VOLUME FOUR OF FOUR

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

John M. Milling, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

ALFONSO STATON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

WANDA H. CARTER
Deputy Chief Attorney

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

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

1535

THE COURT: ANY OTHER INQUIRY ON BEHALF OF THE STATE?

MR. WILSON: NOTHING FROM THE STATE.

THE COURT: ANY OTHER INQUIRY ON BEHALF OF THE DEFENSE?

MR. ERVIN: NO, SIR.

MR. PADGETT: NO, SIR.

MR. REDMOND: NO, YOUR HONOR.

MR. MOORE: NO, SIR.

MR. WILL ROGERS: NO, SIR.

MR. LAWSON: NO, YOUR HONOR.

THE COURT: OKAY. MADAM FOREMAN, LADIES AND GENTLEMEN, WE HAVE NOW CONCLUDED THE TAKING OF ALL OF THE TESTIMONY IN THIS CASE. AND YOU WILL HEAR IN A MOMENT AN OPENING STATEMENT BY THE STATE OF SOUTH CAROLINA REPRESENTED BY SOLICITOR WILSON WHO IS THE SPECIAL PROSECUTOR FROM THE 15TH CIRCUIT, HE BEING FROM CONWAY, SOUTH CAROLINA. IN ADDITION TO THAT, YOU WILL HEAR A POSITION FROM EACH OF THE SIX DEFENDANTS' ATTORNEYS. FOLLOWING THAT, THE SOLICITOR, AS OUR RULES PERMIT, WILL HAVE A FURTHER CLOSING ARGUMENT.

AND GENERALLY AT THAT TIME, WE HAVE A CHARGE UPON THE LAW AND THEN I GIVE YOU THESE INDICTMENTS AND ASK YOU TO BEGIN YOUR DELIBERATIONS. JURORS HAVE

1536

INDEX

INDEX i

RECORD ON APPEAL FROM DIRECT APPEAL (CO-DEFENDANT WAS LEROY STATON) 1

APPLICATION FOR POST-CONVICTION RELIEF 1758

RETURN 1774

POST-CONVICTION RELIEF HEARING TRANSCRIPT 1778

ORDER OF DISMISSAL 1888

INDICTMENT 1905

1537

VOLUME FOUR (OF FOUR VOLS)

STATE OF SOUTH CAROLINA

Closing Arg.

In The Supreme Court

APPEAL FROM MARLBORO COUNTY

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEROY STATON,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

SOUTH CAROLINA OFFICE
OF APPELLATE DEFENSE
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant

CHARLES M. CONDON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

JAY E. HODGE, JR.
Solicitor, Fourth Judicial Circuit
Darlington County Courthouse
Room 410
Darlington, SC 29532
(843) 398-4300

Attorneys for Respondent

1538

INDEX

INDEX i

TRIAL TRANSCRIPT (MARCH 10-19, 1997) 1

PRETRIAL HEARING TRANSCRIPT (FEBRUARY 18, 1997) 1689

INDICTMENTS FOR LEROY STATON 1743

INDICTMENTS FOR ALFONZO STATON 1746

VERDICT FORM FOR LEROY STATON 1754

VERDICT FORM FOR ALFONZO STATON 1755

COURT'S EXHIBIT #2 1756

CERTIFICATE OF COUNSEL 1757

TOLD ME IN THE LAST FEW YEARS, HOWEVER, JUDGE, I WISH YOU WOULD HAVE TOLD ME WHAT THE LAW WAS EVEN BEFORE THEY ARGUED; I BELIEVE I COULD HAVE FOLLOWED WHAT THEY SAID BETTER. SO I'M GOING TO DO THAT NOW. I'M GOING TO GIVE YOU SOME INSTRUCTIONS IN THE LAW. HOPEFULLY I THINK THEY WILL PERMIT YOU TO FOLLOW THEIR POSITIONS BETTER.

REMEMBER THIS. AFTER CONCLUSION OF SUMMATIONS, I WILL HAVE SOME ADDITIONAL INSTRUCTIONS FOR YOU. AND IF AT ANY TIME YOU NEED A FURTHER INSTRUCTION ON THE LAW AS TO ANY ISSUE, THERE WILL BE PENCIL AND PAPER PROVIDED IN THE JURY ROOM. YOU WRITE THAT QUESTION OF LAW DOWN, KNOCK ON THE DOOR, LET THE BAILIFF KNOW AND OF COURSE I'LL BE GLAD TO GIVE IT TO YOU.

NOW, REMEMBER -- AND I'LL GO INTO THIS IN SOME MORE DETAIL IN A FEW MINUTES -- I CAN TELL YOU WHAT THE LAW IS ON ANY ISSUE AND WILL, HOPEFULLY. YOU TELL ME WHAT THE FACTS ARE. YOU JUDGE BASED ON WHAT YOU'VE HEARD IN THIS COURTROOM AND WHAT WEIGHT YOU DESIRE TO GIVE TO THE CREDIBILITY AND THE BELIEVABILITY OF THE WITNESSES. REMEMBER THIS, NOW. IF ANY WORD, RULING OR MANNERISM OF MINE MIGHT TEND TO INDICATE TO ANY OF YOU 12 JURORS HOW I FEEL ABOUT ANY FACT IN THIS CASE, DISMISS THAT FROM YOUR MIND.

1540

I AM NOT ENTITLED TO A FACTUAL OPINION AND I HAVE NONE.

NOW, BY THE NATURE OF THE FACT OF THIS CASE, OBVIOUSLY, WITH SOME SEVEN POSITIONS TO BE ENUMERATED HERE, IT'S GOING TO BE A LENGTHY MORNING AND PERHAPS EARLY PART OF THE AFTERNOON. WE'RE GOING TO MAKE EVERY EFFORT TO GIVE YOU THIS CASE SOME TIME EARLY THIS AFTERNOON. IF AT ANY TIME ANY OF YOU GET TIRED, NEED TO TAKE A RELAX -- NEED TO RELAX FOR A MINUTES, NEED TO GO THE JURY ROOM FOR ANY REASON, RAISE YOUR HAND. THAT'S ALL YOU'VE GOT TO DO AND WE'LL STOP. I WOULD ASK THAT YOU TRY AND DO THAT ONLY AT THE END OF EACH TALK. BUT IF AT ANY TIME ANY OF YOU -- I'LL BE TAKING BREAKS ABOUT EVERY HOUR OR SO ANYWAY, BUT IF AT ANY TIME, NOW, DON'T HESITATE TO RAISE THAT HAND AND WE'LL STOP IN JUST A MOMENT.

I WANT ALL OF YOU TO KNOW THAT YOU ARE A GUEST HERE OF THE COUNTY OF MARLBORO. YOUR APPEARANCE HERE AND YOUR SERVICES HERE IS DEEPLY APPRECIATED BY JUDGE COTTINGHAM AND IS EQUALLY DEEPLY APPRECIATED BY SOLICITOR WILSON AND EACH OF THESE DISTINGUISHED ATTORNEYS HERE WHO ARE REPRESENTING THESE DEFENDANTS.

NOW, MADAM FOREMAN AND LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA HAS CHARGED ONE ROBERT GRAHAM REPRESENTED BY MR. LAWSON WITH THE OFFENSES OF

1541

KIDNAPPING, CRIMINAL SEXUAL CONDUCT FIRST DEGREE AND CRIMINAL CONSPIRACY ON THREE SEPARATE COUNTS. NOW, MADAM FOREMAN, I HAVE PREPARED FOR YOU, I HAVE ATTACHED TO THE INDICTMENT ON EACH ONE A VERDICT FORM WHICH SHOWS YOU AND YOUR JURY WHAT EACH DEFENDANT IS CHARGED WITH, AND ON THE LEFT HAND SIDE, YOU WOULD EITHER WRITE GUILTY OR NOT GUILTY, WHATEVER YOUR UNANIMOUS VERDICT IS. BUT I'VE GOT A JURY FORM FOR YOU, SO YOU CAN CLEARLY SHOW OR INDICATE WHAT EACH DEFENDANT IS CHARGED WITH, REMEMBERING THIS, BASICALLY. ROBERT GRAHAM IS CHARGED WITH KIDNAPPING, CRIMINAL SEXUAL CONDUCT FIRST DEGREE AND CRIMINAL CONSPIRACY. EACH OF THE OTHER FIVE DEFENDANTS ARE CHARGED WITH THE SAME THING. IN ADDITION, THE OTHER FIVE DEFENDANTS ARE CHARGED WITH MURDER. THE DIFFERENCE IN THE CHARGES AS IT RELATES TO THESE SIX DEFENDANTS, THIS DEFENDANT, ROBERT GRAHAM, IS NOT CHARGED WITH MURDER.

NOW, ON FIVE OF THE INDICTMENTS, THEY ARE SHOWN AS FIVE SEPARATE COUNTS: KIDNAPPING, MURDER, CRIMINAL SEXUAL CONDUCT AND CONSPIRACY. AND IT IS AGAIN ENUMERATED ON THIS JURY FORM. YOU WILL NOT HAVE ANY DIFFICULTY WITH REGARD TO THIS JURY FORM. THE DEFENDANT WALLS, RATHER THAN HAVE ONE INDICTMENT WITH FOUR COUNTS, IS CHARGED UNDER SEVERAL SEPARATE

INDICTMENTS. THEY ARE THE SAME CHARGES. AND AGAIN, THAT IS REFLECTED IN THIS JURY FORM. WHEN YOU GO DOWN THIS JURY FORM AS TO EACH DEFENDANT AND AS TO EACH COUNT AND THEREAFTER REACH YOUR VERDICT OF NOT GUILTY OR GUILTY, YOU WILL CLEARLY HAVE DISPOSED OF ALL MATTERS BEFORE YOU. AGAIN, DURING YOUR DELIBERATIONS, IF YOU HAVE ANY QUESTIONS, DON'T HESITATE TO LET ME -- THE BAILIFF KNOW AND HE WILL THEREAFTER INFORM ME. BUT I HAVE PREPARED A SEPARATE VERDICT FORM ON EACH OF THESE CASES FOR YOUR CONSIDERATION.

THESE INDICTMENT WILL BE WITH YOU IN THE JURY ROOM. THEY HAVE BEEN READ TO YOU AND I WILL NOT NOW REPEAT THEM AT THIS TYPE. BUT I CALL TO YOUR -- FOR YOUR CONSIDERATION, ALTHOUGH THE DEFENDANTS ARE BEING TRIED TOGETHER, YOU MUST CONSIDER THE CASE AGAINST EACH ONE SEPARATELY. IN DOING SO, YOU MUST DECIDE WHAT THE EVIDENCE SHOWS ABOUT EACH DEFENDANT WITHOUT CONSIDERING ANY EVIDENCE THAT MAY HAVE BEEN ADDUCED SOLELY AGAINST SOME OTHER DEFENDANT OR DEFENDANTS.

EACH DEFENDANT IS ENTITLED TO HAVE THE CASE AGAINST THAT DEFENDANT DECIDED SOLELY ON THE EVIDENCE AND THE LAW WHICH APPLIES TO THAT INDIVIDUAL DEFENDANT. BECAUSE OF THIS RIGHT TO SEPARATE INDIVIDUAL CONSIDERATION OF EACH DEFENDANT, WHATEVER

1543

YOUR VERDICT YOU FIND, DOES NOT HAVE TO BE THE SAME AS TO ALL DEFENDANTS OR AS TO ALL COUNTS. YOU TAKE EACH DEFENDANT, CONSIDER THE EVIDENCE AS TO THAT DEFENDANT ALONE AND WRITE YOUR VERDICT ACCORDINGLY IN CONFORMITY WITH THE EVIDENCE IN THE CASE AND THE INSTRUCTIONS THAT I WILL BE GIVING TO YOU.

WHERE MORE THAN ONE PERSON IS CHARGED WITH A CRIME, YOU MAY CONVICT ONE AND ACQUIT THE OTHER IF THE EVIDENCE WARRANTS IT. OR YOU MAY ACQUIT BOTH OR YOU MAY CONVICT BOTH. IT WILL DEPEND UPON YOUR VIEW OF THE TESTIMONY AND THE EVIDENCE WHICH YOU ALONE ARE TO ACT UPON.

NOW, FIVE OF THESE INDICTMENTS IN THIS CASE, AS I HAVE INDICATED TO YOU, HAVE MORE THAN ONE COUNT OR PART. EACH COUNT CHARGES A SEPARATE CRIME AND THEY ARE DELINEATED ON THIS FORM THAT I HAVE PREPARED FOR YOU. YOU MUST CONSIDER EACH COUNT SEPARATELY. THAT IS, YOU MUST DECIDE SEPARATELY WHAT THE EVIDENCE IN THE CASE SHOWS ABOUT THAT COUNT. YOUR DECISION ON ONE COUNT SHOULD NOT AFFECT YOUR DECISION ON ANOTHER COUNT. AND AGAIN, THESE VERDICT FORMS ARE SELF-EXPLANATORY.

AS AN EXAMPLE, THIS PARTICULAR DEFENDANT IS CHARGED WITH MURDER. YOU WILL CONSIDER THAT CHARGE AND WRITE YOUR VERDICT, NOT GUILTY OR GUILTY. YOU

WOULD THEN GO TO THE SECOND CHARGE OF KIDNAPPING AND WRITE YOUR VERDICT, NOT GUILTY OR GUILTY. THEN THE THIRD CHARGE, CRIMINAL SEXUAL CONDUCT, NOT GUILTY OR GUILTY. AND THEN THE FOURTH CHARGE, CRIMINAL CONSPIRACY, NOT GUILTY OR GUILTY. BELOW THAT I HAVE "ABOVE IS THE UNANIMOUS VERDICT OF THE JURY." AND YOU WOULD SIGN YOUR NAME. AFTER CONCLUDING THE EVIDENCE AS AGAINST THAT DEFENDANT AND THE EVIDENCE AS TO EACH COUNT, YOU WOULD THEN GO TO THE NEXT DEFENDANT AND FOLLOW THE SAME PROCEDURE.

AS YOU CONSIDER THE COUNTS AGAINST ANY ONE DEFENDANT, I EMPHASIZE AGAIN YOUR VERDICT DOESN'T HAVE TO BE THE SAME AS TO ALL CHARGES. IT MAY BE GUILTY OF ALL OF THE CHARGES AGAINST THAT DEFENDANT. IT MAY BE NOT GUILTY. IT MAY BE GUILTY OF SOME AND NOT GUILTY OF OTHERS. THE SAME THING APPLIES TO VARIOUS DEFENDANTS. YOU MAY FIND ONE DEFENDANT GUILTY OF ALL CHARGES OR NOT GUILTY OF ALL CHARGES. EQUALLY IMPORTANT, YOU MAY FIND ONE OR SOME OF THE OTHERS GUILTY OF ALL CHARGES OR NOT GUILTY. I EMPHASIZE TO YOU, YOU CONSIDER THE EVIDENCE AS TO EACH CHARGE AND AS TO EACH DEFENDANT INDIVIDUALLY AND THEREAFTER WRITE YOUR VERDICT ACCORDING TO THE TESTIMONY AND THE EVIDENCE IN THIS CASE.

NOW, TO THESE INDICTMENTS AND TO THESE COUNTS,

1545

EACH OF THESE SIX DEFENDANTS HAS PLED NOT GUILTY, WHICH PLACES UPON THE STATE OF PROVING THE DEFENDANTS GUILTY, IF THEY CAN. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU THAT IT IS A VITAL, IMPORTANT RULE OF LAW OF EVIDENCE THAT A DEFENDANT IN A CRIMINAL TRIAL, NO MATTER HOW GREAT OR SERIOUS MAY BE THE CHARGE WITH THE OFFENSE WITH WHICH HE'S CHARGED, MUST ALWAYS BE PRESUMED INNOCENT UNTIL HIS GUILT HAS BEEN ESTABLISHED BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE REMAINS WITH THIS DEFENDANT AT ALL TIMES, FROM THE MOMENT OF HIS ARRAIGNMENT, THROUGHOUT THE TRIAL AND UNTIL YOU THE JURY HAVE UPON THE TESTIMONY AND THE EVIDENCE PRESENTED REACHED A VERDICT OF GUILTY BEYOND A REASONABLE DOUBT, FOR IT IS THE SOLEMN DUTY OF THE JURY, LADIES AND GENTLEMEN, IF NOT CLEARLY CONVINCED OF THEIR GUILT BEYOND EVERY REASONABLE DOUBT TO THE CONTRARY TO ACQUIT THESE DEFENDANTS. AND SO IT IS THE BURDEN OF PROOF IS UPON THE STATE OF SOUTH CAROLINA TO ESTABLISH BY EVIDENCE TO YOUR SATISFACTION THE GUILT BEYOND A REASONABLE DOUBT FOR WHICH THE CRIMES THAT THESE DEFENDANTS ARE ON TRIAL.

I'VE USED THE TERM REASONABLE DOUBT. A

REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN THIS CASE OR FROM THE ABSENCE OR LACK OF EVIDENCE IN THE CASE. YOU 12 MUST DETERMINE FOR YOURSELVES WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THESE DEFENDANTS OR DEFENDANT.

NOW, I WENT INTO THIS IN SOME DETAIL WITH YOU AS YOU BEGAN THE TRIAL OF THIS CASE LAST MONDAY REGARDING THE CREDIBILITY AND THE BELIEVABILITY OF THE WITNESSES. AND I WOULD LIKE NOW TO REVISIT THAT WITH YOU AT THIS TIME. LADIES AND GENTLEMEN, AS I TOLD YOU THEN AND I TELL YOU NOW, UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE SOLE FINDERS OF THE FACTS IN THE CASE. I AS TRIAL JUDGE DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS AND EVEN TO EXPRESS AN OPINION AS I HAVE TO THEM, NOR MAY I INTIMATE IN ANY WAY WHAT I MAY THINK ABOUT THE GUILT OR INNOCENCE OF THE DEFENDANTS. I AM NOT ENTITLED TO AN OPINION AND I HAVE NONE. YOU ARE THE JUDGES, THE SOLE JUDGES OF THE CREDIBILITY, MEANING THE BELIEVABILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE.

IN PASSING UPON THEIR CREDIBILITY, YOU MAY, IF YOU CHOOSE, TAKE INTO CONSIDERATION MANY THINGS, SUCH

1547

AS THE APPEARANCE AND MANNER OF THE WITNESSES, SOMETIMES REFERRED TO AS A DEMEANOR OF A WITNESS. WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS A WITNESS' TESTIMONY CONSISTENT OR DID IT CONTAIN DISCREPANCIES? YOU ARE ENTITLED TO CONSIDER WHAT WAS THE ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT WHICH HE OR SHE MAY HAVE TESTIFIED. AND OBVIOUSLY YOU WOULD CONSIDER AS TO EACH WITNESS FOR THE STATE AND THE DEFENSE DID THE WITNESS HAVE A CAUSE OR A REASON TO BE BIASED AND PREJUDICED IN FAVOR OF THE TESTIMONY THAT HE OR SHE MAY HAVE GIVEN? YOU MAY CONSIDER WAS THE TESTIMONY OF A WITNESS CORROBORATED OR MADE STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS IT MADE WEAKER BY OTHER TESTIMONY AND EVIDENCE?

AS JURORS, YOU HAVE A RIGHT TO BELIEVE A SMALL PORTION OF A WITNESS' TESTIMONY AND DISREGARD THE LARGER OR VICE-VERSA. YOU MAY BELIEVE ALL OF A WITNESS' TESTIMONY OR NONE. YOU MAY BELIEVE A SMALL PORTION OF A WITNESS AGAINST THAT OF MANY OR THE OTHER WAY AROUND. LADIES AND GENTLEMEN, MOST CERTAINLY, YOU DO NOT DETERMINE THE CREDIBILITY OR BELIEVABILITY BY COUNTING UP THE NUMBER OF WITNESSES WHO MAY HAVE TESTIFIED FOR ONE SIDE OR THE OTHER.

LADIES AND GENTLEMEN, THROUGHOUT THIS ENTIRE PROCESS, YOU HAVE BUT ONE SINGLE OBJECTIVE, AND THAT

1548

IS TO SEEK THE TRUTH, TO SEEK THE TRUTH HERE REGARDLESS OF FROM WHAT SOURCE THAT TRUTH MAY BE DERIVED. ALL THESE THINGS YOU WILL CONSIDER BEARING IN MIND THAT YOU MUST GIVE THE DEFENDANTS THE BENEFIT OF EVERY REASONABLE DOUBT.

NOW, BY THE SAME CONSTITUTION AND LAWS WHICH MAKES YOU THE FINDERS OF THE FACTS AND THE EVIDENCE AS I'VE DISCUSSED WITH YOU, I AM THE JUDGE HERE, MADE THE SOLE AND ONLY INSTRUCTOR IN THE LAW. AND YOU MUST ACCEPT AS CORRECT THE LAW WHICH I NOW CHARGE YOU AND HEREAFTER WILL CHARGE YOU. EVEN THOUGH YOU OR I MAY DISAGREE WITH WHAT THE LAW IS OR OUGHT TO BE, FOR THE PURPOSE OF THIS TRIAL, UNDER YOUR OATH, PLEASE ACCEPT THE LAW AS I GIVE IT TO YOU, REMEMBERING THAT IT IS YOUR DUTY AND YOUR SOLE DUTY TO APPLY THE FACTS AS YOU FIND THEM TO BE TO THE LAW OF THIS CASE ON THE VARIOUS ISSUES THAT HAVE BEEN PRESENTED.

NOW, AS YOU ARE WELL AWARE, FIVE OF THESE DEFENDANTS ARE INDICTED FOR MURDER. AND AT THIS TIME, I WOULD LIKE TO EXPLAIN TO YOU THE ELEMENTS OF MURDER. WHAT IS MURDER BY DEFINITION? MURDER MAY BE DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT. THUS, IN ORDER TO CONVICT OF MURDER, THE STATE MUST NOT ONLY PROVE THE KILLING OF THE DECEASED BY THE

1549

DEFENDANT, BUT THAT IT WAS DONE WITH MALICE AFORETHOUGHT AND SUCH PROOF MUST BE DONE -- MUST BE BEYOND A REASONABLE DOUBT.

MALICE, LADIES AND GENTLEMEN, IS A WORD SUGGESTING WICKEDNESS, HATRED, AND A DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG WITHOUT JUST CAUSE OR LEGAL PROVOCATION. MALICE NEED NOT BE IN THE MIND OF THE ONE DOING THE KILLING AT ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT OF KILLING TO RENDER THE KILLING MURDER. IF MALICE IS PRESENT IN THE MIND OF THE ONE DOING THE KILLING ANY LENGTH OF TIME BEFORE THE ACT, THEN ITS PRESENCE WOULD BE SUFFICIENT TO RENDER THE KILLING MURDER.

MALICE IS SAID TO BE EXPRESSED WHEN THERE IS MANIFESTED A VIOLENT, DELIBERATE, INTENTIONAL, UNLAWFUL ACT TO TAKE AWAY THE LIFE OF ANOTHER HUMAN BEING. MALICE MAY BE IMPLIED WHERE ONE INTENTIONALLY AND DELIBERATELY DOES AN UNLAWFUL ACT WHICH HE OR SHE KNOWS TO BE WRONG AND IN VIOLATION OF A DUTY TO ANOTHER. MALICE MAY BE IMPLIED WHERE NO EXCUSE OR LEGAL PROVOCATION FOR A KILLING OF ANOTHER APPEARS AND WHEN THE CIRCUMSTANCES ATTENDING THE KILLING SHOW AN ABANDONED HEART, A MALIGNANT HEART FATALLY BENT ON MISCHIEF. SUCH IMPLICATIONS OR INFERENCES ARE NOT CONCLUSIVE AND YOU THE JURY, DEPENDING UPON YOUR VIEW

OF THE EVIDENCE, MAY ACCEPT OR REJECT THE SAME.

THE LAW SAYS THAT IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON OR DANGEROUS INSTRUMENTALITY, THE IMPLICATION OF MALICE MAY ARISE. IF FACTS ARE PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU THE JURY ALONG WITH ALL THE OTHER EVIDENCE, IF ANY, IN THIS CASE. AND YOU, LADIES AND GENTLEMEN, MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE.

IN OTHER WORDS, THE INFERENCE OF MALICE FROM THE USE OF A DANGEROUS WEAPON OR A DANGEROUS INSTRUMENTALITY IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY THE JURY WITH THE OTHER EVIDENCE IN THE CASE AND TO BE GIVEN SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE. THE INFERENCE OF MALICE MAY BE DRAWN FROM THE PROOF OR THE USE OF A DEADLY WEAPON OR DANGEROUS INSTRUMENTALITY IF YOU THE JURY CONCLUDE THAT SUCH IS PROPER AFTER CONSIDERING ALL OF THE FACTS AND CIRCUMSTANCES IN EVIDENCE.

THE LAW SAYS TOO, IF ONE INTENTIONALLY KILLS ANOTHER DURING THE COMMISSION OF A FELONY, THE IMPLICATION OF MALICE MAY ARISE. IF FACTS ARE PROVEN

1551

BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU THE JURY ALONG WITH OTHER EVIDENCE IN THE CASE AND YOU TOO MAY GIVE THAT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE. IF THIS EVIDENCE SHOULD SHOW UNDER WHAT CIRCUMSTANCES A SHOT WAS FIRED OR A BLOW DELIVERED OR AN ACT COMMITTED WHICH TOOK THE LIFE OF ANOTHER, THEN YOU THE JURY WOULD HAVE TO DETERMINE WHETHER UNDER SUCH CIRCUMSTANCES THAT ACT WAS MALICIOUS.

THE NEXT CHARGE THAT ALL SIX DEFENDANTS ARE CHARGED WITH IS CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. AND I WILL AT THIS TIME EXPLAIN TO YOU THE ELEMENTS OF THAT OFFENSE WHICH TOO THE STATE MUST PROVE TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT. IN THIS CASE, AS YOU'RE WELL AWARE, THE STATE HAS NOW CHARGED ALL SIX DEFENDANTS WITH CRIMINAL SEXUAL CONDUCT.

THE FIRST ELEMENT WHICH THE STATE MUST PROVE AND PROVE BEYOND A REASONABLE DOUBT IS THAT THE DEFENDANT ENGAGED IN SEXUAL BATTERY WITH THE DEFENDANT. CRIMINAL SEXUAL CONDUCT IS COMMONLY CALLED THE OLD CRIME OF RAPE. THAT'S WHAT WE'RE TALKING ABOUT WITH REGARDS TO CRIMINAL SEXUAL CONDUCT IN THE FIRST

1552

DEGREE.

I'VE SAID TO YOU THAT FIRST THEY MUST PROVE A SEXUAL BATTERY. WHAT IS SEXUAL BATTERY? OUR CODE OF LAWS DEFINE SEXUAL BATTERY AS FOLLOWS, AND I QUOTE. "SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE OR ANY INTRUSION HOWEVER SLIGHT ON ANY PART OF A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON. I CHARGE YOU, MADAM FOREMAN AND MEMBERS OF THE JURY, THAT IF YOU FIND THAT THE STATE HAS NOT SHOWN BEYOND A REASONABLE DOUBT THAT SEXUAL BATTERY OCCURRED, YOUR DELIBERATIONS WOULD END AT THAT TIME AND YOUR VERDICT WOULD BE NOT GUILTY.

A PERSON IS GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IF THAT PERSON ENGAGES IN SEXUAL BATTERY WITH THE VICTIM AND IF THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT ANY ONE OF THE FOLLOWING CIRCUMSTANCES. FIRST, THAT THE PERSON CHARGED WITH THE CRIME USED AGGRAVATED FORCE TO ACCOMPLISH THE SEXUAL BATTERY. AGGRAVATED FORCE IS DEFINED BY THE CODE TO BE THAT THE ACTOR -- WHO IS THE PERSON ACCUSED OF CRIMINAL SEXUAL CONDUCT -- THAT THE ACTOR USED PHYSICAL FORCE, PHYSICAL RESTRAINT OR PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM.

1553

A SECOND ELEMENT WHICH WOULD EITHER BY ITSELF OR IN CONJUNCTION WITH THE FIRST ELEMENT PERMIT YOU TO FIND THE DEFENDANT GUILTY OF CRIMINAL SEXUAL CONDUCT IS A FINDING BY YOU THAT THE VICTIM SUBMITTED TO SEXUAL BATTERY WHILE THAT PERSON WAS ALSO THE VICTIM OF FORCIBLE CONFINEMENT, KIDNAPPING, ROBBERY, EXTORTION, BURGLARY, HOUSEBREAKING OR ANY OTHER SIMILAR ACT OR OFFENSE. YOU NEED NOT FIND THAT BOTH OF THESE ELEMENTS, THAT IS, AGGRAVATED FORCE AND CONCURRENT SERIOUS CRIME WERE PRESENT AT THE TIME OF THE SEXUAL BATTERY. YOU NEED ONLY TO DETERMINE THAT ONE ELEMENT WAS PRESENT IN ORDER TO CONVICT A DEFENDANT OR DEFENDANTS OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. BUT OF COURSE YOU MUST DETERMINE THAT THE STATE HAS PROVEN THESE ELEMENTS BEYOND A REASONABLE DOUBT.

NEXT, I AM GOING TO CHARGE YOU WITH THE ELEMENTS OF KIDNAPPING. AND AS WITH ALL OTHER ELEMENTS, THE STATE MUST PROVE THESE ELEMENTS TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT. ALL SIX DEFENDANTS ARE CHARGED WITH KIDNAPPING. LET ME NOW EXPLAIN THAT TO YOU. KIDNAPPING IS THE TAKING OF A PERSON AND COMPELLING HIM OR HER TO BE DETAINED AGAINST THEIR WILL. IT IS THE WILLFUL AND UNLAWFUL SEIZING OF A PERSON AGAINST HIS OR HER WILL WITH AN INTENT TO

CAUSE THEM TO BE CONFINED, IMPRISONED OR DETAINED. THE ESSENCE OF THE OFFENSE OF KIDNAPPING IS THE UNLAWFUL SECRET HOLDING OR IMPRISONMENT OF A PERSON. KIDNAPPING MEANS THE CARRYING AWAY OF A PERSON BY UNLAWFUL FORCE OR BY FRAUD AND AGAINST HIS OR HER WILL OR BY SEIZING AND DETAINING HIM OR HER FOR THE PURPOSE OF CARRYING THEM AWAY.

THUS, THE ELEMENTS OF KIDNAPPING ARE AS FOLLOWS. ONE -- AND THE STATE MUST PROVE THESE BEYOND A REASONABLE DOUBT -- THE UNLAWFUL SEIZURE OR CONFINING OR INVEIGLING OR DECOY, KIDNAP, ABDUCT OR CARRY AWAY; TWO, BY ANY MEANS WHATSOEVER; THREE, WITHOUT AUTHORITY OF LAW. THE STATE MUST PROVE THOSE ELEMENTS.

I HAVE NOW DEFINED FOR YOU THE MURDER, THE CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND KIDNAPPING. ANOTHER COUNT OR INDICTMENT AS AGAINST ALL SIX DEFENDANTS IS THE CHARGE OF CONSPIRACY. AND AGAIN, THE INDICTMENTS AND THE ALLEGATIONS WITH REGARD TO THAT INDICTMENT IS IN THE -- THE ALLEGATIONS ARE IN THE INDICTMENT. AND IN THAT CONNECTION, I'VE TOLD YOU THAT YOU WILL HAVE THE INDICTMENTS WITH YOU. AN INDICTMENT AGAINST ANY DEFENDANT AND THESE DEFENDANTS IS SIMPLY THE FORMAL MANNER BY WHICH AN INDIVIDUAL IS BROUGHT TO TRIAL IN

1555

THIS STATE. THE INDICTMENTS THAT YOU WILL HAVE WITH YOU AND THE ALLEGATIONS THEY CONTAIN IS NO EVIDENCE. IT'S SIMPLY WHAT -- IT'S SIMPLY THE ALLEGATIONS AND THE STATE MUST PROVE THEM BEYOND A REASONABLE DOUBT.

NOW, AS I'VE INDICATED TO YOU, ALL SIX DEFENDANTS ARE ALSO CHARGED WITH THE OFFENSE OF CONSPIRACY. AND LET ME NOW DEFINE THAT FOR YOU. THE CRIME KNOWN IN THE COMMON LAW OF CONSPIRACY IS CURRENTLY EMBODIED IN THE APPROPRIATE SECTION OF OUR CODE OF LAWS.

LADIES AND GENTLEMEN OF THE JURY, I CHARGE YOU THAT A CONSPIRACY IS A COMBINATION OF TWO OR MORE PERSONS BY CONCERTED ACTIONS TO ACCOMPLISH SOME UNLAWFUL PURPOSE OR TO ACCOMPLISH A LAWFUL PURPOSE BY UNLAWFUL MEANS. THUS, A CONSPIRACY IS A TYPE OF PARTNERSHIP OF CRIMINAL PURPOSES IN WHICH EACH MEMBER BECOMES THE AGENT OF EVERY OTHER MEMBER. THE GIST OF THE OFFENSE OF CONSPIRACY IS A COMBINATION OR AGREEMENT TO VIOLATE OR TO DISREGARD THE LAW.

MERE SIMILARITY OF CONDUCT AMONG VARIOUS PERSONS AND THE FACT THAT THEY MAY HAVE ASSOCIATED WITH EACH OTHER AND MAY HAVE ASSEMBLED TOGETHER AND DISCUSSED COMMON AIMS AND INTERESTS DOES NOT NECESSARY ESTABLISH PROOF OF THE EXISTENCE OF A CONSPIRACY. HOWEVER, THE EVIDENCE NEED NOT SHOW THAT THE MEMBERS

ENTERED INTO ANY EXPRESSED OR FORMAL AGREEMENT OR THAT THEY DIRECTLY BY WORDS SPOKEN OR IN WRITING STATED BETWEEN THEMSELVES WHAT THE OBJECT OR PURPOSE WAS TO BE OR THE DETAILS THEREOF OR THE MEANS BY WHICH THE OBJECT OR PURPOSE WAS TO BE ACHIEVED.

I CHARGE YOU, LADIES AND GENTLEMEN, THAT BEFORE A JURY MAY FIND THAT A DEFENDANT HAS BECOME A MEMBER OF A CONSPIRACY, THE EVIDENCE MUST SHOW BEYOND A REASONABLE DOUBT THAT THE CONSPIRACY WAS FORMED AND THAT THE DEFENDANT KNOWINGLY AND WILLFULLY PARTICIPATED IN THE UNLAWFUL PLAN WITH THE INTENT TO ADVANCE OR FURTHER SOME OBJECT OR PURPOSE OF A CONSPIRACY. BY KNOWINGLY AND WILLFULLY, I MEAN VOLUNTARILY AND UNDERSTANDINGLY. IF IT APPEARS FROM THE EVIDENCE BEYOND A REASONABLE DOUBT THAT A CONSPIRACY WAS FORMED AND THAT THE DEFENDANT BECAME A MEMBER OF THE CONSPIRACY AND THAT THEREAFTER ONE OR MORE OF THE CONSPIRACIES KNOWINGLY COMMITTED IN FURTHERANCE OF AN OBJECT OR PURPOSE OF THE CONSPIRACY OF ONE OR MORE OF THE OVERT ACTS CHARGED, THEN THE SUCCESS OR FAILURE OF A CONSPIRACY TO ACCOMPLISH THE COMMON OBJECT OR PURPOSE IS IMMATERIAL.

NOW, I CHARGE YOU, LADIES AND GENTLEMEN, THAT IS THE LAW OF THIS STATE, THAT IF A CRIME IS COMMITTED BY TWO OR MORE PERSONS WHO ARE ACTING TOGETHER IN THE

COMMISSION OF AN OFFENSE, THE ACT OF ONE IS THE ACT OF ALL, SOMETIMES SAID THE HAND OF ONE IS THE HAND OF ALL. BY WAY OF ILLUSTRATION, TWO PEOPLE CAN BE GUILTY OF KILLING ANOTHER, OF MURDER, WHEN ONLY ONE OF THE TWO HAD A PISTOL AND ONLY ONE SHOT, BY WAY OF EXAMPLE. IF BOTH ARE TOGETHER, ACTING TOGETHER, ASSISTING EACH OTHER IN THE COMMISSION OF THE OFFENSE, THE LAW SAYS UNDER THOSE CIRCUMSTANCES, THE ACT OF ONE IS THE ACT OF ALL. AND IT IS SOMETIMES SAID THAT THE HAND OF ONE IS THE HAND OF ALL.

MERE PRESENCE IS NOT SUFFICIENT, AND I WILL EXPLAIN THAT TO YOU IN A MOMENT. I CHARGE YOU THAT IF SEVERAL PERSONS AGREE OR CONSPIRE TO COMMIT A CRIME, EACH OF THE PERSONS IS CRIMINALLY RESPONSIBLE FOR THE ACTS OF HIS ASSOCIATES OR CONFEDERATES WHICH ARE DONE IN FURTHERANCE OF OR IN PROSECUTION OF THE COMMON PURPOSE FOR WHICH THEY ARE COMBINED. THE COMMON PURPOSE MAY NOT HAVE INCLUDED OR MAY NOT HAVE BEEN INVOLVED IN THE KILLING AND THE MURDER OF ANYONE. BUT IF IN EXECUTING THE COMMON DESIGN AND PURPOSE AND IF IT WAS UNLAWFUL AND IF IN THE EXECUTION OF THIS COMMON PURPOSE A HOMICIDE IS COMMITTED BY ONE OF THE CONFEDERATES OR ONE OF THE ASSOCIATES AND YOU THE JURY DETERMINE FROM THE PROOF BEYOND A REASONABLE DOUBT THAT THE HOMICIDE WAS THE

1558

PROBABLE AND NATURAL CONSEQUENCES OF THE ACT WHICH WAS DONE IN PURSUANCE OF THIS COMMON DESIGN, THEN ALL WHO WERE PRESENT EITHER ACTUALLY OR CONSTRUCTIVELY AND WHO PARTICIPATED IN THE UNLAWFUL COMMON DESIGN ARE AS GUILTY AS THE SLAYER HIMSELF. AND YOU MUST FIND THIS BEYOND A REASONABLE DOUBT.

I CHARGE YOU NOW, HOWEVER, ONE CO-CONSPIRATOR IS NOT RESPONSIBLE FOR THE INDEPENDENT ACTS THAT ARE NOT REASONABLY FORESEEABLE GROWING OUT OF A PARTICULAR MALICE OF ANYONE OF THE OTHER CO-CONSPIRATORS. ANOTHER PRINCIPAL OF LAW WHICH I DESIRE TO CALL TO YOUR ATTENTION IS WHERE TWO OR MORE ARE PRESENT ACTING IN THE COMMISSION OF A CRIME OR ACTING IN CONCERT, IT DOES NOT MAKE ANY DIFFERENCE WHICH ONE FIRED THE SHOT, AS AN EXAMPLE, IF THEY WERE ACTING TOGETHER IN CONCERT.

ONE WHO IS JOINED IN THE COMMON DESIGN TO KILL OR TO COMMIT AN UNLAWFUL ACT THE NATURAL AND PROBABLE CONSEQUENCES AS I HAVE PREVIOUSLY OUTLINED TO YOU OR THE EXECUTION OF WHICH INVOLVES THE CONTINGENT OF TAKING OF A HUMAN LIFE ESCAPES RESPONSIBILITY FOR A HOMICIDE COMMITTED BY CONFEDERATES IN PURSUANCE OF THE COMMON DESIGN IF BEFORE THE HOMICIDE IS COMMITTED HE WITHDREW ENTIRELY FROM THE UNDERTAKING AND THE FACT OF HIS WITHDRAWAL IS COMMUNICATED TO HIS

1559

ASSOCIATES UNDER SUCH CIRCUMSTANCES AS WOULD PERMIT THEM TO TAKE THE SAME ACTION. NOTWITHSTANDING HIS WITHDRAWAL, HE IS RESPONSIBLE FOR A HOMICIDE COMMITTED IN PURSUANCE OF THE ORIGINAL DESIGN OR AS A NATURAL AND PROBABLE CONSEQUENCE OF THE EXECUTION THEREOF BY ONE OF HIS ASSOCIATES TO WHOM PRIOR TO THE COMMISSION OF THE CRIME THE FACT OF HIS WITHDRAWAL HAD NOT BEEN COMMUNICATED, OR IF IT HAD NOT -- WAS NOT COMMUNICATED UNDER SUCH CIRCUMSTANCES AS WOULD PERMIT HIS ASSOCIATE TO WITHDRAW.

NOW, THERE IS DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. AND IN THAT CONNECTION, I WOULD DESIRE AT THIS TIME TO CHARGE YOU THEREBY. BY DIRECT EVIDENCE OF A FACT IS MEANT THE TESTIMONY OF PERSONS WHO HAVE PERCEIVED ITS EXISTENCE BY MEANS OF THEIR SENSES AS WHERE A PERSON SEES A CRIME COMMITTED AND COMES INTO COURT AND TESTIFIES AS TO WHAT HE OR SHE SAW. BY INDIRECT OR CIRCUMSTANTIAL EVIDENCE IS MEANT THE PROOF OF SOME INDIRECT OR CIRCUMSTANTIAL -- EXCUSE ME -- BY INDIRECT OR CIRCUMSTANTIAL EVIDENCE IS MEANT THE PROOF OF SOME OTHER FACT OR FACTS FROM WHICH TAKEN EITHER SINGULARLY OR COLLECTIVELY THE EXISTENCE OF A PARTICULAR FACT IN QUESTION MAY BE INFERRED AS A NECESSARY CONSEQUENCE. CRIMES MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE AS WELL AS BY THE DIRECT

TESTIMONY OF EYEWITNESSES.

CIRCUMSTANTIAL EVIDENCE IS GOOD PROVIDED IT MEETS THE LEGAL TEST. TO THE EXTENT THAT THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, IT MUST PROVE ALL OF THE CIRCUMSTANCES RELIED ON BEYOND A REASONABLE DOUBT. THEY MUST BE WHOLLY AND IN EVERY PARTICULAR CONSISTENT WITH ONE ANOTHER AND THEY MUST POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS. IT IS NOT SUFFICIENT THAT THEY CREATE A PROBABILITY, THOUGH A STRONG ONE. AND IF ASSUMING THEM TO BE TRUE THEY MAY BE ACCOUNTED FOR IN ANY OTHER REASONABLE HYPOTHESIS WHICH DOES NOT INCLUDE THE GUILT OF THE ACCUSED, THE PROOF HAS FAILED.

DURING THE COURSE OF THIS TRIAL, I QUALIFIED CERTAIN WITNESSES AS EXPERT WITNESSES, WITNESSES WHO BY TRAINING, EDUCATION OR EXPERIENCE ARE CONSIDERED AS EXPERTS IN A PARTICULAR FIELD, AND MAY GIVE OPINIONS IN THAT FIELD BASED UPON THE FACTS OF A MATTER. THEIR CONCLUSIONS AND OPINIONS CONSTITUTES EVIDENCE TO BE CONSIDERED BY YOU IN CONNECTION WITH ALL OF THE OTHER TESTIMONY AND EVIDENCE IN THE CASE. YOU, THE JURY, MAY GIVE IT SUCH WEIGHT AS YOU IN YOUR EXPERIENCE AND DISCRETION MAY DETERMINE APPROPRIATE.

THESE DEFENDANTS ARE ALSO CHARGED WITH THE

AIDING AND ABETTING. AND IN THAT CONNECTION, I WOULD CHARGE YOU AS FOLLOWS. IN ORDER TO BE GUILTY AS AN AIDER OR ABETTOR, THE PARTICIPANTS MUST BE CHARGEABLE WITH KNOWLEDGE OF THE PRINCIPAL'S CRIMINAL CONDUCT. MERE PRESENCE AT THE SCENE IS NOT SUFFICIENT TO ESTABLISH GUILT AS AN AIDER OR ABETTOR, NOR IS MERE KNOWLEDGE. ALL PERSONS WHO ARE PRESENT AIDING, ABETTING, ENCOURAGING OR INCITING ANOTHER TO COMMIT A CRIMINAL ACT ARE EQUALLY GUILTY WITH THE ONE WHO DOES THE ACT. AIDING AND ABETTING ENCOMPASSES ALL ASSISTANCE RENDERED BY ACTS OR WORDS OF ENCOURAGEMENT, INCITEMENT OR SUPPORT WHICH PRECONCEPTS WITH THE INTENTION OF RENDERING ASSISTANCE IF NECESSARY. ALL PERSONS PRESENT AIDING AND ABETTING A FELONY ARE REGARDED AS PRINCIPALS AND ARE EQUALLY GUILTY. THE ACTUAL PERPETRATOR IS REGARDED AS THE AGENT OR INSTRUMENT BY WHICH THE CRIME IS PERPETRATED.

NOW, SEVERAL DEFENDANTS ELECTED TO TAKE THE STAND AND SEVERAL DEFENDANTS ELECTED NOT TO TAKE THE STAND. THERE IS ABSOLUTELY NO INFERENCE TO BE DRAWN BY YOU AS TO WHETHER THEY DID OR DID NOT TAKE THE STAND. ONE HAS THE ABSOLUTE CONSTITUTIONAL RIGHT TO TESTIFY IN HIS OWN BEHALF. EQUALLY IMPORTANT, HE HAS THE ABSOLUTE RIGHT NOT TO TESTIFY IN HIS OWN BEHALF.

AND IN THAT REGARD, I CHARGE YOU AS FOLLOWS, MADAM FOREMAN AND MEMBERS OF THIS JURY, THAT A FACT THAT THE DEFENDANT DOES NOT TESTIFY IN HIS OWN BEHALF CANNOT, MUST NOT BE CONSIDERED AGAINST HIM UNDER ANY CIRCUMSTANCES WHATSOEVER. THE FAILURE OF ANY DEFENDANT TO TAKE THE WITNESS STAND AND TO TESTIFY IN HIS OWN BEHALF DOES NOT CREATE ANY PRESUMPTION AGAINST HIM, AND I TELL YOU NOW THAT YOU MUST NOT PERMIT THAT FACT TO WEIGH IN THE SLIGHTEST DEGREE AGAINST THAT DEFENDANT. YOU MUST NOT, MADAM FOREMAN, PERMIT THE FACT THAT HE -- HE FAILED TO TESTIFY TO EVEN ENTER INTO YOUR DISCUSSIONS IN THE JURY ROOM.

NOW, MERE PRESENCE AT THE SCENE OF A CRIME IS INSUFFICIENT TO CONVICT ONE AS A PRINCIPAL ON THE THEORY OF AIDING AND ABETTING. A PERSON MUST PERSONALLY COMMIT THE CRIME OR BE PRESENT AT THE SCENE OF THE CRIME AND INTENTIONALLY OR THROUGH A COMMON DESIGN AID, ABET OR ASSIST IN THE COMMISSION OF THAT CRIME THROUGH SOME OVERT ACT. I CHARGE YOU THAT MERE KNOWLEDGE THAT ANOTHER PERSON OR PERSONS INTEND TO ENGAGE OR ARE ENGAGED IN CRIMINAL CONDUCT IS NOT SUFFICIENT TO SHOW AN INTENT TO AID IN THAT CONDUCT.

I CHARGE YOU NOW AS I DID DURING THE PROGRESS OF THIS TRIAL WITH REFERENCE TO EVIDENCE OF AN ALLEGED

PRIOR RECORD OF A DEFENDANT OF ANOTHER CRIME. THIS EVIDENCE WAS ADMITTED FOR A LIMITED PURPOSE. I INSTRUCT YOU NOW THAT YOU MUST NOT CONSIDER SUCH EVIDENCE FOR ANY PURPOSE EXCEPT THE PURPOSE FOR WHICH IT WAS ADMITTED. THIS EVIDENCE WAS ADMITTED AND MAY BE CONSIDERED BY YOU THE JURY IF YOU CONCLUDE IT IS TRUE ONLY FOR THE PURPOSE OF EVALUATING THE CREDIBILITY OR BELIEVABILITY OF THE TESTIMONY PRESENTED BY THE DEFENDANT HIMSELF AND FOR NO OTHER PURPOSE. YOU CANNOT AND YOU MUST NOT CONSIDER A PRIOR RECORD, IF ANY, OF A DEFENDANT AS ANY EVIDENCE OF HIS GUILT OF THE CHARGE WITH WHICH HE IS NOW BEING TRIED. YOU MAY GIVE TO THIS EVIDENCE SUCH WEIGHT AND SUCH VALUE, IF ANY, TO WHICH YOU FIND IT VALUABLE TO YOU, IF ANY, ON THE SOLE ISSUE OF THE CREDIBILITY AND THE BELIEVABILITY OF THE TESTIMONY OFFERED BY THE DEFENDANT HIMSELF, BUT NOT AS TO ANY EVIDENCE OF GUILT FOR THE CRIMES FOR WHICH HE'S NOW BEING TRIED. AND IF THE TESTIMONY SHOWS PRIOR CRIMES OF OTHER WITNESSES WHO ARE NOT ON TRIAL, YOU MAY CONSIDER THAT, IF YOU FIND IT TO BE TRUE AND IF YOU CHOOSE TO AS EVIDENCE OF HIS CREDIBILITY OR BELIEVABILITY.

A DEFENDANT IN THIS CASE HAS PLED IN THIS CASE WHAT WE CALL A PLEA OF ALIBI. THAT MEANS THAT HE WAS NOT AT THE SCENE OF THE CRIME AT THE TIME THAT IT WAS

1564

COMMITTED, BUT HE WAS ELSEWHERE AND HAD NOTHING TO DO WITH IT. THERE IS NO BURDEN UPON THE DEFENDANT TO PROVE HIS ALIBI. THE BURDEN IS ON THE STATE TO PROVE THAT HE WAS ACTUALLY PRESENT AND SEEN THE CRIME AND THAT HE ACTUALLY PARTICIPATED IN IT AND THAT HE WAS NOT ELSEWHERE. AND THE STATE MUST PROVE THIS ALLEGATION AS ALL OTHER ALLEGATIONS ARE REQUIRED TO BE PROVED, BY EVIDENCE BEYOND A REASONABLE DOUBT.

LADIES AND GENTLEMEN OF THE JURY, YOU HAVE PATIENTLY SET WITH US NOW FOR A WEEK AND ANOTHER DAY. AND I'VE BEEN PARTICULARLY IMPRESSED AS I KNOW ALL COUNSEL FOR THE STATE AND DEFENDANTS HAVE TO YOUR ATTENTION TO DUTY IN THE CASE, YOUR WRAPPED ATTENTION THROUGHOUT, THE CLOSE FOLLOWING OF ALL OF MY INSTRUCTIONS. AND THAT IS DEEPLY APPRECIATED BY ALL PARTICIPANTS IN THE CASE.

YOU 12 AND YOU TWO ALTERNATES, IF NEEDED, HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY TRY AND TO DETERMINE THE FACTS OF THIS CASE. AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT AND YOU WOULD HAVE FULLY DISCHARGED YOUR DUTY AS JURORS.

YOU MUST NOT -- YOU MUST NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINIONS, IF ANY, WHICH

1565

YOU HAVE HEARD ON THE OUTSIDE, BUT YOU ARE TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN WITNESSES ALONG WITH SUCH OTHER EVIDENCE WHICH HAS BEEN INTRODUCED.

AS YOU ARE WELL AWARE OF NOW, AS TO THE DEFENDANT GRAHAM, THERE ARE THREE VERDICTS THAT YOU MUST RENDER EITHER NOT GUILTY OR GUILTY. AS TO EACH OF THE OTHER FIVE DEFENDANTS, THERE ARE FOUR VERDICTS THAT YOU MUST RENDER. EITHER NOT GUILTY OR GUILTY. WHATEVER YOUR VERDICT IS AS TO EACH COUNT, AS TO EACH INDICTMENT, AS TO EACH DEFENDANT, MUST BE THE UNANIMOUS VERDICT OF ALL 12 OF YOU. IT CANNOT BE A VERDICT OF THE MAJORITY. OBVIOUSLY, IT WOULD NOT BE ONE OF THE MINORITY.

AGAIN, I EMPHASIZE TO YOU, YOU TAKE THIS JURY FORM OF EACH DEFENDANT WHEN YOU GET TO EACH DEFENDANT, THEN YOU START WITH EACH COUNT. YOU DECIDE THE EVIDENCE AS TO THAT DEFENDANT AS IT RELATES TO THAT COUNT AND WRITE YOUR VERDICT. PROCEED WITH THAT DEFENDANT ON EACH COUNT AND WRITE YOUR VERDICT, AND THEN GO TO THE NEXT DEFENDANT. CONSIDER THE EVIDENCE AGAINST HIM, IF ANY, AND WRITE YOUR VERDICT. AS I'VE TOLD YOU, IN CONSIDERING ONE DEFENDANT, ALL THE VERDICTS CAN BE GUILTY, ALL THE VERDICTS CAN BE NOT GUILTY, SOME OF THE VERDICTS CAN

1566

BE GUILTY AND SOME NOT GUILTY, DEPENDING ON YOUR VIEW OF THE EVIDENCE AND THE LAW IN THE CASE. AND THEN, AS YOU CONSIDER ALL SIX DEFENDANTS, SOME DEFENDANTS CAN BE GUILTY OF SOME OR ALL OF THE COUNTS, SOME DEFENDANTS MAY BE GUILTY OF NONE OF THE COUNTS. YOUR VERDICT DOESN'T HAVE TO BE THE SAME. AGAIN, YOU CONSIDER THE EVIDENCE SEPARATELY AS TO EACH ONE OF THESE DEFENDANTS AND THEREAFTER WRITE YOUR VERDICT.

NOW, WE ARE GOING TO HAVE ARGUMENTS OF FIRST THE STATE IN JUST A MOMENT, THEN THE SIX DEFENDANTS, WITH A CLOSURE BY THE STATE. WOULD YOU LIKE TO TAKE A SHORT BREAK AND STRETCH JUST A MINUTE BEFORE WE HAVE THE OPENING STATEMENT OR WOULD YOU LIKE TO GO AHEAD WITH THE ONE OPENING STATEMENT AND THEN STOP? EVERYBODY OKAY AT THIS TIME?

FORELADY: THEY WOULD LIKE TO TAKE A BREAK.

THE COURT: YES, I WOULD LIKE FOR YOU TO. AND JUST AS SOON AS YOU'RE READY, KNOCK ON THE DOOR AND WE'LL START BACK. LET'S TAKE JUST A SHORT BREAK AND THEN WE'LL BE READY TO GO.

(WHEREUPON, THE JURY WAS REMOVED FROM THE COURTROOM AND THE FOLLOWING PROCEEDINGS COMMENCED IN OPEN COURT.)

1567

(WHEREUPON, A BREAK WAS TAKEN FROM THE PROCEEDINGS.)

(WHEREUPON, THE JURY WAS RETURNED TO THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE COMMENCED IN OPEN COURT.)

THE COURT: THANK YOU, LADIES AND GENTLEMEN. YOU MAY HAVE YOUR FIRST ARGUMENT.

MR. WILSON: STATE WAIVES OPENING, YOUR HONOR.

THE COURT: SIR?

MR. WILSON: STATE WAIVES OPENING.

THE COURT: STATE WAIVES OPENING?

MR. WILSON: YES, SIR.

THE COURT: IS THAT BY AGREEMENT? ALL RIGHT. GO AHEAD. THAT WILL SAVE SOME TIME.

MR. ERVIN: PLEASE THE COURT. SOLICITOR. LADIES AND GENTLEMEN OF THE JURY, AS YOU'VE HEARD FROM JUDGE COTTINGHAM, THIS IS OUR LAST OPPORTUNITY TO SPEAK TO YOU. BECAUSE SEVERAL OF THE PEOPLE CHARGED HAVE CHOSEN TO TESTIFY, WE DON'T HAVE THE LAST ARGUMENT. IF I FORGET TO SAY ANYTHING OR TO BRING ANYTHING TO YOUR ATTENTION AT THIS TIME, PLEASE DON'T HOLD IT AGAINST MARTIN MCINTOSH BECAUSE THAT COULD HAPPEN AND IN ALL LIKELIHOOD WILL HAPPEN AND I

1568

WON'T HAVE ANOTHER OPPORTUNITY TO GET UP AND COUNTER ANY POINTS THAT SOLICITOR WILSON MAKES. AND I'M SURE THERE WILL BE SOME THINGS THAT I NEGLECT TO BRING TO YOUR ATTENTION. BUT I'M GOING TO TRY AND COVER IT IN AS MUCH DETAIL AS I CAN.

IT'S DIFFICULT TO DO IN A CASE OF THIS LENGTH. I MEAN, Y'ALL HEARD A LOT OF TESTIMONY LAST WEEK. AND AS THE JUDGE SAID, YOU PAID CLOSE ATTENTION. I WAS REALLY IMPRESSED WITH THE WAY Y'ALL LISTENED TO ALL OF THE TESTIMONY. YOU SEEMED TO HANG ON TO EVERY WORD OF EVERY WITNESS, AND THAT'S WHAT JURORS SHOULD DO BECAUSE THERE'S SO MUCH AT STAKE IN THIS CASE. MARTIN IS CHARGED WITH A VERY SERIOUS CRIME. THE PENALTIES THAT ATTACH TO THOSE CRIMES ARE THE MOST SEVERE PENALTIES ANY PERSON CAN BE FACED WITH IN THIS GREAT STATE AND COUNTRY. AT THE BEGINNING OF THIS TRIAL, Y'ALL DID SOMETHING THAT I THINK WAS INDICATIVE WHICH SHOWED HOW YOU WANTED TO BE FAIR TO EACH PERSON CHARGED AND THAT IS Y'ALL ASKED FOR A LIST OF THE PEOPLE AND WHAT THEY WERE CHARGED WITH SHOWING AT THAT TIME THAT YOU WANTED TO JUDGE THEM INDIVIDUALLY ON THE MERITS OF THIS CASE. IT'S VERY IMPORTANT FOR YOU TO DO THAT BECAUSE THERE'S DIFFERENT PROOF AGAINST THE DIFFERENT PEOPLE CHARGED. THE CASE THAT THE STATE HAS PRESENTED MAY BE STRONGER

1569

AS TO ONE PERSON AND WEAKER OR NOT EXISTENT AS TO ANOTHER.

SO WHEN YOU RETIRE TO GO BACK TO YOUR JURY ROOM AND BEGIN YOUR DELIBERATION, REMEMBER WHEN YOU TALK ABOUT ONE PERSON, TRY TO KEEP IT SEPARATE IN YOUR MIND BECAUSE WHAT THE SOLICITOR HAS DONE BY CALLING ALL THESE CASES TOGETHER IS TO HAVE SOMEWHAT OF A SCATTER SHOT APPROACH.

A LOT OF BAD THINGS HAVE COME OUT DURING THIS TRIAL THAT DON'T NECESSARILY APPLY TO MARTIN MCINTOSH. YOU HEARD HIS TESTIMONY. HE WASN'T HERE. GUILT BY ASSOCIATION IS A HORRIBLE THING. IT IS A TERRIBLE THING. AND IT IS SOMETHING THAT SHOULD NOT INVADE THE JURY ROOM. YOU SHOULDN'T THINK MERELY BECAUSE HE LIVED IN THAT COMMUNITY FOR A PERIOD OF TIME IN DECEMBER AND JANUARY WHEN ALL OF THESE RUMORS WERE FLYING AROUND THAT HE THEREFORE IS GUILTY OF ANYTHING. IT'S UNFORTUNATE THAT HE CAME BACK FROM NEW YORK IN LATE NOVEMBER, NOVEMBER 22ND, TO BE EXACT. PROBABLY THE WORST DECISION HE EVER MADE BECAUSE HE GOT PULLED INTO ALL OF THIS.

IF YOU WILL REMEMBER THE SOLICITOR'S QUESTIONING OF HIM, IT WAS SOMEWHAT VAGUE. THERE SEEMED TO BE SOME IMPLICATION THAT BECAUSE HE CAME DOWN HERE IN A RENTAL CAR IN EARLY NOVEMBER AND RETURNED BACK TO NEW

1570

YORK AND BECAUSE HIS FATHER HAD GIVEN HIM SOME MONEY AND THAT HE WAS UNEMPLOYED THAT HE WAS A BAD PERSON. BUT MARTIN HAS FAMILY HERE. MARLBORO COUNTY IS LIKE HOME TO HIM. HIS GRANDMOTHER LIVES HERE. HIS FATHER WAS BORN AND RAISED HERE. AND THERE'S NOTHING NEGATIVE ABOUT HIM COMING DOWN TO VISIT FRIENDS AND FAMILY BECAUSE HE HAD BEEN DOWN HERE OFF AND ON HIS ENTIRE LIFE. WHAT THE SOLICITOR IS DOING WHEN HE MAKES THESE NEGATIVE COMMENTS ABOUT MARTIN DRIVING A RENTAL CAR AND HAVING THE MONEY TO COME DOWN HERE WHICH HE GOT FROM HIS FATHER IS HE'S IMPLYING TO YOU THAT IN SOME WAY HE'S EVIL, THAT HE FITS SOME STEREOTYPE, CAME DOWN HERE WITH TWO OTHER YOUNG BLACK MEN AND HAD A LITTLE BIT OF MONEY, IS UNEMPLOYED. BUT THAT -- THAT DOESN'T MEAN ANYTHING AND IT SHOULDN'T HAVE ANY WEIGHT IN YOUR DISCUSSIONS BECAUSE THAT'S NOT WHAT HE'S ON TRIAL FOR. HE'S NOT ON TRIAL FOR BEING UNEMPLOYED. HE'S NOT ON TRIAL FOR HAVING CASH THAT HIS FATHER GAVE HIM. HE'S NOT ON TRIAL FOR COMING DOWN HERE. THEY ARE SAYING HE DID THESE TERRIBLE THINGS AND MARTIN SAYS HE'S NOT GUILTY AND HE HAS MAINTAINED THAT POSITION FROM DAY ONE. WHEN HE HEARD THERE WAS A WARRANT OUT DOWN HERE FOR HIM, DID HE RUN TO CANADA? DID HE RUN AND HIDE, WHICH HE CERTAINLY COULD HAVE DONE? NO. HE CAME DOWN AND

1571

REPORTED TO THE D.A.'.S. OFFICE ON HIS OWN. AND WHEN HE GOT THERE, THEY SAID NO, WE DON'T KNOW WHAT YOU'RE DOING HERE. THERE'S NO LONGER A SUBPOENA FOR YOU. DID MARTIN SAY, WELL, FINE, I'LL LEAVE? NO, HE SAID, WELL, GET IN TOUCH WITH INVESTIGATOR JACOBS BECAUSE I'VE HEARD THAT THEY ARE LOOKING FOR ME AND I WANT TO MEET MY ACCUSERS; I DIDN'T DO THIS. AND THAT'S WHAT HE DID. AND HE TOLD THEM FROM THE VERY START I DON'T KNOW WHAT HAPPENED HERE; I JUST KNOW THAT I WASN'T HERE AND I WASN'T INVOLVED.

AND THAT'S VERY IMPORTANT. YOU DON'T HAVE ANY PRIOR INCONSISTENCIES BY HIM BECAUSE HE DOESN'T KNOW ANYTHING TO TELL YOU. UNLIKE THE TWO WITNESSES WHO MAKE UP A CASE AGAINST HIM, HE'S BEEN CONSISTENT FROM THE VERY BEGINNING. NOW, I TOLD YOU AT THE BEGINNING OF THIS CASE DURING MY OPENING STATEMENT THAT THE FIRST PIGS TO THE TROUGH GET FED AND THAT'S WHAT HAPPENED IN THIS CASE. DANNY DAVIS AND BOBBY RANSOM AFTER ALMOST TWO YEARS OF SAYING THEY WERE NOT GUILTY, THEY WERE INNOCENT, LAST WEEK CHOSE TO CUT A DEAL WITH THE STATE. AND THAT'S VERY SIGNIFICANT BECAUSE THE JUDGE TOLD YOU THE MOST IMPORTANT THING YOU HAVE TO DO AS A JURY IS WEIGH THE CREDIBILITY OF EACH WITNESS WHO HAS TESTIFIED. AND IN THIS CASE, THE ONLY EVIDENCE AGAINST MARTIN MCINTOSH CAME FROM

DANNY DAVIS AND BOBBY RANSOM. JEFFREY GRAHAM SAID THAT HE RECALLED BEING IN A -- AT STUCKEY'S SHOP WHEN MARTIN WAS THERE AND HE WASN'T SURE WHETHER IT WAS IN DECEMBER OR JANUARY WHEN THERE WAS SOME TALK GOING ON IN THE SHOP, BUT HE WASN'T EVEN SURE IF MARTIN WAS IN THE SHOP WHEN THE CONVERSATION WAS GOING ON. HE KNEW HE WAS WORKING THERE THAT DAY AND HE WAS IN AND OUT. THAT CERTAINLY DOESN'T MAKE HIM GUILTY OF ANYTHING. AND IT'S VERY SIGNIFICANT -- I TRIED TO BRING THIS OUT ON CROSS-EXAMINATION -- IT'S VERY SIGNIFICANT THAT THE FIRST TIME MARTIN MCINTOSH'S NAME WAS EVER MENTIONED WAS IN PAGELAND, SOUTH CAROLINA AFTER DANNY DAVIS HAD TALKED TO POLICE BY HIS OWN ESTIMATION 10 TO 15 TIMES.

AND WHO DID THE POLICE TAKE UP TO PAGELAND WITH THEM? BOBBY RANSOM. DANNY'S GOOD BUDDY. THEY HAD PLENTY OF OPPORTUNITY AT THAT POINT, MARCH THE 10TH, TO TALK TO EACH OTHER. NOW, HOW DO YOU WEIGH THE TESTIMONY OF DANNY DAVIS AND BOBBY RANSOM? FIRST OF ALL, YOU HAVE TO USE THE TEST THAT THE JUDGE SAID YOU SHOULD USE. WHAT DID THEY HAVE TO GAIN BY THEIR TESTIMONY? THEY'VE ALREADY TOLD YOU ABOUT THE DEAL. THEY WERE FACING THE DEATH PENALTY AND THEY CUT A DEAL WHEREBY THEY CAN GET NO MORE THAN 15, 20 YEARS FOR ALL OF THESE CRIMES THAT THEY'VE ADMITTED TO

COMMITTING. THAT'S WHAT THEY HAD TO GAIN BY IT. NOT EVEN SUBJECT TO THE DEATH PENALTY. THAT'S A PRETTY BIG GAIN THERE. THAT'S NO SMALL EXCHANGE. THAT PLEA BARGAIN WAS STRUCK LAST WEEK, AGAIN, AFTER TWO YEARS OF SAYING NOT GUILTY.

AND YOU MIGHT ASK YOURSELF WHY WOULD MARTIN'S NAME COME UP? DO YOU REMEMBER HOW DANNY AND BOBBY CAME ACROSS? ALL THE DOPING AND DRINKING. AND IT WAS UNBELIEVABLE WHAT DANNY AND BOBBY ADMITTED TO CONSUMING DURING THEIR LIFETIME SINCE THEY WERE TEENAGERS. HALLUCINOGENIC DRUGS, LSD, EVERY KIND OF PAIN -- PHENOBARBITAL, AMPHETAMINES, HUFFING GAS AND DRANK CREEK LIQUOR. AND I DON'T SEE HOW ANYBODY COULD CONSUME THAT MUCH ALCOHOL. AND THEN THEY STOOD HERE IN FRONT OF YOU AND SAID THAT THAT DIDN'T AFFECT OUR ABILITY TO RECALL DATES AND EVENTS AND PEOPLE. WELL, I SUBMIT TO Y'ALL -- AND I TRULY BELIEVE THIS -- THAT THAT IS A LIE. AND YOU CAN USE YOUR COMMON SENSE. Y'ALL WEREN'T BORN YESTERDAY. Y'ALL KNOW WHAT THAT KIND OF DOPING AND DRINKING AND SMOKING CRACK AND I.V. COCAINE IN YOUR VEINS, YOU KNOW WHAT THAT CAN DO TO A PERSON'S BRAIN. IT WILL BURN YOU OUT. IT WILL FRY YOU.

AND SO WHAT YOU'VE GOT, FOR THE FIRST TIME, MARTIN'S NAME COMES UP IN MARCH. PRIOR STATEMENTS

HAVE BEEN MADE. PRIOR STATEMENTS HAVE BEEN MADE BY DANNY DAVIS WITH NO MENTION. ONLY UNTIL HE GOT TOGETHER WITH BOBBY RANSOM DID MARTIN'S NAME SURFACE. THAT WAS IN PAGELAND. AND IN LESS THAN AN HOUR, THOSE TWO PEOPLE GAVE FOUR STATEMENTS, FULL OF INCONSISTENCIES. AND THEY EVEN CHANGED THEM AGAIN FOR THE FIRST TIME LAST WEEK. THAT WAS THE FIRST TIME ANY MENTION OF THIS THIRD ABANDONED HOUSE THAT BOBBY RANSOM GOT CONFUSED ABOUT EVER CAME UP. THE FIRST TIME. AND ONCE AGAIN, THAT'S THE OTHER THING YOU HAVE TO DO IN TRYING TO DETERMINE WHETHER OR NOT SOMEBODY'S TESTIMONY IS BELIEVABLE IS LOOK AT WHETHER OR NOT IT'S CONSISTENT WITH WHAT THEY'VE SAID PREVIOUSLY. AND THE STATE CAN'T GET BACK UP HERE AND TELL YOU THAT THEIR STATEMENTS WERE FULL OF CONSISTENCIES. AND IT WASN'T UNTIL THEY HAD A CHANCE TO COMPARE, TO GET TOGETHER ON THEIR STORIES AND AFTER THEY HAD CUT THEIR FINAL DEAL THAT MARTIN'S NAME CAME UP.

AND SURELY MARTIN LIVED IN THAT TRAILER FROM DECEMBER ON. AND SURELY THERE WAS PARTYING GOING ON AT BOBBY RANSOM'S AT THAT TIME. DANNY DAVIS STILL LIVED IN THE NEIGHBORHOOD AND THEIR RECOLLECTION OF WHAT HAPPENED, AGAIN, WOULD HAVE BEEN DIMMED, WOULD HAVE BEEN CHANGED BY THEIR BEHAVIOR, BY THE WAY THEY

PARTIED ALL THE TIME. MARTIN UNFORTUNATELY WAS LIVING IN THE NEIGHBORHOOD THEN AND WAS A CONVENIENT PERSON TO BRING INTO THIS THING TO GET A DEAL BECAUSE THE STATE WANTED HIM. THEY WANTED TO CHARGE HIM. AND THEY DID BASED ON THE TESTIMONY OF THESE TWO BURNED OUT WITNESSES.

Y'ALL HAVE ALL PROBABLY SEEN THE COMMERCIAL ON TELEVISION, THIS IS YOUR BRAIN, THIS IS YOUR BRAIN ON DRUGS AND ON THE AIR WAVES FOR SEVERAL YEARS NOW. WELL, THAT'S THE STATE'S CASE. THE STATE'S CASE ON DRUGS, BOBBY RANSOM AND DANNY DAVIS. AND THINK ABOUT THE EVIDENCE BECAUSE THE EVIDENCE IS REALLY IMPORTANT IN THIS CASE. WHERE WAS THE SCIENTIFIC EVIDENCE FOUND? IT WASN'T FOUND IN THE TRAILER. IT WAS FOUND IN THAT ABANDONED HOUSE ALONG WITH THE GLASSES AND THE EARRING. NO CONNECTION TO MARTIN MCINTOSH. NOWHERE AT ANY POINT DURING THIS TRIAL WAS ANY CONNECTION DRAWN BETWEEN THE EVIDENCE ABOUT HOW MS. DARLENE PATTERSON DIED AND MARTIN MCINTOSH.

AS A MATTER OF FACT, THE EVIDENCE COLLECTED AT RICKY STUCKEY AND ROBERT GRAHAM'S TRAILER WHERE MARTIN LIVED FROM DECEMBER TO -- UNTIL HE MOVED BACK TO NEW YORK IN FEBRUARY, NONE OF THAT IMPLICATES MARTIN. THEY DIDN'T COLLECT ANY SCIENTIFIC EVIDENCE HERE, WHICH MAKES ME WONDER WHY THE STATE NEVER CHOSE

TO SEARCH BOBBY RANSOM'S TRAILER. BOBBY'S TRAILER. THAT'S WHERE ALL OF THE PARTYING WENT ON. NO, THEY NEVER SEARCHED THAT. EVIDENCE WAS COLLECTED AT THIS ABANDONED HOUSE. AND WHEN YOU GO BACK TO YOUR JURY ROOM YOU WILL REMEMBER THE TESTIMONY. AGAIN, NO CONNECTION WHATSOEVER TO MARTIN MCINTOSH BECAUSE HE WASN'T THERE. NOBODY EVER PUT HIM THERE. THE FIRST TIME HIS NAME EVER CAME UP AT THIS THIRD ABANDONED HOUSE WAS LAST WEEK IN COURT AFTER THE DEAL HAD BEEN CUT WHEN THEY TESTIFIED. AND THEY WERE CONFUSED ABOUT THAT.

REMEMBER THE TESTIMONY OF DANNY DAVIS? HE ADMITTED TO THE 12 OF Y'ALL THAT YOU COULD NOT BELIEVE A SINGLE THING HE SAID, NOT A SINGLE THING BECAUSE IT WAS FULL OF INCONSISTENCIES. FIRST TIME HE EVER HEARD ABOUT DARLENE'S BODY BEING FOUND WAS AFTERWARDS. HE PLED GUILTY UNDER THIS LEGAL THEORY CALLED NORTH CAROLINA VERSUS ALFORD, WHICH MEANS THAT THE EVIDENCE IS SO OVERWHELMING YOU DON'T HAVE ANY CHOICE BUT TO ADMIT IT. IT IS NOT LIKE YOU'RE STANDING IN FRONT OF A JURY OR A JUDGE AND SAYING I'M GUILTY. I WAS THERE. THIS IS WHAT I DID. BUT HE PLED GUILTY UNDER NORTH CAROLINA VERSUS ALFORD, THEN GOES INTO THIS STATEMENT ABOUT WHAT HAPPENED AT THE BRIDGE. AND WHEN I CROSS-EXAMINED HIM, HE SAID,

1577

WELL, THAT ISN'T -- THAT ISN'T THE WAY IT HAPPENED. THE FIRST TIME I EVER HEARD ABOUT THIS WAS AT MY MAMA'S FUNERAL WHEN SO AND SO TOLD ME, WEEKS AFTER DARLENE'S BODY WAS FOUND. IS THAT BELIEVABLE TESTIMONY? IS THAT BELIEVABLE? THAT'S NOT THE WAY THIS SYSTEM -- THIS GREAT SYSTEM WE HAVE IS MEANT TO OPERATE. IT JUST IS NOT MEANT TO BE THAT WAY.

WHEN SOMETHING OF THIS MAGNITUDE WITH STAKES SO HIGH, WHEN A PERSON'S LIFE AND LIBERTY IS AT STAKE, YOU CAN LISTEN TO SOMETHING LIKE THAT AND FEEL COMFORTABLE WITH YOUR DECISION. THAT'S NOT THE WAY THE GREAT AMERICAN SYSTEM IS MEANT TO OPERATE AND I TRUST IN EACH ONE OF Y'ALL NOT TO ALLOW IT TO OPERATE THAT WAY.

NOW, LET'S GO TO BOBBY. I'VE NEVER HEARD OF ANYBODY CONSUMING THAT MANY SUBSTANCES. AND YOU WONDER HOW IT WOULD AFFECT A PERSON. REMEMBER WHAT HE SAID ABOUT THIS CRAZY STORY OF STROM THURMOND MONDAY? WHAT WAS THAT ABOUT? SAID HE HAD BEEN CHARGED WITH THIS BEFORE AND IT INVOLVED A CONSPIRACY TO KIDNAP AND RAPE A YOUNG WHITE GIRL WITH 12 OTHER PEOPLE. AND THAT WAS WELL OVER TEN YEARS AGO. AND HERE HE IS AGAIN ALL OVER AGAIN. HE'S THE GUILTY PARTY, CERTAINLY.

AND RINGO, WHERE IS RINGO? RINGO HASN'T BEEN

TRIED YET. RINGO IS STILL BEING EVALUATED AT THE STATE HOSPITAL. RINGO IS THE ONE THAT THE STATE HAS THE GOODS ON BECAUSE HE'S THE GUILTY PARTY.

NOW, HE MAY HAVE HAD ACCOMPLICES, BUT THERE AGAIN, NOT MARTIN MCINTOSH. NOTHING EVER CONNECTED HIM TO RINGO OTHER THAN A BLANKET STATEMENT THAT HE KNEW HIM AND THAT WAS IT. AND THAT'S SIGNIFICANT BECAUSE THE GUILTY PEOPLE ARE NOT ON TRIAL.

THIS CASE, UNFORTUNATELY, IS FULL OF RUMOR AND INNUENDO, AND YOU CAN'T BASE YOUR VERDICT ON RUMOR AND INNUENDO. IT'S A TERRIBLE CRIME AND NATURALLY WHEN SOMETHING OF THIS NATURE, WHEN SOMETHING BAD LIKE THIS HAPPENS IN A COMMUNITY LIKE BENNETTSVILLE OR A COUNTY LIKE MARLBORO OR FOR THAT MATTER IN CHESTERFIELD COUNTY OR DARLINGTON COUNTY OR ANY OF THE COUNTIES IN THIS AREA, IT'S GOING TO GENERATE A LOT OF TALK. PEOPLE ARE GOING TO SAY, MAN, DID YOU HEAR ABOUT THAT? BUT YOU CAN'T ON A SALEM WITCH HUNT. YOU CAN'T GO OUT THERE AND TRY TO BRAND PEOPLE BY ASSOCIATION AND THINK THAT IF SOMETHING THIS BAD HAPPENED, IF THEY ARE IN ANY WAY MENTIONED IN CONNECTION WITH IT, THEY ARE GUILTY. WHAT THE SOLICITOR AND THE STATE HAVE CHOSEN TO DO UNDER THIS THEORY OF AIDING AND ABETTING IS CHARGE MARTIN BECAUSE HIS NAME CAME -- CAME UP TWICE FROM TWO

UNBELIEVABLE WITNESSES. YOU CAN'T GIVE THEIR TESTIMONY ANY WEIGHT, SO YOU'RE LEFT WITH NOTHING.

BUT UNDER THEIR THEORY, BECAUSE OF THESE TWO INDIVIDUALS STATING HE WAS ON -- ON THE BRIDGE, AND THAT'S THE FIRST TIME HIS NAME EVER COMES UP, HE'S GUILTY OF MURDER DESPITE HAVING ANY OTHER EVIDENCE AT ALL OTHER THAN THOSE TWO BURNED OUT WITNESSES. THAT'S NOT ENOUGH, LADIES AND GENTLEMEN. AND THAT'S -- AGAIN, THAT JUST IS NOT THE WAY THIS SYSTEM SHOULD -- SHOULD WORK.

BECAUSE THE CASE INVOLVED SUCH TERRIBLE FACTS, WHAT THE STATE IS DOING IS TRYING TO GET YOU EMOTIONAL, TO FEED ON YOUR EMOTIONS, TO INJECT FEAR AND TO TRY TO -- I DON'T WANT TO USE THE WORD RAILROAD, BUT TO TRY TO CREATE SOMETHING THAT'S JUST NOT THERE. IT'S NOT THERE IN THE FACTS AGAINST MARTIN. IT DIDN'T COME OUT ON THE WITNESS STAND.

AND YOU REMEMBER THE TESTIMONY OF THE ROBERT GRAHAM AND FOX ANN? IT WAS PRETTY CONSISTENT ABOUT MARTIN. HE WASN'T AROUND UNTIL AFTER THANKSGIVING. AND I PUT INTO EVIDENCE SOMETHING THE STATE CHOSE NOT TO USE, AND THAT WAS FOX ANN'S ROAD LOGS. AND THEY PRETTY MUCH SPEAK TO THEMSELVES. SHE DIDN'T MOVE IN UNTIL DECEMBER TOO. MARTIN CAME LATER. NOT AROUND -- NOT AROUND AT ANY TIME WHEN ALL OF THIS WAS

GOING ON.

IT'S IMPOSSIBLE FOR A JURY TO REACH A VERDICT OF GUILTY BEYOND A REASONABLE DOUBT IF THERE'S ANY CONFUSION, IF THERE'S ANY INDECISION. REMEMBER WHAT THE JUDGE SAID ABOUT DRAWING ON YOUR EVERYDAY EXPERIENCES FROM THINGS YOU GO THROUGH AT WORK AND HOME WITH YOUR FAMILY OR IN YOUR JOB. IF THERE'S SOME CONFUSION, IF THERE'S SOME QUESTION THAT WILL ULTIMATELY LEAD TO A MISTAKE, EVERY TIME -- YOU'RE ALMOST LIKE 12 AIRLINE PILOTS IN THIS CASE. THERE'S NO ROOM FOR ERROR, THOUGH. THE STAKES ARE TOO HIGH. THERE'S NO MARGIN OF ERROR IN THIS CASE. YOUR DECISION HAS TO STAND ALONE AND IT HAS TO SPEAK THE TRUTH. AND IF THERE'S ANY QUESTION, IF YOU HAVE ANY CONFUSION OR IF YOU HESITATE TO ACT AS I TALKED ABOUT AT THE BEGINNING OF THIS TRIAL, THEN YOU MUST FIND MARTIN NOT GUILTY. AND THE CASE IS FULL OF INDECISION. IT'S FULL OF QUESTIONS.

I WOULD ALSO ASK YOU TO CONSIDER SOMETHING ELSE THAT I TALKED ABOUT AT THE BEGINNING OF THIS TRIAL; THE WITNESSES THE STATE CHOSE NOT TO CALL. WHERE WAS ALL OF THE POLICE TESTIMONY FROM THE SLED AGENTS WHO WERE INVOLVED IN THE INVESTIGATION OF THIS CASE? NON-EXISTENT. THEY DIDN'T CALL THEM BECAUSE THERE WAS NO EVIDENCE TO USE AGAINST MARTIN MCINTOSH.

NOTHING POINTING TO THEM. NO SCIENTIFIC EVIDENCE, NO BLOOD OR FIBER EVIDENCE OR ANYTHING. THEY CHARGED HIM WITH SEXUAL CRIMINAL CONDUCT. NO MENTION OF ANYTHING IN THAT NATURE EVER EVEN CAME OUT DURING THIS TRIAL DIRECTED TOWARD HIM. NOBODY EVER SAID HE DID ANYTHING TO DARLENE IN THAT REGARD OR THAT HE WAS INVOLVED IN CONFINING HER, IN MURDERING HER. JUST DANNY AND BOBBY. YOU KNOW, BELIEVABLE TESTIMONY. TOTALLY WITHOUT CREDIBILITY.

YOU WOULD HAVE TO BELIEVE DANNY AND BOBBY COMPLETELY BEFORE YOU COULD EVEN CONSIDER ANY EVIDENCE OF AIDING AND ABETTING BECAUSE THAT'S ALL THERE IS, LADIES AND GENTLEMEN. I KNOW THAT I SOUND LIKE A BROKEN RECORD, BUT THIS IS SO IMPORTANT THAT I'VE GOT TO GO BACK TO THE MAIN THRUST OF THE STATE'S CASE. AND THAT IS IT AND THAT IS IT ALONE.

WHAT WEIGHT DO YOU GIVE THE SCIENTIFIC -- I MEAN, SCIENTIFIC EVIDENCE FOUND AT THE ABANDONED HOUSE? YOU HAVE TO GIVE THAT THE MOST WEIGHT BECAUSE THAT'S THE DIRECT EVIDENCE OF WHERE EVERYTHING WENT ON. AGAIN, NO CONNECTION TO MARTIN. I TELL YOU OF THIS NOW BECAUSE AS I'VE SAID, GUILT BY ASSOCIATION IS A HORRIBLE, HORRIBLE, TERRIBLE THING. IT'S THE STATE'S THEORY IN THIS CASE AGAINST MARTIN MCINTOSH, AND THAT'S NOT PROOF BEYOND A REASONABLE DOUBT.

MERELY KNOWING BOBBY RANSOM AND DANNY DAVIS, MEETING THEM IN DECEMBER AND JANUARY, MERELY HEARING RUMORS OUT IN A SMALL COMMUNITY OUT THERE AROUND STANTON'S BARBECUE, THAT DOESN'T MAKE YOU GUILTY OF COMMITTING THESE TERRIBLE THINGS. IT IS YOUR DUTY AS A JUROR TO CONSIDER EACH OF THEM CHARGED SEPARATELY AND TO DO WHAT'S FAIR, TO DO WHAT'S RIGHT.

THE WORD VERDICT COMES FROM AN OLD LATIN PHRASE CALLED VEREDICTO, WHICH MEANS TO SPEAK THE TRUTH. WHAT MARTIN AND I WANT YOU TO DO IS TO SPEAK THE TRUTH TO THE STATE OF SOUTH CAROLINA AND TO MS. PATTERSON'S FAMILY, TO EVERYONE IN THIS COURTROOM AND IN THIS GREAT STATE, AND THAT IS TO RENDER A VERDICT FINDING HIM NOT GUILTY ON ALL OFFENSES. THANK YOU.

THE COURT: THANK YOU, MR. ERVIN.

MR. ERVIN: THANK YOU, YOUR HONOR.

MR. PADGETT: LADIES AND GENTLEMEN OF THE JURY, A LOT OF WHAT MR. ERVIN SAID TO YOU APPLIES IN ALL OF THESE CASES OVER HERE, SO A LOT OF IT I'M NOT GOING TO REPEAT BECAUSE YOU DON'T WANT TO SIT HERE ALL DAY HEARING THE SAME THING OVER AND OVER AGAIN. SOME OF IT I'LL HAVE TO REPEAT, BUT A LOT OF WHAT HE'S ALREADY SAID APPLIES TO ALL OF THESE CASES. AND AS HE TOLD YOU, AND WE CAN'T EMPHASIZE THIS ENOUGH,

THE STATE HAS TO PROVE GUILT BEYOND A REASONABLE DOUBT. AND YOU'RE GOING TO HEAR THAT PROBABLY 9,000 TIMES TODAY. THAT'S THE MOST IMPORTANT PART OF OUR CRIMINAL JUSTICE SYSTEM. THE MOST IMPORTANT THING. AND NO ONE'S COME CLOSE TO THAT IN THIS CASE, NOT EVEN CLOSE. ALL WE HAVE IS MASS CONFUSION. MASS CONFUSION.

NOW, IF YOU FEEL CONFUSED, YOU SHOULD BECAUSE THE SOLICITOR EVEN GOT CONFUSED, IF YOU REMEMBER. DAY ONE OF THIS TRIAL WE'RE ALL FRESH, READY TO ROLL, NOBODY'S TIRED. THE SOLICITOR COULDN'T EVEN GET IT STRAIGHT WHO WAS CHARGED WITH WHAT. WELL, MAYBE IT JUST SLIPPED OUT ONE TIME. HUH-UH. HE SAID IT TWICE. WRONG PERSON. THAT'S WHAT WE HAVE HERE. NOW, LET ME TELL YOU, MS. PATTERSON DIED A TERRIBLE DEATH. NO QUESTION ABOUT IT. YOU'VE SEEN THE PICTURES. HORRIBLE. BUT I ASK YOU AGAIN, DON'T JUMP TO ANY CONCLUSIONS JUST BECAUSE IT WAS SO HORRIBLE. I MEAN, MR. PEARSON'S NOT HERE AND WE'RE NOT DEALING WITH HIM TODAY. OBVIOUSLY THAT'S -- THAT'S FOR A DIFFERENT DAY. BUT I ASK YOU TO BE AS OPEN-MINDED -- AND IT LOOKS LIKE YOU HAVE BEEN. Y'ALL HAVE SAT HERE MORE PATIENTLY THAN ANY JURY I'VE EVER SEEN. HERE'S WHAT REALLY HAPPENED. THAT TERRIBLE CRIME OCCURRED AND THEN EVERY ONE JUST OVERREACTED IN LAW

ENFORCEMENT. NOT OVERREACTED, BUT JUST WENT KIND OF NUTZO AND WENT AND GRABBED EVERYBODY OFF THEIR JOBS, TIME AFTER TIME AFTER TIME.

IT'S A HORRIBLE THING. WE'VE GOT TO ASK LOTS OF QUESTIONS. AND THEY WENT -- THEY TOLD -- I MEAN, YOU'VE HEARD THE TESTIMONY. THEY TOLD PEOPLE, YOU KNOW, YOU'RE IN ON THIS; WE'RE GOING TO NAIL YOU TO THE WALL. YOU KNOW, YOU BETTER TELL US NOW. PULL THEM OFF THEIR JOB TIME AFTER TIME. AS THE YOUNG FELLOW SAID, HE WAS WORRIED ABOUT HIS JOB AT SOPACKO. JUST MASS HYSTERIA. ONE OF THEM SAID HE WAS TOLD, COVER YOUR ASS IS THE NAME OF THE GAME. COVER YOUR ASS IS THE NAME OF THE GAME. THAT'S WHAT IT COMES DOWN TO.

I WANT TO TELL YOU SOMETHING THAT I'VE LEARNED ABOUT DURING THIS TRIAL, AND I'VE LIVED IN BENNETTSVILLE ABOUT ALL OF MY LIFE. SINCE IN SCHOOL, I ALWAYS THOUGHT OF MARLBORO COUNTY AS BENNETTSVILLE, CLIO AND MCCOLL, BUT I'VE LEARNED BY DOING THIS TRIAL THAT THERE'S -- I DON'T KNOW, BUT IT'S JUST LITTLE CLOSE KNIT COMMUNITIES ALL AROUND THE COUNTY LIKE AROUND THE LESTER AREA AND EVERYBODY KNOWS EACH OTHER. EVERYBODY KNOWS WHERE EVERYBODY LIVED OVER THE LAST 20 YEARS, AND YOU KNOW WHO LIVED THERE AT ONE TIME, WHO LIVED THERE AT ONE TIME AND WHOSE HOUSE

THIS IS AND WHO IS LIVING NOW WITH WHO. AND IT'S REALLY KIND OF AMAZING BECAUSE I THOUGHT IT WAS BENNETTSVILLE, CLIO AND MCCOLL. BUT THERE MUST BE DOZENS OF DIFFERENT COMMUNITIES. SO I'VE LEARNED SOMETHING. AND EVERYBODY KNOWS EACH OTHER. BUT THAT DOESN'T MEAN THAT EVERYBODY OUGHT TO BE LOCKED IN A CAGE THE REST OF THEIR LIFE BECAUSE PEOPLE HAD HEARD SOMETHING THAT HAPPENED, TALK STARTED GOING AROUND. THAT'S NOT RIGHT. THAT'S NOT RIGHT.

AND THESE YOUNG MEN'S LIVES ARE IN YOUR HANDS TODAY, IN YOUR HANDS. AND WHEN YOU WAKE UP NEXT WEEK, YOU'VE GOT TO KNOW THAT YOU GAVE THEM EVERY CONSIDERATION BEYOND A REASONABLE DOUBT. THE LAW SAYS IF YOU HESITATE, HESITATE, YOU'RE SUPPOSED TO SAY NOT GUILTY. HESITATING. NOT GUILTY. YOU HAVE TO. THAT'S WHAT PROTECTS OUR SYSTEM AND THAT'S WHAT PROTECTS THEIR LIVES. PLEASE KEEP THAT IN MIND.

NOW, AS MR. ERVIN CAME DOWN TO, MUCH OF WHAT -- MUCH OF WHAT BOILED DOWN, LIKE THROUGH COLLARDS OR WHATEVER, WHAT IT CAME DOWN TO IN THE LARGE PART WAS DANNY DAVIS AND BOBBY RANSOM. ANY REASONABLE DOUBT THERE? ALL RIGHT. REASONABLE DOUBT NUMBER ONE, DANNY DAVIS TOLD YOU, YEAH, YOU HAVE REASON NOT TO BELIEVE ANYTHING I SAID ON THIS STAND. THE MAN HAS DRUNK AND DRUGGED ALL OF HIS LIFE AND HE ADMITTED IT

RIGHT THERE ON THE STAND. HE SAID HE COULDN'T REMEMBER A LOT OF THINGS. YOU KNOW, HE WOULD SAY ONE THING AND THEN SAY, WELL, YOU'RE RIGHT; I DON'T REALLY REMEMBER THAT. BUT HE WAS -- SEE, HE WAS OFFERED DEAL AFTER DEAL AFTER DEAL UNTIL HE TOOK ONE. HE'S GONE FROM FACING THE DEATH PENALTY TO HOPEFULLY GETTING OUT OF HERE IN JUST A SHORT ORDER. AND THE TWO DEALS THAT YOU HEARD ABOUT FOR THESE TWO WITNESSES, RANSOM AND DAVIS, THEY ARE NOT JUST A FLAT DEAL WHERE YOU WILL GET NO MORE THAN X AMOUNT OF TIME. HUH-UH. THEY GOT LITTLE CLAUSES IN THERE LIKE YOU DO FOR FOOTBALL PLAYERS, HOW MANY YARDS YOU RUN A SEASON, YOU'RE GOING TO GET AN EXTRA MILLION DOLLARS. THEY'VE GOT LITTLE CLAUSES IN THEIR CONTRACTS THAT SAY THE HAPPIER WE ARE WITH WHAT YOU TOLD THAT JURY, THE BETTER THE DEAL YOU'RE GOING TO GET, SO MAKE US HAPPY. MAKE US REAL HAPPY AND YOU'LL GET THE SIGNING BONUS AND THE YARDAGE BONUS AND EVERYTHING ELSE. BUT REMEMBER, WHEN IT CAME DOWN TO IT, DANNY DAVIS SAID YOU HAVE REASON NOT TO BELIEVE ANYTHING I SAY AND I CAN'T REMEMBER A LOT OF THINGS MYSELF.

BOBBY RANSOM, AMAZING CREATURE, ISN'T HE? HE'S PUMPED MORE CHEMICALS IN HIS BODY THAN ANYTHING I'VE EVER HEARD OF IN MY ENTIRE LIFE. LET'S SEE. ONE OF THE MAIN THINGS HE SAID AFTER ALL OF THESE YEARS OF

DRUGGING, DRINKING, DOWNING CREEK LIQUOR WHEN YOU SEE PEOPLE COMING UP SO YOU DON'T HAVE TO SHARE IT WITH THEM, HE SAID I LOSE TIME. I BLACKOUT AND I LOSE TIME. LOSE TIME? NOW HE'S TESTIFYING IN A MURDER CASE? THAT'S LIKE ME FALLING OVER HERE ON THE CARPET AND TOMORROW -- OR TONIGHT OR TOMORROW, THE NEXT DAY, I WAKE UP AND I LOOK AROUND AND, MAN, ALL OF THESE PEOPLE ARE GONE AND YOU'RE GONE AND THEN YOU WANT TO ASK ME WHAT HAPPENED. I LOSE TIME. WELL, THAT'S SOMETHING. BUT HE GOT A DEAL TOO. HE GOT A DEAL TOO. HE WAS FACING THE DEATH PENALTY. THE DEATH PENALTY. NOT ANY MORE. HE'S HOPING TO GET OUT OF HERE IN SHORT ORDER. THAT'S WHAT IT REALLY COMES DOWN TO.

YOU SEE, THEY HAD COURT SCHEDULED A COUPLE OF WEEKS AGO. HAD TO CANCEL IT. WOULDN'T TAKE THE DEALS. SO IT GOT SWEETER AND SWEETER AND SWEETER AND SWEETER AND SWEETER AND RANSOM GOT THE SIGNING AND YARDAGE BONUS ALSO. THE MORE YARDS HE RUNS, THE HAPPIER THEY ARE, THE BETTER OFF HE COMES OUT.

LET'S TALK ABOUT ANOTHER WITNESS. SAM WALLS. REMEMBER THAT YOUNG MAN? WORRIED ABOUT HIS JOB? WHAT DID HE TELL YOU? HE SAID -- HE SAID THEY TRIED TO GET ME CAUGHT UP IN SOMETHING I DIDN'T KNOW NOTHING ABOUT. WELL, YOU'VE HEARD THAT FROM MORE

THAN ONE WITNESS. THAT'S WHAT HAPPENED TO EVERYBODY. THAT'S WHAT MS. FOX ANN, MYRA BENNETT TOLD YOU TOO. WE'RE GOING TO GET YOU IF YOU DON'T START TELLING US SOME THINGS. WE'RE GOING TO GET YOU. WE'RE GOING TO FIX YOU GOOD. THAT'S WHAT WE'RE GOING TO DO. WE'RE GOING TO FIX YOU GOOD. PULLING THEM OFF THEIR JOBS. THEN THEM, THEN THEM, THEN THEM.

DWAYNE SLOAN, HE GOT UP ON THE STAND AND SAID I DIDN'T SAY THOSE THINGS IN THAT STATEMENT. I DIDN'T DO THAT. NOT DWAYNE SLOAN. LET'S SEE. I GOT THAT BACKWARDS. JEFFREY GRAHAM IS WHAT I MEANT TO SAY. JEFFREY GRAHAM GOT UP THERE ON THE STAND AND SAID I DIDN'T SAY THAT, I DIDN'T SAY THAT, I DIDN'T SAY THAT, I DIDN'T SAY THAT. WELL, DIDN'T RICKY SAY SOMETHING ABOUT GETTING SOMEBODY -- NO, I DIDN'T SAY THAT. NOW, ALL THE SOLICITOR COULD DO IS KEEP GOING, WELL, YOU PUT YOUR INITIALS ON HERE, YOU PUT YOUR INITIALS ON HERE, YOU PUT YOUR INITIALS ON HERE. WELL, HE SAID HE PUT HIS INITIALS ON THERE, BUT HE DIDN'T WRITE THAT STATEMENT DOWN AND HE WHOLEHEARTEDLY DENIED IT ON THE STAND. REASONABLE DOUBT? THE WITNESS SAYS HE DENIES EVER SAYING ANY OF THAT. YOU'RE NOT SUPPOSED TO CONSIDER IT.

NONE OF THESE STATEMENTS, BY THE WAY, THAT YOU REMEMBER THESE PEOPLE BEING SHOWN WERE WRITTEN DOWN.

1589

YOU KNOW? DID YOU NOTICE A TREND THAT WAS GOING ON THERE WITH THESE DATES? WHERE DID THIS DATE COME FROM? I DON'T KNOW. BEATS ME. I DIDN'T PUT THAT DATE DOWN THERE. WHAT ABOUT THIS DATE? I DON'T KNOW. I TELL YOU WHO PUT THE DATES DOWN THERE. LAW ENFORCEMENT FOLKS. THEIR JOB IS TO TRY TO PUT SOMETHING TOGETHER HERE AND MAKE IT LOOK LIKE IT ALL FITS EVEN WHEN IT DOESN'T. WELL, I PUT THIS DATE ON HERE AND SAID HERE, SIGN THAT; PUT YOUR INITIALS ON THAT, YOU KNOW. IT'S KIND OF LIKE THE OLD SAYING, PUTTING A ROUND PEG IN A SQUARE HOLE. EVER HEARD THAT ONE? YOU KNOW, IT DOESN'T GO IN THERE. BUT IF YOU GET THAT SLEDGEHAMMER AND YOU JUST BEAT AND BEAT AND BEAT THAT THING TOGETHER, FINALLY IT JUST SLIDES IN THE HOLE, PEG AND EVERYTHING WILL SPLINTER OFF AND YOU MIGHT GET SOMETHING WEDGED DOWN IN THERE. THAT'S BASICALLY WHAT HAPPENED HERE.

DWAYNE SLOAN, WHO I MENTIONED EARLIER. I DON'T KNOW WHY HE PLEAD GUILTY TO ANYTHING. HE DIDN'T KNOW ANYTHING. HE SAID HE HEARD SOME CONVERSATIONS FROM SOME PEOPLE. RICKY STUCKEY WAS NOT INVOLVED IN ANY OF THAT. DENIED A LOT OF THINGS WHEN HE WAS UP THERE. AGAIN YOU HAVE TO DISCOUNT ANYTHING HE SAYS HE DENIED AFTER JERRY WARD, PROFESSIONAL SNITCH IS WHAT -- APPARENTLY IN THIS STATE MOVES FROM PRISON TO

PRISON TO TRY TO GET THEM TO TALK TO OTHER PRISONERS AND SAYS HE WAS IN PRISON WITH SOME OF THESE FELLOWS FOR MONTHS AND MONTHS AND MONTHS AND MONTHS. HOW DID YOU TALK TO THEM? WELL, WE'VE ONLY GOT ONE HOUR A DAY OUT OF THE CELL, SO WE KIND OF LEAN UP TO THE HOLE IN THE DOORWAY AND YELL AT ONE ANOTHER AND ALL OF THAT. AND OUT OF ALL OF THAT COMMOTION, WHAT DID HE SAY? HE SAID RICKY HAD TOLD HIM HE MIGHT HAVE SEEN SOMETHING ONE TIME. WELL, CAN YOU REALLY CONSIDER THAT? I MEAN, THERE WAS A LOT OF CONVERSATIONS OVER A LOT OF MONTHS, AND THAT'S IT? I TELL YOU WHAT, AFTER THAT, TO SHOW YOU HOW ACCURATE MR. WARD IS, THE SOLICITOR ASKED IF RICKY HAD SAID ANYTHING ABOUT THE GIRL BEING TAPED UP. THE GUY SAID YEAH. WHEN I PULLED OUT HIS STATEMENT, THE TRANSCRIPT, I SAID, MR. WARD, ISN'T IT TRUE THAT -- THAT LAW ENFORCEMENT ASKED YOU IS THAT THE SAME RICKY STUCKEY THAT TOLD YOU HE WAS AT THE ABANDONED HOUSE WHEN THE GIRL WAS TAPED UP? HIS ANSWER, NO, HE DIDN'T TELL ME THAT. NO, RICKY DIDN'T TELL ME THAT. AND I ASKED HIM ABOUT IT. NOW, WHAT DID HE SAY? HE SAID LET ME SEE THAT TRANSCRIPT. DO YOU REMEMBER THAT I SAID, YEAH, OKAY. AND I WALKED UP HERE AND HANDED IT TO HIM, AND THE SOLICITOR JUMPS UP AND SAYS WHAT PAGE IS THAT? I SAID 22. THE WITNESS THEN SAID

1591

YOU'RE RIGHT. HE CORRECTED HIMSELF. RICKY DID NOT TELL ME THAT.

DR. CONRADI TESTIFIED. AND THE STATE'S NOT REAL HAPPY WITH IT, BUT SHE SAYS THAT MS. PATTERSON DIED VERY -- IT'S CLOSER TO THE 12TH OF NOVEMBER THAN ANY OTHER DATE. OKAY. YOU KNOW, ALL WE KNOW IS THAT RINGO PEARSON MAY HAVE BEEN WITH THAT LADY BACK UP THERE AROUND THAT DATE. SOMEBODY SAW THEM AT THE SHOP WITH HER. SHE WASN'T TIED UP OR ANYTHING. THE DOCTOR SAYS SHE DIED SOMEWHERE CLOSER TO THE 12TH FROM TAPE BEING WRAPPED AROUND HER -- YOU KNOW, ASPHYXIATION, SMOTHERING, COULDN'T BREATHE. CLOSER TO THE 12TH. THERE WAS NO WATER IN THE LUNGS OR ANYTHING LIKE THAT, NO DROWNING, SO SHE ASPHYXIATED APPARENTLY IN SHORT ORDER WAY BACK EARLY. THAT'S ACCORDING TO THE STATE'S OWN AUTOPSY.

MR. ERVIN TOUCHED ON SOMETHING ELSE. YOU KNOW WHAT THEY ARE TRYING TO ALLEGE? ALL OF THESE GUYS WERE INVOLVED AND ALL OF THESE GUYS DID THESE HORRIBLE THINGS AND CRIMINAL SEXUAL CONDUCT WAS INVOLVED. WELL, YOU'VE GOT COMMON SENSE AND YOU YOU'VE HEARD ENOUGH ABOUT TRIALS OVER THE LAST YEAR OR SO. YOU KNOW THAT THERE OUGHT TO BE SOME KIND OF SCIENTIFIC EVIDENCE THEY BROUGHT BACK WITH THAT. YOU KNOW, BLOOD, HAIR, SPERM; SOMETHING. COME ON, ALL OF

THESE GUYS THEY ARE TRYING TO CLAIM? NOTHING. COME ON.

NOW, RICKY GOT UP AND TESTIFIED. DIDN'T HAVE TO. DIDN'T HAVE TO. HE TOLD ME FOR TWO YEARS HE WANTED TO. AND THE SOLICITOR TRIED TO HANG OUT RELIGION AND ALL OF THAT. WELL, I'VE SEEN A LOT OF PEOPLE WHO HAVE BEEN IN JAIL. RICKY COULD HAVE COME UP HERE AND SAID, YES, I'VE GONE THROUGH A DEEP RELIGIOUS EXPERIENCE AND I'M GOING TO SUNDAY SCHOOL EVERY MORNING AND CHURCH EVERY MORNING. AND HE COULD HAVE TOLD YOU ALL OF THAT, BUT IT'S NOT TRUE. HE KNEW WHAT WAS IMPALED IN THAT TYPE OF LIFESTYLE AND HE WASN'T GOING TO CLAIM THAT HE WAS DOING IT. HE WAS HONEST WITH YOU. HE WAS HONEST WITH YOU. HE SAT THERE AND HE TOLD YOU WHAT HE KNEW. HE COULD HAVE REALLY -- BOY, HE COULD HAVE REALLY MADE HIMSELF LOOK, OH, YES, SUNDAY SCHOOL, CHURCH. HE DIDN'T DO IT. HE WAS HONEST WITH YOU, STRAIGHTFORWARD.

NOW, THEY MENTIONED ROBERT GRAHAM. THEY BROUGHT OUT THAT MAYBE RICKY HAD SAID SOMETHING TO HIM. BUT KEEP IN MIND THAT IT BECAME CLEAR AS THE TESTIMONY WENT ON -- AND THIS GOES BACK TO THE LITTLE COMMUNITY THING I WAS TALKING ABOUT. APPARENTLY, EVERYBODY KNEW ABOUT IT BEFORE ROBERT GRAHAM KNEW ABOUT IT. HE TOLD ME HIS MAMA WAS THE FIRST PERSON TO MENTION

1593

ANYTHING ABOUT MS. PATTERSON, HIS MAMA, MS. GRACIE GRAHAM, SWEET LITTLE LADY. SHE KNEW ABOUT IT BEFORE ANYBODY ELSE SAID ANYTHING TO HIM ABOUT IT.

I'M GOING TO TELL YOU WHAT THIS COMES DOWN TO IN MY OPINION, AND I FEEL THIS STRONGLY. A LOT OF THIS COMES DOWN TO MS. MYRA BENNETT, THE LADY THEY CALLED FOX ANN WHO SAID IF SHE DIDN'T KNOW SOMETHING, SHE SAID I DON'T KNOW. SHE WAS BEING ABSOLUTELY TRUTHFUL. THE STATE DIDN'T WANT YOU TO HEAR ALL OF THAT. THIS IS A STATE'S WITNESS LIST FOR THIS TRIAL. GUESS WHO'S ON IT. MYRA BENNETT. IT BECAME OBVIOUS TO ME AT SOME POINT THAT SHE WASN'T HERE. SO I SENT A SUBPOENA OUT TO GET HER HERE. FIRST, IT CAME BACK, OH, WE CAN'T FIND HER. BUT I KNEW THE SOLICITOR HAD ALREADY TALKED TO HER SEVERAL TIMES. WE TOLD THEM WHAT HOUSE TO GO TO. FINALLY, THEY GOT HER UP HERE, TOOK HER IN THE BACK, SCREAMED AND YELLED AT HER FOR ABOUT 20 MINUTES BEFORE I COULD TALK TO HER. SHE DIDN'T LEAVE. SHE DIDN'T LEAVE. I SAID YOU NEED TO TELL THIS JURY WHAT'S WHAT. SHE TOLD YOU WHAT'S WHAT.

FIRST OF ALL, THEY THREATENED THE HECK OUT OF HER. YOU BETTER TELL US SOMETHING. YOU BETTER TELL US SOMETHING. YOU BETTER TELL US SOMETHING. HUH-UH. SHE TOLD YOU WHAT WAS GOING ON. SECONDLY, THEY

DIDN'T WANT YOU TO HEAR HER BECAUSE YOU'VE GOT AN INTELLIGENT, ATTRACTIVE YOUNG BLACK WOMAN AT THAT TRAILER ALMOST EVERY DAY, AT THAT TRAILER DURING THE SO-CALLED PIG'S FEET PARTY. SHE WAS FLAT OUT THERE. SHE WAS STAYING WITH RICKY. IF NOT, RICKY WAS STAYING WITH HER. SHE'S ON THE WITNESS LIST FOR THE STATE. I HAD TO GET HER HERE. THEY DIDN'T WANT YOU TO KNOW ABOUT THAT. YOUNG INTELLIGENT BLACK WOMAN RIGHT THERE WHERE THE ARE TRYING TO CLAIM SOME HORRIBLE THING WAS GOING ON AT THIS PARTY.

THE JUDGE TOLD YOU TO USE YOUR COMMON SENSE. IF YOU DID DO SOMETHING LIKE THIS, HAD SOMEBODY TIED UP, WOULDN'T IT BE NATURAL TO SAY, MAN, I BETTER KEEP THIS QUIET, BETTER NOT LET ANYBODY KNOW? ISN'T IT ABSOLUTELY ABSURD TO SAY, NO, LET'S THROW A PARTY. LET'S GET A BIG WASH BASIN AND COOK PIG'S FEET, HAVE BEER, LIQUOR, INVITE EVERYBODY OVER, HAVE ALL OF THE DOORS TO THE TRAILER OPEN. LET'S HAVE EVERYBODY WALKING IN AND OUT. ABSOLUTELY ABSURD. ABSOLUTELY RIDICULOUS. AND THAT'S WHAT FOX ANN BENNETT TELLS YOU DIDN'T HAPPEN.

WHO ELSE WAS THERE? ROBERT GRAHAM. WHAT DID HE TELL YOU? DIDN'T HAPPEN. DIDN'T HAPPEN. I'M GOING TO SIT DOWN AND LET SOMEBODY ELSE TALK TO YOU NOW. BUT I'M GOING TO TELL YOU, I HOPE YOU LISTENED TO

1595

EVERY WORD I SAID BECAUSE THESE YOUNG MEN, THEIR LIVES ARE IN YOUR HANDS, LIKE I SAID.

NOW, ONE MORE THING I WANT TO LEAVE YOU WITH, AND I MENTIONED THIS EARLIER. THEY WANT YOU TO FIND THIS BEYOND A REASONABLE DOUBT, AS YOU ARE REQUIRED TO BY LAW. IF YOU FEEL CONFUSED -- WHICH YOU SHOULD BE BECAUSE THEIR WITNESSES CERTAINLY WERE, LOSING TIME, DRUNK, DRUGS, ALL OF THIS, MYRA BENNETT THERE -- IF YOU FEEL CONFUSED, RIGHTFULLY SO, WHEN THE SOLICITOR GETS UP HERE AND HE'S GOING TO START YELLING AND SCREAMING AND RANTING AND WAVING AND PARADING, I WANT YOU TO REMEMBER MY WORDS. BUT I CAN'T TALK TO YOU. REMEMBER THAT I CAN'T CORRECT ANYTHING I LEFT OUT. DON'T HOLD THAT AGAINST RICKY. I CAN'T COME BACK. WHEN HE'S RANTING AND RAVING, SCREAMING AND YELLING, ALL OF THIS, I WANT YOU TO REMEMBER, YOU, SIR, ALSO GOT THIS CONFUSED. YOU, SIR, ALSO GOT THIS CONFUSED. AND I WANT TO TELL YOU SOMETHING ELSE. NOT ONLY DID HE GET CONFUSED IN THE COURTROOM. WHEN THEY HAND YOU THE INDICTMENTS, THE INDICTMENTS ARE WRONG TOO. IT'S WRONG. IT SAYS MS. PATTERSON WAS STRANGLED. NO. SHE DIED A HORRIBLE DEATH, BUT IT WASN'T STRANGULATION. REASONABLE DOUBT, LADIES AND GENTLEMEN? REASONABLE DOUBT? EVEN THE INDICTMENT IS WRONG. THANK YOU.

1596

MR. REDMOND: MAY IT PLEASE THE COURT. SOLICITOR WILSON.

THE COURT: MADAM FOREMAN, LET ME INTERRUPT, IF I MAY. AT THE CONCLUSION OF HIS REMARKS, WE'LL TAKE A SHORT BREAK, SO WE'RE GOING TO HAVE -- I'M GOING TO ORDER LUNCH FOR YOU HERE TODAY, SO AT THE CONCLUSION OF HIS FINAL REMARKS, WE'LL GO TO THE JURY ROOM JUST A MINUTES SO THE CLERK CAN TAKE YOUR ORDER FOR LUNCH. THAT WILL BE AT THE COUNTY'S EXPENSE, INCIDENTALLY. I APOLOGIZE FOR INTERRUPTING, MR. REDMOND.

MR. REDMOND: NO PROBLEM, YOUR HONOR. LADIES AND GENTLEMEN, I'M ATTORNEY KERNARD REDMOND AND I REPRESENT JEFFREY WALLS IN THIS MATTER. NOW, JEFFREY WALLS, AS YOU HAVE HEARD, IS CHARGED WITH CRIMINAL SEXUAL CONDUCT, KIDNAPPING, CRIMINAL CONSPIRACY AND MURDER. NOW, THIS IS A CONFUSING CASE. AND IT'S -- THERE'S A LOT OF PEOPLE INVOLVED. THEREFORE, I'M GOING TO NEED SOME ASSISTANCE, WHICH IS WHY FOR MYSELF AND FOR YOUR BENEFIT, I JUST WANTED TO HIGHLIGHT SOME POINTS IN THIS CASE. LET ME PREFACE BY SAYING THAT AS HAS BEEN ECHOED, I APPRECIATE YOUR ATTENTION TO THIS CASE, THAT YOU HAVE LISTENED TO ALL OF THE TESTIMONY AND THE ATTENTION AND THE INTELLIGENCE THAT I'M SURE YOU WILL RENDER IN

1597

YOUR DELIBERATIONS.

NOW, YOU'VE HEARD A LOT OF THINGS. AND I'M NOT -- MY JOB TODAY ISN'T GOING TO BE AN ECHO, EVEN THOUGH YOU CAN HEAR SOME ECHOES IN HERE. BUT I WANTED TO TOUCH ON SOME THINGS. I WANT TO BEGIN BY DISCUSSING THE PRESUMPTION OF INNOCENCE. THAT PRESUMPTION OF INNOCENCE NEVER LEAVES UNTIL YOU FIND BEYOND A REASONABLE DOUBT. THE STATE ALWAYS HAS THE BURDEN OF PROOF IN THIS CASE. THAT'S IMPORTANT. THE STATE HAS THE BURDEN OF PROVING TO YOU THAT JEFFREY WALLS, MY CLIENT, IS GUILTY OF THE OFFENSE THAT HE WAS CHARGED WITH. BUT AGAIN, THE BURDEN NEVER SHIFTS TO THE DEFENDANT. I WANT YOU TO KEEP ALL OF THESE THINGS IN MIND BECAUSE THAT'S GOING TO BE A RECURRING THEME. ANOTHER RECURRING THEME IS GOING TO BE A REASONABLE DOUBT, DOUBT WHICH WOULD CAUSE A REASONABLE PERSON AS YOU ALL ARE TO HESITATE TO ACT. THERE ARE A LOT OF THINGS THAT HAVE TAKEN PLACE IN THIS COURTROOM THAT I WOULD SUBMIT TO YOU WOULD MAKE ANYONE HESITATE TO FIND JEFFREY WALLS GUILTY OF ANY OFFENSE, AND I'M GOING TO HIGHLIGHT A FEW OF THEM NOW.

GETTING INTO THE STATE'S CASE, I'M NOT GOING TO GO THROUGH THIS WHOLE LIST OF WITNESSES BECAUSE IN THE BEGINNING MOST OF IT WAS JUST FOUNDATIONAL, HOW

WAS SHE FOUND, WHAT DID THEY FIND, THESE THINGS LIKE THAT. THEN WE GET TO JOHN BARRON, THE SLED AGENT. THAT WAS AN INTERESTING BIT OF TESTIMONY CONCERNING THIS DUCT TAPE, ABOUT WHETHER OR NOT THIS IS THE ROLL THAT THE DUCT TAPE CAME FROM. THAT WAS THE REASON THAT ALL OF THIS CAME OUT BECAUSE YOU REMEMBER THE TESTIMONY OF MR. SAM WALLS WAS THAT HE HAD THE DUCT TAPE. WELL, SAM WALLS IS JEFF'S BROTHER.

LET ME RUN A SCENARIO BY YOU. MY BROTHER IS HERE IN THE AUDIENCE TODAY. MY BROTHER. IF MY BROTHER AND I LIVE AT HOME FOR A WHILE, WE BOTH OBVIOUSLY LIVED THERE. MY BROTHER CAME TO THE HOUSE, PICKED UP SOME DUCT TAPE AND LEFT WITH IT, WHICH IS WHAT SAM WALLS SAID HE DID -- AND REMEMBER THE ONLY TIME JEFF'S NAME WAS MENTIONED DURING THAT LINE OF QUESTIONING WAS SIMPLY THE FACT THAT JEFF LIVED IN THE HOUSE. MERE PRESENCE IN THE HOUSE. JUST BECAUSE SAM PICKED UP THAT DUCT TAPE, THERE WAS NO OTHER CONNECTION THAT JEFF HAD EVER EVEN HAD THE DUCT TAPE. THE STATE DID NOT SHOW YOU ANYTHING THAT JEFF ACTUALLY HAD POSSESSION OF THAT DUCT TAPE AT ANY TIME. THE QUESTION WAS WITH SAM AND THE DUCT TAPE, WHERE HE GOT IT FROM, WHEN HE GOT IT FROM, THE FACT THAT HE HAD BEEN QUESTIONED A NUMBER OF TIMES BY LAW ENFORCEMENT CONCERNING THIS DUCT TAPE.

1599

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Marlboro County
Thomas Russo, Circuit Court Judge

ALFONSO STATON,

PETITIONER,

V.

THE STATE,

RESPONDENT.

Appellate Case No. 2015-000460

Appendix Volume 5

Tristan M. Shaffer (SC Bar # 77565)
225 Columbia Ave.
Chapin, SC 29036
Phone: (803) 575-0384
tristan@shafferlawsc.com

Other Counsel of Record:
Johanna Valenzuela
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

INDEX

Volume 1

Appendix of First PCR 1

Volume 2

Appendix of First PCR Continued 400

Volume 3

Appendix of First PCR Continued 800

Volume 4

Appendix of First PCR Continued 1200

Volume 5

Appendix of First PCR Continued 1600

Order Denying Motion for a New Trial 1947

Order Denying Motion to Reconsider on Motion for a New Trial 1949

Transcript of Motion for a New Trial Hearing 1950

Petitioner's Federal Habeas Exhibits 1966

Volume 6

Supplemental Appendix from First PCR 1984

Second PCR Application 1998

Return and Motion to Dismiss from Second PCR 2005

Applicant's Response to the Conditional Order of Dismissal for Second PCR ...2017

Second PCR Hearing Transcript 2088

Second PCR Final Order of Dismissal 2142

OKAY. THEN WE GET TO DWAYNE SLOAN. NOW, DWAYNE WAS INTERESTING AS WELL BECAUSE DWAYNE TESTIFIED ABOUT A CONVERSATION THAT RINGO AND THAT -- YOU'VE HEARD THAT NAME THROUGHOUT, AND YOU WILL, RINGO -- THAT RINGO AND JEFF HIMSELF, AND I BELIEVE ALFONZO STATON WAS ALSO PRESENT. LET ME GIVE YOU ANOTHER SCENARIO. WHAT IF THE SOLICITOR AND I WERE HAVING A DISCUSSION, WE WERE AT MCDONALD'S OR BURGER KING AND THE SOLICITOR MENTIONED TO ME, WELL, I THINK I'M GOING TO FIND SO AND SO AND PERFORM SOME SEXUAL ACT. NEVER MENTIONED THAT THERE WAS A CRIME THAT WAS GOING TO BE INVOLVED. IT'S NOT A QUESTION TO SAY I'M GOING TO PICK UP SO AND SO AND DO SO AND SO. IT WAS NEVER SAID, I'M GOING TO PICK UP SO AND SO AND GO AND TAKE THIS GIRL WHENEVER. I MEAN, IT WAS A HEINOUS SET OF CIRCUMSTANCE BECAUSE JUST BECAUSE JEFF MAY HAVE BEEN THERE TO HEAR THAT STATEMENT, ASSUMING THAT IT WAS EVER MADE, BUT JUST BECAUSE HE WAS THERE PROVES ACTUALLY NOTHING BECAUSE IF THAT WAS THE CASE, THEN WE WOULD ALL BE GUILTY OF SOMETHING AT SOME POINT IN TIME. THAT PROVES ABSOLUTELY NOTHING. YOU'VE GOT TO LISTEN TO THE TOTALITY OF DWAYNE'S CIRCUMSTANCES. HE PLED GUILTY TO A CONSPIRACY, YET WHEN HE TESTIFIED ABOUT ANOTHER CONVERSATION THAT HAD TAKEN PLACE BACK AT THE END OF NOVEMBER, HE NEVER MENTIONED JEFF BEING

INVOLVED. HE NEVER MENTIONED JEFF INVOLVED IN WHATEVER CONSPIRACY HE PLED GUILTY TO. AND HE SEEMED TO BE CONFUSED ABOUT THAT.

REASONABLE DOUBT, LADIES AND GENTLEMEN, AS IT RELATES TO DWAYNE SLOAN'S TESTIMONY. AND THEN THERE'S ANOTHER IMPORTANT ASPECT, TO ME. DWAYNE SLOAN WAS ACTUALLY THE FIRST PERSON TO EVEN MENTION JEFF'S NAME. JEFF AND RINGO HAPPENED TO BE TOGETHER THAT DAY EARLIER IN THE AFTERNOON. NOW, THE LAST TIME -- AS YOU REMEMBER THE TESTIMONY, THE LAST TIME THE VICTIM WAS SEEN WAS HOURS AFTER DWAYNE, RINGO, ALFONZO AND JEFF WERE TOGETHER. NOW, THEY MAY HAVE LEFT TOGETHER, BUT NOTHING HAS BEEN ESTABLISHED AS TO WHERE JEFF WENT OR ANYTHING LIKE THAT. THERE IS REASONABLE DOUBT, NOT TO MENTION THE SWEET DEAL HE GOT.

I DON'T REMEMBER IF -- YOU SHOULD REMEMBER HEARING HIM TESTIFY THAT HE BASICALLY WON'T DO ANY ADDITIONAL TIME FOR PLEADING TO CONSPIRACY IN A CASE OF THIS MAGNITUDE. LADIES AND GENTLEMEN OF THE JURY, I THINK THAT IN AND OF ITSELF SHOULD BE A FLAG, A RED FLAG TO YOU.

JEFF GRAHAM. JEFF GRAHAM AT ONE POINT WHEN THERE WAS TALK ABOUT THIS STATEMENT THAT HE HAD ALSO BEEN HARASSED OR HAD BEEN VISITED AT HIS JOB BY LAW

1601

ENFORCEMENT, I BELIEVE IT WAS, WHEN HE TESTIFIED THE SECOND TIME, HE TESTIFIED THERE WAS NOT ANY LAW ENFORCEMENT INVOLVED, TO THE BEST OF MY RECOLLECTION. NO LAW ENFORCEMENT INVOLVED IN THIS CASE THAT WAS DOING THE QUESTIONING. JEFF'S NAME NEVER CAME UP. NEVER. JEFF WALLS' NAME NEVER CAME UP. NOW, IN THE STATEMENT THAT HE DID NOT WRITE, I MIGHT ADD -- AND IF YOU WILL NOTICE, MOST OF THE STATEMENTS THAT YOU HAVE HEARD WERE NOT WRITTEN BY THESE PARTICULAR -- THE PERSONS WHO SUPPOSEDLY GAVE THE STATEMENT, BUT JEFF NEVER EVEN MENTIONED -- JEFF GRAHAM NEVER MENTIONED JEFFREY WALLS' NAME. HE NAMES EVERYBODY ELSE WHO MAY HAVE BEEN SOMEWHERE AT THIS TRAILER OR WHATEVER WAS GOING ON AND THEN IN SUBSEQUENT CONVERSATIONS THAT TOOK PLACE. BUT JEFF WALLS' NAME WAS NOTICEABLY ABSENT. HE ALSO HAD INDICATED THAT SAM WALLS WAS THERE, BUT SAM WALLS IS NOT JEFF WALLS. THAT'S HIS BROTHER. AGAIN, THERE'S A LEAP OF FAITH THAT YOU'VE BEEN ASKED TO TAKE HERE. AND LADIES AND GENTLEMEN, REASONABLE DOUBT WILL NOT ALLOW A LEAP OF FAITH. AS THE JUDGE HAS CHARGED YOU, REASONABLE DOUBT, YOU MUST FIND BEYOND A REASONABLE DOUBT. THERE'S SOME LEAPS OF FAITH THAT ARE BEING REQUESTED BY THE SOLICITOR.

NOW WE GET TO A PART THAT I TERM WHAT ABOUT JEFF

WALLS? BECAUSE FRIDAY, EVEN THOUGH THIS TESTIMONY HERE TOOK PLACE THURSDAY, I BELIEVE, BUT FRIDAY, YOU NOTICE I REALLY DIDN'T SAY TOO MUCH, AND THERE'S A REASON FOR THAT, AND I'M GOING TO EXPAND UPON THAT IN A MINUTE. LET'S TALK ABOUT DANNY DAVIS. I'M NOT GOING TO RESTATE EVERYTHING EVERYBODY ELSE HAS ALREADY SAID BECAUSE I THINK YOU COULD TELL JUST BY LISTENING UP THERE THAT DANNY DAVIS, THERE ARE SOME QUESTIONS ABOUT HIS TESTIMONY. BUT THERE'S SOME OTHER THINGS THAT I WANT TO HIGHLIGHT AS IT DIRECTLY RELATES TO JEFF WALLS. HE DOESN'T NAME JEFF UNTIL AFTER -- UNTIL MARCH 10TH, HIS STATEMENT ON MARCH 10TH OF '95. NOW, HE HAD GIVEN TWO OTHER STATEMENTS. JEFF'S NAME IS NOTICEABLY OUT. WELL, THERE WAS TESTIMONY THAT HE MIGHT HAVE BEEN THREATENED OR WHATNOT. WELL, IF HE WAS THREATENED, WHY WERE THEY HOUSED TOGETHER IN COLUMBIA? THAT IS A QUESTION THAT NEEDS TO BE ASKED, LADIES AND GENTLEMEN. THEN THERE WAS ANOTHER INTERESTING ASPECT. HE MADE THE COMMENT I'VE BEEN REHEARSING FOR TWO YEARS. WELL, LADIES AND GENTLEMEN, SOME OF YOU MAY OR MAY NOT KNOW, BUT MR. PADGETT WAS IN A PLAY LAST WEEK. HE HAD BEEN REHEARSING FOR A WHILE, BUT HE WAS REHEARSING FOR A PERFORMANCE. REHEARSING. WHAT CONTEXT DO YOU USUALLY TAKE REHEARSING TO MEAN? HE WAS REHEARSING

FOR HIS PERFORMANCE IN FRONT OF YOU TODAY OR IN FRONT OF YOU I BELIEVE WEDNESDAY AND THURSDAY.

THEN HE ALSO INDICATED IN HIS GUILTY PLEA THAT CAME OUT ON THE STAND BOBBY TOLD ME EVERYTHING. HE SAID HE COULDN'T REMEMBER THIS, THAT AND THE OTHER THING, AND FINALLY, HE JUST SAID LOOK, OKAY, BOBBY TOLD ME EVERYTHING. YOU CAN'T TRUST HIS TESTIMONY. YOU CAN'T TRUST DANNY'S TESTIMONY. THERE ARE DEFINITELY QUESTIONS ABOUT HIM. HE ALSO ADMITTED TO ME MAKING A STATEMENT IN FRONT OF HIS LAWYER THAT JEFF WALLS WAS NOT PRESENT AT THE TRAILER AND IF -- AND HE ALSO CORRECTED ME. HE SAID THE TRAILER WITH YOU, BUT ALSO THE BRIDGE AS WELL. HE WANTED -- HE SAYS JEFF WALLS WASN'T PRESENT. THAT WAS LESS THAN TWO WEEKS BEFORE HIS GUILTY PLEA AND ALL OF A SUDDEN, REVELATION OF TRUTH. HE ALSO -- AGAIN, YOU'VE HEARD ABOUT THE DEAL THAT HE GOT, AND I DON'T NEED TO GO THROUGH THAT AGAIN BECAUSE I'M SURE THAT YOU ALL NOTICED THAT.

AND WE GET TO BOBBY RANSOM. AGAIN, I WON'T REPEAT SOME OF THE THINGS THAT HAVE ALREADY BEEN STATED CONCERNING BOBBY, BUT THEN THERE'S NO MENTION OF JEFF WALLS AGAIN UNTIL THE THIRD -- UNTIL MARCH 10 OF 1995. BUT THEN YOU NOTICE ON PAGE 19 -- AND THIS IS WHERE WE GET INTO THIS THEME, WHAT ABOUT JEFF

WALLS? HE DOESN'T MENTION JEFF WALLS' NAME UNTIL PAGE 19. AND THEN IT WAS ONLY WHEN HE WAS DIRECTLY ASKED WHAT ABOUT JEFF WALLS? OH, YEAH, JEFF WALLS. THAT'S AFTER 19 PAGES. THEN WHEN ALL OF A SUDDEN ASKED, JEFF WALLS NAME COMES UP. AND I'VE GOT A THEORY ABOUT THAT THAT I WILL STATE IN MY SUMMARY. THEN THERE'S ANOTHER ASPECT, AN ASPECT, BUT SOMETHING THAT I MUST POINT OUT TO YOU, AND IT RELATES TO WHAT JERRY WARD HAD SAID. WHEN BOBBY GOT TO COLUMBIA, HE SOUGHT OUT JERRY WARD. THE FIRST THING HE TOLD JERRY WARD, FIRST THING WAS I'M GOING TO TESTIFY AGAINST THESE 12 BLACK DUDES. THEN THERE'S ANOTHER SAD, SICK, TWISTED ASPECT TO BOBBY RANSOM. HE DIDN'T CLAIM THAT IT WAS A BLACK GIRL THAT HAD BEEN KILLED. HE TOLD THEM THAT IT WAS A WHITE GIRL THAT HAD BEEN KILLED. THAT IN AND OF ITSELF WOULD INCITE SOMETHING IN THE GENTLEMAN THAT HE PUBLISHED THIS TO, WHICH WAS JERRY WARD. THEY ESTABLISHED A RELATIONSHIP.

NOW, HE TOLD DANNY WHAT TO SAY. I THINK DANNY DAVIS PRETTY MUCH POINTED THAT OUT. AND AGAIN, YOU KNOW ABOUT THE SWEET DEAL THERE. NOW, JERRY WARD, PROFESSIONAL SNITCH, MOLE, WHATEVER YOU WANT TO CALL IT. HE TRIED TO DENY THAT HE HAD A RELATIONSHIP WITH DANNY DAVIS AND BOBBY RANSOM, BUT IF YOU REMEMBER, HE WAS WITH BOBBY RANSOM AT LEAST TWO MONTHS BEFORE

EVERYBODY ELSE IN THAT GROUP GOT TAKEN TO COLUMBIA, THAT GROUP THAT INCLUDED JEFF WALLS. NOW, HE CLAIMS HE CONVENIENTLY OVERHEARD A CONVERSATION. HE CONVENIENTLY OVERHEARD A CONVERSATION, THEM YELLING ALL OUT IN THE CELL BLOCK. NOW, THAT IN ITSELF, TAKEN WITH THE FACT THAT HE HAD ALREADY DEVELOPED A RELATIONSHIP WITH THESE TWO GUYS THAT HE TRIED TO DENY AND FINALLY HAD TO ADMIT THAT HE WAS TRYING TO CONSOLE DANNY AT SOME POINT TO HELP HIM OUT, NEVER SAID ANYTHING ABOUT WHEN THIS SUPPOSED BOAST WAS MADE. HE KNEW OF DANNY'S PLIGHT AND HE WAS TRYING TO HELP BOBBY AND DANNY.

ANOTHER THING, TOO. EVEN THOUGH HE ADMITTED TO HAVING PLED GUILTY TO GIVING FALSE STATEMENTS, HE WASN'T DOING Y'ALL A FAVOR, LADIES AND GENTLEMEN, BY SAYING THAT IN DIRECT EXAMINATION BECAUSE IT WOULD HAVE COME OUT IN CROSS-EXAMINATION ANYWAY. SO HE WAS NOT BEING FORTHRIGHT WITH YOU WHEN HE TOLD YOU THAT HE HAD ADMITTED GIVING FALSE STATEMENTS TO THE POLICE. THESE THINGS, AGAIN, REASONABLE DOUBT.

NOW WE GET INTO SOME OF THE OTHER WITNESSES YOU'VE HEARD FROM FRIDAY. AND THIS REALLY GETS INTO THE CRUX AND INTO THE "WHAT ABOUT JEFFREY WALLS" THEME. MARTIN MCINTOSH, THE SOLICITOR ASKED WHAT ABOUT JEFF WALLS? SAID HE DIDN'T MEET HIM UNTIL

AFTER HIS ARREST, END OF LINE OF QUESTIONING CONCERNING JEFF WALLS. LEROY STATON. HE WAS ALSO ASKED BY THE SOLICITOR WHAT ABOUT JEFF WALLS? MR. STATON TESTIFIED HE DIDN'T KNOW JEFF UNTIL AFTER THE ARREST. THEN HE TRIES TO DRAW INTO -- AN INTERESTING LINK. THE FACT THAT LEROY HAD DELIVERED ONE LOAD -- A LOAD OF WOOD TO JEFF'S MOM'S HOUSE, I GUESS THEY HAD SOME SORT OF RELATIONSHIP. MY MAMA IS ALSO PRESENT. WE'VE GOT A FIREPLACE IN OUR HOUSE. I GUESS IF SOMEBODY HAD COME TO MY HOUSE, DELIVERED A LOAD OF WOOD TO HER OR MY FATHER, A PERSON WHO DELIVERED THAT LOAD, I AUTOMATICALLY HAVE A RELATIONSHIP WITH THEM, A CRIMINAL RELATIONSHIP TO THE EXTENT THAT HE'S BEING ACCUSED OF. LADIES AND GENTLEMEN, THAT ALSO RAISES REASONABLE DOUBT. VERY, VERY REASONABLE DOUBT.

THEN HE DISCUSSES SOME OF THE OTHER PEOPLE HE HAD SEEN, I THINK SOME RELATIVES AND WHATNOT. JEFF WALLS' NAME IS NOTICEABLY ABSENT IN ALL OF THAT DISCUSSION. THEN YOU'VE GOT FOX ANN. YET AGAIN, WE HEAR WHAT ABOUT JEFF WALLS? WELL, SHE DIDN'T KNOW JEFF. SHE SAID THAT JEFF WASN'T PRESENT WHENEVER THESE EVENTS THAT WERE TAKING PLACE, PIG'S FEET, COOKING OR WHATEVER, AND ALSO SOME OF THE CONVERSATIONS THAT SHE TESTIFIED ABOUT. AGAIN, JEFF

WALLS' NAME IS NOTICEABLY ABSENT EXCEPT WHEN ASKED AND THEN SHE SAID I DON'T KNOW.

GET TO RICKY STUCKEY. AGAIN WE'RE ASKED WHAT ABOUT JEFF? SAYS HE DIDN'T KNOW JEFF UNTIL AFTER THE ARREST. AGAIN, THERE ARE OTHER RELATIVES AND WHATNOT THAT ARE MENTIONED. JEFF WALLS' NAME IS NOTICEABLY ABSENT. THE ONLY TIME HIS NAME COMES UP IS WHEN HE'S ASKED BY THE SOLICITOR. AND YET AGAIN, DON'T KNOW.

GRACIE GRAHAM, SHE WAS ALSO ASKED WHAT ABOUT JEFF WALLS? SHE SAYS SHE'S NO RELATION TO JEFF. SHE NAMED OTHERS WHO ARE RELATED TO HER AND ARE COUSINS OR WHATEVER. JEFF WALLS AGAIN NOTICEABLY MISSING IN ALL OF THAT MIX.

AND THEN FINALLY WE GET TO ROBERT GRAHAM. AND THIS IS WHERE IT REALLY GETS INTERESTING. THERE WASN'T ANY MENTION ABOUT JEFFREY WALLS. THERE WAS NO MENTION ABOUT JEFFREY WALLS AT THAT TIME. I GUESS THE SOLICITOR GAVE UP. THERE WAS NO MENTION ABOUT JEFFREY WALLS AT THAT TIME.

NOW, SOME CONCLUSIONS THAT YOU CAN DRAW ABOUT ALL OF THIS. NUMBER ONE, YOU'VE GOT ALL OF THESE EXHIBITS THAT YOU'RE GOING TO SEE. AND AGAIN, THIS WAS A TERRIBLE CRIME. BUT THERE'S NO SCIENTIFIC EVIDENCE WHATSOEVER, NONE WHATSOEVER THAT LINK JEFF WALLS TO ANYTHING THAT HE'S ACCUSED OF. THIS IS

IMPORTANT. STATE ENGAGED IN A FISHING EXPEDITION. I BELIEVE -- I STARTED TO BRING A FISHING POLE IN HERE, BUT I WAS AFRAID TO BECAUSE I WAS AFRAID THE EXPEDITION MIGHT CONTINUE. AND I THINK WE ALL HAVE AN INTEREST IN WRAPPING UP THIS CASE, BUT HE KEPT ASKING WHAT ABOUT JEFFREY WALLS? WHAT ABOUT JEFFREY WALLS? THE ANSWER WAS THE SAME. JEFFREY WALLS WAS NOT INVOLVED IN THIS. AGAIN, DANNY, BOBBY AND JERRY, THE THREE AMIGOS, CONSPIRED TO HELP CONVICT THESE DEFENDANTS. BOBBY RANSOM HAD IT IN HIS MIND FROM THE TIME IN COLUMBIA HE MET JERRY WARD.

AND FINALLY, I WOULD INDICATE TO YOU THAT THIS CASE, STATE VERSUS JEFF WALLS, IS A CASE THAT IS THE EPITOME, THE VERY DEFINITION OF REASONABLE DOUBT. THAT BEING THE CASE, THE THINGS THAT I'VE OUTLINED TO YOU WOULD MAKE IT OBVIOUS THAT THIS CASE, AGAIN, THAT'S BEEN BUILT AGAINST JEFF WALLS IS ONE THAT INVOLVES RUMOR, INNUENDO. AND I CAN TELL YOU HOW HIS NAME GOT INTO IT. YOU'VE HEARD A LOT OF TALK ABOUT RINGO. WELL, WHEN DWAYNE SLOAN MADE THAT -- MADE THAT COMMENT THAT RINGO AND JEFF HAD BEEN TOGETHER THAT DAY, HENCE, JEFF WALLS' NAME GETS INTO IT. THAT IS TOO FAR A LEAP OF FAITH TO ASK YOU TO CONVICT THIS MAN, JEFFREY WALLS, OF CRIMINAL SEXUAL CONDUCT, CRIMINAL CONSPIRACY, KIDNAPPING OR MURDER. AND I

BELIEVE THAT YOU, AS I, WILL UNDERSTAND AND ACKNOWLEDGE THAT JEFFREY WALLS SHOULD BE FOUND NOT GUILTY OF ALL OF THE OFFENSES CHARGED. I THANK YOU FOR YOUR ATTENTION AND GOD'S SPEED IN YOUR DELIBERATIONS.

THE COURT: THANK YOU, MR. REDMOND. MADAM FOREMAN, LADIES AND GENTLEMEN, I'M GOING TO ASK YOU TO RETIRE NOW WITH YOUR CLERK OF COURT WHO WILL BE TAKING YOUR LUNCH REQUEST. ONCE WE GET THOSE, WE'LL COME BACK AND CONTINUE SUMMATIONS BY COUNSEL WHILE WE'RE AWAITING LUNCH. AS SOON AS LUNCH GETS HERE, WE'LL RECESS AND HAVE LUNCH AND CONTINUE. GET THE ORDERS AND I WANT TO WORK WHILE LUNCH IS BEING ORDERED. GO TO YOUR JURY ROOM.

(WHEREUPON, THE JURY WAS REMOVED FROM THE COURTROOM AND THE FOLLOWING PROCEEDINGS COMMENCED IN OPEN COURT.)

(WHEREUPON, A BREAK WAS TAKEN FROM THE PROCEEDINGS.)

(WHEREUPON, THE JURY WAS RETURNED TO THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE COMMENCED IN OPEN COURT.)

THE COURT: ALL RIGHT. LET THE RECORD

REFLECT THAT THE DEFENDANT IS IN THE COURTROOM ACCOMPANIED BY THEIR ATTORNEYS. WHO -- MR. MOORE?

MR. MOORE: YES, SIR. I'M MILTON MOORE. I REPRESENT LEROY STATON, WHICH I'M SURE YOU ALL KNOW BY NOW. WE NOW REACH A POINT IN THE TRIAL WHERE WE ADD UP THE EVIDENCE SHOWN, CONSIDER THE TESTIMONY OF THE WITNESSES AND SEE IF IT FITS. WE'RE GOING TO GIVE YOU SOMETHING TO BASE YOUR DECISION ON. LET'S START WITH THE WITNESSES FOR THE STATE AND SEE IF THEY'VE PROVED ANYTHING. LET ME TELL YOU IN A CASE LIKE THIS, THE STATE HAS TO FIRST PROVE THAT A DEATH OCCURRED. I DON'T THINK ANYBODY WOULD ARGUE WITH THAT. A BODY WAS FOUND AND IDENTIFIED. THE SISTER OF THE DECEASED, MS. DAVIS, TURNED IN A MISSING PERSON'S REPORT. THE CITY POLICE TOOK THE REPORT. THEN SOMEONE NOTICED THAT SOMEONE HAD SEEN A BODY AT THE BURNT FACTORY AND HE AND ANOTHER SHERIFF, DEPUTY FREEMAN, SECURED THE AREA AND CALLED THE CORONER, TIM BROWN WHO AUTHORIZED THE BODY TO BE REMOVED AND IT WAS SENT TO CHARLESTON FOR AN AUTOPSY.

DR. CONRADI TESTIFIED THAT THE BODY WAS THAT OF DARLENE PATTERSON. SHE ALSO TESTIFIED THAT THE CAUSE OF DEATH WAS ASPHYXIATION DUE TO SMOTHERING CAUSED BY DUCT TAPE OVER THE HEAD AND THE MOUTH. AND THIS IS FULLY STATED IN THE AUTOPSY REPORT. AT THAT POINT,

1611

THE STATE HAD PROVED THAT A DEATH HAD OCCURRED AND THAT THE DECEASED WAS DARLENE PATTERSON. THAT IS ALL THAT THEY HAVE PROVED, JUST THAT A DEATH OCCURRED. NEXT, TWO SLED OFFICERS TESTIFIED. AGENT SHEALY WHO WAS A CRIME SCENE INVESTIGATOR TESTIFIED THAT HE HAD OBTAINED THE DUCT TAPE FROM THE VICTIM'S ANKLES, FACE AND HAND, GAVE THE DUCT TAPE TO SLED AGENT DAVID BLACK WHO TESTIFIED THAT HE DID LATENT PRINT ANALYSIS, DID NOT FIND ANY FINGERPRINTS ON THE TAPE, THE POCKETBOOK CONTENTS OR THE GLASSES. AND THE REASON WAS DUE TO WATER CONTAMINATION. WATER HAD COVERED THESE OBJECTS FOR SO LONG, IT WAS IMPOSSIBLE TO TAKE ANY FINGERPRINTS. SO NO FINGERPRINT EVIDENCE IN THIS CASE.

THE ONLY OTHER EVIDENCE PRODUCED BY THE STATE CAME FROM SHERIFF FOLEY, GEORGE STEEN WHO OWNED THE ABANDONED HOUSE, JERRY STARNES, THE DEPUTY SHERIFF'S DEPUTY AND PAT BAILEY WHO WORKED AT THE OPTOMETRIST'S. THEY ALL TESTIFIED TO THAT AND THE EARRING FOUND AT THE HOUSE WHICH INDICATES THAT DARLENE PATTERSON MIGHT HAVE BEEN AT THE HOUSE AT SOME POINT. IT DOESN'T IDENTIFY OR INDICATE WHO WAS WITH HER AT THE HOUSE OR THAT ANYBODY FOR SURE WAS WITH HER AT THAT HOUSE. THE ONLY OTHER SLED AGENT WHO TESTIFIED WAS JOHN BARRON, TRACE EVIDENCE MAN.

1612

HE GAVE EVIDENCE ABOUT THE DUCT TAPE AND THE VICTIM AND THE FLOOR OF THE HOUSE BEING MATCHED UP TO A ROLL OF DUCT TAPE.

NOW, AT THIS POINT, WITH REGARD TO THE STATE'S CASE, THE STATE HAD NOT PROVED A SINGLE THING AGAINST MY CLIENT, LEROY STATON. NOW, REGARDING THE MAIN WITNESSES PUT UP BY THE STATE, DWAYNE SLOAN, JEFFREY GRAHAM, JERRY WARD, DANNY DAVIS AND BOBBY RANSOM, DWAYNE SLOAN NEVER MENTIONED MY CLIENT LEROY STATON. THE MAIN THRUST OF HIS TESTIMONY WAS THAT HE SAID RINGO PEARSON TOLD HIM THAT HE HAD SEX WITH DARLENE PATTERSON IN THE BACK SEAT OF HIS CAR, THEN TIED HER UP AND DUMPED HER AT BURNT FACTORY. AS FOR JERRY WARD, REMEMBER LEROY STATON TESTIFIED HE GOT OUT OF JAIL ON BOND, NEVER IN THE PENITENTIARY IN COLUMBIA, SO NOTHING FROM JERRY WARD COULD AFFECT MY CLIENT. AS FOR JEFFREY GRAHAM, HE TOTALLY REPUDIATED ANY STATEMENT TAKEN FROM HIM BY LAW ENFORCEMENT OFFICERS. HE SAID HE DID NOT WRITE THE STATEMENT.

HE SAID HE DENIED THE STATEMENT. HE SAID HE WAS BEING THREATENED WITH ARREST HIMSELF IN ORDER TO GET HIM TO SIGN THE STATEMENT. THIS ALL CAME FROM HIS TESTIMONY IN CROSS-EXAMINATION BY ME. SO NOW THAT LEAVES US WITH ONLY THE STATE'S LAST TWO WITNESSES, DANNY DAVIS AND BOBBY RANSOM, BOTH OF WHOM TWO WEEKS

AGO WERE CHARGED WITH THE DEATH PENALTY. YOU HEARD DANNY DAVIS' TESTIMONY. SAW HIS APPEARANCE. DID HE LOOK FRIED? DID HE TESTIFY HE WAS ON TWO TYPES OF MEDICATION EVEN AS HE TESTIFIED? DID HE LOOK A LOT OLDER THAN HIS 41 YEARS, JUST TURNED 41 DECEMBER 8TH OF LAST YEAR? DID YOU LISTEN TO HIS DRUG REHAB TREATMENT REPORT AND PSYCHOLOGICAL PROFILE HISTORY OF BEING AN ABUSED CHILD, HOW HE TURNED OUT AS AN ADULT? DID YOU PAY CLOSE ATTENTION TO HOW DANNY DAVIS' TESTIMONY? MATCHED BOBBY RANSOM'S ALMOST IDENTICAL LIKE IT HAD BEEN CAREFULLY REHEARSED. THEY KNEW EXACTLY WHAT THEY HAD TO SAY BECAUSE IF THEY DIDN'T THEY WOULD BE INDICTED FOR PERJURY, LYING UNDER OATH, AND THEY WOULD NOT RECEIVE THE FUTURE SENTENCE THAT -- THEY WOULD NOT -- THEY WOULD NOT RECEIVE THE FUTURE SENTENCE THAT WOULD RELIEVE THEM FROM THE DEATH PENALTY.

NOW, LET'S GO INTO SOME OF BOBBY RANSOM'S TESTIMONY. HERE IS A GUY WHO CHUG-A-LUGGED THE CREEK LIQUOR SO NOBODY ELSE WOULD ASK HIM FOR A DRINK. DO YOU THINK HE HAD A DEPENDENCE ON ALCOHOL? HIS PSYCHOLOGICAL PROFILE SAYS HE HAS NEVER BEEN SOBER SINCE HIGH SCHOOL FOR ANY EXTENDED PERIOD EXCEPT WHEN HE WAS IN JAIL. THIRTY-SEVEN YEARS OLD. THAT'S WHAT HAPPENS WHEN YOU ABUSE ALCOHOL AND DRUGS. HE WAS SO

INTO IT HE WAS ALSO A CONVICTED DRUG DEALER, NOT CHARGED WITH JUST POSSESSION, NOT CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE. CHARGED WITH DISTRIBUTION, A DEALER DEALING IN MARIJUANA. A MOST SERIOUS KIND OF DRUG OFFENSE. YOU BE THE JUDGE OF RANSOM AND DAVIS. COMPARE THEIR BACKGROUND AND THEIR BELIEVABILITY TO THAT OF MY CLIENT, LEROY STATON.

LEROY IS 44 YEARS OLD. BY THE TIME A MAN HITS MIDDLE AGE, 40 TO 50, THE TRACK RECORD IS PRETTY WELL SET. LEROY IS CLEAN AS A PIN. NEVER BEEN IN TROUBLE, NO CRIMINAL RECORD, GOOD DRIVER'S RECORD, HELD A JOB ALL OF HIS LIFE, WORKED HARD, SUPPORTED HIS FAMILY, NEVER DEVIATED, NEVER LEFT THE BEATEN PATH. LEROY STATON, LIKE ALL OF US, FACED CHOICES IN HIS LIFE. HE CHOSE THE STRAIGHT AND NARROW. HE DIDN'T FALTER. LIKE HE TESTIFIED, HE DIDN'T HAVE ANYTHING TO DO WITH ANY OF THESE CHARGES AGAINST HIM. LEROY DESERVES A VERDICT CONSISTENT WITH HIS TESTIMONY, A VERDICT OF NOT GUILTY. THE STATE TOTALLY FAILED TO PRODUCE ANY SOLID OR PHYSICAL EVIDENCE THAT WOULD TEND TO PROVE THAT LEROY STATON HAD ANYTHING TO DO WITH THESE CRIMES.

NOW, THERE ARE SEVERAL OBSERVATIONS THAT I'VE MADE DURING THE TRIAL THAT I WOULD LIKE TO POINT OUT TO YOU. AND I THINK THEY HAVE A LARGE BEARING ON

1615

THIS TRIAL. ONE IS TWO LAW OFFICERS WHO HAD THE MOST TO DO WITH THIS CASE NEVER TESTIFIED, AND THAT WAS MR. KNIGHT, SLED AGENT HERE, AND MR. JACOBS, THE COUNTY DEPUTY. THEY WERE SITTING RIGHT NEXT TO THE SOLICITOR ALL THROUGH THE CASE AND YOU PROBABLY NOTICED THEY HELPED THE SOLICITOR ALL THROUGH THE CASE. BUT COULD IT BE THAT THEY DIDN'T WANT TO BE SUBJECTED TO CROSS-EXAMINATION BY THE DEFENSE LAWYERS ASKING THEM WHY THE STATE'S ONLY TWO CRITICAL WITNESSES, RANSOM AND DAVIS, WERE CONVICTED FELONS, PRISONERS WHOSE CREDIBILITY WAS ABSOLUTELY ZERO? MAYBE THEY DIDN'T WANT TO ANSWER QUESTIONS ABOUT THOSE FORCED OR COERCED STATEMENTS OR THOSE THREE OR FOUR DIFFERENT CONFESSIONS, WHICH ONES TO BELIEVE AND WHICH ONES HAD ANY TRUTH TO THEM WHATSOEVER.

I WOULD ALSO LIKE TO TELL YOU THAT AS YOU'VE PROBABLY HEARD OVER AND OVER, THE REAL CULPRIT IN THIS CASE WAS A GUY NAMED JOHNNY RINGO PEARSON. HE WAS THE FIRST PERSON ARRESTED ON DECEMBER 1ST, 1994, ABOUT A WEEK AFTER THANKSGIVING. NUMEROUS TESTIMONY OCCURRED IN THIS CASE PINPOINTING RINGO PEARSON AS THE SOLE PERPETRATOR AND HE WAS CHARGED WITH THE DEATH PENALTY AND THE ONLY DEFENDANT THAT WAS CHARGED WITH THE DEATH PENALTY. AND HE WILL BE TRIED FOR THESE CRIMES PENDING THE RESULTS OF HIS PRESENT

ONGOING MENTAL EVALUATION. AS YOU PROBABLY KNOW, THIS IS NOT A NEW MANEUVER OR TACTIC FOR DEFENSE ATTORNEYS TO USE IN A DEATH PENALTY CASE.

NOW, AS WE GET TOWARD THE END OF THIS CASE, I WOULD HUMBLY REQUEST THAT YOU WEIGH ALL OF THE TESTIMONY AND EVIDENCE IN THIS CASE AND REMEMBER THAT THE OBJECT OF ALL OF THIS IS TO DETERMINE THE TRUTH. I THINK YOU WILL FIND THAT THE STATE WITHOUT QUESTION FAILED TO PROVE ITS CASE BEYOND A REASONABLE DOUBT AND THAT LEROY STATON SHOULD BE ENTITLED TO AN ABSOLUTE VERDICT OF NOT GUILTY. AND ON BEHALF OF MY CLIENT, LEROY STATON, I THANK YOU FOR YOUR PATIENCE, YOUR TIME, YOUR UNDERSTANDING, YOUR WILLINGNESS TO SERVE MARLBORO COUNTY GENERAL SESSIONS COURT THIS WEEK AND LAST WEEK TOO.

THANK YOU VERY MUCH.

THE COURT: THANK YOU, MR. MOORE. MR. WILL ROGERS.

MR. WILL ROGERS: IF IT PLEASE THE COURT. SOLICITOR WILSON.

LADIES AND GENTLEMEN OF THE JURY, I'M NOT GOING TO REITERATE WHAT THESE OTHER ATTORNEYS HAVE TOLD YOU. I'M GOING TO TRY TO BE AS BRIEF AS POSSIBLE AND JUST ADDRESS THE EVIDENCE AND FACTS AS THEY APPLY TO MY CLIENT. AS I TOLD YOU IN MY OPENING STATEMENT,

ONE KEY ISSUE IN THIS CASE IS WHAT THE JUDGE HAS ALREADY INSTRUCTED, THE PRESUMPTION OF INNOCENCE. MY CLIENT DOES NOT HAVE TO PROVE A THING. IT'S UP TO THE STATE. THEY HAVE THE FULL BURDEN OF PROOF AND THEY MUST PROVE BEYOND A REASONABLE DOUBT THAT MY CLIENT, ALFONZO STATON, WAS INVOLVED IN THESE CRIMES. AND I SUBMIT TO YOU THAT THEY HAVE NOT DONE THAT, THAT THEY HAVE NOT CARRIED THEIR BURDEN OF PROOF.

ALL RIGHT. YOUR DUTIES AS JURORS, YOU HAVE AN OBLIGATION, AS YOU HAVE DONE, TO LISTEN TO ALL OF THE EVIDENCE, AND THEN ONCE YOU DELIBERATE, APPLY THE LAW AS JUDGE COTTINGHAM INSTRUCTS YOU. AND WHENEVER YOU GO BACK AND DO THAT, YOU NEED TO REMEMBER THAT YOU CANNOT MAKE ANY ASSUMPTION FROM THE FACT THAT THESE CLIENTS ARE TRIED TOGETHER AND YOU DON'T NEED TO INFER INTO ANYTHING THE FACT THAT THEY HAVE MULTIPLE CHARGES. THAT SHOULDN'T EVEN COME INTO YOUR DELIBERATIONS.

NOW, I'M GOING TO GO OVER THE EVIDENCE THAT APPLIES TO MY CLIENT IN THIS CASE. FIRST TIME MY CLIENT'S NAME CAME UP WAS WHEN DWAYNE SLOAN TESTIFIED. HE TESTIFIED THAT HE WAS AT BURGER KING ON SATURDAY AT AROUND 4:00. MY CLIENT WAS THERE AND HE WAS NOT WITH RINGO OR JEFF WALLS. THEY WERE IN SEPARATE VEHICLES. MY CLIENT JUST HAPPENED TO BE

THERE AT THE SAME TIME. HE ALSO STATED THAT HE HAD -- MY CLIENT, DWAYNE SLOAN, AND RINGO HAD GONE TO LAURINBURG TOGETHER NOVEMBER 29TH, WHICH WAS AFTER ALL OF THIS HAPPENED, AND THAT RINGO PEARSON CONFESSED TO THEM THAT HE HAD BEEN WITH DARLENE PATTERSON AND HAD ABDUCTED HER. AND ONE QUESTION YOU NEED TO ASK ABOUT THAT, WHY IN THE WORLD WOULD RINGO TELL MY CLIENT SOMETHING ABOUT THIS HORRIBLE CRIME IF MY CLIENT WAS THERE? HE WOULD HAVE NO REASON TO TELL THEM ABOUT IT IF MY CLIENT WAS THERE AND KNEW WHAT WAS GOING ON.

THE NEXT WITNESS YOU NEED TO LOOK AT CLOSELY IS JEFFREY GRAHAM. AND JEFFREY GRAHAM WOULD NOT HAVE ANY REASON TO GET UP HERE AND LIE. HE STATED THAT THE STATEMENT HE GAVE THE POLICE IN FEBRUARY OF '95 WAS NOT HIS STATEMENT. HE ALSO USED THAT STATEMENT WHEN HE TESTIFIED BEFORE THE FEDERAL GRAND JURY. ALL RIGHT. AND ON THIS WITNESS STAND IN FRONT OF Y'ALL 12 JURORS, HE STATED THAT MY CLIENT WAS NOT UP AT THAT TRAILER WHENEVER HE RODE UP THERE WITH ROBERT GRAHAM. HE SAID THAT ON TWO OCCASIONS. THAT'S WHAT YOU NEED TO BE CONCERNED WITH IS WHAT YOU HEARD FROM THIS WITNESS STAND.

THE NEXT WITNESS YOU NEED TO -- WELL, THE NEXT TWO WITNESSES -- AND THE ONLY TWO WITNESSES THAT

1619

IMPLICATED MY CLIENT -- ARE DANNY DAVIS AND ROBERT RANSOM. AND I'M NOT GOING TO GO BACK THROUGH EVERYTHING THESE OTHER ATTORNEYS HAVE SAID, BUT I THINK IT'S CLEAR THAT A REASONABLE PERSON WOULD HESITATE BEFORE THEY WOULD FIND WHAT THEY ARE TELLING YOU TO BE THE TRUTH. DANNY DAVIS ADMITTED ON THE WITNESS STAND THAT HE DIDN'T KNOW WHAT HAPPENED. HE DIDN'T KNOW ABOUT ANYTHING UNTIL HIS MOTHER'S FUNERAL, WHICH WAS LATER ON PAST THANKSGIVING. HE CUT A DEAL WITH THE PROSECUTORS IN AN ATTEMPT TO SAVE HIS OWN HIDE, AND I DON'T THINK ANY -- ANY WEIGHT SHOULD BE GIVEN TO HIS TESTIMONY WHATSOEVER.

NOW, BOBBY RANSOM, HE HAS THE SAME CREDIBILITY PROBLEMS THAT DANNY DAVIS DOES. HE WAS FACING THE DEATH PENALTY JUST AS DANNY DAVIS WAS. HE CHANGED HIS STORY TO FIT THE SCRIPT WHICH WAS WRITTEN BY THE POLICE OFFICER. AND HE WAS ALSO CHARGED BACK IN 1981 WITH KIDNAPPING AND RAPE. SO THIS IS THE SECOND TIME HE'S BEEN UP HERE FOR SOMETHING LIKE THAT. HE TESTIFIED THAT HE HAD TAKEN ALL OF THE DRUGS PRETTY MUCH KNOWN TO MAN. I THINK HE DENIED TAKING HEROIN. HE ADMITTED SNIFFING GASOLINE, GLUE AND SMOKING CRACK, COCAINE, DRINKING CREEK LIQUOR. HE ALSO ADMITTED HAVING BLACKOUTS. AND I KNOW ONE OF THE OTHER ATTORNEYS HAS MENTIONED THAT HE JUST SAID HE

SIMPLY LOST TIME. WHENEVER THIS OCCURRED, HE STATED THAT HE HAD BEEN DRUNK OR INTOXICATED OR HIGH EVERY DAY FOR EIGHT TO NINE MONTHS. AND THAT IS SOMEBODY THAT YOU WOULD HAVE TO HESITATE BEFORE YOU WOULD BELIEVE WHAT THEY TELL YOU.

AND ONE MORE THING ABOUT BOBBY RANSOM. HE NEVER ONCE MENTIONED MY CLIENT'S NAME UNTIL THE GUILTY PLEA. AFTER HE HAD CUT HIS DEAL WITH THE PROSECUTORS IS THE ONLY TIME HE MENTIONED MY CLIENT'S NAME BECAUSE HE WAS TRYING TO MOLD HIS TESTIMONY TO GET A LESSER SENTENCE.

OKAY. JERRY WARD WAS BROUGHT HERE. AND YES, HE IS A PROFESSIONAL SNITCH, WHATEVER YOU WANT TO CALL HIM, BUT HE WAS BROUGHT HERE TO SUPPORT THE TESTIMONY OF BOBBY RANSOM AND DANNY DAVIS. BUT IF YOU RECALL, IT IS IMPORTANT WHAT HE DIDN'T MENTION. HE NEVER ONCE MENTIONED MY CLIENT'S NAME. HE NEVER ONCE MENTIONED ALFONZO STATON.

ALL RIGHT. MARTIN MCINTOSH, HE TESTIFIED THAT -- I THINK THIS IS A REAL IMPORTANT FACT THAT YOU NEED TO TAKE INTO CONSIDERATION. HE WAS ASKED WHEN HE MET MY CLIENT. HE STATED THAT THE FIRST TIME THAT HE HAD EVER MET MY CLIENT WAS IN SEPTEMBER OF 1995, WHICH WAS APPROXIMATELY A YEAR AFTER THIS HORRIBLE CRIME WAS COMMITTED. HE WOULD NOT HAVE ANY

1621

REASON WHATSOEVER TO LIE ABOUT THAT FACT. THAT RIGHT THERE SHOULD MAKE YOU HESITATE TO ACT. THAT IS A REASONABLE DOUBT.

ALL RIGHT. MYRA BENNETT, BETTER KNOWN AS FOX ANN. SHE WAS ANOTHER WITNESS THAT DIDN'T HAVE ANY REASON TO LIE. SHE GOT UP THERE ON THAT WITNESS STAND AND SHE STATED THAT ALFONZO WAS NOT AT THE TRAILER, THAT SHE HARDLY KNEW ALFONZO AND THAT HE WAS NOT THERE.

RICKY STUCKEY TESTIFIED. AND YOU REMEMBER I ASKED HIM SOME QUESTIONS ABOUT IF HE KNEW MY CLIENT. AND HE SAID THE ONLY TIME HE HAD BEEN AT HIS TRAILER IS WHEN HE WAS TRYING TO HELP HIS SISTER WITH A PROJECT OF COLLECTING CANS. MY CLIENT PULLED UP. ALFONZO DIDN'T GET OUT OF THE CAR AND GO IN THE TRAILER. HE SAID THE CANS AREN'T HERE, AND HE TURNED AROUND AND LEFT. HE ALSO STATED THAT ALFONZO DOESN'T DRINK.

OKAY. LIKE THE OTHER ATTORNEYS HAVE SAID, THEY HAVE INTRODUCED A LOT OF EVIDENCE, BUT NOT ONE SIGN OF THE EVIDENCE POINTS A FINGER TO MY CLIENT. THE ONLY TESTIMONY THAT HAS BEEN GIVEN HERE THAT WOULD IMPLICATE MY CLIENT IS DANNY DAVIS AND BOBBY RANSOM. I THINK IT'S CLEAR, Y'ALL ARE REASONABLE PEOPLE, Y'ALL SAW THE TESTIMONY, THAT THEY CANNOT BE

BELIEVED.

I WILL NOT HAVE THE CHANCE TO ADDRESS ANY ISSUES AFTER THIS. THIS IS THE LAST TIME I'LL TALK WITH YOU AND SOLICITOR WILSON WILL GET UP AND GIVE HIS CLOSING ARGUMENT. IF I'VE LEFT OUT ANYTHING, DON'T HOLD IT AGAINST MY CLIENT. BUT I THINK AFTER ALL OF THE EVIDENCE, IT'S CLEAR THAT MY CLIENT HAD NOTHING TO DO WITH THIS. HE WASN'T EVEN THERE. THE WAY HIS NAME GOT TIED UP IN IT I THINK IS THE FACT THAT HE KNEW RINGO, BUT THAT IS NOTHING THAT Y'ALL -- YOU KNOW, THAT'S NOT PROOF BEYOND A REASONABLE DOUBT. JUST BECAUSE HE KNEW SOMEBODY DOES NOT MEAN THAT HE WAS INVOLVED WITH ANYTHING. THERE'S NO EVIDENCE WHATSOEVER ABOUT THAT. AND ON BEHALF OF MY CLIENT, I WOULD JUST ASK THAT Y'ALL BRING BACK A VERDICT OF NOT GUILTY ON ALL CHARGES AGAINST MY CLIENT BECAUSE THE STATE HAS NOT CARRIED ITS BURDEN OF PROOF AND MY CLIENT IS PRESUMED INNOCENT UNTIL THEY DO THAT. THANK YOU.

THE COURT: THANK YOU. MR. ROGERS. MR. LAWSON.

MR. LAWSON: MAY IT PLEASE THE COURT. MR. SOLICITOR.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE JURY, THANK YOU. THANK YOU FOR YOUR ATTENTION.

1623

THANK YOU FOR THE WAY THAT YOU HAVE CONDUCTED YOURSELF THROUGHOUT THIS TRIAL AND THANK YOU FOR THE WAY THAT YOU'VE CONDUCTED YOURSELF TODAY IN LISTENING TO OUR CLOSING STATEMENTS, CLOSING REMARKS. I WILL NOT GET TO TALK WITH YOU AGAIN. THE PROSECUTOR, BECAUSE THEY HAVE THE BURDEN OF PROOF, HAS THE LAST ARGUMENT IN A CRIMINAL CASE AND WILL SO MAKE THAT ARGUMENT.

THIS IS THE ONLY CHANCE THAT I GET TO ADDRESS YOU ON BEHALF OF ROBERT GRAHAM. I ASKED YOU IN OPENING STATEMENT TO CONSIDER THIS CASE SEPARATELY AND INDIVIDUALLY AS TO EACH DEFENDANT. I ASKED YOU TO DO THAT, LOOK AT THIS EVIDENCE SEPARATELY AND INDIVIDUALLY AS TO EACH DEFENDANT. AND AS THE JUDGE HAS INSTRUCTED YOU, THAT IS THE LAW, AND YOU MUST LOOK AT THE EVIDENCE NOT ONLY SEPARATELY AS TO THE CHARGES, BUT SEPARATELY AS TO EACH INDIVIDUAL.

THERE HAS BEEN A LOT SAID IN THIS CASE, A LOT DONE IN THIS CASE. BUT REMEMBER THAT ROBERT GRAHAM IS NOT CHARGED WITH MURDER IN THIS CASE, WAS NEVER CHARGED WITH MURDER IN THIS CASE. HE IS ON TRIAL WITH FIVE PEOPLE CHARGED WITH MURDER, BUT HE IS NOT.

THE EVIDENCE IN THIS CASE -- AND IF I GO BACK OVER SOMETHING THAT SOME OTHER LAWYER HAS TALKED ABOUT, I APOLOGIZE FOR THAT, BUT THIS IS IMPORTANT

STUFF. AND THIS IS STUFF THAT MEANS A GREAT DEAL TO ROBERT GRAHAM. AND IF I TREAD ON SOMETHING THAT SOMEBODY ELSE TALKED ABOUT, I'M SORRY AND I HATE TO HOLD Y'ALL UP BECAUSE Y'ALL HAVE GOT IMPORTANT THINGS TO DO. YOU'VE GOT TO GET ON TO DELIBERATING THIS THING.

BUT LADIES AND GENTLEMEN, THIS CASE HAS BEEN THROWN UP ON THE WALL LIKE A MURIEL BY THE STATE AND THEY WANT YOU TO GO BACK IN YOUR JURY ROOM AND SAY, WELL, YEAH, THAT MURIEL LOOKS LIKE ROBERT GRAHAM TO ME, AND THAT ONE OVER THERE, THAT LOOKS LIKE RICKY STUCKEY AND THAT LOOKS LIKE LEROY. BUT I DON'T KNOW. MAYBE -- MAYBE -- THAT'S WHAT THEY WANT YOU TO DO BECAUSE IT'S ALL JUST BEEN THROWN UP.

YOU SEE, ALL OF THE SCIENTIFIC EVIDENCE CAME IN. DID YOU EVER HEAR ANY SCIENTIFIC EXPERT SAY THIS PIECE OF EVIDENCE HAS BEEN SCIENTIFICALLY LINKED TO ROBERT GRAHAM? WAS THAT EVER MENTIONED? WAS THERE ANY PIECE OF EVIDENCE OUT OF ALL OF THE SCIENTIFIC ARSENAL THAT IS AVAILABLE THAT WAS EVER LINKED TO ROBERT GRAHAM? NO. ALL OF THIS STATE'S EVIDENCE, ALL OF IT THAT YOU'RE GOING TO HAVE BACK THERE, I CHALLENGE YOU TO FIND ANY OF IT THAT HAS BEEN LINKED TO ROBERT GRAHAM. EVEN THE TRAILER THAT HE ACKNOWLEDGES HAVING LIVED IN WAS SEARCHED. NOTHING

1625

OF EVIDENTIARY VALUE WAS FOUND THEREIN, NOT EVEN HIS FINGERPRINTS IN HIS TRAILER. NOTHING TO RELATE TO THIS CRIME, WHICH IS A HORRIBLE CRIME. AND THE ONLY THING WORSE THAN THIS CRIME ITSELF IS FOR AN INNOCENT MAN TO BE ACCUSED OF IT BECAUSE THIS IS A CRIME THAT SHOCKS THE CONSCIENCE, TO SEE THAT SOMEBODY WOULD DO THIS TO SOMEONE IS A SHAME. BUT I MUST RELY ON YOU TO IMPOSE ON THE STATE OF SOUTH CAROLINA THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT ROBERT GRAHAM HAS COMMITTED WHAT HE HAS BEEN ACCUSED OF AND I MUST RELY ON YOU TO HOLD UP THE PRESUMPTION OF INNOCENCE AND ALLOW ROBERT GRAHAM HIS LEGAL RIGHT TO BE PRESUMED BY YOU INNOCENT UNTIL THAT PRESUMPTION IS REMOVED BY THE EVIDENCE. NOT BY THE CRIME. THE CRIME CAN'T REMOVE THE PRESUMPTION OF INNOCENCE.

AND HOW HORRIBLE THIS PHOTOGRAPH IS, WHEREVER IT IS. HOW HORRIBLE THAT PHOTOGRAPH IS. IT CANNOT REMOVE THE PRESUMPTION OF INNOCENCE FROM ROBERT GRAHAM UNTIL YOU THE JURY FIND THAT THE STATE HAS PRODUCED EVIDENCE TO PROVE THAT HE HAD SOMETHING TO DO WITH THAT PHOTOGRAPH. AND IT'S NOT HERE. THE EVIDENCE, THE PHYSICAL EVIDENCE, NONE OF IT, NONE OF IT HAS BEEN ATTACHED TO ROBERT GRAHAM.

THE TESTIMONIAL EVIDENCE IS THE EVIDENCE OF THE WITNESSES WHICH IS SOMETIMES CALLED DIRECT EVIDENCE,

SOMEBODY SAW AND OBSERVED. AND YOU THE JURY, YOU HAVE TO JUDGE THE CREDIBILITY OF THE WITNESSES IN THIS CASE BOTH ON THE STATE'S SIDE AND THOSE WITNESSES THAT TESTIFIED ON THE DEFENSE SIDE. THE SOLICITOR DID A MARVELOUS JOB ON CROSS-EXAMINATION OF POINTING OUT THAT SOME CERTAIN PEOPLE ARE THIEVES OR HAD A PRIOR RECORD. AND I ASSUME THAT THE ARGUMENT IS THAT BECAUSE OF THAT, THEIR CREDIBILITY IS DIMINISHED. WELL, LET'S THINK ABOUT IT. THE STATE'S MAIN WITNESSES ALL HAVE RECORDS AND NOW HAVE RECORDS INVOLVING THIS CASE. THEY SAY THEY WERE INVOLVED. THEY PLED IN THIS CASE. THEY DID WHAT ROBERT GRAHAM IS ON TRIAL FOR. THEY PARTICIPATED IN THIS HORRIBLE THING. NOT ONLY THAT, BUT THEY HAVE A PRIOR HISTORY OF PARTICIPATING IN CRIMINAL ACTIVITY. BOBBY RANSOM, DRUG DEALER, BROUGHT OUT ON CROSS-EXAMINATION. JEFF GRAHAM, BROUGHT HERE FROM JAIL. HE'S BACK IN TROUBLE AGAIN, ALREADY BEEN IN TROUBLE FOR DRUGS, ALREADY BEEN IN TROUBLE FOR FORGERY, BACK IN JAIL AGAIN. THE SOLICITOR SAID YOU'RE NOT HERE ON YOUR OWN? NO. THEN ON CROSS-EXAMINATION WE FIND OUT WHY, BECAUSE HE WAS IN JAIL UP IN SCOTLAND COUNTY, NORTH CAROLINA. THEY HAD HEADED UP THERE, PICKED HIM UP AND BROUGHT HIM BACK.

BUT YOU KNOW, ALL OF THE STATE'S WITNESSES, EACH

AND EVERY FACT WITNESS FROM THE STATE SAID SOMETHING THAT INTERESTED ME ON CROSS-EXAMINATION. THEY ALL SAID ROBERT GRAHAM DIDN'T HAVE ANYTHING TO DO WITH IT. SO DO YOU WANT TO SAY THEY ARE CREDIBLE AND BELIEVE THEM AND SAY I BELIEVE THEM? ROBERT GRAHAM DIDN'T HAVE ANYTHING TO DO WITH IT. OR DO YOU WANT TO SAY THEY CANNOT BELIEVE A WORD THEY SAY? AND IF YOU DON'T BELIEVE A WORD THEY SAY, THEY ARE THE ONLY ONES WHO SAY ROBERT'S INVOLVED. THEY SAY HE'S INVOLVED. THEY SAY HE'S NOT INVOLVED. WHAT HE SAID WAS HE WAS THERE. BOBBY RANSOM -- AND I ASKED HIM ON CROSS, WHAT DID YOU SAY? WELL, I THINK THAT HE WAS THERE BECAUSE IT WAS HIS TRAILER. THAT WAS HIS MARCH 10, 1995 STATEMENT. OH, BUT THEN HE GOES INTO THIS THING, THAT WAS A CODE. I DIDN'T WANT TO GIVE HIS NAME THEN BECAUSE I WASN'T SURE I WANTED TO COOPERATE FULLY AT THAT TIME AND I WAS KEEPING THAT BACK. JUST SAY ROBERT GRAHAM, I THINK HE WAS THERE, BUT I CAN'T BE SURE. YOU KNOW WHY HE COULDN'T BE SURE, LADIES AND GENTLEMEN? I WANT YOU WHEN YOU GO INTO YOUR JURY ROOM TO USE YOUR GOOD COMMON SENSE WHEN YOU DELIBERATE THIS CASE. USE YOUR GOOD COMMON SENSE. WHY COULDN'T HE BE SURE? IT'S BECAUSE HIS MIND WAS CLOUDED.

YOU KNOW, ON THE WAY OVER HERE FRIDAY AS I WAS

COMING TO BENNETTSVILLE FROM FLORENCE, IT STARTED RAINING IN FLORENCE. IT WAS DRIZZLING. AND I TURNED MY WINDSHIELD WIPERS ON SLOW, ON INTERMITTENT. AND THE FURTHER I CAME, THE HARDER THE RAIN GOT, AND I HAD TO TURN MY WINDSHIELD WIPERS ON FASTER AND FASTER. AT ONE POINT, THE WHOLE BOTTOM FELL OUT AND EVEN WITH MY WINDSHIELD WIPERS ON, I COULDN'T SEE THE ROAD. BUT YOU KNOW, I HAD DRIVEN THAT ROAD EVERY DAY LAST WEEK, EVERY DAY. I PRETTY MUCH KNEW WHERE I WAS GOING, BUT I COULDN'T SEE. SO I HAD TO SLOW WAY DOWN. AND I HAVE BEEN IN RAIN STORMS WHERE I HAD TO STOP ALTOGETHER BECAUSE EVEN THOUGH I'VE BEEN ON THAT ROAD BEFORE, I DIDN'T KNOW WHAT WAS ON IT THAT DAY AND I MAY RUN UP ON ANOTHER CAR, SOMEBODY STOPPED IN THE ROAD AND I COULDN'T SEE BECAUSE IT WAS RAINING SO HARD. OR I MAY COME UP ON A BIG 110 CAR PILE UP BECAUSE THAT'S WHAT HAPPENS IN WEATHER LIKE THAT. ALL THOSE CARS GET INVOLVED AND USUALLY IT'S ONE PERSON'S FAULT BECAUSE EVERYBODY ELSE IS JUST THERE.

WELL, SEE, US DRIVING IN A RAIN STORM IS KIND OF LIKE BOBBY RANSOM LIVING AT THAT TIME. HE WOKE UP IN A RAIN STORM EVERY DAY. WASN'T NOTHING CLEAR TO HIM EVERY DAY. HE COULDN'T WALK OUTSIDE AND SEE ANYTHING BECAUSE HIS MIND WAS CLOUDED. HE STAYED DRUNK. ASKED HIM EIGHT OR NINE MONTHS? HE SAID, NO,

ACTUALLY IT WAS THREE YEARS AND EIGHT OR NINE MONTHS HE HAD DRANK EVERY DAY TO THE POINT OF PASSING OUT. ALCOHOL BLACKOUT. HE LOST TIME. FOR HEAVEN'S SAKE, THAT'S THE KIND OF MENTALITY THAT WE'RE GOING TO USE TO SAY THAT ROBERT GRAHAM IS GUILTY OF CRIMINAL SEXUAL CONDUCT, KIDNAPPING AND CONSPIRACY? HE WAS IN A CONSTANT RAIN STORM. HE COULDN'T SEE WHERE HE WAS GOING. SO WHAT DID HE DO? THE SAME THING THAT YOU WOULD DO AND I DO WHEN WE ARE DRIVING. WE KNOW THE ROAD. WE MAY FEEL COMFORTABLE. HE KNEW THE ROAD. HE HAD BEEN THERE BEFORE, EVERY DAY JUST THE SAME, GET UP DRINK AND HAVE A PARTY. SO HE -- WHAT HE COULD REMEMBER ABOUT HAVING A PARTY AND WHO HE SAW THERE HE TRANSLATED INTO A STORY IN THIS CASE. BUT YOU KNOW, HE SAYS ROBERT DIDN'T DO ANYTHING, DIDN'T HAVE ANYTHING TO DO WITH THIS CRIME.

AIDING AND ABETTING IS AN ACTIVE INVOLVEMENT, ACTIVE PARTICIPATION WHERE YOU ASSIST. NOT ONLY ARE YOU PRESENT, BUT YOU ASSIST IN THE COMMISSION OF THE CRIMES. WHAT WITNESS HAS SAID ROBERT GRAHAM DID THAT? JEFFREY GRAHAM, HE SAYS HE HAS NO RECOLLECTION OF THE EVENTS HE TESTIFIED TO.

NOW, THE STATE MAY SAY, WELL, THAT MAKES HIS STATEMENT ALL THE MORE BELIEVABLE BECAUSE IT WAS GIVEN CLOSER IN TIME. WELL, I WONDER, NOW. GOOD

COMMON SENSE WOULD DICTATE THAT IF YOU TELL THE TRUTH, WHEN IT COMES TIME TO TESTIFY, THAT TRUTH IS GOING TO REFRESH YOUR MEMORY AND YOU ARE GOING TO RECALL THE FACTS CONTAINED IN THAT STATEMENT. BUT IF YOU LIED, YOU MAY NOT HAVE INDEPENDENT RECOLLECTION OF WHAT YOU TESTIFIED TO. HE SAYS HE WENT OVER TO THE TRAILER ONE DAY, BUT HE NEVER SAW A GIRL. HE AND ROBERT WERE THERE HE SAYS 20 MINUTES. AND ROBERT LEFT WITH HIM AND HE DOESN'T SAY ONE WORD ABOUT A COOKOUT. SO IF RANSOM'S COOKOUT IS THE SAME DAY GRAHAM -- JEFFREY GRAHAM WAS THERE, WHERE WAS THE POT? NONE OF THIS EVIDENCE FITS TOGETHER. IT'S ALL ROUND PEGS IN SQUARE HOLES. IT'S GETTING A BUNCH OF PEOPLE TOGETHER AND PAINTING THEM ALL WITH THE SAME BRUSH.

DANNY DAVIS, AN INJURY TO HIS HEAD CAUSED BRAIN PROBLEMS, DRANK ALL OF THE TIME, DID DRUGS TOO, I THINK HE SAID. HE SAYS HE DON'T REMEMBER ANYTHING. HE DON'T EVEN REMEMBER BEING ON THE DAM. THEN HE SAYS ROBERT AIN'T INVOLVED. SO DO I BELIEVE HIM THAT ROBERT AIN'T INVOLVED OR DO I JUST SAY THIS GUY YOU CAN'T BELIEVE AT ALL AND NOT BELIEVE A WORD THAT HE SAYS?

DWAYNE SLOAN. HE PLEADS GUILTY, GETS NO TIME, SAYS RINGO DID IT BY HIMSELF. SAYS NOTHING ABOUT

ROBERT. JERRY WARD COMES IN, SAYS HE'S THERE FOR MONTHS AND MONTHS, LISTENS TO THE WHOLE STORY, FIGURES THE WHOLE THING OUT FROM START TO FINISH. NEVER ONCE MENTIONS HEARING ROBERT GRAHAM'S NAME. NOT EVEN HEARING HIS NAME.

ROBERT GRAHAM TESTIFIED, HIS MAMA TESTIFIED, MRS. STANTON TESTIFIED. ROBERT GRAHAM IS A MAN OF ROUTINE. HE'S BEEN DOING THE SAME THING FOR NOW ALMOST 20 YEARS. GOES UP TO STANTON'S AND COOKS, COMES HOME. THAT'S BASICALLY HIS LIFE. AT ONE BRIEF PERIOD, HE LIVED IN A TRAILER, RIGHT AROUND THE CORNER FROM HIS MAMA'S HOUSE. AT THAT POINT, HIS ROUTINE WAS GO TO WORK, GO TO HOUSE, STOP BY THE TRAILER OCCASIONALLY AND SLEEP AT THE TRAILER. YOU HEARD WHAT HIS SCHEDULE IS. YOU HEARD HIS TESTIMONY. YOU JUDGE HIS CREDIBILITY. WAS HE INVOLVED?

IS THERE EVIDENCE THAT HE PARTICIPATED, THAT HE ACTIVELY ASSISTED, THAT HE TOOK PART IN ANY CRIME? THAT HE EVEN KNEW A CRIME WAS TAKING PLACE? SOMEBODY TOLD HIM SOMETHING WAS GOING DOWN AT AN ABANDONED SHACK AFTER THE FACT. BUT LADIES AND GENTLEMEN, THE EVIDENCE IN THE CASE, THE EVIDENCE IN THIS CASE IS SO OVERWHELMING AS TO ROBERT GRAHAM IN THAT HE WAS NOT INVOLVED, THE STATE'S OWN WITNESSES WHEN ASKED DIRECT QUESTIONS SAID NO. NOW, THEY SAID OTHER PEOPLE WERE

INVOLVED. THEY SAID OTHER THINGS TOOK PLACE AND OTHER PEOPLE WERE INVOLVED. BUT WHEN ASKED ABOUT ROBERT, THEY SAID NO.

TO CHARGE AND TO CONVICT SOMEBODY BASED ON WHERE THEY LIVE -- BECAUSE SEE, THE WHOLE IDEA IN THIS WHOLE INVESTIGATION HAS BEEN HE LIVED IN THAT TRAILER, HE HAD TO KNOW. HE HAD TO KNOW. LADIES AND GENTLEMEN, I ASK YOU TO THINK AND REASON WITH YOUR COMMON SENSE. YOU HEARD HIM TESTIFY. DID HE HAVE TO KNOW? AND IS -- DID HE HAVE TO KNOW IS NOT THE QUESTION. THAT'S THE QUESTION THAT WAS ASKED ALL ALONG BY LAW ENFORCEMENT. BUT THAT'S NOT THE QUESTION BECAUSE KNOWLEDGE IN AND OF ITSELF ISN'T ENOUGH. MERE PRESENCE IS NOT ENOUGH. YOU HAVE TO TAKE AFFIRMATIVE STEPS TO ASSIST IN THE COMMISSION OF A CRIME, TO HELP IT ON. AND IF YOU DON'T, YOU'RE NOT GUILTY. THERE IS NO CREDIBLE EVIDENCE IN THIS CASE AGAINST ROBERT GRAHAM. THERE IS NO CREDIBLE EVIDENCE. THE STATE'S OWN WITNESSES SAY NO.

NOW, THERE IS -- THERE'S A WORLD OF OPTIONS INVOLVED IN LIFE. I AM ASKING YOU TO USE YOUR COMMON SENSE AND TO LOOK AT THIS EVIDENCE FOR WHAT IT IS. THE STATE HAS BROUGHT YOU EVIDENCE, BUT NONE OF IT HAS BEEN CONNECTED TO ROBERT GRAHAM. NONE OF IT HAS BEEN CONNECTED TO ROBERT GRAHAM. YOU KNOW --

THE COURT: MR. LAWSON, THE JURY'S FOOD IS HERE. WOULD YOU LIKE TO CONCLUDE NOW OR CONTINUE AFTER THEY EAT? IF YOU'RE NEARLY COMPLETE, WE'LL GO AHEAD NOW. I'LL LEAVE IT TO YOU, SIR.

MR. LAWSON: WELL, I WOULD LET THEM GO AHEAD AND EAT, JUDGE.

THE COURT: ALL RIGHT. I APOLOGIZE FOR THE INTERRUPTION, BUT I DIDN'T WANT THEIR LUNCH TO GET COLD FOR THEM. GO TO YOUR JURY ROOM. WE'LL LET YOU EAT LUNCH.

(WHEREUPON, THE JURY WAS REMOVED FROM THE COURTROOM AND THE FOLLOWING PROCEEDINGS COMMENCED IN OPEN COURT.)

THE COURT: ALL RIGHT. YOU ATTORNEYS, NOW, YOU CAN GET A QUICK LUNCH OVER THERE. I'M NOT GOING TO TAKE AN HOUR-AND-A-HALF LUNCH. TRY TO BE BACK AS CLOSE TO 2:00 AS YOU CAN.

(WHEREUPON, A BREAK WAS TAKEN FROM THE PROCEEDINGS.)

(WHEREUPON, THE JURY WAS RETURNED TO THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE COMMENCED IN OPEN COURT.)

THE COURT: THANK YOU. BE SEATED. I

TRUST THE ARRANGEMENTS FOR LUNCH WERE SATISFACTORY TO YOU.

MR. LAWSON, YOU MAY CONTINUE YOUR FINAL REMARKS.

MR. LAWSON: IF IT PLEASE THE COURT. MR. SOLICITOR.

MR. WILSON: YES, SIR.

MR. LAWSON: MADAM FORELADY, LADIES AND GENTLEMEN, I HOPE THAT YOUR LUNCH WAS GOOD AND I HOPE IT WASN'T COLD. IT MAY HAVE BEEN IF I HAD CONTINUED TO TALK. LET'S GET BACK TO WHERE WE WERE. NOT AN EASY THING TO DO. BUT YOU KNOW, THERE IS SOME EVIDENCE IN THIS CASE. THERE'S A PAIR OF GLASSES. AND I GET INTO A CASE AND I START TRYING TO FIGURE OUT WHAT SIGNIFICANCE A PIECE OF EVIDENCE MAY HAVE OR WHAT -- WHAT DOES THIS PLAY OR WHERE DOES THIS FIT INTO THIS WHOLE SITUATION? HOW DOES IT ASSIST ME IN REPRESENTING MY CLIENT IN THIS CASE? NOW, ALL THE CONNECTION THAT'S BEEN MADE IN RELATION TO THIS CASE IS ROBERT GRAHAM AND THE TRAILER. OKAY? HE LIVED AT THIS TRAILER, THEREFORE, HE MUST BE GUILTY OF A CRIME.

THE STATE SAYS THROUGH THEIR WITNESSES THAT IT TOOK PLACE PARTLY AT THAT TRAILER AND ALSO AT AN ABANDONED HOUSE WHERE INTERESTINGLY GLASSES AND AN EARRING WERE FOUND. NOW, FROM THE TESTIMONY OF THE

1635

MR. RANSOM, HE SAYS THAT THE VICTIM WAS TAPED UP WITHOUT CLOTHES ON AT THE TRAILER AND HAD TAPE AROUND HER FACE. NOT AS MUCH AS WHEN HE SAW HER LATER, BUT THE TAPE AROUND HER FACE.

NOW, WHY WOULD THE GLASSES BE AT THE OLD HOUSE INSTEAD OF AT THE TRAILER IF THE TAPE WAS PUT ON AT THE TRAILER? WOULDN'T THOSE GLASSES NECESSARILY BE WHERE THE TAPE WENT ON? OR WOULD YOU CARRY THEM BECAUSE THEY ARE EVIDENCE FROM THE TRAILER TO THE HOUSE AND THEN JUST LEAVE THEM AT THE HOUSE? IT DOESN'T MAKE SENSE. SEE, IT JUST -- AGAIN, IT'S A ROUND PEG IN A SQUARE HOLE. WHY WAS THE PHYSICAL EVIDENCE AT THE ABANDONED HOUSE AND NO PHYSICAL EVIDENCE AT THE TRAILER? WHY WOULD SOMEBODY TAPE SOMEBODY UP, THEN UNTAPE THEM AND DRESS THEM AND RETAPE THEM AGAIN? IF YOU BELIEVE BOBBY RANSOM, THAT WOULD HAVE HAD TO HAVE HAPPENED. THAT WOULD HAVE HAD TO HAVE HAPPENED. THIS DOESN'T FIT IN THE ROBERT GRAHAM BEING GUILTY OF ANYTHING. ALL THAT FITS INTO EVERYTHING HAPPENING AT THE ABANDONED HOUSE. ALL OF THAT IS CONSISTENT WITH EVERYTHING HAPPENING AT AN ABANDONED HOUSE WHERE THERE IS ABSOLUTELY NO INFERENCE THAT ROBERT GRAHAM WAS EVER, EVER THERE. THERE IS NO EVIDENCE IN THIS RECORD OF ANY AGREEMENT, PARTICIPATION OR ASSISTANCE ON THE PART OF ROBERT

GRAHAM.

HE WAS INTERVIEWED BY THE POLICE AND TOLD TO MOVE BACK HOME AND THE NEXT DAY HE MOVED BACK HOME. HE DID WHAT HE WAS TOLD, JUST LIKE HE HAS ALL OF HIS LIFE. YOU AND YOU ALONE ARE THE JUDGES OF THE CREDIBILITY OF THE WITNESSES. YOU AND YOU ALONE ARE THE JUDGES OF THE EVIDENCE. YOU ARE THE JUDGES OF THE FACTS. YOU FIND IN YOUR DELIBERATIONS WHETHER OR NOT THE STATE HAS PROVEN ROBERT GRAHAM GUILTY BEYOND A REASONABLE DOUBT BY THE EVIDENCE. YOU JUDGE THAT EVIDENCE IN RELATION TO ROBERT GRAHAM'S GUILT OR INNOCENCE. YOU LOOK AT THAT EVIDENCE AND THEN YOU MAKE A DETERMINATION WHETHER THE STATE HAS PROVEN THEIR CASE AGAINST THIS GOOD MAN BY EVIDENCE BEYOND A REASONABLE DOUBT.

YOU HEARD HIM TESTIFY. YOU OBSERVED HIM TESTIFY. YOU OBSERVED HIS BOSS AND HIS MOTHER. YOU HEARD HIM SAY THAT HE SAT DOWN AND TRIED TO FIGURE OUT IF THIS PERIOD OF TIME WAS ANY DIFFERENT THAN ANY OTHER PERIOD. BECAUSE HE IS A MAN OF ROUTINE, HE GOES TO WORK, HE COMES HOME, HE TAKES CARE OF HIS FAMILY. BUT THERE WAS NOTHING DURING THIS PERIOD OF TIME THAT CAUSED ANY REVELATION IN HIS MIND WITH HIM WHEN HE SAT DOWN AND TRIED TO GO BACK OVER THIS PERIOD OF TIME. HE NEVER SAW ANYONE TAPED UP AT THE

1637

TRAILER. HE NEVER PARTICIPATED IN RAPING ANYONE OR HAVING CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. NEVER KIDNAPPED ANYONE. HAD NO RECOLLECTION OF ANYTHING THAT EVEN BORE ANY RESEMBLANCE TO WHAT MR. RANSOM AND MR. DAVIS SAY TOOK PLACE IN RELATION TO THIS VICTIM. AND EVEN THEY SAY HE WASN'T IN THERE. HOW MUCH MORE CAN CROSS-EXAMINATION DO?

SEE, THAT'S THE PURPOSE OF GIVE AND TAKE. THAT'S WHY YOU CAN'T JUST COME INTO COURT AND SAY HE DID SOMETHING. THAT'S WHY YOU ARE SUBJECT TO CROSS-EXAMINATION BECAUSE WHAT YOU MAY SAY IS ALWAYS SUBJECT TO CRITICAL INTERPRETATION AND IT MUST MEET THE TEST OF CROSS-EXAMINATION. AND ON CROSS-EXAMINATION, EACH AND EVERY WITNESS, EACH AND EVERY WITNESS SAID HE WASN'T INVOLVED.

THE EVIDENCE IN THIS CASE IS TOTALLY LACKING IN RELATION TO ROBERT GRAHAM. HE MOVED BACK HOME LIKE HE WAS TOLD. HE HEARD A RUMOR, BUT HIS MOTHER HAD HEARD IT FIRST. SO THERE WERE A LOT OF PEOPLE TALKING AND THERE WAS A LOT OF INFORMATION OUT THERE. BUT THAT INFORMATION, THOUGH IT, MAY BE DAMNABLE TO SOMEONE WHO TRANSMITTED THAT INFORMATION, IS NOT TO THAT ONE WHO RECEIVES IT. AND IF HE WAS INVOLVED, WHY WOULD ANYBODY BE TELLING HIM ABOUT IT?

LADIES AND GENTLEMEN, I SAID THIS PICTURE IS

BAD. THIS CRIME IS BAD. WHAT HAPPENED IS BAD. BUT YOU MUST JUDGE THE EVIDENCE BASED ON THE LAW. YOU MUST HOLD THE STATE TO ITS BURDEN AS TO ROBERT GRAHAM. AND IF THE EVIDENCE DOES NOT ESTABLISH HIS GUILT BY THE EVIDENCE BEYOND A REASONABLE DOUBT, IF YOU AS AN HONEST JUROR IN SEARCH OF THE TRUTH HESITATE TO ACT IN RELATION TO ROBERT GRAHAM, THEN THE STATE FAILED IN ITS BURDEN OF PROOF AND IT IS YOUR DUTY TO FIND HIM NOT GUILTY. THANK YOU.

THE COURT: THANK YOU, MR. LAWSON. THANK YOU, OTHER GENTLEMEN FOR THE DEFENSE. WE WILL NOW HAVE THE CLOSING STATEMENT BY SOLICITOR WILSON.

MR. WILSON: THANK YOU, YOUR HONOR.

MADAM FORELADY AND LADIES AND GENTLEMEN, THIS HAS BEEN A FAIRLY LONG TRIAL AND UNUSUAL IN SOME SENSE OF THE WORD. YOU HAVE HEARD A LOT OF TESTIMONY. YOU HAVE HEARD A LOT OF INFORMATION. AND WHERE YOU SIT IS A VERY DIFFICULT POSITION TO BE IN BECAUSE YOU MUST NOW DELIBERATE AND YOU MUST FIND A TRUTH OUT OF WHAT YOU HAVE HEARD AND WHAT YOU HAVE SEEN IN THIS COURTROOM. AND PROBABLY NO ONE ENVIES YOU AT THIS POINT, AND YOU DIDN'T ASK TO BE HERE. YOU WERE SUBPOENAED, SUMMONED, IF YOU WILL, TO COME AND TO BE HERE. BUT AS I SAID TO YOU AT THE OUTSET, THIS IS PROBABLY THE MOST IMPORTANT RESPONSIBILITY

1639

THAT AN INDIVIDUAL CAN HAVE OTHER THAN TO SERVE IN THE MILITARY BECAUSE OUR VERY SYSTEM OF JUSTICE DEPENDS UPON YOUR FAIRNESS, YOUR JUSTICE. AND DO YOU REMEMBER I TOLD YOU AT THE OUTSET, AND IT'S STILL TRUE TODAY, IF THERE'S NO JUSTICE IN YOUR HEARTS AND IN YOUR MINDS AS WE SIT HERE TODAY AND AS WE'VE GONE THROUGH THIS PAST WEEK, THEN IT DOESN'T EXIST IN MARLBORO COUNTY BECAUSE YOU ARE JUSTICE. THE 14 OF YOU, SOON TO BE THE 12 OF YOU, WILL REPRESENT JUSTICE FOR THIS CASE, FOR THIS COUNTY AND FOR THIS STATE.

THE GOOD THING ABOUT JUSTICE IS IT WORKS THE SAME FOR BOTH SIDES. JUSTICE IS NOT A RESPECTER OF COLOR OR AGE OR STATUS. JUSTICE IS SIMPLE. IT'S PURE. AND IF JUSTICE IS SERVED, THEN IT'S SERVED BOTH FOR THE DEFENSE AND FOR THE STATE. NO ONE, NOT THE SEVERAL OF THE DEFENDANTS WHO NOW ARE SEATED OVER THERE AND NOT THE STATE OF SOUTH CAROLINA HAS ANY RIGHT TO ASK ANY MORE OF YOU THAN THAT, THAT YOUR VERDICT BE THE TRUTH.

NOW, I WANT TO COVER A NUMBER OF THINGS WITH YOU AND IT WILL TAKE ME SOME TIME. I ASK FOR YOUR PATIENCE AS WE TRY TO GO THROUGH BECAUSE THERE ARE SIX DEFENDANTS AND THEY ARE DIFFERENT AND THEY SHOULD BE TREATED DIFFERENT AND YOU SHOULD REVIEW EACH ONE SEPARATE. I AGREE WHOLEHEARTEDLY WITH THAT. THE

OTHER THING I SAY TO YOU IS THIS, THAT THE STATE DOES HAVE THE BURDEN OF PROOF AND THE STATE HAS TO BRING YOU EVIDENCE AND CONVINCE YOU BEYOND A REASONABLE DOUBT.

NOW, REASONABLE DOUBT IS NOT ANY DOUBT BECAUSE YOU CAN HAVE THAT KIND OF DOUBT ABOUT ANYTHING. IT'S NOT BEYOND SOME FOOLISH OR WHIMSICAL DOUBT. I TOLD YOU AT THE OUTSET THAT YOU COULD DOUBT WHETHER OR NOT WE WOULD EVER GROW ANY MORE TOBACCO IN MARLBORO COUNTY OR COTTON IN MARLBORO COUNTY. THAT'S A FOOLISH DOUBT, A WHIMSICAL DOUBT. THE STATE DOESN'T HAVE TO PROVE BEYOND THAT DOUBT. WHETHER THERE IS ANY MORE SALT IN THE OCEAN AT MYRTLE BEACH, THAT'S A FOOLISH, WHIMSICAL DOUBT. YOU CAN DOUBT THAT THE SUN IS NOT EVER GOING TO COME UP AGAIN. WELL, THAT'S NOT A REASONABLE DOUBT. THE STATE DOESN'T HAVE TO PROVE BEYOND THAT KIND OF DOUBT. THE REAL QUESTION IS, IF YOU HAVE THAT KIND OF INFORMATION, WOULD YOU FEEL COMFORTABLE MAKING YOUR DECISION, AND IF THE ANSWER TO THAT IS YES, THEN THE STATE HAS MET ITS BURDEN.

IF YOU GO INTO YOUR JURY ROOM AND YOU CONSIDER ALL OF THE EVIDENCE AND YOU SAY, WELL, I KNOW HE'S GUILTY, THEN THE STATE HAS MET ITS BURDEN. NOW, YOU STILL MAY HAVE SOME QUESTION ABOUT, WELL, HOW DID SO AND SO HAPPEN OR HOW DID THIS HAPPEN OR HOW DID THAT

HAPPEN? THAT'S NOT A REASONABLE DOUBT. THAT'S JUST A QUESTION. SIMPLY A QUESTION THAT YOU HAVEN'T GOTTEN ANY FACTS. IF IN YOUR HEART AND YOUR MIND, WHEN YOU GO IN THAT JURY ROOM, YOU ARE CONVINCED THAT THESE DEFENDANTS ARE GUILTY, THEN THE STATE HAS MET ITS BURDEN. THE FACT THAT YOU MIGHT HAVE SOME ISSUE ABOUT WHAT TRANSPIRED OR WHAT HAPPENED FIRST OR WHAT HAPPENED LAST DOES NOT MAKE THEM ANY LESS GUILTY.

NOW, WHERE DO WE START? THE FIRST THING, LET'S START WITH THE TWO PRIMARY WITNESSES FOR THE STATE OF SOUTH CAROLINA IN THIS CASE. YOU KNOW, MR. DAVIS AND MR. RANSOM. AND THEY'VE GOTTEN BEAT UP LEFT AND RIGHT BY THESE LAWYERS WHO HAVE ALL PRECEDED ME ABOUT, OH, YOU KNOW, THEY ARE ALL ALCOHOLICS AND THEY ARE ALL A BIG BUNCH OF DRUNKARDS. THEY ALL USE DRUGS. BUT LOOK WHO THEY WERE HANGING OUT WITH. CHIPS DON'T FALL FAR FROM THE BLOCK. WHO WERE THEY HANGING OUT WITH? THOSE SIX RIGHT OVER THERE. YOU KNOW, AT LEAST -- AT LEAST THEY HAD THE DECENCY TO COME IN HERE AND SAY TO THIS COURT, YEAH, WE DID SOMETHING WRONG. WE DID WHAT WE'RE ACCUSED OF. WE'RE GUILTY AND WE'RE GOING TO TELL IT. NOT ONLY ARE WE GOING TO TELL WHAT WE DID, WE'RE GOING TO TELL WHAT THE REST OF YOU GUYS DID. BECAUSE LET'S SUPPOSE THAT THEY HADN'T COME FORWARD. LET'S SUPPOSE THAT

RANSOM AND DAVIS HAD DECIDED THAT THEY WEREN'T GOING TO TELL. THEN WHAT? THEN WHAT? THE MURDERER OR MURDERERS OF DARLENE PATTERSON GETS A FREE RIDE AND A FREE TICKET. OKAY. SO THEY ARE ON THE STREET TO MURDER AGAIN. RANSOM AND DAVIS DECIDED THAT THEY COULDN'T -- AND YOU HEARD -- YOU HEARD THE TESTIMONY. WHAT DID HE SAY? MR. DAVIS SAYS I JUST COULDN'T LIVE WITH IT ANYMORE, SO I CALLED THEM. I CALLED THE POLICE AND TOLD THEM I NEEDED TO TELL THEM. THEY HAD BEEN TO HIM SEVERAL TIMES AND FINALLY IT JUST GOT THE BETTER OF ME BECAUSE HE HAD A CONSCIENCE. AND HE WENT AND HE TOLD THEM.

YOU KNOW, AND THE AMAZING THING IS THEY FUSS ABOUT -- SAY, OH, YOU KNOW, THERE WERE SOME INCONSISTENCIES. FOLKS, MARCH THE 10TH OF 1995, TWO-AND-A-HALF YEARS AGO, NOT THIS WEEK, HE TOLD THIS STORY. TWO-AND-A-HALF YEARS AGO, FOUR MONTHS AFTER THIS CRIME OCCURRED, HE TOLD THAT STORY TO THE POLICE. NOT THIS WEEK, NOT LAST WEEK, NOT LAST MONTH. TWO-AND-A-HALF YEARS AGO. SAME THING IS TRUE WITH MR. DAVIS -- MR. RANSOM. AND THEY SAY, OH, YOU KNOW, THE POLICE BROUGHT THEM DOWN HERE TO THE STATION AND THEY WERE IN THERE TOGETHER. THERE'S NOT ONE IOTA OF EVIDENCE OR TRUTH TO THAT. THE TESTIMONY, AS BEST I CAN RECALL, WAS THAT WHEN THEY

BROUGHT ONE IN, THEY TOOK THE OTHER ONE OUT. AND HE SAYS, YEAH, AND WE WERE IN THERE ABOUT TWO OR THREE MINUTES TOGETHER BEFORE THEY TOOK ONE OF US OUT AND BROUGHT THE OTHER ONE IN AND THEY QUESTIONED US SEPARATELY AND LOOKED AT THEIR STORIES. THEY TOLD THE SAME STORY THE SAME DAY, MARCH 10TH.

AND WHAT DID THEY TELL YOU, RANSOM AND DAVIS? THEY WERE AFRAID OF THESE FELLOWS. WELL, WOULDN'T YOU BE? IF -- IF THEY WOULD TAKE DARLENE PATTERSON WHO THEY DIDN'T KNOW, TIE HER UP, TAPE HER UP, DUMP HER IN THE RIVER, WHAT DO YOU THINK THEY WOULD DO TO RANSOM AND TO DAVIS FOR TELLING ON THEM? DO YOU THINK THAT THEY WERE NOT AFRAID? AND ISN'T IT AMAZING THAT EVEN AFTER THE POLICE STARTED TO LOOK FOR THEM, EVEN AFTER THE POLICE STARTED TO GO OUT AND LOOK, THEY WERE ALL STILL HANGING TOGETHER? JANUARY 24TH. REMEMBER THE CONVERSATION JANUARY 24TH WHEN THE POLICE GO TO PICK UP ROBERT GRAHAM? THEY GO TO PICK UP ROBERT GRAHAM AND WHO ALL IS OVER THERE? THE WHOLE CROWD OF THEM ARE ALL OVER THERE TALKING ABOUT, WELL, WE'LL GET US AN ALIBI. WE'LL TELL THEM SOMETHING. AND MCINTOSH OVER HERE SAYS, WELL, I'LL TELL THEM I'M GAY.

YOU KNOW, AND IT'S AMAZING THEY ALL SAY, WELL, I DON'T KNOW HIM. I AIN'T NEVER MET HIM. I DIDN'T

1644

KNOW HIM UNTIL AFTER I GOT IN JAIL. I AIN'T EVER MET HIM. AND 'OL MARTIN MCINTOSH WAS DOWN THERE AT THAT -- AT THAT GARAGE ALL OF THE TIME, BUT HE DIDN'T KNOW RICKY STUCKEY.

NO, I DIDN'T KNOW RICKY. I KNEW HIS BROTHER, BUT I DIDN'T KNOW RICKY. WELL, THE REASON YOU DON'T WANT TO KNOW RICKY IS BECAUSE HE DOESN'T WANT TO BE IN THIS MESS. I DIDN'T KNOW JEFF WALLS. WELL, NO, HE DOESN'T WANT TO KNOW JEFF BECAUSE HE DOESN'T WANT TO KNOW ANYBODY.

LET ME TELL YOU THIS. LET'S TALK ABOUT WHY YOU SHOULD BELIEVE DAVIS AND RANSOM. LET'S TALK ABOUT WHY YOU SHOULD BELIEVE THEM. THE QUESTION IS WHEN SOMEBODY GIVES YOU EVIDENCE OR THEY GIVE YOU A STORY, IS THAT STORY MADE STRONGER BY OTHER EVIDENCE OR IS THAT STORY IMPEACHED AND DISCREDITED BY THE OTHER TESTIMONY AND THE OTHER EVIDENCE THAT COMES IN? THAT'S THE REAL ISSUE. THAT'S THE REAL TEST, I SUBMIT TO YOU.

DO YOU REMEMBER WHEN WE STARTED TALKING TO THEM? AT FIRST THERE WAS A WHOLE BIG QUESTION ABOUT WHETHER THERE EVER WAS A PIG COOKING OR PIG FOOT COOK. AIN'T NO QUESTION NOW. FOX ANN -- THEY ALL TALK ABOUT FOX ANN, SAID THAT'S ONE HONEST WITNESS THAT CAME UP HERE, THEY TOLD YOU. THE ONE THING SHE TOLD YOU IS

THERE WAS A PIG COOKING. WE COOKED PIG FEET OVER THERE. I WENT OVER THERE. I DIDN'T STAY BUT FIVE MINUTES AND I DIDN'T GO IN THE HOUSE, BUT WE COOKED THEM PIG FEET. ISN'T THAT EXACTLY WHAT RANSOM AND DAVIS TOLD YOU? CONSISTENT. RANSOM AND DAVIS TOLD YOU WHO WAS AT THE HOUSE WHEN THE PIG COOKING WENT ON. FOX ANN COMES RIGHT UP THERE AND SAYS, YEAH, THAT'S WHO WAS THERE. 'OL ROBERT GRAHAM WAS THERE. I SAW HIM IN THE KITCHEN. THEN HE CAME OUTSIDE TO WHERE I WAS. CONSISTENT? OF COURSE IT IS.

LET'S TALK ABOUT THE TRAILER, THE -- THEY SAID WELL, YOU KNOW, YOU DIDN'T FIND ANY PHYSICAL EVIDENCE AT THE TRAILER. NO. DIDN'T BECAUSE IT'S SEVERAL MONTHS LATER BEFORE THE POLICE GOT THE SEARCH WARRANT TO GO SEARCH. THEY HAD GOTTEN RID OF IT. THAT AIN'T NO BIG MYSTERY. THEY HAD MOVED HER FROM THE TRAILER TO THE OLD ABANDONED HOUSE, AND LO AND BEHOLD, ISN'T THAT WHAT RANSOM AND DAVIS TOLD YOU? THEY MOVED HER. MOVED HER FROM THE TRAILER TO THE OLD ABANDONED HOUSE, AND LO AND BEHOLD, THEY GOT THERE AND THEY SEARCH. WHAT DO THEY FIND? HER EARRING. THE VICTIM'S EARRING. NO QUESTION SHE WAS AT THAT OLD ABANDONED HOUSE. CONSISTENT? OF COURSE IT'S CONSISTENT. CONSISTENT. EXACTLY WHAT RANSOM AND DAVIS TOLD YOU. WHAT ELSE DID THEY FIND? HER

EYEGLASSES AT THAT OLD ABANDONED HOUSE. OF ALL OF THE PLACES IN THE WORLD, THEY FIND HER GLASSES AND THAT EARRING AT THAT OLD ABANDONED HOUSE, WHICH IS EXACTLY WHAT THEY TOLD YOU. EVERYTHING THAT RANSOM AND DAVIS HAS TOLD YOU HAS BEEN BOLSTERED BY WHAT THESE OTHER WITNESSES TESTIFIED TO.

YOU KNOW, AND I'M NOT SAYING TO YOU THAT RANSOM AND DAVIS DESERVE ANY MEDAL BECAUSE THEY DON'T. THEY DESERVE EXACTLY WHAT THEY ARE GOING TO GET, 15 TO 20 YEARS IN THE PENITENTIARY. THEY EARNED EVERY DAY OF IT. BUT THIS CROWD IS ABSOLUTELY NO BETTER AND THEY DESERVE EXACTLY THE SAME.

NOW, THE OTHER THING THAT RANSOM TOLD YOU WAS THAT WHEN THEY TOOK THEM DOWN TO THE RIVER TO DUMP THE GIRL IN THE RIVER, THAT BECAUSE HE'S CRIPPLED, AND I GUESS THESE THINGS ARE IMPORTANT, HE WAS TRYING TO GET OUT OF THE CAR, BUT THAT HE COULDN'T GET OUT BECAUSE HIS FEET WERE TANGLED IN THE POCKETBOOK, AND SOMEBODY GOT THE POCKETBOOK AND WENT AND THREW IT OVER INTO THE WATER. LO AND BEHOLD, WHEN THE POLICE GO TO LOOK, ISN'T THAT EXACTLY WHAT THEY FIND? DO YOU REMEMBER WHAT THE OFFICER'S TESTIMONY WAS? IT WAS THROWN, HANGING ON A LIMB AND DOWN IN THE WATER. SOMEBODY THREW IT OVER THERE AND IT GOT CAUGHT ON A LIMB AND THE BOTTOM WAS THIS WATER. EXACTLY WHAT HE

TOLD YOU. EXACTLY WHAT HE TOLD YOU. [redacted] TO YOU THAT EVERYTHING THAT RANSOM AND DAVIS TOLD [redacted] IT IS THE HONEST TRUTH ABOUT WHAT TOOK PLACE THE NIGHT DARLENE PATTERSON MET HER DEATH. YOU KNOW WHAT THE OTHER THING WAS? NOT ONE SINGLE DEFENDANT, NOT A ONE, NOT ONE SINGLE DEFENDANT COULD GET UP HERE AND TELL YOU, WELL, RANSOM AND DAVIS DIDN'T LIKE PEOPLE BECAUSE I STOLE SOME MONEY FROM THEM OR BEAT THEM UP OR I TOOK THEIR GIRLFRIEND OR WHATEVER. NOT ONE SINGLE ONE OF THEM. I SAID, WELL, WHY -- DOES IT HAVE ANY REASON -- WHY WOULD HE? I DON'T KNOW. I DON'T KNOW. YOU KNOW, I THOUGHT WE WAS OKAY. ABSOLUTELY NO REASON.

NOW, LET ME TALK WITH YOU FOR A MINUTE ABOUT THE LAW, BUT I WANT IT -- I THOUGHT IT IMPORTANT TO TALK ABOUT RANSOM AND DAVIS FIRST. BUT I WANT TO TALK TO YOU NOW ABOUT THE LAW. THESE DEFENDANTS ARE CHARGED EXCEPT FOR MR. ROBERT GRAHAM WITH MURDER, CRIMINAL SEXUAL CONDUCT, KIDNAPPING AND CRIMINAL CONSPIRACY. MR. GRAHAM IS CHARGED WITH ALL OF THOSE CRIMES EXCEPT FOR THE OFFENSE OF MURDER. AND IF YOU WILL NOTICE, MR. GRAHAM IS THE ONLY ONE THAT IS NOT ALLEGED TO HAVE BEEN ON THE BRIDGE, WHICH IS WHEN SHE WAS THROWN INTO THE WATER, WHICH IS WHEN THE STATE ALLEGES SHE WAS KILLED. NOW, LET'S TALK ABOUT THAT FOR A MINUTE.

MURDER. AND HIS HONOR HAS ALREADY INSTRUCTED YOU AS TO THE LAW, BUT MURDER IS THE KILLING OF ONE PERSON BY ANOTHER WITH MALICE AFORETHOUGHT. MALICE IS SIMPLY ILL WILL, A HATRED, A HEART DEVOID OF SOCIAL RESPONSIBLE AND FATALLY BENT ON MISCHIEF OF SOME TYPE. AND FOLKS, IF YOU DON'T THINK THAT TAPING SOMEBODY UP AND TAPING THEIR MOUTH UP AND TAPING THEIR HANDS BEHIND THE BACK AND TAPING THEIR FEET AND THROWING THEM IN THE RIVER IS NOT ILL WILL, IS NOT HATRED, I DON'T KNOW WHAT IT IS. AND IF THE STATE HAS PROVEN TO YOU BEYOND ANY REASONABLE DOUBT THE FACT THAT THAT HAS OCCURRED, THEN THEY ARE GUILTY OF MURDER, ALL FIVE OF THEM.

THEN THEY ARE CHARGED WITH KIDNAPPING. KIDNAPPING, LADIES AND GENTLEMEN, IS SIMPLE. IF YOU CONFINE SOMEBODY AGAINST THEIR WILL, IF YOU DETAIN THEM OR HOLD THEM AGAINST THEIR WILL -- I DON'T CARE WHETHER IT'S FOR A SECOND OR FOR AN HOUR OR FOR A WEEK. MAKES NO DIFFERENCE. YOU HAVE NO RIGHT TO HOLD A PERSON AGAINST HIS OR HER WILL. AND IF YOU DON'T THINK THAT SHE WAS BEING HELD AGAINST HER WILL, THEN YOU LOOK AT THESE PHOTOGRAPHS. YOU LOOK AT THESE PHOTOGRAPHS OF HER BEING BOUND AND TIED AND YOU TELL ME WHETHER THIS WAS VOLUNTARY ON HER PART. AND IF YOU THINK THAT THIS IS VOLUNTARY, THEN YOU FIND

EVERY ONE OF THEM NOT GUILTY AND SEND THEM HOME. IF YOU THINK THIS IS VOLUNTARY, SEND THEM HOME, EVERY ONE OF THEM. FIND THEM NOT GUILTY. SEND THEM HOME. BUT I SUBMIT TO YOU SHE WAS CONFINED, SHE WAS BOUND, SHE WAS SEIZED AND SHE HAD NO FREEDOM. AND SHE HAD NO FREEDOM BECAUSE THEY DECIDED TO TAKE IT AWAY FROM HER. THEY DECIDED TO TAKE HER FREEDOM AWAY FROM HER. AND FOR THAT, THEY DESERVE TO BE CONVICTED.

THE QUESTION IS HAS THE STATE PROVEN TO YOU BEYOND ANY REASONABLE DOUBT THAT SHE IN FACT WAS KIDNAPPED AND THAT THEY HAD A PARTY UP THERE. AND I SUBMIT TO YOU THAT THEY HAVE. WHEN THEY -- YOU WILL REMEMBER JUST FOR CLARIFICATION, WHEN ALL OF THESE FIVE BACK HERE EXCLUDING MR. GRAHAM, WHEN THEY WERE -- CAME UP TO THE OLD ABANDONED HOUSE -- REMEMBER THE TESTIMONY? FOUR OR FIVE OF THEM WENT AND GRABBED HER AND BROUGHT HER OUT, SOME AT THE HEAD, SOME AT THE FEET, PUT HER IN THAT CAR -- ACTUALLY THE TESTIMONY WAS THEY THREW HER IN THE CAR. WELL, FOLKS, IF THEY SEE HER TIED AND BOUND AND IN SPITE OF SEEING HER TIED AND BOUND THEY TAKE HER AND LIFT HER AND THROW HER IN THE CAR, THEN THEY DRIVE HER SEVERAL MILES DOWN THE ROAD AND THEN THEY TAKE HER, TIED AND BOUND AS SHE WAS, AND LIFT HER AND THROW HER INTO THE RIVER, THEN THAT IS NOT

KIDNAPPING? THAT'S NOT BEING SEIZED? THAT'S NOT BEING DETAINED? DETAINED PERMANENTLY. AND IF THE STATE HAS PROVEN THAT TO YOU BEYOND A REASONABLE DOUBT, THEN IT WOULD BE YOUR RESPONSIBILITY TO FIND THEM GUILTY.

THE OTHER CHARGE IS CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. FOLKS, IT'S AGAINST THE LAW, IT IS AGAINST THE LAW TO HAVE SEXUAL INTERCOURSE WITH A PERSON AGAINST HIS OR HER WILL. IT IS AGAINST THE LAW. AND WHEN YOU'VE GOT A PERSON TAPED UP AND BOUND UP, THEY CANNOT REALLY DECIDE FOR THEMSELVES WHETHER THEY WANT TO ENGAGE IN SEXUAL INTERCOURSE. AND EVERY BIT OF THE TESTIMONY IN THIS RECORD IS THAT SHE WAS TAPED UP FROM THE VERY FIRST TIME AT THAT PIG PICKIN' UNTIL THE DAY THEY DUMPED HER INTO THE RIVER. AND IF YOU ENGAGE IN SEXUAL BATTERY WITH THE PERSON WHO IS A VICTIM OF KIDNAPPING, THAT IS CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

THE OTHER CRIME THAT THEY ARE CHARGED WITH IS CRIMINAL CONSPIRACY. AND FOLKS, I TOLD YOU EARLIER, CRIMINAL CONSPIRACY IS SIMPLE. IT'S WHEN TWO OR MORE PEOPLE HAVE AN UNDERSTANDING, AN AGREEMENT. DOESN'T HAVE TO BE A VERBALIZED AGREEMENT. IT CAN BE A TACIT UNDERSTANDING, THAT IS, EVERYBODY KNOWS WHAT HIS OR HER PART IS. NOT THAT SOMEBODY SAYS IT, BUT THAT YOU

UNDERSTAND WHAT YOU'RE SUPPOSED TO DO. AND IF YOU DON'T THINK THAT IT WAS UNDERSTOOD THE WAY THEY DROVE UP TO THAT HOUSE THAT NIGHT, THAT OLD ABANDONED HOUSE WHEN THEY DROVE UP THERE AND THEY ALL WENT IN THERE AND GOT HER OUT AND THEN THEY LIFTED HER AND TOTED HER AND THREW HER UP IN THIS CAR -- DO YOU NOT THINK THAT THEY HAD AN UNDERSTANDING? DO YOU NOT THINK THAT THEY HAD AN AGREEMENT ABOUT WHAT THEY WERE GOING TO DO AND WHERE THEY WERE GOING TO TAKE HER WHEN THEY DROVE HER DOWN THAT ROAD? DO YOU NOT BELIEVE THAT THEY KNEW WHERE THEY WERE GOING AND WHAT THEY WERE GOING TO DO WHEN THEY LIFTED HER UP AND THEY DUMPED HER INTO THAT RIVER? DO YOU NOT BELIEVE THAT THEY ALL KNEW THAT THAT WAS WHAT THEY WERE GOING TO DO AND THAT'S WHY THEY WENT THERE? BECAUSE IF YOU DO, THEN THAT IS A CONSPIRACY. AND IF YOU THINK -- IF YOU THINK THAT MR. MARTIN MCINTOSH AND MR. STUCKEY AND MR. WALLS AND MR. STATON AND MR. STATON DID NOT KNOW THAT THEY WERE TAKING HER FROM THAT HOUSE TO TAKE HER TO THAT RIVER TO DUMP HER IN THAT RIVER, THEN TURN THEM LOOSE.

THE OTHER THING THAT THE JUDGE HAS CHARGED YOU IS CALLED THE HAND OF ONE IS THE HAND OF ALL. THE HAND OF ONE IS THE HAND OF ALL. THE ACT OF ONE IS THE ACT OF ALL. AND WHAT THAT MEANS IS SIMPLY THIS,

AND HIS HONOR GAVE YOU AN ANALOGY, THAT IF TWO PEOPLE, ONLY ONE WITH A GUN, LEAVE HERE, GO DOWN TO THE BANK TO ROB IT, AND IN THE PROCESS THEY KILL A TELLER, BUT ONE GUY IS SITTING OUTSIDE IN THE CAR, HE'S JUST AS GUILTY AS THE GUY WHO ACTUALLY WENT INSIDE THE BANK WITH THE GUN AND PULLED THE TRIGGER. IT MAKES NO DIFFERENCE. THE HAND OF ONE IS THE HAND OF ALL. THEY WERE THERE TOGETHER, RIDING TOGETHER LIFTING HER TOGETHER, PUTTING HER IN THAT CAR, LIFTING HER AGAIN TO GET HER OUT OF THAT CAR, LIFTING HER AGAIN TO THROW HER OFF THAT BRIDGE, ALL ACTING TOGETHER, ACTING IN CONCERT.

NOW, YOU KNOW, THESE SIX GUYS, THEY ARE WHAT I CALL GAMBLERS. THEY ARE GAMBLERS. AND THEY ARE GAMBLING TODAY. YOU SEE, THEY HAVE GAMBLED THROUGHOUT THIS PROCESS. WHEN THEY GOT DARLENE PATTERSON, THEY WERE GAMBLING THAT THEY COULD DO IT AND THAT NO ONE COULD CATCH THEM. THEY GAMBLED AGAIN WHEN THEY MOVED HER FROM THAT FIRST TRAILER TO THAT OLD ABANDONED HOUSE, THAT BY MOVING HER THEY WERE GOING TO BE A LITTLE BIT SAFER. THEY GAMBLED AGAIN WHEN THEY REALIZED THAT, WELL, WORD IS OUT NOW SO WE'VE GOT TO GET RID OF HER. THEY GAMBLED AGAIN AND THEY GAMBLED THAT IF WE GET RID OF HER, NOBODY IS GOING TO KNOW. SO THEY TOOK HER AND THEY DUMPED HER

1653

OFF THE RIVER, INTO THE RIVER. AND NOW THEY ARE GAMBLING AGAIN. THEY ARE GAMBLING THAT YOU WON'T HAVE THE HEART TO CONVICT THEM BECAUSE THEY ARE GAMBLERS BY NATURE. THEY HAVE GAMBLED THROUGHOUT THIS PROCESS AND THEY ARE GAMBLING NOW, THE BIG GAMBLE. LAST GAMBLE.

DARLENE NEVER HAD A CHANCE. NEVER HAD A PRAYER. CAN YOU IMAGINE, FOLKS, CAN YOU IMAGINE WHAT HER LIFE MUST HAVE BEEN LIKE THOSE THREE OR FOUR OR FIVE DAYS THAT THEY KEPT HER? CAN YOU IMAGINE? THINK ABOUT IT WITH ME FOR JUST A MINUTE. ONE NIGHT YOU ARE HOME WITH YOUR CHILDREN. ONE NIGHT YOU ARE HOME WITH YOUR CHILDREN AND THE NEXT NIGHT YOU'RE IN A STRANGE PLACE WITH YOUR EYES TAPED UP AND YOUR HANDS BEHIND YOUR BACK.

MR. ERVIN: YOUR HONOR, I OBJECT. HE'S GOLDEN RULING THE JURY.

THE COURT: SIR?

MR. ERVIN: HE'S GOLDEN RULING THE JURY. THE SUPREME COURT HAS SAID --

THE COURT: NO. I'M SORRY. WHAT?

MR. ERVIN: GOLDEN RULING THE JURY.

THE COURT: NO, SIR. HE HADN'T GOTTEN TO THAT.

MR. WILSON: HANDS TIED BEHIND HER BACK.

THINK ABOUT WHAT HER LIFE MUST HAVE BEEN LIKE. MAN AFTER MAN COMING IN, ASSAULTING YOU, TOUCHING YOU, HAVING SEXUAL INTERCOURSE WITH YOU AND YOU CAN'T EVEN SEE WHO THEY ARE. YOU CAN'T FIGHT BECAUSE YOUR HANDS ARE TIED. YOU CAN'T CRY BECAUSE YOUR MOUTH IS TAPED. WHAT KIND OF ANIMALS WOULD DO THAT TO ANOTHER HUMAN BEING?

YOU KNOW, WHEN I WAS A LITTLE BOY, MY MAMA USED TO TELL ME A STORY ALL OF THE TIME AND IT REALLY DIDN'T MAKE MUCH SENSE FOR A LOT OF YEARS UNTIL I GOT OLDER AND I STARTED TO GET A LITTLE BIT WISER, I HOPE, AND I STARTED TO UNDERSTAND THINGS A LITTLE BIT BETTER. AND SHE TOLD ME A STORY ABOUT HOW PEOPLE ARE. AND SHE SAID THAT THERE WAS THIS LITTLE 'OL LADY WHO LIVED BY HERSELF, ONE OF THE NICEST PEOPLE THAT YOU EVER WANTED TO MEET. SHE WAS GETTING UP IN AGE, AND ON THIS PARTICULAR DAY, SHE HAD MADE A BIG FIRE IN THE FIREPLACE AND SHE HAD ONE OF THOSE OPEN HEARTH FIREPLACES, AND SHE HAD MADE A BIG FIRE. AND SHE GOT HER WRAP, AND IT WAS REALLY COLD OUTSIDE, FROST ON THE GROUND, AND SHE WAS REALLY COLD AND SHE WAS GOING TO THE STORE AND SHE WAS GOING TO GET SOME MILK AND SOME BREAD AND SOME OTHER THINGS. AND SO AS SHE HAD WAKED THAT PATH, SHE WALKED THAT PATH ON THIS PARTICULAR DAY. AND AS SHE STARTED TO WALK, SHE GOT

1655

ALMOST TO THE STORE, HER FEET WERE COLD AND SHE STOPPED BECAUSE OVER IN THE DITCH WAS A LITTLE SNAKE. AND SHE STOPPED. SHE HAD A SHAWL AROUND HER NECK. AND SHE TOOK THAT SHAWL OFF AND THAT 'OL SNAKE WAS OVER THERE AND HE WAS HALF FROZEN TO DEATH, BARELY MOVING. SHE TOOK THAT SHAWL OFF AND SHE GOT THAT SNAKE AND PUT HIM IN THAT SHAWL AND WRAPPED THAT SHAWL AROUND HIM, AND SHE TURNED BACK AROUND AND SHE TOOK HIM BACK HOME AND SHE PUT HIM DOWN IN FRONT OF THE FIRE PLACE SO HE COULD THAW OUT AND HE COULD GET WARM AND HE COULD LIVE. SHE GOT SOME MILK AND SOME HONEY AND MIXED IT TOGETHER AND PUT IT IN A LITTLE BOWL AND PUT IT RIGHT THERE BY HIM. AND THE 'OL SNAKE ATE THE MILK AND THE HONEY. AND ABOUT TWO DAYS LATER, HE WAS FEELING PRETTY STRONG, STARTING TO MOVE HIS MUSCLES AND FLEX AND CURL UP. SO SHE WENT OVER TO HIM THE THIRD DAY AND REACHED DOWN TO PAT HIM AND RUB HIM, AND THE 'OL SNAKE JUST JUMPED UP AND BIT HER RIGHT IN THE THROAT. AND SHE LOOKED AT HIM AND SHE SAID, "WHY DID YOU DO THAT TO ME AFTER ALL I'VE DONE FOR YOU? WHY WOULD YOU DO THAT? YOU KNOW THAT YOUR BITE IS POISONOUS AND YOU KNOW THAT I'M GOING TO DIE." WHY WOULD YOU DO THAT TO ME? AND THE 'OL SNAKE LOOKED AT HER AND HE SAID, "PSSST, YOU KNEW DARN WELL I WAS A SNAKE WHEN YOU TOOK ME IN."

ISN'T THAT THE STORY HERE? A SNAKE IS A SNAKE NO MATTER WHERE YOU FIND THEM, FOLKS. WHAT HARM, WHAT HARM HAS DARLENE PATTERSON EVER DONE TO ANY OF THESE FOLKS? WHAT HARM? DO YOU HEAR ANYBODY SAY SHE MISTREATED THEM, UGLY TO THEM, CURSED THEM OUT, FOUGHT THEM, REPORTED THEM TO THE POLICE? NOTHING.

LET'S TALK ABOUT EVERYBODY SAYS, WELL, YOU KNOW, THERE AIN'T NO EVIDENCE ABOUT MY CLIENT. THERE AIN'T NO EVIDENCE ABOUT MY CLIENT. WELL, I DON'T KNOW WHERE THEY'VE BEEN FOR THE LAST WEEK. THEY EVIDENTLY HAVEN'T BEEN IN THIS COURTROOM. SO LET'S TALK ABOUT THE EVIDENCE AGAINST THEIR CLIENTS INDIVIDUALLY SO THAT EVERYBODY WILL KNOW WHAT THE EVIDENCE IS AGAINST THEIR CLIENT.

LET'S TAKE 'OL ROBERT GRAHAM AND TALK ABOUT HIM FIRST. ROBERT GRAHAM LIVED IN THE MOBILE HOME. HE OWNED IT. HE AND RICKY STUCKEY WERE THE OWNERS. THEY WERE THE LEASERS. AIN'T NO QUESTION ABOUT THAT. THAT'S UNCONTRADICTED IN THE TRIAL OF THIS CASE, THAT ROBERT GRAHAM AND RICKY STUCKEY RENTED AND LEASED THIS TRAILER.

ROBERT GRAHAM WAS SEEN AT THE MOBILE HOME BY DANNY DAVIS, BY BOBBY RANSOM, BY JEFFREY GRAHAM ALL DURING THIS SAME TIME. ALL OF THEM SAY, YEAH, HE WAS THERE. THEY EVEN TOLD YOU THAT SHE WAS TIED UP ON A

1657

COUCH ACROSS IN FRONT OF HIM. JEFFREY GRAHAM, YOU HEARD HIM, HE TOLD JEFFREY GRAHAM HE HAD SEX WITH HER.

MS. GRACIE, BLESS HER HEART, MS. GRACIE SAYS -- AND THIS IS HIS MOTHER. THIS IS HIS MOTHER. SHE SAYS THAT THE WEEK BEFORE THANKSGIVING, WHICH WOULD BE THE WEEK OF THE 16TH SINCE THANKSGIVING IS ON THE 24TH, THE WEEK OF THE 16TH, ROBERT GRAHAM TOLD HER, WELL, YOU KNOW, THEY'VE GOT THAT GIRL UP THERE AT THAT OLD ABANDONED HOUSE AND MY BUDDY RICKY TOLD ME ABOUT IT. AND HIS ROOMMATE, HIS BUDDY RICKY STUCKEY TOLD HIM ABOUT IT. WELL, NOW, THIS IS HIS MAMA, YOU UNDERSTAND. SO HE AIN'T GOING TO TELL HER THAT HE'S IN ON IT. YOU DON'T EXPECT HIM TO DO THAT, DO YOU? DO YOU EXCEPT HIM TO SAY, MAMA, YEAH, YOU KNOW, WE'VE GOT HER UP THERE AND I'M IN ON THAT THING. NO, NO, NO. HE BLAMES IT ON HIS PARTNER, SAYS RICKY TOLD ME ABOUT IT. I DON'T KNOW -- I JUST KNOW RICKY TOLD ME THEY'VE GOT HER UP THERE AND RICKY TOLD ME IF ANYBODY WANTED TO MESS WITH HER, COME ON UP THERE. WELL, HE HAD ALREADY MESSED WITH HER BECAUSE HE HAD BEEN AT THE TRAILER. HE DIDN'T NEED TO GO UP THERE. HE HAD DONE GOT HIS LITTLE PIECE.

YOU KNOW, HE SAYS HE WORKED AT STANTON'S BARBECUE WEDNESDAY THROUGH SATURDAY 8:00 A.M. TO 2:00

P.M. SUNDAY 8:00 TO 3:00. STANTON'S BARBECUE IS CLOSED MONDAY AND TUESDAY. AND LO AND BEHOLD, WHEN IS THE PIG COOKING? MONDAY. AND WHEN WAS THIS LADY KIDNAPPED? SATURDAY NIGHT. AND SHE'S STILL AT HIS TRAILER ON MONDAY WHEN THEY HAVE THE PIG COOKING. I DIDN'T SEE HER BECAUSE, SEE, I WORK ALL THE TIME AND ALL I DO, I JUST WORK AND I GO AND STAY AT MY MAMA'S, EAT SOME FOOD, AND THEN I COME ON HOME.

SHE WAS THERE FROM SATURDAY NIGHT -- I SUBMIT TO YOU SOMETIME LATE SATURDAY NIGHT, AND MONDAY WHEN THEY HAD THE PIG COOKING, SHE WAS STILL THERE. THAT'S HOW RANSOM AND DAVIS SAW HER THERE. NOW, ROBERT GRAHAM SAYS, OH, RICKY TOLD HIM THE WEEK BEFORE. THAT'S WHAT HE SAYS. THIS IS NOT HIS MAMA NOW. HE SAYS MAMA FIRST SAID THAT HE TOLD HER. THEN WHEN HE GETS UP THERE, HE SAYS, YEAH, RICKY TOLD ME, AND HE TOLD ME THE WEEK BEFORE.

NOW, FOLKS, FOLKS, DON'T YOU THINK IT'S JUST STRIKINGLY STRANGE THAT NOW THE RICKY'S GOT THIS GIRL UP THERE, HIM AND RINGO AND SOME OTHER FELLOWS, THAT HE'S GOING TO BE TELLING ROBERT, YOU KNOW, ROBERT, WE'VE GOT THIS GIRL UP THERE. WE'VE GOT HER ALL TIED UP AND BOUND UP AND STUFF. YOU KNOW, WE'RE ALL HAVING OUR WAY WITH HER. WE JUST WANT TO LET YOU KNOW THAT WE'RE UP TO THAT. COME ON. IF YOU BELIEVE

1659

THAT, YOU BELIEVE IN THE EASTER BUNNY. IT AIN'T TRUE. HE WAS THERE. HE WAS IN ON IT. THAT'S HOW HE KNEW HE WAS JUST LYING TO HIS MAMA, JUST LIKE HE'S LYING TO YOU. HE SAYS, OH, RICKY TOLD, ME SAID ANYBODY CAN GO UP THERE AND MESS WITH HER.

AND THEN TO SHOW YOU WHAT KIND OF PERSON HE IS, LET'S ASSUME -- LET'S JUST ASSUME FOR THE SAKE OF ARGUMENT -- LET'S GIVE HIM THE BENEFIT OF EVERY DOUBT AND LET'S ASSUME HE'S TELLING THE TRUTH, WHICH I TELL YOU AIN'T TRUE, BUT LET'S ASSUME THAT HE IS. HE KNOWS THIS A WEEK BEFORE THIS GIRL IS DEAD AND DOES HE DO ANYTHING? NO. HE DOESN'T DO ANYTHING BECAUSE HE KNOWS ALL ALONG AND HE AIN'T GOING TO TELL ON HIS BOYS, HIS COMRADES, HIS CO-CONSPIRATORS. HE AIN'T ABOUT TO TELL ON THEM. THAT'S THE EVIDENCE AGAINST ROBERT GRAHAM.

ALFONZO STATON, HIS LAWYER SAYS, WELL, THERE AIN'T NO EVIDENCE ABOUT MR. ALFONZO. HE AIN'T DONE NOTHING. AIN'T NEVER BEEN MENTIONED. ALFONZO IS PRESENT AT BURGER KING. DO YOU REMEMBER AT BURGER KING WHEN 'OL RINGO THERE IS SAYING THAT HE'S GOING TO GET SOMEBODY TO SUCK HIS PRIVATE PARTS? WHO IS WITH HIM? WHO IS STANDING THERE IN THE MIDST OF THAT CONVERSATION? ALFONZO. THIS IS JUST HOURS -- THIS IS JUST HOURS BEFORE SHE GETS MISSING. HE'S UP AT

1660

BURGER KING TALKING ABOUT IT WITH HIM, AND HIM, ALFONZO AND JEFF WALLS ARE TALKING TO DWAYNE SLOAN UP AT THE BURGER KING. AND HOURS LATER, SHE GETS KIDNAPPED. BUT I DIDN'T HAVE NOTHING TO DO WITH IT. I DON'T KNOW NOTHING ABOUT IT. THEN 'OL ALFONZO, SEEN BY DANNY DAVIS AND ROBERT RANSOM AND JEFFREY GRAHAM WHO SAYS, YEAH, HE WAS UP THERE. HE WAS ALSO SEEN AT THE OLD ABANDONED HOUSE. SAID HE WAS THERE TOO. THEN HE'S SEEN AT THE BRIDGE. HE'S THERE WITH THEM AGAIN. EVERY STEP OF THE WAY, HE'S THERE WITH THEM. HE'S THERE -- HE'S THERE AT BURGER KING WHEN IT STARTS. HE'S THERE AT THE TRAILER. HE'S THERE WHEN THEY TAKE HER TO THE ABANDONED HOUSE. HE'S THERE WHEN THEY TAKE HER TO THE BRIDGE AND DUMP HER OFF. HE IS THERE EVERY SINGLE STEP OF THE WAY. BUT HE AIN'T DONE A THING. I DIDN'T DO NOTHING. I WAS JUST RIDING WITH THE BOYS. YOU KNOW, I MEAN, YEAH, I SAW SOME GIRL OVER THERE TIED UP, BUT I WAS HANGING WITH THE BOYS. I DIDN'T KNOW WHAT WAS GOING ON. I WAS JUST PRESENT.

I DON'T KNOW. YOU KNOW, HE SPENDS THE NIGHT -- HE AND I THINK IT WAS WALLS, RINGO PEARSON, DWAYNE SLOAN SPENT THE NIGHT -- THEY ALL STAYED OVER AT RINGO'S HOUSE. REMEMBER THEY STAYED OVER AT RINGO'S HOUSE ON FRIDAY NIGHT AND THEN ON SATURDAY MORNING

1661

THEY GO TO THE FLEA MARKET? YEAH. YOU THINK MAYBE THEY WERE MAKING SOME PLANS THEN?

LET'S TALK ABOUT JEFFREY WALLS. JEFFREY WALLS. YOU KNOW, THIS TAPE IS FAIRLY RARE BECAUSE IT'S NOT MADE IN THE UNITED STATES, AND THAT'S WHY IT'S SO IMPORTANT. IF IT WERE JUST A REGULAR ROLL OF TAPE THAT YOU COULD BUY FROM WAL-MART, IT MIGHT NOT HAVE VERY MUCH SIGNIFICANCE. BUT YOU HEARD THE SLED AGENT. HE'S BEEN DOING THIS FOR 22 YEARS. AND IN HIS WHOLE 22 YEARS, NEVER SEEN THIS KIND OF TAPE. NEVER IN 22 YEARS OF ANALYZING TAPE AND THOSE KIND OF THINGS. NEVER SEEN THIS KIND OF TAPE. IT'S MADE IN ENGLAND. NO MANUFACTURER IN THE UNITED STATES MAKES IT. AND THE ONLY ROLL THAT'S EVER FOUND IS FOUND WHERE? AT JEFFREY WALLS' MAMA'S HOUSE IN HIS BROTHER'S CAR. OF ALL OF THE PEOPLE IN THE WORLD WHO COULD HAVE THIS ROLL OF TAPE, JEFFREY WALLS HAS GOT IT. COINCIDENCE? JEFFREY WALLS, UP THERE AT THE BURGER KING. YOU SEE? AND THIS IS THE OTHER THING, NOW, YOU HAVE TO REMEMBER. IF THEY ARE AT THE BURGER KING WHEN RINGO IS MAKING THIS STATEMENT AND THEN THEY ARE PRESENT LATER ON, THEY'VE GOT TO KNOW WHAT'S GOING ON BECAUSE THEY WERE AT THE BURGER KING WHEN HE TOLD THEM WHAT HE'S GOING TO DO. AND NOW HE'S GOT THE VERY PERSON THAT HE'S TALKED ABOUT. SHE'S BOUND

UP AND TIED UP.

HE'S AT THE TRAILER. THIS IS REALLY SIGNIFICANT. LISTEN TO THIS. WALLS IS OVERHEARD BY WARD ARGUING WITH RINGO PEARSON ABOUT WHO FIRST HAD SEX WITH DARLENE PATERSON BECAUSE NEITHER ONE OF THEM DON'T WANT TO HAVE HAD SEX WITH HER SECOND. BOTH OF THEM WANTED TO HAVE IT FIRST. NOW, THAT TELLS YOU WHAT KIND OF FOLKS THEY ARE. THEY ARE IN JAIL, FOLKS, IN JAIL, ARGUING ABOUT WHO HAD SEX WITH THE VICTIM FIRST. THAT'S YOUR DEFENDANT JEFFREY WALLS. YOU KNOW, AND THEY WALK AROUND HERE WEARING CROSSES AND CARRYING BIBLES, AND IN PRISON ARGUING WHO HAD SEX WITH A DEAD WOMAN FIRST.

YOU KNOW, AND THEY MADE A BIG DEAL ABOUT JERRY WARD. JERRY WARD WAS IN PRISON WHEN THIS HAPPENED. THERE'S NO WAY HE COULD HAVE KNOWN WHAT OCCURRED. HE DIDN'T HAVE ANY CHARGES, SO WE COULDN'T HELP HIM. WE COULDN'T GIVE HIM NO DEAL AS THEY SAY RANSOM AND THEM GOT. WASN'T NOTHING TO GIVE. HE CAME FOR NO OTHER REASON THAN HE WANTED TO SEE JUSTICE DONE. HE GOT NOTHING. HE WAS IN JAIL IN ALABAMA AND HE'S BACK IN JAIL IN ALABAMA. HE GAINED NOTHING FOR COMING HERE.

THEN WE'VE GOT -- LET'S SEE, DANNY DAVIS AND BOBBY RANSOM SEEN HIM AT THE ABANDONED HOUSE WHERE DARLENE WAS HELD. SEEN BY DANNY DAVIS AND BOBBY

1663

RANSOM IN THE CAR TRANSPORTING DARLENE TO THE BRIDGE. AS I ALREADY TOLD YOU, THE TAPE CAME FROM HIS MAMA'S HOUSE, SEEN BY DANNY DAVIS AND RANSOM CARRYING DARLENE PATTERSON TO THE ABANDONED HOUSE FROM RICKY STUCKEY'S TRAILER. EVERY STEP OF THE WAY, HE'S WITH THEM FROM BURGER KING RIGHT ON THROUGH.

NOW, LET'S TALK ABOUT MR. NEW YORK. NOW, THIS IS AN INTERESTING FELLOW, I MUST ADMIT. HE'S GOT NO JOB. HE'S GOT NO INCOME. BUT HE'S UP AND DOWN THE ROAD IN RENTED CARS. AND YOU DRAW YOUR OWN CONCLUSION ABOUT THAT BECAUSE I DON'T KNOW WHAT HE WAS DOING. I JUST KNOW HE DIDN'T HAVE NO JOB. AND ACCORDING TO HIS OWN TESTIMONY, THE LONGEST JOB HE EVER HAD IN HIS WHOLE LIFE WAS ABOUT A YEAR. WELL, HOW DO YOU LIVE IF YOU AIN'T GOT NO JOB? AND I ASSUME IT COSTS SOME MONEY TO GO FROM NEW YORK TO MARLBORO COUNTY. AND ACCORDING TO HIM, HE CAME DOWN HERE IN SEPTEMBER, CAME BACK IN NOVEMBER. WELL, HE CAME BACK THE FIRST PART OF NOVEMBER. THEN HE SAYS HE GOES BACK. WELL, HE COMES BACK AGAIN LATE NOVEMBER. THEN HE COMES BACK IN DECEMBER. UP AND DOWN, UP AND DOWN, UP AND DOWN THE ROAD DRIVING -- DRIVING, YOU KNOW, RENTED CARS. NO JOB, NO MONEY. DAVIS AND RANSOM SAYS HE WAS AT THE TRAILER WHEN THEY HAD THE COOKOUT.

1664

MR. ERVIN: YOUR HONOR, THERE WAS NO TESTIMONY TO THAT EFFECT FROM HIM.

MR. WILSON: NO, SIR. THAT'S NOT WHAT I REMEMBER.

THE COURT: LET THE JURY MAKE A DETERMINATION AS TO WHAT THE EVIDENCE HAS SHOWN. GO AHEAD.

MR. WILSON: SEEN BY DAVIS AND RANSOM AT THE HOUSE WHERE DARLENE PATTERSON WAS KEPT. SEEN BY DANNY DAVIS AND RANSOM TRANSPORTING DARLENE PATTERSON TO THE BRIDGE. SEEN BY THEM WHEN SHE WAS THROWN IN THE WATER. PRESENT AT THE GARAGE WHEN RICKY STUCKEY TOLD HIM AND JEFFREY GRAHAM THAT THEY NEEDED TO GET DARLENE PATTERSON AWAY FROM HIS HOUSE. THE TESTIMONY WAS MARTIN MCINTOSH AND JEFFREY WALLS, WHEN THEY CAME TO THE OLD ABANDONED HOUSE THAT NIGHT TO GET DARLENE TO THROW HER IN THE RIVER, THEY WERE ALREADY THERE WAITING. THEY DIDN'T COME WITH THE LAST CAR. THEY WERE THERE WAITING WHEN EVERYBODY ELSE GOT THERE. I GUESS THEY ARE THE BIG MEN. THEY WERE ALREADY THERE WAITING. WHEN THE CAR PULLS UP AND THE LIGHT SHINES, WHAT YOU SEE IS JEFFREY WALLS AND MARTIN MCINTOSH STANDING THERE. COME ON, BOYS. LET'S GET HER. THEN THEY GET HER AND THEY TAKE HER AND DUMP HER IN THE CAR.

YOU KNOW, LET'S ASSUME -- LET'S ASSUME THAT HE WASN'T AT THE -- AT THE TRAILER. SO WHAT. HE WAS THERE AT THE OLD ABANDONED HOUSE. AND SO WHAT, HE WAS THERE WHEN THEY WENT AND GOT HER AND TOOK HER TO DUMP HER IN THE RIVER. AND SO WHAT? HE WAS THERE WHEN THEY DUMPED HER IN THE RIVER. SO WHOOPEE-DO, HE WASN'T AT THE HOUSE, HE WASN'T AT THE TRAILER. HE JUST HAPPENED TO COME AFTER THEY TOOK HER TO THE ABANDONED HOUSE. WELL, I'M SURE SHE'S GRATEFUL. SHE IS JUST AS DEAD.

THEN JANUARY 24TH -- YOU KNOW, THEY WANT TO PUT SO MUCH STOCK IN 'OL FOX ANN, YOU KNOW, AND SAY, YOU KNOW, WELL, SHE WAS A WITNESS ON THE STATE'S LIST AND THEY DIDN'T CALL HER. AND THEY ARE ABSOLUTELY RIGHT BECAUSE SHE TOLD US, WHICH IS WHAT THE TESTIMONY WILL SHOW, SHE TOLD US THAT SHE WAS OUT OF TOWN THE WHOLE -- FOR TWO WEEKS BEFORE THANKSGIVING. TWO WEEKS LEADING UP TO THANKSGIVING, SHE WAS OUT OF TOWN. COME TO FIND OUT SHE WAS ONLY GONE FOR FIVE DAYS AND SHE WAS HOME FROM THE 12TH THROUGH THE 16TH, WHICH IS EXACTLY WHEN THE PIG PICKING WAS OR PIG FOOT EATING OR WHATEVER.

NOW, MARTIN MCINTOSH, YOU KNOW, WHEN THEY WERE AT THE -- AT THE -- SEE, THIS IS WHERE ALL OF THIS STUFF WAS HAPPENING, AT BIG JOE'S GARAGE. THEY ALL

KIND OF GATHERED THERE AND THAT WAS PROBABLY THE CENTRAL GATHERING PLACE APPARENTLY. AND THEY WOULD ALL COME AROUND THERE AND THEY HAD DISCUSSIONS. CAN YOU IMAGINE, THEY ARE ALL AT THIS GARAGE AND THEY ARE TALKING. AND I THINK IT'S RICKY TELLING THE REST OF THEM, Y'ALL HAVE TO GET HER OUT OF MY TRAILER. Y'ALL GOT TO GET HER OUT OF MY TRAILER. AND I GUESS THAT'S WHEN THEY DECIDED THEY WOULD TAKE HER UP TO THIS OLD ABANDONED HOUSE WHICH IS WHERE HIS FAMILY USED TO LIVE.

ISN'T THAT STRIKINGLY STRANGE THAT HE DOESN'T KNOW ANYTHING ABOUT HER, ABOUT ALL OF THIS, BUT IT'S IN HIS HOUSE -- I MEAN, HIS TRAILER AND THEN HIS OLD ABANDONED HOUSE THAT HIS FAMILY USED TO LIVE IN? OF ALL OF THE PLACES IN THE WORLD. COINCIDENCE, I GUESS.

SAYS HE GOT RELIGION. WELL, YOU KNOW, SAYS HE'S GOT RELIGION. YOU KNOW, HE DIDN'T HAVE RELIGION, FOLKS, NOVEMBER 12TH AND 13TH THROUGH THE 24TH. HE DIDN'T HAVE RELIGION THEN. AND ALL OF A SUDDEN, YOU GOT HIM ARRESTED AND GET HIM IN JAIL, YOU GOT RELIGION THEN, JAILHOUSE RELIGION. AND AS SOON AS HE'S BACK ON THE STREET, HE WILL BE A DEVIL AGAIN. THE ONLY REASON HE'S GOT RELIGION IS BECAUSE HE'S IN JAIL AND HE'S CAUGHT AND HE'S LOOKING FOR A WAY OUT.

1667

HE'S A GAMBLER AND HE'S GAMBLING THAT HE CAN CONVINCE YOU THAT BY CARRYING THE BIBLE YOU OUGHT TO TURN HIM LOOSE.

HE SAYS SOMETHING THAT REALLY DISGUSTS ME. HE SAYS, WELL, YOU KNOW, IT'S HARD TO BE ACCUSED OF SOMETHING THAT YOU DIDN'T DO, AND HE CRIED FOR YOU A LITTLE BIT. IT'S DISGUSTING. IT'S A LOT HARDER WHERE DARLENE WAS. DON'T YOU THINK SHE WOULD HAVE BEEN HAPPY IF THEY HAD GIVEN HER A CROSS AND SAID, HERE, DARLENE, BEFORE WE DUMP YOU IN THIS RIVER, LET US GIVE YOU THIS CROSS TO PUT AROUND YOUR NECK. HERE, DARLENE, HERE'S MY BIBLE. READ YOU A VERSE BEFORE WE THROW YOU IN THIS RIVER. NO. DO YOU THINK SHE HAD A BIBLE? DO YOU THINK SHE WOULD HAVE LIKED TO MAYBE HAVE READ A VERSE OR TWO? DO YOU THINK THAT MAYBE SHE WOULD LIKE TO HAVE PUT THAT CROSS AROUND HER NECK, A LADY WHO WAS AN OFFICER ON HER CHURCH CHOIR, WHO WAS SUPPOSED TO BE CELEBRATING A CHOIR ANNIVERSARY THE VERY NEXT DAY, BUT THEY DECIDED THAT SHE COULDN'T GO? THEY DECIDE THAT. SHE DIDN'T HAVE NO SAYSO. THESE GAMBLERS DECIDED IT WAS TIME.

RICKY STUCKEY. MR. RICKY STUCKEY. NOW, YOU TALK ABOUT A RINGLEADER IN THIS. YOU TALK ABOUT A PERSON WHO IS THE CONTROLLER IN ALL OF THIS. HE, RICKY STUCKEY, I SUBMIT TO YOU IS AT THE TOP OF THE

LIST. HE IS AT THE TOP OF THE LIST. IT WAS HIS HOUSE. RANSOM AND JEFFREY GRAHAM AND DAVIS TOLD YOU HE WAS THERE. EVEN HIS 'OL GIRLFRIEND, FOX ANN, SAYS HE WAS THERE. SHE SAID, I DIDN'T GO INSIDE, SO I DON'T KNOW WHETHER ANYBODY WAS THERE NAKED OR TIED UP OR NOT. I WAS ONLY IN THE YARD FOR FOUR OR FIVE MINUTES, BUT YEAH, HE WAS THERE. HE SAYS -- WHEN HE WAS UP THERE, HE SAID, WELL, I DIDN'T HEAR NOTHING AT NO GARAGE ABOUT THEM SAYING GET THE GIRL OUT OF THE HOUSE. HE WAS SEEN BY DAVIS AND RANSOM AT THE OLD ABANDONED HOUSE. SEEN BY DAVIS AND RANSOM IN THE CAR WHEN THEY WERE CARRYING DARLENE TO THE BRIDGE. WAS THERE WHEN THEY THREW HER OVER.

OVERHEARD -- AND THIS IS A GOOD ONE, ANOTHER ONE. OVERHEARD BY WARD DISCUSSING DARLENE PATTERSON BEING KEPT IN HIS TRAILER WHILE TAPED UP. ALSO PRESENT AROUND THE TRAILER WHEN SEXUAL ASSAULT OCCURRED. WATCHED RINGO PEARSON HAVE SEX WITH DARLENE. THAT'S WHAT HE TOLD HIS BUDDY JERRY WARD UP THERE IN PRISON. SEE, WHEN THEY GOT UP TO PRISON, THEY GOT TO BE BUDDIES, AND NOT KNOWING OR THINKING THAT, WELL, YOU KNOW, THAT GUY MIGHT COME BACK AND TELL ON ME. BUT THAT'S THE NATURE OF PRISON WHEN YOU'RE UP THERE. YOU AIN'T REALLY GOT NO FRIENDS BECAUSE EVERYBODY IS LOOKING FOR A WAY OUT AND THEY

WILL DO -- THEY WILL TELL ON YOU IN A HEARTBEAT IF IT WILL HELP THEM GET OUT. AND THAT'S GOOD BECAUSE A LOT OF CRIMES MIGHT NOT BE SOLVED IF THEY WOULDN'T.

JEFFREY GRAHAM ADMITTED RICKY STUCKEY SEXUALLY ASSAULTED DARLENE PATTERSON OR AT LEAST SAID THAT THAT'S WHAT THEY TOLD THEM. SEEN BY DAVIS AND RANSOM CARRYING DARLENE PATTERSON FROM HIS TRAILER TO THE OLD ABANDONED HOUSE. AND THEN HIS GIRLFRIEND FOX ANN SAYS HE WAS AT THE COOKOUT.

NOW, HE SAYS RINGO IS HIS FIRST COUSIN, BUT THEN WHEN I ASKED HIM, I SAID WELL, YOU KNOW, YOU AND RINGO, COUSINS, Y'ALL SPEND TIME -- OH, NO. SAID WE HAD A FALLING OUT BECAUSE HE STOLE A BATTERY FROM MY DADDY AND WE DON'T HAVE NOTHING TO DO WITH EACH OTHER SINCE THEN. NOW, ALL BEFORE, HE WAS DRIVING RINGO AROUND. HE WAS HIS CHAUFFEUR HAULING HIM AROUND ALL OVER TOWN, ANYWHERE HE WANTED TO GO. BUT ALL OF A SUDDEN NOW HE DON'T HAVE NO USE FOR RINGO. OF COURSE. COULD YOU BLAME HIM? THE OTHER THING IS -- WHICH MAKES IT REALLY IMPORTANT HERE IS THAT EVEN -- EVEN RICKY STUCKEY SAYS WE NEVER HAD BUT ONE COOKOUT WITH PIG FEET. ONE. SO THERE CAN'T BE ANY CONFUSION BECAUSE THERE WAS ONLY ONE COOKOUT WITH PIG FEET, HE SAYS.

AND HE -- THIS IS WHAT HE SAYS, NOW. THIS IS

NOT WHAT 'OL RANSOM AND DAVIS SAID, BUT IT'S ABSOLUTELY CONSISTENT WITH WHAT THEY TOLD YOU. THIS IS WHAT HE SAID. HE SAID, YEAH, SAYS RANSOM AND DAVIS WAS PRESENT. RICKY STUCKEY, LEROY STATON AND ROBERT GRAHAM WERE ALL THERE. THAT'S WHAT HE SAYS. THIS AIN'T WHAT 'OL LYING, DRUNKEN DAVIS AND RANSOM SAYS, PEOPLE WHO HAVE NO SENSE, BRAIN FRIED ON ALCOHOL AND DRUGS. THIS IS WHAT HE SAYS, MR. CHRISTIAN.

YOU KNOW, HERE'S ANOTHER ONE HE SAID. WELL, YEAH, YOU KNOW, I GOT MY CROSS AND I'VE BEEN WEARING IT FOR TWO YEARS NOW. THAT'S HOW LONG YOU'VE BEEN IN JAIL.

LEROY STATON. LET'S TALK ABOUT HIM FOR A MINUTE. SEEN BY DAVIS AND RANSOM AND JEFFREY GRAHAM AT THE TRAILER WHERE DARLENE WAS IN PRISON AND SEXUALLY ASSAULT. SEEN BY DAVIS AND RANSOM AT THE ABANDONED HOUSE. SEEN IN THE CAR BY RANSOM AND DAVIS WHEN DARLENE PATTERSON WAS TAKEN ON THE BRIDGE. WAS THERE WHEN SHE WAS THROWN OFF THE BRIDGE. CAME TO SEE JEFFREY GRAHAM'S SISTER AND TOLD HER -- I COME -- LET'S SEE. TOLD JEFFREY GRAHAM HIM AND RINGO -- IF YOU WILL REMEMBER, THE TESTIMONY WAS HIM AND RINGO WENT TO SEE JEFFREY GRAHAM'S SISTER. AND AFTER THEY TALKED TO JEFFREY GRAHAM'S SISTER, ON THE WAY OUT,

THEY TALKED TO JEFFREY. TOLD JEFFREY, WELL, WE GOT A GIRL UP HERE IN THE TRAILER AND IF YOU WANT TO GET YOU A PIECE, COME ON DOWN. AND 'OL JEFFREY SAID HE DIDN'T GO.

THE REASON HE DIDN'T GO IS BECAUSE HIS GIRLFRIEND WAS AT THE HOUSE AND HE COULDN'T GET AWAY RIGHT THEN. OTHERWISE, HE WOULD PROBABLY HAVE BEEN DOWN THERE TOO. BUT HE SAID THAT ON THE STAND. JEFFREY SAID MY GIRLFRIEND WAS AT THE HOUSE, SO I REALLY COULDN'T GO ANYWAY. FOX ANN ALSO SAYS THAT HE WAS THERE. HE'S ANOTHER ONE. LEROY WAS AT THE HOUSE AGAIN WHEN THE POLICE CAME TO GET ROBERT TO TALK TO THEM, AND THEY ARE ALL TALKING ABOUT ALIBIS. LEROY IS RIGHT THERE, RIGHT THERE AMONGST ALL OF THEM.

THEN HE BROUGHT HIS PASTOR IN HERE. DID YOU NOTICE SOMETHING, THOUGH, ABOUT HIS PASTOR? HE NEVER WOULD SAY THAT HE WAS A GOOD PERSON. NEVER. HE NEVER WOULD SAY THAT HIS OWN MEMBER WAS A GOOD PERSON. AND I KEPT ASKING HIM ABOUT HIM AND TRYING TO GET HIM TO TALK ABOUT -- HE WOULD NEVER SAY HE WAS A GOOD PERSON.

NOW, IF THAT'S YOUR -- IF YOU BRING THE MINISTER IN AS YOUR CHARACTER WITNESS AND EVEN HE WON'T EVEN SAY YOU'RE A GOOD PERSON, THERE'S SERIOUS QUESTIONS, I SUBMIT TO YOU, ABOUT YOU. HE DID SAY, WELL, HE

DOES COME TO CHURCH FREQUENTLY AND HE SAYS HE WAS A GOOD MEMBER. OF COURSE HE SAYS HE DIDN'T KNOW WHETHER HE HAD ANY DEVILS AT HIS CHURCH OR NO. AND I SAID, WELL, YOU KNOW, I KNOW THERE'S PLENTY OF DEVILS IN MY CHURCH, AND IF THERE AIN'T NO DEVILS IN HIS CHURCH, THERE'S SOMETHING WRONG.

HE SAYS -- THIS IS WHAT LEROY SAYS. HE SAYS, YEAH, I WAS THERE AT THAT PIG COOKOUT AND I SAW DAVIS AND RANSOM AT THE PIG COOKOUT. NOW, HE SAYS HE DOESN'T KNOW JEFFREY WALLS, BUT HE'S HAULING WOOD TO JEFFREY WALLS' MAMA'S HOUSE. BUT HE DOESN'T KNOW HIM. REMEMBER, HE FIRST SAID, WELL, I ONLY WENT IN THERE ONE TIME. AND THEN WHEN I STARTED PINNING HIM DOWN ABOUT THAT LITTLE ORANGE TRUCK HE'S GOT, HE SAID, WELL, THE ONLY OTHER TIME I WAS ON THAT ROAD WAS WHEN I WAS HAULING THAT COUCH FOR ROBERT GRAHAM. AND THEN LATER HE ADMITS, WELL, YEAH, I'VE BEEN THERE MORE THAN -- MORE THAN ONCE OR TWICE, BUT I DON'T REMEMBER HOW MANY TIMES I'VE BEEN THERE. BUT YEAH, I'VE BEEN THERE MORE THAN ONCE OR TWICE. I THOUGHT YOU WAS JUST TALKING ABOUT RIGHT THEN, THAT WEEK.

NOW, LADIES AND GENTLEMEN, WE HAVE SPENT A LOT OF TIME WITH THIS AND I HAVE TRIED TO GO BACK THROUGH ALL OF THE EVIDENCE AND TESTIMONY WITH YOU TO POINT OUT AND TO REFRESH YOUR MEMORY BECAUSE I KNOW YOU

1673

REMEMBER. TWELVE OF YOU, ONE OF ME. A LOT OF TIMES WHEN SOMETHING IS BEING SAID, I'LL BE WRITING SOMETHING DOWN OR TRYING TO LISTEN OR THINKING OF THE NEXT QUESTION I'M GOING TO ASK. AND SOMETIMES I MISS SOMETHING.

YOUR WHOLE JOB HAS BEEN TO SIT HERE AND LISTEN AND PAY ATTENTION, AND YOU HAVE DONE THAT. AND I AM VERY PLEASED OF THAT, AS IS THE STATE OF SOUTH CAROLINA. AND I'M SURE THESE DEFENDANTS FEEL EXACTLY THE SAME WAY. AND I SIMPLY ASK YOU IN YOUR DELIBERATIONS TO GIVE THE BENEFIT OF THE DOUBT TO THE DEFENDANTS, BUT I THINK THE EVIDENCE IN THIS CASE IS OVERWHELMING, OVERWHELMING AGAINST EACH OF THOSE SIX DEFENDANTS WHO SIT THERE, THOSE FIVE ON THE BACK ROW BACK THERE FOR MURDER, CRIMINAL SEXUAL CONDUCT, KIDNAPPING, CRIMINAL CONSPIRACY. AND TO ROBERT GRAHAM, FOR KIDNAPPING, CRIMINAL SEXUAL CONDUCT AND CRIMINAL CONSPIRACY.

IT IS TOUGH TO DO WHAT YOU'VE BEEN ASKED TO DO. IT IS NOT EASY. IT IS NOT. AND YOU'VE HEARD FROM A WHOLE BUNCH OF WITNESSES. BUT THERE'S ONE WITNESS THAT YOU HAVE NOT HEARD FROM. DARLENE PATTERSON. SHE CAN'T TESTIFY. SHE CAN'T TESTIFY BECAUSE SHE'S IN THE COLD GROUND OF MARLBORO COUNTY. AND SHE'S THERE BECAUSE THESE FIVE FELLOWS ON THE BACK ROW WITH

1674

THE ASSISTANCE OF THEIR COHORT OVER HERE DECIDED THAT IT WAS TIME FOR HER TO DIE. THEY DECIDED THAT IT WAS TIME FOR HER TO BE KIDNAPPED. THEY DECIDED IT WAS TIME FOR HER TO DIE AND THEY CARRIED OUT THEIR PLAN. SHE HAD NO CHOICE. SHE HAD NO SAYSO.

SHE HAS A FAMILY, CHILDREN, PEOPLE WHO LOVE HER. BUT THAT'S NOT FOR YOUR CONSIDERATION. YOUR JOB IS NOT TO DETERMINE BASED ON WHO LOVES WHO, BUT TO DO WHAT'S RIGHT, WHAT'S FAIR AND WHAT JUSTICE CALLS FOR.

LET ME SAY THIS TO YOU. ANYTHING LESS, ANYTHING LESS THAN GUILTY ON ALL COUNTS ON ALL CHARGES FOR THESE DEFENDANTS, THEY WIN THE GAMBLE. THEY WIN. AND THAT'S WHAT THEY ARE COUNTING ON. ONE LAST GAMBLE ONE LAST TIME. THANK YOU.

THE COURT: THANK YOU, MR. WILSON AND THANK YOU, COUNSEL FOR THE DEFENSE.

LADIES AND GENTLEMEN, YOU'VE NOW HEARD ALL OF THE TESTIMONY IN THE CASE. YOU'VE HEARD FINAL SUMMATION OF THE DISTINGUISHED COUNSEL FOR THE STATE AND OF THE DEFENSE. I HAVE GIVEN YOU THE INSTRUCTIONS IN THE LAW WHICH PERTAIN TO ALL OF THE ISSUES THAT ARE RAISED. IN YOUR DELIBERATION AS FINDERS OF THE FACTS, NOW, I WANT YOU TO KEEP IN MIND THE LAW OF THIS CASE AS I HAVE GIVEN IT TO YOU, REMEMBERING IF AT ANY TIME ANY OF YOU NEED TO BE

1675

REASSURED OR REINSTRUCTED AS TO WHAT THE LAW IS, PLEASE WRITE THAT QUESTION DOWN AND KNOCK ON THE DOOR, LET THE BAILIFF KNOW AND I'LL BE DELIGHTED TO BRING YOU OUT AND INSTRUCT YOU ON ANY OR ALL OF THE PROPOSITIONS THAT WE HAVE PREVIOUSLY COVERED.

NOW, I HOLD IN MY HAND THESE VARIOUS INDICTMENTS AS AGAINST THE SIX INDIVIDUALS. WE'VE BEEN OVER THEM ON SEVERAL OCCASIONS. I HAVE IN MY HAND THESE INDICTMENTS WHICH YOU WILL TAKE INTO THE JURY ROOM WITH YOU. NOW, THERE'S ABSOLUTELY NO SIGNIFICANCE IN THE MANNER IN WHICH I HAND YOU THE INDICTMENTS. I COULD TURN THEM AROUND JUST AS EASY. ON THE TOP OF EACH INDICTMENT IS A VERDICT FORM. AND THIS VERDICT FORM LISTS EACH INDIVIDUAL DEFENDANT AND IT LISTS EACH COUNT OR INDICTMENT THAT THEY ARE CHARGED WITH. AS INDICATED BEFORE, YOU CONSIDER THE EVIDENCE AS TO EACH DEFENDANT SEPARATELY AND YOU CONSIDER THE EVIDENCE AS TO EACH INDICTMENT OR EACH COUNT SEPARATELY. EACH COUNT OR EACH INDICTMENT HAS BY IT A LINE, EITHER NOT GUILTY OR GUILTY. ONCE YOU HAVE REACHED A UNANIMOUS VERDICT, YOU WOULD CHECK EITHER NOT GUILTY OR GUILTY AS TO EACH INDICTMENT AND THEREAFTER SIGN YOUR NAME, REMEMBERING THAT WHATEVER YOUR VERDICT IS AS TO EACH COUNT AND AS TO EACH DEFENDANT MUST BE THE UNANIMOUS VERDICT OF ALL 12 OF

YOU. NOT A PORTION OF YOU, NOT A MAJORITY OF YOU, BUT ALL OF YOU. AND ONCE YOU HAVE REACHED A VERDICT ON EACH COUNT AND AS TO EACH DEFENDANT, YOU THEN WOULD KNOCK ON THE DOOR, LET THE BAILIFF KNOW AND I'LL BRING YOU OUT TO RECEIVE YOUR VERDICT.

NOW, LET ME REVIEW JUST BRIEFLY THE PROPOSITIONS OF LAW THAT I TELL YOU NOW ARE EMBRACED IN THE ISSUES IN THE CASE, AND I URGE YOU TO LET ME KNOW IF YOU WOULD DESIRE ANY ADDITIONAL INSTRUCTIONS ON ANY OF THESE PROPOSITIONS OF LAW.

YOU KNOW NOW THAT YOU ARE TO CONSIDER EACH COUNT SEPARATELY AND EACH -- ALL OF THE EVIDENCE SEPARATELY. YOU ARE TO CONSIDER THE EVIDENCE AGAINST EACH DEFENDANT SEPARATELY AND YOU WOULD UNDERSTAND THAT YOUR VERDICT CAN BE GUILTY OF ALL, NOT GUILTY OF ALL, GUILTY OF SOME AND NOT GUILTY OF SOME AS TO EACH COUNT AND AS TO EACH DEFENDANT.

I HAVE INSTRUCTED YOU AS I DO AGAIN THAT EACH DEFENDANT IS PRESUMED INNOCENT. THAT INNOCENCE REMAINS WITH THEM UNTIL THE STATE HAS PROVEN THEM GUILTY BEYOND A REASONABLE DOUBT.

YOU FULLY UNDERSTAND, NOW, THAT YOU ARE THE JUDGE, SOLE JUDGE OF THE CREDIBILITY, MEANING THE BELIEVABILITY OF ALL OF THE WITNESSES WHO TESTIFY. YOU WOULD UNDERSTAND THAT I AM THE INSTRUCTOR IN THE

LAW, AND UNDER YOUR OATH, YOU MUST ACCEPT THE LAW AS I GIVE IT TO YOU. REMEMBER THAT YOU TAKE THE FACTS AS YOU FIND THEM TO BE AND REACH THAT VERDICT THAT SIMPLY SPEAKS THE TRUTH AND A VERDICT THAT DOES JUSTICE TO THE PEOPLE OF SOUTH CAROLINA AND TO THESE DEFENDANTS HERE ON TRIAL.

I HAVE EXPLAINED TO YOU THE CHARGE OF MURDER AND THE DEFINITION OF MURDER. I'VE EXPLAINED TO YOU THE DEFINITION OF MALICE. WE HAVE DISCUSSED CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND THE ELEMENTS THAT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT. I HAVE EXPLAINED TO YOU THE VARIOUS ELEMENTS OF KIDNAPPING WHICH THE STATE TOO, AS WITH ALL OTHER ISSUES, MUST PROVE TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT. AND I HAVE GIVEN YOU THE LAW AS IT RELATES TO THE CRIME OF CONSPIRACY.

I HAVE EXPLAINED TO YOU THAT THE HAND OF ONE IS THE HAND OF ALL, IF PROVEN TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT. AND I HAVE EXPLAINED THE DIFFERENCE FOR YOU AS BETWEEN DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. YOU WILL KNOW THAT I HAVE QUALIFIED CERTAIN WITNESSES AS EXPERT WITNESSES. AND AS I'VE ADVISED YOU, YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE FROM YOUR EXPERIENCE AND DEEM IT APPROPRIATE.

I HAVE DEFINED FOR YOU THE LAW OF THIS STATE AS IT RELATES TO AN AIDER OR ABETTOR. AND I AGAIN SPECIFICALLY CALL TO YOUR ATTENTION THAT YOU MUST NOT PERMIT IN THE SLIGHTEST DEGREE TO WEIGH AGAINST A DEFENDANT WHO ELECTED NOT TO TAKE THE STAND. THERE IS NO ADVERSE INFERENCE TO BE DERIVED FROM THE FACT THAT A DEFENDANT DID OR DID NOT TAKE THE STAND. BUT IF HE DID NOT TAKE THE STAND, YOU MUST NOT PERMIT THAT TO ENTER AGAINST HIM IN ANY WAY.

I'VE INDICATED TO YOU THAT MERE PRESENCE AT THE SCENE OF A CRIME IN AND BY ITSELF IS INSUFFICIENT TO CONVICT AN INDIVIDUAL OR -- NOR IS BARE KNOWLEDGE SUFFICIENT UNDER THOSE CIRCUMSTANCES. AND I HAVE TOLD YOU THAT THE PRIOR RECORD OF A DEFENDANT, IF ANY, AND IF BELIEVED BY YOU, CAN ONLY BE USED AS TO HIS CREDIBILITY AND BELIEVABILITY AND NOT IN ANY WAY AS ANY EVIDENCE OF THE GUILT FOR WHICH HE IS BEING TRIED.

I HAVE EXPLAINED TO YOU THE LAW OF ALIBI AND THAT THERE IS NO BURDEN UPON THE DEFENDANT TO PROVE HIS ALIBI. THE BURDEN IS UPON THE STATE TO PROVE THAT HE WAS ACTUALLY PRESENT AT THE SCENE OF THE CRIME AND THAT HE ACTUALLY PARTICIPATED IN IT AND THAT HE WAS NOT ELSEWHERE.

NOW AGAIN I TELL YOU IF YOU NEED ANY FURTHER

1679

PROPOSITION ON THOSE -- INSTRUCTIONS ON THOSE PROPOSITIONS OF THE LAW, ALL YOU HAVE TO DO IS LET ME KNOW. NOW, DURING YOUR DELIBERATIONS, ALL OF THESE MATTERS THAT I HAVE INTRODUCED INTO THE TRIAL OF THIS CASE WILL BE WITH YOU IN THE JURY ROOM.

NOW, MADAM FOREMAN, BEFORE YOU BEGIN YOUR DELIBERATIONS, I NEED TO DISCUSS ONE OR TWO ISSUES WITH COUNSEL FOR THE STATE AND THE DEFENDANT. DO NOT BEGIN YOUR DELIBERATIONS UNTIL THE CLERK OF COURT BRINGS INTO YOU THESE VERDICT FORMS AND THESE INDICTMENTS AND THE MATTERS THAT ARE IN EVIDENCE. DO NOT BEGIN UNTIL HE BRINGS THAT IN AND SAYS YOU MAY BEGIN.

PLEASE GO TO YOUR JURY ROOM. NOW, TWO ALTERNATES, YOU HOLD RIGHT THERE FOR ME, PLEASE. THE REST OF YOU MAY GO TO YOUR JURY ROOM.

MR. CLERK, I WANT TO KEEP THESE ALTERNATES. WHERE IS A GOOD PLACE FOR THEM? CAN WE PUT THEM IN YOUR OFFICE DOWNSTAIRS?

THE CLERK: I'LL PUT THEM IN MY OFFICE.

THE COURT: OKAY.

(WHEREUPON, THE JURY WAS REMOVED FROM THE COURTROOM AND THE FOLLOWING PROCEEDINGS COMMENCED IN OPEN COURT.)

THE COURT: UNDER OUR RULES, ONLY 12 CAN DELIBERATE. BUT I NEED TO KEEP YOU HERE. IT'S NOT UNLIKELY, BUT IN THE EVENT SOMEONE BECOMES SICK OR DISABLED, I WOULD HAVE TO CALL ON ONE OR THE OTHER. THE CLERK OF COURT WOULD MAKE YOU COMFORTABLE DOWNSTAIRS AT AN APPROPRIATE PLACE. AT ANY TIME IF THE JURY COMES BACK FOR FURTHER INSTRUCTION, I WILL BRING YOU BACK SO YOU WILL HAVE THE RIGHT TO BENEFIT FROM THOSE INSTRUCTIONS.

MR. CLERK, LET THOSE TWO ALTERNATES GO OUTSIDE NOW FOR ME. MR. CLERK -- LET ME TELL BOTH OF YOU THIS. HE'S GOING TO KEEP YOU IN HIS OFFICE AND WE'LL GET REFRESHMENTS FOR YOU, WHATEVER IS NECESSARY. DISCUSS NO PART OF THIS CASE WITH ANYONE. DO NOT EVEN DISCUSS IT AMONG YOURSELVES, OKAY, BECAUSE YOU WELL MAY BE CALLED UPON TO PARTICIPATE AS A JUROR. THEY MAY SIT TOGETHER. JUST DON'T DISCUSS THIS CASE.

(WHEREUPON, THE ALTERNATE JURORS WERE REMOVED FROM THE COURTROOM AND THE FOLLOWING PROCEEDINGS COMMENCED IN OPEN COURT.)

THE COURT: FOR THE STATE, IS THERE ANY EXCEPTION OR ADDITIONS TO THE CHARGE?

MR. WILSON: NOTHING.

THE COURT: FOR THE DEFENSE, BEGINNING

WITH MR. ERVIN, ANY ADDITIONS OR EXCEPTIONS TO THE CHARGE, MR. ERVIN?

MR. ERVIN: NO, SIR.

MR. PADGETT: NO, SIR.

MR. REDMOND: NO, SIR, YOUR HONOR.

MR. MOORE: NO, SIR, YOUR HONOR.

MR. ROGERS: NO, SIR, YOUR HONOR.

MR. LAWSON: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT.

(WHEREUPON, THE JURY BEGAN DELIBERATIONS AT 3:45 P.M.)

V E R D I C T S

THE COURT: ALL RIGHT. I UNDERSTAND THAT THE JURY HAS A VERDICT IN THESE CASES. I HAVE NO IDEA WHAT THE VERDICTS ARE. I WOULD UNDERSTAND THAT WHATEVER THEY ARE, THEY WOULD IMPACT ON THE FAMILIES OF THE VICTIMS, WOULD EQUALLY IMPACT ON THE FAMILIES OF THE DEFENDANT. BUT AGAIN, NOW, I WILL ALLOW NO CONVERSATION, NO REMARKS, NO OUTCRY. AND IF YOU CAN'T AGREE WITH THAT, YOU BETTER LEAVE BEFORE THESE VERDICTS ARE ANNOUNCED.

NOW, OFFICER, I WANT ANYBODY ON ANY SIDE WHO MAKES SOME STATEMENT ABOUT THESE VERDICTS ARRESTED IMMEDIATELY. I WILL DEAL WITH THEM IN A MOST SERIOUS MATTER. IF ANYBODY CAN'T COMPLY WITH THAT, NOW,

PLEASE LEAVE THE COURTROOM.

(WHEREUPON, THE VERDICT WAS DELIVERED AT 5:50 P.M.)

THE COURT: ALL RIGHT. THE ALTERNATES ARE BACK IN THE COURTROOM. BRING THE JURY IN, PLEASE.

(WHEREUPON, THE JURY WAS RETURNEI TO THE COURTROOM AND THE FOLLOWI PROCEEDINGS WERE COMMENCED IN OPEN COURT.)

THE COURT: LADIES AND GENTLEMEN, HAVE YOU REACHED A UNANIMOUS VERDICT WITH REGARDS TO THE MATTERS BEFORE YOU?

FORELADY: YES, SIR.

THE COURT: WOULD YOU PLEASE HAND TO THE CLERK YOUR VERDICT FORM, PLEASE. IF EACH OF THESE VERDICTS REPRESENT THE UNANIMOUS VERDICT OF ALL OF THE JURY, SO SIGNIFY BY RAISING YOUR HAND, PLEASE.

LET THE RECORD REFLECT THAT ALL 12 JURORS HAVE INDICATED THAT THESE ARE UNANIMOUS VERDICTS.

PUBLISH THAT VERDICT.

THE CLERK: INDICTMENT NUMBERS 95-GS-34-448, STATE VERSUS JEFFREY WALLS, INDICTMENT FOR MURDER; VERDICT, GUILTY. NUMBER 95-GS-34-0446, STATE VERSUS JEFFREY WALLS, INDICTMENT FOR KIDNAPPING, GUILTY. INDICTMENT NUMBER 95-GS-34-447, STATE VERSUS JEFFREY WALLS, CRIMINAL SEXUAL CONDUCT

FIRST DEGREE, GUILTY. 95-GS-34-444, STATE VERSUS JEFFREY WALLS, INDICTMENT FOR CRIMINAL CONSPIRACY, GUILTY.

THE COURT: ALL RIGHT. THIS IS THE SECOND ONE. PLEASE PUBLISH THIS VERDICT.

THE CLERK: INDICTMENT NUMBER 96-GS-34-979, THE STATE VERSUS CHARLES M. RICKY STUCKEY, JUNIOR, INDICTMENT FOR KIDNAPPING, COUNT ONE; COUNT TWO IS MURDER; COUNT THREE, CRIMINAL SEXUAL CONDUCT FIRST; COUNT FOUR, CRIMINAL CONSPIRACY.

THE COURT: DID YOU READ ALL FOUR OF THEM, NOW?

THE CLERK: ON COUNT ONE, KIDNAPPING, THE VERDICT GUILTY. COUNT TWO, MURDER, VERDICT GUILTY. COUNT THREE, CRIMINAL SEXUAL CONDUCT FIRST, VERDICT, GUILTY. COUNT FOUR, CRIMINAL CONSPIRACY, GUILTY.

THE COURT: ALL RIGHT.

THE CLERK: INDICTMENT NUMBER 96-GS-34-984, THE STATE VERSUS ALFONZO STATON, COUNT ONE, KIDNAPPING, GUILTY. COUNT TWO, MURDER, GUILTY. COUNT THREE, CRIMINAL SEXUAL CONDUCT FIRST DEGREE, NOT GUILTY. COUNT FOUR, CRIMINAL CONSPIRACY, GUILTY.

THE COURT: STATE VERSUS LEROY STATON.

THE CLERK: INDICTMENT NUMBER

96-GS-34-982, STATE VERSUS LEROY STATON. COUNT ONE, KIDNAPPING, GUILTY. COUNT TWO, MURDER, GUILTY. COUNT THREE, CRIMINAL SEXUAL CONDUCT FIRST, GUILTY. COUNT FOUR, CRIMINAL CONSPIRACY, GUILTY.

THE COURT: THE STATE VERSUS MARTIN MCINTOSH.

THE CLERK: INDICTMENT NUMBER 96-GS-34-983, STATE VERSUS MARTIN MCINTOSH. COUNT ONE, KIDNAPPING, GUILTY. COUNT TWO, MURDER, GUILTY. COUNT THREE, CRIMINAL SEXUAL CONDUCT FIRST DEGREE, GUILTY. COUNT FOUR, CRIMINAL CONSPIRACY, GUILTY.

THE COURT: THE STATE VERSUS ROBERT GRAHAM.

THE CLERK: INDICTMENT NUMBER 96-GS-34-978, STATE VERSUS ROBERT GRAHAM. COUNT ONE, KIDNAPPING, NOT GUILTY. COUNT TWO, CRIMINAL SEXUAL CONDUCT FIRST DEGREE, NOT GUILTY. COUNT THREE, CRIMINAL CONSPIRACY, GUILTY.

THE COURT: ALL RIGHT. PRIOR TO PROCEEDING, NOW, I INVITE EACH DEFENDANT'S ATTORNEY TO COME AROUND AND EXAMINE THE VERDICT FORM. MR. LAWSON.

MR. LAWSON: YES, SIR.

THE COURT: YOU MAY EXAMINE. MR. WILL ROGERS. MR. MOORE. MR. ROGERS --

MR. ROGERS: THAT'S ME.

THE COURT: THAT'S YOU.

MR. ROGERS: YEAH, I'VE ALREADY SEEN IT.

THE COURT: JEFFREY WALLS. RICKY STUCKEY. AND MARTIN MCINTOSH. ALL RIGHT. GENTLEMEN, AS I UNDERSTAND, FIVE OF THE DEFENDANTS WERE FOUND GUILTY OF ALL CHARGES, EXCEPT ALFONZO -- ALL FIVE DEFENDANTS WERE FOUND GUILTY OF ALL CHARGES AS INDICTED EXCEPT ALFONZO WHO WAS FOUND NOT GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. THE REMAINING DEFENDANT, ROBERT GRAHAM, WAS FOUND GUILTY ONLY OF CRIMINAL CONSPIRACY. ANYBODY HAVE ANY QUESTIONS ABOUT THE FORM OF THE VERDICTS?

MR. ERVIN: NO, YOUR HONOR.

MR. ROGERS: NO, YOUR HONOR.

MR. REDMOND: NO, YOUR HONOR.

MR. MOORE: NO, YOUR HONOR.

MR. WILL ROGERS: NO, SIR.

MR. LAWSON: NO, SIR.

THE COURT: I HAVE SO SIGNIFIED NOW BY HAVING THE JURY RAISE THEIR RIGHT HAND. IS POLLING -- WAS POLLING DESIRED OF THE JURY BY ANYONE? THEY HAVE ALREADY SIGNIFICANT BY THE RAISING OF THEIR RIGHT HAND THAT THESE ARE UNANIMOUS VERDICTS. POLLING IS WAVED.

MR. PADGETT: I REQUEST POLLING, JUDGE.

THE COURT: ALL RIGHT, SIR. MR. CLERK, ASK EACH JUROR IS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT.

THE CLERK: LADIES AND GENTLEMEN, THE VERDICT THAT MS. STUBBS HAS JUST PUBLISHED WAS THE VERDICT YOU REACHED IN THE JURY ROOM. I ASK YOU WAS IT YOUR VERDICT THEN AND IS IT YOUR VERDICT NOW. AS I CALL YOUR NAME, PLEASE ANSWER YES OR NO. MADAM FORELADY.

FORELADY: YES.

THE CLERK: MS. MALACHI?

FORELADY: YES.

THE CLERK: ROSE ADAMS?

JUROR: YES.

THE CLERK: JOHN DAVIS.

JUROR: YES.

THE CLERK: TONY MARTIN?

JUROR: YES, SIR.

THE CLERK: OSWALD SIMMONS?

JUROR: YES, SIR.

THE CLERK: PAMELA MCKIVER?

JUROR: YES.

THE CLERK: BOYCE BOSTIC?

JUROR: YES.

THE CLERK: LILLIAN DEESE?

JUROR: YES.

THE CLERK: ROGER HUDGINS?

JUROR: YES.

THE CLERK: TIMOTHY DUPRE?

JUROR: YES.

THE CLERK: PATRICK ADAMS?

JUROR: PATRICIA ADAMS.

THE CLERK: PATRICIA ADAMS.

JUROR: YES.

THE CLERK: BILLY SHELLEY?

JUROR: YES.

THE COURT: DOES THAT COMPLETE THE POLLING?

THE CLERK: YES, SIR.

THE COURT: ALL RIGHT. ANYTHING ELSE REGARDING THAT ISSUE, GENTLEMEN? FROM THE SOLICITOR?

MR. WILSON: NOTHING FROM THE STATE.

THE COURT: WE WILL DEFER SENTENCING UNTIL IN THE MORNING. IS THAT AGREEABLE? I'LL HEAR ANY MOTIONS AFTER I DISCHARGE THIS JURY. PLEASE STAND ASIDE AND LET ME DISCUSS WITH THE JURY.

MADAM FOREMAN, LADIES AND GENTLEMEN, NO ONE OF YOU ASKED TO BE SELECTED AND TO COME IN HERE AND TO SIT FOR A WEEK AND A DAY AND GIVE OF YOUR TIME AND

YOUR JOB AND YOUR FAMILY TO HAVE PARTICIPATED IN THE VERDICT. BUT HAVING DONE SO, YOU HAVE VOICED YOUR OPINION IN ACCORDANCE WITH YOUR OATH, WHICH SAYS THESE ARE THE VERDICTS BASED ON THE LAW AND THE EVIDENCE IN THIS CASE.

THE STATE OF SOUTH CAROLINA AND THIS COURT AND THIS JUDGE IS INDEBTED TO ALL 12 OF YOU FOR YOUR SERVICES. NOW, LET ME SAY THIS TO YOU. IF AFTER YOU LEAVE THIS COURTROOM YOU WISH TO DISCUSS THIS CASE WITH ANYBODY, YOU HAVE THE ABSOLUTE RIGHT TO DO THAT. EQUALLY IMPORTANT, YOU'VE BEEN INVOLVED IN THIS THING FOR A WEEK AND YOU DON'T HAVE TO EXPLAIN YOUR DECISION TO ANYBODY ON THIS GOOD GREEN EARTH EXCEPT YOUR MAKER. YOU DON'T NEED TO ARGUE WITH ANYBODY. YOU DON'T NEED TO TALK TO ANYBODY. YOU DON'T NEED TO EXPLAIN IT. IF YOU CARE TO, YOU MAY. IF YOU DESIRE NOT TO AND SOMEBODY BOTHERS YOU ABOUT IT, YOU TELL THEM YOU DON'T WANT TO DISCUSS IT AND THEY PERSIST, YOU LET YOUR SHERIFF -- YOU LET YOUR SHERIFF KNOW. I'M NOT GOING -- I WOULDN'T ANTICIPATE IT, BUT I'M NOT GOING TO HAVE ANYBODY BADGERING A JURY WHO HAS BEEN AS FAITHFUL TO THEIR OATH AND TO THEIR DUTY AS YOU 14 HAVE. I HOPE YOU ALL UNDERSTAND THAT. YOU ARE FREE TO DISCUSS IT IF YOU CARE TO. YOU ARE FREE NOT TO DISCUSS IT. I WILL LET NO ONE HARASS YOU

ABOUT IT AND I DON'T THINK IT WILL HAPPEN. I DON'T WANT IT TO HAPPEN.

I WANT TO THANK ALL OF YOU FOR YOUR SERVICES. IS THERE ANYTHING -- OF COURSE THERE WILL BE VARIOUS MOTIONS. IS ANYTHING REQUIRED OF THIS JURY, NOW, BEFORE I DISMISS THEM, SOLICITOR?

MR. WILSON: NO, SIR.

(WHEREUPON, THE JURY WAS REMOVED FROM THE COURTROOM AND THE FOLLOWING PROCEEDINGS COMMENCED IN OPEN COURT.)

THE COURT: ALL RIGHT. IT WOULD BE MY INTENTION TO DEFER SENTENCING IN THESE CASES UNTIL 10:00 IN THE MORNING. IN ADDITION TO THAT, I WOULD LIKE TO SENTENCE THOSE I PREVIOUSLY PLED. NOW, GENTLEMEN, I'LL NEVER KNOW MORE ABOUT THIS CASE THAN I KNOW RIGHT THIS MINUTE AND I'LL ENTERTAIN ANY MOTIONS RIGHT NOW STARTING WITH MR. ERVIN. ALL MOTIONS RIGHT NOW.

MR. ERVIN: FIRST OF ALL, I WOULD RENEW MY MOTION -- MY MOTION FOR A NEW TRIAL ON THE -- I'M GOING ON THE BAS-- THE SAME REASONS I STATED EARLIER IN MY DIRECTED VERDICT MOTION AT THE END OF THE STATE'S CASE AND AT THE CONCLUSION OF THE TRIAL. AS TO THE CHARGE OF MURDER, YOUR HONOR, THERE WAS

EVIDENCE WHICH WOULD SUGGEST -- FROM THE STATE'S EXPERT, DR. CONRADI, WHICH WOULD SUGGEST THAT THE VICTIM, DARLENE PATTERSON, WAS ALREADY DEAD WHEN SHE WAS THROWN INTO THE BURNT FACTORY POND. AND IF THAT WERE THE CASE, THEN AT BEST, EVEN IF -- CONSIDERING THE LIGHT IN -- THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, MARTIN MCINTOSH COULD BE GUILTY OF ACCESSORY AFTER THE FACT. AS I INDICATED IN MY DIRECTED VERDICT MOTIONS, THERE WAS NO EVIDENCE THAT HE EITHER AIDED OR ABETTED IN COMMITTING CRIMINAL SEXUAL CONDUCT OR THAT HE ACTUALLY DID COMMIT CRIMINAL SEXUAL CONDUCT WITH THE VICTIM, DARLENE PATTERSON. LIKEWISE, AS TO KIDNAPPING AND CRIMINAL CONSPIRACY. THERE'S JUST NO EVIDENCE IN THE RECORD TO SUPPORT THOSE VERDICTS.

THE COURT: IN EACH INSTANCE, I'LL ASK THE SOLICITOR TO RESPOND.

MR. WILSON: YOUR HONOR --

THE COURT: I DO THAT NOW.

MR. WILSON: IN TERMS OF THE CRIMINAL SEXUAL CONDUCT, I THINK THAT THE -- THE EVIDENCE WAS THAT HE WAS PRESENT ON MORE THAN ONE OCCASION WHEN THIS VICTIM WAS SEEN TIED UP, TAPED UP, AND THAT HE WAS PRESENT WHEN THIS VICTIM WAS TAKEN AND THROWN OFF THE BRIDGE. AND I THINK IF THE JURY BELIEVED, ONE,

THAT HE WAS PRESENT ON MORE THAN ONE OCCASION WHEN -- WHEN HE SAW HER IN THIS CONDITION AND THAT HE WAS PRESENT AT THE TIME, ASSUMING FOR THE SAKE OF ARGUMENT THAT SHE WAS DEAD, WHICH IS WHAT HIS CLAIM IS, WHICH I DENY BECAUSE I THINK SHE WAS ALIVE WHEN THEY THREW HER OFF, BUT ASSUMING THAT SHE WAS DEAD WHEN THEY THREW HER OFF, THE JURY STILL COULD HAVE FOUND THAT BECAUSE OF HIS PARTICIPATION, BECAUSE OF HIS AGREEMENT AND BECAUSE OF HIS GOING ALONG WITH THESE OTHER DEFENDANTS IN RIDING WITH HER FROM PLACE TO PLACE AND THEN TAKING HER DOWN THE RIVER AND THROWING HER IN THAT HE WAS IN PART AND PARCEL A PART OF THIS ENTIRE CONSPIRACY WHICH THEY FOUND HIM GUILTY OF AND THEY FOUND THAT THERE WAS IN FACT AN UNDERSTANDING AND AN AGREEMENT TO DO THESE ACTS.

AND IF THAT BE THE CASE, IT DOES NOT MATTER WHETHER HE WAS PRESENT AT THE TIME. SOMEONE ELSE HAD CRIMINAL SEXUAL CONDUCT WITH HER. IF HE WAS A PART AND PARCEL OF HOLDING HER AGAINST HER WILL AND THEN OTHER FOLK CAME IN WHILE HE'S HOLDING HER AND HAD SEX WITH HER, THEN HE WOULD BE JUST AS GUILTY AS THE PERSON HAVING SEX WITH HER. SAME THING AGAIN WITH THE MURDER. IF HE'S NOW HOLDING HER AGAINST HER WILL AND HE'S NOW A PART OF THAT CONSPIRACY TO HOLD AND DETAIN HER AND SHE DIES, THEN HE IS RESPONSIBLE FOR

1692

HER DEATH.

THE COURT: YES, SIR. I WOULD OVERRULE YOUR MOTION. THERE IS SUFFICIENT EVIDENCE FOR THE JURY TO FIND AS THEY DID. MR. PADGETT OR MR. JIMMY ROGERS.

MR. ROGERS: YOUR HONOR, WE TOO WOULD JOIN THAT MOTION AND RENEW A MOTION FOR A DIRECTED VERDICT OR IN THE ALTERNATIVE A NEW TRIAL. AGAIN, WITH RESPECT TO THE KIDNAPPING AND CRIMINAL SEXUAL CONDUCT, WE DON'T FEEL THAT THERE WAS ANY COMPETENT EVIDENCE THAT RICKY STUCKEY PARTICIPATED IN EITHER THE CRIMINAL SEXUAL CONDUCT OR THE KIDNAPPING. I BELIEVE THE TESTIMONY IS THAT RINGO HAD TAKEN HER INITIALLY AND SHE WAS IN THE TRAILER AND THE ONLY TESTIMONY WAS THAT RINGO HAD SAID THAT RICKY HAD SEX WITH HER, SO BASICALLY ON THOSE TWO ISSUES, YOUR HONOR, WE WOULD MAKE A MOTION.

THE COURT: MY RECOLLECTION IS GRAHAM SAID RICKY TOLD THEM THAT HE HAD SEX WITH THE WOMAN. UNLESS YOU CARE TO RESPOND. DO YOU WISH TO RESPOND TO THAT?

MR. WILSON: YES. RICKY SAYS THAT THEY TOLD HER THAT THEY HAD HER UP THERE AND IN JAIL. WARD SAYS THAT THEY WERE DISCUSSING IT, AND THERE IS A LOT OF EVIDENCE ABOUT MR. STUCKEY ACTUALLY TELLING

PEOPLE THAT THEY COULD HAVE SEX WITH HER IF THEY WANTED TO.

THE COURT: THAT MOTION, MR. ROGERS, IS RESPECTFULLY DENIED. MR. REDMOND.

MR. REDMOND: YES, YOUR HONOR. MAY IT PLEASE THE COURT. I WOULD JOIN THE MOTION FOR A DIRECTED VERDICT AND A NEW TRIAL FOR THE SAME REASONS THAT THERE ISN'T ANY COMPETENT EVIDENCE SAYING THAT JEFF WALLS WAS INVOLVED IN ANY MURDER BECAUSE THERE -- THE RECORD IS DEVOID OF ANY EVIDENCE POINTING EXACTLY WHEN AND WHAT HAPPENED. WE DON'T KNOW WHEN SHE DIED AND I DON'T THINK THERE WAS ENOUGH EVIDENCE IN THE RECORD FOR THE JURY TO HAVE FOUND ANYBODY GUILTY BASED ON THE FACT AGAINST THESE DEFENDANTS, SPECIFICALLY JEFFREY WALLS. THE SAME RELATES TO THE KIDNAPPING, CRIMINAL SEXUAL CONDUCT AND CRIMINAL CONSPIRACY. I WOULD FURTHER ADD -- IN OTHER WORDS, I'M MAKING A TRIAL FOR A DIRECTED VERDICT AND A NEW TRIAL -- A MOTION FOR DIRECTED VERDICT AND A NEW TRIAL ALSO ON THE ADDITIONAL GROUNDS, YOUR HONOR, THAT THIS CASE SHOULD HAVE BEEN SEVERED AND ALSO BECAUSE OF THE PUBLICITY, YOUR HONOR. IT IS -- I AM HARD PRESSED TO BELIEVE THAT A JURY WITHIN LESS THAN TWO HOURS WITH ALL THAT'S BEEN HEARD AGAINST THESE SIX DEFENDANTS COULD HAVE COME TO

1694

A VERDICT UNLESS THERE WAS SOME PRECONCEIVED NOTION. THAT'S JUST SOMETHING THAT'S HARD FOR ME TO BELIEVE AND I WOULD MAKE THOSE MOTIONS ON THE RECORD.

THE COURT: WELL, I'M GOING TO LET YOU RESPOND. I TELL YOU WHAT, THE EVIDENCE, IF BELIEVED, AND THEY BELIEVED IT, WAS SIMPLY OVERWHELMING, IF BELIEVED. DO YOU CARE TO RESPOND TO HIS --

MR. WILSON: YES. I THINK THE ONLY QUESTION IN THIS CASE IS WHETHER OR NOT THE JURY WAS GOING TO BELIEVE THE TWO PRIMARY WITNESSES FOR THE STATE. IF THEY BELIEVED THOSE WITNESSES, WITHOUT QUESTION, THE EVIDENCE WAS ABUNDANT AND AMPLE TO CONVICT EACH ONE OF THESE DEFENDANTS OF WHATEVER THEY WERE CHARGED WITH AND THEN SOME. AND I THINK MR. WALLS IS IN THE SAME SITUATION MR. MCINTOSH IS IN. AND IN THAT REGARD, WHAT I'M SAYING IS SIMPLY THIS. MR. WALLS WAS PRESENT AT BURGER KING WHEN THERE WAS DISCUSSION WITH RINGO WHAT HE WAS GOING TO DO. AND THEN RINGO PICKS UP AND LEAVE, AND THE NEXT THING YOU KNOW SHE'S KIDNAPPED AND GONE. HE'S PRESENT AT THE TRAILER, THE ABANDONED HOUSE, THE RIVER. HE'S PRESENT THROUGHOUT THE ENTIRE PROCESS.

THE COURT: MR. ROBERT GRAHAM PUT IT STRAIGHT ON RICKY. NO QUESTION ABOUT THAT.

MR. REDMOND: WELL, NO, I'VE GOT JEFF.

THE COURT: OH, I KNOW YOU HAVE, BUT THERE'S SUFFICIENT TOO, IF BELIEVED -- YOU MENTIONED HOW QUICK THE JURY CAME TO THE VERDICT. THE EVIDENCE, IF BELIEVED, BY THE TWO IS JUST ABSOLUTELY OVERWHELMING. MR. MOORE.

MR. MOORE: I WOULD RENEW --

THE COURT: AND RESPECTFULLY DENIED, MR. REDMOND.

MR. MOORE: I WOULD MOVE FOR THE PREVIOUS MOTIONS FOR DIRECTED VERDICT AND NEW TRIAL TOO, YOUR HONOR, BASED ON THE FACT SHE WAS DEAD WHEN SHE WAS THROWN OFF THE BRIDGE. I THOUGHT THE AUTOPSY DOCTOR TESTIFIED THAT SHE DIED WITHIN MINUTES FROM SUFFOCATION.

THE COURT: NO, SIR. DIDN'T SAY THAT. SAID SHE WASN'T SURE EITHER WAY.

MR. MOORE: BUT SHE DID MAKE A STATEMENT THAT SHE DIED WITHIN MINUTES. ISN'T THAT CORRECT?

THE COURT: NO, SIR. DIDN'T SAY THAT. SHE TESTIFIED SHE DIED FROM SUFFOCATION OR DROWNING. WASN'T SURE. BUT GO AHEAD. THAT'S MY RECOLLECTION. DO YOU CARE TO RESPOND TO THAT, SOLICITOR?

MR. WILSON: YES, SIR. SHE DID COMMIT THAT'S WHAT SHE BELIEVED. AND I THINK SOMEBODY ASKED HER THE QUESTION, WHAT IS YOUR OPINION TO A

MEDICAL -- REASONABLE MEDICAL CERTAINTY, AND SHE SAID, WELL, MY OPINION WOULD BE THAT SHE DIED OF ASPHYXIATION --

MR. ROGERS: SUFFOCATION.

MR. WILSON: BUT WHEN I ASKED HER BACK ON REDIRECT, CAN YOU SAY -- CAN YOU EXCLUDE DROWNING, SHE SAID, I CAN'T EXCLUDE THAT EITHER. EVEN THOUGH THAT'S NOT WHAT MY OPINION IS, I CAN'T EXCLUDE IT.

THE COURT: REALLY MAKES NO DIFFERENCE AS TO WHEN SHE DIED SINCE THEY FOUND ALSO THAT YOUR CLIENT WAS GUILTY OF KIDNAPPING AND THE EVIDENCE IS OVERWHELMING AS A RESULT OF THE KIDNAPPING THE POOR INDIVIDUAL WAS TIED UP AND PERHAPS STRANGLED AS SHE WAS. THAT MOTION, TOO, MR. MOORE, IS RESPECTFULLY OVERRULED. MR. WILL ROGERS.

MR. WILL ROGERS: YES, SIR. ON BEHALF OF MY CLIENT, ALFONZO STATON, I WOULD LIKE TO MAKE A MOTION FOR NEW TRIAL AND DIRECTED VERDICT FOR THE REASONS THE OTHER ATTORNEYS HAVE STATED AND GENERAL LACK OF EVIDENCE AGAINST MY CLIENT ON THE KIDNAPPING, MURDER AND CRIMINAL CONSPIRACY CHARGE.

THE COURT: CARE TO RESPOND TO THAT?

MR. WILSON: YES, SIR. AND THE PECULIAR THING HERE IS THAT THEY FOUND HIS CLIENT NOT GUILTY OF THE CRIMINAL SEXUAL CONDUCT. AND I HAVE TO AGREE

THAT OUT OF ALL OF THE FIVE, OF ALL OF THE FIVE, HE IS CERTAINLY THE WEAKEST ON THAT ONE ISSUE. AND THE JURY WENT STRAIGHT TO THAT AND PICKED IT OUT AND FOUND HIM NOT GUILTY OF IT. AND I WOULD SAY THAT CERTAINLY VALIDATES THE JURY'S VERDICT AND THAT THEY DID PAY ATTENTION AND THEY DID LOOK INDIVIDUALLY AT EACH OF THESE DEFENDANTS IN TRYING TO FIND OUT WHAT SHOULD HAPPEN TO THEM.

THE COURT: THEY DID THE SAME THING. AND I'M GOING TO ASK MR. LAWSON -- THEY DID THE SAME THING ON MR. LAWSON'S CLIENT. THEY DECLINED TO CONVICT HIM ON THE FIRST TWO COUNTS.

MR. LAWSON: MAY IT PLEASE THE COURT, THEY DID. AND I WOULD LIKE TO SAY THAT'S BECAUSE OF EXCELLENT LAWYERING, BUT --

THE COURT: MAY BE BECAUSE OF THE FACTS. GO AHEAD.

MR. LAWSON: I JOIN IN THE MOTION FOR A DIRECTED VERDICT. I JOIN IN A MOTION IN THE ALTERNATIVE FOR THE -- FOR A NEW TRIAL. I ALSO, YOUR HONOR -- IN THIS CASE, I HAVE BEEN ARGUING SINCE DAY ONE FOR A SEVERANCE OF MY CLIENT BECAUSE I DID NOT THINK NOR DO I THINK AT THIS TIME THAT IT IS POSSIBLE FOR HIM TO GET A FAIR TRIAL IN -- WHEN TRIED IN CONJUNCTION WITH THE OTHER DEFENDANTS CHARGED WITH

MURDER. AND WHAT I DREADED COULD HAPPEN HAS HAPPENEI IN THAT CONSPIRACY, THE CATCHALL IS WHAT THE JURY HAS DECIDED THAT MY CLIENT IS GUILTY OF.

THE COURT: YOUR CLIENT WAS INDEED FORTUNATE BASED ON THE EVIDENCE THAT THEY DIDN'T FIND HIM GUILTY OF SOME OTHER MATTERS. DO YOU CARE TO RESPOND TO THAT?

MR. LAWSON: YOUR HONOR --

THE COURT: WAIT A MINUTE. LET HIM RESPOND AND THEN I'LL LET YOU. MR. WILSON, DO YOU CARE TO RESPOND TO THAT?

MR. WILSON: YES, SIR. I THINK THE JURY WAS VERY BENEVOLENT TO MR. GRAHAM, AND I THINK PART OF THAT WAS HIS TESTIMONY, THE FACT THAT HE TESTIFIED, AND WHEN HE WAS A SYMPATHETIC WITNESS, I THOUGHT, YOU KNOW, WHEN HE WAS TRYING TO TESTIFY. AND I -- AND I -- AND I THINK THAT THEY GAVE HIM THE BENEFIT OF THE DOUBT. BUT EVEN UNDER HIS OWN TESTIMONY I THINK THAT THERE IS ENOUGH TO PROVE A CONSPIRACY BECAUSE EVEN HE SAYS -- EVEN HE ADMITS THAT HE -- THAT HE WAS ROOMMATES WITH RICKY STUCKEY AND THAT RICKY STUCKEY TOLD HIM A WEEK -- AT LEAST A WEEK PRIOR TO THANKSGIVING THAT THEY HAD THIS GIRL UP THERE AND THAT THEY WERE HOLDING HER UP THERE AND THAT ANYBODY WHO WANTED TO COME UP THERE COULD COME

UP THERE AND MESS WITH HER. NOW, THAT'S WHAT HE SAYS. HE TELLS HIS MAMA THAT A WEEK BEFORE ALSO.

THE COURT: AND HE SAW A BODY ON THE COUCH AND IT HAPPENED AT HIS HOUSE. MR. LAWSON, YOUR MOTIONS, TOO, ARE RESPECTFULLY OVERRULED. I THINK AND CLEARLY IN MY MIND THAT THERE IS SUFFICIENT TESTIMONY, IF BELIEVED, TO WARRANT THE VERDICTS OF THE JURY THAT THE JURY HAS FOUND.

MR. LAWSON: YOUR HONOR --

THE COURT: YOUR MOTION FOR SEVERANCE IS AGAIN DENIED.

MR. LAWSON: YOUR HONOR, WHAT HE'S JUST ARGUED IS EXACTLY GUILT BY IMPLICATION OF KNOWLEDGE OR MERE PRESENCE. MERE KNOWLEDGE AND MERE PRESENCE. AND THAT'S ALL THERE IS IN THIS RECORD AS IT RELATES TO ROBERT.

THE COURT: WELL, THAT'S YOUR VIEW OF IT, BUT THE EVIDENCE DOESN'T SUGGEST THAT. DO YOU CARE TO RESPOND TO THAT?

MR. WILSON: YES, SIR. YES, SIR. THAT'S NOT CORRECT. THERE IS TESTIMONY IN THIS RECORD FROM JEFFREY GRAHAM THAT ROBERT GRAHAM TOLD HIM THAT HE HAD SEX WITH THE VICTIM. THERE'S TESTIMONY IN THIS RECORD FROM -- FROM THE TWO PRIMARY WITNESSES FOR THE STATE THAT THIS DEFENDANT WAS PRESENT WHEN THE VICTIM

WAS SITTING ON THE COUCH TIED UP AT HIS HOUSE.

THE COURT: I'M COMFORTABLE WITH THE VERDICTS. THE JURY HAS SPOKEN AND THE VERDICTS WILL STAND. I WILL IMPOSE SENTENCE ON THESE DEFENDANTS AND THE OTHERS -- WILL YOU MAKE ARRANGEMENTS TO HAVE ALL PRESENT AT --

MR. WILSON: YES, SIR. WE'VE ALREADY DONE THAT.

THE COURT: -- 10:00. THANK YOU.

(WHEREUPON, THE FOREGOING PROCEEDINGS WERE ADJOURNED FOR THE EVENING.)

(SENTENCING ON TUESDAY, MARCH 19, 1997.)

THE COURT: NOW, LADIES AND GENTLEMEN OF THE AUDIENCE, I UNDERSTAND THAT THERE WOULD BE DEEP FEELINGS AND EMOTIONS ON THE FAMILY OF THE DECEASED. THERE WOULD BE EQUALLY DEEP FEELINGS AND EMOTIONS FROM THE FAMILIES AND FRIENDS OF THE DEFENDANTS. BUT I TELL YOU NOW THAT I WILL PERMIT NO OUTBURSTS, NO COMMENT OR NOTHING OF ANY KIND IN THAT REGARD. THESE ARE VERY SERIOUS PROCEEDINGS. AND I TELL YOU AHEAD OF TIME THAT SHOULD ANYBODY BREAK THIS ADMONITION, YOU WILL BE SUBJECT TO SEVERE PENALTIES BY CONTEMPT OF COURT. NOW, IF YOU CONCLUDE THAT YOU CANNOT

CONTROL YOUR EMOTIONS, I URGE YOU TO LEAVE THIS COURTROOM AT THIS TIME. THERE ARE AGENTS OF THE SHERIFF'S DEPARTMENT, CITY OF BENNETTSVILLE AND SLED IN THIS COURTROOM AND THEY HAVE BEEN INSTRUCTED BY ME TO VIGOROUSLY ENFORCE THIS RULE. SO PLEASE REMEMBER THIS AS WE GO FORWARD WITH THESE PROCEEDINGS.

LET THE RECORD NOW REFLECT THAT ALL OF THE DEFENDANTS ARE IN THE COURTROOM ACCOMPANIED BY THEIR ATTORNEYS WITH THE EXCEPTION OF LAWYER MILLS WHO IS ON THE WAY FROM COLUMBIA. WE WILL DEAL WITH HIS CASE AT THE TIME THAT HE GETS HERE.

ALL RIGHT. SOLICITOR, HOW SHALL WE PROCEED?

MR. WILSON: YOUR HONOR, PROBABLY THE EASIEST WAY IS TO DO THEM ONE AT A TIME. I KNOW THAT THAT WILL TAKE MORE TIME, BUT IT'S PROBABLY GOING TO BE SIMPLER BECAUSE IT'S GOING TO BE DIFFICULT TO GET EVERYBODY LINED UP IN HERE ANY OTHER WAY.

THE COURT: WELL, LET'S DO IT THIS WAY. LET'S DEAL WITH THOSE FIRST WHO HAVE PREVIOUSLY PLED GUILTY.

MR. WILSON: ALL RIGHT.

THE COURT: LET'S DO THAT. AND THEN I WOULD PROPOSE TO DEAL WITH THE SIX THAT WERE TRIED TOGETHER. WOULD THAT BE SATISFACTORY?

MR. WILSON: THAT WOULD BE SATISFACTORY.

(WHEREUPON, THE SENTENCING HEARINGS IN PREVIOUS GUILTY PLEAS WERE CONDUCTED, FOLLOWED BY THE SENTENCING OF THE DEFENDANTS FOUND GUILTY IN THE TRIAL, WHICH FOLLOWS:)

THE COURT: ALL RIGHT.

MR. WILSON: YOUR HONOR, IF IT'S ALL RIGHT WITH YOU, I WOULD LIKE TO DO MR. GRAHAM NEXT.

THE COURT: YES, SIR.

MR. WILSON: YOUR HONOR, PLEASE THE COURT, THIS IS MR. ROBERT GRAHAM.

THE COURT: YES, SIR.

MR. WILSON: MR. GRAHAM, YOUR HONOR, WAS -- YOU WILL RECALL WAS ORIGINALLY CHARGED AND TRIED FOR THE OFFENSE OF KIDNAPPING, CRIMINAL SEXUAL CONDUCT AND CRIMINAL CONSPIRACY. THE JURY FOUND HIM NOT GUILTY OF ALL CHARGES EXCEPT FOR CRIMINAL CONSPIRACY. AND HE IS NOW BEFORE THE COURT FOR SENTENCING IN THAT REGARD.

YOUR HONOR, LET ME SAY THAT I HAVE LOOKED BACK AND I HAVE TALKED TO THE OFFICERS WHO WORKED THIS CASE, AND UPON THEIR ADVICE AND UPON THEIR RECOMMENDATION, I MAKE THE FOLLOWING RECOMMENDATION TO THE COURT, THAT THE COURT SENTENCE MR. GRAHAM --

AND I WILL EXPLAIN TO YOU THE REASONS WHY I'M MAKING THIS RECOMMENDATION BEYOND THAT IT'S BEEN REQUESTED OF ME BY THE LAW ENFORCEMENT PEOPLE, BUT MISTER -- MY RECOMMENDATION IS THAT MR. GRAHAM BE SENTENCED TO FIVE YEARS, SUSPENDED TO THE SERVICE OF 90 DAYS AND 1500 HOURS OF COMMUNITY SERVICE AND THAT THOSE 1500 HOURS OF COMMUNITY SERVICE BE DONE AT THE MARLBORO COUNTY DETENTION CENTER AS A COOK SINCE THAT SEEMS TO BE HIS SPECIALTY.

MY REASON FOR THAT, YOUR HONOR, IS THAT BASED ON THE FACT THAT MR. GRAHAM CAME FORWARD EARLY ON AND GAVE STATEMENTS TO LAW ENFORCEMENT ABOUT HIS INVOLVEMENT AND SO DID HIS MOTHER, MS. GRACIE, WHICH HELPED TO GET US ON THE RIGHT TRACK EARLY ON ABOUT THIS WHOLE THING. THE OTHER THING, YOU KNOW, THAT I'M CONVINCED OF IS THAT IF THERE IS A LESSER EVIL IN THIS WHOLE MESS, IT'S PROBABLY MR. GRAHAM OUT OF ALL OF THE DEFENDANTS THAT WE HAVE. OUT OF ALL OF THE 13 DEFENDANTS, I THINK MR. GRAHAM IS THE LESSER OF THE 13 EVILS. AND I HAVE NO REAL RESERVATION ABOUT THAT.

THE OTHER THING THAT IS MR. GRAHAM IS APPARENTLY A FOLLOWER. HE IS NOT -- YOU KNOW, HE'S NOT IN HIS -- IN HIS INTELLECTUAL ABILITY, I DON'T THINK THAT HE IS NECESSARILY CAPABLE OF -- OF HANDLING THINGS THE WAY THAT THEY SHOULD BE HANDLED AND I

THINK THAT HE DOES THE BEST THAT HE CAN. HE'S ALWAYS LIVED WITH HIS MOTHER UNTIL ABOUT THREE OR FOUR MONTHS BEFORE THIS OCCURRED WHEN HE MOVED OUT ON HIS ON WITH MR. RICKY STUCKEY, WHICH APPARENTLY WAS THE WORST MISTAKE THAT HE EVER MADE. HE HAD NO CRIMINAL RECORD BEFORE THIS AND EVERYBODY THAT I HAVE TALKED TO ABOUT MR. GRAHAM, THEY HAVE SAID OVER AND OVER AGAIN THAT ALL HE EVER DOES IS GO TO WORK AND COME HOME. AND HE'S 40 YEARS OLD. THAT SAYS SOMETHING TO ME ABOUT HIM.

SO I MAKE THAT RECOMMENDATION FOR THAT REASON. I AM COMFORTABLE WITH THAT BASED ON HIS HISTORY AND BASED ON HIS EDUCATION AND HIS ABILITY. I'M SATISFIED THAT THAT'S THE CORRECT DECISION.

THE COURT: I AM PREPARED TO ACCEPT THIS NEGOTIATED PLEA. I'LL BE GLAD TO HEAR FROM YOU.

MR. LAWSON: YES, SIR. YOUR HONOR, YOU HEARD THE TESTIMONY AND YOU PROBABLY KNOW MORE ABOUT THIS CASE THAN ANYBODY IN THE COURTROOM AT THIS POINT. AND YOU HEARD MR. GRAHAM TESTIFY. AND AS THE SOLICITOR SAID, ON JANUARY 24TH, 1995, HE GAVE THE STATEMENT -- SAME STATEMENT THAT HE TESTIFIED TO RIGHT HERE, YOUR HONOR. THE ONLY THING I WOULD ASK IS YOUR HONOR TO CONSIDER ON THE 90 DAYS TO ALLOW HIM TO DO THAT ON THE TWO DAYS THAT HE'S OFF. I'VE

TALKED TO MR. STANTON, HIS EMPLOYER OF OVER 20 YEARS. MR. STANTON HAS A VERY BAD BACK. HE'S IN THE COURTROOM, OR HE WAS. HE WAS STANDING OUTSIDE. HE COULDN'T SIT DOWN ANY LONGER BECAUSE OF HIS SITUATION. HE RELIES TOTALLY ON ROBERT IN HANDLING ALL OF THE LIFTING AND CARRYING. AND I DON'T -- I'VE TALKED WITH LAW ENFORCEMENT. THEY HAVE NO PROBLEM WITH THAT.

YOUR HONOR, I HAVE BEEN IN THIS MAN'S HOME. I'VE MET WITH HIM. YOUR HONOR KNOWS I'VE BEEN INVOLVED IN THIS CASE FOR A LONG TIME. HE HADN'T SO MUCH AS GOTTEN A SPEEDING TICKET IN THE LAST TWO-AND-A-HALF YEARS, NOR DID HE HAVE ONE PRIOR TO THIS OCCURRENCE. IF THERE'S ANYBODY THAT WILL NEVER BE IN TROUBLE AGAIN, I BELIEVE THAT MAN IS ROBERT GRAHAM, YOUR HONOR.

THE COURT: ROBERT, THE PROBLEM THAT I HAD WITH YOUR TESTIMONY CONCERNING YOU, QUITE CANDIDLY, WAS THAT YOU KNEW THAT UNFORTUNATE LADY WAS TIED UP OUT THERE AND DIDN'T DO ANYTHING ABOUT IT, AS YOU TOLD YOUR MOTHER. NOW, IT'S WRONG THAT YOU DIDN'T DO IT, BUT I CAN PERHAPS UNDERSTAND IT GIVEN THE NATURE OF THE INDIVIDUALS THAT YOU WERE DEALING WITH. BUT THE ONLY WAY OUR COUNTRY CAN MOVE FORWARD IS FOR GOOD PEOPLE TO COME FORWARD IN CRIMES LIKE THIS WHEN

CRIMES LIKE THIS ARE BEING COMMITTED. AND YOU AND I, AS EVERYONE WITHIN THE SOUND OF MY VOICE, HAS A RESPONSIBILITY WHEN SOMETHING LIKE THIS, THIS AWFUL, IS GOING ON. DON'T YOU UNDERSTAND THAT? AND THAT'S YOUR PRIMARY DIFFICULTY IS -- AND I UNDERSTAND WHY YOU DIDN'T, GIVEN THE NATURE OF THE THREATS IN THIS CASE, BUT THERE WAS A TIME WHEN YOU COULD HAVE HELPED HER BY CALLING THE SHERIFF HERE AND YOU DIDN'T DO THAT.

I'M GOING TO ACCEPT THIS RECOMMENDATION AND I'M GOING TO LET HIM DO IT ON THE 90 DAYS. THIS IS AN INDIVIDUAL WHO JUST UNFORTUNATELY STUMBLED INTO SOMETHING THAT WAS NOT OF HIS MAKING. I'M GOING TO SENTENCE HIM TO FIVE YEARS. I'M GOING TO SUSPEND THAT UPON THE SERVICE OF 90 DAYS WHICH I'M GOING TO PERMIT ON THE WEEKEND. AND I'M THEREAFTER GOING TO PUT HIM ON PROBATION FOR THREE YEARS. AND AFTER HE HAS SUCCESSFULLY COMPLETED HIS SENTENCE ON THE WEEKENDS, I THEREAFTER AM GOING TO REQUIRE THAT HE PERFORM 1500 HOURS OF SERVICE AT THE DETENTION CENTER FOR SUCH DUTIES AS THEY THINK APPROPRIATE. HOPEFULLY A COOK, BUT WHATEVER THEY SAY, YOU WILL DO. BUT THEREAFTER, HE'S ON PROBATION FOR A PERIOD OF THREE YEARS.

NOW, ROBERT, I WANT YOU TO KNOW THAT WE DON'T

CONDONE WHAT YOU DID. YOU SHOULD HAVE COME FORWARD. GOOD PEOPLE EVERYWHERE WILL AGREE THAT WHEN YOU HEARD THEY HAD THAT POOR GIRL IN THAT CIRCUMSTANCE, YOU OWED IT TO SOMEBODY TO COME FORWARD AND SAY IT. DO YOU UNDERSTAND THAT?

MR. GRAHAM: YES, SIR.

THE COURT: NOW, I UNDERSTAND PERHAPS WHY YOU DIDN'T, BUT IT WAS WRONG THAT YOU DIDN'T. ALL RIGHT. THAT'S THE JUDGMENT FROM THE COURT.

MR. LAWSON: YOUR HONOR, COULD THE WEEKENDS BE MONDAY AND TUESDAY? THAT'S HIS WEEKEND IS MONDAY AND TUESDAY.

THE COURT: YES, SIR. I'LL PERMIT THAT. THEY COOK OUT THERE ON MONDAY AND TUESDAY.

MR. LAWSON: RIGHT.

MR. WILSON: THANK YOU, YOUR HONOR. YOUR HONOR, IF WE CAN, I WOULD JUST AS SOON TAKE THE OTHER FIVE TOGETHER.

THE COURT: YES. I WANT THEM ALL TOGETHER.

MR. WILSON: MS. DAVIS.

THE COURT: MR. LAWSON.

MR. LAWSON: YES, SIR.

THE COURT: ON MR. GRAHAM'S SENTENCE, I'M GOING TO GIVE HIM CREDIT FOR TIME SERVED, WHATEVER

TIME HE DID SERVE.

MR. LAWSON: THANK YOU, YOUR HONOR.

MR. WILSON: YOUR HONOR, PLEASE THE COURT, WE NOW HAVE MR. ALFONZO STATON ON THE END REPRESENTED BY MR. ROGERS. HE WAS CONVICTED OF MURDER, KIDNAPPING, CRIMINAL CONSPIRACY AND FOUND NOT GUILTY OF CRIMINAL SEXUAL CONDUCT. MR. WALLS IS REPRESENTED BY MR. REDMOND WHO WAS FOUND GUILTY OF MURDER, CRIMINAL SEXUAL CONDUCT, KIDNAPPING AND CRIMINAL CONSPIRACY. MR. STATON, WHO WAS CONVICTED OF MURDER, KIDNAPPING, CRIMINAL SEXUAL CONDUCT FIRST AND CRIMINAL CONSPIRACY, REPRESENTED BY MR. MOORE. AND MR. STUCKEY, WHO IS REPRESENTED -- WHO IS REPRESENTED BY -- I'M TRYING TO FIND HIS CHARGES HERE.
MR. STUCKEY, YOUR HONOR, WHO WAS CHARGED WITH AND FOUND GUILTY OF KIDNAPPING, MURDER, CRIMINAL SEXUAL CONDUCT FIRST DEGREE, CRIMINAL CONSPIRACY. AND HE'S REPRESENTED BY MR. ERVIN -- NO, I'M SORRY.
MR. PADGETT AND MR. ROGERS TOO.

MR. PADGETT: RIGHT. MR. ROGERS.

MR. WILSON: AND MR. ROGERS. HE'S NOT HERE TODAY? AND MR. MARTIN MCINTOSH, YOUR HONOR, WHO IS NOT --

THE COURT: ONE MOMENT. MR. ROGERS HAD INDICATED THAT IT WAS AGREEABLE TO HIS CO-COUNSEL AND

THE DEFENDANT THAT HE BE ABSENT TODAY. IS THAT CORRECT, MR. PADGETT?

MR. PADGETT: YES, SIR.

THE COURT: DOES THE DEFENDANT CONSENT TO HIS ABSENCE TOO?

MR. PADGETT: I DON'T BELIEVE HE DOES CONSENT TO IT.

THE COURT: I'M GOING TO GO FORWARD WITHOUT HIM, THEN. YOU WERE INITIALLY APPOINTED AND I ONLY APPOINTED MR. ROGERS BECAUSE THE STATUTE REQUIRED A SECOND ATTORNEY WHEN THE DEATH PENALTY WAS NOTICED. INASMUCH AS THE DEATH PENALTY WAS WITHDRAWN HE WASN'T ENTITLED TO MR. ROGERS ANYWAY, BUT I LEFT HIM THERE. I'M GOING TO PROCEED WITHOUT HIM. YOU WERE HIS INITIAL APPOINTED ATTORNEY, WERE YOU NOT, MR. PADGETT?

MR. PADGETT: THAT'S CORRECT.

THE COURT: AND YOU'VE BEEN INVOLVED IN THIS CASE FOR A PERIOD OF TWO YEARS?

MR. PADGETT: YES, SIR.

THE COURT: AND I WANT TO SAY TOO THAT YOU ABLY REPRESENTED THIS DEFENDANT AND I EXTEND TO YOU THE COURT'S APPRECIATION AS COURT APPOINTED. WE'LL GO FORWARD WITHOUT MR. ROGERS.

MR. WILSON: AND LASTLY, YOUR HONOR,

MR. MCINTOSH WAS REPRESENTED BY MR. ERVIN.

THE COURT: ALL ATTORNEYS ARE THEREFORE PRESENT.

MR. WILSON: WHO WAS ALSO FOUND GUILTY OF KIDNAPPING, MURDER, CRIMINAL SEXUAL CONDUCT AND CRIMINAL CONSPIRACY.

THE COURT: ALL RIGHT. WHICH ORDER -- I NOTE THAT THE SISTER OF THE UNFORTUNATE VICTIM IS HERE. WHICH WAY WOULD YOU LIKE FOR US TO PROCEED?

MR. WILSON: YOUR HONOR, I WOULD LIKE FOR HER TO BE HEARD. I DON'T KNOW WHAT SHE HAS TO SAY, BUT WHATEVER SHE WOULD LIKE TO SAY IN REGARDS TO SENTENCING OR HER FEELINGS, I WOULD ASK THE COURT IF YOU WOULD HEAR FROM HER.

THE COURT: LET ME SAY THIS TO YOU. I KNOW THIS IS A SAD EVENT FOR YOU. THE COURT DEEPLY APPRECIATES YOUR PRESENCE HERE. YOU KNOW, IN OUR SYSTEM, WE ALWAYS HEAR OF ALL OF THE RIGHTS THAT DEFENDANTS HAVE. SOME DEFENDANTS DON'T UNDERSTAND THAT VICTIMS TOO HAVE RIGHTS. AND I WANT YOU TO KNOW AND EVERY VICTIM HERE THAT VICTIMS TOO HAVE EQUAL RIGHTS IN JUDGE COTTINGHAM'S COURT AND I'M DELIGHTED THAT YOU ARE HERE. I'M SADDENED BY THE EVENT THAT OCCASIONED YOUR PRESENCE. I'LL BE GLAD TO HEAR FROM YOU.

1711

MS. DAVIS: THANK YOU, JUDGE. YOUR HONOR, FIRST I JUST WANT TO THANK EACH AND EVERY ONE, YOU KNOW, FOR WHAT ALL THEY HAVE DONE, TO THE SOLICITOR, RALPH WILSON, AND HIS STAFF FOR TRAVELLING HERE EVERY DAY, SLED, POLICE DEPARTMENT AND EVERYBODY AND ALL THEIR PRAYERS, OF BRINGING THIS CASE FORWARD. I HAVE SOME MATERIAL THAT I HAD WROTE DOWN. I HAVE IT WITH ME. I DIDN'T KNOW IF I COULD READ IT OFF, BUT IT'S JUST BEEN HARD FOR THE FAMILY FOR THE PAST TWO-AND-A-HALF YEARS.

MY AUNT IS SITTING BACK THERE, HAD TO MOVE FROM NEW YORK TO HELP ME WITH HER TWO CHILDREN, WHICH THEY ARE HERE THIS MORNING AND ALL OF MY FAMILY. AND LIKE I SAY, IT'S JUST BEEN A TRAGIC AND AN IMPACT. I HAVE A GRANDMOTHER THAT DIED THIS PAST JANUARY FROM HEART FAILURE FROM THIS CASE BECAUSE SHE RAISED DARLENE FROM A BABY. I HAVE A SISTER THAT'S IN A NURSING HOME THAT WENT INTO SHOCK AND COULDN'T DEAL WITH IT. SHE'S PARALYZED FROM THE HEAD DOWN AND SHE'S IN DUNDER'S NURSING HOME.

THIS IS THE IMPACT THAT IT BRINGS ON A FAMILY WHEN THINGS LIKE THIS HAPPEN. YOU CAN READ HOMICIDE, YOU KNOW, WHAT IT MEANS, BUT WHAT THE DICTIONARY HAS DOES NOT MEAN THAT. IT'S A TORTURE THAT IT PUTS ON THE FAMILY. AND I -- AS OF THIS DAY, I CAN'T FIND

THE WORDS THAT SAY FOR HER CHILDREN. I JUST DON'T KNOW WHAT TO TELL -- AND I JUST NEVER KNEW THAT WE HAD PEOPLE HERE IN MARLBORO COUNTY THAT COULD DO WHAT THEY DID. THAT'S ALL I HAVE TO SAY.

THE COURT: THANK YOU SO MUCH.

MR. WILSON: YOUR HONOR, WHAT I WOULD SAY IN THIS REGARD --

THE COURT: MS. DAVIS, WOULD YOU CARE TO SIT DOWN NOW?

MS. DAVIS: I'LL SIT DOWN NOW.

THE COURT: I'LL PERMIT YOU TO DO THAT. YOU MAY BE SEATED.

PROCEED, SOLICITOR.

MR. WILSON: WHAT I WOULD LIKE TO SAY IN THIS REGARD IS THIS. AND I AGREE WITH HER ASSESSMENT THAT THESE DEFENDANTS, THESE FIVE THAT YOU NOW HAVE BEFORE YOU, THE ONLY PERSON WHO I'M OF THE OPINION IS MORE CULPABLE IS RINGO PEARSON. AND OBVIOUSLY THAT'S SOMETHING WE HAVE TO DEAL WITH AT ANOTHER TIME. BUT THESE DEFENDANTS DESERVE EVERY DAY THAT THE COURT CAN GIVE THEM AND THEN SOME. YOU KNOW, IT'S UNFORTUNATE THAT WE DIDN'T HAVE THE EVIDENCE AND THE NEEDED MATERIALS IN ORDER TO GO FORWARD WITH THE DEATH CASES ON THESE DEFENDANTS. I WISH THAT WE HAD. WE DIDN'T HAVE IT. AND -- AND I'M SAD ABOUT THAT.

BUT I WOULD ASK THE COURT TO GIVE THEM EVERY SINGLE DAY THAT THEY CAN GET. THEY DESERVE IT. THEY NEED IT. AND I CERTAINLY DON'T THINK THAT THEY ARE ENTITLED TO ANY -- ANY BREAKS WHATSOEVER. THEY'VE HAD ALL THAT THEY DESERVE.

THE COURT: BEFORE I HEAR FROM YOU, I WANT -- I NOTE THAT SEVERAL OF YOU ARE WEARING GOD'S CROSS, CAME BEFORE ME HIDING BEHIND THE BIBLE, AND IN MY VIEW, BEARING FALSE WITNESS. DURING YOUR PERIOD OF INCARCERATION, I WANT YOU TO TAKE THAT BIBLE THAT YOU BROUGHT TO THIS WITNESS STAND AND MEMORIZE THAT PORTION OF IT WHICH SAYS THOU SHALT NOT KILL.

WHICH ONE SHALL YOU DEAL WITH FIRST, SOLICITOR?

MR. WILSON: MR. MCINTOSH IS ON THIS END WITH MR. ERVIN, SO WE MIGHT AS WELL START ON THIS END, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. ANY COMMENTS?

MR. WILSON: LET ME SEE WHAT RECORD, IF ANY, HE HAS. THE ONLY RECORD HE HAS, YOUR HONOR, IS HE HAS A GRAND LARCENY AND POSSESSION OF AN UNLAWFUL WEAPON CHARGE. NOTHING ELSE. NO CRIMINAL RECORD.

THE COURT: BE GLAD TO HEAR FROM YOU.

MR. ERVIN: YOUR HONOR, THERE'S REALLY NOTHING I CAN SAY TO MITIGATE THE FACTS OF THIS CASE. YOU'VE HEARD THE FACTS. THE JURY HAS SPOKEN. WHILE

MARTIN AND I MAY NOT AGREE WITH THEIR DECISION, HE ACCEPTS IT AND MOVES FORWARD WITH HIS LIFE. SOLICITOR WILSON STATED THAT THE STATE HAD SOUGHT THE DEATH PENALTY AGAINST THE OTHER FOUR DEFENDANTS IN THIS CASE AND I WOULD POINT OUT TO THE COURT AT THIS TIME THAT THE STATE NEVER DID SEEK THE DEATH PENALTY AGAINST MARTIN, FOR WHATEVER REASON. THEY NEVER CHOSE TO IMPOSE THAT MOST SEVERE PENALTY.

YOUR HONOR, MARTIN IS 29 YEARS OLD. HE DOESN'T HAVE ANY CHILDREN, BUT HE DID COMPLETE HIS EDUCATION IN BROOKLYN, NEW YORK. HE RECEIVED A HIGH SCHOOL DIPLOMA. HE HAS BEEN UNEMPLOYED FOR SOME PERIOD OF TIME. HE HAS TWO BROTHERS AND TWO SISTERS WHO STILL LIVE IN NEW YORK. HIS GRANDMOTHER, WHO IS FROM CLIO, HAS BEEN HERE IN THE COURTROOM THROUGHOUT THE TRIAL. HER NAME IS MARY MCDUFFIE AND SHE OF COURSE IS HERE TO OFFER WHAT SUPPORT SHE CAN FOR MARTIN.

JUDGE, ONCE AGAIN, THERE'S NOTHING I CAN SAY TO MINIMIZE OR MITIGATE WHAT HAPPENED TO MS. PATTERSON. MARTIN HAS ALWAYS EXPRESSED HIS SYMPATHY TOWARDS HER FAMILY. WHILE AGAIN HE'S MAINTAINED HIS INNOCENCE, HE UNDERSTANDS THAT WHAT OCCURRED AND WHAT HAPPENED TO HER IS HORRIBLE.

YOUR HONOR, AS I STATED IN MY CLOSING ARGUMENT YESTERDAY, HE WAS PULLED INTO THIS SITUATION. HE

STILL MAINTAINS THAT, BUT ACCEPTS THE DECISION OF THE JURY AND RECOGNIZES IT'S TIME FOR HIM TO GO FORWARD WITH HIS LIFE.

THE COURT: ALL RIGHT, SIR. LET ME HEAR FROM THE STATE WITH REGARD TO ALFONZO STATON.

MR. ERVIN: I DON'T BELIEVE HE HAS ANYTHING HE WOULD LIKE TO SAY, YOUR HONOR.

THE COURT: ALFONZO STATON.

MR. WILSON: ALFONZO STATON WHO IS ON THIS END.

THE COURT: YES, SIR. I'LL HEAR THEM IN THE ORDER THAT YOU HAVE THEM. WHICH ONE WOULD YOU LIKE --

MR. WILSON: WELL, I WAS GOING TO DO THEM THE WAY THEY ARE LINED UP.

THE COURT: ALL RIGHT.

MR. WILSON: THE NEXT WOULD BE MR. STUCKEY. RICKY STUCKEY.

THE COURT: ALL RIGHT, SIR. THAT'S FINE.

MR. WILSON: YOUR HONOR, MR. STUCKEY HAS FOUR COUNTS OF FORGERY AND FOUR COUNTS OF CRIMINAL CONSPIRACY, WHICH IS HIS RECORD.

THE COURT: ALL RIGHT, SIR. MR. PADGETT.

MR. PADGETT: RICKY IS 35 YEARS OLD. HE'S A HIGH SCHOOL GRADUATE FROM MCCOLL HIGH SCHOOL IN

1980. HE WAS A MECHANIC AND BODY REPAIR MAN, WORKED WITH HIS FATHER EVERY DAY. AND AS HE SAID FROM THE WITNESS STAND, HE KNEW MS. PATTERSON FROM YEARS AGO AND HE SAID ON THE WITNESS STAND HE'S SORRY THAT WHAT HAPPENED TO HER HAPPENED, AND HE FELT LIKE IT'S A TRAGIC THING, BUT AGAIN HE STATES THAT HE HAD NOTHING TO DO WITH IT AND HE REGRETS THAT HE'S GOT TO BE STANDING IN THESE SHOES TODAY. AND HE'S SORRY ANYTHING LIKE THAT HAPPENED TO HER JUST AS HE SAID WHEN HE TESTIFIED. HE STANDS HERE WITH HIS MOTHER.

THE COURT: MR. STUCKEY, ANYTHING YOU WOULD HAVE TO SAY?

THE WITNESS: I'M SORRY IT HAPPENED. I'M SORRY I HAVE TO BE THE ONE PERSON FOR SOMETHING THAT DIDN'T HAPPEN.

THE COURT: MR. STUCKEY, I SAT HERE AND LISTENED TO THE TESTIMONY FOR A WEEK AND A DAY. AND I'M FRANKLY CONVINCED THAT OTHER THAN RINGO PEARSON, YOU HAD MORE TO DO WITH THIS THAN ANYBODY INVOLVED.

WHO WAS THE NEXT ONE, SOLICITOR?

MR. WILSON: THE NEXT ONE IS LEROY STATON. THE ONLY RECORD HE HAS IS CRIMINAL DOMESTIC VIOLENCE.

THE COURT: ALL RIGHT. MR. MOORE.

MR. MOORE: YES, SIR.

THE COURT: I EXTEND TO YOU THE COURT'S

APPRECIATION AS I DO TO MR. PADGETT. HE WAS ALSO COURT APPOINTED. BE GLAD TO HEAR FROM YOU.

MR. MOORE: I POINT OUT ALSO THAT LEROY WAS NOT ONE OF THE FOUR CHARGED WITH THE DEATH PENALTY ORIGINALLY IN THIS CASE. LEROY IS 44 YEARS OLD AND HAD A TENTH GRADE EDUCATION. AND AS THE REVEREND TESTIFIED, HE'S BEEN VERY ACTIVE IN HIS CHURCH ALL OF HIS LIFE. HE HAS NO PAST RECORD OTHER THAN A WARRANT GOING BACK TO A DOMESTIC SITUATION ABOUT TEN YEARS AGO. AND HIS MOTHER ALSO TESTIFIED, MS. STATON. AND HIS WIFE, MS. STATON, SHE WORKS VERY HARD AT FRUIT OF THE LOOM IN ROCKINGHAM.

LEROY HAS WORKED HARD ALL OF HIS LIFE. HE WORKED 13 YEARS AT PALMETTO BRICK COMPANY. HE'S PRESENTLY EMPLOYED AT PERDUE. IN CONSIDERING A SENTENCE, I ASK YOU TO CONSIDER HIS ALMOST EXEMPLARY LIFESTYLE UP TO THIS POINT. I REALIZE THESE ARE MOST HEINOUS CRIMES AND WE PLACE OURSELF ON THE MERCY OF THE COURT.

THE COURT: MR. LEROY STATON, IS THERE ANYTHING YOU CARE TO TELL THE COURT?

MR. LEROY STATON: YES, SIR.

THE COURT: ALL RIGHT.

MR. LEROY STATON: YOUR HONOR, I NEVER SEEN THAT LADY A DAY IN MY LIFE. THAT'S THE HONEST

TRUTH. THAT'S THE HONEST TRUTH. I NEVER SEEN THAT LADY. WHY WOULD I WANT TO DO SOMETHING LIKE THAT AND I'VE GOT A YOUNG DAUGHTER AND I'VE GOT A FAMILY? WHY WOULD I GO OUT THERE AND TAKE ADVANTAGE OF SOMEBODY AND LOSE EVERYTHING I EVER WORKED FOR IN MY LIFE JUST TO GET IN THE CAR WITH SOMEBODY TO GO THROW SOMEBODY OFF THE BRIDGE, YOUR HONOR? I'M NOT GUILTY OF THAT. NO, SIR, I'M NOT.

THE COURT: ALL RIGHT, SIR. WHO IS THE NEXT ONE IN LINE?

MR. WILSON: THE NEXT ONE, YOUR HONOR, IS JEFFREY WALLS. HIS RECORD CONSISTS OF BURGLARY THIRD DEGREE AND B AND E AUTO. I THINK HE'S PROBABLY ON PROBATION NOW.

THE COURT: MR. REDMOND, YOU WERE COURT APPOINTED IN THE CASE TO REPRESENT --

MR. REDMOND: I WAS RETAINED, YOUR HONOR.

THE COURT: YOU WERE RETAINED.

MR. REDMOND: LET ME PREFACE MY STATEMENT BY SAYING THIS WAS A HEINOUS CRIME. IN TALKING TO JEFF, HOWEVER, I WOULD INDICATE THAT AS TO HIS PROBATION, HIS PROBATION TERMINATED AND HE INFORMED ME THAT HE HAS HAD NO PROBLEMS WHILE HE WAS ON PROBATION FOR THE OFFENSE THAT THE SOLICITOR MENTIONED.

JEFF IS 22 YEARS OF AGE NOW. HE WAS ONLY 19 YEARS OLD AT THE TIME OF THE OFFENSE, WHICH I THINK YOUR HONOR WILL NOTICE IS VERY MUCH YOUNGER THAN SOME OF THE OTHER PEOPLE WHO HAVE BEEN CONVICTED IN THIS CASE OR WHO HAVE PLED. HE WAS 19 AT THE TIME OF THE OFFENSE. HE WAS NEVER NOTICED OF THE DEATH PENALTY. HE WAS ALSO AT ONE POINT REFERRED TO AS ONE OF THE LESSER PLAYERS.

THIS IS A TERRIBLE INCIDENT, I UNDERSTAND. HE ALSO MAINTAINS HIS INNOCENCE, THAT HE WAS NOT INVOLVED IN THAT, AND THAT'S SOMETHING THAT HE CONTINUES TO MAINTAIN UP UNTIL THE PRESENT TIME, UNDERSTANDING FULL WELL THAT THE JURY HAS CONVICTED HIM OF SAID OFFENSES. AND HE'S AT A POINT IN TIME WHERE HE HAS TO MOVE ON.

AGAIN, I WOULD ASK THE COURT TO TAKE THESE THINGS INTO CONSIDERATION. HE ALSO HAS A THREE YEAR OLD SON IN CHARLOTTE AT THIS TIME. AND AGAIN, THE FACT THAT HE WAS ONE OF THE YOUNGER PARTICIPANTS, I THINK THAT WITH THE TESTIMONY THAT NEVER EVER ESTABLISHED HIM AS A RINGLEADER OR ANYBODY THAT WAS AS DIRECTLY INVOLVED AS SOME OTHER PERSONS MAY HAVE BEEN ALLEGED TO, I WOULD ASK THAT THE COURT TAKE THESE THINGS INTO CONSIDERATION IN RENDERING HIS SENTENCE.

THE COURT: JEFFREY WALLS, ANYTHING YOU CARE TO TELL THE COURT?

MR. WALLS: YES, YOUR HONOR. ABOUT THE WHOLE TRIAL, WHILE THE WHOLE THING -- WHILE IT WAS HAPPENING, BEFORE I GOT LOCKED UP, THE COPS HARASSED NOT ONLY MYSELF, BUT MY WHOLE FAMILY AND SAID IF I DIDN'T GIVE A STATEMENT THEY WERE GOING TO LOCK MY WHOLE FAMILY UP. SO I TOLD THEM TO GO AHEAD AND DO IT BECAUSE I DON'T HAVE NOTHING TO TELL THEM. AND I KNOW OF MY INNOCENCE AS OF TODAY.

THE COURT: ALL RIGHT, SIR. THE NEXT WOULD BE ALFONZO STATON.

MR. WILSON: THAT'S CORRECT, YOUR HONOR. AND MR. STATON HAS NO RECORD.

THE COURT: NOW, MR. STATON, AS I RECALL, WAS FOUND NOT GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, REPRESENTED BY MR. WILL ROGERS WHO WAS COURT APPOINTED. AND I EXPRESS TO YOU THE COURT'S APPRECIATION, MR. ROGERS, AND I'LL BE GLAD TO HEAR FROM YOU.

MR. WILL ROGERS: YOUR HONOR, ALFONZO STATON IS 19 YEARS OLD. HE WAS 17 YEARS OLD WHEN THIS CRIME OCCURRED. HE'S WENT THROUGH THE 12TH GRADE. HIS MOTHER AND FATHER ARE HERE IN THE COURTROOM. THEY'VE BEEN HERE PRETTY MUCH ALL WEEK.

DURING THE TIME HE WAS OUT ON BOND -- EXCUSE ME. HERE'S HIS MOTHER RIGHT NOW, HERE, YOUR HONOR. DURING THE TIME HE WAS OUT ON BOND, HE WORKED AT PERDUE. AS THE SOLICITOR SAID, HE HAS NO PRIOR RECORD. HE WAS NEVER NOTICED WITH THE DEATH PENALTY. HE HAS MAINTAINED HIS INNOCENCE THROUGHOUT. HE STILL DOES. AND AS MR. ERVIN SAID, HE REALIZES THE JURY HAS SPOKEN AND HE'S READY TO GO AHEAD AND GET ON WITH HIS LIFE.

THE COURT: ANYTHING YOU CARE TO TELL ME, ALFONZO STATON?

MR. ALFONZO STATON: I JUST WANTED TO SAY --

THE COURT: SIR?

MR. ALFONZO STATON: I WANTED TO SAY AT THIS TIME THAT I WAS IN THE 12TH GRADE. IT TOOK ME OUT OF SCHOOL FOR SOMETHING I NEVER SEEN IN A DAY IN MY LIFE AND I DON'T UNDERSTAND IT. I'LL NEVER UNDERSTAND IT AS LONG AS I LIVE.

THE COURT: WELL, I NEED TO TELL YOU -- AND THE RECORD WILL REFLECT THAT THE 12 JURORS WHO CONVICTED ALL OF YOU WERE DRAWN FROM A CROSS-SECTION OF THE GOOD CITIZENS OF THIS COUNTY. AND THE TESTIMONY, IF BELIEVED, AND THEY OBVIOUSLY BELIEVED IT, IS THAT EACH AND EVERY ONE OF YOU ARE TOTALLY

GUILTY OF EVERYTHING THEY CONVICTED YOU OF. I'M CONVINCED THAT IF THERE WAS ANY REASONABLE DOUBT WHATSOEVER IN THEIR MINDS, THIS JURY WOULD NOT HAVE RENDERED THE DECISIONS THAT THEY DID.

MARTIN MCINTOSH, COME FORWARD. THE JURY, HAVING CONVICTED YOU UPON COUNT TWO OF MURDER, IT IS THE SENTENCE AND JUDGMENT OF THIS COURT THAT YOU BE IMPRISONED FOR THE BALANCE OF YOUR NATURAL LIFE. THE JURY HAVING CONVICTED YOU OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, UPON COUNT THREE, IT IS THE JUDGMENT OF THE COURT THAT YOU BE CONFINED FOR A PERIOD OF 30 YEARS CONSECUTIVE TO THE LIFE IN PRISON. UPON COUNT FOUR, CRIMINAL CONSPIRACY, IT IS THE JUDGMENT OF THE COURT THAT YOU BE SENTENCED TO FIVE YEARS CONCURRENT. IN ACCORDANCE WITH SECTION 16-3-910, KIDNAPPING, WHERE AN INDIVIDUAL HAS BEEN SENTENCED TO LIFE IMPRISONMENT, HE SHALL NOT BE SENTENCED FOR KIDNAPPING AND I DECLINE TO SENTENCE UNDER THE KIDNAPPING CHARGE.

CHARLES RICKY STUCKEY, COME FORWARD. MR. STUCKEY, UNDER COUNT TWO OF THE INDICTMENT, A JURY OF YOUR CITIZENS AND PEERS HAVING CONVICTED YOU OF MURDER, IT IS THE SENTENCE OF THE COURT THAT YOU BE CONFINED FOR THE BALANCE OF YOUR NATURAL LIFE. UPON COUNT THREE, YOU HAVING BEEN CONVICTED OF

CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IT IS THE JUDGMENT AND SENTENCE OF THIS COURT THAT YOU BE CONFINED FOR A PERIOD OF 30 YEARS, CONSECUTIVE. UNDER COUNT FOUR, CRIMINAL CONSPIRACY, I SENTENCE YOU TO FIVE YEARS CONCURRENT. IN ACCORDANCE WITH SECTION 16-3-910, KIDNAPPING, YOU HAVING BEEN SENTENCED FOR MURDER, I DECLINE TO SENTENCE YOU FOR KIDNAPPING.

LEROY STATON, COME FORWARD. LEROY STATON, UNDER COUNT TWO OF THE INDICTMENT FOR MURDER, YOU HAVING BEEN FOUND GUILTY UNANIMOUSLY BY A JURY OF YOUR PEERS, IT IS THE JUDGMENT AND SENTENCE OF THIS COURT THAT YOU BE CONFINED FOR A PERIOD OF YOUR NATURAL LIFE. UNDER COUNT THREE, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IT IS THE JUDGMENT AND SENTENCE OF THIS COURT THAT YOU BE CONFINED FOR A PERIOD OF 30 YEARS CONSECUTIVE. UNDER COUNT FOUR, CRIMINAL CONSPIRACY, I SENTENCE YOU TO FIVE YEARS CONCURRENT. YOU HAVING BEEN SENTENCED FOR MURDER, I THEREFORE DECLINE TO SENTENCE YOU UNDER THE KIDNAPPING SENTENCE IN ACCORDANCE WITH 16-3-910 OF THE SOUTH CAROLINA CODE OF LAWS MADE AND PROVIDED.

JEFFREY WALLS, COME FORWARD. MR. WALLS, THE JURY, HAVING CONVICTED YOU UNDER COUNT ONE FOR MURDER, IT IS THE SENTENCE AND JUDGMENT OF THIS COURT THAT YOU BE CONFINED FOR A PERIOD OF YOUR NATURAL

CONCLUDE THE MATTERS INVOLVING THESE INDICTMENTS?

MR. WILSON: IT DOES. YES, SIR.

THE COURT: ALL RIGHT. COURT WILL BE IN RECESS UNTIL 12:30 AT WHICH TIME WE'LL TAKE PROBATION MATTERS INVOLVING SOMETHING ENTIRELY DIFFERENT.

(WHEREUPON, THE FOREGOING PROCEEDINGS WERE CONCLUDED.)

(END OF VOLUME 10.)

LIFE. UNDER COUNT TWO, KIDNAPPING, AND IN ACCORDANCE WITH 16-3-910, YOU HAVING BEEN SENTENCED TO LIFE IMPRISONMENT, I DECLINE TO SENTENCE YOU FURTHER UNDER KIDNAPPING. UNDER INDICTMENT NUMBER 3, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IT IS THE SENTENCE OF THE COURT THAT YOU BE CONFINED FOR A PERIOD OF 30 YEARS CONSECUTIVE TO THE SENTENCE FOR LIFE. UNDER INDICTMENT NUMBER 4, CRIMINAL CONSPIRACY, FIVE YEARS, CONCURRENT.

MR. WALLS: GOD BLESS YOU, MR. WILSON.

MR. WILSON: YOU TOO.

THE COURT: ALFONZO STATON, UNDER INDICTMENT NUMBER TWO, YOU HAVING BEEN FOUND GUILTY BY A JURY OF YOUR PEERS, IT IS THE SENTENCE OF THIS COURT THAT YOU BE CONFINED FOR A PERIOD OF YOUR NATURAL LIFE. YOU WERE FOUND NOT GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. FOR THE CRIMINAL CONSPIRACY, COUNT FOUR, I SENTENCE YOU TO FIVE YEARS CONCURRENT. UNDER COUNT ONE, KIDNAPPING AND IN ACCORDANCE WITH 16-3-910, I DECLINE TO SENTENCE YOU UNDER KIDNAPPING, YOU HAVING BEEN SENTENCED TO A PERIOD OF LIFE IMPRISONMENT.

MR. WILSON: THANK YOU VERY MUCH, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. DOES THAT NOW

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

I, MARK W. HAGOOD, RPR, REGISTERED PROFESSIONAL REPORTER AND NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA, THIS 14TH DAY OF FEBRUARY, 1998.

MARK W. HAGOOD, RPR

1689

STATE OF SOUTH CAROLINA

IN GENERAL SESSIONS COURT

COUNTY OF MARLBORO

STATE OF SOUTH CAROLINA

V. 95-GS-34-0444

LEROY STATON, ET AL.,

DEFENDANTS. ORIGINAL

- - -

THE MOTIONS PROCEEDINGS HAD
IN THE ABOVE-STYLED CAUSE

- - -

FEBRUARY 18, 1997
BENNETTSVILLE, SOUTH CAROLINA

BEFORE: HONORABLE EDWARD B. COTTINGHAM,
CIRCUIT COURT JUDGE

A P P E A R A N C E S

FOR THE STATE: RALPH WILSON, SOLICITOR 15TH CIRCUIT
(SPECIAL PROSECUTOR)

FOR THE DEFENDANTS:
MARTIN MCINTOSH - JOHN M. ERVIN, III, ESQ.
RICKY STUCKEY - JAMES F. ROGERS, ESQ.
MAHLON E. PADGETT, IV, ESQ.
JEFFREY WALLS - KERNARD E. REDMOND, ESQ.
LEROY STATON - MILTON M. MOORE, JR., ESQ.
ALFONZO STATON - WILLIAM A. ROGERS, ESQ.
ROBERT GRAHAM - JACK W. LAWSON, JR., ESQ.
DANNY DAVIS - E. L. CLEMENTS, III, ESQ.
ROBERT E. LEE, ESQ.
ROBERT RANSOM - ROBERT W. MILLS, ESQ.
LOIS MCMILLAN, ESQ.
JOHNNY RINGO PEARSON - LEON C. BANKS, ESQ.
WILLIAM N. NETTLES, ESQ.
DWAYNE SLOAN - J. DUPRE MILLER, ESQ.
ROBERT LEE WHITFIELD - ROBERT L. KILGO, JR., ESQ.

THE COURT: SOLICITOR, I THINK YOU HAD AN OPENING STATEMENT YOU WANTED TO MAKE FOR THE BENEFIT OF ALL OF THE ATTORNEYS INVOLVED.

MR. WILSON: YES, SIR. YOUR HONOR, WE'RE HERE IN REGARD TO THE STATE VERSUS JOHNNY RINGO PEARSON, ET AL. THERE ARE MULTIPLE DEFENDANTS IN THAT CASE: DANNY DAVIS; CHARLES STUCKEY, JUNIOR; ROBERT CHARLES RANSOM, ALFONZO STATON, JEFFREY WALLS, MARTIN MCINTOSH, DWAYNE SLOAN, ROBERT GRAHAM, LEROY STATON, ROBERT LEE WHITFIELD AND JOE ARTHUR STUCKEY AND MICHAEL SPEARS, ALL NAMED DEFENDANTS IN MULTIPLE INDICTMENTS IN THIS CASE.

AND YOUR HONOR, IT HAS COME TO MY ATTENTION OVER THE LAST WEEK THAT THE PRIMARY DEFENDANT, OR AT LEAST THE DEFENDANT THAT THE STATE CONSIDERS TO BE THE PRIMARY DEFENDANT, RINGO PEARSON, MAY BE INCOMPETENT AND MAY NOT BE COMPETENT TO STAND TRIAL EVEN NOW OR IN THE NEAR FUTURE. THAT BEING THE CASE, THE STATE'S OF THE POSITION THAT IT IS NOT GOING TO BE ABLE TO SEEK THE DEATH PENALTY AGAINST THE THREE CO-DEFENDANTS, WHICH WOULD BE RANSOM, DANNY DAVIS AND STUCKEY. SINCE THIS DEFENDANT IS THE PRIMARY WITHOUT QUESTION AT LEAST IN MY MIND AS PROSECUTOR, WITHOUT QUESTION, THIS DEFENDANT IS THE PRIMARY DEFENDANT AND IS THE DEFENDANT WHO I BELIEVE IS THE MOST CULPABLE

OF THE WHOLE 13 THAT'S NOW INDICTED.

THEREFORE, WHAT OUR PLAN IS NOW IS TO -- IS TO GO FORWARD IN TWO WEEKS OF COURT, IN TWO TERMS OF COURT, AND DIVIDE THIS CASE INTO TWO PARTS, AND TO DO THOSE NON-MURDER CASES FIRST WEEK, WHICH WOULD BE MARCH THE 3RD, AND THEN COME BACK ON THE WEEK OF MARCH 10TH AND TRY THE REMAINING DEFENDANTS WHO ARE CHARGED WITH MURDER AND OTHER CHARGES IN THAT TERM. AND --

THE COURT: I HAVE RESERVED TWO WEEKS, THE SECOND AND THE THIRD WEEK TO TAKE CARE OF THESE TRIALS.

MR. WILSON: YES, SIR. AND THAT SHOULD DISPOSE OF MOST OF THOSE CASES. BUT THAT'S OUR PLAN AT THIS POINT.

THE COURT: ALL RIGHT, SIR. BEFORE WE PROCEED, LET ME -- I WANT TO -- PLEASE CALL THE ROLL. I WANT TO MAKE SURE THAT THE RECORD REFLECTS THAT ALL DEFENDANTS ARE HERE, PARTICULARLY THOSE CHARGED WITH MURDER. WOULD YOU DO THAT FOR ME?

MR. WILSON: YES, SIR. JOHNNY RINGO PEARSON?

THE COURT: IS HE HERE?

MR. WILSON: IS DEFENDANT PEARSON HERE?

MR. BANKS: MR. PEARSON IS HERE, YOUR

HONOR.

THE COURT: HIS LAWYER IS HERE?

MR. BANKS: YES, SIR.

MR. WILSON: MR. PEARSON IS REPRESENTED BY MR. BANKS AND MR. NETTLES.

THE COURT: GOOD MORNING, GENTLEMEN.

MR. NETTLES: GOOD MORNING, YOUR HONOR.

MR. WILSON: DANNY DAVIS. IS MR. DAVIS PRESENT?

MR. LEE: HE'S HERE, YOUR HONOR.

MR. CLEMENTS: HE'S HERE, YOUR HONOR.

MR. WILSON: MR. DAVIS IS REPRESENTED BY MR. CLEMENTS AND MR. LEE.

THE COURT: LET THE RECORD REFLECT THAT ALL THREE ARE HERE.

MR. WILSON: CHARLES M. STUCKEY, JUNIOR, REPRESENTED -- DEFENDANT STUCKEY, JUNIOR HERE?

MR. PADGETT: HE'S PRESENT AND REPRESENTED BY JIMMY ROGERS AND MAHLON PADGETT.

THE COURT: BOTH GENTLEMEN ARE HERE.

MR. WILSON: ROBERT CHARLES RANSOM. YOUR HONOR, HE'S HERE.

MR. MILLS: I'M ROBERT MILLS AND LOIS MCMILLAN IS MY CO-COUNSEL.

THE COURT: WHO IS YOUR CO-COUNSEL?

MR. MILLS: LOIS MCMILLAN.

MS. MCMILLAN: HERE, JUDGE.

MR. WILSON: ALFONZO STATON, REPRESENTED BY MR. WILL ROGERS.

MR. WILL ROGERS: MR. STATON IS HERE. DO YOU WANT HIM TO COME UP?

THE COURT: THAT'S A NON-CAPITAL. GO AHEAD.

MR. WILSON: JEFFREY WALLS, REPRESENTED BY MR. REDMOND.

MR. REDMOND: MR. WALLS IS PRESENT IN THE COURTROOM, YOUR HONOR.

THE COURT: GOOD MORNING.

MR. REDMOND: GOOD MORNING, YOUR HONOR.

MR. WILSON: MR. MARTIN MCINTOSH, REPRESENTED BY MR. ERVIN.

MR. ERVIN: HE'S ALSO PRESENT, YOUR HONOR.

THE COURT: THANK YOU.

MR. WILSON: DWAYNE SLOAN, REPRESENTED BY MR. MILLER.

MR. MILLER: I'M HERE. MY CLIENT IS NOT, YOUR HONOR.

SHERIFF: YOUR HONOR, HE'S BEING TRANSPORTED BY THE DEPARTMENT OF CORRECTIONS. HE SHOULD BE HERE ANY MINUTE. THEY ARE EN ROUTE.

THE COURT: ALL RIGHT. YOURS IS NOT A DEATH PENALTY CASE, IS IT?

MR. MILLER: NO, SIR.

THE COURT: CAN WE PROCEED WITHOUT HIM, KNOWING HE'S ON THE WAY?

MR. MILLER: I WOULD PREFER FOR HIM TO BE HERE, YOUR HONOR.

MR. WILSON: JUDGE, I DON'T PLAN TO DO ANYTHING WITH HIS CASE. THE FIRST THING WE'RE GOING TO DO WOULD BE --

THE COURT: OKAY. THAT'S FINE.

MR. WILSON: -- ONLY TO PEARSON, SO WE WON'T DO ANYTHING WITH HIS CASE UNTIL HE ARRIVES.

THE COURT: ALL RIGHT.

MR. WILSON: ROBERT GRAHAM, REPRESENTED BY MR. LAWSON.

MR. LAWSON: MR. GRAHAM IS HERE, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

MR. WILSON: LEROY STATON, REPRESENTED BY MR. MILTON MOORE.

MR. MOORE: HE'S HERE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. WILSON: ROBERT LEE WHITFIELD, REPRESENTED BY MR. KILGO.

MR. KILGO: HE'S HERE, YOUR HONOR. MR. BAKER IS HERE AS HIS GUARDIAN.

MR. WILSON: JOE ARTHUR STUCKEY, REPRESENTED BY MR. CANNARELLA.

MR. STUCKEY: RIGHT HERE, JUDGE.

THE COURT: WHERE'S MR. CANNARELLA?

MR. STUCKEY: I DON'T KNOW WHERE MR. CANNARELLA IS AT.

THE COURT: SIR?

MR. STUCKEY: I DON'T KNOW, BUT I'M ARTHUR STUCKEY.

THE COURT: WAS MR. CANNARELLA NOTIFIED TO BE HERE?

MR. WILSON: YES, SIR. EVERYBODY WAS.

THE COURT: MR. CLERK, WOULD YOU HAVE LINDA CALL PAUL CANNARELLA AND TELL HIM I WANT HIM OVER HERE IMMEDIATELY? HOW ABOUT THE LAST ONE THAT YOU INDICTED THAT HAD NOT BEEN PREVIOUSLY INDICTED?

MR. WILSON: MICHAEL SPEARS, REPRESENTED BY MR. ROGOL. MR. ROGOL.

THE COURT: MR. ROGOL TOLD TO BE HERE TOO?

MR. WILSON: YES, SIR.

THE COURT: GO TELL THEM TO CALL MR. ROGOL TOO. YOU THINK YOU NOTIFIED MR. ROGOL?

MR. WILSON: YOUR HONOR, I HAVE A NOTE

HERE FROM MR. CANNARELLA WHICH IS DATED FEBRUARY 10TH. WELL, I SENT HIM A LETTER FEBRUARY 10TH. HE WROTE -- HE FAXED ME BACK ON THE 11TH. THIS STATEMENT SAYS -- JUST AT THE BOTTOM OF MY LETTER SAYS, "DEAR RALPH, I HAVE AN ALL-DAY CUSTODY CASE IN DARLINGTON THAT DAY." THAT'S ALL IT SAYS.

THE COURT: WELL, WE'LL HAVE TO INTERRUPT HIM. HIS IS A NON-CAPITAL CASE. HIS MAN IS HERE, THOUGH. OKAY.

MR. WILSON: YES, SIR. AND YOUR HONOR, AT THIS POINT, WE'RE NOT GOING TO BE TAKING UP ANYTHING INVOLVING MR. CANNARELLA OR HIS CLIENT, AT LEAST IN THIS PORTION OF THE PROCEEDING.

THE COURT: DOES THAT SAME THING HOLD TRUE FOR ROGOL?

MR. WILSON: YES, SIR.

THE COURT: BUT THE DEFENDANTS ARE HERE?

MR. WILSON: THE DEFENDANTS ARE HERE. MR. SLOAN, YOUR HONOR, IS HERE NOW, FOR THE RECORD. HE WAS JUST BROUGHT IN BY THE DEPARTMENT OF CORRECTIONS.

THE COURT: I'M GOING TO CANCEL ROGOL AND CANNARELLA'S CALLS. YOU MIGHT TELL MR. CANNARELLA HIS CLIENT IS HERE AND HE MAY WANT TO BE HERE. IF HE'S IN AN ALL-DAY CUSTODY, DON'T HAVE HIM COME, BUT OTHERWISE I WOULD LIKE TO HAVE HIM HERE. I WOULD GO

1735

AHEAD AND TELL MR. ROGOL TO COME OVER HERE, IF HE CAN.

ALL RIGHT, SIR. WHAT'S YOUR FIRST ORDER OF BUSINESS?

MR. WILSON: YOUR HONOR, THE FIRST THING THAT WE WOULD LIKE TO DO IS THERE'S BEEN A MOTION MADE BY MR. BANKS, MR. NETTLES AND MR. HUNTER IN REGARD TO THEIR DEFENDANT'S COMPETENCY TO STAND TRIAL, WHO IS MR. PEARSON. AND THE FIRST THING WE WOULD LIKE TO DO IS TO TAKE UP THAT MOTION.

THE COURT: ALL RIGHT, SIR.

MR. BANKS: YOUR HONOR, WE'RE READY TO PROCEED. PRIOR TO DOING THAT, AND I HAD INDICATED TO THE COURT AND JUST FORGOT TO TELL THE SOLICITOR, YOUR HONOR, SOLICITOR WILSON AND I WERE PRESENT IN FRONT OF YOU IN ORANGEBURG COUNTY A COUPLE OF WEEKS AGO ON DNA MATTERS. BY CONSENT, WE HAD ENTERED INTO SOME INFORMATION ON THE RECORD. OUR CLIENT WAS NOT PRESENT AT THAT TIME, AND SIMPLY IN AN ABUNDANCE OF CAUTION, I WANT YOU TO RE-ENTER INTO THE RECORD IN THE PRESENCE OF MY CLIENT WHAT WE ENTERED INTO THE RECORD IN ORANGEBURG.

THE COURT: ALL RIGHT. I WOULD NOT CONCLUDE THAT THAT PROCEEDING WAS ONE THAT HE NEEDED TO BE PRESENT, BUT SINCE HE'S HERE, LET'S REITERATE

WHAT WAS ACCOMPLISHED THERE.

MR. BANKS: THANK YOU, YOUR HONOR. WE HAD ENTERED INTO BY CONSENT AND READ INTO THE RECORD AT THAT TIME THAT AS TO THE DNA THAT THERE WERE SIX SWABS OR SAMPLES TAKEN FROM VARIOUS ITEMS IN THIS CASE, TWO OF WHICH WERE DONE VERY EARLY, AND THEN THERE WERE FOUR SWABS LEFT. OF THOSE FOUR, THEY ARE BEING TRANSFERRED TO NASHVILLE, TENNESSEE TO DR. GUGLIAMO FOR DNA TESTING. THEY WERE GOING TO ATTEMPT TO DO ALL OF THE TESTING ON THE FIRST TWO SWABS. ANY RESIDUE LEFT FROM THOSE TWO SWABS AND THE ADDITIONAL TWO WOULD BE RETAINED FOR THE DEFENSE. IF FOR SOME REASON TESTING WENT BEYOND THE ORIGINAL TWO SWABS, THE DEFENSE WOULD BE CALLED AT THAT TIME AND -- AND GIVEN INFORMATION THAT THEY WOULD HAVE TO TEST A CERTAIN AMOUNT, AND THAT WAS READ INTO THE RECORD AT THAT TIME.

THE COURT: ALL RIGHT. THANK YOU.

(WHEREUPON, A COMPETENCY HEARING IN A DIFFERENT CASE WAS HAD, AFTER WHICH THE MOTIONS IN THESE CASES WERE HAD, AS FOLLOWS:)

THE COURT: ALL RIGHT. THANK YOU. ALL RIGHT. WHERE ARE WE NEXT, SOLICITOR, IN THE ORDER OF THE COURSE OF AFFAIRS HERE?

1737

MR. WILSON: YOUR HONOR, WE ARE NOW READY TO HANDLE ANY MOTIONS, IF ANY OF THE DEFENSE LAWYERS HAVE MOTIONS WHO ARE SCHEDULED FOR TRIAL EITHER THE 3RD OR THE 10TH.

THE COURT: ALL RIGHT. NOW, FIRST, I WANT TO LET THIS RECORD REFLECT THAT ALL DEFENDANTS' ATTORNEYS ARE JOINING IN THE MOTIONS PREVIOUSLY MADE WHICH ARE NOT INCONSISTENT WITH THEIR ACCUSED POSITION, SO IF THESE MOTIONS HAVE BEEN PREVIOUSLY MADE, THEY ARE DEEMED ALSO MADE BY YOU AND THE RULING IS THE SAME, WHATEVER IT MAY HAVE BEEN.

MR. BANKS: I THINK I CAN SPEAK FOR EVERYBODY, YOUR HONOR, FROM LEON BANKS.

THE COURT: ALL RIGHT.

MR. BANKS: I THINK CAN SPEAK FOR ALL CO-DEFENDANTS' COUNSEL THAT WE JOIN IN ALL MOTIONS THAT ARE NOT IN CONFLICT.

THE COURT: OKAY.

MR. CLEMENTS: YOUR HONOR, FOR DANNY DAVIS, THAT IS TRUE. WE DO JOIN IN.

THE COURT: ALL RIGHT.

MR. MILLS: FOR ROBERT RANSOM, THAT'S ALSO TRUE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. KILGO: AND ROBERT LEE WHITFIELD, YOUR

HONOR. I WOULD JOIN IN.

MR. WILL ROGERS: FOR ALFONZO STATON, THAT'S CORRECT.

MR. REDMOND: AND JEFFREY WALLS.

THE COURT: MR. MILLER?

MR. MILLER: YES, YOUR HONOR.

THE COURT: MR. MILLER WILL MAKE THE SAME MOTION. MR. LAWSON?

MR. LAWSON: CORRECT, YOUR HONOR.

THE COURT: DOES THAT TAKE CARE OF EVERYONE?

MR. MOORE: SAME MOTION HERE FOR LEROY STATON, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. WHAT NEXT?

MR. BANKS: YOUR HONOR, THE NEXT MOTION WAS SINGULAR TO CERTAIN DEFENDANTS ON THE LIST OF THE AGENDA THAT WAS PROVIDED TO THE COURT. SO I THINK THE NEXT MOTION THAT I AM CONCERNED ABOUT FOR RINGO PEARSON WHICH IS NOT SINGULAR, BUT IT GOES TO EVERYONE ON THE AGENDA IS NUMBER EIGHT, AND THAT IS A MOTION FOR A MORE DEFINITE TIME AND DATE OF DEATH.

THE COURT: CAN WE -- HOW ABOUT THAT, MR. SOLICITOR? NUMBER EIGHT.

MR. BANKS: YOUR HONOR, WHILE THE SOLICITOR IS GOING THROUGH HIS FILE, FOR THE RECORD,

1739

WE ARE FILING A MOTION TO REQUIRE THE STATE TO PROVIDE A MORE DEFINITE TIME FOR THE ALLEGED OFFENSE OF KIDNAPPING, CRIMINAL SEXUAL CONDUCT AND THE MURDER.

THE COURT: WHAT IS THE POSITION AS TO THAT?

MR. WILSON: YOUR HONOR, THE -- WELL, THE INDICTMENT READS, YOUR HONOR, THAT JOHNNY RINGO PEARSON DID -- AND THIS IS JUST ONE INDICTMENT AND THIS WOULD BE TRUE OF EACH OF THE DEPARTMENTS THAT'S CHARGED WITH MURDER. THAT JOHNNY RINGO PEARSON DID IN MARLBORO COUNTY BETWEEN NOVEMBER 12, 1994 AND NOVEMBER 24, 1994 KNOWINGLY, INTENTIONALLY, WICKEDLY, FELONIOUSLY AND WITH MALICE AFORETHOUGHT KILL DARLENE PATTERSON BY MEANS OF STRANGULATION OR WAS PRESENT AIDING AND ABETTING.

YOUR HONOR, THE REASON THAT THE INDICTMENT IS FASHIONED IN THAT MANNER IS THAT SHE WAS KIDNAPPED ON THE 12TH. THAT, WE KNOW. THE NEXT TIME SHE IS SEEN OR HEARD FROM IS WHEN SHE'S FOUND FLOATING IN THE RIVER ON THE 24TH. THERE IS NO WAY TO KNOW WHEN THEY PUT HER IN THE RIVER. NOW, ACCORDING TO THE AUTOPSY, THEY CAN SAY, WELL, MAYBE SHE WAS IN THERE TWO DAYS. MAYBE SHE WAS IN THERE THREE DAYS. THEY DON'T KNOW. THERE IS NO WAY TO KNOW.

1740

THE COURT: YOU'VE PROVIDED THEM ALL OF THE INFORMATION THAT YOU HAVE WITH REGARDS TO THAT ISSUE?

MR. WILSON: EVERYTHING. YES, SIR. THEY HAVE EVERYTHING THAT I HAVE.

THE COURT: DOES THAT ANSWER YOUR QUESTION?

MR. BANKS: YES, SIR. ALMOST. HERE'S THE PROBLEM, YOUR HONOR, AND I AM -- I AM I THINK APPROPRIATELY ANTICIPATING ISSUES THAT WOULD COME UP AT TRIAL. THE PROBLEM IN ANY MULTI-DEFENDANT CASE THAT IS EVEN MORE SO IN A CASE WHEN THERE IS A LONG PERIOD OF TIME IS THE ISSUE OF WHEREABOUTS OF VARIOUS PEOPLE AT VARIOUS TIMES. AND WHAT WE ASKED THE STATE TO DO IS EITHER TELL US THAT WE CANNOT PROVIDE IT BECAUSE WE DO NOT KNOW AND THAT THEIR THEORY IS NOT GOING TO BE AT TRIAL, WELL, WHERE WERE YOU ON THE 14TH? OKAY, THEN IT APPEARED ON THE 15TH. I MEAN, I THINK THEY HAVE TO TELL US WE DO NOT KNOW OR THEY HAVE TO TELL WHAT THEY DO KNOW.

THE COURT: HOW DO YOU RESPOND TO THAT?

MR. WILSON: WELL, I DISAGREE WITH THAT. I DON'T THINK THAT -- YOU KNOW, IN A SITUATION WHERE -- AS THIS -- WHERE THE VICTIM IS MISSING ON A CERTAIN DATE, THE BODY IS NOT FOUND UNTIL A CERTAIN

1741

DATE, THAT -- THAT THE STATE IS REQUIRED TO CHOOSE A DATE IN BETWEEN THERE.

THE COURT: ALL YOU'RE REQUIRED TO DO IS TO PRESENT TO HIM ANYTHING IN YOUR FILES ON THAT ISSUE.

MR. WILSON: WHICH HAS BEEN DONE.

THE COURT: AND THAT'S THE ONLY -- HE CAN'T TELL YOU -- HE'S SAYING HE DOESN'T KNOW.

MR. BANKS: THAT'S WHAT I'M ASKING. IF THAT'S WHAT HE'S SAYING, I'M --

MR. WILSON: I DON'T -- I DON'T KNOW. I HAVE A THEORY. IF HE WANTS TO KNOW WHAT MY FEELING IS, I'LL BE HAPPY TO SHARE THAT WITH HIM, BUT THAT AND 50 CENTS WILL GET HIM SOME COFFEE. I DON'T KNOW WHEN IT OCCURRED. I HAVE A THEORY OF WHEN IT HAPPENED, AND MY THEORY IS IT HAPPENED TWO DAYS PRIOR TO THEM FINDING HER IN THE RIVER, NOW, WHETHER I CAN PROVE THAT OR WHETHER IT WAS THREE DAYS PRIOR OR ONE DAY PRIOR, I DO NOT KNOW. THERE'S NO WAY I CAN --

THE COURT: MR. BANKS.

MR. BANKS: YOUR HONOR, THAT'S FURTHER THAN HE WENT A FEW MINUTES AGO. THAT'S WHAT I WANTED. I WANTED --

THE COURT: WHAT'S THE NEXT MOTION? THAT'S ALL HE CAN DO.

MR. CLEMENTS: YOUR HONOR, WE --

THE COURT: ALL I'M ASKING HIM TO DO IS TO PRESENT TO YOU, AND HE SAYS HE HAS, ALL OF THE INFORMATION ON THAT ISSUE.

HOW ABOUT YOU, MR. CLEMENTS?

MR. CLEMENTS: YOUR HONOR, IN REGARDS TO THIS PARTICULAR ISSUE, WE HAVE FILED A MOTION SIMILAR TO THAT. AND YOUR HONOR, WHAT WE DON'T KNOW IS WHEN THEY SAY SHE DIED, AND THAT'S WHAT HE JUST RESPONDED TO A LITTLE MORE THAN WE'VE EVER SEEN. THE ONLY THING WE HAVE IN REGARD TO ANY TIME OF DEATH WHATSOEVER IS THE REPORT OF THE CORONER, WHERE THE BODY WAS FOUND AND THE FINAL AUTOPSY REPORT. WE HAVE NOT BEEN SUPPLIED ANY --

THE COURT: HE'S SAYING THAT'S ALL HE'S GOT TOO.

MR. CLEMENTS: YOUR HONOR, I KNOW THAT THERE'S MORE THAN THAT BECAUSE I KNOW THERE ARE ORIGINAL AUTOPSY NOTES MADE THAT ARE HANDWRITTEN. THERE ARE AUTOPSY NOTE AMENDMENTS MADE. AND THEN FINALLY AFTER ALL OF THAT AND A LOT OF MATERIAL, I'VE SEEN IT; I KNOW WHAT IT LOOKS LIKE, THEY COME UP WITH ONE AUTOPSY FINAL REPORT. THE ONLY THING WE HAVE IS THE FINAL AUTOPSY REPORT. WE BELIEVE WE ARE ENTITLED TO ALL OF THE THINGS THAT GO INTO THE MAKING OF THAT

1743

FINAL AUTOPSY REPORT TO SEE WHEN POSSIBLY THE TIME OF DEATH MAY BE.

MR. WILSON: JUDGE, LET ME SAY THIS. MY POSITION ON THAT IS NO, THEY ARE NOT NECESSARILY ENTITLED TO THE AUTOPSY NOTES, BUT I AM NOT TRYING TO PREVENT THEM FROM GETTING THEM. IF THEY WANT TO DO A SUBPOENA AND HAVE THE PATHOLOGIST GIVE THEM TO THEM, I DON'T HAVE THEM, I HAVE NEVER HAD THEM, I DON'T WANT THEM, I DON'T GENERALLY GET THEM. BUT IF THEY WANT TO GET THOSE NOTES, I HAVE NO OBJECTION TO IT. THEY CAN DO A SUBPOENA DUCES TECUM OR HAVE THE COURT ORDER THE PATHOLOGIST OR WHOEVER TURN IT OVER TO THEM. I HAVE ABSOLUTELY NO OBJECTIONS TO THAT.

MR. BANKS: YOUR HONOR, IF I MAY, TO TAIL ON TO THAT, THE PROBLEM WITH THE CASE IS THE INDICTMENT IS SPECIFIC AS TO THE CAUSE OF DEATH AND -- AND THE SOLICITOR HAS INDICATED HIS INTENTION TO TRY ON A TIME OF DEATH CLOSE TO WHEN THE BODY WAS FOUND. BUT THE PERIOD OF TIME WE'RE TALKING ABOUT IS 12 TO 15 DAYS, AND BECAUSE OF THE NUMBER OF CO-DEFENDANTS --

THE COURT: I UNDERSTAND THAT, BUT WHAT DO YOU WANT HIM TO DO ABOUT IT? I MEAN, HE CAN ONLY TELL YOU WHAT HE'S GOT.

MR. BANKS: YES, SIR. AND WE'RE ASKING --

ASKING HIM TO BE LIMITED TO WHAT HE TELLS US NOW SO THAT WE CAN PREPARE FOR TRIAL.

THE COURT: NO, SIR, NOT GOING TO DO THAT.

MR. WILSON: JUDGE, I DON'T MIND BEING LIMITED TO WHAT INFORMATION THEY HAVE BEEN PROVIDED. I HAVE NO OBJECTION TO THAT. IF I HAVEN'T PROVIDED THEM SOMETHING, THEN I SHOULDN'T BE ALLOWED TO COME IN AT THE LAST MINUTE AND SPRING IT ON THEM, BUT I AM NOT GOING TO STAND HERE AND TRY TO TRY THIS CASE TODAY AND TELL THEM EVERY DETAIL.

THE COURT: ALL I ASK YOU TO DO IS THIS. AT SUCH TIME THAT YOU HAVE ANY ADDITIONAL INFORMATION, IF ANY, UNDER THE RULES PROVIDED --

MR. WILSON: JUDGE, WE HAVE GIVEN THEM EVERYTHING THAT'S IN OUR POSSESSION.

THE COURT: AND THAT'S ALL YOU HAVE TO DO. NOW, IF YOU WANT TO GET THOSE RECORDS THERE, YOU PREPARE A SUBPOENA FOR ME. FIRST, I WOULD SUGGEST YOU CALL THEM AND LET HIM SEND YOU THE NOTES, AND IF HE WON'T DO THAT, I'LL ISSUE A SUBPOENA FOR THEM TO DO THAT --

MR. CLEMENTS: THANK YOU, YOUR HONOR.

THE COURT: -- IF YOU THINK THERE'S SOMETHING IN THOSE NOTES THAT WOULD DELINEATE IT. MR. ROGERS.

1745

MR. ROGERS: JUDGE, I WOULD JOIN THIS MOTION AS WELL. AND I THINK PART OF THE PROBLEM IS WE HAVE MULTIPLE COUNTS AND MULTIPLE DEFENDANTS.

THE COURT: I UNDERSTAND THAT.

MR. ROGERS: SO THAT WHEN HE NOW SAYS HIS THEORY IS, YOU KNOW, TWO OR THREE DAYS BEFORE THE BODY IS FOUND, THAT DOESN'T GIVE US ANY DIRECTION ON THE OTHER CHARGES. SPECIFICALLY, THERE'S A C.S.C. CHARGE, SO THAT IF, YOU KNOW, WE ARE OBLIGATED TO PROVIDE AN ALIBI DEFENSE IF WE HAVE ONE, BUT IF WE DON'T KNOW WHICH DATE WITHIN THAT 14-DAY PERIOD THEY ARE ALLEGING THAT THE RAPE OCCURRED --

THE COURT: LET ME ASK HIM TO RESPOND. I UNDERSTAND YOUR POSITION, MR. ROGERS. YES, SIR.

MR. WILSON: JUDGE, THIS IS NO DIFFERENT THAN ANY OTHER RAPE CASE OR ANY OTHER SEXUAL ABUSE CASE WHERE IF THE VICTIM DOES NOT KNOW -- FOR INSTANCE, IF THE DEFENDANT -- IF THE DEFENDANT DRUGS THE VICTIM AND THE VICTIM DOESN'T KNOW WHEN SHE WAS RAPED, SHE JUST KNOWS THAT SHE WAS RAPED, SHE CAN'T THEN COME FORWARD AND TELL YOU I WAS RAPED ON THE 13TH WHEN HE HAD HER DRUGGED FOR FIVE DAYS. THIS WOMAN WAS KIDNAPPED FOR 11 DAYS OR 12 DAYS. HOW IN THE WORLD CAN WE KNOW WHICH DAY ONE OF THESE DEFENDANTS RAPED HER? ALL WE CAN SAY IS THAT THEY

RAPED HER.

NOW, WHEN OR WHAT DAY IT WAS -- AND THE ONLY TIME PERIOD THAT THEY ARE COUNTING, THE ONLY TIME -- AND THERE IS A FINITE TIME PERIOD HERE. THEY ARE ACCOUNTING FOR AN 11 OR 12 DAY PERIOD FROM THE 12TH TO THE 24TH. AND WHAT THEY HAVE TO DO IS THEY'VE GOT TO FIND OUT WHERE THEIR DEFENDANT WAS DURING THAT PERIOD OF TIME.

THE COURT: DOES THAT ANSWER YOUR QUESTION, MR. ROGERS?

MR. ROGERS: NO, YOUR -- WELL, I UNDERSTAND HIS ANSWER. IT DOESN'T SATISFY ME. THERE'S A CASE CALLED STATE VERSUS ROLLINS. MR. ERVIN IS VERY FAMILIAR WITH IT. HE TRIED IT. IN THAT CASE, IT WAS THE SAME ISSUE, ON OR ABOUT ISSUE, AND JUDGE ANDERSON CHARGED ON OR ABOUT THE 14TH. WE HAD -- WE HAD AN ALIBI FOR THE 14TH. AND THE SUPREME COURT REVERSED THAT SAYING THAT EVEN THAT CHARGE WAS NOT SPECIFIC ENOUGH TO RULE OUT --

THE COURT: I'M FAMILIAR WITH THAT CASE, BUT THE FACT SCENARIO IS ENTIRELY DIFFERENT FROM HIM. HERE, A PERSON ALLEGEDLY HELD AND KIDNAPPED FOR 12 DAYS AND NOW DECEASED.

MR. ROGERS: YES, SIR.

THE COURT: HOW IN THE WORLD CAN THIS

1747

SOLICITOR WITH SPECIFICITY TELL YOU WHAT HOUR AND DATE THIS OCCURRED EXCEPT IT OCCURRED WITHIN THAT TIME FRAME? ARE YOU TELLING ME HE CAN'T PROSECUTE BECAUSE THE VICTIM IS DEAD?

MR. ROGERS: NO, YOUR HONOR. I'M NOT SAY THAT. I'M JUST SAYING IN ORDER FOR US TO PREPARE ADEQUATELY FOR A DEFENSE, WE HAVE TO NARROW THE TIME MORE --

THE COURT: HE HAS NARROWED IT AS CLOSE AS HE CAN WITH INSTRUCTION BY ME THAT AT ANY TIME ANY INFORMATION IS AVAILABLE TO HIM THAT NARROWS IT FURTHER TO PROVIDE IT TO YOU. THAT'S ALL I CAN SAY.

MR. CLEMENTS: YOUR HONOR, MAY I ADD MY TWO CENTS ON THAT?

THE COURT: YES, SIR.

MR. CLEMENTS: YOUR HONOR, HE HAS ALLEGED VARIOUS CO-DEFENDANTS COMMITTED CRIMINAL SEXUAL CONDUCT WITH THE DECEASED, THEN HE'S -- AND HE -- AND THE DECEASED IS NOT HERE TO TELL HIM THAT SHE WAS ASSAULTED BY CRIMINAL SEXUAL CONDUCT, HE'S GOT TO HAVE SOME INFORMATION, SOME EVIDENCE BY WHICH TO BASE HIS ALLEGATIONS. ON AND IF HE DOES, HE MUST HAVE SOME TIME FRAME OR SOMETHING.

THE COURT: HE'LL EITHER TELL YOU AT TRIAL OR YOU CAN LOOK AT DISCOVERY INFORMATION PREVIOUSLY

PROVIDED TO YOU TO TELL YOU WHAT HIS POSITION IS. I DON'T KNOW. I HAVEN'T LOOKED AT IT AND DON'T INTEND TO LOOK AT IT UNTIL THE TRIAL DATE.

MR. WILSON: IT'S IN THERE. IT'S IN THE STATEMENTS AND IT'S IN THE INFORMATION THAT THEY'VE WHEN PROVIDED.

THE COURT: DOES THAT ANSWER YOUR QUESTION?

MR. CLEMENTS: NO, SIR, YOUR HONOR. NOT IN REGARD TO DANNY DAVIS.

THE COURT: WELL, IF YOU DON'T KNOW NOW, AT THE TIME OF TRIAL, HE'LL TELL YOU.

MR. CLEMENTS: WELL, YOUR HONOR, WITH ALL DUE RESPECT, THERE IS NOTHING IN THE DISCOVERY TO SAY DANNY DAVIS COMMITTED CRIMINAL SEXUAL CONDUCT ON DARLENE PATTERSON AT ANY TIME. HE'S BEEN CHARGED WITH THAT. HE'S BEEN CHARGED WITH AIDING AND ABETTING THAT. THERE'S NOTHING IN THE DISCOVERY THAT SAYS HE AIDED AND ABETTED.

THE COURT: WHAT ARE YOU ASKING ME TO DO?

MR. CLEMENTS: I'M ASKING YOU FOR SOME SPECIFICITY FROM THE SOLICITOR HERE REQUIRING HIM SO DO WE PROVIDE AN ALIBI DEFENSE, OR WHATEVER. IF HE SAYS DANNY DAVIS EITHER COMMITTED CRIMINAL SEXUAL CONDUCT OR AIDED AND ABETTED IT --

THE COURT: I REFER YOU TO THE DATE FRAME THAT HE'S PREVIOUSLY MENTIONED.

MR. BANKS: YOUR HONOR, FOR THE PURPOSES OF THE RECORD, THE MOTION THAT IS OUTSTANDING, WHICH IS TO REQUIRE THE STATE TO PROVIDE A MORE DEFINITE TIME OF THE ALLEGED OFFENSE, YOU ARE NOT RULING AGAINST THAT MOTION, BUT HOLDING THAT RULING IN ABEYANCE UNTIL FURTHER DISCOVERY?

THE COURT: NO, SIR. I'M DENYING THE MOTION BASED ON WHAT HE SAYS. HE'S GIVEN YOU A TIME FRAME. WHAT'S THE DATE, SOLICITOR?

MR. WILSON: THE 12TH THROUGH THE 24TH.

THE COURT: HE SAYS IT OCCURRED DURING THAT TIME FRAME, AND SO THAT'S IT. I'M NOT HOLDING THAT MOTION IN ABEYANCE AT ALL.

MR. WILSON: BUT YOU ARE REQUIRING THAT SHOULD HE RECEIVE ANY ADDITIONAL INFORMATION DURING THE PERIOD OF TIME UNTIL TRIAL --

THE COURT: I AM, AND HE WILL DO THAT.

MR. BANKS: SO THE MOTION THEREFORE COULD BE RENEWED AT TRIAL?

THE COURT: NO, SIR. IT'S NOT GOING TO BE RENEWED. I'M JUST REQUIRING HIM TO DO IT IF HE COMES INTO POSITION OR I'M NOT GOING TO LET HIM USE IT UNDER THE RULE. THIS ISSUE IS GONE. I'M NOT GOING

TO LISTEN TO THESE MOTIONS.

MR. CLEMENTS: YOUR HONOR, SOMETIMES I'M KIND OF DENSE, BUT I WANT TO BE SURE I UNDERSTAND. DOES THAT MEAN IF SOMETIME BETWEEN NOW AND TRIAL, IF HE COMES UP WITH SOME THEORY THAT NARROWS THE TIME PERIOD DOWN FROM THAT 12 DAYS, THEN HE IS REQUIRED TO GIVE US THAT TIME PERIOD?

THE COURT: NO, SIR. NOT A THEORY. IF HE COMES UP WITH SOME EVIDENCE THAT'S DISCOVERABLE UNDER BRADY OR RULE FIVE. I'M NOT GOING TO REQUIRE HIM TO TELL YOU WHAT ALL OF HIS THEORIES ARE. I'M REQUIRING HIM TO COMPLY WITH BRADY AND RULE FIVE AND THAT'S ALL I'M DOING.

MR. CLEMENTS: YES, SIR.

THE COURT: ALL RIGHT. I CAN'T ASK HIM TO DO SOMETHING HE DOESN'T HAVE. IF HE GETS IT, HE'S GOING TO PROVIDE IT AND THAT'S ALL I'M TELLING YOU.

MR. CLEMENTS: WELL, YOUR HONOR, IN THAT CASE, WE WOULD MAKE THE MOTION THAT THE INDICTMENT BE MADE MORE DEFINITE AND CERTAIN OR -- AS FAR AS THE CRIMINAL SEXUAL CONDUCT ISSUE ON DANNY DAVIS OR THAT THAT CHARGE BE QUASHED.

THE COURT: SOLICITOR, I'VE HEARD YOUR POSITION. I'LL BE GLAD TO HEAR FROM YOU AGAIN.

MR. WILSON: ALL I CAN DO IS REPEAT IT,

1751

YOUR HONOR. THAT'S AS SPECIFIC AS WE CAN GET, THAT SHE WAS RAPED MULTIPLE TIMES BETWEEN THE 12TH AND THE 24TH, YOU KNOW, AND THERE'S NO WAY THAT I CAN TELL THEM ON WHICH DAY OR -- AND THE OTHER THING IS A NUMBER OF THESE DEFENDANTS WERE PRESENT WHEN OTHER DEFENDANTS WERE RAPING HER. SO THAT'S WHY THEY ARE INDICTED THE WAY THAT THEY ARE. AND THE INDICTMENT SAYS THAT THEY EITHER COMMITTED CRIMINAL SEXUAL CONDUCT OR THAT THEY WERE PRESENT AIDING AND ABETTING WHEN THAT CONDUCT WAS BEING --

THE COURT: MY RULING COVERS THAT. I'M SATISFIED WITH WHERE WE ARE. ALL RIGHT. WHAT'S NEXT?

MR. BANKS: YOUR HONOR, FOR OUR PURPOSE --

THE COURT: AND LISTEN, GENTLEMEN, I WANT TO GET WITH THESE ATTORNEYS, NOW, BEFORE WE LEAVE TODAY. I HAD APPOINTED -- SINCE A DEATH PENALTY NOTICE WAS ISSUED, I APPOINTED TWO LAWYERS TO EACH ONE, AND I WANT TO GET WITH Y'ALL AND SEE HOW WE WANT TO HANDLE THAT, TOO. WHAT'S YOUR NEXT MOTION?

MR. BANKS: YOUR HONOR, THERE WOULD BE NO OTHER MOTIONS THAT ARE -- GO TO ALL OF THE ATTORNEYS AS FAR AS RINGO PEARSON IS CONCERNED. I THINK THERE'S A MOTION LEFT THAT IS GOING TO BE INDIVIDUAL TO CERTAIN ATTORNEYS. THERE MAY BE MOTIONS -- THERE

ARE MOTIONS LEFT THAT ARE INDIVIDUAL TO MR. PEARSON IF AT SUCH TIME HE'S TRIED IN THE FUTURE.

THE COURT: ALL RIGHT.

MR. BANKS: AND WE WOULD ASK FOR LEAVE TO RENEW THOSE MOTIONS AT THE APPROPRIATE TIME RATHER THAN HEAR THEM TODAY.

THE COURT: YOU MAY DO SO.

MR. BANKS: THANK YOU.

THE COURT: OKAY. MR. CLEMENTS, I'LL TAKE THEM HOWEVER YOU WANT TO PROCEED.

MR. CLEMENTS: YOUR HONOR, AT THIS TIME, WE WOULD MAKE A MOTION THAT WE HAVE FILED FOR A MORE DEFINITE DESCRIPTION OF AN ALLEGED CRIMINAL CONSPIRACY REGARDING DANNY DAVIS, WHO HE CONSPIRED WITH, WHEN AN AGREEMENT WAS REACHED, WHAT THE AGREEMENT WAS.

THE COURT: WELL, I THINK YOU'RE TALKING ABOUT THE SAME DATE FRAME, BUT WHAT ELSE WOULD YOU RESPOND? HOW ELSE WOULD YOU RESPOND, MR. SOLICITOR?

MR. WILSON: YOUR HONOR, THE DATE THAT THE CONSPIRACY IS ALLEGED TO HAVE OCCURRED, BETWEEN THE 12TH OF NOVEMBER AND THE 24TH OF NOVEMBER. AND THEN -- AND I'M NOT SURE IT'S NOT A NEW CONSPIRACY, TO BE TOTALLY FRANK WITH THE COURT, AFTER NOVEMBER 24TH, WHEN THEY GOT INCARCERATED WHEN THEY THEN START

1753

TRYING TO PLAN HOW TO MISLEAD LAW ENFORCEMENT, SO THEY ENTER A NEW CONSPIRACY AT THAT POINT.

MR. CLEMENTS: THAT'S NOT UNDER INDICTMENT, YOUR HONOR, SO THAT WOULD BE INAPPROPRIATE.

MR. WILSON: WELL, LET'S SEE. I'M NOT SO SURE THAT IT'S NOT. LET'S LOOK AT IT. IT IS INCLUDED. IT SAYS THAT -- AND THIS IS HOW THE INDICTMENT READS AND THIS IS WHY IT READS THAT WAY. THAT JOHNNY RINGO PEARSON DID ALONG WITH OTHER EVIL DISCLOSED PERSONS WHOSE NAMES ARE KNOWN OR UNKNOWN TO THE GRAND JURY UNLAWFULLY AND FELONIOUSLY COMBINED, CONSPIRED, AGREED OR HAD TACIT UNDERSTANDING WITH EACH OTHER BETWEEN NOVEMBER THE 12TH, 1994, AND DECEMBER 30TH, 1994, TO KIDNAP, COMMIT CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND KILLED DARLENE PATTERSON WITH MALICE AFORETHOUGHT; AND THAT FURTHER, JOHNNY RINGO PEARSON DID THEREAFTER CONTINUE SUCH CONSPIRACY, AGREE TO SECRET SUCH CONDUCT, AND HE, ALONG WITH OTHER PERSONS, DID COMMIT OVERT ACTS TOWARD CARRYING OUT SUCH UNLAWFUL AGREEMENT. SO YES, THEY ARE -- THEY ARE CHARGED WITH THE CONSPIRACY INVOLVING THE DEATH AND KIDNAPPING OF THE VICTIM IN THE CRIMINAL SEXUAL CONDUCT AND THEY ARE ALSO CHARGED WITH THAT CONSPIRACY IN HIDING AND TRYING TO SECRET

AND MISLEAD LAW ENFORCEMENT AFTER THE MURDER.

THE COURT: DOES THAT ANSWER YOUR HONOR QUESTION, MR. CLEMENTS?

MR. CLEMENTS: YOUR HONOR, STILL AS FAR AS OUR MOTION, WE ASKED FOR OVERT ACTS, WHEN DANNY DAVIS JOINED THE CONSPIRACY, WHO MIGHT HAVE BEEN A PART OF THE CONSPIRACY THAT THEN WITHDREW FROM THE CONSPIRACY.

MR. WILSON: I DON'T KNOW OF ANYBODY WHO WITHDREW FROM IT. AS I SAID, THEY WERE ALL A PART OF THE CONSPIRACY BETWEEN NOVEMBER THE 12TH AND DECEMBER THE 30TH --

THE COURT: IS THAT ALLEGATION IN THE INDICTMENT SUFFICIENT FOR YOU? I UNDERSTAND THE CHARGES.

MR. CLEMENTS: YES, SIR, YOUR HONOR. JUST --

THE COURT: WHAT IS YOUR NEXT MOTION?

MR. CLEMENTS: YOUR HONOR, WE ALSO MOVE -- FOR THE RECORD, YOUR HONOR, I UNDERSTAND FROM YOUR INDICATION TO ME EARLIER, BUT JUST FOR THE RECORD, TO PROTECT THE RECORD, YOUR HONOR, WE WOULD MOVE FOR A CONTINUANCE IN THAT I WAS APPOINTED ON JANUARY 14TH. I UNDERSTAND, YOUR HONOR, THE DEATH PENALTY NOTICE IS BEING WITHDRAWN AS TO MY CLIENT, DANNY DAVIS.

1755

HOWEVER, YOUR HONOR, WITH A CASE OF THIS COMPLEXITY WITH 14 PEOPLE I BELIEVE NOW UNDER INDICTMENT FOR THESE CHARGES AND WITH THE FACT THAT I PRACTICE BOTH CIVIL AND CRIMINAL LAW IN A LOT OF COUNTIES --

THE COURT: ALL RIGHT. I'M GOING TO STOP THIS REQUEST. YOU'VE GOT TWO MONTHS TO PREPARE. WE'RE GOING FORWARD WITH THIS TRIAL ON THE SECOND WEEK OF MARCH. I'LL GIVE YOU A LETTER -- I'LL GIVE YOU AN ORDER EXCLUDING YOU FROM ANYTHING YOU'VE GOT TO DO IN THE LAST 10 TO 15 DAYS. AND IN YOUR CASE, I'M PERMITTING ASSOCIATE COUNSEL TO STAY IN TO HELP YOU EVEN THOUGH THE DEATH PENALTY NOTICE HAS BEEN WITHDRAWN.

MR. CLEMENTS: THANK YOU, YOUR HONOR.

THE COURT: YOU MAY PROCEED AND PLAN ON TRIAL.

MR. CLEMENTS: YES, SIR.

THE COURT: THAT MOTION FOR CONTINUANCE IS -- I ASSUME WILL BE MADE FOR SOME OF THE REST OF THEM AND IT IS DENIED TOO, BUT I'LL BE GLAD TO HEAR THEM ON THE RECORD. WE ARE GOING FORWARD ON THESE CASES.

MR. MILLS: YOUR HONOR, I WOULD HAVE THE SAME MOTION SINCE I WAS APPOINTED ALSO AND THERE IS NO OTHER ATTORNEY THAT'S HAD THE CASE EARLIER THAN

LATE JANUARY OF THIS YEAR FOR MR. RANSOM. LOIS MCMILLAN WAS ALSO APPOINTED IN LATE JANUARY.

THE COURT: NOW, MR. RANSOM HAD AN ATTORNEY FOR A SIGNIFICANT PERIOD OF TIME WHO WORKED ON IT PRESUMABLY FOR A YEAR AND A HALF.

MR. MILLS: THAT'S MY UNDERSTANDING, BUT IT'S MY UNDERSTANDING HE HAS BEEN RELIEVED. I UNDERSTAND THAT YOU DID NOT RELIEVE HIM, BUT ANOTHER JUDGE RELIEVED HIM. MS. MCMILLAN WAS APPOINTED.

THE COURT: AND THAT JUDGE ONLY RELIEVED HIM BECAUSE HE WAS NOT ADVISED THAT THE FOURTH CIRCUIT SOLICITOR WAS NOT INVOLVED. HE WOULD NOT HAVE BEEN RELIEVED HAD HE BEEN ADVISED THAT THIS SOLICITOR WAS HANDLING THIS CASE. BUT AGAIN, I'LL ISSUE SUCH ORDERS AS REQUIRED TO GIVE YOU ADEQUATE TIME TO PREPARE, BUT WE'RE GOING TO TRIAL ON THESE CASES.

MR. MILLS: SO YOU WILL GIVE ME AN ORDER OF PROTECTION ON THAT?

THE COURT: YES, SIR. AND I UNDERSTAND YOU, BUT YOU CAN CONFER WITH MR. OHANESIAN WHO APPARENTLY WAS INVOLVED IN THIS CASE.

MR. MILLS: I DIDN'T KNOW IF HE FELT THAT HE HAD A CONFLICT THAT HE COULDN'T --

THE COURT: WELL, YOU NEED TO GET UP WITH

1757

HIM AND I'LL ARRANGE IT WHERE HE WILL DO THAT.

MR. MILLS: YES, SIR.

THE COURT: YES, SIR.

MR. ROGERS: JUDGE, ON BEHALF OF MR. STUCKEY, I MAKE THE SAME MOTION.

THE COURT: AND WHO IS YOUR CO-COUNSEL?

MR. ROGERS: MR. MAHLON PADGETT.

THE COURT: WELL, MR. PADGETT HAS BEEN INVOLVED AS PRIMARY ATTORNEY IN THIS CASE FOR A YEAR AND A HALF. AND KNOWING MR. PADGETT, I'M SURE HE'S READY. SO DENIED.

MR. ROGERS: WELL, YOUR HONOR, IF I COULD JUST SAY FOR THE RECORD, IN LIGHT OF YOUR RULING JUST NOW ABOUT THE 14-DAY PERIOD, WE'RE GOING TO HAVE TO -- OR SOMEONE'S GOING TO HAVE TO DO THE INVESTIGATION AND FIND WHERE HE WAS FOR 14 DAYS. THAT'S GOING TO REQUIRE SOME TIME. AND ON THAT BASIS, WE WOULD MAKE THE MOTION FOR A CONTINUANCE.

THE COURT: WELL, MR. PADGETT IS PRIMARY COUNSEL, NOW, AND HAD THE OPPORTUNITY FOR TWO YEARS TO DO THAT, MR. ROGERS. I NEED TO TALK TO YOU. I'M HAVING SOME CONCERN AS TO WHETHER OR NOT I AM GOING TO KEEP TWO LAWYERS IN THE CASE OR NOT, BUT I MAY WELL FOR THE REASONS THAT YOU RAISE.

MR. ROGERS: VERY WELL. THAT WAS ANOTHER

ISSUE THAT I WAS GOING TO RAISE.

THE COURT: WE'LL TALK ABOUT THAT IN A MOMENT.

MR. ERVIN: YOUR HONOR.

THE COURT: YES, SIR.

MR. ERVIN: ON BEHALF OF MARTIN MCINTOSH, AT OUR LAST HEARING, HAIR AND BLOOD SAMPLES WERE OBTAINED FROM ALL OF THE DEFENDANTS. WE DID RECEIVE A REPORT AND NOW IT'S BACK FROM SLED INDICATING WHAT BLOOD TYPE, WHETHER OR NOT THERE WERE SECRETIONS, WHAT GROUP THEY FALL IN, BUT WE DON'T HAVE ANY COMPARISONS. MY CONCERN AT THIS STAGE IS, AND I DON'T WANT TO POP THIS ON YOU AT TRIAL, BUT IF WE GET BACK A POSITIVE MATCH ON ONE OR MORE DEFENDANTS, THEN WE'RE GOING TO HAVE THE NECESSITY OF OBTAINING DNA EXPERTS PROBABLY. I DON'T KNOW THAT THAT WILL HAPPEN, BUT IT COULD FURTHER DELAY THE PROCESS DEPENDING ON WHEN HE RESPONDS WITH THE SLED RESULTS. AND THEY ARE TYPICALLY PRETTY SLOW IN PROCESSING DNA SAMPLES.

THE COURT: YOURS IS A NON-CAPITAL CASE, IS IT NOT?

MR. ERVIN: WELL, THEY ALL ARE NOW.

THE COURT: WELL, NO. SOME OF THEM ARE NOT INDICTED FOR MURDER.

1759

MR. ERVIN: NO, SIR. MINE IS INDICTED.

THE COURT: FOR MURDER? WAS YOURS ONE OF THE CAPITAL CASES ORIGINALLY?

MR. ERVIN: YES, SIR.

THE COURT: WHAT'S YOUR POSITION ON THAT, MR. WILSON.

MR. ERVIN: IT IS NOT ONE OF THE CAPITAL CASES.

THE COURT: SOLICITOR, WHAT WOULD BE YOUR RESPONSE?

MR. WILSON: WELL, I'M NOT SURE I UNDERSTAND --

MR. ERVIN: WELL, WHAT I'M SAYING IS I'M BRINGING TO THE COURT'S ATTENTION AT THIS TIME THAT IF WE GOT POPPED WITH A DNA MATCH, AND I'M SURE I'M SPEAKING ON BEHALF OF THE REST OF THE ATTORNEYS HERE, THAT IF WE GET POPPED WITH A POSITIVE MATCH, WE'RE GOING TO NEED TIME TO OBTAIN EXPERTS. AND IF YOU GIVE US THAT FOUR DAYS BEFORE TRIAL OR TWO DAYS BEFORE TRIAL, THEN A CONTINUANCE MOTION WOULD BE WARRANTED AT THAT TIME. AND THAT MAY BE UNNECESSARY. IN OTHER WORDS, THIS IS ONE OF THOSE SPECULATIVE KIND OF ANTICIPATORY MOTIONS I'M MAKING. I'M JUST ASKING THE COURT TO URGE HIM TO GET THE SLED RESULTS TO US AS SOON AS POSSIBLE, WHICH I THINK HE COULD DO WITH A

PHONE CALL, PROBABLY.

MR. WILSON: WELL, THE DNA HAS BEEN SENT TO A LAB -- WHAT'S THE NAME OF IT -- DIAGNOSTIC SOMETHING -- TO A LAB IN ATLANTA BY SLED TO DO NATIONAL DIAGNOSTIC LABORATORY IN ATLANTA TO BE TESTED, AND WE HAVE FOUR SWABS REMAINING. TWO OF THOSE SWABS -- WE HAD SIX ORIGINALLY. TWO SWABS WAS USED BY SLED THAT. THAT LEAVES FOUR REMAINING SWABS. THOSE SWABS ARE WITH DR. GUGLIAMO AS WE SPEAK. HE HAS INDICATED THAT HE WILL HAVE THE RESULTS FOR US PRIOR TO MARCH 3RD, WHICH IS THE DATE THAT I GAVE HIM. AND YOU KNOW, THAT'S WHERE WE ARE.

I DON'T KNOW WHAT THESE RESULTS ARE GOING TO BE, IF HE'S GOING TO FIND ANYTHING AT ALL.

THE COURT: WELL, WE'LL JUST HOLD THAT QUESTION IN ABEYANCE AND I'LL RULE ON IT IF IT ARISES.

MR. ERVIN: YES, YOUR HONOR.

MR. CLEMENTS: YOUR HONOR, I WOULD JOIN IN MR. ERVIN'S MOTION AND ALSO DRAW TO THE COURT'S ATTENTION THAT IF THEY ARE GOING TO USE UP THE TWO OUT OF THE SIX SWABS, THAT'S GOING TO LEAVE ONLY FOUR SWABS REMAINING FOR ALL OF THE DEFENDANTS TO SQUABBLE OVER AS FAR AS TESTING, AND THAT'S GOING TO PUT US IN A ROUGH POSITION. MY UNDERSTANDING ALSO, YOUR HONOR,

1761

IS THAT THE TYPE OF DNA TESTING THAT THEY ARE DOING ON THESE SWABS IS THE PCR DNA TESTING, AND THE ONLY ONE THAT'S BEEN APPROVED BY THE COURT AS BEING ADMISSIBLE IN SOUTH CAROLINA UNDER THE STATE V. FORD IS RFLP TESTING.

MR. WILSON: WELL, I'M -- I'M SORRY.

THE COURT: WE'LL HAVE A RULING ON THAT WHEN IT BECOMES NECESSARY.

MR. WILSON: ALL RIGHT. LET ME SAY THIS. THE PCR --

THE COURT: THERE MAY WELL NOT BE ENOUGH TO GO AROUND FOR 11 PEOPLE, BUT THAT'S NOT GOING TO PRECLUDE THE STATE FROM USING IT. BUT TO THE EXTENT IT'S AVAILABLE, WE'RE GOING TO LET THE DEFENSE HAVE IT IF IT BECOMES APPROPRIATE. ISN'T THAT RIGHT?

MR. WILSON: YES, SIR. YOUR HONOR, AND I WANT TO CORRECT SOMETHING HE SAID. HE SAID THAT THERE WERE FOUR SWABS. THERE ARE NOT FOUR SWABS. THERE WERE SIX SWABS ORIGINALLY. TWO WAS USED BY SLED IN THE ORIGINAL TESTING PROCESS IN ORDER TO COME UP WITH THE BLOOD TYPING AND THAT KIND OF THING. THERE ARE FOUR SWABS LEFT. THOSE FOUR SWABS HAVE NOW BEEN SENT TO NATIONAL DIAGNOSTICS IN ATLANTA FOR PCR TESTING. THE REASON THAT PCR TESTING IS BEING USED IS THAT PCR TESTING WILL USE LESS OF THE MATERIAL

THAN RFLP WOULD USE. IN FACT, WHAT THEY ARE SAYING IS THAT THERE IS NOT ENOUGH OF THE MATERIAL TO DO RFLP. THAT IS WHY WE HAVE CHOSEN NOT TO DO IT. IF WE WERE GOING TO DO RFLP, SLED COULD DO IT. THEY HAVE INDICATED TO US THAT THERE IS NOT ENOUGH MATERIAL THERE FOR THEM TO DO THAT. SO WE SENT IT TO THE NATIONAL LABORATORY TO HAVE IT DONE.

NOW, MY UNDERSTANDING IS THAT -- FROM DOCTOR -- DR. GUGLIAMO THAT WHAT WILL HAPPEN IS THAT IN ALL PROBABILITY, HE WILL ONLY NEED TWO OF THE SWABS, BUT HE SAYS I CANNOT GUARANTEE YOU THAT BECAUSE I CAN'T TELL YOU WHAT MIGHT HAPPEN OR WHAT MIGHT GO WRONG IN THE PROCESS AND I MAY HAVE TO USE MORE. BUT I HAVE INDICATED TO HIM THAT IF ANY IS LEFT, THAT WE WANT TO MAKE THAT AVAILABLE TO THE DEFENSE. WE WILL MAKE THAT AVAILABLE TO THE DEFENSE, AND WE WILL DO THAT AS SOON AS WE KNOW IT IS AVAILABLE.

THE COURT: DOES THAT ANSWER YOUR QUESTION, MR. CLEMENTS?

MR. CLEMENTS: NOT SATISFACTORILY, YOUR HONOR, BUT IT DOES ANSWER MY QUESTION.

MR. WILSON: YOUR HONOR, I WOULD SAY, THOUGH, IN THIS REGARD, THAT THE DEFENSE NEEDS TO GET TOGETHER COLLECTIVELY TO DECIDE -- BECAUSE OBVIOUSLY AT BEST THERE'S ONLY GOING TO BE TWO SWABS. AND WHAT

THEY NEED TO DO IS THEY NEED TO DECIDE COLLECTIVELY WHO THEY ARE GOING TO HAVE TO TEST THOSE SWABS FOR THEM BECAUSE OBVIOUSLY THERE ARE NOT 11 SWABS AND THEY ARE NOT GOING TO BE ABLE TO GET 1 EACH.

THE COURT: AND OF COURSE THAT MAY NOT BE NECESSARY BECAUSE WE MAY NOT GET ANY RESULTS.

MR. WILSON: IT MAY NOT BE NECESSARY BECAUSE WE MAY NOT GET ANY RESULTS POSITIVE AT ALL.

MR. BANKS: IF I MAY, YOUR HONOR.

THE COURT: YES, SIR.

MR. BANKS: I DON'T DISPUTE ANYTHING THAT EITHER SIDE HAS SAID REGARDING THE DNA, BUT I WOULD LIKE THE RECORD TO REFLECT THAT AS OF THIS POINT AT A QUARTER TO FIVE ON FEBRUARY THE 18TH, THERE'S ONLY ONE CLIENT FACING THE DEATH PENALTY IN THIS CASE, AND THAT'S MY CLIENT, RINGO PEARSON. AND RATHER THAN THE DEFENSE -- WHETHER I SHOULD BE PUT IN A POSITION AS LEAD COUNSEL TO JOIN IN NON-CAPITAL CASES TO SHARE DNA INFORMATION IS NOT A DECISION THAT THE DEFENSE SHOULD HAVE TO MAKE. THE STATE HAS ELECTED TO WITHDRAW --

THE COURT: YOU WON'T MAKE IT. I'LL MAKE IT.

MR. BANKS: WELL, JUST FOR THE RECORD, YOUR HONOR, I THINK IF THE STATE ELECTS TO WITHDRAW

NOTICE OF THE DEATH PENALTY ON SOME PEOPLE AND LEAVE IT --

THE COURT: WHEN IT BECOMES APPROPRIATE, I'LL MAKE THE DECISION AS TO WHAT TO DO.

MR. BANKS: THANK YOU. AND SO I WOULD ASK, YOUR HONOR, THAT AS THE INFORMATION IS MADE AVAILABLE TO THE NON-CAPITAL CASES THAT ARE SET FOR MARCH 3RD AND MARCH THE 10TH, THAT AS TO THAT ISSUE THAT WE ALSO BE NOTIFIED OBVIOUSLY AS TO THAT BECAUSE I DON'T THINK IT'S UP TO THE STATE TO MAKE THAT DECISION IN FRONT OF YOUR HONOR.

MR. WILSON: MAKE WHAT DECISION?

MR. BANKS: MAKE THE DID DECISION OF WHETHER YOU'RE GOING TO USE IT FOR THE DEATH PENALTY CASE OR THE NON-DEATH PENALTY CASE.

THE COURT: HE'S SAYING IF THERE'S NOT ENOUGH TO GO AROUND, AND THERE WON'T BE, THE FIRST PIECE OUGHT TO GO TO THE RINGO PEARSON BECAUSE THE DEATH PENALTY NOTICE IS STILL ON HIM.

MR. WILSON: I DISAGREE.

THE COURT: WELL, I DON'T --

MR. WILSON: I THINK THAT ALL OF THESE DEFENDANTS ARE AT TRIAL. ALL OF THESE DEFENDANTS HAVE AN ENTIRELY --

THE COURT: I DIDN'T SAY I AGREED WITH HIS

1765

POSITION. I JUST TOLD YOU WHAT HIS POSITION WAS.

MR. WILSON: RIGHT. AND I'M SAYING, I THINK THAT ALL OF THESE DEFENDANTS HAVE A RIGHT TO HAVE THIS MATERIAL TESTED TO DETERMINE -- BECAUSE IT MAY EXCLUDE HIS CLIENT OR IT MAY IMPLICATE HIS CLIENT. I DON'T KNOW WHAT'S GOING TO HAPPEN.

THE COURT: WELL, WHY DON'T WE WAIT AND ARGUE THIS WHEN WE GET IT HERE. LET'S SEE. IT MAY BE -- MAY -- IT MAY BE NECESSARY. THERE MAY NOT BE ENOUGH LEFT. LET'S ARGUE THAT SITUATION WHEN WE KNOW WHAT WE'RE TALKING ABOUT, ALL OF US.

MR. CLEMENTS: YES, SIR.

THE COURT: ALL RIGHT.

MR. CLEMENTS: YOUR HONOR, NEXT, THIS IS NOT ON THE AGENDA, BUT AS THINGS HAVE SO RAPIDLY PROGRESSED TODAY, I FEEL THE NEED TO MAKE THIS MOTION. YOUR HONOR, I UNDERSTAND THAT THERE WAS SOME TYPE OF AGREEMENT REGARDING DARLINGTON COUNTY AS TO THE JURORS FOR THE RINGO PEARSON CASE. WE WERE NOT A PART OF IT.

THE COURT: YOU DON'T HAVE TO BE A PART OF IT SINCE THAT RINGO PEARSON CASE IS NOT BEING TRIED IN DARLINGTON, THE JURY IS BEING DRAWN HERE IN MARLBORO, I'VE DRAWN AN EXTRA 50 JURORS AND WE'RE GOING TO TRY THAT CASE RIGHT HERE IN THIS COURTROOM.

MR. CLEMENTS: YOUR HONOR, I WOULD BE --

THE COURT: YOU DIDN'T NEED TO BE A PART OF THE DARLINGTON ISSUE BECAUSE YOU DIDN'T HAVE ANYTHING TO DO WITH RINGO PEARSON TO START WITH.

MR. CLEMENTS: I KNOW THAT, YOUR HONOR.

THE COURT: WHAT'S YOUR MOTION?

MR. CLEMENTS: MY MOTION IS THAT THE JURORS FOR THE CASE OF DANNY DAVIS, AS A RESULT OF THE SMALL COMMUNITY AND CLOSE KNIT COMMUNITY IN MARLBORO, THE FACT THAT BEYOND ANYONE'S FAULT HERE REMAINING ON THE DEFENSE OR THE PROSECUTION IT'S BEEN TWO YEARS FOR THIS TOWN AND THIS COUNTY TO TALK ABOUT THIS ISSUE, THAT A JUROR --

THE COURT: LET ME CUT YOU SHORT REAL QUICK LIKE, MR. CLEMENTS. WE'RE GOING TO VOIR DIRE THIS JURY, AND IF WE CAN GET A JURY HERE, WE WILL DO IT. IF I CONCLUDE AT THE END OF VOIR DIRE THAT WE CAN'T GET A JURY, THEN WE'LL DECIDE WHERE TO GO. BUT WE'RE GOING TO TRY TO GET A JURY HERE. THIS INCIDENT HAPPENED TWO YEARS AGO. I'M SATISFIED THAT WE CAN GET A JURY HERE.

MR. CLEMENTS: THANK YOU, YOUR HONOR.

THE COURT: AND THAT'S THE PROCEDURE. WE'RE GOING TO SEE IF WE CAN GET ONE HERE FIRST. IF WE CAN'T, I CONSIDER MOVING IT.

MR. CLEMENTS: I UNDERSTAND YOUR RULING, YOUR HONOR. JUST FOR THE RECORD, I WANT TO PUT ON THAT WE WOULD MOVE FOR A MINORITY DRAW FROM A MORE DEMOGRAPHICALLY-SYNONYMOUS COUNTY THAN MARLBORO COUNTY. I UNDERSTAND YOUR RULING.

THE COURT: ALL RIGHT. THANK YOU. AND THAT'S GOING -- THE SAME THING IS GOING TO APPLY TO THE FIRST WEEK TOO. WE'RE GOING TO MAKE EVERY EFFORT TO GET A JURY. IF I DETERMINE WE CAN'T GET A FAIR JURY, I'LL CONSIDER MOVING IT.

ALL RIGHT. ANY OTHER MOTIONS?

MR. LEE: YOUR HONOR, I WOULD ASK THAT THE COURT IMPOSE ON ALL OF THE LAWYERS FOR THE STATE AND DEFENSE, LAW ENFORCEMENT AND THE FAMILIES OF THE VICTIMS AS WELL AS THE FAMILY OF DANNY DAVIS A GAG ORDER THAT THIS --

THE COURT: I'M NOT ISSUING ANY GAG ORDER AT THIS TIME UNTIL I SEE SOME NEED FOR IT. THERE'S BEEN NO DEMONSTRATION OF THAT. THESE ARE ALL REPUTABLE ATTORNEYS. WE'RE NOT IN CALIFORNIA AND I DON'T ANTICIPATE A BUNCH OF PEOPLE MAKING SPEECHES. BETTER NOT.

MR. LEE: I UNDERSTAND THAT.

THE COURT: BUT UNTIL I SEE THAT, I'M NOT GOING TO DO THAT.

MR. LEE: I JUST WANTED TO PUT IT ON THE RECORD THAT WE'VE ASKED FOR IT.

THE COURT: WELL, I UNDERSTAND THAT AND I DECLINE TO DO IT TODAY.

MR. LEE: THANK YOU.

THE COURT: THANK YOU.

MR. CLEMENTS: YOUR HONOR, WE HAVE A FEW OTHER MOTIONS THAT I'LL COMBINE TOGETHER, YOUR HONOR, AND I THINK THAT ALL OF THESE MOTIONS WE'RE MAKING ARE IN THE INTEREST OF JUDICIAL ECONOMY.

THE COURT: WELL, GOOD. LET'S HEAR THEM.

MR. CLEMENTS: AND ALSO, YOUR HONOR, NOT TO AGGRAVATE A JURY. NORMALLY, YOUR HONOR, IT IS -- THE FACT THAT SOMEONE GET UP AND TESTIFIES, A STATEMENT OR CRIMINAL RECORD IS PROVIDED TO A PARTY FOR CROSS-EXAMINATION AT THAT TIME. A JURY HAS TO SIT THERE AND THE PERSON DOING THE CROSS-EXAMINING LOOKS LIKE A BAD GUY OR HE LOOKS UNPREPARED IN FRONT OF THE JURY WHICH MAY PREJUDICE --

THE COURT: MR. SOLICITOR, CAN YOU ACCOMMODATE THEM AHEAD OF TIME ON THAT ISSUE?

MR. WILSON: YES, SIR. WHAT IS IT THAT YOU WANT, NOW?

MR. CLEMENTS: WELL, WHAT I'M ASKING FOR, YOUR HONOR --

1769

THE COURT: CRIMINAL RECORDS OF ANY WITNESSES THAT YOU PROPOSE TO CALL.

MR. WILSON: ANY STATE'S WITNESSES?

THE COURT: ANY STATE'S WITNESSES. HE IS ASKING THAT YOU DO IT PRIOR TO THE DAY OF TRIAL. YES, SIR. GRANTED.

MR. CLEMENTS: ALSO, YOUR HONOR, WE WOULD ASK THAT AT THE INCEPTION OF THE TRIAL -- FOR SOMEONE TO SHOOT THAT BURGLAR ALARM ON THAT CAR.

THE COURT: GRANTED.

MR. CLEMENTS: ALSO, WE WOULD ASK FOR AN IN CAMERA HEARING ON THE ADMISSIBILITY OF STATEMENTS UNDER VERSUS V. DENNO.

THE COURT: HE'S ENTITLED TO THAT IF THAT BECOMES AN ISSUE. OBVIOUSLY, WE'RE GOING TO COMPLY WITH THE RULING.

MR. CLEMENTS: AN IN CAMERA HEARING ON ALL OF THE MULTIPLE BRUTEN ISSUES THAT ARE GOING TO BE INVOLVED IN THIS CASE. YOUR HONOR, ALSO WE WOULD MOVE FOR IN CAMERA HEARING INN REGARDS TO ANY EVIDENCE THAT THE STATE WOULD SEEK TO ADMIT AT TRIAL UNDER THE LYLE THEORY. AND THE REASON WHY WE ASK FOR THAT, YOUR HONOR, IS IN THE -- FOR JUDICIAL ECONOMY.

THE COURT: I DON'T SEE A LYLE ISSUE THERE. DO YOU, SOLICITOR?

1770

MR. WILSON: I DON'T SEE ANY LYLE ISSUE.

THE COURT: IF IT COMES UP, I'LL CONSIDER THAT AT THAT TIME. I JUST DON'T SEE A LYLE ISSUE.

MR. WILSON: BUT JUDGE, I'M ALWAYS WILLING TO LISTEN IF HE'S GOT SOME INSIGHTFUL INFORMATION.

THE COURT: WELL, YES, BUT HE'S GOT TO DO BETTER THAN WHAT HE'S BEEN DOING. GO AHEAD.

MR. CLEMENTS: WELL, YOUR HONOR, IF IT DOES COME UP, WE WOULD LIKE IT TO BE HEARD AT THE BEGINNING OF THE TRIAL INSTEAD AT THE END.

THE COURT: IT WILL BE IF YOU'VE GOT A LYLE ISSUE.

MR. CLEMENTS: YOUR HONOR, I THINK OUR MOTION FOR A BILL OF PARTICULARS WOULD FALL UNDER THE SAME ARGUMENTS THAT WE MADE AS FAR AS A MORE DEFINITE TIME OF THE MURDER, KIDNAPPING AND CRIMINAL SEXUAL CONDUCT, A MORE DEFINITE DESCRIPTION, AND CRIMINAL CONSPIRACY. SO YOUR HONOR, WE WOULD JUST RENEW THAT AS FAR AS OUR REGARDS TO A MOTION FOR A BILL OF PARTICULARS.

THE COURT: ALL RIGHT. WILL THE LAWYERS COME FORWARD WHO WERE INVOLVED IN THE PREVIOUSLY APPOINTED DEATH PENALTY CASES ALONG WITH SOLICITOR WILSON? SOLICITOR WILSON, COME FORWARD.

(WHEREUPON, A BREAK WAS TAKEN

FROM THE PROCEEDINGS.)

THE COURT: ALL RIGHT. WITH REGARDS TO MR. KILGO'S CLIENT THAT WE ARE SENDING BACK FOR EXAMINATION BY STATUTE, MR. KILGO, YOU'LL PREPARE THAT ORDER?

MR. BANKS: YES, SIR. I'LL DO THAT TOMORROW.

THE COURT: AND I WANT A REPLY WITHIN 15 DAYS SO THAT, DEPENDING ON WHAT THE RULING IS, HE CAN BE TRIED ALONG WITH THE REST OF THEM.

MR. KILGO: UH-HUH.

THE COURT: AND I WANT IT -- WOULD YOU FOLLOW UP ON THAT FOR ME, SOLICITOR?

MR. WILSON: YES. YES, SIR, I WILL.

THE COURT: I WANT THAT OPINION BACK HERE BECAUSE IF THEY RULE THAT HE'S COMPETENT, WE'LL TRY HIM ON MARCH THE 3RD.

MR. KILGO: YOUR HONOR, ON THAT POINT, WHERE DO YOU WANT HIM SENT? BECAUSE WE'RE NOT TALKING ABOUT CRIMINAL RESPONSIBILITY.

THE COURT: WELL, THE STATUTE CLEARLY SAYS WHERE HE IS TO BE SENT.

MR. KILGO: YOU SEE WHAT I'M SAYING, SOLICITOR?

MR. WILSON: I UNDERSTAND HIS POINT. I

MEAN, I THINK WHAT HE'S ASKING IS DOES HE NOW GO TO THE DEPARTMENT OF MENTAL HEALTH -- MENTAL RETARDATION OR DOES HE GO TO --

MR. KILGO: MENTAL HEALTH.

MR. WILSON: MENTAL HEALTH.

MR. KILGO: AND I THINK MENTAL RETARDATION WOULD BE THE PROPER ONE, WOULDN'T IT, SOLICITOR?

MR. WILSON: I WOULD SUGGEST THAT WE SEND HIM TO MENTAL RETARDATION FIRST AND THEN LET THEM --

THE COURT: WHAT ABOUT IT, MR. BANKS? YOU'VE LOOKED INTO THIS QUESTION, MR. BANKS, TOO. WHAT ABOUT IT? I'M SEEKING SOME ADVICE HERE. I'M NOT SURE WHERE TO SEND HIM.

MR. BANKS: YOUR HONOR, IT DOESN'T MATTER. THE WAY THE STATUTE IS WRITTEN AND THE LEGISLATURE -- THE REASON BEHIND THE STATUTE IS TO EITHER DETERMINE WHETHER THEY CAN GO AS FAR AS THEY CAN AND THEN RETURN IT TO THE OTHER. THEY HAVE WHAT THEY CALL A 15 DAY EVALUATION. AND I THINK HE CAN BE SENT TO THE DEPARTMENT OF MENTAL RETARDATION AND THEY ARE GOING TO TEST FOR RETARDATION. I MEAN, IF THEY END THAT, THE STATUTE REQUIRES THEM TO TURN IT OVER TO THE DEPARTMENT OF MENTAL HEALTH.

THE COURT: BUT I THINK MY ORDER OUGHT TO DIRECT -- THIS IS THE STATUTE. IT SAYS EITHER/OR.

1773

AND THEY WILL MAKE THE DETERMINATION.

MR. KILGO: THAT'S FINE, YOUR HONOR. THAT'S THE WAY I'LL PREPARE THE ORDER.

THE COURT: BOBBY, JUST FOLLOW THE STATUTE HERE.

MR. KILGO: YES, SIR.

THE COURT: I'M NOT SURE. BUT IT DOES SAY THIS. APPROPRIATE FACILITY TO THE DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF MENTAL RETARDATION FOR A PERIOD NOT EXCEEDING 15 DAYS. AND SOLICITOR, MY COMMENT TO YOU IS CALL OVER THERE OR YOU CAN TOO. AND IT DOESN'T HAVE TO WAIT 15 DAYS. I WANT IT BACK, SAY, WITHIN 10 IF I CAN GET IT.

MR. WILSON: WE'LL DO THAT.

THE COURT: ALL RIGHT, SIR. THANK YOU.

MR. KILGO: I'LL COORDINATE WITH THE SOLICITOR'S OFFICE.

THE COURT: ALL RIGHT. NOW, LET'S GET BACK ON THE RECORD FOR SUCH OTHER MOTIONS. ANYBODY GOT ANYTHING? LET ME HEAR -- IF ANYBODY ELSE HAS GOT ANY MOTIONS, LET ME HEAR THEM.

MR. WILSON: YOUR HONOR, I DON'T HAVE A MOTION. WHAT I HAVE IS SOME MORE INFORMATION THAT I NEED TO SHARE WITH THE LAWYERS. AND THIS IS INFORMATION THAT THEY PROBABLY OR MAY ALREADY HAVE.

WHEN I WAS GOING THROUGH OUR MATERIAL, WHAT WE LEARNED WAS THAT THERE MAY HAVE BEEN SOME THINGS THAT AT LEAST ONE OR TWO OF THE LAWYERS DIDN'T HAVE IT, AND I THINK SOME OF THE OTHER LAWYERS PROBABLY ALREADY DO HAVE IT. AT LEAST THAT'S THE INDICATION FROM THE MARKINGS ON THE DOCUMENT. BUT OUT OF AN ABUNDANCE OF CAUTION, I WANTED TO RESERVE IT JUST SO THERE WOULD BE NO QUESTION ABOUT IT.

IT INVOLVES -- THIS IS -- THE FIRST PIECE INVOLVES SEVERAL STATEMENTS WHICH IS -- ONE IS A RECEIPT FROM ADVANCE AUTO PARTS WHICH IS DATED NOVEMBER 8TH OF '94. THE SECOND THING IS A HANDWRITTEN LETTER BEGINNING "MR. HAROLD JACOBS" AND ENDING "YOURS TRULY, DANNY DAVIS" WHICH WAS APPARENTLY WRITTEN BY MR. DAVIS TO MR. JACOBS.

ANOTHER -- THE THIRD ONE IS A HANDWRITTEN LETTER BEGINNING "DELTON" -- I MEAN. I'M SORRY. A HANDWRITTEN LETTER BEGINNING "DELTON, I'M SENDING" AND ENDING "THEIR WAY AND I KNOWED IT." I MEAN, WHATEVER THAT MEANS, IT'S A LETTER WRITTEN -- WHO IS THAT LETTER FROM? I'M NOT SURE WHO THE LETTER IS FROM. WE THINK IT'S FROM ONE OF THE DEFENDANTS. I'M NOT SUR, BUT RATHER THAN HAVE IT AND NOT GIVE IT TO THEM, I'M GIVING IT TO THEM SO IF THERE'S EVER ANY QUESTION ABOUT IT, THEY WILL HAVE IT.

1775

THE OTHER ONE SAYS -- THERE'S ANOTHER HANDWRITTEN LETTER BEGINNING "HI GREG OHANESIAN" AND ENDING "I AWAIT YOUR IMMEDIATE RESPONSE, BOBBY." SO WE ARE PROVIDING THEM WITH COPIES OF THESE DOCUMENTS, AND I HAVE A COPY FOR EVERY DEFENDANT RIGHT HERE AND I WOULD LIKE TO GIVE THEM THAT. THE OTHER THING IS THAT WE HAVE --

THE COURT: AT THE CONCLUSION OF THIS HEARING, YOU GENTLEMEN CAN GO UP AND GET THOSE AT THAT TIME. GO AHEAD.

MR. WILSON: YES, SIR. AND THE OTHER THING, YOUR HONOR, IS A COPY OF AN INDICTMENT WHICH READS "INDICTMENT POSSESS WEAPON ON EDUCATIONAL PROPERTY." THIS IS DWAYNE SHAWNDELL SLOAN. IS THAT CORRECT? AND I'M JUST SERVING THEM A COPY OF THAT PARTICULAR INDICTMENT THAT WE HAVE RECEIVED. WE WILL BE GETTING ADDITIONAL INDICTMENTS FROM A NUMBER OF DEFENDANTS THAT THEY HAVE IN OTHER STATES THAT WE HAVE SENT FOR. AS THOSE INDICTMENTS COME IN, WE WILL BE SERVING EACH OF THOSE INDICTMENTS ON THE DEFENSE PERTAINING TO THE DEFENDANTS IN THESE CASES. I JUST WANTED THEM TO BE AWARE OF THAT.

THE COURT: ALL RIGHT. DOES THAT CONCLUDE ANYTHING THAT YOU HAVE AT THIS TIME?

MR. WILSON: THAT CONCLUDES THE STATE'S,

YES.

THE COURT: ANY OTHER MOTION OVER HERE ON MY RIGHT?

MR. WILL ROGERS: YES, SIR. I WOULD LIKE TO MAKE A MOTION FOR A SEPARATE TRIAL TO MAKE SURE MY CLIENT ISN'T PREJUDICED BY ANY OF THE OTHER CO-DEFENDANTS.

THE COURT: YES, SIR. I'LL DENY THAT. WE'RE GOING TO TRY THEM JOINTLY. AND IN THAT CONNECTION, I WANT THIS RECORD TO REFLECT THAT A HERRING WAS HELD BEFORE ME ON DECEMBER 30TH, 1996. AND AT THAT TIME, ALL COUNSEL AND ALL DEFENDANTS WERE ADVISED THAT THE FIRST TRIAL WOULD BE HELD ON MARCH THE 3RD AND THE SUBSEQUENT TRIAL WOULD BE HELD ON THE SECOND WEEK. SO ALL ATTORNEYS, NOW, HAVE HAD ADEQUATE NOTICE AS TO WHEN THESE CASES WOULD BE HELD, AND THAT'S WHY I'M NOT GOING TO ENTERTAIN ANY MOTION FOR CONTINUANCE. DOES THAT CONDITION YOUR MOTION?

MR. WILL ROGERS: YES, SIR, YOUR HONOR.

MR. MOORE: I JOIN IN, YOUR HONOR.

MR. MILLS: I THINK EVERYBODY JOINS IN ON THAT ONE.

THE COURT: ALL RIGHT.

MR. CLEMENTS: WE WOULD JOIN IN THAT MOTION TO SEVER. WE WEREN'T EVEN ON BOARD ON

1777

DECEMBER 30TH.

THE COURT: YES, SIR, BUT YOUR PREDECESSOR WAS ON BOARD AND HE COULD HAVE TOLD YOU -- I'M SATISFIED HE TOLD YOU OF THE TRIAL DATE. THAT WAS MR. HUGGINS WHO WAS THERE IN COURT.

MR. CLEMENTS: YES, SIR.

THE COURT: AND HE RECUSED HIMSELF AS A RESULT OF A MEDICAL DISABILITY, BUT WAS ADVISED BY ME, AND I'M SURE HE DID, TO GIVE HIS NEXT COUNSEL THE FULL FILE.

MR. CLEMENTS: YES, SIR.

THE COURT: YES, SIR. MR. LAWSON.

MR. LAWSON: AS I UNDERSTAND IT, THAT MOTION WAS A SEVERANCE MOTION AS OPPOSED TO A CONTINUANCE.

THE COURT: NO, SIR. THAT MOTION WAS FOR SEVERANCE. I WILL ADDRESS THE CONTINUANCE ISSUE AGAIN. THE MOTION FOR SEVERANCE AS TO ALL DEFENDANTS IS DENIED.

MR. LAWSON: WELL, IS THAT -- WE WILL BE ALLOWED TO RAISE THAT AGAIN ADDITIONALLY, I WOULD ASSUME, YOUR HONOR.

THE COURT: WELL, THE ONLY THING I'M SAYING IS I NOTE FOR THE RECORD THAT YOU MADE IT AT THIS TIME AND I DENIED IT. I DON'T KNOW WHAT SOME

APPELLATE COURT MIGHT DECIDE.

MR. LAWSON: YOUR HONOR, I'M TALKING ABOUT FURTHER INTO THE TRIAL OF THIS CASE, THE MOTION FOR SEVERANCE CAN BE RAISED AT ANY POINT, AS I UNDERSTAND IT, OR ARE YOU PRECLUDING US --

THE COURT: NO, SIR. ALL I'M RULING ON TODAY IS WHAT'S BEFORE ME TODAY. I'M RULING WE ARE GOING FORWARD WITH THESE TRIALS. THE MOTION FOR SEVERANCE IS RESPECTFULLY DENIED.

MR. LAWSON: ALL RIGHT.

THE COURT: IF I NEED TO ADDRESS IT AGAIN LATER, I WILL.

MR. LAWSON: THANK YOU, YOUR HONOR.

THE COURT: ANYBODY ELSE?

MR. MILLS: YOUR HONOR, JUST FOR THE RECORD, I HAVE QUITE A FEW ILLEGIBLE STATEMENTS AND OTHER DISCOVERY I WOULD ASK THE SOLICITOR TO PROVIDE ME. I'LL GET YOU A LIST OF WHAT WE --

THE COURT: HE WILL DID THAT.

MR. CLEMENTS: YOUR HONOR, WE'RE GOING TO DO THE SAME THING, PROVIDE HIM WITH A LIST OF WHAT WE HAVE WE CAN'T READ.

THE COURT: YES, SIR. WE'LL DO THAT. WE'VE ALREADY RULED THAT ALL BRADY AND RULE FIVE WILL BE PROVIDED. HE WILL ACCOMMODATE YOU. MR. MILLER,

YOU HAVEN'T HAD A MOTION YET. I'LL BE GLAD TO HEAR YOU.

MR. MILLER: I'M WAITING, YOUR HONOR.

THE COURT: ALL RIGHT. HOW ABOUT YOU, MR. ROGERS?

MR. ROGERS: YES.

MR. MILLER: I THINK I'VE SERVED ALL OF MY MOTIONS UPON THE SOLICITOR, YOUR HONOR.

THE COURT: ANYBODY ELSE?

MR. MILLER: ALL OF WHICH YOU'VE DENIED.

THE COURT: YES, SIR. ALL RIGHT. DOES THAT CONCLUDE THIS PROCEEDING? ALL RIGHT.

(WHEREUPON, THE FOREGOING PROCEEDINGS WERE CONCLUDED.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, MARK W. HAGOOD, RPR, REGISTERED PROFESSIONAL REPORTER AND NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA, ON JUNE 18, 1998.

MARK W. HAGOOD, RPR

1781

INDICTMENT FOR

1743

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

Ct 1: Kidnapping
Ct 2: Murder
Ct 3: Criminal Sexual Conduct First Degree
Ct 4: Criminal Conspiracy

At a Court of General Sessions, convened on December 30, 1996, the Grand Jurors of Marlboro County present upon their oath:

COUNT ONE: KIDNAPPING Sec. 16-3-910

That Leroy Staton did in Marlboro County, between November 12, 1994 and November 24, 1994, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Darlene Patterson without authority of law or was present aiding or abetting such kidnapping.

AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH:

COUNT TWO: MURDER Sec. 16-3-10/16-3-20

That Leroy Staton did in Marlboro County, between November 12, 1994 and November 24, 1994, knowingly, intentionally, wickedly, feloniously and with malice aforethought kill Darlene Patterson by means of strangulation or was present aiding or abetting such killing and that Darlene Patterson did die in Marlboro County on said date as a direct and proximate result of such act.

AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH:

COUNT THREE: CRIMINAL SEXUAL CONDUCT FIRST DEGREE Sec. 16-3-652

That Leroy Staton did in Marlboro County, between November 12, 1994 and November 24, 1994, knowingly, wickedly, intentionally and feloniously engage in sexual battery, to wit: sexual intercourse with the victim, Darlene Patterson, or was present aiding or abetting in the penetration of such act, said acts being accomplished while Darlene Patterson was the victim of kidnapping, forcible confinement or aggravated force.

AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH:

COUNT FOUR: CRIMINAL CONSPIRACY Sec. 16-17-410

That Leroy Staton did, along with other evil disposed whose names are known or unknown to the Grand Jury, unlawfu feloniously combine, conspire, agree or have tacit understandi each other between November 12, 1994 and December 30, 1994 to commit Criminal Sexual Conduct in the First Degree and kill Patterson with malice aforethought. Further, Leroy Staton did after continue such conspiracy agreeing to secret such condu he, along with other persons, did commit overt acts toward c out such unlawful agreement.

Against the peace and dignity of the State, and contrary statute in such case made and provided.

Ralph G. Wilson

SOLICITOR

WILLIAM[illegible] COURT
CLERK[illegible]
MARLBORO COUNTY, S.C.

'97 MAR 17 P6:20

FILED

1783

R. Jacobs - MCSD

1784

ARREST WARRANT NO. _____

1. 16-3-910 CDR: 948

2. 16-3-10/16-3-20 CDR: 116

3. 16-3-652 CDR: 160

4. 16-17-410 CDR: 049

ACTION OF GRAND JURY

True Bill 12.30.96

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

1784

COUNTY OF MARLBORO

RJW

COURT OF GENERAL SESSIONS

December TERM 1996

THE STATE

vs.

Leroy Staton

INDICTMENT FOR:

CT 1: KIDNAPPING
CT 2: MURDER
CT 3: CRIMINAL SEXUAL CONDUCT FIRST DEGREE
CT 4: CRIMINAL CONSPIRACY

Ralph J. Wilson, Solicitor

CT 1: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

CT 2: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

CT 3: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

CT 4: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

WILLIAM H. SURRATT
CLERK OF COURT
MARLBORO COUNTY, S.C.
97 MAR 17 P 6:20
FILED

1745

WITNESSES

RKP

Harold Jacobs

FILED
'97 JUL 10 A9:50
WILLIAM [illegible]
CLERK
MARLBURO [illegible]
MARLBORO, S.C.

ARREST WARRANT #:

D349002

Arrested on January 04, 1995

8/25/95

ACTION OF GRAND JURY

True Bill

Foreman: Paul Brown
Grand Jury

VERDICT

Foreman:
Petit Jury
Date:

DOCKET #: 95GS34-0207 1746

THE STATE OF SOUTH CAROLI
County of Marlboro

COURT OF GENERAL SESSION

Term: March, 1995

THE STATE

vs.

Alphonso Staton

INDICTMENT FOR

0095

KIDNAPPING

(16-3-910)

1747.

STATE OF SOUTH CAROLINA)
) INDICTMENT #95GS34-0207
County of Marlboro)

At a Court of General Sessions, convened on March 06, 1995, the Grand Jurors of Marlboro County present upon their oath:

COUNT: KIDNAPPING
(16-3-910)

That Alphonso Staton did in Marlboro County between November 12, and November 24, 1994, did wilfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Darlene McRae Patterson , without authority of law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR _____

WILLIAMSBURG
CLERK
MARLBORO COUNTY, S.C.

'97 JUL 10 A9:50

FILED

1748

WITNESSES

Harold Jacobs

ARREST WARRANT #:

D348996

Arrested on January 04, 1995

8/25/95

ACTION OF GRAND JURY

True Bill

Foreman: _____
Grand Jury

VERDICT

Foreman: _____
Petit Jury
Date: _____

DOCKET #: 95GS34-0208

THE STATE OF SOUTH CAROLIN
County of Marlboro

COURT OF GENERAL SESSIONS

Term: March, 1995

THE STATE

vs.

Alphonso Staton

INDICTMENT FOR

0160

CRIMINAL SEXUAL CONDUCT - FIRST DEG

(16-3-652)

FILED
'97 JUL 10 A9:51
WILLIAM B. [illegible]
CLERK OF COURT
MARLBORO COUNTY, S.C.

1787

1749

STATE OF SOUTH CAROLINA)
)
County of Marlboro)

INDICTMENT #95GS34-0208

At a Court of General Sessions, convened on March 06, 1995, the Grand Jurors of Marlboro County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE
(16-3-652)

That Alphonso Staton did in Marlboro County between November 12, and November 24, 1994, wilfully and unlawfully engage in criminal sexual conduct in the first degree in that, Alphonso Staton, engaged in sexual battery, to wit: Defendant along with co-defendant did engage in sexual intercourse with Darlene McRae Patterson and did use aggravated force to accomplish such sexual battery

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR Gordon McBride

WILLIAM E. [illegible] RSURK
CLERK [illegible] COURT
MARLBORO COUNTY, S.C.

'97 JUL 10 A9:51

FILED

1750

WITNESSES

D/ Harold Brooks 3/21

DOCKET #: 95GS34-0210

THE STATE OF SOUTH CAROLIN
County of Marlboro

COURT OF GENERAL SESSIONS

Term: March, 1995

THE STATE

vs.

Alphonso Staton

ARREST WARRANT #:

0348921

Arrested on January 04, 1995

INDICTMENT FOR

0116

MURDER

16-3-20

8/25/95

ACTION OF GRAND JURY

True Bill

Foreman: _____
Grand Jury

VERDICT

Foreman: _____
Petit Jury

Date: _____

1751

STATE OF SOUTH CAROLINA)
)
County of Marlboro)

INDICTMENT #95GS34-0210

At a Court of General Sessions, convened on March 06, 1995, the Grand Jurors of Marlboro County present upon their oath:

COUNT:

MURDER
16-3-20

That Alphonso Staton did in Marlboro County between November 12, and November 24, 1994, feloniously, wilfully and with malice aforethought, kill one Darlene McRae Patterson by means of suffocation, and that the said Darlene McRae Patterson did die in Marlboro County, as a proximate result between November 12, and November 24 1994.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR Gordon McBride

MARLBORO CO. S.C.
WILLIAMSBURG COUNTY

'97 JUL 10 A9:50

FILED

1752

WITNESSES

Harold Tec. J'K'J'

ARREST WARRANT #:

D549270

Arrested on April 27, 1995

8/25/95

ACTION OF GRAND JURY

True Bill

Foreman: Jack Powers
Grand Jury

VERDICT

Foreman: _____
Petit Jury
Date: _____

DOCKET #: 95GS34-0735

THE STATE OF SOUTH CAROLIN
County of Marlboro

COURT OF GENERAL SESSIONS

Term: July, 1995

THE STATE

vs.

Alphonzo Staton

INDICTMENT FOR

0043

CRIMINAL CONSPIRACY

(16-17-410)

1791

1753

STATE OF SOUTH CAROLINA)
) INDICTMENT #95GS34-0735
County of Marlboro)

At a Court of General Sessions, convened on July 10, 1995, the Grand Jurors of Marlboro County present upon their oath:

COUNT: CRIMINAL CONSPIRACY
(16-17-410)

That Alphonzo Staton did in Marlboro County between November 12, and November 24,1994, unlawfully and wilfully unite, combine, conspire, confederate, agree and have tacit understanding with each other and/or with other persons, whose names are unknown to the Grand Jurors, for the purpose of to wit: defendant did conpsire for the purpose of accomplishing the crime of murder, kidnapping and criminal sexualconduct 1st.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR Gordon McDuffie

MARLBORO CO. S.C.
WILLIAMSBURG
CLERK

'97 JUL 10 A9:51

FILED

175

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO) COURT OF GENERAL SESSIONS
DOCKET # 96-GS-34-0982

THE STATE)
VS.) VERDICT
LEROY STATON)

COUNT #1: KIDNAPPING

NOT GUILTY _____
GUILTY ✓

COUNT #2: MURDER

NOT GUILTY _____
GUILTY ✓

COUNT #3: CRIMINAL SEXUAL CONDUCT
FIRST DEGREE

NOT GUILTY _____
GUILTY ✓

COUNT #4: CRIMINAL CONSPIRACY

NOT GUILTY _____
GUILTY ✓

'97 MAR 17 P6:20

THE ABOVE IS THE UNANIMOUS VERDICT OF THIS JURY.

Mary E. Malloch
FORELADY

1755

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)

COURT OF GENERAL SESSIONS
DOCKET # 96-GS-34-0984

THE STATE)
VS.) VERDICT
ALFONSO STATON)

COUNT #1: KIDNAPPING

NOT GUILTY _____
GUILTY ✓

COUNT #2: MURDER

NOT GUILTY _____
GUILTY ✓

COUNT #3: CRIMINAL SEXUAL CONDUCT
FIRST DEGREE

NOT GUILTY ✓
GUILTY _____

COUNT #4: CRIMINAL CONSPIRACY

NOT GUILTY _____
GUILTY ✓

97 MAR 17 P6:18

THE ABOVE IS THE UNANIMOUS VERDICT OF THIS JURY.

Mary C Malachi
FORELADY

1756

ROBERT GRAHAM

Kidnapping
Crim. Sexual Conduct (1st Degree)
Criminal Conspiracy

MARTIN MCINTOSH

Kidnapping
Murder
Crim. Sexual Conduct (1st Degree)
Criminal Conspiracy

ALFONZO STATON

Kidnapping
Murder
Crim. Sexual Conduct (1st Degree)
Criminal Conspiracy

LEROY STATON

Kidnapping
Murder
Crim. Sexual Conduct (1st Degree)
Criminal Conspiracy

CHARLES M. "RICKY" STUCKEY

Kidnapping
Murder
Crim. Sexual Conduct (1st Degree)
Criminal Conspiracy

JEFFERY WALLS

Kidnapping
Murder
Crim. Sexual Conduct (1st Degree)
Criminal Conspiracy

EXHIBIT
C-2

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 14, 2000

Joseph L. Savitz, III
Deputy Chief Attorney

South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT.

FORM 5

1758

STATE OF SOUTH CAROLINA)
)
County of MARLBORO)

IN THE COURT OF COMMON PLEAS
File Date: 07/10/2003

03-34-244

ALFONSO STATON #241380)
Full name and prison number (if any) of Applicant)

v.

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution; 430 Oaklawn Road; Pelzer, S.C. 29669

2. Name and location of Court which imposed sentence General Sessions Court for Marlboro County

3. Name(s) of co-defendant(s) (if any) Leroy Staton, Martin McIntosh, Rickey Stuckey, Jeffrey Walls, Robert Graham.

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 96-GS-34-984 (Kidnapping, Count 1)

(c) 96-GS-34-984 (Criminal Sexual Conduct First Degree, Count 3) 1759

(d) 96-GS-34-984 (Criminal Conspiracy, Count 4)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 18, 1997 (No Sentence for Kidnapping)

(b) March 18, 1997 (Life for Murder)

(c) March 18, 1997 (Criminal Sexual Conduct 1st degree) equitted.

(d) March 18, 1997 (Criminal Conspiracy - 5 years concurrent)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere N/A

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

Yes

8. If you answered Ayes@ to (7), list:

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

i. SC Court of Appeals

ii. SC Supreme Court

iii.

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

i. Denied direct Appeal

ii. Denied Writ of Certiorari

iii.

(c) the date of each such result:

i. 11-8-2001

ii. 11-21-2002

iii.

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

i. (?)

ii. (?)

iii.

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

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

(a) See attached Memorandum of Law

(b) "

(c) "

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

(a) See attached Memorandum of Law

(b) "

(c) "

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

1799

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

1800

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Exclusive PCR Issue

(b) "

(c) "

(d) "

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Will Rogers; P.O. Box 1175; Bennettville, S.C. 29512

ii. Joseph Savitz III, SC office of Appellate Defense; 1122 Lady street, Suite 940, Columbia, S.C. 29201

iii.

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Direct Appeal/ Writ of Certiorari

iii.

1801

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

Conviction reversed, Vacated and dismissed

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Marlboro)

I, Alfonso Staton # 241380, 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.

Alfonso Staton 241380

SWORN to and subscribed before me this 30
day of June, 2013.

(L.S.)
Notary Public

My Commission Expires: 3-3-2018

1802

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

I, Alfonso Staton # 241380, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Alfonzo Staton 241380
Applicant

SWORN or affirmed to and subscribed before me this 30 day of ~~of~~ JUNE, 2003.

Notary Public

My Commission Expires: 8-3-2008

1803

STATE OF SOUTH CAROLINA)
)
County of Marlboro)

Alfonso Staton, #241380,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

Case No: 03-34-144

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR POST-CONVICTION RELIEF

COME NOW, the applicant, above-named, pro se, presents his memorandum of Law in Support of Application for Post-Conviction Relief and would show unto the Honorable Court.

I. STATEMENT OF THE CASE

In December 1996, the Marlboro County Grand Jury indicted applicant for Murder, Kidnapping, Criminal Sexual Conduct, and Criminal Conspiracy in a multicount Indictment No. 96-GS-34-984.

The applicant proceeded to trial on March 10-19, 1997, before the Honorable Judge Edward B. Cottingham, presiding judge and jury. He was represented by William B. Rogers, Esq.; the State was represented by Ralph J. Wilson, 15th Circuit Solicitor, who was appointed by the S.C. Attorney General to prosecute the case. The jury found him guilty of Murder, Kidnapping, and Criminal Conspiracy, and the Judge sentenced him to life for Murder, and five years for Criminal Conspiracy to run concurrent. The applicant was not sentenced for Kidnapping in accordance with rule of § 16-3-910, Code of Law. Tr. 1683-1687. A timely appeal was filed and served .

On 11-8-01, the S.C. Appelal Court denied the appeal in Up-Op No. 2001-Up-477. Applicant filed a Petition for Rehearing which was denied on

1804

12-20-01±. The applicant then filed a Petiiton for Writ of Certiorari to the S.C. Supreme Court. On 11-21-02 the Court denied the Writ. This PCR application follows.

II. ARGUMENT

9(a)-10(a) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO COUNSEL'S FAILURE TO OBJECT TO INDICTMENT WHICH DID NOT CONFER SUBJECT-MATTER JURISDICTION.

The applicant contends that his trial counsel was ineffective for failing to object to an indictment that failed to confer subject-matter jurisdiction upon the trial court. 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 reasonable assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 104 S.Ct. 2052 (1984).

In support of this claim, applicant submits that his multicount indictment No. 96-GS-34-984 indicates that the grand jury convened on December 30, 1996, to return a true bill. However, applicant contacted the S.C. Court Administration requesting the record of all indictments returned in Marlboro County in December 1996. The Court Administration provided applicant with the requested record that showed applicant had in fact not been indicted in December 1996 as indicated on his indictment. Thus, applicant's indictment operated as a "sham legal process". See § 16-17-735, S.C. Code of Law.

Conversely, a presentment of grand jury is "condition precedent" to trial for crime since grand jury is constituent part of court, which has no jurisdiction of cause without such presentation. See, e.g., State v. Hann, 12 S.E.2d 720 (S.C. 1941); State v. Beachum, 342 S.E.2d 597 (S.C. 1986). Here, as the Court Administration Record shows, there was a Sham legal process purported to be a valid indictment to confer jurisdiction upon the trial court. Moreover, applicant's indictment conspiciously indicated on its face that the solicitor indicted him off the statutory offenses for the crimes charged in violation of Rule 3, S.C.R.Crim.P., which should have warranted an objection from counsel. Our Supreme Court has held that a counsel's performance is deficient and preju-

dicial when he fails to raise in pretrial any defense, objection, or request which is sufficiently capable of determining the general issue without a trial. See, e.g., Mitchel v. State , 379 S.E.2d 123 (S.C. 1989).

In the instant case, applicant submits that it is without question that an indictment which operates as a "sham legal process" also fails to confer subject-matter jurisdiction and could have desided the general issue without a trial; thus, counsel's failure in this instance was ineffective assistance that was per se prejudicial.

9(a)-10(b) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL'S FAILURE TO OBJECT TO A DOUBLE JEOPARDY INDICTEMNT.

The applicant contends that he was denied effective assistance of trial counsel and prejudiced by counsel's failure to object to a jeopardy barred indictment. To show prejudice as required to prevail on ineffective assistance of counsel claim, a defendant must show that but for counsel's error, there is a reasonable probability the result of the trial would have been different. Stevenson v. State, 516 S.E.2d 434 (S.C. 19999).

Accordingly, the applicant submits that he was initially indicted in the March 1995 term of Court for Murder in Indictment No. 95-GS-34-210, Kidnapping in Indictment No. 95-GS-34-207, He was also indicted in the July 1995 term for Criminal Conspiracy in Indictment No. 95-GS-34-735. Consequently, applicant was again indicted in the December term of Court for the same offenses in a multicount Indictment No. 96-GS-34-984. Applicant further submits that all of the above indictments were pending against him at the time of the jury was sworn prior to his trial. The Double Jeopardy provision of the Fifth Amendment provides protection against imposition of cumulative punishment for the same offense(s) in a single trial and against being subjected to successive prosecution for the same offense, without regards to the actual imposition of punishment. See, e.g., U.S. v. Ragin, 840 F.2d 1184, on remand 702 F.Supp 1249; Amend. 5, Const.

The S.C. Supreme Court has found counsel's performance defective and prejudicial for failing to inform or object to double jeopardy indictments. See, e.g., Jivers v. State, 406 S.E.2d (1991); Paggett v. State, 484 S.E.2d 101 (S.C. 1997). Moreover, the U.S.

176

Court has held that the Double Jeopardy Clause protects against even the "risk" of double jeopardy convictions. Abney v. U.S. 431 U.S. 651 (1977); Price v. Georgia, 90 S.Ct. 1757 (1970)

In this case, even a casual review of the record should have revealed to counsel that applicant had been indicted twice and was being tried on a jeopardy barred indictment. Thus, counsel's failure to object to applicant's multicount indictment on which he was tried and convicted in this case constituted ineffective assistance that was enormously prejudicial inasmuch as it resulted in applicant receiving a life sentence on a jeopardy barred indictment. See, United States v. Cronic, 104 S.Ct. 2039 (1984), Strickland, Supra.

9(c)-10(c) THE APPLICANT WAS DENIED DUE PROCESS OF LAW AS A RESULT OF PROSECUTORIAL MISCONDUCT OF KNOWINGLY INTRODUCING PERJURED TESTIMONY TO OBTAIN HIS CONVICTION.

The applicant contends that his conviction was obtained as a direct result of the solicitor's knowing use of perjured testimony to obtain his conviction. [redacted] Donnelly v. DeChristoforo, 416 U.S. 637 (1974). Further, to obtain relief on [redacted] p. 1609 Tr.

Accordingly, it was the state's theory at trial that applicant and codefendants held the murder victim at a trailer where the solicitor argued during trial they had "one pig feet party". The date of 11-12-94 was the only date introduced at trial by the solicitor himself, which was objected to by the defense during his direct of one of the state's key witnesses, Jeffrey Graham. Tr. 582-585; 600; 607-676. This date was the foundation of the state's case in connecting applicant and codefendants to the crimes. With regards to this date, it is imperative to note that the state's theory was that the murder victi

was abducted on 11-12-94, a Saturday around 8:30 p.m. Tr. 235-250. The solicitor proffered testimony by two of its witnesses, Danny Davis and Bobby Ransom, that they seen applicant and codefendants holding the victim captive at the "one pig feet party" around [redacted] Tr. 732-734; 890-893. Davis testified that he cooked the pig feet for the "party". Tr. 733-734.

It is a judicially notice fact[1] that Davis and Ransom could not have seen applicant with the victim at the "party" around 1:00 p.m. on 11-12-94 when the victim was not abducted until around 8:30 p.m. on 11-12-94. It is painfully clear that the solicitor knew he was proffering perjured testimony by Davis and Ransom regarding seeing applicant at the "one pig feet party" on 11-12-94 around 1:00 p.m. when he argued in closing that Davis and Ransom could have seen applicant with the victim because the "one pig feet party" had been on 11-14-94, a Monday. Tr. 1619-1620. No date of 11-14-94 had been introduced by the solicitor as the date for the "party" during the trial.

In sum, when the state knows something is wrong with the evidence, the judicial process is used merely as a legal subtefuge for wrongful depriving the defendant of his liberty. Mooney v. Holohan, 294 U.S. 103,55 S.Ct. 340 (1934); see also, Napue v. Illinois, 360 U.S. 264,79 S.Ct. 1173 (1959). Here, the solicitor's whole theory with respect to applicant's attendance at the "party" depended on his misrepresentation; thus, realizing that Davis and Ransom had testified to facts and events occurring before the victim was abducted on 11-12-94, he knowingly altered the date to coincide with Davis and Ransom's testimony. See, e.g., Miller v. Pate, 386 U.S. 1,87 S.Ct. 785 (1967); State v. Coleman, 389 S.E.2d 659 (S.C. 1990).

9(d)-10(d) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL DUE TO COUNSEL'S FAILURE TO OBJECT TO IMPROPER EVIDENCE.

The applicant contends that he was denied the right to effective assistance of trial

---

[1]: A judicial notice fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. S.C.R.Evi, Rule 201.

counsel when counsel failed to object to the solicitor's introduction of hearsay and the evidence in closing that was not adduced at trial. To establish claim of ineffective assistance of counsel for PCR applicant must prove that counsel's performance was deficient and that deficient performance prejudiced his case. Satterwhite v. State, 481 S.E.2d 709 (S.C. 1997).

Accordingly, applicant and codefendants were tried under the "hand of one is the hand of all" theory. See State v. Johnson, 352 S.E.2d 480,482 (1987). It was the State's theory of the case that applicant was present aiding and abetting Johnny "Ringo" Pearsson who actually and physically murdered the victim. However, "Ringo" Pearson was not present at applicant's trial; nevertheless, [redacted] witnesses, Dwayne Sloan, that "Ringo" confessed to this witness that he had murdered the victim. [redacted]

As "Ringo" Pearson was not present at applicant's trial, the solicitor's proffer of Sloan's testimony constituted impermissible hearsay offered for the truth of the matter. The "hearsay rule" prohibits one from proving a fact in the trial of a case by reciting that someone made a statement which if believed would prove that fact. State v. Pollard, 196 S.E.2d 839,841 (1973); see also, State v. Whisonant, 515 S.C.App. 1999). Hearsay is inadmissible and constitute reversal error if its admission is prejudicial to the accused State v. Williams, 331 S.E.2d 354 (Ct. App. 1985). Here, it is without question that the state's proffer of hearsay testimony was offered for the "truth of the matter asserted", to wit, that "Ringo" Pearson, who was not present at applicant's trial, murdered the victim and that under the theory of "hand of one is the hand of all" applicant was in fact guilt of committing murder as his codefendant.

Therefore, [redacted] See, e.g., Sosebee v. Leeke, 362 S.E.2d 22 (1987); Simkins v. State, 401 S.E.2

142 (S.C. 1991).

In addition, during trial, the solicitor himself introduced and proffered the date of 11-12-94, a Saturday, for the "one pig feet party" where applicant and codefendants were seen by Davis and Ransom holding the victim captive around 1:00 p.m. in the afternoon prior to murdering her. Tr. 582-584; 727-733. Conversely, the solicitor argued in closing that the "one party" had taken place on 11-14-94, a Monday, because this misrepresentation could explain how Davis and Ransom could have seen the applicant with the victim around 1:00 p.m. in the afternoon. This date was never adduced by the solicitor at trial. Furthermore, contrasting the solicitor's proffer of 11-12-94 as the date for the "one party" at trial with the date of 11-14-94 he argued in closing as the date for the "one party" unmistakeningly shows that he was keenly aware that he had to misrepresent the date for the "party to conform to Davis and Ransom's testimony and to implicate the applicant in the crimes.

As the solicitor's argument misrepresented the evidence adduced at trial against the applicant, it certainly warranted an objection from counsel. In the absence of an objection in this instance, counsel rendered applicant ineffective assistance that prejudiced his defense. Reversible error was committed where assistant solicitor's closing argument referred to certain statements implicating defendant in crime and such statements were not introduced into evidence. See, e.g., State v. Gaines, 244 S.E.2d 539 (S.C. 1979).

9(e)-10(e) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY COUNSEL's FAILURE TO OBJECT TO A DEFECTIVE INDICTMENT THAT CONTAIN AN OFFICER OF THE STATE AS THE SOLE WITNESS BEFORE GRAND JURY.

In State v. Capps, 275 S.E.2d 872 (1981), the S.C. Supreme Court held that the practice of using a solicitor or other "officer of the state" as sole witness before the grand jury to provide only a summary of the evidence could be abused and strongly suggested it be abandoned unless no alternative in available. Likewise, in State v. Dawkins, 377 S.E. 2d 289 (1989), the Court once again visited this issue and once again strongly admonished this practice. Althought the Court did not grant a reversal in this case, it did reasoned

that an appellant could obtain relief from this practice if he could demonstrate a prejudice resulting from this practice. In this case, applicant was prejudiced by a state officer appearing before the grand jury for return of a jeopardy-barred, non-jurisdictional, indictment, as previously shown above. Notwithstanding, in Anderson v. State, 439 S.E.2d 835 (S.C. 1993), the Court held that because of the uncertainty and confusion that was taking place at all levels of the judiciary regarding this practice, it took the opportunity to explicitly prohibit this practice and granted a reversal of appellant's conviction.

Thus, counsel's failure to object to this practice constituted ineffective assistance that was prejudicial. Padgett, Supra, JIvers, Supra; see also, Arnett v. State, 413 S.E.2d 803 S.C. 1992).

9(f)-10(f) THE APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL DUE TO COUNSEL'S FAILURE TO SUBPOENA OR OTHERWISE CALL ALIBI WITNESSES.

The applicant submits that he informed counsel that he had witnesses who could provide him an alibi for the crimes for which he was charged and requested that he subpoena them to testify on his behalf. Moreover, applicant provided counsel with the names of his witnesses, who were Larry Graham, Anthony Graham, Sathey Staton, Calvin Betha, and Larry Quick. These witnesses appeared at trial to testify; however, counsel misinformed applicant that in order for his alibi witnesses to testify applicant would have to testify first. Furthermore, counsel assured applicant that the state had not proved that he was at the scene, so he did not need to testify. Therefore, there were no need for his alibi witnesses to testify either.

The applicant accordingly submits that counsel's failure to subpoena or otherwise call his albi witnesses to testify on his behalf constitutes ineffective assistance of counsel that was per se prejudicial. In Martinez v. State, 403 S.E.2d 113 (S.C. 1991) the Court held counsel's assistance ineffective for failing to subpoena or call alibi witnesses, reasoning that albi witnesses could have affected a different outcome in the

trial of the case. See, also, Ford v. State, 442 S.E. 2d 604 (S.C. 1994); Riddle v. State, 410 S.E.2d 308 (S.C. 1992)

II. CONCLUSION

WHEREFORE, for the foregoing reasons, this Honorable Court should reverse, vacate, and dismiss applicant's conviction to correct a fundamental unjust imprisonment of an innocent applicant.

This 30 day

of JUNE, 2003

3-3-2008 (BKP)

Respectfully Submitted

/s/ Alfonso Staton 241380

Alfonso Staton, #241380
Perry Corr. Inst.
430 Oaklawn Rd.-Q3A-
Pelzer, S.C. 29669

Pro Se

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
		2003-CP-34-244
Alfonso Staton, # 241380,	)	
Applicant,	)	
v.	)	RETURN
State of South Carolina,	)	
Respondent.	)	

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed July 10, 2003, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. The Applicant was indicted at the December 1996 term of the Marlboro County Grand Jury for Kidnaping, Murder, Criminal Sexual Conduct First Degree, and Criminal Conspiracy (96-GS-34-984). He was represented by Will Rogers, Esquire. On March 18, 1997, pursuant to trial by jury, the Applicant was found guilty of Kidnaping, Murder, and Criminal Conspiracy. He was sentenced by the Honorable Edward B. Cottingham to confinement for a period of life for Murder, five (5) years for conspiracy, no sentence for Kidnaping, pursuant to S.C. Code § 16-3-910, all concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Staton, Op.

No. 2001-UP-478 (S.C. Ct. App. filed November 8, 2001). The Supreme Court denied certiorari on November 21, 2002.

Attached herewith and incorporated herein by reference are the records of the Marlboro County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. Any of the above not so attached will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel.

2. Prosecutorial misconduct.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. *See* Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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, 305 S.E.2d 247 (1983).

IV.

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

1815

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

V.

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

VI.

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

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

CHRISTOPHER L. NEWTON
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 3, 2003.

1816

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	FOURTH JUDICIAL CIRCUIT
ALFONSO STATON,	)	
APPLICANT-PLAINTIFF,	)	
VERSUS	)	TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA,	)	2003-CP-34-0244
DEFENDANT.	)	
		JANUARY 12, 2005

BEFORE:

THE HONORABLE JOHN M. MILLING, JUDGE

APPEARANCES:

FOR THE APPLICANT-PLAINTIFF:
CANDICE A. LIVELY, ESQ.

FOR THE DEFENDANT:
KAREN C. RATIGAN, ESQ., ASSISTANT ATTORNEY GENERAL

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

1817

INDEX

WITNESSES

ALFONSO STATON

DIRECT EXAMINATION BY MS. LIVELY – PAGE 7

CROSS EXAMINATION BY MS. RATIGAN – PAGE 26

RE-DIRECT EXAMINATION BY MS. LIVELY – PAGE 32

KATHEY STATON

DIRECT EXAMINATION BY MS. LIVELY – PAGE 34

NO CROSS EXAMINATION

CALVIN BETHEA

DIRECT EXAMINATION BY MS. LIVELY – PAGE 37

NO CROSS EXAMINATION

LARRY QUICK

DIRECT EXAMINATION BY MS. LIVELY – PAGE 41

CROSS EXAMINATION BY MS .RATIGAN – PAGE 43

WILLIAM ROGERS

DIRECT EXAMINATION BY MS. RATIGAN – PAGE 45

CROSS EXAMINATION BY MS. LIVELY – PAGE 59

RE-DIRECT EXAMINATION BY MS. RATIGAN – PAGE 84

RE-CROSS EXAMINATION BY MS. LIVELY – PAGE 87

RE-DIRECT EXAMINATION BY MS. RATIGAN – PAGE 91

ALFONSO STATON – RECALL WITNESS

DIRECT EXAMINATION BY MS. LIVELY – PAGE 92-94

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
A-01	PATHOLOGIST'S REPORT	61	61
A-02	HANDWRITTEN NOTE	69	69
A-03	RULE FIVE REQUEST	70	71
A-04	SCHOOL RECORDS	74	75
A-05	NOTICES OF ALIBI WITNESSES	88	91

1819

THE COURT: MS. RATIGAN.

MS. RATIGAN: YES, YOUR HONOR. MAY IT PLEASE THE COURT. THIS IS THE CASE OF ALFONSO STATON VERSUS THE STATE OF SOUTH CAROLINA, DOCKET NUMBER 2003-CP-34-0244. MR. STATON WAS INDICTED ON MURDER, CRIMINAL SEXUAL CONDUCT, FIRST DEGREE; CRIMINAL CONSPIRACY AND KIDNAPPING IN DECEMBER OF 1996. IN MARCH OF 1997, HE AND FIVE CO-DEFENDANTS WERE BROUGHT TO TRIAL BY THE STATE. HE WAS REPRESENTED BY WILLIAM ROGERS, WHO IS SEATED ON MY RIGHT.

AFTER A TRIAL BY JURY HE WAS FOUND GUILTY OF KIDNAPPING, MURDER AND CRIMINAL CONSPIRACY. HE WAS FOUND NOT GUILTY OF CRIMINAL SEXUAL CONDUCT, FIRST DEGREE. HE WAS SENTENCED BY JUDGE COTTINGHAM TO A SENTENCE OF LIFE FOR MURDER, FIVE YEARS FOR CONSPIRACY. THERE WAS NOT SENTENCE FOR KIDNAPPING, PURSUANT TO SOUTH CAROLINA CODE SECTION 16-3-910.

HE FILED A NOTICE OF APPEAL WITH THE SOUTH CAROLINA COURT OF APPEALS. THE COURT SUBSEQUENTLY AFFIRMED HIS CONVICTED AND SENTENCES ON NOVEMBER 28, 2001.

THE COURT: WAS THAT A PUBLISHED OR A NON-PUBLISHED OPINION?

MS. RATIGAN: THAT WAS NOT PUBLISHED, YOUR HONOR.

THE COURT: MS. LIVELY.

MS. LIVELY: YES, YOUR HONOR. WE ARE READY TO PROCEED.

THE COURT: MS. LIVELY, SINCE THE APPLICATION, RATHER THAN SPECIFICALLY SETTING OUT GROUNDS, THE FORM ITSELF INCORPORATES INFORMATION CONTAINED IN THE MEMORANDUM WHICH HE HAS PREPARED---

MS. LIVELY: YES SIR.

THE COURT: IN ORDER TO INSURE THAT WE ARE GETTING EVERYTHING SET OUT THAT HE CONTENDS IS INEFFECTIVE ASSISTANCE OF COUNSEL, CAN YOU JUST LIST THAT FOR ME?

MS. LIVELY: I'LL BE GLAD TO, YOUR HONOR. AND I BELIEVE THAT WILL HELP US NARROW THE ISSUES BEFORE THE COURT.

ONE OF THE THINGS THAT HE BROUGHT UP WAS THE FACT THAT THE INDICTMENT LISTED AN ELEMENT OF THE MURDER INCORRECTLY; THAT BEING ON THE INDICTMENT IT SAID STRANGULATION, WHEN, IN FACT, THE CORONER'S, OR THE REPORT FROM THE PATHOLOGIST STATED ASPHYXIATION. THAT'S ONE OF THE ISSUES WE WILL ADDRESS.

AND THE OTHER ISSUE THAT WE WILL-- WE'RE NOT GONNA GET INTO THE DOUBLE JEOPARDY INDICTMENT ISSUE, WHICH IS ON PAGE THREE OF HIS INDICTMENT.

THE COURT: THAT WOULD BE WITHDRAWN?

MS. LIVELY: YES SIR, WITHDRAWN.

THE COURT: DO YOU UNDERSTAND THAT, MR. STATON, THAT IS YOUR AGREEMENT AS WELL?

MR. STATON: YES SIR.

MS. LIVELY: AND THE NEXT ISSUE, YOUR HONOR, IS FAIRLY BROAD AND ADDRESSES CERTAIN, A LOT OF DIFFERENT LEVELS. THE ALLEGATION OF PROSECUTORIAL MISCONDUCT CONCERNING PERJURED TESTIMONY TO OBTAIN HIS POSITION. WE ARE GOING TO BE GOING INTO THE TESTIMONY OF THE TWO CO-DEFENDANTS AGAINST MY CLIENT, THAT BEING RANSOM AND

DAVIS, AND HOW THAT EVIDENCE WAS PRESENTED AND HOW THE COUNSEL FAILED TO PROPERLY OBJECT TO THAT TESTIMONY.

ALSO, ALONG THAT SAME LINE, HEARSAY TESTIMONY WAS ADMITTED BY ONE OF THE CO-DEFENDANTS WHO WAS NOT PRESENT AT THE TRIAL. WE WILL BE ADDRESSING THE FAILURE TO OBJECT TO THAT BY THE ATTORNEY, AS WELL.

AND, ALONG THOSE SAME LINES, JUST THE GENERAL FAILURE OF MR. ROGERS TO OBJECT TO ANY INADMISSIBLE EVIDENCE, WHICH IS MENTIONED AT THE BOTTOM OF PAGE SIX AND GOES INTO HIS CLOSING ARGUMENT BY THE PROSECUTOR, AND THAT NO OBJECTIONS WERE MADE DURING THE ENTIRE CLOSING ARGUMENT BY MR. ROGERS, TO THE STATEMENTS MADE.

AND IN THE FINAL PHASE WE'RE GOING TO ADDRESS-- WE'RE NOT GOING TO ADDRESS 9-E THROUGH 10-E. WE'RE GONNA WITHDRAW FAILURE TO OBJECT TO A DEFECTIVE INDICTMENT THAT WAS PRESENTED BY A SOLE OFFICER OF THE STATE BEFORE THE GRAND JURY.

WE ARE GOING TO ADDRESS THE FAILURE TO CALL CERTAIN ALIBI WITNESSES. AND I BELIEVE THAT'S THE LAST THING.

THE COURT: AND MR. STATON, YOU UNDERSTAND AND AGREE TO THE WITHDRAWAL OF THE OBJECTION OF SOMEONE ON BEHALF OF THE STATE BEING THE SOLE OFFICER BEFORE THE GRAND JURY?

MR. STATON: YES SIR.

THE COURT: ALL RIGHT, SIR.

MS. LIVELY: YOUR HONOR, I HAVE MY CLIENT AS A WITNESS. AND THEN ONE OF THE WITNESSES HE HAD LISTED IN HIS MEMORANDUM THAT

HE WANTED TO HAVE CALLED AS AN ALIBI WITNESS, WHO WAS NOT CALLED AT THE TRIAL, AND THAT IS MR. LARRY QUICK.

THE COURT: VERY GOOD. DO YOUR WITNESSES PLAN TO STAY THROUGHOUT THE BALANCE OF THE HEARING TODAY?

MS. LIVELY: YES SIR.

THE COURT: I WAS GOING TO SUGGEST THAT YOU CALL THE WITNESSES FIRST SO THEY COULD LEAVE, BUT I WILL ALLOW YOU TO CALL THEM IN ANY ORDER THAT WOULD BE CONVENIENT.

MS. LIVELY: LET ME JUST BE SURE RIGHT QUICK.

THE COURT: ALL RIGHT.

(PAUSE TO CONFER WITH WITNESSES)

MS. LIVELY: WE'RE FINE, YOUR HONOR. THEY'RE HERE FOR THE DURATION.

THE COURT: VERY GOOD. I'LL BE GLAD TO HEAR FROM YOU.

MS. LIVELY: I CALL ALFONSO STATON.

ALFONSO STATON, DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. LIVELY:

Q PLEASE STATE YOUR NAME.

A ALFONSO STATON.

Q NOW, ALFONSO, I WANT YOU TO SPEAK DIRECTLY INTO THE MICROPHONE FOR THE COURT REPORTER WHO IS TAKING DOWN YOUR TESTIMONY.

A OKAY.

Q NOW, YOU WERE CONVICTED IN MARCH OF 1997. CORRECT?

A YES MA'AM.

Q AND YOU'VE HEARD THE DIFFERENT CHARGES THAT YOU WERE CONVICTED OF THAT WERE READ INTO THE RECORD. CORRECT?

A YES MA'AM.

Q NOW, YOU FILED THIS APPLICATION FOR POST CONVICTION RELIEF ON JULY 2, 2003. IS THAT RIGHT?

A THAT'S RIGHT.

Q NOW, YOU HEARD THE THINGS THAT WE'RE GONNA BE TALKING ABOUT TODAY CONCERNING YOUR ACTUAL APPLICATION. IS THAT RIGHT?

A YES MA'AM.

Q DO YOU HAVE A COPY OF THIS UP THERE WHERE YOU CAN REFER TO IT?

A I DON'T HAVE IT.

Q HOW ABOUT I JUST GIVE YOU AN EXTRA COPY.

A OKAY.

MS. LIVELY: IF YOU WOULD JUST GIVE ME ONE SECOND, YOUR HONOR.

THE COURT: CERTAINLY.

(PAUSE)

MS. LIVELY: IF I MAY APPROACH?

THE COURT: YOU MAY.

Q NOW, MR. STATON, I'M GOING TO BE REFERRING TO YOUR APPLICATION MEMORANDUM. OKAY?

A OKAY.

Q SO, IF YOU WILL, JUST FOLLOW ALONG WITH ME. NOW, MR. STATON, THE FIRST THING THAT YOU ADDRESS IN YOUR MEMORANDUM IS THE FAILURE OF THE OBJECTION TO BE MADE BY MR. ROGERS CONCERNING THE INDICTMENT. WOULD YOU PLEASE TELL THE COURT WHAT THAT'S ABOUT?

A I WAS SAYING THAT THE FACT HE DIDN'T ASK THE COURT TO DEAL WITH THE STRANGULATION, WITH THE AUTOPSY COURT THAT THE COURT HAD. HE OBJECTED TO IT WHEN I READ IT ON MY PCR REPORT THAT MY APPELLATE COUNSEL DIDN'T RAISE IT DURING MY APPEAL BECAUSE I FEEL THAT IT SHOULD HAVE BEEN RAISED BECAUSE IT WAS PHYSICAL EVIDENCE, YOU KNOW. AND IF IT WAS RAISED FOR THE WRONG CAUSE OF DEATH.

Q NOW, WHEN THE OBJECTION WAS MADE BY MR. ROGERS, WAS IT DURING A PRE-TRIAL MOTION CONCERNING THE AUTOPSY REPORT OR WAS IT DURING THE TRIAL?

A IT WAS DURING THE TRIAL.

Q AND WHEN DID YOU HAVE THE AUTOPSY REPORT? OBVIOUSLY, BEFORE THE TRIAL BEGAN?

A YES MA'AM.

Q AND DI D YOU DISCUSS YOUR INDICTMENT WITH MR. ROGERS PRIOR TO THE TRIAL BEGINNING?

A NO MA'AM.

Q YOU DID NOT?

A NO MA'AM.

Q OKAY. SO, WHEN WERE YOU FIRST AWARE OF THE DIFFERENCE BETWEEN THE ELEMENTS OF THE CRIME LISTED IN YOUR INDICTMENT AND THE TESTIMONY, OR THE STATEMENT BY THE FORENSIC PATHOLOGIST?

A SINCE MY INCARCERATION.

Q SINCE YOUR INCARCERATION?

A YES MA'AM.

Q NOW, THE NEXT THING YOU MENTION IN YOUR APPLICATION IS GONNA BE ON PAGE FOUR. YOU STATE PROSECUTORIAL MISCONDUCT BY THE STATE BEING ALLOWED TO INTRODUCE PERJURED TESTIMONY. CAN YOU PLEASE EXPLAIN TO THE COURT YOUR GROUNDS FOR THIS ALLEGATION?

A THE CASE WAS BASED ON TWO TESTIMONIES FROM TWO CO-DEFENDANTS.

Q AND WHO WERE THEY?

A BOBBY RANSOM AND DANNY DAVIS.

Q NOW, THEY WERE CO-DEFENDANTS. CORRECT?

A YES MA'AM.

Q AND HAD THEY ALREADY PLEAD GUILTY AT THE TIME OF THE TRIAL?

A YES MA'AM.

Q ALL RIGHT. TELL THE COURT WHAT HAPPENED DURING THEIR TESTIMONY.

A THEY TESTIFIED THERE ON THE TWELFTH THERE WAS A PARTY AT RICK STUCKEY'S TRAILER.

Q OKAY.

A WHICH WAS A SATURDAY.

Q SATURDAY, WHAT DATE WAS THAT?

A NOVEMBER 12.

Q OKAY.

A THE LADY WHO HAD REPORTEDLY BEEN HELD THERE CAPTIVE, THEY SAID-- WELL, THEY SAID THE PARTY WAS AROUND ONE TO THREE P.M. ON SATURDAY AFTERNOON.

Q ON THE TWELFTH?

A ON THE TWELFTH.

Q OKAY.

A NOW, THE LADY THAT WAS SUPPOSED TO BE HELD CAPTIVE THERE, SHE WASN'T ABDUCTED UNTIL EIGHT-THIRTY FROM MY TESTIMONY FROM HER SISTER.

Q ALL RIGHT.

A SO, SHE---

Q AND WHY DID HER SISTER IN HER TESTIMONY-- HOW DID HER SISTER KNOW THAT SHE WASN'T MISSING UNTIL AT LEAST EIGHT-THIRTY THAT NIGHT?

A THEY WAS TOGETHER FROM SEVEN-THIRTY TO EIGHT. AT EIGHT-THIRTY THEY WENT SHOPPING.

Q OKAY. NOW CONTINUE WHAT YOU WERE SAYING CONCERNING THE TESTIMONY OF THE TWO WITNESSES.

A I WAS SAY THAT THEY SAID, THEY WAS TESTIFYING TO THE FACTS BEFORE THE LADY WAS ABDUCTED. SO, I WAS ACTUALLY--

HOW CAN SHE BE REPORTED AT ONE TO THREE O'CLOCK ON A SATURDAY WHEN SHE WASN'T MISSING?

Q DID YOUR ATTORNEY EVER ADDRESS THAT ISSUE?

A NO MA'AM.

Q AND DID HE EVER-- IN THE CLOSING ARGUMENT OF THE PROSECUTION DID HE EVER OBJECT TO MR. WILSON QUALIFYING THIS TESTIMONY AS BEING TRUTHFUL?

A NO MA'AM.

Q DO YOU BELIEVE THAT THE TESTIMONY OF THOSE WITNESSES WERE HARMFUL TO YOUR DEFENSE?

A I DO.

Q NOW, WHAT OTHER MATTERS-- WELL, ACTUALLY, YOU HAVE ANOTHER ISSUE TO ADDRESS CONCERNING IMPROPER EVIDENCE THAT WAS INTRODUCED IN THE TRIAL. I AM LOOKING AT PAGE SIX OF YOUR MEMORANDUM.

DO YOU RECALL WHAT YOUR ALLEGATION WAS CONCERNING THE IMPROPER TESTIMONY?

A THE TESTIMONY OF DWAYNE SLOAN.

Q AND WHAT WAS IT THAT MR. SLOAN TESTIFIED TO THAT YOU FELT SHOULD HAVE BEEN OBJECTED TO?

A HE TESTIFIED TO RINGO'S CONFESSION STATEMENT.

Q WAS RINGO AT THE TRIAL OF YOUR CASE?

A NO MA'AM.

Q AND DID MR. ROGERS OBJECT TO THE HEARSAY TESTIMONY BY MR. SLOAN?

A NO MA'AM.

Q HOW DID THAT CONFESSION BY MR. PEARSON, OR RINGO, AFFECT YOU IN THIS CASE?

A BECAUSE HE WAS CONSIDERED A CO-DEFENDANT ALSO. AND I WAS TRIED UNDER THE HAND OF ONE IS THE HAND OF ALL THEORY. AND BY HIM PUTTING ME IN THAT SITUATION, YOU KNOW WHAT I' M SAYING, LIKE THAT, YOU KNOW, I GUESS THE JURY-- I FEEL LIKE THE JURY LOST SIGHT, YOU KNOW, OF ME, YOU KNOW, BY THAT TESTIMONY.

Q DID MR. SLOAN EVER MENTION YOUR NAME IN HIS TESTIMONY?

A IN THAT TESTIMONY?

Q YES.

A NO MA'AM.

Q WHEN WAS YOUR, THE STATEMENT MADE THAT YOU WERE ACTUALLY RIDING AROUND IN THE CAR WITH MR. PEARSON?

A SAY AGAIN?

Q WHEN WAS IT THAT MR. SLOAN TESTIFIED THAT YOU WERE ACTUALLY IN THE VEHICLE WITH HIM AND RINGO?

A ON NOVEMBER 29.

Q WAS THERE AN OBJECTION MADE TO ANY STATEMENTS MADE BY RINGO IN THE VEHICLE WHILE YOU WERE THERE?

A NO MA'AM.

Q AND WHAT STATEMENTS WERE MADE THAT YOU BELIEVE TO BE PREJUDICIAL TO YOU IN THAT CONVERSATION?

A WHAT STATEMENT?

Q THE STATEMENT THAT WAS MADE BY RINGO THAT DWAYNE RELAYED WHILE HE WAS TESTIFYING. WHAT WAS THAT THAT WAS DETRIMENTAL TO YOU?

A THAT IT WAS A CRIME THAT HAPPENED. HE TOLD IT THAT -- EVERY INDIVIDUAL THAT TESTIFIED SAID THAT THE LADY WAS THERE ON A SATURDAY. AND DWAYNE TESTIFIED THAT THE LADY WAS THERE-- THAT RINGO TOOK THE LADY ON SATURDAY AND TOOK HER TO A CERTAIN AREA AND DID WHAT HE DID AND KILLED THE LADY. AND I SAID WITH RINGO BEING MY CO-DEFENDANT AND HIM NOT BEING THERE, AND DWAYNE TESTIFYING TO HIS STATEMENT, I JUST FEEL LIKE IT WAS WRONG, YOU KNOW, BECAUSE, LIKE I SAID, IT PUT ME IN A POSITION, YOU KNOW, OF BEING PART OF IT, OF BEING A CO-DEFENDANT.

Q AND YOU BELIEVE BY NOT OBJECTING TO THIS, THAT ITS ADMISSION WAS PREJUDICIAL TO YOUR DEFENSE?

A YES MA'AM.

Q NOW, WHAT IN MR. SLOAN'S STATEMENT WAS ADMITTED OTHER THAN THE HEARSAY BY RINGO? DO YOU RECALL WHO ELSE HE SAID SOMETHING?

A SAY THAT AGAIN.

Q I'M SORRY. THAT WAS A CONFUSING QUESTION. LET ME TRY THAT AGAIN.

WHEN MR. SLOAN WAS TESTIFYING ABOUT WHAT RINGO SAID, YOU RECALL ALL THAT TESTIMONY. CORRECT?

A YES MA'AM.

Q NOW, WAS THERE ANY DOUBLE HEARSAY ADMITTED BY WHEN HE SAID RINGO SAID SOMEONE ELSE SAID? DO YOU RECALL?

A NO MA'AM.

Q DO YOU RECALL ANY STATEMENTS MADE BY MR. SLOAN AS TO WHAT THE VICTIM SAID TO RINGO?

A WHAT THE VICTIM SAID TO HIM?

Q YES.

A HE SAID THAT THE LADY TOLD HIM NO AND HE SLAPPED THE LADY AND CUSSED HER AND TOLD HER TO CHILL OUT.

Q BUT MR. SLOAN DID TESTIFY THAT RINGO TOLD HIM THE WOMAN SAID THIS. RIGHT?

A YES MA'AM.

Q WAS AN OBJECTION MADE AS TO THAT STATEMENT?

A NO MA'AM.

Q DO YOU BELIEVE THAT WAS PREJUDICIAL AS WELL?

A YES.

Q NOW, ALL OF THIS TESTIMONY THAT WAS GAINED DURING THE TRIAL, DID THE PROSECUTOR DISCUSS IT IN HIS CLOSING ARGUMENT?

A SAY ONE MORE TIME.

Q MR. WILSON, ---

A RIGHT.

Q --- THE PROSECUTOR, DID HE GO BACK AND REFER TO ALL THIS TESTIMONY WHEN HE DID HIS CLOSING ARGUMENT?

A YES.

Q HE DID?

A YES MA'AM.

Q ALL RIGHT. HE REFERRED TO MR. RANSOM. CORRECT?

A CORRECT.

Q HE REFERRED TO MR. DAVIS?

A RIGHT.

Q AND OBVIOUSLY, HE REFERRED TO MR. SLOAN?

A RIGHT.

Q NOW, ALL OF THAT WAS BROUGHT BACK UP AGAIN IN MR. WILSON'S CLOSING ARGUMENT AGAINST YOU AS WELL AS THE OTHER CO-DEFENDANTS. CORRECT?

A YES MA'AM.

Q NOW, WAS ANY OBJECTION MADE BY YOUR ATTORNEY AT THAT TIME CONCERNING THAT TESTIMONY?

A NO MA'AM.

Q WHAT OTHER STATEMENTS WERE MADE BY MR. WILSON, THE PROSECUTOR, WHICH YOU BELIEVE SHOULD HAVE BEEN OBJECTED TO BY MR. ROGERS IN THAT CLOSING ARGUMENT?

A HIS WHOLE CLOSING ARGUMENT SHOULD HAVE BEEN OBJECTED TO. ONE IN PARTICULAR, OR A COUPLE.

Q WELL, YOU'VE ALREADY STATED ABOUT THE TESTIMONY THAT YOU BELIEVE WAS HEARSAY THAT HE RELIED ON.

A ABOUT THE DATES?

Q YES. AND THEN ABOUT THE DATE WHERE YOU SAID YOU BELIEVE HE WAS SUBORNING PERJURED TESTIMONY. WOULD YOU RELATE THAT TO THE COURT WHAT YOU'RE REFERRING TO ON THAT?

A DURING THE TRIAL, HE SAID THAT, LIKE I SAID, THE DATE OF THE TWELFTH WAS THE FOUNDATION OF THE CASE, THE DATE WHERE THE CRIME SUPPOSED TO HAPPEN.

Q OKAY.

A BUT IN HIS CLOSING ARGUMENT, HE SAID THAT THE CORROBORATING WITNESS, THAT THE TESTIMONY OF DANNY AND BOBBY, THAT HE MISREPRESENTED THE DATES IN ORDER, YOU KNOW, TO MAKE THE TESTIMONY COINCIDE.

Q OKAY.

A IN THE CLOSING HE SAID THAT THE CRIME HAPPENED ON THE FOURTEENTH, WHEN ADMISSION WAS THE TWELFTH.

Q YOU'RE REFERRED TO THEY AS BEING DAVIS AND RANSOM IN THEIR STATEMENT GIVEN TO THE COURT. CORRECT?

A YES MA'AM.

Q DO YOU RECALL WHICH ONE OF THEM ACTUALLY TESTIFIED AS TO THE DATE OF NOVEMBER TWELFTH?

A BOTH OF THEM.

Q BOTH OF THEM. AND WHO WAS IT WHO ACTUALLY BROUGHT UP THE DATE OF THE FOURTEENTH?

A MR. WILSON.

Q MR. WILSON. AND ONCE AGAIN, WAS THERE AN OBJECTION OR A CLARIFICATION REQUESTED BY YOUR ATTORNEY AT THAT TIME?

A NO MA'AM.

Q AND YOU SAID THAT NO OBJECTION WAS MADE BY YOUR ATTORNEY DURING THE ENTIRE CLOSING ARGUMENT. CORRECT?

A NO MA'AM.

Q NOW, YOU STATED ALSO IN YOUR APPLICATION, WHEN YOU LIST THE LAW, YOU STATE THAT THE CLAIM OF PROSECUTORIAL MISCONDUCT IS WHETHER THE PROSECUTOR'S CONDUCTED SO AFFECTED THE TRIAL UNFAIRNESS AS TO MAKE THE CONVICTION A DENIAL OF DUE PROCESS.

WHAT ELSE DO YOU BELIEVE IN THE PROSECUTION'S STATEMENTS AND CLOSING ARGUMENT FAILED TO GIVE YOU DUE PROCESS IN OUR TRIAL?

A AS FAR AS HE PUT THE JURY, HE TRIED TO PUT THE JURY IN THE SITUATION OF BEING THE VICTIM, YOU KNOW. HE TOLD THEM, WELL, YOU WERE IN THE POSITION, WHAT IF YOU WERE RAPED, OR WHAT IF YOU WERE...

Q WHO WAS HE REFERRING TO? OBVIOUSLY, THE VICTIM AT THAT TIME.

A RIGHT.

Q IS THAT CORRECT?

A RIGHT.

Q ALL RIGHT. AND AFTER HE MADE THOSE STATEMENTS, DID ANYONE OBJECT?

A NO MA'AM.

Q WELL, DID YOUR ATTORNEY OBJECT?

A NO MA'AM.

Q AND AFTER THOSE STATEMENTS WERE MADE, OTHER THAN THE MISSTATING OF THE EVIDENCE, WHAT OTHER STATEMENTS WERE MADE THAT YOU BELIEVE WERE UNFAIR?

A HE MADE IT SEEM LIKE, NOT JUST ME, BUT THE CO-DEFENDANTS ALSO, HE MADE IT SEEM LIKE WE WERE DEVILS. HE SAID THAT IN REGARD THAT WE WAS CARRYING BIBLES AND WEARING CROSSES, THAT WE WAS WEARING THEM BECAUSE OF THE SIMPLE FACT THAT THEY WAS ON TRIAL AND THEY WAS TRYING TO GET OUT OF WHAT THEY WAS IN FOR. HE SAID WHAT ELSE WE DID-- WHY DIDN'T THEY GIVE THE LADY A CROSS AND A BIBLE DURING HER LAST MINUTES. SHE PROBABLY WANTED TO READ THE SCRIPTURE ALSO.

Q AND ONCE AGAIN, WAS AN OBJECTION MADE TO THAT?

A NO MA'AM.

Q AND HOW DO YOU FEEL THAT THAT AFFECTED THE JURY AS TO WHAT THEY WERE HEARING AT THAT TIME?

A I SAID IT AFFECTED THE JURY BECAUSE WHEN THEY PUT THEIRSELF IN THE SITUATION OF BEING A VICTIM OF A CRIME SUCH AS THAT CRIME, YOU KNOW. IT'S SAD, NOW; I WOULDN'T DOUBT THAT. BUT WHEN THEY PUT THEIRSELF OF THAT POSITION OF BEING THAT PERSON I FEEL THEY HAVE A TENDENCY TO LOSE SIGHT OF THE ACTUAL EVIDENCE THAT WAS TAKING PLACE IN COURT, DUE TO THAT STATEMENT.

Q NOW, MR. STATON, JUST BRIEFLY, HOW MUCH TIME DID YOU HAVE PRIOR TO YOU ACTUALLY GOING TO TRIAL ON THESE SERIOUS

CHARGES DID YOU HAVE TO ACTUALLY MEET AND TALK WITH MR. ROGERS?

A ABOUT THREE AND A HALF, FOUR MONTHS.

Q OKAY. AND DURING THAT TIME, HOW MANY TIMES DID YOU ACTUALLY MEET WITH HIM?

A NO LESS THAN FIVE, NO MORE THAN EIGHT.

Q WHEN YOU MET WITH HIM DID Y'ALL DISCUSS POSSIBLE DEFENSES IN YOUR CASE?

A YES MA'AM.

Q NOW, DID YOU MENTION TO HIM ANY DEFENSES CONCERNING ALIBI WITNESSES?

A YES MA'AM.

Q DID YOU PROVIDE HIM WITH A LIST OF WHO THE POTENTIAL ALIBI WITNESSES WERE?

A YES MA'AM.

Q WHO WERE THOSE WITNESSES THAT YOU WANTED HIM TO CALL?

A LARRY GRAHAM, LARRY QUICK, CALVIN BETHEA, KATHY STATON, ANTHONY GRAHAM.

Q WERE ALL THOSE WITNESSES AVAILABLE TO APPEAR AT YOUR TRIAL?

A YES MA'AM.

Q WHAT INFORMATION DID YOU GIVE MR. ROGERS TO BE ABLE TO GET IN TOUCH WITH THESE WITNESSES?

A THEIR PHONE NUMBER AND ADDRESSES.

Q AND WERE THOSE PHONE NUMBERS WORKING AT THE TIME?
A YES.
Q WERE YOU AWARE THAT THEY WERE LIVING AT THE ADDRESSES THAT YOU PROVIDED TO HIM?
A YES.
Q HOW MANY OF THOSE PEOPLE THAT YOU HAVE LISTED, AND IS ACTUALLY LISTED ON YOUR PAGE EIGHT, DID MR. ROGERS SPEAK WITH? AND I'LL GO AHEAD AND ASK YOU ONE BY ONE. DID HE EVER SPEAK WITH LARRY GRAHAM?
A NO MA'AM.
Q WHO IS LARRY GRAHAM?
A HE'S A COUSIN THAT LIVES IN THE NEIGHBORHOOD.
Q HE LIVES IN YOUR NEIGHBORHOOD?
A YES MA'AM.
Q WHAT WOULD HE HAVE TESTIFIED TO AT TRIAL?
A HE WAS WITH ME ON THE NIGHT OF THE TWELFTH, ALL DAY, ALL DAY ON THE DAY OF THE TWELFTH.
Q ON THE TWELFTH. THAT WAS THE DAY THAT MS. PATTERSON WAS ABDUCTED. IS THAT CORRECT?
A YES MA'AM.
Q ANTHONY GRAHAM, WHO IS HE?
A HE'S ALSO THE SAME, MY COUSIN.
Q WHAT WOULD MR. ANTHONY GRAHAM HAVE TESTIFIED TO AT TRIAL?
A HE WAS WITH ME ALSO ON SATURDAY, THE TWELFTH.

Q WAS HE EVER SPOKEN TO BY MR. ROGERS?

A NO MA'AM.

Q NOW, YOU HAVE LISTED DAVEY STATON. WHO IS THAT?

A THAT'S A MISREPRESENTATION. IT'S KATHEY.

Q KATHEY STATON. OKAY. KATHEY STATON, TELL THE COURT WHO THAT IS.

A THAT'S MY MOTHER.

Q NOW, HE DID SPEAK WITH YOUR MOTHER. IS THAT RIGHT?

A NO MA'AM.

Q WAS SHE CALLED AS A WITNESS ON YOUR BEHALF?

A NO MA'AM.

Q NOW, CALVIN, IS IT BETHEA?

A RIGHT,.

Q WHO IS HE?

A MY STEPFATHER.

Q DID MR. ROGERS SPEAK TO HIM?

A YES.

Q WHAT WOULD HE HAVE TESTIFIED TO?

A HE WAS HOME ON THAT NIGHT ALSO, AND THAT WHEN I GOT HOME ON THAT AFTERNOON, THAT I DIDN'T LEAVE ANY MORE, THAT I DIDN'T LEAVE ANY MORE THAT NIGHT.

Q ON WHAT DAY?

A ON SATURDAY, THE TWELFTH.

Q SO, HE SPOKE WITH MR. ROGERS, BUT WAS HE CALLED AS A WITNESS ON YOUR BEHALF?

A NO MA'AM.

Q AND FINALLY, LARRY QUICK, WHO IS HE?

A HE'S MY AUNT'S FIANCÉ'.

Q AND YOU GAVE HIS NAME TO MR. ROGERS AS WELL. CORRECT?

A YES MA'AM.

Q DID MR. ROGERS SPEAK TO LARRY QUICK?

A NO MA'AM.

Q WHAT WOULD MR. QUICK HAVE TESTIFIED TO AT TRIAL?

A HE WOULD HAVE TESTIFIED THAT SUNDAY, WHICH WAS THE THIRTEENTH, HE WOULD HAVE TESTIFIED WHEN I GOT OUT OF CHURCH THAT SUNDAY THAT HE CAME TO THE HOUSE AND HE STAYED THERE UNTIL AFTER ELEVEN THAT NIGHT, AND I WAS THERE WITH HIM.

Q AND HE WASN'T CALLED AS A WITNESS EITHER. CORRECT?

A NO MA'AM.

Q DID YOU TESTIFY IN YOUR OWN DEFENSE AT YOUR TRIAL?

A NO MA'AM.

Q WAS ANY EVIDENCE PUT UP FOR YOUR DEFENSE AT YOUR TRIAL?

A NO MA'AM.

Q WHY IS THAT?

A MY LAWYER TOLD ME THAT I SHOULDN'T TESTIFY BECAUSE THEY HADN'T PROVED ME OF DOING ANYTHING OR BEING OVER THERE.

Q AT THE TIME DID YOU WANT TO TESTIFY?

A YES.

Q DID YOU TELL MR. ROGERS THAT YOU WANTED THOSE WITNESSES CALLED ON YOUR BEHALF?

A YES MA'AM.

Q WHAT REASON DID HE GIVE YOU FOR NOT CALLING THOSE ALIBI WITNESSES?

A THAT IF I DIDN'T TESTIFY THEY COULDN'T TESTIFY ON MY BEHALF EITHER.

Q AND HE TOLD YOU THAT IF YOU DIDN'T TESTIFY, YOUR WITNESSES COULDN'T TESTIFY EITHER?

A RIGHT.

Q DID HE GIVE YOU ANY REASON FOR THAT?

A NO MA'AM.

Q HOW OLD WERE YOU AT THE TIME WHEN YOU WERE AT TRIAL?

A TWENTY.

Q DID YOU UNDERSTAND WHAT YOUR RIGHTS WERE CONCERNING PRESENTING A DEFENSE?

A NO MA'AM.

Q WHO DID YOU RELY ON TO GIVE YOU THAT INFORMATION?

A MY LAWYER.

Q WHEN HE ADVISED YOU NOT TO TESTIFY AND DIDN'T CALL ANY OF YOUR WITNESSES, DID YOU BELIEVE THAT TO BE IN YOUR BEST INTEREST?

A YES MA'AM.

Q ONCE AGAIN, DID-- OH, ONE OTHER THING. DID YOU HAVE ANY OTHER INDEPENDENT EVIDENCE CONCERNING YOUR WHEREABOUTS WITHIN THE NEXT COUPLE OF DAYS OF WHEN THE ABDUCTION OCCURRED?

A YES.

Q WHAT OTHER EVIDENCE DID YOU HAVE?

A WELL, LIKE I SAID, THEY SAID ON THE FOURTEENTH. RIGHT? I WAS IN SCHOOL. SO, TO PROVE I WAS IN SCHOOL, MY MOTHER CONTACTED MARLBOROUGH COUNTY HIGH SCHOOL AND THE ATTENDANCE LADY DOWN THERE BROUGHT MR. ROGERS MY ATTENDANCE SHEET TO THE COURTHOUSE ON TRIAL, WHICH SHOWED ON THE FOURTEENTH I WAS PRESENT AT SCHOOL ALL DAY.

Q AND THAT WAS INFORMATION PRESENTED TO MR. ROGERS FOR YOU AT TRIAL?

A YES MA'AM.

Q WHO ACTUALLY BROUGHT THE INFORMATION OVER AT THE COURTHOUSE WHEN MR. ROGERS RECEIVED IT?

A MS. LOCKLEAR.

Q IS SHE THE RECORDS CUSTODIAN?

A YES MA'AM.

Q DID YOU ASK MR. ROGERS TO CALL HER AS A WITNESS IN ORDER TO GET YOUR SCHOOL RECORDS SUBMITTED IN COURT?

A NO MA'AM.

Q DID MR. ROGERS TELL YOU WHY HE DID NOT CALL MS. LOCKLEAR OR SUBMIT THIS REPORT IN YOUR DEFENSE?

A NO MA'AM.

Q BUT HE WAS AWARE OF THIS?

A YES.

MS. LIVELY: ONE MOMENT, YOUR HONOR.

THE COURT: YES MA'AM.

(PAUSE)

Q WERE ANY OF THESE WITNESSES THAT YOU WANTED TO CALL AS ALIBIS, DID ANY OF THEM REQUIRE SUBPOENAS IN ORDER TO APPEAR IN COURT?

A NO MA'AM.

Q WERE THEY ALL WILLING TO BE HERE ON YOUR BEHALF?

A YES.

Q ANSWER ANY QUESTIONS THAT THE ATTORNEY GENERAL MAY HAVE FOR YOU.

CROSS EXAMINATION BY MS. RATIGAN

Q THE FIRST THING I WANT TO TALK ABOUT IS YOUR INDICTMENTS. DO YOU RECALL AT TRIAL ANY ARGUMENT BEING MADE THAT, ABOUT ASPHYXIATION VERSUS SUFFOCATION AND DROWNING WHEN THE CORONER TESTIFIED?

A YES MA'AM.

Q DID YOUR ATTORNEY MAKE THOSE ARGUMENTS OR WERE THEY MADE BY OTHER DEFENSE ATTORNEYS?

A OTHER DEFENSE ATTORNEYS.

Q NOW, YOU STATED THAT MR. ROGERS DID NOT DISCUSS YOUR INDICTMENTS WITH YOU?

A YES MA'AM.

Q WHAT DID YOU DISCUSS WHEN YOU MET WITH HIM?

A HOW WE WAS GONNA DEFEND THE CASE, MY DEFENSE.

Q DID HE GO OVER THE EVIDENCE THAT WAS PRESENTED?

A YES MA'AM.

Q THE STATE'S EVIDENCE?

A YES.

Q WHEN DID YOU GIVE HIM THIS LIST OF WITNESSES? DO YOU RECALL?

A NOT OFFHAND.

Q LET ME MAKE SURE I HAVE THE NAMES RIGHT. THERE'S A BUNCH OF THEM. IT WAS ANTHONY GRAHAM, LARRY GRAHAM, LARRY QUICK, CALVIN BETHEA AND KATHEY STATON. IS THAT CORRECT?

A CORRECT.

Q AND ALL OF THESE PEOPLE WOULD HAVE TESTIFIED ABOUT AN ALIBI FOR YOU. IS THAT CORRECT?

A YES MA'AM.

Q AND, AGAIN, JUST SO I'M CLEAR. YOU TESTIFIED THAT MR. ROGERS SPOKE ONLY TO MR. BETHEA AND TO YOUR MOTHER. IS THAT CORRECT?

A RIGHT.

Q OBVIOUSLY, YOU GAVE HIM A LIST OF WITNESSES. DID YOU EVER ASK MR. ROGERS TO DO ANYTHING ELSE FOR YOU?

A NO MA'AM.

Q DID HE DISCUSS WITH YOU DURING YOUR MEETINGS THE RESULTS OF HIS INVESTIGATION INTO THIS CASE?

A NO.

Q DO YOU RECALL AT THE TRIAL WHETHER MR. DAVIS AND MR. RANSOM'S TESTIMONY ABOUT-- DO YOU REMEMBER THERE BEING ISSUES ABOUT THEIR CREDIBILITY?

A YES MA'AM.

Q THAT WAS BROUGHT UP AT TRIAL?

A YES.

Q NOW, YOU TESTIFIED YOU HAD SOME PROBLEMS WITH DWAYNE SLOAN'S TESTIMONY. IS THAT CORRECT?

A YES MA'AM.

Q AND JUST SO I'M CLEAR, THE MAJORITY OF THE PROBLEMS THAT YOU HAD WITH THAT TESTIMONY IS HIS REFERENCES HE MADE TO RINGO PEARSON AND WHAT HE MAY HAVE SAID. CORRECT?

A CORRECT.

Q NOW, YOU REFERRED TO RINGO PEARSON AS YOUR CO-DEFENDANT. WAS HE ON TRIAL WITH YOU THAT DAY?

A NO MA'AM.

Q WAS HE IN THE COURTROOM THAT DAY?

A NO MA'AM.

Q DID HE TESTIFY AGAINST YOU IN ANY WAY?

A NO MA'AM.

Q NOW, THE STATEMENT – AND AGAIN, WE'RE TALKING ABOUT DWAYNE SLOAN'S TESTIMONY, ABOUT RINGO'S CONFESSION.

A RIGHT.

Q DID THAT CONFESSION REFER TO YOU IN ANY WAY?

A NOT EXACTLY, BUT THE DAY THAT HE MADE THE STATEMENT TO DWAYNE I WAS DRIVING THE CAR. I WAS DRIVING THE CAR. AND I ATTACKED IT REALLY, BECAUSE MR. WILSON ALWAYS CAME BACK AND SAY, WELL, IT WAS DEFINITELY DWAYNE, HE WAS THERE IN THE CAR. AND THAT'S WHY I FEEL LIKE IT PREJUDICED ME.

Q HOW MANY PEOPLE TESTIFIED AT TRIAL THAT YOU WERE EITHER AT THE BRIDGE, WHEN THE VICTIM WAS DUMPED AT THE ABANDONED HOUSE, AT THE TRAILER, OR WERE IN THE VICINITY OF SOMEBODY TALKING ABOUT THIS VICTIM? DO YOU KNOW HOW MANY OF THOSE WITNESSES TESTIFIED AGAINST YOU?

A TWO.

Q JUST TWO?

A YES MA'AM.

Q WHO WERE THOSE PEOPLE WHO TESTIFIED AGAINST YOU? WAS IT JUST DAVIS AND RANSOM?

A YES MA'AM.

Q BUT DIDN'T DWAYNE SLOAN TESTIFY THAT YOU WERE WITH MR. STUCKEY WHEN HE TALKED ABOUT THE VICTIM?

A NO MA'AM.

Q HE DIDN'T TESTIFY THAT YOU WERE WITH HIM AT BURGER KING WHEN HE SAID HE WAS GOING TO GET THE VICTIM?

A YEAH. DWAYNE. THAT WASN'T STUCKEY; THAT WAS PEARSON AND WALLS.

Q BUT HE DID TESTIFY THAT YOU WERE IN THE VICINITY WHEN PEOPLE WERE DISCUSSING THE VICTIM?

A RIGHT.

Q AND WHAT ABOUT JEFF GRAHAM? DIDN'T JEFF GRAHAM SEE YOU AT THE TRAILER, AT RICKY STUCKEY'S TRAILER WHEN THE VICTIM WAS SUPPOSED TO BE INSIDE?

A NO MA'AM.

Q HE DIDN'T TESTIFY THAT HE SAW YOU THERE?

A NO MA'AM.

Q OUTSIDE THE TRAILER?

A IN PARTS OF IT, BUT WHEN MR. ROGERS ASKED HIM ON CROSS HE SAID NO, I WASN'T THERE. HE SAY HE DIDN'T KNOW ME LIKE THAT.

Q AND YOU HAVE VARIOUS PROBLEMS WITH THE SOLICITOR'S CLOSING STATEMENT. IS THAT CORRECT?

A YES MA'AM.

Q AND YOUR TESTIMONY WAS THAT HE SHOULD HAVE OBJECTED TO THE WHOLE THING?

A YES MA'AM.

Q NOW, YOU'VE STATED THAT YOU DID NOT TESTIFY IN YOUR OWN DEFENSE?

A RIGHT.

Q DO YOU RECALL THE TRIAL JUDGE TELLING YOU THAT YOU HAD A RIGHT TO TESTIFY AT YOUR TRIAL?

A YES.

Q DID YOU UNDERSTAND WHEN HE WAS TELLING YOU ABOUT THAT RIGHT TO TESTIFY?

A NOT EXACTLY, BUT I TOOK THE ADVICE OF MY LAWYER.

Q AND WHAT DID MR. ROGERS TELL YOU? WHY DID HE TELL YOU NOT TO TESTIFY?

A HE SAID THAT HADN'T PROVED ME BEING THERE AT THE CRIME SCENE, THAT THEY HADN'T PROVED ME OF DOING NOTHING.

Q DID YOU TELL HIM YOU WANTED TO TESTIFY?

A YES.

Q AND THE EVIDENCE ABOUT YOUR SCHOOL RECORDS, YOU TESTIFIED THAT MR. ROGERS HAD THOSE IN HIS POSSESSION?

A I IMAGINE THAT HE HAD THEM. HE SHOWED THEM TO ME.

Q HAVE YOU LOOKED AT THE INDICTMENT? I REMEMBER YOU SAYING YOU HAD NOT REVIEWED THAT WITH MR. ROGERS, BUT HAVE YOU LOOKED AT THOSE INDICTMENTS? HAVE YOU LOOKED AT THEM SINCE THEM?

A I DIDN'T SEE MY INDICTMENTS PRIOR TO GOING TO TRIAL.

Q OKAY.

A I ONLY SEEN MY INDICTMENTS SINCE MY INCARCERATION.

Q OKAY. BUT YOU HAVE SEEN THEM?

A YES.

Q DO YOU AGREE WITH ME IN THE MURDER INDICTMENT, IT LISTS BETWEEN NOVEMBER TWELFTH AND NOVEMBER TWENTY-FOURTH?

A RIGHT.

Q NOW, YOU TESTIFIED THAT YOU HAVE SCHOOL RECORDS SHOWING YOU WERE AT SCHOOL ON THE FOURTEENTH. IS THAT CORRECT?

A CORRECT.

Q DID YOU HAVE RECORDS SHOWING FOR EVERY OTHER ONE OF THOSE DAYS?

A YES.

Q BUT DIDN'T THE TWELFTH FALL ON A SATURDAY?

A THAT'S CORRECT.

Q SO, YOU WOULDN'T HAVE SCHOOL RECORDS SHOWING YOU WERE IN SCHOOL THAT DAY?

A NO.

MS. RATIGAN: THAT'S ALL I HAVE, YOU HONOR.

THE COURT: ANY RE-DIRECT?

RE-DIRECT EXAMINATION BY MS. LIVELY:

Q DO YOU RECALL WHAT THE AUTOPSY REPORT STATED AT THE DATE OF THE DEATH OF MS. PATTERSON?

A 11/12/1994.

Q IS THAT WHY YOU FELT THAT THESE ALIBI WITNESSES WOULD BE HELPFUL IF THEY WERE CALLED IN YOUR DEFENSE FOR THAT DAY?

A YES MA'AM.

Q THANK YOU.

MS. LIVELY: THAT'S ALL I HAVE.

THE COURT: ANYTHING FURTHER, MS. RATIGAN?

MS. RATIGAN: NO, YOUR HONOR.

THE COURT: DO YOU WANT TO CALL YOUR NEXT WITNESS?

MS. LIVELY: YES, YOUR HONOR. AND ONE OF THE THINGS THAT I WOULD ASK, I WAS PLANNING ON CALLING LARRY QUICK AND I STILL DO WANT TO CALL HIM. MR. STATON TESTIFIED WHAT HIS MOTHER AND FATHER-IN-LAW WOULD TESTIFY TO, THAT BEING KATHEY STATON AND CALVIN BETHEA. AND HE ALSO STATED THAT THESE PEOPLE WERE TALKED TO BY MR. ROGERS. IF THE ATTORNEY GENERAL WILL STIPULATE THAT HE TALKED TO THEM BY ASKING HER CLIENT IF THAT WAS THE CASE, THEN I WON'T HAVE TO CALL THEM TO BOLSTER THE TESTIMONY. WE CAN JUST LET THE FACT THAT THEY WERE TALKED TO BY MR. ROGERS AS BEING ALIBI WITNESSES AND THAT'S ALL I WANTED TO CALL THEM FOR.

MS. RATIGAN: YOUR HONOR, MR. ROGERS HAS STATED THAT HE DID TALK TO BOTH OF THOSE FOLKS IN GETTING READY FOR TRIAL.

THE COURT: DOES HE AGREE THAT THEY WOULD HAVE TOLD HIM THAT WITH RESPECT TO THE EVENING OF NOVEMBER TWELFTH THAT HE WAS PRESENT AT HOME; HE BEING MR. STATON? BECAUSE I THINK THAT'S THE ISSUE.

MS. LIVELY: THAT'S WHAT I WAS TRYING TO GET AT, YES SIR.

MR. ROGERS: YOUR HONOR, I DON'T HAVE ANY SPECIFIC RECOLLECTION ABOUT WHAT WE ACTUALLY TALKED ABOUT. BUT I DON'T HAVE ANY REASON THAT THAT IS NOT CORRECT.

THE COURT: I THINK FOR THE PURPOSE OF PROTECTING THE RECORD, YOU'D BETTER CALL THEM.

MS. LIVELY: I WILL. I CALL KATHEY STATON TO THE STAND.

KATHEY STATON, DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK OF COURT: STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR FIRST NAME, PLEASE.

A KATHEY STATON, K-A-T-H-E-Y.

DIRECT EXAMINATION BY MS. LIVELY:

Q MS. STATON, YOU ARE THE MOTHER TO THE DEFENDANT, ALFONSO STATON. IS THAT CORRECT?

A YES.

Q WERE YOU WITH YOUR SON DURING THE WHOLE PROCESS OF HIS DEFENSE AND TRIAL IN THIS ACTION?

A YES.

Q HOW MANY TIMES DID YOU SPEAK WITH HIS DEFENSE ATTORNEY, MR. ROGERS? DO YOU RECALL?

A NUMEROUS OF TIMES.

Q NUMEROUS TIMES. NOW, WHEN YOU SPOKE TO MR. ROGERS WAS THERE EVER A DISCUSSION ABOUT YOU BEING AN ALIBI WITNESS?

A YES.

Q AND WHAT WOULD YOUR TESTIMONY HAVE BEEN IN THAT REGARD?

A THAT HE WAS HOME THAT SATURDAY AFTERNOON. HE WENT TO CHURCH THAT SUNDAY. HE WENT TO SCHOOL THAT FOLLOWING WEEK.

Q AND CAN YOU GIVE SPECIFIC DATES, IF YOU DON'T MIND, FOR THE RECORD?

A WELL, THE TWELFTH FELL ON A SATURDAY, AND HE WAS WITH ONE OF THE CO-DEFENDANTS THAT FRIDAY AND THEY WENT TO A BASKETBALL GAME.

Q ALL RIGHT.

A AND SO, HE CAME HOME THAT SATURDAY EVENING.

Q OKAY.

A THAT SATURDAY AFTERNOON.

Q SO, YOUR TESTIMONY WOULD HAVE BEEN HE WAS AT HOME WITH YOU ON THE EVENING OF THE TWELFTH OF NOVEMBER?

A YES MA'AM, BECAUSE WHEN HE CAME HOME THAT SATURDAY AFTERNOON HE STAYED AT THE HOUSE WITH THE KIDS BECAUSE I HAD A ERRAND TO RUN. I HAD TO GO TO CHERAW.

Q NOW, WHAT WOULD YOUR TESTIMONY HAVE BEEN AS TO NOVEMBER THIRTEENTH?

A WELL, THE THIRTEENTH, WE WENT TO CHURCH AND WHEN WE CAME HOME FROM CHURCH WE STAYED HOME.

Q AND THEN YOU STATED THAT FOR NOVEMBER FOURTEENTH, AND THE REST OF THAT NEXT WEEK, WHAT DO YOU KNOW ABOUT THAT?

A HE WAS IN SCHOOL.

Q IN SCHOOL?

A UH-HUH.

Q NOW, WHEN THIS INFORMATION WAS GIVEN TO MR. ROGERS DID HE EVER TELL YOU WHETHER OR NOT HE WAS GOING TO CALL YOU AS A WITNESS?

A YES, BECAUSE I WASN'T ALLOWED TO GO IN THE COURTROOM DURING THE TRIAL.

Q SO, YOU WERE SEQUESTERED? IT MEANS THAT YOU WERE NOT ALLOWED TO GO IN THERE BECAUSE THEY DIDN'T WANT YOU IN THERE LISTENING TO THE TESTIMONY.

A YEAH.

Q IS THAT CORRECT?

A CORRECT.

Q NOW, WHEN IT WAS TIME FOR YOU TO POSSIBLY TESTIFY, WHAT HAPPENED?

A WELL, THE NEXT THING I KNOW IS WHEN I GOT OFF WORK WAS THEY WAS GOING, THAT THEY HAD ALREADY TAKE THE JURY OUT. WHEN I WAS ALLOWED TO GO IN THE COURTROOM, THE JURY WAS COMING BACK IN TO GIVE THE VERDICT.

Q AND AFTER YOU WERE SEQUESTERED YOU NEVER TALKED TO MR. ROGERS AGAIN ABOUT WHY YOU WERE OR WERE NOT CALLED AS A WITNESS?

A NO.

Q HAS HE EVER DISCUSSED THIS WITH YOU?

A NO. I MEAN, NO MORE THAN SAYING THAT, YOU KNOW, HE DIDN'T THINK IT WAS-- WELL, HE WOULDN'T LET HIM TESTIFY, SO WE COULDN'T TESTIFY, SO I COULDN'T TESTIFY.

Q HE TOLD YOU THAT BECAUSE MR. STATON DIDN'T TESTIFY THAT YOU COULDN'T TESTIFY?

A MR. ROGERS.

Q WERE YOU READY, WILLING AND ABLE TO TESTIFY ON THAT DAY?

A YES.

Q THANK YOU. ANSWER ANY QUESTIONS THAT THE ATTORNEY GENERAL MIGHT HAVE FOR YOU.

MS. RATIGAN: I DON'T HAVE ANY QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: THANK YOU. YOU MAY STEP DOWN.

MS. LIVELY: WE NEXT CALL CALVIN BETHEA.

CALVIN BETHEA, DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK OF COURT: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

A CALVIN LEE BETHEA.

DIRECT EXAMINATION BY MS. LIVELY:

Q MR. BETHEA, WHAT IS YOUR RELATIONSHIP TO ALFONSO STATON?

A STEPFATHER.

Q WERE YOU AVAILABLE TO TESTIFY AT HIS TRIAL IN MARCH OF '97?

A YES MA'AM.

Q HOW MANY TIMES DID YOU MEET WITH HIS DEFENSE ATTORNEY, MR. ROGERS?

A WELL, WE SPOKE EVERY AFTERNOON AFTER COURT. BECAUSE, LIKE, SHE SAID, THEY WOULDN'T LET US IN THE COURTROOM, BUT WE

WAS WAITING AROUND ON THE OUTSIDE TO FIND OUT THINGS GO. BUT WHEN ME AND HER BOTH WOULD GET OFF FROM WORK WE WOULD GO UP THERE EVERY AFTERNOON, BUT THEY JUST WOULDN'T LET US IN.

Q BEFORE THE TRIAL ACTUALLY BEGAN DID YOU HAVE THE OPPORTUNITY TO MEET WITH MR. ROGERS AND HELP PREPARE THE DEFENSE FOR ALFONSO?

A YES MA'AM. ME AND KATHEY MET WITH HIM QUITE A FEW TIMES.

Q AND DID MR. ROGERS GO OVER WITH YOU WHAT YOUR TESTIMONY WOULD BE?

A WELL, HE TOLD US THAT AT THAT PARTICULAR TIME WE COULD BE A WITNESS, BUT WHEN THE TRIAL GOT STARTED WE COULDN'T TESTIFY AFTER ALFONSO COULDN'T TESTIFY.

Q WHAT WOULD YOUR TESTIMONY HAVE BEEN ON BEHALF OF ALFONSO IF YOU HAVE THE OPPORTUNITY TO GO FORWARD IN THE TRIAL?

A WHEN HE CAME HOME THAT SATURDAY---

Q ON THE TWELFTH?

A ON THE TWELFTH. I WAS THERE.

Q OKAY.

A KATHEY LEFT AND WENT TO CHERAW THE SEWING ROOM. I MEAN, TO THE CLOTH STORE. BUT I STAYED THERE. I WAS THERE WITH HIM AND HE NEVER LEFT THAT HOUSE ANY MORE UNTIL HE WENT TO CHURCH THAT SUNDAY. AND FROM CHURCH THAT SUNDAY

BACK HOME AND WE WATCHED THE BALLGAME. IT WAS THE LAKERS AND SOMEBODY PLAYING THAT SUNDAY AND ME AND HIM AND LARRY AND THEM OTHER GUYS, WE SAT AROUND AND WATCHED THE BALLGAME.

THE OTHER GUYS, THEY LIVED DOWN THE ROAD NOT FAR FROM US AND THEY WALKED HIM DOWN THE ROAD JUST A LITTLE PIECE. HE WASN'T GONE TEN MINUTES. HE WAS BACK TO THE HOUSE AND FROM THERE TO SCHOOL. AND WHEN HE GOT BACK HOME FROM SCHOOL HE DIDN'T GO ANYWHERE, BECAUSE I TOLD HIM I WAS GONNA PUNISH HIM FOR BEING GONE THAT FRIDAY, LIKE HE DID. AND HE DIDN'T LEAVE.

Q BESIDES YOUR POTENTIAL TESTIMONY, OBVIOUSLY NO WITNESSES BESIDES YOURSELF WERE CALLED IN HIS DEFENSE. CORRECT?

A CORRECT.

Q AND WERE YOU READY, WILLING AND ABLE TO GO FORTH AND TESTIFY AT THE TRIAL ON HIS BEHALF?

A YES MA'AM. IN FACT, I HAD ALREADY TALKED TO THE PEOPLE ON MY JOB AND I ASKED FOR THAT WEEK OFF. BUT I WENT ON TO WORK BECAUSE IT WOULDN'T DO ANY GOOD BECAUSE WE COULDN'T GO IN.

Q DO YOU KNOW WHY MR. ROGERS TOLD ALFONSO NOT TO TESTIFY?

A WELL, NO MORE THAN WHAT HE SAID, NO MORE THAN WHAT ALFONSO TOLD YOU; HE SAY THAT THINGS WAS LOOKING GOOD FOR

HIM AND HE DIDN'T THING THAT HE REALLY NEEDED TO TESTIFY. BECAUSE THINGS WAS, THEY COULDN'T PROVE, COULDN'T PLACE HIM AT THE CRIME SCENE, AND THEY COULDN'T PROVE NOTHING ON HIM, SO IT WAS BETTER FOR HIM NOT TO TESTIFY.

Q AND YOU WEREN'T, AS YOU STATED BEFORE IN YOUR TESTIMONY, YOU WEREN'T IN THE COURTROOM AT ANY TIME DURING THAT TRIAL, SO YOU DON'T HAVE ANY PERSONAL KNOWLEDGE ABOUT HOW WELL THE TRIAL WAS GOING. CORRECT?

A NO MA'AM, I DON'T.

Q SO, ALL YOU KNOW IS WHAT MR. ROGERS TOLD ALFONSO ABOUT HOW WELL THINGS WERE GOING?

A YES MA'AM.

Q THANK YOU. ANSWER ANY QUESTIONS THE ATTORNEY GENERAL HAS.

MS. RATIGAN: I DON'T HAVE ANY QUESTIONS FOR THIS WITNESS, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

MS. LIVELY: I CALL LARRY QUICK TO THE STAND.

LARRY QUICK, DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK OF COURT: BE SEATED AND STATE YOUR FULL NAME FOR THE RECORD.

A LARRY QUICK.

DIRECT EXAMINATION BY MS. LIVELY:

Q MR. QUICK, WHAT IS YOUR RELATIONSHIP TO ALFONSO STATON?

A I GO WITH HIS AUNT.

Q DOES THAT MEAN YOU'RE HER BOYFRIEND?

A FIANCÉ'.

Q FIANCÉ. OKAY. NOW, YOU WERE FRIENDS WITH OR CONNECTED WITH MR. STATON AT THE TIME OF HIS TRIAL IN MARCH OF '97. IS THAT CORRECT?

A YES MA'AM.

Q YOU'VE KNOWN HIM FOR HOW LONG NOW?

A EVER SINCE HE WAS THIRTEEN, FOURTEEN YEARS OLD.

Q NOW, HAVE YOU EVER SPOKEN TO MR. ROGERS CONCERNING YOUR ABILITY TO TESTIFY AS AN ALIBI WITNESS ON BEHALF OF MR. STATON?

A NO MA'AM.

Q DID YOU EVER TALK TO ALFONSO ABOUT IT?

A YES MA'AM.

Q WHAT WERE YOU PREPARED TO TESTIFY TO AS AN ALIBI WITNESS ON HIS BEHALF?

A THAT I ARRIVED TO THE HOUSE ABOUT FOUR, FOUR-THIRTY, AFTER THEY HAD GOT HOME FROM CHURCH BECAUSE I KNOW THEY REGULAR ROUTINE, 'CAUSE I HANG AROUND A LOT.

Q WHAT DAY WAS THAT?

A THE THIRTEENTH.

Q ALL RIGHT.

A AND I STAYED THERE TILL ELEVEN OR TWELVE BECAUSE WE WATCHED THE BASKETBALL GAME TOGETHER. THE LAKERS AND THE BULLS WAS PLAYING THAT DAY.

Q DO YOU KNOW WHETHER OR NOT ALFONSO GAVE YOUR NAME TO MR. ROGERS AS A POTENTIAL ALIBI WITNESS?

A YES MA'AM.

Q WERE YOU AT THE TRIAL DURING THE WEEK MR. STATON WAS THERE?

A NO MA'AM. NOBODY NEVER GOT IN CONTACT WITH ME FOR ME TO COME.

Q AND WHERE DO YOU LIVE, MR. QUICK?

A AT THAT TIME I WAS LIVING WITH MY MOM IN AN APARTMENT WHICH WAS FIVE MINUTES FROM WHERE ALFONSO WAS RECENTLY LIVING AT, BUT NOW I LIVE IN CHARLOTTE.

Q SO, WERE YOU READY, WILLING AND ABLE TO TESTIFY AT THE TRIAL IF NEED BE?

A YES MA'AM.

Q WERE YOU WILLING TO TALK TO MR. ROGERS ABOUT YOUR TESTIMONY THAT YOU COULD GIVE AT THE TRIAL?

A YES MA'AM.

Q DID ALFONSO EVER TELL YOU WHY YOU WERE NOT CALLED AS A POTENTIAL WITNESS?

A NO MA'AM.

Q DO YOU HAVE ANY TYPE OF A CRIMINAL HISTORY?

A NO MA'AM.

Q SO, WAS THERE ANY DISCUSSION ABOUT YOUR CREDIBILITY BEING AN ISSUE?

A NO MA'AM.

Q SO, THE ONLY PERSON THAT YOU TALKED TO, THEN, WAS MR. STATON?

A YEAH, AND HIS MOM INFORMED ME THAT ALFONSO WANTED ME TO BE THERE FOR HIM.

Q ONCE AGAIN, YOUR TESTIMONY WOULD HAVE BEEN THAT YOU WERE WITH ALFONSO ON THE DATE OF NOVEMBER THE THIRTEENTH, ALL DAY UP THROUGH THE EVENING. CORRECT?

A THAT'S RIGHT.

Q OKAY. ANSWER ANY QUESTIONS THAT THE ATTORNEY GENERAL HAS FOR YOU.

CROSS EXAMINATION BY MS. RATIGAN:

Q DO YOU HAVE ANY KNOWLEDGE OF WHERE MR. STATON WAS ON THE TWELFTH?

A NO MA'AM.

Q WHAT ABOUT THE FOURTEENTH?

A HE WAS AT SCHOOL BECAUSE I HAD TALKED-- LIKE I SAY, I WAS OVER THERE SUNDAY AND HE WAS PREPARING-- WHEN I WAS OVER THERE HE WAS GETTING HIS CLOTHES AND STUFF READY TO GO TO SCHOOL THE NEXT DAY.

Q WERE YOU WITH HIM ON MONDAY, THE FOURTEENTH? DID YOU HAVE ANY CLASSES WITH HIM?

A NO. I WAS OUT OF SCHOOL.

Q SO, HOW DO YOU KNOW HE WAS IN SCHOOL ON MONDAY?

A WELL, I DON'T KNOW, BUT, LIKE I SAY, THAT SUNDAY HE WAS GETTING HIS CLOTHES UP TO GO TO SCHOOL.

Q DID MR. STATON TELL YOU TO CALL MR. ROGERS ABOUT THIS ALIBI?

A NO, BUT HE ASKED ME HAD ANYBODY GOT IN CONTACT WITH ME.

Q AND WHAT DID YOU TELL HIM, NO?

A NO.

Q AT THAT POINT DID HE TELL YOU TO CALL MR. ROGERS AND GIVE HIM YOUR ALIBI?

A WELL, NO.

MS. RATIGAN: THAT'S ALL I HAVE, YOUR HONOR.

MS. LIVELY: NOTHING FURTHER.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

MS. LIVELY: THAT'S ALL, YOUR HONOR.

THE COURT: THANK YOU. WE'LL TAKE OUR LUNCH BREAK UNTIL TWO O'CLOCK AND THEN THE STATE CAN PRESENT THEIR CASE.

(WHEREUPON THE COURT WAS IN RECESS FOR LUNCH)

COURT IN SESSION – 2:00 P.M.

THE COURT: MS. LIVELY, DURING THE LUNCH RECESS, WAS THERE ANYTHING THAT CAME TO MIND THAT YOU MIGHT WANT TO PUT ON THE RECORD?

MS. LIVELY: NO, YOUR HONOR.

THE COURT: VERY GOOD, THANK YOU. MS. RATIGAN, I'LL BE GLAD TO HEAR FROM YOU.

MS. RATIGAN: THE STATE CALLS WILLIAM ROGERS.

WILLIAM ROGERS, DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR NAME FOR THE RECORD.

A WILLIAM ROGERS.

DIRECT EXAMINATION BY MS. RATIGAN:

Q MR. ROGERS, DO YOU REMEMBER REPRESENTING MR. STATON IN THIS CASE?

A I DO.

Q WERE YOU APPOINTED OR RETAINED?

A I WAS APPOINTED.

Q DO YOU REMEMBER HOW FAR BEFORE THE TRIAL YOU WERE APPOINTED?

A IF I'M NOT MISTAKEN, I WAS APPOINTED MAYBE JULY OR AUGUST OF 2000. OH, EXCUSE ME. 1996.

Q AND THE TRIAL WAS IN?

A IN MARCH OF '97.

Q DO YOU RECALL MEETING WITH MR. STATON BEFORE TRIAL?

A I DO.

Q DO YOU REMEMBER HOW MANY TIMES?

A IT WAS SEVERAL TIMES. I DON'T KNOW SPECIFICALLY. I KNOW HE SAID, LIKE, FIVE TO EIGHT TIMES. THAT'S PROBABLY ACCURATE.

Q DO YOU RECALL WHAT YOU DISCUSSED WITH HIM DURING THOSE MEETINGS?

A MAINLY, TRIAL STRATEGIES, AND, LIKE, DEFENSES, AND WHAT HE WAS CHARGED WITH.

Q DID YOU REVIEW THE EVIDENCE THAT WAS PROVIDED TO YOU?

A I'M SURE I DID. I CAN'T TELL YOU SPECIFICALLY. MY FILE THAT I REVIEWED LAST NIGHT, IT WAS A BANKER BOX FULL OF INFORMATION, A LOT OF STATEMENTS AND ALL. I'M SURE WE WENT OVER A LOT OF THE STATEMENTS AND A LOT OF THE EVIDENCE THEY GAVE US BEFORE TRIAL.

Q DID YOU REVIEW HIS INDICTMENT WITH HIM?

A I DON'T RECALL. I FEEL SURE WE WOULD HAVE. I DON'T KNOW IF I SAID SPECIFICALLY, THIS IS YOUR INDICTMENT, AND WE WENT LINE-BY-LINE, BUT I KNOW WE DISCUSSED THE CHARGES HE HAD AGAINST HIM.

Q REGARDING TO THE INDICTMENT, DID YOU OBJECT TO THAT INDICTMENT AT ANY POINT? TO THE WORDING OF THE INDICTMENT?

A I DON'T THINK I OBJECTED. NOW, THERE WAS A TIME, I THINK IT WAS WHEN WE WERE SEEKING A DIRECTED VERDICT THAT I RAISED

THE ISSUE ABOUT STRANGULATION. BECAUSE I THINK THE WORDING OF THE INDICTMENT HAD STRANGULATION, STATED DEATH BY STRANGULATION. BUT AS FAR AS THE ACTUAL INDICTMENT, I DON'T THINK I OBJECTED TO THAT.

Q DO YOU RECALL CROSS EXAMINING DOCTOR COMRADIE ABOUT THE AUTOPSY, THE FINDING OF DEATH?

A I REMEMBER CROSS EXAMINING. I DON'T KNOW SPECIFICALLY WHAT YOU'RE...

Q DO YOU REMEMBER IF IT WAS AN ISSUE WHETHER IT WAS ASPHYXIATION, SUFFOCATION, STRANGULATION, DROWNING, AS THE CAUSE OF DEATH, THAT BEING AN ISSUE?

A I THINK THAT WAS AN ISSUE AND I THINK THE AUTOPSY STATED ASPHYXIATION AS THE CAUSE OF DEATH.

Q DO YOU RECALL WHETHER OR NOT YOU BROUGHT THAT OUT IN HAVING THAT IN THE INDICTMENT?

A I DON'T RECALL.

Q WHAT KIND OF INVESTIGATION DID YOU DO IN THIS CASE?

A I INTERVIEWED WITNESSES.

Q DO YOU REMEMBER WHO EXACTLY?

A I SURE DON'T. I HAVE LEARNED SINCE THIS TRIAL THAT I NEED TO TAKE BETTER NOTES, WHICH I DO NOW. BUT I HAVE SOME NOTES ABOUT WHEN I MET WITH THE CLIENT; LIKE, MEETING WITH POLICE OFFICERS; REVIEWING THE EVIDENCE AND ALL. BUT I DON'T SPECIFICALLY KNOW. I CAN'T TELL YOU WHEN AND WHO I TALKED WITH.

Q DO YOU RECALL WHETHER THERE WAS ANYTHING PUT ON THE RECORD ABOUT WHETHER OR NOT ALL ATTORNEYS JOINING IN MOTIONS? DO YOU RECALL THAT?

A YEAH, I KNOW ONE CONCERN JUDGE COTTINGHAM HAD, AND THE REASON WE HAD TO TRY THEM ALL TOGETHER, WAS JUDICIAL ECONOMY. AND I THINK EARLY ON AND I DON'T KNOW IF IT WAS IN SOME KIND OF PRE-TRIAL HEARING OR EARLY IN THE TRIAL, THAT ONCE ONE PERSON OBJECTED, THEN EVERYBODY WOULD BE NOTED AS INVOLVED IN THAT OBJECTION.

Q THE STATE'S WITNESSES, IN PARTICULAR, DANNY DAVIS AND BOBBY RANSOM, DID YOU ATTEMPT TO ATTACK THEIR STORIES AND THEIR CREDIBILITY WHEN THEY TESTIFIED?

A I'M PRETTY SURE I DID.

Q DO YOU FEEL THAT PLAYED A BIG PART IN THIS CASE?

A YEAH. MR. STATON, AND I THINK JEFFREY WALLS, WHO WAS REPRESENTED BY NORM REDMOND, WE BOTH FELT LIKE-- OR, I FELT LIKE THOSE TWO WERE THE LEAST CULPABLE IN THE CASE BESIDES ROBERT GRANT, THE ONE THAT WAS CHARGED WITH MURDER.

AND I CAN'T REMEMBER ALL OF THE TESTIMONY THAT WAS GIVEN, TO THE BEST OF MY RECOLLECTION, WERE THE ONLY ONES THAT REALLY IMPLICATED MY CLIENT. AND I KNOW EACH ATTORNEY, INCLUDING MYSELF, ATTACKED THEIR CREDIBILITY. I KNEW IT WAS GOING TO COME DOWN TO WHETHER OR NOT THE JURY BELIEVED WHAT THEY HAD TO SAY.

Q DO YOU BELIEVE AS A RESULT OF THE CROSS EXAMINATION BY YOU AND OTHER DEFENSE COUNSEL, THAT THEIR CREDIBILITY WAS BROUGHT INTO QUESTION?

A YES, DEFINITELY.

Q NOW, YOU HEARD MR. STATON TESTIFY ABOUT DWAYNE SLOAN TESTIFYING. TELL US WHAT YOU REMEMBER ABOUT THAT TESTIMONY.

A IT'S MY RECOLLECTION THAT HE WAS TESTIFYING ABOUT SOMETHING THAT RINGO PEARSON TOLD HIM, WHERE RINGO ADMITTED TO COMMITTING THE MURDER.

Q NOW, WHY DIDN'T YOU OBJECT TO THAT?

A WELL, TO ME, IT WAS BENEFICIAL TO MR. STATON BECAUSE IT HAD SOMEBODY ADMITTING THAT THEY COMMITTED THE MURDER. MR. PEARSON, HE WAS A CO-DEFENDANT, IN THE OVERALL CASE, BUT HE WAS NOT BEING TRIED AT THAT TIME.

Q SO, THAT WAS AN EXECUTIVE DECISION ON YOUR PART?

A YEAH. I FELT LIKE THAT WAS TO HIS BENEFIT. I REALIZE IT WAS HEARSAY, BUT I FELT LIKE THAT WOULD HAVE BENEFITED MORE THAN IT WOULD HAVE HURT HIM. AND MY THINKING ALSO WAS IF MY CLIENT WAS NOT INVOLVED IN IT AND MR. PEARSON ADMITTED THAT HE COMMITTED THE MURDER, THAT WOULD KIND OF LET THE JURY KNOW THAT MY CLIENT WAS NOT INVOLVED IN IT BECAUSE THERE WOULDN'T BE ANY REASON FOR MR. PEARSON TO TELL MR. STATON THAT IF MR. STATON WAS ACTUALLY INVOLVED IN IT.

Q ABOUT THE SOLICITOR'S CLOSING ARGUMENT, DO YOU HAVE ANY RECOLLECTION OF OBJECTING DURING THAT CLOSING ARGUMENT?

A I DON'T. WHEN I REVIEWED THE TRANSCRIPT I DON'T SEE WHERE I EVER OBJECTED. IT LOOKS LIKE THE ONLY OBJECTION WAS WHEN JAY ERVIN RAISED THE ISSUE ABOUT THE GOLDEN RULE.

Q DO YOU RECALL HOW THE JUDGE RULED ON THAT OBJECTION?

A WELL, LOOKING AT THE TRANSCRIPT, HE DENIED THE OBJECTION AND BASICALLY SAID HE DIDN'T THINK HE HAD GONE THAT FAR WITH IT, TALKING ABOUT THE PROSECUTOR.

Q DO YOU RECALL WHY YOU WOULDN'T HAVE OBJECTED TO THAT?

A NO REALLY. I KNOW THAT, LIKE YOU MENTIONED A LITTLE WHILE AGO, I DON'T WANT TO SAY WE WERE ALL WORKING AS A TEAM, BUT IF ONE ATTORNEY OBJECTED, IT WOULD BE NOTED FOR ALL CLIENTS, OR THAT WAS MY UNDERSTANDING.

Q NOW, YOU ALSO HEARD MR. STATON TESTIFY THAT YOU SHOULD HAVE OBJECTED IN THE DIFFERENCE IN THE DATES THAT THE SOLICITOR MADE AT HIS CLOSING. DO YOU RECALL-- DO YOU REMEMBER-- STRIKE THAT.

DO YOU RECALL DURING THAT CLOSING REALIZING THAT HE HAD CHANGED THE DATE?

A I DON'T KNOW WHETHER I DID. THAT WAS A CONTINUING PROBLEM IN THE PRE-TRIAL STAGE AND ALSO AT TRIAL. IF I REMEMBER CORRECTLY, IT WAS, LIKE, A TWELVE-DAY PERIOD THAT

THEY WERE ALLEGING THAT ALL THESE CRIMES WERE COMMITTED. I THINK IT WAS, LIKE, FROM THE TWELFTH UP THROUGH, I DON'T KNOW WHETHER IT WAS, LIKE, THE TWENTY-FOURTH, OR SOMETHING LIKE THAT. AND I KNOW THAT WAS ADDRESSED SEVERAL TIMES, OR AT LEAST ONE TIME PRIOR TO THE TRIAL IN COME KIND OF PRE-TRIAL HEARING.

ONE THING THAT GOT ME CONFUSED, TOO, LOOKING AT THE TRANSCRIPT. THERE WAS ALSO ANOTHER MR. ROGERS INVOLVED IN THE CASE. SO, SOMETIMES I DIDN'T KNOW WHETHER IT WAS ME ACTUALLY BEING TRANSCRIBED OR HIM. BUT I KNOW THERE WAS A MR. ROGERS, WHETHER IT WAS ME OR NOT, BROUGHT THAT UP AT A PRE-TRIAL HEARING, THAT IT'S HARD TO DO AN ALIBI DEFENSE WHEN YOU DON'T KNOW SPECIFIC DATES AND ALL YOU HAVE IS A TWO-WEEK PERIOD TO DEAL WITH.

BUT IF I'M NOT MISTAKEN, JUDGE COTTINGHAM LOOKED AT IT A LITTLE BIT DIFFERENTLY THAN WE DID.

Q SO, DO YOU KNOW WHY YOU DIDN'T OBJECT TO THAT CHANGE OF DATES DURING THE CLOSING?

A I DON'T.

Q BUT YOU STATED IT WAS A CONTINUING PROBLEM THROUGHOUT THE TRIAL?

A YEAH, UH-HUH.

Q YOU ALSO HEARD MR. STATON TESTIFY DURING THE SOLICITOR'S CLOSING ARGUMENT THAT CROSSES WERE MENTIONED,

THE BIBLE WAS MENTIONED. DO YOU RECALL WHETHER OR NOT YOU OBJECTED TO THAT?

A I DON'T THINK I DID.

Q CAN YOU TELL US WHY YOU DIDN'T OBJECT?

A I SURE DON'T. I SURE CAN'T.

Q I BELIEVE YOUR TESTIMONY WAS THAT YOU BELIEVED THE STATE HAD LESS EVIDENCE AGAINST YOUR CLIENT. IS THAT CORRECT?

A YEAH. HIM AND JEFFREY WALLS, I THOUGHT WERE IN SIMILAR SITUATION AS FAR AS THERE WASN'T AS MUCH EVIDENCE AGAINST THEM. AND IT CAME INTO, I THINK, RANSOM'S TESTIMONY AND MR. DAVIS' TESTIMONY.

Q CAN YOU TELL US WHAT YOUR OVERALL TRIAL STRATEGY WAS?

A I WAS TO, I RECKON, TO KIND OF KEEP A LOW PROFILE. IF I'M NOT MISTAKEN, MY CLIENT'S NAME WAS MENTIONED MAINLY WHEN RANSOM AND DAVIS WERE TESTIFYING. IT SEEMS LIKE ONE OF THEM, OR MR. WILSON ASKED HIM ABOUT WHO WAS INVOLVED. AND HE MAY HAVE BEEN EVEN POINTING TO THE DIFFERENT DEFENDANTS.

ONE OF THEM DID NOT MENTION MY CLIENT. AND THERE REALLY WASN'T ANY OTHER EVIDENCE THAT I SAW THAT HAD HIM INVOLVED IN THE CRIME.

Q SO, WITH THE OVERALL STRATEGY OF KEEPING A LOW PROFILE, WOULD THAT HAVE COME INTO PLAY ABOUT WHETHER OR NOT TO MAKE AN OBJECTION DURING CLOSING ARGUMENTS?

A IT PROBABLY WOULD HAVE. IT'S BEEN SO LONG AGO, I CAN'T SAY FOR SURE.

Q YOU HEARD MR. STATON TESTIFY ABOUT THE VARIOUS ALIBI WITNESSES HE WANTED YOU TO CONTACT; THAT BEING ANTHONY GRAHAM, LARRY QUICK, LARRY GRAHAM, AND KATHEY STATON, AND CALVIN BETHEA. DID YOU TALK TO ANY OF THESE INDIVIDUALS?

A I KNOW I TALKED TO HIS MOTHER AND STEPFATHER. I CAN'T GIVE YOU ANY SPECIFICS ABOUT WHAT WE TALKED ABOUT, BUT THEY WERE MY MAIN CONTACTS THROUGHOUT THE PROCESS, AND ALSO HIS GRANDMOTHER. I DON'T THINK SHE WAS LISTED BY HIM.

WHEN I WAS REVIEWING MY FILE FOR TODAY, I HAD A LITTLE NOTE HERE, AND IT HAS LISTED LARRY GRAHAM, ANTHONY GRAHAM, CUSTODIAN OF ATTENDANCE RECORDS AT MARLBOROUGH HIGH SCHOOL, AND LARRY QUICK. THOSE ARE IN MY HANDWRITING, AND THEN OUT BESIDE IT THERE'S SOME ADDRESSES AND PHONE NUMBERS THAT'S IN A DIFFERENT HANDWRITING. I DON'T KNOW. IT KIND OF LOOKS LIKE MY LAW PARTNER'S HANDWRITING, BUT I DON'T KNOW WHO WROTE THOSE.

I'VE GOT A NOTATION BESIDE LARRY GRAHAM AND ANTHONY GRAHAM, SATURDAY, WITH A CHECK; AND LARRY QUICK, WITH A SUNDAY, AND A CHECK. BUT I DON'T HAVE A DATE ON THERE OR ANYTHING LIKE THAT. SO, I JUST CAN'T REMEMBER WHO ALL I TALKED WITH.

Q YOU SAID THAT YOU TALKED TO KATHEY STATON AND CALVIN BETHEA, MR. STATON'S MOTHER AND STEPFATHER. WHAT DID Y'ALL TALK ABOUT?

A I THINK IT WOULD, LIKE, JUST GENERAL TRIAL STRATEGY, OR, YOU KNOW, ABOUT WHAT WAS GOING ON WITH THE CASE, WHAT KIND OF EVIDENCE THEY HAD AND ALL. BUT I JUST CAN'T GIVE YOU ANYTHING SPECIFIC.

Q DO YOU RECALL ABOUT WHETHER YOU DISCUSSED WITH THEM ABOUT AN ALIBI FOR YOUR CLIENT?

A I'M SURE WE PROBABLY DID, BUT I CAN'T GIVE YOU ANYTHING SPECIFIC.

Q DO YOU RECALL WHETHER YOU TOLD EITHER OF THESE INDIVIDUALS THAT YOU WOULD BE CALLING THEM TO TESTIFY AT TRIAL?

A NO. IF I'M NOT MISTAKEN, THEY WERE LISTED ON THE STATE'S WITNESS LIST AND THAT WAS PROBABLY WHY THERE WERE SEQUESTERED.

Q NOW, THESE OTHER INDIVIDUALS, ANTHONY GRAHAM, LARRY QUICK, LARRY GRAHAM, DO YOUR NOTES REFLECT WHETHER OR NOT YOU TALKED TO THESE INDIVIDUALS?

A THEY DON'T.

Q DO YOU HAVE ANY RECOLLECTION OF HAVING TALKED TO THESE INDIVIDUALS?

A I SURE DON'T. I KNOW I TALKED WITH SOME WITNESSES THAT ME AND MR. STATON TALKED ABOUT. I REMEMBER I TALKED WITH

ONE OR TWO PEOPLE WHO EITHER DIDN'T HAVE ANYTHING REALLY TO OFFER OR SAID THEY DIDN'T WANT TO GET INVOLVED, OR SOMETHING LIKE THAT. IT JUST DIDN'T TURN UP ANYTHING THAT I FELT LIKE WOULD BE WORTH PRESENTING AT THE TRIAL. BUT I CAN'T GIVE YOU WHO THEY WERE. I JUST REMEMBER TALKING TO A COUPLE OF WITNESSES.

Q DO YOU RECALL DISCUSSING AN ALIBI DEFENSE AT ALL WITH MR. STATON?

A WE TALKED ABOUT IT HAD TO BE AN ALIBI DEFENSE BASED ON THE FACT THAT, YOU KNOW, WE WERE TALKING ABOUT THE SCHOOL RECORDS, WHETHER HE WAS IN SCHOOL AND LIKE THAT, BUT THE SPECIFICS OF THE CONVERSATION I DON'T KNOW, OR DON'T RECALL.

Q SO, YOU DID HAVE THE SCHOOL RECORDS?

A YEAH. NOW, I DON'T KNOW WHEN I GOT THEM. IT MAY HAVE BEEN DURING-- IT WAS EITHER RIGHT BEFORE TRIAL OR DURING THE WEEK OF TRIAL THAT I GOT THEM, BUT I JUST DON'T REMEMBER WHEN.

Q WHERE THOSE RECORDS HELPFUL TO YOUR CASE? DO YOU RECALL?

A ACCORDING TO THE-- I HAVE A COPY OF IT. IT LOOKS LIKE HE WAS OUT TWO OR THREE DAYS DURING THAT, THE TWELFTH THROUGH THE TWENTY-FOURTH PERIOD.

Q WELL, THAT GETS US TO THE QUESTION OF WHETHER OR NOT YOU WERE GONNA PUT UP A CASE. DID YOU DISCUSS WITH MR.

STATON THE BENEFITS AND DISADVANTAGES OF WHETHER OR NOT YOU SHOULD PUT UP A CASE?

A YEAH. WE TALKED, I KNOW, AT THE COURTHOUSE. AND AT THAT TIME, IF I'M NOT MISTAKEN, THEY STILL HAD WHAT I CALL THE OLD JAIL OUT NEAR THE LAKE. AND I WENT OUT THERE ONE MORNING TO TALK TO HIM BEFORE COURT STARTED ABOUT WHETHER OR NOT HE WAS GONNA TESTIFY. BUT AS FAR AS PUTTING UP A CASE, I REMEMBER MORE ABOUT WHETHER OR NOT HE WAS GONNA TESTIFY VERSUS PUTTING UP A CASE.

Q DID YOU EXPLAIN TO HIM THE ADVANTAGES AND DISADVANTAGES OF TESTIFYING?

A YEAH. AND I THINK THE JUDGE ADDRESSED THAT, TOO.

Q DID HE APPEAR TO UNDERSTAND YOU WHEN YOU TALKED TO HIM ABOUT THAT?

A YEAH.

Q DID YOU EVER TELL HIM NOT TO TESTIFY?

A I DON'T THINK I SAID SPECIFICALLY, NO, YOU DON'T NEED TO TESTIFY. NOW, IF HE WOULD HAVE ASKED WHAT MY OPINION WAS, I PROBABLY WOULD HAVE TOLD HIM THAT BASED ON WHAT WOULD HAVE BEEN PRESENTED, I PROBABLY TOLD HIM THAT HE WOULD BE BETTER OFF NOT TESTIFYING.

ONE PROBLEM I HAD IN REPRESENTING MR. STATON WAS I DON'T KNOW WHETHER IT WAS DUE TO HIS AGE OR WHAT, BUT IT WAS TOUGH TO GET INFORMATION OUT OF HIM. AND I JUST DIDN'T KNOW WHAT KIND OF WITNESS HE WAS GONNA BE.

Q WOULD IT BE FAIR TO SAY THAT PART OF YOUR STRATEGY OF KEEPING A LOW PROFILE WAS TO NOT PUT UP A CASE?

A YEAH. WELL, LET ME CLARIFY THAT. IF WE HAD HAD-- SAY, IF HE HAD BEEN OUT OF TOWN OR SOMETHING THE ENTIRE PERIOD AND WE HAD A CLEAR, YOU KNOW, WE COULD COVER THE ENTIRE PERIOD, THAT WOULD HAVE BEEN A DIFFERENT STORY, BUT WE DIDN'T HAVE ANY WAY TO PROVE-- IT WAS KIND OF LIKE WE WERE HAVING TO PROVE HIS WHEREABOUTS DURING THAT TWO-WEEK PERIOD. AND I DIDN'T SEE WHERE WE HAD ENOUGH TO DO THAT.

Q DID YOU EXPLAIN TO MR. STATON THE CONCEPT OF THE HAND OF ONE IS THE HAND OF ALL?

A I CAN'T SPECIFICALLY REMEMBER, BUT I'M SURE WE PROBABLY DID DISCUSS THAT.

MS. RATIGAN: BEG THE COURT'S INDULGENCE.

THE COURT: YES MA'AM.

(PAUSE)

Q MR. STATON WAS INDICTED FOR WHAT CHARGES?

A I THINK IT WAS MURDER, CRIMINAL SEXUAL CONDUCT, CONSPIRACY. IT SEEM LIKE THERE WAS ONE MORE, BUT I---

Q KIDNAPPING?

A YES, KIDNAPPING.

Q WAS HE FOUND GUILTY ON ALL THOSE COUNTS?

A NO. HE WAS FOUND NOT GUILTY ON THE CRIMINAL SEXUAL CONDUCT AND WAS FOUND GUILTY ON THE OTHER THREE.

Q IT'S HARD TO ASK THIS JUST OF YOU BECAUSE THERE WERE SO MANY LAWYERS IN THIS CASE, BUT DO YOU FEEL THAT AN ADEQUATE JOB WAS DONE IN ATTACKING THE CREDIBILITY OF THE STATE'S WITNESSES?

A I FELT LIKE IT WAS. I KNOW, MR. ERVIN, IT SEEMS LIKE HE WAS THE ONE THAT WAS SITTING CLOSEST TO THE PROSECUTION TABLE. SO, HE WOULD HAVE BEEN THE FIRST ONE TO CROSS-EXAMINE. AND I REMEMBER HE DOING-- HE WAS THE LONGEST ONE AND HE DID A REAL GOOD JOB. AND ALL OF US, EVERYBODY ELSE KIND OF FOLLOWED HIM AND TRIED TO FILL IN ANY HOLES AND TRIED TO BE SPECIFIC AS FAR AS OUR CLIENTS.

Q AND THE SAME QUESTION ABOUT WHETHER YOU THINK THERE WAS AN ADEQUATE JOB DONE IN ATTACKING THE STATE'S EVIDENCE OF THE AUTOPSY AND CORONER WHO TESTIFIED?

A YES. I THINK THE MAJOR PROBLEM WE HAD WITH THE TRIAL FROM A DEFENSE STANDPOINT, AND I THINK ALL THE DEFENSE LAWYERS WOULD AGREE, WAS HAVING SO MANY DEFENDANTS TRIED TOGETHER. BECAUSE IT WAS HAD TO DIFFERENTIATE OR GET THE JURY TO SEE, YOU KNOW, YOUR CLIENT, ONE DEFENDANT, VERSUS A WHOLE CROWD.

Q AND YOU MADE SEVERAL MOTIONS FOR SEVERANCE. IS THAT CORRECT?

A YEAH. I THINK THERE WAS NUMEROUS MOTIONS FOR THAT. AND IF I'M NOT MISTAKEN, THE SUPREME COURT HAS ADDRESSED THAT ON ONE OF THE APPEALS.

MS. RATIGAN: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: YOU MAY CROSS.

MS. LIVELY: THANK YOU, YOUR HONOR.

CROSS EXAMINATION BY MS. LIVELY:

Q MR. ROGERS, I'M JUST GOING TO START AT THE BEGINNING OF MY CLIENT'S MEMORANDUM AND GO THROUGH THE ISSUES WITH YOU.

A OKAY.

Q FIRST OF ALL, ON THE INDICTMENT, THE STATEMENT, OR ONE OF THE ELEMENTS OF MURDER BEING LISTED BY THE STATE WAS STRANGULATION INSTEAD OF ASPHYXIATION, WHICH WAS WHAT THE PATHOLOGIST TESTIFIED TO. IS THAT RIGHT?

A YES, I THINK THAT'S CORRECT.

Q AND ISN'T IT TRUE THAT-- A MINUTE AGO YOU JUST TESTIFIED THAT YOU DIDN'T OBJECT TO IT BECAUSE YOU THOUGHT YOU WOULD CROSS EXAMINE THE PATHOLOGIST ABOUT THAT ISSUE. IS THAT RIGHT?

A YES.

Q ISN'T IT TRUE THAT YOU DID NOT EVEN CROSS EXAMINE THE PATHOLOGIST ON THAT ISSUE?

A THAT MAY BE CORRECT. I DON'T KNOW.

Q IF I SHOWED YOU THE TRANSCRIPT WOULD THAT HELP YOU TO REFRESH YOUR RECOLLECTION ABOUT WHETHER OR NOT YOU DID THAT?

A IF THAT'S WHAT THE TRANSCRIPT SHOWS I DON'T DISPUTE THAT.

Q BECAUSE THE TRANSCRIPT DOES SHOW THAT YOU DID NOT CROSS EXAMINE THE PATHOLOGIST AT ALL?

A IF THAT'S WHAT IT SAYS, THEN I'LL STIPULATE TO THAT.

Q ALL RIGHT. NOW, ALSO, YOU SAID THAT-- WITH YOU NOT OBJECTING AND THEN ALSO NOT CROSS EXAMINING THE PATHOLOGIST, I DON'T THINK THAT YOU EVEN MENTIONED IT IN YOUR, ANYWHERE ELSE IN THE ENTIRE TRIAL. WOULD THAT BE ACCURATE?

A IF THAT'S WHAT THE TRANSCRIPT SAYS. IT'S BEEN A LONG TIME, SO I---

Q I UNDERSTAND.

A I CAN'T SPECIFICALLY SAY I RECALL THAT, THEN IF THAT'S WHAT THE TRANSCRIPT SAYS, THEN THAT MUST BE WHAT HAPPENED.

Q AND THAT'S A PRETTY IMPORTANT ELEMENT OF THE CRIME TO LIST WHAT THE CAUSE OF DEATH IS. IS THAT CORRECT?

A YES.

Q AND THE STATEMENT FROM THE FORENSIC PATHOLOGIST SPECIFICALLY STATED ASPHYXIATION. AND THIS WAS OBVIOUSLY GIVEN TO YOU IN DISCOVERY. IS THAT RIGHT?

A I'M SURE IT WAS.

Q I'M GOING TO SHOW YOU THE FORENSIC PATHOLOGY RESULTS.

MS. LIVELY: YOUR HONOR, MAY I APPROACH?

THE COURT: YOU MAY.

Q MR. ROGERS, DO YOU RECOGNIZE THIS DOCUMENT?

A YEAH. IT APPEARS TO BE THE AUTOPSY REPORT ON THE LADY IN THIS CASE, DARLENE PATTERSON, WHO WAS THE VICTIM IN THIS CASE.

Q AND OPEN IT TO WHERE IT'S BEEN HIGHLIGHTED. HAS IT BEEN ALTERED IN ANY WAY, TO YOUR KNOWLEDGE?

A NO.

MS. LIVELY: YOUR HONOR, I WOULD MOVE TO INTRODUCE THIS AS APPLICANT'S ONE.

MS. RATIGAN: WITHOUT OBJECTION.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON APPLICANT'S EXHIBIT ONE WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION)

Q AND ALSO, IF YOU DON'T MIND, WOULD YOU PLEASE PUBLISH TO THE COURT THE DATE THE PATHOLOGIST PUT AT THE TOP AS TO THE DATE OF DEATH?

A 11/12/94.

Q SO, THE DATE OF NOVEMBER 12, 1994, NOT ONLY WAS AN IMPORTANT DATE FROM THE TWO WITNESSES WHO WERE NOT CREDIBLE, RANSOM AND DAVIS, BUT IT WAS ALSO MENTIONED BY THE FORENSIC PATHOLOGIST IN HER REPORT AND HER TESTIMONY. IS THAT CORRECT?

A I DON'T RECALL THE TESTIMONY, BUT IF THAT'S WHAT THE TESTIMONY SAYS, THEN, YEAH.

Q WELL, HER REPORT WAS PUT INTO EVIDENCE, WAS IT NOT?

A YES.

Q WHICH THAT WAS OBVIOUSLY GIVEN TO THE JURY AT THE END OF THE TRIAL?

A THAT'S CORRECT.

Q AND IT DOES REFLECT THAT THE DATE OF DEATH WAS NOVEMBER 12, 1994?

A THAT'S CORRECT.

Q NOW, I'M GOING TO MOVE TO ANOTHER ISSUE WHICH KIND OF CENTERS AROUND-- WELL, LET ME MOVE TO THAT DATE CONCERNING THE ALIBI ISSUES SO I CAN GO AHEAD AND ADDRESS THAT, SINCE I'VE ALREADY TOUCHED ON THE DATE OF NOVEMBER TWELFTH.

RANSOM AND DAVIS WERE THE TWO STATE'S WITNESSES THAT TALKED ABOUT THE DATE OF THE ALLEGED CRIME. IS THAT RIGHT?

A YES.

Q THEY WERE ALSO, HAD BEEN CHARGED AS WELL AS BEING INVOLVED. IS THAT CORRECT?

A THAT'S CORRECT.

Q AND THEY GAVE TESTIMONY AGAINST THE OTHER DEFENDANTS CONCERNING THEIR INVOLVEMENT IN THE CASE. IS THAT CORRECT?

A THAT'S CORRECT.

Q THEY GAVE STATEMENTS TO THE POLICE AS WELL. IS THAT RIGHT?

A CORRECT.

Q AND IN THEIR TESTIMONY THEY'RE THE ONES THAT THE SOLICITOR THEN RELIED ON IN HIS CLOSING TO ESTABLISH THE DATE

OF A CERTAIN PARTY AND ALSO THE ABDUCTION OF MS. PATTERSON. IS THAT RIGHT?

A YEAH.

Q SO, THE DATE OF THE TWELFTH, WHICH WAS MENTIONED BY THE FORENSIC PATHOLOGIST, AS WELL AS, I BELIEVE THE FOURTEENTH WAS ALSO MENTIONED WAS THE DATE THAT WAS MENTIONED THAT THE BODY WAS ALLEGEDLY DUMPED, THOSE DATES WERE BROUGHT UP BY THE STATE AND ALSO REITERATED IN THE CLOSING ARGUMENTS? CORRECT?

A CORRECT.

Q NOW, YOU MENTIONED IN YOUR TESTIMONY WAS THE PROBLEM THAT YOU AND THE OTHER DEFENSE ATTORNEYS HAD WERE YOU WERE REVIEWING SUCH A LARGE BLOCK OF TIME CONCERNING WHEN THE CRIME HAD ALLEGEDLY OCCURRED. DO YOU REMEMBER SAYING THAT?

A I DO.

Q WELL, EVEN THOUGH THERE HAD BEEN A BLOCK OF TIME WHEN THE CRIME COULD HAVE OCCURRED THE STATE, HOWEVER, PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH THAT THE DEATH OCCURRED ON THE TWELFTH, AS WELL AS THE BODY COULD HAVE BEEN DUMPED OVER THE NEXT COUPLE OF DAYS, THROUGH THE FOURTEENTH. IS THAT RIGHT?

A YEAH.

Q WELL, JUST BASED ON THE INFORMATION I GAVE YOU, THE FORENSIC PATHOLOGIST---

A YEAH. BASED ON THE REPORT THAT THE JUDGE HAD AND I JUST DON'T SPECIFICALLY REMEMBER THE TESTIMONY, BUT I REMEMBER THOSE WERE IMPORTANT DATES.

Q OKAY. AND DO YOU RECALL WHENEVER THE SOLICITOR CROSS EXAMINED MR. SLOAN WHO WAS NOT SO WILLING-- NO, IT WASN'T MR. SLOAN. HOLD ON JUST A MOMENT. I'M GETTING CONFUSED NOW.

MR. GRAHAM, JEFFREY GRAHAM, HE'S THE ONE WHO RECANTED HIS STATEMENT WHENEVER HE WAS ON THE STAND. DO YOU RECALL THAT?

A I DO.

Q HE WAS THE HOSTILE WITNESS THAT MR. WILSON GOT TO REALLY DIG INTO CONCERNING HIS PRIOR STATEMENT BEING POSSIBLY INCONSISTENT.

A DO YOU RECALL WHO WAS REPRESENTING HIM?

Q MR. GRAHAM. GIVE ME A SECOND. I THINK I CAN CLARIFY THAT.

A I THINK ROBERT GRAHAM WAS REPRESENTED BY MR. LAWSON.

Q JUST A MINUTE.

A WAS IT MAYBE... I CAN'T REMEMBER.

(PAUSE)

MS. LIVELY: ONE MOMENT, YOUR HONOR. I SEE ROBERT GRAHAM.

(PAUSE)

A WAS HE ACTUALLY TRIED AT THE SAME TIME THAT---

Q NO. WELL, LET ME ASK YOU A QUESTION THAT MIGHT HELP.

A OKAY.

Q WASN'T HE BROUGHT IN FROM ANOTHER FACILITY AND HE WAS JUST A WITNESS FOR THE STATE, AND HE WASN'T ACTUALLY REPRESENTED BY ANYONE AT THIS PARTICULAR TRIAL? DO YOU RECALL THAT?

A YEAH.

Q DO YOU KNOW WHO I'M TALKING ABOUT NOW?

A I DO.

Q AND THIS INDIVIDUAL ACTUALLY WAS PINNED DOWN ABOUT A STATEMENT THAT HE HAD GIVEN TO THE POLICE THAT HE SAID ON THE TWELFTH THAT CERTAIN MATTERS HAD OCCURRED?

A I DON'T SPECIFICALLY RECALL.

Q OKAY.

A I GENERALLY REMEMBER HIS TESTIMONY.

Q OKAY. BUT ONE OF THE THINGS THAT MR. WILSON, AS THE SOLICITOR, WAS DOING WAS TRYING TO ESTABLISH THAT HIS PRIOR STATEMENT WAS THE ACCURATE ONE AND HE WAS HEDGING ON HIS CURRENT TESTIMONY ABOUT WHAT HAD ACTUALLY OCCURRED. DO YOU RECALL THAT?

A YEAH.

Q THERE WAS ANOTHER TIME THAT THE DATE OF NOVEMBER TWELFTH WAS BROUGHT UP BY A WITNESS. ISN'T THAT RIGHT?

A IF THAT'S WHAT THE TRANSCRIPT SAYS. I JUST DON'T RECALL.

Q ALL RIGHT.

MS. LIVELY: GIVE ME JUST ONE MINUTE.

THE COURT: YES MA'AM.

(PAUSE)

MS. LIVELY: I'M SORRY, YOUR HONOR. IF YOU'LL GIVE ME JUST ONE MORE MINUTE. I THINK I CAN FIND IT.

THE COURT: YES MA'AM.

(PAUSE)

MS. LIVELY: THANK YOU, YOUR HONOR. I'VE FOUND IT.

Q MR. ROGERS, DO YOU HAVE A COPY OF THE TRANSCRIPT?

A I HAVE A COPY BUT I DON'T HAVE IT UP HERE WITH ME.

Q I'LL ASK YOU TO LOOK IN VOLUME II, PAGE 584 TO 585, AND I'LL JUST SHOW YOU MY COPY.

A OKAY.

Q PAGE 584, WHICH IS THE DIRECT TESTIMONY OF JEFFREY GRAHAM.

A OKAY.

Q AND IN HIS STATEMENT AT THE BOTTOM, THE STATEMENT THAT HE GAVE TO THE POLICE, THAT THE INFORMATION HE'D GIVEN TO THEM CONCERNING THE ABDUCTION OF MS. PATTERSON WAS AROUND THE DATE OF NOVEMBER 12, 1994?

A ARE YOU TALKING ABOUT LINE 24?

Q YES.

A YES. IT SAYS NOVEMBER 12, 1994.

Q OKAY. AND THEN HE GOES ON TO TAKE BACK THE STATEMENT HE HAD GIVEN. BUT AS FAR AS YOU REMEMBER-- OR, TELL ME IF YOU REMEMBER THE CRUX OF HIS TESTIMONY WAS KNOWING WHAT HAD

OCCURRED BASED ON INFORMATION THAT HE HEARD FROM CO-DEFENDANTS. IS THAT RIGHT?

A I JUST DON'T REMEMBER.

Q BUT THERE'S NO DOUBT THAT HE'S REFERRING TO NOVEMBER TWELFTH, WHICH WAS ALSO THE DATE STATED BY THE FORENSIC PATHOLOGIST. CORRECT?

A CORRECT.

Q THEN WE HAVE DAVID RANSOM WHO FLIP-FLOPPED ON DATES, AND YOU DID A REALLY GOOD JOB OF CROSS EXAMINING HIM ON THAT. HOWEVER, IN YOUR CLOSING ARGUMENT YOU DIDN'T REALLY MENTION THE DATES CONCERNING THE INCIDENT AND HOW THEY DID NOT ACCURATELY REPRESENT WHEN THESE MATTERS OCCURRED. DO YOU RECALL THAT?

A I DON'T, BUT IF THAT'S WHAT IT SAYS IN THE TRANSCRIPT, THEN I'LL AGREE WITH YOU.

Q OKAY. YOU TALKED ABOUT HOW THEY WERE NOT CREDIBLE, AND THAT DEFINITELY-- I'LL GIVE YOU THAT ON YOUR CLOSING. BUT AS IT RELATES TO THE ACTUAL DATE, THE DATE THAT THE PROSECUTOR WAS MISSTATING IN HIS CLOSING, YOU DIDN'T BRING THAT UP IN YOUR CLOSING ARGUMENT WHENEVER YOU WENT FIRST, AND NEITHER DID YOU OBJECT TO IT LATER WHENEVER HE WAS BRINGING IT UP. ISN'T THAT CORRECT?

A I DON'T SPECIFICALLY REMEMBER, BUT IF THAT'S WHAT IT SAYS, YEAH.

Q OKAY. BUT THE POINT OF THIS QUESTIONING WAS, HOWEVER, LIKE I STATED BEFORE, WAS TO ADDRESS THE ALIBI WITNESSES THAT MR. STATON WANTED YOU TO CALL. HE GAVE YOU THE NAMES OF PEOPLE WHO COULD TESTIFY ABOUT HIS WHEREABOUTS ON THE TWELFTH, THE THIRTEENTH, AND THEN HIS SCHOOL RECORDS FOR THE FOURTEENTH. IS THAT RIGHT?

A LIKE I SAID, THE ONLY NOTES I COULD FIND IN MY FILE WAS I HAD A LIST OF THOSE WITNESSES.

Q OKAY.

A LARRY GRAHAM, ANTHONY GRAHAM, AND LARRY QUICK, WHO TESTIFIED. AND THEN I HAD A COPY OF THE SCHOOL RECORD.

Q OKAY.

A AND I JUST CAN'T REMEMBER WHEN I OBTAINED THAT, BUT IT WOULD HAVE TO HAVE BEEN EITHER RIGHT BEFORE TRIAL OR MAYBE THAT WEEK OF TRIAL. I'M NOT SURE.

Q THE WEEK OF TRIAL?

A IT COULD HAVE BEEN. I JUST DON'T REMEMBER.

Q NOW, MR. QUICK TESTIFIED THAT HE NEVER SPOKE TO YOU. DO YOU RECALL EVER SPEAKING TO HIM?

A I CAN'T REMEMBER WHO I ACTUALLY TALKED WITH. I KNOW THAT SOME PEOPLE THAT HE-- TO THE BEST OF MY RECOLLECTION I TALKED TO MAYBE SOME PEOPLE HE GAVE ME NAMES OF, BUT I JUST DON'T KNOW WHO THEY WERE OR WHAT.

Q NOW, THE NOTES THAT YOU HAVE, IS IT ON CERTAIN PEOPLE, BESIDE CERTAIN PEOPLE'S NAMES, IT HAD SATURDAY, SATURDAY,

SUNDAY AND THEN SOMETHING ELSE, WITH SOME CHECK MARKS. IS THAT CORRECT?

A THAT'S CORRECT.

Q DO YOU MIND IF I LOOK AT THAT DOCUMENT?

A NO. AND I DON'T KNOW WHAT THAT MEANS.

Q I UNDERSTAND.

A I CAN'T DECIPHER.

Q OKAY.

A AND, LIKE I SAID, THE ADDRESS AND THE PHONE NUMBERS WERE OBVIOUSLY WRITTEN BY SOMEBODY ELSE, BUT I DON'T EVEN KNOW WHO WROTE THAT.

Q WERE THE NAMES WRITTEN BY YOU?

A YEAH. THE NAMES AND THE CHECK MARKS AND THE SATURDAY, SOME OF THESE NOTES WERE WRITTEN BY ME.

Q NO QUESTION THAT THESE ARE YOUR NOTES?

A NO QUESTION ABOUT THAT.

MS. LIVELY: YOUR HONOR, CAN I GET A COPY OF THIS AND PLACE IT IN THE RECORD AS APPLICANT'S TWO?

MS. RATIGAN: THAT'S FINE, YOU HONOR.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON APPLICANT'S EXHIBIT TWO WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION)

Q ISN'T IT POSSIBLE, MR. ROGERS, THAT IN YOUR OWN HANDWRITING, BESIDES THE PEOPLE'S NAMES, THE INFORMATION THAT YOU HAD ABOUT SATURDAY, SATURDAY AND SUNDAY WAS MR.

STATON TELLING YOU THAT THOSE PEOPLE WOULD BE ABLE TO BE ALIBIS FOR HIM ON THOSE DAYS?

A YEAH. WELL, I DON'T KNOW WHAT IT MEANT.

Q BUT IT'S POSSIBLE THAT'S WHAT IT MEANT?

A THAT'S POSSIBLE.

Q BECAUSE HE TESTIFIED THAT HE GAVE YOU THAT INFORMATION AND WANTED TO USE ALIBI WITNESSES, AND YOU ACTUALLY DID FILE NOTICE TO THE STATE THAT YOU WERE GOING TO HAVE POTENTIAL ALIBI WITNESSES. ISN'T THAT TRUE?

A I DON'T RECALL, BUT IF IT'S IN THE RECORD....

Q YOU'RE REQUIRED TO GIVE THE STATE NOTICE OF ANY ALIBI WITNESSES. CORRECT?

A YEAH. I BELIEVE IT'S TEN DAYS PRIOR TO TRIAL.

MS. LIVELY: ONE MOMENT, YOUR HONOR.

THE COURT: YES MA'AM.

(PAUSE)

MS. LIVELY: YOUR HONOR, MAY I APPROACH?

THE COURT: YOU MAY.

Q MR. ROGERS, WHOSE LETTERHEAD IS THAT?

A THAT'S ROGERS AND MULLEN, WHICH I'M A MEMBER OF THAT LAW FIRM.

Q DO YOU RECOGNIZE THAT LETTER? AND IF YOU DON'T YOU CAN TAKE A MINUTE TO READ IT OVER.

A WELL, THIS LOOKS LIKE JUST ONE OF OUR, FOR LACK OF A BETTER TERM, FORM LETTER THAT WE USED-- WELL, DID USE PRIOR

TO BECOMING PROSECUTORS, WHERE WE REQUESTED RULE FIVE INFORMATION. AND IT LOOKS LIKE IT MENTIONS, TALKS ABOUT THE ALIBI DEFENSE.

Q OKAY.

A AND THAT'S MY SIGNATURE AT THE BOTTOM.

MS. LIVELY: YOUR HONOR, I MOVE TO INTRODUCE THIS AS APPLICANT'S THREE.

MS. RATIGAN: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON APPLICANT'S EXHIBIT THREE WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION)

Q AND IN THIS LETTER YOU'RE SPECIFICALLY ASKING MR. WILSON, THE SOLICITOR, TO GIVE MORE INFORMATION CONCERNING THE TIME OF THE ALLEGED CRIME IN ORDER FOR YOU TO BETTER ESTABLISH YOUR ALIBI WITNESSES FOR THE CASE. ISN'T THAT RIGHT?

A THAT'S CORRECT.

Q OKAY. SO, THERE'S NO DOUBT THAT THE CALLING OF ALIBI WITNESSES WAS DEFINITELY A DEFENSE STRATEGY ON BEHALF OF MR. STATON?

A YEAH. I MEAN, WE WANTED TO-- WE LOOKED AT ALL OPTIONS.

Q BUT YOU DIDN'T CALL ANY ALIBI WITNESSES. YOU DIDN'T EVEN PRESENT A DEFENSE. ISN'T THAT CORRECT?

A THAT IS CORRECT.

Q AND YOU HEARD MR. STATON SAY THAT HE WAS UNDER THE IMPRESSION BECAUSE HE DIDN'T TESTIFY THAT HIS ALIBI WITNESSES COULDN'T TESTIFY. DID YOU ADVISE HIM OF THAT?

A I KNOW I WOULDN'T HAVE ADVISED HIM OF THAT. I DON'T KNOW WHETHER MAYBE HE MISINTERPRETED SOMETHING I SAID. BUT BACK THEN AND NOW, I REALIZE IT'S CLEAR ANYBODY CAN TESTIFY. IT DOESN'T DEPEND ON WHETHER THE DEFENDANT TESTIFIES OR NOT.

NOW, I CAN'T SAY, YOU KNOW, HE MAY HAVE MISINTERPRETED SOMETHING I SAID.

Q DID YOU EVER SPECIFICALLY TELL HIM THAT EVEN THOUGH HE'S NOT TESTIFYING, THAT WE COULD STILL PUT UP ALIBI WITNESSES ON YOUR BEHALF TO ESTABLISH WHERE YOU WERE ON THOSE CRITICAL DAYS?

A I DON'T RECALL.

Q YOU DON'T RECALL. BUT OBVIOUSLY, NO DEFENSE WAS PUT UP AND THESE ALIBI WITNESSES FOR THE DATES OF THE TWELFTH, THIRTEENTH AND FOURTEENTH WERE NEVER ESTABLISHED. CORRECT?

A THAT'S CORRECT.

Q AND ALSO, THE INFORMATION THAT YOU RECEIVED FROM THE SCHOOL WAS NEVER PUT INTO EVIDENCE AS WELL FOR THE NOVEMBER FOURTEENTH DATE. IS THAT RIGHT?

A THAT'S RIGHT.

Q AND YOU HAVE THOSE RECORDS IN YOUR FILE. IS THAT CORRECT?

A YEAH, I THINK I HAVE IT RIGHT HERE.

Q NOW, DID YOU SPEAK TO THE RECORDS CUSTODIAN WHENEVER SHE BROUGHT THAT INFORMATION TO YOU?

A TO BE HONEST WITH YOU, I DON'T REMEMBER. I COULDN'T EVEN REMEMBER WHERE I ACTUALLY GOT IT. I THOUGHT I HAD REQUESTED IT DIRECTLY FROM THE SCHOOL, BUT I JUST DON'T REMEMBER.

Q WELL, DO YOU REMEMBER, THEN, WHO EXPLAINED TO YOU HOW EVERYTHING IS ACTUALLY LISTED, EXCUSED TARDIES AND UNEXCUSED TARDIES AND ABSENCES AND THAT KIND OF THING?

A I SURE DON'T.

Q YOU DON'T?

A HUH-UH.

Q THE INFORMATION THAT IS ON THAT SCHOOL RECORD, YOU ARE NOT ABLE TO TELL US WHETHER OR NOT, WAS ACTUALLY NOT SHOWING THE DATES WHENEVER HE WAS AT SCHOOL COMPARED TO THE DATES THAT HE ACTUALLY MISSED OR HE WAS TARDY. IS THAT RIGHT?

A WOULD YOU REPEAT THAT?

Q SURE. I'VE GOT A COPY OF IT MYSELF. IF YOU'LL LOOK AT IT.

A THIS THING?

Q YES.

A OKAY.

Q THE DOCUMENT ACTUALLY SPECIFICALLY HAS DAYS WHERE'S THERE'S AN UNEXCUSED ABSENCE OR A TARDY OR SOMETHING OF THAT NATURE. WOULD YOU AGREE?

A YEAH. IT'S GOT EITHER U, E, AND I THINK IT'S GOT A S ON IT, A NOTATION. OUT OF SCHOOL SUSPENSION IS WHAT THAT STANDS FOR.

Q ARE THERE ANY DAYS WHERE IT'S SHOWING THE DOT, WHICH IS PRESENT, WHERE THE DOT GOES ALL THE WAY ACROSS SHOWING THOSE FULL, PRESENT DAYS?

A I'M NOT SURE WHAT YOU'RE ASKING. SAY, LIKE, ON NOVEMBER 17, 1994, THERE'S DOTS, EXCEPT FOR SIXTH PERIOD, WHICH I THINK THAT WAS A U.

Q RIGHT.

A YEAH.

Q OKAY.

A BUT I DON'T SEE ONE WHERE IT HAS IT ALL THE WAY ACROSS.

Q AND THE ONES THAT WOULD HAVE IT ALL THE WAY ACROSS ACCORDING TO JUST THE EXPLANATION OF CODE, WOULD BE THE DAY THAT HE WAS PRESENT THE WHOLE DAY.

A YEAH. ACCORDING TO THE SECOND PAGE. IT HAS A NOTATION WHERE THERE'S A DOT, THAT MEANS PRESENT.

Q SO, THE ONLY THING ON THE DEFENDANT'S RECORD, THEN, IS JUST EXPLANATION OF DAYS WHENEVER HE HAS SOME TYPE OF A VIOLATION, LIKE AN UNLAWFUL ABSENCE OR A TARDY. IT DOESN'T LIST THE DATES HE WAS ACTUALLY PRESENT. ISN'T THAT RIGHT?

A NO.

Q BECAUSE, OTHERWISE, HE WOULD HAVE NEVER BEEN IN SCHOOL HARDLY.

A YEAH. ACCORDING TO MY READING OF IT. AND, LIKE I SAID, AT THE TIME I'M SURE TALKED WITH SOMEBODY AND IT COULD HAVE BEEN, I THINK HE SAID, MS. LOCKLEAR OR SOMEBODY.

Q RIGHT.

A BUT I JUST DON'T REMEMBER.

Q OKAY.

MS. LIVELY: YOUR HONOR, I MOVE TO INTRODUCE THIS AS APPLICANT'S FOUR.

MS. RATIGAN: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON APPLICANT'S EXHIBIT FOUR WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION)

Q WERE YOU EVER GIVEN ANY INDICATION THAT THESE ALIBI WITNESSES WOULDN'T BE AVAILABLE TO COME TO TRIAL?

A NO. I MEAN, I DON'T SPECIFICALLY REMEMBER, BUT I'M SURE IF THAT WHAT THEY TESTIFIED TO-- I KNOW THAT HIS MOTHER AND STEPFATHER WERE AVAILABLE. NOW, MR. QUICK, I JUST DON'T KNOW. I NEVER WAS TOLD NOBODY COULD COME.

Q AND YOU DIDN'T SUBPOENA ANY OF THEM. CORRECT?

A NO.

Q NOW, I'M GOING TO JUMP BACK IN HIS MEMORANDUM TO THE ISSUE WHICH IS ON PAGE FOUR OF HIS APPLICATION, WHICH DEALS WITH THE ISSUE OF PROSECUTORIAL MISCONDUCT. OKAY?

A OKAY.

Q AND ONE OF THINGS THAT IS BROUGHT UP-- I BELIEVE WE'VE ALREADY DISCUSSED HOW WE BELIEVE THE SOLICITOR WAS USING PERJURED TESTIMONY IN ORDER TO PROVE THE ELEMENTS OF THE CRIME AGAINST MR. STATON. DO YOU RECALL THAT?

A YES.

Q WE'VE ALREADY DISCUSSED THAT WITH DAVIS AND RANSOM SAID. YOU CROSS EXAMINED THEM VERY WELL, BUT YOU DIDN'T ADDRESS THE ISSUE OF THE DATES THAT THE SOLICITOR BROUGHT UP IN THE CLOSING. YOU DIDN'T OBJECT TO THAT AS AN MISSTATEMENT OR ANYTHING OF THAT NATURE, DID YOU?

A NO. I DON'T RECALL, BUT IF THAT'S WHAT---

Q WELL, YOU DIDN'T MAKE ANY OBJECTIONS DURING THE CLOSING ARGUMENT.

A THAT'S RIGHT.

Q YOU'VE ALREADY STATED THAT?

A THAT'S RIGHT.

Q OKAY.

A I THINK THE ONLY OBJECTION WAS JAY ERVIN'S OBJECTION.

Q AND ISN'T IT TRUE THAT MR. ERVIN'S OBJECTION WAS NOT PROPERLY RULED ON BY THE COURT?

A YEAH. ACCORDING TO THE TRANSCRIPT THE JUDGE WAS BASICALLY TELLING HIM TO SIT DOWN.

Q AND SHUT UP.

A YEAH.

Q NOW, I UNDERSTAND THAT BY THAT TIME OF THE TRIAL THE FEELING THAT MOST OF THE DEFENSE ATTORNEYS HAD FROM WHAT YOU TOLD ME CONCERNING HOW THE JUDGE WAS GOING TO RULE ON ANY KIND OF OBJECTION THAT WAS MADE. IS THAT RIGHT?

A YEAH.

Q JUST BASED ON THE HISTORY OF WHAT HAD BEEN GOING ON IN THE CASE?

A I DIDN'T GO ALL THE WAY THROUGH THE TRANSCRIPT. I WENT OVER FROM WHAT WAS GONNA APPLY TODAY. BUT I, FROM MY RECOLLECTION, I DON'T REMEMBER HIM EVER GRANTING A DEFENSE MOTION.

Q ALL RIGHT. BUT AS A DEFENSE ATTORNEY, ESPECIALLY IN A CASE OF THIS NATURE, PRESERVING THE RECORD IS ALWAYS A VERY IMPORTANT ISSUE THAT YOU NEED TO ADDRESS FOR YOUR CLIENT.

A I AGREE.

Q ISN'T THAT RIGHT?

A YES, I AGREE.

Q AND THERE'S NO QUESTION THAT DURING THIS ENTIRE CLOSING ARGUMENT BY THE SOLICITOR NO PROPER OBJECTION WERE MADE ABOUT ANY OF THESE ISSUES?

A I THINK THE ONLY, WHAT YOU WOULD CALL AN OBJECTION, IS WHEN JAY ERVIN STOOD UP ABOUT THE GOLDEN RULE PART.

Q OKAY.

A BUT I DON'T THINK THERE WAS ANY OBJECTION ON THERE RECORD.

Q ALL RIGHT. AND YOU DIDN'T OBJECTION WHEN THE SOLICITOR PRESENTED THAT HE BELIEVED EVERYTHING THAT RANSOM AND DAVIS HAD TOLD YOU TO BE THE TRUTH?

A NO.

Q AND WHAT THEY'RE SAYING IS THE TRUTH.

A NO.

Q AND HIM BOLSTERING THEIR TESTIMONY BY STATING WHAT THEY STATED TO BE TELLING THE TRUTH, YOU DIDN'T OBJECT TO THAT EITHER?

A NO, I DIDN'T OBJECT DURING CLOSING ARGUMENTS.

Q AND THESE WERE THE SAME PEOPLE ON CROSS EXAMINATION YOU WERE ABLE TO SHOW THAT LIED SEVERAL TIMES AND ADMITTED TO LYING SEVERAL TIMES. ISN'T THAT RIGHT?

A YEAH.

Q NOW, ALSO, DURING THE CLOSING ARGUMENTS THE ONE THING YOU ALREADY MENTIONED WAS THE GOLDEN RULE BROUGHT UP BY MR. ERVIN, AND THE STATEMENT THAT WAS MADE BY THE SOLICITOR. DO YOU RECALL EXACTLY WHAT MR. WILSON SAID THAT RAISED, THAT GOT MR. ERVIN TO EVEN STAND UP AND OBJECT?

A I DON'T REMEMBER SPECIFICALLY, BUT IT WAS SOMETHING TO THE EFFECT IMAGINE IF YOU'RE AT HOME WITH THE CHILDREN, SOMETHING TO THAT EFFECT, AND I THINK THAT'S WHEN MR. ERVIN STOOD UP.

Q RIGHT. AND IT VERY, IT'S ABOUT ONE OF THE MOST BLATANT, GOLDEN RULE, AS YOU CALL IT, TYPE OF STATEMENTS THAT HAVE

EVER BEEN MADE. LOOK AT IT YOURSELF AND TELL ME WHAT YOU THINK. DON'T YOU THINK IT'S ABOUT ONE OF THE MOST BLATANT ONES, SAYING IMAGINE THEM ASSAULTING YOU, TOUCHING YOU, HAVING SEXUAL INTERCOURSE WITH YOU, AND YOU CAN'T FIGHT BECAUSE YOUR HANDS ARE TIED? NOW, THAT'S PRETTY BLATANT.

A I DID NOT RECALL THAT UNTIL I REVIEWED IT THIS MORNING. I KNOW AS A PROSECUTOR NOW YOU'RE NOT SUPPOSED TO PERSONALIZE THE JURY.

Q DON'T YOU BELIEVE THAT PART OF THE REASON WHY YOU ARE NOT TO DO THAT, THAT THE SUPREME COURT HAS SAID NOT TO DO THAT, DON'T YOU BELIEVE THAT THAT WOULD BE INFLAMMATORY AND CAUSE THE JURY TO USE THEIR OWN PERSONAL BELIEFS INSTEAD OF GOING FOR THE TRUTH OF WHAT REALLY HAPPENED AND USING COMMON SENSE?

A I DON'T THINK IT WAS PROPER, LOOKING BACK OVER IT.

Q AND ALSO, SPEAKING OF SOME OF THE IMPROPER ARGUMENTS, THERE WAS ALSO THE FACT THAT MR. WILSON RAISED THE ISSUE OF RELIGION IN HIS CLOSING ARGUMENT. DO YOU RECALL THAT?

A WHEN I WAS GLANCING AT IT THIS MORNING, I SAW SOME MENTION OF THAT.

Q I MEAN, HE GOES SO FAR AS TO ACTUALLY STATE TO THE JURY, DON'T YOU THINK SHE WOULD HAVE BEEN HAPPEN IF THEY HAD GIVEN HER AND CROSS AND SAID, HERE, GIRLIE, BEFORE WE DUMP YOU IN THIS RIVER, LET US GIVE YOU A CROSS TO PUT AROUND YOUR

NECK? HERE'S MY BIBLE, READ A VERSE OUT OF IT BEFORE WE DUMP YOU IN THE RIVER. DON'T YOU FIND THAT TO BE INFLAMMATORY?

A YEAH.

Q NOBODY OBJECTED TO THAT STATEMENT?

A AS FAR AS I KNOW THE ONLY ONE THAT STOOD UP DURING THE CLOSING WAS JAY ERVIN.

Q AND THE PROBLEM, ONCE AGAIN, WITH THIS WHOLE CASE, AND ALL THE DEFENDANTS BEING TRIED TOGETHER, EVEN IF HE WAS REFERRING TO ONE OR TWO OF THE CO-DEFENDANTS IN MAKING THIS REFERENCE, WHEN HE SAYS WE, IT LUMPS ALL SIX OF THEM TOGETHER. WOULDN'T YOU AGREE?

A YEAH.

Q AND THAT'S THE PROBLEM THAT YOU HAD TO DEAL WITH THE WHOLE TIME. ISN'T THAT RIGHT?

A YEAH. I KNOW I FILED MOTIONS FOR SEVERANCE AND SEVERAL OTHER ATTORNEYS, PROBABLY ALL ATTORNEYS DID. BUT THAT WAS THE BIGGEST PROBLEM I HAD REPRESENTING MR. STATON BECAUSE I DIDN'T THINK-- THERE WAS A LOT MORE EVIDENCE AGAINST SOME OF THE OTHER ONES AND I THOUGHT MAYBE HE GOT LUMPED IN THERE.

Q NOW, JUST BRIEFLY, THE LAST THING THAT I WANTED TO BRING UP WAS THE HEARSAY EVIDENCE THAT WAS BROUGHT IN CONCERNING MR. PEARSON'S STATEMENT AT THE TRIAL. NOW, HE WAS NOT AN AVAILABLE WITNESS. ISN'T THAT RIGHT?

A YEAH. NOW, HE HAD BEEN CHARGED, BUT I KNOW HE WAS NOT TRIED.

Q RIGHT.

A IF I'M REMEMBERING CORRECTLY, WHAT RALPH WILSON WANTED TO DO WAS TRY ALL THE NON-CAPITAL CASES TOGETHER, AND THEN ALL THE CAPITAL CASES TOGETHER. MR. PEARSON HAS NOT BEEN TRIED, AND IT'S MY UNDERSTANDING THERE'S STILL AN ISSUE ABOUT HIS COMPETENCY. SO, I KNOW HE WAS NOT TRIED THAT WEEK.

Q AND HE WAS ALSO NOT THERE OR AVAILABLE AS A WITNESS. IS THAT CORRECT?

A AS FAR AS I KNOW, HE WAS NOT.

Q NOW, AT THE TIME OF THE TRIAL, MR. SLOAN WAS THE ONE THAT TESTIFIED THAT HE WAS THERE ON THE TWELFTH WHENEVER RINGO SHOWED UP WITH, WAS IT JERRY WARD? AND THEN HE SAW ALFONSO STATON AT---

A I THINK JERRY WARD WAS ACTUALLY IN JAIL. HE WAS THE JAILHOUSE SNITCH THAT TESTIFIED.

Q OH, THAT'S RIGHT.

A I THINK YOU'RE REFERRING TO WHEN THEY WERE MAYBE AT BURGER KING OR SOMETHING.

Q OH, I'M SORRY. JEFFREY WALL. NOW, AT THAT TIME MR. SLOAN TESTIFIED THAT RINGO SAID THAT HE WAS GONNA GO AND GET MS. PATTERSON TO DO SOMETHING TO HIS PRIVATE PARTS. IS THAT CORRECT?

A I THINK THAT'S RIGHT.

Q IN THE PRESENCE OF ALFONSO, AS WELL AS MR. WALL?

A WASN'T THAT THE INCIDENT AT BURGER KING?

Q YEAH.

A RIGHT.

Q OKAY. SO THAT WAS THE STATEMENT BY HIM WHICH SHOWED IT BEING ON SATURDAY OF NOVEMBER TWELFTH. CORRECT?

A I DON'T RECALL THE DATE, BUT IF THEY SAY THAT WAS THE DATE, THEN... I DON'T DISAGREE THAT WAS THE DATE.

Q SO, HE PRESENTS THIS HEARSAY STATEMENT WHICH OBVIOUSLY BRINGS UP THE NAME OF YOUR CLIENT, ALFONSO STATON. CORRECT?

A YES.

Q SO, IF THE TESTIMONY PRESENTED BY MR. SLOAN WAS SOLELY BASED ON HEARSAY, WOULDN'T THE BETTER STRATEGY HAVE BEEN TO GET THE ENTIRE TESTIMONY EITHER STRICKEN OR NOT ALLOWED SO THAT YOUR CLIENT'S NAME WOULDN'T HAVE EVEN BEEN BROUGHT UP IN THE CHARACTERIZATION WITH THESE OTHER BAD GUYS?

A YOU'RE TALKING ABOUT SPECIFICALLY AS TO RINGO?

Q WELL, LET ME TELL YOU WHAT I'M GETTING AT. OR ASK YOU WHAT I'M TRYING TO SHOW. MR. SLOAN PROVIDED TWO HEARSAY STATEMENTS WHICH WERE PRETTY CRITICAL AGAINST MR. PEARSON. IS THAT RIGHT?

A ARE YOU TALKING ABOUT MR. PEARSON MADE AGAINST---

Q OH, I'M SORRY. THAT'S RIGHT. MR. PEARSON MADE AGAINST HIS OWN INTEREST.

A YES.

Q OKAY.

A I THINK THERE WAS ONE WHERE HE CONFESSED TO THE MURDER AND MR. SLOAN AND MR. STATON WERE THERE. AND THEN THE INCIDENT AT BURGER KING.

Q OKAY. SO, THE FIRST ONE, THE INCIDENT AT THE BURGER KING, HE SAID HE WAS GOING TO GET SOME ACTION FROM MS. PATTERSON, IN SO MANY WORDS.

A YES.

Q AND ALFONSO WAS THERE?

A YES.

Q AND THEN THE NEXT HEARSAY STATEMENT ISSUED AS TO WHAT MR. PEARSON SAID WAS ONCE AGAIN A STATEMENT THAT WAS MADE IN THE PRESENCE OF YOUR CLIENT, ALFONSO STATON. CORRECT?

A THAT'S CORRECT.

Q OKAY. SO, WOULD IT HAVE BEEN A BETTER STRATEGY TO HAVE HIS TESTIMONY, THE HEARSAY TESTIMONY THAT HE PRESENTED TO THE COURT, EITHER OBJECT TO IT, HAVE IT COMPLETELY-- YOU KNOW, DO A MOTION IN LIMINE TO KEEP IT OUT, THAT THE MENTION OF YOUR CLIENT'S NAME WOULD HAVE EVEN BEEN BROUGHT UP WITH REGARDS TO RINGO PEARSON?

A I DON'T KNOW I CAN SAY IT WOULD HAVE BEEN A BETTER STRATEGY. YOU STILL WOULD HAVE THE PROBLEM WITH DAVIS AND RANSOM'S TESTIMONY.

Q BUT YOU WERE ABLE TO DISCREDIT THEM VERY WELL. RIGHT?

A YEAH. BUT THE PROBLEM-- THEY FOUND THEM NOT GUILTY ON THE CRIMINAL SEXUAL CONDUCT. I JUST DON'T KNOW THAT I CAN SIT HERE AND SAY IT WOULD HAVE BEEN A BETTER STRATEGY. NATURALLY, BECAUSE THEY FOUND THEM GUILTY ON SOMETHING, YOU KNOW, I WOULD LIKE TO GO BACK AND DO A DIFFERENT STRATEGY. WHETHER IT WAS BETTER OR NOT, I JUST DON'T IF I CAN SAY THAT.

Q I UNDERSTAND. BUT IT'S TRUE YOUR CLIENT'S NAME WAS ONLY MENTIONED A VERY FEW TIMES BY ANY OF THE WITNESSES AT ALL. IS THAT CORRECT?

A THAT'S CORRECT.

Q SO, ELIMINATING ANY OF THAT MENTIONING OF HIS NAME WOULD PROBABLY HAVE BEEN A BETTER SCENARIO FOR HIM. DO YOU KNOW WHAT I'M SAYING?

A I DON'T KNOW. IT WOULDN'T HAVE HURT HIM. IT WOULDN'T HURT, BUT I DON'T KNOW-- THERE ARE DIFFERENT WAYS OF DOING IT AND I DON'T KNOW WHETHER THAT WOULD NECESSARILY BE A BETTER STRATEGY.

Q OKAY. THANK YOU, MR. ROGERS.

A OKAY.

MS. RATIGAN: I HAVE A FEW, QUICK QUESTIONS.

THE COURT: ALL RIGHT.

RE-DIRECT EXAMINATION BY MS. RATIGAN:

Q THE EXHIBIT, I BELIEVE EXHIBIT THREE, THE LETTER THAT YOU SENT TO THE SOLICITOR ABOUT THE ALIBI WITNESSES?

A IT IS.

Q DID THAT LETTER SPECIFICALLY AND DEFINITELY STATE THAT YOU WERE GOING TO PRESENT AN ALIBI DEFENSE?

A NO. BASICALLY WHAT IT SAYS IS I'M REQUESTING MORE SPECIFIC INFORMATION OR MORE DEFINITE TIME OF THE ALLEGED CRIMES SO I CAN PROVIDE HIM PROPER NOTICE ABOUT WHERE MY CLIENT WAS AT THE CERTAIN TIMES OF THE ALLEGED CRIMES.

Q WOULD IT BE FAIR TO SAY THAT LETTER COULD BE INTERPRETED THAT ONCE YOU GOT THAT INFORMATION YOU WOULD BE ABLE TO NOTIFY THE STATE ABOUT WHETHER OR NOT YOU HAD AN ALIBI DEFENSE?

A YES. AND IF I'M NOT MISTAKEN, THAT WAS-- WE HAD A PRE-TRIAL HEARING, IT SEEMS LIKE IT WAS THE END OF DECEMBER. THAT WOULD HAVE BEEN '96, BECAUSE IT WAS HELD AT THE MUNICIPAL COURTROOM FOR SOME REASON. AND I THINK THAT WAS WHEN IT WAS BROUGHT UP.

I THINK I MENTIONED EARLIER THERE WAS ANOTHER MR. ROGERS INVOLVED IN THE TRIAL. I THINK HIS NAME WAS JIMMY ROGERS. AND THE TRANSCRIPT SAYS MR. ROGERS AND THAT WAS ADDRESSED, I THINK, AT THAT PRE-TRIAL HEARING WHERE THE JUDGE, WE WERE ASKING THE JUDGE TO REQUIRE THE SOLICITOR TO PROVIDE US WITH MORE SPECIFIC DATES, AND THE JUDGE DENIED THAT MOTION, OR BASICALLY SAID THAT WAS IMPOSSIBLE FOR THEM TO DO.

Q YOU TESTIFIED ON DIRECT AND ON CROSS ABOUT JEFF GRAHAM'S TESTIMONY. WAS HE THE WITNESS THAT WAS DECLARED HOSTILE BY THE STATE?

A I DON'T RECALL. I THINK THAT WAS THE ONE SHE WAS ASKING ME ABOUT. I THINK MAYBE HE WAS.

Q DO YOU RECALL HIS TESTIMONY, WHETHER IT WAS ATTACKED BY BOTH THE SOLICITOR AND THE DEFENSE ATTORNEYS IN THIS CASE?

A I DON'T RECALL.

Q MS. LIVELY ALSO ASKED YOU ABOUT THE MURDER INDICTMENT, ABOUT THE LISTING OF ASPHYXIATION, STRANGULATION, THE AUTOPSY, THE DATE OF DEATH, THAT WHOLE ISSUE OF THE UNCERTAINTY.

WAS THE UNCERTAINTY OF THE VICTIM'S DEATH, INCLUDING SUCH AS THE MANNER OF, CAUSE OF, DATE OF DEATH, WAS THAT ARGUED TO THE JURY, ALL THAT EVIDENCE?

A YEAH. I THINK THAT WAS KIND OF THROUGHOUT THE TRIAL.

Q AND AGAIN, IS IT FAIR TO SAY THAT THE DEFENSE ATTORNEYS WERE KIND OF ACTING IN TANDEM IN TERMS OF EXAMINATION AND CROSS EXAMINATION?

A YEAH. WE WERE NATURALLY LOOKING OUT FOR OUR CLIENTS' BEST INTERESTS. BUT I KNOW EVERY DAY BEFORE COURT WE WOULD MEET. EVERY DAY AFTER COURT WE WOULD MEET. WE WOULD GO TO LUNCH TOGETHER. YOU KNOW, JUST SO EVERYBODY WOULD KNOW, SO TO SAY, WHAT PAGE EVERYBODY WAS ON.

MS. RATIGAN: THAT'S ALL I HAVE, YOUR HONOR. AND THAT WOULD BE THE STATE'S CASE.

MS. LIVELY: I HAVE JUST ONE THING, BASED ON HER QUESTIONS.

THE COURT: ALL RIGHT.

RE-CROSS EXAMINATION BY MS. LIVELY:

Q YOU STATED THAT THAT LETTER THAT YOU WROTE CONCERNING THE ALIBI WITNESSES WAS JUST A FORM LETTER THAT YOU SENT OUT TO GET MORE INFORMATION FROM THE SOLICITOR SO THAT YOU CAN PRESENT ALIBI WITNESSES?

A WHEN I SAY A FORM LETTER, I THINK THAT ABOUT A YEAR PRIOR TO BEING APPOINTED ON THIS CASE IS WHEN MYSELF AND MY LAW PARTNER OPENED UP OUR LAW OFFICE IN BENNETSVILLE. SO, I DON'T WHETHER THIS WOULD HAVE BEEN AN ACTUAL FORM LETTER THAT WE CAME UP WITH.

AT THE TIME WE WERE DOING CRIMINAL WORK, BUT WE WERE JUST GETTING STARTED WITH OUR PRACTICE. I USED TO PRACTICE DOWN AT THE BEACH. SO, WHEN I SAY FORM LETTER, IT MAY HAVE BEEN SOMETHING WE HAD ON OUR COMPUTER THAT WE WOULD DESIGN FOR EACH TYPE CASE WE HAD.

Q SO, AN ACTUAL NOTICE OF ALIBI WITNESSES TO THE SOLICITOR WOULD CLEAR UP THE ISSUE OF WHETHER OR NOT YOU HAD BROUGHT THIS INFORMATION UP AND INTENDED TO CARRY ON POSSIBLY AT TRIAL. IS THAT FAIR TO SAY? AN ACTUAL NOTICE OF ALIBI WITNESSES?

A I DON'T EVEN REMEMBER IF I SENT ONE IN.

Q OKAY.

MS. LIVELY: YOUR HONOR, MAY I APPROACH?

THE COURT: YES MA'AM.

Q LET ME JUST SHOW YOU THESE TWO DOCUMENTS, COLLECTIVELY. ONE'S FEBRUARY 24, AND ONE'S MARCH 13, BOTH IN THE YEAR 1997. IS THAT YOUR SIGNATURE ON BOTH OF THOSE DOCUMENTS?

A IT IS.

Q WHAT ARE THOSE DOCUMENTS?

A NOTICE OF ALIBI. IT'S LOOKS LIKE ONE, DATED MARCH 13, 1997, IT---

Q THAT WOULD HAVE BEEN RIGHT AT THE TIME OF TRIAL, WOULDN'T IT?

A YEAH. IT DOESN'T LOOK LIKE IT WAS FILED. I MEAN, IT DOESN'T HAVE A CLERK'S STAMP ON IT. NOW, THE ONE DATED FEBRUARY 24, 1997, HAS A CLERK'S STAMP ON IT.

Q WHO DOES IT MENTION AS BEING YOUR POTENTIAL ALIBI WITNESSES ON THE TWENTY-FOURTH?

A ON FEBRUARY 24, IT'S NOT REAL SPECIFIC. VARIOUS FAMILY MEMBERS, INCLUDING, BUT NOT LIMITED TO HIS MOTHER AND STEPFATHER, CUSTODIAN OF ATTENDANCE RECORDS FROM MARLBORO COUNTY HIGH SCHOOL AND OTHER WITNESSES THAT MAY BE CALLED ONCE A MORE DEFINITE TIME OF THE CRIMES HAS BEEN ESTABLISHED.

Q OKAY.

A AND THE MOTION SAYS THAT I RESERVE THE RIGHT TO OFFER AN ALIBI DEFENSE IF NECESSARY. AND I PROBABLY DID THAT TO MAKE SURE I COMPLIED WITH THE RULES.

Q OKAY.

A THEY WERE SENT TEN DAYS BEFORE TRIAL.

Q OKAY.

A NOW, THE OTHER ONE, THE MARCH ONE, WAS MORE SPECIFIC. IT LISTED SPECIFIC PEOPLE.

Q OKAY. LOOKING AT THE MARCH THIRTEENTH ONE AGAIN, IS THAT YOUR SIGNATURE?

A IT IS MY SIGNATURE.

Q WHAT WAS THE DATE OF TRIAL? I'M SORRY. I DON'T REMEMBER OFF THE TOP OF MY HEAD.

A (NO RESPONSE)

Q IT WAS IN MARCH OF 1997, WASN'T IT?

A YEAH. I CAN'T REMEMBER. I KNOW IT WAS MARCH OF '97.

Q DO YOU KNOW WHETHER THAT NOTICE OF ALIBI---

THE COURT: THE TRANSCRIPT SAYS MARCH 10, 1997, THROUGH MARCH 19, 1997.

MS. LIVELY: THANK YOU, YOUR HONOR.

Q SO, THE THIRTEENTH WOULD HAVE BEEN RIGHT IN THE MIDDLE OF THE TRIAL?

A IN THE MIDDLE, UH-HUH. IF THE TENTH WAS ON A MONDAY, THAT WOULD HAVE BEEN THURSDAY OR SO.

Q SO, YOU DON'T HAVE ANY RECOLLECTION OR NOT OF WHETHER THAT WAS ACTUALLY PRESENTED TO THE SOLICITOR IN THE CASE?

A I SURE DON'T.

Q BUT, WITHOUT A DOUBT, THAT'S YOUR SIGNATURE AND IT LISTS POTENTIAL ALIBI WITNESSES FOR YOUR CLIENT. IS THAT RIGHT?

A YEAH. KATHEY JOHNSON, THE CUSTODIAN OF THE ATTENDANCE RECORDS, LARRY GRAHAM, LARRY QUICK, ANTHONY GRAHAM AND WILLIE LEE.

MS. LIVELY: YOUR HONOR, I WOULD MOVE TO INTRODUCE THESE AS APPLICANT'S FIVE.

MS. RATIGAN: I WOULD OBJECT TO THE MARCH LETTER. I MEAN, IT'S SIGNED AND DATED, BUT IT WAS NEVER FILED. I DON'T BELIEVE IT'S PROPERLY BEFORE THE COURT.

MS. LIVELY: MAY I RESPOND?

THE COURT: YOU MAY.

MS. LIVELY: HE HAS RECOGNIZED IT AS HIS SIGNATURE. THE WHOLE ISSUE IS WHETHER OR NOT HE HAD NOTICE OF THESE ALIBI WITNESSES. HE LISTS THE NAME OF THE WITNESSES THAT WE STATED IN OUR PCR APPLICATION THAT WE WANTED TO HAVE CALLED ON BEHALF OF MR. STATON. SO, IT'S RELEVANT AT LEAST ON THAT ISSUE.

MS. RATIGAN: I WOULD SIMPLY STATE THAT HE HAS ALREADY STATED THAT HE KNEW THOSE ALIBI WITNESSES AND THAT YOU HAVE THAT NOTE SUBMITTED AS APPLICANT'S TWO INDICATING MR. QUICK. SO, THAT'S ALREADY IN THE RECORD. I DON'T KNOW THAT THIS WOULD ADD---

THE COURT: I WILL ALLOW IT. I THINK IT GOES TO THE ISSUE OF HIS KNOWLEDGE AND WHO WAS AVAILABLE AT THE TIME THE TRIAL WAS PROCEEDING.

MS. LIVELY: THANK YOU. DO YOU WANT TO DO IT AS ONE EXHIBIT, YOUR HONOR?

THE COURT: EITHER WAY.

MS. LIVELY: WE'LL JUST DO IT AS ONE, THEN.

.(WHEREUPON APPLICANT'S EXHIBIT FIVE WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION)

MS. LIVELY: I HAVE NO FURTHER QUESTIONS.

MS. RATIGAN: THE STATE HAS ONE QUESTION REGARDING ALIBI WITNESSES.

THE COURT: ALL RIGHT.

RE-DIRECT EXAMINATION BY MS. RATIGAN:

Q DO YOU NOT RECALL EITHER SENDING OR FILING EITHER OF THESE LETTERS?

A I THINK THE ONE DATED FEBRUARY 24, HAS A CLERK'S STAMP ON IT, BUT THE MARCH ONE DOES NOT.

Q DO YOU RECALL?

A I DON'T.

MS. RATIGAN: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN.

MS. RATIGAN: THAT WOULD BE THE STATE'S CASE, YOUR HONOR.

MS. LIVELY: AND YOUR HONOR, I WOULD ASK TO RECALL MY CLIENT JUST ON THE ISSUE OF SCHOOL RECORDS, THAT EXHIBIT, JUST FOR THE LIMITED PURPOSE OF THAT.

THE COURT: ALL RIGHT. YOU MAY DO SO.

ALFONSO STATON, RECALLED TO THE STAND, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. LIVELY:

Q MR. STATON, HAD YOU EVER SEEN THE DOCUMENTS FROM YOUR SCHOOL AT THAT TIME CONCERNING YOUR ATTENDANCE RECORDS?

A AT WHAT TIME?

Q AT THE TIME OF TRIAL?

A NO.

Q WHEN WAS THE FIRST TIME THAT YOU SAW THE ATTENDANCE RECORDS FOR YOU, WHICH WOULD HAVE BEEN RELEVANT TO THE DATES WHEN THIS CRIME OCCURRED?

A WHEN DID I RECEIVE THAT DOCUMENT?

Q YES.

A SINCE I BEEN LOCKED UP.

Q WERE YOU AWARE THAT MR. ROGERS HAD THAT DOCUMENT WHEN YOU WENT TO TRIAL AS A POTENTIAL ALIBI DOCUMENT ON YOUR BEHALF?

A AT THAT TIME, I DIDN'T KNOW IT WAS ALIBI, BUT I KNEW HE HAD IT.

Q THOSE TWO NOTICES OF ALIBI DOCUMENTS THAT I JUST GAVE YOU THAT WERE SIGNED BY MR. ROGERS, DID YOU SEE WHERE HE LISTED THE CUSTODIAN OF THE SCHOOL RECORDS ON THAT?

A YES MA'AM.

Q NOW THAT YOU'VE LOOKED AT THE ACTUAL SCHOOL RECORDS ARE YOU FAMILIAR WITH WHAT YOUR SCHOOL PRESENTED FOR YOU, WHETHER OR NOT YOU WERE PRESENT, TARDY, UNEXCUSED, EXCUSED? DO YOU UNDERSTAND HOW THE SCHOOL RECORD READS?

A YES.

Q MR. STATON, ON THE SCHOOL RECORDS, ON THE SECOND PAGE, WHAT DO THESE LITTLE DIFFERENT LETTERS AND SYMBOLS MEAN ON YOUR RECORD?

A THE BIG U IS FOR UNLAWFUL.

Q YOU DON'T HAVE TO READ ME ALL OF THEM, BUT WHAT DO THEY STAND FOR? IF YOU'RE PRESENT IN SCHOOL FOR A FULL DAY HOW DOES IT READ ON THAT RECORD?

A IT WOULDN'T READ.

Q WHY?

A BECAUSE I WAS AT SCHOOL UNLESS IT WAS A TARDY.

Q SO, IF IT'S A TARDY OR AN UNEXCUSED, IT'S LISTED?

A YES MA'AM.

Q BUT PRESENT DAYS ARE NOT?

A RIGHT.

Q SO, ON THIS DOCUMENT I SEE WHERE THERE'S SOMETHING HIGHLIGHTED. WHO HIGHLIGHTED THAT?

A I DID.

Q YOU DID.

A YES.

Q WHAT ARE THOSE DATES?

A WELL, THURSDAY IS 11/17/94, AND WEDNESDAY, 11/23/94.

Q OKAY. IS THE DATE OF NOVEMBER FOURTEENTH OR FIFTEENTH LISTED ON THAT DOCUMENT?

A NO MA'AM.

Q THE FIRST DATE SHOWING THAT YOU HAD ANY TYPE OF PROBLEM WITH SCHOOL IS THE SEVENTEENTH? IS THAT WHAT YOU SAID?

A RIGHT.

Q OKAY. AND YOU WERE ACTUALLY PRESENT FOR MOST OF THAT DAY EXCEPT FOR ONE OF YOUR PERIODS. RIGHT?

A I WAS PRESENT THEN. I WAS JUST TARDY.

Q TARDY. OKAY. THANK YOU. ANSWER ANY QUESTIONS THE ATTORNEY GENERAL MAY HAVE.

MS. RATIGAN: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU. YOU MAY STAND DOWN.

MS. LIVELY: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: I'LL BE GLAD TO HEAR FROM THE APPLICANT IN SUMMARY.

MS. LIVELY: MAY IT PLEASE THE COURT, YOUR HONOR. I HOPE THAT I CAN BE A LITTLE MORE CONCISE THAN WHAT THE DEFENSE ATTORNEYS HAD TO DEAL WITH DURING THE TRIAL. WITHOUT A

Q THOSE TWO NOTICES OF ALIBI DOCUMENTS THAT I JUST GAVE YOU THAT WERE SIGNED BY MR. ROGERS, DID YOU SEE WHERE HE LISTED THE CUSTODIAN OF THE SCHOOL RECORDS ON THAT?

A YES MA'AM.

Q NOW THAT YOU'VE LOOKED AT THE ACTUAL SCHOOL RECORDS ARE YOU FAMILIAR WITH WHAT YOUR SCHOOL PRESENTED FOR YOU, WHETHER OR NOT YOU WERE PRESENT, TARDY, UNEXCUSED, EXCUSED? DO YOU UNDERSTAND HOW THE SCHOOL RECORD READS?

A YES.

Q MR. STATON, ON THE SCHOOL RECORDS, ON THE SECOND PAGE, WHAT DO THESE LITTLE DIFFERENT LETTERS AND SYMBOLS MEAN ON YOUR RECORD?

A THE BIG U IS FOR UNLAWFUL.

Q YOU DON'T HAVE TO READ ME ALL OF THEM, BUT WHAT DO THEY STAND FOR? IF YOU'RE PRESENT IN SCHOOL FOR A FULL DAY HOW DOES IT READ ON THAT RECORD?

A IT WOULDN'T READ.

Q WHY?

A BECAUSE I WAS AT SCHOOL UNLESS IT WAS A TARDY.

Q SO, IF IT'S A TARDY OR AN UNEXCUSED, IT'S LISTED?

A YES MA'AM.

Q BUT PRESENT DAYS ARE NOT?

A RIGHT.

Q SO, ON THIS DOCUMENT I SEE WHERE THERE'S SOMETHING HIGHLIGHTED. WHO HIGHLIGHTED THAT?

A I DID.

Q YOU DID.

A YES.

Q WHAT ARE THOSE DATES?

A WELL, THURSDAY IS 11/17/94, AND WEDNESDAY, 11/23/94.

Q OKAY. IS THE DATE OF NOVEMBER FOURTEENTH OR FIFTEENTH LISTED ON THAT DOCUMENT?

A NO MA'AM.

Q THE FIRST DATE SHOWING THAT YOU HAD ANY TYPE OF PROBLEM WITH SCHOOL IS THE SEVENTEENTH? IS THAT WHAT YOU SAID?

A RIGHT.

Q OKAY. AND YOU WERE ACTUALLY PRESENT FOR MOST OF THAT DAY EXCEPT FOR ONE OF YOUR PERIODS. RIGHT?

A I WAS PRESENT THEN. I WAS JUST TARDY.

Q TARDY. OKAY. THANK YOU. ANSWER ANY QUESTIONS THE ATTORNEY GENERAL MAY HAVE.

MS. RATIGAN: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU. YOU MAY STAND DOWN.

MS. LIVELY: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: I'LL BE GLAD TO HEAR FROM THE APPLICANT IN SUMMARY.

MS. LIVELY: MAY IT PLEASE THE COURT, YOUR HONOR. I HOPE THAT I CAN BE A LITTLE MORE CONCISE THAN WHAT THE DEFENSE ATTORNEYS HAD TO DEAL WITH DURING THE TRIAL. WITHOUT A

DOUBT, THEY WERE FACED WITH A MAJOR, UPHILL BATTLE FOR ALL THESE DEFENDANTS.

BUT I THINK THE MOST IMPORTANT THING IS EXACTLY WHAT MR. ROGERS AGREED WITH ME ABOUT, THAT DESPITE WHATEVER THINGS THEY HAD TO DO, PROTECTING YOUR CLIENT'S INTEREST WAS THE MOST IMPORTANT THING. AND I THINK THAT DESPITE EVERYTHING MR. ROGERS DID AND FAILED TO DO IN THIS CASE, WHETHER IT WAS STRATEGY OR NOT, I THINK THAT OUR APPLICATION SUPPORTS THAT.

SPECIFICALLY, ON THE ALIBI WITNESSES. WE HAVE HIS HANDWRITING WHICH SHOWS THAT HE GOT INFORMATION SOMEWHERE AS TO WHAT DATES PARTICULAR PEOPLE WOULD BE AVAILABLE TO BE ALIBI WITNESSES. BUT WE ALSO HEAR FROM MR. QUICK THAT HE WAS NEVER CONTACTED BY MR. ROGERS.

ALL THESE PEOPLE WERE AVAILABLE ON THE ONLY DATES THAT WERE EVER PRESENTED IN THE CASE BY THE SOLICITOR, THE TWELFTH AND FOURTEENTH. THESE WERE DATES THAT WERE BROUGHT UP AS BEING DATES OF THE CRIME. THE FORENSIC PATHOLOGIST BROUGHT UP THE DATE OF THE TWELFTH AS BEING THE DATE THAT SHE DIED. THAT'S THE DATE THAT SHE DISAPPEARED, FROM HER OWN SISTER'S TESTIMONY.

BUT THOSE DATES ARE EXTREMELY IMPORTANT, EVEN THOUGH WE DON'T KNOW FROM A PRACTICAL STANDPOINT AS TO WHETHER IT TOOK TWO WEEKS FOR THIS TO HAVE OCCURRED, WHEN IT COULD HAVE OCCURRED. AND WHEN A JURY IN HEARING THIS INFORMATION

AND IT STICKS OUT IN THEIR MINDS, ESPECIALLY WHEN IT'S REITERATED BY THE PROSECUTOR, PROBABLY THAT BY NOT PRESENTING THESE ALIBI WITNESSES ON BEHALF OF MR. STATON, AS CONFUSING AS ALL THIS TESTIMONY WAS ABOUT WHO DID WHAT I THINK IT RISES, OR IT LOWERS ITSELF TO THE LEVEL OF BEING INEFFECTIVE.

AND OBVIOUSLY, BY NOT CALLING ANY OF THESE WITNESSES, IT WAS PREJUDICIAL TO MR. STATON BECAUSE HE WAS FOUND GUILTY ON THE CHARGES. AND I THINK WHENEVER YOU DON'T ADDRESS THOSE ISSUES AND BRING IN ALIBI WITNESSES IN A CASE SUCH AS THIS, ESPECIALLY WHEN OTHER DEFENDANTS HAVE PRESENTED SOME DEFENSE, THEN YOU'VE GOT MR. STATON HANGING OUT THERE JUST ON WHEN HIS NAME WAS BROUGHT UP BY PARTICULAR WITNESSES IN THE CASE.

THREE WITNESSES, YOUR HONOR, WHO BROUGHT HIM UP. ONE OF THEM BEING ON HEARSAY TESTIMONY ISSUES BY MR. SLOAN THAT TESTIFIED THAT RINGO PEARSON CONFESSED. WELL, THERE WAS NO OBJECTION TO THIS HEARSAY TESTIMONY. AND I UNDERSTAND THAT MR. ROGERS STATED THAT HE BELIEVED IT HELPED HIS CLIENT MORE THAN HURT HIM TO LET THAT INFORMATION IN.

HOWEVER, IN THE PROSECUTOR'S OWN CLOSING ARGUMENT HE GOES INTO THE FACT THAT MR. SLOAN BRINGS UP THAT THEY'RE GOING TO GO FIND MS. PATTERSON AND HAVE HER SEXUALLY GRATIFY THEM IN ALFONSO'S PRESENCE. AND EVEN THE PROSECUTOR MAKES THE STATEMENT OF, DO YOU THINK HE WAS JUST

STANDING AROUND AND DIDN'T WANT A PART OF IT. I MEAN, IT WAS ALLUDED TO BY THE SOLICITOR. EVERY TIME MR. STATON'S NAME WAS MENTIONED WAS A DISSERVICE TO HIM.

THESE HEARSAY STATEMENTS SHOULD HAVE BEEN OBJECTED TO. IT WAS INFLAMMATORY AND IT DEFINITELY PUT HIM IN A POSITION OF NOT HAVING TO BRING UP ALIBI WITNESSES FOR THAT DATE WHEN HE WAS ALLEGEDLY, POTENTIALLY WITH RINGO. BUT IT ALSO SHOULDN'T HAVE BEEN ENTERED INTO. THE TESTIMONY SHOULD NOT HAVE BEEN ALLOWED IN THE FIRST PLACE, OR AT LEAST SHOULD HAVE BEEN OBJECTED TO BY MR. ROGERS.

NOW, THE OTHER THING IS, WHENEVER THE SOLICITOR WENT THROUGH HIS CLOSING ARGUMENT, THERE IS SO MUCH IN THERE, I BELIEVE THE REASON WHY MR. STATON SAID THE WHOLE THING SHOULD HAVE BEEN OBJECTED TO, IS WHEN WE WENT THROUGH IT, THERE WAS JUST SO MUCH THAT WAS INFLAMMATORY. BUT I'LL JUST ADDRESS THE THREE THINGS THAT WE BROUGHT UP IN OUR PCR APPLICATION.

FIRST OF ALL: THE MISSTATEMENTS BY THE SOLICITOR IN HIS CLOSING ABOUT THE DATES THAT CERTAIN WITNESSES SAW DIFFERENT PEOPLE, INCLUDING MR. STATON. THAT NEEDED TO BE CLEARED UP, ESPECIALLY SINCE MR. STATON DIDN'T PRESENT ANY WITNESSES OR ANY ALIBI CONCERNING HIS WHEREABOUTS ON THOSE DATES. THAT NEVER HAPPENED. THERE WAS NO OBJECTION TO THAT.

THE OTHER THING IS, WHENEVER MR. ERVIN STOOD UP AND SAID THAT HE OBJECTS TO THE STATEMENT ABOUT THE GOLDEN

RULE, BUT WE NEVER GET A RULING FROM THE COURT AND SO IT'S JUST HANGING OUT THERE. AND WHAT DOES THE SOLICITOR, HE JUST KEEPS GOING. AND THAT IS ONE OF THE MOST BLATANT STATEMENTS OF THE GOLDEN RULE THAT I'VE EVER SEEN.

AND IF YOU READ THROUGH IT ON PAGE SIXTEEN AND FIFTEEN, I MEAN, THERE'S NO DOUBT THAT HE'S ASKING THE JURY TO PUT THEMSELVES IN THAT POSITION.

AND THEN HE GOES ON FURTHER TO INFLAME THE JURY AND TO RAISE THEIR PASSION IN SUCH A WAY WHERE HE TALKS ABOUT HOW DISGUSTED HE IS WITH ONE OF THE DEFENDANTS, BUT THEN HE LUMPS THEM ALL TOGETHER AGAIN, SAYING WE'RE GOING TO DUMP HER OFF IN THE RIVER AND GET THIS CROSS TO PUT AROUND HER NECK; HERE'S MY BIBLE, READ YOU A VERSE BEFORE WE THROW YOU IN THIS RIVER.

THERE IS NO REASON FOR THIS STATEMENT. THERE'S NO BASIS FOR IT OTHER THAN TO INFLAME THE JURY. THAT WAS NO OBJECTED TO AS WELL. BASICALLY, THE SOLICITOR WAS ALLOWED TO TAKE THE BALL, RUN WITH IT. AND I BELIEVE AT THAT POINT THE DEFENSE ATTORNEYS MAY HAVE HAD THEIR REASONS FOR DOING THAT, BUT IT WAS TO THE DETRIMENT OF MR. STATON WITHOUT A DOUBT.

AND I'LL JUST MENTION A COUPLE OF CASES ON MY POINT, ONE OF THEM BEING VON DOHLEN VERSUS THE STATE OF SOUTH CAROLINA. IT BOLSTERS OUR POSITION CONCERNING THE ALIBI WITNESSES WHICH---

THE COURT: YOU ARE LOOKING NOW AT THE MEMORANDUM THAT WAS PRESENTED BY MR. STATON, OR ARE YOU LOOKING AT SOMETHING ELSE WHEN YOU ARE GIVING ME THESE CITATIONS?

MS. LIVELY: I'M SORRY, YOUR HONOR. I PULLED THESE TWO CASES LAST NIGHT.

THE COURT: ALL RIGHT.

MS. LIVELY: AND I APOLOGIZE.

THE COURT: NO PROBLEM. THOSE ARE, AGAIN, WHAT?

MS. LIVELY: THIS IS HERMAN VON DOHLEN VERSUS THE STATE OF SOUTH CAROLINA. IT'S A SUPREME COURT CASE DATED AUGUST, 2004. IT WAS AN APPEAL FROM A PCR. ONE OF THE ISSUES WAS WHETHER OR NOT-- IT WAS A CAPITAL CASE. WHETHER OR NOT THE ATTORNEY HAD BEEN INEFFECTIVE FOR FAILING TO ADEQUATELY AND PRESENT EVIDENCE IN THE PENALTY PHASE; THAT THE DEFENDANT WAS SUFFERING FROM A SEVERE CHRONIC DEPRESSION AND OTHER THINGS TO MITIGATE THE SITUATION.

THEN IT GOES INTO THE CASE OF STRICKLAND WHICH STATES THAT COUNSEL IS NOT REQUIRED TO INVESTIGATE EVERY CONCEIVABLE LINE OF MITIGATING EVIDENCE OR THAT THE SUBMISSION OF SUCH EVIDENCE BE RETAINED. STRATEGIC CHOICE IS MADE AFTER A COMPLETE INVESTIGATION IS REASONABLE, BUT ONLY TO THE EXTENT THAT REASONABLE, PROFESSIONAL JUDGMENT THWARTS THE LIMITATIONS ON THE INVESTIGATION. A DECISION NOT TO INVESTIGATE MUST BE DIRECTLY ASSESSED FOR REASONABLENESS.

SO, IN MR. STATON'S CASE WHAT WE HAVE TO LOOK AT IS WHETHER OR NOT IT IS REASONABLE FOR MR. ROGERS TO DETERMINE THAT NOT CALLING THESE ALIBI WITNESSES WOULD NOT BE A DETRIMENT TO MR. STATON. AND WE CONTEND THAT THERE IS NO WAY THAT BY NOT CALLING THESE ALIBI WITNESSES THAT THE JURY COULD BE LEFT WITH ANY OTHER CONCLUSION THAT HE WAS LUMPED IN WITH EVERYBODY ELSE. IT JUST SEPARATES HIM OUT.

AND ALSO IT MENTIONS THE GOLDEN RULE ISSUE IN THE SAME CASE, THAT THERE WAS NOT---

THE COURT: WHAT'S THE CITATION ON VAN DOHLEN?

MS. LIVELY: YES SIR. I'VE JUST GOT THE OPINION NUMBER, YOUR HONOR, IF THAT'LL HELP YOU. I'LL HAND THIS UP TO YOUR HONOR. IT'S OPINION NUMBER 25861.

NOW, THE COURT DID REVERSE ON THE FAILURE TO PRESENT THE EVIDENCE AS IT SHOULD HAVE CONCERNING HIS MENTAL DEFICIENCY. IT MENTIONED THE GOLDEN RULE ARGUMENT AND SAID THEY SHOULD HAVE OBJECTED. HOWEVER, THEY SAID IT DID NOT RAISE TO THE LEVEL OF BEING INEFFECTIVE ASSISTANCE OF COUNSEL.

BUT THEY GO THROUGH EVERYTHING. AND WHAT THE REVIEW IS SUPPOSED TO BE IS THE STANDARD OF WHETHER HIS COMMENTS SO AFFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONDITION A DENIAL OF DUE PROCESS. AND THAT HIS CLOSING ARGUMENT MUST BE CAREFULLY TAILORED SO THAT IT DOES NOT APPEAL TO THE PERSONAL BIAS OF THE JURY.

WELL, THOSE WORDS TO THE JURY: CAN YOU IMAGINE BE TAPED UP? CAN YOU IMAGINE THESE MEN HAVING SEX WITH YOU? CAN YOU IMAGINE YOUR FACE BEING TAPED UP? THEN SAYING: WHAT ABOUT, YOU KNOW, DID SHE HAVE A CHANCE TO READ THROUGH A BIBLE VERSE FIRST BEFORE THEY THREW HER OFF THE BRIDGE.

THERE IS NO BASIS FOR THESE STATEMENTS. WE WOULD CONTEND THAT THESE DEFINITELY RISES TO THAT LEVEL. AND I HAVE ONE OTHER CASE, YOUR HONOR. I WILL PASS UP VAN DOHLEN TO YOU.

THE OTHER CASE I HAVE, YOUR HONOR, IS A COURT OF APPEALS CASE. IT'S THE STATE VERSUS WILLIE BERLE REESE. THIS ONE THE COURT DID REVERSE. AND THE STATEMENT THAT WAS ACTUALLY MADE IN THIS CONCERNING THE GOLDEN RULE ARGUMENT AS WELL, YOUR HONOR. THE STATEMENT THAT WAS MADE IN HERE WAS EVEN LESS EGREGIOUS THAN THE STATEMENT THAT WAS MADE IN MY CLIENT'S CURRENT CASE.

ALL IT SAID WAS YOU HAVE TO SPEAK FOR HER, THE VICTIM. YOU CAN SPEAK TO HER WITH YOUR VERDICT. AND THE DEFENSE ATTORNEY OBJECTED AND ASKED FOR A CURATIVE INSTRUCTION, BOTH OF WHICH WERE DENIED. NOW, THIS ONE WAS REVERSED BASED ON THOSE STATEMENTS.

SO, I CONTEND TO YOU THAT THE STATEMENTS THAT WERE MADE IN MR. STATON'S CASE FAR, FAR EXCEED EVEN THAT

STATEMENT WHICH THE COURT HAS HELD WAS IMPROPER. AND YOUR HONOR, I WILL PASS THIS UP AS WELL.

AND FINALLY, YOUR HONOR, ON THE SMALLER ISSUE OF THE INDICTMENT, MR. ROGERS DID NOT OBJECT TO THE ELEMENT OF MURDER BEING INACCURATE. HE DIDN'T CROSS EXAMINE THE FORENSIC PATHOLOGIST ON THE ISSUE. THAT ALSO WAS AN ISSUE WHICH AT LEAST SHOULD HAVE BEEN ADDRESSED. AND HE COULD HAVE PRESERVED THE RECORD BY OBJECTING IN SOME NATURE AND THERE WAS NO OBJECTION MADE.

SO, OUR POSITION IS THAT DESPITE THE DIFFICULTIES OF THIS CASE, WHICH IS OBVIOUS TO ANYONE ELSE WHO WOULD READ THROUGH THE TRANSCRIPT, THAT IF NOTHING ELSE, MR. STATON, HIS RIGHTS WERE NOT PROTECTED AND THEREFORE HE SHOULD BE GIVEN THE OPPORTUNITY TO HAVE HIS CONVICTION REVERSED. THANK YOU.

THE COURT: THANK YOU.

MS. RATIGAN: YOUR HONOR, I THINK IF YOU LOOK AT THE WHOLE RECORD AND MAKE SOME DECISIONS ABOUT WHAT SHOULD AND SHOULD NOT HAVE HAPPENED, I'M A LITTLE AFRAID WE'RE GETTING INTO THE AREA OF GOING BACK INTO THIS CASE.

WE HAVE TO REMEMBER THIS WAS A SIX-DEFENDANT TRIAL, SEVEN ATTORNEYS, NINE DAYS, IN FRONT OF A JUDGE WHO, IF YOU READ THE RECORD, I DO NOT BELIEVE HE DID SUPPRESS ANY INFORMATION.

ARTICULATED STRATEGY WAS TESTIFIED TO ON THE STAND. I MEAN, IT READS IN THE RECORD AND I BELIEVE THAT EVERYONE

WOULD AGREE THAT MR. STATON'S NAME IS MENTIONED BY ANY OF THE WITNESSES. AND THE STRATEGY WAS TRYING TO KEEP A LOW PROFILE, TRY TO FLY UNDER THE RADAR AS MUCH AS POSSIBLE BECAUSE THERE WAS LESS EVIDENCE.

AND MR. ROGERS TESTIFIED THAT THIS WAS ONE OF THE THINGS THAT IMPACTED HIS DECISION NOT TO OBJECT DURING THE PROSECUTION'S CLOSING. THE LESS HE BROUGHT UP THE BETTER. AND THAT WAS INFORMATION ELICITED BY MS. LIVELY, HE DIDN'T WANT HIS NAME BROUGHT UP. HE DIDN'T WANT TO BRING IT UP TO THE JURY AGAIN. HE WANTED TO KEEP HIS NAME OUT OF IT AS MUCH AS POSSIBLE.

I THINK A VALID STRATEGY WAS ARTICULATED AT THE TIME. I THINK IT WAS COMPLETELY REASONABLE BASED ON HOW THINGS WERE BROUGHT UP DURING THAT TRIAL DURING THAT NINE DAYS AND BASED ON THE WAY JUDGE COTTINGHAM WAS RULING, I THINK IT WAS A VALID STRATEGY.

FURTHERMORE, THE TESTIMONY BY MR. SLOAN ABOUT RINGO PEARSON SAYING THAT HE WAS THE ONE THAT MURDERED THAT GIRL. AND MR. ROGERS AGAIN ARTICULATED A VALID STRATEGY NOT TO OBJECT BECAUSE THE TESTIMONY WAS THAT RINGO PEARSON KILLED THAT GIRL, NOT HIS CLIENT. SO, WHY WOULD HE OBJECT TO THAT? THAT SEEMS TO BE A PERFECTLY VALID THING TO DO AT THE TIME.

MS. LIVELY STATED HE WANTED TO KEEP HIS NAME OUT OF IT AS MUCH AS POSSIBLE. THE PROBLEM IS BY THE TIME THAT MR.

STATON'S NAME WAS MENTIONED TO THE JURY, HIS NAME WAS ALREADY OUT THERE. SO, TRYING TO EXCLUDE TESTIMONY BY OBJECTING ALL THE TIME WAS NOT KEEPING HIS NAME OUT. IT WOULD DRAW THE JURY'S ATTENTION TO THE FACT THAT WE'RE TALKING ABOUT MR. STATON AT THE TIME.

I BELIEVE THE TESTIMONY AND THE RECORD IS REPLETE WITH INFERENCES WHERE THE STATE'S WITNESSES WERE ATTACKED AND DISCREDITED. ONE OF THEM WAS PROVEN TO BE HOSTILE, ATTACKED BY BOTH THE SOLICITOR AND ALL THE DEFENSE ATTORNEYS.

AND AGAIN, THAT WAS A TEAM STRATEGY IN THIS CASE. MR. ROGERS TESTIFIED THAT WHOEVER WAS UP FIRST WOULD DO A CROSS EXAMINATION AND THE OTHER ONES WOULD TRY TO FILL IN THE GAPS AS BEST AS POSSIBLE. HE MAY NOT HAVE ASKED THE QUESTIONS, BUT THE QUESTIONS WERE ASKED OF THESE WITNESSES.

THERE WAS A LOT OF CONFLICTING EVIDENCE IN THIS CASE. AGAIN, I DON'T THINK ANYBODY IS GOING TO ARGUE AGAINST THAT. IT WAS A VERY CONFUSING CASE WITH A LOT OF INFORMATION FROM STATE'S WITNESSES WHO WERE ALSO CO-DEFENDANTS. THERE WAS PHYSICAL EVIDENCE IN THE CASE. BUT THE FACT OF THE MATTER WAS IT WAS A JURY TRIAL AND THE JURY IS THE FINDER OF THE FACTS. AND THE DIRECTED VERDICT ISSUES WERE UPHELD ON APPEAL.

AND FURTHERMORE, OBVIOUSLY THE JURY DID SIFT THROUGH THIS INFORMATION BECAUSE MR. STATON WAS FOUND NOT GUILTY

OF FIRST DEGREE CRIMINAL SEXUAL CONDUCT, A CRIME FOR WHICH HE WAS INDICTED FOR.

REGARDING THE ALIBI WITNESSES, MR. ROGERS TESTIFIED THAT HE TALKED TO MR. STATON'S MOTHER AND STEPFATHER ABOUT THERE WERE THESE WITNESSES WHO WOULD HAVE GIVEN AN ALIBI FOR NOVEMBER TWELFTH, THE DATE IN THE INDICTMENT. HE STATED THAT HE TALKED TO THEM AND THAT THEY DID LIKELY DISCUSS AN ALIBI, BUT HE DID NOT TELL THEM THAT THEY WOULD HAVE TO TESTIFY. IT IS NOT HIS RECOLLECTION THAT THEY WOULD TESTIFY TO ALIBI FOR MR. STATON.

AND MR. QUICK TESTIFIED TODAY, WHICH TODAY, IF WE'RE GOING TO KEEP TALKING ABOUT THE TWELFTH BEING THE DAY OR THE FOURTEENTH BEING THE DAY IN THE CLOSING ARGUMENT, THEN THE TESTIMONY ABOUT THE THIRTEENTH IS IRRELEVANT.

MR. ROGERS TESTIFIED THAT HE DID NOT RECALL IF HE TALKED TO THESE OTHER ALIBI WITNESSES. HE MAY OR MAY NOT HAVE. HE SIMPLY JUST DOES NOT RECALL. HE DID HAVE THEM LISTED. YOUR HONOR HAS SEEN THAT, BUT HE SIMPLY CANNOT REMEMBER THE SPECIFIC WITNESSES HE TALKED TO. HE DID SAY HE TALKED TO SOME OF THEM, BUT THAT THEY DID NOT ADD MUCH TO THE CASE.

FINALLY, ABOUT THE GOLDEN RULE. IT'S VERY EASY TO LOOK BACK NOW AND SAY THERE SHOULD HAVE BEEN A MORE FORCEFUL OBJECTION. THE FACT OF THE MATTER IS IT WAS OBJECTED TO. JUDGE COTTINGHAM MAY NOT HAVE TAKEN IT AS A FORMAL MOTION, BUT HE DID TELL MR. ERVIN PRETTY MUCH THAT HE WAS TO SIT

DOWN BECAUSE THE SOLICITOR HAD NOT GOTTEN THAT FAR YET. TO ME THAT DOES RAISE THE ISSUE THAT THE JUDGE HAD MADE A DECISION. CASE LAW IS REPLETE WITH PRECEDENTS SAYING THAT ONCE AN ISSUE IS RAISED BEFORE A JUDGE, IT CANNOT BE RAISED BEFORE HIM AGAIN AND AGAIN IN ORDER TO PRESERVE IT FOR REVIEW.

AND AGAIN, IT'S EASY TO SIT BACK HERE NOW AND SAY HE SHOULD HAVE DONE A BETTER JOB IN COUNTERING SOLICITOR WILSON IN CLOSING, BUT IT WAS A NINE DAY TRIAL. THEY HAD LOST EVERY MOTION. THE TRIAL COURT WAS BARRELING THROUGH. THE STRATEGY WAS TO FLY UNDER THE RADAR, SO WHY POP UP AND NOT ONLY ANGER THE JUDGE, BUT DRAW THE JURY'S ATTENTION TO THE SOLICITOR'S COMMENT.

WE WOULD STATE THAT BASED ON ALL THIS THAT MR. STATON HAS NOT BEEN SUCCESSFUL IN PROVING HIS CASE.

THE COURT: AS TO THE SUFFICIENCY OF THE INDICTMENT, I THINK THE INDICTMENT IS SUFFICIENT TO GRANT THE COURT JURISDICTION TO HEAR THE CASE AS TO WHETHER IT ALLEGES STRANGULATION OR WHETHER IT ALLEGES ASPHYXIATION BECAUSE STRANGULATION AND ASPHYXIATION ARE BASICALLY THE SAME THING, THE CESSATION OF OXYGEN GOING TO THE LUNGS. SO, I DON'T THINK THE DEFENDANT IS PREJUDICED BY THAT OR BY THE INDICTMENT USING THAT LANGUAGE.

AS TO THE ISSUES ABOUT WHETHER OR NOT IT WAS INEFFECTIVE ASSISTANCE OF COUNSEL NOT TO PRESENT ALIBI

WITNESSES FOR DATES THAT SEEM TO BE IMPORTANT AND FOR NOT HAVING OBJECTED TO MISSTATEMENTS IN THE CLOSING ARGUMENT BY THE SOLICITOR TO THE EXTENT THAT THE APPLICANT SAYS THEY WERE MISSTATEMENTS, FROM NOT OBJECTING TO WHAT THE APPLICANT CONTENDS WERE GOLDEN RULE VIOLATIONS, NOT OBJECTING TO STATEMENTS THAT WERE BASED UPON RELIGION AND AROUSED TO INFLAME THE JURY. AS TO WHETHER OR NOT THOSE ISSUES FELL BELOW STANDARDS, I'M SIMPLY GOING TO TAKE THOSE MATTERS UNDER CONSIDERATION AND REVIEW IN ADVISEMENT. AND I'LL LET YOU BOTH KNOW AFTER I'VE HAD A CHANCE TO REVIEW IN DETAIL AGAIN THE CLOSING ARGUMENT BY SOLICITOR WILSON. THANK YOU.

MS. LIVELY: THANK YOU, YOUR HONOR.

MS. RATIGAN: THANK YOU, YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED PHYLLIS S. BARRETT, CIRCUIT COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD IN THE CAPTIONED CASE, RELATIVE TO APPEAL, OF THE PCR HEARING HELD IN THE FOURTH JUDICIAL CIRCUIT, MARLBORO COUNTY, ON THE TWELFTH DAY OF JANUARY, 2005.

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

PHYLLIS S. BARRETT

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO Alfonso Staton, S.C.D.C. No. 241380, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT 2003-CP-34-0244 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed on July 10, 2003. The Respondent made its return on November 3, 2003. An evidentiary hearing into the matter was convened on January 11, 2005 at the Darlington County Courthouse. The Applicant was present at the hearing and was represented by Candice A. Liveley, 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 for the Applicant were Kathey Staton, Calvin Bethae, and Larry Quick. The Applicant's trial counsel, William B. Rogers, Jr., Esquire testified for of the State. The Court had before it a copy of the trial transcript, the records of the Marlboro County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return to the same.

PROCEDURAL HISTORY

The Applicant is presently confined in the Lee Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment from the Marlboro

#1

County Clerk of Court. The Marlboro County Grand Jury indicted the Applicant for kidnapping (1996-GS-34-0979, count 1), murder (1996-GS-34-0979, count 2), first-degree criminal sexual conduct (1996-GS-34-0979, count 3), and criminal conspiracy (1996-GS-34-0979, count 4). He was represented by William B. Rogers, Jr., Esquire.

After the State called the case to trial – the Applicant was tried jointly with five (5) co-defendants – the Applicant was found guilty of kidnapping, murder, and criminal conspiracy. On March 18, 1997, the Applicant was sentenced by the Honorable Edward B. Cottingham to life imprisonment for murder and a concurrent five (5) year sentence for criminal conspiracy.[1]

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court affirmed the Applicant's convictions and sentences. State v. Staton, Op. No. 2001-UP-478 (S.C. Ct. App. filed Nov. 8, 2001). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on November 21, 2002.

ALLEGATIONS

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

1. Ineffective assistance of trial counsel:
   a. Failed to object to indictment.
   b. Failed to object to improper evidence.
   c. Failed to subpoena alibi witnesses.
2. Subject matter jurisdiction.
3. Prosecutorial misconduct.

The Applicant filed an amendment to his PCR application on August 26, 2004 in which he expanded upon his argument that a defective indictment deprived the trial court of subject

1928

matter jurisdiction.

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 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 trial 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) (citing Rule 71.1(e), SCRCP).

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, 80 L. Ed. 2d 674 (1984); Sanchez v. State, 351 S.C. 270, 274-75, 569 S.E.2d 363, 365 (2000). 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

[1] Pursuant to S.C. Code Ann. § 16-3-910, the Applicant was not sentenced on the kidnapping charge because he was sentenced to life imprisonment for murder.

1929

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, 80 L. Ed. 2d 674 (1984)). Where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (citations omitted); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992).

Failure to object

The Applicant argues trial counsel erred in failing to make objections throughout the course of the trial.

At the evidentiary hearing, the Applicant testified trial counsel should have objected to the murder indictment, as it stated the cause of death was strangulation and the State's expert stated the cause of death was suffocation. The Applicant testified trial counsel failed to object to the solicitor's statement that the testimony of Danny Davis and Bobby Ransom was helpful. The Applicant stated trial counsel failed to object to mention of a confession given by a non-testifying co-defendant, Ringo Pearson. The Applicant stated trial counsel failed to object to hearsay testimony given by Dwayne Sloan.

Trial counsel testified he did not object to the indictment, but that during the motion for a directed verdict, he raised the issue of the variance between strangulation and suffocation. Regarding Davis's and Ransom's testimony, trial counsel stated he attacked their credibility at trial – which was key to the Applicant's defense – and that he specifically remarked on their lack of credibility during closing argument. Trial counsel stated that Dwayne Sloan testified Ringo Pearson admitted to the murder. Trial counsel stated it was strategic not to object since this testimony benefited the Applicant because his name was not mentioned. Trial counsel testified

1930

that, even if Sloan's testimony was excluded, the State still had testimony from Davis and Ransom. Trial counsel testified his overall strategy was to keep a low profile, as the State did not have as much evidence against the Applicant as they did for his co-defendants. Trial counsel stated this strategy likely affected his decision not to object during trial, especially during the solicitor's closing argument (to be more fully discussed infra).

This Court finds the Applicant has not met his burden of proving trial counsel was ineffective in failing to object during trial. Trial counsel attacked the perceived irregularity in cause of death as set forth in the indictment and the State's evidence during his motion for directed verdict. (Trial transcript, p.1080, line 13 – p.1082, line 17). In order to combat any attempt at bolstering by the State, trial counsel also thoroughly attacked the credibility of two key State witnesses – Davis and Ransom. (Trial transcript, p.1580, line 25 – p.1582, line 11). Regarding the Applicant's allegations that trial counsel failed to object to Sloan's hearsay testimony and comments made during the solicitor's closing argument, this Court finds trial counsel articulated valid and strategic reasons for not objecting. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (Where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel.). This Court notes trial counsel's strategy of keeping a low profile during the trial may well have worked to the Applicant's advantage, as the jury returned a verdict of not guilty on the charge of first-degree criminal sexual conduct.

"Golden rule"

The Applicant argues trial counsel erred in failing to object to an improper "golden rule" argument made by the Solicitor in closing argument. Excerpted below is the specific section of the State's closing argument complained of by the Applicant:

1931

The Solicitor:	[The victim] never had a chance. Never had a prayer. Can you imagine, folks, can you imagine what her life must have been like those three or four or five days that they kept her? Can you imagine? Think about it with me for just a minute. One night you are home with your children. One night you are home with your children and the next night you're in a strange place with your eyes taped up and your hands behind your back.
Co-defendant's counsel:	Your Honor, I object. He's golden ruling the jury.
The Court:	Sir?
Co-defendant's counsel:	He's golden ruling the jury. The Supreme Court has said –
The Court:	No. I'm sorry. What?
Co-defendant's counsel:	Golden ruling the jury.
The Court:	No, sir. He hadn't gotten to that.

(Trial transcript, p.1615, lines 7-24).

This Court finds that, while the Applicant's trial counsel was not the attorney who lodged the objection at trial, the objection was made on behalf of all the co-defendants, including the Applicant. During a pre-trial motions hearing, the trial judge noted the defense attorneys joined in all motions not inconsistent with their position. (Trial transcript, p.1699, lines 5-11; p.1700, lines 2-3). At the start of trial, trial counsel (and the attorneys for the other five (5) co-defendants) renewed this motion, which the trial judge acknowledged was "consented to." (Trial transcript, p.27, line 19 – p.28, line 1). As such, the objection made by co-defendant's counsel should be viewed as having been made by the Applicant's counsel. Cf. State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (finding issues were not preserved for review since appellant failed to object during trial or join in his co-defendant's objections) (citing State v. Carriker, 269

1932

S.C. 553, 238 S.E.2d 678 (1977)). As a timely, contemporaneous objection was made to the comments in the Solicitor's closing argument, it was not necessary for any of the other defense attorneys to have entered separate objections. Furthermore, case law is clear that once an issue has been raised to and ruled upon by the trial judge, it is not necessary to make further objections on the subject. See, e.g., State v. McDaniel, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995) ("So long as the judge had an opportunity to rule on an issue, and did so, it was not incumbent upon defense counsel to harass the judge by parading the issue before him again.").

Regardless, this Court finds the Solicitor's comments during the closing argument did not rise to the level of being a "golden rule" type of argument. The key to a golden rule argument is that the solicitor asks the jurors to put themselves in the place of the victim. See State v. McDaniel, 320 S.C. 33, 462 S.E.2d 882 (Ct. App. 1995). In McDaniel, for example, the Supreme Court reversed a conviction after the solicitor used the words "you" or "your" or "yours" approximately forty-five times in his closing argument. Id. at 37, 462 S.E.2d at 884. This clearly did not occur in the instant case. Prior to the objection, the Solicitor used some form of "you" nine (9) times. However, the Solicitor also used the word "her" twice before the objection. Such a mixture of points of view indicates this was harmless error by the Solicitor that did not rise to the level of a golden rule argument.

This Court also finds that one of the cases relied upon by the Applicant – Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004) – is distinguishable from the case at bar. Von Dohlen was a capital case where the improper argument was made both in the guilt and penalty phases of the trial. Further, the manner in which the solicitor made the improper closing argument in Von Dohlen was vastly different from the manner used by the Solicitor in the instant case. In Von Dohlen, the solicitor held up the murder victim's shoes and mentioned them four

1933

times during his closing argument. The solicitor expressly told the jury to "put themselves in her shoes" and "put yourself in [the victim]'s shoes, size six." Id. at 608-09, 602 S.E.2d at 743. There was also testimony at the Von Dohlen PCR hearing that the solicitor was crying while holding up the shoes.

The comments made by the Solicitor during the closing argument in the Applicant's case simply do not rise to the egregious level condemned by the Supreme Court in Von Dohlen. The Solicitor did not repeatedly tell the jury to put themselves in the victim's place. Rather, the statements were rhetorical in nature and predicated on the "can you imagine what her life must have been like" comment. The argument was not presented such that the Solicitor was arguing the jury should become advocates of the victim. The Solicitor was, instead, attempting to invoke empathy in the jurors by referring to the facts of the case.

Similarly, this Court finds the Applicant's case is also distinguishable from the facts in State v. Nichols, 359 S.C. 260, 597 S.E.2d 169 (Ct. App. 2004), another recent "golden rule" case. In Nichols, the solicitor made the comment "who speaks for [the victim]" five times in his closing argument and also stated "you can speak for her with your verdict. Because the truth is that she as murdered. The facts are there and you're going to hear the law. And so you, the State submits, will speak for her with your verdict, with your verdict." Id. at 266, 597 S.E.2d at 172. The South Carolina Court of Appeals found it was "an impermissible Golden Rule Argument that asked the jurors to become advocates for the victim by speaking for her instead of maintaining their neutral role as jurors." Id. at 272, 597 S.E.2d at 175. The Solicitor in the Applicant's case neither proposed the jurors should be advocates for the victim nor attempted to appeal to the personal biases of the jurors. See Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002) ("A solicitor's closing argument must not appeal to the personal biases of

1934

the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it."). The Solicitor's comments were "within the record and reasonable inferences to it." Id. The comments contained in the Solicitor's closing argument did not deviate from the facts presented at trial. Rather, the comments were merely to put these facts into context.

References to religion

The Applicant argues the Solicitor made various references to religion during his closing argument that made all the co-defendants "seem like devils." This Court finds trial counsel was not ineffective in failing to object during the Solicitor's closing argument.

Initially, this Court notes that examination of the trial transcript reveals the solicitor's comments were not directed at the Applicant, but concerned two of his co-defendants. (Trial transcript, pp.1628-32).

Regardless, this Court notes the Solicitor was arguing within the scope of evidence presented during trial. See Humphries v. State, supra. The Solicitor questioned a co-defendant about why he was carrying his own Bible into court and made a comment about the co-defendant "getting religion." (Trial transcript, pp.1196-1198). In response to his own attorney's questions, a second co-defendant testified on cross-examination that he had been wearing a cross for a while and not in order to impress anyone. (Trial transcript, p.1390, line 20 – p.1391, line 23). In his closing argument, then, the Solicitor was simply re-hashing ground already covered during the trial itself. This Court finds the Applicant's trial counsel did not err in objecting to statements made by the Solicitor that were not directed toward the Applicant.

Even assuming arguendo that trial counsel should have objected, the Applicant failed to prove he was prejudiced – which is required under the second prong of Strickland v.

1935

Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984). The Applicant has not shown how his co-defendants' testimony about Bibles, crosses, or religion was in any way prejudicial to his case. The Applicant has also failed to show how the Solicitor's comments about a co-defendant carrying a Bible prejudiced him in some way. The Applicant appears to be arguing some kind of "spill over" effect resulted in prejudice. This is not sufficient to prove the second prong of Strickland. Further, the Applicant argued this issue to the South Carolina Court of Appeals, which affirmed his conviction,[2] and the South Carolina Supreme Court rebutted the argument in the petition for writ of certiorari of one of the Applicant's co-defendants. See State v. Stuckey, 347 S.C. 484, 556 S.E.2d 403 (Ct. App. 2001).

Confusion about dates

The Applicant argues trial counsel erred in failing to object that, during the trial, the State presented various contradictory dates for crucial events in the timeline of the victim's abduction and murder.

Trial counsel testified the discrepancy between dates was a continuing problem because there was a large block of time when the murder could have occurred. Trial counsel stated this problem was brought up during pre-trial conferences and meetings because it was hard to put together an alibi when the exact date was unknown. Trial counsel stated the Solicitor likely relied on the key date of November 12 because that was given by State witnesses in their statements.

This Court finds the Applicant has failed to prove trial counsel was ineffective. This Court notes the key dates at issue were: when the victim was in the trailer, when the victim was

[2] State v. Staton, Op. No. 2001-UP-478 (S.C. Ct. App. filed Nov. 8, 2001).

1936

moved to the abandoned house, and when the victim was taken from the abandoned house and thrown into the river. Both Davis and Ransom gave similar testimony about the timeline between the party and the disposal of the victim's body. The forensic pathologist who performed the autopsy on the victim stated the victim died sometime between November 12 – 25, but likely "closer to the 12th of November." (Trial transcript, p.549, line 15 – p.550, line 2). The transcript reveals that, during the course of the entire trial, specific and certain dates were rarely used by witnesses, the Solicitor, or defense counsel.

This Court finds trial counsel did not err in objecting to the various dates referred to during the trial. The indictments in this case all state the crimes against the victim occurred between November 12 and 24, 1996. Based on the medical testimony presented at trial, this was likely the result of the state of decomposition of the victim's body after it was found. Further, trial counsel testified the lack of specificity as to certain events was a continuing problem throughout his representation of the Applicant. This issue was, in fact, addressed in a pre-trial motions hearing when a co-defendant's attorney moved for the solicitor to provide "a more definite time and date of death." This issue affected all the co-defendants. After the Solicitor stated he could not provide a more specific date, the trial judge denied the motion. (Trial transcript, p.1700, line 15 – p.1703, line 25).

As such, the Applicant failed to prove the first prong of Strickland – that trial counsel erred in his representation. Regardless, the Applicant failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's errors. The State presented a strong case against the Applicant, which included eyewitnesses who testified the Applicant was present: (1) while the victim was held against her will in a co-defendant's trailer and (2) when the victim's body was picked up at an abandoned house and thrown from a bridge. (Trial transcript, pp.729-

1937

31; pp.750-57; pp.890-94; pp.909-18). Challenging the variance between dates mentioned at trial would not have been enough to dismantle the State's case.

Alibi witnesses

The Applicant argues trial counsel erred in failing to call alibi witnesses to testify on his behalf at trial.

At the evidentiary hearing, the Applicant testified he gave trial counsel the names of several alibi witnesses: Kathey Staton, Larry Graham, Anthony Graham, Larry Quick, and Calvin Bethae. The Applicant testified trial counsel never contacted Larry Graham, Anthony Graham, or Larry Quick – of which the Grahams allegedly could have provided an alibi for November 12. The Applicant stated trial counsel did contact Kathey Staton and Calvin Bethae, but that trial counsel did not have them testify and present an alibi. The Applicant stated no alibi witnesses were called, as he did not present a case at trial. The Applicant also argued trial counsel erred in failing to present evidence of his school attendance records.

Kathey Staton (the Applicant's mother), Calvin Bethae (the Applicant's stepfather), and Larry Quick (the Applicant's aunt's fiancé) testified on the Applicant's behalf. Mrs. Staton testified she and trial counsel discussed the Applicant's case several times. Mrs. Staton said she would have testified the Applicant was home on November 12 and 13, and that he was in school November 14. Mr. Bethae also testified he met with trial counsel several times and that he would have testified the Applicant was home on November 12 and spent November 14 either at home or at school. Mr. Quick testified he never met with trial counsel, that he could have provided the Applicant with an alibi on November 13, but that the Applicant never told him to contact trial counsel.

Trial counsel testified his notes reflected the names Anthony Graham, Larry Graham, and

1938

Larry Quick. Trial counsel testified he did not recall whether he talked to these individuals, though he did recall talking to several individuals who had nothing worth presenting at trial. Trial counsel testified he talked to Kathey Staton and Calvin Bethae several times about trial strategy, but did not recall whether he told them they would testify as alibi witnesses. Trial counsel testified he contemplated an alibi defense and that he had obtained the Applicant's school attendance records, which indicated the Applicant had missed two or three days of school between November 12 – 24. Trial counsel informed the State of the possibility that he would prevent an alibi defense at trial, but that he decided – as part of his overall trial strategy to keep a low profile – he opted not to put up a defense case.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective in failing to contact alibi witnesses or advance an alibi defense. The Applicant failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Trial counsel testified he knew of all the witnesses the Applicant identified as potential alibi witnesses. Trial counsel testified he spoke to several individuals – including Mrs. Staton and Mr. Bethae – and that he never indicated he would call them as alibi witnesses at trial. Trial counsel also testified he had obtained the Applicant's school records. This Court also finds trial counsel articulated a valid reason why he did not put up a defense case at trial. Naturally, this meant that alibi witnesses could not be presented on the Applicant's behalf. Regardless, the Applicant also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court finds the testimony presented at the PCR hearing does not conclusively provide an alibi for the Applicant at all times between November 12 and November 14, much less between November 12 – 24, which were the dates listed in the indictment.

1939

Prosecutorial Misconduct

At the evidentiary hearing, the Applicant argued there was prosecutorial misconduct during his trial. Specifically, the Applicant argued the solicitor's entire closing argument to the jury was improper. This Court does not agree.

An allegation concerning prosecutorial misconduct raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal; however, this issue was not raised on appeal to the South Carolina Court of Appeals or in the petition for writ of certiorari to the South Carolina Supreme Court. This Court finds the failure to do so has waived this allegation as a ground for relief.

Subject Matter Jurisdiction

The Applicant argued the murder indictment was insufficient because it failed to allege the time the offense occurred. The Applicant also argued the indictment was defective because there was a material variance between the murder indictment and the proof offered at trial because the indictment stated cause of death was strangulation and an expert testified at trial the cause of death was asphyxiation. This Court finds the Applicant's argument is without merit.

The South Carolina Supreme Court has clarified that indictments are merely notice documents. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). Furthermore, the Supreme Court held that challenges to the sufficiency of an indictment must be made before the jury is sworn. See id. As no such challenge was made in this case, this Court finds the Applicant does not have a valid challenge to subject matter jurisdiction on the murder charge.

1940

Regardless, this Court has examined all of the indictments in this case and finds they were sufficient to put the Applicant on notice of the charges he must be prepared to defend at trial. See Winns v. State, 363 S.C. 414, 611 S.E.2d 901 (2005) ("[T]his Court has held that an indictment for murder is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution.") (citation omitted). Accordingly, this issue is denied and dismissed with prejudice.

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 in any manner, nor was the Applicant prejudiced by counsel's representation.

Specifically, concerning the issues raised about the effectiveness of trial counsel, this Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court finds the record does not support a finding of ineffective assistance of trial counsel. This Court also finds that, on several issues raised at the evidentiary hearing, trial

1941

counsel provided valid explanations for decisions made during the course of the trial. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant has also 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.

Therefore, this application for PCR must be denied and dismissed with prejudice. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (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 227 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 16 day of September, 2005.

John M. Milling
Presiding Judge
Fourth Judicial Circuit

Florence, South Carolina.

1942

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	IN THE COURT OF COMMON PLEAS
	2003-CP-34-0244
ALFONSO STATON, 241380 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	AFFIDAVIT OF SERVICE BY MAIL

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 **Order of Dismissal** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Candice A. Lively, Esquire
915 Norman Alley
Conway SC 29526

DATED this 20th day of September, 2005.

Judy A. C. Carey, Legal Assistant
For Respondent

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WITNESSES

S. Jacobs - MCSD

ARREST WARRANT NO.

1. 16-3-910 CDR: 948
2. 16-3-10/16-3-20 CDR: 116
3. 16-3-652 CDR: 160
4. 16-17-410 CDR: 049

ACTION OF GRAND JURY

True Bill - 12.30.96

Foreman of Grand Jury

12-30-96

VERDICT

DOCKET NO. 96-GS-26-0484

THE STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

RJW

COURT OF GENERAL SESSIONS

December TERM 1996

THE STATE

vs.

Alfonso Staton

INDICTMENT FOR:

CT 1: KIDNAPPING
CT 2: MURDER
CT 3: CRIMINAL SEXUAL CONDUCT FIRST DEGREE
CT 4: CRIMINAL CONSPIRACY

VERDICT

CT 1: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

CT 2: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

CT 3: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

CT 4: _____ NOT GUILTY

_____ GUILTY

FOREPERSON

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

'97 MAR 17 P 2:18

FILED

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STATE OF SOUTH CAROLINA)
) Ct 1: Kidnapping
COUNTY OF MARLBORO) Ct 2: Murder
Ct 3: Criminal Sexual Conduct First Degree
Ct 4: Criminal Conspiracy

190

At a Court of General Sessions, convened on December 30, 1996, the Grand Jurors of Marlboro County present upon their oath:

COUNT ONE: KIDNAPPING Sec. 16-3-910

That Alfonso Staton did in Marlboro County, between November 12, 1994 and November 24, 1994, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Darlene Patterson without authority of law or was present aiding or abetting such kidnapping.

AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH:

COUNT TWO: MURDER Sec. 16-3-10/16-3-20

That Alfonso Staton did in Marlboro County, between November 12, 1994 and November 24, 1994, knowingly, intentionally, wickedly, feloniously and with malice aforethought kill Darlene Patterson by means of strangulation or was present aiding or abetting such killing and that Darlene Patterson did die in Marlboro County on said date as a direct and proximate result of such act.

AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH:

COUNT THREE: CRIMINAL SEXUAL CONDUCT FIRST DEGREE Sec. 16-3-652

That Alfonso Staton did in Marlboro County, between November 12, 1994 and November 24, 1994, knowingly, wickedly, intentionally and feloniously engage in sexual battery, to wit: sexual intercourse with the victim, Darlene Patterson, or was present aiding or abetting in the penetration of such act, said acts being accomplished while Darlene Patterson was the victim of kidnapping, forcible confinement or aggravated force.

AND THE GRAND JURORS FURTHER PRESENT UPON THEIR OATH:

COUNT FOUR: CRIMINAL CONSPIRACY Sec. 16-17-410

That Alfonso Staton did, along with other evil disposed persons whose names are known or unknown to the Grand Jury, unlawfully and feloniously combine, conspire, agree or have tacit understanding with each other between November 12, 1994 and December 30, 1994 to kidnap, commit Criminal Sexual Conduct in the First Degree and kill Darlene Patterson with malice aforethought. Further, Alfonso Staton did thereafter continue such conspiracy agreeing to secret such conduct and he, along with other persons, did commit overt acts toward carrying out such unlawful agreement.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ralph J. Wilson

SOLICITOR

WILLIAM S. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

'97 MAR 17 P6:18

FILED

1946

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF GENERAL SESSIONS FOURTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	)	1996-GS-34-0984
V.	)	ORDER DENYING MOTION FOR A NEW TRIAL
ALPHONSO STATON AKA OFONZO STATON DEFENDANT	)	

FILED
2011 OCT 20 AM 11 27
WILLIAM REYNOLDS ERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

This matter is before the Court on motion of the defendant through his attorney Emily Crayton, Assistant Public Defender. Appearing for the State is Senior Assistant Solicitor Donna Elder from the Fifteenth Judicial Circuit, the Circuit originally assigned to prosecute the defendant. Appearing for the defendant was Will Groves, an Assistant Public Defender for the Fourth Judicial Circuit.

The defendant seeks a new trial based upon alleged after discovered evidence, that being a conflict of interest by his trial defense attorney, Will Rogers,Esq. who at the time was a new prosecutor for the Fourth Circuit Solicitor's office. Rule 29 (b), SCRCrimP controls motions for new trial based on after discovered evidence.

A party requesting a new trial on after discovered evidence must show that the evidence (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before trial; (4) is material to the issue of guilt or innocence, and (5) is not merely cumulative or impeaching. *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999), *State v. Freeman*, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995). The defendant has failed to meet these requirements.

The original trial of the defendant took place in March, 1997 and the defendant was found guilty of his charges on March 18, 1997. Prior to the trial in this matter Mr. Rogers had notified all of his clients of his request to be relieved on their cases due to his new position in the solicitor's office. On January 28, 1997 after providing this notification he appeared before Judge Smoak and was relieved, an Order was signed and filed on January 29, 1997. On January 30, 1997, Judge Smoak rescinded that Order as to the defendant Alphonso Staton and that matter was placed on record.

Defendant appealed his conviction and that conviction was upheld on November 8, 2001. He also filed a Post Conviction Relief action which was denied on September 16, 2005.

Defendant asserts that he was unaware of this conflict or Mr. Roger's position until sometime in 2007. However it appears that all these matters were placed on record and the defendant as such is charged with the knowledge of these events. In addition, even taking the defendant's assertion that no knowledge existed until 2007, he failed to act on that information until May 6, 2009 when he filed a *pro se* motion requesting relief.

The Court makes the following findings:

1 of 2

1. The defendant knew or should have know by the exercise of due diligence of the existence of his alleged "conflict" at the time of his trial and could have asserted those claims during his subsequent appeal and post conviction relief;
2. The court finds no reason to now set aside the previous rulings by Judge Smoak as to the issue of any potential conflict on the part of Mr. Rogers, this matter was prosecuted by an agency outside and separate from the Fourth Circuit;
3. Even if the Court did not find the defendant should have had knowledge of this issue at the time of trial, he certainly became aware of it in 2007 and failed to timely file a motion to address his claim;
4. The evidence is not such as would likely change the result if a new trial was held; and
5. Is not material to the guilt or innocence of the defendant.

THEREFORE IT IS ORDERED:

The motion of the defendant for a new trial on after discovered evidence (a possible conflict of interest by Will Rogers, Esq.) is DENIED.

AND IT IS SO ORDERED.

Howard P. King
Presiding Judge

October 19, 2011
Sumter, South Carolina

FILED
2011 OCT 20 AM 11:27
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

292

Exhibit 6.

State of South Carolina — In the Court Of General Sessions

County of Marlboro — Indictment # 96-GS-34-0984

Alfonzo Staton

Applicant

Vs — ORDER

State of South Carolina

Respondent

FILED
2012 JUN 19 PM 1 19
WILLIAM E. MCBRIDE, CLERK OF COURT
MARLBORO CO. S.C.

The Applicant, Alfonxo Staton, has made a motion "to alter or amend judgment" pursuant to Rule 59 (e), SCRCP. This is a criminal proceeding and the Rules of Civil Procedure do not apply.

The Court will treat this as a motion for reconsideration of its Order dated October 19, 2011 and served January 4, 2012 pursuant to Rule 29, SCRCrimP. After careful consideration of all matters set forth in the motion the Court has concluded that its initial Order was correct and therefore denies the motion for reconsideration.

And it is so Ordered!

Howard P. King

January 15, 2012 — Howard P. King, Judge

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

COURT OF GENERAL SESSIONS
1996-GS-34-0984

STATE OF SOUTH CAROLINA :
:
-vs- : TRANSCRIPT OF RECORD
:
ALPHONSO STATON :

THURSDAY, OCTOBER 6, 2011
BENNETTSVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE.

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

DONNA ELDER, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

WILLIAM E. GROVE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

INDEX

CERTIFICATE OF COURT REPORTER 16

EXHIBITS

(No exhibits were introduced during the hearing.)

THE COURT: All right. Yes, ma'am.

MS. ELDER: Your Honor, this is The State versus Alphonso Staton. It's 96-GS-34-0984. This comes to court on a motion by the defense for a new trial based on their apparent conflict he perceived between his defense attorney at the time, William Rogers, and himself. He was convicted in March 18, 1997 of murder, strong arm robbery, conspiracy, criminal sexual conduct first degree, and kidnaping.

THE COURT: Okay. Give me your name please.

MS. ELDER: I'm sorry. Your Honor, I'm Donna Elder.

THE COURT: Okay.

MS. ELDER: I'm from the Fifteenth Judicial Circuit Solicitor's Office. We originally prosecuted this matter.

THE COURT: And how is my friend Greg Hembry?

MS. ELDER: He's doing well. Thank you, Your Honor.

THE COURT: All right. So your motion, Mr. Grove, on behalf of this defendant?

MR. GROVE: Yes, Judge.

THE COURT: All right. Go ahead.

MR. GROVE: And meeting with Mr. Staton today is the first time we've actually had a chance to meet face to face. We may have an issue with withdrawing the motion at this time and raising it again later. He tells me that there are ---

THE COURT: No, sir. We are going to get the matter resolved today.

MR. GROVE: Well, then if we can, Judge, focus the motion solely on the conflict issue. He tells me that there may be other issues relevant to the possibility for a new trial that we're not prepared to go forward on today, simply because I haven't been able to meet with him in person.

THE COURT: Is there a written motion for a new trial filed?

MS. ELDER: Yes, sir, Your Honor, there is.

THE COURT: Let me see it.

MS. ELDER: And it solely deals with the conflict issue.

THE COURT: Do you have a copy of it?

(Pause.)

THE COURT: All right. Give me just a moment to review this.

(Pause.)

THE COURT: All right. I think the only matter then that is before me is the written motion for a new trial based on the conflict issue. You know, if other motions are filed at another time, we'll have to address them when they're filed.

MR. GROVE: Judge, for clarity of the record. Is that

a motion signed by Emily Creighton?

THE COURT: It is.

MR. GROVE: Okay. Thank you, Judge.

THE COURT: This is dated August 15th of this year.

MR. GROVE: Mr. Staton may like to address The Court at the appropriate time.

In regards to Ms. Creighton's motion that she filed, the factual background regarding the conflict, Mr. Jay Hodge was appointed to represent Alphonso Staton in 1995, I believe. Some time after that he was elected to the position of Fourth Circuit Solicitor. He withdraw, obviously, based on an obvious conflict from Mr. Staton's case. And Mr. Staton was then reappointed to Will Rogers.

Following Mr. Rogers' appointment to Mr. Staton's case, he was employed by the Fourth Circuit Solicitor's Office as an assistant solicitor. At that time Mr. Rogers made a motion to be withdrawn on all of his pending criminal cases within the Fourth Circuit.

Some time before that Solicitor Hodge had removed Mr. Staton's case, as well as his co-defendants, from the Fourth Circuit Office. As you heard the solicitor say, it was prosecuted by the Fifteenth Circuit -- Mr. Hodge obviously having a conflict being the solicitor and having been appointed to a co-defendant in the case.

Mr. Rogers asked to be relieved on all of the cases.

And he was relieved, for, I think a period of 24 hours on all of his criminal cases out of the Fourth Circuit. I don't know that he had any elsewhere.

The following day that order relieving him of counsel was amended to exclude Mr. Staton's case from relief. I guess the judge at the time, Judge Smoak -- I believe he cited the fact that the Fifteenth Circuit was prosecuting the case resolved the potential conflict at that time.

I believe Mr. Rogers then re-raised the issues pretrial. I'm not sure that Mr. Staton raised those issues in a P.C.R. or an appeal. However, Judge ---

THE COURT: But all those were in existence at the time; is that right?

MR. GROVE: Yes, Judge.

THE COURT: All right. So what's the basis for the new trial? Aren't they subject to having been raised on appeal? Whether he raised them or not, in order to be after-discovered evidence, it has to be evidence that was in existence at the time and that he knew or should have known that it existed at the time; that's the test of a motion for a new trial on the basis of after-discovered evidence. If he knew all this, it could have been raised in appeals.

(Pause.)

MR. GROVE: Actually, Judge, I might let him discuss

with you -- he's, obviously, much more familiar with it than I am. He tells me that in 2007 is when he was made aware that Mr. Rogers was a local solicitor. There are letters in the motion -- and it might not be properly worded -- Ms. Creighton's motion for a new trial based on after-discovered evidence. That motion may be a motion based on a newly discovered conflict that had existed at the time. Certainly, all of this stuff was in existence. It didn't arise later. But I believe Mr. Staton's position is that it wasn't made known to him until later.

Again, the motion for a new trial based on after-discovered evidence might be something raised at another time on other issues. I think the conflict was lumped in with that.

THE COURT: Well, even the conflict issue, it seems like to me, that could have been raised on appeal.

MR. STATON: I wasn't aware. I wasn't aware that Mr. Rogers was the assistant solicitor for the Fourth Circuit at that particular time. So there's no way that I could have known to raise that on an appeal or a P.C.R. if I wasn't aware.

THE COURT: I thought that Jerry Smoak ruled that there was no conflict. And if he ruled that there was no conflict, then you would have had notice of that.

MR. STATON: It's that Judge Cottingham I guess he --

he got with Judge Smoak in reference to this particular case and this issue. And Judge Cottingham decided that it wasn't -- it wasn't a conflict. Judge Smoak initially relieved Mr. Rogers from my case due to the fact that he was assistant solicitor.

THE COURT: And you knew that?

MR. STATON: Did I know this?

THE COURT: Yes.

MR. STATON: Afterwards, in 2007.

THE COURT: But I mean, was there an order filed relieving him?

MR. STATON: Right here. When I got -- I got it after-the-fact -- after I filed a P.C.R.

THE COURT: The point is that there was a written order filed in the case; is that right?

MR. STATON: I have it right here.

THE COURT: Let me hear from the state.

MS. ELDER: Your Honor, that is our position -- is that the appropriateness of this motion -- it's not appropriate at this point in time. This matter existed at the time in '97 when the trial was there. I believe that Mr. Rogers appeared January 20th, actually, to be exact. He went and made a couple of motions to be relieved as counsel with Judge Brogdin in Darlington on March 20 -- I'm sorry, January 20th. Judge Brogdin then indicated that he

needed to go before Judge Smoak. He addressed the issue.

They were then on January 28th, after notifying all of the -- Mr. Rogers notifying all of his clients, he appeared before Judge Smoak in Dillon County, and he was relieved of counsel in all his criminal cases.

On January 29th, 1997, there was an order filed -- filed with the court, Your Honor, relieving him of all of his obligations.

They were then advised by the clerk -- since this matter was already scheduled for trial in March, which would have been about a month and a half after this, before Judge Cottingham that they would need to advise him of that particular issue.

He then advised Judge Cottingham of that issue. Judge Cottingham had a discussion with Judge Smoak. He then -- they indicated that on January 30, '97 -- Judge Cottingham's office called and indicated that after discussions between the two judges, there was no conflict of interest.

In an abundance of caution, Your Honor, they went back on record before -- let me see. I'm sorry, Your Honor. They went back on record before Judge Smoak, who was the chief administrative judge at that time in Dillon. He then advised on record that he was not relieving Mr. Rogers for Mr. Staton because there was no conflict of interest.

This matter has been appealed. He was represented by counsel on that appeal. His convictions were affirmed.

He was also represented on P.C.R. His P.C.R. relief was denied; that was also appealed. The appeal court affirmed the P.C.R.'s denial of his relief.

THE COURT: All right. Mr. Grove, anything else you'd like to add?

MR. GROVE: Mr. Staton certainly wants to put something else on the record, Judge. And before he does, I'm not sure that all of this stuff was made aware to him. I do know that one of the primary reasons that Mr. Rogers was requesting to be withdrawn is that a co-defendant was being represented under extremely similar circumstances -- identical, I believe, and relieved. And that co-defendant was appointed new counsel.

THE COURT: Well, I can only assume though, Mr. Grove, that he was present at all these hearings that the solicitor has just referred to.

MR. STATON: No, I wasn't.

THE COURT: Just hush. I can only assume that he was there or at least he had the right to be. And he wasn't present, then that's his lawyer's fault for not making sure that wasn't there. And if he was there, then the Judge's rulings are on the record are the law of the case, and he's charged with that knowledge.

MR. GROVE: I understand, Your Honor. I do believe that Mr. Staton wants to address The Court.

MR. STATON: You say I should have been present to all these hearings in reference to when Mr. Rogers was relieved from the case. When he went before Judge Smoak, I'm saying I wasn't -- I wasn't present. I wasn't even made aware that he had go before Mr. -- before the judge to be relieved from the case.

THE COURT: Then that's part of your P.C.R.

MR. STATON: How would I file a P.C.R. if I'm not aware of it?

THE COURT: Well, you became aware of it, you ---

MR. STATON: But I had to file my P.C.R. ---

THE COURT: Now, don't argue with me.

MR. STATON: I'm not arguing.

THE COURT: Just answer my questions.

MR. STATON: But I wasn't aware of it before I filed my P.C.R. I filed my P.C.R. in 2004 -- 2003. I didn't become aware of this issue until 2007, which I then proceeded to file this motion.

THE COURT: You became aware of this issue in 2007?

MR. STATON: Well, I wrote -- I wrote Mr. Rogers.

THE COURT: My question is: Did you become aware of this issue in 2007? Yes or no?

MR. STATON: Yes, sir.

THE COURT: All right. And now in August 15th of 2011, 4 years later you filed this motion.

MR. STATON: Well, I filed the motion -- I filed this motion in May of 2008. I think it was 2008 -- April 28, 2008.

THE COURT: The motion that I've got before me was filed August 15, 2011.

MR. STATON: Well, I mean, I filed a motion pro se. And I filed it to Mr. Funderburk in Marlboro County Clerk of Court. I sent it out April 28, 2008.

THE COURT: That's not the motion that I'm considering today. The motion I'm considering, the one that's been handed up to me dated August 15, 2011.

MR. GROVE: And if I may just one moment, Judge, I might be able to ---

THE COURT: All right. Talk to him about that. I want to get my rule book.

(Pause.)

MS. ELDER: Your Honor, if I may. I do have a copy that was provided me. It looks like a pro se motion. It indicates it's a motion for a new trial based upon after trial discovery. It was dated April 21, 2009, and it looks like it was filed in the clerk of court's office here May 6, 2009. That was provided when I got the notice for motion today; that was the motion I handed up previously

from the public defender. But he apparently has filed a pro se. Would you like to -- it is dated 2009, Your Honor.

MR. GROVE: And, Judge, that's why we're asking that you rule on the conflict today. I think Mr. Staton has some other issues that he might like to raise at another time that don't relate to the conflict.

THE COURT: All right. Let me look at this.

(Pause.)

THE COURT: What you're saying is, Mr. Grove, that the matter before The Court today is for a ruling on the motion filed by Ms. Creighton for a new trial based on conflict and that the other matter has been raised by this pro se motion filed some time ago are still out there.

MR. GROVE: Yes, Judge. I think Mr. Staton has some issues involving preparation and subpoenaing people to testify at a subsequent hearing regarding the new trial on after-discovered evidence. We're hopeful that you will only adjudicate the conflict today.

THE COURT: All right. I understand. And I have reviewed Rule 29 of the South Carolina Rules of Criminal Procedure and, of course, am familiar with that. That rule does deal with post-trial motions.

Generally, of course, most everyone here knows that post-trial motions must be made within 10 days of the time that the decision is made, except for motions for new trial

based on after-discovered evidence.

29 (B) provides for new trials based on after-discovered evidence and provides that it must be made within a reasonable period of time after the discovery of the evidence.

In my view the conflict or potential conflict was in existence early on in this matter.

And throughout the pretrial matters before this matter came to trial or hearings on the record by Judge Smoak who made a finding that there was no conflict. Whether the defendant knew that or not, he was charged with that knowledge. He should have been present. If he was not present, then that would be a matter that would be a P.C.R. issue and not a matter for a new trial or it would be a matter that could be resolved on an appeal.

But the fact of the matter is that he knew or should have known of the potential conflict and an opportunity to make that objection on the record and to appeal from any ruling on that.

So therefore, it is not after-discovered evidence. And so that would be The Court's ruling, that the issue of Mr. Rogers as to a conflict of interest is not after-discovered evidence within the meaning of the rule and the cases interpreting Rule 29 (B).

The matters could have been raised and heard and ruled

upon either on appeal or in a P.C.R.; and, therefore the motion for a new trial based on the conflict set forth in the motion dated August 15, 2011 is denied.

MS. ELDER: Thank you, Your Honor.

MR. GROVE: Thank you, Judge.

--- End of transcript of record ---

I, the undersigned Dianne A. Rutledge, official court reporter for the Fifth Judicial Circuit of The State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Marlboro County, South Carolina on the 6th day of October 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 7, 2014

_____

Court Reporter

Exhibit 1

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M. Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Katherine Carruth Link
Eleanor Duffy Cleary
Assistant Appellate Defenders

November 20, 2001

Alfonzo Staton #241380
Lee Correctional Institution
1204 Church St.
Bishopville, SC 29010

Re: Your appeal

Dear Mr. Staton:

Enclosed is a copy of the Court's opinion and the petition for rehearing I have filed in your case. Please call me so we can discuss this.

Sincerely,

Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

Enclosures

1966

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Alfonzo Staton,

Appellant.

Appeal From Marlboro County
Edward B. Cottingham, Circuit Court Judge

Unpublished Opinion No. 2001-UP-477
Heard September 5, 2001 - Filed November 8, 2001

AFFIRMED

Deputy Chief Attorney Joseph L. Savitz, III, of SC Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General S. Creighton Waters, all of Columbia; and Solicitor Jay E. Hodge, Jr., of Darlington, for respondent.

PER CURIAM: Alfonzo Staton was indicted for kidnapping, criminal sexual conduct (CSC), murder, and criminal conspiracy. He was tried with five co-defendants, of whom Charles "Rickey" Stuckey, Jeffery Walls, Martin

verdict, this court must view the evidence in the light most favorable to the State and if there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the accused's guilt, we must find the trial court properly submitted the case to the jury. Id.

Kidnapping

The record reveals sufficient evidence of Alfonzo's guilt of kidnapping as an accomplice or under the "hand of one, the hand of all" theory of liability. See State v. Burdette, 335 S.C. 34, 45, 515 S.E.2d 525, 531 (1999) (one who aids, abets, or encourages another in and is present during the commission of a crime is guilty as a principal); State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999) (Under the "hand of one, the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."). Alfonzo concedes the evidence shows he attended the party where Victim was held captive, but argues the State was unable to show more than his presence during the crime, his knowledge of the crime, and his commission of certain uncharged crimes, such as accessory after the fact. However, Robert Ransom testified he and Alfonzo were among a group of people standing around the cooking pot when Rickey Stuckey invited Ransom inside to see "that 'ol gal" inside the trailer. Furthermore, the State showed Alfonzo may have been one of the three or four people who moved her from the couch to the bedroom at Stuckey's request after Ransom suggested they move her from the couch, which was directly across from the front door. Thus he may have helped keep her restrained and concealed from people who might have tried to free her or contact police. Finally and most critically, Alfonzo was part of the group of people who retrieved the restrained Victim from the abandoned house and disposed of her by throwing her in the creek. In contrast to Alfonzo's claim that Victim was already dead when he and the others picked her up from the abandoned house, Ransom's testimony that during the car ride he believed Victim was crying and talking is direct evidence she was alive during at least part of the trip to the creek. See State v. Salisbury, 343 S.C. 520, 524 n.1, 541 S.E.2d 247, 248-49 n.1 (2001) (direct evidence is "evidence based on actual knowledge and proves a fact without inference or presumption"). All of this evidence, when viewed in the light most favorable to the State, reasonably tends to prove Alfonzo acted in concert with others or acted as an accomplice in Victim's ongoing kidnapping.

Murder

Exhibit 2

South Carolina Office of Appellate Defense

Daniel T. Stacey
Chief Attorney
Joseph L. Savitz, III
Deputy Chief Attorney

Wanda H. Haile
Senior Assistant Appellate Defender

1122 Lady Street, Suite 940
Columbia, S.C. 29201-3243

Telephone: (803) 734-1330
Fax: (803) 734-1397

Robert M Pachak
Robert M. Dudek
Tara S. Taggart
Aileen P. Clare
Eleanor Duffy Cleary
Assistant Appellate Defenders

December 5, 2002

Mr. Alfonzo Staton #241380
McCormick Correctional Institution
Route 2, Box 100
McCormick, SC 29899

Re: Your appeal

Dear Mr. Staton:

Enclosed please find a copy of the S.C. Supreme Court's order in your case. If you want to pursue your case, you can elect to go into post-conviction relief, but it should be done by November 21, 2003, due to the statute of limitations on PCR's which has been enacted.

Feel free to contact me if you have any questions.

Sincerely,

Joseph L. Savitz, III
Deputy Chief Attorney

JLS,III/kde

Enclosure

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
(803) 734-1080
FAX (803) 734-1499

November 21, 2002

Deputy Chief Attorney Joseph L. Savitz, III
Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201

Re: The State v. Staton, Alfonzo
1996-GS-34-0984

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

Justice James E. Moore,
not participating

November 21, 2002."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

RECEIVED
NOV 21 2002

Very truly yours,

CLERK

DES/dmh

cc: Assistant Attorney General S. Creighton Waters
The Honorable Jay E. Hodge, Jr.
The Honorable William B. Funderburk
The Honorable Kenneth A. Richstad

1971

Exhibit 3

counsel provided valid explanations for decisions made during the course of the trial. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant has also 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.

Therefore, this application for PCR must be denied and dismissed with prejudice. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (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 227 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 16 day of September, 2005.

FILED
05 SEP 21 AM 10:21
CLERK OF COURT
FLORENCE COUNTY

John M. Milling
Presiding Judge
Fourth Judicial Circuit

Florence, South Carolina.

Exhibit 4

SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 6, 2009

Mr. Alfonso Staton #241380
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Staton:

Enclosed please find a copy of the order of the South Carolina Supreme Court denying your petition for writ of certiorari. This means that the lower court's decision in your case stands and you have exhausted your state remedies. Note the time limits for filing future actions based on the date of the denial of this PCR appeal action via the federal habeas statute of limitations.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/mwl

Enclosure

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Alfonso Staton, Petitioner,

v.

State of South Carolina, Respondent.

ON WRIT OF CERTIORARI

Appeal from Marlboro County
John M. Milling, Post-Conviction Judge

Opinion No. 2009-MO-011
Submitted February 19, 2009 – Filed February 23, 2009

DISMISSED AS IMPROVIDENTLY GRANTED

Deputy Chief Appellate Defender Wanda H. Carter, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General

Salley W. Elliott, and Assistant Attorney General Karen Ratigan, all of Columbia, for Respondent.

PER CURIAM: After careful consideration of the Appendix and briefs, the writ of certiorari is

DISMISSED AS IMPROVIDENTLY GRANTED.

TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

Exhibit 5

Dec 14, 2011

Honorable Judge Howard P. King
P.O. Box 189
Sumter, S.C. 29151

Re: Denial of Motion

Dear Judge King

This letter is in reference to my hearing dated October 6, 2011, held at the Marlboro County Court House. I was heard on a 29(b) motion, before you and the issue raised was a conflict of interest. This particular motion was denied, and it's been two (2) months and I've still yet to recieve an order of dismissal. I'd greatly appreciate it if you would please sign off on the order, so I can continue forward with my fight for my freedom. I thank you in advance for your assistance in this matter.

Sincerely,
Jamie A. Staton

12/16/11

cc Finderberk

By the ~~the~~ ruling was on the record in open court a written Order is unnecessary. If it was not done in open court I am sure I will get a written Order with the Clerk of Court

Howard P. King

1976

1976

A. Staton 241380
RiC 124
Sacky Hwy
ie, SC 29010

RECEIVED
JAN 3 2012
LEE CI MAIL ROOM

1775

1977

1977

Date Order Received from 29(b) Motion

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Operations
ORDER TO REPORT

SCDC #	Name	Area
84380	Hood Jones Stato	K 124

REPORT TO MAIL ROOM AT 8:00

Bring All Belongings ☐ Bring State Clothing ☐ Bring Nothing ☐

Date	Signed
1-4-12	
Date	Inmate's Signature
Date	Staff Member's Signature

SCDC 19-45 (Rev. August 1997)

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF GENERAL SESSIONS FOURTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	)	1996-GS-34-0984
V.	)	ORDER DENYING MOTION FOR A NEW TRIAL
ALPHONSO STATON AKA OFONZO STATON DEFENDANT	)	

FILED
2011 OCT 20 AM 11:27
WILLIAM FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

This matter is before the Court on motion of the defendant through his attorney Emily Crayton, Assistant Public Defender. Appearing for the State is Senior Assistant Solicitor Donna Elder from the Fifteenth Judicial Circuit, the Circuit originally assigned to prosecute the defendant. Appearing for the defendant was Will Groves, an Assistant Public Defender for the Fourth Judicial Circuit

The defendant seeks a new trial based upon alleged after discovered evidence, that being a conflict of interest by his trial defense attorney, Will Rogers Esq. who at the time was a new prosecutor for the Fourth Circuit Solicitor's office. Rule 29 (b), SCRCrimP controls motions for new trial based on after discovered evidence.

A party requesting a new trial on after discovered evidence must show that the evidence (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before trial; (4) is material to the issue of guilt or innocence, and (5) is not merely cumulative or impeaching *State v. Spann*, 334 S.C. 618, 513 S.E 2d 98 (1999), *State v. Freeman*, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995). The defendant has failed to meet these requirements.

The original trial of the defendant took place in March, 1997 and the defendant was found guilty of his charges on March 18, 1997. Prior to the trial in this matter Mr. Rogers had notified all of his clients of his request to be relieved on their cases due to his new position in the solicitor's office. On January 28, 1997 after providing this notification he appeared before Judge Smoak and was relieved, an Order was signed and filed on January 29, 1997. On January 30, 1997, Judge Smoak rescinded that Order as to the defendant Alphonso Staton and that matter was placed on record.

Defendant appealed his conviction and that conviction was upheld on November 8, 2001. He also filed a Post Conviction Relief action which was denied on September 16, 2005.

Defendant asserts that he was unaware of this conflict or Mr. Roger's position until sometime in 2007. However it appears that all these matters were placed on record and the defendant as such is charged with the knowledge of these events. In addition, even taking the defendant's assertion that no knowledge existed until 2007, he failed to act on that information until May 6, 2009 when he filed a *pro se* motion requesting relief.

The Court makes the following findings:

1 of 2

1. The defendant knew or should have know by the exercise of due diligence of the existence of his alleged "conflict" at the time of his trial and could have asserted those claims during his subsequent appeal and post conviction relief;
2. The court finds no reason to now set aside the previous rulings by Judge Smoak as to the issue of any potential conflict on the part of Mr. Rogers, this matter was prosecuted by an agency outside and separate from the Fourth Circuit;
3. Even if the Court did not find the defendant should have had knowledge of this issue at the time of trial, he certainly became aware of it in 2007 and failed to timely file a motion to address his claim;
4. The evidence is not such as would likely change the result if a new trial was held; and
5. Is not material to the guilt or innocence of the defendant.

THEREFORE IT IS ORDERED:

The motion of the defendant for a new trial on after discovered evidence (a possible conflict of interest by Will Rogers, Esq.) is DENIED.

AND IT IS SO ORDERED.

Howard P. King
Presiding Judge

October 19, 2011
Sumter, South Carolina

FILED
2011 OCT 20 AM 11:27
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

282

Exhibit 6

State of South Carolina
County of Marlboro

In the Court Of General Sessions
Indictment # 96-GS-34-0984

Alfonzo Staton
Applicant
Vs
State of South Carolina
Respondent

ORDER

FILED
2012 JUN 19 AM 11:16
CLERK OF COURT
MARLBORO COUNTY, S.C.

The Applicant, Alfonxo Staton, has made a motion "to alter or amend judgment" pursuant to Rule 59 (e), SCRCP. This is a criminal proceeding and the Rules of Civil Procedure do not apply.

The Court will treat this as a motion for reconsideration of its Order dated October 19, 2011 and served January 4, 2012 pursuant to Rule 29, SCRCrimP. After careful consideration of all matters set forth in the motion the Court has concluded that its initial Order was correct and therefore denies the motion for reconsideration.

And it is so Ordered!

Howard P. King, Judge

January 15, 2012

Exhibit 7

Fourth Circuit Public Defender

A.C. Stephens
Chief Circuit Defender

January 24, 2012

Alfonso Staton
SCDC ID# 00241380
c/o Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

RE: *The State v. Alfonso Staton*

Alfonso:

I hope this letter finds you well. I did not file an appeal of the judge's ruling on your motion to reopen the case because of a conflict. However, the judge did not rule on your issue of new evidence, which was included towards the back of the motion. This is the issue I'd like to present in front of a judge for consideration.

Once I have it scheduled, I will let you know. If that motion fails, then an appeal of that motion can be filed.

Sincerely,

Will E. Grove
Assistant Public Defender
Fourth Judicial Circuit
Bennettsville, SC

Dillon: Post Office Box 29 • Dillon, SC 29536 • 877-225-2922 • Fax 800-670-6375
Darlington: Post Office Box 648 • Darlington, SC 29540 • 877-225-2922 • Fax 800-670-6375
Bennettsville: Post Office Box 37 • Bennettsville SC 29512 • 877-225-2922 • Fax 800-670-6375
Chesterfield: Post Office Box 307 • Chesterfield, SC 29709 • 877-225-2922 • Fax 800-670-6375

EXHIBIT 6

The South Carolina Court of Appeals

The State, Respondent

v.

Alfonso Staton, Appellant.

The Honorable Howard P. King
Marlboro County
Trial Court Case No. 1996-GS-34-00984

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to timely serve opposing counsel with the Notice of Appeal, as provided for in Rule 203 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Marlboro County after fifteen (15) days, exclusive of the date of filing this Order.

JOHN CANNON FEW, CHIEF JUDGE

BY Jenny A Kitchings
Clerk

Columbia, South Carolina

cc: Alfonso Staton 241380
Senior Assistant Deputy Attorney General Salley W. Elliott
The Honorable William B. Funderburk

FILED
DATE 7/27/12

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Marlboro County
Thomas Russo, Circuit Court Judge

ALFONSO STATON,

PETITIONER,

V.

THE STATE,

RESPONDENT.

Appellate Case No. 2015-000460

Appendix Volume 6

Tristan M. Shaffer (SC Bar # 77565)
225 Columbia Ave.
Chapin, SC 29036
Phone: (803) 575-0384
tristan@shafferlawsc.com

Other Counsel of Record:
Johanna Valenzuela
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

INDEX

Volume 1

Appendix of First PCR 1

Volume 2

Appendix of First PCR Continued 400

Volume 3

Appendix of First PCR Continued 800

Volume 4

Appendix of First PCR Continued 1200

Volume 5

Appendix of First PCR Continued 1600

Order Denying Motion for a New Trial 1947

Order Denying Motion to Reconsider on Motion for a New Trial 1949

Transcript of Motion for a New Trial Hearing 1950

Petitioner's Federal Habeas Exhibits 1966

Volume 6

Supplemental Appendix from First PCR 1984

Second PCR Application 1998

Return and Motion to Dismiss from Second PCR 2005

Applicant's Response to the Conditional Order of Dismissal for Second PCR ...2017

Second PCR Hearing Transcript 2088

Second PCR Final Order of Dismissal 2142

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

John M. Milling, Circuit Court Judge

ALFONSO STATON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Deputy Chief Attorney

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

ATTORNEY FOR PETITIONER

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

APPLICANT'S EXHIBIT 1 1

APPLICANT'S EXHIBIT 2 2

APPLICANT'S EXHIBIT 3 7

APPLICANT'S EXHIBIT 4 8

APPLICANT'S EXHIBIT 5 11

DEPARTMENT OF PATHOLOGY
MEDICAL UNIVERSITY OF S.C.
CHARLESTON, SC 29425
(803) 792-3500

NECROPSY REPORT EA 94-86

NAME: Darlene M Patterson

(HOSPITAL)

(HOSPITAL NUMBER)

AGE 34 Years SEX Female

RACE Black

Unknown TIME 10:15AM TIME

(ADMITTED) DIED 11/24/94 AUTOPSIED 11/25/94 HOURS PM 13

TYPE OF AUTOPSY: COMPLETE ☒ FORENSIC INVESTIGATOR:

CLINICAL HOUSESTAFF CLINICAL ATTENDING

PROSECTOR(S) Conradi Hopkins COUNTY Marlboro

REASON FOR AUTOPSY "Found floating in spillway"

(IF INJURY): HOW OCCURRED Face covered with duct tape AT WORK? No

PLACE? (FARM, HOME, POOL, ETC.) Found in water DATE 11/24/94 TIME 2:30

LOCATION Marlboro County, South Carolina

FINAL AUTOPSY DIAGNOSIS

Asphyxia (face taped with duct tape).
Moderately decomposed body.
Autolysis of internal organs.
Status-post remote cholecystectomy.
Old healed fracture right ulna.

Applicant's 1 1-12-05 EH

MANNER OF DEATH: HOMICIDE

T	M	E		PROBABLE CAUSE OF DEATH	INTERVAL
			Y2100	Asphyxiation	minutes
			Y2110	due to Smothering (duct tape over nose & mouth)	
				due to	

FA94-586 DARLENE M. PATTERSON #23747

CASE HISTORY:

The decedent is a Black female who was found with her hands, ankles and face bound with duct tape floating in Burnt Factory Spillway in Marlboro County. The decedent was found at approximately 2:30 PM on November 24th by local fisherman. She was reported missing 11/12/94. The body was transported to the Medical University for autopsy.

CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

FA94-586 DARLENE M. PATTERSON #23747

EXTERNAL DESCRIPTION:

The body is that of a well developed, well nourished moderately decomposed Black female. The hair is long and red-brown. The face is covered by silver duct tape. After removal of the tape the corneas are clouded without petechial hemorrhage. The nose exhibits frothy pink tinged fluid. The oral cavity shows tissue defects in the upper and lower lips and the tongue clenced between the teeth. The trachea is midline and no neck masses are palpated. The chest is flat and symmetric. The abdomen is slightly protuberant. The wrists are taped with duct tape behind the back. The middle finger of the right hand is tucked in the top of her panties. The ankles are taped with duct tape. Skin sloughage is present as well as marbling. No rigor mortis is identified.

The decedent is clad in burgundy stretch pants, pink socks, black laced-up shoes, off-white print long sleeved sweatshirt, red stretch bra, and burgundy lace panties.

INTERNAL DESCRIPTION:

The body is opened with the usual modified Y shaped thoracoabdominal incision. Skin flaps are reflected to reveal a moderate amount of subcutaneous tissue. No subcutaneous hemorrhages are identified. After removing the chest plate, the chest organs are noted in their normal anatomic relationships. No excess fluid is present within the pericardial or pleural cavities. Opening the abdominal cavities reveals all organs to be in their proper anatomic relationships. There is no evidence of excess fluid accumulation.

REVIEW OF SYSTEMS:

NECK ORGANS: The neck organs are removed en bloc. The tongue is intact. The hyoid bone and laryngeal cartilages are free of fracture. The thyroid is of normal size and configuration. Sectioning shows no nodularity. No adenopathy is appreciated.

CARDIOVASCULAR: The heart weighs 240 grams. The heart is soft with a normal amount of epicardial fat. The coronary circulation is right dominant. Sectioning of the coronary arteries shows no evidence of atherosclerotic disease. The valves are normally formed and positioned. Sectioning reveals the myocardium to be soft and red. No areas of fibrosis or hemorrhage are identified. The foramen ovale is closed. The aorta is unremarkable.

LUNGS: The respiratory system is unobstructed. The trachea and larynx are lined by tan mucosa. The lungs weigh 300 and 250 grams on the right and left respectively. No dirt or debris is present in the bronchi. The parenchyma is soft and dark red. No blood or edema fluid is

CLERK OF COURT
MARLBORO COUNTY

present within the bronchi. No adhesions are identified.

LIVER: The liver weighs 940 grams. The capsule is intact and smooth. The parenchyma is red-brown and soft. Sections reveals no hemorrhage, neoplasia, or fibrosis. No gallbladder is identified. Adhesions are present within the gallbladder bed.

GASTROINTESTINALTRACT: The esophagus is lined by red-tan wrinkled mucosa. There is no evidence of trauma or varices. The gastric mucosa contains normal rugal folds without thickening. The stomach contains no contents. The remainder of the gastrointestinal tract is unremarkable. An appendix is identified.

GENITOURINARY: The kidneys weigh 120 grams on the right and left respectively. The capsules strip with ease revealing smooth cortical surfaces. The cortex and medullae are unremarkable. The corticomedullary junction is distinct. The parenchyma is soft and red-tan. The right pelvis shows mild hydronephrosis. The ureters descend and insert into the bladder in a normal fashion. The bladder is lined by a tan mucosa with focal mucosal gas. No urine is present. The external and internal genitalia are unremarkable. The cervix shows multiple nabothian cysts. A 3 cm. subserosal leiomyoma is noted at the dome of the uterus. The endometrium is dark purple. The fallopian tubes are unremarkable.

ADRENALS: The adrenal glands are of appropriate size and shape. Cut sectioning reveals the yellow cortices to be well demarcated from the tan-grey medullae. There is no evidence of hemorrhage or neoplasia.

SPLEEN: The spleen weighs 50 grams. The capsule is wrinkled, tan-grey and intact. The splenic parenchyma is soft and red. There is no evidence of hemorrhage or neoplasia.

PANCREAS: The pancreas is of normal size and shape. The pancreatic parenchyma is soft, tan and lobulated. There is no evidence of fibrosis, calcification, or neoplasia.

BRAIN: The scalp is incised and reflected revealing no subcutaneous hemorrhages. The calvarium is removed revealing no epidural, subdural, or subarachnoid hemorrhages. No skull fractures are identified. The brain is removed and found to have a mass of 900 grams. The brain is tan and autolyzed.

MUSCULOSKELETAL: The vertebral column is straight. X-rays reveal an old healed fracture of the right ulna..

MAH:mtr
12/5/94

CERTIFIED TRUE COPY
B. Sundstrom
CLERK OF COURT
MARLBORO COUNTY

FA94-586 DARLENE M. PATTERSON #23747

CASE SUMMARY:

A complete autopsy was performed on the decedent identified by fingerprints as Darlene M. Patterson at the Medical University Hospital autopsy facility beginning at 10:15 AM on 11/25/94. Prosecting were Melanie A. Hopkins and Sandra E. Conradi. Also present was Raymond Edwards, autopsy technician. The autopsy was authorized by the Marlboro County Coroner's Office.

Significant findings at autopsy included a moderately decomposed body with hands, ankles, and face bound with duct tape. Also a cholecystectomy scar and old fracture of the right ulna were identified.

Histologic examination of the heart, lungs, liver, kidneys, spleen and adrenals revealed varying degrees of autolysis. Sections of the cervix showed multiple nabothian cysts. No pathologic processes were noted.

Toxicologic examination of the liver revealed an ethanol level of 0.083%, isopropanol level of .002% and an acetone level of .0006%. A general drug screen on the liver by TLC and EMIT was negative. There was no acid phosphatase elevation and no sperm found on smears (SLED).

In light of the history as stated in the protocol and the gross and microscopic autopsy findings, it is the opinion of the prosectors that this death is asphyxiation secondary to smothering (duct tape over nose and mouth). It is further the opinion of the prosectors that this death is best classified as a homicide.

Melanie A Hopkins

Melanie A. Hopkins, MD
Resident in Pathology
& Laboratory Medicine

SConradi

Sandra E. Conradi, MD
Associate Professor of Pathology
& Laboratory Medicine

MAH:SEC:mtr
1/10/95

CERTIFIED TRUE COPY
S. Lundquist
CLERK OF COURT
MARLBORO COUNTY

Sue Lorang Gladney
3235 Clemmonsville Rd Bennettsville SC 29512
(803) 479-6796

Sue Lorang Gladney
13144 Bluff Rd Columbia SC 29223
(910) 268-2931

Sue Lorang Gladney
143 Shady Acre Dr Bennettsville SC 29512
(803) 479-6796

CLERK OF COURT
U.S. DISTRICT COURT
FILED
TRUE COPY
ATTEST

PENGAD-Bayonne, N. J.
Applicant's
1 - 19-91

1991

ROGERS & MUNNERLYN, P.A.
Attorneys at Law
Post Office Box 1175
Bennettsville, South Carolina 29512

William B. Rogers, Jr.
Elizabeth R. Munnerlyn

Telephone (803) 479-9577
Fax (803) 479-0685

February 11, 1997

Ralph J. Wilson, Solicitor
Solicitor for the Fifteenth Judicial Circuit
Post Offic Box 1276
Conway, South Carolina 29526

Re: State v. Alfonso Staten
Charges: Murder, etc.

Dear Solicitor Wilson:

I recently accepted a Subpoena and Notice of Trial on behalf of my client. The Notice of Trial states that the case of the State of South Carolina v. Dwayne Sloan will be called for trial on Monday, March 3, 1997 at 8:30 A.M. I would like to know if my client is subpoenaed to be a witness or a defendant.

I would also like to request that you provide me with a more definite time of the alleged crimes (i.e. murder, kidnapping, criminal sexual conduct, and conspiracy). I have carefully reviewed all of the Rule 5 documentation you provided and have been unable to determine the exact time of the alleged crimes. The purpose of this request is so I can properly prepare my case and also to properly notify you of my client's intention to offer an alibi defense. As you know, Rule 5 of the Rules of Criminal Procedure require me to provide you with "the specific place or places at which [my client] claims to have been at the time of the alleged offense[s] and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi."

I look forward to hearing from you and do not hesitate to contact my office if you have any questions or comments.

With kind regards, I am,

CERTIFIED TRUECOPY
CLERK OF COURT
MARLBORO COUNTY

Yours Truly,

William B. Rogers, Jr.

Enclosure

Applicant's 3
1992 EH

Marlboro County High School

8

STUDENT: Staton, Ofonzo Antonio

Date: 1/30/95
Page: 1

Student ID: 238253945 Ethnic Code: B Home Phone: [redacted]
Home Room Tchr: S Wilkes Parents: Ms. Johnson
Home Room: E176
Base Credits: 0.000 1st. Sem. EFA: 2nd. Sem. EFA:
Credits Earned: 15.500 Status: A
Referral 3 day: 0 Birth Date: [redacted]
Exclusion Date:
UNEXCUSED ABS: 0
Parent/Guardian: Kathy S Johnson
Mailing: [redacted]
Resident:
City: Bennettsville, State: SC Zip: 29512

94-95 Inst. Pd.:

ATTENDANCE DETAIL 8/22/94 - 5/31/95

Date		Periods 1	2	3	4	5	6	7	8
Monday	8/22/94	U	.	.	.	.	.	.	.
Tuesday	9/20/94	.	.	.	.	.	.	U	.
Wednesday	9/21/94	U	U	U	U	.	U	U	U
Wednesday	10/ 5/94	.	U	U	U	.	U	U	U
Friday	10/ 7/94	.	.	U	.	.	.	.	U
Monday	10/10/94	.	.	U	.	.	.	.	.
Tuesday	10/18/94	E	E	E	E	E	E	E	E
Tuesday	10/25/94	.	.	U	.	.	.	.	.
Friday	11/11/94	U	U	U	.	.	U	U	U
Thursday	11/17/94						U		
Wednesday	11/23/94	E	E	E	E	E	E	E	E
Tuesday	11/29/94	E	E	E	E	E	E	E	E
Thursday	12/ 1/94	U	U	U	U	.	U	U	U
Friday	12/ 2/94	.	.	U	U	.	.	.	.
Monday	12/ 5/94	U	U	.	.	.	.	.	.
Wednesday	12/ 7/94	S	S	S	S	S	S	S	S
Thursday	12/ 8/94	S	S	S	S	S	S	S	S
Friday	12/ 9/94	S	S	S	S	S	S	S	S
Monday	12/12/94	S	S	S	S	S	S	S	S
Tuesday	12/13/94	S	S	S	S	S	S	S	S
Wednesday	12/14/94	S	S	S	S	S	S	S	S
Thursday	12/15/94	S	S	S	S	S	S	S	S
Friday	12/16/94	S	S	S	S	S	S	S	S
Monday	1/ 2/95	S	S	S	S	S	S	S	S
Tuesday	1/ 3/95	S	S	S	S	S	S	S	S
Wednesday	1/ 4/95	.	.	.	.	.	.	.	.
Thursday	1/ 5/95	U	U	U	U	.	U	U	U
Friday	1/ 6/95	U	U	U	U	.	U	U	U
Monday	1/ 9/95	U	U	U	U	U	U	U	U

Also: From 11-14 & 23, 1994 (Present) only (2) days being absent or tardy on the 23rd I had an excuse sent to court in N.C.

CERTIFICATION TRUE COPY
CLERK OF COURT MARLBORO COUNTY

Applicant's 4
1-12-05 EH
PENGAD-Bayonne, N. J.

Marlboro County High School

STUDENT: Staton, Ofonzo Antonio

Date: 1/30/95
Page: 2

ATTENDANCE DETAIL 8/22/94 - 5/31/95 (continued)

Date		Periods 1	2	3	4	5	6	7	8
Tuesday	1/10/95	U	U	U	U	U	U	U	U
Wednesday	1/11/95	U	U	U	U	U	U	U	U
Thursday	1/12/95	.	U	U	U	U	U	U	U
Friday	1/13/95	U	U	U	U	U	U	U	U
Wednesday	1/18/95	U	U	U	U	U	U	U	U
Thursday	1/19/95	U	U	U	U	U	U	U	U
Friday	1/20/95	U	.	.	U	.	.	U	U
Monday	1/23/95	U	U	U	U	.	.	.	U
Tuesday	1/24/95	U	U	U	U	.	.	U	U
Wednesday	1/25/95	U	U	U	U	.	U	U	U
Thursday	1/26/95	@	@	@	@	.	.	.	@

Explanation of codes:
(capital letters = absences, small letters = tardies)

U, u Unlawful
S, s OSS
B, b Late Bus *
I, i ISS *
@ absence with excuse pending
. present

E, e Lawful
F, f Field Trip *
L, l Early Dismissal
N, n Lawful - Parent Note
+ tardy with excuse pending
* not used in absence or tardy totals

ATTENDANCE SUMMARY FOR 8/22/94 - 5/31/95

School days in period: 180
Days enrolled: 180.00
Most consecutive absences: 25
Times tardy: 4.00

Days present: 148.00
Days absent: 32.00
Individual ADA: 0.82

Enrolled Withdrew
8/22/94 E

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CLERK OF COURT
MARLBORO COUNTY

STUDENT: Staton, Ofonzo Antonio

Date: 1/30/95
Page: 3

CLASS SCHEDULE FOR SECOND SEMESTER

Per	Days	Course Sect	Subject	Teacher	Room
1	MTWRF	310103-0001	Math Center	Morris	E169
2	MTWRF	309002-0002	Communication Center	McQueen	D149
3	MTWRF	308200-0003	Comm For The Workpl. 2	Jones	D148
4	MTWRF	314100-0010	Math For Technologies I	Hoffman	B112
5	MTWRF	008991-0003	Lunch A 11:15-11:45 AM		COMMS
6	MTWRF	333003-0005	Government	Kimrey	C121
7	MTWRF	500100-0003	Accounting I	Moody	E170
8	MTWRF	089712-0012	Homeroom 12th	Wilkes	E176

CERTIFIED TRUE COPY
William B. Snowden
CLERK OF COURT
MARLBORO COUNTY

1995

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO)	
STATE OF SOUTH CAROLINA,)	
)	**NOTICE OF ALIBI**
versus)	
)	
ALFONSO STATON,)	
)	
Defendant.)	

THE DEFENDANT, through his attorney, William B. Rogers, Jr., respectfully advises Ralph J. Wilson, Solicitor for the Fifteenth Judicial Circuit, that he reserves the right to offer an alibi defense if necessary. If the Defendant offers an alibi defense, he will rely on the following witnesses:

1. Various family members, including but not limited to, his mother and step-father.

2. Custodian of attendance records for the Marlboro County High School

3. Other witnesses which may be called if a more definite time of the alleged crimes is established.

William B. Rogers, Jr.
Attorney for Defendant
P. O. Box 1175
Bennettsville, South Carolina 29512

Bennettsville, South Carolina
February 24, 1997

CERTIFIED TRUE COPY
CLERK OF COURT
MARLBORO COUNTY

FEB 24 '97 10:48

PENGAD-Bayonne, N. J.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
STATE OF SOUTH CAROLINA,	)	
	)	**NOTICE OF ALIBI**
versus	)	
	)	
ALFONSO STATON,	)	
	)	
Defendant.	)	

THE DEFENDANT, through his attorney, William B. Rogers, Jr., respectfully advises Ralph J. Wilson, Solicitor for the Fifteenth Judicial Circuit, that he reserves the right to offer an alibi defense if necessary. If the Defendant offers an alibi defense, he may rely on the following witnesses:

1. Kathy Johnson, mother
2. Custodian of attendance records for the Marlboro County High School
3. Larry Quick
4. Larry Graham
5. Anthony Graham
6. Willie Lee Reid

William B. Rogers, Jr.
Attorney for Defendant
P. O. Box 1175
Bennettsville, South Carolina 29512

Bennettsville, South Carolina
March 13, 1997

CERTIFIED
TRUE COPY
William B. Rogers
CLERK OF COURT
MARLBORO COUNTY

1997

FORM 5

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

Alfonso Staton # 241380)
Full name and prison number (if any) of Applicant.)

v.) APPLICATION FOR

State of South Carolina) POST-CONVICTION RELIEF

2013-CP-34-00089

A CERTIFIED TRUE COPY
William B. [illegible]
CLERK OF COURT
MARLBORO COUNTY

FILED
2013 APR 11 P 2:33
WILLIAM B. [illegible]
CLERK OF COURT
MARLBORO COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee C.I., 990 Wisacky Hwy, Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence General Sessions Marlboro County
3. Name(s) of co-defendant(s) (if any) Leroy Staton, Jeffery Walls, Johnny Pearson, Martin McIntosh, Cicly Stuckey, Bobby Knight, Danny Davis, Robert Graham
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 96-GS-34-984 (Kidnapping Count 1, Murder Count 2, Criminal
   (b) Sexual Conduct Count 3, and Criminal Conspiracy Count 4)
   (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) March 18, 1997 (No sentence for Kidnapping)
   (b) March 18, 1997 (Life for Murder)

Revised 3/2003

(c) March 18, 1997 (Acquitted for CSC)

(d) March 18, 1997 (5 years concurrent for Criminal Conspiracy)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere N/A

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

Yes

8. If you answered "yes" to (7), list:

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

i. S.C. Court of Appeals

ii. S.C. Supreme Court

iii.

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

i. Denied direct Appeal

ii. Denied writ of Certiorari

iii.

(c) the date of each such result:

i. 11-8-2001

ii. 11-21-2002

iii.

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

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

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

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2013 APR 26 PM 1 26
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

Revised 3/2003

(a) Ineffective assistance of 29(b) counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Mr Grove the 29(b) counsel did not properly research or brief my issues. He did not notify me immediately when 29(b) motion was denied, and he did not file an appeal of the dismissing of the 29(b)

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? Yes

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

(a) the specific nature thereof:

i. Post Conviction Relief

ii. 29(b) Motion based upon After-Discovered Evidence SCRcrimP

iii. _____

iv. _____

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

i. Court of Common Pleas, Marlboro County

ii. Court of General Sessions, Marlboro County

iii. _____

iv. _____

(c) the disposition thereof:

i. Denied PCR

ii. Denied 29(b)

iii. _____

FILED
2013 Apr 16 PM 1:29
ELIANA D. SWINDLER
CLERK OF COURT
MARLBORO COUNTY, S.C.

iv. _____

(d) the date of each such disposition:

i. Feb 23, 2009

ii. Oct 19, 2011

iii. _____

iv. _____

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) No

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

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2013 APR 26 PM 1 25
WILLIAM B. FURDERER, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Will B. Rogers, P.O. Box 1175; Bennettsville, S.C. 29512

ii. Joseph Savitz III, S.C. office of Indigent Defense

iii. Ms. Candace Lively, 915 Norman Alley, Conway, S.C. 29526
Mr. Will Grove, P.O. Box 29, Dillon, S.C. 29536

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Direct Appeal

iii. Post Conviction Relief
29(b) Motion

19. State clearly the relief you seek in filing this application:
New trial and belated appeal of 29(b)

20. Are you now under sentence from any other court that you have not challenged?
No

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2013 APR 26 PM 1 25
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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

Alfonso Staton #241380

SWORN to and subscribed before me this 10 day of April, 2013.

(L.S.)
Notary Public

My Commission Expires: 11-4-2025

FILED
2013 APR 26 PM 1 26
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

A CERTIFIED
TRUE COPY
William B. Funderburk
CLERK OF COURT
MARLBORO COUNTY

Revised 3/2003

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

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

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Alfonso Staton 241380
Applicant

SWORN or affirmed to and subscribed before me this 12 day of April, 2013.

Notary Public

My Commission Expires: 11-4-2015

FILED
2013 APR 26 PM 1 26
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

Revised 3/2003

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2013-CP-34-89
	)	
Alfonso Staton, 241380	)	
	)	
Applicant,	)	
	)	**RETURN**
v.	)	**AND MOTION TO DISMISS**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed April 26, 2013, would respectfully show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marlboro County Clerk of Court's orders of commitment. The Marlboro County Grand Jury indicted the Applicant for murder, kidnapping, criminal sexual conduct, and criminal conspiracy (96-GS-34-984).

On February 26, 2004, Applicant was tried before the Honorable Edward B. Cottingham who sentenced the Applicant to an aggregate sentence of life imprisonment for murder and five years imprisonment for criminal conspiracy to run concurrently. Applicant appealed to the South Carolina Court of Appeals, who denied the direct appeal. Applicant subsequently appealed to the South Carolina Supreme Court, who denied certiorari. Applicant also filed a 29(b) motion. Candace Lively, Esquire represented Applicant in the 29(b) motion. Applicant has also previously applied for PCR.

2005 2005

Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, and if available, the transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of 29(b) Counsel"

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced 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 625ial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test, in addition to being filed past the applicable statute of limitations, and in addition to being successive. Therefore, Respondent requests this Court summarily dismiss the Application with prejudice.

IV.

The statute of limitations applicable to post-conviction relief actions bars the entire application. S.C. Code Ann. § 17-27-45 (Supp. 2001) requires an inmate to file a post-conviction relief application "within one year after the entry of a judgment of conviction . . . ." This provision applies to all convictions after the July 1, 1995 effective date of the statute. *See* Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant's conviction and sentence occurred on March 18, 1997. Applicant should have filed allegations in this application on or before one year after that date. Applicant filed this post-conviction relief application fifteen years past the applicable statute of limitations expired. Accordingly, since Applicant did not present these allegations in a timely manner, this Court should dismiss the application with prejudice as barred by the statute of limitations.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a

motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are strongly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "**could not have been raised** . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant

bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present **any** reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this application should be summarily dismissed.

VI.

The State therefore requests that this Court summarily dismiss this Application as it is filed outside the statute of limitations and also seeks relief not available in PCR, pursuant to S.C. Code Ann. ' 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By:_____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 20, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2013-CP-34-0089
	)	
ALFONSO STATON, 241380	)	
	)	
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 and Motion to Dismiss** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Alfonso Staton, 241380
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 20th day of May, 2013.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO Alfonso Staton, 241380 ☐ Plaintiff v. State Of South Carolina ☒ Defendant.	))))))))))	IN THE COURT OF COMMON PLEAS CASE NO. 2013-CP-34-0089 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Alfonso Staton, 241380 , Bar No. Address: Lee CI 990 Wisacky Hwy Bishopville SC 29010 phone: fax: e-mail: other:	Tyson Andrew Johnson, Sr., Bar No. 16230 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ May 20, 2013
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS
Alfonso Staton, 241380	)	2013-CP-34-89
Applicant,	)	
vs.	)	**CONDITIONAL ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 26, 2013. Respondent submitted a Return, requesting summary dismissal of the matter. This Court also has before it the records of the Clerk of Court regarding the subject convictions.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Marlboro County Clerk of Court's orders of commitment. The Marlboro County Grand Jury indicted the Applicant for murder, kidnapping, criminal sexual conduct, and criminal conspiracy (96-GS-34-984). Will B. Rogers, Esquire represented the Applicant at trial.

On February 26, 2004, Applicant was tried before the Honorable Edward B. Cottingham who sentenced the Applicant to an aggregate sentence of life imprisonment for murder and five years imprisonment for criminal conspiracy to run concurrently. Applicant appealed to the South Carolina Court of Appeals, who denied the direct appeal. Applicant subsequently appealed to the South Carolina Supreme Court, who denied certiorari. Joseph Savitz III, Esquire represented the Applicant in the appellate matters. Applicant also filed a 29(b) motion. Candace Lively, Esquire

represented Applicant in the 29(b) motion. Applicant has also previously applied for PCR.

ALLEGATIONS

In the application for post conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of 29(b) Counsel"

DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations and is successive.

Statute of Limitations

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to –160 (1976 & Supp. 1997). The Act reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted on March 18, 1997. This application was filed beyond the time the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

(1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Court finds that it should summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

Successiveness

The current Application is successive to the previous applications for post-conviction relief. Successive applications for post-conviction relief are strongly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> **All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.**

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in his previous application, then the Applicant may not raise those grounds in successive applications. Id. The

Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, this application should be summarily dismissed.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General **David Spencer**., Post Office Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this

_____ day of _____, 2013.

_____
Honorable J. Michael Baxley
Chief Administrative Judge
4th Circuit

_____, South Carolina.

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	Case No. 2013-CP-34-0089
Alfonso Staton, #241380	)	
Applicant,	)	**APPLICANT'S RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL AND REQUEST FOR A HEARING**
vs.	)	
The State of South Carolina,	)	
Respondent.	)	

Applicant respectfully request this Court rescind the Conditional Order of Dismissal and grant Applicant a hearing on his Post Conviction Relief (PCR) case. To support this request Applicant will show the following:

Summary of Argument

While Applicant sat in prison waiting for the appeal of his first PCR to be decided, Applicant learned that at the time of his trial his attorney, Will Rogers, also held the position of part-time assistant solicitor. In fact, unknown to Applicant at the time of trial, Will Rogers, had been relieved as Counsel based on a conflict by Judge Smoak only to be ordered back on the case by Judge Cottingham. Under *Holloway v. Arkansas*, this would require an automatic reversal.[1]

Two months after his first PCR appeal was dismissed, Applicant file a motion for a new trial based on after discovered evidence pursuant to Rule 29(b), SCRCrimP.

[1] In *Holloway*, the U.S. Supreme Court found that when Counsel timely objects to a potential conflict of interest the defendant need not show prejudice to warrant reversal. *Holloway v. Arkansas*, 435 U.S. 475, 490, 98 S.Ct. 1173, 1181-82 (1978).

Applicant's Court appointed 29(b) counsel then proceeded to: submit a substitute motion that waived one of Applicant's issues; failed to advise the court of the applicable statute of limitations[2] on a Rule 29(b) in 2009; failed to argue that *Spann*[3] was inapposite; and failed to file a timely appeal. As a result of court appointed 29(b) counsel's performance, Applicant has been barred from litigating his meritorious newly discovered evidence claims.

BACKGROUND

Allegations and Investigation

In November of 1994, the Decedent was found on partially submerged on Burnt Factory Road in Marlboro County. Her face hands and legs were bound with duct tape. According to the autopsy she had either been suffocated with duct tape or drowned. On December 1, 1994, Johnny "Ringo" Pearson (Ringo) gave a statement to Jerry Starnes of the Marlboro County Sheriff's Department and Tommy Frazier of SLED. In that Statement Ringo claimed to have duct taped the Decedent while having "kinky" sex and then accidentally pushed her off a bridge. Attachment D Ringo was arrested however, was not declare competent to stand trial for over ten years.

Investigators believed that the mentally incompetent Ringo was not acting alone. Although there was no physical evidence linking the killing to any other person, Marlboro County Law Enforcement with the assistance of Chesterfield County Law Enforcement and SLED began looking at people close to Ringo.

About a week after Ringo was arrested, Applicant was overheard stating that Ringo had duct taped the decedent but that Ring did not intend on killing the decedent he only planned on

[2] In 2009, when the 29(b) was filed, the rule provided that the motion must be made in a reasonable amount of time. While his motion was pending this was amended to "within one year."

[3] *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999).

raping her. Attachment E. This was fairly consistent with Ringo's story. Although Ringo claimed that the sex was consensual.

More than eight people were charged with the murder and the State intended on seeking the death penalty against several of the codefendants.

Although there were many people were suspected of participating in killing, law enforcement had little evidence of anyone other than Ringo's involvement until March 2, 1995 when Danny Davis gave a statement. *See* Attachment C. On March 2, 1995, Davis claims that while he was at a cook out some time before Thanksgiving of 1994, he saw the Decedent's body bound with duct tape. Danny told investigators the following:

> Bobby Ransom told me that they had got her from her house in Bennttsville, and took her riding around, and also took her money and food stamps to buy crack with. Ricky Stuckey said that they put tape over her mouth and she suffocated to death.

The March 2, 1995 statement names Robert Graham, Ricky Stuckey, Joe Stuckey, an unnamed person who was related to Rickey Stuckey, Leroy Staton (Applicant's Uncle), and Danny's lifelong friend Robert Ransom. However, this statement never mentions Applicant. Danny Davis was arrested and charged with murder.

Eight days later, Investigator's armed with Danny's Statement confronted Danny's lifelong friend Robert "Bobby" Ransom. Ransom had already been implicated as a principal in the kidnapping, rape, and murder of Decedent. However, Ransom told a different story than the one relayed to investigators by Danny on March 2nd. Ransom mitigated his role as someone merely present for the rape and murder.

Investigator's then took Ransom to confront his lifelong friend Danny at the Chesterfield County Jail. Ransom talked to Danny about what happened. Danny would later admit that he did not remember everything but Ransom told him what happened.

After speaking with Ransom, Danny gave a different statement that was in line with what he had been told by Ransom. Danny's March 10, 1995 statement mentions three other people that were previously not mentioned: Jeffrey Walls, Martin McIntosh and Applicant.

Based on Ransom's story and the new version of Danny's statement, the State's theory of the case is that one or more of the co-defendants kidnapped the decedent. While being held, the State alleges that she was sexually assaulted.[4] At some point, she either died from suffocation or from drowning. Several days after being kidnapped, the State alleges that eight of the codefendants piled into a single car along with the decedent a drove her to a bridge on burnt factory road.

Trial

Applicant was indicted by the Marlboro County Grand Jury for murder, kidnapping, criminal sexual conduct in the first degree and criminal conspiracy. In March 1997, Applicant was called to trial before the Honorable Edward B. Cottingham and a jury. For his trial Applicant was represented by William B. Rogers. The State was represented by Ralph Wilson. Applicant was tried jointly with Leroy Staton, Ricky Stuckey, Jeffery Walls, Robert Graham and Martin McIntosh.[5] Ringo was not tried with Applicant[6].

The Supreme Court of South Carolina has made the following factual statement concerning the evidence presented at trial:

> State's case against [the codefendants] consisted primarily of the testimony from co-defendants, Danny Davis and Bobby Ransom.
>
> Davis and Ransom testified they observed Victim tied up and lying on a couch or bed during a cookout and party at two co-defendants' mobile home. Both accompanied several co-defendants on a trip to move Victim from the mobile home to an abandoned house. Ransom testified he was smoking marijuana and drinking creek liquor (a type of "white lightning" or

[4] Applicant was acquitted of the sexual assault.

[5] In 2004 Martin McIntosh's case was reversed. In 2007, he plead guilty to misprisonment of a felony and is currently not incarcerated.

[6] The State continued to seek the death penalty against Ringo. Ringo was declared incompetent until approximately 2007 at which time death was taken off the table and Ringo plead to 33 years. He was released in 2013.

moonshine) when several co-defendants arrived at his house the next night and asked him to join them on a trip back to the abandoned house. When he saw his visitors approaching, Ransom drank the remaining half of a pint of creek liquor he had been drinking so they would not ask him for any.

Davis and Ransom testified Petitioner and another co-defendant were waiting when they arrived at an abandoned house where Victim had been left the previous night. Several unidentified co-defendants carried Victim, still bound by tape, to the car and put her in the back seat beside Ransom. Ransom testified he began "freaking out" when the "liquor hit [him]" and he begged them to stop Victim from "crying all over [him]," although she really was not. The eight co-defendants - including Davis, Ransom, and [McIntosh]- rode in a single car to a bridge, where unidentified co-defendants placed Victim's body in the pond.

Davis and Ransom were cross-examined at length about their extensive history of alcohol and substance abuse. Davis testified he suffered brain damage from a traumatic head injury 10 years earlier, as well as anxiety, sleeplessness, and depression. He was a victim of child abuse and had extensively abused alcohol and illegal drugs for years. He testified he drank heavily every day during November 1994. His alcohol use caused him to forget events and confuse things. During his two-year incarceration preceding the trial, Davis testified he saw nonexistent shadows, heard "a lot of [nonexistent] voices," and talked with imaginary friends. He was taking anti-psychotic and anti-depressant medications during his incarceration and the trial.

Ransom testified he had been paralyzed from the chest down since 1983. In November 1994, he had been on a drinking binge for some three years and eight or nine months. He often blacked out and suffered from memory loss. He had been hospitalized at psychiatric facilities three times before 1996 for abuse of alcohol and numerous drugs, including Valium, Xanax, sleeping pills, amphetamines, powder cocaine, crack cocaine, acid, marijuana, and "huffing" gasoline. He drank two quarts to a gallon of alcohol each week, including creek liquor.

Davis and Ransom testified on cross-examination they were good friends who grew up together. Davis often visited the reclusive Ransom at his house in 1994, and they saw one another frequently during a four-month period after the crime until their arrest. Police in March 1995 brought Ransom from another jail to see Davis in jail so Ransom could "confront" Davis about the crimes. The two confessed to police the same afternoon at the same location, and, for the first time, Ransom implicated Petitioner.

At his guilty plea prior to [Applicant's] trial, Davis stated, "a lot of this stuff I can't quite remember, but my co-defendant [Ransom] has - he's told me everything." While insisting he was trying to tell the truth at [Applicant's] trial, Davis testified he had changed his story "a lot of times," although not

> every time he talked to police during fifteen to twenty interviews. He "told [police] what they wanted to hear." In fact, he testified he no longer had an independent recollection of even being at the bridge that night, but based his trial testimony on some other source.

State v. McIntosh, 358 S.C. 432, 595 S.E.2d 484 (2004).

Applicant was convicted of murder, kidnapping, and conspiracy. Applicant was acquitted of criminal sexual conduct. Applicant was sentenced to life in prison. Applicant appealed. Applicant's codefendants were also convicted of murder.

Danny Davis and Robert Ransom were sentenced to 15 years for voluntary manslaughter. Martin McIntosh would have his conviction reversed and plead to 15 years under *Alford*.

Post-Trial History

For his direct appeal, Applicant was represented by Joey Savitz. The State was represented by Creighton Waters. The South Carolina Court of Appeals affirmed in an unpublished opinion. Applicant filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina. Certiorari was denied on November 21, 2002.

On July 10, 2003, Applicant filed an application for Post-Conviction Relief (PCR). For his PCR, Applicant was represented by Candice Lively and the State was represented by Karen Ratigan. An evidentiary hearing was convened on January 11, 2005, before the Honorable John Milling. On September 16, 2005, Applicant's PCR was dismissed.

Applicant appealed the denial of his PCR application. For the appeal of his PCR Applicant was represented by Wanda Carter, and the State was represented by Karen Ratigan. The Supreme Court of South Carolina granted certiorari on two issues. While his PCR appeal was pending Applicant wrote Will Rogers to get several documents in his file. Rogers sent him a memorandum stating that the he had been relieved of counsel by Judge Smoak but then placed back on the case by Judge Cottingham. *See* Attachment F. In this memorandum, is states the following:

> [Will Rogers] was informed that Judge Smoak wanted me to inform all of [his] criminal clients that [he] would be unable to represent them because of a conflict of interest. [He] the then notified [his] clients of [that] decision.

To this day, Will Rogers in uncertain whether he ever informed his client of the nature of the conflict.

While his PCR appeal was pending, Ringo had plead. On November 2, 2007, Ringo gave an affidavit stating that Applicant was not involved in the murder. *See* Attachment G.

Although Applicant had two new strong pieces of evidence, he did not believe he could act on them because Rule 29(b), SCRCrimP specifically prevented him filing an after discovered evidence motion while an appeal was pending. Furthermore, Applicant believed that waiting untile after his PCR appeal would be considered within a "reasonable time."[7]

On March 6, 2009, the South Carolina Supreme Court dismissed Applicant's PCR appeal as improvidently granted.

On May 6, 2009, pursuant to Rule 29(b), SCRCrimP, Applicant filed a Motion for a New Trial Based on After-Discovered Evidence (hereinafter 29(b)). Applicant alleged both the conflict of interest and Ringo's statement. For this hearing, Applicant was represented by the Fourth Circuit Public Defender Office. Without consulting applicant, Emily Crayton amended the 29(b) to only allege the conflict of interest.

The 29(b) was heard in October 2011 before the Honorable Howard P. King. Will Grove represented Applicant at the hearing. The 29(b) was denied by written order dated October 19, 2011. This order was mailed to Applicant on January 4, 2012. Applicant filed a motion to reconsider. On January 15, 2012, Judge King denied the motion to reconsider.

[7] At the time, Rule 29(b), SCRCrimP required filing within a reasonable time. In 2011, this was amended to one year.

Applicant filed a notice of appeal on February 13, 2012. Applicant's claim was appeal was dismissed by order dated March 27, 2012. Applicant filed a petition to reinstate the appeal on April 3, 2012. This motion was not ruled on for five months. On April 15, 2013, Applicant asked the Court of Appeal to appoint counsel. The record does not indicate that appellate counsel was ever appointed.

On August 28, 2012, Applicant filed a federal habeas petition. Pursuant to *Rhines*,[8] The Honorable Kaymani West has recommended that the habeas be held in abeyance pending the outcome of Applicant's state claims. In Judge West's recommendation she found the following:

> [T]he undersigned is of the opinion that [Applicant] has satisfied the good-cause prong of *Rhines*. The letter from [Applicant's] appointed Rule 29(b) counsel regarding the potential appeal of the denial of the Rule 29(b) Motion is not a model of clarity. [Applicant's] confusion on whether an appeal regarding the Rule 29(b) Motion was timely is "reasonable" and well-indicated by his filings and letters. His "protective" filing of this federal petition in August 2012, while his appeal was pending, was appropriate.

See Attachment H.

On September 7, 2012, South Carolina Court of Appeal denied Applicant's Petition to Reinstate the Appeal. Two weeks later, on September 21, 2012, Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. In that petition, Applicant again requests that Counsel be appointed. The State filed a return on October 30, 2012. As of May 1, 2013, this petition is still pending review at the South Carolina Supreme Court. However, the State has alleged, that the Supreme Court lacks jurisdiction to hear an untimely appeal.

On April 26, 2013, Applicant filed the current action alleging that 29(b) Counsel was ineffective. Applicant's PCR also alleges that 29(b) Counsel was ineffective in failing to file an

[8] *Rhines v. Weber*, 544 U.S. 269 (2005).

appeal of the 29(b) and request a belated 29(b) appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) and *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

DISCUSSION

In his application for Post-Conviction Relief, Applicant alleges that 29(b) Counsel was ineffective both during the hearing and by not appealing the denial of his 29(b). The State has argued that Applicant failed to state a claim; that the issues are barred by the statute of limitations; and that his application is successive.

As an initial matter, Applicant argues that the factual basis for this PCR did not arise until after his first PCR and therefore this is not a successive Application. S.C. Code § 17-27-90 allows an applicant to file a subsequent PCR application when the factual basis for the claim did not exist or was unknown at the time of the application. *See McCoy v. State*, 401 S.C. 363, 370, 737 S.E.2d 623, 627 (2013). Clearly in 2003—when his first PCR was filed – Applicant would not have been able to raise his 29(b) counsel's deficient performance that occurred in 2011 and 2012. Therefore this is not a successive application.

Although treated as one allegation by the State, Applicant argues that the failure to file an appeal should be examined separately from the other ineffective assistance of counsel (IAC) issues.

I. Ineffective Assistance of 29(b) Counsel for Failure to Appeal.

Relevant Facts

Judge King ruled on the 29(b) at the hearing however planned on signing a written order. On October 19, 2011, Judge King issued a written order. This order was served on Applicant's counsel of record, Will Grove. However, Applicant was not informed of this order when it was signed. On December 14, 2013 Applicant wrote Judge King concerning the order. *See* Attachment A.

On January 4, 2012, Applicant received Judge King's order. Upon receiving the order Applicant filed a motion to reconsider and wrote Will Grove asking about an appeal. On January 15, 2012, Judge King Denied to motion to reconsider in an order.

Applicant received the order denying the motion to reconsider the denial of for a new trial on after discovered evidence on January 24, 2013. That same day Will Grove, his appointed attorney for this motion, sent him a letter stating the following:

> I did not file an appeal of the judge's ruling on your motion to reopen the case because of a conflict. However, the judge did not rule on your issue of new evidence, which was included towards the back of the motion. This is the issue I'd like to present inform of a judge for consideration
>
> Once I have it scheduled, I will let you know if that motion fails then an appeal of that motion can be filed.

Attachment B.

Uncertain whether 29(b) Counsel was correct about his appeal, Applicant filed a notice of appeal on February 13, 2012. Applicant's claim was appeal was dismissed by order dated March 27, 2012. Applicant filed a petition to reinstate the appeal on April 3, 2012. This motion was not ruled on for five months. On April 15, 2013, Applicant asked the Court of Appeal to appoint counsel. The record does not indicate that appellate counsel was ever appointed.

On September 7, 2012, South Carolina Court of Appeal denied Applicant's Petition to Reinstate the Appeal. Two weeks later, on September 21, 2012, Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. In that petition, Applicant again requests that Counsel be appointed. The State filed a return on October 30, 2012. As of May 1, 2013, this petition is still pending review at the South Carolina Supreme Court.

Fearing that the Supreme Court would find that his Appeal was not timely filed, Applicant filed the present action on April 26, 2013.

Applicant is essentially raising a claim for a belated appeal under *Austin*.

The State has argued that an ineffective assistance of counsel claim cannot be properly brought against 29(b) Counsel because Applicant had no right to Counsel at a 29(b) hearing. Regardless of whether a defendant has a Sixth Amendment right to Counsel at a Rule 29(b) hearing, Applicant does have a Due Process right to appellate review of his 29(b); therefore Applicant's court appointed counsel has a duty to ensure that file an appeal when one is necessary. A similar situation arises with some regularity in post-conviction relief cases where appointed counsel fails to perfect an appeal. *See Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). *Austin* establishes a cognizable PCR claim for ineffective assistance of counsel when counsel fails to seek appellate review when the client had a right to assistance of Appellate Counsel. *See id.* 305 S.C. at 453, 409 S.E.2d at 396 ("Because petitioner is entitled to the assistance of appellate counsel on PCR, and because we must craft a remedy to correct the unfairness which occurred, we find his allegation that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance of counsel."). Applicant is asserting an *Austin* claim in the context of his 29(b) case.[9]

Applicant would have been entitled to appointed counsel to perfect his 29(b) appeal.

Similarly to the denial of a PCR, A defendant has the right to appointed counsel for the denial of a 29(b). Applicant had the right to appeal the denial of his 29(b). *See* S.C. Code § 14-3-330 (2)(b) (recognizing appellate jurisdiction for the denial of a motion for a new trial). Since he had been declared indigent and appointed counsel for his 29(b) hearing, Applicant would have been appointed counsel for his 29(b) appeal. *See* Rule 602 (e)(3) (noting that when counsel is appointed and files a notice of appeal counsel is immediately relieved and Appellate Defense is appointed), SCACR; *see also*, S.C. Code § 17-3-360 (C) (Noting the duties of appellate defense to represent persons "who files a Notice of Intention to Appeal or Desires to appeal a conviction in a

[9] The State has raised the statute of limitations. Applicant would point out that the statute of limitations is inapplicable to *Austin* claims. *See Odom v. State*, 337 S.C. 256, 263, 523 S.E.2d 753, 757 (1999) ("*Austin* appeals are considered "belated appeals" and are used to rectify unjust procedural defects such as when an attorney does not file a timely appeal.").

trial court, or decision of a proceeding in civil commitment or other or other involuntary placement in a state, county or municipal facility"). The Fourth Circuit Public Defender was appointed to represent Applicant for his 29(b). Therefore, had they properly filed a notice of appeal, Applicant would have been entitled to Counsel to assist with the 29(b) appeal.

Any argument, that Applicant would not have been entitled to appointed counsel for the purposes of appealing his 29(b) is indefensible. With the exception of one[10] municipal court case, all[11] 29(b) appeals in the past 20 years have been handled by counsel. *See e.g.*, *State v. Koon*, (2013-UP-216) (Mr. Koon was represented by Appellate Defender, Robert Pachak); *State v. Harris*, 391 S.C. 539, 706 S.E.2d 526 (2011) (Mr. Harris was represented by Appellate Defender Celia Robinson); *State v. Bennett*, (2011-UP-208) (Mr. Bennett was represented by Appellate Defender Elizabeth Franklin-Best); *State v. Watrus*, (2010-UP-562) (Mr. Watrus was represented by Appellate Defender Celia Robinson); *State v. Kromah*, (2009-UP-322) (Ms. Kromah was represented by Tara Shurling); *State v. Miller*, (2009-UP-236) (Miller was represented by Appellate Defender Elizabeth Franklin-Best); *State v. Jarell*, (2009-UP-074) (Ms. Jarrell was represented by Appellate Defender Katherine Hudgins); *State v. Rollins*, (2009-UP-264); *State v. Mercer*, 381 S.C. 149, 672 S.E.2d 556 (2009) (Mr. Mercer was represented by Appellate Defender Robert Dudek and other appointed counsel); *State v. Franklin*, 341 S.C. 555, 534 S.E.2d 716 (2000) (Mr. Franklin was represented by Dan Stacey of Appellate Defense); *State v. Needs*, 333 S.C. 134; 508 S.E.2d 857 (1999) (Mr. Needs was represented by Appellate Defender Bob Dudek and Joseph Smith Deal); *State v. Needs*, 334 S.C. 618, 513 S.E.2d 98 (1999) (Mr. Spann was

[10] *City of Columbia v. Assa'ad-Faltas*, (2007-UP-193). However, Applicant submits that Dr. Faltas's case presents and anomaly. Dr. Faltas is a medical doctor who has a long history of *pro se* representation in both State and Federal Court. It is also important to note that Appellate Defense generally will not accept magistrate and municipal appeals. *See State v. Rau*, 320 S.C. 385, 465 S.E.2d 370 (Ct. App. 1995).

[11] This is based upon Counsel's search of Lexis Advance.

represented by John Blume and Diana Holt); *State v. Taylor*, 333 S.C. 159, 508 S.E.2d 870 (1998) (Mr. Taylor was represented by Appellate Defender Robert Dudek); *State v. Clinkscales*, 318 S.C. 513, 458 S.E.2d 548 (1995) (Mr. Clinkscales is represented by Appellate Defender Anne Pearce)[12]; *State v. Freeman*, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995) (Mr. Freeman was represented by Ed Clement and others); *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177 (1993) (Mr. Prince was represented by Ray Coit Yarborough and others). It is also important to note that nearly all of these attorneys were appointed counsel. Clearly, Applicant would have been appointed counsel had the notice of appeal been properly filed.

Under *Austin*, Applicant has raised a cognizable claim for PCR.

"*Austin* appeals are considered "belated appeals and are used to rectify unjust procedural defects, such as when an attorney does not file a timely appeal." *Odom v. State*, 337 S.C. at 263, 523, S.E.2d at 757. The State's primary argument is that Applicant had no right to the effective assistance of 29(b) Counsel. Similarly, there is no Sixth Amendment right to effective assistance of PCR counsel. *See Pennsylvania v. Finley*, 481 U.S. 551, 107 S.Ct. 1990 (1987). However, South Carolina has recognized that appointed PCR counsel has a duty to file an appeal upon an Applicant's request. *Austin*, 305 S.C. 453, 409 S.E.2d 395.

In *Austin,* the Supreme Court held, "[b]ecause petitioner is entitled to the assistance of appellate counsel on PCR, and because we must craft a remedy to correct the unfairness which occurred, we find his allegation that (PCR Counsel) failed to seek review in this case sufficiently states a claim of ineffective assistance of counsel." *Id.* 305 S.C. at 453, 409 S.E.2d at 396. The holding in *Austin* hinges not upon a Sixth Amendment right to Counsel, but rather on the right to assistance of appellate counsel. *See Finlay supra.* Although *Clinkscales* held that 29(b) does not

[12] It is important to note that even in the case the State relies heavily on in their motion to dismiss, 29(b) Counsel was appointed for the purposes of appeal.

implicate a Sixth Amendment right to counsel; under *Austin,* Applicant can alleged that he was denied the assistance of counsel for the appellate review of his 29(b), based upon his appointed 29(b) Counsel's deficient performance.

In sum, Applicant lost his right to appeal the denial of his 29(b) claim based on his appointed counsel's grossly deficient performance. As a result, Applicant has lost his ability to proceed with a meritorious claim. Therefore, this Court should grant his *Austin* appeal to "rectify [this] unjust procedural defect." *See Odom, supra.*

II. Other Claims of Ineffective Assistance of 29(b) Counsel.

Relevant Facts

While awaiting his 29(b) hearing, the court appointed the Fourth Circuit Public Defender's Office to represent him. Emily Crayton was assigned to the case. For an unknown reason, Crayton filed an amended 29(b) that waived Applicant's actual innocence issue. This was done without consulting Applicant.

Applicant's hearing took place in October 2011. For the hearing he was represented by Will Grove. By that time Rule 29(b) was amended to require filing within one year of actual discovery. Applicant has stated[13] that Will did not reference the change in the rule at the hearing. Therefore, it is possible that Judge King applied the incorrect statute of limitation in ruling on that his 29(b) was not timely filed.

Moreover, Judge King found that the conflict was "placed on the record and [Applicant] was charged with the knowledge of these events." Applicant has stated that Will Grove did not challenge Judge King's ruling.

Argument

[13] A transcript of this hearing has not yet been ordered.

The State relies heavily on *Clinkscales*, which held that a defendant is not entitled to court appointed counsel for filing a 29(b). *Clinkscales* noted that a post-trial motion for a new trial based on after discovered evidence is not considered a critical stage in the criminal prosecution, and therefore the Sixth Amendment right to counsel is not triggered. However,

Once counsel is appointed, counsel must diligently and competently present the case.

Applicant's case is distinguishable from *Clinkscales*. In *Clinkscales* the circuit court refused to appoint counsel to a 29(b). Applicant was appointed counsel by the circuit court. Unfortunately, the counsel rendered grossly deficient performance. Not only did 29(b) counsel waive his actual innocence issue, 29(b) counsel diminished[14] any chance of federal habeas review in his case.

South Carolina have crafted remedies in PCR to allow an applicant "a complete 'bite at the apple.'" *See Odum*, 337 S.C. at 262, 523 S.E.2d at 753. Through no fault of his own, Applicant never received a "complete" bite at the apple. He was unaware of his Counsel's severe conflict of interest prior to his first PCR. Additionally, Ringo's exculpatory statement was unavailable prior to his PCR. 29(b) Counsel's deficient performance is responsible for the deny Applicant a "complete bite" at the apple. Fundamental fairness requires that there be some remedy to this in justice.

Timeliness

Although not filed within a year of the dismissal of the 29(b), the District of South Carolina has found that Applicant was "reasonably confused" concerning the whether his appeal was 29(b) appeal was properly filed. *See* Attachment H. This confusion was compounded by 29(b) Counsel's

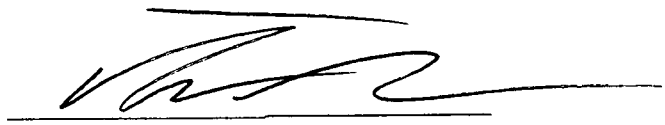
[14] Based on 29(b) court's finding that it was untimely, the State is arguing that the statute of limitations in his Federal Habeas case is untimely, as a result it is the State's contention that Applicant is barred from federal review.

January 24, 2012 letter. Based on this Applicant asserts that he is entitled to a hearing on equitable tolling pursuant to *Gary v. State*, 347 S.C. 627, 557 S.E.2d 662 (2001).

CONCLUSION

Based on the foregoing arguments Applicant respectfully request that this court decline to sign the final order of dismissal and grant him a hearing on this case.

Respectfully submitted,



Tristan M. Shaffer
Attorney for Defendant
120 Gantt Street
Lexington, South Carolina 29072

December 12, 2013

ATTACHMENTS
Attachment A- December 14, 2011 Letter Requesting an Order
Attachment B- January 24, 2012 Letter from Will Grove
Attachment C- March 2, 1995 Statement of Danny Davis
Attachment D- December 1, 1994 Statement of Ringo
Attachment E- Statement of Joann Graham
Attachment F- Will Roger's memorandum
Attachment G- Ringo Affidavit
Attachment H- Stay of Habeas

Attachment A

2033

Exhibit 5

Dec 14, 2011

Honorable Judge Howard P. King
P.O. Box 189
Sumter, S.C. 29151

RE: Denial of Motion

Dear Judge King

This letter is in reference to my hearing dated October 6, 2011, held at the Marlboro County Court House. I was heard on a 29(b) motion, before you and the issue raised was a conflict of interest. This particular motion was denied, and it's been two (2) months and I've still yet to recieve an order of dismissal. I'd greatly appreciate it if you would please sign off on the order, so I can continue forward with my fight for my freedom. I thank you in advance for your assistance in this matter.

Sincerly,
Jamie A. Staton

12/16/11

cc Finderburk

If the ruling was on the record in open court a written order is unnecessary. If it was not done in open court I am sure I will draft a written order and the clerk will

Attachment B

2035

Exhibit 7

Fourth Circuit Public Defender

A.C. Stephens
Chief Circuit Defender

January 24, 2012

Alfonso Staton
SCDC ID# 00241380
c/o Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

RE: *The State v. Alfonso Staton*

Alfonso:

I hope this letter finds you well. I did not file an appeal of the judge's ruling on your motion to reopen the case because of a conflict. However, the judge did not rule on your issue of new evidence, which was included towards the back of the motion. This is the issue I'd like to present in front of a judge for consideration.

Once I have it scheduled, I will let you know. If that motion fails, then an appeal of that motion can be filed.

Sincerely,

Will E. Grove
Assistant Public Defender
Fourth Judicial Circuit
Bennettsville, SC

Dillon: Post Office Box 29 • Dillon, SC 29536 • 877-225-2922 • Fax 800-670-6375
Darlington: Post Office Box 648 • Darlington, SC 29540 • 877-225-2922 • Fax 800-670-6375
Bennettsville: Post Office Box 37 • Bennettsville SC 29512 • 877-225-2922 • Fax 800-670-6375
Chesterfield: Post Office Box 307 • Chesterfield, SC 29709 • 877-225-2922 • Fax 800-670-6375

Attachment C

2037

DATE 3-2-95 TIME 3:20 P.M. PLACE Marlboro Co. S.O.

I, DANNY DAVIS, am _____ years old and I live at 2891 Goodwin Pond Road Bennettsville, S.C.

I am giving this statement to Lt. Terry Stanley I.D. 305, who has identified himself as a Investigator MCSO.

and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

DD I was at Ricky Stuckey's and Robert Graham's Trailer on Right at End of Goodwin Pond Rd. in Marlboro Co. I went Down to the trailor to a party or Cookout. This was sometime before Thanksgiving on a Monday or Tuesday about 2:30pm or 3:00pm. While at the trailor of Ricky's and Robert's they were several other people there. myself (DANNY DAVIS) Betty Caulder, Robert Graham, Ricky Stuckey, Bobby Ramsey, and someone Kin to Ricky Stuckey who Drove a Big Wht Buick, and Big Joe Stuckey Came in and Stayed a Short while then left. After myself and Betty left I saw Harry Stanley in Little Orvin's truck go to Ricky's. Martin was there at the Trailor While there at the Trailor, I went inside to get a beer, when I saw a BLACK Female laying on her side on the Couch with Gray Duck Tape around her mouth and around her hands behind her back and her Ankles. The Clothes She had on was a pair of Dark Color pants D.

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Danny Davis
Signature of person making voluntary statement

Witness

The above warnings were given by and this voluntary statement was taken by

Lt. Terry Stanley
(This must be one and the same person as named above)

2038

Date 3-2-95 Page No. 2

STATEMENT OF: DANNY DAVIS

DD And A DARK looking blouse. The pants look like stretch pants type material. She had been there at Ricky's and Robert's Trailor for 2 or 3 Days before they moved her. Bobby Ransc told me that they had got her from her house ~~and~~ in Bennettsville, and took her riding around and also took her money, and Foodstamps to buy Crack with. Ricky Stuckey said that they put tape over her mouth and she suffocated to Death and the Autopsy Report showed that she had Water in her lungs. DD

witness: H. Jerry Stone Danny Davis

Harold

2039 2039

Attachment D

2040

STATEMENT OF JOHNNY "RINGO" PEARSON

Jerry Starnes:
Today's date is December 1, 1994 the time is 7:34 PM and we are here at the Marlboro County Sheriff's Office, we are here with Johnny "Ringo" Pearson, 29 years old, who lives at 149 Talon Drive in Bennettsville, South Carolina. Present here at this time is Lt. Tommy Frazier with SLED, Lt. Jerry Starnes with the Marlboro County Sheriff's Office and Johnny "Ringo" Pearson. We are here taking a voluntary statement from Johnny " Ringo " Pearson in reference to an incident that took place on November 12, 1994. Mr. Pearson, you are aware of your rights that we had advised you earlier.

Johnny Pearson:
Yes sir.

Jerry Starnes:
You understand these rights.

Johnny Pearson:
Yes sir.

Jerry Starnes:
And having these rights in mind, you still want to talk to us at this time. Now you are going to have to speak up I can't hear you. Slide up closer there and see if you can speak up. Having these rights in mind do you wish to talk to us at this time?

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright. Let's go back to November 12, 1994 you will start there in the beginning and just tell us what happened.

Johnny Pearson:
Well, I went by Darlene's house

Jerry Starnes:
Speak up.

Johnny Pearson:
I went by Darlene's house

Jerry Starnes:
Darlene who.

Johnny Pearson:
Darlene Patterson.

Jerry Starnes:
What date was this on?

Johnny Pearson:
The 12th

Jerry Starnes:
The 12th of November

Johnny Pearson:
Yes sir.

Jerry Starnes:
About what time.

Johnny Pearson:
9:00 or 9:30

Jerry Starnes:
P.M.

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright.

Johnny Pearson:
And I picked her up, so we rode out, she said she wanted to get a real date (?) we rode out to have some fun

Jerry Starnes:
O.K. this was around 9:30 PM

Johnny Pearson:
Yes sir.

Jerry Starnes:
Had you talked to her earlier that afternoon?

Johnny Pearson:
No sir.

Jerry Starnes:
You didn't go by her house earlier that afternoon?

Johnny Pearson:
Yes sir. Yes sir

Jerry Starnes:
And talked with her

Johnny Pearson:
Yes sir.

Jerry Starnes:
Was that when yawl lined up your date?

Johnny Pearson:
It really won't a date, we lined up something to just go out to get high with, just to party a little bit.

Jerry Starnes:
O.K. And then so you went back about 9:30 and picked her up

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright and then what

Johnny Pearson:
And then I stopped by and got I had two pieces of crack two $ 50.00 piece and we had rode out in the country and got high I mean we were smoking and things just got out of and me and her were smoking she smoked a hit and gave me a hit

Jerry Starnes:
Where did yawl go to?

Johnny Pearson:
We parked in a dirt road up there by Pearson Road

Jerry Starnes:
Off of Pearson Road

Johnny Pearson:
Yes sir.

Jerry Starnes:
Is that up there up towards the Hunsucker property up off 79?

Johnny Pearson:
Yes sir.

Jerry Starnes:
O.K.

Johnny Pearson:
And we she took a hit and gave me a hit and we just sat there and she gave me a little bit of loving then, we smoked the other half of the 50

Jerry Starnes:
Alright when you say she gave you a little bit of loving,

Jerry Starnes:
what kind of what do you mean?

Johnny Pearson:
She gave me a little bit of sex.

Jerry Starnes:
Yawl had sex together?

Johnny Pearson:
Yes sir.

Jerry Starnes:
O.K.

Johnny Pearson:
And then she gave we smoked the other little piece then I got higher up, hyper and stuff, and I started flipping out then and then we smoked half of the other little piece and then that is when I tied her up

Jerry Starnes:
What did you tie her up with?

Johnny Pearson:
Some gray duct tape and

Jerry Starnes:
How did you tie her up?

Johnny Pearson:
Her hands in the front of her and then I went down the road a little bit more piece and went and turned left and went down the road 385

Jerry Starnes:
How many times did you have sex with her up there?

Johnny Pearson:
Just one time.

Jerry Starnes:
Just one time

Johnny Pearson:
Yes sir.

Jerry Starnes:
Did yawl get in an argument?

Johnny Pearson:
No sir no fussing no fighting no argument or nothing.

Jerry Starnes:
Why did you tape her hands up?

Johnny Pearson:
We was we were going to have kinky sex one time and I just tied her hands up and left them, then I smoked the other little piece by myself. I had taped her up I smoked the other little piece by myself and I was going to jump in the water and she (unable to understand) and she was beside me after I had her taped up

Jerry Starnes:
Alright after yawl had parked up there on Pearson Road, yawl left Pearson Road and come which way

Johnny Pearson:
Back down through Lester

Jerry Starnes:
Down through Lester

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright did you turn off after you got to Lester?

Johnny Pearson:
Yes sir.

Jerry Starnes:
Whereabouts?

Johnny Pearson:
By Mrs. (unable to understand name of lady) house to the right and come down the Burnt Factory I parked up in the little dirt road after you pass the two dams the point in the dam

Jerry Starnes:
The second after you cross the second bridge there on the dirt road there at Burnt Factory

Johnny Pearson:
Yes sir and I smoked the other half of the $ 50.00 rock by myself

Jerry Starnes:
Alright at this time was she still taped up?

Johnny Pearson:
No sir not all of

Jerry Starnes:
How was she taped up?

Johnny Pearson:
She just had her hand in front. I just had a little piece I mean she was high up on like paranoid I was paranoid.

Jerry Starnes:
Alright and yawl sat there for a while

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright and then what happened?

Johnny Pearson:
Then I was going to kill myself, I didn't know any reason why I was then she was standing I taped her on up and taped her hand up

Jerry Starnes:
You taped her. How did you tape her hands?

Johnny Pearson:
I taped her hands behind her.

Jerry Starnes:
Alright and you taped her feet.

Johnny Pearson:
Yes sir. I put a piece around her foot.

Jerry Starnes:
Alright and what about her head.

Johnny Pearson:
And her mouth and her head. Yea, I put it

Jerry Starnes:
Alright you put a piece across her mouth.

Johnny Pearson:
And her head

Jerry Starnes:
And across her nose.

Johnny Pearson:
No sir I didn't put anything across her nose.

Jerry Starnes:
Across her eyes.

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright and then what happened.

Johnny Pearson:
And then I was going to jump off in there with her

Jerry Starnes:
You taped her up when yawl were sitting there at the little road

Johnny Pearson:
Yes sir, after I smoked the other rock

Jerry Starnes:
Alright and then you pulled from the little road up to the bridge?

Johnny Pearson:
Yes sir.

Jerry Starnes:
O.K.

Johnny Pearson:
And I got out too and standing on road both of us were standing on the edge.

Jerry Starnes:
Alright, was she in the front seat of the car?

Johnny Pearson:
Yes sir.

Jerry Starnes:
O.K.

Johnny Pearson:
And I was rocking a little bit coked up then she was standing up there

Jerry Starnes:
Was she standing or was she sort of

Johnny Pearson:
She was standing.

Jerry Starnes:
Sort of bent down

Johnny Pearson:
She was standing

Jerry Starnes:
Because of the way she was taped up

Johnny Pearson:
She was bent just a little bit and then I was rocking and I tapped her over in the back and (unable to understand)

Jerry Starnes:
You pushed her over into the creek

Johnny Pearson:
No sir I didn't mean to push her. I was trying to stand up straight and I was beside her and I got ready to put my hand around there and she went on and then I liked to fell over and I caught myself and fell against a cement block.

Jerry Starnes:
But you pushed her over into the water.

Johnny Pearson:
Yes sir.

Jerry Starnes:
From the bridge

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright then what happened.

Johnny Pearson:
Well, then I came home.

Jerry Starnes:
Alright, is there anything else throwed into the creek?

Johnny Pearson:
Yes sir I throwed her pocketbook in the creek.

Jerry Starnes:
You throwed her pocketbook in the creek.

Johnny Pearson:
Yes sir.

Jerry Starnes:
Alright, did you take any of the contents of that pocketbook out.

Johnny Pearson:
No sir.

Jerry Starnes:
Did you go in her pocketbook and take any money out?

Johnny Pearson:
No sir.

Jerry Starnes:
Alright, why?

Johnny Pearson:
I was just high up on coke, I was just high up on myself and just high on crack

Jerry Starnes:
You didn't need money to get more crack with.

Johnny Pearson:
No sir, I had been broke all that week. I didn't need no more money.

Jerry Starnes:
Alright, then what happened?

Johnny Pearson:
Then I went to my mama's house, I had made a mistake but I didn't tell nobody.

Jerry Starnes:
Alright, was there anybody else with you besides you and Darlene.

Johnny Pearson:
No more comment sir

Jerry Starnes:
There is no question that you took Darlene out there and there is no question about you throwing her in the creek?

Johnny Pearson:
No sir.

Jerry Starnes:
There is no question about it o.k. Is there anything else Ringo that you need to tell us.

Johnny Pearson:
No sir.

Jerry Starnes:
O.K. this ends the taped statement being taken from Johnny "Ringo" Pearson here at the Marlboro County Sheriff's Office at 7:45 PM in the presence of Johnny "Ringo" Pearson, Lt. Jerry Starnes and Lt. Tommy Frazier with SLED.

This is a true copy of the statement from Johnny "Ringo" Pearson.

Sammie T. Meggs

Dated: December 6, 1994

Attachment E

2051

, 19__. TIME 4:30 P.M. PLACE 13 Jon Rd. (Resident)

I, Joann Graham, am ____ years old and I live at Bowen AR. P.O. Box 494 E. Gibson, N.C.

I am giving this statement to Lt. Jerry Stanton, Harold Jacobs, RCSO, who has identified himself as a Lt. Tommy Franzier SLED and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

About a week after Rigo was in Jail, I was Talking with Someone that told me That Alphonzo Stanton had Told Some of his Family members that Rigo Didn't mean to kill her, He Just intended to Rape, and Do what he wanted to do and leave her. Then he Realize that She was Dead and he had to do Something with the Body. That Rigo was Drunk tape to Tape her up.

I have read this statement consisting of 1 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Joann P. Graham
Signature of person making voluntary statement

Witness

The above warnings were given by and this voluntary statement was taken by

Jerry Stanton
(This must be one and the same person as named above)

Attachment F

2053

MEMORANDUM

TO: FILE
FR: WILL WBR
RE: ALPHONSO STATON
DA: JANUARY 30, 1997

ON JANUARY 17, 1997, JUDGE SMOAK ADVISED THE DEPUTY SOLICITOR GEORGE GREGORY THAT HE WOULD NOT ALLOW ANY OF THE SPECIAL PROSECUTORS/ASSISTANT SOLICITORS TO PROSECUTE IN ONE COUNTY AND DEFEND CRIMINAL CLIENTS IN ANOTHER COUNTY WITHIN THE FOURTH JUDICIAL CIRCUIT. IT WAS MY UNDERSTANDING THAT I WOULD BE UNABLE TO REPRESENT ANY CRIMINAL CLIENTS IN THE FOURTH JUDICIAL CIRCUIT (EITHER IN GENERAL SESSIONS COURT OR MAGISTRATES COURT OR MUNICIPAL COURT).

I PRESENTED SEVERAL MOTIONS TO BE RELIEVED AS COUNSEL TO JUDGE BROGDON IN DARLINGTON COUNTY ON JANUARY 20, 1997. JUDGE BROGDON ADVISED ME THAT I NEEDED TO APPEAR BEFORE JUDGE SMOAK TO RESOLVE THIS MATTER SINCE HE HAD ALREADY ADDRESSED THE ISSUE. THROUGH JAY HODGE, SOLICITOR, I WAS INFORMED THAT JUDGE SMOAK WANTED ME TO INFORM ALL OF MY CRIMINAL CLIENTS THAT I WOULD BE UNABLE TO REPRESENT THEM BECAUSE OF A CONFLICT OF INTEREST. I THEN NOTIFIED MY CLIENTS OF THIS DECISION.

ON JANUARY 28, 1997, AFTER NOTIFYING ALL OF MY CLIENTS, I APPEARED BEFORE JUDGE SMOAK IN DILLON COUNTY AND HE RELIEVED ME AS COUNSEL ON ALL OF MY CRIMINAL CASES. HE SIGNED AN ORDER ON JANUARY 29, 1997 RELIEVING ME AS COUNSEL ON ALL CRIMINAL CASES (SEE ATTACHED ORDER). I THEN ADVISED THE CLERK OF COURT'S OFFICE SO OTHER ATTORNEYS COULD BE APPOINTED TO REPRESENT THE CLIENTS I WAS RELIEVED FROM REPRESENTING. I WAS INSTRUCTED BY THE STAFF OF THE CLERK OF COURT IN MARLBORO TO LET JUDGE COTTINGHAM KNOW THAT I WAS RELIEVED AS COUNSEL FOR ALPHONSO STATON SINCE JUDGE COTTINGHAM HAD JURISDICTION OVER THIS CASE AND THE TRIAL WAS SCHEDULED FOR MARCH 3, 1997. I ADVISED LINDA MCCALL (JUDGE COTTINGHAM'S EXECUTIVE SECRETARY) AND SHE INFORMED JUDGE COTTINGHAM. JUDGE COTTINGHAM DISCUSSED THIS MATTER WITH JUDGE SMOAK.

ON THURSDAY, JANUARY 30, 1997, LINDA MCCALL CONTACTED ME BY PHONE AND ADVISED ME THAT JUDGE SMOAK AND JUDGE COTTINGHAM DECIDED THAT THERE WAS NO CONFLICT OF INTEREST IN THE ALPHONSO STATON CASE BECAUSE SOLICITOR RALPH WILSON FROM THE FIFTEENTH JUDICIAL CIRCUIT WAS PROSECUTING THE CASE. OUT OF AN ABUNDANCE OF CAUTION, I ONCE AGAIN APPEARED BEFORE JUDGE SMOAK (CHIEF ADMINISTRATIVE JUDGE FOR THE FOURTH JUDICIAL CIRCUIT) IN DILLON AND HE ADVISED ME THAT HE WAS NOT RELIEVING ME AS COUNSEL FOR ALPHONSO STATON BECAUSE THERE WAS NO CONFLICT OF INTEREST IN THIS CASE BECAUSE I WAS WORKING FOR THE FOURTH CIRCUIT SOLICITOR AND THE CASE WAS BEING PROSECUTED BY THE FIFTEENTH CIRCUIT SOLICITOR. THE ORIGINAL ORDER WAS AMENDED TO CONFORM TO JUDGE SMOAKS RULING.

MY MAJOR CONCERNS WITH REPRESENTING ALPHONSO STATON ARE AS FOLLOWS:

1. GREG OHANESIAN WAS RELIEVED FROM REPRESENTING A DEFENDANT IN THIS SAME CASE BECAUSE OF A CONFLICT OF INTEREST. SINCE I AM IN A SIMILAR SITUATION AS MR. OHANESIAN, EVEN IF THERE IS NOT A CONFLICT OF INTEREST, IT WOULD BE IMPROPER FOR ME TO CONTINUE REPRESENTING ALPHONSO STATON BECAUSE IT WOULD APPEAR IMPROPER AND PROVIDE MY CLIENT WITH GROUNDS FOR A POST CONVICTION RELIEF MOTION IF HE IS FOUND GUILTY.

2. IT IS MY UNDERSTANDING THAT REPRESENATIVE DOUG JENNINGS WAS REPRIMANDED WHEN HE WAS AN ASSISTANT SOLICITOR FOR REPRESENTING A CRIMINAL IN ANOTHER CIRCUIT.

2055

Attachment G

2056

TH CAROLINA arlboro Staton #241380 Applicant vs. e of South Carolina Respondent	Case No. 96-GS-34-984 AFFIDAVIT

I, Johnny Ringo Pearson, in support of this motion, will give a statement of fact truthfully under the penalty of perjury.

STATEMENT

The above defendant Ofonzo Staton, is innocent on all charges he is being confined for. I, Johnny Ringo Pearson, confessed to the crimes and I acted alone in doing so. I have admitted to doing wrong and those that have been punished for my actions shouldn't be held accountable for something he didn't do. So with my open confession Ofonzo Staton should not be incarcerated for a crime he knew nothing about.

Johnny Ringo Pearson

Johnny Ringo Pearson

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 2 DAY OF Nov. YR. 2007.

NOTARY PUBLIC
MY COMMISSION EXPIRES: 2015

Attachment H

2058

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Alfonso Staton, #241380, Petitioner, vs. Warden Michael McCall, Respondent.	C/A No. 5:12-2483-GRA-KDW REPORT AND RECOMMENDATION

Petitioner, Alfonso Staton ("Petitioner" or "Staton"), a state prisoner, filed a Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) DSC for a Report and Recommendation on Respondent's Return and Motion for Summary Judgment, ECF Nos. 24, 25, and Petitioner's Motion to Stay Proceedings Pending the Exhaustion of State Remedies ("Motion to Stay"), ECF No. 43. Respondent opposes the Motion, ECF No. 45, and Petitioner has submitted a Reply, ECF No. 46.

Originally proceeding pro se, Petitioner brought this habeas action on August 24, 2012.[1] On January 4, 2013, Respondent filed a Return and a Motion for Summary Judgment. ECF Nos. 24, 25. Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the court advised Petitioner of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to Respondent's motion. ECF No. 26. Still proceeding pro se, Petitioner requested and obtained several extensions of time within which to respond to the

[1] This filing date reflects that the envelope containing the Petition was stamped as having been received on August 24, 2012, at the Lee Correctional Institution mailroom. Pet. Attach. 2, ECF No. 1-2. *Houston v. Lack*, 487 U.S. 266 (1988) (holding prisoner's pleading is considered filed when filed with prison authorities for forwarding to the district court). The Petition was docketed by the court on August 28, 2012. Pet., ECF No. 1.

Return and Motion for Summary Judgment. Tristan Shaffer, Esq. filed a Notice of Appearance on Petitioner's behalf on April 5, 2013, ECF No. 38, and requested an extension of time to file a response to the pending Return and Motion for Summary Judgment, ECF No. 39. The court granted that request, making Petitioner's response to the Motion for Summary Judgment due May 2, 2013. ECF No. 40. On that date, Petitioner filed the Motion to Stay as well as a request that he not be required to respond to the Motion for Summary Judgment while the Motion to Stay remained pending. ECF Nos. 43, 44. Being advised of Respondent's consent to the extension of time, the court granted that request. Accordingly, Petitioner has not filed a substantive response to the Motion for Summary Judgment. Having reviewed the parties' filings, the undersigned recommends the following: Petitioner's Motion to Stay, ECF No. 43, be *granted* and this matter be stayed as further set forth herein; and Respondent's Motion for Summary Judgment, ECF No. 25, be *denied with leave to refile* subsequent to the lift of the stay.

I. Procedural History

A. Criminal Proceedings

Petitioner is currently confined in the Lee Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Marlboro County. The Marlboro County grand jury indicted Petitioner for kidnapping (1996-GS-34-0979, count 1), murder (1996-GS-34-0979, count 2), 1st-degree criminal sexual conduct (1996-GS-34-0979, count 3), and criminal conspiracy (1996-GS-34-0979, count 4) in the November 1994 murder of Darlene Davis Patterson ("Victim"). *See* App. 1905-07.[2]

[2] Reference to "App." herein is reference to the record on appeal in the direct appeal of Petitioner's conviction and sentence. The four-volume record is available at ECF Nos. 24-2 through 24-16.

1. Trial and Sentencing

Petitioner and co-defendants Martin McIntosh, Ricky Stuckey, Jeffery Walls, Leroy Staton, and Robert Graham[3] proceeded to trial before the Honorable Edward B. Cottingham, Circuit Court Judge ("the trial/sentencing court") and a jury. William B. Rogers, Esquire, represented Petitioner at trial. The case was prosecuted by Solicitor Ralph Wilson. Petitioner was found guilty of murder, kidnapping, and conspiracy on March 18, 1997. Petitioner was sentenced by Judge Cottingham to life imprisonment for murder, no sentence on the kidnapping charge (based on S.C. Code Ann. § 16-3-910), and five years for criminal conspiracy by. *See* App., ECF Nos. 24-1 through 24-16, for transcript of trial and pretrial conference.

2. Direct Appeal

Represented by Joseph Savitz, Esquire, of the South Carolina Office of Appellate Defense, Petitioner appealed his convictions and sentences to the South Carolina Court of Appeals. In his Brief to the Court of Appeals, Petitioner raised the following issues: (1) The trial judge erred in denying appellant's motions for directed verdict; and (2) The trial court erred in refusing to grant a severance. Final Br. Appellant 3; ECF No. 24-18. The State filed a responsive brief. ECF No. 24-19. On November 8, 2001, the Court of Appeals affirmed Petitioner's convictions and sentences in an unpublished Opinion. *State v. Alfonzo Staton*, Unpub. Op. No. 2001-UP-477 (Ct. App. filed Nov. 8, 2001); ECF No. 24-20. Represented by Mr. Savitz, Petitioner filed a Petition for Writ of Certiorari to the Supreme Court of South Carolina, ECF No.

[3] Eleven defendants were charged with at least some crime in the kidnapping, rape, and murder of Darlene Patterson. In addition to Petitioner and his co-defendants listed above, the other defendants were: state's witnesses Danny Davis, Robert Ransom, and Dwayne Sloan, as well as Ringo Pearson and Robert Lee Whitfield. Ringo Pearson eventually pleaded guilty to murder. *See* Resp't's Return and Mot. Summ. J. 2 & n.2, ECF No. 24.

24-21, which the State opposed, ECF No. 24-22. The South Carolina Supreme Court denied Petitioner's Petition for Writ of Certiorari on November 21, 2002, ECF No. 24-24, and the Remittitur was issued on November 25, 2002, ECF No. 24-25.

3. Rule 29(b), SCRCrimP Motion[4]

On May 6, 2009, pursuant to Rule 29(b), SCRCrimP, Petitioner filed a Motion for a New Trial Based on After-Discovered Evidence (hereinafter "Rule 29(b) Motion"). The court has not been provided a copy of the Rule 29(b) Motion or the transcript of the hearing on that Motion. Based on the parties' representations in their briefs on the Motion to Stay and the Orders regarding the Motion, following is the court's understanding of the basis for the Rule 29(b) Motion: Petitioner moved for a new trial pursuant to Rule 29(b), SCRCrimP, "based upon alleged after discovered evidence, that being a conflict of interest by his trial defense attorney, Will Rogers, Esq.[,] who at the time was a new prosecutor for the Fourth Circuit Solicitor's Office." Oct. 20, 2011 Order denying Rule 29(b) Mot 1; ECF No. 1-1 at 14-15. Rogers indicated he let all of his clients know he was asking to be relieved from his cases because of his new position with the Solicitor's Office. A judge relieved Rogers as counsel on January 28, 1997, and signed and entered an Order relieving Rogers on January 29, 1997. *Id.* On January 30, 1997, the judge "rescinded that Order as to [Petitioner] and that matter was placed on record." *Id.*[5] Petitioner indicated he had not been aware of Rogers' conflict or his position as an assistant solicitor at the time of trial and that he did not learn of the conflict until "sometime in 2007." *Id.*

[4] Chronologically, Petitioner's Rule 29(b) Motion followed his 2003 PCR Application. However, because the Rule 29(b) Motion is part of the direct criminal matter involving Petitioner, the court includes it here.

[5] The record available to the court does not contain the January 29, 1997 Order relieving Rogers, nor does it contain transcripts of either hearing or record-entry referenced.

The Rule 29(b) Motion was heard in October 2011 before the Honorable Howard P. King. For this hearing Petitioner was represented by Will E. Grove of the Office of Public Defender for the Fourth Judicial Circuit of South Carolina. Judge King issued a written Order denying the Rule 29(b) Motion on October 19, 2011, which was served on Petitioner on January 4, 2012. ECF No. 24-36. Petitioner filed a Motion for Reconsideration, which Judge King denied in an Order dated January 15, 2012, and filed January 19, 2012. ECF No. 24-37. Petitioner filed a Notice of Appeal of this Order on February 13, 2012. *See* Mot to Stay 2, ECF No. 43. On March 27, 2012, the Court of Appeals dismissed this appeal "[d]ue to the failure of Appellant to timely serve opposing counsel[.]" Order (Mar. 27, 2012); ECF No. 24-38. Petitioner filed a Petition to Reinstate Appeal on April 3, 2012. ECF No. 43-2 at 8-10. The South Carolina Court of Appeals denied this request on September 7, 2012. ECF No. 43-2 at 11 (denying "petition for rehearing"). On September 21, 2012, Petitioner filed a Petition for Writ of Certiorari to the Supreme Court of South Carolina. *See* ECF No. 43-3. The State filed a return on October 30, 2012. *See* ECF No. 43-4. As of May 1, 2013, the Petition for Writ of Certiorari remained pending. *See* Mot. 3, ECF No. 43.[6]

B. State PCR Proceedings

1. 2003 Post-Conviction Relief ("PCR") Application

Petitioner filed an application for PCR on July 10, 2003. (2003-CP-34-0244). The State filed a Return to the PCR application on November 3, 2003. In the application, Petitioner alleged the following grounds:

[6] Respondent's Motion for Summary Judgment does not reference the Petition to Reinstate Appeal or the Petition for Writ of Certiorari as to the Rule 29(b) Motion. Respondent's response to the Motion to Stay does not reference the pending writ of certiorari to the Supreme Court of South Carolina regarding this appeal.

1. Ineffective assistance of trial counsel:
    a. Failed to object to indictment.
    b. Failed to object to improper evidence.
    c. Failed to subpoena alibi witnesses.
2. Subject matter jurisdiction.
3. Prosecutorial misconduct.

PCR Appl., App. 1758-63.

An evidentiary hearing into the matter was convened on January 11, 2005 at the Darlington County Courthouse before the Honorable John Milling, Circuit Court Judge ("the PCR Court"). App. 1778-1887 (PCR hr'g tr.). Petitioner was present at the hearing and was represented by Candice A. Liveley, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented Respondent. On September 16, 2005, the PCR Court issued an Order of Dismissal denying and dismissing the PCR application with prejudice. App. 1888-1903.

2. Appeal of the 2003 PCR

Petitioner appealed the denial of his PCR application. For the appeal of his PCR Petitioner was represented by Wanda Carter, Esquire, and the State was represented by Karen Ratigan, Esquire. Petitioner raised the following six issues to the Supreme Court of South Carolina:

- Did trial counsel err in failing to present an alibi defense?
- Did trial counsel err in failing to object to hearsay testimony from Dwayne Sloan?
- Did trial counsel err in failing to object to defects in the indictment?
- Did trial counsel err in failing to preserve the error regarding the solicitor's golden rule argument for appellate review?
- Did trial counsel err in failing to object to the solicitor's comments about religion during closing argument?
- Did trial counsel err in failing to object when the solicitor vouched for the credibility of State witnesses?

Pet. Writ Cert. 2-3, ECF No. 24-26. The State filed a Return to the Petition for Writ of Certiorari. ECF No. 24-27. The Supreme Court of South Carolina granted certiorari on the two issues related to the solicitor's argument, which the parties briefed. *See* ECF Nos. 24-28 through 24-33. On March 6, 2009, the Supreme Court of South Carolina dismissed the appeal, finding certiorari had been improvidently granted. ECF No. 24-34. The Remittitur was issued on March 11, 2009. ECF No. 21-35.

3. 2013 PCR

On April 26, 2013, Petitioner filed a PCR application in which his only ground concerns the ineffective assistance of his Rule 29(b) counsel, including counsel's alleged failure to "properly research [and] brief" Petitioner's issues, counsel's failure to notify Petitioner "immediately when [the] 29(b) motion was denied," and his failure to "file an appeal of the dismissing of the 29(b)." 2013 PCR Appl. 3, ECF No. 46-1. Petitioner seeks a belated appeal pursuant to *White v. State*, 208 S.E.2d 35 (S.C. 1974).[7] That PCR matter is pending in the Court of Common Pleas for Marlboro County, 2013-CP-34-00089. *Id.*

C. Petitioner's Federal Habeas Petition

Petitioner raises the following grounds in his federal petition for a writ of habeas corpus, as set forth in his Petition:

> Ground One: Court erred in denial of direct verdict on kidnapping and murder.
> Supporting facts: There was no evidence that victim was alive prior to being placed into car or the creek...But there is considerable evidence that she was not alive. The pathologist testified that the victim have died within "a number of minutes after her head

[7] In *White*, the Supreme Court of South Carolina found that, when a PCR judge determines an applicant did not freely and voluntarily waive his right to a direct appeal, the PCR applicant may petition the Supreme Court of South Carolina for review of direct-appeal issues. *White*, 208 S.E.2d at 39-40.

was wrapped in duct tape, which means she was already dead and a granting of direct verdict would have been necessary.

Ground Two: Ineffective assistance of counsel for failing to subpoena or otherwise call alibi witnesses.
Supporting facts: Petitioner informed his counsel that he had witnesses who could provide him an alibi for the crimes which he's being confined, and requested that they be subpoenaed. Petitioner provided counsel with a list of names of these particular witnesses that would have accounted for petitioner's where abouts on November 12, 1994 and November 13, 1994 for that purposes. Also petitioner informed counsel that his school records would indicate that he was in school during the week of November 14, 1994, in turn would have shown that petitioner was not at scene.

Ground three: Ineffective assistance of Counsel due to counsel failure to object to improper evidence "hearsay evidence"
Supporting facts: It was the state's theory that petitioner was present aiding and abetting Johnny "Ringo" Pearson who actually and physically murdered victim. However, Ringo was not present a petitioner's trial, nevertheless the solicitor (Ralph Wilson) proffered testimony by one of its witnesses Dewayne Sloan, that Ringo confessed to him, and petitioner that he murdered the victim. As Ringo was not present at trial, the admission of Sloan's testimony constituted impermissible hearsay offered for the truth of the matter.

Ground four: Ineffective assistance of counsel for failure to object to misrepresentation of improper dates that was introduced into evidence.
Supporting facts: The date of November 12, 1994, a Saturday, was the only date introduced at trial by the Solicitor for this "one" party where victim was supposedly being held captive. This date was the foundation of the State's case in connecting petitioner to the crimes. Conversely the Solicitor argued in closing that the "one" party had now taken place on November 14, 1994, a Monday. This date was never adduced at trial, and the misrepresentation of the dates was to corroborate the State's witnesses' testimony, because both had testified to the abduction of the victim before she was abducted.

Ground five: Ineffective assistance of counsel for failure to raise and argue defect and constructive amendment of the indictment for murder which deprived court's jurisdiction.
Supporting facts: While there was a variance in the sense of variation between the pleading and proof; the variation destroyed petitioner's substantial right to be tried on charges in the indictment returned by the Grand Jury. Evidence presented at trial was death by asphyxiation. However petitioner was indicted on murder by means of strangulation. Therefore, the indicted charge and the charge petitioner was tried upon were not one and the same. The state failed to prove every essential element of guilt, when Petitioner was indicted for murder by strangulation and trial evidence supposes murder by suffocation.

Ground six: Ineffective assistance of counsel for failure to object to prosecutorial misconduct and preserving Solicitor's Golden Rule error for Appellate Review.
Supporting facts: The solicitor used the word you and its variations thirteen times when he asked the jurors to put themselves in the place of victim with respect to her condition. Petitioner's attorney never objected, but one of other defense attorneys objected, but still never got a ruling from the court. The solicitor just continued on, as in taking the ball and running with it, as he kept inflaming the jury. By Petitioner's attorney never objecting he failed to preserve this vital issue for Appellate review.

Ground seven: Ineffective assistance of counsel for failing to object when solicitor vouched for the credibility of the state's witnesses during closing.
Supporting facts: During closing arguments the solicitor stated " I submit to you, the jury, that everything that Ransom and Davis, the state's witnesses, have told you is the truth." Petitioner complained that counsel failed to object to this error and that this statement affected the jury crucially.

Ground eight: A conflict of interest of trial counsel.
Supporting facts: Petitioner asserts that his trial counsel was an active employee of the Fourth Circuit Solicitor's office simultaneously to his representation, therefore, creating a actual conflict of interest. Petitioner maintain that his attorney Will B. Rogers placed himself in a situation inherently conducive into divided loyalties and owed duties to parties adverse to that of the Petitioner, by counsel being an active solicitor, but acting defense attorney.

Pet., ECF No. 1 at 5-11, 13-16.

On January 4, 2013, Respondent responded to the Petition by filing a Return and Motion for Summary Judgment, ECF Nos. 24, 25, in which he argues the following: the Petition is untimely; certain grounds are procedurally barred from habeas review; and the Petition should be dismissed on its merits. Petitioner filed the instant Motion to Stay on May 2, 2013. ECF No. 43. With Respondent's consent, the court granted Petitioner's request that he not be required to respond to the pending Motion for Summary Judgment prior to the court's ruling on the Motion to Stay.

II. Petitioner's Motion to Stay

Citing *Rhines v. Weber*, 544 U.S. 269 (2005), Petitioner asks that the court stay his pending habeas Petition and hold it in abeyance so that he may return to South Carolina's state courts to exhaust his unexhausted claims related to his trial counsel's purported conflict of interest, which is Ground Eight in the Petition. *See* Pet.'s Mot. 6, ECF No. 43.[8] Respondent responds by arguing Petitioner's Petition is time-barred under the limitations period included in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), and Petitioner's Rule 29(b) Motion and his appeal from the dismissal of that motion were untimely filed in state court. Resp't's Mem. 1, ECF No. 45. Accordingly, Respondent asserts a stay pursuant to *Rhines* would be inappropriate and submits the court should consider and grant its Motion for Summary Judgment. *Id.*

Generally, a habeas petitioner who presents a mixed petition—one containing exhausted and unexhausted claims—may dismiss the unexhausted claims and proceed with the exhausted claims, or dismiss the entire petition to return to state court to exhaust the unexhausted claims. As discussed within, these options are not without potential roadblocks for a petitioner. Prior to the enactment of the AEDPA, federal courts routinely dismissed without prejudice habeas petitions containing a mixture of exhausted and unexhausted claims, pursuant to *Rose v. Lundy*, 455 U.S. 509, 518-19 (1982) (requiring "total exhaustion" of claims and directing courts to

[8] Petitioner also briefly asks that the court consider the effect his ongoing state proceedings may have on all issues in his Petition, asserting that a state-court ruling that his Rule 29(b) Motion and Appeal were timely would place his case within the one-year statute of limitations. Mot. 6, n.7. The court offers no substantive ruling at this juncture, but notes a recent case from the Eleventh Circuit Court of Appeals finding that the applicable statute of limitations is applied on a claim-by-claim basis in certain habeas matters. *See Zack v. Tucker*, 704 F.3d 917, 926 (11th Cir. 2013); *Reddic v. Cartledge*, No. 8:12-cv-00232-DCN, 2013 WL 1010327, at n.6 (D.S.C. Mar. 14, 2013) (citing *Zack* and considering timeliness of habeas grounds separate from each other).

effectuate that requirement by dismissing mixed petitions without prejudice and permitting petitioners to return to state court to present the unexhausted claims). In 1996, though, the AEDPA's enactment changed this landscape. Although the statute preserved the total exhaustion requirement, it also added a one-year statute of limitations for habeas matters filed pursuant to 28 U.S.C. § 2554. *See* 28 U.S.C. § 2244(d). Accordingly, dismissal of a "mixed petition" can result in the application of the AEDPA's one-year statute of limitations to a petitioner's claims. *Duncan v. Walker*, 533 U.S. 167, 172 (2001) (filing of federal habeas petition does not toll the limitations period for filing a timely petition under 28 U.S.C. § 2254). Alternatively, a petitioner can proceed with a federal habeas claim of only those claims that have been exhausted with a dismissal of any unexhausted claims. *See Rose v. Lundy*, 455 U.S. at 522. However, the unexhausted claims would later become subject to the successive petition standards under the AEDPA. *See* Rule 9, Rules Governing Section 2254 Cases in USDC: "Before presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2243(b)(3) and (4)."

Recognizing these changes and the interplay between the one-year limitations period and the requirement of *Lundy* that a district court dismiss a mixed petition so the petitioner may exhaust remedies, the *Rhines* Court noted that some district courts had adopted a procedure of staying the petition and holding it in abeyance while the petitioner returns to state court with his unexhausted claims. 544 U.S. at 275-76. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. Am. Water Works & Elec.*

Co., Inc., 299 U.S. 248, 254 (1936). That discretionary authority to stay mixed petitions in habeas cases, however, "must be compatible with AEDPA's purposes[,]" *Rhines*, 544 U.S. at 276, one of which is "to reduce delays in the execution of state and federal criminal sentences . . ." *Id.* at 276 (internal citation omitted). Further, the one-year "limitations period quite plainly serves the well-recognized interest in the finality of state court judgments" by restricting the time within which to seek federal habeas review. *Id.* (internal quotations and citations omitted). The tolling provision in § 2244(d)(2)[9] "balances the interest served by the exhaustion requirement and the limitation period." *Id.* The "AEDPA thus encourages petitioners to seek relief from state courts in the first instance by tolling the 1-year limitations period while a 'properly filed' application for State post-conviction review is pending." *Id.* "This scheme reinforces the importance of *Lundy*'s 'simple and clear instruction to potential litigants: before you bring any claim to federal court, be sure that you first have taken each one to state court." *Id.* (citing and quoting *Lundy*, 455 U.S. at 520).[10]

The Court cautioned that the stay-and-abeyance procedure should not be used too frequently because it causes delay, frustrating the statutory objective of encouraging finality and undermining the statute's goal of "streamlining" federal habeas actions by diminishing the incentive to exhaust all claims in state court before filing a federal habeas petition. 544 U.S. at

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[9] The tolling provision, § 2244(d)(2), provides: "The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."

[10] The *Lundy* Court also noted, "[e]qually as important, federal claims that have been fully exhausted in state courts will more often be accompanied by complete factual record to aid the federal courts in their review. *Cf.* 28 U.S.C. § 2254(d) (requiring a federal court reviewing a habeas petition to presume as correct factual findings made by a state court)." 455 U.S. at 519 (citation and parenthetical in original).

277. A stay is appropriate, however, when (1) there is good cause for failing to first exhaust claims in state court, (2) the unexhausted claims are not plainly meritless, and (3) there are no intentionally dilatory litigation tactics by the petitioner. *Id.* at 277-78.[11] The Court reasoned that in such circumstances the petitioner's interest in obtaining federal review outweighs the twin interests of speedy review and finality. *Id.*

A. Whether Petitioner Had Good Cause for Filing Federal Petition Before Exhaustion

Petitioner submits he is entitled to a stay pursuant to *Rhines*, first arguing he can demonstrate good cause for filing this Petition before exhausting the claim raised in Ground Eight of his Petition and now pending before the South Carolina courts. Pet.'s Mem. 4-6, ECF No. 43. *See Rhines*, 544 U.S. at 277 ("stay and abeyance is only appropriate when the district court determines there was good cause for the petitioner's failure to exhaust his claims first in state court."). *Rhines* does not define good cause. Petitioner cites to language in *Pace v. DiGuglielmo*, 544 U.S. 408, 416 (2005), that "a petitioner's reasonable confusion about whether a state filing would be timely will ordinarily constitute 'good cause' for him to file in federal court." Pet.'s Mem. 4 (quoting *Pace*). He submits facts surrounding the Rule 29(b) Motion and its appeal caused sufficient confusion to establish "good cause" here.

Pace did not concern a mixed petition, but addressed whether a state PCR application denied as untimely would qualify as "properly filed" under the federal habeas tolling statute, 28 U.S.C. § 2244(d)(2). 544 U.S. at 410. In dicta, the *Pace* Court noted a petitioner who has "reasonable confusion" as to whether a state PCR application is timely filed (thus, whether it will

[11] The Court stated it would likely be an abuse of discretion to deny a stay if a petitioner shows good cause, potentially meritorious unexhausted claims, and no indication of intentionally dilatory litigation tactics. *Rhines*, 544 U.S. at 278.

be considered "properly filed" under 28 U.S.C. § 2244(d)(2)), may consider filing a "protective" federal habeas petition and seeking a *Rhines* stay. 544 U.S. at 416. The Court noted that a "petitioner's reasonable confusion about whether a state filing would be timely will ordinarily constitute 'good cause' for him to file in federal court." *Id.* The discussion in *Pace* does not address circumstances involving a mixed petition, but does indicate that a "reasonable confusion" about the timeliness of the filing in state court ordinarily would be "good cause" for failure to exhaust.

As explained by Petitioner, he received the order denying reconsideration of the denial of his Rule 29(b) Motion based on after-discovered evidence on January 24, 2013. Pet.'s Mem. 5; *see* ECF No. 1-1 at 16 (Order). Petitioner also received a letter dated January 24, 2013, from Will Grove, his appointed attorney for the Rule 29(b) Motion, stating the following:

> I did not file an appeal of the judge's ruling on your motion to reopen the case because of a conflict. However, the judge did not rule on your issue of new evidence, which was included towards the back of the motion. This is the issue I'd like to present in front of a judge for consideration.
>
> Once I have it scheduled, I will let you know if that motion fails then an appeal of that motion can be filed.

Ltr. from Grove to Pet. (Jan. 24, 2013), ECF No. 1-1 at 16. Petitioner submits this letter caused him "reasonable confusion" regarding whether filing an appeal of the motion for a new trial based on after discovered evidence would be timely. In fact, as Petitioner points out, the State has argued that the February 13, 2012 Notice of Appeal was not timely filed pursuant to Rule 203(b)(2), SCACR. *See* Resp't's Return to Pet. Cert. as to Appeal of Rule 29(b) Denial, ECF No. 43-4. Further, Petitioner points out his uncertainty/confusion regarding whether the appeal would be timely also prompted him to file an application for PCR regarding the alleged ineffectiveness

of his Rule 29(b) appointed counsel in which he seeks permission to file a belated appeal pursuant to *White v. State*, 208 S.E.2d 35 (S.C. 1974). Pet.'s Mem. 5, ECF No. 43; *see* ECF No. 46-1 (2013 PCR Appl.).

Petitioner also provides a letter he sent to the Clerk of the South Carolina Court of Appeals on April 15, 2012, explaining he had not received certain paperwork regarding his appeal and requesting that counsel be appointed. *See* Pet'r's Mem., 5-6, ECF No. 43; Apr. 15, 2013 Ltr. from Petitioner to Clerk of Court of Appeals, ECF No. 43-1. He submits this further indicates his "reasonable confusion" regarding whether his appeal of the denial of his Rule 29(b) Motion was timely. Based on this uncertainty, Petitioner submits he "erred on the side of caution" and filed the instant Petition. Pet'r's Mem. 6.

Other than generally stating Petitioner "fails to meet any of the requirements" of *Rhine*, Resp't's Mem. 3, ECF No. 45, Respondent does not specifically argue that Petitioner has not shown "good cause" for filing his federal habeas Petition prior to fully exhausting issues raised in Ground Eight of the Petition.

Based on the factual information presented, the undersigned is of the opinion that Petitioner has satisfied the good-cause prong of *Rhine*. The letter from Petitioner's appointed Rule 29(b) counsel regarding the potential appeal of the denial of the Rule 29(b) Motion is not a model of clarity. *See* ECF No. 1-1 at 17. Petitioner's confusion on whether an appeal regarding the Rule 29(b) Motion was timely is "reasonable" and well-indicated by his filings and letters. His "protective" filing of this federal petition in August 2012, while his appeal was pending, was appropriate. *Rhines*, 544 U.S. at 273-78; *cf. Pace*, 544 U.S. at 410; *see generally Terry v. Byars*,

C.A. No. 4:12-1798-SB-TER, 2012 WL 6102938, at *6 (Dec. 10, 2012) ("The ultimate uncertainty of the state court's disposition of the claim qualifies for good cause under *Rhines*.").

B. Whether the Unexhausted Grounds Are Plainly Meritless

The second consideration when considering a stay as set forth in *Rhines* is that the unexhausted claim or claims must not be meritless. *Rhines*, 544 U.S. at 277 ("[E]ven if a petitioner had good cause for [failing to present his claims first to the state courts], the district court would abuse its discretion if it were to grant him a stay when his unexhausted claims are plainly meritless."). In support of his argument that his unexhausted claim is not "plainly meritless," Petitioner begins: "It is hard to imagine a more egregious conflict of interest than to have the prosecuting attorney, represent a criminal defendant in the same county that he tries cases. Certainly, [Petitioner's trial counsel] would have been hesitant to present the reasonable alternative defense that the law enforcement he worked with coerced his testifying codefendants." Pet'r's Mem. 6. Petitioner's principal and reply briefs include substantive argument regarding the relative merits of the conflict-of-interest issue raised as Ground Eight in the instant Petition. *See id.* at 6-7, ECF No. 43; Pet'r's Reply 2-5.

Respondent counters that Petitioner's "claim of after-discovered evidence is plainly meritless[,]" noting the state court found, as a matter of state law, that Petitioner's claim that his trial counsel had a conflict of interest while representing him is not a claim of after-discovered evidence under South Carolina law. Resp't's Mem. 1, ECF No. 45. Respondent cites to findings by the state trial court on the Rule 29(b) Motion, as well as the findings of the Court of Appeals that the appeal from the denial of the Rule 29(b) Motion was untimely. *Id.* at 1-2. Respondent further submits the unexhausted claim is meritless as Petitioner did not raise it on appeal or in his

initial PCR, making it procedurally defaulted at the state court level. *Id.* at 2. Respondent also cites generally to his pending Motion for Summary Judgment and includes a blanket argument that the Motion to Stay should be denied because Petitioner's Petition is time-barred in its entirety.

In his Reply, Petitioner accurately points out that Respondent's arguments focused on the untimeliness of his Rule 29(b) Motion and appeal of same hinge on both factual and legal findings *that are still on appeal in South Carolina courts.* Pet'r's Reply 1-3. Accordingly, Petitioner submits the arguments do not show a lack of merit. *Id.* Further, Petitioner submits the court is to consider whether the *substantive* claim raised in Ground Eight itself is "plainly meritless," and need not dwell on Respondent's focused argument that the Rule 29(b) motion was untimely under South Carolina law. *See* Reply 4-5, n.8.

Based on the factual information available to the court, it cannot determine that Petitioner's unexhausted claim is "plainly meritless." Although the Order denying the Rule 29(b) Motion and the Order denying reconsideration include findings that the issue of Petitioner's trial counsel's affiliation with the prosecutor's office was raised prior to his trial and could have been raised then, *see* ECF No. 1-1 at 14-16, those Orders are on appeal, as noted above. Further, the record does not include sufficient information for the court to determine what was or was not raised prior to trial, or what was or was not raised in the Rule 29(b) Motion.

In addition, even if the Supreme Court of South Carolina denies the pending Petition for Writ of Certiorari concerning the timeliness of the appeal regarding the Rule 29(b) Motion's denial, another proceeding is pending in state court that relates to Petitioner's unexhausted claim: his recently filed PCR application claiming his Rule 29(b) counsel was ineffective and seeking a

belated appeal of the denial of the Rule 29(b) Motion. Respondent's short argument, Resp't's Mem. 3 n.3, that any belated appeal Petitioner may receive is similarly meritless is also unavailing. That argument supposes Petitioner "could have raised" the unexhausted claim on direct appeal or in his first PCR application but did not. *Id.* Again, this presupposes facts not finally decided below and not fully available to this court. Although Respondent's arguments may eventually bear out, Petitioner's claims cannot be branded "meritless" by this court at this juncture.

To the extent there are questions about Petitioner's ability to proceed in the pending state court proceedings, such questions are best resolved there. The court finds no reason to prematurely foreclose Petitioner's opportunities here, while these issues are now pending before the state court, whose determination it is to make. In light of *Rhines*, it seems that when a state court is willing to consider a prisoner's claims, there is no legitimate federal interest in impairing access to that consideration by refusing a stay.[12] *See, e.g., O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999) ("Comity thus dictates that when a prisoner alleges that his continued confinement for a state court conviction violates federal law, the state courts should have the first opportunity to review this claim and provide any necessary relief."); *Lundy*, 455 U.S. at 518 ("The exhaustion doctrine is principally designed to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings.") (internal citation omitted). Here, the court is unwilling to speculate regarding the issues now before the state courts. *See Robertson v. Ozmint*, C.A. No. 2:11-63-SB-BHH, ECF No. 44 (D.S.C. Apr. 8, 2011) (granting

[12] These recommendations are informed by the specific facts and posture of this habeas matter. This Report and Recommendation should not be read to suggest there could not be situations in which procedural inadequacies of a petitioner's pending appeal or PCR application might inform the analysis of a ruling on a *Rhines*-based motion.

motion to stay under *Rhines* and noting preference for state court to consider issues regarding time bars and other procedural issues raised by respondent).

C. Whether Petitioner is Engaging in Intentional Dilatory Litigation Tactics

Rhines' third and final prong requires the court to consider whether a petitioner seeking a stay has "deliberately engage[d] in dilatory tactics" that "could frustrate the AEDPA's goal of finality by dragging out indefinitely their federal habeas review." 544 U.S. 277-78. Although *Rhines* focused this prong on capital petitioners, *id.*, the court considers it here.

Petitioner submits that he has no history of stalling or otherwise attempting to manufacture delay. He filed his first PCR seven months after certiorari was denied on his direct appeal. When certiorari was denied on his PCR appeal, he filed a motion for a new trial based on after-discovered evidence two months later. This is not the record of a petitioner who is trying to stall or delay. Pet'r's Mem. 7-8.

Respondent does not specifically address this prong of *Rhines* (other than generally stating Petitioner cannot satisfy any prong). Based on the record presented, it does not appear that Petitioner, pro se or through counsel, has engaged in any deliberately dilatory tactics. Accordingly, the undersigned finds Petitioner has satisfied this prong of the *Rhines* analysis, as well.

The court is mindful of the warnings in *Rhines* that stays should be available only in limited circumstances and, if employed too frequently, have the potential to undermine the AEDPA purposes of finality and speedy resolution of federal claims. However, under the unique facts and circumstances of this case, the undersigned is of the opinion that a *Rhines* stay is appropriate. Furthermore, in addition to satisfying the factors set forth in *Rhines*, a more

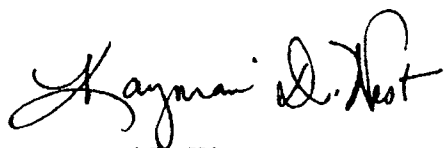
complete factual record to aid this court's review may be available after his pending appeal and second PCR are concluded in state court. *See Lundy*, 455 U.S. at 519 (noting under comity principles the important interest in a state court's complete factual record and citing 28 U.S.C. § 2244(d) (presumption of correctness of factual findings made by a state court)); *see also id.* at 522 (total exhaustion requirement was not intended to "unreasonably impair the prisoner's right to relief").

III. Conclusion

Accordingly, it is recommended that Petitioner's Motion to Stay, ECF No. 43, be *granted.* Based on this recommendation, the undersigned further recommends Respondent's Motion for Summary Judgment, ECF No. 24, be *denied without prejudice* so Respondent can refile any appropriate dispositive motions after the stay is lifted.

It is further recommended that, should the United States District Judge adopt this recommendation, counsel for Petitioner be required to submit a status report to the court within 14 days of the final decision regarding the pending appeal and within 14 days of the final decision in Case No. 2013–CP–34–00089. *See Rhines*, 544 U.S. at 278. At that time, the court will issue briefing instructions regarding this habeas matter.

IT IS SO RECOMMENDED.



June 13, 2013
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Alfonso Staton, #241380, Petitioner, v. Warden Michael McCall, Respondent.	C/A No.: 5:12-cv-02483-GRA **ORDER** (Written Opinion)

This matter comes before the Court for a review of United States Magistrate Judge Kaymani D. West's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) DSC, and filed on June 13, 2013. Petitioner Alfonso Staton ("Petitioner"), a state prisoner, brought this habeas action pursuant to 28 U.S.C. § 2254 on August 24, 2012.[1] ECF No. 1. Presently before the Court for a ruling are Respondent's Return and Motion for Summary Judgment (ECF Nos. 24 & 25) and Petitioner's Motion to Stay Proceedings Pending the Exhaustion of State Remedies ("Motion to Stay") (ECF No. 43). Magistrate Judge West recommends that Petitioner's Motion to Stay be granted. The Magistrate Judge further recommends that Respondent's Motion for Summary Judgment (ECF No. 24) be denied without prejudice so Respondent can refile any appropriate dispositive motions after the stay is lifted. For the reasons stated herein, the Court adopts the Report and Recommendation in its entirety.

[1] Prisoner petitions are deemed filed at the time that they are delivered to prison authorities for mailing to the court clerk. *Houston v. Lack*, 487 U.S. 266, 276 (1988). The envelope Petitioner used to file the § 2254 Petition is stamped "received" by the Lee Correctional Institution Mail Room on August 23, 2012. ECF No. 1-2.

Standard of Review

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

Discussion

On July 1, 2013, Respondent timely objected to the Magistrate Judge's recommendation that this federal habeas proceeding be stayed and held in abeyance. ECF No. 48. Specifically, Respondent alleges that Magistrate Judge West erred in recommending that a stay be granted because he asserts that Petitioner is time barred under the Anti-Terrorism and Effective Death Penalty Act's (AEDPA) one year statute of limitations. *Id.* Additionally, Respondent contends that the Magistrate Judge erred because Petitioner does not meet the requirements of *Rhine v. Weber*, 544 U.S. 269 (2005) because Petitioner's claim of after-discovered evidence which forms the basis of his motion pursuant to Rule 29(b) of the South

Carolina Rules of Criminal Procedure in state court is plainly meritless. *Id.* The Court will address each of these objections herein.

I. AEDPA

Respondent first objects to the Report and Recommendation because he alleges that Petitioner is time barred under the AEDPA's one-year statute of limitations.

Because Petitioner filed his § 2254 Petition after the effective date of the AEDPA, review of his claim is governed by 28 U.S.C. § 2244(d). Under the AEDPA, habeas corpus petitions filed by persons in state custody are subject to a one-year statute of limitations. 28 U.S.C. § 2244(d)(1). This one-year period begins to run from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." *Id.* § 2244(d)(1)(A). When a defendant appeals to the state's highest court but does not seek review from the United States Supreme Court, the AEDPA'S one-year limitations period begins to run when the time for seeking such review expires. *Jimenez v. Quarterman*, 555 U.S. 113, 119 (2009). Defendants have ninety (90) days after the entry of judgment by the "state court of last resort" to seek certiorari from the Supreme Court. Sup. Ct. R. 13. At the end of this period, the judgment of conviction becomes final.

In this case, the South Carolina Supreme Court denied Petitioner's Petition for Writ of Certiorari on direct review on November 21, 2002. ECF No. 24-24. Thus, Petitioner's conviction became final after the lapse of ninety (90) days on February 19, 2003, and the AEDPA's one-year limitations period began to run.

However, under the AEDPA, the one-year limitations period is tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending . . . ." *Id.* § 2244(d)(2). Petitioner's filing of his post-conviction relief ("PCR") application on July 10, 2003 tolled the one-year limitations period. *Id.* As a result, 141 days had expired on the AEDPA's one-year limitations period at the time Petitioner filed his first PCR application. The statute of limitations remained tolled through February 23, 2009—the date the South Carolina Supreme Court dismissed the grant of certiorari to Petitioner on his PCR Application as improvidently granted. At that point, the 224 days left in the limitations period began to run.

Respondent claims that the one-year limitations period expired on October 5, 2009. ECF No. 48. He asserts that because Petitioner's § 2254 Petition was not filed until August 24, 2012, the Court should not grant the stay and instead dismiss the entire action as untimely. *Id.* Respondent acknowledges that Petitioner filed a Motion for a New Trial based on "after-discovered evidence" pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure on May 6, 2009. *Id.* However, citing *Pace v. DiGuglielmo*, 544 U.S. 408 (2005), Respondent contends that Petitioner is not entitled to the benefit of § 2244(d)(2)'s statutory tolling provisions because Petitioner's 29(b) motion was not "properly filed" in state court. *Id.* Specifically, Respondent claims that Petitioner's motion was not "properly filed" because "(1) it did not meet the elements of an after discovered evidence claim (i.e. it was not evidence), and (2) it was not timely filed." *Id.*

The Supreme Court held in *Pace* that "time limits, no matter their form, are 'filing' conditions" and when a state court rejects a petitioner's postconviction application as untimely, the application is not "properly filed," and the petitioner "is not entitled to statutory tolling under § 2244(d)(2)." *Pace*, 544 U.S. at 417. *Pace* involved a petition filed under the Pennsylvania Post Conviction Relief Act (PCRA). *Id.* at 410. The petition was filed on November 27, 1996. *Id.* After the Court of Common Pleas dismissed the petition as meritless, the petitioner appealed. *Id.* at 411. On December 3, 1998 the Superior Court dismissed the petition as untimely. *Id.* Finally, on July 29, 1999, the Pennsylvania Supreme Court denied review. *Id.* Thus, by the time the petitioner in *Pace* filed his federal habeas petition pursuant to 28 U.S.C. § 2254 on December 24, 1999 and the district court made its ruling, all state proceedings were final.

Conversely, Petitioner's Petition for Writ of Certiorari on his Rule 29(b) motion remains pending before the South Carolina Supreme Court. ECF No. 43. Moreover, Petitioner's PCR application involving the alleged ineffective assistance of counsel of his Rule 29(b) counsel is also pending in state court. *See Staton v. State*, No. 2013-CP-34-00089, ECF No. 46-1. It is true that the circuit court denied Petitioner's Rule 29(b) Motion because the judge found that the motion was untimely and that the evidence was "not such as would likely change the result if a new trial was held." ECF No. 24-36. It is also true that the South Carolina Court of Appeals dismissed Petitioner's appeal "[d]ue to the failure of Appellant to timely serve opposing counsel with the Notice of Appeal." ECF No. 24-38. However, while Petitioner's Petition for Writ of Certiorari and his PCR application are pending, the rulings by the lower courts

on his Rule 29(b) motion cannot be said to be final. The Supreme Court could reverse the finding that the motion was untimely or that the motion did not meet the elements of an after-discovered evidence claim if the court finds an "error of law or abuse of discretion." *State v. Harris*, 706 S.E.2d 526, 545 (S.C. Ct. App. 2011). Moreover, in his PCR application involving the alleged ineffective assistance of his 29(b) counsel, Petitioner seeks to file a belated appeal pursuant to *White v. State*, 208 S.E.2d 35 (S.C. 1974). If the state courts ultimately find that Petitioner's Rule 29(b) motion was timely filed then Petitioner could potentially be entitled to the tolling provisions of § 2244(d)(2).

Therefore, the Court cannot determine at this time whether Petitioner's Rule 29(b) motion was "properly filed" within the meaning of § 2244(d)(2). While the timeliness issue is pending in state court, the Court finds that it would be premature to foreclose Petitioner's opportunity for federal habeas relief. This finding is consistent with the AEDPA's purpose "to further the principles of comity, finality, and federalism." *Williams v. Taylor*, 529 U.S. 420, 436 (2000). Accordingly, Respondent's objection is overruled.

II. Plainly Meritless

Respondent next objects to the Magistrate Judge's finding that Petitioner meets the requirements of *Rhines v. Weber*, 544 U.S. 269 (2005) and is therefore entitled to a stay of his § 2254 Petition.

In *Rhines*, the Supreme Court held that a stay of a petitioner's habeas petition to allow him to exhaust state court claims is only appropriate when (1) "the petitioner had good cause for his failure to exhaust," (2) "his unexhausted claims are potentially

meritorious," and (3) "there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." *Rhines*, 544 U.S. at 278. The stay and abeyance procedure is "available only in limited circumstances" because a stay "frustrates AEDPA's objective of encouraging finality by allowing a petitioner to delay the resolution of the federal proceedings," and "[i]t also undermines AEDPA's goal of streamlining federal habeas proceedings by decreasing a petitioner's incentive to exhaust all his claims in state court prior to filing his federal petition." *Id.* at 277.

Respondent takes issue with the Magistrate Judge's finding that Petitioner's claim under Rule 29(b) of after-discovered evidence—a conflict of interest by his trial defense attorney—cannot be labeled "plainly meritless" at this juncture. Respondent asserts, as he did in his response to Petitioner's Motion to Stay that this claim is plainly meritless because the circuit court judge correctly found as a matter of law that it does not meet the elements of after-discovered evidence under state law,[2] and even if it did, it is time barred under state law. ECF No. 48. Additionally, Respondent states that the South Carolina Court of Appeals dismissed the appeal from the dismissal of Petitioner's Rule 29(b) motion "for failing to file a notice of appeal in the proper manner and in a timely manner." *Id.* However, as noted above, both of these rulings are pending on appeal to the South Carolina Supreme Court. Again, because of the pendency of these appeals, the Court cannot say that Petitioner's claim is "plainly meritless" and finds that it would be premature to foreclose the opportunity for federal habeas relief. Moreover, with regard to any questions about whether

[2] In order to prevail on a motion for a new trial under S.C. R. Crim. P. 29(b), a person must show that the after-discovered evidence: "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching." *State v. Spann*, 513 S.E.2d 98, 99 (S.C. 1999).

Petitioner is procedurally barred from proceeding in the pending state court proceedings with his claim because of his failure to raise it on direct appeal, the Court finds, as the Magistrate Judge did, that such questions are best resolved there.

Additionally, Respondent claims that "even if Petitioner's latest PCR action was successful in granting him a belated appeal from the denial of his Rule 29(b) Motion, the claim is merit-less." ECF No. 48. Respondent again claims that Petitioner's claim is not after-discovered evidence and that it was brought in an untimely manner. *Id.* Respondent also claims that Petitioner did not raise this issue on direct appeal or at PCR when he could have. *Id.* However, the Court finds that the Magistrate Judge was correct in her finding that Respondent's argument "presupposes facts not finally decided below and not fully available to this court." ECF No. 47. While Respondent may ultimately prevail in his arguments, in the interest of comity and federalism, the Court finds that these issues must first be finally decided in state court. As such, Respondent's objection is overruled.

Conclusion

After a thorough review of the record, the Report and Recommendation, and the relevant case law, this Court finds that the Magistrate Judge applied sound principles to the facts of this case. Therefore, this Court adopts the Magistrate Judge's Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED that Petitioner's Motion to Stay (ECF No. 43) is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Judgment (ECF No. 24) is DENIED *without prejudice* so Respondent can refile any appropriate dispositive motions after the stay is lifted.

IT IS FURTHER ORDERED that counsel for Petitioner submit a status report to the Court within fourteen (14) days of the final decision regarding the pending appeal and within fourteen (14) days of the final decision in Case No. 2013-CP-34-00089. At that time, the Court will issue briefing instructions regarding this habeas matter.

IT IS SO ORDERED.

G. Ross Anderson, Jr.
Senior United States District Judge

July 11, 2013
Anderson, South Carolina

State of South Carolina) In the Court of Common Pleas
) Fourth Judicial Circuit
County of Darlington) 2013-CP-34-00089

Alfonso Staton,

Applicant,

Vs.

State of South Carolina,

Respondent.

Transcript of Record

July 21, 2014
Darlington, South Carolina

B e f o r e:

The Honorable Thomas A. Russo, Judge

A p p e a r a n c e s:

Tristan Shaffer, Esquire
Attorney for the Applicant

Joshua Thomas, Esquire
Attorney for the Respondent

Bonnie H. Kelly, CVR
Circuit Court Reporter

2088

I N D E X

WITNESS/DESCRIPTION	PAGE NO.
Case Called/Mr. Thomas	4
Motion/Mr. Shaffer	5
Response/Mr. Thomas	30
Reply/Mr. Shaffer	31
Response/Mr. Thomas	34
Reply/Mr. Shaffer	34
Response/Mr. Thomas	36
Reply/Mr. Shaffer	38
Response/Mr. Thomas	47
Reply/Mr. Shaffer	48
Decision of the Court	53
Certificate Page	54

2089

E X H I B I T S

NO.	DESCRIPTION	I.D.	EV.
C-1	Judge King's Orders		21
C-2	Letter Dated 1/24/12		21
C-3	Trial Transcript, 4 Volumes		53
C-4	Appellate Brief		53
C-5	Respondent Brief, 22 pages		53

THE COURT: All right. Mr. Thomas, which one -- which one we gonna go with first, sir?

MR. THOMAS: Your Honor, if it the please the Court, we'd do Alfonso Staton first.

THE COURT: All right.

(Brief pause.)

THE COURT: Are y'all going to have any witnesses in this matter?

MR. SHAFFER: No, Your Honor, I don't believe so.

THE COURT: Okay. All right.

(Brief pause.)

MR. THOMAS: Your Honor, if you'd like a brief procedural history, I'd be happy to ---

THE COURT: Yes. That'd be fine, Mr. Thomas. Thank you.

MR. THOMAS: Yes, sir. Josh Thomas, on behalf of the Respondent, State of South Carolina. This is the case of *Alfonso Staton vs. South Carolina*, case number 2013-CP-34-89. Mr. Staton was convicted in March, of 1997, before Judge Cottingham, who sentenced him to life without prison [sic] for murder; five years concurrent for criminal conspiracy; and he was also convicted of kidnapping, but no sentence was imposed pursuant to section 16-39-10.

The Court of Appeals affirmed his conviction in 2001. He filed his first PCR in 2003. Judge Milling denied that

2091

PCR application in September, 2005. The Supreme Court denied his petition for cert in 2009. He did have a Rule 29 hearing in May, 2009, before Judge King. Judge King denied that in October, 2011, and the Court of Appeals dismissed an appeal from that denial in March, 2012.

He filed his current PCR. Judge Baxley did issue a conditional order of dismissal on October -- in -- in October of 2013. Mr. Shaffer, who represents Mr. Staton, responded to that COD; and also as a result of that, Judge Baxley gave him permission to amend the PCR application to include an extra allegation. I don't think we've done that officially yet, and I'm gonna turn it over to him and let him go ahead and tell Your Honor where we are.

THE COURT: Mr. Shaffer.

MR. SHAFFER: Your Honor, regarding the -- the amendment, essentially, we're amending for after-discovered evidence. We found out in -- one of the co-defendants, one of the many co-defendants, Ringo, in this case -- he goes by "Ringo" -- his name's "Johnny 'Ringo' Pearson" -- he was unavailable at the time of the trial. He was not tried with him. He pled in 2006, Your Honor. He -- he was facing the death penalty, but ended up pleading to 33 years in 2006.

And he -- he finally spoke with us. We had -- we had a little bit of problem with his attorney trying to keep

him -- Mr. Blume represented him, John Blume was one of his attorneys, and he tried to keep him from talking to us for quite a while. We finally were able to talk to him in January of this year. He gave a statement, a recorded statement, with this attorney present to us.

In that recorded statement, he said that -- that two of the co-defendants who had testified against him were -- did not even know who he was whenever he went to prison and met up with them. One of the other co-defendants had to inform them, supposedly, who he was.

Now, he was a primary suspect in this case and if --

THE COURT: Now, when you say "he," we're talking about Mr. Ringo?

MR. SHAFFER: Yes, Your Honor. Ringo was a primary suspect ---

THE COURT: Right.

MR. SHAFFER: --- in this case. He was probably -- or alleged to be the most culpable one.

THE COURT: Right.

MR. SHAFFER: And essentially the two testifying co-defendants did not know who he was.

We also discovered that they tape recorded the interviews with Mr. Ringo. That tape never came up -- up to us.

And I apologize to Josh, this is actually the first

time he's hearing about that particular allegation because I -- I -- we re-listened to the tape over the weekend and -- and thought about it.

But -- so I believe that that constitutes after-discovered evidence, from which we can actually amend the PCR and make a claim based off of that and at least have a hearing, Your Honor.

The -- to give you a little background in the case, my client was convicted after being tried with six other people.

THE COURT: And -- and that was in --

MR. SHAFFER: '97.

THE COURT: 1997.

MR. SHAFFER: The allegation is this, is that -- that my client, who was 17 at the time and in high school, went along with a group of other people who had kidnapped and raped the -- the victim in this case. The allegation is they -- they essentially had her tied up in a trailer for some period of time, and then all got together and disposed of the body. Okay. They found her body in a creek, which is locally referred to in Marlboro or in Bennettsville as -- off of Burnt Factory Road, its name, you know, essentially, the -- the Burnt -- it's -- this crime is locally known as the "Burnt Factory killing." Okay?

To give you background, they accused -- they did not

2094

have an initial -- they didn't have a whole lot of suspects initially. They questioned Ringo about three weeks after they found the body. He gave a statement indicating that he had -- he had had consensual sex with her and then accidentally killed her by himself. He gave that statement in early December of 2000 -- I mean, 1994.

Sometime fairly soon after that, my client, who was in high school at the time, had said to somebody that Ringo didn't mean to kill her, that -- you know, that he accidentally killed her after having consensual sex with her and didn't mean to kill her. That -- or that he -- he -- he had sex with her and didn't mean to kill her.

That was basically a repeat of the story that Ringo had told the police. Okay? The -- the law enforcement obviously did not believe Ringo's story because they didn't believe he did it alone. They continued to investigate the crime looking for other people. They ended up -- my client -- by making that statement at school, he got on their radar at that point along with several other people.

Now, about three months later, one of the other people in their radar, they -- they searched a trash pile outside of a place that he was staying at. He was staying in a run-down house. Outside of it was a trash pile and they allegedly found an earring that belonged to the victim in it. Okay? And I believe that was Danny Davis is the

person who was staying there.

He was questioned and initially denied involvement, and then eventually gave a statement where him and several other people were involved.

Based off of his statement, a guy named "Robert Ransom" was also arrested. Okay? And Robert Ransom also gave a statement where various people were involved. Early on none of the statements included my client.

One of them, and I can't remember which one, was housed at Chesterfield. Okay? They brought Danny over -- because Robert and Danny were long -- long-term friends. They brought Danny over to talk to Robert; and they put them in a room together and said basically, "Your stories aren't matching up. They need to match up. We're going to charge y'all with murder and, you know, seek the death penalty against y'all. Y'all -- you need to get your stories straight," essentially. Law enforcement put them in a room together, and after that, a story came out where my client was involved.

My client was scheduled for trial and initially had Jay Hodge as his attorney. Jay was relieved after getting elected solicitor and got -- and Will Rogers got appointed. Will was working as a solicitor in the Fourth Circuit at the time. He was a part-time solicitor. And this case was out of Marlboro, but he was a part-time solicitor in

Chesterfield and Darlington and Dillon. But he never -- he said he -- I -- I talked to Will about this and he informed me that he was never actually in Marlboro at that time period.

It was prosecuted by Ralph Wilson from the Fifteenth Circuit, but, you know, all the officers, all the law enforcement were local law enforcement or SLED agents that were assigned to this area.

He ended up -- Will eventually moved to get relieved and was relieved by Judge Smoak. After being relieved, Judge Cottingham said, "Well, we have a trial date, and put Mr. Rogers back in the case."

Now, in Mr. Rogers' notes, it indicates -- and he -- he indicates that he doesn't have any clear recollection of this -- indicated that to me, that he doesn't have clear recollection of exactly what happened around this time period. But based off his notes, he said that he was -- moved to get relieved, was relieved, and then informed clients that he was relieved, or that he had -- basically informed clients that -- you know, that he was off the case. He doesn't indicate whether or not -- or he hasn't indicated to me whether or not he actually informed them of the nature of the conflict.

He went to trial with Will Rogers. Will Rogers -- I believe there were seven law enforcement -- and it's been a

while since I've looked at this -- I believe there were seven law enforcement officers that testified at the trial. It's a long transcript. It's about 1800 pages, the trial transcript, because he was tried with all the co-defendants.

THE COURT: Uh-huh.

MR. SHAFFER: Out of the seven that were -- that testified, I believe he cross-examined maybe four of them. Out of the four that -- four that he cross-examined, if you add up, line by line, every question and every answer together, you get 35 lines of transcript, which is a page and 10 lines.

Basically, our assertion is that he -- he essentially held his punches against the officers.

I don't even think we need to prove prejudice on this case. I'm getting a little bit ahead of myself, but there's U.S. Supreme Court case law that says whenever a trial attorney moves to get relieved on conflict and doesn't get relieved, that that's reversible error and you don't have to show prejudice. That's *Holloway vs. Arkansas*. It's 435 U.S. 475, 498 Supreme Court 1173. And that's a 1978 U.S. Supreme Court case.

THE COURT: Now, I'll look at that case, obviously, but ---

MR. SHAFFER: And that's ---

THE COURT: --- the premise of that case is that if an attorney moves to be relieved due to a conflict and that's denied, that's automatically reversible?

MR. SHAFFER: It's per se error, yes, Your Honor. It's reversible ---

THE COURT: It doesn't -- it doesn't say anywhere in there that the attorney has to show the Court a valid conflict, just simply ---

MR. SHAFFER: Your Honor ---

THE COURT: --- allege one?

MR. SHAFFER: No, Your Honor. I believe that he has to show a valid conflict in order -- I -- I -- I would say that if there's actually a conflict that exist or the potential for a conflict, that the trial court should defer to the attorney.

THE COURT: Okay.

MR. SHAFFER: That's basically the argument that Arkansas made in that case is that well, he hasn't shown that there was actually a problem with him representing him. And they said well, you don't know exactly what he would have done different. It's impossible to speculate what they would have done different had that potential conflict not been in place.

And I think that it's similar in this case because you never know what exactly -- what strategies, what valid

strategy would have been put into place if not for the fact that, you know, all the officers -- essentially, all the officers that were involved in this case all worked in the counties where he had cases and were prosecuting cases.

So, I mean, I -- if I was a solicitor, you know -- and this is just from my perspective -- I certainly wouldn't be accusing cops that I have cases with of doing something wrong and basically, you know, manipulating statements into getting a -- you know, including people who weren't there otherwise.

And I think that would have been a valid strategy for him to approach and -- and say well, look, his name didn't come up until then, you know, until they got these cops together -- or got these two witnesses together, which isn't a valid, you know, police interrogation tactic if you're looking to get the truth, to put people in the room together and say get your story straight.

So I -- I -- I certainly think that had we been able to initially raise that issue on the merits of it, I think that we would have won. Even if we were required to show prejudice, I think that the prejudice shown is essentially -- and -- and there's another case cited in my -- my response to the conditional order of dismissal.

But even if we were required to show prejudice on it, I believe that the -- in order to show prejudice in a

actual conflict of interest case, you -- you merely have to show that there was a reasonable strategy that was not pursued otherwise.

THE COURT: Mr. Shaffer, let me ask you: Now, you said initially that Mr. Rogers asked to be relieved. Judge Smoak granted that motion. Was the -- was that the basis of his motion to be relieved that he, working as a ---

MR. SHAFFER: Yes, Your Honor.

THE COURT: --- part-time solicitor, that he felt that that posed a conflict?

MR. SHAFFER: Yes, Your Honor.

THE COURT: And Judge Smoak granted that.

MR. SHAFFER: Yes, Your Honor.

THE COURT: And then subsequent to that, Judge Cottingham overruled that or ---

MR. SHAFFER: Well, Judge Cottingham indicated -- and this is coming from Will Rogers -- Judge Cottingham indicated that there wasn't actually a conflict, and that he had retained jurisdiction over the case. He had called Judge Smoak and Judge Smoak rescinded the order.

THE COURT: Okay.

MR. SHAFFER: The -- and obviously, we don't have a clear record of that because, you know, there's not hearings to -- to indicate that.

And Your Honor, I think that it's important to note

that, you know, throughout today or throughout me talking, I -- I'm going to talk about how he was basically failed by his attorneys.

The first failure that occurred here is that Will Rogers did the right thing. He made sure that the -- you know, he -- he -- he asked for a -- asked to be relieved of counsel, and you know, initially, he did the right thing by doing that. Your Honor, I think that he failed during the trial, but also in the fact that he -- he didn't include that in any sort of indication to the appellate counsel on this case. So nobody really knew about this.

And I'm not sure -- you know, not every single document from the clerk's file goes to an appellate counsel. Okay? And the way this -- the way Appellate Defense is set up, not every single file go -- every single piece of paper goes to them.

The -- the appellate attorney, you know, didn't go and make -- didn't request a copy of that particular hearing because -- we don't have a copy of it even if there was a hearing. I don't even know if this was done ---

THE COURT: Would there not have been a written motion to Judge Smoak?

MR. SHAFFER: I believe there was a written order. I don't think there was written motion, Your Honor, which maybe means that he took it up in chambers. There's no

2102

record of what exactly -- you know, what exactly was said during it. There was no court reporter for this hearing, at least none that we know of at this time.

THE COURT: There's just Judge Smoak's written order that states the conflict ---

MR. SHAFFER: Yes.

THE COURT: --- appears to be valid and he's released.

MR. SHAFFER: Well, I think there -- there's a written order just relieving him of the -- relieving him as counsel and then another order putting him back on. But none of that was delivered later on. You know, that basically went in the clerk's file and I don't think anyone looked at it again until -- you know, it -- it wasn't discovered by his PCR counsel obviously because his PCR counsel didn't bring it up.

In 2007, my client wrote Will Rogers demanding a copy of his file, which at this point, he had already had a PCR, he had already filed a cert petition on it; and the cert was granted, and the case was pending in the South Carolina Supreme Court. Okay?

He -- he got a copy of the file. And while cert was pending, he discovered this based off the notes in the file. They ended up dismissing as improvidently granted at -- in 2008 or 2009. But essentially, two months after that dismissal of the PCR appeal, he filed a 29(b) and was

asking for a new trial based off of this after-discovered evidence.

And at the time, which would have been 2009 whenever he filed it, the rule read that it had to be within a reasonable time period. Okay? And it turns out that's the rule that the judge ended up adopting later on.

But from 2009, it took him a while and they ended up filing a new -- like a -- I guess he got appointed counsel from -- the Fourth Circuit Public Defender's Office appointed him counsel, and he was initially appointed Emily Crayton, who filed another -- another motion for a new trial based on after-discovered evidence. But by the time the hearing came up, he was represented by Will Grove. I'm assuming it's after Emily had left that office.

And he had a hearing in front of Judge King on October 6, 2011, for his motion that he filed in 2009, based off of the conflict. He also alleged in that motion an actual innocence claim, but the -- the conflict was the only thing that was heard by -- by the Court on that day. Essentially Will Rogers said that -- I mean, Will Grove -- excuse me -- Mr. Grove said that he was not going to argue the actual innocence on that day.

On that hearing in 2011, the Court -- the Court found, basically, that by filing that, he either knew about it or -- this is Judge King's ruling: He either knew about it or

by filing it -- by the filing of the motions, he had sort of constructive knowledge, essentially, of it; and therefore, his -- his attorney -- he was either -- he either should have been present at these hearings or his attorney should have informed him of what happened. And because his attorney knew about it, even though it's based off the conflict with the attorney, he said that it wouldn't qualify as after -- after-discovered evidence based off of that.

THE COURT: Let me -- I'm going to interrupt you for just a second and just go off the record for a moment here.

MR. SHAFFER: Yes, Your Honor.

(Briefly off the record.)

THE COURT: All right. Mr. Shaffer, thank you for your patience. I just -- I needed to access my *Westlaw*. So I'm good now. Go ahead.

MR. SHAFFER: Thank you, Your Honor. After this hearing that occurred -- I have -- get to the pertinent part. This is -- this is what Judge King ruled on (as read): "In my view, the conflict, or potential conflict, was in existence on this matter, and throughout the pretrial matters, before this matter came to trial for hearings on the record by Judge Smoak, who made a finding that there was no conflict.

"Whether the Defendant knew that or not, he was

charged with that knowledge. He should have been present. If he was not present, then this would be a matter for PCR" -- or excuse me -- "this would be a matter that would be a PCR issue and not a matter for a new trial, or it would be a matter that could have been resolved on an appeal.

"But the fact of the matter is that he knew or should have known the potential conflict and an opportunity to make the objection on the record from that rule; therefore, it is not after-discovered evidence."

I -- I believe that there would be a meritorious appeal issue off of that because I don't think you can charge him with constructive knowledge if his attorney -- there's no indication that his attorney ever told him that there was a conflict.

What happened after this ruling, the judge signed an order, Mr. Staton wasn't told about the order and -- for several months, and then wrote the judge directly asking for a copy.

THE COURT: What was the date of that order?

MR. SHAFFER: Yes, Your Honor ---

THE COURT: The date of Judge King's order.

MR. SHAFFER: Yes. Judge King's order ...

MR. THOMAS: May I approach, Your Honor?

THE COURT: Yes, sir.

MR. THOMAS: I've got a copy of it.

2106

THE COURT: Oh, okay.

MR. THOMAS: That's the --

(Mr. Thomas hands a document to the Court.)

THE COURT: All right. Thank you, sir.

MR. SHAFFER: Judge King's order, which originally was signed in October I believe, was not given to the client. He ended up writing a letter to -- to Judge King, essentially wondering when the order was coming.

He found out that the order was filed, and then he filed a pro se motion to reconsider because on that day that he filed that -- or immediately thereafter, he -- he also wrote Will Grove asking whether or not an appeal had been filed.

Mr. Grove sent him a letter, which I could submit to the Court. I -- Your Honor, If I may pass this up.

THE COURT: Yes, sir.

(Mr. Shaffer hands a document to the Court.)

MR. SHAFFER: That order was sent to -- I mean -- excuse me, Your Honor -- that letter was sent from Mr. Grove to my client which indicates that an appeal hadn't been filed yet, but he would ask the judge to consider the other part and then file the notice of appeal, essentially saying "don't worry about it."

THE COURT: All right. Let me -- I'm going to stop you for a moment just so that this record will be clear.

I'm going to make these a Court's Exhibit. Court's Exhibit 1 will be the -- the copy of Judge King's order, and then his subsequent order responding to Mr. Staton's, I guess, pro se request. And then Court's Exhibit 2 will be the letter which you just passed to me, Mr. Shaffer, the January 24th letter from Mr. Grove.

MR. SHAFFER: Thank you, Your Honor.

(Marked Court's Exhibit No. 1, Judge King's Order Document.)

(Marked Court's Exhibit No. 2, letter dated January 24.)

THE COURT: All right. Go ahead, sir. Thank you.

MR. SHAFFER: Thank you. Your Honor, I -- I guess Will Grove -- you know, whenever I'm talking about the failure that he's gotten from counsel up until this point, there was a failure of not filing an appeal off the original order. There was not a timely appeal filed in October. There was also a failure here and essentially saying "don't worry about it, it will be a done deal later."

After receiving that, Mr. Staton ended up filing his own appeal. After realizing that that letter was probably not good advice, some -- sometime in mid-February, he filed an appeal. That appeal was dismissed and his -- the cert from that was dismissed based off the timeliness of the

appeal.

THE COURT: February of 2012.

MR. SHAFFER: Yes, Your Honor.

THE COURT: And that was appealing Judge King's dismissal of the rule 29(b) motion?

MR. SHAFFER: Yes, Your Honor.

THE COURT: Okay. And does that include the -- where Judge King referenced Mr. Staton's ---

MR. SHAFFER: Reconsideration?

THE COURT: --- reconsideration?

MR. SHAFFER: Yes, Your Honor. That was -- that was for both -- both dates were appealed.

THE COURT: All right.

MR. SHAFFER: And ---

THE COURT: Now, when -- when -- all right. Go ahead.

MR. SHAFFER: Well, his pro se -- technically his pro se filing wasn't timely if you consider the fact that his attorney received notice of the October order months beforehand --

THE COURT: Right.

MR. SHAFFER: -- but didn't inform him of it.

He ended up filing -- they -- they ended up saying it just wasn't timely. He would have had 10 days to appeal, I suppose, the order -- the order -- if it was timely, he would have had 10 days from the -- the filing of the second

order to appeal -- or the -- receiving the second order to appeal.

So essentially, you know, it's pretty clear that -- at least from the letter, that counsel was at least under the belief that he would have some ability to appeal it later. I don't think that's a valid belief. And as a result, his appeal was dismissed, and they said that he didn't have jurisdiction over it.

He -- when the Court -- when the Court of Appeals dismissed this, he filed this -- I mean, dismissed the appeal from the 20 -- motion for a new trial, he ended up filing this action, this PCR action, alleging that Mr. Grove was ineffective.

What happened -- I guess to -- to give you sort of the back story of what's going on, there's also a pending habeas case, a federal habeas case, which would have been his first federal habeas. And his habeas case is pending, but it's stayed right now because, essentially, the State's argument is if you file ---

MR. THOMAS: Your Honor, I'm going to object. The habeas is irrelevant to this proceeding before this Court. I don't want to be -- I don't do that, so I don't understand the State's argument, so I don't want to have to try -- if he's characterizing the State's argument ---

THE COURT: What -- what are ---

(Mr. Shaffer and Mr. Thomas speak simultaneously.)

MR. SHAFFER: I won't characterize the State's argument. My -- my belief is that -- well, my belief is what will be argued is because the -- the 29(b) wasn't timely and there's a finding from a Court -- from -- you know, a finding from Judge King saying it's not timely. The state court made a finding that a 29(b) wasn't -- wasn't timely.

My belief is that the federal court will look at his statute of limitations for filing habeas as starting from 2009, whenever his PCR appeal was dismissed -- first PCR appeal was dismissed.

THE COURT: Let me -- so that I can be clear on what we're doing here, am I -- we're proceeding on -- on your motion to amend to include the after-discovered evidence, correct?

MR. SHAFFER: Yes. That and the State's motion ---

THE COURT: How -- how -- why is that out of time? Because clearly, in -- no question, I don't think anybody would argue that in 2012, Mr. Staton was aware of that problem, of that so called after-discovered evidence, correct?

MR. SHAFFER: Yes, sir.

THE COURT: And -- and -- and here we are, now in 2014, when Rule 29 requires that it be made within a year

after the date of this discovery, but we're just now doing this as an amendment to this application. So why is that not out of time?

MR. SHAFFER: And Your Honor, the -- the after-discovered evidence is a different -- different piece of evidence. The after-discovered evidence came about in January whenever I was able to speak with Mr. Ring -- Ringo Pearson. That -- that ---

THE COURT: I'm sorry. I thought the after-discovered evidence we're talking about here was ---

MR. SHAFFER: The conflict?

THE COURT: --- the attorney conflict.

MR. SHAFFER: That's the after-discovered which was the basis of the 29, Your Honor. The -- my -- my motion to amend is on something totally separate ---

THE COURT: All right. Okay.

MR. SHAFFER: --- than that issue.

THE COURT: All right. That's what I want to be clear about.

MR. THOMAS: But -- but as I understand it, Your Honor, we're here on basically his motion to amend the pleadings to include that after-discovered evidence claim.

THE COURT: Which is the evidence of the -- the two --

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MR. THOMAS: Correct. The two co-defendants --

THE COURT: --- the two co-defendants?

MR. THOMAS: -- witnesses.

THE COURT: Right.

MR. THOMAS: We're also here on the -- depending upon -- I mean, obviously, I'm going to oppose that as being timely, and we can get into that later and not qualifying as a valid argument.

But I guess there's also the State's motion to, I guess, finalize the COD, to -- to dismiss -- to make the COD an FOD --

THE COURT: Right.

MR. THOMAS: -- based on his ineffectiveness assistance of Rule 29 counsel claim. I'm assuming inherent in that is also the -- the Rule 29 claim itself, the conflict of interest, which the State would also -- and I -- later.

So those three issues: The two co-defendants, the ineffective Rule 29 counsel, and conflict of interest.

THE COURT: All right.

MR. SHAFFER: Your Honor, regarding the -- I think that since two of them are sort of consistent dealing with previous 29(b) counsel, we should probably take those up together. And then take up, sort of separately, just because this is confusing -- there's a lot going on -- the issue involving the after-discovered evidence from January

of this year. And I'm happy to do it in whatever order the Court would prefer.

THE COURT: Well, let's -- let's do it chronologically, so let's do the rule 29 ---

MR. SHAFFER: All right. Thank you, Your Honor.

THE COURT: --- situation.

MR. SHAFFER: The -- the State's motion is moving to dismiss the 29 -- the PCR claims involving ineffective assistance of 29(b) counsel. Their allegation is that -- or their argument is that -- that under *Clinkscales*, a South Carolina case that says that somebody was not entitled to an attorney, an appointed attorney for a 29(b), that based off of that, even if Mr. Grove was ineffective for failing to -- or deficient for failing to preserve that, he basically wasn't entitled to effective assistance of counsel. I believe that's the argument.

(To Mr. Thomas) Is that fair?

MR. THOMAS: That's correct, Your Honor. We would -- it's all outlined in Judge Baxley's conditional order that he signed. The Sixth Amendment doesn't guarantee effective assistance of counsel at post-trial motion stage. So it's not a valid claim under post-conviction relief.

MR. SHAFFER: And my argument to that is that -- well, first, if you're appointed an attorney to represent you at the 29(b), that that attorney can't do things that are --

basically, I mean, it's unfair to hold him accountable if your attorney just doesn't do the right -- what you're supposed to do. That's regarding the actual ineffectiveness of 29(b) counsel at the 29(b) hearing.

But as outlined in my response, there's a -- there's also something where -- you know, I think that there should be a remedy out there, similar to *White vs. State* or *Austin vs. State*, that even when you're not entitled to an effective assistance of post-trial -- post -- I mean, post -- sorry -- post-trial motion, even if you're not entitled to effective assistance of them, you should be entitled to an attorney that can actually file the appeal.

Even in a PCR, you're not entitled to effective assistance of PCR counsel, but you're entitled -- if your PCR attorney fails to file a appeal whenever you want them to do that, then they will -- they basically created a remedy within PCR to grant that belated appeal. And I think that that's essentially what happened here.

Even though he -- it isn't technically a PCR, it's a post-trial motion. But even if he wasn't entitled to an attorney that would argue the right stuff at the post-trial motion, he would at least be entitled to an attorney that can effect an appeal and not waive his appeal, which is what happened here because his attorney basically waived his appeal by not filing timely.

Your Honor, essentially what I'm asking for is for *Austin* to be extended to 29(b) motions for a new trial based off of after-discovered evidence. There's no case law that directly supports that -- that -- there is cases that support it. If you look at *Austin*, basically, an *Austin* appeal is something that -- that is -- it's a court finding a remedy where none exist, a proper remedy for the case. And I think that in this situation, that's -- that's what -- what is warranted. I mean, I think it's pretty clear from the letter that his attorney basically waived his appeal, and as a result, he not only killed his chances at this appeal, this issue, he also killed chances of federal habeas, too.

I mean, Will Grove, by not filing that appeal on time, really, really hurt his client. I mean, basically, there's -- there's no further recourse now if the Court finds that that appeal -- you know, there's no appeal from that.

I mean, I -- you know, there -- there's us saying they should be equitably tolled but -- the habeas timeline should be equitably tolled, but basically what he did was kill off this issue and he killed off his -- all of his other issues for his federal habeas all in one -- one thing, just by not filing the appeal on time.

There has to be some sort of remedy for that, Your Honor. If there's -- if he had filed a PCR instead of a

29(b), there would be a remedy. It would be an *Austin* and PCR. And I think the *Austin* can be extended to a 29(b), you know, essentially the case law is the same for the after-discovered 29(b)s and PCRs where -- it's only fair and equitable that the Court should do that.

THE COURT: All right. And Mr. Thomas, I'll hear from you regarding that issue then.

MR. THOMAS: Again, Your Honor, it's -- I'll reiterate the fact that there's no Sixth Amendment right to post -- to Rule 29(b) counsel.

And the reason we have *White* and the reason we have *Austin* are because that there's -- there has to be a knowing and voluntary waiver of your right to an appeal.

I'm not sure that there's a right to an appeal from a Rule 29(b) denial. There's a constitutional -- there's a South Carolina constitutional statutory right to an appeal from a criminal conviction and there's a statute -- statutory right to an appeal from a PCR denial. But there's no -- nowhere that I'm familiar with -- I could be wrong -- there's nowhere that says you have a right to appeal from the denial of post-trial motions such as that.

So I don't think there's any valid claim of ineffectiveness. Even if Mr. Grove was deficient in not doing that, even if that is a situation like that, I think he's -- Mr. Staton still has to prove prejudice. He can't

2117

do that in this situation because, as Judge King's order clearly outlines, this is information that was available in 2007, or before -- well before this motion was filed. It was available in 1996 when the case was tried, 1997, so it's a merits claim because he can't show prejudice.

And I guess I can expand upon that when we talk about the merits of the 29 -- or the after-discovered evidence for conflict of interest claim.

MR. SHAFFER: And Your Honor -- and Your Honor, my -- my brief reply to that is that clearly you're able to appeal from a 29(b) motion because it happens all the time. Generally, you're appointed counsel for that appeal. You know, there's plenty of cases that are appeals from 29(b) or motions for a new trial based off of after-discovered evidence.

And I think there's -- there's probably -- I want to say there's about 70 cases that *Westlaw* will pull up. If you type in in quotes "motion for a new trial based off after-discovered evidence," there will be a ton of cases that come up. Clearly, they're appealed.

And in the last 20 years, I think I found two that weren't represented by counsel on the appeal on top of that, Your Honor. And one of those is -- is -- one of those is someone who probably did not accept counsel. Just based off of who -- who she is, she probably did not accept

2118

counsel.

And I'm not sure of the story of the other one, but all these cases get appointed counsel and they == they're all appealed, Your Honor. I -- I don't see why they're saying that there's not a right to the appeal if, you know, it's routinely given throughout the state.

THE COURT: Where -- where in -- point me to -- in Judge Baxley's order where he references the --

MR. THOMAS: It -- it starts on page 3, Your Honor. It's ---

THE COURT: All right.

MR. THOMAS: --- Part A, failure to state claim. Then over on page 4, in that -- not the block, but -- but the body of the paragraph ---

THE COURT: Yeah.

MR. THOMAS: --- he references details.

(Brief pause.)

THE COURT: So Mr. Shaffer, your response to that is that -- I'm not sure I understand.

All right. Judge Baxley basically states that -- that this is -- this is simply a post-trial motion and that the Sixth Amendment does not guarantee effective assistance of counsel for those types of proceedings. And -- and your response is?

MR. SHAFFER: It -- it's similar to -- to a PCR. The

Sixth Amendment doesn't guarantee the right to effective assistance of PCR counsel, but -- but South Carolina state law created a remedy to change this exact situation if it happens in a PCR. That remedy should be extended to a 29(b) as well.

White v. State would also apply, Your Honor, which is when your attorney doesn't appeal your actual conviction. Even when your attorney doesn't appeal your conviction, there's a -- there's a remedy to it.

In this situation, if I decided not to appeal my next three cases that are all PCR cases that are going to be heard today, if I decided not to appeal them, they would PCR me; and even though they weren't guaranteed the right to effective assistance of counsel, they would get a belated appeal.

This is the same situation. It's just in a different forum. The only difference is the name. Instead of the -- instead of a Court of Common Pleas, it is a Court of General Sessions; and instead of a PCR, it was a motion for a new trial based off of after-discovered evidence.

THE COURT: So is your remedy then here a belated appeal on the Rule 29?

MR. SHAFFER: Yes, Your Honor.

THE COURT: So ---

MR. SHAFFER: For that -- for that issue it is.

THE COURT: For that issue. So we're not talking about sending the case back ---

MR. SHAFFER: No.

THE COURT: --- on that issue.

MR. SHAFFER: No, Your Honor, I believe that the -- on that issue, the -- the --

THE COURT: That's the belated appeal issue.

MR. SHAFFER: It's belated appeal.

THE COURT: All right. Do you want to respond to that, Mr. Thomas, or you want to move on?

MR. THOMAS: I would just say that I know *Austin* said that it's limited to its factual circumstances, and I don't think it should be extended here.

THE COURT: All right. All right. What's -- what's the next issue?

MR. SHAFFER: I believe that the State had mentioned the initial after-discovered evidence claim.

MR. THOMAS: Your Honor, can we --

MR. SHAFFER: Can we ---

THE COURT: Yeah.

(Brief pause.)

MR. SHAFFER: And Your Honor, the -- concerning the merits of the -- which is sort of a separate claim than what we just be talked about, but it's the merits of the conflict of interest claim. I believe we're at least

entitled to a hearing on that where we can speak to Mr. Rogers, or Solicitor Rogers, about whether -- what he had informed my client and what he didn't.

I've spoken to him previously. I -- I think that at least entitles a hearing for him. I don't think it should be summarily dismissed.

The merits of the claim, I -- I believe there was a conflict of interest. Your Honor, I -- I think that we can -- we could raise it now under, I guess, a -- sort of an equitable tolling argument to say well, he found out about it in 2007 and had an action going since then.

You know, technically, you can raise after-discovered claims like this on PCR. You know, the newly-found evidence or after-discovered PCR cases are similar to like a case that came out last year, *McCoy*, which involved a juror.

I believe that we can -- we're at least, entitled to a hearing on and not summary dismissal on whether or not there was a conflict of interest and whether or not that was a violation of his rights.

You know, I -- I guess the State has its position on the dismissal of that, but I believe that it at least passes where we're at right now, which is summary dismissal of that claim.

MR. THOMAS: And the State's position on that, Your

2122

Honor, is Applicant's had an opportunity to litigate this issue about the conflict of interest. He did it before Judge King. Judge King had issued a ruling on that. PCR is not a substitute for -- for something that can go in a trial court. I think it's inappropriate to try and re-litigate an issue -- call it res judicata or collateral estoppel if you'd like, but it's just inappropriate to re-litigate an issue that another judge has already ruled upon. It's the same facts; it's the same parties; it's the same circumstances.

And again, I would just -- I would note that it's -- even if it is some sort of a merit -- I don't think there's a meritorious claim because, obviously, this case was prosecuted by the Fifteenth Circuit solicitor, not by the Fourth Circuit. So there's no actual conflict. I don't believe fear of cross-examining police officers rises to the level of a conflict as he's outlined.

And -- and again, this was -- this all happened -- this would have all been available, this information, in 1996/1997 when this was going on, so it's clearly untimely. Even if there is some merit to it, it could -- could have and should have been raised earlier and that's what Judge King found when he dismissed this exact same claim.

MR. SHAFFER: Your Honor, my -- my response is that representing the State and certainly in your home circuit

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THE COURT: All right. But -- but -- what -- deal with the issue that Judge King heard all that.

MR. SHAFFER: And Your Honor, I -- I believe that he heard it under state law, and what we're basically alleging is that his constitutional rights were deprived based on the conflict of interest.

So it's somewhat of a -- somewhat of a distinction, Your Honor, in what -- whether or not -- because he was finding whether or not it was evidence under after-discovered evidence.

My argument is that it's a violation of his right to due process and had a conflict of interest -- have that attorney that has an actual conflict with it.

So I guess it's a similar -- similar issue. It's very -- very similar to what was raised before, but it was under the scope previously as an after-discovered evidence claim and now it's under the scope of a violation of due process, I suppose.

THE COURT: And were you prepared for that hearing today? Did you -- did you subpoena Mr. Rogers?

MR. SHAFFER: No, Your Honor, I have not subpoenaed Mr. Rogers. I was under the impression we were just doing motions.

THE COURT: Okay.

MR. THOMAS: Yeah. And that's why we had just scheduled this as a motion to dismiss because I don't believe testimony is necessary ---

THE COURT: All right. All right. What's -- what do we have next?

MR. SHAFFER: The last claim, Your Honor, is an after-discovered evidence claim based off of the evidence that was discovered by talking to Mr. Pearson.

THE COURT: Okay.

MR. SHAFFER: That evidence was unavailable prior to now because basically Mr. Pearson wouldn't talk -- Ringo wouldn't talk to us.

He was also protected by his lawyer. Even after he had pled guilty, he was basically protected by his lawyer, you know, for at least a year there while I was trying to get an interview with him and couldn't. His lawyer didn't want him to talk to us and finally agreed to allow us to.

I was able to record a conversation with him, about a 45-minute conversation. I apologize, I left the CD in the car. Even though that would mainly be a merits issue, I'm happy to get it for you if you would like to hear.

But during one point in the -- in it, around 12 minutes into the CD, Ringo is talking about how he was recorded -- he had audio recording. The -- the -- all of the interviews with him were recorded with audio, which

2125

might create a *Brady* issue in this case. Those audio recordings were never determined -- turned over to defense counsel.

Court's indulgence just a moment.

THE COURT: Okay.

(Brief pause.)

MR. SHAFFER: Your Honor, I -- I've spoken now with two -- two of the attorneys involved in this case and they said that they never -- they don't recall ever receiving it. One was fairly firm about it. The other one said he doesn't recall. The -- so that was discovered in -- in --

THE COURT: Now, these are -- these are -- in your conversation with Ringo, these were statements that were taken from Ringo back in 1994 ---

MR. SHAFFER: Yes, Your Honor.

THE COURT: --- during the original investigation?

MR. SHAFFER: Yes, Your Honor. He -- he basically -- and -- and really, the reason that they would be relevant is essentially that they -- based off of what Ringo was saying, is that the officers were making statements that tried to get him to change his story.

You know, initially he confessed to doing this alone -- well, initially he said that he didn't actually mean to kill her, then ---

THE COURT: But you had -- you had that, though,

right?

MR. SHAFFER: Yes, Your Honor. We had a written statement. They didn't have audio. The audio statements change as they go along. And essentially they were -- they had asked him, "Well, weren't -- weren't other people involved?" You know, "You don't want to go down for this by yourself," things like that.

I think they probably would have been useful to have at the time. I -- I don't think that they -- they were turned over to counsel. And obviously that's something we're gonna explore further during a hearing, Your Honor. But the -- that's one claim.

There's also -- during the -- during the -- the pretrial detention of these guys -- the entire case that they had against all these guys were based essentially off of some duct tape that was linked back to one of them. And the statement -- it was not my client -- the duct tape was not linked back to my client.

And -- but the statement that was given by Danny Davis and Robert Ransom -- and one of the other co-defendants, Mark McIntosh -- and I included this in my order.

I would just like for the Court, before making a ruling, to at least -- you know, in that -- that response to the conditional order to dismiss, I did mention -- I did include a long citation to exactly what the Supreme Court

2127

found that the facts of the trial in this case were, which is sort of a scathing review of Robert Ransom and Danny Davis.

Obviously the Court wasn't ruling on credibility, the Supreme Court wasn't, but ...

And Your Honor, I emailed that to you this morning. That was originally sent to Judge Baxley.

THE COURT: It was an exhibit that you had attached?

MR. SHAFFER: There were a lot of exhibits attached, Your Honor, but -- but this is actually in the -- on page 4 and 5 and a little bit into 6.

THE COURT: Of -- of your -- of your memo?

MR. SHAFFER: Yes, Your Honor. It's at the bottom of page 4. It's --

THE COURT: All right. All right.

(Brief pause.)

MR. SHAFFER: Your Honor, I -- I do that basically put the -- sort of the facts of this case in context.

But Ransom and Davis were housed in Columbia during part of this time, along with several other people. They -- Ringo actually came into where they were housed at at one point.

And Ringo says that at that point -- you know, Ringo's a -- he's pretty distinctive, but he -- he came in and they didn't even know who he was. Jeff Walls had to tell them

2128

who he was.

That's what Ringo said in his statement, is that basically the two main people who said that they killed -- that -- you know, the victim was killed by Ringo and all these other guys -- and their story is basically that, you know, they all got together into a K-car, Chrysler Reliant K, and they all got together -- like eight people into a car and a body -- and then dumped her off the bridge together.

The -- and then on top of that, one of them, the one that was in a wheelchair, actually claimed to have rolled down a almost vertical embankment to go assist her body in moving down the creek. And he swam out there and then somehow got himself back up.

You know, it's -- the facts of this case -- and I -- I'm sort of digressing -- the facts of this case and the story that was given is just not plausible.

But you know, they -- they indicated to Ringo that they didn't even know who he was. Stucky, one of the other co-defendants, actually had to tell them who -- who Ringo was, had to say, "Hey, that's Ringo. That's the guy you're accusing of being out here with you."

I -- I believe that that in this case is material, not merely impeaching. Whenever you have a situation where he doesn't even know who he is, I believe that that's after-

2129

discovered evidence that should have been brought up at that point. But it wasn't discovered until now because obviously my client didn't know about it and didn't know about it -- and we didn't find out until January of this year.

THE COURT: The fact that -- that these two co-defendants didn't know who Ringo was at the time and were told by someone else that that was Ringo?

MR. SHAFFER: Yes, Your Honor.

THE COURT: And -- and --

MR. SHAFFER: And this is after being arrested. This is after they -- they were all arrested ---

THE COURT: Okay.

MR. SHAFFER: --- and they had given a statement that Ringo was with them whenever this happened. If that was the case, then it seems like they would know at least who he was. And I think that that's actually --

THE COURT: Well, if this -- if -- if it was a statement given after this all happened --

MR. SHAFFER: Your Honor, I think it was pretrial after the --

THE COURT: Right. But you indicate that -- that someone pointed out to these guys who Ringo was.

MR. SHAFFER: Yes, Your Honor.

THE COURT: So then if they claim, well, Ringo was

2130

with us, they may not have known who he was at the time until he was pointed out to them. I mean, I don't understand how that's relevant.

MR. SHAFFER: And I -- I apologize, Your Honor. It was after -- after they had been locked up, after they had given a statement saying Ringo was with us whenever the victim was killed. After that point, they didn't even know who he was.

When they were arrested and all locked up together, they didn't even know -- they couldn't identify Ringo later. And if they couldn't identify Ringo later, you have to wonder whether or not they -- their story regarding Ringo being there was true or not.

MR. THOMAS: Your Honor?

MR. SHAFFER: If -- if -- if you're able to say well, he wasn't -- that wasn't -- you know, if he's -- if they're able to point out and say Ringo was with us on the bridge when the body was dumped over the bridge ---

THE COURT: All right. When was that comment made? When was that statement made?

MR. SHAFFER: That statement was made after they had given a statement to police that Ringo was involved, but before trial.

THE COURT: All right. They gave a statement to police that Ringo was involved in this thing along with

2131

everyone else.

MR. SHAFFER: Yes, Your Honor. And that would be -- they -- they included Ringo from the beginning, but they add several versions of the statement as to who was involved.

THE COURT: Right. But -- but -- and of course, just using the name "Ringo."

MR. SHAFFER: Yes. I believe there was ---

THE COURT: And then at some point, it's discovered that -- that they don't know who Ringo is. At what point is that?

MR. SHAFFER: That is after they had given their statement. They were locked up in Columbia.

THE COURT: All right.

MR. SHAFFER: I believe they were going for a psychological evaluation, but it was -- I'm not -- I'm not a hundred percent clear on what date it was or anything like that.

THE COURT: So who pointed out to them who Ringo was?

MR. SHAFFER: Stucky, who is one of their co-defendants.

THE COURT: And that was done while they were in the Department of Corrections.

MR. SHAFFER: Yes, Your Honor. Or while they're waiting for a psychological evaluation. They might have

2132

been in mental health at the time.

THE COURT: And that fact is relevant to Mr. Staton's conviction because ...?

MR. SHAFFER: Well, it -- it's a -- it's another statement -- it's actually a statement that -- that demonstrates -- or is evidence that demonstrates that their story is just not plausible, just not ---

THE COURT: And so ---

MR. SHAFFER: Just didn't happen.

THE COURT: And so how does that not go to just simply the weight?

MR. SHAFFER: And Your Honor, I -- I think that in a situation when you have no physical evidence linking him to the -- to the offense -- there's no physical evidence here linking him to -- to anything that happened. There are statements where he wasn't involved, but she still got killed and some of the people were involved. And then finally a statement that everyone was involved and list them.

You know, I -- I think that in that situation, that, you know, it's enough to say well, there's a gaping hole in your story if you can't even say who Ringo is. If you -- if you don't even know Ringo enough to whenever you see him identify him, then how can you say that that was the guy who was with you on the bridge? Because it basically

creates a big hole in their story ---

THE COURT: So it goes to their credibility.

MR. SHAFFER: It -- it does attack their credibility, yes, Your Honor, but I think it also -- where it's not merely to say, well, you're lying -- I mean, it's -- it's to show that they're lying, but it's not merely to show -- well, you know -- like normal impeachment material would be, for example, you know, a prior conviction. That's impeachment, that's merely impeaching.

This creates a hole in their story where their -- their story is impossible. The story that they gave to the jury would be impossible. And this is evidence that creates that hole. It's a contradiction rather than merely impeachment, Your Honor, and I think that that -- that's the distinction in this case.

MR. THOMAS: Yes, Your Honor. And obviously I -- I disagree with his characterization of it. This isn't after-discovered evidence because of the factors -- I mean, you -- first, you have to talk about how discovery of this evidence would have changed the result of the trial. And it wouldn't in this case.

In this case, it's merely cumulative, it's merely impeaching because we had -- Mr. Davis testified that, at various points in cross-examination -- and I'll point out that although Mr. Rogers may not have cross-examined all of

2134

these witnesses like Mr. Shaffer was referring to, there were four other attorneys here who did go into a thorough cross-examination. This is a 1700-page record. They did their best to poke holes in the story.

And Mr. Davis testified at various points in his cross-examination that he couldn't remember if some things had happened. You know, he -- everything he testified to he had heard from one of his co-defendants. He was base -- testifying based on information he got from some other source. He did not remember being on the bridge that day.

And that was also basically the substance of the cross-examination testimony of Mr. Ransom. He also testified he was "strung out" when they went out there that day, and he didn't really remember what had happened. He had occasion to lose time and sometimes would forget things, and he was not sure exactly what had happened.

So all of this has been -- I mean, this is -- this was the case from the beginning -- was trying to poke holes in the stories of these co-defendants.

And -- and I -- I don't know that this information changes anything. I don't know how it would have been relevant -- it -- it would have further helped that defense.

And along those same lines, I mean, this is clearly -- it's something that could have been discovered. It was

2135

simple as interviewing these witnesses and getting this information from them. So it's -- it's not something that could not have been discovered until Mr. Pearson decided to tell Mr. Shaffer this a couple months ago.

And again, as far as the motion to amend the pleadings to include this, I think at this point in time, this information would have been discovered so long ago that at the point we are now, amending it, I don't know that this relates back to the initial filing of the pleadings. So I'm not sure how this is even a timely amendment under the statute, under the rules, Rule 15.

But other than that, again, it's just not after-discovered evidence. That's the State's position.

THE COURT: All right.

MR. SHAFFER: Your Honor, regarding the timeliness, it's within a year -- we're having a hearing within a year right now. I found this out in January. I can show where I've tried to reach these people.

And that goes also into whether or not it could be discovered before. Everyone was represented by counsel. Their attorneys aren't -- aren't sitting there letting them, you know, get interviewed by the -- the co-counsel. I mean, we couldn't have discovered it because all the people we were -- we were talking about were represented by counsel.

2136

THE COURT: All these folks were subject to cross-examination throughout the trial, correct?

MR. SHAFFER: Yes. But I -- I think the State made a very good point -- a very good description of how -- you know, their stories were shaky at best. I -- I -- you know, Your Honor, anything could have basically tipped the scales.

And then say, well, the primary person, the most culpable person, the only guy you decided to hold off on and seek the death penalty against, you know, the -- the person who instigated this thing, that actually had ties to the family, to say he was -- they couldn't even identify him, I -- I think that that creates a major hole in their story where it should -- not just, oh, well, this is one of the things where you -- you forgot or something like that.

You couldn't identify the guy who -- who is the primary, most culpable person in all of this, the person they said who had abducted her because I think that that's -- that's sort of something that hasn't been before this Court, at least, is -- is they were able to find Ringo based off the fact that he had previously allegedly done some work for the victim, for her car, and tried to fix her car or something like that. That's why his name came into the picture.

And they believed that -- the theory that they

presented was basically that Ringo, the most culpable, evil person in the group, had kidnapped her; and then everyone else participated in the killing. You know, to say, well, you don't even know the main guy who kidnapped her is a major hole, bigger than any of the other holes of "you're an alcoholic, you're a drunk, you forget things," things like that.

THE COURT: But how does that go to the culpability or the inculpability of Mr. Staton?

MR. SHAFFER: Well, I think that it goes -- it demonstrates that their story is inconsistent because otherwise, the only thing they could -- they could produce is people saying, well, no, I didn't do it.

THE COURT: Well, I'm confident there were other inconsistencies brought out throughout the trial, correct?

MR. SHAFFER: Well, I believe that it's inconsistent on the major detail that you -- I guess if -- if I'm going to go kill someone and I -- I'm going to have a group of people with me, I'm going to at least know who they are.

It's insane to say I'm not going to at least know who they are because these people are -- you know, their stories is they're packed into a -- to a Reliant K car and maybe one other car, depending on the story you -- you get because there's different versions of it.

But you know, it's at least to say I would at least

2138

know the guy who kidnapped the woman who I helped kill.

You know, it's not saying -- I -- I think there's such a major hole in his story or such a major inconsistency in his story that it would actually go to the fact that maybe the entire story's contrived, which is basically what our position is, is that they made this story up against -- against my client.

But that's why I believe that it's -- it's something different than merely saying -- mere impeachment I would say is limited to -- to prior bad acts or -- or things that you could say to discredit someone. Not to say, okay, well, your story just doesn't make sense. It's impossible. And that's what we have here, evidence to say that's impossible.

THE COURT: All right. All right. Anything else?

MR. THOMAS: Nothing else from the State, Your Honor.

THE COURT: Anything else, Mr. Shaffer?

MR. SHAFFER: Nothing at this time, Your Honor.

THE COURT: All right.

MR. THOMAS: Can I just -- a couple of housekeeping matters, Your Honor?

THE COURT: Yeah.

MR. THOMAS: Just for the record, I guess, could I move into evidence the trial transcript. There's four volumes. Obviously I don't know that you want to read the

whole thing, but I'm going to put that into evidence.

I'll also put into evidence a copy of what I've been referencing and that is the -- the appellate briefs and the direct appeal that sort of give an outline of the testimony of everyone.

THE COURT: All right.

MR. THOMAS: Final brief of appellant and final brief of respondent. I think that sort of directs you to where certain people's testimony is. If that would make your job easier.

THE COURT: That's fine.

(Marked Court's Exhibit No. 3, trial transcript.)

(Marked Court's Exhibit No. 4, Appellate Brief.)

(Marked Court's Exhibit No. 5, Respondent Brief Document, 22 pages.)

THE COURT: All right. I'm going to take the matter under advisement so that I can review the matters that you've submitted, and I'll get you an answer, okay?

MR. SHAFFER: Thank you, Your Honor.

MR. THOMAS: Thank you, Your Honor.

-- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Darlington County, South Carolina, on the 21st day of July, 2014.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

_____

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

May 22, 2016

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STATE OF SOUTH CAROLINA COUNTY OF MARLBORO	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Alfonso Staton, #241380, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-34-89 **FINAL ORDER OF DISMISSAL**

This post-conviction relief action came before the Court on July 24, 2014, at the Darlington County Courthouse, for a hearing on Applicant's motion to amend the pleadings and motion to set aside a conditional order of dismissal. Applicant was present and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office represented Respondent. The Court had before it a copy of the trial transcript, the records of the Marlboro County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's direct appeal, the records from Applicant's prior post-conviction relief action, the application for post-conviction relief, the return and motion to dismiss, the conditional order of dismissal, the transcript from Applicant's Rule 29, SCRCrimP, hearing, the orders regarding Applicant's Rule 29 hearing, a letter from Applicant's Rule 29 counsel, and a recorded interview with one of Applicant's co-defendants. After hearing arguments of counsel, and viewing the record in the light most favorable to Applicant, the Court finds as follows:

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I. PROCEDURAL HISTORY

A. Underlying Conviction

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marlboro County Clerk of Court. In December 1996, the Marlboro County Grand Jury indicted Applicant for kidnapping, murder, first-degree criminal sexual conduct,

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and criminal conspiracy (1996-GS-34-0979). William B. Rogers, Jr., Esquire, represented Applicant. On March 10, 1997 Applicant, jointly with five (5) co-defendants, proceeded to trial before the Honorable Edward B. Cottingham and a jury. On March 19, 1997, the jury found Applicant guilty of kidnapping, murder, and criminal conspiracy. Judge Cottingham sentenced Applicant to life imprisonment for murder and a concurrent five (5) years for criminal conspiracy.[1]

Applicant filed a timely notice of appeal, and Joseph L. Savitz, III, Esquire, of the South Carolina Office of Appellate Defense, perfected the appeal. The Court of Appeals affirmed Applicant's convictions and sentences. State v. Staton, Op. No. 2001-UP-478 (S.C. Ct. App. filed Nov. 8, 2001). The South Carolina Supreme Court denied Applicant's subsequent petition for writ of certiorari on November 21, 2002. The remittitur was returned to the circuit court on November 25, 2002.

B. First Post-Conviction Relief Action

Applicant filed his first application for post-conviction relief action on June 10, 2003 (2003-CP-34-244). In his that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
   a. Failed to object to indictment.
   b. Failed to object to improper evidence.
   c. Failed to subpoena alibi witnesses.
2. Subject matter jurisdiction.
3. Prosecutorial misconduct.

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Respondent made a return to the application on November 3, 2003. Applicant filed an amendment to his application on August 26, 2004, in which he expanded upon his argument that a defective indictment deprived the trial court of subject matter jurisdiction. The Honorable John H. Milling convened an evidentiary hearing into the application on January 11, 2005, at the Darlington

[1] Applicant was not sentenced on the kidnapping conviction provision pursuant to S.C. Code Ann. §16-3-910.

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County Courthouse. Applicant was present and represented by counsel. After the hearing, Judge Milling denied all of Applicant's claims in an order dated September 16, 2005.

Applicant timely appealed Judge Milling's order, and Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense, perfected the appeal with the filing of a petition for writ of certiorari on June 18, 2007. The South Carolina Supreme Court partially granted certiorari on May 8, 2008. However, on February 23, 2009, the Supreme Court dismissed the writ as improvidently granted. The remittitur was returned to the circuit court on March 11, 2009.

C. Rule 29 Motion

On August 15, 2011, Applicant filed a motion for a new trial pursuant to Rule 29(b), SCRCrimP. The Honorable Howard P. King convened a hearing on the Motion on October 6, 2011, at the Marlboro County Courthouse. Applicant was present and represented by William E. Grove, Esquire. Judge King denied Applicant's motion by order dated October 19, 2011, and filed October 20, 2011. Judge King denied a motion for reconsideration by order filed January 19, 2012. On March 27, 2012, the Court of Appeals dismissed an appeal from Judge King's order for failure to timely serve the notice of appeal. The Court of Appeals denied a petition for rehearing on September 7, 2012. The Supreme Court denied Applicant's petition for writ of certiorari on April 3, 2014. The remittitur was returned to the circuit court on April 8, 2014.

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II. CURRENT APPLICATION[2]

Applicant filed this application on April 26, 2013. In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of 29(b) counsel"
   a. "Mr. Grove the 29(b) counsel did not properly research of brief my issues. He did not notify me immediately when 29(b) motion was denied, and he did not file an appeal of the dismissing of 29(b)."

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[2] Applicant also filed a federal habeas corpus action (5:12-2483-JFA-KDW), which is pending in the United States Federal Court for the District of South Carolina.

Respondent made a timely return and motion to dismiss on May 20, 2013, requesting the application be denied as successive, untimely, and failing to state a cognizable claim. The Honorable J. Michael Baxley issued a Conditional Order of Dismissal on October 22, 2013, provisionally dismissing the application. Judge Baxley subsequently directed the parties to schedule a hearing on Applicant's motion to amend the pleadings and motion to set aside the conditional order.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Motion to Amend

The Court finds Applicant has shown good cause to amend his application. Rule 15(a), SCRCP, provides that leave to amend a pleading "shall be freely given when justice so requires and does not prejudice any other party." Here, Applicant has presented sufficient grounds to include allegations of newly discovered evidence in the form of a conflict of interest and information from Applicant's co-defendant. The Court further finds Respondent is not prejudiced by the addition of these allegations. Accordingly, Applicant's motion to amend the pleadings is granted.

B. Motion to Set Aside the Conditional Order of Dismissal

As a result of the Court granting Applicant's motion to amend in Part III.A., supra, the following allegations are presently before the Court in support of Applicant's request to be allowed to proceed on a successive post-conviction relief application:

1. Mr. Grove was ineffective in failing to appeal Judge King's denial of Applicant's Rule 29 motion.
2. Applicant was denied due process based on trial counsel's conflict of interest.
3. Newly discovered evidence of information from co-defendant Ringo Pearson.

Applicant and Respondent fully argued the merits of each of these allegations at the hearing and presented relevant exhibits. Viewing the record before it in the light most favorable to Applicant, the Court makes the following findings of fact and conclusions of law pursuant to S.C. Code Ann. § 17-27-70(c):

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1. Mr. Grove's Performance

The Court finds Applicant failed to demonstrate a sufficient reason to proceed on a successive application based on the performance of counsel at his Rule 29(b) hearing. The Sixth Amendment only guarantees effective assistance of counsel at critical stages of a prosecution. State v. Clinkscales, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995). However, a post-trial motion is not a critical stage of criminal proceedings. Id. Because the Constitution does not guarantee Applicant effective assistance of counsel for his Rule 29(b) hearing, he has not demonstrated "[t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State[.]" S.C. Code Ann. § 17-27-20(a)(1).

Furthermore, the Court declines to adopt Applicant's expansive interpretation of Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and impose upon post-trial motion counsel a duty to file appeals from the denial of Rule 29(b) motions. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) ("Austin is limited to its particular factual situation"). The right to appeal outlined in Austin is derived from a statutory requirement that counsel be appointed in post-conviction relief actions. Austin, 305 S.C. at 454, 409 S.E.2d at 396 (citing S.C.Code Ann. § 17-27-100). However, no statutory or constitutional right to counsel attaches to a post-trial motion under Rule 29(b). Clinkscales, 318 S.C. at 515, 458 S.E.2d at 549. The mere fact the State appointed Mr. Grove to represent Applicant at the hearing does not convey such a right. Without a right to counsel, there can be no concomitant right to have that counsel file an appeal on Applicant's behalf. This maxim is especially true where, as will be discussed in Part III.B.2., infra, Applicant has not presented evidence to support his grounds for a new trial. Accordingly, the Court finds Applicant has not shown he is entitled to a successive post-conviction relief application.

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2. Conflict of Interest

The Court finds Applicant failed to demonstrate a sufficient reason to proceed on a successive application based on a conflict of interest at his original trial. As a preliminary matter, the Court finds this allegation is procedurally barred in post-conviction relief because it was raised as a ground for a new trial in Applicant's Rule 29(b) motion. The doctrine of collateral estoppel "prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (citing Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009)). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Id. (citing Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 191, 427 S.E.2d 918, 919 (Ct. App. 1993) (citing Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C., 294 S.C. 9, 362 S.E.2d 176 (1987); Beall, 281 S.C. 363, 315 S.E.2d 186).

Applicant raised the conflict of interest issue in his Rule 29(b) motion before Judge King, and Judge King denied Applicant's requested relief. The merits of his claim were directly addressed in Judge King's order. Applicant cannot now attempt to couch his argument in terms of a due process violation when he has already received an adjudication of this issue based on the same factual and legal circumstances. Accordingly, the Court finds the doctrine of collateral estoppel bars Applicant from pursuing this issue in post-conviction relief.

Furthermore, the Court agrees with Judge King's ruling that no conflict of interest existed in Applicant's case. "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants." State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449,

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450 (2005) (citing Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001)). Applicant's trial counsel began working for the Fourth Circuit Solicitor's Office shortly before trial. However, Applicant's case was prosecuted by Fifteenth Circuit Solicitor Ralph J. Wilson, Sr. Because Applicant's case was prosecuted by an agency other than the one for which trial counsel worked, no actual conflict existed in this case. See, e.g., Rule 1.11(d)(2)(i),RPC, Rule 407, SCACR (government lawyer only conflicted out of matters in which he "participated personally and substantially while in private practice"). The Court is not persuaded trial counsel abandoned his duty of zealous representation simply because he was to be employed by a separate prosecuting agency. Thus, Applicant has not demonstrated a conflict of interest denied him due process.

Finally, to the extent Applicant argues in this proceeding that this conflict of interest is newly discovered evidence, the Court agrees with and adopts Judge King's reasoning for denying a new trial on those grounds. Applicant should have known of this alleged conflict at the time of his trial. Applicant also had actual knowledge of this conflict in 2007 when he contacted trial counsel about it. Thus, his 2013 post-conviction relief application was untimely filed under the Uniform Post-Conviction Relief Act. S.C. Code Ann. §17-27-45(c) (providing for one year statute of limitation where "applicant contends that there is evidence of material facts not previously presented and heard"). The Court also agrees Applicant has not demonstrated this alleged conflict is material to his guilt or innocence, especially in light of the extensive trial record before the Court.

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3. Ringo Pearson's Information

The Court finds Applicant has not demonstrated he is entitled to a new trial based on newly discovered evidence in the form of a statement by co-defendant Ringo Pearson. To obtain a new trial based on newly discovered evidence, Applicant must show the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely

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cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)). Pearson was one of Applicant's co-defendants, who pled guilty to his involvement in the crimes in 2006. In a recorded interview, Pearson avers his statements to police at the time of the murder were false. He further avers that two witnesses who identified Applicant as being involved in the crime had no prior knowledge of Applicant's involvement.

Pearson's statement does not qualify as newly discovered evidence. Initially, the Court finds Pearson's refusal to cooperate and provide this information until 2014 does not satisfy the requirement that the evidence "could not have been discovered before trial." Pearson was not called to testify at trial and did not invoke his Fifth Amendment right to silence. Thus, there is no evidence in the record Pearson's testimony was unavailable. See Com. v. Padillas, 997 A.2d 356, 363 (Pa. Super. Ct. 2010) ("For that testimony to be considered previously 'unavailable,' however, the witness must have actually invoked his right to remain silent; if the witness simply refused to testify or the defendant did not question the witness about the incriminating topic, then the defendant cannot claim a witness' later self-incriminating statement is 'after-discovered.'" (citing Stanley v. Shannon, 2007 WL 2345284, *4 n. 6 (E.D.Pa. Aug.16, 2007))). Applicant knew Pearson was a co-defendant, and had the opportunity to discover Pearson's statements prior to trial. His failure to interview Pearson at that time cannot be the basis for a newly discovered evidence claim at this juncture. See Jones v. Scurr, 316 N.W.2d 905, 908-10 (Iowa 1982) (analyzing cases on the subject of non-cooperating co-defendants, and finding "that the latter line of authority, holding that exculpatory evidence that was unavailable, but known, at the time of trial is not newly discovered evidence, represents the better resolution of this issue" (citations omitted)); see also Padillas, 997 A.2d at 363 n.4 ("A majority of federal circuits have concluded evidence known but unavailable at trial, including evidence unavailable due to a witness' invocation of the Fifth Amendment, does not constitute 'newly discovered evidence within the

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meaning of [Fed R. Evid. 33]." (citations omitted)); State v. McDonough, 350 A.2d 556, 560 (Me. 1976) ("Evidence known to the accused at the time of trial cannot be considered newly discovered." (citing State v. Lund, 266 A.2d 869 (1970))). Accordingly, Applicant has not demonstrated Pearson's information was not available to him prior to the trial.

The Court also finds Pearson's information was merely cumulative and impeaching. In the interview, Pearson simply avers that two of the testifying co-defendants, Danny Davis and Robert Ransom, were not acquainted with Applicant at the time of the murder. While this information may have been excellent fodder for cross-examination, it would not have directly refuted any of these witnesses' testimony at trial. Davis and Ransom both testified in great detail about Applicant's involvement in the kidnapping and murder of the victim. However, both vacillated on cross-examination, with Davis even testifying he was merely reciting facts relayed to him by another individual. Both witnesses were rehabilitated by the State, and the Court cannot discern how further cross-examination about their relationship with Applicant would have been anything more than cumulative impeachment material.

Finally, the Court finds that, even if Pearson's information was provided to the jury, it would not have had a material effect on the outcome of the trial. Davis and Ransom were not the only persons to implicate Applicant in the victim's kidnapping and murder. All of the co-defendants on trial denied involvement in the crimes. However, the testifying co-defendants all implicated Applicant as an accomplice. In light of the unanimous testimony of the cooperating co-defendants that Applciant was somehow involved, the Court cannot discern how testimony from Pearson that "Davis and Ransom are lying" would have changed the outcome of Applicant's trial. Therefore, the Court finds Applicant has not demonstrated Pearson's information is material to the issue of Applicant's guilt or innocence.

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IV. CONCLUSION

Based on the foregoing, the Court finds Applicant has not shown a sufficient reason why the application was not untimely, successive, and failed to state a cognizable claim. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application, nor has he presented sufficient reasons why Judge Baxley's conditional order should not become final. Therefore, for the reasons set forth above and in the Conditional Order of Dismissal, the Court finds this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

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CLERK OF COURT
MARLBORO COUNTY, S.C.

AND IT IS SO ORDERED this 24 day of Nov, 2014.

THE HONORABLE THOMAS A. RUSSO
Presiding Judge

Lexington, South Carolina

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William B. [illegible]
CLERK OF COURT
MARLBORO COUNTY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO)
)
) 2013-CP-34-0089
ALFONSO STATON, 341380)
)
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 **Conditional Order of Dismissal** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
140 Gibson Road
Lexington SC 29072

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CLERK OF COURT
MARLBORO COUNTY, SC

DATED this 24th day of October, 2013.

Judy A. C. Carey
Judy A. C. Carey, Legal Assistant
For Respondent

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William B. Hunderburk
CLERK OF COURT
MARLBORO COUNTY

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