

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County
Honorable Alexander S. Macaulay, Judge
2008-CP-04-00104

RECEIVED

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S.C. SUPREME COURT

BRADLEY ISHMAN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

ORIGINAL

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON)

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
 vs.) TRANSCRIPT OF RECORD
) 2006-GS-04-3028
BRADLEY ISHMAN,)
)
)
 DEFENDANT.)

SEPTEMBER, 20, 2006
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR.; JUDGE.

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

AL A. MEANS, ASSISTANT SOLICITOR
Attorney for the State

JOHN J. STATHAKIS, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

Donna Brady
Official Court Reporter

1 SEPTEMBER 20, 2006

2 (WHEREUPON, Court convened with all parties present,
3 when the following proceedings were had:)

4 MR. MEANS: Your Honor, comes now before you
5 Deanna D. Farr, in 2005-GS-04-2525, pleading guilty to a
6 burglary third.

7 Next is Bobby Williams, he's pleading guilty to
8 assault and battery of a high and aggravated nature,
9 number 2006-GS-04-3025.

10 Next gentleman is 2006-GS-04-3029, grand larceny and
11 3030, that's burglary second. His name is Richard Gault.

12 And, finally, pleading guilty to pointing and
13 presenting a firearm at a person 2006-GS-04-3028 is
14 Bradley William Ishman.

15 THE COURT: Ms. Farr, raise your right hand.

16 DEANNA FARR, being first duly sworn,
17 testified as follows:

18 THE COURT: What's the recommendation, solicitor?

19 MR. MEANS: Your Honor, the recommendation on Ms.
20 Farr is five years suspended to three years probation,
21 restitution on the order attached.

22 THE COURT: All right. Mr. Williams raise your right
23 hand.

24 BOBBY WILLIAMS, being first duly
25 sworn, testified as follows:

1 THE COURT: What's the recommendation? Six
2 something?

3 MR. MEANS: Six, suspended on three years probation,
4 your Honor.

5 THE COURT: Mr. Gantt, raise your right hand.

6 THE DEFENDANT GAULT: It's Gault.

7 THE COURT: Please raise your right hand. It's
8 Gault?

9 THE DEFENDANT GAULT: Yes, sir.

10 RICHARD GAULT, being first duly sworn,
11 testified as follows:

12 THE COURT: What's the recommendation on Mr. Gault?

13 MR. MEANS: Your Honor, it's time served on the grand
14 larceny and 12 suspended to four years probation on the
15 burglary.

16 THE COURT: What's the maximum? Fifteen on the
17 burglary?

18 MR. MEANS: Yes, Your Honor.

19 THE COURT: Mr. Ishman, raise your right hand.

20 B. W. ISHMAN, being first duly sworn,
21 testified as follows:

22 THE COURT: Lisa Sprado, Brandon McConnell -- are
23 those her family or are those additional people?

24 MR. MEANS: Those are witnesses, your Honor.

25 THE COURT: All right. Mrs. Farr, how old are you?

1 THE DEFENDANT FARR: Thirty-six.

2 THE COURT: Thirty-six. How far did you go in
3 school?

4 THE DEFENDANT FARR: To the 10th grade. Tenth grade.

5 THE COURT: What's your date of birth?

6 THE DEFENDANT FARR: 7-17-70.

7 THE COURT: What's your social security number?

8 THE DEFENDANT FARR: 251-57-7629.

9 THE COURT: Two-five-one what?

10 THE DEFENDANT FARR: Five-seven.

11 THE COURT: Five-seven. Okay. Do you understand on
12 the burglary second you can get up to five years?

13 THE DEFENDANT FARR: Yes, sir.

14 THE COURT: Letting you plead to a third; is that
15 correct?

16 MR. MEANS: Yes, your Honor.

17 THE COURT: Burglary third you can get up to five
18 years. CDR code right? Did you all change it? Yeah, you
19 changed it.

20 MR. MEANS: I did change it, Your Honor.

21 THE COURT: You understand you can get up to five
22 years on the burglary third?

23 THE DEFENDANT FARR: Yes, sir.

24 THE COURT: Thank you very much.

25 Bobby Williams, how old are you?

1 THE DEFENDANT WILLIAMS: Twenty-two.

2 THE COURT: Twenty two?

3 THE DEFENDANT WILLIAMS: Yes, sir.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT WILLIAMS: Tenth grade.

6 THE COURT: Tenth grade?

7 THE DEFENDANT WILLIAMS: Yes, sir.

8 THE COURT: And what's your date of birth?

9 THE DEFENDANT WILLIAMS: 2/25/84.

10 THE COURT: Social security number?

11 THE DEFENDANT WILLIAMS: 249-57-3423.

12 THE COURT: And you understand on assault and battery
13 of a high and aggravated nature you can get up to ten
14 years?

15 THE DEFENDANT WILLIAMS: Yes, sir.

16 THE COURT: Do you have any questions about it?

17 THE DEFENDANT WILLIAMS: No, sir.

18 THE COURT: Mr. Gault?

19 THE DEFENDANT GAULT: Yes, sir.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT GAULT: Graduated high school.

22 THE COURT: You understand on burglary second you can
23 get up to 15 years?

24 THE DEFENDANT GAULT: Yes, sir. I understand that.

25 THE COURT: Grand larceny up to five?

1 THE DEFENDANT GAULT: Yes, sir.

2 THE COURT: Do you have any questions about it?

3 THE DEFENDANT GAULT: No, sir. I do not.

4 THE COURT: How much time have you served, Mr. Gault?

5 THE DEFENDANT GAULT: Since the ninth.

6 THE COURT: Pardon?

7 THE DEFENDANT GAULT: Since the ninth, the eighth
8 month.

9 THE COURT: Do you have any time, solicitor?
10 Mr. Stathakis?

11 MR. STATHAKIS: Yes, sir.

12 THE COURT: How much time has he served?

13 MR. STATHAKIS: Oh, I'm sorry. I do not know how
14 much time.

15 MR. MEANS: I had that written down but I've lost it.

16 THE COURT: While we're talking, you find it. All
17 right. Mr. Gault, have you done any type of work
18 anywhere?

19 THE DEFENDANT GAULT: Yes, sir. I'm currently
20 working at a car wash here in town. I've been there about
21 a year and a half.

22 THE COURT: Which car wash?

23 THE DEFENDANT GAULT: Perx Car Wash, sir.

24 THE COURT: Perx car wash. What are you doing there?

25 THE DEFENDANT GAULT: Wash cars.

1 THE COURT: Okay. You pull them through, drive them
2 in?

3 THE DEFENDANT GAULT: Yes, sir.

4 THE COURT: Do you vacuum or you wipe them off? What
5 do you do?

6 THE DEFENDANT GAULT: I do a little of all.

7 MR. STATHAKIS: Forty-three days, Your Honor.

8 THE COURT: Forty-three. Okay. All right.

9 Mr. Gault, what's your date of birth?

10 THE DEFENDANT GAULT: Six-four-fifty-three.

11 THE COURT: What's your social security number?

12 THE DEFENDANT GAULT: 247-02-5502.

13 THE COURT: Mr. Ishman?

14 THE DEFENDANT ISHMAN: Yes, sir.

15 THE COURT: How old are you?

16 THE DEFENDANT ISHMAN: Twenty-three.

17 THE COURT: What's your date of birth?

18 THE DEFENDANT ISHMAN: 9-25-1982.

19 THE COURT: What's your social security number?

20 THE DEFENDANT ISHMAN: 240-53-7055.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT ISHMAN: Two years university.

23 THE COURT: What university?

24 THE DEFENDANT ISHMAN: NSU, Northwestern State
25 University.

1 THE COURT: What did you take or major in?

2 THE DEFENDANT ISHMAN: Structural engineering.

3 THE COURT: When did you drop out?

4 THE DEFENDANT ISHMAN: Oh, it was August of 2004.

5 THE COURT: Why did you drop out?

6 THE DEFENDANT ISHMAN: I got in trouble.

7 THE COURT: What kind of trouble did you get in?

8 THE DEFENDANT ISHMAN: A federal class A misdemeanor,
9 simple possession.

10 THE COURT: Simple possession of marijuana?

11 THE DEFENDANT ISHMAN: Yes, sir.

12 THE COURT: You understand you can get up to five
13 years on pointing a pistol?

14 THE DEFENDANT ISHMAN: Yes, sir.

15 THE COURT: Do you have any questions about it?

16 THE DEFENDANT ISHMAN: No, sir.

17 THE COURT: Are you married?

18 THE DEFENDANT ISHMAN: No, sir.

19 THE COURT: Do you have any children?

20 THE DEFENDANT ISHMAN: No, sir.

21 THE COURT: Okay. I'm going to ask all of you a
22 series of questions. And I'll ask you to respond by
23 raising your right hand. Have you had any drugs or
24 alcohol in the last 24 hours. If you have, raise your
25 right hand.

1 (No negative response elicited.)

2 Are you taking any prescription medication; if so,
3 please raise your right hand.

4 (Mr. Gault raises hand.)

5 All right, Mr. Gault, what are you taking?

6 THE DEFENDANT GAULT: Ibuprofen.

7 THE COURT: Ibuprofen.

8 THE DEFENDANT GAULT: Yes, sir.

9 THE COURT: For your arm?

10 THE DEFENDANT GAULT: Yes, sir.

11 THE COURT: Is it prescription Ibuprofen or is it
12 over the counter?

13 THE DEFENDANT GAULT: It's prescription.

14 THE COURT: Did you take it this morning?

15 THE DEFENDANT GAULT: Yes, sir.

16 THE COURT: Doesn't interfere with your thought
17 process, does it?

18 THE DEFENDANT GAULT: No, sir.

19 THE COURT: You understand why you're here?

20 THE DEFENDANT GAULT: Yes, sir. I do.

21 THE COURT: Has anybody been diagnosed with an
22 emotional, mental, or nervous condition by a doctor?

23 (No negative response elicited.)

24 If you're not satisfied with the service of your
25 attorney, please raise your right hand. If there's

1 anything else you need to tell your attorney about your
2 case; please raise your right hand. You have any
3 questions you want to ask your attorney about your case?
4 Please raise your right hand. You have any complaint
5 whatsoever with your attorney? Please raise your right
6 hand.

7 (No negative response elicited.)

8 You understand you're entitled to a jury trial? If
9 you do not understand that, please raise your right hand.
10 If you want a jury trial, please raise your right hand.

11 Mr. Gault, can you raise your right hand?

12 THE DEFENDANT GAULT: Yes, sir.

13 THE COURT: If you can't, raise your left. Okay? Do
14 you understand?

15 THE DEFENDANT GAULT: Yes, sir, I understand that.

16 THE COURT: Do you understand under the Fifth
17 Amendment to the constitution you have a right to remain
18 silent. No one can make you testify against yourself. If
19 you do not understand that, please raise your right hand.

20 (No negative response elicited.)

21 When you enter a guilty plea, you're going to be
22 required to give up that right to remain silent and
23 acknowledge your guilt. If you do not understand that,
24 please raise your right hand. If you're not willing to
25 give up your right to remain silent under the Fifth

1 Amendment, please raise your right hand.

2 (No negative response elicited.)

3 If you do not understand you have the right to appeal
4 the guilty plea ten days from today, please raise your
5 right hand.

6 (No negative response elicited.)

7 If anybody has coerced you, intimidated you, or
8 threatened you to make you plead guilty, please raise your
9 right hand. If you're pleading guilty -- if you're not
10 pleading guilty of your own free will and accord, please
11 raise your right hand. If you have not had enough time to
12 make your decision to plead guilty, please raise your
13 right hand.

14 (No negative response elicited.)

15 If you have not understood my questions, please raise
16 your right hand. You have any questions you want to ask
17 the Court or your attorney? Please raise your right hand.

18 (No negative response elicited.)

19 All right. Miss Farr, how do you wish to plead?

20 THE DEFENDANT FARR: Guilty.

21 THE COURT: Are you guilty?

22 THE DEFENDANT FARR: Yes, sir.

23 THE COURT: Mr. Stathakis, have you explained to
24 Mrs. Farr her constitutional rights, the crime, the
25 elements of the crime?

1 MR. STATHAKIS: I have, Your Honor.

2 THE COURT: Does she appear to understand?

3 MR. STATHAKIS: Yes, sir.

4 THE COURT: From your investigation, do you agree
5 with her decision to plead guilty?

6 MR. STATHAKIS: I do, sir.

7 THE COURT: All right. Miss Farr, the solicitor is
8 going to give me the facts. I want you to listen. After
9 he gives me the facts, I'm going to ask you if you agree
10 with the facts or disagree. If you disagree, I want to
11 know specifically what facts you disagree with. Can you
12 do that?

13 THE DEFENDANT FARR: Yes, sir.

14 THE COURT: Solicitor?

15 MR. MEANS: Your Honor, Miss Farr here in Anderson
16 County August 18, 2005, did go with her husband, James
17 Barry Farr, and enter a storage building. At that time
18 Mr. Farr removed some materials while Mrs. Farr acted as a
19 lookout, in essence watching for approaching vehicles or
20 someone who might see them. Her prior record, all she --

21 THE COURT: Is what?

22 MR. MEANS: She doesn't really have a prior record.

23 THE COURT: Doesn't have anything?

24 MR. MEANS: Just arrests for petit larceny, Your
25 Honor, no convictions.

1 THE COURT: All right. Miss Farr, do you agree with
2 those facts?

3 THE DEFENDANT FARR: Yes, sir.

4 THE COURT: Any of those facts you disagree with?

5 THE DEFENDANT FARR: No, sir.

6 THE COURT: All right. I find there's a factual
7 basis for the plea and that she's freely, voluntarily,
8 knowingly, and intelligently made the decision to plead
9 guilty with the advice of her attorney. Mr. Stathakis,
10 anything you want to add?

11 MR. STATHAKIS: Nothing further, sir.

12 THE COURT: Miss Farr, anything you want to say?

13 THE DEFENDANT FARR: No, sir.

14 THE COURT: All right. On indictment number 2555,
15 sentenced to the state department of corrections a period
16 of five years, three years probation. Condition of
17 probation, attend voc rehab, \$150 public defender fund;
18 \$500 to the indigent defense; and restitution in the
19 amount of \$342. You won't need a restitution hearing, do
20 you, Mr. Stathakis?

21 MR. STATHAKIS: No, sir.

22 THE COURT: All right. Mr. Williams, how do you wish
23 to plead?

24 THE DEFENDANT WILLIAMS: Guilty.

25 THE COURT: Are you guilty?

1 THE DEFENDANT WILLIAMS: Yes, sir.

2 THE COURT: Mr. Stathakis, have you explained to
3 Mr. Williams his constitutional rights, the elements of
4 the crime?

5 MR. STATHAKIS: Yes, sir.

6 THE COURT: Did he appear to understand?

7 MR. STATHAKIS: Yes, sir.

8 THE COURT: From your investigation, do you agree
9 with his decision to plead guilty?

10 MR. STATHAKIS: I do.

11 THE COURT: Mr. Williams, listen to the solicitor.

12 MR. MEANS: Your Honor, Mr. Williams here in Anderson
13 County on August 6, 2006, met up with another individual
14 that apparently he had some kind of a bad relationship
15 with. He -- the other fellow tried to walk past him and
16 apparently Mr. Williams took that as an offense and took
17 an unknown sharp object, we presume a small knife, and
18 stabbed the other individual in the shoulder, leaving
19 about a one-inch size laceration.

20 Frankly, Your Honor, that victim hasn't been
21 particularly cooperative. Based on that, we think this is
22 an appropriate recommendation. Also, Mr. Williams has
23 just fraudulent-check priors.

24 THE COURT: Okay. Mr. Williams, are those facts
25 correct?

1 THE DEFENDANT WILLIAMS: Yes, sir.

2 THE COURT: Yes or no?

3 THE DEFENDANT WILLIAMS: No, not really.

4 THE COURT: All right. What facts do you disagree
5 with?

6 THE DEFENDANT WILLIAMS: I didn't have no sharp
7 object.

8 THE COURT: What did you stab him with?

9 THE DEFENDANT WILLIAMS: It wasn't -- I didn't stab
10 him with nothing.

11 THE COURT: You didn't stab him?

12 THE DEFENDANT WILLIAMS: No.

13 THE COURT: What did you do to him?

14 THE DEFENDANT WILLIAMS: I assaulted him.

15 THE COURT: Pardon?

16 THE DEFENDANT WILLIAMS: I assaulted him.

17 THE COURT: You what?

18 THE DEFENDANT WILLIAMS: Fought with him.

19 MR. STATHAKIS: Assaulted him.

20 THE COURT: What did you assault him with?

21 THE DEFENDANT WILLIAMS: It was a stick.

22 THE COURT: A stick. How big a stick?

23 THE DEFENDANT WILLIAMS: It was a big one.

24 THE COURT: How big?

25 THE DEFENDANT WILLIAMS: About that. (indicates.)

1 MR. STATHAKIS: About two feet.

2 THE COURT: How big around was it?

3 THE DEFENDANT WILLIAMS: (Indicates.)

4 THE COURT: Where did you hit him?

5 THE DEFENDANT WILLIAMS: I think it was on the arm.

6 THE COURT: Okay. I find there's a factual basis for
7 the plea; and that he's freely, voluntarily, knowingly,
8 and intelligently made a decision to plead guilty with the
9 advice of his attorney. All elements of the charge have
10 been met factually. Anything, Mr. Stathakis?

11 MR. STATHAKIS: Clearly there are arguments to be
12 made. In light of the recommendation my client has
13 decided to go ahead and plead guilty. I agree with that
14 decision based upon all the facts and circumstances.

15 THE COURT: Okay. Mr. Williams, on indictment number
16 3025, sentenced to the state department of corrections a
17 period of six years, three years probation. Condition of
18 probation, attended voc rehab, \$150 public defender fund,
19 anger management, \$500 indigent defense.

20 Donna, let the record reflect that no one raised
21 their right hand during the questioning period except for
22 Mr. Gault who raised his right hand concerning the
23 Ibuprophen.

24 Mr. Gault, how do you wish to plead?

25 THE DEFENDANT WILLIAMS: Guilty, sir.

1 THE COURT: Are you guilty?

2 THE DEFENDANT WILLIAMS: Yes, sir.

3 THE COURT: All right. Listen to the solicitor.

4 MR. MEANS: Your Honor, this occurred here in
5 Anderson County, this happened August 8, 2006, Mr. Gault
6 took from a home here in Anderson various furniture and
7 household goods valued at over a thousand dollars. He
8 didn't have permission to enter that home or to take those
9 items.

10 THE COURT: Is that correct, Mr. Gault?

11 THE DEFENDANT GAULT: It's partially correct. I want
12 to add something to that.

13 THE COURT: It's what?

14 THE DEFENDANT GAULT: That's partially correct. Let
15 me add this to it. A fellow named Sammy Mullinax had
16 gotten prior -- he had got prior agreement with the owner
17 for us to go in, that was me and Mr. Volrath, go in and
18 remove certain articles that we did. Did not know that
19 anything was, that he was not allowed in there; and the
20 reason I just went ahead and pled guilty to it is I just
21 wanted to get on with my life.

22 THE COURT: Do what?

23 THE DEFENDANT GAULT: Get on with my life.

24 THE COURT: Carolyn Brandt, that's where you went
25 into, at 322 I street?

1 THE DEFENDANT GAULT: That's right.

2 THE COURT: That's the property you went into?

3 THE DEFENDANT GAULT: Yes, sir.

4 THE COURT: All right. I find there's a factual
5 basis for the plea. He's freely, voluntarily, and
6 intelligently made the decision to plead guilty with
7 advice of an attorney. Mr. Stathakis, do you agreed with
8 his decision to plead guilty?

9 MR. STATHAKIS: I do, sir.

10 THE COURT: Have you explained to him his
11 constitutional rights and the elements of the crime?

12 MR. STATHAKIS: Yes, sir.

13 THE COURT: Did he appear to understand?

14 MR. STATHAKIS: Yes, sir.

15 THE COURT: Anything else, Mr. Gault.

16 THE DEFENDANT GAULT: That's all, sir.

17 THE COURT: Mr. Stathakis, anything else?

18 MR. STATHAKIS: Nothing further.

19 THE COURT: All right. Indictment 3029, that's the
20 grand larceny, sentenced to the county detention center a
21 period of 43 days, give you credit for 43 days.

22 Indictment number 3030 -- what's his criminal
23 history?

24 MR. MEANS: Your Honor, his prior history, a
25 marijuana possession back in the 70's along with a

1 disorderly conduct in the early 80's. He does have one
2 thing bad on his record, a lewd act from 1993; but no
3 prior property crimes.

4 THE COURT: And your recommendation was 12 years
5 suspended upon four years probation; is that right?

6 MR. MEANS: Yes, Your Honor. My intention is just if
7 he behaves himself, he'll never see the 12 years. But
8 with his -- having been involved certainly with the
9 criminal justice system, he should know better than to
10 mess with this kind of thing.

11 THE COURT: Okay. Thank you very much.
12 Mr. Stathakis, anything else?

13 MR. STATHAKIS: Nothing further.

14 THE COURT: All right. Mr. Gault, indictment number
15 3030, sentenced to the state department of corrections a
16 period of eight years suspended, four years probation.
17 Condition of probation, substance abuse counseling, random
18 alcohol and drug testing; \$150 public defender fund, \$500
19 indigent defense.

20 All right. Mr. Ishman, how do you wish to plead?

21 THE DEFENDANT ISHMAN: Guilty.

22 THE COURT: Are you guilty?

23 THE DEFENDANT ISHMAN: Yes, sir.

24 THE COURT: Listen to the solicitor.

25 MR. MEANS: Your Honor, Mr. Ishman, this happened

1 here in Anderson County July 11, 2006. Mr. Ishman had
2 been in a relationship with a Keenan Giovanni. At some
3 point there was a phonecall made in which Miss Giovanni, I
4 think some guy she was with, were sort of taunting
5 Mr. Ishman. He didn't take it very well. He went over
6 there where he really wasn't welcome to go, first of all;
7 when he got there, he tried to fight with the guys. There
8 was a lot going on at the situation, but the bottom line
9 is he eventually ended up taking his friend's pistol, who
10 had driven him over there, and pointing it at
11 Miss Giovanni according to multiple witnesses. Then he
12 took it back and told his friend to take the gun. He
13 didn't, he said he -- he said something to the effect that
14 he didn't want to shoot anyone; but he had pointed it
15 right at her head, said that he could kill her, he could
16 kill her sister, who was there, apparently.

17 At any rate, it was very frightening for the victim
18 and I think some of the guys there. Mr. Ishman is not a
19 small fellow, either, and there was a lot going on. But I
20 think Mr. Ishman certainly needs to stay away from
21 Miss Giovanni. I'll be happy to -- I've written what's
22 probably almost impossible to read. I'll be happy to add
23 that to the order, if he could just stay away from those
24 people, behave himself for the next three years, probably
25 be all right. He seems to be an intelligent individual.

1 But he and, you know, this lady are not a good mix. She
2 wants -- she didn't really want to see him go to jail,
3 just wants to break it off and move on.

4 Mr. Stathakis, have you explained to Mr. Ishman his
5 constitutional rights?

6 MR. STATHAKIS: I have, Your Honor.

7 THE COURT: Have you explained to him the crime?

8 MR. STATHAKIS: Yes, sir.

9 THE COURT: Have you explained to him the elements of
10 the crime?

11 MR. STATHAKIS: Yes, sir.

12 THE COURT: Did he appear to understand.

13 MR. STATHAKIS: Yes, sir.

14 THE COURT: Do you agree with his decision to plead
15 guilty?

16 MR. STATHAKIS: I do.

17 THE COURT: Mr. Ishman, do you agree with those
18 facts?

19 THE DEFENDANT ISHMAN: Yes, sir.

20 THE COURT: I find there's a factual basis for the
21 plea; and he's freely, voluntarily, and intelligently made
22 the decision to plead guilty with the advice of his
23 attorney.

24 All right, Mr. Ishman, on Indictment 3028, sentenced
25 to the state department of corrections for a period of

1 five years, three years probation. Conditions of
2 probation, substance abuse counseling, random alcohol and
3 drug testing, \$150 public defender fund, complete anger
4 management course, \$500 indigent defense. No contact with
5 the victim Keenan Giovanni and her family: Nathan Orr,
6 Benjamin Combs, James Rainey, Jerry Plum, Melissa Spado,
7 Brandon McConnell. And not to enter Stonewall Woods for
8 any reason whatsoever. Do you understand?

9 THE DEFENDANT ISHMAN: Yes, sir. I have one
10 question, Your Honor.

11 THE COURT: Yes, sir.

12 THE DEFENDANT ISHMAN: Upon leaving here I'll be
13 moving to Fort Bragg, North Carolina.

14 THE COURT: Take that up with the probation office.

15 THE DEFENDANT ISHMAN: Okay.

16 MR. MEANS: Your Honor, I just want to clarify that
17 Miss Giovanni can't change the court's order just for the
18 record? My understanding the Court ordered him to stay
19 away from Miss Giovanni. If she were to invite him over,
20 have to stay away from him; is that correct?

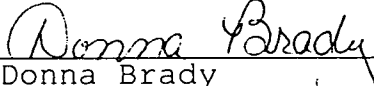
21 THE COURT: That's correct. If she wants to change
22 it, make a motion.

23 MR. MEANS: I just don't want the action as an excuse
24 later for problems.

25 THE COURT: If for some reason she wants to change

1 it, she can file a motion before the Court, I'll drop the
2 requirement. Right now he's restrained from having any
3 contact with her whatsoever.

4 * * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF ANDERSON)
6
78 I, Donna M. Brady, Official Court Reporter for the
9 Tenth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete Transcript of Record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the Court of General Sessions for
14 Anderson County, South Carolina, on the 20th day of
15 September, 2006.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819 May 12, 2008
2021
22 
23 Donna Brady
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ANDERSON

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

BRADLEY ISHMAN,)

DEFENDANT.)

2006-GS-04-3028

JANUARY 19, 2007

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

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

AMY METCALF, PROBATION AGENT
ON BEHALF OF THE STATE

ANDREW POTTER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

RENEE H. TOLLISON
CIRCUIT COURT REPORTER

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EXHIBITS

No	DESCRIPTION	ID	EV
NO EXHIBITS WERE PRESENTED DURING THE HEARING			

1 (WHEREUPON, all parties were present and the following
2 proceedings were had.)

3 THE COURT: What's the name? I'm sorry.

4 MS. METCALF: Ishman.

5 THE COURT: Is this number fifteen?

6 Okay. This is Bradley Ishman, pointing and presenting a
7 firearm, five years suspended with three years probation.
8 Looks like he failed to report. He entered a place where
9 alcohol was sold, possession of a firearm, failed to work and
10 C.D.V. Has that been ...

11 MR. POTTER: Judge, that's still pending. Actually,
12 apparently he was charged with a C.D.V. second. That's still
13 pending. Mr. Means at the Solicitor's office has that case.
14 As far as I'm aware, it has not been indicted at this time.

15 He does agree with violations in regards to condition
16 number three, condition number five, condition number nine.
17 He does deny that he -- well, he does admit he missed his
18 report date on December 4th, but tells me he called in and had
19 that rescheduled. He did make his appointment when it was
20 rescheduled. In regards to the possession of a firearm, he
21 denies that. Apart from that he -- if Your Honor is going to
22 consider those matters, he tells me he does have a witness
23 that can address the issue, at the very least for the firearm.

24 THE COURT: All right. What's the deal with the
25 firearm?

1 MS. METCALF: Your Honor, if it pleases the Court,
2 the victim is here today, Kenan Geovani (phonic). She is the
3 victim in the probation case as well as the pending charge of
4 C.D.V. second. Her family is also here today, and they are
5 also listed on the original order to have no contact with the
6 pointing and presenting of the firearm.

7 Ms. Geovani came into my office on the 12th of December
8 and did an affidavit stating that Mr. Ishman showed her a
9 picture of a firearm via webcam. And I have her affidavit as
10 well as a picture and the statement she gave to law
11 enforcement from the C.D.V. incident.

12 THE COURT: What's the explanation for the gun?

13 MR. POTTER: Judge, I haven't had a chance to review
14 the affidavit or see a copy of that. He's telling me that he
15 does have a witness related to this particular allegation for
16 his violation. So if Your Honor wishes to go forward on that
17 particular matter, I'm going to ask for a continuance so I can
18 get the witness in and give me a chance to review the
19 affidavit.

20 MS. METCALF: Your Honor, if it pleases the Court,
21 the witness that he is speaking of is his sister. His sister
22 did contact my office. And she could not verify if the gun
23 was actually in the residence, but she could verify through
24 the picture that that was her residence. She also had given
25 the same statement to Ms. Geovani. And I also have instant

1 messages between the offender and the victim at which time he
2 does not come out and actually point-blank say that he's in
3 possession of a firearm. He just makes references that if you
4 would like to look at -- there are some -- I've highlighted
5 some of the main points.

6 MR. POTTER: Again, Judge, I haven't had the
7 opportunity to review that. I haven't had an opportunity to
8 review that paperwork either as well.

9 MS. METCALF: And the Kenan (phonic) Parker is his
10 screen name, also through another instant message that he has.
11 I can verify that it would have been the offender based on
12 some of the statements he made about seeing his probation
13 officer and whatnot.

14 THE COURT: So he's in jail now?

15 MS. METCALF: Yes, sir.

16 MR. POTTER: Yes.

17 THE COURT: Well, here's the problem. I mean, if --
18 he's got this charge out here, this serious charge. Not that
19 having a gun is not serious. I mean, that's the kind of thing
20 I would revoke him for. But the C.D.V. and kidnaping ...

21 MS. METCALF: Actually the charges have -- at the
22 time when the warrant was done, it was based on the incident
23 report from the sheriff's office at which time they have
24 listed C.D.V. as high and aggravated nature and kidnaping.

1 The actual charge now is C.D.V. second. They did not charge
2 him with kidnaping. And I have a copy of the incident report
3 as well if you would like to see that.

4 MR. POTTER: Judge, the only real issue is the gun
5 situation. It's my understanding that, as the agent
6 indicated, his sister will testify that she searched the house
7 and did not find a gun. And like I said, I haven't had a
8 chance to review the affidavit to exactly see whether or not
9 there's a need for any other additional witnesses.

10 THE COURT: Do you want to look at this?

11 MR. POTTER: We can stand down, Judge, if you need
12 about five ...

13 THE COURT: We can stand down and let you look at
14 it.

15 Do you have any objection to him looking at it?

16 MS. METCALF: No, sir.

17 THE COURT: Looks like there was a gun to me.

18 MS. METCALF: And I do apologize. Up until this
19 morning I did not know that he was going to have
20 representation.

21 THE COURT: That's okay.

22 MR. POTTER: Judge, we need to stand down. We could
23 do a couple of pro se while I'm looking at it.

24 THE COURT: Yeah, let's do that.

1 (WHEREUPON, the hearing ended at approximately 12:07 p.m.
2 and then reconvened at approximately 12:20 p.m.)

3 THE COURT: Okay. We're back on the record with
4 Ishman.

5 MR. POTTER: If it pleases the Court?

6 THE COURT: Yes, sir.

7 MR. POTTER: Judge, I've had an opportunity to
8 review the affidavit, the photograph as well as the instant
9 messaging paperwork. The agent also showed me an email from
10 his sister confirming what she told Your Honor, that it was a
11 picture of the kids' playroom. I think the email message also
12 indicated that there were no guns in the house. At least no
13 toy guns or any guns were found in the house if I remember
14 correctly. Judge, after showing that information to my client
15 he tells me the instant messages, he tells me, that wasn't
16 him, that this is something that is being fabricated by the
17 victim.

18 Additionally, he's telling me that the photograph of the
19 weapon is something that he claims was fabricated as well with
20 a cut and paste using a computer.

21 THE COURT: Okay.

22 MR. POTTER: That's where we're at right now, Judge.

23 THE COURT: Okay. All right. Well, this is one of
24 those volatile situations. I'm going to revoke and terminate.

1 MS. METCALF: I'm sorry?
2 THE COURT: Revoke in full and terminate.
3 MS. METCALF: Thank you, Your Honor.
4 THE COURT: All right.
5 MR. POTTER: Thank you, Judge.
6 THE COURT: Thank you.

7 (END OF REQUESTED TRANSCRIPT OF RECORD)

1

CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED RENEE H. TOLLISON, OFFICIAL COURT
3 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
4 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
5 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 19TH DAY OF
9 JANUARY 2007.

10 THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
11 MATERIAL IS REPRODUCED AS READ BY THE SPEAKER.

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

14

FEBRUARY 15, 2008

15

16

Renee H. Tollison

17

CIRCUIT COURT REPORTER

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) JANUARY 19, 2007 (1-19-07)
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ (9-20-06 original case)
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
- If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) VOLUNTARILY ENTERED GUILTY PLEA WITH PROVISIONS OF PROBATION.

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) JUDICIAL MISCONDUCT/VIOLATION OF DUE PROCESS
- (b) PROSECUTORIAL MISCONDUCT
- (c) MISREPRESENTATION^{INEFFECTIVE ASSISTANCE}/UNETHICAL CONDUCT OF COUNSEL
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT 11(a)
- (b) SEE ATTACHMENT 11(b)
- (c) SEE ATTACHMENT 11(c)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? ~~NO~~ ⁸² YES.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. MOTION TO RECONSIDER (JANUARY, 07)
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. 10th CIRCUIT, COURT OF GENERAL SESSIONS; ANDERSON COUNTY
- ii. N/A
- iii. N/A

iv. N/A

(c) the disposition thereof:

i. NO RESPONSE

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. JANUARY, 2007

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) JUDICIAL MISCONDUCT: DUE TO INCARCERATION LEGAL RESEARCH LIMITS
 - (b) PROSECUTORIAL MISCONDUCT: (SAME)
 - (c) MISREPRESENTATION / UNETHICAL CONDUCT OF COUNSEL: (SAME)
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
 - (b) your trial, if any? N/A
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. JOHN STATIAKIS
ANDERSON COUNTY PUBLIC DEFENDERS OFFICE
 - ii. ANDY POTTER
ANDERSON COUNTY PUBLIC DEFENDERS OFFICE
 - iii. N/A
 - (b) the proceedings at which each such attorney represented you:
 - i. PLEA AND SENTENCING (INITIAL)
 - ii. SENTENCING (VIOLATION OF PROBATION)
 - iii. N/A

19. State clearly the relief you seek in filing this application:

~~REVERSAL~~ REVERSAL OR VACATUR OF SENTENCE IMPOSED.

20. Are you now under sentence from any other court that you have not challenged?

No.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of ANDERSON)

VERIFICATION

I, BRADLEY W. ISHMAN, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Bradley W. Ishman

BRADLEY W. ISHMAN #319764
(PRO-SE)

SWORN to and subscribed before me this 9th
day of JANUARY, 2008
[Signature] (L.S.)
Notary Public

My Commission Expires: 1-26-2009

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, BRADLEY W. ISHMAN, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

Bradley W. Ishman (PRO-SE)
Applicant

SWORN or affirmed to and subscribed before me this
9th day of JANUARY, 2008.

[Signature]
Notary Public

My Commission Expires: 1-26-2009

Judicial Misconduct (continued)

11(a)(1). During the proceedings of the hearing the applicant's appointed counsel did not demand that applicant "shut-up" in an extremely aggressive and unprofessional manner; whenever the presiding judicial judge was in violation of "rules of judicial conduct, rule 3.13(4), CSC, Rule 501, SCACR, by not correcting or addressing the counsel for the unprofessional act.

- (iii). The honorable judge was in violation of "rules of judicial conduct, rule 3.13(4), CSC, Rule 501, SCACR, by not allowing the petitioner to speak before the court in effort of mitigating sentence to be imposed. US v Anderson, 987 F.2d 251, 26 (5th Cir. 1993) required sentencing court failed to specify address the defendant and ask whether he wanted to exercise right to allocation. see Greppi v Leslie, 404 US 476, 30 LE2d 632, 92 SCT 582 (1972).

- (iiii) The court did violate the applicants 14th Amendment rights under the Due Process Act by depriving him the minimum procedural requirements during hearing. See US v Haver, 155 F.3d 1090 (4th Cir. 1998) stating, "Minimum due process requirements apply alike in proceedings for parole, and probation revocation, and supervised release revocation." These minimal requirements include (a) written notice of the alleged violations; (b) disclosure of the evidence against probationer/parolee; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses; (e) a neutral and detached hearing body; and (f) a written statement of the findings as to the evidence relied on and the reasons for revocation. See also Black v Romano, 110, 175, 105 SCT 2254, 41 US 666, 57 L. Ed 2d 636, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 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2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 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2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 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- (iv) At all times during and throughout the proceedings of hearing the pre-
honorable Judge was biased and ~~im~~partial. This is evident by the judge's
lack of tolerance with the defense when counsel proposed that his client,
applicant, states that the evidence was fraudulent and the judge instantly
issued a sentence of full revocation (5 years). The judge also denied the
request for a continuance by the applicant's counsel, as well as he only allotted
the defense a ten minute recess to overlook and examine the evidence, which
only been submitted minutes before, knowing that the defense counsel had been
appointed directly before the hearing and that the applicant was being deprived
his right to a preliminary "evidential" hearing before a hearing of sentencing
stated in and mandated by under the Constitution's FOURTEENTH AMENDMENT
"DUE PROCESS CLAUSE ACT." See U.S. v WHITE, 222 F3d. 363 (2000).
"The government has a special responsibility to ensure the integrity of the criminal
judicial process by living up to the code of professional ethics and fair play
at all times." See also NORTH CAROLINA, v PEARCE, 395 US 711, 23 LEd2d 6
89 Sct. 2072 (1969).
- (v) Applicant's probation violations consisted of and contained the "reason to
believe" that applicant had committed the crimes of Kidnapping and C.D.V.H.A.N.
Applicant was served warrant and detained for C.D.V. 2nd offense. Although
applicant had been arrested for said charge he had not, and has not, been con-
victed of this criminal charge. Throughout the hearing the presiding judge
did, numerous times, state that these "reason to believe" violations were serious
implying to the court that he believed the applicant had committed these acts
and also persuading the court to believe so. According to the Supreme Court's, (of
the United States), ruling in APPENDIX it is patently and constitutionally unjust
for a defendant to be sentenced for a crime which he has not...

PROSECUTORIAL MISCONDUCT (continued)

11.(b). (i) The prosecuting solicitors did fail to disclose all evidence within a timely manner to allow the applicant a fair and just opportunity to establish and prepare the court a defense for the effect and purpose of mitigating the sentence be imposed, therefore the prosecuting solicitors were in violation of Rules of Professional Conduct, Rule 3.8(d), RPC, Rule 407, SCACR. (special responsibilities of a prosecutor.)

(ii) The prosecuting solicitors did violate the applicants constitutional Fifth Amendment rights by depriving him of his life, liberty, and property due to the solicitors acts of, opposing and submitting materially untrue statements and evidence in which neither the solicitors or the protection officer took the time to correct or withdraw. See DAVIES v LEE, 316 F.3d 477 (4th Cir. 2003), also see U.S. v. HARRIS, 427 US 97, 49 LE2d 342, 96 S.Ct. 2392 (1976), U.S. v. NAPP, 243 F.3d 1139 (9th Cir. 2001), U.S. v. ESEMAN, 227 F.3d 886 (7th Cir. 2001).

(iii) By the prosecuting solicitors acting in their individual and official capacity in that knowingly violate the applicants 4th Amendment rights as well as his constitutional 14th Amendment "Due Process" rights. See TECHNICAL ORDINANCE, INC. v. U.S., 244 F.3d 641 (8th Cir. 2001), WATERS, a warrant issued on the basis of an affidavit that shows probable cause only because it contains a deliberate or reckless falsehood or omission violates the 14th Amendment. Also see WILSON v. LAWRENCE (unpubl. 260 F.3d 940 (8th Cir. 2001)). If officers used false evidence, including false testimony, to secure a conviction, the defendants due process (14th Amendment) rights are violated. The prosecuting solicitors did not, it only have question the truthfulness of the affidavit and evidence in hand would have over attempt to correct the evidence. The applicant never received the opportunity to cross-examine the witnesses) nor was he able to dispute the allegations against him during the initial trial.

INEFFECTIVE ASSISTANCE, MISREPRESENTATION, UNETHICAL CONDUCT OF COUNSEL

11. (c)(i). During the proceedings of the hearing the applicant's appointed counsel did verbally demand that the applicant, "Shut-Up!" in an extremely aggressive and professional demeanor; wherefore the counselman was in direct violation of the South Carolina Rules of Professional Conduct, Rule 8.4(a), (d), (e), RPC, Rule 407, SCACR.

- (ii) Applicant's appointed counsel did not object to the the lack of notice and submission of the evidence, nor did he propose to the Court and make known the procedural errors, along with constitutional rights being violated and deprived; wherefore the appointed counsel was in violation of Rules of Professional Conduct, Rule 1.1, RPC, Rule 407, SCACR. It is generally preferred that a blameless party not be disadvantaged by the procedural errors or neglect of his or her attorney; see HARRIS v. U.S. RR RETIREMENT BD., 178 F3d 139 (4th Cir. 1999)

- (iii) Due to the applicant's counsel being so hastily appointed, there was a substantial lack of time for preparation and consultation in which the counsel, nor applicant, were able to properly and justly confer. Counsel was in direct violation of Rules of Professional Conduct, Rule 1.1, RPC, Rule 407, SCACR which states, "competent handling of a particular matter, inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation," whereas applicant's appointed counsel did not abide within. See U.S. v. BOWE, 221 F3d 1193 (2000), "implicit in the right to counsel is the notion of adequate time for counsel to prepare the defense."

- (iv) Applicant's counsel did fail to present any mitigating evidence during sentencing, nor did counsel argue the minute opportunities given (10 minute recess) matter to review evidence submitted; wherefore this lack of action on part of counsel does constitute ineffective assistance. See Williams v. Taylor 170 S.Ct. 1142 (2002)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS

2008-CP-04-104

Bradley W. Ishman, # 319764,)
Applicant,)
v.) RETURN
State of South Carolina,)
Respondent.)
_____)

Respondent, making its Return to the application for post conviction relief (PCR) filed January 11, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted for pointing or presenting a firearm (06-GS-04-3028). John Stathakis, Esquire, represented him. On September 20, 2006, Applicant pled guilty as indicted. He was sentenced by the Honorable J.C. Nicholson to confinement for five years suspended upon three years probation. Applicant did not appeal his conviction or sentence.

Applicant subsequently violated the terms of his probation. On January 19, 2007, a probation revocation hearing was convened at which Applicant was present. Applicant was represented by Andrew Potter, Esquire. The Honorable J. Cordell Maddox revoked Applicant's probation in full and sentenced him to serve five years with credit given for time already served.

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the probation revocation transcript. Any of the above not so attached will be forwarded upon receipt.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
2. Judicial misconduct; and
3. Prosecutorial misconduct.

III.

Respondent interprets each of Applicant's allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine

issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL E. GRIGG
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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March 6, 2008.

STATE OF SOUTH) IN THE COURT OF COMMON PLEAS
CAROLINA)
) CASE NO: 2008-CP-04-00104
COUNTY OF ANDERSON)

BRADLEY ISHMAN,)
)
APPLICANT,)
) TRANSCRIPT OF RECORD
-VS-) POST-CONVICTION RELIEF
) HEARING
STATE OF SOUTH)
CAROLINA,)
)
DEFENDANT.)

OCTOBER 22, 2008
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE.

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

JOHN GRIFFITH, ESQ.
ATTORNEY FOR THE APPLICANT

GREGORY P. JONES, ESQ.
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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1 ***** START OF REQUESTED TRANSCRIPT OF RECORD *****

2 **THE COURT:** THE NEXT CASE IS *BRADLEY WILLIAM*
3 *ISHMAN VERSUS THE STATE OF SOUTH CAROLINA,*
4 2008-CP-04-104. MR. GRIFFITH REPRESENTS THE APPLICANT,
5 MR. JONES AND MS. ELLIOTT REPRESENT THE STATE OF SOUTH
6 CAROLINA.

7 TELL ME A LITTLE BIT ABOUT THE CASE.

8 **MR. JONES:** MAY IT PLEASE THE COURT. THIS
9 MATTER COMES TO COURT BY WAY OF APPLICATION FILED
10 JANUARY 11TH, 2008.

11 THE APPLICANT WAS INDICTED FOR POINTING AND
12 PRESENTING A FIREARM. JOHN STATHAKIS REPRESENTED HIM.
13 ON SEPTEMBER 20TH, 2006, THE APPLICANT PLED GUILTY AS
14 INDICTED. HE WAS SENTENCED BY THE HONORABLE J.C.
15 NICHOLSON TO CONFINEMENT FOR FIVE YEARS SUSPENDED UPON
16 THREE YEARS PROBATION. APPLICANT DID NOT APPEAL HIS
17 CONVICTION OR SENTENCE.

18 SUBSEQUENTLY, THE APPLICANT VIOLATED THE
19 TERMS OF HIS PROBATION. ON JANUARY 19TH, 2007, A
20 PROBATION REVOCATION HEARING WAS CONVENED AND THE
21 APPLICANT WAS PRESENT AND REPRESENTED BY ANDREW POTTER.
22 THE HONORABLE J. CORDELL MADDOX REVOKED THE APPLICANT'S
23 PROBATION IN FULL AND SENTENCED HIM TO SERVE FIVE YEARS
24 WITH CREDIT FOR TIME SERVED.

25 AT THIS MOMENT THE STATE WILL YIELD TO THE

1 APPLICANT.

2 THE COURT: MR. GRIFFITH, WHAT DO YOU HAVE?
3 WHAT ARE THE GROUNDS FOR THE APPLICATION?

4 MR. GRIFFITH: JUDICIAL MISCONDUCT,
5 PROSECUTORIAL MISCONDUCT. I DID AN AMENDMENT TO EXPLAIN
6 A LITTLE BIT MORE WHAT WAS BEHIND THE DUE PROCESS AND
7 INEFFECTIVE ASSISTANCE OF COUNSEL. IT SHOULD BE IN THE
8 FILE, YOUR HONOR.

9 THE COURT: WHEN WAS THIS FILED?

10 MR. GRIFFITH: OCTOBER 7, 2008. IT'S
11 ENTITLED "APPLICANT'S AMENDMENT TO P.C.R." I JUST
12 LISTED WHAT WE WERE ADDING TO THE GROUNDS HE HAD ALREADY
13 PLED.

14 THE COURT: DO YOU HAVE A COPY, MR. JONES?

15 MR. JONES: YES, YOUR HONOR.

16 THE COURT: PLEASE MAKE A COPY FOR THE COURT
17 AND MAKE ONE FOR THE COURT REPORTER, AS WELL.

18 THE CLERK: YES, YOUR HONOR.

19 THE COURT: WHILE WE'RE DOING THAT,
20 MR. GRIFFITH, IF YOU WOULD PLEASE TELL ME AGAIN. YOU'VE
21 GOT INEFFECTIVE ASSISTANCE OF COUNSEL. WHAT ARE YOUR
22 GROUNDS FOR THAT?

23 MR. GRIFFITH: LET ME START WITH, IF I
24 COULD, THE PROCESS THAT'S THE MAIN GROUND. BASICALLY
25 IT'S AN EIGHT-PAGE TRANSCRIPT, YOUR HONOR, A PROBATION

1 REVOCATION HEARING. MR. POTTER WAS APPOINTED THAT DAY
2 AND HE MET WITH THE DEFENDANT VERY BRIEFLY BEFORE THE
3 HEARING. THEY NEEDED A CONTINUANCE BECAUSE THERE WAS
4 EVIDENCE HE HAD NOT SEEN AND THAT HE HAD WITNESSES WHO
5 COULD REBUT THAT EVIDENCE. AND HE TECHNICALLY ADMITTED
6 THE VIOLATIONS THAT WERE NOT SERIOUS OR NOT AS BAD AS
7 THE MAIN ONES THEY HAD ALLEGED AND THAT HE WANTED A
8 CONTINUANCE TO DO THAT.

9 THE PROBATION OFFICER SAID "WE HAVE AN
10 AFFIDAVIT." THEY STOOD DOWN 13 MINUTES ACCORDING TO THE
11 TRANSCRIPT. THEY CAME BACK UP. HE SAID, "WE CAN
12 PRESENT EVIDENCE AND WITNESSES THAT WILL SHOW THAT
13 THAT'S NOT TRUE."

14 JUDGE MADDOX SAID, "THIS IS ONE OF THOSE
15 VOLATILE SITUATIONS." IT WAS OVER THE ALLEGED VIOLATION
16 WHICH WAS THE ALLEGED C.D.V. BETWEEN MY CLIENT AND HIS
17 ORIGINAL VICTIM, HIS GIRLFRIEND, AND DURING THAT TIME
18 THEY WERE ENGAGED. SHE WAS ALSO THE VICTIM OF THE
19 UNDERLYING CHARGE, POINTING AND PRESENTING THE FIREARM.
20 JUDGE MADDOX SAID, "THIS ONE IS VOLATILE," AND HE SAID,
21 "I'M GOING TO REVOKE AND TERMINATE."

22 MR. ISHMAN NEVER SAID ONE WORD. THERE WAS
23 NO CROSS-EXAMINATION OF ANY WITNESSES. THE PROBATION
24 OFFICER WASN'T SWORN. I MEAN, IT REALLY WAS A SUMMARY
25 HEARING AND IT ALMOST WOULD BE A SUMMARY JUDGMENT IF I

1 COULD GET ONE ON BEHALF OF A P.C.R. APPLICANT.

2 I'M PREPARED TO HAVE MR. POTTER TESTIFY.

3 I'VE GOT THE APPLICANT HERE TO TESTIFY. I'VE GOT ABOUT
4 FOUR OTHER WITNESSES, BASICALLY PEOPLE WHO WOULD HAVE
5 BEEN ABLE TO SAY SOMETHING ON HIS BEHALF CONCERNING THE
6 VIOLATIONS OF HIS PROBATION. I DON'T KNOW THAT THEY
7 NECESSARILY NEEDED TO TESTIFY. IF YOU READ THAT
8 TRANSCRIPT HERE, MR. POTTER'S DESCRIPTION OF WHAT
9 HAPPENED IN MR. ISHMAN'S LITTLE DISPUTE AND THE FACT HE
10 WAS NOT ALLOWED TO PRESENT HIS CASE.

11 WE RELY ON *STATE VERSUS ALLEN*, WHICH IS A
12 2006 SUPREME COURT CASE. MY WESTLAW WAS DOWN, SO I GOT
13 THE OPINION NUMBER, IT'S 26204. IT CITES *MORRISSEY*
14 *VERSUS BREWER*, A U.S. SUPREME COURT CASE FROM 1972, 408
15 U.S. 471, THAT EXPLAINS THE MINIMAL DUE PROCESS RIGHTS
16 FOR PROBATION AND PAROLE REVOCATIONS, THE ONES THAT WE
17 ARE ALLEGED THAT WERE VIOLATED.

18 HE WAS SUPPOSED TO GET THE DISCLOSURE OF THE
19 EVIDENCE AGAINST HIM. HE DIDN'T HAVE THAT UNTIL AFTER
20 IT WAS PRESENTED AT THE HEARING.

21 HE WAS SUPPOSED TO HAVE AN OPPORTUNITY TO BE
22 HEARD AND PRESENT WITNESSES AND DOCUMENTARY EVIDENCE.
23 HE WAS NOT GIVEN THE OPPORTUNITY TO SAY ANYTHING OR
24 PRESENT ANYTHING.

25 HE WAS SUPPOSED TO HAVE THE RIGHT TO

1 CONFRONT ADVERSE -- HE WAS SUPPOSED TO HAVE THE RIGHT TO
2 CONFRONT AND CROSS-EXAMINE ADVERSE WITNESSES. THAT
3 DIDN'T OCCUR.

4 HE WAS SUPPOSED TO HAVE A NEUTRAL AND
5 DETACHED HEARING BODY, AND WE BELIEVE BASED ON THE
6 CIRCUMSTANCES HE DIDN'T HAVE THAT.

7 HE'S GOT OTHER REASONS FOR COMPLAINTS ABOUT
8 THAT. BUT I THINK JUST REVIEWING THE TRANSCRIPT WILL
9 TELL YOU HE DIDN'T HAVE A NEUTRAL HEARING BODY AT THE
10 TIME.

11 HE WAS ALSO SUPPOSED TO BE GIVEN, ACCORDING
12 TO THIS -- AND I DON'T THINK THIS HAPPENED WITH ANY
13 PROBATION REVOCATION HEARINGS THAT I'M AWARE OF -- A
14 WRITTEN STATEMENT OF THE FACT-FINDERS AS TO THE EVIDENCE
15 RELIED ON AND REASONS FOR REVOKING THE PAROLE, OR HERE
16 THE PROBATION.

17 THE INEFFECTIVE ASSISTANCE OF COUNSEL REALLY
18 STEMS FROM THAT, BASICALLY BEING THAT COUNSEL WAS
19 APPOINTED THAT DAY, HE HAD NO ADEQUATE TIME TO PREPARE.
20 BUT I DON'T KNOW THAT THAT'S REALLY -- IT WAS THE
21 DEFENDANT'S ATTORNEY AT THAT TIME -- I DON'T KNOW THAT
22 WAS REALLY THE ATTORNEY'S FAULT BECAUSE THERE WAS NO
23 TIME TO PREPARE. HE DID PROPERLY ASK FOR A CONTINUANCE
24 FOR MORE TIME TO PRESENT THE CASE WHICH WAS NOT GRANTED.

25 BUT THERE WAS ALSO A FAILURE TO FILE A

1 MOTION TO RECONSIDER OR AN APPEAL FOLLOWING THE HEARING,
2 AND I THINK THAT THAT LIKELY WOULD HAVE BEEN GRANTED SO
3 HE COULD COME FORWARD AND HAVE A HEARING WHERE EVIDENCE
4 WAS ACTUALLY PRESENTED.

5 IN TERMS OF JUDICIAL MISCONDUCT, MY CLIENT
6 THINKS THAT THE WAY THE HEARING WAS HELD CONSTITUTES
7 THAT. I DON'T THINK THAT LEGALLY THAT DOES.

8 AS TO THE PROSECUTOR MISCONDUCT, THAT IS
9 SORT OF A MIXED CLAIM IN THERE. AND BASICALLY WHAT HE'S
10 SAYING IS THE PROBATION OFFICER KNEW THAT HE HAD CONTACT
11 WITH MS. KENAN GIOVANNI, WHO WAS THE ALLEGED VICTIM, WHO
12 WAS ALSO AT THE TIME OF THE SUPPOSED VIOLATION WAS HIS
13 FIANCÉE. AND MS. GIOVANNI, THE ALLEGED VICTIM'S,
14 BROTHER WORKED FOR THE SHERIFF'S DEPARTMENT. HER FATHER
15 HAD BEEN SOME LAW ENFORCEMENT PERSON WITH THE F.B.I. OR
16 SOME FEDERAL AGENCY I THINK PREVIOUSLY.

17 AND HE FELT LIKE HE'D BEEN TRAMPLED ON BY
18 THE PROCESS AND NOT GIVEN A PROPER HEARING AND SORT OF
19 RAILROADED IN HIS OPINION. I DON'T KNOW IF WE CAN PROVE
20 THAT, BUT THAT'S HIS ALLEGATION. I THINK WE DEFINITELY
21 HAVE PROOF OF DUE PROCESS AND PROBABLY INEFFECTIVE
22 ASSISTANCE OF COUNSEL. THANK YOU, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. WHAT I UNDERSTAND,
24 THEN, IS YOUR MAIN GROUND FOR THE DUE PROCESS GROUND IS
25 FAILURE TO DISCLOSE EVIDENCE AGAINST THE APPLICANT,

1 DENIAL OF THE OPPORTUNITY TO PRESENT EVIDENCE AND TO
2 CONFRONT WITNESSES AND TO PRESENT WITNESSES; IS THAT
3 CORRECT?

4 MR. GRIFFITH: THAT'S THE THRUST OF IT, YOUR
5 HONOR. AND THE INEFFECTIVE ASSISTANCE OF COUNSEL REALLY
6 EMANATES FROM THAT, FAILURE TO CORRECT THAT.

7 THE COURT: ALL RIGHT. I'VE READ THE
8 TRANSCRIPT. IS THERE ANYTHING FROM THE STATE BEFORE
9 I -- I DO WANT TO HEAR THE TESTIMONY, THOUGH, IF THERE
10 IS ANY TESTIMONY. BUT IS THERE ANYTHING BEFORE WE DO
11 THAT, MR. JONES?

12 MR. JONES: THE ONLY THING, THE ALLEGATION
13 THAT HIS DUE PROCESS RIGHTS WERE VIOLATED, THE
14 ALLEGATIONS OF JUDICIAL MISCONDUCT AND PROSECUTORIAL
15 MISCONDUCT ARE DIRECT APPEAL ISSUES.

16 THE COURT: WHAT DO YOU SAY ABOUT THAT,
17 MR. GRIFFITH?

18 MR. GRIFFITH: YOUR HONOR, WELL, TO THE
19 EXTENT THAT -- I DON'T BELIEVE THAT'S CORRECT. BUT TO
20 THE EXTENT THAT WOULD BE TRUE, IT'S INEFFECTIVE
21 ASSISTANCE OF COUNSEL FOR FAILURE TO FILE A MOTION TO
22 RECONSIDER, TO ADVISE THE APPLICANT TO FILE AN APPEAL OR
23 ADVISE THE APPLICANT THAT HE SHOULD FILE AN APPEAL. SO
24 THAT'S -- I MEAN, THAT'S MY BACKUP ARGUMENT. BUT I
25 THINK THE DUE PROCESS ARGUMENT IS PROPER FOR P.C.R.'S.

1 IT'S BASICALLY LIKE *HABEAS CORPUS*, BEING HELD WITHOUT
2 GOOD CAUSE BY THE STATE. I MEAN, HE DIDN'T HAVE A FAIR
3 HEARING. THEY CAN'T JUST HOLD HIM IN JAIL. AND
4 PERSONALLY, I DON'T THINK NECESSARILY THAT'S AN
5 APPELLATE AREA. THAT'S A P.C.R. OR A STATE *HABEAS*
6 *CORPUS*-TYPE ISSUE. AND I THINK HE'S ENTITLED TO RELIEF
7 UNDER, JUST FOR DUE PROCESS DIRECTLY; BUT IF NOT,
8 CERTAINLY FOR INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT
9 RAISING THE ARGUMENT THAT MIGHT CORRECT THAT ERROR.

10 **THE COURT:** ALL RIGHT. I WILL HEAR THE
11 APPLICANT. YOU MAY CALL YOUR FIRST WITNESS.

12 **MR. GRIFFITH:** WE WOULD CALL ATTORNEY ANDREW
13 POTTER.

14 (WHEREUPON, THE WITNESS WAS SWORN BY THE
15 CLERK.)

16 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
17 SPELL YOUR LAST NAME FOR THE RECORD.

18 **THE WITNESS:** MY NAME IS ANDREW T. POTTER,
19 P-O-T-T-E-R.

20 WHEREUPON,

21 ANDREW T. POTTER,
22 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
23 FOLLOWS:

24 DIRECT EXAMINATION BY MR. GRIFFITH:

25 Q. MR. POTTER, DID YOU REPRESENT MR. BRADLEY ISHMAN

1 IN HIS PROBATION REVOCATION HEARING BACK ON JANUARY
2 19TH, 2007?

3 A. YES, SIR.

4 Q. WHO DID YOU WORK FOR AT THAT TIME?

5 A. ANDERSON COUNTY PUBLIC DEFENDER'S OFFICE.

6 Q. DO YOU STILL WORK FOR THEM?

7 A. YES, SIR.

8 Q. ALL RIGHT. WERE YOU APPOINTED TO REPRESENT
9 MR. ISHMAN FOR THAT HEARING?

10 A. YES. FOR PRACTICAL PURPOSES, YEAH. THERE WASN'T
11 A FORMAL ORDER OR ANYTHING OF THAT SORT.

12 Q. WERE YOU DIRECTED THAT DAY THAT YOU SHOULD
13 REPRESENT HIM FOR THE HEARING?

14 A. I DON'T KNOW IF I WAS DIRECTED BY THE COURT.
15 THIS WAS A FRIDAY, AND WHOEVER IS LOCKED UP WE TRY TO
16 TALK TO, TO SEE IF THEY HAVE RETAINED COUNSEL. IF NOT,
17 IF NOT, THEN WE'LL GO AHEAD AND REPRESENT THEM.

18 Q. ALL RIGHT. DO YOU KNOW WHETHER OR NOT YOU HAD AN
19 OPPORTUNITY TO SPEAK WITH MR. ISHMAN PRIOR TO THE DAY OF
20 THE HEARING?

21 A. PRIOR TO THE DAY OF THE HEARING, PROBABLY NOT.
22 MY NOTES DON'T INDICATE EXACTLY WHAT DAY I SPOKE TO HIM.
23 I'M ASSUMING I SPOKE TO HIM THE DAY OF.

24 Q. ALL RIGHT. DO YOU HAVE AN INDEPENDENT
25 RECOLLECTION OF WHAT OCCURRED THAT DAY OTHER THAN

1 READING YOUR NOTES AND THE TRANSCRIPT?

2 A. NO, SIR.

3 Q. WOULD YOU HAVE HAD SEVERAL HEARINGS TO HANDLE
4 THAT DAY IN ADDITION TO HIS?

5 A. YES, SIR.

6 Q. WHAT WOULD A TYPICAL REVOCATION, PROBATION
7 REVOCATION HEARING DATE REPRESENT IN TERMS OF NUMBER OF
8 CLIENTS FOR YOU?

9 A. A LOT. I'VE NEVER HAD LESS THAN FIVE, I KNOW
10 THAT. ANYWHERE BETWEEN FIVE TO MAYBE 15 TO 20.

11 Q. OKAY. ALL RIGHT. IN TERMS OF MR. ISHMAN'S
12 HEARING, DID THE TRANSCRIPT SOMEWHAT REFRESH YOUR MEMORY
13 AS TO WHAT OCCURRED?

14 A. I READ THE TRANSCRIPT. IT DOESN'T NECESSARILY
15 SPARK ANY INDEPENDENT RECOLLECTION OF WHAT HAPPENED.

16 Q. BASED ON THE TRANSCRIPT, DID YOU ATTEMPT TO GET A
17 CONTINUANCE SO THAT YOU COULD PREPARE A DEFENSE FOR
18 MR. ISHMAN?

19 A. YES, SIR.

20 Q. BASED ON YOUR NOTES AND TRANSCRIPT, DO YOU
21 BELIEVE HE WOULD HAVE BEEN ABLE TO PRESENT A DEFENSE TO
22 SOME, AT LEAST SOME IF NOT ALL THE ALLEGATIONS AGAINST
23 HIM?

24 A. FOR SOME HE TOLD ME THAT HE HAD A -- HIS SISTER
25 WAS A WITNESS, THAT HE WOULD TESTIFY THAT APPARENTLY ONE

1 OF THE ALLEGATIONS WAS THERE WAS A GUN IN HIS RESIDENCE.
2 HE HAD HIS SISTER WHO WOULD TESTIFY THAT THERE WAS NO
3 GUN AT THE RESIDENCE. THAT WAS THE ONE WITNESS HE DID
4 MENTION TO ME IN REGARDS TO THE POSSESSION OF A GUN
5 CHARGE.

6 Q. ALL RIGHT. I THINK ON, ABOUT FAILING TO REPORT,
7 APPARENTLY HE TOLD YOU THAT HE CALLED TO RESCHEDULE THE
8 REPORTING DATE?

9 A. YES, SIR.

10 Q. AND THAT WAS FOR A DECEMBER 4, 2006, REPORT?

11 A. THAT'S CORRECT.

12 Q. ALL RIGHT. HE ALSO TOLD YOU HE DENIED THE
13 ALLEGATIONS, I GUESS, CONCERNING BEING INTOXICATED AT
14 MARK AND JEANNIE'S BAR ON DECEMBER 18TH, 2006?

15 A. YES. MY NOTES INDICATE HE DENIED THAT. HE DID
16 TELL ME HE WAS THERE AND MY NOTE SAYS BEHIND BAR. SO
17 THAT'S WHAT MY NOTES INDICATED.

18 Q. SO HE MAY HAVE BEEN AT THAT LOCATION BUT NOT
19 INSIDE DRINKING?

20 A. THAT MAY BE TRUE, YES, SIR.

21 Q. OKAY. DID HE ALSO DENY THAT HE WAS GUILTY OF
22 CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED IN
23 ADDITION TO A KIDNAPPING THAT ALLEGEDLY TOOK PLACE ON
24 DECEMBER 8, 2006?

25 A. YEAH. HE TOLD ME THAT THAT WAS A C.D.V. SECOND

1 AND THAT WAS GOING TO TRANSFER COURT.

2 Q. ALL RIGHT. DID HE INDICATE THAT HE HAD WITNESSES
3 THAT WOULD SAY THAT WASN'T TRUE AND HE DIDN'T COMMIT A
4 CRIME ON THAT DAY?

5 A. HE DIDN'T TELL ME THAT.

6 Q. ALL RIGHT. YOU DON'T INDEPENDENTLY RECALL THAT,
7 BUT YOU GOT THAT HE DENIED OR HAD SOME OTHER CHARGE
8 PENDING? I GUESS YOUR NOTES INDICATE HE HAD ANOTHER
9 CHARGE PENDING?

10 A. THE NOTES INDICATE HE HAD ANOTHER CHARGE PENDING.
11 I DON'T THINK I ASKED HIM SPECIFICALLY ABOUT THOSE
12 CHARGES. I USUALLY DON'T.

13 Q. ALL RIGHT. DID YOU ASSUME THAT BECAUSE THAT WAS
14 A PENDING CHARGE VERSUS A PROVEN CHARGE, THAT THAT WOULD
15 NOT BE A REASON TO REVOKE HIS PROBATION?

16 A. TYPICALLY OUR JUDGES WILL NOT REVOKE JUST ON A
17 PROBABLE CAUSE WARRANT, AND USUALLY WHAT I ASK FOR IS
18 CONTINUE THE CASE UNTIL THE PENDING CASE IS HANDLED. AT
19 THAT POINT IN TIME THEN ANY PROBATION REVOCATION ISSUE
20 COULD BE ADDRESSED IF THERE'S A GUILTY PLEA OR A GUILTY
21 FINDING.

22 Q. ALL RIGHT. DO YOU RECALL -- THERE'S NOT A PLACE
23 IN THE TRANSCRIPT -- BUT DO YOU RECALL MR. ISHMAN TRYING
24 TO SPEAK UP AND YOU TELLING HIM NOT TO SPEAK AT THAT
25 TIME?

1 A. I DON'T RECALL THAT.

2 Q. WOULD THAT BE UNUSUAL IF HE WAS SPEAKING UP AT A
3 TIME YOU DIDN'T THINK APPROPRIATE FOR HIM TO ADDRESS THE
4 COURT?

5 A. IF SOMEBODY IS SPEAKING WHILE SOMEBODY ELSE IS
6 SPEAKING OR THE JUDGE IS SPEAKING OR SOMETHING OF THAT
7 SORT, I'LL TELL THEM TO WAIT, YOU'LL GET A CHANCE TO
8 TALK.

9 Q. ALL RIGHT. WERE YOU ULTIMATELY GIVEN A CHANCE TO
10 PRESENT EVIDENCE EITHER IN DEFENSE OF THE VIOLATION OF
11 PROBATION OR IN MITIGATION OF THE SENTENCE THAT THE
12 JUDGE ACTUALLY GAVE HIM -- ULTIMATELY GAVE HIM?

13 A. OKAY. I'M SORRY. SAY THAT ONE MORE TIME.

14 Q. LET ME START AGAIN. WERE YOU ABLE TO PRESENT ANY
15 EVIDENCE, TESTIMONY, ANYTHING IN HIS DEFENSE IN THE
16 HEARING?

17 A. IN REGARDS TO THE VIOLATIONS, NO. WE WEREN'T
18 ABLE TO GET THE WITNESS, HIS SISTER, IN TO TESTIFY; WE
19 WEREN'T GIVEN THAT OPPORTUNITY. AND I HAD A BRIEF.
20 LOOKING AT THE TRANSCRIPT, APPARENTLY I SAW AN AFFIDAVIT
21 AND PHOTOGRAPH, I TALKED WITH HIM BRIEFLY ABOUT THAT,
22 AND RELAYED TO THE COURT WHAT HE HAD TOLD ME REGARDING
23 THAT EVIDENCE. I THINK HE HAD ALREADY DECIDED, SO I
24 DON'T THINK I MADE ANY ARGUMENT ABOUT CROSS-EXAMINATION
25 OR ANY RIGHT TO CONFRONTATION AT THAT TIME.

1 Q. ALL RIGHT. I THINK YOU INFORMED THE COURT THAT
2 AS TO THE INSTANT MESSAGES OR SOME OF THE OTHER EVIDENCE
3 THAT MR. ISHMAN HAD INDICATED TO YOU, THAT THOSE WERE
4 FABRICATED AND HE WANTED TO PRESENT EVIDENCE ON THAT
5 ISSUE; IS THAT RIGHT?

6 A. YES.

7 Q. BUT HE WASN'T ALLOWED TO PRESENT ANY EVIDENCE; IS
8 THAT CORRECT?

9 A. ACCORDING TO THE TRANSCRIPT HE DIDN'T GET A
10 CHANCE TO SAY ANYTHING.

11 Q. ALL RIGHT. AND ACTUALLY, MR. ISHMAN DIDN'T SPEAK
12 ONE WORD IN THE TRANSCRIPT; IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. OKAY. ALL RIGHT. AND THAT WOULD NOT BE THE
15 NORMAL COURSE OF A REVOCATION HEARING, WOULD IT?

16 A. TYPICALLY A PROBATIONER WILL HAVE AN OPPORTUNITY
17 TO EXPLAIN THEMSELVES, TO OFFER ANY MITIGATION ON
18 THEMSELVES. IF I NEGLECT TO MENTION SOMETHING,
19 TYPICALLY MY CLIENT WILL CHIME IN AND ADD WHAT HE THINKS
20 OR SHE THINKS IS NECESSARY FOR THE JUDGE TO CONSIDER.

21 Q. ALL RIGHT. DID YOU ADVISE MR. ISHMAN TO FILE A
22 MOTION TO RECONSIDER THE COURT'S VIOLATION AND SENTENCE?

23 A. THAT'S NOT MY -- I USUALLY DON'T DO THAT. AFTER
24 A SENTENCE IS ENTERED, I DON'T TURN TO MY CLIENT AND SAY
25 YOU CAN APPEAL WITHIN TEN DAYS. I DON'T DO THAT.

1 Q. ALL RIGHT. OKAY. YOU DO NOT EXPLAIN TO HIM HIS
2 RIGHTS TO APPEAL; IS THAT CORRECT?

3 A. AFTER THE HEARING, NO.

4 Q. OKAY. YOU DID NOT FILE A MOTION TO RECONSIDER
5 FOR HIM?

6 A. NO.

7 Q. OKAY. AND AS FAR AS YOU KNOW, YOU DIDN'T ADVISE
8 HIM THAT HE COULD DO EITHER ONE, FILE A MOTION TO
9 RECONSIDER OR APPEAL?

10 A. I DON'T KNOW IF A MOTION TO RECONSIDER WOULD BE
11 APPROPRIATE. IT WAS A FRIDAY MORNING. COURT WAS ENDING
12 AT THIS POINT IN TIME. HONESTLY, I DON'T THINK THAT
13 WOULD COME ACROSS MY MIND, THOUGH, TO DO A MOTION TO
14 RECONSIDER.

15 Q. ALL RIGHT.

16 MR. GRIFFITH: THAT'S ALL MY QUESTIONS, YOUR
17 HONOR.

18 THE COURT: ALL RIGHT, MR. JONES?
19 CROSS-EXAMINATION BY MR. JONES:

20 Q. YOU STATED, MR. ANDREWS [SIC], THAT YOU MET THE
21 APPLICANT THE DAY OF THE PROBATION REVOCATION HEARING?

22 A. I BELIEVE SO. AT THAT POINT IN TIME IT WAS
23 PROBABLY THE MORNING OF MEETING WITH THEM TO DISCUSS THE
24 VIOLATIONS AND ALL THAT. SO IT'S LIKELY THAT I DIDN'T
25 EVEN GO DOWN THERE.

1 Q. WHAT DO YOU NORMALLY DISCUSS WITH ANYONE THAT IS
2 FACING PROBATION REVOCATION?

3 A. GO THROUGH THE VIOLATIONS. I GET AN 1106 FROM
4 THE PROBATION DEPARTMENT, WHICH IS, IT SETS FORTH WHAT
5 THEY ARE ON PROBATION FOR, GIVES A HISTORY OF WHAT THE
6 SENTENCE WAS, WHERE HE'S LIVING, JOBS, WHAT HIS FINES
7 AND SUPERVISION FEES ARE, WHETHER HE'S BEHIND ON HIS
8 MONEYS OR NOT, WHETHER HE'S WORKING OR NOT. AND THEN IT
9 SETS FORTH THE REASONS FOR THE VIOLATION, HIS
10 CONDITIONS. CONDITION ONE, VIOLATE, FAILURE TO REPORT.

11 WHAT I'LL DO IS I'LL GO THROUGH EACH CONDITION
12 THAT THEY SAID HE VIOLATED AND ASK HIM IF IT'S TRUE OR
13 NOT. AND THEY USUALLY TELL ME, YEAH, THIS IS TRUE; AND
14 IF IT'S NOT TRUE, THIS IS WHAT HAPPENED. AND I GO
15 THROUGH EACH VIOLATION AND ASK THEM IF THEY VIOLATED OR
16 NOT AND IF THESE ALLEGATIONS ARE TRUE.

17 Q. AT THIS TIME CAN YOU TELL THE STATE THE POTENTIAL
18 VIOLATIONS THAT THEY MAY HAVE HAD?

19 A. ACCORDING TO THE 1106 HE WAS VIOLATED FOR FAILING
20 TO REPORT ON DECEMBER 4, 2006.

21 CONDITION 3: HE WAS VIOLATED FOR ENTERING
22 ESTABLISHMENTS WHOSE PRIMARY BUSINESS IS THE SALE AND
23 DRINKING OF ALCOHOL, THAT BEING MARK AND JEANNIE'S BAR,
24 AND THAT OCCURRED ON DECEMBER 8TH, 2006.

25 AND IT ALSO REFERENCES AN INCIDENT REPORT FILED

1 BY THE ANDERSON COUNTY SHERIFF'S DEPARTMENT. PROBABLE
2 CAUSE TO BELIEVE THE OFFENDER WAS IN POSSESSION OF A
3 FIREARM AS WITNESSED BY AN AFFIDAVIT OF KENAN GIOVANNI.
4 THAT WAS DATED 12-12-2006.

5 ANOTHER VIOLATION FOR FAILURE TO WORK DILIGENTLY
6 AT A LAWFUL OCCUPATION IN THAT THE OFFENDER WAS FIRED
7 FROM HIS PLACE OF EMPLOYMENT NOVEMBER 27TH, 2006.

8 PROBABLE CAUSE THAT THE OFFENDER DID COMMIT THE
9 CRIME OF C.D.V. HIGH AND AGGRAVATED NATURE AND
10 KIDNAPPING ON DECEMBER 8, 2006, AS EVIDENCED BY AN
11 INCIDENT REPORT.

12 CONDITION 9: BEING BEHIND ON HIS PUBLIC DEFENDER
13 FEES, \$25 BEHIND ON THAT, HAVING NEVER MADE A PAYMENT.

14 THERE WAS ANOTHER VIOLATION. FAILURE -- THERE
15 WAS APPARENTLY A WARRANT AND THEN A CITATION, A SEPARATE
16 CITATION WAS ISSUED FOR PREVIOUS VIOLATIONS PUT ON THE
17 WARRANT. THE CITATION ISSUED ON DECEMBER 28TH FOR
18 FAILING TO REFRAIN FROM CONTACT WITH VICTIM AND/OR
19 VICTIM'S FAMILY DIRECTLY OR INDIRECTLY, AND THAT IS ON
20 DECEMBER 28, 2006, OFFENDER SENT THREE LETTERS TO THE
21 VICTIM'S RESIDENCE FROM THE ANDERSON COUNTY DETENTION
22 CENTER.

23 SO THOSE ARE THE THREE I REVIEWED WITH HIM.

24 Q. NOW, AT ANY POINT IN TIME DID THE APPLICANT OR
25 DID ANYBODY INDICATE THAT HE VIOLATED SOME OF THOSE

1 ITEMS?

2 A. HE TOLD ME THAT ON THE FAILURE TO REPORT ON
3 DECEMBER 4TH HE TOLD ME HE DIDN'T REPORT BUT HE CALLED
4 IN AND RESCHEDULED THAT APPOINTMENT.

5 IN REGARDS TO BEING IN THE BAR, HE DENIED THAT HE
6 WAS IN THE BAR AND THAT HE WAS DRUNK. HE SAID HE WAS
7 THERE -- AND MY NOTE SAYS "STAYS BEHIND BAR." I DON'T
8 KNOW IF THAT'S OUTSIDE THE BAR OR BEHIND THE ACTUAL BAR
9 ITSELF. I DON'T KNOW EXACTLY WHAT THAT MEANT.

10 CONDITION 4, WHICH IS POSSESSION OF FIREARM, HE
11 COMPLETELY DENIED THAT. HE CLAIMED HIS GIRLFRIEND WAS
12 LYING.

13 CONDITION 5, NOT HAVING A JOB, HE AGREED WITH
14 THAT AND HE AGREED THAT HE GOT FIRED ACCORDING TO MY
15 NOTES.

16 ACCORDING TO THE C.D.V. HIGH AND AGGRAVATED AND
17 KIDNAPPING CHARGE, HE SAYS THAT THAT WAS A C.D.V.
18 SECOND, THAT THAT WAS GOING TO TRANSFER COURT, THAT THAT
19 WAS STILL PENDING.

20 HE AGREED THAT HE WAS BEHIND ON HIS MONEY.

21 HE HAD AGREED THAT HE HAD DIRECTLY OR INDIRECTLY
22 CONTACTED BY SENDING LETTERS -- THE VICTIM'S FAMILY BY
23 SENDING LETTERS TO THE VICTIM'S RESIDENCE. HE AGREES
24 WITH THAT VIOLATION.

25 Q. BASED ON THE VIOLATIONS THAT THE APPLICANT

1 ADMITTED TO YOU AND THE C.D.V. CHARGES, IN YOUR OPINION,
2 PROFESSIONAL OPINION, DO YOU BELIEVE THAT HIS PROBATION
3 SHOULD HAVE BEEN REVOKED?

4 A. I'M SORRY, SAY THAT ONE MORE TIME. YOU'RE GOING
5 TOO FAST FOR ME.

6 Q. IN YOUR PROFESSIONAL OPINION DO YOU BELIEVE THAT
7 PROBATION WAS LAWFULLY REVOKED BASED ON HIS ADMISSIONS
8 AND THE C.D.V. CHARGES?

9 A. IT CAN BE REVOKED. ULTIMATELY THAT'S THE JUDGE'S
10 DECISION, FINDING WILLFUL VIOLATION. BUT IGNORING THE
11 GUN ISSUES, BASED UPON WHAT HE TOLD ME, HE WAS IN
12 VIOLATION OF HIS PROVISION AND I WOULD HAVE APPROACHED
13 IT AS KIND OF A MITIGATION-TYPE CASE. "JUDGE, CONTINUE
14 HIM ON PROBATION, GIVE HIM ANOTHER SHOT, GIVE HIM CREDIT
15 FOR TIME SERVED AND TERMINATE THE CASE," SOMETHING OF
16 THAT SORT. SO THAT'S HOW I WOULD HAVE APPROACHED IT.

17 IN REGARDS TO THE GUN CHARGE, LIKE I MENTIONED
18 BEFORE FROM READING THE TRANSCRIPT, HE TOLD ME HE HAD A
19 WITNESS THAT HE WANTED TO BRING IN, SO WE ASKED FOR A
20 CONTINUANCE SO WE COULD GET THAT PERSON IN. IF THAT
21 ISSUE HADN'T BEEN ADDRESSED BY THE COURT, THEN HE COULD
22 HAVE STILL BEEN REVOKED ON THE OTHER VIOLATIONS.

23 Q. AND WHEN THAT ISSUE ABOUT THE GUN CHARGE AROSE,
24 YOU DID MOVE FOR A CONTINUANCE, CORRECT?

25 A. YES, SIR.

1 Q. DID YOU RECEIVE ANY TIME TO DISCUSS THE
2 AFFIDAVITS WITH THE APPLICANT?

3 A. THE JUDGE ORDERED THAT WE STAND DOWN FROM THE
4 CASE. I WAS GIVEN THE AFFIDAVIT. ACCORDING TO THE
5 TRANSCRIPT I WAS ALSO GIVEN SOME E-MAIL OR SOME TEXT
6 MESSAGES AS WELL AS A PHOTOGRAPH OF THE GUN. I
7 DISCUSSED WITH HIM WHAT THOSE ITEMS WERE AND THEN
8 ADDRESSED THE COURT WHEN THE CASE WAS CALLED BACK TO THE
9 BAR.

10 Q. MR. POTTER, DID YOU CONVEY TO THE COURT
11 EVERYTHING THAT THE DEFENDANT TOLD YOU DURING YOUR
12 MEETINGS AND DURING THE TIME HE STOOD DOWN?

13 A. AS FAR AS I, AS FAR AS I CAN TELL, YES, IN
14 REFERENCE TO HIS POSITIONS ON VIOLATIONS AND
15 SPECIFICALLY THE GUN AND THE AFFIDAVIT.

16 MR. JONES: I BEG THE COURT'S INDULGENCE.
17 BY MR. JONES:

18 Q. AND THE BASIS FOR YOUR CONTINUANCE WAS TO SOLELY
19 GET MORE TIME TO REVIEW THE ISSUE REGARDING THE GUN
20 CHARGE, NOT NECESSARILY THE OTHER ISSUES?

21 A. THAT'S CORRECT. I MEAN, THOSE WERE THE ISSUES
22 THAT HE WAS DENYING, SO YES, SIR.

23 Q. MR. POTTER, DO YOU GENERALLY DISCUSS WITH
24 APPLICANT HIS RIGHT TO APPEAL?

25 A. NO.

1 Q. WHAT ABOUT AFTER THE HEARING?

2 A. DON'T HAVE TIME, OBVIOUSLY. WE DO THE HEARING,
3 THE JUDGE ISSUES THE ORDER, WE MOVE ON TO THE NEXT CASE.
4 SO I DON'T HAVE -- I HONESTLY DON'T HAVE TIME TO SIT
5 DOWN AND EXPLAIN THE POST-CONVICTION RIGHTS OR RIGHTS TO
6 APPEALS.

7 Q. DID YOU RECOGNIZE ANY APPEALABLE ISSUES?

8 A. NO. NOTHING STANDS OUT.

9 Q. AFTER PROBATION WAS REVOKED IN THIS CASE, DID THE
10 APPLICANT COMPLAIN TO YOU ABOUT THE PROBATION
11 REVOCATION?

12 A. I DON'T RECALL. I DON'T RECALL BEING CONTACTED
13 BY THE APPLICANT TO FILE AN APPEAL. IF I WOULD HAVE, AN
14 APPEAL WOULD HAVE BEEN FILED. SO THE APPLICANT DIDN'T
15 TELL ME HE WANTED TO APPEAL. I DIDN'T RECEIVE ANY
16 LETTER FROM HIM OR ANY NOTES FROM HIM WISHING TO FILE AN
17 APPEAL ON HIS BEHALF. SO MY CONTACT AFTER THE ORDER WAS
18 ISSUED WAS THAT WAS IT, AND I WENT ON WITH THE OTHER
19 CASES THAT I WAS DEALING WITH THAT DAY.

20 Q. DID THE APPLICANT SEEM ANGRY AFTER PROBATION WAS
21 REVOKED?

22 A. I CAN'T REMEMBER. I KNOW THE INCIDENT REPORT --
23 EXCUSE ME -- THE SENTENCING SHEET HE REFUSED TO SIGN,
24 BUT I CAN'T REMEMBER IF HE WAS UPSET OR ANYTHING LIKE
25 THAT. I JUST DON'T HAVE ANY INDEPENDENT RECOLLECTION OF

1 THAT. AND I DON'T SEE A COPY OF THE SENTENCING SHEET AT
2 ALL AFTER THE HEARING, SO...

3 MR. JONES: NO FURTHER QUESTIONS, YOUR
4 HONOR.

5 THE COURT: RE-EXAM?
6 REDIRECT EXAMINATION BY MR. GRIFFITH:

7 Q. MR. POTTER, DO YOU HAVE A COPY OF YOUR COMPLETE
8 FILE WITH YOU?

9 A. YES.

10 MR. GRIFFITH: JUDGE, CAN WE MAKE AN EXHIBIT
11 OF THAT, HIS FILE?

12 THE COURT: HOW BIG IS YOUR FILE?

13 THE WITNESS: THREE PAGES, YOUR HONOR.

14 THE COURT: I THINK SO. WITH THE
15 APPLICANT'S PERMISSION, WE'LL COPY THE FILE AND RETURN
16 THE ORIGINAL TO THE ATTORNEY. DO YOU ALL SEE A PROBLEM
17 WITH THAT?

18 THE WITNESS: NO, YOUR HONOR. HE'S GOT A
19 COPY.

20 THE COURT: LET'S GO AHEAD AND MARK YOUR
21 COPY, THEN.

22 MR. JONES: YOUR HONOR, I DON'T HAVE A COPY.
23 IS THERE ANY WAY I CAN GET A COPY?

24 THE COURT: CERTAINLY.

25 (MARKED FOR IDENTIFICATION AND RECEIVED IN

1 EVIDENCE WAS APPLICANT'S EXHIBIT NUMBER 2,
2 NOTES OF ANDY POTTER.)

3 MR. GRIFFITH: WOULD YOU LIKE ME TO
4 CONTINUE, YOUR HONOR?

5 THE COURT: PLEASE. I'VE BEEN WAITING ON
6 YOU.

7 BY MR. GRIFFITH:

8 Q. MR. POTTER, IN TERMS OF YOUR DISCUSSION WITH
9 MR. ISHMAN REGARDING THE ALLEGED VIOLATIONS, DID YOU
10 DISCUSS WHETHER THOSE WERE WILLFUL VIOLATIONS OR WHETHER
11 THOSE ACTS JUST OCCURRED?

12 A. WELL, I DON'T SPECIFICALLY ASK THEM WERE YOU IN
13 WILLFUL VIOLATION. I JUST GO THROUGH, THIS IS WHAT THEY
14 ARE SAYING YOU VIOLATED. IS THAT TRUE?

15 Q. DO YOU AGREE THAT THE PROOF REQUIRED IS THAT THE
16 VIOLATIONS BE WILLFULLY DONE? FOR INSTANCE, THE FACT
17 THAT YOU HAVEN'T WORKED MAY BE A VIOLATION OF PROBATION
18 TECHNICALLY, BUT IT'S NOT TRULY A VIOLATION UNLESS YOU
19 WILLFULLY DIDN'T WORK.

20 A. YES.

21 Q. YOU DON'T RECALL SPECIFICALLY YOU WENT OVER WHAT
22 WAS WILLFUL AND WHAT WASN'T AND THAT TYPE OF THING?

23 A. I DIDN'T GO SPECIFICALLY OVER WHAT WAS WILLFUL
24 AND WHAT WAS NOT WILLFUL.

25 Q. THANK YOU, SIR. AND IN TERMS OF DID MS. METCALF,

1 THE PROBATION AGENT, HAND YOU SOMETHING LIKE 30 TO 40
2 PAGES OF PAPER THAT DAY THAT WERE THINGS THEY WANTED TO
3 PRESENT OR MIGHT PRESENT AT THE HEARING?

4 A. I DON'T KNOW HOW MUCH SHE HANDED ME. SHE HANDED
5 ME SOME ITEMS, OF WHICH ONE WAS THE AFFIDAVIT AND WHICH
6 ONE WAS THE PHOTOGRAPH, TEXT OR E-MAIL MESSAGES.

7 Q. ALL RIGHT. ACCORDING TO THE COURT'S RECORD OR
8 TRANSCRIPT, IT LOOKS LIKE YOU HAD BETWEEN 12:07 AND
9 12:20 TO REVIEW THOSE, WHATEVER ITEMS SHE MAY HAVE GIVEN
10 YOU; IS THAT CORRECT?

11 A. UH-HUH. I GUESS SO.

12 Q. THAT WOULD BE 13 MINUTES. IS THAT SUFFICIENT
13 TIME IN YOUR OPINION TO DETERMINE A DEFENSE TO SEVERAL
14 ITEMS OF DOCUMENTARY EVIDENCE?

15 A. I WENT OVER THE ITEMS WITH HIM, GOT WHAT HIS
16 POSITION WAS IN REGARDS TO THE AFFIDAVIT, THE GUN AND
17 ALL THAT, AND HE RELATED TO ME WHAT HIS POSITIONS WERE,
18 SO I FELT COMFORTABLE WITH WHAT I HAD.

19 Q. ALL RIGHT.

20 A. I WOULDN'T HAVE GONE FORWARD OTHERWISE.

21 Q. OKAY. BUT BASICALLY WHAT YOU WERE GOING FORWARD
22 ON WAS TO GET MORE TIME SO HE COULD PRESENT WITNESSES;
23 IS THAT CORRECT?

24 A. I GUESS. YOU KNOW, HONESTLY, I CAN'T SAY WHAT I
25 WAS THINKING AT THE TIME. I EXPLAINED TO THE JUDGE OUR

1 POSITION IN REGARDS TO WHAT WAS SHOWN TO US AND THAT'S
2 SET FORTH IN THE TRANSCRIPT.

3 Q. ALL RIGHT. IT LOOKS LIKE -- IN THE TRANSCRIPT IT
4 LOOKS LIKE YOU TOLD THE JUDGE THAT THE INSTANT MESSAGES
5 WERE NOT FROM HIM, THEY WERE FABRICATED BY THE VICTIM?

6 A. YES.

7 Q. ALL RIGHT. THAT THE PHOTOGRAPH OF THE WEAPON IS
8 SOMETHING HE CLAIMS WAS FABRICATED, YOU CAN CUT AND
9 PASTE USING A COMPUTER?

10 A. YES.

11 Q. DO YOU REMEMBER IF THERE WERE OTHER PAPERS AS
12 WELL?

13 A. THERE MAY HAVE BEEN. I JUST DON'T REMEMBER.

14 Q. DO YOU REMEMBER WHAT WAS IN THE AFFIDAVIT THEY
15 WERE REFERRING TO?

16 A. NO, SIR.

17 Q. DO YOU KNOW WHO THAT AFFIDAVIT IS BY?

18 A. I'M PRESUMING IT'S FROM THE VICTIM, THE GIOVANNI
19 LADY, KENAN GIOVANNI.

20 Q. ALL RIGHT. YOU ALREADY TOLD THE JUDGE THAT HE
21 DENIED THE ALLEGATIONS CONCERNING C.D.V., C.D.V. HIGH
22 AND AGGRAVATED, AND KIDNAPPING?

23 A. YES.

24 Q. OKAY. I'M SORRY. GO AHEAD.

25 A. MY NOTES DON'T INDICATE -- MY NOTES -- I WOULD

1 HAVE TO LOOK AT THE TRANSCRIPT AGAIN. IF HE DID SAY HE
2 DENIED ALLEGATIONS AND/OR IF HE SAID IT WAS TRANSFERRED
3 TO TRANSFER COURT, I DON'T REMEMBER THAT SPECIFICALLY.

4 Q. YOU REVIEWED THE TRANSCRIPT?

5 A. I HAVE.

6 Q. YOU DON'T HAVE AN INDEPENDENT RECOLLECTION TO
7 KNOW WHETHER IT'S CORRECT OR NOT?

8 A. RIGHT.

9 Q. SO YOU MAKE THE ASSUMPTION THAT IT IS CORRECT?

10 A. YES.

11 Q. HAVE YOU PREVIOUSLY EVER HAD A HEARING WHERE THE
12 DEFENDANT WAS NOT ALLOWED TO SPEAK ONE WORD TO THE
13 COURT?

14 A. I DON'T RECALL ANY HEARING WHERE THE DEFENDANT
15 WAS NOT GIVEN AN OPPORTUNITY TO SPEAK.

16 Q. ALL RIGHT. DO YOU BELIEVE THAT THE HEARING AS IT
17 OCCURRED WAS DUE PROCESS FOR MR. ISHMAN?

18 A. I NEED YOU TO ASK ME THAT ONE MORE TIME.

19 Q. ALL RIGHT. DO YOU BELIEVE THAT DUE PROCESS WAS
20 DONE IN TERMS OF HIS HEARING ON JANUARY 19, 2007?

21 MR. JONES: OBJECTION, YOUR HONOR. THAT
22 ISSUE IS FOR THE COURT TO DECIDE.

23 THE COURT: I FIND THAT HE'S AN EXPERT AND
24 I'M GOING TO PERMIT HIM TO GIVE HIS OPINION. IF HE HAS
25 ONE.

1 **THE WITNESS:** I CAN TELL YOU THIS. IN
2 REGARDS TO HAVING THE HEARING AND ALL THAT, I THINK DUE
3 PROCESS WAS COMPLIED WITH. I'M NOT NECESSARILY HAPPY
4 WITH NOT BEING ABLE TO HAVE AN OPPORTUNITY TO
5 CROSS-EXAMINE PEOPLE WHO SEND IN AFFIDAVITS TO THEIR
6 PROBATION AGENTS; HOWEVER, THAT IS THE LAW OF SOUTH
7 CAROLINA AT THIS TIME.

8 I WAS SURPRISED WHEN I READ THE TRANSCRIPT
9 THAT HE DIDN'T GET AN OPPORTUNITY TO PRESENT ANY TYPE OF
10 MITIGATION OR GIVE HIS SIDE OF THE STORY FOR THE JUDGE
11 TO CONSIDER IN REGARDS TO ULTIMATE SENTENCING ON THE
12 VIOLATION. SO HOPEFULLY I ANSWERED YOUR QUESTION.

13 Q. ALL RIGHT. WELL, LET ME ASK YOU A DIFFERENT WAY.
14 IF DUE PROCESS REQUIRED DISCLOSURE TO MR. ISHMAN OF THE
15 EVIDENCE AGAINST HIM FOR THE HEARING, WOULD YOU BELIEVE
16 THAT WAS DONE?

17 A. IT'S NEVER DONE ON PROBATION HEARINGS. ALL I GET
18 IS AN 1106. WHEN THEY ARE RELYING ON AN AFFIDAVIT OR
19 SOMETHING LIKE THAT ON THE 1106, TYPICALLY I HAVE AN
20 OPPORTUNITY TO REVIEW THE AFFIDAVIT, KIND OF LIKE IN
21 THIS SITUATION.

22 Q. IN THIS HEARING DO YOU BELIEVE MR. ISHMAN WAS
23 GIVEN AN OPPORTUNITY TO BE HEARD AND PRESENT WITNESSES
24 AND DOCUMENTARY EVIDENCE AND ALL THAT?

25 A. WE ASKED FOR A CONTINUANCE TO GET HIS SISTER IN,

1 AND ULTIMATELY HE WAS DENIED EVEN AN OPPORTUNITY TO
2 ADDRESS THE COURT, EITHER.

3 Q. ALL RIGHT. DO YOU BELIEVE HE HAD A FAIR
4 OPPORTUNITY TO BE HEARD HIMSELF?

5 A. HE DIDN'T GET A CHANCE TO TALK. BUT HE DID GET A
6 CHANCE TO TALK THROUGH ME.

7 Q. ALL RIGHT. DID MR. ISHMAN HAVE A RIGHT TO
8 CONFRONT AND CROSS-EXAMINE ADVERSE WITNESSES AT THIS
9 HEARING?

10 A. WE HAD AN OPPORTUNITY TO ASK THE AGENT THAT WAS
11 THERE ANY QUESTIONS. THERE WAS NO TESTIMONY TAKEN.
12 OBVIOUSLY, I CAN'T CROSS-EXAMINE AN AFFIDAVIT SO I
13 COULDN'T DO THAT.

14 Q. ALL RIGHT.

15 A. AND I DON'T NECESSARILY RECALL WHETHER THERE WERE
16 ANY VICTIMS THERE AT ALL.

17 Q. DO YOU BELIEVE THAT YOU HAD ADEQUATE TIME TO
18 PROPERLY PREPARE HIS DEFENSE FOR THE HEARING?

19 A. YES.

20 Q. IF THAT'S THE CASE, WHY WERE YOU ASKING FOR A
21 CONTINUANCE?

22 A. HE WANTED THE WITNESS TO COME IN AND TESTIFY.
23 AND IF THAT WAS GONNA BE DENIED, THEN...

24 Q. WHAT DO YOU KNOW ABOUT THE CIRCUMSTANCES OF WHAT
25 HAPPENED WITH THE C.D.V. ALLEGATION?

1 A. THE PENDING C.D.V.?

2 Q. RIGHT.

3 A. WHAT THE UNDERLYING ---

4 Q. DO YOU KNOW ANYTHING ABOUT WHAT HAPPENED IN
5 REGARD TO THAT?

6 A. IN REGARDS TO THE UNDERLYING FACTS RELATED TO
7 THAT CHARGE, I DON'T REMEMBER.

8 Q. RIGHT. OKAY. DO YOU KNOW ANYTHING ABOUT WHERE
9 MR. ISHMAN WORKED OR WHY HE WAS FIRED?

10 A. HE DIDN'T TELL ME. AT LEAST MY NOTES DON'T
11 INDICATE. THEY JUST INDICATE HE WAS FIRED.

12 Q. DO YOU KNOW ANYTHING ABOUT WHY MR. ISHMAN MAY
13 HAVE BEEN AT MARK AND JEANNIE'S BAR AND WHETHER HE WAS
14 INSIDE OR OUTSIDE OF IT?

15 A. JUST FROM WHAT HE TOLD ME AND WHAT MY NOTES
16 INDICATE.

17 Q. THAT JUST INDICATES THAT HE DENIED SOMETHING
18 ABOUT IT?

19 A. HE DENIED HE WAS DRINKING IN EXCESS. HE DID TELL
20 ME HE WAS THERE.

21 Q. BEHIND THE BAR, APPARENTLY?

22 A. RIGHT.

23 Q. BUT YOU DON'T KNOW WHY HE WAS THERE OR HOW THAT
24 MAY OR MAY NOT BE DEFENSIBLE?

25 A. EITHER I DIDN'T ASK OR HE DIDN'T TELL OR I DIDN'T

1 THINK IT WAS NECESSARY TO FIND OUT.

2 Q. YOU DIDN'T KNOW WHETHER HE WAS THERE TO PICK
3 SOMEBODY UP WHO HAD A WRECK THERE OR WHAT?

4 A. TYPICALLY SOMEBODY WOULD TELL ME. IF THEY HAD A
5 VIOLATION, WHY DID YOU VIOLATE? HE DIDN'T SHOW UP.
6 LIKE ON THE FAILURE TO REPORT. HE DIDN'T REPORT ON
7 DECEMBER 4TH. "THAT'S RIGHT, BUT I DID CALL AND
8 RESCHEDULE." TYPICALLY SOMEBODY WILL TELL ME REASONS
9 WHY THEY DID WHAT THEY DID OR DIDN'T DO WHAT THEY WANTED
10 THEM TO DO.

11 Q. HOW ABOUT ON THIS THIRD PAGE, \$25 ON THE PUBLIC
12 DEFENDER FUND? DID YOU ASK HIM WHY THAT WASN'T PAID,
13 WHAT THE CIRCUMSTANCES WERE FOR THAT?

14 A. MY NOTES ONLY INDICATE I CIRCLED THE NUMBER. AND
15 HONESTLY, ON THE FAILURE TO PAY, I DON'T NECESSARILY PAY
16 TOO CLOSE ATTENTION TO THAT BECAUSE TYPICALLY JUDGES
17 DON'T REVOKE STRICTLY ON MONETARY ISSUES, AND THERE WERE
18 OTHER ISSUES THAT NEEDED TO BE ADDRESSED THAT I THOUGHT
19 WERE MORE IMPORTANT.

20 Q. IN TERMS OF WHETHER OR NOT MR. ISHMAN HAD CONTACT
21 WITH THE ALLEGED VICTIM, DID YOU GET ANY INFORMATION
22 ABOUT WHY HE HAD CONTACT OR WHAT THE CONTEXT OF THAT
23 WAS?

24 A. MY NOTES DON'T INDICATE AND I DON'T HAVE ANY
25 INDEPENDENT RECOLLECTION. IT LOOKS AS IF I ASKED HIM

1 ABOUT IT AND HE AGREED AND HE SAID YEAH.

2 Q. DO YOU KNOW HE WAS ENGAGED TO THE KENAN GIOVANNI,
3 THE ALLEGED VICTIM, AT THAT TIME?

4 A. I DIDN'T KNOW THAT.

5 Q. DO YOU KNOW THAT SHE WAS PURSUING HIM, PURSUING
6 HAVING CONTACT WITH HIM?

7 A. HE DIDN'T TELL ME THAT.

8 Q. THAT MIGHT BE IMPORTANT TO HOW HIS OUTCOME OF HIS
9 PROBATION HEARING WOULD COME OUT, DON'T YOU THINK?

10 A. WELL, WHEN YOU ARE UNDER AN ORDER NOT TO HAVE
11 CONTACT WITH THE VICTIM, YOU ARE NOT SUPPOSED TO HAVE
12 CONTACT WITH THE VICTIM. IT'S KIND OF CUT AND DRIED.
13 EITHER YOU'RE PREGNANT OR YOU'RE NOT.

14 Q. NO MITIGATION OF THAT?

15 A. HE DIDN'T TELL ME ANY.

16 Q. DID YOU KNOW HIS PROBATION OFFICER, ACCORDING TO
17 HIM AND HIS WITNESSES, KNEW THAT HE WAS HAVING CONTACT
18 WITH MS. GIOVANNI?

19 A. SAY THAT ONE MORE TIME?

20 Q. DID YOU KNOW HIS PROBATION OFFICER AND WITNESSES
21 KNEW THAT THEY WERE HAVING CONTACT AND WERE ENGAGED?

22 A. MY NOTES DON'T INDICATE THAT. I DON'T KNOW.

23 Q. ALL RIGHT. BUT WITH MORE TIME THEY MAY HAVE LED
24 TO DEFENSES OR AT LEAST MITIGATION TO A FULL REVOCATION.
25 DO YOU AGREE WITH THAT?

1 A. I MEAN, I CAN GO AND FIND OUT WHAT HIS THIRD
2 GRADE TEACHER SAID ABOUT HIM. THERE'S A LIMIT TO WHAT I
3 CAN DO IN THE AMOUNT OF TIME I HAVE AVAILABLE FOR ME. I
4 WAS PREPARED FOR THIS CASE AND I WAS READY TO GO
5 FORWARD. I FELT COMFORTABLE HOW I WAS HANDLING IT, I
6 FELT COMFORTABLE WITH WHAT WE WERE PRESENTING. WE ASKED
7 FOR THE CONTINUANCE FOR THE WITNESS AND THAT WAS DENIED.

8 **MR. GRIFFITH:** NO FURTHER QUESTIONS, YOUR
9 HONOR.

10 **THE COURT:** RECROSS?

11 **MR. JONES:** BEG THE COURT'S INDULGENCE.

12 (COUNSEL CONFER.)

13 **MR. JONES:** NO FURTHER QUESTIONS, YOUR
14 HONOR.

15 **THE COURT:** ALL RIGHT. VERY WELL. YOU MAY
16 STEP DOWN.

17 **THE WITNESS:** MAY I BE RELEASED?

18 **THE COURT:** MAY THE WITNESS BE EXCUSED? ANY
19 OBJECTION?

20 **MR. JONES:** NO OBJECTION.

21 **MR. GRIFFITH:** NONE, YOUR HONOR.

22 **THE COURT:** WITHOUT OBJECTION YOU MAY BE
23 EXCUSED, MR. POTTER.

24 (WHEREUPON, THE WITNESS WAS EXCUSED.)

25 **THE COURT:** YOU MAY CALL YOUR NEXT WITNESS.

1 MR. JONES: I CALL BRADLEY ISHMAN, THE
2 APPLICANT.

3 (WHEREUPON, THE WITNESS WAS SWORN BY THE
4 CLERK.)

5 THE CLERK: PLEASE STATE YOUR FULL NAME AND
6 SPELL YOUR LAST NAME FOR THE RECORD.

7 THE WITNESS: BRADLEY WILLIAM ISHMAN,
8 I-S-H-M-A-N.

9 WHEREUPON,

10 BRADLEY ISHMAN,
11 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
12 FOLLOWS:

13 DIRECT EXAMINATION BY MR. GRIFFITH:

14 Q. MR. ISHMAN, YOU ARE THE APPLICANT IN THIS CASE
15 FOR POST-CONVICTION RELIEF?

16 A. YES, SIR.

17 Q. ALL RIGHT. AND YOU FILED THAT BASED ON THE VERY
18 GROUNDS THAT I INFORMED THE COURT PRIOR TO THE HEARING
19 BEGINNING?

20 A. YES, SIR.

21 Q. OKAY. IN TERMS OF YOUR PROBATION REVOCATION
22 HEARING, WHEN WAS THE FIRST TIME YOU MET WITH YOUR
23 ATTORNEY?

24 A. THAT MORNING PRIOR TO GOING UPSTAIRS TO THE
25 COURTROOM.

1 Q. WERE YOU IN THE JAIL PRIOR TO THAT?

2 A. YES, SIR.

3 Q. HOW LONG HAD YOU BEEN INCARCERATED?

4 A. I BELIEVE IT WAS 38 DAYS, 32 DAYS, ROUGHLY.

5 Q. WERE YOU HELD AT THE ANDERSON COUNTY DETENTION
6 CENTER?

7 A. YES, SIR.

8 Q. WHILE YOU WERE THERE DID YOU HAVE ACCESS TO LEGAL
9 RESOURCES OR MATERIAL TO HELP YOU?

10 A. NO, SIR.

11 Q. DID YOU ASK FOR AN ATTORNEY WHEN YOU WERE OUT
12 THERE?

13 A. YES, SIR.

14 Q. THE FIRST DAY YOU KNEW YOU HAD AN ATTORNEY WAS
15 THE DAY OF THE HEARING?

16 A. YES, SIR.

17 Q. WHEN DID YOU MEET YOUR ATTORNEY?

18 A. WE MET PRIOR TO COMING INTO THE COURTROOM, IN THE
19 BASEMENT OF THE COURTHOUSE.

20 Q. ALL RIGHT. DID HE MEET YOU DOWNSTAIRS IN THE
21 HOLDING CELL?

22 A. YES, SIR.

23 Q. HOW LONG DO YOU THINK YOU MET WITH HIM?

24 A. FIVE MINUTES.

25 Q. ALL RIGHT. DID HE GIVE YOU ANY REAL TIME TO

1 EXPLAIN YOUR DEFENSES TO THESE VARIOUS ALLEGATIONS?

2 A. NO, SIR. I TRIED.

3 Q. DID YOU TRY TO TELL HIM WHAT YOUR DEFENSE WOULD
4 BE TO THEM?

5 A. YES, SIR.

6 Q. OKAY. IN TERMS OF THE ALLEGED VIOLATION FOR
7 FAILING TO REPORT ON DECEMBER 4, 2006, DID YOU TELL HIM
8 YOU TRIED TO RESCHEDULE THAT?

9 A. YES, SIR.

10 Q. DID YOU ACTUALLY CALL HER THAT -- CALL THE AGENT
11 THAT DAY?

12 A. YES, SIR.

13 Q. DID YOU SPEAK WITH HER OR SOMEBODY ELSE?

14 A. I SPOKE WITH HER.

15 Q. OKAY. ALL RIGHT. IS THAT THE ONLY TIME IT WAS
16 ALLEGED THAT YOU HAD NOT REPORTED DURING YOUR PROBATION?

17 A. YES, SIR.

18 Q. WAS THAT A "YES"?

19 A. YES, SIR.

20 Q. ALL RIGHT. THIS CONDITION 3, THEY CLAIM YOU
21 VIOLATED PROBATION BY ENTERING A BUSINESS WHERE THE
22 PRIMARY BUSINESS WAS FOR THE SALE OF ALCOHOL, FOR THE
23 SALE AND DRINKING OF ALCOHOL. CONCERNING WHETHER OR NOT
24 YOU WERE AT MARK AND JEANNIE'S BAR ON DECEMBER 8, 2006,
25 DID YOU HAVE TIME TO EXPLAIN THAT FULLY TO MR. POTTER?

1 A. NO, SIR.

2 Q. WHAT IS YOUR POSITION ON THAT? WERE YOU
3 INTOXICATED THAT DAY?

4 A. NO, SIR. I HAD HAD A FEW DRINKS THAT NIGHT.

5 Q. HAD YOU BEEN INSIDE MARK AND JEANNIE'S BAR?

6 A. NO, SIR, WE DID NOT GO INSIDE.

7 Q. DID YOU ACTUALLY GO THERE?

8 A. WE DID GO THERE.

9 Q. ALL RIGHT. WHAT WAS THE PURPOSE OF GOING THERE?

10 A. WE MET WITH SOME FRIENDS AND FAMILY AND THEN
11 ACTUALLY LEFT AND WENT TO ANOTHER PLACE.

12 Q. ALL RIGHT. DID YOU MEET THEM IN THE PARKING LOT
13 OR SOMETHING?

14 A. YES.

15 Q. THEY REFER TO ANDERSON COUNTY SHERIFF'S OFFICE
16 INCIDENT REPORT NUMBER 2006-46341. DID ANYBODY GIVE YOU
17 A COPY OF THAT SO YOU COULD SEE WHAT WAS IN THAT REPORT?

18 A. NO, SIR.

19 Q. YOU DIDN'T REALLY KNOW WHAT WAS ALLEGED AS TO
20 WHAT SUPPOSEDLY OCCURRED IN THAT REPORT; IS THAT RIGHT?

21 A. NO, SIR.

22 Q. OKAY. WERE YOU ULTIMATELY ARRESTED?

23 A. I'D BEEN SERVED WARRANTS FOR C.D.V. SECOND
24 OFFENSE, AND I COME TO COURT AND THEY TOLD ME C.D.V.
25 HIGH AND AGGRAVATED NATURE.

1 Q. WERE YOU ARRESTED FOR ANY SORT OF ALCOHOL-RELATED
2 OFFENSE?

3 A. NO, SIR.

4 Q. CONDITION NUMBER 4 THEY SAY THAT YOU WERE IN
5 POSSESSION OF A FIREARM BASED ON AN AFFIDAVIT FROM KENAN
6 GIOVANNI DATED DECEMBER 12TH, 2006. WERE YOU GIVEN AN
7 AFFIDAVIT OF KENAN GIOVANNI?

8 A. NO, SIR.

9 Q. WAS IT EVEN READ IN YOUR HEARING SO YOU KNEW WHAT
10 IT SAID?

11 A. NO, SIR.

12 Q. WERE YOU IN POSSESSION OF A FIREARM ON
13 12-12-2006?

14 A. NO, SIR.

15 Q. DID SOMETHING OCCUR ON THAT DAY?

16 A. 12-12, THAT'S ACTUALLY WHEN I WENT AND REPORTED
17 TO MY PROBATION OFFICER.

18 Q. REPORTED WHAT TO HER?

19 A. I'M SORRY. THAT WAS 12-13 AND 12-14 SHE VIOLATED
20 ME. 12-12 IS WHEN KENAN GIOVANNI CALLED ME AT MY
21 SISTER'S AND TOLD ME THERE WAS A WARRANT FOR MY ARREST
22 FOR VIOLATION OF PROBATION.

23 Q. NOW, YOU HAD A BOYFRIEND-GIRLFRIEND RELATIONSHIP
24 WITH MS. GIOVANNI FOR SOMETHING LIKE TWO YEARS PRIOR TO
25 ALL THIS TAKING PLACE?

1 A. YES, SIR.

2 Q. WERE YOU ACTUALLY ENGAGED TO HER AT THE TIME
3 OF -- IN DECEMBER OF 2006?

4 A. YES, SIR.

5 Q. WHEN DID YOU ALL BECOME ENGAGED?

6 A. WE ACTUALLY RE-ENGAGED IN OCTOBER OF 2006.

7 Q. YOU HAD BEEN ENGAGED PREVIOUSLY?

8 A. YES, SIR.

9 Q. WAS THERE A RESTRAINING ORDER IN REGARDS TO THE
10 ORIGINAL POINTING AND PRESENTING ---

11 A. THERE WAS A --

12 Q. --- CHARGE?

13 A. THERE WAS A PROTECTION ORDER PREVIOUSLY. SHE
14 CAME, SHE WENT DOWNTOWN AND HAD IT DROPPED. ALSO THERE
15 WAS A COURT ORDER THAT I HAVE NO FURTHER CONTACT WITH
16 MS. GIOVANNI. WHEN I TOLD AMY METCALF, MY PROBATION
17 OFFICER, THAT KENAN GIOVANNI AND I WERE ENGAGED, SHE
18 SAID, "WELL, IF YOU'RE ENGAGED, THAT WOULD BE HARD NOT
19 TO HAVE CONTACT."

20 I SAID, "WHAT DO I NEED TO DO?"

21 SHE SAID, "YOU NEED TO HAVE HER COME TO MY OFFICE
22 AND SIGN AN AFFIDAVIT STATING IT'S OKAY FOR YOU TO HAVE
23 CONTACT UNTIL I CAN GET IT IN FRONT OF A JUDGE."

24 AND SHE CAME UP AND SIGNED AN AFFIDAVIT, AND I
25 SIGNED AN AFFIDAVIT, AS WELL. AND SHE SAID THAT WOULD

1 BE OKAY UNTIL SHE HAD THE ORDER CHANGED IN FRONT OF A
2 JUDGE.

3 Q. THAT WAS AT THE PROBATION OFFICER'S ---

4 A. YES, SIR.

5 Q. --- OFFICE?

6 OKAY. APPROXIMATELY WHEN DID THAT OCCUR, BEFORE
7 DECEMBER 2006?

8 A. I WOULD SAY ROUGHLY THE END OF OCTOBER, EARLY
9 NOVEMBER 2006.

10 Q. OKAY. HOW ABOUT THIS CONDITION NUMBER 5 WHERE
11 THEY CLAIM THAT YOU FAILED TO WORK DILIGENTLY AT A
12 LAWFUL OCCUPATION BECAUSE YOU WERE FIRED ON NOVEMBER THE
13 27TH, 2006?

14 A. YES, SIR.

15 Q. WHAT HAPPENED TO THAT?

16 A. I WAS FIRED FROM MY JOB FOR TRYING TO LOOK FOR A
17 BETTER JOB. WE WERE TRYING -- ACTUALLY, ME AND
18 MS. GIOVANNI WERE TRYING TO LEAVE ANDERSON AND MOVE TO
19 GREENVILLE, AND I SPOKE WITH MY PROBATION OFFICER ABOUT
20 THAT. AND I HAD BEEN TEMPORARILY HIRED AT A BAR AND
21 GRILL IN GREENVILLE, BUT WE WERE IN THE PROCESS OF
22 LOOKING FOR A PLACE IN GREENVILLE SO WE COULD GET OUT OF
23 ANDERSON AND GET AWAY FROM HER FAMILY.

24 Q. HOW DID THAT CAUSE YOU TO BE FIRED BY THE PLACE
25 YOU WERE WORKING?

1 A. BECAUSE I WAS ACTUALLY SUPPOSED TO REPORT FOR
2 WORK, AND I DID NOT FOR ONE DAY BECAUSE I HAD A JOB
3 INTERVIEW.

4 Q. WHAT HAPPENED WITH THIS JOB THAT YOU WERE BEING
5 HIRED TO DO OR WERE GONNA DO?

6 A. I NEVER GOT AN OPPORTUNITY TO START. I WAS
7 ARRESTED FOR A VIOLATION.

8 Q. OKAY. HAD YOU GIVEN YOUR PROBATION OFFICER THAT
9 INFORMATION?

10 A. YES, SIR.

11 Q. OKAY. PRIOR TO HER VIOLATING YOU OR AFTER?

12 A. PRIOR.

13 Q. OKAY. ALL RIGHT. CONDITION NUMBER 6, THEY CLAIM
14 THERE WAS PROBABLE CAUSE TO BELIEVE YOU COMMITTED THE
15 CRIME OF CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED
16 AND KIDNAPPING ON 12-8-2006 BASED ON I GUESS THE SAME
17 SHERIFF'S DEPARTMENT INCIDENT REPORT NUMBER.

18 ON DECEMBER 12TH, 2006, WHAT HAPPENED THAT DAY,
19 JUST BRIEFLY?

20 A. ON DECEMBER THE 12TH?

21 Q. RIGHT. WAS THAT MS. GIOVANNI'S BIRTHDAY?

22 A. NO, THAT WAS DECEMBER 8TH.

23 Q. I'M SORRY, I MEANT TO SAY DECEMBER 8TH. THE
24 C.D.V. HIGH AND AGGRAVATED AND KIDNAPPING WAS DECEMBER
25 8TH, 2006. WAS THAT MS. GIOVANNI'S BIRTHDAY?

1 A. YES, SIR.

2 Q. ALL RIGHT. DID SHE ASK YOU TO GO OUT AND
3 CELEBRATE WITH HER THAT NIGHT?

4 A. YES, SIR.

5 Q. DID SHE PICK YOU UP?

6 A. YES, SIR.

7 Q. DID YOU HAVE A VEHICLE AT THAT TIME?

8 A. NO, SIR.

9 Q. WHERE DID SHE TAKE YOU?

10 A. EARLIER IN THE DAY WE ACTUALLY WENT OUT TO
11 GREENVILLE AND WENT OUT TO EAT AND SHE HAD A JOB
12 INTERVIEW AT A PLAZA SOMEWHERE IN GREENVILLE. WE CAME
13 BACK. SHE HAD TO GO GET HER HAIR DONE AND DID SOME
14 THINGS WITH HER MOTHER. SHE WENT DRIVING OUT TO MY
15 SISTER'S PRIOR TO THIS AND SHE WENT OUT AND DID SOME
16 THINGS WITH HER MOTHER, AND SHE CAME BACK ROUGHLY AN
17 HOUR AND A HALF, TWO HOURS LATER TO PICK ME UP.

18 WE WENT TO MARK AND JEANNIE'S BAR AND MET WITH
19 SOME FRIENDS AND FAMILY THERE. WE LEFT THERE AND WE
20 WENT TO NIGHTSHADES, WHICH IS LIKE A SEMI-BAR, GRILL
21 SLASH, I GUESS YOU COULD SAY IT'S MORE OR LESS A SPORTS
22 BAR, IT SERVED FOOD AND DRINK, BUT IT'S A REALLY
23 LAID-BACK ENVIRONMENT.

24 WELL, WE STAYED THERE TWO AND A HALF, THREE
25 HOURS. AND I TOLD HER I WOULD BE THERE, AND I TOLD HER,

1 YOU KNOW, GO DO WHAT YOU GOT TO DO AND I COULD HAVE A
2 MORE FOR-GRANTED EVENING. AND SHE TOOK ME BACK, STARTED
3 TO TAKE ME BACK TO THE HOUSE. SHE PULLED INTO A PARKING
4 LOT. AND WE SAT THERE AND TALKED AND ARGUED.

5 AND WE LEFT. AND SHE WAS RATHER INTOXICATED.
6 SHE WRECKED THE CAR IN SOMEBODY'S FRONT YARD. WELL,
7 WHEN THE CAR WAS, STOPPED THE CAR, AND I TOLD HER,
8 "WELL, NO NEED TO DRIVE ANYMORE, YOU'RE INTOXICATED,
9 YOU'RE DRUNK," AND SO FORTH.

10 SHE SAID, "I'M NOT DRUNK."

11 I SAID, "YES, YOU ARE. YOU'RE SITTING IN
12 SOMEBODY'S YARD."

13 AND WHEN SHE HIT THE DITCH WE DIDN'T KNOW THE OIL
14 PAN HAD BUSTED. AND I DROVE FROM THERE. WE GOT ABOUT A
15 MILE, MILE AND A HALF DOWN THE ROAD AND THE CAR BROKE
16 DOWN. I PULLED OFF TO THE SIDE OF THE ROAD, I LOCKED UP
17 THE CAR, AND I CALLED A FRIEND OF MINE TO COME PICK US
18 UP.

19 Q. WHO DID YOU CALL?

20 A. BRIAN STEWART.

21 Q. DID BRIAN COME AND GET YOU?

22 A. YES, SIR.

23 Q. ALL RIGHT. DID YOU ALL HAVE A TOW TRUCK COME?

24 A. YES, SIR.

25 Q. ALL RIGHT. DID BRIAN TAKE YOU HOME AND GIOVANNI

1 HOME?

2 A. YES, SIR. WE ALL DROVE TOGETHER. SHE RODE IN MY
3 LAP. HE PICKED US UP IN HIS JEEP. AND THE TOW TRUCK
4 GUY LOADED UP THE CAR ON THE TOW TRUCK, AND HE FOLLOWED
5 US TO DROP ME OFF BECAUSE IT WAS ON THE WAY TO HER
6 HOUSE. AND THEN HE DROPPED HER OFF AT HER HOUSE.

7 Q. WAS THERE AT LEAST SOMEWHAT OF AN ARGUMENT
8 BETWEEN YOU AND MS. GIOVANNI ABOUT LEAVING NIGHTSHADES
9 IN THE FIRST PLACE?

10 A. WELL, SHE DIDN'T WANT TO LEAVE AND I DID WANT TO
11 LEAVE.

12 Q. BUT BY THE TIME MR. STEWART CAME, Y'ALL WERE
13 GETTING ALONG FINE, YOU HAD MADE UP; IS THAT RIGHT?

14 A. YES, SIR.

15 Q. HE DROPPED YOU OFF AT YOUR HOUSE BEFORE HE TOOK
16 HER HOME; IS THAT RIGHT?

17 A. YES, SIR.

18 Q. DID SHE MAKE ANY COMPLAINTS TO HIM THAT YOU HAD
19 DONE ANYTHING BAD OR HURT HER OR KIDNAPPED HER OR
20 ANYTHING?

21 A. NO, SIR.

22 Q. DID YOU ALL KISS GOODNIGHT?

23 A. PROBABLY MORE THAN THAT. HUGGED, KISSED.

24 Q. ALL RIGHT. WAS IT THE FOLLOWING MONDAY OR
25 TUESDAY THAT YOU FOUND OUT -- WELL, WHAT HAPPENED THE

1 NEXT DAY?

2 A. WELL, SHE HAD HER SPARE KEYS THAT I HAD LEFT IN
3 MY POCKET FROM WHERE I HELPED GET THE CAR ON THE ROAD
4 BACK FROM THE TOW TRUCK. WELL, I DIDN'T KNOW THAT I HAD
5 THEM SO I CALLED HER THE NEXT DAY WHILE SHE WAS AT WORK.
6 SHE ASKED ME IF I HAD HER KEYS AND I SAID NO.

7 WELL, AFTER GETTING OUT OF THE SHOWER, I CHECKED
8 MY JEANS WHICH I WORE THE NIGHT BEFORE, AND HER KEYS
9 WERE IN THERE AND I CALLED AND TOLD HER THAT WHEN BRIAN
10 GOT OFF WORK, I'D HAVE HIM BRING BACK HER KEYS, AND SHE
11 SAID THAT WOULD BE FINE.

12 Q. ALL RIGHT. DID Y'ALL DO THAT?

13 A. YES, SIR.

14 Q. ANY PROBLEM WHEN Y'ALL DID THAT?

15 A. NO, SIR.

16 Q. ANY ALLEGATION THAT YOU WERE DOING ANYTHING
17 TERRIBLE OR SHE NEEDED TO CALL THE POLICE OR ANYTHING
18 LIKE THAT?

19 A. NO, SIR.

20 Q. OKAY. NOW, I GUESS ON THE 12TH OR SOMETIME DID
21 YOU HAVE SOME -- WHEN DID YOU HAVE THE NEXT CONTACT WITH
22 HER?

23 A. IT WOULD BE THE 10TH, IT WOULD HAVE BEEN THAT
24 SUNDAY. THE 8TH WAS ON FRIDAY.

25 Q. DID YOU HAVE A CONVERSATION WITH HER ABOUT MAYBE

1 Y'ALL SHOULD BREAK UP?

2 A. YES, SIR.

3 Q. WAS THE NEXT CONTACT YOU HAD WITH HER WHEN THE
4 ALLEGATIONS WERE MADE, YOU COMMITTED ALL THESE CRIMES
5 ALLEGEDLY?

6 A. WELL, SHE CALLED ME THE FOLLOWING MORNING. AFTER
7 I TOLD HER MAYBE IT WOULD BE BEST FOR US TO GO OUR
8 SEPARATE WAYS, THE NEXT MORNING SHE CALLED ME AND TOLD
9 ME THAT THERE WAS A WARRANT FOR MY ARREST.

10 Q. WAS SHE ANGRY ABOUT THE FACT YOU MIGHT WANT TO
11 BREAK UP?

12 A. YES, SIR.

13 Q. SHE ACCUSED YOU OF HAVING ANOTHER WOMAN?

14 A. YES, SIR.

15 Q. DID YOU DENY THAT?

16 A. YES, SIR.

17 Q. DID YOU HAVE ANOTHER WOMAN?

18 A. NO, SIR.

19 Q. THAT WAS FOLLOWED BY YOUR ARREST FOR C.D.V. HIGH
20 AND AGGRAVATED AND KIDNAPPING AND ALL THAT?

21 A. YES, SIR.

22 Q. DID SHE BASICALLY ALLEGE THAT YOU HAD HIT HER OR
23 DONE SOMETHING TO HER OR KIDNAPPED HER THE NIGHT OF THE
24 8TH, BASICALLY AFTER Y'ALL LEFT NIGHTSHADES?

25 A. I DON'T KNOW ANYTHING ABOUT THE KIDNAPPING

1 BECAUSE NO WARRANT EVER CAME FROM THAT, PERIOD.

2 Q. THAT'S WHEN SHE'S CLAIMING ALL THIS OCCURRED
3 APPARENTLY IS DURING THAT EVENING SOMETIME?

4 A. YES, SIR.

5 Q. THE FACT OF THE MATTER IS YOU ARE NOT ONLY HERE
6 TO SAY THAT DIDN'T HAPPEN, BUT BRIAN STEWART, WHO CAME
7 AND GOT Y'ALL THAT NIGHT, SAID THERE WAS NOTHING THAT
8 WENT ON, THERE WERE NO PROBLEMS BETWEEN Y'ALL?

9 A. YES, SIR.

10 Q. SO THOSE ALLEGATIONS ARE FALSE?

11 A. YES, SIR. IT'S NOW GRADED DOWN TO ASSAULT AND
12 BATTERY OF A HIGH AND AGGRAVATED NATURE.

13 Q. OKAY. DID YOU ASK FOR A JURY TRIAL AND A SPEEDY
14 TRIAL?

15 A. YES.

16 Q. IN TERMS OF YOUR PROBATION VIOLATION HEARING, DO
17 YOU BELIEVE YOUR ATTORNEY HAD SUFFICIENT TIME TO
18 PROPERLY PREPARE AND DEFEND YOUR CASE?

19 A. NO, SIR.

20 Q. ALL RIGHT. DID YOU POINT OUT VARIOUS WITNESSES
21 AND OTHER EVIDENCE THAT COULD BE PRESENTED FOR YOU IF HE
22 WOULD GO AND GET THEM?

23 A. YES, SIR, I DID.

24 Q. ALL RIGHT. WHAT DID YOU TELL HIM THAT YOU WANTED
25 HIM TO DO?

1 A. WELL, AT FIRST I WASN'T EVEN AWARE OF AN
2 AFFIDAVIT BEING STATED AGAINST ME OR ABOUT ALL THE
3 COMPUTER PRINTOUTS AND SO FORTH UNTIL THAT MORNING WHEN
4 MY PROBATION OFFICER, AMY METCALF, SUBMITTED TO THE
5 COURT, AND THAT'S WHEN I TOLD ANDY POTTER TO ASK FOR A
6 CONTINUANCE BECAUSE IT WAS A FAIRLY LARGE STACK OF
7 PAPERS. WELL, WE WERE GRANTED A MINOR RECESS, AND I
8 STILL DIDN'T GET TO REVIEW ANY OF THE PAPERWORK. HE SAT
9 BESIDE ME AND HE JUST VAGUELY WENT OVER IT, BUT WE
10 DIDN'T EVEN GET TO DISCUSS NOT EVEN 90 PERCENT OF IT.

11 Q. WERE YOU ALLOWED TO SPEAK AT ALL DURING THE
12 HEARING?

13 A. NO, SIR.

14 Q. DID THE JUDGE ADDRESS YOU ABOUT WHETHER YOU
15 COMMITTED ANY VIOLATIONS OR WHETHER THEY WERE WILLFUL OR
16 WHETHER OR NOT YOU HAD ANY EVIDENCE TO PRESENT IN
17 MITIGATION CONCERNING THE ALLEGED VIOLATIONS?

18 A. NO, SIR.

19 Q. ALL RIGHT. DO YOU BELIEVE THE VIOLATIONS, EVEN
20 THE ONES THAT YOU DID WHATEVER ACT THEY CLAIMED, WERE
21 THOSE WILLFUL VIOLATIONS IN YOUR OPINION?

22 A. NO, SIR.

23 Q. OKAY. DID YOU TRY TO SPEAK UP DURING THE HEARING
24 AND SAY SOMETHING IN YOUR DEFENSE?

25 A. I DID ONE TIME, AND ANDY POTTER, WHEN HE WAS

1 SPEAKING -- AND HE DID STOP SPEAKING FOR A MOMENT, AND I
2 DID TRY TO SAY SOMETHING, AND HE DID TELL ME TO SHUT UP,
3 BUT THAT WAS NOT SHOWN ON THE RECORD.

4 Q. WAS THAT SOMETHING WHISPERED TO YOU OR SAID TO
5 YOU BESIDE HIM?

6 A. WELL, TO ME, I GUESS BECAUSE I WAS STANDING
7 BESIDE HIM, IT DIDN'T SEEM VERY MUCH LIKE A WHISPER, BUT
8 MAYBE EVERYBODY ELSE DID NOT HEAR IT.

9 Q. BUT HE TOLD YOU NOT TO TALK?

10 A. YES, SIR.

11 Q. DO YOU BELIEVE THAT IF INFORMATION YOU GAVE TODAY
12 AND THE WITNESSES YOU HAVE TODAY WOULD HAVE BEEN ABLE TO
13 BE PRESENTED, YOU WOULD NOT HAVE BEEN REVOKED ON
14 PROBATION?

15 A. YES, SIR.

16 Q. OR CERTAINLY WOULD HAVE GOTTEN A LESSER SENTENCE?

17 A. YES, SIR.

18 Q. IS IT TRUE MR. POTTER DIDN'T GIVE YOU ANY ADVICE
19 ABOUT FILING A MOTION TO RECONSIDER OR APPEAL AFTER THE
20 HEARING?

21 A. YES, SIR.

22 Q. WERE YOU IN A POSITION TO RESEARCH THAT AND FIND
23 THAT OUT, WHAT COULD BE DONE ABOUT THE HEARING?

24 A. NO, SIR. AFTER THE JUDGE DID GIVE ME A FULL
25 REVOCATION, I TRIED TO SPEAK TO MR. POTTER THREE OR FOUR

1 TIMES FROM THE JURY-BOX INSIDE THE COURTROOM, AND HE
2 JUST SHRUGGED ME OFF. AND GOING BACK TO ANDERSON COUNTY
3 DETENTION CENTER I DID REQUEST ACCESS TO THE LAW LIBRARY
4 WHERE SOMEBODY COULD HELP ME WITH IT, AND THEY DON'T
5 HAVE ANY ACCESS AND DON'T HAVE ANY LAW MATERIALS. AND
6 GOING THROUGH R AND E THROUGH THE SOUTH CAROLINA
7 DEPARTMENT OF CORRECTIONS, I WAS THERE RIGHT AT
8 APPROXIMATELY TWO MONTHS, AND I HAD NO ACCESS THERE
9 UNTIL GOING AWAY.

10 Q. ALL RIGHT. BUT YOU TRIED TO CONTACT OR SPEAK TO
11 MR. POTTER IN THE COURTROOM BEFORE YOU WERE TAKEN OUT
12 AFTER THE HEARING?

13 A. YES, SIR.

14 Q. OKAY. YOU WEREN'T ABLE TO COMMUNICATE WITH HIM
15 OR GET ACROSS WHAT YOU WANTED?

16 A. NO, SIR.

17 Q. OKAY. ALL RIGHT. WERE YOU AWARE OF THE SPECIFIC
18 TIME LIMITS FOR FILING A MOTION TO RECONSIDER OR AN
19 APPEAL?

20 A. NO, SIR.

21 Q. ALL RIGHT. WHAT ARE YOUR ALLEGATIONS
22 CONCERNING -- DO YOU HAVE SEPARATE ALLEGATIONS
23 CONCERNING JUDICIAL MISCONDUCT OTHER THAN THE FACT THAT
24 YOU WEREN'T ALLOWED TO PRESENT YOUR DEFENSE DURING THE
25 HEARING?

1 A. YES, SIR.

2 Q. WHAT ABOUT PROSECUTORIAL MISCONDUCT? ARE YOU
3 REFERRING TO MS. METCALF?

4 A. YES, SIR.

5 Q. WHAT DO YOU THINK SHE DID THAT WAS MISCONDUCT?

6 A. I FEEL THAT SHE COERCED ME INTO BELIEVING I WAS
7 ALLOWED TO HAVE CONTACT WITH MS. GIOVANNI UPON THE
8 AFFIDAVIT SUBMITTED BY HER, AND THEN SHE TURNS AROUND
9 AND VIOLATES ME FOR HAVING CONTACT WITH MS. GIOVANNI.
10 AND THAT SHE KNEW OF ME AND MS. GIOVANNI HAVING PHYSICAL
11 CONTACT PRIOR BECAUSE ONLY HER AND MS. GIOVANNI HAVE A
12 COPY OF THE AFFIDAVIT. AND I REQUESTED A COPY UNDER THE
13 FREEDOM OF INFORMATION ACT AND I HAVE YET TO RECEIVE
14 ANYTHING FROM THE PROBATION OFFICE.

15 Q. OKAY. HAD MS. METCALF ACTUALLY -- YOUR PROBATION
16 OFFICER, HAD SHE ACTUALLY BEEN TO YOUR SISTER'S HOUSE
17 WHERE YOU WERE LIVING AND SEEN YOU AND MS. GIOVANNI
18 THERE TOGETHER?

19 A. YES, SEVERAL TIMES.

20 Q. AND THAT WAS IN ADDITION TO HER HAVING YOU BOTH
21 COME TO THE PROBATION OFFICE THAT DAY AND SIGN
22 AFFIDAVITS SAYING YOU WANTED TO HAVE CONTACT WITH EACH
23 OTHER?

24 A. YES, SIR.

25 Q. OKAY. DO YOU THINK MS. METCALF'S DESCRIPTION OF

1 YOUR VIOLATIONS FAIRLY DEPICTS THE KNOWLEDGE SHE HAD
2 ABOUT THOSE THINGS THAT MIGHT MITIGATE THE VIOLATION?

3 A. YES, SIR.

4 Q. DO YOU THINK SHE WAS FAIR IN HOW SHE DESCRIBED
5 THOSE VIOLATIONS?

6 A. NO, SIR.

7 Q. SHE COULD HAVE GIVEN A FAIRER PICTURE ABOUT WHAT
8 OCCURRED; ISN'T THAT TRUE?

9 A. SHE COULD HAVE BEEN MORE SPECIFIC.

10 Q. OKAY. IN YOUR P.C.R. ORIGINALLY YOU HAD PUT
11 UNETHICAL CONDUCT OF COUNSEL. IS THAT BECAUSE YOUR
12 LAWYER TOLD YOU NOT TO SPEAK UP?

13 A. YES.

14 Q. YOU FELT THAT WAS UNETHICAL BECAUSE YOU DIDN'T
15 FEEL LIKE YOU GOT A CHANCE TO PRESENT ANYTHING?

16 A. YES, SIR.

17 Q. HOW ABOUT THE PICTURE THAT MS. GIOVANNI -- OR THE
18 PROBATION AGENT SAID SHE SUPPOSEDLY SHOWED A PICTURE OF
19 A GUN ON A WEBCAM OR SOMEHOW IT APPEARED. DID YOU DO
20 THAT?

21 A. NO, SIR.

22 Q. DID YOU HAVE POSSESSION OF A FIREARM WHILE YOU
23 WERE ON PROBATION?

24 A. NO, SIR.

25 Q. ALL RIGHT. DO YOU BELIEVE THAT WAS SOMEHOW MADE

1 UP BY MS. GIOVANNI OR OTHERS?

2 A. YES, SIR.

3 Q. OKAY. HOW ABOUT THE INSTANT MESSAGES, WHAT ABOUT
4 THAT?

5 A. I DIDN'T GET A CHANCE TO REVIEW IT. SHE SAID --
6 AMY METCALF IN THE COURTROOM DID SAY THAT WE HAD INSTANT
7 MESSAGES, WHICH ME AND MS. GIOVANNI HAD CONTACT
8 CONSTANTLY, ALMOST EVERY DAY THROUGH YAHOO INSTANT
9 MESSENGER. BUT THE NAME THAT WAS GIVEN WAS NOT MY
10 SCREEN NAME, AND MS. GIOVANNI DID TAKE -- WE HAD AN OPEN
11 RELATIONSHIP WITH OUR INFORMATION TOWARD ONE ANOTHER,
12 AND SHE HAD ACCESS TO MY ACTUAL E-MAIL ACCOUNT ON HER
13 YAHOO WHERE SHE KEPT GOING TO MY E-MAIL ACCOUNT AND SHE
14 DELETED MY E-MAIL ACCOUNT.

15 WELL, I WAS PRETTY UPSET ABOUT THAT, AND MY
16 BROTHER-IN-LAW CAN VOUCH. HE CAN'T VOUCH WHAT SHE DID
17 TO VIOLATE MY E-MAIL ACCOUNT, BUT I ASKED HIM ABOUT IT
18 BECAUSE HE ASKED ME ABOUT IT, AND I TOLD HIM THAT I
19 THINK SHE DELETED MY ACCOUNT. SHE DENIED IT. BUT
20 APPARENTLY I GUESS SHE MADE UP ANOTHER SCREEN NAME TO
21 TRY TO SAY IT WAS ME TALKING TO HER, BUT I ONLY HAD TWO
22 SCREEN NAMES ON WHICH I TALKED TO HER ON.

23 Q. AND SHE WOULD HAVE KNOWLEDGE ABOUT YOUR DEALINGS
24 WITH THE PROBATION OFFICER SO THAT SHE COULD MAKE IT
25 LOOK LIKE IT WAS YOU THAT WAS TALKING AND GET

1 INFORMATION THAT SUPPOSEDLY ONLY YOU WOULD KNOW?

2 A. YES, SIR.

3 Q. ALL RIGHT. AND YOU BELIEVE SHE'S CAPABLE OF
4 MANIPULATING THAT TO MAKE IT LOOK LIKE YOU SENT A
5 MESSAGE TO HER?

6 A. YES, SIR.

7 Q. ALL RIGHT. IS HER FAMILY IN LAW ENFORCEMENT IN
8 ANDERSON COUNTY?

9 A. HER BROTHER WAS A DEPUTY SHERIFF.

10 Q. AT THE TIME ALL THIS WAS GOING ON?

11 A. YES, SIR.

12 Q. WAS HER BROTHER INVOLVED IN THE WARRANT FOR
13 C.D.V. THAT WAS ISSUED AGAINST YOU?

14 A. YES, SIR.

15 Q. IS HE THE ONE THAT SIGNED IT?

16 A. NO, SIR.

17 Q. BUT HE WAS INVOLVED?

18 A. YES, SIR. HE WAS INVOLVED IN THE ACTUAL I GUESS
19 YOU WOULD SAY PRELIMINARY INVESTIGATION BEFORE THE
20 WARRANT WAS EVEN CONSIDERED.

21 Q. ALL RIGHT. WAS HER FATHER ALSO A LAW ENFORCEMENT
22 PERSON?

23 A. YES, SIR.

24 Q. ALL RIGHT. WHAT WOULD BE HER MOTIVE TO DO ALL
25 THOSE THINGS TO YOU?

1 A. IF SHE CAN'T HAVE ME, NOBODY CAN. THAT WAS HER
2 WORDS SEVERAL TIMES.

3 Q. ALL RIGHT. WAS SHE ALSO GONNA HAVE SOME TROUBLE
4 OUT OF THE BREAKING OUT WITH THE CAR?

5 A. YES, SIR.

6 Q. ALL RIGHT. WOULD SHE BE IN TROUBLE WITH HER
7 FAMILY FOR THAT?

8 A. YES, SIR.

9 Q. ALL RIGHT. AND THE BIRTH DATE SHE GAVE, SHE WAS
10 21 YEARS OLD AT THE TIME?

11 A. YES, SIR.

12 Q. AND YOU WERE 24 AT THE TIME?

13 A. TWENTY --

14 Q. -- THREE?

15 A. JUST TURNED 24.

16 Q. OKAY. ALL RIGHT. HAS SHE SENT YOU LETTERS SINCE
17 YOU HAVE BEEN IN THE DEPARTMENT OF CORRECTIONS?

18 A. YES, SIR, TWICE.

19 Q. HAVE YOU SENT ANYTHING BACK TO HER SINCE YOU'VE
20 BEEN THERE?

21 A. NO, SIR.

22 Q. WHAT DID HER LETTERS SAY, HATE MAIL OR WHAT?

23 A. JUST "I'M SORRY" AND ---

24 **MR. JONES:** OBJECTION, YOUR HONOR; HEARSAY.

25 **THE COURT:** DO YOU HAVE THE LETTERS?

1 **MR. GRIFFITH:** WE DON'T HAVE THEM. BUT I
2 JUST WANTED TO GET AN IDEA WHETHER IT WAS NEGATIVE OR
3 POSITIVE LETTERS, GENERALLY.

4 **THE COURT:** ALL RIGHT. I'M GOING TO PERMIT
5 IT.

6 BY MR. GRIFFITH:

7 Q. OKAY. SO THESE WERE LETTERS THAT WERE NOT LIKE
8 LETTERS IN ANGER TO YOU?

9 A. NO, SIR.

10 Q. THEY WERE FRIENDLY LETTERS?

11 A. YES, SIR.

12 Q. OKAY. ALL RIGHT. ANY OTHER -- HOLD ON A SECOND.

13 ANY OTHER GROUND YOU HAVE FOR YOUR P.C.R.
14 APPLICATION THAT WE HAVEN'T GONE OVER?

15 A. NO, SIR.

16 Q. OKAY.

17 **MR. GRIFFITH:** PLEASE ANSWER ANY QUESTIONS
18 THE STATE MAY HAVE OR THE COURT MAY HAVE FOR YOU.
19 CROSS-EXAMINATION BY MR. JONES:

20 Q. MR. ISHMAN, YOU PREVIOUSLY STATED THAT YOU WERE
21 FIRED FROM YOUR JOB FOR FAILURE TO SHOW UP?

22 A. YES, SIR.

23 Q. AND YOU PREVIOUSLY STATED THAT YOU WERE GOING TO
24 LOOK FOR A DIFFERENT JOB IN A DIFFERENT CITY?

25 A. YES, SIR.

1 Q. DID YOU CALL YOUR EMPLOYER TO LET HIM KNOW THAT?

2 A. YES, SIR, I DID.

3 Q. AND WHAT DID HE SAY? DID HE GIVE YOU PERMISSION?

4 A. NO, HE DIDN'T.

5 Q. AND YOU STILL DECIDED NOT TO SHOW UP FOR WORK

6 EVEN THOUGH HE DID NOT GIVE YOU PERMISSION?

7 A. YES, SIR. THIS PARTICULAR JOB WAS ACTUALLY SIX
8 DAYS A WEEK, AND IT WAS ACTUALLY LOOKING AT JUST NOW TO
9 BEING SEVEN DAYS A WEEK, WHICH WAS FROM 9:00 IN THE
10 MORNING, 8:30, 9:00 IN THE MORNING UNTIL EVERY NIGHT AT
11 11:30, 12:00, AND WHICH I HAD TO HAVE -- MAKE SOME KIND
12 OF TIME WHETHER THEY ALLOWED ME OR NOT TO LOOK FOR
13 ANOTHER JOB.

14 Q. WHY DIDN'T YOU RESCHEDULE YOUR INTERVIEW INSTEAD
15 OF NOT GOING TO WORK?

16 A. WELL, I MEAN, I'D TRIED SEVERAL TIMES ALREADY,
17 BUT IT GOT TO THE POINT TO WHERE I JUST HAD TO TELL MY
18 BOSS, "NO, YOU KNOW, I'VE GOT TO GO TO THESE
19 INTERVIEWS."

20 Q. NOW, ON THE NIGHT OF MS. GIOVANNI'S BIRTHDAY YOU
21 TESTIFIED THAT YOU GUYS WENT OUT, CORRECT?

22 A. YES, SIR.

23 Q. WHERE DID YOU GO TO EAT?

24 A. WE ACTUALLY MET UP BEHIND MARK AND JEANNIE'S BAR
25 AND THEN WE WENT TO ANOTHER BAR AND GRILL ON 81 SOUTH

1 KNOWN AS NIGHTSHADES.

2 Q. DOES THAT BAR AND GRILL SELL ALCOHOL?

3 A. YES, SIR.

4 Q. DID ANYBODY FORCE YOU TO GO TO THAT BAR AND GRILL
5 THAT SERVES ALCOHOL?

6 A. NO, SIR.

7 Q. YOU WENT WILLFULLY?

8 A. YES, SIR.

9 MR. JONES: NO FURTHER QUESTIONS, YOUR
10 HONOR.

11 THE COURT: RE-EXAM?

12 MR. GRIFFITH: NO QUESTIONS, YOUR HONOR.

13 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.
14 (WITNESS LEAVES STAND.)

15 MR. GRIFFITH: YOUR HONOR, THE APPLICANT
16 CALLS TANYA VAUGHN.

17 THE COURT: VERY WELL.

18 (WHEREUPON, THE WITNESS WAS SWORN BY THE
19 CLERK.)

20 THE CLERK: PLEASE STATE YOUR FULL NAME AND
21 SPELL YOUR LAST NAME FOR THE RECORD.

22 THE WITNESS: TANYA VAUGHN, V-A-U-G-H-N.
23 WHEREUPON,

24 TANYA VAUGHN,

25 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

1 FOLLOWS:

2 DIRECT EXAMINATION BY MR. GRIFFITH:

3 Q. MS. VAUGHN, I THINK YOU ARE MARRIED TO JEFF
4 VAUGHN?

5 A. CORRECT.

6 Q. JEFF IS HERE IN COURT WITH YOU TODAY?

7 A. CORRECT.

8 Q. OKAY. YOU ARE A DETENTION OFFICER AT THE
9 ANDERSON COUNTY DETENTION CENTER?

10 A. YES, SIR.

11 Q. HOW LONG HAVE YOU BEEN DOING THAT?

12 A. SINCE NOVEMBER 19TH, 2007.

13 Q. WERE YOU IN LAW ENFORCEMENT BACK IN 2006 WHEN ALL
14 THESE THINGS WERE GOING ON?

15 A. NO, SIR.

16 Q. WERE YOU AWARE OF A RELATIONSHIP FOR A COUPLE
17 YEARS PRIOR TO THE PROBATION REVOCATION BETWEEN YOUR
18 BROTHER AND MS. GIOVANNI?

19 A. YES, SIR.

20 Q. WAS YOUR BROTHER ACTUALLY LIVING WITH YOU AT THE
21 TIME THAT THEY CLAIM HE VIOLATED HIS PROBATION?

22 A. YES, SIR.

23 Q. DID HE HAVE ANY GUNS AT YOUR HOME?

24 A. NO, SIR.

25 Q. DO YOU HAVE ANY CHILDREN?

1 A. YES, SIR.

2 Q. HOW OLD WERE YOUR CHILDREN AT THAT TIME?

3 A. SEVEN AND THREE.

4 Q. OKAY. WOULD YOU HAVE ALLOWED ANY SORT OF GUN IN
5 YOUR HOUSE?

6 A. NO, SIR.

7 Q. WERE YOU AWARE THAT YOUR BROTHER WAS NOT ALLOWED
8 TO HAVE A GUN BECAUSE HE WAS ON PROBATION?

9 A. I WAS NOT AWARE OF HIS CIRCUMSTANCES, NO, SIR.

10 Q. OKAY. BUT YOU DIDN'T KNOW WHETHER HE WAS ALLOWED
11 TO HAVE ONE OR NOT?

12 A. NO, SIR.

13 Q. OKAY. BUT AT YOUR HOUSE IT WOULD NOT HAVE BEEN
14 REGARDLESS; IS THAT RIGHT?

15 A. NO.

16 Q. BUT WAS THAT YOUR HUSBAND'S POSITION, AS WELL?

17 A. I'M SORRY?

18 Q. I'M SORRY, I SLURRED THAT.

19 WAS THAT YOUR HUSBAND'S POSITION, AS WELL?

20 A. CORRECT.

21 Q. HE AGREED WITH THAT?

22 A. YES.

23 Q. OKAY. DID THE PROBATION OFFICER, MS. METCALF,
24 CONTACT YOU AND SAY IT WAS ALLEGED THAT HE HAD A GUN
25 SHOWING ON A COMPUTER CAMERA OR SOMETHING AT YOUR HOUSE?

1 A. YES.

2 Q. ALL RIGHT. DID SHE ASK YOU TO LOOK THROUGH THE
3 HOUSE TO SEE IF THERE WAS ANY GUN OR ANYTHING AT YOUR
4 HOUSE?

5 A. YES, SIR.

6 Q. DID YOU DO THAT?

7 A. I DID. I LOOKED AT EVERY, EVERY BELONGING OF
8 OURS THAT A GUN COULD BE IN, AND I ALSO LOOKED IN MY
9 BROTHER'S BELONGINGS AT THE TIME.

10 Q. OKAY. ALL RIGHT. AND YOU DIDN'T FIND ANYTHING
11 LIKE THAT?

12 A. NO, SIR.

13 Q. ALL RIGHT. BUT THERE APPARENTLY WAS A PICTURE
14 THAT LOOKED LIKE IT HAD SOME BACKGROUND IN IT, A PICTURE
15 OF A PLAYROOM; IS THAT CORRECT?

16 A. CORRECT.

17 Q. OKAY. ALL RIGHT. YOU ACTUALLY SAW THE PICTURE
18 THAT THEY ARE CLAIMING IS BRADLEY SHOWING A GUN IN SOME
19 MANNER; IS THAT RIGHT?

20 A. THERE WAS A PICTURE THAT WAS SENT TO ME VIA
21 E-MAIL, BUT BRAD WAS NOT IN THE PICTURE ITSELF.

22 Q. ALL RIGHT. COULD YOU TELL IF THE PICTURE WAS
23 ACTUALLY OF SOME SORT OF WEAPON OR NOT?

24 A. NO, SIR.

25 Q. OKAY. ALL RIGHT. DID MS. GIOVANNI COME TO YOUR

1 HOUSE AND VISIT BRADLEY OF HER OWN FREE WILL ON SEVERAL
2 OCCASIONS?

3 A. YES, SIR.

4 Q. ALL RIGHT. WERE THEY ACTUALLY ENGAGED AT THE
5 TIME THAT SHE'S CLAIMING HE COMMITTED ALL THESE BAD ACTS
6 AGAINST HER?

7 A. YES, SIR.

8 Q. OKAY. DO YOU BELIEVE THAT SHE MADE FALSE
9 ALLEGATIONS AGAINST HIM IN THE PAST?

10 A. I'M NOT SURE. I'M NOT AWARE OF ANY ACCUSATIONS
11 IN THE PAST.

12 (DISCUSSION OFF THE RECORD BETWEEN
13 MR. GRIFFITH AND THE APPLICANT.)

14 **MR. GRIFFITH:** I BELIEVE THAT'S ALL I HAVE.

15 **MR. JONES:** I BEG THE COURT'S INDULGENCE.

16 **THE COURT:** CERTAINLY.

17 CROSS-EXAMINATION BY MR. JONES:

18 Q. THE PICTURE THAT YOU REFERRED TO EARLIER, YOU
19 TESTIFIED THAT YOU SAW IT?

20 A. CORRECT.

21 Q. WERE YOU THERE WHEN THAT PICTURE WAS TAKEN?

22 A. NO, SIR.

23 Q. SO YOU CAN'T REALLY SAY FOR SURE WHETHER OR NOT
24 THERE WAS A GUN IN YOUR HOUSE?

25 A. NO, SIR.

1 **MR. JONES:** NO FURTHER QUESTIONS.

2 THANK YOU, YOUR HONOR.

3 **THE COURT:** RE-EXAM?

4 **MR. GRIFFITH:** NO FURTHER QUESTIONS OF THIS
5 WITNESS.

6 **THE COURT:** YOU MAY STEP DOWN. THANK YOU,
7 MA'AM.

8 **MR. JONES:** JEFF VAUGHN, YOUR HONOR.

9 (WHEREUPON, THE WITNESS WAS SWORN BY THE
10 CLERK.)

11 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
12 SPELL YOUR LAST NAME FOR THE RECORD.

13 **THE WITNESS:** JEFFREY VAUGHN, V-A-U-G-H-N.
14 WHEREUPON,

15 JEFFREY VAUGHN,
16 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
17 FOLLOWS:

18 DIRECT EXAMINATION BY MR. GRIFFITH:

19 Q. MR. VAUGHN, ARE YOU THE BROTHER-IN-LAW OF THE
20 APPLICANT?

21 A. YES, SIR.

22 Q. TANYA VAUGHN IS YOUR WIFE?

23 A. YES, SIR.

24 Q. WERE YOU AWARE OF THE ALLEGATION THAT HE
25 ALLEGEDLY HAD A GUN AT YOUR HOME SHOWN ON A WEB CAMERA?

1 A. IT WAS A DAY LATER WHEN I FOUND THAT OUT.

2 Q. OKAY. DO YOU KNOW WHETHER OR NOT YOUR WIFE
3 SEARCHED AS SHE SAID SHE DID?

4 A. SHE SEARCHED AND I SEARCHED AND I FOUND NO GUN.

5 Q. OKAY. WOULD YOU ALL ALLOW A GUN IN YOUR HOUSE?

6 A. NO, SIR.

7 Q. OKAY. AND YOU HAVEN'T PREVIOUSLY HAD GUNS IN
8 YOUR HOUSE SINCE YOU'VE HAD CHILDREN?

9 A. I'VE NEVER HAD A GUN IN MY HOUSE, PERIOD.

10 Q. IS IT TRUE THAT MS. GIOVANNI HAD BEEN TO YOUR
11 HOUSE ON SEVERAL OCCASIONS TO SEE BRADLEY ISHMAN?

12 A. YES, SIR. THAT'S THE ONLY WAY THEY COULD SEE
13 EACH OTHER WAS BY HER COMING BECAUSE HE HAS NO
14 TRANSPORTATION.

15 Q. ALL RIGHT. SHE WOULD COME AND PICK HIM UP AND
16 TAKE HIM PLACES?

17 A. EITHER SHE WOULD COME OR BRIAN WOULD COME PICK
18 HIM UP. THAT'S THE ONLY WAY HE GOT AROUND.

19 Q. AND BRIAN IS HIS FRIEND WHO'S HERE TODAY?

20 A. YES, SIR.

21 Q. DID YOU SEE ANY INDICATIONS THAT SHE WAS SCARED
22 OF HIM OR THERE WAS SOME PROBLEM BETWEEN HIM AND HER
23 WHEN HE WOULD COME SEE HER?

24 A. NOT AT ALL.

25 Q. IS IT TRUE THAT THEY WERE ENGAGED?

1 A. YES.

2 Q. WHEN MR. ISHMAN TESTIFIED ABOUT HIS E-MAIL
3 ACCOUNTS, WERE YOU AWARE THAT HIS YAHOO E-MAIL ACCOUNT
4 WAS ERASED SOMEHOW?

5 A. IT WAS DELETED SOMEHOW, BUT ---

6 Q. AT THE TIME DID HE TELL YOU THAT HE THOUGHT THAT
7 MS. GIOVANNI WAS AT FAULT FOR THAT?

8 A. HE DID SAY HE THOUGHT SHE'D DONE IT.

9 MR. GRIFFITH: THAT'S ALL THE QUESTIONS,
10 YOUR HONOR.

11 THE COURT: CROSS-EXAM?

12 CROSS-EXAMINATION BY MR. JONES:

13 Q. THE SAME QUESTIONS I ASKED TO THE PREVIOUS
14 WITNESSES. WERE YOU THERE WHEN THE PHOTOS WERE TAKEN OF
15 THE GUN?

16 A. NO, SIR.

17 Q. SO YOU DON'T REALLY KNOW FOR SURE IF THE GUN WAS
18 OR WAS NOT IN YOUR HOUSE?

19 A. AT THAT TIME, NO, I CANNOT CONFIRM THERE WAS A
20 GUN THERE OR NOT. BUT WHEN I GOT HOME, THAT NEXT DAY,
21 WE SEARCHED. THERE WAS NO GUN.

22 Q. AND DO YOU KNOW FOR SURE WHO ERASED THIS E-MAIL
23 ACCOUNT?

24 A. NO, I CANNOT.

25 MR. JONES: NO FURTHER QUESTIONS, YOUR

1 HONOR.

2 THE COURT: RE-EXAM?

3 MR. GRIFFITH: NO, YOUR HONOR.

4 THE COURT: VERY GOOD. YOU MAY STEP DOWN.

5 (WHEREUPON, THE WITNESS WAS EXCUSED.)

6 MR. GRIFFITH: BRIAN STEWART.

7 (WHEREUPON, THE WITNESS WAS SWORN BY THE
8 CLERK.)

9 THE CLERK: PLEASE STATE YOUR FULL NAME AND
10 SPELL YOUR LAST NAME FOR THE RECORD.

11 THE WITNESS: BRIAN EDWARD STEWART,
12 S-T-E-W-A-R-T.

13 WHEREUPON,

14 BRIAN STEWART,

15 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
16 FOLLOWS:

17 DIRECT EXAMINATION BY MR. GRIFFITH:

18 Q. ALL RIGHT. MR. STEWART, YOU ARE A FRIEND OF
19 BRADLEY ISHMAN?

20 A. CORRECT.

21 Q. HAVE Y'ALL BEEN FRIENDS FOR A FEW YEARS NOW?

22 A. YES, SIR.

23 Q. WERE YOU AWARE OF THE RELATIONSHIP HE HAD WITH
24 MS. GIOVANNI?

25 A. YES.

1 Q. PRIOR TO BEING PUT ON PROBATION?

2 A. YES, SIR.

3 Q. OKAY. IS IT TRUE THAT THEY WERE ENGAGED BACK IN
4 DECEMBER 2006?

5 A. YES, SIR.

6 Q. ALL RIGHT. DID YOU GO OUT TO ASSIST THEM WITH
7 THE CAR BEING BROKEN DOWN EITHER LATE AT NIGHT ON
8 DECEMBER 8TH, 2006 OR MAYBE THE EARLY MORNING HOURS OF
9 DECEMBER 9TH, 2006?

10 A. YES, SIR.

11 Q. WHO CALLED YOU?

12 A. THEY CALLED FROM KENAN'S CELL PHONE.

13 Q. OKAY. WAS IT BRADLEY ON THE PHONE OR WAS SHE ON
14 THE PHONE?

15 A. IT WAS BRAD.

16 Q. WHAT DID HE TELL YOU THEY NEEDED?

17 A. HE SAID THAT THE CAR WAS BROKE DOWN ON THE SIDE
18 OF THE ROAD AND THEY NEEDED ME TO COME DOWN THERE AND
19 PICK THEM UP AND TAKE THEM BACK TO KENAN'S HOUSE.

20 Q. DID YOU GO AND MEET THEM AT THE CAR?

21 A. YES, SIR.

22 Q. WAS IT UNABLE TO BE DRIVEN ANY FURTHER?

23 A. WE ATTEMPTED TO GET IT STARTED, AND WE CONFIRMED
24 THAT WE COULD NOT GET IT STARTED, SO WE CALLED THE
25 TRIPLE A TOW SERVICE AND THEN WE WAITED FOR THE TOW

1 SERVICE TO GET THERE AND TAKE US TO TANYA'S HOUSE AND
2 THEN WAITED FOR ME TO TAKE HER HOME.

3 Q. WHEN YOU SAY "HER," YOU MEAN KENAN GIOVANNI?

4 A. YES.

5 Q. DID YOU ALL TALK WHILE MESSING WITH THE CAR
6 WAITING ON THE TOW TRUCK?

7 A. YES, SIR.

8 Q. ANY INDICATION OF A PROBLEM BETWEEN MS. GIOVANNI
9 AND BRADLEY ISHMAN?

10 A. NO, SIR.

11 Q. DID SHE APPEAR TO HAVE BEEN INJURED OR SCARED OR
12 HURT IN ANY MANNER?

13 A. NO, SIR.

14 Q. DID THEY SEEM TO BE GETTING ALONG WHILE YOU WERE
15 THERE?

16 A. YES, SIR.

17 Q. I THINK YOU SAID YOU TOOK BRADLEY BACK TO TANYA,
18 HIS SISTER'S HOUSE?

19 A. YES, SIR.

20 Q. ALL RIGHT. THEN YOU TOOK MS. GIOVANNI HOME AFTER
21 THAT?

22 A. YES.

23 Q. AFTER BRADLEY GOT OUT OF THE CAR AND IT WAS JUST
24 YOU AND MS. GIOVANNI, DID SHE SAY THAT SHE HAD ANY
25 PROBLEM WITH BRADLEY EITHER KIDNAP HER OR HIT HER OR

1 HURT HER?

2 A. NO, SIR.

3 Q. ANY INDICATION THERE WAS FRAUGHT BETWEEN THEM?

4 A. NO, SIR.

5 Q. OKAY. ARE YOU SURPRISED SHE WAS ALLEGING ALL
6 THESE BAD THINGS HAPPENED THAT NIGHT A FEW WEEKS LATER?

7 A. YES, SIR.

8 Q. OKAY. HAD YOU SEEN MR. ISHMAN AND MS. GIOVANNI
9 TOGETHER ON SEVERAL OCCASIONS AFTER HE HAD GOTTEN ON
10 PROBATION?

11 A. YES, SIR.

12 Q. OKAY. DID MR. ISHMAN APPEAR TO BE INTOXICATED?

13 A. NO, SIR. HE WAS NOT INTOXICATED.

14 Q. WAS MS. GIOVANNI INTOXICATED?

15 A. YES.

16 MR. GRIFFITH: THAT'S ALL MY QUESTIONS.

17 PLEASE ANSWER QUESTIONS THE COURT OR THE STATE MAY HAVE
18 FOR YOU.

19 THE COURT: CROSS-EXAM.

20 CROSS-EXAMINATION BY MR. JONES:

21 Q. CAN YOU REPEAT TO US WHAT YOUR RELATIONSHIP TO
22 MR. ISHMAN IS?

23 A. HE'S HONESTLY MY BEST FRIEND.

24 Q. BEST FRIEND?

25 A. YES.

1 Q. OKAY.

2 A. HE'S, HE'S NEVER LIED TO ME AND HE'S ALWAYS BEEN
3 THERE FOR ME.

4 Q. SO MR. ISHMAN, THROUGHOUT YOUR FRIENDSHIP, HAS
5 SHARED INFORMATION WITH YOU ABOUT HIS RELATIONSHIP WITH
6 MS. GIOVANNI, CORRECT?

7 A. YES, SIR.

8 Q. HAVE YOU IN YOUR EXPERIENCE EVER SEEN THEM FIGHT
9 OR ARGUE?

10 A. I'VE HEARD THEM HAVE VERBAL ARGUMENTS, BUT I HAVE
11 NEVER ACTUALLY, I'VE NEVER SEEN ANY PHYSICAL FIGHTING,
12 NO.

13 Q. IN YOUR OPINION DID THEY HAVE A VOLATILE
14 RELATIONSHIP? WERE THEY ALWAYS TOGETHER FOR THE ENTIRE
15 TIME OR OFF AND ON?

16 A. SOMETIMES THEY WERE TOGETHER -- IT WAS MORE OF
17 A -- HOW DO I WORD IT? WHEN THEY WERE TOGETHER, THEY
18 WERE TOGETHER ALL THE TIME. WHEN THEY WERE AWAY, THEY
19 WERE AWAY.

20 Q. AND YOU TESTIFIED EARLIER THAT IT APPEARED THAT
21 MS. GIOVANNI WAS INTOXICATED THE NIGHT IN QUESTION?

22 A. YES, SIR.

23 Q. AND HOW DO YOU KNOW THAT? DID SHE HAVE CONTROL
24 OVER HER FACULTIES?

25 A. SHE HAD -- SHE WAS VERY, SHE WAS LAUGHY. SHE WAS

1 LAUGHY AND GIGGLY, WHICH IS NOT HER NORMAL DEMEANOR,
2 SHE'S NORMALLY CALM, VERY QUIET AND LAID BACK. SHE
3 DIDN'T HAVE THAT. SHE WAS MORE LOUD AND ROBUST INSTEAD
4 OF -- AND SHE DID HAVE THE SMELL OF ALCOHOL ON HER
5 BREATH, WHEREAS BRADLEY DIDN'T.

6 Q. YOU SAID SHE DID HAVE THE SMELL?

7 A. YES.

8 MR. JONES: NO FURTHER QUESTIONS.

9 THE COURT: RE-EXAM?

10 MR. GRIFFITH: NO FURTHER QUESTIONS.

11 THE COURT: YOU MAY STEP DOWN.

12 MR. GRIFFITH: THIS IS THE LAST ONE. GLEN
13 DEAL.

14 (WHEREUPON, THE WITNESS WAS SWORN BY THE
15 CLERK.)

16 THE CLERK: PLEASE STATE YOUR FULL NAME AND
17 SPELL YOUR LAST NAME FOR THE RECORD.

18 THE WITNESS: IT'S CHARLES GLEN DEAL,
19 D-E-A-L.

20 WHEREUPON,

21 CHARLES DEAL,

22 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
23 FOLLOWS:

24 DIRECT EXAMINATION BY MR. GRIFFITH:

25 Q. MR. DEAL, ARE YOU MR. ISHMAN'S UNCLE?

1 A. YES, I AM.

2 Q. WHAT SORT OF WORK DO YOU DO?

3 A. I PREVIOUSLY WORKED FOR SANTEE COOPER'S ESTATE
4 FIRE COMPANY. PRIOR TO THEN I WAS RETIRED MILITARY.

5 Q. SO YOU ARE TOTALLY RETIRED NOW?

6 A. I'M OUT RIGHT NOW. I GOT A HEART ANEURYSM ON MY
7 MAIN AORTA. THEY GOT ME OUT TEMPORARILY ON DISABILITY.

8 Q. ALL RIGHT. BUT YOU ARE RETIRED FROM THE MILITARY
9 AS WELL?

10 A. YES, SIR.

11 Q. WHAT POSITION DID YOU HAVE IN THE MILITARY?

12 A. I WAS A RECRUITER, SUPPLY SERGEANT, COMBAT ARMS.
13 DURING MY BREAK FROM THE MILITARY I WAS AN ANDERSON
14 POLICEMAN, ALSO, FOR THREE YEARS.

15 Q. ALL RIGHT. NOW, ON DECEMBER 8TH, 2006, THE NIGHT
16 OF MS. GIOVANNI'S BIRTHDAY, DID YOU MEET SHE AND
17 MR. ISHMAN OUT AT NIGHTSHADES OR WHEREVER?

18 A. MY WIFE AT THAT TIME WORKED AT MARK AND JEANNIE'S
19 FIRST SHIFT AS A BARTENDER. WE MET THEM OUT BACK. I
20 HAD MET MS. GIOVANNI JUST A COUPLE TIMES PREVIOUS. BUT
21 IT WAS HER 21ST BIRTHDAY, AND YOU KNOW HOW WE ALL ARE ON
22 OUR 21ST BIRTHDAY, LEGAL AGE TO DRINK.

23 WHEN THEY GOT TO MARK AND JEANNIE'S, THEY -- SHE
24 REALIZED WE DIDN'T SELL LIQUOR DRINKS, SO SHE WANTED TO
25 GO SOMEWHERE ELSE. SO ME AND MY WIFE FOLLOWED BRADLEY

1 AND KENAN -- IS IT KENAN?

2 Q. KENAN.

3 A. -- DOWN TO NIGHTSHADES WHICH IS ACROSS FROM
4 FIBERGLASS. AND EVERYBODY FOUND OUT SHE WAS 21. AND
5 YOU KNOW HOW IT IS ON YOUR 21ST BIRTHDAY, EVERYBODY
6 WANTS TO BUY YOU A DRINK. AND SHE WAS SLAMMING THEM
7 DOWN PRETTY GOOD. BRAD DID HAVE A COUPLE, YOU KNOW, BUT
8 SHE WAS VERY INTOXICATED.

9 Q. ALL RIGHT. WAS BRADLEY INTOXICATED IN YOUR
10 OPINION?

11 A. NO, SIR.

12 Q. DID SHE DRINK ANYTHING BESIDES MIXED DRINKS?

13 A. YES, SIR. A FRIEND OF MINE HAD SOME GEORGIA
14 MOONSHINE OUT IN THE TRUNK OF HIS CAR AND THEY DID GO
15 OUT A COUPLE TIMES AND DRINK SOME MOONSHINE.

16 Q. ALL RIGHT. NOW THAT IS KENAN OR KENAN AND
17 BRADLEY?

18 A. JUST KENAN. AS A MATTER OF FACT, I WENT OUT WITH
19 THEM, ALSO.

20 Q. OKAY. ALL RIGHT. DID YOU SEE ANY PROBLEMS GOING
21 ON BETWEEN MS. GIOVANNI AND BRADLEY?

22 A. THE ONLY THING, BRADLEY WAS READY TO GO, AND SHE
23 WAS -- YOU KNOW, LIKE I SAY, WHEN YOU GET TO THAT POINT,
24 YOU DON'T WANT TO LEAVE UNTIL THE LIGHTS WAS TURNED OFF
25 AND HE WAS READY TO GO. AND THAT'S THE ONLY CROSS WORDS

1 I HEARD THAT NIGHT, BECAUSE, LIKE I SAY, SHE WAS FEELING
2 GOOD.

3 MR. GRIFFITH: I BELIEVE THAT'S ALL THE
4 QUESTIONS I HAVE.

5 THE COURT: CROSS-EXAMINE?
6 CROSS-EXAMINATION BY MR. JONES:

7 Q. DID YOU SAY THAT BRADLEY HAD A FEW DRINKS OF
8 ALCOHOL?

9 A. I THINK HE HAD A COUPLE DRINKS SOMETIME DURING
10 THE DAY, YES, SIR.

11 MR. JONES: NO FURTHER QUESTIONS, YOUR
12 HONOR.

13 THE COURT: RE-EXAM?

14 MR. GRIFFITH: NONE, YOUR HONOR. THAT WILL
15 ALSO BE THE APPLICANT'S CASE.

16 THE COURT: ANYTHING FROM THE STATE?

17 MR. JONES: I BEG THE COURT'S INDULGENCE.
18 NO OTHER QUESTIONS FOR THE WITNESS, SIR.

19 THE COURT: YOU MAY STEP DOWN. THANK YOU.
20 (THE WITNESS LEFT THE WITNESS STAND.)

21 MR. JONES: YOUR HONOR, THE STATE CALLS AMY
22 METCALF.

23 THE COURT: VERY GOOD.

24 MR. JONES: YOUR HONOR, THE STATE WILL CALL
25 AMY METCALF.

1 (WHEREUPON, THE WITNESS WAS SWORN BY THE
2 CLERK.)

3 THE CLERK: PLEASE STATE YOUR FULL NAME AND
4 SPELL YOUR LAST NAME FOR THE RECORD.

5 THE WITNESS: AMY METCALF, M-E-T-C-A-L-F.
6 WHEREUPON,

7 AMY METCALF,
8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION BY MR. JONES:

11 Q. GOOD AFTERNOON, MS. METCALF. CAN YOU TELL US
12 WHERE YOU WORK AT?

13 A. I WORK WITH THE DEPARTMENT OF PROBATION, PAROLE
14 AND PARDON SERVICES.

15 Q. AND HOW LONG HAVE YOU BEEN WORKING THERE?

16 A. A LITTLE OVER THREE YEARS NOW.

17 Q. CAN YOU EXPLAIN YOUR RELATION TO THIS SPECIFIC
18 CASE?

19 A. YES, SIR. AT THE TIME THAT THE INCIDENTS
20 OCCURRED I WAS A SUPERVISING AGENT FOR BRADLEY ISHMAN.

21 Q. AND WHAT DOES BEING A SUPERVISING AGENT ENTAIL?

22 A. I'M PRETTY MUCH IN CHARGE OF MAKING SURE THAT THE
23 CONDITIONS OF HIS CASE ARE COMPLIED WITH, THAT THEY HAVE
24 SPECIAL CONDITIONS OF THE CASE THAT'S, YOU KNOW, ORDERED
25 THROUGH THE COURT, AS WELL AS THE SPECIAL CONDITIONS OF

1 THE PROBATION. CONDUCTING HOME VISITS. YOU KNOW,
2 RANDOM DRUG AND ALCOHOL TESTING. THEY REPORT IN TO OUR
3 OFFICE, WE SET UP A REPORTING SCHEDULE WITH THE PERSON
4 AND MAKE SURE THE FINANCIAL OBLIGATIONS THAT THEY OWE TO
5 THE STATE ARE, YOU KNOW, PAID. AND THERE'S VARIOUS JOB
6 DUTIES SUPERVISING A CASE, BUT MORE OR LESS JUST MAKING
7 SURE THE OBLIGATIONS THAT WERE PLACED ON THEM BY THE
8 STATE ARE FOLLOWED THROUGH.

9 Q. NOW, WHAT OBLIGATIONS WERE PLACED BY THE STATE IN
10 REGARDS TO MR. ISHMAN?

11 A. WHEN HE WAS ACTUALLY SENTENCED, HE WAS SENTENCED
12 ON SEPTEMBER 20TH OF 2006 FOR POINTING A FIREARM AT A
13 PERSON. HE RECEIVED A SENTENCE OF FIVE YEARS SUSPENDED
14 TO THREE YEARS PROBATION. HE WAS TO HAVE NO CONTACT
15 WITH KENAN GIOVANNI OR WITH NATHAN OR BENJAMIN COMBS,
16 JAMES RAINEY, JERRY PLUM, MELISSA -- I CAN'T MAKE OUT
17 THAT LAST NAME -- BRANDON MCCONNELL, AND STAY AWAY FROM
18 STONEWALL WOODS SUBDIVISION WHERE THE INCIDENT WAS
19 LOCATED. HE WAS TO HAVE NO CONTACT WITH MS. GIOVANNI
20 AND HER FAMILY.

21 HE WAS TO HAVE SUBSTANCE ABUSE COUNSELING, RANDOM
22 DRUG AND ALCOHOL TESTING.

23 HE DID HAVE COURT COSTS OF \$775.

24 HE WAS TO ALSO PARTICIPATE IN ANGER MANAGEMENT.

25 AND THEN HE ALSO HAS THE SPECIAL -- THE

1 CONDITIONS OF THE PROBATION.

2 Q. AND WAS HE IN FULL COMPLIANCE?

3 A. HE -- NOT AT THE TIME OF THE REVOCATION.

4 ACTUALLY, WHEN HE FIRST STARTED ON PROBATION, HE WAS
5 ASSIGNED TO ANOTHER AGENT WHO DEALT WITH MR. ISHMAN FOR
6 UP UNTIL ABOUT, IT LOOKS LIKE ABOUT TILL NOVEMBER, ABOUT
7 THE END OF OCTOBER OF 2006, AT WHICH TIME THE CASE WAS
8 TRANSFERRED TO MYSELF.

9 THE FIRST OFFICE VISIT THAT I HAD WITH MR. ISHMAN
10 WAS THE FIRST TIME THAT I HAD KNOWLEDGE THAT HE HAD HAD
11 CONTACT WITH THE VICTIM. HE WAS ORDERED TO HAVE NO
12 CONTACT WITH MS. GIOVANNI. WHEN HE REPORTED IN TO MY
13 OFFICE ON NOVEMBER THE 29TH OF 2006, MR. ISHMAN
14 EXPRESSED TO ME THAT HE HAS A LAWYER AND IS FILING A
15 MOTION TO APPEAL AND THAT, YOU KNOW, WE -- HE DISCUSSED
16 THAT BECAUSE OF THE NO CONTACT WITH THE VICTIM. HE THEN
17 AT THAT POINT PROCEEDED TO TELL ME THAT THE VICTIM IN
18 THE CASE WAS HIS FIANCÉE AND THAT THEY WOULD LIKE THE NO
19 CONTACT TO BE REMOVED.

20 AT THAT OFFICE VISIT THE VICTIM WAS IN THE CAR,
21 WHICH AT THAT TIME WOULD HAVE BEEN CONSIDERED A
22 VIOLATION BECAUSE HE WAS NOT SUPPOSED TO HAVE HAD
23 CONTACT WITH HER. WE DID SPEAK WITH THE VICTIM WHO AT
24 THAT POINT HAD PROCEEDED TO EXPRESS, YOU KNOW, THAT, YOU
25 KNOW, THEY WOULD LIKE THE CONDITION REMOVED.

1 AFTER THAT, THOUGH, IS WHEN THE INCIDENTS THAT
2 WERE INVOLVED IN THE WARRANT AND THE CITATION CAME
3 ABOUT. SO THE ACTUAL CONDITION OF NO CONTACT WAS NOT
4 REMOVED FROM HIS ORDER. BUT BEFORE THAT DATE I HAD NO
5 PRIOR KNOWLEDGE THAT HE AND MS. GIOVANNI WERE HAVING
6 CONTACT WITH EACH OTHER.

7 Q. NOW, HE ALLEGED THAT NOT ONLY THAT HE SPOKE TO
8 MS. GIOVANNI, BUT MR. ISHMAN AND MS. GIOVANNI SIGNED AN
9 AFFIDAVIT?

10 A. MS. GIOVANNI SIGNED AN AFFIDAVIT ON, ON THAT DATE
11 THAT THEY WERE IN THE OFFICE TO REMOVE THE NO CONTACT,
12 AT WHICH THAT TIME I STAFFED WITH MY SUPERVISOR TO DO A
13 CASE WORK REVIEW IN THE CASE. BEFORE ANY -- EVEN THE
14 WHOLE PROCESS OF GETTING THAT NO CONTACT WAS LIFTED IS
15 WHEN ALL THE OTHER INCIDENTS TRANSPIRED.

16 SO WHEN HE WAS ARRESTED FOR THE VIOLATION OF
17 PROBATION, YOU KNOW, WE HAD NOT -- IN FACT, WHEN THAT
18 ARREST WARRANT WAS ISSUED THE CITATION WAS WITHDRAWN, SO
19 IT HAD NOT OFFICIALLY BEEN REMOVED FROM THE ORDER. AND
20 HE AT THAT POINT, YOU KNOW, DUE TO THE VIOLENT NATURE
21 OF, YOU KNOW, THE PROBABLE CAUSE VIOLATIONS, HE WAS NOT
22 TO HAVE CONTACT WITH MS. GIOVANNI.

23 Q. SO DO YOU THINK THAT YOU MISLED MR. ISHMAN INTO
24 BELIEVING HE COULD HAVE CONTACT WITH MS. GIOVANNI?

25 A. FROM THE OFFICE VISIT WHEN I FIRST FOUND OUT

1 ABOUT IT OR BEFORE THAT OR -- I'M SORRY.

2 PRIOR TO THAT I HAD NO KNOWLEDGE THAT HE HAD BEEN
3 HAVING CONTACT WITH MS. GIOVANNI. DURING THAT OFFICE
4 VISIT SHE DID SIGN AN AFFIDAVIT WHICH I DID STAFF WITH
5 MY SUPERVISOR. WE WERE IN THE PROCESS OF DOING A CASE
6 WORK REVIEW THAT WE WERE GOING TO TAKE BACK BEFORE A
7 JUDGE TO ACTUALLY REMOVE THAT CONTACT. BEFORE THAT,
8 THAT ORDER COULD BE APPROVED AND THE NO CONTACT WOULD
9 HAVE BEEN REMOVED IS WHEN THE OTHER VIOLATIONS WOULD
10 HAVE OCCURRED THAT WE HAD TO ACTUALLY ARREST HIM ON.

11 SO, AND THEN AT THAT POINT, DUE TO THE FACT THAT
12 THE CITATION PROCESS WAS WITHDRAWN, WE HAD ISSUED A
13 WARRANT FOR HIS ARREST DUE TO HIS VIOLATIONS. THE NO
14 CONTACT WOULD HAVE BEEN STILL IN PLACE, SO FROM THAT
15 POINT WE HAD TO ISSUE AN ADDITIONAL CITATION BECAUSE
16 FROM THE -- WHILE HE WAS INCARCERATED HE WAS SENDING
17 MS. GIOVANNI LETTERS.

18 Q. YOU SAID WHILE HE WAS INCARCERATED ---

19 A. WHILE HE WAS INCARCERATED --

20 Q. --- AFTER HE WAS ARRESTED ---

21 A. -- AFTER HE WAS ARRESTED, HE WAS SENDING
22 MS. GIOVANNI LETTERS IN WHICH AT THAT POINT WE DID AN
23 ADDITIONAL CITATION DUE TO HIM HAVING, STILL HAVING
24 CONTACT WITH MS. GIOVANNI.

25 Q. ALSO, ONE OF THE VIOLATIONS WAS FAILURE TO REPORT

1 TO WORK. CAN YOU EXPLAIN WHAT WAS GOING ON IN THAT
2 SITUATION?

3 A. YES, SIR. ON NOVEMBER THE 30TH OF 2006, I
4 ACTUALLY CONTACTED THE COACH HOUSE TO VERIFY EMPLOYMENT.
5 WE DO EMPLOYMENT VERIFICATIONS. I SPOKE WITH SOMEONE AT
6 THE COACH HOUSE WHO STATED THAT ---

7 MR. GRIFFITH: OBJECTION, YOUR HONOR;
8 HEARSAY.

9 THE COURT: I'VE BEEN SORT OF THINKING ABOUT
10 THIS. RULE 1101 SAYS THAT THE RULES OF EVIDENCE ARE
11 INAPPLICABLE TO MATTERS GRANTING OR REVOKING PROBATION,
12 SO I'M GOING TO OVERRULE YOUR OBJECTION, JUST AS I'VE
13 DONE MR. JONES'S.

14 MR. JONES: YOU CAN CONTINUE.
15 I'M SORRY, YOUR HONOR.

16 THE COURT: THAT'S ALL RIGHT.
17 YOU MAY PROCEED.

18 THE WITNESS: OKAY. ON NOVEMBER THE 30TH IN
19 2006 I SPOKE WITH -- I CALLED THE COACH HOUSE. AT THAT
20 TIME I WAS NOTIFIED THAT THE OFFENDER NO LONGER WORKS
21 THERE SINCE THAT MONDAY WHEN HE NEVER SHOWED UP FOR
22 WORK.

23 BY MR. JONES:

24 Q. NOW, MR. ISHMAN ALLEGED THAT HE CONTACTED YOU
25 PREVIOUSLY AND TOLD YOU THAT HE WAS LOOKING FOR A NEW

1 JOB. HOW DO YOU RESPOND TO THAT ALLEGATION?

2 A. AS FAR AS, BECAUSE I ACTUALLY HAD ONLY HAD ONE
3 OFFICIAL OFFICE VISIT WITH HIM -- TO THE POINT THAT
4 PEOPLE, PEOPLE LOOK FOR NEW JOBS ALL THE TIME. I MEAN,
5 AS FAR AS SPECIFICALLY IF HE NOTIFIED ME THAT HE WAS
6 LOOKING FOR A NEW JOB, YOU KNOW, I CANNOT RECALL THE
7 EXACT DETAILS OF THE CASE.

8 BUT THAT WE ARE -- YOU KNOW, WE DO ASK THAT PART
9 OF THEIR CONDITIONS IS IF THEY ARE NO LONGER WORKING AT
10 AN EMPLOYMENT OR OBTAIN NEW EMPLOYMENT, THAT THEY ARE TO
11 NOTIFY US. SO IF HE WAS STILL EMPLOYED WITH ONE JOB, HE
12 MAY HAVE BEEN LOOKING FOR ANOTHER ONE. WHICH HAS NOT A
13 VIOLATION. YOU KNOW, THEY ARE ENTITLED TO LOOK FOR
14 ANOTHER JOB. BUT IF THEY BECOME UNEMPLOYED, WE NEED TO
15 KNOW ABOUT THAT.

16 Q. DID HE NOTIFY YOU OF THAT?

17 A. WHEN I FOUND OUT ABOUT HIM BEING UNEMPLOYED WOULD
18 HAVE BEEN WHEN I CONTACTED THE COACH HOUSE. SO I
19 ACTUALLY WOULDN'T HAVE FOUND OUT FROM HIM UNTIL AFTER
20 THE FACT THAT I'D ALREADY SPOKEN WITH THE COACH HOUSE.

21 Q. OKAY. HOW LONG -- WHAT WAS LIKE THE TIME FRAME
22 FROM WHEN HE WAS FIRED TO WHEN YOU VERIFIED HIS
23 EMPLOYMENT?

24 A. I SPOKE WITH, I CALLED THE COACH HOUSE ON
25 NOVEMBER THE 30TH, AT WHICH POINT I WENT OUT AND DID A

1 HOME VISIT ON DECEMBER THE 1ST AND SPOKE WITH THE
2 OFFENDER, AND WE DISCUSSED THE SITUATION WITH
3 EMPLOYMENT. BUT THAT IT WAS ME CONDUCTING A HOME VISIT
4 THAT I FOUND OUT ABOUT HIM -- OR HIM ACTUALLY
5 COMMUNICATING I GUESS YOU WOULD SAY -- THAT HE WAS
6 UNEMPLOYED. I HAD FOUND OUT PRIOR TO THAT THROUGH THE
7 EMPLOYER.

8 Q. OKAY. BUT YOU DID NOT KNOW HOW LONG HE WAS
9 UNEMPLOYED?

10 A. WELL, ACCORDING TO, ACCORDING TO THE EMPLOYER AT
11 THE COACH HOUSE, THAT HE WAS NO LONGER WORKING THERE AS
12 OF THAT MONDAY. WHICH THIS WOULD HAVE BEEN ON -- I'M
13 SORRY I DON'T HAVE THE SPECIFIC DATE -- THIS WOULD HAVE
14 BEEN NOVEMBER THE 30TH OF 2006 I SPOKE WITH HIM. SO IT
15 WOULD HAVE BEEN ON THAT MONDAY THAT HE NEVER SHOWED UP
16 FOR WORK. I'M NOT SURE WHAT DAY OF THE WEEK THAT WOULD
17 HAVE FALLEN ON. BUT AFTER I FOUND OUT FROM THE COACH
18 HOUSE, THAT'S WHEN I WENT OUT AND DID A HOME VISIT ON
19 DECEMBER THE 1ST.

20 Q. NOW, DO YOU EVER RECALL TELLING MR. ISHMAN NOT TO
21 SHOW UP FOR WORK AND, "HEY, YOU CAN LOOK FOR A NEW JOB"?

22 A. WE WOULDN'T -- I MEAN, I -- WE WOULD NOT TELL
23 SOMEONE NOT TO SHOW UP FOR WORK, I MEAN, BECAUSE THAT IS
24 THEIR EMPLOYMENT AND THEIR MEANS OF SUPPORT. NOW, IF
25 SOMEONE WANTED TO LOOK FOR A NEW JOB, YOU KNOW, THERE'S

1 NOTHING THAT'S GONNA PREVENT THEM FROM THAT, BUT THEY
2 WOULD STILL HAVE, YOU KNOW, THEIR OBLIGATIONS TO THAT
3 EMPLOYER.

4 Q. NOW, IN REGARDS TO MR. ISHMAN ENTERING A HOUSE
5 THAT SELLS ALCOHOL, CAN YOU LIKE GIVE US MORE DETAIL
6 ABOUT THE NATURE OF THE VIOLATION, MAYBE IN PARTICULAR
7 ANY EVIDENCE THAT YOU HAD AGAINST HIM?

8 A. I CAN'T REMEMBER THE -- I CANNOT RECALL THE EXACT
9 DETAILS OF THE CASE OTHER THAN WHAT WAS DOCUMENTED AT
10 THE TIME THAT THE WARRANT WAS ISSUED IN THAT ACCORDING
11 TO THE INCIDENT REPORT FROM THE ANDERSON COUNTY
12 SHERIFF'S OFFICE, INCIDENT REPORT CASE NUMBER
13 2006-46341, THE OFFENDER WAS INTOXICATED ON 12-8 OF '06.
14 THAT SAME INCIDENT REPORT ALSO INDICATED THAT THE
15 OFFENDER WAS AT THE ESTABLISHMENT OF MARK AND JEANNIE'S
16 BAR.

17 Q. AND DID MR. ISHMAN ADMIT LIKE ANY OTHER
18 VIOLATIONS, AGREE TO ANY VIOLATIONS THAT HE COMMITTED?

19 A. DURING THIS TIME OR AT THE TIME OF HIS ARREST?

20 Q. AT THE TIME OF HIS PROBATION REVOCATION.

21 A. I CAN'T REMEMBER ANY EXACT DETAILS OF ANYTHING HE
22 MAY HAVE ADMITTED OR NOT ADMITTED TO.

23 MR. JONES: I BEG THE COURT'S INDULGENCE.

24 THE COURT: CERTAINLY.

25

1 BY MR. JONES:

2 Q. IN REGARDS TO MR. ISHMAN MISSING HIS REPORTING
3 DAY ON DECEMBER 4TH, DID HE CALL LIKE PRIOR TO THAT DATE
4 TO LIKE RESCHEDULE OR DID HE CALL AFTER THE FACT TO
5 RESCHEDULE?

6 A. WHEN HE WAS SUPPOSED TO HAVE REPORTED, AS FAR AS
7 MY NOTES INDICATE WAS THAT HE DID NOT REPORT ON THE 4TH.
8 I ATTEMPTED TO CONTACT HIM ON THE 5TH, WAS NOT ABLE TO
9 REACH HIM ON THE 5TH. I SENT A LETTER ON THE 12TH --
10 EXCUSE ME -- I SENT A LETTER ON DECEMBER THE 7TH
11 INSTRUCTING HIM TO REPORT ON DECEMBER THE 12TH.

12 ON DECEMBER THE 12TH MR. ISHMAN DID CALL AND
13 STATE THAT HE HAD JOB INTERVIEWS ALL DAY. I INSTRUCTED
14 HIM THAT HE WOULD STILL NEED TO REPORT, BUT IF HE COULD
15 NOT MAKE IT BACK INTO TOWN, HE WOULD NEED TO CONTACT
16 AGENT BEFORE 5:00 THAT EVENING AND WOULD NEED TO REPORT
17 AT 8:30 ON DECEMBER THE 13TH. AND ON DECEMBER THE 12TH
18 MR. ISHMAN NEVER CONTACTED THE AGENT.

19 Q. AND I'M SORRY. LET ME BACK UP A MOMENT. REPORT
20 TO WHAT, EXACTLY?

21 A. REPORT TO OUR OFFICE.

22 Q. SO YOUR RECORDS DO NOT INDICATE THAT MR. ISHMAN
23 CONTACTED YOU OR ANYONE ELSE IN YOUR OFFICE TO
24 RESCHEDULE HIS REPORT DATE PRIOR TO THE DAY HE WAS
25 SUPPOSED TO REPORT?

1 A. NO, SIR.

2 Q. NOW, EARLIER YOU MENTIONED THAT MR. ISHMAN WROTE
3 LETTERS TO THE VICTIM.

4 A. YES, SIR.

5 Q. AFTER HE WAS CITED FOR A PROBATION VIOLATION.
6 HOW DID YOU FIND OUT ABOUT THOSE LETTERS?

7 A. THEY WERE BROUGHT TO MY ATTENTION BY MS. GIOVANNI
8 WHO BROUGHT THE LETTERS FROM, THAT MR. ISHMAN HAD SENT
9 FROM THE ANDERSON COUNTY DETENTION CENTER. I REVIEWED
10 OVER THOSE LETTERS AS WELL AS REVIEWED IT WITH MY
11 SUPERVISOR, AS WELL. WE READ THE LETTERS. TO THE BEST
12 I COULD RECALL, SOME OF IT WAS KIND OF VAGUE, SOMEWHAT
13 INTIMIDATING. I DO HAVE A NOTE THAT ---

14 MR. GRIFFITH: JUDGE, I DO HAVE AN
15 OBJECTION.

16 THE COURT: I BEG YOUR PARDON?

17 MR. GRIFFITH: OBJECTION.

18 THE COURT: ON WHAT GROUNDS?

19 MR. GRIFFITH: SHE SAYS AS FAR AS I CAN
20 RECALL, THAT'S VAGUE. SHE DOESN'T RECALL.

21 THE COURT: GO AHEAD. OVERRULED.

22 THE WITNESS: I DO HAVE SOME NOTES THAT
23 JUST -- I DIDN'T HAVE ACTUALLY TYPED OUT THE FULL LENGTH
24 OF THE LETTERS THAT WERE WRITTEN. JUST, JUST SOME
25 THINGS I GUESS THAT WOULD HAVE BEEN BROUGHT TO MY

1 ATTENTION. DURING SOME OF IT THE OFFENDER DID, HE WAS
2 VERY LIKE APOLOGIZING FOR HURTING HER, BUT WAS VAGUE AS
3 INTO HOW HE MAY HAVE HURT MS. GIOVANNI. AND ACTUALLY
4 THOSE LETTERS WOULD HAVE BEEN, YOU KNOW, PRESENTED AT
5 THE DAY OF COURT, AS WELL. BUT A LOT OF -- I MEAN, IT
6 WAS -- HE WAS NEVER -- DIDN'T GIVE ANY SPECIFIC DETAILS
7 IN THE LETTER, BUT, YOU KNOW, MORE OR LESS TALKING ABOUT
8 HURTING HER BUT NOT TO WHAT EXTENT.

9 Q. IN REGARDS TO -- A FOLLOW-UP QUESTION IN REGARDS
10 TO HURTING HER. CAN YOU EXPLAIN WHAT WAS GOING ON WITH
11 THE C.D.V. CASE THAT HE WAS CHARGED WITH?

12 A. THOSE WERE CHARGES THAT -- IF I CAN GO BACK
13 AND -- THERE WAS AN INCIDENT REPORT WITH ANDERSON COUNTY
14 SHERIFF'S OFFICE, INCIDENT REPORT CASE NUMBER
15 2006-46341, AT WHICH TIME IS WHERE WE GOT THE PROBABLE
16 CAUSE THAT THE OFFENDER DID COMMIT THE CRIME OF C.D.V.
17 OF A HIGH AND AGGRAVATED NATURE AND KIDNAPPING OF 12,
18 DECEMBER 8TH, 2006. THAT ALONG WITH AFFIDAVITS THAT
19 WERE GIVEN BY MS. GIOVANNI.

20 Q. NOW, FOR A PROBATION VIOLATION TO OCCUR IN THIS
21 INSTANCE, DOES THE APPLICANT HAVE TO BE FOUND GUILTY OR
22 DO YOU JUST NEED PROBABLE CAUSE?

23 A. WELL, DUE TO THE VIOLENT NATURE OF THE OFFENSE,
24 THERE WOULD BE PROBABLE CAUSE TO BELIEVE THAT THE
25 OFFENDER DID COMMIT THE OFFENSE EVEN IF IT HAD NOT GONE

1 THROUGH COURT YET AND BEEN FOUND CONVICTED OF THAT. ANY
2 TIME THERE'S AN OFFENSE WE'LL DO WHAT WE WOULD CALL
3 PROBABLE CAUSE WARRANTS TO ADDRESS THAT, THAT ISSUE OF
4 THE VIOLENT NATURE.

5 Q. DO YOU RECALL WHAT WAS IN MS. GIOVANNI'S
6 AFFIDAVIT THAT LED YOU TO BELIEVE THAT THIS WAS A
7 VIOLENT CRIME?

8 A. I KNOW ONE PART OF IT WAS THE ISSUE WITH THE GUN,
9 AND THERE WAS ALSO A REPORT THAT HE ASSAULTED HER ON 12
10 THE 8 -- DECEMBER THE 8TH -- AND THAT WAS WHAT WAS
11 REPORTED TO ANDERSON COUNTY SHERIFF'S OFFICE.

12 Q. DO YOU KNOW WHEN IT WAS REPORTED?

13 A. I DO NOT. I'M SORRY.

14 Q. WHAT ABOUT THE ISSUE IN REGARD TO FAILING TO PAY
15 FEES? CAN YOU EXPLAIN WHAT WAS GOING ON WITH THAT?

16 A. AS FAR AS THE FINANCIAL OBLIGATIONS ARE
17 CONCERNED, WHEN SOMEONE IS PLACED ON, UNDER OUR
18 SUPERVISION, THEY ARE GIVEN A GUIDELINE OF WHAT THEIR
19 MINIMUM MONTHLY PAYMENTS ARE THAT THEY ARE REQUIRED TO
20 PAY, AND WE EXPLAIN WHAT PAYMENTS MAY NEED TO BE MADE,
21 WHETHER THAT'S THROUGH SUPERVISION FEES, COURT COSTS, OR
22 RESTITUTION, OR WHATEVER THE CASE MAY -- WHATEVER THERE
23 MAY BE FINANCIAL OBLIGATION WISE ORDERED TO PAY ON THAT
24 CASE. SO HE WOULD HAVE BEEN AWARE OF WHAT NEEDED TO BE
25 PAID AND WOULD HAVE BEEN AWARE OF WHAT THE MINIMUM

1 FINANCIAL OBLIGATION, THE MINIMAL FINANCIAL OBLIGATION
2 WAS. IN FACT ---

3 Q. AND MR. ISHMAN CLAIMED THAT THERE WERE SOME
4 PICTURES OF A FIREARM TAKEN AND THAT THOSE PICTURES WERE
5 FABRICATED. DO YOU RECALL HAVING ANY EVIDENCE IN
6 REGARDS TO LIKE PICTURES TAKEN THAT SHOWED THE FIREARM
7 IN SOMEONE'S HOME?

8 A. THE INFORMATION THAT WE RECEIVED WAS A PICTURE OF
9 A WEBCAM, WHICH, ALONG WITH THE AFFIDAVIT OF
10 MS. GIOVANNI. AND IN REGARDS TO THAT FIREARM IT WAS
11 SUPPOSED TO HAVE BEEN IN THE OFFENDER'S RESIDENCE WHICH
12 HE WAS STAYING WITH HIS SISTER.

13 I ACTUALLY SPOKE WITH HIS SISTER ON JANUARY THE
14 8TH OF 2007. SHE HAD CALLED THE OFFICE IN REGARDS TO
15 MR. ISHMAN'S VIOLATIONS IN THE CASE. SHE HAD SEEN A
16 PICTURE OF THE FIREARM FROM THE WEBCAM PHOTO. SHE
17 STATED THAT IF THE OFFENDER HAD A GUN, HE GOT RID OF IT.
18 SHE STATED THAT THE PICTURE OF THE GUN, THE PICTURE OF
19 THE GUN WAS TAKEN IN HER HOUSE BECAUSE SHE RECOGNIZED
20 THE PICTURE IN THE BACKGROUND.

21 SHE DID REQUEST TO STAY OUT OF THE CASE AT THAT
22 TIME. BUT SHE SAID THAT THE OFFENDER DID NOT HAVE A
23 STABLE MIND AND SHE BELIEVED THAT THE OFFENDER NEEDED TO
24 BE EXAMINED FOR MENTAL ILLNESS. SHE STATED THE OFFENDER
25 IS NOT A DANGER TO HIMSELF BUT HE IS ALWAYS A DANGER TO

1 OTHERS. SHE SAID THAT WHEN THE OFFENDER WAS A JUVENILE,
2 HE WAS EVALUATED AND WAS DETERMINED TO HAVE A MILD CASE
3 OF SCHIZOPHRENIA. SHE STATED THAT HE WAS NOT SUITABLE
4 TO BE LET OUT AROUND OTHER PEOPLE. SHE HAD ALSO
5 EXPRESSED THAT IF HE WAS RELEASED, THAT HE WAS NOT
6 ALLOWED TO RESIDE AT HER RESIDENCE.

7 MR. JONES: YOUR HONOR, CAN THE STATE ADMIT,
8 IF MS. METCALF GIVES US HER PERMISSION, MAKE HER NOTES
9 INTO EVIDENCE AS STATE EXHIBIT NUMBER ONE?

10 MR. GRIFFITH: YOUR HONOR, MY POSITION IS
11 THAT, ONE, I DIDN'T OBJECT TO THAT HEARSAY BECAUSE YOU
12 TOLD ME THAT YOU WEREN'T GONNA ACCEPT THAT OBJECTION.

13 THE COURT: I HAVEN'T TOLD YOU ANYTHING. I
14 JUST TOLD YOU WHAT THE RULE WAS.

15 MR. GRIFFITH: WELL, I OBJECT AND MOVE TO
16 STRIKE THAT TESTIMONY REGARDING ALL THAT HE WAS TOLD,
17 ONE, ON RELEVANCE; TWO, IT CAN'T BE RELIED ON BY THE
18 STATE AS TO WHAT OCCURRED IN THE HEARING BECAUSE I
19 HAVEN'T BEEN AT THE HEARING.

20 THE COURT: I THINK YOUR RELEVANCY QUESTION
21 IS APPROPRIATE BECAUSE THERE'S NO FINDING IN THE RECORD
22 THAT I'VE SEEN AS TO ANY SORT OF ADMISSIBILITY.

23 MR. GRIFFITH: WELL, NONE OF THE INFORMATION
24 FROM THE POINT WHERE SHE SAYS SHE SAW WHAT WAS IN THE
25 PHOTO FROM THAT POINT TO I GUESS THE TIME WE GOT THIS

1 OBJECTION, NOTHING SHE SAID WAS RELEVANT, SHE WASN'T IN
2 FRONT OF THE JUDGE, HE COULDN'T CONSIDER IT, SO IT WAS
3 NOTHING THAT WAS NEW.

4 THE COURT: I UNDERSTAND. IT'S NOT
5 DISPOSITIVE. ALL RIGHT. OVERRULED. DENIED. UNLESS,
6 NOW, IF YOU DO FIND IT IN THE RECORD. I'VE GONE THROUGH
7 THE TRANSCRIPT AND IT LOOKS LIKE THE ONLY THING THAT WAS
8 CONSIDERED REALLY WAS THE WEAPON. HER TESTIMONY OF THE
9 WEAPON IS IN, BUT THE OTHER I'M NOT SURE ABOUT. ALL
10 RIGHT. WELL, HER TESTIMONY IS IN SO YOU CAN RELY ON
11 THAT.

12 MR. JONES: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 BY MR. JONES:

15 Q. NOW, MR. ISHMAN RELAYED THAT HE RECEIVED
16 PROSECUTORIAL MISCONDUCT. HOW DO YOU RESPOND TO THAT
17 ALLEGATION?

18 A. I DON'T KNOW HOW TO RESPOND. I'M SORRY. I
19 DON'T...

20 Q. DID YOU DO EVERYTHING BY THE BOOKS?

21 A. I WOULD HAVE DONE MY JOB AND THE OBLIGATIONS THAT
22 I HAVE AS FAR AS PRESENTING, YOU KNOW, A VIOLATION WHEN
23 IT OCCURS. I MEAN, IF THERE'S PROBABLE CAUSE THAT
24 SOMEONE COMMITTED AN OFFENSE, IF IT'S A VIOLENT OFFENSE,
25 ALL THE CASES, THE OFFENSES AND THE VIOLATIONS IN THIS

1 MATTER WOULD HAVE BEEN STAFFED. THE EVIDENCE THAT WE
2 HAD WOULD HAVE BEEN PRESENTED ON THE DAY OF COURT. SO,
3 I MEAN, I WOULD HAVE DONE EVERYTHING THAT I WAS ENTITLED
4 TO DO AS FAR AS MY JOB WAS CONCERNED.

5 Q. AND ONE LAST QUESTION. THIS IS MORE THAN ONE
6 VIOLATION, CORRECT?

7 A. YES, SIR.

8 MR. JONES: NO FURTHER QUESTIONS.

9 THE COURT: CROSS-EXAMINE?

10 CROSS-EXAMINATION BY MR. GRIFFITH:

11 Q. MS. METCALF, YOU HADN'T BEEN A PROBATION OFFICER
12 TOO LONG WHEN THIS CASE CAME TO YOU, HAD YOU?

13 A. I CAME TO THE DEPARTMENT, I GUESS I'D HAVE BEEN
14 THERE FOR OVER A YEAR. ACTUALLY, ABOUT A YEAR AND A
15 HALF WHEN I GOT HIS CASE.

16 Q. ALL RIGHT. DO YOU HAVE A COPY OF THE AFFIDAVIT
17 THAT MS. GIOVANNI SIGNED SAYING SHE WANTED TO HAVE
18 CONTACT WITH MR. ISHMAN?

19 A. WE HAVE AN AFFIDAVIT ON NOVEMBER THE 29TH OF 2006
20 FROM MS. KENAN GIOVANNI THAT STATES THAT: I AM THE
21 VICTIM IN THE POINTING AND PRESENTING CASE AGAINST
22 BRADLEY WILLIAM ISHMAN. I WISH TO HAVE THE NO CONTACT
23 WITH VICTIM CLAUSE REMOVED FROM THE CONDITION OF BRADLEY
24 ISHMAN'S PROBATION. AND THIS WOULD HAVE BEEN PRIOR TO
25 HIS ACTUAL VIOLATION.

1 Q. ALL RIGHT. THAT WAS DONE IN PERSON IN YOUR
2 OFFICE IN FRONT OF YOU AND THE SUPERVISOR; IS THAT
3 CORRECT?

4 A. THIS WOULD HAVE BEEN DONE IN MY OFFICE. BUT AT
5 THE TIME THAT IT WAS DONE MS. GIOVANNI WAS SITTING IN
6 THE CAR IN THE PARKING LOT WHILE MR. ISHMAN WAS
7 REPORTING, AND UP UNTIL THAT POINT I HAD NO KNOWLEDGE
8 THAT THEY WERE HAVING CONTACT WITH EACH OTHER, AND THEY
9 SHOULDN'T HAVE BEEN CONSIDERING THAT THERE WAS A COURT
10 ORDER TO HAVE NO CONTACT. SO THEY WERE TOGETHER --
11 REALLY AT THAT POINT IN TIME REALLY WOULD BE CONSIDERED
12 A VIOLATION, BUT SINCE SHE AGREED TO SIGN AN AFFIDAVIT,
13 WE WERE GONNA TAKE THAT INTO CONSIDERATION TO PRESENT
14 BEFORE THE COURT. BUT BEFORE IT COULD EVER BE, THAT
15 CAUSE BE REMOVED, THE VIOLATIONS OCCURRED.

16 Q. I KNOW THAT'S WHAT YOU WANT TO TELL US. BUT MY
17 QUESTION IS: WERE YOU THERE WITH YOUR SUPERVISOR WHEN
18 SHE SIGNED THE AFFIDAVIT?

19 A. I WAS THERE.

20 Q. SHE DID THAT IN YOUR PRESENCE?

21 A. IN MY PRESENCE.

22 Q. ALL RIGHT. AND I ASSUME THAT Y'ALL TOOK
23 PRECAUTIONS THAT SHE DIDN'T NEED TO WORRY? HE DIDN'T
24 THREATEN TO KILL HER OR SOMETHING IF SHE DIDN'T SIGN
25 SOMETHING SAYING HE COULD SEE HER; IS THAT RIGHT?

1 A. WE, YOU KNOW, WENT THROUGH EVERYTHING AS FAR AS
2 WHETHER THE STATEMENTS THAT SHE WAS GIVING WAS THE
3 TRUTH. IN FACT, THE AFFIDAVIT STATES (READING):

4 I, THE UNDERSIGNED, KENAN
5 GIOVANNI, HEREBY STATE, UNDER THE PAINS
6 AND PENALTIES OF PERJURY THAT THE
7 FOLLOWING STATEMENTS ARE TRUE AND CORRECT
8 TO THE BEST OF MY KNOWLEDGE AND BEHALF
9 [SIC].

10 SO WAS MR. ISHMAN THERE WHEN SHE SIGNED IT?
11 YES, HE WAS, BECAUSE SHE WAS IN THE CAR THE DAY THAT HE
12 WAS REPORTING.

13 Q. ALL RIGHT. BUT AS THE PROBATION AGENT, AND
14 HAVING YOUR SUPERVISOR THERE, Y'ALL WERE TRYING TO MAKE
15 SURE THAT SHE DID THIS VOLUNTARILY AND KNEW THAT, YOU
16 KNOW, SHE WAS ASKING THAT BE CHANGED? IS THAT RIGHT?

17 A. WHEN WE WERE ASKING ---

18 **THE COURT:** LET'S DO THIS: ANSWER THE
19 QUESTION AND THEN YOU CAN EXPLAIN YOUR ANSWER.

20 **THE WITNESS:** TO THE BEST OF OUR KNOWLEDGE,
21 I MEAN, WE -- I WASN'T ---

22 **THE COURT:** JUST A MOMENT. STATE THE
23 QUESTION ONE MORE TIME. DO IT SIMPLY.

24 BY MR. GRIFFITH:

25 Q. BEFORE YOU LET HER SIGN THE AFFIDAVIT, DID YOU

1 ALL TALK TO HER AT ALL ABOUT WHETHER IT WAS FREELY AND
2 VOLUNTARILY BEING DONE BY HER?

3 THE COURT: ANSWER THE QUESTION AND THEN YOU
4 CAN EXPLAIN YOUR ANSWER.

5 THE WITNESS: I DON'T KNOW THAT WE WOULD
6 HAVE USED THOSE EXACT WORDS. WE WOULD HAVE ASKED IF THE
7 STATEMENT SHE WAS GIVING WAS THE TRUTH AND IF THAT IS
8 WHAT SHE WISHED TO DO, IF SHE WAS WILLING TO SIGN THE
9 AFFIDAVIT.

10 BY MR. GRIFFITH:

11 Q. ALL RIGHT. WAS THERE ANY INDICATION TO YOU ---

12 THE COURT: ALL RIGHT. NOW YOU CAN EXPLAIN
13 YOUR ANSWER.

14 THE WITNESS: I'M SORRY?

15 THE COURT: I SAID YOU CAN EXPLAIN YOUR
16 ANSWER IF YOU THINK IT NEEDS IT.

17 THE WITNESS: I MEAN, SHE WOULD HAVE BEEN --
18 SHE WAS PRESENT THAT DAY. I WITNESSED HER SIGNING THE
19 AFFIDAVIT. MR. ISHMAN WAS IN THE ROOM WITH HER WHEN SHE
20 SIGNED THE AFFIDAVIT. SO SHE WAS -- HE HAD ACTUALLY
21 BEEN WITH HER PRIOR TO HER COMING UP TO SIGN THE
22 AFFIDAVIT.

23 NOW, WE WENT OVER WITH HER, BY SIGNING THE
24 AFFIDAVIT, IT WOULD BE REMOVING THE NO CONTACT. IS THAT
25 WHAT SHE WISHED TO DO? AND THAT'S WHAT SHE EXPRESSED

1 THAT SHE WISHED TO DO; THEREFORE, SIGNING THE AFFIDAVIT.
2 BY MR. GRIFFITH:

3 Q. DID YOU MAKE ANY DETERMINATION ABOUT WHETHER OR
4 NOT SHE WAS DOING THAT FREELY AND VOLUNTARILY BECAUSE
5 SHE WANTED TO?

6 A. WE ASKED HER IF SHE WANTED TO, SHE SAID SHE
7 WANTED TO, SO I ASSUME THAT WOULD HAVE BEEN FREELY AND
8 VOLUNTARILY.

9 Q. ALL RIGHT. IF YOU THOUGHT SHE WAS BEING COERCED
10 TO DO IT, WOULD YOU HAVE LET HER SIGN IT AT YOUR OFFICE?

11 A. IF I THOUGHT SHE WAS BEING COERCED, THEN WE WOULD
12 HAVE TAKE -- YOU KNOW, I DON'T KNOW WHAT I WOULD HAVE
13 DONE. I MEAN, AT THAT POINT IN TIME THIS WAS THE FIRST
14 TIME THAT I HAD, MY FIRST OFFICE VISIT WITH THE
15 OFFENDER, NOT KNOWING ANY HISTORY OF ANY CASE OTHER THAN
16 THERE WAS THE NO CONTACT ORDER ON THERE.

17 SHE WAS ALREADY PRESENT WITH HIM, WHICH WOULD
18 HAVE BEEN A VIOLATION BECAUSE THEY SHOULDN'T HAVE BEEN
19 TOGETHER ANYWAYS. BUT SHE DID COME UP AND ADDRESS, YOU
20 KNOW, TO ME THAT THIS WAS SOMETHING THAT SHE WANTED TO
21 DO. SO WE HAVE, YOU KNOW, WE TOOK THAT AS WHAT IT IS.
22 I MEAN, IT'S ---

23 Q. ALL RIGHT. HAVING MET HER AND SEEN HER, NOTICING
24 HER DEMEANOR, YOU DID NOT THINK SHE WAS BEING COERCED TO
25 SIGN THAT, DID YOU?

1 A. I GUESS NOT AT THE TIME. I MEAN, I -- WE WENT
2 OVER WITH HER WHAT SHE WAS DOING BY SIGNING THAT.

3 Q. YOU SAID THAT THE DATE OF THAT MEETING WAS
4 NOVEMBER 26 '06; IS THAT RIGHT?

5 A. NOVEMBER THE 29TH OF 2006.

6 Q. DID MS. KENAN [SIC] TELL YOU THAT THE LETTERS
7 THAT MR. ISHMAN SENT HER FROM THE JAIL AFTER HE WAS
8 ARRESTED WERE IN REPLY TO HER LETTERS TO HIM?

9 A. NO, SIR.

10 Q. DO YOU HAVE A COPY OF THOSE LETTERS?

11 A. NO, SIR.

12 Q. OKAY.

13 A. THAT WE WOULD HAVE HAD A COPY AT THE TIME WE WERE
14 IN COURT.

15 Q. WHERE ARE THEY NOW? WOULD THEY GET SHREDDED
16 AFTER COURT?

17 A. WHEN THE CASE IS CLOSED, THE FILES ARE PURGED IN
18 WHICH SOME INFORMATION IS DISCARDED, SOME INFORMATION IS
19 KEPT AS FAR AS IN REGARDS TO WARRANTS, CITATIONS, LEGAL
20 PROCESS. I WAS NOT THE ONE IN CHARGE OF DESTROYING THAT
21 INFORMATION.

22 Q. ALL RIGHT. THAT RAISES AN INTERESTING QUESTION.
23 ARE ANY OF THE DOCUMENTS THAT WERE SHOWN TO JUDGE MADDOX
24 AT THAT HEARING STILL IN EXISTENCE?

25 A. THE INCIDENT REPORTS FROM THE ANDERSON COUNTY

1 SHERIFF'S OFFICE.

2 Q. IS THAT IT?

3 A. AS FAR AS ACTUAL AFFIDAVITS, PHOTOS, AND THINGS
4 OF THAT NATURE, I GUESS THEY WOULD HAVE BEEN DESTROYED
5 WHEN THE CASE WAS CLOSED.

6 Q. AND NONE OF THOSE, NONE OF THE THINGS THAT YOU
7 SHOWED THE JUDGE WERE ACTUALLY MARKED AS EXHIBITS AND
8 PUT INTO THE RECORD OF THE HEARING, WERE THEY?

9 A. WE DON'T ACTUALLY USE THE TERMINOLOGY "EXHIBITS."
10 WE ARE JUST PRESENTING CASES ON BEHALF OF THE
11 DEPARTMENT. BUT ANY INFORMATION THAT WE HAVE THAT'S
12 RELEVANT TO THE CASE WOULD BE PRESENTED TO THE COURT.

13 Q. BUT THEY WEREN'T GIVEN TO THE COURT REPORTER AND
14 MARKED AND KEPT BY THE COURT?

15 A. TO MY KNOWLEDGE I DON'T KNOW IF COURT REPORTERS
16 MARK EXHIBITS DURING PROBATION VIOLATION HEARINGS. I
17 MEAN, I HAND UP INCIDENT REPORTS AND WHATNOT DURING
18 VIOLATION HEARINGS ON NUMEROUS OCCASIONS, AND I DON'T
19 KNOW IF THEY ARE ACTUALLY MARKED AS EXHIBITS OR NOT.

20 THE COURT: LET'S LET THE RECORD REFLECT, AS
21 IT DOES, THE TRANSCRIPT OF RECORD DATED JANUARY THE
22 19TH, 2007, ON PAGE 2 STATES, "NO EXHIBITS WERE
23 PRESENTED DURING THE HEARING."

24 MR. GRIFFITH: I WAS TRYING TO VERIFY IF
25 THAT WAS CORRECT.

1 THE COURT: WELL, I RELY ON THE TRANSCRIPT.

2 MR. GRIFFITH: THANK YOU, YOUR HONOR.

3 BY MR. GRIFFITH:

4 Q. WHAT WAS THE DATE THAT YOU ACTUALLY ISSUED THE
5 CITATION FOR THE VIOLATION OF PROBATIONS?

6 A. THE ACTUAL ADDITIONAL CITATION OR THE WARRANT?

7 Q. THE WARRANT..

8 A. THE ORIGINAL WARRANT?

9 Q. RIGHT.

10 A. THE ARREST WARRANT WAS ISSUED ON DECEMBER THE
11 12TH OF 2006.

12 Q. OKAY. SO THAT'S LESS THAN TWO WEEKS AFTER
13 MR. ISHMAN HAD LOST THE JOB THAT HE HAD BECAUSE THAT WAS
14 THE END OF OCTOBER, RIGHT? I'M SORRY -- WAS IT THE END
15 OF OCTOBER OR NOVEMBER?

16 A. IT WOULD HAVE BEEN --

17 Q. I MIGHT BE WRONG.

18 A. -- NOVEMBER 30TH IS WHEN ACTUALLY THAT WE WERE --
19 I SPOKE WITH HIS EMPLOYER.

20 Q. OKAY. ALL RIGHT. SO IT WAS -- ALL RIGHT. BUT
21 HE ALLEGEDLY WAS FIRED ON NOVEMBER 27TH, 2006. ABOUT
22 TWO WEEKS FROM THAT DATE YOU VIOLATED HIM FOR THAT; IS
23 THAT RIGHT?

24 A. THAT'S WHEN THE WARRANT WAS ISSUED, ON DECEMBER
25 THE 12TH.

1 Q. IS THAT NORMAL TO VIOLATE PEOPLE FOR BEING
2 UNEMPLOYED FOR LESS THAN TWO WEEKS? YOU VIOLATE THEM
3 JUST LIKE THAT (SNAPS FINGERS)?

4 A. WELL, THERE WERE -- THAT WASN'T THE ONLY
5 VIOLATION. WHEN THERE'S A VIOLATION, WE INCLUDE ALL THE
6 VIOLATIONS THAT EXIST, NOT JUST ONE VIOLATION. I MEAN,
7 IF I HAD TO DO A SEPARATE WARRANT OR CITATION FOR EVERY
8 VIOLATION THAT EXISTS, I MEAN, I WOULD HAVE HAD ONE,
9 TWO, THREE, FOUR, FIVE, SIX, LIKE SEVEN DIFFERENT
10 CITATIONS JUST ON THIS ONE VIOLATION ALONE.

11 Q. LET'S SAY THAT WAS THE ONLY VIOLATION. WOULD YOU
12 HAVE FILED TO HAVE HIM VIOLATED BY THE COURT IF THAT WAS
13 THE ONLY THING HE'D DONE WRONG?

14 A. THE EMPLOYMENT?

15 Q. RIGHT.

16 A. WE WOULD HAVE ADDRESSED THAT IN OTHER MEANS.

17 Q. OKAY. LIKE WHAT?

18 A. THERE'S OTHER -- WE COULD HAVE GIVEN A VERBAL
19 REPRIMAND, WRITTEN REPRIMAND, WE COULD HAVE GIVEN HIM A
20 CITATION, HAD AN ADMINISTRATIVE HEARING. IT WOULD HAVE
21 BEEN OTHER -- YOU KNOW, ONE VIOLATION ALONE, DEPENDING
22 ON WHAT THE VIOLATION IS, SOMETHING SUCH AS EMPLOYMENT
23 WE MAY GIVE THEM A CERTAIN TIME FRAME TO OBTAIN
24 EMPLOYMENT. OR, I MEAN, THERE'S DIFFERENT -- IT'S A
25 CASE-BY-CASE, YOU KNOW, SCENARIO. YOU CAN'T JUST SAY

1 WHAT YOU'RE GONNA DO FOR ONE CASE AND DO THAT FOR ALL
2 CASES.

3 Q. WHAT I'M TRYING TO SAY, THOUGH, IS, GETTING FIRED
4 FROM YOUR EMPLOYMENT ISN'T ALWAYS BROUGHT UP TO COURT AS
5 A VIOLATION, WILLFUL VIOLATION FOR FAILURE TO BE
6 EMPLOYED?

7 A. IF THERE ARE OTHER VIOLATIONS, THEN YES, SIR, IT
8 IS.

9 Q. IT DOESN'T SEEM LIKE THE ONLY VIOLATION.
10 NORMALLY YOU WOULDN'T GO TO COURT ON THAT; IS THAT
11 RIGHT?

12 A. IF I CAME UP WITH COURT WITH THEIR ONLY VIOLATION
13 IS THAT THEY WERE FIRED FROM THEIR EMPLOYMENT, NO, SIR,
14 WE WOULD NOT DO A WARRANT BASED ON THAT VIOLATION ALONE.
15 WE WOULD HANDLE THAT THROUGH OTHER MEANS.

16 Q. ALL RIGHT. AND THAT'S PARTICULARLY TRUE WHEN
17 IT'S LESS THAN TWO WEEKS THAT THEY HAD BEEN UNEMPLOYED;
18 IS THAT RIGHT? DOESN'T THE TIME FRAME MATTER?

19 A. AS FAR AS WHEN THEY BECOME UNEMPLOYED?

20 Q. HOW LONG THEY'VE BEEN UNEMPLOYED, ISN'T THAT
21 RELEVANT?

22 A. WELL, IT'S RELEVANT AS TO WHETHER OR NOT THEY
23 NOTIFIED US BECAUSE THEY ARE REQUIRED TO NOTIFY US OF
24 THEIR EMPLOYMENT IF THEY EVER BECOME UNEMPLOYED AND
25 THEN, YOU KNOW, WE WOULD GIVE THEM AN OPPORTUNITY TO

1 OBTAIN EMPLOYMENT.

2 Q. OKAY. ALL RIGHT. WAS HE GIVEN ANY WARNING,
3 REPRIMAND, ANYTHING ABOUT HIS EMPLOYMENT BETWEEN
4 NOVEMBER 27TH '06 AND THE WARRANT ON 12-12-06?

5 A. WE ACTUALLY DISCUSSED THE EMPLOYMENT STATUS WHEN
6 I WENT OUT TO CONDUCT A HOME VISIT ON DECEMBER THE 1ST,
7 AT WHICH TIME HE WAS TRYING TO GET ANOTHER JOB.

8 Q. AND YOU NORMALLY -- DON'T YOU FIND OUT ABOUT A
9 LOT OF THIS INFORMATION AT THE MONTHLY VISITS THAT YOU
10 HAVE WITH PROBATIONERS? I MEAN, ISN'T THAT WHEN THEY
11 TELL YOU ABOUT EVERYTHING THAT'S GONE ON THE PRIOR
12 MONTH? A MOVE, WHATEVER?

13 A. NO, SIR. WE ASK THAT THEY CONTACT US IMMEDIATELY
14 UPON ANY TYPE OF CHANGE, NOT TO WAIT TILL THE NEXT MONTH
15 WHEN THEY COME IN TO REPORT. IF THEY LOSE THEIR JOB, WE
16 NEED TO KNOW ABOUT THAT. IF THEY'RE GOING TO CHANGE
17 THEIR RESIDENCE, WE NEED TO KNOW THAT. ANYTHING THAT
18 THEY -- ANYTHING THAT'S CHANGING AS FAR AS FROM ONE
19 OFFICE VISIT TO THE NEXT, WE NEED TO BE NOTIFIED OF
20 BEFORE THEY COME BACK FOR ANOTHER OFFICE VISIT.

21 Q. DO YOU SPECIFICALLY REMEMBER TELLING MR. ISHMAN
22 THAT?

23 A. THAT WOULD HAVE BEEN REVIEWED WHEN HIS CONDITIONS
24 OF PROBATION WERE REVIEWED.

25 Q. ALL RIGHT. SO YOU THINK YOU DID IT, BUT YOU

1 DON'T SPECIFICALLY REMEMBER DOING IT; IS THAT CORRECT?

2 A. WELL, I KNOW THAT THE CONDITIONS OF HIS PROBATION
3 WERE GIVEN TO HIM, WHICH HE SIGNED AND AGREED TO, THAT
4 HE WAS GOING TO NOTIFY HIS AGENT IF HE EVER BECAME
5 UNEMPLOYED AND THAT HE WOULD ALSO MAINTAIN EMPLOYMENT.

6 Q. ON THAT PARTICULAR DAY? HE WOULD NOTIFY YOU ON
7 THE DAY THAT HE'S UNEMPLOYED THAT HE'S UNEMPLOYED? IS
8 THAT WHAT IT SAYS?

9 A. WOULD YOU LIKE ME TO READ THE CONDITIONS FOR YOU?

10 Q. READ THAT ONE ABOUT EMPLOYMENT.

11 A. OKAY (READING):

12 I SHALL WORK DILIGENTLY AT A
13 LAWFUL OCCUPATION. FURTHER, I SHOULD
14 NOTIFY MY AGENT IF I BECOME UNEMPLOYED.
15 ALSO, THAT'S CONDITION, THAT'S CONDITION
16 NUMBER FIVE.

17 CONDITION TWO: I SHALL NOT
18 CHANGE MY RESIDENCE OR EMPLOYMENT WITHOUT
19 THE CONSENT OF MY AGENT. FURTHER, I
20 SHALL NOTIFY MY AGENT -- OR I SHALL ALLOW
21 MY AGENT TO VISIT ME AT MY HOME, PLACE OF
22 EMPLOYMENT OR ELSEWHERE AT ANY TIME.

23 Q. ALL RIGHT. YOU READ THAT TO MEAN THE DAY THEY
24 GET FIRED TO COME AND TELL YOU. BUT IT'S REASONABLE TO
25 READ IT THAT THEY TELL YOU AT THE NEXT REPORT. THAT'S

1 WHEN THINGS ARE REPORTED, AT THE REPORTING VISIT, RIGHT?

2 A. NO (READING): I SHALL NOT CHANGE MY RESIDENCE OR
3 EMPLOYMENT WITHOUT THE CONSENT OF THE AGENT.

4 Q. WELL, HE CAN'T GET YOUR PERMISSION TO GET FIRED,
5 CAN HE? IS HE SUPPOSED TO CALL YOU UP AND SAY, "CAN I
6 GET FIRED?"

7 A. WELL, HE'S NOT SUPPOSED TO NOTIFY -- I MEAN, NOT
8 JUST TO CALL UP AND SAY, "HEY, I'M GOING TO GET FIRED
9 NEXT WEEK," BUT WE EXPECT HIM TO CALL AND LET US KNOW
10 THAT HE HAS BEEN FIRED.

11 Q. LET'S MOVE ON TO ANOTHER ONE. HOW ABOUT THE
12 INCIDENT REPORT FROM THE ANDERSON COUNTY SHERIFF'S
13 OFFICE? Y'ALL WERE RELYING ON THAT ALLEGEDLY TO PROVE
14 THAT HE WAS INTOXICATED ON DECEMBER 8, 2006. WHAT DATE
15 WAS THAT REPORT DATED?

16 A. I DON'T HAVE THE REPORT IN FRONT OF ME.

17 Q. WHEN WAS THE INVESTIGATION DONE?

18 A. I DON'T HAVE THAT INFORMATION IN FRONT OF ME.

19 Q. HOW DID THAT AMOUNT TO PROBABLE CAUSE THAT HE WAS
20 INTOXICATED ON THAT DAY? WAS THAT JUST A REPORT,
21 SOMEBODY SAID -- MAYBE THIS JUST SAYS THIS WAS REPORTED
22 BY SOMEBODY THAT HE WAS DRUNK THAT DAY.

23 A. BECAUSE WE HAVE GOOD FAITH TO BELIEVE THAT AN
24 INCIDENT REPORT THAT'S PROVIDED THROUGH A LAW
25 ENFORCEMENT AGENCY IS GOING TO BE TRUE TO THE BEST OF

1 THEIR KNOWLEDGE AND THE INFORMATION THAT THEY'VE
2 OBTAINED. I MEAN, SO IF WE HAVE RECEIVED INFORMATION
3 THAT HE WAS INTOXICATED, WHICH PART OF THE CONDITIONS OF
4 PROBATION WHICH IS THAT THEY CAN'T DRINK IN EXCESS, THEN
5 WE USE THAT INFORMATION AS THAT CONDITION WAS VIOLATED.

6 Q. ALL RIGHT. BUT YOU DON'T REMEMBER WHAT THIS
7 REPORT SAYS ABOUT HIS INTOXICATION OR CIRCUMSTANCES OR
8 WHO SAID WHAT, DO YOU?

9 A. I DON'T HAVE THE INCIDENT REPORT IN FRONT OF ME,
10 SO I ---

11 Q. HE WAS NOT ARRESTED ON DECEMBER 12TH, 2006 --
12 DECEMBER 8TH, 2006, BY LAW ENFORCEMENT, WAS HE?

13 A. I'M NOT SURE OF THE DATE OF ARREST. ACCORDING TO
14 THE INCIDENT REPORT, THE INCIDENTS HAPPENED ON DECEMBER
15 THE 8TH OF 2006. BUT WITHOUT HAVING FURTHER INFORMATION
16 IN FRONT OF ME, I'M, I'M GOING ON WHAT, THE INCIDENTS
17 THAT OCCURRED.

18 Q. AND YOU READ INCIDENT REPORTS WHERE THEY DESCRIBE
19 THIS PERSON SAID THAT SOMEBODY DID THIS AND SOMEBODY DID
20 THAT AND SO ON. AND WE DON'T KNOW IF THAT'S THE KIND OF
21 REPORT IT IS OR WHETHER SOME OFFICER SAID HE PERSONALLY
22 SAW IT OR ANYTHING ELSE, DO YOU?

23 A. WE HAVE TO GO ON THE INFORMATION THAT WE RECEIVE,
24 AND DUE TO THE VIOLENT NATURE, PROCEED WITH THE PROBABLE
25 CAUSE.

1 Q. ALL RIGHT. SO PROBABLE CAUSE IN YOUR OPINION IS
2 IF THERE'S A POLICE REPORT INDICATING ANYTHING BAD ABOUT
3 YOU, THAT'S PROBABLE CAUSE THAT YOU ACTUALLY DID THOSE
4 THINGS?

5 A. WELL, PROBABLE CAUSE IF THERE'S A VIOLENT OFFENSE
6 THAT'S BEING COMMITTED. I MEAN, WE HAVE TO HAVE AN
7 OBLIGATION, YOU KNOW, FOR THE SAFETY OF THE COMMUNITY IF
8 THERE IS A VIOLENT OFFENSE THAT'S BEING COMMITTED. NOW,
9 WHETHER OR NOT, YOU KNOW, THAT PERSON GETS CONVICTED OF
10 THAT, YOU KNOW, THAT AT THE POINT THAT THE INCIDENT
11 HAPPENED, THAT'S WHAT, YOU KNOW, WE HAVE TO GO BY IS THE
12 PROBABLE CAUSE THAT THAT INCIDENT OCCURRED.

13 Q. BUT YOU ALSO USE THE SAME INCIDENT REPORT THAT
14 YOU DON'T HAVE AND YOU DON'T KNOW WHAT IT SAYS EXACTLY
15 TO COME UP WITH THE IDEA THAT THERE WAS PROBABLE CAUSE
16 THAT HE COMMITTED CRIMINAL DOMESTIC VIOLENCE AND
17 KIDNAPPING; IS THAT RIGHT?

18 A. YES, SIR. THAT'S WHAT PART OF THE INCIDENT
19 REPORT, IT INCLUDED THE C.D.V. OF A HIGH AND AGGRAVATED
20 NATURE AND KIDNAPPING.

21 Q. ALL RIGHT. BUT ULTIMATELY HE WASN'T CHARGED WITH
22 KIDNAPPING, SO SOMEBODY DIDN'T MAKE A PROBABLE CAUSE FOR
23 THAT. WOULDN'T YOU AGREE?

24 A. WHAT HE MAY HAVE BEEN CHARGED WITH LATER, WE HAVE
25 TO GO -- WE'RE GOING BY WHAT WAS BELIEVED TO HAVE

1 HAPPENED WHEN THE INCIDENTS OCCURRED.

2 Q. WELL, YOU ARE ALSO GOING BY THE SHERIFF'S OFFICE
3 REPORT THAT HE WAS AT MARK AND JEANNIE'S BAR, RIGHT?

4 A. UH-HUH.

5 Q. BUT YOU DON'T KNOW WHETHER HE WAS OUTSIDE OR
6 INSIDE OR WHAT THE CIRCUMSTANCES WERE; IS THAT CORRECT?

7 A. AS FAR AS ACTUAL DETAILS THAT WERE, YOU KNOW, MAY
8 HAVE BEEN LISTED ON THE INCIDENT REPORT AT THAT TIME,
9 OBVIOUSLY JUST FOR ONE OCCASION AS FAR AS ENCLOSING
10 EVERYTHING INTO ONE CITATION, YOU KNOW, WE DON'T
11 ACTUALLY LIST WORD FOR WORD EVERYTHING, WHAT THE ENTIRE
12 INCIDENT REPORT STATES. SO PART OF HIS VIOLATION IS
13 THAT, WHAT WE VIOLATED HIM FOR WAS THAT HE ENTERED THE
14 ESTABLISHMENT OF MARK AND JEANNIE'S BAR ON 12-8 OF '06
15 BASED ON THE INCIDENT REPORT. NOW, AS FAR AS THE ACTUAL
16 DETAILS OF THE REPORT AT THAT TIME, YOU KNOW, I DON'T
17 HAVE IT IN FRONT OF ME, BUT THAT WAS THE VIOLATION THAT
18 OCCURRED AT THAT TIME.

19 Q. WHAT DID HE SUPPOSEDLY DO AT MARK AND JEANNIE'S
20 BAR IN THE INCIDENT REPORT THAT YOU DON'T HAVE?

21 A. I'M SORRY?

22 Q. WHAT HAPPENED AT MARK AND JEANNIE'S BAR? WHY IS
23 IT IN THE INCIDENT REPORT?

24 A. WHY IS IT IN THE INCIDENT REPORT?

25 Q. YEAH. WHAT HAPPENED AT MARK AND JEANNIE'S BAR?

1 A. YOU ARE ASKING ABOUT EXACT DETAILS FROM A CASE
2 THAT HAPPENED TWO YEARS AGO. I'M SORRY IF I CANNOT
3 RECALL ALL THE DETAILS.

4 Q. WELL, IT JUST SEEMS LIKE IF WE'RE GONNA BASE
5 EVERYTHING ON AN INCIDENT REPORT, THAT YOUR VIOLATION
6 WOULD BE THAT THERE'S AN INCIDENT REPORT ON HIM, ON
7 WHICH WE BASE VIOLATION OF HIS PROBATION.

8 A. NO. WE ARE NOT BASING EVERYTHING SOLELY ON THE
9 INCIDENT REPORT. WE HAVE TO LOOK AT THE PICTURES AS A
10 WHOLE AND PUT ALL THE PIECES OF THE PUZZLE TOGETHER.
11 AND WHEN YOU HAVE AN INCIDENT REPORT SUPPORTED BY AN
12 AFFIDAVIT OF THE VICTIM, THAT IS WHAT WOULD LEAD TO THE
13 PROBABLE CAUSE.

14 Q. ALL RIGHT. DIDN'T YOU SAY THAT SOMEWHERE IN THAT
15 FIRST WEEK OF DECEMBER, ABOUT THE REPORTING, THAT HE
16 DIDN'T REPORT ON DECEMBER THE 4TH, 2006? YOU DON'T
17 REMEMBER FOR SURE THAT HE DIDN'T CALL YOUR OFFICE TO TRY
18 TO RESCHEDULE THAT, DO YOU?

19 A. IF HE DID, IF HE DID TRY TO CALL AND RESCHEDULE,
20 YOU KNOW, I, I DON'T HAVE THAT INFORMATION, OKAY? AND
21 GENERALLY, YOU KNOW, THE RULE OF THUMB IS YOU DON'T WAIT
22 UNTIL THE DAY OF YOUR REPORT TO CALL AND RESCHEDULE. I
23 MEAN, IF THERE'S EXTENUATING CIRCUMSTANCES, YOU KNOW,
24 THAT'S ONE THING. BUT WE ARE TALKING ABOUT THE 4TH OF
25 DECEMBER, WHICH I DIDN'T EVEN MAKE CONTACT WITH HIM

1 UNTIL THE 12TH OF DECEMBER, AFTER I HAD ATTEMPTED
2 THROUGH TELEPHONE CONTACT AND A LETTER.

3 SO IF HE HAD CALLED THAT DAY, AND FOR WHATEVER
4 REASON JUST ABSOLUTELY COULD NOT MAKE IT IN THAT DAY,
5 THEN, YOU KNOW, HE WOULD HAVE HAD THAT RESPONSIBILITY TO
6 CALL BACK THE NEXT DAY. CALL, LEAVE MESSAGES, CALL,
7 KEEP CALLING UNTIL YOU TALK TO THE AGENT. MAKE A
8 REASONABLE EFFORT TO CONTACT THAT AGENT TO NOTIFY THEM
9 THAT, "HEY, I MISSED MY REPORT" OR "I'M NOT GOING TO BE
10 ABLE TO MAKE IT TO MY REPORT AND I NEED TO RESCHEDULE."

11 Q. WELL, SOMEWHERE IN THERE YOU INDICATE IN
12 TESTIMONY THAT HE CALLED YOU TO SAY HE HAD SEVERAL JOB
13 INTERVIEWS; IS THAT RIGHT?

14 A. THIS IS ON 12TH OF DECEMBER. AND ON THAT DAY HE
15 DID CALL AND STATED THAT HE HAD JOB INTERVIEWS AND HE
16 WOULD NOT BE ABLE TO MAKE IT IN TO REPORT. AND AT WHICH
17 TIME I EXPLAINED HE WOULD STILL BE REQUIRED TO REPORT,
18 BUT IF HE DID NOT MAKE IT BACK IN TOWN BY 5:00 THAT DAY,
19 THAT HE WOULD NEED TO CONTACT ME. AND AGAIN, ALSO HE
20 WOULD NEED TO REPORT ON THE 13TH, THAT HE NEVER
21 CONTACTED ME.

22 Q. ALL RIGHT. ON THE -- ON THAT DATE HE SAID HE HAD
23 A JOB INTERVIEW. THAT WOULD INDICATE THAT HE WAS NOT
24 WILLFULLY TRYING TO GET UNEMPLOYED. DOESN'T THAT
25 INDICATE THAT TO YOU?

1 A. HE WAS SUPPOSEDLY LOOKING FOR A JOB THE DAY HE
2 GOT UNEMPLOYED AND HE LOST HIS JOB.

3 Q. IF SOMEBODY IS WILLFULLY UNEMPLOYED AND DOESN'T
4 CARE, THEY'RE NOT EVEN TRYING TO GET WORK; ISN'T THAT
5 RIGHT?

6 A. WELL, HE WILLFULLY LOST HIS JOB BY NOT REPORTING.

7 Q. THAT'S NOT THE QUESTION. DOESN'T THE FACT THAT
8 HE WAS LOOKING FOR JOBS INDICATE THAT HE'S TRYING TO GET
9 A JOB AND HE'S NOT BEING WILLFULLY UNEMPLOYED AT THAT
10 POINT?

11 A. NO. I MEAN, AND HE COULD ALSO BE TELLING ME THAT
12 HE'S LOOKING FOR A JOB AS AN EXCUSE TO NOT REPORT.

13 MR. JONES: OBJECTION; ASKED AND ANSWERED.

14 THE COURT: A GREAT MANY OF THESE QUESTIONS
15 GO IN THAT CATEGORY. I'M GOING TO SUSTAIN YOUR
16 OBJECTION.

17 GO AHEAD.

18 BY MR. GRIFFITH:

19 Q. MR. ISHMAN DID NOT HAVE ANY SORT OF PRELIMINARY
20 HEARING, PRELIMINARY REVOCATION HEARING BEFORE HE WENT
21 TO THE FINAL REVOCATION HEARING IN FRONT OF JUDGE
22 MADDOX, DID HE?

23 A. DUE TO THE NATURE OF THE OFFENSE, HE WENT TO A
24 REVOCATION -- I MEAN A GENERAL SESSIONS HEARING.

25 Q. ALL RIGHT. IS IT NOT POSSIBLE TO HAVE A

1 PRELIMINARY HEARING?

2 A. DUE TO THE NATURE OF THE OFFENSE WE WOULD HAVE
3 TAKEN IT TO A GENERAL SESSIONS HEARING.

4 Q. ALL RIGHT. BUT ISN'T IT POSSIBLE THAT HE COULD
5 HAVE HAD A PRELIMINARY HEARING AND THEN HAVE A FINAL
6 HEARING?

7 MR. JONES: OBJECTION; ASKED AND ANSWERED.

8 THE COURT: NO. THAT'S -- OVERRULE YOUR
9 OBJECTION.

10 ANSWER THE QUESTION AND YOU CAN EXPLAIN YOUR
11 ANSWER IF YOU NEED TO.

12 RESTATE YOUR QUESTION.

13 BY MR. GRIFFITH:

14 Q. ISN'T IT POSSIBLE THAT HE COULD HAVE HAD A
15 PRELIMINARY HEARING BEFORE A FINAL REVOCATION HEARING?

16 A. UNDER THE CIRCUMSTANCES OF ---

17 THE COURT: JUST ANSWER THE QUESTION AND
18 THEN YOU CAN EXPLAIN YOUR ANSWER. IS IT POSSIBLE?

19 THE WITNESS: DID HE ---

20 THE COURT: IS IT POSSIBLE TO HAVE A ---

21 THE WITNESS: FOR ANY VIOLATION OR FOR THIS
22 SPECIFIC VIOLATION?

23 THE COURT: MA'AM, PLEASE, JUST ANSWER THE
24 QUESTION. IS IT POSSIBLE TO HAVE A PRELIMINARY HEARING
25 BEFORE YOU HAVE A FINAL HEARING?

1 THE WITNESS: WE HAVE WHAT WE CONSIDER
2 ADMINISTRATIVE ---

3 THE COURT: JUST -- MA'AM, ANSWER THE
4 QUESTION: IS IT POSSIBLE TO HAVE A PRELIMINARY HEARING
5 BEFORE THE FINAL REVOCATION HEARING?

6 THE WITNESS: WE HAVE WHAT WE CALL AN
7 ADMINISTRATIVE HEARING THAT I GUESS YOU COULD CONSIDER A
8 PRELIMINARY HEARING.

9 THE COURT: ALL RIGHT. SO THAT'S THE
10 ANSWER. IT IS POSSIBLE.

11 THE WITNESS: YES, SIR.

12 THE COURT: ALL RIGHT. NOW EXPLAIN YOUR
13 ANSWER.

14 THE WITNESS: OKAY. WE DO HAVE AN
15 ADMINISTRATIVE HEARING THAT COULD BE CONSIDERED A
16 PRELIMINARY HEARING. IT'S -- NOT EVERY CASE HAS GONE
17 BEFORE AN ADMINISTRATIVE HEARING BEFORE IT'S TAKEN TO A
18 GENERAL SESSIONS HEARING. ADMINISTRATIVE HEARING -- YOU
19 KNOW, DUE TO THE NATURE OF THE OFFENSES, THIS CASE WENT
20 TO A GENERAL SESSIONS HEARING. ADMINISTRATIVE HEARING
21 IS IF IT WOULD HAVE BEEN PURELY FINANCIAL OBLIGATIONS
22 AND THINGS OF THAT NATURE, WE WOULD HAVE HAD AN
23 ADMINISTRATIVE HEARING.

24 BY MR. GRIFFITH:

25 Q. HE WASN'T PROVIDED ONE IN THIS CASE; IS THAT

1 CORRECT?

2 A. NO, SIR.

3 Q. OKAY. DIDN'T YOU TELL MR. ISHMAN THAT HE DIDN'T
4 HAVE TO WORRY ABOUT PAYING HIS MONEY BECAUSE YOU WERE
5 GONNA COMBINE A BUNCH OF ANGER MANAGEMENT AND WHATEVER
6 HE HAD TO DO ALL TOGETHER?

7 MR. GRIFFITH: HOLD ON A SECOND. WITHDRAW
8 THAT QUESTION.

9 (MR. GRIFFITH CONFERRED WITH THE APPLICANT
10 OFF THE RECORD.)

11 MR. GRIFFITH: LET ME RESTATE THAT.
12 BY MR. GRIFFITH:

13 Q. DIDN'T YOU TELL MR. ISHMAN THAT HE DIDN'T HAVE TO
14 PAY THE PUBLIC DEFENDER FUND MONEY AT THAT TIME BECAUSE
15 HE WAS TAKING ANGER MANAGEMENT, STEER, SUBSTANCE ABUSE
16 COUNSELING, AND SOME SORT OF DRUG COUNSELING ALL AT ONE
17 TIME THAT HE WOULD HAVE TO PAY FOR AND HANDLE, SO HE
18 COULD WAIT AND PAY THAT P.D.F. FUND MONEY LATER?

19 A. NO, SIR. THOSE ARE SEPARATE FINANCIAL
20 OBLIGATIONS. THE P.D.F. THAT HE IS RESPONSIBLE FOR WE
21 SET UP ON A MINIMUM MONTHLY PAYMENT. SO WE EXPECT THOSE
22 PAYMENTS TO BE MADE MONTHLY, WHATEVER THE MINIMUM AMOUNT
23 MAY BE AT THAT TIME.

24 BUT ANY ADDITIONAL COUNSELING OR ANYTHING THAT
25 THEY CHARGE, THAT'S COMPLETELY SEPARATE. I MEAN, THOSE

1 FINANCIAL OBLIGATIONS ARE FOR THE COUNSELING CENTER
2 TREATMENT CENTER THEMSELVES, THAT DOESN'T COME TO US, SO
3 WE WOULDN'T POSTPONE A PAYMENT TO THE STATE OR WAIT AND
4 COMBINE IT OR ANYTHING OF THAT NATURE.

5 (MR. GRIFFITH CONFERRED WITH THE APPLICANT
6 OFF THE RECORD.)

7 MR. GRIFFITH: NO FURTHER QUESTIONS, YOUR
8 HONOR.

9 THE COURT: RE-EXAM?

10 MR. JONES: NO FURTHER QUESTIONS.

11 THE COURT: ALL RIGHT. VERY GOOD. YOU MAY
12 STEP DOWN. THANK YOU, MA'AM.

13 THE WITNESS: THANK YOU, YOUR HONOR.

14 (WHEREUPON, THE WITNESS WAS EXCUSED.)

15 THE COURT: LADIES AND GENTLEMEN, IT HAS
16 BEEN SEVERAL HOURS THAT WE HAVE BEEN AT THIS. HOW MANY
17 MORE WITNESSES DOES THE STATE HAVE?

18 MR. JONES: NO MORE WITNESSES FROM THE
19 STATE, YOUR HONOR.

20 THE COURT: ALL RIGHT. ANY REPLY?

21 MR. GRIFFITH: ONE SECOND, YOUR HONOR.
22 THERE MIGHT HAVE BEEN ONE SMALL ISSUE, BUT...

23 NOTHING FURTHER FROM THE DEFENDANT [SIC].

24 THE COURT: ALL RIGHT. LET'S TAKE A SHORT
25 BREAK AND THEN SEE IF WE CAN'T ADDRESS THIS ISSUE. ALL

1 RIGHT. WE'LL TAKE A VERY SHORT BREAK.

2 (OFF-THE-RECORD DISCUSSION.)

3 THE COURT: ALL RIGHT. WE'LL RECONVENE AT
4 3:15.

5 (A LUNCHEON RECESS OCCURRED.)

6 THE COURT: ALL RIGHT. WE'RE BACK ON THE
7 CASE OF *ISHMAN VERSUS THE STATE OF SOUTH CAROLINA*,
8 2008-CP-04-104. PRIOR TO THE LUNCH BREAK I UNDERSTAND
9 THAT THE APPLICANT HAD RESTED. IS THAT CORRECT?

10 MR. GRIFFITH: THAT IS CORRECT, YOUR HONOR.

11 THE COURT: THE STATE HAD RESTED, ALSO?

12 MR. JONES: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: AND THERE IS NO REPLY?

14 MR. GRIFFITH: NO, SIR.

15 THE COURT: I WOULD LIKE TO HEAR YOUR
16 ARGUMENT, IF I MAY. MR. GRIFFITH?

17 FINAL ARGUMENT ON BEHALF OF APPLICANT:

18 MR. GRIFFITH: YOUR HONOR, ON BEHALF OF THE
19 APPLICANT OUR BASIC CONTENTION IS THAT HIS DUE PROCESS
20 RIGHTS WERE VIOLATED. IN TERMS OF THE HEARING HE WASN'T
21 ALLOWED ANY CHANCE TO PRESENT ANY EVIDENCE OR TO
22 CONFRONT WITNESSES. HE DIDN'T HAVE DISCLOSURE OF THE
23 EVIDENCE BEFOREHAND SO HE COULD PREPARE FOR THE HEARING.
24 HE DIDN'T HAVE AN OPPORTUNITY TO BE HEARD, PRESENT
25 WITNESSES, DOCUMENTARY EVIDENCE. HE DID NOT -- WAS NOT

1 ALLOWED A RIGHT TO CONFRONT OR CROSS-EXAMINE ADVERSE.
2 WITNESSES.

3 YOU KNOW, BASED ON THE ARBITRARY WAY THE
4 COURT HEARD THE HEARING, I THINK ARGUABLY HE DIDN'T GET
5 A NEUTRAL, DETACHED HEARING BODY. ALL THAT IS BASED ON
6 *STATE VERSUS ALLEN*, WHICH IS S.C. 2000, A SOUTH CAROLINA
7 STATE SUPREME COURT CASE, WHICH CITES *MORRISSEY VERSUS*
8 *BREWER*, A U.S. SUPREME COURT CASE FROM 1972. ALSO UNDER
9 *GAGNON VERSUS SCARPELLI*, THAT'S A 1973 U.S. SUPREME
10 COURT CASE, THAT'S AT 411 U.S. 778. THAT SAYS
11 (READING): PROBATIONER IS ENTITLED TO A PRELIMINARY AND
12 FINAL REVOCATION HEARING UNDER THE CONDITIONS SPECIFIED
13 IN *MORRISSEY*, WHICH ARE ALL THOSE RIGHTS.

14 REALLY UNDER DUE PROCESS WE BELIEVE THAT
15 HE'S ENTITLED TO A NEW HEARING AND A FAIR HEARING TO
16 GIVE HIM A CHANCE TO DO ALL THESE THINGS HE WAS NOT,
17 REALLY AS A MATTER OF LAW, JUST BASED ON THE TRANSCRIPT
18 ALONE, NOT EVEN HAVING TO HEAR THE TESTIMONY.

19 OF COURSE, HEARING THE TESTIMONY, YOU CAN
20 MAKE A DETERMINATION I THINK IN HIS FAVOR THAT HAD HE
21 BEEN ALLOWED TO PRESENT EVIDENCE, HE WOULD HAVE EITHER,
22 ONE, HAD THE OPPORTUNITY TO SUBMIT TO THE COURT THAT HE
23 DID NOT WILLFULLY VIOLATE HIS PROBATION, OR IN
24 MITIGATION OF HIS SENTENCE, THAT HE GET SOMETHING LESS
25 THAN FULL REVOCATION.

1 WE ALSO RELY ON DANGERFIELD VERSUS STATE
2 WHICH IS FOUND AT 656 S.E.2D 352, AND THAT'S A 19- --
3 I'M SORRY -- A 2008 SOUTH CAROLINA SUPREME COURT CASE
4 THAT BASICALLY HOLDS THAT -- THIS WAS BASED ON A
5 MAGISTRATE'S COURT CASE WHERE THEY HAD GIVEN SUSPENDED
6 SENTENCES WITHOUT REALLY A HEARING. AND THE HOLDING WAS
7 GENERALLY THAT IMPOSITION OF A SENTENCE WITHOUT AN
8 EVIDENTIARY HEARING VIOLATED THE DEFENDANT'S DUE PROCESS
9 RIGHTS.

10 THAT DID NOT NECESSARILY GO ALONG WITH THE
11 ISSUE -- THERE IS NO ALLEGATION THAT I COULD SEE IN THE
12 CASE OF INEFFECTIVE ASSISTANCE OF COUNSEL. I THINK THAT
13 STOOD ON ITS OWN, AND THAT'S A P.C.R. CASE.

14 ADDITIONALLY, IN THAT CASE ON THE LAST PAGE,
15 WHICH IS PAGE 355 IN THE ACTUAL CASE, PAGE 4 ON THE
16 PRINTOUT THAT I GAVE YOU, THE COURT INDICATES (READING):

17 SPECIFICALLY, IN CASES INVOLVING
18 THE FAILURE TO PAY FINE OR RESTITUTION,
19 WE HAVE HELD THAT DUE PROCESS REQUIRES
20 THE COURT TO FIRST MAKE A DETERMINATION
21 ON THE RECORD -- AND THIS WASN'T DONE IN
22 THIS CASE -- THAT THE PROBATIONER
23 WILLFULLY VIOLATED THESE TERMS OF
24 PROBATION.

25 AND I DON'T BELIEVE THERE'S ANY FINDING ON

1 THE RECORD BY THE COURT OF WILLFUL VIOLATION OF
2 PROBATION. IT IS ALSO NOT IN THE ORDER FOR THE
3 VIOLATION OF PROBATION SIGNED BY THE JUDGE. I LOOKED TO
4 SEE IF THAT WAS POSSIBLY IN THE ORDER RATHER THAN IN THE
5 RECORD. I DIDN'T SEE IT THERE, EITHER.

6 LET'S SEE. ADDITIONALLY, AS INEFFECTIVE
7 ASSISTANCE OF COUNSEL HIS ATTORNEY DIDN'T HAVE TIME TO
8 PROPERLY PREPARE THE CASE, HE DIDN'T HAVE ENOUGH
9 INFORMATION ABOUT WHAT HIS DEFENSES WERE, HE HAD NO TIME
10 TO GET ANY WITNESSES. IF HE HAD TIME, AND HE COULD
11 PROPERLY PREPARE IT, HE DIDN'T PROPERLY PREPARE IT OR
12 GET THOSE WITNESSES HERE.

13 HE DID ASK FOR A CONTINUANCE WHICH I THINK
14 WAS PROPER. I THINK THE COURT ABUSED HIS DISCRETION BY
15 NOT GIVING HIM THAT. I DON'T KNOW -- THAT'S ANOTHER
16 PART OF THE DUE PROCESS PROBLEM I THINK IN OUR CASE.

17 HE FAILED TO SPEAK UP AND PRESENT EVIDENCE
18 ON BEHALF OF THE DEFENDANT: EVEN AFTER THE COURT
19 ANNOUNCED THE SENTENCE, HE COULD HAVE OBJECTED OR DONE
20 SOMETHING TO INDICATE THAT THE DEFENDANT IN THAT CASE
21 HAD NOT HAD A CHANCE TO SAY ANYTHING TO THE COURT. AND
22 I THINK THE COURT WOULD HAVE TAKEN THAT INTO
23 CONSIDERATION AND POSSIBLY MADE SOME OTHER RULING, OR AT
24 THE VERY LEAST HEARD THE EVIDENCE.

25 THE OTHER PROBLEM IN THIS CASE, WHICH I

1 WASN'T AWARE OF, I THOUGHT IT MIGHT BE THE CASE BECAUSE
2 I'VE HAD SOMETHING LIKE THIS HAPPEN BEFORE, IS THAT ALL
3 THE EVIDENCE APPARENTLY SHOWN TO THE JUDGE IS NOT AN
4 EXHIBIT AND NOT IN EXISTENCE ACCORDING TO THE PROBATION
5 AGENT. AND I DON'T KNOW HOW THEY CAN REVIEW THAT TO
6 FIND IF THE STATE ACTED PROPERLY WHEN YOU DON'T KNOW
7 WHAT THE COURT CONSIDERED IN MAKING THE DECISION THAT
8 THEY DID MAKE.

9 WE DO KNOW THEY DIDN'T CONSIDER ANYTHING
10 FROM THE DEFENDANT BECAUSE HE WAS NOT ALLOWED TO SPEAK
11 TO THE COURT AT ALL DIRECTLY CONSIDERING THE VIOLATIONS
12 OR IN MITIGATION OF HIS SENTENCE.

13 BASICALLY THE APPLICANT'S ALLEGATIONS AS TO
14 MISCONDUCT, WHETHER JUDICIAL OR PROSECUTORIAL, REALLY
15 JUST GO TO THE FACT THAT HE DIDN'T GET A FAIR HEARING
16 AND HE DIDN'T HAVE NOTICE TO KNOW AHEAD OF TIME WHAT WAS
17 GONNA HAPPEN AND DID NOT HAVE A FAIR OPPORTUNITY TO
18 PRESENT ITS CASE. I THINK HE PRETTY WELL PRESENTED IT
19 TODAY, AND THERE WAS A LOT OF EVIDENCE THAT COULD HAVE
20 BEEN PRESENTED IN MITIGATION.

21 CERTAINLY I THINK ONE THING: IT WAS OBVIOUS
22 THE COURT WAS CONCERNED ABOUT WITH THE WHOLE CRIMINAL
23 DOMESTIC VIOLENCE ALLEGATION AND GUN ALLEGATION, WHICH
24 THE UNCONTESTED EVIDENCE TODAY -- WELL, NOT TOTALLY
25 UNCONTESTED. I GUESS THE AGENT PUT FORTH THEIR SIDE OF

1 IT. BUT THE EVIDENCE THAT'S RELIABLE BY WITNESSES WHO
2 WERE HERE TO BE CROSS-EXAMINED IS THAT EITHER THAT
3 DIDN'T OCCUR AND CERTAINLY THAT THE C.D.V. DIDN'T OCCUR
4 AS STATED. IT'S ALL BASED ON A POLICE REPORT THAT WE
5 DON'T HAVE IN EVIDENCE, THAT WE DON'T KNOW WHAT WAS
6 THERE.

7 CERTAINLY IT WASN'T DONE THE NIGHT OF
8 DECEMBER 8, 2006, BECAUSE MY CLIENT WENT HOME,
9 MS. GIOVANNI WENT HOME, MY CLIENT SAW HER THE NEXT DAY,
10 TALKED TO HER ON MONDAY AND THAT'S WHEN SHE TOLD HIM HE
11 WAS GONNA BE ARRESTED. SO ALL THIS HAPPENED ON THE
12 MONDAY FOLLOWING THE FRIDAY NIGHT THAT THIS SUPPOSEDLY
13 OCCURRED.

14 AND THEY WERE RELYING ON A POLICE REPORT
15 THAT WAS DONE APPARENTLY MONDAY OR LATER TO ESTABLISH
16 THAT HE WAS INTOXICATED IN A BAR AND ALL OF THESE
17 DIFFERENT THINGS BASED UPON HER VERY ALLEGATION, WHICH
18 IS JUST HEARSAY FOLLOWING HEARSAY.

19 WE'D ASK THE COURT TO FIND THAT MY CLIENT'S
20 DUE PROCESS RIGHTS WERE VIOLATED, THAT HE DID NOT GET
21 EFFECTIVE ASSISTANCE OF COUNSEL IN THIS PARTICULAR CASE,
22 AND REMAND HIS CASE BACK FOR A FAIR HEARING. THANK YOU,
23 YOUR HONOR.

24 THE COURT: ALL RIGHT. WHO WANTS TO BE
25 HEARD? MR. JONES?

1 FINAL ARGUMENT ON BEHALF OF RESPONDENT:

2 MR. JONES: YES, SIR. THE STATE SUBMITS
3 THAT THE ALLEGATIONS THAT THE APPLICANT'S BROUGHT FORTH
4 ON IN HIS P.C.R. HEARING ARE WITHOUT MERIT AND HIS
5 APPLICATION SHOULD BE SUMMARILY DISMISSED.

6 HIS CLAIMS IN REGARDS TO PROSECUTORIAL
7 MISCONDUCT ARE A DIRECT APPEAL ISSUE, HIS CLAIMS
8 REGARDING JUDICIAL ERROR ARE A DIRECT APPEAL ISSUE, AND
9 HIS CLAIMS IN REGARDS TO SUFFICIENCY EVIDENCE AT THE
10 PROBATION REVOCATION HEARING IS ALSO A DIRECT APPEAL
11 ISSUE.

12 IN REGARDS TO INEFFECTIVE ASSISTANCE OF
13 COUNSEL. THE STATE SUBMITS THAT COUNSEL WAS EFFECTIVE
14 BECAUSE LIKE THE APPLICANT'S PROBATION WAS PROPERLY
15 REVOKED. TESTIMONY WAS SUBMITTED AT THE P.C.R. HEARING
16 THAT THE JUDGE USED TO MAKE HIS DECISION.

17 AND THE JUDGE IS NOT REQUIRED TO MAKE HIS
18 DECISION BASED -- EXCUSE ME, YOUR HONOR -- THE STANDARD
19 THAT THE JUDGE USED IN THE PROBATION REVOCATION HEARINGS
20 IS A PREPONDERANCE OF THE EVIDENCE, AND BY REVIEWING THE
21 TRANSCRIPT YOU CAN SEE THERE WAS A PREPONDERANCE OF THE
22 EVIDENCE THAT THE APPLICANT, YOU KNOW, VIOLATED THE
23 TERMS OF HIS PROBATION. HE WAS AT A BAR AND GRILL, HE
24 ADMITTED ON THE STAND THAT HE WAS AT A BAR AND GRILL,
25 WHICH WAS A VIOLATION. ALSO, ONE OF HIS WITNESSES

1 ADMITTED THAT THE APPLICANT DRANK ALCOHOL.

2 THE APPLICANT ADMITTED ON THE STAND THAT HE
3 FAILED TO CONTACT HIS EMPLOYER TO NOTIFY HIM THAT HE WAS
4 LOOKING FOR A NEW JOB AND THAT HE WOULD NOT BE IN WORK
5 THAT PARTICULAR DAY SO, THEREFORE, THAT'S A VIOLATION.

6 AND ALSO THE RECORD REVEALS THAT, YOU KNOW,
7 IN REGARDS TO THE OTHER VIOLATIONS, THAT CLEARLY SHOWS
8 THAT THE APPLICANT VIOLATED THE TERMS OF HIS PROBATION
9 AND THE JUDGE PROPERLY REVOKED IT.

10 AND ALSO, COUNSEL FOR THE APPLICANT MET WITH
11 THE APPLICANT AND DISCUSSED THE APPLICANT'S DEFENSES
12 ALSO DURING PROBATION REVOCATION HEARING. HE SET FORTH
13 ALL THE APPLICANT'S DEFENSES TO COUNTER THE PROBATION
14 AGENT'S CLAIMS. AND COUNSEL EVEN TESTIFIED THAT HE
15 BELIEVED THAT THE APPLICANT HAD A FAIR OPPORTUNITY TO
16 PRESENT HIS CASE.

17 AND LASTLY, YOUR HONOR, IN REGARDS TO THE
18 DUE PROCESS ISSUE. THAT ISSUE ALSO IS A DIRECT APPEAL
19 ISSUE AND NOT FOR P.C.R. ACCORDING TO *DANGERFIELD*
20 *VERSUS STATE*, THE COURT FOUND -- I BEG THE COURT'S
21 INDULGENCE.

22 (COUNSEL CONFER.)

23 **MR. JONES:** IN *DANGERFIELD VERSUS STATE* THE
24 COURT FOUND THAT ---

25 (COUNSEL CONFER.)

1 MR. JONES: --- THE P.C.R. COURT FOUND THE
2 COUNSEL WAS INEFFECTIVE FOR FAILING TO ATTACK THE
3 APPLICANT'S DUE PROCESS RIGHTS. AND THAT IS WHAT THE
4 SUPREME COURT AFFIRMED, WHETHER OR NOT COUNSEL PROTECTED
5 THE APPLICANT'S DUE PROCESS RIGHTS, AND THEN THEY COULD
6 MAKE A DETERMINATION ON WHETHER DUE PROCESS VIOLATIONS
7 WERE PROPER FOR P.C.R. COURT, AND THEY SAID THAT THOSE
8 ISSUES WERE ONLY APPROPRIATE FOR DIRECT APPEAL. AND
9 THAT'S IT.

10 AND ONE LAST THING. THE STATE REQUESTS THAT
11 EACH PARTY SEND THEIR PROPOSED ORDERS TO FURTHER EXPLAIN
12 THEIR POSITIONS IN THIS CASE.

13 THE COURT: WHAT?

14 MR. JONES: THE STATE REQUESTS THAT EACH
15 PARTY SEND THEIR PROPOSED ORDERS TO FURTHER EXPLAIN
16 THEIR POSITIONS IN THIS CASE.

17 THE COURT: I CAN ASSURE YOU I WILL TRY TO
18 DO THAT IN THIS CASE. I WILL TRY TO NARROW THE ISSUES,
19 THOUGH.

20 ANYTHING FURTHER IN REPLY, MR. GRIFFITH?
21 REPLY ARGUMENT ON BEHALF OF APPLICANT:

22 MR. GRIFFITH: YOUR HONOR, I DO THINK THE
23 EVIDENCE WAS THAT HE DID NOT HAVE WILLFUL VIOLATIONS.

24 YOU HEARD THE ATTORNEY GO INTO THAT. HE
25 WENT INTO "WERE YOU AT A BAR?" "DID YOU DO THIS?" "DID

1 YOU HAVE SOME CONTACT WITH HER?" WHATEVER. AND TOOK
2 THE POSITION THAT THAT WASN'T DEFENDABLE, I GUESS.

3 OF COURSE, I DON'T SEE IT THAT WAY AT ALL.
4 I THINK THE TESTIMONY WE PRESENTED TODAY WAS HE DIDN'T
5 HAVE WILLFUL VIOLATIONS REGARDING THESE THINGS. I DON'T
6 THINK THE COURT WOULD NORMALLY FIND THAT THEY WERE
7 WILLFUL. I DON'T THINK THEY GOT ANYWHERE CLOSE TO THE
8 FULL STORY OR ALLOWED THE DEFENDANT TO PRESENT THE FULL
9 STORY.

10 I DON'T THINK THAT THEY CAN TAKE THE
11 POSITION THAT THE JUDGE CAN -- I MEAN, ONE, WITH HIS
12 ATTORNEY SAYING, "WE CAN PROVE, WE WANT TO PROVE, WE
13 WANT TO PRESENT WITNESSES ON ISSUES" AREN'T PROOF.
14 THAT'S NOT -- THAT'S A PREAMBLE OF WHAT THEY WANT TO
15 PROVE OR PLAN TO PROVE IN THE CASE. THAT'S NOT THEIR
16 PROOF.

17 HIS PROOF IS MUCH MORE EXHAUSTIVE THAN WHAT
18 THE, THAN THE SHORT SNIPPET THAT MR. POTTER GAVE DURING
19 THE HEARING THAT HE WANTED TO PRESENT. HE WASN'T
20 ALLOWED TO PRESENT ANY OF IT. I MEAN, GENERALLY THE
21 COURT DOESN'T HAVE A DETAIL OF EVERY BIT OF THE EVIDENCE
22 BEFORE WE PRESENT IT. IN THAT CASE HE WOULDN'T ALLOW
23 HIM TO PRESENT IT AT ALL.

24 I DON'T REALLY THINK THE COURT CAN GET
25 AROUND ALSO THE FACT THAT THERE'S NO PRIOR WILLFUL

1 VIOLATION. HE JUST VIOLATED HIM. I GUESS IT COULD BE
2 IMPLIED HE FOUND THAT. BUT ACCORDING TO *DANGERFIELD*
3 CASE, THAT HAS TO BE AN ON-THE-RECORD DETERMINATION.
4 THANK YOU, YOUR HONOR.

5 THE COURT'S RULING:

6 **THE COURT:** ALL RIGHT. AS FAR AS THE FIRST
7 ISSUE AS WHETHER OR NOT DUE PROCESS IS A GROUNDS OF
8 P.C.R., VIOLATION OF AN OFFENDER'S DUE PROCESSES ARE
9 GROUNDS FOR WITHIN THE JURISDICTION OF P.C.R. COURT, I
10 DO FIND THAT IT IS, NOT ONLY UNDER *STATE VERSUS ALLEN*
11 WHICH YOU REFERRED TO, BUT ALSO *STATE VERSUS DANGERFIELD*
12 WHERE THE SUPREME COURT SAID (READING):

13 WE HOLD THAT THE P.C.R. COURT
14 PROPERLY CONCLUDED THAT DUE PROCESS
15 REQUIRES THAT RESPONDENT BE AFFORDED
16 NOTICE AND A HEARING ON THE WILLFULNESS
17 OF A VIOLATION.

18 SO I DO FIND THAT DUE PROCESS IS A PROPER
19 CONSIDERATION FOR A P.C.R. APPLICATION.

20 I ALSO FIND BASED ON THE RECORD HEREIN THAT
21 ALTHOUGH THERE WAS OTHER ALLEGED VIOLATIONS, THAT THE,
22 APPARENTLY THE VIOLATION -- AND OF COURSE I HAVE TO DO
23 THIS AROUND A RATHER LIMITED RECORD -- BUT THE VIOLATION
24 THAT THE COURT APPARENTLY RELIED ON THERE NOT HAVING
25 BEEN AN AFTER-THE-FACT FINDING OF ANY PARTICULAR

1 VIOLATION, RELIED ON THE ONE I WANT YOU TO ADDRESS, IS
2 THAT HAVING A GUN, POSSESSION OF A WEAPON, WHICH SHOULD
3 BE NUMBER FIVE, CONDITION FIVE OF THE PROBATIONARY
4 SENTENCE -- NO, EXCUSE ME -- CONDITION FOUR OF THE
5 PROBATIONARY SENTENCE, POSSESSION OF A WEAPON BASED ON
6 PROBABLE CAUSE, IF THAT.

7 I DO THIS BY REASON OF I FIND THAT THAT
8 SEEMED TO BE THE ONE IF NOT ONLY ISSUE ADDRESSED BY THE
9 COURT. AND I'M LOOKING AT TRANSCRIPT 3, PAGE -- I MEAN
10 LINES -- BEGINNING ON LINE 20 (READING):

11 IN REGARDS TO POSSESSION OF A
12 FIREARM, HE DENIES THAT. APART FROM THAT
13 HE -- IF YOUR HONOR IS GOING TO CONSIDER
14 THESE MATTERS, HE TELLS ME HE DOES HAVE A
15 WITNESS THAT CAN ADDRESS THE ISSUE, AT
16 THE VERY LEAST THE FIREARM.

17 ALL RIGHT. WHAT'S THE DEAL WITH
18 THE FIREARM?

19 THEN THE COURT, PAGE 4, LINE 12
20 (READING):

21 WHAT'S THE EXPLANATION FOR THE
22 GUN?

23 JUDGE, I HAVEN'T HAD A CHANCE TO
24 REVIEW THE AFFIDAVIT OR SEE A COPY OF
25 THAT. HE'S TELLING ME THAT HE DOES HAVE

1 A WITNESS TO RELATE TO THIS PARTICULAR
2 ALLEGATION FOR HIS VIOLATION. SO IF YOUR
3 HONOR WISHES TO GO FORWARD ON THAT
4 PARTICULAR MATTER, I'M GOING TO ASK FOR A
5 CONTINUANCE SO I CAN GET THE WITNESSES IN
6 AND GIVE ME THE CHANCE TO REVIEW THE
7 AFFIDAVIT.

8 AND I'M ADVISED THAT MR. POTTER WAS ASSIGNED
9 AND FIRST SAW THE PROBATIONER THE MORNING OF THE
10 HEARING. AND THE SUPERVISING AGENT ON LINE 22 SAYS
11 (READING):

12 AND SHE COULD NOT VERIFY IF THE
13 GUN WAS ACTUALLY IN THE RESIDENCE -- NOT
14 "SHE" BEING THE AGENT BUT THE SISTER WITH
15 WHOM HE WAS LIVING -- SHE COULD NOT
16 VERIFY THE GUN WAS ACTUALLY IN THE
17 RESIDENCE, BUT SHE COULD VERIFY THROUGH
18 THE PICTURE THAT THAT WAS HER RESIDENCE.

19 AND THE OFFENDER DOES NOT COME
20 OUT AND POINT-BLANK SAY THAT HE WAS IN
21 POSSESSION OF A FIREARM.

22 THAT'S ON PAGE 5, LINES 1 THROUGH
23 3. ON 5, FURTHER DOWN THE PAGE, THE
24 COURT SAYS (READING):

25 NOT THAT HAVING A GUN IS NOT

1 SERIOUS. I MEAN, THAT'S THE KIND OF
2 THING I WOULD REVOKE HIM FOR. BUT THE
3 C.D.V. AND KIDNAPPING -- AND THEN IT ENDS
4 THERE.

5 THEN IT AGAIN DISCUSSED THE PHOTOGRAPH, OR
6 THE COURT DOES. HE SAYS "IT LOOKS LIKE A GUN TO ME."

7 WHICH IS NOT A CONCLUSIVE FINDING. AND THEN
8 HE SAYS ON LINE 7 -- THE COURT SAYS ON PAGE 7, LINE 23
9 (READING):

10 ALL RIGHT. WELL, THIS IS ONE OF
11 THOSE VOLATILE SITUATIONS. I'M GOING TO
12 REVOKE AND TERMINATE.

13 SO THE ISSUE THAT I'M CONCERNED ABOUT UNDER
14 THE DUE PROCESS QUESTION IS WHETHER OR NOT DUE PROCESS
15 WOULD HAVE SUPPORTED THE APPLICANT IN THIS CASE WHEN
16 THERE WAS NOT A DISCLOSURE OF EVIDENCE AGAINST HIM AS TO
17 WHETHER THERE WAS WRITTEN NOTICE OF THE CLAIMED
18 VIOLATIONS, AND DISCLOSURE OF THE EVIDENCE AGAINST THE
19 PAROLEE OR PROBATIONER, AND AN OPPORTUNITY TO BE HEARD
20 IN PERSON AND PRESENT WITNESSES AND DOCUMENTARY
21 EVIDENCE.

22 AND THEN THE RIGHT TO CONFRONT AND
23 CROSS-EXAMINE THAT FIRST WITNESS, THERE BEING NO FINDING
24 THAT THERE WAS GOOD CAUSE TO NOT ALLOW THE
25 CONFRONTATION.

1 AND THE WRITTEN STATEMENT BY THE
2 FACT-FINDER, BEING THE TRIAL JUDGE IN THIS CASE, OF THE
3 EVIDENCE RELIED ON AND THE REASONS FOR REVOKING THE
4 PROBATION. AND THE EVIDENTIARY SUPPORT FOR THE FACTUAL
5 CONCLUSION THAT THERE -- WELL, ACTUALLY -- LET ME SEE --
6 THERE IS NO FACTUAL CONCLUSION THAT I FIND OTHER THAN
7 "THIS IS ONE OF THOSE VOLATILE SITUATIONS. I'M GOING TO
8 REVOKE AND TERMINATE."

9 SO I WANT THE DUE PROCESS ISSUES ADDRESSED,
10 PARTICULARLY IN LIGHT OF THE VIOLATION OF CONDITION
11 FOUR. AND I MIGHT NOTE THAT -- AND AGAIN, AS TO WHETHER
12 A PROBABLE CAUSE IS BEST OR A PROBABLE CAUSE VIOLATION
13 WHICH I UNDERSTAND WAS THE BASIS OF NUMBER FOUR.

14 AND I DO STAND CORRECTED. THERE HAS NOT
15 BEEN A DISPOSITION OF THE CHARGE OF POSSESSION OF A
16 FIREARM?

17 MR. JONES: THAT'S CORRECT, YOUR HONOR.
18 THAT'S PENDING.

19 THE COURT: STILL PENDING?

20 MR. GRIFFITH: IT WASN'T POSSESSION OF A
21 FIREARM. IT WAS C.D.V. HIGH AND AGGRAVATED WAS THE
22 CHARGE. HE WAS NEVER CHARGED WITH ANY FIREARM CHARGE.
23 BUT ORIGINALLY POINTING AND PRESENTING GOT HIM THE
24 PROBATION, BUT NOTHING REGARDING THE VIOLATION. THEY
25 CLAIM HE HAD A GUN IN A VIDEO OR SOMETHING LIKE THAT FOR

1 A WEBCAM PICTURE OR SOMETHING, BUT HE WAS NOT ARRESTED
2 IN CONNECTION WITH THAT.

3 THE COURT: WELL, AGAIN, I DON'T KNOW WHAT
4 THE ALLEGED EVIDENTIARY BASIS FOR THE CRIMINAL DOMESTIC
5 VIOLENCE OF A HIGH AND AGGRAVATED NATURE -- IS THAT WHAT
6 IT WAS EVENTUALLY? I MEAN, THAT'S WHAT THE CHARGE, THE
7 PENDING CHARGE IS?

8 MR. GRIFFITH: YES, SIR.

9 THE COURT: IF IT DID CONTAIN THE USE OF A
10 FIREARM. BUT THE MAIN THING I'M TRYING TO TELL NOT ONLY
11 THE PARTIES HERE TODAY BUT ALSO FOR FUTURE REFERENCE,
12 LOOKING AT STATE VERSUS ALLEN, FOOTNOTE 1 STATES -- THE
13 COURT THERE NOTED IT WAS -- THE COURT MADE NOTE IT WAS
14 THE SAFEST COURSE TO FOLLOW OR TO PURSUE (READING):

15 WHEN ISSUE IS WHETHER THE
16 PROBATIONER HAS COMMITTED A LATER CRIME
17 WHICH SHOULD RESULT IN REVOCATION OF
18 PROBATION, TRIAL COURT MAY DETERMINE
19 PROBATIONER'S GUILT ON THE CHARGE, BUT
20 SUBJECT TO THE DUE PROCESS, OF COURSE, OR
21 HOLD THE REVOCATION MATTER IN ABEYANCE --
22 OR, EXCUSE ME -- OR IMPANEL A JURY TO
23 DECIDE THE ISSUE, OR HOLD THE REVOCATION
24 MATTER IN ABEYANCE UNTIL THE PROBATIONER
25 IS TRIED ON THE CHARGE IN THE USUAL

1 COURSE, WITH THE FINAL OPTION AS THE
2 PREFERRED AND SAFEST COURSE TO PURSUE.

3 AND IN THIS CASE I FIND THAT WOULD BE THE
4 SAFEST COURSE TO PURSUE.

5 NOW, THAT MIGHT, AS I SAY, MY RULING, IT IS
6 ACTUALLY TO BE THAT YOU NEED TIME TO BRIEF THE MATTERS.
7 I COMPARE ONE TO EARLIER THIS WEEK AND WE WERE USING 30
8 DAYS AND 30 DAYS AND 15 DAYS. DOES THAT SATISFY THE
9 APPLICANT? 30 DAYS FOR THE APPLICANT, SUBMIT A PROPOSED
10 ORDER, 30 DAYS FOR THAT TIME FROM THE RESPONDENT TO
11 SUBMIT ITS ORDER, AND 15 DAYS FOR THE APPLICANT TO FILE
12 AND SERVE ANY REPLY.

13 AND I THINK I HAVE TO USE DATES IN THAT
14 FORMER ORDER, AND WHICH WOULD BE NOVEMBER THE 24TH FOR
15 THE FIRST 30 DAYS, DECEMBER THE 29TH FOR THE SECOND 30
16 DAYS, AND JANUARY THE 16TH FOR THE 15 DAYS. SO WE'LL
17 USE ACTUAL DATES. THOSE ARE ALL DATES, EITHER ON MONDAY
18 OR FRIDAY.

19 ALL RIGHT. MADAM COURT REPORTER, HOW DOES
20 THAT WORK WITH YOUR SCHEDULE?

21 (DISCUSSION OFF THE RECORD.)

22 **THE COURT:** WHAT I'LL DO IS I'LL LEAVE IT
23 BETWEEN THE PARTIES AND THE COURT REPORTER AND THE
24 SCHEDULE WILL BE 30 DAYS FROM RECEIPT OF THE TRANSCRIPT.
25 BUT, LIKE I SAY, NOT ON A SUNDAY. THE NEXT BUSINESS

1 DAY.

2 ALL RIGHT. ANYTHING FROM THE APPLICANT?

3 MR. GRIFFITH: NO, YOUR HONOR.

4 THE COURT: ANYTHING FROM THE STATE?

5 MR. JONES: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. VERY GOOD. I THANK
7 YOU FOR YOUR PATIENCE. NOW, WHEN I SAY THOSE ARE THE
8 ISSUES THAT I'M GOING TO BE ADDRESSING, IF YOU SEE ANY
9 REASON OR FEEL THAT OTHERS WOULD BE IMPORTANT TO BE
10 CONSIDERED, DON'T HESITATE TO BRIEF THOSE, TOO. VERY
11 GOOD.

12 (THE POST-CONVICTION RELIEF HEARING WAS
13 CONCLUDED AT 4:02 P.M.)

14 (APPLICANT'S EXHIBIT NUMBER 1, AMENDMENT TO
15 P.C.R., WAS MARKED FOR IDENTIFICATION AND
16 RECEIVED IN EVIDENCE.)

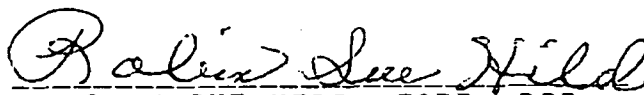
17 ***** END OF REQUESTED TRANSCRIPT OF RECORD *****
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CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED
CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS
FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 22ND DAY OF
OCTOBER, 2008.

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

MARCH 20, 2009


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) 2008-CP-04-00104
Bradley J. Ishman # 319764,)
Applicant,)
v.) **ORDER GRANTING**
State of South Carolina,) **POST-CONVICTION RELIEF**
Respondent.)

This matter was heard before the court on October 22, 2008 on the Applicant's application for Post-Conviction Relief (PCR) from his probation revocation and sentence. The Applicant was represented by his appointed PCR attorney, John P. Griffith, and the State was represented by Assistant Attorney General Gregory P. Jones and Assistant Attorney General Salley Elliott.

I. FACTS/ PROCEDURAL HISTORY

The Applicant was originally convicted of pointing and presenting a firearm (indictment 06-GS-04-3028) at his girlfriend, Kenon Giovanni. The Applicant pled guilty on September 20, 2006 and was sentenced to 5 years suspended to 3 years probation, including special conditions to stay away from the victim and to pay various assessments (public defender, etc.). The Applicant did not appeal the conviction or sentence.

Subsequently, the Applicant was served with a Probation Arrest Warrant on December 13, 2006 for various alleged violations of probation, including more serious allegations of possession of a gun and his arrest on a pending CDV charge. The Applicant was incarcerated from his arrest on the Probation Arrest Warrant on December 13, 2006 until the Probation Revocation Hearing. The Applicant's Probation Revocation Hearing was held on January 19,

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2007 before Judge J. Cordell Maddox, Jr. The Applicant was represented by trial counsel, attorney Andrew Potter of the Public Defender's office. (PCR Tr. p.10-11). Mr. Potter met briefly with the Applicant for the first time in the courthouse holding cell just prior to the Probation Revocation Hearing. (PCR Tr. p.17, lines 20-24).

At the Probation Revocation Hearing, the trial court announced that the Applicant was alleged to have entered a place where alcohol was sold, possessing a firearm, failing to work, and had a pending CDV charge. (Prob. Tr. p.3, lines 6-10). Mr. Potter responded to the court that the Applicant was charged with CDV second and that the Applicant agreed with the other violations alleged. Mr. Potter stated that the Applicant admitted that he missed a report date of December 4th, but called and made the rescheduled appointment. Further, Mr. Potter stated that the Applicant denied the possession of firearm and had a witness that could address that allegation. (Prob. Tr. p.3, lines 11-23). The Probation Agent, Ms. Metcalf, informed the court that she had an affidavit from the victim stating that the Applicant showed her a firearm via webcam. In addition, Ms. Metcalf had the statement the victim gave law enforcement from the CDV incident. Mr. Potter indicated that he had not had a chance to review the affidavit or see a copy of it and moved for a continuance so he could obtain the Applicant's witness and review the victim's affidavit. The court did not grant the motion. (Prob. Tr. p.4, lines 16-19).

Ms. Metcalf informed the court that the witness Mr. Potter referred to was the Applicant's sister who had contacted her office and could not verify if a gun was in the residence, but could verify that the picture was taken in her residence. (Prob. Tr. p.4, lines 7-24). Ms. Metcalf also told the court that she had some alleged instant messages between the Applicant and victim which did not come out and say that the Applicant was in possession of a firearm, but that used the screen name Kenan Parker, which she claimed was the Applicant based

on statements made about seeing a probation officer. Mr. Potter again responded that he had not had the opportunity to review that paperwork either. (Prob. Tr. p.4, ln. 25, p.5, lines 1-13).

The trial judge was concerned with the allegations of CDV and kidnapping. Ms. Metcalf clarified that the incident report from the Sheriff's Office listed CDV high and aggravated and kidnapping, but the actual charge at the time of the hearing was CDV second as he was not charged with kidnapping. She indicated that she had a copy of the incident report. Mr. Potter stated that the gun situation was the real issue and the Applicant's sister would testify that she searched the house and did not find a gun. Mr. Potter then stated that he had not had a chance to review the affidavit to see whether or not there is a need for any other additional witnesses. The trial judge then granted Mr. Potter a brief recess to allow him the opportunity to review the materials Ms. Metcalf identified.

After a thirteen (13) minute recess, the hearing resumed. Mr. Potter informed the court that he reviewed the affidavit, photograph, instant message paperwork, and the email from the sister confirming that the picture is of the kids' playroom and that there are no guns in the house. Further, he told the trial court that the Applicant told him that the instant messages were not transmitted by him, but were fabricated by the victim. In addition, Mr. Potter informed the trial court that the Applicant told him that the photograph of the weapon was fabricated by the victim by using the cut and paste function on a computer. The trial court immediately responded that "this is one of those volatile situations. I'm going to revoke and terminate ... Revoke in full and terminate." (Prob. Tr. p.7-8).

There were no witnesses called and no one testified at the Probation Revocation Hearing. In addition, the probation agent was not put under oath. The trial court never addressed the Applicant and he was never permitted to speak during the hearing. The trial court sentenced the

Applicant to full revocation of 5 years with credit for time already served. The Applicant refused to sign the Order.

After the Probation Revocation Hearing, Applicant's appointed attorney did not file a motion to reconsider and did not file an appeal. (PCR Tr. p.17, lines 1-14). The Applicant filed an untimely pro se motion to reconsider and a petition for rehearing on June 6, 2007, which were never ruled on as they had no effect as a matter of law.

The Applicant filed his Application for Post-Conviction Relief (PCR) on January 8, 2008. The Applicant, through his appointed PCR counsel, also filed an amendment to his Application on October 7, 2008. The Applicant essentially alleged the following grounds: (1) that the Applicant was denied due process because the trial court failed to grant his request for a continuance and for the trial court's failure to allow the Applicant to present evidence in defense of the alleged violation, in mitigation of his sentence, and to speak or address the trial court concerning the allegations and sentence; and (2) that the Applicant was denied effective assistance of counsel by his attorney in the Probation Revocation hearing prejudicing the Applicant because of the attorney's: failure to present the Applicant's defense or evidence including the Applicant's testimony concerning the alleged violations; failure to timely meet with Applicant and prepare his defense; failure to properly investigate the Applicant's defenses to the allegations; failure to present the Applicant's evidence in mitigation for his sentence including the Applicant's testimony concerning the alleged violations; failing to file a timely Motion to Reconsider on the Applicant's behalf; failure to advise Applicant of his right to file a Motion for Reconsideration so that he could present his evidence and testimony in defense of the allegations; failure to appeal the court's finding that Applicant was in violation and sentence; and failure to advise the Applicant of his right to appeal his violation and sentence.

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The State timely filed its Return with a transcript of the January 19, 2007 Probation Revocation Hearing which was made a part of the record. The State's Return denied that the Applicant should receive post-conviction relief, but requested an evidentiary hearing on the issue of ineffective assistance of counsel. Further, at the hearing, the State took the position that Applicant's due process and other allegations were issues for direct appeal rather than post-conviction relief.

II. ARGUMENT/ FINDINGS OF FACT

The Applicant has the burden of establishing his entitlement to post-conviction relief by a preponderance of the evidence. Rule 71.1(e), SCRCP and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The court finds that the Applicant has met his burden of proof as discussed below.

The trial court has discretion to revoke probation. State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006); S.C. Code Ann. § 24-21-460 (2007). When deciding whether to revoke probation, "[t]he trial court must determine whether the State has presented sufficient evidence to establish that a probationer has violated the conditions of his probation." Allen, 370 S.C. at 94, 634 S.E.2d at 655. "Probation is a matter of grace; revocation is the means to enforce the conditions of probation." Hamilton, 333 S.C. at 648, 511 S.E.2d at 97; *see* State v. White, 218 S.C. 130, 136, 61 S.E.2d 754, 756 (1950) ("While probation is a matter of grace, the probationer is entitled to fair treatment, and is not to be made the victim of whim or caprice."). "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of

permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.” Allen 370 at 94, 634 S.E.2d at 655 (citing Fontaine v. Peitz, 291 S.C. 536, 539, 354 S.E.2d 565, 566 (1987)); S.E.C. v. TheStreet.Com, 273 F.3d 222, 229 n. 6 (2d Cir.2001).

The State failed to present sufficient evidence to establish that the Applicant violated the conditions of his probation. The “authority to review such a decision is confined to correcting errors of law unless the lack of a legal or evidentiary basis indicates the circuit judge’s decision was arbitrary and capricious.” State v. Hamilton, 333 S.C. 642, 647, 511 S.E.2d 94, 96 (Ct. App. 1999).

In State v. Allen, the South Carolina Supreme Court held that a probationer has a constitutionally protected liberty interest and cannot be denied due process. Id. at 96-97. The Allen court cited the United States Supreme Court’s decision in Morrissey v. Brewer, 408 U.S. 471, 480-90 (1972), which held that the “minimum requirements of due process in parole revocation proceedings include ‘(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.’” In Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973), the United States Supreme Court expanded upon Morrissey, holding that “a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in Morrissey.” Id. at 782. The South Carolina Supreme Court acknowledged these requirements in State v. Riddle, 277 S.C. 110, 282 S.E.2d 863 (1981), which

reversed a probation revocation and remanded for a new hearing consistent with the guidelines set forth in Morrissey and Gagnon.

More recently, in State v. Dangerfield, 376 S.C. 176, 656 S.E.2d 352 (2008), the South Carolina Supreme Court acknowledged the guidelines set forth in Morrissey and Gagnon and held that a Defendant must be afforded notice and an evidentiary hearing before an imposition of a suspended sentence. This rationale also applies to imposing suspended sentences in probation revocation hearings for alleged probation violations. Id. at 180, 656 S.E.2d at 354. The procedural component of the state and federal due process clauses require the person whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 3. See State v. Hill, 368 S.C. 649, 656, 630 S.E.2d 274, 278 (2006). Accordingly, this court finds that alleged violations of due process are proper for PCR applications and can support the granting of post-conviction relief.

III. CONCLUSIONS OF LAW

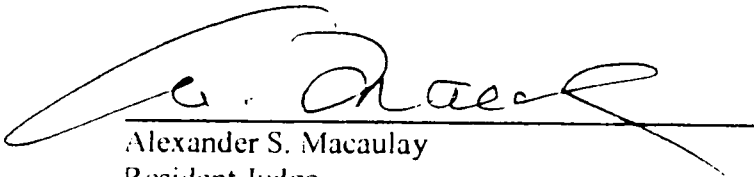
Upon review of the record of the Probation Revocation Hearing, this court finds that there was a lack of evidence presented by the State to impose the suspended sentence. Although the Applicant was provided a hearing, he was not afforded the considerations addressed by the South Carolina Supreme Court in Dangerfield. The State did not disclose evidence against the Applicant until the Probation Revocation Hearing. Although a short recess was granted in order for Mr. Potter to review the evidence against the Applicant, this was not an adequate amount of time to obtain witnesses to testify in order to rebut the evidence against the probationer. (Prob. Tr. p.4, lines 13-19). In addition, the Applicant never had the opportunity to present witnesses

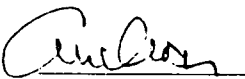
and documentary evidence or the opportunity to confront and cross-examine adverse witnesses. The probation agent was not sworn and gave no testimony under oath. The probation agent showed various documents to the court and to Mr. Potter, but no exhibits were marked into evidence or appear in the record. Moreover, in the PCR Hearing, the probation agent testified that the probation file had been purged and the alleged evidence referred to before the trial court had been purged and destroyed. (PCR Tr. p.97-98). Mr. Potter explained to the trial court that the probationer denied the violations and could produce witnesses and needed a continuance, which was not granted. Finally, the Applicant never received a written statement of the factfinder providing evidence to support the revocation and the record does not contain any conclusion or provide an evidentiary basis for the revocation or sentence.

ORDER

The Applicant has met his burden of establishing his entitlement to post-conviction relief by a preponderance of the evidence. Accordingly, Applicant's application for post-conviction relief is hereby granted. The Applicant's probation revocation and sentence hereby is vacated and the case is remanded for a new hearing consistent with the requirements of State v. Allen regarding the alleged probation violations.

AND IT IS SO ORDERED this 9th day of September, 2009.


Alexander S. Macaulay
Resident Judge
Tenth Judicial Circuit

, South Carolina
September 9, 2009

WITNESSES

APD, WILLIAMS

ARREST WARRANT NO. 1-714980

ACTION OF GRAND JURY

return of Grand Jury

VERDICT

return of Petit Jury

Date:

DOCKET NO. 10010-GS-04-3028

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

TERM

AAM

THE STATE

vs.

BRADLEY WILLIAM ISHMAN

Indictment for

POINTING OR PRESENTING A FIREARM
16-23-0410 [0122]

✓ COMMITMENT
9-20-06/comp

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR

POINTING OR PRESENTING A FIREARM

16-23-0410 [0122]

At a Court of General Sessions, convened on 16-23-0410 [0122],
the Grand Jurors of ANDERSON County present upon their oath:

POINTING OR PRESENTING A FIREARM

That Bradley William Ishman did in Anderson County on or about July 11, 2006 point or present a firearm at Kenon Jiovanni. All in violation of Section 16-23-410 Code of Laws of South Carolina (1976), as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
STATE v BRADLEY WILLIAM ISHMAN
AKA: _____
Race/Sex: W M Age: 23

DOB: 09/25/82 SSN: 240-53-7055

Address: 231 MCFALL CIRCLE

City, State, Zip ANDERSON SC 29621

DL# _____ SID: SC01655498

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

2006-GS-04-3028

A/W#: 1714980

Date of Offense: 07/11/06

S.C. Code: 16-23-0410

CDR Code #: 0122

CASE RESTORED ☐

SENTENCE ☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

Pointing a Firearm at a Person

in violation of 16-23-410 of the S.C. Code of Laws, bearing CDR Code #: 0112121

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 1725-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Al A. Means
Solicitor

Bradley William Ishman
Defendant

James P. Phillips
Attorney for Defendant

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

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
14-1-211 (A)(2) DUI Surcharge \$100 \$ _____
56-6-2995 (DUI Assessment) \$12 \$ _____
56-13 (Public Def/Prob) \$500 \$ 500
73-3, 13 TP (Law Enforcement Funding) \$25 \$ 25
33-7, 13 TP (Drug Court Surcharge) \$100 \$ _____
50-21-114 (BUI Breath Test Fee) \$50 \$ _____
56-6-2942(u) (Vehicle Assessment) \$40/ea \$ _____
3% County (if paid in installments) \$ _____
TOTAL \$ 775

Cathy M. Phillips

Clerk of Court/Deputy Clerk

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling 17

Random Drug/Alcohol Testing 17

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ 25.00 beginning 10/20/06
\$ 150.00 paid to Public Defender Fund.

Other: _____

ANGEL MAMAG EHELE

☒ Appointed PD or other counsel, 35.13 TP

Requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 1117

Sentence Date 4/20/06

Court Report Brady

Code # _____

533
NO. 100
KERNON C.
DA. 480 C
NATHAN C.
JAMES PA
JERRY PLU
MELISSA S
BRANDON M.
STAY AWAY
STONE
WOOD
IN-DOE
LOCAL

Spade,
BRANDON
MCCOONS
NOT
ENTER
STONE
WOODS

1-714980

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Anderson Municipal Court

FILED - CLERK'S OFFICE

THE STATE

against

Bradley William Ishman

Address:

231 Mcfall Cir

Anderson, SC 29621-

Phone:

SSN:

Sex: MRace: WHeight: 63Weight: 220DL State: SC

DL #:

011156444

DOB:

Agency ORI #:

Prosecuting Agency:

Anderson Police Department

Prosecuting Officer:

Tyrone Williams

Offense:

POINTING/PRESENTING FIREARM

Offense Code:

16-23-410

Code/Ordinance Sec:

16-23-410

his warrant is

CERTIFIED FOR SERVICE

in the

☐ County/☐ Municipality of

The accused

to be arrested and brought before me
to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

copy of this arrest warrant was delivered to

defendant

B. W. Ishman

1150406

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Anderson Municipal Court

401 South Main Street

Anderson, SC 29624

☐ County/ ☒ Municipality of

Anderson Municipal Court

Personally appeared before me the affiant

Tyrone Williams

being duly sworn deposes and says that defendant

did within this county and state on

07/11/2006

State of South Carolina (or ordinance of
in the following particulars:☐ County/☒ Municipality of

Anderson Municipal Court

DESCRIPTION OF OFFENSE:

POINTING/PRESENTING FIREARM

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On the above date the defendant did, without legal cause and not in self defense, present a firearm at the victim
(Kenon Giovanni). This incident did occur at 160 Fairway Green within the city limits of Anderson, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

Anderson Municipal Court

Affiant's Address

401 South Main Street

Anderson, SC 29621-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe

on 07/11/2006

defendant

Bradley William Ishman

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

Anderson Municipal Court

) as set forth below:

DESCRIPTION OF OFFENSE:

POINTING/PRESENTING FIREARM

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution
soon thereafter as is practicable

Sworn to and subscribed before me

on 07/11/2006

Signature of Issuing Judge

Judge Code: 099

Judge's Address

Anderson, SC -

Judge's Telephone

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

ORIGINAL

AFFIDAVIT

Not Applicable by
S.C. Attorney General
April 21, 2009
S.C. 2008-10

K. M. M.

7-11-2006

Amount: *20,000*

Surety: *Surety*

PRELIMINARY HEARING held by

Attorney:

DISPOSITION before

(indicate jury trial, bench trial, plea, nol. pros., etc.)

n

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA

County of _____
STATE _____

VS.

AKA: _____

Race: _____

Sex: _____

DOB: _____

SSN: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#: _____

016 -GS- 04 3028
CW#: R-01-01-0819 (17-12-16) C-14-16-1-708Name of Original Offense: Robbing & Possessing FirearmConviction S.C. Code §: 16-23-410Conviction CDR Code #: 0, 1, 2, 2Date of Original Offense: 09-20-06Original Sentence: 5 years suspendedWith 3 years **ORDER** Probation

The above named defendant has been charged with violating the conditions of probation ordered on 09/20/06 in the Court of General Sessions of Anderson County as set forth in the attached warrant or citation dated 12/13/06. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant, has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 1, 3, 4, 5, 6, 9, 11 & Special Conditions

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 5 months/years the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☒ Additional Conditions ordered by the Court:

Full Revocation; terminate balance of Probation.
Credit for time served 38 days
Civil judgments for balance of monies

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

- ☒ The defendant has previously served 0 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

This 19th day of January, 2007.Anderson, SC.

Presiding Judge

Hon. Judge H. H. H.

Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Refused to sign

Witnessed by

H. H. H.Signed this 19th day of January, 2007, at Anderson, SC

SC00# 319764 (SHMAN, BRADLEY W. 0024636
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE FBI# 390294084
INSTITUTION ... TYGER RIVER CORR INST
SECURITY/CUST.: 2 MINIMUM IN
CURR INCARC SENT...: 5 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: YES
MED CLASS: 3 MED PROB/WORK RESTRICT
MENTAL CLASS: NMH (NO MENTAL HEALTH TRE
CURRENT PROGRAM...: NO CURRENT PROGRAM
AGE...: 25
DORM.....: U1002148
TOBACCO USER...: Y
PROJ MAXOUT DATE: 01/12/2010
PROJ PAROLE DATE: 02/28/2008
ENC JOB...: NO CURRENT JOB
EDUC PGM...: NO CURR EDUC PROGRAM
ENC LEVEL: 0 SEC LEVEL:
ASSIGNMENT...: GENERAL DETAIL UNEN

PREVIOUS NUMBERS:

*** NO PREVIOUS NUMBERS ***

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CAT INDICT
POINTING A FIREARM	5 0 0 ANDERSON	12/12/2006 N 3 0665043028

PRIOR COMMITMENTS OVER 90 DAYS:
MISSING PRIORS DATA
DETAINEES (HOLD, WANTED, NOTIFY):
CDV 1/2/3-NON-MAND WANTED JUDGE SHARPE CATEG: 3
CDV 1/2/3-NON-MAND WANTED PRESIDING JUDGE CATEG: 3
ESCAPES:
NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

04/12/07 THREATENING TO INFLECT H	OTHER
05/24/07 REFUSING OR FAILING OBEY DROPPED	MAJOR
05/18/07 REFUSING OR FAILING OBEY CONVICTED	ADMIN
04/09/07 OUT OF PLACE CONVICTED	ADMIN

HISTORY OF MOVEMENTS:

11/27/07 TYGER RIVER	INCARCERATED	RETURN FROM COURT
11/27/07 ANDERSON CO	AUTH ABSENSE (AWL)	TO COURT
03/13/07 TYGER RIVER	INCARCERATED	ADMINISTRATIVE
01/30/07 KIRKLAND	INCARCERATED	R&E PROCESSING
01/30/07 PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
GOOD SERVICE AIDE	03/16/07	04/19/07	MEDICAL	3F5
GOOD SERVICE AIDE	03/15/07	03/15/07	NOT ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS*

***** END OF REPORT *****

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/23/08
 OMCOMITA RELEASE DATE SCREEN C024686
 SCDC# > 319764 LOC: TYGER RIVER
 ISHMAN, BRADLEY W. SCDC CLASSIFICATION...: NON-VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT...: N
 CURRENT SENTENCE: 005-00-000 CONSECUTIVE SENTENCE ...: N
 005-00-000 CURRENT SENT START DATE: 12/12/2006
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 01/12/2010 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 02/28/2008 NEXT PAROLE HEARING DATE: 02/28/2008

 TOTAL GT DAYS EARNED: 000220 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ..: 000012 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 OUTSTANDING DETAINER
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 000403

PFKEYS: 5:HISTORY OF DATE CHANGES
 4- 1 Sess-1 167.7.50.33 TNET1194 3/11

STATE OF SOUTH CAROLINA

County of _____
STATE _____

VS

AKA: _____

Race: W Sex: MDOB: 09-25-1982SSN: 240-53-7055SID#: 01055498

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#: _____

CW#: 016-GS-04-3028
016-GS-04-3028Name of Original Offense: Printing & Presenting FalseConviction S.C. Code §: 16-23-410Conviction CDR Code #: 0, 1, 2, 2Date of Original Offense: 09-20-06Original Sentence: 5 years suspendedWith 3 years ORDER Probation

The above named defendant has been charged with violating the conditions of probation ordered on 09/20/06 in the Court of General Sessions of Anderson County as set forth in the attached warrant or citation dated 12/13/06. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 1, 3, 4, 5, 6, 9, 10 & Special Conditions

Therefore, IT IS ORDERED that:

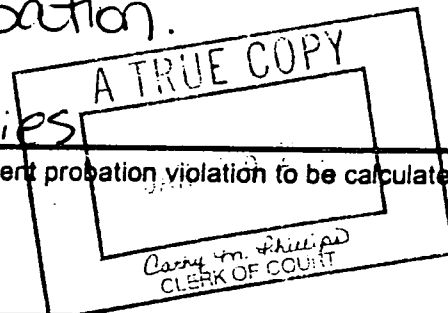
- ☒ the suspended sentence be revoked and the above named defendant be required to serve 5 months/years of the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☒ Additional Conditions ordered by the Court:

Full Revocation; terminate balance of Probation.
Credit for time served 38 days
Civil judgments for balance of monies

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 0 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

This 19th day of January, 2007.Anderson, SC.

Presiding Judge Hen. Judge [Signature]
Tenth Judicial Circuit



You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Refused to Sign

Witnessed by

[Signature]Signed this 19th day of January, 2007, at Anderson, SC.