

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from York County

Lee S Alford, Circuit Court Judge

---

RECEIVED

MAY - 4 2012

SC Supreme Court

STEVEN J FREEMAN,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

---

DAYNE C PHILLIPS  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

JOHN W MCINTOSH  
Chief Deputy Attorney General

SALLEY W ELLIOTT  
Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

J RUTLEDGE JOHNSON  
Assistant Attorney General  
P O Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1                   IN THE COURT OF GENERAL SESSIONS  
2                   YORK COUNTY, SOUTH CAROLINA  
3  
4           SOUTH CAROLINA  
5           VERSUS  
6           STEVEN JOEL FREEMAN, DEFENDANT  
7           CASE NUMBER   2006-CS-46-3825  
8

9           HEARD ON MONDAY, MARCH 5, 2007  
10          BEFORE THE HONORABLE JOHN C HAYES, III

11                                   APPEARANCES

12          KEVIN BRACKETT  
13          WILLY THOMPSON  
14          16TH CIRCUIT SOLICITOR'S OFFICE  
15          1675 YORK HIGHWAY  
16          YORK, SC 29745  
17          REPRESENTING THE STATE

18          HARRY DEST  
19          B J BARROWCLOUGH  
20          POST OFFICE BOX 691  
21          YORK, SC 29745  
22          REPRESENTING MR FREEMAN

23          REPORTED BY       JANET M RICH  
24                           CIRCUIT COURT REPORTER  
25                           1992 DOWNEY STREET  
                          ROCK HILL, SC 29732

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1                   THE COURT   ALL RIGHT    LET'S GO THROUGH  
2   THE VOIR DIRE

3                   MR BRACKETT   I THINK ALL OF THESE ARE  
4   INCORPORATED IN YOUR STANDARD VOIR DIRE QUESTIONS  
5   IN ANY EVENT, WE DON'T HAVE ANY OBJECTIONS, BUT I  
6   BELIEVE THEY ARE ALL INCORPORATED AND JUST ASK FOR  
7   THE STANDARD RECIPROCAL AS FAR AS ANY MEMBER OF THE  
8   JURY PANEL KNOW EITHER ANYBODY WHO WORKS IN THE  
9   PUBLIC DEFENDER'S OFFICE OR CLOSE FRIENDS, PERSONAL  
10  ACQUAINTANCES WITH ANY MEMBER OF THE DEFENDANT'S  
11  FAMILY WHICH I BELIEVE IS ALSO PART OF YOUR STANDARD  
12  QUESTIONING TO THE JURY PANEL   THEN THERE IS A  
13  SECOND PAGE OF MOTIONS IN LIMINE BY THE DEFENSE WHICH  
14  WE INTEND TO TAKE UP AFTER THE JURY IS SELECTED  
15  EITHER BEFORE OR AFTER LUNCH DEPENDING ON HOW MUCH  
16  TIME IS LEFT OVER

17                  THE COURT   ALL RIGHT   DO I HAVE A  
18  WITNESS LIST FROM THE DEFENSE?

19                  MR BARROWCLOUGH   NO, YOUR HONOR

20                  MR BRACKETT   WE PROVIDED A COPY

21                  THE COURT   HAS THE INCIDENT DATE AND  
22  LOCATION

23                  MR BRACKETT   YES, SIR

24                  THE COURT   I'VE GOT IT   WE SHOULD BE  
25  READY FOR THE JURY THEN

1 MR BRACKETT YES, SIR  
2 THE COURT ANYTHING BEFORE THE JURY COMES  
3 IN?

4 MR BRACKETT NOT FROM THE STATE  
5 MR DEST NOT BY THE DEFENSE, YOUR HONOR  
6 THE COURT WE NEED THIS SIDE OF THE ROOM,  
7 MR BRACKETT

8 (THE JURY RETURNS TO THE COURTROOM AT  
9 12 29 PM )

10 THE COURT MEMBERS OF THE JURY PANEL, I'M  
11 JOHN HAYES ALONG WITH JUDGE ALFORD, WHO YOU MET  
12 THIS MORNING, I'M THE OTHER JUDGE ASSIGNED FROM ROCK  
13 HILL HE AND I ARE THE RESIDENT JUDGES FOR THE  
14 SIXTEENTHS CIRCUIT FOR YORK AND UNION COUNTIES  
15 WE'RE BOTH ASSIGNED TO HOLD WHAT WE CALL GENERAL  
16 SESSIONS CRIMINAL COURT THIS WEEK I'M GOING ASK THE  
17 SOLICITOR TO CALL THE FIRST CASE FOR THIS COURT

18 MR BRACKETT MAY IT PLEASE THE COURT  
19 YOUR HONOR, THIS IS 2006-GS-46-3825, 3826, AND 3827,  
20 THE STATE VERSUS STEVEN JOEL FREEMAN THEY ARE  
21 RESPECTIVELY INDICTMENTS FOR MURDER, BURGLARY IN THE  
22 FIRST DEGREE, AND RESISTING ARREST THE STATE IS  
23 PREPARED TO DRAW A JURY ON THESE CHARGES AT THIS  
24 TIME

25 THE COURT ALL RIGHT THESE ARE THE

1       CASES OF THE STATE VERSUS STEVEN JOEL FREEMAN  
2       MR   FREEMAN, WILL YOU STAND AND FACE THE JURY    THIS  
3       IS MR   FREEMAN AND HE'S REPRESENTED BY MR   DEST AND  
4       MR   BARROWCLOUGH   YOU MAY BE SEATED    THANK YOU  
5       THE STATE IS REPRESENTED BY MR   BRACKETT AND  
6       MR   THOMPSON    YOU MAY BE SEATED  
7                       MR   FREEMAN IS CHARGED WITH MURDER  
8       IT'S ALLEGED THAT ON OR ABOUT AUGUST 28, 2006, HE  
9       FELONIOUSLY, WILLFULLY, AND WITH MALICE AFORETHOUGHT  
10      KILLED ONE MICHAEL BURGESS BY MEANS OF PHYSICALLY  
11      BEATING HIM AND THAT THE VICTIM DIED AS A RESULT  
12      THEREOF   IT'S ALLEGED THE MURDER OCCURRED AT  
13      ADDRESS                   AT APARTMENT           IN ROCK HILL  
14                       ADDITIONAL INDICTMENT ALLEGES THAT ON  
15      THAT DATE AND AT THAT TIME AND AT THAT PLACE  
16      MR   FREEMAN COMMITTED THE OFFENSE OF BURGLARY FIRST  
17      DEGREE BY ENTERING WITHOUT CONSENT WITH INTENT TO  
18      COMMIT A CRIME IN THE NIGHTTIME APARTMENT       AT  
19                       AND THAT HE CAUSED PHYSICAL INJURY TO  
20      MICHAEL BURGESS WHO WAS NOT PARTICIPATING IN THE  
21      BURGLARY  
22                       THE LAST CHARGE IS THAT ON THAT SAME  
23      DATE HE RESISTED ARREST, THAT IS, HE RESISTED THE  
24      EFFORTS OF ROCK HILL POLICE OFFICERS TO MAKE A LAWFUL  
25      ARREST OF HIM IN VIOLATION OF THE LAWS OF THIS STATE

1                   FIRST ARE ANY OF YOU RELATED BY BLOOD  
2           OR MARRIAGE OR ARE YOU A CLOSE PERSONAL FRIEND OF ANY  
3           OF THE INDIVIDUAL TO WHOM YOU'VE JUST BEEN  
4           INTRODUCED, THE FOUR ATTORNEYS OR MR FREEMAN, IF SO  
5           PLEASE STAND   NO ONE STANDS

6                   HAVE ANY OF YOU BEEN REPRESENTED BY  
7           OUR SOLICITOR'S OFFICE OR OUR PUBLIC DEFENDER'S  
8           OFFICE HERE IN YORK COUNTY, SOUTH CAROLINA, OR ANY OF  
9           THE ATTORNEYS ASSOCIATED WITH EITHER OF THOSE  
10          OFFICES, IF SO PLEASE STAND   NO ONE STANDS

11                   I'VE TOLD YOU THE DATE THIS OCCURRED  
12          I TOLD YOU WHERE IT HAPPENED   I'VE INTRODUCED YOU TO  
13          THE DEFENDANT AND I TOLD YOU WHO THE VICTIM WAS   DO  
14          ANY OF YOU KNOW ANYTHING ABOUT THIS CASE, HEARD ABOUT  
15          IT FROM ANY SOURCE WHATSOEVER OR HAVE ANY OF YOU  
16          FORMED OR EXPRESSED ANY OPINION ON ANY MATTER OR  
17          ISSUE WHICH WOULD BE INVOLVED IN THIS CASE, IF SO  
18          PLEASE STAND   NO ONE STANDS

19                   WERE ANY OF YOU MEMBERS OF THE GRAND  
20          JURY WHICH PASSED ON THIS INDICTMENT AT AN EARLIER  
21          TIME, IF SO PLEASE STAND   NO ONE STANDS

22                   ARE ANY OF YOU OR A MEMBER OF YOUR  
23          FAMILY INVOLVED IN LAW ENFORCEMENT AT ANY LEVEL,  
24          ANYTHING FROM THE MILITARY POLICE TO HIGHWAY PATROL  
25          TO CITY OR COUNTY OFFICER OR ANY OF YOU, GO AHEAD AND

1 STAND, AND ARE ANY OF YOU RELATED BY BLOOD OR  
2 MARRIAGE TO ANYONE WHO IS INVOLVED IN THE PROSECUTION  
3 OF CRIMINAL CASES ANYTHING LIKE THE SOLICITOR,  
4 DISTRICT ATTORNEY, OR JUDGE ADVOCATE GENERAL, IF SO  
5 PLEASE STAND ALL RIGHT YOUR NAME AND NUMBER  
6 THE JUROR MY NAME IS WENDY BAUER, JUROR  
7 NUMBER 221 MY HUSBAND WORKS FOR THE YORK COUNTY  
8 SHERIFF'S DEPARTMENT  
9 THE COURT ALL RIGHT THIS WAS A CITY  
10 CASE, IS THAT CORRECT?  
11 MR BRACKETT YES, YOUR HONOR  
12 THE COURT ALL RIGHT WOULD THE FACT  
13 THAT YOUR HUSBAND IS EMPLOYED BY THE SHERIFF'S OFFICE  
14 WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND  
15 IMPARTIAL IN THE TRIAL OF THIS CASE?  
16 THE JUROR NO, SIR  
17 THE COURT WOULD YOU BE ABLE TO BASE YOUR  
18 VERDICT SOLELY ON THE LAW AND THE EVIDENCE?  
19 THE JUROR YES, SIR  
20 THE COURT YOU CAN BE SEATED THANK YOU  
21 YES, MA'AM, YOUR NAME AND NUMBER  
22 THE JUROR SUSAN MISKELLY I'M  
23 JUROR 140 MY SISTER WORKS FOR THE SOLICITOR'S  
24 OFFICE  
25 THE COURT ALL RIGHT I BELIEVE I'LL

1 EXCUSE YOU THEN WELL, LET ME ASK YOU THIS FIRST  
2 DO YOU THINK IN SPITE OF THE FACT THAT YOUR SISTER  
3 WORKS FOR THE SOLICITOR, DO YOU, IN SPITE OF THAT,  
4 COULD YOU BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS  
5 CASE?

6 THE JUROR I'M NOT SURE

7 THE COURT WELL, I'LL EXCUSE YOU THEN  
8 YOU CAN BE SEATED THANK YOU FOR BEING COMPLETELY  
9 HONEST YES, SIR

10 THE JUROR MY NAME IS CRAIG ROMB I'M  
11 164 MY BROTHER IS A BRIARWOOD SHERIFF IN BRIARWOOD  
12 COUNTY, FLORIDA

13 THE COURT WOULD THAT AFFECT YOUR ABILITY  
14 TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

15 THE JUROR NO, SIR

16 THE COURT WOULD YOU BE ABLE TO BASE YOUR  
17 VERDICT ON THE LAW AND THE EVIDENCE IN THE TRIAL?

18 THE JUROR YES, SIR

19 THE COURT THANK YOU I APPRECIATE YOUR  
20 STANDING YES, MA'AM

21 THE JUROR I'M LINDA MCWHIRTER JUROR  
22 138 RETIRED CAPTAIN OF MECKLENBURG COUNTY SHERIFF'S  
23 OFFICE

24 THE COURT WOULD THAT AFFECT YOUR ABILITY  
25 TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?



1 THE JUROR NO, SIR

2 THE COURT WOULD YOU BE ABLE TO BASE YOUR  
3 VERDICT ON THE LAW AND THE EVIDENCE IN THE TRIAL?

4 THE JUROR YES, SIR

5 THE COURT THANK YOU YES, MA'AM, YOUR  
6 NAME AND NUMBER

7 THE JUROR SHERRY LOWDER, JUROR NUMBER  
8 128 MY DAD WAS SHERIFF, CAPTAIN FOR THE SHERIFF'S  
9 DEPARTMENT FOR MANY, MANY YEARS HERE IN YORK COUNTY

10 THE COURT WOULD THAT AFFECT YOUR ABILITY  
11 TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

12 THE JUROR NO

13 THE COURT WOULD YOU BE ABLE TO BASE YOUR  
14 VERDICT ON THE LAW AND THE EVIDENCE?

15 THE JUROR YES, SIR

16 THE COURT ALL RIGHT THANK YOU NO ONE  
17 ELSE STANDS ARE ANY OF YOU MEMBERS OF OR  
18 CONTRIBUTORS TO ORGANIZATIONS SUCH AS STUDENTS  
19 AGAINST DRUNK DRIVERS, MOTHERS AGAINST DRUNK DRIVERS,  
20 CITIZENS AGAINST VIOLENCE, TROOPER'S ASSOCIATION,  
21 SHERIFF'S ASSOCIATION, THE FRATERNAL ORDER OF THE  
22 POLICE, ANY OF YOU CONTRIBUTORS TO OR MEMBERS OF ANY  
23 OF THOSE ORGANIZATIONS, IF SO PLEASE STAND ALL  
24 RIGHT YES, SIR, YOUR NAME AND NUMBER

25 THE JUROR JAMES CANTY JUROR NUMBER 35

1 MY WIFE AND I ARE CONTRIBUTORS TO THE TROOPER'S  
2 ASSOCIATION

3 THE COURT WOULD THAT AFFECT YOUR ABILITY  
4 TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

5 THE JUROR NO, SIR

6 THE COURT WOULD YOU BE ABLE TO BASE YOUR  
7 VERDICT SOLELY ON THE LAW AND THE EVIDENCE IN THE  
8 TRIAL?

9 THE JUROR YES, SIR

10 THE COURT ALL RIGHT THANK YOU YES,  
11 SIR, YOUR NAME AND NUMBER

12 THE JUROR JOHN JACKSON 108 AND I  
13 CONTRIBUTED TO THE SAME FRATERNAL ORDER OF POLICE I  
14 DON'T THINK THAT AFFECT MY OPINION

15 THE COURT IN SPITE OF THAT YOU'LL BE  
16 ABLE TO BE FAIR AND IMPARTIAL?

17 THE JUROR I THINK SO

18 THE COURT WOULD YOU BE ABLE TO BASE YOUR  
19 VERDICT ON THE LAW AND THE EVIDENCE IN THE TRIAL?

20 THE JUROR YES, SIR

21 THE COURT THANK YOU YES, MA'AM, YOUR  
22 NAME AND NUMBER

23 THE JUROR PHOEBE SHEETS I'M JUROR  
24 NUMBER 173 I'M ASSOCIATE MEMBER OF THE FOP

25 THE COURT WOULD THAT AFFECT YOUR ABILITY

1 TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

2 THE JUROR NO

3 THE COURT WOULD YOU BE ABLE TO BASE YOUR  
4 VERDICT ON THE LAW AND THE EVIDENCE?

5 THE JUROR YES, SIR

6 THE COURT ALL RIGHT THANK YOU DO ANY  
7 OF YOU HAVE ANY PHILOSOPHICAL, THEOLOGICAL, ANY  
8 MORAL, ANY REASONS THAT YOU FEEL YOU COULD NOT SERVE  
9 AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS  
10 CASE YOU'VE HEARD WHOSE INVOLVED AND WHAT'S  
11 INVOLVED, IF YOU HAVE ANY RELIGIOUS, AS I SAID  
12 THEOLOGICAL, RELIGIOUS, SOCIOLOGICAL ANY REASON THAT  
13 YOU WOULD NOT BE ABLE TO BE FAIR AND IMPARTIAL IN THE  
14 TRIAL OF THIS CASE IF SO PLEASE STAND NO ONE  
15 STANDS

16 DO ANY OF YOU KNOW OF ANY REASON YOU  
17 COULD NOT SERVE AS A FAIR AND IMPARTIAL JUROR IN THE  
18 TRIAL OF THIS CASE IF SO PLEASE STAND NO ONE  
19 STANDS

20 NOW IF ANY OF YOU OR A MEMBER OF YOUR  
21 FAMILY, AND I'M NOT GOING TO ASK YOU TO GO INTO THE  
22 PARTICULARS OF THIS BECAUSE WHEN YOU HEAR THE  
23 QUESTION YOU'LL KNOW THAT THERE IS SOME SENSITIVITY  
24 INVOLVED HAVE ANY OF YOU BEEN EITHER THE VICTIM OF,  
25 YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY, A VICTIM OF

1 A BURGLARY OR HAVE ANY OF YOU OR A MEMBER OF YOUR  
2 IMMEDIATE FAMILY BEEN CHARGED WITH THE OFFENSE OF  
3 BURGLARY? IF SO PLEASE STAND ALL RIGHT AGAIN I'M  
4 NOT GOING TO ASK TO TELL THE PARTICULARS ALL I WANT  
5 TO DO IS ASK EACH OF YOU TO GIVE ME YOUR NAME AND  
6 YOUR NUMBER AND THEN I'M GOING TO ASK THE THREE OF  
7 YOU WHETHER OR NOT THAT WOULD AFFECT YOUR ABILITY TO  
8 BE FAIR AND IMPARTIAL

9 THE JUROR WILLIAM WARREN, JUROR NUMBER  
10 206 IT WOULD NOT AFFECT MY ABILITY

11 THE COURT ALL RIGHT JUST REMAIN  
12 STANDING

13 THE JUROR LAURA SMITH NUMBER 186 AND IT  
14 WON'T AFFECT MY ABILITY

15 THE COURT ALL RIGHT

16 THE JUROR TINA FISHER JUROR NUMBER 75  
17 AND I DON'T BELIEVE IT WOULD AFFECT MY ABILITY

18 THE COURT ALL RIGHT WELL, YOU'VE TOLD  
19 ME YOUR NAMES AND YOU TOLD ME IT WOULD NOT AFFECT  
20 YOUR ABILITY TO BE FAIR AND IMPARTIAL SO YOU MAY BE  
21 SEATED THANK YOU

22 THE FOLLOWING ARE POSSIBLE WITNESSES IN  
23 THIS CASE I DON'T KNOW THAT ALL OF THESE WILL  
24 TESTIFY IT IS A LONG LIST I DON'T BELIEVE BASED  
25 ON EXPERIENCE THAT ALL OF THESE WITNESSES WILL

1 TESTIFY BUT SOMETIMES THEY DON'T TESTIFY AND THEIR  
2 NAME JUST HAPPEN TO POP UP SO I'M GOING TO ASK IF ANY  
3 OF YOU ARE RELATED BY BLOOD OR MARRIAGE OR RELATED TO  
4 ANY OF THESE INDIVIDUALS IF SO PLEASE STAND YVETTE  
5 FREEMAN, CHARLIE CUTSHAW, ROB BLACKMAN, GINA BURGESS,  
6 HETHIA BURGESS, RONALD BURGESS, BRANDON BYRD, TIMOTHY  
7 CARTER, DAVID CHAMBERS  
8 THEN FROM THE EMS SERVICE ANDY  
9 CLYBURN, JOE HENSON, STEVE PURSLEY  
10 THEN INDIVIDUALS ASSOCIATED WITH 911  
11 RALPH MERCHANT, AN INDIVIDUAL  
12 INDIVIDUALS ASSOCIATED WITH THE  
13 FORENSIC SERVICE UNIT, AUDRA EDDIE, KEVIN TOLSON,  
14 JOHN WILLIAMS, MIKE WILLIAMS  
15 THEN FROM THE ROCK HILL POLICE  
16 DEPARTMENT JOHN AITON, T ALLEN, I DON'T KNOW WHAT  
17 THE T STANDS FOR TIM AYERS, TONY BREEDEN, DON  
18 DOSTER, DERRICK DURST, VERNON HARMON, KATHERINE  
19 HARVESTON, LES HERRING, S H HORNING, LINDA IRBY,  
20 MICHAEL JOHNSON, AMY JONES, BRIAN LAMBERT, JACK  
21 MCKELLAR, RAY MURPHY, JAMES PARASOLICK, DANIEL POPOV,  
22 JOHN RAINIER, MICHAEL SMOTHERS, THELMA STEELE, JASON  
23 STOKES, KEVIN SULLIVAN, JASON ZIKE  
24 ANY OF YOU RELATED BY BLOOD OR  
25 MARRIAGE TO ANYONE WHO I'VE NAMED SO FOR OR ARE CLOSE

1       PERSONAL FRIENDS, GO TO CHURCH, WORKOUT AT THE Y OR  
2       THE CLUB OR SOMETHING   ALL RIGHT    JUST REMAIN  
3       STANDING   YOU TWO REMAIN STANDING BECAUSE I'VE GOT A  
4       FEW MORE NAMES TO GO OVER AND I WANT TO COVER THEM  
5       ALL AT THE SAME TIME  
6                   ALSO POSSIBLE WITNESS DR   EARL  
7       JENKINS, JASON LIGHTFOOT, JASON LIGHTFRITZ, FANNIE  
8       LONG, BIANCA MOISON, M-O-I-S-O-N, ERIC SCHMITTLE,  
9       JAKE SHERMAN, PETRA SHERMAN, KELSEY YOUNG  
10                  ALL RIGHT    YOU MAY BE SEATED, BUT NOT YOU  
11       TWO    THAT WASN'T A JUROR WHO STOOD    THAT WAS ONE OF  
12       THE PEOPLE WHOSE NAMED THAT I CALLED    THAT'S RIGHT  
13       ALL RIGHT    THE THREE OF YOU WHO ARE STANDING IF  
14       YOU'LL GIVE ME YOUR NAME AND NUMBERS    I KNOW YOU  
15       STOOD ONE TIME BEFORE, BUT WE HAVE TO REDO THIS FOR  
16       THE RECORD EVERY TIME  
17                  THE JUROR    JIMMY PITTMAN, JUROR 152    I  
18       GO TO CHURCH WITH JOHN AITON  
19                  THE COURT    OKAY  
20                  THE JUROR    ANDREW CSORDAS, JUROR NUMBER  
21       53    I FORMERLY WENT TO CHURCH WITH MICHAEL SMOTHERS  
22                  THE COURT    YES, MA'AM  
23                  THE JUROR    PHOEBE SHEETS, 173    I HAVE  
24       WORKED WITH MOST OF THE POLICE OFFICERS  
25                  THE COURT    ALL RIGHT    IF THE FACT THAT

1 YOU HAVE THIS RELATIONSHIP EITHER THROUGH CHURCH OR  
2 WORK, IF THAT WOULD PREVENT YOU FROM BEING FAIR AND  
3 IMPARTIAL IN THIS TRIAL PLEASE RAISE YOUR RIGHT HAND  
4 NO ONE DOES

5 IF THAT WOULD PREVENT YOU FROM BASING  
6 YOUR VERDICT ON THE LAW AND THE EVIDENCE IN THE TRIAL  
7 RAISE YOUR RIGHT HAND NONE OF THE THREE DO THANK  
8 YOU YOU MAY BE SEATED ALL RIGHT ANYTHING ELSE  
9 FROM THE STATE?

10 MR BRACKETT NO, SIR  
11 THE COURT ANYTHING ELSE FROM THE  
12 DEFENDANT?

13 MR DEST NOT FROM THE DEFENSE, YOUR  
14 HONOR

15 MR BRACKETT STRIKES ARE TEN AND FIVE,  
16 ONE AND TWO FOR THE ALTERNATE, AND THE STATE REQUESTS  
17 TWO ALTERNATES

18 THE COURT ANY PROBLEM WITH THAT?

19 MR DEST NO PROBLEMS WITH THAT

20 (THE JURY IS DRAWN AND SEATED AT 12 43  
21 PM )

22 JUROR NUMBER 10 JERRY ASHLEY MALE WHITE STRUCK BY THE  
23 DEFENSE

24 JUROR NUMBER 3 DAVINA ALEXANDER FEMALE BLACK

25 ACCEPTED

1 JUROR NUMBER 212 KENETTE WHITE FEMALE WHITE STRUCK BY  
2 THE DEFENSE  
3 JUROR NUMBER 174 MANDY SILVERTHORN FEMALE WHITE  
4 ACCEPTED  
5 JUROR NUMBER 88 ROBERT GLENN MALE WHITE ACCEPTED  
6 JUROR NUMBER 126 APRIL LINGERFELT FEMALE WHITE  
7 ACCEPTED  
8 JUROR NUMBER 145 KENNETH MYERS MALE WHITE ACCEPTED  
9 JUROR NUMBER 164 CRAIG ROMB MALE WHITE STRUCK BY THE  
10 STATE  
11 JUROR NUMBER 108 JOHN JACKSON MALE BLACK STRUCK BY  
12 THE STATE  
13 JUROR NUMBER 119 PATRICIA KNOTT FEMALE WHITE STRUCK  
14 BY THE DEFENSE  
15 JUROR NUMBER 128 SHERRI LOWDER FEMALE WHITE STRUCK BY  
16 THE DEFENSE  
17 JUROR NUMBER 153 NANCY PURSLEY FEMALE WHITE ACCEPTED  
18 JUROR NUMBER 122 AMANDA LAFOY FEMALE WHITE ACCEPTED  
19 JUROR NUMBER 84 ROBERT GANUS MALE WHITE ACCEPTED  
20 JUROR NUMBER SARAH CHAPMAN FEMALE WHITE ACCEPTED  
21 JUROR NUMBER RICHARD YOUNG MALE WHITE ACCEPTED  
22 JUROR NUMBER 148 MARGARET PAIGE FEMALE WHITE STRUCK  
23 BY THE DEFENSE  
24 JUROR NUMBER 139 DALE MERRITT MALE WHITE ACCEPTED  
25 JUROR NUMBER 53 ANDREW CSORDAS MALE WHITE ACCEPTED



1                   THE COURT    STRIKE THE FIRST ALTERNATE  
2   STRIKES WILL BE ONE AND TWO  
3   JUROR NUMBER 221 WENDY BAUER FEMALE WHITE STRUCK BY  
4   THE DEFENSE  
5   JUROR NUMBER 152 JIMMY PITTMAN MALE WHITE ACCEPTED  
6   JUROR NUMBER 23 BARBARA BLAKE FEMALE WHITE ACCEPTED  
7                   THE COURT    ANYTHING FROM THE STATE  
8   INVOLVING THE STRIKING OF THE PANEL?  
9                   MR BRACKETT   NO, YOUR HONOR  
10                  THE COURT    ANYTHING FROM THE DEFENSE?  
11                  MR DEST    NONE BY THE DEFENSE, YOUR  
12   HONOR  
13                  THE COURT    ALL RIGHT    MADAM CLERK, THOSE  
14   WHO WERE NOT CHOSEN I'M GOING TO EXCUSE YOU FOR TODAY  
15   AND PLEASE CALL BACK AT SEVEN O'CLOCK AND FIND OUT  
16   YOUR INSTRUCTIONS WHAT TO DO NEXT  
17                    (THE MAIN JURY PANEL IS EXCUSED AT  
18   01 02 PM )  
19                  THE COURT    THOSE OF YOU WHO WERE CHOSEN,  
20   WE'RE NOT GOING TO ADMINISTER THE OATH YET   WE'RE  
21   GOING TO LET YOU GO TO LUNCH IN A FEW MINUTES   WHEN  
22   YOU COME BACK YOU'LL COME NOT BACK TO THE COURTROOM  
23   AND NOT TO THE JURY ROOM DOWNSTAIRS, BUT TO THE JURY  
24   ROOM ON THIS FLOOR   THE BAILIFF WILL SHOW YOU HOW TO  
25   GET IN AND OUT WHILE YOU ARE SERVING AS A MEMBER OF

1 THE JURY PANEL

2 MR MERRITT, I'M GOING TO ASK YOU TO  
3 BE THE FOREMAN WHEN YOU COME BACK YOU'LL TAKE THE  
4 FOREMAN'S SEAT WHERE THIS LADY IS SITTING IN NOW  
5 THE TWO ALTERNATES WILL ALWAYS SIT IN THOSE TWO  
6 SEATS THERE IS NO OTHER ASSIGNED SEATING IT'S  
7 JUST WHEREVER YOU HAPPEN TO COME IN THE LINE COMING  
8 IN YOU SIT, OTHER THAN THE FOREMAN AND THE TWO  
9 ALTERNATES

10 NOW WE'RE NOT GOING TO ADMINISTER THE  
11 OATH BUT YOU ARE ON THIS JURY OVER LUNCH DO NOT  
12 DISCUSS THE CASE WHILE YOU ARE ON THE JURY DO NOT  
13 DISCUSS THE CASE DON'T DISCUSS IT AMONG YOURSELVES  
14 AND DON'T LET ANYONE DISCUSS THE CASE WITH YOU  
15 OUTSIDE THE COURTROOM AND DO NOT TRY TO MAKE UP YOUR  
16 OWN MIND UNTIL WE REACH THE POINT IN THE TRIAL WHERE  
17 I INSTRUCT YOU TO JOINTLY DELIBERATE AND RETURN A  
18 UNANIMOUS VERDICT PRIOR TO THAT TIME YOU ARE NOT  
19 PROPERLY EQUIPPED TO MAKE A FAIR AND REASONABLE  
20 DECISION IF ANYONE OUTSIDE THE COURTROOM TRIES TO  
21 DISCUSS THIS CASE WITH YOU, TELL THEM YOU CANNOT AS  
22 YOU ARE SERVING AS A JUROR IF ANYONE DOES TRY TO  
23 DISCUSS THE CASE WITH YOU REPORT THAT BACK TO ME  
24 HOPEFULLY GETTING THE IDENTITY OF THAT PERSON BECAUSE  
25 I WOULD HAVE TO TAKE ACTION FOR ANYONE WHO TRIES TO

1 TALK TO A SEATED JUROR SO DON'T DISCUSS THE CASE  
2 OUTSIDE THE COURTROOM WITH ANYONE, DON'T INITIATE A  
3 CONVERSATION ABOUT IT, DON'T LET ANYONE INITIATE A  
4 CONVERSATION WITH YOU I DON'T KNOW THAT THIS CASE  
5 WILL RECEIVE ANY COVERAGE IN THE NEWS BUT DON'T LET  
6 YOURSELF BE EXPOSED TO IT IF IT IS THAT IS, DON'T  
7 READ ABOUT IT, WATCH ANYTHING ABOUT IT, OR LISTEN TO  
8 ANYTHING ABOUT IT IF ANYTHING CATCHES YOUR EYE OR  
9 EAR THAT COULD REMOTELY DEAL WITH THIS TRIAL, DON'T  
10 LET YOURSELF BE EXPOSED TO IT

11 NOW WE'RE IN A NEW ERA WITH COMPUTERS  
12 YOU ARE NOT, I DON'T THINK ANY OF YOU WOULD DO THIS,  
13 BUT I HAVE TO INSTRUCT YOU I FEEL NOW, YOU MUST BASE  
14 YOUR VERDICT SOLELY ON THE LAW AS IT'S DEVELOPED IN  
15 THIS TRIAL DON'T BE DOING ANY INDEPENDENT  
16 INVESTIGATION OBVIOUSLY DON'T GO OUT TO WHERE THIS  
17 HAPPENED I DON'T THINK ANY OF YOU LIVE OUT THERE,  
18 SO NONE OF YOU HAVE ANY REASON TO DON'T DO ANY  
19 INDEPENDENT RESEARCH, DON'T GO ON LINE TO SEE IF YOU  
20 CAN FIND OUT ANYTHING ABOUT THE LAW, DON'T GO ON LINE  
21 TO SEE IF YOU CAN FIND ANYTHING THAT COULD REMOTELY  
22 DEAL WITH THIS TRIAL DON'T LET YOURSELF BE EXPOSED  
23 TO ANYTHING THAT COULD TOUCH ON ANY ISSUE IN THIS  
24 TRIAL WHILE YOU ARE SERVING AS A JURY PANEL UNTIL YOU  
25 JOINTLY DELIBERATE AND RETURN A UNANIMOUS VERDICT

1       LIKE I SAID I TRUST YOU, I DON'T THINK YOU WOULD DO  
2       THAT, BUT OUT OF AN ABUNDANCE OF CAUTION DON'T LET  
3       YOURSELF GET INTO ANY INDEPENDENT INVESTIGATION  
4       THROUGH ANY FORM WHATSOEVER SUCH AS MEDIA OR INTERNET  
5       OR BOOKS OR ANYTHING LIKE THAT

6                       IT'S ABOUT ONE O'CLOCK    WE HAVE SOME  
7       MATTERS TO TAKE UP OUTSIDE OF YOUR PRESENCE    I'M  
8       GOING TO ASK YOU TO BE BACK IN THE JURY AT 2 30    THE  
9       BAILIFF WILL SHOW YOU AGAIN HOW TO GET IN AND OUT  
10      WE'RE GOING TO BREAK FOR LUNCH AND START BACK AT TWO  
11      DOING SOME THINGS WE HAVE TO DO OUTSIDE YOUR  
12      PRESENCE, BUT WE SHOULD BE THROUGH BY 2 30 SO WE CAN  
13      BRING YOU IN AND START AT THAT TIME    ANYTHING ELSE I  
14      SHOULD INSTRUCT THE JURY ON BEFORE WE ADJOURN FOR  
15      LUNCH?

16                   MR BRACKETT    WE HAVE NO REQUESTS FOR  
17      THAT, YOUR HONOR

18                   MR DEST    NO REQUESTS BY THE DEFENSE,  
19      YOUR HONOR

20                   THE COURT    WHEN YOU GO OUT, YOU GO OUT  
21      THIS DOOR AND THE BAILIFF WILL SHOW YOU WHERE TO  
22      REPORT AT 2 30 AND HOW TO BEST GET IN AND OUT OF THE  
23      BUILDING WHILE YOU ARE SERVING ON THE JURY PANEL  
24                                (THE JURY EXITS THE COURTROOM AT 01 06  
25      PM)

1                   THE COURT    I THINK SINCE IT'S ONE O'CLOCK  
2                   IT'S BEST FOR US TO TAKE LUNCH UNTIL TWO AND BE BACK  
3                   AT TWO AND WE'LL TAKE UP THE JACKSON VERSUS DENNO AND  
4                   OTHER MATTERS THAT ARE UNDERTAKEN    WE'LL SEE YOU AT  
5                   TWO O'CLOCK

6                   MR BRACKETT    THANK YOU

7                   MR DEST     THANK YOU, JUDGE

8                   (COURT'S IN RECESS AT 01 07 PM )

9                   THE COURT    IS THE STATE READY?

10                  MR THOMPSON   YES, YOUR HONOR

11                  THE COURT    IS THE DEFENSE?

12                  MR DEST     YES, SIR    JUST ONE MATTER

13                  BRIEFLY    WHILE WE WERE, OVER THE BREAK THE STATE  
14                  PRODUCED ANOTHER PIECE OF DISCOVERY THAT WAS SENT TO  
15                  US I BELIEVE FROM, BASICALLY THE INCIDENT SUMMARY  
16                  FROM OFFICER STOKES   YOUR HONOR, THIS WAS AGAIN, IT  
17                  WAS PRESENTED TO US JUST A FEW MOMENTS AGO    I WOULD  
18                  ASK THE COURT TO BASICALLY PRECLUDE OFFICER STOKES  
19                  FROM TESTIFYING IN TERMS, BASED UPON THE FACT THAT  
20                  THIS COMES SO LATE IN THE PROCESS, DISCOVERY PROCESS  
21                  WE'VE BEEN WORKING WITH THE PROSECUTION BACK AND  
22                  FORTH WITH DISCOVERY AND I WOULD SUBMIT, YOUR HONOR,  
23                  THIS COMES WAY TOO LATE TO BE ALLOWED, HIS TESTIMONY  
24                  BE ALLOWED TO COME IN

25                  THE COURT    MR THOMPSON

1                   MR THOMPSON   MAY IT PLEASE THE COURT  
2   YOUR HONOR, WE'LL HAND UP TO THE COURT NOW OFFICER  
3   STOKES SUMMARY AS WELL AS OFFICER RAY MURPHY   THE  
4   TWO OFFICERS WERE WITH EACH OTHER, MARK THESE AS  
5   COURT'S EXHIBITS

6                               (COURT'S EXHIBITS MARKED ONE AND TWO  
7   SUMMARY )

8                   MR THOMPSON   THESE ARE COURT EXHIBITS  
9   ONE AND TWO   THE TWO OFFICERS WERE TOGETHER AT THE  
10  TIME THAT THEY --

11                   THE COURT   WELL, BEFORE YOU GET INTO  
12  THAT, WHY DIDN'T YOU GIVE IT TO THEM BEFORE TODAY?

13                   MR THOMPSON   JUDGE, WE HONESTLY JUST GOT  
14  IT TODAY AS WELL   I THINK WHAT HAPPENED ULTIMATELY  
15  WAS MOST LIKELY A COPY ERROR   ONE OF THOSE THINGS  
16  WHEN YOU FEED A COPIER AND IT SKIPS A PAGE   I THINK  
17  THAT'S WHAT HAPPENED   WE DIDN'T ACTUALLY HAVE IT  
18  OURSELVES, HOWEVER, THE SUBSTANCE OF WHAT OFFICER  
19  STOKES WILL TESTIFY TO IS IN OFFICER MURPHY'S  
20  STATEMENT   THE TWO ARE TOGETHER   THE DEFENSE HAD  
21  OFFICER MURPHY'S STATEMENT   THEY ARE ALMOST  
22  IDENTICAL EXCEPT FOR ONE TERM IN WHICH OFFICER STOKES  
23  SAYS THAT THE DEFENDANT MENTIONED THAT HE SAW THE TWO  
24  OF THEM SITTING ON THE SOFA FROM WHERE HE WAS SITTING  
25  ON THE VICTIM'S CAR AND JUST THAT PART OF HIM SEEING

1 THE TWO SITTING ON THE SOFA INSIDE THE APARTMENT  
2 HOWEVER THE DEFENDANT IN HIS STATEMENT HE GAVE  
3 POLICE, THE WRITTEN STATEMENT WHICH THE DEFENSE ALSO  
4 HAS, THE DEFENDANT HIMSELF SAID HE SAW THE TWO  
5 SITTING ON THE SOFA IN THAT WRITTEN STATEMENT, SO  
6 THERE IS NOTHING IN THE SUBSTANCE OF WHAT  
7 THIS OFFICER WOULD TESTIFY TO AND MR MURPHY'S  
8 STATEMENT OFFICER MURPHY'S STATEMENT ALSO MENTIONS  
9 OFFICER STOKES AS BEING WITH HIM, SO THE DEFENSE WAS  
10 WELL AWARE, THERE IS NO, THEY HAD EVERYTHING THAT WAS  
11 SAID IN THE STATEMENTS AS A MATTER OF FACT, OFFICER  
12 MURPHY'S STATEMENT IS MORE DETAILED THAN OFFICER  
13 STOKES

14 THE COURT LET'S GO BACK TO THE HEART OF  
15 IT WHY, HOW DID IT ALL OF A SUDDEN POP UP THIS  
16 MORNING? AND THAT YOU, OR OVER LUNCH ACTUALLY, THAT  
17 YOU, NUMBER ONE, DIDN'T KNOW YOU HAD IT AND DIDN'T  
18 GIVE IT TO THE DEFENSE?

19 MR THOMPSON WELL, JUDGE, AS I SAID I  
20 CAN'T REALLY EXPLAIN IT ALL I CAN ASSUME IS THAT  
21 THERE WAS A COPY ERROR, THAT WHEN WE RUN OFF THE  
22 PHOTOCOPIES IT SKIPPED A PAGE

23 THE COURT I KNOW, BUT WHY DID YOU JUST  
24 FIND THAT OUT TODAY?

25 MR THOMPSON WELL, OFFICER STOKES WE HAD

1 INTERVIEWED HIM A FEW WEEKS AGO MENTIONED THAT HE  
2 THOUGHT HE HAD WRITTEN A STATEMENT BUT AT THAT TIME  
3 WE COULDN'T FIND ONE WE LOOKED FOR ONE, WE COULDN'T  
4 FIND ANOTHER STATEMENT, ASSUMED IT WASN'T TRUE, AND  
5 THEN WHEN WE HAVE THE OFFICERS UP HERE, WE WERE ABLE  
6 TO GO THROUGH DETECTIVE AYERS FOLDER AGAIN AND AT  
7 THAT POINT WE DID FIND IT

8 THE COURT WHEN WAS THAT?

9 MR THOMPSON THAT WAS TODAY AT LUNCH OR  
10 RIGHT WHEN WE BROKE FOR LUNCH HOWEVER, I WOULD SAY,  
11 YOUR HONOR, THAT WE'RE NOT ACTUALLY PUTTING THIS  
12 PIECE OF PAPER

13 THE COURT I UNDERSTAND THAT BUT HE'S GOT  
14 A RIGHT, THEY HAVE THE RIGHT TO PREPARE THEIR DEFENSE  
15 AND KNOW WHAT THEY ARE GOING TO BE FACING

16 MR THOMPSON THAT'S CORRECT AND THEY  
17 KNOW IF YOU READ OFFICER MURPHY'S STATEMENT WHY  
18 IT'S PUTTING IT IN THERE, IF YOU READ OFFICER  
19 MURPHY'S STATEMENT AND -- SEE, WE CAN'T PUT OFFICER  
20 MURPHY UP, HE IS IN, HE IS OVERSEAS OR DEPLOYED IN  
21 THE MILITARY RIGHT NOW, SO WE CAN'T PUT OFFICER  
22 MURPHY UP OFFICER STOKES IS HERE HE'S MENTIONED  
23 IN OFFICER MURPHY'S STATEMENT THEY KNEW THAT HE  
24 GAVE A STATEMENT TO OFFICER MURPHY AND STOKES BECAUSE  
25 THEY SAT TOGETHER WHEN THEY HAD THE DEFENDANT AT THE



1 HOSPITAL, SO THERE IS NOTHING TO PREVENT US PUTTING  
2 IT IN THEY HAVE BEEN GIVEN THE NOTICE OF THE  
3 STATEMENT COMPLETELY AND THEY KNOW EVERY PART OF THE  
4 STATEMENT AND OFFICER MURPHY'S NOTES THAT HE PUT DOWN  
5 ARE ACTUALLY MORE DETAILED THAN OFFICER STOKES SO  
6 IF THE DEFENSE HAS ANY SURPRISE, I ASK THEM TO TELL  
7 US WHAT IT IS

8 THE COURT I DIDN'T ASK THEM WHAT THE  
9 PREJUDICE WAS, BUT STILL, YOU KNOW, I'VE EXPRESSED MY  
10 CONCERN BEFORE THAT THERE IS NOT MUCH SENSE IN HAVING  
11 DISCOVERY RULES IF THIS KIND OF STUFF HAPPENS AND I  
12 KNOW IT HAPPENS SOMETIMES

13 MR THOMPSON I UNDERSTAND  
14 THE COURT AND I HATE TO BE TOO CRITICAL  
15 MR THOMPSON AND I CAN'T OFFER AN  
16 EXCUSE, JUDGE, AND I WON'T BECAUSE WE SHOULD HAVE  
17 COME ACROSS THAT SOONER AND WE DIDN'T AND IT'S JUST  
18 THAT SIMPLE BUT HAVING SAID THAT I ALSO PUT FORWARD  
19 THAT THEY'VE BEEN GIVEN EVERYTHING THAT'S BEEN  
20 DETAILED IN THIS STATEMENT AND OFFICER MURPHY'S  
21 STATEMENT INCLUDING THE FACT THAT OFFICER STOKES WAS  
22 THERE WHEN IT HAPPENED

23 THE COURT ALL RIGHT WHAT'S THE  
24 PREJUDICE?

25 MR DEST YOUR HONOR, THE FACT OF THE

1       MATTER IS THERE IS NOTHING IN OFFICER MURPHY'S  
2       STATEMENT THAT SAYS THAT OFFICER STOKES REMEMBERS  
3       THAT OR RECALLS THAT AT ALL    I MEAN THE FACT THAT  
4       TWO PEOPLE ARE IN THE SAME CAR OR THE SAME ROOM AT  
5       THE SAME TIME DOES NOT NECESSARILY MEAN THEY RECALL  
6       ANYTHING    THIS IS TOTAL SURPRISE    WE HAD NO -- THE  
7       SUBSTANCE OF IT, ALTHOUGH IT WASN'T OFFICER MURPHY'S  
8       STATEMENT, THAT WITNESS IS NOT AVAILABLE, BUT WE HAD  
9       NO IDEA THAT OFFICER STOKES HEARD IT, THAT OFFICER  
10      STOKES WAS GOING TO GIVE TESTIMONY REGARDING THAT,  
11      THE MERE FACT THAT HE WAS IN THE CAR IS NOT  
12      SUFFICIENT NOTICE THAT HE KNEW, THAT WE SHOULD KNOW  
13      THAT OFFICER STOKES KNEW THE BASIC CONTENT OF WHAT  
14      OUR CLIENT ALLEGEDLY SAID ON THAT DAY    I THINK THE  
15      ONUS IS ON THE STATE, YOUR HONOR    THEY PRODUCED THIS  
16      AT THE LAST MINUTE    I MEAN WE KNEW WE WERE GOING TO  
17      TRIAL

18                   THE COURT    WELL, I --

19                   MR   DEST    THE PREJUDICE IS, YOUR HONOR,  
20      THIS STATEMENT WAS PRODUCED AT THE LAST MINUTE AND WE  
21      HAD NO IDEA THAT OFFICER STOKES WAS GOING TO TESTIFY  
22      TO THAT    THEIR OTHER WITNESS IS UNAVAILABLE    I  
23      WOULD SUGGEST TO YOUR HONOR, I WOULD MAKE THE MOTION  
24      TO PRECLUDE TESTIMONY OF OFFICER STOKES REGARDING  
25      THIS MATTER BASED UPON THIS DISCOVERY COMING SO LATE

1                   THE COURT    BUT WHAT -- NOW THAT YOU KNOW  
2           IT, WHAT IT'S GOING TO DO AS FAR AS YOUR PREPARATION?  
3           WHAT DO YOU NEED TO DO TO PREPARE THE CROSS  
4           EXAMINATION OF MR STOKES, OFFICER STOKES, BASED ON  
5           NOW JUST RECEIVING THIS? I MEAN AT SOME POINT, EVEN  
6           IF WE CONTINUE THE CASE, YOU ARE STILL GOING TO HAVE  
7           TO FACE OFFICER STOKES   WHAT WOULD YOU NEED TO DO  
8           DIFFERENT THAN YOU HAVE ALREADY DONE TO GET READY TO  
9           CROSS EXAMINE OFFICER STOKES NOW THAT YOU HAVE IT  
10                   MR DEST   YOUR HONOR, I WOULDN'T DO  
11           ANYTHING DIFFERENT, YOUR HONOR   I CAN'T SAY THAT THE  
12           PREPARATION IN TERMS OF WHAT I WOULD CROSS HIM WOULD  
13           BE ANY DIFFERENT THAN OFFICER MURPHY, BUT IT WAS MY  
14           UNDERSTANDING THAT IT WAS ONLY ONE OFFICER THAT HEARD  
15           THIS AND NOW THAT THEY ARE PRODUCING SOMETHING SO  
16           LATE -- OBVIOUSLY, I WOULD SUBMIT, YOUR HONOR, THAT  
17           THE RULES OF DISCOVERY ARE THERE FOR A PURPOSE, THEY  
18           ARE THERE FOR US TO HAVE FULL NOTICE OF WHAT THE  
19           EVIDENCE WILL BE WITH RESPECT, SPECIFICALLY WITH  
20           RESPECT TO STATEMENTS THAT OUR CLIENT MADE AND THEY  
21           ARE GOING TO USE THIS STATEMENT FROM THIS OFFICER, I  
22           CAN, TO CONTRADICT THE STATEMENT THAT HE MADE TO THE  
23           INVESTIGATIVE OFFICER IN THIS CASE, HIS MIRANDIZED  
24           STATEMENT WITH RESPECT TO THE REASON OF WHY HE LOST  
25           IT WHICH AGAIN GOES TO THE ISSUE, AS WE DISCUSSED IN

1 CHAMBERS, WE'RE CONTENDING IT'S A MANSLAUGHTER CASE  
2 THEY ARE NOW PUTTING FORTH A DIFFERENT STATEMENT FROM  
3 OUR CLIENT FROM A WITNESS THAT WE DID NOT KNOW WAS  
4 GOING TO TESTIFY TO THAT SPECIFIC MATTER

5 THE COURT WELL, WE HADN'T HAD THE  
6 JACKSON VERSUS DENNO IS THIS DIFFERENT FROM WHAT --

7 MR THOMPSON NO, YOUR HONOR

8 THE COURT ---WHAT HE'S GOING TO TESTIFY  
9 TO

10 MR THOMPSON IT'S NOT DIFFERENT

11 THE COURT HE JUST SAID IT WAS

12 MR THOMPSON AS A MATTER OF FACT,  
13 OFFICER STOKES WOULD NEVER HAVE TO WRITE THIS  
14 STATEMENT EVER ALL WE HAVE TO DO IS GIVE NOTICE OF  
15 THE TYPE OF THE STATEMENT AND THE SUBSTANCE OF IT AND  
16 WE'VE DONE THAT AND OFFICER MURPHY'S INFORMATION,  
17 HE'S ACTUALLY MORE DETAILED THAN OFFICER STOKES IN  
18 GIVING WHAT HAPPENED THAT NIGHT AND WHAT HE SAID AND  
19 IT STARTS OUT SAYING OFFICER RAY MURPHY AND OFFICER  
20 CEDRIC STOKES TRANSPORTED STEVEN FREEMAN TO PMC FROM  
21 THE DETENTION CENTER FOR A SELF-INFLECTED HEAD  
22 INJURY COMMON SENSE WOULD TELL YOU IF TWO OFFICERS  
23 ARE BRINGING AN ARRESTED DEFENDANT TO PMC THEY DON'T  
24 NEED TO SIDE, SO WHEN HE SPEAKS THEY ARE THERE AND  
25 THIS IS WHAT HE SAID AND SO THE STATEMENT, THEY

1 WERE GIVEN NOTICE OF THAT, WE WOULDN'T HAVE HAD, IF  
2 OFFICER STOKES NEVER WROTE A WORD, HE COULD STILL GET  
3 UP AND TESTIFY BECAUSE HE WAS THERE WITH JUST THE  
4 DEFENDANT, THE DEFENSE HAVING BEEN GIVEN OFFICER  
5 MURPHY'S STATEMENT AT THE BEGINNING

6 MR DEST YOUR HONOR, I WILL TAKE ISSUE  
7 WITH THE CHARACTERIZATION THAT IT'S NOT DIFFERENT  
8 FROM MY CLIENT'S MIRANDIZED STATEMENT IT IN FACT  
9 IS THE MIRANDIZED STATEMENT, AND I KNOW YOU HADN'T  
10 HEARD THAT, YOUR HONOR, BUT THE REASON HE GIVES FOR  
11 LOSING IT IS THAT HE SAW MR BURGESS PULLING UP HIS  
12 PANTS WHEN HE LOOKED INTO THE WINDOW, SO THERE ARE  
13 TWO DIFFERENT VERSIONS THERE

14 MR THOMPSON AND, YOUR HONOR, THE RULES  
15 SIMPLY REQUIRE RULE FIVE (A) (ONE) THAT THE SUBSTANCE  
16 OF ANY ORAL OR, OF ANY ORAL STATEMENT WHICH THE  
17 PROSECUTION INTENDS TO OFFER IN THE EVIDENCE AT TRIAL  
18 MADE BY THE DEFENDANT WHETHER BEFORE OR AFTER ARREST  
19 OR IN RESPONSE TO INTERROGATION BY ANY PERSON --

20 THE COURT DON'T READ SO FAST, JANET HAS  
21 GOT TO TAKE IT DOWN

22 MR THOMPSON BUT OBVIOUSLY WE'VE GIVEN  
23 THEM THE SUBSTANCE OF ANY ORAL STATEMENT THAT THE  
24 DEFENDANT HAS GIVEN AND THERE'S ACTUALLY NO  
25 REQUIREMENT IN THE RULE THAT WE SAY WHICH OFFICER

1 HEARD THAT STATEMENT

2 THE COURT ALL RIGHT WELL, I'M NOT  
3 GOING TO GRANT THE MOTION TO PRECLUDE THE TESTIMONY  
4 OF OFFICER STOKES

5 MR DEST YOUR HONOR, I UNDERSTAND YOUR  
6 RULING I WOULD EXCEPT TO THAT AT THIS TIME THANK  
7 YOU

8 THE COURT YOU DON'T HAVE TO EXCEPT TO  
9 IT I MADE THE RULING IT'S MY DECISION

10 MR DEST JUST SO THAT ISSUE IS PRESERVED  
11 FOR THE RECORD, YOUR HONOR

12 THE COURT THAT'S FINE ALL RIGHT  
13 READY ON THE JACKSON VERSUS DENNO?

14 MR BRACKETT FOR PURPOSES OF THE JACKSON  
15 VERSUS DENNO HEARING THE STATE WOULD CALL DETECTIVE  
16 TIM AYERS

17 THE COURT PLEASE COME UP AND BE SWORN  
18 TIMOTHY AYERS, BEING FIRST  
19 DULY SWORN WAS EXAMINED AND TESTIFIED AS FOLLOWS  
20 DIRECT EXAMINATION BY MR BRACKETT

21 Q SIR, WOULD YOU PLEASE STATE YOUR FULL NAME AND  
22 SPELL YOUR LAST FOR THE RECORD?

23 A DETECTIVE TIM AYERS A-Y-E-R-S

24 Q WHERE ARE YOU EMPLOYED, SIR?

25 A ROCK HILL POLICE DEPARTMENT

1 Q AND WHAT DO YOU DO AT THE ROCK HILL POLICE  
2 DEPARTMENT?

3 A FOR THE LAST SEVEN AND A HALF YEARS I'VE BEEN  
4 ASSIGNED TO THE DETECTIVE DIVISION

5 Q OKAY, SIR SO YOU WERE ASSIGNED IN AUGUST OF  
6 2006

7 A YES, SIR

8 Q AND WERE YOU CALLED OUT TO INVESTIGATE AN  
9 ASSAULT AT PACES RIVER ON AUGUST 28, 2006, IN THE  
10 EVENING HOURS ABOUT 8 50-8 55?

11 A YES, SIR I WAS ON SECOND SHIFT OR PRIMARY ON  
12 CALL DETECTIVE I WAS WORKING SECOND SHIFT THAT  
13 WEEK I HEARD RADIO TRAFFIC OF AN ASSAULT TAKING  
14 PLACE AT PACES RIVER, CONTINUED RADIO TRAFFIC AT  
15 THAT TIME I DECIDED TO HEAD THAT AWAY BEFORE I  
16 ARRIVED THEY HAD CALLED AND ASKED FOR A DETECTIVE TO  
17 COME TO THE SCENE

18 Q ALL RIGHT, SIR AND YOU WERE ULTIMATELY THE  
19 CHIEF INVESTIGATING OFFICER, DESIGNATED AS THE CHIEF  
20 INVESTIGATING OFFICER ON THE CASE?

21 A YES, SIR, I WAS

22 Q OKAY DID THEY ARREST SOMEBODY IN CONNECTION  
23 WITH THAT ASSAULT AND ULTIMATELY TURNED INTO A  
24 HOMICIDE WHEN THE VICTIM EXPIRED?

25 A YES, SIR, DID MAKE AN ARREST

1 Q AND WHO DID THEY ARREST?

2 A STEVEN JOEL FREEMAN

3 Q ALL RIGHT, SIR AS PART OF YOUR INVESTIGATION  
4 DID YOU HAVE OCCASION TO INTERVIEW MR FREEMAN IN  
5 REGARD TO WHAT EVENTS TRANSPIRED AT  
6 THAT NIGHT?

7 A YES ON THE ACTUAL NIGHT OF THE INCIDENT I WAS  
8 TIED UP WITH THE PRELIMINARY INVESTIGATION,  
9 STATEMENTS AND THOSE TYPE THINGS THE NEXT DAY I WAS  
10 SCHEDULED TO COME IN AT THREE O'CLOCK IN THE  
11 AFTERNOON FOR MY SECOND SHIFT AGAIN, AND WHEN I CAME  
12 IN THAT AFTERNOON I DID HAVE AN INTERVIEW WITH THE  
13 DEFENDANT

14 Q OKAY, SIR AND CAN YOU TELL ME WHERE DID THIS  
15 INTERVIEW TAKE PLACE?

16 A THE DETECTIVE DIVISION IS BASICALLY DIVIDED INTO  
17 TWO SIDES THERE IS THE PERSONS CRIME SIDE AND  
18 THERE'S PROPERTY CRIMES SIDE AT THE TIME MY  
19 ASSIGNMENT WAS ON THE PROPERTY CRIME SIDE, SO I DID  
20 USE THE INTERVIEW ROOM THAT IS ADJOINING THE PROPERTY  
21 CRIME SIDE OF THE DETECTIVE DIVISION

22 Q ALL RIGHT, SIR AND CAN YOU DESCRIBE FOR THE  
23 COURT WHAT THAT ROOMS LOOKS LIKE?

24 A ESTIMATION IT'S ABOUT AN 8 BY 10 ROOM IT'S THE  
25 LARGER OF THE TWO INTERVIEW ROOMS THAT WE DO HAVE



TIMOTHY AYERS            IN CAMERA DIRECT

35

1       WE HAVE A SMALL TABLE IN THERE WITH A COMPUTER    THE  
2       KEY BOARD AND THE MONITOR ARE UP ON TOP OF THE TABLE  
3       THE ACTUALLY COPIER IS DOWN BELOW    THERE IS ALSO A  
4       PHONE ON THE TABLE IN THAT ROOM    THERE IS A CHAIR IN  
5       FRONT OF THE DESK    AND THEN TWO TO THREE ADDITIONAL  
6       CHAIRS IN THERE    SOMETIMES THERE IS TWO, SOMEBODY  
7       WILL TAKE ONE OUT, SOMETIMES THERE IS THREE CHAIRS  
8       I WOULD SAY NORMALLY THERE WOULD BE FOUR CHAIRS IN  
9       THE ROOM

10      Q       OKAY

11      A       IT'S LARGE ENOUGH FOR IT

12      Q       DID SOMEONE ASSIST YOU IN CONDUCTING THIS  
13      INTERVIEW?

14      A       YES, DETECTIVE LES HERRING

15      Q       ALL RIGHT, SIR    NOW WHAT WAS THE CUSTODY STATUS  
16      OF MR   FREEMAN AT THIS TIME?

17      A       HE WAS IN JAIL ON THE CHARGES OF, AT THE  
18      ORIGINAL TIME OF THE CASE IT WAS, MR   BURGESS WAS  
19      STILL ALIVE    HE WAS CHARGED WITH ABWIK, ASSAULT AND  
20      BATTERY WITH INTENT TO KILL

21      Q       YES, SIR

22      A       THE RESISTING ARREST AND THE BURGLARY FIRST  
23      DEGREE, SO HE WAS IN CUSTODY, HAD BEEN IN OUR HOLDING  
24      FACILITY OVERNIGHT

25      Q       SO HE HAD NOT, YOU DIDN'T HAVE TO COME GET HIM

1 FROM THE DETENTION CENTER HERE?

2 A NO, SIR

3 Q OKAY SO WHO ACTUALLY RETRIEVED MR FREEMAN  
4 FROM THE MUNICIPAL JAIL?

5 A I KNOW I WENT BACK THERE I'M NOT, I CAN'T  
6 REMEMBER OFF THE TOP OF MY HEAD IF LIEUTENANT  
7 HERRING, DETECTIVE HERRING WENT WITH ME WHEN I WENT  
8 TO THE JAIL I KNOW I WENT BACK TO THE JAIL AND  
9 ESCORTED HIM TO THE INTERVIEW ROOM

10 Q OKAY AND DID YOU STOP ANYWHERE ALONG THE WAY  
11 OR DID YOU GO DIRECTLY FROM THE JAIL TO THE INTERVIEW  
12 ROOM?

13 A THE ONLY STOP I WOULD HAVE MADE WOULD HAVE BEEN  
14 AT THE GUN LOCKER WHERE WE HAVE TO SECURE OUR WEAPONS  
15 BEFORE ENTERING ANY HOLDING FACILITY IT'S TWO  
16 SECONDS WHERE I WOULD HAVE RETRIEVED MY WEAPON TO  
17 SECURE IT UNTIL I GOT THROUGH WITH THE INTERVIEW

18 Q SO YOUR WEAPON WAS IN THE GUN LOCKER DURING THE  
19 INTERVIEW?

20 A NO, SIR AS I CAME OUT OF JAIL I RETRIEVED MY  
21 WEAPON

22 Q OH, I SEE

23 A AT THAT TIME

24 Q ALL RIGHT, SIR AND WAS MR FREEMAN HANDCUFFED  
25 AT THAT TIME?

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1        A        YES, SIR, HE WAS

2        Q        ALL RIGHT    AND WHEN YOU GOT TO THE ROOM --  
3        WELL, FIRST OF ALL ON THE WAY TO THE JAIL FROM THE  
4        ROOM, WAS THERE ANY CONVERSATION WITH MR   FREEMAN?  
5        DID YOU START QUESTIONING HIM AT THAT POINT IN TIME?

6        A        NO, SIR    WHEN I APPROACHED HIM IN THE HOLDING  
7        FACILITY WHILE HE WAS IN ONE OF THE HOLDING CELLS I  
8        DID SPEAK TO HIM AND ADVISED HIM WHO I WAS    AT THAT  
9        TIME I TOLD HIM I WANTED TO TALK TO HIM AND HE AGREED  
10       TO COME TALK TO ME, SO THAT WAS, THAT WAS THE BASIS  
11       OF ANY INTERACTION AT THAT TIME, JUST THAT I WOULD  
12       LIKE TO SPEAK WITH YOU ABOUT THE INCIDENT

13       Q        AND CAN YOU RELATE TO THE COURT WHAT HIS  
14       EMOTIONAL OR PHYSICAL APPEARANCE WAS AT THAT TIME?  
15       WAS HE, DID HE SEEM TO BE CALM/AGITATED?

16       A        HE WAS VERY CALM, WAS ABLE TO TALK TO US, YOU  
17       KNOW, VERY OPENLY    HE WAS, YOU KNOW, NOT EXCITED,  
18       NOT ENRAGED IN ANY KIND OF WAY    HE WAS, YOU KNOW,  
19       VERY SOMBER IN A NORMAL TONE, HIS VOICE AND  
20       EVERYTHING OF THAT MATTER    HE APPEARED TO BE FINE

21       Q        ALL RIGHT, SIR    AND COULD YOU DETECT ANY  
22       INDICATION, YOU SAID YOU'D BEEN IN LAW ENFORCEMENT  
23       FOR HOW MANY YEARS?

24       A        I'VE BEEN IN LAW ENFORCEMENT 12 AND A HALF  
25       YEARS

1 Q HAVE YOU DEALT WITH PEOPLE UNDER THE INFLUENCE  
2 OF ALCOHOL AND DRUGS?

3 A YES

4 Q AND YOU KNOW WHAT SIGNS TO LOOK FOR?

5 A NUMEROUS TIMES

6 Q WAS THERE ANY INDICATION TO YOU THAT MR FREEMAN  
7 WAS UNDER THE INFLUENCE OF ANY ALCOHOL OR DRUGS AT  
8 THAT TIME?

9 A DID NOT APPEAR TO BE INTOXICATED IN ANY MANNER  
10 WHEN I SPOKE TO HIM

11 Q WHEN YOU SAT DOWN IN THE ROOM WHAT WAS, HOW DID  
12 YOU START THE INTERVIEW? WHAT DID YOU TELL HIM?

13 A BECAUSE OF THE EVENTS OF THE NIGHT BEFORE WERE  
14 VERY PHYSICAL, AT THAT TIME I ASKED HIM, I SAID LOOK,  
15 I DON'T WANT TO HAVE ANY PROBLEMS OR ANYTHING HE  
16 SAID NO, I'M NOT GOING TO CAUSE ANY PROBLEMS AT  
17 THAT TIME I TOOK HIS HANDCUFFS OFF

18 Q WHEN YOU SAID VERY PHYSICAL?

19 A THE ASSAULT THAT OCCURRED TO THE VICTIM, THE  
20 OFFICERS THAT HAD TO RESTRAIN HIM, THE RESISTING OF  
21 THE ARREST TYPE THINGS THAT WENT ON

22 Q YOU WERE AWARE OF HOW MANY OFFICERS IT TOOK TO  
23 ACTUALLY PLACE HIM IN CUSTODY AND GET HIM HANDCUFFED?

24 A YES

25 Q HOW MANY?

1 A THERE WAS THREE OFFICERS THAT WERE ACTUALLY  
2 INSIDE OF THE BEDROOM OF THE APARTMENT PHYSICALLY  
3 TRYING TO RESTRAIN HIM

4 Q ALL RIGHT, SIR AND WERE YOU AWARE IF THEY HAD  
5 TO USE ANY, DEPLOY TAZERS IN ORDER TO GET HIM UNDER  
6 CONTROL?

7 A I KNOW THEY HAD, ONE OFFICER TRIED TO USE THE  
8 TAZER AND IT DID NOT DEPLOY AND ANOTHER OFFICER HAD  
9 TO USE HIS TAZER TWICE I BELIEVE TO GET HIM TO  
10 ACTUALLY COMPLY WITH THEIR COMMANDS TO STOP  
11 RESISTING, THAT HE WAS UNDER ARREST

12 Q OKAY WHAT DID HE TELL YOU ABOUT HIS  
13 WILLINGNESS TO SPEAK WITH YOU OR NOT CAUSE ANY  
14 PROBLEMS RATHER?

15 A HE SAID NO, I'M NOT GOING TO CAUSE ANY PROBLEMS,  
16 YOUR KNOW, THAT TYPE OF THING, AND BASICALLY WAS VERY  
17 CALM AT THAT POINT I FELT COMFORTABLE WITH IT THAT  
18 HE WAS OVER THE RAGE THAT HE WAS IN THE NIGHT BEFORE  
19 I FELT, I FELT COMFORTABLE AND SAFE, YOU KNOW, FOR MY  
20 OWN SAFETY TO RELEASE HIM FROM THE HANDCUFFS IN THE  
21 ROOM DETECTIVE HERRING WAS ALSO IN THERE WITH ME  
22 HE WAS OKAY AT THAT POINT TO WHERE HE WAS

23 Q ALL RIGHT, SIR NOW AT THIS POINT, AT ANY POINT  
24 IN TIME HAD YOU READ HIM HIS MIRANDA RIGHTS UP TO  
25 THAT POINT?

1 A NO, I HAD NOT AT THAT POINT

2 Q WHEN DID YOU READ HIM OR DID YOU READ HIM HIS  
3 MIRANDA RIGHTS?

4 A ONCE I REMOVED THE HANDCUFFS AND, THAT WAS WHEN  
5 I TOLD HIM I SAID BEFORE WE GO ANY FURTHER, I WANT  
6 TO READ YOU YOUR RIGHTS SO I READ HIM HIS MIRANDA  
7 WARNINGS AT THAT TIME

8 Q WHAT WERE YOU READING FROM?

9 A THE, IN THE INTERVIEW ROOM WE HAVE THE COMPUTER,  
10 THE MONITOR ITSELF, WE HAVE A FORM THAT WE USE, AND  
11 THAT FORM IS WHAT WE CALL DEFENDANT STATEMENT FORM  
12 AND IT HAS THE MIRANDA WARNING ON IT THAT WE USE  
13 EVERY TIME

14 Q YOU WERE READING OFF THE SCREEN OF THE COMPUTER?

15 A YES, SIR

16 Q ALL RIGHT, SIR AND DID HE INDICATE THAT HE  
17 UNDERSTOOD HIS RIGHTS?

18 A YES, SIR AFTER I READ, FINISHED THE MIRANDA I  
19 ASKED HIM IF HE UNDERSTAND HIS RIGHTS HE SAID THAT  
20 HE DID

21 Q AND HAD YOU READ THE RIGHTS EXACTLY AS THEY WERE  
22 WRITTEN ON THE SCREEN?

23 A VERBATIM

24 Q ALL RIGHT ULTIMATELY WAS THAT SCREEN PRINTED  
25 OUT AT SOME POINT IN THE INTERVIEW PROCESS?

1        A        YES, SIR, IT WAS

2        Q        ALL RIGHT    AND SO THE WORDS THAT YOU READ TO  
3        HIM, WERE THEY ON THIS PIECE OF PAPER --

4        A        YES, SIR, THEY ARE

5        Q        ---THAT YOU READ OFF?

6        Q        AND DO YOU HAVE THAT HERE WITH YOU TODAY?

7        A        YES, SIR, I DO

8        Q        MAY I SEE THAT?

9                    MR BRACKETT    YOUR HONOR, I ASK THIS BE  
10        MARKED AS STATE'S EXHIBIT 30    IT IS THREE PAGES  
11        I'M SORRY    THEY ARE ALL RELATED TO THE SAME  
12        INTERVIEW, IF WE CAN GET THEM STAPLED TOGETHER AS ONE  
13        EXHIBIT

14                    (STATE'S EXHIBIT 30 STATEMENT )

15        Q        THE MIRANDA WARNINGS THAT ARE CONTAINED AT THE  
16        TOP PARAGRAPH OF THAT PAGE, THAT'S WHAT YOU READ TO  
17        HIM?

18        A        THAT'S CORRECT

19        Q        ALL RIGHT    AND HE INDICATED THAT HE UNDERSTOOD  
20        THOSE?

21        A        YES, SIR

22                    MR BRACKETT    DO YOU WANT TO READ THOSE  
23        AT THIS TIME OR AT THE END?

24                    THE COURT    I'D RATHER YOU HAND THEM UP  
25        ARE YOU GOING TO NEED THEM BACK?

1                   MR BRACKETT   YES, SIR   I'LL DO IT ALL

2       Q       NOW DID, WAS, THIS FORM HAS THE DEFENDANT'S  
3       SIGNATURE ON IT HERE   SINCE YOU WERE READING OFF THE  
4       COMPUTER, WHEN DID HE SIGN THAT?

5       A       THE WAY THAT I CONDUCT EVERY INTERVIEW THAT I'M  
6       WITH THE DEFENDANT STATEMENT FORM, I READ THE MIRANDA  
7       WARNING TO THE PERSON, ASK THEM IF THEY UNDERSTAND  
8       THEIR RIGHTS, AND THEN I GO INTO THE STATEMENT AND  
9       WE'LL HAVE A CONVERSATION   THEN I'LL COMPLETE THE  
10      STATEMENT BY ACTUALLY TYPING OUT THE STATEMENT AS WE  
11      ARE GOING THROUGH IT TOGETHER, ME AND THE DEFENDANT,  
12      WHOEVER IT MIGHT BE   AT THE END, I'LL PRINT OFF A  
13      COPY OF THE STATEMENT THAT WE PREPARED, LET THEM READ  
14      IT, SEE IF THEY AGREE WITH IT, THOSE TYPE THINGS, AND  
15      THEN THEY'LL SIGN IT

16     Q       SO HE ORALLY INDICATED THAT HE UNDERSTOOD HIS  
17     RIGHTS AND THEN HE SIGNED LATER?

18     A       THAT'S CORRECT

19     Q       ALL RIGHT, SIR   DID YOU INQUIRE OF HIM IF HE,  
20     LET ME ASK YOU BEFORE I GO THERE   DID YOU OR  
21     DETECTIVE HERRING OR ANYONE ELSE THREATEN OR APPLY  
22     ANY TYPE OF COERCION TO MR FREEMAN IN ORDER TO GET  
23     HIM TO WAIVE HIS RIGHTS THAT DAY?

24     A       NO, SIR

25     Q       OR MAKE ANY KIND OF STATEMENT?



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1 A NO, SIR

2 Q DID YOU OR DETECTIVE HERRING OR ANYONE ELSE  
3 OFFER HIM ANY PROMISE OF LENIENCY OR HOPE OF REWARD  
4 OR ACCOMMODATION IF HE WERE TO GO AHEAD AND MAKE A  
5 STATEMENT THAT DAY?

6 A NO, SIR

7 Q SO THE STATEMENT CONTAINED IN EXHIBIT 30 WAS THE  
8 STATEMENT HE MADE OF HIS OWN FREE WILL AND ACCORD  
9 THAT DAY?

10 A THAT'S CORRECT

11 Q ALL RIGHT SO DID YOU INQUIRE OF HIM WHETHER OR  
12 NOT, AFTER HAVING HIS RIGHTS READ TO HIM, DID HE WISH  
13 TO SPEAK TO YOU?

14 A YES, SIR

15 Q OKAY TELL THE JURY, I'M SORRY TELL THE JUDGE  
16 BASICALLY HOW THAT INTERVIEW UNFOLDED, WHAT DO YOU  
17 TYPICALLY DO?

18 A AS I SAID BEFORE I BROUGHT HIM INTO THE  
19 INTERVIEW ROOM, RELEASED THE CUFFS FROM HIM, WE TOOK  
20 THE HANDCUFFS OFF OF HIM, WENT THROUGH THE MIRANDA  
21 WARNING HE ADVISED THAT HE UNDERSTOOD HIS RIGHTS  
22 AT THAT TIME I BEGAN A CONVERSATION WITH HIM YOU  
23 KNOW, YOU WANT TO TELL ME WHAT HAPPENED LAST NIGHT,  
24 THOSE TYPE THINGS, AND LET HIM EXPLAIN TO ME HOW ,  
25 THINGS TRANSPIRED

1 Q ALL RIGHT AT WHAT POINT DID YOU MEMORIALIZE  
2 YOUR CONVERSATION ON THIS STATE'S EXHIBIT 30?  
3 A AS I SAID ME AND DETECTIVE HERRING WERE IN THE  
4 ROOM, I WAS PRIMARY AS FAR AS THE INTERVIEW IF  
5 DETECTIVE HERRING HAD A QUESTION HE WOULD ASK IT  
6 BASICALLY WHAT, FROM MY OWN PERSONAL WAY OF DOING IT,  
7 I GO THROUGH THE ENTIRE STORY EXPLAIN TO ME THE  
8 ENTIRE THING I DON'T SIT THERE AND TAKE NOTES  
9 BECAUSE I'M LISTENING TO THE PERSON TO SEE WHAT THEY  
10 ARE TELLING ME I'M TRYING TO BE ATTENTIVE TO WHAT  
11 THEY ARE SAYING IF I'M STOPPING, TAKING NOTES,  
12 THOSE TYPE OF THINGS, IT'S GOING TO DISTRACT ME AND  
13 IT'S GOING TO DISTRACT THEM FROM THEIR CONVERSATION  
14 THAT THEY ARE HAVING WITH ME IT WAS NO YELLING OR  
15 SCREAMING OR ANYTHING OF THAT NATURE IT WAS  
16 BASICALLY A CONVERSATION IN THE TONES THAT I'M USING  
17 RIGHT NOW WE TALKED, YOU KNOW, IN DETAIL ABOUT WHAT  
18 LEAD UP TO IT HOW, YOU KNOW, HOW IT TRANSPIRED, HOW  
19 HE BECAME TO BE AT PACES RIVER, HOW HE LOCATED HER  
20 THOSE TYPES THINGS, WENT THROUGH ALL OF THAT WITH  
21 HIM THEN I ACTUALLY TYPED UP THE STATEMENT PUTTING  
22 THE DATE AND THE TIME OF THE EVENTS, THE LOCATION,  
23 ALL THAT, AND THEN WHAT PERTAINED TO THE CRIME  
24 SPECIFICALLY I PUT IT IN THE ACTUAL STATEMENT  
25 Q ALL RIGHT, SIR AND DID HE HAVE AN OPPORTUNITY

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1        TO REVIEW THIS STATEMENT?

2        A        YES, SIR, HE DID

3        Q        AND AFTER YOU PRINTED IT OFF?

4        A        YES, SIR

5        Q        AND DID YOU AFFORD HIM THE OPPORTUNITY OF MAKING  
6        ANY CORRECTIONS OR ADDITIONS TO THE STATEMENT IF HE  
7        WANTED TO?

8        A        YES, SIR    THE AMOUNT OF TIME THAT HE TOOK,  
9        LOOKED AT THE STATEMENT, IT APPEARED THAT HE WAS  
10       READING THE ENTIRE STATEMENT    AT THE END, EVEN  
11       BEFORE I ACTUALLY PRINTED IT OFF, I ASKED HIM IF  
12       THERE IS ANYTHING ELSE HE WOULD LIKE TO ADD ON THE  
13       END OF IT, SO THERE WAS LIKE A LINE OR TWO AT THE END  
14       THAT HE DID ADD AFTER WE FINISHED WITH THE FACTS OF  
15       THE CASE, YOU KNOW, THE ACTUAL CRIME ITSELF    AT THE  
16       END, YOU KNOW, HE DID ADD A SENTENCE OR TWO THAT HE  
17       DID WISH TO HAVE ON HIS STATEMENT, THAT WAS WHEN I  
18       PRINTED IT OUT    HE DID REVIEW IT AGAIN    THERE WAS,  
19       NOTHING REALLY NEEDED TO BE CORRECTED THAT I REMEMBER  
20       AND I HAD HIM SIGN AT THAT POINT AND EXPLAINED TO HIM  
21       WHAT HE WAS SIGNING AT EACH POINT ON THE STATEMENT  
22       FORM

23       Q        ALL RIGHT, SIR    SO THE FIRST SIGNATURE ON  
24       STATE'S EXHIBIT 30 HERE IS, THAT HE'S HAD HIS RIGHTS  
25       READ TO HIM?

1       A       AND HERE'S THE WAY I EXPLAIN THAT EACH TIME IS,  
2       THIS IS THE STATEMENT AND RIGHTS THAT I READ TO YOU  
3       BEFORE WE GOT STARTED, YOU REMEMBER, AND EXPLAINED  
4       THAT, AND IF YOU AGREE WITH THAT, I'D LIKE FOR YOU TO  
5       SIGN RIGHT HERE     THAT'S THE WAY I DO THAT

6       Q       AND HERE INDICATING THAT HE DOES WISH TO TALK TO  
7       YOU AND HE DOES NOT WISH TO HAVE AN ATTORNEY?

8       A       THAT'S CORRECT

9       Q       ALL RIGHT, SIR     AND THEN?

10      A       THEN I ACTUALLY HAVE HIM INITIAL IT     IF YOU  
11      NOTICE ON THE BOTTOM RIGHT I ASK HIM TO INITIAL THAT  
12      BECAUSE IT'S CHANGING PAGES, I ALWAYS ASK SOMEBODY TO  
13      INITIAL THAT POINT RIGHT THERE TO WHERE I CAN'T ADD  
14      ANYTHING TO THEIR STATEMENT OR CHANGE IT IN ANY WAY  
15      AT A LATER TIME TO WHERE IT DOCUMENTED THAT THAT'S  
16      THE END OF WHAT HE SAID ON THAT PAGE     I HAD HIM DO  
17      IT AGAIN ON THE SECOND PAGE AT THE END OF THE ACTUAL  
18      PARAGRAPH ITSELF AND THEN I HAD HIM ACTUALLY SIGN  
19      BELOW THAT POINT AND THEN WE NOTARIZED THE STATEMENT,  
20      THAT IT WAS A SWORN STATEMENT, AND I DID READ THAT  
21      ALSO

22      Q       AND IS THAT YOUR SIGNATURE THERE, TIM AYERS?

23      A       YES, IT IS

24      Q       AND THE DEFENDANT SIGNED IN EACH OF THESE SPOTS  
25      AND PLACED HIS INITIALS WHERE YOU MENTION?

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1 A THAT'S CORRECT

2 Q OKAY AT ANY POINT IN TIME DID HE INDICATE TO  
3 YOU THAT HE WISHED TO STOP SPEAKING TO YOU?

4 A NO, SIR

5 Q AT ANY POINT IN TIME DID HE INDICATE TO YOU THAT  
6 HE WISHED TO CONSULT WITH AN ATTORNEY BEFORE GOING  
7 ANY FURTHER?

8 A NO, SIR

9 Q AT ANY POINT IN TIME DID ANYONE HAVE TO EXERT  
10 ANY SORT OF COERCIVE BEHAVIOR TO GET HIM TO CONTINUE  
11 TALKING?

12 A NO, I DID NOT

13 Q SO THIS ENTIRE STATEMENT, STATE'S EXHIBIT 30,  
14 WAS MADE OF HIS OWN FREE WILL AND ACCORD, WITHOUT ANY  
15 THREATS OR COERCION?

16 A THAT'S CORRECT

17 Q THANK YOU, DETECTIVE AYERS PLEASE ANSWER ANY  
18 QUESTIONS MR DEST MAY HAVE FOR YOU  
19 CROSS EXAMINATION BY MR DEST

20 Q DETECTIVE AYERS, YOU WERE CASE AGENT ON THIS  
21 CASE?

22 A THAT'S CORRECT

23 Q AND SO YOU WERE ONE OF THE LEAD INVESTIGATORS?

24 A YES, SIR

25 Q IN FACT, A FEW MOMENTS AGO YOU SAID THAT YOU

1 DIDN'T TAKE A STATEMENT FROM MY CLIENT UNTIL THE NEXT  
2 DAY, RIGHT?

3 A THAT'S CORRECT

4 Q AND YOU WERE BUSY TAKING STATEMENTS FROM OTHER  
5 PEOPLE?

6 A THAT AND GOING TO THE HOSPITAL UP IN CHARLOTTE,  
7 THINGS LIKE THAT IT WAS LIKE THREE O'CLOCK IN THE  
8 MORNING BEFORE I GOT BACK FROM CHARLOTTE

9 Q AND DOING OTHER ASPECTS OF YOUR INVESTIGATION?

10 A THAT'S CORRECT

11 Q NOW YOU TALKED A MINUTE AGO ABOUT THE DAY BEFORE  
12 HE WAS IN A RAGE, IS THAT CORRECT?

13 A FROM THE DESCRIPTION THAT I RECEIVED FROM THE  
14 OFFICERS ON THE SCENE HE WAS NOT ON SCENE BY THE  
15 TIME I ARRIVED

16 Q AND HE WAS A VERY EMOTIONAL THE DAY BEFORE?

17 A YES, SIR

18 Q IN FACT, YOU TESTIFIED THERE WERE AT LEAST THREE  
19 OFFICERS THAT HAD TO SUBDUE HIM IN ORDER TO ARREST  
20 HIM?

21 A THAT'S CORRECT

22 Q NOW NONE OF THOSE OFFICERS TO YOUR KNOWLEDGE  
23 WERE HURT IN THE COURSE OF THAT ARREST, CORRECT?

24 A NO INJURIES WHERE THEY WOULD SEEK MEDICAL  
25 ATTENTION THERE WAS SOME TALK OF BEING SORE FROM

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1       FALLING ON THIS OR THAT, BUT NO ONE RECEIVED MEDICAL  
2       ATTENTION, WAS OUT OF WORK IN ANY WAY, OR ANYTHING OF  
3       THAT NATURE

4       Q       BUT YET HE WAS IN A HIGHLY EMOTIONAL STATE THE  
5       DAY BEFORE, CORRECT?

6       A       THAT'S CORRECT

7       Q       IN FACT, THEY HAD TO TAZE HIM WITH A TAZER TO  
8       ARREST HIM, CORRECT?

9       A       THAT'S CORRECT

10      Q       IN FACT, IT WAS OFFICER DOSTER, LAMBERT, AND  
11      POPOV WHO WERE EFFECTING THAT ARREST, CORRECT?

12      A       POPOV     YES, SIR

13      Q       POPOV     AND PARASOLICK WAS THERE AS WELL?

14      A       PARASOLICK WAS ON THE SCENE BUT I DON'T BELIEVE  
15      HE WAS DIRECTLY IN THE BEDROOM IN THE ARREST PROCESS  
16      I'M NOT POSITIVE

17      Q       AND IT TOOK ALL OF THEM TO ARREST HIM?

18      A       THAT'S CORRECT

19      Q       AND IN ADDITION TO THOSE POLICE OFFICERS TOOK  
20      TAZING HIM WITH AN ELECTRONIC TAZER, CORRECT?

21      A       THAT'S CORRECT

22      Q       I THINK THEY TAZED HIM AT LEAST TWICE, ISN'T  
23      THAT CORRECT?

24      A       I THINK IT WAS TWO TIMES THAT HE WAS TAZED

25      Q       AND HE WAS HIGHLY EMOTIONAL EVEN AFTER THEY

1 ARRESTED HIM, CORRECT?

2 A THAT'S CORRECT

3 Q IN FACT, I BELIEVE THAT SAME NIGHT HE POUND HIS  
4 HEAD AGAINST A JAIL CELL, CORRECT?

5 A I BELIEVE THAT WAS WHAT WAS INFORMED TO ME WHY  
6 HE WAS TRANSPORTED TO PIEDMONT MEDICAL CENTER

7 Q AND THIS WAS AFTER HE WAS ARRESTED?

8 A YES, SIR

9 Q AND EVEN AFTER HE WAS ARRESTED AND POUND HIS  
10 HEAD AGAINST A JAIL CELL, I BELIEVE OFFICERS HAD TO  
11 ACTUALLY TAKE HIM TO THE HOSPITAL, ISN'T THAT  
12 CORRECT?

13 A THAT'S CORRECT

14 Q AND WHEN THEY TOOK HIM TO THE HOSPITAL HE  
15 ACTUALLY HAD A LARCEATION ON HIS HEAD THAT THEY HAD  
16 TO TREAT HIM FOR, ISN'T THAT CORRECT?

17 A I HAVE NOT SEEN THE MEDICAL RECORDS BUT I DO  
18 RECALL THEM SAYING THAT HE HAD HAD SOME INJURIES THAT  
19 THEY WERE, HAD TO STITCH UP OR SOMETHING

20 Q DID YOU INQUIRE AS TO WHETHER OR NOT WHAT TYPE  
21 OF MEDICAL TREATMENT HE RECEIVED THE NIGHT BEFORE FOR  
22 BASHING HIS HEAD AGAINST THE JAIL CELL?

23 A I DID ASK THE OFFICERS AND THE SUPERVISOR THAT  
24 WAS ON DUTY THE NEXT DAY I WAS INFORMED THAT HE HAD  
25 GONE TO PIEDMONT MEDICAL CENTER AND HE HAD RECEIVED



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1 MEDICAL ATTENTION FOR, YOU KNOW, THE INJURIES BUT  
2 THAT WAS ABOUT THE EXTENT OF IT

3 Q DETECTIVE AYERS, DID YOU SEE MY CLIENT THE NIGHT  
4 BEFORE?

5 A I DON'T RECALL I KNOW HE WAS NOT ON SCENE BY  
6 THE TIME I ARRIVED AND I DID NOT MAKE IT A POINT TO  
7 GO BACK AND TALK TO HIM IN THE JAIL BECAUSE THE  
8 EXCITED STATE HE WAS IN AT THAT TIME

9 Q I UNDERSTAND

10 A I DO NOT RECALL BEING IN FRONT OF HIM IF I  
11 DID, IF I STEPPED INTO THE JAIL, I MIGHT HAVE JUST  
12 BRIEFLY SEEN HIM THROUGH THE PLEXIGLASS WINDOW, BUT I  
13 DID NOT GO IN AND CONFRONT HIM AND VIEW HIM OR  
14 ANYTHING OF THAT NATURE, NO, SIR

15 Q WELL, WHEN YOU SAW HIM HE WAS NOT IN AN AGITATED  
16 STATE, WAS HE?

17 A NO, SIR

18 Q WHEN YOU SAW HIM HE WAS NOT IN A RAGE AS WAS  
19 DESCRIBED TO YOU THE NIGHT BEFORE?

20 A NO, SIR, HE WAS NOT

21 Q AND WHEN YOU SAW HIM, HE WAS NOT UNCOOPERATIVE  
22 WITH YOU?

23 A NO, SIR, HE WAS COOPERATIVE WITH ME

24 Q IN FACT, I BELIEVE YOU SAID TO MR BRACKETT THAT  
25 HE WAS CALM?

1 A YES

2 Q THAT YOU FELT COMFORTABLE ENOUGH AT THAT TIME TO  
3 TALK TO HIM?

4 A YES, SIR

5 Q YOU DIDN'T FEEL LIKE YOUR, YOU WERE IN ANY  
6 DANGER AT ALL?

7 A NO, SIR

8 Q IN FACT, YOU SAID THAT AT THAT TIME YOU EVEN  
9 FELT COMFORTABLE ENOUGH WITH HIM TO HAVE HIS  
10 HANDCUFFS OR THE CUFFS TAKEN OFF OF HIS WRISTS?

11 A THAT'S CORRECT

12 Q AND AT NO TIME DID HE ACT DISRESPECTFUL TOWARDS  
13 YOU WHEN YOU WERE TALKING TO HIM?

14 A NO, SIR

15 Q AND AT NO TIME DID HE COME AT YOU PHYSICALLY OR  
16 YOU FELT THAT HE WAS GOING TO HARM YOU?

17 A NO, SIR

18 Q NOW OFFICER AYERS OR DETECTIVE AYERS, WHEN YOU  
19 TOOK THIS STATEMENT YOU SAID TO MR BRACKETT THAT YOU  
20 READ HIM THE MIRANDA RIGHTS, IS THAT CORRECT?

21 A THAT'S CORRECT

22 Q DID YOU READ THOSE RIGHTS TO HIM IN THE  
23 AGGREGATE, ALL AT ONE TIME, OR DID YOU STOP AFTER  
24 EACH SENTENCE?

25 A I JUST READ THE ENTIRE PARAGRAPH, THE WHOLE, AT

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CROSS

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1 ONE TIME

2 Q AT ANY TIME AFTER YOU READ THE FIRST SENTENCE,  
3 LIKE YOU HAVE THE RIGHT TO REMAIN SILENT, DID YOU ASK  
4 HIM DO YOU UNDERSTAND WHAT THAT MEANS?

5 A NO, SIR, I DID NOT BREAK IT DOWN THAT WAY

6 Q OKAY SO YOU JUST READ THE ENTIRE PARAGRAPH AT  
7 ONE TIME?

8 A THAT'S CORRECT

9 Q DID YOU AT ANY TIME TELL HIM, ASK HIM, DOES HE  
10 UNDERSTAND THAT?

11 A YES, SIR AT THE END I ALWAYS ASK EVERY PERSON  
12 I EVER READ MIRANDA TO I ASK THEM, DO YOU UNDERSTAND  
13 YOUR RIGHTS

14 Q AFTER YOU TOOK THE STATEMENT DOWN -- WELL, LET  
15 ME BACK UP YOU DID NOT RECORD THIS STATEMENT, DID  
16 YOU?

17 A NO, SIR

18 Q YOU DID NOT VIDEO TAPE IT?

19 A NO, SIR

20 Q AND AGAIN WHEN HE TALKED TO YOU, HE WAS CALM?

21 A YES, SIR

22 Q THANK YOU

23 MR BRACKETT NOTHING FURTHER

24 THE COURT YOU CAN STEP DOWN THANK YOU

25 MR THOMPSON THE STATE WOULD CALL---

1                   MR BRACKETT   YOU WANT TO TAKE EACH  
2       STATEMENT INDIVIDUALLY OR DO YOU WANT YOU TO --

3                   THE COURT    WELL, ONLY, HE SAID DETECTIVE  
4       HERRING WAS IN THERE   IS THERE ANOTHER STATEMENT?

5                   MR BRACKETT   DETECTIVE HERRING WAS IN  
6       THERE FOR THE SAME STATEMENT   I DIDN'T INTEND TO  
7       CALL HIM

8                   THE COURT    THAT'S FINE

9                   MR BRACKETT   THERE IS A SECOND STATEMENT  
10      THAT WAS GIVEN AT THE HOSPITAL   IT'S THE ORAL  
11      STATEMENT THAT YOU GOT

12                  THE COURT    LET'S DO THEM BECAUSE DEFENSE  
13      HAS A RIGHT TO PUT UP ANY WITNESSES THEY WANT, SO WHY  
14      DON'T WE GO AHEAD AND DO, TAKE ALL THE STATE'S

15                  MR THOMPSON   THE STATE WOULD CALL CEDRIC  
16      STOKES

17                               CEDRIC STOKES, BEING FIRST  
18      DULY SWORN, TESTIFIED AS FOLLOWS

19      DIRECT EXAMINATION BY MR THOMPSON

20      Q     OFFICER STOKES, COULD YOU GIVE YOUR FULL NAME  
21      FOR THE COURT?

22      A     SURE   CEDRIC STOKES

23      Q     AND HOW DO YOU SPELL CEDRIC?

24      A     C-E-D-R-I-C

25      Q     AND STOKES?

CEDRIC STOKES

DIRECT

55

1 A S-T-O-K-E-S

2 Q AND HOW LONG HAVE YOU BEEN WITH THE ROCK HILL  
3 POLICE DEPARTMENT?

4 A 13 MONTHS NOW, SIR

5 Q AND WERE YOU WORKING THE NIGHT THAT THIS  
6 OCCURRED WHEN MR FREEMAN WAS ARRESTED?

7 A YES, I WAS

8 Q WAS THERE ANY OTHER OFFICERS WORKING WITH YOU  
9 THAT NIGHT SPECIFICALLY ON THIS CASE WITH YOU?

10 A MYSELF AND OFFICER -- WELL, AT THE TIME OFFICER,  
11 10-15 OFFICERS

12 Q OKAY DID YOU HAVE AN OPPORTUNITY TO ULTIMATELY  
13 TAKE THE DEFENDANT TO PIEDMONT MEDICAL CENTER THAT  
14 NIGHT?

15 A YES, I DID

16 Q AND CAN YOU TELL ME THE CIRCUMSTANCES AROUND  
17 THAT, HOW DID THAT DEVELOP?

18 A WELL, SIR, I WAS TOLD TO COME TO THE LAW CENTER  
19 BECAUSE THE SUSPECT THAT WAS INVOLVED IN THE ASSAULT  
20 HAD BANGED HIS HEAD UP AGAINST THE JAIL WALL AND  
21 SUSTAINED AN INJURY LIEUTENANT CALLED MYSELF AND  
22 OFFICER MURPHY BECAUSE I GUESS WE WERE, YOU KNOW, THE  
23 BIGGER GUYS BECAUSE, YOU KNOW, THE ISSUE THAT THEY  
24 HAD WITH THE THREE OFFICERS AND THE GENTLEMAN BEING  
25 COMBATIVE

1 Q RIGHT

2 A WHEN WE GOT THERE, WE SHACKLED MR FREEMAN AND  
3 WE ACTUALLY HAD TO CONVOY HIM UP TO PIEDMONT MEDICAL  
4 CENTER

5 Q WHAT DO YOU MEAN BY THAT?

6 A MEANING THAT WE PUT MR FREEMAN IN MY VEHICLE, I  
7 HAD A LIEUTENANT IN FRONT OF ME IN HIS VEHICLE, AND  
8 OFFICER MURPHY BEHIND, SO THREE CARS GOING TO TAKE  
9 HIM TO THE HOSPITAL

10 Q OKAY AND WHEN YOU GOT TO THE HOSPITAL, WHAT  
11 HAPPENED AT THAT POINT?

12 A WHEN WE GOT TO THE HOSPITAL WE CHECKED HIM IN AT  
13 THE FRONT DESK THEY SAW, YOU KNOW, PRETTY MUCH THE  
14 STATE THAT HE WAS IN AND THAT HE WAS HANDCUFFS AND  
15 EVERYTHING, SO THEY SAID THAT THEY WOULD TAKE HIM TO  
16 A PRIVATE AREA IN THE BACK SO WE WENT TO A PRIVATE  
17 AREA IN THE BACK AND WE SAT HIM DOWN FOR HIS  
18 TREATMENT

19 Q WHAT'S THE DEFENDANT'S DEMEANOR AT THAT TIME?

20 A OH, AT THAT TIME MR FREEMAN WAS, HE WASN'T  
21 EXCITED OR, YOU KNOW, HE WASN'T IN A RAGE HE JUST  
22 WAS PRETTY CALM

23 Q OKAY AND WAS THAT HIS DEMEANOR PRETTY MUCH FOR  
24 THE WHOLE TIME YOU DEALT WITH HIM?

25 A YES, SIR

CEDRIC STOKES

DIRECT

57

1 Q ALL RIGHT NOW DID YOU ACTUALLY ASK MR FREEMAN  
2 ANY QUESTIONS ABOUT THE CASE AT THAT TIME?  
3 A NO, SIR, I DID NOT  
4 Q DID YOU EVER READ HIM HIS MIRANDA RIGHTS?  
5 A NO, SIR, I DID NOT  
6 Q DID ANY OTHER OFFICERS IN YOUR PRESENCE ASK HIM  
7 ANYTHING ABOUT THE CASE?  
8 A NO, SIR  
9 Q OR READ THE MIRANDA RIGHTS TO HIM AT THAT TIME?  
10 A NO, SIR  
11 Q ALL RIGHT AND AGAIN GOING BACK TO THE TIME  
12 THAT THIS WOULD HAVE HAPPENED, I BELIEVE THIS ALL  
13 HAPPENED ON 28, THE ACTUAL INCIDENT, WHEN WAS IT THAT  
14 YOU ENDED UP TRANSPORTING HIM TO PMC?  
15 A WELL, IT WAS SOMETIME OVER INTO THE EVENING I  
16 WANT TO SAY, TO GIVE YOU AN EXACT TIME I CAN'T  
17 RECALL, BUT IT WAS OVER INTO THE MORNING, GOING INTO  
18 THE MORNING HOURS  
19 Q OKAY THE MORNING HOURS OF THE 29?  
20 A YES  
21 Q WAS IT EARLY MORNING HOURS OF THE 29?  
22 A YES  
23 Q LIKE SIX OR SEVEN IN THE MORNING?  
24 A NO, EARLY MORNING HOURS  
25 Q OKAY WHEN YOU GOT TO THE HOSPITAL, WHEN IF AT

1 ALL DID THE DEFENDANT SPEAK TO YOU REGARDING THIS  
2 CASE?

3 A ONCE WE GOT TO THE HOSPITAL, WE GOT INTO THE  
4 PRIVATE AREA OF THE HOSPITAL I GUESS MR FREEMAN, I  
5 DON'T WANT TO SAY HE STARTED PLAYING IN HIS MIND, HE  
6 JUST STARTED TALKING ABOUT WHAT HAPPENED HE JUST  
7 STARTED TALKING

8 Q WHO WAS THERE WHEN HE STARTED TALKING?

9 A IT WAS MYSELF AND OFFICER MURPHY

10 Q ALL RIGHT HAD EITHER OF YOU ASKED HIM ANY  
11 QUESTIONS WHEN HE STARTED TALKING?

12 A NO, SIR

13 Q DID YOU ASK HIM ANY QUESTIONS AT ANY TIME DURING  
14 THE TIME THAT HE WAS TALKING?

15 A NO, SIR

16 Q DID OFFICER MURPHY ASK HIM ANY QUESTIONS DURING  
17 THE TIME THAT HE WAS TALKING?

18 A NO, SIR

19 Q ALL RIGHT AND WHAT DID HE SAY WHEN YOU WERE  
20 SITTING THERE?

21 A WELL, HE, HE, HE STARTED OUT BY SAYING THAT HE  
22 WAS JUST, HE WAS SORRY, YOU KNOW, FOR THAT GUY, BUT,  
23 YOU KNOW, IT WASN'T HIS FAULT HE SAID THAT HE HAD  
24 TALKED TO HIS GIRLFRIEND AT THE TIME AND SHE SAID SHE  
25 WAS ON HER WAY TO SEE A FRIEND IN CHARLOTTE AND HE



CEDRIC STOKES

DIRECT

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1 SAID AT THAT TIME WHEN HE WAS SPEAKING WITH HER HE  
2 WAS ON THE WAY HOME FROM WORK HE WAS COMING IN FROM  
3 WORK AND AS HE WAS COMING IN OFF I-77 HE SAW HER  
4 VEHICLE GO BY HIM AND HE KNEW SOMETHING WASN'T RIGHT  
5 SO HE FOLLOWED HER HE GOT IN AND HE FOLLOWED HER  
6 HE SAID HE LOST HER SOMEWHERE IN THE ROUTE BUT HE  
7 FOUND HER VEHICLE OVER AT THE APARTMENT COMPLEX

8 Q ALL RIGHT

9 A AND HE SAID HE AGAIN PLACED A CALL TO HER AGAIN  
10 SAYING, YOU KNOW, WHERE ARE YOU, WHERE ARE YOU, WHERE  
11 YOU AT SHE SAID SHE WAS ON THE HIGHWAY GOING UP TO  
12 CHARLOTTE AND HE SAID ARE YOU SURE SHE SAID YES  
13 HE SAID WELL, THAT'S FUNNY BECAUSE I'M SITTING ON  
14 YOUR CAR HE SAID AT THAT TIME HE SAID HE WAS  
15 LOOKING AT HER THROUGH A WINDOW AND SHE COULD SEE  
16 HIM, SEE HER AND ANOTHER GUY SITTING ON THE COUCH  
17 AND THEN THAT'S WHEN HE, YOU KNOW, ASKED HER TO COME  
18 OUTSIDE AND SHE SAID SHE WOULDN'T HE WENT AND HE  
19 KNOCKED AND SAID COME OUTSIDE AND SHE SAID THAT SHE  
20 WOULDN'T COME OUTSIDE HE SAID I COULD HAVE SWORE  
21 SHE GRINNED AT ME AND THEN THAT'S WHEN I LOST IT

22 Q ALL RIGHT WAS THAT THROUGH THE WINDOW, IS  
23 THAT, I MEAN DID HE --

24 A YEAH, HE SAW HER THROUGH THE WINDOW LIKE HE  
25 SAW HER, LOOKED THROUGH THE WINDOW AND SHE GRINNED AT

1 HIM

2 Q OKAY

3 A AND HE SAID THAT'S WHEN HE LOST IT

4 Q DID HE SAY WHAT HE DID AFTER THAT?

5 A HE SAID THAT HE BROKE THE GLASS AND HE WENT IN  
6 AND HE STARTED PUNCHING THE GUY THE GUY WHO WAS IN  
7 THE APARTMENT WITH HER HE ALSO SAID THAT, YOU KNOW,  
8 HE THOUGHT HE ONLY PUNCHED HIM TWICE, BUT WHEN HE  
9 LOOKED AT HIM HE SAW HIM, I GUESS, I'M NOT SURE IT  
10 WAS AFTER WE PLACED HIM UNDER ARREST OR DURING THE  
11 TIME, HE KNEW HE HAD PUNCHED HIM MORE THAN TWO TIMES  
12 AND HE WANTED TO APOLOGIZE TO HIM BECAUSE HE KNEW  
13 THAT IT PROBABLY WASN'T HIS FAULT

14 Q ALL RIGHT AND AGAIN DID YOU ASK HIM ANY  
15 QUESTIONS DURING THE TIME THAT HE WAS --

16 A NO, SIR, NO QUESTIONS

17 Q OKAY DID OFFICER MURPHY ASK HIM ANY QUESTIONS?

18 A NO, SIR

19 Q DID Y'ALL THREATEN OR COERCE HIM IN ANY WAY?

20 A NO, SIR, ABSOLUTELY NOT

21 Q DID YOU HAVE GUNS OR WEAPONS DRAWN ON HIM AT THE  
22 TIME THAT HE GAVE YOU THIS STATEMENT?

23 A NO, SIR

24 Q SO IS THIS BASICALLY JUST SOMETHING HE JUST  
25 STARTED TALKING?

CEDRIC STOKES

CROSS

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1 A JUST STARTED TALKING ABOUT IT

2 Q AS YOU WERE SITTING THERE?

3 A YES, SIR

4 Q DID Y'ALL FOLLOW UP WITH ANY QUESTIONS AFTER HE  
5 SAID THAT OR ANYTHING?

6 A NO, SIR NO, SIR

7 Q SO WAS ANY PART OF THAT STATEMENT THAT YOU JUST  
8 TESTIFIED TO ON THE PART OF YOUR QUESTIONING OR ANY  
9 OTHER OFFICERS?

10 A NO NO QUESTIONS

11 Q THANK YOU NO FURTHER QUESTIONS

12 CROSS EXAMINATION BY MR DEST

13 Q OFFICER STOKES

14 A YES, SIR

15 Q YOUR PURPOSE FOR BEING IN CONTACT WITH MY CLIENT  
16 THAT NIGHT WAS NOT TO INTERVIEW HIM, CORRECT?

17 A ABSOLUTELY RIGHT THAT'S CORRECT

18 Q IN FACT YOU JUST TESTIFIED THAT NOT TOO MUCH  
19 EARLIER, EARLIER THAT EVENING HE WAS IN A RAGE,  
20 CORRECT, WHICH YOU UNDERSTOOD?

21 A YES, I UNDERSTOOD HE WAS IN A RAGE PRIOR TO ME  
22 COMING IN CONTACT WITH HIM

23 Q AND IN FACT, ACCORDING TO THE REPORT THAT YOU  
24 WROTE, THAT HE ACTUALLY HIT HIS HEAD AGAINST A  
25 CABINET, IS THAT CORRECT? AS A PART OF THAT CASE?

1       A       WELL, ONCE HE, YOU KNOW, HE WAS SAYING THAT HE  
2       WAS UPSET   HE WAS IN A RAGE THAT NIGHT AFTER HE CAME  
3       IN CONTACT WITH THAT GENTLEMAN AND HE WAS PUNCHING  
4       HIM, HE RIPPED THE WALL, THE MEDICINE CABINET DOOR  
5       OFF AND HIT HIMSELF IN THE HEAD WITH THE CABINET

6       Q       RIGHT    HIT HIMSELF IN THE HEAD?

7       A       HE HIT HIMSELF IN THE HEAD, IN THE FOREHEAD WITH  
8       IT

9       Q       AND THEN THE POLICE CAME SHORTLY AFTER THAT,  
10      CORRECT?

11      A       YES, SIR

12      Q       AND THEY HAD TO ARREST HIM INSIDE THE APARTMENT?

13      A       YES, SIR

14      Q       AND THEY HAD TO TAZE HIM?

15      A       YES, SIR

16      Q       AND AT LEAST THREE OFFICERS HAD TO DO THAT?

17      A       I WASN'T SURE HOW MANY OFFICERS    I WASN'T  
18      ACTUALLY AT THAT SCENE AT THE TIME

19      Q       BUT WHEN YOU CAME IN CONTACT WITH HIM HE  
20      ACTUALLY HAD HURT HIMSELF AGAIN INSIDE THE JAIL CELL?

21      A       YES, SIR

22      Q       IN FACT HE RAMMED HIS HEAD I GUESS?

23      A       AGAINST THE WALL

24      Q       THE WALL?

25      A       YES

CEDRIC STOKES

CROSS

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1 Q AND AS A RESULT OF RAMMING HIS HEAD AGAINST THE  
2 WALL THERE WAS A LAR CERATION?

3 A YES, SIR

4 Q AND THAT'S WHAT YOU WERE TAKING HIM TO THE  
5 HOSPITAL FOR?

6 A YES, SIR

7 Q YOU DID NOT RECORD ANYTHING OR HAVE ANY TYPE OF  
8 INTERVIEW WITH HIM AT ALL THAT NIGHT, DID YOU?

9 A NO, I DIDN'T

10 Q IN FACT YOU WERE JUST THERE TAKING HIM TO THE  
11 HOSPITAL?

12 A THAT WAS MY PURPOSE, YES, OF COMING IN CONTACT  
13 WITH HIM

14 Q AND WHATEVER YOU WROTE DOWN IN THIS REPORT AS TO  
15 WHAT HAPPENED, YOU NEVER WENT BACK TO STEVEN FREEMAN  
16 AND SAID, ISN'T THIS WHAT YOU SAID?

17 A NO, SIR, I DIDN'T

18 Q NOR DID YOU DO ANY FOLLOW UP INTERVIEW WITH HIM  
19 AT ANY TIME IN THIS CASE?

20 A - NO, SIR, I DIDN'T

21 Q AND AGAIN YOU WERE JUST THERE TO TAKE HIM TO THE  
22 HOSPITAL?

23 A TRANSPORT HIM TO THE HOSPITAL, CORRECT

24 Q THANK YOU

25 MR THOMPSON NOTHING FURTHER, YOUR

1 HONOR .  
2 THE COURT YOU CAN STEP DOWN THANK YOU  
3 A THANK YOU  
4 THE COURT ANY FURTHER WITNESSES FOR THE  
5 STATE?  
6 MR THOMPSON THE STATE WOULD CALL OFFICER  
7 POPOV TO THE STAND  
8 THE COURT PLEASE COME UP AND BE SWORN  
9 DANIEL POPOV, BEING  
10 FIRST DULY SWORN, TESTIFIED AS FOLLOWS  
11 DIRECT EXAMINATION BY MR THOMPSON  
12 Q OFFICER POPOV, COULD YOU GIVE YOUR FULL NAME FOR  
13 US PLEASE?  
14 A DANIEL POPOV  
15 Q COULD YOU SPELL IT FOR THE COURT REPORTER?  
16 A P-O-P-O-V  
17 Q OKAY AND OFFICER, CAN YOU TELL ME YOUR CONTACT  
18 WITH THE DEFENDANT THAT NIGHT? I KNOW YOU WERE  
19 INVOLVED IN HIS ARREST, HOWEVER, DID YOU ALSO  
20 TRANSPORT HIM BACK TO THE LAW CENTER AFTER HIS  
21 ARREST?  
22 A YES, SIR  
23 Q OKAY WHEN YOU TRANSPORTED HIM BACK TO THE LAW  
24 CENTER, DID YOU QUESTION HIM AT ALL ABOUT THIS CASE?  
25 A NO, SIR I ASKED HIM ONE QUESTION ON THE WAY

DANIEL POPOV

DIRECT

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1 BACK BECAUSE IT WAS AUGUST, HOT, EVERYONE LIVES IN  
2 ROCK HILL KNOWS IT DOES GET HOT IN THE SUMMER, I LIKE  
3 TO CRACK THE WINDOW IN THE BACK FOR PEOPLE TO GET  
4 SOME AIR AND I ASKED HIM IF HE WAS GETTING ENOUGH AIR  
5 IN THE BACK THAT'S THE ONLY QUESTION I EVER ASKED  
6 HIM

7 Q DID HE EVER SAY ANYTHING DURING THE TIME THAT HE  
8 WAS IN THE BACK OF YOUR PATROL CAR?

9 A YES, HE DID

10 Q AND WHAT IF ANYTHING DID HE SAY AT THAT TIME  
11 WHEN HE WAS IN THE BACK OF YOUR VEHICLE?

12 A THE STATEMENTS THAT I HEARD HIM SAYING, HE SAID  
13 I MADE A MISTAKE HE STATED I KNEW SHE WAS CHEATING  
14 I KEPT HEARING BECAUSE I HAD MY WINDOW OPEN SO THOSE  
15 ARE THE ONLY TWO THAT I RECALL HEARING HIM SAY IN THE  
16 BACK

17 Q WERE THOSE A RESULT OF YOU QUESTIONING HIM AT  
18 ALL?

19 A NEVER ONCE DID I ASK HIM A QUESTION SAVE THAT  
20 ONE ABOUT GETTING ENOUGH AIR IN THE BACK

21 Q WAS ANY OTHER OFFICER ASKING HIM A QUESTION  
22 WHILE YOU WERE THERE?

23 A NO, SIR

24 Q ALL RIGHT DID YOU OR ANYONE ELSE READ HIM HIS  
25 MIRANDA RIGHTS AT THAT TIME?

1 A NO, SIR

2 Q SO THOSE STATEMENTS THAT HE GAVE TO YOU AT THAT  
3 TIME WERE THEY AS A RESULT OF ANY INTERROGATION FROM  
4 YOU OR ANYONE ELSE?

5 A NO, SIR

6 Q THANK YOU NO FURTHER QUESTIONS  
7 CROSS EXAMINATION MR DEST

8 Q OFFICER POPOV, YOU WROTE A REPORT BASED UPON  
9 YOUR INTERACTION WITH MY CLIENT?

10 A YES, SIR

11 Q AND IN THAT REPORT YOU WROTE HE SAID I KNEW SHE  
12 WAS CHEATING I KNEW SHE WAS CHEATING?

13 A YES, SIR

14 Q AND AT SOME POINT HE WAS CRYING IN THE BACK OF  
15 YOUR PATROL CAR?

16 A YES, SIR

17 Q THANK YOU

18 MR THOMPSON NOTHING FURTHER IN THE  
19 JACKSON VERSUS DENNO HEARING

20 THE COURT YOU CAN STEP DOWN ANY OTHER  
21 WITNESSES?

22 MR THOMPSON NO, YOUR HONOR

23 THE COURT DEFENSE HAVE ANY WITNESSES?

24 MR DEST NO, YOUR HONOR

25 THE COURT WHAT'S THE DEFENSE POSITION?



1                   MR DEST   YOUR HONOR, WITH RESPECT TO  
2                   OFFICER STOKES YOU ALREADY RULED ON THAT ISSUE, BUT  
3                   WITH REGARD TO THE OTHER STATEMENTS WE HAVE NOTHING  
4                   TO PRESENT AT THIS TIME

5                   THE COURT   WELL, THE COURT FINDS THAT AS  
6                   TO OFFICER POPOV AND STOKES THAT THOSE WERE VOLUNTARY  
7                   STATEMENTS

8                   AS TO THE STATEMENT GIVEN AT THE  
9                   POLICE STATION ON THE NEXT DAY, I FIND THAT IT WAS,  
10                  AFTER CONSIDERING ALL OF THE EVIDENCE I FIND BY A  
11                  PREPONDERANCE OF THE EVIDENCE THAT BEFORE THE  
12                  STATEMENT WAS TAKEN MR FREEMAN WAS FULLY ADVISED OF  
13                  HIS RIGHTS UNDER BOTH THE 5TH AND 6TH AMENDMENTS AS  
14                  TO THE CONSTITUTION OF THE UNITED STATES AND THE  
15                  CONSTITUTIONAL SAFEGUARDS REQUIRED BY THE LAW THROUGH  
16                  MIRANDA VERSUS ARIZONA

17                  HE WAS ADVISED PRIOR TO ANY  
18                  INTERROGATION THAT HE HAD THE RIGHT TO REMAIN SILENT,  
19                  THAT ANYTHING HE SAID COULD BE USED AGAINST HIM   HE  
20                  WAS ADVISED HE HAD THE RIGHT TO TALK TO AN ATTORNEY  
21                  FOR ADVICE BEFORE BEING ASKED ANY QUESTIONS AND TO  
22                  HAVE THE ATTORNEY WITH HIM DURING QUESTIONING

23                  HE WAS ADVISED HE HAD THE RIGHT TO THE  
24                  ADVICE AND PRESENCE OF AN ATTORNEY EVEN IF HE COULD  
25                  NOT AFFORD ONE, THAT ONE WOULD BE APPOINTED BY THE

1 COURT TO HIM AND FOR HIM IF HE WISHED THAT HE COULD  
2 ANSWER QUESTIONS WITHOUT THE PRESENCE OF AN ATTORNEY  
3 AND STOP ANSWERING THOSE QUESTIONS AT ANY TIME, IF HE  
4 DESIRED TO HAVE AN ATTORNEY PRESENT

5 I FIND THAT HE FREELY, VOLUNTARILY,  
6 KNOWINGLY, AND INTELLIGENTLY WAIVED HIS RIGHTS UNDER  
7 THE 5TH AND 6TH AMENDMENTS OF THE CONSTITUTION OF  
8 UNITED STATES AS REQUIRED BY MIRANDA HE HAS SIGNED  
9 A STATEMENT AND SIGNED A WAIVER I FIND THE ALLEGED  
10 INCRIMINATING STATEMENT OBTAINED FROM HIM WAS FREELY  
11 AND VOLUNTARILY GIVEN WITHOUT DURESS, WITHOUT  
12 COERCION, WITHOUT UNDUE INFLUENCE, WITHOUT REWARD,  
13 WITHOUT PROMISE OR HOPE OF REWARD, WITHOUT COMPULSION  
14 OR INDUCEMENT, AND THAT SUCH ALLEGED INCRIMINATING  
15 STATEMENT WAS THE VOLUNTARY PRODUCT OF HIS FREE AND  
16 UNCONSTRAINED WILL AT THAT TIME AND THERE IS NO  
17 INDICATION THAT HE WAS UNDER THE INFLUENCE OF  
18 ANYTHING THAT WOULD CAUSE HIM TO BE INTOXICATED I  
19 FIND THEREFORE THAT THE INCRIMINATING STATEMENT OR  
20 CONFESSION, IF YOU WANT TO CALL IT A CONFESSION, IS  
21 ADMISSIBLE INTO EVIDENCE AND OF COURSE THE JURY WOULD  
22 ALSO HAVE THE RIGHT TO DETERMINE THE VOLUNTARINESS OF  
23 THE STATEMENT BEFORE THEY CONSIDERED IT TO WHATEVER  
24 DEGREE THEY WISH ALL RIGHT ANYTHING FURTHER?

25 MR BRACKETT NOT ON THESE ISSUES, YOUR

1 HONOR

2 THE COURT ANYTHING BEFORE WE GET THE  
3 JURY IN?

4 MR DEST NOTHING FROM THE DEFENSE, YOUR  
5 HONOR

6 THE COURT LET'S TAKE A FIVE MINUTE BREAK  
7 TO REFRESH BEFORE WE GET THE JURY

8 MR THOMPSON THERE IS ONE THING THERE  
9 IS NOTHING ELSE ON THIS, BUT THERE IS ONE OTHER THING  
10 BEFORE THE JURY COMES IN AND I WOULD LIKE ADDRESS THE  
11 COURT

12 THE COURT ALL RIGHT

13 MR THOMPSON AND IT'S THE SAME THING  
14 THAT I BROUGHT UP IN CHAMBERS SPECIFICALLY REQUEST  
15 THE DEFENSE NOT BE ALLOWED TO GO TO THE ISSUE OF  
16 VOLUNTARY MANSLAUGHTER DURING THEIR OPENING NOW  
17 THAT THE COURT HAS HEARD SOME OF THESE STATEMENTS AND  
18 SEEN THE STATEMENTS BY THE DEFENDANT, I THINK THE  
19 COURT WOULD BE IN A BETTER POSITION NOW TO CONSIDER  
20 THIS I THINK THE CASE LAW IS CLEAR AND THE  
21 PARTICULAR CASE I'D LIKE TO CITE WHICH I'LL PASS UP  
22 TO THE COURT NOW IS STATE VERSUS GADSON IT'S 2000  
23 OR 1994 SOUTH CAROLINA SUPREME COURT CASE FOR WHICH  
24 THE DEFENSE I KNOW HAS A COPY BECAUSE WE DISCUSSED IT  
25 TOGETHER I WOULD PASS A COPY OF IT UP TO THE COURT

1       AND SPECIFICALLY IN THAT CASE IT'S AN INSTANCE IN  
2       WHICH IT WAS A HUSBAND AND WIFE WHO HAD APPARENTLY  
3       HAD A MARRIAGE THAT WAS ON THE ROCKS, HAD SOMEWHAT  
4       SEPARATED    THE HUSBAND THOUGHT HE HAD BEEN ABLE TO  
5       COME BACK WITH THE WIFE    HOWEVER HE STAYED ONE  
6       EVENING WITH HER AND THEN SHE TOLD HIM, WOKE HIM UP  
7       AND SAID HE HAD TO GO    HE WAS SUSPICIOUS THAT  
8       SOMEONE ELSE MIGHT BE COMING, SOME OTHER MAN    AT  
9       THAT POINT HE WENT OUT OF THE APARTMENT BUT THEN HE  
10      STAYED OUT AND WAITED TO SEE IF SOMEONE WOULD SHOW UP  
11      AND ULTIMATELY ANOTHER PERSON DID AND IT WAS A MAN  
12      HE WAITED A FEW MORE MINUTES, ABOUT 15 MINUTES OR SO  
13      ACCORDING TO HIS TESTIMONY IN THIS PARTICULAR CASE,  
14      AND AT THAT TIME WENT INTO THE APARTMENT, FINDING THE  
15      DEFENDANT AND THE, OR FINDING HIS WIFE AND THIS OTHER  
16      MAN TOGETHER ON THE BED PARTIALLY CLOTHED, NOT  
17      NECESSARILY IN THE ACT OF ANYTHING AT THE TIME, BUT  
18      ON THE MARITAL BED PARTIALLY CLOTHED    AT THAT TIME  
19      HE BEGAN ARGUING WITH HER    THE OTHER MAN LEFT    HE  
20      ENDED UP CONTINUING THE ARGUMENT WITH HER    AT SOME  
21      POINT SHE EVEN THREW HIS CLOTHES DOWN THE STAIRS AND  
22      HE GOT, HE WENT DOWNSTAIRS, GOT A KITCHEN KNIFE  
23      AFTER SHE THREW HIS CLOTHES DOWN THE STAIRS HE BEGAN  
24      STABBING THE COUCH, SHE THREW HER WEDDING RINGS AT  
25      HIM AND THEN HE BECAME ENRAGED AND STABBED HER    IN

1        THAT PARTICULAR CASE THE COURT HAD CHARGED VOLUNTARY  
2        MANSLAUGHTER AS AN OPTION AND OF COURSE HE WAS FOUND  
3        GUILTY OF MURDER    THE COURT DETERMINED IN THIS CASE  
4        THAT VOLUNTARY MANSLAUGHTER SHOULD NOT HAVE BEEN  
5        CHARGED IN THAT CASE, THAT THESE DID NOT AMOUNT TO  
6        VOLUNTARY MANSLAUGHTER AND GOES ON TO SAY THAT  
7        WHEREAS HERE THE KILLER SUSPECTED HIS SPOUSE OF  
8        ADULTERY, LAYS IN WAIT OR SEARCHES FOR THE GUILTY  
9        EMBRACE, THE CRIME OF MURDER WILL NOT BE REDUCED TO  
10       VOLUNTARY MANSLAUGHTER

11                        I THINK THE FACTS OF THAT CASE ARE  
12       MUCH LIKE THIS CASE BUT THIS ONE GOES EVEN FARTHER  
13       AWAY TO LET THE COURT KNOW THE TESTIMONY WILL  
14       ULTIMATELY SHOW THIS DEFENDANT AND THIS, THE LADY  
15       THAT HE WAS DATING AT THE TIME, SHE WAS ACTUALLY  
16       STILL MARRIED TO ANOTHER PERSON AT THAT TIME AND SHE  
17       WAS IN THE PROCESS OF SEPARATION AND THEN ULTIMATELY  
18       TO BE DIVORCED, BUT SHE LIVED WITH THE DEFENDANT FOR  
19       JUST UNDER TWO MONTHS    THEY HAD KNOWN EACH OTHER  
20       JUST ABOUT TWO MONTHS, THEY MET ON LINE, AND HADN'T  
21       KNOWN EACH OTHER FOR ANY EXTENSIVE PERIOD OF TIME  
22       THE DEFENDANT FOLLOWS HER TO THIS APARTMENT  
23       SUSPECTING HE WAS GOING TO FIND HER POSSIBLY  
24       CHEATING    FROM WHAT YOU SEE FROM HIS OWN STATEMENT,  
25       HE FINDS HER OBVIOUSLY AT ANOTHER MAN'S APARTMENT BUT

1       NOTHING ABOUT IN THE ACT OF CHEATING OR IN THE ACT OF  
2       DOING ANYTHING AMISS, HE SAYS THAT AND GIVES TWO  
3       VERSIONS OF IT, ONE THAT SHE GRINS AT HIM FROM INSIDE  
4       THE WINDOW AND THAT HE BREAKS IN AND GOES ON AND  
5       BEATS THE MAN UP AND OF COURSE IN THIS CASE THE  
6       EVIDENCE WILL SHOW THAT ULTIMATELY BEAT THE MAN TO  
7       DEATH

8                       AND THE OTHER STATEMENT THAT HE GAVE  
9       IS THE WRITTEN STATEMENT HE SAYS HE'S ACTUALLY  
10      OUTSIDE AND TALKS TO HER OUTSIDE WHICH I BELIEVE WILL  
11      BE CONFIRMED BY THE 911 TAPES AND MS SHERMAN AS WELL  
12      THAT, WHERE SHE ACTUALLY CAME OUTSIDE AND DID TALK TO  
13      HIM, THAT HE THEN BROKE OUT THE WINDOW TO THE  
14      APARTMENT, WENT IN, AND AS THE STATEMENT SAYS CHASED  
15      THAT VICTIM DOWN AS HE WAS TRYING TO GET OUT OF HIS  
16      OWN WINDOW OF HIS OWN APARTMENT IN HIS OWN SLIDING  
17      GLASS WINDOW AND ATTACKED HIM THERE AND THEN BEGAN TO  
18      BEAT HIM AND OF COURSE EVIDENCE WILL ULTIMATELY SHOW  
19      THAT HE BEAT HIM TO DEATH

20                     THE STATE'S POSITION IS THAT THERE IS  
21      NO MANSLAUGHTER HERE     UNDER THE LAW THERE CANNOT BE  
22      MANSLAUGHTER UNDER THE FACTS MOST FAVORABLE TO THE  
23      DEFENDANT

24                     THE COURT     WELL, THE FLAW RIGHT NOW, AND I  
25      HADN'T HEARD ALL THE FACTS, I'VE HEARD THE STATE'S

1       SIDE     I AGREE THAT WHAT I HEARD DOES NOT LEND ITSELF  
2       SO FAR TO -- WELL, I BETTER NOT SAY, BUT I'M NOT  
3       GOING TO RESTRICT THE DEFENSE FROM DEVELOPING  
4       WHATEVER THEORY THEY WANT BECAUSE ALL I'VE HEARD SO  
5       FAR IS ONE SIDE     SO I THINK THAT AS OFFICERS OF THE  
6       COURT THE 'DEFENSE KNOWS THAT THEY CAN'T ARGUE  
7       SOMETHING THAT'S INDEFENDABLE AND I DON'T THINK THEY  
8       WOULD, SO IF THEY ARGUE IT THEY ARE TELLING ME BY  
9       ARGUING IT AS OFFICERS OF THE COURT THAT THEY HAVE  
10      GOT GOOD LEGAL AND FACTUAL BASIS FOR DOING IT, SO I'M  
11      NOT GOING TO GRANT THAT MOTION TO EXCLUDE THAT

12               MR THOMPSON     ALL RIGHT     THANK YOU, YOUR  
13      HONOR     THAT WOULD BE ALL

14               THE COURT     LET'S TAKE ABOUT A FIVE MINUTE  
15      REFRESHER BREAK SO THAT WHEN WE GET STARTED WE CAN  
16      SPEND SOME TIME WORKING ON THIS CASE

17                               (COURT'S IN RECESS AT 03 04 PM )

18                               (COURT RESUMES AT 03 09 PM )

19               THE COURT     BRING IN THE JURY

20                               (THE JURY RETURNS TO THE COURTROOM AT  
21      03 09 PM )

22               THE COURT     NOW THAT YOU ARE ALL  
23      COMFORTABLY SEATED, IF YOU'LL STAND I'LL ASK THE  
24      CLERK TO ADMINISTER THE OATH

25                               (THE JURY IS SWORN )

1                   THE COURT     MEMBERS OF THE JURY PANEL, IT  
2     TOOK US A LITTLE LONGER TO DO WHAT WE NEEDED TO DO  
3     OUTSIDE YOUR PRESENCE AND WE WILL TRY TO STICK AS  
4     CLOSE TO A SCHEDULE AS WE POSSIBLY CAN, BUT SOMETIMES  
5     THINGS COME UP     WE TRY TO START AROUND, AND WE WILL  
6     IN THE MORNING, AROUND 9 30     WE TAKE AN HOUR AND 15  
7     MINUTES, HOUR AND A HALF FOR LUNCH, AND WE TRY TO GO  
8     NO LATER THAN 5 30 OR SIX

9                   NOW I'VE GIVEN YOU SOME INSTRUCTIONS  
10    ABOUT NOT MAKING YOUR MIND UP, WHAT SORT OF NOT TO  
11    DO, AND I'M NOT GOING TO REPEAT THAT BUT THAT  
12    CONTINUES AS I SAID EARLIER UNTIL YOU ARE RELEASED  
13    FROM THIS TRIAL; THAT IS, THE INSTRUCTIONS

14                   TO THE CHARGES, AND THERE ARE THREE,  
15    BURGLARY, RESISTING ARREST, AND MURDER, MR   FREEMAN  
16    HAS ENTERED PLEAS OF NOT GUILTY     HIS PLEAS OF NOT  
17    GUILTY PLACE ON THE STATE THE BURDEN OF PROOF, THAT  
18    IS, THE BURDEN OF PROVING HIS GUILT BEYOND A  
19    REASONABLE DOUBT BEFORE YOU AS THE TRIAL JURY IN THIS  
20    CASE COULD CONVICT HIM OF ANY OF THE OFFENSES

21                   HE IS PRESUMED INNOCENT OF ALL THREE  
22    OFFENSES     UNDER OUR LAW ANYONE CHARGED WITH ANY  
23    OFFENSE IS PRESUMED INNOCENT BY LAW AND THAT  
24    PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL RIGHT     IT  
25    IS A RIGHT WHICH ATTACHES TO AN INDIVIDUAL AT THE



1        TIME OF THEIR ARREST, REMAINS WITH THEM THROUGH  
2        TRIAL, REMAINS WITH THEM AS THE JURY DELIBERATES  
3        THE PRESUMPTION OF INNOCENCE REMAINS WITH THE  
4        DEFENDANT UNTIL IT IS REMOVED, IF IT IS REMOVED, BY  
5        THE JURY FINDING THAT THE STATE HAS PROVEN HIS GUILT  
6        BEYOND A REASONABLE DOUBT

7                        NOW DURING THIS TRIAL I'M THE SOLE  
8        JUDGE OF THE LAW    YOU MUST TAKE, ACCEPT AND APPLY  
9        THE LAW AS I CHARGE IT    THIS IS TRUE EVEN IF YOU  
10       THINK I CHARGE THE LAW IN ERROR OR EVEN IF YOU THINK  
11       THE LAW SHOULD BE DIFFERENT    YOUR OATH REQUIRES THAT  
12       YOU TAKE, ACCEPT, AND APPLY THE LAW AS I CHARGE IT  
13       YOU ARE NOT TO INFER FROM ANYTHING I SAY OR DO DURING  
14       THE TRIAL AS INDICATING AN OPINION OF MINE ON THE  
15       FACTS    THE TRIAL JUDGE IN OUR STATE IS NOT ALLOWED  
16       TO FORMULATE OR EXPRESS TO A JURY AN OPINION ON THE  
17       FACTS    THAT IS SOLELY YOUR JOB

18                       AS FINDERS OF THE FACTS IT IS SOLELY  
19       UP TO YOU TO EXAMINE THE EVIDENCE, GIVE TO THE  
20       EVIDENCE THE EFFECT, THE VALUE, THE WEIGHT, AND THE  
21       TRUTH YOU BELIEVE THE EVIDENCE SHOULD HAVE

22                       IN DOING THIS, YOU CAN BELIEVE ONE  
23       WITNESS AS OPPOSED TO SEVERAL, SEVERAL WITNESSES  
24       AS OPPOSED TO ONE    YOU MAY BELIEVE ALL, PART, OR  
25       NONE OF THE WITNESS'S TESTIMONY    USE YOUR COMMON

1        SENSE, YOUR SENSE OF LOGIC, USE YOUR EXPERIENCE IN  
2        LIFE AS YOU ANALYZE THE EVIDENCE

3                    AS JUDGES OF THE FACTS, YOU HAVE TO  
4        JUDGE THE CREDIBILITY, THAT IS, THE BELIEVABILITY OF  
5        THE WITNESSES WHO TESTIFIED    IN ASSESSING  
6        CREDIBILITY USE THOSE THINGS I JUST MENTIONED, USE  
7        THOSE THINGS THAT YOU IN YOUR DAY-TO-DAY LIFE FIND  
8        INDICATE TRUTHFULNESS, AND YOU CAN USE CERTAIN OTHER  
9        CRITERIA    YOU CAN LOOK AT THE WITNESS'S DEemeanor,  
10       HOW THEY ACT ON THE STAND, ARE THEY HESITANT OR  
11       STRAIGHT FORWARD IN RESPONDING TO QUESTIONS    LOOK AT  
12       THE CONSISTENCIES OR INCONSISTENCIES WITHIN A  
13       WITNESS' TESTIMONY AS GIVEN TODAY OR AS COMPARED TO  
14       STATEMENTS GIVEN BY THAT WITNESS AT AN EARLIER TIME  
15       YOU CAN CONSIDER ANY BIAS OR PREJUDICE A WITNESS MAY  
16       HAVE, THAT IS, WHETHER A WITNESS WOULD WISH TO HELP  
17       OR HURT ONE SIDE OR THE OTHER    YOU CAN CONSIDER THE  
18       OPPORTUNITY A WITNESS MAY HAVE HAD TO KNOW THOSE  
19       THINGS ABOUT WHICH THE WITNESS TESTIFIED    ALL OF  
20       THOSE THINGS YOU CONSIDER, DETERMINE THE TRUE FACTS,  
21       APPLY THE LAW, AND YOU'LL BE ABLE TO RETURN A VERDICT  
22       THAT SPEAKS THE TRUTH

23                    WE TAKE BREAKS ABOUT EVERY HOUR AND A  
24        HALF    I FIND THAT IS A GOOD COMFORT LEVEL, BUT IF  
25        ANY OF YOU AT ANY TIME NEED A BREAK, SIMPLY RAISE

1 YOUR RIGHT HAND AND NO QUESTIONS ASKED WE'LL TAKE A  
2 BREAK AND I EXTEND THAT TO COUNSEL AND MR FREEMAN  
3 WE WANT TO MOVE THE CASE ALONG, BUT WE DON'T WANT  
4 ANYBODY TO BE IN DISCOMFORT AND NOT ABLE TO PAY  
5 ATTENTION, SO IF YOU NEED A BREAK, RAISE YOUR HAND  
6 AND WE'LL TAKE A BREAK

7 IF YOU CAN'T SEE OR YOU CAN'T HEAR  
8 INDICATE THAT TO ME, CUP YOUR EAR OR GIVE ME A VOICE  
9 RAISING GESTURE AND NUDGING GESTURE AND I WILL  
10 CORRECT WHATEVER SITUATION EXISTS BECAUSE IT'S NOT  
11 FAIR TO ASK YOU TO RESOLVE THIS MATTER AND THEN NOT  
12 LET YOU SEE AND HEAR THOSE THINGS YOU NEED TO SEE AND  
13 HEAR

14 MR FOREMAN, YOU WILL PRESIDE OVER THE  
15 JURY DELIBERATION, YOU WILL BE THE LIAISON BETWEEN  
16 THE JURY AND MYSELF AND YOU WILL ULTIMATELY SIGN THE  
17 UNANIMOUS VERDICT OF THE JURY

18 IN JUST A MOMENT THE ATTORNEYS HAVE A  
19 RIGHT BUT NO OBLIGATION TO COME BEFORE YOU AND MAKE  
20 OPENING STATEMENTS WHAT THEY WILL BE DOING AT THIS  
21 TIME IS OUTLINING OR BLUE PRINTING THE TRIAL THEY  
22 WILL NOT BE ARGUING THE CASE THEY, AT A LATER TIME,  
23 HAVE A RIGHT TO SUM UP AFTER THE TESTIMONY IS  
24 PRESENTED, AFTER THE EVIDENCE IS IN, THEY CAN GIVE  
25 WHAT WE EITHER CALL SUMMATIONS OR ARGUMENTS OR

1 CLOSING STATEMENTS AND AT THAT TIME THEY WILL BE  
2 TRYING TO PERSUADE YOU TO REACH A CERTAIN VERDICT  
3 THAT'S NOT WHAT THEY ARE DOING NOW TODAY THEY ARE  
4 SIMPLY OUTLINING THE TRIAL FOR YOU WHAT THEY SAY IS  
5 NOT EVIDENCE AND KEEP IN MIND THAT THEY MAY STATE  
6 SOME LEGAL PRINCIPLES TO YOU, BUT ULTIMATELY I AM THE  
7 ONE WHO WILL CHARGE YOU THE LAW THAT YOU ARE TO APPLY  
8 IN THIS CASE

9 I HAVE GIVEN YOU A FEW LEGAL  
10 PRINCIPLES AS I TALKED I MAY DURING THE TRIAL GIVE  
11 YOU SOME LEGAL PRINCIPLES AT THE END OF THE TRIAL I  
12 WILL GIVE YOU A PRECISE AND COMPREHENSIVE CHARGE ON  
13 THE LAW INCLUDING ALL THE ELEMENTS OF THE THREE  
14 CHARGES AND GIVE YOU FURTHER INSTRUCTIONS ON HOW YOU  
15 ARE TO CONDUCT YOURSELVES IN YOUR DELIBERATIONS

16 AS I SAID EARLIER THE ALTERNATES WILL  
17 SIT THERE AND THE FOREMAN WILL SIT THERE THE REST  
18 OF YOU WILL SIT WHEREVER YOU FIND A SEAT WHEN YOU  
19 COME IN COUNSEL

20 OPENING STATEMENT BY MR THOMPSON  
21 MAY IT PLEASE THE COURT

22 TWO THINGS EVERYONE KNOWS, EVEN AS LITTLE  
23 CHILDREN, TOO MANY THINGS, BUT TWO OBVIOUS THINGS  
24 EVERY CHILD KNOWS, (ONE) YOU CAN'T BREAK INTO SOMEONE  
25 ELSE'S HOUSE YOU CAN'T DO IT IT'S WRONG (TWO)

1       YOU CAN'T MURDER SOMEONE    YOU CAN'T KILL SOMEONE  
2       ELSE   IT'S WRONG    AND THEY KNOW NOT JUST THAT IT'S  
3       WRONG, BUT THAT IT'S A CRIME, AND IN THIS CASE AS THE  
4       EVIDENCE WILL SHOW, THIS MAN HERE STEVEN FREEMAN,  
5       LAST ON THE ROW HERE, HE BROKE INTO ANOTHER MAN'S  
6       HOUSE, ANOTHER MAN'S APARTMENT, SMASHED OUT THE  
7       WINDOW, CLIMBED IN, AND BEAT THAT MAN TO DEATH WITH  
8       HIS BARE HANDS    NOT ONLY IS THAT WRONG, IT'S  
9       CRIMINAL, AND HE NEEDS TO BE PROSECUTED  
10                   AS YOU CONSIDER THIS CASE YOU'LL HEAR  
11       A LOT OF EVIDENCE, YOU'LL HEAR A LOT OF THINGS FROM A  
12       LOT OF DIFFERENT PEOPLE, BUT A FEW THINGS I NEED YOU  
13       TO KEEP IN MIND    LET'S TALK ABOUT FIRST THE  
14       DEFINITION OF THESE FEW THINGS    THE FIRST IS THE  
15       DEFINITION OF THE CRIMES THEMSELVES    HE'S CHARGED  
16       WITH THREE CRIMES AS YOU HEARD READ OFF AS YOU WERE  
17       BEING CHOSEN FOR THE JURY DUTY AND GOT TO COME UP  
18       HERE AND BE SELECTED  
19                   THE FIRST THING YOU HEARD ABOUT WAS  
20       THAT HE WAS CHARGED WITH MURDER, THE SECOND THING  
21       THAT YOU HEARD ABOUT IS THAT HE IS CHARGED WITH FIRST  
22       DEGREE BURGLARY, AND THE THIRD THING YOU HEARD ABOUT  
23       WAS THAT HE WAS CHARGED WITH RESISTING ARREST, AND IN  
24       THIS CASE LET ME EXPLAIN TO YOU WHAT THOSE ARE  
25       WE'LL GET THE RESISTING ARREST OUT OF THE WAY QUICKLY

1       AND IT'S AN EASY ONE     BASICALLY IT'S JUST AS THE  
2       JUDGE READ THE INDICTMENT     IT'S MUCH LIKE THAT     YOU  
3       RESIST A LAWFUL ARREST AND YOU'LL SEE THROUGH THE  
4       FACTS AND EVIDENCE IN THIS CASE THAT THE DEFENDANT  
5       DID THAT     SIMPLY IN THIS CASE IT'S A SIMPLE  
6       RESISTING ARREST     NOT THAT HE BEAT UP THE OFFICERS,  
7       NOT THAT HE STRUCK THEM OR BIT THEM OR HIT THEM IN  
8       SOME FORM OR FASHION, BUT THAT HE WOULDN'T COOPERATE  
9       WITH THE ARREST AND YOU'LL SEE HE IN NO WAY  
10      COOPERATED WITH THIS ARREST     THAT IT TOOK AT LEAST  
11      THREE OFFICERS TO SUBDUE TO HIM TO PHYSICALLY BRING  
12      HIM TO THE POINT WHERE THEY COULD HANDCUFF HIM TO  
13      BRING HIM TO THE POINT WHERE HE COULD BE WALKED OUT  
14      OF THAT APARTMENT     BECAUSE AS YOU SEE IN THE  
15      EVIDENCE, HE WAS STILL IN THE APARTMENT, STANDING  
16      NEXT TO THE BODY OF THE MAN HE HAD JUST KILLED WHEN  
17      THE OFFICERS CAME IN

18                   LET'S GO TO MURDER     WHAT ARE THE  
19      ELEMENTS OF MURDER?     MURDER IS THE UNLAWFUL KILLING  
20      OF ANOTHER PERSON WITH MALICE AFORETHOUGHT, WITH  
21      MALICE IN YOUR HEART     IT'S RATHER SIMPLE BUT YET A  
22      LOT OF PEOPLE HAVE A PROBLEM WITH THE DEFINITION OF  
23      WHAT IS MALICE     WHAT IS MALICE?     EASIEST WAY I CAN  
24      DESCRIBE IT TO YOU AND THERE IS MANY WAYS THAT THE  
25      JUDGE ULTIMATELY WILL DESCRIBE IT TO YOU WHEN YOU ARE

1 CHARGED AT THE END OF THIS CASE, HE WILL TELL YOU  
2 ABOUT HOW IT IS INDICATIVE OF AN EVIL AND WICKED  
3 HEART, SOMEONE FATALLY BENT ON MISCHIEF, AND GIVE YOU  
4 TERMS SUCH AS THAT BUT I LIKE TO TRY TO MAKE IT A  
5 LITTLE EASIER, SOMETHING THAT'S NOT SO OUT THERE  
6 THINK OF IT THIS WAY, MALICE IS MEAN IT'S BEING  
7 MEAN, EXTREMELY MEAN AND AS YOU LOOK AT THIS CASE,  
8 I WANT YOU TO LOOK AT EACH ASPECT OF THE THINGS THAT  
9 THE DEFENDANT DID AND THAT YOU'LL SEE THAT EACH ONE  
10 OF THESE ACTIONS WAS MEAN AND IT WAS PURPOSEFUL AND  
11 IT WAS MALICIOUS

12 NOW THE BURGLARY FIRST DEGREE, IT'S  
13 QUITE SIMPLE AS WELL, IT'S THE ENTERING OF THE  
14 RESIDENCE OF ANOTHER WITHOUT CONSENT AND WITH THE  
15 INTENT TO COMMIT A CRIME THEREIN AND YOU'LL SEE THOSE  
16 ELEMENTS THERE NOW TO MAKE IT, THAT'S A BURGLARY  
17 ITSELF, BUT TO MAKE IT A FIRST DEGREE BURGLARY, THE  
18 OTHER ELEMENTS THAT ARE REQUIRED, ONE OF THESE OTHER  
19 TWO, THAT YOU ENTER IN THE NIGHTTIME WHICH YOU'LL SEE  
20 THIS WAS, IT WAS ABOUT 8 54 IN THE EVENING ON AUGUST  
21 28 OF LAST YEAR AT PACES RIVER APARTMENTS, AND  
22 ANOTHER ELEMENT OF AGGRAVATION IF YOU FIND THIS ALSO  
23 TO BE FIRST DEGREE BURGLARY IS THAT WHEN YOU GO IN  
24 YOU ACTUALLY INJURE SOMEBODY ELSE IN THAT RESIDENCE  
25 SO BY THE FACT THAT MICHAEL BURGESS IS A RESIDENT OF

1        THAT APARTMENT AT PACES RIVER WAS BEATEN AND KILLED  
2        BY THE DEFENDANT GIVES YOU THE AGGRAVATING  
3        CIRCUMSTANCES THAT YOU NEED TO FIND FIRST DEGREE  
4        BURGLARY

5                        AS WE LOOK AT THESE THINGS ONE OF THE  
6        OTHER THINGS I WANT YOU TO CONSIDER AS YOU LOOK  
7        THROUGH AND YOU SEE ALL THE EVIDENCE, COMPARE THINGS  
8        BACK TO MALICE    AS YOU GO THROUGH LOOK AND THINK TO  
9        YOURSELF HOW DOES THIS APPLY TO MALICE    BECAUSE  
10       YOU'LL FIND AS THE EVIDENCE GOES THIS IS SOMEWHAT OF  
11       A WILD FACT PATTERN AT LEAST INITIALLY, BUT WHAT IT  
12       COMES DOWN TO IS THAT NIGHT RIGHT THERE AT THAT  
13       APARTMENT, YOU'LL FIND FROM THE EVIDENCE THAT THIS  
14       DEFENDANT STEVEN FREEMAN DIDN'T EVEN KNOW MICHAEL  
15       BURGESS BEFORE THIS, MICHAEL BURGESS HAD NO IDEA OR  
16       DIDN'T KNOW THIS MAN AT ALL    THE COMMON LINK WAS THE  
17       GIRLFRIEND OF THE DEFENDANT PETRA SHERMAN AND PETRA  
18       DIDN'T KNOW MICHAEL BURGESS, AT LEAST PERSONALLY  
19       FACE-TO-FACE, UNTIL THE NIGHT THIS HAPPENED    YOU'LL  
20       SEE THAT THE RELATIONSHIP BETWEEN PETRA AND THE  
21       DEFENDANT WAS ONE IT WAS STORMY AS OFTEN IS    YOU'LL  
22       SEE THAT IT HAD BEEN A SHORT RELATIONSHIP    PETRA WAS  
23       ACTUALLY IN THE PROCESS OF SEPARATION FROM HER  
24       MARRIAGE    SHE HAD MET UP WITH THE DEFENDANT, THEY  
25       HAD MET ON LINE, AND EARLY IN JULY IS WHEN THEY



1        REALLY HAD THEIR FIRST MEETING ACCORDING TO THE  
2        DEFENDANT HIMSELF AND IN THE STATEMENT THAT YOU'LL  
3        HEAR FROM LAW ENFORCEMENT    THAT'S REALLY WHEN THEY  
4        MET, AROUND JULY FOURTH 2006    REMEMBER THIS HAPPENS  
5        ON AUGUST 28, 2006, SO IN LESS THAN A TWO MONTH  
6        PERIOD THESE TWO WERE TOGETHER AND HAD MOVED IN WITH  
7        EACH OTHER AND HAD BECOME EXTREMELY JEALOUS, A  
8        VOLATILE RELATIONSHIP    ULTIMATELY, YOU'LL FIND THAT  
9        PETRA HAD CONTACTED MICHAEL BURGESS ON LINE AS WELL  
10       THAT THE FIRST NIGHT SHE WENT TO MEET HIM WAS THIS  
11       PARTICULAR NIGHT AND YOU'LL HEAR HOW SHE WENT TO HIS  
12       APARTMENT AND MET HIM    BUT HOW THERE WERE A NUMBER  
13       OF PHONE CALLS BACK AND FORTH BETWEEN HER AND THE  
14       DEFENDANT    WHERE ARE YOU GOING, WHAT ARE YOU DOING,  
15       WHERE ARE YOU GOING, WHAT ARE YOU DOING, AND HE  
16       CATCHES HER IN A LIE    SHE TELLS HIM THAT SHE IS  
17       GOING TO CHARLOTTE WITH SOME FRIENDS, BUT AS HIS  
18       STATEMENT SAYS, HE SEES HER GOING A DIFFERENT WAY  
19       THAN 77, SO HE SUSPECTS SOMETHING AND HE FOLLOWS HER  
20       AND FOR SOME PERIOD OF TIME HE FOLLOWS HER, NOT JUST  
21       FOR A FEW MINUTES, BUT FOR A PERIOD OF TIME  
22       EXPECTING HE'S GOING TO FIND SOMETHING    ULTIMATELY  
23       GOING INTO THIS APARTMENT COMPLEX, FINDING HER CAR  
24       PARKED THERE    AND ACCORDING TO THE STATEMENTS THAT  
25       HE GAVE LAW ENFORCEMENT, AND THERE IS TWO THAT YOU'LL

1 BE ABLE TO KEY ON, ONE THAT HE TOLD ONE OFFICER AND  
2 THEN ONE THAT HE GAVE AS A SWORN WRITTEN STATEMENT,  
3 AND THEY DIFFER IN TWO VERY IMPORTANT WAYS, THEY  
4 DIFFER IN EXACTLY WHAT HAPPENED RIGHT BEFORE HE  
5 KILLED MICHAEL BURGESS AND THE WAY IT DIFFERS IN THE  
6 FIRST ONE THAT HE GAVE TO OFFICER STOKES, HE TOLD  
7 OFFICER STOKES THAT HE FOLLOWED HER, HE GOT TO THE  
8 APARTMENT, HE SAT ON THE HOOD OF HER CAR, AND HE  
9 CALLED HER AND SAID SOMETHING TO THE EFFECT OF WHERE  
10 ARE YOU NOW, ARE YOU IN CHARLOTTE? YEAH, I'M IN  
11 CHARLOTTE WELL, THAT'S FUNNY BECAUSE I'M SITTING ON  
12 THE HOOD OF YOUR CAR HE SAID THAT HE SAW THROUGH  
13 THE WINDOW THAT SHE WAS SITTING ON THE COUCH WITH  
14 THAT GUY HE DIDN'T TELL THE OFFICER SHE WAS SITTING  
15 ON THE COUCH MAKING OUT HE DIDN'T TELL THE OFFICER  
16 THEY ARE IN THE MIDDLE OF HAVING SEX ON THE COUCH  
17 AND THERE IS A REASON BECAUSE NONE OF THAT HAPPENED  
18 HE TOLD THE OFFICER HE SAW THEM ON THE COUCH THEN  
19 HE SAID HE GOES UP TO THE DOOR AND KNOCKS AND THAT  
20 THEY WON'T COME TO THE DOOR AND HE DEMANDS THAT SHE  
21 COME TO THE DOOR AND SHE WON'T COME TO THE DOOR, BUT  
22 THEN HE SEES HER COME TO THE WINDOW GRINNING, HE LOST  
23 IT, HE BROKE INTO THE WINDOW, HE WENT INTO THE  
24 APARTMENT, AND HE STARTED BEATING THIS GUY THAT'S  
25 WHAT HE FIRST TOLD LAW ENFORCEMENT

1                    THEN IN THE WRITTEN STATEMENT HE  
2       CHANGES THAT A LITTLE BIT    HE TURNS AROUND AND HE  
3       SAYS PRETTY MUCH EVERYTHING UP TO THAT PART WHERE HE  
4       GETS TO THE APARTMENT AND THEN HE'S ON THE HOOD OF  
5       THE CAR, HE MAKES THAT CALL, BUT THAT SHE COMES OUT  
6       TO HIM AND THEY BEGIN TO ARGUE AND THAT HE GOES UP  
7       AND KNOCKS ON THE DOOR BECAUSE HE WANTS TO TALK TO  
8       THIS GUY, BUT THE GUY DOESN'T COME TO THE DOOR    AND  
9       THEN ULTIMATELY HE LOOKS UP AND HE SEES THE GUY GET  
10      UP OFF THE SOFA AND IT LOOKS LIKE HE MIGHT BE PULLING  
11      UP HIS PANTS, SO THEN HE WENT AND BROKE OUT THE  
12      WINDOW AND THEN HE WENT IN AND STARTED BEATING THE  
13      GUY

14                   NOW I MENTION THOSE TO YOU BECAUSE  
15      ONCE AGAIN I WANT YOU TO LOOK AT THE EVIDENCE AND  
16      COMPARE IT TO MALICE    COMPARE IT TO MEANNESS  
17      YOU'LL HEAR A LOT PROBABLY ABOUT HOW HE WAS IN A  
18      RAGE, HOW HE WENT IN AND BEAT THIS MAN UP, AND  
19      LITERALLY WITH HIS BARE HANDS BEAT THIS MAN TO DEATH  
20      LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT AS YOU  
21      LOOK AT THIS EVIDENCE YOU WILL DETERMINE FOR YOURSELF  
22      THAT THAT RAGE WAS MALICE    THIS IS A MAN FATALLY  
23      BENT ON MISCHIEF    THIS WAS MALICE    MICHAEL BURGESS  
24      IS REALLY WHAT THIS CASE IS ALL ABOUT WHEN IT COMES  
25      DOWN TO IT    HE WAS IN HIS OWN APARTMENT, NOT KNOWING

1 ANYTHING ODD WAS GOING TO HAPPEN, THIS WOMAN HAD JUST  
2 COME IN HIS DOOR, AND NOW THERE IS A MAN OUTSIDE  
3 GOING CRAZY AND YET IS HE GOING CRAZY? LOOK AT IT  
4 SHE COMES OUT, SHE TALKS TO HIM AND YOU'LL HEAR SOME  
5 OF THE 911 TAPE AND THEY WILL CONFIRM THIS, THAT SHE  
6 DID GO OUTSIDE BECAUSE SHE CALLS 911 AND YOU'LL HEAR  
7 THE DEFENDANT TALKING TO HER DURING SOME OF THE 911  
8 TAPE YOU'LL HEAR THE GLASS BREAKING IN THE WINDOW  
9 YOU'LL SEE FROM THE PHOTOGRAPHS OF THE CRIME SCENE  
10 THAT WHEN HE WENT UP TO THE WINDOW OF THE FRONT OF  
11 THAT APARTMENT HE DIDN'T JUST BREAK OUT THE WINDOW  
12 AND CLIMB IN BECAUSE HE'S IN SUCH A RAGE, HE BROKE  
13 OUT THE WINDOW HERE, HE BROKE OUT THE WINDOW UP HERE,  
14 BEFORE HE BROKE THEM OUT, HE TOOK THE SCREENS OFF,  
15 ONCE AGAIN LOOK AT MALICE LOOK AT WHAT HE'S DOING  
16 LOOK AT WHAT HE'S PLANNING LISTEN TO WHAT HE SAYS  
17 WHEN YOU CATCH LITTLE BITS OF THINGS THAT HE MIGHT  
18 SAY DURING THESE 911 TAPES WHEN HE SAYS ONE THING,  
19 WHEN HE'S ASKING PETRA SHERMAN, WHY DID YOU DO IT,  
20 WHY DID YOU DO IT IF YOU WON'T TELL ME, I'LL HIT  
21 HIM AGAIN LOOK TOWARDS THE MALICE BECAUSE THAT'S  
22 MEANNESS IT'S MALICE  
23 ONCE AGAIN LOOK TOWARDS WHAT HE DIDN'T  
24 DO DID HE PUMMEL PETRA SHERMAN? NO A MAN WHO  
25 LOST IN HIS RAGE, WOULD HE PUMMEL THE OTHER PERSON

1       THERE? COMMON SENSE WOULD SAY YES     DID HE PUMMEL  
2       THE FRIEND OF MICHAEL BURGESS WHO TRIED TO COME TO  
3       HIS RESCUE? NO, HE THREATENED TO, BUT HE DIDN'T  
4       ONCE AGAIN CONTROLLING THIS RAGE TO THE POINT THAT HE  
5       ONLY GETS THE ONE PERSON HE WANTS TO GET AND ONCE  
6       AGAIN YOU'LL SEE WHY HE WANTS TO GET THAT PERSON,  
7       IT'S TO GET AT PETRA     IT'S MALICE  
8                         LOOK AT THOSE THINGS ONCE AGAIN, MAKE  
9       THEM CRIMES THEMSELVES, THE MALICE, AS YOU LOOK AT  
10      EVERYTHING, AND THEN THE FINAL THING WITHIN ONCE  
11      AGAIN     THIS CASE IS NOT ABOUT PETRA SHERMAN     THIS  
12      CASE IS ABOUT MICHAEL BURGESS AND THE FACT THAT  
13      STEVEN FREEMAN BEAT HIM TO DEATH IN HIS OWN  
14      APARTMENT  
15                         ONCE AGAIN UNDER THE LAW AND EVERYONE  
16      HAS HEARD THIS AT SOME POINT I'M SURE IN THEIR LIFE,  
17      A MAN'S HOME IS HIS CASTLE     THIS MAN WAS IN HIS  
18      HOME     HE HAD NO WHERE ELSE TO GO     IF HE HAD HAD A  
19      GUN HE WOULD HAVE HAD EVERY RIGHT TO HAVE SHOT STEVEN  
20      FREEMAN DEAD AS HE TRIED TO ENTER HIS APARTMENT, BUT  
21      HE DIDN'T     HE WAS SCARED OF STEVEN FREEMAN     THIS  
22      MAN WAS BREAKING INTO HIS WINDOW     YOU'LL HEAR HOW HE  
23      CALLED HIS BUDDY AND SAID THERE IS A GUY TRYING TO  
24      GET IN MY HOUSE, YOU GOT TO COME HELP ME     YOU'LL  
25      HEAR EVEN FROM THE DEFENDANT'S OWN STATEMENT THAT HE

1 TRIED TO RUN OUT THE SLIDING GLASS DOOR TO GET AWAY  
2 AFTER THE DEFENDANT HAD BROKEN INTO THE APARTMENT AND  
3 THEN THE DEFENDANT RAN AROUND THROUGH THE FIRST ROOM  
4 HE CAME INTO, AROUND TO THE NEXT ROOM AND TACKLED HIM  
5 AS HE TRIED TO GET OUT OF THAT SLIDING GLASS DOOR AND  
6 AS I SAID BEAT HIM TO DEATH

7 YOU'LL SEE FROM THE AUTOPSY THERE ARE  
8 NO DEFENSIVE WOUNDS HE DIDN'T EVEN GET A CHANCE TO  
9 BLOCK BLOWS HE WAS TACKLED, HE WAS BEATEN  
10 UNMERCIFULLY, AND YOU'LL HEAR FROM THE EMS PEOPLE WHO  
11 TREATED HIM ON THE SCENE, THE OFFICERS WHO WERE  
12 THERE, HE WAS BASICALLY DEAD ON THE SCENE HE NEVER  
13 REGAINED CONSCIOUSNESS AGAIN HE GURGLED TRYING TO  
14 GET BREATH AND THAT'S WHEN THE INCIDENT THAT THE  
15 OFFICER CAME IN THAT THEY SAW THIS AND YOU'LL HEAR  
16 FROM THE OFFICERS THAT WHEN HE CAME IN, IS HE IN A  
17 RAGE? NO, HE'S STANDING THERE HE'S GONE AND RIPPED  
18 OFF THE CABINET FROM THE BATHROOM SINK AND HE'S GOT  
19 THE MIRROR FROM THAT CABINET IN HIS HAND AND HE'S  
20 STANDING THERE WITH IT BUT THEN HE WON'T OBEY  
21 COMMANDS IS HE DOING ANYTHING AGGRESSIVE TOWARDS  
22 THE OFFICERS? NO, HE'S NOT HE'S NOT THROWING  
23 THINGS AT THEM HE'S NOT SAYING HE'S GOING TO KILL  
24 THEM HE'S NOT SAYING, BUT HE'S STANDING THERE WITH  
25 IT ONCE AGAIN IF IT'S A MAN IN A RAGE DO THEY

1       CONTROL THEMSELVES ENOUGH NOT TO HARM OTHER PEOPLE  
2       EXCEPT FOR ONE, THE ONE THAT WOULD HURT PETRA THE  
3       MOST

4                       SO AS YOU LOOK AT THIS CASE AGAIN I  
5       WOULD ASK YOU TO REMEMBER IT'S NOT ABOUT PETRA  
6       SHERMAN   IT'S NOT ABOUT THIS RELATIONSHIP THAT HER  
7       AND THE DEFENDANT HAD, THAT SHE HAD LIED TO HIM ABOUT  
8       THINGS, ABOUT THAT, OR ABOUT OTHER THINGS, OR  
9       ANYTHING ELSE BECAUSE YOU CAN'T MAKE THAT LEAP FROM  
10      PETRA SHERMAN AND THE DEFENDANT STEVEN FREEMAN AND  
11      SAY, OH, THAT WAS ALL RIGHT FOR HIM TO KILL THIS  
12      THIRD MAN, TO BREAK INTO HIS HOUSE AND KILL HIM   THE  
13      ONE SANCTUARY THAT WE ALL SHOULD HAVE, OUR OWN HOME,  
14      AND YOU'LL FIND THROUGH THE EVIDENCE THIS IS MURDER  
15      IT'S A TEXTBOOK CASE OF MURDER   MALICE IS THERE  
16      IT'S A FIRST DEGREE BURGLARY   HE BROKE IN THAT  
17      HOUSE, HE DID IT AT NIGHT, AND HE HURT SOMEONE WHEN  
18      HE WENT IN   EVERY ACTION THAT HE TOOK WAS  
19      DELIBERATE   IT WAS THOUGHT OUT   HE HAD TIME TO  
20      THINK IT OUT   HE COULD HAVE WALKED AWAY   WHEN SHE'S  
21      CALLING 911, HE KNOWS SHE'S CALLING 911   SHE'S  
22      TALKING TO THEM RIGHT IN FRONT OF HIM OUTSIDE   HE  
23      COULD HAVE WALKED AWAY   HE COULD HAVE WAITED UNTIL  
24      THE POLICE CAME AND TOLD WHAT AN AWFUL PERSON HE  
25      THOUGHT PETRA WAS   BUT HE HAD A HEART FATALLY BENT

1 ON MISCHIEF HE WAS MEAN AND HAD A MALICE INTENT AND  
2 IT WAS MURDER AND I ASK THAT YOU FIND THAT AND I AS  
3 ASK YOU TO LOOK CAREFULLY AT ALL THE EVIDENCE THAT'S  
4 PRESENTED BECAUSE THAT'S WHAT YOU ARE GOING TO DRAW  
5 IT FROM AND I TRUST THAT YOU WILL FIND THAT THAT'S  
6 WHAT HE DID THANK YOU  
7 OPENING STATEMENT BY MR DEST  
8 MAY IT PLEASE THE COURT  
9 THE STATE WOULD WANT YOU TO BELIEVE  
10 THAT THIS IS AN OPEN AND SHUT CASE THE STATE WOULD  
11 WANT YOU TO BELIEVE THAT STEVEN FREEMAN IS AN EVIL  
12 AND WICKED MONSTER THIS IS NOT AN OPEN AND SHUT  
13 CASE AND STEVEN FREEMAN IS NOT AN EVIL AND WICKED  
14 MONSTER LADIES AND GENTLEMEN OF THE JURY, THIS CASE  
15 IS ABOUT A CONFUSED, BROKEN DOWN, PSYCHOLOGICALLY AND  
16 EMOTIONALLY FRAGILE YOUNG MAN WHO SNAPPED, WHO  
17 SNAPPED IN THE HEAT OF THE MOMENT AND HEAT OF  
18 PASSION STEVEN FREEMAN SNAPPED HE SNAPPED BECAUSE  
19 HE WAS SERIOUSLY INVOLVED WITH A WOMAN WHO COULD PLAY  
20 HIM LIKE A PUPPET ON A STRING THIS IS NOT A CASE OF  
21 MURDER THIS IS A CASE OF MANSLAUGHTER, VOLUNTARY  
22 MANSLAUGHTER, KILLING ANOTHER PERSON IN THE HEAT OF  
23 PASSION WITHOUT, WITHOUT, MALICE AFORETHOUGHT AND  
24 THAT'S WHAT STEVEN FREEMAN DID ON AUGUST 28, 2006  
25 SO WHO IS STEVEN FREEMAN? WHAT KIND



1       OF PERSON IS HE? THE EVIDENCE WILL SHOW THAT STEVEN  
2       FREEMAN IS A 30 YEAR OLD MAN WHO WAS BORN AND RAISED  
3       RIGHT HERE IN YORK COUNTY HE GREW UP IN FORT MILL,  
4       WENT TO FORT MILL HIGH SCHOOL, PLAYED FOOTBALL, AND  
5       GRADUATED FROM THAT SCHOOL IN 1996 THE EVIDENCE  
6       WILL SHOW THAT SINCE 1996 HE'S BEEN GAINFULLY  
7       EMPLOYED HIS ENTIRE LIFE IN FACT, THE EVIDENCE WILL  
8       SHOW THAT UP UNTIL HIS ARREST HE WAS WORKING AT  
9       BLYTHE DEVELOPMENT COMPANY IN CHARLOTTE COMPANY HE  
10      WORKED FOR THE LAST SEVEN YEARS HE'S WORKED  
11      SOMETIMES 60 TO 70 HOURS A WEEK AND YOU'LL HEAR FROM  
12      HIS BOSS THROUGHOUT THE COURSE OF THIS TRIAL THE  
13      EVIDENCE WILL SHOW THAT HE HAS A VERY GOOD  
14      RELATIONSHIP WITH HIS FAMILY HE'S BELOVED BY HIS  
15      MOTHER AND FATHER RANDY AND YVETTE FREEMAN THE  
16      EVIDENCE WILL ALSO SHOW THAT HE HAS NO PRIOR CRIMINAL  
17      RECORD WHATSOEVER THE EVIDENCE WILL SHOW HE'S A  
18      GOOD SON, HE'S A GOOD WORKER, HE'S A GOOD MAN SO  
19      WHAT WOULD CAUSE STEVEN FREEMAN, A 30 YEAR OLD MAN  
20      WITH NO PRIOR CRIMINAL RECORD, WHO HAD A GOOD JOB,  
21      WORKING 60-70 HOURS A WEEK, WHO WAS BELOVED BY HIS  
22      FAMILY, TO SNAP AND KILL ANOTHER MAN IN THE HEAT OF  
23      PASSION, IN THE HEAT OF THE MOMENT? WHAT CAUSED  
24      THAT? LADIES AND GENTLEMEN OF THE JURY, I SUBMIT TO  
25      YOU THE ANSWER TO THAT QUESTION LIES, LIES DIRECTLY

1 WITH HIS RELATIONSHIP WITH PETRA SHERMAN PETRA  
2 SHERMAN WILL WALK THROUGH THOSE WALLS THERE, THAT  
3 DOOR, PUT HER HAND ON THIS BIBLE, AND THEN SHE WILL  
4 SIT RIGHT HERE IN THIS WITNESS CHAIR AND TELL YOU HOW  
5 SHE MET STEVEN FREEMAN AND SHE WILL TELL YOU ABOUT  
6 THE RELATIONSHIP AND WE'RE GOING TO ASK HER A LOT OF  
7 QUESTIONS AND I SUBMIT TO YOU THAT THE ANSWER TO  
8 THOSE QUESTIONS WILL REVEAL WHAT KIND OF PERSON SHE  
9 IS WHETHER SHE IS A PERSON WHO IS HONEST OR WHETHER  
10 SHE IS A PERSON WHO IS LIKELY TO LIE WHETHER SHE IS  
11 A PERSON WHO IS SINCERE OR WHETHER SHE IS A PERSON  
12 WHO IS MANIPULATIVE THEY WILL REVEAL WHETHER OR NOT  
13 SHE IS CARING OR CONTROLLING WHEN SHE IS DONE  
14 TESTIFYING ASK YOURSELVES ONE QUESTION WOULD I  
15 BELIEVE ANYTHING SHE SAYS, ANYTHING

16 THE EVIDENCE IN THIS CASE WILL SHOW  
17 THAT PETRA SHERMAN LIED TO MY CLIENT ABOUT THEIR  
18 RELATIONSHIP BEFORE AUGUST 28, 2006, SHE LIED TO HIM  
19 ABOUT THEIR RELATIONSHIP ON AUGUST 28, 2006, AND SHE  
20 LIED TO HIM AFTER, AFTER AUGUST 28, 2006 AND THE  
21 EVIDENCE WILL ALSO SHOW NOT ONLY DID SHE LIE TO HIM  
22 BUT SHE LIED TO LAW ENFORCEMENT ABOUT HER  
23 RELATIONSHIP WITH STEVEN BEFORE AUGUST 28, ON AUGUST  
24 28, AND AFTER AUGUST 28

25 THE EVIDENCE WILL ALSO SHOW THAT AS

1 RECENTLY AS A COUPLE OF WEEKS AGO SHE LIED TO ONE OF  
2 THE PROSECUTORS SITTING RIGHT HERE AT THIS TABLE AND  
3 YOU'LL HEAR ABOUT THAT AS WELL

4 YOU WILL ALSO HEAR FROM STEVEN  
5 FREEMAN HE WILL TELL YOU HOW THEY MET HE WILL  
6 TELL YOU WHAT HE DID FOR HER AND MORE IMPORTANTLY HE  
7 WILL TELL YOU WHAT SHE DID TO HIM PROSECUTORS IN  
8 THIS CASE WILL AT SOME POINT IN TIME TALK ABOUT THE  
9 ENORMOUS STRENGTH OF STEVEN FREEMAN AND STRENGTH,  
10 LADIES AND GENTLEMEN OF THE JURY, YOU WILL HEAR ABOUT  
11 THAT BUT I SUBMIT TO YOU DURING THIS IRONY ABOUT  
12 THIS SITUATION IS EVEN THOUGH HE'S A MAN THAT HAS  
13 STRENGTH, IT'S REALLY A MASK OR A SHIELD FOR SOMEONE  
14 WHO IS EXTREMELY INSECURE, A PERSON WHO DOESN'T LIKE  
15 HIMSELF VERY MUCH IN FACT THE EVIDENCE WILL SHOW  
16 IT'S THE TYPE OF PERSON WHO IS MORE LIKELY TO HURT  
17 HIMSELF THAN OTHERS

18 AS I SAID A MOMENT AGO, HE WILL TELL  
19 YOU ABOUT HOW HE MET PETRA SHERMAN THE EVIDENCE  
20 WILL SHOW THAT HE ACTUALLY MET PETRA SHERMAN IN  
21 MID-JUNE, MID-JUNE, 2006 SHORTLY AFTER THAT THEY  
22 WENT ON OUT ON A COUPLE DATES AND THEN, LADIES AND  
23 GENTLEMEN OF THE JURY, THE EVIDENCE WILL SHOW THAT BY  
24 JULY, JULY, PETRA SHERMAN MOVES IN WITH STEVEN  
25 FREEMAN'S HOUSE AND I SUBMIT TO YOU THE EVIDENCE

1 WILL SHOW THAT HER MANIPULATION, THAT HER GAMES, THAT  
2 HER LYING AND DECEPTION TO SUCH A POINT THAT THE  
3 EVIDENCE WILL SHOW THAT ON AUGUST FIRST, 2006, STEVEN  
4 FREEMAN IS FOUND BY PETRA SHERMAN UNCONSCIOUS IN  
5 THEIR HOUSE WHERE HE ATTEMPTED TO COMMIT SUICIDE  
6 THE EVIDENCE WILL SHOW THAT HE TOOK 21 PILLS OF  
7 FLEXERIL, FIVE PILLS OF HYDROCODENE, JACK DANIELS,  
8 AND A QUANTITY OF ASPIRIN

9 MR THOMPSON YOUR HONOR, I OBJECT  
10 THE COURT I SUSTAIN THE OBJECTION  
11 LET'S MOVE ON TO SOMETHING ELSE I SUSTAIN THE  
12 OBJECTION

13 OPENING STATEMENT CONTINUED BY MR DEST

14 THE EVIDENCE WILL ALSO SHOW THAT,  
15 LADIES AND GENTLEMEN OF THE JURY, IN MID-AUGUST  
16 2006 --

17 MR THOMPSON I OBJECT TO THIS AS WELL

18 THE COURT I HADN'T HEARD ANYTHING YET

19 MR THOMPSON YOUR HONOR, THAT'S WHAT I'M  
20 TRYING TO PREVENT

21 THE COURT THE SAME THING?

22 MR DEST NO, YOUR HONOR, IF I MAY

23 THE COURT GO AHEAD AND START YOUR

24 ARGUMENT IF YOU THINK HE'S OFF BASE, LET ME KNOW

25 MR DEST IN MID-AUGUST 2006 PETRA

1 SHERMAN BECOMES PREGNANT WITH THEIR CHILD A FACT  
2 THAT THE PROSECUTOR DID NOT TELL YOU IN HIS OPENING  
3 AND LADIES AND GENTLEMEN OF THE JURY, THE EVIDENCE  
4 WILL SHOW THAT THERE IS A LOT OF ARGUMENT BACK AND  
5 FORTH IN THE MONTH OF AUGUST, THE MONTH THAT THIS  
6 INCIDENT OCCURRED, AND THAT IN THE MID-AUGUST SHE  
7 FINDS OUT SHE'S PREGNANT THE EVIDENCE WILL SHOW  
8 THAT AT ONE POINT IN TIME SHE WANTS TO BE WITH HIM  
9 IN FACT THE EVIDENCE WILL SHOW THAT SHE WANTS TO  
10 MARRY HIM AND HAVE HIS BABY BUT THERE ARE TWO  
11 COMPETING VIEWS AND EMOTIONS AND ARGUMENTS THAT PETRA  
12 SHERMAN WILL MAKE, IT'S EITHER THIS, OR SHE WANTS TO  
13 BE SINGLE AND HAVE AN ABORTION WHICH IS EXACTLY WHAT  
14 MY CLIENT TALKED ABOUT IN HIS STATEMENT ON AUGUST 28,  
15 2006

16 THE EVIDENCE WILL ALSO SHOW, LADIES  
17 AND GENTLEMEN OF THE JURY, THAT THIS GAME OF BACK AND  
18 FORTH BETWEEN THESE TWO VERY DIFFERENT, VERY  
19 DIFFERENT VIEWS IS WHAT PETRA SHERMAN WAS DOING TO MY  
20 CLIENT DURING THAT TIME THE EVIDENCE WILL ALSO SHOW  
21 THAT JUST SIX DAYS PRIOR TO THIS INCIDENT ON AUGUST  
22 21 MY CLIENT IS ATTEMPTING TO COMMIT SUICIDE

23 MR THOMPSON OBJECTION, YOUR HONOR

24 THE COURT I SUSTAIN THE RELEVANCE

25 LET'S STAY AWAY FROM THAT I'LL HEAR FROM YOU

1       THOUGH     GO AHEAD

2                   MR   DEST     YOU WILL HEAR, YOU WILL HEAR  
3       WHAT HAPPENED JUST SIX DAYS PRIOR TO THIS INCIDENT  
4       LADIES AND GENTLEMEN OF THE JURY, YOU WILL HEAR ALL  
5       OF THAT AND MORE     SO THAT YOU CAN DECIDE WHY STEVEN  
6       FREEMAN SNAPPED     WHY HE SNAPPED

7                   THE GREATEST THING ABOUT OUR SYSTEM OF  
8       JUSTICE IS THAT IT TAKES THE ULTIMATE DECISION AWAY  
9       FROM THE STATE, AWAY FROM THE COURT, THE PROSECUTION,  
10      IT TAKES IT ALL AWAY FROM THEM AND GIVES IT TO YOU 12  
11      PEOPLE   YOU 12 PEOPLE WILL DECIDE THAT ISSUE   THE  
12      CRITICAL ISSUE OF WHY DID HE SNAP   WHY? WITH THAT  
13      AWESOME POWER THAT YOU NOW HAVE, ALL WE ASK IS THAT  
14      YOU KEEP AN OPEN MIND AS TO THAT CENTRAL ISSUE OF WHY  
15      HE SNAPPED   BECAUSE IN THE END YOU WILL HAVE TO  
16      REACH A VERDICT, A VERDICT THAT SPEAKS THE TRUTH,  
17      THAT COMES FROM THE LATIN WORD VEREDICTO, VERDICT,  
18      WHICH MEANS TO SPEAK THE TRUTH   THE TRUTH IS STEVEN  
19      FREEMAN KILLED MICHAEL BURGESS NOT OUT OF BEING EVIL,  
20      NOT OUT OF WICKEDNESS, NOT EVEN WITH THE SPECIFIC  
21      INTENT TO KILL   HE KILLED HIM IN THE HEAT OF  
22      PASSION, NOT WITH MALICE AFORETHOUGHT, NOT WITH  
23      MALICE AFORETHOUGHT   THANK YOU

24                   THE COURT   LET ME LET THE JURY GO TO THE  
25      JURY ROOM JUST FOR A MINUTE AND WE'VE GOT A SHORT

1       MATTER TO TAKE UP WITH THE ATTORNEYS

2                               (THE JURY EXITS THE COURTROOM AT 03 49  
3       PM )

4                       THE COURT    ALL RIGHT    I JUST WANT TO  
5       REMIND EVERYBODY TO HAVE THEIR EYES WIDE OPEN BECAUSE  
6       I HAD SAID EARLIER WHEN THE STATE HAD ASKED THAT SOME  
7       OF THIS NOT BE GONE INTO, THE DEFENSE OF VOLUNTARY  
8       MANSLAUGHTER, I CERTAINLY THINK THAT IF HE'S GOT AN  
9       DEFENSE FOR VOLUNTARY MANSLAUGHTER HE'S CERTAINLY  
10      ENTITLED TO IT, BUT I'M GOING TO HAVE TO SEE SOME  
11      CASES WHERE SAYING SNAPPING OVER WHAT YOUR GIRLFRIEND  
12      DOES CONSTITUTES SUFFICIENT LEGAL PROVOCATION BEFORE  
13      I CAN LET THAT BE DEVELOPED ANY FURTHER BECAUSE THAT  
14      APPEARS TO BE YOUR DEFENSE AND I'LL CERTAINLY LET YOU  
15      DEVELOP IT, BUT BEFORE I LET IT COME BEFORE THE JURY,  
16      AND YOU CAN CERTAINLY HEAR EVERYTHING YOU WANT TO  
17      HEAR IN CAMERA, BEFORE I LET THE JURY CONSIDER ALL OF  
18      THE PROBLEMS HE HAD WITH HIS GIRLFRIEND, I HAVE TO  
19      SEE SOME LAW WHERE THAT WOULD CONSTITUTE, REGARDLESS  
20      OF THE CASE I'VE ALREADY BEEN SHOWN, BUT I'VE GOT TO  
21      SEE SOME LAW THAT SUPPORTS THAT CONSTITUTING  
22      SUFFICIENT LEGAL PROVOCATION FOR IN THE HEAT OF  
23      PASSION BEFORE I'M GOING TO ALLOW THAT TO EVEN BE  
24      DEVELOPED IN FRONT OF THE JURY    OBVIOUSLY YOU CAN  
25      MAKE A RECORD FOR APPELLATE PURPOSES, I WANT YOU TO

1 MAKE A RECORD, BUT THAT'S, I CAN'T SEE ANY, I CAN'T  
2 SEE WHERE IN GOOD CONSCIOUS WHERE THERE IS ANY LEGAL  
3 PROVOCATION PRESENTED YET BASED ON WHAT I HEARD I  
4 JUST WANT EVERYBODY'S EYES TO BE OPENED YOU  
5 UNDERSTAND THAT?

6 MR DEST YES, SIR

7 THE COURT SO BEFORE YOU GET INTO THAT  
8 AREA, IF THE STATE OBJECTS, I WANT TO LET THE JURY GO  
9 AND TAKE IT UP IN CAMERA BECAUSE I WANT YOU TO HAVE A  
10 FULL RIGHT TO APPEAL I'D ALSO LIKE TO SEE SOME CASE  
11 LAW SUPPORTING OF YOUR POSITION ALL RIGHT BRING  
12 THE JURY BACK IN

13 (THE JURY RETURNS TO THE COURTROOM AT  
14 03 52 PM )

15 THE COURT CALL YOUR FIRST WITNESS,  
16 SOLICITOR

17 MR BRACKETT MAY IT PLEASE THE COURT  
18 THE STATE WOULD CALL MR RALPH MERCHANT

19 RALPH MERCHANT, BEING FIRST  
20 DULY SWORN, TESTIFIED AS FOLLOWS

21 DIRECT EXAMINATION BY MR BRACKETT

22 Q GOOD AFTERNOON, SIR WOULD YOU PLEASE STATE  
23 YOUR FULL NAME AND SPELL YOUR LAST FOR THE COURT  
24 REPORTER?

25 A RALPH ANTHONY MERCHANT M-E-R-C-H-A-N-T



RALPH MERCHANT

DIRECT

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1 Q AND CAN YOU TELL THE JURY WHERE YOU ARE  
2 EMPLOYED, SIR?

3 A I'M THE DIRECTOR FOR THE YORK COUNTY 911  
4 DISPATCH CENTER

5 Q ALL RIGHT AND WHAT HAPPENS OVER THERE AT 911  
6 DISPATCH CENTER?

7 A THE 911, EXCUSE ME, WE'RE THE RECEP FOR THE  
8 COUNTY PUBLIC SAFETY ANSWERING POINT EVERYBODY IN  
9 YORK COUNTY OR THE SURROUNDING AREAS WHEN THEY DIAL  
10 911 IT WILL COME TO OUR LOCATION WE DISPATCH ALL  
11 FIRE AND EMS FOR THE COUNTY AND THEN IF IT HAS TO DO  
12 WITH LAW ENFORCEMENT, WE ONE BUTTON TRANSFER IT TO  
13 THAT RESPECTIVE AGENCY AND THEN ONCE THEY ARE  
14 TALKING, THEN WE DROP OFF

15 Q CAN YOU ELABORATE ABOUT HOW THE TRANSFER WORKS A  
16 LITTLE BIT MORE SO THE JURY UNDERSTANDS IF I CALL  
17 IN 911 RIGHT NOW AND REPORT AN EMERGENCY IN THIS  
18 COURTROOM THEY ARE GOING TO DISPATCH THE SHERIFF'S  
19 OFFICE?

20 A WELL, DEPENDING ON THAT AGENCY, CORRECT WE  
21 WILL SIT THERE AND SAY 911 DO YOU NEED POLICE, FIRE,  
22 OR MEDICAL DEPENDING IF YOU SAY POLICE, WE LOOK ON  
23 THE SCREEN, IF IT'S A HARD WIRE, LIKE YOUR HOUSE  
24 PHONE OR SOMETHING LIKE, THAT WILL GIVE US ANTI AND  
25 ALI, AUTOMATIC NUMBER AND AUTOMATIC LOCATION AND

1 WE'LL ASK YOU IF YOU ARE AT THAT LOCATION TO CONFIRM  
2 THAT AND IF IT IS, WE'VE ALREADY GOT IT IN OUR CAD,  
3 COMPUTER AIDED DISPATCH IT'S AT THE BOTTOM OF THE  
4 SCREEN IT WILL SHOW WHAT APPROPRIATE LAW, FIRE, AND  
5 EMS WOULD RESPOND TO THAT LOCATION IF IT'S A  
6 WIRELESS OR CELL PHONE THEN DUE TO WHAT BRINGS IN OR  
7 WHAT SHOWS UP ON THE CAD IS THE TOWER SITE, SO WE  
8 HAVE TO MAKE SURE THAT WE KNOW WHERE YOU ARE WE  
9 RECORD EVERYTHING THAT COMES IN AND THEN WHAT WE DO  
10 IF IT IS FOR LAW ENFORCEMENT, WE WILL ONE BOTTOM  
11 TRANSFER IT, STAY ON THE LINE UNTIL WE CAN HEAR YOU  
12 BOTH TALKING, AND THEN WE KNOW YOU ARE TALKING AND  
13 WE'LL DROP OFF OF IT

14 Q ALL RIGHT

15 A IT HAS TO DO POSSIBLY A MEDICAL, WE TRY TO GIVE  
16 IT TO THE LAW ENFORCEMENT AND THEN WE'LL LISTEN AND  
17 SEE IF WE HAVE TO GET MEDICAL OUT THERE ALSO, BUT  
18 LIKE I SAID EVERYTHING IS RECORDED

19 Q NOW WHO, WHEN YOU DO A ONE BOTTOM TRANSFER TO A  
20 POLICE AGENCY, WHERE IN THAT AGENCY IS THE TRANSFER  
21 YOU ARE TRANSFERRING THE CALL TO?

22 A IT WILL GO FROM THE 911 CENTER TO THE  
23 APPROPRIATE DISPATCH CENTER ROCK HILL CITY POLICE,  
24 YORK COUNTY SHERIFF'S OFFICE, AND THEN THE SMALL  
25 MUNICIPALITIES, YORK, CLOVER, LIKE THAT

RALPH MERCHANT

DIRECT

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1 Q ALL RIGHT

2 A IT GOES TO THEIR DISPATCH CENTER SO THEN THEY  
3 CAN DISPATCH THEIR OFFICERS TO THE LOCATION

4 Q AND THOSE ARE THE PEOPLE THAT ACTUALLY TALK TO  
5 THE CARS AND TELL THEM WHERE TO GO?

6 A YES, SIR

7 Q NOW YOU SAID YOU RECORD EVERY PHONE CALL THAT  
8 COMES IN?

9 A YES, SIR, WE HAVE A RECORDER THAT RECORDS ALL,  
10 ACTUALLY RECORDED IN MULTIPLE WAYS IT'S RECORDED BY  
11 RADIO CHANNEL, TELEPHONE NUMBER, AND POSITION SO IF  
12 ONE SYSTEM, NOT SYSTEM, BUT IF ONE AREA FAILS WE CAN  
13 PICK IT UP ON THE OTHER ONE IT'S A FAIL SAFE  
14 SITUATION THE RECORDER IS AT THE CENTER I AM THE  
15 CARE KEEPER OF THOSE TAPES THEY ARE IN MY OFFICE  
16 AND THEY ARE LOCKED UP BUT THEY WILL COME IN AND  
17 I'M TRYING TO THINK, WHENEVER THEY ARE REQUESTED BY A  
18 COURT THEN OF COURSE I GET THEM I'M SORRY

19 Q DO YOU HAVE THE ABILITY TO RETRIEVE SPECIFIC  
20 PHONE CALLS FROM SPECIFIC INCIDENTS?

21 A YES I'M SORRY EVERYTHING, LIKE I SAID, IS  
22 RECORDED, SO IF THERE IS A TIME AND DATE, EXCUSE ME,  
23 THE RECORDER PLACES A TIME AND DATE ON EACH  
24 TRANSMISSION RADIO, TELEPHONE, WHATEVER I CANNOT  
25 CHANGE THAT IT IS PUT IN BY THE RECORDER ITSELF AND

1        THEN WE GO, I GO BACK ON MY PC IN MY OFFICE, LOOK FOR  
2        THE CALL OR THE AREA OF THE CALL, AND THEN I CAN  
3        RECORD IT, MAKE TAPES, LIKE I HAVE DONE IN THE PAST  
4        EITHER GO BY AN ADDRESS BECAUSE WE DO HAVE A PRINTOUT  
5        OF EVERY CALL ALSO EVERYDAY, SO I CAN GO BY THE  
6        ADDRESS OR THE TELEPHONE CALL

7        Q        AND YOU CAN LOCATE SPECIFIC CALLS FROM A  
8        PARTICULAR INCIDENT?

9        A        YES, SIR

10       Q        ALL RIGHT

11       A        BECAUSE IT WOULD GIVE US LIKE SUBDIVISION OR  
12       ADDRESSES OR ANYTHING LIKE THAT

13       Q        IF A CALL COMES IN ON A CELL PHONE YOU INDICATED  
14       IT DOESN'T GIVE THE ADDRESS OF WHERE YOU ARE LOCATED?

15       A        NO, SIR, IT GIVES THE TOWER SITE    THAT'S WHY A  
16       LOT OF TIMES WE HAVE PROBLEMS WITH THE TOWER SITES  
17       LIKE ON A FRIDAY AFTERNOON PEOPLE COMING DOWN I-77  
18       AND THEY MIGHT BE IN MECKLENBURG COUNTY BUT SINCE  
19       EVERYBODY IS TALKING IN MECKLENBURG IT MIGHT BOUNCE  
20       FROM TOWER TO TOWER SITE SO WE TRY TO CONFIRM THAT,  
21       WHERE THEY ARE CALLING FROM, SO WE CAN GET IT TO THE  
22       PROPER AGENCY BECAUSE A LOT OF TIMES WE HAVE TO SEND  
23       THE CALL BACK TO MECKLENBURG COUNTY OR VICE VERSA,  
24       BUT IT WILL GIVE THE TOWER SITE    AND ON AN AVERAGE,  
25       ON AN AVERAGE, IT'S USUALLY ABOUT 80 OR 90 PERCENT IN

RALPH MERCHANT

DIRECT

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1 AREA

2 Q AND THEN THAT NARROWS IT DOWN TO ABOUT HOW BIG  
3 OF AN AREA FOR ONE TOWER?

4 A DEPENDING ON THE POPULATION OR THE DENSITY OF  
5 ROCK HILL MAYBE COMPARED TO SYMRA OR SOMETHING LIKE  
6 THAT, IT'S USUALLY IN THE AREA OF ABOUT ONE TO TWO  
7 MILES CIRCLE

8 Q SO IT'S NOT VERY HELPFUL IF THEY DON'T KNOW  
9 WHERE THEY ARE?

10 A NO, SIR, BECAUSE LIKE I SAID IT DOES GIVE THE  
11 TOWER SITE AND THEN YOU HAVE TO BREAK IT DOWN TO  
12 QUADRANTS LIKE THIS SIDE OF THE TOWER OR THAT SIDE  
13 OF THE TOWER IT CAN TAKE SOME TIME TO DO IT

14 Q NOW ON THE HAND OFF YOU TESTIFIED A MOMENT AGO  
15 THAT YOU CAN LISTEN IN WHEN YOU HAND THE PHONE CALL  
16 OFF TO THE POLICE DISPATCH FOR THE RIGHT AGENCY?

17 A YES, SIR THE PHONE CALL COMES IN AND BASICALLY  
18 WE'LL SIT THERE AND SAY, STANDBY, I'M GOING TO  
19 TRANSFER YOU TO ROCK HILL CITY POLICE OR YORK COUNTY  
20 SHERIFF'S OFFICE AND HIT THE ONE BOTTOM TRANSFER, WE  
21 LOSE THE AUDIO FOR MAYBE THREE SECONDS AND THEN THEY  
22 WILL COME BACK ON AND WE'LL SAY STAY ON THE LINE AND  
23 MOST OF THE TIME BECAUSE SOME PEOPLE ARE LIKE, HELLO,  
24 HELLO, BUT THEY WILL, WE WILL CONTINUE TO HEAR THEM  
25 TALK AND THEN ROCK HILL OR WHATEVER LAW ENFORCEMENT

1 AGENCY GETS ON, ON THE PHONE THEN WE WILL AGAIN, LIKE  
2 I SAID, LISTEN TO THE BOTH OF THEM TALK, NOW WE KNOW  
3 THAT THEY ARE TALKING, AND THEN WE WILL DROP OFF

4 THE ROCK HILL CITY POLICE AND YORK  
5 COUNTY SHERIFF ARE WHAT WE CALL TRUE SECONDARY PSAP,  
6 PUBLIC SAFETY ANSWERING POINTS, BECAUSE THE 911 CALL  
7 WHEN IT COMES IN, WE GET LIKE I SAID THE AUTOMATIC  
8 NUMBER AND AUTOMATIC LOCATION, THOSE TWO AGENCIES  
9 HAVE A CAD SYSTEM SO, A COMPUTER AIDED DISPATCH, SO  
10 WE CAN, ONCE WE HIT THAT ONE BOTTOM TRANSFER, THEY  
11 ARE GETTING THAT STREAM OF INFORMATION THE SAME THAT  
12 WE GOT, SO THEY ALSO GET THAT TELEPHONE NUMBER AND  
13 LOCATION THE SAME AS WE GOT

14 Q UNLESS THEY ARE ON THE CELL PHONE?

15 A UNLESS THEY ARE ON CELL PHONE THEY WILL  
16 BASICALLY GET JUST A TELEPHONE NUMBER FOR A CELL  
17 PHONE CURRENTLY AT THIS TIME

18 Q OKAY NOW IS THE, WHEN DOES THE RECORDING ON  
19 YOUR END STOP?

20 A THE RECORDING ON OUR END STOPS AS SOON AS WE  
21 DISCONNECT IT WILL GO CONTINUING AND SOMETIMES ON  
22 RECORDINGS YOU MIGHT HEAR ROCK HILL CITY POLICE  
23 DEPARTMENT AND THEN THAT SHOWS THAT WE GOT CONNECTED  
24 TO THEM AND THEN THAT'S WHEN WE DROP OFF, BUT AS SOON  
25 AS THE PHONE RINGS, THE RECORDING IS STARTED

RALPH MERCHANT

DIRECT

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1 Q ALL RIGHT, SIR NOW TURNING YOUR ATTENTION TO  
2 AN INCIDENT THAT OCCURRED ON AUGUST 28 OF 2006 AT  
3 PACES RIVER APARTMENT COMPLEX IN THE  
4 CITY OF ROCK HILL, DID 911, THIS INCIDENT OCCURRED IN  
5 THE EVENING HOURS 8 58-8 52?

6 A YES, SIR

7 Q DID 911 RECEIVE CALLS IN REFERENCE TO AN  
8 INCIDENT AT THAT LOCATION?

9 A YES, SIR, THEY DID THEY RECEIVED A MULTIPLE  
10 NUMBER OF CALLS, SOME HARD WIRE AND SOME CELL PHONE  
11 CALLS

12 Q IS IT UNUSUAL TO GET MULTIPLE CALLS IN FOR ONE  
13 INCIDENT?

14 A NO, SIR BACK IN THE GOOD OLD DAYS WHEN YOU  
15 USED TO BE GOING DOWN THE HIGHWAY AND SOMEONE HAD A  
16 BREAK DOWN OR SOMEONE WAS IN AN ACCIDENT ON THE  
17 INTERSTATE YOU USED TO GET ONE CALL BECAUSE YOU'D  
18 HAVE TO GO TO THE NEXT OVERPASS OR WHATEVER, GET OFF,  
19 AND GO TO THE GAS STATION AND CALL IN AN ACCIDENT  
20 NOWADAYS EVERYBODY HAS A CELL PHONE SO WE CAN GET  
21 FIFTY CALLS ON A CALL FROM SOMEBODY BROKE DOWN OR A  
22 TIRE OR ENGINE SMOKING ON THE INTERSTATE THE SAME  
23 THING WITH OUT IN THE RURAL AREAS WHERE OR  
24 RESIDENTIAL AREAS WHERE PEOPLE LIVE BECAUSE EVERYBODY  
25 CARRIES THEM NOW SO WE GET THE HARD WIRE AND THE

1 WIRELESS

2 Q NOW NOT IN THE CONTEXT OF A CAR BROKEN DOWN OR  
3 RELATIVE MINOR EMERGENCY SITUATION?

4 A UH-HUH

5 Q IN A CRIMINAL, WHEN A CRIME IS IN PROGRESS, DO  
6 YOU TRY TO FORWARD ALL THOSE CALLS TO THE APPROPRIATE  
7 AGENCY?

8 A YES, SIR, IF WE NOTICE THAT WE'RE RECEIVING  
9 CALLS FROM A SPECIFIC AREA, ESPECIALLY IF IT'S HARD  
10 WIRE AND THEY ARE ALL COMING IN, BASICALLY SUCH AS  
11 THIS ONE DID, AS SOON AS THEY SIT THERE AND SAY 911  
12 YOU NEED POLICE, FIRE, OR MEDICAL, THEY WILL SIT  
13 THERE AND START TRYING TO GET THOSE CALLS TO THAT LAW  
14 ENFORCEMENT AGENCY BECAUSE WE'VE ALL READY RECEIVED  
15 SOME SO WE KNOW SOMETHING IMPORTANT OR VITAL, BANK  
16 ROBBERY, WHATEVER, A CRIME OR SOMETHING IS GOING ON,  
17 WE CAN STAY ON THE LINE AND LISTEN JUST FOR A SECOND  
18 LIKE WE SAY, BUT WE USUALLY TRY TO DROP OFF SO THAT  
19 THEY ARE CONCENTRATED JUST ON THE LAW ENFORCEMENT  
20 AGENCY

21 Q OKAY, SIR IN REGARDS TO THE INCIDENT THAT  
22 OCCURRED ON AUGUST 28 OF 2006 AT PACES RIVER, DID YOU  
23 RECEIVE A REQUEST FROM LAW ENFORCEMENT TO IDENTIFY  
24 AND COPY ALL THE 911 CALLS THAT CAME INTO 911?

25 A YES, SIR, I DID



RALPH MERCHANT

DIRECT

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1 Q EMERGENCY CENTER?

2 A YES, I DID

3 Q ALL RIGHT AND WERE YOU ABLE TO ISOLATE AND  
4 LOCATE ALL THOSE TELEPHONE CALLS?

5 A YES, SIR, I DID

6 Q AND DID YOU PROVIDE A COPY OF THOSE CALLS TO LAW  
7 ENFORCEMENT?

8 A YES, SIR, I DID

9 Q OKAY, SIR I'M SHOWING YOU A CD THAT'S BEEN  
10 MARKED STATE'S EXHIBIT 23?

11 A OKAY

12 Q DO YOU RECOGNIZE THAT CD?

13 A YES, SIR, I DO

14 Q HAVE YOU HAD AN OPPORTUNITY TO LISTEN TO THE  
15 TRACKS THAT ARE CONTAINED ON THIS CD?

16 A YES, SIR, I DO

17 Q ALL RIGHT, SIR AND DO THOSE TRACKS, ARE THEY  
18 ACCURATE AND FAITHFUL REPRODUCTIONS OF THE ORIGINAL  
19 COPY THAT YOU HAVE IN YOUR OFFICE OF THE CALLS THAT  
20 CAME IN TO 911 PERTAINING TO THE INCIDENT AT PACES  
21 RIVER AT 8 52 AUGUST 28, 2006?

22 A YFS, SIR, THEY ARE

23 MR BRACKETT THIS WAS PREMARKED AS  
24 STATE'S EXHIBIT 23

25 Q SO ARE ALL OF THE CALLS THAT CAME IN TO 911 ALL

1 THE RECORDINGS ON YOUR END THAT YOU HAVE?

2 A YES, SIR THE PHONE CALLS THAT CAME THROUGH MY  
3 AGENCY ARE ON THAT DISK

4 Q AND THEY ARE ACCURATE AND TRUE COPIES?

5 A YES, SIR THEY ARE TIME STAMPED, YES, SIR

6 Q OKAY THANK YOU VERY MUCH MR MERCHANT,  
7 PLEASE ANSWER ANY QUESTIONS MR DEST MAY HAVE FOR  
8 YOU

9 MR DEST NO QUESTION OF THIS WITNESS  
10 THE COURT THANK YOU APPRECIATE YOUR  
11 TIME

12 MR BRACKETT THE STATE WOULD CALL MRS  
13 THELMA STEEL

14 THELMA STEELE, BEING FIRST DULY SWORN,  
15 TESTIFIED AS FOLLOWS

16 DIRECT EXAMINATION BY MR BRACKETT

17 Q GOOD AFTERNOON, MA'AM WOULD YOU PLEASE STATE  
18 YOUR FULL NAME AND SPELL YOUR LAST FOR THE COURT  
19 REPORTER?

20 A THELMA RENEE STEELE S-T-E-E-L-E

21 Q AND WHERE ARE YOU EMPLOYED, MA'AM?

22 A ROCK HILL POLICE DEPARTMENT

23 Q AND IN WHAT CAPACITY DO YOU WORK FOR THE POLICE  
24 DEPARTMENT?

25 A I AM SUPERVISOR OF COMMUNICATIONS AND RECORDS

THELMA STEELE

DIRECT

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1 DEPARTMENT

2 Q ALL RIGHT DOES THAT INCLUDE COMMUNICATIONS,  
3 DOES THAT INCLUDE THE DISPATCH NUMBER THERE AT THE  
4 ROCK HILL POLICE DEPARTMENT?

5 A YES

6 Q ALL RIGHT NOW TURNING YOUR ATTENTION  
7 SPECIFICALLY TO AUGUST 28, 2006, DID YOUR AGENCY  
8 RECEIVE A NUMBER OF CALLS THAT WERE TRANSFERRED TO  
9 YOU FROM 911, EMERGENCY CALLS, RELATING TO AN  
10 INCIDENT AT PACES RIVER?

11 A YES, WE DID

12 Q ALL RIGHT AND WERE YOU ASKED TO SEARCH YOUR  
13 RECORDS -- LET ME BACK UP A SECOND DO YOU ALSO  
14 RECORD THE CALLS THAT COME INTO THE DISPATCH CENTER  
15 AFTER THEY ARE TRANSFERRED TO YOU FROM 911?

16 A WE DO

17 Q ALL RIGHT NOW THE CALLS THAT YOU RECORD, ARE  
18 YOU THE CUSTODIAN OF THE RECORDS?

19 A I AM

20 Q AND DO YOU KEEP, DO YOU HAVE CUSTODY AND CONTROL  
21 OF ALL THOSE RECORDINGS?

22 A I DO

23 Q WERE YOU ASKED AT SOME POINT TO RETRIEVE COPIES  
24 OF ALL OF THE RECORDINGS FOR ALL THE 911 CALLS THAT  
25 WERE TRANSFERRED TO YOU TO ROCK HILL POLICE

1 DEPARTMENT DISPATCH RELATING TO AN ASSAULT INCIDENT  
2 AT PACES RIVER APARTMENT ON AUGUST 28, 2006?

3 A YES

4 Q AND WERE YOU ABLE TO LOCATE ALL OF THOSE CALLS?

5 A YES, I WAS

6 Q AND I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S  
7 EXHIBIT 23 A CD AND ASK IF YOU CAN IDENTIFY THAT  
8 COMPACT DISK?

9 A YES

10 Q HAVE YOU HAD AN OPPORTUNITY TO LISTEN TO I GUESS  
11 IT'S THE SECOND HALF OF THE PHONE CALLS, THE FIRST  
12 HALF COMING TO 911 AND THEN IT TRANSFER OVER, HAVE  
13 YOU HAD AN OPPORTUNITY TO LISTEN TO THE ROCK HILL  
14 POLICE DEPARTMENT SIDE OF THOSE 911 CALLS?

15 A I HAVE

16 Q AND ARE THE RECORDINGS CONTAINED ON THIS  
17 ACCURATE COPIES OF THE RECORDINGS THAT ARE ON FILE  
18 WITH YOUR OFFICE AT THE ROCK HILL POLICE DEPARTMENT?

19 A THEY ARE

20 Q OKAY SO WHAT'S CONTAINED ON THIS IS ALL THE  
21 911 CALLS THAT WERE TRANSFERRED TO YOU ON THAT DAY?

22 A YES

23 Q ALL RIGHT REFERRING TO THAT INCIDENT?

24 A YES, IT IS

25 Q AND THEY ARE ACCURATE AND TRUE COPIES?

THELMA STEELE

DIRECT

111

1 A THEY ARE

2 MR BRACKETT YOUR HONOR, AT THIS TIME I  
3 WOULD SEEK TO INTRODUCE STATE'S EXHIBIT 23 FOR  
4 IDENTIFICATION, I'D SEEK TO INTRODUCE IT INTO  
5 EVIDENCE

6 MR DEST NO OBJECTION, YOUR HONOR  
7 THE COURT ALL RIGHT IT WILL BE  
8 RECEIVED

9 (STATE'S EXHIBIT 23 IN EVIDENCE )

10 MR BRACKETT AND I WOULD MOVE TO PUBLISH  
11 STATE'S EXHIBIT 23

12 THE COURT ALL RIGHT YOU MAY DO SO

13 MR BRACKETT THIS WILL BE TRACK ONE OF  
14 THREE, TRACK ONE, TWO, AND THREE

15 (PLAYS THE RECORDING )

16 Q MRS STEELE, CAN YOU TELL THE JURY WHAT AN OPEN  
17 LINE CALL IS?

18 A WHEN WE RECEIVE A CALL IN AND IF THE CALLER  
19 DOESN'T HANG UP THE PHONE THAT'S CALLED AN OPEN LINE  
20 AND WE CAN RECORD EVERYTHING THAT'S GOING ON FROM  
21 THAT CALL, NOISE IN THE BACK GROUND OR ANYTHING THAT  
22 THEY ARE SAYING, THE RECORDER PICKS IT UP

23 Q SO IF THERE IS TALKING ON THE OTHER END OF THE  
24 PHONE, IS THAT WHAT YOU MEAN BY THAT?

25 A YEAH, NO ONE CAN BE TALKING BUT IT WILL STILL

1 PICK IT UP, WHATEVER SOUNDS OR WHATEVER COMMENTS THEY  
2 ARE MAKING, THE RECORDER WILL PICK IT UP  
3 Q ALL RIGHT DID YOU RECEIVE OPEN LINE CALLS?  
4 A WE HAD ONE THAT WAS AN OPEN LINE  
5 Q ALL RIGHT MOVE TO PUBLISH TRACK TWO  
6 MR DEST NO OBJECTION, YOUR HONOR  
7 THE COURT ALL RIGHT  
8 (PLAYS THE RECORDING )  
9 MR BRACKETT AND FINALLY TRACK FOUR  
10 (PLAYS THE RECORDING )  
11 Q MRS STEELE, ONE MORE QUESTION DID YOU RECEIVE  
12 ANY NUMBER OF OTHER CALLS FROM CITIZENS OUTSIDE OF  
13 THE SCENE CALLING FOR HELP?  
14 A WE DID  
15 Q ARE THOSE ON THE CD AS WELL?  
16 A YES  
17 Q THANK YOU VERY MUCH PLEASE ANSWER ANY  
18 QUESTIONS DEFENSE COUNSEL MAY HAVE FOR YOU  
19 CROSS EXAMINATION BY MR DEST  
20 Q MA'AM, WERE YOU INVOLVED IN ANY OTHER PART OF  
21 THE INVESTIGATION?  
22 A NO  
23 Q YOU WERE JUST THERE, TOOK THE PHONE CALLS,  
24 RETRIEVE THESE RECORDS, IS THAT ALL YOU DID?  
25 A I'M JUST THE CUSTODIAN OF THE RECORD

THELMA STEELE

CROSS

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1 Q CUSTODIAN OF THE RECORDS?

2 A YES

3 Q THANK YOU

4 THE COURT ALL RIGHT YOU CAN STEP DOWN  
5 WE APPRECIATE YOUR TIME THANK YOU CALL YOUR NEXT  
6 WITNESS

7 MR BRACKETT YES, SIR MAY WE APPROACH  
8 FOR JUST ONE MOMENT

9 THE COURT CERTAINLY

10 (BENCH CONFERENCE AT 04 18 PM )

11 THE COURT WE'RE GOING TO TAKE A SHORT  
12 BREAK, JUST FOLLOW THE BAILIFF TO THE JURY ROOM

13 (THE JURY EXITS THE COURTROOM AT 04 18  
14 PM )

15 THE COURT WE'RE GOING TAKE A BREAK BUT  
16 BEFORE I DO THAT I'M GOING TO HAVE TO GIVE AN  
17 ADMONITION I KNOW THIS IS A VERY TRAUMATIC AND  
18 DRAMATIC SET OF FACTS IF YOU CAN'T CONTROL YOUR  
19 EMOTIONS, AND THIS GOES FOR ANYONE INVOLVED, THE  
20 STATE AND THE DEFENSE ARE ENTITLED TO HAVE A CASE  
21 TRIED ON THE FACTS, IF YOU CANNOT CONTROL YOUR  
22 EMOTIONS, YOU CAN'T BE IN THE COURTROOM, SO WE CAN'T  
23 HAVE ANY EMOTIONAL OUTBURSTS AND IT DOESN'T HAVE TO  
24 BE SCREAMING, BUT ANY CONDUCT WHICH CONVEYS TO THE  
25 JURY ANY WHAT I WOULD CALL APPEAL FOR SYMPATHY OR

1 PASSION ONE WAY OR THE OTHER FROM EITHER SIDE WILL  
2 NOT BE TOLERATED, SO IF YOU CANNOT CONTROL YOUR  
3 EMOTIONS I'LL HAVE TO ASK YOU NOT TO BE IN THE  
4 COURTROOM

5 NOW CAN I SEE COUNSEL JUST FOR A  
6 MINUTE WE'LL TAKE ABOUT A TEN MINUTE BREAK A REAL  
7 SHORT BREAK

8 (COURT'S IN RECESS AT 04 20 PM )

9 (COURT RESUMES AT 04 34 PM )

10 THE COURT FOR THE RECORD I HAVE  
11 INDICATED TO DEFENSE COUNSEL I WAS GOING TO BE A  
12 LITTLE MORE LENIENT IN ALLOWING EVIDENCE THAN I HAD  
13 STATED EARLIER AND LET THEM PURSUE SOME THEORIES THAT  
14 THEY DISCUSSED WITH ME AND I JUST WANT THE RECORD TO  
15 REFLECT THAT THAT'S WHAT WE TALKED ABOUT OVER THE  
16 BREAK LET'S GET THE JURY IN

17 MR BRACKETT WE HAVE AN ISSUE, YOUR  
18 HONOR, THAT MR IVEY BROUGHT TO OUR ATTENTION DO  
19 YOU WANT TO?

20 THE COURT OH, YEAH BRING IN THAT  
21 PARTICULAR GENTLEMAN

22 (THE JUROR ENTERS THE COURTROOM )

23 THE COURT YES, SIR YOUR NAME AGAIN?

24 THE JUROR KENNETH MYERS

25 THE COURT I'M NOT AFRAID OF YOU BUT



THELMA STEELE

CROSS

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1 SHE'S GOT TO HEAR YOU  
2 THE JUROR OKAY  
3 THE COURT YOU INDICATE THAT YOU KNOW  
4 MR FREEMAN'S FATHER NOW?  
5 THE JUROR I'M NOT SURE I'M NOT SURE IF  
6 MR FREEMAN HAD A BROTHER NAMED DICKY OR BILLY? IF  
7 THAT'S NOT HIM  
8 THE COURT THEY ARE SHAKING THEIR HEAD  
9 MR MYERS THAT'S NOT YOUR BROTHER?  
10 THE COURT SO YOU DON'T, IT'S NOT THE  
11 SAME FAMILY  
12 MR MYERS SO THEY DON'T HAVE A BROTHER  
13 NAMED BILLY OR DICKY?  
14 THE COURT THEY ARE INDICATING NO I  
15 DON'T KNOW WHO THEY ARE BUT A LOT OF PEOPLE ARE  
16 SAYING NO  
17 MR MYERS DID YOU HAVE A BROTHER NAMED  
18 BILLY?  
19 MR FREEMAN ME? NO  
20 THE COURT THEY DON'T IT'S A DIFFERENT  
21 FAMILY  
22 MR MYERS THANK YOU THAT'S GOOD  
23 THE COURT ALL RIGHT THANK YOU  
24 (JUROR EXITS THE COURTROOM )  
25 (THE JURY RETURNS TO THE COURTROOM )

1 THE COURT CALL YOUR NEXT WITNESS  
2 MR BRACKETT THE STATE WOULD CALL  
3 INVESTIGATOR MIKE WILLIAMS  
4 MIKE WILLIAMS, BEING FIRST  
5 DULY SWORN, TESTIFIED AS FOLLOWS  
6 DIRECT EXAMINATION BY MR BRACKETT  
7 Q WOULD YOU PLEASE STATE YOUR FULL NAME AND SPELL  
8 YOUR LAST FOR THE COURT REPORTER?  
9 A MICHAEL LEE WILLIAMS W-I-L-L-I-A-M-S  
10 Q AND WHERE DO YOU WORK?  
11 A I'M EMPLOYED WITH THE ROCK HILL POLICE  
12 DEPARTMENT  
13 Q AS, IN WHAT CAPACITY?  
14 A ASSIGNED TO THE FORENSICS SERVICE UNIT  
15 Q ARE YOU AN INVESTIGATOR OR DETECTIVE?  
16 A AN INVESTIGATOR  
17 Q AN INVESTIGATOR ALL RIGHT, SIR HOW LONG HAVE  
18 YOU BEEN WITH THE FORENSIC SERVICE UNIT?  
19 A SINCE 1992  
20 Q AND WHAT DOES THE FORENSIC SERVICE UNIT DO?  
21 A WE ARE CALLED OUT TO PROCESS CRIME SCENES  
22 DEALING FROM ANYTHING FROM A LARCENY FROM A MAILBOX,  
23 THAT SIMPLE, TO PROCESS MURDER SCENES  
24 Q AND HOW LONG HAVE YOU BEEN DOING CRIME SCENE  
25 PROCESSING ALL TOGETHER?

MIKE WILLIAMS

DIRECT

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1 A ROCK HILL STARTED A CRIME SEEN UNIT IN 1992  
2 PRIOR TO 1992 I WAS AN INVESTIGATOR WE PROCESSED  
3 OUR SCENES OR IF WE NEEDED ASSISTANCE AT THAT TIME WE  
4 WOULD CALL SLED, SOUTH CAROLINA LAW ENFORCEMENT  
5 DIVISION, IN COLUMBIA 27 YEARS

6 Q IS THAT HOW LONG YOU'VE BEEN IN LAW ENFORCEMENT?

7 A YES

8 Q ALL RIGHT WERE YOU WORKING ON AUGUST 28 OF  
9 2006?

10 A NO, I WAS NOT I WORKED DAY SHIFT THAT DAY

11 Q DID YOU HAVE OCCASION TO GET CALLED OUT THAT  
12 NIGHT?

13 A YES, I DID

14 Q ALL RIGHT AND WHERE DID YOU GET CALLED OUT TO?

15 A APARTMENTS OFF CELANESE BYPASS

16 Q AND WHAT WAS THAT IN REGARDS TO?

17 A THIS WAS IN REFERENCE TO AN INDIVIDUAL HAD BEEN  
18 BEATEN AND AT THAT TIME I DO NOT BELIEVE HAD PASSED  
19 AWAY, BUT TO ASSIST IN PROCESSING THE SCENE OF THE  
20 INCIDENT WHERE AN INDIVIDUAL HAD BEEN BEATEN

21 Q ALL RIGHT, SIR YOU ARE GOING TO HAVE TO SPEAK  
22 UP I'M HAVING A LITTLE BIT OF A HARD TIME HEARING  
23 YOU SO I'M SURE THEY MIGHT AS WELL IF YOU WOULD  
24 TELL THE JURY WHAT'S INVOLVED IN PROCESSING A CRIME  
25 SCENE, JUST BRIEFLY?

1       A       WELL, WHEN WE RESPOND TO CRIME SCENES WHAT WE  
2       ENTAIL IS A VISUAL OF THE SCENE ITSELF   WHAT WE  
3       WOULD DO IS PHOTOGRAPH THE SCENE AS WE SEE IT WHEN WE  
4       ARRIVE   WHAT WE FIND IN THE SCENE WE WOULD MAKE  
5       NOTATIONS OF IT, PHOTOGRAPH IT, AND ACTUALLY IDENTIFY  
6       SOME THINGS USING NUMBER CONES AND THIS IS TO SAY IF  
7       AN ITEM WAS RIGHT HERE, WE WOULD PLACE A NUMBER CONE  
8       BESIDE IT AND PHOTOGRAPH IT WITH THE NUMBER CONE AND  
9       WITHOUT THE NUMBER CONE   WE WOULD THEN PREPARE  
10      SKETCHES OF THE SCENE AND USE MEASUREMENTS TO PLACE  
11      ITEMS THAT WE RECOVERED IN A SCENE IF WE WOULD HAVE  
12      TO RETURN   WE WOULD ALSO COLLECT ANY EVIDENCE THAT  
13      WE THOUGHT WAS NEEDED AS FAR AS THE CASE WOULD GO TO  
14      EITHER FIND AN INDIVIDUAL GUILTY OR TO ELIMINATE AN  
15      INDIVIDUAL   BASICALLY WE JUST COLLECT ANYTHING THAT  
16      WE SEE THAT WOULD BE RELEVANT TO A CASE   WE WOULD  
17      THEN TAKE THOSE OBJECTS BACK TO THE LAW ENFORCEMENT  
18      DIVISION, EITHER ROCK HILL IF IT'S IN THE CITY, OR  
19      THE SHERIFF'S OFFICE IF IT'S IN THE COUNTY, AND WE  
20      WOULD PLACE THESE ITEMS IN EVIDENCE ENVELOPES   WE  
21      WOULD WRITE ON THE FRONT OF THE ENVELOPES DETAILING  
22      WHAT WE RECOVERED, THE TIME WE RECOVERED IT, AND  
23      WHERE WE RECOVERED IT   THOSE WOULD THEN BE PLACED  
24      INTO EVIDENCE LOCKERS ,TO BE STORED IN THE EVIDENCE  
25      ROOMS OF THOSE DEPARTMENTS

MIKE WILLIAMS

DIRECT

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1 Q ALL RIGHT, SIR ON A MAJOR CRIME SCENE SUCH AS  
2 A MURDER, ARE THERE MORE THAN ONE CRIME SCENE OFFICER  
3 DISPATCHED OUT TO PROCESS THE SCENE?

4 A YES, WE DO A ROTATION SCHEDULE IN OUR UNIT I'M  
5 A DAY, DAILY OPERATIONS SUPERVISOR FOR OUR UNIT  
6 SCHEDULING TIME OFF, SCHEDULING LOCATIONS INDIVIDUALS  
7 WORK MYSELF AND KEVIN TOLSON ARE THE SUPERVISORS  
8 HE'S THE DIRECTOR AND I'M SECOND IN CHARGE ANY TIME  
9 THERE IS A DEATH THAT OUR UNIT IS RESPONDING TO DAY  
10 OR NIGHT ONE OF OUR CRIME SCENE TECHS WILL RESPOND  
11 ALONG WITH EITHER ME OR DIRECTOR KEVIN TOLSON SO  
12 ONE SUPERVISOR WILL BE ON SCENE OF EVERY DEATH

13 Q AND DO THE DIFFERENT CRIME SCENE OFFICERS HAVE  
14 DIFFERENT RESPONSIBILITIES THERE?

15 A YES, THEY DO

16 Q WHAT WERE YOUR SPECIFIC RESPONSIBILITIES WITH  
17 REGARDS TO THE CRIME SCENE AT PACES RIVER ON AUGUST  
18 28, 2006?

19 A MY RESPONSIBILITY WAS TO COMPLETE SKETCHES OF  
20 THE LOCATION OF THE INCIDENT

21 Q OKAY, SIR AND TO THAT END DID YOU USE A  
22 COMPUTER DEVICE TO HELP YOU DO THAT?

23 A YES, I DID

24 Q ALL RIGHT I'M SHOWING YOU WHAT'S BEEN MARKED  
25 STATE'S 24, 25, 26, 27, AND 28 FOR IDENTIFICATION AND

1 ASK IF YOU CAN IDENTIFY THOSE PAPERS

2 A THESE ARE COPIES OF THE SKETCHES THAT I  
3 COMPLETED OF THAT LOCATION

4 Q ALL RIGHT, SIR AND WHILE WE'RE AT IT, IF YOU  
5 WOULD, TAKE A LOOK AT WHAT'S BEEN MARKED STATE'S  
6 EXHIBIT 1, 2, 3, AND 16 FOR IDENTIFICATION AND TELL  
7 ME IF YOU CAN IDENTIFY THOSE?

8 A THESE ARE THE PHOTOGRAPHS OF THE FRONT OF THE  
9 APARTMENT AND THE WINDOW THAT WAS DAMAGED AT THAT  
10 LOCATION

11 Q DO THOSE PHOTOGRAPHS ACCURATELY DEPICT THE  
12 EXTERIOR OF THAT BUILDING AS IT WAS THAT EVENING?

13 A THESE PHOTOGRAPHS ARE THE WAY WE FOUND IT WHEN  
14 WE GOT THERE, YES, SIR

15 MR BRACKETT YOUR HONOR, AT THIS TIME I  
16 WOULD MOVE STATE'S EXHIBIT 24-28 INTO EVIDENCE AS  
17 WELL AS STATE'S EXHIBITS 1, 2, 3, AND 16 THE  
18 PHOTOGRAPHS AND CRIME SCENE SKETCHES

19 MR DEST NO OBJECTION, YOUR HONOR

20 THE COURT BE RECEIVED WITHOUT OBJECTION

21 (STATE'S EXHIBITS 1-3, 16 & 24-28 RECEIVED  
22 INTO EVIDENCE )

23 Q CAN YOU SEE THAT SCENE FROM WHERE YOU ARE  
24 SITTING?

25 A NO

MIKE WILLIAMS

DIRECT

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1                   THE COURT    AND YOU GOT THIS PIECE OF  
2   EQUIPMENT HERE

3   Q     HE CAN COME DOWN   DOES THAT HELP THE MATTER?

4   A     YES, IF I CAN STEP DOWN

5                   THE COURT    THAT WILL BE FINE

6                   MR BRACKETT   MADAM CLERK, IF WE COULD  
7   JUST DIM THE LIGHTS

8   Q     SHOWING YOU FIRST STATE'S EXHIBIT 24?

9                   THE COURT    I'M GOING TO ASK YOU TO MOVE  
10   THIS AGAIN   NOW I CAN'T SEE   THAT'S GOOD   THANK  
11   YOU

12   Q     IF YOU COULD, SIR, COULD YOU JUST DESCRIBE WHAT  
13   STATE'S EXHIBIT 24 DEPICTS?

14   A     THIS IS A COMPUTER GENERATED VERSION SHOWING, IF  
15   YOU ARE RIGHT HERE, YOU WOULD BE IN THE FRONT YARD OF  
16   THE APARTMENT COMPLEX IN FRONT OF ADDRESS  
17   YOU'LL BE LOOKING THIS WAY AND THIS WOULD BE THE  
18   LIVING ROOM WINDOWS AND THIS IS SHRUBBERY THAT'S IN  
19   FRONT OF THE WINDOWS   TO ENTER THE APARTMENT THE  
20   WALKWAY WOULD BE OVER HERE TO YOUR LEFT AND TO THE  
21   RIGHT WOULD BE A PATIO THAT GOES INTO THE BEDROOM OF  
22   THIS LOCATION

23   Q     ALL RIGHT, SIR   AND MR THOMPSON, IF YOU COULD  
24   CALL UP STATE'S EXHIBIT ONE   IS THAT A PHOTOGRAPH OF  
25   THE DIAGRAM THAT YOU JUST?

1       A       YES       THIS IS BASICALLY A PHOTOGRAPH OF THE  
2       FRONT OF THE LOCATION SHOWING THE LIVING ROOM, THE  
3       THREE WINDOWS, THE PATIO TO THE RIGHT, AND THE  
4       WALKWAY THAT WOULD LEAD YOU TO THE DOOR TO THE  
5       APARTMENT ON THE LEFT

6       Q       ALL RIGHT   AND THEN THE DIAGRAM YOU DREW, IS  
7       THAT TO SCALE?

8       A       NO, IT'S NOT

9       Q       OKAY       BUT DOES IT CONTAIN ACCURATE MEASUREMENTS  
10      OF THE DISTANCES BETWEEN OBJECTS AND SO FORTH?

11      A       YES

12      Q       ALL RIGHT, SIR   AGAIN A CLOSER LOOK AT STATE'S  
13      EXHIBIT 16

14      A       THIS IS A PHOTOGRAPH OF, THIS ON THE LEFT, RIGHT  
15      HERE WOULD BE A WALKWAY WHERE YOU WALK UP TO THE  
16      FRONT DOOR   THIS IS WHERE WE'RE STANDING AND THIS IS  
17      THE PHOTOGRAPH SHOWING THE BROKEN WINDOW ON THE TOP  
18      AND THE BOTTOM IN THE LIVING ROOM AREA OF THE  
19      APARTMENT

20      Q       ALL RIGHT, SIR   AND STATE'S EXHIBIT TWO

21      A       THIS IS A PHOTOGRAPH WHERE YOU WOULD BE STANDING  
22      ON THE SIDEWALK LOOKING, THE WINDOW WOULD BE UP HERE  
23      THAT'S BROKEN, AND THIS IS THE SCREEN THAT WAS PULLED  
24      OFF THE WINDOW THAT'S BEHIND THE SHRUBBERY, BETWEEN  
25      THE SHRUBBERY AND THE BUILDING



MIKE WILLIAMS

DIRECT

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1 Q ALL RIGHT, SIR NOW DID YOU ALSO DO A GENERAL  
2 DIAGRAM OF THE PARKING LOT AND THE SURROUNDING AREAS  
3 OF THE APARTMENT OF THAT IMMEDIATE BUILDING?

4 A YES, I DID

5 Q ALL RIGHT, SIR MR THOMPSON, IF YOU'D CALL UP  
6 STATE'S EXHIBIT 28 DESCRIBE IF YOU WOULD WHAT'S  
7 DEPICTED ON THIS DIAGRAM?

8 A RIGHT HERE WAS THE VICTIM'S APARTMENT RIGHT  
9 WHERE THE LIGHT IS AT WHERE THE WINDOWS HAD BEEN  
10 KNOCKED OUT INTO THE LIVING ROOM THIS IS THE WALK  
11 WAY THAT WOULD LEAD DOWN OR UP TO THE FRONT DOOR OF  
12 THE RESIDENCE THIS VEHICLE WAS PLACED INTO THE  
13 PARKING LOT THIS WOULD BE MS SHERMAN'S, I BELIEVE  
14 PETRA SHERMAN'S, VEHICLE WHERE SHE WOULD HAVE BEEN  
15 PARKED THAT NIGHT AND THIS VEHICLE WITH THE NC, WHICH  
16 IS NORTH CAROLINA TAG, AS6884 WOULD HAVE BEEN THE  
17 DEFENDANT'S VEHICLE WHERE IT WAS PARKED IN THE ROAD  
18 WAY OR IN THE PARKING LOT I TOOK MEASUREMENTS FROM  
19 THE CORNERS OF THE APARTMENT BUILDING OF THE VICTIM'S  
20 APARTMENT AND BASICALLY MEASURED WHERE THE DISTANCE  
21 WOULD HAVE BEEN, WHERE THE SUSPECT'S VEHICLE WOULD  
22 HAVE BEEN PARKED, AND MEASURED BACK TO WHERE THE  
23 FEMALE VICTIM WOULD HAVE BEEN PARKED IN THE PARKING  
24 LOT

25 Q AND THE DISTANCES THAT ARE DEPICTED ON THERE, 95

1 FOR EXAMPLE OF 1311 IS THAT INCHES OR FEET?

2 A THAT'S FEET

3 Q FEET OKAY DID YOU HAVE OCCASION TO ENTER THE  
4 RESIDENCE OF MR BURGESS AND DO CRIME SCENE DIAGRAMS  
5 FOR THE APARTMENT?

6 A YES, I DID

7 Q OKAY, SIR TAKING FIRST STATE'S EXHIBIT 26 CAN  
8 YOU DESCRIBE THAT FOR THE JURY?

9 A THIS WOULD BE THE FRONT YARD AREA THIS WOULD  
10 BE THE WINDOW THAT WE'VE SEEN THAT HAD BEEN KNOCKED  
11 OUT INTO THE LIVING RIGHT HERE THE BALCONY, PATIO  
12 THIS WOULD BE THE HALLWAY THAT WOULD LEAD YOU TO THE  
13 FRONT DOOR ONCE YOU ENTER THE FRONT DOOR OF THE  
14 RESIDENCE, THE LIVING ROOM IS RIGHT INSIDE THE FRONT  
15 DOOR IF YOU GO AROUND TO THE LEFT, YOU GO INTO THE  
16 KITCHEN AREA OF THE APARTMENT OUTSIDE THE KITCHEN  
17 AREA THERE WAS A BED THAT WAS FOUND RIGHT HERE IN  
18 THIS GENERAL AREA ADJACENT TO THE KITCHEN AND THE  
19 LIVING ROOM AS YOU COME AROUND THE CORNER FROM THE  
20 LIVING ROOM, THERE WAS A CLOSET RIGHT HERE TO THE  
21 IMMEDIATE RIGHT TO THE LEFT WOULD TAKE YOU INTO  
22 THE, LIKE AN OPEN AREA, BASICALLY WHERE WASHING  
23 MACHINE/DRYER HOOK UP AREA BE WOULD, OPEN AREA HALL,  
24 AND MAKE ANOTHER RIGHT AND THIS WOULD TAKE YOU INTO  
25 THE MAIN BEDROOM OF THE RESIDENCE AND THE BATHROOM

MIKE WILLIAMS

DIRECT

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1 ACTUALLY HAD TWO ENTRANCES, ONE FROM THE HALL AND ONE  
2 FROM THE ONE BEDROOM THAT WOULD TAKE YOU INTO THE  
3 BATHROOM WHICH WOULD BE AT THE BACK OF THE APARTMENT  
4 DOWN HERE, THESE THREE LINES RIGHT HERE, WOULD  
5 REPRESENT WHERE THE SLIDING DOORS WOULD LEAD YOU OUT  
6 INTO THE BALCONY AND THERE IS A LITTLE UTILITY ROOM  
7 RIGHT HERE

8 Q ALL RIGHT, SIR NOW ON THE UPPER RIGHT HAND  
9 CORNER THERE'S A NUMBER OF THE ITEMS LISTED, HAIR,  
10 TISSUE SAMPLE, AND THERE ARE NUMBERS BESIDE THAT, 1  
11 THROUGH 8, WHAT DO THOSE REPRESENT?

12 A MYSELF AND INVESTIGATOR JOHN WILLIAMS PROCESSED  
13 THE SCENE JOHN WILLIAMS WAS THE CASE AGENT FOR US  
14 I WAS THERE TO ASSIST AND PERFORM THESE SKETCHES FOR  
15 JOHN THESE NUMBERS INDICATE WHAT I EXPLAINED  
16 EARLIER ABOUT NUMBER CONES THAT WE USE TO PLACE DOWN  
17 TO MAKE PHOTOGRAPHS AND SHOW REFERENCE POINTS TO  
18 IDENTIFY ITEMS NUMBER CONES WERE USED IN THIS  
19 APARTMENT WAS 1 THROUGH 8

20 ONE WAS HAIR AND TISSUE SAMPLE THAT  
21 WAS NOTED AND IT WAS FOUND BY INVESTIGATOR JOHN  
22 WILLIAMS NEAR THE WINDOW OF THE ENTRY POINT OF THE  
23 BROKEN WINDOW

24 NUMBER TWO WAS A CINGULAR CELL PHONE  
25 AND YOU CAN SEE WHERE IT WOULD BE IN THE BEDROOM ON

1 THE FLOOR

2 NUMBER THREE WAS A VERIZON CELL PHONE

3 THAT WAS NEAR THAT CINGULAR PHONE IT WAS ON THE

4 FLOOR AND IT'S MARKED RIGHT HERE WHERE YOU WOULD HAVE

5 FOUND IT AS NUMBER THREE

6 NUMBER FOUR IS A MOTOROLA CELL PHONE

7 AND IT WAS IN THE SAME GENERAL AREA AS THE OTHER TWO

8 NUMBER FIVE IS BROKEN DENTURES AND

9 THEY WERE FOUND IN THIS AREA IN THE BEDROOM ON THE

10 FLOOR

11 NUMBER SIX WAS A LAPTOP COMPUTER THAT

12 WAS FOUND OVER NEAR THE WALL IN THIS CORNER HERE

13 NUMBER SEVEN WAS A MIRRORED DOOR

14 THIS WAS FOUND IN THE BEDROOM IN THIS AREA

15 AND NUMBER 8 IS A MEDICINE CABINET IN

16 THE BATHROOM WHEN YOU OPEN THE MIRROR YOU HAVE THE

17 MEDICINE CABINET THAT'S INSIDE THE WALL THIS HAD

18 BEEN PULLED OUT OF THE WALL AND WAS FOUND LAYING ON

19 THE FLOOR IN THE BATHROOM IN THAT AREA

20 Q OKAY, SIR DID YOU DO ANOTHER DIAGRAM WITHOUT

21 DEPICTING ALL THE LOCATIONS OF ALL THOSE OBJECTS

22 WITHOUT THE MEASUREMENTS?

23 A YES, I DID

24 Q STATE'S EXHIBIT 27

25 A THIS IS A DIAGRAM OF THE SAME LOCATION BUT IT'S

MIKE WILLIAMS

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1       BASICALLY I HAVE TAKEN OUT THE DIMENSIONS OF THE  
2       ROOM, MEASUREMENTS OF HOW WIDE THE ROOMS ARE TO  
3       BASICALLY GIVE YOU A CLEAR VIEW OF WHAT THOSE NUMBERS  
4       ARE AT WITHOUT SEEING ALL THE LINES AND THE  
5       MEASUREMENTS IN THE DRAWING

6       Q       ALL RIGHT, SIR   AND FINALLY STATE'S EXHIBIT 25

7       A       THIS IS A DIAGRAM OF JUST THE BEDROOM   THE  
8       PATIO WOULD BE HERE IN THE FRONT, SLIDING DOOR IS  
9       HERE, AND BASICALLY WHAT I DO IS I STARTED WITH A  
10      BASE LINE AND WE HAVE SEVERAL DIFFERENT WAYS WE  
11      MEASURE WHEN WE DO A SCENE   WE DO TRIANGULATION,  
12      BASE LINES, AND GRIDS   IN THIS SCENE I DID A BASE  
13      LINED AND BASICALLY WHAT THAT CONSISTS OF IS I LAY A  
14      TAPE MEASURE DOWN IN THE CORNER OF THE BEDROOM HERE  
15      STARTING AT ZERO AND I PULL IT AGAINST THE WALL AND  
16      TO THE OPPOSITE END OF THE ROOM AND LAY IT DOWN   I  
17      THEN COME BACK AND TAKE A TAPE MEASURE AND COME UP AT  
18      A 90 DEGREE ANGLE TO ITEM NUMBER SIX   SO BASICALLY  
19      MY MEASUREMENT FROM HERE TO WOULD ZERO, YOU GO UP ONE  
20      FOOT UP THE TAPE MEASURE, AND THEN YOU GO OUT 8 FEET  
21      8 INCHES OUT HERE   TO FIND WHERE IT WOULD HAVE BEEN  
22      IN THE HOUSE AND I DID THIS FOR EVERY ITEM IN THE  
23      BEDROOM

24      Q       OKAY, SIR   THANK YOU VERY MUCH   YOU CAN HAVE A  
25      SEAT AND I'LL TAKE THAT FROM YOU   OTHER THAN THE

1 CRIME SCENE SKETCHING WAS THAT YOUR PRIMARY  
2 RESPONSIBILITY THAT DAY?

3 A YES, SIR

4 Q AND INVESTIGATOR JOHN WILLIAMS, ANY RELATION?

5 A NO

6 Q OKAY HE WAS RESPONSIBLE, HE WAS THE CASE AGENT  
7 FOR COLLECTING ALL THE EVIDENCE THAT YOU DETAILED ON  
8 THAT DIAGRAM?

9 A YES, HE WAS

10 Q OKAY THANK YOU VERY MUCH, SIR PLEASE ANSWER  
11 ANY QUESTIONS THE DEFENSE COUNSEL MAY HAVE  
12 CROSS EXAMINATION BY MR DEST

13 Q OFFICER WILLIAMS, YOU'VE BEEN WITH THE YORK  
14 COUNTY FORENSIC UNIT FOR QUITE SOME TIME?

15 A YES, SIR WE STARTED THE FORENSIC UNIT IN THE  
16 COUNTY IN 2002

17 Q IN FACT YOU WERE ONE OF THE LEAD INVESTIGATORS  
18 FOR THAT UNIT, CORRECT?

19 A SUPERVISOR, YES, SIR

20 Q AND AS PART OF A CRIMINAL INVESTIGATION FORENSIC  
21 IS EXTREMELY IMPORTANT, IS IT NOT?

22 A YES

23 Q IN FACT ONE OF YOUR RESPONSIBILITIES AS A  
24 FORENSIC INVESTIGATOR IS TO LOOK FOR FORENSIC  
25 EVIDENCE AS SOON AS YOU ARRIVE AT THE CRIME SCENE?

1 A IT'S KIND OF MISLEADING TO FIND OUT ALL THE  
2 INFORMATION ABOUT WHAT HAS HAPPENED AND THEN LOOK FOR  
3 IT, YES, SIR

4 Q BECAUSE FORENSIC EVIDENCE CAN DETERMINE HOW  
5 SOMETHING HAPPENED POSSIBLY, CORRECT?

6 A THAT'S CORRECT

7 Q IT COULD DETERMINE WHERE SOMETHING HAPPENED?

8 A THAT'S CORRECT

9 Q IN A SPECIFIC LOCATION?

10 A YES, SIR

11 Q AND IT CAN OFTEN DETERMINE THE CIRCUMSTANCES  
12 AROUND WHAT HAPPENED?

13 A YES, SIR

14 Q CAN IT NOT?

15 A THAT'S CORRECT

16 Q AND OF COURSE YOUR RESPONSIBILITY AS A FORENSIC  
17 INVESTIGATOR IS TO COLLECT AND PROCESS AND PRESERVE  
18 EVIDENCE, CORRECT?

19 A YES, IF I'M THE CASE AGENT THAT WOULD HAVE BEEN  
20 MY RESPONSIBILITIES ON THIS CASE

21 Q BUT YOU HAVE BEEN CASE AGENT ON OTHER CASES,  
22 HAVE YOU NOT?

23 A OH, YES, SIR

24 Q AND OF COURSE WHEN WE TALK ABOUT EVIDENCE AT A  
25 CRIME SCENE, THERE IS WHAT, IT'S CALLED JUST PHYSICAL

- 1 EVIDENCE WHICH IS A TANGIBLE OBJECT, CORRECT?
- 2 A YES, SIR
- 3 Q LIKE A PIECE OF FURNITURE, CORRECT?
- 4 A THAT'S CORRECT
- 5 Q A WEAPON?
- 6 A THAT'S CORRECT
- 7 Q ANY TANGIBLE OBJECT THAT YOU WOULD THINK IS
- 8 IMPORTANT TO THE SCENE, CORRECT?
- 9 A YES
- 10 Q NOW ALSO WHEN WE TALK ABOUT FORENSIC EVIDENCE
- 11 WE'RE TALKING ABOUT SUCH THINGS AS FINGERPRINTS?
- 12 A YES
- 13 Q PALM PRINTS?
- 14 A YES, SIR
- 15 Q FOOT WEAR IMPRESSIONS?
- 16 A YES, SIR
- 17 Q AND BLOOD SAMPLES?
- 18 A THAT'S CORRECT
- 19 Q AND AS PART OF YOUR INVESTIGATION, OF COURSE,
- 20 YOU ARE AS METICULOUS AS YOU CAN BE AND PEOPLE THAT
- 21 YOU WORK WITH IN TRYING TO COLLECT THAT TYPE OF
- 22 EVIDENCE?
- 23 A YES, SIR
- 24 Q AND YOU EXHAUST ALL POSSIBLE LEADS BEFORE YOU
- 25 CLOSE OUT A CASE, ISN'T THAT CORRECT?



1 A WE, WE WILL HOLD A SCENE UNTIL WE GET WITH THE  
2 INVESTIGATORS TO MAKE SURE THAT THERE IS NOTHING THAT  
3 THEY HAVE LEARNED THAT WE HAVEN'T BEEN TOLD TO MAKE  
4 SURE THAT WE DON'T MISS ANYTHING

5 Q BECAUSE FORENSIC EVIDENCE, LIKE YOU JUST SAY,  
6 CAN DETERMINE HOW IT OCCURRED?

7 A YES, SIR

8 Q WHERE IT OCCURRED?

9 A THAT'S CORRECT

10 Q AND EXACT CIRCUMSTANCES AROUND IT POTENTIALLY?

11 A YES

12 Q AND AS A FORENSIC INVESTIGATOR I KNOW THAT YOU  
13 HAVE EXTENSIVE TRAINING IN ALL TYPES OF FORENSIC  
14 EVIDENCE, CORRECT?

15 A YES, I HAVE ATTENDED SCHOOLS

16 Q AT THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY?

17 A YES, SIR

18 Q SEMINARS AND TRAINING?

19 A YES, SIR

20 Q AND YOU STUDIED THE VARIOUS TYPES OF EVIDENCE  
21 LIKE FINGERPRINTS, CORRECT?

22 A YES

23 Q PALM PRINTS?

24 A YES, SIR

25 Q BLOOD EVIDENCE?

1 A YES

2 Q AND ANY OTHER TYPE OF FORENSIC EVIDENCE THAT  
3 WOULD BE APPROPRIATE FOR YOU TO COLLECT AT A CRIME  
4 SCENE?

5 A THAT'S CORRECT

6 Q AND YOU UNDERSTAND THE NATURE OF HOW THAT  
7 FORENSIC EVIDENCE CAN AFFECT THE INVESTIGATION,  
8 CORRECT?

9 A YES

10 Q AND CAN DETERMINE HOW IT HAPPENED, CORRECT?  
11 POSSIBLY?

12 A POSSIBLY

13 Q NOW MAY I HAVE 25 ON THE SCREEN PLEASE THIS  
14 PARTICULAR DIAGRAM IS OF THE BEDROOM, IS THAT  
15 CORRECT, OFFICER?

16 A YES

17 Q AND YOU HAVE SEVERAL ITEMS IN HERE, THE CINGULAR  
18 PHONE, THE VERIZON, THE MOTOROLA PHONE, THE BROKEN  
19 DENTURES, THE LAPTOP, ALL OF THIS IS LABELED IN HERE,  
20 IS THAT CORRECT?

21 A YES, THAT'S CORRECT

22 Q NOW IN THIS DIAGRAM THERE IS NOTHING THAT  
23 SIGNIFIES OR REPRESENTS THE BLOOD THAT WAS IN THAT  
24 ROOM, CORRECT?

25 A THAT'S CORRECT

1 Q IN FACT, THERE IS NOTHING IN THIS DIAGRAM THAT  
2 PUTS, THAT REPRESENTS WHERE MICHAEL BURGESS' BODY  
3 WOULD HAVE BEEN, CORRECT?

4 A THAT'S CORRECT

5 Q AND AGAIN NOTHING ABOUT BLOOD AT ALL?

6 A NO THERE WAS BLOOD THROUGHOUT THE BEDROOM

7 Q THERE WAS BLOOD EVERYWHERE, CORRECT?

8 A YES, SIR

9 Q IN FACT, THERE WAS BLOOD ON THE FLOOR? CORRECT?

10 A YES

11 Q THERE WAS BLOOD ON THE WALLS?

12 A YES

13 Q THERE WAS BLOOD NEAR THE SLIDING GLASS DOOR?

14 A YES

15 Q THERE WAS BLOOD ON THE WALL NEXT TO THE SLIDING  
16 GLASS DOOR?

17 A WITHOUT SEEING A PHOTOGRAPH I THINK THERE WAS

18 Q AND LET ME TALK A MINUTE ABOUT BLOOD EVIDENCE

19 BLOOD EVIDENCE CAN DETERMINE, CAN IT NOT, OFFICER, OR

20 AN ANALYSIS OF BLOOD EVIDENCE CAN OFTEN DETERMINE THE

21 DISTANCE BETWEEN THE TARGET SURFACE, WHERE THE BLOOD

22 IS FOUND AND WHERE THE BLOOD ORIGINATED FROM OR WHERE

23 THE BLOOD SHED OCCURRED, CAN IT NOT?

24 A I DON'T KNOW IF I UNDERSTAND THE WAY YOU ARE

25 TRYING TO ASK ME THE QUESTION

1 Q AN ANALYSIS OF BLOOD THAT'S FOUND AT THE CRIME  
2 SCENE CAN DETERMINE, YOU COULD DETERMINE THE DISTANCE  
3 BETWEEN THE TARGET SURFACE, WHERE THE BLOOD IS LEFT  
4 AT, AND THE ORIGIN OF THAT BLOOD?

5 A YES

6 Q OKAY AN ANALYSIS OF BLOOD AT A CRIME SCENE CAN  
7 OFTEN DETERMINE THE TYPE OF IMPACT, THE TYPE OF  
8 IMPACT THAT CAUSED THAT PARTICULAR BLOOD PATTERN,  
9 CORRECT?

10 A YES, HIGH VELOCITY, MEDIUM VELOCITY, LOW  
11 VELOCITY

12 Q AND BLOOD AT A CRIME SCENE ANALYSIS, BLOOD AT A  
13 CRIME SCENE, CAN OFTEN DETERMINE THE MOVEMENT AND THE  
14 DIRECTION OF INDIVIDUALS IN THE COURSE OF AN ASSAULT,  
15 CAN IT NOT? AT TIMES?

16 A YES

17 Q AND THE BLOOD ANALYSIS OF A CRIME SCENE CAN  
18 OFTEN DETERMINE THE MOVEMENT OF INDIVIDUALS AFTER THE  
19 ASSAULT, CAN IT NOT?

20 A IF THEY HAVE BLOOD ON THEM OR IF A PERSON IS  
21 INJURED OR THE PERSON HAS BLOOD ON THEM AND THEY ARE  
22 MOVING, IT WILL SHOW A PATTERN AND DIRECTION OF WHERE  
23 THEY ARE GOING

24 Q FOR EXAMPLE, IF SOMEONE WAS INVOLVED IN AN  
25 ASSAULT AND THEN THEY CAME BACK TO WHERE THE BLOOD

1 WAS, THEN THERE IS A POSSIBILITY THAT THE BLOOD WOULD  
2 BE LEFT EITHER ON SOME OF THEIR CLOTHING, CORRECT?

3 A IF THEY GOT INTO THE BLOOD, THAT'S CORRECT

4 Q OR THEIR FOOT WEAR IMPRESSIONS COULD BE LEFT  
5 ACTUALLY IN THAT BLOOD POOL?

6 A YES

7 Q CORRECT?

8 A YES, SIR

9 Q AGAIN THERE IS NOTHING IN THIS DIAGRAM THAT  
10 REFLECTS ANYTHING REGARDING THE BLOOD?

11 A NO NOTHING ON THOSE DIAGRAMS REFLECT ANY BLOOD  
12 PATTERNS OR BLOOD STAINS THAT WERE FOUND INSIDE THE  
13 RESIDENCE

14 Q AND THERE WAS NOTHING THAT YOU DID THAT  
15 DETERMINED THROUGH A BLOOD ANALYSIS THE DIRECTION IN  
16 WHICH THE PERSONS WHO WERE INVOLVED IN THE  
17 ALTERCATION OR ASSAULT WERE AT THE TIME OF THE  
18 INCIDENT, CORRECT?

19 A NO, BASED ON THE INFORMATION THAT WE HAD THAT --

20 Q I'M ASKING YOU, DID YOU HAVE ANY ANALYSIS OF  
21 ANYTHING INVOLVING THE BLOOD AT ALL?

22 A NO

23 Q AND DID YOU DO ANY BLOOD ANALYSIS?

24 A NO, WE DID NOT

25 Q DID YOU ASK SLED TO DO ANY BLOOD ANALYSIS?

1 A NO, WE DID NOT

2 Q SO NOTHING THAT YOU ARE AWARE OF DETERMINES THE  
3 DIRECTION OF THE TWO INDIVIDUALS THAT WERE INVOLVED  
4 IN THIS CASE BASED UPON A BLOOD ANALYSIS, CORRECT?

5 A BASED ON THE INFORMATION THAT I HAD RECEIVED  
6 ONCE THE OFFICERS ENTERED THE RESIDENCE THAT THE  
7 BLOOD ANALYSIS THAT YOU ARE ASKING WOULD HAVE BEEN  
8 ALTERED WITH THE STRUGGLE WITH THE INDIVIDUAL FROM  
9 WHAT I WAS TOLD

10 Q THAT'S NOT ANSWERING MY QUESTION MY QUESTION  
11 IS --

12 A BUT I DIDN'T --

13 Q NO BLOOD INTERPRETATION WAS DONE BY YOU OR  
14 ANYONE ELSE IN YOUR DEPARTMENT?

15 A NO, IT WAS NOT

16 Q OR BY SLED?

17 A NO

18 MR DEST NO FURTHER QUESTIONS, YOUR  
19 HONOR

20 THE COURT ANY REDIRECT?

21 MR BRACKETT JUST BRIEFLY, YOUR HONOR  
22 REDIRECT EXAMINATION BY MR BRACKETT

23 Q WHAT MR DEST WAS TALKING ABOUT WITH THE BLOOD,  
24 IS THAT TYPICALLY CALLED BLOOD SPLATTER ANALYSIS?

25 A YES, IT IS

MIKE WILLIAMS

REDIRECT

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1 Q ALL RIGHT, SIR NOW YOU DID NOT UNDERTAKE BLOOD  
2 SPLATTER ANALYSIS IN THIS CASE?

3 A I DID NOT

4 Q OKAY AND WHY WAS THAT?

5 A WHEN WE ARRIVED ON THE SCENE, THE SCENE HAD  
6 ALREADY BEEN CONTAMINATED AND ALTERED PRIOR TO OUR  
7 ARRIVAL BY THE LAW ENFORCEMENT OFFICERS THAT MADE THE  
8 ARREST ON THE DEFENDANT THIS WOULD, BASICALLY BY  
9 GOING INTO THE BEDROOM AND ARRESTING THE INDIVIDUAL,  
10 THEY WOULD ALTER HOW BLOOD WAS LEFT ON FURNITURE OR  
11 IF IT WAS LEFT ON THE WALL, MAYBE SMEARED WE  
12 WOULDN'T KNOW IF IT WAS SMEARED PRIOR TO THEM GETTING  
13 THERE OR IF THIS IS SOMETHING THEY DID IN THE ACTIONS  
14 OF ARRESTING THE INDIVIDUAL, SO WE DID NOT DO ANY  
15 BLOOD ANALYSIS ON THAT ROOM

16 Q WERE PHOTOGRAPHS TAKEN OF THE INTERIOR OF THE  
17 APARTMENT?

18 A YES, PHOTOGRAPHS WERE TAKEN OF THE LOCATION THAT  
19 REFLECT WHAT WE FOUND IN THE BEDROOM

20 Q THAT DOCUMENT THE BLOOD?

21 A YES

22 Q WHERE IT WAS? SHOWING YOU WHAT'S BEEN MARKED  
23 STATE'S EXHIBIT 28 AND, STATE'S EXHIBIT 20, 8, AND  
24 STATE 11

25 A THESE ARE THREE PHOTOGRAPHS THAT WERE TAKEN OF

1 THE BEDROOM AT THE RESIDENCE

2 Q ALL RIGHT, SIR AND DO THOSE ACCURATELY DEPICT  
3 THE INTERIOR OF THE RESIDENCE AFTER THE SCENE HAD  
4 BEEN SECURED?

5 A YES THESE ARE PHOTOGRAPHS THAT WERE TAKEN ONCE  
6 THE SCENE WAS SECURED WE PHOTOGRAPHED THE LOCATION  
7 PRIOR TO COLLECTING ANY EVIDENCE

8 Q AND WHAT DO YOU MEAN WHEN YOU SAY THE SCENE WAS  
9 SECURED?

10 A WHEN WE RESPOND TO A SCENE, OFFICERS, FIRST LINE  
11 OFFICERS, PATROL, ONCE THEY DETERMINE THE SCENE TO BE  
12 SAFE AND HAVE RENDERED AID TO THE VICTIMS OR SUSPECTS  
13 THEY THEN SECURE THE LOCATION BY PUTTING CRIME SCENE  
14 TAPE OUT AND WE CALL IT BARRIER TAPE, YOU SEE YELLOW  
15 TAPE, BASICALLY PROTECTING THE INNER CIRCLE OF THE  
16 TAPE TO LET NO ONE ENTER OR EXIT THE LOCATION UNTIL  
17 WE ARRIVE

18 Q OKAY, SIR AND SO THAT'S BASICALLY AFTER  
19 EVERYBODY HAS BEEN REMOVED FROM THE CRIME SCENE?

20 A YES, THAT'S AFTER ALL AID HAS BEEN RENDERED TO  
21 THE VICTIM AND/OR SUSPECT OR THE SUSPECT HAS BEEN  
22 ARRESTED

23 MR BRACKETT I MOVE TO INTRODUCE 20, 8  
24 AND 11 AT THIS TIME

25 MR DEST YOUR HONOR, MAY I EXAMINE THE



1       PHOTOGRAPHS

2                   THE COURT    ANY OBJECTION?

3                   MR   DEST    NO OBJECTION, YOUR HONOR

4                   THE COURT    IN WITHOUT OBJECTION

5                               (STATE'S EXHIBITS 20, 8, 11

6                                       PHOTOGRAPHS RECEIVED INTO EVIDENCE )

7       Q       AND AGAIN IF YOU WOULD STEP DOWN FOR JUST A  
8       MOMENT       MR   THOMPSON, IF YOU WOULD SHOW US STATE'S  
9       EXHIBIT 11    WHAT DOES THAT DEPICT?

10      A       THIS IS A PHOTOGRAPH OF THE BEDROOM    IN THE FAR  
11      RIGHT CORNER YOU CAN SEE THE ENTRANCE INTO THE  
12      BATHROOM    THE DOOR TO THE LEFT WOULD BE GOING BACK  
13      INTO THE HALLWAY THAT WOULD LEAD YOU BACK AROUND TO  
14      THE LIVING ROOM    YOU CAN SEE A DOOR IN THE LEFT  
15      RIGHT AT THE BLINDS AND THAT WOULD BE A CLOSET THAT  
16      WAS LOCATED IN THE BEDROOM    THE RED STAINS THAT YOU  
17      SEE ALL THROUGH THE BEDROOM IS BLOOD STAINS THAT WE  
18      FOUND THROUGHOUT THE BEDROOM

19      Q       ALL RIGHT, SIR    STATE'S EXHIBIT 20

20      A       THIS IS A PHOTOGRAPH, TO THE LEFT CORNER WOULD  
21      BE THE BEDROOM DOOR THAT YOU WOULD ENTER TO GO IN  
22      FROM THE HALLWAY    THIS WOULD BE LOOKING TO THE RIGHT  
23      SIDE WALL OF THE BEDROOM    AT THE BOTTOM CORNER THERE  
24      WOULD BE A DOOR THAT WOULD LEAD YOU INTO THE  
25      BATHROOM    THIS IS A PHOTOGRAPH OF A WOODEN TABLE

1        THAT WAS FOUND BUSTED IN THE BEDROOM AND THE RED  
2        STAINS, THESE ARE ON THE PATIO BLINDS THAT WOULD HAVE  
3        BEEN HANGING IN THE PATIO ENTRANCE

4        Q        OVER THE SLIDING GLASS DOOR?

5        A        YES

6        Q        ALL RIGHT    AND FINALLY STATE'S EXHIBIT 8?

7        A        THIS AS A PHOTOGRAPH OF BASICALLY AT THE DOOR  
8        LEADING INTO THE BEDROOM FROM THE HALLWAY SHOWING THE  
9        PHOTOGRAPH TOWARD THE PATIO, THE CLOSET TO THE RIGHT,  
10       THEN SHOWING THE ITEMS MARKED WITH NUMBER CONES THAT  
11       WE IDENTIFIED IN THE SKETCH THAT YOU SAW PREVIOUSLY  
12       AND ALSO THE RED STAINS THAT WERE FOUND IN THE  
13       BEDROOM ON THE FLOOR

14       Q        AND THOSE NUMBER CONES CORRESPOND TO THE NUMBERS  
15       ON THE SKETCH?

16       A        YES, THEY DO

17       Q        ALL RIGHT, SIR    SO THE BLOOD AT THE SCENE WAS  
18       DOCUMENTED AND PHOTOGRAPHED?

19       A        YES, IT WAS

20       Q        ALL RIGHT, SIR    THANK YOU VERY MUCH    YOU  
21       MIGHT WANT TO STAND THERE    I THINK MR    DEST PROBABLY  
22       MAY HAVE FOLLOW UP QUESTIONS ON THIS

23                    MR    DEST    YOU CAN SIT DOWN

24       RE CROSS EXAMINATION BY MR    DEST

25       Q        OFFICER WILLIAMS, EVEN THOUGH THERE WAS BLOOD

1       EVERYWHERE, NO ONE IN YOUR DEPARTMENT DID ANY DNA  
2       TESTING TO DETERMINE WHOSE BLOOD WAS ACTUALLY AT  
3       CERTAIN LOCATIONS ON THAT CRIME SCENE, CORRECT?

4       A       NO, WE DID NOT DO ANY DNA OR SWABS FOR BLOOD  
5       ANALYSIS

6       Q       THERE IS, OFFICER, BLOOD OVER THERE NEAR THE  
7       SLIDING GLASS DOOR, CORRECT?

8       A       YES, TO THE LEFT OF THE DOOR

9       Q       YES

10      A       YES

11      Q       AND WHAT IS THIS RIGHT ON THE SLIDING GLASS  
12      DOOR? IS THAT BLOOD AS WELL?

13      A       CAN I GET UP?

14      Q       YES, SIR

15      A       RIGHT TO THE CORNER ON THE EDGE?

16      Q       YES

17      A       YES, I BELIEVE IT WAS BLOOD

18      Q       THANK YOU       AND YOU SAY NO BLOOD INTERPRETATION  
19      ANALYSIS WAS DONE AND WE DON'T KNOW WHOSE BLOOD IT IS  
20      IN TERMS OF ON THE WALL OR NEAR THE SLIDING GLASS  
21      DOOR, DO WE?

22      A       NO, WE DO NOT

23      Q       AND THERE WAS NO MEASUREMENTS OF ANY OF THE  
24      BLOOD TAKEN TO DETERMINE THE EXACT POINT IN WHICH  
25      BLOOD SHED OCCURRED, CORRECT?

1       A       NO, WE DID NOT DO ANY OF THAT

2       Q       SO IF YOU LOOK AT THIS UP HERE, THIS PICTURE  
3       AGAIN, YOU DON'T KNOW IF THAT BLOOD THAT'S ON THAT  
4       WALL COULD HAVE BEEN THE ACTUAL FIRST BLOOD LETTING  
5       IN THIS CASE, COULDN'T IT?

6       A       NO, I DO NOT KNOW THAT FOR A FACT

7       Q       BUT IT COULD BE?

8       A       (NO RESPONSE )

9       Q       YOU DON'T KNOW, DO YOU?

10      A       I THINK THE FIRST BLOOD THAT WAS NOTED OR  
11      LOCATED I THINK WAS ON AT THE ENTRY POINT ON THE  
12      GLASS

13      Q       I'M NOT TALKING ABOUT THAT     I'M TALKING ABOUT  
14      THE ACTUAL ASSAULT, THAT COULD HAVE BEEN ONE OF THE  
15      FIRST POINTS IN WHICH BLOOD SHED OCCURRED UP THERE?

16      A       IT COULD AND IT COULD NOT     THERE IS NO WAY FOR  
17      ME TO TELL THAT

18      Q       AND YOU WOULD AGREE WITH ME THOUGH THAT THE  
19      POSSIBILITY THAT THAT'S ONE OF THE FIRST, POSSIBILITY  
20      THAT'S ONE OF THE FIRST AREAS OF BLOOD SHED WOULD BE  
21      IF THE ALTERCATION OR THE ASSAULT OCCURRED BACK NEAR  
22      THAT SLIDING GLASS DOOR?

23                   MR BRACKETT     OBJECTION, CALLS FOR  
24      SPECULATION

25                   THE COURT     WELL, I'LL ALLOW THE QUESTION

MIKE WILLIAMS

RE CROSS

143

1 Q WHAT I'M SAYING IS IF THE FIRST -- IF THERE WAS  
2 A COLLISION OR AN ASSAULT AT THAT SLIDING GLASS DOOR,  
3 IS IT POSSIBLE THAT'S WHERE THE FIRST PART OF BLED  
4 LETTING OCCURRED?

5 A THAT'S A QUESTION I CAN'T ANSWER I MEAN IT  
6 COULD HAVE HAPPENED THERE, THAT COULD BE WHERE IT  
7 HAPPENED, AND THAT COULD BE THE FIRST, AND IT COULD  
8 BE IT HAPPENED THERE AND WHERE NUMBER FIVE IS ON THE  
9 GROUND IT COULD BE THE FIRST I CAN'T TELL YOU WHERE  
10 WHAT BLOOD WAS THE FIRST BLOOD THAT WAS BLOOD LETTING  
11 IN THAT ROOM I CAN'T TELL YOU

12 Q BUT IT COULD BE?

13 A NO I CAN'T --

14 Q YOU CAN'T ANSWER?

15 A NOT WITH THE CONTAMINATED AREA OF THIS ROOM BY  
16 THE OFFICERS WHEN THEY WENT IN AND STRUGGLED WITH  
17 THESE GUYS THAT WHEN THE DEFENDANT AND THE OFFICERS  
18 WERE IN THE ROOM MAKING THE ARREST THEY WERE MOVING  
19 BLOOD, THEY WERE MOVING ITEMS AROUND THE ROOM

20 Q I UNDERSTAND THAT?

21 A SO WHAT YOU WERE --

22 MR BRACKETT I THINK HE HAS A RIGHT TO  
23 EXPLAIN HIS ANSWER

24 A SO I CAN'T TELL GO BACK AND TELL YOU THIS DID IT  
25 FIRST BECAUSE IT'S BEEN CONTAMINATED BY MOVEMENT

1 PRIOR TO US GETTING THERE

2 Q BUT YOU CAN'T RULE IT OUT EITHER, CAN YOU?

3 A I JUST CAN'T GIVE YOU AN ANSWER FOR IT

4 MR DEST THANK YOU

5 THE COURT YOU CAN STEP DOWN WE

6 APPRECIATE YOUR TIME THANK YOU CALL YOUR NEXT

7 WITNESS

8 MR BRACKETT THE STATE WOULD CALL BIANCA

9 MOISON

10 BIANCA MOISON, BEING FIRST DULY

11 SWORN, TESTIFIED AS FOLLOWS

12 DIRECT EXAMINATION BY MR BRACKETT

13 Q MA'AM, WOULD YOU PLEASE STATE YOUR FULL NAME?

14 A BIANCA MOISON

15 Q AND HOW DO YOU SPELL YOUR FIRST NAME?

16 A B-I-A-N-C-A

17 Q AND YOUR LAST NAME IS SPELLED?

18 A M-O-I-S-O-N

19 Q AND YOU HAVE A SOFT VOICE SO YOU ARE GOING TO

20 HAVE TO SPEAK UP FOR US SO EVERYBODY OVER HERE CAN

21 HEAR YOU YOU MIGHT HAVE TO LEAN INTO THAT

22 MICROPHONE A LITTLE BIT WHERE DO YOU LIVE,

23 MS MOISON?

24 A I LIVE IN ADDRESS

25 Q ALL RIGHT IS THAT THE AREA THAT WE'VE BEEN

BIANCA MOISON

DIRECT

145

1 TALKING ABOUT AND YOU'VE SEEN THE PHOTOGRAPHS AND THE  
2 DIAGRAMS, IS THAT WHERE YOU LIVE?  
3 A YES, SIR  
4 Q ALL RIGHT HOW LONG HAVE YOU LIVED THERE?  
5 A A LITTLE BIT, ABOUT A MONTH  
6 Q ABOUT A MONTH?  
7 A YES, SIR  
8 Q AS OF TODAY OR AS OF THE DAY OF THIS INCIDENT?  
9 A AS OF THE DAY OF THE INCIDENT  
10 Q ALL RIGHT WHERE DID YOU LIVE IN RELATION TO  
11 WHERE MR MICHAEL BURGESS LIVED?  
12 A THE APARTMENT TO THE LEFT  
13 Q OKAY IF I WAS STANDING FACING THE WINDOWS THAT  
14 WERE BUSTED OUT, WOULD YOUR APARTMENT BE THIS WAY OR  
15 TO THIS WAY?  
16 A IF YOU ARE STANDING ON THE OUTSIDE IT WOULD BE  
17 TO THE RIGHT  
18 Q OKAY AND DID YOU LIVE, HOW MANY LEVELS ARE  
19 THERE ON THE, IN THAT BUILDING?  
20 A THREE  
21 Q OKAY AND WHAT LEVEL DID YOU LIVE ON AT THAT  
22 TIME?  
23 A FIRST  
24 Q AND WHAT LEVEL DO YOU LIVE ON AT THIS TIME?  
25 A THIRD

1 Q SO YOU MOVED SINCE THIS INCIDENT HAPPENED?

2 A YES, SIR

3 Q DO YOU LIVE IN THE SAME BUILDING NOW?

4 A YES, SIR

5 Q ALL RIGHT NOW DID YOU, YOU SAID YOU LIVED

6 THERE A MONTH AT THE TIME OF THIS INCIDENT?

7 A YES, SIR

8 Q DID YOU KNOW MR BURGESS?

9 A I'VE SEEN HIM AROUND

10 Q DO YOU RECALL THE EVENTS OF THE EVENING OF

11 AUGUST 28, 2006?

12 A YES, SIR

13 Q ALL RIGHT CAN YOU TELL US WHAT TRANSPIRED,

14 WHAT WERE YOU DOING THAT NIGHT STARTING AT ABOUT

15 8 30-8 35, SOMETHING LIKE THAT

16 A I WALKED OUT OF MY APARTMENT TO WALK TOWARDS THE

17 MAILBOX TO GO CHECK OUR MAIL AND I NOTICED SOMEBODY

18 SITTING ON A VEHICLE BUT I DIDN'T THINK OF ANYTHING

19 SO I JUST KEEP WALKING

20 Q SITTING ON A VEHICLE?

21 A YES, SIR

22 Q AND IN WHAT REGARD, WHERE WERE THEY SITTING ON

23 THE CAR?

24 A THE HOOD

25 Q ON THE HOOD



BIANCA MOISON

DIRECT

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1 A YES, SIR

2 Q ALL RIGHT WHAT WERE THEY DOING, IF YOU RECALL?

3 A I DON'T RECALL WHAT THEY WERE DOING

4 Q DID YOU KNOW THIS PERSON?

5 A NO, SIR

6 Q OKAY AND YOU WERE GOING TO THE MAILBOX?

7 A YES, SIR

8 Q NOW IN ORDER TO GET TO THE MAIL BOXES FROM YOUR

9 APARTMENT, DID YOU HAVE TO WALK PAST MR BURGESS'

10 APARTMENT?

11 A YES, SIR

12 Q ALL RIGHT SO WAS HE ON THE WAY TO MR BURGESS'

13 APARTMENT?

14 A NO HE WAS JUST SITTING ON THE VEHICLE

15 Q HE WAS JUST SITTING ON IT BUT YOU PASSED HIM

16 AS YOU WERE PASSING?

17 A YEAH

18 Q OKAY HOW MUCH FURTHER DOWN UNTIL YOU GOT TO

19 YOUR MAIL BOXES?

20 A IT'S A TWO MINUTE WALK

21 Q ALL RIGHT DESCRIBE WHAT YOU DID NEXT?

22 A I HAVE CHECKED MY MAIL AND THERE WAS NOTHING IN

23 THERE AND I WALKED IN THE BACK PAST THE POOL AND I

24 CALLED MY FIANCE ON THE PHONE

25 Q ALL RIGHT HOW FAR IS THE POOL FROM THIS

1 BUILDING?

2 A FROM WHERE THE MAIL BOXES AT?

3 Q YES

4 A IT'S A MINUTE WALK

5 Q AND YOUR BOYFRIEND, YOU SAY YOUR FIANCE?

6 A YES

7 Q WHAT'S HIS NAME?

8 A MATTHEW

9 Q ALL RIGHT WHERE WAS HE?

10 A HE WAS AT WORK AT THE TIME

11 Q OKAY AND TELL ME WHAT YOU DID WHEN YOU GOT ON

12 THE PHONE?

13 A I ASKED HIM IF HE WANTED ANYTHING FOR DINNER AND

14 HE SAID NO AND WE TALKED FOR A LITTLE BIT AND I HANG

15 UP AND WENT BACK INSIDE AND I STARTED A MOVIE

16 Q OKAY NOW AS OF THE TIME YOU SAT DOWN IN YOUR

17 APARTMENT AT THIS POINT AND STARTED THE MOVIE, HOW

18 MANY MINUTES HAD PASSED FROM THE TIME WHERE YOU

19 WALKED PAST THE FELLOW SITTING ON THE HOOD OF THE

20 CAR?

21 A ABOUT 10-15 MINUTES

22 Q ALL RIGHT AND WHAT HAPPENED, HOW LONG DID THE

23 MOVIE PLAY FOR?

24 A I JUST STARTED IT

25 Q OKAY AND WHAT HAPPENED NEXT THAT CAUGHT YOUR

BIANCA MOISON

DIRECT

149

1 ATTENTION?

2 A I HEARD PEOPLE FIGHTING/ARGUING I DIDN'T KNOW  
3 IF IT WAS A NORMAL FIGHT OR ANYTHING I WENT OUTSIDE  
4 ON MY BALCONY AND I COULDN'T SEE ANYTHING SO I WENT  
5 BACK INSIDE AND I CONTINUED TO WATCH THE MOVIE AND  
6 THEN I HEARD GLASS SHATTER AND I HEARD SOMEBODY  
7 SCREAMING FOR HELP

8 Q NOW YOU WENT BACK INSIDE AND SAT BACK DOWN ON  
9 YOUR COUCH?

10 A YES

11 Q AND YOU STARTED WATCHING THE MOVIE AGAIN?

12 A YES, SIR

13 Q HOW MUCH MORE TIME PASSED FROM THAT POINT UNTIL  
14 THE GLASS BREAKS?

15 A TWO-THREE MINUTES

16 Q ALL RIGHT AND WHAT DID YOU DO WHEN YOU HEARD  
17 THE GLASS BREAKING?

18 A I WENT OUT MY FRONT DOOR AND I WALKED TO THE  
19 RIGHT AND THERE IS A TREE IN FRONT OF THE BUILDING  
20 THAT I LIVE IN AND I LOOKED AND I JUST SEEN SOMEBODY  
21 BREAKING GLASS AND SOMEBODY SAYING CALL 911, CALL  
22 911, AND I CALLED 911 AND I WAS PUT ON HOLD AND I  
23 HUNG UP AND I CALLED THEM BACK AFTER A MINUTE OR TWO

24 Q OKAY WHAT COULD YOU SEE WHEN YOU WALKED OUT TO  
25 THAT TREE?

1       A       SOMEBODY BREAKING THE WINDOW TRYING TO GET IN --  
2       Q       HAD YOU SEE THE PERSON --  
3       A       ---TO THE APARTMENT  
4       Q       ---THAT WAS BREAKING IN THE WINDOW BEFORE?  
5       A       PARDON ME?  
6       Q       THE PERSON THAT YOU SAW BREAKING THE WINDOW, HAD  
7       YOU SEEN THAT PERSON BEFORE?  
8       A       SITTING ON THE VEHICLE  
9       Q       THAT WAS THE SAME FELLOW YOU SAW SITTING ON THE  
10      VEHICLE?  
11      A       YES, SIR  
12      Q       OKAY    AND YOU SAID BEFORE YOU DIDN'T KNOW THIS  
13      MAN?  
14      A       I DO NOT KNOW THIS MAN  
15      Q       WHEN YOU SAW THAT HAPPENING WHAT WAS HE USING TO  
16      BREAK THE WINDOW OUT IF ANYTHING?  
17      A       I DON'T -- I COULDN'T SEE IF HE HAD ANYTHING IN  
18      HIS HANDS TO BREAK THE WINDOW  
19      Q       CAN YOU DESCRIBE OR DEMONSTRATE FOR US HOW YOU  
20      SAW HIM, WAS HE PUNCHING LIKE THIS, HOW WAS HE  
21      ACTUALLY?  
22      A       I SEEN HIM FROM THE BEHIND  
23      Q       OKAY  
24      A       AND I COULDN'T SEE HIS ARMS OR ANYTHING  
25      Q       OKAY    COULD YOU SEE THE WINDOW?

BIANCA MOISON

DIRECT

151

1     A     NO, SIR     HE WAS STANDING DIRECTLY IN FRONT OF  
2     IT  
3     Q     OKAY     DID YOU HEAR THE GLASS BREAKING?  
4     A     YES, SIR  
5     Q     WHEN YOU SAW THAT WHAT DID YOU DO NEXT?  
6     A     I CALLED 911  
7     Q     OKAY     STANDING THERE BY THE TREE?  
8     A     NO, I WENT IN BETWEEN THE BREEZEWAY WHERE HE  
9     COULDN'T SEE ME  
10    Q     ALL RIGHT     AND DESCRIBE WHAT HAPPENED NEXT?  
11    A     I CALLED 911 AND THEY ASKED ME WHERE I WAS AND I  
12    GAVE THEM THE ADDRESS AND THEY SAID THEY HAD PEOPLE  
13    ON THE WAY AND I HUNG UP  
14    Q     ALL RIGHT  
15    A     AND I SEE LAW ENFORCEMENT COMING AND THEN I WENT  
16    OUT AND A FEMALE OFFICER TOOK MY NAME AND PHONE  
17    NUMBER AND DATE OF BIRTH  
18    Q     DID YOU SEE THE FELLOW AGAIN THAT YOU SAW  
19    SITTING ON THE HOOD AND BREAKING OUT THE WINDOW, DID  
20    YOU SEE HIM AGAIN THAT NIGHT?  
21    A     YES, SIR  
22    Q     WHEN WAS THAT?  
23    A     WHEN THE POLICE OFFICERS BROUGHT HIM OUT IN  
24    HANDCUFFS  
25    Q     OKAY     DID THEY BRING ANY --- MORE THAN ONE

1 PERSON OUT?

2 A NO, JUST HIM

3 Q JUST HIM AND ARE YOU SURE IT WAS THE SAME

4 FELLOW YOU SAW SITTING ON THE HOOD?

5 A YES

6 Q AND THE SAME FELLOW, WHICH WAS THE SAME FELLOW

7 YOU SAW BREAKING OUT THE WINDOW?

8 A YES, SIR

9 Q NOW WHEN THE, DID THE DETECTIVE COME AND TALK TO

10 YOU?

11 A YES

12 Q ABOUT WHAT YOU SAW, THIS GENTLEMAN HERE?

13 A YES

14 Q ALL RIGHT AND WHAT DID HE ASK YOU?

15 A HE ASKED ME IF I SEEN WHAT HAPPENED INSIDE OF

16 THE APARTMENT

17 Q OKAY

18 A AND I DIDN'T

19 Q AND WHAT DID YOU TELL HIM?

20 A I DIDN'T

21 Q DID YOU SHOW HIM WHERE YOU WERE STANDING?

22 A NO, WE WERE SITTING INSIDE OF MY NEIGHBOR'S

23 APARTMENT TALKING

24 Q I SEE DID YOU EXPLAIN WHAT POSITION YOU WERE

25 STANDING AT, YOUR VANTAGE POINT ON THE APARTMENT?

BIANCA MOISON

DIRECT

153

- 1 A NO, SIR
- 2 Q OKAY AND AFTER YOU EXPLAINED THAT YOU DIDN'T
- 3 SEE ANYTHING THAT HAPPENED IN THE APARTMENT, HOW LONG
- 4 DID THAT INTERVIEW TAKE PLACE?
- 5 A 10 MINUTES, 15 MINUTES
- 6 Q DID THE SUBJECT OF YOU SEEING HIM SITTING ON THE
- 7 CAR COME UP?
- 8 A NO
- 9 Q OR BREAKING OUT THE WINDOW?
- 10 A NO, SIR
- 11 Q ALL RIGHT AND AFTER THE DETECTIVE LEFT, WHEN
- 12 WAS THE NEXT TIME YOU HEARD FROM SOMEBODY WITH
- 13 REGARDS TO THIS CASE?
- 14 A LAST WEEK
- 15 Q AND WHO WAS THAT?
- 16 A INVESTIGATOR NEAL
- 17 Q INVESTIGATE CHUCK NEAL?
- 18 A YES, SIR
- 19 Q FROM THE SOLICITOR'S OFFICE?
- 20 A YES, SIR
- 21 Q MY OFFICE?
- 22 A YES, SIR
- 23 Q OKAY AND HE CAME BY TO TALK TO YOU ABOUT IT?
- 24 A UH-HUH
- 25 Q AND DID HE DISCUSS WHAT YOU MAY HAVE SEEN
- .

1       BEFOREHAND?

2       A       YES

3       Q       ALL RIGHT     DID YOU SHARE WITH HIM THAT  
4       INFORMATION?

5       A       YES

6       Q       AND DID HE COME BACK BY THERE LATER ON THAT DAY?

7       A       YES, SIR

8       Q       AND DELIVER A PRESENT FOR YOU?

9       A       YES

10      Q       WHAT WAS THAT?

11      A       THE SUBPOENA

12      Q       THE SUBPOENA, OKAY     WHAT WAS THE LIGHTING LIKE  
13      AT THE TIME THAT YOU SAW HIM BREAK THE WINDOW OUT WAS  
14      IT?

15      A       IT WAS IN BETWEEN DAY LIGHT AND DARK

16      Q       OKAY     WAS THE LIGHT ON INSIDE OF THE APARTMENT?

17      A       YES

18      Q       COULD YOU SEE HIM FAIRLY WELL AS HE WAS STANDING  
19      THERE RIGHT AT THE WINDOW?

20      A       I SEEN HIM STANDING BY THE WINDOW

21      Q       OKAY     THE LIGHT WAS STREAMING OUT IN FRONT OF  
22      THE WINDOW?

23      A       YES

24                   MR   DEST     OBJECTION, YOUR HONOR, LEADING  
25                   THE COURT    I SUSTAIN THE OBJECTION



BIANCA MOISON

CROSS

155

1       REPHRASE YOUR QUESTION

2       Q       WHAT WAS THE LIGHT SOURCE YOU HAD TO SEE HIM BY?

3       A       THE STREETLIGHTS AND THE LIGHTS FROM THE HALLWAY  
4       AND FROM THE APARTMENT

5       Q       OKAY    MS   MOISON, THANK YOU VERY MUCH    PLEASE  
6       ANSWER ANY QUESTIONS THE DEFENSE COUNSEL MAY HAVE FOR  
7       YOU

8       CROSS EXAMINATION BY MR   DEST

9       Q       MS   MOISON, YOU HAD NOT SEEN THAT MAN BEFORE?

10      A       NO, SIR

11      Q       AND WHEN YOU SAW HIM HE WASN'T AGITATED OR UPSET  
12      WAS HE?

13      A       NOT THAT I COULD TELL

14      Q       AND YOU DIDN'T KNOW, THE SAME THING, ANYTHING  
15      OUT OF THE ORDINARY OTHER THAN YOU JUST DIDN'T KNOW  
16      WHO HE WAS, CORRECT?

17      A       NO

18      Q       AND WHEN YOU SAW, BEFORE YOU SAW HIM BREAK OUT  
19      THE WINDOW, YOU DIDN'T SEE ANYTHING ELSE OUTSIDE, DID  
20      YOU?

21      A       I JUST SEE HIM SITTING ON THE VEHICLE

22      Q       RIGHT    BUT PRIOR TO THAT, YOU DIDN'T SEE WHAT  
23      HAPPENED OUTSIDE?

24      A       NO, SIR

25      Q       YOU DIDN'T SEE WHAT HAPPENED INSIDE THE HOUSE?

1       A       NO, SIR

2       Q       THANK YOU

3                   MR BRACKETT   NO FURTHER QUESTIONS

4                   THE COURT    YOU CAN STEP DOWN AND BE

5       EXCUSED   THANK YOU

6                   MR BRACKETT   THANK YOU    I ASK SHE BE

7       RELEASED

8                   THE COURT    YES, SIR    DO YOU HAVE ANOTHER

9       WITNESS, A SHORT ONE

10                  MR THOMPSON   YES, YOUR HONOR, WE DO

11       THE STATE WOULD CALL TIMOTHY CARTER

12                               TIMOTHY CARTER, BEING FIRST DULY

13       SWORN, TESTIFIED AS FOLLOWS

14       DIRECT EXAMINATION BY MR THOMPSON

15       Q       MR CARTER, COULD YOU GIVE YOUR FULL NAME FOR

16       THE COURT PLEASE?

17       A       TIMOTHY LEON CARTER

18       Q       MR CARTER, WHERE DO YOU LIVE?

19       A       I LIVE AT PACES RIVER

20       Q       ALL RIGHT   AND DID YOU LIVE AT PACES RIVER BACK

21       IN AUGUST OF LAST YEAR?

22       A       YES, SIR

23       Q       DID YOU KNOW MICHAEL BURGESS?

24       A       YES, SIR, I DID

25       Q       HOW DID YOU KNOW MICHAEL BURGESS?

1       A       I HAD MET HIM AT THE POOL OVER THE SUMMER  
2       Q       AT PACES RIVER?  
3       A       YES, SIR  
4       Q       ALL RIGHT     HAD YOU KNOWN HIM LONG BEFORE THIS  
5       HAPPENED?  
6       A       NO, SIR  
7       Q       HOW LONG HAD YOU KNOWN HIM?  
8       A       ABOUT A WEEK  
9       Q       OKAY     AND HAD YOU DEVELOPED ANY SORT OF  
10      FRIENDSHIP WITH HIM AT THAT POINT?  
11      A       YES, SIR     WE TALKED AROUND THE POOL AND  
12      EXCHANGED PHONE NUMBERS, OUR CELL PHONES NUMBERS, AND  
13      WE BECAME FRIENDS INSTANTLY  
14      Q       SO Y'ALL KIND OF HIT IT OFF RIGHT AWAY AS  
15      FRIENDS?  
16      A       YES, SIR  
17      Q       AND WHAT TYPE OF THINGS DID YOU DO WITH MICHAEL  
18      BURGESS THAT WEEK BEFORE HIS DEATH?  
19      A       WE HAD WENT TO A, THE OUTBACK AND GOT SOMETHING  
20      TO EAT AND JUST HUNG OUT AROUND MY APARTMENT A LITTLE  
21      BIT AND THEN WE WENT TO FRIDAY, THAT PREVIOUS FRIDAY,  
22      WE WENT TO CHUCK E CHEESE WITH HIS KIDS AND MY KIDS  
23      AND THEN SATURDAY WAS THE DAY OF SUMMERFEST, HE HAD  
24      NEVER BEEN TO IT, AND HE AND MY KIDS AND HIS KIDS, WE  
25      WENT TO SUMMERFEST AND SPENT ALL DAY AT SUMMERFEST

1       SATURDAY

2       Q       OKAY     AND HOW MANY KIDS DO YOU HAVE, MR

3       CARTER?

4       A       I HAVE TWO

5       Q       ALL RIGHT     AND HOW MANY KIDS DID MR   BURRIS

6       HAVE?

7       A       HE HAD THREE

8       Q       AND HE TOOK THOSE KIDS WITH Y'ALL?

9       A       HE ONLY TOOK TWO LITTLE BOYS

10      Q       ALL RIGHT     TOOK TWO LITTLE BOYS WITH HIM?

11      A       YES, SIR

12      Q       CAN YOU TELL ME IN DEALING WITH MR   BURGESS ON

13      THE DAY THAT THIS HAPPENED WITH MICHAEL, DID YOU, HAD

14      YOU TRIED TO MAKE PLANS WITH HIM THIS DAY?

15      A       REPEAT THE QUESTION?

16      Q       HAD YOU TRIED TO MAKE PLANS WITH HIM THAT ON

17      DAY, DID Y'ALL CALL TO FIGURE OUT WHAT YOU WERE GOING

18      TO DO THAT NIGHT?

19      A       FOR SATURDAY?

20      Q       RIGHT, FOR THE 28?

21      A       RIGHT     YEAH     RIGHT     WE HAD PLANNED TO COOK

22      OUT AT MY HOUSE OR WHATEVER AND -- NOW ARE YOU

23      TALKING ABOUT THE 28?

24      Q       RIGHT, THE 28 WHEN THIS HAPPENED?

25      A       OH, OKAY     NO     WE HAD MADE PLANS     I WAS COMING

TIMOTHY CARTER

DIRECT

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1 HOME FROM WORKING HE WAS WANTING TO START WORKING  
2 OUT WITH ME, BECAUSE I WORKED OUT AT A LOCAL GYM  
3 THERE, SO I GOT OFF WORK LATE AND I CALLED HIM AND HE  
4 SAID THAT HE WASN'T GOING TO BE ABLE TO MAKE IT HE  
5 HAD MET A GIRL AT A BP GAS STATION

6 Q OKAY

7 A SHORT CONVERSATION IT WAS AROUND 7-7 30

8 Q ALL RIGHT AND SO YOU ENDED UP NOT GOING OVER  
9 OR NOT GOING OUT WITH HIM THAT NIGHT?

10 A EXACTLY

11 Q OKAY WHERE DID YOU GO THAT NIGHT? YOU WERE  
12 GETTING OFF OF WORK ABOUT THAT TIME, IS THAT RIGHT?

13 A RIGHT I WAS COMING DOWN THE INTERSTATE

14 Q WHERE DID YOU GO FROM THERE?

15 A I HAD CAME HOME, CHANGED I ACTUALLY WENT TO  
16 WORK, CLOCKED OUT, CAME HOME, CHANGED INTO MY GYM  
17 CLOTHES AND I WENT AND WORKED OUT FOR ABOUT AN HOUR,  
18 AND GOT HOME AROUND 8 15

19 Q OKAY WHAT DID YOU DO AFTER THAT WHEN YOU GOT  
20 BACK?

21 A I STARTED COOKING, WATCHING TV, AND STUFF LIKE  
22 THAT AND IT WAS ABOUT FIVE MINUTES TO NINE  
23 MR BURGESS HAD CALLED ME

24 Q ALL RIGHT AND WHAT HAPPENED IN THAT CALL?  
25 COULD YOU DESCRIBE THIS FIRST, WHEN YOU RECEIVED THE

1 CALL WAS THERE ANYTHING UNUSUAL ABOUT IT?

2 A YES HE WAS VERY UPSET, TREMBLING IN THE VOICE,  
3 AND HOLLERING FOR ME TO PLEASE GET TO HIS APARTMENT,  
4 SOMEONE WAS TRYING TO KICK HIS DOOR IN, AND HE  
5 BRIEFLY HUNG UP THE PHONE

6 Q ALL RIGHT AND WHAT DID YOU DO AS A RESULT OF  
7 THAT?

8 A I CUT MY STOVE OFF, RUN OUT THE DOOR, AND RAN  
9 DOWN THERE AND

10 Q OKAY AND WHEN YOU GOT DOWN THERE WHAT DID YOU  
11 SEE?

12 A I DIDN'T SEE ANYTHING I HEARD A GIRL  
13 SCREAMING I TRIED TO GO IN THE DOOR IT WAS LOCKED  
14 AND I CAME AROUND TO THE APARTMENT AND JUMPED OVER  
15 THE RAIL AND WENT INTO THE ROOM

16 Q ALL RIGHT DID YOU SEE, WAS THE WINDOW BROKEN  
17 AT THAT TIME, THE FRONT WINDOW?

18 A I DID NOT SEE IT I RAN RIGHT PAST IT

19 Q OKAY AND YOU WENT INTO THE ROOM, DESCRIBE TO  
20 ME HOW YOU GOT INTO THE ROOM?

21 A , WELL, THE WAY THE ROOM, THE APARTMENT SITS,  
22 THERE WAS SOME BUSHES THERE AND THEN YOU HAD TO GO  
23 AROUND THOSE AND THERE WAS A RAILING THAT WAS  
24 PROBABLY FOUR FOOT TALL, I JUMPED OVER TOP OF IT, AND  
25 THE SLIDING WINDOW DOOR WAS OPEN AND I WENT IN

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DIRECT

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1       THROUGH THE DOOR THERE

2       Q     ALL RIGHT     AND WHAT DID YOU SEE WHEN YOU WENT

3       IN THAT DOOR?

4       A     WHEN I WALKED INTO THE BEDROOM I SEEN THIS GIRL

5       STANDING HERE TO MY RIGHT AND SHE WAS SCREAMING HELP

6       ME     THERE WAS ANOTHER GUY AT THE BACK STANDING

7       AGAINST THE WALL, HE WAS JUST STANDING THERE, AND MY

8       FRIEND MIKE, HE WAS KIND OF LAYING FACE DOWN TRYING

9       TO, IT LOOKED LIKE TRYING TO PUSH HIMSELF UP BUT HE

10      WAS NOT, HE WASN'T DOING A PUSH UP, HE WAS JUST KIND

11      OF MOVING A LITTLE

12      Q     WHERE WERE HIS HANDS AND HIS ARMS?

13      A     THEY WERE KIND OF UNDERNEATH OF HIM

14      Q     LYING DOWN FLAT OR --

15      A     RIGHT

16      Q     OKAY SO HE WASN'T LIKE IN A PUSH UP STANCE?

17      A     RIGHT     HE WAS JUST TRYING LOOKS LIKE MOVE UP

18      AND I WAS ONLY IN THERE BRIEFLY

19      Q     ALL RIGHT     SO BASICALLY WHEN HE WAS LAYING

20      DOWN, HE WAS ON HIS HANDS?

21      A     RIGHT

22      Q     AND YOU SAW HIS SHOULDERS TRYING TO MOVE?

23      A     RIGHT     AND I WAS HOLLERING FOR HIM TO SPEAK TO

24      ME AND THERE WAS NO RESPONSE

25      Q     COULD YOU SEE ANY BLOOD AT THAT TIME?

1       A       YES, THE ROOM WAS COVERED

2       Q       ALL RIGHT    AND DID YOU NOTICE ANYTHING IN  
3       PARTICULAR ABOUT THE MAN THAT WAS STANDING UP AGAINST  
4       THE WALL?

5       A       HE WAS JUST STANDING THERE AND I ASKED HIM WHAT  
6       WAS GOING ON    AND HE ASKED ME DID I WANT SOME    AND  
7       I RESPONDED NO AND HE TOLD ME HE WOULD RIP ME IN  
8       FUCKING HALF AND I RAN OUT OF THE ROOM    HE STARTED  
9       COMING TOWARDS ME AND I RAN OUT OF THE ROOM AND I  
10      WENT OUT THE RESIDENCE

11      Q       ALL RIGHT    DID YOU NOTICE ANYTHING ABOUT WHAT  
12      HE WAS WEARING AT THAT TIME?

13      A       HE DID NOT HAVE A SHIRT ON    I THINK HE HAD BLUE  
14      JEANS ON    I'M NOT REAL SURE BECAUSE HE HAD, HIS  
15      SHIRT WAS OFF

16      Q       CAN YOU DESCRIBE HIM WHEN YOU FIRST SAW HIM, DID  
17      HE APPEAR TO BE IN A RAGE AT THAT TIME?

18      A       NOT AT THE TIME    WHEN I FIRST GOT IN THE  
19      RESIDENCE, NO

20      Q       OKAY    BUT THEN HE SAID THAT TO YOU AFTERWARDS  
21      AFTER YOU STARTED ASKING HIM WHAT HAPPENED?

22      A       YES, SIR, I RAN OUT    THAT'S WHEN I DIALED 911  
23      AND I WAS STANDING OUTSIDE OF THE APARTMENT AND HE  
24      KICKED MIKE IN THE FACE AND KNOCKED HIM OVER AND  
25      STOMPED HIM TWICE



TIMOTHY CARTER

DIRECT

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1 Q IF YOU WOULD, COULD YOU -- PLEASE THE COURT, I'D  
2 ASK THE WITNESS TO STEP DOWN

3 THE COURT SURE HE CAN STEP DOWN

4 Q IF YOU WOULD DISPLAY WHAT YOU MEAN, WHAT YOU  
5 SAW, WERE YOU STILL IN THE APARTMENT AT THAT TIME OR  
6 HAD YOU STEPPED OUT?

7 A I WAS PROBABLY FROM THE RAILING, IF THIS WAS THE  
8 RAILING HERE, I WAS PROBABLY THIS FAR FROM HIM

9 Q OKAY THAT'S THE RAILING

10 A FROM THE PATIO, FROM THE PATIO TO THE DOOR

11 Q OKAY

12 A AND WHEN I GOT OUT THERE, I GOT ON THE PHONE,  
13 CALLED 911 HE KICKED HIM THAT WAY AND THEN STOMPED  
14 IN THE FACE

15 Q OKAY THEN HE TURNED HIM OVER WHEN HE KICKED  
16 HIM?

17 A YES, SIR

18 Q SO THE FIRST KICK TURNED HIM OVER?

19 A RIGHT

20 Q AND THEN STOMPED HIM DID YOU SEE HOW MANY  
21 TIMES HE STOMPED HIM?

22 A IT LOOKED LIKE TWICE IT LOOKED LIKE TWO TIMES

23 Q ALL RIGHT YOU CAN GO AHEAD AND SIT DOWN  
24 DID YOU STAY IN THAT POSITION OR DID YOU LEAVE THAT  
25 AREA AT THAT POINT?

1 A I LEFT

2 Q OKAY WHERE DID YOU GO?

3 A I WAS JUST WALKING THE AREA ON THE PHONE WITH

4 911 I WAS SO SCARED I DIDN'T KNOW WHAT TO DO

5 Q OKAY AND HAVE YOU HAD AN OPPORTUNITY, HAVE YOU

6 HAD AN OPPORTUNITY TO HEAR THE 911 TAPE THAT YOU

7 CALLED ON?

8 A YES, SIR

9 MR THOMPSON YOUR HONOR, I BELIEVE THIS

10 IS ALREADY IN STATE'S EXHIBIT EVIDENCE AND I WOULD

11 ASK TO PUBLISH IT AT THIS TIME EXHIBIT 23 TRACK 9

12 (PLAYS THE RECORDING )

13 Q WAS THAT YOUR CALL, MR CARTER?

14 A YES, SIR

15 Q DID YOU HAVE AN OPPORTUNITY TO SEE MICHAEL'S

16 FACE WHEN YOU WERE INSIDE?

17 A YES, SIR

18 Q AND CAN YOU TELL ME IN LOOKING AT MICHAEL IN

19 THAT INSTANCE, WERE YOU ABLE TO, WAS HE READILY

20 RECOGNIZABLE BY LOOKING AT HIS FACE?

21 A NO, SIR

22 Q CAN YOU DESCRIBE WHAT HIS FACE LOOKED LIKE TO

23 YOU AT THAT TIME?

24 A IT WAS, HIS FACE LOOKED LIKE IT WAS BLACK FROM

25 ALL THE BLOOD IT WAS JUST -- I DON'T KNOW HOW TO

TIMOTHY CARTER

DIRECT

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1 DESCRIBE IT IT WAS ALL MANGLED UP

2 Q COULD YOU HEAR WHETHER HE WAS ABLE TO BREATHE AT  
3 THE TIME?

4 A HE WAS --

5 MR DEST? OBJECTION, YOUR HONOR

6 THE COURT REPHRASE YOUR QUESTION

7 Q WAS HE MAKING ANY SOUND AT ALL?

8 A HE WAS CHOKING ON HIS BLOOD

9 Q DO YOU RECALL IF THE GIRL WAS SAYING ANYTHING  
10 WHEN YOU WENT INSIDE?

11 A WHEN I FIRST CAME IN THE RESIDENCE SHE WAS  
12 ASKING ME PLEASE TO HELP, HELP, AND THAT'S REALLY ALL  
13 I RECALL

14 Q ALL RIGHT IF YOU WOULD I'M GOING TO SHOW YOU  
15 TWO PHOTOGRAPHS, STATE'S EXHIBIT 14 AND 15

16 MR DEST YOUR HONOR, MAY WE APPROACH

17 (BENCH CONFERENCE AT 05 36 PM )

18 THE COURT OVER OBJECTION I'LL ALLOW  
19 STATE'S EXHIBIT 14 INTO EVIDENCE, NOT THE OTHER ONE

20 (STATE'S EXHIBIT 14 PHOTO RECEIVED  
21 INTO EVIDENCE )

22 Q MR CARTER, I'LL SHOW YOU STATE'S EXHIBIT NUMBER  
23 14, IF YOU CAN IDENTIFY THAT FOR ME?

24 A THIS IS MIKE BURGESS

25 Q ALL RIGHT IS THAT HOW HE LOOKED PRIOR TO,

1 PRIOR TO THE 28 WHEN HE WAS BEATEN UP?

2 A NO, SIR

3 Q I'M SORRY PRIOR TO --

4 A NO NO YES, I'M SORRY THIS IS WHAT HE

5 LOOKED LIKE I'M SORRY

6 Q OKAY DID HE LOOK ANYTHING LIKE THAT WHEN YOU

7 SAW HIM ON THE FLOOR?

8 A NO

9 Q ALL RIGHT I ASK TO ENTER THIS INTO EVIDENCE AT

10 THIS TIME

11 THE COURT IN OVER OBJECTION IT'S IN

12 MR THOMPSON I ASK TO PUBLISH IT AS WELL

13 STATE'S EXHIBIT 14

14 Q IF YOU COULD TELL ME, TIM, WHEN WAS THE LAST

15 TIME YOU WERE IN MICHAEL'S APARTMENT BEFORE THIS HAD

16 HAPPENED?

17 A IT WAS SATURDAY NIGHT

18 Q OKAY SO HOW LONG WAS THAT BEFORE THIS?

19 A IT WAS TWO DAYS

20 Q OKAY WHEN YOU WENT IN THERE, WHAT WAS THE

21 CONDITION OF IT WHEN YOU WENT IN BEFORE THIS

22 HAPPENED?

23 A THE CONDITION OF HIS APARTMENT?

24 Q YES

25 A EVERYTHING WAS PRETTY ORGANIZED LOOKED LIKE IT

TIMOTHY CARTER

CROSS

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1 WAS CLEANED UP, NICE LOOKING ROOM

2 Q WAS THERE ANY BROKEN FURNITURE OR OVERTURNED  
3 THINGS IN THERE?

4 A NO, SIR

5 Q ANY BLOOD OR ANYTHING LIKE THAT?

6 A NO, SIR

7 Q WERE THE BLINDS UP ON THE WINDOW?

8 A YES, SIR

9 Q THANK YOU NO FURTHER QUESTIONS

10 THE COURT CROSS

11 CROSS EXAMINATION BY MR DEST

12 Q MR CARTER

13 A YES, SIR

14 Q YOU GAVE A STATEMENT TO THE POLICE ON AUGUST 28,  
15 ISN'T THAT CORRECT?

16 A YES, SIR

17 Q AND ON AUGUST 28 IN YOUR STATEMENT YOU SAID THAT  
18 YOU KNEW STEVEN -- I'M SORRY, MICHAEL BURGESS ABOUT  
19 TWO WEEKS, IS THAT RIGHT?

20 A IT WAS A WEEK OR TWO, YES

21 Q AND IN THAT WEEK OR TWO YOU SAY /IN YOUR  
22 STATEMENT THAT YOU DEVELOPED A RELATIONSHIP WITH HIM,  
23 CORRECT?

24 A YES, SIR

25 Q YOU WERE FRIENDS?

1       A       UH-HUH

2       Q       AND A MOMENT AGO YOU SAID THAT HE HAD THREE

3       CHILDREN, IS THAT CORRECT?

4       A       RIGHT

5       Q       BUT THOSE CHILDREN DID NOT LIVE IN THAT

6       APARTMENT?

7       A       NO, SIR

8       Q       IN FACT, MR BURGESS LIVED ALONE IN THAT

9       APARTMENT?

10      A       FROM MY KNOWLEDGE

11      Q       NOW ALSO IN THE STATEMENT THAT YOU SAY THAT ON

12      THE 28 HE MET A GIRL AT A BP STATION?

13      A       YES, SIR

14      Q       HE MET A GIRL AT THE BP STATION ON SPRINGDALE

15      ROAD?

16      A       YES, SIR

17      Q       IS THAT CORRECT?

18      A       YES, SIR

19      Q       AND IN YOUR STATEMENT YOU SAY THAT HE TOLD YOU

20      THAT SHE WAS GOING THROUGH A DIVORCE?

21      A       RIGHT

22      Q       AND YOU SAID I TOLD HIM HE BETTER BE CAREFUL

23      WITH THAT SITUATION?

24      A       YES, SIR

25      Q       AND HE DIDN'T TELL YOU ANYTHING ELSE ABOUT THAT

TIMOTHY CARTER

CROSS

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1 GIRL, DID HE?

2 A NO, SIR, IT WAS A VERY SHORT CONVERSATION  
3 BECAUSE THAT WAS THE NIGHT THAT WE WERE GOING TO GO  
4 WORKOUT OR WHATEVER, SO IT WAS VERY SHORT

5 Q IN FACT YOU SAID A MOMENT AGO THAT YOU WERE  
6 GOING TO SEE HIM THAT NIGHT, CORRECT?

7 A I HAD PLANNED ON IT, RIGHT WE WERE GOING TO GO  
8 WORKOUT TOGETHER

9 Q AND YOU DIDN'T WORKOUT TOGETHER BECAUSE HE WAS  
10 GOING TO MEET THIS GIRL WHO HE JUST MET AT THE BP  
11 STATION?

12 A YES, SIR

13 Q THAT WAS GOING THROUGH A DIVORCE?

14 A THAT'S WHAT HE HAD TOLD ME

15 Q SO HE CHANGED HIS PLANS TO MEET YOU, NOT TO MEET  
16 YOU, CORRECT?

17 A YES, SIR

18 Q NOW AT SOME POINT IN TIME YOU SAY IN YOUR  
19 STATEMENT THAT HE CALLED YOU AT AROUND 8 55, IS THAT  
20 RIGHT?

21 A YES, SIR

22 Q AND HE CALLED YOU UPSET ACCORDING TO YOUR  
23 STATEMENT?

24 A YES, SIR

25 Q AND TOLD YOU THAT SOMEONE WAS TRYING TO KICK HIS

1 DOOR IN, IS THAT RIGHT?

2 A YES, SIR

3 Q NOW WHEN YOU ARRIVED AT THE APARTMENT MICHAEL

4 BURGESS WAS ALREADY ON THE FLOOR, CORRECT?

5 A YES, SIR

6 Q MICHAEL BURGESS ALREADY HAD BLOOD ON HIS FACE?

7 A YES, SIR

8 Q HE HAD BLOOD ON HIS CLOTHING, HIS CLOTHES, HIS

9 CHEST?

10 A YES, SIR

11 Q AND I BELIEVE YOUR WORDS WERE THAT BLOOD WAS

12 EVERYWHERE?

13 A IT WAS

14 Q AND THEN YOU SAY THAT AT SOME POINT IN TIME THE

15 MAN KICKED MICHAEL BURGESS?

16 A YES, SIR

17 Q I BELIEVE YOUR TESTIMONY WAS THAT HE KICKED HIM

18 THREE TIMES?

19 A YES, SIR

20 Q IN THE MIDST OF ALL THAT BLOOD?

21 A UH-HUH

22 Q IN THE MIDST OF THE BLOOD THAT WAS EITHER ON HIM

23 AND ON THE FLOOR, CORRECT?

24 A YES, SIR

25 Q WHEN HE CALLED YOU AT 8 55 P M IN YOUR



TIMOTHY CARTER

CROSS

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1 STATEMENT YOU SAY THAT YOU HURRIED OVER THERE,  
2 CORRECT?

3 A YES, SIR

4 Q YOU WENT OVER THERE AS QUICKLY AS YOU POSSIBLY  
5 COULD?

6 A YES, SIR

7 Q AND FROM THE TIME THAT HE CALLED YOU TO THE TIME  
8 THAT YOU ACTUALLY GOT THERE YOU WERE HURRYING AS FAST  
9 AS YOU CAN, CORRECT?

10 A YES, SIR

11 Q AND I BELIEVE YOUR STATEMENT, SIR, YOU SAY THAT  
12 I GOT THERE, IT ONLY TOOK ME ONE MINUTE, RIGHT?

13 A YES

14 Q SO FROM THE TIME THAT HE ACTUALLY CALLED YOU AND  
15 TOLD YOU TO COME OVER TO THE TIME THAT YOU ACTUALLY  
16 WERE INSIDE THE APARTMENT SEEING YOUR FRIEND IN THAT  
17 CONDITION WAS ABOUT A MINUTE?

18 A ROUGHLY, YES

19 Q IT WAS THAT QUICK?

20 A I WAS THERE PRETTY QUICK BECAUSE I DON'T LIVE --

21 Q BUT YOU DIDN'T SEE ANYTHING INSIDE THE APARTMENT  
22 PRIOR TO THAT?

23 A NO, SIR

24 MR DEST NO FURTHER QUESTIONS, YOUR  
25 HONOR

1 THE COURT REDIRECT?

2 MR THOMPSON NO, YOUR HONOR

3 THE COURT YOU CAN STEP DOWN AND BE

4 EXCUSED WE APPRECIATE YOUR TIME

5 A THANK YOU, SIR

6 THE COURT MEMBERS OF THE JURY PANEL,

7 WE'LL STOP FOR THE DAY AND START BACK AT 9 30 I'LL

8 ASK YOU TO BE IN THE JURY ROOM AND WE'LL TRY TO START

9 AS PROMPTLY AS POSSIBLE I HAVE A SHORT MATTER,

10 ANYWAY, WE'LL START AS CLOSE TO 9 30 AS WE CAN KEEP

11 IN MIND DON'T LET YOURSELF BE EXPOSED TO ANY NEWS

12 COVERAGE IF THERE IS ANY DON'T DO ANY INDEPENDENT

13 RESEARCH IN ANY FASHION OR GO TO THE SCENE DON'T

14 DISCUSS THE CASE WITH ANYONE OUTSIDE THE COURTROOM

15 DON'T LET ANYONE DISCUSS THE CASE WITH YOU DON'T

16 DISCUSS THE CASE WITH EACH OTHER AND DON'T TRY TO

17 MAKE UP YOUR MIND, SO WE'LL SEE YOU BACK AT 9 30 IN

18 THE MORNING

19 (THE JURY EXITS THE COURTROOM AT 05 44

20 PM )

21 THE COURT WE'LL BE AT EASE UNTIL 9 30 IN

22 THE MORNING

23 (COURT'S IN RECESS AT 05 44 PM )

24 (COURT RESUMES AT 09 45 AM ON MARCH 6,

25 2007 )

1 THE COURT IS THE STATE READY?

2 MR BRACKETT YES, YOUR HONOR

3 THE COURT IS THE DEFENSE READY?

4 MR DEST NOT QUITE, YOUR HONOR MAY WE  
5 APPROACH

6 (BENCH CONFERENCE )

7 THE COURT COUNSEL WANTS A FEW MORE  
8 MINUTES TO GET READY SO WE'LL TAKE A LITTLE BIT OF A  
9 SHORT BREAK WOULD Y'ALL NOTIFY ME WHEN YOU ARE  
10 READY?

11 MR BRACKETT YES, SIR

12 (COURT RESUMES )

13 MR BRACKETT YOUR HONOR, THIS IS IN  
14 REFERENCE TO DOCKET NUMBERS 2006-GS-46-3825, 3826,  
15 AND 3827 INDICTMENTS FOR MURDER, FIRST DEGREE  
16 BURGLARY, AND RESISTING ARREST SECTION A  
17 RESPECTIVELY THEY ARE TRUE BILLED INDICTMENTS AND  
18 THEY'VE BEEN CALLED FOR TRIAL WE'RE HALF THROUGH  
19 THE TRIAL AS YOUR HONOR KNOWS THE DEFENDANT HAS  
20 INDICATED THROUGH HIS COUNSEL THAT HE WISHES TO  
21 CHANGE HIS PLEA FROM A PLEA OF NOT GUILTY TO A PLEA  
22 OF GUILTY TO THESE CHARGES THERE ARE NO  
23 NEGOTIATIONS IN THE MATTER THE STATE WOULD ASK THE  
24 VICTIM'S FAMILY BE ALLOWED TO BE HEARD AT THE  
25 APPROPRIATE TIME AND WE WOULD ALSO LIKE TO SUPPLY THE

1 COURT WITH ADDITIONAL FACTS THAT WE WOULD HAVE  
2 DEVELOPED THROUGH THE PRESENTATION OF OUR CASE  
3 THE COURT ALL RIGHT MR FREEMAN, HOW  
4 OLD ARE YOU?  
5 MR FREEMAN 30  
6 THE COURT HOW FAR DID YOU GO IN SCHOOL?  
7 MR FREEMAN 12 YEARS  
8 THE COURT ALL RIGHT BEFORE YOU WERE  
9 INCARCERATED WHAT DID YOU DO FOR A LIVING?  
10 MR FREEMAN WORKED CONSTRUCTION  
11 THE COURT YOU'RE REPRESENTED BY MR DEST  
12 AND MR BARROWCLOUGH, ARE YOU SATISFIED WITH THE WAY  
13 THEY HAVE REPRESENTED YOU?  
14 MR FREEMAN YES, SIR  
15 THE COURT HAVE THEY DONE FOR YOU THE  
16 THINGS THAT YOU HAD ASKED THEM TO DO?  
17 MR FREEMAN YES, SIR  
18 THE COURT HAVE THEY DONE ANYTHING THAT  
19 YOU DID NOT WANT THEM TO DO?  
20 MR FREEMAN NO, SIR  
21 THE COURT YOU ARE CHARGED WITH RESISTING  
22 ARREST, BURGLARY FIRST, AND MURDER ALL OF THESE ARE  
23 ALLEGED TO HAVE OCCURRED HERE IN YORK COUNTY ON  
24 AUGUST 28, 2006  
25 IT'S ALLEGED IN THE RESISTING ARREST

1 INDICTMENT THAT YOU RESISTED OFFICERS LAMBERT AND  
2 POPOV TO ARREST YOU LAWFULLY WHEN YOU KNEW OR SHOULD  
3 HAVE KNOWN THEY WERE LAW ENFORCEMENT OFFICERS THIS  
4 CARRIES UP TO A YEAR IN JAIL AND UP TO A \$1,000 FINE  
5 DO YOU UNDERSTAND WHAT YOU ARE CHARGED WITH AND THE  
6 POTENTIAL PENALTY IN THAT INDICTMENT?

7 MR FREEMAN YES, SIR

8 THE COURT YOU HAVE TO SPEAK UP HOW DO  
9 YOU PLEAD TO THAT?

10 MR FREEMAN GUILTY

11 THE COURT YOU ARE ALSO CHARGED ON THAT  
12 SAME DAY IN YORK COUNTY WITH COMMITTING BURGLARY BY  
13 UNLAWFULLY ENTERING THE DWELLING OF MICHAEL BURGESS  
14 LOCATED AT ADDRESS APARTMENT, THE DWELLING  
15 OF MICHAEL BURGESS AT ADDRESS , APARTMENT  
16 IN ROCK HILL IT'S ALLEGED THAT YOU ENTERED  
17 WITHOUT CONSENT AND WITH INTENT TO COMMIT A CRIME  
18 IT OCCURRED IN THE NIGHTTIME WHEN YOU CAUSED PHYSICAL  
19 INJURY TO MICHAEL BURGESS AND MR BURGESS WAS NOT A  
20 PARTICIPANT IN THE CRIME

21 IT CARRIES TO 15 YEARS TO LIFE IT IS  
22 A MOST SERIOUS OFFENSE, IT IS A VIOLENT OFFENSE, AND  
23 IT IS A NO PAROLE OFFENSE A MOST SERIOUS OFFENSE IS  
24 THE TYPE OF OFFENSE IF IN ONE'S LIFE TIME THEY  
25 RECEIVE TWO MOST SERIOUS OR A COMBINATION OF THREE

1       SERIOUS AND MOST SERIOUS OFFENSES WOULD SUBJECT THAT  
2       INDIVIDUAL FOR BEING INCARCERATED FOR LIFE WITHOUT  
3       PAROLE, THAT IS, A TRUE LIFE SENTENCE

4                   A VIOLENT OFFENSE IS AN OFFENSE WHICH  
5       RESTRICTS AN INDIVIDUAL WHO IS INCARCERATED  
6       OPPORTUNITIES TO PARTICIPATE IN CERTAIN PROGRAMS  
7       WITHIN THE DEPARTMENT OF CORRECTIONS IN WHICH A  
8       NON-VIOLENT OFFENDER WOULD BE ENTITLED TO PARTICIPATE  
9       IN

10                   A NO PAROLE OFFENSE IS AN OFFENSE  
11       WHICH REQUIRES THE PERSON SERVING TIME UNDER THAT  
12       OFFENSE TO SERVE AT LEAST 85 PERCENT OF THEIR  
13       SENTENCE BEFORE THEY WOULD BE ELIGIBLE FOR ANY EARLY  
14       RELEASE    IF THEY WERE RELEASED EARLY, IT WOULD BE  
15       INTO A COMMUNITY SUPERVISION PROGRAM    THAT PROGRAM  
16       WOULD HAVE CONDITIONS THAT MUST BE ADHERED TO    IF  
17       THAT INDIVIDUAL VIOLATED THOSE CONDITIONS, THEN THEY  
18       WOULD BE RE-INCARCERATED FOR UP TO A YEAR AND THIS  
19       SUPERVISION CAN LAST UP TO TWO YEARS    IF THAT  
20       INDIVIDUAL WERE RE-INCARCERATED AND RE-RELEASED AND  
21       AGAIN VIOLATED THEIR COMMUNITY SUPERVISION, THEY  
22       COULD BE RE-INCARCERATED AGAIN A SECOND TIME FOR UP  
23       TO A YEAR    THIS PATTERN COULD CONTINUE, A PERSON  
24       WILL CONTINUE TO BE RELEASED INTO THE COMMUNITY  
25       SUPERVISION AND CONTINUE TO VIOLATE IT UNTIL THAT

1 PERSON HAD SERVED AN IDENTICAL TIME TO THE TIME FOR  
2 WHICH THEY WERE, AN ADDITIONAL LENGTH OF TIME TO THE  
3 TIME FOR WHICH THEY WERE INITIALLY AND ORIGINALLY  
4 SENTENCED YOU UNDERSTAND ALL THAT?

5 MR FREEMAN YES, SIR

6 THE COURT KNOWING ALL THOSE THINGS HOW  
7 DO YOU PLEAD TO BURGLARY IN THE FIRST DEGREE?

8 MR FREEMAN GUILTY

9 THE COURT THE LAST INDICTMENT CHARGES  
10 YOU WITH MURDER WHICH CARRIES A MANDATORY MINIMUM OF  
11 30 YEARS UP TO LIFE IT IS A MOST SERIOUS OFFENSE  
12 AND I'VE ALREADY EXPLAINED THAT TO YOU IT IS A  
13 PAROLE INELIGIBLE OFFENSE AND IT IS A VIOLENT  
14 OFFENSE I'VE EXPLAINED THAT TO YOU ALSO IT'S  
15 ALLEGED THAT THIS OCCURRED HERE IN YORK COUNTY ON OR  
16 ABOUT AUGUST 28, 2006, WHEN YOU WITH MALICE  
17 FELONIOUSLY AND WILLFULLY KILLED MICHAEL BURGESS BY  
18 MEANS OF PHYSICALLY BEATING HIM AND AS A RESULT  
19 THEROF HE DIED IT'S ALLEGED THAT THIS OCCURRED AT  
20 ADDRESS APARTMENT IN ROCK HILL  
21 YOU UNDERSTAND WHAT YOU ARE CHARGED WITH AND THE  
22 POTENTIAL PENALTY ON THAT INDICTMENT?

23 MR FREEMAN YES, SIR

24 THE COURT AND HOW DO YOU PLEAD TO THAT?

25 MR FREEMAN GUILTY

1 THE COURT THE STATE HAS INDICATED THAT  
2 THEY HAVE MADE NO PROMISE TO YOU, IS THAT CORRECT?

3 MR FREEMAN YES, SIR

4 THE COURT HAS ANYBODY THREATENED YOU OR  
5 COERCED YOU INTO ENTERING YOUR PLEA?

6 MR FREEMAN NO, SIR

7 THE COURT ENTERING PLEAS TO THESE THREE  
8 CHARGES TODAY, HAVE THEY?

9 MR FREEMAN NO, SIR

10 THE COURT ARE YOU TODAY UNDER THE  
11 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE  
12 INTOXICATED?

13 MR FREEMAN NO, SIR

14 THE COURT YOU KIND OF HAVE TO WAIT UNTIL  
15 I FINISH, SO THIS LADY HAS TO TAKE IT DOWN SO WAIT  
16 UNTIL I FINISH

17 MR FREEMAN SORRY, SIR

18 THE COURT ARE YOU UNDER THE INFLUENCE OF  
19 ANYTHING THAT WOULD CAUSE YOU TO BE INTOXICATED?

20 MR FREEMAN NO, SIR

21 THE COURT ARE YOU ENTERING YOUR PLEA  
22 TODAY TO THESE CHARGES FREELY AND VOLUNTARILY?

23 MR FREEMAN YES, SIR

24 THE COURT NOW YOU HAVE A RIGHT TO TRIAL  
25 BY JURY ON THIS SET OF CHARGES, MR FREEMAN, AND YOU



1 ARE PRESUMED INNOCENT OF THIS SET OF CHARGES UNTIL  
2 SUCH TIME AS THE STATE IS ABLE TO PROVE, IF IT CAN,  
3 TO THE JURY'S SATISFACTION YOUR GUILT BEYOND A  
4 REASONABLE DOUBT IN FACT WE HAVE STARTED A TRIAL  
5 AND THERE HAVE BEEN SEVERAL WITNESSES AND YOU WERE  
6 PRESENT WHEN I EXPLAINED THAT TO THE JURY YESTERDAY  
7 DO YOU UNDERSTAND YOU HAVE THESE RIGHTS?

8 MR FREEMAN YES, SIR

9 THE COURT NOW I MADE SOME RULINGS  
10 YESTERDAY AND SOME COMMENTS YESTERDAY REGARDING SOME  
11 CONCERN I HAD ABOUT SOME OPTIONS THAT MAY BE  
12 AVAILABLE TO YOU AS FAR AS DEFENSES AND I DON'T WANT  
13 YOU TO BE ENTERING A PLEA BASED ON ANYTHING THAT YOU  
14 THINK THAT I MAY HAVE DONE TO TRY TO GET YOU TO  
15 PLEAD THAT CERTAINLY WASN'T MY INTENTION ARE YOU  
16 ENTERING YOUR PLEA BECAUSE OF ANYTHING THAT I HAVE  
17 DONE DURING THIS TRIAL?

18 MR FREEMAN NO, SIR

19 THE COURT YOU HAVE A RIGHT TO REMAIN  
20 SILENT AS TO THE CHARGE, THAT IS, NO ONE CAN MAKE YOU  
21 TESTIFY OR GIVE ANY STATEMENT CONCERNING THIS SET OF  
22 EVENTS YOU HAVE THE RIGHT TO CONFRONT WITNESSES TO  
23 SEE, HEAR, QUESTION, AND CROSS EXAMINATION ANY  
24 WITNESSES THE STATE WOULD CALL TO TESTIFY AGAINST YOU  
25 AND YOU EXPERIENCED THAT YESTERDAY AND YOU SAW THAT

1       YOU ALSO HAVE A RIGHT TO HAVE YOUR WITNESSES  
2       SUBPOENAED AND MADE TO COME TO COURT TO TESTIFY ON  
3       YOUR BEHALF   DO YOU UNDERSTAND YOU HAVE THESE  
4       RIGHTS?

5                   MR   FREEMAN    YES, SIR

6                   THE COURT    I ADVISE YOU THAT WHEN YOU  
7       ENTER A PLEA OF GUILT THAT YOU GIVE UP YOUR  
8       PRESUMPTION OF INNOCENCE, YOU GIVE UP YOUR RIGHT TO A  
9       JURY TRIAL, YOU GIVE UP ANY DEFENSES THAT YOU THINK  
10      YOU MAY HAVE TO THE CHARGES, OR ANY OPPORTUNITIES TO  
11      HAVE A JURY CONSIDER ANY LESSER INCLUDED OFFENSE  
12      YOU ALSO GIVE UP YOUR RIGHT TO REMAIN SILENT, YOUR  
13      RIGHT TO CONFRONT THE WITNESSES AGAINST YOU, AND YOU  
14      ALSO GIVE UP THE RIGHT TO HAVE YOUR WITNESSES MADE TO  
15      COME TO COURT   YOU UNDERSTAND ALL THAT?

16                  MR   FREEMAN    YES, SIR

17                  THE COURT    KNOWING ALL THOSE THINGS I ASK  
18      AGAIN, HOW DO YOU PLEAD TO MURDER?

19                  MR   FREEMAN    GUILTY

20                  THE COURT    HOW DO YOU PLEAD TO BURGLARY  
21      IN THE FIRST DEGREE?

22                  MR   FREEMAN    GUILTY

23                  THE COURT    HOW DO YOU PLEAD TO RESISTING  
24      ARREST?

25                  MR   FREEMAN    GUILTY

1 THE COURT MR FREEMAN, HAVE YOU EVER  
2 BEEN TREATED FOR ANY MENTAL OR EMOTIONAL DISABILITY?

3 MR FREEMAN NO, SIR

4 MR DEST YOUR HONOR, IF I MAY BRIEFLY

5 THE COURT YES

6 MR DEST AS I ALLUDED TO YESTERDAY  
7 MR FREEMAN WAS HOSPITALIZED TWICE IN THE MONTH OF  
8 AUGUST THE DATE OF THIS INCIDENT, THE MONTH OF THIS  
9 INCIDENT, FOR SUICIDE ATTEMPTS ONE WAS ON AUGUST  
10 FIRST WHERE HE BASICALLY CONSUMED ABOUT, EXCUSE ME,  
11 21 PILLS OF FLEXERIL, SOME HYDROCODENE, WAS  
12 HOSPITALIZED AT PMC PSYCH WARD FOR ABOUT THREE DAYS  
13 AND THEN SUBSEQUENT TO THAT, YOUR HONOR, ON AUGUST 22  
14 HE WAS HOSPITALIZED FOR ANOTHER ATTEMPTED SUICIDE AND  
15 HE WAS I THINK RELEASED FROM THE HOSPITAL ON AUGUST  
16 23

17 IN ADDITION TO THAT, YOUR HONOR, JUST  
18 AS A SIDE NOTE FOR THE RECORD, DURING THE, DURING THE  
19 BEGINNING OF THIS CASE WE HAD ACTUALLY HAD DR MORGAN  
20 COME IN AND SPEND SOME TIME WITH STEVEN REGARDING HIS  
21 DEPRESSION AND HIS PSYCHOLOGICAL STATE BECAUSE I  
22 WANTED TO EXPLORE WHETHER OR NOT THERE WERE ANY  
23 ISSUES REGARDING HIS MENTAL STATE ON THE DAY IN  
24 QUESTION, EITHER INSANITY OR GUILTY BUT MENTALLY ILL  
25 I WILL STATE FOR THE RECORD THAT DR MORGAN DID NOT

1 FIND THOSE TWO SITUATIONS TO BE APPLICABLE, BUT HE  
2 DID SAY CLEARLY THAT HE WAS A YOUNG MAN UNDER A LOT  
3 OF STRESS BECAUSE OF HIS RELATIONSHIP WITH  
4 MS SHERMAN AND THAT HIS REACTION WAS BASICALLY AS A  
5 RESULT OF THAT SITUATION THAT HE FOUND HIMSELF IN ON  
6 AUGUST 28, THAT IT WAS SOMETHING THAT IN ESSENCE  
7 SNAPPED, BUT IT DID NOT AMOUNT TO A MENTAL HEALTH  
8 DEFENSE REGARDING INSANITY OR GUILTY BUT MENTALLY  
9 ILL, BUT DID SAY HE HAD A LOT OF STRESSES ON HIM  
10 DURING THAT TIMEFRAME WHICH IS CLEARLY DEMONSTRATED  
11 BY HIS BEHAVIOR IN THE MONTH OF AUGUST

12 IN ADDITION TO THAT, YOUR HONOR, THERE  
13 WAS, AS I ALLUDED TO IN CHAMBERS, EXCUSE ME, THE USE  
14 OF ANABOLIC STEROIDS, BUT NOT DURING THIS TIME OUR  
15 CONTENTION WOULD HAVE BEEN AT TIME TIME HE WAS  
16 ACTUALLY OFF ANABOLIC STEROIDS, YOUR HONOR, BUT  
17 THAT, AS I LEARNED IN TALKING WITH DR MORGAN, COULD  
18 HAVE DETRIMENTAL AFFECTS ON HIS ABILITY TO CONTROL  
19 HIMSELF, SO THAT WAS PART AND PARCEL OF THE MENTAL  
20 EXAMINATION BUT CLEARLY, YOUR HONOR, HE DID NOT  
21 HAVE ANY DRUGS IN HIS SYSTEM THAT WE KNOW OF ON THAT  
22 DAY THERE WAS NO MENTAL HEALTH DEFENSE, BUT HE HAS  
23 CLEARLY, CLEARLY BEEN UNDER A LOT OF STRESS DURING  
24 THAT MONTH TO THE POINT WHERE HE, YOU KNOW, WAS,  
25 ATTEMPTED TO KILL HIMSELF IF I MAY BRIEFLY, YOUR

1 HONOR, ON THE 22, THE POLICE ACTUALLY ARRIVED OUT AND  
2 SEEN HIM, SHOT HIM TWICE WITH A TAZER, AND THE TAZER  
3 WAS, IT WAS UNABLE TO MAKE HIM DROP THE KNIFE, BUT HE  
4 ULTIMATELY DROPPED THE KNIFE PEACEFULLY AND THE  
5 OFFICERS PLACED HIM UNDER ARREST AND HE WAS TAKEN TO  
6 PMC

7 IN SHORT, YOUR HONOR, THERE WAS A LOT  
8 GOING ON OBVIOUSLY, BUT I WANTED THE COURT TO BE  
9 AWARE OF THE FACT THAT WE HAD AT LEAST EXPLORED THAT  
10 POSSIBILITY

11 THE COURT YOU MENTIONED DR MORGAN I  
12 PRESUME THAT'S HAROLD MORGAN

13 MR DEST YES, SIR, DR HAROLD MORGAN

14 THE COURT OTHER THAN THAT, HAVE YOU EVER  
15 BEEN TREATED?

16 MR FREEMAN NO, SIR

17 THE COURT FOR ANY MENTAL OR EMOTIONAL  
18 PROBLEMS?

19 MR FREEMAN NO, SIR

20 THE COURT YOU FINISHED 12TH GRADE?

21 MR FREEMAN YES, SIR

22 THE COURT AND YOU HAVE A STEADY JOB?

23 MR FREEMAN YES, SIR

24 THE COURT I'M GOING TO ASK YOU, I'VE  
25 HEARD THE FACTS, I'M GOING TO INCORPORATE WHAT I'VE

1 HEARD INTO THE RECORD, AND I WILL ASK THE STATE TO  
2 ADD ANYTHING IT WISHES OBVIOUSLY, BUT I'VE HEARD THE  
3 CORE FACTS, HEARD THE 911 TAPES, I HAVE REVIEWED, I  
4 DID NOT REVIEW QUITE FRANKLY THE STATEMENT GIVEN AT  
5 THE POLICE STATION, THE JACKSON VERSUS, THE WRITTEN  
6 STATEMENT THAT WAS GIVEN THE FOLLOWING DAY I HAVE  
7 READ OFFICER MURPHY'S AND STOKES RECITATION OF THE  
8 FACTS

9 MR DEST YES, YOUR HONOR

10 THE COURT SO I WILL JUST ASK THE STATE  
11 TO FILL ME IN ON ANYTHING ELSE THAT THEY FEEL I NEED  
12 TO KNOW REGARDING, AND OF COURSE I'VE SEEN THE  
13 PHOTOGRAPHS OF THE SCENE

14 MR BRACKETT YES, SIR MAY IT PLEASE  
15 THE COURT, YOUR HONOR THE CASE THAT WE INTENDED TO  
16 PRESENT HAD THE TRIAL GONE FORWARD WOULD NEXT HAVE  
17 MOVED INTO THE POLICE OFFICERS WHO ARRIVED ON THE  
18 SCENE TO GET CONTROL OF THE SITUATION OFFICERS  
19 LAMBERT, DOSTER, POPOV, AND JONES ARRIVED THEY ARE  
20 ALL ROCK HILL DEPARTMENT PATROL OFFICERS THEY  
21 ARRIVED ON THE SCENE VIRTUALLY SIMULTANEOUSLY  
22 OFFICERS LAMBERT I BELIEVE WAS THE FIRST ONE IN THE  
23 ROOM, BUT FOLLOWED QUICKLY BY THE OTHERS THEY  
24 ATTEMPTED TO GET MR FREEMAN UNDER CONTROL AND HE  
25 WOULDN'T OBEY THEIR COMMANDS, HE WOULDN'T TURN AROUND

1       AND VOLUNTARILY SUBMIT TO BEING HANDCUFFED, AND A  
2       STRUGGLE ENSUED BETWEEN OFFICERS LAMBERT, DOSTER, AND  
3       POPOV TO GET MR FREEMAN UNDER CONTROL IT TOOK ALL  
4       THREE OFFICERS TO GET MR FREEMAN UNDER CONTROL  
5       MR LAMBERT WOULD HAVE TESTIFIED THAT MR FREEMAN AND  
6       HE WAS, HAD ONE OFFICER ON EACH ARM AND THEN OFFICER  
7       DOSTER WAS BEHIND HIM ATTEMPTING TO GET HIM IN A  
8       CHOKE HOLD OFFICER LAMBERT WOULD HAVE TESTIFIED  
9       THAT HE WAS BASICALLY BEING PICKED UP AND FLUNG  
10      AROUND BY MR FREEMAN ALMOST AT WILL HE IS A VERY  
11      VERY POWERFUL MAN HE WAS AT THE TIME I HEARD  
12      MR DEST'S DISCUSSION ABOUT THE STEROIDS AND HIS USE  
13      OF THE STEROIDS A WEEK BEFORE AT THE TIME OF THE  
14      SUICIDE GESTURE THAT MR FREEMAN DID AFTER THAT THEY  
15      WENT BACK TO HIS HOME AND THEY FOUND STEROIDS IN HIS  
16      HOUSE THEY DIDN'T CHARGE HIM WITH THAT HE WAS IN  
17      THE PSYCHIATRIC WARD THEY TOOK HIM OVER TO THE  
18      HOSPITAL HE WAS NOT CHARGED WITH THOSE STEROIDS A  
19      WEEK LATER, AFTER THIS MURDER, PETRA SHERMAN TOOK  
20      THEM BACK TO THEIR HOUSE AND THEY FOUND MORE  
21      STEROIDS, SO SOME TIME BETWEEN THE 21 AND THE 28 HE  
22      HAD OBTAINED MORE STEROIDS OR THERE WERE ADDITIONAL  
23      STEROIDS IN HIS HOUSE AT THAT TIME  
24                      THE SCENE, AS YOU'VE SEEN IT, WAS  
25      DEVASTATION IT WAS BLOODY THERE WAS BLOOD

1        EVERYWHERE    THERE IS SOME ADDITIONAL PICTURES THAT  
2        YOUR HONOR MAY NOT HAVE SEEN    ALL THESE PHOTOGRAPHS  
3        HAVE BEEN PROVIDED TO DEFENSE

4                    MR DEST    YES, SIR, YOUR HONOR, I'VE SEEN  
5        THIS

6                    MR BRACKETT    THIS IS THE PHOTOGRAPH OF  
7        THE FRONT OF THE WINDOW THAT HE CAME THROUGH    HE  
8        BROKE BOTH PANES OUT    HE TOOK THE TIME, IF HE WAS IN  
9        A RAGE, HE TOOK THE TIME TO BREAK OUT THE TOP WINDOW,  
10       HE COULD ONLY COME THROUGH ONE, BUT HE TOOK TIME TO  
11       BREAK OUT THE BOTTOM AND THE TOP WINDOW    ANOTHER  
12       PHOTOGRAPH THAT --

13                   THE COURT    THAT'S STATE'S 17

14                   MR BRACKETT    YES, SIR, AND NOT ALL OF  
15        THESE ARE MARKED    SOME OF THESE DON'T HAVE AN  
16        EXHIBIT NUMBER ON THEM    PETRA SHERMAN, THIS IS  
17        MARKED AS STATE'S EXHIBIT 9, BUT PETRA SHERMAN IN HER  
18        INTERVIEWS WITH US INDICATED THAT SHE HAD ONLY BEEN  
19        IN THE HOUSE FOR A FEW MINUTES, THIS WAS THE VERY  
20        FIRST TIME THAT THEY'D EVER MEET FACE-TO-FACE    THEY  
21        TALKED ON THE TELEPHONE AND APPARENTLY EXCHANGED SOME  
22        EMAILS, BUT SHE SAID SHE'D BEEN IN THE HOUSE FOR A  
23        FEW MINUTES, LONG ENOUGH FOR HIM TO POUR THEM BOTH A  
24        GLASS OF TEA, SHE SMOKED A CIGARETTE, AND BASICALLY  
25        GOT THE CALL FROM HIM SAYING HE WAS SITTING ON THE



1 HOOD OF THE CAR AND THAT PICTURE CLEARLY SHOWS THERE  
2 ARE TWO GLASSES OF TEA, THEY ARE SEPARATED BY THE  
3 POLE THERE IS A CHAIR THAT IS OVER TURNED IN THAT  
4 PHOTOGRAPH WHICH IF YOU STRAIGHTENED IT OUT, THERE IS  
5 A GLASS OF TEA FOR THE CHAIR AND A GLASS OF TEA FOR  
6 THE COUCH, SO THE DEFENDANT'S STATEMENT THAT THEY  
7 WERE SITTING ON THE COUCH COZIED UP TOGETHER DOESN'T  
8 JIBE WITH THAT AND THAT TENDS TO CORROBORATE WHAT  
9 PETRA SHERMAN SAID THAT HE HAD JUST POURED THEM A  
10 GLASS OF TEA AND SAT IT DOWN AND THEY WERE SITTING  
11 SEPARATED AND APART THERE IS ONE CIGARETTE BUTT IN  
12 THE ASTRAY THAT PETRA SHERMAN SAID SHE SMOKED

13 THESE ARE SOME PHOTOGRAPHS, STATE'S  
14 EXHIBIT 36 AND 19, THAT DEPICT MR BURGESS AS HE LAY  
15 ON THE GROUND THE AMOUNT OF DAMAGE DONE TO  
16 MR BURGESS BY THE ASSAULT WAS TERRIFIC I SPOKE  
17 WITH DR JENKINS AND I ASKED HIM COULD YOU, IN  
18 ADDITION TO, YOU KNOW, THE REGULAR DESCRIPTION OF THE  
19 WOUNDS AND I'LL HAND THAT UP TO YOU, AND I BELIEVE  
20 THESE ARE PHOTOGRAPHS FROM THE AUTOPSY THERE IS ONE  
21 PARTICULARLY THAT SHOWS A FULL SHOT OF HIS HEAD AND I  
22 BELIEVE YOU'VE SEEN THE PHOTOGRAPH OF MR BURGESS IN  
23 LIFE, WE PUT THAT IN TO DEMONSTRATE THE TREMENDOUS  
24 AMOUNT OF SWELLING THAT HIS HEAD UNDER WENT FROM ALL  
25 THE VARIOUS BLOWS THAT HE ENDURED HE HAD A PARTIAL

1 PLATE, A DENTURE PLATE IN HIS MOUTH, THAT WAS RIPPED  
2 OUT AND BROKEN INTO SEVERAL PIECES AND WAS STREWN  
3 ABOUT THE FLOOR HIS MOUTH, AS YOU CAN SEE FROM THE  
4 ONE PICTURE, WAS PARTICULARLY SWOLLEN SHUT, THE  
5 TONGUE EVERYTHING, IT WAS HARD TO INTUBATE HIM  
6 BECAUSE HIS MOUTH WAS SO SWOLLEN, MASSIVE AMOUNT OF  
7 BRUISING RIGHT THERE BOTH EYES ARE BLACK HIS NOSE  
8 IS BROKEN YOU CAN'T SEE IT IN THE PHOTOGRAPHS  
9 BECAUSE IT IS UNDERNEATH THE SKIN, BUT ON ONE SIDE OF  
10 HIS HEAD BASICALLY WHEN THEY DID THE AUTOPSY AND THEY  
11 CHECKED UNDER HIS SKIN NEXT TO THE SKULL IT WAS  
12 BLACK, ALL BLACK IN THERE, FROM BLOWS THAT HE  
13 RECEIVED ON THE SIDE OF HIS HEAD AND I ASKED DR  
14 JENKINS IF HE COULD GIVE ME SOME IDEA OF WHAT AMOUNT  
15 OF FORCE IT WAS NECESSARY, WHAT HAD HE SEEN IN OTHER  
16 DEATH SITUATIONS THAT WAS COMPARABLE, THAT HAD CAUSED  
17 THAT KIND OF DAMAGE TO A HEAD AND HE SAID IT'S  
18 COMPARABLE TO SOMEBODY IN A 50 TO 60 MILE AN HOUR CAR  
19 CRASH COMING UP OVER THE STEERING WHEEL AND HITTING  
20 THE SIDE OF THEIR HEAD AGAINST THE WINDSHIELD SO  
21 THIS WAS A TREMENDOUS AMOUNT OF FORCE THAT WAS USED,  
22 IT WAS A SAVAGE, SAVAGE ATTACK THERE IS A PIECE OF  
23 MR BURGESS'S DENTURE, ANOTHER PIECE WAS FOUND UP  
24 UNDERNEATH HIM STUCK TO HIS CLOTHING AND IS STILL  
25 STUCK THERE TODAY IN A BAG OVER HERE NEXT TO OUR

1 TABLE

2 I ALSO WOULD HAND UP FOR THE COURT'S  
3 CONSIDERATION STATE'S EXHIBIT 30 THAT'S THE  
4 STATEMENT THAT YOU SAID YOU HAD REVIEWED FOR THE  
5 PURPOSES OF DENNO BUT HAD NOT REVIEWED THE ACTUAL  
6 WHAT HE HAD SAID THERE WAS NO---

7 THE COURT I TAKE IT BACK I DID NOT  
8 READ THIS WORD FOR WORD, BUT IT'S COMING BACK TO ME  
9 EVEN THOUGH IT WAS JUST YESTERDAY, I DID SKIM IT

10 MR BRACKETT HE GAVE, IF YOU'LL NOTICE  
11 THAT THE STATEMENT THAT HE GIVES THERE IS  
12 INCONSISTENT WITH THE STATEMENT THAT HE GAVE TO THE  
13 LAW ENFORCEMENT OFFICERS AT THE HOSPITAL IN THAT  
14 STATEMENT HE INDICATES THAT PETRA DID COME OUT AND IN  
15 THE STATEMENT HE GAVE AT THE HOSPITAL HE SAYS HE  
16 KNOCKED ON THE DOOR BUT PETRA WOULDN'T COME OUT SHE  
17 CAME OVER TO THE WINDOW AND GRINNED AT HIM AND THAT  
18 THAT'S WHAT SET HIM OFF AND HE CAME THROUGH THE  
19 WINDOW AT HER

20 MR BURGESS NEVER DID ANYTHING, AND  
21 THIS WAS OUR PROBLEM FROM THE BEGINNING, WE NEVER SAW  
22 MANSLAUGHTER IN THIS BECAUSE WE NEVER SAW THAT MR  
23 BURGESS EVER DID ANYTHING TO PROVOKE MR FREEMAN INTO  
24 ATTACKING HIM MR BURGESS DIDN'T EVEN KNOW WHO  
25 MR FREEMAN WAS MR BURGESS WAS MEETING A GIRL FOR

1 THE FIRST TIME TO WATCH A MOVIE AND EAT A PIZZA AT  
2 HIS APARTMENT AND HAD NO CLUE WHO MR FREEMAN WAS  
3 MR FREEMAN CAME INTO MR BURGESS'S APARTMENT, HAD TO  
4 BREAK THROUGH HIS WINDOW TO GET AT HIM MR BURGESS  
5 WAS ATTEMPTING TO FLEE HIS OWN HOME TO GET AWAY FROM  
6 HIM AND HE TACKLED HIM AT THE DOOR AS HE TRIED TO  
7 FLEE AND BEAT HIM DOWN TO DEATH IN HIS OWN HOUSE  
8 THAT IS MURDER AND THERE IS SIMPLY NO TWO WAYS AROUND  
9 IT MR BURGESS DID ABSOLUTELY NOTHING TO PROVOKE  
10 THIS RESPONSE NOW PETRA SHERMAN AND WHAT SHE MAY  
11 HAVE DONE, BUT PETRA WASN'T ASSAULTED THAT DAY  
12 MR BURGESS WAS THE PROVOCATION NEEDS TO COME FROM  
13 THE VICTIM NOT FROM SOME THIRD PARTY SO WE NEVER  
14 SAW THIS AS A VOLUNTARY MANSLAUGHTER SITUATION THEY  
15 DIDN'T, EVEN MR FREEMAN DOES NOT INDICATE THAT HE  
16 EVER SAW THEM IN A SEXUAL ACT ON THE COUCH, THAT THEY  
17 WERE SITTING ON THE COUCH IN ONE INSTANCE, THAT SHE  
18 GRINNED AT HIM IN ANOTHER STATEMENT, AND THEN IN THE  
19 WRITTEN STATEMENT FINALLY THAT AS HE STOOD UP OFF THE  
20 COUCH THAT HE PULLED HIS PANTS UP OR HE WAS, APPEARED  
21 TO BE PULLING UP HIS PANTS IN THIS FASHION, BUT NO  
22 INDICATION THAT THEY WERE DOWN AROUND HIS ANKLES,  
23 AROUND HIS KNEES, THAT HE WAS BUTTONING THEM AND  
24 PUTTING A BELT ON, OR ANYTHING OF THAT NATURE IT  
25 WAS SIMPLY, YOU KNOW, PITCHING UP HIS PANTS AFTER HE

1 HAD SITTING DOWN WHICH I SUBMIT AFTER MR FREEMAN  
2 WAS POUNDING ON THE DOOR, THAT MR BURGESS WOULD  
3 NOT -- I'M SORRY, THAT MR BURGESS WOULD NOT HAVE  
4 BEEN SITTING ON THE COUCH WHILE ALL THIS WAS GOING ON  
5 AND IN ORDER FOR THAT STATEMENT TO BE TRUE, BASICALLY  
6 MR BURGESS WOULD HAVE HAD TO CALMLY SIT ON HIS COUCH  
7 WHILE MR FREEMAN POUNDED ON HIS DOOR AND THEN CAME  
8 BACK AROUND AND LOOKED IN THE WINDOW AND SAW HIM  
9 GETTING UP OFF THE COUCH AND PULLING UP HIS PANTS UP  
10 AND I DON'T THINK MR FREEMAN WAS DOING THAT I  
11 THINK MR FREEMAN WAS FRANTICALLY CALLING HIS FRIEND  
12 TIM CARTER TO COME OVER AND GIVE HIM SOME HELP

13 AT THE APPROPRIATE TIME -- I THINK  
14 THAT'S IT FACTUALLY HE DOES NOT HAVE A PRIOR  
15 RECORD AT THE APPROPRIATE TIME I WOULD LIKE TO  
16 ADDRESS THE SUICIDE ISSUES AND WHAT WE THINK IS  
17 APPROPRIATE SENTENCING AS WELL AS HAVING THE VICTIMS  
18 COME UP AND BE HEARD FROM

19 THE COURT ALL RIGHT MR FREEMAN, THE  
20 RECITATION OF THE FACTS, YOU HEARD THE EVIDENCE  
21 YESTERDAY WHICH I'M TAKING INTO CONSIDERATION, AND  
22 HIS, I'M NOT ASKING YOU TO CONFIRM HIS THEORIES ABOUT  
23 THE TEA AND ONE SITTING ON THE COUCH, I'M NOT ASKING  
24 YOU TO CONFIRM THAT, WHY HE WAS HITCHING HIS PANTS UP  
25 OR IF HE WAS HITCHING HIS PANTS UP, BUT THE BASIC

1       FACTS     ENTERING THE HOME AND ASSAULTING MR   BURGESS  
2       IN WHICH HE DIED, DO YOU AGREE WITH THOSE FACTS?

3               MR   FREEMAN     YES, SIR

4               THE COURT     HE SAID YES, SIR     ALL RIGHT  
5       I ACCEPT YOUR PLEA, MR   FREEMAN     I FIND IT'S FREELY,  
6       VOLUNTARILY, KNOWINGLY -- PLEAS TO THREE CHARGES     I  
7       FIND THEY ARE FREELY, VOLUNTARILY, KNOWINGLY, AND  
8       INTELLIGENTLY ENTERED     THEY ARE ENTERED WITH ADVICE  
9       OF COMPETENT COUNSEL WITH WHOM YOU ARE SATISFIED AND  
10      I FIND THAT THE FACTS SUPPORT YOUR PLEAS AND YOU'VE  
11      SIGNED PLEAS OF GUILT

12              NOW I'M GOING TO ASK THE STATE TO  
13      CONTINUE WITH HIS PRESENTATION AND WHEN HE'S FINISHED  
14      I'LL HEAR FROM YOUR ATTORNEYS AND I THINK THERE ARE  
15      SOME OF YOUR FAMILY MEMBERS HERE, I'LL CERTAINLY BE  
16      GLAD TO HEAR FROM THEM, AND THEN YOU     YES, SIR

17              MR   BRACKETT     MAY IT PLEASE THE COURT  
18      THE FIRST THING I'D LIKE TO COMMENT ON IS THE SUICIDE  
19      ISSUES THAT THEY ARE UNDOUBTEDLY GOING TO RAISE IN  
20      THEIR MITIGATION     THE STATE'S POSITION IS THOSE WERE  
21      SUICIDE GESTURES     THERE IS NO DOUBT THAT THE  
22      RELATIONSHIP BETWEEN MR   FREEMAN AND MS   SHERMAN WAS  
23      ODD     IT WAS ONLY TWO MONTHS OLD     IT WAS NOT SOME  
24      LENGTHY LOVE AFFAIR OR MARRIAGE THAT BEEN GOING ON  
25      FOR 15 TO 20 YEARS     THIS WAS A VERY SHORT LIVED

1       RELATIONSHIP AND IT WAS STORMY IT HAD ITS PROBLEMS  
2       I SUBMIT THAT THE PROBLEMS EXISTED ON BOTH SIDES AND  
3       OUR POSITION IS IS THAT THE SUICIDE ATTEMPTS WERE  
4       REALLY SUICIDE GESTURES AND THAT MR FREEMAN WAS  
5       ATTEMPTING TO MANIPULATE THE SITUATION WITH HIS  
6       BEHAVIOR IN MUCH THE SAME WAY THAT MS SHERMAN WAS  
7       MANIPULATING THE SITUATION WITH HER BEHAVIOR  
8                 BOTH THE ATTEMPT THE WEEK BEFORE  
9       INVOLVED A KNIFE IN WHICH MR FREEMAN HELD A KNIFE UP  
10      TO HIS CHEST BUT HE INDICATED TO THE OFFICERS  
11      AFTERWARDS THAT HE, WHEN HE STARTED POKING HIMSELF  
12      WITH THE KNIFE HE WOULDN'T HAVE PUSHED IT ANY FURTHER  
13      BECAUSE IT HURT TOO MUCH AND HE ONLY AGREED TO GIVE  
14      THE KNIFE UP AFTER MS SHERMAN, AFTER HE TOLD THEM,  
15      THE POLICE, THAT HE WANTED THEM TO GO TO MS SHERMAN  
16      AND HAVE HER WRITE HIM A NOTE TELLING HIM HOW SHE  
17      FELT ABOUT HIM SO IT WAS CLEARLY AN ATTEMPT TO  
18      MANIPULATE PETRA SHERMAN AND I SUBMIT THAT THE  
19      MANIPULATION WAS GOING BOTH WAYS  
20                 THE PILL OVERDOSE WAS DONE IN SUCH A  
21      WAY SO AS TO ENSURE THAT MS SHERMAN, WHO WAS ON THE  
22      WAY HOME, WOULD FIND HIM IN THAT CONDITION AND  
23      AGAIN IT'S OUR POSITION THAT WAS A SUICIDE GESTURE  
24      THAT WAS DONE IN AN ATTEMPT TO INFLUENCE AND  
25      MANIPULATE PETRA SHERMAN'S FEELINGS FOR HIM

1 I'LL SPEAK ON SENTENCING AFTER THE  
2 VICTIMS HAVE HAD AN OPPORTUNITY TO COME FORWARD, BUT  
3 I DO WANT THE COURT TO CONSIDER, THIS IS HOW  
4 MR FREEMAN LOOKED AT THE TIME OF HIS ARREST, THAT'S  
5 STATE'S EXHIBIT 29, THAT WAS HIS MUG SHOT THAT WAS  
6 TAKEN AFTER HE WAS ARRESTED

7 HETHIE AND RONALD BURGESS, CRAIG PATRICK,  
8 DAN ROGERS, AND WE CAN ONLY HAVE TWO AT A TIME SO  
9 STATE YOUR NAME AND YOUR RELATIONSHIP TO  
10 MR MICHAEL BURGESS, SPEAK LOUDLY ENOUGH SO THE COURT  
11 REPORTER CAN HEAR YOU

12 MRS BURGESS MY NAME IS HETHIE BURGESS  
13 I WAS MICHAEL'S MOTHER

14 MR PATRICK MY NAME IS CRAIG PATRICK  
15 I'M THE BOTHER OF HETHIE AND UNCLE OF MICHAEL I'LL  
16 BE READING A LETTER THAT'S SIGNED BY RONALD H  
17 BURGESS TO THE PRESIDING JUDGE OF THE SIXTEENTH  
18 JUDICIAL CIRCUIT ON MONDAY NIGHT, AUGUST 28, 2006,  
19 WE RECEIVED A PHONE CALL NO PARENT WANTS TO RECEIVE  
20 AND THAT EVERY PARENT DREADS RECEIVING THE CALL  
21 CAME FROM MY DAUGHTER-IN-LAW SAYING THAT OUR SON  
22 MICHAEL HAD BEEN ASSAULTED AND WAS AT THE HOSPITAL  
23 AND THAT IT WAS NOT GOOD WE LEFT OUR HOME IN FORT  
24 LAWN AND WHEN WE ARRIVED AT PIEDMONT HOSPITAL  
25 APPROXIMATELY 30 MINUTES LATER WE WERE TOLD MICHAEL'S



1       CONDITION WAS VERY GRAVE AND THAT HE WAS BEING PUT IN  
2       AN AMBULANCE TO BEING TAKEN TO THE CAROLINA MEDICAL  
3       CENTER IN CHARLOTTE    IN THE EARLY HOURS OF TUESDAY  
4       MORNING, AUGUST 29, MICHAEL DIED    FROM THE TIME OF  
5       THAT PHONE CALL ALL THE WORLD FELL APART AND WE KNOW  
6       OUR LIVES WILL NEVER BE THE SAME    STEVEN FREEMAN  
7       TOOK IT UPON HIMSELF TO CHANGE OUR WORLD THAT NIGHT  
8       STEVEN FREEMAN MURDERED OUR ONLY CHILD   STEVEN  
9       FREEMAN MURDERED THE FATHER OF OUR THREE  
10      GRANDCHILDREN   STEVEN FREEMAN RUDELY AND SENSELESSLY  
11      BEAT MICHAEL TO DEATH THAT NIGHT LEAVING US TO GRIEVE  
12      FOR OUR SON AND FOR THE REST OF OUR LIVES AND LEAVING  
13      OUR GRANDCHILDREN TO BE RAISED WITHOUT THEIR FATHER  
14                           AT TIMES THE PAIN STEVEN FREEMAN  
15      BROUGHT TO US SEEMS UNBEARABLE    JANUARY 12 IS MY  
16      MICHAEL'S BIRTHDAY   ON JANUARY 12 THIS YEAR WE WOULD  
17      NOT GET OUR USUAL PHONE CALL FROM MICHAEL   YOU SEE,  
18      MICHAEL ALWAYS CALLED ON HIS BIRTHDAY SO WE COULD  
19      WISH HIM A HAPPY BIRTHDAY   WE KNOW THAT THIS HAS  
20      BEEN PAINFUL FOR STEVEN FREEMAN'S FAMILY AND WE PRAY  
21      FOR STRENGTH FOR THEM AS WE PRAY FOR STRENGTH FOR  
22      OURSELVES   HOWEVER, WHEN WE GO TO THE CEMETERY TO  
23      VISIT THAT COLD PIECE OF STONE WITH MICHAEL'S NAME,  
24      DATE OF BIRTH, AND DATE OF DEATH ON IT, WE CAN'T HELP  
25      BUT THINK THAT AT LEAST STEVEN FREEMAN'S FAMILY CAN

1        STILL VISIT WITH HIM, CAN STILL SIT DOWN AND TALK  
2        WITH HIM, AND CAN STILL GIVE HIM A HUG AND A KISS AND  
3        CAN STILL WISH HIM A HAPPY BIRTHDAY

4                        WE'VE BEEN TOLD THAT STEVEN FREEMAN'S  
5        ACTIONS THAT NIGHT WERE OUT OF CHARACTER FOR HIM    WE  
6        HAVE NO WAY OF KNOWING WHETHER THIS IS TRUE OR NOT,  
7        BUT WE DO KNOW THAT WE ARE ALL RESPONSIBLE FOR OUR  
8        ACTIONS AND MUST ACCEPT THE CONSEQUENCES OF OUR  
9        ACTIONS    WITH THAT IN MIND, YOUR HONOR, WE  
10       RESPECTFULLY ASK THAT YOU HAVE AS MUCH MERCY ON  
11       STEVEN FREEMAN AS HE HAD ON OUR SON THAT NIGHT, ON  
12       THE NIGHT THAT HE MURDERED MICHAEL    YOUR HONOR, WE  
13       RESPECTFULLY ASK THAT YOU SENTENCE STEVEN FREEMAN TO  
14       SPEND THE REST OF HIS LIFE IN PRISON    RESPECTFULLY  
15       RONALD BURGESS    AND HETHIE BURGESS

16                        MR   BRACKETT    MR   TIM CARTER

17                        MR   CARTER    MY NAME IS TIM CARTER    YOUR  
18       HONOR, FOR MY SHORT TIME ME KNOWING MR   BURGESS, ME  
19       NOT HAVING A LOT OF FRIENDS, HE WAS LIKE A BROTHER TO  
20       ME    THERE IS NOT A DAY I DON'T THINK ABOUT HIM    I  
21       MISS HIM VERY MUCH AND I DON'T WISH ANYTHING, WHAT  
22       HAPPENED THAT NIGHT, TO ANYBODY IN THIS WORLD    IT  
23       WAS VERY TRAUMATIZING    IT AFFECTED MY LIFE    AND I  
24       HOPE I NEVER GO THROUGH ANYIHING LIKE THAT IN MY LIFE  
25       AGAIN AND I MISS MR   BURGESS DEARLY

---

1                   THE COURT    THANK YOU

2                   MR   BRACKETT    GINA BURGESS    YOUR HONOR,

3   THIS IS GINA BURGESS THE WIFE OF MICHAEL BURGESS

4                   THE COURT    YES, MA'AM

5                   MR   BRACKETT    AND MR   JAMES DAWKINS, HIS

6   FATHER-IN-LAW

7                   MR   DAWKINS    YOUR HONOR, I'M

8   FATHER-IN-LAW OF MICHAEL BURGESS    I THINK YOU'VE

9   HEARD FROM MICHAEL'S PARENTS    THE SIDE OF COURSE

10   THAT'S GOING WITHOUT SAYING THE LOSS    I WANT TO

11   SHARE WITH YOU THE THREE THAT I CANNOT REPRESENT

12   THEMSELVES TODAY BECAUSE OF THEIR AGE    THEY ARE MY

13   GRANDCHILDREN    THEY CALL ME PAW-PAW    THEY LOVED

14   THEIR DADDY MORE THAN ANY KIDS    YOU NOTICED IN

15   EVIDENCE YESTERDAY THAT MR   CARTER SAID THAT HE HAD

16   TAKEN THEM TO CHUCK E   CHEESE    HE DIDN'T SAY THAT

17   THE NIGHT AFTER THAT THAT HE HAD HIS DAUGHTER OVER

18   FOR THE NIGHT    HE LOVED HIS CHILDREN AND THEY LOVED

19   HIM, YOUR HONOR

20                   THE FIVE YEAR OLD NICHOLAS, THE MIDDLE

21   CHILD, HAS VERY SERIOUS ISSUES LOSING HIS FATHER    HE

22   WAS SO CLOSE TO HIM    HE NOT ONLY LOOKS LIKE HIM BUT

23   THEY WERE JUST STUCK TOGETHER, AS A SAYING WE HAVE,

24   JOINED AT THE HIP    THIS CHILD NOW CANNOT SLEEP AT

25   NIGHT    HE HAS NIGHTMARES    HE WANTS HIS FATHER    HE

1 WANTS HIS DADDY HE DOESN'T WANT HIS MOMMA TO LEAVE  
2 HOME HE DOESN'T WANT ANYBODY IN HIS CARE TO LEAVE  
3 BECAUSE HE'S AFRAID THEY WON'T COME BACK HE'S IN  
4 PSYCHOLOGICAL CARE HE HAS TO GO THE OTHER TWO  
5 CHILDREN HAVE ISSUES ALSO THEY ARE NOT AS  
6 COMPLICATED RIGHT NOW OR DOESN'T SEEM TO BE BUT THE  
7 LITTLE GIRL, THREE YEAR OLD, JUST LAST WEEK FOR  
8 INSTANCE ASKED MY WIFE, BECAUSE MY WIFE WAS LAYING  
9 HER DOWN HAVING A PRAYER, SHE SAID I WANT TO SEE MY  
10 DADDY AND WE HAVE A LITTLE THAT GINA CAME WITH UP,  
11 WELL, BABY CLOSE YOUR EYES AND REMEMBER AND YOU CAN  
12 SEE YOUR DADDY AND SHE SAID I CANNOT SEE HIM, NANA  
13 AND SHE SAYS TRY HARDER HERE'S A CHILD THREE YEARS  
14 OLD THAT IS FORGETTING WHAT HER FATHER LOOKED LIKE  
15 AND WE CAN THANK MR FREEMAN FOR THAT

16 I'M NOT SPEAKING FOR MYSELF, YOUR  
17 HONOR I AM SPEAKING FOR THOSE THREE CHILDREN THEY  
18 WON'T BE ABLE TO GO TO THE SOCCER GAME AND HAVE THEIR  
19 DADDY HELP THEM COACH THEM AS MOST DADDYS AND A LOT  
20 OF DADDYS DO AND MICHAEL DID WHEN THEY COME OFF THE  
21 FIELD HE WON'T BE THERE TO PAT THEM ON THE BACK AND  
22 TELL THEM WHAT A GOOD JOB THEY DID WHETHER THEY  
23 TRIP AND FELL ON FLAT ON THEIR FACE OR WHETHER THEY  
24 SCORED A GOAL BECAUSE THAT'S THE WAY MICHAEL WAS, HE  
25 LOVED HIS CHILDREN, HE SUPPORTED THEM, AND THEY WILL

1       MISS THAT SUPPORT

2                       THE BURDEN NOW HAS SHIFTED SOLELY ON

3       TO GINA THROUGH THE HELP OF HER PARENT-IN-LAWS RON

4       AND HETHIE, AUNTS AND UNCLES, MY WIFE AND MYSELF,

5       CHURCH MEMBERS, AND FRIENDS AND COMMUNITY   WE'RE

6       STRUGGLING ALONG AND DOING AS WELL AS TO BE EXPECTED

7       BUT I JUST WANTED YOU TO KNOW, YOUR HONOR, THAT AS A

8       CHRISTIAN MAN I KNOW THAT THE LORD HAS A PLACE FOR

9       PEOPLE THAT HURT FAMILIES AND PEOPLE IN SUCH A WAY,

10      AND I JUST ASK THAT GOD HAVE MERCY ON THIS MAN BUT

11      YOU, YOUR HONOR, I ASK NOT TO HAVE ANY MERCY

12      WHATSOEVER   YOU GIVE HIM THE FULL EXTENT OF THE LAW

13      AS YOU KNOW IT AND THAT WOULD STILL BE NOT ENOUGH FOR

14      WHAT THIS MAN DESERVED FOR WHAT HAS HAPPENED TO THESE

15      THREE CHILDREN   NOT FOR ME, NOR NOT GINA'S LIFE, BUT

16      FOR THOSE THREE CHILDREN, YOUR HONOR   THEY DESERVE

17      THAT

18                      THE COURT   THANK YOU

19                      MR   DAWKINS   THANK YOU

20                      MRS   BURGESS   I'M GINA BURGESS   I'M JUST

21      GOING TO READ THIS

22                      THE COURT   THAT WILL BE FINE

23                      MRS   BURGESS   AS I SIT BEFORE MY HEART IS

24      FULL OF GRIEF   MY FAMILY AND I HAVE BEEN DEPRIVED OF

25      MY HUSBAND, A FATHER, AND A FRIEND   DEATH IS COMMON

1 PLACE IN OUR WORLD, BUT ON AUGUST 29 THIS AFFECTED ME  
2 AND MY FAMILY FIRST HAND IT IS IMPOSSIBLE FOR ME TO  
3 SIT BEFORE YOU WITHOUT FEELINGS OF ANGER AND HATE  
4 MY HUSBAND WAS A WONDERFUL MAN AND A WONDERFUL  
5 FATHER HE LOVED OUR CHILDREN AND THEY LOVED HIM  
6 MORE THAN ANYTHING IN THIS WORLD

7 ON AUGUST 28 WE HAD SOMEONE COMING IN  
8 THE BACK DOOR AND SAYING DON'T GO CRAZY I KNEW  
9 SOMETHING WAS TERRIBLY WRONG I MADE A TELEPHONE  
10 CALL THAT WOULD CHANGE MY FAMILY'S LIFE FOREVER  
11 THERE HAD BEEN A BREAK IN AND MICHAEL WAS BARELY  
12 HANGING ON IT WAS THE HARDEST THING I'VE EVER HAD  
13 TO DO SAYING GOODBYE TO THE ONE TRUE MAN I LOVED  
14 THE FATHER OF MY THREE CHILDREN HOW DO I EXPLAIN TO  
15 A SIX, A FIVE, AND THREE YEAR OLD THAT THEIR FATHER  
16 HAS GONE TO HEAVEN BECAUSE ONE PERSON IN THIS WORLD  
17 DECIDED TO MAKE POOR CHOICES AND DECIDED THAT IT WAS  
18 OKAY TO KILL ANOTHER PERSON WITH HIS BARE HANDS  
19 MICHAEL WAS A KIND AND GENTLE MAN AND WOULD NEVER  
20 HURT ANYONE AND FOR SOMEBODY TO TAKE HIS LIFE IS  
21 UNBELIEVABLE I CANNOT IMAGINE THE PAIN OR THE FEAR  
22 THAT MICHAEL MUST HAVE EXPERIENCED THAT NIGHT ONLY  
23 GOD KNOWS

24 AS A PERSON WHO HAS RUINED MY FAMILY,  
25 MY CHILDREN HAVE A LONG ROAD AHEAD OF THEM GROWING UP

1 WITHOUT THEIR DAD IT'S A PARENT'S JOB TO PROTECT A  
2 CHILD FROM THIS VISCOUS WORLD I WANT YOU TO KNOW  
3 THAT MY SIX YEAR OLD PATRICK WON'T SLEEP ANYWHERE  
4 EXCEPT IN THE BED WITH ME AND HE SLEEPS WITH PLASTIC  
5 SWORDS UNDER HIS PILLOW SO HE'LL PROTECT ME FROM THE  
6 BAD GUYS I WANT YOU TO KNOW HOW MY FIVE YEAR OLD  
7 NICHOLAS IS IN THERAPY BECAUSE HE CANNOT COPE  
8 EFFECTIVELY WITH HIS LOSS HE CAN'T SLEEP THROUGH  
9 THE NIGHT DUE TO HIS HORRIFIC NIGHTMARES THAT LEAVE  
10 HIM TERRIFIED HE'LL WAKE WITH BLACK CIRCLES UNDER  
11 HIS EYES BECAUSE HE CAN'T SLEEP AND HE'S SO  
12 DEPRESSED I WISH YOU COULD HEAR HIS SCREAMS IN THE  
13 NIGHT FOR HIS DADDY HE WILL NOT LET ME OUT OF HIS  
14 SIGHT BECAUSE HE'S AFRAID I'LL BE SHOT OR KILLED OR  
15 WON'T COME HOME HE HAS HIS LIFE PLANNED OUT THAT IF  
16 I DIE HE'LL GO LIVE WITH HIS GRANDPARENTS AND THEN IF  
17 THEY DIE, HE'LL GO LIVE WITH HIS UNCLE TODD  
18 I WANT Y'ALL TO KNOW THAT WHEN MY  
19 THREE YEAR CLOSES HER EYES AND TALKS TO HER FATHER  
20 EVERYDAY IS NOT FAIR THAT SO MANY PEOPLE AND SO  
21 MANY INNOCENT CHILDREN HAVE BEEN HURT BECAUSE SOMEONE  
22 THOUGHT IT WAS OKAY TO KILL ANOTHER HUMAN BEING  
23 AFTER I SAW MICHAEL IN THE HOSPITAL IT WAS HARD FOR  
24 ME TO -- I SAW HOW BADLY HE HAD BEEN BEATEN HOW  
25 SWOLLEN AND BRUISED HE WAS I BARELY RECOGNIZED HIM

1 I CAN'T IMAGINE THE RAGE AND ANGER THAT WOULD HAVE  
2 BEEN REQUIRED FOR THIS TYPE OF DAMAGE MICHAEL WAS  
3 BEATEN SO BADLY THAT HIS FUNERAL WAS A CLOSED SERVICE  
4 BECAUSE NOBODY WOULD HAVE RECOGNIZED HIM IN HIS  
5 CASKET THE SINGLE HARDEST THING I HAVE EVER HAD TO  
6 FACE IN MY LIFE WAS BURYING MY HUSBAND SIX MONTHS  
7 BEFORE HIS 31TH BIRTHDAY, TELLING THE DOCTORS TO STOP  
8 EFFORTS TO REVIVE MICHAEL BECAUSE HE WAS BRAIN DEAD,  
9 AND WATCHING HIS CLOSEST FRIENDS LOWER HIM INTO THE  
10 GROUND THERE ARE DAYS WHEN I WOULD RATHER GIVE UP  
11 AND JUST GO IN THE GROUND AND HAVE THE EARTH COVER  
12 ALL OF US, BUT I HUNG IN THERE FOR MY CHILDREN  
13 BECAUSE I'M ALL THAT THEY HAVE

14 MICHAEL WAS ROBBED OF HIS FUTURE AND  
15 MY CHILDREN HAVE A LONG ROAD AHEAD OF THEM I PRAY  
16 THAT JUSTICE WILL BE SERVED AND THAT STEVEN FREEMAN  
17 WILL SPEND THE REST OF HIS LIFE IN JAIL

18 THE COURT THANK YOU ANYTHING ELSE?

19 MR BRACKETT JUST A COUPLE COMMENTS THAT  
20 I'D LIKE TO ADD THE TESTIMONY OF MS MOISON I THINK  
21 IS VERY IMPORTANT IN TRYING TO FIGURE OUT WHAT  
22 JUSTICE SHOULD BE MEETED OUT FOR MR FREEMAN SHE  
23 SAID SHE WALKED BY HIM ON THE WAY TO THE MAILBOX AND  
24 THEN WORKED HER WAY BACK THROUGH THE POOL, COME BACK  
25 TO HER APARTMENT, AND PUT A MOVIE ON AND ASKED HER



1       HOW MUCH TIME PASSED FROM THE TIME YOU PASSED HIM ON  
2       FOOT WALKING BY THE CAR WHERE HE WAS SITTING ON THE  
3       HOOD UNTIL YOU HEARD THE YELLING START DOWNSTAIRS OR  
4       IN FRONT OF MR BURGESS' APARTMENT   AND SHE SAID 10  
5       TO 15 MINUTES   HE SAT ON THE HOOD OF THAT CAR FOR 10  
6       TO 15 MINUTES AND THOUGHT ABOUT WHAT HE WAS GOING TO  
7       DO   BEFORE THAT, BEFORE THAT, IT'S CLEAR FROM HIS  
8       STATEMENTS HE SUSPECTED THAT PETRA WAS CHEATING ON  
9       HIM AND HE WATCHED AND WAITED FOR HER TO DRIVE BY ON  
10      THE WAY TO I-77 AND THEN TRIED TO FOLLOW HER INTO  
11                      AND COULDN'T QUITE GET IN THERE SO HE  
12      HAD TO ROAM THROUGH THE PARKING LOT OF  
13      APARTMENTS WHICH IS A VERY LARGE APARTMENT COMPLEX,  
14      DISPATCH COULDN'T EVEN SEND ANYBODY OUT THERE BECAUSE  
15      THEY DIDN'T KNOW WHICH SECTION TO SEND IT TO, THE OLD  
16      ONE OR THE NEW ONE, HE HAD TO ROAM THROUGH THE  
17      PARKING LOTS LOOKING FOR HER CAR UNTIL HE FINALLY  
18      FOUND IT AT THE VERY END, THEN HE GETS OUT, AND SITS  
19      OVER ON THE HOOD OF THE CAR AND WAITS FOR 10 TO 15  
20      MINUTES THINKING ABOUT WHAT HE'S GOING TO DO   THIS  
21      WASN'T A MAN WHO SNAPPED   THIS WAS A MAN WHO  
22      CALCULATED WHAT HE WAS GOING TO DO, SAT THERE AND  
23      THOUGHT ABOUT IT, AND COLDLY MALICIOUSLY TOOK THE  
24      LIFE OF MICHAEL BURGESS   MR BURGESS WILL BE DEAD  
25      FOREVER   HE WAS THE SAME AGE AS MR FREEMAN IS NOW

1 I AGREE WITH THE VICTIMS WHEN THEY SAY THAT  
2 MR BURGESS SHOULD SPEND THE REST OF HIS LIFE IN  
3 JAIL MR FREEMAN SHOULD SPEND THE REST OF HIS LIFE  
4 IN JAIL MR BURGESS WILL BE GONE FOR THE REST OF  
5 THEIR LIVES AND THE REST OF THEIR CHILDREN'S LIVES  
6 AND THEY SHOULD NEVER EVER HAVE TO WORRY OR THINK  
7 ABOUT MR FREEMAN GETTING OUT OF JAIL AND WALKING THE  
8 SAME STREETS THAT THEY DO SO THE STATE WOULD JOIN  
9 THEM IN REQUESTING A LIFE SENTENCE FOR MR STEVEN  
10 FREEMAN FOR WHAT HE DID TO MR BURGESS ON AUGUST 28,  
11 2006

12 THE COURT ALL RIGHT MR DEST  
13 MR DEST MAY IT PLEASE THE COURT YOUR  
14 HONOR, I'VE REPRESENTED STEVEN SINCE THE INCEPTION OF  
15 THIS CASE ALONG WITH MR BARROWCLOUGH AND CLEARLY WE  
16 WERE PREPARED TO GO FORWARD IN A TRIAL SETTING AND  
17 THIS DEVELOPMENT TODAY WAS SOMETHING THAT SURPRISED  
18 US WHAT DIDN'T SURPRISE ME THOUGH WAS WHY MY CLIENT  
19 DECIDED TO ENTER A PLEA TODAY BESIDES ADMITTING TO  
20 THE FACTS OF THE CASE, YOUR HONOR, HE SIMPLY TOLD ME  
21 HE DIDN'T WANT THE BURGESS FAMILY OR ANYONE ELSE  
22 ASSOCIATED WITH THIS CASE TO SUFFER ANYMORE AND QUITE  
23 FRANKLY WE CAME OUT HERE AND HE WAS BREAKING DOWN  
24 CRYING IN THE COURTROOM RIGHT BEFORE YOUR HONOR  
25 STEPPED ON THE BENCH AND THAT'S WHEN ALL OF THIS

1       REALLY SORT OF CAME TO A HEAD WITH RESPECT TO HIS  
2       DECISION TO PLEAD

3                       I WILL SAY FOR THE RECORD, YOUR HONOR,  
4       THAT CLEARLY THAT THE DEFENSE WAS PREPARED TO GO  
5       FORWARD, WE WERE PREPARED TO PRESENT OUR VOLUNTARY  
6       MANSLAUGHTER DEFENSE AS I ALLUDED TO IN CHAMBERS  
7       YESTERDAY AND TODAY AND MR FREEMAN FULLY UNDERSTANDS  
8       THAT BY ENTERING A PLEA TO THESE CHARGES THAT WE ARE  
9       OR HE IS I SHOULD SAY GIVING UP THE RIGHT TO ASSERT  
10      THAT DEFENSE    I HAVE EXPLAINED TO HIM WHAT OUR  
11      STRATEGY WOULD HAVE BEEN AND THAT HE REALIZES THAT BY  
12      ENTERING A PLEA THAT HE'LL NEVER BE ABLE TO PURSUE  
13      THAT    AGAIN I'M NOT GETTING INTO THE FACTS OF THE  
14      CASE    I JUST WANT TO LET THE RECORD REFLECT THAT WE  
15      HAD A LENGTHY DISCUSSION REGARDING WHAT HE WAS GIVING  
16      UP

17                     I WILL SAY, YOUR HONOR, THAT SINCE THE  
18      BEGINNING OF THIS CASE I DON'T THINK THERE WAS A DAY  
19      THAT WENT BY WHEN I VISITED HIM AT THE JAIL THAT HE  
20      DIDN'T CRY    I REMEMBER THE VERY FIRST TWO OR THREE  
21      TIMES I WENT TO TALK TO HIM, HE COULD BARELY TALK  
22      BECAUSE HE WOULD BREAK DOWN AND SHOW REMORSE FOR HIS  
23      ACTIONS FROM THE VERY BEGINNING

24                     IT'S A DIFFICULT CASE TO UNDERSTAND  
25      AND I REALIZE THAT, YOUR HONOR    MR BRACKETT ALLUDED

1 TO THE FACT THAT PETRA SHERMAN MAY HAVE HER ISSUES, I  
2 CERTAINLY WOULD AGREE WITH THAT, BUT I DO THINK THAT  
3 IN JUDGING EVERYTHING WE HAVE TO LOOK AT THE TOTALITY  
4 OF A MAN'S LIFE AND I WILL SAY THAT EVERYBODY THAT WE  
5 SPOKE TO EITHER MR BARROWCLOUGH OR MR O KELLY AND  
6 I, EVERYBODY WE TALKED TO HAS SAID NOTHING BUT GOOD  
7 THINGS ABOUT MR FREEMAN WE HAVE THE OPPORTUNITY TO  
8 GO UP TO CHARLOTTE A COUPLE MONTHS AGO TO SEE RANDY  
9 CUTSHAW WHO IS HIS BOSS AT BLYTHE DEVELOPMENT IN  
10 CHARLOTTE AND WE ASKED HIM TO DESCRIBE WHAT KIND OF  
11 WORKER HE WAS AND HE SAID WELL, ANYTHING THAT I  
12 ASKED HIM TO DO HE WOULD DO IT, NEVER QUESTION, NEVER  
13 GOT IN AN ARGUMENT WITH ANYBODY ON EITHER HE WORKED  
14 WITH OR WAS UNDER IN FACT HE WORKED SOME 60 TO 70  
15 HOURS A WEEK AND THE KIND OF WORK HE DID WAS  
16 EXTREMELY, EXTREMELY DIFFICULT AND HE TOLD ME, MR  
17 CUTSHAW TOLD ME, HE SAID OUT OF 600 EMPLOYEES THAT I  
18 HAVE HERE IN CHARLOTTE HE IS THE BEST, HANDS DOWN HE  
19 IS THE BEST, AND HE WOULD HAVE TESTIFIED, YOUR HONOR,  
20 IN OUR CASE TO TALK ABOUT, HOW HE KNOWS HIM AND HIS  
21 PEACEFULNESS AROUND THE WORK SETTING THERE WERE  
22 TIMES WHEN ARGUMENTS WOULD BREAK OUT, CONSTRUCTION  
23 WORKERS, IT WAS STEVEN WHO WAS ALWAYS SETTLING PEOPLE  
24 DOWN, IT WAS STEVEN WHO WOULD RATHER DO SOMEBODY'S  
25 WORK THAN SEE THEM IN TROUBLE IS THE WAY MR CUTSHAW

1       EXPLAINED IT TO ME

2                   I KNOW MR O'KELLY HAD THE OPPORTUNITY  
3       TO SPEAK TO SOME OTHER FOREMEN THAT HE WORKED FOR AND  
4       THEY EXPRESSED BASICALLY THE SAME

5                   AS THE SOLICITOR INDICATED, HE HAS NO  
6       PRIOR CRIMINAL RECORD   HE'S NEVER BEEN IN TROUBLE  
7       WITH THE LAW BEFORE   THE FIRST TIME, THE FIRST TIME  
8       THE POLICE EVER CAME TO HIS RESIDENCE WAS AUGUST  
9       FIRST OF 2006   WE CAN DEBATE WHETHER OR NOT IT REAL  
10      OR NOT, BUT WE DO KNOW THIS, HIS STOMACH WAS PUMPED  
11      OUT   THE EVIDENCE WOULD HAVE SHOWN 21 PILLS OF  
12      FLEXERIL, FIVE PILLS OF HYDROCODINE, A QUANTITY OF  
13      ASPIRIN, AND THEY DID TAKE THIS SERIOUSLY, YOUR  
14      HONOR

15                  THE SECOND TIME THE POLICE ARRIVED AT  
16      HIS HOUSE WAS AUGUST 22 AND I HAD AN OPPORTUNITY TO  
17      SPEAK WOULD TO OFFICER BREEDEN THE OTHER DAY AND I  
18      WILL TELL, YOUR HONOR, HE TOLD ME THAT THEY THOUGHT  
19      HE HAD THE KNIFE TO HIS CHEST, THEY TAZED HIM TWICE,  
20      AND I THINK THE IMPORTANT POINT IS HE DIDN'T DO  
21      ANYTHING IN RETALIATION   HE FINALLY DID LAY IT DOWN  
22      AND THEY DID TAKE HIM TO THE HOSPITAL   HE WAS  
23      TREATED   HE WAS GOING THROUGH A LOT OF THINGS, YOUR  
24      HONOR   WE LATER LEARNED THAT QUITE FRANKLY THERE  
25      WERE THINGS IN HIS LIFE THAT EVEN HIS PARENTS DIDN'T

1       KNOW ABOUT, HE WAS SEXUALLY ABUSED AS A YOUNG CHILD,  
2       AND I THINK SOME OF THOSE THINGS HAVE AFFECTED HIS  
3       LIFE    HE NEVER REALLY HAD ANY RELATIONSHIPS WITH  
4       WOMEN AT ALL    IN FACT I THINK THE TESTIMONY WOULD  
5       HAVE BEEN THAT FROM THE AGE OF 18 TO THE AGE OF 30 HE  
6       REALLY ONLY WENT OUT WITH THREE WOMEN FOR ANY LENGTH  
7       OF TIME    I SAY THAT AS A WAY OF EXPLANATION, YOUR  
8       HONOR, JUST TO SHOW YOU HOW HE WOULD HAVE GOTTEN  
9       INVOLVED IN THIS TYPE OF RELATIONSHIP WITH A WOMAN  
10      WHO I CLEARLY BELIEVE, BASED UPON WHAT I'VE LEARNED,  
11      WAS EXTREMELY MANIPULATIVE, EXTREMELY CONTROLLING TO  
12      A POINT WHERE I THINK IT LEAD HIM DOWN THAT  
13      SPIRALING, THAT PATH WHERE HE JUST WENT OUT OF  
14      CONTROL, AND, YOUR HONOR, I'M NOT HERE TO TRY THE  
15      CASE, I'M NOT GOING TO DO THAT, BUT I WOULD ASK THE  
16      COURT TO AT LEAST LOOK AT FOR A MOMENT THE LAST  
17      LETTER THAT SHE WROTE THAT WAS SENT TO THE  
18      SOLICITOR'S OFFICE    AS I INDICATED EARLIER YOUR  
19      HONOR THAT THE STATEMENT THAT MR   FREEMAN GAVE  
20      INDICATES THAT SHE'S BEEN MESSING WITH MY MIND FOR  
21      WEEKS, THAT SHE THREATENED TO KILL THE BABY WITH AN  
22      ABORTION    I BELIEVE HIS STATEMENT SAYS THAT    YOUR  
23      HONOR, WE DID NOT FIND OUT UNTIL LAST WEEK THAT IN  
24      FACT THAT BABY WAS ABORTED IN SEPTEMBER    I THINK THE  
25      LETTER AND I WILL NOT READ IT TO THE COURT BUT I

1 THINK IS CERTAINLY ILLUSTRATES WHAT WE WERE TRYING TO  
2 CONVEY TO THE COURT REGARDING THE DYNAMICS OF THEIR  
3 RELATIONSHIP

4 THE COURT LET ME STOP RIGHT HAS ANYONE  
5 CONFIRMED THAT SHE WAS PREGNANT OTHER THAN WHAT SHE  
6 SAYS?

7 MR DEST YOUR HONOR, A COUPLE WEEKS AGO  
8 I SERVED A SUBPOENA THROUGH THE SOLICITOR'S OFFICE  
9 AND I ON THE SUBPOENA I ASKED THAT SHE PRODUCE THE  
10 BIRTH CERTIFICATE AND THAT'S WHAT SPAWNED THAT LETTER  
11 BEING PRODUCED TO US A COUPLE DAYS LATER WE HAVE NO  
12 CONFIRMATION THAT SHE EVER WAS PREGNANT, NO, YOUR  
13 HONOR

14 THE COURT HOW ABOUT THE STATE?

15 MR BRACKETT NO, SIR WE CAN'T SAY ONE  
16 WAY OR THE OTHER

17 THE COURT AND THIS IS ADDRESSED TO  
18 RENEE

19 MR BRACKETT RENEE SEALY, SHE'S OUR  
20 VICTIM WITNESS SHE COORDINATED WITH HER

21 THE COURT THAT'S WHAT I THOUGHT, BUT I  
22 JUST WANTED TO MAKE SURE

23 MR DEST AND, YOUR HONOR, AGAIN I'M NOT  
24 GOING TO BELABOR THE POINTS REGARDING THE FACTS HE  
25 DID GO IN AND THERE WAS AN ASSAULT I WILL SAY

1       THOUGH FOR THE RECORD THAT I HAD AN OPPORTUNITY TO  
2       SPEAK TO DR JENKINS AS WELL   WHAT DR JENKINS TOLD  
3       ME, YOUR HONOR, THAT THERE WERE, ALTHOUGH THERE WAS  
4       BLOOD ABOUT THE FACE AND I'M NOT DIMINISHING THE  
5       SERIOUSNESS OF THAT, YOUR HONOR, BUT NONE OF THESE  
6       WERE FATAL BLOWS   THERE WERE ACTUALLY ONLY TWO FATAL  
7       CLOSED HEAD INJURIES   ONE WAS TO THE OCCIPITAL  
8       REGION IN THE BACK OF THE HEAD   THE OTHER ONE WAS TO  
9       THE LEFT TEMPLE AREA   I ASKED DR JENKINS COULD IT  
10      BE THAT ONE OF THOSE INJURIES WOULD HAVE RESULTED  
11      JUST FROM THE TACKLE ITSELF   I BELIEVE THE STATEMENT  
12      THAT MY CLIENT GAVE WAS THAT HE TACKLED HIM NEAR THE  
13      SLIDING GLASS DOOR AND DR JENKINS TOLD ME THAT  
14      CLEARLY THIS WOULD BE CONSISTENT, THIS ONE IN THE  
15      BACK OF THE HEAD, WITH FALLING ON THE FLOOR   AND  
16      THEN THIS ONE, HE CAN'T SAY FOR SURE WHETHER IT WAS  
17      CAUSED BY A PUNCH, IT COULD HAVE BEEN, BUT CERTAINLY  
18      AT MOST THERE IS A SCENARIO WHERE THOSE TWO INJURIES  
19      COULD HAVE OCCURRED VERY QUICKLY, ALMOST AT THE SAME  
20      TIME, WHERE IN FACT THERE WOULD HAVE JUST BEEN ONE  
21      FATAL BLOW   I DON'T DIMINISH THE --

22                   THE COURT   YOU ARE GOING TO HAVE TO TELL  
23      ME THE SIGNIFICANCE OF THAT BECAUSE YOU'VE LOST ME  
24      WITH WHAT THAT --

25                   MR DEST JUDGE,   WHAT I'M TRYING TO



1 ILLUSTRATE THAT THIS IS SOMETHING THAT HAPPENED VERY  
2 QUICKLY THERE HAS BEEN THE CHARACTERIZATION THAT  
3 THERE HAS BEEN REPEATED, REPEATED BEATING DR  
4 JENKINS TESTIMONY WOULD HAVE BEEN IT WAS ALL  
5 CONCENTRATED IN ONE AREA THERE WASN'T ANY OTHER  
6 INJURIES ON THE EXTERNAL PART OF HIS BODY I'M JUST  
7 SAYING, JUDGE, IT WAS SOMETHING THAT COULD HAVE  
8 HAPPENED EXTREMELY QUICKLY AGAIN FITTING INTO WHAT  
9 WE BELIEVED HAPPENED AND IT DID HAPPEN VERY QUICKLY,  
10 YOUR HONOR

11 JUDGE, WE ALSO HAVE BEEN PREPARING  
12 THIS CASE AS WELL THE PROSECUTION AND WE FULLY  
13 RECOGNIZE THAT THIS HAD BEEN DIFFICULT ON EVERYONE,  
14 AND THE SITUATIONS LIKE THIS ARE HARD TO EXPLAIN, AND  
15 PARTICULARLY WITH A YOUNG MAN WHO HAS NO PRIOR  
16 CRIMINAL RECORD, WHO FROM ALL INDICATION HAS NEVER  
17 ASSAULTED ANYONE UNTIL THIS NIGHT SO, JUDGE, I JUST  
18 ASK THAT YOU CONSIDER LOOKING AT HIS LIFE IN ITS  
19 TOTALITY AND I ASK THE COURT TO CONSIDER A MINIMAL  
20 SENTENCE OF 30 YEARS 30 YEARS, OF COURSE, YOUR  
21 HONOR, IS 30 YEARS DAY-TO-DAY WHETHER IT'S BURGLARY  
22 FIRST OR WHETHER IT'S MURDER JUDGE, I ASK THAT YOU  
23 DO THAT IN THIS CASE

24 I KNOW MR BARROWCLOUGH MAY HAVE A COUPLE  
25 THINGS TO ADD WITH RESPECT TO HIS REPRESENTATION OF

1 MR FREEMAN

2 MR BARROWCLOUGH MAY IT PLEASE THE

3 COURT, YOUR HONOR YOUR HONOR, IN PREPARING FOR THIS

4 CASE MY ROLE WOULD HAVE BEEN REALLY TO PRESENT OUR

5 CASE AND CERTAINLY WE'RE HERE PLEADING GUILTY TO

6 MURDER, BUT I DO WANT TO, AND MR BRACKETT GAVE SOME

7 FACTS CONSISTENT WITH HIS THEORIES, AND I WOULD LIKE

8 TO GIVE YOU SOME FACTS I THINK WE WOULD HAVE

9 DEVELOPED BOTH FROM WHAT'S IN THE STATE'S FILE AS

10 WELL AS OUR OWN WHEN THIS HAPPENED MR FREEMAN WAS

11 AT HIS PARENTS' HOUSE IN FORT MILL WHEN HE FIRST GOT

12 A CALL FROM MS SHERMAN AND THAT SHE HAD ASKED HIM TO

13 GO HOME AND TAKE CARE OF THE DOGS THEIR RESIDENCE

14 WAS ON CIRCLE OFF OF MOUNT GALLANT WHICH I'M

15 SURE YOU ARE AWARE IS OFF OF CHERRY ROAD HE WAS ON

16 HIS WAY FROM HIS MOTHER'S HOUSE TO HIS OWN HOUSE ON

17 CHERRY ROAD WHEN, YOU KNOW, UNFORTUNATELY IS WHEN HE

18 PASSED MS SHERMAN AND SAW HER TAKE A TURN, NOT

19 HEADED TOWARDS CHARLOTTE, BUT TO WHERE SHE SAID SHE

20 WAS GOING I SAY THAT BECAUSE I WOULD NOT AGREE WITH

21 MR BRACKETT'S ASSERTION THAT HE WAS STAKED OUT

22 CHERRY ROAD LOOKING TO SEE WHAT SHE WAS DOING THE

23 EVIDENCE WOULD HAVE SHOWN THAT THERE WERE PHONE CALLS

24 TO THE MOTHER'S RESIDENCE IN FORT MILL, HE WAS THERE

25 THE MOTHER WOULD HAVE TESTIFIED, THAT'S WHERE HE WAS

1       GOING

2                       ALSO IN STATEMENTS AND IN LETTERS BY

3       MS SHERMAN, CONTRARY TO THE FACT THAT SHE HAD JUST

4       BEEN IN THERE FOR A MINUTE OR TWO WHEN THIS HAPPENED,

5       LATER SHE STATED THAT SHE ACTUALLY HAD BEEN OVER

6       THERE AT MR BURGESS' APARTMENT EARLIER, AND BEFORE I

7       EVEN GET TO THAT, THAT SHE SAID THAT SHE HAD MADE

8       MR BURGESS AWARE OF THE FACT THAT SHE LIVED WITH

9       MR FREEMAN AND WAS PREGNANT WITH MR FREEMAN'S

10      CHILD, NEVERTHELESS SHE WAS THERE FOR DINNER AND A

11      MOVIE    THEN SHE WAS OVER THERE EARLIER AT HIS

12      SUGGESTION THAT SHE BRING HER DOGS OVER TO HIS

13      APARTMENT, SHE LEFT AND THEN WENT BACK TO HIS

14      APARTMENT AND HAD BEEN THERE FOR HOWEVER AMOUNT OF

15      TIME BEFORE MR FREEMAN ARRIVED   MR FREEMAN WOULD

16      HAVE TESTIFIED AND I THINK IT'S IN HIS STATEMENT THAT

17      HE WAS WALKING UP THE BREEZE WAY WHEN HE OBSERVED

18      THEM TOGETHER ON THE COUCH    FROM THE PICTURE, AND I

19      DON'T KNOW WHICH STATE'S EXHIBIT IT WAS, BUT FROM THE

20      PICTURE YOU CAN SEE THAT THE ONLY PIECE OF FURNITURE

21      THAT WOULD HAVE BEEN REALLY OBSERVABLE THROUGH THE

22      WINDOW FROM THE BREEZEWAY AT THAT ANGLE IS THE COUCH

23      AND OUR POSITION WOULD HAVE BEEN THAT WOULD HAVE

24      SUPPORTED THE VERACITY OF WHAT MR FREEMAN HAD TO SAY

25      ABOUT WHAT HE FIRST OBSERVED, AND THEN, OF COURSE,

1 YOUR HONOR, SHORT TIME PERIOD AFTER THAT WOULD HAVE  
2 BEEN THE PULLING UP OF THE PANTS WHICH MR FREEMAN  
3 TOOK TO BE INDICATIVE OF SOME SORT OF A SEXUAL  
4 ENCOUNTER

5 YOUR HONOR, AS MR DEST STATED,  
6 MR FREEMAN AT 30 YEARS OLD AND I HAVE HAD AN  
7 OPPORTUNITY TO TALK TO HIM MANY, MANY, MANY HOURS IN  
8 PREPARING HIS TESTIMONY AS WELL AS JUST, YOU KNOW,  
9 THE WAY WE DO WHEN WE HAVE OUR CLIENTS ESPECIALLY IF  
10 WE'RE GOING TO BE THE ONE EXAMINING THEM WE TRY TO  
11 GAIN THEIR TRUST, YOU KNOW, AT 30 YEARS OLD HE IS A  
12 PERSON WHO I WOULD SAY HAD SELF-ESTEEM ISSUES RELATED  
13 TO THAT ONE MOLESTATION ENCOUNTER THROUGH HIS  
14 ENTIRE LIFE UP UNTIL THE TIME HE MET MS SHERMAN HE  
15 DID ONLY DATE THREE WOMAN, TWO IN HIGH SCHOOL, AND  
16 ONE OF THEM THE GRAND TOTAL OF TIME IN HIS LIFE  
17 THAT HE SPENT DATING ANYBODY PRIOR TO MS SHERMAN WAS  
18 SIX MONTHS HE WAS EXTREMELY INEXPERIENCED PERSON IN  
19 DATING, IN RELATIONSHIPS WITH WOMEN, HE WAS NAIVE  
20 PERSON, AND I THINK YOU CAN TELL FROM THAT LETTER THE  
21 TYPE OF PERSON THAT MS SHERMAN WAS THERE IS, YOU  
22 KNOW, ALL KINDS OF EVIDENCE -- THE FIRST TIME THEY  
23 MET, WENT TO CHILI'S AT THE END OF THE DATE, YOU  
24 KNOW, SHE SAID, WELL, I DON'T HAVE MONEY TO PAY MY  
25 PHONE BILL, SO HE GAVE HER \$140 THE NEXT TIME HE

1        SAW HER HE BOUGHT HER A TANK OF GAS    YOU KNOW,  
2        CONSTANTLY, SHE MOVED IN WITH HIM AND HE WOULD TAKE  
3        CARE OF HER    EVERY TIME THEY GO OUT TO EAT HE WOULD  
4        PAY    SHE WANTED TO GO TO THE BEACH ALL THE TIME, HE  
5        GAVE UP HIS MORTGAGE PAYMENT ONE TIME TO TAKE HER TO  
6        MYRTLE BEACH    JUST, HE WAS TOTALLY AND CONSTANTLY  
7        BEING TAKEN ADVANTAGE OF BECAUSE OF HIS INEXPERIENCE  
8        IN COHABITING WITH WOMEN  
9                        YOUR HONOR, I'VE TALKED TO HIS  
10       PARENTS    I KNOW THAT THEY WANT TO ADDRESS THE COURT  
11       BUT I CANNOT EXPRESS TO YOU STRONGLY ENOUGH THE MORAL  
12       CHARACTER OF MR   FREEMAN OUTSIDE OF THIS INCIDENT, HE  
13       LIVED 30 YEARS OF HIS LIFE, HE GRADUATED HIGH SCHOOL,  
14       HE PLAYED FOOTBALL    HE GRADUATED ON A FRIDAY AND  
15       BEGAN WORK AT DYLAN'S LANDSCAPING ON A MONDAY    HE  
16       HAS WORKED HIS ENTIRE ADULT LIFE    HE GOT PROMOTIONS  
17       AT DYLAN'S    HE WORKED THERE FOR THREE YEARS, WENT  
18       OVER TO BLYTHE, WITHIN A YEAR OF WORKING AT BLYTHE HE  
19       WAS PROMOTED TO FOREMAN    HE WORKED, AS MR   DEST  
20       SAID, 60-70-80 HOURS A WEEK    I SPOKE WITH TO MR  
21       CUTSHAW WHO IS THE BIG BOSS    I ALSO SPOKE TO ROB  
22       BLACKMAN WHO IS HIS IMMEDIATE SUPERVISOR, THEY BOTH  
23       SAID HE WAS THE HARDEST WORKER    THEY WORK, JUST TO  
24       GIVE YOU SOME EXPLANATION WHAT BLYTHE DOES, THEY  
25       BASICALLY THEY WORK ON SEWER LINES AND WATER LINES

1       DIGGING THEM OUT, FIXING THEM, MOVING THEM, ET  
2       CETERA THEY WORK IN ALL KINDS OF CONDITIONS,  
3       EXTREME HEAT EXTREME COLD THEY SAID HIS DEMEANOR  
4       WAS SUCH THAT WHEN JOBS WERE THE WORST HE COULD TAKE  
5       THE MOST ABUSE FROM THEM, SO WE GOT TO GET THIS DONE,  
6       YOU GOT TO PUSH ON, AND HE WOULD NEVER BACK TALK  
7       THEM, NEVER DO ANYTHING OTHER THAN DO WHAT THEY TOLD  
8       HIM TO DO, AND THAT'S WHAT WHY MR CUTSHAW SAID HE  
9       WAS THEIR BEST EMPLOYEE MR BLACKMAN ECHOED THAT  
10      SENTIMENT AND HE DID, HE WORKED 60-70 HOURS A WEEK  
11      DOING THAT JOB AND REALLY HIS ONLY OTHER HOBBY PRIOR  
12      TO MEETING MS SHERMAN WAS GOING TO THE GYM AND  
13      WORKING OUT I MEAN, I'M NOT PSYCHIATRIST BUT I  
14      WOULD SUBMIT TO THE COURT THAT A LOT OF THAT WOULD  
15      HAVE TO DO WITH HIS SELF-ESTEEM ISSUE, THE FACT THAT  
16      HE WANTED TO BE BIGGER AND STRONGER AND HEALTHIER,  
17      MAKE HIMSELF LOOK BETTER, BECAUSE HE DID HAVE THESE  
18      SELF ESTEEM ISSUES

19                   ANOTHER THING THAT GOES TO THAT, YOUR  
20      HONOR, IS THE FACT THAT HE MET MS SHERMAN ON LINE  
21      HE DIDN'T MEET WOMEN, HE DIDN'T GO OUT TO BARS, HE  
22      DIDN'T GO TO CLUBS HE DIDN'T MEET WOMEN IN A  
23      TRADITIONAL SENSE THE ONLY WAY HE EVEN FELT  
24      COMMUNICATING WITH WOMEN WAS ON LINE, ON MATCH DOT  
25      COM OR YAHOO PERSONALS OR SOMETHING THAT WAS A LITTLE

1 BIT MORE IMPERSONAL WAY OF DOING IT, BUT HE DIDN'T  
2 HAVE THE SELF CONFIDENCE AND THAT'S WHERE HE MET  
3 MS SHERMAN ON LINE  
4 BUT, YOUR HONOR, THIS CLEARLY IS A  
5 TRAGEDY I MEAN THE WORDS CAN'T EXPRESS WHAT A  
6 TRAGEDY IT IS AND CERTAINLY OUR HEARTS GO OUT TO THE  
7 BURGESS FAMILY AND I KNOW YOU HAVE TO SENTENCE HIM  
8 FOR, TO COVER THE SITUATION AND COVER THEIR LOSS, BUT  
9 I WOULD ASK YOU, JUDGE, BEYOND AUGUST 28, YOU KNOW,  
10 BEFORE AUGUST 28 AND EVEN AFTER AUGUST 28, THAT  
11 MR DEST SAID EVERY TIME YOU TALK ABOUT THIS CASE,  
12 HE'D CRY, HE'D FEEL SO BAD, HE WANTS TO SET UP A  
13 TRUST FUND FOR MRS BURGESS' KIDS, HE WANTS TO DO  
14 WHAT HE CAN TO MAKE THIS RIGHT, AND EVEN TODAY THE  
15 REASON WHY HE WAS CRYING UNCONTROLLABLE, WHY HE  
16 SWITCHED HIS PLEA IS BECAUSE HE DIDN'T WANT TO GO ON  
17 HE DIDN'T WANT TO PUT THEM THROUGH IT, HE DIDN'T WANT  
18 TO PUT HIS PARENTS THROUGH IT THAT'S THE KIND OF  
19 PERSON HE IS, THAT'S THE KIND OF CHARACTER HE IS,  
20 AND, YOU KNOW, I JUST THINK THAT SHOULD COUNT FOR  
21 SOMETHING, YOUR HONOR  
22 THE COURT YES, MA'AM YOUR NAME?  
23 MRS FREEMAN YVETTE FREEMAN  
24 MR FREEMAN AND I'M RANDY, STEPHEN'S DAD  
25 THE COURT I'LL BE GLAD TO HEAR FROM

1       EITHER ONE OR BOTH OF YOU

2                   MRS FREEMAN    YES, I'D LIKE TO SAY THAT  
3       MY HEART DOES GO OUT TO THE BURGESS    I DID KNOW WHAT  
4       IT FEELS LIKE TO BURY A KID, WE DONE BURIED TWO, AND  
5       THEN MY SON AS ALWAYS BEEN THE VERY BEST    HE'S NEVER  
6       BEEN DISRESPECTFUL    HE'S NEVER BEEN IN A FIGHT A DAY  
7       IN HIS LIFE AND I PLEASE ASK YOU TO PLEASE HAVE MERCY  
8       ON HIM    THIS IS A, HE HAS ALWAYS BEEN A VERY, VERY  
9       FINE, YOUNG MAN, AND BEFORE THIS DAY NEVER IN HIS  
10      LIFE HAS STEVEN, NEVER LIVED HIS LIFE, HE'S ALWAYS  
11      HELPED PEOPLE, DOES STUFF    PLEASE, PLEASE JUST HAVE  
12      MERCY ON HIM

13                   THE COURT    YES, SIR

14                   MR FREEMAN    WE DO PRAY FOR THE BURGESS  
15      STEVEN DID MAKE A MISTAKE WHICH I THINK HE REALIZED  
16      THIS, BUT I DON'T THINK HE SHOULD BE PUNISHED THE  
17      REST OF HIS LIFE FOR THIS    IT'S NOT ENTIRELY HIS  
18      FAULT    THERE IS SOMETHING ELSE THAT'S GOING ON THAT  
19      WE DON'T KNOW    I CAN'T NOT SPEAK FOR STEVEN, BUT I  
20      CAN TELL IN MY HEART THAT THERE IS SOMETHING ELSE AND  
21      I WISH YOU'D HAVE MERCY ON MY SON    AND LIKE I SAID,  
22      I DO PRAY FOR THE BURGESS AND WE WOULD HELP THEM  
23      ANYWAY WE CAN    I JUST DON'T WANT YOU TO TAKE MY  
24      SON'S LIFE

25                   THE COURT    THANK YOU



1                   MR BARROWCLOUGH   YOUR HONOR, HIS BROTHER  
2   DEWAYNE WOULD LIKE TO ADDRESS THE COURT AS WELL

3                   THE COURT    YES, SIR

4                   MR FREEMAN   YOUR HONOR, DEWAYNE FREEMAN  
5   I'M STEVEN FREEMAN'S BROTHER   I WOULD JUST LIKE TO  
6   STATE THAT ALL MY LIFE, YOU KNOW, WE HAD A VERY CLOSE  
7   RELATIONSHIP AND, YOU KNOW, MY BROTHER, HE'S ALWAYS  
8   HELPED ME OUT, ALWAYS DID ANYTHING   I MEAN WORKED ON  
9   MY HOUSE FOR ME AND EVEN WHEN I DIDN'T EVEN HAVE A  
10   HOUSE, HE LET ME STAY THERE   BASICALLY I DIDN'T EVEN  
11   HAVE TO PAY NOTHING   HE WAS JUST ALWAYS BEEN THERE  
12   FOR ME, FOR ANYBODY THAT EVER ASKED FOR HIM TO DO  
13   ANYTHING   AT, WORK WHEN HE GET OFF OF WORK, HE WOULD  
14   HELP ANYBODY   I MEAN HE WOULD HAVE HELPED ANYBODY IN  
15   THIS COURTROOM IF THEY NEEDED HELP   AND UP TO THE  
16   LAST POINT OF HIS, THE COUPLE MONTHS BEFORE THAT, I  
17   MEAN I NEVER SEEN MY BROTHER REALLY GET TOO  
18   EMOTIONAL, BUT I REMEMBER WORKING ONE SATURDAY WITH  
19   HIM AND SEEING HIM THAT DAY JUST, HE WAS, WE WAS  
20   GOING HOME AND HE WAS JUST CRYING AT THAT DAY BECAUSE  
21   HE COULDN'T, I DON'T KNOW, HE JUST THOUGHT THE OF, I  
22   DON'T KNOW WHAT WAS GOING ON WITH HIM AND HER AT THAT  
23   TIME, BUT IT'S JUST, I MEAN, HE WILL ALWAYS HELP  
24   ANYBODY AND I MEAN HE'S DONE LOT FOR ME, NOT JUST  
25   BECAUSE HE'S MY BROTHER, THAT'S THE WAY HE IS   HE'S

1        DONE A LOT FOR A LOT OF PEOPLE IN CHARLOTTE JUST  
2        OUTSIDE OF WORK AND I WILL SAY FOR HIS JUSTICE, I  
3        MEAN, IT JUST, WHAT IS JUSTICE FOR HIM TO SPEND THE  
4        REST OF HIS LIFE IN JAIL REALLY IS NOT GOING TO HONOR  
5        MR BURGESS OR HONOR THEIR FAMILY ANY AND I JUST  
6        DON'T SEE HOW THAT WILL HELP ANYBODY

7                    THE COURT    THANK YOU    YES, SIR, YOUR  
8        NAME

9                    MR TERRY    HENRY TERRY    I WAS LISTENING  
10       TO THE TESTIMONY OF THIS FAMILY OVER HERE AND I CAN  
11       UNDERSTAND HOW THEY FEEL BECAUSE I'VE LOST BROTHERS  
12       AND SISTERS AND YET WHEN I THINK ABOUT THE WIFE AND  
13       THE CHILDREN AND KNOW WHAT THEY ARE FACING IN  
14       REALITY, MY HEART REALLY BREAKS FOR THEM    THE MOTHER  
15       AND DADDY, I CAN IMAGINE WHEN THEY SAW THEIR SON, SAW  
16       HIM, AND THEN REMEMBERED WHAT HE WAS WHEN HE WAS A  
17       BABY, HOW THEY HELD HIM IN HIS ARMS, HOW THEY PLAYED  
18       WITH HIM AND EVERYTHING ELSE, I KNOW ALL THAT IS  
19       GONE    AND I KNOW STEVEN OVER HERE FOR ABOUT SEVEN  
20       YEARS    I PASTOR A CHURCH IN FORT MILL AND THIS YOUNG  
21       MAN, I'VE NEVER KNOWN HIM TO GO OFF THE WAY THAT I'VE  
22       HEARD HIM DESCRIBED TODAY, AND I NEVER SEEN HIM IN A  
23       RAGE OR ANYTHING LIKE THIS AND I'VE ALWAYS RESPECTED  
24       HIM AND WE'VE HAD WORK TO DO AT OUR CHURCH TO HAVE  
25       SOME GRAVEL PUT DOWN, HE WENT AND TALKED TO HIS

1 BOSSMAN ABOUT GETTING USE MACHINERY TO COME DOWN AND  
2 DO IT AND SPREAD IT OUT FOR US WHICH HE DID TRIED  
3 TO PAY HIM AND HE WOULDN'T TAKE NOTHING FOR IT HE'S  
4 ALWAYS BEEN WITHDRAWED FROM EVERYBODY ELSE HE HAD  
5 NO DEALINGS WITH ANYBODY HE'S STAYED TO HIS SELF  
6 I DON'T KNOW WHAT HE WAS IN HIGH SCHOOL, I DON'T KNOW  
7 WHAT HE WAS RIGHT AFTER HE WENT TO WORK, BUT I DO  
8 KNOW THAT IN THE SEVEN YEARS THAT I'VE KNOWN HIM,  
9 HE'S BEEN QUIET PEACEABLE FELLOW AND AS FAR AS  
10 DRUGS OR ANYTHING, I NEVER KNOWN HIM TO TAKE DRUGS  
11 I'VE NEVER SEEN ANY EVIDENCE OF IT AND I HEAR THE  
12 STEROID HAS BEEN FOUND AT HIS HOUSE AND I DON'T  
13 UNDERSTAND THAT BUT THERE IS A LOT OF THINGS THAT I  
14 DON'T UNDERSTAND BUT STILL, THIS YOUNG MAN HERE, I  
15 KNOW THE FAMILY FEELS HATRED TOWARD HIM, WHICH THEY  
16 HAVE RIGHT TO DO THIS, TO FEEL THAT WAY, BUT BY  
17 TAKING HIM AWAY FROM HIS FAMILY, HIS MOTHER AND DADDY  
18 AS LONG SAY 30 YEARS, THAT'S TAKING A SON JUST LIKE  
19 IT IS FOR THIS FAMILY HERE TAKING THEIR SON AND I'D  
20 HATE TO HAVE YOUR JOB, I TELL YOU THAT NOW, TO MAKE A  
21 DECISION ABOUT THINGS LIKE THIS, BUT THIS YOUNG MAN,  
22 I VISITED WHILE HE WAS INCARCERATED, AND HE WASN'T  
23 CONCERNED ABOUT HIS SELF HE SAT THERE AND CRIED AND  
24 HE WAS WORRIED ABOUT THE CHILDREN OF THIS LADY BACK  
25 HERE AND HE SAID I JUST WISH THERE IS SOMETHING I

1       COULD DO TO HELP TAKE CARE OF THEM AND HE SAT THERE  
2       AND CRIED JUST BOOED AND THIS TO ME SHOWED THAT THERE  
3       WAS A LOT OF HURT IN HIS HEART   HE WASN'T CONCERNED  
4       ABOUT WHAT WAS GOING TO HAPPEN TO HIM, BUT HE WAS  
5       CONCERNED ABOUT WHAT WAS GOING TO HAPPEN TO THE KIDS  
6       HE'S CONCERNED ABOUT HIS MOTHER, HIS DADDY, AND ALSO  
7       HIS BROTHER   HE WAS CONCERNED HOW THIS WAS GOING TO  
8       AFFECT THEM AND BY THEM LOSING A CHILD, IT'S GOING  
9       REALLY AFFECT THE WHOLE FAMILY, AND I JUST ASK THAT  
10      YOU BE LENIENT ON HIM AND THANK YOU

11                   MR   DEST   YOUR HONOR, I BELIEVE THAT'S IT  
12      FOR US WITH REGARD TO OUR WITNESSES

13                   THE COURT   MR   FREEMAN, DO YOU WANT TO  
14      SAY ANYTHING?

15                   MR   FREEMAN   YES, SIR   I JUST WANT TO  
16      SAY HOW SORRY I AM FOR WHAT I DID   I KNOW THAT I  
17      TOOK A FATHER FROM HIS CHILDREN AND A SON FROM HIS  
18      PARENTS   NO MATTER WHAT I CAN'T GIVE THAT BACK TO  
19      THEM   I WISH, NOT A DAY GOES BY THAT I WISHED I  
20      COULD TURN BACK TIME AND GO BACK TO THAT DAY   I  
21      WOULD DRAG MYSELF OUT OF THERE IF I COULD   I KNOW ME  
22      SPEND MY LIFE IN PRISON IS PROBABLY, PROBABLY  
23      EVERYBODY IS RIGHT, THERE AIN'T NOTHING LIKE THE  
24      PRISON I'VE BEEN SPENDING SINCE THE NIGHT THIS  
25      HAPPENED   I'VE BEEN A PRISONER HERE FOR THE REST OF

1 MY LIFE JUST BECAUSE IF THERE WAS ANYWAY, I KNOW  
2 THEY PROBABLY DON'T WANT TO HEAR IT, BUT WHEN I GET  
3 TO PRISON AND IF I GET A JOB AT PAY, PLEASE LET ME  
4 HELP HIS CHILDREN, SOMEHOW JUST LET ME HELP THEM  
5 THEY DIDN'T DESERVE THIS NONE OF THEM DESERVED  
6 THIS I'M SORRY

7 THE COURT ANYTHING ELSE?

8 MR BRACKETT NO, SIR

9 THE COURT WELL, I'VE BEEN DOING THIS 15  
10 YEARS AND THIS IS, HAS BEEN A LOT OF MURDER CASES AND  
11 THIS IS UP THERE IN THE TOP FOUR OR FIVE IN  
12 HEINOUSNESS AND SENSELESS ACT TO BE VERY CANDID, IF  
13 THE TRIAL HAD GONE ON AND, MR FREEMAN, YOU HAD BEEN  
14 FOUND GUILTY OF MURDER, I WOULD SENTENCE YOU TO LIFE  
15 YOU MIGHT FEEL LIKE MY SENTENCE IS A LIFE SENTENCE  
16 ANYWAY BUT I AM GIVING YOU SOME CONSIDERATION I  
17 DON'T CONSIDER IT MERCY BECAUSE UNDER THE FACTS OF  
18 THIS CASE I DON'T SEE ANY REAL OPPORTUNITY FOR MERCY  
19 YOU HAVE EXPRESSED SOME REMORSE AND YOU HAVE SAVED  
20 SOME HURT BY PLEADING AND NOT PUTTING EVERYBODY  
21 THROUGH A FOUR DAY TRIAL, SO I'M GIVING YOU SOME  
22 CONSIDERATION FOR YOUR PLEADING AS OPPOSED TO A JURY  
23 RETURNING A VERDICT AGAIN MY VERDICT IS NOT BASED  
24 ON MERCY BUT ON OTHER MORE PRACTICAL CONSIDERATIONS,  
25 ALTHOUGH IF YOU ARE 30 YEARS OLD, IT MAY NOT MAKE A

1 LOT OF DIFFERENCE

2 THE SENTENCE ON THE RESISTING ARREST

3 IS FOR ONE YEAR, ALL OF THESE TO RUN CONCURRENT ON

4 THE BURGLARY AND MURDER BOTH OF THOSE ARE FOR 50

5 YEARS AND THEY ARE TO RUN CONCURRENT THANK YOU

6 ALL RIGHT WE'LL TAKE A BREAK AND THEN WE'LL GET THE

7 JURY IN AND DISMISS THEM

8 (COURT'S IN RECESS AT 11 56 AM )

9 (COURT RESUMES AT 12 01 PM )

10 THE COURT BRING IN THE JURY

11 (THE JURY RETURNS TO THE COURTROOM AT

12 12 02 PM AND IS EXCUSED )

13 (END OF PROCEEDINGS )

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1 I, JANET RICH, OFFICIAL COURT REPORTER FOR  
2 THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA,  
3 DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE,  
4 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL  
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE  
6 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN  
7 THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON  
8 THE 5 & 6 DAY OF MARCH 2007

9 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,  
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO  
11  
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*Janet Rich*  
\_\_\_\_\_  
JANET M RICH

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

John C Hayes, III, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V

STEVEN JOEL FREEMAN,

APPELLANT

---

FINAL ANDERS BRIEF OF APPELLANT

---

JOSEPH L SAVITZ, III  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S C 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT



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TABLE OF AUTHORITIES

**Cases**

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| <i>Blakely v State</i> , 360 S C 636, 602 S E 2d 758 (2004)    | 6 |
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| <i>State v Gore</i> , 283 S C 118, 322 S E 2d 12 (1984)        | 6 |
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| <i>State v Mitchell</i> , 330 S C 189, 498 S E 2d 642 (1998)   | 5 |
| <i>State v Tyson</i> , 283 S C 375, 323 S E 2d 770 (1984)      | 5 |

STATEMENT OF ISSUE ON APPEAL

The judge erred by accepting Freeman's plea to murder, since the State's evidence would have supported a conviction for voluntary manslaughter

STATEMENT OF FACTS

On March 5, 2007, Steven Joel Freeman stood trial in York County, before Judge John C Hayes, III, and a jury, on an indictment charging him with the murder of his girlfriend's newest paramour. Freeman killed the victim with his bare hands in his home after he caught the two of them apparently having sex. (The indictment also charged him with first-degree burglary and resisting arrest.) The morning of the second day of trial, Freeman "[broke] down crying in the courtroom" and told defense counsel he had decided to plead guilty to all charges. ROA p 204, line 13 – p 205, line 2. The judge accepted the plea and sentenced Freeman to concurrent fifty-year sentences for murder and burglary and one year for resisting arrest.

## ARGUMENT

The judge erred by accepting Freeman's plea to murder, since the State's evidence would have supported a conviction for voluntary manslaughter

"[W]e never saw this as a voluntary manslaughter situation," the Solicitor informed the judge, because Freeman's girlfriend was unharmed and (the State's argument continued) "[t]he provocation needs to come from the victim, not from some third party " ROA p 190, lines 9-14 The judge had indicated during Freeman's truncated trial that he would "have to see some cases saying snapping over what your girlfriend does constitutes sufficient legal provocation" before he would allow the defense to raise the issue of voluntary manslaughter before the jury ROA p 97, lines 4-24 "I can't see where in good conscience there is any legal provocation presented," he concluded ROA p 97, line 24 – p 98, line 12

Voluntary manslaughter is a lesser-included offense of murder *State v Mitchell*, 330 S C 189, 498 S E 2d 642 (1998) It is defined as the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation *State v Kornahrens*, 290 S C 281, 350 S E 2d 180 (1986) Both heat of passion and sufficient legal provocation must be present at the time of the killing *State v Tyson*, 283 S C 375, 323 S E 2d 770 (1984)

In determining whether to charge voluntary manslaughter, the trial judge and the appellate courts view the facts in the light most favorable to the defendant *State v Byrd*, 323 S C 319, 474 S E 2d 430 (1996) "In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing "

*State v Gardner*, 219 S C 97, 64 S E 2d 130, 134 (1951) “[T]he sudden heat of passion, upon sufficient legal provocation,’ which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an ‘uncontrollable impulse to do violence’ ” *State v Davis*, 50 S C 405, 27 S E 905, 911 (1897) “It is well settled that to warrant the Court in eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime for murder to manslaughter ” *Gardner*, 64 S E 2d at 134

Although some cases speak of “spousal adultery” and “marital infidelity,” it is clear from other cases that marriage is not a prerequisite for voluntary manslaughter See, for example, *Blakely v State*, 360 S C 636, 602 S E 2d 758 (2004) (defendant convicted of voluntary manslaughter where he killed girlfriend’s paramour after he saw them kissing in car), and *State v Gore*, 283 S C 118, 322 S E 2d 12 (1984) (defendant convicted of voluntary manslaughter where he killed his girlfriend because she was leaving him)

In conclusion, the evidence was such that a jury could have found the elements of voluntary manslaughter that the killing occurred in sudden heat of passion upon sufficient legal provocation

For this reason, the judge erred by accepting Freeman’s plea to murder The Court should vacate that conviction and remand for further proceedings

Respectfully submitted,

---

Joseph L. Savitz, III  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of July, 2008

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

---

 Appeal from York County

 John C Hayes, III, Circuit Court Judge
 

---

THE STATE,

RESPONDENT,

V

STEVEN JOEL FREEMAN,

APPELLANT

---

 PETITION TO BE RELIEVED AS COUNSEL
 

---

Counsel for Steven Joel Freeman states

1       He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant

2       He has reviewed the record of appellant's trial before Judge John C Hayes, III, which was held on 3-6-07, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial

3       He has, pursuant to Anders v California, 386 U S 738, 87 S Ct 1396 (1967), briefed an arguable legal issue which arose during the course of the trial

WHEREFORE, he asks the Court to relieve him as counsel for Steven Joel Freeman

Respectfully submitted,

---

 Joseph L Savitz, III  
 Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of July, 2008

8



## CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR

July 21, 2008

---

Joseph L. Savitz, III  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, SC 29211-1589  
803) 734-1343  
Attorney for Appellant

**THIS OPINION HAS NO PRECEDENTIAL VALUE IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v

Steven Joel Freeman, Appellant

---

Appeal From York County  
John C Hayes, III, Circuit Court Judge

---

Unpublished Opinion No 2009-UP-477  
Submitted October 1, 2009 – Filed October 13, 2009

---

**APPEAL DISMISSED**

---

Chief Appellate Defender Joseph L Savitz, III, of Columbia, for Appellant

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W McIntosh, and Assistant Deputy Attorney General Donald J Zelenka, all of Columbia, and Solicitor Kevin S Brackett, of York, for Respondent

**PER CURIAM** Steven Joel Freeman appeals his guilty pleas to murder, first-degree burglary, and resisting arrest. Freeman argues the trial court erred by accepting his pleas because they did not comply with Boykin v Alabama, 395 U S 238 (1969). Freeman also filed a pro se brief. After a thorough review of the record and both briefs pursuant to Anders v California, 386 U S 738 (1967) and State v Williams, 305 S C 116, 406 S E 2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved [1].

**APPEAL DISMISSED**

**Huff, Thomas, and Pieper, JJ , concur**

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

## FORM 5

2009CP4605532

STATE OF SOUTH CAROLINA )

) IN THE COURT OF COMMON PLEAS

County of YCPK )Steven Joel Freeman, 120516 )

Full name and prison number (if any) of Applicant )

v )

State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEFDAVID HAMILTON  
CLERK P. & GS.  
YORK COUNTY, SC

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**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- 1 Place of detention Perry Correctional Institution  
430 Oaklawn Rd. Pelzer, SC 29669
- 2 Name and location of Court which imposed sentence York County Court of  
General Sessions, York, South Carolina
- 3 Name(s) of co-defendant(s) (if any) N/A
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed  
(a) 2006-GS-46-3825, Murder

- (b) 2006-CS-46-3826, Burglary First Degree
- (c) 2006-CS-46-3827, Resisting Arrest
- 5 The date upon which sentence was imposed and the terms of the sentence
- (a) under 50 years, March 5, 2007
- (b) Burglary 1st 50 years, March 6, 2007
- (c) Resisting Arrest, 1 year, March 5, 2007
- 6 Check whether a finding of guilty was made
- (a) after a plea of guilty yes
- (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?
- yes
- 8 If you answered Ayes@ to (7), list
- (a) the name of each Court to which you appealed
- 1 Appellant Court of South Carolina
- 11 \_\_\_\_\_
- 111 \_\_\_\_\_
- (b) the result in each such Court to which you appealed
- 1 Appeal was Dismissed
- 11 \_\_\_\_\_
- 111 \_\_\_\_\_
- (c) the date of each such result
- 1 October 13, 2009
- 11 \_\_\_\_\_
- 111 \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results
- 1 Opinion No 2009-UP-477
- 11 \_\_\_\_\_
- 111 \_\_\_\_\_
- 9 If you answered Ano@ to (7), state your reasons for not so appealing
- (a) N/A

- (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

- (a) Ineffective assistance of counsel See attachment  
 (b) Violation of Due Process See attachment  
 (c) \_\_\_\_\_

11 State concisely and in the same order the facts which support each of the grounds set out in (10)

- (a) See attachment  
 (b) See attachment  
 (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? N/A  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A  
 (d) any other petitions, motions or applications in this or any other Court? N/A

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 N/A  
 II N/A  
 III N/A  
 IV N/A  
 (b) the name and location of the Court in which each was filed  
 I N/A  
 II N/A  
 III N/A

IV 1/A

(c) the disposition thereof

I N/A

II N/A

III N/A

IV N/A

(d) the date of each such disposition

I N/A

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?

0

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

(a) which grounds have been presented

I 1/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) N/A
- (b) N/A
- (c) N/A
- 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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (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 Verly, 2 Dept. of Justice Center P O Box 501
- York, South Carolina 29745
- ii Joseph T. Salas, P O Commission on Indigent Defense
- P O Box 11500 Columbia, SC 29211-1500 (Appeal)
- iii \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you
- i Trial, Plea, Sentencing
- ii Appeal
- iii \_\_\_\_\_





19 State clearly the relief you seek in filing this application

Relief is sought in this court to be a returned and his case  
be removed from the state

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 \_\_\_\_\_ )

VERIFICATION

I, \_\_\_\_\_, 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

[Signature]

SWORN to and subscribed before me this 24<sup>th</sup>  
 day of March, 2014

[Signature] (L S)  
 Notary Public

My Commission Expires May 12<sup>th</sup>, 2014

APPLICANT'S COUNTERS AND SUPPORTING ALLEGATIONS

(Leave Open To Amend)

10(a) Applicant contends he was denied effective assistance of counsel guaranteed by the Sixth and Fourteenth amendments of the United States constitution

11(a) Applicant contends trial counsel assistance was ineffective for the following (1) failing to fully investigate his client's fitness to stand trial or enter a guilty plea (2) failing to motion for a Bill of Necessity (3) failing to motion for an continuance (4) failing to properly inform the court of his client's mental illnesses (5) failing to motion for a recess at his client's family's request (6) failing to allow his client time to call counsel before entering a guilty plea (7) Failing to advise his client of any options other than to plea guilty

Applicant contends he was not mentally or emotionally fit to stand trial or enter a guilty plea and he lacks the capacity to assist in his defense. Trial counsel failed to meet the two prong test laid out in Strickland v. Washington, 476 U.S. 668, 104 S.Ct. 55, 80 L.Ed.2d 674 (1984) (1) when a guilty plea has been entered, the applicant must prove counsel's representation as below the standard reasonableness and (2) but for counsel's unprofessional errors, there is a reasonable probability the applicant could not have pled guilty and could have insisted on going to trial

In this case, Applicant started a trial, but due to his mental and emotional illnesses was not able to continue at the time of his mental area four in open court, therefore entering a guilty plea that was not voluntary nor intelligent. Trial counsel's before mentioned deficiencies prejudiced Applicant's proceedings and he would not have pled guilty

10(c) Applicant contends he has been denied Due Process guaranteed by the United States Constitution.

11(c) Due Process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Jeter v. State, 306 S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992)(citations omitted). It is the defense counsel, state and trial court through Due Process to make sure a defendant is competent to stand trial. Due Process is violated when a competency hearing has not been held to determine Defendant's mental fitness. For the before mentioned reasons Applicant's right to Due Process was violated.

Defense counsel fail to grant his client's request for a bond hearing guaranteed by the Fifth Amendment of the United States Constitution and Due Process. A Defendant accused of a crime has a right to a bond hearing (not necessarily bail), every day (DC) does hearing convictions

Steven Freeman, #320516  
Perry C I Q-1-A 116  
430 Oaklawn Road  
Pelzer, S C. 29669

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DAVID HAMILTON  
C C C P & G S  
YORK COUNTY, SC

September 9, 2010

Mr David Hamilton  
York County Clerk of Court  
P O. Box 649  
York, S.C 29745

Dear Mr. Hamilton

I filed my PCR application on December 18, 2009, my case no 2009-CS-46-5532 I would like to amend 11 (a) by adding the issues enclosed on attached page(s). Also I would like to request a clocked stamped copy of this letter and amended issues and ask you to forward a copy to Ms Jennifer Kinzeler, at the Attorney General's Office Thank you for your time

Sincerely,

  
Steven Freeman, #320516

ISSUES TO BE AMENDED TO 11 (a)

- (8) Trial counsel failed to enter into plea negotiations. Counsel failed to pursue a plea deal with the State.
- (9) Trial counsel failed to discuss trial strategy with Applicant. Counsel failure to discuss trial strategy with Applicant, rendered Applicant knowledge of any and all options available to him before entering a guilty plea, Applicant did not enter the plea to murder knowingly, voluntarily or intelligently.
- (10) Trial counsel failed to object to murder indictment before jury was sworn in. Trial counsel failed to raise the issue of inadequate murder indictment. Indictment failed to mention time and place of victim's death as required by S.C. Code Ann. §17-19-30 (1985). The time and place of assault, as well as the time and place of victim's death must be alleged in the body of the indictment.
- (11) Trial counsel failed to argue Applicant's steroid use as a mitigating factor.

Applicant would like to make to Attorney General's Office, the Honorable Clerk of Court and the Honorable PCR Court aware that, if the Honorable PCR Judge does not rule on all PCR issues based on fact and conclusion of law under §17-27-80 of PCR statute, Applicant requests his PCR attorney to file a 59(e) on his behalf before filing an appeal. If PCR attorney refuses to do so as most appointed attorneys do, then Applicant is making all parties aware he will be doing a 59(e) motion Pro-Se.

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2010 SEP 13 PM 1 41  
DAVID HAMILTON  
C.C.C.P. & G.S.  
YORK COUNTY, SC

Steven Freeman, #320516  
Perry C I Q-1-A 116  
430 Oaklawn Rd.  
Pelzer, S C 29669

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2011 JAN 20 AM 10 00  
DAVID HAMILTON  
CC CP & GS  
YORK COUNTY, SC

Mr David Hamilton  
York County Clerk of Court  
P O Box 649  
York, S C 29745

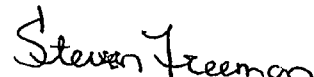
RE Freeman v State of South Carolina  
Case No 2009-CP-46-5532

Dear Mr Hamilton-

Enclosed is a copy of a issue and exhibits dealing with my PCR I have sent the issue and exhibits to my attorney Mr Brian R Murphey to amend into my PCR application I ask that you please time stamp the enclosed and place them into my file

I deeply appreciate your time and kind attention in this matter

Sincerely,

  
Steven Freeman

convict, and sentence him under indictments obtained through willful acts of perjury and prosecutorial misconduct

Therefore, Applicant would show this PCR Court the Following

Applicant's bill of indictment prints that, "At a Court of General Sessions, convened on November 9, 2006, the Grand Jurors of York County present upon their oath." (see Exhibit 1, Indictments). Furthermore, the indictments is affixed with a true bill stamp, and signed by Assistant Deputy Solicitor Willy Thompson (see Exhibit 1, Indictments), who was the State Judicial official assigned the responsibility of processing the document.

However, the evidence conclusively establishes that the information published in the document regarding a Grand Jury convened Court of General Sessions, is in fact. The attached, certified true copy of the Judicial Department's calendar of Circuit terms shows that on November 9, 2006 "NO" General Sessions Court had been open in York County for the Grand Jurors to present anything upon their oath, much less that a crime had taken place. (see Exhibits 1, Indictments in comparison with Exhibit 2, Calendar of Convened Courts) Thus false information is contained in the State indictment, prepared and processed by Assistant Deputy Solicitor Willy Thompson.

South Carolina law is very specific concerning matters of false information in a State document. It is an Offense Against Public Justice to willfully give false information in a State

EXHIBIT I

WITNESSES

RHPD / Popov

mac

ARREST WARRANT NUMBER

G-900146

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

11-09-06

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO 2006-GS-46-03825

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 9, TERM 2006

THE STATE

vs

STEVEN JOEL FREEMAN

Indictment for

MURDER

SC Code § 16-3-10  
CDR Code 0116

After being fully advised as to my  
legal rights I hereby waive presentment  
to the Grand Jury

Defendant

I  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness

CCC PLS AND GS

146



## EXHIBIT 1

147

STATE OF SOUTH CAROLINA    )  
                                      )  
COUNTY OF YORK            )

INDICTMENT

At a Court of General Sessions, convened on November 9 2006, the Grand Jurors of  
York County present upon their oath    ~

## MURDER

Steven Joel Freeman did in York County on or about August 28, 2006,  
feloniously, willfully and with malice aforethought, kill one Michael Burgess by means of  
physically beating him and that the said victim died as a result thereof, all in violation of  
Section 16-3-10, *Code of Laws of South Carolina* (1976) as amended The Murder  
occurred at ADDRESS                    Avenue at apartment            in Rock Hill, South  
Carolina

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

  
\_\_\_\_\_  
ASSISTANT DEPUTY SOLICITOR

# EXHIBIT 1

DOCKET NO 2006-GS-46-03826

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 9, TERM 2006

THE STATE

vs

STEVEN JOEL FREEMAN

Indictment for

BURGLARY  
FIRST DEGREE

SC Code 16-11-311  
CDR Code 0079

After being fully advised as to my legal rights I hereby waive presentment to the Grand Jury

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

CCC PLS AND GS

WITNESSES

RHPD / Popov

mac

ARREST WARRANT NUMBER

G-900084

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date 11-09-06

VERDICT

Foreperson of Petit Jury

Date

148

# EXHIBIT 1

253

14/9

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

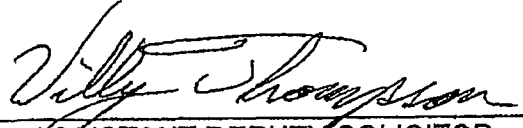
INDICTMENT

At a Court of General Sessions, convened on November 9, 2006, the Grand Jurors of York County present upon their oath

## BURGLARY FIRST DEGREE

Steven Joel Freeman did in York County on or about August 28, 2006, willfully and unlawfully enter the dwelling of Michael Burgess located at ADDRESS Avenue Apartment # in Rock Hill, South Carolina Steven Joel Freeman entered without consent and with the intent to commit a crime therein The entering occurred in the nighttime and the defendant caused physical injury to Michael Burgess who was not a participant in the crime All in violation of Section 16-11-311 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

  
ASSISTANT DEPUTY SOLICITOR

# EXHIBIT 4

DOCKET NO 2006-GS-46-03827

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 9, TERM 2006

THE STATE

vs

STEVEN JOEL FREEMAN

Indictment for

RESISTING ARREST

SC Code § 16-9-320(A)  
CDR Code 0326

After being fully advised as to my legal rights I hereby waive presentment to the Grand Jury

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

C C C PLS AND G S

WITNESSES

RHPD / Popov

mac

ARREST WARRANT NUMBER

G-900087

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

11-09-06

VERDICT

Foreperson of Petit Jury

Date

150

# EXHIBIT 1

255

151

STATE OF SOUTH CAROLINA)  
COUNTY OF YORK )

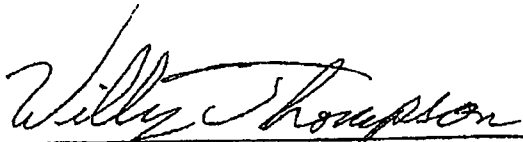
INDICTMENT

At a Court of General Sessions, convened on November 9th, 2006, the Grand Jurors of York County present upon their oath

## RESISTING ARREST / SERVICE OF PROCESS

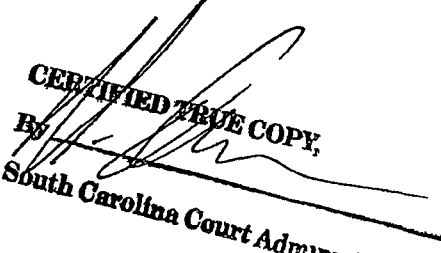
Steven Joel Freeman did in York County on or about August 28, 2006, knowingly and willfully oppose and/or resist the efforts of Lt Donald Doster, Officer Brian Lambert and Officer Daniel Popov of the Rock Hill Police Department, law enforcement officers of this State, to make a lawful arrest of the said defendant in violation of Section 16-9-320(a) *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

  
ASSISTANT DEPUTY SOLICITOR

**Terms of Circuit and Family Court  
November 2006**

| Circuit Number | 11/6/2006                                                                                                                                                                                                                                                                                                       | 11/13/2006                                                                                                                 | 11/20/2006                                                 | 11/27/2006                                                                                                                          |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <b>16</b>      | Common Pleas Non-<br>Jury/PCR<br>Alford Lee<br><br><b>MCGILBERRY</b><br><br>General Sessions<br>Union<br>Hayes John C<br><br><b>BARRETT</b><br><br>Common Pleas Non-<br>Jury 7 8 9<br>York<br>Kimball S<br><br><b>FAUCETTE 7 8 9</b><br><br>General Sessions 8<br>York<br>Alford Lee<br><br><b>MCGILBERRY 8</b> | General Sessions<br>York<br>Cole, J<br><br><b>BROOM</b><br><br>General Sessions<br>York<br>Hayes John C<br><br><b>RICH</b> | Common Pleas 22<br>York<br>Kinard J<br><br><b>BROOM 22</b> | General Sessions<br>York<br>Alford Lee<br><br><b>MCGILBERRY</b><br><br>General Sessions<br>York<br>Hayes J Mark<br><br><b>WOODS</b> |

**CERTIFIED TRUE COPY,**  
**By**   
**South Carolina Court Administration**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Steven J Freeman, # 320516

Applicant,

v

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
Case No 2009 CP 46-5532

RETURN

FILED-RECEIVED  
2010 APR -7 AM 10 56  
DAVID H. TILTON  
CLERK OF COURT  
YORK COUNTY SC

Respondent, making its Return to the application for post conviction relief (PCR) filed December 18, 2009, would respectfully show this Court

## I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the November 2006 term of the York County Grand Jury for Murder (2006-GS 46 3825), Burglary - 1<sup>st</sup> degree (2006 Gs 46 3826), and Resisting Arrest (2006-GS 46-3827). Harry A. Dest, Esquire, represented the Applicant. On March 6, 2007 the Applicant pled guilty to as indicted to all charges. The Honorable John C Hayes, III sentenced the Applicant to confinement for a period of fifty (50) years for Murder, fifty (50) years for Burglary - 1<sup>st</sup> degree, and one (1) year for Resisting Arrest, sentences running concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v California, 386 US 738 (1967). The South Carolina Court of Appeals dismissed the Applicant's appeal State v Freeman, Op No 2009 UP-477 (S C Ct App filed October 1, 2009). The Remittitur was issued on October 29, 2009.

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Appellate Court records, and the trial transcript

## II

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

- 1 Ineffective assistance of counsel, and
- 2 Violation of due process

## III

In his first allegation the Applicant claims he received ineffective assistance of counsel In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief Caprood v State, 338 S C. 103, 109, 525 S E 2d 514, 517 (2000) First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness Strickland v Washington, 466 US 668, 687, 104 S Ct 2052, 2064, 80 L Ed 2d 674, 693 (1984), Alexander v State, 303 S C 539, 541, 402 S E 2d 484, 485 (1991) Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms " Cherry v State, 300 S C 115 at 117, 386 S E 2d 624 at 625 (1989), *ating Strickland*

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different Strickland, 466 US at 687, 104 S Ct at 2064, 80 L Ed 2d at 693, Alexander, 303 S C at 541-42, 402 S E 2d at 485 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, Id

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for



counsel's errors, there is a reasonable probability he would not have pleaded guilty and instead would have insisted on going to trial Hill v Lockhart, 474 US 52, 59, 106 S Ct 366, 370, 88 L Ed 2d 203, 210 (1985), Jordan v State, 297 S C. 52, 54, 374 S E 2d 683, 684 (1988) In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing Harres v Leek, 282 S C. 131, 133, 318 S E 2d 360, 361 (1984)

Respondent submits that the 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 Applicant further alleges his due process rights were violated because he "was not mentally or emotionally fit to stand trial or enter a guilty plea" In post conviction relief action, the applicant bears the burden of proof and is required to show by preponderance of evidence that he was incompetent at time of entry of guilty plea Jeter v State, 308 S C. 230, 417 S E 2d 594, 596 (1992) A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Id

Respondent submits that the Applicant cannot satisfy his burden of proof under Jeter, *supra* However, this allegation 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)

#### VII

Therefore, Respondent requests that this Court convene an evidentiary hearing to fully resolve these issues

## VII

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

## VIII

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

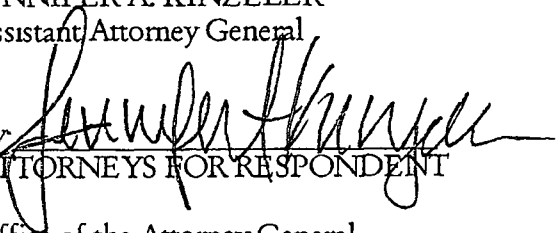
Respectfully submitted,

HENRY D McMASTER  
Attorney General

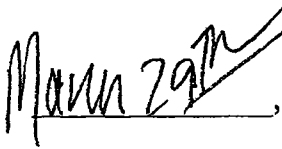
JOHN W McINTOSH  
Chief Deputy Attorney General

SALLEY W ELLIOTT  
Assistant Deputy Attorney General

JENNIFER A. KINZELER  
Assistant Attorney General

By   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P O Box 11549  
Columbia, SC 29211  
Telephone (803) 734-3737

, 2010

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STEVEN J FREEMAN,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent

IN THE COURT OF COMMON PLEAS

2009-CP-46-5532

AFFIDAVIT OF SERVICE BY MAIL

DAVID L. LITTON  
C.C.C.P. & C.S.  
YORK COUNTY, SC

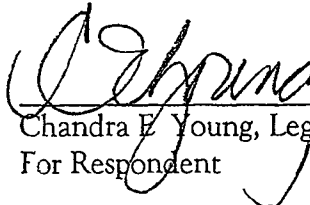
2010 APR -7 AM 10 56

FILED RECEIVED

- 1 I am an employee of the Respondent in the above captioned action
- 2 Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail
- 3 I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid

Tara Schultz, Esquire  
1365 Ebenezer Rd  
Rock Hill, SC 29732

DATED this 5<sup>TH</sup> day of April, 2010

  
Chandra E. Young, Legal Assistant  
For Respondent

State of South Carolina , )  
 )  
 )  
 )  
 )  
 County of York, )

In the Common Pleas  
 Court of York

Case No 2009-CP-46-05532

Steven Freeman , )  
 )  
 Plaintiff, )  
 )  
 VS )  
 )  
 State of South Carolina , )  
 )  
 Defendant )  
 )

---

Transcript of Record

June 2, 2011  
 York, South Carolina

B E F O R E

Honorable Lee S Alford, Judge

A P P E A R A N C E S

Mr Brian R Murphy  
 Attorney at Law  
 For the Applicant

Mr Harrison Brant  
 Office of the Attorney General  
 State of South Carolina  
 P O Box 11549  
 803-734-2593  
hbrant@scag.gov  
 For the Respondent

Wanda Nelson  
 Circuit Court Reporter  
 Sixteenth Judicial Circuit

**ORIGINAL**

I-N-D-E-XWITNESSPAGE NO

Steven Freeman

By Mr Murphy

P 6-26

P 36-37

By Mr Brant

P 26-36

Harry Dest

By Mr Murphy

P 37-50

By Mr Brant

P 51-57

B J Barrowclough

By Mr Murphy

P 58-63

By Mr Brant

P 63-68

Randall Freeman

By Mr Murphy

P 69-72

By Mr Brant

P 72-73

Evette Freeman

By Mr Murphy

P 73-77

By Mr Brant

P 77-79

Pastor Henry Terry

By Mr Murphy

P 79-82

By Mr Brant

P 82-84

Doctor Harold Morgan

By Mr Murphy

P 85-94

P 98-100

By Mr Brant

P 94-98

P 100-101

E-X-H-I-B-I-T-S

| <u>NO</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVD</u> |
|-----------|--------------------|-----------|------------|
| Def 1     | Plea Affidavit     |           | P 26       |

Reporter's Note All exhibits were filed with the York  
County Clerk of Court's Office

1 (ON THE RECORD THURSDAY, JUNE 2, 2011 AT 09 25 AM )

2 MR BRANT Mr Freeman

3 (APPLICANT ENTERING COURTROOM )

4 MR BRANT May it please the Court?

5 THE COURT Counsel

6 MR BRANT Your Honor, this is York County Case 2009-  
7 CP-46-5532, the Applicant's name is Steven Freeman SCDC  
8 Number 3-2-0-5-1-6

9 Mr Freeman was indicted November 2006 with murder,  
10 burglary first degree, and resisting arrest He was  
11 represented by Harry Dest and B J Barrowclough with the  
12 Public Defender's Officer

13 On March 5th, 2007, he proceeded to a jury trial

14 However, on March 6th, he decided to forego trial and  
15 pled guilty as indicted to all charges Judge Hayes  
16 presided and sentenced him to 50 years for murder, 50 years  
17 for burglary, concurrent and one year for resisting arrest  
18 concurrent

19 Again, appeal filed It was perfected by Joseph Sets  
20 pursuant to Anders in California, Court of Appeals  
21 dismissed

22 Remitter was issued on October 29, 2009

23 This application was filed December 18th, 2009

24 And Respondent's return was filed on April 7, 2010

25 His attorney today is Brian Murphy and I'll turn it

1 over to him at this point

2 THE COURT Counsel

3 MR MURPHY Your Honor, Brian Murphy for Steven

4 Freeman If, Your, Honor, if I may give a brief overview

5 slash opening, Your Honor, I'd be most appreciative May

6 it please the Court, Your Honor?

7 THE COURT Yes, sir

8 MR MURPHY Mr Freeman has a long and troubled

9 mental health history And the testimony that we're going

10 elicit today, Your Honor, is going to show that as his

11 trial was proceeding, that he had stopped taking his

12 medication -- not -- He hadn't made that decision, Your

13 Honor Someone had made that decision from him He wasn't

14 on his medication And that with his mental disorders, as

15 we got through the trial, that his anxiety and those mental

16 disorders took over his rational thought process leading up

17 to a plea of guilty, Your Honor We would also assert that

18 Counsel was ineffective in helping him through that matter

19 because they should have -- They should have asked the

20 Court for a competency hearing or continuance to assist Mr

21 Freeman in evaluating his mental health to make sure that

22 he was -- that his plea was intelligently and knowingly

23 entered into

24 In that respect, Your Honor, the Plaintiff calls

25 Steven Freeman



STEVEN FREEMAN DIRECT BY MR MURPHY

6

1 MADAME CLERK Mr Freeman, stop right here, and place  
2 your left hand on the Bible, please

3 (WHEREUPON STEVEN FREEMAN, BEING  
4 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS )

5 DIRECT EXAMINATION

6 STEVEN FREEMAN BY MR MURPHY

7 Q Mr Freeman, could you give your full name, please?

8 A Steven Joel Freeman

9 Q And your address?

10 A Right now?

11 Q Yes, sir

12 A Perry Correctional Institution

13 Q Thank you And you were indicted for murder, burglary  
14 first, and resisting arrest?

15 A Yes, sir

16 Q Case Number is 2006-GS-46-3825?

17 A Yes, sir

18 Q 3826 and 3827?

19 A Yes, sir

20 Q And Mr Harry Dest and Mr B G Barrowclough of the  
21 Public Defender's Office represented you?

22 A Yes, sir

23 Q And you pled guilty on March 6th, 2007 to those  
24 charges?

25 A Yes, sir

1 Q And you had gone through a few days of trial before  
2 that Correct?

3 A One day, yes, sir

4 Q And you were sentenced to 50 years, concurrent?

5 A Yes, sir

6 Q And one year on resisting arrest?

7 A Yes, sir

8 Q Mr Freeman, I'd like to talk about your mental health  
9 history Can you give me an overview of your mental health  
10 history?

11 A I've been having mental health problems since I was  
12 young You know, with depression, and anxiety, and I  
13 attempted suicide a couple of times while I was young

14 And the month of the incident, I attempted suicide  
15 twice First time on August 1st, 2006, second time on  
16 August 22nd, 2006 On the 22nd, I was admitted into the  
17 Psychiatric Ward of Piedmont Medical Center and I diagnosed  
18 with borderline personality disorder, depression with  
19 anxiety impulse control disorder, adjustment disorder And  
20 I was prescribed medication for the anxiety and depression,  
21 prescribed Zoloft

22 Q And that was at the last attempt?

23 A Yes, sir

24 Q When was the first time you attempted suicide?

25 A When I was young Right when I was like, probably in

STEVEN FREEMAN DIRECT BY MR MURPHY

8

1 my early teens I used to play Russian Roulette and

2 Q What would you play it with?

3 A A little revolver pistol

4 Q What happened?

5 A I never -- I just stuck it to my head and -- you know,  
6 pulled the trigger, but it wouldn't -- I never got the  
7 bullet

8 Q The hammer never found the bullet?

9 A No, sir

10 Q So, that was the first time When was the second  
11 time?

12 A When I used to -- I put a bullet in -- I had a AK 47  
13 I put a bullet in there and, but it jammed That was --  
14 That was probably 2003

15 Q What were your thoughts in these attempted suicides?

16 A Just -- Just at the time, I just was -- I just didn't  
17 want to go on

18 Q How about the third time?

19 A It was on August 1st

20 Q What happened?

21 A I overdosed on pain pills because I was just down  
22 And I was taken to the Piedmont Medical Center, had my  
23 stomach pumped And spent the night over in Piedmont  
24 Medical Center

25 (WITNESS CLEARS THROAT )

1 A Sorry

2 Q Why were you down?

3 A Just -- I get -- I get down sometimes, get depressed

4 Q Was there anything that caused it? What was going on  
5 in your life at that time?

6 A I guess the -- the issue with my girlfriend -- my  
7 girlfriend back -- and then You know, me and her was  
8 having problems And I just felt like I couldn't go on

9 Q The issues with your girlfriend what ultimately led to  
10 the charges?

11 A Yes, sir

12 Q Okay, so we've talked about through the third time  
13 Correct?

14 A Yes, sir

15 Q And you went to Piedmont Medical Center?

16 A Yes, sir

17 Q What division of the hospital were you in when you  
18 were there?

19 A The Psychiatric Ward

20 Q Did they diagnose you at that time?

21 A Yes, sir

22 Q What did they diagnose you with?

23 A Borderline personality, adjustment disorder, impulse  
24 control disorder, depression with anxiety

25 Q And they prescribed some medication for you?

STEVEN FREEMAN DIRECT BY MR MURPHY

10

1 A Yes, sir

2 Q What did they prescribe?

3 A Zoloft

4 Q Let's talk about the fourth time then that you  
5 committed -- that you attempted to commit suicide Tell me  
6 about that

7 A The fourth time?

8 Q You said there was one in earlier August and one in  
9 late August Correct?

10 A Yes, sir

11 Q Tell me about the one in late August

12 A That was the one -- I was in -- I was in the  
13 Psychiatric Ward

14 Q So tell me about -- Did we skip the early August one?

15 A No, sir That's the one I overdosed on pain pills

16 Q Tell the Court about the one in late August then

17 A I had an argument with my girl and just before I could  
18 even think about anything, I grabbed a butcher knife and  
19 went out on my back porch, and I was -- I didn't know quite  
20 what to do And I was just real upset When -- When she  
21 called the police, and when the officers come out, you  
22 know, they started talking to me And they were out there  
23 talking to me, and they shot me with Tasers And, you  
24 know, that didn't work So they kept talking to me And  
25 then finally, I dropped the knife and gave up And they

1 put me in protective custody and took me to the Psychiatric  
2 Ward I volunteered myself in And I was supposed to be  
3 in seven days, but they released me after one day And --

4 Q What were you -- What was going through your head in  
5 these attempts?

6 A Just racing thoughts Just -- it's like awful pain  
7 inside It's -- It's hard to explain It's just like a  
8 awful pain, like somebody's taking a like their hand and  
9 putting it inside you and just twisting And I just  
10 couldn't take it

11 Q Were you able to sleep during these times?

12 A No, sir

13 Q We've talked a little bit about your medications  
14 We've talk about Zoloft Are you on any other medications?

15 A Right now?

16 Q What are you on now?

17 A I'm on Celexe and Depakote

18 Q And what are those intended to treat?

19 A Celexe is for anxiety and depression, and the Depakote  
20 is for bipolar

21 Q And before -- So before your trial, were you on any  
22 other medications besides Zoloft?

23 A They switched my medication in November to Vistaril  
24 for anxiety issues

25 Q November of what year?

STEVEN FREEMAN DIRECT BY MR MURPHY

12

1 A 2006

2 Q And that was designed to treat anxiety?

3 A Yes, sir

4 Q At that time, were you still experiencing anxiety?

5 A A little bit

6 Q When did you stop taking those medications? I think  
7 you said that they switched from Zoloft to Vistaril in  
8 November?

9 A Yes, sir

10 Q Did you continue to take the Vistaril throughout the  
11 trial?

12 A No, sir They stopped my Vistaril a few weeks before  
13 trial

14 Q How many weeks?

15 A About three weeks

16 Q And why did they stop that?

17 A I have no idea

18 Q Did you ask for more?

19 A Yes, sir They just -- They wouldn't give me an  
20 answer

21 Q And at this time, you were incarcerated at the York  
22 County Detention Center?

23 A Yes, sir

24 Q And you were under their care?

25 A Yes, sir

1 Q Leading up to your trial, you were not taking your  
2 medications Correct?

3 A No, sir

4 Q Did you tell your attorneys that you were not taking  
5 your medications?

6 A Yes, sir I told Mr Dest they weren't giving me my  
7 meds

8 Q And what did he do?

9 A I don't know -- I don't know if he looked into it  
10 or - -

11 Q How many times did you ask him or tell him about the  
12 medication?

13 A Just once

14 Q Did you hear anything else about it?

15 A No, sir

16 Q What type of mental health problems were you  
17 experiencing the week before your trial and the first day  
18 of your trial?

19 A Just a lot of anxiety, a lot of racing thoughts, a lot  
20 of like panic like the walls are closing in on you and the  
21 room's spinning Just a lot of -- Just like a lot of  
22 anxiety

23 Q Tell me what you were experiencing mental health-wise  
24 the day of your -- the first day of your trial

25 A The first day It was hard to get through the first



STEVEN FREEMAN DIRECT BY MR MURPHY

14

1 day But it was short It was shorter because we started  
2 later And I remember hearing, you know, hearing the  
3 testimony and then hearing the recording And I just lost  
4 it the first day And - -

5 Q You said you lost it What do you mean by you lost  
6 it?

7 A I just -- It was just hard to listen I just started  
8 crying and, you know, just couldn't gather my thoughts

9 Q Were you able to have conversations with your  
10 attorneys?

11 A For the most part, yes, sir

12 Q Were you able to understand what they told you, or  
13 were you focusing -- Were you able to understand what they  
14 told you?

15 A I was -- I was kind of going more -- thinking about  
16 more what, you know, just more of what I heard and all of  
17 that instead of the what he was telling me

18 Q Could you stop those thoughts?

19 A No, sir

20 Q You said you were crying that first day?

21 A Yes, sir

22 Q What were you thinking about?

23 A Just what happened and all the -- You know, just what  
24 happened on the night of the incident and just how much  
25 pain I caused and -- It was just hard to deal with

1 Q Did you sleep that night?

2 A No, sir

3 Q At all?

4 A No, sir

5 Q Anything else happen that night?

6 A They give -- We had like a -- these little bags They  
7 give plastic bags they give us to put our trash in And  
8 that night I took it and put it on my head trying to, you  
9 know, I guess, just end it

10 Q End what?

11 A My life

12 Q Why?

13 A I just -- I just felt bad about what happened And I  
14 didn't think it was fair that I lived And, you know, this  
15 happened and

16 Q And, why didn't it work?

17 A Just -- I don't know, just didn't

18 Q I know it's tough to -- I know this is difficult to  
19 talk about Were you crying that night?

20 A Yes, sir

21 Q Is it in your nature to cry?

22 A No, sir

23 Q You're a weightlifter, right?

24 A I was Yes, sir

25 Q Weight lifters don't cry, do they?

STEVEN FREEMAN DIRECT BY MR MURPHY

16

1 A No, sir

2 Q But that's what you were doing a lot during you trial?

3 A Yes, sir

4 Q I'd like to talk a little bit about the second day  
5 now, the day that you pled guilty What happened first  
6 that day?

7 A When I got up that morning, I just -- Well it was --  
8 It was just like a -- My heart was beating, my mind was  
9 racing, and it was just hard to even get out of bed And  
10 then when I got in the courtroom, walked in the courtroom,  
11 it's -- everything -- I just -- Everything just went  
12 downhill I couldn't catch my breath, the room was  
13 spinning And, you know, I just -- I was just bawling, you  
14 know, just crying And that's when -- When I sat down, I  
15 just couldn't -- like, I couldn't gather myself, couldn't  
16 gather my thoughts And Mr Dest asked me, you know, what  
17 was wrong I told him I didn't, you know, I just couldn't  
18 go on You know, at that time, at that exact time, you  
19 know, I just couldn't sit -- sit out there So, he asked  
20 me what I want to do I told him I didn't know You know,  
21 I guess my only options was either to, you know, go sit  
22 through trial or plea So, I told him -- I asked him if  
23 they would plea And then when he took me in the back, I  
24 was sitting there and, you know, I just tried to gather  
25 myself, but I just couldn't, you know, just couldn't gather

1 my thoughts I asked Mr Dest if I could speak with my  
2 family, and he told me, no But then he went and spoke to  
3 them And then came back and told me whatever I did, that  
4 they, you know, they got my back You know, they approve  
5 of whatever I did I told him I just can't go back out  
6 there

7 Q What was going through your mind at that time?

8 A Just, was like I -- It was like just racing, I mean,  
9 just racing thoughts like a million things going through my  
10 mind at a hundred miles per hour And like I say, it was  
11 hard for me to catch my breath and everything

12 Q Did you tell that to your attorneys?

13 A Sir?

14 Q Did you tell that to your attorneys?

15 A Yes, sir

16 Q What did they do?

17 A He just -- He went -- After he got back, he went and  
18 got the papers and had me sign them And I went right in  
19 front of Mr Hayes -- Judge Hayes

20 Q Throughout the case, trial preparation, trial prep,  
21 had you followed the advice of your attorneys? Did you do  
22 what they told you to do?

23 A Yes, sir

24 Q What did they tell you to do in reference to the plea?  
25 Did they tell you, yes you should plea, or no you shouldn't

STEVEN FREEMAN DIRECT BY MR MURPHY

18

1 plea? Or did they have an opinion on it?

2 A He told me he couldn't tell me either way because it  
3 would go against his ethics

4 Q Did anybody try to talk you out of it?

5 A No, sir

6 Q Did your attorneys ask you about your mental health?

7 A No, sir

8 Q Did they ask you what you were feeling, what you were  
9 experiencing?

10 A No, sir

11 Q Did they request a continuance to have you evaluated?

12 A No, sir

13 MR MURPHY May I beg a moment from the Court, Your  
14 Honor?

15 THE COURT Yes, sir

16 MR MURPHY Thank you

17 (PAUSE )

18 Q Is there anything else that you would like to bring to  
19 the attention of the Court?

20 A Yes, sir

21 Q What is that?

22 A I'd like to -- I'd like to tell the Court I'm not here  
23 to waste his time I would like to get all of my issues on  
24 the record

25 I would -- I would not have pled guilty if I had time

1 to calm down And that time never got -- never was  
2 afforded to me from Mr Dest because within 15 minutes of  
3 my breakdown, I went right in front of the judge And, you  
4 know, if I had just had a little bit of time to calm down,  
5 I would not have pled guilty, I would have continued with  
6 the trial

7 And I went -- I went 6 months at the county jail never  
8 asking to plea And the State offered me a plea deal of  
9 murder for 50 -- 45 to 50 years and I turned it down  
10 because I was not guilty -- I felt I was not guilty of  
11 murder or, you know, of burglary And so I, you know, I  
12 made it clear that I wanted a trial from the beginning up  
13 till my breakdown So -- So if, you know, I just feel if  
14 Mr Dest would have given me time to calm down, I know I  
15 wouldn't have pled guilty because I -- I'm not guilty of  
16 this crime

17 Also, Mr Dest could have called for a recess

18 He could have investigated my medicine, or the reason  
19 they stopped my medicine Because with my medicine, I  
20 wouldn't have had the breakdown to begin with if I was  
21 taking my medicine And they stopped my medicine before  
22 trial And then right after trial when I got to SCDC, I  
23 saw a psychiatrist, and he started my medicine right back  
24 up And I've been on medication ever since So, I mean,  
25 for the last 5 years -- or 4 years, I've been on

STEVEN FREEMAN DIRECT BY MR MURPHY

20

1 medication I've been treated -- Right now, I've been  
2 treating -- treated for bipolar disorder

3 And I -- So, if -- if Mr Dest would have just -- just  
4 -- had just given me time to calm down, I would have  
5 continued with trial

6 He was -- He was arguing manslaughter, but instead,  
7 allowing me to plea guilty to murder, something that he  
8 wasn't even arguing

9 And he never asked for a competency hearing He never  
10 -- before trial, he never told the Court of my mental  
11 illnesses So the Court was unaware of, you know, my  
12 mental illness

13 He never -- He never entered into the plea  
14 negotiations, which when I decided to plea, he should have  
15 at least tried to get me a plea deal of manslaughter since  
16 he was arguing that

17 And I'd like to put it on record and enter my exhibit  
18 into evidence that he - - the indictment

19 Q You want me to hand this up?

20 A Yes, sir

21 Q This whole thing?

22 A It already got the indictments?

23 Q It does?

24 A So, I don't need them

25 Q You don't need the indictments? You want that - - -

1 A Yes, sir

2 Q - - - in there? This goes in?

3 A No, I'll keep that

4 Q All this goes in?

5 A Yes, sir

6 Q Okay I'm going to hand it to him so he can look at  
7 it first

8 A Yes, sir

9 (MR BRANT REVIEWING DOCUMENTS )

10 A I'd like to enter into evidence my indictment issue  
11 Mr Dest failed to object to faulty indictments The  
12 indictments state that in the Court of General Sessions on  
13 November 9th, 2006, the Grand Jury swore upon their oath,  
14 which I got the calendar from the Clerk of Court, Ms  
15 Michelle Owens And it states that there was no Court of  
16 General Sessions on November 9th So, I'd just like to  
17 enter that into evidence

18 MR BRANT Your Honor, the State would be opposed to  
19 entering this into evidence This was not filed by his  
20 attorney for him I'm still not sure -- There's several  
21 pages of -- I'm just not sure what it is

22 THE COURT Are you familiar with what it is?

23 MR MURPHY I briefly discussed the claims that are  
24 in those papers, Your Honor It's not something that I  
25 filed, but it's something that Mr Freeman would like Your



STEVEN FREEMAN DIRECT BY MR MURPHY

22

1 Honor to consider

2 MR FREEMAN It should be -- I filed it with --

3 THE COURT No - -

4 MR FREEMAN Yes, sir

5 THE COURT Why wasn't it presented it to the other  
6 side if it's something you want the Court to consider?

7 MR MURPHY Your Honor, it's something that was  
8 presented to me It's not something that I would present  
9 with my signature on it, but it is something that Mr  
10 Freeman would like Your Honor to consider

11 THE COURT Is it duplicative of what you presented?

12 MR MURPHY It is not, Your Honor, not to my  
13 knowledge There may be something about the mental health  
14 issues in there, Your Honor, but the other issues are not

15 THE COURT Does it address any issues he raised in  
16 his Application for Post-conviction Relief?

17 MR MURPHY Yes, Your Honor Ineffective assistance  
18 of counsel in violation of due process, Your Honor

19 MR BRANT I'm seeing something about defective  
20 indictments in here I'm still not sure what all is  
21 addressed It says Counsel was ineffective for failing to  
22 object to the deficient -- It's something about the  
23 indictments being deficient, and that just may be one  
24 portion of it And prosecutorial misconduct

25 THE COURT Was that raised in his application?

1 MR MURPHY Unless you tie that in, that could be  
2 addressed in a due process of law, violation of due process  
3 argument, Your Honor Again, Your Honor --

4 THE COURT He don't say it violates his Fourth and  
5 Fifth Amendments, due process of law, and send it back to  
6 the Court, and expect from that to throw everything you  
7 want into the hearing, Counsel I'm saying, is it  
8 addressed -- Did they put on notice of what he's --

9 MR MURPHY I'm sorry, Your Honor This is not an  
10 argument that I would be addressing, and it's not an  
11 argument that I would be presenting to Your Honor

12 THE COURT And I'm just asking, is it relevant at  
13 least to some of the grounds he raised?

14 MR MURPHY Your Honor, it's -- He alleges  
15 ineffective assistance of counsel in violation of due  
16 process of law in his application

17 THE COURT Counsel, I understand that And that  
18 encompasses ten million volumes of law somewhere

19 MR MURPHY Yes, Your Honor

20 THE COURT And I'm asking you, is it specifically  
21 relate to anything he raised in his grounds there? I mean,  
22 you can't say, "You violated my Fourth Amendment rights",  
23 and that constitutes throwing anything into the hearing you  
24 want to bring in that the other side is unaware of

25 MR MURPHY I would --

STEVEN FREEMAN DIRECT BY MR MURPHY

24

1 THE COURT It's got to be more specific than saying  
2 this is a Constitutional violation

3 MR MURPHY I would need to review it more closely,  
4 Your Honor

5 THE COURT Counsel, I'll give you a chance to look at  
6 it I probably will admit it for whatever consideration  
7 the Court wants to give it

8 MR BRANDT I will just state for the record, we do  
9 oppose it It does raise new allegations And it comes  
10 into evidence and we'll have to respond to it

11 THE COURT What new grounds does it raise?

12 MR BRANDT There's something about perjury and  
13 prosecutorial misconduct by Assistant Deputy Solicitor  
14 Thompson knowingly and willingly causing false information  
15 to be printed and published in the indictments

16 THE COURT Is there anything like that in his  
17 application or any notice -- You say you wouldn't present  
18 it?

19 MR MURPHY No, Your Honor

20 THE COURT All right, I'm not going to allow that in  
21 if you didn't raise it until today, he's handing it up  
22 today I'm not going to allow it in today It hadn't been  
23 raised before Counsel could -- has plenty of opportunity  
24 to raise that - -

25 MR MURPHY Thank you, Your Honor

1 MR BRANT Thank you

2 THE COURT I want him to raise anything he wants to  
3 raise, but there's got to be some notice here for the other  
4 side, what is he seeking to, so they can respond to it

5 MR MURPHY Thank you, Your Honor

6 THE COURT Or even here in court, if it just relates  
7 to something you raised in his application in some way, any  
8 of the grounds they were put on notice about, that's fine  
9 Even if you get into the hearing, before the hearing's  
10 starts, but we're in the middle of the hearing now If you  
11 want to raise something else that's not an issue, wasn't  
12 raised in his application, with no notice given of it, they  
13 have no opportunity to respond to it And it's something  
14 that Counsel had an opportunity to raise, but chose not to  
15 raise, not to present, so

16 All right, I'm going to do this He gets his one  
17 shot I'm going to allow it in I'm going to allow it  
18 I'll give it whatever weight I want to give it when I get  
19 it in But, I'm going to allow it in

20 I'll give you full time to respond to it If not  
21 today, in a subsequent brief

22 MR BRANT Thank you, Your Honor

23 MR MURPHY Permission to approach, Your Honor

24 THE COURT Sir

25 MR MURPHY Permission to approach and enter into

24 Q When was the first time you were diagnosed with  
25 depression?

1 A I was diagnosed with depression -- It was when I was  
2 young, I went to a psychiatrist, but I don't have no record  
3 of it

4 Q You have no record of you being diagnosed with  
5 depression at that time?

6 A No, sir

7 Q Was anyone else with you when you played Russian  
8 Roulette?

9 A Sir?

10 Q You said you played Russian Roulette when you were  
11 young?

12 A Yes, sir

13 Q Was anyone else with you?

14 A No, sir

15 Q You said at the trial, it was hard to sit through  
16 Correct?

17 A Yes, sir

18 Q You had a lot of anxiety, a lot of emotions Correct?

19 A Yes, sir

20 Q What was so difficult about the trial?

21 A Just reliving the incident and just -- It was hard to  
22 cope with

23 Q You said that it was hard to hear the testimony?

24 A Yes, sir

25 Q What was difficult to hear about the testimony?

STEVEN FREEMAN CROSS BY MR BRANT

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1 A Just listening to the -- just again, just reliving  
2 the -- over and over, just -- I mean, I continue to have  
3 nightmares about the incident But just to relive it over  
4 and over it was just hard to sit through at that time

5 Q Your lawyer asked you if you were able to communicate  
6 with your lawyers during the trial, and you said, "for the  
7 most part " Correct?

8 A Yes, sir

9 Q He asked you if you could understand them, and I  
10 wasn't sure what your answer was

11 A Well, I mean, I could I mean, I could hear what they  
12 were saying But as far as, like, processing it and, you  
13 know, I just couldn't concentrate on what he was saying

14 Q Did you say you were crying at trial?

15 A Yes, sir

16 Q Why were you crying?

17 A Just the emotion of what happened and of reliving it  
18 And, you know, just the emotion

19 Q Did you feel that you had done something wrong?

20 A I know I done something wrong

21 Q So you knew you did something wrong it just wasn't, in  
22 your opinion it wasn't murder, it was manslaughter?

23 A Yes, sir

24 Q And you were remorseful?

25 A Yes, sir

1 Q And you felt bad for the victim's family?

2 A Yes, sir

3 Q And for the victim himself?

4 A Yes, sir

5 Q Was that part of why you were emotional?

6 A Might a been a part of it Yes, sir

7 Q And you were talking about a time -- I thought it was  
8 right before trial or maybe the night after the first day  
9 of trial when you -- Did you say you put a plastic bag over  
10 your head?

11 A Yes, sir

12 Q Where was that?

13 A In the jail cell

14 Q Where did you get a plastic bag?

15 A They -- put my trash in it

16 Q And you said, "It just didn't work "

17 A Yes, sir

18 Q What does that mean?

19 A I'm still here

20 Q So, are you saying that you didn't go through with it?

21 A I tried, but just --

22 Q Just wouldn't work?

23 A No, sir They -- Like you see on TV, everything don't  
24 work like it shows

25 Q Did you take the bag off of your head at some point or



STEVEN FREEMAN CROSS BY MR BRANT

30

1 did someone else come in and remove it?

2 A I took it off after a while

3 Q Were there any drugs that you were taking prior to the  
4 incident that were not prescribed?

5 A No, sir

6 Q You never took steroids?

7 A Well, earlier Yes, sir

8 Q And how far before the incident happened were you  
9 taking steroids?

10 A How far was I -- Had I stopped -- I stopped taking  
11 steroids before the incident

12 Q How soon before the incident did you stop?

13 A About a month and a half

14 Q A month and a half before the incident happened?

15 A Yes, sir

16 Q Were you taking heavy doses every day?

17 A Yes, sir It goes up and down

18 Q You were cycling it?

19 A Yes, sir

20 Q How long were you cycling steroids?

21 A About 4 years, 3 years

22 Q And you're familiar with the term "Roy Rage"?

23 A Yes, sir

24 Q You heard of that before you started taking steroids?

25 A Yes, sir

1 Q You knew that, that could be a side effect?

2 A I thought that, that was just a myth

3 Q At trial, I believe, the first day ended, you came  
4 back the second day in the morning, and that's when you  
5 pled Right?

6 A Yes, sir

7 Q Nothing -- There was no testimony or anything given  
8 before you pled guilty?

9 A No, sir

10 Q Well, you said you had about 15 minutes to talk with  
11 your attorney and discuss whether to plead Correct?

12 A Yes, sir

13 Q Why did you have that 15 minutes?

14 A Just -- I don't know He just -- getting the  
15 paperwork He went and talked to my family

16 Q Why did you have that time at all? Who asked for that  
17 time?

18 A I guess he did

19 Q Your attorney did?

20 A I guess

21 Q Mr Dest? You guess or he did?

22 A I guess he did

23 Q You said that if you had more time, you would not have  
24 pled Correct?

25 A Yes, sir

STEVEN FREEMAN CROSS BY MR BRANT

32

1 Q How much more time did you need?

2 A It's hard to say That afternoon when Mr Dest came  
3 to see me, I told him I didn't want to plead guilty But  
4 it was too late And that's when he filed my appeal --  
5 signed and filed my appeal

6 Q When you received your sentence, were you surprised at  
7 all?

8 A It really didn't hit me until -- till I was already in  
9 R & E

10 Q Do you remember a statement you made before the Court  
11 when you pled guilty?

12 A The statement I gave?

13 Q Yeah

14 A Not offhand, no, sir

15 MR BRANT Permission to approach, Your Honor?

16 THE COURT Yes, sir

17 Q This is a copy of your record on appeal Does that  
18 look like it?

19 A Yes, sir

20 Q And I'm on Page 222, starting at Line 15, going  
21 through the next page to Line 6 Is that your statement?

22 A Yes, sir

23 Q Can you read it out loud to the Court?

24 A "I just want to say how sorry I am for what I did I  
25 know that I took a father from his children, and a son from

1 his parents No matter what, I can't give that back to  
2 them I wish -- Not a day goes by that I wish I could turn  
3 back time and go back to that day I know I would drag  
4 myself out of there if I could I know -- I know me spend  
5 my life in prison is probably -- probably everybody is  
6 right They ain't nothing like the prison I've been  
7 spending since that night -- since the night this happened  
8 I've been in a prison here for the rest of my life because  
9 -- just because if there was anything I know they probably  
10 don't want to hear it But when I get to prison, and if I  
11 get a job that pays, please let me help his children  
12 Somehow let me help them They didn't deserve this None  
13 of them deserve this I'm sorry "

14 Q Thank you And you seem pretty remorseful in that  
15 statement, do you not?

16 A Yes, sir

17 Q In fact, that's pretty much the only thing you talk  
18 about, isn't it?

19 A Yes, sir

20 Q And did you say, "I know" -- You said you knew that  
21 you might spend life in prison?

22 A Yes, sir

23 Q So at the time that you pled guilty, you knew that was  
24 a possibility?

25 A Yes, sir

STEVEN FREEMAN CROSS BY MR BRANT

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1 Q And you gave, say a decently long statement Was this  
2 rehearsed at all?

3 A No, sir

4 Q Did you give it on your own?

5 A Yes, sir

6 Q No one was feeding you anything to say?

7 A No, sir

8 Q Were you having trouble thinking then?

9 A Well, I was having

10 Q I'm sorry, did you answer?

11 A No, sir

12 Q Is that "No, sir, you weren't having, you were having  
13 trouble thinking" or "No, sir, you didn't answer"?

14 A No, sir, I wasn't having that much trouble thinking  
15 it

16 Q You were not?

17 A No, sir It was emotions

18 Q Do you remember all the other questions -- or the  
19 judge asking you questions about your plea?

20 A Yes, sir

21 Q And you answered all those questions Correct?

22 A Yes, sir

23 Q Were you having trouble thinking then?

24 A Well, if you -- If you -- If you look on -- If you  
25 look on page -- When the judge asked me a question of -- He

1 started asking me question if I'd been treated for any  
2 mental illnesses, and I said, "No," which was a lie I  
3 wasn't -- You know, he was just asking me a question I  
4 was just -- You know, I was just answering him And then  
5 Mr Dest had a comment to tell him about, you know, all my  
6 mental history

7 Q So, Mr Dest stood up for you?

8 A Well, I mean, that's cause I -- No, I didn't -- You  
9 know, I didn't -- wasn't listening -- I just said, "No,"  
10 which -- But --

11 Q But he told him about your problems, didn't he?

12 A Yes, sir But if -- If I was answering the questions  
13 correctly, I would have said, "Yes," and told him myself  
14 There's also another one where he asked me a question In  
15 the middle of the question, I answered it And then Judge  
16 Hayes says, "You've got to wait till I ask you" or "finish  
17 the question before you answer it " And he done that  
18 twice So, it's just to say, you know, I was going through  
19 there answering questions on my own free will, thinking  
20 about every question would be wrong because I wasn't

21 Q Well, when you gave the statement to the Court, you  
22 were thinking - -

23 A It was out of emotions, yes, sir

24 MR BRANT I beg the Court's indulgence

25 (PAUSE )

STEVEN FREEMAN    CROSS BY MR BRANT  
REDIRECT BY MR MURPHY

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1        Q     Mr Freeman, during the plea hearing portion of the  
2        trial, when you gave your statement, you were given a  
3        chance to say anything you wanted to    Correct?

4        A     Yes, sir

5        Q     Did you say anything at that point about your  
6        inability to understand what was going on?

7        A     I wasn't thinking about it, no, sir

8        Q     What were you thinking about?

9        A     I guess, just

10       Q     How sorry you were?

11       A     Yes, sir

12       Q     And you knew you had a right to a jury trial  
13       Correct?

14       A     I chose a jury trial, yes, sir

15       Q     You chose it before you declined to continue with it?

16       A     Before I broke down, yes, sir

17       Q     And you knew you still had the right to proceed when  
18       you pled guilty?

19       A     If I would had continued, yes, sir

20       MR BRANT    Nothing further, Your Honor

21       MR MURPHY    Briefly, Your Honor

22                   REDIRECT EXAMINATION

23       STEVEN FREEMAN BY MR MURPHY

24       Q     Mr Freeman, had you not been under a mental  
25       disability, would you have pled guilty?

STEVEN FREEMAN REDIRECT BY MR MURPHY  
HARRY DEST DIRECT BY MR MURPHY

37

1 A No, sir

2 Q What are you asking this court to do?

3 A To overturn my case, and give me a new trial

4 Q Thank you

5 MR MURPHY No further questions, Your Honor

6 THE COURT Thank you, sir You may step down, sir

7 MR MURPHY Your Honor, the Plaintiff calls Mr Harry  
8 Dest

9 (WHEREUPON HARRY DEST,  
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS )

11 DIRECT EXAMINATION

12 HARRY DEST BY MR MURPHY

13 Q Please state your name

14 A Harry Dest

15 Q Mr Dest, what's your address?

16 A My home address?

17 Q No, sir, the place you work, your work address

18 A Moss Justice Center

19 Q And what do you do?

20 A I am the 16th Circuit Public Defender

21 Q And in that capacity, you represented Mr Freeman?

22 A I did along with B J Barrowclough, the Deputy Public  
23 Defender

24 Q And he was indicted for murder, burglary first, and  
25 resisting arrest?



HARRY DEST DIRECT BY MR MURPHY

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1 A Yes

2 Q And he pled guilty on March 6th, 2007?

3 A Yes

4 Q To all those charges?

5 A Yes

6 Q And he was sentenced to 50 years concurrent on the  
7 murder and burglary first, and one year on resisting  
8 arrest?

9 A Yes

10 Q I'd like to talk a little bit about -- You heard Mr  
11 Freeman talk about his mental illness history Can you  
12 talk to me about your knowledge of Mr Freeman's mental  
13 health history?

14 A Yes We knew about the suicide attempts The ones  
15 that we were most interested in were the ones in August of  
16 2006, which occurred the same month as the incident itself  
17 We knew that he had bouts with depression We knew that,  
18 that was something that was part of his makeup

19 However, I will say that, that were other things that,  
20 to get a more complete picture, you need to understand  
21 Prior to the incident, as Mr Freeman testified, he was  
22 using anabolic steroids He had been using anabolic  
23 steroids for quite some time In fact, the day that he was  
24 arrested, he was 265 pounds At the day of trial, he was  
25 195 pounds So, in order to explore the consequences of

1 using anabolic steroids, and his bouts of depression, and  
2 suicidal ideation, we hired Dr Harold Morgan to do a  
3 forensic examination of him

4 Dr Morgan met with him, I believe, on two occasions  
5 to explore those issues He also did a, I believe, an MMPI  
6 test, personality test to determine what his inherent  
7 personality traits are It was clear from Dr Morgan's  
8 assessment of him that he was somebody who has very low  
9 self-esteem, somebody who is very insecure in his own  
10 feelings, in his relationships with individuals And that  
11 it was compounded by the fact that he had never had a  
12 serious relationship with any female up until the time he  
13 met the woman who was involved in this case

14 So, it was Dr Morgan's belief that, first of all,  
15 competency was never an issue, insanity was never an issue  
16 And that what happened on the night in question was really  
17 two factors that sort of converged in one One was the  
18 fact that he was emotionally dependent upon this woman who  
19 now -- who we knew, at the time, was cheating on him, who  
20 claimed to have been pregnant with his baby, who was  
21 basically playing mind games with him And when he saw  
22 this woman with another man who he did not know, who he  
23 thought was engaged in sexual activity with her, he  
24 basically snapped because of the impulsivity involved In  
25 other words, Dr Morgan believes that he had -- not only

HARRY DEST DIRECT BY MR MURPHY

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1 was he emotionally dependent, but he suffered from  
2 impulsivity, which could be attributed to a number of  
3 things, one of those which could have been the use of  
4 anabolic steroids And coming off of anabolic steroids,  
5 one of the consequences of that is that you are more  
6 irritable, and quite frankly, can be enticed very quickly  
7 to snap And what happened was, from what Dr Morgan told  
8 us, is that you have those two factors converging He's  
9 emotionally dependent upon her He's never had a sexual  
10 relationship with a mature woman, never had a mature  
11 relationship with a woman coupled with his impulsivity  
12 based upon what he perceived Based on that is when he  
13 smashed through the window of the apartment and beat Mr  
14 Burgess to death That's what happened

15 Okay, now, you have to understand that his testimony  
16 he just gave regarding being tearful, that he's never been  
17 tearful is inaccurate And because I even stated on Page  
18 205 of the transcript that virtually every single time that  
19 I went to see him, he cried Steven was somebody who was  
20 an extraordinary person Besides his own emotional  
21 difficulties, he was not the type of person who could not  
22 function He worked his job at Blythe Construction, he  
23 worked 60 to 80 hours a week In fact, had we finished the  
24 trial, one of our key character witnesses would have been  
25 his former employer who said that he was the best employee

1 he ever had, that he worked 60 to 80 hours a week, that he  
2 was a foreman And that he was somebody who they trusted  
3 to do the most difficult jobs That's the basic summary of  
4 what Dr Morgan's examination would reveal to us

5 The fact that he had bouts of depression, the fact  
6 that he had suicidal attempts before, we knew about  
7 That's why we retained Dr Morgan, but there was never a  
8 question as to whether or not he understood what we were  
9 going to do

10 And one thing I want to clear up too There was never  
11 a plea offer in this case In fact, we were preparing for  
12 trial There was never an offer made by the State We had  
13 tried to negotiate with the State a plea offer where they  
14 would come down to voluntary manslaughter They never did  
15 that, they weren't going to do that So we were left with  
16 the option of pursuing a defense of voluntary manslaughter  
17 by claiming that the legal provocation was Mr Freeman  
18 perceiving or observing his girlfriend in the middle of a  
19 sexual act And that would have been the legal provocation  
20 that we were going to try to put forth at trial

21 Q You wanted to put that up?

22 A We wanted -- Yes, we did And we were preparing for  
23 trial the entire time

24 Q Trial are stressful for the participants Correct?

25 A They're stressful for everybody, yes

HARRY DEST DIRECT BY MR MURPHY

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1 Q Probably enough stress that anyone -- It's one of the  
2 most stressful events in life, in your experience?

3 A I would assume it would be if you're on trial, yes

4 Q Were you aware that Mr Freeman was taking medication?

5 A I was aware that he was taking some medication for  
6 depression And he never told me that they stopped giving  
7 him medication at any time

8 Q So that answers the question that you weren't aware  
9 that Mr Freeman stopped taking his medication?

10 A He never told us that, no Never told me that

11 Q You weren't aware of any doctor's orders that ceased  
12 that medication?

13 A No

14 Q I'd like to take you to the day of Mr Freeman's plea  
15 Talk about what happened that day

16 A We came out to start the second day of trial and Mr  
17 Freeman, I noticed he was crying He had tears coming down  
18 his face, which again, you have to understand, that was not  
19 uncommon for Steven to cry Now I don't like -- No lawyer  
20 wants his client crying in the middle of a trial, so I  
21 asked him what was wrong And he said he wanted to stop  
22 this And I said, "Well what do you mean?" He says,  
23 "Well, I want to plead " I said, "Steven, we haven't even  
24 gotten into our case, and the State hasn't even finished  
25 their presentation So, we have a long way to go " And he

1 kept crying He said, "No, I don't want to put the family  
2 through it," talking about the victim's family And he  
3 didn't want to put his family through it So, I said,  
4 "Well, let me talk to the Judge to see if he'll give us  
5 some time to discuss what's going on and talk to the  
6 Solicitor "

7 So, Judge Hayes gave us some time to speak back in  
8 lockup And, of course, I told the Prosecutor -- I  
9 apprised the Prosecutor of what was going on because, you  
10 know, it was something that we did not expect because we  
11 never talked about a plea In fact, as I indicated, a plea  
12 offer was never made in this case So, we were pursuing a  
13 trial strategy When we got him back in lockup, Steven  
14 said, "Well, I don't want to go to trial I want to end  
15 this " And Mr Barrowclough and I said, "Look, if you  
16 plead guilty, the Judge could give you a life sentence,  
17 that you would be waiving or giving up your defense, which  
18 is that you're guilty of a lesser charge of voluntary  
19 manslaughter " I explained to him that the best part of  
20 our case would be when we would have an opportunity to  
21 cross examine his girlfriend because we had a lot of  
22 letters that she wrote him that we could cross her on to  
23 show the Jury the level of manipulation that she employed  
24 in their relationship

25 So, we were trying to convince him not to plead

HARRY DEST DIRECT BY MR MURPHY

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1 Again, he kept reiterating the two reasons why he wanted to  
2 plea, which were "I don't want to put the victim's family  
3 through a trial, they've already suffered enough I don't  
4 want to put my family through a trial and I'm willing to  
5 plead "

6 So, he asked me to tell his parents what was going on  
7 He did not ask us to arrange some kind of meeting where we  
8 could meet with the family Because you have to  
9 understand, we're in the middle of a murder trial that's  
10 already in its second day The Judge is only going to give  
11 us 20 or 30 minutes to explore the possibility of a  
12 resolution The State was unwilling to give us any type of  
13 plea offer Quite frankly, really, it's no surprise to me  
14 because we were in the middle of a trial So, I went and I  
15 spoke to his parents, and I told them that Steven wanted to  
16 plead And that was his decision, not ours But I know  
17 that they did not want him to plead because we explained to  
18 the parents that he would be waiving all of his rights with  
19 respect to a jury trial by entering a plea and could get a  
20 life sentence But in the end, that's what he wanted to  
21 do

22 And so, there was a lot of discussion between Mr  
23 Barrowclough, Steven, and myself about the hazards of  
24 entering a plea, particularly straight up to a murder  
25 charge

1 Q Did you request a continuance at that time?

2 A I did not

3 Q Did you request a competency hearing at that time?

4 A I did not

5 Q When was the last time that Dr Morgan evaluated  
6 Mr Freeman?

7 A I believe it was in January

8 Q About two months before the trial?

9 A Yes But let me -- Let me answer the question,  
10 though, a little bit more thoroughly

11 First of all, when you're in the middle of a jury  
12 trial and a murder case, the judge is not going to give you  
13 a continuance to discuss the case any longer than probably  
14 20 or 30 minutes That's been my experience I've been  
15 practicing law for 20 years I know that the judge would  
16 not have given me a continuance because that's really not a  
17 legitimate, legal ground for a continuance to explore a  
18 plea offer and whether or not to have a continuance for the  
19 grounds of having a competency hearing when as an officer  
20 of the court, I did not see anything in my observations or  
21 my experience with Steven from beginning to end which would  
22 suggest that he wasn't competent to stand trial And I  
23 knew because we already had a forensic examination  
24 conducted by Dr Morgan, that, that was not an issue And  
25 I also knew that if we tried to assert any kind of mental



HARRY DEST DIRECT BY MR MURPHY

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1 health issues at trial, that the impulsivity aspect of his  
2 personality would have come out, and which would have been,  
3 in my view, detrimental in front of the jury

4 Q Have you had experience with anybody who maybe go in  
5 and out of competency through time?

6 A Yes, I have

7 Q So, Mr Freeman's decision, at that point, to enter in  
8 a plea, that surprised you?

9 A That surprised me because we never discussed a plea  
10 And we had been discussing trial strategy from the very  
11 beginning of the case

12 Q You didn't --

13 A What did not surprise me, though, was the fact that he  
14 was emotionally weak In fact, I think, one of the ironies  
15 of this case is that you have a man who was physically  
16 strong, but emotionally weak, emotionally weak I mean, he  
17 could not handle -- If you want to say he couldn't handle  
18 the stress of a trial I would say, yes, that's probably  
19 true But to say that, that was because of some mental  
20 issue or mental health disability, well, he's never had a  
21 disability, I think, would be inaccurate I think that he  
22 was emotionally weak and physically strong And I think  
23 that's what Dr Morgan relayed to me in terms of his  
24 overall psychological makeup

25 Q You didn't want him to plea guilty? time

1 A I did not

2 Q At least not at that time?

3 A I did not

4 Q Had he always done what you asked of him, followed  
5 your advice throughout the preparation of the case?

6 A Yes

7 Q The day of his plea, he was crying?

8 A Yes, he was crying

9 Q And he was emotional?

10 A Yes

11 Q He was breaking down in court?

12 A I wouldn't say he was breaking down I think he was  
13 emotional I've been in a lot of situations where death is  
14 involved, and people are emotional on both sides So, I  
15 wouldn't say that his emotion was any more or any greater  
16 than any other Defendant expressing remorse

17 Q I guess we can talk about semantics, but would it  
18 surprise you if you used the word "breaking down, crying"  
19 in the courtroom at his plea hearing?

20 A Would that surprise me?

21 Q Yes

22 A No, not when you've beat somebody to death, no -- With  
23 your bare hands, no

24 Q I think you've alluded to it, but it is important for  
25 an attorney as an officer of the court to evaluate -- I'm

HARRY DEST DIRECT BY MR MURPHY

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1 not asking for your evaluation -- But, to evaluate a  
2 client's mental health before allowing them to plead  
3 guilty -- their state of mind Correct?

4 A Yes But let me say, there is a qualitative  
5 difference between somebody who is mentally unfit versus  
6 emotionally weak

7 Q And you knew his mental health background?

8 A Yes

9 Q His decision surprised you?

10 A Yes His decision did surprise me because we were  
11 preparing for trial

12 Q He was crying?

13 A Yes

14 Q He was emotional?

15 A Yes

16 Q He wasn't on his medication?

17 A I'm not sure what medication he was on I know that  
18 he was on for depression, the other medication I'm not sure  
19 about

20 Q He wasn't focused on consequences, he was focused on  
21 others?

22 A No, I wouldn't say that either, because he knew fully  
23 that by entering a plea that he was facing the possibility  
24 of going to prison for the rest of his life That was made  
25 quite clear to him by me, by Deputy Public Defender

1 Barrowclough, and I believe the Court in his plea, and I  
2 believe in the transcript where he just articulated on the  
3 stand that he knew he was facing life in prison

4 Q But he wasn't focused on that?

5 A I don't know -- He seemed focused to me He seemed  
6 focused to me, he seemed focused to Mr Barrowclough when  
7 we were talking to him about the consequences of pleading  
8 guilty Had I thought for one minute that he was not  
9 mentally fit to do that, I would have asked the judge for a  
10 continuance I would have asked the judge immediately to  
11 stop the trial But as an officer of the court, I can't  
12 say that I observed those types of characteristics that  
13 would let -- make me make that motion

14 Q And in your testimony you said, though, that his  
15 reason were -- those reasons were more focused on others  
16 and not on the consequences of the decision to plead  
17 guilty Correct?

18 A The only -- I wouldn't say that I think it's a  
19 combination of two things It's a combination of knowing  
20 that what he did, he was extremely remorseful for And  
21 knowing that by pleading guilty, he's going to be facing  
22 life in prison So, I wouldn't say that he didn't know the  
23 consequences of what he was doing If I thought that, I  
24 wouldn't have allowed him to plead

25 Q His crying, though, his emotional state, I thought you

HARRY DEST DIRECT BY MR MURPHY

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1 had given testimony that said the two reasons that he  
2 expressed to you were focus on the victim's family and  
3 focus on his family

4 A Right, for what he had done

5 Q And knowing this, he pled guilty without an  
6 evaluation?

7 A Counsel, he was evaluated prior to trial There was  
8 never any indication for anything that he said that day to  
9 me to indicate that he didn't understand what he was doing,  
10 or that he had racing thoughts, or that he could not  
11 comprehend the consequences of his actions

12 You have to understand that he pled guilty because he  
13 was sorry for what he actually did And that was what was  
14 weighing on his mind I mean, the fact that somebody's  
15 life was taken where he beat this man to death by crashing  
16 through the apartment complex, through the window -- And  
17 that testimony was compelling -- And that there was blood  
18 everywhere is what he was thinking about when he pled  
19 guilty

20 Q Did he tell you that?

21 A Yes

22 Q Thank you I have no more questions

23 MR BRANT I beg the Court's indulgence

24 (PAUSE )

25 CROSS EXAMINATION

1 HARRY DEST BY MR BRANT

2 Q Mr Dest, how many times do you recall, just roughly,  
3 in meeting with Mr Freeman for the trial?

4 A I don't have an exact number, but it was many, many  
5 times, maybe 15 to 20 times I know that Mr Barrowclough  
6 may have met with him, actually, more than I because he was  
7 going to do the direct examination at trial

8 Q Did you notice any change in his demeanor between  
9 those 15 to 20 times that you met with him?

10 A No, sir

11 Q What was his demeanor? I know you said that he cried  
12 pretty much every time

13 A Well, and you have to understand -- Let me try and  
14 give you a little bit of a backdrop to this Steven was  
15 a young man who never committed a crime, no prior criminal  
16 record, was a very valued employee, was a very good son to  
17 his mother and father and had a great relationship with his  
18 family, had a strong family He was a very, very good and  
19 productive citizen

20 Besides some of the emotional baggage that he had, you  
21 know, he was, again, physically strong, but mentally weak  
22 And there were many times when we talked to him about the  
23 case, that he cried He cried because not only of what he  
24 did and how that affected other people, but certainly his  
25 situation He found himself -- Here is somebody with no

HARRY DEST CROSS BY MR BRANT

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1 prior criminal record, now is facing life in jail,  
2 potentially

3 Q In your experience, does it sound any alarm bells if  
4 someone cries talking about the homicide?

5 A No

6 Q In fact, if someone was -- You say he was remorseful  
7 Correct?

8 A Yes, sir

9 Q If somebody was not remorseful, would that be more  
10 indicative of some kind of --

11 A Right I'm not a psychiatrist, but that certainly  
12 would be more indicative of anti-social behavior somebody  
13 who is devoid of any thoughts or feelings regarding other  
14 human beings And I found him to be the exact opposite of  
15 that I found him to be very remorseful, very  
16 understanding, very sensitive to what had transpired

17 Q And in your meetings with him, did he ever seem to not  
18 understand the conversations?

19 A No, sir

20 Q He always understood consequences?

21 A Yes, sir

22 Q He understood all the evidence that was going to be  
23 presented against him?

24 A Yes, sir, we went over that

25 Q And when did you take over this case?

1 A We had the case since the inception He was arrested  
2 in August, I think we had it shortly after that, we were  
3 appointed

4 Q And let's go to the first day of trial Did you speak  
5 to him in before the trial?

6 A Yes

7 Q What was his demeanor then?

8 A The same as it had always been

9 Q What about during the trial?

10 A The first day, it -- I don't recall anything unusual  
11 about his demeanor the first day of trial I believe we  
12 finished opening argument and may have gotten into two or  
13 three witnesses And the last witness was, I believe, the  
14 neighbor who came to the scene right after the incident

15 Q On the day of the plea, did you meet with him before  
16 coming into court?

17 A Yes

18 Q What was his demeanor like then?

19 A I don't remember anything unusual until we sat down

20 Q In the courtroom?

21 A In the courtroom And then he started crying And  
22 again, when I say, "crying," he was crying, but it wasn't  
23 like he was sobbing The tears were just sort of streaming  
24 down his face, and he was silent And that's when I asked  
25 him, "What's wrong?"



HARRY DEST CROSS BY MR BRANT

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1 Q Did he seem confused?

2 A No, not to me

3 Q Again, he was just remorseful?

4 A Yes Which again, is something that occurred  
5 frequently throughout our representation is him expressing  
6 remorse for what he had done

7 Q And was his demeanor like that, just identical to that  
8 before you had him examined by Dr Morgan?

9 A Yes, I mean --

10 Q And after?

11 A Right Now, the biggest difference I would say  
12 physically, as I indicated earlier in my testimony, was  
13 when he was arrested, he was 265 pounds At trial, he was  
14 190 pounds And there were times, like I said, he was  
15 crying when we met with him

16 Q Did anything change in his demeanor after Dr Morgan  
17 examined him?

18 A No, none that I could tell

19 Q And Dr Morgan was not present at the trial?

20 A No, sir

21 Q You say you've handled numerous murder trials before?

22 A Yes

23 Q And you've had other clients in these murder trials  
24 who, I guess, express anxiety at trial?

25 A Absolutely

1 Q Nothing abnormal about that?

2 A There's nothing abnormal about being on -- expressing  
3 anxiety when you're on trial for your life, no

4 Q From the moment you came in the courtroom, and the  
5 Defendant said -- Not the Defendant, I'm sorry -- Mr  
6 Freeman said he wanted to plead guilty, in your discussion  
7 with him at that time, did he seem to understand everything  
8 that you were communicating to him?

9 A Yes

10 Q And just to be very clear, your advice to him was  
11 what?

12 A If you plead -- My advice was not to plead because if  
13 he pleads, he would be facing a life sentence And we  
14 would be giving up any defense that we had, which was,  
15 again, to ask the Jury to find him guilty of a lessor  
16 included offense of voluntary manslaughter

17 Q You made sure he wanted to go forward with this,  
18 despite the advice?

19 A And that's why I met with the family because I knew  
20 that they would not understand why he's pleading guilty,  
21 that this was his decision

22 Q And did he ask you any questions during that  
23 discussion?

24 A I think he asked me, "What do you think I would get if  
25 he pled straight up?" And I said, "Steven, I don't know

HARRY DEST CROSS BY MR BRANT

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1 what you would get " I said, "But, I can tell you that as  
2 a bare minimum, you're facing 30 years And the fact that  
3 this was, you know, a pretty brutal killing, that the judge  
4 is going to consider all of this " I couldn't tell him  
5 exactly what he was going to get But, I told him that it  
6 was my advice that we should go to trial and not give up  
7 our defense

8 And, you know, I think it's -- It's important to  
9 understand that at that point in the trial, it really  
10 wasn't going well for us, okay Because this was the  
11 really, the heart of the State's case They had put up the  
12 neighbors, they had put up the police I think, one police  
13 officer, maybe a crime scene person So, we were going  
14 through a difficult point in the trial My belief was that  
15 we could have shifted the momentum once the girlfriend took  
16 the stand And then it would have become more clear to the  
17 jury how manipulative she was, and how that played into the  
18 entire event But we never had the opportunity to do that  
19 Q And you told him, not to just not plead guilty You  
20 told him to wait - - -

21 A Right

22 Q - - - until you could present the defense

23 A Because I was going to do the cross examination of  
24 that witness And it would have been a long cross  
25 examination And I already went over that with him Some

1 of the letters that she wrote him while he was in jail,  
2 which would have, in my view, clearly demonstrated the  
3 amount of manipulation that she employed throughout the  
4 course of their relationship

5 Q And despite that advice, he went against your advice  
6 Correct?

7 A Yes

8 Q Have you ever had that to happen with other clients  
9 before?

10 A Yes

11 Q Nothing unusual about that?

12 A You know, it's the client's case, it's not yours But  
13 yes, I mean it happens

14 Q You couldn't force him to go to trial even if you  
15 wanted to?

16 A Right, just like you can't force someone to plead

17 MR BRANT Nothing further, Your Honor

18 MR MURPHY No further questions, Your Honor

19 Thank you

20 THE COURT Thank you, sir

21 MR DEST Thank you

22 (WITNESS LEAVING WITNESS STAND )

23 MR MURPHY The Plaintiff calls Mr Barrowclough,  
24 Your Honor

25 (WITNESS COMING FORWARD )

B J BARROWCLOUGH DIRECT BY MR MURPHY

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(WHEREUPON B J BARROWCLOUGH,  
BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS )

DIRECT EXAMINATION

B J BARROWCLOUGH BY MR MURPHY

Q What's your name?

A B J Barrowclough

Q And where do you work?

A The 16th Circuit Public Defender's Office

Q And in that capacity, you represented Mr Freeman?

A Yes, sir

Q He was indicted for murder, burglary, first, and  
resisting arrest?

A Yes

Q And he pled guilty on March 6th, 2007?

A Yes

Q And he pled guilty to those charges, murder,  
burglary, and resisting arrest?

A Yes

Q And he was sentenced for 50 years concurrent on the  
murder and burglary, and one year on the resisting arrest?

A Sounds right, yes

Q I want to talk to you a little bit about his mental  
health history We've had some testimony about that

You've been in the courtroom for that testimony Correct?

A Yes

1 Q Can you tell me what your knowledge of Mr Freeman's  
2 mental health history is?

3 A I recall the testimony -- I mean, the testimony about  
4 his two suicide attempts that were somewhat close in time  
5 to the incident I remember those, reviewing the records  
6 from those

7 I remember that given his history with low self-esteem  
8 and depression that Harry did have Dr Morgan evaluate him  
9 And basically, what Harry just relayed about Dr Morgan's  
10 findings would be consistent with my recollection as well  
11 As far as Dr Morgan's dealings with Mr Freeman, I think  
12 Harry handled more of that end of the case than I did I  
13 mean I think, Harry was the one who was in contact with Dr  
14 Morgan about those things

15 But that is all consistent with my recollection

16 Q Do you know the last time that Dr Morgan evaluated  
17 Mr Freeman before the trial?

18 A Not specifically, no

19 Q Were you aware if Mr Freeman was taking medication  
20 within the four months leading up to his trial date?

21 A I don't recall

22 Q Were you aware that Mr Freeman had stopped taking his  
23 medication?

24 A I mean, I didn't recall that he was on medication or  
25 not taking medication

B J BARROWCLOUGH DIRECT BY MR MURPHY

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1 Q I'm going to take you to the date of Mr Freeman's  
2 plea Can you tell me your recollection of leading up to  
3 that plea that day?

4 A Yes As Harry just testified to, we were at a part of  
5 the trial where things were looking bad for us at that  
6 point, not anything unexpected We knew some of the early  
7 testimony from the neighbor, I think there was an  
8 additional neighbor witness we may not have been apprised  
9 of, but that was bad testimony for us Officer Stokes, who  
10 was one of the responding officers, testified I remember  
11 that testimony that was hurtful to us

12 But, at the same time, you know, we had a lot of  
13 points to make, you know We had, as Harry said,  
14 testimony, the cross examination of Petra, the girlfriend,  
15 who was sort of in the middle of all of this And we had  
16 our defense to present

17 So, it was a bad stage in the trial But I remember  
18 that, you know, Steven was, as Harry said, crying like as  
19 far as tears coming down his face And Harry indicated to  
20 Solicitor about us needing a break And then we went into  
21 the holding cell And then that's when, you know, Steven  
22 had indicated that he didn't want to go further in the  
23 trial, that he wished to plead And although, you know,  
24 Harry and Steven were doing most of the talking, but I do  
25 remember saying, you know, that I did not think that was a

1 good idea I thought that this was actually the worse  
2 possible time for him to plead guilty because the only  
3 thing that the judge who was going to be doing the  
4 sentencing had seen was this damaging testimony for us  
5 There was a lot of good still to come that would have put  
6 us in a much more favorable light

7 So, I mean, that's -- But nevertheless, I mean, that's  
8 what he wanted to do, and that's what ended up happening

9 Q Did the decision surprise you?

10 A I would say it was surprising, yes

11 Q And you -- You told him -- Did you tell him you didn't  
12 want him to plead, you didn't think he should?

13 A Right I did not think it was a good idea And I  
14 don't remember exactly how I put it, but I remember  
15 expressing that I thought it was a bad idea

16 Q And throughout the case, Mr Freeman had done what  
17 y'all had asked him to do?

18 A Pretty much, yes

19 I mean I, as Harry testified, it was -- One of my  
20 roles in the trial was to do the direct examination of  
21 Steven, which was going to be lengthy And, you know, he  
22 and I worked together on that a lot And obviously, you  
23 know, the content of his answers were his, but as far as,  
24 you know, the order and why we were doing things a certain  
25 way, why we were emphasizing certain things and all of



B J BARROWCLOUGH DIRECT BY MR MURPHY

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1 that, you know, he always understood what I was talking  
2 about and would follow my suggestions If I said, you  
3 know, "Talk about this before this " And he would comply  
4 with that I mean, he -- So, yes, the answer to your  
5 question is yes

6 Q Now leading up to his plea, he was crying?

7 A Yeah I mean, like Harry said Not sobbing crying,  
8 but, I mean, yeah Tears were rolling down his face, and  
9 he was emotional

10 Q He was emotional?

11 A Yes

12 Q He was breaking down in court?

13 A When you say, "breaking down," I mean, I don't really  
14 know what that means He was very emotional

15 Q Did anyone ask for a continuance? We heard Mr Dest  
16 didn't ask for a continuance You don't know -- You didn't  
17 ask for a continuance?

18 A No, not a continuance Mr Dest asked for a break  
19 where Judge Hayes gave us, you know maybe, 20 minutes, 30  
20 minutes, something like that But, I mean, not a  
21 continuance for a week or anything like that

22 Q And you didn't suggest a competency hearing?

23 A No

24 Q Did he seem any different to you the day of the guilty  
25 plea than in your past meetings?

B J BARROWCLOUGH DIRECT BY MR MURPHY  
CROSS BY MR BRANT

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1 A No, I mean he was upset, clearly There were other  
2 times, I mean, a lot of times talking about either this  
3 case, what happened to the victim, how Petra manipulated  
4 him, lied to him, treated him I mean, there were a lot  
5 of things in talking to him about the whole situation that  
6 made him upset during the entire course of our  
7 representation

8 Q So he wasn't any different -- In your opinion, was he  
9 different -- acting differently the day of the plea than  
10 when you had previously --

11 A Well, I'll say this He was upset There were other  
12 times during the representation where he was upset He  
13 wasn't constantly upset You know, so -- But, I mean, it  
14 wasn't anything completely new

15 Q Please answer any questions of the Attorney General's  
16 Office

17 CROSS EXAMINATION

18 B J BARROWCLOUGH BY MR BRANT

19 Q Mr Barrowclough, do you have any -- Do you recall how  
20 many conversations or meetings you probably had with Mr  
21 Freeman the two or three weeks before the trial?

22 A I couldn't give you the exact number But I know we  
23 were working on his testimony, you know, probably about  
24 three times a week each week, you know, for the month  
25 leading -- the four weeks leading up to the trial I mean,

B J BARROWCLOUGH CROSS BY MR BRANT

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1 a good number of times, many times

2 Q Did anything seem different about his demeanor  
3 interacting with you during that two or three weeks before  
4 the trial?

5 A No

6 Q Did you hear his testimony earlier that he was not  
7 taking his prescriptions at that time?

8 A Right, and I don't really -- I don't really recall  
9 anything about that, to be honest with you I didn't even  
10 recall him being on medication, much less, not taking his  
11 medication

12 Q Did his demeanor in any way change from the beginning  
13 of your representation up until trial?

14 A No

15 Q Did he always respond appropriately in your  
16 interactions with him, especially in the case?

17 A Yes I mean, Steven Freeman, as Harry said, I mean,  
18 he was nice, respectful I mean, he -- I can't recall a  
19 time we had an unpleasant interaction I mean, he was --  
20 yeah, I mean, normal, like nice Sad, but nice

21 Q The day in trial, did you have interactions with him?

22 A Yeah

23 Q And did he seem to understand your conversations?

24 A Yeah

25 Q And he responded in a way that affirmed to you that he

1 understood what was going on?

2 A Yeah

3 Q Have you represented -- Well, first, how long have you  
4 been practicing law?

5 A It's almost 16 years

6 Q And it's been mostly criminal or --

7 A All criminal

8 Q All criminal Have you represented clients with  
9 mental illnesses before?

10 A Many times

11 Q Based on that experience, did you see any indication  
12 that he suffered from mental illness - - -

13 A No

14 Q - - - that would affect his competency to fully  
15 understand the proceedings?

16 A No

17 Q The day of the plea, were you present when he gave his  
18 statement to the Court?

19 A Yes

20 Q Did it appear that -- None of you were helping him  
21 with that?

22 A No

23 Q That was his own statement?

24 A Yes

25 Q Did he appear to be confused when he was giving the

B J BARROWCLOUGH CROSS BY MR BRANT

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1 statement, at all?

2 A No And like Harry said, I mean, you know, I think,  
3 my take on that was that it did come from a place of  
4 remorse Steven Freeman had always presented himself to  
5 me, to us, as someone who had a big heart I know he felt  
6 bad about what had happened to the victim in the case and  
7 the victim's family I know he felt terrible about putting  
8 his own family through this I know he was extremely close  
9 with his mother And he felt bad about that And I know  
10 that he even felt bad for Petra even though from an  
11 outsider's point of view, she was really the cause of all  
12 of this I mean, I think he just -- He felt bad

13 Q And prior to the plea, after he first told you and Mr  
14 Dest that he wanted to plead guilty, in your conversations  
15 with him at that time, did he seem confused at all?

16 A No, he didn't seem confused I would say somewhat --  
17 I would say somewhat sad and somewhat resolute

18 Q Were you ever aware that he may have put a bag over  
19 his head while he was in his jail cell at the time of  
20 trial?

21 A No, I was not aware of that

22 Q You and Mr Dest, one of you requested a break to talk  
23 with him about his desire to plead Correct?

24 A Right

25 Q And why did you say you didn't ask for a continuance?

1 Or did you say - -

2 A Well, I'll say this Specifically, I didn't because  
3 Harry was lead counsel

4 But also, that would have been, I mean, professionally  
5 speaking, I don't think that, that is something that would  
6 be granted, would be done I think that it would not only  
7 have not been granted, I think that it certainly would have  
8 put us in a worse position, you know, with the judge,  
9 however, you know, the case was going to come out I mean,  
10 I think -- I mean, there's --

11 The short answer is no, we didn't And I can't  
12 imagine doing it in that circumstance for that reason

13 Q Did you review the indictments in this case?

14 A Did I review the indictments? Yeah

15 Q They were True Billed?

16 A Yeah

17 Q Was there anything deficient about them from your  
18 recollection?

19 A No

20 Q Do you know if -- Did they present sufficient notice  
21 of the charges?

22 A Yes

23 Q Did Mr Freeman ever ask you at the time that he  
24 expressed his desire to plead whether he could speak with  
25 his family?

B J BARROWCLOUGH CROSS BY MR BRANT

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1 A I don't recall

2 MR BRANDT Nothing further, Your Honor

3 MR MURPHY No further questions, Your Honor

4 THE COURT Thank you, sir

5 MR BARROWCLOUGH Thank you, Judge

6 (WITNESS LEAVING WITNESS STAND )

7 MR MURPHY Your Honor, I have a few more witnesses  
8 to call If the Court would wish to take a break, this  
9 would be a good breaking point

10 THE COURT Yeah, I'm going to take a break What  
11 other witnesses do you have? What kind of witnesses you  
12 have?

13 MR MURPHY Family, Your Honor, and Dr Morgan

14 THE COURT Okay, let's take about ten minutes

15 MR MURPHY Thank you, Your Honor

16 (COURT IN RECESS AT 11 06 AM

17 (COURT BACK IN SESSION AT 11 25 AM )

18 THE BAILIFF Court is in session

19 THE BAILIFF Bring Mr Freeman back out, please

20 (APPLICANT REENTERING COURTROOM )

21 THE COURT You may proceed

22 MR MURPHY May it please the Court?

23 THE COURT Yes, sir

24 MR MURPHY Randall Freeman

25 MADAME CLERK I'm going to have you place your left

RANDALL FREEMAN DIRECT BY MR MURPHY

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1 hand on the Bible, raise your right hand, please

2 (WHEREUPON RANDALL FREEMAN,  
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS )

4 DIRECT EXAMINATION

5 RANDALL FREEMAN BY MR MURPHY

6 Q What's your name?

7 A Randall Freeman

8 Q What's your address?

9 A ADDRESS

10 Q Now, how do you know Mr Freeman?

11 A He's my son

12 Q Do you know him well?

13 A Yes

14 Q Are you aware of Mr Freeman's mental health problems?

15 A Not until recent

16 Q Until when?

17 A Probably a year prior to this accident that  
18 happened -- incident, may I say

19 Q And before that, you weren't aware of Mr Freeman  
20 having any mental health problems?

21 A No

22 Q Did Mr Freeman grow up in your home?

23 A Sir?

24 Q Did Mr Freeman grow up in your home?

25 A Yes, sir



RANDALL FREEMAN DIRECT BY MR MURPHY

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1 Q It was a father-son relationship?

2 A Yes, sir

3 Q I want to take you to the day of the plea and the  
4 trial Did you notice anything interesting about Mr  
5 Freeman's behavior?

6 A Very strange

7 Q How so?

8 A I didn't think he was able to go through the trial  
9 either

10 Q Why is that?

11 MR BRANDT Objection, Your Honor

12 THE COURT Sustained

13 BY MR MURPHY

14 Q Tell me what was -- How was he behaving? What was he  
15 doing? What was your observation of Mr Freeman?

16 A He was very nervous Didn't quite understand what was  
17 going on Nor did I, actually

18 Q I'm sorry, could you say that -- repeat that?

19 A I didn't know what was going on, and I don't think he  
20 did either He didn't realize what was --

21 MR BRANDT Objection, Your Honor

22 THE COURT Sustained, Counsel You got to ask him  
23 what he knows He can't testify as to what the Applicant  
24 knew at the time - -

25 MR MURPHY Yes, Your Honor, thank you

1 Q I want you to focus on what you observed from your  
2 son What actions? Was he crying?

3 A Yes, sir

4 Q Was he emotional?

5 A Yes, sir

6 Q Was he doing anything else that you thought was  
7 interesting? His behavior?

8 A Usually he's outspoken But he didn't -- He weren't

9 Q Are those behaviors that you just testified to normal  
10 for Mr Freeman?

11 A No, sir, not at all

12 Q Did you ask to speak to Mr Freeman before he pled  
13 guilty?

14 A Yes, sir, I did

15 Q Did you speak with Mr Freeman before he pled?

16 A No, sir, I did not

17 Q And why is that?

18 A They put us in a room right back there And Mr Dest  
19 came back there and he asked -- you know, talked to us I  
20 say, "Well, can I please speak with my son before he enters  
21 this guilty plea?" That never happened

22 Q What would you have told Mr Freeman?

23 A I'd told him to go through trial

24 Q These behaviors that you were seeing were not normal  
25 for Mr Freeman?

C

2 Q Please answer any questions of the Attorney General's  
3 Office

5 RANDALL FREEMAN BY MR BRANT

8 A Yes, sir, we visited

11 | A No, sir

|    |   |                     |
|----|---|---------------------|
| 14 | A | Emotional, yes, sir |
|----|---|---------------------|

16 A Yes, sir, he did

|    |   |             |
|----|---|-------------|
| 20 | A | Pretty much |
|----|---|-------------|

22 MR MURPHY Objection, Your Honor

24 | A My opinion is --

25 THE COURT You don't have to answer this

RANDALL FREEMAN CROSS BY MR BRANT  
EVETTE FREEMAN DIRECT BY MR MURPHY

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1 BY MR BRANT

2 Q Did he express to you that he was remorseful?

3 A He showed remorseful, yes

4 Q Was he emotional when he talked about how remorseful  
5 he was?

6 A We never discussed it

7 Q I'm sorry

8 A We never discussed that part

9 MR BRANT Nothing further, Your Honor

10 MR MURPHY No further questions

11 THE COURT Thank you, sir You may step down, sir

12 (WITNESS LEAVING WITNESS STAND )

13 MR MURPHY Plaintiff calls Ms Evette Freeman

14 MADAME CLERK Ms Freeman, I'll have you place your  
15 left hand on the Bible, raise your right, please

16 (WHEREUPON EVETTE FREEMAN, BEING

17 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS )

18 DIRECT EXAMINATION

19 EVETTE FREEMAN BY MR MURPHY

20 Q What is your name?

21 A Evette Freeman

22 Q What is your address?

23 A I'm staying right now with my son ADDRESS

24 in Charlotte

25 Q How do you know Mr Freeman?

EVETTE FREEMAN DIRECT BY MR MURPHY

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1 A He's my son

2 Q He grew up in your house?

3 A Yes

4 Q Good, strong mother-son relationship?

5 A Yes

6 Q When did you learn about Mr Freeman's mental health  
7 problems?

8 A I learned them before the trial, during the trial  
9 Before -- Back in August when it really came to a head he's  
10 had -- like I said, he had seen a psychiatrist when he was  
11 young, but our house burned down So, I had them all --  
12 all seen then And then until right before the incident  
13 with Mr Burgess and my son

14 Q Are you familiar with his behaviors?

15 A Yes

16 Q Is he prone to crying

17 A No, sir, not before then No, sir

18 Q Is he prone to being emotional?

19 A No, sir He's more outgoing And a lot of times he  
20 would hold in stuff But, no matter what he was feeling,  
21 he would always try to be happy around everybody

22 Q Was he prone to breaking down

23 A No, sir, not until Court

24 Q I'd like to take you to the day that Mr Freeman pled  
25 guilty Tell me what -- Did you see anything interesting

1 about Mr Freeman's behavior?

2 A Yes, I noticed when -- because we was in the other  
3 courtroom When he came to the door, he was already  
4 just -- already crying and stuff then And then he  
5 just -- like dazed, walked in a daze when they brought him  
6 to the table And he just sat there, you know, like looked  
7 around, like dazed, but he was still -- still crying

8 And next thing we know -- Because we wasn't in court  
9 long that morning, and the next thing we know, Steven's off  
10 to the side

11 Harry came and got us and took us to the back said it  
12 was -- Steven wanted to plead guilty It was an honor for  
13 him to have represented Steven That's what Mr Dest and  
14 Mr Barrowclough both kept saying -- It was an honor to  
15 represent him And we told him, no, please don't let  
16 Steven plead guilty No -- Was there some way we could  
17 talk to him because I knew if I could talk to Steven, give  
18 him time to calm him down, let him see the whole thing

19 But all that Steven ever, you know, talked about was  
20 the kids because Steven loved kids And he was just more  
21 distraught over the kids growing up and not with their  
22 father

23 Q Are these behaviors norm for Mr Freeman?

24 A Far as the crying and stuff like that?

25 Q Right

EVETTE FREEMAN DIRECT BY MR MURPHY

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1 A No, sir, not like that No, sir

2 Q But you didn't get to speak with Mr Freeman?

3 A No, sir They wouldn't --

4 Q You wanted to?

5 A Yes, sir

6 Q And if you'd have spoken with him, you would have told  
7 him not to plead guilty?

8 A No, sir Huh-uh

9 Q Did you notice anything else about his behavior that  
10 day? The day he pled guilty

11 A Yes, when they brought him -- brought him back, I  
12 mean -- Steven, even though he was just standing there  
13 like -- like we -- You'd be standing here talking, and it's  
14 like you're talking but like he really didn't hear and  
15 didn't really, even though, he was up here, it was like --  
16 He really didn't perceive everything what was going on and  
17 he - -

18 MR BRANDT Objection, Your Honor

19 THE COURT Sustained

20 BY MR MURPHY

21 Q On what you saw -- Focus on what you saw

22 A On that -- That's from what I saw That's what I  
23 mean, from what I saw He was just standing, and whatever  
24 they said, Steven just, you know, "Yes, sir," or whatever  
25 He just really, you know, cried, hung his head, and then

EVETTE FREEMAN DIRECT BY MR MURPHY  
CROSS BY MR BRANT

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1 whatever they said

2 Q Thank you

3 A You're welcome

4 Q Please answer any questions of the Attorney General's  
5 Office

6 CROSS EXAMINATION

7 EVETTE FREEMAN BY MR BRANT

8 Q Ms Freeman, did you see your son in between the time  
9 that he was arrested and the time that he went to trial?

10 A Yes, I visited him

11 Q Was he very emotional during those meetings?

12 A Some of them, yes, sir

13 Q He cried?

14 A Some of them

15 Q From the time that you raised him, did he ever do  
16 anything bad that he got in trouble for?

17 A You talking about outside the norm?

18 Q I'm sorry

19 A Are you talking about outside the norm?

20 Q No, just did he ever get in trouble for anything at  
21 school or with you?

22 A Oh, like not cleaning rooms and stuff like that, as  
23 far as in trouble and stuff, no, sir

24 Q Did he ever cry in front of you when he was growing up  
25 for doing anything else that was wrong?



EVETTE FREEMAN      DIRECT BY MR   MURPHY  
                         CROSS BY MR   BRANT

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1            A      Huh-uh

2            Q      Did he ever -- He never cried once?

3            A      He might have did when he was young at the funerals  
4            and stuff    Like I said, he -- We've been through a lot  
5            And the lost of his sister and the house burning down, I  
6            think that's actually the very first time I seen Steven  
7            break down and cry because he thought his sister was still  
8            here, but we had done buried her

9            Q      Did you listen to him give his statement to the Court  
10           when he pled guilty?

11           A      Yes

12           Q      What was his demeanor like then?

13           A      He -- He was -- He was very, very remorseful    And he  
14           was very hurt, and very sad and sorry for what -- what the  
15           children having to grow up with

16           Q      Did he seem clearheaded while he was speaking?

17           A      Yes, sir, sometime    Part of it, and part of it,  
18           just -- It's hard to describe to you what I know of Steven  
19           and what y'all present from the Court    I know I've got to,  
20           but it's just

21           MR   BRANT    Nothing further, Your Honor

22           MR   MURPHY   No further questions, Your Honor

23           THE COURT   Thank you, ma'am    You may stand down

24           (WITNESS LEAVING WITNESS STAND )

25           MR   MURPHY   Your Honor, Plaintiff calls Pastor Henry

1 Terry

2 MADAME CLERK Place your left hand on the Bible, and  
3 raise your right hand

4 (WHEREUPON PASTOR HENRY TERRY,  
5 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS )

6 DIRECT EXAMINATION

7 PASTOR HENRY TERRY BY MR MURPHY

8 Q What's your name?

9 A Henry Terry

10 Q Mr Terry, what do you do?

11 A Pastor a church in Fort Mill

12 Q What church?

13 A Solid Rock Baptist

14 Q Where is that?

15 A On Brickyard Road

16 Q How do you know Mr Freeman?

17 A By his parents They came to our church And I met  
18 Steven about ten years ago And his brother Dwayne, before  
19 he moved to Charlotte, he came to our church And I would  
20 go to their home occasionally, and I met him at their  
21 homes

22 Q How would you classify your relationship with the  
23 family and with Mr Freeman?

24 A Steven is, to me, he was just a normal every day guy  
25 He went to work, come home, mind his own business, never

PASTOR HENRY TERRY DIRECT BY MR MURPHY

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1 got in any trouble with the law And all he wanted to do  
2 was have a home, a car, and maybe later on, a wife And I  
3 think there's where the mistake came in, was a wife

4 Q And how often would you see Mr Freeman, as his  
5 pastor?

6 A How long?

7 Q How often would you see him?

8 A I've -- I've known him for ten years But as a  
9 pastor, I'm not his pastor He never came to our -- I'm  
10 mean, he'd visit, but he never came to our church

11 Q Are you familiar with Mr Freeman's demeanor?

12 A His what?

13 Q His demeanor? His behaviors?

14 A No, huh-uh I know when I'd been over to his house,  
15 or to their house, and his house too, really, he was always  
16 just calm, didn't have any kind of emotion about him or  
17 anything And when I saw him over here, he's not the same  
18 Steven today that he was during the court

19 Q How do you mean?

20 A When he came in the court, I had went to the Moss  
21 Justice Center down here to visit with him, with his mom  
22 and dad And he came over to the window that I was at, and  
23 his eyes were bloodshot He had been crying a great deal  
24 And he began to talk to me, and he said, "If I go to  
25 prison, if I make any money, I want to make sure the money

1 goes to the victim's children "

2 Q And when was this?

3 A That was before the trial

4 Q Okay

5 A And I told him, I said, "I don't know anything about  
6 the situation like that " I said, "You'll have to find  
7 that out if you go to jail or go to prison " And he said,  
8 "I want to make sure that they get any kind of money I  
9 have " And I said, "Well, that probably can be arranged "  
10 And when he came into the courtroom that day, he looked  
11 like a beaten person, a depressed person, a person that  
12 didn't know what was going on One day, here he was he had  
13 a job --

14 MR BRANDT Objection, Your Honor

15 THE COURT Hold it We've got an objection I  
16 sustain the objection as to his frame of mind, he can't  
17 testify as to his frame of mind He can testify to what he  
18 saw

19 MR MURPHY

20 Q Focus on what you saw and actually so they're not all  
21 conclusions

22 A What I saw?

23 Q What you saw

24 A What I saw was a man that was beaten He didn't know  
25 what was going on because when he was in the jail --

C

25 Q You said you'd known him for ten years

1 A Ten years

2 Q Ten years before today or ten years before the trial

3 A Ten years complete

4 Q And you said he did not attend your church Correct?

5 His parents did

6 A His parents did and his brother did

7 Q So, I think your attorney was asking you this How  
8 often did you actually see him during those ten years?

9 A Maybe -- When his brother was living with him about  
10 every week because I'd go pick Dwayne up We went to  
11 visitation, and he was there, and I talked to him then

12 Q You would see him briefly once a week at visitation?

13 A No, it wasn't briefly I would talk to him about the  
14 Lord, and try to get him to come to church

15 Q You said he appeared different on the day of trial  
16 from the Steven that you knew Correct?

17 A Right

18 Q Had he lost weight?

19 A Looked like to me he done lost a lot of things besides  
20 weight But, he did lose weight And I could understand  
21 the way that he reacted because one day, like I said, he  
22 had a house, he had a job, he had a car and had everything  
23 Then next day, it's all gone Why? Because he had been  
24 lied to The woman that he had taken in to help out told  
25 him a lie to start off with, said she was pregnant Then

PASTOR HENRY TERRY CROSS BY MR BRANT

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1 the next thing you know, here he is, that woman with some  
2 other man, and he - -

3 MR BRANT Objection, Your Honor, I just, not  
4 responsive to - -

5 THE COURT Sustained Not responsive to any  
6 question

7 MR BRANT Can we strike that testimony?

8 THE COURT That testimony will be stricken It's not  
9 responsive to the question that was asked It was  
10 volunteered

11 MR BRANT Thank you, Your Honor

12 Q Prior to the day of the incident, when was the last  
13 time you saw Mr Freeman

14 A Probably about -- It might have been about a month

15 MR BRANT I beg the Court's indulgence

16 (PAUSE )

17 MR BRANT Nothing further, Your Honor

18 MR MURPHY Nothing further, Your Honor

19 THE COURT Thank you, sir You may stand down, sir

20 (WITNESS LEAVING WITNESS STAND )

21 MR MURPHY Beg the Court for a moment

22 THE COURT Yes, sir

23 (PAUSE )

24 MR MURPHY Plaintiff calls Dr Morgan, Your Honor

25 MADAME CLERK Place your left hand and raise your

DOCTOR HAROLD MORGAN DIRECT BY MR MURPHY

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1 right hand

2 (WHEREUPON DOCTOR HAROLD MORGAN,  
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS )

4 DIRECT EXAMINATION

5 DOCTOR HAROLD MORGAN BY MR MURPHY

6 Q What's your name?

7 A Harold Clifford Morgan

8 Q What's your address?

9 A ADDRESS that's spelled ADDRESS , Columbia,  
10 South Carolina, 29204

11 Q What's your occupation?

12 A I am a medical doctor with a specialty in general and  
13 forensic psychiatry

14 Q Talk to me a little bit about your education

15 A I did my undergraduate work at Emory University in  
16 Atlanta

17 MR BRANT Your Honor, we'll stipulate to let him  
18 testify as an expert

19 THE COURT As a forensic psychiatrist?

20 MR BRANDT Forensic psychiatrist, yes, sir

21 THE COURT Do you accept that?

22 MR MURPHY Yes, Your Honor, thank you

23 THE COURT He's so qualified Please proceed

24 BY MR MURPHY

25 Q Dr Morgan, you've been stipulated as an expert in



1 your field of expertise

2 How did you come to know Mr Freeman?

3 A I was asked to examine him by his attorney Mr Dest  
4 back in, probably, early September of 2006 My first  
5 examination was on September 22nd So, Mr Dest and I  
6 talked before that He had asked me to come up and examine  
7 him

8 Q And do you know if he was on any medications at that  
9 time?

10 A At that time, he was taking -- one second -- Yes, he  
11 was -- had been given an anti-depressant Zoloft on August  
12 the 23rd And he was taking that at home, I believe, yes  
13 I don't know the exact dosage, but it had been prescribed  
14 for him

15 Q What documents have you reviewed regarding Mr  
16 Freeman?

17 A Lots of them The incident report, the witness  
18 statements, the medical records, letters from different  
19 people, the statements by the investigators, all of the  
20 investigative reports, and I think that's all of the  
21 records Then I spoke with his parents a time or two  
22 during the course of that period of examination The first  
23 time I saw him was as I say, in September And then I saw  
24 him again in January -- January the 31st of 2007 At that  
25 time, he was off the medications

1 Q That time that you saw him when -- He was off the  
2 medications?

3 A I saw him for the second time on January the 31st,  
4 2007 At that time his medications had been discontinued

5 Q Why had they been discontinued?

6 A Well, when I looked at the records -- And I forgot to  
7 mention that I did see the medical records from the  
8 detention center here, thanks to you getting those for me

9 But, prior to getting those recent records, I had seen  
10 the records of his hospitalizations at -- I think it's  
11 called Piedmont Medical here, showing an admission on  
12 August the 2nd, 2006, when he had taken an overdose and  
13 seen at the emergency room was unresponsive At that time  
14 his girlfriend had threatened to leave He was given --  
15 Medications were not prescribed at that point He was  
16 admitted to the ICU though They found some illicit drugs  
17 in his urine

18 The other record showed on August 22nd of 2006, he was  
19 seen again at the hospital This time he had attempted --  
20 I don't know exactly how he did it, but he -- This had to  
21 do with his girlfriend and he had been arguing They made  
22 the diagnoses that had been mentioned here the  
23 depression, the impulse control, and so forth That's when  
24 they prescribed the Zoloft, August 23rd

25 And then his next admission was the day after the

DOCTOR HAROLD MORGAN DIRECT BY MR MURPHY

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1 homicide And he was admitted to the hospital from the  
2 jail He had hit his head against the wall He was given  
3 the diagnosis of a closed-head injury with contusion or a  
4 bruise And the medications were -- The Zoloft was  
5 continued, I believe, until that fall

6 The records show, that you gave me, show that the  
7 Zoloft that had been prescribed in early August was  
8 discontinued in November He had been seen by the people  
9 at the mental health center They had come out to the jail  
10 to see them And he told them in October that he was doing  
11 much better

12 And soon after that, the doctor saw him and stopped  
13 the Zoloft, but at the same time he was apparently  
14 complaining of difficulty sleeping And they started him  
15 on Vistaril, which is a -- actually an antihistamine,  
16 similar to Benadryl, very low dose of that was started at  
17 bedtime

18 And that was continued up until December the 8th of  
19 '06 He had been seen by a social worker before that time  
20 and he had told her that he was doing fine And her  
21 comment is that he appears to be stable And his trial was  
22 in early March

23 Q Were those appropriate medications?

24 A Yes, they were From my point of view, the doses were  
25 on the low-side, but they were appropriate, certainly

1 Q And so at the point that he's in, in March of 2007, he  
2 no longer has his medication Correct?

3 A Yes, he's been off of medication for about three  
4 months, I think

5 Q What is Mr Freeman's diagnosis?

6 A From the records, the diagnosis had been fairly  
7 consistent, which is called an adjustment disorder, which  
8 is a fairly mild kind of diagnosis, I guess you could say,  
9 that includes anxiety and depression It happens when  
10 people are under a lot of stress

11 They also gave him a diagnosis of impulsive -- impulse  
12 control disorder, which means the individual acts in an  
13 impulsive way, not able to control his impulses very well

14 And then they gave him a diagnosis of borderline  
15 personality disorder, which is a difficult diagnosis to  
16 describe But it means that they don't handle stress very  
17 well They can go up and down and act in very irrational  
18 ways out of proportion to the reality of their situation

19 And at one point, they gave him a diagnosis of alcohol  
20 dependence I don't know where that came from

21 And then the other thing would be, of course, the  
22 drugs He gave a history of using, and were in his system  
23 on one of the hospitalizations

24 From my own point of view, I would say that the  
25 anxiety and depression are certainly very accurate

DOCTOR HAROLD MORGAN     DIRECT BY MR   MURPHY

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1       diagnoses

2       Q       How severe is the anxiety?

3       A       I'm sorry?

4       Q       How severe is the anxiety?

5       A       I think it depends on the situation     I think,  
6       basically, he has a problem of -- It gets very technical,  
7       but the jargon would be a dependent personality     He's  
8       very, very insecure, very sensitive to what he thinks other  
9       people think of him, a sense of inadequacy     I think that  
10       explains his need to -- to build his body up, and develop  
11       his muscles, and get him a stronger sense of his own  
12       person, maybe     But underneath all those muscles, he's  
13       still feeling very, very insecure, and very dependent     So,  
14       I think the anxiety fluctuated with the situation     But I  
15       think his ability to cope with stress has always been very  
16       low, very meager, because he has no real sense of his own  
17       adequacy as a person

18       Q       How does that impact decision-making?

19       A       I think the lack of confidence in one's ability can  
20       create a serious impediment to clever or rational kind of  
21       decision-making     I think that so much of it is looking for  
22       approval rather than looking at the consequences of what  
23       the choices are

24       Q       Can this -- When this kind of comes up on an upswing,  
25       so the height of stress, the height of anxiety, can that

1 completely overtake someone's ability to understand what  
2 they're doing?

3 A Can anxiety completely overtake their ability to  
4 understand?

5 Q A person with his diagnosis, do you testify that on  
6 the upswing, when there's high stress, that it gets worse?

7 A Yes

8 Q So can that, a level of that, completely overtake  
9 somebody's ability to make competent decisions?

10 A Yes, I think severe anxiety could erode the ability to  
11 make a competent decision

12 Q What happens to an individual when they don't have  
13 any -- But, this is treatable with medication Correct?

14 A Anxiety?

15 Q Yes

16 A Yes

17 Q What happens when that individual is not on that  
18 medication?

19 A They're going to be more anxious, of course

20 Q How does the medication control anxiety?

21 A It works on certain processes in the brain Anxiety  
22 is basically fear And the medications work by calming  
23 that fear down

24 Q And based on the testimony that you've heard, up until  
25 leading into the trial, would this have been one of those

DOCTOR HAROLD MORGAN DIRECT BY MR MURPHY

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1 upswings for Mr Freeman?

2 A I am sure that he was more anxious at the trial, sure

3 Q A high level of anxiety?

4 A Probably so

5 Q Potentially enough to overcome his ability to  
6 competently make decisions?

7 A Potentially, yes

8 Q And he wasn't on his medication?

9 A He was not and had not been on in a while

10 Q Medication designed to control that anxiety?

11 A Zoloft is considered an antidepressant, but if it's  
12 taken over in adequate doses over a long period of time, it  
13 will control the anxiety in most people Vistaril or  
14 hydroxyzine is not really an anti-anxiety medication It's  
15 a very, very mild sedative at best It's more of an  
16 antihistamine So, I don't think that's going to do much  
17 for his anxiety

18 Q Can sleeplessness contribute to anxiety?

19 A Sure

20 Q So, in order -- One way to control anxiety is to  
21 sleep?

22 A That should help, sure

23 Q And if he wasn't getting sleep, then that would  
24 continue to exasperate the problem with his anxiety?

25 A It certainly could, yes

1 Q Mr Freeman is on medications now Correct?

2 A That's my understanding, yes

3 Q Do you know what he's on -- what his medications  
4 are -- his current medications are?

5 A I don't think he told us this morning That's the  
6 only way I would know

7 Q Now, Zoloft is not a medication you go on It's kind  
8 of like a Tylenol

9 A I just remembered

10 Q I'm sorry

11 A He did tell us Yes, he's on a drug called Depakote  
12 and -- I wrote it down I've forgotten the other one  
13 Celexe Celexe and Depakote Celexe is an antidepressant,  
14 very much like Zoloft Depakote is a little more difficult  
15 to explain It is, I guess you could say, a mood  
16 stabilizer Theoretically, it at least keeps you from  
17 going up and down It's given for a number of things  
18 including what's called bipolar or manic depressant

19 Q Now, Zoloft is not a medication like Advil?

20 A I'm sorry

21 Q Zoloft is not a medication like Advil? If you're  
22 hurt, you take Advil You don't have to continue taking  
23 Advil necessarily

24 A Advil, no, no It's not that at all

25 Q What do you need to do with Zoloft?



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24 Q What was the result of your examination? What were  
25 your conclusions?

1 A Well, just what I've said He's basically a very  
2 insecure person, very dependent on other people's -- what  
3 he perceives as the need for other people's approval

4 Anxious in some situations, but not really -- He's  
5 socially appropriate in every way, knows how to control  
6 himself, behave, that kind of thing So, his anxiety, I  
7 think, was handled in the appropriate ways at that level  
8 I mean, he was channeling it into his work -- into his --  
9 lifting -- lifting weights, and that kind of -- building up  
10 his body

11 So, he was turning that self-doubt into an effort to  
12 make himself feel more self-confident

13 So, what was the diagnosis? I would say, at that  
14 point, probably dependent personality

15 Q What was your conclusion about his competence at that  
16 time of his examinations?

17 A Oh, he was clearly competent, he was clearly  
18 competent There was never any suggestion of confusion or  
19 not knowing what he was -- what the trouble was or what had  
20 happened, or what he needed to think about in order to  
21 defend himself or explain what had happened He was  
22 clearly competent in all those things And interestingly,  
23 I never saw any tears He was much more - -

24 Q I'm sorry, you never saw what?

25 A I never saw any tears He was much more forthcoming

DOCTOR HAROLD MORGAN CROSS BY MR BRANT

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1 and verbal in the times that I saw him Admittedly, we  
2 were in a private setting, and I tried to make him feel at  
3 ease But, he was quite coherent in every way

4 Q Did you discuss the facts of the homicide with him?

5 A Oh, he told me about them, yes And, of course, I had  
6 the reports to go by, and they were pretty much consistent

7 Q Did he express remorse to you?

8 A Oh, clearly, clearly throughout the whole thing, yes

9 Q Was there anything abnormal about that?

10 A Well, that varies from person to person, I guess Not  
11 abnormal at all

12 Q Did you do a criminal responsibility assessment?

13 A Yes

14 Q And what was your conclusion?

15 A He did not meet the standard for that

16 Q So, your advice to his attorneys was that he was  
17 competent to stand trial?

18 A He was clearly competent to stand trial on both the  
19 times that I saw him And that he did not meet the  
20 standard for an insanity defense

21 Q And at that time you knew that he -- You said, I  
22 guess, he was -- His anxiousness was responsive to stress  
23 levels?

24 A Yes

25 Q You knew that at the time?

1 A Sure

2 Q And you still thought that he was competent to stand  
3 trial?

4 A Oh, yes

5 Q Did you advise his lawyers of anything, I guess, more  
6 specific than he's competent and in a -- any kind of like a  
7 caution or warning? "He's competent, but" or?

8 A Well, there was the question of whether it would --  
9 would help or hurt their case if I came to testify and talk  
10 about Mr Freeman So, I explained to the attorney my  
11 assessment, his personality, and how I saw that his  
12 personality playing into the events of the homicide And  
13 after that, they didn't think that it would be in their  
14 best interest for me to testify So - -

15 Q Was there a doubt in your mind that he was competent  
16 to stand trial?

17 A Oh, no, not at all And the thing -- Based on the  
18 things that have been reported to me since then, I mean,  
19 the transcript or whatever that was read here, it seems to  
20 me that he was still competent

21 Q You reviewed the transcript?

22 A No, but I've heard it read here He's giving a  
23 reason He's pleading guilty, but he -- My -- My -- I  
24 think there are two things My concern was, is he pleading  
25 because of this impulse control disorder? Is this an

DOCTOR HAROLD MORGAN    CROSS BY MR BRANT  
                             REDIRECT BY MR MURPHY

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1        impulsive act? He hasn't only thought about it    Or, is it  
2        something more rational    And he says, "I don't want to go  
3        through with this    I want to spare the family "    That's a  
4        fairly rational kind of explanation    So, I think it's  
5        those two things playing in there together, both the  
6        rational part, "I don't want to put people through this,"  
7        and the impulsivity to get out of this as quickly as I can

8        Q        So, your opinion based on the testimony today and  
9        everything else that you reviewed up until this time, is  
10       that he was still competent the day of trial, the day of  
11       the plea?

12       A        Based on what I've heard here, yes indeed

13                MR BRANT    Nothing further, Your Honor

14                                REDIRECT EXAMINATION

15        DOCTOR HAROLD MORGAN BY MR MURPHY

16        Q        Dr Morgan, you're familiar with people going in and  
17        out of competency?

18        A        Yes

19        Q        In other words, just because I may be competent  
20        standing here today, tomorrow, I may not be

21        A        You may not be

22        Q        And for people with different type of mental  
23        disabilities, it can be common for them to go in and out of  
24        competency?

25        A        Well, not exactly    I think it depends on the nature

1 of their illness There are some people who can be  
2 competent one day But it's not an -- It's not an  
3 immediate sort of transformation And if you get hit in  
4 the head, that may change things But if you're suffering  
5 from a chronic illness, for example, anxiety, then you may  
6 be more anxious, but you're not likely to lose your  
7 competency just because you're more anxious You may say,  
8 "I need a break for a little while to get myself together "  
9 But, if you have a more serious illness such as, for  
10 example, schizophrenia, you could decompensate overnight,  
11 have an acute psychotic episode

12 Q How about bipolar disorder?

13 A Bipolar disorder doesn't work quite that rapidly  
14 either You may be slipping into it, but it won't happen  
15 overnight

16 Q Is someone trying to kill themselves the result of  
17 rational thinking?

18 A Well, I suppose you could argue that in some cases it  
19 would be, but I think in this case, it wasn't

20 Q So, if he's attempting to commit suicide the day  
21 before his plea deal, that's not the product of a rational  
22 mind

23 A Well, it's not -- It's not very rational, but it's  
24 also very impulsive

25 Q And his impulsivity that you're describing, could

DOCTOR HAROLD MORGAN    REDIRECT BY MR   MURPHY  
                                 RECROSS BY MR   BRANT

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1            completely take over his decision-making ability?

2            A        I think it could, yes

3            Q        His competence

4            MR   MURPHY    No further questions, Your Honor

5                                   RECROSS EXAMINATION

6            DOCTOR HAROLD MORGAN BY MR   BRANT

7            Q        Doctor Morgan, you said that, I guess, it was anxiety  
8            and depression could overtake his competence?   I mean,  
9            could affect his competence?

10          A        Yes, you could have a panic attack, for example, in  
11          the midst of something, and maybe be briefly incompetent  
12          But that's not very likely to go into a competent state --  
13          from an incompetent -- from a competent state into an  
14          incompetent state just because you suffer from chronic  
15          anxiety

16          Q        And have you heard any testimony today -- Or do you  
17          know of anything else that suggests that on the day of his  
18          plea, that his competence was overtaken by his anxiety?

19          A        I don't think anxiety did it    I think there's  
20          information to help us understand that he was under a lot  
21          of stress, partly because of the situation    But also, the  
22          stress of feeling so guilty and remorseful about what he  
23          had done

24          Q        So, in your opinion, he was still competent on the day  
25          of his plea

1        A        I haven't seen anything that would lead me to think  
2 otherwise

3        Q        And suicide -- You heard him say that he attempted  
4 suicide in his jail cell around the time of the trial?

5        A        With the -- With the paper bag?

6        Q        Plastic bag

7        A        With the plastic bag, yes

8        Q        In your opinion, can someone attempt suicide with a  
9 plastic bag and pull it off and that actually be an  
10 attempted suicide?

11       A        Well, I think any kind of self-destructive behavior  
12 has to be taken seriously    But, I think in this case, it  
13 was an impulsive act to try to relieve some of the stress  
14 he was feeling

15       Q        Can suicide also be used for manipulation?

16       A        Sure

17                MR   BRANT    Nothing further, Your Honor

18                THE COURT    Doctor, is Zoloft a strong medication  
19 compared to other drugs?    How about the dosage used?

20                DOCTOR MORGAN    Zoloft is originally considered an  
21 antidepressant    It's not really a -- something that  
22 overpowers you    It's a very subtle kind of effect it has  
23 You have to take it for a while, about three, or four, or  
24 five weeks before you begin to notice anything    But it  
25 gradually lifts you out of that depression    It's not one



1 you get hooked on or anything like that The dosage here  
2 was very low from my point of view, 50 milligrams It  
3 takes usually, at least 100, 150, sometimes 200 milligrams  
4 to do much for the depression, and the same for anxiety  
5 You have to get the dose even higher for anxiety and take  
6 it for even a longer period of time So --

7 THE COURT Some people take it a lot more than he was  
8 prescribed

9 DOCTOR MORGAN Oh, yeah He was taking a low dose,  
10 yeah

11 THE COURT And it was being monitored by Mental  
12 Health in the jail apparently?

13 DOCTOR MORGAN That's my understanding, yes

14 THE COURT They made the decision to take him off of  
15 it?

16 DOCTOR MORGAN The -- I think he was being seen by a  
17 social worker, somebody like that And the notes are in  
18 the record But then the doctor apparently saw those notes  
19 and stopped the medication

20 THE COURT Can persons with borderline personalities  
21 also be manipulative?

22 DOCTOR MORGAN Yes

23 THE COURT I believe that's all the questions I have

24 Do you want to follow up from anything I ask I'll  
25 allow you to do that

1 MR MURPHY No, Your Honor Thank you

2 MR BRANT Nothing further, Your Honor

3 THE COURT Thank you, sir

4 DOCTOR MORGAN Thank you, Your Honor

5 (WITNESS LEAVING WITNESS STAND )

6 MR MURPHY Plaintiff rests, Your Honor

7 THE COURT I want to ask -- I know -- I want to ask  
8 the Applicant any questions And I really meant to ask  
9 him I understand, he's still under oath He can answer  
10 from there

11 Just speak loud enough for me and the court reporter  
12 to hear it I want to ask him, on his appeal it appeared --

13 Mr Freeman, it appeared that it was an Anders Brief  
14 filed by Mr Sakes who's with the, of course, Defense,  
15 Appellate Defense, State Appellate Defense, and there's an  
16 Anders Brief filed where they question And then it  
17 appeared that Mr Freeman sought permission to file his own  
18 brief and he raised these same issues It appears to me in  
19 that brief on appeal, his own brief, and, of course, the  
20 appeal was dismissed

21 Is that correct, Mr Freeman? I want to ask you that  
22 Did you file your own brief?

23 MR FREEMAN Yes, sir

24 THE COURT Did you raise these same issues in that  
25 brief?

1 MR FREEMAN Well, I raised them as far as the  
2 Court - -

3 THE COURT Taking your plea and whether it was  
4 voluntary or not?

5 MR FREEMAN Yes, sir

6 THE COURT Under those circumstances with your mental  
7 problems and that you reflect in there, the same thing  
8 you're -- that's being reflected today, you raise those  
9 same issues saying that you attempted suicide, and got  
10 some mental health treatment, and under stress and anxiety,  
11 and all that -- All those sorts of things, you raised also  
12 to the Appellate Court, did you not in your brief, the  
13 three separate issues you raised Is that correct?

14 MR FREEMAN I can't exactly remember I can't  
15 exactly remember I was -- I sort of raised it as that,  
16 but as far as the Court and as far as ineffective  
17 assistance of counsel it was the same

18 THE COURT I realize you didn't raise it in that  
19 context But you raised it in the context that the judge  
20 should not have taken your plea because it wasn't free and  
21 voluntarily made, is that correct?

22 MR FREEMAN Yes, sir, as far as I know

23 THE COURT And because you raised the issue that  
24 voluntary manslaughter was an issue in your case, and you  
25 should have been allowed to go forward on that Judge

1 shouldn't have accepted it because that was an issue in  
2 your case, and he shouldn't have accepted your plea as free  
3 and voluntarily made, particularly in light of all of these  
4 problems that you raised today in court, is that correct?

5 MR FREEMAN Yes, sir

6 THE COURT Yes, sir

7 MR FREEMAN My whole -- My whole argument like today  
8 is not that I pled guilty because I don't deny pleading  
9 guilty, but that it could have been prevented by Mr Dest  
10 And because I went 6 months in the jail I never asked to  
11 plead guilty The prosecution -- Mr Dest did come to me  
12 and tell me the Prosecution offered him -- offered us a  
13 plea

14 THE COURT Well, I understand, Mr Freeman I don't  
15 want to go back over all of that But the fact of the  
16 matter is, they tried to get you not to plead, and you made  
17 the decision to plead Who made the decision to plead  
18 guilty

19 MR FREEMAN Well --

20 THE COURT Be seated

21 Who made the decision to plead guilty?

22 MR FREEMAN I -- Ultimately, I made the decision

23 THE COURT Yes, sir, you made it They tried to get  
24 you not to plead, didn't they?

25 MR FREEMAN They -- They never -- He never said

1 that

2 THE COURT All right

3 MR FREEMAN I understand what he said on the stand  
4 but he never -- He said it goes against his ethics to tell  
5 me what to do He could not tell me either way

6 THE COURT He told you he couldn't make the decision  
7 You had to make the decision But, didn't he advise you  
8 not to go forward? You disagree with his testimony that he  
9 advised you not to plead, and go forward with the trial  
10 because he thought you had a chance on involuntary  
11 manslaughter?

12 MR FREEMAN Well, he told me that before that I  
13 had -- that he was arguing manslaughter This was a  
14 manslaughter case And the time that we were sitting back  
15 there in the jail cell, I asked him -- I asked him, "What  
16 would you do?" He said, "I can't tell you either way " He  
17 never said, you know, "I think you ought to, you know, go  
18 through trial" or whatever He said -- He just told me --  
19 Then, that's when I asked if I could speak with my parents  
20 because I didn't know what to do I knew I couldn't go  
21 back out there and sit like this But, I didn't know what  
22 to do My options was either --

23 THE COURT You didn't tell him before you went back  
24 in the jail cell you wanted to plead guilty and he asked  
25 for a recess?

1 MR FREEMAN He asked for a few minutes, yes, sir

2 THE COURT All right Thank you

3 Any questions related to the questions I asked?

4 MR BRANT Nothing, Your Honor

5 THE COURT I'll take it under advisement

6 I beg your pardon I know a bunch of witnesses have  
7 been called -- Some that you might call Do you have  
8 witnesses you want to call?

9 MR BRANT Your Honor, we don't have anyone to call

10 THE COURT You don't want to put up any testimony or  
11 evidence? I wasn't trying to prevent you from doing that

12 MR BRANT No, Your Honor

13 THE COURT But I know they already called Doctor  
14 Morgan and also called Mr Dest and Barrowclough Do you  
15 know which you might call? Do you have any other witnesses  
16 you want to call?

17 MR BRANT No, Your Honor Thank you

18 THE COURT Then I'll take it under advisement

19 MR MURPHY Your Honor, may I submit a brief, a brief  
20 argument, and I believe it goes to part of Your Honor's  
21 questions as far as with the specific piece of this case

22 THE COURT What?

23 MR MURPHY Your Honor, my argument is that I think  
24 we have two grounds due process, incompetence, and also  
25 ineffective assistance of counsel

1           Your Honor, I would submit that at the point that Mr  
2       Freeman had been following his attorney's advice all along  
3       the way, and at the point, the testimony is that his  
4       attorney said, "Don't, don't " That combined with  
5       everything else, his behaviors, the crying should have led  
6       to, "Okay, we need to do something here Let's get a  
7       competency hearing " It could have gone up and down, in  
8       and out of competence Wasn't on medication And that  
9       should have been a trigger to say, "You know what,  
10      something is different, something is wrong, and we should  
11      have at that point required it "

12           And, Your Honor, as far as the appeal issue Even  
13      though it may have been raised, there wouldn't have been a  
14      record for the court to actually look at None of that  
15      information could have been on the record on appeal because  
16      it's not fully developed at this court And at this court,  
17      Your Honor, that's one of the reasons why we're here today

18           THE COURT Well, I'm not saying -- On that issue, I'm  
19      not saying that there's anything about that, that's binding  
20      on this court

21           MR MURPHY Thank you, Your Honor

22           THE COURT Because here we are on a different issue  
23      anyway

24           MR MURPHY Yes, Your Honor

25           THE COURT But I'm just asking -- I'm simply asking,

1 did he file his own brief and raise all these issues that I  
2 - -

3 MR MURPHY Yes, Your Honor

4 THE COURT He basically said the same thing he said  
5 here in court today

6 MR MURPHY Yes, Your Honor And I think --

7 THE COURT But it was in the context that the judge  
8 should not have accepted his plea, not in the context of  
9 ineffective assistance of counsel I understand that It  
10 has to be raised in a collateral proceeding like post  
11 conviction relief, I understand that

12 MR MURPHY Thank you, Your Honor

13 THE COURT I'm just asking because I've already read  
14 everything he said today, put it in a brief to the Appeals  
15 Court except what he said with regard to the attorneys --  
16 his attorneys at the trial

17 MR MURPHY And I think it's important, Your Honor,  
18 there are two different ways that Your Honor could rule in  
19 favor of the Plaintiff one would be a due process  
20 violation, Your Honor, the second would be an ineffective  
21 assistance of counsel So, Your Honor, I don't believe you  
22 have to

23 THE COURT How could I rule in his favor on a due  
24 process argument?

25 MR MURPHY Your Honor --



1 THE COURT He appealed that issue to the Appellate  
2 Court already And they're required to look at whatever  
3 they need to look at on his brief They don't have a  
4 record before them

5 MR MURPHY Thank you, Your Honor And I believe as  
6 far as --

7 THE COURT What's the due process? Didn't it have to  
8 be raised there?

9 MR MURPHY I don't believe so, Your Honor, because  
10 we wouldn't have --

11 THE COURT Well, why could I consider on a post-  
12 conviction relief appeal?

13 MR MURPHY I think you could consider a due process  
14 violation --

15 THE COURT Such as, what?

16 MR MURPHY Your Honor

17 THE COURT Yes, sir What?

18 MR MURPHY Incompetence That his incompetence at  
19 the time of his plea Your Honor, I will submit to *Jeter*  
20 *versus State* And this is 417 SC 2d 594 for Your Honor's  
21 consideration, respectfully

22 THE COURT Well, all I have to say, Counsel, is, this  
23 is his application, his action, he's got the burden of  
24 proof This is no longer a criminal action where the  
25 State's got to prove something beyond a reasonable doubt

1 MR MURPHY Yes, Your Honor

2 THE COURT Its a civil action, the burden is on your  
3 client, he's got to prove whatever he alleges in here by a  
4 preponderance of the evidence And he's got to convince  
5 the court of that by a preponderance of the evidence

6 MR MURPHY Yes, Your Honor

7 THE COURT So, the burden is on him

8 MR MURPHY Yes, Your Honor Thank you, Your Honor

9 THE COURT Thank you I'll take it under advisement

10

11

-- END OF TRANSCRIPT OF HEARING --

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CERTIFICATE OF REPORTER

State of South Carolina )

)

County of York )

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 2nd day of June 2011

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

Wanda Nelson

Wanda Nelson, CVR

Certified Verbatim Reporter,

Official Court Reporter,

Notary Public, in and for

The State of South Carolina

My Commission Expires 1/21/2021

DATE November 29 / 2011

RECEIPTS FOR EXHIBITS

CASE NO 2009 CP46-05532 (320516) JUDGE Lee S Alford  
 PLAINTIFF Steven Inceman PLTF'S ATTY Brian R Murphy  
 DEFENDANT State DEF'S ATTY A.G. Harrison Brandt  
 DATE TRIAL STARTED 6-2-11 DATE TRIAL ENDED 6-2-11

Received of Wanda Nelson, C.R., Court Reporter for above case,  
 these Exhibits

**APPLICANTS**

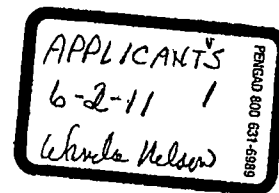
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|----|--------------------|-----------------|-----------|
| 1  | <u>Trial Brief</u> | <u>10 Pages</u> | <u>nd</u> |
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Received from Court Reporter Wanda Nelson this 2<sup>ND</sup> day of  
June, 20 11

YORK COUNTY CLERK OF COURT

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## I

INEFFECTIVE ASSISTANCE OF  
TRIAL COUNSEL

## [Standard of Review]

When ineffective assistance of counsel is alleged as a ground for relief in a PCR action, the 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, 693 (1984) Butler v States 286 S C 441, 334 S E 2d 813 (1985)

Courts use a two pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its 'reasonableness under professional norms " Cherry v State, 300 S C 115, 117-18 386 S E 2d 624, 625 (1989). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different " Cherry, 300 S C at 117-18, 386 S E 2d at 625.

In interpreting the prejudice prong, our State Supreme Court in State v Quattlebaum, 338 S C 441, 527 S E 2d 105 (S C 2000), held 'consistent with existing federal precedent, that a

defendant must show either deliberate prosecutorial misconduct or prejudice to make out a violation of the Sixth Amendment, but not both " Id. 527 S E 2d at 109 The court determined that 'deliberate misconduct raises an irrebuttable presumption of prejudice " Id. 527 S E 2d at 109

Moreover, claims alleging that trial counsel was ineffective for failing to object to trial court errors are recognizable in a PCR proceeding This includes failure to object to inadmissible evidence, Dawkins v State, 346 S C 151, 551 S E 2d 260 (2001) (failing to object to hearsay) improper arguments by the prosecution, Matthews v State, 2001 WL 1887491 (S C Sup Ct , decided June 17, 2002) erroneous jury instructions, Plyer v State, 309 S C 408, 424 S E 2d 477 (1992) (counsel deficient for failing to object to improper charge on malice, which improperly shifted burden of proof from the state to defendant), or any other matter that could otherwise be reviewed on direct appeal, if not for counsel's failure to properly preserve the issue

Accordingly a claim alleging that trial counsel was ineffective for failing to object to an indictment obtained through acts of perjury and gross professional misconduct, can be raised in a PCR proceeding pursuant to the Stickland standard of review

#### **[Perjury and Gross Prosecutorial Misconduct]**

Here, Applicant argues that trial counsel provided ineffective assistance by allowing the State, without objection, to charge,

convict, and sentence him under an indictment obtained through willful acts of perjury and prosecutorial misconduct

Therefore, Applicant would show this PCR Court the following

Applicant's bill of indictment prints that, "At a Court of General Sessions, convened on November 9, 2006, the Grand Jurors of Spartanburg County present upon their oath " (see exhibit 1, indictment) Furthermore, the indictment is affixed with a true bill stamp, and signed by Assistant Deputy Solicitor Willy Thompson (see exhibit 1, indictment), who was the State Judicial Official assigned the responsibility of processing the document

However, the evidence conclusively establishes that the information published in the document regarding a Grand Jury convened Court of General Sessions is in fact The attached, certified true copy of the Judicial Department's calendar of Circuit Court terms shows that on November 9, 2006 "NO" General Sessions Court had been open in Spartanburg County for the Grand Jurors to present anything upon their oath, much less that a crime had taken place (see exhibit 1, indictment in comparison with exhibit 2, Calendar of Convened Courts) Thus, false information is contained in the State indictment, prepared and processed by Assistant Deputy Solicitor Willy Thompson

South Carolina law is very specific concerning matters of false information in a State document It is an offense against public justice to willfully give false information in a State document S C Code Ann §16-9-10, "Perjury and Subornation of

Perjury" states in pertinent part

A(2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record or report or from required by the law of this State

B(2) A person who violates the provisions of subsection A(2) is guilty of a misdemeanor, and upon conviction must be imprisoned not more than 6 months, or fined not less than one hundred dollars or both

C A person may be convicted under this section if he commits perjury by his own act, consent or agreement

FIRST it should be noted that a criminal indictment is a document required by the law of this State In State v. Gentry, 363 S C 96, 610 S E 2d 494 (2005), our Supreme Court held that an indictment is a "notice document" required by both our State Constitution and Statutory law See S C Const Art I §11, and Art V §22 See also S C Code Ann §17-19-10 (2003) ('[n]o person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury , " except specific instances)

Therefore, for purposes of establishing an offense of perjury against public justice, a State indictment would satisfy the document requirements specified under subsection A(2), S C Code Ann §16-9-10

SECOND it should also be noted that a County Prosecutor, [Assistant Deputy Solicitor Thompson] is required to know the laws of this State, and has special responsibilities to see that justice is done, and is held to the highest standards of



professional ethics See Appellate Court Rules, Rule 407, Rules of Professional Conduct, Rule 3 & Comment Also see Quattlebaum  
 In fact, the prosecutor hold a quasi-judicial position See State v Durden, 264 S C 86, 212 S E 2d 587 (1975) State v King, 222 S C 108, 71 S E 2d 793 (1952) ( "he [prosecutor] must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any constitutional right or privilege ")

However, instead of discharging his responsibilities in conformity with the laws of this State, Assistant Deputy Solicitor Thompson knowingly or willfully cause false information to be printed and published in Applicant's indictments thereby violating the provisions of §16-9-10 Thus, Assistant Deputy Solicitor Thompson is guilty of committing an act of perjury against public justice, and which would by necessity also constitute gross professional misconduct See Rules of Professional Conduct, Rule 407, SCACR Rule 8 4(b) (it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other aspects) Rule 8 4(d) ( it is professional misconduct for a lawyer to engage in dishonesty, fraud or misrepresentation) and Rule 8 4(e) (it is professional misconduct for a lawyer to engage in conduct that prejudicial to the administration of justice)

Accordingly both perjury and gross professional misconduct are established in this case. Therefore, Applicant would show this Court the following ineffective assistance of counsel for not challenging the false indictment information

**[Counsel Deficient Performance]**

In Strickland, the Court explained that "access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution to which they are entitled' " Id 466 U S at 685, 104 S Ct at 2063 (quoting Adams v United States ex rel, McCann, 317 U S 269, 275, 2276, 63 S Ct 236 240, 87 L Ed 268 (1942) "Counsel has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process " Id 466 U S at 689, 104 S Ct at 2065

A criminal attorney is constitutionally required to conduct pretrial investigation and discovery, and file any necessary motions to suppress. See e.g. Kimmelman v Morrison, 477 U S 365 385 (1986). It was conclusively shown above that false information is contained in Applicant's true billed State indictment(s), and easily discoverable through examination of the document. Under these circumstances "any competent" trial attorney would have not hesitated to enter an objection, and/or move to suppress Applicant's defective indictment(s), especially given the certainty of prevailing on such a motion.

All attorney's licensed to practice criminal law in South Carolina are required to know and understand this State's

statutory laws and rules related to the lawful return of true bill indictment(s) Therefore, it would be an untenable position for trial counsel to now claim ignorance of the law

South Carolina criminal law sets forth clear provisions for challenging defects in the indictment See S C Code Ann §17-19-90 ('Every objection to an indictment for any defect apparent on the face and would move to squash such indictment before the jury shall be sworn and not afterwards) Unquestionably, trial counsel should have utilized §17-19-90, to challenge Applicant's true bill indictment(s)

In summary, the false information is apparent on the face of the indictments, and easily discoverable through an examination of the document Accordingly, trial counsel provided a deficient performance in not entering an objection to Applicant's defective indictment(s), or motioning to squash

#### [Prejudice]

In interpreting the prejudice prong under a defendant's Sixth Amendment right to counsel, our State Supreme Court identified a narrow category of cases in which prejudice is presumed In Quattlebaum, the Supreme Court concluded, consistent with existing federal precedent, " that a defendant must show either deliberate prosecutorial misconduct or prejudice to make out a violation of the Sixth Amendment, but not both Deliberate prosecutorial misconduct raises an irrebuttable presumption of prejudice " Id 527 S E 2d at 109 Our Supreme Court further determined that the focus must be on the misconduct because the

Court bears the ultimate responsibility for maintaining judicial integrity and high standards of professional conduct among the members of the bar, and for protecting and defending the constitutional rights of the accused See e g Quattlebaum, 527 S E 2d at 109

Above, prima facie evidence was presented showing that the Prosecutor violated the provisions of §16-9-10, and thereby committed an act of perjury against public justice by willfully giving false General Sessions Court information in Applicant's true billed indictment(s). Moreover, it was further established that the Prosecutor's act of perjury against public justice, would by it's very nature also constitute a violation of the Rules of Professional Conduct, specifically, [Rule 8 4(b), 8 4(d) and 8 4(e)], and establish gross prosecutorial misconduct. Thus Quattlebaum is controlling in this case, and an "irrebuttable presumption of prejudice" has been established See Quattlebaum 527 S E 2d at 109

#### CONCLUSION

Under the circumstances found in this case, Applicant's conviction and sentence cannot be allowed to stand because to do so, the State would have to now become a knowing party to the Prosecutor's acts of perjury and gross misconduct, and maintaining Applicant's indictment(s) in it's records, thereby representing those acts to be public

Above, Applicant established a claim of ineffective assistance

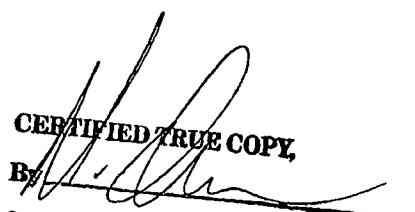
of trial counsel by his showing that (1), counsel's performance was deficient in failing to object to the defective indictment(s), and (2), because prejudice is presumed due to the Prosecutor's acts of perjury and gross misconduct

Accordingly, and based on the forgoing Applicant's conviction and sentence should be overturned

**Terms of Circuit and Family Court  
November 2006**

| Circuit Number | 11/6/2006                                                                                                                                                                                                                                                                                                         | 11/13/2006                                                                                                                | 11/20/2006                                                 | 11/27/2006                                                                                                                          |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <b>16</b>      | Common Pleas Non<br>Jury/PCR<br>Alford Lee<br><br><b>MCGILBERRY</b><br><br>General Sessions<br>Union<br>Hayes John C<br><br><b>BARRETT</b><br><br>Common Pleas Non-<br>Jury 7 8 9<br>York<br>Kimball S<br><br><b>FAUCETTE 7 8</b><br>9<br><br>General Sessions 8<br>York<br>Alford Lee<br><br><b>MCGILBERRY 8</b> | General Sessions<br>York<br>Cole J<br><br><b>BROOM</b><br><br>General Sessions<br>York<br>Hayes John C<br><br><b>RICH</b> | Common Pleas 22<br>York<br>Kinard J<br><br><b>BROOM 22</b> | General Sessions<br>York<br>Alford Lee<br><br><b>MCGILBERRY</b><br><br>General Sessions<br>York<br>Hayes J Mark<br><br><b>WOODS</b> |

**CERTIFIED TRUE COPY,**

By 

**South Carolina Court Administration**

RECEIPTS FOR EXHIBITS

CASE NO 2009-CP 46-05532 JUDGE Lee S Alford  
 PLAINTIFF Steven Freeman PLTF'S ATTY Brian Murphy  
 DEFENDANT State DEF'S ATTY HARRISON D BENT  
 DATE TRIAL STARTED 6-2-11 DATE TRIAL ENDED 6-2-11  
 Received of Wanda Nelson, CSR, Court Reporter for above case,  
 these Exhibits

This space for Clerk  
of Court's use

|    |                                                  |  |
|----|--------------------------------------------------|--|
| 1  | <u>Dated Grand Jury Convened July - Dec 2006</u> |  |
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Received from Court Reporter Wanda Nelson this 22 day of  
August, 2011

WORK COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA

16<sup>TH</sup> JUDICIAL CIRCUIT

State of South Carolina

IN THE COURT OF GENERAL SESSIONS

# ADMINISTRATIVE ORDER

Pursuant to authority vested in me as the duly designated Chief Judge for administrative purposes of the Sixteenth Judicial Circuit

IT IS ORDERED that the dates for the convening of the Grand Jury for July through December of the year 2006 shall be as follows

York County  
Thursday, July 20  
Thursday, August 17  
Thursday, September 14  
Thursday, October 12  
Thursday, November 9  
Thursday, December 7

|              |                       |
|--------------|-----------------------|
| Union County | Thursday, July 13     |
|              | Thursday, August 10   |
|              | Thursday, September 7 |
|              | Thursday, October 5   |
|              | Thursday, November 2  |
|              | Thursday, November 30 |

AND IT IS SO ORDERED

Honorable Lee S. Afford  
Chief Administrative Judge  
Sixteenth Judicial Circuit

April 3 2006

CERTIFIED TRUE COPY  
2011 JUN -3 AM 9:37  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC



STATE OF SOUTH CAROLINA  
 COUNTY OF YORK  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NO 2009CP4605532

Steven J Freeman vs South Carolina State of

**CHECK ONE**

- ☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRCP ☐ Rule 41(a),  
 SCRCP (Vol Nonsuit), ☐ Rule 43(k), SCRCP (Settled), ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRCP, ☐ Bankruptcy  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award  
☐ Other \_\_\_\_\_

IT IS ORDERED AND ADJUDGED

☒ See attached order,

☐ Statement of Judgment by the Court

**ORDER OF DISMISSAL**

Dated at York, South Carolina, this 2nd day of August, 2011

Court Reporter

s/ LEE S ALFORD

**PRESIDING JUDGE - LEE S ALFORD**

This judgment was entered on the 3rd day of August, 2011, and a copy mailed first class this 3rd day of August, 2011, to attorneys of record or to parties (when appearing pro se) as follows

Steven J Freeman Perry Correctional Inst Q4B-  
 108 430 Oaklawn Rd Pelzer, SC 29669  
 Brian R Murphy Law Office Of Brian R.  
 Murphy P O Box 805 Fort Mill SC 29716

Harrison D Brant Office Of Attorney General  
 P O Box 11549 Columbia, SC 292111549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

**David Hamilton**

SCRCP APP-24/FORM 4

David Hamilton - Clerk of Court

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )  
  
Steven J Freeman, #320516, )  
  
Applicant, )  
  
v )  
  
State of South Carolina, )  
  
Respondent. )

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

2009-CP-46-5532

ORDER OF DISMISSAL

DAVID HAMILTON  
C C C P & GS  
YORK COUNTY S.C.

2011 AUG -3 AM 8 58

FILED-RECEIVED

This matter comes before the Court by way of Application for Post-Conviction Relief filed December 18, 2009. The Respondent filed its Return on April 7, 2010. An evidentiary hearing into the matter was convened at the Moss Justice Center in York County on June 2, 2011. The Applicant was present at the hearing and was represented by Brian R. Murphy, Esquire. The Respondent was represented by Harrison D. Brant, Esquire, of the South Carolina Attorney General's Office.

The Applicant testified on his own behalf at the hearing, and also presented the testimony of his parents, Randall and Evette Freeman, Pastor Henry Terry, and Dr. Harold Morgan. The Applicant's trial counsel, Harry A. Dest, Esquire, and B. J. Barrowclough, Esquire, also testified at the hearing. This Court had before it the records of the York County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's appellate records, and the trial transcript.

#### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was

*[Handwritten signature]*

indicted at the November 2006 term of the York County Grand Jury for Murder (2006-GS-46-3825), Burglary in the First Degree (2006-Gs-46-3826), and Resisting Arrest (2006-GS-46-3827) Harry A Dest, Esquire, and B J Barrowclough, Esquire, represented him on these charges The Applicant proceeded to a jury trial on March 5, 2007, however, on March 6, 2007, he decided to forego the remainder of trial and pled guilty as indicted to all charges The Honorable John C Hayes, III, sentenced him to confinement for a period of fifty (50) years for Murder, fifty (50) years for Burglary in the First Degree, and one (1) year for Resisting Arrest, sentences running concurrently

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected pursuant to Anders v California, 386 U S 738 (1967) The Applicant also filed a pro se brief The S C Court of Appeals dismissed the Applicant's appeal State v Freeman, Op No 2009-UP-477 (S C Ct App filed October 1, 2009) The Remittitur was issued on October 29, 2009

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel
  - a Failure to fully investigate Applicant's fitness to stand trial or enter a guilty plea
  - b Failure to motion for a Blair hearing
  - c Failure to motion for a continuance
  - d Failure to properly inform the court of Applicant's mental illnesses
  - e Failure to motion for a recess at request of Applicant's family
  - f Failure to allow Applicant time to calm down before entering guilty plea
  - g Failure to advise Applicant of any options other than to plead guilty
  - h Failure to request bond hearing<sup>1</sup>

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<sup>1</sup> No testimony or evidence was presented on this issue Therefore the Applicant failed to meet his burden of proof

At the evidentiary hearing, the Applicant amended his Application, over objection, to include a claim of prosecutorial misconduct. The Respondent was granted the opportunity to supplement the record after the hearing in order to respond to this new claim.

### STATEMENT OF FACTS

On the evening of August 28, 2006, the Applicant followed his girlfriend, Petra Sherman, as she drove down the highway. The Applicant suspected Sherman had been cheating on him. He followed Sherman to an apartment complex, and found her car parked outside the apartment of the victim, Michael Burgess. He then saw Sherman and the victim through the window of the apartment sitting on the couch. He broke the glass on the window, entered the apartment and beat the victim to death with his bare fists. He violently resisted the police, and was arrested after being tazed twice and subdued by three officers.

The next morning, the Applicant was transported to the hospital from the jail after sustaining self-inflicted injuries to his head. (Tr p 55) At the hospital, the Applicant gave a voluntary statement to law enforcement officers indicating he followed Sherman to the apartment after she said she was going to Charlotte, but he saw her car travelling in the opposite direction. (Tr pp 58-60) He stated he found her vehicle and sat on it while he called her phone. He asked her to come outside, but she would not. He stated he saw her grin at him through the window, at which point he "lost it." He stated he broke through the window, entered, and started punching the guy. On the way back from the hospital, he told another officer he made a mistake, and he knew she was cheating. (Tr p 65)

At trial, one of the victim's neighbors, Bianca Moison, testified she saw the Applicant sitting on a car in front of the victim's apartment. (Tr pp 144-16) About ten to fifteen minutes

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and the allegation is denied and dismissed

later, she heard people arguing (Tr pp 148-149) She went outside and saw the Applicant breaking the window and trying to get into the apartment, and saw someone else trying to call 911 (Tr pp 149-150)

Timothy Carter, a friend and neighbor of the victim, testified the victim called him the night of the incident (Tr p 159) He testified the victim was very upset, his voice was trembling (Tr p 160) He testified the victim was hollering for him to come over because someone was trying to kick his door in, and then the victim hung up the phone (Tr p 160) He ran to the victim's apartment and jumped a porch rail to enter because the front door was locked He saw a girl in the room screaming for help, saw the Applicant standing against the wall, and the victim was lying face down on the ground (Tr p 161) He testified the room was covered in blood, and the victim was moving a little but was unresponsive (Tr pp 161-162) He asked the Applicant what was going on, and the Applicant responded by threatening to rip him in half (Tr p 162) He ran out to call 911, then saw the Applicant kick the victim twice in the face, and stomped on him twice as well He testified the Applicant's face was not recognizable and looked black from all the blood (Tr p 164) He further testified the Applicant was choking on his own blood (Tr p 165)

On the second day of trial, Mr Dest indicated they were not ready to proceed, and the trial court granted the parties a short break (Tr p 173) After the break, the Solicitor indicated the Applicant wished to plead guilty to the charges without any negotiations with the State (Tr p 173) The Applicant then answered a series of questions from the court regarding his desire to plead guilty The Applicant affirmed that he was satisfied with his attorneys, he understood the charges and the potential penalties they carried, he understood his jury trial rights and the fact he was waiving those rights, and he wanted to plead guilty to each of the charges (Tr pp 174-180) Mr Dest then advised the trial court that the Applicant had attempted suicide several

times, and as a result he had the Applicant evaluated by Dr Morgan to determine whether he was insane or guilty but mentally ill (Tr pp 181-182) He explained that Dr Morgan concluded the Applicant was under a lot of stress from his relationship with his girlfriend, and his steroid use may have had detrimental effects on his ability to control himself, however, Dr Morgan concluded these issues did not rise to the level of a mental health defense (Tr p 182-183)

The Solicitor then recited the facts of the case that had yet to be presented He stated Petra Sherman indicated in her interviews that this was the first time she ever met the victim, and she had been in the apartment for just a few minutes, long enough for them to pour glasses of tea and for her to smoke a cigarette, before the Applicant arrived (Tr pp 186-187) Picture evidence showed two glasses of tea and one smoked cigarette were found on the scene (Tr p 187) He stated the Applicant also gave another statement in which he indicated Sherman actually came out of the apartment before he entered and attacked the victim (Tr p 189) The Applicant agreed with the facts as stated by the Solicitor (Tr pp 191-192) The trial court then found the Applicant's plea freely, voluntarily, and knowingly entered into (Tr p 192)

In mitigation of sentencing, Mr Dest advised the trial court that he was surprised the Applicant decided to plead guilty in the middle of trial, but he was not surprised as to the reasons the Applicant gave for his decision (Tr p 204) He stated the Applicant said he did not want the victim's family or his family to suffer anymore He stated the defense was ready to go forward and present a voluntary manslaughter defense, and the Applicant is aware he is waiving the right to pursue that defense (Tr p 205) He stated the Applicant cried and was remorseful every time he visited him He further advised the court that the Applicant was sexually abused as a child, and never really had any relationships with women (Tr pp 207-208) He stated the Applicant's girlfriend was manipulative, controlling, and led the Applicant down the path to

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losing control The Applicant subsequently addressed the court, and gave the following statement

I just want to say how sorry I am for what I did I know that I took a father from his children and a son from his parents No matter what I can't give that back to them I wish, not a day goes by that I wished [sic] I could turn back time and go back to that day I would drag myself out of there if I could I know me [sic] spend my life in prison is probably, probably everybody is right, there ain't nothing like the prison I've been spending since the night this happened I've been a prisoner here for the rest of my life just because If there was anyway, I know they probably don't want to hear it, but when I get to prison and if I get a job at pay, please let me help his children, somehow just let me help them They didn't deserve this None of them deserved this I'm sorry

(Tr pp 222-223) The trial court responded that this was one of the top four or five most heinous and senseless acts he had seen in fifteen years on the bench, and stated he would have given the Applicant a life sentence if he had been convicted of murder by a jury (Tr p 223)

#### SUMMARY OF TESTIMONY

The Applicant testified he had a history of mental and emotional issues He testified he has suffered from depression and anxiety problems since he was young, although he was not diagnosed with such issues until much later He stated he first attempted suicide when he was in his early teens by playing Russian roulette by himself, but the hammer never found a bullet He testified that in 2003 he attempted a second time to shoot himself, but the gun jammed His third attempt was on August 1, 2006, when he overdosed on pain pills because issues with his girlfriend caused him to be down and depressed He stated he was hospitalized and his stomach was pumped He was then admitted to a psychiatric ward, and was diagnosed with borderline personality disorder, bipolar disorder, impulse control disorder, anxiety disorder, and depression He testified he was prescribed Zoloft for depression, and was also prescribed medicine for bipolar disorder and anxiety He stated his fourth suicide attempt was on August 22, 2006, after

an argument with his girlfriend. He testified that in November of 2006 he was taken off his other medications and given only Vistaril for his anxiety issues.

The Applicant testified to his mental state at the time of his trial. He stated that two or three weeks before trial he was taken off Vistaril, and he told his attorneys this. He testified that the week before trial he felt panicked, and it felt like the room was spinning. He stated the first day of trial was difficult and he "lost it" when he heard the testimony presented by the State, and he was unable to focus. He testified he began crying at trial because he thought about what happened and how much pain he caused. He stated he had been having trouble sleeping, and the night after the first day of trial he again tried to commit suicide in his cell by putting a plastic bag over his head, however, it did not work.

The Applicant testified that on the day of his plea he could not gather his thoughts and felt like he could not go on. He stated he met with his attorneys in a back room and asked Mr. Dest if he could speak with his family, but Mr. Dest would not let him. He testified he then told Mr. Dest he could not go back out in the courtroom. He stated his thoughts were racing and he could not catch his breath. He testified his attorneys told him they could not tell him whether or not to plead guilty, and they did not try to talk him out of it. He stated his attorneys did not ask him about his mental status and should have asked for a continuance to have him evaluated, or should have asked for a recess to allow him to calm down. He testified he pled guilty within ten to fifteen minutes of "breaking down," and he would not have pled guilty if he had more time to calm down.

On cross-examination, the Applicant testified the trial was difficult to sit through because his anxiety and emotional state made it hard to relive the incident and hear the testimony. He testified he knew he did something wrong, he was remorseful, and he felt bad for the victim and his family. He stated he was able to communicate with his attorneys for the most part during

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trial and before the plea, but he had difficulty concentrating. He testified he previously cycled steroids in heavy doses for three to four years, and stopped about one month and a half before the crimes were committed. He stated he thinks the reason he had about fifteen minutes to speak with his attorney prior to his plea was because his attorney requested that time. He again stated he would not have pled guilty if he had been given more time; however, he stated he did not know how much time he actually needed to calm down. He then read aloud the same statement he made to the trial court at sentencing. He testified he did not have trouble thinking when he gave this statement to the trial court, these were his own words, and no one told him what to say. He stated he knew he faced life in prison when he pled guilty, and he knew he had the right to a jury trial because he was in the middle of one and could have continued with it if he wanted to.

The Applicant then answered questions from the Court. He testified appellate counsel filed an Anders brief on his behalf, and he then sought permission to file his own pro se brief. He then filed a brief that raised these same issues on appeal, i.e., his plea was not knowingly, voluntarily, and intelligently entered. He testified he made the decision to plead guilty.

→ The Applicant's father, Randall Freeman, testified he was not aware of the Applicant's mental health problems until recently. He said the Applicant's behavior on the day of his plea was strange, and he did not think the Applicant could go forward. He testified the Applicant was crying and appeared to be nervous and emotional. He stated it was not normal for the Applicant to be emotional. He testified he asked Mr. Dest to speak with the Applicant, but he was not given the opportunity. He stated he would have told the Applicant to continue with trial. On cross-examination, he testified he visited the Applicant at the jail before trial, and the Applicant was emotional at that time. He then stated the Applicant was emotional from the time of his arrest until trial, and was always very remorseful.

The Applicant's mother, Evette Freeman, testified the Applicant first saw a psychiatrist

when he was young after their house burned down and his sister passed away. She stated the Applicant was not prone to crying or being emotional. She stated the Applicant was remorseful, and often talked about the victim's children having to grow up without a father. She testified that on the second day of trial the Applicant appeared to be dazed, and the next thing she knew Mr. Dest was telling them the Applicant wanted to plead guilty. She stated she told Mr. Dest not to let the Applicant plead guilty, and asked to speak with the Applicant. She said she would have told the Applicant not to plead guilty. On cross-examination, she testified the Applicant was emotional during visits she made to jail prior to trial. She also testified she witnessed the Applicant give his statement to the trial court at sentencing, and the Applicant seemed very remorseful, sad, hurt, and clear-headed.

Henry Terry testified he was the pastor of the Applicant's parents, but the Applicant did not attend his church. He stated he met the Applicant ten years ago in the parents' home. He testified the Applicant appeared to be a normal, calm, everyday guy who never got in trouble with the law. He testified that when he visited the Applicant in jail he "saw a man that was beaten," and appeared depressed. He stated the Applicant told him he wanted to give money to the victim's children. He testified the Applicant was emotional and his face looked different than it does today.

Mr. Dest testified he met with the Applicant fifteen to twenty times before trial. He testified he knew the Applicant attempted suicide several times, suffered from bouts of depression, and had previously taken steroids<sup>2</sup>. He stated he knew the Applicant was on medication for depression, however, the Applicant never told him that he stopped taking his medication, and he was not aware of any doctor's orders to such effect. He hired Dr. Harold

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<sup>2</sup> Dest also testified the Applicant weighed 265 pounds on the day he was arrested and weighed about 195 pounds at the time of trial.

Morgan a forensic psychiatrist, to examine the Applicant and explore these issues. Dr. Morgan met with the Applicant twice and conducted a personality traits test. He testified Dr. Morgan's assessment found the Applicant was insecure and had low self-esteem. He stated Dr. Morgan indicated these issues were the product of the Applicant's emotional dependence on a woman who played mind games and who he thought he saw engaging in sexual activity with another man, and also the product of his impulsivity problems. He testified the Applicant's prior steroid use, or his withdrawals therefrom, made him more irritable and impulsive. He testified that as a result of these examinations, Dr. Morgan concluded the Applicant had no issues with competency, and found no indication the Applicant was insane.

Mr. Dest testified he has been practicing criminal law for about twenty years. He stated he has experience representing clients who have competency issues, and more specifically, clients who go in and out of competency. He testified that based on his interactions with the Applicant, he made no observations suggesting the Applicant was incompetent to stand trial, and Dr. Morgan's examination proved that. He stated the Applicant did not have a mental health disability, he was just emotionally weak. He testified he observed no change in the Applicant's demeanor before or after he was examined by Dr. Morgan. He stated the Applicant never appeared confused in their discussions, and always seemed to understand the charges, the consequences of those charges, and the evidence against him.

Mr. Dest testified that on the second day of trial, the Applicant was crying and said he wanted to plead guilty. He stated he asked the judge for some time, and they were given twenty to thirty minutes to talk. He testified the Applicant said he did not want to put his family or the victim's family through anymore. He testified he was surprised by the Applicant's decision and did not want him to plead guilty. He stated their trial strategy all along had been to put up a voluntary manslaughter defense, and they had not had a chance to present any evidence yet. He

testified he tried to convince the Applicant not to plead guilty, and told him to at least wait until they had a chance to cross-examine the girlfriend. He testified the Applicant asked how much time he could get if he pled straight up, and he advised the Applicant he could receive a life sentence and would waive his voluntary manslaughter defense. He stated he spoke with the Applicant's family, and they did not want him to plead guilty, however, the Applicant never asked to meet with his family, and this was not their decision to make.

Contrary to the Applicant's assertion he was emotional only at the time of the plea, Mr. Dest testified the Applicant was emotional and cried every time they met. He testified the Applicant was not "breaking down" but was emotional and said he was sorry for what he did, however, in his experience it is not unusual for a client who killed someone to express remorse. He stated he has tried numerous murder cases in the past, and it is normal for a defendant to experience anxiety. He testified the Applicant seemed focused and did not appear confused during their plea discussions, and the Applicant never indicated he had racing thoughts or did not understand anything. He testified that prior to trial the Applicant always did what was asked of him, however, he testified clients often do not follow advice, and it did not strike him as unusual that the Applicant did not follow his advice on this occasion. He stated he did not request a continuance because the judge would not have granted one under the circumstances of this case just so they could explore plea options. He further stated that if there was any reason to believe the Applicant had become incompetent to continue trial, they would have requested an evaluation.

Mr. Barrowclough testified he has been practicing criminal law exclusively for about sixteen years. He stated his role in this case involved more direct interaction with the Applicant. He stated he has represented clients with competency issues in the past, and he never observed anything from the Applicant to indicate he lacked competency. He further stated he met with the

Applicant numerous times before trial, and the Applicant always seemed to understand their discussions, did not appear confused, and followed their suggestions. He testified the Applicant always responded to questions and interacted appropriately with him. He further testified the Applicant had a big heart and felt bad about what he did.

Mr. Barrowclough also testified the Applicant was emotional during the trial and on the day he pled guilty, however, this was nothing new or different as the Applicant was emotional throughout his representation. He stated he did not recommend that the Applicant plead guilty, and his decision to plead guilty came at the worst possible time of trial when the State had just presented damaging testimony. He stated they needed to put up their own evidence to put the Applicant in a better light. He testified they requested and were granted a break to speak with the Applicant, but they did not request a continuance or a competency hearing. He stated the Applicant did not seem confused in their discussions immediately prior to the plea. He testified he does not recall the Applicant asking to speak with his family.

Dr. Harold Morgan was stipulated as an expert in forensic psychiatry. He stated that in preparation for his current testimony he reviewed incident reports, witness statements, letters, medical records, investigative reports, and talked to the Applicant's parents. He testified he was asked by Mr. Dest to examine the Applicant in early September of 2006. He examined the Applicant twice, once on September 22, 2006, and once on January 31, 2007. He testified the Applicant's medical records reveal he was admitted into a hospital on August 2, 2006, after overdosing on pills because his girlfriend threatened to leave him. He stated illicit drugs were also found in the Applicant's urine. On August 23, 2006, the Applicant was again hospitalized, was diagnosed with depression and impulse control issues, and was prescribed Zoloft. On the day after the Applicant's arrest, he was admitted to the hospital after sustaining self-inflicted injuries to his head. In November of 2006, he testified the Applicant was evaluated by Catawba

Mental Health Center staff in jail. They determined that he no longer needed Zoloft and discontinued the prescription, however, they did prescribe an antihistamine, Vistaril, to help him sleep.

Dr. Morgan testified the Applicant was then diagnosed with the following adjustment disorder, which includes symptoms of anxiety and depression, impulse control disorder, borderline personality disorder, which means he does not handle stress very well, and alcohol dependence. He stated the Applicant has a dependent personality accompanied by insecurity, lacks confidence, and has feelings of inadequacy which he tried to cover with large muscles. He testified the Applicant's ability to cope with stress is low and meager. He testified the severity of the Applicant's anxiety is situationally dependent, and could to some extent erode the Applicant's ability to make competent decisions. He testified medications can help calm this fear and anxiety, however, Zoloft is for depression, and would not have been very helpful. He stated a trial would cause high anxiety, and could potentially take over his ability to make competent decisions.

On cross-examination Dr. Morgan testified that both times he evaluated the Applicant he concluded he was clearly competent, and there is no doubt the Applicant was criminally responsible at the time he committed the crimes. He stated the Applicant expressed remorse in their meetings, and he saw nothing abnormal about this. He stated the Applicant appeared anxious at the time of these evaluations. He testified he was not given a copy of the transcript from the Applicant's plea to review before his current testimony, however, he was present in the courtroom for all of the testimony given thus far, and was present when the Applicant read out loud the statement he previously gave to the trial court at sentencing. He testified the reasons the Applicant gave for pleading guilty were emotional, but rational. Based on this testimony, he believes the Applicant was competent to stand trial and make decisions at the time he pled guilty.

On re-direct, Dr Morgan testified he knows a person can go in and out of competency depending on the nature of a mental illness. However, he testified anxiety is not likely to cause a person to lose competence, and a more serious mental illness is necessary to cause such an effect. He testified bipolar disorder is also not likely to overtake someone's competency overnight, and suicide attempts are not necessarily indicative of incompetency. On recross-examination, Dr Morgan reiterated his belief the Applicant was competent on the day of the plea. He also testified suicide attempts can be used for manipulative purposes. He stated he believes the Applicant ultimately made the decision to plead guilty.

Dr Morgan then answered questions directly from the Court, and testified that Zoloft is an anti-depressant with subtle effects. He testified the Applicant was prescribed a low dosage that was not likely to help the Applicant much. He stated the Applicant was monitored by the department of mental health in jail, and the doctor took him off Zoloft based on the social worker's notes. He testified borderline personalities can be manipulative.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S C Code Ann § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71 1(e), SCRCP, Butler v State, 286 S C 441, 334 S E 2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

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MB

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, 286 S C 441, 334 S E 2d 813 (1985)

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S C 441, 334 S E 2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S C 115, 386 S E 2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S C at 117, 385 S E 2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the 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.

The Applicant alleges counsel was ineffective with regards to his alleged incompetency by failing to adequately investigate the matter, move for a Blair hearing, or otherwise properly inform the court of his mental illnesses. For the Applicant's claims to be successful, he must prove he was incompetent at the time of his plea, or was insane at the time the crimes were committed. "In a PCR action, the petitioner bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter v. State, 308 S C 230, 232, 417 S E 2d 594, 596 (1992). Even if counsel was deficient with regards to his or her failure to further investigate or address the Applicant's defendant's mental capacity, the Applicant still must show prejudice from this deficiency. Jeter, 308 S C at 233. 417 S E 2d at



596 Under the second prong of Strickland, this requires the Applicant to demonstrate a “reasonable probability” that he was either insane at the time the crime was committed, or that he was incompetent at the time of the plea Id

This Court finds the Applicant failed to prove he was incompetent at the time of his plea “The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him ” McLaughlin v State, 352 S C 476, 481, 575 S E 2d 841, 843 (2003), see also Jeter, 308 S C at 232, 417 S E 2d at 596 (“The test for competency to enter a plea is the same as required to stand trial”) The Applicant’s own testimony established he was able to communicate with his lawyers in preparation for trial, during trial, and immediately before he pled guilty The Applicant also testified he did not have trouble thinking when he voluntarily, and without assistance, addressed the court at the plea hearing and gave a statement exceeding nine sentences in length in which he expressed extreme remorse for his actions Further, his testimony established he understood the consequences of his plea, i e , he knew he potentially faced life in prison and was waiving his right to continue with a jury trial

This Court finds the testimonies of the Applicant’s mother and father, and their pastor, not persuasive on the issue Each of these witnesses attempted to establish that the Applicant’s emotional behavior on the day of the plea was abnormal and irrational However, his mother and father both testified the Applicant was emotional and very remorseful from the time of his arrest until the time of trial, a time period which exceeded seven months in length<sup>3</sup> Further, the Applicant’s mother testified the Applicant seemed clear-headed when he addressed the court at the plea hearing These witnesses failed to otherwise present any credible testimony indicating

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<sup>3</sup> The Applicant was arrested on August 28 2006 the night of the murder, and pled guilty on March 6 2007

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the Applicant did not understand what he was doing when he pled guilty, or did not understand the consequences of doing so

The testimony of each of the Applicant's attorneys further indicates the Applicant was competent at the time of the plea. This Court first finds the Applicant was represented by two experienced criminal trial practitioners, both of whom have years of experience in the most serious and high profile cases. These attorneys also have substantial experience in representing persons that are mentally ill or have emotional issues, including persons who go in and out of competency. Their testimony in this case established that they both had extensive direct interaction with the Applicant, and neither one of them ever observed any behavior from the Applicant indicative of incompetency. Their testimony established the Applicant's tearful and emotional behavior at the plea was not unusual, to the contrary, they observed this behavior every time they met with the Applicant. Mr. Dest testified the Applicant was emotionally weak, but not mentally ill. They testified the Applicant at all times seemed to understand their discussions, the charges and their consequences, and the evidence against him. They testified the Applicant always responded to questions and interacted appropriately with them. Further, they testified that in their discussions about the plea the Applicant seemed focused and appeared to understand he faced the possibility of life in prison and would waive his voluntary manslaughter defense.

The testimony of the Applicant's expert, Dr. Morgan, did not help his case. He testified he examined the Applicant and found him to be clearly competent on two occasions, the second of which occurred about a month before trial. He testified the Applicant's anxiety and emotional issues were not likely serious enough in nature to have caused the Applicant to suddenly decompensate to the point where he became incompetent to proceed with trial. Further, he did not believe the fact the Applicant was taken off his Zoloft prescription affected his competency.

because Zoloft has subtle effects, and he was only prescribed a very low dose. He also testified the reasons the Applicant stated for pleading guilty before the trial court were emotional and remorseful, but rational, and indicate the Applicant was competent to stand trial or make decisions at the time he pled guilty. Ultimately, he concluded the Applicant was competent when he made the decision to plead guilty.

Furthermore, this Court finds the Applicant failed to show a "reasonable probability" he was insane at the time he committed the crimes. See Jeter, 308 S C at 233, 417 S E 2d at 596. "For an insanity defense, the accused must be unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong." Id. (citing S C Code Ann. § 17-24-10 (Supp. 1991)). "To show prejudice for failing to pursue this defense, the petitioner must produce some evidence of insanity or a showing that with the exercise of due diligence, an insanity defense could have been developed." Id. at 233-34, 417 S E 2d at 596.

There is ample evidence before this court to establish the Applicant knew it was morally and legally wrong to kill the victim. In the Applicant's statement to the trial court, he expressed regret and remorse for his actions, apologized to the victim's family, and offered to help the victim's children financially. The Applicant testified before this Court that he knew what he did was wrong, and reaffirmed that he was remorseful for his actions. In fact, every other witness presented at the hearing testified the Applicant expressed remorse for his actions and guilt for the effect those actions had on the family of the victim. Further, Dr. Morgan testified he had no doubt the Applicant was criminally responsible at the time he committed the crimes.

Therefore, this Court finds the Applicant failed to meet his burden of proving he was incompetent at the time of his plea, or insane at the time he committed the crimes. This Court finds counsel was not ineffective for failing to further investigate the Applicant's alleged incompetency, request a Blair hearing, or request a continuance to have the Applicant further

evaluated because the evidence before this Court clearly refutes the Applicant's claim of mental incompetency. Accordingly, these claims are denied and dismissed.

### Involuntary Guilty Plea

The Applicant alleges he would not have pled guilty if his attorneys had moved for a continuance, moved for a recess to allow him to speak with his family, or advised him of alternative options. An applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S. C. 16, 546 S. E. 2d 417 (2001), Richardson v. State, 310 S. C. 360, 426 S. E. 2d 795 (1993).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U. S. 238, 89 S. Ct. 1709 (1969), Dover v. State, 304 S. C. 433, 405 S. E. 2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harris v. Leeke, 282 S. C. 131, 318 S. E. 2d 360 (1984). Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual." Dalton v. State, 376 S. C. 130, 137, 654 S. E. 2d 870, 874 (Ct. App. 2007). "Therefore, statements made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S. E. 2d at 874.

The guilty plea transcript reflects straightforward responses by the Applicant to questions from the trial court. The Applicant affirmed he was satisfied with his attorneys, he understood the charges against him and their potential penalties, he was entering his plea freely and

voluntarily, he understood his jury trial rights and the fact he was waiving those rights, and he wanted to plead guilty (Tr pp 174-180) Mr Dest then informed the court of the Applicant's history of suicide attempts and depression (Tr p 181) Mr Dest also informed the court that he had the Applicant examined by Dr Morgan who concluded these issues did not amount to a mental health defense (Tr pp 181-183) The Applicant agreed with the facts of the case as recited by the Solicitor (Tr pp 184 192) After the court found the Applicant's plea was freely, voluntarily, knowingly, and intelligently entered into, the Applicant addressed the court with a statement that was clear, coherent, and expressed extreme remorse for his actions (Tr pp 192 222-223) This Court finds the Applicant has failed to present sufficient reason why he should be allowed to depart from the truth of his statements made at the guilty plea hearing

This Court further finds no evidence to indicate the Applicant would have continued with trial rather than pleading guilty if his attorneys had requested a continuance, requested a recess to allow him to speak with his family, or advised him of other options The Applicant's attorneys had already requested and obtained a brief recess during which they advised the Applicant not to plead guilty yet They also testified a continuance would not have been granted at that time and the Applicant never asked to speak with his family Further, the Applicant testified he did not know how much more time he would have needed to calm down before he would have decided to continue with trial Therefore, the conclusion the Applicant would not have pled guilty if he had been given more time is based purely on speculation See Simpson v Moore, 367 S C 587, 598, 627 S E 2d 701, 707 n 2 (2006) (PCR applicants "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective") This Court finds no evidence to indicate additional time, investigation, evaluation, or discussion would have resulted in the Applicant deciding to continue with trial rather than plead guilty These claims are therefore denied and dismissed as being without merit

Therefore, this Court finds that Applicant's plea was entered into voluntarily, knowingly, and intelligently. This Court finds Applicant was made aware of the right to a jury trial and rights pertinent thereto as well as the fact these rights would be waived by entering a plea of guilty. This Court further finds counsel did not improperly pressure or threaten the Applicant in counsel's discussions regarding the Applicant's plea. Further, this Court finds counsel was prepared for a trial and provided the Applicant with counsel's assessment of the strength of the State's case and possible outcome at trial. The testimony offered at the evidentiary hearing and the guilty plea colloquy clearly establishes the Applicant knowingly and intelligently pled guilty based upon the effective assistance of trial counsel. This Court further finds counsel adequately conferred with the Applicant, adequately sought and discussed plea options, was thoroughly competent in their representation, and counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, the allegation of ineffective assistance of counsel is denied.

#### **Prosecutorial Misconduct**

The Applicant also alleges the Solicitor committed prosecutorial misconduct. By way of a legal memorandum entered into the record as an exhibit, the Applicant alleges the Solicitor obtained indictments against the Applicant through acts of perjury. In support of this allegation,

the Applicant asserts the York County Grand Jury was not scheduled to convene on November 9, 2006, the date on which his indictments were true billed. In response, the Respondent supplemented the record with a certified copy of an Administrative Order, dated April 3, 2006, setting forth the dates for the convening of the York County Grand Jury. The Administrative Order conclusively shows the York County Grand Jury was scheduled to convene on November 9, 2006, the same date on which the Applicant's indictments were true-billed. Accordingly, this allegation is denied and dismissed as being entirely without merit.

### CONCLUSION

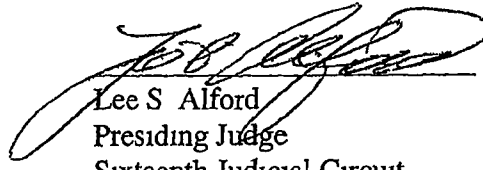
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S C 137, 620 S E 2d 743 (2005). Also, pursuant to Austin v. State, 305 S C 453, 409 S E 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71 1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

**IT IS THEREFORE ORDERED**

- 1 That the application for post-conviction relief be dismissed with prejudice, and
- 2 That the Applicant be remanded to the custody of the Respondent

**AND IT IS SO ORDERED** this 2<sup>nd</sup> day of August, 2011

  
Lee S. Alford  
Presiding Judge  
Sixteenth Judicial Circuit

York, South Carolina

#23  
2011



## ARREST WARRANT

G-900146

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
Rock Hill

 THE STATE  
 against
Steven Joel Freeman
 Address Rock Hill, SC 29731 1706

 Phone \_\_\_\_\_ SSN \_\_\_\_\_  
 Sex M Race W Height 5'09" Weight 210  
 IL State SC DL # \_\_\_\_\_  
 DOB 12/29/1976 Agency ORI # SC0460300  
 Prosecuting Agency Rock Hill Police Department  
 Prosecuting Officer Herring  
 Offense 16 3 10 Murder

Offense Code \_\_\_\_\_

Code/Ordinance Sec 16 3 10

This 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 law

Signature of Judge

(LS)

## RETURN

 copy of this arrest warrant was delivered to  
 defendant Steven Joel Freeman
0-29-06

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO  
 Municipal Judge  
East Black Street  
Rock Hill, SC 29731 1706  
329 7200

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
Rock Hill

## AFFIDAVIT

 Form Approved  
 U.S. Attorney General  
 July 6, 1960  
 56CA-1B

 Personally appeared before me the affiant L. R. Herring who  
 being duly sworn deposes and says that defendant Steven Joel Freeman  
 did within this county and state on August 28, 2006 violate the criminal laws of the  
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill)  
 in the following particulars
DESCRIPTION OF OFFENSE 16 3 10 Murder0116
 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

 Did wilfully and unlawfully violate the S C Code of Laws, 16 3-10, Murder, in that the defendant  
 did, with malice aforethought and with the use of his hands, assault the victim, one Michael Burgess, by  
 beating him about the head and body, causing the victim to lose consciousness and to stop breathing and the  
 victim did die as a result of this assault. This assault taking place at the victim's residence, AD  
Ave apartment # inside the city limits of Rock Hill, S C DR

 \*Police investigation  
 \*Sworn statements from witnesses  
 \*Recovery of evidence

 Sworn to and subscribed before me  
 on 08/29/2006

Signature of Affiant

Affiant's Address 120 E. Black StreetRock Hill, SC 29731 1706Affiant's Telephone 803-329-5695

Signature of Issuing Judge

(LS)

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
Rock Hill

## 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 that  
 on August 28, 2006 defendant Steven Joel Freeman  
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Rock Hill ) as set forth below
DESCRIPTION OF OFFENSE 16 3 10 Murder
 Now therefore you are empowered and directed to arrest the said defendant and bring him or 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 or as soon thereafter as is practicable
Judge's Address 120 East Black StreetRock Hill, SC 29731 1706

Signature of Issuing Judge

Judge's Telephone 803 329 7200Judge Code 1631

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

G-900146

Ref # 0608281725

411

## ARREST WARRANT

G-900C84

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality ofTHE STATE  
against

Steven Joel Freeman

Address

Phone SSN

Sex M Race W Height 509 Weight 210

DL State SC DL#

DOB 12-29-1976 Agency ORI# SC0460300

Prosecuting Agency RHPD

Prosecuting Officer D. Popov

Offense Burglary - 1st Degree

Offense Code

Code/Ordinance Sec 16-11-311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused  
to be arrested and brought before me to be  
admitted with according to law

Signature of Judge (LS)

## RETURN

copy of this arrest warrant was delivered to

defendant Steven Joel Freeman

August 29, 2006

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO

Rock Hill Police Dept

1 E Black St

Rock Hill, SC 29730

#0608281725

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
Rock Hill

## AFFIDAVIT

Form Approved by  
SC Attorney General  
July 26, 1990  
SCGA 51B

Personally appeared before me the affiant D. Popov will  
being duly sworn deposes and says that defendant Steven Joel Freeman  
did within this county and state on August 28, 2006 violate the criminal laws of the  
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill)  
in the following particulars

DESCRIPTION OF OFFENSE Burglary 1st Degree

0079

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 The defendant did wilfully and  
unlawfully violate SC Code of Laws 16-11-311 Burglary 1st degree The defendant  
did enter the residence of Michael Burgess ADD Ave # with the  
intent of doing bodily harm to Michael Burgess Once inside, the defendant did  
beat Michael Burgess causing him great bodily injury The incident took place at  
approximately 8 57 p m within the city limits of Rock Hill, SC  
\*police investigation

\*witness statement

Sworn to and subscribed before me

on 8/25/06

Signature of Affiant

Affiant's Address 120 E. Black St

Signature of Issuing Judge (LS)

Rock Hill, SC 29730

Affiant's Telephone 329-7200

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
Rock Hill

## 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 that  
on August 28, 2006 defendant Steven Joel Freeman  
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Rock Hill ) as set forth below

DESCRIPTION OF OFFENSE

Burglary 1st Degree

Now therefore you are empowered and directed to arrest the said defendant and bring him or 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 or as soon thereafter as is practicable

Signature of Issuing Judge (LS)

Signature of Issuing Judge

Judge Code 1311Judge's Address 120 E. Black St.

Rock Hill, SC 29730

Judge's Telephone 329-7200

Issuing Court

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

CERTIFIED TRUE COPY  
 2009 DEC 22 PM 3 05  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY SC

## ARREST WARRANT

G-900037

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
Rock Hill

 THE STATE  
against

Steven Joel Freeman

Address \_\_\_\_\_

Phone \_\_\_\_\_ SSN 7x M Race W Height 509 Weight 210State SC DL # \_\_\_\_\_DOB 12-29-1976 Agency ORI # SC0460300Prosecuting Agency RHPDProsecuting Officer Popov / LambertOffense Resisting Arrest (A)

Offense Code \_\_\_\_\_

Code/Ordinance Sec 16-9-320
 This warrant is CERTIFIED FOR SERVICE in the  
County ☐ Municipality of

 The accused  
to be arrested and brought before me to be  
it with according to law

(LS)

Signature of Judge

## RETURN

Copy of this arrest warrant was delivered to

Defendant Steven Joel FreemanDate August 29, 2006

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO  
Rock Hill Police Dept  
E Black St  
Hill, SC 29730  
#0608281725

 STATE OF SOUTH CAROLINA )  
☐ County/ ☒ Municipality of )  
Rock Hill )

## AFFIDAVIT

 I hereby certify that  
this is a true and correct  
copy of the original  
filed in the  
SCCA 518

 Personally appeared before me the affiant D Popov who  
being duly sworn deposes and says that defendant Steven Joel Freeman  
did within this county and state on August 28, 2006 violate the criminal laws of the  
State of South Carolina (or ordinance of ☐ County, ☒ Municipality of Rock Hill)  
in the following particulars
DESCRIPTION OF OFFENSE Resisting Arrest (A) 0326
 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 The defendant did wilfully and  
knowingly violate SC Code OF Laws 16-9-320 Resisting Arrest (A) The defendant  
was being placed under lawful arrest at ADDRESS Ave # Freeman did  
resist Officers without violence or injury to the Officers Freeman was controlled  
after a brief struggle This incident occurred within the city limits of Rock Hill  
SC

 \*police investigation  
\*lawful arrest

 Sworn to and subscribed before me )  
on 8/29/06 )  
Signature of Issuing Judge (LS) )

 Signature of Affiant  
Affiant's Address 120 E Black St  
Rock Hill, SC 29730  
Affiant's Telephone 329-7200

 FILED  
2009 DEC 22 PM 3 05  
CLERK OF COURT  
YORK COUNTY, SC

 STATE OF SOUTH CAROLINA )  
☐ County/ ☒ Municipality of )  
Rock Hill )

## 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 that  
on August 28, 2006 defendant Steven Joel Freeman  
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of Rock Hill ) as set forth below

DESCRIPTION OF OFFENSE

Resisting Arrest (A)

 Now therefore you are empowered and directed to arrest the said defendant and bring him or 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 or as soon thereafter as is practicable

 Signature of Issuing Judge (LS) )  
Judge's Address 120 E. Black St.  
Rock Hill, SC 29730  
Judge's Telephone 329-7200  
Issuing Court ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

## WITNESSES

RHPD / Popov

mac

## ARREST WARRANT NUMBER

G-900146

## ACTION OF GRAND JURY

TRUE BILL

*Duffy*  
 Foreperson of Grand Jury  
 11-09-06

## VERDICT

Foreperson of Petit Jury  
 Date

DOCKET NO 2006-GS-46-03825

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 9, TERM 2006

THE STATE

vs

STEVEN JOEL FREEMAN

Indictment for

MURDER

SC Code § 16 3-10  
 CDR Code 0116

After being fully advised as to my  
 legal rights, I hereby waive presentment  
 to the Grand Jury

Defendant

*Steven Joe Freeman*  
 hereby appear in my own proper person and plead  
 guilty to the within indictment or to

*as charged*

*Steven Joe Freeman*  
 Defendant

Witness

*Christy Benfield Ct Specialist*  
 CCC PLS AND GS

CERTIFIED TRUE COPY  
 2007 MAR 28, PM 3 12  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

## INDICTMENT

At a Court of General Sessions convened on November 9, 2006, the Grand Jurors of York County present upon their oath

## MURDER

Steven Joel Freeman did in York County on or about August 28, 2006, feloniously, willfully and with malice aforethought, kill one Michael Burgess by means of physically beating him and that the said victim died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended The Murder occurred at ADDRESS Avenue at apartment in Rock Hill South Carolina

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

  
ASSISTANT DEPUTY SOLICITOR

CERTIFIED TRUE COPY  
2007 MAR 28 PM 3 12  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

## WITNESSES

RHPD / Popov

DOCKET NO 2006-GS-46-03826

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 9, TERM 2006

mac

ARREST WARRANT NUMBER

G-900084

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date 11-09-06

VERDICT

Foreperson of Petit Jury

Date

THE STATE

vs

STEVEN JOEL FREEMAN

Indictment for

BURGLARY  
FIRST DEGREESC Code 16-11 311  
CDR Code 0079After being fully advised as to my  
legal rights I hereby waive presentment  
to the Grand Jury

Defendant

Steven Joel Freeman  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

as charged

K. L. Freeman  
DefendantWitness  
Christie Benfield Ct Specialist  
CCC PLS AND GCERTIFIED TRUE COPY  
2007 MAR 28 PM 3 13  
DAVID KEMILION  
CLERK OF COURT  
YORK COUNTY, SC

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )

## INDICTMENT

At a Court of General Sessions, convened on November 9, 2006, the Grand Jurors of York County present upon their oath

**BURGLARY FIRST DEGREE**

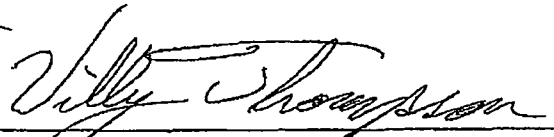
Steven Joel Freeman did in York County on or about August 28, 2006 willfully and unlawfully enter the dwelling of Michael Burgess located at ADDRESS

# in Rock Hill, South Carolina Steven Joel Freeman entered without consent and with the intent to commit a crime therein The entering occurred in the nighttime and the defendant caused physical injury to Michael Burgess who was not a participant in the crime All in violation of Section 16-11-311, *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

DAVID HAMMOND  
 CLERK OF COURT  
 YORK COUNTY SC

2007 MAR 28 PM 3 13  
 CERTIFIED TRUE COPY

  
 ASSISTANT DEPUTY SOLICITOR

WITNESSES

RHPD / Popov

DOCKET NO 2006-GS-46- **03827**

The State of South Carolina

County of York

After being fully advised as to my legal rights I hereby waive presentment to the Grand Jury

Defendant

COURT OF GENERAL SESSIONS

NOVEMBER 9, TERM 2006

I Steven Joel Freeman  
hereby appear in my own proper person and plead guilty to the within indictment or to

as charged

mac

ARREST WARRANT NUMBER

G-900087

Steven Joel Freeman  
Defendant

THE STATE

vs

Witness  
Christy Benfield Ct Specialist  
C C C PLS AND QS

ACTION OF GRAND JURY

STEVEN JOEL FREEMAN

TRUE BILL

Dx Fy  
Foreperson of Grand Jury  
11-02-06

VERDICT

Indictment for

RESISTING ARREST

SC Code § 16-9-320(A)  
CDR Code 0326

CERTIFIED TRUE COPY  
2007 MAR 28 PM 3 13  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Foreperson of Petit Jury  
Date



STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

## INDICTMENT

At a Court of General Sessions, convened on November 9th, 2006, the Grand Jurors of York County present upon their oath

## RESISTING ARREST / SERVICE OF PROCESS

Steven Joel Freeman did in York County on or about August 28, 2006 knowingly and willfully oppose and/or resist the efforts of Lt Donald Doster, Officer Brian Lambert and Officer Daniel Popov of the Rock Hill Police Department, law enforcement officers of this State to make a lawful arrest of the said defendant in violation of Section 16-9-320(a), *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

DAVID HATHORN  
CLERK OF COURT  
YORK COUNTY, SC  
2007 MAR 28 PM 3 13  
CERTIFIED TRUE COPY

  
ASSISTANT DEPUTY SOLICITOR

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF York  
 STATE VS  
Steven Freeman

INDICTMENT/CASF# 2006 GS46 3825A/W# G900146Date of Offense 08 28 2006SC Code § 16-03-0010 0020CDR Code # 0116

AKA \_\_\_\_\_

Race W Sex MDOB 1-24-76Address RESDL# 24SID# 24

CERTIFIED TRUE COPY  
 - 2006 DEC 22 PM 3:04  
 CLERK OF COURT  
 YORK COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO MURDER

in violation of § 16 03 0010 0020 of the S C Code of Laws bearing CDR Code # 0116

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

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

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\* the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation Parole and Pardon Services standard conditions of probation, which are incorporated by reference

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on \_\_\_\_\_☒ The Defendant is to be given credit for time served pursuant to S C Code § 24 13-40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code § 7 25 135

## 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)

§ 14 1 211(A)(2) (DUI Surcharge)

§ 56 5 2995 (DUI Assessment)

§ 35 15 (Public Def/Prob)

§ 75 3 1B TP (Law Enforce Funding)

§ 33 7 1B TP (Drug Court Surcharge)

§ 50 21 114(BUI Breath Test Fee)

§ 56 5 2942(J) (Vehicle Assessment) \$40 ea

3% to County (if paid in installments)

TOTAL

\$ 125

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab or Job Corp \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd in equal consecutive weekly/monthly pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other \_\_\_\_\_

☐ Appointed PD or appointed other counsel § 55 13 TP

Requires \$500 be paid to Clerk during probation

Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code

Sentence Date



## IN THE COURT OF GENERAL SESSIONS

STATE OF York )  
 VS )  
Steven Freeman )  
 AKA )  
 Race W Sex M )  
 DOB 12/76 SSN# 29/30 )  
 Address 115 N. 1st St. York, SC 29731 )  
 DI 115 N. 1st St. York, SC 29731 )  
 INDICTMENT/CASE# 2006 GS46-3827  
 A/W# G900087  
 Date of Offense 08-28-2006  
 S.C. Code 16-09-0320(A)  
 CDR Code # 0326

CERTIFIED TRUE COPY

2006 DEC 22 PM 3:05

SENTENCE SHEET

#3

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO RESISTING ARREST (NON AGGRAVATED)

in violation of § 16-09 0320(A) of the S C Code of Laws bearing CDR Code # 0326

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

The charge is ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury (Defendant initial)

The plea is ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\* the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation Parole and Pardon Services standard conditions of probation, which are incorporated by reference

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 3/6/07

☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code § 7-25-135

## 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 \$ \_\_\_\_\_

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

§ 35-13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 73-3-1B TP (Law Enforce Funding) \$25 \$ 25

§ 33-7-1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

TOTAL \$ 125

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab or Job Corp \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd in equal consecutive weekly/monthly pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other \_\_\_\_\_

☐ Appointed PD or appointed other counsel §35-13 TP Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code

Sentence Date

Clerk of Court Deputy Clerk