

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G Edward Welmaker, Circuit Court Judge

RECEIVED

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SC Supreme Court

MICHAEL ANTHONY SARRATT,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

A P P E N D I X

ELIZABETH A FRANKLIN-BEST
Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W MCINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

KAREN RATIGAN
Assistant Attorney General

P O Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ERIC CHRISTENSEN, M D - DIRECT EXAMINATION BY MR FRETWELL

498

1 BUT IN THE SETTING OF ALL THE BLEEDING THAT WOULD BE GOING
2 ON FROM THESE STAB WOUNDS AND INCISE WOUNDS THEY WOULD
3 CERTAINLY PUT HIM AT RISK FROM DYING MORE RAPIDLY FROM THOSE
4 WOUNDS THAN A PERSON WITHOUT THOSE SAME CONDITIONS

5 Q BASED ON YOUR EXAMINATION AND AUTOPSY OF THE BODY OF
6 JAMES DELLINGER WERE YOU ABLE TO FORMULATE AN OPINION ABOUT
7 HIS CAUSE OF DEATH?

8 A YES, WE WERE

9 Q AND WHAT WAS THAT OPINION, SIR?

10 A WE DETERMINED HIS CAUSE OF DEATH TO BE MULTIPLE STAB
11 AND INCISE WOUNDS AND WE DON'T ATTEMPT TO SORT OUT, YOU
12 KNOW, WAS IT THIS ONE THAT KILLED HIM OR THIS ONE THAT
13 KILLED HIM IN REALITY IT'S THE SUM TOTAL OF ALL OF THEM
14 ALL OF THESE WOULD CAUSE BLOOD LOSS, EVEN THE SUPERFICIAL
15 ONES WOULD CAUSE SOME BLOOD LOSS OBVIOUSLY THE ONES THAT
16 CUT ARTERIES ARE GOING TO BLEED A LOT MORE, BUT THE SUM
17 TOTAL OF HIS INJURIES IS WHY HE'S DEAD

18 Q DR CHRISTENSEN, WERE YOU ABLE TO DETERMINE THE MANNER
19 OF DEATH IN THIS CASE?

20 A YEAH WE DETERMINED THAT THESE WERE NOT ACCIDENTAL AND
21 NOT SELF-INFLICTED AND NOT NATURAL OBVIOUSLY SO IT LEAVES
22 US WITH A DETERMINATION THIS WAS INFLICTED BY ANOTHER
23 INDIVIDUAL OR A HOMICIDE

24 Q THANK YOU, DR CHRISTENSEN PLEASE ANSWER QUESTIONS

25 MS WIYGUL WOULD HAVE

ERIC CHRISTENSEN, M D - CROSS EXAMINATION BY MS WIYGUL

499

1 CROSS EXAMINATION BY MS WIYGUL

2 Q DR CHRISTENSEN, YOU ALSO MENTIONED THAT MR DELLINGER
3 HAD A THERAPEUTIC AMOUNT OF ASPIRIN ---

4 A YES, MA'AM

5 Q --- IN HIS SYSTEM?

6 A UM-HUM (AFFIRMATIVE)

7 Q WOULD THAT ALSO CAUSE HIM TO BLEED MORE THAN USUAL?

8 A IT COULD

9 Q OKAY I NOTE ON STATE'S EXHIBIT 93A, THIS ONE HERE,
10 ---

11 A YES, MA'AM

12 Q --- THAT ONE OF THE ITEMS TAKEN FROM MR DELLINGER WAS

13 A REAR KNIFE POUCH?

14 A UH-HUH (AFFIRMATIVE)

15 Q DID HE HAVE A KNIFE IN THAT POUCH?

16 A NO, HE DID NOT

17 Q SO NO KNIFE WAS FOUND?

18 A NOT WHEN HE CAME TO AUTOPSY, NO, MA'AM

19 Q OKAY WERE YOU ABLE TO ESTABLISH A TIME OF DEATH?

20 A THE DETERMINATION OF TIME OF DEATH IS ESSENTIALLY A
21 MECHANISM -- YOU LOOK AT ALL THE EVIDENCE THAT YOU HAVE WE
22 DO NOT ATTEMPT TO DETERMINE AN EXACT TIME OF DEATH, YOU
23 KNOW, BASED ON WHAT'S THERE

24 THE CORONER'S OFFICE, WHEN THEY'RE COMPLETING THEIR
25 REPORTS, THEY WILL USUALLY MAKE AN ESTIMATE BASED ON WHAT

ERIC CHRISTENSEN, M D - CROSS EXAMINATION BY MS WIYGUL

500

1 THEY SEE AT THE SCENE BUT -- AND, YOU KNOW, WHEN I SIGN
2 THE DEATH CERTIFICATE I REVIEW THEIR INFORMATION AND
3 SOMETIMES I CHANGE IT, SOMETIMES I LEAVE IT THE SAME BUT
4 IN HIS CASE -- I'LL HAVE TO LOOK AT WHAT WE PUT ON THE DEATH
5 CERTIFICATE

6 Q WHILE YOU'RE LOOKING FOR THAT ---

7 A UM-HUM (AFFIRMATIVE)

8 Q --- WOULD YOU ALSO -- WOULD YOU ONLY LOOK AT THE
9 PHYSICAL EVIDENCE WHEN DETERMINING THAT TIME OF DEATH OR
10 WOULD YOU ---

11 A NO

12 Q --- TAKE INFORMATION FROM THE POLICE?

13 A I TAKE WHATEVER INFORMATION I CAN GET AND FRANKLY
14 MOST OF THE TIME INFORMATION SURROUNDING CAUSE OF DEATH, I
15 MEAN, THE STUFF YOU SEE ON TV WHERE THE MEDICAL EXAMINER OR
16 CORONER SHOWS UP AND SEES THE BODY AND TELLS THE DETECTIVE,
17 YOU KNOW, THIS GUY DIED SOMETIME LAST NIGHT BETWEEN 5 30 AND
18 6 30, IT JUST -- THAT'S IMPOSSIBLE IT DOESN'T WORK THAT
19 WAY

20 AND MOST OF THE TIME CAUSE OF DEATH OR TIME OF DEATH
21 INFORMATION IS BEST, YOU KNOW, REALLY THE BEST ESTIMATE YOU
22 KNOW WHEN THEY WERE LAST SEEN ALIVE, YOU KNOW WHEN THEY WERE
23 FOUND DEAD, YOU KNOW THAT IT HAS TO BE IN THAT INTERVAL
24 THERE ARE THINGS THAT YOU CAN LOOK AT THAT WILL HELP NARROW
25 THAT WINDOW, PERSON'S BODY TEMPERATURE, THE DEGREE OF RIGOR

ERIC CHRISTENSEN, M D - CROSS EXAMINATION BY MS WIYGUL

501

1 MORTIS THAT THEY HAVE SET IN ALL THOSE SORTS OF THINGS CAN
2 ASSIST WITH THAT DETERMINATION BUT SOMETIMES YOU REALLY
3 DON'T GET ANY CLOSER THAN, YOU KNOW, THAT IT'S BETWEEN THE
4 TIME THEY WERE LAST SEEN AND THE TIME THEY WERE FOUND DEAD

5 Q OKAY WELL, THAT BEING THE CASE I WON'T MAKE YOU LOOK
6 UP THAT ---

7 A OKAY

8 Q --- INFORMATION ABOUT THAT COULD YOU -- YOU SAID YOU
9 COULDN'T DETERMINE EXACTLY WHAT POSITION MR DELLINGER AND
10 HIS ATTACKER WERE IN

11 A UM-HUM (AFFIRMATIVE)

12 Q WERE YOU ABLE TO RULE OUT ANY POSITIONS?

13 A THAT'S NOT SOMETHING I EVEN ATTEMPT TO DO I MEAN, YOU
14 COULD POSE HYPOTHETICALS TO ME AND I'D BE HAPPY TO SAY, YOU
15 KNOW, WOULD THAT BE CONSISTENT OR NOT BUT THE
16 DETERMINATIONS OR THE THINGS THAT I WRITE INTO THE REPORT IN
17 TERMS OF, YOU KNOW, THE DIRECTION OF THE WOUND REFERS ONLY
18 TO THE PATH OF THAT WOUND THROUGH THE BODY THAT'S ALL IT
19 REFERS TO

20 IT DOESN'T MEAN THE PERSON WAS STANDING IN FRONT OF
21 THEM OR BEHIND THEM OR WHATEVER AND, YOU KNOW, MY TRAINING
22 DOES ALLOW ME TO DO SOME SORT OF, YOU KNOW, RECONSTRUCTION
23 OF EVENTS, BUT THAT, YOU KNOW, WITHOUT -- GENERALLY THE TIME
24 I WRITE MY AUTOPSY REPORT I DON'T HAVE ALL THE INFORMATION
25 IN TERMS OF NECESSARILY WHAT -- EVERYTHING THAT WENT ON AT

ERIC CHRISTENSEN, M D - CROSS EXAMINATION BY MS WIYGUL

502

1 THIS SCENE AND GENERALLY THAT'S NOT SOMETHING THAT I
2 ATTEMPT TO DO

3 Q OKAY WERE YOU ABLE TO DETERMINE WHETHER THE PERSON
4 THAT KILLED MR DELLINGER WOULD HAVE NEEDED TO BE BIGGER
5 THAN HIM?

6 A NOT NECESSARILY, NO

7 Q OKAY SO WERE YOU ABLE TO DETERMINE WHETHER A MALE OR
8 A FEMALE KILLED MR DELLINGER?

9 A NO

10 Q WERE YOU ABLE TO DETERMINE A HEIGHT OF THE PERSON THAT
11 KILLED HIM?

12 A NO

13 Q OKAY HAVE YOU SEEN OTHER CASES WHERE PEOPLE HAVE HAD
14 SIMILAR NECK WOUNDS TO MR DELLINGER?

15 A YES

16 Q TAKING INTO ACCOUNT YOUR EXPERIENCE WITH THAT AND AS
17 YOU MENTIONED MR DELLINGER'S HEALTH ISSUES AND THE ASPIRIN
18 IN HIS SYSTEM HOW MUCH WOULD YOU HAVE EXPECTED HIM TO BLEED
19 JUST FROM THOSE NECK WOUNDS?

20 A JUST FROM THE NECK WOUNDS, I MEAN, I WOULD EXPECT, YOU
21 KNOW, HE WOULD, YOU KNOW, BLEED TO DEATH WITHIN A MATTER OF,
22 YOU KNOW, PROBABLY FIVE OR SIX MINUTES AT THE MOST

23 Q OKAY HOW -- I GUESS WHAT I'M TRYING TO ASK IS IF MR
24 DELLINGER WAS -- RECEIVED THOSE WOUNDS IN AN ENCLOSED AREA
25 ---

ERIC CHRISTENSEN, M D - CROSS EXAMINATION BY MS WIYGUL

503

1 A UM-HUM (AFFIRMATIVE)

2 Q --- WOULD YOU EXPECT THERE TO BE BLOOD SPATTER?

3 A ABSOLUTELY, YES THERE WOULD BE A LOT OF BLOOD

4 Q AND I GUESS IT WOULDN'T MATTER IF IT WAS IN AN ENCLOSED
5 AREA OR NOT, WOULD IT?

6 A NO IN AN OUTSIDE AREA, YOU KNOW, BLOOD FREQUENTLY
7 WILL BECOME, YOU KNOW, ABSORBED IN THE GROUND AND STUFF
8 IT'S NOT, YOU KNOW, NOT AS READILY APPARENT THE VOLUME OF
9 BLOOD THAT'S LOST SOMETIMES AS COMPARED TO YOU KNOW, A TILE
10 FLOOR OR SOMETHING LIKE THAT BUT, YOU KNOW, THE -- TRYING
11 TO GET AT THE QUESTION OF, YOU KNOW, HOW MUCH BLOOD WOULD
12 OCCUR WITH THESE CUTS? IT WOULD DEPEND, YOU KNOW, REALLY ON
13 THE ORDER OF THE INJURIES

14 I MEAN, THERE ARE A NUMBER OF THESE INJURIES,
15 PARTICULARLY THE NECK WOUNDS, YOU KNOW, I WOULD EXPECT THEM
16 TO BLEED, YOU KNOW, A FAIR AMOUNT, YOU KNOW, NO MATTER WHERE
17 THEY WERE INFLICTED BUT AGAIN, IT WOULD DEPEND ON, YOU
18 KNOW, WHICH ONES WERE INFLICTED WHEN AS TO HOW MUCH BLOOD I
19 WOULD EXPECT TO FIND AT WHICH PARTS OF THE SCENE AND THE
20 SEQUENCE OF EVENTS

21 Q OKAY AND JUST STICKING WITH THOSE NECK WOUNDS, WOULD
22 YOU EXPECT THAT BLOOD JUST KIND OF TO FLOW OUT OR WOULD YOU
23 ---

24 A NO

25 Q --- EXPECT IT TO ---

ERIC CHRISTENSEN, M D - REDIRECT EXAMINATION BY MR FRETWELL

504

1 A IT WOULD BE SPURTING OUT

2 Q HAVE YOU ACTUALLY SEEN CASES WHERE BLOOD WENT UP ONTO A
3 CEILING?

4 A YES AND IT'S NOT UNCOMMON TO SEE IN CASES WHERE
5 THERE'S ARTERIAL INJURY LIKE THAT FOR THAT BLOOD TO BE
6 PROJECTED, YOU KNOW, MUCH HIGHER THAN THE DECEDENT'S HEIGHT

7 Q OKAY ONE MOMENT, PLEASE, DOCTOR

8 A UM-HUM (AFFIRMATIVE)

9 Q I HAVE NO FURTHER QUESTIONS THANK YOU

10 MR FRETWELL JUST BRIEFLY, YOUR HONOR, ONE AREA

11 REDIRECT EXAMINATION BY MR FRETWELL

12 Q MS WIYGUL ASKED YOU ABOUT THE SIZE OF AN ASSAILANT, IF
13 YOU CAN DETERMINE THAT BASED ON YOUR AUTOPSY FINDINGS
14 COULD YOU TELL ANYTHING ABOUT THE RIGHT-HANDEDNESS OR THE
15 LEFT-HANDEDNESS OF AN ASSAILANT BASED ON YOUR AUTOPSY
16 FINDINGS?

17 A NO

18 MR FRETWELL NO FURTHER QUESTIONS, YOUR HONOR

19 THE COURT ALL RIGHT THANK YOU YOU CAN STEP DOWN,
20 DOCTOR

21 MR FRETWELL MAY HE BE EXCUSED, YOUR HONOR?

22 THE COURT ANY OBJECTION TO RELEASING HIM FROM
23 SUBPOENA?

24 MS WIYGUL NO, YOUR HONOR

25 THE COURT THANK YOU, DOCTOR

WESLEY SMITH - DIRECT EXAMINATION BY MS HODGE

505

1 A THANK YOU

2 THE COURT: WHAT DO Y'ALL HAVE?

3 MS. HODGE. YOUR HONOR, WE WOULD RECALL INVESTIGATOR
4 SMITH BRIEFLY, AFTER LUNCH OR DO IT NOW IT DOESN'T MATTER

5 THE COURT WELL, HOW LONG? WHAT'S BRIEFLY?

6 MS HODGE I WOULD SAY TEN MINUTES FOR ME, MAX

7 THE COURT: ALL RIGHT COME ON BACK YOU'RE STILL
8 UNDER OATH

9 WESLEY SMITH, HAVING BEEN
10 PREVIOUSLY SWORN TESTIFIED AS FOLLOWS

11 DIRECT EXAMINATION BY MS HODGE

12 Q INVESTIGATOR SMITH, WERE YOU PRESENT WHEN DANIEL McABEE
13 TESTIFIED A FEW MOMENTS AGO?

14 A I WAS

15 Q DO YOU RECALL INTERVIEWING HIM AT THE DETENTION CENTER
16 ON JULY 6TH OF 2006?

17 A YES

18 Q AND DID YOU -- TELL ME HOW YOU TOOK HIM INTO THE
19 INTERVIEW AREA AND WHERE EXACTLY YOU INTERVIEWED HIM

20 A I INTERVIEWED HIM IN THE DATAMASTER OR BREATHALYSER
21 ROOM, WHICH IS OFF OF WHAT WE CALL THE JUDICIAL CORRIDOR OF
22 THE DETENTION CENTER, WHICH IS IMMEDIATELY ADJACENT TO THE
23 BOOKING AREA AND I TOOK HIM THERE FOR CONVENIENCE AND ALSO
24 WHEN WE CALL AND HAVE SOMEBODY ASKED TO BE BROUGHT DOWN TO
25 TRANSPORT, PEOPLE KNOW THAT PEOPLE ARE COMING TO TRANSPORT

WESLEY SMITH - DIRECT EXAMINATION BY MS HODGE

506

1 AND YOU ONLY GO TO TRANSPORT FOR A COUPLE OF THINGS, ONE, TO
2 GO TO COURT, TWO, TO GO TO THE HOSPITAL OR A MEDICAL
3 APPOINTMENT, THREE, TO GET TRANSFERRED SOMEWHERE ELSE OR,
4 FOUR, TO TALK TO SOME OF US

5 Q AND THAT WAS THE PURPOSE IN BRINGING HIM THERE AS
6 OPPOSED TO GOING INTO THE OTHER FLAT OPENED AREA?

7 A RIGHT

8 Q SO THERE COULD HAVE BEEN VARIOUS REASONS MR McABEE WAS
9 GOING TO THAT AREA?

10 A THAT'S CORRECT

11 Q ALL RIGHT AND DO YOU RECALL MR McABEE TELLING YOU
12 THE DEFENDANT'S ---

13 MS WIYGUL OBJECTION, YOUR HONOR LEADING
14 THE COURT DON'T LEAD

15 MS HODGE YES, SIR

16 Q LET ME REPHRASE IT AND THEN BACK UP A LITTLE BIT ANY
17 POLICE REPORTS GENERATED BY GREENVILLE COUNTY SHERIFF'S
18 OFFICE IN THIS CASE FILE AS YOU'RE THE LEAD INVESTIGATOR
19 THAT STATE ANYWHERE AT ALL THE DEFENDANT HIT HIS HAND WITH A
20 HAMMER OTHER THAN MR McABEE'S STATEMENT?

21 A NO

22 Q IS THERE ANY WITNESS STATEMENT ---

23 MS WIYGUL OBJECTION, YOUR HONOR THIS IS IMPROPER
24 BOLSTERING OF A WITNESS

25 MS HODGE NO, YOUR HONOR SHE IS ---

WESLEY SMITH - DIRECT EXAMINATION BY MS HODGE

507

1 THE COURT WELL, WAIT A MINUTE IT'S GETTING INTO
2 HEARSAY IF YOU'RE GOING TO ASK HIM ABOUT WITNESS -- WHAT
3 OTHER WITNESSES HAVE SAID AS THE LEAD INVESTIGATOR, OF
4 COURSE, YOU CAN ASK HIM WHAT HIS INVESTIGATION HAS REVEALED,
5 OKAY?

6 Q DID IT REVEAL IN ANY -- ANYTHING THAT YOU COLLECTED IN
7 THIS ENTIRE CASE FROM ANY OTHER SOURCE THAN MR McABEE DID
8 YOU FIND THE DEFENDANT HIT HIS HAND WITH A HAMMER IN
9 PENNSYLVANIA?

10 A NO

11 Q ANY PHYSICAL EVIDENCE THAT YOU OBSERVED AND WENT
12 THROUGH AS THE LEAD INVESTIGATOR IN THIS CASE SHOW ANYWHERE,
13 OTHER THAN WHAT MR McABEE SAID, THE DEFENDANT HIT HIS HAND
14 WITH A HAMMER?

15 A NO

16 Q IS THERE ANY AUDIOTAPE OR VIDEOTAPE IN THIS CASE ---

17 MS WIIYGUL YOUR HONOR, I'M GOING TO OBJECT AGAIN
18 SHE'S ATTEMPTING TO IMPEACH MR McABEE THAT IS IMPROPER
19 ---

20 MS HODGE THE IMPLICATION WAS ---

21 THE COURT WAIT A MINUTE GO AHEAD

22 MS HODGE YOUR HONOR, THE IMPLICATION WAS THAT HE
23 ONLY HAD THIS KNOWLEDGE OF THIS CASE THROUGH PAPERS LEFT OUT
24 WIDE IN THE OPEN BY THE DEFENDANT

25 THE COURT WELL, LET ME SEE WHAT THE QUESTION IS GO

WESLEY SMITH - CROSS EXAMINATION BY MS WIYGUL

508

1 AHEAD

2 MS HODGE JUST ALONG THE SAME LINES, IS THERE ANY
3 VIDEOTAPE OR AUDIOTAPE THAT THIS INVESTIGATOR HAS WATCHED OR
4 HEARD IN THIS CASE THAT HAS ANY REFERENCE TO ---

5 MS WIYGUL YOUR HONOR, ---

6 MS HODGE --- TO THE DEFENDANT ---

7 MS WIYGUL --- MAY WE APPROACH?

8 MS HODGE --- BREAKING HIS HAND?

9 THE COURT ALL RIGHT Y'ALL COME UP HERE

10 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
11 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

12 Q SO IS THERE ANYWHERE AT ALL IN YOUR CASE FILE THAT
13 SHOWS THAT INFORMATION?

14 A NO

15 Q THANK YOU

16 THE COURT ALL RIGHT ANY CROSS? I'M SORRY

17 MS WIYGUL ONE MOMENT, YOUR HONOR

18 THE COURT ALL RIGHT

19 CROSS EXAMINATION BY MS WIYGUL

20 Q INVESTIGATOR SMITH, DID YOU HAVE AT ANY TIME DURING
21 THIS CASE COME INTO YOUR POSSESSION A STATEMENT GIVEN BY THE
22 DEFENDANT THAT HE HAND WROTE?

23 A NO

24 Q INVESTIGATOR, DID YOU PULL MR SARRATT OUT TO INTERVIEW
25 HIM TO ASK HIM ABOUT AN AFFIDAVIT THAT HE HAD MAILED IN OR

WESLEY SMITH - CROSS EXAMINATION BY MS WIYGUL

509

1 THAT CAME INTO YOUR POSSESSION?

2 A NO, I DON'T REMEMBER DOING THAT THE ONLY TIME I TOOK
3 HIM OUT WAS TO SERVE THE COURT ORDER TO TAKE HIS BLOOD FOR A
4 KNOWN DNA SAMPLE

5 Q INVESTIGATOR, DO YOU RECALL SPEAKING WITH MR SARRATT
6 AT A BRIEF INTERVIEW WHERE HE INFORMED YOU THAT HE HAD
7 RECENTLY GOTTEN NEW REPRESENTATION AND THAT HE HAD BEEN TOLD
8 NOT TO TALK TO YOU, SO HE JUST WANTED TO GO BACK?

9 A I CAN'T RECALL THAT, NO I'M SORRY I'VE NEVER SEEN
10 ANY OF THAT

11 MS WIYGUL YOUR HONOR, COULD WE HAVE A BRIEF RECESS?

12 COULD WE GO ON A BREAK FOR LUNCH AND HAVE INVESTIGATOR ---

13 THE COURT Y'ALL ---

14 MS WIYGUL: --- SMITH ---

15 THE COURT --- COME UP HERE WAIT A MINUTE COME UP
16 HERE

17 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
18 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

19 THE COURT ALL RIGHT LADIES AND GENTLEMEN, WE'RE
20 GOING TO -- WE'VE GOT SOME THINGS WE NEED TO DEAL WITH OUT
21 OF YOUR PRESENCE AND IT'S A GOOD TIME TO BREAK FOR LUNCH
22 AS IT IS SO I'M GOING TO GIVE YOU A LITTLE BIT OF AN
23 EXTENDED LUNCH HOUR TODAY AND ASK YOU TO BE BACK IN YOUR
24 JURY ROOM AT SHORTLY BEFORE 2 00 PLEASE ENJOY YOUR LUNCH
25 AND WE'LL SEE YOU BACK PLEASE DON'T DISCUSS THE CASE

1 THANK YOU VERY MUCH

2 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11 54 AM)

3 THE COURT ALL RIGHT THERE WAS SOME DISCUSSION ABOUT
4 A VIDEOTAPE AND I BELIEVE THE STATE HAS -- DO YOU HAVE THE
5 VIDEOTAPE, IS THAT RIGHT?

6 MS HODGE IN OUR OFFICE, YES, SIR

7 THE COURT OKAY

8 MS WIYGUL AND, YOUR HONOR, I APOLOGIZE THERE'S
9 APPARENTLY TWO DOCUMENTS THAT LOOK AN AWFUL LOT ALIKE ONE
10 OF WHICH IS THE PRO SE MOTION MS HODGE IS TALKING ABOUT,
11 ONE OF WHICH IS THE STATEMENT I'M TALKING ABOUT SO THAT'S
12 WHERE THE CONFUSION WAS COMING IN ON THAT

13 THE COURT SO WHAT ARE WE SAYING?

14 (WHEREUPON MS WIYGUL AND MS HODGE WERE TALKING TO
15 EACH OTHER)

16 MS WIYGUL THE ISSUE ---

17 THE COURT THE BENCH CONFERENCE ISSUE IS A NON-ISSUE,
18 IS THAT WHAT YOU'RE SAYING?

19 MS WIYGUL IT'S A NON-ISSUE, YOUR HONOR

20 THE COURT- ALL RIGHT DO YOU HAVE ANYMORE EXAMINATION
21 FOR INVESTIGATOR SMITH?

22 MS WIYGUL NO, YOUR HONOR WELL, ONE MOMENT

23 (PAUSE)

24 MS WIYGUL NO I'LL HAVE NO FURTHER QUESTIONS

25 THE COURT Y'ALL HAVE ANY REDIRECT?

1 MS HODGE NO, SIR

2 THE COURT ALL RIGHT ALL RIGHT NOW ARE YOU ALL
3 GOING TO HAVE ANY OTHER EVIDENCE TO PUT UP?

4 MS HODGE NO, SIR WE'RE GOING TO REST SO IF YOU
5 WANT TO HANDLE THE MOTIONS NOW AND THEN WE'LL OFFICIALLY DO
6 IT ON THE RECORD

7 THE COURT OKAY ALL RIGHT ARE THERE MOTIONS?

8 MS WIYGUL NO, I HAVE NO MOTIONS, YOUR HONOR

9 THE COURT NO MOTIONS AT THIS TIME

10 MS HODGE SOUNDS GOOD

11 THE COURT ALL RIGHT WELL, MAYBE TWO HOURS -- YOU
12 SAY YOU HAVE A ---

13 MS HODGE WELL, WE COULD DO OUR JACKSON V DENNO
14 HEARING, COME BACK FROM LUNCH, DO THAT

15 THE COURT HOW LONG YOU ANTICIPATE THAT WILL TAKE?

16 MS HODGE I DON'T KNOW I MEAN, I DON'T THINK IT'S
17 GOING TO TAKE MORE THAN TWENTY MINUTES FOR THE STATE, MAX

18 MS WIYGUL AS DEFENSE HAS NOT MADE THE DETERMINATION
19 WHETHER MR SARRATT'S GOING TO TESTIFY OR NOT, WE DON'T SEE
20 ANY POINT IN HAVING THE HEARING IF IT'S NOT GOING TO BE
21 NECESSARY

22 THE COURT WELL, Y'ALL ARE GOING TO BE UP AGAINST IT
23 DO YOU HAVE EVIDENCE TO PRESENT?

24 MS. WIYGUL. FOR THE JACKSON ---

25 THE COURT ARE YOU GOING TO -- NO Y'ALL GOING TO

1 PRESENT A CASE?

2 MS WIYGUL YES, YOUR HONOR

3 THE COURT ALL RIGHT WELL, MR SARRATT, LET ME GET
4 YOU TO STAND FOR ME AND JUST RAISE YOUR RIGHT HAND YOU
5 SWEAR TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
6 TRUTH?

7 MR SARRATT YES, SIR

8 THE COURT. OKAY YOU CAN PUT YOUR HAND DOWN NOW YOU
9 UNDERSTAND THAT YOU HAVE AN ABSOLUTE CONSTITUTIONAL RIGHT TO
10 TESTIFY IN THIS TRIAL, DO YOU UNDERSTAND THAT?

11 MR SARRATT. YES, SIR

12 THE COURT YOU HAVE AN EQUAL AND ABSOLUTE RIGHT NOT TO
13 TESTIFY AND IF YOU CHOOSE NOT TO TESTIFY YOUR FAILURE TO
14 TESTIFY CANNOT AND -- BE HELD AGAINST YOU AND I WILL -- I
15 GIVE A STRONG INSTRUCTION TO A JURY ABOUT THAT, THAT THEY'RE
16 NOT TO EVEN CONSIDER IT IN -- WHILE THEY'RE BACK THERE
17 DURING DELIBERATIONS I'M NOT GOING TO ASK YOU WHETHER OR
18 NOT YOU INTEND TO TESTIFY, BUT I WANT TO TELL YOU ALL THIS
19 BEFORE YOU DISCUSS IT WITH YOUR ATTORNEYS OVER LUNCH

20 THERE ARE CERTAIN STRATEGICAL MATTERS THAT GO INTO A
21 DEFENDANT'S DECISION TO TESTIFY OR NOT TESTIFY, WHICH YOU'LL
22 HAVE TO DISCUSS WITH YOUR ATTORNEYS BUT I WANT YOU TO KNOW
23 THAT YOU HAVE THAT RIGHT AND YOU HAVE THE EQUAL RIGHT NOT TO
24 TESTIFY AND IF YOU DON'T TESTIFY I WILL TELL THE JURY IN
25 NO UNCERTAIN TERMS THAT THEY ARE NOT TO CONSIDER IT

1 BUT ALSO I WANT YOU TO KNOW THAT THAT DECISION IS
2 YOURS, YOUR DECISION, YOURS ALONE I DON'T -- I SUGGEST
3 THAT YOU MAKE IT UPON CONSULTATION AND RECOMMENDATIONS FROM
4 YOUR ATTORNEYS, BUT IT'S YOUR DECISION AND NOBODY CAN
5 FORCE YOU TO TESTIFY AND NOBODY CAN FORCE YOU NOT TO
6 TESTIFY DO YOU UNDERSTAND THAT?

7 MR SARRATT YES, SIR

8 THE COURT: DO YOU HAVE ANY QUESTIONS YOU WANT TO ASK
9 ME ABOUT THAT?

10 MR SARRATT NO, SIR

11 THE COURT: OKAY ALL RIGHT

12 MS WIYGUL YOUR HONOR, I'VE BEEN INSTRUCTED BY CO-
13 COUNSEL TO GO AHEAD AND MAKE ONE MOTION FOR A DIRECTED
14 VERDICT

15 THE COURT AND THE BASIS FOR THAT MOTION?

16 MS WIYGUL MR SARRATT HAS NOT BEEN LINKED ---

17 THE COURT SUFFICIENCY OF THE EVIDENCE?

18 MS WIYGUL SUFFICIENT EVIDENCE

19 THE COURT I FIND IN THE LIGHT MOST FAVORABLE TO THE
20 STATE THAT THERE IS SUFFICIENT EVIDENCE TO ALLOW THIS CASE
21 TO GO FORWARD AND I'LL DENY YOUR MOTION

22 MS WIYGUL THANK YOU

23 THE COURT OKAY ALL RIGHT SO WE DON'T KNOW -- DO
24 WE DO THIS JACKSON V DENNO HEARING?

25 MS WIYGUL WE DON'T KNOW YET, YOUR HONOR

1 THE COURT DO Y'ALL CONTEST THE VOLUNTARY AND
2 INTELLIGENT NATURE OF THAT STATEMENT? DON'T KNOW?

3 MS WIYGUL MR SARRATT HAS NOT BEEN ABLE TO RECALL
4 HE WATCHED THE VIDEO LAST WEEK, BUT WE'RE GOING TO GO REVIEW
5 IT AGAIN AT LUNCH

6 THE COURT. WELL, WHY DON'T WE ALL -- WHY DON'T WE BE
7 BACK AT SAY QUARTER TIL TWO AND THEN IF WE NEED TO DO IT
8 WE CAN START THEN AND THE JURY CAN WAIT A LITTLE BIT BUT
9 Y'ALL HAVE YOUR DECISION, IF YOU CAN, PLEASE MAKE YOUR
10 DECISION BEFORE THEN

11 MS WIYGUL YES, SIR

12 THE COURT HOW MANY WITNESSES DO YOU ANTICIPATE?

13 MS WIYGUL BETWEEN THREE AND FIVE

14 THE COURT OKAY ALL RIGHT SEE Y'ALL AT QUARTER TIL
15 TWO

16 (WHEREUPON COURT WAS IN RECESS AT 12 00 PM)

17 THE COURT THANKS PLEASE BE SEATED ALL RIGHT

18 MR FRETWELL MAY IT PLEASE THE COURT, YOUR HONOR? AS
19 A HOUSEKEEPING MATTER, I HAVE STATE'S EXHIBIT 92, WHICH IS A
20 BAG THAT CONTAINED 92A THROUGH I A THROUGH I WERE PUT INTO
21 EVIDENCE 92 WAS NEVER PLACED INTO EVIDENCE I'VE TALKED
22 WITH MS WIYGUL ABOUT THAT AND FOR CLARIFICATION FOR THE
23 RECORD, THE COURT REPORTER ASKED THAT 92 BE ADMITTED INTO
24 EVIDENCE AT THIS TIME

25 MS WIYGUL WITHOUT OBJECTION

1 THE COURT. ALL RIGHT

2 MR FRETWELL THANK YOU, YOUR HONOR

3 (WHEREUPON STATE'S EXHIBIT 92 WAS ENTERED INTO
4 EVIDENCE)

5 THE COURT ANYTHING ELSE?

6 MS HODGE NO, SIR I BELIEVE INVESTIGATOR SMITH WAS
7 ON THE STAND AND MS WIYGUL HAD MADE SOME OBJECTIONS AND
8 THEN THE JURY WAS LET OUT SO I DON'T KNOW IF YOU WANTED TO
9 WITHDRAW YOUR OBJECTIONS

10 THE COURT I THOUGHT SHE DID WITHDRAW HER OBJECTIONS

11 MS WIYGUL I WAS UNDER THE IMPRESSION THAT I HAD
12 WITHDRAWN

13 THE COURT YEAH, I THINK SHE DID WITHDRAW ---

14 MS HODGE OUTSIDE THE PRESENCE OF THE JURY OR IN
15 FRONT OF THE JURY?

16 THE COURT WELL, IN OTHER WORDS YOU WANT TO PUT
17 INVESTIGATOR SMITH BACK UP HERE, HAVE HER WITHDRAW HER
18 OBJECTIONS AND THEN YOU, I MEAN,

19 MS. HODGE HERE'S WHAT I DON'T WANT I DON'T WANT
20 THEM SITTING BACK THERE THINKING HE'S BEEN HIDING SOMETHING
21 'CAUSE THAT WAS HOW IT WAS LEFT WHEN WE APPROACHED THE BAR
22 AND THEN SHE CAME OVER HERE AFTER THE JURY WAS GONE AND
23 SAID, OH, I'M SORRY, I'M SORRY, THAT WAS NOT -- THAT WASN'T
24 WHAT IT WAS WE HAD ALREADY LET THE JURY OUT I THOUGHT I
25 COULD BE VERY -- I COULD BE WRONG, BUT I THOUGHT WE HAD LET

WESLEY SMITH - REDIRECT EXAMINATION BY MS HODGE

516

1 THE JURY GO AND WERE TAKING THIS UP OUTSIDE THE PRESENCE OF
2 THE JURY

3 THE COURT ALL RIGHT I MEAN, WE'LL GO THROUGH THE --
4 ALL RIGHT WES, COME ---

5 MS HODGE AND THEN ---

6 THE COURT --- ON BACK UP

7 MS HODGE --- WE'LL REST ---

8 MR. SMITH YES, SIR

9 MS HODGE AND THEN WE'LL REST OFFICIALLY

10 THE COURT ALL RIGHT

11 (WHEREUPON WESLEY SMITH CAME BACK UP TO THE WITNESS
12 STAND)

13 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2 18 PM)

14 THE COURT ALL RIGHT, LADIES AND GENTLEMEN I HOPE
15 Y'ALL HAD A PLEASANT LUNCH WE'RE BACK AND I HOPE
16 EVERYBODY'S DOING WELL MS WIYGUL

17 MS. WIYGUL YOUR HONOR, AT THIS TIME, THE DEFENSE WILL
18 WITHDRAW IT'S OBJECTIONS

19 THE COURT OKAY ALL RIGHT ANY OTHER QUESTIONS?

20 MS WIYGUL NO, YOUR HONOR

21 THE COURT ALL RIGHT ANY REDIRECT?

22 REDIRECT EXAMINATION BY MS HODGE

23 Q JUST FOR CLARIFICATION, INVESTIGATOR SMITH, IS THERE
24 ANYTHING IN YOUR FILE THAT YOU HAVE KNOWLEDGE OF THAT HAS
25 ANYTHING THAT SAYS THE DEFENDANT HIT HIS HAND WITH A HAMMER?

JAMES BROCK - DIRECT EXAMINATION BY MS WIYGUL

517

1 A NONE

2 Q THANK YOU THAT'S ALL

3 THE COURT ALL RIGHT YOU CAN STEP DOWN THANK YOU
4 VERY MUCH ALL RIGHT

5 MS HODGE YOUR HONOR, THE STATE WOULD REST

6 THE COURT OKAY

7 MS WIYGUL DEFENSE WOULD MOVE FOR A DIRECTED VERDICT
8 ON THE BASIS THAT NO RELIABLE EVIDENCE TIES MR SARRATT TO
9 THE CHARGES

10 THE COURT ALL RIGHT THAT IS DENIED OKAY

11 MS WIYGUL THANK YOU

12 THE COURT Y'ALL READY?

13 MS WIYGUL YES, YOUR HONOR

14 THE COURT OKAY CALL YOUR WITNESS

15 MS WIYGUL DEFENSE CALLS JAMES BROCK

16 JAMES BROCK, BEING DULY

17 SWORN TESTIFIED AS FOLLOWS

18 MADAME CLERK STATE YOUR NAME FOR THE RECORD, PLEASE

19 MR BROCK. JAMES CARL BROCK

20 MADAME CLERK THANK YOU BE SEATED

21 DIRECT EXAMINATION BY MS WIYGUL

22 Q MR BROCK, WILL YOU PLEASE INTRODUCE YOURSELF TO THE
23 COURT?

24 A YES MY NAME IS JAMES CARL BROCK

25 Q AND HOW OLD ARE YOU, SIR?

JAMES BROCK - DIRECT EXAMINATION BY MS WIYGUL

518

- 1 A I'M FORTY YEARS OLD
- 2 Q AND WHERE DO YOU LIVE?
- 3 A ON HIGHWAY 14 IN GREER
- 4 Q AND HOW MUCH ACREAGE DO YOU HAVE OUT THERE?
- 5 A ABOUT FIFTEEN ACRES
- 6 Q HOW DO YOU TAKE ADVANTAGE OF THAT ACREAGE?
- 7 A WE RIDE FOUR WHEELERS, MOTORCYCLES AND GO-CARTS
- 8 Q OKAY AND DO YOU KNOW MR SARRATT?
- 9 A YES THAT'S MY SECOND COUSIN
- 10 Q OKAY AND HAVE YOU HAD OCCASION TO HAVE HIM OVER TO
- 11 YOUR HOUSE?
- 12 A YES
- 13 Q AND DO YOU RECALL THE LAST TIME THAT YOU SAW MICHAEL
- 14 OUTSIDE OF COURT?
- 15 A YES, I DO
- 16 Q COULD YOU TELL US ABOUT IT?
- 17 A THE DAY BEFORE HE HAD BEEN AT MY HOUSE AND ASKED TO
- 18 RIDE MY FOUR WHEELER AND I TOLD HIM IT WAS TOO MUCH POWER,
- 19 HE DIDN'T NEED TO MESS WITH IT AND HE HEADED DOWN THROUGH
- 20 THE WOODS ON IT AND WHEN HE CAME BACK OUT HE FLIPPED IT
- 21 Q OKAY WHEN WAS THIS?
- 22 A IT WAS RIGHT BEFORE CHRISTMAS OF '04
- 23 Q DO YOU RECALL ABOUT HOW LONG BEFORE CHRISTMAS IT WAS?
- 24 A IT HAD TO HAVE BEEN AT LEAST TWO OR THREE WEEKS
- 25 BEFOREHAND

JAMES BROCK - DIRECT EXAMINATION BY MS WYUGUL

519

1 Q OKAY AND WHO WAS OUT AT YOUR HOUSE THAT DAY?

2 A IT WAS ME AND MY WIFE, MY KIDS, MICHAEL CAME OVER, A
3 WOMAN NAMED DEBRA DURHAM AND THAT'S ALL THAT WAS THERE
4 THAT DAY

5 Q OKAY

6 A BEST I RECALL

7 Q OKAY AND WHO WAS ON THE FOUR WHEELER?

8 A WHEN MICHAEL AND THEM PULLED UP I WAS

9 Q OKAY JUST WALK US THROUGH, TELL US ---

10 A AND WELL THEY ---

11 Q --- WHAT HAPPENED STEP BY STEP

12 A RIGHT THEY PULLED UP AND HE WAS ALL OVER IT, LET ME
13 RIDE, LET ME RIDE I WAS LIKE, MAN, THIS THING IS GOING TO
14 HURT YOU AND HE INSISTED TO RIDE IT AND I TOLD HIM YOU
15 GET IT ON YOUR OWN RECOGNIZANCE AND WHEN HE TOOK OFF HE
16 HEADED DOWN THROUGH THE TRAILS AND WHENEVER HE CAME BACK
17 OUT ABOUT FIVE MINUTES LATER WE HEARD A NOISE, LOOKED
18 AROUND, AND HE WAS ROLLING IT BACK OVER, GETTING BACK ON IT
19 AND HE'D FLIPPED IT IN THE LOWER FIELD

20 Q OKAY DID YOU OBSERVE ANY INJURIES?

21 A YEAH HE BROKE HIS HAND IN LIKE TWO OR THREE PLACES,
22 IF I'M NOT MISTAKEN, AND SKINT ONE OF HIS LEGS UP I CAN'T
23 REMEMBER EXACTLY WHICH ONE 'CAUSE IT TORE HIS BRITCHES

24 Q OKAY DID THE FOUR WHEELER ACTUALLY GO OVER ON TOP OF
25 MICHAEL?

JAMES BROCK - CROSS EXAMINATION BY MS HODGE

520

1 A OH, YES, MA'AM

2 Q OKAY WHAT HAPPENED THEN? DID Y'ALL GET HIM ANY
3 MEDICAL TREATMENT?

4 A NO ACTUALLY HE CAME BACK UP THERE AND I LAUGHED AT
5 HIM FOR ABOUT TEN MINUTES AND DEBRA TOOK HIM ON AND GOT
6 HIM SOME HELP

7 Q OKAY DO YOU ---

8 A 'CAUSE I TOLD HIM IF HE WRECKED IT I'D LAUGH AT HIM

9 Q DO YOU KNOW WHERE THE PLAN WAS TO TAKE HIM?

10 A THAT I DO NOT

11 Q OKAY I APPRECIATE YOU BEING HERE TODAY, SIR PLEASE
12 ANSWER ANY QUESTIONS MS HODGE HAS FOR YOU

13 CROSS EXAMINATION BY MS HODGE

14 Q SIR, YOU AREN'T A MEDICAL DOCTOR OR ANYTHING LIKE THAT,
15 IS THAT RIGHT?

16 A NO NO, MA'AM, I'M NOT

17 Q SO WHEN YOU SAY THAT HE BROKE HIS HAND IN A COUPLE OF
18 PLACES YOU DON'T REALLY KNOW THAT, DO YOU?

19 A WELL, HE CAME BACK THE NEXT DAY AND IT WAS IN A CAST

20 Q OKAY SO IT WAS IN A CAST, BUT YOU DON'T KNOW ---

21 A YEAH, ---

22 Q --- TECHNICALLY ---

23 A A LITTLE SHORT CAST ABOUT THAT LONG

24 Q A HARD CAST OR A SOFT CAST?

25 A I BELIEVE IT WAS A SOFT CAST IT WAS LIKE -- AND THEN

JAMES BROCK - CROSS EXAMINATION BY MS HODGE

521

1 IT WAS WRAPPED

2 Q LIKE WITH AN ACE BANDAGE AROUND IT?

3 A RIGHT IT HAD LIKE A HARD, LIKE A HALF CAST, IF I'M
4 NOT MISTAKEN, THEN WRAPPED

5 Q OKAY

6 A IF I'M NOT MISTAKEN BUT THAT'S BEEN A COUPLE OF YEARS
7 AGO SO

8 Q RIGHT AND YOU'RE TALKING ABOUT -- YOU DON'T KNOW WHAT
9 -- WHAT YEAR ARE WE TALKING ABOUT? DO YOU KNOW THAT?

10 A IT WAS THE END OF '04

11 Q OKAY

12 A 'CAUSE WE JUST HAD BOUGHT NEW GO-CARTS, MOTORCYCLES AND
13 EVERYTHING FOR THAT CHRISTMAS

14 Q OKAY SO IT WAS AROUND THE END OF 2004, SOMETIME THE
15 BEGINNING OF DECEMBER YOU DON'T HAVE ANY PERSONAL
16 KNOWLEDGE OF WHERE MICHAEL WAS ON NOVEMBER THE 30TH OF 2004,
17 DO YOU?

18 A NO, MA'AM NOT THAT I CAN, I MEAN, ---

19 Q YOU DON'T KNOW IF HE HURT HIS HAND ON NOVEMBER 30TH OF
20 2004 ---

21 A WELL, LIKE I SAID, I DON'T KNOW THE EXACT DATE I JUST
22 KNOW THAT HE DID DO THE DAMAGE ON MY FOUR WHEELER IT WAS
23 ON A 300 POLARIS

24 Q RIGHT BUT YOU'RE SAYING THIS HAPPENED IN DECEMBER,
25 CORRECT?

DALE GAINES - DIRECT EXAMINATION BY MS WIYGUL

522

1 A WELL, I CAN'T SPECIFY THE DATE IS WHAT I'M SAYING I
2 JUST KNOW IT WAS AROUND RIGHT BEFORE CHRISTMAS

3 Q ALL RIGHT OKAY DO YOU -- DID YOU KNOW MICHAEL WELL
4 OR SPEND A LOT OF TIME AROUND MICHAEL?

5 A NOT A WHOLE LOT DURING HIS LIFETIME, NO HE CAME AND
6 WENT, YOU KNOW LIKE I SAY, HE'S FAMILY IT AIN'T LIKE WE
7 ACTUALLY HUNG OUT TOGETHER SOMETIMES HE'D COME STAY, YOU
8 KNOW, FOR A FEW HOURS AND THEN LEAVE, YOU KNOW BUT, NO,
9 I'VE NEVER HAD ANY TROUBLE OUT OF HIM AT MY HOUSE

10 Q OKAY DID YOU EVER KNOW HIM TO CARRY A KNIFE?

11 A YEAH

12 Q THANK YOU

13 THE COURT ALL RIGHT ANYTHING ON REDIRECT?

14 MS WIYGUL NO THANK YOU, MR BROCK

15 THE COURT THANK YOU YOU CAN STEP DOWN

16 MS. WIYGUL YOUR HONOR, MAY MR BROCK BE EXCUSED?

17 MS HODGE NO OBJECTION

18 THE COURT ALL RIGHT HE'S RELEASED FROM SUBPOENA

19 MS WIYGUL DEFENSE CALLS MS DALE GAINES

20 DALE GAINES, BEING

21 DULY SWORN TESTIFIED AS FOLLOWS

22 MADAME CLERK STATE YOUR NAME FOR THE RECORD, PLEASE

23 MS. GAINES DALE GAINES

24 MADAME CLERK THANK YOU BE SEATED

25 MR FRETWELL YOUR HONOR, MAY IT PLEASE THE COURT?

DALE GAINES - DIRECT EXAMINATION BY MS WIYGUL

523

1 WITH RESPECT TO ANY EVIDENCE, I KNOW MS GAINES, ANY MEDICAL
2 RECORDS THAT SHE HAS THE STATE WOULD BE HAPPY TO STIPULATE
3 TO WHATEVER SHE'S GOING TO TESTIFY TO AS FAR AS MEDICAL
4 RECORDS

5 THE COURT WELL, I DON'T KNOW WHAT SHE'S GOING TO
6 TESTIFY TO GO AHEAD, MS WIYGUL

7 DIRECT EXAMINATION BY MS WIYGUL

8 Q MS GAINES, COULD YOU INTRODUCE YOURSELF TO THE COURT?
9 JUST TELL US WHERE YOU WORK AND WHAT YOUR JOB IS

10 A DALE GAINES, MEDICAL INFORMATION, GREENVILLE MEMORIAL
11 HOSPITAL

12 Q AND ARE YOU THE CUSTODIAN OF RECORDS OVER THERE?

13 A YES

14 Q AND DID I ASK YOU TO BRING SOME RECORDS WITH YOU TODAY?

15 A YES, YOU DID

16 Q AND COULD YOU JUST BRIEFLY TELL US WHAT THOSE ARE?

17 A EMERGENCY ROOM VISIT FROM 12/5/04

18 Q AND WHO ARE THOSE PERTAINING TO?

19 A MICHAEL ANTHONY SARRATT

20 Q AND YOU SAID THAT WAS FROM DECEMBER 5TH, ---

21 A YES

22 Q --- 2004?

23 A YES

24 MS WIYGUL AT THIS TIME THE DEFENSE WOULD MOVE THAT
25 THESE RECORDS BE ENTERED AS DEFENSE EXHIBIT 8? DEFENSE

LARRY ATKINS - DIRECT EXAMINATION BY MS WIYGUL

524

1 EXHIBIT 8

2 MR FRETWELL WITHOUT OBJECTION

3 THE COURT ALL RIGHT THAT'S WITHOUT OBJECTION

4 (WHEREUPON DEFENDANT'S EXHIBIT 8 WAS MARKED AND ENTERED
5 INTO EVIDENCE)

6 Q THANK YOU, MS GAINES PLEASE ANSWER ANY QUESTIONS MS
7 HODGE HAS FOR YOU

8 MR FRETWELL NO QUESTIONS, YOUR HONOR

9 THE COURT ALL RIGHT THANK YOU, MA'AM CAN WE
10 RELEASE HER FROM SUBPOENA?

11 MR FRETWELL NO OBJECTION

12 MS WIYGUL YES, YOUR HONOR

13 THE COURT ALL RIGHT THANK YOU

14 MS WIYGUL DEFENSE WOULD CALL LARRY ATKINS

15 LARRY ATKINS, BEING DULY
16 SWORN TESTIFIED AS FOLLOWS

17 MADAME CLERK STATE YOUR NAME FOR THE RECORD, PLEASE,
18 SIR

19 MR ATKINS LARRY ATKINS

20 MADAME CLERK THANK YOU BE SEATED

21 DIRECT EXAMINATION BY MS WIYGUL

22 Q HI, MR ATKINS CAN YOU PLEASE INTRODUCE YOURSELF TO
23 THE COURT?

24 A MY NAME IS LARRY ATKINS, PASTOR OF CATHEDRAL OF FAITH
25 BAPTIST FELLOWSHIP IN MARIETTA AND PUBLISHER OF THE MOUNTAIN

LARRY ATKINS - DIRECT EXAMINATION BY MS WIYGUL

525

1 MONITOR NEWSPAPER

2 Q OKAY AND WHERE IS THAT?

3 A TRAVELERS REST

4 Q WHAT ROAD IS IT ON?

5 A ARE YOU SPEAKING OF THE NEWSPAPER OR THE CHURCH?

6 Q OH, I DID NOT REALIZE THEY WERE IN SEPARATE LOCATIONS,

7 SIR

8 A YES

9 Q WHERE IS THE CHURCH LOCATED?

10 A AT THE INTERSECTION OF GARRETT HIGHWAY AND TALLEY

11 BRIDGE ROAD

12 Q OKAY AND DID YOU HAVE AN OPPORTUNITY TO KNOW

13 SOMETHING ABOUT THE DEATH OF MR DELLINGER?

14 A WHAT I HEARD THAT EVENING ---

15 Q AND I'M SORRY TO STOP YOU, MR ATKINS WHERE WERE YOU

16 WHEN YOU HEARD THIS AND ABOUT WHAT TIME IT WAS AND WHAT DAY?

17 A I WAS AT OUR CHURCH IN THE LOWER LEVEL OF OUR CHURCH

18 AND IT'S ACROSS THE DRIVEWAY THAT GOES INTO THE BACK PARKING

19 AREA IT'S ALMOST PARALLEL WITH THE DRIVEWAY THAT WENT INTO

20 MR DELLINGER'S HOUSE

21 Q OKAY

22 A AND THAT -- I WAS INSIDE AND I HEARD A BANGING

23 Q OKAY AND WHEN WAS THIS?

24 A THIS WAS APPROXIMATELY, I'M NOT POSITIVE, BUT SOMEWHERE

25 AROUND SEVEN, SEVEN PM

LARRY ATKINS - DIRECT EXAMINATION BY MS WIYGUL

526

1 Q DO YOU KNOW IF IT WAS DARK OUTSIDE?

2 A YES, MA'AM, IT WAS

3 Q OKAY AND DO YOU KNOW WHAT DATE THAT WAS?

4 A THAT WAS JANUARY THE 4TH, I BELIEVE

5 Q OKAY WAS IT -- DO YOU REMEMBER WHAT DAY OF THE WEEK
6 IT WAS?

7 A SUNDAY

8 Q WAS IT SUNDAY?

9 A SUNDAY EVENING

10 Q WAS IT SUNDAY EVENING OR WAS IT THE DAY THAT MR
11 DELLINGER WAS KILLED?

12 A IT WAS THE NIGHT BEFORE

13 Q OKAY AND WHAT DID YOU HEAR?

14 A I HEARD SOME BANGING WE WERE ACCUSTOMED TO CARS GOING
15 IN AND OUT OF THE APARTMENT THERE BEFORE MR DELLINGER AND
16 HIS WIFE RENTED THE APARTMENT WE COULD HEAR THE DOORS AND
17 THEY COULD HEAR, I'M SURE, THE DOORS CLOSE AT THE CHURCH IN
18 THE BACK PARKING AREA BUT THIS WAS NOT DOOR CLOSING IT
19 WAS MORE LIKE A BANG I BELIEVE I HEARD THREE TIMES

20 Q UM-HUM (AFFIRMATIVE)

21 A AND IT GOT MY ATTENTION AND I WENT TO THE EXIT DOOR,
22 WHICH IS THE GLASS RUNS FROM THE FLOOR TO THE CEILING

23 Q UM-HUM (AFFIRMATIVE)

24 A AND I LOOKED IN THAT DIRECTION AND THERE WAS A PICKUP
25 TRUCK IN THE YARD AND ANOTHER VEHICLE AND THERE WAS AN

LARRY ATKINS - DIRECT EXAMINATION BY MS WIYGUL

527

1 IMAGE OF A MAN NEAREST THE TRUCK AND THERE WAS SOMEONE
2 BEHIND HIM THAT I COULDN'T TELL WHERE IT WAS A MAN OR A
3 WOMAN IN THE DARK

4 AND THE TRUCK THEN PROCEEDED TO LEAVE THE DRIVEWAY AND
5 TURN TOWARDS SLATER, THE VILLAGE OF SLATER IT WENT DOWN TO
6 THE SECOND DRIVEWAY AND TURNED AROUND AND WHEN IT CAME
7 BACK AND APPROACHED THE APARTMENT WHERE MR DELLINGER AND
8 HIS WIFE LIVED IT SLOWED DOWN AND CUT ITS LIGHTS COMPLETELY
9 OFF THREE TIMES AND BACK ON

10 Q KIND OF FLASHING THEM?

11 A NO, MA'AM, TURNED THEM COMPLETELY OFF

12 Q OKAY

13 A AND IT WOULD -- I WENT TO -- UP THE STEPS THROUGH THE
14 HALL AT THE FELLOWSHIP HALL AND THERE I HAD ANOTHER VIEW OF
15 FULL LENGTH FLOOR TO CEILING OF THE INTERSECTION OF HIGHWAY
16 276 AND TALLEY BRIDGE ROAD AND THE PICKUP TRUCK TURNED
17 RIGHT, WHICH WOULD BE GOING NORTH TOWARD CLEVELAND AND AT
18 THAT TIME I JUST TURNED TO MY RIGHT AND WALKED -- STARTED
19 DOWN THE HALL OF THE EDUCATIONAL PART AND THE NEXT THING I
20 HEARD THE NEXT MORNING WAS WHAT HAD HAPPENED, THAT THEY'D
21 FOUND MR DELLINGER

22 Q SO THIS WAS THE NIGHT BEFORE YOU HEARD ABOUT MR
23 DELLINGER?

24 A YES, MA'AM YES, MA'AM

25 Q OKAY ALL RIGHT AND DID YOU HAVE -- DID YOU KEEP

LARRY ATKINS - DIRECT EXAMINATION BY MS WIYGUL

528

1 THIS INFORMATION TO YOURSELF?

2 A NO, MA'AM THE NEXT MORNING I CALLED THE GREENVILLE
3 COUNTY SHERIFF'S DEPARTMENT, EXCUSE ME, SHERIFF'S
4 DEPARTMENT I FELT IT WAS MY OBLIGATION TO NOTIFY THEM OF
5 WHAT I HAD HEARD AND I DID SO

6 Q DID YOU LEAVE THEM YOUR NAME?

7 A YES, MA'AM

8 Q YOUR PHONE NUMBER?

9 A YES, MA'AM

10 Q DID YOU JUST LEAVE THEM YOUR WORK NUMBER?

11 A YES, MA'AM

12 Q OKAY AND DID YOU HEAR BACK FROM THEM?

13 A NO, MA'AM

14 Q DID YOU DISSEMINATE THIS INFORMATION IN ANY OTHER WAY?

15 YOU SAID YOU RUN A NEWSPAPER

16 A OUR EDITOR, ROGER JEWEL, TOOK THE STORY AND
17 INVESTIGATED THE STORY, WHICH WAS RELATING TO THE READERS
18 WHAT THE SHERIFF'S DEPARTMENT HAD SAID AND PEOPLE IN -- I
19 THINK IT WAS TWO DIFFERENT INDIVIDUALS IN THE COMMUNITY THAT
20 MAYBE FOUND THE BODY AND THEN WENT TO THE MOUNTAIN GIFT SHOP
21 ---

22 MS HODGE YOUR HONOR, I'M GOING TO OBJECT THIS IS
23 ALL HEARSAY HE'S TALKING ABOUT SOMEONE PUBLISHED SOMETHING
24 IN HIS PAPER AND RECITED THE STORY

25 THE COURT YEAH, YOU CAN'T TALK ABOUT WHAT SOMEBODY

LARRY ATKINS - DIRECT EXAMINATION BY MS WIYGUL

529

1 ELSE SAID

2 A ALL RIGHT, SIR

3 THE COURT OKAY I'LL SUSTAIN IT

4 A THANK YOU, YOUR HONOR

5 Q IS THIS YOUR PAPER, SIR?

6 A YES, MA'AM

7 Q AND WHAT'S THE NAME OF IT?

8 A IT'S THE TRAVELERS REST MONITOR

9 Q AND WHAT'S THE DATE THAT THIS STORY WAS RUN?

10 A I MAY HAVE TO GET MY ---

11 Q HAVING A PROBLEM?

12 A --- BIFOCALS OUT

13 Q IT PRINTED OUT SMALL

14 A YES, MA'AM THIS IS TWENTY-FIVE PERCENT OF THE PAGE

15 THAT'S WEDNESDAY, JANUARY THE 12TH, WEDNESDAY, JANUARY THE

16 12TH, 2005

17 Q AND DID THAT ARTICLE ACCURATELY PUBLISH WHAT YOU ---

18 MS HODGE- OBJECTION, YOUR HONOR

19 Q --- HAD REPORTED HEARING?

20 MS HODGE THE CONTENTS OF THIS ARTICLE IS ALL

21 HEARSAY

22 MS WIYGUL YOUR HONOR, I'M SIMPLY ASKING IF THE

23 ARTICLE ACCURATELY REFLECTED WHAT HE HAD REPORTED I'M NOT

24 ASKING ABOUT ANYTHING ELSE ---

25 THE COURT. ALL RIGHT I'LL LET HER ASK THAT QUESTION

LARRY ATKINS - CROSS EXAMINATION BY MS HODGE

530

1 GO AHEAD

2 Q YOU DON'T HAVE TO READ IT JUST LOOK THROUGH IT DOES

3 IT -- IS THAT WHAT YOU JUST TOLD US ---

4 A YES

5 Q --- THAT YOU HEARD?

6 A THAT'S -- I WAS QUOTED IN THE PAPER WHAT I JUST SHARED

7 WITH YOU

8 Q AND THAT WAS MONDAY NIGHT THAT YOU SAW THIS AND HEARD

9 ALL THIS GOING ON, RIGHT?

10 A YES, MA'AM

11 Q AND YOU CALLED THE POLICE?

12 A YES, MA'AM

13 Q AND NOBODY EVER CALLED YOU BACK?

14 A NO, MA'AM

15 Q NOW DO YOU KNOW MICHAEL SARRATT?

16 A NO, MA'AM

17 Q DO YOU EVEN RECOGNIZE HIM?

18 A NO, MA'AM

19 Q DID YOU KNOW ANY OF THE PEOPLE INVOLVED IN THIS CASE?

20 A I KNEW MR DELLINGER AND HIS WIFE AND THEY'RE

21 RESIDENTS OF THE COMMUNITY NEAR OUR CHURCH

22 Q OKAY I APPRECIATE IT, MR ATKINS PLEASE ANSWER ANY

23 QUESTIONS MS HODGE HAS FOR YOU

24 CROSS EXAMINATION BY MS HODGE

25 Q MR ATKINS, YOU SAW A TRUCK

LARRY AIKINS - CROSS EXAMINATION BY MS HODGE

531

1 A YES

2 Q AND YOU SAW IT NEAR MR DELLINGER'S RESIDENCE

3 A IT WAS IN THE DRIVEWAY

4 Q AND IT WAS -- HAD WHAT YOU THOUGHT TO BE A MAN AND
5 WEREN'T SURE ABOUT SOMETHING ELSE

6 A YES

7 Q OKAY AND THEN THE TRUCK WENT AROUND, TURNED AND WENT
8 OUT TOWARDS 276 TOWARD CLEVELAND

9 A YES IT CAME OUT OF THE, EXCUSE ME, CAME OUT OF THE
10 DRIVEWAY AND TURNED ONTO TALLEY BRIDGE ROAD TOWARD THE
11 VILLAGE OF SLATER AND WENT APPROXIMATELY A HUNDRED YARDS AND
12 TURNED AROUND AND THEN CAME BACK AND AS IT APPROACHED THE
13 HOUSE OR THE APARTMENT IT FLIPPED ITS LIGHTS OFF AND ON,
14 COMPLETELY OFF AND ON THREE TIMES

15 Q ALL RIGHT AND THEN IT WENT UP TOWARDS 276 AND TOOK A
16 RIGHT ---

17 A YES

18 Q BUT YOU DON'T KNOW WHERE IT WENT AFTER THAT?

19 A NO, MA'AM NO, MA'AM

20 Q AND WHEN YOU WERE LOOKING OUT AND SEEING THIS GOING ON
21 AT MR DELLINGER'S HOUSE WAS MR DELLINGER'S CAR THERE?

22 A THERE WAS ANOTHER CAR THERE

23 Q DO YOU KNOW WHAT KIND?

24 A I DON'T KNOW IT WAS DARK AND I COULDN'T ACCURATELY
25 DESCRIBE OR IDENTIFY THE OTHER VEHICLE BUT I ASSUMED IT

LARRY ATKINS - CROSS EXAMINATION BY MS HODGE

532

1 WAS HIS CAR

2 Q WE CAN'T GO ON ASSUMPTIONS DO YOU KNOW FOR SURE ---

3 A NO, MA'AM

4 Q --- IF IT WAS HIS CAR?

5 A NO, MA'AM NO, MA'AM

6 Q AND YOU HAVE NO IDEA WHO THE PEOPLE DRIVING THIS TRUCK
7 WERE?

8 A NO, MA'AM IT WAS DARK I COULDN'T ---

9 Q COULDN'T SEE?

10 A --- IDENTIFY THEM

11 Q THANK YOU

12 MS WIYGUL I HAVE NO FURTHER QUESTIONS

13 THE COURT ALL RIGHT THANK YOU, SIR YOU CAN STEP
14 DOWN

15 MS WIYGUL MAY MR ATKINS BE EXCUSED?

16 THE COURT ANY OBJECTION?

17 MS HODGE NO OBJECTION

18 THE COURT ALL RIGHT THANK YOU YOU'RE FREE TO GO,
19 SIR THANK YOU VERY MUCH ALL RIGHT

20 MS WIYGUL DEFENSE RESTS, YOUR HONOR

21 THE COURT ALL RIGHT LET ME SEE Y'ALL UP HERE A
22 SECOND

23 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
24 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

25 THE COURT ALL RIGHT, LADIES AND GENTLEMEN, AT THIS

1 TIME WE'VE GOT TO TALK ABOUT SOME LEGAL ISSUES OUT OF YOUR
2 PRESENCE SO I'M GOING TO EXCUSE YOU TO YOUR JURY ROOM
3 THANK YOU VERY MUCH PLEASE DON'T DISCUSS THE CASE

4 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2 37 PM)

5 THE COURT ALL RIGHT ANY -- I UNDERSTAND -- WELL,
6 ANY MOTIONS AT THIS TIME?

7 MS WIYGUL WE WOULD RENEW OUR MOTION FOR A DIRECTED
8 VERDICT, YOUR HONOR

9 THE COURT ALL RIGHT SAME RULING DOES THE STATE
10 HAVE ANY REPLY?

11 MS HODGE NO, YOUR HONOR

12 THE COURT. ALL RIGHT LET'S TALK ABOUT WHAT WE'RE
13 GOING TO CHARGE THE JURY Y'ALL HAVE ANY SPECIAL REQUESTS?

14 MS WIYGUL NONE FROM THE DEFENSE, YOUR HONOR

15 THE COURT ALL RIGHT

16 MS HODGE WHAT'S YOUR REASONABLE DOUBT CHARGE, YOUR
17 HONOR, THE WORDING?

18 THE COURT REASONABLE DOUBT IS THE KIND OF DOUBT WHICH
19 WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT IT MAY
20 ARISE FROM THE EVIDENCE IN A CASE OR FROM THE LACK OR
21 ABSENCE OF EVIDENCE IN THE CASE THE JURY MUST DETERMINE
22 WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT THE
23 STATE HAS THE BURDEN OF PROVING EACH AND EVERY ELEMENT
24 BEYOND A REASONABLE DOUBT ANY REASONABLE DOUBT YOU HAVE
25 SHOULD BE RESOLVED IN FAVOR OF THE DEFENDANT

1 MS HODGE DO YOU SAY -- DO YOU MAKE ANY MENTION OF
2 THE -- WHERE THERE'S NOTHING THAT WE KNOW WITH ONE HUNDRED
3 PERCENT CERTAINTY?

4 THE COURT THAT'S MY CHARGE

5 MS HODGE OH, OKAY

6 THE COURT THAT'S IT

7 MS HODGE ALL RIGHT

8 THE COURT ALL RIGHT GOT THE USUAL DUTIES OF THE
9 JUDGE AND JURY, CHARGE ARREST INDICTMENT IS NOT EVIDENCE,
10 MULTIPLE CHARGES, CREDIBILITY OF THE WITNESSES DO YOU WANT
11 A CHARGE ON EXPERT WITNESSES?

12 MS WIYGUL WE'LL LEAVE THAT UP TO THE COURT, YOUR
13 HONOR

14 MS HODGE WE HAVE NO OPINION ON THAT

15 THE COURT ALL RIGHT DO YOU WANT A CHARGE AS TO --
16 WELL, FIRST LET ME ASK MR SARRATT, YOU'VE DECIDED NOT TO
17 TESTIFY IN THIS CASE, IS THAT RIGHT?

18 MR SARRATT YES, SIR

19 THE COURT ALL RIGHT ANY QUESTIONS YOU HAVE THAT YOU
20 WANT TO ASK ME ABOUT THAT?

21 MR SARRATT NO, SIR

22 THE COURT AND ARE YOU FIRMLY CONVINCED THAT THIS IS
23 WHAT YOU WANT TO DO?

24 MR SARRATT YES, SIR

25 THE COURT IS IT YOUR DECISION?

1 MR. SARRATT YES, SIR

2 THE COURT DID ANYBODY FORCE YOU IN ANY WAY TO COME TO
3 THAT DECISION?

4 MR SARRATT NO, SIR

5 THE COURT ALL RIGHT AND DO YOU HAVE ANY OTHER
6 QUESTIONS YOU NEED TO ASK YOUR ATTORNEY OR ME WITH RESPECT
7 TO THAT?

8 MR SARRATT NO, SIR

9 THE COURT. ALL RIGHT VERY GOOD THANK YOU DO YOU
10 WANT A CHARGE ON FAILURE OF THE DEFENDANT TO TESTIFY?

11 MS WIYGUL YES, YOUR HONOR WE'D APPRECIATE THAT

12 THE COURT ALL RIGHT PRESUMPTION OF INNOCENCE,
13 REASONABLE DOUBT, MURDER, CAR-JACKING, AND POSSESSION OF A
14 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME ALL RIGHT
15 WHY DON'T I GIVE Y'ALL TEN MINUTES, FIFTEEN MINUTES TO GET
16 YOUR THOUGHTS TOGETHER

17 MS WIYGUL: THANK YOU, YOUR HONOR

18 THE COURT OKAY

19 (WHEREUPON COURT WAS IN RECESS AT 2 41 PM)

20 THE COURT GOT A PROPOSED VERDICT FORM CAROLINE,
21 WOULD YOU LET THE ATTORNEYS LOOK AT THAT

22 (PAUSE)

23 THE COURT OKAY? ALL RIGHT HOW LONG ARE Y'ALL GOING
24 TO ARGUE? TWENTY MINUTES?

25 MS WIYGUL YOUR HONOR, I HAVE NO IDEA

1 THE COURT OKAY WELL, I DO YOU THINK YOU NEED MORE
2 THAN TWENTY MINUTES?

3 MS WIYGUL I THINK IT'LL PROBABLY TAKE MORE THAN
4 TWENTY MINUTES

5 THE COURT WHAT, TWENTY-FIVE?

6 MS WIYGUL YOUR HONOR, I DON'T KNOW I WOULD TEND TO
7 SAY ABOUT THIRTY, BUT I JUST DON'T KNOW

8 THE COURT HOW ABOUT YOU ALL?

9 MS HODGE I THINK TWENTY I CAN DO IT IN TWENTY

10 THE COURT OKAY ALL RIGHT YOU START TO DRAG ON I
11 MAY START TAPPING THE PEN OKAY

12 MS WIYGUL I'LL KEEP AN EAR OUT, YOUR HONOR

13 THE COURT ALL RIGHT ANYTHING ELSE BEFORE WE BRING
14 THE JURY?

15 MS HODGE NO, SIR

16 MS WIYGUL NO, SIR

17 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3 00 PM)

18 THE COURT ALL RIGHT, LADIES AND GENTLEMEN OF THE
19 JURY, THANK Y'ALL FOR YOUR PATIENCE IF YOU REMEMBER MONDAY
20 WHEN I SPOKE TO YOU I TOLD YOU I WOULD GIVE YOU A ROAD MAP
21 TO TELL YOU WHERE WE WERE SO WE'D KEEP TRACK OF WHERE WE
22 WERE GOING WE DID -- THE FIRST PART WAS OPENING
23 STATEMENTS WE DID THAT MONDAY MORNING OR MONDAY -- MONDAY
24 WE DID IT

25 THEN WE DONE -- THE SECOND PART WAS THE PRESENTATION OF

CLOSING ARGUMENTS - MS WIYGUL

537

1 THE TESTIMONY AND THE EVIDENCE AND I WANT TO TELL YOU THAT
2 WE HAVE FINISHED PART TWO SO ALL OF THE TESTIMONY AND ALL
3 OF THE EVIDENCE THAT YOU WILL HAVE TO CONSIDER WHEN YOU
4 BEGIN YOUR DELIBERATIONS HAS NOW BEEN INTRODUCED SO WE'VE
5 FINISHED THAT PART OF THE TRIAL

6 THE NEXT PART, WE'RE GOING TO START RIGHT NOW AND
7 THAT IS THE ARGUMENTS OF THE ATTORNEYS AFTER THAT I WILL
8 GIVE YOU A -- MY CHARGE ON THE LAW, WHAT THE LAW IS AS IT
9 APPLIES TO THIS CASE AND AFTER THAT YOU ALL WILL BE FREE
10 TO BEGIN YOUR DELIBERATIONS BACK IN THE JURY ROOM

11 SO Y'ALL HAVE PAID CLOSE ATTENTION THROUGHOUT THE
12 COURSE OF THIS TRIAL YOU'VE BEEN GREAT JURORS WE
13 APPRECIATE THAT AND I WANT YOU TO PLEASE CONTINUE TO PAY
14 CLOSE ATTENTION TO THE ARGUMENTS OF THESE FINE ATTORNEYS
15 THANK YOU MS WIYGUL

16 MS WIYGUL THANK YOU, YOUR HONOR I WOULD SECOND
17 JUDGE MILLER'S APPRECIATION FOR YOUR CLOSE ATTENTION DURING
18 THIS CASE IT'S IMPORTANT

19 WE LIVE IN A WORLD OF ILLUSION TODAY THAT'S WHAT
20 MODERN LIFE'S ABOUT WE SEE IT ON TV, WE SEE IT ON THE
21 INTERNET, WE SEE IT IN DAILY LIFE WE SEE PEOPLE OUT THERE
22 DRIVING THESE FANCY CARS AND WEARING REALLY NICE CLOTHES
23 AND WE THINK, WOW, THEY'VE GOT MONEY, THEY'RE SUCCESSFUL
24 BUT THEY MIGHT BE LIVING OFF OF CREDIT CARDS WHAT THAT
25 TELLS YOU ABOUT THAT PERSON IS THAT OTHER PEOPLE THINKING

CLOSING ARGUMENTS - MS WIYGUL

538

1 THEY'RE SUCCESSFUL IS IMPORTANT TO THEM BECAUSE THAT'S THEIR
2 MOTIVATION

3 WOMEN IN TODAY'S WORLD OFTEN PRESENT ILLUSIONS WE USE
4 HIGH HEELS TO MAKE OUR LEGS LOOK LONGER THAT'S AN
5 ILLUSION WE USE MAKEUP TO TRY AND HIDE THE WRINKLES
6 WE'LL GET HAIR COLOR TO TRY AND HIDE THE GRAY IF
7 APPEARANCE IS VERY IMPORTANT NOW, WE HAVE PLASTIC SURGERY
8 WE CAN MAINTAIN THAT ILLUSION OF YOUTH THAT'S THE WORLD WE
9 LIVE IN

10 BUT ILLUSION, DECEPTION, MISDIRECTION, IT HAS NO PLACE
11 IN THE JUSTICE SYSTEM IT HAS NO PLACE IN THIS COURTROOM
12 AS JURORS IT'S YOUR JOB TO DECIDE WHAT THE FACTS ARE AND
13 TO BE ABLE TO DECIDE THAT YOU HAVE THE RIGHT TO HAVE ALL THE
14 INFORMATION THAT WE CAN GIVE YOU NOT TO HIDE IT NOT TO
15 TRY AND MAKE YOU LOOK OVER HERE WHILE THE IMPORTANT STUFF'S
16 OVER THERE NOT TO MAKE IT LOOK LIKE SOMETHING IT'S NOT
17 JUST TO LAY OUT WHAT WE HAVE SO THAT YOU CAN DECIDE THE
18 FACTS

19 I ASKED YOU AT THE BEGINNING OF THIS CASE NOT JUST TO
20 LISTEN TO WHAT PEOPLE WERE SAYING BUT TO LISTEN TO WHY THEY
21 WERE SAYING IT TO LISTEN FOR THEIR MOTIVATION

22 SO LET'S TALK ABOUT WHAT WE'VE HEARD THE LAST FEW DAYS
23 THE FIRST PERSON THAT WE HEARD FROM WAS MS DELLINGER MS
24 DELLINGER, HER MOTIVATION IS THAT SHE WOULD LIKE TO KNOW WHO
25 TOOK AWAY HER HUSBAND OF THIRTY-FOUR YEARS THAT'S HER

CLOSING ARGUMENTS - MS WIYGUL

539

1 MOTIVATION SHE DOESN'T CARE WHO IT WAS BUT YOU CAN BE
2 SURE THAT SHE WANTS THE RIGHT PERSON PUNISHED FOR IT

3 SHE TOLD YOU THAT THEIR CAR WAS NOT DAMAGED, THAT IT
4 STARTED WITH A KEY SHE TOLD YOU THAT THE POLICE GAVE HER
5 THE CAR BACK SOMETIME LAST YEAR AND THEY CLEANED IT BEFORE
6 THEY GAVE IT BACK TO HER SHE WAS ABLE TO SELL IT

7 SHE TOLD YOU THAT SHE WAS NOTIFIED OF HIS DEATH ON
8 TUESDAY HE'D GONE MISSING ON MONDAY NIGHT THAT'S WHAT
9 MS DELLINGER TOLD YOU AND HER MOTIVATION IS TO MAKE SURE
10 THE RIGHT PERSON IS PUNISHED

11 THEN WE HEARD FROM AMANDA INMAN AMANDA INMAN, WHEN IT
12 COMES RIGHT DOWN TO IT, SHE TOLD YOU THAT SHE SAW MICHAEL
13 SARRATT LEAVE IN THE CAR WITH PEGGY SHE DIDN'T SEE HIM GET
14 OUT OF THAT CAR SHE COULDN'T LOOK AT THE PICTURES LOOK
15 AT THE POSITIONING OF THESE HOUSES AND THE TREES

16 SHE TOLD YOU WHAT SHE SAW SHE SAW PEGGY HURRYING
17 MICHAEL UP THEY'D JUST BOUGHT TWO HUNDRED DOLLARS WORTH OF
18 GROCERIES MICHAEL'S TRYING TO GET THEM WHAT DID PEGGY
19 SAY? FUCK THE GROCERIES LET'S GET OUT OF HERE SHE
20 WANTED TO LEAVE AND AMANDA TOLD YOU WHAT SHE HEARD

21 AMANDA ALSO TOLD YOU THAT PEGGY WAS USING AN ALIAS WHEN
22 SHE GOT THERE SHE ALSO TOLD YOU THAT SHE DIDN'T SEE ANY
23 BLOOD ON MICHAEL NONE

24 THEN WE HEARD FROM WILLIAM JO PHILLIPS WILLIAM JO
25 PHILLIPS, HE BACKED UP AMANDA, AS MUCH AS HE COULD HE TOLD

CLOSING ARGUMENTS - MS. WIYGUL

540

1 YOU HE WAS ALREADY OUTSIDE WHEN THE CAR CAME PULLING UP, BUT
2 HE STILL DIDN'T SEE WHO GOT OUT OF THE CAR HE COULDN'T SEE
3 THAT HE TOLD YOU HE SAW MICHAEL LEAVE WITH PEGGY IN THE
4 CAR THAT'S ALL HE COULD SAY

5 HE TOLD YOU A BUNCH OF STUFF ABOUT KIND OF THIS AND
6 THAT BUT WHEN IT COMES RIGHT DOWN TO IT, WHEN IT COMES
7 DOWN TO PROVING THE ELEMENTS OF THE CRIMES THAT MR SARRATT
8 IS CHARGED WITH, HE TOLD YOU HE DIDN'T SEE MICHAEL GET OUT
9 OF THE CAR HE SAW HIM LEAVE IN THE CAR HE ALSO TOLD YOU
10 HE DOESN'T DRIVE HE ADMITTED THAT HE GOT A FAILURE TO STOP
11 FOR POLICE, BUT HE DOESN'T DRIVE

12 WE HEARD FROM ANNA McDANIEL, WHO WAS DATING MICHAEL'S
13 COUSIN WHAT WERE HER MOTIVATIONS? I THINK THEY WERE
14 PRETTY OBVIOUS AND YET STILL WHAT SHE COULD SAY WAS THAT
15 MICHAEL HAD LEFT HER SOME VOICEMAILS ON FEBRUARY OR ON
16 JANUARY 3RD, 2005 HE WAS KIND OF FREAKED OUT HE WAS
17 GETTING ANGRY

18 Y'ALL HEARD THE TAPES Y'ALL WILL HAVE THEM BACK
19 THERE YOU CAN LISTEN TO THEM AGAIN HE WAS ANGRY HE WAS
20 GETTING IRRITATED WITH PEGGY HE WAS TIRED OF WALKING ALL
21 OVER TOWN HE WANTED TO GO BACK TO THE TRAILER

22 AND THEN WE HEARD FROM PEGGY, PEGGY GLADFELTER LET'S
23 TALK ABOUT HER MOTIVATIONS SHE WAS CHARGED THE SAME AS
24 MICHAEL WAS CHARGED SHE WAS CHARGED WITH MURDER SHE WAS
25 CHARGED WITH CAR-JACKING SHE WAS CHARGED WITH POSSESSION

CLOSING ARGUMENTS - MS WIYGUL

541

1 OF A WEAPON DURING A VIOLENT CRIME SHE WAS CHARGED WITH
2 CONSPIRACY

3 THAT'S A LOT OF TIME, LADIES AND GENTLEMEN SHE PLED
4 TO ACCESSORY AFTER THE FACT TO A FELONY SHE COULD WALK OUT
5 OF HERE IF SHE TESTIFIED GOOD ENOUGH TO SATISFY THE STATE
6 THAT'S A PRETTY GOOD MOTIVATION

7 SHE TOLD YOU SHE WAS MARRIED TO THOMAS GLADFELTER SHE
8 MET MICHAEL ON NOVEMBER 9TH OF 2004, LESS THAN TWO MONTHS
9 BEFORE ALL THIS HAPPENED SHE TOLD YOU THAT SHE JUST WANTS,
10 YOU KNOW, SHE'S JUST TELLING THE TRUTH SHE DOESN'T EXPECT
11 ANYTHING FROM THE STATE FOR HER TESTIMONY THAT'S WHAT SHE
12 TOLD YOU AND THAT'S WHAT HER ILLUSION IS BUT LOOK AT THE
13 MOTIVATION BEHIND IT

14 THERE'S A LOT OF PICTURES IN EVIDENCE A VERY BIG DEAL
15 WAS MADE ABOUT HOW MICHAEL'S USING HIS RIGHT HAND BUT I
16 URGE YOU, TAKE A REALLY CLOSE LOOK AT THOSE PICTURES LOOK
17 AT THE POSITIONING OF MICHAEL'S HAND LOOK AT HIS
18 HANDWRITING ON THIS NOTE LOOK AT HOW HE'S OPENING THE
19 CHRISTMAS PRESENTS WITH HIS TEETH

20 BECAUSE SHE COULDN'T CHANGE WHAT THE PICTURES SHOW, SHE
21 COULD ONLY PUT HER SPIN ON IT SHE COULD ONLY PROVIDE WHAT
22 SHE'D LIKE YOU TO SEE IN THOSE PICTURES YOU HAVE YOUR OWN
23 EYES YOU DON'T HAVE TO USE PEGGY'S EYES OR THE STATE'S
24 EYES TO KNOW WHAT YOU'RE LOOKING AT

25 PEGGY ADMITTED MR DELLINGER'S CAR WOULDN'T START

CLOSING ARGUMENTS - MS WIYGUL

542

1 WITHOUT A SCREWDRIVER SHE KNEW THAT CAR SHE GAVE YOU A
2 DESCRIPTION OF WHAT MR DELLINGER WAS WEARING THAT NIGHT
3 SHE KNEW WHAT HE WAS WEARING

4 SHE GAVE YOU A VERY DRAMATIC DESCRIPTION OF WHAT SHE
5 SAYS SHE SAW WHILE SHE SAT IN THE BACK OF THE CAR AND
6 WATCHED SAID SHE SCREAMED SHE DIDN'T RUN SHE DIDN'T
7 RUN THEN SHE DIDN'T RUN ALL THE WAY DOWN TO ARIZONA SHE
8 DIDN'T RUN WHEN THEY GOT TO ARIZONA

9 SHE DIDN'T RUN UNTIL SHE WAS ARRESTED AND THEN SHE
10 RAN STRAIGHT TO THE STATE 'CAUSE IT'S THEIR TURN TO TAKE
11 CARE OF HER, SOUTH CAROLINA'S PENNSYLVANIA'S HAD ITS TURN

12 LET'S TALK ABOUT WHAT WE KNOW ABOUT MICHAEL SARRATT
13 WE KNOW THAT HE SOMEHOW MANAGED TO AVOID ARREST BEFORE ALL
14 THIS WE KNOW THAT HE SOMEHOW MANAGED TO GET HIM AND PEGGY
15 A PLACE TO STAY WHEN HE GOT PICKED UP AT HIS GIRLFRIEND'S
16 HOUSE, HIS OLD GIRLFRIEND WE KNOW THAT HE GOT THEM UP TO
17 PENNSYLVANIA WE KNOW THAT HE GOT THEM BACK TO SOUTH
18 CAROLINA AND WE KNOW THAT HE DID ALL OF THIS WITHOUT
19 HURTING 'ANYBODY

20 HE MUST BE A PRETTY PERSUASIVE GUY DOESN'T SOUND LIKE
21 HE HAD TO RESORT TO VIOLENCE TO GET MONEY, TO GET A PLACE TO
22 STAY, TO GET FOOD, TO GET WHAT HE WANTED SOUNDS LIKE HE
23 WAS PRETTY GOOD AT PUTTING ON THAT ILLUSION TOO SOUNDS
24 LIKE HE KNEW HOW TO DO IT WITHOUT CAUSING PHYSICAL HARM TO
25 OTHERS

CLOSING ARGUMENTS - MS WIYGUL

543

1 BUT THE STATE WANTS YOU TO BELIEVE THAT HAVING GONE TO
2 PENNSYLVANIA, HAVING TAKEN A GREYHOUND BUS THROUGH AT LEAST
3 TWO STOPS IN DIFFERENT STATES ALL OF A SUDDEN HE JUST HAD TO
4 GET OUT OF SOUTH CAROLINA AND IT WAS SO IMPORTANT HE JUST
5 WENT AND KILLED A STRANGER

6 WE KNOW HE'D ALREADY GOTTEN ONE CAR FROM JOBO
7 EVERYBODY ADMITS THAT JOBO HAD ACCESS TO CARS THEY MIGHT
8 NOT START WITH A KEY, BUT THEY DRIVE FOR A WHILE BUT THE
9 STATE WANTS YOU TO BELIEVE THAT INSTEAD OF TAKING THE EASY
10 WAY OF GETTING A CAR THAT MR SARRATT WAS WILLING TO KILL
11 SOMEONE FOR A VEHICLE

12 BACK TO PEGGY PEGGY TOLD YOU THAT SHE SHOWED THE
13 INVESTIGATOR WHERE MICHAEL THREW AWAY THIS EVIDENCE
14 SMOKING GUN PEGGY DOESN'T KNOW THE AREA REAL WELL WE'VE
15 HEARD TESTIMONY MICHAEL GREW UP IN THIS AREA

16 PEGGY TOOK INVESTIGATOR SMITH TO A LITTLE SHALLOW
17 CREEK INVESTIGATOR SMITH KNOWS HIS JOB, LADIES AND
18 GENTLEMEN YOU CAN BE SURE, AS HE TOLD YOU, HE SEARCHED
19 THAT AREA THEY WENT SO FAR AS TO GET THE K-9s OUT THERE
20 THEY DIDN'T FIND ANYTHING

21 PEGGY GOT A SANDWICH AND GOT TO SMOKE IT MIGHT NOT
22 SOUND LIKE A LOT, BUT YOU CAN'T SMOKE AT THE DETENTION
23 CENTER YOU CAN'T SMOKE IN JAIL

24 PEGGY TOLD YOU THAT JOBO, WILLIAM JO PHILLIPS, WAS
25 USING MICHAEL'S TRUCK TO DO RUNS ON JANUARY 3RD OF 2005

CLOSING ARGUMENTS - MS WIYGUL

544

1 PEGGY TOLD YOU OR MAYBE PEGGY DIDN'T TELL YOU MAYBE PEGGY
2 DENIED IT SEVERAL PEOPLE TOLD YOU THAT MICHAEL AND PEGGY
3 HAD GIVEN JOBO TWO HUNDRED DOLLARS FOR SOME KIND OF DRUGS OR
4 SOME KIND OF DRUG DEAL AND THEY TRIED TO KEEP THE MONEY
5 AND HE WAS DRIVING AROUND IN THE TRUCK WHILE HE WAS DOING
6 THESE RUNS REMEMBER JOBO TOLD YOU, HE DOESN'T DRIVE
7 EVERYONE AGREES THAT AT SOME POINT PEGGY AND MICHAEL
8 WERE AT THE FOODSHOP PEGGY TOLD YOU SHE WENT IN THERE,
9 LET'S SEE, SHE SAID SHE BOUGHT -- SAID SHE WAS INSIDE THE
10 STORE BUYING CIGARETTES WHILE MICHAEL WAS LEAVING THESE
11 MESSAGES FOR ANNA SHE WAS IN THE STORE BUYING CIGARETTES
12 NOW THE SOLICITOR OR THE STATE, THE INVESTIGATORS, THEY
13 GOT THE VIDEOS FROM THAT FOODSHOP THEY GOT THE VIDEO BUT
14 ALL THIS VIDEO SHOWS IS PEGGY BY HERSELF WALKING IN THE
15 DOOR, LOOKING AROUND, TURNING AROUND AND WALKING OUT
16 YOU HEARD INVESTIGATOR SMITH TESTIFY ABOUT THIS SHE'D
17 ALREADY GOTTEN HER CIGARETTES MICHAEL HAD ALREADY LEFT
18 HER SHE TOLD YOU MICHAEL WAS GETTING ANGRY SHE TOLD YOU
19 THEIR RELATIONSHIP WAS GOOD UNTIL THEY GOT BACK FROM
20 PENNSYLVANIA
21 MR MCABEE TOLD YOU YOU CAN BE SURE HIS MOTIVATION UP
22 THERE TODAY, IT WAS NOT TO HELP MICHAEL BUT HE TOLD YOU
23 MICHAEL TOLD HIM, HE GOT MAD AT PEGGY, HE SLAPPED HER HE
24 GOT A RIDE WITH SOMEBODY, AND HE WENT BACK TO THE HOUSE AND
25 LAID DOWN THE NEXT THING HE KNEW SHE WAS THERE WITH THIS

CLOSING ARGUMENTS - MS WIYGUL

545

1 CAR THAT DIDN'T START WITH A KEY JUST LIKE THE LAST ONE THEY
2 GOT FROM JOBO

3 YOU'VE HEARD THAT A RIVER RUNS RIGHT NEXT TO [REDACTED]
4 [REDACTED] ROAD, RIGHT ACROSS THE STREET FROM WHERE MR
5 DELLINGER'S BODY WAS FOUND MICHAEL KNEW THIS AREA WHY
6 WOULD HE GO ALL THE WAY OUT TO HIGHWAY 11 TO TOSS THIS STUFF
7 OVER A BRIDGE INTO A VERY SHALLOW CREEK WHEN THERE'S A RIVER
8 RIGHT THERE? THESE ARE THINGS YOU NEED TO ASK YOURSELF
9 BECAUSE THESE ARE THE THINGS THAT ARE GOING TO MAKE IT
10 EASIER TO SEE THROUGH THE ILLUSION

11 WILLIAM JO PHILLIPS ALSO CORROBORATED THE STEERING
12 COLUMN IN THIS CAR WAS BROKEN HOW DID HE KNOW IT? HE SAYS
13 HE SAW IT IT WAS TOO DARK TO SEE ANY BLOOD ON MICHAEL, BUT
14 HE COULD SEE THAT STEERING COLUMN

15 KEEP IN MIND, YOU KNOW, THE LIGHT DIDN'T CHANGE IN
16 THIRTY SECONDS EITHER THERE WERE STREET LIGHTS AROUND ,
17 THESE HOUSES AND YOU COULD SEE EVERYTHING THAT WAS GOING ON
18 OR THERE WEREN'T NOW THE CHOICE HAS TO BE MADE IN YOUR OWN
19 MINDS TO MAKE THIS TESTIMONY MESH

20 NOW AMANDA TOLD YOU SHE COULD SEE REALLY GOOD 'CAUSE
21 THERE WERE STREET LIGHTS RIGHT THERE UNTIL I ASKED HER ABOUT
22 THE BLOOD ON MICHAEL AND WHETHER SHE SAW HIM AT WHICH POINT
23 THE LIGHTING WASN'T THAT GOOD COULDN'T REALLY TELL SHE
24 DOESN'T THINK SHE SAW HIM

25 AMANDA TOLD YOU MICHAEL HAD A CAST ON HIS HAND AND

CLOSING ARGUMENTS - MS WIYGUL

546

1 SHE TOLD YOU JOBO DOESN'T DRIVE, LICENSE SUSPENDED ANNA,
2 SHE ADMITTED THAT MICHAEL SAID SOMETHING ABOUT SOMEONE OWED
3 HIM SOME MONEY, AND HE WANTED IT

4 THESE X-RAYS, THEY'RE NOT MADE UP THINGS THEY'RE X-
5 RAYS MICHAEL SARRATT CAN'T GO AND MAKE HIS OWN X-RAYS
6 THEY CAME FROM A HOSPITAL PEGGY GLADFELTER MIGHT BE GOOD
7 AT MANIPULATING PEOPLE SHE MIGHT BE GOOD AT PUTTING ON
8 THIS ILLUSION, BUT SHE'S NOT GOING TO FOOL DOCTORS IN THE
9 ER THEY SEE PEOPLE

10 AND ACTUALLY WE HEARD TESTIMONY, PEGGY DIDN'T EVEN GO
11 WITH MICHAEL TO THE HOSPITAL DEBRA WENT WITH HIM DOWN IN
12 GREENVILLE SHE TOOK HIM THE NEXT DAY 'CAUSE SHE'D SEEN HIM
13 HAVE THAT FOUR WHEELER ACCIDENT

14 KEEP IN MIND, PEGGY ALREADY HAD A WARRANT OUT ALSO
15 SHE WAS RUNNING SHE WAS RUNNING WHEN SHE GOT HERE SHE
16 WAS A DRUG USER SHE FAILED A URINE TEST SHE'D BEEN ON
17 PROBATION BUT SHE DIDN'T WANT TO GO TO JAIL SHE DOESN'T
18 LIKE JAIL AND NOW SHE'S SHOWING YOU JUST HOW FAR SHE'LL GO
19 TO STAY OUT OF JAIL

20 SHE TOLD YOU THAT WHEN SHE WAS IN THE BACK OF THAT CAR
21 WATCHING MR DELLINGER BE KILLED SHE NEVER EVEN LEANED UP
22 AGAINST THE WINDOW SHE JUST HELD PERFECTLY STILL AND
23 SCREAMED

24 PEGGY'S BIBLE, PEGGY WANTS YOU TO BELIEVE THAT IN THIS
25 HURRIED, HURRIED RUSH TO GET THE CAR LOADED UP THAT MICHAEL

CLOSING ARGUMENTS - MS WIYGUL

547

1 TOOK THE TIME TO GO TO A CLOSET AND PLACE HER BIBLE UP IN A
2 SHELF

3 LADIES AND GENTLEMEN, YOU HAVE TO ASK YOURSELF DOES
4 WHAT THESE PEOPLE ARE SAYING MAKE SENSE? DOES IT ALL MESH
5 TOGETHER? OR IF YOU START PICKING AT IT IS IT JUST AN
6 ILLUSION? BECAUSE PEOPLE WHO ARE KEEPING UP ILLUSIONS,
7 THEY'LL MESS UP THEY'LL MAKE SLIPS AND IN THIS COURTROOM
8 IT'S YOUR JOB TO CATCH THOSE SLIPS, TO SEE THEM, TO PULL
9 THAT THREAD AND TO SEE WHAT'S UNDER THERE WHEN YOU UNRAVEL
10 THE ILLUSION

11 PEGGY TOLD YOU MICHAEL HAD A BUNCH OF KNIVES SHE TOLD
12 YOU MICHAEL HAD THIS KNIFE HE WAS MESSING WITH RIGHT BEFORE
13 HE STABBED MR DELLINGER SHE WOULDN'T GO SO FAR AS TO
14 SPECIFY WHICH KNIFE SHE SAID THAT MICHAEL USED 'CAUSE SHE
15 KNEW HE HAD SEVERAL SO SHE WANTED TO LEAVE HER OPTIONS
16 OPEN

17 BUT IF YOU WANT TO TALK ABOUT MOTIVATION, TALK ABOUT
18 ROBIN TAYLOR HER MOTIVATION, TO DO A GOOD JOB THAT'S THE
19 ONLY MOTIVATION SOMEONE LIKE HER NEEDS AND SHE DID A GOOD
20 JOB AND SHE TOLD YOU THERE IS NOT ANY IDENTIFIABLE BLOOD
21 ON THE KNIVES THAT WERE TAKEN FROM MICHAEL NONE

22 NOBODY IN THIS WHOLE CASE EXCEPT FOR DR CHRISTENSEN
23 MENTIONED THAT MR DELLINGER HAD AN EMPTY KNIFE POUCH WHEN
24 HE WAS FOUND WHERE'S HIS KNIFE? DID ANYBODY LOOK? WE
25 DON'T KNOW WE DON'T HAVE THOSE PIECES OF EVIDENCE

CLOSING ARGUMENTS - MS WIYGUL

548

1 PEGGY TESTIFIED THAT MICHAEL HAD BLOOD ALL OVER HIM,
2 HAD IT ON HIS FACE, HAD IT ON HIS SHOES PEGGY'S THE ONE
3 THAT GOT RID OF HER SHOES, NOT MICHAEL PEGGY THREW HER
4 SHOES AWAY SOMEWHERE BETWEEN HERE AND ARIZONA 'CAUSE THEY
5 WEREN'T COMFORTABLE ASK YOURSELVES WHAT MAKES SENSE
6 AT SOME POINT BETWEEN HERE AND ARIZONA AFTER THE CAR
7 BROKE DOWN MICHAEL TOOK BACK OVER AS THE PROVIDER AND WHAT
8 HAPPENED THEN? HE TALKED A TRUCK DRIVER INTO GIVING THEM A
9 RIDE ACROSS THE STATE AND THEN GIVING THEM TWENTY BUCKS TO
10 GET SOMETHING TO EAT HE DIDN'T HURT THE TRUCK DRIVER
11 HE'S JUST SO PERSONABLE AND LIKEABLE HE JUST KNOWS
12 HOW TO WORK PEOPLE THERE'S NOTHING WRONG WITH THAT
13 THAT'S THE WAY SOME PEOPLE ARE HE DIDN'T HURT THE TRUCK
14 DRIVER HE DIDN'T LAY IN WAIT AT THE REST AREA, STEEL
15 ANOTHER CAR NO
16 HE JUST FOUND A GOOD OLD BOY HE TURNED ON THE CHARM
17 HE GOT THEM A RIDE HE GOT THEM DINNER HE GOT THEM
18 ANOTHER RIDE HE GOT THEM A BUS RIDE HE GOT THEM A STAY
19 IN A CHURCH HE GOT THEM A STAY IN A HOTEL HE GOT THEM A
20 STAY IN THE SALVATION ARMY AND WHEN HE COULDN'T FIND
21 ANYBODY ELSE TO TALK OUT OF MONEY HE WENT AND WORKED DAY
22 LABOR IN CONSTRUCTION
23 LADIES AND GENTLEMEN, THAT'S NOT SOMETHING THAT
24 SOMEBODY DOES THAT WANTS TO TAKE THE EASY WAY, EASY WAY OUT
25 IT'S NOT SOMETHING THAT SOMEONE DOES THAT'S WILLING TO KILL

CLOSING ARGUMENTS - MS WIYGUL

549

1 A STRANGER FOR THEIR CAR ASK YOURSELVES, THEY'RE IN
2 ARIZONA NOBODY KNOWS THEM IF HE WAS THIS KIND OF PERSON
3 WOULDN'T IT HAVE BEEN EASIER JUST TO KILL SOMEBODY ELSE AND
4 TAKE THEIR CAR?

5 BECAUSE QUITE FRANKLY, A PERSON THAT COULD DO SOMETHING
6 LIKE THIS, DO YOU THINK THEY'D ONLY DO IT ONCE? DO YOU
7 THINK A PERSON THAT WOULD DO SOMETHING LIKE THAT WOULD GO
8 WORK DAY LABOR TO TRY AND SUPPORT THIS WOMAN WHO'S BEEN
9 GETTING SUPPORTED BY THE STATE OF PENNSYLVANIA? AND THEN
10 SHE GOT, ONE ASSUMES, SUPPORTED BY HER HUSBAND

11 AND THEN SHE CAUGHT A BREAK AND GOT PROBATION, BUT SHE
12 MESSED THAT UP SO SHE CAME DOWN HERE AND LET HER BROTHER
13 TAKE CARE OF HER AND FOUND MICHAEL AND LET HIM TAKE CARE OF
14 HER TILL HE GOT SICK OF IT AND THEN WHAT DID SHE DO?
15 MICHAEL, WE'VE GOT TO RUN WE'VE GOT TO RUN WE'VE GOT TO
16 LEAVE SOUTH CAROLINA GOT TO LEAVE ALL YOUR FAMILY

17 PEGGY TOLD YOU IT WAS STARTING TO GET DARK THIS IS
18 JANUARY THE 3RD, LADIES AND GENTLEMEN, IN SOUTH CAROLINA
19 AT 7 00, IT'S DARK IT'S NOT STARTING TO GET DARK IF IT
20 WAS STARTING TO GET DARK IT COULDN'T HAVE BEEN LATER THAN
21 FIVE THAT'S JUST -- THAT'S THE WEATHER IT DOESN'T GET
22 TRICKED BY ILLUSIONS IT JUST IS

23 PEGGY TOLD YOU MICHAEL HAD NEVER HAD A FOUR WHEELER
24 ACCIDENT SHE TOLD YOU SHE WAS SCARED OF HIM SHE ALSO
25 ADMITTED SHE KEPT WRITING HIM EVEN AFTER THEY WERE OVER

CLOSING ARGUMENTS - MS WIYGUL

550

1 THERE AT THE DETENTION CENTER SHE KEPT WRITING HIM AND
2 WRITING HIM SHE GOT MAD 'CAUSE HE WAS WRITING TO DEBRA
3 AGAIN 'CAUSE DEBRA WAS ON HIS VISITOR LIST PEGGY DIDN'T
4 LIKE THAT

5 SHE TALKED TO HIM THROUGH THOSE DUCTS ISN'T THAT A
6 COMFORTING THOUGHT? SHE TALKED TO HIM THROUGH THOSE DUCTS
7 AND DANIEL McABEE, HE WAS IN THE SAME DETENTION CENTER DID
8 HE TALK TO PEGGY THROUGH THE DUCTS? WE DON'T KNOW DID HE
9 TALK TO KIZZIE BRIDGEMAN? WE DON'T KNOW

10 WE HEARD FROM SERGEANT DAW SHAW, DAR, DAR SHAW, WHO WAS
11 WITH GREENVILLE COUNTY FORENSICS HE TOLD YOU HE COLLECTED
12 EVERYTHING HE COULD FIND FROM THAT CAR HE COLLECTED THE
13 THREE SPOTS OF BLOOD FROM THE CAR AND FROM ONE OF THE INGLES
14 BAGS

15 NOW, LADIES AND GENTLEMEN, BEAR WITH ME ONE MOMENT
16 WHILE I LOOK THROUGH THIS PHOTO Y'ALL WILL HAVE ALL OF
17 THIS BACK THERE WITH YOU I'M NOT GOING TO POINT OUT ANY --
18 TOO MANY THINGS IN PARTICULAR BUT I WANT TO ASK YOU
19 SOMETHING I WANT YOU TO KEEP IT IN MIND WHILE YOU'RE BACK
20 THERE LOOKING DOES THIS LOOK LIKE A CAR THAT SOMEONE
21 SCRUBBED DOWN WITH KEROSENE? KEEP THAT IN MIND

22 YOU HEARD DR CHRISTENSEN TESTIFY ABOUT HOW MUCH BLOOD
23 WOULD HAVE BEEN INVOLVED IN THIS MURDER IT WAS GRAPHIC
24 IT WASN'T -- IT WASN'T PRETTY AND IT WASN'T CLEAN

25 HE WAS TAKING ASPIRIN I KNOW MYSELF HOW QUICK THAT'LL

CLOSING ARGUMENTS - MS WIYGUL

551

1 MAKE YOU -- HOW MUCH MORE THAT'LL MAKE YOU BLEED Y'ALL
2 KNOW THAT IT'S COMMON SENSE AND YOU HEARD DR
3 CHRISTENSEN SAY IF SOMEONE'S THROAT WERE CUT IN A SMALL
4 CONFINED SPACE THERE WOULD BE BLOOD ON EVERYTHING THESE
5 ARE CLOTH SEATS, REMEMBER?

6 ASSISTANT SOLICITOR HODGE CORRECTED SERGEANT SHAW,
7 REMINDED HIM, NO, THESE AREN'T VINYL ARE YOU SURE? YOU
8 WANT TO TAKE ANOTHER LOOK AT THIS? THEY'RE CLOTH YOU
9 CAN'T CLEAN BLOOD OUT OF CLOTH WITH KEROSENE IT'S NOT THAT
10 EASY

11 SERGEANT SHAW DID A GOOD JOB HE WORKED WITH WHAT HE
12 HAD THAT'S ALL THEY CAN DO, IS COLLECT ALL THE EVIDENCE
13 THAT THEY CAN FIND HE TOLD YOU HE WENT BACK OUT TO THE
14 SITE TO [REDACTED] ROAD WHERE MR DELLINGER'S BODY WAS
15 FOUND AND COLLECTED A SOIL SAMPLE

16 THE SITE HADN'T BEEN PROTECTED NO CRIME TAPE AROUND
17 IT, NOTHING NOT AFTER THE BODY WAS REMOVED I DON'T KNOW
18 WHY I DON'T UNDERSTAND EXACTLY WHAT STEPS ARE INVOLVED IN
19 AN INVESTIGATION IT DOESN'T MAKE ANY SENSE AT ALL TO ME
20 BE THAT AS IT MAY THE SOIL WAS COLLECTED FROM THE SCENE
21 AND MR DELLINGER'S BLOOD WAS FOUND IN THE SOIL THAT'S
22 ALL

23 A BIG DEAL WAS MADE ABOUT ALL THESE CD CASES Y'ALL
24 WILL HAVE THEM THEY WERE IN THE CAR PEGGY AND MICHAEL
25 HAD THE CAR THAT'S NOT THE QUESTION THE QUESTION IS WHO

CLOSING ARGUMENTS - MS WIYGUL

552

1 GOT THE CAR AND HOW DID THEY GET IT? WHAT DID THEY DO FOR
2 IT? NOT WHETHER THEY WERE IN IT

3 WE HEARD TESTIMONY THAT A PAIR OF BOOTS WAS FOUND ON
4 THE BACK FLOORBOARD OF THE CAR NO BLOOD WAS FOUND ON THEM
5 ONE SPOT ON THE ARMREST, TWO SPOTS ON THE RUNNING BOARD, ONE
6 SPOT ON AN INGLES BAG LADIES AND GENTLEMEN, IT'S JUST NOT
7 ENOUGH BLOOD

8 SERGEANT SHAW RAN THE CAR FOR PRINTS, GOT PRINTS OFF OF
9 EVERY AVAILABLE SURFACE WHOSE DID HE FIND? KIZZIE
10 BRIDGEMAN WHERE'S KIZZIE BRIDGEMAN? WE DIDN'T HEAR FROM
11 HER WE DON'T KNOW WHAT SHE HAS TO SAY WE DON'T KNOW WHAT
12 SHE HAS TO DO WITH THIS

13 WE KNOW THAT SHE WAS EITHER MR DELLINGER'S DAUGHTER-
14 IN-LAW OR WAS DATING HIS SON THAT'S ALL WE KNOW ABOUT HER
15 EXCEPT THAT HER PRINTS WERE FOUND IN THE CAR AND SHE WAS IN
16 JAIL WITH PEGGY WHO WAS AT THE DETENTION CENTER SELLING
17 DRUGS AT THE DETENTION CENTER LADIES AND GENTLEMEN, YOU'VE
18 GOT TO LOOK AT THOSE MOTIVATIONS

19 WE HEARD FROM KARA BENNICK, MIKE FORTNER, SEVERAL
20 PEOPLE OVER A VERY DRAWN OUT PERIOD OF TIME BECAUSE THESE
21 INVESTIGATORS ARE THOROUGH THEY WANT TO DO A GOOD JOB
22 THEY WANT TO FIND THE RIGHT PEOPLE THEY WANT TO MAKE SURE
23 THE RIGHT PEOPLE GET PUNISHED NOT THE WRONG ONES

24 SO WHAT DID THEY DO? THEY WENT THROUGH METICULOUS
25 STEPS THEY SIGNED THESE THINGS BACK AND FORTH AND SEALED

CLOSING ARGUMENTS - MS WIYGUL

553

1 THEM SIDWAYS TO MAKE SURE THAT IT WAS GOOD EVIDENCE AND
2 IT IS

3 AND WHAT DOES IT SHOW? NOTHING WELL, IT DOES IT
4 SHOWS THAT NONE OF MICHAEL'S KNIVES WERE USED TO KILL MR
5 DELLINGER THAT'S WHAT IT SHOWS THAT'S WHAT THE STATE
6 TOOK THREE QUARTERS OF A DAY TO TELL YOU NO BLOOD SOME
7 BLOOD NOT SURE IF IT WAS HUMAN BLOOD ON ONE KNIFE THAT'S
8 NOT ENOUGH NOT WITH THAT MUCH BLOOD NOT WITH ONE, TWO,
9 THREE, THIRTY-EIGHT STAB WOUNDS

10 INVESTIGATOR SMITH, WHO'S BEEN AT THIS A REALLY LONG
11 TIME, WHO ONLY HAS FORTY-NINE DAYS TO GO, HE TOLD YOU THAT
12 HE DIDN'T SEE SCUFF MARKS OR ANYTHING INDICATING A SCUFFLE
13 AROUND MR DELLINGER'S BODY HE KNOWS WHAT TO LOOK FOR HE
14 WORKS WITH WHAT HE HAS

15 OH, BUT WHAT DIDN'T HE HAVE? WELL, HE NEVER GOT THE
16 DNA REPORT THAT WAS ADDRESSED TO HIM 'CAUSE HE TOLD US HE
17 NEVER SAW IT HAD HIS NAME ON IT LOOK AT IT THEY MAILED
18 IT TO HIM AND THEY SENT A COPY TO THE SOLICITOR'S OFFICE
19 BUT HE NEVER GOT IT WOULD IT HAVE CHANGED THE DIRECTION OF
20 HIS INVESTIGATION? WE DON'T KNOW

21 INVESTIGATOR SMITH TOLD US THAT THERE WAS NO BLOOD
22 SPATTER AT THE SCENE WERE MR DELLINGER'S BODY WAS FOUND
23 DR CHRISTENSEN TOLD YOU WITH A CRIME THIS VICIOUS, WITH
24 ONE, TWO, THREE, THIRTY-EIGHT STAB WOUNDS YOU'RE GOING TO
25 HAVE A LOT OF BLOOD SPATTER A LOT IT'S NOT IN THE CAR

CLOSING ARGUMENTS - MS WIYGUL

554

1 IT'S NOT WHERE THE BODY WAS FOUND WHERE IS IT?

2 WE KNOW THERE WAS SOMETHING WEIRD GOING ON AT MR
3 DELLINGER'S HOUSE ON THE NIGHT THAT HE DISAPPEARED, THAT HE
4 WAS KILLED WHAT WAS IT? WE DON'T KNOW IT HAPPENED TWO
5 YEARS AGO THAT WAS ONE LEAD THAT DIDN'T GET FOLLOWED UP
6 IT HAPPENS THINGS SLIP THROUGH THE CRACKS

7 BUT YOU CAN'T LET MICHAEL SARRATT SLIP THROUGH THE
8 CRACKS JUST BECAUSE AN INVESTIGATION GOT MESSED UP, JUST
9 BECAUSE A LEAD WASN'T FOLLOWED, JUST BECAUSE A DNA REPORT
10 WASN'T SENT TO THE RIGHT PERSON THAT'S NOT THE WAY IT
11 WORKS

12 WE'VE HEARD THE STATE'S THEORY THAT MR DELLINGER WENT
13 TO INGLES AND WENT TO SPINX AND BOUGHT KEROSENE, BUT
14 COINCIDENTALLY THOSE WERE THE TWO TAPES THAT WEREN'T WORKING
15 THAT NIGHT SO WE DON'T KNOW

16 ROBIN TAYLOR EXPLAINED TO US WHAT MS BRYSON TOLD US
17 MS BRYSON TOLD US THAT ON SEVERAL ARTICLES THERE WAS THE
18 POSSIBILITY OF DNA AND FOR MS BRYSON'S PURPOSES THAT WAS
19 CONSIDERED A POSITIVE RESULT

20 THE WAY THAT AREA WORKS IS LIKE A FUNNEL MS BRYSON'S
21 UP HERE HER JOB IS TO PICK OUT ANYTHING THAT LOOKED LIKE
22 IT REMOTELY COULD POSSIBLY HAVE DNA ON IT AND THAT'S WHAT
23 SHE DID MS TAYLOR'S JOB IS TO NARROW THAT DOWN AND
24 SPECIFY WHAT'S THERE AND WHAT'S NOT THERE AND SHE TOLD
25 YOU, SHE TOLD YOU THAT'S THE JOB

CLOSING ARGUMENTS - MS WIYGUL

555

1 WHAT DID SHE SAY? I WROTE IT DOWN BECAUSE I LIKED THE
2 LANGUAGE SO MUCH SHE SAID THE WHOLE PURPOSE OF DNA TESTING
3 IS TO ESTABLISH WHETHER THERE'S A LINK AND SHE TOLD YOU
4 THERE'S NO LINK BETWEEN MICHAEL'S KNIVES AND MR DELLINGER
5 NO LINK SHE TOLD YOU SHE COULDN'T CONCLUDE IT WAS HUMAN
6 BLOOD ON THE KNIFE SHE FOUND

7 NOW, LADIES AND GENTLEMEN, I DON'T MEAN TO BE
8 STEREOTYPICAL, BUT I'VE LIVED IN SOUTH CAROLINA AND I KNOW
9 THAT AROUND HERE KNIVES CAN BE USED FOR OTHER THINGS
10 THEY'RE ACTUALLY USED FOR HUNTING I DIDN'T BELIEVE THAT
11 THE FIRST FEW YEARS I WAS HERE I HADN'T BEEN EXPOSED TO
12 IT BUT NOW I KNOW, PEOPLE HUNT AND PEOPLE THAT HUNT,
13 THEY CARRY KNIVES

14 DANIEL McABEE, WHAT DID HE TELL YOU? HE GREW UP WITH
15 MICHAEL DIDN'T HAVE ANY PROBLEM WITH HIM AT ALL BUT HE
16 ADMITTED TO MS HODGE THAT THEY'D HAD A FALLING OUT HE
17 DIDN'T GO INTO DETAILS HE'S JUST UP THERE OUT OF THE
18 GOODNESS OF HIS HEART BECAUSE HE DOESN'T THINK THAT MICHAEL
19 NEEDS TO BE ON THE STREET

20 WELL, LADIES AND GENTLEMEN, IF EVER THERE'S BEEN A CASE
21 OF SOMEONE LIVING IN A HOUSE OF GLASS AND THROWING STONES
22 THIS MAN IS SERVING A SENTENCE FOR TWO COUNTS OF CRIMINAL
23 DOMESTIC VIOLENCE, HIGH AND AGGRAVATED THIS MAN IS ALREADY
24 IN JAIL THIS MAN IS GETTING HIS REVENGE FOR WHATEVER THAT
25 FALLING OUT WAS ABOUT

CLOSING ARGUMENTS - MS WIYGUL

556

1 HE STILL MESSED THE FACTS UP THOUGH DID YOU CATCH
2 THAT? HE COULDN'T REMEMBER EXACTLY WHAT HE'D HEARD MAYBE
3 YOU CAN'T HEAR SO GOOD THROUGH THOSE DUCTS MAYBE HE WAS
4 CATCHING GLANCES AT LEGAL MATERIALS THAT HAD TO BE LEFT OUT
5 IN THE OPEN AND DIDN'T GET TO READ EVERYTHING

6 MAYBE -- 'CAUSE WE HEARD, HE WAS ON PROBATION FROM A
7 2005 OFFENSE SO THAT MEANS WE KNOW HE WASN'T IN JAIL
8 MAYBE HE SAW IT ON THE NEWS HE KNEW MICHAEL HE'D BEEN
9 INTERESTED HE WOULD HAVE LISTENED

10 AND YOU SAW HIS TESTIMONY YOU SAW HOW FRUSTRATING IT
11 WAS TO TRY AND PULL IT OUT OF HIM WHAT'S THE ONE TIME WHEN
12 HE JUST TRIPPED ALONG AND SAID SOMETHING? WHEN HE SAID THAT
13 MICHAEL TOLD HIM HE DIDN'T DO IT, THAT HE'D LOST HIS TEMPER
14 WITH PEGGY, THAT HE SLAPPED HER, THAT HE LEFT HER, GOT A
15 RIDE JUST LIKE HE'D GOTTEN A RIDE TWICE BEFORE TO JOBO'S
16 HOUSE, THAT HE LAID DOWN, THAT HE SLAMMED HIS OWN HAND WITH
17 A HAMMER IN PENNSYLVANIA SO THAT THEY COULD GO AND GET PAIN
18 PILLS LIKE PEGGY'S TAKING, LIKE SHE TOLD YOU LORTAB,
19 SOMETHING FOR DEPRESSION 'CAUSE, LADIES AND GENTLEMEN,
20 EXCUSE ME, THEY DON'T GIVE DISABILITY CHECKS FOR A LEARNING
21 DISABILITY IT DOESN'T WORK THAT WAY

22 OH, WHAT ELSE DID MR McABEE TELL US? WORD TRAVELS
23 THROUGH THE JAIL WORD TRAVELS THROUGH THE JAIL YEAH, IT
24 DOES THESE PEOPLE ARE BORED THEY TALK TO EACH OTHER
25 THEY APPARENTLY TALK TO EACH OTHER THROUGH THE DUCT-WORK

CLOSING ARGUMENTS - MS WIYGUL

557

1 WORD TRAVELS THROUGH THE JAIL NOT TOO MANY SECRETS IN
2 THERE

3 WE HEARD FROM DR ERIC CHRISTENSEN AGAIN, LET'S TALK
4 ABOUT MOTIVATION WHAT'S HIS MOTIVATION? IT'S THE EXACT
5 SAME AS DR -- AS MS TAYLOR'S IT'S THE EXACT SAME AS
6 INVESTIGATOR SMITH'S THEIR MOTIVATION IS TO DO THE BEST
7 JOB THEY CAN 'CAUSE PEOPLE DON'T GO INTO THOSE KIND OF LINES
8 OF WORK UNLESS THEY LOVE THEM, UNLESS THEY WANT TO DO A GOOD
9 JOB, UNLESS THEY WANT TO SEE A SCIENTIFIC, PROVABLE, CORRECT
10 RESULT AND WHAT DID HE TELL YOU? THERE WOULD HAVE BEEN A
11 LOT OF BLOOD A LOT OF IT

12 NO MATTER WHOSE STORY YOU BELIEVE, WHEN IT COMES DOWN
13 TO IT SOMEBODY KILLED MR DELLINGER AND WHOEVER DID IT,
14 THERE WOULD HAVE BEEN A LOT OF BLOOD LOOK AT THE PICTURES
15 OF THE CAR THINK OF SERGEANT SHAW'S TESTIMONY A LOT

16 TOLD YOU THAT THAT NECK WOUND, HE'D SEEN THEM WHERE THE
17 BLOOD WENT ALL THE WAY UP TO THE CEILING BECAUSE THAT'S AN
18 ARTERY I'M NOT SAYING THE EXACT TYPE OF ARTERY BECAUSE I'M
19 NOT A DOCTOR, AND I'LL SAY IT WRONG BUT YOU HEARD HIS
20 TESTIMONY

21 HE SAID THERE WERE DEFENSIVE WOUNDS THERE WERE THEY
22 TOOK NAIL CLIPPINGS THEY SENT THEM DOWN TO SLED FOR
23 TESTING THEY DIDN'T FIND ANY OF MR SARRATT'S DNA UNDER
24 THOSE NAILS

25 HE TOLD YOU HE COULDN'T TELL YOU HOW BIG THE PERSON

CLOSING ARGUMENTS - MS WIYGUL

558

1 THAT KILLED MR DELLINGER WAS HE TOLD YOU HE COULDN'T TELL
2 YOU HOW BIG THEY ARE, WHAT SEX THEY ARE, WHETHER THEY WERE
3 LEFT-HANDED OR RIGHT-HANDED HE DOESN'T KNOW IT COULD
4 HAVE BEEN A WOMAN WE DON'T LIKE TO THINK THAT, NOT IN THIS
5 DAY AND AGE NOT EVEN NOW THERE ARE SOME THINGS THAT JUST
6 WOMEN AREN'T SUPPOSED TO BE CAPABLE OF BUT THEY ARE IT'S
7 EQUALITY, LADIES AND GENTLEMEN YOU CAN'T JUST LOOK AT IT
8 AS FEMALE YOU HAVE TO LOOK AT MOTIVATION

9 DR CHRISTENSEN TOLD YOU THAT THE VICTIM, MR
10 DELLINGER, HE HAD A KNIFE POUCH THEY DID NOT FIND A KNIFE
11 HE'S THE ONLY ONE THAT MENTIONED THAT MISSING KNIFE WE
12 DON'T KNOW WHAT HAPPENED TO IT

13 WE HEARD JAMES BROCK, WHO TOLD YOU PEGGY LIED MICHAEL
14 DID HAVE A FOUR WHEELER ACCIDENT HE APPARENTLY HAD SUCH A
15 BAD FOUR WHEELER ACCIDENT HE HAD TO GO TO THE HOSPITAL, THAT
16 HE HAD TORN UP HIS LEG HIS LEG THE STATE WANTS YOU TO
17 LOOK AT THIS PICTURE THAT'S SOMEWHERE IN ALL THOSE PICTURES
18 OF A SCAR ON MR SARRATT'S LEG BECAUSE THERE'S NO WAY HE
19 COULD HAVE GOTTEN INJURED UNLESS HE SOMEHOW STABBED HIMSELF
20 EVEN THOUGH HIS BLOOD WAS NOT FOUND AT THE SCENE OR IN THE
21 CAR OR ANYWHERE

22 WELL, NO, THAT'S JUST NOT TRUE, LADIES AND GENTLEMEN
23 HE HAD A FOUR WHEELER ACCIDENT HE HAD IT HE WENT TO THE
24 HOSPITAL AND THOSE MEDICAL RECORDS YOU DO HAVE SO I
25 WOULD URGE YOU TO LOOK AT THEM WE HEARD FROM DALE GAINES

CLOSING ARGUMENTS - MS WIYGUL

559

1 WHO BROUGHT THOSE RECORDS

2 AND THEN WE HEARD FROM MR ATKINS WHO TRIED TO DO THE
3 RIGHT THING, WHO CALLED THE POLICE AND SAID, LISTEN, I HEARD
4 THIS WEIRD STUFF AT THIS PLACE AND THIS MAN WAS JUST KILLED
5 AND I SAW THIS ODD THING THAT I'VE NEVER SEEN BEFORE AND I
6 SAW THIS TRUCK AND IT WAS DOING THIS STRANGE THING, IT WAS
7 DRIVING BY AND IT WAS FLASHING LIGHTS, NOT FLASHING, TURNING
8 THEM ALL THE WAY OFF AND ALL THE WAY ON AGAIN

9 WELL, MR ATKINS HAS NO DOG IN THIS FIGHT HE WAS
10 SIMPLY TRYING TO DO THE RIGHT THING THAT WAS HIS
11 MOTIVATION BUT THE POLICE DIDN'T CALL HIM BACK THEY THEN
12 WROTE UP WHAT HE SAID IN THE LOCAL PAPER IN TRAVELERS REST
13 NOBODY EVER CALLED HIM SO WE DON'T KNOW WHO WAS IN THAT
14 TRUCK AND WE DON'T KNOW WHAT WAS GOING ON THERE THAT
15 NIGHT WE JUST DON'T KNOW

16 LADIES AND GENTLEMEN, MS HODGE IS GOING TO GET UP HERE
17 NEXT SHE'S GOING TO TELL YOU WHAT THE STATE WANTS YOU TO
18 BELIEVE JUST LIKE I'VE DONE FOR MR SARRATT 'CAUSE THAT'S
19 OUR JOBS BUT WHILE YOU'RE LISTENING TO HER YOU KEEP IN
20 MIND THAT YOU HAVE THE EVIDENCE AND YOU KEEP IN MIND WHAT'S
21 THE MOTIVATION IS IT TO STAY OUT OF JAIL? IS IT TO GET
22 REVENGE ON SOMEONE THAT PISSED YOU OFF WHEN YOU WERE A KID?
23 'CAUSE YOU'RE ALREADY IN JAIL, SO HE MAY AS WELL BE TOO IS
24 IT TO COVER UP SOMETHING YOU DID YOURSELF? WHAT'S THE
25 MOTIVATION?

CLOSING ARGUMENTS - MS HODGE

560

1 WE'RE CONFIDENT THAT AFTER YOU THINK ABOUT THOSE
2 MOTIVATIONS, AFTER YOU LOOK AT THE EVIDENCE AND SEE WHAT'S
3 THERE, AND AFTER YOU THINK ABOUT WHAT'S NOT THERE THAT
4 SHOULD BE THAT YOU'LL SEND MR SARRATT HOME, THAT YOU WON'T
5 LET HIM SLIP THROUGH THE CRACKS THANK YOU

6 THE COURT MS HODGE

7 MS HODGE THANK YOU, YOUR HONOR MAY IT PLEASE THE
8 COURT, LADIES AND GENTLEMEN OF THE JURY? IT'S ALMOST THAT
9 TIME FOR YOU TO DO THE JOB YOU'VE ACTUALLY BEEN SELECTED TO
10 DO AND THAT IS TO REACH A VERDICT IN THIS CASE

11 SO TO DO YOUR JOB YOU NEED TOOLS JUST LIKE EVERY OTHER
12 JOB AND YOU'RE GOING TO NEED THREE TOOLS TO REACH YOUR
13 VERDICT NUMBER ONE, YOU'RE GOING TO NEED TO KNOW WHAT THE
14 LAW IS AND JUDGE MILLER IS GOING TO GIVE YOU THE LAW IN
15 SOUTH CAROLINA AS IT APPLIES TO MURDER, CAR-JACKING AND
16 POSSESSION OF A WEAPON IN THE COMMISSION OF A VIOLENT CRIME

17 I DON'T BELIEVE THERE'S GOING TO BE A HUGE DEBATE ABOUT
18 WAS A PERSON MURDERED OR WAS A CAR-JACKING COMMITTED AND WAS
19 A WEAPON USED IN IT? I WILL NOT BELABOR THE LAW THE JUDGE
20 IS GOING TO GIVE YOU THE LAW

21 THE SECOND TOOL THAT YOU NEED IS THE EVIDENCE, WHAT
22 HAPPENED AGAIN, I DON'T THINK IT'S A BIG LEGAL QUESTION
23 I THINK WE KNOW WHAT HAPPENED THE QUESTION FOR YOU TO
24 DECIDE IS DID MICHAEL SARRATT COMMIT THE CRIMES?

25 SO YOU'RE GOING TO HAVE TO LOOK AT THE EVIDENCE AND

CLOSING ARGUMENTS - MS HODGE

561

1 YOU'RE GOING TO HAVE TO USE THAT THIRD TOOL, THE VERY
2 IMPORTANT TOOL THAT YOU BROUGHT TO THE COURTROOM, WHICH WAS
3 YOUR COMMON SENSE

4 YOUR COMMON SENSE IS WHAT IS GOING TO GUIDE YOU THROUGH
5 YOUR DELIBERATIONS, THROUGH LOOKING AT THE EVIDENCE AND
6 IT'S WHAT YOU USE EVERY DAY TO MAKE MAJOR DECISIONS THAT'S
7 WHY WE HAVE JURIES OF TWELVE ORDINARY PEOPLE IN THE
8 COMMUNITY, NOT TWELVE JUDGES, OR TWELVE ASTRONAUTS, OR
9 ANYTHING -- SUPER, SUPER SMART FOLKS THAT WE WOULD THINK
10 COULD DO THIS JOB GREAT

11 WE NEED PEOPLE WITH COMMON SENSE AND THAT MAKE BIG
12 DECISIONS ALL THE TIME LIKE WHERE AM I GOING TO LIVE? AM I
13 GOING TO GET MARRIED? WHO AM I GOING TO MARRY? AM I GOING
14 TO GO TO SCHOOL? AM I GOING TO HAVE CHILDREN? AM I GOING
15 TO PRACTICE RELIGION? SO EVERY DAY YOU'RE MAKING THESE KIND
16 OF DECISIONS

17 AND HOW DO YOU MAKE YOUR DECISIONS? YOU GO BY WHAT
18 PEOPLE TELL YOU MOST OF THE TIME CONVERSATION, TESTIMONY,
19 IF YOU WILL AND THEN IF YOU NEED MORE TO BACK UP WHAT
20 THESE PEOPLE ARE TELLING YOU TO HELP YOU IN YOUR DECISIONS,
21 YOU MIGHT DO SOME SEPARATE RESEARCH OR YOU MIGHT TRY TO
22 CORROBORATE IT WITH OTHER PEOPLE'S TESTIMONY OR PHYSICAL
23 EVIDENCE

24 SO THAT'S EXACTLY WHAT YOU'RE GOING TO DO WHEN YOU GO
25 BACK TO THE JURY ROOM YOU'RE GOING TO GO THROUGH THE

CLOSING ARGUMENTS - MS HODGE

562

1 TESTIMONY AND YOU ARE GOING TO DETERMINE FIRST OF ALL, DID
2 MICHAEL SARRATT MURDER VIOLENTLY JAMES DELLINGER? AND I
3 SUBMIT TO YOU YOUR ANSWER WILL BE YES

4 WHY? BECAUSE YOU HAVE HEARD FROM THE EYEWITNESS THAT
5 SAW THE ENTIRE THING GO DOWN, PEGGY GLADFELTER YOU DON'T
6 HAVE TO LIKE HER BUT SHE IS CREDIBLE, SHE IS BELIEVABLE
7 AND SHE IS CORROBORATED BY NUMEROUS THINGS

8 IF PEGGY WAS LYING ABOUT WHAT HAPPENED TO MR DELLINGER
9 SHE HAD TO GET ON BOARD MS VIRGINIA DELLINGER, SHE'D HAVE
10 TO GET ON BOARD AMANDA HOLT, WILLIAM JO PHILLIPS OR JOBO AS
11 HE'S BEEN CALLED SHE HAS TO GET ANNA McDANIEL ON BOARD
12 AND SHE HAS TO GET DANIEL MCABEE ON BOARD SHE'S GOT TO GET
13 ALL THESE PEOPLE TO CORROBORATE HER LIE AND NOT KNOW REALLY
14 ANY OF THEM EXCEPT FOR AMANDA AND JOBO

15 SO LET'S LOOK AT PEGGY'S TESTIMONY IN THAT LIGHT SHE
16 SAYS THAT THEY WERE IN PENNSYLVANIA AT SOME POINT WELL,
17 EXCUSE ME, I'LL BACK UP THEY WERE HERE I THINK YOU KNOW
18 PRETTY MUCH HOW THE CASE WENT THEY WERE HERE AND THEY
19 HAD WARRANTS AND THEY NEEDED TO GET OUT OF TOWN AND THEY
20 TRADED A CAR WITH JOBO AND GO UP TO PENNSYLVANIA

21 WHY DID THEY GO THERE? 'CAUSE THEY NEEDED MONEY SHE
22 HAD MONEY SHE WAS PROVIDING MONEY TO MR SARRATT SHE HAD
23 THE MONEY THEY'RE GOING TO GET HER MONEY

24 SO THEY GO UP THERE AND WHILE THEY'RE UP THERE THE
25 CAR DIES AND THEY GET A BUS TICKET AND THEY COME BACK

CLOSING ARGUMENTS - MS HODGE

563

1 AND THEY GET A RIDE FROM THE NICE MAN FROM THE BUS STATION

2 AND HE TAKES THEM BACK TO JOBO'S HOUSE OR THE TRAILER

3 WELL, THEY GET BACK THERE AND THEN THEY START REALLY

4 CONFIDING IN AMANDA AND WILLIAM PHILLIPS TELLING THEM, YEAH,

5 WE DO HAVE THESE WARRANTS ON US AND THAT KIND OF THING AND

6 RED FLAGS WENT UP FOR AMANDA AND JOBO AGAIN, YOU DON'T

7 NECESSARILY HAVE TO LIKE SOME OF THE PEOPLE IN THIS, BUT

8 THEY'RE BEING VERY HONEST ABOUT THEMSELVES AND WHAT THEY DO

9 AND WHAT THEY DON'T DO RIGHT

10 AND THEY DON'T WANT COPS AROUND SO YOU'VE GOT TO GO

11 MICHAEL AND PEGGY, YOU'VE GOT TO GO WELL, HOW ARE THEY

12 GOING TO GO? THEY DON'T HAVE A CAR THEY'VE ALREADY TRADED

13 THEIR CAR LEFT THE OTHER ONE THAT THEY TRADED IT FOR IN

14 PENNSYLVANIA SO JOBO'S CERTAINLY NOT ABOUT TO GIVE HIM A

15 CAR HE'S ALREADY OUT ONE CAR HE'S NOT GOING TO GIVE HIM

16 ANOTHER ONE

17 SO YOU'VE GOT TO GO THERE'S SOME URGENCY HERE

18 DROPPED THEM OFF AT A PAYPHONE SO THEY COULD MAKE CALLS TO

19 WHO THEY THOUGHT WAS GOING TO COME AND GET THEM, PATRICK

20 PARRIS OR HIS GIRLFRIEND, ANNA AGAIN, PEGGY'S GOING TO

21 HAVE TO GET ANNA ON BOARD TO MAKE THIS RECORDING OF THE

22 THREE PHONE CALLS THAT THEY LEFT ON HER VOICEMAIL TO TIE

23 INTO HER BIG LIE HERE

24 SO YOU'LL HEAR THESE THAT THEY WERE FROM, I BELIEVE,

25 6 12, 6 43 AND 6 45 PM ON JANUARY 3RD, 2005 YOU KNOW MS

CLOSING ARGUMENTS - MS HODGE

564

1 DELLINGER STATED THAT THE LAST TIME SHE SAW HER HUSBAND
2 ALIVE, TEN MINUTES TO SEVEN JANUARY 3RD, 2005 SO WE ARE
3 TALKING A VERY CLOSE TIME-FRAME ALSO HERE
4 AND ON THOSE MESSAGES THEY NEED A RIDE YOU'LL HEAR IT
5 FOR YOURSELF SHIT AIN'T RIGHT COME AND GET US HURRY
6 PLEASE HURRY PLEASE HURRY THEY DON'T HAVE A CAR THEY
7 DON'T HAVE A PLACE TO STAY AND THEY'VE BEEN TOLD BY AMANDA
8 AND JOBO, THE COPS ARE LOOKING FOR YOU THE RUBBER'S
9 GETTING READY TO MEET THE ROAD MARIETTA IS NOT VERY BIG
10 IF THE COPS ARE LOOKING FOR YOU AND YOU'RE STUCK THERE,
11 THEY'RE GOING TO FIND YOU EVENTUALLY
12 AND THAT'S WHEN, UNFORTUNATELY, THEY COME UP TO MR
13 DELLINGER, A NICE, DECENT MAN WHO WAS GOING TO BE KIND AND
14 GIVE THEM A RIDE AND PEGGY TELLS YOU MICHAEL GETS IN THE
15 FRONT AND SHE GETS IN THE BACK AND THEY GO, AND THAT AS THEY
16 GET TO WHERE SHE THINKS THEY'RE GOING SHE SAYS, OH WAIT,
17 IT'S RIGHT HERE, AND THAT MICHAEL SHOOTS HER A LOOK, AND SHE
18 SHUTS UP FROM THAT POINT ON IT JUST GOT WORSE
19 THEY PULL OVER ONTO A DIRT AREA MICHAEL'S FROM THIS
20 AREA HE KNOWS THAT'S A WASHOUT, THAT'S AN ABANDONED
21 DRIVEWAY, GREAT PLACE TO DO WHATEVER IT IS YOU'RE GOING TO
22 DO, NO LIGHTS, VERY DIFFICULT AREA AS FAR AS CRIME SCENES
23 WOULD GO TO COLLECT ANYTHING, AND NOBODY'S THERE
24 PULL OVER RIGHT HERE AND THEN HE ATTACKS MR
25 DELLINGER FOR NO REASON BECAUSE MR DELLINGER DOESN'T WANT

CLOSING ARGUMENTS - MS HODGE

565

1 TO GIVE HIM HIS CAR OR HIS MONEY AND HE VIOLENTLY ATTACKS
2 HIM

3 IF YOU'LL RECALL PEGGY'S TESTIMONY, AGAIN, YOU RECALL
4 IT HOW YOU HEARD IT OF COURSE, MYSELF AND MS WIYGUL HAVE
5 DIFFERENT RECITATIONS, I BELIEVE, BUT THAT HE HEADLOCKED MR
6 DELLINGER AND PUT THE KNIFE TO HIS THROAT, NOT SLICED HIS
7 THROAT OFF IN THE CAR SHE EVEN STATED THAT HE WENT TO
8 UNBUCKLE HIS SEATBELT SHE EVEN REMEMBERED THAT DETAIL, MR
9 DELLINGER TRYING TO UNBUCKLE HIS SEATBELT TO GET OUT AND
10 THAT THEY GOT OUT OF THE CAR AND EVERYTHING TOOK PLACE
11 OUTSIDE THE CAR, SIX TO TEN FEET AWAY FROM THE CAR DOOR

12 THAT'S WHY THERE'S NOT A LOT OF BLOOD IN THE CAR ON THE
13 HEADREST WHY ELSE IS THERE NOT A LOT OF BLOOD IN THE CAR?
14 BECAUSE THEY WIPED IT DOWN WITH KEROSENE ON THE STEERING
15 WHEEL, ON THE DOORS BUT WHERE DIDN'T THEY WIPE IT DOWN?
16 WERE THEY REALLY THINKING, HEY, MAYBE SOME BLOOD GOT DOWN
17 HERE IN THE CRACK OF THE MAROON CAR OR MAYBE THEY JUST
18 COULDN'T SEE IT?

19 MAYBE THAT'S WHY THAT'S ALL THERE IS, BECAUSE MR
20 SARRATT IS NOT A DUMMY HE FOUND A GREAT PLACE TO DO THIS
21 CRIME HE FIGURED OUT HOW TO CLEAN UP THE AREA HE THREW
22 AWAY THINGS ON THE WAY DOWN THE ROAD YOU'VE GOT THINGS
23 GOING OUT THE WINDOW, THE SWEATSHIRT THE PANTS CAME OFF
24 THE SHOES GOT CLEANED WITH KEROSENE CLEAN OUR FACE DUMP
25 OUR IDs, OUR REAL IDs DUMP YOUR POCKETBOOK DUMP THIS

CLOSING ARGUMENTS - MS HODGE

566

1 WALLET WITH THE CHAIN

2 PEGGY GLADFELTER NEVER SAID MICHAEL DUMPED THE KNIFE

3 SHE SAID IT WAS A WALLET WITH A CHAIN AND SOMETHING WRAPPED

4 UP IN PAPER WAS IT JUST THE WALLET? DON'T KNOW COULD

5 THAT KNIFE BE STATE'S NUMBER 52, WHICH IS NICE AND SECURE IN

6 THIS BOX?

7 BUT YOU'LL RECALL PEGGY'S TESTIMONY ABOUT THAT SPECIFIC

8 KNIFE BECAUSE IT HAD A BROKEN TIP SHE REMEMBERS THE KNIFE

9 HE WAS MESSING WITH IT RIGHT BEFORE HE KILLED MR DELLINGER

10 SHE CAN'T SWEAR THAT'S THE KNIFE HE USED, AND SHE'S NOT

11 GOING TO, BUT THAT HE HAD A BROKEN TIPPED KNIFE THAT HE

12 REALLY LIKED A LOT, IT WAS SENTIMENTAL TO HIM 'CAUSE HIS

13 BROTHER GAVE IT TO HIM SO I DON'T THINK HE WOULD DITCH

14 THAT KNIFE IF HE REALLY LIKED IT, THAT HE HELD ONTO IT

15 AND DO YOU THINK THAT THERE WOULD BE -- IT'D BE COVERED

16 IN BLOOD TWO MONTHS LATER BY THE TIME, YOU KNOW, THE POLICE

17 FROM SOUTH CAROLINA GET IT AND GET TO TEST IT? NO, OF

18 COURSE NOT IF HE HAS CLEANED THE CAR WITH KEROSENE I CAN

19 GUARANTEE YOU HE'S CLEANED THE KNIFE

20 AND THAT THING IS CLEAN ON THE BLADE, BUT HE DIDN'T

21 TAKE IT APART NOT UNTIL IT WENT TO SLED DID IT COME APART

22 AND THE SWABS ARE FROM DOWN IN THE HANDLE THERE'S NOT

23 ENOUGH THERE TO SAY IT'S MR DELLINGER'S OR TO SAY IT'S

24 HUMAN OR ANIMAL, BUT IT'S INTERESTING THAT THERE'S BLOOD

25 DOWN IN THE HANDLE I DIDN'T HEAR ANY TESTIMONY ABOUT

CLOSING ARGUMENTS - MS HODGE

567

1 MICHAEL BEING A HUNTER

2 WE OBVIOUSLY KNOW HE LIKES KNIVES THAT'S A LOT OF
3 KNIVES FOR ONE PERSON, I THINK AGAIN, YOU'LL HAVE TO JUDGE
4 ALL OF THIS FOR YOURSELVES

5 SO AGAIN, WE'RE LOOKING AT PEGGY, WHAT'S CORROBORATING
6 PEGGY'S STORY WE HAVE MS DELLINGER, AMANDA, WILLIAM, ANNA
7 AND NOW DANIEL MCABEE AGAIN, DON'T HAVE TO LIKE THESE
8 PEOPLE, BUT MR MCABEE WAS RIGHT THERE WITH THE DEFENDANT
9 AND HE TOLD YOU THINGS THAT NOBODY ELSE KNEW INVESTIGATOR
10 WES SMITH HAD NOTHING IN HIS FILE ANYWHERE FROM ANYBODY THAT
11 SAID THAT MICHAEL SAID HE SLAMMED HIS HAND WITH A HAMMER
12 NOWHERE WAS THAT SAID PEGGY DIDN'T SAY IT SHE ACTUALLY
13 DENIED THAT NO, HE DID NOT DO THAT

14 HOW WOULD MR MCABEE KNOW THAT? BECAUSE MICHAEL TOLD
15 HIM MICHAEL TOLD HIM ALL OF THIS YOU'RE IN JAIL YOU
16 NEED A LITTLE PROTECTION YOU'RE A MURDERER PLAIN AND
17 SIMPLE THE OLD BASTARD WOULDN'T DIE KEPT KILLING HIM,
18 STABBING HIM HE JUST WOULDN'T COME OFF HIS MONEY HE'S
19 PRETTY PROUD OF THAT, ACCORDING TO MR MCABEE AND THAT
20 MADE HIM SICK

21 NOW MR MCABEE'S NOT THE NICEST GUY EITHER, BUT THAT
22 EVEN MADE HIM SICK AND HE NEEDED TO TELL LAW ENFORCEMENT
23 WHAT HE KNEW HE GOT NOTHING OUT OF IT HIS STUFF WAS A
24 DONE DEAL ALREADY YOU'LL TAKE THAT INTO CONSIDERATION

25 WE NOW HAVE FIVE PEOPLE CORROBORATING STORIES WITH SOME

CLOSING ARGUMENTS - MS HODGE

568

1 CORROBORATING PHOTOGRAPHS AND AGAIN, WHAT PEGGY SAID, HOW
2 MICHAEL HURT HIS LEG YOU'LL HAVE THESE BACK THERE

3 THE DEFENSE WANTS YOU TO BELIEVE THAT HE HURT HIS LEG
4 WHEN HE HAD HIS FOUR WHEELER ACCIDENT ON DECEMBER THE 5TH OF
5 2004, WHICH HIS COUSIN CAME IN AND WAS TALKING ABOUT, THAT
6 HE HAD A FOUR WHEELER ACCIDENT AND HURT HIS HAND HE TORE
7 UP HIS PANTS AND HURT HIS KNEE

8 I WANT YOU TO LOOK AT THE MEDICAL RECORDS THAT SHE'S
9 PUT INTO EVIDENCE IT STATES WHAT HIS INJURIES ARE AND
10 THEY ARE, WRECKED A FOUR WHEELER, COMPLAINS OF PAIN IN THE
11 RIGHT HAND, JAMMED LEFT THUMB, HAS A SCRATCH ON LEFT ARM,
12 PERIOD NO LEG INJURY WHERE'S THE MISCONCEPTION AND
13 ILLUSION HERE? IT'S NOT IN THERE HE DIDN'T HAVE IT THEN

14 HE WAS FURIOUSLY STABBING MR DELLINGER THIRTY-EIGHT
15 TIMES IN THE BACK OF THE HEAD AND THE ARMS AS HE TRIED TO
16 FIGHT AND AS HE'S GOING HE GOT HIMSELF THAT'S WHAT THAT
17 IS LOOK AT THE SHAPE OF THE INJURY AS WELL IT LOOKS
18 ALMOST LIKE A BROKEN TIP KNIFE BUT YOU LOOK AT IT YOU
19 DECIDE THAT

20 AND WHERE HE HURT HIS HAND WITH THIS FOUR WHEELER
21 ACCIDENT, IT'S A FIFTH METACARPAL FRACTURE DON'T REALLY
22 KNOW WHAT THAT MEANS DON'T KNOW IF THAT'S REALLY SERIOUS
23 OR NOT SERIOUS I'M NOT A MEDICAL DOCTOR DIDN'T HEAR ONE
24 TESTIFY ABOUT IT

25 BUT HE SIGNED FOR IT HIMSELF YOU KNOW, THERE WAS A

CLOSING ARGUMENTS - MS HODGE

569

1 BIG DEAL HOW PEGGY HAD TO SIGN FOR HIM IN PENNSYLVANIA
2 THAT WAS A RUSE THESE PEOPLE ARE LOOKING FOR LORTABS
3 THEY'RE GOING AROUND TO HOSPITALS GETTING THEIR PILLS AND
4 GUESS WHAT? ON DECEMBER THE 5TH HE GOT TWENTY LORTABS TO GO
5 WITH HIS HAND

6 IT'S THE STATE'S POSITION BASED ON MS GLADFELTER'S
7 TESTIMONY ALSO THAT THE DEFENDANT REALLY HURT HIS HAND ON
8 NOVEMBER 30TH DOING SOMETHING ELSE THIS WAS A RUSE TO GET
9 MORE PAIN MEDICINE

10 WHEN YOU GO UP TO PENNSYLVANIA AND YOU LOOK AT THE
11 RECORDS UP THERE, WHICH ARE ALSO INTO EVIDENCE, HIS
12 DISCHARGE PAPERS, LET ME FIND THOSE, IT SAYS HE'S GOT A
13 HURT HAND AND, OF COURSE, PEGGY HAD TO SIGN BIG DEAL
14 ABOUT PEGGY HAVING TO SIGN FOR HIM HIS HAND IS REALLY
15 HURT AND SHE WAS LIKE, NO, I WASN'T EVEN PAYING ATTENTION
16 BECAUSE THIS WAS JUST ABOUT GETTING SOME PILLS

17 AND PART OF THE DISCHARGE PAPERS WITH THIS HORRIBLY
18 HURT HAND THE DOCTOR UP THERE TELLS HIM, YOU'RE IN HERE ON
19 THE 26TH OF DECEMBER OF '04, BUT YOU MAY RETURN TO WORK WITH
20 ABSOLUTELY NO RESTRICTIONS IN THREE DAYS, A WORK RELEASE
21 SHEET

22 IF ANYONE'S EVER HAD A WORKERS' COMP ISSUE OR ANYTHING
23 LIKE THAT, A LOT OF TIMES THE DOCTORS HAVE TO FILL THESE OUT
24 SO THEY CAN GO BACK TO WORK HE OR SHE MAY RETURN TO WORK
25 12/29/04 WITH THE FOLLOWING RESTRICTIONS, NONE NO HEAVY

CLOSING ARGUMENTS - MS HODGE

570

1 LIFTING, DIDN'T CHECK THAT DESK WORK ONLY, DIDN'T CHECK
2 THAT NO RESTRICTIONS

3 SO AGAIN, WHERE'S THE RUSE? WHERE'S THE MISDIRECTION?
4 WHERE'S THE MISGUIDED INFORMATION? I SUBMIT TO YOU IT'S NOT
5 FROM THE STATE THE STATE HAS ATTEMPTED EVERY AVENUE THAT
6 WE COULD TO COLLECT PHYSICAL EVIDENCE TO CORROBORATE PEGGY
7 AND THE OTHER FOUR WITNESSES IT WASN'T THERE

8 WE TRIED FINGERPRINTING THEY WIPED THE CAR DOWN WE
9 DIDN'T GET ANYBODY BUT KIZZIE BRIDGEMAN I THINK YOU'LL
10 RECALL MS DELLINGER SAID, YEAH, THAT WAS MY SON'S
11 GIRLFRIEND AT THE TIME SO VERY POSSIBLE SHE WAS IN THE CAR
12 JUST AS A PASSENGER IN THE CAR

13 TRIED TO GET DNA 'CAUSE PEGGY HAD SAID THAT MICHAEL HAD
14 CUT HIS LEG APPARENTLY IT DIDN'T BLEED A LOT IT DIDN'T
15 BLEED INTO MR DELLINGER'S BLOOD ENOUGH SO THAT IT WOULD BE
16 PRESENT WHEN THEY TOOK THE SOIL SAMPLE

17 APPARENTLY MR DELLINGER DIDN'T GET EVEN A CHANCE TO
18 SCRATCH MICHAEL HE JUST DIDN'T GET THE OPPORTUNITY TO DO
19 MUCH OF ANYTHING OTHER THAN BLOCK HIMSELF

20 SO ATTEMPTED TO COLLECT EVERYTHING WE POSSIBLY COULD,
21 BUT IT COMES DOWN TO THE CREDIBILITY, THE BELIEVABILITY OF
22 PEGGY GLADFELTER, AMANDA, WILLIAM, ANNA AND DANIEL McABEE
23 AND I SUBMIT TO YOU THAT THEY ARE VERY CREDIBLE IN THE FACT
24 THAT THEY'VE COME IN HERE BEARING ALL THE UGLINESS OF
25 THEMSELVES AND TOLD YOU THE TRUTH OF WHAT REALLY HAPPENED

CHARGE OF THE COURT

571

1 HERE, THAT MICHAEL SARRATT IS GUILTY OF THIS MURDER AND CAR-
2 JACKING AND POSSESSING A WEAPON DURING THE COMMISSION OF A
3 VIOLENT CRIME BEYOND A REASONABLE DOUBT THANK YOU

4 **THE COURT:** ALL RIGHT LADIES AND GENTLEMEN OF THE
5 JURY, DURING THIS TRIAL YOU AND I HAVE CERTAIN DUTIES TO
6 PERFORM AND AS THE TRIAL JUDGE IT IS MY RESPONSIBILITY TO
7 PRESIDE OVER THE TRIAL OF THE CASE AND TO RULE ON THE
8 ADMISSIBILITY OF THE EVIDENCE THAT'S OFFERED DURING THE
9 TRIAL IT'S ALSO MY DUTY TO CHARGE YOU THE LAW THAT IS
10 APPLICABLE TO THIS CASE

11 AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE
12 LAW AS I NOW STATE IT TO YOU IF YOU THINK YOU HAVE ANY
13 IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW SHOULD BE AND IT
14 DOES NOT AGREE WITH WHAT I TELL YOU THE LAW IS NOW, YOU HAVE
15 SWORN AN OATH TO SET ASIDE YOUR OWN IDEAS AND APPLY THE LAW
16 PRECISELY AS I STATE IT TO YOU

17 I REMIND YOU THAT IN EVERY CASE TRIED IN THIS COURT
18 BEFORE A JURY, THE JURY IS THE SOLE AND EXCLUSIVE JUDGE OF
19 THE FACTS AND A TRIAL JUDGE CANNOT COMMENT ON OR MAKE ANY
20 STATEMENT ABOUT THE FACTS IN A CASE SO PLEASE DON'T THINK
21 BY ANYTHING I MAY HAVE SAID OR DONE THROUGHOUT THE COURSE OF
22 THIS TRIAL THAT I HAVE AN OPINION ABOUT THE FACTS OF THIS
23 CASE BECAUSE I DO NOT

24 I AGAIN INSTRUCT YOU THAT THE FACT THAT THE DEFENDANT
25 WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE IS NOT

CHARGE OF THE COURT

572

1 EVIDENCE OF GUILT NOR DOES IT CREATE ANY PRESUMPTION OR
2 INFERENCE OF GUILT THESE DOCUMENTS ARE SIMPLY THE FORMAL
3 WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGE MADE AGAINST
4 THIS DEFENDANT AND THEY SERVE AS THE FORMAL DOCUMENTS BY
5 WHICH THIS CASE IS PROCESSED AND BROUGHT INTO COURT

6 NOW THE INDICTMENTS IN THIS CASE ALLEGE THREE DIFFERENT
7 OFFENSES AGAINST THE DEFENDANT THE CHARGES ARE MURDER,
8 CAR-JACKING AND POSSESSION OF A WEAPON DURING THE COMMISSION
9 OF A VIOLENT OFFENSE EACH INDICTMENT OR EACH CHARGE
10 CHARGES A SEPARATE AND DISTINCT OFFENSE AND YOU MUST
11 DECIDE EACH INDICTMENT OR EACH CHARGE AGAINST MR SARRATT
12 SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT
13 UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER CHARGE OR
14 INDICTMENT THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON
15 ANY OR ALL OF THE OFFENSES CHARGED AND YOU'LL BE ASKED TO
16 WRITE A SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH
17 INDICTMENT OR EACH CHARGE IN THIS CASE

18 NOW NECESSARILY YOU MUST DETERMINE THE CREDIBILITY OR
19 BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED IT
20 BECOMES YOUR DUTY AS JURORS TO EVALUATE THE EVIDENCE AND
21 DETERMINE WHICH EVIDENCE CONVINCES YOU IT IS TRUE

22 AND IN DETERMINING THE BELIEVABILITY OF THE WITNESSES
23 YOU MAY BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL OVER
24 ONE YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS
25 AND REJECT THE REMAINING PART YOU MAY BELIEVE THE

CHARGE OF THE COURT

573

1 TESTIMONY OF A WITNESS IN ITS ENTIRETY AND YOU MAY REJECT
2 THAT SAME TESTIMONY IN ITS ENTIRETY

3 YOU MAY CONSIDER WHETHER THE WITNESS HAS AN INTEREST IN
4 THE RESULT OF THE TRIAL, WHETHER THE WITNESS IS PREJUDICED
5 TOWARDS EITHER THE STATE OR THE DEFENSE, THE OPPORTUNITY FOR
6 THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS ABOUT WHICH
7 THAT WITNESS TESTIFIED AND THE WAY THE WITNESS ACTS ON THE
8 WITNESS STAND OR WHAT WE CALL A WITNESS' DEMEANOR

9 NOW I INSTRUCT YOU AND I EMPHASIZE THAT THE FACT THAT
10 THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE
11 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS ON THE
12 QUESTION OF GUILT OR INNOCENCE IT MUST NOT BE CONSIDERED
13 BY YOU IN ANY MANNER WHATSOEVER

14 EVERY CITIZEN HAS THE CONSTITUTIONAL RIGHT TO REMAIN
15 SILENT AND THE ASSERTION OF THIS RIGHT MUST NOT BE
16 CONSIDERED BY YOU IN YOUR DELIBERATIONS PLEASE REMEMBER
17 THAT THE BURDEN OF PROOF ALWAYS REMAINS ON THE STATE AND A
18 DEFENDANT IS NEVER REQUIRED TO PROVE THEIR INNOCENCE

19 NOW THE DEFENDANT HAS PLED NOT GUILTY TO THESE CHARGES,
20 THESE INDICTMENTS AND THAT PLEA PUTS THE BURDEN ON THE
21 STATE TO PROVE THE DEFENDANT GUILTY A PERSON CHARGED WITH
22 COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER
23 REQUIRED TO PROVE THEMSELVES INNOCENT

24 I CHARGE YOU THAT IT IS A CARDINAL AND AN IMPORTANT
25 RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL WILL

CHARGE OF THE COURT

574

1 ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE
2 INDICTMENT WAS ISSUED UNLESS AND UNTIL GUILT HAS BEEN
3 ESTABLISHED OR PROVEN BY EVIDENCE SATISFYING YOU OF GUILT
4 BEYOND A REASONABLE DOUBT

5 NOW REASONABLE DOUBT IS THE KIND OF DOUBT WHICH WOULD
6 CAUSE A REASONABLE PERSON TO HESITATE TO ACT AND
7 REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE IN A CASE OR
8 FROM THE LACK OR ABSENCE OF EVIDENCE IN A CASE AND YOU,
9 THE JURY, MUST DETERMINE WHETHER OR NOT REASONABLE DOUBT
10 EXISTS AS TO THE GUILT OF THE DEFENDANT

11 THE STATE HAS THE BURDEN OF PROOF OF EACH AND EVERY
12 ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT AND ANY
13 REASONABLE DOUBT THAT YOU MAY HAVE IN YOUR DELIBERATIONS
14 SHOULD BE RESOLVED IN FAVOR OF THE DEFENDANT

15 THE DEFENDANT IS CHARGED WITH MURDER THE STATE MUST
16 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED
17 ANOTHER PERSON WITH MALICE AFORETHOUGHT NOW MALICE IS
18 HATRED, ILL-WILL OR HOSTILITY TOWARDS ANOTHER PERSON IT IS
19 THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE
20 OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER
21 CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT

22 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS
23 FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT IS
24 COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE
25 DEFENDANT JUST BEFORE AND AT THE TIME THE ACT IS COMMITTED

CHARGE OF THE COURT

575

1 THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS OR
2 PRIOR EVIL INTENT AND THE ACT

3 MALICE AFORETHOUGHT MAY BE -- COMES ABOUT IN ONE OF TWO
4 WAYS IT MAY BE EITHER EXPRESSED OR INFERRED THESE TERMS
5 EXPRESSED AND INFERRED DO NOT MEAN DIFFERENT KINDS OF
6 MALICE, BUT MERELY MEAN THE MANNER IN WHICH MALICE MAY BE
7 SHOWN TO EXIST THAT IS EITHER BY DIRECT EVIDENCE OR BY
8 INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVEN
9 IN THE CASE

10 EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS
11 WHICH EXPRESS HATRED OR ILL-WILL FOR ANOTHER OR WHEN THE
12 PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER
13 ACCOMPLISHED MALICE MAY BE INFERRED FROM CONDUCT SHOWING A
14 TOTAL DISREGARD FOR HUMAN LIFE

15 INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE
16 WITH A DEADLY WEAPON A DEADLY WEAPON IS ANY ARTICLE,
17 INSTRUMENT OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR
18 GREAT BODILY HARM

19 WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON
20 DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE THE
21 FOLLOWING ARE EXAMPLES OR -- EXAMPLES OF INSTRUMENTS WHICH
22 MAY BE DEADLY WEAPONS, A PISTOL, A SHOTGUN, A RIFLE, A
23 DIRK, A DAGGER, A KNIFE, A SLINGSHOT, METAL KNUCKLES, A
24 RAZOR, GASOLINE, FIRE BOMB OR MOLOTOV COCKTAIL

25 NOW, LADIES AND GENTLEMEN, THE DEFENDANT IS ALSO

CHARGE OF THE COURT

576

1 CHARGED WITH CAR-JACKING IN ORDER TO PROVE CAR-JACKING THE
2 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
3 DEFENDANT TOOK OR ATTEMPTED TO TAKE A MOTOR VEHICLE FROM
4 ANOTHER PERSON BY FORCE AND VIOLENCE OR BY INTIMIDATION
5 WHILE THE PERSON WAS OPERATING THE VEHICLE OR WHILE THE
6 PERSON WAS IN THE VEHICLE

7 THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF A
8 WEAPON DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A
9 VIOLENT CRIME THE STATE MUST PROVE BEYOND A REASONABLE
10 DOUBT THAT THE DEFENDANT VISIBLY DISPLAYED A KNIFE DURING
11 THE COMMISSION OF A VIOLENT CRIME A KNIFE MEANS AN
12 INSTRUMENT OR TOOL WITH A SHARP CUTTING BLADE WHETHER OR NOT
13 FASTENED TO A HANDLE WHICH CAN BE USED TO INFLICT A CUT, A
14 SLASH OR A WOUND

15 AND IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION
16 OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME YOU
17 MUST FIRST FIND THE DEFENDANT GUILTY OF EITHER COMMITTING A
18 VIOLENT CRIME OR ATTEMPTING TO COMMIT A VIOLENT CRIME AND
19 I WOULD TELL YOU UNDER THE LAW OF SOUTH CAROLINA THE CRIMES
20 OF MURDER AND CAR-JACKING ARE CONSIDERED VIOLENT CRIMES

21 NOW IN EACH OF THESE THREE CASES, LADIES AND GENTLEMEN,
22 EACH CHARGE, THE MURDER CHARGE, THE CAR-JACKING CHARGE AND
23 THE POSSESSION OF A WEAPON DURING A VIOLENT OFFENSE CHARGE,
24 THERE ARE TWO POSSIBLE VERDICTS THAT YOU MAY REACH ON EACH
25 ONE THERE'S NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN

CHARGE OF THE COURT

577

1 WHICH I STATE THE VERDICTS, BUT ONE'S GOT TO BE STATED
2 BEFORE THE OTHER THE TWO POSSIBLE VERDICTS IN EACH CASE
3 ARE GUILTY OR NOT GUILTY

4 AND I WANT TO TELL YOU, ALL TWELVE OF YOU MUST AGREE ON
5 YOUR VERDICT YOUR VERDICT MUST BE UNANIMOUS YOUR VERDICT
6 CANNOT BE BASED ON SYMPATHY, PASSION, PREJUDICE, EMOTION OR
7 ANY OTHER CONSIDERATION THAT IS NOT IN EVIDENCE IN THIS
8 CASE YOU HAVE NO ENEMIES TO PUNISH YOU HAVE NO FRIENDS
9 TO REWARD HERE

10 NOW, LADIES AND GENTLEMEN, I HAVE PREPARED A VERDICT
11 FORM AND, MR FOREMAN, I WILL SEND THIS BACK INTO YOUR
12 JURY ROOM WITH YOU AND IT LISTS THE THREE CHARGES AND
13 THERE'S A BOX TO CHECK FOR EACH CHARGE SO WHEN THE JURY
14 HAS REACHED A UNANIMOUS VERDICT ON EACH CHARGE, IF YOU'LL
15 INDICATE THE PROPER VERDICT AND WHEN YOU'VE REACHED A
16 VERDICT ON ALL THREE, IF YOU'LL SIGN YOUR NAME AND DATE JUNE
17 13TH, IF YOU ALL DECIDE TODAY AND IF YOU'LL INDICATE THEN
18 TO THE BAILIFFS WE'LL RECEIVE YOU BACK INTO THE COURTROOM
19 AND TAKE THE VERDICT

20 NOW I HOPE FOR THE LAST TIME I'M GOING TO TELL YOU ALL,
21 I'M GOING TO EXCUSE YOU AND THEN ASK YOU NOT TO BEGIN YOUR
22 DELIBERATIONS AGAIN I WANT TO MAKE SURE WITH THE ATTORNEYS
23 THAT I HAVE NOT MISSTATED ANY PROVISION OF THE LAW AND THAT
24 I HAVEN'T LEFT ANYTHING OUT

25 SO I'M GOING TO ASK Y'ALL TO RETIRE WHEN THE BAILIFFS

CHARGE OF THE COURT

578

1 BRING THE EVIDENCE BACK TO THE JURY ROOM -- WITH RESPECT TO
2 THE KNIVES, WE HAVE A POLICY THAT WE DON'T ALLOW YOU ALL TO
3 HANDLE WEAPONS LIKE THAT SO PLEASE DON'T TAKE THEM OUT OF
4 THE BOX WE WOULDN'T WANT ANYBODY TO GET INJURED IN ANY
5 WAY

6 BUT WE'LL -- WHEN THE BAILIFFS BRING ALL THE EVIDENCE
7 BACK TO YOU ALONG WITH THE VERDICT FORM, THEN YOU ALL CAN
8 BEGIN YOUR DELIBERATIONS THANK YOU VERY MUCH AND I NEED
9 TO ASK MS MASSA AND MS BROWN TO PLEASE REMAIN IN THE
10 COURTROOM

11 (WHEREUPON THE JURY EXITED THE COURTROOM AT 4 21 PM)

12 THE COURT ALL RIGHT ANY EXCEPTIONS OR OBJECTIONS TO
13 THE CHARGE?

14 MS. HODGE NONE FROM THE STATE, YOUR HONOR

15 MS WIYGUL NONE FROM THE DEFENSE, YOUR HONOR WE
16 WOULD ASK IF THE JURORS WANT TO TAKE A CLOSER LOOK AT THESE
17 KNIVES, THEN CAN THE BAILIFF GO IN THERE AND OPEN THEM UP
18 FOR THEM?

19 THE COURT WE'LL CROSS THAT BRIDGE WHEN WE COME TO IT,
20 BUT YEAH, IF THEY NEED TO LOOK AT SOMETHING MORE -- IN MORE
21 DETAIL WE'LL PERHAPS HAVE SOME OF THE DEPUTIES GO BACK WITH
22 THEM

23 MS WIYGUL THANK YOU, YOUR HONOR

24 THE COURT OKAY LADIES, THIS IS ONE OF THE HARDEST
25 PARTS -- ONE OF THE HARDEST THINGS I HAVE TO DO DEALING WITH

1 A JURY I'VE ASKED Y'ALL -- I'VE MADE Y'ALL BE HERE ALL
2 WEEK AND YOU ARE JUST AS QUALIFIED, YOU'VE PAID JUST AS
3 CLOSE ATTENTION AS THE OTHER TWELVE YOUR DECISION IS JUST
4 AS VALID AS THE OTHER TWELVE'S, BUT THE LAW ONLY ALLOWS
5 TWELVE

6 WE KNEW THIS WAS GOING TO BE A CASE THAT WOULD LAST TWO
7 OR THREE DAYS AND IT'S UNFORTUNATELY SOMETIMES THINGS
8 HAPPEN TO THE ORIGINAL TWELVE AND SO WE NEED TO HAVE
9 ALTERNATES BUT UNFORTUNATELY I CAN'T SEND YOU BACK THERE
10 TO DELIBERATE WITH YOUR FELLOW JURORS

11 I COULD SEND YOU BACK DOWNSTAIRS AND MAKE YOU -- 'CAUSE
12 THEY MIGHT TRY SOME MORE CASES, BUT I'M GOING TO CUT YOU
13 LOOSE FOR THE WEEK Y'ALL HAVE EARNED IT AND YOU'RE
14 WELCOME TO STAY AND SEE THE OUTCOME OF THE VERDICT YOU'RE
15 WELCOME TO LEAVE WHATEVER YOU'D LIKE TO DO

16 BUT I RELEASE YOU FROM SERVICE FOR THE REST OF THE
17 WEEK THANK Y'ALL VERY MUCH APPRECIATE IT AND I HOPE IT
18 WAS A GOOD EXPERIENCE FOR YOU THANK YOU VERY MUCH

19 (WHEREUPON THE ALTERNATES WERE RELEASED FROM SERVICE)

20 THE COURT ALL RIGHT IF THE ATTORNEYS WOULD GO
21 THROUGH THE EVIDENCE AND MAKE SURE, WITH MS HUDGINS, AND
22 MAKE SURE EVERYTHING'S CORRECT THEN WE'LL SEND IT ON BACK
23 AND BEFORE MR SARRATT LEAVES, ANYTHING YOU NEED TO
24 SAY?

25 MR SARRATT (NEGATIVE NOD)

1 THE COURT I HOPE YOU'RE WELL SATISFIED WITH THE
2 REPRESENTATION OF YOUR ATTORNEY THEY -- BOTH ATTORNEYS ON
3 -- DID OUTSTANDING JOBS PRESENTING THEIR SIDES OF THE CASE
4 ALL RIGHT

5 (WHEREUPON COURT WAS IN RECESS AT 4 24 PM TO GATHER
6 EXHIBITS)

7 THE COURT ALL RIGHT I UNDERSTAND ALL THE EVIDENCE
8 HAS BEEN RETURNED ALONG WITH THE VERDICT FORM TO THE JURY
9 ARE THERE ANY OBJECTIONS FROM EITHER THE STATE OR THE
10 DEFENSE WITH WHAT'S GONE BACK TO THE JURY ROOM?

11 MR. FRETWELL. NONE FROM THE STATE, YOUR HONOR

12 MS. WIYGUL NONE FROM THE DEFENSE, YOUR HONOR

13 THE COURT OKAY THANKS

14 (WHEREUPON THE JURY BEGAN DELIBERATING AT 4 36 PM)

15 (WHEREUPON COURT WAS IN RECESS AT 4 36 PM)

16 THE COURT ALL RIGHT WE'VE GOT A MESSAGE FROM THE
17 JURY THEY -- IT READS, CAN WE GET A PLAYER TO SEE BOTH
18 THE MESSAGE CD AND THE INTERVIEW VIDEO? THE VIDEO IS NOT IN
19 EVIDENCE, IS IT?

20 MS. HODGE THAT'S CORRECT

21 THE COURT HOW DID YOU PLAY THE CD?

22 MS. HODGE WE'LL NEED A LAPTOP IT WAS BURNED TO A
23 COMPUTER FILE, AN MP3 FILE

24 INVESTIGATOR SMITH IT'S AN MP3 FILE

25 THE COURT SO WE'VE GOT TO HAVE ---

1 INVESTIGATOR SMITH A LAPTOP COMPUTER

2 MS HODGE OR THIS WE CAN DO IT ON THIS IF THEY WANT
3 TO COME IN HERE OR WE CAN HAVE A LAPTOP THAT -- OR WE CAN
4 TRY TO FIND ONE TO SEND BACK THERE

5 THE COURT ALL RIGHT I'M GOING TO SEND MY LAW CLERK
6 BACK WITH HIS LAPTOP YOU PLAY IT FOR THEM HOW MANY EVER
7 TIMES THEY WANT TO HEAR IT AND I'M JUST GOING TO WRITE ON
8 THIS MESSAGE -- WELL, HOW DO YOU WANT TO SAY IT? INTERVIEW
9 VIDEO IS NOT IN EVIDENCE? ALL RIGHT BRING THIS BACK
10 (WHEREUPON COURT'S EXHIBIT 3 WAS MARKED)

11 THE COURT ALL RIGHT AND, TOWNES, DON'T TALK TO
12 THEM OKAY

13 (WHEREUPON THE JURY CONTINUED THEIR DELIBERATIONS AT
14 4 55 PM)

15 (WHEREUPON COURT WAS IN RECESS AT 4 55 PM)

16 THE COURT: ALL RIGHT GOT A NOTE, SAYS WE ARE STILL
17 DISCUSSING THE CASE AND WISH TO BREAK FOR THE EVENING AND
18 WISH TO CONTINUE TOMORROW WELL, THEY MUST BE -- MUST NOT
19 BE TOO CLOSE WHAT DO Y'ALL -- WHAT'S YOUR POSITION?

20 MS HODGE THAT'S FINE, IF THAT'S WHAT THEY WANT TO
21 DO

22 MS WIYGUL I HAVE NO PROBLEM WITH IT

23 THE COURT ALL RIGHT I DON'T WANT TO MAKE THEM STAY
24 THEY MIGHT ---

25 MS HODGE RIGHT

1 THE COURT ALL RIGHT LET'S BRING THEM BACK

2 MS WIYGUL YOUR HONOR, YOU'LL INSTRUCT THEM NOT TO
3 TALK ABOUT IT, ALL THAT GOOD STUFF?

4 THE COURT YOU WANT ME TO DO THAT? YEAH, I'M GOING TO
5 TELL THEM THAT OKAY

6 (WHEREUPON COURT'S EXHIBIT 4 WAS MARKED)

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 6 07 PM)

8 THE COURT ALL RIGHT MR FOREMAN, LADIES AND
9 GENTLEMEN OF THE JURY, I GOT YOUR REQUEST I KNOW Y'ALL
10 HAVE BEEN HARD AT IT NOW FOR THREE DAYS IN A ROW AND I
11 THINK IT'S A REASONABLE REQUEST AND WE WILL BREAK FOR THE
12 EVENING

13 WE WERE GOING TO TAKE YOU OUT TO SOBY'S RESTAURANT AND
14 FEED YOU SO IF Y'ALL JUST WANT TO GO HOME, NO, I'M
15 KIDDING, OF COURSE BUT I WANT TO CAUTION YOU, I'VE
16 RELEASED THE TWO ALTERNATES, OKAY? AND SO IT IS VITALLY
17 IMPORTANT THAT NONE OF Y'ALL GET SICK PLEASE TAKE CARE OF
18 YOURSELVES TONIGHT

19 IT'S ALSO VITALLY IMPORTANT, JUST DO NOT DISCUSS THIS
20 WITH ANYONE, NOT EVEN AMONG YOURSELVES ONCE YOU LEAVE DO
21 YOUR DELIBERATIONS IN THE JURY ROOM WITH THE EVIDENCE
22 DON'T TALK ABOUT IT WITH ANYBODY DON'T DRIVE OUT TO THE
23 SCENE DON'T GO ON THE INTERNET DON'T LOOK ANYTHING UP
24 THINK ABOUT IT IN YOUR OWN MIND OVER NIGHT

25 YOU'VE COME THIS FAR YOU'VE PAID ATTENTION YOU HAVE

1 FOLLOWED YOUR INSTRUCTIONS, YOUR OATH, UNDER YOUR OATH AND
2 DON'T SACRIFICE IT AT THIS LATE DATE, OKAY? AND PLEASE
3 DON'T GET SICK TONIGHT SO -- BUT I'LL ASK Y'ALL TO BE BACK
4 AT 9 00 IN THE MORNING, OKAY?

5 MS WIYGUL YOUR HONOR, MAY WE APPROACH THE BENCH?

6 THE COURT ALL RIGHT

7 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
8 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

9 THE COURT AND THE OTHER THING I WANT TO INSTRUCT YOU,
10 AND I APPRECIATE COUNSEL REMINDING ME, THERE MAY OR MAY NOT
11 BE MEDIA COVERAGE, OKAY? SO THERE HAVE BEEN NO TELEVISION
12 CAMERAS I DON'T ANTICIPATE THERE'LL BE ANYTHING ON THE
13 NEWS

14 I BELIEVE THAT THE NEWSPAPER HAS BEEN HERE SO PLEASE
15 DON'T EVEN LOOK AT THE NEWSPAPER IN THE MORNING OR HAVE
16 SOMEONE IN YOUR HOUSE REMOVE ANY ARTICLES THAT MIGHT PERTAIN
17 TO THIS, OKAY? THAT WOULD BE VERY INAPPROPRIATE FOR Y'ALL
18 TO READ ANYTHING

19 IT'S IN YOUR HANDS NOW DON'T LET ANYBODY ELSE
20 INFLUENCE YOUR DECISION, OKAY? WE WANT YOUR TWELVE
21 DECISIONS WE DON'T WANT ANYBODY ELSE INVOLVED IN THIS SO
22 WITH THAT, LADIES AND GENTLEMEN, Y'ALL HAVE A PLEASANT
23 EVENING AND WE'LL SEE YOU TOMORROW AT 9 00, OKAY? JUST
24 COME DIRECTLY TO YOUR ROOM WHEN EVERYBODY GETS THERE Y'ALL
25 CAN START AGAIN THANK YOU

1 (WHEREUPON THE JURY EXITED THE COURTROOM AT 6 10 PM)

2 THE COURT ALL RIGHT I GUESS WE'LL BE AT EASE SEE

3 Y'ALL TOMORROW

4 (WHEREUPON COURT WAS IN RECESS AT 6 10 PM)

5 THURSDAY, JUNE 14, 2007

6 (WHEREUPON ALL JURORS WERE PRESENT AND BEGAN

7 DELIBERATING AT 9 05 AM)

8 (WHEREUPON COURT WAS IN SESSION AT 9 36 AM)

9 THE COURT ALL RIGHT I HAVE A QUESTION FROM THE

10 JURY CAN WE HAVE THE TRANSCRIPT FROM THE TRIAL FOR PEGGY,

11 AMANDA, WILLIAM? WE HAVE GONE BACK -- PEGGY'S TESTIMONY IS

12 ABOUT THREE HOURS AMANDA'S IS FORTY-FIVE MINUTES AND

13 WILLIAM IS THIRTY-FIVE MINUTES

14 I'M GOING TO SUGGEST, IF COUNSEL AGREES, THAT WE INFORM

15 THEM OF THAT AND SEE IF THERE'S ANY SPECIFIC PART OF THE

16 TESTIMONY THEY'D BE INTERESTED IN HEARING OR IF THEY WANT TO

17 HEAR THE WHOLE THING DOES THAT SOUND AGREEABLE?

18 MS WIYGUL I HAVE NO OBJECTION TO THAT, YOUR HONOR

19 MS HODGE THAT'S FINE, YOUR HONOR

20 THE COURT ALL RIGHT LET'S AT LEAST FIND OUT WHAT IT

21 IS THEY WANT AND THEN WE'LL TAKE IT FROM THERE

22 (PAUSE)

23 THE COURT OKAY LET ME LET Y'ALL READ THIS NOTE AND

24 SEE IF IT'S SATISFACTORY BEFORE I SEND IT BACK AND, SUSAN,

25 LET ME GET YOU -- THAT'S A COURT'S EXHIBIT

1 (WHEREUPON COURT'S EXHIBIT 5 WAS MARKED)

2 THE COURT AND THEN I'M GOING TO SEND -- WE OUGHT TO
3 MARK THIS ONE TOO SATISFACTORY?

4 MS. WIYGUL YES, SIR

5 MS HODGE YES, SIR

6 THE COURT. OKAY LET HER MARK IT AND THEN, JAMES,
7 IF Y'ALL WILL TAKE IT BACK TO THEM

8 (WHEREUPON COURT'S EXHIBIT 6 WAS MARKED)

9 THE COURT WELL, WE CAN KEEP THE LITTLE NOTE FROM THE
10 JURY THEY DON'T NEED THAT BACK ALL RIGHT I GUESS WE'LL
11 BE AT EASE FOR A FEW MINUTES

12 (WHEREUPON COURT WAS IN RECESS AT 9 42 AM)

13 THE COURT ALL RIGHT I HAVE A REPLY FROM THE JURY
14 THEY WOULD LIKE WITH PEGGY'S TESTIMONY, I BELIEVE THE INTENT
15 IS AFTER ACT WAS COMMITTED TO TIME THEY LEAVE CAR AT REST
16 STOP THEY'D LIKE TO HEAR THAT

17 AMANDA, TIME THE VEHICLE ARRIVED WITH PEGGY AND
18 MICHAEL UNTIL THE TIME SHE FOUND THE BODY

19 WILLIAM, TIME VEHICLE ARRIVED UNTIL THE TIME IT LEFT
20 ALL RIGHT ANY OBJECTIONS FROM ANYBODY ABOUT TRYING TO
21 REPLAY THOSE PARTS?

22 MS HODGE NOTHING FROM THE STATE, YOUR HONOR

23 MS WIYGUL NOTHING FROM THE DEFENSE, YOUR HONOR

24 THE COURT ALL RIGHT WE'LL JUST TAKE A FEW MINUTES
25 SUSAN, I'LL GIVE THIS TO YOU AND SEE IF YOU CAN KIND OF

1 ISOLATE THAT ALL RIGHT JUST BE AT EASE FOR A FEW
2 MINUTES

3 (WHEREUPON COURT WAS IN RECESS AT 10 03 AM)

4 (WHEREUPON COURT WAS IN SESSION AT 10 32 TO PLAY
5 TESTIMONY FOR THE JURY)

6 THE COURT ALL RIGHT WE THINK WE'VE GOT IT NAILED
7 DOWN AND I'M GOING TO ALLOW THEM TO SIGNAL IF THEY'VE
8 HEARD ENOUGH OTHERWISE WE'RE GOING TO START IT WHERE WE
9 THINK THEY WANT IT AND PLAY IT UNTIL THEY TELL US TO STOP
10 ALL RIGHT

11 MS HODGE DID YOU ADVISE THEM OF THAT, YOUR HONOR, OR
12 DO THEY KNOW ---

13 THE COURT NO, I'M GOING TO TELL THEM -- YOU THINK
14 I'VE BEEN BACK THERE TALKING TO THEM?

15 MS HODGE OF COURSE I DO

16 MS WIYGUL YOUR HONOR, WILL YOU PERMIT THEM ALSO TO
17 HEAR THE CROSS EXAM IF THEY'VE HEARD WHAT ONE PORTION OF THE
18 DIRECT THEY WANT? BECAUSE A LOT OF STUFF WAS TALKED ABOUT
19 ---

20 THE COURT OKAY WELL, WE'LL HAVE -- I'LL CERTAINLY
21 TELL THEM ABOUT THAT 'CAUSE WE HAVEN'T FOUND THAT -- WE
22 HAVEN'T ISOLATED THAT, CROSS

23 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 10 34 AM)

24 THE COURT ALL RIGHT GOOD MORNING, LADIES AND
25 GENTLEMEN

1 THE JURY GOOD MORNING

2 THE COURT BOY, WAS I GLAD TO HEAR THAT ALL TWELVE OF
3 YOU GOT BACK THIS MORNING THANK YOU FOR YOUR NOTES AND
4 WE HAVE TRIED TO ISOLATE IN THE TESTIMONY THE AREAS THAT YOU
5 WOULD LIKE TO HEAR WE HAVE -- WE BELIEVE WE HAVE A GOOD
6 STARTING POINT AND WE KNOW WHERE YOU WANT TO STOP IT, BUT
7 LET ME JUST TELL YOU THAT IF IT GETS TO THE POINT WHERE YOU
8 ALL HAVE HEARD ALL YOU WANT TO HEAR, THEN JUST SIGNAL TO ME,
9 OKAY?

10 AND THE OTHER THING ABOUT THIS IS, WE ARE STARTING IN
11 THE DIRECT TESTIMONY, WHICH IS THE QUESTIONING BY THE STATE
12 SO I WANT YOU TO CONSIDER, AND YOU DON'T HAVE TO DO IT, YOU
13 CAN RETIRE AND DECIDE IF YOU WANT TO HEAR CROSS EXAMINATION
14 OF THE SAME SUBJECTS IT'S ENTIRELY UP TO YOU BUT THE
15 CROSS EXAMINATION WOULD BE BY THE DEFENSE, THE EXAMINATION
16 OR THE DIRECT EXAMINATION BY THE STATE WE'RE STARTING IN
17 THE DIRECT EXAMINATION, OKAY? IF Y'ALL HAVE TROUBLE HEARING
18 LET US KNOW AND WE'LL TRY AND ADJUST IT FOR YOU ALL RIGHT,
19 SUSAN

20 (WHEREUPON THE FOLLOWING PORTION OF PEGGY GLADFELTER'S
21 TESTIMONY WAS PLAYED FOR THE JURY)

22 Q DID YOU SEE THE KNIFE WHEN HE GOT BACK TO THE CAR?

23 A NO, SIR

24 Q WHEN YOU WERE LEAVING GREENVILLE YOU WERE DRIVING?

25 A YES, SIR

1 Q TELL ME WHAT THE DEFENDANT WAS DOING

2 A HE HAD HIS BUTTERFLY KNIFE OUT IT WAS LIKE A SILVER,
3 CHROME TYPE KNIFE, THE SILVER KNIFE THAT FLIPS OPEN

4 Q HAD YOU SEEN THAT KNIFE BEFORE?

5 A YES, SIR

6 Q WAS THAT THE ONLY KNIFE THE DEFENDANT HAD?

7 A NO, SIR

8 Q WHAT KIND OF KNIVES DID HE HAVE?

9 A HE HAD LOTS OF KNIVES HE HAD THE SMALL ONES, THE
10 LITTLE POCKET KNIVES HE HAD BIG KNIVES HE CARRIED IN HIS
11 POCKET

12 Q AND HE HAD A BUTTERFLY KNIFE OUT THAT PARTICULAR NIGHT?

13 A YES, SIR

14 Q WAS HE DOING ANYTHING ELSE AS YOU WERE DRIVING?

15 A HE WAS CLEANING HIMSELF OFF WITH KEROSENE

16 Q DID YOU SEE ANYTHING WITH A CHAIN?

17 A MR DELLINGER'S WALLET

18 Q THAT WAS NOT THE DEFENDANT'S WALLET?

19 A NO, SIR

20 Q WHAT WAS HE DOING WITH THAT?

21 A HE WAS DIGGING THROUGH IT

22 Q COULD YOU SEE WHAT HE WAS -- FALLING OUT, IF ANYTHING?

23 A I COULDN'T SEE

24 Q AND WHAT HAPPENED TO THAT WALLET?

25 A MICHAEL THREW IT OVER A BRIDGE

1 Q DID HE THROW ANYTHING ELSE OUT TO YOUR RECOLLECTION?
2 A A RAG
3 Q LIKE A PAPER TOWEL OR SOMETHING?
4 A YEAH
5 Q DID YOU SEE IF HE PUT ANYTHING IN THAT PAPER TOWEL?
6 DID YOU KNOW WHAT WAS IN THAT PAPER TOWEL?
7 A NO
8 Q DID IT FLOAT LIKE A PAPER TOWEL OR DID IT SINK?
9 A I DIDN'T SEE ANYTHING SINK OR ANYTHING LIKE THAT I
10 JUST SEEN HIM THROW IT AND I SEEN THE CHAIN
11 Q YOU DROVE BACK BY THE AREA WHERE MR DELLINGER HAD
12 BEEN DID YOU SEE HIM THERE?
13 A NO, SIR
14 Q HE WASN'T STANDING ANYMORE?
15 A NO, SIR
16 Q WAS HE BENT OVER AS YOU COULD SEE?
17 A NO, SIR
18 Q WERE YOU PAYING ATTENTION TO THAT SIDE OF THE ROAD?
19 A NO, SIR
20 Q TRYING TO AVOID IT?
21 A YEAH
22 Q WHAT HAPPENED WHEN -- WHAT ROUTE DID YOU TAKE? WAS IT
23 A ROUTE THAT YOU KNEW TO TAKE OR ---
24 A NO, SIR
25 Q --- WAS HE TELLING YOU WHERE TO GO?

1 A HE WAS TELLING ME WHERE TO GO

2 Q BUT YOU DIDN'T TELL -- YOU DIDN'T TELL JOBO OR AMANDA
3 OR ANYBODY WHAT HAD HAPPENED, DID YOU?

4 A NO, SIR

5 Q YOU DIDN'T TRY TO GIVE THEM A SIGNAL TO CALL THE
6 POLICE, DID YOU?

7 A NO, SIR

8 Q AND AS YOU WERE DRIVING YOU DIDN'T TRY TO SIGNAL ANY
9 KIND OF OFFICER OR ANYTHING LIKE THAT AS YOU WERE DRIVING,
10 DID YOU?

11 A NO, SIR

12 Q HOW LONG WERE YOU DRIVING THE CAR?

13 A MAYBE ABOUT FORTY-FIVE MINUTES

14 Q AND THEN WHAT HAPPENED THEN?

15 A WE WERE OUT OF STATE WELL, WE -- IT WAS STOPS BEFORE
16 THEN AND IT WAS A STOP AT A BRIDGE IS WHERE HE GOT OUT AND
17 THREW IT AND THEN HE DROVE FROM THERE TO, I THINK IT WAS
18 ALABAMA

19 Q SO 'THAT'S WHERE HE THREW ---

20 A NO

21 Q --- HE THREW OUT THE WALLET AND THE PAPER TOWEL ---

22 A YES, SIR

23 Q --- ON THE BRIDGE?

24 A YES, SIR

25 Q AND THEN WHERE DID HE GO?

1 A WE DROVE TO A WELCOME CENTER, TRUCK STOP AREA WHERE YOU
2 GO IN TO USE THE BATHROOM AND STUFF IT WAS LOCKED UP

3 Q OKAY

4 A AND FROM THERE WE GOT OUR STUFF AND WE WENT DOWN OVER
5 AN EMBANKMENT TO A TRUCK AREA WHERE A BUNCH OF EIGHTEEN
6 WHEELERS WERE PARKED

7 Q ON THE WAY WHAT WAS HE DOING, IF ANYTHING, -- WHAT WAS
8 HE DOING -- YOU SAID HE HAD BLOOD ON HIM WHAT DID HE HAVE
9 BLOOD ON? HIS FACE? HIS CLOTHES? WHAT DID HE HAVE IT ON?

10 A HE HAD A SPOT ON HIS FACE

11 Q OKAY

12 A HE HAD IT ON HIS HANDS, HIS SHOES AND ON THE FLEECE
13 THAT I HAD GOT HIM FOR CHRISTMAS

14 Q LET ME SHOW YOU STATE'S 20 IS THAT THE FLEECE YOU'RE
15 TALKING ABOUT?

16 A YES, SIR

17 Q THAT'S WHAT HE WAS WEARING?

18 A YES, SIR

19 Q WHAT DID HE DO WITH THAT?

20 A HE THREW IT OUT THE WINDOW

21 Q AND THIS PICTURE WAS TAKEN WITH THE OTHER ONES UP IN
22 PENNSYLVANIA, IS THAT CORRECT?

23 A YES, SIR

24 MR FRETWELL YOUR HONOR, PERMISSION TO MOVE STATE'S
25 20 INTO EVIDENCE

(1 MS WIYGUL JUST SUBJECT TO PREVIOUS ---

2 THE COURT ALL RIGHT SAME RULING

3 (WHEREUPON STATE'S EXHIBIT 20 WAS ENTERED INTO
4 EVIDENCE)

5 Q IS THAT THE SWEATER HE WAS WEARING, MA'AM?

6 A YES, SIR

7 Q AND THAT'S THE SWEATER HE DISPOSED OF?

8 A YES, SIR

9 Q LET ME DIRECT YOU BACK TO THESE TWO PHOTOGRAPHS,
10 STATE'S 16 AND 16B CAN YOU TELL WHAT SHIRT THE DEFENDANT'S
11 WEARING IN THESE TWO PICTURES?

12 A HIS NAUTICA SHIRT THAT HE HAD UNDERNEATH THE FLEECE

(13 Q THE FLEECE IS WHAT COLOR?

14 A GRAY

15 Q GRAY?

16 A OH, NO, THE FLEECE IS BLUE I'M SORRY

17 Q OKAY IS IT A LIGHT BLUE OR A DARK BLUE?

18 A DARK BLUE

19 Q OKAY AND THIS GRAY SHIRT, WHAT'S SIGNIFICANT ABOUT
20 THIS GRAY SHIRT?

21 A THAT'S THE SHIRT HE HAD ON UNDERNEATH THE FLEECE

22 Q UNDERNEATH THIS FLEECE?

23 A YES, SIR

24 Q DID HE KEEP THAT SHIRT OR DID HE THROW AWAY THAT SHIRT?

(25 A HE KEPT THAT SHIRT

1 Q AND AT SOME POINT DID -- NOW WHAT KIND OF PANTS WAS HE
2 WEARING?

3 A HE HAD ON A PAIR OF BLUE JEANS

4 Q WHAT, IF ANYTHING, DID HE DO WITH THOSE JEANS?

5 A HE DISCARDED THEM TOO

6 Q AND WERE YOU ABLE TO SEE HIS LEGS WHEN HE DISCARDED
7 THOSE JEANS?

8 A YES, SIR

9 Q WHAT DID YOU SEE ON HIS LEGS?

10 A HE HAD A STAB WOUND TO HIS LEFT LEG

11 Q WAS IT BLEEDING?

12 A YES, SIR

13 Q AT SOME FUTURE POINT WERE YOU ABLE TO SEE THAT WOUND
14 AGAIN AND AGAIN?

15 A YOU MEAN AFTER THE INCIDENT?

16 Q UM-HUM (AFFIRMATIVE)

17 A YES, SIR

18 Q DID YOU SEE IT ONCE IT HAD HEALED?

19 A YES

20 Q OKAY LET ME SHOW YOU STATE'S 36 AND 37 DO YOU
21 RECOGNIZE THOSE?

22 A THAT'S THE WOUND

23 Q THAT'S THE WOUND?

24 A YES, SIR

25 Q PROPER LOCATION?

1 A IT'S ON HIS LEFT LEG

2 Q DOES THAT -- THOSE PICTURES ACCURATELY REFLECT HIS LEFT
3 LEG?

4 A YES, SIR

5 Q AND THE WOUND?

6 A YES, SIR

7 MR. FRETWELL YOUR HONOR, AT THIS TIME WE'D MOVE
8 STATE'S 36 AND 37 IN

9 MS WIYGUL WITHOUT OBJECTION

10 THE COURT ALL RIGHT NO OBJECTION

11 (WHEREUPON STATE'S EXHIBITS 36 AND 37 WERE ENTERED INTO
12 EVIDENCE)

13 Q LET ME SHOW YOU FIRST THIS PICTURE, WHICH IS STATE'S
14 EXHIBIT 36 IS THAT THE LOCATION WHERE HE RECEIVED THE
15 WOUND?

16 A YES, SIR

17 Q THEN A CLOSE UP OF THAT PICTURE, STATE'S 37, IS THAT
18 THE WOUND?

19 A YES, SIR

20 (WHEREUPON THE JURY INDICATED TO THE COURT THAT THEY
21 HAD HEARD ENOUGH OF THE TESTIMONY)

22 THE COURT ALL RIGHT WE'RE READY TO GO TO AMANDA
23 ALL RIGHT

24 (WHEREUPON THE FOLLOWING PORTION OF AMANDA INMAN'S
25 TESTIMONY WAS PLAYED FOR THE JURY)

1 Q OKAY AND THEN DID YOU SEE THE DEFENDANT AGAIN THAT
2 NIGHT?

3 A YES

4 Q ALL RIGHT DO YOU RECALL AROUND WHAT TIME THIS WAS AND
5 WHAT HAPPENED?

6 A IT WAS PROBABLY ABOUT, I WOULD SAY 7 30 HIM AND PEGGY
7 COME RUSHING UP THE DRIVEWAY AT 196 AND THEY BOTH GOT OUT
8 THEY WERE RUSHING IN AND OUT OF THE HOUSE GETTING THEIR
9 BELONGINGS, DROPPING STUFF AND MY BOYFRIEND ACTUALLY
10 PICKED UP SOME STUFF AND, YOU KNOW, HANDED IT TO THEM THEY
11 WERE IN SUCH A HURRY

12 Q AND WHEN YOU SAY THEY CAME RUSHING UP, WERE THEY
13 WALKING OR WERE THEY IN A CAR?

14 A THEY WERE IN A MAROON CAR

15 Q OKAY I'M SHOWING YOU STATE'S NUMBER 2 DID THEY PULL
16 UP IN YOUR DRIVEWAY OR IN THE DRIVEWAY NEXT TO THE HOUSE
17 THEY WERE STAYING IN?

18 A RIGHT THERE, THAT DRIVEWAY GOING UP THROUGH THERE

19 Q OKAY AND THEY WERE IN A HURRY?

20 A YES

21 Q DID YOU GET A GOOD LOOK AT THE CAR?

22 A YES

23 Q OKAY DO YOU RECALL WHAT IT LOOKED LIKE?

24 A I CAN REMEMBER IT 'CAUSE THE SQUARE REAR END OF THE
25 BACK OF THE CAR WHERE THE TRUNK IS AND THEN THE COLOR

1 BECAUSE IT WAS RIGHT UP UNDER STREET LIGHTS

2 Q OKAY SO THERE ARE LIGHTS OUT THERE BY THE TRAILERS?

3 A YES

4 Q AND I'M SHOWING YOU STATE'S NUMBER 1 DO YOU RECOGNIZE
5 THAT CAR?

6 A YES, I DO

7 Q OKAY AND HOW IS THAT?

8 A THE FRONT END OF THE CAR AND THEN THE COLOR OF IT

9 Q IS THAT THE CAR THAT THEY CAME RIDING UP IN?

10 A YES

11 Q OKAY HAD YOU EVER SEEN THEM IN THIS CAR BEFORE?

12 A NO

13 Q AND WHAT WAS HAPPENING -- WERE YOU OUTSIDE TALKING TO
14 THEM OR WERE YOU JUST WATCHING OR WHAT WAS GOING ON?

15 A I WAS STANDING AT THE CORNER OF THE TRAILER AT 196 I
16 WAS JUST SORT OF STANDING THERE WATCHING THEM THEY WERE IN
17 SUCH A HURRY THERE WAS NO TALKING GOING ON IT WAS, YOU
18 KNOW, RUNNING

19 Q AND DID YOU HEAR ANYTHING? ANY CONVERSATION AT ALL
20 FROM ANYBODY?

21 A ONE OF THEM SAID -- THEY HAD JUST BOUGHT GROCERIES
22 AND ONE OF THEM SAID, WHAT ABOUT THE GROCERIES? AND THE
23 OTHER ONE SAID,

24 Q GO AHEAD YOU CAN SAY THE BAD WORD

25 A FUCK THE GROCERIES AND -- BUT I CANNOT RECALL WHICH

1 ONE SAID, WHAT ABOUT THE GROCERIES AND THE OTHER ONE SAYING,
2 FUCK THE GROCERIES

3 Q THEY WERE IN AGREEMENT THEY NEEDED TO BE GETTING GOING?

4 A YES

5 Q AND WERE THEY DROPPING THINGS ON THE WAY OR ---

6 A YES

7 Q AND DID YOU ACTUALLY TOUCH SOMETHING THAT THEY HAD
8 DROPPED?

9 A YES, THE CAMERA I HAD PICKED UP A CAMERA LATER I
10 THINK IT WAS THE NEXT DAY I HAD PICKED IT UP IN THE DAYLIGHT
11 AND TOOK IT IN THE HOUSE AND LAID IT ON THE TABLE AND SOME
12 DETECTIVES OR POLICE

13 Q POLICE OFFICER?

14 A YES, COME IN AND I HAD TO SIGN A PAPER TO LET THEM
15 TAKE SOME THINGS OUT OF THE HOUSE

16 Q AND THAT WAS ONE OF THE THINGS?

17 A YES

18 Q THE CAMERA?

19 A UM-HUM (AFFIRMATIVE)

20 Q OKAY NOW YOU SAY THAT Y'ALL DID NOT WANT THEM THERE
21 'CAUSE THEY HAD THESE OUTSTANDING WARRANTS DID YOU KNOW OF
22 EITHER ONE OF THEM TO BE USING FAKE NAMES OR FAKE IDs?

23 A NOT AT THE TIME, BUT MICHAEL HAD A FAKE ID OR IT WAS
24 SOMEBODY ELSE'S PICTURE ON IT IT WAS -- THE LAST NAME
25 FREY AND HE WAS ASKING MY BOYFRIEND COULD HE PASS FOR THE

1 PICTURE ON THE ID

2 Q SO DID YOU SEE THE ID?

3 A YES

4 Q ALL RIGHT HOW LONG DO YOU THINK IT TOOK PEGGY AND
5 MICHAEL TO GET THEIR STUFF AND GET OUT OF Y'ALL'S DRIVEWAY?

6 A FIVE MINUTES

7 MS. HODGE IF YOU WOULDN'T MIND TURNING THAT LIGHT
8 BACK ON I'M SORRY I KNOW IT'S A LOT OF ON AND OFF

9 Q AND WILLIAM WAS HOME AT THE TIME?

10 A YES

11 Q DID HE ACTUALLY ALSO GO OUTSIDE ---

12 A YES

13 Q --- DURING THIS TIME? OKAY NOW WHAT HAPPENED AFTER
14 THEY LEFT? WHAT DID YOU AND WILLIAM DO?

15 A WE JUST WENT BACK HOME WE DIDN'T THINK NOTHING OF
16 THEM, YOU KNOW, HURRYING AND LEAVING WE JUST THOUGHT MAYBE
17 THEY HAD TO GO SOMEWHERE PROBABLY ABOUT FORTY-FIVE MINUTES
18 LATER WE HAD GOT IN A -- HIS MOTHER'S CAR AND WENT TO THE
19 MOUNTAIN GIFT SHOP

20 Q OKAY I'M GOING TO SHOW YOU THE MAP THAT YOU'VE
21 ALREADY LOOKED AT, STATE'S NUMBER -- WELL, HANG ON A SECOND
22 WHY DON'T YOU TELL ME WHAT HAPPENED WHEN Y'ALL WENT TO GO TO
23 THE MOUNTAIN GIFT SHOP

24 A WE COME DOWN A HILL, WE COME AROUND THE CURVE WE
25 THOUGHT THERE WAS A ROLL OF CARPET LAYING THERE WHEN WE

1 GOT UP CLOSER THEY WAS A MAN'S BODY LAYING IN BLOOD

2 Q AND HOW FAR AWAY WAS THIS FROM Y'ALL'S PLACE?

3 A NOT FAR MAYBE -- NOT EVEN A HALF MILE

4 Q WAS IT ON [REDACTED] ROAD?

5 A YES UH-HUH (AFFIRMATIVE)

6 Q I'M GOING TO SHOW YOU STATE'S NUMBER 10 IF YOU WANT
7 TO USE YOUR LITTLE POINTER, THAT'LL HELP, AND TELL US HOW
8 Y'ALL GOT TO MOUNTAIN GIFT OR WERE GOING TO GO TO THE
9 MOUNTAIN GIFT SHOP AND WHAT HAPPENED

10 A WE COME OUT OF THIS DRIVEWAY RIGHT HERE AT 194, COME
11 AROUND THROUGH HERE AND THERE'S A HILL THAT YOU GO DOWN
12 AND COME AROUND WE GOT ABOUT RIGHT HERE AND THERE'S A
13 SANDY AREA AND THAT'S WHERE MR DELLINGER WAS LAYING

14 Q NOW DID YOU KNOW MR DELLINGER?

15 A NO

16 Q OKAY AT THE TIME YOU DIDN'T KNOW THE NAME OF THE
17 PERSON?

18 A NO, I DIDN'T

19 Q AND I'M GOING TO PUT UP STATE'S NUMBER 9 THAT SHOWS --
20 WHAT DOES THAT SHOW?

21 A THIS IS THE ROAD WE COME DOWN AND THIS IS THE SANDY
22 AREA AND THIS IS THE SANDY DRIVEWAY UP IN HERE AND HE
23 WAS LAYING RIGHT IN HERE

24 Q AND ONCE Y'ALL SAW HIM WHAT DID YOU DO?

25 A WE CONTINUED GOING STRAIGHT OUT THIS ROAD RIGHT HERE

1 I -- UM

2 Q YOU KEPT ON GOING DOWN [REDACTED] [REDACTED]

3 A YES, RIGHT OUT THROUGH HERE

4 Q OKAY

5 A I TURNED AROUND IT JUST STARTLED ME I WENT BACK TO

6 MY HOUSE AND PICKED UP MY BOYFRIEND'S MOM WE WENT BACK

7 DOWN HE WAS STILL LYING THERE WE WAS GOING TO GO CALL

8 THE POLICE TO GET HIM SOME HELP WE GOT TO THE END OF [REDACTED]

9 [REDACTED] AND THEY WAS A DEPUTY SITTING THERE AT A HOUSE AND

10 WE FLAGGED HIM DOWN AND TOLD HIM THAT THEY WAS A MAN LAYING

11 NEXT TO THE RIVER AT THE SANDY AREA

12 Q DID YOU -- OKAY SO YOU WERE DRIVING?

13 A NOT AT THE TIME BECAUSE I -- IT JUST MADE ME NERVOUS

14 AND EVERYTHING AND MY EX-MOTHER-IN-LAW WAS DRIVING THEN

15 Q OKAY BUT TO START WITH?

16 A I WAS DRIVING

17 (WHEREUPON THE JURY INDICATED TO THE COURT THAT THEY

18 HAD HEARD ENOUGH OF THE TESTIMONY)

19 THE COURT ALL RIGHT WE'LL MOVE TO WILLIAM'S

20 TESTIMONY

21 (WHEREUPON THE FOLLOWING PORTION OF WILLIAM JO

22 PHILLIP'S TESTIMONY WAS PLAYED FOR THE JURY)

23 A AND THEN WE WAS SITTING IN THERE AND WE HEARD A CAR

24 COME DOWN THE HILL SO I GOT UP I WALKED OUTSIDE AND I

25 SEEN A CAR COMING OVER THE HILL I SEEN IT SWOOP UP IN MY,

1 THE HOUSE I WAS BUYING, I SEEN IT SWOOP UP IN THE DRIVEWAY
2 REAL QUICK SO I WALKED OFF DOWN THROUGH THERE AND THAT'S
3 WHEN THERE WAS THIS MAROON OR BEIGE LOOKING CAR PULL UP IN
4 THE DRIVEWAY MICHAEL AND PEGGY GOT OUT THAT'S WHEN THEY
5 STARTED RUNNING AND GRABBING STUFF

6 Q WERE THEY GOING INTO 196 GRABBING STUFF?

7 A YES, MA'AM

8 Q OKAY DID YOU GET A CHANCE TO LOOK AT THE CAR THAT
9 THEY DROVE UP IN?

10 A YES, MA'AM

11 Q ALL RIGHT AND I'M GOING TO SHOW YOU STATE'S NUMBER 1
12 IS THAT THE CAR THEY CAME DRIVING UP IN?

13 A YES, MA'AM

14 Q HAD YOU EVER SEEN THEM IN THIS CAR BEFORE?

15 A NO, MA'AM

16 Q HAD YOU EVER SEEN THIS CAR YOURSELF BEFORE ---

17 A NO, MA'AM

18 Q --- ANYTIME? ALL RIGHT OKAY AND YOU GO OUTSIDE
19 DO YOU GET CLOSE UP TO MICHAEL AND PEGGY? ARE YOU STANDING
20 REAL CLOSE TO THEM?

21 A YES, MA'AM I WASN'T MAYBE ABOUT FOUR FEET FROM THE
22 CAR

23 Q OKAY

24 A 'CAUSE THEY WAS DROPPING STUFF I MEAN, I WAS LEANING
25 DOWN PICKING IT UP TRYING TO HAND IT TO THEM

1 Q OKAY SO AS THEY'RE DROPPING YOU'RE TRYING TO ---

2 A YEAH

3 Q --- HELP?

4 A YEAH

5 Q AND ARE THEY HAVING ANY CONVERSATION OR ARE YOU ASKING
6 THEM WHERE YOU GOING, WHAT'S GOING ON, ANYTHING LIKE THAT?

7 A NO, MA'AM, I DIDN'T, YOU KNOW

8 Q YOU, I MEAN, Y'ALL PRETTY MUCH WANTED THEM GONE, ---

9 A YEAH

10 Q --- SO IT WASN'T TOO TERRIBLE THEY WERE LEAVING?

11 A YEAH

12 Q OKAY AND DID YOU HEAR THEM TALKING ABOUT ANYTHING
13 AMONGST THEMSELVES?

14 A WELL, ALL I HEARD WAS ONE OF THEM HOLLERING HURRY UP,
15 HURRY UP AND ONE OF THEM HOLLERING SOMETHING ABOUT THE
16 GROCERIES AND THE OTHER ONE SAID, "F" THE GROCERIES, WE'VE
17 GOT TO GO, WE'VE GOT TO GO

18 Q AND ABOUT HOW LONG DID IT TAKE THEM TO GATHER THEIR
19 STUFF UP AND GET OUT OF THERE?

20 A MAYBE A MINUTE, MINUTE AND A HALF

21 Q SO IT WAS PRETTY FAST?

22 A OH, YEAH

23 Q ALL RIGHT DO YOU RECALL WHO GOT IN THE CAR IN THE
24 DRIVER'S SEAT TO GO?

25 A NO, MA'AM I WASN'T FOR SURE WHO WAS DRIVING

1 Q DO YOU KNOW WHICH WAY THEY WENT OR WHAT HAPPENED WHEN
2 THEY LEFT?

3 A ~ THEY WENT -- YEAH THEY BACKED OUT OF THE DRIVEWAY AND
4 THEY BACKED OFF INTO THE DITCH AND STUFF, AND THEY WENT UP
5 THE HILL

6 Q WERE THEY DRIVING CALMLY?

7 A NO, MA'AM

8 Q OKAY ABOUT THIS -- DO YOU HAVE ANY IDEA ABOUT WHAT
9 TIME OF DAY WE'RE TALKING ABOUT NOW?

10 A YEAH IT WAS ---

11 Q OR NIGHT?

12 A IT WASN'T LONG AFTER I'D COME IN FROM WORK IT WAS
13 PROBABLY ABOUT 7 30, 7 40, SOMEWHERE ALONG THERE SO I
14 DIDN'T HAVE TIME TO GO AND TAKE A SHOWER OR NOTHING LIKE I
15 SAY, I JUST GOT IN FROM WORK AND WENT IN AND SAT DOWN AND
16 THEN THAT -- IT WASN'T THAT LONG THEY COME DOWN THE HILL

17 Q OKAY AND AT THAT TIME DID YOU THINK ANYTHING OF THAT
18 OR ---

19 A NO

20 Q --- THINK ANYTHING WEIRD ABOUT THAT?

21 A NO, MA'AM THEY JUST SAID THEY WAS GOING TO, YOU KNOW,
22 COME BACK UP THERE TO GET THEIR STUFF

23 Q SO THEY SAID THEY WERE GOING TO COME AND GET THEIR
24 STUFF, CAME AND GOT THEIR STUFF ---

25 A YES, MA'AM

1 Q --- AND TOOK OFF? WHAT DID YOU DO NEXT? WHAT HAPPENED
2 AFTER THAT ONCE THEY LEFT?

3 A WELL, AFTER THEY LEFT A FEW MINUTES LATER WE -- I WAS
4 OUT OF DIP AND I TOLD THEM, WELL, I NEED TO GO TO THE
5 STORE SO WE BORROWED MY MOM'S CAR WE STARTED DOWN THE
6 HILL, RIGHT PAST THE HOUSE GOT DOWN THERE RIGHT DOWN BELOW
7 THE HOUSE, THERE WE COME IN THE CURVE, AND AT THE SANDY
8 SPOT, I MEAN, THERE WAS SOMETHING LAYING THERE I MEAN, I
9 THOUGHT -- I DIDN'T KNOW WHAT IT WAS I THOUGHT IT WAS
10 CARPET OR SOMETHING, SOMEBODY THREW SOMETHING DOWN ON THE
11 SIDE OF THE ROAD AND WE GET A LITTLE CLOSER, THEN I SEEN,
12 YOU KNOW, THEY WAS SOMEBODY LAYING THERE

13 MY FIRST THOUGHT, YOU KNOW, MAYBE THE MAN HAD BEEN
14 DRINKING OR SOMETHING, YOU KNOW, FELL AND HURT HIMSELF
15 WELL, I ROLLED MY WINDOW DOWN I WENT TO HOLLER AND STUFF
16 HE NEVER DID MOVE I WENT HITTING ON THE SIDE OF THE CAR,
17 ---

18 (WHEREUPON THE JURY INDICATED TO THE COURT THAT THEY
19 HAD HEARD ENOUGH OF THE TESTIMONY)

20 THE COURT ALL RIGHT, LADIES AND GENTLEMEN NOW I'M
21 GOING TO GET Y'ALL TO RETIRE BACK TO YOUR JURY ROOM AND
22 AGAIN, LET ME REMIND YOU THAT WE HAVE THE CROSS EXAMINATION
23 IF ANYONE WOULD LIKE TO HEAR THAT WE'LL TRY AND ISOLATE
24 WHATEVER ELSE YOU MIGHT LIKE TO HEAR, OKAY? BUT IS EVERYONE
25 SATISFIED SO FAR AT THIS TIME?

1 THE JURY (AFFIRMATIVE NODS)

2 THE COURT ALL RIGHT THANK YOU VERY MUCH

3 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10 58 AM TO

4 CONTINUE DELIBERATING)

5 THE COURT ALL RIGHT WE'LL BE AT EASE

6 (WHEREUPON COURT WAS IN RECESS AT 10 59 AM)

7 THE COURT THE JURY HAS WRITTEN -- HAS WRITTEN A NOTE,

8 CAN WE HAVE A WRITTEN DEFINITION OF REASONABLE DOUBT IN

9 MURDER AS DESCRIBED IN THE COURTROOM ON 6/13/07? SO I WILL

10 PRINT THOSE TWO CHARGES AND SEND THEM TO THEM UNLESS

11 THERE'S, I MEAN, ANY OBJECTION TO THAT?

12 MS HODGE NO, SIR

13 MS WIYGUL NO, SIR

14 THE COURT OKAY

15 (WHEREUPON COURT'S EXHIBIT 7 WAS MARKED)

16 MS WIYGUL YOUR HONOR?

17 THE COURT YEAH

18 MS. WIYGUL. ARE YOU GOING TO INCLUDE ALL THE SUB-

19 DEFINITIONS OF MALICE AND EVERYTHING OR JUST THE ---

20 THE COURT I'M JUST GOING TO GIVE THEM THE CHARGE I

21 GAVE THEM THAT'S WHAT THEY WANT SO I'LL SHOW IT TO YOU

22 BEFORE I SEND IT BACK

23 (WHEREUPON COURT WAS IN RECESS AT 11 05 AM)

24 THE COURT ALL RIGHT I HAVE SHOWN THE PROPOSED OR

25 THE CHARGES, JURY CHARGES, WHICH ARE A CORRECT STATEMENT OF

VERDICT OF THE JURY

606

1 THE LAW TO THE ATTORNEYS THEY AGREE THAT THAT IS WHAT WAS
2 CHARGED BEFORE WE'RE GOING TO MARK IT AS AN EXHIBIT,
3 COURT'S EXHIBIT, AND SEND IT BACK TO THE JURY

4 MS WIYGUL THANK YOU, YOUR HONOR

5 MS. HODGE YES, SIR

6 (WHEREUPON COURT'S EXHIBIT 8 WAS MARKED)

7 THE COURT OKAY ALL RIGHT

8 (WHEREUPON COURT WAS IN RECESS AT 11 11 AM)

9 THE COURT ALL RIGHT I HAVE A NOTE FROM THE JURY
10 IT SAYS WE HAVE REACHED A UNANIMOUS DECISION ON ALL THREE
11 COUNTS

12 (WHEREUPON COURT'S EXHIBIT 9 WAS MARKED)

13 THE COURT ALL RIGHT I DON'T KNOW WHAT THE VERDICT
14 IS, BUT I EXPECT Y'ALL TO REMAIN CALM IN THE COURTROOM NO
15 REACTIONS

16 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11 55 AM)

17 THE COURT ALL RIGHT MR FOREMAN, I UNDERSTAND Y'ALL
18 HAVE REACHED A VERDICT

19 MR FOREMAN WE HAVE, YOUR HONOR

20 THE COURT ALL RIGHT IF YOU WOULD, PLEASE HAND IT TO
21 THE BAILIFF ALL RIGHT

22 MADAME CLERK YOUR HONOR, CASES NUMBER 2005-GS-4106

23 AND 4108, THE STATE OF SOUTH CAROLINA VERSUS MICHAEL ANTHONY
24 SARRATT, ALSO KNOWN AS LEROY EUGENE FREY, JR , AS TO THE
25 CHARGE OF MURDER, WE, THE JURY, FIND THE DEFENDANT GUILTY

VERDICT OF THE JURY

607

1 AS TO THE CHARGE OF CAR-JACKING, WE, THE JURY, FIND THE
2 DEFENDANT GUILTY AS TO THE CHARGE OF POSSESSION OF A
3 WEAPON DURING THE COMMISSION OF A CRIME, WE, THE JURY, FIND
4 THE DEFENDANT GUILTY, SIGNED, PAUL H SINANIAN, FOREMAN IF
5 THESE ARE YOUR VERDICTS, THEN PLEASE RAISE YOUR RIGHT HANDS

6 (WHEREUPON ALL JURORS RAISED THEIR RIGHT HAND)

7 THE COURT ALL RIGHT THANK YOU ALL VERY MUCH
8 ANYTHING FURTHER FROM THE JURY?

9 MS HODGE NOTHING FROM THE STATE, YOUR HONOR

10 MS. WIYGUL NOTHING FROM THE DEFENSE, YOUR HONOR

11 THE COURT ALL RIGHT MR FOREMAN, LADIES AND
12 GENTLEMEN OF THE JURY, THANK YOU VERY MUCH FOR YOUR SERVICE
13 AND I THINK WE'VE GOT SOME INFORMATION OR LETTERS THAT WE
14 NEED TO GIVE YOU BACK IN THE JURY ROOM Y'ALL ARE FREE TO
15 RETIRE TO THE JURY ROOM OR STAY FOR SENTENCING, WHATEVER YOU
16 PREFER TO DO THANK Y'ALL VERY MUCH

17 AND, MR SINANIAN, WE NEED TO GET YOU TO SIGN THE
18 ACTUAL INDICTMENTS, IF YOU DON'T MIND

19 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11 58 AM)

20 THE COURT ALL RIGHT DO WE HAVE ANY MOTIONS?

21 MS WIYGUL YOUR HONOR, WE WOULD RENEW OUR MOTION FOR
22 A DIRECTED VERDICT

23 THE COURT OKAY I WILL DENY THAT

24 MS WIYGUL AND WE WOULD MAKE A MOTION FOR A NEW
25 TRIAL

SENTENCE OF THE COURT

608

1 THE COURT AND I'LL DENY THAT AS WELL ALL RIGHT
2 Y'ALL WANT TO COME AROUND FOR SENTENCING ALL RIGHT I'LL
3 BE HAPPY TO HEAR FROM THE STATE

4 MS. HODGE THANK YOU, YOUR HONOR MAY IT PLEASE THE
5 COURT? AS YOUR HONOR KNOWS AND HEARD THE TRIAL, THE
6 TESTIMONY IN THIS CASE, THIS WAS A VERY VICIOUS, A VERY
7 BRUTAL, A VERY UNNECESSARY MURDER OF MR DELLINGER HE WAS
8 A COMPLETELY INNOCENT MAN DOING NOTHING BUT OFFERING A RIDE
9 TO THESE PEOPLE

10 THE STATE WOULD ASK FOR THE MAXIMUM AND THE VICTIM'S
11 FAMILY DOES NOT WISH TO ADDRESS THE COURT, DOESN'T THINK
12 THEY WOULD BE ABLE BUT THEY, OF COURSE, ARE REQUESTING THE
13 SAME

14 HE DOES HAVE A PRIOR RECORD I APOLOGIZE, I'VE ALREADY
15 TAKEN MY COMPLETE FILE BACK, BUT HE HAS BEEN INCARCERATED
16 FOR BURGLARIES, FAILURE TO STOP FOR POLICE HE'S GOT
17 SHOPLIFTING, I BELIEVE, LARCENY AND IF I'M MISSPEAKING,
18 I'LL BRING THE EXACT ---

19 THE COURT- WELL, I'D LIKE TO HAVE THAT BEFORE I
20 SENTENCE HIM

21 MS HODGE YES, SIR IF YOU'D LIKE TO HEAR ANYTHING
22 ON THEIR BEHALF WHILE WE'RE WAITING OR YOU JUST WANT TO
23 WAIT

24 THE COURT OH, YOU'VE SENT FOR IT ALREADY?

25 MS HODGE- YES, SIR

SENTENCE OF THE COURT

609

1 THE COURT OKAY ALL RIGHT YEAH, I'D BE HAPPY TO
2 HEAR FROM THE DEFENSE

3 MS WIYGUL YOUR HONOR, MR SARRATT, AS YOU'VE HEARD
4 THE TESTIMONY THROUGH THIS TRIAL, THERE'S BEEN SOME BACK AND
5 FORTH AS FAR AS WHAT EXACTLY HAPPENED MR SARRATT WOULD
6 JUST ASK FOR THE COURT TO SHOW MERCY

7 DO YOU HAVE ANYTHING YOU WOULD LIKE TO ADDRESS THE
8 COURT?

9 MR. SARRATT NO

10 THE COURT ALL RIGHT

11 MS HODGE MS REEVES HAS GONE TO RETRIEVE IT

12 THE COURT OKAY WELL, WHY DON'T WE JUST -- Y'ALL
13 JUST HAVE A SEAT AND LET'S WAIT FOR THE ---

14 MS HODGE YES, SIR

15 THE COURT --- PRIOR CRIMINAL HISTORY TO ARRIVE
16 (WHEREUPON COURT WAS IN RECESS AT 12 01 PM)

17 MS HODGE YOUR HONOR, I'M SORRY FOR THAT

18 THE COURT THAT'S ALL RIGHT OKAY

19 MS. HODGE 1995, WE HAVE PUBLIC DRUNK, PETTY LARCENY,
20 SHOPLIFTING, '96, PUBLIC DRUNK, '97, FALSE INFORMATION TO
21 POLICE, '97, BURGLARY, SECOND, NON-VIOLENT, PETTY LARCENY,
22 2000, PETTY LARCENY, '97 AGAIN, SEVEN COUNTS OF FRAUDULENT
23 CHECKS

24 THE COURT THAT WAS '97?

25 MS. HODGE BACK IN '97, YES, SIR

SENTENCE OF THE COURT

610

1 THE COURT OKAY

2 MS HODGE '98, DRIVING UNDER SUSPENSION, '99,

3 POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA ACTUALLY

4 THAT'S 2000, I'M SORRY THE CONVICTION WAS IN 2000, PWID,

5 MARIJUANA, FIRST, UNLAWFUL CARRYING OF A WEAPON, POSSESSION

6 OF DRUG PARAPHERNALIA, '99, SIMPLE ASSAULT AND BATTERY HE

7 HAD A PROBATION REVOCATION, IT LOOKS LIKE ON HIS BURGLARY

8 CHARGE IN '99

9 2001, FINANCIAL TRANSACTION CARD FRAUD GREATER THAN

10 FIVE HUNDRED DOLLARS, INTERFERING OR HINDERING WITH

11 OFFICERS, DRIVING UNDER SUSPENSION, RECEIVING STOLEN GOODS,

12 2002 HE HAD A PROBATION REVOCATION ON HIS PWID, FIRST, OF

13 MARIJUANA, HE HAD A HABITUAL TRAFFIC OFFENDER, AND IN, OR

14 EXCUSE ME, 2003, HABITUAL TRAFFIC OFFENDER, HIT AND RUN WITH

15 PROPERTY DAMAGE, FAILURE TO STOP FOR THE BLUE LIGHTS, AND

16 THEN JUST THE PENDING CHARGES

17 THE COURT ALL RIGHT WHAT ARE THE OTHER

18 MS. HODGE OTHER PENDING CHARGES?

19 THE COURT YEAH

20 MS HODGE HE'S GOT LYNCHING, SECOND DEGREE LYNCHING,

21 TWO COUNTS, ASSAULT AND BATTERY WITH INTENT TO KILL,

22 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT

23 CRIME, MALICIOUS INJURY TO PERSONAL PROPERTY

24 THE COURT ALL RIGHT OKAY THANK YOU VERY MUCH

25 MS HODGE YES, YOUR HONOR

SENTENCE OF THE COURT

1 THE COURT HOW OLD IS HE? HOW OLD ARE YOU?

2 MR SARRATT I'M TWENTY-NINE, SIR

3 THE COURT WHAT'S THE HIGHEST GRADE YOU FINISHED IN
4 SCHOOL?

5 MR SARRATT NINTH

6 THE COURT ALL RIGHT ANYTHING ELSE YOU WANT TO TELL
7 ME?

8 MS WIYGUL NO, YOUR HONOR

9 THE COURT ALL RIGHT I'M GOING TO GIVE YOU FIVE
10 YEARS ON THE GUN, THIRTY YEARS ON THE CAR-JACKING AND FIFTY
11 YEARS ON THE MURDER

12 MS HODGE. THANK YOU, YOUR HONOR

13 THE COURT GOOD LUCK

14 MS WIYGUL THANK YOU, YOUR HONOR

15 (HEARING ENDED AT 12 07 PM)

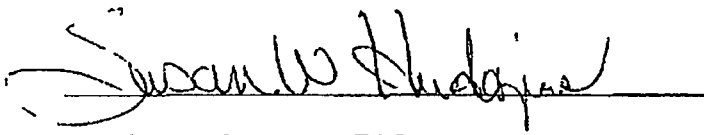
16 (END OF REQUESTED TRANSCRIPT OF RECORD)

1
CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 11TH -
9 14TH DAYS OF JUNE 2007

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO

12 OCTOBER 27, 2007

13
14 
15 CIRCUIT COURT REPORTER

2010 MAY 10 PM 2:26

STATE OF SOUTH CAROLINA

County of GREENVILLEFILED CL-
GREENVILLE CO S

In the Court of Common Pleas

2010-CP-23-3720

Michael Anthony Sarratt # 299026

Full name and prison number (if any) of Applicant

vs

State of SOUTH CAROLINA

Name of Respondent

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- 1 Place of detention South Carolina Dep. of Correction, Lee Co. I.,
990 Wisacky Hwy, Bishopville, S.C. 29010
- 2 Name and location of Court which imposed sentence Greenville County Court of General
Sessions, Greenville, S.C.
- 3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed
 - (a) 2005-GS-23-4106 carjacking - 30 years violent
 - (b) 2005-GS-23-4108 poss weapon - 5 year nonviolent
 - (c) (concurrent sentences)
- 4 The date upon which sentence was imposed and the terms of the sentence
 - (a) 6-14-07 / 30 years violent, 5 years nonviolent
 - (b) 6-14-07 / 50 years violent
 - (c) (concurrent sentences)

5 Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty at jury trial.
- (c) after a plea of nolo contendere _____

6 Did you appeal from the judgment of conviction or the imposition of sentence?

Yes.

7 If you answered "yes" to (6), list

(a) the name of each Court to which you appealed

- i South Carolina Court of Appeals.
- ii _____
- iii _____

(b) the result in each such Court to which you appealed

- i Denied.
- ii _____
- iii _____

(c) the date of each such result

- i January 04, 2010.
- ii _____
- iii _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

- i _____
- ii N/A
- iii _____

8 If you answered "no" to (6), state your reasons for not so appealing

- (a) _____
- (b) N/A
- (c) _____

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

- (a) Judicial Error, Subjectmatter Jurisdiction
- (b) Constitutional violations
- (c) Prosecutorial misconduct, ineffective assistance of counsel

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) _____
- (b) see attached Issues one(1) thru sixteen(16)
- (c) and Exhibits. Pages 1-76.

11 Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12 If you answered "yes" to any part of (11), list with respect to each petition, motion or application

(a) the specific nature thereof

- i _____
- ii N/A
- iii _____
- iv _____

(b) the name and location of the Court in which each was filed

- i _____
- ii N/A
- iii _____
- iv _____

(c) the disposition thereof

- i _____
- ii N/A
- iii _____
- iv _____

(d) the date of each such disposition

- i _____
- ii N/A
- iii _____
- iv _____

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

- i _____
- ii N/A
- iii _____
- iv _____

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

14. If you answered "yes" to (13), identify

(a) which grounds have been presented

- i _____
- ii N/A
- iii _____

(b) the proceedings in which each ground was raised

- i _____
- ii N/A
- iii _____

15 If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented

- (a) ineffective assistance of counsel at trial and on
- (b) appeal.
- (c) _____

16 Were you represented by an attorney at any time during the course of

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17 If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

- i Elizabeth Wiegul, 101 Whitsett St., Greenville, S.C. 29601
- ii Joseph L. Savitz, P.O. Box 11589, Columbia, S.C. 29211
- iii _____

(b) the proceedings at which each such attorney represented you

- i trial, sentencing.
- ii appeal from conviction.
- iii _____

18 State clearly the relief you seek in filing this application

Conviction vacated and case remanded for New Trial.

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

N/A.

* I leave way to alter or amend this complete application after being appointed an attorney, Michael A. Saratto

STATE OF SOUTH CAROLINA

County of Greenville

VERIFICATION

I, Michael Anthony Sarratt # 299026, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof, that it includes every ground known to me for vacating setting aside or correcting the conviction and sentence attacked in this application, and that the matters and allegations therein set forth are true

Michael A. Sarratt

SWORN to and subscribed before me this 5day of May, 2010

Debra S. [Signature] (L S)
Notary Public

My Commission Expires 11-4-2015

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
2010 MAY 10 PM 2:26

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael Anthony Sarratt # 299026, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true

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

Michael A. Sarratt
Applicant

SWORN or affirmed to and subscribed before me this

5 day of May, 2010

Debra S. [Signature]
Notary Public

My Commission Expires 11-4-2015

Attachment to Question Ten (10).

see, following pages : 1-76

①

ISSUE ONE

The Applicant's Indictments are "Sham Legal Process" that failed to confer subject matter jurisdiction upon the trial court to convict him. Lack of subject matter jurisdiction may be raised at any time as it may not be waived. State v. Guthrie, 572 S.E.2d 309 (SC App 2000).

The Applicant contends that his murder indictment No. 2005-GS-23-4106 and indictment No. 2005-GS-23-4108 containing the multiple duplicity charges of carjacking and possession of a weapon during the commission of a crime were sham legal process that failed to confer subject matter jurisdiction upon trial court to convict him. A sham legal process is defined under S.C. code, § 16-17-735, in relevant part as follows: . . . the issuance, display, reliance on an indictment that is not lawfully issued . . . which purports to . . .
 ch) assert jurisdiction or authority over or determines or adjudicate the legal status, right, dispute or privilege of a person . . .

Here, Applicant's indictments indicate that he was indicted for murder, carjacking and possession of a weapon during commission of a crime, by a grand jury on the 24th day of May Term, 2005, in the County of Greenville. However, under SC code, § 14-5-670, the SC Legislature has enacted the following terms of court in the Thirteenth Circuit (i) Greenville County, (a) The court of general sessions for the county shall be held at Greenville the first Monday in May for two weeks,

In conjunction, the SC Legislature has enacted SC code, § 14-9-170, which mandates the following provisions for convening of the grand jury for service upon the general sessions Court:

The grand jury as lawfully drawn in accordance with law for service upon the court of general sessions in each of the counties shall constitute the grand jury for the County Court and shall meet with the county court at each of its terms, except the next term succeeding each session of Circuit court, at which term the grand jury need not meet.

Further, the S.C. Legislature has enacted SC code, § 14-9-210, which imposes the following lawful requirements upon the County solicitor to obtain indictment: The county Solicitor shall prepare and through the presiding judge of the court of general sessions, submit to grand jury "while in attendance upon the court

②

of general sessions", bill of indictment in all cases in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days. (emphasis added),

As can be shown from the plain and unambiguous language of the foregoing statutory enactments, the S.C. Legislature has not enacted any "May Term" of general sessions court in Greenville county on May 24, 2005, as indicated by Applicant's indictments.

Thus, Applicants indictments allegedly obtained by the solicitor at a "May Term" of general sessions for Greenville county, on May 24, 2005, while no lawful grand jury was in attendance, operates as "sham legal process" that failed to confer subject matter jurisdiction upon trial court since a nonexistent term contrary to § 14-9-170 and § 14-9-210, see, State v. Hann, 12 S.E. 2d 726 (1940),

Notwithstanding, as a threshold matter, in Brown v. State, 449 S.E. 494 (1994), the court dealt with an issue similar to the Applicant's issue. In Brown the indictment indicated that the grand jury foreman signed the indictment "True Bill" on 10-19-90 while the indictments caption indicated that the grand jury convened on 10-22-90. The court held that by order of the chief Justice, the chief Justice for Administrative purposes in each county within the circuit could convene the grand jury when the circuit court was not in session and that the grand jury took action on the indictment earlier than they made their report to the court. Brown's claim was denied.

Conversely, Applicant contends that in his case any reliance on the Brown decision to deny his claim would be misplaced. To begin with, § 14-7-1550-70 (cited in Brown) has since been repealed and reinstituted under § 14-7-1520 (entitled drawing of lawful grand jury), which mandates in relevant part the following provisions: Not less than fifteen days before the convening for the first term of general sessions court for the calendar year, the jury commissioner shall proceed to draw . . . grand jurors which the . . . Administrative judge for the circuit has determined to be sufficient in order to impanel a grand jury . . . "Immediately after these grand jurors are drawn, the clerk shall issue writ of venire facias for the grand jurors, requiring their attendance on the first day of the first week of criminal court in the county . . ." (emphasis added).

In reviewing the plain and unambiguous language of § 14-7-1520, formally § 14-7-1550-70 during the Brown decision, it is clear that the S.C. Legislature did not (nor could under Article I section 8 S.C. Constitution) empower the chief Justice or Administrative

judge to convene a grand jury outside a term of general sessions court, but did rather empower the Administrative judge to determine the sufficiency of empaneled grand jury for convening with general sessions court to return indictments for trial, see, Gilfilin v Gilfilin, 544 S.E. 2d 829 (2001).

Finally, Applicant contends that any reliance on the recently decided case of State v. Gentry, 610 S.E. 2d 494 (2005), would be misplaced as well since he is challenging the courts "statutory or constitutional power" to adjudicate his indictments and not their sufficiency.

④

ISSUE TWO

Applicant argues that his conviction should be set aside because the Thirteenth Judicial Circuit Solicitor systematically employs practices discouraged by the SC Supreme Court. The following memorandum of law supports this issue.

Facts

The Thirteenth Circuit Solicitor uses a longstanding system where each police agency designates a court officer. The court officers testify before the grand jury. Except in rare cases where the court officer also participated in the investigation, the court officers do not have personal knowledge of the cases that they present. Applicant is informed and believes that the court officers merely provide summaries of the evidence in the form of oral hearsay, often times spending less than three minutes per case. In almost every case, the court officers are the only witnesses called before the grand jury. In the Applicant's indictments, it is unclear when and if the investigating officer in this case even testified before the grand jury, as the indictments were signed by someone who appears to be Woods. There is no Woods related to this case in any kind of way. See, Record on Appeal p. 613-616.

ISSUE

Should the court set aside Applicant's conviction, because the Thirteenth Judicial Circuit Solicitor systematically employs grand jury practices discouraged by the SC Supreme Court?

Argument

The court should set aside Applicant's conviction, because the Thirteenth Circuit Solicitor systematically employs procedures discouraged by the SC Supreme Court, because these practices could lead to abuse of the grand jury system. Specifically, the Solicitor uses court officers from each police agency to be the sole witness before the grand jury and to provide an oral, hearsay summary of the evidence in each case presented to the grand jury. As will be discussed below, the SC Supreme Court does not approve of this practice.

(5)

In order to predict how the SC supreme court would treat this argument, it is necessary to review the warning issued by the SC supreme court regarding an officer of the state appearing as the sole witness before the grand jury to provide hearsay, summary testimony. Second, it is necessary to review the supreme courts repetition of this warning in subsequent cases. Third, it is necessary to review the supreme courts eventual prohibition of solicitors being the sole witness before the grand jury. Finally, using this information, it will be possible to predict how the supreme court will address this issue.

I. The SC supreme court warns in State v. Capps, 276 S.C. 59, 62, 275 S.E. 2d 872, 873 (1981), that solicitors or other officers of the state should not be the sole witness before the grand jury, and Chief Justice Lewis dissents, arguing that the practice should be abandoned.

In State v. Capps, the supreme court declined to set conviction aside when the solicitor was the sole witness presenting testimony to the grand jury. The court however, warned the practice of using a solicitor or other officer of the state as the sole witness before the grand jury, to provide only a summary of the evidence could be abused, and we strongly suggest it be abandoned, unless no alternative is available. Although the court did not ban the practice, the court explained the reason for this warning.

The SC supreme court shares with the nations founders a concern that on occasions prosecuting officers will expand too far and abuse the powers granted to them. A grand jury is not a prosecutor's plaything and the awesome power of the state should not be abused, but should be used deliberately, not in haste. Id. 276 S.C. at 61, 275 S.E. 2d at 873.

Chief Justice Lewis, who would have prohibited the practice altogether, dissented and reasoned, were we to allow a solicitor to merely tell "his story" by giving a summary of the evidence, the function of his constitutionally mandated body would soon be viewed by a justifiably skeptical public as a mere plaything of prosecutor's. This would have a detrimental effect since it is only through strong public support that [sic] system may continue to serve. Id. 276 S.C. at 67, 275 S.E. 2d at 876.

II. The SC supreme court reports the warning first issued in Capps, and Chief Justice Lewis continues to dissent. The supreme court next addressed this issue in State

⑥

V. Williams, 280 S.C. 305, 312 S.E. 2d 555 (1984), again refusing to set conviction aside because a solicitor was the sole witness in front of a grand jury. Chief Justice Lewis once again dissented, I adhere to my views expressed in State v. Capps. It is apparent that the majority view in Capps is now being used as a licence to circumvent and eliminate a meaningful participation by the grand jury in the Judicial Process. The cavalier treatment of this issue by the majority should be disturbing. Williams, 280 S.C. at 307, 312 S.E. 2d at 556

The Supreme Court reemphasized the warning from Capps in State v. Dawkins, the court once again declined to prohibit the practice of a solicitor being the sole grand jury witness.

III. A unanimous S.C. Supreme Court adopts Chief Justice Lewis' dissent and outlaws the practice of the solicitor testifying as the sole witness before the grand jury

The Supreme Court next addressed this issue in State v. Anderson, 312 S.C. 185, 439 S.E. 2d 835 (1993). The state admitted using a systematic practice contrary to the Supreme Court's admonition in Capps. The state essentially admitted the questionable practice would continue until the Supreme Court prohibited it. The solicitor stated: "I would also agree... that the particular case State v. Capps, 276 S.C. 59, 275 S.E. 2d 872 (1981), it did say they frowned upon it. They did not however, bar it. It has always been the practice of our office to do that. I think other solicitor's offices do that as well. But that was nothing -- the case did not say that we could not do it; they said they didn't like it. Anderson, 312 at 186-187, 439 S.E. 2d at 835.

The Supreme Court attempted to end this questionable grand jury practice. After recognizing Chief Justice Lewis's dissent in Capps, the Supreme Court held:

Because of the uncertainty and confusion that is taking place at all levels of the Judiciary regarding this issue, we take this opportunity to explicitly prohibit the practice of prosecutor's appearing as the sole witness before the grand jury. As with any creation of a new liability where formerly there was none, this rule must be applied prospectively. Anderson, 312 at 187, 439 S.E. 2d at 836.

IV. The S.C. Supreme Court would extend Capps and Anderson to outlaw the practice of a police officer, not personally familiar with the investigation, testifying as the sole witness before the

grand jury and merely providing oral hearsay summaries of the evidence.

The holding in *Anderson*, however, did not end the uncertainty and confusion. After all, *Capps*, warned "The practice of using a solicitor or other officer of the state as the sole witness before the grand jury, to provide only a summary of the evidence could be abused". *Capps*, 276 S.C. at 62, 275 S.E. 2d at 873 (emphasis added). The solicitor designating a police officer, who did not participate in the investigation of the case, to provide a summary of the evidence to the grand jury does not do enough to prevent the abuse first warned about in *Capps*.

The solicitor, in effect, is having another officer of the state, who did not participate in the investigation, being the sole witness before the grand jury and merely providing a summary of the evidence in the case. This extension of *Anderson* is necessary to guarantee the public confidence in a meaningful grand jury proceeding. Just as the state had no intention of ending the questionable practice of a solicitor being the witness to the grand jury until the supreme court outlawed the practice, the state will not abandon the current practice until the supreme court outlaws it.

Because *Anderson* essentially adopted the position of Chief Justice Lewis in his dissents in *Capps* and *Williams*, it is useful to further examine his dissents in *Capps* and to apply that reasoning to this case. Regarding the procurement of an indictment based solely on hearsay evidence requires the indictment to be dismissed. Therefore, even assuming the assistant solicitor could act as a witness, the argument should have been granted.

Our court previously indicated in *State v. Williams*, 263 S.C. 290, 210 S.E. 2d 298, an opinion which I authored, that an indictment based solely on hearsay evidence did not violate the constitutional requirements of a grand jury indictment as a condition precedent to a trial in such a case. However, it was never our intention or purpose to create a limitless haven for its routine use. The deliberate use of hearsay testimony alone to obtain indictments is a questionable practice which seriously erodes the function of the grand jury. see, *U.S. v. Gramelin*, 301 F. Supp. 39. It can be used to subject a defendant to the expense and humiliation of a public trial on the basis of evidence which is generally inadmissible in a trial.

In order to provide more than lip service to the constitutional provisions here in question, I would hold that an indictment cannot, as a matter of course, be acquired solely on hearsay testimony. The routine practice of an individual appearing before the proceeding to

⑧

give "Third Hand" capsule version of facts which he has no direct knowledge without some other competent evidence, is insufficient,

The drafters for Article I section 11 as well as those citizens who voted for its implementation clearly intended the right to a grand jury indictment to be meaningful, because they incorporated it into such a solemn document, our state constitution. The disposition $\pm$ propose seeks to rekindle the spirit which it was created, Capps, 276 S.C. at 67, 275 S.E. 2d at 876 (C.J. Lewis dissenting) (emphasis added).

Chief Justice was correct and a visionary ahead of time regarding the importance of the grand jury and the potential abuse when the government cuts corners. Prosecutors, at least in the Thirteenth Judicial Circuit, are deliberately and systematically circumventing the importance of the grand jury by using a designated court officer, who typically did not participate in the investigation, to present summary, hearsay testimony. Based on the evolution on the analysis from Capps to Anderson, the S.C. Supreme Court would not tolerate this practice. This court should set conviction aside and require the state to call witnesses with personal knowledge of the facts to testify at the grand jury proceedings. The holding in Capps and Anderson should be extended to outlaw the practice of a police officer or someone not personally familiar with the investigation, testifying as the sole witness before the grand jury and merely providing oral, hearsay summaries of the evidence as is the issue in this case.

⑨

ISSUE THREE

Applicant argues that the prosecutor committed misconduct in error of Rule 3(c)(1) S.C. rule crim proc, which states that within (90) days after receipt of an arrest warrant from the clerk of Court, the solicitor shall take action on the warrant by preparing an indictment for presentment to the grand jury, which indictment shall be filed with the clerk of court, assigned a criminal case number and presented to the grand jury. Applicant moves to show that Indictment No. 2005-GS-23-4108 for multiple accusations of carjacking and poss. weapon during commission of a crime and Indictment No. 2005-GS-23-4106 for the accusation of murder were never filed through the clerk of court for the Thirteenth Judicial Circuit that heard the case before you. see, Record on Appeal p. 613-616.

Accordingly, the standard for reviewing a claim of prosecutorial misconduct is whether the prosecutor's actions are of a nature to render the trial fundamentally unfair. Donnelly v. DeChristoforo, 614 U.S. 637, 94 S.Ct. 1868 (1974). Applicant argues that due to the prosecutor's misconduct and error, the Thirteenth Judicial Circuit never had jurisdiction to hear the case before you, resulting in a trial that should have never occurred.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.

Nor be deprived of life, liberty or property without due process of Law. Fifth Amendment, U.S. Constitution.

Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of Laws Fourteenth Amendment, U.S. Constitution.

While prosecutor's may strike hard blows, they are not at liberty to strike foul ones. Beiger v. U.S., 295 U.S. 78, 55 S.Ct. 629 (1935). The prosecutor struck real foul blows by violating Applicant's Constitutional rights, by denying him due process and equal protection of Laws in the case before you, by presenting insignificant indictments before the grand jury, that were never filed by any clerk of court, to have him held for capital crimes that he has been convicted of.

Applicant argues that due to prosecutorial misconduct, the Thirteenth Judicial Circuit never had jurisdiction to hear the case before you, due to the fact the referenced indictments were never

filed in their jurisdiction to give them way to move upon them.

The S.C. supreme court has found that in order to challenge an indictment in a PCR action, the applicant must first have challenged the sufficiency of the indictment before the jury was sworn. State v Gentry, 363 S.C. 93, 102, 610 S.E. 2d 494 500 (2005). Applicant is in full agreement with the S.C. supreme court and argues that as observed in Powell V Alabama, 287 U.S. 45 (1932), the layman defendant "requires the guiding hand of counsel at every step in the proceeding against him".

As noted:

"If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge to adequately prepare his defense, even though he has a perfect one".

Applicant argues that as a result of ineffective assistance of trial counsel, due to his indictments not being challenged, he was convicted by the Thirteenth Judicial Circuit who never formally had jurisdiction to hear the case before you, where a state obtains a criminal conviction in a trial in which the accused is deprived of effective assistance of counsel, the "state... unconstitutionally deprives the defendant of his liberty". Cayler, 446 U.S., at 343. The Applicant is thus "in custody in violation of the constitution".

ISSUE FOUR

Applicant argues that due to prosecutorial misconduct and trial counsel failing to provide adequate legal assistance, he was tried and convicted for the charge of possession of a weapon during the commission of a crime, that occurred on 1/03/05 that he was never charged with.

Trial judge presented indictment No. 05-4106 before the court, involving two counts. Count one is for car-jacking that occurred on or about the 3rd day of January, 2005. Count Two is stated as:

Count two is possession of a weapon during the commission of a crime. And it alleges that Michael Anthony Sarratt, also known as Leroy Eugene Frey, Jr., did in Greenville County on or about January 3rd of '05 possess or visibly display a knife during the commission or attempted commission of a violent crime, that is car-jacking in violation of the statutes and laws of the state of South Carolina.

See, Tr. p. 20, line 17 - p. 21, line 13.

Applicant presents Exhibit A, pages 14-17, being indictment No. 05-4106 for the multiple charges of carjacking and possession of a weapon during the commission of a crime, that occurred on 1/03/05, Arrest Warrant No. 1-467591, for the charge of carjacking, that occurred on 1/03/05 and Arrest warrant No. 1-467594, being the only charge of possession of a weapon during a crime that the Applicant was charged with, that occurred on 1/25/05.

Any reasonable individual can plainly see that Applicant was never charged for possession of a weapon during a crime that occurred on 1/03/05, as stated in indictment No. 05-4106 and presented before the court.

As a result of prosecutorial misconduct and ineffective assistance of trial counsel, Applicant was tried before a jury and convicted of a crime he has never been formally charged with.

Accordingly, the standard for reviewing a claim of prosecutorial misconduct is whether the prosecutor's actions are of such a nature to render the trial fundamentally unfair. Donnelly v. DeChristoforo, 614 U.S. 637, 94 S.Ct. 1868 (1974). Applicant argues that the prosecutor is in serious violation as she took him before a jury, who convicted him of a crime he was never charged with.

No person shall be deprived of life, liberty or property without due process of law. Fifth Amendment U.S. Constitution. Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the Laws. Fourteenth Amendment U.S.

Constitution.

While prosecutors may strike hard blows, they are not at liberty to strike foul ones Berger V U.S., 245 U.S. 18, 55 S.Ct. 629 (1935). The prosecutor struck real foul blows by violating Applicant's constitutional rights, by having him convicted of a crime he was never charged with, denying him due process and Equal protection of Laws.

Applicant argues that, as observed in Powell V. Alabama, 287 U.S. 45 (1932), the layman defendant "requires the guiding hand of counsel at every step in the proceedings against him".

As noted:

"If charged with a crime, he is incapable generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a good one".

As a result of ineffective assistance of trial counsel, the Applicant was tried by jury and convicted for the charge of possession of a weapon during the commission of a crime that occurred on 1/03/05, that he was never formally charged with. Records plainly show that Applicant was never charged with possession of a weapon during the commission of a crime that occurred on or about 1/03/05 as Indictment No. 05-4106 indicates, which he was wrongfully convicted for and being illegally held in custody. Where a state obtains a criminal conviction in a trial in which the accused is deprived of the right to effective assistance of counsel, the "state... unconstitutionally deprives the defendant of his liberty". Coyler, 446 U.S., at 343. Thus defendant is "thus in custody in violation of the constitution".

Applicant further presents Exhibit B, pg. 18, being the sentencing sheet, for the charge of possession of a weapon during commission of a violent crime that he was convicted for and being illegally held in custody for. The date of offense is labeled as 1/25/05. Applicant argues that he was never tried before any court for the accusation of possession of a weapon during commission of a violent crime that occurred on 1/25/05. Neither does Indictment No. 2005BS2304106, referred to in the sentencing sheet, indicate the accusation of possession of a weapon during

Commission of a violent crime that occurred on 1/25/05. Whereas, the Applicant is being illegally held against his will, in violation of both the U.S. and S.C. Constitution, for the charge of possession of a weapon during commission of a violent crime that appears to have occurred, on 1/25/05, that he was never tried before a judge or jury for. Applicant argues that this conviction cannot stand.

WITNESSES

Wesley Smith

Greenville County Sheriffs Office

2/23/2005

DOCKET NO 2005-GS-23-

KBH

004106

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MAY TERM 2005

THE STATE

vs

MICHAEL ANTHONY SARRATT
(aka LEROY EUGENE FREY, JR)**GUILTY**
Both counts

ARREST WARRANT NUMBER

I467591 I467594

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*GUILTY**6/19/07*

2600

Indictment for

CARJACKING

0549

VIOLATION § 16 03-1075

POSSESSION OF WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

Foreperson of Petit Jury

Date

*2.1***Exhibit A****(14)**

**INDICTMENT FOR
CARJACKING AND POSSESSION OF WEAPON DURING THE
COMMISSION OF A CRIME**

MAY 24, 2005

That MICHAEL ANTHONY SARRATT (aka LEROY EUGENE FREY, JR) did in Greenville County, on or about the 3rd day of January, 2005, take or attempt to take a motor vehicle, to wit. 1991 Plymouth Acclaim from James Folwer Dellinger by force, and violence or by intimidation while James Folwer Dellinger, was operating and/or was in the said vehicle This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended

That MICHAEL ANTHONY SARRATT (aka LEROY EUGENE FREY, JR) did in Greenville County, on or about the 3rd day of January, 2005, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit Carjacking This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended

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

SOLICITOR

ARREST WARRANT

1-467591

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

1-2005-06097

against

Michael Anthony Sarratt

Address

Greenville SC 29651

Phone

Sex: M

DOB

DOB

Prosecuting Agency

Greenville County Sheriff's Office

Prosecuting Officer

Wesley Smith

Offense

Carjacking / Take or attempt a vehicle by force from person, great bodily injury

Offense Code

2600

Code/Ordinance Sec:

16 03 1075(B)(2)

This warrant is

CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is or be arrested and brought before me to be

dealt with according to the law

(LS)

Sign of Judge

Page

RETURN

A copy of this arrest warrant was delivered to

defendant

Michael Anthony Sarratt

on

2-23-05

Officer of Constable/Law Enforcement Officer

RETURN WARRANT TO

City Magistrate #2

4 Mc Gee Street Room 116-B

Greenville SC 29601

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant Wesley Smith

being duly sworn deposes and says that defendant Michael Anthony Sarratt

did within this county and state on

01/03/2005

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

in the following particulars

DESCRIPTION OF OFFENSE

Carjacking / Take or attempt a vehicle by force from person, great bodily injury

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

See the attached affidavit

The defendant is also known as Leroy Eugene Frey Jr

Vehicle description 1991 Plymouth Acclaim sedan, maroon in color SC vehicle tag 444 TAH, VIN 3P3XA46K5MTO42149, value \$1,200 00

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on 1/3/2005

defendant Michael Anthony Sarratt

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below

DESCRIPTION OF OFFENSE

Carjacking / Take or attempt a vehicle by force from person, great bodily injury

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable

Sworn to and subscribed before me

on 01/25/2005

Sign of Issuing Judge

James E Hudson

Judge Code

5031

Judge's Address

4 McGee Street, Room 116 B

Greenville, SC 29601

Judge's Telephone

(864)467-5302

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

7

ARREST WARRANT 5031
1-467594 3305

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville 1-05-6097

THE STATE
Michael Anthony Sarratt
Address: 4 Mc Gee Street, Room 116 B
Greenville, SC 29601
Phone: [REDACTED] SSN: [REDACTED]
Sex: M Race: W Height: 5 10 Weight: 170
DL State: SC DL #: 090174690
DOB: 1/25/1978 Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: Wesley Smith
Offense: Weapons / Poss weapon during violent crime, if
not also sentenced to life witho
Offense Code: 0549
Code/Ordinance Sec: 16 23 0490

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to the law

(LS)

Signature of Judge

Date: 1/25/2005

RETURN

A copy of this arrest warrant was delivered to
defendant Michael Anthony Sarratt
on 1/23/05

Hawkins #434 (513)
Judge of Court in Law & Cement Officer

PETITION WARRANT TO

City Magistrate #2
4 Mc Gee Street Room 116 B
Greenville SC 29601

17

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

Personally appeared before me the affiant Wesley Smith who
being duly sworn deposes and says that defendant Michael Anthony Sarratt
did within this county and state on 01/25/2005 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)
in the following particulars

DESCRIPTION OF OFFENSE Weapons / Poss weapon during violent crime, if not also sentenced to life witho

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

See the attached affidavit

The defendant is also known as Leroy Eugene Frey, Jr

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601
Affiant's Telephone (864)467-5145

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on 1/25/2005 defendant Michael Anthony Sarratt
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Greenville) as set forth below

DESCRIPTION OF OFFENSE Weapons / Poss weapon during violent crime, if not also sentenced to life witho

Having found probable cause and the above affiant having sworn before me you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 01/25/2005
Signature of Issuing Judge (LS)
James E Hudson
Judge Code 5031

Judge's Address 4 Mcgee Street, Room 116 B
Greenville, SC 29601
Judge's Telephone (864)467 5302

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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7

STATE OF SOUTH CAROLINA

Exhibit B

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Michael Anthony Sarratt

INDICTMENT/CASE# 2005GS2304106

AKA

A/W# 1467594Race W Sex M Age 29Date of Offense 01-25-2005DOB [REDACTED] SS# [REDACTED]S C Code § 16-23-0490Address [REDACTED]CDR Code # 0549

Greer SC 29651

SENTENCE SHEET

DL# [REDACTED] SID# [REDACTED]

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME

in violation of § 16-23-0490

of the S C Code of Laws bearing CDR Code # 0549

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

The charge is ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury (Defendant initial)The plea is ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State

ATTEST

[Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference

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

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Ordered

PTUP

Total \$ _____ plus 20% fee \$ _____

_____ days/hours Public Service Employment

Payment Terms

Obtain GED

☐ set by SCDPPPS

Attend Voc Rehab or Job Corp

Recipient

May serve W/E beginning

*Fine

Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %)

\$

Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv Surcharge)

\$100

\$

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

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

\$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment)

\$12

\$

Other _____

§ 35-13 (Public Def/Prob)

\$500

\$

§ 73-3, 1B TP (Law Enforce Funding)

\$25

\$

§ 33-7, 1B TP (Drug Court Surcharge)

\$100

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

☐ Appointed PD or appointed other counsel §35-13 TP
Requires \$500 be paid to Clerk during probation

3% to County (if paid in installments)

\$

TOTAL

\$

[Signature]
Clerk of Court/ Deputy Clerk
Court Reporter *[Signature]*

PRESIDING JUDGE

Judge Code

Sentence Date

SCCA/217 (9/2006)

ISSUE FIVE

All persons shall be, before conviction, bailable by sufficient sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. S.C. constitution Article I section 15.

Applicant argues that in order to receive due process and equal protection of laws, that person must be provided a bond hearing by the state. That person must be brought before a judge to see if the judge is willing to grant or deny the person a bond.

The privileges and immunities of citizens of this state and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. S.C. constitution Article I section 3,

Applicant argues that the prosecutor, being an arm of the state, has a duty to insure that a criminal defendant receives all his constitutional rights as provided by the U.S. and S.C. constitution. Records show that the Applicant's rights were violated by the state, where he was never provided a bond hearing.

Applicant argues that he was denied effective assistance of counsel, where he went through Three separate attorney's and none of them assisted him with receiving a bond hearing to see if a judge will grant or deny him bond. See, Tr. p. 12, line 14-22. Applicant was denied due process and equal protection of laws, as a result of prosecutorial misconduct and ineffective assistance of counsel.

20

ISSUE SIX

Applicant had a total of Thirty-two pending pretrial prose motions that had not been heard or ruled upon prior to trial. Trial judge brought these motions to life on the day of trial and stated: "well, we're going to handle all that today", see, Tr p. 16, line 4-8.

Applicant argues that the trial judge committed judicial error after bringing the motions alive before the court, telling him that the motions would be handled that day, apparently before trial would begin, and then never ruled upon the motions. Trial began and the pending pretrial motions were never heard or ruled upon by the trial judge. see, Tr. p 20, line 3-11

Trial counsel was ineffective and denied Applicant adequate legal assistance as she failed to object to trial beginning when she knew that Applicant's motions were before the court and had not been heard or ruled upon.

As a result of trial judge's error, the Applicant was denied Due Process and Equal protection of Laws provided by the Fourteenth Amendment of the U.S. Constitution. Trial counsel was ineffective as she denied Applicant adequate legal assistance at such a critical stage, when she knew his motions were before the court and never ruled upon, allowing trial to begin in a way that violated his constitutional rights. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. Cayler v. Sullivan, supra, at 346. It has long been settled that the right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n 14 (1970). A proceeding in which the defendant does not receive meaningful assistance in meeting the forces of the state does not constitute Due Process.

(21)

ISSUE SEVEN

The Fifth Amendment protects a person from being a witness against his self. This right protects a defendant from his character or criminal history from being presented before a jury in a criminal trial, leaving the jury only the actual physical and material evidence to judge a case by.

Applicant utilized his fifth amendment right at trial to prevent the prosecutor from the impeachment of his character and criminal history, by not testifying so the cloak of innocence would stay upon him to protect his criminal history and character from being placed before the jury to mislead them, so the case would be heard and based upon actual evidence that does not link him to the accused accusations, as he sought to receive a fair trial.

The Sixth Amendment guarantees a defendant to be provided with a competent Attorney in a criminal trial. The Fourteenth Amendment guarantees a person to receive Due Process and Equal Protection of Laws

Applicant argues that he was denied due process and equal protection of Laws as his fifth, sixth and fourteenth amendments were violated, as a result of the trial judge, prosecutor and trial counsel's errors, which denied Applicant the right to a fair trial.

Applicant was denied adequate assistance of trial counsel, due to an agreement made with the prosecutor, which gave the prosecutor consent to mention during trial that Applicant had outstanding warrants pending during the time period the criminal actions in the case before you accused, as long as what the pending charges were for were not mentioned. Applicant argues that this agreement between trial counsel and the prosecutor violated Applicant's Fifth Amendment, as they agreed to place his character before the jury. This was an act of ineffective assistance of trial counsel and prosecutorial misconduct. See, Tr. p. 43, line 9-22,

As a result of prosecutorial misconduct and not receiving adequate legal assistance from trial counsel, the Applicant's character was first presented before the jury by the states witness, Amanda Inman, during direct examination by the prosecutor. Tr. p. 75, line 25- p. 76, line 15. Amanda testifies that the Applicant and his co-defendant talked about them both having pending charges. This

is in violation of Applicant's Fifth Amendment as his character was presented before the jury as a result of prosecutorial misconduct. Trial counsel failed to object under Rule 404 s.c. rule of evidence, denying Applicant effective assistance of counsel. This is the start of the poison that corrupted the minds of the jury to illegally present Applicant's character before the jury to mislead them from the actual physical and material evidence in the case before you that does not link Applicant to the murder of the victim.

Trial counsel was ineffective by placing Applicant's character before the jury during the cross-examination of, Amanda Inman, by asking about Applicant's pending warrants. Tr p 97, line 11-15. This is the spread of the poison that was presented to mislead the jury. This is part of the chain of corruption that denied Applicant the right to a fair trial.

As a result of prosecutorial misconduct, Applicant's character was placed before the jury, by the prosecutor asking, William Joe Phillips, about his knowledge of Applicant and co-defendant Peggy having outstanding warrants, which he stated yes on the record before the jury. Tr p. 112, line 5-13. Trial counsel was ineffective by failing to object under rule 404 sic rule of evidence. The poison that was presented further spread and corrupted the minds of the jury, denying Applicant the right to a fair trial.

The prosecutor committed reversible error during the direct examination of, Anna McDaniel, by asking about the pending charges of two counts of lynching, assault and battery with intent to kill and possession of a weapon during a violent crime, which the question presented before the jury was as follows: "was the defendant, Michael Sarratt, also charged in the incident that you and Patrick Paris were charged with"? which was irrelevant to the case before you. Trial counsel objected and asked to approach? A bench conference was held off the record in the presence of the jury. The trial judge erred by not ruling on the objection, neither giving the jury any type of instructions concerning the testimony of Anna McDaniel. The prosecutor further asked Anna McDaniel, "so you knew the defendant had some charges pending"? which she stated yes. Trial counsel was ineffective by failing to object to the question under Rule 403 and 404 sic rules of evidence. Tr. p 136, line 6-14, p 137, line 1-25.

Trial judge committed error by not attempting to cure the poisoned minds of the jury, as Applicant's character had been shown, taking the cloak of innocence off of him, which denied Applicant the right to a fair trial.

(23)

Trial Counsel was ineffective during the cross-examination of Anna McDaniel, when she further questioned the witness about the pending charges. This act of trial counsel further poisoned the minds of the jury through testimony of this state witness showing the Character of Applicant before the jury, Tr. p. 145, line 8-25.

Trial Counsel moved for a mistrial after the prosecutor intentionally killed the Character and innocence of Applicant, as he was stripped of all constitutional rights during redirect examination of, Peggy Gladfelter, when the prosecutor instructed Peggy to tell the jury how Applicant broke his hand, which she testifies before the jury: "He got .. He robbed a female and male". Applicant was then stripped of his cloak of innocence and his constitutional rights violated by the misconduct of the prosecutor, who violated Applicant's Fifth and Fourteenth amendments, when he chose not to testify at trial to protect his character from being presented to mislead the jury.

Trial Judge erred by not granting a mistrial after the minds of the jury were completely corrupted with the poison that was fed to destroy the character of Applicant, which denied him the right to a fair trial. Tr. p. 284, line 24 - p. 286, line 21. Tr. p. 287, line 19 - p. 289, line 9. Later the trial judge admonished the prosecutor for his misconduct, which nothing can justify, neither take the poison from the minds of the jury, which no type of instruction could cure, Tr. p. 288, line 2 - p. 289, line 9. Tr. p. 291, line 13-20.

Applicant utilized his Constitutional rights to protect his Character and Criminal history from being placed before the jury, leaving them only the actual evidence to judge the case before you. Trial Counsel and prosecutor both poisoned the minds of the jury by intentionally placing the Applicants Character and pending criminal accusations before the jury on numerous occasions throughout the trial. Trial Judge moved to cure the poisoned minds of the jury, that could not be cured by any type of instructions, as he neglected to cure their minds from the spread of poisonous testimony that began with State witness, Amanda Inman, and spread freely until the testimony of State Key witness, Peggy Gladfelter. Trial Judge erred under Rule 403 and 404 S.C. rules of evidence by denying a mistrial and instead placed the bad acts of another criminal case before the jury whose minds had been poisoned, destroying the character of Applicant and burning the cloak of innocence that belonged to the Applicant, by reinforcing the acts and misconduct of the

(24)

prosecutor and trial counsel. Tr p. 289, line 2-10

In a Criminal case, the state cannot attack the character of the defendant unless the defendant himself first places his character in issue. Rule 404(a) SCRE, Mitchell v State, 298 S.C. 186, 379 S.E. 2d 123, 125 (1989), State v. McEleven, 280 S.C. 325, 313 S.E. 2d 298 (1984), State v. Swords, 279 S.C. 554, 309 S.E. 750 (1983), State v. Gamble, 247 S.C. 214, 146 S.E. 2d 709 (1966).

Evidence of prior or pending bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person, State v. Johnson, 293 S.C. 321, 360 S.E. 2d 317 (1987).

In any event, as a general rule, evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action, in conformity therewith. Rule 404(b) SCRE, State v. Jenkins, 322 S.C. 414, 472 S.E. 2d 251 (1996). Even if the prior crime evidence is relevant, it must be excluded if its probative value is substantially outweighed by the danger of the unfair prejudice to the defendant. Rule 403 SCRE. State v. King, 334 S.C. 504 S.E. 2d 578 (1999).

Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime which he is charged. Rule 404(a) SCRE. State v. Brown, 344 S.C. 70, 543 S.E. 2d 552 (2001), State v. Nelson, 331 S.C. 1, 501 S.E. 2d 716 (1998).

This Court has defined the term "character" on the other hand, as "a generalized description of a person's disposition or a general trait such as honesty, temperance or peacefulness". State v. Nelson, 331 S.C. at 7, 501 S.E. 2d at 718 (1998).

Trial Counsel's ineffectiveness violated Applicants Sixth amendment which grants a defendant to be provided adequate assistance of counsel in a criminal trial. Trial counsel failed to provide Applicant effective assistance as he has shown. The right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 N 14, 40 S.Ct. 1441, 1449, N 1425, L Ed. 2d 763 (1970). Counsel can deprive a defendant the right of effective assistance of counsel by simply failing to render adequate legal assistance, as Applicant has shown, Cayler v. Sullivan, 446 335, 344, 107 S.Ct. 1708, 1716, 64 L Ed 2d. 333 (1980). The benchmark for judging any claim of ineffective assistance of counsel claim was whether counsel's conduct so undermined proper functions of adversarial process that the trial cannot be relied upon as having produced a just result, Strickland v. Washington, 466 U.S. 668,

104 S. Ct. 2052 (1984),

The prosecutor's committed misconduct as the Applicant has plainly shown. Accordingly, the standard for reviewing a claim of prosecutorial misconduct is whether the prosecutor's actions are of such a nature to render the trial fundamentally unfair, as Applicant has shown, Dannelly v. DeChristoforo, 614 U.S. 637, 94 S.Ct. 1868 (1974). While prosecutors may strike hard blows, they are not at liberty to strike foul ones, as Applicant has shown, Berger v. U.S., 295 U.S. 78, 55 S.Ct. 629 (1935),

Trial judge committed reversible judicial error in violation of Rule 403 and 404 S.C.R., by denying a mistrial after Applicants fifth, sixth and fourteenth amendments were plainly violated by the prosecutor and trial counsel.

ISSUE EIGHT

The state produced photo's at trial that trial Counsel claimed to not have known existed. The day of trial was the first time defence viewed the photo's. According to the prosecutor the photo's had been in property in evidence alone with all the other evidence in this case. As the prosecutor stated: "Ms. Wiygul could have gone at any point in time and looked at them". See, Tr p 50, line 4-25, p. 51, line 1-21.

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in possession of the prosecution and law enforcement authorities. 1 American Bar Association Standards For Criminal Justice 4-4.1 (2d ed. 1982 supp.)

Applicant argues that trial Counsel failed to investigate the evidence in possession of the prosecutor and law enforcement authorities. Counsel has a duty to make reasonable decisions that makes a reasonable decision that makes particular investigations unnecessary. Kummelmann v. Morrison, 477 U.S. 365 (1986). It was necessary to investigate all leads and evidence related to the case before you, as it was a high profile murder involved. As a result of trial Counsel failing to investigate the evidence made available, the prosecutor presented photo's at trial that were very harmful to Applicant's defense. If trial counsel had properly investigated the evidence made available, she could have been prepared to assist Applicant with a proper defense related to the evidence presented instead of being unaware that the photo's existed, leaving her unprepared to provide a proper defence at trial.

Applicant argues that he was denied due process of Law, in violation of his Fourteenth Amendment, as he was denied effective assistance of counsel at trial, which violated his sixth amendment of the constitution, which denied him the right to a fair trial. A proceeding in which the defendant does not receive meaningful assistance of counsel in meeting the forces of the state does not constitute due process. In Chapman v. California, 386 U.S. 18, 23 (1967), its acknowledged that certain constitutional rights are "so basic to a fair trial that their infraction can never be treated as harmless error". Among these rights is

(27)

the right to the assistance of counsel at trial Gideon v. Wainwright, 372 U.S. 335 (1963). The right to effective assistance of counsel is entailed by the right to counsel and abridgment of the former is equivalent to abridgment of the latter. It was held that the showing that the performance of a defendant's lawyer departed from prescribed standards requires a new trial regardless of whether the defendant suffered demonstrable prejudice thereby. Strickland v. Washington, 466 U.S. 668 (1984). Where a state obtains a criminal conviction in a trial in which the accused is deprived of the right to effective assistance of counsel, the "state . . . unconstitutionally deprives the defendant of his liberty". Cayler, 446 U.S. at 343. The Applicant is thus "in custody in violation of the Constitution", U.S.C. § 2254 (a).

28

ISSUE NINE

Applicant argues that the prosecutor violated rule 403 S.C. rules of evidence by presenting state Exhibits 52-58 before the jury that was irrelevant and not linked to the case before you, such evidence prejudiced the Applicant the right to a fair trial, as the evidence confused and mislead the jury.

Applicant argues that trial counsel was ineffective as she objected to states Exhibits 52-58 being admitted as evidence under Relevance grounds and 403 grounds and then withdrew the objection before the trial judge could rule upon the issue Tri. p. 397, line 12- p. 402, line 10.

Trial counsel was ineffective for withdrawing her objection before the trial judge ruled upon the issue, that resulted in the prosecution being permitted to admit evidence before the jury that was irrelevant to the case before you, in violation and error of Rule 403 S.C. rules of evidence. The right to counsel is the right to effective assistance of counsel, McMann v. Richardson, 397 U.S. 759, 771, n 14, 90 S. Ct 1441, 1449, n 14, 25 L. Ed. 763 (1970). Counsel can deprive a defendant of assistance of counsel by simply failing to render adequate legal assistance, Cayler v. Sullivan, 446 U.S. 335, 344, 107, S. Ct. 1708, 1716, 64 L. Ed. 2d 333 (1980). The benchmark for judging any claim of ineffective assistance of counsel claim was whether counsel's conduct so undermined proper functioning of adversarial process that trial cannot be relied upon as having produced a just result, Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984).

Applicant argues that as a result of trial counsel being ineffective, the prosecutor presented numerous knives before the jury that were irrelevant to the case before you, that confused and mislead the jury to believe that they were looking at murder weapons, Evidence proved that the knives were not linked to the murder in any kind of way, but they were admitted as evidence in a murder case by the prosecutor to mislead and confuse the jury.

As a result of ineffective assistance of trial counsel and prosecutor misconduct the Applicant was prejudiced and denied the right to a fair trial in error of Rule 403 S.C. rules of evidence, by states Exhibits 52-58 were admitted as evidence in the case before you to mislead and confuse the jury to believe they were looking at murder weapons belonging to the Applicant. Whereas, Applicant was tried before a jury and

Convicted for the charge of possession of a weapon during commission of a crime, as a result of states Exhibits 52-58, which evidence shows is in no way related or linked to the case before you. Applicant was denied the right to a fair trial and due process of Law as a result of prosecutorial misconduct and ineffective assistance of counsel.

Accordingly, the standard for reviewing a claim of prosecutorial misconduct is whether the prosecutor's actions are of such a nature to render the trial fundamentally unfair Dennelly v. DeChristofaro, 614 U.S. 637, 94 S.Ct 1868 (1974), while prosecutors may strike hard blows, he is not at liberty to strike foul ones, as you plainly see in the case before you. Berger v. U.S., 295 U.S. 78, 55 S.Ct. 629 (1935).

Furthermore, where a state obtains a criminal conviction in a trial in which the accused is deprived of the right to effective assistance of counsel, the "state . . . unconstitutionally deprives the defendant of his liberty". Cayler, 446 U.S., at 343,

ISSUE TEN

Applicant argues that trial counsel was ineffective for not objecting to states Exhibits 23-25 being admitted and challenging the chain of custody. According to the property/evidence forms located in the states files that were provided, there is no records verifying where, when or how the state came in possession of this evidence, neither did the state present any chain of custody at trial, Tr p. 190, line 14-25,

Applicant argues that trial counsel was ineffective for not challenging the chain of custody of states Exhibit 16-22. There was no chain of custody produced or presented at trial to verify where, when or how this evidence was obtained and the different type of transactions it went through prior to trial. Tr. p. 184, line 1-25, Tr. p. 223, line 1-25.

Applicant argues that trial counsel was ineffective for failing to challenge the chain of custody of states Exhibit 36 and 37. There was no evidence to verify where, when or how the state obtained these exhibits to legally present them to the jury. Tr. p. 226, line 1-25.

Applicant argues that trial counsel was ineffective for failing to challenge the chain of custody of states Exhibit 46-51. These items were claimed to have been located in Arizona, but no chain of custody was ever presented before the court to verify who originally obtained them or where, when or how they were actually obtained. No chain of custody was presented from anyone in Arizona, although witnesses were brought from Tucson, Arizona, but never utilized at trial. Tr p. 246, line 1-25.

Applicant argues that trial counsel was ineffective for failing to challenge the chain of custody of states Exhibit 45. There was no evidence presented to verify where, when or how the state obtained this Exhibit to legally present it to the jury. Tr. p. 370, line 1-25.

Applicant argues that trial counsel was ineffective for failing to challenge the chain of custody of states Exhibit 52-58. This evidence was claimed to have been located in Tucson, Arizona, but no chain of custody was presented to the court to verify who originally obtained this evidence, where, when or how it was obtained, neither the condition this evidence was originally located in. No chain of custody was ever presented from anyone in Tucson, Arizona, although the state brought witnesses

(31)

from Tucson, Arizona, but never presented them or utilized them at trial. Tr p. 404, line 1-25. Applicant further argues that trial counsel was ineffective for not challenging the chain of custody on state Exhibit 52, a pocket knife with a wood handle, broken at the tip, containing blood, after the following testimony was given by, Janice Bryson, when the item is claimed to have come from Arizona :

A. Item 11 was a pocket knife with a wood handle, broken tip at the end. It was not originally listed on the log-in sheet. And so I gave it a new item number, which was item number 11. And I collected four swabs that was positive for the presumptive of blood.
see, Tr. p 423, line 17-21.

Proof of chain of custody need not negate all possibility of tampering, but must establish a complete chain of evidence as far as practicable. Benton v. Peltum, 232 S.C. 26, 100 S.E. 2d 534 (1957), Sligh v. Johnson, 288 S.C. 364, 342 S.E. 2d 620 (Ct. App. 1986). Applicant argues that the state failed to present a proper chain of custody for any of the presented evidence in the afore listed Exhibits. Trial counsel was ineffective for failing to object to, or challenge the chain of custody on the foregoing states Exhibits, when the state plainly never presented evidence or witnesses to verify where, when or how they came in possession of the evidence presented in these Exhibits.

Applicant argues that he was prejudiced and denied the right to a fair trial, due to ineffective assistance of trial counsel. Due to ineffective assistance of trial counsel, how can Applicant say if he was or was not convicted as a result of illegally obtained or altered evidence? The question stands open, because trial counsel neglected to check or challenge the chain of custody of the evidence presented in the afore listed states Exhibits. In a long line of cases that includes Rowell v. Alabama, 287 U.S. 45 (1932), Johnson v. Zerbst, 304 U.S. 458 (1938) and Gideon v. Wainwright, 372 U.S. 335 (1963), the courts recognized that the sixth amendment right to counsel is needed in order to protect the fundamental right to a fair trial. Counsel's function is to assist the defendant, and hence Counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. Cayler v. Sullivan, supra, at 346. The sixth and Fourteenth amendments guarantee a person accused of a crime the right to effective assistance of a lawyer. It has long been settled that the right to counsel is the right to the effective assistance of counsel. McMann v.

(32)

Richardson, 397 U.S. 759, 771, n. 14 (1970), A proceeding in which the defendant does not receive meaningful assistance against the forces of the state does not constitute due process. In Chapman v. California, 386 U.S. 18, 23 (1967), its acknowledged that certain constitutional rights are "so basic to a fair trial that their infraction can never be treated as harmless error". Among these rights is the right to the assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335 (1963), The right to effective assistance of counsel is established by the right to counsel, and abridgment of the former is equivalent to abridgment of the latter. It was held that a showing that the performance of a defendant's lawyer departed from constitutionally prescribed standards requires a new trial regardless of whether the defendant suffered demonstrable prejudice thereby. Strickland v. Washington, 466 U.S. 668 (1984),

ISSUE ELEVEN

Strategic choices made by criminal defense counsel after thorough investigations of law and facts relevant to plausible options are virtually unchallengeable, while strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigations, in other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary, and a particular decision not be investigated must be directly assessed for reasonableness in all circumstances, applying a heavy measure of deference to counsel's judgments, Strickland v. Washington, 466 U.S. 668 (1984),

The sixth amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigating all options.

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. I American Bar Association Standards For Criminal Justice 4-4.1 (2d ed. 1982 supp) .

Applicant argues that trial counsel was ineffective by not investigating all the circumstances of the case before you. Considering the fact that the victims death accrued by multiple stab wounds and Applicant is known to have had a severely fractured right hand during the time frame the murder accrued, would lead any reasonable person to investigate and find out if the victims wounds were caused by a right or left handed suspect.

Due to trial counsel not investigating and failing to have an expert examine the autopsy report of the victims wounds, she could not present possible evidence at trial to support the fact that the Applicant may not have been able to commit the crimes committed, due to a severely fractured right hand. Tr. p. 14, line 17-22.

Applicant was denied the right to a fair trial, as he was not prepared to meet the forces of the state against him. Applicant's main argument to prove his innocence was the fact he had a severely fractured right hand and was not capable of committing the accusations against him, but as a result of ineffective assistance of trial counsel this argument could not properly be presented without the evidence to support it. As a result

of trial counsel not investigating such a serious issue that could have possibly proved Applicant's innocence, the Applicant was forced to go to trial without evidence or testimony that could have possibly shown the jury that Applicant may not have been able to commit the accused accusations.

A proceeding in which the defendant does not receive meaningful assistance in meeting the forces of the state does not constitute Due Process. In Chapman v. California, 386 U.S. 18, 23 (1967), it is acknowledged that certain Constitutional rights are "so basic to a fair trial that their infraction can never be treated as harmless error". Among these rights is the right to the assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335 (1963).

The right to counsel and the abridgment of the former is equivalent to abridgment of the latter, which is effective assistance of counsel. It was held that a showing that the performance of a defendant's lawyer departed from constitutionally prescribed standards requires a New Trial regardless of whether the defendant suffered demonstrable prejudice thereby. The court also held that a New Trial must be granted when evidence is not introduced because of the incompetence of counsel. Strickland v. Washington, 466 U.S. 668 (1984).

(35)

ISSUE TWELVE

In all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor. Both clauses are made obligatory on the states by the Fourteenth Amendment, Pointer v. Texas, 380 U.S. 400, 403-406, 85 S.Ct. 1065, 1067-1069, 13 L.Ed. 2d 923 (1965). Washington v. Texas, 388 U.S. 14, 17-19, 87 S.Ct. 1920, 1922-1923, 18 L.Ed. 2d 1019 (1967). Criminal defendants have the right under compulsory process clause to the governments assistance in compelling the attendance of favorable witnesses at trial and the right to put before the jury evidence that might influence the determination of guilt.

In the case before you, Applicant filed a pro se motion, on June 25, 2006, to retrieve evidence, by making a request for the following records to be retrieved:

4) I need you to retrieve the medical records of, Leroy Eugene Frey, Jr, Leroy Frey Jr and Leroy Frey from the counties of Gettysburg, Thomasville, York Haven, York, Hanover and all near by counties in the state of Pennsylvania and forward them to me, due to the fact I used these names to receive medical attention for a broke right hand between the dates of: 12/16/04 to 01/01/05. See, Exhibit C, pgs. 38-41.

Applicant argues that this information was essential to insure that he received a fair trial, right to present witnesses and right to present evidence. Applicant made the specific request for the listed medical records to insure his right to a fair trial. Had the prosecutor upheld her job and located the requested medical records, they could have been used to show the jury that the Applicant had a severely fractured right hand during the time frame the accusations occurred in the case before you occurred and that he could not have committed the accused accusations.

Applicant argues that the prosecutor failed to provide evidence favorable to defence in violation of Brady and his right to the compulsory process clause of the sixth amendment of the U.S., was violated, Brady v. Maryland, 373 U.S. 83, 87,

Furthermore, the sixth amendment right to counsel is the right to the effective assistance of counsel and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the

(36)

trial cannot be relied on as having produced a just result. The sixth amendment imposes on counsel a duty to investigate, because reasonably effective assistance can be made only after investigation of options. If there is more than one plausible line of defence, the court held, counsel should ideally investigate each line substantially before making a strategic choice about which lines to rely on at trial. Strickland v. Washington, 466 U.S. 668 (1984). It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of facts constituting guilt or the accused's stated desire to plead guilty. 1 American Bar Association Standards For Criminal Justice 4-4.1 (2d ed. 1982).

Applicant argues that trial counsel was ineffective for failing to investigate and locate the medical records of Applicant from the state of Pennsylvania, being material evidence that could have been used with the testimony of medical personell to show that Applicant had a severe fracture to his right hand during the time frame the accusations in the case accrued. Had trial counsel located the medical records of Applicant and subpoenaed medical personell from Pennsylvania to testify about the injuries of his right hand at trial, it would have shown the jury that he could not have possibly been capable of committing the accusations he was accused of. Tr p. 14, line 6-16. Tr p. 287, line 8-17.

A proceeding in which the defendant does not receive meaningful assistance in meeting the forces of the state does not constitute due process. In Chapman v. California, 386 U.S. 18, 23 (1967), it is acknowledged that certain constitutional rights are "so basic to a fair trial that their infraction can never be treated as harmless error". Among these rights is the right to the assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335 (1963). The right to effective assistance of counsel is entailed by the right to counsel, and abridgment of the former is equivalent to the abridgment of the latter. It was held that a showing that the performance of a defendant's lawyer departed from constitutionally prescribed standards requires a New Trial regardless of whether the defendant suffered demonstrable prejudice thereby. Strickland v. Washington, 466 U.S. 668 (1984).

Applicant argues that there is a compulsory process clause violation, as here, where he was denied pretrial access to information, that if provided, with the testimony of medical personnel, would have shown the jury that he was not capable committing the accused accusations at the time frame they were committed. Failure to disclose the requested medical records of Applicant, violated the compulsory process clause of the sixth amendment, as applied to the states through the Due Process clause of the Fourteenth Amendment.

Applicant argues that by being denied access to his medical records, the trial court, prosecutor and trial counsel violated the confrontation and compulsory process clauses of the sixth amendment, his conviction must be vacated and the case remanded to determine if a New Trial was necessary. See, Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed. 2d 40, 1987 U.S. Lexis 558, 55 U.S.L.W. 4180 (emphasis added).

A proper defense could not be provided when an argument arose at trial related to Applicant's broke right hand. see, Tr p. 287, line 8-17. Trial counsel could not present evidence to defend Applicant at such a critical stage arose at trial, denying him effective assistance to meet the forces of the state against him, denying him the right to a fair trial,

(38)

Page: 1 of 4

Exhibit CProof of Service

The undersigned hereby certifies that a true copy of the attached matter has been served upon the parties listed below by depositing a properly addressed - stamps envelope in the U.S. mail this 25th day of JUNE 2006, such matter being: Motion to retrieve evidence

1.) Clerk of Court

Greenville County Court House

305 E. North Street

Greenville, S.C. 29601

2.) Robert M. Ariail

Solicitors Office

305 E. North Street

Greenville, S.C. 29601

Sworn to and Subscribed before me

this 24 day of June 2006.

Notary Public for South Carolina,

Print: M. R. R. R.Signature: [Signature]My Commission expires: January - 2015Print: Michael SarraffSignature: Michael Sarraff

Defendant Pm Co

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE GENERAL
SESSIONS COURT
THIRTEENTH JUDICIAL
CIRCUIT

SOUTH CAROLINA

v.

MICHAEL SARRATT

WARRANT No.

1-467591, 1-467590,

1-467593, 1-467594-

Request: motion to retrieve evidence

Due to the following grounds:

- 1.) I need you to retrieve the mental health records of, Peggy Lucille Gladfelter, from the state of Pennsylvania and forward them to me, due to me receiving due process of law, due to the cross-examination of, Peggy Lucille Gladfelter, as a witness in this case.
- 2.) I need you to retrieve the criminal history records of, Peggy Lucille Gladfelter, from the state of Pennsylvania and forward them to me, due to me receiving due process of law, due to the cross-examination of, Peggy Lucille Gladfelter, as a witness in this case
- 3.) I need you to retrieve the disability records of, Peggy Lucille Gladfelter, from the social services, from the state of Pennsylvania and forward them to me.

due to me recieving due process of law, due to the cross-examination of, Peggy Lucille Gladfelter, as a witness in this case.

4.) I need you to retrieve the medical records of, Leroy Eugene Frey Jr., Leroy Frey Jr., and Leroy Frey, from the counties of Gettysburg, Thomasville, York Haven, York, Hanover, and all near by counties in the state of Pennsylvania and forward them to me, due to the fact I used these names to recieve medical attenti for a broke right hand between the dates of: 12-16-04 to 1-1-05.

5.) I need you to retrieve the records of, Leroy and Amanda Frey, from the Salvation Army hospitality house in Tucson, Az., from the dates of: 1-6-05 to 2-1-05, due to the fact that me and, Peggy Lucille Gladfelter, used these names to stay there. I also need all of in house records due to Amanda Frey staying there by her self due to medica Condition as I was working.

6.) I need you to retrieve the employment records from Tucson, Arizona under the name of, Leroy Eugene Frey Jr., Social Security number: 189-68-269 from the dates of: 1-6-05 to 2-1-05, due to the fact I used the name and social security number to work under.

7.) I need all requested records retrieved and forwarded to me, due to me receiving due process of law, due to me being fully prepared for trial, due to Pro se.

ATTN: Forward this matter and all matters to me and anything that may concern me to:

Michael Anthony Sarratt #676
Greenville County Det. Ctr
20 McGee St.
Greenville, S.C. 29601-2210

Proof of Service

The undersigned does hereby certify that a true copy of the attached matter has been served upon the parties listed below by depositing a properly addressed-stamped envelope in the U.S. mail this 2nd day of June 2007, such matter being: motion for an order compelling mental health records

1.) Clerk of Court

Greenville County Court House

305 E. North Street

Greenville, S.C. 29601

2.) Robert M. Ariail

Solicitors Office

305 E. North Street

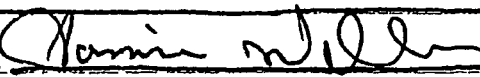
Greenville, S.C. 29601

Sworn to and subscribed before me

this 2nd day of June 2007.

Print:

Signature:



Notary Public for South Carolina,

my commission expires: 12/27/07Print: Michael A. SarrattSignature: Michael A. Sarratt

Defendant, Pro-Se

STATE OF SOUTH CAROLINA ' IN THE GENERAL
 COUNTY OF GREENVILLE ' SESSIONS COURT
 ' THIRTEENTH JUDICIAL
 ' CIRCUIT

South Carolina

VS.

Warrant No.

Michael A. Sarratt

1-467590-91, 93, 94

"motion for an order compelling mental health records"

Now comes Defendant, Michael A. Sarratt, who move this Honorable Court for an order compelling the state of S.C., County of Greenville to provide the following mental health records:

1.) Defendant moves to receive his own mental health report from: DMH, Columbia Behavioral Health System, Forensic Center, 7901 Farrow Road, Columbia, S.C. 29203,

2.) Defendant moves to receive the mental health reports of Peggy L. Gladfelter, if available from: DMH, Columbia Behavioral Health System, Forensic center, 7901 Farrow Road, Columbia, S.C. 29203. Due to the fact Mrs. Gladfelter is the Defendants known Co-Defendant.

3.) Defendant moves to receive his own mental health records from: Greenville County Det. Ctr, 20 McGee St., Greenville, S.C. 29601,

4.) Defendant moves to receive the mental health records of Peggy L. Gladfelter from: Greenville County Det. Ctr,

3 of 3 (44)

Greenville, S.C. 29601.

5.) Defendant moves to receive any of his own past mental health records that may be known or become known by the state of S.C., county of Greenville

6.) Defendant moves to receive all past mental health records of Peggy L. Gladfelter that are known to be on file within the state of Pennsylvania as it is a known fact Mrs. Gladfelter received a disability check from the state of Pennsylvania for mental health matters.

Whereas, Defendant moves to receive the above listed mental health records of Peggy L. Gladfelter who is a known co-Defendant involved in above-referenced case. Defendant needs these records to properly cross-examine Mrs. Gladfelter at trial.

Furthermore, Defendant move this Honorable Court for an order compelling the State of S.C., county of Greenville to provide him the listed mental health records so he can properly prepare his defense against the false accusations against him.

Defendant moves to make this request as he seeks Due Process and Equal Protection according to his V and XIV amendments of the U.S. constitution and article I section 3 of the S.C. constitution.

ISSUE THIRTEEN

It is revealed that the state never disclosed certain evidence favorable to Applicant and that his conviction was obtained in violation of Brady v. Maryland, 373 U.S. 83, 87, which held that the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material to guilt or punishment.

Under United States v. Bagley, 433 U.S. 667, Four aspects of materiality for Brady purposes bear emphasis. First, favorable evidence is material and constitutional error from its suppression by the government, if there is a "reasonable probability" that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Second, Bagley materiality is not a sufficiency of evidence test. One does not show a Brady violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Third, contrary to the courts assumption, once a reviewing court applying Bagley has found constitutional error, there is no need for further harmless-error review, since the constitution standard for materiality under Bagley imposes a higher burden than the harmless error standard of Brecht v. Abrahamson, 507 U.S. _____, _____. Fourth, the states disclosure obligation turns on the cumulative effect of all suppressed evidence favorable to the defense, not on the evidence considered item-by-item. 473 U.S. at 675 and n.7. Thus the prosecutor who alone can know what is undisclosed, must be assigned the responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of "reasonable probability" is reached. Moreover, that responsibility remains regardless of any failure by the police to bring favorable evidence to the prosecutor's attention. To hold otherwise would amount to a serious change of course from the Brady line of cases.

Applicant has come to realize that the prosecutor supp-

pressed a video that could have changed the out come of his trial This video, being "material evidence" could have shown that Applicant's co-defendant, ms Gladfelter, and Lead Investigator, Wesley Smith, gave perjured testimony at trial, that is the result of his conviction.

ms Gladfelter testified as follows:

- Q. All right. Tell us about walking across from the hometown food store to the Spinx.
- A. There was a car parked by the Kerosene pumps. And there was an older gentleman walking towards the car. And we were going to ask him for a ride.
- Q. What kind of car was - - -
- A. It was an older car. It was like a reddish type car.
- Q. Okay. Is that the car I've shown you already in States Exhibit I?
- A. Yes, Sir.
- Q. - - He was walking to? All right. And can you describe this man for us?
- A. He was very polite man and trying to help.
- Q. Okay. What - - who had a conversation with him?
- A. Michael

See, Tr p. 206, line 14 - p. 207, line 5.

Investigator Wesley Smith testified as follows:

- Q. Investigator, are you aware at the Spinx when someone purchases Kerosene do they have to go inside the store to pay for that Kerosene?
- A. Yes. You cant pay at the pump there.
- Q. Okay. But you indicated that that video at the Spinx did not show Mr Dellinger nor any possible suspects?
- A. I didnt say that. I said that the video of the - - where we had the video of the pitchure of the Kerosene pumps we couldn't see the vehicle, that we couldn't see Mr. Dellinger because the view was obstructed by the cover of the Spinx over the gas - - over the gas pumps
- Q. Did you view the video that covered the cash register?
- A. Yes.

(47)

Q. And . . .

A. I think I remember that being on a multiplexer. And our equipment doesn't catch all the views on a multiplexer.

Q. Okay, so Ingles and the spinx had multiplexer?

A. As I - I think I remember that, Yes.
See, Tr p 339, line 11 - p. 340, line 4.

Applicant offers Exhibit D, pgs 50-54, that he has located after trial. This Exhibit shows a Greenville County Sheriff's Office Supplemental Report given by, W. A. Smith, dated 01/05/05, which states: We obtained videotapes from the spinx and Ingles store the previous evening. In viewing the video from the spinx, we were unable to make an identification of the victim or his vehicle. This Exhibit further shows a Greenville County Sheriff's Office Supplemental Report given by, Michael E. Fortner, dated 01/10/05, which states: Investigator Smith and I watched the videos. The Ingles video was unable to be viewed due to needing a multiplexer, we were unable to locate either the victim or Peggy or Michael Sarratt on the spinx video.

Applicant argues that had the state not suppressed the spinx video from defense and the eyes of the jury, defense could have used the video to verify and show the jury that the states key witness, Mrs. Gladfelter and Lead Investigator, Wesley Smith, both gave perjured testimony at trial. Because of the net effect of the state-suppressed evidence favoring Applicant raises a reasonable probability that its disclosure would have produced a different result at trial, the conviction cannot stand, and Applicant is entitled to a New Trial.

A review of the suppressed video from the spinx store, where Sarratt and Gladfelter were suppose to meet the victim prior to carjacking him and murder, being the essence of the states case, based upon the testimony of Gladfelter, reveals that their disclosure of the video would have resulted in a markedly weaker case for the prosecution and a stronger for the defense, but also would have substantially reduced and destroyed the value of the testimony given by the states key witness, Gladfelter, and Lead Investigator, W. Smith, as the prosecutor knowingly used their perjured testimony,

Applicant argues that Exhibit , pages , show that the spinx video was perfectly watched, worked perfect and exist, that Investigator Wesley Smith knowingly gave perjured testimony at trial. This Exhibit plainly shows that the video, if produced, would have shown that the states key witness knowingly gave perjured testimony at trial, as the video would show that the Applicant was never at the spinx, where he elegibly got a ride from the victim prior to the accusations of carjacking and murder, neither was the victim ever a customer at the spinx the night these accusations accured.

Typified by Mooney v. Holahan, 294 U.S. 103, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony that the prosecution knew, or should have known to be perjury. In a series of subsequent cases, the court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. It is this line of cases on which the court has applied a strict standard of materiality, not just because the involved prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process

Furthermore, the sixth amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. The sixth amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can only be made after investigation of options. If there is more than one plausible line of defense, the court held, counsel should ideally investigate each line substantially before making a strategic choice about which lines to rely on at trial. Strickland v. Washington, 466 U.S. 668 (1984),

Applicant argues that as a result of trial counsel neglecting to fully investigate the states files, evidence and all prior statements, to include reports related to the case before you, resulted in the state suppressing evidence, that could have plainly been seen by any reasonable person during an actual investigation. By trial counsel neglecting to properly investigate the case before you, it allowed the prosecutor to withhold material evidence that could have affected the judgment of the jury, by showing that the prosec-

who's whole case relied upon the use of perjured testimony to convicted Applicant.

In a long line of cases that includes Powell v. Alabama, 287 U.S., 45 (1932), Johansen v. Zerbst, 304 U.S. 458 (1938) and Gideon v. Wainwright, 372 U.S. 335 (1963), the courts recognized that the sixth amendment right to counsel exists and its needed in order to protect the fundamental right to a fair trial. The sixth and

Fourteenth amendments guarantee a person accused of a crime the right to the aid of a lawyer in preparing and presenting his defense. It has long been settled that the right to counsel is the right to the effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n 14 (1970). A proceeding in which the defendant does not receive meaningful assistance in meeting the forces of the state does not constitute due process. In Chapman v. California, 386 U.S. 18, 23 (1967), its acknowledged that certain constitutional rights are "so basic to a fair trial that their infringement can never be treated as harmless error". It was held that a showing that the performance of a defendant's lawyer departed from constitutionally prescribed standards requires a New Trial regardless of whether the defendant suffered demonstrable prejudice thereby. Strickland v. Washington, 466 U.S. 668 (1984),

☐ ORIGINAL REPORT ☐ STATUS CHANGE ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY ☐ INCIDENT TYPE Death Investigation-Homicide
☒ SUPPLEMENTAL REPORT ☐ OTHER ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY ☐ PATROL DISTRICT 10 PAGE 6 OF 7 PAGES

2005

Exhibit D

During the previous evening the local news media released the identification of this victim to the public, and the circumstances of the missing vehicle

*We obtained videotapes from the Spinx and the Ingles store the previous evening (In viewing the video from the spinx, we were unable to make an identification of the victim or his vehicle)

*Attempts to view the tapes from the Ingle's store and we were unable to get the video to play on our available equipment at any speed I took the video tapes to Forensics and attempted to view them there with the same problem

Inv Fortner and I then went to the area of the incident location and continued to canvas the area for more information. At 11 00 hrs we recieved a telephone call from

Holt-Amanda Darlene w/f-18 yoa

Holt and her live-in boyfriend, William Joe Phillips had been the original complainant's in this case She requested that we come to meet with her because she had additional information

When we met with Holt at the Mountain Gift Shop at the intersection of Long Shoals Rd and Geer Hwy, she was visibly upset, and began to cry as she told us the following Holt says that when she and Phillips discovered the victim. She did not relate the following circumstances until she saw the information on the television news that morning

Holt says that her boyfriend, William Joe Phillips is an acquaintance of

Sarratt-Michael Anthony w/m-26 yoa

that on 01/01/2005 Sarratt and his girlfriend then known only as "Peggy", but later in this investigation identified as

Gladfelter Peggy Lucille w/f 23 yoa

came to their home located at [REDACTED] Rd., and asked if they could stay with them claiming that they were homeless Phillips said that they had no room for them at their [REDACTED] location, but told them that they could stay in the house next door at [REDACTED] Rd., which they were presently buying but not living there because the house was in need of extensive repairs Sarratt and Gladfelter stayed in that residence on 01/01 03/2005 On 01/03/2005 Holt says that Sarratt and "Peggy" came over to #194 where they stayed during the day at meals and took showers After the evening meal, Holt says that she overheard them talking about having outstanding charges against them and asked them about it. Holt says that they admitted to her that they were both wanted, Sarratt here in SC, and "Peggy" from where she was from in Pennsylvania Upon hearing this at approximately 1800 hrs Holt says that she told them that they could not stay there any longer because of Holt's small children being there Sarratt and "Peggy" then asked for a ride to a nearby store, and Holt says that she and her mother took them to the "Food Shop", located at 2931 Geer Hwy, Marietta where they dropped them off, and they told Holt and her mother that they would be back later to get their things Holt and her mother then returned home Between 1930-2000, Holt said that they heard a car pull into the driveway at 196, and they looked out to see who it was Holt says that she saw Sarratt and "Peggy" get out of a maroon car and run into the house and then come back out running carrying arm loads of their possessions which they were dropping several items of as they did so Holt says that she observed Sarratt turn to go back into the residence and tell "Peggy" he was going to go "get the groceries" to which "Peggy" replied "fuck the groceries" Sarratt and "Peggy" then got into the maroon car and left in a hurried manner bottoming the car out in the driveway as they did so or as Holt described "cleaned out the ditch." A short time later, Holt said that Phillips returned home and from working, and he and Holt left to go to the Mountain Gift Shop to use the telephone, and as they traveled to that location, found the victim lying on the side of the highway Holt says that it did not occur to her or Phillips that Sarratt and "Peggy" possibly had anything to do with the incident until they saw the news report regarding the victim's maroon car Holt gave us a written statement regarding this information

Holt also took us to the house at [REDACTED] Rd., where she says that they allowed Sarratt and "Peggy" to stay I asked Holt if Sarratt

SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADMIN CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX CLEARED UNDER 11 ☐ EX-CLEARED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST						
ADMIN	REPORTING OFFICER(S)	DATE	UNIT NO / STAR #	APPROVING OFFICER		DATE
	SMITH W A	*315/01/05/05	614	SGT BROWN J M *048		601
	FOLLOW UP INVESTIGATION ☐ YES ☐ NO		(OFFICER)			

Greenville County Sheriff's Office
SUPPLEMENTAL REPORT

0 5 0 0 0 0 0 6 0 9 7

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	Death Investigation-Homicide
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	10
				PAGE	7 OF 7

or ggy had paid any rent to them for the use of the house and she said they did not. Holt showed us the scrape mark in the drive way as he tire marks in the ditch she says were made when Sarratt and "Peggy" left in the maroon car. I asked her to sign a consent to search form and she did so after which we entered the residence. This location is in very poor condition and in need of a large number of repairs. We looked through all of the rooms and found the following items:

- MEF-a) Hard bound, red, Gideon edition, Holy Bible
- MEF-b) "Funshot" disposable 35 mm camera with 27 exposures indicated
- MEF-c) Photograph of a young white male wearing #80 jersey
- MEF-d) Piece of paper with purple floral printing and hand writing

These items were found on a table in the dining room of the house. Holt advised that she had picked up the camera from the front yard after Sarratt and 'Peggy' had left in the maroon car. We collected these items and then secured from this location.

Fortner and I then took the disposable camera to a local Winn Dixie store that has one-hour photo processing and while we were present at the photo-lab had the film in the camera processed and two copies of the prints made.

In examining the photographs, there were several of Sarratt with a large build white female in various homes. In one of the photographs Sarratt has a soft cast on his right hand.

In examining the Bible, there was a name written inside the front cover in blue ink, that had been scribbled over in black ink. Using a magnifier the name "Peggy L. Gladfelter" could be made out.

Searches of public record databases were then conducted, and the full name of

Peggy Lucille Laughman Gladfelter DOB [REDACTED]

located with addresses and relatives in Pennsylvania. A criminal history was run on that name and date of birth and a criminal record was also confirmed. Contact was made with the Pennsylvania State Police and a driver's license/state I.D. photograph was obtained, and the identification of Gladfelter was made to the large white female in the pictures developed from the disposable camera.

BOLO information was distributed via NCIC nation wide broadcast, and telephone contact with agencies in the areas Holt informed us where Sarratt and Gladfelter had talked about wanting to go.

SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADMIN CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEARED UNDER 18	
☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE 40 ARREST									
ADMIN	REPORTING OFFICER(S)		DATE	UNIT NO. / STAR #	APPROVING OFFICER		DATE		UNIT NO. / STAR #
	SMITH W A *315		01/05/05	614	SGT BROWN J M *048				01
					FOLLOW UP INVESTIGATION ☐ YES ☐ NO (OFFICER)				



☐ ORIGINAL REPORT ☐ STATUS CHANGE ☐ ADDITIONAL VICT MS ☐ ADDITIONAL STOLEN PROPERTY ☐ INCIDENT TYPE DEATH INVESTIGATION
☒ SUPPLEMENTAL REPORT ☐ OTHER ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY PATROL DISTRICT 10 PAGE 3 OF 5 PAGES

STATES THAT MICHAEL SARRATT AND PEGGY THEN ASKED FOR A RIDE TO A PHONE AND THEY AGREED TO THEM ONE MS HOLT ADVISED US THAT SHE GAVE THEM A RIDE TO THE FOOD SHOP IN MARIETTA ON GEORGE HWY SO THEY COULD USE A PHONE ACCORDING TO MS HOLT THIS WAS SOMETIME BETWEEN 1800 HOURS AND 1815 HOURS MS HOLT STATES THAT MICHAEL SARRATT STATED THAT HE WAS GOING TO CALL SOMEONE AND WOULD THEN RETURN IN A BLUE EXPLORER TO GET THE REST OF THEIR ITEMS AFTER DROPPING MICHAEL SARRATT AND PEGGY OFF, MS HOLT STATES THAT SHE AND HER BOYFRIEND RETURNED HOME MS HOLT STATES THAT IT WAS ABOUT 1930 HOURS TO 2000 HOURS WHEN SHE HEARD A VEHICLE PULL INTO THE DRIVEWAY AT [REDACTED] RD MS HOLT STATES THAT SHE GOT UP TO LOOK OUT THE DOOR AND SAW MICHAEL SARRATT AND PEGGY GET OUT OF A SMALL MAROON VEHICLE AND RAN INTO THE HOUSE AND THEN RUN BACK OUT TO THE CAR. MS HOLT STATES THAT IT WAS APPARENT THAT THEY WERE IN A HURRY AND THEY WERE DROPPING ITEMS ON THE GROUND ONE OF THESE ITEMS WAS A DISPOSABLE CAMERA THAT SHE PICKED UP AND PUT BACK INTO THE HOUSE MS HOLT STATES THAT WHILE THEY WERE LOADING THE VEHICLE SHE HEARD MICHAEL SARRATT ASK, "WHAT ABOUT THE GROCERIES?" MS HOLT STATES SHE HEARD PEGGY ANSWER, 'FUCK THE GROCERIES' MS HOLT STATES THAT THEY THEN DROVE DOWN THE DRIVEWAY AT A HIGH RATE OF SPEED BOTTOMING THE VEHICLE OUT ON THE DRIVEWAY AND GOING DOWN INTO A DITCH MS HOLT STATES THAT SHE SAW ON THE NEWS A PICTURE OF THE VICTIM'S VEHICLE AND SHE STATED THAT IT LOOKED LIKE THE VEHICLE THAT PEGGY AND MICHAEL SARRATT WERE IN

INVESTIGATOR TOOK A WRITTEN STATEMENT FROM MS HOLT AND SHE SIGNED IT AND INVESTIGATOR SMITH PROVIDED HER WITH A COPY OF IT THE FOLLOWING IS MS HOLT'S INFORMATION

HOLT, AMANDA DARLENE W/F 18 (H) [REDACTED]
[REDACTED] RD
MARIETTA, SC [REDACTED]

AFTER TAKING THE STATEMENT, WE ASKED MS HOLT IF SHE COULD TAKE US TO [REDACTED] RD AND SHE DID HOLT SIGNED A CONSENT TO SEARCH FORM ALLOWING US TO SEARCH THE RESIDENCE AS A RESULT OF THE SEARCH THE FOLLOWING ITEMS WERE SEIZED

MEFA - ONE HARDBOUND RED GIDEON BIBLE WITH THE NAME OF PEGGY WRITTEN ON THE INSIDE FRONT COVER THE BIBLE WAS LOCATED ON THE TOP SHELF OF A CLOSET IN THE DINING ROOM AREA
MEFB - ONE FUNSHOT 35 MM DISPOSABLE CAMERA, 27 EXPOSURE, FROM DINING ROOM TABLE
MEFC - ONE PHOTO OF A WM SUBJECT WEARING A #80 BLACK IN COLOR JERSEY FROM DINING TABLE
MEFD - ONE PIECE OF PURPLE FLORAL PATTERNED NOTE PAPER FROM DINING TABLE

ALL ITEMS SEIZED WERE LISTED ON THE CONSENT TO SEARCH FORM AND A COPY WAS PROVIDED TO THE OWNER OF THE RESIDENCE MS HOLT

AFTER FINISHING AT THE RESIDENCE WE WENT TO THE FOOD MART TO ASK FOR THE VIDEO FROM 01 03 05 THE VIDEO WAS PROVIDED TO US AND INV WES SMITH PREPARED A P&E SHEET FOR IT

AFTER FINISHING AT THE FOOD MART, WE TOOK THE CAMERA TO WINN DIXIE ON SULPHUR SPRINGS RD TO HAVE THE PHOTOS DEVELOPED SOME OF THE PICTURES WERE OF PEGGY AND MICHAEL SARRATT SOME OF THE PHOTOS SHOWED MR. SARRATT WITH A BROKEN HAND THE PHOTOS WERE DEVELOPED BY DAWN WOOD OF THE PHOTO LAB BEFORE TURNING THE CAMERA OVER TO DAWN WOOD, I HAD HER SIGN THE P&E FORM WHEN SHE FINISHED THE PHOTOS I THEN SIGNED THE P&E FORM TO GET THE PICTURES BACK

INVESTIGATOR SMITH AND I THEN WENT BACK TO THE CID OFFICE AND WATCHED THE VIDEOS (THE INGLES VIDEO WAS UNABLE TO BE VIEWED DUE TO NEEDING A MULTIPLEXOR) WE WERE UNABLE TO LOCATE EITHER THE VICTIM OR PEGGY OR MICHAEL SARRATT ON THE SPINX VIDEO BUT ON THE FOOD MART VIDEO WE DID LOCATE PEGGY

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ ADMIN CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE NO ARREST									
REPORTING OFFICER(S) FORTNER, MICHAEL E		DATE 1/10/05		UNIT NO / STAR # 621/129		APPROVING OFFICER SGT BROWN		DATE 1/10/05	
						FOLLOW UP INVESTIGATION ☐ YES ☒ NO		(OFFICER)	

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	DEATH INVESTIGATION
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	10
				PAGE	4 OF 5

1-06-05 I WAS NOTIFIED BY INVESTIGATOR WES SMITH SHORTLY AFTER I CAME IN FOR WORK THAT THE V. IM'S 1991 PLYMOUTH ACCLAIM HAD BEEN RECOVERED IN HEFLIN AL BY THE CLEBURNE SHERIFF'S OFFICE THE VEHICLE WAS ABANDONED AT THE ALABAMA WELCOME CENTER JUST ACROSS THE GEORGIA/ALABAMA STATE LINE ON I20 THE CLEBURNE SO CONTACTED INVESTIGATOR WES SMITH ABOUT THE VEHICLE AND ADVISE HIM THAT IT WAS GOING TO BE TOWED TO ADAM'S TEXACO INVESTIGATOR SMITH ASKED ME TO MAKE PLANS FOR A TRIP TO HEFLIN ALABAMA ALONG WITH SGT SHAW AND LT PETERSON WITH FORENSICS I MADE PLANS FOR THE TRIP AND HEADED TO HEFLIN AL WHERE I WAS GOING TO MEET WITH INVESTIGATOR DENNIS GREEN WITH THE CLEBURNE SO

I LEFT FOR ALABAMA AT APPROXIMATELY 1200 HOURS ALONG WITH LT PETERSON AND SGT SHAW FROM FORENSICS WHEN WE WERE ABOUT 30 MILES FROM THE WELCOME CENTER, I CONTACTED INVESTIGATOR DENNIS GREEN AND MADE ARRANGEMENTS TO MEET WITH HIM AT THE WELCOME CENTER. ONCE AT THE WELCOME CENTER, LT PETERSON AND SGT SHAW PHOTOGRAPHED THE AREA SURROUNDING WHERE THE VEHICLE WAS PARKED THEY ALSO SEARCHED THE AREA FOR ANY TYPE OF A CUTTING INSTRUMENT THAT MAY HAVE BEEN DISCARDED IN THE AREA WE ALSO SEARCHED THE GARBAGE CANS HOWEVER WE WERE ADVISED BY MAINTENANCE PERSONNEL AT THE WELCOME CENTER THAT THE GARBAGE IS EMPTIED REGULARLY

MAINTENANCE PERSONNEL SHOWED ME THE AREA WHERE THE VEHICLE WAS ABANDONED THEY SHOWED ME TWO SPOTS HOWEVER THEY WERE NOT SURE WHICH ONE OF THE TWO WAS THE CORRECT PARKING SPACE I USED A GPS AND MARKED THE CENTER OF THE TWO SPOTS AS N34 20 023' W78 36 514'

AFTER MARKING THE PARKING SPACE I SPOKE WITH A MAINTENANCE WORKER, DONALD KEITH TIBBETTS, WHO ADVISED ME THAT HE SAW THE VEHICLE SOMETIME ON THE AFTERNOON OF TUESDAY 01 04-05 THE FOLLOWING IS MR TIBBETTS' INFORMATION

TIBBETTS DONALD KEITH W/M 28 11-20-76 (H) (256) 253-2071 (W) (256) 748-3503
6337 HWY 431
HEFLIN AL 36264

AFTER SPEAKING WITH MR TIBBETTS I CALLED JOHN TARVER WHO IS WITH TWIN CITY SECURITY MR. TARVER WAS WORKING ON THE NIGHT OF 01 03-05 FROM THE HOURS OF 1800 HOURS TO 0600 HOURS HE TOLD ME THAT HE FIRST SAW THE VEHICLE AT ABOUT 2400 HOURS HE TOLD ME THAT HE NOTICED IT BECAUSE IT WAS BACKED INTO THE PARKING SPACE HE TOLD ME THAT WAS UNUSUAL SINCE MOST VEHICLES WERE JUST PULLED STRAIGHT IN INSTEAD OF BACKED IN MR. TARVER TOLD ME THAT HE DID NOT SEE ANYONE AROUND THE VEHICLE, NOR COULD HE RECALL SEEING ANYONE MATCHING THE DESCRIPTION OF THE POSSIBLE SUSPECTS THE FOLLOWING IS MR TARVER'S INFORMATION

TARVER, JOHN W/M (H) (256) 282-3036 (W) 1-888-749 8385 (W) 1-334-749-7038

AFTER FINISHING AT THE WELCOME CENTER, I WENT WITH INVESTIGATOR GREEN TO GO TO THE COURTHOUSE TO SPEAK WITH GARY CARROLL WHO IS THE CHIEF INVESTIGATOR WITH THE DISTRICT ATTORNEY FOR THE SEVENTH JUDICIAL CIRCUIT I PROVIDED MR CARROLL WITH A SEARCH WARRANT FOR THE VICTIM'S VEHICLE THAT WAS PREPARED BY INVESTIGATOR WES SMITH MR CARROLL THEN USED OUR SEARCH WARRANT TO PREPARE A SEARCH WARRANT FOR INVESTIGATOR GREEN AFTER FINISHING THE SEARCH WARRANT I FOLLOWED INVESTIGATOR GREEN OVER TO ADAM'S TEXACO WHERE THE VICTIM'S VEHICLE WAS BEING STORED LT PETERSON AND SGT SHAW DID A BASIC PROCESSING OF THE VEHICLE THERE AT THE TEXACO THEY PHOTOGRAPHED THE VEHICLE AND PROCESSED IT FOR LATENT PRINTS AND SEARCHED IT FOR A POSSIBLE WEAPON HALE'S TOWING HAD ALSO RESPONDED TO ADAM'S TEXACO TO TOW THE VICTIM'S VEHICLE BACK TO GREENVILLE ARRANGEMENTS HAD BEEN MADE THROUGH THE SERVICE CENTER TO STORE THE VEHICLE INSIDE UNTIL THE NEXT DAY WHEN THE PROCESSING OF THE VEHICLE COULD CONTINUE

SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADMIN CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEARED UNDER 18		
☐ YES ☒ NO		☐ YES ☒ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEARED 18 AND OVER		
REASON FOR EXCEPT ONAL CLEARANCE.. ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST										
ADMIN	REPORTING OFFICER(S)		DATE		UNIT NO / STAR #	APPROVING OFFICER		DATE		
	FORTNER, MICHAEL E		1/10/05		621/129	SGT BROWN		1/10/05		
					FOLLOW UP INVESTIGATION		☐ YES ☒ NO		(OFFICER)	

OF AGENCY ID
(54) SC0230000

Greenville County Sheriff's Office
SUPPLEMENTAL REPORT



CASE NUMBER

675

0 5 0 0 0 0 0 6 0 9 7

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	INCIDENT TYPE	DEATH INVESTIGATION
☒ SUPPLEMENTAL REPORT	☐ OTHER	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT	10

PAGE 5 OF 5 PAGE

FOLLOWING IS A LISTING OF ITEMS TAKEN FROM THE VICTIM'S VEHICLE

- MF (A) 1 PIECE OF PVS PIPE WITH CAP ENDS
- MF (B) - BLUE AND BLACK BOOK BAG WITH ROLLERS AND HANDLE CONTAINING X-RAYS OF RIGHT HAND
- MF (C) COVER FROM STEERING WHEEL
- MF (D) TWO STYROFOAM YELLOW CUPS FROM BOJANGLES
- MF (E) - YELLOW DOLLAR GENERAL BAG WINNIE THE POOH STUFFED ANIMAL
- MF (F) VARIOUS LIGHTERS
- MF (G) - FIRST AID KIT IN CLEAR PLASTIC BAG
- MF (H) - VARIOUS FEMALE AND MALE CLOTHING ITEMS
- MF (I) - TWO LONG STEM RED ROSES IN PLASTIC CONTAINER WITH RED RIBBON
- MF (J) - WILCO PLASTIC BAG CONTAINING VARIOUS PIECES OF PAPER
- MF (K) - 1/2 GALLON JUG OF TAMPICO CITRUS DRINK ABOUT 1/4 FULL
- MF (L) EMPTY 1 GALLON MR CLEAN JUG
- MF (M) - INGLES BAG CONTAINING GALLON OF MILK
- MF (N) - ONE LOAF OF LAURA LYNN BREAD
- MF (O) - INGLES BAG CONTAINING TWO PACKAGES OF LIVER PUDDING
- MF (P) INGLES BAG WITH A CONTAINER OF RUTH'S HAM SALAD
- MF (Q) - HEAD OF T&A LETTUCE IN INGLES BAG
- MF (R) - 18 GRADE A LARGE EGGS, LAURA LYNN BRAND, IN INGLES BAG
- MF (S) - 1991 PLYMOUTH ACCLAIM 4 DOOR, MAROON IN COLOR, VIN 3P3XA46K5MT042149 TAG 444 TAH 12/05
BENSON GREER, SC EMBLEM ON LEFT CORNER OF TRUNK
- MF (T) - PHOTOS INSIDE AND OUT OF VEHICLE
- MF (U) - BLOOD SWABBINGS FROM DRIVER'S SIDE DOOR AND FLOOR DOOR JAMB
- MF (V) - SIZE 8 1/2 BOOTS

ALL ITEMS WERE SEIZED BY SGT SHAW FROM FORENSICS A COPY OF THE SEARCH WARRANT WAS LEFT WITH THE VEHICLE THE ORIGINAL SEARCH WARRANT FROM CLEBURNE COUNTY WAS PLACED IN P&E WHEN I WAS PROVIDED WITH THE SEARCH WARRANT IN CLEBURNE COUNTY THEY MADE A COPY AND TOLD ME THAT WAS ALL THEY WANTED AND THAT I COULD KEEP THE ORIGINAL

ON 01-07 05 I OBTAINED A SEARCH WARRANT FROM JUDGE HUDSON'S OFFICE FOR THE ADDRESS AT [REDACTED] RD SO INVESTIGATOR SMITH AND I COULD GO BACK AND CONDUCT ANOTHER SEARCH OF THE PREMISES ONCE THE SEARCH WARRANT WAS ACQUIRED INVESTIGATOR SMITH AND I RETURNED AND GOT WITH AMANDA HOLT WHO HAD HER BOYFRIEND, WILLIAM PHILLIPS UNLOCK THE DOOR TO THE RESIDENCE SGT SHAW FROM FORENSICS ALSO RESPONDED AND PHOTOGRAPHED THE INSIDE AND OUT OF THE RESIDENCE WHERE THE POSSIBLE SUSPECTS HAD BEEN STAYING A COPY OF THE SEARCH WARRANT WAS LEFT WITH THE RESIDENCE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ ADMIN CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEARED UNDER 18 ☐ EX-CLEARED 18 AND OVER				
REASON FOR EXCEPTIONAL CLEARANCE ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/DECLINES COOPERATION ☐ EXTRADITION DENIED ☐ JUVENILE-NO ARREST												
ADMIN	REPORTING OFFICER(S) FORTNER, MICHAEL E		DATE 1/11/05		UNIT NO / STAR # 621/129		APPROVING OFFICER SGT BROWN		DATE 1/11/05		UNIT NO / STAR # 601/48	
							FOLLOW UP INVESTIGATION ☐ YES ☒ NO (OFFICER)					

ISSUE FOURTEEN

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with witnesses against him and to have compulsory process for obtaining witnesses in his favor. Both clauses are made obligatory on the states by the Fourteenth Amendment, Pointer v. Texas, 380 U.S. 400, 403-406, 85 S.Ct. 1065, 1067-1069, 13 L.Ed. 2d 423 (1965). Washington v. Texas, 388 U.S. 14, 17-19, 87 S.Ct. 1920, 1922-1923, 18 L.Ed. 2d 1019 (1967). Defendants have the right under compulsory process clause to the governments assistance in compelling the attendance of favorable witnesses at trial and the right to put before the jury evidence that might influence the determination of guilt.

Brady requires that the state disclose evidence in its possession favorable to the accused and material to guilt or punishment. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 489, 94 L.Ed. 2d 40 (1987). This rule applies to impeachment evidence as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985).

Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Bagley, 473 U.S. at 682, 105 S.Ct. at 3383, 87 L.Ed. at 494.

Applicant argues that :

- On the date of February 28, 2005, Defendant by and through counsel requested all disclosure materials by motion pursuant to S.C. rules of crim. proc rule 5 and authority of Brady v. Maryland.
- On the date of June 25, 2006, Defendant by way of prose motion to retrieve evidence, made a request for the following records to be retrieved :
 - 1) I need you to retrieve the mental health records of, Peggy Lucille Gladfelter, from the state of Pennsylvania and forward them to me, due to me receiving due process of law, due to the cross-examination of, Peggy

Lucille Gladfelter, as a witness in this case,

- 3) I need you to retrieve the disability records of, Peggy Lucille Gladfelter, from social services, from the state of Pennsylvania and forward them to me, due to me receiving due process of Law, due to the cross-examination of, Peggy Lucille Gladfelter, as a witness in this case,

- On the date of June 02, 2007, Defendant by way of pro se motion for an Order compelling mental health records, made a request for the following mental health records:

- 2) Defendant moves to receive the mental health reports of Peggy Lucille Gladfelter, if available from: DMH, Columbia Behavioral Health System, Forensic Center, 7901 Farrow Rd, Columbia, SC 29203. Due to the fact Mrs Gladfelter is defendant's known co-defendant,
- 4) Defendant moves to receive the mental health records of Peggy L Gladfelter from: Greenville County Det ctr., Greenville, S.C. 29601,
- 6) Defendant moves to receive the mental health records of Peggy Lucille Gladfelter that are known to be on file within the state of Pennsylvania, as it is a known fact Mrs Gladfelter received a disability check from the state of Pennsylvania for mental health matters,

See, Exhibit C, pgs. 38-44

This information was requested on the grounds that it was essential to insure the Applicant's right to a fair trial, right to confront witnesses, the right to effective assistance of counsel and Due Process of Law guaranteed by the U.S. Constitution

In the case before you, the Applicant by and through counsel, requested all disclosure materials pursuant to Rule 5 SC, rule crim proc and authority of Brady v Maryland, and the Applicant made specific request for the mental health records of, Peggy L. Gladfelter. The states case against Applicant depended largely upon the credibility of its principle witness, Mrs Gladfelter. Any evidence that can impeach the credibility of Mrs Gladfelter is material evidence. Based upon the notice contained in the request of Applicant, the prosecutor could have focu-

sed her inquiry on the distinct sources of information, conduct a search and met her obligation under Brady either by turning over exculpatory evidence or notifying opposing counsel that no such evidence existed. Applicant argues that the prosecutor failed to meet her obligation to defence, in violation of Brady and violation his right to confront witnesses against him, in violation of the U.S. Constitution, amendments six and fourteen. See, Tr. p. 14, line 1-5.

Under Rule 608(c), "Bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced". This subsection of Rule 608 preserves S.C. precedent holding that generally, anything having a legitimate tendency to throw light on the accuracy, truthfulness and sincerity of a witness may be shown and considered in determining the credit to be accorded his/her testimony. State v. Brewington, 267 S.C. 47, 226 S.E. 2d. 249 (1976). Gladfelter's credibility was the central issue in the case before you.

Cross-examination is the principle means by which the believability of a witness and the truth of his/her testimony are tested. Subject always to the broad discretion of a trial judge to preclude repetitive and unduly harrassing interrogation of the cross-examination is not only permitted to delve into the witnesses story to test the witness perception and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit the witness. Davis v. Alaska, 415 U.S. 308, 316, 94 S.Ct. 1105, 1110, 39 L.Ed. 2d 347 (1974).

Applicant argues that he was denied the right to fully confront the states key witness, Mrs Gladfelter, due to the prosecutor withholding the mental health records of their key witness. Applicant was denied access to evidence, that was a serious issue towards his right to cross examine the states key witness. The mental health records of Mrs. Gladfelter, if provided, could have been utilized to prove the witnesses believability and truthfulness before the jury. The state withheld their key witness, Mrs. Gladfelter's, mental health records to protect her character and truthfulness, so they could secure the conviction of Applicant. The Applicant was denied and prejudiced the right to a fair trial, as a result

of the prosecutor's error, which denied him the right to confront the witness against him.

Furthermore, the sixth amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. The sixth amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options. If there is more than one plausible line of defense, the court held, counsel should ideally investigate each line substantially before making a strategic choice about which lines to rely on at trial. Strickland v. Washington, 466 U.S. 668 (1984).

It is the duty of the lawyer to conduct a prompt investigation of all circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused admissions or statements to the lawyer of facts constituting guilt or the accused stated desire to plead guilty. 1 American Bar Association Standards For Criminal Justice 4-4.1 (2d ed. 1982 Supp.).

Applicant argues that trial counsel was ineffective for failing to investigate and locate the mental health records of Mrs. Gladfelter. See, Tr p. 13, line 14-20. As a result of trial counsel failing to investigate the mental health history of the states key witness, Mrs Gladfelter, and locating her mental health records, it allowed the prosecutor to paint a face on their key witness to look believable and truthful before the jury. As a result of ineffective assistance of trial counsel, the Applicant was denied the right to confront and properly cross-examine Mrs Gladfelter, who knowingly received a disability check from the state of Pennsylvania for mental health reasons.

A proceeding in which a defendant does not receive meaningful assistance in meeting the forces of the State does not constitute due process. In Chapman v. California, 386 U.S. 18, 23 (1967), its acknowledged that certain constitutional rights are "so basic to a fair trial that their infraction can never be treated as harmless error" Among these rights is the right to the assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335 (1963) The right to effective assistance of counsel is entailed by the right to counsel, and abridgment of the former is equivalent to abridgment of the latter. It was held that a showing that the performance of a defendant's lawyer departed from constitutionally prescribed standards requires a New Trial regardless of whether the defendant suffered demonstrable prejudice thereby, Strickland v. Washington, 466 U.S. 668 (1984),

Applicant further argues that he was denied the right to a fair trial, as he was denied due process and equal protection of Law, due to the error of the trial judge in violation of Brady and Bagley. The Applicant argues that the trial judge committed judicial error, by not looking into or locating the mental health records of the states key witness, Peggy Lucille Gladfelter, prior to her giving testimony, as he claimed he would, in violation of Brady v. Maryland, 373 U.S. 83, 87. See, Tr. p. 13, line 14-25, p. 14, line 1, as stated:

The Court: what about the mental health records and criminal records of Peggy Gladfelter?

Mr Sarratt: I haven't viewed none of them and don't know if they exist or not.

The Court: Ms. Wiygul?

Ms. Wiygul: Those were not requested by me, your Honor.

The Court: All right. We'll find out about it. Is she going to be a witness?

Ms Hodge: Yes.

Ms. Wiygul: She is.

The Court: well, we'll find out before she testifies what it is,

(60)

As records verify, the mental health records of the state key witness, Peggy Lucille Gladfelter, were suppressed by the state, never requested by trial counsel and kept out of view of the jury. Had trial judge looked into locating the mental health records of the states key witness, the records could have been presented to the jury to impeach the witness and attack her credibility, United States V. Bagley, 433 U.S. 667, See, Tr. p 162, line 22- p.163, line 5, Tr. p. 266, line 20- p. 267, line 16, Tr. p 270, line 14-19.

There is a confrontation violation, as here, the Applicant was denied pre trial access to information that would have made it possible to properly cross-examine a crucial prosecution witness. Failure to disclose the mental health records of, Mrs. Gladfelter, violated the confrontation clause of the sixth Amendment, as applied to the states through the Due Process clause of the Fourteenth Amendment.

Applicant argues that by being denied access to the states key witness, Mrs. Gladfelter's, mental health records, the trial court, prosecutor and trial counsel violated both the confrontation and compulsory process clauses of the sixth Amendment and Due Process clause of the Fourteenth Amendment, his conviction must be vacated and the case remanded to determine if a New Trial was necessary. Pennsylvania V. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed. 2d 40, 1987 U.S. Lexis 558 U.S.L.W., 4180 (emphasis added),

ISSUE FIFTEEN

According to the states files that are available to any party to this case and the trial transcript, it is revealed that the states key witness, Peggy L Gladfelter, gave testimony at trial that does not consist with her prior statements,

Mrs Gladfelter gave statements to Detective's K Kelly and F Pacheco, of Tucson Police Dep., Arizona, and Investigator's W Smith and M Fields, of the Greenville County Sheriff's Dep., South Carolina, prior to trial and made readily accessible, stating that when Applicant confronted the victim she never seen a knife at all, neither did she ever see Applicant stabbing the victim with a knife. Mrs. Gladfelter then testified at trial, stating that she seen Applicant stabbing the victim. Tr. p 213, line 1-7, Tr. p. 226, line 25 - p 227, line 15, Tr. p. 228, line 1-19.

Mrs. Gladfelter gave statements to Detective's K Kelly, and F Pacheco, of the Tucson Police Dep., Arizona, and Investigators W Smith and M. Fields, of the Greenville County Sheriff's Dep., South Carolina, prior to trial and made readily accessible, stating that after Applicant confronted the victim, she never seen any of the victims property, such as his wallet.

Mrs Gladfelter then gave testimony at trial stating that she seen the Applicant with the victims wallet. Tr p, 220, line 12-21,

Applicant argues that trial counsel was ineffective as a result of not challenging the states key witness, Mrs. Gladfelter, under Rules 613 and 801(d)(2) S.C. rules of evidence, knowing that Mrs. Gladfelter's testimony was inconsistent and contrary to her prior statements, Trial counsel was ineffective by not impeaching the states key witness, Mrs Gladfelter, with readily available evidence to show the witnesses character, to truthfulness and sincerity, knowing how damaging and harmful this witnesses testimony was to defense.

As a result of trial counsel being ineffective and not properly assisting Applicant against the

forces of the state, it allowed the states key witness, Mrs Gladfelter, to give testimony before the jury to be seen as truthful and believable, causing serious harm to defense. Trial counsel was ineffective and prejudiced Applicant the right to a fair trial, by failing to challenge the states key witness, Mrs. Gladfelter, under Rules 613 and 801(d)(2) Sic rules of evidence, by presenting the witnesses prior statements before the jury to show the witnesses testimony is inconsistent and contrary to her prior statements, Trial counsel prejudiced Applicant the right to a fair trial by failing to impeach the witness with her prior statements after she gave testimony that was very harmful to defense that plainly contradicts her prior statements,

Counsel's function is to assist the defendant and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest Caylor v Sullivan, supra, at 346. The sixth Amendment and Fourteenth Amendment of the U.S. Constitution guarantee's a person accused of a crime the right to the aid of a lawyer in preparing and presenting his defense. It has been settled that the right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970). A proceeding in which the defendant does not receive meaningful assistance in meeting the forces of the state does not constitute due process. In Chapman v. California, 386 U.S. 18, 23 (1967) it's acknowledged that certain constitutional rights are "so basic to a fair trial that their infraction can never be treated as harmless error". Among these rights is the right to the assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335 (1963). The right to effective assistance of counsel is entailed by the right to counsel, and the abridgment of the former is equivalent to abridgment of the latter. It was held that a showing that the performance of a defendant's lawyer departed from constitutionally prescribed standards requires a new trial regardless of whether the defendant suffered prejudice thereby, Strickland v. Washington, 466 U.S. 668 (1984). Where a state obtains a criminal conviction in a trial in which the

(63)

accused is deprived of the effective assistance of counsel the "state . . . unconstitutionally deprives the defendant of his liberty". Cayler, 446 U.S., at 343. The Applicant is in custody in violation of the constitution, 28 U.S.C. § 2254 (a),

ISSUE SIXTEEN

Applicant argues that as a result of trial Counsel failing to investigate, his conviction was partially obtained by an illegal search and seizure. Applicant investigated the chain of custody on all the evidence presented against him at trial and there appears to be a serious Fourth Amendment violation.

It is revealed that the state illegally obtained and failed to show the chain of custody for a 1991 Plymouth Acclaim sedan, Maroon in color, South Carolina Tag 444 TAH, vin : 3P3XA46K5Tm042149, which was suppose to have impounded at Adam's Texaco, 6326 Hwy 46, Heflin, Alabama. A search warrant was suppose to have been issued and executed by, Deputy Dennis Green, on January 06, 2005. The vehicle alone with contents were then suppose to have been released to South Carolina as evidence in the case before you.

It is revealed that the search warrant to obtain the above referenced vehicle is fabricated. According to the Cleburne County Law Enforcement Center and clerk of court, for Cleburne County Court house, in Heflin, Alabama, there is no such search warrant or records to have ever existed.

Applicant provides Exhibit E, pages 72-76, being a copy of the Search Warrant located in the states files, with attachments. Applicant provides Exhibit E, pages 67-71, being personal correspondences to Cleburne County Law Enforcement Center and Cleburn County Court house, in Heflin, Alabama, This Exhibit shows that the above referenced search warrant is fabricated, as it does not exist.

In order to prevail on a Fourth Amendment claim, the complainant need prove that a search or seizure was illegal and that it violated his reasonable expectation of privacy in the item or place at issue, Kimmelman v. Morrison, 477 U.S. 365 (1986),

Applicant argues that as a result of an illegal search and seizure that has been shown, the state presented very harmful evidence before the jury that poisoned their minds. The evidence being illegally obtained as the result of a fabricated search warrant and no showing of chain of custody. The state presented illegally obtained evidence at trial that cannot be verified where, when or how they came in possession of it.

Applicant argues that as a result of a poisonous tree, the State presented very harmful and misleading evidence before the jury that assisted in his conviction. The state presented numer-

(65)

ous items, to include blood evidence, before the jury that are all branches of a poisonous tree. Applicant argues that states Exhibits 1, 26, 27, 28, 29, 30, 31, 32, 38, 39, 40, 41, 62, 64, 65, 66, 67, 68, 69, 70, 71-90, 94-99, were all illegally presented to the jury, as they are all poisonous branches from a poisonous tree, an illegal search warrant. Applicant argues that his conviction was obtained by the use of evidence that was illegally obtained, in violation of his Fourth Amendment which further violates his Fourteenth Amendment and his conviction cannot stand.

Furthermore, where defence counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness on a sixth Amendment claim of ineffective assistance of counsel, the defendant must prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice. Himmelman v. Morrison, 477 U.S. 365 (1986), Applicant argues that had the illegally obtained evidence been excluded, the state could not have linked the death of the victim to his vehicle, with the physical evidence that was obtained. The Applicant could not have been linked to the victims vehicle, with the material evidence that was obtained.

Applicant argues that had trial counsel conducted a proper investigation and checked the chain of custody on the available evidence, she could have seen that the evidence referred to was illegally obtained through a fabricated search warrant. Due to trial counsel failing to investigate, she failed to see the Fourth Amendment violation, leaving her blind to litigating the issue at hand.

Applicant argues that had trial counsel done a proper investigation of the available evidence, she would have noted the fabricated search warrant. As a result of trial counsel's negligence, the state presented very poisonous evidence before the jury, that was illegally obtained and used to convict him. Trial counsel was so ineffective, that she failed to check the chain of custody on any of the presented evidence prior to trial or challenge the chain of custody that was never presented at trial, to verify where the evidence actually come from.

The sixth amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after

⑥⑥

investigating options. Strickland v Washington, 466 U.S. 668 (1984). Where a state obtains a criminal conviction in a trial in which the accused is deprived of the effective assistance of counsel, the "state . . . unconstitutionally deprives the defendant of his Liberty" Cayler, 446 U.S., at 343. The defendant is thus "in custody in violation of the Constitution", 28 U.S.C. § 2254(a), due to being denied effective assistance of trial counsel, the Applicant was denied and prejudiced the right to a fair trial, as the state presented illegally obtained evidence before the jury at trial in violation of the Fourth Amendment.

(67)

Exhibit E

Cleburne County
Law Enforcement Center
140 Lambert Drive
Heflin, AL 36264

Re: state of South Carolina V. Michael A. Sarratt
Case No. 01-05-6097

I seek your assistance with my present Legal Matters under the Freedom of Information Act, as I am the Defendant in above listed case. I need a copy of all statements, Reports, Search warrants, Property sheets, chain of custody forms or any other records you may possess in-reference to this listed case.

I look forward to your assistance with this matter and I thank you for all your time and true concern.

Sincerely,

* Written Copy.
8-18-08
Pelzer, S.C.

Michael Anthony Sarratt # 299026
Michael Anthony Sarratt # 299026
Perry Corr Inst.
430 Oaklawn Rd.
Pelzer, S.C. 29669

68

**Jerry P Owen**

Clerk of the Circuit Court
of Cleburne County Alabama
Seventh Judicial Circuit
120 Vickery Street, Room 202
Heflin, Alabama 36264

Sheila W Laminack
Chief Deputy Clerk

Area Code 256
Telephone 463 2651
Fax 463 2257

September 5, 2008

Michael Anthony Sarratt
C/O Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669

RE letter dated 8-18-08

Mr Sarratt

Your letter was referred to our office by the Cleburne County Sheriff's Office
Apparently they find no information on you

In looking through our court records, I find no information or cases on you
Therefore, I am sending your letter back and informing you that I am unable to
help you with your request

Respectfully,

Barbara H Jordan
Court Specialist III
Circuit Criminal Division

Enclosure

Jerry P. Owen
Clerk and Register
Cleburne County Courthouse
120 Vickery St., Room 202
Heflin, Alabama 36264

Re: State of Alabama vs. Pending Investigation
Case No. 01-05-6097,
State of South Carolina v. Michael A. Sarratt
Case No. 01-05-6097.

Dear, Mr. Owen

I write to seek your assistance under the Freedom of Information Act, as I am the Defendant in above listed Criminal case.

On the date of January 06, 2005, officer Michael E. Fortner, on behalf of Greenville County Sheriffs office, South Carolina, was supposed to have been the Applicant to request a Search Warrant. The Search warrant was suppose to be for the use of obtaining a 1991 Plymouth Acclaim Sedan, maroon in color, South Carolina Tag 444 TAH, vin: 3P3XA46KSTM042149, which was suppose to have been impounded at Adam's Texaco, 6326 HWY 46, Heflin, Alabama. The Search warrant was suppose to have been issued to Deputy Dennis Green, on January 6, 2005 and then executed by him on the same date.

I seek your assistance to obtain a copy of this Search warrant. I need a copy of original Application, Issue, Executed and Return of this Search warrant. To my understanding all these transactions were suppose to have properly happened as I've explained them, I need to verify if this is actually correct, as if it is, it should be on Record. If this is incorrect or false information, I need to verify it.

I seek your assistance to obtain a copy of any and all records you may possess in-reference to above listed case, as I am the Defendant seeking Due Process of Law.

I sent a Request to seek all information, a copy of all Records in-reference to above listed case to the Cleburne County Law Enforcement Center, dated 8-18-08. On the date of 9-08-08, I received a letter from, Barbara H. Jordan, stating that my letter was referred to your office, by Cleburne County Sheriff's office. She stated that apparently they can't find any information on me. She stated that in looking through your court records, there is no information or cases on me.

I seek your assistance with this issue. I look forward to your response and I thank you for all your time and concern.

Sincerely,

written Copy.

9-08-08

Pelzer, S.C.

Michael A. Sarratt

Michael Anthony Sarratt #299026

Perry Correctional Institution

430 Oaklawn Road

Pelzer, S.C. 29669

(11)

**Jerry P Owen**

Clerk of the Circuit Court
of Cleburne County Alabama
Seventh Judicial Circuit
120 Vickery Street, Room 202
Heflin Alabama 36264

Sherla W Laminack
Chief Deputy Clerk

Area Code 256
Telephone 463 2651
Fax 463 2257

September 11, 2008

Michael Anthony Sarratt #299026
C/O Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

RE Search Warrant

Mr Sarratt

You have made an inquiry to this office wanting information on a case against you I have written a letter to you informing you that this office DOES NOT have any active or inactive cases for a Michael Anthony Sarratt and regretfully cannot help you with the information you seek

I am writing you again, informing you that this office has NO information or cases on Michael Anthony Sarratt and regretfully cannot help you with the information you seek

Respectfully,

Barbara H Jordan
Court Specialist III
Circuit Criminal Division

72

State of Alabama
Unified Judicial System
Seventh Judicial Circuit

APPLICATION FOR SEARCH WARRANT

(State Court)

Related Case / Warrant No
(For Reference Only)

01-05-6097

IN THE _____ Circuit _____ COURT OF _____ Cleburne _____ COUNTY, ALABAMA

State of Alabama vs Pending Investigation

Re _____

I the undersigned, hereby make application for a search warrant as I have probable cause to believe and do believe that the following described personal property to-wit:

A 1991 Plymouth Acclaim Sedan maroon in color South Carolina Tag 444 TAH, VIN 3P3XA46K5MT042149 which is currently impounded at Adam's Texaco 6326 HWY 46 Heflin Alabama

Is presently located or concealed at, in or upon the following described person or premises, to-wit:

Adam's Texaco, 6326 HWY 46, Heflin Alabama The aforementioned vehicle was seized and maintained by the Cleburne County Sheriff's Office and was not searched The aforementioned vehicle shall now be released by the Cleburne County Sheriff's Office of Cleburne County Alabama to the care, custody and control of the Greenville County Sheriff's Office of Greenville County South Carolina

and that said personal property



was or is expected to be unlawfully obtained



was or is expected to be used as the means of committing or attempting to commit an offense contrary to the laws of the State of Alabama, to-wit: _____



is or is expected to be in the possession of another to whom it was delivered for the purpose of concealing it or preventing its discovery



constitutes or is expected to constitute evidence of a criminal offense contrary to laws of the State of Alabama to-wit: _____

Applicant states that his (her) belief and application is based upon the facts stated in the Affidavit(s) submitted herewith

Dated

1 16 05

Michael E. Fortner

Applicant

(73)

State of Alabama
Unified Judicial System
Seventh Judicial Circuit

**AFFIDAVIT IN SUPPORT OF APPLICATION
FOR SEARCH WARRANT**
(State Court)

Related Case / Warrant No
(For Reference Only)

01-05-6097

IN THE _____ Circuit COURT OF _____ Cleburne COUNTY, ALABAMA

State of Alabama vs Pending Investigation

Re _____

Application for a Search Warrant being made to the Court, I Investigator Michael E Fortner the undersigned after being duly sworn to tell the truth and in support of said application hereby depose and say as follows

I am employed by the Greenville County Sheriff's Office as a violent crime investigator and I have 11 years experience in law enforcement. I am currently investigating the homicide death of James Fowler Dellinger who was found deceased on the side of _____ Rd in the northern portion of Greenville County SC on January 3, 2005 at 08 20p m. Dellinger's body was not identified until the morning of January 4 2004 through finger prints during autopsy, as there was no wallet or other identification with the body. During the autopsy, the cause of Dellinger's death was determined to be in excess of 30 stab wounds to the back of the head neck and arms. After Dellinger was identified further investigation determined that Dellinger had left his residence on January 3 at approximately 7 00p m, driving the vehicle to be searched, en route to a grocery store, and he never returned home. The vehicle was missing as well as his wallet and at that point reported as stolen. The vehicle was entered onto NCIC and this information regarding the incident and vehicle was provided by a teletype to the states in the southeastern portion of the United States. The vehicle was recovered by Deputy Dennis Hazel of the Cleburne County Alabama Sheriff's Office at the Alabama Welcome Center on I-20 west near Heflin Alabama. The vehicle was impounded at that time, and is now located at Adam's Texaco in Heflin, Alabama. In order to conduct a complete fair and objective investigation, it is necessary to conduct a forensic search of the vehicle for the items sought, and the victim is no longer alive and thus cannot give his consent. I believe that based on my experience in the investigation of homicides and the information developed during this investigation that some, if not all of the items sought will be found in the vehicle and it is reasonable prudent and necessary to search the vehicle for the items sought.

☒ Further Affiant says nothing

☐ Affidavit continues on next page

Sworn to and subscribed before me on this the _____ day of _____ 20 05

[Signature]

Circuit Judge Court of Cleburne County

Michael E Fortner
Affiant

74

State of Alabama
Unified Judicial System
Seventh Judicial Circuit

SEARCH WARRANT

(State Court)

Related Case / Warrant No
(For Reference Only)

01-05-6097

COPY

IN THE _____ Circuit COURT OF _____ Cleburne COUNTY, ALABAMA

State of Alabama vs _____

Re _____

TO ANY LAW ENFORCEMENT OFFICER AUTHORIZED TO EXECUTE THIS WARRANT

On this day personally appeared before me _____ Investigator Michael E Fortner and by sworn testimony established probable cause that

A 1991 Plymouth Acclaim Sedan maroon in color South Carolina Tag 444 TAH, VIN 3P3XA46K5MT042149 which is currently impounded at Adam's Texaco, 6326 HWY 46 Heflin Alabama

is(are) presently located or concealed upon (at) (within) the following-described premises to-wit

Adam's Texaco, 6326 HWY 46, Heflin Alabama The aforementioned vehicle was seized and maintained by the Cleburne County Sheriff's Office and was not searched The aforementioned vehicle shall now be released by the Cleburne County Sheriff's Office of Cleburne County, Alabama to the care, custody and control of the Greenville County Sheriff's Office of Greenville County South Carolina

and that the property (Check All Grounds That Apply)

☒ was or is expected to be unlawfully obtained

☐ was, or is expected to be, used as the means of committing or attempting to commit an offense contrary to the laws of the State of Alabama to-wit _____

☐ is or is expected to be, in the possession of another to whom it was delivered for the purpose of concealing it or preventing its discovery

☐ constitutes, or is expected to constitute, evidence of a criminal offense contrary to laws of the State of Alabama to-wit _____

NOW THEREFORE, by virtue of the authority given to me by Rule 3, Alabama Rules of Criminal Procedure you are hereby commanded ☐ IN THE DAYTIME ☒ AT ANYTIME OF THE DAY OR NIGHT and within 10 days to make a search of the above-named person place, premises or vehicle located in _____ Cleburne County Alabama, for the above-described property or evidence and to make due return of this Warrant along with the property seized or a complete inventory of the same, to the undersigned or another Judge of this Court.

ISSUED TO Deputy Dennis Green, CCSO at 520 o'clock P M on this the 6th day of January 2005

Judge of the _____ Circuit Court of _____ Cleburne Co., Ala.

(13)

State of Alabama Unified Judicial System Form CR-1-c Draft	SEARCH WARRANT RETURN AND INVENTORY COPY	Case or Warrant Number 01-05-6097
IN THE <u>CIRCUIT</u> COURT OF <u>CLEBURNE CO</u> ALABAMA (Circuit, District or Municipal) (Name of County or Municipality)		
☒ STATE OF ALABAMA ☐ MUNICIPALITY OF _____		
v _____, Defendant		
RETURN UPON EXECUTION		
I certify that I executed the attached Search Warrant as directed therein by searching the person place premises and/or vehicles described therein at <u>6:00</u> o'clock <u>P.</u> M on the <u>6th</u> day of <u>January</u> 19 <u>2005</u> , and (Check One)		
☐ did not find or seize any property located thereon or therein ☒ found and seized the following described property		
<u>1991 PLYMOUTH SEDAN, MARON IN COLOR, VIN 3P3XA4</u> <u>6K5NT042149, SC TAG 444TAH,</u> <u>RELEASED TO DEPUTY MICHAEL E. FORTNER, FOR</u> <u>RETURN TO SOUTH CAROLINA</u>		
I further certify that a copy of the Search Warrant, along with an endorsed copy of the inventory of property seized was left with or served upon <u>LEFT w/ Vehicle</u> in accordance with Rule 3 ARCP		
<u>Dennis Green</u> Signature of Executing Officer	<u>CLEBURNE CO SO</u> Agency of Executing Officer	
ACKNOWLEDGMENT OF RETURN		
I the undersigned Judge/Magistrate certify that the foregoing return was made to me by _____ on the _____ day of _____ 19____		
_____ Judge/Magistrate		
ORDER		
The Court hereby directs that this Search Warrant be filed with the Clerk of the _____ Court of _____ as required by Rule 3 ARCP		
Dated _____	_____ Judge/Magistrate	

76

CASE #	050105016	DATE	1-6-05	TIME	601 PM
--------	-----------	------	--------	------	--------

~~SYSTEM OF RECIPIENT~~

SIGNATURE OF RECIPIENT *Michael L. Fortner*

[illegible]

NATURE OF RELEASING OFFICER.

SIGNATURE OF RELEASING OFFICER
James Green

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C A No 2010-CP-23-3720
COUNTY OF GREENVILLE	)	
	)	
Michael Anthony Sarratt,	)	
a/k/a Leroy Eugene Frey, Jr ,	)	
S C D C No 299026,	)	
	)	
Applicant,	)	
	)	RETURN
v	)	
	)	
State of South Carolina,	)	
	)	
Respondent	)	
	)	

In response to the post-conviction relief application filed May 10, 2010, the Respondent would show this Court

I

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the May 2005 term of General Sessions for carjacking (2005-GS-23-4106, count 1), possession of a weapon during commission of a violent crime (2005-GS-23-4106, count 2), and murder (2005-GS-23-4108). Elizabeth P. Wiygul, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On June 14, 2007, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of thirty (30) years for carjacking, five (5) years for possession of a weapon during commission of a violent crime, and fifty (50) years for murder.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz,

III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal State v Sarratt, Op No 2010-UP-046 (S C Ct App filed January 27, 2010)

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records

II

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel
- 2 Judicial error
- 3 Subject matter jurisdiction
- 4 Constitutional violations
- 5 Prosecutorial misconduct

III

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v Washington, 466 U S 668, 686, 104 S Ct 2052, 2064 (1984), Butler v State, 286 S C 441,

¹ Anders v California, 386 U S 738, 87 S Ct 1396, 18 L Ed 2d 493 (1967)

442, 334 S E 2d 813, 814 (1985)

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U S at 690, 104 S Ct at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v State, 300 S C 115, 118, 386 S E 2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v State, 300 S C at 117, 386 S E 2d at 625 (quoting Strickland, 466 U S at 688, 104 S Ct at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S C at 117-18, 386 S E 2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland v Washington, 466 U S 668, 104 S Ct 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v State, 279 S C 264, 265, 305 S E 2d 247, 248 (1983) (citing Norman v State, 276 S C 278, 277 S E 2d 707 (1981)).

IV

The Respondent submits the Applicant's assertion that the court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appraises the defendant of what he must be prepared to meet. State v. Gentry, 363 S C 93, 103, 610 S E 2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S E 2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing.

V

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P O Box 11549
Columbia, S C 29211

By Mary S Williams for
Attorneys for Respondent

September 16, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2010-CP-23-3720
	)	
MICHAEL ANTHONY SARRATT, 299026	)	
a/k/a Leroy Eugene Frey, Jr	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	
_____	)	

1 I am an employee of the Respondent in the above-captioned action

2 Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail

3 I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid

Michael Anthony Sarratt, 299026
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 16th day of September, 2010


 Judy A C Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF COMMON PLEAS
2010-CP-23-03720

ORIGINAL

MICHAEL ANTHONY SARRAT)
APPLICANT)

vs)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)
RESPONDENT)

May 11, 2011
Greenville, South Carolina

B E F O R E

THE HONORABLE EDWARD WELMAKER, Judge

A P P E A R A N C E S

RODNEY RICHEY, ESQ
Attorney for the Applicant

KAREN C RATIGAN, ESQ
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

EVELYN DAWKINS

Direct Q 5

MICHAEL SARRAT

Direct By Mr Richey 10

Cross By Ms Ratigan 29

ELIZABETH WIYGUL

Direct By Mr Richey 32

Cross By Ms Ratigan 36

Redirect By Mr Richey 42

» > o < «

Certificate of Reporter 44

PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Trial Notes	16	16

1 MS RATIGAN Your Honor, may it please the
2 Court, the last case of the morning is Michael Sarrat vs
3 The State of South Carolina Docket number is
4 2010-CP-23-3720 The Applicant was indicted for
5 carjacking, possession of a weapon during the commission
6 of a violent crime and murder He was represented on
7 these charges by Ms Wiygul Case was brought to trial in
8 June of 2007, the applicant was found guilty of all
9 charges On June 14th, 2007 Judge Miller sentenced him to
10 concurrent terms of 30 years of carjacking, five years for
11 the weapons charge and 50 years for murder He did file
12 an appeal That was perfected in the nature of a Anders
13 brief at the Court of Appeals The Court then dismissed
14 the appeal January 27th of 2010 and The State's ready to
15 proceed

16 THE COURT Mr Richey, you may call your first
17 witness

18 MR RICHEY We call Evelyn Dawkins

19 THE COURT Come around and be sworn, please,
20 ma'am

21 THE CLERK Place your left hand on the Bible,
22 please, raise your right hand

23 EVELYN DAWKINS, after being duly sworn,
24 testified as follows

25 THE CLERK Thank you, you may be seated State

1 your name for the record, please and spell your last name

2 THE WITNESS Evelyn Dawkins, D-A-W-K-I-N-S

3 THE CLERK Thank you

4 DIRECT EXAMINATION

5 Q Ms Dawkins, do you know Michael Sarrat?

6 A Yes

7 Q How do you know him?

8 A He's my son

9 Q Okay And you were here when he had a trial on the
10 current charges?

11 A Yes

12 Q Is that correct?

13 A Yes, I was

14 Q And you -- who represented him, do you know at the
15 trial?

16 A I don't really remember her full name

17 Q Was it this lady sitting here?

18 A Yes

19 Q At the table

20 A Yes, I think it was

21 Q And if the name is Elizabeth Wiygul, would that be
22 familiar to you?

23 A Yes

24 Q Okay At the time of the trial, you had some
25 information as to your son's innocence, is that

1 correct?

2 A Yes

3 Q And what was that information?

4 A I had mentioned to her an employee -- I was a manager
5 for Taco Bell and an employee of mine had been
6 incarcerated and in the same jail cell with Peggy and
7 Kizzie (ph)

8 Q Peggy is who?

9 A Was one of the people that was involved with the
10 crime

11 Q Was she one of the co-defendants that testified at
12 trial?

13 A Yes

14 Q Did she testify against Michael?

15 A Yes, she did

16 Q And she was one of Michael's co-defendants in the
17 trial, correct?

18 A Yes

19 Q Okay Go ahead

20 A At the time the person who was one of my employees,
21 Mary Ivy was her name, she had told me that while
22 being in the same jail cell with Peggy and Kizzie,
23 that they had been talking about committing the
24 murder themselves And that Mary had a letter that
25 she had received after getting out of jail from Peggy

1 and Kizzie about the crime and that she had the
2 letter at home And that if I needed her to come to
3 Court that she would And I had told Elizabeth that
4 if they needed her to come to court that she had that
5 letter and could come to court and testify

6 Q And that letter is -- was supposedly written by Peggy
7 and the other girl combined?

8 A Yes, she had gotten a letter -- actually a letter
9 from both of them

10 Q Okay And you tell Ms Wiygul?

11 A Yes

12 Q And as of today do you still have contact with this
13 lady?

14 A It's probably been about a year, because I'm no
15 longer a manager for Taco Bell, but I think I could
16 probably still get a phone number for her

17 Q Did you ever present a letter to Ms Wiygul or
18 anything?

19 A No

20 Q Also you were at the trial, correct?

21 A Yes

22 Q You sat through the trial?

23 A Yes, I was

24 Q And during the trial you made some observations while
25 you were outside the courtroom, is that correct?

1 A Yes

2 Q What were those observations in terms of the jury?

3 A The first thing that I noticed on the first time that
4 when the court was first released for a break, the
5 jury went out into the hallway and at the same time
6 when the family went out the jurors was in the same
7 elevators with the family members

8 Q When you say family members, what kind of members--

9 A The victim's family members

10 Q Okay

11 A And the victim's family was talking to the jurors
12 about the situation, what had happened And they
13 were talking to the jury people about what they
14 wanted done as far as prosecuting my son They were
15 talking to him--

16 Q Go ahead, I'm sorry

17 A -- and I had told Elizabeth about that and she came
18 in and she confronted the Judge about it

19 Q So go ahead, I'm sorry, keep going

20 A The Judge did instruct them if they had heard
21 anything in the elevators or anything from the
22 victim's family to disregard it But what I was
23 trying to say is the jury wasn't actually instructed
24 on which way to go or to avoid the family members
25 Because they all got into the same elevators

1 together, they took smoke breaks together as far as
2 the jurors and the victim's families

3 Q Okay And also, at some point the Judge -- the jury
4 was deliberating, is that correct?

5 A Yes

6 Q And during the deliberations, did anything happen
7 that you thought was not appropriate?

8 A Yes

9 Q What was that?

10 A At the time of deliberations, I remained here in the
11 courtroom during that time And the Judge, he kept
12 wanting to know what was taking so long Because
13 actually everybody was wanting to go to lunch And
14 he sat here for a while and he made a comment, he
15 said, We'll let me go back here and see what's taking
16 so long See if I can't rush them along He went
17 back there, he was probably gone about 10 minutes
18 He come back and said, Well I went back there and had
19 a talk with them He said, I think everything's good
20 to go and we're ready to go now I had a little talk
21 with them So about three minutes later everyone
22 come back in and he said, Well they made their
23 decision

24 Q Ma'am, you know, Mr Sarrat is your son, right?

25 A Yes

1 Q But you still understand you have to tell the truth,
2 right? Regardless

3 A Yes

4 Q And that's what you're doing?

5 A Yes

6 MR RICHEY Thank you, answer any questions the
7 Attorney General has for you

8 MS RATIGAN I have no questions for this
9 witness

10 THE COURT Thank you, ma'am, you may step down

11 MR RICHEY Well call Mr Sarrat

12 THE CLERK Place your left hand on the Bible,
13 please, raise your right hand

14 MICHAEL SARRAT, after being duly sworn,
15 testified as follows

16 THE CLERK Thank you, you may be seated State
17 your name for the record, please

18 THE WITNESS Michael Sarrat

19 THE CLERK Thank you

20 DIRECT EXAMINATION

21 BY MR RICHEY

22 Q Mr Sarrat, are you currently incarcerated?

23 A Yes, sir

24 Q Where are you incarcerated?

25 A At Perry Correctional Institution

1 Q Okay Why are you incarcerated?

2 A As a result of being found guilty for the accusation
3 of carjacking, murder and possession of a weapon

4 Q And who represented you on those charges?

5 A Ms Elizabeth Wiygul

6 Q And you have filed an application stating that
7 Ms Wiygul did not effectively represent you,
8 correct?

9 A Yes, sir

10 Q Briefly about the facts of the case, the facts is
11 that you allegedly highjacked a gentleman and killed
12 him, correct? That's the basics of it, correct?

13 A Yes, sir

14 Q And at the time that this occurred there was
15 supposedly a woman with you, correct?

16 A Supposedly so

17 Q All right And that woman, you had some type of
18 relationship with her, correct?

19 A Yes, sir

20 Q And so that was the basis for the charge and you
21 being tried At the time of the trial, The State did
22 not have a large or hardly any evidence to
23 directly -- that directly connected you to this
24 murder, correct?

25 A Yes, sir

1 Q And The State called the -- the gist of it they
2 called the, now I'm going to say girlfriend for lack
3 of better phrase, and one of your cellmates, correct?

4 A Yes, sir

5 Q And those were the two people who actually pointed to
6 you doing this murder, correct?

7 A Correct

8 Q Okay You believe that there was evidence out there
9 that would show that you did not commit this murder,
10 correct?

11 A Yes, sir

12 Q And you maintained your innocence throughout the
13 whole process?

14 A Correct

15 Q Okay One of the pieces of evidence -- go ahead and
16 take me through the facts, and I'll let you do it,
17 that The State alleged how this chain got started

18 A Where would you prefer me to start?

19 Q At the Spinx station

20 A Okay According to The State's key witness, my
21 co-defendant, Peggy Gladfelter, she gave numerous
22 statements prior to trial, she -- and she further
23 testified at trial that me and her had met the
24 victim, Mr James Dellinger, at a Spinx gas station
25 Where he was -- he was in the position of coming out

1 of the Spinx from purchasing kerosene As a result
2 of the fact that you have to go in and pay for the
3 kerosene prior to the pump being turned on and
4 pumping the kerosene

5 Q Okay

6 A Okay Investigator Wesley Smith testified--

7 Q Well hold up

8 A Okay

9 Q So you have to go into the store to pay for it, come
10 back out of the store and--

11 A -- then pump the kerosene

12 Q Then pump the kerosene?

13 A Correct

14 Q Okay And so this is where you supposedly met this
15 gentleman, correct?

16 A Yes, sir

17 Q Okay, go ahead

18 A Okay So at trial this is what was testified by
19 Ms Gladfelter And to support her -- purge her
20 testimony, Investigator Wesley Smith testified that
21 the videos obtained from the Spinx could not be
22 properly viewed due to needing a multiplexer because
23 they couldn't get them to work on their equipment

24 Q Okay And can you -- you got your application in
25 evidence you got--

- 1 A Yes, sir
- 2 Q Videos were, in fact, reviewed, is that correct?
- 3 A Yes, sir
- 4 Q And I want you to tell us where you were coming from
- 5 about the -- you have -- do you have the actual
- 6 incident report about the video, correct?
- 7 A Yes, sir
- 8 Q And they are on your application?
- 9 A Under issue 13
- 10 Q I'm trying to--
- 11 A Page 45
- 12 Q I'm looking at page 50
- 13 A Okay Okay
- 14 Q Page 50 is Exhibit D
- 15 A Yes, that's where it starts at That's where the
- 16 actual incident report is
- 17 Q Okay Are you there?
- 18 A Yes, sir
- 19 Q Okay So at trial, they allege that you came out --
- 20 the guy came out of Spinx, you met with him and all
- 21 this but on this Exhibit D, the video tapes were
- 22 taken from the Spinx and the Ingles store from the
- 23 previous evening?
- 24 A Yes, sir According to Investigator W A Smith
- 25 Q Okay And according to this incident report, the

1 viewing of the Spinx video, they were unable to make
2 an identification of the victim or his vehicle?

3 A Yes, sir As it plainly see, we obtained the video
4 from the Spinx and Ingles store the previous evening
5 And viewing the video from the Spinx, we were unable
6 to make an identification of victim or his vehicle
7 Attempts to view the videos from the Ingles store and
8 we were unable to get the video to play on our
9 available equipment at any speed I took the video
10 tape to forensic and attempted to view them there
11 with the same problem

12 So this incident report's verifying that the
13 video from the Spinx were viewed, worked properly
14 And the ones that did not work were the ones obtained
15 from the Ingles

16 Q Okay And did you and Ms Wiygul discuss these
17 videos?

18 A No, sir, I never had the opportunity to I -- the
19 video was never brought to my attention prior to
20 trial But during trial, as I had this piece of
21 paper here taking notes and things, as I was
22 instructed to do by Ms Wiygul--

23 Q Okay, let me see that

24 A -- I brought it to her attention about the video and
25 she wrote no across it and underlined it

1 Q Okay So--

2 MR RICHEY Your Honor, one moment Your
3 Honor, we'd offer these notes of trial, which were
4 Mr Sarrat's writing, Video from Spinx and said we met
5 There's a response of no over the top of this We offer
6 that as Applicant's number 1 I showed it to --

7 MS RATIGAN We have no objection, Your Honor
8 (WHEREUPON, Applicant's Exhibit No 1 was marked
9 for identification and received into evidence)

10 BY MR RICHEY

11 Q So this exhibit that we have here, you're actually --
12 this document, you're actually in the trial of your
13 case, correct?

14 A Yes, sir

15 Q And Peggy is testifying?

16 A Yes, sir

17 Q And she's testifying that you all met at the Spinx,
18 that y'all met the guy at a Spinx?

19 A Yes, sir

20 Q And your response to Ms Wiygul at the time to trial,
21 Hey, the video, this is your handwriting, video from
22 the Spinx where Peggy said we met That's your
23 handwriting?

24 A Yes, sir

25 Q And you were saying that to Ms Wiygul to say what?

1 A To inform her that the video needs presented

2 Q It Needs

3 A Presented before the court

4 Q And that would dispute Peggy's testimony?

5 A Correct

6 Q Okay And Ms Wiygul wrote, No?

7 A Correct

8 Q Okay All right And so Peggy was really the focal
9 point of this case, really, wasn't she? She was the
10 middle of it? She was the one that made -- pretty
11 much made the whole case for the state?

12 A Without her there would have been no case

13 Q Okay, because there was no physical evidence found
14 that you had killed the man?

15 A Nothing

16 Q Okay There was no fingerprints of you on the car?

17 A Nothing

18 Q Just Peggy and basically cellmate?

19 A A cellmate who had possession of my legal materials
20 during the time period of being incarcerated in the
21 detention facility with him

22 Q So you think this video would have been important to
23 impeach or say her testimony was not truthful?

24 A Correct It would have verified that she was
25 planning on giving perjured testimony And it would

1 have further verified that officer -- I mean,
2 Investigator Wesley Smith further gave purger
3 testimony to support her testimony to get a
4 conviction Because the video, if it had presented,
5 it would have showed that Peggy Gladfelter was lying
6 She was giving -- knowingly giving purger testimony
7 as The State should have plainly been aware of

8 In order for her -- in order for Wesley Smith,
9 Investigator W A Smith, to support her purger
10 testimony, he intentionally gave purger testimony as
11 he testified that he couldn't get the videos to work
12 properly In which the statements plainly shows that
13 they did work and they were viewed As further --
14 there's further, another incident report also from --
15 from Michael E Fortner which also states--

16 Q Were are you referring to that? What number is that
17 on?

18 A It is -- it starts at page 53

19 Q Page 53?

20 A Fifty-three

21 Q And that's attached to the application?

22 A Yes, sir

23 Q Go ahead

24 A Let me slow down, I'm missing something, I'm
25 slipping

1 Q Take your time

2 A I just had this page

3 Q You were referring to on page 52, I believe the

4 bottom, where you talked about--

5 A Yes, yes Thank you

6 Q Go ahead

7 A Okay Yes, starting at the bottom of page 52 it

8 states by Michael E Fortner, Investigator Smith and

9 I went -- No, let me start back over After

10 finishing at the Food Mart we took the camera -- hold

11 on, let me pause for second

12 Q Let me do this

13 A Okay

14 Q The last paragraph it says the Ingles video was

15 unable to view due to needing--

16 A A multiplexer

17 Q -- and we were unable to locate either the victim or

18 Peggy or Michael Sarrat on the Spinx video?

19 A Correct

20 Q Okay But on the Food Mart video, we did locate

21 Peggy?

22 A Yes, sir

23 Q Okay

24 A That's what I was referring to

25 Q So on these videos on the night all this happened,

1 they were only able to basically find her on one
2 video and they couldn't locate you on any of them?

3 A No, sir

4 Q And she testified that you were with her, is that
5 correct?

6 A Yes, sir And according to her testimony that it all
7 started at the Spinx gas station

8 Q Did y'all -- did you and Ms Wiygul, did y'all
9 physically have the video at the table?

10 A No, sir

11 Q Where was it?

12 A I have no idea I have a property form verifying
13 that it was property and evidence And that's as far
14 as I've ever known about the video to exist

15 Q At the time of trial did y'all have these Exhibits D,
16 where it talks about this video?

17 A No, sir

18 Q So you didn't have this incident report?

19 A No, sir

20 Q So you got this incident report after you were
21 incarcerated?

22 A No, I had it prior I didn't have it present with me
23 but I was aware of the fact that Spinx video did
24 exist

25 Q Okay

- 1 A That's when I had brought it to her attention about
2 the Spinx video But I did not have these -- these
3 incident reports available
- 4 Q Okay All right And you have other issues that you
5 believe Ms Wiygul could have more effectively
6 represented you, is that correct?
- 7 A Yes, sir
- 8 Q And one of those deals with the autopsy report?
- 9 A Yes, sir
- 10 Q Go ahead
- 11 A Okay Let me get to the issue Can I--
- 12 Q Go ahead, go ahead
- 13 A I need that large folder I apologize
- 14 Q Well you thought that she should have the autopsy
15 examined by an expert, is that correct?
- 16 A Yes, sir
- 17 Q And the basis for that examination is that you allege
18 that could have shown whether the crime was committed
19 by a right or left handed person?
- 20 A Yes, sir
- 21 Q Why is that of significance?
- 22 A Because during the time period that the accusation
23 supposedly occurred, I was known to have a fractured
24 right hand
- 25 Q Okay And so, if it was done by somebody that's

1 right handed, you could not have done it, correct?

2 A If it could have been--

3 Q Right hand dominant?

4 A Yes, sir If it could have been -- if the autopsy
5 had been properly -- if the autopsy reports had been
6 properly examined to determine if it had been a right
7 or left handed assaultant [sic], and it had -- and if
8 it had been verified that it was a right hand
9 assaultant, it could have been argued that I -- that
10 there was the possibility that I may not have been
11 able to commit the crimes that were committed

12 Q Okay And what's the other issue that you have?

13 A Failure to investigate After my conviction I've
14 tried to -- I've took it upon myself to contact the
15 authorities in Alabama, where the victim's vehicle
16 was supposedly obtained from And Alabama claims
17 that they're not aware of the, what I want to call
18 the fabricated search warrant, that The State of
19 South Carolina has presented Because Alabama, to
20 them, claims that they have no records of the search
21 warrant Based upon the fact that they have no
22 records of the search warrant, where was the vehicle
23 actually obtained from? So I feel as if Ms Wiygul
24 had did a proper investigation and investigated the
25 chain of custody on the victim's vehicle, she would

1 have found the same information I did, there's no
2 records of it

3 Q Okay

4 A I was trying to find that issue in here

5 Q And those issues are laid out on the application, is
6 that correct?

7 A Yes, sir

8 Q And every argument that you want to make is preserved
9 in this application, correct?

10 A Yes, sir

11 Q Might can't get it but it's in here?

12 A Yes, sir, it's within that original filed
13 application

14 Q Okay And you believe that your right to confront
15 the witnesses were also taken away, is that correct?

16 A Yes, sir

17 Q Why is that?

18 A Based upon the fact that The State's key witness was
19 known to have mental health issues As she received
20 a disability check from the State of Pennsylvania
21 And prior to trial and the day of trial, I stressed
22 the fact of obtaining these mental health records so
23 that I could properly confront the witness And the
24 mental health records was never obtained Judge
25 Miller, if you look -- sit back and look back at the

1 issue, I go back to the transcript where he said on
2 her mental health records be looking into prior to
3 her testifying And they never were Her mental
4 health records never been obtained to this day, as
5 far as I'm aware of

6 Q And some of the mental health records that you're
7 referring to are from the state of Pennsylvania, is
8 that correct?

9 A Yes, sir

10 Q Go ahead, what's the next issue

11 A Let me see

12 Q I think the gist of these issues primarily are -- is
13 the credibility of the girl, Peggy, was not attacked
14 sufficiently, is that correct?

15 A Correct

16 Q And all the issues stems around from the video, to
17 the medical records, to everything, stems around that
18 because it was the center figure of the trial, that
19 you don't believe that her credibility was
20 sufficiently attacked?

21 A Correct

22 Q Okay And that you had evidence to do that between
23 the video tape and these records, correct?

24 A Correct

25 Q Okay Go ahead

1 A Okay Another issue was Ms Wiygul had made an
2 objection during trial to the weapons The weapons
3 that's presented State's Exhibits, I can't think of
4 them right off She had objected to them on one day
5 Because the weapons, there's no way possible -- no
6 way and link to the case Instead of her going
7 through with objection as to determine how the Judge
8 was going to rule upon the objection, the trial went
9 on to the next day And she withdrew the objection
10 and permitted these knives to be presented before the
11 jurors
12 Q You're referring to Exhibit S-52 through S-57, the
13 knives?
14 A Yes, sir
15 Q Okay Go ahead
16 A Yeah, she had objected to them and withdrew her
17 objection before the Judge could hear it Permitting
18 these knives to freely be presented before the
19 jurors So these knives were presented before the
20 jury, putting them under the influence -- under the
21 impression that they was actually looking at murder
22 weapons when there's no way possible -- no way linked
23 to this case And then, as I -- as I further looked
24 into the records from SLED, the SLED report's
25 verifying where there's the knife that actually

1 possessed blood within it

2 There was, I think, six items that was dropped
3 off at SLED And then when the -- when they went to
4 do the DNA testing on the knife there was an extra
5 knife appeared out of no where And the one that
6 appeared, there's no chain of custody on it or
7 nothing This happens to be the knife that had blood
8 in it Although it doesn't match the victim, it was
9 presented before the jurors and accepted as a State
10 Exhibit, putting them under the impression that they
11 actually looking at the murder weapon

12 Q And your blood was not on that either?

13 A Neither mine nor the victim's

14 Q Okay Go ahead

15 A So there's really nothing to verify where this knife
16 actually came from If I sit here, I mean, it's
17 filed with my application If I sit here and just
18 went through and read through it--

19 Q Right, I know it's in your application

20 A Okay Another thing was related to my medical
21 records From Pennsylvania Because I was -- I was
22 going to numerous hospitals throughout the state of
23 Pennsylvania under numerous -- I mean, I was going to
24 numerous hospitals under different time frames and
25 different dates related to my fractured right hand

1 And my hand was refractured again prior to leaving
2 the state of Pennsylvania And I had been stressing
3 trying to obtain all these medical records under my
4 alias to verify the difference between the wounds
5 that was conducted upon my hand Which with the
6 proper examination of the autopsy reports, it may
7 have shown that if it had been a right hand
8 assaultant that I couldn't have did it because of the
9 fractured right hand

10 Q Okay

11 A There's a issue with the vehicle -- with the vehicle
12 because there's a lot of things that don't add up
13 with the vehicle I feel like Ms Wiygul should have
14 investigate the vehicle better Like I said, I had
15 wrote Alabama myself and they have no records of the
16 vehicle, the search warrants related to the vehicle
17 or nothing But the state claims they obtained the
18 victim's vehicle from, okay

19 Because the co-defendant testified that the
20 switch in the vehicle was busted out That we had to
21 crank the vehicle, she testified, was with a
22 screwdriver The victim's wife testified that the
23 car crunk [sic] with a key when her husband left the
24 home And then Investigator Dar Shaw testified that
25 the vehicle obtained from Alabama, the steering

1 column wasn't busted in, there was a set of keys
2 sitting on the seat So there's a lot of
3 contradictions over the vehicle That wasn't
4 properly investigated so who knows that there was one
5 or two vehicles involved Which vehicle did they
6 actually obtain and where did they actually obtain
7 the vehicle from? And what condition was the vehicle
8 returned to the victim's wife? Did it have a busted
9 out switch? Did it crank with a key?

10 Q At the time this crime is alleged that you carjacked
11 the car, did you own a car at the time?

12 A I owned a truck

13 Q Okay And did you talk to Ms Wiygul about owning a
14 truck?

15 A Yes, sir

16 Q And do you believe that that was properly put before
17 the jury? That you had your own vehicle, you didn't
18 need to rob this guy?

19 A It wasn't mentioned It wasn't mentioned by
20 Ms Wiygul

21 Q And those are the grounds you have against Ms Wiygul
22 and you'd like the record to reflect that these
23 grounds were set out and argued in your application,
24 correct?

25 A Yes, sir

1 Q And you're not waiving any of these issues as they
2 appear on this application?

3 A No, sir

4 MR RICHEY Okay, thank you Answer any
5 questions the Attorney General has

6 CROSS-EXAMINATION

7 BY MS RATIGAN

8 Q How many meetings would you say you had with
9 Ms Wiygul before trial, do you remember?

10 A I would say -- I don't want to answer properly [sic]
11 because I can't remember but I would say possibly --

12 Q You can just give me ballpark

13 A I say possibly four, five I mean, I'm really, I'm
14 not sure

15 Q So you had several meetings with her?

16 A Yes

17 Q Did you review The State's evidence against you, the
18 discovery materials?

19 A Partially

20 Q What parts did you not go over?

21 A Well, the Spinx video I never existed Because there
22 was a time that she brought numerous videos to the
23 detention facility I think within a week prior to
24 trial And I viewed all the videos -- the Ingles
25 video that's referred to that doesn't work properly,

- 1 it was available but there was not a Spinx video
2 available So it really wasn't even on my mind
- 3 Q So what else did you not get to view before your
4 trial? In terms of discovery, The State's evidence?
- 5 A The -- as I claim about the mental health records of
6 the co-defendant They was never obtained to view
7 The medical records related to my hand was never
8 obtained to view The autopsy reports was never
9 examined
- 10 Q But you did have the autopsy report?
- 11 A Yes, ma'am
- 12 Q And you reviewed that with Ms Wiygul?
- 13 A No, ma'am
- 14 Q Okay She went over with you what the charges were,
15 what The State would have to prove at trial?
- 16 A Yes, ma'am
- 17 Q You told her your version of what had happened?
- 18 A Yes, ma'am
- 19 Q You told her you were innocent?
- 20 A Yes, ma'am
- 21 Q Did you always want to go to trial on this case?
- 22 A Yes, ma'am
- 23 Q And you told her that?
- 24 A Yes, ma'am
- 25 Q What was the defense strategy going to be at trial?

1 What did y'all talk about was going to happen during
2 the trial?

3 A Well what I stressed was -- what I stressed with
4 Ms Wiygul was obtaining my medical records related
5 to my hand, to try to substantiate that I was not --
6 that I could not possibly have committed the crimes,
7 if the victim had been murdered by a right handed
8 assaultant I stressed the fact that obtaining the
9 mental health records of Ms Gladfelter because
10 she -- I know personally and The State was aware that
11 she obtained -- she received a disability check from
12 the state of Pennsylvania relating to mental health
13 issues

14 Q And didn't Ms Wiygul present testimony at trial
15 about your fractured hand?

16 A Partially

17 Q You just wish that she should have done a more
18 thorough job, would that be fair to say?

19 A She didn't -- she did not present updated materials
20 The most recent materials to substantiate the actual
21 condition of my hand prior to the crimes being
22 committed

23 Q And you knew prior to trial that Peggy was going to
24 testify against you?

25 A Yes, ma'am

1 Q And you reviewed with Ms Wiygul how that would be
2 damaging to your case?

3 A Yes, ma'am

4 MS RATIGAN That's all I have, Your Honor

5 MR RICHEY No other questions

6 THE COURT All right, thank you, sir, you may
7 step down

8 MR RICHEY We call Elizabeth Wiygul

9 THE COURT Place your left hand on the Bible,
10 please raise your right hand

11 ELIZABETH WIYGUL, after being duly sworn,
12 testified as follows

13 THE CLERK Thank you, you may be seated State
14 your name for the record

15 THE WITNESS Elizabeth Patterson Wiygul

16 DIRECT EXAMINATION

17 BY MR RICHEY

18 Q Ms Wiygul, do you recall representing Michael
19 Sarrat?

20 A I do

21 Q Do you recall representing him on murder charge --
22 murder charges?

23 A I do

24 Q Carjacking?

25 A Yes

1 Q Okay And you've been in the courtroom during his
2 testimony and I'm just going to go through these
3 issue with you This was a case where the
4 co-defendant testified against him, correct?

5 A Correct

6 Q The other physical evidence that the State had
7 against him, would say that that was limited, a lot,
8 overwhelming?

9 A There was a lot of physical evidence in this case,
10 none of it directly tie Mr Sarrat to the

11 Q So the main thing that really got him convicted was
12 the girl, girlfriend, alleged girlfriend, and the
13 cellmate that was the bulk of it, correct? Do you
14 think so?

15 A Probably the bulk of it

16 Q Okay And looking at Mr Sarrat in these videos, did
17 you have an opportunity to review these videos of the
18 Spinx?

19 A I know that we reviewed a lot of videos I think --
20 I know from the -- from one of the food stores we
21 were given still shots from the video and told the
22 video was not available I think that might have
23 been from the food store I just don't recall about
24 this Spinx video

25 Q Did you recall whether any of these videos had

1 Mr Sarrat in them?

2 A No No And I believe we got testimony in that the
3 videos did not show Mr Sarrat

4 Q Okay And did you believe -- let me go to
5 Applicant's number 1 and I'm going to pass this up to
6 you and ask you, did you identify any of the writing
7 on that at all?

8 A I wrote the word, No I'm not sure what it was in
9 response to, I just can't recall

10 Q Do you believe -- okay Do you believe Mr Sarrat
11 wanted these videos admitted into evidence?

12 A I don't recall

13 Q Okay Do you believe that the videos would have been
14 good evidence to impeach Peggy's testimony?

15 A No

16 Q Okay Can you tell me why?

17 A Because to the best of my recollection, and I'm
18 running off five years worth of memory and a quick
19 review of the transcript, I believe that we got
20 testimony in from Investigator Smith that the videos
21 did not show Michael

22 Q Okay

23 A There was further testimony from somebody that one of
24 the videos did show Peggy And so I think that came
25 in and the jury knew what the videos showed

1 Q Okay All right In terms of the autopsy, did you
2 review the autopsy?

3 A Yes

4 Q Do you believe that having it examined by a expert to
5 show whether it was a right handed or left handed
6 dominant person who done it would have been
7 beneficial to Mr Sarrat?

8 A To the best of my recollection, I called and spoke
9 with the corner that had performed the autopsy, and
10 knew that their testimony was going to be it wouldn't
11 have mattered But I did not ask the Court to have
12 an additional expert appointed

13 Q What about these mental health records of Peggy and
14 the state of Pennsylvania and all that, were you able
15 to get those?

16 A I was not able to get those I was on
17 cross-examination of Ms Gladfelter able to get into
18 testimony that she had been on disability since she
19 was a child But we were not able to get those
20 mental health records

21 Q And Mr Sarrat's mamma testified, you were in the
22 courtroom for that testimony, and his momma testified
23 that there was Peggy and these other girls alleged
24 that they admitted they did this crime Do you
25 recall that conversation with her at all?

1 A I kind of recall it I do recall that I never got
2 the note, the letter that was written And I was
3 never able to speak with Ms Ivy The lady that she
4 said was locked up with them I do not recall why

5 Q Okay So you did not have an opportunity to review
6 the letter?

7 A Correct

8 Q But you recall talking to Ms Dawkins about that
9 issue?

10 A I recall the issue being there I don't really
11 recall the conversation I wouldn't question that
12 she told me about it

13 Q And as to -- do you believe that the videos would
14 have been the best evidence as to Mr Sarrat not
15 being there? Do you believe that would be the best
16 evidence?

17 A Yes

18 MR RICHEY Okay, thank you Answer any
19 questions that the Attorney General has for you

20 CROSS-EXAMINATION

21 BY MS RATIGAN

22 Q You filed the appropriate Brady and Rule 5 motion in
23 this case?

24 A I did

25 Q And did you review those materials with your client?

1 A On numerous occasions

2 Q Was he able to view the videos or is that something
3 that you had to view and tell him about?

4 A No, we actually had it set up in the Pro B section
5 over at the detention center And we sat there one
6 day for several hours doing nothing but reviewing
7 videos from the case

8 Q I believe you testified that at least in one of those
9 instances you received some photographic stills?

10 A Correct And I believe we actually entered some of
11 those still photographs from the video into evidence

12 Q Had he told you his version of the story that he was
13 innocent of the charges?

14 A He had

15 Q Was his case always going to go trial or was there
16 some talk of a negotiated plea at some point?

17 A I was the third attorney on this case When I got it
18 it was -- there was never any question, it was always
19 going to be a trial

20 Q What was your defense strategy going to be at trial?

21 A Basically to attack Ms Gladfelter's credibility
22 She had written several letters from jail and we were
23 successful in entering a couple of those into
24 evidence And just to pick a part the State's case
25 This was my first trial, so

1 Q Did you have any assistance?

2 A I did My co-counsel was Larry Crane And so I had
3 him pretty much double checking anything that was
4 planned

5 Q And Mr Crane's been practicing several years, is
6 that fair to say?

7 A I'd say 30 plus

8 Q What did you do in terms of investigation in this
9 case, do you recall?

10 A I actually went out to the scene I drove around to
11 each of the incident -- or each location that was
12 part of the incident and just got out and walked
13 around I went to the area where the actual crime
14 had occurred And walked up and down the banks of
15 the stream I took pictures of the area, hoping they
16 could -- we could compare them with the pictures we
17 had been provided and that there would be some type
18 of discrepancy

19 Q Were there any witnesses Mr Sarrat asked you to
20 contact?

21 A No

22 Q And you knew prior to trial that Peggy was going to
23 be the State's witness?

24 A Yes

25 Q And you reviewed with Mr Sarrat the impact -- the

1 probable impact her testimony would have on the case?

2 A Yes, we have

3 Q And Mr Sarrat, he told you that she had some prior
4 psychiatric issues, is that correct?

5 A Correct

6 Q And did you attempt to get those psychiatric records
7 from Pennsylvania?

8 A I believe that I did I don't believe we ever
9 actually issued a subpoena, but I really just cannot
10 recall why we couldn't get those We were successful
11 in entering some of Mr Sarrat's medical records
12 through Ms Gladfelter

13 Q In your opinion, even without having her medical
14 records, were you able to impeach her credibility as
15 a witness?

16 A I felt like it was impeached

17 Q In your opinion, did you present adequate testimony
18 or documentation about Mr Sarrat's fractured hand?

19 A We presented everything that the Judge -- that we
20 could get in Some of what we tried to enter into
21 evidence, the Judge would not admit

22 Q However, his injury was placed before the jury by
23 several witnesses, would that be fair to say?

24 A By at least two witnesses, yes

25 Q And Mr Sarrat testified that you had made objection

1 to some weapon and then withdrew it the next day Do
2 you recall why you would have withdrawn that
3 objection?

4 A I really cannot I know that there was no human
5 blood on any of the knives or nothing that could be
6 definitively identified as human blood And I know
7 that it was -- I remember it was a big issue but I
8 really cannot recall why that objection was
9 withdrawn

10 Q Mr Sarrat testified that he told you that he owned a
11 truck at the time and that it would have been
12 unnecessary for him to carjack somebody Is that a
13 discussion that you remember having with him?

14 A I knew that he owned a truck I don't really recall
15 what the testimony was at trial about the truck I
16 do recall that there was some testimony regarding the
17 car

18 Q The victim's car?

19 A The victim's car The -- we were able to get it in
20 through cross-examination of the victim's widow that
21 his vehicle started with key and didn't have any
22 trouble with starting

23 Q And there was contrary testimony about that at trial,
24 is that?

25 A The co-defendant testified about having to start it

1 with a screwdriver

2 Q Mr Sarrat has also brought up the issue of the
3 vehicle's recovery in Alabama Do you recall looking
4 into that issue at all?

5 A No, I did not I received the subpoena and the
6 paperwork from the Solicitor's Office where they had
7 gotten the car but I did not contact Alabama

8 Q Is that because you didn't see any reason to contact
9 Alabama?

10 A Yes

11 Q And one last issue, Mr Sarrat's mother testified
12 that during jury deliberation the Judge wanted to
13 know what was taking so long that he came back in the
14 court and said he had a talk with the jury, do you
15 recall that at all?

16 A I don't even remember it

17 Q Is that something you would have objected to if you
18 heard the Judge say he had gone back to motivate the
19 jury

20 A Probably not, no

21 MS RATIGAN That's all I have, Your Honor

22 MR RICHEY Just got a couple things, Your
23 Honor

24 ///

25 ///

REDIRECT EXAMINATION

BY MR RICHEY

Q Ms Wiygul, I'm going to refer you to the transcript on page 13, real quickly And on lines -- on lines 17 -- lines 14 where the Court is asking about the mental health records of Peggy Gladfelter and Mr Sarrat said, I have reviewed none of them And don't know if they exist or not

And the Court says, Ms Wiygul

And Ms Wiygul says, Those were not requested by me, Your Honor

The Court says, All right, we'll find out about it Is she going to be a witness?

And Solicitor Hodge says, Yes

And you stated at the time that, She is

What -- at that point in this transcript were you surprised that she was going to testify against him?

A I'm sorry?

Q Were you surprised she was going to actually testify against him because she was a co-defendant?

A No

Q Okay Do you have any recollection why you would say, She is? When Ms Hodge said she was going to testify you said, She is I guess on paper it would

1 seem like somewhat a surprise that she testified, is
2 that correct?

3 A I don't recall being surprised She was -- we always
4 knew she was going to testify, far ahead of trial

5 Q You are familiar there were knives entered into
6 evidence, correct?

7 A Correct

8 Q And there was one knife that basically showed up at
9 the time of the testing was going to be done on the
10 others, that was admitted into evidence Did you
11 ever -- why didn't you attack the chain of custody of
12 these knives coming in?

13 A I don't recall

14 Q You don't recall why you did not do it?

15 A Correct

16 MR RICHEY That's all the questions I have for
17 her

18 MS RATIGAN No recross, Judge

19 THE COURT Thank you, you may step down

20 You may call your next witness

21 MR RICHEY That's all, Your Honor

22 THE COURT Anything from the State?

23 MS RATIGAN Your Honor, The State would rest
24 on the record and the testimony of Ms Wiygul

25 THE COURT Well, obviously, I have a lot of

1 material to review I'll try to get an Order out soon
2 Don't know exactly when I'll be able to go through all
3 these matters, as well as the exhibits that have been
4 admitted into evidence I'll let you know something as
5 soon as I can

6 MR RICHEY Thank you, Your Honor

7 MS RATIGAN Thank you, Judge

8 (WHEREUPON, the proceedings were concluded)

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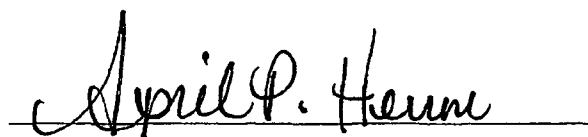
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P HERRON, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
11th day of May, 2011

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

November 16, 2011



APRIL P HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Michael Anthony Sarratt,)
 a/k/a Leroy Eugene Frey, Jr,)
 S C D C No 299026,)
)
 Applicant,)
)
 v)
)
 State of South Carolina,)
)
 Respondent)

IN THE COURT OF COMMON PLEAS
 C A No 2010-CP-23-3720

ORDER OF DISMISSAL

FILED
 CLERK OF COURT
 GREENVILLE CO S C
 JUL 27 2011

2011 JUL 27 P 3 00

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 10, 2010. The Respondent made its return on September 16, 2010. An evidentiary hearing into the matter was convened on May 11, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Evelyn Dawkins and the Applicant's trial counsel, Elizabeth P. Wiygul, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant

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was indicted at the May 2005 term of the Greenville County Grand Jury for carjacking (2005-GS-23-4106, count 1), possession of a weapon during commission of a violent crime (2005-GS-23-4106, count 2), and murder (2005-GS-23-4108) He was represented by Elizabeth P Wiygul, Esquire

After the State called the case to trial, the Applicant was found guilty On June 14, 2007, the Honorable Edward W Miller sentenced the Applicant to concurrent terms of thirty (30) years for carjacking, five (5) years for possession of a weapon during commission of a violent crime, and fifty (50) years for murder

A notice of appeal was filed at the South Carolina Court of Appeals Joseph L Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief The Court of Appeals dismissed the appeal State v Sarratt, Op No 2010-UP-046 (S C Ct App filed January 27, 2010)

ALLEGATIONS

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

- 1 Ineffective assistance of counsel
- 2 Judicial error
- 3 Subject matter jurisdiction
- 4 Constitutional violations
- 5 Prosecutorial misconduct

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their

¹ Anders v California, 386 U S 738, 87 S Ct 1396, 18 L Ed 2d 493 (1967)

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credibility This Court has weighed the testimony accordingly

Set forth below are the relevant findings of fact and conclusions of law as required by S C Code Ann § 17-27-80 (2003)

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence ” Frasier v State, 351 S C 385, 389, 570 S E 2d 172, 174 (2002)

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance See Strickland v Washington, 466 U S 668, 104 S Ct 2052 (1984), Porter v State, 368 S C 378, 383, 629 S E 2d 353, 356 (2006) In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different ” Cherry v State, 300 S C 115, 117-18, 386 S E 2d 624, 625 (1989) “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial ” Johnson v State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland v Washington, 466 U S 668, 104 S Ct 2052)

The Applicant stated he had four (4) or five (5) meetings with trial counsel and that they discussed his version of events and reviewed some of the discovery materials The Applicant stated the only evidence linking him to these crimes were the statements and testimony of his co-defendant (Peggy Gladfelter) The Applicant stated he always wanted to go to trial on these charges The Applicant stated he and trial counsel also discussed possible defense strategies such as obtaining medical records regarding his fractured hand and obtaining Peggy’s psychiatric

3 

records The Applicant stated he could not have committed the crime because of his injured hand and that, while trial counsel did make this argument, she failed to introduce his most recent medical records The Applicant stated trial counsel should have challenged the autopsy report because it did not state whether the crime was committed by a left- or right-handed individual The Applicant stated trial counsel should have introduced the surveillance videos at trial, as they would have proven his innocence The Applicant stated trial counsel failed to investigate the facts and evidence surrounding the victim's vehicle (which was found in Alabama) The Applicant stated trial counsel should not have withdrawn her objection to the admission of the knives that were seized when he was arrested

Evelyn Dawkins, the Applicant's mother, stated she told trial counsel that she knew someone who had been at the jail with Peggy (the Applicant's co-defendant) and they could testify that Peggy confessed to the crime Dawkins stated that, during the jury's deliberations, the trial judge said he had gone back and "had a talk" with the jury

Trial counsel testified she filed discovery motions in this case and reviewed those materials with the Applicant several times Trial counsel testified she and the Applicant watched several surveillance videos and discussed his version of events Trial counsel confirmed the Applicant always wanted a jury trial Trial counsel testified she knew Peggy would be the State's key witness and that her defense strategy was to attack her credibility Trial counsel stated she was never able to speak to the jail employee who allegedly heard Peggy confess Trial counsel stated she presented evidence and testimony about the Applicant's fractured hand at trial Trial counsel stated she could not have obtained Peggy's medical records, but did ask questions on cross-examination about her disability Trial counsel stated she reviewed the autopsy report and spoke to the coroner Trial counsel testified the Applicant was not seen on the videos Trial

counsel testified she received the subpoena and paperwork from the State regarding the evidence located in Alabama (the victim's car) and that there was no reason to object to that evidence Trial counsel testified she could not recall why she withdrew her objection to the admission of the Applicant's knives into evidence Trial counsel testified she did not recall the judge entering the jury room in order to motivate them to reach a verdict

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation

This Court finds the Applicant failed to meet his burden of proving trial counsel should have contacted the jail employee who – according to Ms Davis – heard Peggy confess to the crime Trial counsel testified she was aware of this individual but was not able to speak with her Regardless, as this alleged witness did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative See Bannister v State, 333 S C 298, 303, 509 S E 2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial”) (emphasis in original)

This Court finds the Applicant failed to meet his burden of proving trial counsel should have obtained his most recent medical records, Peggy's records of prior psychiatric treatment, and complete documentation from Alabama about the victim's car This Court notes that trial counsel developed the issue at trial that, as the Applicant's hand was fractured, he could not have committed the crime (Trial transcript, p 255, p 287) This Court also notes trial counsel's

testimony that she was not able to obtain Peggy's psychiatric records and that she could not think of a reason to challenge the evidence from the recovery of the victim's car in Alabama. Regardless, this Court finds it cannot speculate upon the impact all of these records could have had upon the trial because they were not produced at the hearing. See Palacios v State, 333 S C 506, 513, 511 S E 2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense)

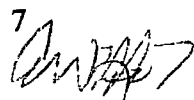
This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the autopsy report and hired an independent expert. This Court notes trial counsel testified that she spoke to the coroner in this case and determined it would not have benefited the case to determine whether the wound were inflicted by the assailant's left or right hand. This Court finds trial counsel made a strategic decision not to retain an expert on this issue. See Roseboro v State, 317 S C 292, 294, 454 S E 2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court notes the Applicant failed to produce any evidence or testimony or expert opinion that an independent evaluation of the victim's autopsy was warranted. As such, this Court cannot speculate upon whether an expert opinion on the matter would have affected the defense case. See Bannister v State, 333 S C at 303, 509 S E 2d at 809, see also Dempsey v State, 363 S C 365, 370, 610 S E 2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative")

This Court finds the Applicant failed to meet his burden of proving trial counsel should have introduced the gas station surveillance video at trial. Trial counsel testified the admission

of the video would not have added to the trial strategy she pursued – to impeach Peggy’s credibility as the State’s key witness. Trial counsel further noted there was testimony at trial that the Applicant was not visible on the video. Regardless, as the Applicant failed to produce this video at the PCR hearing, this Court cannot speculate as to either its contents or its potential impact upon the Applicant’s case. Cf. Palacios v. State, 333 S.C. at 513, 511 S.E.2d at 66.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved to suppress the State’s introduction of various knives. The Applicant claims trial counsel was ineffective in initially objecting to the admission of this evidence and then later withdrawing that objection before the trial judge ruled upon their admissibility. (Trial transcript, pp. 397-402). While trial counsel could not recall why she withdrew her objection, this Court finds it would be a strategic call that – under the circumstances of this case – would be objectively reasonable. This Court finds that, regardless, the Applicant has failed to prove he suffered any prejudice as a result of trial counsel’s action in light of the overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have reasonably affected the result of defendant’s trial), Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected when the trial judge allegedly entered the jury room during deliberations. Trial counsel testified she did not recall this occurring during the trial but that, regardless, she likely would not have objected. This Court finds the Applicant has failed to prove either that the trial judge entered the jury room or that he influenced the jury during their deliberations. As such,

7


this issue is without merit

Accordingly, this Court finds the Applicant failed to prove the first prong of Strickland – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed errors or omissions in her representation of the Applicant. In fact, this Court notes the trial judge consistently praised trial counsel’s performance in this case and went so far as to comment “it’s been incredible” that her co-counsel had not needed to offer assistance during the trial. (Trial transcript, p 400, p 580). This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

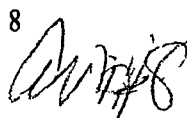
All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

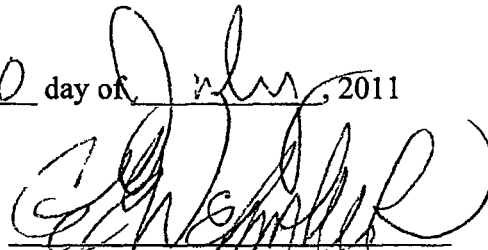
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(30) days from the receipt of this Order if he wants to secure appropriate appellate review His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed

IT IS THEREFORE ORDERED

- 1 That the application for post-conviction relief be denied and dismissed with prejudice, and
- 2 That the Applicant be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 20 day of July, 2011



G Edward Welmaker
Resident Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

WITNESSES

Wesley Smith

Greenville County Sheriffs Office

2/23/2005

DOCKET NO 2005-GS-23-

KBH

The State of South Carolina

004108

County of Greenville

COURT OF GENERAL SESSIONS

MAY TERM 2005

THE STATE

GUILTY

vs

MICHAEL ANTHONY SARRATT
(aka LEROY EUGENE FREY, JR.)

ARREST WARRANT NUMBER

1467590

ACTION OF GRAND JURY

TRUE BILL

Daniel J. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY *ML 6/14/07*

0116

Indictment for

MURDER

VIOLATION § 16-03-0010

Foreperson of Petit Jury

Date

001

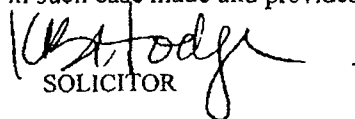
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions convened on MAY 24 2005 the Grand Jurors of Greenville
County present upon their oath

That MICHAEL ANTHONY SARRATT (aka LEROY EUGENE FREY, JR) did in Greenville County, on or
about the 3rd day of January 2005, unlawfully and with malice aforethought kill James Fowler Dellinger by
means of stabbing the victim multiple times, and that James Fowler Dellinger died as a proximate result thereof
This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended

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


SOLICITOR

WITNESSES

Wesley Smith

Greenville County Sheriffs Office

2/23/2005

DOCKET NO 2005-GS-23-

KBH

004106

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MAY TERM 2005

THE STATE

vs

MICHAEL ANTHONY SARRATT
(aka LEROY EUGENE FREY, JR)

ARREST WARRANT NUMBER

1467591 1467594

GUILTY
Both counts

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

6/9/07

2600

Indictment for

CARJACKING

VIOLATION § 16-03-1075

0549

POSSESSION OF WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

Foreperson of Petit Jury

Date

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CARJACKING AND POSSESSION OF WEAPON DURING THE
COMMISSION OF A CRIME

At a Court of General Sessions convened on MAY 24, 2005 the Grand Jurors of Greenville
County present upon their oath

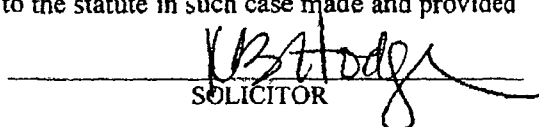
COUNT ONE- CARJACKING

That MICHAEL ANTHONY SARRATT (aka LEROY EUGENE FREY, JR) did in Greenville County, on or
about the 3rd day of January, 2005, take or attempt to take a motor vehicle, to wit 1991 Plymouth Acclaim from
James Folwer Dellinger by force, and violence or by intimidation while James Folwer Dellinger, was operating
and/or was in the said vehicle This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as
amended

COUNT TWO- POSSESSION OF WEAPON DURING THE COMMISSION OF A CRIME

That MICHAEL ANTHONY SARRATT (aka LEROY EUGENE FREY, JR) did in Greenville County, on or
about the 3rd day of January, 2005, possess or visibly display a knife during the commission or attempted
commission of a violent crime, to wit Carjacking This is in violation of §16-23-490 of the South Carolina Code
of Laws (1976) as amended

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


SOLICITOR