

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County
The Honorable Steven H. John, Circuit Court Judge

S.C. Supreme Court

Opinion No. 4742 (S.C. Ct. App. filed 9/22/2010)

THE STATE,

RESPONDENT,

V.

THEODORE DAVID WILLS, JR.,

APPELLANT

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Theodore David Wills, Jr.,

Appellant.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 4742
Submitted September 1, 2010 – Filed September 22, 2010

AFFIRMED

Senior Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Attorney General S. Creighton Waters, all
of Columbia; and Solicitor J. Gregory Hembree, of
Conway, for Respondent.

PER CURIAM: Theodore David Wills, Jr. appeals his murder conviction and forty-year sentence, arguing the trial court erred in admitting his statement in violation of Rule 410, SCRE. We affirm.¹

FACTS

Wills was charged with murdering Julian Lee. Prior to his trial, Wills entered into a proffer agreement with the State, reviewed and signed by his attorney, whereby he agreed to truthfully divulge the events and circumstances surrounding Lee's death in exchange for the State's consideration and a recommended sentence. The agreement contained several conditions, including Wills's submission to a polygraph examination to test the veracity of his statement. Additionally, the agreement provided:

[U]pon examination(s) by polygraph, if the responses given by Theodore David Wills Jr. show deception, are inconsistent with information previously provided or indicates he is the person or one of the persons that shot the victim, the terms of this proffer are null and void and any statements made by Theodore David Wills Jr. may be used against him by the State for any legal purpose, including, but not limited to, considerations for charging, bond, disposition of charges through plea or trial of Theodore David Wills Jr. and impeachment.

After Wills gave a video-taped proffer statement, the polygraph was administered and the State determined Wills was untruthful.

At trial, Wills opposed the statement's introduction, and after a Jackson v. Denno, 378 U.S. 368 (1964), hearing, the trial court found the statement was voluntary and admissible on the conditions both parties would refrain from mentioning the polygraph, and the videotape would be redacted where Wills referenced his previous incarceration and the polygraph. Wills was

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

convicted as charged and sentenced to forty years' imprisonment. This appeal followed.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the trial court's conclusions either lack evidentiary support or are controlled by an error of law. Id.

LAW/ANALYSIS

"Rule 410[, SCRE,] provides . . . a statement made during plea negotiations with a prosecuting authority, even if a guilty plea is not entered or is later withdrawn, is not admissible." State v. Compton, 366 S.C. 671, 679, 623 S.E.2d 661, 665 (Ct. App. 2005).

In Compton, this court addressed the admissibility of a defendant's statements procured pursuant to an agreement with the State. Id. Otis James Compton was questioned about an unsolved murder prior to pleading guilty to unrelated counts of burglary. Id. at 675, 623 S.E.2d at 663. At all times, Compton remained a person of interest in the murder investigation. Id. While incarcerated, Compton pled to additional charges unrelated to the murder and was placed in a holding cell. Id. Compton initiated a conversation with his holding cellmate regarding the unsolved murder, admitting his involvement. Id. Approximately two months later, the cellmate was transferred to Compton's prison and asked by investigators to listen to Compton about the unsolved murder. Id. at 675-76, 623 S.E.2d at 663. The cellmate acquiesced and reported several conversations to investigators. Id. at 676, 623 S.E.2d at 663.

Eight months after his initial plea, Compton contacted investigators regarding the unsolved murder and entered into a written agreement labeled "Plea Agreement" whereby Compton agreed to fully and truthfully cooperate in the murder investigation. Id. at 676, 623 S.E.2d at 663-64. In exchange for his cooperation, the State agreed to reduce all sentences Compton was

serving for the unrelated burglary charges. Id. at 676, 623 S.E.2d at 664. As a result of his cooperation during the investigation, Compton was indicted for murder. Id. Pretrial, Compton moved to suppress his statements, arguing they were subject to an immunity agreement and precluded by Rule 410, SCRE. Id. The trial court admitted the statements after finding no reasonable expectation of immunity existed and the statements were not procured during plea negotiations. Id.

On appeal, this court examined the "Plea Agreement," and determined the agreement did not contain an immunity clause. Id. at 676-78, 623 S.E.2d 664-65. In construing the agreement, our court stated "immunity agreements and plea agreements are to be construed in accordance with general contract principles." Id. at 677, 623 S.E.2d at 664. Thus, "[t]he court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." Id. at 678, 623 S.E.2d at 665. Likewise, this court determined the admission of Compton's statements did not offend Rule 410, SCRE. Id. at 679, 623 S.E.2d at 665. This court held Rule 410, SCRE, did not preclude the admission because the statements were not procured in the course of plea negotiations when the negotiation "related to the reduction in sentence for the burglary" convictions. Id. Specifically, our court stated the discussions "were not in furtherance of Compton making a plea on any charges." Id.

Applying the principles of Compton to the instant facts, an ambiguity in South Carolina law seems to emerge. Our case law unequivocally establishes agreements between defendants and the State should be interpreted "in accordance with general contract principles." Id. at 677, 623 S.E.2d at 664. However, by examining the admissibility of Compton's statements² under Rule 410, SCRE, our court has left the precise question of whether an agreement can waive the application of the Rules of Evidence unanswered.

² Compton was also subjected to a polygraph, and the State determined he was deceitful. Compton, 336 S.C. at 676, 623 S.E.2d at 664. However, in his appeal, we declined to address whether Compton's breach of the agreement contributed to his statements' admissibility because the issue was not properly before this court. Id. at 679 n.2, 623 S.E.2d at 665 n.2.

While no South Carolina case law specifically discusses whether a defendant can waive the exclusionary provisions of Rule 410, SCRE, the United States Supreme Court addressed waiver of the exclusionary provisions of Rule 410, FRE, in United States v. Mezzanatto, 513 U.S. 196, 200 (1995).³ Gary Mezzanatto was arrested and charged with possession with intent to distribute methamphetamine after attempting to sell an undercover officer drugs. Id. at 198. The controlled buy was arranged by an informant who was arrested a few hours before Mezzanatto for operating a methamphetamine laboratory in his residence. Id. at 197-98. Pretrial, Mezzanatto and his attorney contacted the prosecutor to discuss the possibility of cooperating with the government. Id. at 198. The prosecutor informed Mezzanatto he was under no obligation to talk; however, the prosecutor stated Mezzanatto would have to be completely truthful if he wanted to cooperate with the government. Id. Additionally, Mezzanatto orally agreed, with advice of his counsel, "that any statements he made during the meeting could be used to impeach any contradictory testimony he might give at trial if the case proceeded that far." Id.

During the meeting, Mezzanatto attempted to minimize his involvement in distributing methamphetamine and claimed he had not visited the methamphetamine laboratory at the informant's residence for at least a week before his arrest. Id. at 199. After showing Mezzanatto video surveillance of his vehicle at the methamphetamine laboratory the day before

³ Rule 410, SCRE, is substantially similar to Rule 410, FRE. Compare Rule 410, FRE, and Mezzanatto, 513 U.S. at 197 ("Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(e)(6) provide that statements made in the course of plea discussions between a criminal defendant and a prosecutor are inadmissible against the defendant."), with Rule 410, SCRE, and Compton, 366 S.C. at 679, 623 S.E.2d at 665 ("Rule 410 provides that evidence of a guilty plea that is later withdrawn or evidence of a plea of nolo contendere is inadmissible against a defendant. Furthermore, statements made in the course of court proceedings related to such pleas are not admissible. Likewise, a statement made during plea negotiations with a prosecuting authority, even if a guilty plea is not entered or is later withdrawn, is not admissible.").

his arrest, the government terminated the meeting due to Mezzanatto's deceit. Id.

Accordingly, Mezzanatto was tried, and during his cross-examination, the prosecutor impeached him using the statements procured during the cooperation meeting. Id. Mezzanatto was ultimately convicted. Id. On appeal to the Ninth Circuit Court of Appeals, Mezzanatto's conviction was reversed. Id. The Ninth Circuit "held [Mezzanatto's] agreement to allow admission of his plea statements for purposes of impeachment was unenforceable." Id. The United States Supreme Court granted certiorari and reversed the Ninth Circuit, stating: "The presumption of waivability has found specific application in the context of evidentiary rules. Absent some 'overriding procedural consideration that prevents enforcement of the contract,' courts have held that agreements to waive evidentiary rules are generally enforceable even over a party's subsequent objections." Id. at 202 (citation omitted). Furthermore, the Court held "absent some affirmative indication that the agreement was entered into unknowingly or involuntarily, an agreement to waive the exclusionary provisions of the plea-statement Rules is valid and enforceable." Id. at 210.

Here, the principles of Mezzanatto are instructive in determining whether Wills's statements were properly admitted. First, we note the proffer agreement between Wills and the State constituted a plea negotiation and triggered the exclusionary provisions of Rule 410, SCRE. Likewise, any statements procured in execution of the agreement were unequivocally in furtherance of Wills entering a plea on his pending charges. Second, construing the proffer agreement in accordance with general contract principles, regardless of the agreement's wisdom or lack thereof, the agreement unambiguously provides Wills's statement can be used against him by the State for any legal purpose if the State determines Wills was deceitful. Thus, we hold the proffer agreement waived the protections of Rule 410, SCRE. Next, we must determine whether an affirmative indication that Wills entered the agreement unknowingly or involuntarily exists. Because Wills entered the proffer agreement with advice of counsel, evidenced by counsel's co-signature, and the record lacks support for a finding to the contrary, we find the agreement was knowingly and voluntarily entered. Therefore, the

trial court properly admitted Wills's statements as evidence against him at trial.

Accordingly, Wills's conviction is

AFFIRMED.

WILLIAMS, PIEPER, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

THEODORE DAVID WILLS, JR.,

APPELLANT

Appeal from Horry County

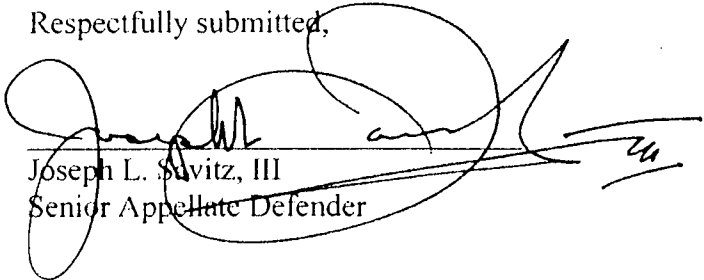
Steven H. John, Circuit Court Judge

Opinion No. 4742

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Theodore David Wills, Jr., petitions the Court for rehearing of its opinion affirming his conviction for murder. The Court's interpretation of Rule 410, SCRE, creates a new exception – waiver – of the rule, in violation of Rule 1102, SCRE, which provides, "Amendments to the South Carolina Rules of Evidence may be made by the South Carolina Supreme Court."

Respectfully submitted,



Joseph L. Savitz, III
Senior Appellate Defender

This 7th day of October, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

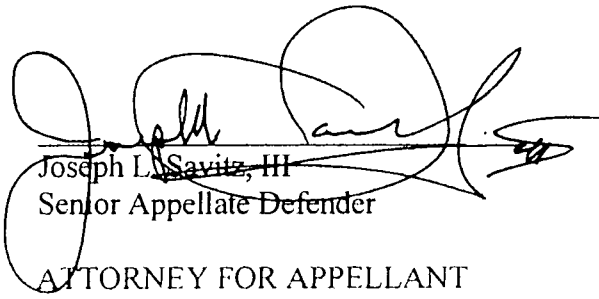
V.

THEODORE DAVID WILLS, JR.,

APPELLANT

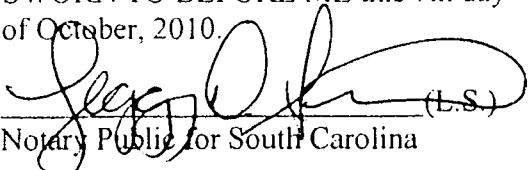
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon S. Creighton Waters, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 7th day of October, 2010.


Joseph L. Savitz, III
Senior Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 7th day
of October, 2010.


(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

The South Carolina Court of Appeals

The State,

Respondent,

v.

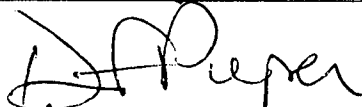
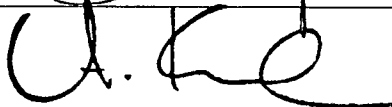
Theodore David Wills, Jr.,

Appellant.

The Honorable Steven H. John
Horry County
Trial Court Case No. 2006-GS-26-01652

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

	J.
	J.
	J.

Columbia, South Carolina

cc: Senior Appellate Defender Joseph L. Savitz, III
Theodore David Wills, Jr. # 239761
Assistant Deputy Attorney General Donald J. Zelenka

FILED

OCT 28 2010

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE DAVID WILLS, JR.,

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**STATE'S EXHIBIT 21 (CD OF DEFENDANT'S STATEMENT) HAS BEEN DOCKETED
WITH THE COURT**

JACKSON V. DENO HEARING

42

1 MR. RICHARDSON: THANK YOU, YOUR HONOR, MAY IT
2 PLEASE THE COURT? YOUR HONOR, WITH REGARD TO THE MATTER OF
3 THE STATE OF SOUTH CAROLINA COUNTY OF HORRY V. THEODORE
4 DAVID WILLS THE STATE DOES INTEND TO USE A STATEMENT
5 PROVIDED BY THE DEFENDANT BY WAY OF PROFFER. I PASS UP AT
6 THIS TIME A COPY OF THE PROFFER AGREEMENT; I'VE ALSO GIVEN
7 A COPY TO MR. DIGGS. I BELIEVE HE'S REVIEWED IT AND ---

8 THE COURT: JUST A SECOND, SIR, SHE'S GOT TO
9 TAKE TIME TO MARK THE EXHIBITS.

10 MR. RICHARDSON: YES, SIR.

11 (WHEREUPON, STATE'S EXHIBITS NUMBERS 1, 2, 3, 7,
12 8, 9, 10, 12, 13, 14, 18, 19, AND 20 MARKED FOR
13 IDENTIFICATION.)

14 THE COURT: ALL RIGHT, SOLICITOR?

15 (WHEREUPON, STATE'S EXHIBIT NUMBER 15 MARKED FOR
16 IDENTIFICATION.)

17 MR. RICHARDSON: YOUR HONOR, BY THE TERMS OF THE
18 PROFFERED AGREEMENT REACHED BETWEEN THE DEFENDANT, MR.
19 WILLS, AND HIS ATTORNEY PRESENT, MR. DIGGS, AND SCOTT
20 HIXSON, FOR THE SOLICITOR'S OFFICE, THE DEFENDANT AGREED TO
21 PROVIDE A PROFFERED STATEMENT AND SUBSEQUENTLY TAKE A
22 POLYGRAPH EXAMINATION. I'LL PASS UP A COPY OF THIS
23 AGREEMENT RIGHT NOW; IT'S BEEN MARKED STATE'S NUMBER 15 FOR
24 IDENTIFICATION PURPOSES ONLY.

25 THE COURT: ALL RIGHT, SIR, THANK YOU.

JACKSON V. DENO HEARING

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1 MR. RICHARDSON: YOUR HONOR, TO PREFACE
2 EVERYTHING THE DEFENDANT SIGNED THIS PROFFERED AGREEMENT ON
3 AUGUST 26TH, 2005, AS CAN BE SEEN ON THE FINAL PAGE, PAGE 3
4 OF THAT PROFFER AGREEMENT. IT'S ALSO SIGNED BY SCOTT
5 HIXSON OF THE FIFTEENTH CIRCUIT SOLICITOR'S OFFICE AND MR.
6 DIGGS AS COUNSEL FOR THE DEFENDANT.

7 THE DEFENDANT SUBSEQUENTLY GAVE A PROFFERED
8 STATEMENT THAT DAY, YOUR HONOR, AND AGREED TO TAKE A
9 POLYGRAPH EXAM SUBJECT TO PARAGRAPH 2 SUBSECTION 2 OF THAT
10 PROFFER AGREEMENT WHICH STATES THAT THEODORE DAVID WILLS,
11 JR., SHALL SUBMIT HIMSELF TO A POLYGRAPH EXAMINATION TO
12 VERIFY ALL INFORMATION PROVIDED TO THE STATE AT THE
13 ELECTION OF THE STATE.

14 THIS POLYGRAPH EXAMINER SHALL BE SELECTED BY THE
15 STATE AND FOR THE PURPOSES OF THIS PROFFER A DESIGNATED
16 AGENT FOR THE STATE.

17 UPON EXAMINATION BY POLYGRAPH IF THE RESPONSES
18 GIVEN BY THEODORE DAVID WILLS, JR., SHOWED DECEPTION OR
19 INCONSISTENT WITH INFORMATION PREVIOUSLY PROVIDED OR
20 INDICATES HE OR SHE IS THE PERSON OR ONE OF THE PERSONS
21 THAT SHOT THE VICTIM, THE TERMS OF THIS PROFFER ARE NULL
22 AND VOID AND ANY STATEMENTS MADE BY THEODORE DAVID WILLS,
23 JR., MAY BE USED AGAINST HIM BY THE STATE FOR ANY LEGAL
24 PURPOSE INCLUDING BUT NOT LIMITED TO CONSIDERATIONS FOR
25 CHARGING, BOND, DISPOSITION OF THE CHARGES THROUGH PLEA OR

JACKSON V. DENO HEARING

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1 TRIAL OF THEODORE DAVID WILLS AND IMPEACHMENT.

2 YOUR HONOR, ON SEPTEMBER 19TH, 2005, THE
3 DEFENDANT DID UNDERGO A POLYGRAPH EXAMINATION. I DO HAVE
4 THE AGENT HERE, AGENT RICK CHARLES OF THE SOUTH CAROLINA
5 LAW ENFORCEMENT DIVISION. HE WAS THE SUPERVISORY AGENT AND
6 I BELIEVE HE'S PREPARED TO RENDER TESTIMONY AT THIS TIME,
7 YOUR HONOR.

8 THE COURT: ALL RIGHT, SO I UNDERSTAND, WE HAVE
9 THE POLYGRAPH AS AN ISSUE BUT THE BASIC PREMISE OF THIS IS
10 WHETHER OR NOT THE DEFENDANT'S STATEMENT CAN BE USED
11 AGAINST HIM ---

12 MR. RICHARDSON: YES, SIR.

13 THE COURT: --- IN THE TRIAL OF THIS CASE?

14 MR. RICHARDSON: YES, SIR.

15 THE COURT: OKAY, I MEAN THAT'S THE PURPOSE,
16 REAL PURPOSE OF THIS MOTION HEARING IS TO DETERMINE WHETHER
17 OR NOT THE STATEMENT OF MR. WILLS WHICH HE GAVE PURSUANT TO
18 THIS PROFFER CAN BE USED IN THE COURSE OF THIS TRIAL?

19 MR. DIGGS: YES, SIR.

20 MR. RICHARDSON: YES, SIR.

21 MR. DIGGS: WE DO PLACE ON THE RECORD AT THIS
22 TIME AN OBJECTION TO THE STATEMENT.

23 THE COURT: ALL RIGHT, SIR. SO YOU'RE REQUIRING
24 THEN THE ---

25 MR. DIGGS: YES, SIR.

JACKSON V. DENO HEARING

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1 THE COURT: --- STATE TO GO FORWARD PURSUANT TO
2 A JACKSON V. DENO AND TO HAVE A HEARING THEN?

3 MR. DIGGS: YES, AND, YOUR HONOR, BASICALLY THE
4 REASON THAT WE ARE DOING THAT IS BECAUSE WE GOT INTERTWINED
5 HERE THE USE OF THE POLYGRAPH, THAT POLYGRAPH PROCEDURE,
6 WITH THE VOLUNTARINESS, THE QUESTION OF THE VOLUNTARINESS
7 OF THE DEFENDANT'S STATEMENT.

8 YOUR HONOR, IT WOULD BE OUR POSITION THAT IT'S
9 INEXTRICABLY INTERTWINED. HE GAVE THE STATEMENT, MR. WILLS
10 GAVE THE STATEMENT IN EXCHANGE FOR PARTICIPATION BY THE
11 STATE IN A PLEA AGREEMENT PROCESS. HE GAVE A STATEMENT TO
12 THE BEST OF HIS ABILITY AND NOW IT'S, WE FIND THAT THE
13 STATE HAS DETERMINED THAT MR. WILLS DID NOT TELL THE TRUTH
14 IN THE STATEMENT THAT WAS GIVEN AS A RESULT OF THE PROFFER.

15 YOUR HONOR, I WOULD SUBMIT THAT UNDER THOSE
16 CIRCUMSTANCES THAT PROCESS IS SIMPLY APPARENTLY UNFAIR.
17 MR. WILLS HAS GIVEN A STATEMENT TOTALLY RELIANCED ON THE
18 COOPERATION THAT HE'S GIVEN UNDER AN AGREEMENT THAT HE'S
19 MADE WITH THE STATE IN ORDER TO GIVE AS MUCH INFORMATION AS
20 HE KNOWS ABOUT THIS CASE.

21 MR. WILLS TELLS ME HE'S TELLING THE TRUTH AND IN
22 THIS SITUATION ALL OF THE INFORMATION THAT HE GAVE TO
23 AGENTS FOR THE STATE WAS TRUTHFUL. HE TELLS ME THERE WAS
24 ONE QUESTION AT ONE TIME DURING THE EXAM AS TO WHETHER OR
25 NOT HE HAD DISCLOSED EVERYTHING THAT HE HAD EVER DONE TO

JACKSON V. DENO HEARING

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1 THE STATE WAS ILLEGAL. HE SAID THAT HE HAD DONE SOME WHEN
2 IN FACT HE HAD NOT.

3 YOUR HONOR, IF THAT PROCEDURE DID OCCUR WE HAVE A
4 PROFFER THAT'S INHERENTLY FLAWED AND UNFAIR AND WE WOULD
5 OBJECT TO THE USE OF THE STATEMENT EVEN IF THE REFERENCE TO
6 THE POLYGRAPH IS EXCLUDED.

7 THE JURY WHO IS THE ULTIMATE DETERMINATE AUTHOR
8 OF WHETHER OR NOT THE STATEMENT WAS VOLUNTARILY GIVEN
9 COULDN'T POSSIBLY MAKE THAT DETERMINATION WITHOUT KNOWING
10 THE WHOLE CIRCUMSTANCES SURROUNDING THE GIVING OF THE
11 STATEMENT. THE STATE'S THE ONE, NOT THIS ATTORNEY BUT THE
12 SOLICITOR'S OFFICE, CHOSE TO FOLLOW THIS PROCEDURE AND I
13 WOULD SUBMIT THAT BECAUSE IT'S INHERENTLY UNFAIR, BECAUSE
14 YOU CANNOT EXTRICATE THE REFERENCE TO THE POLYGRAPH FROM
15 THE DETERMINATION OF WHETHER MR. WILLS GAVE A VOLUNTARY
16 STATEMENT THE STATEMENT SHOULD BE SUPPRESSED AS BEING
17 INVOLUNTARY.

18 THE COURT: ALL RIGHT, LET ME ASK A QUESTION
19 HERE. FOR THE PURPOSES OF THIS HEARING IS YOUR POSITION
20 THAT WHAT MR. WILLS TOLD THE STATE THE STATEMENT HE GAVE
21 THEM THE TRUTH OF WHAT OCCURRED; IS THAT, IS THAT WHAT
22 YOU'RE SAYING TO ME?

23 MR. DIGGS: YES, SIR, YES, SIR.

24 THE COURT: ALL RIGHT, ALL RIGHT, NOW, AND I'M
25 TRYING TO HAVE YA'LL PRESENT THIS TO ME AND I WANT TO KNOW

JACKSON V. DENO HEARING

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1 WITHOUT GETTING INTO THE POLYGRAPH AND HOW THE STATE
2 DETERMINED THE STATEMENT TO BE UNTRUE -- IT COULD STILL BE
3 LEFT TO THE JURY, AND I HAVEN'T MADE ANY DECISIONS AS TO
4 WHAT I'M GOING TO DO -- I'M JUST TRYING TO PRESENT THIS TO
5 YOU FOR THE STATE'S FEEDBACK AND THE DEFENSE'S FEEDBACK -
6 COULD THE JURY CONSIDER THE STATEMENT WITH AN UNDERSTANDING
7 THAT THE DEFENDANT MR. WILLS MADE THIS STATEMENT AS BEING
8 THE TRUTH. THE STATE FOR WHATEVER REASONS, REASONS OF ITS
9 OWN, DETERMINED THIS STATEMENT WAS NOT THE TRUTH. IT DID
10 NOT GO FORWARD WITH THE OFFER TO HIM AND NOW IS USING THIS
11 STATEMENT AGAINST HIM IN THE TRIAL. THAT WOULD BE
12 PRESENTED TO THE JURY WITHOUT TELLING THEM THE STATE
13 DETERMINED IT NOT TO BE TRUTHFUL BECAUSE HE FLUNKED THE
14 POLYGRAPH BUT THE STATE DETERMINED FOR ITS REASONS,
15 WHATEVER THEY MAY BE, THAT THEY BELIEVE THE STATEMENT NOT
16 TO BE TRUE EVEN THOUGH THE DEFENDANT SAYS THIS IS WHAT
17 OCCURRED AND NOW THEY ARE USING THE STATEMENT AGAINST HIM
18 IN THE PROSECUTION OF THIS CASE AND IT'S ULTIMATELY UP TO
19 YOU THE JURY TO DETERMINE WHETHER OR NOT THE STATEMENT WAS
20 FREELY GIVEN PURSUANT TO MIRANDA, IS VOLUNTARY AND
21 ULTIMATELY THE BELIEVABILITY OR THE CREDIBILITY OF IT IS
22 COMPLETELY AND TOTALLY UP TO THEM,. JUST BASICALLY WE'RE
23 ELIMINATING POLYGRAPH FROM THE TRIAL OF THIS CASE. WHAT
24 WOULD BE THE DEFENSE'S POSITION TO THAT?

25 MR. DIGGS: YOUR HONOR, I CAN SEE THE POINT THAT

JACKSON V. DENO HEARING

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1 YOU MAKE, IT'S A VERY GOOD POINT. BUT I STILL SUGGEST THAT
2 IT'S IMPOSSIBLE FOR THE JURY TO COMPLETELY KNOW OR MAKE THE
3 DETERMINATION OF VOLUNTARINESS OF THE QUESTION WITHOUT
4 KNOWING THE FULL CONTENT. I THINK THE COURT'S SUGGESTION
5 GOES A LONG WAY BUT IT DOESN'T QUITE GET US THERE.

6 THE COURT: ALL RIGHT, SIR, WHAT'S THE STATE'S
7 POSITION?

8 MR. RICHARDSON: YOUR HONOR, THE ONLY REASON WE
9 HAVE ANYTHING TO DO WITH THE POLYGRAPH EXAMINATION AS TIME
10 BEGAN ALL CASE SITES SEEMED TO BE ON THE FEDERAL SIDE WITH
11 REGARD TO PROFFERS BUT A POLYGRAPH IS A USEFUL TOOL IN
12 DETERMINING THE RELIABILITY OF STATEMENTS GIVEN IN PROFFER.
13 OFTENTIMES DEFENDANTS ARE TRYING TO HELP THEMSELVES OUT.
14 WE NEED TO BE ABLE TO FIND OUT MORE THAN BY A CRIMINAL
15 STATEMENT WHAT THEY'RE TELLING US IS TRUE.

16 THEY CHOSE THE TERMS OF THIS, OF THIS PROFFER
17 STATEMENT. THEY AGREED TO THE TERMS OF THAT AND VIOLATED
18 THE TERMS IN THAT DECEPTION WAS NOTED BY OUR STATE LAW
19 ENFORCEMENT DIVISION WHEN THEY DID POLYGRAPH LESS THAN A
20 MONTH AFTERWARDS OR, YES, LESS THAN A MONTH AFTER HE GAVE
21 THE STATEMENT. I BELIEVE AGENT CHARLES CAN SPEAK ON MORE
22 ELOQUENTLY WITH REGARD TO ANY QUESTIONING AS TO THE
23 POLYGRAPH AND ITS RELIABILITY. THE STATE WAS NOT SEEKING
24 TO INTRODUCE ANY TESTIMONY FROM AGENT CHARLES OR EVEN ENTER
25 INTO ANYTHING REGARDING THE POLYGRAPH DURING THE CASE IN

JACKSON V. DENO HEARING

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1 CHIEF.

2 THE COURT: WELL I UNDERSTAND THAT BUT YOU WANT
3 TO INTRODUCE HIS STATEMENT?

4 MR. RICHARDSON: YES, SIR.

5 THE COURT: OKAY, YOU WANT TO INTRODUCE THE
6 STATEMENT ---

7 MR. RICHARDSON: YES, SIR.

8 THE COURT: --- SO THE TERMS OF HIS STATEMENT
9 BASICALLY BESIDES THE JACKSON V. DENO ISSUES AND THEN THE,
10 YOU KNOW, RULES OF EVIDENCE AS TO RELEVANT EVIDENCE AND
11 THEN JUDGING THE PREJUDICIAL VALUE TO THE DEFENDANT, WE
12 HAVE ALL THOSE AND OBVIOUSLY I NEED TO CONSIDER ALL THOSE;
13 BUT WE ALSO IN AFFECT HAVE AN AGREEMENT, A WRITTEN
14 AGREEMENT, BETWEEN THE STATE AND THE DEFENSE THAT YOU CAN
15 USE MY STATEMENT AGAINST ME PURSUANT TO THE TERMS OF THIS
16 CONTRACT, THIS AGREEMENT.

17 YOU CONDITIONED THE USE OF HIS STATEMENT ON HIM
18 PASSING OR FAILING A POLYGRAPH WITHOUT DELINEATING
19 SPECIFICALLY, PROBABLY OR POTENTIALLY WITHOUT DELINEATING
20 SPECIFICALLY WHO GETS TO DETERMINE WHETHER OR NOT HE PASSED
21 OR FAILED THE EXAM AND IF IT CAN BE CONSTRUED TO SAY THE
22 STATE HAS THE ABILITY TO DO SO. WHAT REFERENCE, IF ANY,
23 REGARDING THE HOW THE STATEMENT WAS GARNERED, THE FULL
24 EXTENT OF THE FACTS, HOW THAT SHOULD BE VIEWED BY THE JURY
25 BECAUSE ULTIMATELY IF I ALLOW THE STATEMENT INTO EVIDENCE

JACKSON V. DENO HEARING

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1 ALL I'VE DONE IS ALLOW IT INTO EVIDENCE? IT'S ULTIMATELY
2 UP TO THE JURY TO MAKE THE ULTIMATE DETERMINATION, ONE,
3 ABOUT THE STATEMENT MADE PROPERLY PURSUANT TO MIRANDA;
4 WHETHER IT WAS VOLUNTARY, KNOWINGLY, INTELLIGENTLY MADE;
5 WHETHER IT IS THE STATEMENT OF THE DEFENDANT, ALL THOSE
6 THINGS AS FAR AS CREDIBILITY AND BELIEVABILITY. ALL THOSE
7 THINGS ARE ULTIMATELY UP TO THE JURY AND I, AND I HAVE SOME
8 CONCERNS HERE EVEN IF I USED THE PROCEDURE AS I OUTLINED TO
9 MR. DIGGS THAT WHETHER OR NOT THE JURY HAS ALL THE
10 INFORMATION IN FRONT OF IT TO BE ABLE TO PROPERLY DETERMINE
11 THE THINGS THAT IT MUST REGARDING ANY STATEMENT TO BE USED
12 AGAINST HIM, THAT'S THE QUESTION HERE.

13 MR. RICHARDSON: YOUR HONOR, THE STATE WOULD
14 HAVE NO OBJECTION TO PUTTING SPECIAL AGENT CHARLES UP ON
15 THE STAND IN THE CASE OF THE TRIAL. IT'S JUST THAT --

16 THE COURT: WELL THE PROBLEM I'VE GOT IS THE
17 UNITED STATES SUPREME COURT AND THE SOUTH CAROLINA SUPREME
18 COURT IS SAYING THAT THERE BEING NO CONSENSUS AS TO THE
19 RELIABILITY OF POLYGRAPH EVIDENCE, THAT AND THE SCIENTIFIC
20 COMMUNITY AS THE CASE, THE STATE REMAINED EXTREMELY
21 POLARIZED AS TO THE RELIABILITY THAT YOU'RE NOT SUPPOSED TO
22 EVEN MENTION THE WORD IN A CRIMINAL TRIAL MUCH LESS GO INTO
23 IT IN FRONT OF THE JURY.

24 MR. DIGGS: YOUR HONOR --

25 THE COURT: YES, SIR?

JACKSON V. DENO HEARING

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1 MR. DIGGS: IF I COULD ADD, PARAGRAPH 2 FROM THE
2 STATE RELIES ON THIS ONE ADMISSIBILITY. THE STATE REALLY
3 DOESN'T PROVIDE FOR ITS USE IN THAT FASHION. IT SAYS THAT
4 IT MAY BE USED AGAINST HIM FOR ANY LEGAL PURPOSE INCLUDING
5 BUT NOT LIMITED TO CONSIDERATIONS FOR CHARGING ON
6 DISPOSITION OF CHARGES THROUGH PLEA OR TRIAL.

7 NOW IN TERMS OF WHAT MR. RICHARDSON JUST SAID
8 IT'S COMPLETELY TRUE. IT'S USED AS AN INVESTIGATING TOOL.
9 IT WOULD BE CERTAINLY PROPER TO USE THE STATEMENT IN TERMS
10 OF MAKING A DECISION OF HOW TO CHARGE MR. WILLS OR HOW TO
11 MAKE A PLEA NEGOTIATION MAKING CHARGE OR SENTENCING
12 CONCESSIONS BUT IT DOESN'T SPECIFICALLY SAY WE'RE GOING TO
13 USE THIS AND INTRODUCE IT AT TRIAL IN FRONT OF THE JURY SO
14 THAT THE JURY CAN MAKE A DETERMINATION ON THE GUILT OR
15 INNOCENCE AT TRIAL.

16 IT MAY BE WHY THE LIMITATION AND THE EXPLANATION
17 OF THAT KIND OF LIMITATION WOULD BE THE RECOGNITION BY THE
18 SOLICITOR'S OFFICE IN A INHERENTLY UNFAIR NATURE OF THIS
19 KIND OF PLEA PROCEEDING PROCEDURE WHEN YOU END UP WITH A
20 DISPUTE IN THE END ABOUT WHETHER OR NOT HE PASSED A
21 POLYGRAPH OR DID NOT PASS IT. BUT TO GO AHEAD I WOULD
22 SUBMIT TO USE THIS KIND OF PROCEDURE THEN ULTIMATELY YOU
23 LET THE STATE MAKE THE DECISION THAT HE'S NOT TELLING THE
24 TRUTH OR SHOWING DECEPTION IN SOME FASHION, SOME GENERAL
25 FASHION. WE DON'T KNOW SPECIFICALLY IN WHAT REGARD. IT'S

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 52

1 APPARENTLY UNFAIR AND VIOLATES DUE PROCESS WHEN YOU ALLOW
2 THE STATE TO EXPAND BEYOND THE SCOPE OF LITERAL LANGUAGE
3 CONTAINED IN THE AGREEMENT. THAT WOULD BE THE BASIS OF OUR
4 OBJECTION ---

5 THE COURT: ALL RIGHT.

6 MR. DIGGS: --- REGARDLESS OF WHAT'S SAID IN THE
7 STATEMENT.

8 THE COURT: YES, SIR.

9 MR. RICHARDSON: YOUR HONOR, I BEG TO DIFFER ON
10 THE INTERPRETATION OF THE CONSIDERATIONS FOR CHARGING BY
11 DISPOSITION THROUGH PLEA OR TRIAL, IT SPEAKS FOR ITSELF.

12 THE COURT: WELL AND I, I APPRECIATE THAT, YOU
13 KNOW, AND I UNDERSTAND. I DON'T KNOW THAT I HAVE A PROBLEM
14 WITH THAT. I THINK I REALLY WISH THAT PARAGRAPH 2 WOULD BE
15 MORE SPECIFIC AS TO THE CONSEQUENCES AND DETERMINATION OF
16 WHETHER HE'S TELLING THE TRUTH OR IT COULD BE A COMPLETELY
17 ARBITRARY DECISION BY THE STATE OF SOUTH CAROLINA TO USE IT
18 HOWEVER YOU WANT TO DEFINE IT. PARAGRAPH 2 TO ME LACKS
19 SOME SPECIFICITY ---

20 MR. RICHARDSON: YOUR HONOR, I ---

21 THE COURT: --- AS TO THE CONSEQUENCES AND WHO
22 GETS TO DETERMINE AND UNDER WHAT CIRCUMSTANCES THEY GET TO
23 DETERMINE WHETHER OR NOT HE WAS TELLING THE TRUTH OR NOT
24 TELLING THE TRUTH.

25 ANYWAY, ALL RIGHT, WELL I NEED TO HEAR ALL THIS

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 53

1 SO ---

2 MR. RICHARDSON: YES, SIR.

3 THE COURT: --- LET'S, LET'S GO FORWARD WITH THE
4 HEARING. LET ME HEAR ALL OF IT AND THEN WE CAN, THEN WE
5 CAN MOVE ALONG AFTER THAT.

6 MR. RICHARDSON: YOUR HONOR, IF WE MAY CALL
7 SPECIAL AGENT CHARLES FIRST.

8 THE COURT: ALL RIGHT, SIR. COME AROUND AND BE
9 SWORN, THANK YOU.

10 SPECIAL AGENT RICKY W. CHARLES

11 BEING FIRST DULY SWORN, TESTIFIED IN CAMERA AS FOLLOWS:

12 MADAM CLERK: SPEAK INTO THE MICROPHONE, PLEASE
13 STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE
14 COURT.

15 THE WITNESS: RICKY W. CHARLES, C-H-A-R-L-E-S.

16 DIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q SPECIAL AGENT CHARLES, WOULD YOU TELL US
19 YOUR PLACE OF EMPLOYMENT?

20 A I WORK FOR THE SOUTH CAROLINA LAW
21 ENFORCEMENT DIVISION.

22 Q OKAY, FOR HOW LONG AND IN WHAT CAPACITY?

23 A I'VE BEEN WITH THE STATE FOR SEVEN YEARS
24 AND I'M A POLYGRAPH EXAMINER.

25 Q AND PRIOR, YOU'VE BEEN A POLYGRAPH EXAMINER

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 54

1 WITH SLED FOR SEVEN YEARS?

2 A THAT'S CORRECT.

3 Q PRIOR TO THAT WHAT IS YOUR EXPERIENCE WITH
4 POLYGRAPH EXAMINATION?

5 A I'VE BEEN A POLYGRAPH EXAMINER FOR 20 YEARS
6 AND A CRIMINAL INVESTIGATOR FOR 24 YEARS.

7 Q AND WITH WHAT OTHER AGENCIES HAVE YOU
8 WORKED?

9 A THE SPARTANBURG COUNTY SHERIFF'S OFFICE FOR
10 SEVEN YEARS AND I WAS IN THE UNITED STATES AIR FORCE FOR 20
11 YEARS AS A CRIMINAL INVESTIGATOR.

12 Q AND CAN YOU, CAN YOU TELL US A LITTLE BIT
13 ABOUT POLYGRAPH EXAMINATION, WHAT GOES INTO EXAMINING
14 ANYTHING OR ANY WITNESS?

15 A THERE ARE THREE PHASES IN THE POLYGRAPH
16 EXAMINATION. ONE IS CALLED THE PRETEST PHASE, ONE IS THE
17 IN TEST AND ONE IS THE POST TEST.

18 IN THE PRETEST PHASE CERTAIN THINGS HAVE TO TAKE
19 PLACE. ONE IS A MIRANDA FORM THAT IS READ AND SIGNED. ONE
20 IS A POLYGRAPH STATEMENT OF CONSENT WHICH MEANS THAT THE
21 EXAMINEE IS VOLUNTARILY TAKEN THE TEST.

22 THERE IS AN EXPLANATION OF THE INSTRUMENT HOW IT
23 WORKS, A LITTLE BIT ABOUT HUMAN PHYSIOLOGY, HOW THE BODY
24 REACTS TO CERTAIN THINGS.

25 THERE IS A REVIEW OF THE CASE ITSELF AND THE LAST

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 55

1 THING WE DO BEFORE WE ACTUALLY COLLECT CHARTS IS REVIEW
2 EVERY SINGLE QUESTION WITH THE EXAMINEE PRIOR TO THE TEST.

3 Q AND WERE ALL THOSE STEPS CARRIED OUT
4 WHENEVER YOU POLYGRAPHED THE DEFENDANT THEODORE DAVID
5 WILLS, JR.?

6 A YES.

7 Q WITH REGARD TO, YOU SAID YOU READ A
8 MIRANDA?

9 A THAT'S CORRECT.

10 Q AND YOU EXPLAIN POLYGRAPH TO HIM AND GET
11 HIM TO SIGN AN ACCEPTANCE TO BE POLYGRAPHED?

12 A A CONSENT FORM, THAT'S CORRECT.

13 Q THAT'S TO ENSURE THE WILLINGNESS TO BE
14 POLYGRAPHED?

15 A THAT'S CORRECT.

16 Q THERE'S AN EXPLANATION OF HOW ALL THE
17 MECHANICS WORK?

18 A THAT'S CORRECT.

19 Q AND THEN YOU REVIEW THE CASE WITH HIM?

20 A YES.

21 Q AND IT'S PRIOR TO THE ACTUAL QUESTIONING?

22 A THAT'S CORRECT.

23 Q WITH REGARD TO THE MECHANICAL
24 PHYSIOLOGICALLY HOW THE POLYGRAPH WORKS, COULD YOU EXPLAIN
25 THAT A LITTLE BIT?

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 56

1 A SURE, THE POLYGRAPH BASICALLY IS BASED ON
2 WHAT WE CALL FEAR OF DETECTION OF DECEPTION. WE MONITOR
3 THREE SEPARATE PHYSIOLOGICAL PHENOMENON IN THE BODY. ONE
4 IS THE CARDIOVASCULAR SYSTEM, BLOOD PRESSURE AND PULSE
5 RATE. ONE IS WHAT WE CALL GSR, GALVONIC SKIN RESPONSE,
6 WHICH RELATES TO SWEAT GLAND ACTIVITY, AND ONE IS THE
7 BREATHING A RESPIRATORY SYSTEM.

8 Q AND HOW LONG DID YOU MONITOR HIM?

9 A THE RESPIRATORY SYSTEM IS MONITORED BY TWO
10 CONVOLUTED TUBES THAT GO AROUND THE UPPER TORSO.

11 THE GALVONIC SKIN RESPONSE IS RECORDED VIA TWO
12 FINGER PLATES, ONE ON THE RING AND ONE ON THE INDEX FINGER,
13 AND THE CARDIOVASCULAR RESPONSES ARE MONITORED WITH A
14 TYPICAL BLOOD PRESSURE CUP.

15 Q AND HAVE YOU TESTIFIED MOTIONS OR IN A
16 TRIAL PRIOR TO THIS WITH REGARDS TO POLYGRAPH EXAMINATION?

17 A YES.

18 Q CAN YOU TELL US ABOUT THAT?

19 A WELL I'VE TESTIFIED IN NUMEROUS HEARINGS.
20 I'VE TESTIFIED IN GENERAL SESSIONS COURT IN THIRD CIRCUIT
21 IN FRONT OF JUDGE NEWMAN AND WAS DECLARED AN EXPERT WITNESS
22 BY JUDGE NEWMAN.

23 Q WITH REGARD TO POLYGRAPH EXAMINATION?

24 A THAT'S CORRECT.

25 Q ARE YOU, WHAT KIND OF TRAINING HAVE YOU HAD

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 57

1 WITH REGARD TO POLYGRAPH EXAMINATION?

2 A I WENT TO THE DEPARTMENT OF DEFENSE
3 POLYGRAPH INSTITUTE IN 1987. WE HAVE TO HAVE AT LEAST 40
4 HOURS OF TRAINING, UP GRADE TRAINING, EVERY THREE YEARS SO
5 I USUALLY ATTEND TRAINING THREE TO FOUR TIMES A YEAR SINCE
6 1987.

7 Q HAVE YOU GOTTEN CONTINUING EDUCATION?

8 A YES, THAT IS A CONTINUING EDUCATION.

9 Q AND HAVE YOU, HAVE YOU ACTUALLY TRAINING
10 ANYONE OR HAVE YOU DONE EDUCATION TRAINING FOR AS IT
11 REGARDS TO POLYGRAPH?

12 A YES, I'VE INTERNEED FIVE POLYGRAPH EXAMINERS
13 SINCE I'VE BEEN A CERTIFIED EXAMINER IN THE STATE OF SOUTH
14 CAROLINA.

15 Q AND ARE YOU A MEMBER OF ANY ASSOCIATIONS OR
16 --

17 A I'M A MEMBER OF THE AMERICAN POLYGRAPH
18 ASSOCIATION AND THE SOUTH CAROLINA ASSOCIATION FOR
19 POLYGRAPH EXAMINERS.

20 MR. RICHARDSON: YOUR HONOR, FOR THE PURPOSES OF
21 THIS HEARING I WOULD LIKE TO HAVE THIS WITNESS QUALIFIED AS
22 AN EXPERT FOR PURPOSES OF POLYGRAPH EXAMINATION
23 INTERPRETATION.

24 MR. DIGGS: YOUR HONOR, I DON'T HAVE ANY
25 QUESTIONS AND I DON'T OBJECT, I STIPULATE TO IT.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 58

1 THE COURT: ALL RIGHT, SIR, HE'S QUALIFIED TO
2 GIVE HIS OPINION.

3 Q AGENT CHARLES, IN LATE AUGUST, EARLY
4 SEPTEMBER OF 2005, DID YOU RECEIVE A REQUEST TO ADMINISTER
5 A POLYGRAPH EXAM FOR THE DEFENDANT?

6 A YES, I DID.

7 Q AND WHO, WHO MADE THAT REQUEST?

8 A THE SOLICITOR'S OFFICE, FIFTEENTH CIRCUIT.

9 Q AND DID YOU EVER HAVE THE OPPORTUNITY TO
10 ACTUALLY ADMINISTER A POLYGRAPH EXAM TO THIS DEFENDANT?

11 A THAT'S CORRECT.

12 Q AND DO YOU REMEMBER THE STATE?

13 A IT WAS SEPTEMBER 19TH, 2005.

14 Q OKAY, DID YOU PERSONALLY ADMINISTER THE
15 POLYGRAPH EXAM?

16 A NO, ONE OF MY INTERNS, MY INTERN AT THE
17 TIME CONDUCTED THE TEST.

18 Q AND HER NAME IS?

19 A JULIE DUFF.

20 Q AND DID YOU REMAIN IN THE ROOM DURING THE
21 POLYGRAPH EXAMINATION?

22 A NO, ONLY DURING THE RIGHTS ADVISEMENT AND
23 CONSENT FORM. I STEPPED OUT OF THE ROOM FOR HER TO CONDUCT
24 THE TEST AND THEN LATER LOOKED AT THE TEST, REVIEWED THE
25 CHARTS AFTER THE TEST WAS ADMINISTERED.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 59

1 Q DID YOU OBSERVE IN ANY WAY DURING THE
2 COURSE OF THE POLYGRAPH EXAM?

3 A IF THE ROOM THAT WE ARE WORKING IN IS, HAS
4 AUDIO VIDEO CAPABILITY, YES, THIS ONE DID NOT.

5 Q OKAY, DID YOU HELP SGT. DUFF, SERGEANT,
6 CORRECT?

7 A SHE'S CORRECT, THAT'S CORRECT, SHE'S A
8 SERGEANT NOW.

9 Q DID YOU HELP HER IN DEVELOPING THE
10 QUESTIONS THAT WOULD BE ASKED?

11 A YES.

12 Q AND YOU REVIEWED THOSE QUESTIONS?

13 A YES.

14 Q PRIOR TO THE EXAM?

15 A YES, WHICH IS A REQUIREMENT FOR ANYONE WHO
16 IS AN INTERN A CERTIFIED EXAMINER MUST BE PHYSICALLY
17 PRESENT AND MUST REVIEW THE QUESTIONS WITH THE EXAMINER
18 AHEAD OF TIME AND MAKE SURE THEY'RE APPROVED QUESTIONS.

19 Q AND THE EXAMINATION QUESTIONS THEMSELVES
20 HOW MANY QUESTIONS WERE ASKED?

21 A APPROXIMATELY 10 QUESTIONS AND WE CAN ASK
22 UP TO 4 RELEVANT QUESTIONS WHICH DEAL SPECIFICALLY WITH THE
23 ISSUE BEING TESTED.

24 Q DO YOU HAVE A COPY OF THOSE QUESTIONS?

25 A YES, SIR, I DO.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 60

1 THE COURT: BEFORE WE GO ANY FURTHER, SOLICITOR

2 --

3 MR. RICHARDSON: YES, SIR.

4 THE COURT: WAS THERE SOME AGREEMENT THAT YOU
5 AND THE DEFENSE ATTORNEY HAD -- AS I UNDERSTAND IT MS. DUFF
6 IS NOT GOING TO BE HERE?

7 MR. RICHARDSON: THAT'S CORRECT, YOUR HONOR.

8 THE COURT: AND SHE'S NOT GOING TO TESTIFY AT
9 THIS HEARING, CORRECT?

10 MR. RICHARDSON: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: ALL RIGHT, AND SO I UNDERSTAND IT AS
12 TO WHAT OCCURRED --

13 MR. RICHARDSON: YES, SIR.

14 THE COURT: -- AND YA'LL CORRECT ME IF I'M WRONG
15 AND IF I'M JUMPING AHEAD I APOLOGIZE, THAT THIS EXAMINER
16 HELPED MS. DUFF DRAFT THE QUESTIONS ---

17 MR. RICHARDSON: YES, SIR.

18 THE COURT: --- BUT THAT DURING THE QUESTIONING
19 ITSELF OR THE QUESTIONING PROCESS OF MR. WILLS MR. CHARLES
20 WAS NOT PRESENT IN THE ROOM?

21 MR. RICHARDSON: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: NOR DID HE OBSERVE THE PROCESS, YOU
23 KNOW, THROUGH AN ADJACENT ROOM OR ANY OTHER WAY?

24 MR. RICHARDSON: THAT IS MY UNDERSTANDING, YOUR
25 HONOR.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 61

1 THE COURT: ALL RIGHT, IS THERE SOME AGREEMENT
2 HERE?

3 MR. DIGGS: YOUR HONOR, WHAT WE OBJECT TO
4 DOESN'T REALLY INVOLVE ANY OF THOSE ITEMS. THE FACT THAT
5 THIS WITNESS WAS NOT PRESENT AT THE TIME THAT THE QUESTIONS
6 WERE ACTUALLY ASKED DOESN'T FORM A BASIS FOR THE OBJECTIONS
7 THAT WE HAVE WITH RESPECT TO THIS PROCEEDING.

8 THE COURT: OKAY.

9 MR. DIGGS: SO FOR THOSE PURPOSES I ADVISED THE
10 SOLICITOR I WOULDN'T OBJECT IF HE DID NOT CALL MS. DUFF,
11 AGENT, SGT. DUFF, TO COME TO TESTIFY AT THIS PARTICULAR
12 HEARING ABOUT THOSE MATTERS. WHAT WE DO CONTEST IS THE
13 ACCURACY IF THIS WITNESS PUTS ON THE TEST RESULTS LIABILITY
14 UPON CROSS EXAMINING HIM AND THE EXTENT THAT THEY WENT TO
15 TRY TO VERIFY OR HAVE A COMPETENCY RESULTS.

16 THE COURT: WELL, OKAY, THEN THAT GOES TO MY
17 QUESTION.

18 MR. RICHARDSON: YOUR HONOR, SGT. DUFF WAS UNDER
19 SUBPOENA WAS WILLING TO COME.

20 THE COURT: AND I UNDERSTAND THAT AND I
21 UNDERSTAND THAT, BUT ULTIMATELY YOU'RE ASKING I MIGHT HAVE
22 TO IN ANALYZING THIS UNDER THE RULES OF EVIDENCE AND TWO OF
23 THEM THAT COME TO MIND RIGHT NOW, AND I KNOW I'M FORGETTING
24 ONE OR TWO OF THEM BUT, YOU KNOW, RULE 403, RULE 702, IN
25 EXAMINING WHETHER OR NOT HOW THIS MATTER SHOULD BE

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 62

1 PRESENTED TO THE, TO THE JURY THE DEFENSE IS QUESTIONING
2 THE ACCURACY OF THE TEST RESULTS SAYING ULTIMATELY YOUR
3 DETERMINATION, THE STATE'S DETERMINATION THAT HE WAS NOT
4 TRUTHFUL DURING THE EXAMINATION AND YOU HAVE THIS WITNESS,
5 AND I HAVE QUALIFIED HIM TO GIVE HIS OPINION AND CERTAINLY
6 HE CAN, AND HE CAN BASE THAT UPON THE STANDARD RULES OF
7 EVIDENCE, HE CAN BASE IT UPON ALL OF THE EVIDENCE AND ALL
8 OF THE MATTERS BEFORE HIM TO BASE HIS OPINION, NOT THAT HE
9 HAD TO BE PRESENT BUT I, I GUESS I'VE GOT SOME CONCERN AS
10 TO HOW HE'S SUPPOSED TO BE JUDGING THE ACCURACY OF THE
11 RESULTS WHEN HE WASN'T THERE.

12 MR. DIGGS: YOUR HONOR, IF IT'S GOING TO RESULT
13 IN, IF THE COURT'S INCLINED TO SAY THE DEFENSE HAS WEIGHED
14 THE ISSUE OUT REQUIRING THE WITNESS MS. DUFF TO BE HERE
15 THEN I CERTAINLY WOULD ASK THAT THE STATE PROVIDE THAT
16 WITNESS, YOU KNOW, IT'S TOO MUCH OF A CONCESSION TO THE
17 SOLICITOR EARLIER. I APOLOGIZE, I CAN'T PUT MY CLIENT IN
18 THAT POSITION.

19 THE COURT: WELL I APPRECIATE THAT. HOW ARE YOU
20 EXPECTING TO HAVE THIS WITNESS TESTIFY AS TO THE ACCURACY
21 OF THE TEST RESULTS?

22 MR. RICHARDSON: YOUR HONOR, I BELIEVE THE
23 WITNESS MIGHT BE ABLE TO GO THROUGH ACTUALLY WHAT HE DID TO
24 VERIFY THE RESULTS.

25 THE COURT: ALL RIGHT, WELL LET'S HEAR HIM ABOUT

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 63

1 THAT THEN BEFORE WE GO INTO ANYTHING ELSE.

2 THE WITNESS: (CONTINUING)

3 A SLED, I'M SORRY, GO AHEAD.

4 Q AGENT CHARLES, YOU WERE SAYING THAT YOU
5 HELPED PREPARE THE QUESTIONS?

6 A THAT'S CORRECT.

7 Q YOU REVIEWED THEM PRIOR TO THOSE QUESTIONS
8 BEING ASKED?

9 A THAT'S CORRECT.

10 Q YOU OBSERVED EVERYTHING THAT OCCURRED
11 BEFORE ---

12 A THAT'S CORRECT.

13 Q --- THE EXAMINATION? COULD YOU TELL US
14 WHAT ALL WENT ON?

15 A WELL AFTER, FIRST OF ALL EVERY TEST THAT IS
16 RUN FOR SLED IS QUALITY CONTROLLED BY AT LEAST TWO OTHER
17 EXAMINERS. THE EXAMINER WHO RUNS THE TEST AND THERE ARE
18 TWO OTHER EXAMINERS WHO REVIEW THE CHARTS AND THE QUESTIONS
19 TO DETERMINE IF THE QUESTIONS WERE PROPER FOR THAT ISSUE
20 BEING TESTED.

21 NUMBER TWO, THE CHARTS THAT WERE COLLECTED DURING
22 THE EXAMINATION ARE EVALUATED BY TWO OTHER EXAMINERS IN THE
23 BLIND WHICH MEANS THEY DID NOT LOOK AT ANY OTHER EXAMINERS
24 RESULT TO DETERMINE IF THAT PERSON WAS TRUTHFUL OR NOT
25 TRUTHFUL.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 64

1 WE'RE ALL TAUGHT TO EVALUATE CHARTS THE SAME WAY,
2 WHAT CRITERIA THAT WE ARE LOOKING FOR. AND THAT'S HOW AN
3 EXAMINER WHO WAS NOT EVEN PRESENT CAN REVIEW THE CHARTS TO
4 DETERMINE IF THE PERSON WAS BEING TRUTHFUL OR NOT TRUTHFUL.

5 THE QUESTIONS THAT WERE ASKED OUT OF MY PRESENCE
6 ARE PUT INTO A COMPUTER. THERE'S NO WAY TO ALTER THAT AND
7 WHEN THE EXAMINER ASKS THE QUESTION THAT QUESTION POPS UP
8 ON THE COMPUTER SCREEN AND IT IS RECORDED AS A MATTER OF
9 RECORD AS TO WHAT QUESTION WAS BEING ASKED AT THAT TIME.

10 Q SO YOU VERIFY WHAT QUESTIONS WERE ASKED?

11 A YES, DEFINITELY.

12 Q YOU DID THAT IN THIS CASE?

13 A THAT'S CORRECT.

14 Q DO YOU HAVE A LIST OF THE QUESTIONS THAT
15 WERE ASKED?

16 A I HAVE A LIST OF THE TOTAL QUESTIONS BUT I
17 ALSO HAVE THE REPORT OF THE RELEVANT QUESTIONS.

18 Q AND THOSE LISTS DIFFER?

19 A I'M SORRY, I DIDN'T UNDERSTAND YOU?

20 Q THE LISTS ARE DIFFERENT BETWEEN THE TOTAL
21 QUESTIONS ASKED AND THE PERTINENT QUESTIONS?

22 A THAT'S CORRECT BECAUSE, BECAUSE THE ONLY
23 QUESTIONS THAT ARE EVALUATED TO DETERMINE IF THERE WAS AN
24 ATTEMPT TO DECEIVE ARE THE RELEVANT QUESTIONS, QUESTIONS
25 THAT HAVE TO DO WITH THE ISSUE AT HAND.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 65

1 Q PART OF DETERMINING, PART OF ASKING THE
2 PERTINENT QUESTIONS IS THERE ANY WAY TO DEVELOP A BASELINE?

3 A THERE ARE WHAT WE CALL IRRELEVANT
4 QUESTIONS, QUESTIONS THAT ARE NON THREATENING, NON
5 EMOTIONAL, HAVE NOTHING TO DO WITH THE ISSUE AT HAND. FOR
6 INSTANCE, IS TODAY MONDAY, DO YOU SOMETIMES WATCH T.V., IS,
7 YOU KNOW, DO YOU LIVE IN SOUTH CAROLINA, THOSE KINDS OF
8 THINGS.

9 Q THOSE KINDS OF QUESTIONS WERE ASKED IN THIS
10 PARTICULAR INCIDENT?

11 A THAT'S CORRECT.

12 Q YOUR OPINION NO DOUBT IN YOUR MIND THOSE
13 QUESTIONS WERE ASKED?

14 A THEY WERE ASKED, IN FACT THEY'RE LISTED ON
15 THE CHART ITSELF. WHEN YOU ASK A QUESTION ON THE COMPUTER
16 YOU HIT A BUTTON TO START THE QUESTION, YOU HIT A BUTTON TO
17 END THE QUESTION AND AT THE BOTTOM IT TELLS YOU WHAT
18 QUESTION WAS ASKED.

19 Q ALL RIGHT, AND THESE IRRELEVANT QUESTIONS
20 ALONG WITH THE PERTINENT QUESTIONS ARE THEY LIKE ALL
21 IRRELEVANT QUESTIONS AND THEN TWO OR FOUR PERTINENT?

22 A NO, THEY ARE INTERSPERSED IN THE QUESTIONS.

23 Q WHAT'S THE REASONING FOR THAT?

24 A WELL BECAUSE YOU DO NOT WANT THE PERSON TO
25 ANTICIPATE WHAT QUESTION IS GOING TO BE ASKED NEXT. ALL

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 66

1 THE QUESTIONS ARE REVIEWED AHEAD OF TIME BUT, YOU KNOW, YOU
2 DO NOT WANT TO ESTABLISH A PATTERN AS TO WHERE YOU ASK THIS
3 QUESTION FIRST EVERY TIME, YOU ASK THIS QUESTION SECOND
4 EVERY TIME. WE REVIEW THE QUESTION BUT WE DO NOT REVIEW
5 THE ORDER THAT THE QUESTIONS WILL BE ASKED IN.

6 Q AND THESE CHARTS YOU TALKED ABOUT TELL US
7 HOW IT WORKS, SAY WHEN A QUESTION IS ASKED IS YOUR NAME
8 RICK CHARLES?

9 A RIGHT.

10 Q THESE CHARTS DO THEY COME ACROSS THE
11 COMPUTER SCREEN ---

12 A YES.

13 Q --- IN SPIKES?

14 A YES, THEY'RE BEING, THEY'RE BEING DEPICTED
15 ON A COMPUTER SCREEN AND THEY'RE LATER PRINTED OUT ON A
16 PRINTER.

17 Q AND YOU REVIEWED THE RECORDS IN THIS CASE?

18 A YES.

19 Q AND CAN YOU TELL US WHAT WERE THE PERTINENT
20 QUESTIONS THAT WERE ASKED OF MR. WILLS?

21 A THE RELEVANT QUESTIONS WERE ---

22 Q RELEVANT QUESTIONS, I APOLOGIZE?

23 A RELEVANT QUESTION NUMBER 4 WAS, ARE YOU
24 LYING ABOUT MARK WILLARD SHOOTING JULIAN LEE IN THAT FIELD,
25 IN WHICH THE EXAMINEE ANSWERED, NO.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 67

1 RELEVANT QUESTION 6 WAS, DID YOU SHOOT JULIAN
2 LEE? THE EXAMINEE ANSWERED, NO.

3 RELEVANT QUESTION 8 WAS, ARE YOU LYING ABOUT
4 DONNELL GREEN THROWING THAT GUN USED IN THAT SHOOTING IN
5 THE WATER? THE EXAMINEE ANSWERED, NO.

6 AND RELEVANT QUESTION 10, DID YOU LIE ABOUT BEING
7 PAID BY THE JOHNSON BROTHERS TO SHOOT JULIAN LEE IN WHICH
8 THE EXAMINEE ANSWERED, NO.

9 Q AND YOUR REPORT WHAT DID IT INDICATE?

10 A IT INDICATED THAT THE EXAMINEE SHOWED
11 DECEPTION ON THE TEST.

12 Q HOW CAN YOU -- WHAT GOES INTO THE
13 INTERPRETATION OF THESE CHARTS TO SHOW WHETHER ---

14 A OKAY, THROUGH ---

15 Q --- DECEPTION IS NOTED OR NOT?

16 A THROUGH RESEARCH MANY, MANY RESEARCH
17 STUDIES WE KNOW WHAT PHYSICAL CRITERIA THAT ARE ASSOCIATED
18 WITH DECEPTION, OKAY, AND BASICALLY WE'RE TRAINED IN WHAT
19 TO LOOK FOR, THE KINDS OF PHYSIOLOGICAL REACTIONS THAT
20 WE'RE LOOKING FOR THAT WOULD SHOW, ARE TYPICAL OF A PERSON
21 ATTEMPTING TO DECEIVE.

22 Q AND THESE, I GUESS, ARE EARMARKED AND SHOW
23 UP ON THE COMPUTER?

24 A YES.

25 Q AND SO YOU STATED YOU NOTED DECEPTION WITH

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 68

1 RESPONSE TO, ARE YOU LYING ABOUT MARK WILLARD SHOOTING
2 JULIAN LEE IN THAT FIELD?

3 MR. DIGGS: YOUR HONOR, I OBJECT, I WOULD SUBMIT
4 THAT'S A MISCHARACTERIZATION OF WHAT THE TESTIMONY WAS.

5 THE COURT: WHY DON'T YOU REPHRASE YOUR QUESTION
6 AND DETERMINE WHETHER OR NOT HIS REPORT INDICATES HE SHOWED
7 DECEPTION ON THE TEST OR ON THOSE PARTICULAR QUESTIONS. I
8 DON'T THINK THAT'S CLEAR, IT'S CERTAINLY NOT CLEAR TO ME.

9 MR. RICHARDSON: YES, SIR, YOUR HONOR.

10 Q (CONTINUING) AGENT CHARLES, IS THERE ANYWAY
11 TO DETERMINE IF DECEPTION IS NOTED ON A PARTICULAR
12 QUESTION?

13 A YES.

14 Q QUESTION NUMBER, I BELIEVE, DID YOU HAVE A
15 COPY OF THE REPORT?

16 A YES.

17 Q ARE YOU LOOKING AT THAT REPORT NOW?

18 A YES.

19 MR. RICHARDSON: MR. DIGGS, DO YOU HAVE A COPY
20 OF POLYGRAPH EXAM?

21 MR. DIGGS: YES.

22 THE COURT: ALL RIGHT, THANK YOU.

23 MR. RICHARDSON: YOUR HONOR, QUESTION R-4.

24 THE COURT: FOR THE PURPOSES OF THIS HEARING,
25 MR. DIGGS, IS THERE ANY PROBLEM WITH THE POLYGRAPH REPORT

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 69

1 BEING MADE A PART OF THE RECORD FOR THE PURPOSES OF THE
2 MOTION?

3 MR. DIGGS: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT, YOU'VE GOT A COPY OF THIS
5 DOCUMENT, IS THAT RIGHT?

6 MR. DIGGS: YES, SIR, I JUST WANT TO LOOK AT IT
7 AND MAKE SURE IT'S THE SAME.

8 THE COURT: YES, SIR. ALL RIGHT, SOLICITOR,
9 LET'S MARK THAT, MARK THAT AS A STATE'S EXHIBIT.

10 MR. RICHARDSON: YOUR HONOR, STATE'S EXHIBIT 16
11 FOR IDENTIFICATION PURPOSES ONLY.

12 THE COURT: ALL RIGHT, SIR.

13 MR. RICHARDSON: FOR THIS ---

14 THE COURT: JUST BE REAL CLEAR JUST MAKE SURE
15 THAT THAT MATCHES THE REPORT HE HAS.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER 16 MARKED FOR
17 IDENTIFICATION.)

18 MR. RICHARDSON: (CONTINUING)

19 Q AGENT CHARLES, I'M SHOWING YOU A COPY OF
20 WHAT'S BEEN PREVIOUSLY MARKED STATE'S EXHIBIT FOR
21 IDENTIFICATION PURPOSES NUMBER 16. IS THAT A TRUE AND
22 ACCURATE COPY OF THE REPORT FROM THE STATE LAW ENFORCEMENT
23 DIVISION REGARDING THE POLYGRAPH OF MR. WILLS?

24 A YES, IT IS.

25 THE COURT: ALL RIGHT, SIR, YOU MAY PROCEED.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 70

1 MR. RICHARDSON: THIS IS IT.

2 THE COURT: THANK YOU.

3 MR. RICHARDSON: (CONTINUING)

4
5 Q AGENT CHARLES, WITH REGARD TO QUESTION R-4,
6 ARE YOU LYING ABOUT MARK WILLARD SHOOTING JULIAN LEE IN
7 THAT FIELD, WHAT WAS THE EXAMINEE'S RESPONSE?

8 A HE ANSWERED, NO.

9 Q AND WHAT WERE YOU ABLE TO DISCERN FROM THAT
10 ANSWER?

11 A WHEN WE NUMERICALLY EVALUATED THE CHART WE
12 DETERMINED THAT HE WAS DECEPTIVE TO THAT QUESTION WHEN HE
13 ANSWERED NO.

14 Q AND IN RESPONSE TO R-6 DID YOU SHOOT JULIAN
15 LEE WHAT WAS THE EXAMINEE'S RESPONSE?

16 A HE ANSWERED, NO.

17 Q AND WERE YOU ABLE TO DETERMINE WHETHER THE
18 DEFENDANT WAS SHOWING DECEPTION OR NOT ON THAT QUESTION?

19 A NUMERICALLY WHEN THE CHARTS WERE EVALUATED
20 IT WAS DETERMINED THAT HE WAS DECEPTIVE WITH THAT QUESTION.

21 Q FINALLY TO SPEED THINGS UP, WITH REGARD TO
22 QUESTION R-8 AND R-10, ARE YOU LYING ABOUT DONNELL GREEN
23 THROWING THAT GUN USED IN THE SHOOTING IN THE WATER?
24 TWELVE IS, DID YOU LIE ABOUT BEING PAID BY THE JOHNSON
25 BROTHERS TO SHOOT JULIAN LEE, WHAT WERE THE DEFENDANT'S

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 71

1 RESPONSES WITH REGARD TO THOSE QUESTIONS?

2 A HE ANSWERED, NO, TO BOTH.

3 Q AND WERE YOU ABLE TO DETERMINE ANYTHING
4 WITH REGARD TO THAT QUESTION?

5 A NO, NUMERICALLY BOTH OF THOSE WERE SCORED
6 INCONCLUSIVE OR NO OPINION.

7 Q INCONCLUSIVE?

8 A YES.

9 Q SO THE TOP TWO QUESTIONS R-4 AND R, I
10 BELIEVE, 6, HE ANSWERED, NO, AND DECEPTION WAS NOTED ON
11 THOSE QUESTIONS?

12 A THAT'S CORRECT.

13 Q NUMERICALLY?

14 A NUMERICALLY.

15 Q AND THIS, THESE RESULTS WERE REVIEWED BY
16 YOU?

17 A YES.

18 Q ANYONE ELSE REVIEW THESE RESULTS?

19 A YES, LT. DENNIS COGGINS WHO IS THE CHIEF OF
20 THE SLED POLYGRAPH PROGRAM ALSO DID WHAT WE CALL A BLIND
21 ANALYSIS ON THE CHARTS AND HE DETERMINED THAT THERE WAS
22 DECEPTION.

23 Q AND YOU RENDERED THIS REPORT TO THE
24 FIFTEENTH CIRCUIT JUDICIAL CIRCUIT?

25 A THAT'S CORRECT.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 72

1 Q AND WAS THE DEFENDANT INFORMED OF HIS
2 RESULTS?

3 A YES.

4 Q WAS HE ASKED ANY OTHER QUESTIONS?

5 A NO, BECAUSE HE HAD AN ATTORNEY NO POST
6 INTERVIEW WAS CONDUCTED.

7 Q SO IT'S YOUR EXPERT OPINION THROUGH THE
8 POLYGRAPH THAT THE DEFENDANT ON THOSE RELEVANT QUESTIONS
9 SHOWED DECEPTION IN HIS ANSWERS?

10 A ABSOLUTELY.

11 Q AND DID YOU REVIEW HIS STATEMENT PRIOR TO
12 THAT?

13 A YES, WE DID.

14 Q OKAY, AND IN YOUR OPINION HIS ANSWERS BEING
15 DECEPTIVE ON THAT ARE THEY THEN POSITIVE AND OPPOSITE OF
16 HIS STATEMENTS ON HIS PRIOR STATEMENT?

17 A YES, THEY ARE.

18 MR. RICHARDSON: THANK YOU.

19 THE COURT: ALL RIGHT, BEFORE YOU START, MR.
20 DIGGS, LET ME, LET ME HAVE YOU COVER TWO THINGS, SOLICITOR,
21 IF YOU WOULD?

22 MR. RICHARDSON: YES, SIR.

23 THE COURT: I WANT YOU TO COVER WITH THE WITNESS
24 WHO DETERMINED THE ORDER OF THE QUESTIONS THAT WERE POSED
25 TO MR. WILLS, WHO ACTUALLY DID THAT THE ORDER OF THE

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 73

1 QUESTIONS THAT WERE ACTUALLY ASKED AND HAVE HIM REVIEW THE
2 MIRANDA WARNING THAT WAS GIVEN TO THIS DEFENDANT IF HE
3 KNOWS ABOUT IT, IF HE WAS PRESENT WHO DID THAT, IF THERE'S
4 ANY DOCUMENTATION OF THAT, PLEASE GO OVER ALL THAT.

5 MR. RICHARDSON: I'LL GO IN A LITTLE BIT REVERSE
6 ORDER ON THAT.

7 Q (CONTINUING) WITH REGARD TO MIRANDA YOU
8 STATED THAT MIRANDA WAS READ TO THE DEFENDANT PRIOR TO HIM
9 BEING ADMINISTERED A POLYGRAPH?

10 A THAT'S CORRECT.

11 Q AND THAT WAS DONE IN THIS CASE?

12 A YES, IT WAS.

13 Q DID YOU PERSONALLY WITNESS THAT?

14 A YES, I DID.

15 Q AND WAS THE DEFENDANT PROVIDED WITH ANY
16 KIND OF, ANYTHING TO SIGN, ANY FORMS?

17 A YES.

18 Q DO YOU HAVE A COPY OF THAT?

19 A YES, I DO, I HAVE THE ORIGINAL.

20 Q AND THIS IS THE ORIGINAL MIRANDA FORM THAT
21 THE DEFENDANT SIGNED?

22 A THAT'S CORRECT.

23 MR. RICHARDSON: MAY I HAVE IT MARKED?

24 (WHEREUPON, STATE'S EXHIBIT NUMBER 17 MARKED FOR
25 IDENTIFICATION.)

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 74

1 Q (CONTINUING) AGENT CHARLES, I'M GOING TO
2 HAND TO YOU WHAT HAS BEEN PREVIOUSLY MARKED AS STATE'S
3 NUMBER 17 FOR IDENTIFICATION PURPOSES, PLEASE TELL ME WHAT
4 THAT IS?

5 A THIS IS A MIRANDA FORM.

6 Q AND WHAT IS THE PURPOSE OF THAT?

7 A IT IS TO ADVISE A SUBJECT OF HIS
8 CONSTITUTIONAL RIGHTS.

9 Q AND IS THIS JUST HANDED TO THE DEFENDANT OR
10 ---

11 A NO.

12 Q --- WHAT MANNER IS IT PRESENTED TO HIM?

13 A NO, IT IS READ WORD FOR WORD VERBATIM TO
14 HIM OR HER.

15 Q AND WAS THIS FORM READ TO THIS DEFENDANT
16 BACK IN SEPTEMBER OF '05?

17 A YES, IT WAS.

18 Q AND ARE YOU SURE THIS IS THE FORM THAT HE
19 SIGNED?

20 A HAS HIS NAME AT THE BOTTOM OF IT, HE SIGNED
21 IT.

22 Q AND HOW DO YOU KNOW THAT THIS IS THE ONE
23 YOU AND AGENT DUFF, I'M SORRY, SGT. DUFF, PRESENTED TO THE
24 DEFENDANT?

25 A IT'S GOT SGT. DUFF'S SIGNATURE AT THE

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 75

1 BOTTOM WHERE SHE WITNESSED IT.

2 Q DOES IT HAVE YOUR NAME ANYWHERE ON IT?

3 A NO, THERE'S NOT A PLACE FOR A SECOND
4 WITNESS BUT I WAS PHYSICALLY THERE WHEN I SAW IT.

5 Q SO YOU DID OBSERVE THIS MIRANDA RIGHT BEING
6 READ TO THIS DEFENDANT?

7 A THAT'S CORRECT.

8 Q AND YOU OBSERVED THE DEFENDANT SIGN OFF
9 THAT HE UNDERSTOOD?

10 A THAT'S CORRECT.

11 Q ALSO THAT HE'S WAIVING HIS RIGHTS FOR THIS
12 PORTION?

13 A THAT'S CORRECT, EXCEPT FOR THE EXCEPTION
14 THERE WHERE WE MARKED OUT AND SO IT READ I DO HAVE AN
15 ATTORNEY AT THIS TIME AND WE HAD HIM INITIAL THAT CHANGE.

16 Q THAT HE DOES HAVE AN ATTORNEY?

17 A YES.

18 Q AND, AGENT CHARLES, WITH REGARD TO THE
19 ORDER OF THE QUESTIONING WHO DETERMINED THAT?

20 A THE, THE EXAMINER WHO RUNS THE TEST
21 DETERMINES THE ORDER, HOWEVER, THE ORDER CAN CHANGE EACH
22 TIME THAT WE RUN A CHART, OKAY. SO THE EXAMINER AFTER
23 THEY'RE IN THERE CAN DETERMINE WHICH ORDER I'M GOING TO RUN
24 THE NEXT CHART IN WHICH IS JUST STANDARD, THAT'S STANDARD
25 POLYGRAPH PROCEDURE.

AGENT CHARLES - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 76

1 Q SO SGT. DUFF DETERMINED?

2 A YES.

3 Q IN THIS CASE WHAT ORDER SHE ASKED THE
4 QUESTIONS?

5 A THAT'S CORRECT.

6 Q AND I BELIEVE YOU STATED BEFORE THAT YOU
7 INTERSPERSED RELEVANT QUESTIONS WITH IRRELEVANT QUESTIONS?

8 A THAT'S CORRECT. THERE IS A, A APPROVED
9 FORMAT THAT WE CONDUCT THE TEST IN, YES.

10 Q AND YOU TRAINED AGENT DUFF?

11 A YES.

12 Q SO SHE WAS TRAINED AT THIS POINT?

13 A OH, YES, WELL SHE RECEIVED THAT TRAINING
14 WHEN SHE WENT THROUGH HER POLYGRAPH SCHOOL WHICH SHE WENT
15 TO AND THEN AFTER THAT AN INTERN IS REQUIRED TO RUN 150
16 EXAMINATIONS UNDER DIRECT SUPERVISION OF A CERTIFIED
17 EXAMINER TO GET THEIR STATE LICENSE.

18 Q AND, AGENT CHARLES, APPROXIMATELY HOW MANY
19 POLYGRAPH HAVE YOU RUN?

20 A FIVE THOUSAND.

21 Q 5,000, AND HAVE YOU EVER RUN A POLYGRAPH
22 THAT KIND OF KNOCKS THE LEGS OUT OF A STATE'S CASE?

23 A YES.

24 Q AND SO INFORMED THE STATE?

25 A YES.

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

77

1 Q BUT IN THIS CASE IT'S YOUR OPINION THE
2 DEFENDANT SHOWED DECEPTION ON HIS QUESTIONING?

3 A ABSOLUTELY.

4 MR. RICHARDSON: THANK YOU.

5 THE COURT: ALL RIGHT, BEFORE YOU START, MR.
6 DIGGS, I'M GOING TO TALK TO THE BAILIFF. IT'S 3:15. I
7 DON'T SEE HOW WE'RE GOING TO GET TO ANY OF THIS CASE THIS
8 AFTERNOON WITH ME HAVING TO REVIEW THE HOUR LONG VIDEO IN
9 THIS MATTER SO I'M GOING TO TALK TO THE BAILIFFS AND WHEN
10 THOSE JURORS ARRIVE I'M JUST GOING TO HAVE HIM EXCUSE THEM
11 UNTIL TOMORROW MORNING AT 9:30. THANK YOU, WE'LL TAKE A
12 SHORT BREAK.

13 MR. RICHARDSON: THANK YOU, YOUR HONOR.

14 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
15 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

16 CROSS EXAMINATION

17 BY MR. DIGGS:

18 Q AGENT CHARLES, DO YOU HAVE OR WOULD IT BE
19 FAIR TO SAY YOU'VE POLYGRAPHED INDIVIDUALS BEFORE AND THE
20 RESULTS SHOWED DECEPTION WHEN YOU KNEW THEY WERE TELLING
21 THE TRUTH; HAVE YOU EVER SEEN A SITUATION LIKE THAT?

22 A NO, SIR.

23 Q YOU NEVER HAVE?

24 A ME PERSONALLY?

25 Q RIGHT?

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

78

1 A NO, SIR.

2 Q WOULD YOU AGREE WITH ME THAT THAT CAN
3 HAPPEN?

4 A SURE.

5 Q AND YOU AGREE WITH ME THE POLYGRAPH IS NOT
6 100 PERCENT FOOL PROOF?

7 A THAT'S CORRECT.

8 Q WHY IS THAT, FROM YOUR POSITION AS AN
9 EXPERT IN THIS AREA WHY CAN WE GET RESULTS THAT ARE NOT
10 RELIABLE?

11 A THERE COULD BE A COUPLE OF DIFFERENT
12 REASONS. A LOT OF IT IS DEPENDENT UPON DID THE EXAMINER
13 ASK THE RIGHT QUESTIONS THAT WERE PERTINENT TO THE ISSUE.
14 IF THE EXAMINER WHAT WE CALL MISSES THE TARGET AND DOESN'T
15 ASK THE CORRECT QUESTIONS YOU CAN GET EITHER A FALSE
16 POSITIVE WHICH MEANS THAT THE PERSON IS TELLING THE TRUTH
17 BUT SHOWED DECEPTION OR A FALSE NEGATIVE WHERE THE PERSON
18 WAS ACTUALLY DECEPTIVE BUT DID NOT SHOW DECEPTION.

19 Q OKAY, ARE THERE ANY OTHER CIRCUMSTANCES
20 THAT MIGHT RESULT IN FALSE READINGS?

21 A SURE, IF A PERSON IS MENTALLY HANDICAPPED
22 OR MENTALLY ILL, A, SOMEONE WHO IS MENTALLY IMMATURE,
23 DOESN'T UNDERSTAND WHAT IS GOING ON YOU CAN DEFINITELY GET
24 A FALSE POSITIVE OR A FALSE NEGATIVE.

25 Q HOW ABOUT OTHER SITUATIONS, ARE THERE ANY

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

79

1 OTHERS YOU CAN THINK OF?

2 A THOSE ARE THE ONLY ONES I CAN THINK OF.
3 AGAIN PROBABLY THE MOST COMMON ERROR, IF YOU WILL, IS IF
4 THE EXAMINER EITHER ASKS QUESTIONS THAT WERE NOT PERTINENT
5 TO THE ISSUE OR DOESN'T HAVE ALL THE INFORMATION FROM THE
6 INVESTIGATOR OR, OR WHOEVER PROVIDED THEM THE INFORMATION
7 AND THEY, THEY DON'T ASK THE CORRECT QUESTIONS.

8 Q WELL, WHAT DID YOU DO IN THIS CASE TO MAKE
9 SURE THE CORRECT QUESTIONS WERE ASKED?

10 A WELL, WE REVIEWED THE STATEMENT, THE CASE
11 BEFORE WE CONSTRUCTED THE TEST QUESTIONS. MS. DUFF AND I
12 CONFERRED ON WHAT QUESTIONS NEEDED TO BE ASKED IN ORDER TO
13 ANSWER THE MAIL, IF YOU WOULD, FOR THIS CASE AND THEN WE
14 DECIDED ON THE QUESTIONS THEMSELVES.

15 Q ALL RIGHT, DID YOU, DID YOU KNOW WHETHER OR
16 NOT THIS DEFENDANT FITS THE REQUIREMENTS OF MENTAL
17 INTELLECTUAL STATE, STATE OR MATURITY STATUS IN ORDER TO
18 GIVE A RELIABLE RESULT ON THE POLYGRAPH?

19 A ME PERSONALLY?

20 Q YES?

21 A NO, NO, I DO NOT KNOW.

22 Q WAS ANYTHING DONE TO YOUR KNOWLEDGE TO MAKE
23 SURE THAT HE WAS A SUITABLE CANDIDATE FOR A POLYGRAPH?

24 A WE HAVE A FORM THAT WE FILL OUT THAT WE ASK
25 THE EXAMINEE QUESTIONS IN AN ATTEMPT TO DETERMINE IF THEY

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

80

1 ARE PHYSICALLY AND MENTALLY CAPABLE OF TAKING THE TEST,
2 YES.

3 Q DID YOU DO THAT IN THIS CASE?

4 A MS. DUFF DID, YES.

5 Q ALL RIGHT, DO YOU HAVE THAT QUESTIONNAIRE
6 WITH YOU?

7 A YES, I DO.

8 Q OKAY, DO YOU MIND IF WE HAVE THIS MARKED?

9 A NOT AT ALL.

10 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 2 MARKED
11 FOR IDENTIFICATION.)

12 MR. DIGGS: (CONTINUING)

13 Q DO YOU KNOW, AGENT CHARLES, IF OTHER THAN
14 THAT QUESTIONNAIRE WAS ANYTHING ELSE DONE TO MAKE A
15 DETERMINATION AS TO WHETHER OR NOT THIS DEFENDANT WAS A
16 SUITABLE CANDIDATE FOR THE POLYGRAPH?

17 A NO, THE ONLY THING WE DO IS GO THROUGH THE
18 QUESTIONNAIRE AND ASK IF THEY HAVE ANY MEDICAL PROBLEMS,
19 HAD HE BEEN TREATED BY A PSYCHIATRIST OR PSYCHOLOGIST FOR
20 ANYTHING, DETERMINE WHAT THEIR GRADE LEVEL IS, CAPABILITY
21 TO READ AND WRITE AND UNDERSTAND.

22 Q HAVE YOU EVER SAW, MET INDIVIDUALS OR HEARD
23 OF INDIVIDUALS IN YOUR AREA OF EXPERTISE, AGENT CHARLES,
24 THAT JUST DIDN'T PASS POLYGRAPHS, COULDN'T DO WELL ON THE
25 POLYGRAPH?

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

81

1 A NO.

2 Q YOU NEVER HAVE?

3 A NO.

4 Q WOULD YOU AGREE WITH ME THAT IF SOMEONE
5 FEELS AN EXCEPTIONAL AMOUNT OF ANXIETY WITH RESPECT TO A
6 PARTICULAR QUESTION OR EVENT RELATED TO THE CASE WHICH IS
7 THE SUBJECT OF THE POLYGRAPH THAT THAT FEELING CAN AFFECT
8 AND SPILL OVER INTO THE RESPONSES GIVEN TO OTHER QUESTIONS
9 IN THAT TEST?

10 A NO, MR. DIGGS, I DISAGREE WITH YOU ON THAT.

11 Q YOU DISAGREE WITH THAT?

12 A AND I, AND I HAVE A WAY TO EXPLAIN THAT.

13 Q ALL RIGHT, PLEASE DO.

14 A ALL RIGHT. WHAT WE DO IS WHEN WE GO
15 THROUGH THE PRETEST PORTION OF THE EXAMINATION WE TALK
16 ABOUT THE CASE. WE EXPLAIN TO THEM EXACTLY, WE GET THEIR
17 SIDE OF THE STORY BASICALLY, WHAT HAPPENED, TELL ME WHAT
18 HAPPENED, WHAT WAS YOUR ROLE, IF ANY. WE TALK ABOUT, WE
19 ASK WHAT WE CALL COMPARISON QUESTIONS TO, AND, AND THESE
20 ARE USED TO COMPARE RESPONSES TO THE RELEVANT ISSUE. THOSE
21 ARE NOT EVALUATED OTHER THAN TO USE AS A COMPARISON
22 RESPONSE VERSUS RESPONSE AGAINST THE RELEVANT ISSUE AND AS
23 AN EXAMPLE IF IT WAS A THEFT CASE WE WOULD ASK, THE
24 RELEVANT ISSUE MIGHT BE DID YOU STEAL THAT MONEY.

25 THE COMPARISON OR CONTROLLED QUESTION WOULD BE

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

82

1 BEFORE THIS YEAR DID YOU EVER STEAL ANYTHING IN YOUR LIFE
2 AND THE WAY THAT IS EXPLAINED IS LOOK THE KIND OF PERSON
3 WHO STOLE THIS MONEY PROBABLY THEY'VE STOLEN IN THE PAST
4 AND WE GET A COMMITMENT FROM THE PERSON THAT THEY'RE NOT
5 THAT KIND OF PERSON.

6 THE THEORY IS THAT IF THE PERSON STOLE THE MONEY
7 THEIR PSYCHOLOGICAL SET IS GOING TO GO TO THE QUESTION THAT
8 IS THE MOST THREATENING TO THEM. IF THEY DID NOT STEAL THE
9 MONEY THEY'RE GOING TO RESPOND TO QUESTIONS THAT HAVE TO DO
10 WITH PAST TRANSGRESSIONS THAT MIGHT LEAD US TO BELIEVE THAT
11 THEY STOLE THIS MONEY SO THAT'S WHAT WE CALL PSYCHOLOGICAL
12 SET. THE PERSON IS GOING TO RESPOND TO THE QUESTION THAT
13 IS THE MOST THREATENING AT THE TIME.

14 Q LET'S APPLY THAT TO R-4?

15 A OKAY.

16 Q LET'S ASSUME THAT THE DEFENDANT HAD LIED IN
17 THE PAST ABOUT KNOWING THE IDENTITY OF A SHOOTER IN ANOTHER
18 CASE WOULD THAT AFFECT HIS RESPONSE ON THIS QUESTION?

19 A NO, SIR, BECAUSE THE OTHER SHOOTERS NAME IS
20 NOT USED IN THAT QUESTION, MARK WILLARD'S IS.

21 Q NO, BUT IN THE CONTROLLED QUESTION?

22 A OKAY, I'M NOT SURE ---

23 Q YOU ASKED ---

24 A I'M NOT SURE I UNDERSTAND YOUR QUESTION.

25 Q YOU ASKED A CONTROLLED QUESTION ABOUT THAT

1 PARTICULAR SET OF CIRCUMSTANCES?

2 A I'M SURE.

3 Q DO YOU KNOW WHAT IT WAS?

4 A YES, SIR, BEFORE THE YEAR 2000 DID YOU EVER
5 TRY TO SERIOUSLY HURT OR HARM ANYONE.

6 Q AND WHAT WAS HIS RESPONSE?

7 A HE ANSWERED NO.

8 Q COULD YOU, DID YOU GET A READING ON THAT?

9 A WELL, YEAH, WE HAD TO BECAUSE WE HAD TO USE
10 THAT AS A COMPARISON TO THE RELEVANT QUESTION.

11 Q WHAT WAS THE, WHAT DID YOU DETERMINE ABOUT
12 THAT READING, COULD YOU, FOR EXAMPLE COULD YOU DETERMINE
13 WHETHER HE WAS BEING TRUTHFUL?

14 A NO, WE COULDN'T BECAUSE HE'D RESPONDED
15 GREATER TO THE RELEVANT ISSUE THAN HE DID THAT QUESTION SO
16 YOU DON'T, YOU DON'T EVALUATE THE COMPARISON QUESTIONS TO
17 DETERMINE IF THEY'RE, THEY'RE BEING TRUTHFUL ABOUT THAT.
18 YOU USE THE COMPARISON QUESTIONS AS, AS A BASE LINE SO TO
19 SPEAK AGAINST THE RELEVANT ISSUE.

20 IF THE RESPONSES TO THE COMPARISON QUESTIONS ARE
21 GREATER CONSISTENTLY ACROSS THE BOARD AND ON ALL THREE
22 CHARTS IT'S OBVIOUS TO US THAT HE'S BEING TRUTHFUL. HE'S
23 NOT SCARED OF THE ISSUE AT HAND. HE'S MORE CONCERNED ABOUT
24 PAST TRANSGRESSIONS, SO I CAN'T TELL YOU THAT, THAT, YOU
25 KNOW, HE SCORED 100 ON THAT QUESTION. WHAT I CAN TELL YOU

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

84

1 IS CONSISTENTLY THE QUESTIONS CONCERNING THE RELEVANT ISSUE
2 THE RESPONSES WERE GREATER NUMERICALLY THAN THEY WERE TO
3 THE QUESTIONS CONCERNING PAST TRANSGRESSIONS.

4 Q LET ME ASK ABOUT THAT SINCE YOU BRING THAT
5 UP TO HOW MUCH GREATER?

6 A YOU WANT, YOU WANT TO KNOW HOW WE SCORE THE
7 CHARTS?

8 Q YES?

9 A OKAY, WE SCORE THE CHARTS ON WHAT'S CALLED
10 A 7 POINT SCALE.

11 Q DID YOU BRING THE CHARTS WITH YOU?

12 A YEAH, HAVE THEM RIGHT HERE.

13 Q SHOW, SHOW US AND THE COURT, IF YOU WOULD,
14 THE CHARTS WHICH WERE USED IN THIS CASE, GENERATED IN THIS
15 CASE?

16 MR. DIGGS: YOUR HONOR, MAY I GO AROUND?

17 THE COURT: YES, SIR.

18 THE WITNESS: (CONTINUING)

19 A WHAT CAN I SHOW YOU?

20 Q ALL RIGHT, CAN YOU POINT OUT FOR US WHERE
21 THE RELEVANT QUESTIONS WERE ASKED ON THAT CHART?

22 A YES.

23 Q AND IF YOU WOULD, PLEASE SIR, DO THAT AND
24 SHOW US WHAT THE RESPONSE WAS?

25 A OKAY, EACH QUESTION THAT HAS A (C) BEHIND

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

85

1 IT IS A COMPARISON QUESTION; EACH QUESTION THAT HAS AN (R)
2 BEHIND IT IS A RELEVANT QUESTION. THE (X) HERE IS WHERE
3 THE TEST BEGAN AND THE (XX) AT THE END IS WHERE THE TEST
4 WAS OVER, THAT PARTICULAR CHART.

5 Q OKAY, SHOW US THE SECTION OF THE CHART THAT
6 DEALS WITH R-4?

7 A WELL THERE'S GOING TO BE THREE SEPARATE
8 ONES. THERE'S GOING TO BE ONE ON EACH CHART.

9 Q OKAY?

10 A ALL RIGHT, HERE'S THE FIRST CHART, R-4 IS
11 HERE.

12 Q NOW WHEN YOU SAY THE FIRST CHART WHICH
13 CHART IS THIS?

14 A THE FIRST GRADED CHART.

15 Q ALL RIGHT, WHAT ARE WE, WHAT ARE WE
16 GRADING?

17 A WE'RE LOOKING AT RESPONSES. THE TOP TWO
18 TRACINGS HERE ARE THE RESPIRATION. THE MIDDLE TRACING HERE
19 IS THE SWEAT GLAND ACTIVITY. THE BOTTOM TRACING HERE IS
20 THE CARDIOVASCULAR TRACING, BLOOD PRESSURE AND PULSE RATE.

21 Q ALL RIGHT, GO AHEAD AND SHOW ME WHERE R-4
22 WAS ASKED AND WHAT HIS RESPONSE WAS?

23 A THIS IS R-4. THE MINUS BEHIND EACH
24 QUESTION MEANS THAT HE ANSWERED, NO. YOU'LL SEE HERE IF
25 THERE WAS A YES ANSWER THERE WOULD BE A PLUS THERE.

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

86

1 Q SHOW ME, HOW DO YOU DETERMINE THAT THERE IS
2 DECEPTION SHOWN?

3 A OKAY. PROBABLY THE EASIEST ONE TO SEE IS
4 THE ELECTRODERMELER GSR, HERE.. THIS IS THE MIDDLE LINE,
5 OKAY, YOU CAN SEE HERE THE RESPONSE AT QUESTION 3 AND THE
6 RESPONSE AT QUESTION 4 HOW MUCH LARGER THAT IS. IT'S, IT'S
7 THREE TIMES BIGGER, OKAY. YOU CAN SEE THAT ---

8 Q WHY WOULD YOU SAY THREE TIMES BIGGER?

9 A WELL COUNT THE CHARTS.

10 Q WHAT ARE WE ---

11 A COUNT THE CHART DIVISIONS.

12 Q WHAT ARE WE MEASURING HERE?

13 A WE'RE MEASURING, WE'RE RECORDING REACTION.

14 Q GO BACK TO CONTROLLED QUESTION?

15 A UH-HUH.

16 Q WHAT IS THE, WHAT'S THE BASELINE THERE THAT
17 YOU'RE USING?

18 A THERE IS NO BASELINE, I MEAN HE STARTS, HE
19 STARTS HERE.

20 Q WHAT DO YOU, WHAT IS THE SCORE WITH THE
21 CONTROLLED QUESTION?

22 A THERE IS NO SCORE.

23 Q WELL I'M SORRY, YOU SAID IT WAS THREE TIMES
24 GREATER, GREATER THAN WHAT?

25 A ALL RIGHT, OKAY.

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

87

1 Q LET ME ASK IT THAT WAY?

2 A ALL RIGHT, SEE THE CHART DIVISIONS HERE,
3 THE SECTIONS, 1, 2, 3, 4, 1, 2, 3, 4, 5, 6, 7, 8, 9, OKAY,
4 TWO AND A HALF TIMES.

5 Q WELL LET ME ASK YOU THIS, WHAT IS ONE STEP,
6 WHAT DIFFERENTIATES THE ONE STEP TO THE NEXT TWO THINGS?

7 A I DON'T UNDERSTAND THE QUESTION?

8 Q ALL RIGHT, WHAT'S THE DIFFERENCE?

9 A WELL ---

10 Q IS THERE A SIGNIFICANT DIFFERENCE ---

11 A SURE.

12 Q --- BETWEEN ONE LINE AND THE NEXT?

13 A SURE, HE RESPONDED TWO AND A HALF TIMES
14 GREATER TO THAT REACTION THERE.

15 Q TWO AND A HALF TIMES WHAT?

16 A CHART POSITIONS.

17 Q DO YOU SEE WHAT I'M SAYING?

18 A NO, I CERTAINLY DON'T. I DON'T SEE WHAT
19 YOU'RE SAYING.

20 Q YOU'RE LOOKING AT GRAPH, GRAPH PAPER ---

21 A DO YOU SEE THESE ---

22 Q THESE ---

23 A ALL RIGHT, DO YOU SEE ---

24 THE COURT: ALL RIGHT, GENTLEMEN, GENTLEMEN,

25 STOP, STOP, YOU'RE TALKING ON TOP OF EACH OTHER, ALL RIGHT.

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

88

1 MR. DIGGS, I THINK IT WOULD BE HELPFUL IF YOU MOVED BACK
2 DOWN AND STOOD IN FRONT OF THAT MICROPHONE RIGHT THERE,
3 PLEASE SIR, ALL RIGHT. YOU ASK THE QUESTION AND YOU STOP
4 AND ALLOW THE WITNESS TO ANSWER FULLY AND COMPLETELY. WHEN
5 THE WITNESS IS, WITNESS STOPS THEN ASK ANOTHER QUESTION,
6 ALL RIGHT, GO AHEAD.

7 Q WHEN YOU LOOK AT THE CONTROLLED QUESTION
8 THERE AND YOU'RE LOOKING AT A SCORING LEVEL ---

9 A RIGHT.

10 Q --- CHART, WHAT I'M TRYING TO GET AT IS
11 WHAT IS INDICATED BY THAT LEVEL, WHAT ARE WE MEASURING?

12 A OKAY, WHAT WE'RE LOOKING AT IS THE SEVERITY
13 OR DEGREE OF A REACTION, OKAY. IF THE REACTION IS LARGER
14 TO THE RELEVANT ISSUE, OKAY, THAT, THAT INDICATES DECEPTION
15 TO US. THAT'S WHERE HE RESPONDED THE GREATEST AS TO THE
16 RELEVANT ISSUE AND THE -- WHAT YOU WERE LOOKING I THINK,
17 AND I'M NOT TRYING TO DODGE YOUR QUESTION I'M JUST TRYING
18 TO UNDERSTAND IT, THE EASIEST WAY TO LOOK AT IT IS THE
19 NUMBER OF DIVISIONS THAT IT GOES UP, OKAY.

20 ON THIS PARTICULAR QUESTION THAT YOU ASKED ME
21 ABOUT HIS RESPONSE WAS ABOUT TWO AND A HALF TIMES GREATER
22 TO THE RELEVANT ISSUE THAN IT WAS TO THE COMPARISON ISSUE
23 WHICH INDICATES THAT HIS BIGGEST FEAR WAS THAT QUESTION
24 THERE, OKAY, WHICH IS AN INDICATION OF DECEPTION. THE SAME
25 THING OCCURRED THROUGHOUT ---

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

89

1 Q ALL RIGHT, I THINK MY QUESTION ---

2 A --- THE EXAMINATION.

3 Q --- ALSO GOES TO, AGENT CHARLES, HOW THAT
4 PARTICULAR MACHINE WAS CALIBRATED WHAT WE'RE LOOKING AT
5 HERE. WOULD YOU AGREE WITH ME A MACHINE CAN BE CALIBRATED
6 IN A WAY SO THAT THE SAME RESPONSE MIGHT SHOW DIFFERENTLY
7 DEPENDING ON HOW IT WAS ---

8 A ABSOLUTELY NOT, ABSOLUTELY NOT BECAUSE ---

9 Q --- SET?

10 A OKAY, THE COMPUTER SOFTWARE CALIBRATES IT,
11 OKAY. THAT ELIMINATES ANY SUBJECTIVITY ON THE EXAMINERS
12 PART, SO THAT COMPUTER SOFTWARE TAKES CARE OF THAT. YOU
13 CANNOT CHANGE, ANY TIME YOU MAKE A CHANGE TO A SENSITIVITY
14 ON THAT IT'S NOTED, OKAY, ON HERE. ALSO THE COMPUTER WILL
15 NOT ALLOW YOU TO, TO MESS WITH THOSE KINDS OF THINGS.

16 Q NO, I'M NOT ---

17 A YOU CAN'T DO THAT.

18 Q AND I'M NOT ASKING YOU ABOUT WHETHER OR NOT
19 IT WAS MESSED WITH.

20 A OKAY, I'M SORRY.

21 Q I'M TRYING TO GET A ---

22 A I MISUNDERSTOOD YOU.

23 Q IS THERE A STANDARD OF DEVIATION HERE OR
24 VARIATION FROM ONE TEST TO THE NEXT SO THAT WE KNOW IN THIS
25 TEST WE'VE GOT THIS TYPE OF DEVIATION AND THAT'S WHAT IS

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

90

1 TYPICALLY SHOWN ON EVERY OTHER TEST THAT'S DONE ---

2 A ARE YOU TALKING ABOUT OTHER TESTS BESIDES -

3 -

4 Q --- TO TEST DECEPTION? YES?

5 A NO, NO, YOU CAN'T COMPARE. I CAN'T COMPARE

6 A TEST I RAN ON YOU VERSUS A TEST -- THE ONLY PERSON YOU'RE

7 BEING COMPARED AGAINST IS THE PERSON WHO'S TAKEN THE TEST.

8 YOU'RE NOT COMPARED AGAINST ANYBODY ELSE.

9 Q WELL IN THIS CASE WE'RE LOOKING AT TWO AND
10 HALF, DID YOU SAY TWO AND HALF TO THREE TIMES --

11 A RIGHT.

12 Q VARIATION?

13 A SURE.

14 Q IS THAT SOMETHING, THAT'S SOMETHING WE CAN
15 CERTAINLY LOOK AT ON OTHER TESTS, IS IT NOT, TO SEE IF
16 THERE'S A, TWO, TWO TO THREE TIMES?

17 A UH-UH, NO, BECAUSE IF IT'S ONE ---

18 Q WHY IS THAT?

19 A BECAUSE IF IT'S ONE DIVISION, ONE SMALL
20 CHART DIVISION BIGGER ON ONE THAN IT IS THE OTHER WE'RE
21 ALLOWED TO LOOK AT THAT.

22 Q OKAY?

23 A SO HIS WAS TWO AND A HALF TIMES BIGGER SO
24 IT'S CERTAINLY ---

25 Q SO, LET ME, LET ME ASK YOU THIS ---

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

91

- 1 A --- AN EVALUATOR.
- 2 Q --- HOW MANY TESTS DID YOU RUN ON DAVID
- 3 WILLS?
- 4 A EXPLAIN WHAT YOU MEAN BY TEST. WE RAN ONE
- 5 EXAMINATION, WE CONDUCTED THREE CHARTS.
- 6 Q YOU DID ONE, ONE SPECIFICALLY?
- 7 A YES.
- 8 Q OKAY, HOW DO YOU KNOW, DID HE SHOW
- 9 DECEPTION ON EVERY THREE, EACH OF THE THREE?
- 10 A YES, HE DID.
- 11 Q ALL RIGHT, IF YOU CAN'T COMPARE ONE TEST TO
- 12 ANOTHER HOW DO YOU KNOW THIS IS NOT THE WAY HE WOULD DO
- 13 TYPICALLY EVERY TIME THE TEST WAS DONE EVEN IF HE WERE
- 14 TELLING THE TRUTH?
- 15 A I DON'T UNDERSTAND THAT QUESTION AT ALL.
- 16 Q LET ME ASK YOU THIS. YOU KNEW AT THAT
- 17 TIME, OR LET ME, MAYBE YOU DIDN'T, DID YOU KNOW WHETHER OR
- 18 NOT AT THAT TIME MR. WILLS HAD BEEN CHARGED WITH MURDER?
- 19 A I DON'T REMEMBER, I DON'T REMEMBER. I DO
- 20 REMEMBER THAT THERE WAS A PROFFER AND THIS REQUEST TO
- 21 CONDUCT THE EXAMINATION WAS A RESULT OF THAT PROFFER BUT I
- 22 DO NOT REMEMBER ---
- 23 Q DID YOU READ THE PROFFER?
- 24 A I'M SORRY?
- 25 Q DID YOU READ THE PROFFER?

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

92

1 A NO, ALL I READ WAS HIS STATEMENT.

2 Q OKAY, DID YOU KNOW THAT ULTIMATELY HE COULD
3 BE CHARGED WITH MURDER IN THIS CASE?

4 A I DON'T REMEMBER.

5 Q WOULD YOU AGREE WITH ME THAT OF THE THREE
6 RESPIRATION, YOU SAID HEARTBEAT AND SKIN --

7 A YEAH, SKIN RESPONSE, GALVONIC SKIN
8 RESPONSE.

9 Q IS THERE A INDICATION ON YOUR CHART THAT
10 WOULD SHOW SOMETHING THAT WAS NEAR AUTONOMIC IN RESPONSE,
11 SOMETHING THAT WOULD BE IMPOSSIBLE TO FAKE; DO YOU KNOW
12 WHAT I'M TALKING ABOUT?

13 A YOU'RE TALKING ABOUT COUNTERMEASURES IS
14 WHAT YOU'RE TALKING ABOUT.

15 Q TELL US ABOUT THAT.

16 A SOMETIMES PEOPLE ATTEMPT TO USE WHAT WE
17 CALL PHYSICAL COUNTERMEASURES IN AN ATTEMPT TO DEFEAT THE
18 TEST. IT CAN BE SOMETHING LIKE CONTROLLING YOUR BREATHING,
19 MOVEMENTS, CURLING UP YOUR TOES IN YOUR SHOES, BITING YOUR
20 TONGUE, THOSE KINDS OF THINGS THAT SOMETIMES PEOPLE TRY.

21 Q WAS THERE ANYTHING NOTED IN THE CHARTS HERE
22 THAT SHOWED DECEPTION THAT WOULD BE POSSIBLE TO
23 MISREPRESENT HIM?

24 A ARE YOU ASKING DID HE ATTEMPT TO USE ANY
25 COUNTERMEASURES IN THIS EXAMINATION, IS THAT THE QUESTION?

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

93

1 Q LET ME, YEAH, GO AHEAD AND ANSWER THAT, IF
2 YOU WOULD?

3 A OKAY, NO, NO.

4 Q TYPICALLY WHEN YOU DO A TEST, AGENT
5 CHARLES, IF YOU GET DECEPTION AS YOU TESTIFIED TO IN THIS
6 CASE DO YOU EVER FOLLOW IT UP AGAIN FOR A SECOND INTERVIEW
7 TO SEE WHAT ---

8 A DEFINE INTERVIEW?

9 Q ANOTHER SITTING.

10 A ANOTHER POLYGRAPH?

11 Q GO BACK ON ANOTHER DAY AND REDO THE TEST?

12 A IF YOU DIDN'T BELIEVE MY FIRST TEST WHY
13 WOULD YOU BELIEVE MY SECOND ONE.

14 Q ALL RIGHT, HAVE YOU EVER DONE THAT?

15 A ONLY IN AN INCONCLUSIVE. IF WE, IF WE HAD
16 WHAT WE CALL IS AN INCONCLUSIVE WE MIGHT BE ASKED TO
17 ATTEMPT ANOTHER TEST IN AN ATTEMPT TO DETERMINE WHETHER A
18 PERSON WAS BEING TRUTHFUL OR NOT.

19 Q YOUR TESTIMONY IS THAT HE CAN, YOU COULD
20 ASK FOUR QUESTIONS AS YOU DID HERE?

21 A WE DON'T LIKE TO ASK ANY MORE THAN FOUR
22 RELEVANT QUESTIONS, THAT'S CORRECT.

23 Q ARE THERE OTHER EXPERTS THAT SAY FOUR ARE
24 TOO MANY?

25 A NOT TO MY KNOWLEDGE.

AGENT CHARLES - CROSS EXAM. IN CAMERA BY MR. DIGGS

94

1 Q NOT TO YOUR KNOWLEDGE. YOU AREN'T AWARE OF
2 ANY EXPERTS THAT SAY THAT ONE QUESTION AND CERTAINLY NOT
3 MORE THAN TWO?

4 A I'M SURE THERE PROBABLY ARE BUT WE DON'T
5 ADHERE TO THAT.

6 MR. DIGGS: YOUR HONOR, WE MOVE TO INTRODUCE THE
7 CHARTS INTO EVIDENCE AS A PART OF THE RECORD.

8 MR. RICHARDSON: WITHOUT OBJECTION.

9 THE COURT: ALL RIGHT, WE'RE GOING TO MAKE
10 COPIES OF THESE OR --

11 MR. DIGGS: YOUR HONOR, I DON'T KNOW HOW THEY
12 COULD BE COPIED.

13 THE COURT: OKAY, ALL RIGHT, GO AHEAD AND HAVE
14 THEM MARKED.

15 MR. RICHARDSON: YOUR HONOR, WE CAN ENTER THE
16 ORIGINALS.

17 THE COURT: ALL RIGHT, GO AHEAD AND HAVE THEM
18 MARKED. SOLICITOR, CAN YOU HELP THE WITNESS, PLEASE?

19 MR. RICHARDSON: SORRY, YOUR HONOR, I WAS TRYING
20 TO LOOK AT A QUESTION.

21 THE COURT: THAT'S ALL RIGHT.

22 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER 3 MARKED
23 FOR IDENTIFICATION.)

24 THE COURT: ALL RIGHT, ANY FURTHER QUESTIONS AT
25 THIS POINT IN TIME, MR. DIGGS?

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON 95

1 MR. DIGGS: NOT OF THIS WITNESS.

2 THE COURT: ALL RIGHT, SIR. ANY REDIRECT,
3 SOLICITOR?

4 MR. RICHARDSON: JUST TWO QUESTIONS.

5 REDIRECT EXAMINATION

6 BY MR. RICHARDSON:

7 Q AGENT CHARLES, YOU SAID THAT YA'LL DO HAVE
8 QUALITY CONTROL TO CONTROL ON THE IRRELEVANT QUESTIONS,
9 CORRECT, QUALITY CONTROL WITH REGARD TO SLED'S CALLIGRAPHY
10 STANDARDS?

11 A EVERY TEST THAT WE RUN IS QUALITY
12 CONTROLLED BY A SUPERVISOR EXAMINER, YES, THAT'S CORRECT.

13 Q MR. DIGGS JUST ASKED ABOUT HIS POLYGRAPH
14 100 PERCENT RELIABLE, YOU'VE GIVEN US SOME REASONS WHY IT
15 MIGHT BE UNRELIABLE?

16 A RIGHT.

17 Q YA'LL DO EVERYTHING THAT YOU CAN TO ENSURE
18 RELIABILITY?

19 A THAT'S, THAT'S WHY WE HAVE, THAT'S WHY WE
20 RUN MORE THAN ONE CHART AND THAT'S WHY WE HAVE MORE THAN
21 ONE EXAMINER WHO REVIEWS THE CHARTS.

22 Q AND I DON'T KNOW YOU AND MR. DIGGS WERE
23 TALKING I BELIEVE YOU WERE TRYING TO SAY THAT WHAT YOU
24 ACTUALLY MEASURE IS THE REACTION OF SOMEONE TO A QUESTION?

25 A THAT'S RIGHT, THE QUESTION ITSELF IS WHAT

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON 96

1 WE CALL A STIMULUS AND WHEN THEY ANSWER THE QUESTION THE
2 ANSWER IS NOTED AND WE LOOK AT THE RESPONSE TO THAT ANSWER.

3 Q SO A QUESTION LIKE, HAVE YOU EVER BEAT UP
4 SOMEONE BEFORE AND THEY ANSWERED, NO, YOU'RE NOT THAT
5 WORRIED ABOUT IT THAT'S GOING TO BE KIND OF LOW? AND THEN,
6 DID YOU BEAT UP JOHN DOE ON SEPTEMBER 12TH, 1942, IF
7 THEY'RE WORRIED ABOUT THAT QUESTION THAT'S GOING TO SPIKE
8 IT?

9 A THE REACTION WILL, THEY WILL RESPOND TO THE
10 REACTION THAT CAUSES THEM THE GREATEST FEAR, THAT'S
11 CORRECT.

12 Q OKAY, SO THE GREATEST FEAR OF MR. WILLS BY
13 YOUR EXAMINATION IS, DID YOU SHOOT JULIAN LEE?

14 A THAT WAS ONE OF THEM, YES, SIR.

15 Q AND DID YOU LIE DURING YOUR PROFFER
16 STATEMENT BASICALLY, PARAPHRASED?

17 A THAT'S CORRECT.

18 MR. RICHARDSON: THANK YOU.

19 THE COURT: ALL RIGHT, LET ME ASK A QUESTION SO
20 THAT I UNDERSTAND IT. YOU'VE GOT THREE CHARTS. WAS ONE OF
21 THEM GRADED BY SERGEANT DUFF, YOU DID ONE AND THEN THE
22 OTHER SUPERVISOR DID ONE, IS THAT WHAT HAPPENED?

23 A NO, SIR, WHAT HAPPENED --

24 THE COURT: ALL RIGHT, TELL ME WHAT HAPPENED?

25 THE WITNESS: (CONTINUING)

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON 97

1 A WHAT HAPPENS IS MS. DUFF IS THE FIRST ONE
2 TO REVIEW THE CHARTS, TO ANALYZE THE CHARTS AND RENDER AN
3 OPINION, OKAY. THE NEXT EXAMINER WHICH WAS ME REVIEWS
4 THOSE CHARTS, ALL THREE, INDEPENDENTLY OF WHAT, I DIDN'T
5 KNOW WHAT MS. DUFF HER OPINION WAS, OKAY. WE DO THAT ON
6 PURPOSE. WE DON'T WANT ONE EXAMINER TRYING TO SWAY ANOTHER
7 ONE. I REVIEW THE CHARTS INDEPENDENTLY OF HER, RENDERED AN
8 OPINION.

9 THE COURT: OKAY.

10 A THE CHARTS WERE THEN TAKEN TO SLED
11 HEADQUARTERS IN COLUMBIA REVIEWED BY A SUPERVISOR EXAMINER
12 WHO KNEW NEITHER OF OUR OUTCOMES AND HE EVALUATED THE
13 CHARTS INDEPENDENTLY OF MYSELF AND SERGEANT DUFF.

14 THE COURT: ALL RIGHT, THOSE OUTCOMES, THE ONE
15 BY MS. DUFF, THE ONE BY YOU AND ONE BY THAT OTHER
16 SUPERVISOR?

17 A YES, SIR.

18 THE COURT: WERE THOSE OUTCOMES REDUCED TO
19 WRITING?

20 A YES, SIR, I HAVE A SCORE SHEET.

21 THE COURT: FOR EACH ONE OF YOU?

22 A YES, SIR.

23 THE COURT: ALL RIGHT, AND YOU HAVE THAT WITH
24 YOU?

25 A YES, SIR.

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON 98

1 THE COURT: ALL RIGHT, AND, ALL RIGHT. THEN I
2 WANT US TO MARK COPIES OF THOSE THEN.

3 MR. RICHARDSON: YES, SIR, YOUR HONOR.

4 MR. DIGGS: YOUR HONOR, I DON'T HAVE THEM AND
5 I'D LIKE LOOK AT THEM

6 THE COURT: WELL THAT'S FINE, I'M GOING TO GIVE
7 YA'LL THE OPPORTUNITY TO ASK SOME QUESTIONS AFTER, AFTER
8 I'M DONE CAUSE YA'LL ARE GOING TO HAVE TO HAVE HIM IDENTIFY
9 WHO'S WHO AND THEN ASK SOME QUESTIONS ABOUT EACH ONE OF
10 THEM. LET'S GO MAKE SOME, CAN YOU MAKE SOME COPIES RIGHT
11 NOW, MA'AM?

12 MADAM CLERK: YES, SIR.

13 THE COURT: OKAY, JUST ONE COPY OF EACH ONE OF
14 THEM.

15 MR. RICHARDSON: YOUR HONOR, AGENT CHARLES HAS
16 INDICATED WE CAN KEEP, THAT THESE BE MADE PART OF THE
17 COURT'S.

18 THE COURT: ALL RIGHT, THAT'S FINE THEN, ALL
19 RIGHT.

20 MR. RICHARDSON: IF MR. DIGGS NEEDS COPIES ---

21 THE COURT: NO, I MEAN HE CAN LOOK AT THE
22 ORIGINALS. YOU CAN GET COPIES LATER. LET'S MOVE THIS
23 ALONG THEN IF WE CAN. ALL RIGHT, HAVE THE COURT REPORTER
24 MARK THEM NOW. NO, STATE'S EXHIBITS.

25 MR. RICHARDSON: STATE'S EXHIBITS.

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON 99

1 THE COURT: JUST MARK ALL THREE OF THEM AND THEN
2 YOU CAN HAVE THIS WITNESS IDENTIFY WHO'S WHO AND WHAT THEY
3 SAY.

4 (WHEREUPON, STATE'S EXHIBITS NUMBERS 4, 5, AND 6
5 MARKED FOR IDENTIFICATION.)

6 MR. RICHARDSON: THANK YOU, MA'AM.

7 THE COURT: ALL RIGHT, AND BEFORE YOU, BEFORE
8 YOU START, REGARDING THESE THREE AGENT, AGENT, DID EACH OF
9 YOU MAKE YOUR OWN DETERMINATION AS TO WHETHER OR NOT MR.
10 WILLS HERE WAS TRUTHFUL OR DECEPTIVE ON EACH ONE OF THESE
11 FOUR QUESTIONS? YOU'VE GOT THEM AS 4, 6, 8 AND 10, DID
12 EACH OF YOU DO THAT?

13 A YES, SIR, INDEPENDENTLY.

14 THE COURT: AND THAT'S INDICATED ON THOSE
15 REPORTS?

16 A THAT'S CORRECT, YOUR HONOR.

17 THE COURT: ALL RIGHT, SOLICITOR, HAVE HIM
18 IDENTIFY WHO'S WHO AND WHAT THOSE REPORTS SAY AS TO THOSE
19 FOUR QUESTIONS?

20 Q AGENT CHARLES, AT THIS TIME I'M HANDING YOU
21 WHAT'S BEEN PREVIOUSLY MARKED AS STATE'S EXHIBIT 4, 5, AND
22 6. IF YOU COULD JUST TELL US WHAT THOSE ARE, SPECIFICALLY
23 WHOSE REPORTS THEY ARE?

24 A EXHIBIT 4 IS A NUMERICAL ANALYSIS FORM THAT
25 WAS FILLED OUT BY SERGEANT DUFF.

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON100

1 STATE'S EXHIBIT 5 IS A QUALITY ASSURANCE
2 EVALUATION FORM THAT WAS COMPLETED BY ME.

3 AND STATE'S EXHIBIT 6 IS A QUALITY ASSURANCE
4 EVALUATION FORM THAT WAS COMPLETED BY LIEUTENANT DENNIS
5 COGGINS AT SLED HEADQUARTERS.

6 Q AND WHAT WAS THE PURPOSE OF THESE CHARTS?
7 WHAT IS THE PURPOSE OF THESE CHARTS? WHAT DO THEY, WHAT DO
8 THEY INTEND TO SHOW?

9 A THE PURPOSE OF THE SCORE SHEETS, NUMBER
10 ONE, IS TO EVALUATE NUMERICALLY THE QUESTIONS ON THE CHARTS
11 AND WHAT THEY INDICATE IS THAT EACH EXAMINER DETERMINED
12 THAT THE EXAMINEE WAS DECEPTIVE CONCERNING THE RELEVANT
13 ISSUES THAT WERE TESTED.

14 Q AND I BELIEVE I SEE AT THE TOP, I SEE 4, 5,
15 4, 6, 8 AND 10, IS THAT THE ---

16 A THOSE ARE THE RELEVANT QUESTIONS THAT WERE
17 ASKED, CORRECT.

18 Q QUESTIONS THAT CAN BE FOUND ON --

19 A ON THE, ON THE POLYGRAPH REPORT, CORRECT.

20 Q AND AT THE BOTTOM IS THE SUBTOTALS?

21 A THAT'S CORRECT.

22 Q YOU HAVE SOME CHARTS, I SEE 1, BUT 2, 3 AND
23 4 ACTUALLY HAVE NUMERICAL?

24 A RIGHT.

25 Q ESTIMATIONS AND WHAT, WHAT, WHAT DO, LOOKS

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON101

1 LIKE THEY'RE A BUNCH OF NEGATIVE NUMBERS. WHAT DO THOSE
2 NEGATIVE NUMBERS TELL US?

3 A OKAY, WELL LET ME BACK UP AND EXPLAIN THE
4 SCORING SYSTEM. WE USE WHAT IS CALLED A 7 POINT SCALE THAT
5 GOES FROM PLUS 3 TO MINUS 3 AND 0 IS IN THE MIDDLE. IN
6 ORDER TO CALL A PERSON DECEPTIVE WE NEED A CALL OF MINUS 3
7 OR LESS ON THE NEGATIVE SIDE. IN ORDER TO DETERMINE OR
8 CALL A PERSON NON DECEPTIVE WE NEED A SCORE OF PLUS 3 OR
9 GREATER. ANYTHING IN BETWEEN PLUS 3 AND MINUS 3 WOULD BE
10 INCONCLUSIVE AND WE DO THAT PURPOSELY.

11 WE BUILD IN A LARGE INCONCLUSIVE AREA BECAUSE WE
12 WANT TO SAY DEFINITELY THAT A PERSON IS BEING TRUTHFUL OR
13 NOT AND WE DON'T WANT JUST TO GRADE IT ON A PLUS 1 OR A
14 MINUS 1.

15 Q SO YOU WANT TO BE FAIR?

16 A YES.

17 Q AND WHEN YOU SAY YOU HAVE A PLUS 3 OR A
18 NEGATIVE 3 IS THAT THE FINAL NUMBER WE'RE LOOKING FOR?

19 A THAT IS, THAT IS THE TOTAL. WE DON'T JUST
20 RUN ONE CHART AND EVALUATE ONE CHART. BASICALLY THE PERSON
21 GETS THREE CHANCES TO GET IT RIGHT. WE ASK THE SAME
22 QUESTIONS THREE SEPARATE TIMES AND THEN THE TOTAL OF THOSE
23 THREE CHARTS, THE SCORES OF EACH CHART ARE TOTALLED UP.

24 Q FOR EXAMPLE, THE DEFENDANT WAS ASKED IF HE
25 SHOT JULIAN LEE THREE SEPARATE TIMES?

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON102

1 A THAT'S CORRECT.

2 Q THE SAME THING WITH THE OTHER RELEVANT
3 QUESTION ---

4 A THAT'S CORRECT, EVERY ---

5 Q -- AND MARK WILLARD?

6 A EVERY QUESTION, EVERY RELEVANT QUESTION WAS
7 ASKED THREE TIMES.

8 Q AND THEN YOU ADD UP THE TOTAL?

9 A CORRECT.

10 Q THAT'S WHERE YOU GET THE NEGATIVE NUMBERS?

11 A THAT'S CORRECT.

12 Q OKAY, WITH REGARD TO QUESTION, LET'S SEE
13 QUESTION 4 I BELIEVE THAT WAS ---

14 THE COURT: YOU'RE REFERRING BACK TO STATE'S
15 EXHIBIT 16, CORRECT?

16 MR. RICHARDSON: YES, SIR, AT THE POLYGRAPH 4.

17 THE COURT: ALL RIGHT.

18 MR. RICHARDSON: (CONTINUING)

19 Q REFER BACK TO STATE'S EXHIBIT 16 I BELIEVE
20 THE QUESTION R-4 WAS, ARE YOU LYING ABOUT MARK WILLARD
21 SHOOTING JULIAN LEE IN THAT FIELD, WHAT WAS THE SCORE ON
22 SGT. DUFF'S?

23 A MINUS 6.

24 Q WHAT WAS THE SCORE ON YOUR CHART?

25 A MINUS 5.

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON103

1 Q AND HOW ABOUT LIEUTENANT COGGINS?

2 A MINUS 2.

3 Q MINUS 2, SO BETWEEN YOU AND SERGEANT DUFF
4 YOU CAME UP WITH DEFINITELY WHAT WOULD BE CONSTRUED AS A
5 DECEPTIVE NUMBER?

6 A THAT'S CORRECT.

7 Q WHAT ABOUT R-6, DID YOU SHOOT JULIAN LEE,
8 EXAMINEE'S RESPONSE NO. WHAT WAS THE SCORE ON SERGEANT
9 DUFF'S?

10 A MINUS 5.

11 Q MINUS 5, HOW ABOUT ON YOURS?

12 A MINUS 5.

13 Q MINUS 5, HOW ABOUT ON LIEUTENANT COGGINS?

14 A MINUS 6.

15 Q MINUS 6, SO ON THREE REPORTS DECEPTION
16 NOTED ON THAT?

17 A THAT'S CORRECT.

18 Q REMAINING QUESTION, ARE YOU LYING ABOUT
19 DONNELL GREEN THROWING A GUN, THROWING THAT GUN USED IN THE
20 SHOOTING IN THE WATER, EXAMINEE'S RESPONSE NO, WHAT WAS THE
21 SCORE THAT SGT. DUFF?

22 A THAT WAS, THAT WAS RELEVANT QUESTION 8?

23 Q RELEVANT QUESTION 8?

24 A OKAY, MINUS 3 FOR MS. DUFF.

25 Q MINUS 3, YOURSELF?

AGENT CHARLES - REDIR. EXAM. IN CAMERA BY MR. RICHARDSON104

1 A MINUS 1.

2 Q MINUS 1, AND FOR LT. COGGINS?

3 A MINUS 2.

4 Q MINUS 2, AND FINALLY DID YOU LIE ABOUT,
5 QUESTION R-10, DID YOU LIE ABOUT BEING PAID BY THE JOHNSON
6 BROTHERS TO SHOOT JULIAN LEE, EXAMINEE'S RESPONSE NO, WHAT
7 WAS SERGEANT DUFF'S SCORE?

8 A MINUS 1.

9 Q MINUS 1, HOW ABOUT YOURS?

10 A ZERO.

11 Q ZERO, AND HOW ABOUT LT. COGGINS?

12 A ZERO.

13 Q ZERO, SO INCONCLUSIVE ON THAT?

14 A THAT'S CORRECT.

15 Q AND INCONCLUSIVE REALLY ON R-8?

16 A THAT'S CORRECT.

17 Q BUT DECEPTION NOTED BY THE TWO OF YOU ON
18 QUESTION R-4?

19 A YES.

20 Q DECEPTION NOTED BY ALL THREE OF YOU ON
21 QUESTION R-6?

22 A CORRECT.

23 Q AND ONCE AGAIN THESE SCORES YOUR OPINION
24 WOULD INDICATE THAT HE WAS NOT BEING TRUTHFUL IN HIS
25 PROFFERED STATEMENT?

AGENT CHARLES - RECROSS EXAM. IN CAMERA BY MR. DIGGS 105

1 A NO DOUBT ABOUT IT.

2 MR. RICHARDSON: THANK YOU.

3 THE COURT: AND ONE FINAL QUESTION BEFORE I
4 ALLOW YOU TO EXAMINE HIM AGAIN, MR. DIGGS. YOU'VE BEEN
5 QUALIFIED AS AN EXPERT, QUALIFIED TO GIVE YOUR OPINION IN
6 THIS MATTER. AS I UNDERSTAND YOUR OPINION IS THAT THE
7 DEFENDANT MR. WILLS WAS DECEPTIVE IN HIS RESPONSES TO THE
8 RELEVANT QUESTIONS, THAT'S YOUR OPINION?

9 A THAT'S CORRECT, YOUR HONOR.

10 THE COURT: ALL RIGHT, SIR, AND YOU USED, IN
11 COMING UP WITH YOUR OPINION YOU REVIEWED ALL OF THIS
12 INFORMATION, YOUR RESULTS, SGT. DUFF'S RESULTS, THE
13 INDIVIDUAL FROM SLED HEADQUARTERS, YOU USED ALL OF THAT TO
14 COME UP WITH YOUR OPINION; IS THAT CORRECT?

15 A THAT'S CORRECT, SIR.

16 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.
17 MR. DIGGS?

18 RECROSS EXAMINATION

19 BY MR. DIGGS:

20 Q ALL RIGHT, HOW DO YOU GET DIFFERENT SCORES
21 EACH, YOU KNOW, THE THREE OF YOU?

22 A UH-HUH, YOU MEAN HOW ARE THEY, WHY ARE THEY

23 --

24 Q WHY IS IT, WHY CAN THEY DIFFER?

25 A BECAUSE ONE EXAMINER MAY SEE SOMETHING THAT

AGENT CHARLES - RECROSS EXAM. IN CAMERA BY MR. DIGGS 106

1 ANOTHER EXAMINER DOESN'T. ONE EXAMINER MAY SAY, WELL I
2 DON'T THINK THAT'S QUITE THERE, IT'S ALMOST THERE, I'M NOT
3 GOING TO CALL THAT ONE, I'M NOT GOING TO GIVE IT AS HIGH A
4 POINT OR, OR AS MUCH WEIGHT, BUT THAT'S WHY WE HAVE QUALITY
5 CONTROL

6 Q ALL RIGHT, SO WOULD YOU SAY, WELL ONE
7 EXAMINER GAVE HIM A MINUS 6, ANOTHER A MINUS 5 AND ANOTHER
8 MINUS 6 ON THAT RELEVANT QUESTION REGARDING THE SHOOTING?

9 A OKAY.

10 Q IT WAS STILL A, YOU WERE USING A JUDGMENT,
11 EXERCISING A JUDGMENT BASED ON WHAT YOU WERE SEEING IN THE
12 CHARTS?

13 A I'M NOT, I'M NOT QUITE SURE I UNDERSTAND
14 YOUR QUESTION.

15 Q YOU'RE EXERCISING JUDGMENT? IN OTHER WORDS
16 SOMEONE MIGHT SEE IT, SOMEONE MAY NOT SEE IT?

17 A RIGHT.

18 Q THAT'S WHY THERE'S A VARIANCE IN THE SCALE?

19 A SURE, SURE.

20 Q NOW IS THERE ANYTHING THAT, I ASKED YOU
21 THIS EARLIER AND I WANT TO MAKE SURE THAT WE'VE COVERED IT.
22 IS THERE ANYTHING TO YOUR KNOWLEDGE THAT COULD INFLUENCE AN
23 INDIVIDUALS RESPONSE TO ASSIST OR TO SHOW DECEPTION WHEN NO
24 DECEPTION WAS ACTUALLY INTENDED BY THE SUBJECT?

25 A THE ONLY, THE ONLY QUESTION, THE ONLY TIME

AGENT CHARLES - RECROSS EXAM. IN CAMERA BY MR. DIGGS 107

1 I CAN THINK OF SOMETHING LIKE THAT IS IF AGAIN IF YOU ASK
2 THE WRONG QUESTION OR IF THERE'S SORT, SOME SORT OF MENTAL
3 HANDICAP WHERE THE PERSON DOES NOT UNDERSTAND A QUESTION
4 FULLY.

5 Q DO YOU BELIEVE THAT THE QUESTION, DID YOU
6 SHOOT JULIAN LEE WAS AN APPROPRIATE QUESTION ---

7 A SURE.

8 Q --- IN THIS CASE? WHO FORMULATED THAT
9 QUESTION, WHO CAME UP WITH IT?

10 A I WOULD ASSUME THAT, AND I DON'T REMEMBER.
11 YOU HAVE TO UNDERSTAND I RUN 300 POLYGRAPHS A YEAR SO I
12 DON'T REMEMBER SPECIFICALLY. BUT WHEN I INTERVIEW WITH
13 SOMEONE OR SOMEONE INTERVIEWS WITH ME WE SIT DOWN AND DISCUSS
14 THE QUESTIONS TOGETHER TO DETERMINE IF IT'S A PROPER
15 QUESTION OR NOT AND I'M GOING TO HAVE TO SAY THAT THAT'S
16 THE WAY THAT WE DID IT THIS TIME, I MEAN WE'RE TALKING TWO
17 YEARS AGO.

18 MR. DIGGS: I DON'T HAVE ANYTHING FURTHER.

19 THE COURT: ALL RIGHT, SIR, ANY FOLLOW UP,
20 SOLICITOR?

21 MR. RICHARDSON: NO, SIR, YOUR HONOR.

22 THE COURT: YOU MAY STEP DOWN, SIR. ALL RIGHT,
23 OTHER WITNESSES THAT YOU WOULD HAVE BESIDES THE VIDEO?

24 MR. RICHARDSON: NO, SIR, YOUR HONOR, JUST
25 DETECTIVE LARGE TO GET IN THE VIDEO TO GO OVER

AGENT CHARLES - RECROSS EXAM. IN CAMERA BY MR. DIGGS 108

1 ADMINISTRATION OF THE MIRANDA PRIOR TO THE TAKING OF THE
2 STATEMENT.

3 THE COURT: ALL RIGHT, SIR. WELL, LET'S REVIEW
4 THAT. LET'S HAVE, LET'S HAVE, LET'S GET THAT DONE.

5 MR. DIGGS: YOUR HONOR, THERE'S ONE THING ---

6 THE COURT: YES, SIR?

7 MR. DIGGS: --- I THINK WE NEED TO DO FOR THE
8 RECORD. I DON'T KNOW IF YOU WANT TO PUT MR. WILLS ON THE
9 STAND FOR THIS BUT WITH RESPECT TO PUTTING THE TESTIMONY OF
10 AGENT CHARLES IN CONTEXT, AT THE TIME OF THIS POLYGRAPH MR.
11 WILLS WAS NOT CHARGED WITH MURDER. HE WAS CHARGED WITH
12 OBSTRUCTION OF JUSTICE AND I WANTED TO MAKE THAT CLEAR IN
13 THE RECORD. I CAN PUT MR. WILLS ON THE STAND.

14 THE COURT: IS THERE ANY QUESTION ABOUT THAT,
15 SOLICITOR?

16 MR. RICHARDSON: NO, SIR, YOUR HONOR.

17 THE COURT: OKAY, I MEAN THAT, YOU ACCEPT THAT
18 AS BEING THE CIRCUMSTANCES THAT WERE IN EXISTENCE AT THE
19 TIME HE TOOK THE POLYGRAPH EXAM?

20 MR. RICHARDSON: I BELIEVE AT THE TIME HE WAS
21 CHARGED WITH ACCESSORY AFTER THE FACT, IT MIGHT HAVE BEEN
22 BEFORE THE FACT AND OBSTRUCTION OF JUSTICE AND HE ALSO HAD
23 SOME OTHER CHARGES THAT ARE NOT PERTINENT TO THIS CASE.

24 THE COURT: BUT HE WAS NOT CHARGED WITH MURDER
25 AT THAT POINT IN TIME?

DETECTIVE LARGE - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 109

1 MR. RICHARDSON: NO, SIR, HE WAS NOT.

2 THE COURT: OKAY, BUT IT COULD VERY WELL HAVE
3 BEEN ACCESSORY; IS THAT CORRECT?

4 MR. RICHARDSON: HE WAS CHARGED ---

5 MR. DIGGS: ACCESSORY AFTER THE FACT. IT'S MY
6 UNDERSTANDING HE WAS NOT BEING CHARGED AS ACCESSORY BEFORE
7 THE FACT AND OBSTRUCTION OF JUSTICE.

8 THE COURT: OKAY, OBSTRUCTION OF JUSTICE AND
9 ACCESSORY AFTER THE FACT, OKAY, AND SO THERE'S NO, NO
10 QUESTION ABOUT THAT THEN, RIGHT?

11 MR. RICHARDSON: NO, SIR.

12 THE COURT: ALL RIGHT, OKAY. LET'S CALL THE,
13 LET'S CALL THE NEXT WITNESS THEN ABOUT THE MIRANDA
14 STATEMENT THEN.

15 MR. RICHARDSON: THE STATE CALLS DETECTIVE ALLEN
16 LARGE.

17 THE COURT: ALL RIGHT, SIR, PLEASE COME AROUND
18 TO BE SWORN.

19 DETECTIVE ALLEN LARGE

20 BEING FIRST DULY SWORN, TESTIFIED IN CAMERA AS FOLLOWS:

21 MADAM CLERK: STATE YOUR NAME AND SPELL LAST
22 NAME FOR THE RECORD.

23 THE WITNESS: TROY ALLEN LARGE, L-A-R-G-E.

24 THE COURT: GO AHEAD, SOLICITOR.

25 DIRECT EXAMINATION

DETECTIVE LARGE - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 110

1 BY MR. RICHARDSON:

2 Q DETECTIVE LARGE, COULD YOU, PLEASE, TELL US
3 ABOUT YOUR PLACE OF EMPLOYMENT AND IN WHAT CAPACITY AND HOW
4 LONG?

5 A I WORK AT THE HORRY COUNTY POLICE
6 DEPARTMENT, I'M ASSIGNED TO THE VIOLENT CRIME DIVISION OF
7 INVESTIGATIONS. I'VE BEEN WITH THE DEPARTMENT 20 YEARS, 15
8 OF WHICH I'VE WORKED IN INVESTIGATIONS.

9 Q OKAY, AND THE CASE THAT'S HERE TODAY THAT
10 BEING THEODORE DAVID WILLS WERE YOU THE CHIEF INVESTIGATOR
11 ON THAT CASE WITH REGARD TO THE MURDER?

12 A NO, OUR LIEUTENANT RAUL DENNIS WAS THE LEAD
13 INVESTIGATOR. I ASSISTED WITH SOME OF THE INVESTIGATION
14 WHEN IT OCCURRED BACK IN 2001. LIEUTENANT RAUL DENNIS AT
15 THE TIME OF THE MURDER WAS ASSIGNED TO THE VIOLENT CRIME
16 DIVISION. HE HAS SINCE BEEN PROMOTED SEVERAL TIMES AND
17 ASSUMES THE RANK OF LIEUTENANT IN THE SOUTH PRECINCT OF
18 HORRY COUNTY.

19 Q SOMETIME IN 2005 WERE YOU CONTACTED BY THE
20 SOLICITOR'S OFFICE?

21 A YES, SIR.

22 Q AND WITH REGARD TO MR. WILLS?

23 A YES, SIR.

24 Q AND WHAT WAS THE PURPOSE OF THAT?

25 A THE PURPOSE WAS WE WERE GOING TO MEET WITH

DETECTIVE LARGE - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 111

1 MR. DIGGS WHO WAS REPRESENTING MR. WILLS AT J. REUBEN LONG
2 DETENTION CENTER I BELIEVE IT WAS AUGUST 2005 ON THE 26TH,
3 TO DO A PROFFER AGREEMENT TO COME FORTH WITH WHAT HAPPENED
4 TO THE VICTIM WHOSE STREET NAME WAS "J ROCK" GOES BY JULIAN
5 LEE, A HOMICIDE THAT HORRY COUNTY POLICE HAD WORKED BACK IN
6 2001..

7 Q THAT WAS A PROFFER STATEMENT?

8 A YES, SIR.

9 Q OKAY, AND AT THE TIME DO YOU REMEMBER THE
10 DATE IN WHICH YOU DID MEET WITH THE DEFENDANT?

11 A YES, SIR, WE MET ON 8-26, 2005 AT J. REUBEN
12 LONG, THE FORM WAS READ AND SIGNED AT 2:39 P.M. WITNESSED
13 BY DETECTIVE NEIL LIVINGSTON WHO ALSO WORKS WITH ME OUT OF
14 THE VIOLENT CRIME SECTION OF THE HORRY COUNTY POLICE
15 DEPARTMENT.

16 Q OKAY, AND YOU SAY THE FORM, WAS IT A
17 MIRANDA FORM?

18 A YES, SIR.

19 Q WHO ELSE WAS PRESENT AT THIS MEETING?

20 A ASSISTANT SOLICITOR SCOTT HIXSON AND MR.
21 BILL DIGGS AND MR. WILLS..

22 Q MR. WILLS HAD HIS ATTORNEY WITH HIM?

23 A YES, SIR.

24 Q SO HE WAS REPRESENTED NO DOUBT ABOUT THAT?

25 A YES, SIR.

DETECTIVE LARGE - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 112

1 Q AND HE WAS GIVEN A STATEMENT UNDER A
2 PROFFER AGREEMENT?

3 A YES, SIR.

4 Q AND YOU STILL READ THE MIRANDA?

5 A YES, SIR.

6 Q WOULD YOU, PLEASE, TELL US HOW EXACTLY HE
7 WAS ADMINISTERED THE MIRANDA?

8 A WENT THROUGH IT, THIS IS OUR STANDARD FORM
9 THE HORRY COUNTY POLICE USES AS ADVISEMENT OF MIRANDA
10 RIGHTS. IT SAYS:

11 YOU HAVE THE RIGHT TO REMAIN SILENT; ANYTHING YOU
12 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW;

13 YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY AND
14 HAVE HIM PRESENT WITH YOU WHILE YOU'RE BEING QUESTIONED;

15 IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY ONE WILL
16 BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONS IF YOU
17 MAKE A STATEMENT OR DO DESIRE;

18 IF YOU MAKE A STATEMENT OF ANSWER QUESTIONS YOU
19 MAY HAVE THE RIGHT TO STOP AT ANY TIME;

20 AND THEN WE HAVE TWO SECTIONS ON THE FORM IT
21 SAYS,

22 DO YOU UNDERSTAND YOUR RIGHTS AS I'VE READ THEM
23 AND HAS A YES AND NO, IT'S CHECKED AND INITIALED;

24 AND THEN THE SECOND QUESTION IS, UNDERSTANDING
25 YOUR RIGHTS DO YOU WISH TO WAIVE THEM AND MAKE THE

DETECTIVE LARGE - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 113

1 STATEMENT OR ANSWER ANY QUESTIONS AT THIS TIME.

2 THIS FORM WAS INITIALED OR CHECKED YES AND
3 INITIALED, MR. WILLS SIGNATURE; HANDWRITING HERE IS MINE
4 WHERE IT FILLS IN THE DATE, TIME, LOCATION AND WITNESSES.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER 21 MARKED FOR
6 IDENTIFICATION.)

7 MR. RICHARDSON: YOUR HONOR, AT THIS TIME FOR
8 IDENTIFICATION PURPOSES STATE'S NUMBER 22 HORRY COUNTY
9 POLICE DEPARTMENT CRIMINAL INVESTIGATIONS DIVISION
10 ADVISEMENT AND MIRANDA RIGHT.

11 THE COURT: IS THERE ANY PROBLEM WITH THAT
12 EXHIBIT BEING MADE A PART OF THE RECORD FOR THE PURPOSES OF
13 THIS MOTION HEARING, MR. DIGGS?

14 MR. DIGGS: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT, LET ME HAVE THAT
16 DOCUMENT, PLEASE?

17 MR. RICHARDSON: YES, SIR, YOUR HONOR.

18 (WHEREUPON, STATE'S EXHIBIT NUMBER 22 MARKED FOR
19 IDENTIFICATION.)

20 MR. RICHARDSON: (CONTINUING)

21 Q DETECTIVE LARGE, DID YOU DO ANYTHING TO
22 ASCERTAIN THE DEFENDANT'S EDUCATION LEVEL?

23 A NOT ANYTHING THERE. I HAD HAD DEALINGS
24 WITH HIM ON OUR ORIGINAL INVESTIGATION BACK IN 2001.
25 MYSELF AND RAUL DENNIS, DETECTIVE DENNIS, HAD DONE AN

DETECTIVE LARGE - DIR. EXAM. IN CAMERA BY MR. RICHARDSON 114

1 INTERVIEW AND THEN THAT DAY THAT ARRANGEMENT OR MEETING AT
2 J. REUBEN LONG WAS SCHEDULED WITH MR. DIGGS. I FELT, YOU
3 KNOW, THERE WAS NO NEED TO RUN ANY STANDARD QUESTIONS THAT
4 WE USUALLY ASK LIKE, ARE YOU UNDER THE INFLUENCE OF ANY
5 DRUGS OR ALCOHOL OR WHAT THE EDUCATIONAL LEVEL, THOSE ARE
6 SOME OF THE ADDITIONAL QUESTIONS WE MIGHT ASK BEFORE WE
7 CONDUCT AN INTERVIEW IF A PERSON'S NOT THERE WITH THEIR
8 ATTORNEY.

9 Q SO HE SEEMED TO BE ABLE TO UNDERSTAND THE
10 ENGLISH LANGUAGE?

11 A YES, SIR.

12 Q OKAY, SEEMED TO BE ABLE TO COMMUNICATE?

13 A YES, SIR.

14 Q HE WAS IN CUSTODY AT J. REUBEN LONG?

15 A YES, SIR.

16 Q TO YOUR KNOWLEDGE ARE ALCOHOL OR DRUGS
17 PROHIBITED THERE?

18 A YES, SIR, THEY ARE NOT ALLOWED.

19 Q DID HE APPEAR TO BE UNDER THE INFLUENCE?

20 A NO, SIR.

21 Q AND SPOKE COHERENTLY?

22 A YES, SIR.

23 Q AND HE SIGNED THE MIRANDA?

24 A YES, SIR.

25 Q YOU GAVE HIM MIRANDA?

DETECTIVE LARGE - CROSS EXAM. IN CAMERA BY MR. DIGGS

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1 A YES, SIR.

2 Q DID YOU DO ANYTHING, DID HE MAKE A
3 STATEMENT THAT DAY?

4 A YES, SIR, WE, WE DID A TAPED STATEMENT AT,
5 AT THE FACILITY.

6 Q DID YOU DO ANYTHING TO RECORD OR
7 MEMORIALIZE THE STATEMENT?

8 A YES, IT WAS DONE WITH A DIGITAL RECORDER.

9 Q I'M GOING TO SHOW YOU WHAT'S BEEN
10 PREVIOUSLY MARKED AS NUMBER 21, STATE'S 21 FOR
11 IDENTIFICATION PURPOSES, DO YOU RECOGNIZE THAT ITEM?

12 A YES, SIR, THAT IS A DIGITAL RECORDING CD.

13 Q AND WHAT DOES THE RECORDED CD DEPICT?

14 A IT SHOULD BE THE, THE ACTUAL INTERVIEW THAT
15 WAS CONDUCTED AT J. REUBEN LONG WITH MYSELF AND DETECTIVE
16 LIVINGSTON PRESENT WITH THE DEFENDANT, MR. HIXSON, AND MR.
17 DIGGS PRESENT.

18 Q HAVE YOU REVIEWED THIS CD?

19 A A WHILE BACK WHEN IT FIRST, WHEN WE FIRST
20 DID IT REVIEWED IT.

21 Q DOES IT CONTAIN THE ENTIRE STATEMENT?

22 A YES, SIR.

23 Q AND SO THERE'S NO MISSING PARTS?

24 A NO, SIR.

25 MR. RICHARDSON: YOUR HONOR, AT THIS TIME THE

DETECTIVE LARGE - CROSS EXAM. IN CAMERA BY MR. DIGGS 116

1 STATE WOULD SEEK PUBLISH THE STATEMENT.

2 THE COURT: ALL RIGHT, FIRST, MR. DIGGS, DO YOU
3 HAVE ANY QUESTIONS YOU WANT TO ASK DETECTIVE LARGE ABOUT
4 THE MIRANDA RIGHTS OR THE ADVISEMENT OF THE RIGHTS OR
5 QUESTION HIM IN ANY FASHION ABOUT THAT?

6 MR. DIGGS: WELL NOT WITH RESPECT TO MIRANDA
7 RIGHTS, JUST A COUPLE OF QUESTIONS.

8 THE COURT: ALL RIGHT, SIR.

9 CROSS EXAMINATION

10 BY MR. DIGGS:

11 Q DETECTIVE LARGE, THERE'S NO QUESTION MR.
12 WILLS WAS RESPONDING TO AN OFFER OF PLEA OFFER THAT HAD
13 BEEN EXTENDED TO HIM BY THE STATE; IS THAT CORRECT?

14 A I BELIEVE SO.

15 Q AND HE GAVE THIS STATEMENT AS A RESULT OF
16 THAT OFFER THAT HAD BEEN EXTENDED TO HIM?

17 A YES, SIR, THAT STANDARD PROCEDURE IS MADE
18 UNDER PROFFER TO SEE IF THE PERSON CAN OFFER INFORMATION
19 AND BE TRUTHFUL.

20 Q AND BUT FOR THAT PROFFER AGREEMENT MR.
21 WILLS WOULD NOT HAVE SPOKEN TO YOU; WOULD YOU AGREE WITH ME
22 THERE?

23 A PROBABLY.

24 Q BECAUSE HE HAD NO REASON ---

25 A YEAH, I MEAN HE WAS, LIKE I SAID HE WAS

DETECTIVE LARGE - CROSS EXAM. IN CAMERA BY MR. DIGGS 117

1 UNDER CHARGES AND, AND HE HAD INVOKED HIS RIGHT FOR
2 COUNSEL.

3 Q HE HAD BEEN LOCKED UP FOR SOME TIME BY THAT
4 PERIOD OF TIME, BY THAT DATE; ISN'T THAT TRUE?

5 A I GUESS, I DIDN'T KNOW THAT HE, I MEAN I
6 KNEW WHEN HE WAS LOCKED UP WHEN WE WENT OVER THERE BUT I
7 DON'T KNOW FROM, I BELIEVE HE MADE BOND IN REFERENCE TO THE
8 INITIAL CHARGES, IN REFERENCE TO THE HOMICIDE.

9 Q ALL RIGHT, BUT YOU DON'T KNOW IF HE WAS
10 LOCKED UP AT THE TIME OF THE INTERVIEW?

11 A NO, I'M SAYING HE WAS LOCKED UP AT THE
12 TIME, I'M JUST SAYING I DON'T KNOW THE DURATION IF IT WAS
13 FOR SOMETHING ELSE BUT --

14 MR. DIGGS: THAT'S ALL I HAVE, THANK YOU.

15 THE COURT: ALL RIGHT, ALL RIGHT, COUNSEL, YA'LL
16 COME UP AND TALK TO ME ONE SECOND, PLEASE.

17 MR. RICHARDSON: YES, SIR.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
19 RECORD.)

20 MR. RICHARDSON: I'D ASK THAT AGENT CHARLES BE
21 EXCUSED?

22 THE COURT: IS THERE ANY REASON THAT HE CANNOT
23 BE EXCUSED?

24 MR. DIGGS: NO, SIR.

25 THE COURT: ALL RIGHT, THAT AGENT IS EXCUSED AND

DETECTIVE LARGE - CROSS EXAM. IN CAMERA BY MR. DIGGS 118

1 RELEASED FROM HIS SUBPOENA. ALL RIGHT, GENTLEMEN, WHAT
2 WE'RE GOING TO IS WE'RE GOING TO RECESS AT THIS POINT IN
3 TIME. WE'RE GOING TO BE BACK IN THE COURTROOM TOMORROW
4 MORNING AT 8:30, AT 8:30 WE WILL RESUME THIS MOTION
5 HEARING.

6 I'VE ALREADY EXCUSED THE JURY TO COME BACK
7 TOMORROW MORNING AT 9:30 SO HOPEFULLY WE WON'T KEEP THAT
8 JURY TOO LONG BETWEEN, YOU KNOW, AFTER 9:30 AND WE'LL BE
9 ABLE TO CALL THEM IN AND GET THEM STARTED BUT I WANT YA'LL
10 HERE IN THE COURTROOM READY TO GO AT 8:30.

11 DEFENDANT, I WANT THE DEFENDANT IN THE COURTROOM
12 AT OR BEFORE 8:30. I DON'T WANT TO COME IN HERE AND, YOU
13 KNOW, HE'S COMING, AND HE'S COMING, HE'S IN THE COURTROOM
14 BY 8:30. ALL RIGHT, AND WE'LL START AGAIN AT THAT POINT IN
15 TIME. WE'LL RECESS UNTIL THEN, THANK YOU.

16 (WHEREUPON, COURT WAS ADJOURNED FOR THE EVENING
17 AND RESUMES ON OCTOBER 2, 2007 AT 8:30 A.M.)

18 THE COURT: ALL RIGHT, WE'RE GOING TO RESUME THE
19 JACKSON V. DENO HEARING REGARDING THE STATEMENT OF MR.
20 WILLS IN THIS PARTICULAR MATTER AND I THINK WE'RE AT THE
21 POINT IN TIME, SOLICITOR, WHERE YOU WERE GOING TO PLAY THE
22 RECORDED STATEMENT OF MR. WILLS; IS THAT CORRECT?

23 MR. RICHARDSON: THAT'S CORRECT, YOUR HONOR,
24 WOULD YOU LIKE ---

25 THE COURT: ALL RIGHT, IF YOU WANT TO PROCEED.

1 MR. RICHARDSON: WOULD YOU LIKE DETECTIVE LARGE
2 TO RETAKE THE STAND OR --

3 THE COURT: YOU COULD JUST GO AHEAD AND -- IS
4 THERE NECESSITY DURING THE PLAYING OF THAT FOR HIM TO BE ON
5 THE STAND?

6 MR. DIGGS: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT, SO LET'S JUST GO AHEAD
8 AND PLAY THE STATEMENT AND THEN WE CAN GO FROM THERE.

9 DO YOU NEED THE SCREEN PUT DOWN?

10 MR. RICHARDSON: YES, SIR. I'VE BEEN LOOKING AT
11 THIS SAME VIEW FOR A WHILE.

12 (WHEREUPON, THE RECORDED CD STATEMENT OF THEODORE
13 DAVID WILLS, JR., WAS PLAYED IN CAMERA FOR THE COURT AND
14 THE FOLLOWING TAKES PLACE FOLLOWING THE PLAYING OF THE CD.)

15 THE COURT: ALL RIGHT, ANYTHING FURTHER FROM THE
16 STATE AS TO THE PRESENTATION OF THE JACKSON V. DENO
17 HEARING?

18 MR. RICHARDSON: NOTHING FURTHER FROM THE STATE,
19 YOUR HONOR.

20 THE COURT: ALL RIGHT, MR. DIGGS, ANY
21 PRESENTATION THE DEFENDANT WOULD LIKE TO MAKE REGARDING
22 THIS JACKSON V. DENO HEARING?

23 MR. DIGGS: YOUR HONOR, I'D CALL THE DEFENDANT
24 TO THE STAND?

25 THE COURT: ALL RIGHT, SIR, PLEASE COME AROUND

MR. WILLS - DIR. EXAM. IN CAMERA BY MR. DIGGS

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1 TO BE SWORN, SIR.

2 THEODORE DAVID WILLS, JR.

3 BEING FIRST DULY SWORN, TESTIFIED IN CAMERA AS FOLLOWS:

4 MADAM CLERK: STATE YOUR FULL NAME AND SPELL
5 YOUR LAST NAME FOR THE COURT.

6 THE WITNESS: THEODORE DAVID WILLS.

7 THE COURT: ALL RIGHT, SIR, YOU'RE GOING TO HAVE
8 TO SPEAK UP AND ---

9 THE WITNESS: THEODORE DAVID WILLS.

10 THE COURT: ALL RIGHT, SIR.

11 THE WITNESS: W-I-L-L-S.

12 THE COURT: ALL RIGHT, MR. DIGGS.

13 DIRECT EXAMINATION

14 BY MR. DIGGS:

15 Q DAVID, DO YOU REMEMBER DOING THE INTERVIEW
16 WITH DETECTIVE LARGE?

17 A YES.

18 Q AND WOULD YOU TELL THE COURT WHY IT WAS
19 THAT YOU DECIDED TO GO AHEAD AND PARTICIPATE IN THE
20 INTERVIEW?

21 A CAUSE THEY MADE ME AN OFFER.

22 Q OKAY, AND DID YOU UNDERSTAND THAT THEY WERE
23 GOING TO DO A POLYGRAPH?

24 A NOT AT THAT TIME.

25 Q WELL DID YOU EVER DISCUSS THAT WITH

MR. WILLS - DIR. EXAM. IN CAMERA BY MR. DIGGS

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1 ANYBODY, ME OR ANYONE ELSE?

2 A NOT THAT I RECALL.

3 Q ALL RIGHT, WELL LET ME ASK YOU THIS, DID
4 YOU UNDERSTAND THAT YOU WERE SUPPOSED TO TELL THE TRUTH?

5 A YES.

6 Q AND DURING THE COURSE OF THAT INTERVIEW DID
7 YOU TELL THE TRUTH?

8 A YES.

9 Q ALL RIGHT, AND IN THE COURSE OF THAT
10 INTERVIEW DID YOU DO THAT IN RELIANCE OF THE PROFFER
11 AGREEMENT THAT WAS OFFERED TO YOU BY THE PROSECUTION?

12 A YES.

13 Q NOW IF THEY HADN'T MADE YOU AN OFFER WOULD
14 YOU HAVE MADE A STATEMENT?

15 A NO.

16 MR. DIGGS: YOUR HONOR, THAT'S ALL I HAVE.

17 THE COURT: DO YOU WANT HIM TO, SINCE I HAVE THE
18 EXHIBITS UP HERE, DID YOU WANT HIM TO IDENTIFY THE PROFFER
19 AGREEMENT?

20 MR. DIGGS: WELL ---

21 THE COURT: IF YOU DON'T WANT TO THAT'S FINE, I
22 JUST WANTED TO INDICATE I HAD THE DOCUMENT ---

23 MR. DIGGS: WELL LET'S GO AHEAD.

24 THE COURT: --- IN FRONT OF ME.

25 MR. DIGGS: LET ME HAND THAT TO HIM.

MR. WILLS - CROSS EXAM. IN CAMERA BY MR. RICHARDSON 122

1 THE COURT: ALL RIGHT, SIR.

2 MR. DIGGS: (CONTINUING)

3 Q DAVID, IF YOU WOULD I WANT YOU TO LOOK AT
4 THIS AND TELL US IF THAT'S YOUR SIGNATURE ON THAT?

5 A YES.

6 Q OKAY, THIS IS THE AGREEMENT THAT YOU RELIED
7 ON AND ENTERED INTO THAT DAY BEFORE YOU GAVE YOU STATEMENT?

8 A YES.

9 MR. DIGGS: OKAY, THANK YOU.

10 THE COURT: AND FOR THE RECORD, COUNSEL, THAT'S
11 EXHIBIT WHICH?

12 MR. DIGGS: IT IS EXHIBIT 15.

13 THE COURT: ALL RIGHT, THANK YOU. ALL RIGHT,
14 MR. RICHARDSON, I'M SORRY, MR. RICHARDSON, ANY QUESTIONS
15 THAT YOU HAVE, SIR?

16 MR. RICHARDSON: VERY BRIEFLY, YOUR HONOR.

17 CROSS EXAMINATION

18 BY MR. RICHARDSON:

19 Q MR. WILLS, YOU JUST STATED YOU DID SIGN THE
20 POLYGRAPH, THE PROFFER AGREEMENT, RIGHT?

21 A YES, I DID.

22 Q HAVE YOU REVIEWED IT AT THIS TIME?

23 THE COURT: DO YOU WANT HIM TO LOOK AT IT?

24 MR. RICHARDSON: FOR THE RECORD IT'S STATE'S FOR
25 I.D. NUMBER 15.

MR. WILLS - CROSS EXAM. IN CAMERA BY MR. RICHARDSON 123

1 THE COURT: DO YOU WANT HIM TO READ THROUGH THE
2 WHOLE THING OR IS THERE SOME PARTICULAR PART THAT YOU WANT
3 HIM TO LOOK AT?

4 MR. RICHARDSON: (CONTINUING)

5 Q I'M ASKING HIM, HAVE YOU READ THROUGH THIS,
6 MR. WILLS?

7 A NOT RECENTLY.

8 Q BUT HAVE YOU READ THROUGH IT IN THE PAST?

9 A I SKIMMED THROUGH IT.

10 Q PARAGRAPH 1 SAYS TO BE TRUTHFUL, CORRECT?

11 A YES.

12 Q AND IF YOU'LL FLIP TO THE SECOND PAGE AT
13 PARAGRAPH 2, SKIM THROUGH IT REAL QUICK? IT TALKS ABOUT A
14 POLYGRAPH, DOESN'T IT?

15 A YES.

16 Q AND YOU SIGNED IT? YOU SIGNED IT MR.
17 WILLS?

18 A YES, I DID.

19 Q PRIOR TO GIVING THAT INTERVIEW WE JUST SAW?

20 A YES.

21 Q YOU WERE READ MIRANDA, YOU WERE READ YOUR
22 MIRANDA RIGHTS?

23 A YES.

24 Q YOU UNDERSTOOD THOSE RIGHTS?

25 A YES.

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1 Q YOU EVEN HAD YOUR ATTORNEY PRESENT?

2 A YES, I DID.

3 Q AND YOU READ AND UNDERSTAND THE ENGLISH
4 LANGUAGE, CORRECT?

5 A YES.

6 MR. RICHARDSON: YOUR HONOR, NO FURTHER
7 QUESTIONS.

8 THE COURT: ANYTHING ON THOSE QUESTIONS, MR.
9 DIGGS?

10 REDIRECT EXAMINATION

11 BY MR. DIGGS:

12 Q ON THE POLYGRAPH DURING THAT POLYGRAPH DID
13 YOU TELL THE TRUTH?

14 A YES, I DID.

15 Q ALL RIGHT, DO YOU HAVE ANY EXPLANATION FOR
16 THE JUDGE, OR THE COURT, AS TO WHY THE STATE ALLEGES YOU
17 SHOWED DECEPTION?

18 A I MEAN I REALLY CAN'T MAKE NO STATEMENT ON
19 THAT BUT AT THE SAME TIME I TOOK THE POLYGRAPH TEST I WAS
20 TOLD BY THE D.A. THAT, I MEAN I WASN'T TOLD BY THE D.A.
21 THAT IF I DIDN'T PASS THAT THEY WAS GOING TO HOLD ME
22 ACCOUNTABLE FOR WHATEVER WENT ON. LIKE I SAID I, I BRIEFLY
23 SKIMMED THROUGH THE PROFFER.

24 MR. DIGGS: THAT'S ALL I HAVE.

25 THE COURT: ALL RIGHT, SIR, YOU MAY STEP DOWN,

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1 THANK YOU VERY MUCH. FURTHER PRESENTATION FROM THE DEFENSE
2 AS TO THE JACKSON V. DENO HEARING?

3 MR. DIGGS: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT, SIR, ALL RIGHT. I'LL BE
5 GLAD TO HEAR ANY ARGUMENTS THAT YOU MIGHT HAVE, MR. DIGGS.

6 MR. DIGGS: WELL AS I STATED YESTERDAY, YOUR
7 HONOR, THE PROFFER AGREEMENT ITSELF REALLY DOESN'T TELL ME
8 OR DAVID THAT THIS STATEMENT IS GOING TO BE INTRODUCED
9 DURING THE TRIAL, THE COURSE OF THE TRIAL FOR THE JURY TO
10 HEAR. IT SAYS IT'LL BE USED IN, IN A MANNER THAT
11 POLYGRAPHS ARE CONSISTENTLY USED FOR OR IN AND THAT IS WITH
12 RESPECT TO DECISIONS ON WHETHER OR NOT TO PROSECUTE,
13 DECISIONS WHETHER, WHETHER TO ENTER INTO CERTAIN
14 CONCESSIONS, CHARGE, OR SENTENCING CONCESSIONS THAT KIND OF
15 THING. AND SO THE POLYGRAPH, THE LANGUAGE IN THE AGREEMENT
16 IS NOT CLEAR. JUST TO USE FOR A COMMON LAW PRINCIPLES IT
17 SHOULD BE CONSTRUED STRICKLY AGAINST THE STATE.

18 YOUR HONOR, IT'S NOT A VOLUNTARY, KNOWING,
19 INTELLIGENT DECISION THAT EITHER OF US MADE WITH RESPECT TO
20 ENTERING INTO THE AGREEMENT.

21 SECONDLY, THE, IT'S INEXTRICABLE. IT'S
22 INTERTWINED TO THE POINT IT CAN'T BE SEPARATED. DAVID'S
23 RELIANCE ON THE, THE AGREEMENT, THE PROFFER AGREEMENT AND
24 THE VOLUNTARINESS OF HIS STATEMENT THERE'S NO WAY THAT ONE
25 CAN, CAN MAKE A DETERMINATION AS TO WHETHER OR NOT THIS

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1 STATEMENT WAS VOLUNTARILY MADE AND NOT GET INTO THE
2 CONSIDERATION OF THE POLYGRAPH ITSELF AND WHETHER THE
3 EXAMINERS HAD A MOTIVATION FOR READING OR INTERPRETING IT
4 IN, IN A CERTAIN WAY. THERE'S JUST NO WAY. AND, AND WE
5 DIDN'T CHOOSE TO SET UP THIS FRAMEWORK; THE PROSECUTION SET
6 UP THE FRAMEWORK. THE ONLY THING WE DID WAS TRY TO
7 COOPERATE TO THE BEST OF OUR ABILITY AND THE PROCESS DIDN'T
8 WORK.

9 FOR SOME REASON THE SLED AGENT ONLY DECIDED TO
10 TEST MR. WILLS IN ONE SETTING. THERE WAS AN OPPORTUNITY,
11 HE WAS IN FOR ABOUT 3 YEARS INCARCERATED, THEY CERTAINLY
12 COULD HAVE WORKED WITH US. THEY COULD HAVE COME BACK AND
13 SAID, LOOK WE WANT TO REDO THIS BECAUSE IT'S AN IMPORTANT
14 FACTOR.

15 WE'VE GOT A SITUATION HERE WHERE THIS DEFENDANT
16 IS A WITNESS TO A MURDER THAT'S PROBABLY A CAPITAL MURDER,
17 A MURDER FOR HIRE. IT'S AN EXTREMELY IMPORTANT, IT'S AN
18 EXTREMELY IMPORTANT STORY OR EVIDENCE THAT HE HAS. WE WANT
19 TO MAKE SURE ABOUT WHAT WE'RE DEALING HERE WITH WHETHER
20 IT'S RELIABLE.

21 THE STATE NEVER WENT BACK, THEY HAD THIS ONE
22 SETTING, AND I WOULD SUBMIT TO YOU THAT THE OFFICER, THE
23 AGENT YESTERDAY WHEN I ASKED HIM WHY DIDN'T YOU GO BACK AND
24 HAVE A SECOND SITTING WITH HIM TO SEE, YOU KNOW, IF WE
25 COULD WORK AND, AND DEVELOP THIS THING SO THAT YOU'VE GOT A

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1 RESPONSE THAT YOU WERE CONFIDENT IN THAT WAS CONSISTENT
2 WITH THE PHYSICAL EVIDENCE THAT YOU HAD? AND HE DIDN'T
3 REALLY HAVE A RESPONSE FOR THAT OTHER THAN TO SAY, WELL IF
4 YOU DIDN'T BELIEVE THE FIRST ONE WHY YOU WOULD BELIEVE THE
5 SECOND ONE, SO THE STATE, THE BOTTOM LINE IS THE STATE'S
6 GOT TO SHOW A VOLUNTARY, INTELLIGENT, KNOWING WAIVER. THEY
7 HAVEN'T DONE THAT.

8 THE WRITTEN CONTRACT IS VAGUE FOR ONE THING.
9 SECONDLY, IT INCORPORATES AN INADMISSIBLE FACTOR, THAT
10 BEING THE POLYGRAPH, AND THERE'S NO WAY THAT WE CAN LET THE
11 JURY MAKE A DETERMINATION ABOUT THE VOLUNTARINESS OF THE
12 STATEMENT WITHOUT SAYING THAT THE STATE ALLEGES THAT HE
13 FAILED THE POLYGRAPH. SO WE WOULD ASK THE JUDGE, THE COURT
14 TO KEEP THE STATEMENT OUT OF THE EVIDENCE THAT'S PRESENTED
15 TO THE JURY.

16 THE COURT: ALL RIGHT, SIR, LET ME ASK A
17 QUESTION. DID YOU ASK THE STATE TO RETEST THE DEFENDANT
18 WHEN, WHEN YOU KNEW, WHEN YOU KNEW, I'M NOT SAYING WHETHER
19 OR NOT YOU HAD AN OBLIGATION TO DO SO OR NOT, BUT I'M JUST
20 ASKING, WHEN YOU KNEW THAT THEY WERE INDICATING TO YOU THAT
21 HE DIDN'T PASS THIS TEST? DID YOU SAY, WE NEED TO RETEST
22 THIS. YOU KNOW, I'M CONVINCED HE IS TELLING ME THE TRUTH
23 OR TELLING THE TRUTH. WILL YOU RETEST HIM?

24 MR. DIGGS: YOUR HONOR, LET ME STATE, YES, AND
25 LET ME EXPLAIN IT.

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1 THE COURT: ALL RIGHT.

2 MR. DIGGS: YOUR HONOR KNOWS HOW THINGS OPERATE
3 HERE. THERE'S A LOT OF COMING AND GOING. WE HAVE A LOT OF
4 ROLL CALLS AND THAT KIND OF THING BUT YOU HAVE AN
5 OPPORTUNITY TO PASS BY SOLICITORS IN THE HALLWAY. WHEN YOU
6 MAKE COMMENTS LIKE, YOU KNOW, WE NEED TO WORK ON THAT, WE,
7 THIS AND THAT, AND IN THAT TYPE OF SETTING AND ON A NUMBER
8 OF OCCASIONS, NOT WITH THIS SOLICITOR BUT WITH OTHER
9 SOLICITORS, I'D ASK FOR THE CHARTS OF THE STORY, THE
10 PAPERWORK AND THAT KIND OF THINGS SO THAT WE COULD SIT DOWN
11 AND LOOK AT IT, REEVALUATE IT AND MAYBE SET UP SOME KIND OF
12 PROCESS WHERE WE COULD REVISIT THIS AND GET SOMETHING THAT
13 WE FELT, THAT I FELT AS THE DEFENSE ATTORNEY THAT WOULD BE
14 MORE RELIABLE OR CONSISTENT WITH WHAT I THOUGHT I
15 UNDERSTOOD ABOUT THE CASE.

16 THE COURT: ALL RIGHT, SO AND, AND WHEN, WHEN,
17 WHEN, WHEN THE STATE DIDN'T DO THAT DID YOU COME TO THE
18 CIRCUIT COURT AND SAY, JUDGE, I NEED THESE DOCUMENTS, THIS
19 IS IMPORTANT TO ME?

20 MR. DIGGS: NO, I DIDN'T.

21 THE COURT: OKAY, ALL RIGHT, ALL RIGHT,
22 SOLICITOR, ANY BRIEF COMMENTS YOU WANT TO MAKE?

23 MR. RICHARDSON: VERY BRIEFLY, YOUR HONOR. WITH
24 REGARD TO THE PROFFER AGREEMENT ITSELF PARAGRAPH 1 CLEARLY
25 INDICATES THE DEFENDANT SHOULD BE COMPLETELY TRUTHFUL. THE

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1 DEFENDANT SAID HE UNDERSTOOD THAT AND THEN HE SAYS, DIDN'T
2 UNDERSTAND THE REST OF IT. HE DOES SIGN THE AGREEMENT WITH
3 HIS ATTORNEY PRESENT BUT THEY WANT TO SAY THAT THEY DIDN'T
4 KNOW ABOUT THE POLYGRAPH; IT'S IN PARAGRAPH 2.

5 YOUR HONOR, WITH REGARD TO PARAGRAPH 2 IT
6 INDICATES THAT THE POLYGRAPH EXAMINER SHALL BE SELECTED BY
7 THE STATE. OBVIOUSLY IF THE STATE IS SELECTING THE
8 POLYGRAPHER THEN THE POLYGRAPHER IS GOING TO BE THE
9 ULTIMATE DETERMINER OF WHETHER A DEFENDANT OR ANY PERSON
10 TAKING A POLYGRAPH IS SHOWING DECEIT OR NOT SHOWING DECEIT
11 AND DECEPTION OR NO DECEPTION.

12 FURTHER, IN PARAGRAPH 2 IT INDICATES THAT WHETHER
13 DECEPTION, WHETHER DECEPTION IS NOTED OR STATEMENTS THAT
14 ARE MADE THAT ARE INCONSISTENT WITH PROFFER TESTIMONY WE
15 WOULD BE ABLE TO USE THOSE STATEMENTS, USE HIS STATEMENT,
16 IT STATES CLEARLY THAT MAY BE USED AGAINST HIM INCLUDING
17 BUT NOT LIMITED TO DISPOSITION THROUGH PLEA OR TRIAL. YOUR
18 HONOR, I DON'T KNOW HOW TO USE A STATEMENT FOR DISPOSITION
19 OF A TRIAL EXCEPT TO PLAY IT IN FRONT OF A JURY.

20 CLEARLY FROM AGENT CHARLES' TESTIMONY YESTERDAY
21 THE DEFENDANT SHOWED DECEPTION AND INCONSISTENT STATEMENTS
22 SPECIFICALLY WITH HE WAS ASKED DURING THE STATEMENT. HE
23 STATED I DID NOT SHOOT THE GUN. HE ALSO STATES THAT MARK
24 WILLARD DID SHOOT JULIAN LEE. THOSE ARE THE TWO QUESTIONS
25 THAT HE FAILED AND FAILED MISERABLY.

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1 YOUR HONOR, AGENT CHARLES WAS ADMITTED AS AN
2 EXPERT AND HE SAID THAT THE STATEMENTS WERE DECEPTIVE AND
3 IN STATING OPPOSITE TO THE STATEMENTS HE GAVE TO THE POLICE
4 DETECTIVES.

5 THE COURT: ALL RIGHT, SIR, LET ME, LET ME ASK
6 YOU A QUESTION ---

7 MR. RICHARDSON: YES, SIR?

8 THE COURT: --- SO THAT I UNDERSTAND EXACTLY
9 WHAT YOU INTEND OR WANT TO PROFFER TO OR SHOW TO THE JURY
10 IN THIS PARTICULAR MATTER.

11 WHAT YOU WANT TO DO IS SHOW THE HOUR LONG
12 STATEMENT THAT WE JUST VIEWED, THAT'S WHAT YOU INTEND TO
13 SHOW TO THE JURY?

14 MR. RICHARDSON: YES, SIR, ALL I WISH TO SHOW IS
15 THIS ---

16 THE COURT: ALL RIGHT, AND YOU DON'T INTEND AND
17 IT'S NOT THE STATE'S INTENTION IN ITS CASE IN CHIEF TO CALL
18 AGENT CHARLES OR ANY OTHER, MS. DUFF OR ANYBODY ELSE
19 REGARDING THE POLYGRAPH NOR DOES THE STATE INTEND TO TALK
20 ABOUT THE RESULTS OF THE POLYGRAPH EXAM OR ANYTHING OF THAT
21 NATURE; IS THAT CORRECT?

22 MR. RICHARDSON: YOUR HONOR, IT'S MY INTENTION
23 NOT TO MENTION THE WORD POLYGRAPH.

24 THE COURT: ALL RIGHT, SIR, OKAY. ALL RIGHT,
25 ANYTHING, ANY OTHER FINAL STATEMENTS YOU WANT TO MAKE

MR. WILLS - CROSS EXAM. IN CAMERA BY MR. RICHARDSON 131

1 BEFORE I MAKE A RULING, MR. DIGGS, ANYTHING ELSE YOU WANT
2 TO SAY TO ME?

3 MR. DIGGS: WELL, JUST THAT I RESPECTFULLY
4 DISAGREE WITH THE SOLICITOR'S CONSTRUCTION OF PARAGRAPH 2
5 AND TO SUGGEST IT'S NOT AS CLEAR AS HE WOULD LIKE TO THINK
6 THAT IT IS. IT DOES NOT SAY THAT THAT STATEMENT WILL BE
7 PLAYED FOR THE JURY. IT INDICATES, IN THE CONTEXT IT
8 INDICATES IT'LL BE USED IN A DECISION MAKING PROCESS NOT
9 DISPOSITION OF THE CASE AND AT THIS POINT I THINK THAT'S
10 THE EXTENT OF WHAT I HAVE.

11 THE COURT: ALL RIGHT, SIR, ALL RIGHT. I
12 UNDERSTAND THAT WE HAVE THE ISSUE OF THE POLYGRAPH AS TO
13 THE DEFENDANT BEING GIVEN A POLYGRAPH AND THE STATE'S
14 DECISION THAT HE WAS NOT TRUTHFUL AND THEIR INTENTION TO
15 PROSECUTE HIM FOR THE, AND AS THEY ARE, THE OFFENSE OF
16 MURDER, AND USING THIS STATEMENT AGAINST HIM.

17 I AM NOT CONVINCED THAT NEED TO GET TO THE ISSUE
18 OF THE POLYGRAPH AND HOW IT RELATES TO THIS PARTICULAR
19 STATEMENT. NUMBER ONE, IF WE WERE TO TALK ABOUT THE
20 POLYGRAPH I WOULD HAVE TO DO AN EXAMINATION UNDER RULE 702,
21 SOUTH CAROLINA RULES OF EVIDENCE, AS TO THE ADMISSIBILITY
22 OF SCIENTIFIC EVIDENCE, ALSO PURSUANT TO STATE V. COUNCIL
23 AND STATE V. JONES.

24 FROM THE INFORMATION PROVIDED TO ME AND READING
25 THE SOUTH CAROLINA SUPREME COURT DECISIONS AS WELL AS

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1 UNITED STATES SUPREME COURT DECISION IN UNITED STATES V.
2 SCHEFFER OR -- I'M NOT SURE EXACTLY HOW IT'S PRONOUNCED,
3 IT'S S-C-H-E-F-F-E-R -- AT 523 U. S. 303 1998 UNITED STATES
4 SUPREME COURT DECISION, I CERTAINLY CAN'T FIND THAT FROM
5 THE PRESENTATION MADE BEFORE ME THAT THE, AS TO THE
6 POLYGRAPH, THE UNDERLYING SCIENCE IS RELIABLE SO THAT I
7 WOULD ALLOW A JURY TO HEAR ANY EVIDENCE ABOUT A POLYGRAPH
8 IN ANY FASHION AND IT'S GOING TO BE MY RULING THAT THAT NOT
9 BE DISCUSSED IN ANY FASHION BEFORE THIS JURY, THAT THE WORD
10 POLYGRAPH NOT BE MENTIONED BY ANY OF THE PARTICIPANTS IN
11 THIS TRIAL. IT IS NOT A PART OF THIS CASE, THAT IS GOING TO
12 BE MY RULING, AND IT IS NOT TO BE DISCUSSED BEFORE THE JURY
13 IN THIS PARTICULAR MATTER. THAT BEING SAID I DON'T KNOW
14 THAT WE NEED TO GET TO THAT ISSUE.

15 THERE'S NO QUESTION THAT ON AUGUST 26TH, 2005,
16 MR. WILLS CAME BEFORE DETECTIVES OF HORRY COUNTY AND WAS
17 ADVISED OF HIS MIRANDA RIGHTS. THERE'S NO QUESTION THAT
18 THOSE MIRANDA RIGHTS WERE PROPERLY GIVEN AND ADMINISTERED
19 TO MR. WILLS. THERE'S NO QUESTION THAT HE UNDERSTOOD HIS
20 MIRANDA RIGHTS.

21 AFTER HIS ADVISEMENT OF HIS MIRANDA RIGHTS, WHICH
22 AT THE VERY TOP OF THE DOCUMENT AND AT THE VERY TOP OF THE,
23 OR BEGINNING OF THE STATEMENT TO HIM, IT INDICATES THAT
24 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A
25 COURT OF LAW.

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1 RIGHT BEFORE THAT IT HAS, YOU HAVE THE RIGHT TO
2 REMAIN SILENT AND GOES ON TO TALK ABOUT, YOU HAVE THE RIGHT
3 TO TALK TO A LAWYER AND HAVE HIM QUESTION, AND OBVIOUSLY HE
4 HAD A LAWYER WITH HIM, AND IF YOU MAKE A STATEMENT OR
5 ANSWER ANY QUESTIONS YOU HAVE THE RIGHT TO STOP AT ANY
6 TIME. THERE'S NO QUESTION HE UNDERSTOOD THESE RIGHTS.

7 THERE'S NO QUESTION THAT HE UNDERSTOOD THEM AND
8 HE MADE THE VOLUNTARY DECISION TO WAIVE HIS CONSTITUTIONAL
9 RIGHTS AFTER BEING ADVISED OF HIS MIRANDA STATEMENTS OR
10 MIRANDA RIGHTS. THEREFORE, PURSUANT TO JACKSON V. DENO AND
11 A NUMBER OF OTHER CASES CLEARLY, AS AN ASIDE, CLEARLY THE
12 DEFENDANT WAS IN CUSTODY HE HAD TO BE ADVISED OF HIS
13 MIRANDA RIGHTS SO THERE'S NO QUESTION ABOUT THAT. BUT I DO
14 FIND THAT AFTER THE INQUIRY AND EXAMINATION HERE THAT HE
15 MADE A VOLUNTARY STATEMENT TO THE POLICE. THEY COMPLIED
16 WITH THE DICTATES AND THE MANDATES OF MIRANDA. HE KNEW THE
17 RISK OF COMMUNICATING WITH THE POLICE IN TELLING THEM A
18 STORY WHICH THEY HAD THE RIGHT TO BELIEVE OR NOT TO
19 BELIEVE. HOWEVER THEY CHOSE TO TEST THAT BELIEF DOES NOT
20 AFFECT THE FACT THAT HE WAS ADVISED OF HIS MIRANDA RIGHTS.
21 HE UNDERSTOOD THEM AND HE VOLUNTARILY WAIVED HIS MIRANDA
22 RIGHTS KNOWING THAT ANYTHING HE SAID IN ANY CONTEXT COULD
23 BE USED AGAINST HIM IN A COURT OF LAW. THEREFORE, I FIND
24 THAT THE STATE WILL BE ALLOWED TO PLAY THE STATEMENT OF THE
25 DEFENDANT BEFORE THE JURY IN THIS PARTICULAR MANNER WITH

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1 THE UNDERSTANDING THAT NONE OF THE PARTIES IN THIS CASE
2 SHALL COMMUNICATE TO THE JURY IN ANY FASHION ABOUT A
3 POLYGRAPH, POLYGRAPH EXAM, THE RESULTS THEREOF. WE'RE NOT
4 GOING TO TALK ABOUT IT BEFORE THIS JURY IN ANY FASHION.

5 NOW, I WILL ALLOW THE DEFENSE, EITHER THROUGH
6 QUESTIONING, AND QUESTIONS WILL HAVE TO BE TAILORED SO THAT
7 WE DON'T TALK ABOUT POLYGRAPH, BUT THE DEFENSE CAN BRING
8 OUT BEFORE THE JURY THAT THE DEFENDANT MADE THIS STATEMENT
9 WITH THE UNDERSTANDING THAT HE HAD AN AGREEMENT WITH THE
10 STATE OF SOUTH CAROLINA BASED UPON THE TRUTHFULNESS OF HIS
11 STATEMENTS AND THAT THE STATE HAS DETERMINED FOR WHATEVER
12 REASONS THAT THEY BELIEVE HE IS NOT TELLING THE TRUTH AND
13 THEY HAVE MADE THE DETERMINATION TO USE THIS STATEMENT
14 AGAINST HIM, BUT THAT THE DEFENDANT MADE THE STATEMENT WITH
15 THE UNDERSTANDING THAT HE WAS MAKING AN AGREEMENT WITH THE,
16 WITH THE STATE TO, AS FAR AS THE PROFFER OR THE STATEMENT
17 THAT HE DID MAKE.

18 NOW, MR. DIGGS, I'M GOING TO GIVE YOU LATITUDE IN
19 THAT REGARD AS LONG AS YOU DON'T TOUCH ON THE ISSUE OR
20 BRING UP ABOUT THE POLYGRAPH, ALL RIGHT.

21 MR. DIGGS: I THINK WE UNDERSTAND THAT.

22 THE COURT: YOU'RE GOING TO HAVE A LOT OF
23 LATITUDE. I DON'T CARE HOW YOU APPROACH IT, YOU KNOW,
24 APPROACH IT FROM A COUPLE OF DIFFERENT WAYS. I DON'T HAVE
25 A PROBLEM WITH THAT BUT JUST DON'T BRING UP POLYGRAPH ALL

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1 RIGHT, SIR?

2 MR. DIGGS: WE'RE NOT GOING TO BRING IT UP.

3 THE COURT: I APPRECIATE THAT AND I KNOW YOU
4 WON'T BUT I'M JUST SAYING, AND I WANT THE STATE TO
5 UNDERSTAND, I'M GOING TO ALLOW YOU TO EXAMINE THE
6 CIRCUMSTANCES EXCEPT FOR THAT ONE ISSUE.

7 MR. DIGGS: YOUR HONOR, ON THE ISSUE OF
8 ADMISSIBILITY FOR THE RECORD I WOULD RESPECTFULLY SUGGEST
9 THAT THE PROFFER AGREEMENT WAS MORE SPECIFIC. IT
10 SUPERSEDED THE MIRANDA, THE GENERAL MIRANDA WARNINGS ABOUT
11 ANYTHING YOU MAY SAY CAN AND WILL BE USED AGAINST YOU IN A
12 COURT OF LAW. I UNDERSTAND THE COURT'S RULING. I JUST
13 WANTED TO MAKE THAT STATEMENT ON THE RECORD.

14 THE COURT: AND I APPRECIATE THAT. I UNDERSTAND
15 THAT, THAT, THAT THERE'S AN AGREEMENT AND, AND SOME
16 AGREEMENT BETWEEN THE STATE AND THE DEFENDANT AND I DO NOT
17 HAVE A PROBLEM WITH YOU EXAMINING THAT AGREEMENT AND ALL OF
18 ITS DETAILS EXCEPT FOR THAT ONE ISSUE OF THE POLYGRAPH AND
19 YOU'LL CERTAINLY BE ALLOWED TO GO INTO THAT FULLY BEFORE
20 THE JURY ABOUT THAT AND THAT THAT AGREEMENT WAS MADE WITH
21 THE STATE, AND CLEARLY IT WAS, THE DAY BEFORE HE WENT AND
22 HAD HIS MIRANDA RIGHTS GIVEN AND HE MADE THIS STATEMENT TO,
23 TO THE POLICE. THERE'S NO QUESTION HE, HE WAS ADVISED OF
24 HIS MIRANDA RIGHTS REGARDING THE STATEMENT RIGHT BEFORE HE
25 MADE THE STATEMENT ON AUGUST 26TH, 2005, AND THE PROFFER IS

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1 DATED AUGUST 25TH, 2005, AND SIGNED BY THE ASSISTANT
2 SOLICITOR, MR. WILLS, AND MR. DIGGS.

3 MR. DIGGS: YOUR HONOR, CAN I ASK YOU ARE YOU
4 GOING TO ADMIT THE VIDEO ITSELF OR JUST THE AUDIO?

5 THE COURT: OR THE WHAT?

6 MR. DIGGS: THE VIDEO AND THE AUDIO OR JUST THE
7 AUDIO BECAUSE HE'S APPEARING THERE, I JUST WANTED THE COURT
8 IF YOU'RE GOING TO SHOW THE VIDEO ---

9 THE COURT: I WAS GOING TO ALLOW IT AS IT WAS
10 PRESENTED TO ME UNLESS YOU HAD SOME OBJECTION TO IT BEING
11 PRESENTED IN SOME OTHER FASHION.

12 MR. DIGGS: WELL, NO, I THINK WE CAN DEAL WITH
13 HIS CLOTHING, HIS DRESS THERE, WITH SOME INSTRUCTIONS THAT
14 THEY'RE NOT TO, YOU KNOW, HE'S INCARCERATED AT THAT MOMENT.

15 THE COURT: AND, PLEASE, REMIND ME AT THE TIME
16 THAT THAT IS MADE AT THE TIME RIGHT BEFORE WE PLAY THAT TO,
17 TO THE JURY BUT IT WAS MY INTENTION THAT WE SHOW IT AS IT
18 WAS PRESENTED TO ME. NOW IF YOU JUST WANTED THE AUDIO
19 PLAYED IF THAT'S YOUR REQUEST I'LL CERTAINLY LISTEN TO THAT
20 AS TO JUST THE AUDIO BEING PLAYED TO, TO THE JURY IF THAT'S
21 WHAT YOU WANT ON BEHALF OF THE DEFENDANT.

22 MR. DIGGS: WELL I, I WOULD ACTUALLY PREFER THE
23 VIDEO TO BE PLAYED BUT I THINK IT WOULD BE FAIR TO INSTRUCT
24 THE JURY NOT TO DRAW ANY NEGATIVE ADVERSITY.

25 THE COURT: ALL RIGHT, AND I'LL BE GLAD TO DO

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1 THAT JUST, PLEASE, HELP ME AND REMIND ME ABOUT THAT RIGHT
2 BEFORE THE VIDEO IS PLAYED TO THE JURY.

3 MR. DIGGS: THEY'RE TWO THINGS MAYBE THE COURT
4 MIGHT WANT TO CONSIDER HAVING THE STATE TO REDACT, IN FACT
5 I WOULD ASK THE JUDGE, THE COURT TO DO THIS. THERE'S A
6 REFERENCE BY MY CLIENT TO HIS BEING IN PRISON AND HE HAD
7 JUST GOTTEN OUT OF PRISON. I WOULD ASK THAT, IT'S REALLY,
8 IT HAS NOTHING TO DO WITH THE CONTENT OF THE STATEMENT.

9 THE COURT: IF WE CAN FIND THAT AND ---

10 MR. DIGGS: YOUR HONOR, WE DO HAVE A TRANSCRIPT
11 OF IT AND I CAN SHOW THE SOLICITOR BASICALLY EXACTLY WHERE
12 THAT IS.

13 THE COURT: OKAY, AND IF WE COULD BASICALLY GET
14 TO THAT POINT AND STOP IT AND FAST FORWARD IT I THINK ---

15 MR. DIGGS: AND I ---

16 THE COURT: --- THAT'S PROPER.

17 MR. DIGGS: AND I THINK THERE'S ALSO ---

18 THE COURT: I DON'T THINK THERE'S ANY REASON WHY
19 THERE SHOULD BE AT THIS POINT IN TIME IN THE TRIAL.

20 MR. DIGGS: I THINK THERE'S ALSO REFERENCE TO
21 THE POLYGRAPH ITSELF IN THERE THAT NEEDS TO BE REDACTED.

22 THE COURT: I BELIEVE THERE IS AND I WAS GOING
23 TO BEFORE WE GOT TOO FAR I WAS GOING TO MENTION THAT. IF
24 YA'LL HAVE GOT A TRANSCRIPT OF IT I SUPPOSE ---

25 MR. RICHARDSON: YOUR HONOR, IT'S A ---

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1 THE COURT: --- YOU CAN PINPOINT WHERE THAT IS
2 SO RIGHT BEFORE THAT WHEN YA'LL KNOW WE'RE GETTING TO THAT
3 POINT IF WE CAN, YA'LL LOOK AT YOUR TRANSCRIPT STOP IT AT
4 THE END OF A SENTENCE, FAST FORWARD IT PAST THE NEXT
5 SENTENCE AND THEN CONTINUE IT ON. THAT WOULD BE, YOU'RE
6 CORRECT, MR. DIGGS, WE NEED TO ADDRESS BOTH THOSE ISSUES
7 AND MAKE SURE WE DON'T PLAY EITHER ONE OF THOSE TO THE
8 JURY.

9 MR. RICHARDSON: YOUR HONOR, WITH REGARD TO THE
10 PRISON STATEMENT I'VE MARKED WHERE THAT IS.

11 THE COURT: ALL RIGHT, SIR.

12 MR. RICHARDSON: IT'S ACTUALLY A MINUTE 55 INTO
13 THE SECOND PART OF THE STATEMENT.

14 THE COURT: OKAY, AND YOU'VE ALSO GOT A
15 TRANSCRIPT, I MEAN YOU CAN TELL FROM HIS WORDS AND THE
16 QUESTIONS YOU KNOW WHERE IT'S COMING.

17 MR. DIGGS: EXACTLY.

18 MR. RICHARDSON: YES, SIR, YES, SIR, AND I CAN
19 MUTE THAT OUT THE WAY THIS SYSTEM WORKS, I'VE TRIED TO FAST
20 FORWARD AND UNTIL IT PLAYS YOU CAN'T FAST FORWARD SO I CAN
21 MUTE THAT OUT AT THAT POINT.

22 THE COURT: OKAY.

23 MR. RICHARDSON: LIKE I SAY THERE AT THE DIAL
24 AND DIAL THAT DOWN FOR THE TWO SECONDS.

25 THE COURT: ALL RIGHT, WELL HOWEVER, JUST MAKE

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1 SURE THAT, YOU KNOW, WHEN, WHEN YOU DO THAT THAT YOU ARE
2 ELIMINATING IT, YOU KNOW, FOR THE, SO THE JURY DOES NOT
3 HEAR IT.

4 MR. RICHARDSON: YES, SIR.

5 THE COURT: AND DO YOU KNOW WHERE THE REFERENCE
6 IS REGARDING THE POLYGRAPH?

7 MR. RICHARDSON: YOUR HONOR, I'LL LOOK THROUGH
8 THIS TO SEE IF THERE'S A REFERENCE TO THE POLYGRAPH.

9 THE COURT: THERE IS SOMETHING SAID ABOUT IT.
10 THERE WAS SOME ---

11 MR. RICHARDSON: THEY MENTION PROFFER I KNOW BUT
12 I DON'T RECALL WHERE THEY SAY POLYGRAPH AND I WAS TRYING TO
13 FOLLOW ALONG WITH THE TRANSCRIPT. UNFORTUNATELY THIS IS
14 NOT ---

15 THE COURT: WELL IT STRUCK ME THAT THERE WAS AND
16 IT WAS SOMEWHERE AROUND THE TIME THEY WERE TALKING ABOUT
17 THE PROFFER. YA'LL LOOK AT IT AND MAKE SURE, OKAY.

18 MR. DIGGS: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT, ANY OTHER MOTIONS THAT WE
20 NEED TO TAKE UP AT THIS POINT IN TIME?

21 MR. RICHARDSON: YOUR HONOR, WE MAY WANT TO LOOK
22 AT THE EXHIBITS, I BELIEVE MR. DIGGS HAS SOME OBJECTIONS TO
23 THE PICTURES.

24 THE COURT: ALL RIGHT.

25 MR. DIGGS: YOUR HONOR ---

PRELIMINARY CHARGE

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1 MAY BE BECAUSE AGAIN THAT'S NOT MY JOB, THAT'S YOUR JOB, SO
2 PLEASE UNDERSTAND WHEN I MAKE STATEMENTS IN THE COURT OR
3 MAKE RULINGS IN THE COURT I'M GOVERNING THE CONDUCT OF THE
4 TRIAL, HOW IT WILL PROCEED NOT AS TO WHAT THE COURT MAY OR
5 MAY NOT BELIEVE ABOUT ANY EVIDENCE THAT IS PRESENTED IN
6 THIS PARTICULAR MATTER.

7 SO WITH THAT I'LL TURN IT OVER TO THE LAWYERS FOR
8 THEIR OPENING STATEMENTS. SOLICITOR?

OPENING STATEMENT

9
10 **BY MR. RICHARDSON:**

11 GREED, BETRAYAL, GREED AND BETRAYAL, TWO HUMAN
12 VICES OLD AS TIME. EITHER OF THESE GREED OR BETRAYAL
13 STANDING ON THEIR ON IS INHERENTLY WRONG. IT TENDS TO LEAD
14 US DOWN THE PATHS THAT, THAT ARE NO GOOD FOR US. THEY'RE
15 BAD, BUT WHEN YOU TAKE GREED AND BETRAYAL AND THEY COME
16 TOGETHER IT FORMS SOMETHING NEW, SOMETHING MALIGNANT,
17 SOMETHING UGLY.

18 ON OCTOBER 13TH, 2001, GREED AND BETRAYAL CAME
19 TOGETHER, THEY TOOK A NEW FORM, SOMETHING FULL OF MALICE,
20 SOMETHING FULL OF HATE AND EVIL. IT TOOK THE FORM OF
21 MURDER IN A COLD BLOODIED CONTRACT KILLING OF JULIAN LEE.

22 FOLKS, AS WE GO THROUGH THIS CASE I WANT YOU TO
23 KEEP A, KEEP A STORY IN IT. IMAGINE, IF YOU WILL, A YOUNG
24 MAN SITTING AT HOME ON A FRIDAY EVENING THE TELEPHONE
25 RINGS. HE GETS A CALL FROM HIS BUDDY, HIS FRIEND, A GUY HE

PRELIMINARY CHARGE

155

1 TRUSTS, BUDDY ON THE OTHER END OF THE LINE SAYS, HEY MAN,
2 YOU WANT TO GO PLAY SOME BASKETBALL. THIS YOUNG MAN
3 SITTING AT HOME HE SAYS, YEAH, LOVE BASKETBALL, LET'S GO,
4 HANGS UP THE PHONE GRABS HIS GYM SHORTS, GRABS HIS FAVORITE
5 BASKETBALL JERSEY, MAYBE A SIX'ERS, MAYBE A NETS JERSEY,
6 GRABS HIS BASKETBALL SNICKERS, LACES THEM UP, GRABS HIS
7 BASKETBALL AND HE GOES OUTSIDE AND HE WAITS, WAITS FOR THE
8 FRIEND OF HIS TO PICK HIM UP CAUSE HE'S GOING TO GO PLAY
9 BASKETBALL AND HIS BUDDY ARRIVES. IT'S A MAN THAT HE
10 TRUST, PICKS HIM UP IN HIS CAR AND THERE'S A COUPLE OF
11 OTHER PEOPLE IN THERE AND THIS FRIEND DRIVES THIS YOUNG MAN
12 WHO WANTS TO GO PLAY BASKETBALL ON DOWN THE ROAD OUT TO THE
13 NEW BASKETBALL COURT, WAY OUT IN THE COUNTRY. THEY'RE
14 GOING TO GO PLAY BASKETBALL.

15 THEY GET TO THE COURT, PARK THE CAR, THIS YOUNG
16 MAN THAT LOVES BASKETBALL. HE HOPS OUT OF THE CAR AND HE
17 STARTS TO JUST GO RIGHT DOWN TO THE BASKETBALL COURT AND
18 HE'S GOING TO THE BASKETBALL COURT READY TO PLAY
19 BASKETBALL, BAM. HE FEELS A 9MM SLUG RIP THROUGH HIS LOWER
20 BACK, DRIVING HIM INTO THE GROUND. HE'S IN SHOCK. IT'S
21 RIPPED THROUGH HIS LIVER. HE'S ON THE GROUND WONDERING
22 WHY, WHAT'S GOING ON, AND HE STARTS CRAWLING, CRAWLED
23 FORWARDS JUST A LITTLE BIT, FEELS THE SHADOW OF EVIL COME
24 OVER. HIS LAST THOUGHT WHY, WHY HAVE I BEEN BETRAYED, BAM,
25 THE KILL SHOT.

PRELIMINARY CHARGE

156

1 I WANT YOU KEEP THAT STORY IN MIND BECAUSE THE
2 LAW SERVES TO PROTECT THAT YOUNG MAN GOING TO PLAY
3 BASKETBALL. THE LAW PROTECTS EVERY, EACH OF US AND YOU
4 NEED TO BE COGNIZANT OF THAT FOR ONE SIMPLE REASON, JULIAN
5 LEE WAS NOT GOING TO PLAY BASKETBALL THAT NIGHT. IT WOULD
6 BE NICE IF HE WAS.

7 THAT NIGHT ON OCTOBER 12TH, 2001, JULIAN LEE
8 RECEIVED A PHONE CALL FROM THE DEFENDANT, IT WASN'T TO PLAY
9 BASKETBALL, IT WAS, HEY, MAN, LET'S GO PULL A RIP, LET'S GO
10 RIP OFF SOME DRUG DEALERS. JULIAN LEE SAID, OKAY, HE LIKES
11 DOING THAT, WAS GOING TO SCORE SOME QUICK CASH, BUT JULIAN
12 LEE WAS NOT WEARING BASKETBALL SHORTS AND A JERSEY. HE HAD
13 ON DARK JEANS AND A BLACK LONG SLEEVE TEE SHIRT, DIDN'T
14 HAVE ON SNEAKERS AND A BASKETBALL. HE HAD ON BLACK DOO RAG
15 AND A STOCKING CAP, LONG GLOVES. HE WAS NOT DRESSED FOR
16 BASKETBALL; HE WAS DRESSED TO GO ROB DRUG DEALERS.

17 HE DID GO OUTSIDE AND WAIT FOR THIS BUDDY, THIS
18 FRIEND WHO CALLED HIM, WAS GOING TO HELP HIM GET SOME QUICK
19 CASH, GOING TO HELP HIM SCORE SOME MONEY AND HE GOT IN THE
20 CAR WHENEVER DAVID WILLS ARRIVED EARLY IN THE MORNING ON
21 OCTOBER 13TH.

22 YOU'LL HEAR DAVID WILLS TELL YOU HE PICKED HIM UP
23 SOMETIME BETWEEN ONE AND TWO AT HIS HOUSE ON OCTOBER 13TH,
24 2001, AND THAT THEY DROVE OUT AWAY FROM JULIAN LEE'S HOUSE
25 DOWN HIGHWAY 9 PAST HIGHWAY 22 TO A LITTLE PLACE CALLED

OPENING STATEMENT BY DEFENSE

157

1 PINT CIRCLE. THAT'S WHAT THE AREA IS CALLED OUT ON VEREEN
2 AVENUE AND THAT'S, THAT'S WHERE IT STARTS GETTING EXCITING
3 BECAUSE JULIAN KNOWS HE'S GOING TO MAKE SOME MONEY SO HE
4 DOES GET OUT OF THE CAR.

5 YOU'RE GOING TO HEAR THE DEFENDANT'S OWN
6 TESTIMONY, YOU'RE GOING TO HEAR A STATEMENT HE GAVE TO THE
7 POLICE, JULIAN GOT OUT OF THE CAR AND WALKED FORWARD AND
8 HE'S GOING AND HE'S GOING AND BAM, SHOT IN THE BACK, AND
9 THE DEFENDANT STATES THAT HE WATCHED AS JULIAN IS SHOT IN
10 THE BACK, DROVE HIM OUT THERE TO WHERE HE WAS SHOT IN THE
11 BACK.

12 THE PHYSICAL EVIDENCE WILL TELL YOU HE WAS SHOT
13 YET A SECOND TIME THROUGH THE UPPER BACK. THE PATHOLOGIST
14 WILL TELL YOU THAT BULLET RIPPED THROUGH HIS UPPER BACK OUT
15 HIS THROAT, INTERSECTED HIS AORTA, HE BLED OUT, AND HE LAY
16 THERE IN THE MIDDLE OF A DESOLATE REMOTE AREA WHERE NOBODY
17 KNEW HIM AND THAT'S WHERE HE DIED. THAT'S WHERE HIS FINAL
18 MOMENTS WERE SPENT.

19 NOW YOU'RE NOT GOING TO HEAR THE DEFENDANT SAY HE
20 WAS THE SHOOTER BUT YOU DO HEAR THAT BETRAYAL, HE DROVE HIM
21 TO THAT PLACE OF EXECUTION.

22 I BEGAN THIS COLLOQUY BY SAYING GREED AND
23 BETRAYAL SO YOU'RE WONDERING WHERE THE GREED IS. WELL
24 YOU'LL GET THAT INFORMATION FROM THE DEFENDANT AS WELL.

OPENING STATEMENT BY DEFENSE

158

1 HE'LL TELL YOU THAT HE WAS PAID \$10,000 TO MAKE SURE JULIAN
2 LEE DIED. HE'LL TELL YOU THAT HE CONSPIRED WITH MARK
3 WILLARD TO MAKE SURE JULIAN LEE WAS EXECUTED AND HE'LL TELL
4 YOU THAT MARK WILLARD WAS ONE OF THE PASSENGERS IN THE CAR
5 THAT JUST HAPPENED TO BE GOING OUT TO THAT DRUG DEAL OR
6 THAT RIP THAT NIGHT AND IN HIS STATEMENT HE SAYS, I DIDN'T
7 KNOW MARK WILLARD WAS GOING TO SHOOT HIM. FOLKS, USE YOUR
8 COMMON SENSE YOU KNOW THAT IT'S NOT TRUE.

9 THE DEFENDANT PICKED UP JULIAN LEE FOR ONE REASON
10 AND PICKED UP MARK WILLARD FOR ONE REASON TO DRIVE THEM OUT
11 TO THE PLACE OF EXECUTION AND TO MAKE SURE JULIAN LEE DID
12 NOT RETURN ALL FOR THE SUM OF \$10,000, 5,000 FOR THE
13 DEFENDANT AND 5,000 FOR MARK WILLARD.

14 FOLKS, THERE IT IS GREED AND BETRAYAL AND THE LAW
15 PROTECTS EACH OF US FROM IT. THE LAW PROTECTS US ALL FROM
16 THESE EVIL ACTS AND THE LAW SHOULD SERVE AND PROTECT JULIAN
17 LEE FROM THE GREED AND BETRAYAL THAT LED TO THE COLD
18 CONTRACT KILLING OF THIS YOUNG MAN.

19 THE COURT: ALL RIGHT, MR. DIGGS?

20 MR. DIGGS: MAY IT PLEASE THE COURT?

21 THE COURT: YES, SIR.

22 OPENING STATEMENT

23 BY MR. DIGGS:

24 GOOD MORNING LADIES AND GENTLEMEN. MY NAME IS

OPENING STATEMENT BY DEFENSE

159

1 BILL DIGGS, I'M AN ATTORNEY AND I PRACTICE IN MYRTLE BEACH
2 AND I HAVE AN OPPORTUNITY TO REPRESENT DAVID WILLS IN THE
3 TRIAL OF THIS CASE.

4 I WANT YOU TO THINK FOR JUST A MOMENT THAT THE
5 SOLICITOR IS NOT A WITNESS IN THIS CASE. HE DOESN'T KNOW
6 WHAT HAPPENED. WE DO KNOW THAT JULIAN LEE WAS SHOT AND
7 THAT HE WAS KILLED AND THAT HE SHOULD NOT HAVE BEEN. WE
8 KNOW THAT HE WAS MURDERED BUT THE SOLICITOR WAS NOT THERE
9 THAT NIGHT AND HE'S NOT GOING TO BE ABLE TO STAND UP HERE
10 AND TELL YOU WHAT HAPPENED.

11 YOU'RE GOING TO HAVE TO MAKE THAT DETERMINATION
12 DURING THE TRIAL OF THE CASE AND WHEN YOU BEGIN TO
13 DELIBERATE AT THE END OF THIS CASE AFTER ALL OF THE
14 EVIDENCE HAS BEEN PRESENTED AND SO IT WOULD BE WRONG FOR
15 YOU TO BEGIN TO MAKE A DECISION RIGHT NOW ABOUT WHAT
16 HAPPENED. IT WOULD BE WRONG FOR YOU TO SAY THE SOLICITOR'S
17 TOLD ME WHAT HAPPENED NOW, I DON'T NEED TO LISTEN TO THE
18 EVIDENCE. I KNOW THAT DAVID WILLS IS GUILTY. THAT WOULD
19 BE A MISTAKE, AND IT WOULD BE DEVIATED FROM WHAT HIS HONOR
20 HAS CHARGED YOU ABOUT YOUR RESPONSIBILITIES AS A JURY.

21 DAVID WILLS WAS THERE THAT NIGHT, DAVID WAS
22 THERE. HE KNOWS WHO SHOT JULIAN LEE. THE EVIDENCE IS
23 GOING TO SHOW THAT DAVID AND JULIAN WERE FRIENDS FOR YEARS
24 AND YEARS.

OPENING STATEMENT BY DEFENSE

160

1 DAVID IS GOING TO TESTIFY OR YOU'RE GOING TO HEAR
2 EVIDENCE THAT DAVID HAS INDICATED THAT A GENTLEMAN NAMED
3 MARK WILLARD WAS THE SHOOTER IN THIS CASE AND THAT DAVID
4 HAD NO IDEA, HAD NO IDEA THAT MARK WILLARD WAS GOING TO
5 PULL OUT A GUN AND KILL JULIAN LEE BY SHOOTING HIM IN THE
6 BACK. I WANT YOU TO THINK ABOUT THAT DURING THE TRIAL OF
7 THE CASE AND LOOK AT THE EVIDENCE TO SEE WHAT SUGGESTS TO
8 YOU THE CONTRARY.

9 NOW IN THIS SITUATION THERE WERE TRAGEDIES THAT
10 HAPPENED, A YOUNG MAN WAS SHOT AND KILLED. AND THE
11 TESTIMONY, I BELIEVE, IS GOING TO SHOW THAT SOME PEOPLE
12 WERE ANGRY AT JULIAN BECAUSE JULIAN HAD ROBBED THEIR HOME
13 AND HAD STOLEN ABOUT \$50,000 IN CASH AND OTHER ITEMS FROM
14 THESE TWO INDIVIDUALS. THEY WERE ANGRY, THEY WANTED JULIAN
15 SHOT.

16 MARK WILLARD WAS THE INDIVIDUAL WHO KILLED;
17 COMMITTED THE ACT ON BEHALF OF THE INDIVIDUALS WHO WANTED
18 JULIAN DEAD. DAVID TELLS US THAT AND SO YOU CAN SEE FROM
19 WHAT THE SOLICITOR HAS SAID AND WHAT I'M SAYING NOW WE'RE
20 GOING TO HAVE TO GET REAL SPECIFIC HERE ABOUT WHO DID WHAT
21 WHEN AND WHO KNEW WHAT WAS GOING TO HAPPEN ON WHAT
22 OCCASION.

23 SOMETIMES THE LAW GETS VERY SPECIFIC, REQUIRES US
24 TO LOOK AT DETAILS, THE SMALLEST DETAIL. BUT AT THE END OF

OPENING STATEMENT BY DEFENSE

161

1 THE CASE HIS HONOR IS GOING TO CHARGE US, HE'S GOING TO
2 CHARGE YOU THAT MURDER HAS SPECIFIC ELEMENTS, SPECIFIC
3 THINGS THAT HAVE TO HAPPEN FOR A HOMICIDE TO CONSTITUTE
4 MURDER, FOR THE KILLING OF ANOTHER HUMAN BEING TO
5 CONSTITUTE MURDER. AND IN ORDER TO GET TO THAT CONCLUSION
6 YOU HAVE TO LOOK SPECIFICALLY AT THE EVIDENCE IN THE CASE,
7 SPECIFICALLY WHO KNEW WHAT WAS GOING TO HAPPEN WHEN.

8 FOR EXAMPLE, IN THE INDICTMENT IT ALLEGES THAT
9 DAVID WILLS IN CONCERT WITH OTHERS WILLFULLY, FELONIOUSLY,
10 AND INTENTIONALLY KILLED THE VICTIM, OKAY, THAT'S PART OF
11 MURDER. THEY'RE GOING TO HAVE TO PROVE THAT TO SHOW THAT
12 DAVID WILLS COMMITTED MURDER, NOT THAT HE WAS JUST THERE,
13 WE KNOW HE WAS THERE, THAT'S NOT GOING TO MAKE HIM GUILTY
14 OF MURDER. YOU'RE GOING TO HAVE TO DECIDE WAS HE
15 WILLFULLY, FELONIOUSLY, AND INTENTIONALLY KILLING THE
16 VICTIM AND THE EVIDENCE IS GOING TO SHOW, NO, HE WASN'T.

17 HE WAS THERE AND THIS SHOOTING WAS ABSOLUTELY A
18 SURPRISE TO HIM, THAT HE WAS AFRAID, HE HAD HEARD STORIES
19 ABOUT THIS WILLARD FELLOW BEFORE. HE LEFT WITH HIM BECAUSE
20 HE DIDN'T KNOW IF HE WAS GOING TO BE KILLED. HE HAD JUST
21 WITNESSED A MURDER.

22 HE DID TAKE THE MONEY, SOME MONEY AFTER THE FACT
23 TO KEEP HIS MOUTH SHUT AND THAT'S A CRIME PROBABLY BUT IT'S
24 NOT MURDER AND SO YOU'RE GOING TO HAVE TO MAKE A DECISION

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

162

1 ABOUT WHAT THE SPECIFIC FACTS ARE IN THIS CASE AND NOT JUST
2 LOOK INTO A CLOUD OF DUST AND NOT BE ABLE TO REALLY SEE
3 WHAT'S GOING ON IN THERE AND JUST SAY, WELL JULIAN'S DEAD
4 SO AND HE WAS THERE HE MUST BE GUILTY. YOUR JOB IS NOT
5 GOING TO BE THAT EASY. IT'S GOING TO BE MORE DIFFICULT.

6 YOU'RE GOING TO HAVE TO ANALYZE THE EVIDENCE AND
7 MAKE INFERENCES, WHAT'S REASONABLE AND WHAT'S NOT. DOES IT
8 REALLY MAKE SENSE WHAT THE PROSECUTOR IS SAYING BEYOND A
9 REASONABLE DOUBT? YOU HAVE TO ANSWER THOSE QUESTIONS SO,
10 PLEASE, I WOULD ASK YOU AS COUNSEL FOR DAVID, IF DAVID
11 WOULD ASK YOU, PLEASE WHEN YOU RAISED YOUR HAND AND TOOK
12 THAT OATH AS A JUROR TO FOLLOW THAT OATH TRULY AND HOLD THE
13 STATE TO THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT ON
14 THIS OFFENSE. DID DAVID WILLS WILLFULLY, FELONIOUSLY, AND
15 INTENTIONALLY KILL JULIAN LEE OR WAS HE JUST THERE ON THAT
16 OCCASION WHEN MARK WILLARD ACTED ON HIS OWN AND KILLED
17 JULIAN LEE? THAT'S YOUR JOB.

18 WE APPRECIATE YOUR WILLINGNESS TO BE HERE. IT IS
19 BY FAR I ASSURE YOU THE MOST IMPORTANT DAY IN MY CLIENT'S
20 LIFE. THIS IS HIS ONE DAY IN COURT. THIS IS HIS ONE
21 OPPORTUNITY TO HAVE A JURY OF HIS PEERS. JUDGE WHAT THE
22 FACTS ARE IN THIS CASE. WITH ALL THE POWER THAT THE JUDGES
23 HAVE IN THIS STATE AND IN THE UNITED STATES THE JUDGE
24 CANNOT TELL YOU WHAT THE FACTS ARE IN THIS CASE BUT THAT'S
25 YOUR ROLE. IT'S GOING TO BE A DIFFICULT ONE. YOU'RE NOT

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

163

1 JUST LOOKING AT A CLOUD OF DUST AND GUESSING WHAT HAPPENED
2 BUT BEING ABLE TO INFER BEYOND A REASONABLE DOUBT WHAT
3 SPECIFICALLY HAPPENED AND WHAT WAS IN THIS YOUNG MAN'S MIND
4 AND WHAT DID HE KNOW AT THAT TIME WHEN JULIAN LEE WAS
5 KILLED.

6 WE WILL NOT TAKE ANY MORE TIME; WE UNDERSTAND
7 YOUR TIME IS VALUABLE. WE'RE NOT GOING TO DRAG IT OUT ANY
8 LONGER THAN IT NEEDS TO BE FOR YOU TO KNOW EVERYTHING YOU
9 NEED TO KNOW ABOUT THIS CASE SO YOU CAN MAKE A TRUE AND
10 JUST VERDICT IN THE CASE, THANK YOU.

11 THE COURT: ALL RIGHT, SOLICITOR, YOUR FIRST
12 WITNESS, PLEASE.

13 MR. RICHARDSON: THANK YOU, YOUR HONOR, PLEASE
14 THE COURT THE STATE WOULD CALL FORMER DETECTIVE ANN HAYES
15 PITTS.

16 THE COURT: ALL RIGHT, PLEASE COME AROUND AND BE
17 SWORN, MA'AM.

18 ANN HAYES PITTS

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 MADAM CLERK: STATE YOUR FULL NAME AND SPELL
21 YOUR LAST NAME FOR THE COURT.

22 THE WITNESS: ANN HAYES PITTS, P-I-T-T-S.

23 DIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q GOOD MORNING, ANN?

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

165

1 Q AND IN WHAT CAPACITY OR CAPACITIES DID YOU
2 SERVE WITH HORRY COUNTY?

3 A I STARTED THERE IN 1997 IN THE UNIFORM
4 PATROL DIVISION; I SERVED APPROXIMATELY THREE YEARS THERE.
5 I WAS THEN MOVED TO CRIME SCENE WHERE I WAS A CRIME SCENE
6 TECHNICIAN FOR APPROXIMATELY THREE YEARS AND THEN I WAS
7 PROMOTED TO DETECTIVE AND SERVED IN THE VIOLENT CRIME
8 SECTION FOR APPROXIMATELY THREE YEARS BEFORE LEAVING
9 NOVEMBER OF '06.

10 Q BACK IN OCTOBER OF 2001 YOU WERE WORKING --

11 A AS A CRIME SCENE TECHNICIAN.

12 Q WHAT WERE YOUR, WHAT WERE YOUR DUTIES AS A
13 CRIME SCENE TECHNICIAN?

14 A TO RESPOND TO CRIME SCENES AND PHOTOGRAPH
15 THEM, COLLECT ANY EVIDENCE, PROCESS THE SCENE.

16 Q KIND OF LIKE CSI?

17 A SIMILAR.

18 Q DO YOU RECALL BACK IN OCTOBER, 2001, BEING
19 CALLED OUT TO A MURDER CASE AROUND OCTOBER 13TH, 2001?

20 A I DO.

21 Q AND WHERE WAS THAT?

22 A IT WAS LOCATED IN THE WAMPEE SECTION OF
23 HORRY COUNTY WHICH IS OFF HIGHWAY 90, IT WAS VEREEN AVENUE.

24 Q AND THAT'S HERE IN HORRY COUNTY?

25 A IT IS.

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

166

1 Q AND IS THERE ANYTHING, ARE THERE ANY OTHER
2 NAMES FOR THAT AREA?

3 A THE NEWEST MAJOR ROAD, IF YOU WILL, IS PINT
4 CIRCLE AND MOST PEOPLE THAT ARE FAMILIAR WITH THAT AREA
5 KNOW WHERE PINT CIRCLE IS. IT'S A, HAS TWO SEPARATE
6 ENTRANCES AND IS NEAR THE MAIN GROCERY STORE IN THAT AREA.

7 Q ANN --

8 MR. RICHARDSON: THE COURT'S INDULGENCE.

9 THE COURT: YES, SIR

10 MR. RICHARDSON: (CONTINUING)

11 Q I'LL JUST HOLD THIS UP, IT'S FOR THE
12 PURPOSE OF IDENTIFICATION STATE'S 14, ANN, DO YOU RECOGNIZE
13 THIS ITEM?

14 A I DO.

15 Q AND WHAT DOES, WHAT DOES THIS EXHIBIT
16 DEPICT?

17 A IT'S A 2005 TOPOGRAPHICAL MAP OF THE VEREEN
18 AVENUE AREA OF HIGHWAY 90 AREA.

19 Q THIS CASE OCCURRED BACK IN 2001?

20 A THAT'S CORRECT.

21 Q AND IS THIS THE CRIME SCENE AREA TO WHICH
22 YOU WERE CALLED?

23 A YES, SIR.

24 Q THE MURDER SCENE, AND THIS FAIRLY AND
25 ACCURATELY DEPICTS THAT AREA?

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

167

1 A THERE'S BEEN SOME DEVELOPMENT, IT'S
2 DIFFERENT THAN IT WAS IN '01 BUT IT'S THE SAME AREA, SIR.

3 MR. RICHARDSON: YOUR HONOR, PERMISSION TO
4 PUBLISH AT THIS TIME?

5 THE COURT: ANY OBJECTION?

6 MR. DIGGS: NO OBJECTION.

7 THE COURT: I'LL ALLOW STATE'S 14 INTO EVIDENCE
8 AND ALLOW PUBLICATION.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER 14 ENTERED
10 INTO EVIDENCE.)

11 MR. RICHARDSON: (CONTINUING)

12 Q ANN, WHEN YOU, WHEN YOU FIRST ARRIVED ON
13 THE SCENE TO THIS MURDER INVESTIGATION WHAT WERE YOUR
14 INITIAL OBSERVATIONS?

15 A THERE WAS A YOUNG MALE LYING IN A VACANT
16 LOT FACE DOWN.

17 MR. RICHARDSON: YOUR HONOR, I'M GOING TO ASK
18 THAT IF MS. PITTS CAN COME DOWN OFF THE STAND?

19 THE COURT: ANY OBJECTION?

20 MR. DIGGS: NO, YOUR HONOR.

21 THE COURT: YOU MAY DO SO, NOW MAKE SURE THAT
22 YA'LL STAND EITHER IN FRONT OF THAT MICROPHONE OR THE ONE
23 ON THE JURY BOX ONE OF THE TWO.

24 MR. RICHARDSON: YES, SIR.

25 Q (CONTINUING) ANN, TO HELP US GET A BETTER

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

168

1 UNDERSTANDING COULD YOU INDICATE ON THIS MAP APPROXIMATELY
2 WHERE THE BODY WAS AT?

3 A RIGHT AT THIS AREA HERE WHERE THIS HOUSE --

4 -

5 THE COURT: YOU NEED TO SPEAK UP, MA'AM.

6 THE WITNESS: (CONTINUING)

7 A IN THE AREA WHERE THIS RESIDENCE IS SHOWN
8 HERE.

9 Q WAS THAT RESIDENCE THERE BACK IN 2001?

10 A NO, SIR.

11 MR. RICHARDSON: YOU CAN HAVE A SEAT.

12 Q WHAT, WHAT WAS THE SCENE LIKE BACK IN 2001,
13 THAT AREA?

14 A IT'S A, NOT A VERY POPULATED AREA, NOT A
15 LOT OF RESIDENCES OR BUSINESSES IN THAT AREA AND IT WAS A
16 DARK ROAD.

17 Q AND YOU SAID YOU FOUND A YOUNG MAN AS YOU
18 ARRIVED ON THE SCENE?

19 A YES, SIR.

20 Q WHAT WAS HIS CONDITION AGAIN?

21 A HE WAS DEAD.

22 Q HE WAS DEAD. DID YOU EVER DETERMINE THE
23 IDENTITY OF THAT MURDER VICTIM?

24 A NOT WHILE WE WERE ON THE SCENE, LATER HIS
25 IDENTITY WAS DETERMINED BY FINGERPRINTS.

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

169

1 Q AND DO YOU KNOW THE IDENTITY?

2 A YES, SIR.

3 Q AND WHO WAS THAT?

4 A JULIAN LEE.

5 Q AND YOU DESCRIBED THE AREA WHERE JULIAN WAS
6 FOUND AS REMOTE?

7 A YES, SIR.

8 Q OKAY, AND THAT HOUSE WASN'T THERE IN 2001?

9 A THAT'S CORRECT.

10 Q HOW DID YOU DESCRIBE THE AREA IN GENERAL?

11 A IT'S A PRETTY MUCH HEAVILY WOODED AREA WITH
12 SPARSE RESIDENCES. IT'S, LIKE I SAID IT'S NOT VERY
13 POPULATED.

14 Q BUT THE PEOPLE THERE DO THEY KEEP TO
15 THEMSELVES, DO THEY ---

16 MR. DIGGS: YOUR HONOR, SHE WOULDN'T KNOW, I
17 OBJECT ON THAT BASIS.

18 THE COURT: WELL I DON'T KNOW IF SHE KNOWS OR
19 NOT BUT YOU NEED TO REPHRASE YOUR QUESTION, SOLICITOR.

20 MR. RICHARDSON: (CONTINUING)

21 Q WHAT'S THE OCCUPATIONS OF THE POPULATION IN
22 THAT GENERAL AREA?

23 A FOR THE MOST PART THE PEOPLE THAT LIVE IN,
24 IN THAT COMMUNITY PRETTY WELL KNOW EACH OTHER. LIKE I WAS
25 MENTIONING THERE'S ONE SUPERMARKET THAT'S PRETTY WELL FOR

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

170

1 THE AREA. THERE'S NOT A LOT OF PLACES TO SHOP SO THE MOST
2 PEOPLE THAT LIVE IN THAT AREA PRETTY WELL KNOW EACH OTHER.

3 Q DO YOU KNOW WHERE JULIAN WAS FROM?

4 A I BELIEVE CONWAY, BUT I'M NOT SURE.

5 Q SO HE MAY NOT KNOW THE PEOPLE THERE, DID
6 YOU EVER SPEAK TO ANY OF THE PEOPLE ON THE SCENE THERE THE
7 LOCAL POPULATION?

8 A I DID NOT, THE DETECTIVES DID BUT I DIDN'T
9 PERSONALLY SPEAK TO ANY WITNESSES.

10 Q BUT WHILE YOU WERE ON THE SCENE NO ONE
11 THERE COULD IDENTIFY WHO THE VICTIM WAS?

12 A CORRECT.

13 Q SO LET ME SEE IF UNDERSTAND THIS CORRECT,
14 THE AREA IS SPARSELY POPULATED?

15 A YES, SIR.

16 Q PEOPLE THERE TEND TO KNOW ONE ANOTHER?

17 A YES, SIR.

18 Q JULIAN WAS NOT FROM THAT AREA?

19 A YES, SIR.

20 Q AND IT'S A REMOTE AREA?

21 A CORRECT.

22 Q ALL IN ALL A PRETTY GOOD PLACE TO SET UP AN
23 EXECUTION, CORRECT?

24 MR. DIGGS: YOUR HONOR, I OBJECT.

25 THE COURT: SUSTAINED.

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

173

1 THIS DEPICT?

2 A THAT'S THE BODY POSITION AS JULIAN LEE WAS
3 FOUND IN THE FIELD.

4 Q THAT'S THE POSITION HE WAS FOUND?

5 A YES, SIR.

6 Q LAYING DEAD IN THE FIELD?

7 A CORRECT.

8 Q JULIAN WAS LAYING IN THAT FIELD WHEN YOU
9 FOUND HIM?

10 A YES, SIR, WHEN I ARRIVED ON SCENE.

11 Q DID YOU MAKE ANY INITIAL OBSERVATIONS, YOU
12 SAID HE WAS MURDERED, AS TO CAUSE OF DEATH DID YOU EVER
13 DETERMINE INITIALLY WHAT WAS THE CAUSE OF DEATH?

14 A YES, SIR, I OBSERVED WHAT APPEARED TO BE
15 TWO GUNSHOT WOUNDS.

16 Q TWO GUNSHOT WOUNDS TO WHAT PART OF HIS
17 BODY?

18 A TO HIS BACK, BOTH TO HIS BACK.

19 Q AND CAN YOU BE ANY MORE SPECIFIC ON WHERE
20 THEY WERE LOCATED ON HIS BACK?

21 A ONE WAS TO THE LEFT SIDE ALMOST THE LOWER
22 BACK APPROXIMATE MIDDLE LOWER BACK ON THE LEFT SIDE. THE
23 SECOND ONE WAS MUCH HIGHER NEAR THE LEFT SHOULDER BLADE.

24 Q AND THAT PICTURE IS A LITTLE BIT FAR AWAY
25 WERE THERE ANY LANDMARKS WHERE JULIAN WAS, ANYTHING THAT

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

174

1 DISTINGUISH IT FROM THE REST OF THE FIELD?

2 A IT WAS, HE WAS IN A CLEARED SECTION, THERE
3 WASN'T REALLY ANY LANDMARKS CLOSE TO HIM.

4 Q ANN, I'M GOING TO SHOW YOU WHAT'S BEEN
5 PREVIOUSLY MARKED FOR IDENTIFICATION STATE'S NUMBER 18 AND
6 19, DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

7 A I DO.

8 Q HOW DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

9 A THESE ARE ALSO PHOTOGRAPHS I TOOK THE DAY I
10 RESPONDED TO THE CRIME SCENE.

11 Q AND ONCE AGAIN DO THEY FAIRLY AND
12 ACCURATELY REPRESENT THE CRIME SCENE AS YOU FOUND IT?

13 A YES, SIR, THEY DO.

14 MR. RICHARDSON: YOUR HONOR, AT THIS TIME THE
15 STATE WOULD SEEK TO INTRODUCE 18 AND 19.

16 THE COURT: ALL RIGHT, ANY OBJECTION?

17 MR. DIGGS: YES, SIR, PRIOR.

18 THE COURT: ALL RIGHT, SIR, I'M GOING TO ALLOW
19 STATE'S 18 AND 19 INTO EVIDENCE OVER THE OBJECTION OF THE
20 DEFENSE. DO YOU WISH TO PUBLISH?

21 MR. RICHARDSON: YES, SIR, YOUR HONOR.

22 THE COURT: ANY OBJECTION TO PUBLICATION?

23 MR. DIGGS: SUBJECT TO OUR --

24 THE COURT: I UNDERSTAND BUT THEY'RE ALREADY IN
25 EVIDENCE NOW. ALL RIGHT, YOU MAY PUBLISH, THANK YOU:

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

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1 A YES, SIR.

2 Q THIS LOG WHERE JULIAN WAS FOUND WOULD THAT
3 BE A GOOD AREA FOR FINGERPRINTS?

4 A NO, SIR.

5 Q NOW DID YOU USE ANY SPECIALIZED TOOLS OR
6 ANYTHING IN HELPING LOCATE THE EVIDENCE?

7 A THE METAL, METAL DETECTOR.

8 Q AND USING THIS METAL DETECTOR DID YOU FIND
9 ANYTHING?

10 A YES, A PROJECTILE WAS LOCATED USING THE
11 METAL DETECTOR.

12 Q NOW PRIOR TO FINDING THE PROJECTILE DID YOU
13 FIND ANY OTHER ITEMS?

14 A A SPENT CASING, SHELL CASING.

15 Q ANN, I'M GOING TO SHOW YOU WHAT'S BEEN
16 PREVIOUSLY MARKED AS STATE'S NUMBER 7 FOR IDENTIFICATION,
17 DO YOU RECOGNIZE THAT PICTURE?

18 A I DO.

19 Q AND HOW DO YOU RECOGNIZE THAT PICTURE?

20 A THIS IS A CLOSE UP PHOTOGRAPH I TOOK OF THE
21 SPENT SHELL CASING I LOCATED AT THE CRIME SCENE THAT DAY.

22 Q DOES THAT FAIRLY AND ACCURATELY DEPICT THAT
23 SHELL CASING AS YOU FOUND IT?

24 A IT DOES.

25 Q DID YOU TURN IT UP ON THE SIDE OR ANYTHING?

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

178

1 A NO, SIR.

2 Q WAS IT HARD TO FIND?

3 A EXTREMELY HARD TO FIND.

4 Q LIKE A NEEDLE IN A HAYSTACK?

5 A YES, SIR.

6 Q AND COULD YOU TELL US WHERE THE SHELL
7 CASING --

8 MR. RICHARDSON: I'M SORRY, YOUR HONOR, MOVE TO
9 INTRODUCE STATE'S 7.

10 THE COURT: ANY OBJECTION? MR. DIGGS, ANY
11 OBJECTION TO STATE'S 7 INTO EVIDENCE?

12 MR. DIGGS: NO, YOUR HONOR, I'M SORRY.

13 THE COURT: THAT'S ALL RIGHT, IN EVIDENCE
14 WITHOUT OBJECTION.

15 MR. RICHARDSON: PERMISSION TO PUBLISH?

16 THE COURT: ANY OBJECTION TO THAT?

17 MR. DIGGS: NO, YOUR HONOR.

18 THE COURT: YOU MAY DO SO.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER 7 ENTERED INTO
20 EVIDENCE.)

21 MR. RICHARDSON: (CONTINUING)

22 Q NOW THIS SHELL CASING, NUMBER ONE, WERE YOU
23 ABLE TO DETERMINE WHAT KIND OF WEAPON FIRED IT?

24 A NO, SIR.

25 Q IS THERE ANYTHING TO INDICATE WHAT CALIBER

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

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1 IT WAS?

2 A I BELIEVE IT WAS STAMPED WITH 9MM ON THE
3 RIM OF THE CASING.

4 Q 9MM, AND ONCE AGAIN WHERE WAS IT LOCATED?

5 A IT WAS, AS THE PICTURE SHOWS THERE WAS A
6 BLOOD POOL TO THE LEFT OF IT, IT WAS JUST TO THE RIGHT OF
7 THAT BLOOD POOL. THAT HAD BEEN WHERE THIS PHOTOGRAPH WAS
8 TAKEN AFTER MR. LEE HAD BEEN REMOVED FROM THE SCENE.
9 THAT'S THE AREA WHERE HIS HEAD HAD BEEN SO THE CASING IS
10 JUST TO THE RIGHT OF WHERE HIS HEAD WOULD HAVE BEEN.

11 Q SO THE SHELL CASING LANDED TO THE RIGHT?

12 A CORRECT.

13 Q OF MR. LEE'S HEAD?

14 A CORRECT.

15 Q NOW YOU SAY YOU FOUND A SHELL, A ROUND AS
16 WELL?

17 A YES, SIR, A PROJECTILE SPENT.

18 Q USED A METAL DETECTOR FOR THAT?

19 A CORRECT.

20 Q AND THAT PROJECTILE, LET'S GO SO WE CAN
21 FULL EXPLAIN EVERYTHING. STATE'S 8, 9, 8 AND 9 FOR
22 IDENTIFICATION PURPOSES, LET'S TAKE A LOOK AT THAT. ANN,
23 WHAT, DO YOU RECOGNIZE THOSE ITEMS?

24 A I DO.

25 Q AND HOW DO YOU RECOGNIZE THOSE ITEMS?

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

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1 A THESE ARE PHOTOGRAPHS I TOOK THE DAY I
2 RESPONDED TO THE CRIME SCENE.

3 Q AND WHAT DO THESE PHOTOGRAPHS DEPICT?

4 A NUMBER 8 DEPICTS, YOU CAN STILL SEE PART OF
5 THE MAIN BLOOD POOL AND JUST BELOW THAT IS AN AREA THAT I
6 HAD DUG UP AFTER THE METAL DETECTOR ALERTED TO TRY TO FIND
7 OUT WHAT THE DETECTOR WAS HITTING ON.

8 NUMBER 9 DEPICTS A LARGER ANGLED VIEW OF THAT
9 SAME SCENE.

10 Q SO THAT TURNED UP DIRT IN THERE THAT'S
11 WHERE YA'LL WERE DIGGING?

12 A CORRECT.

13 Q DUE TO HITS BY THE METAL DETECTOR?

14 A CORRECT.

15 MR. RICHARDSON: YOUR HONOR I'D SEEK TO
16 INTRODUCE STATE'S 8 AND 9 INTO EVIDENCE?

17 THE COURT: ANY OBJECTION?

18 MR. DIGGS: NO, SIR, YOUR HONOR.

19 THE COURT: THEY'RE IN EVIDENCE WITHOUT
20 OBJECTION.

21 (WHEREUPON, STATE'S EXHIBITS NUMBERS 8 AND 9
22 ENTERED INTO EVIDENCE.)

23 MR. RICHARDSON: AND PERMISSION TO PUBLISH?

24 THE COURT: ANY OBJECTION TO PUBLICATION?

25 MR. DIGGS: NO, SIR.

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

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1 THE COURT: YOU MAY DO SO.

2 MR. RICHARDSON: (CONTINUING)

3

4 Q ONCE AGAIN THAT TURNED UP DIRT IS WHERE
5 YA'LL HAD BEEN DIGGING?

6 A CORRECT.

7 Q AND THAT WAS DUE TO THE METAL DETECTOR?

8 A YES, SIR.

9 Q NOW YA'LL DUG UP THE DIRT AS STATED
10 PREVIOUSLY WHEN YOU FOUND THE PROJECTILE?

11 A YES, SIR.

12 Q I'M GOING TO SHOW YOU STATE'S NUMBER 10 FOR
13 IDENTIFICATION, DO YOU RECOGNIZE THAT ITEM?

14 A I DO.

15 Q AND HOW DO YOU RECOGNIZE THAT ITEM?

16 A THIS IS ALSO A PHOTOGRAPH I TOOK THE DAY OF
17 THE CRIME SCENE.

18 Q AND DOES IT FAIRLY AND ACCURATELY DEPICT
19 WHAT YOU SAW AT THE CRIME SCENE?

20 A YES, SIR.

21 MR. RICHARDSON: YOUR HONOR, THE STATE WOULD
22 SEEK TO INTRODUCE NUMBER 10 INTO EVIDENCE.

23 THE COURT: ANY OBJECTION TO STATE'S 10?

24 MR. DIGGS: NO OBJECTION.

25 THE COURT: IT'S IN EVIDENCE WITHOUT OBJECTION.

MS. HAYES - DIR. EXAM. BY MR. RICHARDSON

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1 (WHEREUPON, STATE'S EXHIBIT NUMBER 10 ENTERED
2 INTO EVIDENCE.)

3 MR. RICHARDSON: (CONTINUING)

4 Q WHAT IS THIS, DETECTIVE PITTS?

5 A THAT'S THE PROJECTILE THAT WAS LOCATED IN
6 THE DIRT THAT WAS BELOW THE MAIN BLOOD POOL.

7 MR. RICHARDSON: YOUR HONOR, PERMISSION TO
8 PUBLISH?

9 THE COURT: ANY OBJECTION TO PUBLICATION?

10 MR. DIGGS: NO, SIR.

11 THE COURT: YOU MAY DO SO.

12 MR. RICHARDSON: (CONTINUING)

13 Q SO THIS IS THE ROUND THAT YOU DUG OUT FROM
14 OTHER THERE FROM THE MAIN BLOOD POOL?

15 A CORRECT.

16 Q AND THE MAIN BLOOD POOL WAS, USING STATE'S
17 NUMBER 18 WHERE WAS THE MAIN BLOOD POOL?

18 A DO YOU WANT ME TO STEP DOWN OR JUST --

19 Q WELL IF YOU CAN JUST POINT OUT, WHAT PART
20 OF THE BODY WAS IT FOUND?

21 A HIS HEAD.

22 Q SO BASICALLY THIS ROUND WAS DUG UP FROM
23 WHERE JULIAN'S HEAD WAS LAYING?

24 A BELOW, YES, BELOW WHERE HIS HEAD WAS
25 POSITIONED.

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 SO WE DO THAT BY OPENING THE BODY AND LOOKING AT THE
2 INTERNAL ORGANS AND STRUCTURES, SO AFTER WE'VE ALL OF THAT
3 THEN WE ALSO WE'LL LOOK AT TISSUES UNDER THE MICROSCOPE.

4 WE SEND OUT USUALLY BLOOD AND URINE FOR
5 TOXICOLOGY STUDIES AND THEN WE TAKE ALL OF THOSE THINGS
6 INTO CONSIDERATION BEFORE WE ISSUE OUR FINAL REPORT WHICH,
7 WHICH PUTS DOWN OUR OPINION AS TO THE CAUSE AND MANNER OF
8 DEATH.

9 Q ALL THAT WAS DONE IN THIS CASE?

10 A THAT'S CORRECT.

11 Q DOCTOR, IN YOUR EXPERT OPINION WHAT WERE
12 YOUR SIGNIFICANT FINDINGS WITH REGARD TO THE DEATH OF
13 JULIAN LEE?

14 A WITH REGARD TO HIS DEATH THE SIGNIFICANT
15 FINDINGS WERE TWO GUNSHOT WOUNDS THAT ENTERED THE BACK IN
16 DIFFERENT PLACES ON THE BACK AND TRAVELED THROUGH THE BODY
17 AND EXITED THROUGH THE FRONT OF THE BODY.

18 Q AND NOW YOU SAY THE CAUSE OF DEATH WAS, WAS
19 TWO GUNSHOT WOUNDS, CORRECT?

20 A YES, THAT'S CORRECT.

21 Q TO THE BACK?

22 A THAT'S CORRECT.

23 Q HOW WERE YOU ABLE TO DETERMINE THE GUNSHOT
24 WOUNDS ENTERED THE BACK?

25 A ONE OF THE THINGS THAT, THAT WE'RE TRAINED

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 TO DO IS MAKE A DETERMINATION OF WHICH GUNSHOT WOUNDS ARE
2 ENTRANCE WOUNDS IN WHICH GUNSHOT WOUNDS ARE EXIT WOUNDS.
3 THEY HAVE CHARACTERISTIC PHYSICAL FINDINGS THAT YOU CAN
4 SEE. SO IN THIS CASE THE ENTRANCE WOUNDS WERE QUITE
5 TYPICAL FOR ENTRANCE WOUNDS MEANING THAT THERE WAS AN
6 ACTUAL DEFECT IN THE SKIN AND A NICE ABRASION BORDER AROUND
7 THE ENTRANCE WOUND. SO AS THE BULLET IS TRAVELING THROUGH
8 SPACE IT'S ALSO TURNING SO AS IT GOES THROUGH AN ENTRANCE
9 WOUND IT'S ACTUALLY MAKING A HOLE THROUGH THE SKIN AND
10 ABRADING THE SKIN AS IT GOES THROUGH. SO WE CAN,
11 FREQUENTLY WE CAN, WE CAN MAKE THAT DETERMINATION OF AN
12 ENTRANCE WOUND.

13 THE EXIT WOUNDS ON THE OTHER HAND OFTEN THE EDGE
14 OF THE EXIT WOUNDS RATHER THAN BEING A HOLE THAT YOU WOULD
15 SEE AT THE ENTRANCE WOUND MAY REAPPROXIMATE SO THERE'S NO
16 LOST SKIN IN THOSE CASES AND ALSO THE ABRASION BORDER IS
17 USUALLY ABSENT.

18 IN THIS CASE THERE WAS AN ABRASION BORDER AT THE
19 EXIT WOUNDS WHICH WE CALLED A SHORED ABRASION BORDER AND
20 THAT SUGGESTS THAT HE WAS UP AGAINST SOMETHING. SO RATHER
21 THAN THE ABRASION BORDER AS IT'S GOING IN AND TURNING WHEN
22 IT'S COMING OUT OF AN EXIT WOUND IF, IF THE, IF THE TARGET
23 IS UP AGAINST SOMETHING SOLID IT MAY MAKE AN ABRASION AS
24 THE SKIN RUBS AGAINST THAT SOLID OBJECT SO IT'S A DIFFERENT
25 NATURE OF AN ABRASION.

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 SO TAKING ALL OF THOSE THINGS INTO CONSIDERATION
2 WE WERE ABLE TO DETERMINE THAT THE WOUNDS ON THE BACK, THE
3 TWO WOUNDS ON THE BACK WERE THE ENTRANCE WOUNDS AND THE TWO
4 WOUNDS ON THE FRONT WERE THE EXIT WOUNDS.

5 Q EITHER ONE OF THOSE GUNSHOT WOUNDS THAT YOU
6 FOUND THERE IN THE BACK COULD THEY HAVE BEEN FATAL ON THEIR
7 OWN?

8 A YES, SIR.

9 Q AND THE TRAJECTORY OF THE PROJECTILES
10 COULD, COULD YOU DETERMINE THE TRAJECTORY OF THE
11 PROJECTILES ONCE THEY ENTERED THE BODY?

12 A YES, THAT'S ANOTHER, ANOTHER DETERMINATION
13 THAT WE MAKE. ESSENTIALLY WE MATCH UP ONE, YOU KNOW, THE
14 ENTRANCE WOUND TO THE EXIT WOUND AND YOU CAN COME UP WITH
15 AN ANGLE WITH THE BODY IN WHAT WE CALL ANATOMICAL POSITION.
16 SO WE DO WRITE DOWN THOSE NUMBERS OF ANGLES THROUGH THE
17 BODY, BUT THAT'S ONLY GOOD FOR, YOU KNOW, THE WIDTH OF THE
18 BODY SO WE KNOW THAT, YOU KNOW, IT'S GOING THIS WAY THROUGH
19 THE BODY. THAT'S ALL THAT THAT TELLS US.

20 Q WITH REGARD TO THE SHOT TO THE LOWER BACK
21 DO YOU KNOW WHAT THE ANGLE WOUND WAS ON THAT SHOT?

22 A IF I CAN REFER TO MY NOTES?

23 MR. RICHARDSON: ONCE AGAIN I'D ASK THAT THE
24 DOCTOR BE ALLOWED TO REFRESH HER RECOLLECTION?

25 THE COURT: SHE MAY DO SO.

1 THE WITNESS: (CONTINUING)

2 A THE LOWER BACK WAS 40 DEGREES UPWARDS, 25
3 DEGREES TO THE RIGHT AND FORWARD.

4 Q SO THE ROUND TRAVELED INTO THE BACK,
5 TRAVELING IN AN UPWARD MOTION?

6 A UP AND RIGHT.

7 Q WOULD THAT BE CONSISTENT WITH SOMEONE
8 KNEELING AND FIRING UP AT THE BODY?

9 A IT WOULD, I, I CAN'T REALLY PUT TWO BODIES
10 IN SPACE BECAUSE I DON'T KNOW, YOU KNOW, HOW THE BODIES
11 WERE MOVING SO I, I CAN'T REALLY GIVE YOU THAT ANSWER.

12 Q CAN YOU TELL FROM THAT, THOUGH, THE
13 DEFENDANT, THE SHOOTER WAS MORE THAN LIKELY NOT BEHIND THE
14 VICTIM?

15 A THE SHOOTER ---

16 MR. DIGGS: YOUR HONOR, I OBJECT TO THE LEADING
17 ON THAT QUESTION.

18 THE COURT: REPHRASE YOUR QUESTION, SOLICITOR.

19 MR. RICHARDSON: (CONTINUING)

20 Q COULD YOU TELL ME ANYTHING ABOUT THE
21 POSITION OF THE SHOOTER AS HE EXECUTED JULIAN LEE?

22 A I, I CAN'T REALLY TELL YOU WHERE THE
23 SHOOTER WAS. ALL I CAN TELL YOU IS THAT THE, YOU KNOW,
24 THAT, YOU KNOW, IN THAT VERY NARROW SPACE BETWEEN THE
25 INDIVIDUAL'S BACK AND HIS FRONT IT WAS TRAVELING FROM THE

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 BACK TO THE FRONT SO THE PROJECTILE HAD TO BE TRAVELING
2 FROM, AGAIN FROM HIS BACK TO HIS FRONT. AS FAR AS WHERE
3 THE TWO PEOPLE WERE STANDING THAT I CANNOT TELL YOU.

4 Q SO IF I UNDERSTAND YOU THE SHOOTER LIKELY
5 WAS STANDING BEHIND THE VICTIM?

6 A IT'S, IT'S THE MOST LIKELY SCENARIO.

7 Q OR AT LEAST THE PISTOL WAS BEHIND THE
8 VICTIM?

9 A EXACTLY.

10 Q HOW ABOUT THE SECOND GUNSHOT WOUND IN YOUR
11 REPORT THE ONE TO THE UPPER BACK?

12 A THE ONE TO THE UPPER BACK WAS ALSO
13 TRAVELING SLIGHTLY UPWARDS AND, WELL SLIGHTLY, ABOUT 30
14 DEGREES UPWARDS, 10 DEGREES TO THE RIGHT AND FORWARD SO THE
15 SAME GENERAL DIRECTION UP TO THE RIGHT AND FORWARD.

16 Q AND YOU COULDN'T TELL ABOUT, ONCE AGAIN YOU
17 CAN'T TELL THE POSITION OF THE SHOOTER?

18 A THAT'S CORRECT.

19 Q OTHER THAN THE SHOT ENTERED THE BACK?

20 A THAT'S CORRECT.

21 Q DID YA'LL ATTEMPT TO DO ANY GUNSHOT RESIDUE
22 TESTS AND STIPPLING TESTS?

23 A WE DON'T DO GUNSHOT RESIDUE TESTING. THE
24 LAW ENFORCEMENT, WE LEAVE THAT TO THE LAW ENFORCEMENT
25 OFFICIALS. THAT'S WHERE THEY TAKE SWABS AND SEE IF THERE'S

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 RESIDUE ON HANDS AND SO FORTH.

2 AS FAR AS STIPPLING THAT WOULD INDICATE A RANGE
3 OF FIRE SO WE DO ATTEMPT TO MAKE A DETERMINATION OF THE
4 RANGE OF FIRE. IF IT'S A CONTACT WOUND WE EXPECT TO FIND
5 SOOT IN THE WOUND. IF IT'S CLOSE RANGE WE EXPECT TO FIND
6 STIPPLING INTO THE SKIN AROUND THE WOUND. THAT'S ACTUAL
7 ABRASIONS OF LITTLE PARTICLES LEAVING THE END OF THE
8 BARREL, THE MUZZLE OF THE GUN, AND ABRADING THE SKIN SO
9 THAT WOULD BE A CLOSE RANGE, AND IF YOU DON'T SEE ANYTHING
10 THEN THAT WOULD BE CONSIDERED DISTANT SO WE DO ATTEMPT TO
11 MAKE THAT DETERMINATION.

12 IN THIS CASE WE DID NOT SEE SOOT AND WE DID NOT
13 SEE STIPPLING, HOWEVER, THE INDIVIDUAL WAS ALSO WEARING A
14 BLACK SHIRT. SO WAS THERE SOOT ON THAT BLACK SHIRT? I
15 CANNOT TELL YOU. SO IN THIS CASE I CHOSE NOT TO MAKE A
16 DETERMINATION OF THE RANGE OF FIRE BECAUSE ALTHOUGH I DID
17 NOT SEE ANY SOOT IT DID NOT MEAN TO ME THAT THERE WAS NO
18 SOOT ON THAT SHIRT.

19 Q DOCTOR, YOU SAID CLOTHES AND CONTACT,
20 DEFINE CLOTHES WITH REGARD TO STIPPLING?

21 A STIPPLING IS GENERALLY SEEN NOT BEYOND 18
22 TO 24 INCHES SO ANYWHERE FROM VERY NEAR THE WOUND TO 18 TO
23 24 INCHES AWAY YOU REALLY CAN'T MAKE A SPECIFIC
24 DETERMINATION OF RANGE OF FIRE WITHOUT ACTUALLY TEST FIRING
25 A WEAPON AND SEEING WHAT THAT SPREAD IS WITH THE SPECIFIC

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 WEAPON THAT WAS USED AND THE SPECIFIC AMMUNITION THAT WAS
2 USED. BUT THAT'S USUALLY WHAT WE'RE SAYING WHEN WE'RE
3 SAYING CLOSE RANGE WE MEAN LESS THAN 18 TO 24 INCHES FROM
4 THE INDIVIDUAL.

5 Q SO IF THE FIREARM IS HELD A FOOT AND A HALF
6 TO TWO FEET AWAY LIKELY TO HAVE STIPPLING?

7 A IF IT'S HELD ---

8 MR. DIGGS: YOUR HONOR, I OBJECT AGAIN. I DON'T
9 IF YOU REALIZED IT BUT THE SOLICITOR KEEPS POINTING DOWN
10 AND I WANT TO OBJECT TO HIM LEADING THE WITNESS.

11 THE COURT: ALL RIGHT, SOLICITOR, DON'T MAKE ANY
12 ---

13 MR. RICHARDSON: YOUR HONOR, I HAD TO BE ABLE TO
14 EXPLAIN ---

15 THE COURT: NO, SIR, YOU CAN EXPLAIN IT WITH
16 YOUR WORDS.

17 MR. RICHARDSON: (CONTINUING)

18 Q FOOT AND A HALF TO TWO FEET AWAY NO
19 STIPPLING?

20 A GREATER THAN THAT DISTANCE AND YOU WOULDN'T
21 SEE STIPPLING, HOWEVER AGAIN IF SOMEBODY HAS THICK CLOTHING
22 ON YOU MAY NOT SEE STIPPLING IN ANY CASE.

23 Q DOCTOR, I'M GOING TO SHOW YOU WHAT'S BEEN
24 PREVIOUSLY MARKED STATE'S NUMBER 11 FOR IDENTIFICATION, AND
25 I BELIEVE IT'S BEEN INTRODUCED INTO EVIDENCE, DO YOU

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 RECOGNIZE THAT ITEM?

2 A YES, SIR, THIS IS A PHOTOGRAPH TAKEN DURING
3 THE POST MORTEM EXAMINATION OF MR. JULIAN LEE'S BACK.

4 Q AND DOES IT FAIRLY AND ACCURATELY DEPICT
5 JULIAN LEE AS YOU FOUND HIM?

6 A YES, SIR, IT DOES.

7 MR. RICHARDSON: YOUR HONOR, PERMISSION TO
8 PUBLISH?

9 THE COURT: YOU MAY DO SO.

10 MR. RICHARDSON: (CONTINUING)

11 Q DOCTOR, I'LL REFER TO THE LOWER BACK AS 1,
12 UPPER BACK 2?

13 A YES, SIR.

14 Q THESE ARE THE WOUNDS YOU TALKED ABOUT 1 AND
15 2, CORRECT?

16 A YES, SIR.

17 Q AND THOSE ARE DEFINITELY ENTRANCE WOUNDS?

18 A ENTRANCE WOUNDS, YES, SIR.

19 Q NO DOUBT ABOUT IT, NOW WE TALKED ABOUT THE
20 ENTRANCE WOUNDS, DID YOU FIND ANY EXIT WOUNDS?

21 A YES, SIR.

22 Q AND WHAT WAS THE EXIT WOUND FOR THE LOWER
23 BACK SHOT, SHOT 1?

24 A THE EXIT WOUND WAS TO THE FRONT OF THE BODY
25 TO THE UPPER RIGHT ABDOMEN REGION FOR THE LOWER WOUND.

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 Q AND THAT SHOT WHAT KIND OF DAMAGE DID IT TO
2 DO INSIDE THE BODY?

3 A THAT SHOT WENT THROUGH THE LIVER AND IT
4 ALSO WENT THROUGH THE SACRAL VERTEBRAE SO ONE OF THE
5 VERTEBRAL BONES AND THEN THROUGH THE LIVER.

6 Q THAT SHOT STANDING ALONE IF YOU COULD,
7 COULD YOU GIVE A PRESUMPTION AS TO HOW LONG SOMEONE COULD
8 SURVIVE A SHOT LIKE THAT UNTREATED?

9 A NO, NOT, NOT DIRECTLY. IT'S, COULD BE, IT
10 COULD BE SECONDS, IT COULD BE HOURS.

11 Q AND HOW ABOUT THE SHOT TO THE UPPER BACK
12 WERE YOU ABLE TO DETERMINE THE EXIT WOUND FROM THAT SHOT?

13 A YES, THE EXIT WOUND TO THAT ENTRANCE WOUND
14 WAS RIGHT TO THE, RIGHT ABOVE THE CLAVICLE HERE AT THE
15 NECK.

16 Q SO ENTERED IN THE MID TO UPPER BACK AND
17 EXITED BELOW THE ADAMS APPLE?

18 A THAT'S CORRECT.

19 Q WHAT KIND OF DAMAGE DID THAT DO TO THE
20 BODY?

21 A THAT, THAT WENT THROUGH THE AORTA AND THE
22 TRACHEA. THE AORTA IS BASICALLY THE LARGEST VESSEL,
23 LARGEST BLOOD VESSEL IN THE BODY, AND THE TRACHEA IS THE
24 LARGEST BREATHING TUBE IN THE BODY SO IT WENT THROUGH BOTH
25 OF THOSE STRUCTURES.

DR. SCHANDL - DIR. EXAM. BY MR. RICHARDSON

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1 Q AND COULD YOU GIVE AN IDEA ABOUT
2 APPROXIMATE AMOUNT OF TIME SOMEONE COULD SURVIVE FROM A
3 SHOT LIKE THAT?

4 A THAT ONE IS MORE, THE TIME PERIOD WOULD BE
5 CERTAINLY SHORTER MOST LIKELY THAN THE, THAN THE OTHER
6 WOUND SIMPLY BECAUSE OF THE BLEEDING THAT WOULD OCCUR WHEN
7 YOU DAMAGE THE AORTA SUCH A VERY LARGE BLOOD VESSEL. THE
8 BLEEDING THAT WOULD OCCUR WOULD BE A GREAT DEAL IN A SHORT
9 AMOUNT OF TIME BUT I CAN'T GIVE YOU A SPECIFIC TIME.

10 Q SO THE SHOT NUMBER 2 TO, FOR LACK OF A
11 BETTER TERM, MORE CATASTROPHIC?

12 A POTENTIALLY, YES.

13 Q DOCTOR, WERE THERE ANY OTHER WOUNDS THAT
14 YOU SAW THAT APPEARED TO BE GUNSHOT WOUNDS ON THE BODY?

15 A NOT THAT I COULD SAY FOR CERTAIN THAT WERE
16 GUNSHOT WOUNDS, NO, SIR.

17 Q NONE YOU CAN SAY FOR CERTAIN, WERE THERE
18 ANY THAT YOU HAD AN IDEA APPEARED TO BE GUNSHOT WOUNDS?

19 A THERE WERE INJURIES TO THE HAND THAT WERE
20 PERFORATING THROUGH THE FINGER THAT I COULDN'T RULE OUT AS,
21 AS POTENTIALLY BEING IN THE, IN A GUNSHOT PATHWAY.

22 Q DOCTOR SCHANDL, I'M GOING TO SHOW YOU
23 WHAT'S BEEN PREVIOUSLY MARKED FOR IDENTIFICATION PURPOSES
24 ONLY STATE'S NUMBER 12?

25 A YES, SIR.

DR. SCHANDL - CROSS EXAM. BY MR. DIGGS

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1 TWO GUNSHOT WOUNDS?

2 A YES, SIR.

3 Q THAT THEY DEFINITELY ENTERED HIS BACK?

4 A YES, SIR.

5 Q THAT, YOU SAID THAT HE HAD LESS ABRASIVE
6 WOUNDS ON THE EXIT WOUND ON HIS THROAT?

7 A HE HAD EXIT WOUNDS ON THE FRONT, ONE TO
8 THE, TO THE AREA OF THE THROAT AND ONE TO THE AREA OF THE
9 ABDOMEN, YES.

10 Q YOU MENTIONED SOMETHING ABOUT THE
11 CHARACTERISTICS OF THOSE EXIT WOUNDS?

12 A RIGHT, THEY, THEY DEMONSTRATED SHORED, WHAT
13 WE CALL SHORED, S-H-O-R-E-D, SHORED ABRASIONS.

14 Q SO HE COULD HAVE BEEN AGAINST SOMETHING?

15 A CORRECT, THAT'S WHAT THAT SUGGESTS IS THAT
16 THE SKIN OR THE INDIVIDUAL WAS UP AGAINST SOMETHING.

17 Q IT'S FURTHER YOUR OPINION THAT THE LOWER
18 BACK SHOT ENTERED AND WENT IN AT AN UPWARD ANGLE?

19 A YES.

20 Q WENT THROUGH HIS LIVER?

21 A YES.

22 Q THE SECOND SHOT ENTERED HIS BACK, UPPER
23 BACK?

24 A YES.

25 Q AND TRAVELED AT AN UPWARD ANGLE AS WELL?

DR. SCHANDL - CROSS EXAM. BY MR. DIGGS

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1 A YES.

2 Q BUT LESS OF AN ANGLE?

3 A CORRECT.

4 Q EITHER OF THESE SHOTS COULD HAVE BEEN
5 FATAL?

6 A THAT'S CORRECT.

7 Q BOTH TOGETHER WERE DEFINITELY FATAL?

8 A CLEARLY.

9 Q IT'S YOUR OPINION THAT JULIAN LEE DIED AS A
10 RESULT OF BEING SHOT IN THE BACK TWICE?

11 A THAT'S CORRECT.

12 MR. RICHARDSON: THANK YOU, DOCTOR, PLEASE
13 ANSWER ANY QUESTIONS MR. DIGGS MAY HAVE.

14 THE WITNESS: YES, SIR.

15 THE COURT: CROSS EXAMINATION, MR. DIGGS.

16 MR. DIGGS: THANK YOU, YOUR HONOR.

17 CROSS EXAMINATION

18 BY MR. DIGGS:

19 Q DOCTOR, DID YOU TESTIFY THAT YOU HAD
20 REMOVED THE CLOTHING OR NOT, WAS THE BODY STILL CLOTHED
21 WHEN YOU RECEIVED IT?

22 A HE IS STILL CLOTHED, THAT'S CORRECT.

23 Q DO YOU RECALL IF HE HAD ANYTHING ON HIS
24 HANDS?

25 A HE DID, HE, HE DID NOT HAVE ANYTHING ON HIS

DR. SCHANDL - CROSS EXAM. BY MR. DIGGS

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1 THE CASE. I WOULD ASK THAT YOU DO NOT DISCUSS THE CASE
2 AMONG YOURSELVES UNTIL I GIVE IT TO YOU AT THE END FOR YOUR
3 DELIBERATIONS, THANK YOU VERY MUCH.

4 (WHEREUPON, THE JURY WAS EXCUSED FOR LUNCH AT
5 12:18 P.M.)

6 THE COURT: ALL RIGHT, SOLICITOR, IS THERE
7 ANYTHING WE NEED TO DO AT THIS POINT IN TIME THAT YOU KNOW
8 OF?

9 MR. RICHARDSON: I NEED TO HOOK UP THAT
10 PROJECTOR AND MAKE SURE IT'S WORKING.

11 THE COURT: ALL RIGHT, SIR, WELL I'LL LEAVE THAT
12 TO YOU. FROM THE DEFENSE?

13 MR. DIGGS: NOT AT THIS TIME, YOUR HONOR.

14 THE COURT: ALL RIGHT, THANK YOU. SOLICITOR,
15 CAN I SEE STATE'S EXHIBIT 20.

16 (WHEREUPON, COURT WAS RECESSED FOR LUNCH)
17 REPORTER'S NOTE: THE Horry COUNTY COURTHOUSE WAS EVACUATED
18 WITH INSTRUCTIONS FOR NO ONE TO ENTER THE COURTHOUSE FOR
19 THE REMAINDER OF THE AFTERNOON.)

20 (WHEREUPON, COURT RESUMED ON OCTOBER 3, 2007 AT
21 9:30 A.M.)

22 THE COURT: NOW WE ARE RESUMING THE MATTER
23 OF THE STATE OF SOUTH CAROLINA V. THEODORE DAVID WILLS, IS
24 THE STATE READY TO PROCEED IN THIS MATTER?

25 MR. RICHARDSON: WE ARE, YOUR HONOR, I JUST

DR. SCHANDL - CROSS EXAM. BY MR. DIGGS

220

1 WANTED TO ADDRESS ONE MATTER QUICKLY WITH THE ---

2 THE COURT: YES, SIR.

3 MR. RICHARDSON: --- WITH THE REDACTED PORTIONS.
4 I'VE SPOKEN WITH MR. DIGGS REGARDING PORTIONS THAT NEED TO
5 BE STRICKEN THAT I SAW. IT'S AT, ON THE SECOND INTERVIEW
6 AND IT'S AT ONE MINUTE 50 SECONDS TO TWO MINUTES, WE'LL CUT
7 THAT OUT AT THAT POINT. THAT'S WHERE THEY MAKE A MENTION
8 OF PRISON.

9 AT 1555 TO 1605 THERE'S A STATEMENT WE CAN ASSESS
10 WHERE WE'RE AT WITH THE POLYGRAPHS, OF COURSE I'LL MUTE
11 DURING THAT PORTION.

12 THE COURT: YES, SIR.

13 MR. RICHARDSON: AND ALSO 2709 THROUGH 2719
14 THERE'S LIKE I SAID GET THE POLYGRAPH SET UP AND LIKE I
15 SAID THAT WOULD BE STRICKEN AT THAT POINT AND THE METHOD I
16 INTEND TO USE IS JUST TURN THE VOLUME DOWN AT THAT POINT.

17 THE COURT: I DON'T HAVE, IS THERE ANY PROBLEM
18 WITH THAT, MR. DIGGS?

19 MR. DIGGS: NO, SIR, I THINK ---

20 THE COURT: SO, SO ---

21 MR. DIGGS: --- WE'VE GONE OVER THAT AND THAT'S
22 ACCEPTABLE TO US.

23 THE COURT: ALL RIGHT, CAUSE WHERE THE
24 DIFFICULTY IS WHAT YA'LL HAVE DESCRIBED TO ME IF WE TRY TO
25 FAST FORWARD IT WE'RE GOING TO ENCOUNTER A LOT OF PROBLEMS

DR. SCHANDL - CROSS EXAM. BY MR. DIGGS

221

1 SO ---

2 MR. RICHARDSON: IT MAY NOT CATCH UP IN TIME
3 AND, YOUR HONOR, I, I, I LOOKED LAST NIGHT AND PLAYED THE
4 VIDEO AND I COULD NOT FIND A MENTION OF DON'T LIE BUT IT
5 WAS ADDRESSED YESTERDAY.

6 THE COURT: ALL RIGHT, ALL RIGHT. WELL, IS
7 THERE ANYTHING IN THE TRANSCRIPT THAT YOU HAVE, MR. DIGGS,
8 THAT YOU COULD FIND THAT WOULD INDICATE THAT THERE WAS SOME
9 STATEMENT TO MR. WILLS TO THE EFFECT? AND I'M JUST GIVING
10 EXAMPLES HERE, I DON'T KNOW LIKE YOU, YOU KNOW, YOU NEED TO
11 TELL THE TRUTH ON THE POLYGRAPH OR YOU NEED, AT THE VERY
12 END OF IT SOMETHING LIKE THAT?

13 MR. DIGGS: YOUR HONOR, WE WENT BACK, I LOOKED
14 AT IT LAST NIGHT AND DISCUSSED IT WITH COUNSEL THIS
15 MORNING. WE'RE OKAY WITH WHAT THE SOLICITOR HAS ASKED.

16 THE COURT: VERY GOOD.

17 MR. RICHARDSON: THE CLOSEST THING ---

18 MR. DIGGS: I WOULD ASK THAT YOU INSTRUCT THE
19 JURY, SAY LOOK HE WAS ARRESTED. HE'S, HE'S IN A JAILED
20 ISSUED CLOTHING.

21 THE COURT: WELL WHAT I CAN SAY IS THE, THE, THE
22 INTERVIEW WAS TAKEN SHORTLY AFTER HE WAS ARRESTED FOR THE
23 CHARGES AND, AND OBVIOUSLY YOU CAN TAKE NO IMPRESSION FROM
24 EITHER THAT FACT OR WHAT CLOTHING HE MIGHT BE WEARING AT
25 THE TIME.

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON

222

1 MR. DIGGS: THANK YOU.

2 THE COURT: ALL RIGHT.

3 MR. RICHARDSON: AND, YOUR HONOR ---

4 THE COURT: ALL RIGHT, WITH THAT -- I'M SORRY,
5 YES, SIR?

6 MR. RICHARDSON: I WOULD JUST ASK FOR AN
7 INSTRUCTION TO THE JURY THAT THERE ARE PORTIONS OF THE
8 INTERVIEW WHICH WILL HAVE TO BE MANUALLY REDACTED DURING
9 THE TIME SO THEY'RE NOT, THE JURY IS NOT LEFT TRYING TO
10 FIGURE OUT WHY WE'RE MUTING.

11 THE COURT: I WILL TELL THEM THAT I INSTRUCTED
12 YA'LL TO, THAT FOR THE COURT'S REASONS THAT CERTAIN
13 PORTIONS HAD TO BE MUTED, ALL RIGHT.

14 MR. RICHARDSON: THANK YOU, YOUR HONOR.

15 MR. DIGGS: THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT, ASK THE JURY TO COME IN,
17 PLEASE.

18 (WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT
19 9:40 A.M.)

20 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I'M
21 GLAD THAT WITH YESTERDAY'S EXCITEMENT WE FOUND OURSELVES
22 BACK HERE TODAY. I NEED TO TELL YOU A COUPLE OF THINGS.
23 WE'RE AT A STAGE IN THE PROCEEDINGS WHERE THE, THE COURT IS
24 ALLOWING A INTERVIEW TO BE PLAYED THAT THE STATE CONDUCTED
25 WITH THE DEFENDANT MR. WILLS.

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON 223

1 NOW REGARDING THAT YOU WOULD SEE FROM THE VIDEO
2 MR. WILLS HAD BEEN RECENTLY ARRESTED AND OBVIOUSLY HE WAS
3 IN CUSTODY AT THAT POINT IN TIME AND WHEN THAT HAPPENS YOU
4 OBVIOUSLY MUST WEAR THE JAIL ISSUED CLOTHING. YOU ARE TO
5 TAKE NO, GAIN NO IMPRESSION FROM THAT. YOU'RE GOING TO
6 GAIN NOTHING FROM THAT OR TAKE ANYTHING FROM THAT. THAT'S
7 JUST A CIRCUMSTANCE WHEN SOMEBODY IS ARRESTED THAT'S WHAT
8 HAPPENS, SO OBVIOUSLY YOU DON'T LET THAT AFFECT YOUR
9 JUDGMENT AS TO WHAT THE PROCEEDINGS ARE REGARDING THAT.

10 ALSO DURING THE PLAYING OF THE VIDEO AND AUDIO
11 DISK I HAVE INSTRUCTED COUNSEL TO MUTE THE VOLUME AT
12 SEVERAL PLACES, THAT IS THE COURT'S DOING AND THE COURT'S
13 RULING. THOSE MATTERS ARE NOT FOR YOUR, THAT ARE BEING
14 TALKED ABOUT OR STATED AT THAT TIME ARE NOT FOR YOUR
15 CONCERN IN THIS TRIAL AND THE COURT HAS INSTRUCTED AND
16 ORDERED THAT THOSE PORTIONS BE MUTED, THAT THERE BE NO
17 VOLUME, ALL RIGHT. YOU MAY PROCEED, SOLICITOR.

18 MR. RICHARDSON: THANK YOU, YOUR HONOR. AT THIS
19 TIME THE STATE WOULD CALL DETECTIVE NEIL LIVINGSTON.

20 THE COURT: ALL RIGHT, SIR, PLEASE COME AROUND,
21 SIR.

22 DETECTIVE NEIL LIVINGSTON

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 MADAM CLERK: STATE YOUR FULL NAME AND SPELL
25 YOUR LAST NAME FOR THE COURT.

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON 224

1 THE WITNESS: NEIL LIVINGSTON, L-I-V-I-N-G-S-T-
2 O-N.

3 MR. RICHARDSON: THE COURT'S INDULGENCE FOR ONE
4 MOMENT.

5 THE COURT: YES, SIR.

6 MR. RICHARDSON: THANK YOU, YOUR HONOR.

7 THE COURT: YES, SIR.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q DETECTIVE LIVINGSTON, COULD YOU, PLEASE,
11 TELL US A LITTLE BIT ABOUT YOUR, YOUR OCCUPATION, WHERE
12 YOU'RE EMPLOYED, HOW LONG AND IN WHAT CAPACITY?

13 A OKAY, I'M A DETECTIVE WITH THE HORRY COUNTY
14 POLICE DEPARTMENT PRESENTLY IN THE VIOLENT CRIMES UNIT AND
15 I'VE BEEN EMPLOYED WITH THEM FOR APPROXIMATELY 22 YEARS.

16 Q AND YOU'RE WITH VIOLENT CRIMES, WHAT KIND
17 OF, WHAT KIND OF DUTIES DO YOU PERFORM AS A DETECTIVE WITH
18 THE VIOLENT CRIMES DIVISION?

19 A TO FOLLOW UP WHERE THE ROAD OFFICERS STOP.
20 THEY HAVE CALLS TO CONTINUE ON TO AND WE HAVE MORE TIME TO
21 DEVOTE TO THEM SO AT THAT POINT WE POINT TO OR WE CONTINUE
22 ON WITH CRIME SCENE. WE FOLLOW UP FROM THE EVIDENCE THAT'S
23 COLLECTED AND DO INTERVIEWS AND TRY AND COME TO A
24 CONCLUSION FOR A CASE.

25 Q SO IN THE PRESENT CASE THE STATE OF SOUTH

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON 225

1 CAROLINA V. DAVID WILLS TO THE CHARGE OF MURDER, DID YOU
2 EVER HAVE THE OPPORTUNITY TO INTERVIEW THE DEFENDANT?

3 A YES, SIR, I WAS PRESENT DURING AN
4 INTERVIEW.

5 Q OKAY, AND DID YOU ---

6 THE COURT: COULD YOU SPEAK UP JUST A LITTLE
7 BIT, MR. LIVINGSTON.

8 THE WITNESS: (CONTINUING)

9 A YES, SIR.

10 Q DO YOU RECALL WHAT THE DATE OF THAT WAS?

11 A NOT RIGHT OFF HAND, NO, SIR.

12 Q DETECTIVE LIVINGSTON, I'M GOING TO HAND UP
13 TO YOU WHAT HAS BEEN PREVIOUSLY BEEN MARKED FOR
14 IDENTIFICATION PURPOSES AS STATE'S NUMBER 22; DO YOU
15 RECOGNIZE THIS ITEM?

16 A YES, SIR, I DO.

17 Q AND HOW DO YOU RECOGNIZE THIS ITEM?

18 A THAT'S MIRANDA RIGHTS THAT WERE READ TO MR.
19 WILLS AND I WAS PRESENT, IT BEARS MY SIGNATURE AS A WITNESS
20 ON IT.

21 Q AND YOU PERSONALLY WATCHED MR. WILLS SIGN
22 THAT?

23 A YES, SIR, I DID.

24 Q YOU OBSERVED IT BEING ADMINISTERED TO HIM?

25 A YES, SIR.

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON 226

1 Q AND WHO ADMINISTERED THAT MIRANDA WARNING?

2 A DETECTIVE ALLEN LARGE, HIS SIGNATURE IS
3 ALSO ON HERE.

4 MR. RICHARDSON: YOUR HONOR, AT THIS TIME THE
5 STATE WOULD SEEK TO INTRODUCE STATE'S NUMBER 22.

6 MR. DIGGS: YOUR HONOR, SUBJECT TO OUR PRIOR
7 OBJECTION.

8 THE COURT: ALL RIGHT, SIR, STATE'S 22 IS IN
9 EVIDENCE OVER THE OBJECTION OF DEFENSE.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER 22 ENTERED
11 INTO EVIDENCE.)

12 MR. RICHARDSON: PERMISSION TO PUBLISH, YOUR
13 HONOR.

14 THE COURT: ANY OBJECTION TO PUBLICATION?

15 MR. DIGGS: NO, SIR.

16 THE COURT: YOU MAY DO SO.

17 MR. RICHARDSON: (CONTINUING)

18 Q DETECTIVE LIVINGSTON, COULD YOU, PLEASE,
19 DEMONSTRATE TO THE JURORS HOW DETECTIVE LARGE ADMINISTERED
20 THIS MIRANDA WARNING?

21 A TO READ IT FROM THE FORM, IT'S A FORM THAT
22 WE HAVE WITH OUR POLICE DEPARTMENT. DO YOU WANT ME TO READ
23 IN ITS ENTIRETY?

24 Q PLEASE?

25 A IT SAYS, ADVISEMENT OF MIRANDA RIGHTS:

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON 227

1 YOU HAVE THE RIGHT TO REMAIN SILENT;
2 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU
3 IN A COURT OF LAW;

4 YOU HAVE THE RIGHT TO TALK WITH A LAWYER AND HAVE
5 HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED;

6 IF YOU CANNOT AFFORD TO HIRE A LAWYER ONE WILL BE
7 APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU SO
8 DESIRE;

9 IF YOU MAKE A STATEMENT OR ANSWER ANY QUESTIONS
10 YOU HAVE THE RIGHT TO STOP AT ANY TIME.

11 THEN IT HAS TWO BLOCKS, IT WOULD SAY:

12 DO YOU UNDERSTAND YOUR RIGHTS AS READ TO YOU, AND
13 IT'S GOT A PLACE FOR, YES OR NO, IN THIS PARTICULAR ONE
14 IT'S CHECKED, YES.

15 IT ALSO BEARS MR. WILLS INITIALS BESIDE THE
16 CHECK.

17 BELOW THAT IT SAYS, UNDERSTANDING YOUR RIGHTS DO
18 YOU WISH TO WAIVE THEM MAKE A STATEMENT OR ANSWER ANY
19 QUESTIONS, THERE AGAIN IT HAS A, YES OR NO, BLOCK. IT'S
20 CHECKED AND HAS MR. WILLS INITIALS AND BELOW THAT IT HAS
21 HIS SIGNATURE THEN IT GOES ON TO HAVE THE DATE OF 8-26-2005
22 AND THE TIME OF 2:39 P.M.

23 Q THANK YOU, DETECTIVE. MR. WILLS SIGNED IT?

24 A YES, SIR.

25 Q DID HE APPEAR TO BE COHERENT THAT DAY?

1 A YES, SIR.

2 Q APPEAR TO UNDERSTAND THE ENGLISH LANGUAGE?

3 A YES, SIR, HE DID.

4 Q DID HE HAVE ANY QUESTIONS REGARDING HIS
5 MIRANDA RIGHTS TO YOUR MEMORY?

6 A NO, SIR.

7 Q SO HE SAID HE COULD UNDERSTAND IT?

8 A YES, SIR, HE DID.

9 Q AND WHO WAS PRESENT DURING THAT INTERVIEW?

10 A HIS ATTORNEY WAS PRESENT DURING THE ENTIRE
11 INTERVIEW.

12 Q MR. DIGGS?

13 A YES, SIR.

14 Q SO HE WAS REPRESENTED BY COUNSEL?

15 A YES, SIR.

16 Q HE WAS ADVISED OF HIS MIRANDA RIGHTS?

17 A CORRECT.

18 Q AND HE GAVE A STATEMENT?

19 A YES, SIR, HE DID.

20 Q DETECTIVE LIVINGSTON, NOW I'M GOING TO SHOW
21 YOU WHAT HAS BEEN PREVIOUSLY MARKED FOR IDENTIFICATION
22 PURPOSES STATE'S NUMBER 21, TAKE A MOMENT TO LOOK AT THAT?
23 DO YOU RECOGNIZE THAT ITEM?

24 A YES, SIR, I DO.

25 Q AND HOW DO YOU RECOGNIZE THAT ITEM?

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON 229

1 A IT BEARS A CASE NUMBER AND MY INITIALS ON
2 IT.

3 Q OKAY, AND WHAT IS THAT?

4 A IT'S A COMPACT DISK WHICH CONTAINS AUDIO
5 AND VIDEO RECORDINGS OF THE INTERVIEW PERTAINING TO THAT
6 MIRANDA.

7 Q AND IS IT A TRUE AND ACCURATE DEPICTION OF
8 THAT INTERVIEW?

9 A YES, SIR, IT IS.

10 Q IN ITS ENTIRETY?

11 A YES, SIR.

12 MR. RICHARDSON: YOUR HONOR, AT THIS TIME THE
13 STATE WOULD SEEK TO INTRODUCE STATE'S NUMBER 21 INTO
14 EVIDENCE.

15 THE COURT: MR. DIGGS?

16 MR. DIGGS: YOUR HONOR, JUST SUBJECT TO THE
17 PRIOR OBJECTION.

18 THE COURT: ALL RIGHT, SIR, I'M GOING TO ALLOW
19 THE, BRING STATE'S 21 IN EVIDENCE, I'M GOING TO ALLOW IT
20 INTO EVIDENCE AND ALLOW THE STATE TO PLAY THAT INTERVIEW AT
21 THAT TIME.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER 21 ENTERED
23 INTO EVIDENCE.)

24 MR. RICHARDSON: YOUR HONOR, DO YOU WISH
25 DETECTIVE LIVINGSTON TO REMAIN ON THE STAND DURING THE

DETECTIVE LIVINGSTON - DIR. EXAM. BY MR. RICHARDSON

230

1 PLAYING OF THIS?

2 THE COURT: I DON'T, THAT'S NOT NECESSARY, IS
3 IT, MR. DIGGS, CAN HE HAVE A SEAT BACK?

4 MR. DIGGS: NO, SIR.

5 THE COURT: ALL RIGHT, SIR, YOU MAY DO SO.

6 MR. DIGGS: THAT'S PERFECTLY FINE.

7 THE WITNESS: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT, SIR, THANK YOU.

9 MR. RICHARDSON: THANK YOU, YOUR HONOR. AT THIS
10 TIME I'M GOING TO INSERT THE DISK FOR PUBLICATION, YOUR
11 HONOR.

12 THE COURT: ALL RIGHT, SIR. ARE YOU READY,
13 SOLICITOR?

14 MR. RICHARDSON: I'VE GOT TO WAIT FOR THE FILE,
15 YOUR HONOR, IT TAKES A MINUTE TO LOAD.

16 THE COURT: ALL RIGHT, WELL I DIDN'T WANT TO CUT
17 THE LIGHT ---

18 MR. RICHARDSON: SHE CAN GO AHEAD AND ---

19 THE COURT: I DIDN'T WANT TO CUT THE LIGHTS OUT
20 UNTIL THEN.

21 MR. RICHARDSON: I'LL BE ABLE TO SEE FROM THE
22 COMPUTER SCREEN.

23 THE COURT: ALL RIGHT, SIR.

24 MR. RICHARDSON: AND, YOUR HONOR, THIS INTERVIEW
25 IS IN TWO PARTS SO WE'LL PLAY BOTH PARTS.

DETECTIVE LIVINGSTON - CROSS EXAM. BY MR. DIGGS

231

1 THE COURT: YES, SIR.

2 MR. RICHARDSON: AND, FOLKS, I'M JUST TELLING
3 YA'LL IF YA'LL CAN'T HEAR.

4 MR. FOREMAN: JUDGE --

5 THE COURT: YES, SIR?

6 MR. FOREMAN: THE BACK ROW IS SAYING THAT IT'S
7 DIFFICULT TO HEAR BECAUSE OF THE AIR CONDITIONER SO CAN WE
8 MAKE SURE IT'S TURNED UP LOUD.

9 THE COURT: ALL RIGHT.

10 MR. RICHARDSON: I'LL SPEAK UP AND I'LL MAKE
11 SURE THIS IS TURNED UP LOUD.

12 THE COURT: ALL RIGHT, SIR.

13 (WHEREUPON, THE TAPED STATEMENT BY CD OF THEODORE
14 DAVID WILLS WAS PLAYED IN OPEN COURT.)

15 MR. RICHARDSON: YOUR HONOR, I'LL STOP.

16 MR. DIGGS: YOUR HONOR, MAY WE APPROACH FOR
17 A SECOND?

18 THE COURT: ABSOLUTELY.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
20 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
21 OF THE JURY AND THE COURT REPORTER.)

22 THE COURT: ASK THE WITNESS.

23 MR. RICHARDSON: (CONTINUING)

24 Q ONCE AGAIN, DETECTIVE LIVINGSTON, THAT WAS
25 THE ENTIRE INTERVIEW?

DETECTIVE LIVINGSTON - CROSS EXAM. BY MR. DIGGS

232

1 A YES, SIR, IT WAS.

2 MR. RICHARDSON: THANK YOU, I HAVE NO FURTHER
3 QUESTIONS.

4 THE COURT: ALL RIGHT.

5 MR. RICHARDSON: ANSWER ANY QUESTIONS MR. DIGGS
6 MIGHT HAVE.

7 THE COURT: MR. DIGGS, CROSS EXAMINATION.

8 MR. DIGGS: YOUR HONOR, I JUST HAVE ONE ---

9 THE COURT: YES, SIR.

10 MR. DIGGS: --- CLARIFICATION.

11 THE COURT: ABSOLUTELY.

12 CROSS EXAMINATION

13 BY MR. DIGGS:

14 Q DETECTIVE LIVINGSTON, CORRECT?

15 A YES, SIR.

16 Q CAN YOU IDENTIFY FOR US WHO IT WAS THERE
17 AGAIN, THERE WERE SEVERAL PEOPLE ASKING QUESTIONS, WHO WERE
18 THOSE PEOPLE?

19 A THERE WAS DETECTIVE LARGE, MYSELF,
20 ASSISTANT SOLICITOR SCOTT HIXSON, YOUR CLIENT, YOURSELF,
21 AND ONE OF YOUR STAFF.

22 Q ALL RIGHT, SO THERE WERE THREE QUESTIONERS,
23 YOURSELF, DETECTIVE LARGE, AND SOLICITOR HIXSON?

24 A AT THE END, YES, SIR, IT WAS ASSISTANT
25 SOLICITOR HIXSON.

DEFENSE MOTION FOR DIRECTED VERDICT

233

1 MR. DIGGS: THAT'S ALL I HAVE.

2 THE COURT: ALL RIGHT, MR. DIGGS, COULD YOU COME
3 FORWARD AND MR. RICHARDSON?

4 MR. RICHARDSON: YES, SIR, YOUR HONOR.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
6 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
7 OF THE JURY AND THE COURT REPORTER.)

8 MR. RICHARDSON: I WOULD ASK THAT DETECTIVE
9 LIVINGSTON BE EXCUSED.

10 THE COURT: ALL RIGHT, MR. DIGGS, ANY REASON
11 THAT THIS WITNESS SHOULD NOT BE EXCUSED?

12 MR. DIGGS: NO, NO, YOUR HONOR.

13 THE COURT: YOU CAN STEP DOWN, YOU'RE RELEASED
14 FROM YOUR SUBPOENA, SIR.

15 THE WITNESS: THANK YOU, YOUR HONOR.

16 THE COURT: THANK YOU. ALL RIGHT, SOLICITOR,
17 FURTHER WITNESSES ON BEHALF OF THE STATE?

18 MR. RICHARDSON: NO FURTHER WITNESSES FROM THE
19 STATE, YOUR HONOR, AT THIS TIME THE STATE RESTS.

20 THE COURT: THE STATE RESTS AT THIS TIME, ALL
21 RIGHT.

22 MR. RICHARDSON: YES, SIR.

23 THE COURT: ALL RIGHT, MR. DIGGS, YOU HAVE SOME
24 MATTERS FOR THE COURT AT THIS POINT IN TIME THEN?

25 MR. DIGGS: YES, SIR.

DEFENSE MOTION FOR DIRECTED VERDICT

234

1 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF
2 THE JURY, IF YOU WOULD GO TO YOUR JURY ROOM FOR A LITTLE
3 BIT AND WE'LL CALL YOU BACK OUT JUST AS SOON AS I CAN.

4 (WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT
5 10:50 A.M.)

6 THE COURT: WE'LL COME BACK IN HERE IN ABOUT 10
7 MINUTES. I'LL HEAR ALL YOUR MOTIONS AT THAT POINT IN TIME,
8 MR. DIGGS. IF I DO NOT DECIDE TO GRANT YOUR MOTIONS LET'S
9 AT LEAST ANTICIPATE THAT POSSIBILITY AND TALK TO YOUR
10 CLIENT ABOUT HIS RIGHT TO TESTIFY SO THAT WE CAN GO INTO
11 THAT PARTICULAR MATTER WHEN WE COME BACK, ALL RIGHT.

12 MR. DIGGS: THANK YOU, YOUR HONOR.

13 THE COURT: THANK YOU VERY MUCH, WE'LL COME BACK
14 IN ABOUT 10 MINUTES, THANK YOU.

15 (WHEREUPON, A RECESS WAS TAKEN AND THE FOLLOWING
16 TAKES PLACE ON THE RECORD AFTER THE RECESS.)

17 THE COURT: ALL RIGHT, MR. DIGGS, YOU HAVE SOME
18 MOTIONS REGARDING THE STATE'S CASE?

19 MR. DIGGS: YOUR HONOR, WE WOULD MOVE FOR A
20 DIRECTED VERDICT AT THIS TIME BECAUSE THERE'S NOT EVIDENCE
21 IN THE RECORD UPON WHICH A RATIONAL TRIER OF FACT COULD
22 CONCLUDE GUILT BEYOND A REASONABLE DOUBT.

23 THE ONLY EVIDENCE, WE'VE HAD THREE WITNESSES IN
24 THE CASE. WE'VE HAD THE INVESTIGATOR THAT DISCOVERED, OR
25 INITIALLY WENT TO THE CRIME SCENE. WE HAVE THE DOCTOR THAT

DEFENSE MOTION FOR DIRECTED VERDICT

235

1 TALKED ABOUT THE CAUSE OF DEATH. WE HAVE DETECTIVE
2 LIVINGSTON WITH THE AUDIO STATEMENT AND VIDEO STATEMENT.

3 YOUR HONOR, IN THAT STATEMENT THE ONLY REASONABLE
4 INFERENCE THAT CAN BE GLEANED FROM THE STATEMENT IS THE
5 FACT THAT THIS WAS A SHOOTING THAT WAS DONE ON THE SPUR OF
6 THE MOMENT BY ANOTHER INDIVIDUAL NOT MY CLIENT; THAT HE WAS
7 NOT THERE TO PARTICIPATE IN ANY KIND OF MURDER AND WAS NOT
8 AT THAT POINT ENGAGED IN ANY ACTIVITY IN A NATURAL AND
9 PROBABLE CONSEQUENCE OF WHICH WOULD RESULT IN DEATH OR
10 KILLING. SO BASED ON THAT STATE OF THE RECORD WE'D MOVE
11 FOR A DIRECTED VERDICT ON THE CHARGE OF MURDER.

12 THE COURT: ALL RIGHT, SIR. SOLICITOR?

13 MR. RICHARDSON: THANK YOU, YOUR HONOR. AS THE
14 BURDEN IS ON THE DEFENSE ON THAT MOTION, YOUR HONOR. THE
15 STATE WOULD RESPECTFULLY SUBMIT THAT, NUMBER ONE, NO DOUBT
16 A MURDER TOOK PLACE. MR. DIGGS CONCEDED THAT IN HIS
17 OPENING AND, OF COURSE, WE'VE HEARD AMPLE TESTIMONY BOTH
18 FROM ANN PITTS, WHO WAS THE CRIME SCENE TECHNICIAN ON THE
19 SCENE, AS WELL AS DR. SCHANDL.

20 WITH REGARD TO THE DEFENDANT'S GUILT AND HIS
21 TESTIMONY IN HIS STATEMENT THAT WE HEARD. THE DEFENDANT
22 SAYS THAT HE WAS PRESENT DURING THE TIME, THAT HE HEARD
23 THAT THERE WAS A CONTRACT OUT OR BOUNTY ON THE VICTIM'S
24 HEAD. HE ACCEPTED THAT, TALKED TO THE SHOOTER, MARK
25 WILLARD, ABOUT IT, PICKS MARK WILLARD UP PRIOR TO PICKING

DEFENSE MOTION FOR DIRECTED VERDICT

236

1 UP THE VICTIM, AND DRIVES THEM OUT TO A REMOTE AREA AND
2 THEN THE KILLING OCCURS.

3 NOW HE TRIES TO MITIGATE AND SAYS, I DIDN'T KNOW
4 IT WAS GOING TO GO ON. BUT THERE'S ONLY ONE INFERENCE YOU
5 CAN TAKE FROM THAT, THAT HE GOES TO A REMOTE AREA WHERE
6 NONE OF THEM LIVE. THEY TAKE ONE GUN TO A DRUG RIP, TO A
7 DRUG ROBBERY, THAT ONE GUN AIN'T TO ROB ANYBODY. IT'S TO
8 EXECUTE JULIAN LEE AND THAT'S EXACTLY WHAT THEY DID.

9 THEY FULFILLED THEIR PLAN. HE GOT PAID HIS MONEY
10 ON THAT. HE TELLS YOU HE GOT \$5,000. HE SAYS IT WAS HUSH
11 MONEY SO HE GETS HALF OF ALL THE MONEY TO REMAIN QUITE.
12 HIS BROTHER GETS A PITTANCE, I ASSUME, AND THE SHOOTER GETS
13 LESS THAN THE HUSH MONEY. YOUR HONOR, IT'S JUST SIMPLY
14 RIDICULOUS TO BELIEVE THAT PORTION OF THE STATEMENT.

15 THIS DEFENDANT CAN'T DENY BY ANY MOTION HE IS THE
16 MURDERER. THE ONLY DIFFERENCE IS THE WEAPON HE CHOSE TO
17 USE TO EXECUTE JULIAN LEE WAS MARK WILLARD.

18 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.
19 DIGGS, I'M SORRY, YES, SIR?

20 MR. DIGGS: YOUR HONOR, I ALSO FOR THE RECORD I
21 THINK IT WOULD BE APPROPRIATE FOR ME TO RENEW MY OBJECTION
22 TO THE ADMISSIBILITY OF THAT STATEMENT AND SAY THAT YOUR
23 HONOR SHOULD NOT CONSIDER THAT STATEMENT. I KNOW WHAT YOUR
24 PRIOR RULING WAS THAT IT WAS ADMITTED, BUT I'D ASK YOUR
25 HONOR TO RECONSIDER THAT AND RECONSIDER IT IN CONJUNCTION

DEFENSE MOTION FOR DIRECTED VERDICT

237

1 WITH THIS MOTION TO DISMISS THE MURDER CHARGE AGAINST MR.
2 WILLS.

3 YOUR HONOR, ESPECIALLY, I DON'T KNOW IF YOU HAVE
4 A TRANSCRIPT OF THE STATEMENT IN FRONT OF YOU, BUT FOR THE
5 RECORD I THINK MAYBE THE SOLICITOR AND I BOTH WOULD LIKE TO
6 MAKE THIS TRANSCRIPT A COURT EXHIBIT MAYBE SO THAT IT WOULD
7 BE AVAILABLE. BUT AT PAGE 30 SCOTT HIXSON, WHO IS AN
8 ASSISTANT SOLICITOR HERE IN THIS CIRCUIT, PREFACES A
9 QUESTION WITH, YOU DON'T HAVE ANYTHING TO WORRY ABOUT
10 ANSWERING IT. AND FOR, YOUR HONOR, FOR CLARIFICATION THE
11 ENTIRE QUESTION WAS, "CAN YOU TELL ME A LITTLE BIT MORE
12 ABOUT, UM, CAUSE ON THE SURFACE IT WILL LOOK LIKE CERTAINLY
13 YOU GOT PAID BUT HIT ON SOMEBODY THAT YOU HAD A LOT TO DO
14 WITH THE HIT. NOW THIS IS ALL PART OF THE PROFFER SO YOU
15 UNDERSTAND THAT SO YOU DON'T HAVE ANYTHING TO WORRY ABOUT
16 ANSWERING IT."

17 NOW CLEARLY THAT STATEMENT IS A PROMISE, CONTAINS
18 A PROMISE TO MR. WILLS WITH RESPECT TO ANY KIND OF RESPONSE
19 THAT'S ELICITED THAT AND I WOULD ASK THE COURT TO
20 RECONSIDER. AND MAYBE I DIDN'T CLARIFY IT AS, AS CLEARLY
21 AS I COULD HAVE DONE PRIOR TO TRIAL BEFORE WE ACTUALLY GOT
22 INTO THE TRIAL OF THE CASE BUT IT'S CLEARLY A PROMISE THAT
23 IS TELLING MR. WILLS YOU CAN FEEL FREE TO BE TRUTHFUL HERE
24 AND BE COMPLETELY OPEN AND HONEST WITH ME. YOU DON'T HAVE
25 TO WORRY ABOUT THE RAMIFICATIONS AS LONG AS YOU WERE NOT

DEFENSE MOTION FOR DIRECTED VERDICT

238

1 THE TRIGGER MAN, GO BACK TO THAT INITIAL CAVEAT. AND SO
2 IMMEDIATELY, IMMEDIATELY IS WHEN MR. WILLS RESPONDS AND
3 ACKNOWLEDGES IN, IN ONE WAY, WHICH THE SOLICITOR IS
4 CONSTRUING THE STATEMENT, ACKNOWLEDGES THAT, YES, MAYBE HE
5 POINTED OUT TO MARK, I CAN'T REMEMBER THE GENTLEMAN'S NAME,
6 AS BEING SOMEONE WHO COULD, COULD BE A HIT MAN, SO TO SPEAK
7 IF YOU CONSTRUE IT THAT WAY, AND I WOULD SUBMIT THAT'S NOT
8 THE ONLY WAY YOU CAN CONSTRUE THAT STATEMENT. BUT I WOULD
9 ASK THE COURT NOT TO CONSIDER THAT PORTION OF THE STATEMENT
10 IN RULING ON THIS DIRECTED VERDICT MOTION AND, AND RELY
11 SOLELY ON THE TESTIMONY OF THE OTHER TWO WITNESSES AND THE
12 PORTION OF MR. WILLS STATEMENT THAT HE WAS NOT THE SHOOTER
13 IN THIS CASE AND, AND DID, DID NOT KNOW THAT THERE WAS A
14 SHOOTING THAT WAS GOING TO OCCUR THAT EVENING.

15 THE COURT: ALL RIGHT, SIR. IN GOING BACK TO
16 THE MOTION TO ALLOW THE STATEMENT INTO EVIDENCE IN THIS
17 PARTICULAR MATTER I WOULD REAFFIRM MY PREVIOUS RULING TO
18 ALLOW THE STATEMENT INTO EVIDENCE. I BELIEVE THAT IT WAS
19 PROPER, THAT THE STATEMENT WAS MADE KNOWINGLY, WAS MADE
20 AFTER ADVISEMENT OF HIS MIRANDA RIGHTS, AFTER ADVICE OF
21 COUNSEL, ACTUALLY HAVING COUNSEL PRESENT DURING THE
22 QUESTIONING AND THE MAKING OF THE STATEMENT.

23 I WILL CHARGE THE JURY, OF COURSE, THAT THEY MAKE
24 THE ULTIMATE DECISION AS TO WHETHER OR NOT THE STATEMENT
25 WAS MADE VOLUNTARILY AND OF THE DEFENDANT'S OWN FREE WILL

DEFENSE MOTION FOR DIRECTED VERDICT

239

1 AND IN THAT, AND I WILL TELL THEM THAT, THAT MEANS THAT THE
2 STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE, FEAR OF
3 THREATS, COERCION OR BY HOPE OF PROMISE OF LENIENCY OR
4 REWARD OF ANY KIND, AND THAT WILL BE PART OF THE JURY'S
5 DETERMINATION TO DECIDE WHETHER OR NOT THEY BELIEVE THE
6 STATEMENT WAS VOLUNTARY. BUT I BELIEVE THAT IN ACCORDANCE
7 WITH THE LAW OF THIS STATE THAT IT WAS PROPER FOR THE JURY
8 TO HEAR THE STATEMENT AND I INDICATED TO YOU, MR. DIGGS,
9 THAT I WAS, YOU WERE FREE TO BRING UP ANY CIRCUMSTANCES
10 SURROUNDING THE GIVING OF THE STATEMENT AS TO HOW THEY,
11 HOW IT MIGHT HAVE COME ABOUT EXCEPT FOR THE MENTION OF
12 POLYGRAPH BUT THAT THERE WAS A PROFFER AND THAT HE WAS
13 GIVING IT PURSUANT TO DISCUSSIONS WITHIN A WRITTEN
14 AGREEMENT WITH THE STATE OF SOUTH CAROLINA AS LONG AS WE
15 REDACTED THE PART ABOUT THE POLYGRAPH, HAD NO PROBLEM WITH
16 THAT COMING INTO, TO EVIDENCE. SO I BELIEVE IT WAS PROPER
17 FOR THE JURY TO HEAR AND I WOULD REAFFIRM MY PREVIOUS
18 RULING TO ALLOW THAT.

19 MR. DIGGS: YOUR HONOR, WOULD YOU REPEAT THAT
20 LAST POINT THAT YOU WERE MAKING. I'M NOT SURE I FOLLOWED?

21 THE COURT: WHICH, WHICH PART?

22 MR. DIGGS: THE COURT IS AWARE THAT WE HAD
23 OBJECTED, THOUGH, TO THE STATEMENT COMING INTO EVIDENCE.

24 THE COURT: I UNDERSTAND THAT, AND I UNDERSTAND
25 THAT, AND, AND I, I'M REAFFIRMING MY PREVIOUS RULING TO

DEFENSE MOTION FOR DIRECTED VERDICT

240

1 ALLOW THE STATEMENT INTO EVIDENCE. BUT I WAS INDICATING
2 THAT IN THAT, IN ALLOWING IT INTO EVIDENCE I ALSO MADE IT
3 CLEAR TO YOU THAT YOU WERE FREE TO BRING TO THE JURY ALL
4 THE SURROUNDING CIRCUMSTANCES OF THE STATEMENT AS TO ANY
5 PROMISES THAT MIGHT HAVE BEEN MADE TO HIM OR STATEMENTS
6 MADE TO HIM OR ANY REASON THAT HE MAY BE GIVING THE
7 STATEMENT EXCEPT AS TO THE ISSUE OF THE, THE POLYGRAPH
8 INCLUDING THAT YOU WERE FREE TO HAVE IN EVIDENCE THE
9 PROFFER AGREEMENT ENTERED INTO BETWEEN THE DEFENDANT AND
10 THE STATE AS LONG AS WE REDACTED IT TO MAKE SURE THAT THE
11 JURY DOES NOT SEE THE PART ABOUT THE POLYGRAPH TEST OR
12 VERIFICATION BY A POLYGRAPH. OTHER THAN THAT THE ENTIRETY
13 OF THE PROFFER AGREEMENT BETWEEN THE STATE CAN COME INTO
14 EVIDENCE AND I HAVE NO PROBLEM WITH THAT AND WOULD, YOU
15 KNOW ---

16 MR. DIGGS: YOUR HONOR ---

17 THE COURT: --- SO STILL ALLOW.

18 MR. DIGGS: --- FOR PURPOSES DOWN THE ROAD I
19 WANT TO GET, YOUR HONOR'S CORRECT AND I MADE A DECISION. I
20 WANT TO MAKE CLEAR IT WASN'T AN OVERSIGHT. I MADE A
21 DECISION TO LEAVE IT EXACTLY THE WAY IT IS.

22 THE COURT: ALL RIGHT, SIR, AND, AND I
23 APPRECIATE THAT AND, AND UNDERSTANDING THAT, THAT'S YOUR
24 DECISION BUT, BUT, YOU KNOW, I WANTED IT CLEAR THAT, THAT --
25 --

COURT TO DEFENDANT WILLS

241

1 MR. DIGGS: YES, SIR.

2 THE COURT: --- YOU WERE FREE, FREE TO DO SO IF
3 YOU SO CHOSE TO DO SO, BUT ONCE AGAIN I REAFFIRM MY
4 PREVIOUS ---

5 MR. DIGGS: THANK YOU, YOUR HONOR.

6 THE COURT: --- RULING IN THIS MATTER.

7 NOW AS TO YOUR MOTIONS FOR A DIRECTED VERDICT I
8 WOULD RESPECTFULLY DECLINE TO GRANT YOUR MOTION FOR A
9 DIRECTED VERDICT FINDING THAT THERE IS SUFFICIENT EVIDENCE
10 IF SO BELIEVED BY THE JURY THAT WOULD SUPPORT A CONVICTION
11 FOR THE OFFENSE OF MURDER BY NO MEANS SETTING FORTH ALL THE
12 FACTS THAT WOULD SUPPORT IT, BUT THAT THERE IS EVIDENCE OF
13 A PREARRANGEMENT FOR A MURDER TO TAKE PLACE AT SOME POINT
14 IN TIME IN THE FUTURE WHETHER OR NOT THE TIME AND DATE ARE
15 CERTAIN BUT THAT FOR A MURDER IN FACT TO, TO OCCUR KNOWING
16 THAT THERE WAS MONEY TO BE HAD FOR, FOR DOING SO.

17 OBVIOUSLY THERE WAS A MURDER AS SET FORTH BY THE
18 EVIDENCE THAT THE JURY COULD BELIEVE A MURDER OCCURRED AS
19 SET FORTH BY THE EVIDENCE, SET FORTH BY THE MEDICAL DOCTOR
20 AND THE CRIME SCENE INVESTIGATOR, THAT IT WAS DONE WITH A
21 9MM WEAPON, AND THOSE ARE FACTS THAT ARE OUTSIDE OF THE
22 DEFENDANT'S STATEMENT AND WHEN YOU COMBINE THOSE WITH THE
23 DEFENDANT'S STATEMENT THAT THERE IS EVIDENCE IF THE JURY
24 BELIEVES IT WITH THEIR ULTIMATE RESPONSIBILITY TO DETERMINE
25 THE VOLUNTARINESS OF THE STATEMENT TO SUPPORT A CONVICTION

COURT TO DEFENDANT WILLS

242

1 FOR MURDER. THEREFORE, I RESPECTFULLY DECLINE TO GRANT
2 YOUR MOTION FOR A DIRECTED VERDICT.

3 FURTHER MOTIONS ON BEHALF OF THE DEFENSE AT THIS
4 POINT IN TIME?

5 MR. DIGGS: NOTHING FURTHER AT THIS TIME.

6 THE COURT: ALL RIGHT, SIR.

7 MR. DIGGS: I'M SORRY, YOUR HONOR?

8 THE COURT: YES, SIR?

9 MR. DIGGS: YES, AT SOME POINT I WOULD ASK THE
10 COURT TO DISCUSS WITH THE DEFENDANT WHETHER OR NOT HE
11 INTENDS TO TESTIFY.

12 THE COURT: YES, SIR, I WAS JUST GOING TO DO
13 THAT RIGHT NOW SO I WAS GOING TO, I WAS GOING TO ASK YOU
14 ARE YOU, IS YOUR CLIENT PREPARED FOR THE COURT TO TALK TO
15 HIM ABOUT HIS CONSTITUTIONAL RIGHTS ---

16 MR. DIGGS: YES, SIR.

17 THE COURT: --- AND HIS RIGHT TO TESTIFY?

18 MR. DIGGS: WE ARE.

19 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR.
20 WILLS, IF YOU DON'T MIND, IF YOU'D RAISE YOUR RIGHT HAND,
21 SIR.

22 THEODORE DAVID WILLS

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE COURT: AND COULD YOU SLIDE THE MICROPHONE
25 IN FRONT OF MR. WILLS SO THAT AND WHEN I ASK YOU A

CLOSING ARGUMENT BY STATE

261

1 FOR YOUR DELIBERATIONS. SOLICITOR?

2 CLOSING ARGUMENT

3 BY MR. RICHARDSON:

4 THE DEFENDANT IS A GREEDY COLD BLOODIED CONTRACT
5 KILLER. FOR SOME \$10,000 CASH MONEY THE DEFENDANT BETRAYED
6 THIS SO CALLED FRIEND OF HIS, THE DEFENSE SAYS THAT WAS A
7 FRIEND OF HIS, JULIAN LEE WAS HIS FRIEND, AND HE SET HIM
8 UP, CHOSE THE PLACE OF EXECUTION, THE WEAPON OF CHOICE,
9 THAT BEING MARK WILLARD, AND THE TIME, AND THE DEED WAS
10 DONE AND JULIAN WAS MURDERED.

11 IN JUST A LITTLE WHILE THE JUDGE IS GOING TO
12 INSTRUCT YOU AS TO THE LAW THAT'S GOING TO BE USED IN THIS
13 CASE. YOU NEED TO LISTEN CLOSELY. HE'S GOING TO TALK TO
14 YOU ABOUT MURDER, WHAT, WHAT IS MURDER. IT'S SOMETHING
15 WE'RE ALL FAMILIAR WITH, THAT, THAT TERM.

16 THE JUDGE I BELIEVE WILL INFORM YOU THAT MURDER
17 IS THE UNLAWFUL KILLING OF ANOTHER HUMAN BEING WITH MALICE
18 AFORETHOUGHT AND I ALSO BELIEVE THAT THE JUDGE WILL TELL
19 YOU YOU CAN INFER THAT MALICE IS THERE WHENEVER A DEADLY
20 WEAPON IS USED. IN THIS CASE THERE'S NO DOUBT A MURDER
21 OCCURRED. THE DEFENSE IS OPEN, THEY TOLD YOU. THEY KNOW
22 JULIAN LEE WAS MURDERED.

23 YOU HEARD ANN PITTS UP ON THE STAND. SHE SAID
24 WHEN SHE WALKED UP TO THE CRIME SCENE JULIAN LEE LAY THERE
25 DEAD OVER A PINE STONE OR A PINE BRANCH, BLOOD BELOW HIS

CLOSING ARGUMENT BY STATE

262

1 HEAD, TWO SHOTS TO HIS BACK, FOUND A 9MM SHELL CASING DOWN
2 BESIDE HIS HEAD IN THE BLOOD POOL, FOUND A PROJECTILE BELOW
3 HIS HEAD THAT EXITED OUT OF HIS THROAT.

4 DR. SCHANDL TOLD YOU THE CAUSE OF DEATH WAS THAT
5 GUN, WERE THOSE TWO GUNSHOT WOUNDS. EITHER ONE OF THEM
6 COULD HAVE BEEN LETHAL, TOGETHER DEFINITELY FATAL, SO
7 THERE'S NO DOUBT THAT A MURDER OCCURRED BUT WHO DID IT.

8 THE JUDGE IS GOING TO TALK TO YOU ABOUT
9 REASONABLE DOUBT. ONCE AGAIN THIS IS A TERM THAT, THAT
10 WE'VE ALL HEARD BEFORE WHETHER IT'S ON T.V., BOOKS,
11 NEWSPAPER, MOVIES, BUT WHAT IS REASONABLE DOUBT. IT'S NOT
12 PROOF BEYOND ALL POSSIBLE DOUBT. IT'S NOT PROOF BEYOND AN
13 UNREASONABLE DOUBT. WHAT THE JUDGE IS GOING TO TELL YOU
14 THAT REASONABLE DOUBT IS THAT, IS THAT DOUBT WHICH WOULD
15 CAUSE A REASONABLE PERSON TO HESITATE TO ACT, BUT HE'S
16 GOING TO GO FURTHER. THAT'S A LITTLE CONVOLUTED SO HE'S
17 GOING TO TELL YOU TO REACH A POSITION OF GUILTY BEYOND A
18 REASONABLE DOUBT THE STATE MUST PRODUCE EVIDENCE WHICH
19 LEAVES YOU FIRMLY CONVINCED OF DAVID WILLS GUILT IN THIS
20 MURDER. I SUBMIT TO YOU THAT WE'VE DONE THAT.

21 FURTHER THE JUDGE WILL TELL YOU ABOUT A LAW
22 CALLED HAND OF ONE HAND OF ALL AND BRIEFLY WHAT THAT MEANS
23 IS, IS WHEN TWO OR MORE PERSONS COME TOGETHER TO COMMIT A
24 CRIME THAT CRIME IS CARRIED OUT ANY ACT DONE BY ONE OF
25 THOSE PLANNERS, ONE OF THOSE CRIMINALS, IS THE ACT OF ALL.

CLOSING ARGUMENT BY STATE

263

1 THE HAND OF ONE IS THE HAND OF ALL SO THAT IF YOU'RE THERE,
2 YOU PLANNED IT, YOU PARTICIPATE IN IT AND IT HAPPENS YOU'RE
3 JUST AS GUILTY AS ANYONE ELSE. IT DOESN'T MATTER IF YOU'RE
4 THE SHOOTER OR IF YOU'RE MERELY THE MAN WHO DELIVERED THE
5 SHOOTER AND YOU STAND THERE AND YOU KNOW THE MURDER IS
6 GOING TO OCCUR. THAT'S WHAT HAPPENED HERE, WE ALL KNOW
7 THAT AND WHO DO WE KNOW THAT.

8 FOLKS, WE SAT HERE AND WATCHED ABOUT AN HOURS
9 WORTH OF THE STATEMENT GIVEN BY DAVID WILLS. FROM THE GET
10 GO YOU HEARD IT, HE WAS MIRANDIZED, HAD HIS ATTORNEY
11 PRESENT. THE STATEMENT WAS VOLUNTARILY GIVEN AND HE BEGAN
12 TELLING US WHAT HAPPENED AND WHAT HE STARTED OFF WITH WAS
13 PRETTY BENEVOLENT. HE SAID ME AND MY BROTHER MARK WILLARD
14 AND JULIAN LEE, J ROCK, WE WENT, WE WENT OFF TO COMMIT A
15 DRUG RIP AND MARK WILLARD SHOT HIM. WELL HE HAD TO GET A
16 LITTLE MORE SPECIFIC.

17 WE WANTED TO KEEP IT AS SIMPLE AS POSSIBLE,
18 WANTED TO MITIGATE WHAT HE HAD DONE. OOPS, HE HAD TO GET
19 MORE SPECIFIC AND HE DID. SO THEN HE COMES IN AND HE SAYS,
20 OKAY, WELL, YOU KNOW, I CALLED JULIAN AND TALKED TO HIM
21 ABOUT LET'S GO OUT AND DO THIS ROBBERY AND, AND I HAD MARK
22 WILLARD WITH ME, HAD MARK WILLARD WITH ME WHENEVER I PICKED
23 UP JULIAN AND WE WENT OUT AND MARK SHOT HIM. I DIDN'T KNOW
24 IT WAS GOING TO HAPPEN BUT THEN I JUST WAITED FOR MARK TO
25 COME BACK IN THE CAR CAUSE I WAS SCARED. I WAITED 30 TO 45

CLOSING ARGUMENT BY STATE

264

1 SECONDS FOR THIS MAN WHO JUST MURDERED THIS SO CALLED
2 FRIEND OF MINE TO GET BACK IN THE CAR BECAUSE I WAS SCARED.

3 WELL LOOK AT THE DEFENDANT, HE'S SIX FOOT THREE.
4 HE'S A LARGE MAN AND HE'S SCARED. IMAGINE HE MIGHT BE
5 SCARED BECAUSE THERE'S A GUN INVOLVED.

6 WELL HE TELLS YOU THAT THEY GO ON DOWN THE ROAD
7 AND THEY DUMP IT OUT IN THE RIVER. MARK WILLARD DOESN'T
8 HAVE A GUN ANYMORE AND HE'S GOT HIS BROTHER WITH HIM, TWO
9 GROWN MEN AND THEY'RE SCARED OF THIS OTHER FELLOW AND WHAT
10 DO THEY DO THE NEXT DAY. DO THEY GO RUN TO THE POLICE AND
11 SAY, HEY, WE KNOW WHO SHOT JULIAN LEE. THIS GUY WE WENT
12 OUT WITH HE SHOT HIM. NO, INSTEAD WHAT HE DOES IS HE GOES
13 AND HE COLLECTS A BOUNTY OF \$5,000 FOR HIMSELF AND \$5,000
14 TO BE SPLIT BETWEEN MARK WILLARD AND THE DEFENDANT'S
15 BROTHER AND WE KNOW THAT DOESN'T QUITE MAKE SENSE, OOPS,
16 MESSED UP AGAIN, SO HE GOES BACK AND GIVES US A LITTLE MORE
17 DETAIL AND THAT'S WHERE WE FIND THE TRUEST STATEMENTS.

18 HE TELLS YOU THAT HE KNEW THAT THERE WAS A BOUNTY
19 OUT FOR JULIAN LEE BECAUSE HE KNOWS THAT JULIAN HAD STOLEN
20 SOME \$50,000 FROM THE JOHNSON BROTHERS. HE KNEW THE
21 JOHNSON BROTHERS HAD PUT A BOUNTY OUT, \$10,000 FOR THE
22 DEATH OF JULIAN LEE. HEARD IT ON THE STREET AND WENT AND
23 TALKED WITH THE JOHNSON'S ABOUT IT, ACCEPTED THAT CONTRACT
24 AND THEN HE TALKED TO MARK WILLARD ABOUT IT AND THIS IS ALL
25 PRIOR TO OCTOBER 13TH, 2001.

CLOSING ARGUMENT BY STATE

265

1 THIS IS WHAT HE KNEW AND THEN HE TELLS YOU THAT
2 ON THE EARLY OR IN THE EARLY MORNING HOURS OCTOBER 13TH,
3 2001, HE HAD SPOKEN TO JULIAN AND SAID, LET'S GO, LET'S GO
4 PULL THIS DRUG RIP, LET'S GO GET SOME QUICK MONEY, I'LL
5 COME PICK YOU UP IN THE EARLY MORNING HOURS. THAT'S
6 EXACTLY WHAT HE DID. HE WENT BY TO PICK UP JULIAN LEE AND
7 WHO WAS IN THE CAR. IT JUST HAPPENS TO BE MARK WILLARD,
8 THIS MAN, THIS ASSASSIN THAT HE HAS SUB-CONTRACTED TO SPLIT
9 MONEY WITH TO KILL JULIAN LEE SO ---

10 MR. DIGGS: YOUR HONOR, WE OBJECT, IT'S OUTSIDE
11 THE RECORD EVIDENCE.

12 THE COURT: I'M GOING TO ALLOW THE STATE TO
13 CONTINUE HIS CLOSING. IT'S FOR THE JURY TO JUDGE THE
14 EVIDENCE IN THIS CASE. I'M GOING TO ALLOW THE STATE TO
15 CONTINUE, THANK YOU.

16 MR. RICHARDSON: THANK YOU, YOUR HONOR.

17 SO HE PICKS UP MARK WILLARD FIRST THEN HE PICKS
18 UP JULIAN LEE. THEY HAVE ONE GUN DRUG IN THE CAR TO PULL A
19 DRUG RIP. HE TELLS YOU JULIAN'S GOT ON HIS LONG GLOVES
20 DRESSED FOR A ROBBERY BUT HE DOESN'T REMEMBER WHAT THE
21 OTHER PEOPLE HAVE ON, PROBABLY DARK CLOTHES, BUT LET'S
22 ADMIT JULIAN IS THE ONLY ONE DRESSED FOR A ROBBERY CAUSE HE
23 THINKS THAT'S WHAT'S GOING TO GO ON.

24 THEY DRIVE OUT TO A REMOTE AREA OF THE COUNTY.
25 JULIAN IS NOT GOING TO KNOW ANYBODY, WON'T KNOW WHAT'S

CLOSING ARGUMENT BY DEFENSE

266

1 GOING ON. THEY WAIT UNTIL JULIAN GETS OUT OF THE CAR AND
2 STARTS WALKING FORWARD IN A FIELD AND HE TELLS YOU HE'S
3 RIGHT OUT THERE, ABOUT SEVEN YARDS AWAY, WHEN MARK WILLARD,
4 "POP", SHOOTS JULIAN LEE, TELLS YOU HE SAW IT, TELLS YOU HE
5 RUNS BACK TO THE CAR AND HE WAITS.

6 HE DOESN'T WAIT BECAUSE HE'S SCARED. HE WAITS
7 BECAUSE HE'S PLANNED THIS KILLING. HE'S JUST AS GUILTY AS
8 IF HE WOULD HAVE PULLED THE TRIGGER. HE DIDN'T CHOOSE TO
9 USE THE PISTOL HIMSELF, HE CHOOSES TO USE MARK WILLARD TO
10 KILL JULIAN LEE FOR \$10,000.

11 FOLKS, IT'S GREED, IT'S A PORTRAYAL, IT'S WRONG.
12 AND I TOLD YOU IN THE BEGINNING THAT THE LAW SERVES TO
13 PROTECT US ALL FROM THE GREATEST AND TO THE LEAST. YOU MAY
14 NOT LIKE WHAT JULIAN LEE WAS. HE RIPPED OFF DRUG DEALERS
15 BUT THAT DID NOT GIVE DAVID WILLS THE RIGHT TO EXECUTE
16 JULIAN LEE.

17 FOLKS, LET YOUR VERDICT SPEAK FOR JULIAN LEE.
18 LET IT SPEAK TO THE FAMILY OF JULIAN LEE, HIS WIFE, HIS
19 CHILD. LET THEM KNOW THAT THE LAW PROTECTS US ALL, WILL
20 PROTECT US FROM THE GREED OF INDIVIDUALS THAT SEEK TO
21 BETRAY US AND MURDER US, THANK YOU.

22 THE COURT: ALL RIGHT, MR. DIGGS?

23 MR. DIGGS: THANK YOU, MAY IT PLEASE THE COURT?

24 THE COURT: YES, SIR.

25 CLOSING ARGUMENT

CLOSING ARGUMENT BY DEFENSE

267

1 BY MR. DIGGS:

2 LADIES AND GENTLEMEN, THERE'S NO DOUBT THAT
3 JULIAN LEE WAS MURDERED AND HE DIDN'T DESERVE TO BE
4 MURDERED, THAT'S A TRAGEDY, AND WHAT'S UNFORTUNATE IS IT
5 ALMOST BECOMES A SIDE ISSUE BECAUSE THE PERSON, WE ALL KNOW
6 THAT THE PERSON WHO MURDERED JULIAN IS NOT HERE. HE'S NOT
7 BEING PROSECUTED. JULIAN ---

8 MR. RICHARDSON: OBJECTION, YOUR HONOR, THAT
9 FACT IS NOT. HE'S NOT BEING PROSECUTED THIS DAY.

10 THE COURT: GENTLEMEN --

11 MR. DIGGS: YOUR HONOR ---

12 THE COURT: ONCE AGAIN -- GENTLEMEN, ALL RIGHT,
13 COULD YOU STEP BACK FOR JUST ONE SECOND, MR. DIGGS.

14 LADIES AND GENTLEMEN, I REMIND YOU AGAIN ABOUT
15 THE CLOSING ARGUMENTS BOTH THE STATE AND THE DEFENSE THOSE
16 ARE NOT EVIDENCE AND CANNOT BE CONSIDERED BY THE JURY AS
17 EVIDENCE. YOU ARE THE JUDGES OF THE FACTS OF THIS
18 PARTICULAR CASE AND I'LL ALLOW THE DEFENSE TO CONTINUE WITH
19 HIS CLOSING ARGUMENTS, THANK YOU VERY MUCH.

20 MR. DIGGS: (CONTINUING)

21 WE KNOW THERE HAS BEEN NO EVIDENCE TO SUGGEST
22 THAT MARK WILLARD HAS BEEN OR IS BEING PROSECUTED. YOU
23 HAVE NO EVIDENCE IN THIS CASE OF THAT. WE HAVE NO EVIDENCE
24 THAT ANY OTHER PERSON THAT MIGHT BE INVOLVED IN THIS CASE
25 WHETHER IT BE PEOPLE WHO PAID THE MONEY, PEOPLE WHO CARRIED

CLOSING ARGUMENT BY DEFENSE

268

1 OUT THE SHOOTING OR PLANNED IT OR ANYTHING ELSE, WE HAVE,
2 THERE'S NOTHING IN THIS RECORD ABOUT THAT, NOTHING.

3 LET ME REMIND YOU THIS YOUNG MAN IS SHOT IN
4 OCTOBER OF 2001, SIX YEARS AGO. MY CLIENT GAVE HIS
5 STATEMENT IN OCTOBER OR, EXCUSE ME, AUGUST OF 2005, TWO
6 YEARS AGO, WHY HAS IT TAKEN SO LONG FOR THIS DAY TO COME
7 FOR US TO HAVE A TRIAL, FOR MY CLIENT TO HAVE HIS DAY IN
8 COURT. THAT'S A LEGITIMATE QUESTION, WHY DID IT TAKE SO
9 LONG. IF THE PROSECUTION KNOWS SO MUCH ABOUT THIS CASE AND
10 WHO'S RESPONSIBLE WHY DID IT TAKE SO LONG.

11 THE FIRST, ALL OF THE EVIDENCE IN THIS CASE CAN
12 BE DISMISSED WHEN IT COMES TO THE ISSUE OF MY CLIENT'S
13 GUILT OR INNOCENCE, ALL OF IT, BECAUSE NO ONE HAD ANY
14 INFORMATION ABOUT WHO KILLED JULIAN LEE.

15 THE INVESTIGATORS THEY TOLD US JULIAN HAD BEEN
16 SHOT AND WAS LEFT DEAD.

17 THE DOCTOR TOLD US THAT JULIAN HAD BEEN SHOT AND
18 WAS KILLED AS A RESULT OF THOSE WOUNDS, BUT THE ONLY PERSON
19 WHO IMPLICATES IN ANY CRIMINAL ACTIVITY DAVID WILLS IS
20 DAVID WILLS.

21 IN THE OPENING OF THIS TRIAL I ENCOURAGED YOU TO
22 THINK ABOUT THE TECHNICALITIES OF THE LAW, OKAY, BECAUSE
23 THAT'S WHAT'S GOING TO BE REQUIRED IN THIS CASE. IT'S
24 GOING TO BE DIFFICULT CAUSE IT'S NOT SOMETHING YOU HAVE TO
25 DO EVERY DAY BUT YOU DO, ONE OF THE THINGS YOU DO

CLOSING ARGUMENT BY DEFENSE

269

1 COLLECTIVELY AS HUMAN BEINGS IS MAKE DECISIONS BASED ON THE
2 RATIONAL LOGIC ATTENTION TO DETAIL AND THAT'S WHAT YOU'RE
3 GOING TO HAVE TO DO IN THIS CASE.

4 THE STATE IS SAYING, LOOK WE'VE GOT ELEMENTS OF
5 MURDER AND HERE'S ONE OF THEM OVER HERE THAT OCCURRED AT
6 SOME TIME IN THE PAST MONTHS AGO THEN WE'VE GOT SOMETHING
7 ELSE THAT HAPPENED OVER HERE MONTHS LATER AND THEN WE'VE
8 GOT SOMETHING OVER HERE THAT RESULTED IN JULIAN'S DEATH.

9 YOU PUT ALL THREE OF THOSE THINGS TOGETHER AND
10 MAYBE YOU'VE GOT A MURDER NOT COMMITTED BY HIM BUT BY THE
11 HAND OF ONE IS THE HAND OF ALL, PEOPLE ACTING IN A CONCERT,
12 BUT THINK ABOUT THAT.

13 I WOULD SUBMIT TO YOU THAT HIS HONOR IS GOING TO
14 TELL YOU THE LAW, ALL THOSE THINGS HAVE TO CONVERGE AT THAT
15 MOMENT, THEY'RE, IT'S KIND OF LIKE TAKING A TAPE AND
16 SPLICING IT, MAYBE YOU'VE GOT AN HOURS OF WORTH OF TAPE AND
17 YOU SPLICE IT TOGETHER AND YOU HAVE THE PERSON SPEAKING THE
18 WORDS BUT OUT OF CONTEXT. IT'S GOT TO BE IN CONTEXT, ALL
19 HAPPENING AT THE SAME TIME.

20 WHEN JULIAN LEE WAS SHOT MY CLIENT HAD TO BE
21 THERE ENCOURAGING AIDING AND ABETTING AND PLANNING,
22 PARTICIPATING IN THAT MURDER. NOT IF HE HAD THE MIND SET
23 SIX MONTHS AGO DID HE HAVE IT THAT NIGHT AT THE TIME JULIAN
24 WAS SHOT, THAT'S THE ISSUE YOU'VE GOT TO RESOLVE AND
25 THERE'S NO EVIDENCE OF THAT.

CLOSING ARGUMENT BY DEFENSE

270

1 HIRED ASSASSIN THAT'S FANTASY, THERE'S NO
2 EVIDENCE HE WENT OUT THERE THAT NIGHT TO KILL THAT YOUNG
3 BOY, A YOUNG MAN.

4 ALL OF US MIGHT HAVE HAD SOME ILL FEELING TOWARDS
5 ANOTHER PERSON SIX MONTHS AGO OR SOME TIME IN THE PAST,
6 HEAVEN HELP US IF WE HAPPEN TO BE PRESENT WHEN THAT PERSON
7 GETS KILLED BECAUSE THE STATE'S ARGUMENT IS RETROACTIVELY
8 YOU CAN GO BACK THERE AND BE PUNISHED FOR IT AND THAT'S NOT
9 WHAT THE LAW IS.

10 THE LAW, HIS HONOR IS GOING TO TELL YOU
11 FOREKNOWLEDGE, EVEN FOREKNOWLEDGE THAT SOMETHING IS GOING
12 TO HAPPEN DOESN'T MAKE YOU GUILTY.

13 MERE PRESENCE DOESN'T MAKE YOU GUILTY.

14 YOU'VE GOT TO BE THERE ACTING AND PARTICIPATING
15 AND INTENDING TO DO THOSE THINGS TO BE GUILTY AND THERE'S
16 NO EVIDENCE THAT DAVID WILLS WAS DOING THAT.

17 MAYBE THEY WENT THERE TO ROB SOME OTHER PERSON
18 THAT LIVES IN THE NEIGHBORHOOD, THAT THEY DIDN'T EVEN GET
19 TO THE PLACE OF THE ROBBERY, JULIAN GOT SHOT BEFOREHAND, SO
20 DON'T FALL FOR THE ARGUMENT OR THE SUGGESTION THAT JULIAN'S
21 DEATH WAS A NATURAL AND LOGICAL CONSEQUENCE THAT SOME
22 ROBBERY THEY HAD PLANNED LATER THE NIGHT, THAT NIGHT. IT'S
23 NOT APPLICABLE HERE.

24 IT HAD NOTHING TO DO, WHAT, WHAT THAT LAW DOES IS
25 SAY, IF WE GO OVER HERE AND ROB SOMEBODY AND IN THE PROCESS

CLOSING ARGUMENT BY DEFENSE

271

1 SOMEBODY ACCIDENTALLY GETS SHOT AND KILLED THEN YOU'RE
2 GUILTY OF MURDER, THAT MAKES SENSE, THAT'S NOT WHAT WE HAVE
3 IN THIS CASE.

4 WE'VE GOT A YOUNG, MARK WILLARD WHO MAKES A
5 DECISION TO PULL OUT A GUN AND KILL JULIAN LEE UNBEKNOWNST
6 TO HIM, LADIES AND GENTLEMEN, THAT'S WHAT A BURDEN OF PROOF
7 IS. THE DEFENSE DOESN'T HAVE TO CONVINCE YOU OF HIS
8 INNOCENCE. WE DON'T HAVE THAT BURDEN UNDER THE LAW.

9 WHEN YOU RAISED YOUR HANDS AS JURORS YOU SAID,
10 YES, YOUR HONOR, I CAN FOLLOW THE LAW EVEN IF I DON'T LIKE
11 IT EXPLICITLY, EVEN IF I DON'T LIKE WHAT THE LAW IS I HAVE
12 TO FOLLOW THE LAW AND THAT MEANS YOU HOLD THE STATE TO ITS
13 BURDEN OF PROOF IN THIS CASE BEYOND A REASONABLE DOUBT.

14 REASONABLE DOUBT IS A DOUBT THAT WOULD HESITATE
15 YOU TO ACT, HESITATE A REASONABLE PERSON TO ACT. DO YOU
16 THINK THAT YOUNG MAN IS A KILLER OR DO YOU HESITATE TO CALL
17 HIM THAT. LOOK AT HIM, DO YOU HESITATE TO LOOK AT HIM AND
18 SAY, YOU'RE A KILLER YOUNG MAN. I SUBMIT TO YOU IT'S
19 REASONABLE TO HESITATE. I DON'T KNOW IF ALL THOSE THINGS
20 CAME IN CONVERSION THAT NIGHT.

21 THAT DAVID WILLS, THEODORE DAVID WILLS DID WHILE
22 ACTING IN CONCERT WITH OTHERS ON OR ABOUT OCTOBER THE 13TH,
23 WILLFULLY, FELONIOUSLY, AND INTENTIONALLY KILL JULIAN LEE;
24 DO YOU BELIEVE THAT. HAS THE STATE PROVEN THAT BEYOND A
25 REASONABLE DOUBT; I SUBMIT TO YOU THEY HAVE NOT AND I

CLOSING ARGUMENT BY DEFENSE

272

1 SUBMIT TO YOU THEY NEVER COULD THAT'S WHY IT'S TAKEN SIX
2 YEARS TO COME TO THE COURT TODAY. THAT'S WHY THEY ONLY HAD
3 THREE WITNESSES OR SO IN THE CASE. THEY DON'T HAVE ANY
4 EVIDENCE TO SUGGEST THAT. WHY WOULD ANYBODY WANT TO
5 COOPERATE WHEN THEY'RE GOING TO BE PROSECUTED, LET'S TALK
6 ABOUT THAT FOR A MINUTE.

7 I WAS LISTENING TO DAVID'S STATEMENT WHEN SCOTT
8 HIXSON SAID, AND BY THE WAY THE JUDGE IS GOING TO TELL YOU
9 THAT EVEN THOUGH THIS, THIS STATEMENT IS IN EVIDENCE IF YOU
10 FIND IT'S NOT VOLUNTARY YOU CAN'T CONSIDER IT, OKAY. IF
11 DAVID DIDN'T WILLFULLY, KNOWINGLY, AND INTELLIGENTLY MAKE
12 THIS STATEMENT, IF HE DIDN'T MAKE THE STATEMENT NOT IN
13 RESPONSE TO A PROMISE, IN OTHER WORDS IF THE STATE MADE ANY
14 KIND OF PROMISE TO HIM AT ALL YOU CAN'T USE HIS STATEMENT.

15 BEFORE HE EVER SAID ANYTHING ABOUT MONEY OR MARK
16 WILLARD THE SOLICITOR'S OFFICE, NOT THIS ONE BUT ANOTHER
17 ONE, CAN YOU TELL ME A LITTLE BIT MORE ABOUT BECAUSE ON THE
18 SURFACE IT WILL LOOK LIKE CERTAINLY YOU GOT PAID FOR A HIT
19 ON SOMEBODY THAT YOU HAD A LOT TO DO WITH THE HIT. NOW
20 THIS IS ALL PART OF THE PROFFER SO YOU UNDERSTAND THAT YOU
21 DON'T HAVE ANYTHING TO WORRY ABOUT ANSWERING. YOU DON'T
22 HAVE ANYTHING TO WORRY ABOUT BY ANSWERING SO DAVID
23 ANSWERED. WHAT DID IT GET HIM, FOR HELPING THE POLICE IT
24 GOT HIM PROSECUTED FOR MURDER, SO UNLESS YOU FIND THAT
25 STATEMENT TO BE VOLUNTARY, GIVEN WITHOUT HOPE OF REWARD OR

CLOSING ARGUMENT BY DEFENSE

273

1 PROMISE, YOU CAN'T CONSIDER IT AND YOU KNOW WITHOUT THAT
2 STATEMENT YOU CAN'T CONVICT DAVID.

3 NOW THIS FAMILY, JULIAN'S FAMILY HAS A RIGHT TO
4 JUSTICE. I CAN'T IMAGINE BEING IN THEIR SITUATION AND MY
5 HEART, OF COURSE, AS A HUMAN BEING BLEEDS AND FEELS FOR
6 THEM BUT THEY ARE ENTITLED TO JUSTICE AND THEY WOULD BE THE
7 FIRST TO SAY WE DON'T WANT MORE THAN JUSTICE FOR JULIAN.
8 WE WANT HIS KILLER PROSECUTED AND CONVICTED AND WE WANT IT
9 DONE IN A LEGAL WAY.

10 NOW WE'VE SEEN, THERE'S A FIRE THAT BURNS HERE
11 WITH RESPECT TO THE KILLER OF JULIAN LEE. WE SAW IT IN THE
12 SOLICITOR'S VOICE AND IN HIS, THE ANGER THAT HE HAS WITH
13 RESPECT TO THIS, THE LOSS OF THIS YOUNG MAN'S LIFE. BUT WE
14 KNOW THAT DAVID WILLS IS NOT THE SHOOTER IN THIS CASE AND
15 WE DO KNOW THAT THERE IS NOT PROOF BEYOND A REASONABLE
16 DOUBT THAT HE CONSPIRED THAT HE WENT THERE AND PARTICIPATED
17 IN CONCERT WITH OTHERS THAT NIGHT TO KILL JULIAN LEE.

18 THERE'S NOT THE EVIDENCE THERE TO REACH THAT
19 BURDEN AND YOU DON'T HAVE TO WORRY ABOUT MARK WILLARD
20 BECAUSE HE'S NOT ON TRIAL TODAY AND I BELIEVE THE SOLICITOR
21 ACTS IN GOOD FAITH, MAYBE HE WILL BE OR HAS BEEN, I DON'T
22 KNOW, WE DON'T HAVE ANY EVIDENCE ABOUT THAT, BUT THAT IS
23 NOT, THAT'S NOT HERE OR THERE WITH RESPECT TO DAVID WILLS
24 INNOCENCE OR GUILT IN THIS CASE.

25 I WOULD SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT

CLOSING ARGUMENT BY DEFENSE

274

1 THE STATEMENT SHOULD NOT BE USED AS A MATTER OF LAW BECAUSE
2 WE DON'T TRICK OR PROMISE PEOPLE THINGS IN ORDER TO GET
3 THEM TO TALK. DAVID WAS RESPONDING. THEY TOLD HIM YOU
4 DON'T HAVE ANYTHING TO WORRY ABOUT. IT'S RIGHT HERE. I
5 WAS LISTENING WHEN THE SOLICITOR SAID THAT, YOU DON'T HAVE
6 ANYTHING TO WORRY ABOUT ANSWERING, AND SO HE ANSWERED. YOU
7 SHOULDN'T USE THAT STATEMENT; IT IS INVOLUNTARY. IT CANNOT
8 BE CONSIDERED AS A MATTER OF LAW AND IF YOU DON'T BELIEVE
9 ME THE JUDGE, HIS HONOR, IS GOING TO INSTRUCT YOU EXACTLY
10 HOW THE LAW APPLIES HERE AND WHAT THE LAW IS WITH RESPECT
11 TO THAT ISSUE. SIMPLY BECAUSE THE STATEMENT COMES INTO
12 EVIDENCE DOES NOT MEAN YOU MUST CONSIDER IT. YOU MAY
13 CONSIDER IT ONLY AFTER YOU DETERMINE BEYOND A REASONABLE
14 DOUBT IT'S VOLUNTARY, THAT IT WASN'T A RESULT OF A PROMISE
15 AND DOES IT EVEN MAKES SENSE. WHY WOULD HE WALTZ IN THERE
16 AND SAY STUFF LIKE THIS.

17 ALL RIGHT, DAVID WAS THERE, BUT MERE PRESENCE
18 DOES NOT MAKE HIM GUILTY. EVEN PRIOR KNOWLEDGE THAT
19 SOMETHING IS GOING TO HAPPEN DOESN'T MAKE HIM GUILTY.

20 ASSUMING YOU BELIEVE THE STATE'S THEORY OF THE
21 CASE THAT MONTHS AGO DAVID WAS INVOLVED IN SOME KIND OF
22 DISCUSSION ABOUT MARK WILLARD SHOOTING JULIAN LEE THAT WAS
23 MONTHS AGO. HOW MANY TIMES HAD HE BEEN IN JULIAN LEE'S
24 PRESENCE OR MARK WILLARD'S PRESENCE IN THOSE MONTHS. I
25 MEAN THERE'S NO EVIDENCE TO SUGGEST TO US THAT THOSE

JURY CHARGE

275

1 FACTORS AND ELEMENTS CONVERGE THAT EVENING THAT RESULTED IN
2 THE MURDER OF JULIAN LEE. THERE'S NO EVIDENCE. LADIES AND
3 GENTLEMEN, YOU CAN'T MAKE THAT LEAP ON FAITH. YOU CAN'T
4 DISCARD REASONABLE DOUBT. DOUBT THAT WOULD CAUSE A
5 REASONABLE PERSON TO HESITATE TO ACT, LOOK IN THAT YOUNG
6 MAN'S FACE AND CALL HIM A KILLER AND DO IT WITHOUT
7 HESITATION, I SUBMIT TO YOU THAT YOU CAN'T.

8 IT IS A COURT OF LAW. WE MUST FOLLOW THE LAW.
9 WE MUST ABIDE BY THE LAW. THAT'S ALL WE HAVE AS A SOCIETY
10 THAT MAKES US HUMAN.

11 YOU AS A JUROR AND JUROR, COLLECTIVELY A JURY,
12 ARE REQUIRED BY THE LAW TO ABIDE BY YOUR OATH. THE
13 QUESTION WHY SHOULDN'T, WHY SHOULDN'T WE BELIEVE YOU DID
14 IT, MR. HIXSON ASKED DAVID THAT, BECAUSE I DON'T DO THAT
15 KIND OF THING. THAT'S HIS ANSWER, I DON'T DO THAT KIND OF
16 THING. WE LIVE IN A CRUEL WORLD. DAVID IS PART OF IT;
17 WE'RE PART OF IT. DAVID DOESN'T DO THAT, I WOULD SUBMIT TO
18 YOU HE'S NOT A KILLER, HE'S NOT A MURDERER, BUT FOR
19 WHATEVER CRIME HE MIGHT HAVE COMMITTED THAT'S NOT AT ISSUE,
20 OKAY. WE HAVE TO DECIDE TODAY, YOU HAVE TO DECIDE IS HE A
21 MURDERER, IS HE A MURDERER, IS HE A MURDERER AND I WOULD
22 SUBMIT TO YOU, NO, NOT UNDER THE LAW THAT'S APPLIED IN THIS
23 CASE IN THIS COUNTRY AND THE STATE, NO, HE'S NOT BECAUSE
24 THE STATE DIDN'T MEET ITS BURDEN OF PROOF. THAT'S WHY IT
25 TOOK SO LONG TO TRY THE CASE, I CONGRATULATE THE SOLICITOR

JURY CHARGE

276

1 FOR HAVING THE COURAGE TO EVEN BRING IT TO COURT. NONE OF
2 THE SOLICITOR'S PRIOR HAD THAT COURAGE I WOULD SUBMIT BUT
3 IT BECAME HIS RESPONSIBILITY. HE'S MADE AN EFFORT BUT HE
4 CAN'T MEET THAT OBLIGATION TO THE LEE, TO JULIAN'S FAMILY
5 BECAUSE HE DOESN'T HAVE THE EVIDENCE IN THIS CASE AND
6 BECAUSE THIS MAN IS NOT GUILTY OF MURDER. HE'S NOT A
7 KILLER; HE'S NOT A MURDERER. THE STATE HASN'T PROVEN THAT.

8 YOU CAN'T SAY HE MIGHT BE, HE MIGHT HAVE, HE
9 COULD HAVE, THEY DIDN'T PROVE IT BEYOND A REASONABLE DOUBT.
10 THAT IS THE STANDARD. IF HE MIGHT HAVE BEEN GUILTY YOU GOT
11 TO ACQUIT IT; IF HE COULD HAVE BEEN GUILTY YOU'VE GOT TO
12 ACQUIT IT. THAT IS THE LAW AND THAT IS WHAT WE ARE ALL
13 REQUIRED TO FOLLOW.

14 LADIES AND GENTLEMEN, I WISH I COULD STAND UP
15 HERE ALL DAY AND TALK TO YOU ABOUT THIS CASE BUT THOSE ARE
16 THE POINTS THAT ARE APPLICABLE TO THIS CASE AND I TOLD YOU
17 WE WEREN'T GOING TO TAKE MORE TIME THAN WAS NECESSARY TO
18 MAKE OUR POINT. BUT I APPRECIATE YOUR ATTENTION THAT
19 YOU'VE PAID TO THIS AND I WOULD SUGGEST THE ONLY VERDICT
20 UNDER THE LAW IN THIS CASE IS NOT GUILTY, NOT GUILTY
21 BECAUSE THE BURDEN OF PROOF IS NOT MET HERE, THANK YOU.

22 JURY CHARGE

23 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
24 IT'S NOW MY RESPONSIBILITY TO GIVE YOU THE LAW THAT YOU
25 WILL APPLY TO THE FACTS AS YOU SO FIND THEM TO BE AND I

POST TRIAL MOTIONS BY DEFENSE

297

1 KNOW FOR THE NEXT THREE YEARS YOU HAVE THAT EXEMPTION. YOU
2 ARE NOW EXCUSED. IF YOU WILL ACCOMPANY THE DEPUTY OUTSIDE.

3 (WHEREUPON, THE JURY WAS EXCUSED AT 4:22 P.M.)

4 THE COURT: ALL RIGHT, MR. DIGGS I'LL HEAR ANY
5 MOTIONS YOU MIGHT HAVE, SIR.

6 MR. DIGGS: NUMBER ONE, I WOULD REQUEST IS UNDER
7 THE RULES TO BE PERMITTED TO FILE WRITTEN MOTIONS WITHIN
8 TEN DAYS?

9 THE COURT: I WOULD APPRECIATE IT IF YOU WOULD
10 MAKE YOUR MOTIONS AT THIS TIME, PLEASE, SIR.

11 MR. DIGGS: WELL, YOUR HONOR, UNDER THE PROVISIO
12 I MAY BE ABLE TO SUPPLEMENT.

13 THE COURT: I WOULD BE GLAD FOR YOU TO DO SO BUT
14 I WOULD APPRECIATE IT IF YOU WOULD MAKE YOUR MOTIONS AT
15 THIS POINT IN TIME.

16 MR. DIGGS: ALL RIGHT, INITIALLY, WE WOULD ASK
17 FOR A NEW TRIAL, TO HAVE THE VERDICT BE SET ASIDE AND HAVE
18 A NEW TRIAL ON THE GROUNDS THAT WE HAVE STATED IN THE
19 RECORD THUS FAR WHICH WOULD INCLUDE THE, WHAT WE
20 RESPECTFULLY SUBMIT WOULD BE AN OVER EXTENSION OF THE
21 PRINCIPALS DISCUSSED IN BATSON AND SUBSEQUENT CASES. YOUR
22 HONOR, ALSO, I WOULD SUBMIT THAT THE STATEMENT THAT WAS
23 MADE IN THE CASE WAS NOT A VOLUNTARY STATEMENT. IT WAS
24 MADE IN THE SETTING OF A PROFFER, NEGOTIATED CONTACT WITH
25 THE STATE. THE LANGUAGE IN THE PROFFER WAS NOT CLEAR IN

POST TRIAL MOTIONS BY DEFENSE

298

1 TERMS OF WHAT WAS GOING TO HAPPEN WITH THE RESPECT TO THE
2 STATEMENT IN THE EVENT THE POLYGRAPH EXAMINER DETERMINED
3 THAT DECEPTION WAS INDICATED. WHAT IS HAVE IS VAGUENESS IN
4 THAT PARAGRAPH 2 OF THE AGREEMENT THAT SAYS THEY WERE GOING
5 TO USE THAT POLYGRAPH OUTCOME FOR CERTAIN THINGS. BUT IT
6 DOES NOT WITH ANY CLARITY AT ALL STATE THAT THE STATEMENT
7 WAS GOING TO BE USED AS EVIDENCE TO BE PRESENTED TO THE
8 JURY DURING THE COURSE OF THE TRIAL. WHAT I SUGGEST, AS
9 I'VE ARGUED BEFORE, SAYS THAT THE STATE CAN USE THAT
10 EVIDENCE AGAINST THE DEFENDANT IN MAKING DECISIONS ABOUT
11 HOW A CASE IS GOING TO BE DISPOSED OF THROUGH THE
12 NEGOTIATION OR THE INVESTIGATION, PLEA PROCESS AND THE
13 TRIAL, BUT IT DOESN'T SAY IT'S GOING TO BE USED AS EVIDENCE
14 IN THE TRIAL. I WOULD SUBMIT THAT THE PLEA PROFFER THAT'S
15 WRITTEN AND SIGNED BY REPRESENTATIVES OF THE STATE AND BY
16 THE DEFENDANT AND HIS ATTORNEY FOCUSES MORE NARROWLY ON THE
17 ISSUE OF VOLUNTARINESS TRUMPS THE BROAD FIFTH AMENDMENT,
18 MIRANDA, SIXTH AMENDMENT APPLICATIONS OF THE CONSTITUTION,
19 WOULD OTHERWISE BE APPLIED TO THE STATEMENT. YOUR, HONOR,
20 I WOULD SUBMIT A DIRECTED VERDICT AT THE CLOSE OF THE CASE
21 AND AGAIN AS IT WAS REVIEWED AT THE CLOSE OF ALL THE
22 EVIDENCE WOULD, SHOULD PROPERLY BE GRANTED, WITH ALL DUE
23 RESPECT, BECAUSE OF THE LACK OF EVIDENCE THAT SHOWS MALICE
24 AT THAT TIME. YOUR HONOR, THE ONLY EVIDENCE WE HAVE IN THE
25 CASE, AT ALL, THAT PLACES MY CLIENT AT THE SCENE AND

POST TRIAL MOTIONS BY DEFENSE

299

1 PARTICIPATING, IS THAT STATEMENT THAT HE MADE. HIS
2 IMPLICATING OF HIMSELF WITH RESPECT TO BRANDING WILDER,
3 MARK WILDER AS THE POSSIBLE SHOOTER -- HE SAID FOR MONTHS -
4 - THERE'S NO EVIDENCE THAT CONTRADICTS THAT IN THE RECORD -
5 - MONTHS EARLIER. YOUR HONOR, THERE'S NO EVIDENCE TO SHOW
6 THAT ALL OF THOSE ELEMENTS THAT ARE REQUIRED TO BE SHOWN TO
7 PROVE A MURDER OCCURRED ON THAT NIGHT. THERE'S JUST NOT
8 ANY EVIDENCE THERE. HE WAS THERE. HE WAS GOING,
9 UNCONTRADICTED, NO EVIDENCE IN THE RECORD TO SUGGEST
10 OTHERWISE, THEY WERE GOING TO COMMIT A ROBBERY SOMEWHERE
11 ELSE. NOW, THAT WASN'T A LEGITIMATE REASON TO BE THERE.
12 BUT THAT DOESN'T KICK IN AS HAND OF ONE IS THE NATURAL AND
13 PROBABLE CONSEQUENCE OF THE FAILURE, THE RESULTS OF THE
14 CRIMINAL CONDUCT RULE. THAT DOESN'T KICK IN BECAUSE THAT
15 HADN'T BEEN REACHED YET, THAT LOCATION. IN FACT, MARK
16 WILLARD WAS GOING TO COMMIT A BURGLARY HE INDEPENDENT OF
17 THE ROBBERY THAT WAS TALKED ABOUT IN AN UNRELATED AND
18 SEPARATE LOCATION, DOESN'T INVOKE THAT RULE SO THE STATE
19 CAN'T RELY ON THAT RULE OF LAW IN ORDER TO GET THE ISSUE OF
20 MALICE TO THE JURY HERE. SO, I WOULD SUBMIT THERE'S NO
21 EVIDENCE TO SUGGEST MALICE ON THE PART OF THIS DEFENDANT ON
22 THE NIGHT OF THE SHOOTING AND A NEW TRIAL SHOULD BE GRANTED
23 ON THOSE GROUNDS.

24 THE COURT: ALL RIGHT, SIR.

25 MR. DIGGS: YOUR HONOR, I BELIEVE THAT COVERS THE

POST TRIAL MOTIONS BY DEFENSE

300

1 ISSUES AND I WOULD ASK YOUR HONOR TO LET ME GO BACK AND
2 REFLECT AND MAYBE SUPPLEMENT WITH MORE ARGUMENT.

3 THE COURT: I'LL BE GLAD FOR YOU TO DO SO.

4 MR. DIGGS: GO LOOK IF I'VE OVERLOOKED A POINT.

5 THE COURT: WELL, IF YOU'VE OVERLOOKED A POINT
6 I'LL BE GLAD FOR YOU TO ALSO FILE IT WITH THE CLERK AND
7 SERVE A COPY ON THE STATE AND GIVE THEM AN OPPORTUNITY TO
8 RESPONSE AND I'LL BE GLAD TO RULE ON THAT. BUT AS THE
9 ISSUES THAT YOU HAVE PRESENTED TO ME I WILL ADDRESS THOSE
10 AT THIS POINT IN TIME.

11 MR. DIGGS: ALL RIGHT.

12 THE COURT: AS TO YOUR MOTION FOR A NEW TRIAL,
13 THAT REQUEST IS DENIED.

14 AS TO THE REQUIREMENTS OF BATSON AND JEB V.
15 ALABAMA AND ANY OTHER FEDERAL PROGENY FROM THERE OR STATE
16 CASES, I DO BELIEVE THE COURT PROPERLY FOLLOWED THE RULES
17 AS SET FORTH BY THE UNITED STATES SUPREME COURT AND ALSO AS
18 ADOPTED IN SUBSEQUENT SOUTH CAROLINA SUPREME COURT
19 DECISIONS. THEREFORE, I WOULD RESPECTFULLY DECLINE TO
20 GRANT YOUR MOTION FOR A NEW TRIAL IN THAT REGARD.

21 AS TO THE VOLUNTARINESS OF THE STATEMENT COURT
22 REAFFIRMS THE RULINGS THAT I MADE AFTER YOUR JACKSON V.
23 DENO MOTION AND AFTER YOUR MOTIONS AT THE END OF THE
24 STATE'S CASE AND WHEN THE DEFENSE RESTED. I DO BELIEVE
25 THAT THE DEFENDANT WAS PROPERLY ADVISED OF HIS MIRANDA

POST TRIAL MOTIONS BY DEFENSE

301

1 WARNINGS. IT WAS CLEAR THAT ANY STATEMENTS THAT HE MADE
2 COULD BE USED AGAINST HIM IN A COURT OF LAW. HE SIGNED THE
3 DOCUMENT INDICATING SUCH. THE PROFFER YOU SPEAK OF I THINK
4 THE TERMS WERE SUFFICIENTLY, MORE THAN SUFFICIENTLY CLEAR
5 TO THE DEFENDANT THAT IT WAS UP TO THE STATE TO DETERMINE
6 REGARDING THE TRUTHFULNESS OF THE MATTERS, KNEW THE RISKS
7 WHEN HE MADE THE STATEMENT TO LAW ENFORCEMENT. HE DID SO
8 WITH THE ADVISE OF COUNSEL AT ALL STAGES. COUNSEL WAS
9 PRESENT. HE MADE NO STATEMENTS WITHOUT THE ADVISE OF
10 COUNSEL. THEREFORE, I FIND, FOUND, THAT THE STATEMENT WAS
11 VOLUNTARY AND WAS MADE KNOWING HIS CONSTITUTIONAL RIGHTS.
12 FURTHER, IT WAS FOR THE JURY TO DETERMINE AGAIN BOTH THE
13 VOLUNTARINESS OF THE STATEMENT REGARDING ANY PROMISE OR
14 HOPE OF REWARD, ANY LENIENCY. I SPECIFICALLY SAID THAT TO
15 THE JURY. I'M SURE THAT THEY CLEARLY UNDERSTOOD THAT.
16 THEY DETERMINED ULTIMATELY, AS CAN BE REELECTED BY THE
17 VERDICT, THAT THE STATEMENT WAS VOLUNTARY.

18 REGARDING THE MATTERS AS YOU SET FORTH IN YOUR
19 MOTION FOR DIRECTED VERDICT AFTER THE STATE'S CASE, AFTER
20 THE DEFENSE RESTED, THAT YOU HAVE REAFFIRMED AT THIS POINT
21 IN TIME, THE COURT WOULD AGAIN RESPECTFULLY DECLINE TO
22 GRANT YOUR MOTIONS IN THAT REGARD FOR A DIRECTED VERDICT,
23 NEW TRIAL, JUDGMENT NOTWITHSTANDING THE VERDICT AND WOULD
24 RESPECTFULLY DECLINE TO GRANT ANY OF THE POST TRIAL MOTIONS
25 AS YOU HAVE STATED THEM. I AM ALLOWING YOU TO, IF YOU

SENTENCING

302

1 WISH, TO FILE ANY WRITTEN MATTERS TO THE COURT. OBVIOUSLY
2 AS INDICATED, FILE IT WITH THE CLERK, SEND THE COURT A COPY
3 AND SEND A COPY TO THE SOLICITOR'S OFFICE SO HE CAN
4 RESPOND. BUT AS TO THE MATTERS THAT YOU PRESENTED THOSE
5 ARE RESPECTFULLY DECLINED.

6 MR. DIGGS: YOUR HONOR, THANK YOU FOR HEARING
7 US.

8 THE COURT: YES, SIR. IS THE STATE READY TO
9 PROCEED WITH SENTENCING IN THIS MATTER?

10 MR. RICHARDSON: YOUR HONOR, WE ARE, YOUR HONOR.

11 THE COURT: IS THE DEFENSE READY TO PROCEED WITH
12 SENTENCING IN THIS MATTER?

13 MR. DIGGS: YOUR HONOR, I WOULD ASK THAT WE DELAY
14 THAT UNTIL THE EXPIRATION OF THE TEN DAYS, WE HAVE THE
15 CHANCE TO PUT TOGETHER ANY WRITTEN MOTIONS THAT WE HAVE,
16 MAYBE TAKE UP SENTENCING AT THAT TIME, YOUR HONOR,
17 CONSIDERS ANY WRITTEN MOTIONS THAT WE SUPPLEMENT WITH AFTER
18 TODAY.

19 MR. RICHARDSON: YOUR HONOR, IF I MAY BE HEARD
20 ON THAT?

21 THE COURT: YES, SIR, I'LL BE GLAD TO HEAR FROM
22 YOU.

23 MR. RICHARDSON: THIS FAMILY HAS BEEN WAITING
24 SIX YEARS FOR THIS DAY, ALMOST SIX YEARS, JUST SHY OF IT.
25 MS. MINIBURK HAS BEEN PATIENTLY WAITING FOR THIS. WE'VE

SENTENCING

308

1 PRETEXTUAL AND, THEREFORE, I'D REAFFIRM THE RULING.

2 YOUR NEXT GROUND, SIR?

3 MR. DIGGS: YOUR HONOR, THE NEXT GROUND THAT WE
4 HAVE IS ADDRESSING THE DEFENDANT'S STATEMENT. WE'RE ASKING
5 THE COURT TO RECONSIDER THE ADMISSION OF THAT STATEMENT
6 INTO EVIDENCE BECAUSE WE SIMPLY WOULD SUBMIT THAT IT SIMPLY
7 CAN'T BE DETERMINED THAT THAT STATEMENT WAS GIVEN
8 VOLUNTARILY.

9 IT WAS GIVEN AS THE COURT WILL RECALL IN RESPONSE
10 TO A PROFFER AGREEMENT THAT WAS ENTERED INTO BETWEEN THE
11 STATE AND THE DEFENSE.

12 THERE WERE REPRESENTATIONS IN THAT STATEMENT THAT
13 IN THE, IN THE PROFFER AS TO HOW THAT STATEMENT COULD BE
14 USED, BUT IT WAS UNCLEAR, YOUR HONOR, THAT, AND IT DID NOT
15 SPECIFY DIRECTLY THAT THE STATEMENT WOULD BE USED AS
16 EVIDENCE ITSELF IN THE TRIAL OF THE CASE AGAINST THE
17 DEFENDANT IN THE EVENT THAT THE STATE DETERMINED THAT THE
18 DEFENDANT WASN'T IN FULL COMPLIANCE WITH HIS OBLIGATIONS
19 UNDER THE AGREEMENT.

20 AND, OF COURSE, YOU'LL RECALL, YOUR HONOR, THE
21 TESTIMONY WAS THAT A POLYGRAPH WAS GIVEN TO MR. WILLS THAT
22 HE DIDN'T PASS IT AND, THEREFORE, THE STATE TOOK THE
23 POSITION THAT MR. WILLS WAS IN VIOLATION OF THE AGREEMENT
24 AND THEY COULD USE THE STATEMENT THAT HE MADE AS A RESULT
25 THEREOF BUT, YOUR HONOR, AGAIN I WOULD, I WOULD ARGUE THAT

SENTENCING

309

1 THE AGREEMENT THAT IS IN EVIDENCE THAT YOUR HONOR READ IS
2 NOT CLEAR.

3 IT DOES NOT SAY THE STATE CAN DO WHAT THEY WERE
4 GOING TO DO OR WHAT THEY DECIDED THEY WERE GOING TO DO IN
5 THIS CASE AND WHICH THE COURT PERMITTED THEM TO DO AND THAT
6 IS TO USE THAT EVIDENCE AND USE THAT STATEMENT AS A PIECE
7 OF EVIDENCE.

8 IN FACT THE ONLY PIECE OF EVIDENCE THAT THEY USED
9 IT INCRIMINATED THE DEFENDANT AND SO WE WOULD ASK THE COURT
10 TO RECONSIDER THE RULING ON THAT ISSUE AND GRANT US A NEW
11 TRIAL AND SAY THAT THE STATEMENT IS NOT A VOLUNTARY BECAUSE
12 IT WAS INDUCED BY PROMISES OF HOPE AND REWARD.

13 HE WAS TOLD, HE WAS TOLD BY THE SOLICITOR GO
14 AHEAD AND YOU CAN ANSWER THAT BECAUSE YOU DON'T HAVE
15 ANYTHING TO WORRY ABOUT AND, YOUR HONOR, THAT WOULD BE A
16 PROMISE BY THE STATE, WE SUBMIT, AND A HOPE OF REWARD IN
17 ORDER TO INDUCE HIM TO GIVE THAT INTERVIEW AND WE WOULD ASK
18 THE COURT FOR A NEW TRIAL ON THAT GROUND.

19 THE COURT: ALL RIGHT, SIR. MR. RICHARDSON?

20 MR. RICHARDSON: THANK YOU, YOUR HONOR, WITH
21 REGARD TO ANY PROFFER I BELIEVE ALL THAT WAS COVERED WELL
22 DURING THE PRETRIAL MOTIONS, YOUR HONOR. I BELIEVE THE
23 DECISION ON THE STATEMENT WAS MADE NOT DEALING SPECIFICALLY
24 WITH THE PROFFER BUT I BELIEVE THE STATEMENT WAS DEEMED TO
25 BE ADMISSIBLE DUE TO THE FACT THE DEFENDANT WAS PROPERLY

SENTENCING

310

1 MIRANDIZED.

2 HE HAD MORE PROTECTION THAN MOST DEFENDANTS. NOT
3 ONLY WAS HE PROPERLY MIRANDIZED HE INDICATED THAT HE
4 UNDERSTOOD THAT HE WAS GIVING A STATEMENT AND IT COULD BE
5 USED AGAINST HIM BUT HE HAD HIS LEGAL COUNSEL PRESENT AT
6 THE TIME THAT STATEMENT WAS BEING GIVEN.

7 IN ADDITION, YOUR HONOR, ONCE THE COURT
8 DETERMINED THAT THE STATEMENT WAS ADMISSIBLE IT BECAME THE
9 JURY'S DUTY TO DETERMINE WHETHER OR NOT THE STATEMENT WAS
10 VOLUNTARILY GIVEN AND IF THEY DETERMINED IN THEIR OWN
11 CAPACITY IT WAS NOT VOLUNTARILY GIVEN THEN THEY HAD A DUTY
12 TO THROW IT OUT.

13 I INCORPORATED INTO THE STATE'S RESPONSE THE,
14 WHAT I BELIEVE THE CHARGE WAS TO THE JURY. IT WAS A PROPER
15 CHARGE THE STATE BELIEVES AND THE STATE, AND MR. DIGGS EVEN
16 ARGUED, WAS ALLOWED TO ARGUE THE VOLUNTARINESS OF THAT, OF
17 THAT STATEMENT, ARGUED IT TO THE JURY AND THE JURY DECIDED
18 THAT THE STATEMENT WAS VOLUNTARILY GIVEN AND GAVE THAT
19 STATEMENT THE WEIGHT THAT IT DEEMED PROPER, YOUR HONOR, AS
20 SUCH A NEW TRIAL SHOULD NOT BE GRANTED DUE TO THE ADMISSION
21 OF THE DEFENDANT'S STATEMENT.

22 THE COURT: ALL RIGHT, WHEN THIS MATTER CAME
23 BEFORE THE COURT PREVIOUSLY I FOUND THAT THE DEFENDANT WAS
24 PROPERLY MIRANDIZED OR PROPERLY ADVISED OF ALL OF HIS
25 CONSTITUTIONAL RIGHTS. I FURTHER FOUND THAT THE STATEMENT

SENTENCING

311

1 BY THE DEFENDANT WAS VOLUNTARY. HE DID HAVE LEGAL COUNSEL
2 PRESENT WHEN HE GAVE THE STATEMENT, THOUGH THAT CERTAINLY
3 IS NOT NECESSARY, BUT HE CERTAINLY HAD THE AVAILABILITY OF
4 LEGAL COUNSEL IF HE HAD ANY QUESTIONS. BUT IT WAS CLEAR
5 THAT HE KNEW HIS RIGHTS, THAT HE VOLUNTARILY WAIVED THOSE
6 RIGHTS AND WILLINGLY GAVE HIS STATEMENT TO THE POLICE AND
7 TO THE STATE OF SOUTH CAROLINA UNDERSTANDING THAT IT COULD
8 BE USED AGAINST HIM IN SUBSEQUENT PROSECUTION OR IT COULD
9 BE USED AGAINST HIM IN A COURT OF LAW AND HE CLEARLY
10 UNDERSTOOD THAT. HE VOLUNTARILY GAVE THE STATEMENT AND I
11 ALLOWED IT INTO EVIDENCE.

12 I ALSO FIND THAT THE COURT PROPERLY LEFT IT TO
13 THE JURY TO ULTIMATELY DETERMINE IF HE MADE THE STATEMENT,
14 WHETHER OR NOT IT WAS VOLUNTARILY MADE, WHETHER OR NOT HE
15 WAS PROPERLY ADVISED OF HIS CONSTITUTIONAL RIGHTS AND MADE
16 THE STATEMENT ANYWAY. ALL THAT WAS CLEARLY LEFT TO THE
17 JURY AND I SO INSTRUCTED THEM AND BY THEIR VERDICT IN THIS
18 MATTER IT IS CLEAR THAT THE JURY FOUND THOSE ISSUES AS
19 AGAINST THE DEFENDANT, THEREFORE, YOUR MOTION FOR A NEW
20 TRIAL IS DENIED ON THAT GROUND?

21 ANY OTHER MATTERS?

22 MR. DIGGS: I'M NOT, YOUR HONOR, I THINK THE
23 COURT UNDERSTANDS OUR ARGUMENT ON THAT ISSUE AND SO I'M NOT
24 GOING TO ARGUE ANY FURTHER TO THE COURT, I UNDERSTAND THE
25 COURT'S RULING.

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



REPLY TO ☐

P.O. BOX 1276
CONWAY, SC 29526
843-248-1309

REPLY TO ☐

P.O. BOX 1688
GEORGETOWN, SC 29442
843-548-3751

J. GREGORY HEMBREE
Solicitor

August 25, 2005

William Issac Diggs, Esquire
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
(843) 626-4243
Fax (843) 626-5123

RE: State v. Theodore David Wills Jr.
Charge: October 2001 Murder of Julian Lee, Obstruction of Justice,
Accessory After the Fact

Dear Mr. Diggs:

By this letter, the State extends to your client the opportunity of a Proffer in this matter subject to the following material terms:

1. Theodore David Wills Jr. shall submit himself to agent(s) of the State for the purpose of debriefing regarding this matter and all other matters materially bearing on this matter. He shall be completely truthful concerning his involvement in this matter, and completely truthful concerning the involvement of all other individuals in this matter. He shall truthfully and completely answer all questions posed by agent(s) of the State bearing materially on this matter and shall provide without prompting all information concerning this matter in a complete and truthful manner even if such information is not elicited by agent(s) of the State by direct question. Any and all information provided by Theodore David Wills Jr. under the terms of this proffer may be recorded in any fashion at the election of the State;

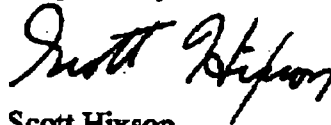
186

2. Theodore David Wills Jr. shall submit himself to a polygraph examination(s) to verify all information provided to the State at the election of the State. The polygraph examiner(s) shall be selected by the State and, for the purpose of this Proffer, are designated agent(s) of the State; upon examination(s) by polygraph, if the responses given by Theodore David Wills Jr. show deception, are inconsistent with information previously provided or indicates he is the person or one of the persons that shot the victim, the terms of this proffer are null and void and any statements made by Theodore David Wills Jr. may be used against him by the State for any legal purpose, including, but not limited to, considerations for charging, bond, disposition of charges through plea or trial of Theodore David Wills Jr. and impeachment.
3. Theodore David Wills Jr. shall appear as a witness in the trial(s) of all individuals in this matter who are designated as defendants by the State through indictment; and Theodore David Wills Jr. shall testify truthfully, completely, and consistently with prior statements made to the State upon being called upon to do so; failure to testify in the manner specified above will render the terms of this Proffer null and void and will subject Theodore David Wills Jr. to prosecution for perjury as well as full prosecution on all charges deemed appropriate by the State in connection with this matter; use of statement(s), should Theodore David Wills Jr. violate this term of the Proffer, are the same as provided in Paragraph Two of this Proffer;
4. In return for Theodore David Wills Jr.'s full compliance with all terms stated within this Proffer, statements provided during his debriefing will not be used in a criminal prosecution currently pending against him by this Office. The State will not seek any additional charges against Theodore David Wills Jr. in connection with the subject of this Proffer;
5. In return for Theodore David Wills Jr.'s full compliance with all terms stated within this Proffer, the State shall take into consideration the materiality of his truthful testimony and degree of cooperation in the election of charge(s) and recommendation of sentencing for your client in this matter;
6. The State agrees to fully inform the Court of Theodore David Wills Jr.'s degree of cooperation and the relative benefit to the State at time of sentencing;

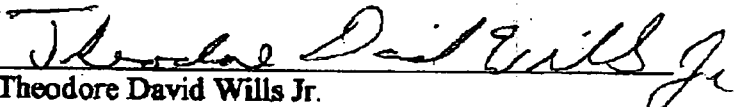
7. Violation of any term of this Proffer renders all terms null and void; the State shall have the right to use any information obtained through this Proffer in any fashion, whether direct or collateral to this matter, and
8. This Proffer is the entire agreement between the parties; any agreement reached between the parties prior to the date of acceptance of this Proffer is made null and void by this Proffer; the terms of this Proffer may be amended only in writing and only by agreement of the parties.

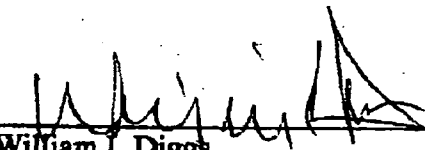
Should your client wish to accept the terms of this Proffer, please have him sign on the signature line provided. Please witness his signature by signing on the signature line provided for that purpose. Please return the original to me as soon as possible. Thank you for your prompt attention to this matter.

Respectfully



Scott Hixson
Assistant Solicitor, 15th Judicial Circuit
Conway, SC
(843) 915-8640


Theodore David Wills Jr. 8-26-05
Date


William I. Diggs
Attorney for Defendant

8-26-05
Date

**HORRY COUNTY POLICE DEPARTMENT
CRIMINAL INVESTIGATIONS DIVISION**

ORIGINAL

Advisement of Miranda Rights

YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.

YOU HAVE THE RIGHT TO TALK WITH A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU SO DESIRE.

IF YOU MAKE A STATEMENT OR ANSWER ANY QUESTIONS, YOU HAVE THE RIGHT TO STOP AT ANYTIME.

Do you understand your rights as I have read them to you?

DW Yes: ☒ No: ☐

Understanding your rights, do you wish to waive them and make a statement Or answer questions at this time?

DW Yes: ☒ No: ☐

J. Leodine Willis Jr.
(Signature)

Date: 8/26/2005

Time: 2:39 pm

Location: J. Leodine Willis Jr. Long
District 2

Witness: *[Signature]*
[Signature]



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR:

MURDER

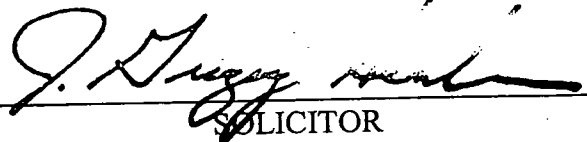
At a Court of General Sessions, convened on April 27, 2006, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 §16-03-0010,0020

That Theodore David Wills, Jr., did in Horry County, while acting in concert with others, on or about October 13, 2001, willfully, feloniously, and intentionally kill the victim, Julian Lee, with malice aforethought, either express or implied, by means of multiple gun shots to the back, and the victim did die as a proximate result thereof on or about October 13, 2001 in Horry County, in violation of Section §16-3-10, S. C. Code of Laws, 1976, as amended.

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


SOLICITOR

CERTIFIED COPY
2007 DEC -4 PM 9:55
Melanie Huguenin
CLERK OF COURT
HORRY COUNTY

WITNESSES

Raul Dennis/HCPD

DOCKET NO. 2006-GS-26-1652

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

SRH 66398

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE
VS

ARREST WARRANT NO. CAW200604021

CDR: 0116 §16-03-0010,0020

DOA: 11-01-01

THEODORE DAVID WILLS JR. M/B
3238 RED BIRD LANE
MYRTLE BEACH, SC 29577
DOB: 07/20/77
SS#: 215-90-7283

ACTION OF GRAND JURY

TRUE BILL

Ratzen
Foreman of Grand Jury

APR 27 2006

VERDICT

ATTORNEY: WILLIAM P. DIGGS

INDICTMENT FOR:

MURDER

ORIGINAL

Foreman of Petit Jury Date:

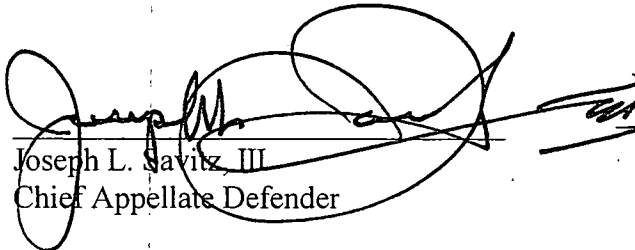
J. GREGORY HEMBREE, SOLICITOR

10/03/01 06114
Sent: scheduled for
Oct. 29, 2007 @ 2:00pm

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 19th, 2009



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) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE DAVID WILLS, JR.,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by allowing Wills' statement into evidence, since it resulted from a proffer agreement with the State and was thus inadmissible under *Rule 410, SCRE*.

STATEMENT OF FACTS

On October 1 through 3, 2007, Theodore David Wills, Jr., stood trial in Horry County, before Judge Steven H. John and a jury, on an indictment charging him with murder. Based on a statement Wills provided pursuant to a proffer agreement with the State, it alleged that Wills and Mark Willard tricked the victim, Julian Lee, into participating in a bogus robbery and that Wills and Willard split a \$10,000 bounty on Lee's head after Willard shot Lee twice in the back. The jury found Wills guilty as charged, and the judge sentenced him to imprisonment for forty years.

ARGUMENT

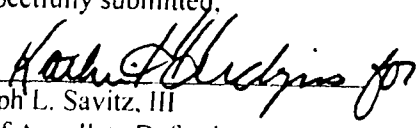
The trial judge committed reversible error by allowing Wills' statement into evidence, since it resulted from a proffer agreement with the State and was thus inadmissible under Rule 410, SCRE.

The prosecution of Wills was based almost exclusively upon a taped statement Wills gave as part of his proffer agreement with the State. ROA p. 147, lines 13-14. At the start of trial, defense counsel objected to its admissibility on the ground that the statement was given "in exchange for participation ... in a plea agreement process. ROA p. 3, line 21 – p. 5, line 17. The judge overruled the objection. ROA p. 90, line 11 – p. 93, line 4; see, also, ROA p. 152, line 20 – p. 155, line 18.

Rule 410(4), SCRE, provides that evidence of "any statement in the course of plea discussions with an attorney for the prosecuting authority which did not result in a plea of guilty or which result in a plea of guilty later withdrawn" is not admissible "in any ... criminal proceeding ... against the defendant who made the plea or was a participant in the plea discussions." See, also, *State v. Compton*, 366 S.C. 671, 623 S.E.2d 661 (Ct. App. 2005).

Rule 410(4) would appear on its face to exclude Wills inculpatory admissions to the State. Since those admissions were the centerpiece of the State's case at trial, the error could not have been harmless. For this reason, the Court should reverse Wills' conviction for murder and remand for a new trial.

Respectfully submitted,


Joseph L. Savitz, III
Chief Appellate Defender

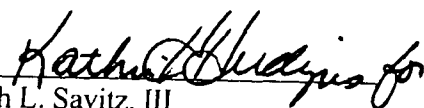
ATTORNEY FOR APPELLANT

This 23rd day of June, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 23, 2009



Joseph L. Savitz, III
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE DAVID WILLS, JR.,

APPELLANT

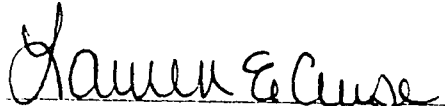
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of June, 2009.


Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of June, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

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STATEMENT OF THE ISSUE ON APPEAL

DID THE TRIAL COURT VIOLATE RULE 410, SCRE, BY ALLOWING USE APPELLANT'S STATEMENT GIVEN PURSUANT TO A PROFFER AGREEMENT, WHERE: (1) THE ISSUE IS NOT PRESERVED; (2) RULE 410 IS INAPPLICABLE BECAUSE THE STATEMENT WAS NOT GIVEN PURSUANT TO A PLEA AGREEMENT; AND (3) APPELLANT WAIVED ANY PROTECTION OF RULE 410 BY AGREEING HIS STATEMENT COULD BE USED UPON HIS BREACH?

STATEMENT OF THE CASE

Appellant, Theodore Wills, was indicted by the Horry County Grand Jury for murder (06-GS-26-1652). Specifically, the indictment alleged that, on October 13th, 2001, Appellant with malice aforethought killed Julian Lee by shooting him. {R. p. 189-90}.

The Honorable Stephen H. John conducted a jury trial from October 1st to 3rd, 2007. At trial, Applicant was represented by Attorney William I. Diggs, and Assistant Solicitor Bradley C. Richardson prosecuted the case for the State. The jury found Appellant guilty of murder. A hearing was held on the defense's motions for a new trial on October 29th, 2007, and after they were denied, Judge John sentenced Appellant to forty (40) years.

A timely Notice of Appeal was filed with the South Carolina Court of Appeals. This appeal follows.

STATEMENT OF FACTS

The State presented evidence that Appellant was one of two men who murdered the victim in return for \$10,000. The issue on appeal concerns use of his statement at trial.

A. October 2001: Julian's body is discovered

On October 13th, 2001, police were called out to find the victim, Julian Lee, lying dead face down in a vacant lot on a dark road in a sparsely populated area. He had two gunshot wounds to his back. {R. 109-114; 115-116}. Police found a projectile in the ground where the main blood pool had been, and a 9mm shell casing to the right of where Julian's head had been. {R. 117-122}. The pathologist confirmed that Julian has suffered two gunshot wounds – one to the lower back and one to the upper back, both of which went upwards and to the right. The lower one went through the vertebrae and liver before exiting, and the upper one went through the aorta and trachea before exiting. {R. 123-132; 133-134}.

B. August 2005: Appellant's videotaped statement

In August 2005, and pursuant to the proffer agreement that is the subject of this appeal, Appellant met with police and answered questions regarding Julian's death. This interview took place after Appellant was advised of and waived his Miranda rights, and in the presence of his attorney. The statement was played for the jury at trial. {R. 140-148}.

In the statement, Appellant claimed he drove his brother Donnell Green, Mark Willard, and Julian to the murder scene, ostensibly to rob some drug dealers. Appellant said he saw Mark run behind Julian and shoot him as they walked to house, and heard a second shot as he ran away. Appellant claimed he did not know Mark was going to shoot

him. The three then ran back to the car, and stopped to throw the gun into the Intercoastal Waterway on the way back home.

As the interview progressed, Appellant stated one Tony Johnson believed Julian had stolen \$50,000 from him, and Tony was trying to pay someone to have Julian killed. Appellant claimed he did not know prior to Julian's shooting that Mark was using the supposed robbery of the drug dealers as an opportunity to kill Julian and collect the bounty. However, he admitted taking Mark sometime after the murder to Tony's store, where he acted as a "middleman" by picking up \$10,000 from Tony's brother Bruce as payment for the crime, and delivering it to Mark.

Appellant began to trip up a bit more in the interview when he admitted he received \$5,000 of the cash as hush money, and that his brother also received some. He could not explain why Mark would have given them more for hush money than Mark would have kept himself, and Appellant then stated that he did not know if his brother got any money or not. Later, Appellant stated Tony told him why he believed Julian stole the \$50,000 – because Julian had taken two shoe boxes in Julian's size, and because after the money was stolen Julian had a new SUV and put a down payment on a house. Appellant also admitted talking to Tony and arranging the meet for the payment at the store. Finally, Appellant ultimately admitted that he had heard on the street Tony was looking for someone to kill Julian, and asked Tony about it. He then told Mark about it, and Mark told Appellant he would do the hit. Thus, Appellant conceded he knew prior to the murder the hit was a "done deal", but just did not know when it was going to happen.

During the interview, Appellant stated the gun used was a 9mm, and also said Mark was in a crouched position when he first shot Julian, after which Julian fell to the ground.

Appellant did not see the second shot. This version of events was of course consistent with the forensic evidence.

The defense presented no evidence.

ARGUMENT

THE TRIAL COURT DID NOT VIOLATE RULE 410, SCRE, BY ALLOWING USE APPELLANT'S STATEMENT GIVEN PURSUANT TO A PROFFER AGREEMENT, WHERE: (1) THE ISSUE IS NOT PRESERVED; (2) RULE 410 IS INAPPLICABLE BECAUSE THE STATEMENT WAS NOT GIVEN PURSUANT TO A PLEA AGREEMENT; AND (3) APPELLANT WAIVED ANY PROTECTION OF RULE 410 BY AGREEING HIS STATEMENT COULD BE USED UPON HIS BREACH.

Appellant contends on appeal that use of his videotaped statement given pursuant to the proffer agreement violated Rule 410(4), SCRE. However, the issue is not preserved. In any event, Rule 410 is inapplicable because the statement was not given pursuant to any plea negotiations or plea deal. Regardless, Appellant waived any claim under Rule 410 with his assent to the proffer agreement.

A. Events at trial

Appellant was initially charged with accessory after the fact and obstruction of justice. {R. 108-09}. He then gave a statement pursuant to a proffer agreement, signed by both Appellant and his attorney. Paragraph One of the agreement provided that Appellant had to "submit himself to agents of the State for the purpose of debriefing", and that he had to be "completely truthful" in answering "all questions". The agreement noted that the information could be recorded by the State. {R. 185}.

Paragraph Two provided that Appellant had to submit to a polygraph taken by an examiner selected by the State, and that if his responses "show deception, are inconsistent with information previously provided or [indicate] he is the person or one of the persons who shot the victim", then:

[T]he terms of this proffer are null and void and any statements made by [Appellant] may be used against him by the State for any legal purpose, including, but not limited to, considerations for charging, bond, disposition of

charges through plea or trial of [Appellant] and impeachment.

{R. 186}.

Paragraph Three required Appellant to appear as a witness at trial against other involved persons and testify truthfully and completely, or the proffer would be null and void. Appellant would then be subject to prosecution for perjury as well as "full prosecution on all charges deemed appropriate by the State in connection with this matter; use of statement(s) . . . are the same as provided in Paragraph Two of this Proffer". **{R. 186}.**

Paragraph Four provided that in return for Appellant's "full compliance", that State would not use statements provided during the debriefing against him in the criminal prosecution then pending against him, and also would not seek any additional charges arising out of the Julian's murder. **{R. 186}.**

Paragraph Five provided that in return for Appellant's full compliance, the State would "take into consideration the materiality of [Appellant's] truthful testimony and the degree of cooperation in the election of charge(s) and recommendation of sentencing". **{R. 186}.**

Paragraph Six provided that the State would inform the court of the cooperation at time of sentencing. **{R. 186-87}.**

Paragraph Seven provided that violation of the Proffer would render it null and void, and the State would be able to "use any information obtained through this proffer in any fashion, whether direct of [sic] collateral to this matter". **{R. 187}.**

Paragraph Eight provided that the proffer was the complete and full agreement of the parties. **{R. 187}.**

At the taking of the statement, Appellant was read his Miranda rights and signed a waiver. Of course, during that waiver, he was told anything he said could and would be used against him in a court of law. {R. 69-74; 185-187, 188; State's 21}. After a break in the interview, the officer noted on the tape that Appellant had talked with his counsel and the terms of the proffer and the Miranda waiver were still in effect. {State's 21}. On a couple of occasions during the interview the officers mentioned they would be setting up a polygraph. {State's 21}. At one point during questioning, it was noted that Appellant had an obligation to talk about anything he knew, whether or not the detective has asked about it. At another point it was stated that Appellant did not have anything to worry about in answering a question since it was part of the proffer. {State's 21}.

After the interview was completed, Appellant was polygraphed. Prior to the polygraph, he waived his Miranda rights again and also signed a polygraph consent form. {R. 14; 18}. The polygrapher found Appellant was deceptive in his answers to the question as to whether he was lying that Mark Willard shot Julian, and to the question as to whether Appellant himself was the one to shoot Julian. There was no conclusive result as to whether Appellant was lying about Donnel throwing the gun in to the water, and whether he was lying about being paid by the Johnson brothers to shoot Julian. {R. 24-31; 35-36}.

Given the deception, Appellant was ultimately charged with murder, and indicted in April 2006. Before presentation of evidence to the jury, the State indicated its intent to use the recorded interview as evidence in its case-in-chief, due to Appellant's deception on the polygraph examination. {R. 1-3}. The defense objected and requested a hearing, arguing:

[B]asically the reason that we are doing that is because we got intertwined here the use of the polygraph, that polygraph procedure, with the

voluntariness, the question of the voluntariness of the defendant's statement.

The defense continued, arguing that the process was unfair because Appellant had given the statement in reliance on the proffer agreement, and the State was refusing to honor it based on the polygraph results. Defense counsel asserted that the jury would be unable to effectively gauge the voluntariness of the statement without knowing all the circumstances, and concluded:

[B]ecause you cannot extricate the reference to the polygraph from the determination of whether Mr. Wills gave a voluntary statement the statement should be suppressed as being involuntary.

Defense counsel agreed when the court asked if it was the defense's position Appellant had in fact told the State the truth. {R. 4-5}.

The State pointed out that the polygraph was necessary to prevent the State from being taken by a defendant simply trying to help himself out, and noted that Appellant had agreed to the express terms of the proffer agreement which included the provision allowing use of the statement if Appellant showed deception. {R. 7-8}. The defense responded by contending Paragraph Two did not specifically provide that in the event of a breach State could present the recorded interview to the jury as evidence in chief. The defense again asserted it was inherently unfair to allow the State to alone make the decision of whether Appellant was telling the truth or not – and asserted a due process violation from allowing “the State to expand beyond the scope of the literal language contained in the agreement”. The court admitted it wished Paragraph Two was more specific as to how the determination of deception is made, but asked to hear the testimony {R. 10-11}.

Police officers then testified as to the taking of the recorded statement, and the

polygraph procedure and results, as previously described. After the recording was played for the judge, Appellant testified, contending that he only gave the statement because "they gave me an offer", and claiming he did not understand nor did anyone explain to him he would have to take a polygraph. Appellant stated he told the truth in the interview. {R. 79-80}. On cross, Appellant admitted he signed the proffer agreement, but stated he only "skimmed" through it. He also admitted begin given his Miranda rights and understanding those rights. {R. 81-82}. On redirect, when asked why he showed deception, Appellant stated he had not been told by the "DA" he would be held accountable if he did not pass the polygraph, and again said he had only skimmed through the proffer. {R. 81-83}.

Following testimony, the defense made two arguments. First, Appellant argued that Paragraph Two was vague and should be construed against the State to preclude use of the statement at trial. The defense contended neither Appellant or his attorney made a voluntary and intelligent decision with regard to the agreement if the statement could be used. Next, the defense argued that since an inadmissible factor like a polygraph was inextricably intertwined with the determination of voluntariness, it would be impossible for the jury to make the call without knowing all the circumstances. {R. 84-86}.

The State responded the agreement clearly provided that in the event of deception the State could use the statements made "for any legal purpose including . . . disposition of charges through plea or trial". The State asserted any mention of polygraph could be extricated from the presentation to the jury. {R. 88-90}. The defense disagreed, arguing that in context the provision only referred to the "decision making process" and not the "disposition of the case". {R. 90}.

The court found that the polygraph was not to be mentioned at trial. However, the court found Appellant was advised of and understood his Miranda rights, and that he made a knowing and voluntary decision to waive those rights and talk to police. The judge pointed out that the Miranda rights themselves informed Appellant anything he said could be used against him in court, and that Appellant "knew the risk of communicating with the police in telling them a story which they had the right to believe or not to believe". The judge indicated the defense would have "a lot of latitude" in bringing out that Appellant had an agreement with the State when he provided the information. {R. 90-93}. The defense added the argument that the proffer agreement was more specific and trumped the Miranda warnings, but the court held firm. {R. 94-95}.

A police officer testified to the taking of the statement before it was played for the jury. Appellant renewed his objection. {R. 142-145}.

After the State rested, Appellant renewed his objection to the admissibility of the statement and argued the judge should not consider it in the directed verdict analysis. He argued the assistant solicitor had made a promise to Appellant by saying Appellant did not have to worry in answering. The judge reaffirmed his ruling. {R. 152-157}.

After the guilty verdict, the defense made a motion for a new trial by again asserting the statement was not voluntary because it was "made in the setting of a proffer". The defense argued the agreement was vague as to whether the statement could be used at trial, and alleged that a directed verdict should be granted since there was no other evidence. {R. 175-177}. The judge again affirmed his ruling that the statement was voluntarily made after a valid waiver of rights. {R. 178-179}.

At sentencing some days later, the defense re-raised the issue that the statement should not have been admitted because "it simply can't be determined that the statement was given voluntarily". The defense continued with the argument that the agreement was vague as to consequences. The judge reaffirmed his ruling. {R. 181-184}.

B. Any issue as to Rule 410, SCRE, is not preserved.

As can be seen from the discussion of the events at trial in the preceding subsection, the defense's argument always centered on voluntariness and the alleged vagueness of the provisions of the agreement related to the consequences of failing the polygraph. At no time ever did the defense mention "Rule 410, SCRE", or even "the rules of evidence".

Appellant's present argument before this Court is that Rule 410(4), SCRE, is applicable and flatly prohibits introduction of the statement taken pursuant to the proffer. This contention based purely in the evidentiary rules is different from the constitutional argument of voluntariness and the contractual argument of vagueness made at trial. Since the argument made now was not raised to and ruled upon by the trial court, it is not preserved for appeal. See State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (a party cannot argue one basis in support of motion at trial and another ground on appeal, and a constitutional argument is not preserved for appeal where appellant failed to argue the constitutional basis for his request at trial); State v. Caldwell, 378 S.C. 268, 662 S.E.2d 474 (Ct. App. 2008) (objection only that probative value was outweighed by prejudice did not fairly raise issue under Rule 404(b), SCRE, or State v. Nelson; even though counsel briefly mentioned character, it was made in the context of a relevance argument and neither Rule

404(b) nor the Nelson case was mentioned).

C. There was no offer to plea; thus, Rule 410 was inapplicable.

The provision on which Appellant relies prevents admission into evidence “any statement made in the course of *plea discussions* with an attorney for the prosecuting authority which do not result in a *plea of guilty* or which result in a *plea of guilty later withdrawn*”. Rule 410(4), SCRE (emphasis added). This provision expressly conditions its applicability to statements involved in discussions for a plea of guilty.

Here, Rule 410(4), SCRE is inapplicable as there was no offer to plea or acceptance of an offer to plea by either side to the agreement. The agreement merely provided that if Appellant fully complied with his obligation to testify truthfully, the State: (1) would not use the statements against Appellant, (2) would not seek any further charges on Appellant with regard to Julian’s murder, (3) would take into account Appellant’s cooperation in charging and sentence recommendation decisions, and (4) would inform the court of Appellant’s cooperation. {R. 185-87}. At no time did Appellant promise to plead guilty to any charge, nor did the State agree to accept a plea to any charge. The agreement was essentially information for limitation of possible future charges, and consideration of cooperation in any final judicial disposition of Appellant’s criminal liability in the case. Since this agreement was not a plea negotiation, Rule 410(4) is inapplicable by its express terms. See State v. Compton, 366 S.C. 671, 623 S.E.2d 661 (Ct. App. 2007) (finding Rule 410, SCRE inapplicable because the statements was not in furtherance of any plea, but occurred after the plea on the original charges and before any charges on the second matter, and where the defendant never offered to plead guilty to the second matter in

exchange for anything from the State). See also State v. Curry, 569 S.E.2d 691 (N.C. Ct. App. 2002) (no objective belief statements were in the course of plea bargaining, which involves the offer to plead guilty on condition).

D. A provision waiving the protection in Rule 410 is enforceable.

Even assuming the applicability of Rule 410, SCRE, to this situation, it would not bar introduction of Appellant's statement during the prosecution's case-in-chief.

The issue of whether one could waive the protections in Federal Rule of Evidence 410, and its sister provision in Rule 11(e)(6)(D) of the Federal Rules of Criminal Procedure, was addressed by the United States Supreme Court in United States v. Mezzanatto, 513 U.S. 196 (1995). There, seven members of the court reversed the Ninth Circuit, and held enforceable a prosecutor's insistence prior to a cooperation discussion that any statements could be used to impeach contradictory testimony in event of a trial. The Court first noted that there was a presumption the right could be waived, since most constitutional and statutory rights could be waived, as well as rights under the Federal Rules of Evidence or Criminal Procedure. The Court pointed out that Congress was silent on the matter, which weighed in favor of the State's position, and noted that the protection in Rule 410 was not so fundamental that waiver would be abhorrent to justice. If anything, the Court reasoned, allowing examination of a defendant on prior inconsistent statements would *increase* the reliability of the factfinding process.

Further, the Court responded to arguments that waiver would conflict with the policy of encouraging defendants to engage in plea discussions, by noting that there were two sides to the transaction, and prosecutors may be unwilling to bind themselves on charging

and plea decisions without some way to verify truthfulness. Id. at 200-208. Ultimately, the Court stated that “it simply makes no sense to conclude that mutual settlement will be encouraged by precluding negotiation over an issue that may be particularly important to one of the parties to the transaction”. Id. at 208. Finally, the Court rejected claims that such a ruling would lead to abuse or overreaching by prosecutors, by noting that most prosecutors are “faithful to their duty”, and that the mere potential for abuse is insufficient to preclude all negotiation on the point. Id. at 209-10.

Admittedly, three of the seven members filed a concurrence in which they expressed concern that use of such statements in the case-in-chief – as opposed to mere impeachment – might more severely undermine a defendant’s incentive to negotiate. Id. at 211 (Ginsberg, J., concurring). However, “[federal] circuit courts that subsequently have considered the question have upheld the use of proffer waivers at trial”. United States v. Hardwick, 544 F.3d 565, 570 (3rd Cir. 2008) (citing cases from the Second, Seventh, Ninth and D.C. Circuits). While Hardwick involved a provision that allowed use of the statements in rebuttal based on arguments made and cross-examination conducted, that was simply because that was how the provision was written in the agreement in that case, and other courts have applied Mezzanatto to use of statements in the prosecution’s case-in-chief. See United States v. Burch, 156 F.3d 1315 (D.C. Cir. 1998) (enforcing 410 waiver provision to statements offered in prosecution’s case-in-chief); United States v. Young, 223 F.3d 905 (8th Cir. 2000) (reversing trial court’s suppression of affidavit, and enforcing waiver provision to allow it to be used by prosecution in case in chief); United States v. Davis, 166 Fed. Appx. 70 (4th Cir. 2006) (finding waiver provision enforceable to allow introduction at trial of statements made during plea negotiations).

Simply put, the rationale of Mezzanatto applies to evidence in the case-in-chief as much as impeachment, as nothing is served in the law by allowing a defendant to get a free shot at attempting to dupe the prosecution, by escaping either full criminal liability if successful, or escaping liability for his lies at trial if the attempt is unsuccessful.

E. Appellant waived any complaint under Rule 410.

It is clear that Appellant waived any protections from Rule 410 in this case. As noted in State v. Compton, 366 S.C. 671, 623 S.E.2d 661 (Ct. App. 2007), such agreements between prosecutors and defendants are governed by general contract principles, and the courts should not read terms or conditions into the contract the parties did not intend.

Here, the agreement was unambiguous. Paragraph one required complete truthfulness, and noted that the interview could be recorded; Paragraph Two specifically noted that if Appellant showed deception on the polygraph his statements could “be used against him by the State for any legal purpose . . . including but not limited to . . . disposition of charges through plea or trial”; and Paragraph Seven stated that if Appellant violated any term of the agreement, “the State shall have the right to use any information obtained through this Proffer in any fashion, whether direct or collateral to this matter”. These provisions could not have been clearer that breach would put the statements in play. And then, on top of that, Appellant was advised of and waived his Miranda rights – which of course included the admonition that anything he said could be used against him in court.

Admittedly, the provisions do not specifically refer to a waiver of Rule 410(4), SCRE. However, such a specific reference is not necessary where the whole point is more than evident from the language of the agreement – that breach will result in use of the

statements. See United States v. Young, 223 F.3d 905 (8th Cir. 2000) (finding lack of specific reference to Rule 410 inconsequential because the provisions specifically set forth the consequences, and defendant acknowledged he was represented by counsel who has discussed his rights). Indeed, unlike State v. Thompson, 329 S.C. 72, 495 S.E.2d 437 (1998) – a pre-Rules case that still pointed out its result would be the same under Rule 410 – here Appellant had no reasonable expectation the statements would be confidential because he specifically agreed they would not be.

Since the waiver was effective, once Appellant breached the agreement by failing the polygraph, the State was entitled to cancel it and take advantage of its contractual remedy – use of the statements. See United States v. Scruggs, 356 F.3d 539 (4th Cir. 2004) (rejecting allegation that breach by defendant put the parties in the position as if nothing had happened, and noting that the correct view was that the agreement was canceled with the aggrieved party having the right to seek its contractual remedies); Roberts v. Commonwealth, 896 S.W.2d 4 (Ky. 1995) (state not bound by agreement where defendant failed to give complete information as required).

As such, there was no violation of Rule 410(4), SCRE, from admission of the statement.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment and conviction of the trial court should be affirmed.

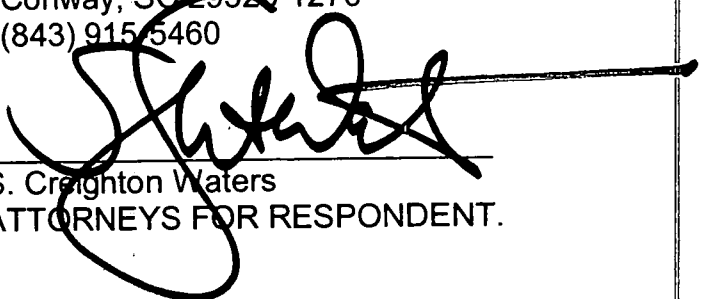
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July 9, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Horry County
The Honorable Steven H. John, Circuit Court Judge

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Respondent,

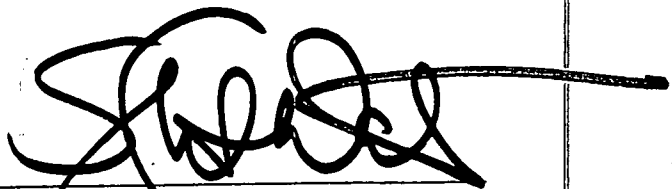
-VS-

THEODORE DAVID WILLS, JR.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.



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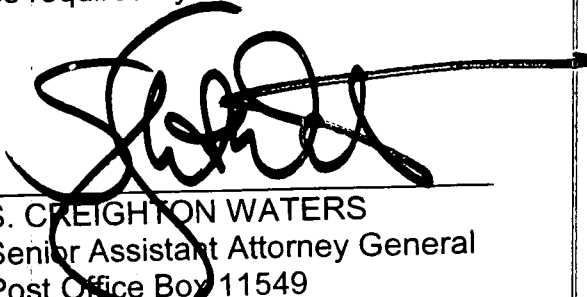
PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the ***Final Brief of Respondent and Designation of Matter***, dated July 9, 2009, on Appellant by depositing three (3) copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

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I further certify that I have served all parties required by Rule to be served.

This 9th day of June, 2009.



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