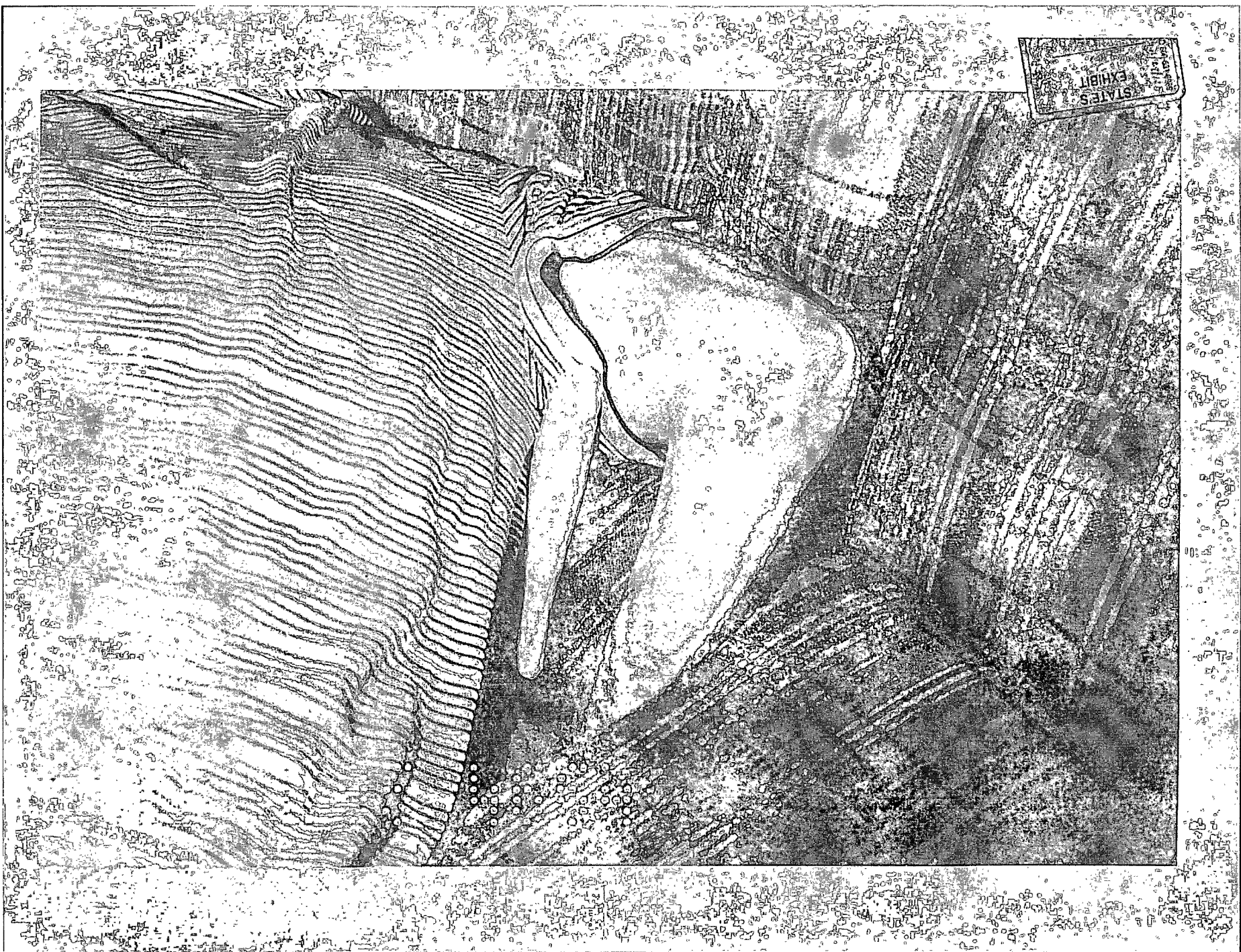


STATE'S
EXHIBIT





STATE'S
EXHIBIT
3-10-77
FBI - NEW YORK





rapeist



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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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 10, 2016



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(803) 765-1044

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