

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

Honorable D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JON SMART

APPELLANT

APPELLATE CASE NO. 2017-001754

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

COURT OF GENERAL SESSIONS

STATE OF S.C.)
PLAINTIFF)

VS.)

JON SMART)
DEFENDANT.)
-----)

TRANSCRIPT OF RECORD
2000-GS-14-356

MANNING, SOUTH CAROLINA
MAY 25, 2001

B E F O R E:

HONORABLE KENNETH GOODE, PRESIDING JUDGE.

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

C. KELLY JACKSON, SOLICITOR
ATTORNEY FOR THE PLAINTIFF

FREDERICK HOEFER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

KATHLEEN M. SIMMONS

CIRCUIT COURT REPORTER

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
<u>COURT'S EXHIBITS</u>			
1	REPORT		5
2	PROFFER		16
3	AGREEMENT		16

1 MR. JACKSON: YOUR HONOR, MAY IT PLEASE THE COURT.
2 THIS IS INDICTMENT 2000-GS-14-356. YOUR HONOR, IT'S THE
3 STATE VERSUS STEPHEN HUTTO AND JON SMART. THEY ARE
4 CO-DEFENDANTS IN THIS INDICTMENT.

5 BEFORE YOU TODAY, YOUR HONOR, IS MR. JON SMART.
6 HE IS CHARGED IN THIS INDICTMENT WITH MURDER, ARMED
7 ROBBERY, GRAND LARCENY OF A MOTOR VEHICLE, CRIMINAL
8 CONSPIRACY AND ESCAPE.

9 HIS ATTORNEY, YOUR HONOR, IS MR. RICK HOEFER.
10 BEFORE WE GO ANY FURTHER, I BELIEVE MR. HOEFER NEEDS TO
11 TALK WITH YOU ABOUT WHY IT IS THAT HE GOT APPOINTED TO
12 REPRESENT THIS CASE.

13 THE COURT: MR. HOEFER, I HATE TO IMPOSE ON YOU OR
14 ASK YOU FOR INDULGENCE, BUT I HAVE BEEN INFORMED, MR.
15 SOLICITOR, WE HAVE SOME MEMBERS OF THE VICTIM'S FAMILY.

16 MR. JACKSON: WE DO, YOUR HONOR.

17 THE COURT: I FEEL LIKE THE FIRST ORDER OF BUSINESS
18 SHOULD BE TO THANK EACH OF YOU FOR TAKING TIME FROM YOUR
19 SCHEDULE AND SITUATIONS IN LIFE TO BE HERE. I RECOGNIZE
20 WHAT A DIFFICULT AND PAINFUL EXPERIENCE THIS HAS BEEN FOR
21 YOU.

22 I WANT YOU TO KNOW THAT THE COURT APPRECIATES
23 YOUR BEING HERE, THAT IT'S HELPFUL TO ME IN DEALING WITH
24 THESE SITUATIONS TO HAVE THE VICTIMS' INPUT AND
25 PREFERENCE, AND I JUST WANTED TO TAKE THIS OPPORTUNITY TO

1 THANK YOU FOR BEING HERE. THANK YOU VERY MUCH.

2 MR. JACKSON: LET ME INTRODUCE THESE FOLKS IF I MAY.
3 THIS IS MR. JODY PACK, HIS WIFE GRACE. JODY PACK IS A
4 BROTHER OF THE DECEASED. THIS IS MR. AND MRS. JOE PACK,
5 THE PARENTS OF THE DECEASED, RHONDA RAINEY, THE VICTIM
6 ADVOCATE OF THE SHERIFF'S DEPARTMENT. I BELIEVE YOU KNOW
7 MR. JOHNSON AND MR. MCKENZIE, AND THERE ARE TWO OTHER
8 BROTHERS THAT COULD NOT BE WITH US TODAY.

9 THE COURT: THANK YOU AND AGAIN THANK YOU VERY MUCH
10 FOR TAKING TIME TO BE HERE WITH US. AND MR. HOEFER, I
11 APOLOGIZE FOR INTERRUPTING. HAPPY TO HEAR FROM YOU AT
12 THIS TIME.

13 MR. HOEFER: NO PROBLEM, YOUR HONOR. IF YOUR HONOR
14 PLEASE, I PRACTICE IN FLORENCE COUNTY. FLORENCE IS THE
15 HELPER COUNTY OR HOWEVER THE TERM IS USED FOR CLARENDON
16 COUNTY UNDER THE NEW RULE 608.

17 UNDER THAT RULE I AM DEATH PENALTY CERTIFIED AND
18 ASSUME I WAS APPOINTED PURSUANT TO THAT CERTIFICATION TO
19 REPRESENT MR. SMART IN THIS CASE. I HAVE REPRESENTED
20 HIM. I BELIEVE I GOT MY INITIAL ORDER OF APPOINTMENT IN
21 DECEMBER OF 2000.

22 I HAVE REPRESENTED HIM SINCE THAT TIME. WE HAVE
23 NEGOTIATED A RESOLUTION TO THIS CASE, NOT NECESSARILY A
24 NEGOTIATED PLEA AS FAR AS IT IS -- IT'S MORE OF A
25 NEGOTIATED SENTENCE I BELIEVE AND WE ARE PREPARED TO GO

1 FORWARD.

2 THE COURT: THANK YOU. MR. SOLICITOR, DUE TO THE
3 UNUSUAL NATURE OF THE PROCEEDINGS TODAY, I WILL ALLOW YOU
4 TO CONDUCT THIS MATTER IN THE ORDER IN WHICH YOU DEEM
5 APPROPRIATE.

6 MR. JACKSON: THANK YOU, YOUR HONOR. THE NEXT THING
7 I BELIEVE WE NEED TO DO IS ESTABLISH HIS COMPETENCY. YOUR
8 HONOR, I HAVE GOT AN ORDER FROM COLUMBIA. HE WAS
9 EVALUATED, AND THE DOCTOR'S REPORT WILL BE MARKED AS
10 COURT'S EXHIBIT NUMBER 1.

11 THE COURT: IS THIS THE REPORT OF PAMELA M. CRAWFORD,
12 MEDICAL DOCTOR, DIRECTOR OF THE FORENSIC DIVISION OF THE
13 W.S.H.T.I. DATED MARCH THE 1ST OF 2001.

14 MR. JACKSON: THAT'S CORRECT. YOUR HONOR, MY OFFICE
15 RECEIVED THE ORIGINAL ON MARCH 5TH OF 2001 AND I HAVE THAT
16 ORIGINAL HERE AND WOULD LIKE TO HAVE THAT MARKED AS A
17 COURT'S EXHIBIT AND OFFER TO THE COURT.

18 THE COURT: YES, SIR.

19 (COURT'S EXHIBIT NO. 1 MARKED FOR
20 IDENTIFICATION).

21 THE COURT: I HAVE A COPY OF THAT. I HAVE REVIEWED
22 THE REPORT DATED MARCH THE 1ST OF 2000 ONE OF PAMELA M.
23 CRAWFORD, M.D. WHICH SPECIFICALLY CITES TO THIS CASE. I
24 HAVE ALSO REVIEWED ALL OF THE ATTACHMENTS TO THIS
25 EVALUATION OF MR. SMART AND FIND THAT HE HAS SUFFICIENT

1 PRESENT ABILITY TO CONSULT WITH HIS LAWYER WITH A
2 REASONABLE DEGREE OF RATIONAL UNDERSTANDING AND ALSO THAT
3 HE WAS RATIONAL AS WELL AS HAD A FACTUAL UNDERSTANDING OF
4 THE PROCEEDINGS AGAINST HIM AND IS ABLE TO PARTICIPATE IN
5 THE DEFENSE AND HIS COMPETENT TO STAND TRIAL PURSUANT TO
6 BLAIR, STATE VERSUS BLAIR WHICH IS AT 276 SOUTH CAROLINA
7 644. YES, SIR.

8 MR. JACKSON: THANK YOU, YOUR HONOR. I BELIEVE THAT
9 QUALIFIES US TO TAKE THE PLEA.

10 MR. HOEFER: I WOULD AGREE.

11 THE COURT: THANK YOU. MR. HOEFER, YOU REPRESENT THE
12 DEFENDANT, JON SMART?

13 MR. HOEFER: YES, SIR.

14 THE COURT: AND HAVE YOU EXPLAINED TO MR. SMART THE
15 CHARGES CONTAINED IN HIS INDICTMENT, THE POSSIBLE
16 PUNISHMENT AND HIS CONSTITUTIONAL RIGHT INCLUDING HIS
17 RIGHT TO A JURY TRIAL?

18 MR. HOEFER: I HAVE.

19 THE COURT: IN YOUR OPINION DOES MR. SMART UNDERSTAND
20 THE CHARGE, THE PUNISHMENT AND HIS RIGHTS?

21 MR. HOEFER: YES, SIR, HE DOES.

22 THE COURT: AND HOW DOES HE INDICATE HE DESIRES TO
23 PLEAD, GUILTY OR NOT GUILTY?

24 MR. HOEFER: GUILTY, YOUR HONOR.

25 THE COURT: DO YOU AGREE WITH HIS DECISION TO PLEAD

1 GUILTY?

2 THE DEFENDANT: YES, YOUR HONOR.

3 THE COURT: NOW MR. HOEFER, I WAS ASKING THAT
4 QUESTION TO YOU. DO YOU AGREE WITH HIS DECISION TO PLEAD
5 GUILTY?

6 MR. HOEFER: YES, SIR I DO.

7 THE COURT: AND MR. HOEFER, FROM YOUR INVESTIGATION
8 OF THE FACTS AND CIRCUMSTANCES OF THE CASE, DO YOU FEEL
9 THAT THE STATE COULD PRODUCE SUFFICIENT EVIDENCE TO
10 CONVINCE A JURY OF THE DEFENDANT'S GUILT BEYOND A
11 REASONABLE DOUBT AND THAT IF THE DEFENDANT WERE TO STAND
12 TRIAL, HIS CONVICTION WOULD BE PROBABLE?

13 MR. HOEFER: I BELIEVE SO.

14 THE COURT: MADAM CLERK, IF YOU'D BE KIND ENOUGH TO
15 PLACE HIM UNDER OATH.

16 JON SMART, BEING FIRST DULY SWORN,
17 TESTIFIED AS FOLLOWS:

18 THE COURT: YOU ARE MR. JON SMART?

19 MR. SMART: YES, SIR.

20 THE COURT: J-O-N?

21 MR. SMART: YES, SIR.

22 THE COURT: IS THAT HOW YOU PRONOUNCE IT, JON?

23 MR. SMART: YES, SIR.

24 THE COURT: MR. SMART, BEFORE I CAN ACCEPT THE PLEA
25 OF GUILTY, IT IS NECESSARY FOR ME TO MAKE SURE THAT THE

1 PLEA OF GUILTY IS MADE FREELY AND VOLUNTARILY AND
2 THEREFORE I NEED TO ASK YOU SOME QUESTIONS.

3 IF AT ANY TIME DURING THIS QUESTIONING YOU DO
4 NOT UNDERSTAND THE QUESTIONS THAT I ASK OR THE WORDS THAT
5 I USE, YOU SHOULD TELL ME SO THAT I CAN EXPLAIN THEM TO
6 YOU. YOU MAY CONSULT WITH MR. HOEFER, YOUR ATTORNEY, AT
7 ANY TIME ABOUT ANY MATTER DURING THIS QUESTIONING. DO YOU
8 UNDERSTAND?

9 MR. SMART: YES, SIR.

10 THE COURT: THANK YOU, SIR. MR. SMART, HOW OLD ARE
11 YOU PLEASE, SIR?

12 MR. SMART: EIGHTEEN.

13 THE COURT: AND HOW FAR DID YOU GO IN SCHOOL?

14 MR. SMART: 9TH GRADE, YOUR HONOR. I HAVE MY GED.

15 THE COURT: YOU DO HAVE YOUR GED? AND ARE YOU
16 EMPLOYED IN LIFE?

17 MR. SMART: NO, YOUR HONOR.

18 THE COURT: MR. SMART, HAVE YOU EVER BEEN TREATED FOR
19 THE ABUSE OF ALCOHOL OR DRUGS OR FOR MENTAL ILLNESS?

20 MR. SMART: YES.

21 THE COURT: AND WHICH OF THOSE AND WHEN?

22 MR. SMART: I HAVE BEEN TREATED IN A JUVENILE PRISON
23 IN '98 AND THEN I GOT MOVED TO MARINE INSTITUTE AND I WAS
24 WEEKLY DRUG TREATMENT THERE.

25 THE COURT: OKAY. DID YOU SUCCESSFULLY COMPLETE THE

1 PROGRAM?

2 MR. SMART: NO.

3 THE COURT: HAVE YOU TAKEN ANY MEDICATION, DRUGS OR
4 ALCOHOL WITHIN THE LAST 24 HOURS?

5 MR. SMART: JUST MY MENTAL HEALTH MEDICATION.

6 THE COURT: OKAY. AND DOES THAT MEDICATION IN ANY
7 WAY AFFECT YOUR ABILITY TO UNDERSTAND WHAT WE ARE DOING
8 HERE IN COURT TODAY?

9 MR. SMART: NO, SIR.

10 THE COURT: MR. HOEFER, DO YOU AGREE THAT MR. SMART
11 KNOWS AND UNDERSTANDS WHAT HE IS DOING TODAY?

12 MR. SMART: YES, SIR, I DO. THE MEDICATION HE TAKES
13 IS ZOLOFT AND BENADRYL. HE HAS BEEN TAKING IT FOR QUITE
14 SOME TIME. I HAVE TALKED WITH HIM AFTER HE HAS HAD THE
15 MEDICATION AND I DON'T SEE THAT IT IMPAIRS HIM AT ALL,
16 SO...

17 THE COURT: I SEE NO INDICATION TO THAT. HE SEEMS
18 VERY ALERT AND COGNIZANT. MR. SMART, ARE YOU TODAY AWARE
19 OF ANY PHYSICAL, EMOTIONAL OR NERVOUS PROBLEM THAT MIGHT
20 KEEP YOU FROM UNDERSTANDING WHAT YOU ARE DOING?

21 MR. SMART: NO, SIR.

22 THE COURT: MR. SMART, YOU HEARD MR. HOEFER, YOUR
23 ATTORNEY, TELL ME THAT HE HAS HAD EXPLAINED TO YOU THE
24 CHARGES AGAINST YOU AND THE POSSIBLE PUNISHMENT AND YOUR
25 CONSTITUTIONAL RIGHT AND THAT YOU UNDERSTAND THESE THINGS;

1 IS THAT CORRECT?

2 MR. SMART: YES, SIR.

3 THE COURT: YOU ARE CHARGED IN A FIVE COUNT
4 INDICTMENT, MR. SMART. YOUR INDICTMENT NUMBER IS
5 2000-GS-14-356. COUNT ONE OF YOUR INDICTMENT IS FOR
6 MURDER.

7 THE INDICTMENT STATES SPECIFICALLY THAT YOU DID
8 IN CLARENDON COUNTY ON OR ABOUT AUGUST THE 12TH OF 1999
9 FELONIOUSLY AND WILLFULLY AND WITH MALICE AFORETHOUGHT
10 KILL ONE TRACEY PACK BY MEANS OF BEATING HIM WITH A LEAD
11 PIPE AND THE SAID TRACEY PACK DID DIE AS A PROXIMATE
12 RESULT THEREOF.

13 FOR THIS CHARGE I COULD SENTENCE YOU BETWEEN 30
14 YEARS AND LIFE IN PRISON WITHOUT PAROLE. DO YOU
15 UNDERSTAND THE CHARGE AND THE POSSIBLE PUNISHMENT?

16 MR. SMART: YES, SIR.

17 THE COURT: COUNT TWO OF YOUR INDICTMENT IS ARMED
18 ROBBERY. YOUR INDICTMENT STATES SPECIFICALLY THAT YOU DID
19 IN CLARENDON COUNTY ON OR ABOUT AUGUST THE 12TH OF 1999
20 VIOLATE SECTION 16-11-330 OF THE CODE OF LAWS OF SOUTH
21 CAROLINA IN 1976 AS AMENDED WHILE ARMED WITH A DEADLY
22 WEAPON TO WIT, A LEAD PIPE, DID FELONIOUSLY TAKE FROM THE
23 PERSON AND PRESENCE OF TRACEY PACK BY MEANS OF FORCE OR
24 INTIMIDATION GOODS OR MONIES OF THE SAID TRACEY PACK, SUCH
25 GOODS OR MONEY BEING DESCRIBED AS A BEEPER AND OTHER

1 ITEMS, AND FOR THIS I COULD SENTENCE YOU UP TO 25 YEARS --
2 EXCUSE ME -- UP TO 30 YEARS. DO YOU UNDERSTAND THE CHARGE
3 AND THE POSSIBLE PUNISHMENT?

4 MR. SMART: YES, SIR.

5 THE COURT: COUNT THREE OF YOUR INDICTMENT IS GRAND
6 LARCENY OF A MOTOR VEHICLE. THE INDICTMENT STATES
7 SPECIFICALLY THAT YOU DID IN CLARENDON COUNTY ON OR ABOUT
8 AUGUST THE 12TH OF 1999 FELONIOUSLY TAKE AND CARRY AWAY
9 THE PERSONAL PROPERTY: TO WIT, A 1994 NISSAN TRUCK OF
10 ANOTHER SPECIFICALLY TRACEY PACK WITH THE VALUE OF MORE
11 THAN \$5000 WITH INTENT TO DEPRIVE THE OWNER THEREOF
12 PERMANENTLY OF SUCH PROPERTY, AND FOR THIS I COULD
13 SENTENCE YOU UP TO TEN YEARS. DO YOU UNDERSTAND THE
14 CHARGE AND THE POSSIBLE PUNISHMENT?

15 MR. SMART: YES, SIR.

16 THE COURT: COUNT FOUR OF YOUR INDICTMENT, CRIMINAL
17 CONSPIRACY. YOUR INDICTMENT STATES SPECIFICALLY, MR.
18 SMART, THAT YOU DID IN CLARENDON COUNTY ON OR ABOUT AUGUST
19 THE 12TH OF 1999 VIOLATE SECTION 16-17-410 OF THE CODE OF
20 LAWS OF SOUTH CAROLINA AS AMENDED IN THAT YOU DID
21 UNLAWFULLY, WILLFULLY, KNOWINGLY, ILLEGALLY AND
22 FELONIOUSLY UNITE, COMBINE, CONSPIRE, CONFEDERATE, AGREE
23 BETWEEN AMONG YOURSELVES AND HAVE A TACIT UNDERSTANDING
24 WITH STEPHEN HUTTO AND OTHER PERSONS UNKNOWN TO THE GRAND
25 JURORS FOR THE PURPOSE OF COMMITTING THE CRIME OF MURDER,

1 ARMED ROBBERY AND GRAND LARCENY OF A MOTOR VEHICLE AND OR
2 ESCAPE AND FOR THIS I COULD SENTENCE YOU UP TO FIVE YEARS.
3 DO YOU UNDERSTAND THE CHARGE AND THE POSSIBLE PUNISHMENT?

4 MR. SMART: YES, SIR.

5 THE COURT: COUNT FIVE OF YOUR INDICTMENT ESCAPE
6 STATES SPECIFICALLY THAT YOU DID IN CLARENDON COUNTY ON OR
7 ABOUT AUGUST THE 12TH OF '99 VIOLATE SECTION 2413 OF THE
8 CODE OF SOUTH CAROLINA AS AMENDED IN THAT YOU DID WHILE IN
9 LAWFUL CUSTODY AND UNDER CONTROL OF THE RIMINI MARINE
10 INSTITUTE, A CORRECTIONAL INSTITUTE IN THE STATE OF SOUTH
11 CAROLINA, DID ESCAPE AND WERE RECAPTURED, AND FOR THIS I
12 COULD SENTENCE YOU UP TO 15 YEARS. DO YOU UNDERSTAND THE
13 CHARGE AND THE POSSIBLE PUNISHMENT?

14 MR. SMART: YES, SIR.

15 THE COURT: AND I ASK YOU AGAIN DO YOU UNDERSTAND THE
16 NATURE OF THE CHARGES AGAINST YOU AND THE RANGE OF
17 POSSIBLE PUNISHMENT?

18 MR. SMART: YES, SIR.

19 THE COURT: MR. SMART, WHEN YOU PLEAD GUILTY, YOU
20 GIVE UP CERTAIN IMPORTANT CONSTITUTIONAL RIGHTS. FIRST
21 YOU GIVE UP YOUR RIGHT TO REMAIN SILENT. THAT IS YOUR
22 RIGHT AGAINST SELF-INCRIMINATION, YOUR RIGHT TO SAY
23 NOTHING AT ALL.

24 YOU CANNOT BE COMPELLED TO TESTIFY OR TO PROVIDE
25 EVIDENCE AGAINST YOURSELF. SECOND, YOU GIVE UP THE RIGHT

1 TO HAVE A JURY TRIAL, THAT IS YOUR RIGHT TO HAVE A JURY TO
2 DECIDE WHETHER OR NOT YOU ARE GUILTY BEYOND A REASONABLE
3 DOUBT.

4 THE JURY WOULD BASE THEIR DECISION UPON EVIDENCE
5 WHICH THE STATE PRESENTS AND ON ANY EVIDENCE YOU MIGHT
6 WISH TO INTRODUCE. IN A TRIAL YOU WOULD BE PRESUMED TO BE
7 INNOCENT AND THE STATE WOULD HAVE TO PRODUCE EVIDENCE THAT
8 WOULD CONVINCE ALL 12 MEMBERS OF THE JURY THAT YOU WERE
9 GUILTY BEYOND A REASONABLE DOUBT.

10 THIRD, YOU GIVE UP YOUR RIGHT TO CONFRONT, BE
11 CONFRONTED BY THE WITNESSES AGAINST YOU, THAT IS THE RIGHT
12 TO SEE, HEAR AND CROSS-EXAMINE ANY WITNESSES THAT MAY BE
13 CALLED AGAINST YOU DURING THE TRIAL AND THE RIGHT TO
14 SUBPOENA AND CALL WITNESSES IN YOUR OWN BEHALF. MR.
15 SMART, DO YOU UNDERSTAND THESE RIGHTS?

16 MR. SMART: YES, SIR.

17 THE COURT: DO YOU UNDERSTAND THAT WHEN YOU PLEAD
18 GUILTY, YOU GIVE UP THESE IMPORTANT CONSTITUTIONAL RIGHTS?

19 MR. SMART: YES, SIR.

20 THE COURT: IS THAT WHAT YOU WISH TO DO?

21 MR. SMART: YES, SIR.

22 THE COURT: DO YOU UNDERSTAND THAT YOU WILL NOT GET A
23 JURY TRIAL IF YOU PLEAD GUILTY?

24 MR. SMART: YES, SIR.

25 THE COURT: AND AGAIN I ASK YOU UNDERSTANDING THE

1 NATURE OF THE CHARGES AGAINST YOU AND THE CONSEQUENCES OF
2 THE GUILTY PLEA, HOW DO YOU WISH TO PLEAD TO THESE
3 CHARGES, GUILTY OR NOT GUILTY?

4 MR. SMART: GUILTY, YOUR HONOR.

5 THE COURT: DO YOU UNDERSTAND THAT WHEN YOU PLEAD
6 GUILTY, YOU ADMIT THE TRUTH OF THE CHARGE THAT IS MADE
7 AGAINST YOU?

8 MR. SMART: YES, SIR.

9 THE COURT: YOU MAY HAVE DEFENSES TO THE CHARGES
10 AGAINST YOU. I DON'T KNOW WHETHER YOU DO OR NOT. DO YOU
11 UNDERSTAND THAT IF YOU PLEAD GUILTY, YOU WILL WAIVE AND
12 GIVE UP ANY DEFENSES TO THESE CHARGES?

13 MR. SMART: YES, SIR.

14 THE COURT: YOU MAY HAVE GIVEN AN INCRIMINATING
15 STATEMENT IN THIS CASE. IF YOU PLEAD GUILTY, DO YOU
16 UNDERSTAND THAT YOU WAIVE OR GIVE UP THE RIGHT TO CONTEST
17 OR CHALLENGE WHETHER SUCH STATEMENTS WERE FREELY AND
18 VOLUNTARILY GIVEN IN ACCORDANCE WITH YOUR CONSTITUTIONAL
19 RIGHTS?

20 MR. SMART: YES, SIR.

21 THE COURT: DID YOU COMMIT THESE OFFENSES?

22 MR. SMART: YES, SIR.

23 THE COURT: HAVE THERE BEEN ANY PLEA NEGOTIATIONS,
24 MRS. SOLICITOR?

25 MR. JACKSON: YES, THERE HAVE, YOUR HONOR. AT THIS

1 TIME I WILL PUT THOSE ON THE RECORD.

2 THE COURT: YES, SIR.

3 MR. JACKSON: YOUR HONOR, THE PAST FEW WEEKS IN
4 CONJUNCTION WITH THE FAMILY AND WITH LAW ENFORCEMENT,
5 NEGOTIATED THIS CASE WITH MR. SMART'S ATTORNEY, MR. RICK
6 HOEFER.

7 YOUR HONOR, WE ENTERED INTO A PROFFER JUST THIS
8 WEEK AND I HAVE THE ORIGINAL OF THAT PROFFER, AND I WILL
9 HAVE THAT MARKED AS COURT'S 2. YOUR HONOR, I BELIEVE YOU
10 HAVE A COPY OF THAT AS WELL.

11 (COURT'S EXHIBIT NO. 2 MARKED FOR
12 IDENTIFICATION).

13 THE COURT: PROVIDED ME WITH A COPY OF IT.

14 MR. JACKSON: AS A RESULT OF ENTERING INTO THIS
15 PROFFER, MR. SMART WAS DEBRIEFED BY LAW ENFORCEMENT HERE
16 IN CLARENDON COUNTY ON WEDNESDAY OF THIS WEEK. HE WAS
17 POLYGRAPHED YESTERDAY IN COLUMBIA. ULTIMATELY THE PLEA
18 AGREEMENT WAS REACHED.

19 (COURT'S EXHIBIT NO. 3 MARKED FOR
20 IDENTIFICATION).

21 MR. JACKSON: I HAVE A COPY OF THE PLEA AGREEMENT. I
22 HAVE THE ORIGINAL MARKED AS COURT'S NUMBER 3. YOUR HONOR,
23 THE BASIS OF THE PROFFER AND THE PLEA AGREEMENT ARE THAT
24 MR. SMART WILL TESTIFY TRUTHFULLY IN ANY JUDICIAL
25 PROCEEDING HERE IN CLARENDON COUNTY IN THE REMAINDER OF

1 THIS CASE, AND IN RETURN THE STATE WILL NOT SEEK THE DEATH
2 PENALTY.

3 AND SHOULD HE TESTIFY TRUTHFULLY AND COOPERATE
4 WITH THE STATE, THAT HE SHOULD RECEIVE A SENTENCE OF LIFE
5 WITHOUT PAROLE. THERE ARE ALSO CHARGES AGAINST HIM IN
6 HORRY COUNTY, WHICH IS THE SECOND CIRCUIT -- EXCUSE ME --
7 HORRY COUNTY WHICH IS THE 15TH CIRCUIT AND BAMBERG WHICH
8 IS THE SECOND CIRCUIT.

9 THE SOLICITOR IN BAMBERG OR IN THE SECOND
10 CIRCUIT AND THE SOLICITOR IN HORRY COUNTY OR THE 15TH
11 CIRCUIT HAVE ALSO AGREED EITHER TO RECOMMEND OR NOT OPPOSE
12 CONCURRENT SENTENCINGS ON THE CASES IN THEIR CIRCUITS.

13 THE COURT: AND THEY HAVE DONE THIS IN WRITING, I
14 BELIEVE?

15 MR. JACKSON: THAT'S CORRECT, YOUR HONOR. AND THAT
16 WAS A COPY OF THAT, AND THE ORIGINAL OF SOLICITOR MORGAN'S
17 LETTER WILL BE FILED WITH THE CLERK OF COURT. I DO NOT
18 HAVE AN ORIGINAL OF MR. HEMBREE'S, BUT THE ACTUAL FAXED
19 COPY THAT HE SENT TO ME THE CLOSEST I HAVE--

20 THE COURT: THAT'S SUFFICIENT AND I WILL TAKE
21 JUDICIAL NOTICE AND MAKE A FINDING THAT THE FAXED COPY OF
22 SOLICITOR HEMBREE'S LETTER WILL ACT AS AN ORIGINAL AND
23 WILL BE BINDING ON HIM IN FUTURE PROCEEDINGS.

24 MR. JACKSON: BECAUSE WE CANNOT SENTENCE AT THIS
25 POINT, I ASK THAT YOU RETAIN JURISDICTION OVER THIS CASE

1 IN THE FUTURE, AND ONCE WE COMPLETE THE CASE HERE IN
2 CLARENDON COUNTY AGAINST THE CO-DEFENDANT THAT YOUR HONOR
3 WOULD BE RESPONSIBLE FOR SENTENCING IN THIS CASE.

4 THE COURT: I WILL RETAIN JURISDICTION IN THIS
5 MATTER.

6 MR. JACKSON: THANK YOU.

7 THE COURT: YES, SIR. MR. HOEFER, HAS THE SOLICITOR
8 CORRECTLY AND COMPLETELY STATED THE NEGOTIATIONS INTO THE
9 RECORD?

10 MR. HOEFER: THOSE ARE THE WRITTEN NEGOTIATIONS THERE
11 WAS ONE OTHER CONSIDERATION THAT SOLICITOR JACKSON HAS
12 AGREED TO, THAT IS TO RECOMMEND THAT MR. SMART BE ALLOWED
13 TO SERVE HIS SENTENCE IN OR AROUND GREENVILLE COUNTY.

14 THAT IS NOT BINDING ON THE DEPARTMENT OF
15 CORRECTIONS. WE UNDERSTAND THAT. IT WOULD SIMPLY BE HIS
16 RECOMMENDATION TO THE DEPARTMENT OF CORRECTIONS FOR WHAT
17 IT'S WORTH, BUT HE HAS AGREED TO DO THAT.

18 MR. JACKSON: IN SENTENCING WE WILL DO THAT, YOUR
19 HONOR.

20 THE COURT: YES. AND MR. SMART, HAS THE SOLICITOR
21 FULLY AND COMPLETELY STATED WHAT YOU UNDERSTAND THE
22 RECOMMENDATION TO BE?

23 MR. SMART: YES, SIR.

24 THE COURT: AND BOTH OF YOU HAVE REVIEWED AND SIGNED
25 THESE DOCUMENTS THAT HAVE BEEN ADMITTED INTO EVIDENCE AS

1 COURT'S EXHIBITS?

2 MR. HOEFER: WE HAVE, YOUR HONOR, AND IF I MIGHT ADD
3 ONE MORE THING. MR. SMART HAS SIGNED THE PLEA AGREEMENT
4 AND THE PLEA SHEETS AS -- AS BEFORE THE COURT. WITH
5 REGARD TO THE COUNT CHARGING ARMED ROBBERY, THERE WAS SOME
6 QUESTION AS TO WHETHER MR. SMART WOULD WISH TO PLEAD TO
7 THAT COUNT UNDER ALFORD VERSUS NORTH CAROLINA. I HAVE
8 ADVISED HIM OF HIS OPTION THERE. THE RESULT WOULD
9 ABSOLUTELY NOT CHANGE.

10 THE COURT: THAT'S CORRECT.

11 MR. HOEFER: BECAUSE THERE IS A NEGOTIATED SENTENCE,
12 IT WOULD NOT CHANGE AT ALL, AND AS A RESULT OF THAT HE'S
13 OPTED NOT TO DO THAT, TO SIMPLY GO FORWARD WITH THE PLEA
14 AS SIGNED.

15 THE COURT: THANK YOU. AND WITH YOUR UNDERSTANDING
16 AND YOUR ATTORNEY'S UNDERSTANDING OF THESE NEGOTIATED
17 PLEAS, YOU STILL WISH TO PLEAD GUILTY, MR. SMART?

18 MR. SMART: YES, SIR.

19 THE COURT: MR. SMART, HAS ANYONE PROMISED YOU
20 ANYTHING OR HELD OUT ANY HOPE OF REWARD TO GET YOU TO
21 PLEAD GUILTY?

22 MR. SMART: NO, SIR.

23 THE COURT: HAS ANYONE THREATENED YOU OR USED FORCE
24 TO GET YOU TO PLEAD GUILTY?

25 MR. SMART: NO, SIR.

1 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE UP YOUR
2 MIND AS TO WHETHER OR NOT YOU WANT TO PLEAD GUILTY?

3 MR. SMART: YES, SIR.

4 THE COURT: ARE YOU PLEADING GUILTY OF YOUR OWN FREE
5 WILL AND ACCORD?

6 MR. SMART: YES, SIR.

7 THE COURT: ARE YOU SATISFIED WITH THE MANNER IN
8 WHICH MR. HOEFER HAS ADVISED AND REPRESENTED YOU?

9 MR. SMART: YES, SIR.

10 THE COURT: HAVE YOU TALKED WITH MR. HOEFER AS OFTEN
11 AND FOR AS LONG AS YOU FEEL NECESSARY FOR MR. HOEFER TO
12 PROPERLY REPRESENT YOU?

13 MR. SMART: YES, SIR.

14 THE COURT: DO YOU NEED ANY MORE TIME TO TALK WITH
15 MR. HOEFER?

16 MR. SMART: NO, SIR.

17 THE COURT: HAVE YOU UNDERSTOOD YOUR TALKS WITH MR.
18 HOEFER?

19 MR. SMART: YES, SIR.

20 THE COURT: HAS MR. HOEFER DONE EVERYTHING FOR YOU
21 THAT YOU FEEL THAT HE COULD HAVE OR SHOULD HAVE DONE?

22 MR. SMART: YES, SIR.

23 THE COURT: ARE YOU COMPLETELY AND TOTALLY SATISFIED
24 WITH MR. HOEFER'S SERVICES?

25 MR. SMART: YES, SIR.

1 THE COURT: DO YOU HAVE ANY COMPLAINT THAT YOU WANT
2 TO MAKE ABOUT YOUR LAWYER, THE SOLICITOR OR ANY POLICE
3 OFFICER?

4 MR. SMART: NO, SIR.

5 THE COURT: MR. SMART, HAVE YOU UNDERSTOOD MY
6 QUESTIONS?

7 MR. SMART: YES, SIR.

8 THE COURT: IS THERE ANYTHING THAT YOU WOULD LIKE TO
9 ASK ME AT THIS TIME ABOUT WHAT WE HAVE JUST BEEN OVER?

10 MR. SMART: NO, SIR.

11 THE COURT: DO YOU UNDERSTAND THAT YOU HAVE A RIGHT
12 TO APPEAL THE GUILTY PLEA OF THE COURT AND THAT YOU OR
13 YOUR LAWYER MUST DO THIS WITHIN TEN DAYS?

14 MR. SMART: YES, SIR.

15 THE COURT: THANK YOU. MR. SOLICITOR, I'LL BE HAPPY
16 TO HEAR A FACTUAL BASIS FOR THIS PLEA.

17 MR. JACKSON: THANK YOU, YOUR HONOR. I WILL LEAVE
18 OUT ANY FACTS ON THE RECORD.

19 THE COURT: WE NEED SIMPLY ENOUGH TO ESTABLISH A
20 FACTUAL BASIS.

21 MR. JACKSON: THANK YOU, YOUR HONOR. THEN I WILL
22 STAY AWAY FROM THE CO-DEFENDANT MR. HUTTO WHO HAS YET TO
23 COME TO COURT. YOUR HONOR, LET ME FIRST TELL YOU KIND OF
24 AS A BASIS.

25 THE PACK FAMILY IS FROM THE RIMINI AREA OF

1 CLARENDON COUNTY. THEY OPERATE A LANDING MARINA ON THE
2 BANKS OF LAKE MARION AND DO GUIDED TOURS IN AND OUT OF
3 SANTEE OR WATEREE SWAMPS FOR HUNTING AND FISHING.

4 IN ADDITION TO THAT THEY FARM AND THEY ALSO HAVE
5 CHICKEN HOUSES ON THEIR FARM. THEY PARTNERSHIPED WITH THE
6 STATE OF SOUTH CAROLINA TO ALLOW A JUVENILE DETENTION
7 FACILITY TO BE PUT ON THEIR PROPERTY KNOWN AS THE RIMINI
8 MARINE INSTITUTE WHERE JUVENILES COMMITTED CRIMES COULD BE
9 SENT AND HOPEFULLY REHABILITATED.

10 IT IS IN THIS PARTNERSHIP THAT MR. SMART FOUND
11 HIMSELF SENTENCED IN THE DEPARTMENT OF JUVENILE SERVICES
12 TO THE MARINE INSTITUTE, THE RIMINI MARINE INSTITUTE WHICH
13 WAS LOCATED ON THE PROPERTY THAT THE PACKS OWN AND LIVE ON
14 AND FARM ON.

15 THE PACK FAMILY WOULD TAKE FROM TIME TO TIME
16 SOME OF THE BOYS AT THE MARINE INSTITUTE AND WORK THEM ON
17 THE FARM OR IN THE CHICKEN HOUSES TO TEACH THEM WORK
18 ETHIC, TEACH THEM SKILLS THAT OTHERWISE THEY WOULD NOT
19 HAVE.

20 AND IT'S IN THIS RELATIONSHIP AND THIS
21 PARTNERSHIP THAT MR. SMART WAS IN THE COMPANY OF TRACEY
22 PACK WHO WAS THE VICTIM IN THIS CASE ON AUGUST THE 12TH OF
23 1999. TRACEY WAS 32 YEARS OLD AT THE TIME AND HE WAS
24 TAKING MR. SMART AND THE CO-DEFENDANT, MR. HUTTO, AND
25 WORKING THEM IN THE CHICKEN HOUSES HANDS-ON.

1 THAT PARTICULAR DAY WHILE THEY WERE IN THE
2 CHICKEN HOUSES, MR. SMART TOOK A LEAD PIPE AND FROM BEHIND
3 HIT TRACEY PACK WHILE HE WAS UP ON A LADDER AND HIT HIM
4 NUMEROUS TIMES.

5 PRIOR TO HIS DEATH, MR. SMART TOOK SOME ITEMS
6 OFF OF HIS PERSON AND WE BELIEVE MAYBE A BEEPER AND
7 POSSIBLY SOME OTHER PERSONAL ITEMS.

8 THEN THEY TOOK THE BODY OUTSIDE AND LEFT IT IN
9 THE WOODS AND THEY TOOK HIS TRUCK AND THEY TOOK HIS TRUCK
10 AND THEY ESCAPED AND THEY WENT TO BAMBERG, SOUTH CAROLINA.

11 THE COURT: AND MR. SOLICITOR, I DON'T MEAN TO
12 INTERRUPT YOU. YOU SAY THEY. DID HE CONSPIRE WITH
13 SOMEONE ELSE TO DO THAT?

14 MR. JACKSON: THAT'S CORRECT, YOUR HONOR. THAT'S
15 CORRECT. MR. SMART AND MR. HUTTO ARE THE TWO THAT ARE
16 INVOLVED. AND THEY LEFT THERE AND THEY WENT TO BAMBERG,
17 SOUTH CAROLINA AND CRIMES ALLEGEDLY COMMITTED THERE, AND
18 ALLEGEDLY COMMITTED IN HORRY COUNTY. AND WHEN THEY WERE
19 CAUGHT IN HORRY COUNTY, THEY BOTH GAVE STATEMENTS.

20 AND AT THE TIME THEY GAVE STATEMENTS IS WHEN WE
21 FELT THAT THIS WAS PLANNED AND CONSPIRED, AND AS A RESULT
22 OF DEBRIEFING ON WEDNESDAY OF THIS WEEK, WE ARE STILL OF
23 THAT OPINION AND HE IS ALSO PLEADING GUILTY TO CRIMINAL
24 CONSPIRACY BECAUSE OF THAT.

25 THE COURT: THANK YOU.

1 MR. JACKSON: I BELIEVE THOSE ARE THE ELEMENTS WE
2 NEEDED TO HIT, YOUR HONOR.

3 THE COURT: THANK YOU. MR. SMART, YOU HAVE HEARD THE
4 SOLICITOR STATE THE FACTS THAT LED TO YOUR ARREST AND
5 ULTIMATELY TO YOUR INDICTMENT ON THESE CHARGES. DO YOU
6 AGREE THAT THE FACTS AS STATED BY THE SOLICITOR ARE
7 MATERIALLY ACCURATE AND CORRECT?

8 MR. SMART: YES, SIR.

9 THE COURT: THANK YOU, SIR. I FIND THAT THERE IS A
10 SUBSTANTIAL FACTUAL BASIS FOR THIS PLEA. I FIND THE
11 DEFENDANT'S DECISION TO PLEAD GUILTY IS FREELY,
12 VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE AND THAT
13 HE'S HAD THE ADVICE AND COUNSEL OF A MOST COMPETENT
14 ATTORNEY WITH WHOM HE INDICATES THAT HE IS TOTALLY
15 SATISFIED. THE PLEA OF GUILTY IS ACCEPTED.

16 MR. JACKSON: THANK YOU, YOUR HONOR.

17 THE COURT: AND SO THAT THE RECORD IS CLEAR, I AM
18 MAINTAINING JURISDICTION OVER THIS CASE AND THAT AT SUCH
19 TIME THAT SENTENCING BECOMES APPROPRIATE, I WILL BE THE
20 SENTENCING JUDGE.

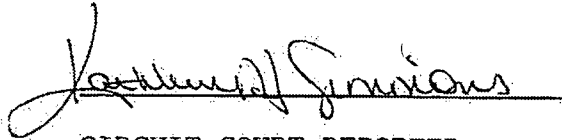
21 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
22
23
24
25

C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD 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 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE TWENTY-FIFTH DAY OF MAY, 2001.

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

AUGUST 9, 2001

A handwritten signature in cursive script, reading "Kathleen M. Simmons", written over a horizontal line.

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

COURT OF GENERAL SESSIONS

STATE OF S.C.,)
PLAINTIFF)

VS.)

TRANSCRIPT OF RECORD

JON SMART AND)
STEPHEN HUTTO,)
DEFENDANTS.)

MANNING, SOUTH CAROLINA
AUGUST 9, 2001

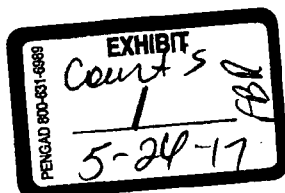
B E F O R E:

HONORABLE THOMAS W. COOPER, JR., PRESIDING JUDGE.

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

C. KELLY JACKSON, SOLICITOR
GREG HEMBREE, SOLICITOR
BARBARA MORGAN, SOLICITOR
ATTORNEYS FOR THE PLAINTIFF CIRCUITS

JACK EARLY, ESQUIRE
DANIEL W. LUGINBILL, ESQUIRE
HARRY DEVOE, PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT HUTTO
FREDERICK HOEFER, ESQUIRE
ATTORNEY FOR THE DEFENDANT SMART



KATHLEEN M. SIMMONS
CIRCUIT COURT REPORTER

EXHIBITS

(NO EXHIBITS MARKED)

1 THE COURT: MADAM REPORTER, THE RECORD SHOULD REFLECT
2 THAT DURING THE TERM OF GENERAL SESSIONS COURT FOR
3 CLARENDON COUNTY DURING THE WEEK OF JULY THE 9TH, STEPHEN
4 HUTTO PLED GUILTY BEFORE THIS COURT FOR CLARENDON COUNTY
5 CHARGES OF MURDER, ARMED ROBBERY, GRAND LARCENY OF A MOTOR
6 VEHICLE, CRIMINAL CONSPIRACY, ESCAPE AND ASSAULT ON A
7 CORRECTIONS OFFICER.

8 BAMBERG COUNTY CHARGES THAT DAY HE PLED GUILTY
9 TO ARMED ROBBERY. FROM Horry COUNTY CASES THAT DAY HE
10 PLED GUILTY TO A FAILING TO STOP FOR A BLUE LIGHT AND
11 SIREN, TWO COUNTS OF ASSAULT WITH INTENT TO KILL, ONE
12 COUNT OF ASSAULT ON A POLICE OFFICER, ONE COUNT OF
13 MALICIOUS INJURY TO PROPERTY.

14 HE WAS SENTENCED ON THAT DAY TO THE CLARENDON
15 COUNTY CHARGE OF ASSAULT ON A CORRECTIONS OFFICER. THE
16 REMAINING CHARGES WERE HELD IN OBEYANCE INsofar AS
17 SENTENCING WAS CONCERNED.

18 THE COURT RECESSED THE SENTENCE PROCEEDING ON
19 THAT DAY UNTIL TODAY'S DATE TO HEAR ADDITIONAL MATTERS
20 FROM THE STATE IN AGGRAVATION AND FROM THE DEFENDANT IN
21 MITIGATION OF SENTENCING ON ALL THREE JURISDICTIONAL
22 CHARGES.

23 MR. C. KELLY JACKSON, THE SOLICITOR OF THE THIRD
24 JUDICIAL CIRCUIT IS HERE. MS. BARBARA MORGAN OF THE
25 SECOND CIRCUIT, MR. GREG HEMBREE OF THE 15TH JUDICIAL

1 CIRCUIT IS HERE OBVIOUSLY ALL REPRESENTING THE STATE.

2 MR. HARRY DEVOE, PUBLIC DEFENDER OF CLARENDON
3 COUNTY, MR. JACK EARLY, MR. DAN LUGENBILL OF THE BAMBERG
4 COUNTY BAR HERE ON BEHALF OF MR. HUTTO. MR. JACK?

5 MR. EARLY: BEFORE WE START, WE NEED ONE HOUSEKEEPING
6 MATTER. WE NEED OUR CLIENT UP HERE WITH US AND MAY WE
7 APPROACH THE SIDE BAR ON ANOTHER...

8 THE COURT: YES, SIR.

9 (WHEREUPON A BENCH CONFERENCE WAS HELD AS FOLLOWS:)

10 THE COURT: MR. HUTTO WITH CAN BE BROUGHT AROUND TO
11 SIT AT COUNSEL TABLE WITH HIS ATTORNEYS.

12 MR. EARLY: I RESPECTFULLY REQUEST THAT THE
13 CO-DEFENDANT BE PUT SOMEWHERE OUT OF SIGHT. HIS PARENTS
14 HAVE BEEN GLARING AT HIM, GLARING AND ME AND AWFULLY CLOSE
15 TOGETHER WITH THE -- ALL SITTING THERE.

16 THE COURT: WHERE IS HE?

17 MR. EARLY: RIGHT THERE IN THE ORANGE JUMPSUIT.
18 HE'S...

19 THE COURT: OKAY. ANY--

20 MR. JACKSON: I HAVE NO PROBLEM AS LONG AS HE REMAINS
21 IN COURTROOM. THAT'S FINE.

22 THE COURT: OKAY. WHERE IS THERE A BETTER PLACE TO
23 PUT HIM?

24 MR. JACKSON: ONLY THING I KNOW IS PUT HIM IN THE
25 BACK.

1 THE COURT: STAY IN THE COURTROOM? CAN YOU HAVE --
2 CAN YOU HAVE SOMEBODY FROM SECURITY TO SIT BY HIM, SIT HIM
3 ON THE BACK ROW BACK THERE?

4 MR. JACKSON: YES, SIR.

5 THE COURT: OKAY. WE WILL DO THAT.

6 MR. EARLY: ALSO HAVE -- IS IT PROPER TO ASK TO HAVE
7 HIS HANDCUFFS REMOVED OR WOULD YOU RATHER NOT?

8 THE COURT: NO, SIR, NOT.

9 MR. DEVOE: WE DON'T WANT -- NOTE SOME RESPONSES TO
10 CERTAIN THINGS GOING ON.

11 THE COURT: HE'S CUFFED IN FRONT; ISN'T HE?

12 MR. DEVOE: HE'S SHACKLED ALSO.

13 THE COURT: ALL RIGHT. I WILL ASK HIM JUST TO REMAIN
14 IN RESTRAINTS HERE. IF YOU ALL NEED TO CONFER WITH HIM
15 DURING THE TIME, I WILL LET YOU TALK WITH HIM.

16 MR. DEVOE: JUDGE, MAY -- MR. SMART DOES NOT HAVE
17 HANDCUFFS ON, HIS SITUATION--

18 THE COURT: WELL, THAT'S GOING TO BE UP TO SECURITY,
19 YOU KNOW. I ALWAYS LEAVE THOSE MATTERS ENTIRELY UP TO
20 SECURITY NOW. I WOULD HAVE BEEN GLAD TO ADDRESS THAT IN
21 ADVANCE AND TRY TO GET ALL THAT ARRANGED, BUT I'M NOT
22 GOING TO STOP NOW AND GET EVERYTHING ADDRESSED.

23 MR. DEVOE: THEY ARE IN FRONT.

24 THE COURT: OKAY. PERHAPS THEY CAN USE THAT.

25 (BACK ON BENCH).

1 THE COURT: MR. HOEFER, YOU CAN MOVE BACK WITH YOUR
2 CLIENT IF YOU WOULD LIKE.

3 MR. EARLY: THANK YOU, JUDGE. THANK YOU.

4 (WHEREUPON THERE WAS A PAUSE).

5 THE COURT: ALL RIGHT. MR. JACKSON, I THINK WE ARE
6 READY TO PROCEED NOW.

7 MR. JACKSON: THANK YOU, YOUR HONOR. MAY IT PLEASE
8 THE COURT. ONE HOUSEKEEPING MATTER, YOUR HONOR. WANT TO
9 ALSO -- I WANT TO LET YOUR HONOR KNOW THAT IN ADDITION TO
10 THE SOLICITORS FROM THE OTHER CIRCUITS, ALSO THERE'S ALSO
11 LAW ENFORCEMENT AND VICTIMS AND POSSIBLY FRIENDS HERE AND
12 ALSO WE HAVE GOT THE PACK FAMILY SITTING HERE IN THE JURY
13 BOX AS WE HAD THEM DURING THE PLEA.

14 THE COURT: RIGHT.

15 MR. JACKSON: ALSO, YOUR HONOR, TERMS OF THE PLEA
16 AGREEMENT OR THE TERMS OF THE PLEA WHEN WE ENTERED THE
17 PLEA WERE THAT ANYTHING THAT YOUR HONOR SENTENCES THAT THE
18 CIRCUITS RUN CONCURRENT WAS THE ONLY THING THAT WE HAD --
19 WE HAD AGREED UPON IS MY RECOLLECTION.

20 THE COURT: OKAY. THAT'S RIGHT.

21 MR. JACKSON: AND ALSO THE CRIMINAL CONSPIRACY WAS AN
22 ALFORD PLEA PARTICULARLY ON THAT CHARGE.

23 THE COURT: OKAY.

24 MR. JACKSON: YOUR HONOR, WHAT I WOULD LIKE TO DO IS
25 BEGIN BY GOING THROUGH FACTS ON THESE CASES, AND I WILL GO

1 FIRST AND TALK ABOUT THE CRIME THAT OCCURRED HERE IN
2 CLARENDON COUNTY.

3 I WILL BE FOLLOWED BY SOLICITOR MORGAN AND SHE
4 WILL BE FOLLOWED BY SOLICITOR HEMBREE, THEN WE WILL COME
5 BACK AND START PRESENTING THINGS IN A LITTLE MORE DETAIL.
6 BUT WE WOULD LIKE TO GIVE YOU FIRST OF ALL AN OVERVIEW OF
7 EXACTLY THE CRIME SPREE THAT TOOK PLACE IN THESE THREE
8 CIRCUITS.

9 HERE IN CLARENDON COUNTY, YOUR HONOR, CRIME
10 OCCURRED ON AUGUST THE 12TH, 1999. APPROXIMATELY 10 YEARS
11 PRIOR TO THAT THE PACK FAMILY HAD GONE INTO A CONTRACT
12 WITH THE STATE OF SOUTH CAROLINA TO OFFER ASSISTANCE TO
13 TROUBLED YOUTHS, AND THEY ALLOWED THE RIMINI MARINE
14 INSTITUTE TO BE PLACED ON THEIR PROPERTY NOT FAR FROM
15 THEIR HOME AND NOT FAR FROM THE CHICKEN HOUSES.

16 EVERYTHING WAS ON THE SAME LARGE PIECE OF REAL
17 ESTATE. YOUR HONOR, I WANT TO SHOW YOU AN AERIAL PHOTO
18 THAT WE HAVE SO THAT YOU WILL HAVE SOME IDEA OF HOW CLOSE
19 THESE PARTICULAR LOCATIONS ARE TO EACH OTHER.

20 THE COURT: ALL RIGHT, SIR.

21 MR. JACKSON: WHAT YOU HAVE IN THE BOTTOM OF THE
22 PHOTOGRAPH IS THE ACTUAL RIMINI MARINE INSTITUTE. YES,
23 SIR. AND HERE IN THE MIDDLE IS THE HOME OF THE PACK
24 FAMILY.

25 THE COURT: RIGHT.

1 MR. JACKSON: AND HERE ARE THE CHICKEN HOUSES AND THE
2 ROADS THAT INTERTWINE IN BETWEEN.

3 THE COURT: OKAY. THANK YOU.

4 MR. JACKSON: IT'S ALL CLOSE PROXIMITY. THE PACK
5 FAMILY, YOUR HONOR, IN ORDER TO HELP THE TROUBLED YOUTHS
6 WOULD OFTEN TAKE THEM AND LET THEM WORK IN THE FARM THAT
7 THE PACKS RAN AND ALSO TAKE SOME OF THE YOUTHS THAT WORK
8 IN THE CHICKEN HOUSES THAT THEY HAD.

9 THE TWO BOYS INVOLVED IN THESE CRIMES, STEPHEN
10 HUTTO AND JON SMART, WERE TWO BOYS THAT THEY WORKED AND
11 THEY PUT THEM IN THE CHICKEN HOUSES, AND I BELIEVE THEY
12 ALSO ASSISTED ON THE FARM.

13 THEY WOULD BE CARRIED AT TIMES TO WHAT WE KNOW
14 AS PACK'S LANDING WHICH WAS ANOTHER BUSINESS OPERATED AND
15 OWNED BY THE PACK'S, LANDING DOWN ON LAKE MARION AND THEY
16 WOULD BE TAKEN THERE, TAKEN BACK TO THE CHICKEN HOUSES,
17 WORK, TAKEN BACK TO THE MARINE INSTITUTE AND THEY FORMED A
18 BOND.

19 TRACEY PACK, THE VICTIM IN THIS CASE, HAD FORMED
20 A BOND WITH THESE TWO BOYS AND HE WOULD TAKE THEM TO THESE
21 PLACES AND WORK THEM, AND IT'S UNDER THIS BOND OF TRUST
22 THAT THIS CASE CAME ABOUT.

23 ON AUGUST THE 12TH, TRACEY PICKED THEM UP AT THE
24 MARINE INSTITUTE PROBABLY AROUND 9:30 THAT MORNING TO WORK
25 THEM IN THE CHICKEN HOUSES. AND THEY WOULD WORK IN THE

1 CHICKEN HOUSES TO TAKE OUT DEAD CHICKENS, THROW THEM AWAY,
2 THEY WOULD CHECK THE FOGGERS THAT RUN DOWN THE TOP OF THE
3 CHICKEN HOUSES THAT PROVIDE MOISTURE AND CLIMATE CONTROL
4 AND REPLACE FOGGERS WHEN THAT NEEDED TO BE DONE.

5 ON THIS PARTICULAR DAY THE THREE OF THEM WERE
6 WORKING TOGETHER. AND WHEN THEY GOT DOWN TO CHICKEN HOUSE
7 NUMBER THREE, THEY WENT INSIDE AND BY THAT TIME JON SMART
8 AND STEPHEN HUTTO HAD BEGAN PURPOSELY BREAKING THE FOGGERS
9 SO THAT THEY COULD GO OUT TO THE TRUCK AND COME BACK IN.

10 AND THEY WOULD USE A LADDER WHEN THEY FIXED THE
11 FOGGER TO CLIMB UP ON THE LADDER, REACH UP INTO THE PIPING
12 SYSTEM, CHANGE THE FOGGER. AND IN THIS SKIT OR THIS
13 SCHEME OF BREAKING THEM, THEY HAD GOTTEN TRACEY PACK TO
14 THE POINT THAT HE WOULD GO UP THE LADDER AND CHANGE IT
15 HIMSELF BECAUSE HE KNEW THAT THEY WERE MISBEHAVING, SO TO
16 SPEAK.

17 AND AS THEY GOT HIM ON THE LADDER HIMSELF, AT
18 SOME POINT IN TIME, AND WE ARE THINKING IT'S BETWEEN 11
19 AND 12 THAT MORNING, JON SMART TOOK A LONG LEAD PIPE ABOUT
20 FOUR FEET AND HE COLD COCKED TRACEY FROM THE LADDER WHILE
21 HE WAS STANDING ON THE TOP.

22 HE KNOCKED HIM DOWN, AND FROM THE STATEMENTS WE
23 UNDERSTAND THAT AS HE WAS LAYING IN THE BOTTOM OF THE
24 CHICKEN HOUSE, HE HIT HIM AT LEAST THREE OR FOUR MORE
25 TIMES. THE ROOF ON THE CHICKEN HOUSE IS VERY LOW.

1 AND THERE IS AN ACTUAL MARK AS THOUGH YOU WERE
2 CHOPPING WOOD FROM OVERHEAD OF THE PIPE RUNNING ACROSS AND
3 CREASING AND THE BLOOD SPLATTER ON TOP OF THE CEILING.
4 THAT IS WHERE HE WAS KILLED.

5 AFTER THEY KILLED HIM, THEY TOOK FROM HIS PERSON
6 HIS BEEPER, HIS CIGARETTES AND HIS LIGHTER AND THEY WENT
7 AND SMOKED A CIGARETTE TO FIGURE OUT WHAT THEY WERE GOING
8 TO DO NEXT.

9 YOUR HONOR WILL SEE SOME MORE DETAILS ABOUT HOW
10 HE WAS KILLED AND WHAT THEY DID TO ENSURE THAT HE WAS DEAD
11 AND HOW THEY TRIED TO DESTROY THE CRIME SCENE WITH WATER
12 AND WASHING BLOOD AND THINGS AWAY OFF THE WALLS.

13 YOU WILL HEAR ABOUT THAT LATER IN THE STATEMENT
14 IN MORE DETAIL, BUT AFTER THEY SMOKED THE CIGARETTES,
15 DECIDED THAT WHAT THEY WOULD DO IS TAKE THE BODY AND WRAP
16 IT IN A TARP ALONG WITH THE MURDER WEAPON WHICH IS THE
17 PIPE AND THEY WOULD CARRY HIM OUT AND DISPOSE OF THE BODY
18 IN THE WOODS, AND THAT'S WHAT THEY DID, YOUR HONOR.

19 THEY CARRIED A TARP IN. THEY PUT HIS BODY IN
20 THE TARP, THE PIPE IN THERE WITH IT AND THEY ROLLED HIM
21 UP. THEY HAVE LITTLE PUSH CARTS KIND OF LIKE WHEELBARROWS
22 THAT THEY USE OUT THERE.

23 THE BOYS WENT AND GOT A PUSH CART, BROUGHT IT IN
24 AND TOOK THE BODY IN THE TARP AND LAID IT IN THE PUSH
25 CART. THEY CARRIED THE PUSH CART OUT OF THE CHICKEN

1 HOUSE, AND TRACEY PACK'S TRUCK WAS OUTSIDE.

2 STEPHEN HUTTO GOT IN THE DRIVER'S SIDE AND JON
3 SMART GOT ON THE TAILGATE OF THE TRUCK AND HE LIFTED UP
4 THE BARREL OFF OF THE GROUNDS AND THEY WHEELED IT LIKE A
5 TRAILER DOWN TO THE WOODLINE, AND THAT'S WHERE THEY LEFT
6 THE BODY, YOUR HONOR.

7 AND I'D LIKE TO SHOW YOU ANOTHER AERIAL
8 PHOTOGRAPH. THIS ONE SHOWS THE FOUR CHICKEN HOUSES. THIS
9 IS CHICKEN HOUSE NUMBER THREE. THE ENTRANCE IS IN THE
10 MIDDLE.

11 THE MURDER OCCURRED DOWN ON THIS END, AND THEY
12 WOULD HAVE WHEELED IN THE TRAILER HERE OR THE CART HERE,
13 LOADED THE BODY, CARRIED IT OUT THE MIDDLE OF THE DOOR
14 WHERE THE TRUCK WAS PARKED IN THE MIDDLE AND WHEELED IT
15 DOWN TO THIS POINT WHERE THIS "X" IS.

16 THERE IS A ROAD THERE THAT RUNS DOWN THIS POND
17 HERE, AND THEY PUSHED THE CART DOWN INTO THE WOODS AND
18 SHOVED IT INTO THE WOODS.

19 THE COURT: OKAY.

20 MR. JACKSON: FROM THERE, YOUR HONOR, THEY LEFT. AND
21 WE ARE NOT SURE EXACTLY THE TIME THAT THE MURDER OCCURRED
22 AND EXACTLY THE TIME THEY PULLED AWAY, BUT FROM THEIR
23 STATEMENTS WE GATHERED IT HAD TO HAPPEN SOMETIME BETWEEN
24 11 AND 12 BECAUSE THE TRUCK WAS SEEN BY A FRIEND OF THE
25 FAMILY AND TRACEY WASN'T IN IT SOMETIME AROUND 1 OR 1:30

1 AND IN THE RIMINI AREA.

2 THAT, YOUR HONOR, IS THE BASIS FOR THE MURDER AT
3 THIS TIME. FROM THEN THEY WENT TO BAMBERG, AND THAT IS
4 WHERE STEPHEN HUTTO WAS FROM, AND I WILL ASK SOLICITOR
5 MORGAN TO TALK TO YOU ABOUT WHAT OCCURRED IN BAMBERG
6 COUNTY.

7 THE COURT: THANK YOU. MS. MORGAN?

8 MS. MORGAN: THANK YOU, JUDGE. JUDGE, SOME TIME THEY
9 ENTERED INTO BAMBERG COUNTY. STEVE HUTTO'S FAMILY LIVES
10 THERE. THEY GAINED ACCESS TO HIS HOME, CHANGED CLOTHES.
11 NOT EXACTLY SURE OF THE NATURE OF THE CLOTHES THAT THEY
12 HAD AT THE INSTITUTE, BUT THEY GOT FRESH CLOTHES.

13 THEY DRANK SOME OF THE LIQUOR IN THE HUTTO HOME.
14 THEY ALSO TOOK SOME WITH THEM. THEY ALSO OBTAINED A
15 SHOTGUN AND SOME AMMUNITION. SOME TIME EITHER -- WE KNOW
16 AT 5:35 THEY WENT TO THE FAMILY DOLLAR STORE.

17 THERE'S SOME INDICATION THAT PRIOR TO GOING TO
18 THE FAMILY DOLLAR STORE THEY WENT TO A LOCATION THAT WAS
19 KNOWN TO MAYBE BE ABLE TO OBTAIN SOME DRUGS. I BELIEVE
20 THEY WERE NOT SUCCESSFUL AT THAT TIME, SO THEY WENT TO THE
21 FAMILY DOLLAR STORE.

22 AT THE FAMILY DOLLAR STORE MR. HUTTO IS IN THE
23 CAR. MR. SMART WENT IN WITH A SHOTGUN. THAT WAS MR.
24 HUTTO'S FATHERS OR FAMILY'S SHOTGUN. WENT IN. THERE WERE
25 TWO CASHIERS WORKING, SHANIKA WILSON WHO IS 16 AND PRESTON

1 FOLK WHO IS 17. BOTH THOSE INDIVIDUALS KNEW MR. HUTTO.

2 MR. SMART WAS THE ONE THAT CAME IN. HE CAME IN
3 WITH A SHOTGUN, COCKED IT AS HE WENT IN THE DOOR AND
4 GRABBED THE MONEY. THERE WERE OTHER WITNESSES TO THE
5 ARMED ROBBERY.

6 WHAT HAPPENED WAS THEY -- WHEN HE LEFT, HE --
7 THEY PULLED OUT THE CASH REGISTER DRAWN. THERE WAS
8 APPROXIMATELY \$200 IN CASH TAKEN FROM MS. WILSON. THE GUN
9 WAS POINTED AT MS. WILSON'S CHEST AND MR. FOLK'S FACE.
10 THEY WERE BOTH WORKING THE CASHIER LINE AT THAT TIME.

11 THEY GAVE THE MONEY, IT WAS TAKEN. THERE IS A
12 REPRESENTATIVE HERE FROM THE FAMILY DOLLAR STORE ALSO
13 BECAUSE THEY WERE CONCERNED WITH THE ARMED ROBBERY THAT
14 OCCURRED AT THEIR STORE.

15 JUDGE, NO ONE KNEW MR. SMART, BUT THEY KNEW MR.
16 HUTTO. AND AS IT IS SOMETIMES IN SMALL COMMUNITIES,
17 SOMEONE SAW MR. HUTTO IN THE FRONT OF THE FAMILY DOLLAR
18 STORE, KNEW THAT PERHAPS HE DID NOT NEED TO BE HERE, AND
19 THAT IS ONE OF THE REASONS WHY THEY GOT THE TAG NUMBER.

20 THEY MADE THE CONNECTION THAT HE WAS SOMEHOW
21 CONNECTED TO THE INSTITUTE HERE AND HELPED WORK WITH LAW
22 ENFORCEMENT IN LETTING THEM KNOW THAT HE WAS IN BAMBERG.

23 WE ARE NOT SURE WHEN EXACTLY THEY LEFT, BUT THEY
24 DID GET SOME MARIJUANA AFTER THEY -- WHILE THEY WERE IN
25 BAMBERG AND THEY LEFT BAMBERG COUNTY.

1 THE COURT: THANK YOU, MS. MORGAN. MR. HEMBREE?

2 MR. HEMBREE: THANK YOU, YOUR HONOR. AT

3 APPROXIMATELY 2:00 IN THE MORNING, 2:05 TO BE EXACT, ON
4 THE EARLY MORNING HOURS OF AUGUST THE 13TH OF 1999,
5 OFFICER PATRICIA HEMRAY WITH THE MYRTLE BEACH POLICE
6 DEPARTMENT WAS ON ROUTINE PATROL IN MYRTLE BEACH.

7 SHE NOTICED A PICK-UP TRUCK THAT DIDN'T HAVE ANY
8 TAILLIGHTS. THAT'S WHAT DREW HER ATTENTION INITIALLY.
9 SHE INITIATED A TRAFFIC STOP, GOT THE TAG NUMBER AND
10 CALLED IT IN. AS SHE CALLED IT IN, SHE -- THEY REPORTED
11 BACK THAT THE TRUCK HAD BEEN STOLEN.

12 AT THAT POINT PATROLMAN TROY SPIVEY RESPONDED TO
13 ASSIST HER. THEY WERE GOING TO MAKE A FELONY TRAFFIC STOP
14 REALIZING IT WAS A LITTLE MORE SERIOUS THAN WHAT IT FIRST
15 MIGHT HAVE APPEARED. PATROLMAN SPIVEY IS HERE IN THE
16 COURTROOM TODAY ALONG WITH PATROLMAN DON GAUSE OF THE
17 MYRTLE BEACH POLICE DEPARTMENT.

18 MAY HEAR FROM THEM A LITTLE LATER. BUT AS
19 OFFICER HEMRAY BEGAN TO PULL UP BEHIND AND INITIATE THE
20 STOP ON MR. HUTTO AND MR. SMART, THE CAR INITIALLY BEGAN
21 TO PULL OVER AND STOP, THE PICK-UP TRUCK THAT THE
22 DEFENDANTS WERE DRIVING.

23 AT THAT POINT OFFICER SPIVEY'S CAR PULLED UP
24 NEXT TO -- NEXT TO OFFICER HEMRAYS DEMONSTRATING HE WAS
25 THERE TO ASSIST. AT THAT STAGE THE TRUCK TOOK OFF AT A

1 HIGH SPEED CHASE.

2 THIS WAS A HIGH SPEED CHASE THAT BEGAN IN MYRTLE
3 BEACH 48TH AVENUE NORTH, WENT THROUGH -- THROUGH TOWN ON
4 KINGS HIGHWAY. ONCE ON THE BYPASS ALL DOWN THROUGH TOWN,
5 CUT THROUGH CITY STREETS, NEIGHBORHOODS, ACTUALLY WENT BY
6 THE POLICE DEPARTMENT ON OAK STREET, DROVE RIGHT IN FRONT
7 OF THE MYRTLE BEACH POLICE DEPARTMENT ON A HIGH SPEED
8 CHASE UNTIL THEY GOT TO 501. THEY TURNED OFF ON 501
9 HEADING TO CONWAY.

10 DURING THIS TIME THE DEFENDANTS TURNED AROUND
11 ARMED WITH A SHOTGUN AND TOOK SEVERAL SHOTS AT OFFICER
12 SPIVEY. THE FIRST SHOT WAS WITH BUCK SHOTS. IT IS A --
13 IT IS FORTUNATE THAT THE DEFENDANTS ONLY HAD ONE SHELL OF
14 BUCK SHOT.

15 THE REST OF IT WAS BIRD SHOT. BUT THERE WAS
16 BUCK SHOT THAT WAS SPLATTERED AND ACTUALLY DID DAMAGE TO
17 THE LIGHT BAR ON TOP OF OFFICER SPIVEY'S CAR.

18 AS I SAY, THE CHASE WENT THROUGH. THERE WERE
19 SEVERAL SHOTS FIRED AT OFFICER SPIVEY. THE CHASE WENT
20 THROUGH MYRTLE BEACH. IT WENT OVER THE BRIDGE OVER THE
21 WATERWAY GOING INTO THE -- GOING OUT INTO THE COUNTY. AT
22 THAT POINT THE COUNTY THEN PICKED UP THE CHASE.

23 AGAIN OFFICERS RESPONDED, GOT IN BEHIND HIM, AND
24 ONCE AGAIN THEY BEGAN TO DO WHAT'S CALLED A ROLLING
25 ROADBLOCK WHERE ONE OFFICER GETS IN FRONT OF THE

1 DEFENDANTS' VEHICLE, ONE OFFICER IS BEHIND THE DEFENDANTS'
2 VEHICLE AND THEY -- THEY ESSENTIALLY JUST KIND OF BLOCK
3 THEM IN AND SLOW THEM DOWN TO THE POINT THAT THEY CAN
4 ACTUALLY STOP IT.

5 AGAIN AND INVOLVED IN THIS PARTICULAR TRAFFIC
6 STOP WAS SERGEANT STAN STRICKLAND WITH THE HORRY COUNTY
7 POLICE DEPARTMENT. HE'S ALSO PRESENT IN COURT TODAY AS IS
8 DETECTIVE DAVID FLOYD WHO WAS INVOLVED IN THE STOP.

9 AS HE BEGINS TO TRY TO STOP HIM, SERGEANT
10 STRICKLAND IS IN FRONT OF THE DEFENDANTS' VEHICLE. ONCE
11 AGAIN THE DEFENDANTS FIRE UPON SERGEANT STRICKLAND. THEY
12 SPLATTERED HIS CAR WITH BIRD SHOT. SEVERAL PHOTOGRAPHS
13 THAT WE WILL SHOW YOU LATER, JUDGE, THAT SHOW -- THEY SHOW
14 THE DAMAGE TO SERGEANT STRICKLAND'S CAR.

15 OBVIOUSLY HE BREAKS OFF FROM HIS POSITION, LET'S
16 THE DEFENDANTS GO FORWARD, AND DETECTIVE FLOYD AT THAT
17 POINT BECOMES THE PRIMARY PURSUER IN THIS CHASE. AGAIN
18 THEY GO ALL THE WAY DOWN 501, ALL THE WAY INTO CONWAY, RUN
19 OVER CONCRETE MEDIANS, FLATTEN TIRES, HAVE NUMEROUS NEAR
20 MISSES WITH TRAFFIC, I MEAN OVER AND OVER AND OVER AGAIN.

21 ALTHOUGH IT WAS 2:00 IN THE MORNING, KEEP IN
22 MIND THIS IS MYRTLE BEACH IN THE MIDDLE OF THE SUMMER,
23 HEIGHT OF THE TOURIST SEASON. THERE ARE PEOPLE OUT AND
24 ABOUT, AND IT'S JUST ONE AFTER ANOTHER NEAR MISS. THE
25 CHASE REACHED, YOU KNOW, 90, A HUNDRED MILES AN HOUR AT

1 DIFFERENT POINTS, WENT INTO CONWAY.

2 AS IT CROSSED OVER INTO CONWAY, THE CONWAY
3 POLICE ARE NOTIFIED, THEY SET UP STOP STICKS TO TRY TO
4 FLATTEN THE TIRES OF THE VEHICLE, WHICH THEY DID FLATTEN
5 THE TIRES, DIDN'T SLOW THESE GUYS DOWN AT ALL.

6 THEY KEPT RIGHT ON TEARING THROUGH CONWAY AGAIN
7 GOING THROUGH THE MIDDLE OF TOWN RIGHT DOWN MAIN STREET AT
8 SPEEDS AS I SAY 70, 80 MILES AN HOUR JUST THROUGH CONWAY.

9 AS A CONWAY OFFICER BEGINS TO PULL UP, HE'S NOT
10 HERE TODAY, OFFICER EDWARD GORDON PULLS UP ON THE SIDE OF
11 THE VEHICLE AT ONE POINT. ONE OF THE DEFENDANTS LEANS HIS
12 WHOLE BODY OUTSIDE OF THE TRUCK WITH THE SHOTGUN POINTING
13 IT AT OFFICER GORDON.

14 OFFICER GORDON SAID HE WAS SEVEN TO TEN YARDS
15 AWAY WHEN THAT HAPPENED. OFFICER GORDON RESPONDED. HE
16 FIRED AT THE TRUCK WITH HIS SERVICE WEAPON AND -- BUT HE
17 BACKED OFF AGAIN, AND YOU KNOW, JUST FELL IN WITH THE
18 CHASE, LEFT CONWAY OUT INTO THE COUNTY.

19 THIS WENT ON FOR -- WELL, THE CHASE WENT ON FOR
20 30 MILES, JUST TO GIVE YOU SOME IDEA OF HOW LONG THIS
21 THING TOOK, WENT ON FOR 20 OR 30 MILES. ULTIMATELY THE
22 DEFENDANTS LOST CONTROL OF THE VEHICLE. IT WENT OFF. ONE
23 OF THE DEFENDANTS -- DEFENDANTS FLED ON FOOT AND WAS --
24 WAS APPREHENDED SOME FIVE HOURS LATER.

25 THE LAST CRIME THAT WE TOUCH ON, YOUR HONOR,

1 THAT COVERS THAT PARTICULAR NIGHT INVOLVES SOME MALICIOUS
2 INJURY TO PROPERTY. THIS CRIME INVOLVED THE DEFENDANT
3 BACK IN SEPTEMBER OF '99 JAMMING HIS LOCK IN HIS JAIL CELL
4 AND CUTTING ALL THE WATER ON TO TRY TO FLOOD THE CELL AND
5 TO JUST CREATE A MESS.

6 AND HE WAS UP ON THE SECOND FLOOR. IT LITERALLY
7 LOOKED LIKE A WATERFALL COMING DOWN, SO NOT -- DIDN'T
8 REALLY ENDANGER ANYBODY ON THAT PARTICULAR INSTANCE, JUST
9 TRYING TO BE SPITEFUL AND MEAN AND COSTING THE TAXPAYERS A
10 GOOD BIT OF MONEY.

11 YOUR HONOR, WE HAVE A VIDEOTAPE OF A PORTION OF
12 THE HIGH SPEED CHASE THAT TOOK PLACE. AND THERE IS --
13 THIS IS SHOT FROM DETECTIVE DAVID FLOYD'S VEHICLE. HE WAS
14 A PATROLMAN AT THE TIME.

15 I'D LIKE TO SHOW THAT TO THE COURT AT THIS TIME,
16 AND I'M GOING TO ASK THAT DETECTIVE FLOYD COME FORWARD SO
17 HE CAN -- HE'S GOING TO NEED TO NARRATE IT FOR YOU JUST A
18 LITTLE BIT. IF HE COULD STEP UP HERE WITH YOU, WE'D LIKE
19 TO PUBLISH THAT TO THE COURT.

20 THE COURT: THAT WILL BE FINE. MR. FLOYD?

21 (TAPE PLAYED).

22 COURT REPORTER: I CAN'T HEAR.

23 THE COURT: SO SHE CAN HEAR THE NARRATION, TURN THE
24 VOLUME DOWN.

25 OFFICER FLOYD: CAN'T HEAR MUCH OF THE AUDIBLE

1 CONVERSATION.

2 MR. JACKSON: IF YOU CAN NARRATE IT, THERE'S REALLY
3 NO REASON TO -- OKAY. LET'S TRY THIS.

4 (TAPE BEGAN PLAYING).

5 OFFICER FLOYD: AS THE TAPE STARTS, YOUR HONOR, MY
6 VIEW AS I COME FROM CONWAY, WHAT -- THEY CALL --
7 DISPATCHED THE CHASE WAS COMING OUT OF MYRTLE BEACH CITY,
8 SHOTS FIRED AT OFFICERS. I TURNED AROUND IN THE MEDIAN
9 NOW HEADED WEST FACING BACK TOWARDS CONWAY AND THE
10 DEFENDANT'S VEHICLE PASSES ME.

11 THE COURT: RIGHT.

12 OFFICER FLOYD: RIGHT THERE, AND IT GOES OUT OF SIGHT
13 BECAUSE THERE'S NO TAILLIGHTS ON THE VEHICLE. AT THIS
14 TIME I ACCELERATE SPEED, NOTIFY SERGEANT STRICKLAND THAT
15 WE ARE HEADED BACK TOWARDS CONWAY. HE LET'S ME KNOW HE'S
16 AT THE COASTAL CAROLINA COLLEGE AREA. YOU SEE IN A MINUTE
17 HIS BLUE LIGHTS START APPEARING IN FRONT OF ME.

18 THE COURT: I SEE.

19 OFFICER FLOYD: OKAY. THIS IS BLUE LIGHTS APPEAR IN
20 FRONT OF ME, THE -- CAN'T SEE THE SUSPECT VEHICLE OR THE
21 DEFENDANT'S VEHICLE TILL THEY HIT THE BRAKE LIGHTS. WHAT
22 WE ARE TRYING TO DO HERE IS TRYING TO BLOCK THEM IN.

23 HE WILL MOVE TO THE RIGHT, I WILL THEN MOVE TO
24 THE LEFT LANE, SO ON AND SO FORTH. RIGHT HERE IN A MINUTE
25 WHEN WE START GETTING CLOSE TO THE 501 BYPASS, 501

1 BUSINESS SPLIT, YOU WILL SEE HIS PATROL VEHICLE MAKE A
2 MOVE TO THE LEFT, TO THE LEFT SIDE.

3 THEN THAT'S ABOUT THE TIME HE GETS OUT OF THE
4 WAY AND THE AUDIO ON THE TAPE -- HE'S SAYING ON THE RADIO
5 SHOTS FIRED, SHOTS FIRED AT THIS VEHICLE, WHICH AT WHICH
6 POINT WE GO UP TO THE RIGHT SIDE, THE FORK ON THE 501
7 BUSINESS TOWARDS CONWAY. THAT'S HAPPENING RIGHT THERE.
8 HE'S GOTTEN OUT OF THEIR WAY. THEY'RE GOING OFF TO THE
9 RIGHT.

10 THE COURT: OKAY.

11 OFFICER FLOYD: DOESN'T KNOW WHICH WAY HE'S GOING TO
12 GO, MOVES IT TO THE RIGHT ON THE 501 BUSINESS. COUPLE
13 MINUTES TURNS INTO A TWO LANE ROAD JUST THROUGH A SMALL
14 RED LIGHT SECTION AND GOES OFF WACCAMAW RIVER INTO CONWAY
15 CITY, WHICH IS THE MAIN STREET, HISTORIC AREA OF CONWAY.

16 NOTICE HERE COMING TO A RED LIGHT INTERSECTION
17 WITH -- TRAFFIC LIGHT IS RED. HE GOES THROUGH THE MIDDLE
18 OF THE LANE INTO ON-COMING TRAFFIC. AT THIS TIME THERE'S
19 SO MUCH -- AT THIS POINT HE'S -- THE PASSENGER IN THE
20 VEHICLE HAS GOT THE FIREARM AND IS REPEATEDLY POINTING IT
21 OUT OF THE BACK WINDOW OF THE VEHICLE AT ME.

22 HAVE TO PUT THE SPOT LIGHT ON HIM AND BACK OFF
23 BECAUSE WITH THE AMOUNT OF DUST AND DEBRIS THAT'S BEING
24 THROWN OUT THE VEHICLE, I CAN'T TELL WHEN THEY ARE FIRING,
25 WHEN THEY ARE NOT. I HEAR THINGS HITTING, BOUNCING OFF

1 THE VEHICLE, OFF MY VEHICLE.

2 HERE THEY HIT THAT RAISED MEDIAN AND THE TIRE
3 EITHER BECAME FLAT HERE OR SOMETHING BEGAN RUBBING. THE
4 SPARKS STARTED FLYING UP FROM THEIR VEHICLE WHICH CAUSED
5 ROCKS AND EVERYTHING ELSE TO BOUNCE OFF TO MINE.

6 AS WE ARE GOING HERE, WE ARE APPROACHING THE
7 WACCAMAW RIVER BRIDGE, 501 BUSINESS. GET A LITTLE CLOSER
8 TO -- WHEN WE GET TO THE BRIDGE, THERE IS PROBABLY ONE OF
9 THE MOST BLATANT DISREGARDS FOR SAFETY TO NOT ONLY THE
10 POLICE BUT ALSO THE PUBLIC BECAUSE WE GET TO THE BRIDGE,
11 THERE WILL BE A VEHICLE HEADING INTO CONWAY THE SAME
12 DIRECTION WE ARE TRAVELING.

13 THE DEFENDANT GOES AROUND THIS VEHICLE ON THE
14 BRIDGE AND THE BRIDGE IS A CURVE, SO IT'S NOT ONLY A BLIND
15 BRIDGE DUE TO THE FALL IN THE SIGN, BUT IT'S ALSO A
16 CURVING BRIDGE. HE GOES TO PASS THIS VEHICLE ON THE
17 BRIDGE ON THE UPHILL SIDE, WHICH AS I BACK OFF NOT KNOWING
18 WHAT'S COMING UP, AND YOU WILL SEE THAT. RIGHT NOW YOU
19 CAN SEE THE BRAKE LIGHTS OF HIS CAR ON TOP OF THE BRIDGE.

20 THIS IS WHERE I THOUGHT THEY WERE GOING TO HAVE
21 A MAJOR ACCIDENT. AT THE BASE OF THE BRIDGE HE'S GOT SOME
22 DISTANCE ON HIM. CONWAY CITY'S LIGHTS ARE DOWN THERE,
23 WHICH IS WHERE HE IS RIGHT NOW.

24 YOU CAN BARELY SEE HIM. AND THIS PUTS HIM MORE
25 IN THE PERSPECTIVE OF SPEED, THE FOUR LANE, YOU KNOW.

1 EVERY ONE OF THESE RED LIGHTS IS A GOOD CITY BLOCK. HE'S
2 GOT FLAT TIRES NOW AND WE ARE STILL DOING I'D SAY AN
3 AVERAGE OF 80, 85 MILES AN HOUR, WHICH IS THE EXPLANATION
4 FOR THE FLAT TIRES, WHY THERE IS SO MUCH DEBRIS AND DIRT
5 BEING THROWN UP FROM THE ROAD.

6 THE COURT: RIGHT.

7 OFFICER FLOYD: THIS IS A RED LIGHT HERE AT 12TH
8 AVENUE. HE CHANGES -- I CHANGE THE SIREN PITCH BECAUSE
9 THERE WAS CAR HEADLIGHTS COMING UP OFF THAT SIDE ROAD.

10 THE COURT: RIGHT.

11 OFFICER FLOYD: OKAY. WE WERE COMING ON AT RED LIGHT
12 AT A MAJOR INTERSECTION OF 16TH AVENUE WHICH THEY BLEW
13 RIGHT THROUGH. SEE ANOTHER POLICE CAR COME OFF FROM THE
14 LEFT, IT'S A CONWAY CITY OFFICER. THE DEFENDANT'S VEHICLE
15 STARTS SLIDING WITH THE SPARKS STILL BEHIND IT.

16 THE COURT: RIGHT.

17 OFFICER FLOYD: OKAY. AT THAT POINT THE DEFENDANTS'
18 VEHICLE IS IN THE ON-COMING TWO LANES OF TRAFFIC. SEE,
19 IT'S ON THE RIGHT. AT THIS POINT IS WHERE I BELIEVE IT
20 LOOKED LIKE SOMEBODY WAS HANGING OUT OF THE DEFENDANTS'
21 VEHICLE.

22 I COULD NOT PHYSICALLY SEE HIM FIRING, YOU KNOW,
23 AT THIS POINT BECAUSE NOW WE SEPARATED BY THE TIME I
24 CAUGHT BACK UP TO IT. IF YOU ARE FAMILIAR WITH THAT AREA
25 GOING TOWARDS HOMEWOOD, OUR POLICE DEPARTMENT IS JUST

1 AROUND THIS CURVE.

2 THERE'S GOING TO BE SOME OFFICERS SITTING THERE
3 WITH A SHOTGUN, THAT'S GOING TO TRY TO DISABLE THEIR
4 VEHICLE TO POSSIBLY END THE PURSUIT OR FLATTEN WHATEVER
5 TIRES AREN'T FLATTENED, WHICH THEY WERE.

6 IT FLATTENS THE TIRES. THE CHASE ENDS IN ABOUT
7 TEN MILES. AND YOU SEE THEIR LIGHTS HERE. THEY ARE ON
8 THE SIDE OF THE ROAD AND YOU HEAR A SHOT.

9 THE COURT: SEE THE OFFICER DROPPED OUT OF THE CHASE
10 THEN?

11 OFFICER FLOYD: YES, SIR. HE DIDN'T DROP OUT OF THE
12 CHASE, HE FELL SOMEWHERE IN LINE. AND THEN FROM HERE IT
13 JUST GOES RIGHT ON OUT INTO A COUNTRY ROAD. HERE IS WHERE
14 -- IF YOU WILL NOTICE HERE THE RIGHT REAR TIRE ROLLS OFF
15 OF THE VEHICLE RIGHT HERE BEFORE THIS STORE. YOU WILL SEE
16 IT COME OFF AND ROLL TO THE RIGHT.

17 THE COURT: I SEE.

18 OFFICER FLOYD: THIS IS WHEN HE STARTED REALLY LOSING
19 CONTROL. THIS IS 701 NORTH. THAT'S TOWARDS LORIS. TURNS
20 INTO A TWO-LANE HIGHWAY AND IT GOES INTO A TWO-LANE
21 HIGHWAY WE SEE -- WE HAVE THE SPOTLIGHTS ON HIM. HE'S IN
22 THE ON-COMING LANES OF TRAFFIC.

23 UP HERE TRAFFIC HAS TO GET OUT OF HIS WAY, BUT
24 WHEN HE GETS ON THE TWO-LANE IS WHEN HE REALLY -- HE
25 STAYED IN THE OTHER LANE, BUT THE REST OF THE CHASE IS HIM

1 FISHTAILING AND SLIDING THROUGH BOTH LANES OF TRAFFIC.

2 WE ARE STILL DOING ABOUT 50 -- EITHER 50 TO 55
3 MILES AN HOUR, AND THERE WERE NO -- THERE WAS NO RUBBER
4 LEFT ON THE VEHICLE, AT LEAST WHEN THE CHASE WAS OVER.

5 NOW, WHEN IT GOES TO A TWO-LANE, THIS OFFICER
6 HERE ACTUALLY TAKES PRIMARY RIGHT IN FRONT OF ME BECAUSE
7 HE WAS IN THE BEST POSITION FOR SAFETY REASONS.

8 THE COURT: RIGHT.

9 OFFICER FLOYD: PROBLEM WE HAVE THERE AT THIS TIME IS
10 THE CHASE IS PRIMARILY TAKING PLACE IN THE ON-COMING LANE
11 OF TRAFFIC. THEY ARE NOT EVEN ATTEMPTING TO BRAKE IT INTO
12 THE CORRECT LANE, AND IT PRETTY MUCH CONTINUES JUST LIKE
13 THIS.

14 MR. HEMBREE: ANY MORE SIGNIFICANT ASPECTS OF THE
15 CHASE?

16 OFFICER FLOYD: OTHER THAN IN A FEW MINUTES THERE ARE
17 SEVERAL PARTS -- GET OUT OF THE WAY, ONE COMING UP TO A
18 HILL ON A CURVE HERE. HIGHWAY 22 BYPASS IS NOW IN PLACE.
19 A LADY IN A CAR BARELY GETS OUT OF THE WAY BEFORE THE
20 DEFENDANTS' VEHICLE HEAD-ONS THEM.

21 SHE I DON'T THINK REALIZED WHAT WAS HAPPENING
22 UNTIL IT WAS ALMOST TOO LATE AND SHE GETS OFF IN THE
23 GRASS, AND I'D SAY THEY MISSED HER BY A FOOT OR SO OF
24 HAVING A HEAD-ON COLLISION.

25 MR. HEMBREE: MR. HUTTO WAS THE DRIVER OF THAT

1 VEHICLE; WAS HE NOT?

2 OFFICER FLOYD: MR. HUTTO WAS, YES, SIR.

3 THE COURT: AT THIS TIME DID YOU KNOW IF THERE WERE
4 ANY SHOTS BEING FIRED?

5 OFFICER FLOYD: DURING THE CHASE, LIKE I STATED,
6 STARTED -- DISPATCHED A CHASE WAS LITTLE MYRTLE BEACH --
7 LEAVING MYRTLE BEACH WITH SHOTS FIRED AT THEIR OFFICERS.
8 WHEN I TOOK IT OVER, WHEN WE STARTED FURTHERING DISPATCH
9 FOR INFORMATION TRYING TO BE RELAYED WHICH GAVE THEM THE
10 TAG OF THE VEHICLE -- YOU SEE HERE HOW HE'S SLIDING WHERE
11 WE'RE TALKING TO HIM ON THE P.A.'S TO PULL THE VEHICLE ON
12 THE SIDE.

13 DISPATCH STARTED INFORMING US THAT TAG COMES
14 BACK ENTERED IN THE FEDERAL COMPUTER AS STOLEN AND THAT ON
15 THE NCIC COMPUTER ENTRY IT STATED THAT THE VICTIM, THE
16 OWNER OF THE VEHICLE, THE VICTIM OF THE STOLEN AUTO WAS
17 THE VICTIM ALSO OF A HOMICIDE.

18 AND AT THIS POINT, WE -- WE FIGURED THAT THEY
19 WERE ON THE RUN FROM SOMETHING. PIERCING SHOTS WERE FIRED
20 AND HERE AT THAT POINT PUT IT IN THE PERSPECTIVE AS TO
21 EXACTLY WHY WE WERE CHASING HIM WHICH IS WHY EVEN THOUGH
22 DANGER THE -- THAT THE PURSUIT WENT ON, WE COULDN'T LET
23 THEM, YOU KNOW...

24 THE COURT: RIGHT.

25 OFFICER FLOYD: OKAY. I THINK THESE ARE HEADLIGHTS

1 HERE ON-COMING. OKAY. NOW YOU WILL SEE THE ON-COMING
2 VEHICLE COMING. THEY ARE STILL IN THAT LANE, AND SHE
3 MANAGES TO JUST TO BARELY GET OFF THE SIDE OF THE ROAD.

4 WE ARE ALMOST TO IT NOW. I REMEMBER AT THIS
5 POINT ONE OF THE OFFICERS STATED THERE WAS A TRAIN GOING
6 ON THE TRACKS WHICH IS WHEN THIS ROAD FORKS, THE RAILROAD
7 TRACKS CROSS THAT HIGHWAY, AND WE WERE AFRAID THAT IF THEY
8 TOOK THE RIGHT HAND FORK WHICH WOULD BE 701 THAT IT WOULD
9 DEFINITELY END BECAUSE WE HAD A TRAIN CROSSING, CROSSING
10 THE HIGHWAY IF IT WAS NOT PASSED AT THAT POINT.

11 RIGHT DOWN THIS HILL ON HIGHWAY PATROL COMES UP
12 TO ASSIST, AND THAT'S WHEN THE CHASE ENDED WHEN THEY LOST
13 CONTROL AND SPUN OUT I THINK ON THE OTHER SIDE OF THIS
14 HILL.

15 IT'S HARD TO SEE, YOUR HONOR, BUT HEADLIGHTS
16 SPIN AROUND RIGHT THERE AND YOU SEE THEM POINTING BACK
17 TOWARDS US. ONE DEFENDANT HAS NOW RUN INTO THIS
18 WOODLINE.

19 WE APPROACHED THE VEHICLE. THE OTHER DEFENDANT
20 IS IN -- IN THE VEHICLE WITH THE SHOTGUN IN THE FRONT SEAT
21 OF THE VEHICLE. HAD TO CRAWL IN THERE. HE WOULDN'T SHOW
22 HIS HANDS FOR THE FIRST FEW MOMENTS. FINALLY GOT HIM OUT,
23 SECURED THE SHOTGUN AND MOVED HIM.

24 THE COURT: ALL RIGHT. THANK YOU.

25 MR. HEMBREE: THANK YOU, OFFICER.

1 THE COURT: ALL RIGHT. THANK YOU, MR. HEMBREE.

2 MR. HEMBREE: THANK YOU, SIR.

3 THE COURT: MR. JACKSON?

4 MR. JACKSON: THANK YOU, YOUR HONOR. YOUR HONOR, AT
5 THE END OF THE HIGH SPEED CHASE MR. HUTTO WAS APPREHENDED
6 AT THE SCENE. HE WAS BEHIND THE WHEEL OF THE TRUCK.

7 MR. SMART HAD FLED INTO THE WOODS AND I BELIEVE
8 BROUGHT DOWN SLED AND BROUGHT DOWN THE DOGS AND THERE WAS
9 A HUNT FOR HIM AND HE ACTUALLY CAME OUT THE NEXT MORNING
10 AND SUBMITTED HIMSELF TO LAW ENFORCEMENT THAT WERE OUT ON
11 A PAVED ROAD WHERE HE CAME UP OUT OF THE SWAMP.

12 THAT'S WHERE THEY WERE FIRST APPREHENDED HIM AND
13 THEY WERE TAKEN DOWN TO I BELIEVE HORRY COUNTY DETENTION
14 CENTER AND THAT'S WHERE THEY GAVE THEIR FIRST STATEMENTS.

15 JON SMART GAVE A STATEMENT THAT THEY HAD BEEN IN
16 THE CHICKEN HOUSE, THE THREE OF THEM, THEY HAD THE LADDER
17 AND THAT THEY HAD -- HAD SOMEWHAT AGGRAVATED TRACEY PACK
18 AND HE HAD GOTTEN UP ON THE LADDER HIMSELF TO CHANGE THE
19 FOGGER AND THAT HE AND HUTTO HAD GOTTEN IN SOME TYPE OF AN
20 ARGUMENT.

21 HUTTO WAS PICKING AT TRACEY PACK AND THAT TRACEY
22 CAME DOWN AND THEY GOT IN A SHOVING CONTEST, HUTTO AND
23 TRACEY PACK, AND THAT SMART HIT TRACEY WITH THE PIPE AND
24 KILLED HIM SOMEWHAT TAKING UP FOR HIM BECAUSE HE AND HUTTO
25 WERE IN A SCUFFLE WHICH WE LATER FOUND OUT TO BE TOTALLY

1 FABRICATED.

2 BUT THAT WAS THE FIRST STATEMENT THAT SMART
3 GAVE. HUTTO'S FIRST STATEMENT BASICALLY SAID I WAS OUT AT
4 THE TRUCK AND I CAME BACK IN AND JON SMART HAD KILLED
5 TRACEY AND I DIDN'T KNOW WHAT HAD HAPPENED.

6 AND BECAUSE OF THE DISCREPANCIES IN THOSE TWO
7 STORIES, HUTTO WAS TAKEN TO COLUMBIA TO SLED HEADQUARTERS
8 AND HE GAVE ANOTHER STATEMENT. AND AT THAT STATEMENT HE
9 PUT HIMSELF INSIDE THE CHICKEN HOUSE STILL SAYING THAT JON
10 SMART HAD KILLED TRACEY, BUT HE PUT HIMSELF INSIDE THE
11 CHICKEN HOUSE ABOUT IN THE MIDDLE WHERE THE CONTROL
12 DEVICES ARE FOR WATER AND ELECTRICITY, AND HE SIMPLY SAYS
13 THAT HE SAW JON SMART HIT TRACEY AND KNOCK HIM OFF THE
14 LADDER AND WENT DOWN AND TRACEY WAS THEY SAY STILL
15 BREATHING. ACTUALLY HE PROBABLY WAS GURGLING.

16 AND THAT SMART THEN HIT HIM THREE OR FOUR MORE
17 TIMES AND SWUNG OVER THE HEAD AND THAT JON HAD KILLED HIM
18 AND THEN THEY HAD TO DECIDE WHAT TO DO, AND THEY DISPOSED
19 OF THE BODY IN THE SAME WAY THAT I TOLD YOU EARLIER.

20 THERE WERE STILL INCONSISTENCIES, GREAT
21 INCONSISTENCIES. AND HUTTO WAS BROUGHT BACK HERE TO
22 CLARENDON COUNTY, AND HE WAS TAKEN OUT TO THE CHICKEN
23 HOUSE. AND YOUR HONOR, HE GAVE A VIDEOTAPED INTERVIEW OUT
24 AT THE CHICKEN HOUSE TWO DAYS AFTER.

25 AND YOUR HONOR, I'D LIKE TO PLAY THAT FOR THE

1 COURT AT THIS TIME. I UNDERSTAND THERE MAY BE SOME FAMILY
2 MEMBERS THAT MIGHT LIKE TO LEAVE THE COURTROOM AT THIS
3 TIME IF IT WOULD BE APPROPRIATE.

4 THE COURT: IF THEY DO, I WOULD SUGGEST THEY STEP
5 RIGHT INTO THE JURY ROOM THERE IF IT'S NOT OCCUPIED. I
6 THINK IT MIGHT BE APPROPRIATE FOR THEM TO GO IN THERE.

7 THE COURT: ALL RIGHT, SIR.

8 MR. JACKSON: YOUR HONOR, THIS VIDEOTAPE BEFORE WE
9 GET STARTED IS TAKEN APPROXIMATELY TWO DAYS AFTER THE
10 CRIME. IT IS STEPHEN HUTTO OUT THERE ON THE SCENE AT THE
11 CHICKEN HOUSE WITH HANK RICHARDSON WHO WAS WITH THE
12 CLARENDON COUNTY SHERIFF'S DEPARTMENT AND JOE BRABHAM AND
13 POSSIBLY SOME OTHERS.

14 AND YOUR HONOR, HE WILL -- HE WILL TELL YOU IN
15 MUCH MORE DETAIL WHAT HE SAW, AND HE ACTUALLY MOVES
16 HIMSELF CLOSER TO THE CRIME SCENE EVEN STILL WHERE THE
17 ACTUAL MURDER TOOK PLACE AND AT ONE PLACE TALKS ABOUT THEM
18 TAKING CHICKEN DROPPINGS AND SHOVING IT IN HIS FACE TO
19 MAKE HIM GO AHEAD AND EASE ON OUT.

20 PROBABLY HE WAS ALREADY PASSED ANY FEELING OR
21 ANY EMOTION AT THAT TIME, BUT NEVERTHELESS YOU WILL SEE
22 THAT. YOU WILL ALSO SEE IN THE END THEIR ATTEMPTS TO COME
23 BACK AND WATER DOWN AND WASH DOWN BLOOD SPATTER AND BRAIN
24 MATTER OFF OF THE WALL INSIDE THE CHICKEN HOUSE IN AN
25 EFFORT TO COVER UP THIS CRIME.

1 THE COURT: ALL RIGHT. THANK YOU.

2 (VIDEOTAPE OF STATEMENT PLAYED).

3 MR. JACKSON: THESE ARE THE KITCHEN HOUSES WE SAW
4 FROM THE AERIAL PHOTOGRAPH.

5 (TAPE PLAYED).

6 MR. JACKSON: YOUR HONOR, THAT WAS THE THIRD
7 STATEMENT GIVEN BY STEPHEN HUTTO, AND THE SIGNIFICANCE OF
8 THESE THREE STATEMENTS WERE ALL GIVEN WITHIN TWO DAYS OF
9 THE CRIME.

10 THE LAST STATEMENT WE HAVE FROM STEPHEN HUTTO
11 WAS A STATEMENT THAT WAS GIVEN ALMOST A YEAR AFTER THIS
12 CRIME OCCURRED. AND THAT IS WHAT, YOUR HONOR, WE REFERRED
13 TO AS A JAILHOUSE CONFESSION.

14 THIS HAPPENED TO BE IN A CELL WITH STEPHEN HUTTO
15 HERE IN THIS CLARENDON COUNTY DETENTION CENTER, A YOUNG
16 MAN WHO HAD GONE TO HIGH SCHOOL WITH TRACEY PACK, AND HE
17 HAD BEEN PLACED IN THE CELL WITH STEPHEN HUTTO AND HE
18 BECAME KNOWN TO MY OFFICE AND TO LAW ENFORCEMENT THAT HE
19 WANTED TO SPEAK WITH US ABOUT SOME STATEMENTS THAT STEPHEN
20 HUTTO HAD MADE TO HIM AT THE JAIL.

21 AND I WOULD LIKE TO READ THROUGH EXCERPTS OF
22 CONVERSATIONS THAT HE AND STEPHEN HUTTO HAD, AND THESE
23 WILL BE THROUGH AN INTERVIEW FORMAT WITH CHIEF JOE
24 BRABHAM.

25 THE COURT: ALL RIGHT.

1 MR. JACKSON: IN THE SUBSTANCE OF THE STATEMENT CHIEF
2 BRABHAM SAYS OKAY, DID YA'LL DISCUSS ANY CRIMES THAT HUTTO
3 MAY HAVE BEEN INVOLVED IN? YES, SIR WE DID. HE TOLD ME
4 TO THE BEST THAT HE COULD DESCRIBE OF WHAT ALL HAPPENED
5 AND WHAT EXACTLY TOOK PLACE. HE EVEN TOLD ME I REMINDED
6 HIM OF THE GUY. AND THE CHIEF BREAKS IN AND SAYS WHO WAS
7 HE TALKING ABOUT? AND THE FELLOW SAYS TRACEY PACK.

8 ONE NIGHT HE WAS LAYING THERE AND HE SAID YOU
9 KNOW WHAT I'M IN JAIL FOR? AND I SAID NO, I DON'T KNOW.
10 HE SAID I'M IN FOR MURDER. I SAID WHO WAS THE GUY? HE
11 SAID TRACEY PACK.

12 HE WENT INTO DETAILS AND TOLD ME HOW HE KILLED
13 HIM. HE TOLD ME THAT THEY WERE DOWN THERE AT SOMEPLACE
14 CALLED -- I GUESS THEY HAVE A LIKE MILITARY CAMP OR
15 SOMETHING DOWN IN RIMINI AND SAID THAT THEY WERE DOWN
16 THERE AND THEY ONLY HAD LIKE TWO WEEKS LEFT TO GO.

17 AND SAID THAT THIS GUY TRACEY WAS PICKING THEM
18 UP AND LETTING THEM WORK AT THE CHICKEN HOUSES DOWN THERE
19 AND SAID THAT LIKE TWO DAYS BEFORE THE ACCIDENT, BEFORE
20 THEY KILLED HIM, THAT THEY WERE PLANNING TO KILL HIM
21 ALREADY.

22 THEY SAID TWO DAYS BEFORE THEY KILLED HIM THEY
23 PULLED A RAZOR BLADE ON HIM AND WAS FIXING TO CUT HIS
24 THROAT AND HIS MOM AND THEM PULLED UP.

25 THEY DIDN'T DO IT THAT DATE, SO I GUESS TWO DAYS

1 AFTER THAT THEY WENT TO THE CHICKEN HOUSES AND WERE
2 HELPING HIM WORK AND THEY SAID THEY PICKED UP A STEEL BAR
3 AND TRACEY WAS UP ON A LADDER, HIT HIM IN THE BACK OF THE
4 HEAD.

5 SAID HE HIT HIM FOUR TIMES. TOLD ME THAT HE
6 BUSTED HIM WIDE OPEN. HE COULD SEE SLAM THROUGH HIS
7 HEAD. HE WAS LAYING THERE. HE SAID HE COULD TELL HE WAS
8 SUCKING BLOOD WHILE HE WAS STILL DOWN THERE.

9 HE TOLD ME THAT JON SMART WAS THE ONE THAT HIT
10 HIM, BUT HE WAS THERE AND HE SAID ONCE THEY GOT THROUGH,
11 ONCE THEY BEAT THE BOY DOWN, THEY HIT HIM FOUR TIMES WITH
12 THE PIPE, SAID THAT THEY TOOK HIM AND THEY WRAPPED HIM UP
13 IN SOME LIKE SOME SHEETS, I GUESS THEY HAD, TOOK HIM
14 OUTSIDE.

15 THEY SAID THEY TOOK THE MURDER WEAPON AND STUCK
16 IT RIGHT DOWN BESIDE HIM. THE CHIEF SAYS OKAY, LET'S TALK
17 ABOUT HUTTO RIGHT NOW. WHAT DID HE SAY THEY DID? HE SAID
18 THEY PLANNED TO DO IT. DID THEY DO ANYTHING TO PREPARE TO
19 DO IT?

20 AND THE FELLOW SAYS MY UNDERSTANDING HE SAID TWO
21 DAYS BEFORE THAT THEY WERE -- THEY WERE ALREADY TALKING
22 ABOUT KILLING THE BOY. THEY WANTED TO SEE WHAT IT WAS
23 LIKE TO KILL SOMEBODY. THAT WAS HIS EXACT WORDS TO ME,
24 THAT HE WANTED TO KNOW WHAT IT FELT LIKE TO KILL
25 SOMEBODY.

1 AND THE CHIEF SAYS WERE THEY GOING TO ROB HIM OR
2 JUST -- AND THE FELLOW BREAKS IN AND SAYS NO, THEY JUST
3 WANTED TO SEE WHAT IT WAS LIKE TO KILL SOMEBODY. AND THE
4 CHIEF SAYS TELL ME ABOUT THE -- YOU SAID A RAZOR BLADE OR
5 A RAZOR OR SOMETHING.

6 AND THE FELLOW SAYS YES, SIR. HE SAID THAT THEY
7 HAD A RAZOR BLADE AND THEY WERE FIXING TO CUT HIS THROAT
8 WHILE THEY WAS I GUESS THEY WERE RIDING DOWN THE ROAD OR
9 SOMETHING.

10 AND ANY WAY, THEY PULLED UP AT A STOP SIGN IN
11 RIMINI AND HIS MOTHER AND THEM PULLED UP, THEN THEY SAID
12 THEY DIDN'T DO IT THAT DAY, SO THEY WAITED TWO DAYS LATER
13 WHEN ACTUALLY TOOK PLACE, AND FROM MY UNDERSTANDING THEY
14 DIDN'T ROB THE BOY OR NOTHING.

15 ALL THEY TOOK FROM HIM WAS HIS TRUCK. AND I
16 TOLD HIM I SAID MAN, TRACEY WAS A GREAT GUY, ALL YA'LL
17 WOULD HAVE HAD TO DO IF YA'LL WANTED HIS TRUCK WAS SAID
18 LOOK, WE WANT TO TAKE YOUR TRUCK. TRACEY WOULD HAVE MORE
19 THAN GLAD TO GIVE HIM THE TRUCK.

20 I KNOW IT. TRACEY WOULD HAVE SAID HERE, HERE IS
21 MY KEYS MAN, TAKE MY TRUCK. AND THE CHIEF SAYS CAN YOU
22 REMEMBER HOW LONG IT WAS AFTER YA'LL WERE TOGETHER THAT
23 YA'LL TALKED ABOUT THAT?

24 AND THE FELLOW SAYS IT WAS LIKE A COUPLE NIGHTS
25 LATER AFTER HE GOT IN THE CELL WITH ME, AND I EVEN ASKED

1 HIM -- I WAS LIKE MAN, I MEAN, THEY DIDN'T -- I WAS PUT IN
2 THAT SITUATION KNOWING THAT HE WAS A FRIEND OF MINE AND
3 HERE THIS GUY IS LAYING THERE TALKING ABOUT ALL OF THAT
4 AND THEN HE TOLD ME THAT I REMINDED HIM OF TRACEY.

5 AND THEN THEY FOUND A SHANK IN THE ROOM WHERE I
6 WAS. AND YOU KNOW, AND HERE I'M LAYING HERE THINKING WAS
7 HE MAKING THAT SHANK FOR ME. AND HE GOES ON TO DESCRIBE
8 AGAIN HOW HUTTO EXPLAINED TO HIM THAT HE AND JON SMART HAD
9 KILLED TRACEY PACK.

10 AND THEN HE SAYS HE WAS EVEN BRAGGING ABOUT HOW
11 HIS HEAD WAS BUSTED CLEAN OPEN AND HE COULD SEE SLAM
12 THROUGH IT. AND AGAIN THE GENERAL DISCUSSION OF HOW THEY
13 DISPOSED OF THE GUY, WHICH IS ALL CONSISTENT WITH WHAT
14 YOUR HONOR HAS HEARD SO FAR.

15 AND FINALLY TOWARDS THE END OF THE STATEMENT THE
16 BOY SAYS HUTTO ALSO TOLD ME THAT HIS INTENTION WAS -- AND
17 HE WAS GOING TO PLEAD CRAZY SO HE COULD JUST GET DEATH --
18 I MEAN A LIFE SENTENCE INSTEAD OF THE DEATH PENALTY. AND
19 THE CHIEF SAYS DID -- HOW WAS HE GOING TO COME UP WITH
20 CRAZY? DID HE TELL YOU THAT?

21 AND THE FELLOW SAYS HE SAID HE WAS JUST GOING TO
22 PLAY CRAZY. HE WAS GOING TO DO -- HE WAS GOING TO GO TO
23 THE MENTAL HEALTH, SEE IF HE COULD PLAY TO GET OFF LIKE
24 THAT.

25 AND THE CHIEF SAID AND THAT WAS HOW HE WAS GOING

1 TO DO IT? AND THE FELLOW REPLIES YES, SIR. I EVEN ASKED
2 HIM DID HE BELIEVE IN THE LORD, AND HE SAID NO, HE DIDN'T,
3 HE DIDN'T BELIEVE IT, ALL HE BELIEVED IN WAS HIS SELF.

4 AS THEY TALK ABOUT IT A LITTLE FURTHER, THEY GET
5 DOWN TO THE END OF THE STATEMENT AND THE CHIEF ASKED HIM
6 WHAT WAS HUTTO'S ATTITUDE OR WHATEVER, WAS HE SORRY,
7 UPSET, WHAT WAS HIS -- WHAT WAS IT WHEN HE WAS TALKING
8 WITH YOU?

9 AND THE FELLOW REPLIES THE IMPRESSION I GOT THAT
10 THEY WERE BRAGGING ON KILLING HIM, THEY WERE BOTH BRAGGING
11 ABOUT HOW THEY KILLED HIM AND THE WAY IT ALL TOOK PLACE.
12 AND HE MORE OR LESS TOOK IT AS IF OH WELL, YOU KNOW.
13 CHIEF SAYS DID YA'LL TALK ABOUT MORE THAN ONE NIGHT ANY
14 OTHER TIME?

15 FELLOW SAYS YES, SIR. HE TOLD ME THAT A COUPLE
16 OF NIGHTS EXACTLY HOW IT ALL HAPPENED. THE CHIEF SAID
17 WHAT WOULD START THE CONVERSATION? AND THE FELLOW REPLIES
18 HE WOULD JUST BE PLAYING THERE AND SAID HE NEEDED TO GET
19 IT OFF HIS MIND, HE REALLY NEEDED TO TALK ABOUT IT. NOW,
20 WHY HE FELT LIKE HE COULD TALK TO ME I DON'T KNOW.

21 I GUESS I TOLD HIM THAT HE REMINDED ME OF MY
22 BROTHER AND I ASKED HIM WHAT WAS -- I SAID, YOU KNOW, YOU
23 DONE THROWN YOUR WHOLE LIFE AWAY, YOU KNOW, BY DOING THIS
24 CRIME.

25 I SAID YOU KNOW, THAT'S A REAL SERIOUS CRIME

1 YA'LL DID. HE WAS YEAH, I KNOW. BUT HE NEVER FELT LIKE
2 -- HE NEVER SAID ONE TIME OH, I WAS SORRY FOR KILLING
3 HIM. THEY WERE MORE OR LESS BRAGGING ABOUT HOW THEY DONE
4 IT.

5 AND THE CHIEF SAYS HOW MANY TIMES DO YOU RECKON
6 YA'LL DISCUSSED IT? AND THE FELLOW REPLIES I'D PROBABLY
7 SAY THREE TIMES. AND THEN FINALLY I GOT TO THE POINT
8 WHERE I TOLD HIM I JUST DON'T WANT TO HEAR NO MORE.

9 YOUR HONOR, THIS STATEMENT IS THE CLOSEST THAT
10 WE HAVE GOT TO MOTIVE AND ALSO TO SHOW LACK OF REMORSE.
11 AND THIS WAS THE FINAL STATEMENT THAT WE HAD FROM HUTTO.
12 THROUGHOUT THE INVESTIGATION THERE WERE A COUPLE OF OTHER
13 STATEMENTS THAT WERE TAKEN THAT I WOULD LIKE TO SHARE WITH
14 THE COURT.

15 AND THOSE ARE TWO STATEMENTS THAT SOME JUVENILES
16 THAT WERE ALSO DOWN AT THE RIMINI MARINE INSTITUTE AT THE
17 SAME TIME THAT HUTTO AND SMART WERE DOWN THERE. YOUR
18 HONOR, I CALL THEM JUVENILE NUMBER ONE AND JUVENILE NUMBER
19 TWO SO AS NOT TO IDENTIFY THEM.

20 BUT THESE STATEMENTS WERE TAKEN APPROXIMATELY
21 FIVE DAYS AFTER THE MURDER. THE FIRST INTERVIEW WITH
22 JUVENILE NUMBER ONE, 15 YEARS OLD, SAYS HE KNEW SUSPECTS
23 ABOUT A MONTH, ABOUT A MONTH AND A HALF AT THE RIMINI
24 MARINE INSTITUTE.

25 AND JUVENILE ONE TALKED ABOUT A CONVERSATION

1 THAT HAPPENED ON THE 10TH OF AUGUST WHICH WOULD HAVE BEEN
2 TWO DAYS PRIOR TO THE CRIME AT THE CHOW HALL. HE SAID HE
3 WAS RESTING IN THE CHOW HALL DUE TO HAVING A HEADACHE AND
4 HE SAID THAT THE SUSPECTS CAME IN WITH A MAP, BEING HUTTO
5 AND SMART, AND SAID THEY MADE REFERENCES TO BAMBERG AND
6 GREENVILLE ON THE MAP.

7 HE ALSO SPOKE OF A CONVERSATION THE SUSPECTS
8 SMART AND HUTTO HAD AT THIS TIME. IT WAS SOMETHING TO THE
9 EFFECT OF JON SMART TELLING STEPHEN I DON'T BELIEVE YOU
10 GOT THE GUTS TO DO IT.

11 HUTTO SAID THAT HE COULD DO IT, THAT HE DID HAVE
12 THE GUTS. AND JON SMART SAID HE WOULD DO IT IF HUTTO
13 COULDN'T. AND THEN AT A LATER DATE -- AND WHEN I'M UNSURE
14 -- WHEN THERE WAS A CONVERSATION HEARD AFTER SCHOOL AT
15 RECREATION, JUVENILE NUMBER ONE, HUTTO AND SMART HAD
16 PLAYED A GAME OF VOLLEYBALL AND SOMEONE MADE A COMMENT
17 ABOUT HUTTO AND SMART WORKING AT THE CHICKEN HOUSE.

18 THEY SAID THAT IN A COUPLE OF DAYS THERE WOULD
19 BE NO MORE CHICKEN HOUSE. A COMMENT FROM THEM. AND
20 JUVENILE NUMBER TWO, AN INTERVIEW THAT WAS DONE WITH HIM
21 ALSO FIVE DAYS LATER.

22 INTERVIEW WITH JUVENILE NUMBER TWO.
23 CONVERSATION OVERHEARD BY VOLLEYBALL COURT, WHICH WOULD
24 HAVE BEEN THE SAME CONVERSATION THAT JUVENILE ONE
25 OVERHEARD SOMEWHERE AROUND THE PICNIC TABLES BY THE PUMP

1 HOUSE.

2 JON WAS OVERHEARD TELLING HUTTO I DON'T BELIEVE
3 YOU HAVE THE GUTS TO DO IT. CONVERSATION OVERHEARD AT THE
4 CHICKEN HOUSE, WHICH IS A DIFFERENT CONVERSATION, WHERE
5 JUVENILE NUMBER TWO AND HUTTO AND SMART AND TRACEY WERE
6 ALL PRESENT.

7 THE CONVERSATION OVERHEARD AT THE CHICKEN HOUSE
8 WERE ALL THREE WERE WORKING. JUVENILE NUMBER TWO STATES
9 IT WAS ABOUT ONE MONTH AGO. JUVENILE NUMBER TWO, SMART
10 AND HUTTO WERE TALKING IN TRACEY'S TRUCK.

11 SMART SAID TO TRACEY WHAT IF WE KNOCKED YOU OUT
12 AND TOOK YOUR TRUCK? TRACEY SAID WHEN HE CAME TO HE'D
13 CALL THE POLICE. HUTTO SAID WHAT IF WE KILL YOU AND TAKE
14 THE TRUCK?

15 TRACEY SAID THAT YOU WOULD GET CAUGHT
16 EVENTUALLY. AND THOSE ARE SOME STATEMENTS THAT WE HAD
17 FROM OTHER KIDS THAT WERE OUT THERE AT THE INSTITUTE.

18 YOUR HONOR, AT THIS PARTICULAR TIME I BELIEVE
19 THE NEXT THING WE WOULD DO IS PRESENT JON SMART, AND
20 DIDN'T KNOW IF THE COURT WOULD LIKE TO TAKE A RECESS AT
21 THIS TIME OR...

22 THE COURT: THIS IS A GOOD TIME TO DO THAT. THAT
23 MIGHT BE SOMEWHAT LENGTHY CONSIDERING THE SCOPE OF IT. WE
24 WILL BE IN RECESS, LADIES AND GENTLEMEN, FOR 15 MINUTES.
25 WE WILL RESUME AT A QUARTER OF THE HOUR. THE CLOCK ON THE

1 BACK IS PRETTY ACCURATE IN THAT REGARD. COURT WILL BE IN
2 RECESS UNTIL 11:45.

3 (WHEREUPON A BRIEF RECESS WAS TAKEN).

4 THE COURT: OKAY. WE WILL RETURN TO ORDER.

5 (MR. SMART ON STAND)

6 JON SMART, BEING FIRST DULY SWORN,
7 TESTIFIED AS FOLLOWS:

8 MR. EARLY: YOUR HONOR, MR. DEVOE IS NOT BACK YET.

9 THE COURT: GOT ANY IDEA WHERE HE IS?

10 MR. EARLY: I THINK HE WENT DOWNSTAIRS.

11 THE COURT: OKAY. IT'S A FEW MINUTES PAST THE
12 APPOINTED HOUR. I WAS GOING TO TRY TO...

13 MR. EARLY: I APOLOGIZE.

14 THE COURT: IS HE GOING TO HANDLE THE EXAMINATION OF
15 MR. SMART OR ARE YOU?

16 MR. EARLY: I WILL.

17 THE COURT: ALL RIGHT. PLEASE CONTINUE. THANK YOU.
18 ALL RIGHT. MR. JACKSON?

19 MR. JACKSON: THANK YOU, YOUR HONOR. MR. SMART, YOU
20 AND I AND JOE BRABHAM AND A COUPLE OTHERS SAT DOWN AT THE
21 CLARENDON COUNTY DETENTION CENTER JUST A FEW WEEKS AGO AND
22 YOU TOLD ME WHAT HAPPENED IN THE PRESENCE OF YOUR LAWYER.
23 AND WHAT I WOULD LIKE FOR YOU TO DO IS JUST -- IF YOU WANT
24 ME TO HELP YOU EASE YOUR CHAIR OUT, WANT YOU TO TALK TO
25 JUDGE COOPER AND TALK WITH HIM JUST LIKE YOU TALKED WITH

1 ME JUST A FEW WEEKS AGO AT THE DETENTION CENTER. YOU
2 COMFORTABLE? DO YOU WANT ME TO HELP YOU MOVE YOUR CHAIR
3 AROUND?

4 THE COURT: ALL RIGHT. MR. SOLICITOR, GOING TO ASK
5 HIM QUESTIONS OR IS HE GOING TO NARRATE?

6 MR. JACKSON: LET HIM NARRATE. DIDN'T WANT TO GET
7 INTO ANY KIND OF DIRECT EXAMINATION.

8 THE COURT: ALL RIGHT. MR. SMART?

9 MR. SMART: ABOUT TWO DAYS BEFORE THE INCIDENT
10 HAPPENED, ME AND STEPHEN WAS WORKING AT THE LANDING. IT
11 WAS ABOUT THE DAY BEFORE WE WAS WORKING AT THE LANDING AND
12 WE WERE HUFFING GAS FROM SOME KIND OF -- I DON'T KNOW WHAT
13 IT WAS -- AND WE WAS MOVING CASES OF BEER FOR MR. PACK,
14 AND STEPHEN CAME UP WITH A -- I GUESS WAS A OLD BOX CUTTER
15 AND HE SAID THAT CUT MR. PACK'S THROAT, TAKE THE CAR. I'M
16 JUST THINKING PLAYING AROUND, SO I SAY WE DOING THIS TO
17 PUT SEVEN--

18 COURT REPORTER: I COULDN'T...

19 THE COURT: SEVEN DUST? GO AHEAD.

20 MR. SMART: AND SO CONTINUED TALKING ABOUT IT JOKING
21 MANNER ACTUALLY, AND WE CONTINUED TO GET HIGH. AND AS WE
22 WAS GETTING READY TO LEAVE, TRACEY CAME BY. HE WAS GOING
23 TO TAKE US BACK TO CAMP AND--

24 (WHEREUPON THERE WAS A PAUSE).

25 MR. SMART: AND I WAS HELPING GAS STEPHEN, AND WE

1 WERE SAYING WE NEEDED TO GO AHEAD AND DO SOMETHING AND HE
2 BROUGHT OUT ANOTHER, A SCRAPER THAT HAD A RAZOR ON THE END
3 OF IT AND HE SAID WE COULD JUST TAKE TRACEY'S TRUCK.

4 SO I WAS LIKE YEAH, WE WILL DO THAT. SO WHEN
5 TRACEY GOT IN THERE, HE HAD SOME STUFF IN THE BACK, SO WE
6 BOTH HAD TO SIT UP FRONT. I SAT IN THE MIDDLE, STEPHEN
7 SAT AT THE DOOR.

8 WE GOT DOWN TO THE STOP SIGN AND I PULLED THE
9 RAZOR OUT PLAYING WITH STEPHEN, AND THEN AS WE GOT DOWN
10 THE ROAD, WE GOT TO THE CHICKEN HOUSES, STEPHEN, TRACEY
11 GOT UP THE FOGGERS, HOUSE NUMBER TWO. STEPHEN HAD A
12 SCREWDRIVER AND SAID JUST GO STAB HIM IN THE BACK OF THE
13 HEAD, AND I SAID -- I SAID WHY DON'T YOU GO DO IT?

14 HE SAID NO, ALL YOU GOT TO DO IS GO UP THERE AND
15 GET THAT PIPE THAT'S IN THAT BARREL RIGHT THERE AND HIT
16 HIM IN THE BACK OF THE HEAD. WHOLE TIME I THOUGHT STEPHEN
17 WAS PLAYING AROUND, SO YOU KNOW, I'M JUST JOKING WITH
18 HIM. WE GET BACK TO CAMP AND THE COUNSELOR SMELLED GAS ON
19 ME. I TELL A LIE TO GET AWAY WITH IT.

20 NEXT DAY WE GO -- WE GO TO TRACEY DOWN TO THE
21 CHICKEN HOUSES. WE ARE WORKING IN HOUSE FOUR WITH THE
22 FOGGERS FIXED, AND WE FIXED THE FOGGERS TIPS. I NOTICED A
23 CAN OF GAS OUT THERE IN THE HOUSE. WHEN I MOVED, I
24 STARTED BREAKING TIPS SO WE COULD GET HIGH.

25 I FOUND A RAG IN THE TRUCK, SO I POURED GAS ON

1 IT SO I COULD JUST WALK AROUND ON IT, SO WE GOT -- I --
2 AFTER WE COME OUT OF THE HOUSE FOUR, STEPHEN BRINGS AROUND
3 THE PIPE AND HE SAYS HERE, YOU CAN USE, HIT TRACEY WITH
4 THIS. SO YOU KNOW I'M THINKING, YOU KNOW, PLAYING, SO I
5 TAKE IT IN HOUSE THREE.

6 WE GET DOWN AND TRACEY ASKED WHAT I GOT THE PIPE
7 FOR. I TOLD HIM TO HELP ME GET UP ON THE LATTER. WE GET
8 HALF WAY DOWN ON HOUSE THREE AND WE START ON THE OTHER
9 HALF.

10 WE WERE ABOUT HALF WAY DOWN ON THE OTHER ONE,
11 ABOUT A QUARTER OF THE WAY TO GO AND I STRIPPED ONE SO I
12 COULD GO GET MORE GAS. I STRIPPED IT A LITTLE BIT TOO
13 BAD. TRACEY GETS UP THERE AND HE'S FIXING IT AND I'M
14 HUFFING GAS BEHIND HIM, AND TRACEY -- AND STEPHEN WAS IN
15 FRONT OF TRACEY AND I COULD SEE HIS LIPS MOVING DO IT, DO
16 IT.

17 I PICK UP THE PIPE AND IT JUST HAPPENED. I
18 DON'T KNOW QUITE HOW MANY TIMES I HIT HIM. I CAN'T
19 REMEMBER. AFTER THAT, YOU KNOW, STEPHEN SAYS IT'S GOING
20 TO BE ALL RIGHT AND WE JUST GO TO HIS HOUSE AND GET SOME
21 MONEY.

22 I TOLD STEPHEN, I SAID I'M NOT LEAVING TRACEY'S
23 BODY HERE. I COULDN'T HAVE MR. AND MRS. PACK COME FIND
24 TRACEY. SO WE WENT TO HOUSE TWO AND FRONT OF HOUSE TWO
25 THERE'S A STORAGE SHED, GOT A TARP.

1 BROUGHT IT BACK DOWN TO HOUSE TWO, HOUSE THREE,
2 AND WE HAD THE CHICKEN BIN, WE WRAPPED TRACEY UP, PUT HIM
3 IN A BARROW, PUSHED HIM OUT, SMOKED A CIGARETTE WHICH I
4 THOUGHT WAS IN THE TRUCK. I CAN'T REMEMBER.

5 I SEEN BLOOD EVERYWHERE. I'M THINKING, YOU
6 KNOW, I GOT TO MAKE THINGS RIGHT. SO I GO IN THERE AND I
7 TRY TO WASH THE BLOOD OFF THE WALLS AS BEST I CAN. I GOT
8 OUT THERE, I WAS STILL THINKING WHAT WE GOING TO DO WITH
9 TRACEY.

10 HE SAID WE'LL JUST PUT HIM IN THE WOODLINE. SO
11 I GET ON THE BACK OF THE TRUCK AND HOLD HIM ON THE GROUND
12 WHILE STEPHEN GOES AROUND TO HOUSE FOUR AND HE SHOWS ME A
13 CLEARING.

14 WE WALKED DOWN WALKING TO THE WOODS, PUSHED
15 TRACEY IN THE WOODS AND I LAID THE PIPE BESIDE HIM. WE
16 STARTED TO LEAVE, STEPHEN WENT UP TO -- BOGGED A LITTLE TO
17 GET OUT. I TELL HIM NO, WE--

18 THE COURT: TELL HIM WHAT? I'M SORRY.

19 MR. SMART: I TOLD HIM BLOOD HOUNDS WOULD LEAD HIM
20 OUT TO HIM.

21 THE COURT: RIGHT.

22 MR. SMART: GO STEPHEN'S HOUSE, GET A CHANGE OF
23 CLOTHES, SOME MONEY, SOME -- DIDN'T HAVE ENOUGH GAS TO GET
24 TO HIS HOUSE, SO WE STOPPED AT A STORE. I WENT IN TO GET
25 A CUP OF ICE AND HE FILLED THE TRUCK UP.

1 WE COME BACK OUT AND HE PULLED A WEAPON OUT, PAY
2 THEM. WE DRIVE TO BAMBERG. ON THE WAY I TELL HIM DON'T
3 WORRY ABOUT IT, I WILL TAKE THE WRAP FOR EVERYTHING IF WE
4 GET CAUGHT.

5 SO WE GET TO HIS HOUSE AND HE TELLS ME HE DIDN'T
6 HAVE ANY MONEY. SO WE CHANGE CLOTHES AND HE PULLS OUT A
7 GUN FROM UNDER THE BED. HE TELLS ME IT'S JUST IN CASE I
8 WOULD HAVE TO KILL ANYBODY ELSE. WE GET THE -- WE GO TO A
9 DIRT ROAD, GET THE LIQUOR, WE STARTED DRINKING. I CLEAN
10 OUT THE TRUCK.

11 THE COURT: WHAT WAS IN THE TRUCK THAT YOU HAD TO
12 CLEAN OUT?

13 MR. SMART: JUST A BUNCH OF TRASH, BOTTLES, THE RAG
14 THAT I WAS HUFFING FROM, SOME TYPE MOTOR. SO HE SAYS THAT
15 WE WERE GOING TO THE DOPE MAN'S HOUSE, SO WE GO TO THIS
16 GUY'S HOUSE. WE WALK IN, BUT HE IS NOT THERE. SEES
17 HIMSELF -- HE COMES IN AND STEPHEN IS ASKING HIM ABOUT
18 SOME MARIJUANA.

19 HE SAID HE NEEDED SOME MONEY TO BUY REFER. SO
20 STEPHEN SAYS ALL RIGHT, I WILL GET THE MONEY. I THINK
21 HE'S BLOWING HIM OFF, YOU KNOW, JUST TRYING TO GET OUT OF
22 THERE.

23 SO WE STARTED DRIVING, PULLS UP TO A FAMILY
24 DOLLAR AND HE'S SAYING ALL YOU GOT TO DO IS GO IN THERE,
25 POINT THE GUN AT THEM AND GET THE MONEY. HE SAYS IT'S

1 REAL EASY, AS SOON AS THEY SEE THE GUN, THEY ARE GOING TO
2 GIVE IT UP.

3 I TOLD HIM I WAS TOO DRUNK TO GO INTO THE STORE,
4 SO HE GETS MAD AND START PUTTING THE TRUCK IN REVERSE,
5 PULLING BACK IN, PULLING IN REVERSE, PULLING BACK IN.

6 SO FINALLY I GET OUT, I GRAB THE GUN, GO INTO
7 THE STORE. I DID GET THE MONEY AND COME BACK OUT. WE GO
8 TO THE GUY'S HOUSE, BUY THE REFER AND STARTED DRIVING. I
9 DON'T KNOW WHERE WE WAS AT. I DON'T KNOW WHERE WE WENT.
10 I JUST KNOW WE ENDED UP IN MYRTLE BEACH.

11 A COP WAS IN FRONT OF US. A COP PULLED OVER AND
12 GOT IN BEHIND US AND I TOLD HIM, I SAID THAT'S IT, THEY
13 ALREADY RAN THE LICENSE PLATE, TAKE THEM TO JAIL. HE SAID
14 NO, THEY AIN'T. SO I KNOW ANOTHER COP CAR GOT IN BESIDE
15 THE OTHER ONE.

16 WE STARTED TO PULL OVER AND HE TOLD ME, HE SAYS
17 WHEN THEY COME ASK ME FOR MY LICENSE, JUST SHOOT THEM. I
18 TOLD THEM, I SAID I'M NOT SHOOTING A COP, THAT'S NOT WHAT
19 WE GOING TO ANY WAY.

20 I SAID I'M GOING TO GET OUT THE CAR, TELL US TO
21 GET OUT. SO I TOLD HIM IF HE WAS GOING TO DO ANYTHING, HE
22 BETTER GO NOW, SO HE PULLS OFF. WE WERE GOING DOWN THE
23 ROAD AND TELLING ME TO SHOOT, SHOOT.

24 I PULL UP THE GUN AND IT WOULDN'T FIRE. HAD TO
25 MASH SOME KIND OF BUTTON ON IT. HE MASHED THE BUTTON. I

1 FIRED ONE TIME AND THEN I JUST -- I KEPT TRYING UNTIL I
2 HAD NO MORE SHELLS. AT THAT POINT I -- MIGHT AS WELL GO
3 AHEAD AND SHOOT HIM, WASN'T WORTH ANYTHING ANY WAY, I DIE
4 BE WELL.

5 SO IT WAS THE CHASE ENDS, I THINK I'M GOING TO
6 JUMP OUT THE TRUCK AND LET THEM HIT ME OR I'M GOING TO
7 MAKE IT. I JUMP OUT THE TRUCK, HIT THE GRASS AND INTO THE
8 WOOD. I PASS OUT. I WAKE UP ABOUT 6:00 AND I START
9 WALKING AND I CAME OUT IN A FIELD AND THAT'S WHEN I WAS
10 ARRESTED.

11 THE COURT: WERE THEY WAITING FOR YOU WHEN YOU CAME
12 OUT OF THE WOODS?

13 MR. SMART: YES, SIR.

14 THE COURT: WHEN YOU GOT TO BAMBERG, WHAT WERE YOUR
15 PLANS TO DO NEXT? WHERE WERE YOU GOING TO GO WHEN YOU
16 LEFT BAMBERG BEFORE YOU DRANK, BEFORE YOU GOT TO DRINKING
17 AND SMOKING?

18 MR. SMART: HE TOLD ME THAT HE KNEW WHERE HE WAS
19 GOING. I DON'T KNOW WHERE WE WAS AT OR WHERE WE WAS
20 GOING. HE JUST SAID HE'D TAKE CARE OF IT.

21 THE COURT: ALL RIGHT, SIR. MR. JACKSON?

22 MR. JACKSON: MR. SMART, THERE WAS A LETTER THAT YOU
23 HAD SENT TO STEPHEN HUTTO WHILE YA'LL WERE IN THE HORRY
24 COUNTY DETENTION CENTER. DO YOU REMEMBER THAT LETTER?

25 MR. SMART: YES.

1 MR. JACKSON: TELL THE JUDGE A LITTLE BIT ABOUT THAT
2 LETTER AND WHAT ITS INTENT WAS.

3 MR. SMART: I WROTE STEPHEN A LETTER TELLING HIM TO
4 KEEP HIS MOUTH SHUT. I TOLD HIM I WAS GOING TO TAKE THE
5 WRAP ANY WAY, JUST DON'T SAY NOTHING. I GUESS THAT LETTER
6 GOT TURNED INTO THE POLICE. I DETAILED IT OUT WHAT HE
7 SHOULD SAY.

8 THE COURT: DO YOU HAVE THAT LETTER, MR. SOLICITOR?

9 MR. JACKSON: I DO. WOULD YOU LIKE TO SEE IT?

10 THE COURT: THANK YOU.

11 (WHEREUPON THERE WAS A PAUSE)

12 (ATTORNEYS CONFERRING) .

13 MR. JACKSON: YOUR HONOR, I WILL HAND UP A LETTER, A
14 COPY OF IT. MY UNDERSTANDING THIS LETTER WAS DELIVERED TO
15 CLARENDON COUNTY SHERIFF'S DEPARTMENT BY MR. HUTTO'S
16 FATHER.

17 THE COURT: OKAY. THANK YOU. JUST ONE MOMENT, MR.
18 SMART.

19 (WHEREUPON THERE WAS A PAUSE) .

20 THE COURT: OKAY. MR. JACKSON, ANY FURTHER QUESTIONS
21 OF MR. SMART FROM YOUR PERSPECTIVE?

22 MR. JACKSON: NONE, YOUR HONOR.

23 THE COURT: THANK YOU. MR. EARLY YOU CAN QUESTION
24 MR. SMART IF YOU'D LIKE.

25 MR. EARLY: AS I UNDERSTAND, I GET TO CROSS-EXAMINE

1 JUST AS IF IT WAS LIKE A...

2 THE COURT: YES, SIR.

3 MR. EARLY: MR. SMART, YOU REACHED A PLEA AGREEMENT
4 WHERE YOU PLED GUILTY TO THE MURDER OF MR. PACK IN
5 EXCHANGE FOR A LIFE SENTENCE; HAVE YOU NOT?

6 MR. SMART: YES, SIR.

7 MR. EARLY: YOU GOT THAT BECAUSE YOU WOULD COME IN
8 HERE AND TESTIFY AGAINST MY CLIENT, STEPHEN HUTTO; ISN'T
9 THAT CORRECT?

10 MR. SMART: YES, SIR.

11 MR. EARLY: IT IS WITHOUT QUESTION SIR THAT YOU ARE
12 THE MAN WHO STOOD OVER MR. PACK FIRST OF ALL WHILE HE WAS
13 ON THE LADDER AND HIT HIM IN THE HEAD WITH THE PIPE, AND
14 AFTER HE WAS ON THE CHICKEN FLOOR AND YOU CONTINUED TO
15 STRIKE HIM UNTIL YOU KILLED HIM; IS THAT NOT CORRECT?

16 MR. SMART: YEAH.

17 MR. EARLY: AND STEPHEN HUTTO DID NOT KILL MR. PACK;
18 DID HE?

19 MR. SMART: NO, SIR.

20 MR. EARLY: YOU ARE THE SAME PERSON WHO WENT INTO THE
21 FAMILY DOLLAR STORE IN BAMBERG WITH A SHOTGUN LOADED WITH
22 FIVE SHELLS, STUCK IT INTO TWO PEOPLE'S FACE AND ROBBED
23 THEM AT GUNPOINT; ARE YOU NOT, SIR?

24 MR. SMART: YES, SIR.

25 MR. EARLY: STEPHEN HUTTO WAS NOT IN THAT FAMILY

1 DOLLAR; WAS HE?

2 MR. SMART: NO.

3 MR. EARLY: AND YOU ARE THE SAME PERSON, DURING THE
4 HIGH SPEED CHASE, THAT STUCK OUT YOUR -- STUCK YOUR HEAD
5 OUT THE WINDOW, YOUR BODY OUT THE WINDOW WITH THE SHOTGUN,
6 FIRED BUCK SHOT AT THE OFFICERS; IS THAT CORRECT?

7 MR. SMART: YES.

8 MR. EARLY: AND STEPHEN HUTTO FIRED NO SHOT AT THE
9 POLICE; IS THAT CORRECT?

10 MR. SMART: YES.

11 MR. EARLY: AND YOU ARE THE SAME PERSON WHEN THE CAR
12 STOPPED AND FLED INTO THE WOODS WHILE STEPHEN TURNED
13 HIMSELF INTO THE AUTHORITIES; IS THAT RIGHT?

14 MR. SMART: YES, SIR.

15 MR. EARLY: AND WHEN IT WAS OVER, STEPHEN IS THE ONE
16 WHO WENT WITH THE AUTHORITIES TO THE CHICKEN HOUSE AND
17 SHOWED THEM EXACTLY WHAT TOOK PLACE AND GAVE THE STORY AS
18 TO WHAT HAPPENED; ISN'T THAT CORRECT? YOU NEVER
19 COOPERATED AND WENT TO THE CHICKEN HOUSE AND TOLD THEM
20 ANYTHING; DID YOU, SIR?

21 MR. SMART: I DID NOT EITHER.

22 MR. EARLY: ANSWER MY QUESTION. DID YOU GO TO THE
23 POLICE, WERE THE POLICE -- THE CHICKEN HOUSE TO SHOW THEM
24 HOW IT HAPPENED?

25 MR. SMART: NO.

1 MR. EARLY: AND THE LETTER WE ARE TALKING ABOUT THAT
2 YOU WROTE TO STEPHEN AFTER YA'LL WERE IN JAIL FOR SOME
3 TIME WAS SORT OF TWO PARTS; ISN'T THIS CORRECT, SIR?

4 MR. SMART: YES, SIR.

5 MR. EARLY: STARTED OFF WITH A PICTURE OF A MUSHROOM,
6 AND LISTEN TO ME READ IT AND TELL ME IF THIS IS NOT
7 CORRECT. LISTEN, I HAVE TALKED WITH PEOPLE ABOUT WHAT
8 WENT ON AT THE CHICKEN HOUSE AND EVERYTHING IS GOING TO BE
9 FINE IF YOU STICK TO THIS STORY.

10 WE WILL STILL DO TIME, BUT NOT AS LONG. SO JUST
11 CHILL UNTIL DECEMBER 13 WHEN I TURN 17. I WILL BE DOWN
12 THE HALL. DON'T LET ANYONE KNOW I AM WRITING YOU. AND
13 YOU WRITING THAT LETTER?

14 MR. SMART: YES.

15 MR. EARLY: YOU ALSO WROTE HIM ANOTHER THREE PAGE
16 LETTER WHICH DESCRIBED WHAT HAPPENED; DID YOU NOT?

17 MR. SMART: YES.

18 MR. EARLY: AND THIS LETTER MAKES NO MENTION OF A
19 RAZOR BLADE OR STEPHEN TELLING YOU TO DO IT OR STEPHEN
20 WHISPERING IN A VOICE HIT HIM, HIT HIM; DOES IT, SIR?

21 MR. SMART: NO.

22 MR. EARLY: LET ME READ TO YOU AND TELL ME IF THIS IS
23 NOT THE CORRECT WAY IT HAPPENED. IN THE FIRST PART OF THE
24 LETTER YOU TALK ABOUT HUFFING GAS AND GOING INTO THE
25 CHICKEN HOUSES. YOU SAID THAT THE FOUR CHICKENS WERE

1 LAUGHING AT YOU. WERE YOU THAT HIGH SON THAT THE CHICKENS
2 WERE LAUGHING AT YOU ON THE GAS?

3 MR. SMART: YES.

4 MR. EARLY: SAID I WENT BACK, I JUST TOOK THE SOCK
5 WITH ME WITH THE STEEL PIPE TO HELP ME GET UP ON THE
6 LADDER. SO YOU GOT THE STEEL PIPE YOURSELF; DIDN'T YOU?

7 MR. SMART: NO.

8 MR. EARLY: WHERE DID YOU GET IT?

9 MR. SMART: STEPHEN.

10 MR. EARLY: STEEL PIPE THAT YA'LL WERE USING TO HELP
11 BALANCE ON THE LADDER, RIGHT?

12 MR. SMART: YES.

13 MR. EARLY: SO IT DIDN'T COME OUT OF ANY BARREL OR
14 ANYTHING, IT WAS SOMETHING IN THE CHICKEN HOUSE YA'LL WERE
15 USING?

16 MR. SMART: NO.

17 MR. EARLY: TOOK THE STEEL PIPE TO HELP ME GET UP ON
18 THE LADDER. SO WHEN HE WAS ALMOST DONE WITH THAT HOUSE, I
19 BROKE A TIP ON ACCIDENT THAT I COULDN'T FIX IT SO TRACEY
20 HAD TO DO IT, SO I STOOD BEHIND HIM, LEANED UP AGAINST THE
21 WALL HUFFING. THAT'S HUFFING GAS I ASSUME?

22 MR. SMART: YES.

23 MR. EARLY: THEN I THOUGHT I HEARD TRACEY SAY HE HAD
24 TO GET SOMETHING OUT OF THE TRUCK, SO I KEPT HUFFING.
25 THEN I TURNED AROUND AND SAW SOMEONE TALL WITH A BLACK

1 FACE. YOU HALLUCINATING, SON? THERE WAS NO BLACK PERSON
2 IN THAT CHICKEN HOUSE; WAS IT?

3 MR. SMART: NO.

4 MR. EARLY: SOMEONE WITH A TALL -- SOMEONE TALL WITH
5 A BLACK FACE COMING TOWARDS ME AND I WAS SO SCARED THAT I
6 PICKED UP THE PIPE AND SWUNG, AND I WAS SO SCARED THAT I
7 KEPT HITTING HIM.

8 AND WHEN I STOPPED AND REALIZED WHAT I HAD JUST
9 DONE, IT SHOOK ME UP SO BAD THAT I TOLD STEPHEN THAT I HAD
10 TO GO BACK TO CAMPUS. AND THAT'S HOW IT HAPPENED; ISN'T
11 IT?

12 MR. SMART: NO.

13 MR. EARLY: THAT'S NOT HOW IT HAPPENED?

14 MR. SMART: NO.

15 MR. EARLY: THEN WHY DID YOU WRITE THIS STORY AS TO
16 HOW IT HAPPENED?

17 MR. SMART: SOUNDED GOOD?

18 MR. EARLY: SIR?

19 MR. SMART: SOUNDED GOOD.

20 MR. EARLY: SO IT SOUNDED GOOD? WELL, DOES IT SOUND
21 GOOD WHAT YOU WROTE THEN OR WHAT YOU ARE TELLING JUDGE
22 COOPER TODAY? WHICH ONE SOUNDS THE BEST, SON?

23 MR. SMART: IT DOESN'T MATTER. THE TRUTH IS HERE
24 TODAY.

25 MR. EARLY: THE TRUTH IS THAT YOU KILLED TRACEY PACK

1 WHO WAS A FRIEND OF BOTH YOU AND STEPHEN; ISN'T THAT
2 CORRECT?

3 MR. SMART: YES.

4 THE COURT: AND THE TRUTH IS THAT STEPHEN HAD NOTHING
5 TO DO WITH THE KILLING, HE PANICKED JUST LIKE YOU AFTER IT
6 WAS OVER AND YA'LL TOOK OFF; ISN'T THAT CORRECT?

7 MR. SMART: NO.

8 MR. EARLY: YOU DON'T AGREE WITH THAT?

9 MR. SMART: NO.

10 MR. EARLY: YOU EVER GIVEN A WRITTEN STATEMENT THAT'S
11 DIFFERENT THAN WHAT YOU WROTE TO STEPHEN IN THIS LETTER?

12 MR. SMART: NO.

13 MR. EARLY: THE ONLY TIME YOU TOLD ANY DIFFERENT IS
14 WHAT YOU ARE TELLING JUDGE COOPER TODAY; ISN'T IT?

15 MR. SMART: NO.

16 MR. EARLY: I THINK YOU JUST TOLD JUDGE COOPER AFTER
17 YOU SAW MR. PACK LYING ON THE GROUND YOU SAID WELL, THAT
18 WAS THAT AND THAT'S PRETTY MUCH YOUR ATTITUDE ABOUT THIS
19 WHOLE THING; ISN'T IT, SON?

20 MR. SMART: NO.

21 MR. EARLY: DID YOU EVER GO TO THE AUTHORITIES TWO
22 DAYS BEFORE OR THE PEOPLE AT THE MARINE INSTITUTE AND TALK
23 ABOUT THIS RAZOR BLADE OR THIS BOX KNIFE?

24 MR. SMART: NO.

25 MR. EARLY: BOX KNIFE HAD NEVER SHOWED UP ANYWHERE;

1 HAS IT, SON? THERE'S NOTHING TO CORROBORATE THAT STORY;
2 IS IT?

3 MR. SMART: NO.

4 MR. EARLY: THE ONLY THING THAT CORROBORATES THE
5 STORY IS THAT YOU KILLED TRACEY PACK AT YOUR OWN HANDS
6 WITH FOUR BLOWS FROM A LEAD PIPE, YOU AND NO ONE ELSE.
7 THAT'S THE TRUTH; ISN'T IT?

8 MR. SMART: NO.

9 MR. EARLY: WELL, YOU DID KILL HIM; DIDN'T YOU?

10 MR. SMART: YES.

11 MR. EARLY: THANK YOU, JUDGE.

12 THE COURT: ALL RIGHT. MR. JACKSON, ANYTHING
13 FURTHER?

14 MR. JACKSON: NOTHING FURTHER FROM MR. SMART, YOUR
15 HONOR.

16 THE COURT: MR. SMART, YOU CAN STEP DOWN, SIR.

17 MR. SMART: CAN I SAY SOMETHING?

18 THE COURT: GOT SOMETHING ELSE YOU WANT TO SAY, GO
19 AHEAD.

20 THE WITNESS: I'M VERY SORRY FOR WHAT HAPPENED. IT
21 WASN'T SUPPOSED TO HAPPEN.

22 (WHEREUPON THE WITNESS LEFT THE STAND).

23 MR. JACKSON: AT THIS TIME I BELIEVE SHERIFF JOSEY,
24 LAW ENFORCEMENT HAD A FEW THINGS TO ADVISE THE COURT ON.

25 THE COURT: OKAY. SHERIFF, I WILL BE GLAD TO HEAR

1 FROM YOU.

2 SHERIFF: THANK YOU, YOUR HONOR. THANK YOU, YOUR
3 HONOR.

4 THE COURT: YES, SIR.

5 SHERIFF: WE HAVE INVESTIGATOR THOMAS BURGESS WITH US
6 ALSO THIS MAP WILL COME INTO PLAY IN A FEW MOMENTS. AS
7 YOUR HONOR KNOWS, THIS OCCURRED ON AUGUST THE 12TH OF '99,
8 ALMOST TWO YEARS AGO.

9 WE GOT A CALL FROM THE PACK FAMILY THAT THEIR
10 SON WAS OVERDUE. AT THAT TIME OF COURSE WE HAD NO IDEA
11 THAT IT WAS GOING TO TURN INTO SOMETHING LIKE THIS. WE
12 SENT SERGEANT WALT FLOYD THERE TO TAKE THE INITIAL
13 REPORT.

14 FIGURED PROBABLY A TRUCK BREAK DOWN, SOMETHING
15 NOT EVEN AKIN TO WHAT WE -- WHAT WE FOUND. ONCE WE GOT
16 THERE AND WE REALIZED THAT THE TRUCK WAS MISSING AND THEN
17 WE FOUND OUT THAT THE TRUCK HAD BEEN USED IN AN ARMED
18 ROBBERY IN BAMBERG, THEN WE KNEW THAT SOMETHING WAS WRONG,
19 DEFINITELY WRONG.

20 HOPEFULLY HE HAD BEEN TIED UP AND WAS JUST
21 HIDDEN WELL AND WE WOULD FIND HIM AND IN GOOD CONDITION
22 WAS OUR HOPE. WE CONTACTED CHIEF DEPUTY JOE BRABHAM. HE
23 STARTED TOWARD THE SCENE.

24 OF COURSE, I STARTED TOWARD THE SCENE. I
25 STOPPED AT JIM BOB'S IN SUMMERTON TO MAKE SOME PHONE

1 CALLS. AT THAT TIME CHIEF DEPUTY CALLS ME BACK AND I
2 DECIDED THEN THAT WE NEEDED MUCH MORE ASSISTANCE.

3 WE CALLED OUT THE SHIFT THAT WAS ON DUTY, SENT
4 EVERYONE BUT ONE DEPUTY TO THE RIMINI AREA TO HELP WITH
5 THE SEARCH. WE CALLED THE DEPARTMENT OF NATURAL
6 RESOURCES, SERGEANT BLACKWELL, SERGEANT TIM BAXLEY. THEY
7 CALLED ALL OF THEIR UNITS OUT, WHICH CONSIST OF SIX UNITS.

8 WE ALSO HAD THREE UNITS FROM SUMTER COUNTY
9 THERE. ALL THESE GUYS ALL HAVE FOUR WHEELERS AS YOUR
10 HONOR IS WELL AWARE BECAUSE WE DID NOT KNOW WHAT THE
11 SEARCH AREA WOULD BE. I CALLED CAPTAIN HARVIN BROCK WHO
12 LIVES IN CLARENDON COUNTY, IS A CAPTAIN OF THE SIXTH
13 DISTRICT.

14 HE MADE ARRANGEMENTS FOR A HELICOPTER TO COME
15 DOWN. THIS WAS JUST AN INTENSIVE SEARCH FOR AN INDIVIDUAL
16 THAT WE ALL KNEW OR EVERY ONE OF US KNOWS THE FAMILY, HAVE
17 KNOWN THE FAMILY FOR YEARS, JUST AN INTENSIVE SEARCH OF A
18 MAGNITUDE THAT WE PROBABLY HAVE NEVER DONE BEFORE.

19 THE BAD PART, THE HELICOPTER WAS IN THE AIR ON
20 THE WAY HERE. IT'S GOT AN INFRARED UNIT, YOUR HONOR, THAT
21 CAN SPOT HEAT FROM A HUMAN. ON THE WAY HERE I'M AFRAID I
22 GOT THE CALL FROM CHIEF DEPUTY BRABHAM THAT TRACEY PACK
23 HAD BEEN DISCOVERED BY DEPUTY JEFF CARTER WHO IS NOW WITH
24 THE SLED TRACKING TEAM AND BY DEPUTY COREY MCWHITE WHO IS
25 NOW ONE OF OUR INVESTIGATORS.

1 THEY DISCOVERED TRACEY, DISCOVERED HIS BODY
2 ABOUT A HUNDRED, 150 YARDS FROM WHERE THE CHICKEN HOUSE
3 WAS LOCATED AND ABOUT 50 YARDS FROM ONE OF THE OTHER
4 CHICKEN HOUSES, LIKE THREE OR FOUR CHICKEN HOUSES RIGHT IN
5 THAT AREA.

6 HE WAS WRAPPED UP IN PLASTIC, TAPED AND TIED
7 ALONG WITH A PIPE. CHIEF DEPUTY BRABHAM, OF COURSE AS
8 YOUR HONOR KNOWS, I WAS ON THE WAY THERE MAKING THESE
9 PHONE CALLS FROM A MOBILE PHONE.

10 CHIEF DEPUTY BRABHAM GOES DOWN TO WHERE THEY
11 WERE LOCATED BY A POND AND HE CUTS THE BAG, THE PLASTIC
12 OPEN ENOUGH TO SEE THAT TRACEY PACK WAS NO LONGER ALIVE.
13 YOUR HONOR, THE YOUNG MEN THAT DID THIS -- JUST ABSOLUTELY
14 UNBELIEVABLE. I HAVE SOME PICTURES THAT WE'D LIKE TO SHOW
15 YOUR HONOR IF THAT WOULD BE AT ALL POSSIBLE.

16 THE COURT: YES, SIR.

17 SHERIFF: THEN I COULD EXPLAIN THEM TO YOUR HONOR AND
18 THEN WE WILL LET THOMAS BURGESS EXPLAIN THE MAP.

19 THE COURT: OKAY.

20 SHERIFF: MAY I APPROACH?

21 THE COURT: YES, SIR. IF YOU WOULD, PLEASE.

22 (CONFERRING WITH JUDGE).

23 THE COURT: THESE ARE PICTURES OF THE SCENE?

24 SHERIFF: YES, SIR, BLOOD SPATTERS ON THE WALL ON THE
25 CEILING, ALSO THE PIPE.

1 THE COURT: GENTLEMEN AT DEFENSE TABLE, THE SHERIFF
2 IS DESCRIBING WHAT THE PICTURES ARE. IF YOU'D LIKE TO
3 APPROACH WHILE HE DOES THIS, YOU HAVE THE RIGHT TO DO IT.
4 IT'S SIMPLY SETTING THE SCENE. THIS IS THE LADDER IN
5 QUESTION?

6 SHERIFF: THAT'S THE LADDER HE WAS ON.

7 THE COURT: AND DO THOSE VICE GRIP PLIERS ON THE TOP
8 HAVE ANYTHING TO DO WITH ANYTHING?

9 SHERIFF: HE WAS WORKING ON A SPRINKLER HEAD.

10 (AT BENCH SHOWING PICTURES).

11 SHERIFF: THAT'S THE FLOOR OF THE CHICKEN HOUSE.

12 THE COURT: ALL RIGHT. THESE AREAS WERE THE FOUR
13 WALLS SHOWN?

14 SHERIFF: YES, SHOWS THE BLOOD SPLATTER, YES, IT'S
15 SHOWN ON HERE. THAT'S RIGHT. THAT'S THE CEILING WHERE
16 YOU CAN SEE THE SCRAPE MARK WHERE THE PIPE HIT SCRAPED THE
17 CEILING WHEN IT WAS SWUNG FROM AN OVERHEAD POSITION, BLOOD
18 SPLATTER ON THE CEILING BECAUSE WHEN THE PIPE.

19 (CONFERRING WITH JUDGE OUT OF HEARING OF COURT REPORTER).

20 THE COURT: ALL RIGHT. SHERIFF, THEY CAN BE LOOKING
21 AT THOSE AS YOU CONTINUE.

22 SHERIFF: THANK YOU, YOUR HONOR. YOUR HONOR, WE ALSO
23 SEARCHED MR. TRACEY PACK'S HOUSE THINKING THAT FIRST OF
24 ALL HE MAY HAVE BEEN AT THE HOUSE, AND THAT TOOK US ABOUT
25 30 TO 45 MINUTES TO SEARCH THAT AREA.

1 OF COURSE, THE GAME WARDENS WERE THERE WITH US.
2 WE ONLY HAVE ONE FOUR WHEELER AND THEY HAVE SIX, SO LIKE I
3 SAY, WE ALSO CALLED IN GAME WARDENS, THREE OF THEM FROM
4 SUMTER COUNTY FOR THIS INTENSIVE SEARCH AREA HOPING WE
5 WOULD FOUND TRACEY PACK ALIVE. STARTED AT HIS HOUSE AND
6 WENT OUT FROM THERE.

7 SENT A GROUP DOWN TO THE CHICKEN HOUSES. WHEN
8 WE REALIZED THE HOUSE WAS CLEAR AND THE CURTILAGE AROUND
9 THE HOUSE WAS CLEAR, THEN WE EXPANDED THE SEARCH AREA
10 AROUND THE HOUSE, LEFT SOME PEOPLE THERE.

11 SOME PEOPLE WENT ON DOWN TO THE CHICKEN HOUSES.
12 WHEN I GOT THERE, MY JOB WAS TO STAY OUT AT THE ROAD TO
13 KEEP ANYBODY FROM GOING IN THERE THAT WAS NOT AUTHORIZED.

14 AND OF COURSE WE STAYED THERE ALL NIGHT. EVEN
15 AFTER WE FOUND TRACEY PACK'S BODY AND HE WAS TRANSPORTED,
16 YOU KNOW, AWAY FROM THE SCENE, WE CONTINUED TO STAY
17 THERE. WE CALLED IN THE SLED FORENSICS UNIT.

18 I LEFT THERE -- THE ONLY TIME I LEFT THE SCENE I
19 MET THE SLED FORENSICS TEAM IN PINWOOD AND WE MOVED
20 ANOTHER DEPUTY UP TO MY POSITION IN FRONT OF THE ROAD TO
21 KEEP ANY CURIOSITY SEEKERS, ANYONE NOT AUTHORIZED TO BE IN
22 THERE.

23 SO I WENT AND GOT THE SLED FORENSICS TEAM,
24 BROUGHT THEM IN. IT TOOK APPROXIMATELY AN HOUR, MAYBE
25 HOUR AND 15 MINUTES TO GET HERE ONCE THEY WERE NOTIFIED,

1 BUT OF COURSE BY THAT TIME WHEN YOU CALL SLED FORENSICS
2 TEAM, IT'S TOO LATE TO HELP ANYONE. THEY CAME, THEY
3 PROCESSED THE SCENE.

4 DEPUTIES MCWHITE AND DEPUTY CARTER, HAD CORDONED
5 OFF THE CRIME SCENE AREA OF COURSE WITH OUR YELLOW POLICE
6 LINE TAPE AND THEY HAD SECURED THE SCENE, SO WE FEEL
7 CONFIDENT THAT NOT ONLY WAS THE SCENE SECURE THERE, BUT
8 THE SCENE AROUND HIS HOUSE WAS SECURE.

9 AS A MATTER OF FACT, THE ENTIRE PACK COMPOUND AS
10 WE LIKE TO CALL IT BECAUSE THEY OWN A PIECE -- AMOUNT OF
11 PROPERTY THERE WAS SECURE BECAUSE WE HAD SOMEBODY AT THE
12 ROAD GOING INTO THE PROPERTIES, SO THE WHOLE AREA WAS
13 SECURE.

14 THE WHOLE AREA WAS SEARCHED. AND THEN WHEN THEY
15 FOUND THE -- FOUND TRACEY PACK, THEN OF COURSE THE WORD
16 WENT OUT AND SHORTLY BEFORE THAT IS WHEN WE FOUND OUT THE
17 TRUCK WAS IN BAMBERG INVOLVED IN THE ROBBERY.

18 SHORTLY A COUPLE ABOUT -- WELL, PROBABLY ABOUT
19 THREE OR FOUR HOURS AFTER WE FOUND TRACEY PACK IS WHEN WE
20 GOT A CALL FROM HORRY COUNTY IN MYRTLE BEACH THAT THESE
21 GUYS HAD SHOWN UP DOWN THERE.

22 SO NOW MR. BURGESS -- WE WANT TO SHOW YOU THIS
23 MAP IF YOU DON'T MIND, YOUR HONOR. MR. BURGESS CAME TO
24 WORK FOR US ON AUGUST THE 16TH, SO WE IMMEDIATELY INVOLVED
25 HIM WITH THIS CASE.

1 HE WAS NOT IN ON IT FROM THE START, BUT AS THE
2 CASE DEVELOPED AND EVIDENCE CAME TO US, THIS MAP SHOWED UP
3 AND IT WAS GIVEN TO HIM I'M SURE I BELIEVE BY A TEACHER.

4 OFFICER BURGESS: AT THE RIMINI MARINE INSTITUTE. IF
5 I MAY APPROACH.

6 THE COURT: YES, SIR, MR. BURGESS.

7 OFFICER BURGESS: WHAT WE HAVE IS A MAP THAT WAS
8 RETRIEVED FROM DOWN AT THE MARINE INSTITUTE.

9 THE COURT: WHERE WAS IT RETRIEVED?

10 OFFICER BURGESS: WHEN I ARRIVED THEY HAD IT FOR ME
11 AT THE OFFICE. I BELIEVE IT WAS IN THE CLASSROOM OF MR.
12 NICHOLS. AS YOU SEE, THERE ARE SEVERAL AREAS CIRCLED ON
13 THE MAP ALONG WITH THE OUTER CIRCLE DONE BY CHIEF DEPUTY,
14 AREA ST. GEORGE CIRCLED WAS ON THE MAP ORIGINALLY.

15 THE COLUMBIA AREA WAS ALSO CIRCLED HERE. THIS
16 WE BELIEVE CORROBORATES I BELIEVE JUVENILE NUMBER ONE'S
17 STATEMENT AS TO -- REFERRED TO BY THE SOLICITOR ABOUT THEM
18 REFERRING TO A MAP AND PLAN. LAW ENFORCEMENT FEELS THAT
19 THIS MAP CORROBORATES THAT THEY DID PLAN IT.

20 THE COURT: ALL RIGHT.

21 OFFICER BURGESS: THAT'S THE SIGNIFICANCE OF THIS
22 MAP.

23 THE COURT: ALL RIGHT.

24 OFFICER BURGESS: AS YOU SEE, YOU HAVE CONWAY
25 CIRCLED, MYRTLE BEACH CIRCLED, BOTH PLACES THEY WENT

1 THROUGH AND...

2 THE COURT: THE CIRCLES AROUND BAMBERG?

3 OFFICER BURGESS: THE OUTER -- IS NOT.

4 THE COURT: NOT WHAT?

5 OFFICER BURGESS: NOT ORIGINAL, BUT THIS -- THERE ST.
6 GEORGE IS OUTLINED AS THE OUTER CIRCLE IS NOT.

7 THE COURT: ALL RIGHT.

8 OFFICER BURGESS: WE PUT THAT THERE FOR SIGNALING
9 THAT THAT IS WHERE HUTTO'S SISTER WAS WHICH WE HAD
10 INFORMATION SOMEWHERE THAT DOCUMENTS THAT HUTTO'S SISTER
11 WAS GOING TO BE VISITED BY THEM WHEN THEY LEFT.

12 THE COURT: ALL RIGHT. OKAY. THANK YOU.

13 SHERIFF: YOUR HONOR, ONE MORE THING IF YOU DON'T
14 MIND.

15 THE COURT: YES, SIR.

16 SHERIFF: YOUR HONOR, THIS IS THE PIPE THAT WAS
17 RECOVERED WITH THE BODY. IF YOUR HONOR WOULD LIKE, THE
18 PIPE, THE MAGNITUDE, THE WEIGHT IS SOMETHING IF YOUR HONOR
19 WOULD LIKE TO HOLD IT OR ANYTHING.

20 THE COURT: PASS IT UP, PLEASE SIR.

21 SHERIFF: IF I MAY FROM THIS SIDE.

22 THE COURT: YES, SIR, THAT'S FINE.

23 (SHOWED TO JUDGE).

24 SHERIFF: ALL RIGHT, SIR. THANK YOU, SIR. I DARE
25 SAY, YOUR HONOR, THAT THE PIPE PROBABLY WEIGHS PROBABLY

1 ABOUT 15 TO 16 POUNDS, AND THIS IS THE -- THIS IS THE
2 WEAPON THAT WAS USED TO KILL TRACEY PACK.

3 THE COURT: OKAY. THANK YOU, SHERIFF.

4 SHERIFF: THANK YOU, YOUR HONOR.

5 MR. JACKSON: YOUR HONOR, I BELIEVE SOLICITOR HEMBREE
6 HAS SOME LAW ENFORCEMENT FOLKS THAT WOULD LIKE TO ADDRESS
7 THE COURT.

8 THE COURT: THANK YOU. SOLICITOR?

9 MR. HEMBREE: THANK YOU, YOUR HONOR. CALL YOU UP
10 HERE. YOUR HONOR, I INTRODUCED THEM TO YOU EARLIER. THIS
11 IS PATROLMAN FIRST CLASS TROY SPIVEY AND PATROLMAN FIRST
12 CLASS DON GAUSE IS ALSO SEATED HERE. HE WAS INVOLVED IN
13 THE HIGH SPEED CHASE IN THE CITY OF MYRTLE BEACH.

14 DETECTIVE DAVID FLOYD, YOU ALREADY HEARD FROM
15 DETECTIVE FLOYD. I'D ASK HIM TO STEP UP IF YOU WOULD, SIR
16 AND SERGEANT STAN STRICKLAND. YA'LL PLEASE COME FORWARD.
17 AND YOUR HONOR, I'D JUST LIKE TO NOTE FOR THE RECORD, AND
18 OF COURSE THESE DEFENDANTS -- THIS DEFENDANT HAD NO
19 KNOWLEDGE OF THIS, BUT I JUST WANT TO BRING TO THE COURT'S
20 ATTENTION THAT WE HAD ONE WEEK PRIOR TO -- WELL, I TAKE
21 THAT BACK. I WILL -- LET ME JUST MOVE ALONG.

22 WE FIRST WANT TO TALK ABOUT THE MYRTLE BEACH
23 OFFICERS. DETECTIVE -- I MEAN PATROLMAN GAUSE WAS IN A
24 SECONDARY CAR IN THE PURSUIT. HE'S WHAT -- HE WAS IN
25 CHARGE OF KIND OF CONDUCTING THE RADIO TRAFFIC FOR THE

1 CHASE AND THE PERSON THAT'S THE PRIMARY -- THE PRIMARY CAR
2 WAS PATROLMAN SPIVEY, AND I JUST WANT TO HAVE HIM TELL YOU
3 A LITTLE BIT ABOUT THE EXPERIENCE THAT HE HAD OUT THERE
4 THAT NIGHT.

5 THE COURT: ALL RIGHT. PATROLMAN GAUSE IS IT OR
6 SPIVEY?

7 MR. HEMBREE: SPIVEY.

8 THE COURT: YES, SIR PATROLMAN SPIVEY.

9 OFFICER SPIVEY: DURING THE TIME OF THE CHASE, WE
10 WERE GOING TOWARDS THE CONWAY ON 501 AND ALL OF A SUDDEN I
11 SAW A LIGHT, FLASH OF LIGHT FROM COMING OUT THE BACK
12 WINDOW.

13 THE COURT: HOW CLOSE TO YOU WERE YOU FROM THE
14 PICK-UP AT THAT TIME?

15 OFFICER SPIVEY: I WAS PROBABLY MORE THAN 25 YARDS
16 BEHIND HIM.

17 THE COURT: OKAY.

18 OFFICER SPIVEY: I SAW THE BRIGHT FLASH AND PROBABLY
19 A SPLIT SECOND LATER I HEARD THE BANG. AND AT THAT TIME
20 IT DIDN'T REALLY SEEM LIKE IT WAS REAL TO ME. IT TOOK A
21 COUPLE OF SECONDS TO ACTUALLY REALIZE THAT THEY WERE
22 ACTUALLY SHOOTING AT ME.

23 AFTER A COUPLE MORE SHOTS WERE FIRED -- DURING
24 ALL THAT TIME MY ADRENALINE WAS UP AND I DIDN'T REALIZE MY
25 SIREN WAS SHOT OUT AND ALSO A COUPLE OF MY LIGHT BARS, BUT

1 I CONTINUED ON WITH THE CHASE, BUT I BACKED OFF A LITTLE
2 BIT.

3 THEY FIRED -- AFTER THE FIRST SHOT, THEY FIRED
4 APPROXIMATELY THREE MORE I GUESS TRYING TO HIT ME OR
5 TRYING TO HIT ME, GET ME OUT OF THE CHASE. AT THAT TIME
6 MY ADRENALINE WAS GOING SO FAST IT DIDN'T REALLY SEEM REAL
7 UNTIL I TALKED WITH THE CRIME SCENE INVESTIGATOR THE NEXT
8 DAY AND HE WAS ACTUALLY POINTING OUT THE PELLET HOLES IN
9 THE LIGHT BAR AND ALSO THE BIRD SHOT IN THE HOOD AND ALSO
10 THE ONE WHERE IT REALLY GOT TO ME, WHAT WAS REALLY
11 HAPPENING.

12 THE COURT: ALL RIGHT. THANK YOU.

13 MR. HEMBREE: YOUR HONOR, THOSE ARE PHOTOGRAPHS OF
14 THE LIGHT BAR OF PATROLMAN SPIVEY'S VEHICLE. ACTUAL THERE
15 WAS -- THERE WAS BUCK SHOT RECOVERED FROM THE LIGHT BAR,
16 BIG PELLET, GOOD SIZE PELLETS THAT WERE RECOVERED, BUT
17 APPARENTLY THERE WAS ONLY ONE OR TWO SHELLS.

18 DON'T KNOW HOW MANY SHELLS OF BUCK SHOT THEY HAD
19 THAT WENT THROUGH THOSE QUICKLY AND WERE SHOOTING BIRD
20 SHOT THEREAFTER WHICH IS FORTUNATE OBVIOUSLY FOR THIS
21 OFFICER AND THE OTHER OFFICERS THERE ENDED WHO UP INVOLVED
22 IN THE CHASE.

23 THE COURT: YES, SIR.

24 MR. HEMBREE: I'D LIKE TO GO AHEAD AND RECOGNIZE
25 SERGEANT STRICKLAND AT THIS TIME.

1 THE COURT: SERGEANT?

2 OFFICER STRICKLAND: THANK YOU. AFTER DETECTIVE
3 FLOYD GOT BEHIND THE VEHICLE, I WAS IN A POSITION TO WHERE
4 I COULD PULL OUT IN FRONT OF THEM. WE TRIED TO USE MY CAR
5 WEAVING BACK AND FORTH TO GET THEM TO SLOW DOWN.

6 WE SLOWED DOWN TO PROBABLY 40 TO 50 MILES AN
7 HOUR. THE TRUCK THEY WERE DRIVING WAS SO CLOSE BEHIND ME
8 I COULDN'T SEE THEIR HEADLIGHTS. WHILE I WAS LOOKING IN
9 THE MIRROR TO STAY IN FRONT OF THEM WAS WHEN I SAW THE
10 FLASH AND THEN HEARD THINGS BOUNCING OFF THE BACK OF MY
11 CAR.

12 I HAD A NEW OFFICER RIDING WITH ME THAT I WAS IN
13 THE PROCESS OF TRAINING. HE WAS LOOKING AT ME, I WAS
14 LOOKING AT HIM, AND THEN ANOTHER -- ANOTHER BAM AND STUFF
15 BOUNCING OFF THE BACK OF THE CAR.

16 AT THAT TIME WE TRIED TO SPEED UP TO GET AWAY
17 FROM THEM. THEY SPED UP, STAYED RIGHT BEHIND ME. THAT'S
18 WHENEVER I WAS ABLE TO DODGE MY CAR TO THE LEFT, HIT THE
19 BRAKES AND THEN THEY WENT ON BY.

20 THE COURT: THAT WAS AT THE BYPASS?

21 OFFICER STRICKLAND: YES, SIR. THIS WAS OUT IN FRONT
22 OF COASTAL CAROLINA UNIVERSITY, HIGHWAY 501, YEAH. AFTER
23 THE INCIDENT ENDED, WE RECOVERED SHOTGUN PELLETS THAT HAD
24 BEEN EMBEDDED IN THE REAR OF MY CAR. THEY WERE IN THE
25 REAR BUMPER. ALL OF THE DAMAGE TO MY CAR WAS BEHIND ME ON

1 MY SIDE.

2 THE WINDOW, THE BUMPER, THE TRUNK, SO THERE --
3 THERE IS NO DOUBT IN MY MIND THAT THEY WERE SHOOTING AT
4 ME.

5 THE COURT: ALL RIGHT. THANK YOU, SERGEANT.

6 MR. HEMBREE: SOME OF THOSE ADDITIONAL PICTURES, YOUR
7 HONOR, ARE PHOTOGRAPHS OF THE VEHICLE AFTER IT HAD -- YOU
8 CAN SEE THE CONDITION OF THE VEHICLE AFTER IT CAME TO REST
9 AS WELL AS THE SHOTGUN THAT WAS RECOVERED FROM THE
10 VEHICLE.

11 THE COURT: ALL RIGHT. THANK YOU.

12 OFFICER STRICKLAND: THANK YOU.

13 MR. HEMBREE: YOUR HONOR, I'D LIKE TO ASK THAT THESE
14 OFFICERS BE EXCUSED AT THIS TIME. THEY HAVE -- I THINK
15 TWO OF THEM ARE ON THEIR DAY OFF AND--

16 THE COURT: ALWAYS SEEMS TO BE THE WAY IT IS,
17 GENTLEMEN. THE DAY OFF FINDS YOU IN COURT. THANK YOU
18 VERY MUCH FOR COMING. THANK YOU VERY MUCH.

19 MR. HEMBREE: THANK YOU, YOUR HONOR.

20 MR. JACKSON: AT THIS TIME I BELIEVE THE FAMILY WOULD
21 LIKE TO MAKE SOME REMARKS. THE FIRST THING THAT WE WOULD
22 DO IS I WOULD ASK RHONDA RAINEY TO READ A STATEMENT THAT I
23 BELIEVE REPRESENTS THE FAMILY'S FEELINGS AT THIS
24 PARTICULAR TIME. RHONDA?

25 THE COURT: MS. RAINEY?

1 MR. EARLY: HER NAME?

2 THE COURT: RHONDA RAINEY. SHE'S WITH THE VICTIM'S
3 -- WHAT TITLE SHE'LL HAVE TO GIVE YOU.

4 MS. RAINEY: RHONDA RAINEY, VICTIM ADVOCATE FOR
5 CLARENDON COUNTY SHERIFF'S OFFICE.

6 THE COURT: THANK YOU.

7 MS. RAINEY: THE FAMILY ASKED ME TO READ THIS LETTER
8 AND THEY BROUGHT IT TO US YESTERDAY. TRACEY WAS BORN ON
9 FATHER'S DAY, [REDACTED] [REDACTED]. HE WAS THE SECOND SON TO
10 BE BORN TO US. WE WERE SO HAPPY AND PROUD THAT WE HAD ONE
11 MORE SON FOR OUR FAMILY.

12 AS HE GREW, HE CONTINUED TO MAKE US HAPPY AND
13 PROUD OF HIM EVERY DAY. ON AUGUST THE 12TH, 1998, STEPHEN
14 HUTTO AND JON SMART TOOK TRACEY'S LIFE WITH MALICE
15 AFORETHOUGHT.

16 TRACEY HAD TAKEN STEPHEN AND JON TO LUNCH THAT
17 DAY OUT OF THE KINDNESS OF HIS HEART. HE LET THEM CHOOSE
18 WHAT THEY WANTED TO EAT AND PAID FOR THEIR LUNCH. HOW
19 COULD YOU, JON AND STEPHEN, SIT AND EAT WITH HIM KNOWING
20 AT THE FIRST OPPORTUNITY YOU WOULD MURDER HIM.

21 YOU KNEW THAT YOU WOULD MURDER HIM, STEAL HIS
22 CAR, GO TO YOUR DADDY'S HOUSE TO GET ALCOHOL AND GUNS TO
23 ROB A STORE, GO TO THE STATE LINE, BUY FIREWORKS AND GO TO
24 MYRTLE BEACH TO CELEBRATE YOUR MURDER OF TRACEY. ALL OF
25 THIS WAS PLANNED BY BOTH OF YOU.

1 ON THAT DAY, YOUR HONOR, JON AND STEPHEN NOT
2 ONLY TOOK TRACEY'S LIFE BUT IN MANY RESPECTS HE KILLED A
3 PART OF THOSE THAT WAS LEFT BEHIND. THEY KILLED A PART OF
4 HIS MOTHER, FATHER, BROTHERS, HIS EXTENDED FAMILY, PRESENT
5 AND FUTURE AND HUNDREDS OF FRIENDS.

6 WHEN THEY TOOK AWAY HIS LIFE, THEY TOOK AWAY HIS
7 RIGHT TO BE A HUSBAND AND A FATHER. THEY TOOK AWAY HIS
8 RIGHT TO HAVE CHILDREN AND GRANDCHILDREN. THEY TOOK AWAY
9 OUR SON THAT WOULD HELP US WHEN WE ARE OLD AND CANNOT HELP
10 OURSELVES.

11 THERE IS NOT ENOUGH INK, PENCIL OR PEN TO
12 DESCRIBE WHAT THEY HAVE DONE. TRACEY'S RIGHT FOR THE
13 PURSUIT OF HAPPINESS IN HIS WORK WAS TAKEN AWAY. HE HAD A
14 BRIGHT FUTURE.

15 HE HAD A CHANCE TO INFLUENCE THE WORLD FOR GOOD,
16 BUT THEY TOOK THAT AWAY WHEN THEY CRUELLY MURDERED HIM.
17 JON AND STEPHEN, YOUR CRUELTY AND MALICE AFORETHOUGHT THAT
18 YOU EXHIBITED IN THE MURDER OF TRACEY DEMANDS THAT THE
19 JUDGE PUNISH YOU FOR THE REST OF YOUR LIVES.

20 ONE DAY WHEN GOD CALLS FOR YOU, I HOPE THAT YOU
21 WILL BE READY AND THAT GOD WILL HAVE MERCY ON YOUR SOULS.
22 RESPECTFULLY SUBMITTED, TRACEY'S FAMILY.

23 THE COURT: THANK YOU.

24 MS. RAINEY: WOULD YOU LIKE A COPY?

25 THE COURT: NO, MA'AM. IT'S READ INTO THE RECORD AND

1 I MADE NOTES ON IT.

2 MS. RAINEY: OKAY.

3 THE COURT: YES, SIR. IF YOU WILL IDENTIFY YOURSELF
4 FOR THE COURT REPORTER AND THEN I WILL BE GLAD TO HEAR
5 FROM YOU.

6 MR. JODY PACK: I'M JODY PACK, BROTHER OF TRACEY.

7 THE COURT: YES, SIR.

8 MR. JODY PACK: IT'S NO WORDS TO DESCRIBE WHAT KIND
9 OF PERSON TRACEY WAS BECAUSE HE HAD THE TIME TO GIVE TO
10 TRY TO HELP THESE BOYS. HE LOVED THEM AND HE THOUGHT THEY
11 LOVED HIM AND HE TRIED TO HELP THEM, HE GAVE THEM DRINKS
12 AND FOOD AND THEY KNEW WHAT THEY WERE GOING TO DO.

13 AND HUTTO COULD HAVE GOT OUT OF THE TRUCK. HE
14 COULD HAVE WALKED BACK TO THE CAMP AT ANY TIME. HE WAS
15 INVOLVED FROM THE BEGINNING TO THE END. HE DESERVES LIFE
16 WITHOUT PAROLE WITHOUT EXCEPTION.

17 THEY JUST BE THANK GOD THAT THEY DIDN'T -- WE
18 DIDN'T SEEK THE DEATH PENALTY BECAUSE AFTER HEARING ALL OF
19 THIS, IT WOULD HAVE BEEN A GUARANTEED DEAL. AND I WANT TO
20 THANK YOU FOR YOUR TIME.

21 AND I CAN'T EXPRESS -- THAT NIGHT I CAN REMEMBER
22 WHEN THE CAMP CAME TO MY HOUSE AND SAID GO LOOK FOR YOUR
23 BROTHER, HE'S GONE BUT HIS TRUCK IS IN ORANGEBURG. AND I
24 COULD REMEMBER RUNNING AROUND THE CHICKEN HOUSES AT
25 NIGHT.

1 IT WAS DARK AND I SAID CHRIST. I CALLED TRACEY,
2 AND I KNEW, SO I WENT AND CALLED MY FRIENDS. I SAID COME
3 HELP ME FIND MY BROTHER -- THAT'S ALL.

4 THE COURT: THANK YOU, MR. PACK. MR. JACKSON, MS.
5 RAINEY, ANYTHING?

6 MR. JACKSON: YOUR HONOR, I BELIEVE A FEW OTHER
7 FAMILY MEMBERS THAT MIGHT LIKE TO ADDRESS THE COURT IF
8 YOU'LL GIVE THEM A FEW MOMENTS TO COMPOSE THEMSELVES.

9 THE COURT: ALL RIGHT.

10 (WHEREUPON THERE WAS A PAUSE).

11 MS. HAWKINS: HI.

12 THE COURT: YES, MA'AM. TELL US WHO YOU ARE, PLEASE
13 MA'AM.

14 MS. HAWKINS: YES, YOUR HONOR. MY NAME IS ELEANOR
15 HAWKINS. I'M TRACEY PACK'S AUNT. ROSE MARIE IS HIS
16 MOTHER -- IS MY SISTER.

17 THE COURT: YES, MA'AM.

18 MS. HAWKINS: TRACEY HAD A PROMISING FULFILLING LIFE
19 BEFORE HIM. HE WAS SO YOUNG, ONLY 32 YEARS OLD, BUT HE
20 HAD ALREADY CONTRIBUTED SO MUCH. HE HAD SERVED AS
21 COUNSELOR AT THE SAME INSTITUTE WHERE HIS ASSAILANTS WERE
22 SERVING TIME.

23 HE HAD BEEN SUCCESSFUL AT HIS JOB AS MANY OF THE
24 LETTERS HIS FAMILY RECEIVED FROM MANY OF THE YOUNG MEN
25 ATTENDING THE INSTITUTE ATTEST. HE ALSO OWNED A CHICKEN

1 BUSINESS AT WHICH HE WAS VERY PROUD.

2 HE ONLY HAD A FEW PAYMENTS LEFT AND HE WOULD
3 HAVE REALIZED A GOOD INCOME FROM HIS CHICKEN HOUSES. OUR
4 FAMILIES ARE VERY CLOSE KNIT UNIT AND WE DEARLY LOVED ALL
5 OF ROSIE AND JOE'S BOYS.

6 TRACEY WAS A TREASURED MEMORY OF OUR FAMILY AND
7 HE HAS BEEN SORELY MISSED. THE PREMEDITATED AND HEINOUS
8 ACTS THESE YOUNG MEN COMMITTED HAS ROBBED HIS FAMILY OF SO
9 MANY THINGS, TRACEY'S LOVE, HIS FUTURE, HIS GRANDCHILDREN
10 THEY WILL NEVER HAVE. IN FACT, HIS LOSS HAS LEFT A GAPING
11 HOLE IN THE LIVES OF HIS FAMILY.

12 I BELIEVE HIS DEATH HAS DONE IRREPARABLE DAMAGE
13 TO MY SISTERS AND MY HUSBAND AND HER HUSBAND'S HEALTH BOTH
14 PHYSICALLY AND MENTALLY. YOUR HONOR, I AM NOT A VENGEFUL
15 PERSON.

16 I BELIEVE IN FORGIVENESS, BUT I ALSO BELIEVE IN
17 JUSTICE. TOO OFTEN YOUNG PEOPLE ARE GIVEN LIGHTER
18 SENTENCES BECAUSE IT'S SAID THEY DIDN'T KNOW WHAT THEY
19 WERE DOING, THEY WERE SO YOUNG.

20 I SUBMIT THEY DID KNOW EXACTLY WHAT THEY WERE
21 DOING. IN FACT, THEY PLANNED TO MURDER TRACEY JUST TO
22 STEAL HIS TRUCK AND GO FOR A JOYRIDE COMMITTING ARMED
23 ROBBERY AND FIRING WEAPONS AT POLICE ALONG THE WAY.

24 THESE YOUNG MEN ARE A THREAT TO SOCIETY AND
25 THEIR ACTS SHOULD NOT -- ACTIONS SHOULD NOT BE TREATED

1 LIGHTLY. THEY HAD ALREADY BEEN INCARCERATED BUT MADE NO
2 ATTEMPT TO CHANGE THEIR WAYS.

3 YOUR HONOR, THESE MEN WILLFULLY PLANNED AND
4 MURDERED MY NEPHEW. I PLEAD FOR YOU TO GIVE THEM THE
5 MAXIMUM SENTENCE, LIFE IN PRISON WITHOUT PAROLE, SO THEY
6 CANNOT INFLICT PAIN ON ANY OTHER LIVING SOUL. THANK YOU.

7 THE COURT: THANK YOU, MS. HAWKINS. YES, MA'AM.

8 MS. MORGAN: YOUR HONOR, I'M GRACE PACK, JODY PACK'S
9 WIFE. YOUR HONOR, TODAY I WOULD LIKE TO SPEAK ON BEHALF
10 OF MY TWO CHILDREN, WELLS AND HANNA GRACE. ON AUGUST
11 12TH, 1999 WE NOT ONLY LOST A CHILD, BROTHER AND A FRIEND,
12 BUT WE LOST UNCLE TRACEY.

13 THIS MAN WHO WAS SUPPOSED TO BE IN HIS FINAL
14 DAYS OF HIS ALLEGED CRIMINAL REHABILITATION TOOK MY
15 CHILDREN'S UNCLE AWAY FROM THEM. ALMOST DAILY TRACEY WAS
16 A PART OF THEIR LIVES. HE HAD BIG PLANS FOR THEM AND WAS
17 SO ENJOYING WATCHING THEM GROW UP.

18 YOU KNOW, YOUR HONOR, MY CHILDREN USED TO SEND
19 THEIR BALLOONS TO HEAVEN FOR TRACEY AND JODY, AND I SHOULD
20 NOT HAVE TO BE EXPLAINING WHY TRACEY IS IN HEAVEN, AND WE
21 SHOULDN'T BE HAVING TO ANSWER MAMA, WHEN IS HE COMING
22 BACK.

23 AND TRACEY SHOULD BE HERE SHARING IN THEIR LIVES
24 WITH US. SO I DO AT THIS TIME ASK YOU PLEASE TO USE THE
25 POWER THAT HAS BEEN ENTRUSTED IN YOU TO GIVE STEPHEN HUTTO

1 THE MAXIMUM SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF
2 PAROLE. THANK YOU.

3 THE COURT: THANK YOU, MRS. PACK.

4 MR. BARWICK: YOUR HONOR, I'M BENNIE BARWICK. I WAS
5 TRACEY PACK'S PASTOR AND FRIEND TO THIS FAMILY. YOUR
6 POSITION HERE TODAY IS ONE THAT I DO NOT ENVY. AS WE COME
7 TOGETHER AS FRIENDS TO SUPPORT THIS FAMILY, LET US ALSO
8 SAY THAT WE UNDERSTAND AND OUR HEARTS REACH OUT TO FOLKS
9 WHO CARE ABOUT THESE YOUNG MEN, STEPHEN AND...

10 THE COURT: JON.

11 MR. BARWICK: MR. HUTTO. EVERY PART OF ME LOOKS AT
12 THIS SITUATION, WHAT HAS TRANSPIRED, AND FROM SO MANY
13 DIFFERENT PERSPECTIVES. I HAVE A PART OF ME THAT IS
14 ALWAYS VERY MUCH GEARED TOWARDS BEING MERCIFUL, FOR I
15 UNDERSTAND THE MERCY OF GOD.

16 AND YET AT THE SAME TIME I REALIZE THAT IN THESE
17 BOYS' PAST THERE HAVE BEEN EFFORTS AT BEING LENIENT, AT
18 TRYING TO BE HELPFUL AND TO BE REHABILITATED FOR THEM, AS
19 MY UNDERSTANDING IS THAT THAT'S WHY THEY WERE IN THE
20 MARINE INSTITUTE THERE AT RIMINI TO BEGIN WITH.

21 THERE HAD BEEN EFFORTS TO RECLAIM YOUNG LIVES
22 THAT HAD GONE WAYWARD, THAT WERE GOING ASTRAY. TODAY WE
23 STAND HERE ON WHAT IS THE OTHER SIDE OF THE TREMENDOUS,
24 HORRENDOUS ASTROCITY THAT WAS COMMITTED AGAINST TRACEY
25 PACK AND AGAINST THIS FAMILY.

1 WE WISH THAT, YOU KNOW, WE COULD SAY THINGS
2 COULD BE MADE BETTER AND THAT THESE YOUNG MEN COULD BE
3 BROUGHT TO A PLACE BACK TO SOCIETY WHERE THEY WOULD BE
4 USEFUL AND PROFITABLE CITIZENS, BUT THE REALITY OF THE
5 MATTER IS THIS.

6 IN YOUR POWER TO SENTENCE, YOU HAVE
7 DISCRETIONARY MEASURES TO DECIDE WHAT YOU FEEL IS JUST AND
8 APPLICABLE IN THIS SITUATION. IT MAY BE THAT THESE BOYS
9 COULD BE GIVEN A SENTENCE AND AT A CERTAIN GIVEN TIME THAT
10 SENTENCE REDUCED OR A PORTION OF IT SERVED TO WHERE THEY
11 COULD COME OUT OF PRISON.

12 TRACEY PACK IN 30 YEARS WON'T BE ABLE TO COME
13 BACK AND RESUME HIS LIFE FOR IT WAS TAKEN AWAY FROM HIM.
14 IN 50 YEARS TRACEY CAN'T COME BACK AND PICK UP WHERE HE
15 LEFT OFF AS FAR AS LIFE IS CONCERNED.

16 TRACEY'S LIFE HAS ENDED. IN EVERY SENSE OF
17 FAIRNESS AND JUSTICE IT WOULD SEEM THAT THE ONLY JUST
18 THING, THE ONLY FAIR THING IN THIS SITUATION IS THAT THESE
19 MEN BE COMMITTED TO A PLACE OF CORRECTION OR IMPRISONMENT
20 FOR THE REST OF THEIR LIFE.

21 AND I ALONG WITH THIS FAMILY WOULD URGE THAT YOU
22 CONSIDER THE FULLEST EXTENT OF SENTENCING THAT YOU CAN IN
23 THIS SITUATION. THANK YOU, SIR.

24 THE COURT: THANK YOU, REVEREND BARWICK.

25 MS. RAINEY: YOUR HONOR, I WAS GIVEN A LETTER THIS

1 MORNING AND ASKED TO READ IT. IT'S FROM A FRIEND OF
2 TRACEY'S, TRACE AND SAMANTHA GARDNER. THEY WERE UNABLE TO
3 BE HERE TODAY. I MET MY FRIEND TRACEY BACK IN 1996 WHEN I
4 WAS A STUDENT AT SPARTANBURG METHODIST COLLEGE.

5 HIS ROOM WAS NOT -- EXCUSE ME -- HIS ROOM WAS
6 NEXT TO MINE. AT THE BEGINNING WE MADE SMALL TALK AND
7 DISCUSSED LIFE ON CAMPUS AS A STUDENT, BUT AFTER A WHILE
8 WE BEGAN TO KNOW EACH OTHER AND WE BEGAN TO SHARE THINGS
9 WE HAD IN COMMON SUCH AS FISHING, HUNTING, SOCIALIZING,
10 FAMILY AND GIRLFRIENDS.

11 TRACEY WAS ALSO LIKE A BROTHER TO ME. WE HAD
12 DISAGREEMENTS AND GOT INTO ARGUMENTS JUST LIKE ANY OTHER
13 FRIENDS, BUT WE KNEW WE COULD DEPEND ON EACH OTHER. IN
14 ADDITION TRACEY WAS MY BEST MAN IN MY WEDDING. TRACEY
15 WASN'T ONLY MY BEST FRIEND, BUT ONE OF MY WIFE'S BEST
16 FRIENDS.

17 HE ALWAYS CALLED HER AT NIGHT TO MAKE SURE SHE
18 WAS ALL RIGHT WHEN I WAS AT WORK. HE USED TO TAKE HER
19 CHRISTMAS SHOPPING IN ORDER TO SURPRISE ME, AND SHE PICKED
20 OUT HIS FAMILY'S GIFTS.

21 HE WAS LIKE A BROTHER TO HER SINCE SHE DOESN'T
22 HAVE ANY FAMILY CLOSE BY. HIS DEATH CHANGED OUR LIVES
23 FOREVER NOT BECAUSE OF THE THINGS THAT WE CANNOT DO ANY
24 MORE, BUT FOR THE PRODUCTIVE, LOVING PERSON THIS
25 INDIVIDUAL TOOK AWAY FROM THIS EARTH -- EXCUSE ME.

1 THERE ISN'T A SINGLE DAY WE DON'T THINK ABOUT
2 TRACEY. THIS MAN -- AND HE'S GOT IN PARENTHESIS --
3 ACCUSED CHANGED OUR LIVES. HE COULD HAVE CHANGED HIS LIFE
4 BUT CHOSE NOT TO.

5 WE KNOW THAT ALL THE REMORSE, IF ANY, WILL NOT
6 BRING TRACEY BACK. THIS INDIVIDUAL'S ACTIONS WERE CALLOUS
7 AND FINAL. YOUR HONOR, WE RESPECTFULLY RECOMMEND THAT
8 THIS INDIVIDUAL BE GIVEN LIFE WITHOUT PAROLE IF FOR
9 NOTHING ELSE TO LEARN, IF HE CAN, THAT WE HAVE TO BE
10 ACCOUNTABLE FOR OUR ACTIONS.

11 AT LEAST HE CAN HAVE THAT OPPORTUNITY AND
12 HOPEFULLY HE WILL NOT VICTIMIZE ANOTHER HUMAN BEING DURING
13 HIS INCARCERATION. RESPECTFULLY, TRACE AND SAMANTHA
14 GARDNER.

15 THE COURT: THANK YOU, MS. RAINEY.

16 MR. SMITH: YOUR HONOR, I'M SIM SMITH.

17 THE COURT: YES, SIR. REVEREND SMITH.

18 MR. SMITH: I WAS PASTOR OF THE PINWOOD BAPTIST
19 CHURCH FOR ABOUT 18 YEARS. I CAME THERE WHEN TRACEY WAS
20 AROUND, I DON'T KNOW, FOUR OR FIVE YEARS OF AGE. I'M
21 HAPPY TO SAY TODAY IN WATCHING HIM GROW UP THAT I LED HIM
22 PERSONALLY TO FAITH IN JESUS CHRIST AND BAPTIZED HIM, THAT
23 HE HAS BEEN A AND WAS A LONG TIME FRIEND OF MINE AND I
24 LOVED TO FISH, AND SO THAT SORT OF FIT WITH THE PACKS.

25 AND I VISITED THERE AT THEIR LANDING SO MANY

1 TIMES, ATE LUNCH A LOT OF DAYS WITH MR. AND MRS. PACK
2 SENIOR. MRS. MARY, HIS GRANDMOTHER, WAS AN EXCELLENT AND
3 WONDERFUL COOK.

4 SHE WOULD SEE MY VEHICLE AT THE LANDING.
5 SOMETIMES I WAS IN MY SHIRT AND TIE, AND EVEN IF SHE SAW
6 MY VEHICLE, SHE WOULD CALL UP THERE AND SAY SEND THE
7 PASTOR DOWN, I HAVE GOT A GOOD LUNCH TODAY, AND SO
8 NEEDLESS TO SAY I VISITED DOWN THAT WAY QUITE OFTEN.

9 BUT WONDERFUL FAMILY, NOT JUST TRACEY, WONDERFUL
10 KIDS BUT A WONDERFUL FAMILY. AND TRACEY WAS A BOY THAT HE
11 WAS NOT PERFECT AS NONE OF US ARE, BUT HE WAS COURTEOUS,
12 AND I SAW THAT IN HIM AROUND HIM SO MUCH.

13 HE WAS COURTEOUS. HE WAS KIND. HE WAS
14 GRACIOUS. HE REALLY CARED AS ALREADY BEEN SAID FOR THOSE
15 BOYS THAT HE WORKED BECAUSE HE WOULD TAKE SOME OF THEM
16 SOMETIMES TO A LOCAL STORE AND BUY THEM SOMETHING TO EAT,
17 A SNACK.

18 HE WAS INTERESTED IN THEM, VERY CONCERNED ABOUT
19 THEM. I TALKED WITH HIM MANY NUMBER OF TIMES ABOUT THEM.
20 HE AT TIMES WOULD CARRY THEM TO CHURCH IF THEY WOULD
21 VOLUNTEER TO GO WITH HIM. HE WOULD CARRY SOME OF THEM
22 EVEN TO CHURCH.

23 HE WAS AN EXCEPTIONAL BOY IN HIS KINDNESS AND
24 THE WAY THAT HE HAD RESPECT FOR PEOPLE. FOR EXAMPLE, IF I
25 WERE SITTING OUT ON THE RIVER FISHING AND HAD MY LINES IN

1 THE WATER AND SITTING BACK IN THE BOAT WAITING FOR A
2 STRIKE AND TRACEY WOULD COME UP OR DOWN THE RIVER AND SEE
3 ME, HE WOULD ALWAYS COME OVER, AND MANY YEARS HIS SENIOR
4 OF COURSE, BUT HE ALWAYS TAKE TIME TO COME OVER AND TALK
5 WITH ME AND FELLOWSHIP WITH ME.

6 EVEN HE WOULD EVEN TELL ME WHERE THE FISH WERE
7 BITING. NOW, THAT MAY NOT SOUND LIKE MUCH TO MOST FOLKS,
8 BUT TO A FISHERMAN THAT'S A BIG PLUS NOT ONLY TO KNOW
9 WHERE TO GO BUT WHERE THEY ARE BITING, AND HE LOVED -- HE
10 LOVED THE OUTDOORS. HE LOVED LIFE.

11 AND HE WAS A VERY KIND AND A VERY GRACIOUS YOUNG
12 MAN AND IT HAS GRIEVED MY HEART AND I HAVE WEPT OVER HIM
13 AND THIS FAMILY SINCE ALL OF THIS HAS TAKEN PLACE. I HAVE
14 VISITED HIS GRAVE SITE ON SEVERAL OCCASIONS FROM TIME TO
15 TIME JUST TO GO BY AND JUST REMEMBER TRACEY AND WHAT HE
16 MEANT TO ME AND THE KIND OF BOY THAT HE WAS.

17 AND THINKING IN MY OWN HEART AND IN MY OWN MIND
18 WHAT KIND OF CONTRIBUTION COULD HE HAVE POSSIBLY MADE TO
19 OUR SOCIETY, AND HE HAS BEEN DENIED ALL OF THAT.

20 NOW, I KNOW TODAY THAT GOD IS LOVE, GOD LOVES
21 THESE BOYS. GOD LOVES THESE FAMILIES AND GOD'S GRACE AND
22 MERCY IS WITH THEM IF THEY WILL CALL UPON HIM, BUT I ALSO
23 BELIEVE THAT MAN IS RESPONSIBLE AND ACCOUNTABLE FOR HIS
24 OWN ACTIONS. AND WE HAVE A LAW AND JUDGES AND MAGISTRATES
25 AND LAWYERS AND THESE PEOPLE, THEY ARE MINISTERS OF THE

1 LAW.

2 AND THEY HAVE A RESPONSIBILITY, A JOB TO DO LIKE
3 ALL OF US DO IN WHATEVER PROFESSION WE ARE IN, AND I HAVE
4 THE GREATEST RESPECT FOR YOU IN YOUR POSITION TODAY. AND
5 LIKE MY FELLOW PASTOR FRIEND SAID, I DON'T ENVY YOU AT ALL
6 IN THESE POSITIONS.

7 BUT I JUST TRUST TODAY THAT YOU WILL TAKE ALL
8 THAT HAS BEEN SAID HERE TODAY AND THAT YOU WILL SEEK
9 DEVINE WISDOM IN WHAT GOD WILL HAVE US TO DO IN THIS
10 SITUATION. THANK YOU SO MUCH AND GOD BLESS.

11 THE COURT: THANK YOU, REVEREND. I HAVE AND I WILL.
12 THANK YOU.

13 MR. JACKSON: ANYBODY ELSE? YOUR HONOR, IT'S VERY
14 IMPRESSIVE TODAY IN THE MOST HORRIBLE WAY THAT WE HAVE GOT
15 THREE OF 16 SOLICITORS IN THE SAME COURTROOM ASSOCIATED
16 WITH THE SAME CRIME SPREE INVOLVING THE DEATH, THE ARMED
17 ROBBERY AND THE ATTEMPTED DEATHS OF LAW ENFORCEMENT
18 OFFICERS, A MEMBER OF THIS COMMUNITY AND THE BAMBERG
19 COUNTY. IT'S HORRIBLE THAT WE ARE HERE.

20 I HAVE NEVER BEEN IN A SITUATION IN 12 YEARS OF
21 BEING IN THIS PROFESSION WHERE CIRCUITS HAVE BEEN BROUGHT
22 TOGETHER FOR THE SINGLE PURPOSE OF PROSECUTING CASES THAT
23 OCCURRED IN A CRIME SPREE LIKE THIS.

24 I HOPE I'M NEVER HERE AGAIN. AND I HAVE TALKED
25 WITH SOLICITOR MORGAN AND SOLICITOR HEMBREE, AND WE ALL

1 AGREE THAT WE DON'T EVER WANT TO BE IN THESE CIRCUMSTANCES
2 AGAIN.

3 BUT WE ARE AND WE HAVE DONE EVERYTHING THAT WE
4 THINK IS WITHIN OUR POWER TO PRESENT TO YOU THESE CASES IN
5 A FASHION THAT GIVES YOU THE AMMUNITION THAT YOU NEED TO
6 DO WHAT WE ARE ASKING YOU TO DO, AND THAT'S TO GIVE A
7 SENTENCE OF LIFE WITHOUT PAROLE.

8 WE UNDERSTAND THAT OUR MISSION TODAY IS TO MAP
9 OUT WHAT WE THINK ARE THE AGGRAVATING CIRCUMSTANCES IN
10 THESE THREE CIRCUITS THAT GIVE YOU WHAT YOU NEED TO DO,
11 AND I'D LIKE TO JUST CAP SOME OF THOSE.

12 AND I KNOW I DON'T HAVE A JURY AND I'M NOT GOING
13 TO RANT AND RAVE, BUT I DO WANT TO GO THROUGH SOME OF
14 THESE, AND I MIGHT GET A LITTLE EMOTIONAL. TRACEY WAS A
15 FRIEND OF MINE.

16 AND I JUST WANT TO GO DOWN AND BRING YOUR
17 ATTENTION TO SOME OF THE THINGS THAT WE THINK ARE THE
18 AGGRAVATING CIRCUMSTANCES WHICH YOU COULD CONSIDER, NOT
19 ONLY US, BUT THE LAW ENFORCEMENT FOLKS INVOLVED, THE
20 FRIENDS THAT ARE HERE AND OF COURSE THE FAMILIES THAT WE
21 REPRESENT.

22 FIRST OF ALL, YOUR HONOR, THAT THIS -- WE WOULD
23 NOT BE HERE BUT FOR THE KINDNESS OF THE PACK FAMILY IN
24 OFFERING TO THE STATE OF SOUTH CAROLINA TO PUT THIS MARINE
25 INSTITUTE ON THEIR PROPERTY.

1 AND I SAID IN THE BEGINNING THAT THESE BOYS WERE
2 ALLOWED TO WORK. IT WASN'T A WORK RELATIONSHIP. THEY --
3 THE PACKS OPENED THE DOOR AND SAID IF ANYBODY WANTS TO
4 VOLUNTEER AND COME, WE WILL HELP YOU, WE WILL HELP YOU.

5 AND THE ACT OF KINDNESS THAT HAS RESULTED IN THE
6 ASTROCITY THAT BRINGS US HERE TODAY IS AN AGGRAVATING
7 CIRCUMSTANCE. THE BRUTALITY OF THE MURDER ITSELF, THE
8 BRUTALITY OF THE ARMED ROBBERY, THE BRUTALITY OF THIS
9 ASSAULT OF THE OFFICERS ARE AN AGGRAVATING CIRCUMSTANCE
10 OVER AN ENTIRE THIRD PART OR A THIRD PIECE OF OUR STATE.

11 THE ATTEMPTS TO COVER IT UP, MULTIPLE STATEMENTS
12 GIVEN BY HUTTO, FIRST HE WASN'T THERE AT ALL, THEN HE WAS
13 IN THE DOOR, BUT HE WASN'T AT THE LADDER, THEN HE WAS AT
14 THE LADDER BUT HE DIDN'T PARTICIPATE.

15 IN ALL OF THOSE GIVEN WITHIN TWO DAYS OF THE
16 CRIME AND A YEAR LATER IS WHEN HE SAYS TO SOME CELLMATE,
17 YOU KNOW, I WAS THERE AND THIS IS HOW IT HAPPENED AND PUT
18 SOME MOTIVE OUT AND THE LACK OF REMORSE IN THOSE
19 STATEMENTS.

20 JON SMART IN THE BEGINNING ASSISTED IN COVERING
21 IT UP. NOW, HE WROTE THE LETTER THAT SAID LET'S STICK
22 WITH THIS STORY. AND IN HIS INITIAL STATEMENT TO LAW
23 ENFORCEMENT HE CLAIMED THERE WAS A SCUFFLE AND THAT HE
24 SOMEWHAT ACTED ON BEHALF OF HUTTO IN KILLING TRACEY PACK.

25 NOW ALL OF THIS IS A WAY OF COVERING IT UP, THAT

1 THEY TRIED TO WIPE AWAY THE BLOOD SPLATTER ON THE WALL,
2 THAT THEY CHANGED THEIR CLOTHES AND HID THE BLOODY
3 CLOTHES, YOU KNOW.

4 JUST THING AFTER THING AFTER THING OF TRYING TO
5 COVER UP WHAT IT IS THEY HAD DONE. YOUR HONOR, SUPPLYING
6 WEAPONS IS AN AGGRAVATING CIRCUMSTANCE. AND THE THINGS
7 THAT JON SMART TALKED ABOUT, WE FIND OUT THAT THERE WAS A
8 RAZOR OR A BOX CUTTER THAT WAS PROCURED BY HUTTO THAT WAS
9 GIVEN TO SMART TO CARRY OUT THIS CRIME.

10 AND WHEN THEY DECIDED NOT TO DO IT, SOMETHING
11 HAPPENED TO THE BOX CUTTER. SOMETHING HAPPENED TO THE
12 KNIFE WE DON'T KNOW, BUT IT WAS NEVER RECOVERED. THEY GOT
13 RID OF IT. THE PIPE THAT WAS USED TO KILL TRACEY WAS
14 PROCURED BY HUTTO SO THAT SMART COULD CARRY OUT THE ACT.

15 AND THEN THEY TOOK THE PIPE AND THEY PUT IT IN
16 THE WHEELBARROW TO GET RID OF IT. AND THE THIRD WEAPON
17 WAS THE SHOTGUN. THERE WOULD BE NO SHOTGUN IF HE, HUTTO,
18 HAD NOT GONE TO HIS HOME IN BAMBERG AND GOTTEN THE SHOTGUN
19 AND PROVIDED IT AND SUPPLIED IT WITH THE AMMUNITION.
20 THERE WOULD BE NO SHOTGUN BUT FOR HIM.

21 AND IT'S INTERESTING TO NOTE THAT AFTER THE
22 ARMED ROBBERY IN BAMBERG THEY DIDN'T GET RID OF THAT
23 WEAPON LIKE THEY HAD THE OTHER TWO. THEY CARRIED IT WITH
24 THEM AND THEY USED IT AGAIN TO TRY TO KILL THOSE
25 OFFICERS.

1 AND THEY DIDN'T HAVE ANY MONEY AND THERE'S NO
2 DOUBT THAT THEY WOULD HAVE USED IT AGAIN TO PROCURE MONEY
3 SOMEWHERE ELSE WHEN THE MONEY THEY HAD GOTTEN IN THE ARMED
4 ROBBERY IN BAMBERG HAD RUN OUT.

5 AND IT'S AN AGGRAVATING CIRCUMSTANCE THAT THEY
6 CHOSE TO KEEP THIS WEAPON AND USE IT AGAIN AND AGAIN.
7 YOUR HONOR, THE PRIOR PLANNING IS EVERYWHERE. SMART TALKS
8 ABOUT IT AND HE TOLD YOU ABOUT IT TODAY.

9 HUTTO TALKED ABOUT IT IN HIS JAILHOUSE
10 CONFESSION BUT DENIED IT IN THE OTHERS. THE TWO BOYS DOWN
11 AT THE FACILITY, JUVENILE ONE AND JUVENILE TWO, THEY
12 TALKED OF HEARING OF THE PRIOR PLANNING TWO DAYS BEFORE.
13 THE MAP THAT WE HAVE TENDS TO SHOW THAT THERE WAS SOME
14 TYPE OF PLAN TO GO PLACES, AND ACTUALLY THE PLACES THAT
15 THEY WENT CORROBORATE USE OF THE MAP.

16 YOUR HONOR, IT'S OUR BELIEF THAT HUTTO WAS THE
17 BRAINS, SMART WAS THE MUSCLE. AND NONE OF THIS COULD HAVE
18 BEEN ACCOMPLISHED WITHOUT THE BRAINS AND THE MUSCLE, THAT
19 THEY ARE EQUALLY CULPABLE ALBEIT EACH TIME THERE WAS AN
20 ACT IT WAS DONE BY SMART, THE PLANNING AND THE GETTING
21 THERE WAS MOSTLY ATTRIBUTED TO HUTTO.

22 AND ONE COULD NOT HAVE BEEN DONE WITHOUT THE
23 OTHER. AND WHAT OCCURRED IN BAMBERG IS THE BEST EXAMPLE
24 OF THAT. IT'S KIND OF ODD, BUT IN THE PROCESS OF FINDING
25 THE INFORMATION AND INVESTIGATING THE CASE AND HUTTO'S

1 POSITION THAT SMART DID IT, SMART DID IT, SMART DID IT, HE
2 ACTUALLY OUTSMARTED HIMSELF WHEN HE GAVE HIS JAILHOUSE
3 CONFESSION WHICH I THINK SHOWS TWO OF THE MOST AGGRAVATING
4 CIRCUMSTANCES, ONE THE CLOSEST WE GET TO A MOTIVE THEY
5 KILLED HIM BECAUSE HE WANTED TO KNOW WHAT IT FELT LIKE TO
6 KILL SOMEBODY. CLOSEST THING WE HAVE TO A MOTIVE.

7 AND THE SECOND THING IS THE COMPLETE LACK OF
8 REMORSE. WITHIN ONE OR TWO DAYS AFTER THE CRIME, HE HAD
9 GIVEN THREE STATEMENTS. THE VIDEO STATEMENT SHOWS
10 ABSOLUTELY NO REMORSE I WOULD SUBMIT TO THE COURT.

11 BUT THEY ALL OCCURRED CLOSE IN TIME. MAYBE HE
12 DIDN'T HAVE A CHANCE TO THINK ABOUT IT. BUT A YEAR LATER
13 LAID UP IN THE JAIL CELL IN CLARENDON COUNTY TALKING ABOUT
14 IT TWO OR THREE DIFFERENT NIGHTS TO SOMEBODY HE DOESN'T
15 EVEN KNOW, HE BRAGS ABOUT IT, DESCRIBES THE INJURIES TO
16 THE NTH (SIC) DEGREE IN DETAIL.

17 IT'S WHAT WE DID. WE WANTED TO KNOW WHAT IT
18 FELT LIKE TO KILL SOMEBODY. AND WHEN CHIEF BRABHAM ASKED
19 HIM, THE BOY THAT GAVE US THE STATEMENT, WAS THERE ANY
20 SIGN OF REMORSE OR SORRY.

21 HE SAYS HE NEVER NOT ONCE SAID THAT HE WAS
22 SORRY. AND THAT LACK OF REMORSE, YOUR HONOR, I THINK WAS
23 SEEN AT THE TIME WE TOOK THE GUILTY PLEA AND WILL BE SEEN
24 AGAIN HERE TODAY.

25 AND FINALLY, YOUR HONOR, THE MOST AGGRAVATING

1 CIRCUMSTANCE IS NOT SO MUCH WHAT HAPPENED HERE BUT WHAT
2 WAS TAKEN FROM US IN THE LIFE OF TRACEY PACK. TRACEY PACK
3 WAS ONE OF THE FINEST PEOPLE I KNEW IN THE HUNTING AND
4 FISHING COMMUNITY.

5 AND HE WAS PROBABLY THE BEST STRIPER GUY THERE
6 WAS, WHETHER IT WAS SPRING SCHOOL OR WINTER MONTH
7 SCHOOLING OR RUNS IN THE SPRING TIME, HE KNEW WHERE TO
8 GO. AND PEOPLE WOULD CALL IN, CORPORATIONS WOULD CALL IN
9 AND THEY WANT TRACEY TO GUIDE THEM, YOU KNOW. HE'S THE
10 ONE OUT OF THE FOUR THAT THEY WANT TO GO OUT WITH.

11 PEOPLE ARE STILL CALLING DOWN ASKING FOR
12 TRACEY. THEY WILL BE CALLING DOWN ASKING FOR TRACEY. HAD
13 TO BE EXPLAINED BY THE FAMILY WHY HE WON'T BE GUIDING, BUT
14 HE WAS ONE OF THE BEST STRIPER GUYS THERE WERE.

15 AND THERE IS A PHRASE, YOUR HONOR, THAT WE USE
16 AROUND HERE A LOT OF THE TIME AND IT'S VERY SIMPLE, BUT TO
17 ME IT'S NEVER HAD A GREATER POTENTIAL FOR IMPACT THAN
18 TODAY.

19 AND THAT'S A PHRASE OF WE ARE HERE TO FISH OR
20 CUT BAIT. THIS IS THE FISHING HOLE THAT WE HAVE FOR
21 TRACEY PACK TODAY. AND WE HAVE GOT THE RIGHT EQUIPMENT
22 SITTING RIGHT HERE, SITTING RIGHT HERE, RIGHT HERE AND ON
23 THIS SIDE OF THE COURTROOM.

24 AND WE'VE GOT THE RIGHT BAIT AND THAT'S ALL THE
25 THINGS YOUR HONOR HAS HEARD TODAY. AND WE ARE IN THE

1 RIGHT FISHING HOLE BECAUSE TRACEY PACK HAS BROUGHT US HERE
2 TO THIS HOLE. HE HAS GUIDED US ONE MORE TIME.

3 AND YOUR HONOR, WE ARE FISHING FOR THE BIG ONE.
4 AND WHAT WE WANT TO CATCH IS A SENTENCE OF LIFE WITHOUT
5 PAROLE FOR THE LAST GUIDED TRIP THAT HE WILL HAVE. AND
6 THAT'S ALL THAT THE STATE HAS, YOUR HONOR.

7 THE COURT: THANK YOU, MR. JACKSON: MR. JACKSON,
8 WHAT WAS MR. HUTTO IN THE MARINE INSTITUTE FOR?

9 MR. JACKSON: YOUR HONOR, THE SHEET I HAVE FROM THE
10 DEPARTMENT OF JUVENILE JUSTICE SHOWS MALICIOUS INJURY IN
11 '95, A BURGLARY IN '97, A GRAND LARCENY AND A MALICIOUS
12 INJURY IN '98 AND POSSIBLY A CONTEMPT CHARGE WHICH MAY
13 HAVE BEEN A PROBATION VIOLATION, I'M NOT SURE, WHICH WOULD
14 HAVE ALSO BEEN IN '98 AND A PETTY LARCENY IN '98 THAT
15 WOULD HAVE SENT HIM TO THE MARINE INSTITUTE.

16 THE COURT: THANK YOU. LADIES AND GENTLEMEN,
17 OBVIOUSLY THERE IS STILL YET MUCH MORE TO BE HEARD, AND
18 THE LUNCH HOUR IS UPON US, AND EVEN IN MATTERS OF THIS
19 IMPORTANCE, MAYBE I SHOULD SAY ESPECIALLY IN MATTERS OF
20 THIS IMPORTANCE, WE HAVE GOT TO TEND TO THOSE NEEDS AS
21 WELL.

22 WE WILL BE IN RECESS UNTIL 2:15. THAT'S AN HOUR
23 AND FIVE MINUTES. HOPEFULLY THAT'S ENOUGH TIME TO GIVE
24 EVERYBODY A CHANCE TO GET SOMETHING TO EAT, AND LET'S
25 RESUME PLEASE AT 2:15. COURT WILL BE IN RECESS UNTIL

1 THEN. THANK YOU.

2 MR. JACKSON: THANK YOU, YOUR HONOR.

3 (WHEREUPON COURT WAS IN RECESS FOR LUNCH).

4 THE COURT: MR. DEVOE, I'LL TURN TO YOU NOW.

5 MR. EARLY: THANK YOU, YOUR HONOR, MR. SOLICITORS AND
6 THE PACK FAMILY. YOU KNOW, THIS IS A HORRIBLE, DIFFICULT
7 SITUATION, JUDGE COOPER. I HAVE KNOWN THIS BOY SINCE HE
8 WAS BROUGHT INTO OUR NEIGHBORHOOD IN OUR COMMUNITY. AND
9 TO THE PACK FAMILY, I ON BEHALF OF THE WHOLE HUTTO FAMILY,
10 THEY EXTEND THEIR CONDOLENCES AND SORROW, MR. AND MRS.
11 PACK, BROTHER, AUNTS, UNCLES, FAMILY.

12 WHAT MAKES THIS THING SO BAD IS THAT WHEN
13 STEPHEN WAS AT RIMINI AND HIS MAMA WOULD COME PICK HIM UP
14 ON THE WEEKENDS, TRACEY WOULD BRAG ON STEPHEN AND SAID
15 TRACEY WAS A GOOD -- THAT STEPHEN WAS A GOOD BOY, JUST GOT
16 OFF ON THE WRONG FOOT.

17 HE APPARENTLY ATE IN THEIR HOME. HE WOULD GO
18 HOME ON THE WEEKENDS WITH HIS MOM AND TALK ABOUT COOKIES
19 THAT MRS. PACK BAKED FOR HIM. SAID MAMA, SHE BAKES JUST
20 LIKE YOU.

21 AND THEN HERE WE ARE IN YOUR COURTROOM TODAY
22 WITH THIS GUY WHO PROVIDED SO MUCH GUIDANCE AND HELP AND
23 WHO HAS BEEN BRUTALLY MURDERED, AND WE ALL ASK WHY. I
24 KNOW THERE IS NO ANSWER. JUST THE MOST DIFFICULT
25 SITUATION.

1 I LISTENED VERY CAREFULLY PARTICULARLY TO WHAT
2 THE VICTIMS' COORDINATOR SAID ABOUT GOD HAVING MERCY ON MY
3 CLIENT AND HAWKINS, MRS. HAWKINS, THE AUNT ABOUT
4 FORGIVENESS, JUSTICE, MERCY, THE TWO PREACHERS ABOUT THE
5 MERCY OF GOD AND PARTICULARLY PREACHER SMITH WHO TALKED
6 ABOUT RESPONSIBILITY AND ACCOUNTABILITY FOR THEIR ACTS.

7 MY CLIENT IS NOT IN HERE TODAY TRYING TO DUCK
8 ANY RESPONSIBILITY OR TO DUCK ANY ACCOUNTABILITY FOR WHAT
9 HIS INVOLVEMENT WAS. I WANT THE PACK FAMILY TO KNOW
10 THAT.

11 HE'S PLED GUILTY TO ALL OF THESE CRIMES AND THE
12 AGREEMENT AS WE ALL KNOW IS THAT IT WILL BE YOUR HONOR'S
13 CHOICE OR DECISION BASED ON THE LAWS OF THE STATE AND THE
14 FACTS PRESENTED IN THIS CASE AS TO WHETHER OR NOT HE GETS
15 30 YEARS OR LIFE OR WHATEVER YOUR HONOR CHOOSES.

16 SO HE IS NOT ESCAPING ANY RESPONSIBILITY IF HE
17 GETS 30 YEARS. HE'S NOT ESCAPING ANY ACCOUNTABILITY. AND
18 I WILL GET BACK TO THAT IN A MINUTE, BUT THANK GOODNESS WE
19 DO HAVE MERCY.

20 I'M GOING TO ASK YOUR HONOR TO BE MERCIFUL TO MY
21 CLIENT IN SENTENCING HIM AT THE APPROPRIATE TIME. YOUR
22 HONOR, LET ME INTRODUCE STEPHEN AND THE HUTTO FAMILY TO
23 YOU AND TO THE PACKS AND TO THE COURT.

24 OF COURSE, STEPHEN IS SEATED RIGHT THERE IN THE
25 PRISON GARB. STEPHEN IS 19 YEARS OLD. WAS BORN [REDACTED] OF

1 1982. HIS DADDY IS RIGHT HERE IN THE SHORT SLEEVE PLAID
2 SHIRT, MAMA AND DADDY IS RIGHT HERE, HIS BABY SISTER IS
3 RIGHT HERE.

4 FIRST TWO ROWS OF THE COURTROOM ARE EXTENDED
5 FAMILIES, AUNTS, UNCLES, COUSINS, ETC. MR. HUTTO IS A
6 LIFE-LONG RESIDENT OF OUR AREA. HE GREW UP IN THE
7 ORANGEBURG AREA, BUT HE HAD A RELATIVE WHO HAD SOME LAND
8 IN BAMBERG COUNTY, GAVE HIM A LOT AS A WEDDING PRESENT,
9 AND HE AND DEBBIE WERE MARRIED.

10 HE HAS WORKED FOR YEARS AND YEARS AND YEARS ON
11 THE EDISTO ELECTRIC COOP, JUST A HARD WORKING MAN. DEBBIE
12 IS A NURSE AND SHE CONTINUES TO WORK AS OF TODAY. THEY
13 HAVE BOTH WORKED ALL OF THEIR LIVES.

14 WHEN THEY GOT MARRIED IN 1973, THEY WANTED TO
15 HAVE CHILDREN BUT WERE UNABLE TO. AND YEARS WENT BY,
16 ALMOST NINE YEARS AND REALIZING THAT THEY WEREN'T GOING TO
17 BE ABLE TO HAVE CHILDREN, DEBBIE HAD SORT OF PUT OUT
18 FEELERS AND SHE HAD A FRIEND AT THE HOSPITAL WHO LIKEWISE
19 COULDN'T HAVE CHILDREN AND SHE HAD GONE THROUGH THE
20 ADOPTION PROCESS AND HAD ADOPTED THREE CHILDREN.

21 A PHONECALL CAME INTO FRIENDS, SAID WE GOT THIS
22 LITTLE BOY THAT NEEDS HELP. THE LADY SAID I GOT THREE, I
23 CAN'T TAKE ON ANY MORE. AND THE FIRST PERSON, FAMILY THAT
24 SHE THOUGHT ABOUT WAS DEBBIE AND SAMMY.

25 WHO WAS MAKING THE CALL WAS A GREAT AUNT OF A 15

1 YEAR OLD GIRL WHO WAS A DRUG ADDICT AND HAD COME AND HAD
2 LEFT STEPHEN ON THE AUNT'S DOORSTEP, SO TO SPEAK. SO
3 DEBBIE AND SAMMY GO OVER TO ORANGEBURG TO VISIT WITH THE
4 AUNT.

5 AND THERE THEY MEET STEPHEN FOR THE FIRST TIME.
6 HE IS SEVEN WEEKS OLD, BEEN ABANDONED BY HIS DRUG ADDICT
7 MOTHER. DEBBIE DESCRIBED THAT HE HAD BITE MARKS ABOUT HIS
8 BREAST, STOMACH, CIGARETTE MARKS, BURNS ON HIS LEGS. HE
9 WAS SEVEN WEEKS OLD AND HIS UMBILICAL CORD WAS STILL
10 ATTACHED TO HIM, JUST TOTALLY HAD BEEN NEGLECTED.

11 WELL, THAT WAS IN 1982. LAWS WERE A LITTLE BIT
12 DIFFERENT ABOUT ADOPTION THEN. INSTEAD OF HAVING TO GO
13 THROUGH ALL THE PROCESS, WITHOUT HESITATION THEY PICKED
14 HIM UP FROM THAT GREAT AUNT AND TOOK HIM BACK TO THEIR
15 HOME IN BAMBERG AND THEN WENT THROUGH THE ADOPTION
16 PROCEEDING.

17 IN FACT, IT'S IRONIC. IT'S ALMOST THIS TIME OF
18 YEAR THAT THEY WERE BEFORE THE FAMILY COURT JUDGE IN OUR
19 AREA SEEKING APPROVAL OF THE ADOPTION AND ASKING THE COURT
20 TO ALLOW THEM TO TAKE STEPHEN INTO THEIR HOME AND MAKE HIM
21 THEIR SON AND TO RAISE HIM.

22 AS WITH MOST PEOPLE WHO ARE TRYING TO ADOPT, TWO
23 YEARS LATER SHE GOT PREGNANT AND THEY HAD MARY CATHERINE
24 WHO IS THE APPLE OF THEIR EYE ALSO. STEPHEN AND CATHERINE
25 GREW UP THERE IN THE HOUSE.

1 JUDGE, THEY LIVE ON THE RURAL SIDE OF BAMBERG,
2 LIVE OUT ON HIGHWAY 78 ALMOST TO THE EDISTO RIVER. THEY
3 ARE GOOD, HARD WORKING PEOPLE. AUNT CAROLYN AND UNCLE TOM
4 LIVED NEXT DOOR. THE TWO BIG OLD BOYS IN THE BACK, GEORGE
5 AND JACK.

6 AND THEN THEY -- THEY GREW UP TOGETHER, GREW UP
7 IN THE PUBLIC SCHOOLS TOGETHER. I HAVE KNOWN THEM. I
8 HAVE -- GEORGE AND JACK PLAYED BALL WITH MY BOYS. THEY
9 PLAYED ON A HIGH SCHOOL FOOTBALL TEAMS. PLAYED FOR THE
10 STATE CHAMPIONSHIP ONE YEAR. WE GOT BEAT BY PAGELAND, BUT
11 SAMMY WAS ALWAYS AROUND. STEPHEN WAS WITH SAMMY AND WITH
12 DEBBIE.

13 I KNOW MANNING UP HERE YA'LL TAKE PRIDE IN YOUR
14 STRIPER FISHING, AND BAMBERG WE TAKE PRIDE IN ALL OF OUR
15 HUNTING ACTIVITIES. SAMMY HAD THIS YOUNG BOY IN THE WOODS
16 ALL THE TIME. I HAVE BEEN COON HUNTING WITH HIM OUT AT
17 NIGHTS WITH HIM IN THE WOODS WHEN THEY WERE GROWING UP
18 WITH MY BOYS.

19 HE WAS RAISED RIGHT. HE COMES FROM A GOOD
20 FAMILY. AND THAT'S WHAT MAKES IT EVEN MORE DIFFICULT
21 HAVING TO STAND BEFORE YOUR HONOR AND THE PACKS BECAUSE HE
22 WASN'T RAISED LIKE THIS.

23 HE STARTED THE SCHOOL IN THE BAMBERG PUBLIC
24 SCHOOL SYSTEM. KINDERGARTEN, FIRST GRADE, RIGHT ON
25 THROUGH. AT AN EARLY AGE HIS MOM REALIZED THAT HE WAS

1 HAVING SOME EMOTIONAL PROBLEMS.

2 AND I THINK AS EARLY AS THE SECOND GRADE, YOUR
3 HONOR, A UNDERWENT A CONFIDENTIAL PSYCHIATRIC EVALUATION,
4 THROUGH A WHOLE BATTERY OF TESTS, BUT THE -- BUT THE END
5 RESULT WAS THAT HE HAD A I.Q. IN THE AVERAGE RANGE, SCORE
6 OF 109 AT THAT PARTICULAR TIME, BUT BECAUSE OF HIS
7 BEHAVIORAL PROBLEMS, HE HAD A LOT OF HYPERACTIVITY,
8 DISTRACTIBILITY, AND ONE THAT REALLY JUMPED OUT AT ME WAS
9 THE IMPULSIVITY.

10 IN OTHER WORDS, HE DID THINGS ON AN IMPULSE.
11 AND HE WAS PUT INTO A SPECIAL EDUCATION CLASS AND WAS
12 DEEMED EMOTIONALLY HANDICAPPED, BUT CONTINUED ON WITH
13 SCHOOL AND DID WELL AND THROUGH HIS GRAMMAR SCHOOL AND
14 ALL.

15 IN FACT, HERE IS A LETTER THAT 1996, WHICH
16 WASN'T TOO FAR FROM WHERE WE ARE, LETTER TO HIS DAD FROM
17 THE BAMBERG MIDDLE SCHOOL GOES TO SAY YOUR SON STEPHEN WAS
18 CHOSEN AS STUDENT OF THE WEEK AT BAMBERG AERHART MIDDLE
19 SCHOOL, WEEK OF MAY 13TH, 1996, NOMINATED BY SOCIAL
20 STUDIES TEACHER MR. WAYNE GOODMAN, AND THEN THEY TALK
21 ABOUT THE CRITERIA FOR BEING STUDENT OF THE WEEK.

22 STUDENT HAD TO PAY ATTENTION AND BE A GOOD
23 PARTICIPANT IN CLASS. THIS MEANS HE SHOULD ASK QUESTIONS
24 AND SHOW THAT HE'S INTERESTED, ON AND ON. IT WAS A THREE
25 PAGE LETTER TALKING ABOUT STEPHEN, TALKING ABOUT HIS

1 TEACHERS SAYING MANY PLEASING THINGS ABOUT STEPHEN, THAT
2 STEVEN MET ALL THE CRITERIA TO BE STUDENT OF THE WEEK.

3 HE WORKED HARD THIS YEAR TO GET HIS GRADES
4 GOOD. BUT HE EARNED IT. HE PARTICIPATES IN CLASS AND
5 ANSWERS THE QUESTIONS. STEPHEN IS HELPFUL AND SHARES WITH
6 OTHER STUDENTS.

7 SO WE'VE GOT A KID WHO HAS GOT SOME EMOTIONAL
8 HANDICAPS, BUT WITH THE LOVE OF HIS PARENTS, THE SUPPORT
9 OF THE SCHOOL SYSTEM, HE'S DOING FAIRLY WELL. WHEN HE'S
10 TEN YEARS OLD IN THE FIFTH GRADE, ANOTHER PSYCHOLOGICAL
11 EVALUATION WAS DONE.

12 AND AT THAT TIME HE HAD BEEN DIAGNOSED BY HIS
13 PHYSICIANS AS HAVING ATTENTION DEFICIT DISORDER, A.D.D.
14 HE WAS BEING MEDICATED WITH EITHER RIDALIN OR SOME OF THE
15 OTHER DERIVATIVES, PERHAPS DEXTRINE OR WHATEVER THEY USE
16 TO CONTROL THE A.D.D., AND HE WAS DOING FAIRLY WELL.

17 I DON'T MEAN THIS TO SOUND AS ANY SPRINGBOARD TO
18 HIS PROBLEMS, BUT SAMMY AND DEBBIE HAD MARITAL PROBLEMS.
19 THEY SEPARATED, THEY ULTIMATELY DIVORCED. SHE WENT TO ST.
20 GEORGE TO LIVE WHERE SHE CURRENTLY LIVES. STEPHEN AND THE
21 DAUGHTER WENT DOWN TO ST. GEORGE AND STAYED.

22 STEPHEN WANTED TO BE BACK WITH HIS DADDY. I
23 THINK HE LIKED THE RURAL SETTING OF BAMBERG AND THE
24 HUNTING AND THE FISHING AND ALL THE GOOD THINGS THAT GO
25 WITH THE SAME SORT OF THING THAT PACK FAMILY DOES, THE

1 FISHING THERE, SO HE CAME BACK TO BAMBERG AND LIVED WITH
2 HIS DAD.

3 AND THEN HE WAS IN ABOUT THE 8TH GRADE THAT
4 STEPHEN STARTED GETTING INTO TROUBLE, NOTHING MAJOR. YOU
5 ASKED EARLIER WHAT WAS HE DOING AT THE MARINE INSTITUTE.

6 FROM MY REVIEW OF THE RECORDS IT LOOKS LIKE THAT
7 HIS FIRST LITTLE RUN-IN WITH THE LAW HE BURNED SOMEBODY'S
8 COTTON BALE. THAT WAS THE MALICIOUS INJURY TO PROPERTY.
9 THINK HE GOT PROBATION FOR THAT. AND THEN I THINK THE
10 CATALYST TO A LOT OF THIS SITUATION TO HIS PROBLEMS IS HE
11 STARTED USING MARIJUANA.

12 AND I HAD TWO BOYS IN THAT SAME JUNIOR HIGH AND
13 THAT SAME GRAMMAR SCHOOL THAT I ASKED HIM STEPHEN, WHERE
14 IN THE WORLD ARE YOU GETTING THIS STUFF? HE SAID MR.
15 JACK, IT AIN'T HARD, YOU JUST WALK OUTSIDE THE SCHOOL AND
16 IT'S THERE. YOU WANT IT, YOU CAN GET IT.

17 APPARENTLY HIS MOTHER BEING GONE, USING THE
18 MARIJUANA, IT GOT TO BE MORE AND MORE PROBLEMS, MORE
19 PROBLEMATIC. HE TOOK A NEIGHBOR'S -- RIGHT THERE IN TOWN,
20 TOOK SOMEBODY'S CAR ONE DAY AND WENT FOR A JOYRIDE.

21 THAT WAS THE GRAND LARCENY OF THE VEHICLE MR.
22 JACKSON WAS TELLING YOU ABOUT. IT WAS SIMPLY A JOYRIDE.
23 HE GOT SOME PROBATION FOR THAT AND PERHAPS EVEN WAS SENT
24 TO R.N.E. AND WAS SENT BACK HOME.

25 HE WAS ON PROBATION. AND TERMS OF HIS PROBATION

1 WERE THAT HE OBVIOUSLY WAS SUPPOSED TO DO WELL IN SCHOOL.
2 AND HERE'S HOW WE GET TO THE MARINE INSTITUTE. AT THE
3 SCHOOL HE IS IN WELDING CLASS AND A COUPLE OF THEM PUT
4 SOMETHING IN THE WELDING MACHINE OR SOMETHING THAT CAUSED
5 A POOF AND HE WAS EXPELLED FROM SCHOOL.

6 HE HAD HAD SOME PROBLEMS AT SCHOOL BEFORE, NOT
7 GOING -- BUT THIS WAS SORT OF A, YOU KNOW, YOU HAD YOUR
8 CHANCE AND YOU MESSED UP IN WELDING CLASS, WE ARE GOING TO
9 EXPEL YOU.

10 WELL, HE WAS EXPELLED, AND AS A RESULT OF
11 EXPULSION THAT VIOLATED HIS PROBATION. LET ME REGRESS, BE
12 COMPLETELY CANDID WITH THE COURT. THERE WAS ANOTHER
13 INCIDENT, THERE WAS A BURGLARY THEY TALKED ABOUT. STEPHEN
14 HAD A FRIEND JEFFCOAT -- IS THAT THE NAME -- WHO LIVED
15 RIGHT ACROSS FROM HIGH SCHOOL BASEBALL COACH'S HOUSE.

16 AND THEY WERE OVER THERE. HE WAS GOING TO VISIT
17 HIS BUDDY AND THE LITTLE BOY WASN'T HOME AND STEPHEN WENT
18 INTO THE HOUSE AND TOOK ONE DOLLAR. AND AS A RESULT OF
19 THAT, THAT WAS THE BURGLARY CHARGE AND THAT'S WHEN HE WENT
20 OFF TO R.N.E., CAME BACK AND THAT'S WHEN HE GOT EXPELLED
21 FROM SCHOOL AND HAD TO GO BACK.

22 HE WAS EXPELLED FROM SCHOOL. THEY GOT HIM IN ON
23 VIOLATION OF PROBATION AND HE WAS SENTENCED TO THE
24 NORTHEAST CENTER FOR AN INDETERMINATE PERIOD OF TIME I
25 THINK NOT TO EXCEED -- HOWEVER THEY DO AS A JUVENILE, IF

1 YOU UNDERSTAND THAT.

2 HE WENT UP THERE AND DID FAIRLY WELL AND MADE
3 HIS PAROLE. AND I THINK AS A CONDITION OF PAROLE THE
4 MARINE INSTITUTE WAS SORT OF AN INTERMEDIATE STEP THAT YOU
5 HAD TO GO TO TO FIND JOB PLACEMENT, ETC.

6 AND STEPHEN HAD BEEN AT THE MARINE INSTITUTE AND
7 THAT'S WHEN HE BECAME INVOLVED WITH THE PACK FAMILY VERY
8 FAVORABLY. I THINK THEY WERE -- PARTICULARLY TRACEY WAS A
9 WONDERFUL INFLUENCE ON HIS LIFE.

10 THAT'S WHAT MAKES THIS THING SO HORRIBLE. WHILE
11 AT RIMINI AT THE MARINE INSTITUTE ON APRIL 24 OF '99 WHICH
12 WAS WHAT, FOUR MONTHS BEFORE ALL OF THIS, HE GOT HIS HIGH
13 SCHOOL EQUIVALENCY DIPLOMA, THE GED. HE CONSTANTLY GOT
14 LETTERS SENT HOME FROM RIMINI.

15 I HAVE A NUMBER OF THEM HERE. I WILL READ SOME
16 HIGHLIGHTS. TALKING ABOUT THE -- INFORM YOU OF HIS
17 BEHAVIOR AND ATTITUDE, REPORT COMES ON A MONTHLY BASIS.
18 STEPHEN HAS BECOME A MEMBER OF THE H.I.T. SQUAD, WHICH
19 STANDS FOR HELPING IMPRESSIONABLE TEEN-AGERS AND HAS
20 VISITED SEVERAL SCHOOLS AND SPOKEN TO OTHER TEEN-AGERS
21 ABOUT MAKING POSITIVE DECISIONS.

22 I ENJOYED THE OPPORTUNITY TO WORK WITH STEPHEN,
23 LOOK FORWARD TO THE SUPPORT THAT HE WILL NEED FROM HIS
24 FAMILY AS WELL. ANOTHER LETTER SHORTLY BEFORE THIS
25 HAPPENED -- THIS WAS IN JULY, THE LAST OF JULY, WHICH

1 AGAIN MAKES IT SO CRAZY.

2 STEPHEN HAS REALLY MADE PROGRESS SINCE ENTERING
3 THE PROGRAM. HE HAS ACCEPTED RESPONSIBILITY FOR HIS
4 ACTIONS WITH A PLEASANT ATTITUDE DURING ANY OF HIS
5 COUNSELING SECTIONS.

6 HE HAS ALSO BECOME MORE HELPFUL IN HELPING HIS
7 PEERS WHO HAVE PROBLEMS WITH THEIR ACADEMICS. STEPHEN HAS
8 GOTTEN HIS JOB IN SCHOOL PLACEMENT AND NOW HAS TO EARN HIS
9 FINAL RANK TO GRADUATE FROM THE PROGRAM IN AUGUST.

10 NOW, THAT'S BEEN JULY 28, 1999, APPROACHING THE
11 TRAGIC DATE THAT WE ARE HERE IN COURT ABOUT. IT GETS EVEN
12 MORE TRAGIC. BECAUSE THIS TRAGEDY HAPPENED ON A THURSDAY,
13 IF I'M CORRECT -- I THINK THAT'S CORRECT.

14 HE HAD LEARNED HIS FINAL FURLOUGH THE WEEK --
15 THE WEEK BEFORE THAT WEEKEND. AND HIS MOM HAD PICKED HIM
16 UP AND HAD BROUGHT HIM HOME TO VISIT. I THINK THE
17 FURLOUGHS WERE FOR A WHOLE WEEKEND TILL SUNDAY AFTERNOON.

18 THEY WERE EXCITED BECAUSE HE WAS COMING HOME IN
19 FIVE OR SIX DAYS, THAT WAS THE END OF IT. AND THEY TALKED
20 ABOUT MAKING PLANS FOR HIS FUTURE. HIS MOTHER WANTED TO
21 GO WITH THE WELDING. HOPEFULLY WASN'T GOING TO PUT ANY
22 MORE STUFF IN THE PIPE TO MAKE A MESS.

23 BUT SHE HAD MADE ARRANGEMENTS OVER AT ORANGEBURG
24 TECH, HAD LOOKED INTO SOME THINGS. AND THE WORDS WERE I
25 WAS READY TO HOCK ANYTHING I COULD TO GET STEPHEN INTO A

1 WELDING PROGRAM SO HE WOULD HAVE SOMETHING TO DO WHEN HE
2 GOT HOME AND BE ABLE TO BE MEANINGFUL OUT OF HIS LIFE, BE
3 MEANINGFUL WITH HIS LIFE.

4 WELL JUDGE, WE KNOW HE DIDN'T GET HOME. WE KNOW
5 A FEW DAYS BEFORE HE WAS TO BE RELEASED HE WAS INVOLVED IN
6 THIS HORRIBLE TRAGEDY THAT THE PACK FAMILY HAS HAD TO
7 ENDURE. IT WAS AT RIMINI THAT HE MET JON SMART.

8 AND I THINK I'M REPRESENTING THE CORRECT
9 REPRESENTATION TO THE COURT. I THINK MR. SMART'S ONLY
10 SECOND TIME WORKING IN THE CHICKEN HOUSES. I MAY BE WRONG
11 ABOUT THAT, BUT THAT'S BEEN TOLD TO ME, AND I STAND
12 CORRECTED IF I AM, BUT DEBBIE HIS MOTHER HAD -- AND SAMMY
13 THE FATHER, THEY NEVER MISSED A WEEKEND.

14 THEY WOULD ALTERNATE EVERY OTHER WEEKEND GOING
15 UP, AND IT WASN'T -- IT WAS ONE WEEKEND WHEN SMART WAS
16 FIRST ON THE CAMPUS AT RIMINI THAT THEY WERE ALL SITTING
17 IN THE LITTLE WAITING AREA, A GROUP BEING -- MARY
18 CATHERINE'S ROOM, AND SMART MADE RATHER SUGGESTIVE REMARKS
19 ABOUT WHAT HE WOULD LIKE TO DO SEXUALLY TO MARY
20 CATHERINE.

21 THIS UPSET DEBBIE TREMENDOUSLY AND SHE WENT TO
22 THE PEOPLE THERE AT THE RIMINI WHO SHE GOT ALONG WELL WITH
23 AND BASICALLY ASKED THEM TO KEEP STEPHEN AWAY FROM MR.
24 SMART.

25 JUDGE, I'M ASKING YOU ON BEHALF OF THIS BOY AND

1 THIS FAMILY IN YOUR SENTENCING NOT TO FEED HIM OUT OF THE
2 SAME SPOON THAT MR. SMART HAS CHOSEN TO BE FED OUT OF.
3 MR. SMART HAS PLED GUILTY IN THIS COURTROOM TO A
4 NEGOTIATED PLEA WHERE HE WILL GET LIFE IN PRISON TO ESCAPE
5 AS THE BROTHER SAID WHAT HE THOUGHT WOULD HAVE OBVIOUSLY
6 BEEN A DEATH PENALTY, HIGH PROBABILITY OF A DEATH PENALTY
7 CONCERNING THE HORRENDOUSNESS OF WHAT HAPPENED.

8 WHY SHOULD WE TREAT STEPHEN DIFFERENT? WHY?
9 WHY? I HAVE ASKED MYSELF THAT A HUNDRED TIMES IN TRYING
10 TO PREPARE WHAT I WAS GOING TO TALK TO YOUR HONOR ABOUT.
11 LET'S TALK ABOUT WHAT WE DO KNOW. AND I WOULD AGREE WITH
12 ALL THREE SOLICITORS WHAT WE DO KNOW, AND IT'S
13 UNCONTRADICTED THAT SMART KILLED TRACEY PACK.

14 I THINK THE EVIDENCE IS CLEARLY UNCONTRADICTED
15 THAT HE TOOK THIS MASSIVE STEEL PIPE -- AND YOU SAW THE
16 PICTURES -- I DON'T NEED TO GO INTO THAT -- AND JUST
17 STRUCK HIM REPEATEDLY AND KILLED HIM.

18 IT WAS SMART WITHOUT QUESTION WHO WENT INTO THE
19 FAMILY DOLLAR IN BAMBERG AND STUCK THAT SHOTGUN INTO THE
20 FACE OF TWO OF THE STORE WORKERS AND THREATENED THEIR
21 LIVES AND COMMITTED ARMED ROBBERY.

22 IT WAS SMART WHO WHEN THE POLICE OFFICERS BEGAN
23 PURSUING THEM, THAT HE FIRED AT LEAST FIVE ROUNDS I THINK
24 FROM THE PASSENGER'S SIDE HANGING OUT OF THE WINDOW AT THE
25 POLICE OFFICERS.

1 IT WAS SMART WHO FLED AND HID OUT IN THE WOODS
2 OVERNIGHT UNTIL HE WAS FOUND. THOSE ARE THE REASONS I
3 THINK THAT THE SENTENCES SHOULD BE DIFFERENT. THE
4 SOLICITOR AND THE PACK FAMILY AND OTHERS ARGUE DIFFERENT
5 WITH ME.

6 THEY SAY IT WAS A PLANNED, PREMEDITATED MURDER.
7 WHERE DO WE GET THE EVIDENCE ABOUT PLANNING AND
8 PREMEDITATION? THAT EVIDENCE IS CONTRADICTED. SMART GETS
9 ON THE STAND TODAY AND IMPLICATE STEPHEN, BUT HE IS A
10 CONFESSED LIAR AS HE SAID ON THE STAND JUST TELLING YOU
11 THE STORY, WENT AND TOLD A LIE.

12 HE TALKS ABOUT A BOX CUTTER. THAT WOULD SHOW
13 SOME TYPE OF PLAN. AND THE STORY ON THE BOX CUTTER WAS
14 THAT THEY WERE AT A STOP SIGN AND THAT STEPHEN HAD A BOX
15 CUTTER AND WAS GOING TO CUT TRACEY'S THROAT. WHERE IS ANY
16 OF THAT CORROBORATED?

17 WHERE IS THE BOX CUTTER? IF IT WAS RIGHT THERE
18 AT A STOP SIGN WITH MRS. PACK BESIDE THEM, SURELY THERE
19 WOULD BE SOME CORROBORATING PHYSICAL EVIDENCE OTHER THAN
20 THIS STORY BY A CO-DEFENDANT THAT THERE WAS A BOX CUTTER
21 TWO DAYS EARLIER.

22 AND THEN OF COURSE SMART SAYS IT WAS STEPHEN'S
23 IDEA, DO IT. BUT IT'S ALSO SMART WHO WITH THE FAMILY
24 SITTING THERE TODAY AND TALKING TO YOUR HONOR AFTER HE HIT
25 THE MAN THE FOURTH TIME, SORT OF NONCHALANTLY SAYS WELL, I

1 GOT IT QUOTED, THAT WAS THAT.

2 IT DEFIES LOGIC FOR THIS TO BE A PREMEDITATED
3 EVENT ON BEHALF OF STEPHEN. I MEAN, HE IS GETTING OUT IN
4 THREE OR FOUR DAYS. WHEN IT HAPPENS, AND I'LL TALK ABOUT
5 TRYING TO COME UP WITH TRYING TO HAVE SOME REASON WHY HE
6 WENT WITH SMART -- BUT ANY WAY, WHEN THEY LEFT, THEY GO TO
7 THE FIRST PLACE ANYBODY WOULD LOOK AT WOULD BE YOUR OWN
8 HOME.

9 THAT MAKES ABSOLUTELY NO SENSE. AND WHAT HAS
10 NOT COME OUT BUT WHAT STEPHEN WOULD SAY IS THAT WHEN THEY
11 LEFT BAMBERG, HECK, THEY CAME BACK UP 95 RIGHT THROUGH
12 HERE, RIGHT WHERE THE EVENT HAD OCCURRED AND WENT TO UP
13 NEAR SOUTH OF THE BORDER.

14 STEPHEN TELLS ME, AND I HAVE NO REASON TO
15 DISBELIEVE THIS, THAT THEY GOT TURNED AROUND AT SOUTH OF
16 THE BORDER BECAUSE HE WAS GOING TO HEAD UP NORTH, BUT GOT
17 TURNED AROUND AND ENDED UP GOING BACK TOWARDS MYRTLE
18 BEACH.

19 BUT THE POINT I'M MAKING IS THAT THIS WAS A
20 PREMEDITATED, CONCEIVED PLAN WITH MAPS AND THINKING IT
21 OUT. THEY WOULDN'T COME RIGHT BACK WHERE THEY HAD
22 COMMITTED THIS HORRENDOUS MURDER AND THEY WOULDN'T HAVE
23 GONE TO HIS OWN HOUSE, WHERE THAT'S THE FIRST PLACE PEOPLE
24 LOOK WHEN SOMEONE ESCAPES FROM JAIL IS THEIR FAMILY.

25 SO I THINK THAT THE -- THAT THE FACT THAT THE

1 EVIDENCE THAT IT WAS PREMEDITATED COMING FROM SMART IS
2 JUST TOTALLY OUT OF LINE WITH THE FACTS AS THEY EXISTED.

3 JUDGE, I THINK IF YOU READ, AND I THINK YOU HAVE
4 GOT IT UP THERE, THE LETTER FROM SMART TO MY CLIENT, SMART
5 SAYS THAT HE KEPT HUFFING, THAT'S THE GAS, THEN I TURNED
6 AROUND AND SAW SOMEONE TALL WITH A BLACK FACE COMING AT
7 ME.

8 AND I WAS SO SCARED THAT I JUST PICKED UP THE
9 PIPE AND SWUNG. AND I WAS SO SCARED THAT I JUST KEPT
10 HITTING HIM. NOWHERE IN THAT LETTER DOES HE MENTION ANY
11 PLANS OR ANY PREMEDITATION OR ANY BOX CUTTERS OR
12 ANYTHING.

13 IT SOUNDS LIKE TO ME THAT SMART GOT SO MESSED UP
14 ON THIS GAS THAT HE STARTED HALLUCINATING THINKING THERE
15 WAS A TALL BLACK FACE COMING AT HIM AND HE WAS SCARED AND
16 HE PICKED IT UP AND STARTED SWINGING.

17 I THINK THE LETTER THAT HE WROTE TO STEPHEN SAYS
18 IT IN A NUT SHELL. I THINK GOD KNOWS WHAT REASON YOU
19 WOULD WANT TO SNIFF GAS, BUT HE DID IT AND CAUSED HIM TO
20 DO THIS HORRIBLE ACT.

21 AND IN THAT STEPHEN'S STATEMENTS AND THEN ON THE
22 FILM HE WAS DOWN THE CHICKEN HOUSE AWAY FROM ALL OF THIS
23 TURNING ON SOME FOGGERS WHILE TRACEY WAS WORKING ON THE
24 APPARATUS UP TOP.

25 THERE IS NO EVIDENCE WHATSOEVER TO SUGGEST THAT

1 STEPHEN WAS INVOLVED IN THAT. SO TO LOOK AT THE
2 PREMEDITATION PART OF IT, YOU HAVE GOT TO PRETTY MUCH
3 BELIEVE WHAT SMART SAYS AND DISREGARD WHAT HE SAID IN HIS
4 LETTER, DISREGARD WHAT STEPHEN HAS SAID AND DISREGARD THE
5 BASIC FORENSIC SITUATION.

6 A COUPLE OF ISSUES. THE MAP. INTERESTING. AND
7 IT GIVES ALL OF US SOME QUESTIONS WELL, WHY DID THIS MAP
8 WITH CIRCLES ON IT? IT IS OUR -- IT WOULD BE OUR
9 POSITION, AND STEPHEN TELLS ME THIS -- THAT THE MAP HAD --
10 IF YOU LOOK AT IT CAREFULLY, IT'S GOT SOME PIN HOLES IN
11 THE CORNERS WHERE IT WAS ON A BULLETIN BOARD.

12 STEPHEN SAYS THAT THE KIDS WOULD FANTASIZE ABOUT
13 WHEN THEY GET OUT WHERE THEY ARE GOING OR WHERE THEY LIVE.
14 IN FACT, ONE OF THEM CIRCLED MY HOUSE AND IT CERTAINLY
15 WOULD HAVE TO BE A STRETCH OF IMAGINATION OR A LOT OF
16 CIRCUMSTANTIAL EVIDENCE TO SAY THAT MAP REPRESENTED A
17 PREMEDITATED PLAN.

18 AND I THINK THAT CERTAINLY DOES NOT RISE TO
19 PROOF BEYOND A REASONABLE DOUBT, THAT ONE PIECE OF
20 EVIDENCE IN AND OF ITSELF. THERE WAS SOME PHOTOGRAPHS
21 SHOWN TO YOUR HONOR OF THE SHEETS THAT WERE ON STEPHEN'S
22 BED AMONG WHICH THEY POINTED OUT ONE SAYING ABOUT GOING
23 OUT WITH A BANG, BUT THERE WERE A HOST OF OTHER SAYINGS ON
24 THAT SHEET, AND THEY ALL CONTAINED LYRICS FROM RAP SONGS
25 IS WHAT THAT IS.

1 AND I'M NOT GOING TO -- NOT A BIG BELIEVER IN
2 RAP MUSIC, BUT A LOT OF THE YOUNG KIDS ARE. AND STEPHEN
3 GAVE US A C.D. OF SOME OF THE RAP MUSIC HE LISTENS TO. IN
4 FACT SHOWS US A BOOK WRITTEN BY TUPAK SHAKUR OR SOMETHING
5 HAD A LOT OF THE LYRICS ABOUT WHERE THEY CAME FROM THAT
6 WAS ON THE BED.

7 HAD NOTHING TO DO WITH A PLAN TO CARRY OUT AND
8 KILL HIS FRIEND. AND THEN, YOUR HONOR, YOU -- I'M
9 TROUBLED WITH AND I'M SURE YOUR HONOR IS ALSO, TRYING TO
10 ASSESS THIS SITUATION WOULD BE THE JAILHOUSE STATEMENT.

11 THAT CERTAINLY WITHOUT BEING -- MAY HAVE BEEN
12 SUBJECT TO CROSS-EXAMINATION, LEADS ME TO BELIEVE THAT
13 THERE'S SOME CREDIBILITY ISSUES.. THE PUBLIC DEFENDER HERE
14 MR. DEVOE TELLS ME THAT THIS MAN IN THAT WAS IN JAIL, MR.
15 ROBINSON, WAS IN JAIL FOR AN ESCAPE CHARGE AS A RESULT OF
16 A DOMESTIC CASE. I THINK THAT'S CORRECT.

17 AND THE STATEMENT THAT HE GAVE TO THE POLICE WAS
18 ON JULY 10 OF 2000. STRESS WILLINGLY ENOUGH THE SAME DATE
19 THAT HE WAS INDICTED WAS JULY THE 10TH. HE WAS A FRIEND
20 OF THE DECEASED.

21 AND YOU KNOW THAT THERE'S JUST A LOT OF
22 REASONING THAT YOU COULD ARGUE AS TO IS THAT STATEMENT
23 SUFFICIENT ENOUGH TO SHOW PREMEDITATION OR DOES IT RISE TO
24 THE LEVEL OF EVIDENCE THAT WE NEED TO CONCLUSIVELY ASSUME
25 THAT.

1 I SUBMIT THAT IT IS NOT. I SUBMIT THAT IT'S
2 NOT.. THE SOLICITOR HAD US LOOK AT OR HAD YOUR HONOR LOOK
3 AT THE TAPE OF A CHICKEN HOUSE WHICH OCCURRED -- THE
4 TAPING WAS JUST WITHIN THE WEEK AFTER THE TRAGEDY. I
5 THINK IT WAS TWO DAYS AFTER.

6 I WAS STANDING OVER YOUR HONOR'S SHOULDER
7 WATCHING IT. AND FOR THIS TO HAVE BEEN PREMEDITATED
8 BURDEN ON BEHALF OF MR. HUTTO -- IS HARD FOR ME TO
9 RECONCILE THE PREMEDITATED MURDER WITH THE WAY HE APPEARED
10 ON THAT TAPE. HE WAS POLITE TO THE OFFICERS.

11 I RECALL HIM SAYING YES, SIR TO RESPONSES,
12 ALWAYS USING SIR, NO, SIR, YES, SIR, YES, SIR. HE -- I
13 MEAN, HE JUST TOLD THEM LIKE IT -- IT HAPPENED, I THINK,
14 WHICH WAS EXACTLY THE WAY SMART SAYS IN HIS LETTER, THAT
15 STEPHEN WAS DOWN WORKING ON THE SWITCHES OR CUTTING ON THE
16 FOGGER WHICH WAS DOWN THE CHICKEN HOUSE, DOWN FROM THE
17 WHERE MR. PACK WAS UP ON THE LADDER.

18 IT'S CONSISTENT WITH WHAT HAPPENED TWO OR THREE
19 DAYS -- I MEAN STORY TWO OR THREE DAYS AFTERWARDS IS
20 CONSISTENT WITH SMART'S LETTER, WAS PRETTY MUCH CONSISTENT
21 WITH THE WAY WE WOULD APPROACH THIS SENTENCE.

22 SO IF THAT IS CORRECT, I THINK THAT IS WHY HE
23 SHOULD BE GIVEN A DIFFERENT SENTENCE THAN THE MURDERER,
24 THE UNQUESTIONABLE MURDERER. I SORT OF LOOKED AT THE TAPE
25 AND MY NOTES WERE I FELT THAT HE WAS COOPERATIVE, HE WAS

1 ASSISTING THE LAW ENFORCEMENT OFFICERS.

2 IT WAS SMART WHO WANTED HIM TO -- TOLD ABOUT
3 CLEANING UP OFF THE WALLS. SMART WAS THE MAN COVERED UP
4 THE BODY AND SO FORTH AND SO ON. I THINK IF YOU LOOK AT
5 HIS CREDIBILITY ON THAT FILM, IT GOES A LONG WAY IN
6 CORROBORATING THE WAY THIS THING MORE THAN LIKELY
7 HAPPENED.

8 NONE OF US WILL EVER KNOW WHAT HAPPENED, BUT I
9 THINK THAT IS SOUND GROUND IN EVIDENCE TO ALLOW THIS BOY
10 TO BE GIVEN A SENTENCE OTHER THAN LIFE IN JAIL. THE
11 SOLICITOR COVERED THE ISSUES OF MOTIVE AND LACK OF
12 REMORSE.

13 IT'S JUST INCONCEIVABLE FOR ME TO THINK THAT
14 THEY JUST WANTED THAT -- FOR STEPHEN TO -- THE ONLY REASON
15 THEY DID IT IS TO SEE HOW IT FEELS TO KILL SOMEBODY. THAT
16 -- IT DEFIES HUMAN NATURE. IT'S THREE DAYS AWAY, FOUR
17 DAYS AWAY FROM RELEASE.

18 THIS GUY IS TAKING THEM IN. I MEAN, THIS GUY
19 HAS AND THE FAMILY HAS BEEN GOOD TO HIM. AND IT DOESN'T
20 MAKE ANY HUMAN SENSE WHATSOEVER THAT HE WOULD HAVE PLANNED
21 THIS.

22 I THINK BACK TO THE THEORY OF GETTING GASSED UP
23 AND HALLUCINATING AND GOING NUTS IS MORE ACCEPTABLE THAN
24 SOME SCHEME AND THEN PARTICULARLY WHAT THEY DID
25 AFTERWARDS.

1 JUDGE, ANOTHER THING THAT -- THE REASONS TO FEED
2 THEM OUT OF A DIFFERENT SPOON, I MADE MY NOTES WITH SMART
3 TALKING AFTER HE SAID WELL, THAT WAS THAT, HE TALKED ABOUT
4 HE WAS THE ONE WHO WASHED THE BLOOD OFF, I GOT TO MAKE IT
5 RIGHT, WASH IT OFF.

6 WELL, SMART WAS THE ONE WHO CLEANED OUT THE
7 TRUCK TRYING TO GET RID OF ANY EVIDENCE, AND HE BLAMED
8 STEPHEN FOR SENDING HIM INTO A STORE AND BLAMED STEPHEN
9 FOR SUGGESTING THAT THEY SHOOT AT THE POLICE OFFICERS IN
10 MYRTLE BEACH, YET THEN HE SAYS HE JUMPS OUT AND FLEES AND
11 GOES INTO THE WOODS AND IMMEDIATELY PASSES OUT?

12 YOU DON'T THINK THOSE POLICE OFFICERS WERE
13 LOOKING FOR HIM? I FIND ALL OF THAT TO BE INCREDIBLE, NOT
14 BELIEVABLE. THE LETTER THAT WE GOT WITH THE MUSHROOM ON
15 IT FOR STEPHEN, LISTEN I TALKED WITH PEOPLE ABOUT WHAT
16 WENT ON AT THE CHICKEN HOUSE AND EVERYTHING IS GOING TO BE
17 FINE IF YOU STICK TO THIS STORY.

18 WE WILL DO TIME, BUT NOT AS LONG. JUST CHILL
19 OUT UNTIL DECEMBER WHEN I TURN 17. I WILL BE DOWN THE
20 HALL. DON'T LET ANYONE KNOW I'M WRITING YOU. HE SENDS
21 THIS TO STEPHEN. STEPHEN GIVES IT TO HIS DAD.

22 AND IF WE ARE DEFENDING A PREMEDITATED MURDER, I
23 MEAN, HIS DAD'S TURNED ALL OF THIS OVER TO THE SOLICITOR'S
24 OFFICE AND TO THE AUTHORITIES TRYING TO -- I GUESS TRYING
25 TO MAKE SOME RHYME OR REASON OUT OF WHAT HAPPENED, AND

1 IT'S HARD TO MAKE RHYME OR REASON IN THIS SITUATION.

2 WHAT MADE STEPHEN JUMP IN THE TRUCK, GO TO
3 BAMBERG, PULL UP IN FRONT OF THE FAMILY DOLLAR STORE, YOUR
4 GUESS IS AS GOOD AS MINE. I HAVE ASKED HIM THAT POINT
5 BLANK. MR. DEVOE HAS ASKED HIM THAT.

6 HIS MOM AND DADDY HAVE ASKED HIM THAT. AND HIS
7 EXPLANATION IS I DON'T KNOW. I PANICKED, I WAS SCARED TO
8 DEATH. I SAW MY FRIEND ON THE GROUND DEAD AND DESCRIBED
9 THE CONDITION HE WAS IN, AND HE SAID I PANICKED, I RAN.

10 WELL, IF YOU RAN, WHY USE ALCOHOL AND
11 MARIJUANA? I DON'T KNOW. WANTED TO SORT OF NUMBNESS
12 HIMSELF FROM THIS SITUATION. THERE'S NO RHYME OR REASON
13 FOR ANY OF THAT. BUT JUDGE, ALL OF THAT AS THE SOLICITOR
14 JACKSON SAID, ALL OF THAT ARE AGGRAVATING CIRCUMSTANCES
15 THAT TOOK PLACE SUBSEQUENT TO THE MURDER.

16 AND THAT'S ONE REASON WHY WE -- ONE OF THE MANY
17 REASONS WHY WE PLED GUILTY. AND IT'S NO WAY IN ANY KIND
18 OF GOOD CONSCIENCE COULD WE COME BEFORE ANY COURT IN THIS
19 STATE AND TRY TO GET OUT OF THE GRAND LARCENY, STEALING
20 THE CAR, THE ARMED ROBBERY, WHAT ALL WAS INVOLVED. SO THE
21 BOY IS FACING THREE STRIKES AND THIS IS HIS -- THIS IS HIS
22 ONLY WAY OF GETTING SOMETHING LESS THAN A LIFE SENTENCE.

23 YOU KNOW, JUDGE EVERYONE ON BEHALF OF THE PACK
24 FAMILY THAT STOOD UP, THE LETTER THAT WAS WRITTEN BY THE
25 FAMILY THAT WAS READ BY THE VICTIMS' COORDINATOR, THE

1 BROTHER, THE AUNT, THE SISTER-IN-LAW, PREACHERS, WE ALL
2 TALKED ABOUT -- THEY ALL TALKED ABOUT MERCY,
3 RESPONSIBILITY, JUSTICE, AWESOME RESPONSIBILITY THAT YOUR
4 HONOR HAS.

5 AND I SUBMIT TO YOUR HONOR THAT I THINK IT'S IN
6 FLORENCE -- IN THE COURTHOUSE IN FLORENCE THERE'S A QUOTE
7 ON THE WALL THAT SAYS TO ACT JUSTLY AND TO LOVE MERCY AND
8 TO WALK HUMBLY WITH YOUR GOD. IT COMES FROM MICHAEL.

9 I THINK THAT'S WHERE I SAW THAT. AS THE
10 PREACHER SAID, WE HAVE A MERCIFUL LORD, BUT WE ALSO LIVE
11 IN A SOCIETY THAT DEMANDS JUSTICE. AND I THINK YOUR HONOR
12 CAN SATISFY BOTH OF THOSE REQUIREMENTS.

13 I MEAN, WE HAVE A SITUATION THAT WAS AWFUL, BUT
14 I HONESTLY BELIEVE FROM WHAT YOU HAVE HEARD TODAY THAT MR.
15 HUTTO'S CULPABILITY DOES NOT RISE TO THE LEVEL OF MR.
16 SMART'S PARTICULARLY IN INVOLVING THE DEATH, AND THERE IS
17 NO EXCUSE FOR WHAT HAPPENED AFTER THE DEATH.

18 BUT I THINK TO -- A JUST SENTENCE THAT SHOWS
19 MERCY THAT STEPHEN HUTTO COULD BE SENTENCED TO 30 YEARS,
20 MR. SMART COULD BE SENTENCED TO LIFE AS HE'S AGREED TO DO
21 AND WE WOULD HAVE A SENTENCE THAT WAS BOTH JUST, THAT WAS
22 FAIR UNDER THE CIRCUMSTANCES, THAT WAS A MERCIFUL SENTENCE
23 AND AS PREACHER SMITH SAID IT WOULD BE A SENTENCE THAT
24 MADE OR MAKES STEPHEN HUTTO RESPONSIBLE AND ACCOUNTABLE
25 FOR WHAT HE DID.

1 HE IS 19 YEARS OLD. A 30 YEAR SENTENCE, HE WILL
2 BE MANY YEARS BEHIND BARS BEFORE HE IS RELEASED TO
3 SOCIETY. AND DURING THAT TIME OBVIOUSLY HE HAS TO
4 MAINTAIN HIMSELF AND HOPEFULLY BE REHABILITATED.

5 STEPHEN AND HIS DAD LIKE TO HUNT A LOT. THERE
6 IS AN EPISCOPAL CHURCH IN CHARLESTON THAT REVEREND BELSER
7 WHO IS THE DIRECTOR, AND THIS IS LONG BEFORE I BECAME
8 INVOLVED IN THE CASE, AND THIS IS A LETTER THAT HE WROTE
9 STEPHEN IN AUGUST OF 1999, AUGUST THE 25TH.

10 AND HE TOLD STEPHEN TO BE PATIENT AND TO BELIEVE
11 IN THE LEGAL PROCESS. AND HE SAYS, YOU KNOW, NOBODY KNOWS
12 AT THIS POINT WHAT CONSEQUENCES YOU WILL HAVE TO FACE, BUT
13 NO MATTER HOW MUCH TIME YOU ARE LOOKING, AT I WANT YOU TO
14 REMEMBER THAT GOD CAN HELP YOU MAKE THE MOST OF YOUR
15 SENTENCE AND THAT GOD WILLING, GOD WILLING, YOU WILL HAVE
16 A NEW LIFE AND NEW OPPORTUNITIES WHEN YOU ARE RELEASED
17 FROM JAIL.

18 HOW YOU CONDUCT YOURSELF WILL HELP DETERMINE
19 WHAT THE FUTURE HOLDS. DIRECTOR BELSER IS IN CALIFORNIA,
20 BUT HE FAXED ME A LETTER TO HAND TO YOUR HONOR DATED
21 AUGUST 7TH.

22 DEAR JUDGE COOPER, I'M WRITING TO ASK FOR
23 CLEMENCY IN THE UPCOMING SENTENCES OF STEPHEN HUTTO. I
24 HAVE KNOWN STEPHEN FOR SIX YEARS, SPENDING TIME WITH HIM
25 AND HIS FATHER HAS BEEN SHARED HUNTING AND FISHING

1 EXPERIENCES TOGETHER.

2 UNDER THOSE CIRCUMSTANCES I HAVE SEEN STEPHEN'S
3 EASY GOING PERSONALITY AND LOVE OF NATURE. I ALSO SAW THE
4 IMMATURITY THAT I BELIEVE MADE HIM VULNERABLE TO BAD
5 COMPANY. AFTER HIS ARREST, I VISITED HIM IN JAIL.

6 I AM CONVINCED THIS YOUNG MAN IS GENUINELY
7 REPENTANT AND READY TO PAY FOR HIS MISTAKES AND LIVE A
8 WHOLESOME LIFE. I KNOW HE HAS COMMITTED HIS LIFE TO
9 CHRIST AND I'M CONFIDENT HE WILL DO HIS BEST TO BE A
10 CREDIT TO HIS FAMILY, HIS CHURCH AND HIS COMMUNITY.

11 I PRAY THAT THE SENTENCE HE RECEIVES WILL BE
12 TEMPERED WITH MERCY SO THAT STEPHEN, HIS FATHER AND I WILL
13 ONE DAY SHARE ANOTHER DAY IN THE FIELDS TOGETHER, SIGNED
14 RICHARD BELSER. I HAVE BEEN PRACTICING 27 YEARS, JUDGE.
15 IT'S A LONG TIME.

16 AND THESE, YOU KNOW, I DON'T HAVE TO TELL YOU
17 HOW DIFFICULT THIS IS FOR LAWYERS AND THE FAMILY MEMBERS,
18 FAMILY MEMBERS AND YOUNG MEN WHO HAVE RUINED THEIR LIVES.

19 AS MUCH AS I SQUIRM WITH IT AND WORRY IF I'M
20 DOING ALL I HAVE DONE TO HELP THIS BOY OR TO MAKE SURE HIS
21 INTEREST IS ADVOCATED AND TO DEAL FAIRLY WITH THE
22 SOLICITOR'S OFFICE, EVERYONE, AS MUCH AS I HAVE ANXIETY
23 ABOUT IT, I CAN'T IMAGINE YOU, AND I DON'T ENVY YOUR JOB.

24 AND I KNOW THE SOLICITOR AND MEMBERS OF THE PACK
25 FAMILY HAVE SAID THE ONLY JUSTICE WILL BE SERVED IS TO

1 TREAT THIS YOUNG MAN THE SAME WAY THAT SMART IS GOING TO
2 BE TREATED. I TOLD THIS BOY -- AND MAYBE I SHOULDN'T SAY
3 THIS, BUT I AM.

4 I TOLD THIS BOY'S PARENTS THAT IF I WERE IN HIS
5 SHOES, THERE IS NOT A BETTER JUDGE IN THIS STATE THAT I
6 WOULD WANT TO GO BEFORE TO PRESENT MY CASE BECAUSE THERE'S
7 NOT A FAIRER PERSON AND NOT A PERSON WHO IS UPHOLD TO
8 JUSTICE OF SOUTH CAROLINA, BUT ALSO IF THERE IS MERCY CAN
9 BE SHOWN, THAT YOUR HONOR WOULD DO SO.

10 AND HIS PARENTS APPRECIATED THAT AND I LIKEWISE
11 ASK AND PLEAD THAT MERCY BE SHOWN. AND I THINK WE HAVE
12 FACTS TO SUPPORT THAT. I THINK WE HAVE A SITUATION THAT
13 IS DIFFERENT FOR THESE TWO BOYS.

14 AND YOUR HONOR, I BEG AND PLEAD AS I HAVE ON
15 BEHALF OF STEPHEN THAT THE MERCY THAT GOD WILL SHOW HIM AT
16 THE APPROPRIATE TIME CAN BE SPEEDED FAST FORWARDING AND
17 YOUR HONOR SHOW MERCY IN YOUR SENTENCE TODAY. THANK YOU.

18 THE COURT: THANK YOU, MR. EARLY. ANYTHING FURTHER
19 FROM THE DEFENSE?

20 MR. EARLY: YOUR HONOR, I WOULD LIKE TO PASS UP -- I
21 HAVE GIVEN HIS PARENTS THE OPPORTUNITY TO SPEAK AND HIS
22 MOTHER AND SORT OF ON BEHALF OF THE FAMILY HAS WRITTEN A
23 STATEMENT, AND I WILL PASS IT UP TO, YOUR HONOR.

24 THE COURT: ALL RIGHT, SIR. IF YOU WILL PASS THAT
25 UP.

1 MR. EARLY: IF YOU GIVE ME ONE SECOND TO SEE IF THERE
2 IS ANYTHING ELSE.

3 (APPROACHED BENCH AND GAVE JUDGE STATEMENT).

4 THE COURT: THANK YOU.

5 MR. EARLY: YOUR HONOR, MY CO-COUNSEL JUST ASKED ME
6 ONE THING THAT I THINK VERY IMPORTANT, I WAS RE-MENTIONING
7 -- MENTIONING IT -- IS THAT THE LETTER THAT THE SOLICITOR
8 JACKSON PUTS INTO EVIDENCE THAT WAS WRITTEN TO STEPHEN BY
9 SMART, THERE WAS ABSOLUTELY NO CHANCE OR OPPORTUNITY FOR
10 THEM TO HAVE GOTTEN TOGETHER TO FABRICATE ANY OF THAT, SO
11 IT HAD TO BE COMING STRAIGHT FROM SMART'S MOUTH. THERE
12 AGAIN I THINK THAT GOES TO THE CREDIBILITY ISSUE.

13 THE COURT: YES, SIR. THANK YOU.

14 (WHEREUPON THERE WAS A PAUSE).

15 THE COURT: MR. EARLY, THANK YOU. I HAVE READ THE
16 MOTHER'S LETTER. COURT WILL BE IN RECESS UNTIL A QUARTER
17 OF THE HOUR, LADIES AND GENTLEMEN. THANK YOU.

18 (WHEREUPON A BRIEF RECESS WAS TAKEN)

19 THE COURT: LADIES AND GENTLEMEN, I ANNOUNCE MY
20 SENTENCES FIRST OF THOSE OFFENSES WHICH ARE FROM BAMBERG
21 COUNTY AND HORRY COUNTY. FROM BAMBERG COUNTY ON THE
22 CHARGE OF ARMED ROBBERY, INDICTMENT 2001-GS-05-131, THE
23 SENTENCE OF THE COURT IS MR. HUTTO BE COMMITTED TO THE
24 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS.

25 HE WILL GET CREDIT FOR JAIL TIME SINCE AUGUST.

1 THE 13TH, 1999. THIS SENTENCE WILL RUN CONCURRENT TO ALL
2 OTHER SENTENCES IMPOSED THIS DAY.

3 FROM HORRY COUNTY, INDICTMENT 00-GS-26-451,
4 CHARGING MALICIOUS INJURY TO THE COURTHOUSE OR JAIL, THE
5 SENTENCE OF THE COURT IS THAT MR. HUTTO BE COMMITTED TO
6 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF THREE
7 YEARS, CREDIT FOR JAIL TIME, SENTENCES CONCURRENT.

8 UNDER HORRY COUNTY INDICTMENT 01-GS-26-1849,
9 ASSAULT WITH INTENT TO KILL AND FAILURE TO STOP FOR A BLUE
10 LIGHT. ON THE ASSAULT WITH INTENT TO KILL, THE SENTENCE
11 OF THE COURT IS THAT MR. HUTTO BE COMMITTED TO THE STATE
12 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF TEN YEARS.

13 AND ON THE FAILURE TO STOP FOR BLUE LIGHT, THREE
14 YEARS. BOTH CONCURRENT TO EACH OTHER AND ALL OTHER
15 SENTENCES. CREDIT FOR TIME SERVED SINCE AUGUST 13TH,
16 1999.

17 ON INDICTMENT 01-GS-26-1850 CHARGING ASSAULT ON
18 A POLICE OFFICER, THE SENTENCE OF THE COURT IS THAT MR.
19 HUTTO BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
20 FOR A PERIOD OF TEN YEARS. CREDIT FOR JAIL TIME
21 CONCURRENT TO ALL OTHER SENTENCES.

22 HORRY COUNTY INDICTMENT 01-GS-26-1851, ASSAULT
23 WITH INTENT TO KILL, MR. HUTTO IS TO BE COMMITTED THE
24 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF TEN
25 YEARS. CREDIT FOR TIME SERVED AND CONCURRENT TO OTHER

1 SENTENCES.

2 ON THE CLARENDON COUNTY CHARGES, INDICTMENT
3 00-GS-14-356, THE CHARGE IS ARMED ROBBERY, THE SENTENCE OF
4 THE COURT IS THAT MR. HUTTO BE COMMITTED TO THE STATE
5 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS.

6 THAT SENTENCE IS CONCURRENT TO ALL OTHER
7 SENTENCES IMPOSED THIS DAY AND HE IS GIVEN CREDIT FOR JAIL
8 TIME SINCE AUGUST THE 13TH, 1999. FOR THE CHARGE OF
9 ESCAPE, THE SENTENCE IS 15 YEARS CONCURRENT TO OTHER
10 SENTENCES.

11 I RECOGNIZE THAT THE LAW REQUIRES CONSECUTIVE
12 SENTENCING TO THE CRIME FOR WHICH HE IS IN PRISON AT THE
13 TIME. OF COURSE, THAT SITUATION DOES NOT APPLY IN THIS
14 CASE BECAUSE OF THE CIRCUMSTANCES SURROUNDING THIS ESCAPE,
15 HE ONLY HAVING FOUR OR FIVE DAYS LEFT ON THAT PARTICULAR
16 TERM. CREDIT FOR JAIL TIME CONCURRENT TO OTHER
17 SENTENCES.

18 ON THE CHARGE OF CRIMINAL CONSPIRACY, THE SAME
19 CLARENDON COUNTY INDICTMENT, THE DEFENDANT IS COMMITTED TO
20 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF FIVE
21 YEARS. CREDIT FOR TIME SERVED, CONCURRENT TO OTHER
22 SENTENCES.

23 SAME INDICTMENT IN CLARENDON COUNTY, GRAND
24 LARCENY OF A MOTOR VEHICLE VALUED AT MORE THAN \$5000, THE
25 SENTENCE OF THE COURT IS TEN YEARS, CREDIT FOR TIME

1 SERVED, CONCURRENT TO OTHERS.

2 OBVIOUSLY, LADIES AND GENTLEMEN, THOSE ARE THE
3 EASY SENTENCES TO IMPOSE GIVEN THE CIRCUMSTANCES
4 SURROUNDING THIS ENTIRE SITUATION WHICH YOU HAVE ALL --
5 SOME OF YOU HAVE BEEN LIVING WITH NOW FOR NEARLY TWO YEARS
6 AND SOME OF YOU WERE JUST EXPOSED TO IT TODAY.

7 AND THERE ARE SOME DAYS WHEN THIS JOB IS MUCH
8 EASIER THAN IT IS ON OTHER DAYS, DAYS LIKE TODAY, WHEN I
9 HAVE TO DECIDE WHETHER AN 18 YEAR OLD WILL SPEND THE REST
10 OF HIS LIFE IN JAIL OR JUST A MAJOR PART OF THE REST OF
11 HIS LIFE IN JAIL, ON DAYS WHEN I'M CONFRONTED WITH
12 DECIDING HOW A CIVILIZED SOCIETY SHOULD DEAL WITH AN ACT
13 OF ABSOLUTE AND TOTAL BARBARIC.

14 WHEN I'M FACED WITH TWO GOOD FAMILIES, HARD
15 WORKING, RESPECTED IN THEIR OWN COMMUNITY, PARENTS AND
16 SIBLINGS AND AUNTS AND UNCLES, ALL VICTIMS IN THEIR OWN
17 RIGHT, FEELING THE UTTER HELPLESSNESS IN THIS PLIGHT, THIS
18 PLIGHT THAT FATE HAS CONFRONTED THEM WITH, TRACEY PACK'S
19 FAMILY EXPERIENCED A HELPLESSNESS IN THAT DESPAIR TWO
20 YEARS AGO, COUPLED WITH THE -- KNOWING THERE IS NOTHING
21 HERE TODAY CAN REPLACE THEIR LOSS, AND STEPHEN HUTTO'S
22 PARENTS RECOGNIZE THAT EVEN IN THE BEST OF CIRCUMSTANCES
23 THEY WILL NOT SEE THEIR SON WALK IN FREEDOM WITHIN THEIR
24 LIFETIMES AGAIN.

25 WHEN I HAVE LISTENED TO OUTSTANDING ATTORNEYS

1 FOR WHOM I HAVE THE UTMOST RESPECT ON BOTH SIDES OF THIS
2 AISLE GIVE ME REASONS TO RENDER WHAT THEY CONSIDER TO BE
3 THE APPROPRIATE SENTENCE UNDER THE LAW, AND I HAVE
4 LISTENED AND I HAVE AS REVEREND SMITH SUGGESTED PRAYED,
5 WHETHER THOSE PRAYERS HAVE BEEN ANSWERED OR EVEN HEARD I
6 HAVE GOT NO WAY OF KNOWING, AND I CAN'T IN GOOD CONSCIENCE
7 SAY GOD OR ANY OTHER HIGH AUTHORITY TELLS ME WHAT TO DO.

8 I HAVE TO TAKE THE BLAME OR THE CREDIT FOR THESE
9 DECISIONS ALONE NOT BECAUSE I'M SMARTER THAN ANYBODY ELSE
10 WHO IS HERE OR MORE CAPABLE OF RENDERING THESE DECISIONS
11 THAN ANYBODY ELSE BECAUSE I'M NOT, BUT AS THE ROBE THAT I
12 WEAR VESTS ME WITH THIS AWESOME AND SOMETIMES UNWELCOME
13 RESPONSIBILITY TO DECIDE MATTERS SUCH AS THIS. I THOUGHT
14 ABOUT JUSTICE. I THOUGHT ABOUT MERCY.

15 JUSTICE OUGHT BE APPLIED BECAUSE THE LAW DEMANDS
16 IT. MERCY MUST BE APPLIED WHEN THE CIRCUMSTANCES WARRANT
17 IT, AND SO WHAT OF THIS SITUATION. I FIND THAT MERCY HAS
18 BEEN EXTENDED ALREADY BY THE STATE OF SOUTH CAROLINA WHEN
19 IT CHOSE NOT TO SEEK THE DEATH PENALTY FOR THESE CRIMES.

20 I FIND THAT MERCY HAS BEEN EXTENDED TO A CERTAIN
21 EXTENT WHEN IT HAS LEFT THIS MATTER IN MY HAND RATHER THAN
22 SEEKING LIFE WITHOUT PAROLE OR SUBSEQUENT CONVICTIONS AND
23 SUBSEQUENT JURISDICTIONS AS IT SURELY WOULD.

24 I HAVE LOOKED AT THIS SITUATION AS CLOSELY AS I
25 CAN AND I HAVE BEEN PROVIDED A GREAT DEAL OF INFORMATION

1 BY ATTORNEYS FOR BOTH SIDES. I HAVE CONSIDERED WHETHER OR
2 NOT IT SEEMED TO BE A PLANNED EVENT, AND FRANKLY I AM
3 CONVINCED THAT SOME PLANNING IS NECESSARY.

4 I AGREE WITH MR. EARLY THAT MR. SMART'S
5 STATEMENT WAS SOMEWHAT SELF-SERVING AND I QUITE FRANKLY
6 DID NOT GIVE IT A GREAT DEAL OF WEIGHT IN DECIDING THE
7 RELATIVE ROLES OF THESE INDIVIDUALS IN THIS PARTICULAR
8 CRIME.

9 I DO NOT THINK THAT THERE WAS SOME VOICE
10 SPEAKING TO MR. SMART FROM ACROSS THE ROOM. I DO NOT
11 THINK THAT HE WAS HEEDING MR. HUTTO'S INSTRUCTIONS WHEN HE
12 DID WHAT HE DID. I THINK HE DID IT BECAUSE HE WANTED TO
13 DO IT.

14 AND I THINK THAT MR. HUTTO HELPED HIM DO IT AND
15 I THINK THERE IS EVIDENCE THAT THEY HAD PUT SOME PLAN INTO
16 THIS. CLEARLY IT'S NOT LOGICAL. IT'S NOT A LOGICAL
17 PLAN. MR. HUTTO HAD SIX DAYS LEFT TO GO AND HE COULD WALK
18 OUT.

19 PREMEDITATED DOES NOT MEAN THAT IT WAS PLANNED
20 WELL. IT CAN BE POORLY PLANNED AND STILL BE
21 PREMEDITATED. I GIVE SOME WEIGHT TO THE CONVERSATIONS
22 WITH THE CELLMATE. I GIVE SOME WEIGHT TO THE MAP, BUT NOT
23 A GREAT DEAL.

24 I DO GIVE WEIGHT TO THE STATEMENTS OF THE
25 JUVENILES WHO TESTIFIED, JUVENILES ONE AND TWO AS THEY

1 HAVE BEEN CHARACTERIZED HERE. AS I LOOK AT THE CRIME
2 ITSELF, I SEE THAT THE BREAKING OF THE FOGGERS WAS
3 SOMETHING THAT HAD A DUAL PURPOSE.

4 ACCORDING TO MR. SMART HE WAS USING THAT TO TAKE
5 ADVANTAGE OF A LOCATION OF GASOLINE SO THAT HE COULD START
6 HUFFING GASOLINE IN HIS WORDS. THE PIPE WAS THERE. IT
7 WAS THERE FOR A PURPOSE, NOT TO CLIMB A LADDER. IT WAS
8 THERE TO DO HARM TO MR. PACK.

9 THE ABSOLUTE BRUTALITY OF THE ACTIONS THEMSELVES
10 AS THEY WERE SHOWN TO ME ON THE PHOTOGRAPH HAVE TO LIE AT
11 THE FEET OF MR. SMART. MR. HUTTO DID NOT STRIKE THE BLOW,
12 BUT HE IS RESPONSIBLE NONETHELESS.

13 THE ATTEMPTS TO CONCEAL THE ACT AFTER THAT, THE
14 MOTIVE IF THERE WAS ONE TO SEE WHAT IT WAS LIKE SEEMS
15 SOMEWHAT EXTREME, BUT CLEARLY THE MOTIVE WAS NOT TO ESCAPE
16 THE MARINE INSTITUTE.

17 MR. HUTTO HAD SIX DAYS. I'M NOT SURE HOW MANY
18 -- HOW MUCH TIME MR. SMART HAD, BUT NOBODY IS SENTENCED
19 TO AN INORDINATE LENGTH OF TIME AT THAT INSTITUTION.

20 THOSE EVENTS HAPPENED AFTERWARD, AFTER THE EVENT
21 ITSELF, AFTER THE TERRIBLE MURDER, WHILE THEY CANNOT OF
22 COURSE BE TAKEN INTO ACCOUNT IN DECIDING WHO DID WHAT
23 INSOFAR AS THE ACTIONS ARE CONCERNED OR WHAT THE
24 PUNISHMENTS WOULD BE IN AND OF THEMSELVES BECAUSE THEY ARE
25 ALL SUBJECT TO SEPARATE PUNISHMENT FOR WHICH I HAVE

1 ALREADY PASSED SENTENCE.

2 NONETHELESS, THE ACTIONS FOLLOWING THE CRIME
3 ITSELF ARE INSTRUCTIVE ON THE RELATIVE ROLES AND
4 RESPONSIBILITIES OF THESE TWO YOUNG MEN IN THIS CRIME OF
5 MURDER.

6 IT IS SIGNIFICANT I THINK THAT MR. HUTTO WAS
7 DRIVING THE VEHICLE. IT MAY WELL HAVE BEEN THAT MR. SMART
8 WAS TOO DRUNK TO DRIVE OR TOO INTOXICATED ON THE GASOLINE
9 FUMES, BUT IT IS INSTRUCTIVE THAT WHEN THE VEHICLE WAS
10 DRIVEN IT WAS DRIVEN TO MR. HUTTO'S HOME.

11 IT IS INSTRUCTIVE THAT IT WAS HIS PARENT'S
12 WEAPON THAT WAS USED, THAT THE ARMED ROBBERY OCCURRED IN
13 HIS HOME TOWN, A PLACE ABOUT WHICH I WOULD IMAGINE MR.
14 SMART KNEW VERY LITTLE, THAT A DRUG DEALER WAS CONTACTED
15 WHOM MR. HUTTO KNEW, AND FOLLOWING THAT THE ATTEMPT TO
16 AVOID THE POLICE, THE CHASE THAT I SAW SHOWING AN ABSOLUTE
17 COMPLETE LACK OF CONCERN ABOUT SAFETY TO LIVES AND SAFETY
18 OF OTHERS INCLUDING THE OFFICERS, INCLUDING INNOCENT
19 BYSTANDERS, THIS GOES IN MY VIEW TO THE STATE OF MIND OF
20 BOTH OF THESE YOUNG MEN.

21 MR. HUTTO DID NOT FIRE A SINGLE SHOT, BUT HIS
22 ACTIONS IN DRIVING THE VEHICLE QUITE CANDIDLY WERE EQUALLY
23 DANGEROUS. THE STATEMENTS THAT WERE MADE FOLLOWING THAT,
24 THE STATEMENTS BACK AND FORTH FROM ONE THING TO THE OTHER,
25 COLD AND CALCULATING THOUGH THEY MAY HAVE BEEN, I DISCOUNT

1 AS I HAVE SAID THE REMARKS OF MR. SMART IN LARGE MEASURE
2 BECAUSE THEY ARE SELF-SERVING AND THEY TEND TO DEFLECT THE
3 MAIN RESPONSIBILITY FROM HIMSELF TO SOMEONE ELSE.

4 BUT THE VIDEOTAPE, MR. HUTTO DESCRIBING AN EVENT
5 IN NARRATIVE FORM IN A COLD AND CALCULATING WAY, NOT
6 DESCRIBING THE BRUTAL DEATH OF SOMEONE THAT HE COULD AND
7 SHOULD HAVE CALLED A FRIEND BECAUSE OF THE RECEIPT OF MR.
8 HUTTO INTO THEIR HOME, BECAUSE OF THE HELP THAT TRACEY
9 PACK HAD TRIED TO RENDER TO MR. HUTTO AND TO OTHERS, NOT
10 CONCERNED OVER ANYTHING OTHER THAN SIMPLY A COLD NARRATIVE
11 AS TO HOW THIS HAPPENED IN VERY CALCULATING TERMS.

12 AND THEN I LOOK AT THE LOSS OF TRACEY PACK.
13 BECAUSE THE SENTENCE OF AN INDIVIDUAL WHO IS ACCUSED OF A
14 CRIME AND WHETHER MERCY SHOULD BE EXTENDED TO AN
15 INDIVIDUAL IN A PARTICULAR INSTANCE IS DETERMINED NOT ONLY
16 BY HIS OWN ACTIONS BUT ALSO BY THE RESULT OF THOSE ACTIONS
17 AND THEIR IMPACT ON OTHERS.

18 MR. SMART AND MR. HUTTO IN MY VIEW MUST BARE AN
19 EQUAL RESPONSIBILITY FOR THE LOSS OF TRACEY PACK IN THE
20 32ND YEAR OF HIS LIFE AND FOR THE VACANCY WHICH HIS FAMILY
21 WILL FEEL FROM THIS DAY ON AND FOR THE VACANCY WHICH HIS
22 OWN FAMILY MUST FEEL AS THEY SIT THERE AS HELPLESS PARENTS
23 WHO TRIED TO BRING UP THEIR SON AS BEST THEY KNEW HOW AND
24 WILL FOREVER LEAVE HIS HOUSE THIS DAY WONDERING WHERE THEY
25 WENT WRONG AND WHAT TURNED A STUDENT OF THE WEEK INTO A

1 MURDERER.

2 I HOPE THEY WILL FIND THAT ANSWER, BUT I DOUBT
3 THAT THEY WILL FIND IT WITHIN THEMSELVES. IT WILL HAVE TO
4 COME FROM SOME OTHER POWER BECAUSE FRANKLY PARENTS ARE NOT
5 ALWAYS RESPONSIBLE FOR EVERYTHING THAT THEIR CHILDREN DO.
6 SOME CHILDREN HAVE TO ANSWER FOR THEIR OWN ACTIONS AND MR.
7 HUTTO HAS TO DO THAT.

8 AND THE SENTENCE OF THE COURT FOR THE CRIME OF
9 MURDER IS HE BE COMMITTED TO THE STATE DEPARTMENT OF
10 CORRECTIONS FOR THE BALANCE OF HIS LIFE WITHOUT THE
11 POSSIBILITY OF PAROLE. THANK YOU, LADIES AND GENTLEMEN.
12 WE WILL BE IN RECESS.

13 (WHEREUPON A BRIEF RECESS WAS TAKEN).

14 (COURT'S EXHIBIT NO. 4 MARKED FOR
15 IDENTIFICATION).

16 MR. JACKSON: MAY IT PLEASE THE COURT.

17 THE COURT: YES, SIR, MR. JACKSON.

18 MR. JACKSON: AGAIN IN REFERENCE TO 2000-GS-14-356,
19 THE STATE VERSUS STEPHEN HUTTO AND JON SMART, YOUR HONOR,
20 THIS WOULD BE THE SENTENCING HEARING FOR JON SMART. I
21 HAVE ONLY TO OFFER INTO THE COURT WHAT WE HAVE LABELED
22 COURT'S EXHIBIT NUMBER 4, A LETTER THAT I RECEIVED FROM
23 JUDGE KENNETH GOODE STATES THIS LETTER IS TO CONFIRM THAT
24 I AM RELINQUISHING JURISDICTION IN THE ABOVE REFERENCED
25 CASE TO JUDGE THOMAS W. COOPER, JR., AND HE SIGNED THAT

1 LETTER AND FAXED IT TO ME ON AUGUST THE 8TH.

2 YOUR HONOR, WHEN WE TOOK THE INITIAL PLEA OF MR.
3 SMART, SOMETIME AGO, JUDGE GOODE RETAINED JURISDICTION AT
4 OUR REQUEST AND HAS NOW RELINQUISHED JURISDICTION. AND
5 YOUR HONOR, THE STATE WOULD CONSENT TO HIM RELINQUISHING
6 JURISDICTION AND ALLOWING YOUR HONOR TO GO FORWARD WITH
7 THE SENTENCE.

8 THE COURT: MR. HOEFER, DOES THE DEFENSE ALSO JOIN IN
9 THAT CONSENT?

10 MR. HOEFER: YES, SIR, YOUR HONOR. I DISCUSSED THIS
11 IN FULL WITH JON SMART AND HE DOES CONSENT.

12 THE COURT: THANK YOU, SIR.

13 MR. JACKSON: YOUR HONOR, I WILL PUT INTO THE RECORD
14 COURT'S EXHIBIT NUMBER 4, THE LETTER. AND THAT'S ALL THE
15 STATE HAS, YOUR HONOR.

16 THE COURT: OKAY. THANK YOU. THE PLEA HAS
17 PREVIOUSLY BEEN ACCEPTED BY JUDGE GOODE ON MAY THE 25TH OF
18 THIS YEAR HERE IN CLARENDON COUNTY TO THE CRIME OF MURDER,
19 GRAND LARCENY, CRIMINAL CONSPIRACY, ESCAPE AND ARMED
20 ROBBERY.

21 JUDGE GOODE HAS RELINQUISHED JURISDICTION TO
22 THIS COURT. OBVIOUSLY I HAVE HEARD THE FACTS IN
23 AGGRAVATION EARLIER TODAY IN CONNECTION WITH THE
24 SENTENCING OF MR. HUTTO. AND UNLESS THE STATE HAS
25 SOMETHING FURTHER NOW TO OFFER, I'M PREPARED TO HEAR FROM

1 MR. HOEFER, MR. SMART OR ANYONE ON HIS BEHALF.

2 MR. JACKSON: NOTHING FURTHER, YOUR HONOR.

3 THE COURT: THANK YOU. MR. HOEFER?

4 MR. HOEFER: JUDGE, I THINK WHAT HAS IMPRESSED ME THE
5 MOST TODAY IS PROBABLY THE NUMBER OF BROKEN HEARTS AND THE
6 ANGUISH THAT HAS BEEN IN THIS SINGLE ROOM ALL DAY LONG IN
7 AND OUT.

8 I CAN'T HELP BUT THINK THAT BUT FOR A NUMBER OF
9 FACTORS WE MIGHT NEVER EVEN BE HERE. IT'S JUST A
10 TERRIBLE, TERRIBLE TRAGEDY. LISTENING TO THE PACK FAMILY
11 AND THE FRIENDS AND THE SPOKESMAN, I WAS MOVED.

12 I TRULY, HONESTLY WAS. AND I'M KIND OF AT A
13 LOSS OF WHAT TO SAY FOR JON. HE'S SPOKEN. HE HAS
14 TESTIFIED IN THIS COURTROOM UNDER OATH. IN YOUR
15 STATEMENTS EARLIER YOU MADE MENTION THAT PERHAPS HIS
16 STATEMENTS WERE A LITTLE BIT SELF-SERVING.

17 AND WITH ALL DUE RESPECT, I TELL YOU THAT THE
18 FACT IS HE SIGNED THIS AGREEMENT AND THEN TOLD THIS STORY
19 AND THERE WERE SIGNIFICANT STEPS TAKEN TO CORROBORATE WHAT
20 HE HAD TOLD IN THAT STORY, AND I THINK THE STATE IS
21 SATISFIED THAT WHAT HE SAID IS THE TRUTH.

22 AND THAT WAS ONE OF THE REALLY IMPORTANT THINGS
23 TO HAVE HAPPEN IN THIS CASE WAS FOR THE TRUTH TO
24 ULTIMATELY COME OUT. THAT DOESN'T BRING TRACEY BACK
25 CERTAINLY, BUT AT LEAST MR. AND MRS. PACK AND THEIR FAMILY

1 KNOW WHAT THE TRUTH IS.

2 JUDGE, HE'S 18 NOW. HE WAS 16 WHEN IT
3 HAPPENED. BELIEVE HIS BIRTHDAY IS [REDACTED] THE [REDACTED]
4 1982. HE CAME TO BE IN THE CUSTODY OF THE DEPARTMENT OF
5 JUVENILE JUSTICE AT THE REQUEST OF HIS FAMILY. HE IS FROM
6 GREENVILLE COUNTY.

7 HE WAS SENTENCED IN FAMILY COURT BY JUDGE
8 JENKINS WHERE HE WAS SENT TO COLUMBIA TO THE NORTHEAST
9 CENTER, SPENT SOME TIME THERE AND HE WAS PAROLED TO THE
10 MARINE INSTITUTE OF RIMINI. HE EARNED THAT. WHILE HE WAS
11 INCARCERATED, HE GOT HIS GED DEGREE.

12 THAT TELLS YOU A LITTLE BIT ABOUT WHAT HE DID
13 WHILE HE WAS THERE, BUT I WANT TO TELL YOU A LITTLE BIT
14 ABOUT HOW HE GOT THERE. JON HAS A SIGNIFICANT HISTORY OF
15 DRUG ABUSE. AND PROBABLY MORE SPECIFICALLY JON WAS KNOWN
16 TO INHALE AROMATIC HYDROCARBONS, HUFFING GAS, GLUES,
17 PAINTS, ANYTHING THAT HAD THE HYDROCHLORIDE HE COULD GET
18 HIGH ON.

19 THE ANGUISH THAT I MENTIONED NOT ONLY FLOWS FROM
20 THE PACK FAMILY, I'M SURE IT FLOWS FROM THE HUTTO FAMILY
21 AND ALSO FLOWS FROM JON'S FAMILY. TIME AFTER TIME WE HAVE
22 TALKED ABOUT THIS.

23 THEY ARE HEARTBROKEN FOR THE PACKS. THEY HAD
24 NOTHING TO DO WITH THIS CRIME, BUT THEY WISH THERE WAS
25 SOMETHING THEY COULD HAVE DONE OR COULD DO ABOUT IT. THE

1 FACT IS THEY WERE SO CONCERNED THAT JON WAS IN TROUBLE
2 THEY WENT TO THE FAMILY COURT AND ASKED FOR ASSISTANCE.

3 THE CHARGE THAT HE WAS INCARCERATED ON WAS A
4 BURGLARY SECOND DEGREE BURGLARY. HOWEVER, IT WAS THE KIND
5 OF BURGLARY WHERE THE VICTIM WAS A FRIEND OF THE FAMILY
6 WHO WAS NOT EVEN GOING TO PRESS CHARGES.

7 THE SMARTS HAD TO CONVINCING THAT PERSON TO PRESS
8 CHARGES SO THAT THEY COULD GET HIM INTO THE SYSTEM AND TRY
9 TO GET HIM SOME HELP. AND YOU KNOW, IT'S JUST AMAZING IN
10 GOING THROUGH HIS RECORDS AT THE DEPARTMENT OF JUVENILE
11 JUSTICE -- THEY HAVE THESE REPORTS.

12 AND THEY SAY THINGS LIKE JON SMART WAS BEFORE
13 JUDGE JENKINS TODAY FOR THE OFFENSE OF INHALATION OF
14 AROMATIC HYDROCARBONS, BURGLARY SECOND DEGREE AND PETTY
15 LARCENY.

16 WELL, HE PLED TO THE BURGLARY SECOND DEGREE.
17 THE OTHER TWO CHARGES WERE DISMISSED. BUT JUDGE JENKINS
18 COMMITTED JON TO THE DEPARTMENT OF JUVENILE JUSTICE. HE
19 ALSO ORDERED SUBSTANCE ABUSE COUNSELING TO SPECIFICALLY
20 ADDRESS THE HUFFING. THAT IS NOVEMBER OF '98.

21 THE COURT: RIGHT.

22 MR. HOEFER: IN DECEMBER OF '98 THERE'S ANOTHER
23 REPORT, AND THEY HAVE GOT IT, AND THEY SAY THAT JON -- THE
24 COURT HAS REQUESTED AT THIS TIME REQUESTED INSTEAD OF
25 ORDERED THAT JON RECEIVE ALCOHOL AND DRUG COUNSELING TO

1 ADDRESS HUFFING.

2 THE COURT: WHAT IS THE DATE OF THAT?

3 MR. HOEFER: DECEMBER 4, 1998.

4 THE COURT: NEXT MONTH?

5 MR. HOEFER: YES, SIR.

6 THE COURT: OKAY.

7 MR. HOEFER: IN HIS TENURE OR HIS STAY AT THE
8 NORTHEAST CENTER HE'S GIVEN PSYCHOLOGICAL EVALUATIONS IN
9 DECIDING WHETHER TO GRANT HIM PAROLE, THEY TEST HIM, I.Q.
10 TESTING, MENTAL HEALTH TYPE TESTING.

11 HE HAS A RELATIVE I.Q. IT DEPENDS UPON WHICH
12 REPORT YOU LOOK AT. ONE SAYS HE HAS AN I.Q. OF 85,
13 ANOTHER ONE A SHORT TIME LATER SAYS HE HAS AN I.Q. OF 95.
14 BUT BE THAT AS IT MAY, THAT EVEN A 95 IS IN THE LOW
15 AVERAGE RANGE, BUT THEY -- THOSE REPORTS ALSO MAKE
16 REFERENCE TO HIS DRUG ABUSE PROBLEM AND HUFFING.

17 THE COURT: RIGHT. AS I UNDERSTAND IT, HUFFING CAN
18 DESTROY YOUR BRAIN CELLS AS I UNDERSTAND IT.

19 MR. HOEFER: YES, SIR. WELL, THE NOTE I MADE IS THAT
20 HIS BRAIN WAS FRIED. AND I THINK THAT'S KIND OF
21 INACCURATE, BUT THINK THIS IS AN ACCURATE DESCRIPTION. I
22 JUST DON'T THINK THAT YOU COULD CONTINUOUSLY DO THAT AND
23 MAKE SOUND JUDGMENT DECISIONS DURING THE COURSE OF HIS
24 LIFE.

25 BUT THAT IS WHAT JON WAS. THAT WAS THE PROBLEM

1 THAT JON HAD. THAT WAS THE PROBLEM THAT THE FAMILY COURT
2 REQUIRED THE DEPARTMENT OF JUVENILE JUSTICE TO ADDRESS.
3 NONE OF IT HAPPENED. THE ONLY COUNSELING HE GOT -- I HAVE
4 ASKED HIM TO DESCRIBE IT IN DETAIL TO ME.

5 THEY DID HAVE THESE OPEN SESSIONS WHERE, YOU
6 KNOW, PEOPLE WOULD SIT AROUND THE ROOM AND DISCUSS THEIR
7 PROBLEMS. I THINK IT'S KIND OF AKIN TO AN A.A. MEETING
8 WHERE YOU STAND UP AND KIND OF GIVE YOUR TESTIMONY.

9 BUT IN THESE SESSIONS JON WOULD BE CALLED TO THE
10 FRONT, SAY YOU KNOW, TELL US ABOUT IT, WHEN DID YOU GET
11 HOOKED, HOW DID YOU GET HOOKED, AND TELL US THE KIND OF
12 THINGS YOU DID WRONG WHEN YOU WERE UNDER THE INFLUENCE,
13 AND HE WOULD DO THAT.

14 AND THEN THEY SAY THANK YOU, GO SIT DOWN. NOW
15 EVERYBODY ELSE, THIS IS WHAT HAPPENS TO YOU WHEN YOU USE
16 THESE THINGS, DON'T USE THESE THINGS. HE WAS KIND OF THE
17 POSTER BOY.

18 BUT THE PROBLEM WITH THAT IS IT DIDN'T ADDRESS
19 HIS PROBLEM. NOBODY HAS EVER ADDRESSED HIS PROBLEM. THEY
20 RAN HIM THROUGH THE SYSTEM. AND WHEN THEY NEEDED THE BED
21 SPACE, THEY FARMED HIM OUT TO R.M.I., THE MARINE INSTITUTE
22 AND RIMINI MARINE INSTITUTE.

23 AND THERE LO AND BEHOLD HE HAD BEEN THERE
24 SEVERAL WEEKS, A COUNSELOR CAUGHT HIM HUFFING GAS AND
25 THAT'S WRITTEN INTO THE RECORDS AND HE WAS PUNISHED FOR

1 THAT. HE LOST SOME PRIVILEGES. THAT WAS ALL THEY DID,
2 BUT STILL THEY DIDN'T GIVE HIM -- BY HIS OWN STATEMENT --
3 YOU HEARD HIM TESTIFY THIS MORNING.

4 THE COURT: RIGHT, SIR.

5 MR. HOEFER: THE DAY BEFORE TRACEY PACK DIED HE WAS
6 HUFFING. HE HAD THAT RAG, CARRIED WITH HIM ALL THE TIME.
7 AND WHEN HE WENT BACK TO THE CAMPUS, HIS COUNSELOR -- HE
8 TELLS ME THIS GENTLEMAN'S NAME IS THADEUS CHESTER --
9 SMELLED IT ON HIM, CAUGHT HIM WITH IT, AND HE JUST GAVE
10 HIM SOME EXCUSE AND NOTHING WHATSOEVER WAS DONE.

11 NOW, I'M TELLING YOU ALL OF THIS SIMPLY SO THAT
12 EVERYBODY CAN HAVE AN UNDERSTANDING OF HOW THIS CAME ABOUT
13 AND WHY THIS HAPPENED. YOU KNOW, ONE OF THE THINGS THAT
14 HASN'T BEEN OBVIOUS IN THIS CASE IS WHAT KIND OF MOTIVE
15 WOULD THERE BE FOR DOING ANY HARM TO A PERSON LIKE TRACEY
16 PACK.

17 FROM EVERYTHING I HAVE GATHERED, INCLUDING FROM
18 JON, TRACEY PACK WAS NOTHING BUT A GENTLEMAN EVER. AND
19 EVERY SINGLE TIME HE AND I HAVE DISCUSSED THIS CASE AND
20 THE INCIDENTS LEADING UP TO TRACEY PACK'S DEATH, HE CANNOT
21 EXPLAIN TO ME WHY AND HOW THIS COULD HAVE POSSIBLY
22 HAPPENED.

23 WHEN HE SAYS HE KNOWS HE DID IT, BUT HE -- HE
24 HAS PROBLEMS REMEMBERING THE SPECIFICS OF WHAT HE DID. HE
25 WILL TELL YOU HE DOESN'T REMEMBER HOW MANY TIMES HE HIT

1 MR. PACK.

2 THE COURT: RIGHT.

3 MR. HOEFER: I BELIEVE THAT. I TRULY BELIEVE THAT.
4 HE HADN'T SHIRKED RESPONSIBILITY, HASN'T TRIED TO PULL
5 THAT POLE IN ANYBODY ELSE'S HAND.

6 THE COURT: RIGHT.

7 MR. HOEFER: BUT I THINK HE'S TELLING THE TRUTH. I
8 THINK HIS BRAIN HAS BEEN SO FAR GONE BECAUSE OF THIS
9 INHALATION THAT HE DOES HAVE THE MEMORY LAPSE. NOW, WHEN
10 I STARTED, I SAID I CAN'T HELP BUT THINK, YOU KNOW, BUT
11 FOR A NUMBER OF THINGS WE MIGHT NOT BE HERE.

12 I CALL IT THE IF THEN. IF SOMETHING DID OR
13 DIDN'T HAPPEN, THEN WE MIGHT NOT BE HERE. AND YOU KNOW,
14 IF -- IF JON HAD GOTTEN THE TREATMENT HE WAS SUPPOSED TO
15 GET, WE MIGHT NOT BE HERE.

16 IF HE HAD BEEN PUT IN A FACILITY DESIGNED TO
17 TREAT CHILDREN -- AND LET'S FACE IT. HE WAS 16 YEARS
18 OLD. THE LAW TREATS HIM LIKE AN ADULT NOW, BUT NO MATTER
19 HOW YOU DID IT, THAT'S A CHILD.

20 THE COURT: RIGHT.

21 MR. HOEFER: WE UNDERSTAND THAT CHILDREN -- WE GOT
22 THIS WHOLE FRAMEWORK SET IN PLACE TO GET THEM AND PUT THEM
23 BACK ON THE RIGHT TRACK, BUT IT DOESN'T DO ANY GOOD UNLESS
24 WE UTILIZE THE FACILITIES THAT WERE AVAILABLE.

25 AND A FAMILY COURT JUDGE RECOGNIZED THAT THIS

1 WAS A KID IN TROUBLE AND ORDERED THAT HE GET THIS
2 TREATMENT. HE NEVER GOT IT. IF HE HAD BEEN SENT TO THE
3 TREATMENT FACILITY, WELL, HE MAY NOT HAVE BEEN HUFFING
4 THAT DAY.

5 BEEN SENT TO A TREATMENT FACILITY, HE WOULDN'T
6 HAVE BEEN AT R.M.I. THAT DAY. IF THE COUNSELOR HAD GOTTEN
7 HIM THE DAY BEFORE AND TAKEN HIS PRIVILEGES, SAID YOU ARE
8 NOT GOING ANYWHERE, HE WOULDN'T HAVE BEEN OUT WITH TRACEY
9 THAT DAY.

10 AND THE FACT IS I AM ABSOLUTELY CONVINCED IN MY
11 HEART THAT IT TOOK TWO TO COMMIT THIS CRIME BECAUSE I
12 THINK THEY FED OFF OF EACH OTHER. ONE OF THEM DARED THE
13 OTHER.

14 AND I THINK MR. JACKSON HID IT RIGHT WHEN HE
15 SAID THAT STEPHEN HUTTO WAS THE BRAINS AND JON SMART WAS
16 THE BRAWN BECAUSE I THINK JON'S BRAIN HAD GOT TO THE POINT
17 PARTICULARLY BEING HIGH ON GAS THAT DAY THAT SOMEBODY ELSE
18 WAS DOING THE THINKING.

19 AND IT ENCOURAGED HIM IN HIS STATE OF
20 INTOXICATION, ENCOURAGED HIM TO DO THE DIRTY WORK, TO DO /
21 THE EVIL DEED, AND HE DID, BUT IT TOOK TWO OF THEM. AND
22 IF EVEN -- IF IT HAD ONLY BEEN ONE OF THESE KIDS WITH
23 TRACEY, I BET THIS WOULDN'T HAVE HAPPENED.

24 I'M CONVINCED THIS WOULDN'T HAVE HAPPENED, BUT
25 IT DID. SO THERE ARE SO MANY IF'S THEN. NONE OF THAT

1 CHANGES WHAT WE ARE HERE ABOUT TODAY. THE ONLY OTHER
2 THING I KNOW TO TELL YOU, JUDGE, EVERY TIME I HAVE TALKED
3 TO HIM AND IN TODAY OF THE TWO BOYS, JON SMART IS THE ONLY
4 ONE TO SHOW ANY REMORSE.

5 JOE BRABHAM, THE CHIEF DEPUTY WHO INVESTIGATED
6 THIS, I WISH HE WAS HERE TODAY. HE'S OUT. I UNDERSTAND
7 HE'S GOT SOME MEDICAL PROBLEMS, BUT HE TOLD ME THAT IN HIS
8 -- AND HE HAD SPOKEN -- HE HAD ALREADY INTERVIEWED JON
9 TWICE BEFORE I WAS EVER APPOINTED TO REPRESENT HIM IN THE
10 CASE.

11 HE TOLD ME THAT FROM DAY ONE JON SHOWED
12 REMORSE. I THINK THAT SAYS SOMETHING ABOUT HIM
13 INDIVIDUALLY. HE IS NOT THE CALCULATING MIND THAT CAME UP
14 WITH THIS SCHEME.

15 YOU MAY BE ABSOLUTELY RIGHT. IT MAY NOT HAVE
16 BEEN A LONG TERM PLAN. IT MAY HAVE BEEN -- AS A MATTER OF
17 FACT, IT MAY HAVE BEEN A SPUR OF THE MOMENT. BUT THE FACT
18 WAS THAT IDEA CAME FROM SOMEWHERE ELSE AND HE WAS JUST IN
19 A POSITION THAT HE FELL PRAY TO AND HE DID IT.

20 HE DID SOMEBODY ELSE'S AND IT'S JUST TRAGIC.
21 YOU SAID IT YOURSELF, YOU KNOW. GOING TO SEND HIM TO
22 PRISON THE REST OF HIS LIFE OR THE MAJORITY PORTION OF THE
23 REST OF HIS LIFE. WELL, WE HAVE AN AGREEMENT.

24 AND EARLY ON MY CLIENT HAD ASKED ME TO INQUIRE
25 OF THE COURT ABOUT NOT ADHERING TO THAT AGREEMENT,

1 PARTICULARLY CONSIDERING THAT THE CO-DEFENDANT MAY HAVE
2 RECEIVED A LESSER SENTENCE.

3 NOW THAT THAT IS RESOLVED, HE IS NOT ASKING ME
4 TO DO THAT ANY MORE. HIS SENTENCE IS PRETTY MUCH SET. HE
5 KNOWS WHAT'S GOING TO HAPPEN. IT IS JUST SO TRAGIC. ALL
6 OF THE THINGS I'M SAYING PROBABLY ISN'T GOING TO CHANGE
7 ANYTHING, BUT THE FAMILY WANTED THE PACKS TO UNDERSTAND
8 THAT HE IS NOT A TERRIBLY EVIL PERSON IN HIS HEART.

9 HE DID WRONG AND WHAT HE DID WAS EVIL, BUT THERE
10 IS ROOM, THERE IS ROOM FOR FORGIVENESS, AND THEY WANT THE
11 PACKS TO UNDERSTAND THEY HAVE ASKED. JUDGE, I'M NOT SURE
12 NOW. WE HAVE WAXED AND WANED ON WHO WAS GOING TO SPEAK
13 AND IF THEY WERE GOING TO SPEAK.

14 THEY ARE JUST SO BROKENHEARTED ABOUT ALL OF
15 THIS. I WILL ASK THAT THE -- I HAVE GOT JON'S MOTHER, JON
16 SMART, HIS FATHER RICHARD SMART AND HIS AUNT LAURIE WOODS
17 HERE, AND ASK IF THE COURT WOULD HEAR FROM ANY OF THEM.

18 THE COURT: BE GLAD TO HEAR FROM ANY OF THEM WHO
19 WOULD LIKE TO ADDRESS THE COURT.

20 MR. RICHARD SMART: I WOULD.

21 MR. HOEFER: MR. SMART WOULD.

22 THE COURT: MR. SMART, BE GLAD TO HEAR FROM YOU.
23 STAND RIGHT HERE. SPEAK UP SO THE COURT REPORTER AND I
24 CAN HEAR YOU. YOU CAN STAND RIGHT THERE.

25 MR. RICHARD SMART: JUDGE, ALL THIS HAS BEEN A

1 NIGHTMARE FOR OVER TWO YEARS. IT BEGAN WHEN JON WAS 15,
2 ACTUALLY 14. HE BEGAN WITH THE DRUGS. AND SINCE DRUGS
3 WERE NOT EASILY ACQUIRED FOR HIM, TAKES MONEY, AND HIS
4 PARENTS DID NOT AGREE WITH THAT AND WOULD NOT ALLOW HIM TO
5 HAVE MONEY TO GET, BUT INHALANTS IS SOMETHING THAT WE CAN
6 ALL GET EASILY.

7 JON -- OUR DAUGHTER WAS WITH OUR NEXT DOOR
8 NEIGHBOR, AND HE BROKE INTO THEIR HOUSE IN THE DAYTIME TO
9 STEAL WHAT HE KNEW WAS IN THERE, MINI BOTTLES OF LIQUOR.

10 AND WHEN THEY CAME HOME FROM MYRTLE BEACH, WE
11 WENT OVER THERE, WE TOOK THIS RING AND SOME MINI BOTTLES.
12 DIDN'T EVEN KNOW THEIR HOUSE WAS BROKE INTO, BUT WE WENT
13 PURPOSELY TO TELL THEM THAT WE HAVE YOUR RING AND JON HAD
14 BROKE IN AND THEY WERE OH NO, WE ARE NOT GOING TO PRESS
15 CHARGES ON JON.

16 NO, WE WANT YOU TO BECAUSE JON'S TOTALLY OUT OF
17 CONTROL WITH GASOLINE. HE WOULD GO IN THE BACK YARD AND
18 TAKE GASOLINE. I HAD TO LOCK IT UP. WE HAD IT FOR THE
19 LAWN MOWERS AND EVERYTHING. ANYTHING HE COULD GET HIS
20 HANDS ON TO SNIFF, THAT'S WHAT HE WAS DOING.

21 I DID NOT HAVE THE MONEY TO PUT HIM INTO A
22 TREATMENT FACILITY, SO I SAW THE OPPORTUNITY TO MAYBE
23 ADDRESS THIS ISSUE IN A COURT OF LAW.

24 PRIOR TO JON GOING TO COURT TO HAVE THIS
25 ADDRESSED, THE SECOND DEGREE BURGLARY, GREENVILLE COUNTY

1 POLICE DEPARTMENT THREWED MY YOUNGUN DOWN ON THE GROUND
2 BECAUSE HE THOUGHT THAT HE HAD SOMETHING IN HIS HAND, AND
3 HE WENT TO STICK IT IN HERE, HE DIDN'T KNOW WHAT IT WAS,
4 SO THEY ALMOST SHOT HIM.

5 BUT WHEN THEY REALIZED IT WAS A PAINT RAG, THEY
6 BROUGHT HIM HOME TO US WHERE WE ASKED THEM TO PUT HIM IN
7 JAIL FOR HIS OWN SAFETY. THEY SAID THEY COULDN'T. THEY
8 ASKED US TO SEE WHAT WE COULD DO.

9 WE CALL -- TOLD THEM THAT WE WAS ALREADY
10 PLANNING ON TRYING TO GET HIM HELP IN THE MANNER IN WHICH
11 I TOLD YOU WITH THE BURGLARY. THEY SAID FINE. WE TOOK
12 HIM TO COURT THAT DAY. I HAD TO WORK. MY WIFE WENT WITH
13 HIM.

14 SHE STOOD IN THE COURTROOM BECAUSE JON WHEN HE
15 WOULD GET ON THIS STUFF WOULD COME IN THE HOUSE -- THERE
16 WAS AN INCIDENT WHERE JON -- HIS MOTHER SAID JON, WHAT ARE
17 YOU DOING THAT FOR, AND JON PROCEEDED TO HIT HER
18 REPEATEDLY BECAUSE HE DID NOT KNOW WHO SHE WAS.

19 BUT SHE JUST SCREAMED JON, AND WHEN HE REALIZED
20 WHO SHE WAS, HE STOPPED AND HE STARTED CRYING AND HE RAN
21 OUT OF THE HOUSE. HE COME BACK THREE HOURS LATER. MY
22 WIFE TOLD HIM, SAID JON, DEVIL GOING TO GET YOU.

23 HE KNEW. HE WAS CRYING. HE SAID MOM, I'M GOING
24 TO STOP. I KNOW I COULD HURT YOU. BUT HE COULDN'T STOP.
25 HE WAS CAUGHT AGAIN. BUT BY MY WIFE KNOWING THIS AND WHEN

1 WE WENT INTO THAT COURTROOM, SHE ADDRESSED ALL OF THIS TO
2 THE JUDGE AND BY THE JUDGE HEARING THIS, HE ASKED JON --
3 HE SAYS SON, DO YOU HAVE THIS KIND OF PROBLEM?

4 AND JON SAID YES, SIR, I DO. AND HE DETERMINED
5 THAT JON NEEDED HELP FROM ALL OF THIS. EVEN THE
6 DEPARTMENT OF JUVENILE JUSTICE STOOD UP IN HIS FAVOR
7 BECAUSE AS A CHILD THEY HAVE THE SAME RIGHTS AS AN ADULT,
8 HE WAS TRYING TO PULL HIM TO THE SIDE AND THEY DROPPED THE
9 INHALANT CHARGE ON JON SO THEY COULD GIVE HIM THE SECOND
10 DEGREE BURGLARY BECAUSE LAWYER-CLIENT CHILD
11 CONFIDENTIALITY THEY THOUGHT THE BEST THING IS TO
12 ELIMINATE ALL THE CHARGES THEY CAN, BUT THEY ELIMINATED
13 THE ONE CHARGE THAT SHOULD HAVE GOTTEN JON HELP, BUT THEY
14 PROMISED THEY WOULD ADDRESS IT, AND THEY DID.

15 FIRST OF ALL THE DEFINITION OF THE DEPARTMENT OF
16 JUVENILE JUSTICE IS THAT THEY ARE MORE INTERESTED IN
17 REHABILITATING OUR CHILDREN THAN PUNISHING THEM.

18 THE COURT: RIGHT.

19 MR. RICHARD SMART: THE FIRST THING THEY DID WAS SENT
20 JON TO THE N.E.C. FOR PUNISHMENT. WHILE HE WAS AT THE
21 N.E.C., HE WAS CAUGHT WITH PROZAC. WE WENT TO VISIT WITH
22 HIM AND HIS COUNSELOR MR. RICKEN.

23 WE HAD A DISCUSSION OVER THIS. THEY HAD JON ON
24 PROZAC. HE HELD THIS BACK UNDER HIS TONGUE SO HE COULD
25 ACQUIRE OTHER DRUGS. THEY -- ALL THE CHILDREN DOWN THERE

1 WERE ON STUFF.

2 JON SHOULD HAVE NEVER BEEN PLACED IN THAT
3 FACILITY TO START WITH, BUT SINCE ALL THE OTHER CHILDREN
4 HAD DIFFERENT TYPES OF DRUGS, HE HELD BACK HIS AND TRADED
5 FOR CIGARETTES, WHATEVER HE COULD. HE EVEN WENT TO THE
6 POINT OF INHALING OF CLEANER.

7 HE JUST WAS NOT CAUGHT FOR IT, BUT HE ADMITTED
8 IT TO ME. AND MR. RICKER KNEW WHAT HE WAS SAYING WAS TRUE
9 AND BY HIS RECOMMENDATION HE KNEW JON HAD A TERRIBLE
10 PROBLEM THAT NEEDED TO BE ADDRESSED.

11 HIS PROBATION OFFICER KNEW JON HAD THIS PROBLEM,
12 BUT JON NEVER GOT THE TREATMENT. HIS PROBATION OFFICER
13 DECIDED THAT JON NEEDED TO GO TO THE RIMINI INSTITUTE.
14 AFTER HIS MOTHER HAD WARNED EVERYBODY, THE N.E.C. HAD
15 WARNED EVERYBODY, JON HIMSELF CRIED FOR HELP, THIS MAN
16 PLACED HIM DOWN HERE IN HARMS WAY.

17 MY SON'S LUNGS COULD HAVE BEEN CHANCED OFF OF
18 GASOLINE AND THIS MAN KNEW WHAT THE EFFECTS OF GASOLINE
19 COULD DO TO YOU BECAUSE HE IS THAT TYPE OF PERSON THAT
20 DEALS WITH THAT.

21 HE WAS NOTIFIED FROM THE MARINE INSTITUTE PRIOR
22 TO TRACEY'S DEATH THAT MY SON WAS DOWN THERE DOING THIS
23 MORE THAN ONCE. NOTHING WAS -- NO RESPONSE FROM THEM.
24 THEN AFTER THIS TERRIBLE INCIDENT HAPPENS, HE JUST THROWS
25 UP HIS HANDS AND SAYS WELL, WE ARE THROUGH WITH HIM NOW.

1 YOUR HONOR, THIS IS TERRIBLE. I HEARD EARLIER
2 THAT YOUR PASTOR SAID TRACEY WAS SAVED. HE IS BORN
3 AGAIN. I'M BORN AGAIN. HE IS MY BROTHER IN CHRIST. AND
4 WHAT I'M SAYING TO YOU IS I BELIEVE TRACEY WOULD HAVE
5 WANTED JON TO GET THIS HELP, BUT HE NEVER KNEW JON NEEDED
6 IT.

7 NO ONE ADDRESSED THIS ISSUE. I DON'T UNDERSTAND
8 WHY THE SOLICITOR DID NOT ADDRESS THIS ISSUE. I DON'T
9 UNDERSTAND WHY THIS STATE IS NOT STANDING HERE IN
10 ACCOUNTABILITY FOR THEIR HAND IN THIS.

11 I DON'T UNDERSTAND WHY EVERYONE WONDERS WHAT'S
12 THE MOTIVE WHEN JON HAS CRIED FOR HELP, WE HAVE CRIED FOR
13 HELP. AND ONCE AGAIN JON'S CRIED FOR HELP AND A BROTHER
14 IN CHRIST LOST HIS LIFE.

15 NOW MY SON SETS HERE AND HE'S FIXING TO LOSE
16 HIS. SIR, I PLEAD TO YOU THAT THERE IS SOMEONE ELSE
17 THAT'S ACCOUNTABLE FOR THIS MURDER ALSO. MY SON HAS NEVER
18 DENIED THAT HE DID THIS.

19 HE DIDN'T EVEN WANT ME TO SAY ANYTHING BECAUSE
20 HE DIDN'T WANT TO HURT ANYBODY. I HAVE NOTIONS IN MY MIND
21 OF WHAT TYPE PERSON WAS TRACEY. JON TOLD ME HE WAS A
22 GREAT GUY, HE WAS A FRIEND.

23 I SAID WHAT ABOUT MR. AND MRS. PACK? DADDY,
24 DON'T SAY ANYTHING TO THEM. THEY ARE GOOD PEOPLE. IT'S
25 NOT IN MY SON'S NATURE TO DO THIS. MY SON HAD DONE

1 ALREADY SERVED WELL OVER A YEAR IN THIS INSTITUTE AWAITING
2 HELP.

3 HE WAS ALMOST TO THE POINT TO BEING PUT BACK OUT
4 ON THE STREETS AFTER TRACEY PACK HAS HELPED HIM. WHAT WAS
5 HAPPENING WAS THIS STATE PUTTING HIM BACK OUT HERE WITH
6 THE SAME PROBLEM. SIR, THERE HAS BEEN A TERRIBLE,
7 TERRIBLE THING HAPPENED HERE.

8 AND WE ARE ALL VERY SORRY, BUT I LOVE MY SON
9 TOO, BUT I THAT'S WHY I ASKED FOR HELP FOR HIM. AND THIS
10 STATE DENIED IT AND I STILL DO NOT UNDERSTAND WHY THE
11 STATE NEVER ADDRESSED IT.

12 I DON'T KNOW WHETHER IT'S POLITICAL ISSUES
13 AROUND IT OR WHAT. I DON'T KNOW, BUT I DO BELIEVE THAT IT
14 NEEDS TO BE ADDRESSED. I JUST WANT YA'LL TO KNOW THE
15 TRUTH. I'M VERY SORRY.

16 THE COURT: THANK YOU, MR. SMART. MR. HOEFER,
17 ANYTHING FURTHER?

18 MR. HOEFER: THIS IS LAURIE WOODS.

19 MS. WOODS: MR. AND MRS. PACK, I'M VERY, VERY SORRY,
20 VERY, VERY SORRY. I ONLY HAVE A QUESTION. THERE IS ONLY
21 ONE THAT CAN POSSIBLY BE ASKED. WILL HE GET HELP NOW? I
22 MEAN, FINALLY WILL HE GET SOME HELP?

23 THE COURT: I CAN TELL YOU THAT LIKE THE FAMILY COURT
24 JUDGE I'M GOING TO ORDER THAT HE RECEIVE HELP, MS. WOODS.

25 MS. WOODS: THANK YOU.

1 THE COURT: AS TO THE QUALITY OF THE HELP IT SHOULD
2 BE, IT SHOULD BE BETTER THAN -- ANYTHING WOULD BE BETTER
3 THAN HE HAS RECEIVED BECAUSE HE HAS RECEIVED NOTHING, AND
4 THEY DO HAVE SUBSTANCE ABUSE TREATMENT FACILITIES WITHIN
5 THE DEPARTMENT OF CORRECTIONS THAT I AM DIRECTING THAT HE
6 RECEIVE TREATMENT FROM.

7 OBVIOUSLY THE BENEFITS TO HIM IS GOING TO BE FAR
8 LESS NOW THAN IT WOULD HAVE BEEN HAD HE GOTTEN IT EARLIER,
9 BUT HOPEFULLY IT--

10 MR. RICHARD SMART: BENEFIT FOR ALL OF US, SIR.

11 THE COURT: YES, SIR. OKAY. I AM DIRECTING THAT HE
12 RECEIVE THAT IN ANY EVENT.

13 MS. WOODS: THANK YOU.

14 MR. HOEFER: MAY IT PLEASE THE COURT. I BELIEVE JON
15 WOULD LIKE TO ADDRESS THE COURT.

16 THE COURT: MR. SMART, I'LL BE GLAD TO HEAR FROM
17 YOU.

18 MR. SMART: YOUR HONOR, THIS IS NOT FOR YOU. THIS IS
19 FOR THE PACKS.

20 THE COURT: OKAY.

21 MR. SMART: TRACEY WAS A GOOD MAN AND I KNOW YA'LL
22 WAS, TOO. THE REASON WHY WE DID MOVE THE BODY BECAUSE I
23 DIDN'T WANT YA'LL TO FIND HIM. I KNOW MR. PACK WENT
24 AROUND THERE, GOT DIESEL FUEL FROM THE CHICKEN HOUSES.

25 I KNOW I GOT TO LIVE WITH THIS MAN'S BLOOD ON MY

1 HANDS FOR THE REST OF MY LIFE. I KNOW I HAVE YOU, TOO. I
2 ATTEMPTED SUICIDE. I HAVE BEEN GOING TO MENTAL HEALTH FOR
3 NIGHTMARES. I THINK ABOUT TRACEY EVERY DAY.

4 I THINK ABOUT YA'LL. THAT'S NOT GOING TO BRING
5 HIM BACK I KNOW, AND I'M VERY SORRY. THANK YOU.

6 THE COURT: THANK YOU, MR. SMART. MADAM CLERK, WOULD
7 YOU HAND ME MR. HUTTO'S SENTENCE SHEETS ON THE MURDER
8 CHARGE? DO YOU HAVE THAT WITH ME? HAND IT UP, PLEASE
9 MA'AM.

10 THE COURT: MR. HOEFER, IS THAT IT?

11 MR. HOEFER: JUDGE, I BELIEVE THAT'S ALL WE HAVE.

12 THE COURT: THANK YOU.

13 (WHEREUPON THERE WAS A PAUSE).

14 THE COURT: I HAD ALREADY EXPRESSED TO THE PACK
15 FAMILY -- I WAS ADDRESSING MR. HUTTO'S SITUATION, THE LOSS
16 THAT I KNOW IS THEIRS, AND I ADDRESSED MR. AND MRS. HUTTO
17 AT THAT SAME TIME AND I REALIZE THAT THE SMARTS FEEL THE
18 SAME LOSS THAT EVERYONE HERE TODAY THAT IS ASSOCIATED WITH
19 THIS CLOSELY FEELS.

20 THE PACK AND THE SMART FAMILY MAY HAVE HAD A
21 COUPLE OF MONTHS TO ADJUST ITSELF TO THE INEVITABILITY OF
22 THIS OUTCOME TODAY PROBABLY IS A LITTLE CONSOLATION THAN
23 PROBABLY NONE AT ALL TO THE FINALITY OF THESE THINGS.

24 AND I APPRECIATE, MR. SMART, YOUR REMARKS. AND
25 WHILE I CANNOT ANSWER AS TO WHAT HAS NOT BEEN DONE BEFORE,

1 I WOULD SIMPLY TRY TO ADDRESS THE BEST I CAN WHAT WILL
2 HAPPEN FROM THIS DAY ON.

3 ON THE CLARENDON COUNTY INDICTMENT
4 2000-GS-14-356, THE GRAND LARCENY OVER \$5000, THE SENTENCE
5 IS MR. SMART BE COMMITTED THE STATE DEPARTMENT OF
6 CORRECTIONS FOR A PERIOD OF TEN YEARS. CREDIT FOR TIME
7 SERVED SINCE AUGUST THE 13TH, 1999.

8 THE SENTENCE TO RUN CONCURRENT TO ALL OTHER
9 SENTENCES IMPOSED THIS DAY. ON THE CRIMINAL CONSPIRACY
10 CHARGE, THE SAME INDICTMENT, THE SENTENCE IS FIVE YEARS
11 WITH CREDIT FOR TIME SERVED, CONCURRENT SENTENCE.

12 ON THE ESCAPE CHARGE, 15 YEARS, CREDIT FOR TIME
13 SERVED AND A CONCURRENT SENTENCE. ON THE ARMED ROBBERY
14 CHARGE THE SENTENCE IS 30 YEARS WITH CREDIT FOR TIME
15 SERVED AND CONCURRENT SENTENCE.

16 ON THE MURDER CHARGE, THE SENTENCE IS THAT MR.
17 SMART BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
18 FOR THE BALANCE OF HIS NATURAL LIFE. HE IS TO RECEIVE
19 TREATMENT THROUGH THE ADDITION TREATMENT UNIT OF THE
20 DEPARTMENT AND MENTAL HEALTH COUNSELING.

21 THIS SENTENCE IS TO RUN CONCURRENT TO ALL OTHER
22 SENTENCES WITH CREDIT FOR TIME SERVED. THANK YOU, LADIES
23 AND GENTLEMEN. GOOD LUCK TO YOU.

24 MR. JACKSON: THANK YOU, YOUR HONOR.

25 THE COURT: THANK YOU.

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-----END OF REQUESTED TRANSCRIPT OF RECORD-----

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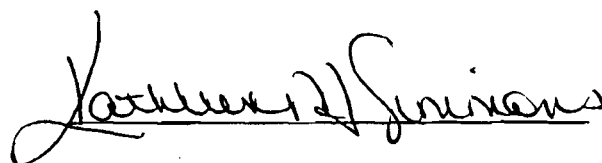
25

C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD 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 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE NINTH DAY OF AUGUST, 2001.

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

AUGUST 21, 2001

A handwritten signature in cursive script, appearing to read 'Kathleen M. Simmons', written over a horizontal line.

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JON PAUL SMART,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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

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TABLE OF AUTHORITIES**CASES**

<u>Gibson v. State</u> , 334 S.C. 515, 514 S.E.2d 320 (1999)	5
<u>State v. O'Leary</u> , 302 S.C. 17, 393 S.E.2d 186 (1990)	5
<u>Weathers v. State</u> , 319 S.C. 59, 459 S.E.2d 838 (1995)	5

STATEMENT OF ISSUE ON APPEAL

The judge erred by informing appellant that he could appeal his guilty plea, advice which rendered the plea conditional and thus void.

STATEMENT OF FACTS

On December 11, 2000, a Clarendon County grand jury indicted Jon Smart and Stephen Hutto for murder, armed robbery, grand larceny of a motor vehicle, criminal conspiracy and escape. Smart pleaded guilty before Judge Kenneth Goode on May 25, 2001, pursuant to a plea agreement whereby the state agreed not to seek the death penalty. Judge Thomas W. Cooper, Jr., presided at sentencing on August 9, 2001. He sentenced Smart to life without parole for murder and concurrent sentences on the remaining offenses.

ARGUMENT

The judge erred by informing appellant that he could appeal his guilty plea, advice which rendered the plea conditional and thus void.

Before he accepted Jon Smart's guilty plea, the judge informed him that "you have a right to appeal the guilty plea of the court..." May 25 R. p. 20, lines 11-14. This advice rendered the plea conditional and thus void.

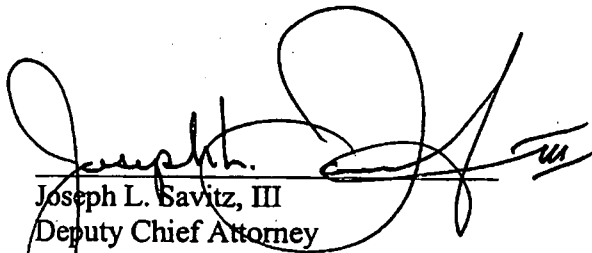
The right to appeal a guilty plea is limited to "extraordinary circumstances." Weathers v. State, 319 S.C. 59, 459 S.E.2d 838, 839 (1995). Normally, a guilty plea constitutes a waiver of all non-jurisdictional defects and defenses. Gibson v. State, 334 S.C. 515, 514 S.E.2d 320 (1999). Moreover:

Guilty pleas are unconditional and, if an accused attempts to attach any condition, the trial court must direct a plea of not guilty... It is, thus, impermissible for a defendant to preserve constitutional issues while entertaining a guilty plea; the trial court may not accept the plea on such terms.

State v. O'Leary, 302 S.C. 17, 393 S.E.2d 186, 187 (1990).

When the judge advised Smart that he had a right to appeal the guilty plea, he thereby added a condition to the plea which rendered it void. For this reason, the Court should vacate Jon Smart's guilty plea and remand for further proceedings.

Respectfully submitted,


Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

This 4th day of June, 2002.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JON PAUL SMART,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jon Paul Smart states:

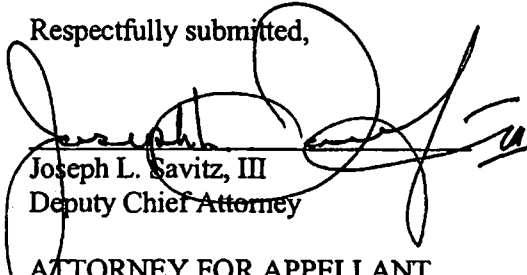
1. He is Deputy Chief Attorney for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Thomas W. Cooper, Jr., which was held on Aug. 8, 2001, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Jon Paul Smart.

Respectfully submitted,



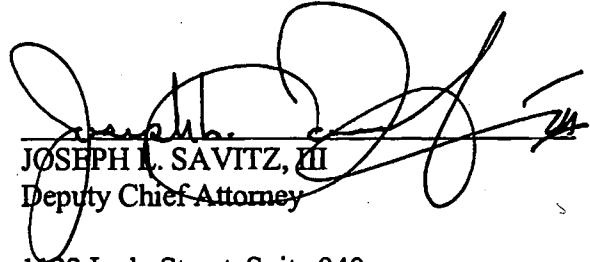
Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

This 4th day of June, 2002.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



JOSEPH L. SAVITZ, III
Deputy Chief Attorney

1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant.

June 4, 2002

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

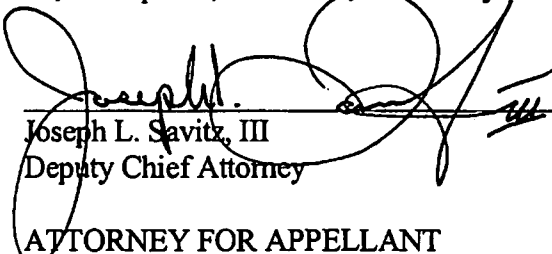
V.

JON PAUL SMART,

APPELLANT

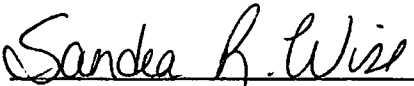
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief in the above referenced case has been served upon Donald J. Zelenka, this 4th day of June, 2002; a copy of the Record on Appeal and Final Anders Brief has been served on Jon Paul Smart, #277378, Lee Correctional Institution, 1204 East Church Street, Bishopville, SC 29010, this 4th day of June, 2002.


Joseph L. Savitz, III
Deputy Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of June, 2002.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Jon Paul Smart,

Appellant.

Appeal From Clarendon County
Thomas W. Cooper, Jr., Circuit Court Judge
Kenneth G. Goode, Circuit Court Judge

Unpublished Opinion No. 2003-UP-092
Submitted November 20, 2002 – Filed January 30, 2003

APPEAL DISMISSED

Deputy Chief Attorney Joseph L. Savitz, III, of
Columbia; for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelenka, of Columbia; Cecil Kelley Jackson, of
Sumter; for Respondent.

PER CURIAM: Jon Paul Smart appeals his guilty plea to murder, armed robbery, grand larceny of an automobile, conspiracy, and escape. Counsel for Smart attached to the final brief a petition to be relieved as counsel. Smart did not file a separate pro se response.

After a review of the record as required by Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we hold there are no directly appealable issues that are arguable on their merits. Accordingly, we dismiss Smart's appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.

CONNOR, STILWELL, and HOWARD, JJ., concur.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON) IN THE COURT OF GENERAL SESSIONS
) 2000-GS-14-356
 The State,)
)
 vs.) MOTION FOR SENTENCE
) RECONSIDERATION
)
 JON SMART,)
)
Defendant.)

NOW COMES THE UNDERSIGNED, on behalf of the Defendant, requesting that this Honorable Court conduct a sentencing rehearing in his case in order to reconsider his sentence of life without parole.

BACKGROUND

1. On May 25, 2001, the Defendant entered a plea of guilty to a multiple count indictment, including a plea to the crime of Murder in violation of SC Code §16-03-0010. The Court accepted all pleas;
2. On August 9, 2001, the Defendant was sentenced by the Court to the State Department of Corrections for a term of Life without Parole;
3. The crime of which Defendant was convicted occurred on or about August 1999. Defendant was 17 years old and a minor at the time of the offense;

LEGAL BASIS

4. In *Miller v Alabama*, 567 US ___, 132 S. Ct. 2455 (2012), the United States Supreme Court held that, when applied to a minor, a mandatory sentence of life without parole violated the Eighth Amendment's prohibition of "cruel and unusual punishment". The Court focused on the "constitutional difference" between minors and adults, where "immaturity, irresponsibility, impetuosity and recklessness" are more prevalent and should be considered as mitigating factors;
5. In *Aiken v. Byars*, 410 SC 534 (SC 2014) the South Carolina Supreme Court interpreted *Miller*, together with *Roper v Simmons*, 543 US 551 (2005) and *Graham v Florida*, 560 US 48 (2010), to establish a constitutional requirement that "courts fully explore the impact of the defendant's juvenility on the sentence rendered." The Court ordered a sentence rehearing "to

allow the judge to consider such evidence in light of its constitutional weight." The court applied these principles retroactively to all those similarly situated to the petitioners in *Aiken*;

6. The South Carolina Supreme Court highlighted a specific framework for the sentencing of minors, setting forth that the sentencing court must consider:

- (1) the chronological age of the offender and the hallmark features of youth, including immaturity, impetuosity and the failure to appreciate risks and consequences;
- (2) the family and home environment that surrounded the offender;
- (3.) the circumstances of the homicide offense, including the extent of the offenders conduct and how familial or peer pressures may have affected him;
- (4) the incompetencies associated with youth such as the offender's inability to deal with police officers, prosecutors or his own attorney; and
- (5) the possibility of rehabilitation.

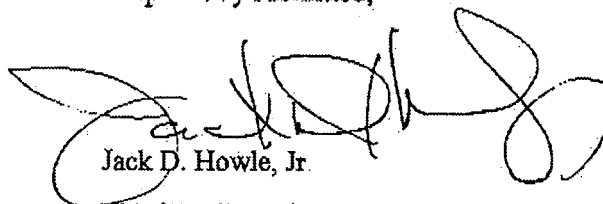
Miller, supra at 2468

7. The South Carolina Supreme Court also drew a parallel between life without parole sentences for minors with the death penalty, noting that the *Miller* opinion "linked" the "individualized sentencing requirements of capital sentencing to juvenile life without parole sentencing." The court authorized all defendants similarly situated to Petitioner *Aiken* to file a motion for relief in the Court of General Sessions where originally sentenced.

REQUEST FOR RELIEF

8. Accordingly, pursuant to the decision of the South Carolina Supreme Court decision in *Aiken v Byars*, supra, the undersigned on behalf of the Defendant respectfully MOVES for a hearing on sentencing in this Defendant's case.

Respectfully submitted,



Jack D. Howle, Jr.

Chief Public Defender, Third Circuit

Attorney for the Defendant

The Supreme Court of South Carolina

Jon Smart, Petitioner,

v.

State of South Carolina, Respondent.

Clarendon County

Docket No.: 2000-GS-14-00356

ORDER

Petitioner filed a motion on May 26, 2016 for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable D. Craig Brown be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Brown shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where he may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge Brown shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.

s/Costa M. Pleicones

Costa M. Pleicones
Chief Justice

June 7, 2016
Columbia, South Carolina

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

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
2000-GS-14-356

v.)

JON SMART,)

DEFENDANT.)

May 24, 2017
Bishopville, South Carolina

B E F O R E :

THE HONORABLE D. CRAIG BROWN, JUDGE

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

ERNEST A. FINNEY, III, ESQ.
Solicitor of the Third Circuit

JACK D. HOWLE, JR., ESQ.
Chief Public Defender of the Third Circuit

FRANCES B. RAY, RPR
Circuit Court Reporter

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1 THE COURT: We're here in the matter of
2 the State of South Carolina versus Mr. Jon Smart.
3 We're back for -- we're here for a re-sentencing
4 hearing pursuant to Aiken v. Byars, 410 SC 534, 765,
5 S.E.2d 572, the State Supreme Court case from 2014.

6 At this time, Mr. Finney, I'm gonna allow
7 you to put kind of a, not a factual background but a
8 background as to what we got here as far as ---

9 MR. FINNEY: May it please the Court, Your
10 Honor, State versus Smart was a Clarendon County
11 murder case that originated on December the ---

12 THE COURT: August.

13 MR. FINNEY: Well -- yes, sir, August 9th,
14 2001, as a result of a negotiated guilty plea with
15 the defendant Jon Paul Smart.

16 THE COURT: Hold on a minute. The offense
17 occurred August 12, 1999.

18 MR. FINNEY: That's what I was going
19 to ---

20 THE COURT: I'm sorry, I didn't mean to
21 cut you off.

22 MR. FINNEY: The plea took place ---

23 THE COURT: Go ahead.

24 MR. FINNEY: Yes, sir. The death of the
25 victim Tracey Smart occurred on August 12th, 1999,

1 in Clarendon County, and the -- as a result of the
2 investigation the defendant entered into a
3 negotiated guilty plea with the State of South
4 Carolina, and that plea was commensurated on
5 August 9th, 2001. He pled guilty to murder of
6 Tracey Pack, armed robbery, grand larceny of a motor
7 vehicle, criminal conspiracy, and escape. For those
8 charges he received a life sentence plus other
9 numerical sentences that ran concurrent with that
10 charge. The sentencing judge was the Honorable
11 Thomas Cooper out of Clarendon County, and Mr. Smart
12 had a codefendant in Mr. Hutto who also entered
13 pleas to similar charges arising out of the same
14 incident at that time.

15 As a result of the Aiken versus Byars
16 case, Mr. Smart filed a motion for re-sentencing on
17 May 26th, 2016, and you, Your Honor, were appointed
18 to hear this case June 7th, 2016. We've had several
19 status conferences since then, and today we're here
20 to have evidence presented on the motion of the
21 moving party.

22 THE COURT: All right, let me ask this
23 question, Mr. Howle, of you. This case, as everyone
24 is aware, originated out of Clarendon County
25 involving offenses that took place in Clarendon

1 County, Bamberg County, as well as Horry County.
2 We're here for a re-sentencing on the murder
3 conviction or plea sentence out of Clarendon County.
4 Today this date, May 24th, 2017, we are in Lee
5 County to conduct this hearing.

6 Is there any, I assume, and I want it on
7 the record, that your client consents to having this
8 matter heard, and me make a decision on here in Lee
9 County today; is that correct?

10 MR. HOWLE: Yes, sir, it will be Lee
11 County rather than Clarendon County. We have no
12 problem with that whatsoever, Your Honor.

13 THE COURT: Anything before we begin,
14 Mr. Howle, that you'd like to place on the record?

15 MR. HOWLE: Your Honor, just, I think it's
16 our understanding, the Solicitor had, the Byars case
17 it's my understanding it applies to the life without
18 parole for the murder charge. Those other charges
19 that ran concurrent with whatever that sentence is
20 or would be after today, those matters are not going
21 to be gone into. It's only the LWOP is the one
22 being considered?

23 THE COURT: That's my understanding as
24 well.

25 MR. HOWLE: Yes, sir.

1 THE COURT: And it was five factors that
2 our Supreme Court addressed in the Aiken v. Byars
3 case ---

4 MR. HOWLE: Yes, sir.

5 THE COURT: ---that was most important for
6 me to consider in determining what I believe to be
7 the appropriate sentence, okay. I did this morning
8 the first thing, sent an email to both of you, and
9 both you, and I appreciate both of you in complying
10 with my request; but I asked that one of you, that
11 you all bring me a copy of the transcript from the
12 August 9, 2001, copy of transcript of record at the
13 time when both the defendants pled guilty and
14 sentence was imposed on both defendants. I told you
15 all, again, both of you brought me a copy. I had a
16 copy beforehand. My copy was marked up and wanted a
17 clean copy and told each of you for the purpose of
18 requesting a clean copy because I wanted to make it
19 a part of this record here today 'cause I wasn't
20 exactly sure to what extent the Solicitor would go
21 into the background of this case from the standpoint
22 that I was not the judge that presided over the
23 guilty pleas and sentences back in 2001. It was the
24 State represented by Mr. Finney. It was Judge
25 Cooper, Tommy Cooper from Manning that presided over

1 that. So any objection to me making this a part of
2 the record from the State?

3 MR. FINNEY: No objection, Your Honor.

4 THE COURT: Defense counsel?

5 MR. HOWLE: No objection.

6 (Court's Exhibit 1 was marked and made a
7 part of the record.)

8 THE COURT: All right, what I would
9 propose doing at this point is turn -- since it's
10 your motion, Mr. Howle, or your client's motion. I
11 will propose turning the matter in its entirety over
12 to you and let you present whatever you so desire in
13 addressing those five factors as set forth in Aiken
14 v. Byars. Therefore, I will turn it over to you at
15 this time unless there's anything, Mr. Finney, you'd
16 like to add.

17 MR. FINNEY: No, Your Honor.

18 THE COURT: Mr. Howle, you're so
19 recognized.

20 MR. HOWLE: Your Honor, we call Ms. Tammy
21 Smart as a witness.

22 THE COURT: Ma'am, if you'd place your
23 left hand on the Bible, raise your right hand.

24 WHEREUPON,

25 **TAMMY SMART,**

DW - T. SMART - DIRECT

1 having been duly sworn by the Court, testified as
2 follows:

3 THE COURT: You may be seated. State your
4 name for the record, spelling your last name please.

5 THE WITNESS: Tammy Angie Smart,
6 S-M-A-R-T.

7 THE COURT: Tell me your first name again.

8 THE WITNESS: Tammy.

9 THE COURT: Spell it for my clerk. I want
10 to make sure it's not ---

11 THE WITNESS: T-A-M-M-Y.

12 THE COURT: Thank you.

13 All right, Mr. Howle.

14 MR. HOWLE: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. HOWLE:

17 Q Tammy, what kin are you to Jon?

18 A I'm his sister.

19 Q And where do you live now?

20 A As of now I live in Easley at my son's aunt's
21 house.

22 Q Okay. And where were you living at the time of
23 this incident?

24 A At my parents' house.

25 Q Okay. And who beside yourself was in that home?

DW - T. SMART - DIRECT

- 1 A Me and my brother Jon.
- 2 Q Okay. And is there another brother in the
- 3 family?
- 4 A Yeah, my brother Jason.
- 5 Q Was he there or had he already moved out or what?
- 6 A He moved out.
- 7 Q Okay. What was living in the family like back at
- 8 that time?
- 9 A I mean, it was really just me and my brother and
- 10 my cousins at the house for the most part. I mean,
- 11 he would watch us, and, I mean, most of the time I
- 12 didn't know where my parents were.
- 13 Q You say a lot of times you didn't know where your
- 14 parents were?
- 15 A Right.
- 16 Q So they would just leave you and your brother in
- 17 the house?
- 18 A Yeah. I mean, he would watch me, get me up for
- 19 school, you know, make sure I matched and, I mean,
- 20 fix me food and everything. I mean, most of the
- 21 part ---
- 22 Q So Jon kind of took care of you since they
- 23 weren't; is that what you're saying?
- 24 A Yeah.
- 25 Q Was anything bad or wrong going on in the home

DW - T. SMART - DIRECT

1 that you observed?

2 A Drugs.

3 Q Drugs? And when you say drugs you're talking
4 about drug use by family members?

5 A My parents.

6 Q Okay. What kind of drugs were they using?

7 A I mean, I couldn't, I'm not too for sure of all
8 the drugs they used. I know my dad, you know,
9 smoked weed. There was -- I mean, my mom, she was
10 an alcoholic. I mean, I -- cocaine. Uh, when he
11 ---

12 Q So they were just ---

13 A When he, there was a lot of meth going on
14 whenever or crank, whenever, whenever he got sent
15 away. When they sent him away they were smoking
16 crack, anything that was in the neighborhood at the
17 time.

18 Q Okay. Did their drug use effect any of the
19 children in the home as far as drug use?

20 A I mean, when they were high they used to -- if
21 we, the kids got on their nerves they would always
22 grab the oldest. That's the reason why Jason left.

23 Q Okay. Did ---

24 A And I remember a lot of times they would...

25 Q Did their drug habit and having drugs in the

DW - T. SMART - DIRECT

1 house, what effect did that have on you and Jon as
2 far as drug use?

3 A Well, I mean, I can't really speak for Jon, but I
4 know he started doing drugs. I didn't start doing
5 drugs until I was 17 after all of this ended but.

6 Q Okay. But you think Jon did start doing some
7 drugs in this time when he was there with the
8 family?

9 A I know he did.

10 Q Okay. And I was going to ask you what your
11 relationship was with Jon, but I think you said he
12 kind of took care of you. What exactly did he do
13 day to day as far as helping you?

14 A I mean, he got me up. I was young. He made sure
15 that all my clothes matched 'cause I didn't match
16 growing up, and he'd fix my hair, walk me to school,
17 walk me home, fix me dinner, you know.

18 Q So these were things your parents weren't doing?

19 A Yeah. If I wanted to stay up he tried to, you
20 know, scare me with Stephen King novels till I went
21 to sleep.

22 Q Okay. So your relationship with your parents at
23 that time, how would you characterize that?

24 A I didn't really have a relationship with my
25 parents.

DW - T. SMART - DIRECT

1 Q I'm sorry?

2 A I didn't really have a relationship, I mean --
3 what was the question?

4 Q Well just, what kind of relationship did you have
5 with them was the question.

6 A I mean, I didn't have a relationship.

7 Q Okay. How did your parents get the drugs?

8 A They would buy them from, you know, their
9 friends, people they knew.

10 Q All right, besides buying drugs was there any
11 other thing they did with drugs?

12 A They sold drugs.

13 Q All right. And when you say they sold drugs you
14 talking about selling drugs out of the house?

15 A Yeah.

16 Q All right. Did they expect you or ask you or
17 demand of you to participate in that in any way?

18 A I mean, yeah, she would, if someone came over --
19 most of the time my mom didn't like to talk to
20 people so she would send me to the door with
21 whatever she was, you know, they wanted, and I'd
22 collect the money and take it back to her.

23 Q Okay. So your mother was actually ---

24 A Most of the time it was just marijuana and
25 cocaine.

DW - T. SMART - DIRECT

1 Q But they were giving you the drugs to go to the
2 door when somebody would come to buy it, and you
3 were actually giving it to them and taking the money
4 back to your parents?

5 A Yeah.

6 Q Okay. What is your drug dependency today?

7 A I don't do drugs today.

8 Q Okay.

9 A I don't even smoke cigarettes today.

10 Q And you recently had a baby?

11 A Yeah.

12 Q And how old is the baby now?

13 A He's a little over a month old.

14 Q Okay. You went through, I assume, various tests
15 during your pregnancy. Did you ever test positive
16 for drugs during any of that time?

17 A No.

18 Q So you have been free of drugs for some period of
19 time now and not using, all right. But in regard to
20 growing up you saw drug use pretty much on a regular
21 basis with your parents?

22 A Yeah, I saw drug use a lot and I swore I would
23 never do drugs 'cause I saw how everyone else ended
24 up. But I mean, eventually I did start doing them.

25 Q Okay. Beyond that what, what was just the daily

DW - T. SMART - DIRECT

1 discipline that your parents did as far as making
2 sure you went to school or did your homework or
3 anything like that?

4 A They never did my homework. I mean, I never did
5 my homework. I didn't go to school the entire time
6 when Jon's case was going on. I mean, I failed. I
7 didn't go to school. I missed the entire year.

8 Q And your parents did not expect you to go or make
9 you go?

10 A No, I mean, they -- no.

11 Q Okay. Anything else about your parents' conduct
12 that you think the Court needs to know about?

13 A Well, actually after he went to -- during the
14 trial for Jon they did start pushing for me to go to
15 school on time and, I mean, they'd get very upset if
16 I cut it close.

17 Q Okay.

18 A But that's the only time that they ever worried
19 about me going to school.

20 Q Thank you, Tammy, I appreciate it.

21 THE COURT: Mr. Finney.

22 MR. FINNEY: May it please the Court.

23 Would you like some water?

24 THE WITNESS: Yes, please.

25 **CROSS-EXAMINATION**

DW - T. SMART - CROSS

1 BY MR. FINNEY:

2 Q Ms. Tammy, my name is Chip Finney and I'm
3 representing the State today. Just a few questions
4 please, ma'am. How old are you now?

5 A I'm 31.

6 Q 31. And your brother has been in prison for
7 about 16 years.

8 A Longer than that, right?

9 Q Well, he got sentenced 16 years ago so ---

10 A It seems a whole lot longer than that.

11 Q So maybe 18 years he's been in prison. So the
12 last time that he actually took care of you you
13 would have been?

14 A Young.

15 Q 12, 13?

16 A Young. Yeah, I think I was going on 12.

17 Q At the time that he left the house to go to the
18 Rimini Marine Institute you were pretty young. He
19 stayed down there for a year. Did you see him
20 during that year?

21 A No, my mom wouldn't go visit him.

22 Q I'm sorry?

23 A My parents wouldn't go visit. They wouldn't take
24 me down there.

25 Q Okay. And did he ever get to come home on the

DW - T. SMART - CROSS

1 weekends to visit with you and your family up at the
2 house?

3 A No, they kept saying that they were supposed to
4 let him come home, but he was huffing gas so he kept
5 getting his visitation denied.

6 Q So did he write to you during this year that he
7 was at this school that he wasn't coming home very
8 much, did he write to you?

9 A Yes.

10 Q And what kind of things would he tell you in the
11 letters?

12 A He told me that he wasn't going to come home.

13 Q He told you he wasn't going to come home?

14 Because he didn't like the house, he didn't like the
15 rules of the house, he didn't like what was going
16 on?

17 A No, because my parents treated him---

18 Q Do you remember during that time before he left
19 to go down to the marine center when he was taking
20 care of you, this was in Easley, did you say that?
21 Or Greenville?

22 A When?

23 Q When he was taking care of you, you were 12, he
24 was ---

25 A Greenville.

DW - T. SMART - CROSS

1 Q Greenville. Was there somebody else in your
2 family or in your community, in your church, that
3 was taking, helping him take care of you?

4 A No.

5 Q No? So you all were pretty much on your own?

6 A (No verbal response.)

7 Q Let me ask you this ---

8 THE COURT: Hold on a minute. I need a
9 verbal response, okay---

10 THE WITNESS: No.

11 THE COURT: ---for my court reporter.

12 Thank you.

13 I'm sorry.

14 BY MR. FINNEY:

15 Q Did you go all the way through school?

16 A No, I, I mean, I dropped out when I was in ninth
17 grade and I failed a couple of times; but I went
18 back and got my GED and I have done, went and did
19 some college, I, some college, I didn't graduate.

20 Q All right. And did you ever see your brother
21 become aggressive or physical with you or other
22 members of your family?

23 A No. I mean, we would fight and stuff like that;
24 but if he ever thought -- I remember one time when
25 he thought he hurt me 'cause I was, I was crying

DW - T. SMART - CROSS

1 acting like he hurt my ankle and he hurt hisself.
2 He rammed himself into the wall like he was just
3 trying, you know, pretended like he was going to
4 hurt hisself and he ended up shattering the window
5 and...

6 Q Did you ---

7 A Other than that he never hurt me.

8 Q There was how much age difference between you
9 all?

10 A Three years.

11 Q Three years. So did you all ever go to the same
12 school? Or you were always in different schools
13 than he was?

14 A I don't even remember. Yeah, we went to St.
15 Senseney (ph) together.

16 Q Since you remember him and his schoolwork, was he
17 a good student, did he get kicked out of school, did
18 he get kicked out of class? Do you remember what
19 kind of student he was?

20 A I mean, he, I don't know about getting kicked out
21 of class. I mean, I don't know about, you know,
22 elementary school.

23 Q You don't remember?

24 A I don't remember about his class work, about his
25 work in elementary school.

DW - T. SMART - CROSS

1 Q Okay. Have you been keeping up with him while
2 he's been in prison for the last ten years?

3 A I've had a lot of stuff about the case and
4 everything. I don't really know much about what
5 happened, and he hasn't told me anything about what
6 happened. But I haven't got to see him since 2003.

7 Q That's the last time you saw him? So it's been
8 over ten years?

9 A It's been fourteen years.

10 Q Nothing further, thank you. Thank you for
11 coming.

12 THE COURT: Anything further?

13 MR. HOWLE: Nothing further.

14 THE COURT: Ma'am, let me ask you this,
15 you answered and I apologize for having ask it
16 again, I didn't understand what you said. You said
17 he told you, he had sent a letter saying that he was
18 not coming home at some point; is that correct?

19 THE WITNESS: Yeah, he said he was
20 gonna ---

21 THE COURT: Why was that?

22 THE WITNESS: ---come and pick me up and
23 take care of me because my parents weren't taking
24 care of me and they weren't taking care of him. It
25 was Christmas time and they went and got a bush

DW - D. PRICE - DIRECT

1 from outside and put it in the corner with the roots
2 and everything and went in my room and took all of
3 the stuff that was in my room like my cassette tapes
4 and my stereo, some of my whatnots and stuff put it
5 under the bush. When I walked out there on
6 Christmas morning I said, why is all my stuff out
7 here; and they said, Merry Christmas, this is what
8 we got you for Christmas. And when I said, this is
9 all my stuff, they flipped out and started calling
10 me a liar. And I did like I didn't appreciate it.
11 It isn't like...

12 THE COURT: All right. Anything else,
13 ma'am? Ma'am, you may step down, thank you.

14 MR. HOWLE: We call Doctor David Price.

15 THE COURT: Doctor Price.

16 WHEREUPON,

17 DAVID PRICE,
18 having been duly sworn by the Clerk, testified
19 as follows:

20 THE CLERK: Please state your name for the
21 Court please.

22 THE WITNESS: David Price.

23 **DIRECT EXAMINATION**

24 BY MR. HOWLE:

25 Q Doctor Price, what is your profession?

DW - D. PRICE - DIRECT

1 A I'm a licensed clinical psychologist in the State
2 of South Carolina.

3 Q Okay, and what is your educational background?

4 A I have a copy of my CV if you'd like one.

5 Q That's 'cause it's so long?

6 A That's correct, 30 pages.

7 MR. HOWLE: Your Honor, I don't know if
8 you care to see this either here or Mr. Finney.

9 MR. FINNEY: Just make it an exhibit.

10 THE COURT: I'm assuming you mean to
11 examine him to qualify him as an expert?

12 MR. HOWLE: Yes, Your Honor.

13 THE COURT: Any objection, Mr. Finney?

14 MR. FINNEY: I don't have any objection to
15 the Vitae becoming an exhibit, Your Honor.

16 THE COURT: Well, go through the steps to
17 qualify him and then I'll see if he's got any
18 questions of the witness and go from there.

19 (Court's Exhibit Number 2 was marked
20 and made a part of the record.)

21 BY MR. HOWLE:

22 Q In your profession of being a clinical
23 psychologist have you often made presentations to
24 different groups, schools, whatever?

25 A I've made 275 professional presentations.

DW - D. PRICE - DIRECT

1 Q Okay. And have you appeared in court as an
2 expert witness as a clinical psychologist?

3 A I've appeared in court as an expert witness in
4 forensic psychology, clinical psychology,
5 neuropsychology, both in the State of South
6 Carolina, across the country, in US federal courts.

7 Q Okay. A number of different times?

8 A A number of different times, yes, sir.

9 Q Have you also written articles that have been
10 published?

11 A I believe I've written 30 articles.

12 MR. HOWLE: Your Honor, we would submit
13 Doctor Price as an expert in the field of clinical
14 psychology.

15 THE COURT: Mr. Finney?

16 MR. FINNEY: No objection.

17 THE COURT: Without objection, so
18 qualified.

19 MR. HOWLE: Thank you.

20 THE COURT: Go ahead.

21 BY MR. HOWLE:

22 Q I'm not gonna go through your various articles
23 and presentations but, as a clinical psychologist
24 were you asked to meet with Jon Smart?

25 A Yes, sir.

DW - D. PRICE - DIRECT

1 Q How many times did you meet with Jon?

2 A I met with Mr. Smart on seven occasions.

3 Q Seven different occasions?

4 A Yes, sir.

5 Q Did you have any records in regard to the past,
6 whether it was school records or anything else back
7 all the way to the time as a juvenile when this
8 incident happened?

9 A I had voluminous records on Mr. Smart, and
10 they're listed in my report; and it would appear
11 that there are almost 12 pages of records, single
12 spaced.

13 Q Okay. And that's just listing the records,
14 that's not ---

15 A That's just listing the records, yes, sir.
16 They're too voluminous for me to bring to court
17 today.

18 Q Now those are all attached, the reference to
19 those 12 pages to your forensic evaluation?

20 A That's correct.

21 Q All right, sir. You have read the requirements
22 that the Court put in the Byars case in regard to
23 looking at youth to see where they fit into a
24 particular situation?

25 A Yes, sir.

DW - D. PRICE - DIRECT

1 Q It came, quoted some from Miller which required
2 that the Court take into account how children are
3 different and how those differences could counsel
4 against irrevocably sentencing him to life in
5 prison, and it gave several factors for the Court to
6 look at, chronological age of the offender and the
7 hallmark features of youth. In talking with Jon
8 these numerous times and looking over the records,
9 what would be your evaluation, if you will, of his
10 immaturity at that time?

11 A Well, chronologically he was 16 years old at the
12 time of the offense. But in cognitive, if we look
13 at cognitive age he was much younger than that and
14 it was related to the history of poly-substance
15 dependence that he had. He had, he had been
16 involved and had a number of evaluations by that
17 time through the Department of Juvenile Justice. He
18 was raised in an atmosphere -- he was raised in a
19 drug culture, there were drugs plentiful in the home
20 lying around. His brother who had a similar path as
21 far as being involved with the Department of
22 Juvenile Justice, said that the marijuana was just
23 lying around; and when Jon initially started smoking
24 marijuana he would just pick it up in his house,
25 started alcohol about eight. He used a number of

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1 drugs. He was basically unsupervised. He lived in
2 an impoverished environment in which a lot of the
3 income went to purchase drugs. There were violent
4 family arguments between his parents over when drugs
5 ran out. His responsibility was to go score some
6 more drugs. He was basically unsupervised. He was
7 in and out of school. He had a number of problems
8 with truancy which is how he initially got involved
9 with DJJ.

10 He began to huff. The huffing of -- he
11 basically liked to huff gas, but he'd huff anything.
12 He'd huff embalming fluid; he'd huff paint. He
13 would spend up to eight to ten hours a day huffing
14 by the time he became a huffer. The important thing
15 about that is that the front lobes of the last part
16 of the brain to develop, they're also the part of
17 the brain that really distinguishes us from animals.
18 It's what makes us social beings. It's what we use
19 to modulate our behavior, planning and organizing,
20 judgment, we think of maturity, executive function.
21 The frontal lobes are the last to develop; and
22 actually the current theory is the frontal lobes are
23 there, but the axons that connect the neurons and
24 the frontal lobes to the other parts of the brain.
25 They're surrounded by a fatty substance called

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1 myelon and those myelon sheaths are what are slow to
2 develop. But the problem is, when you do a
3 substantial amount of drugs, particularly early, it
4 effects the functioning of the frontal lobes and it
5 directly affects impulsivity, aggressiveness, poor
6 judgment, failure to appreciate the consequences of
7 your action. So you have the slowness of the
8 developmental frontal lobes and you couple that with
9 all of the drugs and, particularly the huffing that
10 he was doing, and it affected him. I'm not so sure
11 -- early on he had a diagnosis of attention deficit
12 hyperactivity disorder. I'm not so sure he had true
13 ADD as we know it as much as that could have been a
14 function of the neonatal involvement he was in with
15 his mother using drugs. But that was a factor as
16 well.

17 He -- I gave him a diagnosis in the course
18 it's used in today's terms of a neuro-cognitive
19 disorder to reflect a frontal lobe dysfunction. He,
20 both the State and I gave him a diagnosis based upon
21 his drug history; they're very similar. Of course,
22 by the time the State and I evaluated him he was in
23 a controlled environment. But he had alcohol use,
24 he had cannabis abuse, he had halogenic use. He had
25 opioid, amphetamines, stimulants, and then, of

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1 course, the inhalant. And he would use whatever was
2 available, but he preferred to huff.

3 We start seeing some of his problems
4 related to those drugs and all in 1996 when he got
5 the diagnosis of conduct disorder or 1998 when he
6 was diagnosed with oppositional defiant disorder,
7 cannabis abuse, alcohol abuse, and borderline
8 intellectual functioning. The -- that would be an
9 IQ of 70's. His IQ today, having been off drugs and
10 with some recovery, is about 103. So, you really,
11 the chronological age would not be the same as the
12 mental age. For -- it's an interesting comparison
13 of a family. Mr. Smart's great grandfather's
14 brother started a sandwich shop in Greenville called
15 Dukes. It's sort of an iconic place to go; it's an
16 umbrella. And that business has burgeoned off into
17 a huge sandwich spread business that they market
18 nationally. He's got a distant cousin that would be
19 about the same age, Andy Smart, who has done very
20 well, gone to college, made a congressional run
21 through the primary; but it's interesting how the
22 side of the family that didn't get into drugs and
23 pursued education has functioned very well. Their
24 side of the family didn't do nearly as well.
25 They've all been into drugs. None of them finished

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1 high school. Of course, he got his GED while he was
2 at the Marine Institute. His sister, I think said
3 earlier, when she got her GED. I don't think that
4 the other brother has gotten his GED. And it's
5 directly related, I think, to the home environment
6 and substantial substance abuse that was experienced
7 in that home environment.

8 Q You had an opportunity to review the evaluation
9 that was made before he did his plea agreement or
10 sentencing originally. I think Doctor Crawford and
11 there were several others that gave it, the
12 diagnosis in regard to the dependence on all of
13 these things, they're the same there as you're
14 talking about now?

15 A That's correct.

16 Q So he had this, even back then as soon as he was
17 evaluated in 2001 he had the marijuana, alcohol,
18 inhalant dependence, cocaine, all of these, opioids
19 that you list, all of those type things, so that
20 existed back then?

21 A That's correct.

22 Q Okay. And you think a lot of that was because of
23 the home life and the dependency on drugs that he
24 acquired from that home life, living there?

25 A It's exactly related to that. He lived in a,

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1 that family had a drug culture, and they used
2 multiple drugs and they would do anything to get it.
3 His brother disassociated himself from the family
4 and which was probably a healthy thing for him to
5 do, but he talks about the parents stealing from him
6 to buy drugs and you heard some of what his sister
7 had to say today. But basically there was drug
8 usage, unsupervised drug usage, certainly modeling a
9 dishonest and unlawful behavior and just a lack of
10 basic parental supervision.

11 Q Okay. The effect that you said would have on
12 reasoning with these frontal lobes not developing as
13 quickly as they should from the huffing and things
14 of that nature, would that make him more inclined to
15 give in to peer pressure to do things or whatever?

16 A It could predispose him to give in to peer
17 pressure. It certainly predisposes him to act
18 impulsively without concern for the consequences of
19 his actions.

20 Q Okay. And what was the title of the diagnosis
21 that you actually gave him?

22 A I gave him neuro cognitive disorder; that's
23 DSM-5.

24 Q Okay. And what -- I'm not asking so much of
25 characteristics -- when you have that disorder poor

DW - D. PRICE - DIRECT

1 judgment I think you indicated was more ---

2 A Yeah. In other circles this would be known as a
3 frontal lobe syndrome and it's characterized by
4 failure to appreciate the consequences of your
5 actions, impulsiveness, can be aggressiveness,
6 sensation seeking. That's what all that huffing was
7 about was sensation seeking. All the drug usage was
8 sensation seeking. It certainly causes you to act
9 without regard for others. It's makes you pretty
10 primitive in some ways.

11 Q Okay. So not only how children are different but
12 you add these other things to it, make his decision
13 making, understanding, or appreciating what the
14 consequences could be, more aggressive, all of those
15 these would be part of that?

16 A Well, his clear record of all his difficulty with
17 school and Department of Juvenile Justice about
18 difficulty with decision making.

19 Q Okay. What do you think in regards to
20 possibility of rehabilitation from those kind of
21 problems?

22 A Well, the first step in rehabilitation and
23 sobriety, of course he's been forced into sobriety
24 by his incarceration. And we've seen some recovery
25 since he's been incarcerated between the IQ that he

DW - D. PRICE - DIRECT

1 had in the early '90s that was in the borderline
2 range, and then there was another IQ that was in the
3 low average range up to having an IQ of under 103
4 now. He's had some cognitive recovery. You know,
5 he does have -- he doesn't really have a connection
6 with his family other than maybe his sister; but he
7 does have a relationship with a female out in the
8 community that they would hope to marry someday if
9 he ever gets out of jail.

10 There's some other things that's difficult
11 to gauge his rehabilitation 'cause as part of his
12 plea agreement he hadn't been able to participate in
13 rehabilitation or education programs in the
14 Department of Corrections. Certainly if he could do
15 that, that could certainly benefit him as well.

16 Q Okay. So he, unfortunately, has been limited and
17 not able to take advantage of some of those things?

18 A That's correct.

19 Q Doctor Price, is there anything else that you
20 observed in talking to him that clearly would
21 indicate that a juvenile, especially in the
22 situation he had, could not make a right decision
23 when he was 16, or would be influenced by the
24 huffing and these other things?

25 A It was influenced by the family environment he

DW - D. PRICE - CROSS

1 was growing up in. It was influenced when he had
2 Attention Deficit Disorder so there may be something
3 that happened while his mother was pregnant with him
4 because of her drug use and she was smoking crack
5 cocaine and things like that; and if so, there was
6 influenced by his own drug usage which is what his
7 role models taught him to do. Children emulate
8 their parents and these three emulated their
9 parents. They used drugs, they got into trouble,
10 they didn't finish school. I mean, that's all part
11 of that family environment they grew up in.

12 Q Okay. Anything else you feel or need to tell the
13 Court in regard to his juvenile problems that he had
14 at that time in regard to cognitive reasoning?

15 A Well, I think all of it affected his cognitive
16 reasoning. And another thing, the environment he
17 grew up in without adult supervision. His parents
18 certainly didn't teach him the repercussions of his
19 behavior or to think about the consequences of his
20 behavior because they weren't doing it.

21 Q Thank you, Doctor Price.

22 A Yes, sir.

23 **CROSS-EXAMINATION**

24 BY MR. FINNEY:

25 Q Good afternoon. Doctor Price, I just have a few

DW - D. PRICE - CROSS

1 questions for you this afternoon. I was very
2 interested in reading your report and the voluminous
3 medical records and other records that you had to
4 review, but a lot of them were after Mr. Smart was
5 incarcerated for the murder and have developed since
6 his incarceration while serving the sentence. I
7 want to focus on the records that you may have
8 reviewed between 1996 and 1999 when this event
9 occurred. Can you tell us -- and I guess you have
10 your report there.

11 A I do.

12 Q It looks like that the -- if you want to look
13 under the section of prior psychological
14 evaluations, in February of '96 you have something
15 that was done at DJJ. It has diagnostic impressions
16 and three axis reports, page 16.

17 A Yes, sir.

18 Q Would you say that you could tell us a little
19 bit about what the findings were in 1996 when they
20 evaluated Mr. Smart?

21 A Yes, sir. And actually I had referred to that
22 when I was talking earlier. That's when they gave
23 him the diagnosis of the conduct disorder.

24 Q And the conduct disorder does not necessarily
25 have to have the drug addiction or drug usage inside

DW - D. PRICE - CROSS

1 of it, does it? Or it doesn't, it doesn't have to
2 relate to drug use?

3 A It doesn't have to.

4 Q It can?

5 A It commonly does. It doesn't have to, you're
6 correct.

7 Q And what I'm saying is, other young men have had
8 this conduct disorder impression reported and they
9 didn't use drugs like Mr. Smart done?

10 A That can happen.

11 Q All right. On the axis II, it says no diagnosis.
12 Can you tell us what that means?

13 A Axis II -- now this changed in May of 2013 when
14 from 1980 to 2013 we made what we call a
15 multi-actual diagnosis, diagnosed over five things.
16 And on axis I is where we would put clinical
17 disorders such as substance abuse and conduct
18 disorder. On axis II we would put personality
19 disorders or mental retardation or developmental
20 disorders. They didn't give a diagnosis then
21 because he wasn't mentally retarded, and he was too
22 young at that time to give a diagnosis of a
23 personality disorder.

24 Q All right. And axis III was reported as none
25 also?

DW - D. PRICE - CROSS

1 A That's correct. That means he didn't have a
2 physical disorder.

3 Q All right. Now it appears that the next testing
4 was done two years later in 1998.

5 A That's correct.

6 Q Also done at DJJ.

7 A That's correct.

8 Q And on axis I there's a different listed
9 reporting finding there, oppositional defiant
10 disorder?

11 A That's correct.

12 Q How does that relate to the earlier finding of
13 conduct disorder?

14 A Well, actually they also say diagnosed conduct
15 disorder if you'll look on the next page.

16 Q All right.

17 A We have, we see some -- and it's mostly males.
18 It can happen to females, but it's mostly males. We
19 see, there's a clinical group of males that start
20 off with Attention Deficit Hyperactivity Disorder,
21 then develop into a conduct disorder, that then
22 develop into an oppositional defiant disorder which
23 seems to be the track that he was on. Oppositional
24 Defiant Disorder is generally people that have
25 issues with authority and following authority,

DW - D. PRICE - CROSS

1 following rules.

2 Q Now my question is, it seems to me that he was
3 inside of DJJ from the time of the first test in '96
4 to the time of the second test in '98. I don't know
5 that for a fact. I wonder can you, can you affirm
6 that he was probably in custody during that period
7 of time?

8 A He was in and out of custody with DJJ, and I
9 don't have those records with me but I think that
10 this was a new admission to DJJ and that's why he
11 had a new evaluation.

12 Q All right. And so the Oppositional Defiant
13 Disorder was relative to his having to come back to
14 an institution he probably already left, also having
15 to come back to a situation two years down the road
16 from the first time he'd been there.

17 A I suspect -- of course, they're different
18 examiners, but I suspect they gave him that
19 diagnosis based upon what had happened outside of
20 DJJ ---

21 Q All right.

22 A ---prior to that admission. That's where they
23 continued the conduct disorder, and that's where
24 they diagnosed the cannabis abuse and the alcohol
25 abuse and the borderline intellectual functioning.

DW - D. PRICE - CROSS

1 Q All right. And then the next one, June 30th,
2 1999, was taken at the Rimini Marine Institute?

3 A That's correct.

4 Q And that test showed what, in your opinion?

5 A Well, they didn't do any tests; that's just their
6 diagnosis. And they could have done it based upon
7 an interview. And they had polysubstance
8 dependence.

9 Q Which is a reference to drug usage?

10 A It's a reference to all that drug usage, yes,
11 sir.

12 Q Okay. And it doesn't say anything in the '99
13 test as far as this report is concerned about being
14 aggressive, behavior problem, failure to follow
15 commands? I mean, it's pretty, it doesn't have
16 those kind of references, does it?

17 A Well, we'd have to look at the actual report.
18 This is just the diagnoses. It was just a history
19 of the diagnoses that he had, other evaluations, so
20 I'm sure there are probably references like that in
21 the actual report.

22 Q Okay. And then after that report in '99 it looks
23 like most all of the other reports were done in
24 prison as a part of the South Carolina Department of
25 Corrections?

DW - D. PRICE - CROSS

1 A Well, actually the 2001 was done as part of his
2 legal proceedings; it wasn't done by SCDC. It was
3 done by the Department.

4 Q But after the murder took place?

5 A Yes, sir.

6 Q All right. Now you have testified that today he
7 seems to be a little better person, Mr. Smart, in
8 terms of his cognitive ability has improved and that
9 he has been without chemical dependence for more
10 than ten years.

11 A That's correct.

12 Q Did you not write in your behavioral observations
13 on your cover sheet of your evaluation that
14 Mr. Smart was less cooperative in one of your
15 meetings than the prior meeting, he was more
16 argumentive, and that he was very -- I'm gonna use
17 your words, he was obsessed with certain beliefs.

18 A That's correct.

19 Q All right. So even though he's been off
20 chemicals for ten years, he's been in the Department
21 of Corrections, you, your testimony was he hasn't
22 been through the treatment program; but that he
23 still has these aggressive, obsessive,
24 noncooperative type behaviors?

25 A I still, I would say that is aggressive and

DW - D. PRICE - CROSS

1 that's actually one of the reasons I gave him the
2 diagnosis of the neuro-cognitive disorder. I think
3 those are continuing symptoms of a frontal lobe
4 syndrome as I discussed. He can't shift from one
5 solution to another. He, he's not real fluid in
6 understanding different concept, and he's somewhat
7 perseverative in making the same error.

8 Q So now this man has been in prison for 16 years,
9 he's still suffering from these deficits?

10 A He still has some deficits, that's correct.

11 Q And would it be fair to say that if a judge was
12 to release him early from prison he would have
13 difficulties making decisions, judgments, dealing
14 with people that didn't give him what he wanted, and
15 that he could be aggressive on the outside of
16 prison?

17 A I wouldn't see him as being aggressive. And
18 aggressive is, aggressive is often overspeculated.
19 Particularly as he ages, and t's true for the prison
20 population, as they age they tend to become more
21 social and more able to live within the guidelines
22 that society sets for him and I would expect him to
23 as well.

24 Q But it's possible that he would not?

25 A Well of course, anything is possible.

DW - D. PRICE - REDIRECT

1 Q Do you have an opinion based on a reasonable
2 degree of medical certainty that Mr. Smart could
3 come out of prison early, earlier than the sentence
4 he's got now, and be a model citizen?

5 A I think he can -- you'd have to define model
6 citizen; but I think he can be a productive member
7 of society, yes.

8 Q All right, sir. Thank you for coming.

9 **REDIRECT EXAMINATION**

10 BY MR. HOWLE:

11 Q Doctor Price, Mr. Finney made numerous references
12 to your forensic psychological evaluation. The very
13 last page.

14 A Yes, sir.

15 Q This is in the conclusion section?

16 A Yes, sir.

17 Q Would you read the very last sentence.

18 A "I feel that Mr. Smart has the reduced capacity
19 to conform his impulsive behavior to the
20 requirements of the law and to appreciate the
21 wrongfulness of his action and the outcome of his
22 behavior."

23 Q Okay. And that is reflective of the time of the
24 incident?

25 A That's correct.

1 Q Thank you.

2 MR. HOWLE: Your Honor, both Mr. Finney
3 and I have made numerous references to this. I
4 would like to submit it as an exhibit to the Court.

5 MR. FINNEY: No objection.

6 THE COURT: Without objection, it's so
7 admitted.

8 (Court's Exhibit Number 3 was marked
9 and made a part of the record.)

10 THE COURT: Mr. Finney, anything else?

11 MR. FINNEY: No, sir.

12 THE COURT: Stay right there for a minute.

13 THE WITNESS: Yes, sir.

14 THE COURT: Give me just a minute, okay,
15 Doctor?

16 THE WITNESS: Yes, sir.

17 **EXAMINATION BY THE COURT**

18 Q Doctor, you talked about this damage to the
19 frontal lobe and the time it takes for the frontal
20 lobe to develop in individuals, and I think in your
21 report it talks about fully developing in early 20s;
22 is that right?

23 A That's correct. You know, I, that's why the
24 military like young men between 18 and 22 because
25 they can be impulsive and they don't worry about the

1 consequences of their actions so they actually will
2 take more risk as a soldier than someone of my age
3 or anybody in this courtroom.

4 Q Let me ask you this, you talked about the
5 potential damage or the damage that you recall as a
6 result of drugs, were there any MRIs done on his
7 brain to determine the extent of frontal lobe
8 damage? At any point in time, and I saw where there
9 was a MRI of the cervical spine back in October of
10 2008, but was there ever any MRI done on his brain
11 to determine the extent of the damage that we talked
12 about here today that you believe could result in
13 the type of actions that resulted in what we have
14 here?

15 A That's an excellent question. And I did not see
16 one, and I reviewed, I think, every medical record
17 he had. He did have an EEG that ---

18 Q If you had requested one today would you be able
19 to tell by virtue of maybe scar tissue or something
20 to that effect what damage was done way back when?

21 A Actually what we often see in substance abusers
22 and like people with alcohol, we don't necessarily
23 see scar tissues, we see some atrophy.

24 Q Would that have been beneficial if you'd
25 requested that?

1 A Yes, sir.

2 Q And that wasn't done?

3 A No, sir.

4 Q I mean, plenty of people, I guess, grow up in a
5 drug environment that subject themselves to drugs at
6 a young age that don't do what brought us here
7 today. What differentiates? I mean, how do you set
8 it apart?

9 A Huffing eight to ten hours a day.

10 Q And that's what he told you?

11 A His family talks about that. He talked about
12 that, and they discussed it also in the State
13 hospital records with their social worker. This is
14 per his evaluation at the time of trial. Their
15 social worker documented that.

16 Q Eight to ten hours a day over how long a period?
17 Because in this case what I've read from the
18 transcripts and whatnot, he was huffing the day
19 before and the day of, and there's no evidence that
20 he was huffing eight to ten hours before this
21 incident took place?

22 A He actually huffed every time he had an
23 opportunity to be exposed to gas. And I think when
24 we talk about huffing eight to ten hours a day, they
25 don't have their nose in a gas tank eight to ten

1 hours a day. As soon as the euphoria starts to
2 wane, they go back and huff again; but he was
3 carrying a rag of gas in his pocket that he would
4 huff with.

5 Q I just wanted to clear this up.

6 A Oh, yes, sir, certainly.

7 Q Does everyone that huffs eight to ten hours a day
8 result in doing what this gentleman did, have the
9 capability of, as a result of it?

10 A They would have the capability. Not everyone
11 murders that huff eight to ten hours a day, Your
12 Honor.

13 Q Now you testified earlier considering experience
14 and papers and your presentations in court, in all
15 of that how many times have you dealt with
16 individuals that abuse gas in huffing?

17 A I see a substantial number of people that abuse
18 various substances in the course of my practice.
19 Huffing, huffing would account for about five
20 percent of individuals that have substance abuse
21 problems that I see. Huffing actually used to be
22 more common in the '70s and early '80s than it is
23 now. It's been replaced by the drugs.

24 Q Too many other choices?

25 A That's exactly right. There's a buffet of things

1 out there.

2 Q And out of all the huffing cases, the five
3 percent that you dealt with, how many of them are
4 murderers?

5 A I've certainly seen number of people that have
6 used various substances that have murdered. I
7 couldn't give you accurate -- I can't recall exactly
8 another case of huffing, but I've been practicing---

9 Q That resulted in murder, resulting in murder.

10 A But I've been practicing 35 years so. And
11 actually, beginning in the '90s forward, most of the
12 murders that I've seen that involved substance abuse
13 has been cocaine crack or meth.

14 Q Well, I mean, and I understand you've seen a
15 number of cases; but it seems to me that if you've
16 only seen five percent which means narrow that
17 number substantially down, and then that would give
18 you an idea of out of that five percent when it's a
19 hundred, only five of them that committed a murder.

20 A That's correct.

21 Q That would stick out more so I would think. Is
22 that an accurate, fair statement?

23 A Well, ---

24 Q I mean, you can't give me one here today.

25 A Right.

1 Q Okay.

2 A The problem, Your Honor, is I've seen a lot of
3 murderers.

4 Q And I have too.

5 A Yeah. And ---

6 Q But not at your level.

7 A Yeah. And just about all of those murderers have
8 used substances just, 90 percent of them.

9 Q Uh-huh. Now it appears through your report and
10 records that you read directly from various
11 institutions that he's been incarcerated?

12 A Yes, sir.

13 Q And I don't see with specificity any disciplinary
14 action have taken place as far as he's concerned
15 since he's been incarcerated, might go to
16 rehabilitation issues?

17 A He's had some disciplinary issues like with
18 tobacco, some things like that.

19 Q Cell phones.

20 A Cell phone.

21 Q Illegally in there?

22 A It's my understanding all of them are illegal in
23 the Department of Corrections.

24 Q During the period of time he's been incarcerated
25 I know he's probably limited in what he can

1 participate in based upon what he is in prison for;
2 but has he done anything, has he taken any classes
3 in an effort to better himself since he's been
4 incarcerated? He got this GED at Rimini, but has he
5 done anything else?

6 A It's my understanding by terms of his plea
7 agreement that he cannot participate in those
8 programs so he was restricted in that regard.

9 MR. FINNEY: And just for the record, Your
10 Honor, we would take exception to that. We ---

11 THE COURT: I got the plea agreement in my
12 file back here, and I'm gonna look at it.

13 BY THE COURT:

14 Q I'm just, I understand that may be your
15 understanding, but you still didn't answer my
16 question. And separate and apart from what you
17 believe the plea agreement says, did you see any
18 evidence of him doing anything in an effort to try
19 to rehabilitate himself in any way?

20 A No, sir.

21 Q Did you review the plea agreement?

22 A Yes, sir, I think so, pretty sure I did.

23 THE COURT: Mr. Howle, I don't see -- did
24 you see anywhere in the plea agreement that
25 prohibited him from participating in any

1 rehabilitative matters? And I've looked at hundreds
2 of plea agreements when I practiced law and from
3 since being a judge, I've never seen one that
4 included that. Am I missing something?

5 MR. HOWLE: Your Honor, it's my
6 understanding is that you can't get a date till you,
7 unless you're within six months max-out date ---

8 THE COURT: That's not my question. My
9 question is, was there anything that you saw in the
10 plea agreement or otherwise, not including what may
11 or may not be allowed by the Department of
12 Corrections; but was there anything in the agreement
13 with the State of your client that prohibited him
14 from at least trying?

15 MR. HOWLE: Within the plea agreement
16 itself I don't recall anything limiting that, Your
17 Honor.

18 THE COURT: Okay. And I don't see
19 anything. I just want to make sure I wasn't missing
20 anything. Okay, thank you.

21 BY THE COURT:

22 Q Doctor, bear with me please.

23 A Yes, sir.

24 (Pause.)

25 BY THE COURT:

1 Q Let me ask you this question. In looking at this
2 list of documents that you obtained and had a chance
3 to review, I don't see where he specifically pointed
4 out or made any records that dealt with any
5 rehabilitative issues. I know he received mental
6 health treatment, etc. Were any documents other
7 than you simply identifying them that you believe
8 would be pertinent to this Court in deciding based
9 upon those factors set forth in Aiken v. Byars the
10 Court needs to look at?

11 A I have got, I believe in my file I have copies of
12 these DJJ evaluations if you would like them.

13 Q No, that's not what I'm asking.

14 A Okay.

15 Q What I'm asking is, you listed I think over two
16 thousand documents here.

17 A Yes, sir.

18 Q Okay.

19 A Yes, sir.

20 Q I remember signing the order so we could get them
21 and get you paid to look at them.

22 A Yes, sir.

23 Q But my point is, Aiken v. Byars set forth five
24 factors that me as a judge, and I'm supposed to take
25 into consideration. Certainly you've testified to

1 as the age of the defendant at the time, the
2 hallmark features of youth including immaturity,
3 impetuosity, failure to appreciate the risk and
4 consequence, you've given me some testimony on that.

5 A Yes, sir.

6 Q All right. The family and home environment that
7 surrounds the offender. You, as well as the sister,
8 has given me some information to consider on that.

9 A Yes, sir.

10 Q The circumstances of the homicide offense
11 including the extent of his participation, the
12 offender's participation in the conduct, and how
13 familial peer pressures may have affected him.
14 You've testified to some extent on that.

15 A Yes, sir.

16 Q Did you see anything within the numerous,
17 voluminous number of documents that you reviewed
18 concerning his incompetence to associate with his
19 youth? For example, as the court says, his
20 inability to deal with police officers or
21 prosecutors including on a plea agreement, his
22 incapacity to assist his own attorney? I didn't see
23 anything that I reviewed by virtue of plea agreement
24 (that I talked about earlier, the reviewing of the
25 record from August 9, 2001 of which I'm assuming you

1 read as well.

2 A Yes. You're talking about the State evaluation?

3 Q No, sir, I'm talking about this.

4 A Oh, yes, sir.

5 Q The plea of Hutto and Mr. Smart. Was there
6 anything that you saw in there concerning his
7 incompetence as it relates to police officers, a
8 lawyer, or anything? Even within your report you
9 said he could assist his attorney, he was competent,
10 no question in your mind about that.

11 A I actually agreed with Doctor Crawford's
12 evaluation regarding his competency.

13 Q All right. Now with regards to -- and that is
14 that he was competent?

15 A That's correct.

16 Q Now with regards to the possibility of
17 rehabilitation, I guess you touched on that to some
18 extent, but give me a little bit more. Give me your
19 opinion on rehabilitation, what you've done to
20 determine whether or not, in fact, he can be
21 rehabilitated if he's allowed to at some point be
22 released from the Department of Corrections.

23 A Well, certainly being in the Department of
24 Corrections is a life changing experience for him.
25 He certainly has had cognitive recovery from 1970s

1 to '80s to -- I tested him with an IQ ---

2 Q 103.

3 A 103. And he actually had had good recovery with
4 everything except like needing (ph) attention, and
5 that's also related to frontal lobe. That's the
6 digit span within the 90 percentile; but overall,
7 he's made good recovery. He actually on academic
8 achievement things he's up to the 12th grade level
9 in word reading and sentence comprehension which is
10 very important. Math was at the eighth grade level.
11 He has a relationship in the community. I mean, I
12 think those all argue well for him.

13 I used to, I'm familiar with the prison
14 that he was at in Perry and that I put the mental
15 health counseling programs in Perry in '80s in
16 response to federal court order. And in many ways
17 he is -- he's not the perfect inmate, he's not the
18 worst inmate either. He's probably in the average
19 range for inmates. I think that, you know, the
20 proof is if he can get out and get involved in some
21 other programs. He has received counseling in the
22 Department of Corrections.

23 Q Mental health counseling?

24 A Mental health counseling.

25 Q And was there anything of importance in there

1 concerning his progression that is important for me?
2 I mean, I'm just referencing those notes and just
3 referencing what your evaluation is of him at this
4 time, what leading up to this.

5 A Yes, sir, and the notes are somewhat cryptic. He
6 has been on antidepressants in the past while he has
7 been incarcerated. He, you know, the good news is
8 he doesn't have any psychotic disorder like
9 schizophrenia or anything like that that would, or
10 delusional disorder that would affect him. He has a
11 diagnosis of an antisocial personality disorder.
12 Doctor Crawford's group gave him that diagnosis and
13 I continued it based upon ---

14 Q Is there another Doctor Watson that did as well?

15 A I can't remember if Sam Watson did that as well
16 offhand.

17 Q I'm sorry, I didn't mean to interrupt you.

18 A But those -- again, the people that have
19 antisocial personality disorders they tend to wane
20 out in their '40s and early '50s as do borderline
21 personality disorders for reasons we don't truly
22 understand, probably just the aging process. So I
23 mean, that would be a concern. The biggest thing
24 with him though, and it's really hard to tease out,
25 Your Honor, symptoms caused by the drug dependence

1 and symptoms caused by antisocial personality
2 disorder because they both exhibit themselves very
3 similarly.

4 Q There was a diagnosis in '09 imperative bipolar?

5 A I did not think he was bipolar.

6 Q Is that something that can change over a period
7 of time or is that just a differing opinion of
8 doctors?

9 A It's a differing opinion of doctors and that's
10 not been a diagnosis that's been made very often
11 with him. I don't think he has a bipolar disorder.

12 Q What is bipolar? Explain that for the record.

13 A Bipolar disorder is a mood disorder where you can
14 have manic episodes and periods of depression.

15 Manic depression, you may know what is manic
16 depression. Generally speaking, most people have
17 what's called a hypomanic episode if they have one
18 instead of hypermanic. I don't see -- we have
19 fluctuation in mood like that, and I didn't feel
20 like he met the diagnostic criteria for bipolar
21 disorder.

22 Q Now, in your last sentence before Mr. Howle
23 brought out where you say, I feel Mr. Smart had a
24 reduced capacity to conform his impulsive behavior.
25 Simply reduced, not completely gone?

1 A And managed, yes, sir.

2 Q And managed. And that was by virtue of his own
3 decision?

4 A That's correct.

5 Q And to appreciate the wrongfulness of his action.
6 Tell me why you believe that based upon the facts of
7 this case?

8 A It's certainly interesting if you go back and
9 read his statements that he gave regarding this
10 case. In one of the statements we can see sort of
11 the nexus of when he impulsively hit Mr. Pack. I
12 think that he could appreciate the wrongfulness by
13 the way he hid the body and whatnot, but I think the
14 huffing of the gas attenuated him being aggressive.
15 I think he had some influence by Mr. Hutto on what
16 happened, and I think that that, those influences
17 reduced his ability.

18 Q Reduced his ability, but he appreciated from
19 what -- and what I'm getting that this is kind of,
20 what I'm struggling with, when you say reduced his
21 capacity to. Certainly the huffing reduced his
22 capacity, it didn't completely diminish it, okay.

23 A I think he---

24 Q Let me finish.

25 A Yes, sir.

1 Q What goes along with not only wrapping the body
2 up and hiding the body, cleaning up, fleeing the
3 scene, fleeing law enforcement, shooting at law
4 enforcement, fleeing into the woods, how can, I
5 mean, to me that illustrates I know absolutely what
6 I did was wrong. How can you say otherwise?

7 A I think after ---

8 Q That's what I'm trying to figure out.

9 A Yes, sir. I think after the fact he realized, he
10 and Mr. Hutto realized it was wrong and they tried
11 to conceal. But I think that that, that kind of
12 behavior was just a continuation of that huffing
13 behavior and failing to appreciate the consequences
14 of actually it was a series of impulsive and bad
15 decisions.

16 Q Let me ask you this, did the huffing which was
17 his own decision, did it result in permanent
18 insanity of this young man?

19 A He was not insane.

20 Q Because under South Carolina law voluntary
21 intoxication is not a defense unless it was a result
22 of permanent insanity. And you're saying he wasn't
23 insane?

24 A That's correct.

25 Q Okay, all right.

1 THE COURT: All right. Mr. Finney,
2 anything further?

3 MR. FINNEY: If you don't mind.

4 THE COURT: Let me do this first before I
5 go to you.

6 Mr. Howle, any questions you want to ask
7 pursuant to my questions?

8 MR. HOWLE: No, sir, Your Honor.

9 THE COURT: All right, Mr. Finney, any
10 questions you wish to ask?

11 MR. FINNEY: Yes, Your Honor. And if you
12 don't mind, I would like to place on the record that
13 on page 141 of the transcript that you have marked
14 as Court Exhibit 1, Judge Cooper talks about the
15 mental health treatment that he's ordering for
16 Mr. Smart as part of the sentence. Also, I want the
17 record to reflect that on the sentencing sheet that
18 Judge Cooper filled out that day, ATU and mental
19 health counseling is marked on the sentencing sheet
20 by the court.

21 THE COURT: Well, and I say this in
22 fairness to him, while we as judges mark that stuff,
23 the Department of Corrections has their own, they
24 can get -- and the Department of Corrections say,
25 well, under our guidelines, while the judge wrote

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1 it doesn't necessarily mean it. I'd like to think
2 they do everything we say, but they don't. But so
3 noted for the record.

4 MR. FINNEY: Thank you, Your Honor.

5 **RE-CROSS EXAMINATION**

6 BY MR. FINNEY:

7 Q Doctor Price, have you seen Mr. Smart's prison
8 record as far as disciplinaries that have occurred
9 over the last ten years?

10 A I have.

11 Q And would you say that they are numerous?

12 A Well, there are a number of them, yes, sir.

13 Q And would you say some of them involve drug usage
14 and drug possession?

15 A I recall more the recent tobacco. There may be
16 some drug usage in there.

17 Q And are you also aware that there are at least
18 one or two assaultive type behaviors?

19 A That's correct.

20 Q All right. So his actions in prison, while he's
21 not been on, using medication, not medication but
22 controlled substances, has continued to be somewhat
23 aggressive, he's not following the rules?

24 A Well, he follows the rules most of the time but
25 there have been infractions, yes, sir.

DW - D. PRICE - RECROSS

1 Q All right. Does it make a difference to you as a
2 doctor that this man killed somebody who was very
3 well known to him, was reaching out and trying to
4 help him become a better person as opposed to the
5 person he put the gun on in the Dollar General Store
6 a couple of hours later and robbed? Does it make a
7 difference to Mr. Smart in terms of his impetuosity
8 who he harms and when he harms them?

9 A No, most people, most of the murders occur
10 between people who know each other or related to
11 each other.

12 Q All right.

13 A So it's just another example of that.

14 Q Okay.

15 A So it's just another example of that.

16 Q So it would have been out of norm for him to go
17 and rob somebody in a store that he'd never been in
18 before or didn't know as opposed to hurting
19 Mr. Tracey Pack who had been in a relationship with
20 for a year?

21 A Well, until that day he hadn't robbed a store or
22 murdered somebody.

23 Q I'm sorry?

24 A Until that day he hadn't robbed a store or
25 murdered somebody, but murders occur between people

DW - D. PRICE - RECROSS

1 who know each other.

2 Q Isn't this a situation kind of like a handgun
3 that has what we call a hair trigger, that the gun
4 can be fired at any time; but if a person has a hair
5 trigger so to speak, a personality disorder, he's
6 more likely to go off without the stimulus that most
7 people need to go off?

8 A Well, he didn't have a personality disorder at
9 the time because he was too young to merit the
10 diagnosis of a personality disorder. The problem at
11 the time was he had the impaired frontal lobes from
12 all these years of substance abuse with the huffing
13 gas going on simultaneously, and those factors
14 interacted to cause that behavior.

15 Q All right. Now he had been placed at the Marine
16 Institute for several months, eight, nine months.

17 A Yes, sir.

18 Q Do you have information that he huffed gas on a
19 regular basis down there?

20 A From talking with him he huffed gas when he got
21 an opportunity to.

22 Q When he got an opportunity to?

23 A Yes, sir.

24 Q So you don't really know how often that was?

25 A No.

DW - D. PRICE - RECROSS

1 Q All right. And he didn't have write-ups in the
2 Rimini Marine Institute records that showed you that
3 he was a constant problem and that they couldn't
4 keep up with him so they were going to ship him out
5 somewhere else?

6 A No, he was within days of graduating from the
7 Marine Institute.

8 Q So the records at the institute show you that he
9 was able to comply and was complying with the
10 schoolwork, the working, the career activities, a
11 lot of things?

12 A Correct.

13 Q Did he have a lot of fights with other inmates as
14 far as the records were concerned while he was there
15 at the institute?

16 A I don't recall a lot of fights.

17 Q All right. And your opinion of the huffing and
18 other drug use is based on his relating events to
19 you and your review of the mental health records,
20 but is not based on a MRI or other organic type test
21 to see what actually is going on inside his head?

22 A It's based upon my review of the records which
23 included other evaluations and documentation of the
24 substance abuse and all of that; but no, there was
25 not an MRI.

1 Q Thank you.

2 MR. FINNEY: Thank you, Your Honor.

3 THE COURT: Mr. Howle, anything?

4 MR. HOWLE: Nothing further, Your Honor.

5 THE COURT: You may step down.

6 THE WITNESS: May I be excused?

7 THE COURT: Any objection?

8 MR. FINNEY: No objection.

9 THE COURT: Without objection, you may be
10 excused, sir. Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Mr. Howell.

13 MR. HOWLE: Your Honor, we have nothing
14 further.

15 THE COURT: Nothing further?

16 MR. HOWLE: No, sir.

17 THE COURT: All right, very good.

18 Mr. Finney?

19 MR. FINNEY: May we have a ten minute
20 break?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 THE COURT: Mr. Howle?

25 MR. HOWLE: Yes, sir, Your Honor.

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1 THE COURT: The discussion we had back in
2 chambers about the five factors, I read I got to
3 consider all of them.

4 MR. HOWLE: But you don't have to find all
5 of them.

6 THE COURT: No, I've got to consider all
7 of them.

8 MR. HOWLE: Well, I understand, yes, sir,
9 you certainly can consider them; but I think it'd be
10 very rare that all five of them would apply to a
11 particular case.

12 THE COURT: All right.

13 Mr. Finney, yes, sir.

14 MR. FINNEY: Thank you, Your Honor. We
15 call Investigator Burgess to the stand.

16 WHEREUPON,

17 **THOMAS BURGESS,**
18 having been duly sworn by the Clerk, testified
19 as follows:

20 THE CLERK: Please have a seat and state
21 your full name for the Court.

22 THE WITNESS: Thomas Burgess,
23 B-U-R-G-E-S-S.

24 **DIRECT EXAMINATION**

25 BY MR. FINNEY:

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1 Q Investigator, where are you employed?

2 A I'm now employed with South Carolina Department
3 of Corrections, police services division.

4 Q And how long have you been there?

5 A Approximately five years.

6 Q All right. And prior to that did you have
7 occasion to work for the Clarendon County Sheriff's
8 Department?

9 A Yes, sir.

10 Q And were you employed there in 1999 when Tracey
11 Pack was killed?

12 A Yes, sir, I came to work the Monday following the
13 incident.

14 Q All right, sir. And as a result of coming to
15 work at the Clarendon County Sheriff's Department,
16 did you have occasion to assemble some of the
17 evidence and go through some of the interviewing of
18 witnesses associated with Tracey's case?

19 A Yes, sir, I was hired to the investigations unit.

20 Q All right, sir. Did you have occasion to go down
21 to the Rimini Marine Institute and do interviews
22 with people down there?

23 A Yes, sir, I did.

24 Q All right. And based on your conversations with
25 these people and investigation that you performed,

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1 would you tell the judge a little bit about the
2 background of what you found out about Mr. Smart as
3 a resident or inmate at the Rimini Marine Institute.
4 A During our interviews we spoke with other, I
5 guess, residents, they didn't really call them
6 inmates. And we spoke with several employees who
7 were employed there at the time. After this type of
8 situation you want a background to gather as much as
9 you can about the individuals involved. We did
10 learn about Mr. Smart. In talking with several of
11 the other, I won't call them inmates for lack of a
12 better term. We learned that there was some
13 planning involved in reference to this event where
14 they, basically when it was on volleyball court
15 where he and Hutto were overheard talking about, you
16 know, what they could do and what that they, who had
17 the guts to do it or not. We spoke with ---

18 MR. HOWLE: Your Honor, if I may, I, I
19 understand he may interview people; but this is, it
20 certainly seems improper because they could just be
21 making up a story he's telling them and he's telling
22 them as though it is a fact.

23 THE COURT: I mean, I, well, what he's
24 testified to thus far is already part of the record
25 pursuant to the sentencing. I mean, all that's in

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1 the record.

2 MR. HOWLE: I understand that was in the
3 record, but ---

4 THE COURT: I'm gonna allow him 'cause I
5 think it goes to -- and it's already in the
6 record -- it goes to the circumstances of the
7 offense so I'm gonna allow him to testify under your
8 objection. So noted.

9 BY MR. FINNEY:

10 Q Investigator, these conversations that were
11 described to you by other inmates, they were
12 conversations taking place between who?

13 A Hutto, Smart, and one of the individuals involved
14 in one of the conversations.

15 Q All right. And how long before Mr. Pack's body
16 was found were these conversations supposedly taken
17 place?

18 A Within several days.

19 Q All right. Did you get a feeling from your
20 learning or working down there on this case as to
21 what kind of person Mr. Smart was in terms of his
22 ability to follow the rules, to -- for example, did
23 this place, this institution, did it have any wire
24 fences and locks and gates to keep the boys in
25 there?

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1 A No, sir.

2 Q All right. So they could have walked off at any
3 time?

4 A Yes, sir.

5 Q Did you get a sense that he was a troublemaker,
6 that he walked off, that he was high all the time,
7 or any of those things?

8 A My understanding was actually a privilege for the
9 guys to go and work off site such as they did with
10 Mr. Pack.

11 Q All right. And they had counselors at the Rimini
12 Marine Institute that looked after the boys during
13 the day and at the night?

14 A That is my understanding.

15 Q And did you have given to you reports of
16 Mr. Smart being a troublemaker or being aggressive
17 with the other inmates or being high on drugs or
18 anything like that?

19 A None of that was brought to my attention.

20 Q All right. Would you give the judge just a
21 little bit of background about what you found there
22 when the investigation started? I believe that what
23 tipped you off to the problems that Tracey had was
24 that there was a truck found in another city?

25 A Yes, sir.

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1 Q Tell us about that.

2 A On the night of the 12th, the date that Mr. Pack
3 was murdered, the family received a call from
4 Bamberg in reference to Mr. Pack's drug being
5 involved in a armed robbery. We received a call at
6 the Sheriff's Office about 8:30 so we began to
7 mobilize going that way 'cause they could not find
8 Mr. Pack at that time. So Chief Bradham and other
9 deputies were in route. They began a search of the
10 area. One of the first things you do for a missing
11 person you search the residence. You search
12 surrounding areas. They didn't find him there.
13 They traced over to the chicken house which is a
14 short distance from the main house.

15 Q And just for the judge's record, Mr. Tracey Pack
16 ran a chicken house, a farm, a chicken farm?

17 A Yes, sir.

18 Q How many buildings would you say were out there
19 on the chicken house?

20 A There's four chicken houses and there were a
21 couple of outbuildings.

22 Q All right, sir. Pretty large operation?

23 A Yes, sir, that's a good many chicken houses.

24 Q And did your investigation lead you to believe
25 that Mr. Pack used Mr. Hutto and Mr. Smart on a lot

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1 of occasions to help him work in the chicken houses?

2 A Yes, sir.

3 Q He was teaching him the business?

4 A I won't say whether he was teaching him the
5 business or not, I can't say, but he used him
6 regularly. They were his guys that came.

7 Supposedly they knew how to change out the piping,
8 the mister heads and everything else.

9 Q All right, sir. And so your officers responded
10 down to the work area. What did you find there?

11 A Yes, sir. The body was located ---

12 Q How far from -- the crime scene itself was inside
13 the chicken house?

14 A Yes, sir, it was inside the chicken house.

15 Q How far from that location did you find the body?

16 A I would gather about a hundred yards.

17 Q All right. And was it carried there by hand or
18 was it in the truck, or how did it get there?

19 A According to the statements of the young men they
20 wrapped him in a tarp in a chicken house, got a hand
21 cart type apparatus, rolled him up into the cart in
22 the tarp with the weapon they used, rolled it
23 outside the chicken house. I believe Mr. Smart held
24 the handle of the cart while Mr. Hutto drove the
25 truck.

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1 Q And that would have been Mr. Tracey Pack's truck?

2 A Yes, sir.

3 Q All right.

4 A And they drove the truck around the backside of
5 the chicken houses and down a little road that led
6 to a pond and put it over in the bushes.

7 Q All right. Was there a statement given by either
8 one of the defendant subjects at that time as to
9 them trying to stop Mr. Pack from -- once they hit
10 him in the head did they try to do anything else to
11 stop him from breathing?

12 A I did not read it in the statements, but I was
13 told by the other investigators that they took
14 chicken litter, the poop from the ground---

15 Q Right.

16 A ---and put it in his mouth:

17 Q All right. Once Mr. Pack's body was found and
18 you realized that there was a murder, how did the
19 Bamberg case tie into that?

20 A Well, being that the Bamberg case had already
21 been discovered 'cause they called looking for
22 Mr. Pack 'cause they'd saw his truck, Chief Bradham
23 and Hank Richardson began traveling that way; and as
24 things began to unfold through the night, crime
25 scene was called to the actual scene. More

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1 information kept coming in. The armed robbery took
2 place around 5:30 in Bamberg. Around 1:00 the truck
3 tag was run by the City of Myrtle Beach police
4 officer and a chase began at that point. Horry
5 County joined in at that point. And also at some
6 point -- of course I wasn't there, it's what I'm
7 reading in the report -- shots were exchanged.
8 Eventually the suspects were stopped.

9 Q Is it your understanding that Mr. Smart fled the
10 scene of the stop once his car was stopped in Horry
11 County?

12 A According to the reports, yes, sir.

13 Q All right, sir. Now, is it also your
14 understanding from your talking with the counselors
15 down there that both of these young men only had a
16 few days left or a few weeks left at the Rimini
17 Center before they would have graduated and gone on?

18 A Yes, sir.

19 Q Let me ask you, in your present capacity how long
20 have you worked at South Carolina Department of
21 Corrections?

22 A Five years.

23 Q All right. In your capacity do you have access
24 to the classification summary on Mr. Jon Smart?

25 A Yes, sir, I do.

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1 Q And have you brought it to court with you today?

2 A Yes, sir.

3 Q Is that a accurate reflection of his inmate
4 disciplinary record over the last ten years?

5 A Yes, sir.

6 Q All right. And can you tell us how SCDC divides
7 inmate infractions occurring by people in prison?

8 A The classification report is put a little
9 different, put together a little differently than
10 the standard reports that are normally run; but this
11 report shows assaultive versus non-assaultive.

12 Q And tell the judge what do you mean by the
13 assaultive type reports?

14 A You can -- assaultive means it's typically what
15 it sounds like. It's assaultive in nature or more
16 violent in nature when it's defined as a major
17 infraction.

18 Q And the non-assaultive infractions would be what
19 type of things?

20 A Minor infractions, failure to report, failure to
21 stand for count, failure to follow directions,
22 contraband certain types.

23 Q Would there be drug possessions under the
24 non-assaultive?

25 A Yes, sir.

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1 Q Have you reviewed that record?

2 A Yes, sir, I looked over it when I printed it.

3 MR. FINNEY: Your Honor, we'd like to
4 introduce that report now as part of our case.

5 THE COURT: Any objection?

6 MR. HOWLE: I'm not sure what that has to
7 do with youth, the things that are spelled out in
8 Byars as far as youth things at the time. I...

9 MR. FINNEY: Your Honor, I'm introducing
10 it because it's a present day ---

11 THE COURT: It's something that the expert
12 Mr. Doctor Price ---

13 MR. FINNEY: Yes, sir, Doctor Price.

14 THE COURT: ---reviewed in his, before
15 coming here to testify to something I asked him
16 about, something that you asked him about on
17 cross-examination. I think you laid the foundation.
18 I think when I asked him about, specifically was
19 asking him about for rehabilitation going on my
20 recollection so I'm gonna allow it in.

21 MR. HOWLE: Yes, sir. Can we mark it?

22 MR. FINNEY: Yes, sir.

23 MR. HOWLE: Just say what the offenses
24 are.

25 THE COURT: Hold on, let me see it first.

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1 (Pause.)

2 (WHEREUPON, State Exhibit No. 1 was
3 marked for identification and admitted
4 into evidence.)

5 THE COURT: All right.

6 BY MR. FINNEY:

7 Q Investigator Burgess, have you seen -- is it
8 correct that under the assaultive disciplinaries
9 since 2007 Mr. Smart has been charged with striking
10 an inmate, convicted; possession of a weapon,
11 convicted; striking an employee with or without a
12 weapon, convicted; and striking an inmate with or
13 without a weapon and convicted?

14 A Yes, sir, that's what this reflects.

15 Q All right, sir. On the non-assaultive does he
16 also have a number, probably over 25 violations of
17 non-assaultive disciplinary rules?

18 A Yes, sir, it's way beyond 25.

19 Q And does that record reflect that he had charges
20 of possession of contraband and possession of drugs
21 while inside SCDC?

22 A It reflects the use, possession of marijuana on
23 several occasions, as well as other contraband.

24 Q All right, sir. Thank you very much. Did you
25 have occasion to ever interview Mr. Smart prior to

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1 him pleading guilty?

2 A No, sir, that was done by other officers.

3 Q All right. And under the circumstances that you
4 came to investigate, how well known was Tracey Pack
5 to Jon Smart before Mr. Pack was killed?

6 A Even in their statements they refer to him as
7 Trace, you know, they reference that in their
8 statements. So to me that would indicate they were
9 more than just a boss, you know, worker kind of
10 concept. In interviewing some of the employees they
11 felt like the reason this was a privilege to go to
12 work at the chicken farm is where the guys were fed,
13 they were taken to eat.

14 Q You mean take them to Hardees and buy them soft
15 drinks and things like that?

16 A Yes, sir.

17 Q And to your knowledge did -- is it your
18 understanding from the investigation that Tracey did
19 those things with these fellas on multiple
20 occasions?

21 A Yes, sir.

22 Q Did you ever have any conversations with the
23 staff at the Marine Institute that led you to
24 believe that Mr. Smart was in any way unable to
25 follow the rules, that he had a mental problem, that

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1 he had an issue with getting along with other
2 people, or anything like that?

3 A Mr. Moore, the group leader referenced where he
4 got upset on occasion where he wasn't allowed to go
5 home.

6 Q Mr. Moore made the decision to not allow
7 Mr. Smart to go home?

8 A It was referenced that the mental health workers
9 felt that it would not be healthy for him to go
10 home. Mr. Smart blamed Mr. Moore.

11 Q All right. And as a result of that conversation
12 where Mr. Smart was denied a weekend pass, were
13 threats made against Mr. Moore?

14 A Yes, sir.

15 Q By Mr. Smart?

16 A Yes, sir.

17 Q And was it a threat to harm him or kill him?

18 A Threatening to kill him in twelve different ways
19 he'd never know it.

20 Q Beg the Court's indulgence. During your
21 investigation time with Mr. Smart and Mr. Hutto --
22 today we're talking about Mr. Smart -- did you
23 notice any incapacity on his part to deal with the
24 police or the prosecutors that he was having to deal
25 with in terms of his asking, giving information,

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1 answers, or anything like that?

2 A I wasn't present when the interviews were done
3 with him; but in reading the transcripts of those,
4 Miranda is given. We make sure they understand it.
5 And it's been -- especially Chief Bradham always
6 ended his statements saying, were you coerced or
7 were you been threatened, he would try to explain
8 it. And the answers were all that he understood, he
9 was not coerced, there were no issues.

10 Q When he was arrested in the Horry County area
11 they detained him for a day or two I imagine before
12 he was brought back to Clarendon?

13 A I'm not exactly sure how long they kept him but
14 it was a little bit.

15 Q Do you remember anything in the investigative
16 file that would have led you to believe he had any
17 problems with attitude or aggression towards the
18 officers in Horry County once he was arrested?

19 A One of them was charged with assault on a
20 correctional officer I believe, but I can't remember
21 exactly which one it was.

22 Q You don't remember which defendant it was?

23 A No, sir.

24 MR. FINNEY: Nothing further. That's all
25 I have, Your Honor.

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1 THE COURT: Mr. Howle.

2 MR. HOWLE: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. HOWLE:

5 Q The day this incident happened you don't know
6 whether Jon was high on anything from huffing gags
7 or anything, do you?

8 A No, sir, I don't.

9 Q Or whether he had a rag with gas and he was
10 carrying around and that's how he had access to it?
11 You don't know that at all, do you?

12 A That was only referenced in a letter he wrote to
13 Hutto that I saw.

14 Q Right. But you don't have any idea whether there
15 was huffing, anything that day?

16 A I can only go by what they wrote in their
17 statements.

18 Q And have you seen the autopsy report?

19 A Yes, sir, I have looked at it.

20 Q There's no reference in there to chicken litter
21 or anything else in his throat.

22 A That was just referenced to me by the other
23 officers that were present.

24 Q I understand that.

25 A Yes, sir.

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1 Q There's nothing whatsoever in the autopsy report
2 to say anything about such a matter, is it?

3 A I don't believe so.

4 Q Okay. And he's been in prison now for about 15
5 years. And there are four offenses that you would
6 consider the assaultive or whatever that term was
7 you used.

8 A Yes, sir.

9 Q 4 in 15 years. It's not that unusual per se, is
10 it?

11 A No, sir, it's not unusual.

12 Q Okay. And these other ones, the non-assaultive,
13 that can be anything from not coming out of your
14 room when you're told, and you named several things
15 that would be these minor ones.

16 A And each one of those are labeled exactly what it
17 is on that report.

18 Q Right. But they are minor, they're not ---

19 A Yeah, they ---

20 Q Okay.

21 A We have to differentiate them some way to have a
22 category.

23 Q I understand that.

24 A And that's what they do is they put assaultive
25 versus non-assaultive or major versus minor, and

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1 they already categorized major one, two, and three.

2 Q And there were only four major in 15 years?

3 A Yes, sir.

4 Q And Mr. Finney asked you some things about the --
5 are you aware of inconsistent statements that were
6 given to the police where they say something and
7 later give a statement that was not exactly the
8 same?

9 A The statements that I had in the file that I was
10 able to go through, the inconsistencies I saw, I saw
11 one statement from Smart, one statement from Hutto,
12 it was basically self-serving on each one of the
13 account of what happened.

14 Q Well, I understand where that may come from, but
15 I'm talking about Mr. Smart. You haven't seen more
16 than one statement from him?

17 A I only saw one statement in my file.

18 Q So you can't testify as to whether there were
19 some inconsistent statements?

20 A True.

21 Q And if there were that would show a lack of
22 cooperation with the police; would it not?

23 A If there were, we just reviewed them.

24 Q Okay, thank you.

25 MR. HOWLE: I don't have any further

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1 questions, Your Honor.

2 THE COURT: Sir, you may step down. Thank
3 you.

4 MR. FINNEY: Ask that the witness be
5 excused.

6 THE COURT: So excused, sir. Have a nice
7 day.

8 Any objection, Mr. Howle?

9 MR. HOWLE: No, sir.

10 THE COURT: All right.

11 MR. FINNEY: Mr. Andy Pack.

12 THE CLERK: Place your left hand on the
13 Bible, raise your right hand.

14 WHEREUPON,

15 **ANDY PACK,**

16 having been duly sworn by the Clerk, testified as
17 follows:

18 THE CLERK: Please state your name for the
19 Court when you have a seat.

20 THE WITNESS: Andy Pack, A-N-D-Y P-A-C-K.

21 **DIRECT EXAMINATION**

22 BY MR. FINNEY:

23 Q Tell us your name, sir.

24 A Andy Pack.

25 Q And are you the younger brother of Mr. Tracey

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1 Pack?

2 A That's correct.

3 Q And where do you live?

4 A I live right there at Pack's landing.

5 Q And what do you do for a living?

6 A We run a marina right there on the marina at Lake
7 Marion.

8 Q So you do charter fishing and ---

9 A That's correct.

10 Q ---all things associated with fishing on the
11 lake?

12 A That's correct.

13 Q All right, sir. I don't want to keep you long
14 but I want to give you an opportunity to tell the
15 judge a little bit about Tracey and a little bit
16 about what his loss meant to you. So could you tell
17 us a little bit about Tracey Pack and what kind of
18 fella he was and what kind of brother he was.

19 A Absolutely. Just coming here today and listening
20 to what all I've heard so far, I get it that, you
21 know, this has come up with the grand jury ---

22 Q Go slow 'cause she's got to take everything down.

23 A Okay, with the grand jury ruling or whatever.

24 But you know, just like we stated earlier, there was
25 no chains, there was no bars, there was nothing to

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1 hold y'all back. I'm getting a little nervous
2 but...

3 Q Drink some water please, sir.

4 A Y'all were -- Tracey was a little guy. It was
5 two of you. You could have tied him up. You could
6 have did so many different ways before y'all did
7 what you did. And you wielded the pipe, you killed
8 him. Whether the chicken litter thing or what, you
9 know, whatever you were going on about. That being
10 said first off I'd just like to say that in my eyes
11 it is a sad, sad world, not just because of all the
12 terrible things that are going on like terrorist
13 bombings and people killing people every day,
14 tremendous amounts of murder, it is hard for me to
15 believe that there is even a notion of reducing
16 sentences or heaven forbid even releasing convicted
17 killers back out on the streets.

18 You see this, this man that we're here for
19 now not only killed my brother but ultimately killed
20 my father. My father became very sick after the
21 death of my brother Tracey. His heart was just torn
22 apart. And he held out dying for two years. He
23 held out until the trial of this man Smart and his
24 was accomplice were convicted and given what we were
25 told was pine box life, meaning that they would

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1 never see the light of day again, nor we'd have to
2 do what we are doing now. My father held out on
3 dying until that, until he felt justice was served
4 and passed away just a few days later. My father
5 died at 62.

6 Not only did the two young men kill my
7 brother and that they ultimately caused my mother to
8 lose her mind. She started slipping away after
9 Tracey died and then even more after my father died.
10 Within just a few short years we were not able to
11 keep up with her or keep up with her medications,
12 keep her medications straight. Total dementia had
13 set in and we had to put her in assisted living. My
14 brother Tracey and my father were two of the best
15 men that I've ever known. In fact, they were my
16 go-to people. If I ever felt like I needed any
17 advice on anything, financial, personal, or any of
18 that stuff, they were the ones I went to. They were
19 always, I always felt strongly on their opinions.
20 So not only did the actions of the young men that
21 killed my brother, father, drive my mother off the
22 deep end, but they also took a huge hole out of all
23 our hearts that will never be gotten back. They
24 helped so many young men and could have helped so
25 many more, but it was all taken away in just a short

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1 period of time.

2 These young guys not only killed my brother
3 but committed armed robbery, endangered lives of
4 hundreds of people on the highway while shooting at
5 the police while they were in pursuit of them. They
6 had no regard to anyone, any lives except their own.
7 The whole thing was plotted before their horrific
8 crimes took place. Neither one, Smart or Hutto
9 deserve to see the light of day again. In fact, I
10 believe they deserve the death penalty. The only
11 simple reason for taking another person's life in my
12 opinion is war or if someone else's lives are in
13 jeopardy, or maybe a person carrying out the death
14 penalty, persons or people.

15 Do I have a, do or have I prayed for them?
16 Yes. I hope that they would see the light of the
17 lord and I hope that the lord will have mercy on
18 their souls. But do I think they deserve freedom?
19 Absolutely not. My wife had sent me a text last
20 night telling me how sorry she was that I was having
21 to re-live this all over again so I guess she
22 doesn't realize that I think about this every day of
23 my life, about my brother and father.

24 Q Thank you very much, sir. I appreciate you
25 coming.

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1 THE COURT: Any questions, Mr. Howle?

2 MR. HOWLE: I have no questions, Your
3 Honor.

4 Thank you, sir.

5 Sir, you may step down.

6 THE WITNESS: Thank you.

7 MR. FINNEY: Mr. Joe Pack.

8 THE CLERK: Place your left hand on the
9 Bible, raise your right hand.

10 WHEREUPON,

11 **JOE PACK,**

12 having been duly sworn by the Clerk, testified
13 as follows:

14 THE CLERK: Have a seat. State your full
15 name for the Court please.

16 THE WITNESS: Joseph Britton Pack, III.

17 **DIRECT EXAMINATION**

18 BY MR. FINNEY:

19 Q Mr. Pack, where do you live?

20 A Krist River, Florida.

21 Q And what do you do there?

22 A I work for the United States Fish and Wild Life
23 Service. I'm a captain.

24 Q How long have you done that?

25 A Approximately nine years, five years in Florida.

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1 Q And so your information is that you grew up
2 helping people learn how to fish and enjoy the water
3 in Clarendon County and now you make money doing it
4 down in Florida?

5 A Yes, for the government, for the people.

6 Q Are you the oldest son of Mr. and Mrs. Pack?

7 A I am.

8 Q All right, sir. And Tracey was several years
9 younger than you were?

10 A Yes, just a few years.

11 Q All right, sir. I need you to probably get a
12 little closer to that microphone so we can hear you.
13 Would you tell the judge a little bit about Tracey
14 and what kind of fella he was.

15 A He was just a, he was a wonderful man. He was
16 very caring, very loving, loved working with kids at
17 the Rimini Marine Institute and thought he was doing
18 a wonderful job; and it's just unbelievable that I'm
19 even sitting here today. I'm just, it took me years
20 to get where I could function again after this mess,
21 and I just can't even believe I'm here today, I just
22 can't.

23 Q Can you tell the judge how long the Pack family
24 had run the Marine Institute?

25 A I think it was established in 19-- oh, the Marine

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1 Institute?

2 Q Yes, sir?

3 A I think this was going on the final two five year
4 terms, right at ten years.

5 Q So right at ten years. And you all had what size
6 crew of boys would you house down there?

7 A The American -- Marine Institute, Rimini Marine
8 Institute, I think they usually had like 20 or 30.

9 Q All right. And do you, were you actually living
10 at the Institute or in Clarendon County?

11 A I lived on a farm in front of my mother's and
12 dad's farm, may be a mile or two, maybe a mile from
13 the camp.

14 Q And did you get the call that night when Tracey
15 went missing?

16 A I can remember exactly. One of the counselors
17 had came to my door and it was like dusk/dark or
18 maybe, maybe right before sunset. He said, we
19 can't, your brother has not come back and we can't
20 find his truck and there's two boys missing; and I
21 just, I was just like, what are you talking about.
22 He's like, we don't know where they're at. And
23 immediately I just, I said call, let's call 911, and
24 then I went to the farm and I just kind of -- it was
25 dark and I didn't have, I couldn't find a light

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1 quick enough. I just walked in circles hollering
2 his name and I didn't know was already gone. And I
3 went back to the house and then we all got up at my
4 mother's house while they did the, whatever went on,
5 the search or whatever.

6 Q You told me a story about Tracey bringing sodas
7 and candy for your kids. Would you tell the judge
8 that please.

9 A. Every day. Every day he would, he would put a
10 coke and a candy bar at the steps. When my wife got
11 home the kids would get them. And what we talked
12 about today, I heard nothing but about this guy's
13 plan on marrying and this guy's plan on getting out.
14 You know, how about my brother, he can't talk, he
15 can't, he has no, nothing, nothing. And then years
16 went along that I had to tell my little children --
17 he was like, when is Tracey coming, when is he going
18 to bring us a candy, a drink, and then it was just,
19 it was just, this has been a nightmare to my family,
20 complete destruction. My mother, my father just
21 leaving two days after he got sentenced. He just
22 let go, he couldn't hold on, he was sick.

23 Q Let me ask you ---

24 A I really don't have a lot more to say. I just,
25 enough has been said, I mean, I feel, I am in total

1 shock I've got to be here today when I got the call
2 months ago about this coming. I'm just, it's just a
3 sad day in the State of South Carolina we got to go
4 through. It's a sad, sad day.

5 Q Thank you, sir.

6 MR. FINNEY: Jack?

7 THE COURT: Hold on a second, hold on a
8 second.

9 MR. HOWLE: I have no questions.

10 THE COURT: Sir, you may step down.

11 MR. FINNEY: Your Honor, that would be our
12 case. Thank you.

13 THE COURT: Mr. Howle, anything else?

14 MR. HOWLE: Yes, Your Honor, I'd like to
15 make a statement to the Court.

16 THE COURT: Yes, sir.

17 MR. HOWLE: Your Honor, let me go back a
18 little bit kind of how Jon even got into custody to
19 start off with. He was charged with a burglary
20 second at a actual friend of the family's house, a
21 friend who just took something out the house. The
22 friend didn't want to bring charges. They finally
23 decided they would bring charges hoping that he
24 would get the help he needed for the drug addiction
25 that everyone knew he had at that time. He was

1 sentenced to family court by Judge Jenkinson and
2 sent to Columbia to the Northeast Center. After
3 some time there he was paroled to the Marine
4 Institute in Rimini, and while he was there he got
5 his GED. One thing that I thought was very
6 interesting, Judge Jenkinson ordered that substance
7 abuse counseling to specifically address the
8 huffing; and yet, he did not receive any help
9 whatsoever on that while he was at Northeast Center.
10 I don't even think they scheduled anything. Then he
11 was moved to Rimini after being there a while and
12 only been at Rimini for a few weeks when a counselor
13 caught him huffing gas. He was punished for that,
14 lost some privileges; but still, there was no
15 program put in place in regard to addressing that.

16 As the Court has heard the day before, or
17 the day before Tracey Pack died, Jon was huffing.
18 Your Honor, if Jon had gotten the help, the
19 treatment he was supposed to get, we may well not be
20 here today. And as a matter of fact, in regard to
21 that, the Pack family brought a suit against
22 Associate Marine Institute and Rimini Marine
23 Institute for not keeping an eye on Jon, knowing he
24 had a huffing problem, everything else, letting him
25 just do what he wanted do 'cause if they had kept an

1 eye on him and kept him away from having access to
2 gasoline, 'cause one of the jobs he had was cutting
3 grass so he had access to gasoline all the time,
4 that that would not have happened. That suit ended
5 up being dismissed by the court on appeal basically
6 saying that the institute met the minimum
7 requirements for watching somebody, which like I
8 say, if they had done the programs this may well
9 never have happened.

10 Beyond the youth of Jon at this time and
11 the huffing, there was also something that Kelly
12 Jackson said previous sentencing that I certainly
13 believe is applicable, and this is in the sentencing
14 of the previous one. "Your Honor, it's our belief
15 that Hutto was the brains and Smart was the muscle.
16 There's no question when he was huffing he became
17 more aggressive. He also was much more inclined to
18 do something someone else told him." And again,
19 quoting, "And none of this could have been
20 accomplished without the brains and the muscle, that
21 they are equally culpable, albeit each time there
22 was an act done by Smart, the planning and the
23 getting there was mostly attributed by Hutto." So I
24 think it's very clear that there's peer pressure
25 that was put on him in regard to that.

1 In regard to the family life, Your Honor,
2 you heard from Tammy Smart, his sister, told you
3 about the drug use of the parents which led to both
4 her and Jon unfortunately having that same kind of
5 addiction, the disregard for attending school that
6 they had, really the complete lack of any kind of
7 parental supervision. But at the same time she
8 said, you know, the only supervision, the only help
9 I got was from Jon. He helped me dress, get me
10 ready for school, he'd walk me there, help fix meals
11 for me, everything else. The immaturity, failure to
12 appreciate risk and consequences, I think Doctor
13 Price certainly talked about his diagnosis of the
14 unspecified neuro-cognitive disorder, and those are
15 some of the very things that come out of that, not
16 understanding and appreciate risks and consequences.
17 Spoke about the inhalant disorder he had which he
18 classified in his report as severe. And there is an
19 antisocial personality; that is there as well. But
20 that inhalant all acted to not prevent, but
21 certainly slow down the development of those frontal
22 lobes which is where a lot of your reasoning and as
23 you grow up is where you get that from.

24 And then like I say, when I asked the
25 officer about the inconsistent statements, my

1 understanding is there were some inconsistent
2 statements which meets the fourth requirement that
3 is spelled out. They would not cooperate, if you
4 will, as much with the police as you certainly can
5 or should.

6 Possibility of rehabilitation, the doctor
7 felt that that certainly was possible. I understand
8 there have been some incidents for that they've
9 categorized as more serious, if you will, within 15
10 years which I don't think it's at all an unusual
11 amount over that period of time. And the others
12 were minor ones that probably fit right in with
13 being the antisocial personality. But the factors
14 familial that are cited in Byars, and we really
15 think that you take into account how children are
16 different and how he has not only has shown had been
17 different at that age, but how these other four
18 things that are listed there, they certainly do
19 apply to him in the way that he has it, and that
20 would certainly counsel against sentencing him to a
21 life time in prison.

22 He's been in about 15 years now. If Your
23 Honor gave him the very minimum sentence which is
24 still 30 years day for day, he'd be about 47,
25 another 15 years before he could get out. Life

1 expectancy of someone who is in prison is certainly
2 less than what someone who is not in prison so
3 getting out then, he's not gonna have that many
4 years left to be perfectly honest.

5 Considering his youth, he was
6 16-and-a-half roughly when this happened, and even
7 though huffing is certainly not a defense, I think
8 it is mitigation in that not only does it affect
9 your ability to understand and know what the
10 consequences are, but also just not getting the
11 treatment when he was put in several places and
12 actually treatment was ordered and it still didn't
13 happen and I think that certainly added to it as
14 well. And with all that in mind, Your Honor, we do
15 think that the requirements are spelled out in the
16 Byars case from the Millers case have been shown and
17 his sentence should be not only changed from life
18 without parole, but like I say, the minimum is still
19 30 years on the murder so he'd still have another 15
20 years and that should be the sentence that is
21 imposed. Thank you, Your Honor.

22 THE COURT: All right. Mr. Finney.

23 MR. FINNEY: Beg the Court's indulgence.

24 (Attorneys confer.)

25 MR. FINNEY: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. FINNEY: Your Honor, the record that
3 was introduced from Judge Cooper's handling of the
4 sentencing, I don't think it includes a plea
5 agreement that was signed by the lawyers and I would
6 like to have that plea agreement -- you have a
7 problem with it being a exhibit because there is
8 some language in there I just wanted to...

9 (Document is shown to Mr. Howle.)

10 MR. FINNEY: Right there.

11 MR. HOWLE: Well, that's why I think the
12 plea agreement has no merit to this. If he can't,
13 if he's a juvenile it has these other problems. You
14 know, plus this plea agreement, Your Honor, we won't
15 seek the death penalty if we sign a plea agreement
16 which I find to be rather reprehensible in itself;
17 but there is some wording in there that says, oh, by
18 the way, when you sign this you can't PCR, you can't
19 do appeal, you can't do anything.

20 THE COURT: Well, there's been some case
21 law pursuant to signing of that plea agreement just
22 like there's been some case law with regards to
23 death penalties that relates to youth, life
24 imprisonment as it relates to youth. I mean,
25 there's been some moving of all target so to speak

1 since that plea agreement. Now, I think it
2 certainly goes to factor four here about his
3 incompetence. He was represented by counsel. If it
4 had just been him signing that it might be an issue;
5 but he signed that through counsel or by virtue of
6 representation of counsel, very competent counsel
7 from Florence whom I've known for many, many years.
8 So I'm gonna allow him 'cause I think it does go to
9 that, I mean, it's something I observed, looked at,
10 even questioned your doctor about so I'm gonna allow
11 it.

12 MR. FINNEY: And Your Honor ---

13 MR. HOWLE: I understand it's something he
14 signed.

15 THE COURT: Sir?

16 MR. HOWLE: I understand it is something
17 that he signed, but when you're told you can just
18 sign this or we'll seek the death penalty, I think
19 that negates it. I just want that on the record,
20 Your Honor.

21 THE COURT: I understand.

22 MR. FINNEY: And Your Honor, this is the
23 original that came out of the Sumter County
24 Solicitor's file so I would ask that we make a copy
25 and put the copy in as an exhibit.

1 THE COURT: Okay. All right.

2 MR. FINNEY: The reason I mention that,
3 Your Honor, is because obviously I think we as
4 lawyers have, and judges, have a obligation to have
5 our word mean something. And when you hear the Pack
6 brothers' who testified here today say that they
7 thought that this was the end of the matter, they
8 certainly have been impacted by the change in the
9 law under Aiken versus Byars. That's not something
10 you can control nor Jack, nor I, that's why we're
11 here. But I want the Court to take full cognizant
12 understanding that I believe Aiken versus Byars says
13 that you must look back at what Judge Cooper heard
14 and saw and ask questions about back in 2001 to see
15 if he hit these five factors, if they were covered
16 in front of him. If they were not, then you have
17 the opportunity today to fill in those gaps to see
18 if it would make a change. But we're not, we're not
19 concerned with the fact that this young man didn't
20 know what he was doing. He knew what he was doing.
21 As you have said, he had good counsel. He signed an
22 agreement which says in pertinent part, I'm not
23 gonna file an appeal or seek post-conviction relief
24 at any time. And I think the Court just should have
25 that has a kind of a starting point because as you

1 just said, Judge, Aiken versus Byars wasn't the law
2 of the land then.

3 Now he's saying that because he was
4 huffing gas and had a drug addiction and a bad
5 family life that you should consider changing the
6 sentence. And what we're saying here is under the
7 five Miller factors and especially when you read the
8 transcript that Judge Cooper oversaw during the
9 sentencing, this young man was 16.8 years old. He
10 was a few weeks away from 17, excuse me, a few
11 months away from 17. He was a few weeks away from
12 being discharged from the facility, and he and his
13 friend consciously planned to do something big.
14 They made remarks to other people in other people's
15 presence that they weren't gonna be on this chicken
16 farm long. And when the day came and the
17 opportunity present itself and they had huffed
18 enough gas to give them the courage to do it, they
19 went about doing what they had planned to do. We
20 think that you ought to take that into consideration
21 and hold it against them even though they were
22 young, that this is not a youthful trait. This is
23 not something that would give you pause to sentence
24 them as an adult for a horrific crime because if
25 they were 18 or 19 years old, under these

1 circumstances they would certainly have qualified
2 for life imprisonment without parole. They planned
3 it; it was not impetuous. They failed to appreciate
4 the risk and the consequence? No, because they
5 decided to rob the store for money. They decided to
6 steal the gun from the house or take the gun from
7 the house so that they could use it later on. They
8 decided to move the body. They decided to flee into
9 the woods, at least Smart did, when the car got
10 stopped down in Horry County. He wasn't done yet.

11 I understand the family home environment.
12 I understand that it was a bad situation to grow up
13 in. There are cases like that all over the place in
14 terms of what we're having to deal with. I do not
15 think that it rises to a factor that gives you now,
16 Judge, with the evidence that you heard, a sense
17 that you're going to be returning somebody into
18 society that can be trusted to walk the walk and
19 keep, be a model citizen. And I think that's what
20 Judge Cooper was concerned with when he said I'm
21 gonna give you a long life sentence, but I'm gonna
22 see that you get treatment and I hope that you can
23 find some peace with yourself and some peace with
24 your maker.

25 The circumstances of the crime I think

1 we've gone over. I think the transcript that you're
2 gonna read is gonna tell you all of the aggravating
3 circumstances. These are not strangers. You know,
4 when I talk to the Packs, the brothers in my office,
5 it was just astonishing to me that his family, the
6 Pack family, could donate this land that they were
7 gonna use for the Christian camp for boys so that
8 DJJ could send their boys down there 'cause they
9 were having overcrowded conditions. The Packs
10 donated this land so that DJJ could use it so that
11 boys can come down there and find their place in
12 society. Not only did they do that, but then Tracey
13 took some of the boys, this young man included, and
14 tried to teach them something about work and about
15 learning something about being a farmer or fixing
16 water pipes in the chicken farm. Took him out for
17 meals, took him out for drinks. They probably went
18 fishing a time or two. Did everything he could have
19 to give this boy some sense of encouragement.

20 To make matters worse, the record reveals
21 that Jon Smart knew how to get along with people.
22 He wasn't aggressive to the other inmates. He
23 wasn't aggressive towards all of the counselors.
24 It's only when he didn't get his way that he would
25 flip the switch, and that's what he did when Tracy

1 told him you're messing up something, get down, let
2 me do it. He got mad. We don't know if he was
3 huffing. All we know is he blamed it on the
4 huffing. All we know is that once he did the
5 dastardly deed, he tried to cover it up and run away
6 from it; and then when he decided he couldn't get
7 away from it, he was gonna fire at other police
8 officers and put other people's lives in danger.

9 The fourth factor is the incompetency
10 associated with youth. Judge Cooper considered
11 letters from the family members, testimony from the
12 family members of Mr. Smart. Judge Cooper
13 considered letters from the pastor of Mr. Smart, a
14 man who had worked with Mr. Smart down there at the
15 center. Judge Cooper considered the findings of
16 remorse that a officer, law enforcement officer said
17 that Mr. Smart had. There was an agreement reached
18 with the Defense through the plea agreement
19 Mr. Smart understood that. He only wanted to be --
20 if you read the transcript you will see a place in
21 there where it seems that Mr. Smart was only
22 concerned that making sure that he got the same
23 sentence that Mr. Hutto got; and as long as they
24 were fed out of the same spoon, you know, that was
25 his big concern. He had the capacity to assist his

1 lawyers. He gave statements once he, you know, was
2 in custody. And I just don't think that the
3 factors -- the factors that the Court should
4 consider today were the same factors that Judge
5 Cooper considered back then and they were not this
6 happened by mistake. They went into rob a store and
7 the store owner pulled a gun and somebody got
8 killed. It wasn't that kind of situation. These
9 fellas decided to do something. They didn't have a
10 very good plan according to the way Judge Cooper saw
11 it, but that doesn't mean they didn't plan it and
12 they didn't let it roll once it started. And that
13 doesn't mean that they were young and impetuous. It
14 just means that they decided they were going to do
15 it their way.

16 Finally, rehabilitation. We have a
17 document from the prison that shows that Mr. Smart
18 continues to do things his way. He won't follow the
19 rules. He's continuing to use drugs. He's
20 assaulted at least on four occasions over the last
21 several years. Judge Cooper made a finding that the
22 agreement was fair and considered those, that
23 agreement when he sentenced him to life.
24 Rehabilitation was considered, but it wasn't a high
25 priority with Judge Cooper. Judge Cooper made a

1 finding that drug treatment was to be made part of
2 the sentence. He thought the young man would
3 benefit from drug treatment, but he, he also made a
4 decision, Your Honor, that this young man and
5 society would benefit by him being kept away from
6 other good people in the world. And we ask the
7 Court now to consider the evidence that's been
8 placed in and to take his petition and deny it with,
9 all due respect, because the Court had opportunity
10 to do that in 2001. They made the right decision
11 and we think you should affirm that decision today.
12 Thank you, sir.

13 THE COURT: Anything in response,
14 Mr. Howle?

15 MR. HOWLE: Your Honor, I think Judge
16 Cooper may have talked about some of those things
17 since he was doing sentencing; but like I say, the
18 Byars case specifically spells out these things. I
19 don't know if he went through each one of them.
20 Honestly I don't know if the attorneys presented
21 each one of them. If they had been presented more
22 they made a difference at that time. So I just say
23 that in response, Your Honor.

24 THE COURT: All right, I understand. I'm
25 gonna stand down just a minute. I want to look at

1 something.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 (WHEREUPON, State Exhibit No. 2 was marked
5 for identification and admitted into
6 evidence.)

7 THE COURT: What I'm gonna do is I am
8 going to take this matter under advisement. I'm
9 gonna set it for August 11th. I talked with the
10 lawyers back in chambers. The sentencing will take
11 place when my decision will be on the record in
12 Clarendon County on the morning of August 11th,
13 10:00. You can get me a transport order and make
14 sure it's taken place. Call the day before to make
15 sure there's not an issue with transport as far as
16 that's concerned. We will reconvene this matter
17 August 11th, 10:00, in the Clarendon County
18 courthouse. Anything further from the State?

19 MR. FINNEY: Nothing from the State.

20 MR. HOWLE: Nothing from Defense.

21 THE COURT: All right, August 11th.

22

23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA))
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding 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 counsel for, nor related to nor 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 4th day of June, 2017.

Frances B. Ray

FRANCES B. RAY, RPR

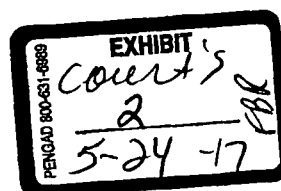
DAVID RICHARD PRICE, PH.D.

EDUCATIONAL HISTORY

1982	Auburn University Major: Degree: Dissertation: Chair:	Auburn, Alabama 36849 Clinical Psychology Doctor of Philosophy Conversation Skills Training with Chronic Psychiatric Patients James F. McCoy, Ph.D.
1979	Auburn University Major: Degree: Thesis: Co-Chair:	Auburn, Alabama 36849 Clinical Psychology Master of Science Concurrent Validity of an Early Childhood Screening Instrument. The Comprehensive Early Evaluation Profile, Research Edition James F. McCoy, Ph.D. Samuel B. Green, Ph.D.
1977	Clemson University Major: Minor: Degree: Honors:	Clemson, South Carolina 29631 Psychology Sociology Bachelor of Arts with Honor Psi Chi 1977 Sigma Phi Epsilon Honorary 1976-1977 South Carolina Psychological Association Award for Undergraduate Research 1977

LICENSURE

License Number 330 to practice Clinical Psychology issued by the South Carolina Board of Examiners in Psychology on October 8, 1983.



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CLINICAL POSITIONS

- 1991-present Private Practice
304 W. Stone Avenue
Greenville, South Carolina 29609
- Duties: Private practice offering psychotherapy, psychological and neuropsychological evaluations, and forensic consultation. Organizational consultation, intervention, and development.
- 1991-present The Forensic Network
304 W. Stone Avenue
Greenville, South Carolina 29609
- President: Senior Analyst
- Duties: Forensic consultation and psychological and neuropsychological evaluations in civil and criminal cases. Claims analysis/review. Fitness for Duty evaluations.
- 2010-2013 The Assessment Center
304 W. Stone Avenue
Greenville, South Carolina 29609
- Duties: Evaluate childhood developmental disorders including Autism through structured observations on specific tasks and administration of a battery of tests to assess language, sensory processing, adaptive behavior, and cognitive abilities.
- 1983-1991 Behavior Resources, Inc.
217 East Park Avenue
Greenville, South Carolina 29601
- Private Practice: Principal member
- Duties: Personality, vocational, and neuropsychological assessment. Individual, behavior, family, and marital therapy. Case analysis, forensic consultation, and expert testimony at the local, state, and federal level.

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1982-1983 Psychology Service
South Carolina State Hospital
2100 Bull Street
Columbia, South Carolina 29202

Staff Psychologist

Duties: Diagnostic assessment. Crisis intervention, brief psychotherapy, and group therapy. Consultant to treatment team in an acute care psychiatric admission unit. Program evaluations.

Supervisor: Linda S. Moore, Ph.D., Chief Psychologist

1981-1982 Psychology Services (116B)
University Drive
Veterans Administration Medical Center
Pittsburgh, Pennsylvania 15240

Clinical Psychology Intern (APA Approved)

Duties: Personality, vocational, and neuropsychological assessment. Stress management, biofeedback and hypnotherapy/relaxation training. Medical/Consultative liaison. Individual, group, behavior, family, and marital therapy.

Supervisor: Arnold Freedman, Ph.D., Chief Psychologist

1979-1981 Psychology Service (116B)
Veterans Administration Medical Center
Tuskegee, Alabama 36083

Psychology Technician. Half-time GS-9 Civil Service position

Duties: Individual, group, and behavior therapy. Personality, neuropsychological, and diagnostic assessment. Consultation to treatment team.

Supervisor: David A. Herbert, Ed.D., Chief Psychologist

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1978-1979 Lee County Head Start
Auburn, Alabama 36830

B.A. Level Psychologist. Half-time position.

Duties: Individual, group, and behavioral assessment. Program design and evaluation. Consultation to speech and education departments.

Supervisors: James F. McCoy, Ph.D., Consultant
Joseph G. Cunningham, Ph.D., Consultant

1977-1979 Psychology Department
Auburn University, Alabama 36849

Instructor

Duties: Teach Introductory Psychology and Developmental Psychology

Supervisor: Philip Lewis, Ph.D., Professor and Department Head

ACADEMIC POSITIONS

2003- Adjunct Associate Professor
Department of Social and Behavioral Sciences
University of South Carolina Spartanburg
800 University Way
Spartanburg, South Carolina 29303

Duties: Teach lower and upper level undergraduate psychology courses.

1996- Adjunct Associate Professor
Department of Psychiatry and Behavioral Sciences
Medical University of South Carolina
171 Ashley Avenue
Charleston, South Carolina 29425-0742

Duties: Lecture psychiatric students on all forensic areas germane to a psychiatric practice. Administrative Director of the Forensic Psychiatry Research Foundation.

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TEACHING APPOINTMENTS

- 2003- Adjunct Associate Professor. Department of Social and Behavioral Sciences, University of South Carolina Spartanburg, 800 University Way, Spartanburg, South Carolina.
- 1996- Adjunct Associate Professor, Forensic Psychiatry Program, Department of Psychiatry and Behavioral Sciences, Medical University of South Carolina. Charleston, South Carolina.
- 1998- Attorney General's National Advocacy Center. U.S. Department of Justice. Columbia, South Carolina.
- 1997 Ira C. Eaker College for Professional Development, Air Force Judge Advocate General School. Montgomery, Alabama.
- 1983-1984 Limestone College, Gaffney, South Carolina.
- 1982 Midlands Technical College, Lexington, South Carolina.
- 1977-1979 Auburn University, Auburn, Alabama.

PRESENTATIONS

- Ballenger, Ballenger, J.C. & Price, D.R. Evaluating the Expert and the Expert's Examination Protocol. Psychological and Psychiatric Injury Claims Seminar. Sponsored by the Forensic Psychiatry Program, Medical University of South Carolina. March, 1997.
- Blackwelder, I. & Price, D.R. The Legal Context of Mental and Emotional Injury Compensatory Claims in Employment Litigation. Invited lecture presented at the United States Postal Service Law Department Conference. November, 1993.
- Fabia, R., Price, D.R., & Presant, N. Analysis of Psychological Injury Claims. Panel discussion presented at the Compensatory Damage Claims in Federal Sector EEOC Cases. February, 1997.
- Kerrigan, R.E., Read, G.C., Price, D.R. & Herman, A.F. Practical Tips on Why and When You Hire a Defense Medical Opinion. Invited lecture at the Damages Seminar sponsored by the Defense Research Institute. March, 1997.

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Lees-Haley, P.R. & Price D.R. Evaluating Posttraumatic Stress Disorder. Invited lecture at the Society of Claim Law Associates Sixth Annual Conference and Seminar. September, 1997.

McDonald, J.J., Jr., Price, D.R. & Smith, R.D. Ethics: Do What, When, Where, and How? Annual Psychiatric, Psychological and Neuropsychological Injury Claims Conference and Seminar. November, 2002.

McCoy, J.F., McGee, G.G., Price, D.R., & Mason, D. Social Skills Training For Aggressive Children While Playing Competitive Games. Paper presented at the meeting of the Association for the Advancement of Behavior Therapy. November, 1980.

McCoy, J.F., Price, D.R., Herring, S.T., & McGee, G.G. Social Skills Training For Aggressive Children in a Summer Day Camp. Paper presented at the meeting of the Southeastern Psychological Association. March, 1982.

Mross, A. & Price, D.R. Special Issues: Managing the Mentally Ill Employee, the Personality Disorder Employee, and the Substance Abuse Employee Under the ADA and the Enforcement Guidance. Invited lecture presented at the National Symposium on Psychiatric Disabilities and the EEOC's New Enforcement Guidance Under the Americans with Disabilities Act, sponsored by the Government Training Institute Foundation. June, 1999.

Mross, A. & Price, D.R. Special Issues: Managing the Mentally Ill Employee, the Personality Disordered Employee, and the Substance Abuser Employee Under the ADA and the Enforcement Guidance. Invited lecture presented at the National Symposium on Psychiatric Disabilities and the EEOC's New Enforcement Guidance Under the Americans with Disabilities Act, sponsored by the Government Training Institute Foundation. November, 1999.

Price, D.R. A Survey of Prisoners' Past Participation in and Attitudes Towards Sports. Paper presented at the meeting of the South Carolina Psychological Association. April, 1977.

Price, D. R. Behavior Therapy in General Medical and Surgical Hospitals. Paper presented at Psychiatry Grand Round, University Drive Veterans Administration Medical Center. February, 1982.

Price, D.R., In-service Training. The Use of Brief Forms of MMPI: The Use and Abuse of the Mini-mult. Presented to the staff of the Unit 1, Psychology Service, South Carolina State Hospital, September, 1982.

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Price, D.R., In-service Training. An Introduction to Basic Neuro-anatomy and Neuropsychology. A series of lectures presented to the staff of Unit 1, Psychology Service, South Carolina State Hospital. October-November, 1982.

Price, D.R. Witness Preparation: The Professional in the Courtroom. Invited seminar presented at the meeting of the Council on Child Abuse and Neglect. September, 1989.

Price, D.R. Defending Against Claims of Psychological Injury Involving Claims of Depression, Anxiety, Organic Brain Syndrome or Trauma. Invited seminar presented at the meeting of the Atlanta Claims Association. April, 1990.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. February, 1992.

Price, D.R. Psychological, Neuropsychological, and Psychiatric Disorders in Mitigation. Invited seminar and case clinic at the offices of the Public Defender of Indiana. July, 1992.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. August, 1992.

Price, D.R. The Analysis of Psychological Injury Claims. In-house seminar at Selective Insurance Company of the Southeast. January, 1993.

Price, D.R. The Analysis of Psychological Injury Claims. In-house seminar at Central Insurance Company. February, 1993.

Price, D.R. The Analysis of Psychological Injury Claims. In-house seminar at Gulf Insurance Group. February, 1993.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. April, 1993.

Price, D.R. Issues in Malingering and Factitious Disorders. Defense of Damages Conference and Seminar. April, 1993.

Price, D.R. Standards of Care in the Evaluations of Claims of Sexual Harassment. Defense of Damages Conference and Seminar. April, 1993.

Price, D.R. Claims Analysis. In-house lecture at Central Insurance Company. April, 1993.

Price, D.R. Defending Claims of Psychological Injury. Invited speech at the Southeastern Claims Association. June, 1993.

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Price, D.R. The Analysis of Psychological Injury Claims. In-house seminar at Gulf Insurance Group. July, 1993.

Price, D.R. Medical Signs and Symptoms. NAACP Legal Defense Fund Annual Capital Punishment Conference. July, 1993.

Price, D.R. Use of the Diagnostic and Statistical Manual, Third Edition Revised (DSM-III-R) and its Revision (DSM-IV) in Diagnosing Mental Illness. NAACP Legal Defense Fund Annual Capital Punishment Conference. July, 1993.

Price, D.R. The Analysis of Claims of Closed Head Injury. Defending Claims of Closed Head Injury Seminar sponsored by the Atlanta Claims Association. August, 1993.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. October, 1993.

Price, D.R. Issues in Malingering and Factitious Disorders. Defense of Damages Conference and Seminar. October, 1993.

Price, D.R. Evaluating Claims of Head Injury. Paper presented at The Annual Symposium on Head Injury Claims. December, 1993.

Price, D.R. Defending Head Injury Claims. Invited in-house seminar at A.I. Management and Professional Liability Claim Adjusters, Medical Malpractice Claims. January, 1994.

Price, D.R. The Most Problematic Psychological Injury Claims. Invited keynote speech at Second Annual Mid-Atlantic Regional RIMS Conference. June, 1994.

Price, D.R. Mental Conditions to Consider. Invited lecture at The Benefits and Challenges of Representing Capitol Defendants in the 90's seminar sponsored by The Association of the Bar of the City of New York. June, 1994.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. July, 1994.

Price, D.R. Defending Claims of Psychological Injury. Invited lecture at The Arkansas Association of Defense Counsel 1994 Annual Meeting and Seminar. August, 1994.

Price, D.R. Psychological Injury, a General Orientation. Keynote speech at The South Carolina Claims Association Fall meeting. October, 1994.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. November, 1994.

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Price, D.R. Evaluating Claims of Head Injury. Defense of Damages Conference and Seminar. November, 1994.

Price, D.R. Defending Psychological Injury Claims. Invited lecture at a Johnson and Higgins of Ohio seminar. Cleveland, Ohio. November, 1994.

Price, D.R. Introduction to Brain Anatomy and Head Injury. Invited lecture presented at the Handling Head Trauma Cases From The Questionable To The Catastrophic Seminar sponsored by the Atlanta Claims Association. February, 1995.

Price, D.R. The Analysis and Defense of Claims of Head Injury. Invited lecture presented at the Handling Head Trauma Cases From The Questionable To The Catastrophic Seminar sponsored by the Atlanta Claims Association. February, 1995.

Price, D.R. Defending Psychological Injury Claims. Invited lecture at a Johnson and Higgins of Ohio seminar. Columbus, Ohio. April, 1995.

Price, D.R. Defending Psychological Injury Claims. Invited lecture at a Johnson and Higgins of Ohio seminar. Cincinnati, Ohio. April, 1995.

Price, D.R. Defending Psychological Injury Claims. Invited lecture at a Johnson and Higgins of Ohio seminar. Toledo, Ohio. April, 1995.

Price, D.R. Trends and Red Flags in Psychological Injury Claims. Southeastern Electric Exchange Claims Meeting. April, 1995.

Price, D.R. Analysis of the Psychological Injury Claim. Self-Insurers Association Members Only Conference. April, 1995.

Price, D.R. Mental and Emotional Injury Claims in Employment Litigation. South Carolina Bar Annual Meeting. June, 1995.

Price, D.R. Psychological Injury Claims: Future trends. Piedmont Claims Association. June, 1995.

Price, D.R. Evaluating Psychological Injury Claims. Invited in-house seminar presented to the State Accident Fund Claims and Legal Departments. June, 1995.

Price, D.R. Psychological Injury Claims in the Workplace. National Workers' Compensation and Occupational Medicine Seminar. July, 1995.

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Price, D.R. The Defense of Mental and Emotional Injury Claims in Employment Litigation. In-house seminar presented to Haynsworth, Baldwin, Johnson and Greaves. August, 1995.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. August, 1995.

Price, D.R. Psychological Injury Claims. Dallas Claims Association. September, 1995.

Price, D.R. Evaluating Psychological Injury Claims. In-house seminar presented to the Legal Department of The New York Transit Authority. September, 1995.

Price, D.R. The Analysis and Limitation of Damages. Keynote speech at the Defense of Damages Conference and Seminar. November, 1995.

Price, D.R. Analysis and Evaluation of Posttraumatic Stress Disorder and Other Psychological Injury Claims. Invited lecture at the Defense and Evaluation of PTSD and Other Psychological Injury Cases Arising from Injury or Employment Situations Seminar sponsored by the Defense Research Institute. November, 1995.

Price, D.R. Evaluating Claims of Head Injury. The Annual Symposium on Head Injury Claims. November, 1995.

Price, D.R. Defending Psychological and Neuropsychological Injury Claims. In-house seminar presented to National Indemnity Company. February, 1996.

Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. In-house seminar presented to Nationwide Insurance Company. February, 1996.

Price, D.R. Defending Psychological and Neuropsychological Injury Claims. In-house seminar presented to Westchester Specialty Group. March, 1996.

Price, D.R. Identifying the "Red Flags" in a Traumatic Brain Injury Claim. Invited lecture at the Traumatic Brain Injury: A Plaintiff and Defendant's Perspective Seminar sponsored by Lorman Education Services. March, 1996.

Price, D.R. Twenty-five Defense Tips in the Evaluation of the Brain Injury Claim. Invited lecture at the Defense and Evaluation of Brain Damage Claims Seminar sponsored by the Defense Research Institute. April, 1996.

Price, D.R. Psychological Injury Claims. The Virginia's Self-Insurers Association, Inc. April, 1996.

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Price, D.R. Evaluating Closed Head Injuries and Psychological Injury Claims. In-house seminar presented to Nationwide Insurance Medical Coordinator Seminar. May, 1996.

Price, D.R. The Analysis and Evaluation of Brain Injury Claims. Invited lecture at the Defense Trial Counsel of West Virginia 1996 Annual Convention. June, 1996.

Price, D.R. The Analysis of the Psychological Injury Claim. The Annual Mental and Emotional Injury Claims Conference and Seminar. July, 1996.

Price, D.R. The Analysis and Evaluation of Psychological Injury Claims. Invited lecture at the Psychological Injury Claims Seminar sponsored by the Defense Research Institute. November, 1996.

Price, D.R. Evaluating Claims of Head Injury. The Annual Symposium on Head Injury Claims. November, 1996.

Price, D.R. The Role of the Consulting Defense Expert in the Evaluation of Brain Injury Claims. Invited lecture at the Evaluation and Settlement of Claims Involving Acquired Brain Injury seminar sponsored by The Brain Injury Association of North Carolina Second Annual Trial Lawyers Conference. January, 1997.

Price, D.R. Evaluation of the Psychological Injury Claim. Psychological and Psychiatric Injury Claims Seminar. Sponsored by the Forensic Psychiatry Program, Medical University of South Carolina. March, 1997.

Price, D.R. Psychological and Neuropsychological Tests. Psychological and Psychiatric Injury Claims Seminar. Sponsored by the Forensic Psychiatry Program, Medical University of South Carolina. March, 1997.

Price, D.R. Mild Traumatic Brain Injuries. Psychological and Psychiatric Injury Claims Seminar. Sponsored by the Forensic Psychiatry Program, Medical University of South Carolina. March, 1997.

Price, D.R. The Role of Financial Incentives in the Production of Mental and Emotional Symptoms. Invited lecture at the Damages Seminar sponsored by the Defense Research Institute. March, 1997.

Price, D.R. Twenty-five Defense Tips in the Evaluation of the Brain Injury Claim. Invited lecture at the Damages Seminar sponsored by the Defense Research Institute. March, 1997.

Price, D.R. Evaluating Neurological, Psychological and Psychiatric Injury Claims. In-house seminar presented to General Accident Insurance Company. April, 1997.

David R. Price, Ph.D.**Vita****Page 12**

Price, D.R. Twenty-five Defense Tips in the Evaluation of the Brain Injury Claim. Invited lecture at the Brain Damage Institute sponsored by the Defense Research Institute. April-May, 1997.

Price, D.R. Investigation and Defense of Closed Head Injury Trauma Cases. Invited lecture at the PRO NET 5th Annual Meeting. June, 1997

Price, D.R. Evaluating Neurological, Psychological, and Psychiatric Injury Claims. In-house seminar presented to Peerless Insurance Company. July, 1997.

Price, D.R. The Analysis of the Psychological Injury Claim. The Annual Mental and Emotional Injury Claims Conference and Seminar. July, 1997.

Price, D.R. Psychiatric Disabilities and the EEOC's New Enforcement Guidance Under the Americans with Disabilities Act. The National Symposium on Federal EEO Law, Process and Procedures. Washington, D.C. September, 1997.

Price, D.R. Psychiatric Disabilities and the EEOC's New Enforcement Guidance Under the Americans with Disabilities Act. The National Symposium on Federal EEO Law, Process and Procedures. Los Angeles. September, 1997.

Price, D.R. Twenty-five Defense Tips in the Investigation and Evaluation of Brain Injury Claims. Presented at The Hot Topics in Worker's Compensation client seminar sponsored by Gibbes, Gallivan, White and Boyd. October, 1997.

Price, D.R. Posttraumatic Stress Disorder Claims. Invited lecture at The Trucking Industry Defense Association's 5th Annual Industry Seminar. October, 1997.

Price, D.R. Twenty-five Defense Tips on the Evaluation and Defense of Psychological Injury Claims. Invited lecture at the Defense and Evaluation of Psychological Injury Cases Seminar sponsored by the Defense Research Institute. November, 1997.

Price, D.R. Analysis of Psychological Injury Claims. Invited lecture at the Compensatory Damages Claims in Federal Sector EEO Cases Seminar sponsored by the Government Training Institute. December, 1997.

Price, D.R. The EEOC's Enforcement Guidance: Issues, Questions and Concerns From a Clinician's Perspective. National Symposium on Psychiatric Disabilities and the EEOC's New Enforcement Guidance Under the Americans with Disabilities Act sponsored by the Government Training Institute. January, 1998.

David R. Price, Ph.D.

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Price, D.R. Mental and Emotional Injury Claims in Employment Litigation. Invited lecture presented to the Employment and Labor Law Section at The South Carolina Bar Mid-year Meeting. January, 1998.

Price, D.R. Ten Most Common Mistakes Made by Plaintiff's in ABI Cases. Invited lecture at the Mild Acquired Brain Injury: Proving it is Real seminar sponsored by The Brain Injury Association of North Carolina 3rd Annual Trial Lawyers Conference. January, 1998.

Price, D.R. Evaluating Psychological Injury Claims. Invited in-house seminar presented to F.A. Richard and Associates, Inc/ Ingalls Shipbuilding, Inc. March, 1998.

Price, D.R. Twenty-five Defense Tips in the Investigation and Evaluation of Brain Injury Claims. Presented at The 31st Annual Convention of The Georgia Defense Lawyers Association. April, 1998.

Price, D.R. Posttraumatic Stress Disorder Claims. Invited lecture at The Attorney General's National Advocacy Center. U.S. Department of Justice. May, 1998

Price, D.R. Analyzing Psychological Injuries. Invited lecture at The Attorney General's National Advocacy Center. U.S. Department of Justice. July, 1998.

Price, D.R. Psychological Impact of Work Related Injury. Invited lecture at the Hand Care in The Workplace seminar sponsored by The Carolina Hand Center. July, 1998.

Price, D.R. Analyzing Psychological Injury Claims. Invited lecture at the South Carolina Defense Trial Attorneys' Association and Claims Management Association of South Carolina Joint Meeting. July, 1998.

Price, D.R. The EEOC's Enforcement Guidance: Issues, Questions and Concerns From a Clinician's Perspective. National Symposium on Psychiatric Disabilities and the EEOC's New Enforcement Guidance Under the Americans with Disabilities Act. Invited lecture for Sedgwick Claims Management Services, Inc. August, 1998.

Price, D.R. The Analysis of the Psychological Injury Claim. The Annual Mental and Emotional Injury Claims Conference and Seminar. August, 1998.

Price, D.R. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at SAFECO Insurance Group sponsored by the PLRB/LIRB Extension Program. October, 1998.

David R. Price, Ph.D.

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Page 14

Price, D.R. Analysis of Neuropsychological Injury Claims. Invited lecture at the Handling Psychological and Neuropsychological Injury Claims Seminar, sponsored by Lorman Education Services. November, 1998.

Price, D.R. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at Highlands Insurance Group sponsored by the PLRB/LIRB Extension Program. November, 1998.

Price, D.R. Handling Psychological and Neuropsychological Injury Claims. Invited lecture to the Advanced Casualty Classes at Royal Sun Alliance Insurance Co. November, 1998.

Price, D.R. Psychological Injury Claims and Fraud. Invited lecture at the National Council on Compensation Insurance, Incorporated, West Coast Forum and Fraud Conference. November, 1998.

Price, D.R. Tips for the Evaluation of the Closed Head Brain Injury Claim. Invited lecture at the Psychological and Neuropsychological Injury Claims: From PTSD to Closed Head Injury Claims Seminar sponsored by the Defense Research Institute. November, 1998.

Price, D.R. Discovery of Emotional Distress Injuries and Evidence in Compensatory Damages Cases. Invited lecture at the Compensatory and Consequential Damages and Federal Sector Cases Seminar sponsored by the Government Training Institute Foundation. March, 1999.

Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited lecture at the South Carolina Claims Association's Spring Meeting. April, 1999.

Price, D.R. The Ethical Evaluation of Psychological Injury Claims. In-house seminar presented at Edward, Ballard, Bishop, Sturm, Clark and Keim. June, 1999.

Price, D.R. The Ethical Discovery, Analysis, and Conceptualization of Psychological Injury Claims. The Annual Psychological and Neuropsychological Injury Claims Conference and Seminar. August, 1999.

Price, D.R. Expert Witnesses and Testimony. Invited lecture at the Judge Advocate General Negotiations and Settlement Seminar at the Ira C. Eaker College for Professional Development, Air Force Judge Advocate General School. August, 1999.

Price, D.R. Analyzing Records and Conceptualizing Psychological Injury Claims. Invited lecture at the Mild/Moderate Traumatic Brain Injuries and Psychological Injury Seminar sponsored by the Defense Research Institute. August, 1999.

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- Price, D.R. Analysis of Brain Injury Claims. Invited lecture at the Traumatic Brain Injury Seminar sponsored by the Atlanta Claims Association. November, 1999.
- Price, D.R. Handling Psychological Aspects of Personal Injury Claims. Invited lecture at the Third Annual Claims Exposition and Conference. November, 1999.
- Price, D.R. Evaluating the Potentially Violent Employee. Invited lecture at the National Symposium on Psychiatric Disabilities and the EEOC's New Enforcement Guidance under the Americans with Disabilities Act sponsored by the Government Training Institute Foundation. November, 1999.
- Price, D.R. The Defense of Mild Traumatic Brain Injury Cases. Invited lecture at the Damages Seminar sponsored by the Defense Research Institute. March, 2000.
- Price, D.R. Analysis of Mental and Emotional Injury Claims. Invited lecture at the Damages Seminar sponsored by the Defense Research Institute. March, 2000.
- Price, D.R. Analysis of Psychological Injury Claims. Invited lecture at the Compensatory and Consequential Damages in Federal Cases Seminar sponsored by the Government Training Institute. March, 2000.
- Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited lecture at the Ninth Annual Worker's Compensation and Occupational Medicine Seminar sponsored by S-E-A-K. March, 2000.
- Price, D.R. Evaluating Symptom Magnification, Deception and Malingering. Invited lecture at the Ninth Annual Worker's Compensation and Occupational Medicine Seminar sponsored by S-E-A-K. March, 2000.
- Price, D.R. Analysis of Psychological Injury Claims. Invited lecture at the Compensatory and Consequential Damages in Federal Cases Seminar sponsored by the Government Training Institute Foundation. April, 2000.
- Price, D.R. Evaluating Psychiatric Injury Claims for Compensatory Damages in Personnel Cases. Invited lecture at the OAGC (M&RA) CPL Seminar for the Department of the Navy. August, 2000.
- Price, D.R. The Ethical Discovery, Analysis and Conceptualization of Psychological Injury Claims. Annual Mental and Emotional Injury Claims Conference and Seminar. October, 2000.
- Price, D.R. Handling the Psychological Aspects of Claims. Invited lecture at the Annual Claims Exposition and Conference. October, 2000.

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Price, D.R. The Emotional Side of Asbestosis, Lung Cancer, and Mesothelioma. Invited lecture at the Asbestos Personal Injury Litigation Seminar sponsored by the Defense Research Institute. November, 2000.

Price, D.R. The Ethical Discovery, Analysis, and Conceptualization of Psychological Injury Claims. Annual Mental and Emotional Injury Claims Conference and Seminar. November, 2000.

Price, D.R. Psychological Injury Claims: Overview, Analysis and Evaluation. Psychiatric, Psychological and Neuropsychological Claims Conference and Seminar. July, 2001.

Price, D.R. Psychological and Brain Injury Claims. Tennessee Farmers Insurance Companies. August, 2001

Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Defending Traumatic Brain Injury Claims Seminar sponsored by Mabry & McClelland. September, 2001.

Price, D.R. The Psychological Aspects of Claims. Invited lecture at the Annual Claims Exposition and Conference. October, 2001.

Price, D.R. Evaluating Psychological Injury Claims. Invited lecture at the Louisiana Claims Association Eighth Annual Educational Conference. May, 2002.

Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited lecture at Sharon W. Ware & Associates. April, 2002.

Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited lecture at Hartford/Omni Insurance Company. August, 2002.

Price, D.R. A Review of Federal Employment Mental Health Issues: From a Psychiatrist's Perspective. Invited lecture at the 2002 EXCEL: Examining Conflicts in Employment Laws Conference. Sponsored by the EEOC. August, 2002.

Price, D.R. Evaluating Claims of Brain Injury. Invited lecture at the Evaluating Traumatic Brain Injury Seminar sponsored by Mabry & McClelland. September, 2002.

Price, D.R. Analysis and Evaluation of Psychological and Neuropsychological Injury Claims. Annual Psychiatric, Psychological and Neuropsychological Injury Claims Conference and Seminar. November, 2002.

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- Price, D.R. Evaluating Brain Injury Claims. Invited lecture at the McAngus, Goudelock & Courie, LLC Client Seminar. November, 2002.
- Price, D.R. Dealing with Psychological Injury Claims in Employment Cases. Invited lecture at the Civilian Personnel Law Seminar for the Department of the Navy. February, 2003.
- Price, D.R. Posttraumatic Stress - Real or Fake. Invited lecture at the Case Management Society of America (CMSA), Birmingham Alabama Chapter, Ninth Annual Conference. April, 2003.
- Price, D.R. Psychiatric, Psychological and Neuropsychological Injury Claims. Invited lecture at Travelers Insurance Company, Charlotte, North Carolina. May, 2003.
- Price, D.R. Evaluating Psychological Injury Claims. Invited lecture at the Louisiana Claims Association Ninth Annual Educational Conference and Expo, Biloxi, Mississippi. May, 2003.
- Price, D.R. The Science of Neuropsychology: Evaluating Mild Brain Injury Cases. South Carolina Defense Trial Attorneys' Association and Claims Management Association of South Carolina, Thirty-Sixth Annual Joint Meeting. July, 2003.
- Price, D.R. Federal Employment Mental Health Issues: From a Psychologist's Perspective. Examining Conflicts in Employment Laws Conference sponsored by the EEOC. August, 2003.
- Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited in-house seminar presented to Carolina Casualty Insurance Company. September, 2003.
- Price, D.R. Malingering. Invited lecture at The Oregon Chapter International Association of Special Investigations Unit 9th Annual Insurance Fraud Conference. April, 2004.
- Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited lecture at Citizens Insurance Company. May, 2004.
- Price, D.R. Primer on Evaluating Psychological Injury Claims. Invited lecture presented at the Society of Insurance Trainers and Educators. June, 2004.
- Price, D.R. Educating the Trainers on Teaching How to Evaluate Psychological and Neuropsychological Injury Claims. Invited lecture presented at the Society of Insurance Trainers and Educators. June, 2004.
- Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited in-house seminar presented at the Gainey Corporation. July, 2004.

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Price, D.R. Identification of Fraudulent Psychological and Neuropsychological (Brain) Injury Claims. Invited lecture presented at the 2004 Asia Pacific Fraud Convention and Trade Show. September, 2004.

Price, D.R. Investigating and Detecting Fraudulent Stress Claims. Invited lecture presented at the 2004 Asia Pacific Fraud Convention and Trade Show. September, 2004.

Price, D.R. Evaluating Workplace Stress Claims. Invited lecture at the Managing Stress: A Multi-Disciplinary Approach Seminar. September, 2004.

Price, D.R. Posttraumatic Stress Disorder Claims. Invited lecture at the Insurance Fraud Executive Council. November, 2004.

Price, D.R. Evaluating Claims of Pediatric Brain Injury. Invited Lecture at the Brain Injuries Seminar, sponsored by Mabry & McClelland, January, 2005.

Price, D.R. Detecting Fraudulent Psychological and Neuropsychological Injury Claims. IASIU 20th Annual Seminar and Expo on Insurance Fraud. September, 2005.

Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited in-house seminar presented to State Farm Insurance Company. (Please note this seminar was presented twice by request.) September, 2005.

Price, D.R. Evaluating Psychological and Neuropsychological Injury Claims. Invited in-house seminar presented to State Farm Insurance Company. (Please note this seminar was presented twice by request.) September, 2005

Price, D.R. Evaluating Traumatic Brain Injury Claims. Invited lecture at Sharon W. Ware & Associates. December, 2005.

Price, D.R. Evaluating the Invisible Injury Claim - Posttraumatic Stress Syndrome Disorder. Invited lecture presented at the Damages Seminar sponsored by the DRI Trial Tactics Committee. March, 2006.

Price, D.R. Malingering and Fraud in Psychological and Neuropsychological Injury Claims. Invited lecture presented at the Damages Seminar sponsored by the DRI Trial Tactics Committee. March, 2006.

Price, D.R. Evaluating Malingering in Workers' Compensation. Invited lecture at the South Carolina Workers' Compensation Update 2006 Seminar sponsored by the Council on Education in Management. May, 2006.

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- Price, D.R. Evaluating Brain Injury Claims. Invited lecture at Crawford University sponsored by Crawford & Company. June, 2006.
- Price, D.R. Evaluating Malinger in Psychological and Neuropsychological Injury Claims. Presented at the 21st Annual Seminar & Expo on Insurance Fraud sponsored by the International Association of Special Investigation Units. September, 2006.
- Price, D.R. Evaluating Claims of Mild Traumatic Brain Injury. Presented at the Atlanta Claims Association. November, 2006.
- Price, D.R. Detecting Malinger, Symptom Exaggeration and Fraud in Psychiatric and Neuropsychological Claims. The NHCAA Institute for Health Care Fraud Prevention, 2006 Annual Training Pre Conference Program. November, 2006.
- Price, D.R. Detecting Malinger, Symptom Exaggeration and Fraud in Psychological, Psychiatric and Neuropsychological Claims. The NHCAA Institute for Health Care Fraud Prevention, 2006 Annual Training Conference. November, 2006.
- Price, D.R. Evaluating for Fraudulent Psychological and Neuropsychological Injury Claims presented at the Mental Health Fraud and Substance Abuse Issue Seminar sponsored by The National Health Care Anti-fraud Association Institute of Health Care Fraud Prevention. February, 2007.
- Price, D.R. Malinger in Psychological, Psychiatric and Neuropsychological Injury Claims. Invited lecture at Carolina Casualty Insurance Company. April, 2007.
- Price, D.R. Analysis of Psychological, Psychiatric, and Neuropsychological Claims. Presented at the 2007 Claims Conference sponsored by Mountain West Farm Bureau Insurance Company. June, 2007.
- Price, D.R. "I Can't Even Think of Driving Again"; PTSD Claims. Trucking Industry Defense Association Worker's Comp Seminar. August, 2007
- Price, D.R. Detecting Fraudulent Psychological and Neuropsychological (Brain) Injury Claims. Presented at the 22nd Annual Seminar & Expo on Insurance Fraud sponsored by the International Association of Special Investigation Units. September, 2007.
- Price, D.R. Investigating Fraudulent Psychological Claims. The United States Postal Service and the Office of Inspector General, 2nd National Injury Compensation Symposium & Training Conference. April, 2008.
- Price, D.R. Malinger. The United States Postal Service and the Office of Inspector General, 2nd National Injury Compensation Symposium & Training Conference. April, 2008.

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Price, D.R. Detecting Fraudulent Psychological and Neuropsychological (Brain) Injury Claims. International Association of Special Investigation Units (IASIU), 23rd Annual Seminar & Expo on Insurance Fraud. September, 2008.

Price, D.R. Arson and The Criminal Mind. Carolina Fire Investigators Association. September, 2008.

Price, D.R. Malingering in Mental and Emotional Injury Claims. International Claims Association Annual Education Conference. September, 2008.

Price, D.R. Evaluating Mental and Emotional Injury Claims. International Claims Association Annual Education Conference. September, 2008.

Price, D.R. How to Interpret and Use Neuropsychological Testing. DRI Complex Medicine Seminar. November, 2008.

Price, D.R. Detecting Malingered Fraud in Psychological and Neuropsychological (Brain) Injury Claims. NC Insurance Crime Information Exchange 17th Annual Training Conference. February, 2009. (Please note this seminar was presented twice by request.)

Price, D.R. Detecting Malingered Fraud in Psychological and Neuropsychological (Brain) Injury Claims. NC Insurance Crime Information Exchange 17th Annual Training Conference. February, 2009. (Please note this seminar was presented twice by request.)

Price, D.R. Detecting Fraudulent Psychological and Neuropsychological (Brain) Injury Claims. International Association of Special Investigation Units (IASIU). 24th Annual Seminar and Expo on Insurance Fraud. September, 2009.

Price, D.R. The Evaluation of PTSD: Causes and Symptoms. Making The Case For Life XII: Mitigation and Jury Selection in Capital Cases sponsored by the Southern Center for Human Rights and the National Association of Criminal Defense Lawyers. September, 2010.

Price, D.R. The Evolution of Posttraumatic Stress Disorder. Invited lecture at the Charlotte Claims Association. November, 2010.

Price, D.R. The Evolution of Posttraumatic Stress Disorder. Invited lecture at the Houston Claims Association. December, 2010.

Price, D.R. The Evolution of Posttraumatic Stress Disorder and Malingering. Invited lecture at the Chicago Claims Association. March, 2011.

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Price, D.R. Dealing with Difficult Clients. Invited lecture at the Public Defender Investigators Conference. March, 2011.

Price, D.R. PTSD/Traumatic Brain Injury Claims, Future Trends. South Carolina Defense Trial Attorneys' Association & Claim Management Association of South Carolina. 44th Annual Joint Meeting. July, 2011.

Price, D.R. Managing Stress in the Private Investigator. Invited lecture at the Public Defenders Conference. March, 2012.

Price, D.R. Managing Stress in the Private Investigator. Invited lecture at the South Carolina Association of Legal Investigators. May, 2012.

Price, D.R. Evaluating Traumatic Brain Injury Claims. Invited lecture at the 2014 South Carolina Farm Bureau Claims Conference. March, 2014.

Price, D.R. Trends in PTSD and TBI Claims DSM-5TM and Beyond. Invited lecture at Canal Insurance Company. June, 2015.

Price, D.R. Trends in PTSD and TBI Claims, DSM-5 and Beyond, Part I. Iowa Defense Counsel Association's 2016 Annual Meeting. September, 2016.

Price, D.R. Trends in PTSD and TBI Claims, DSM-5 and Beyond, Part II. Iowa Defense Counsel Association's 2016 Annual Meeting. September, 2016.

Fox, W.S. & Price, D.R. Evaluating Brain Injuries. Invited lecture at Home Depot. May, 2006.

Kamanski, J.B. & Price, D.R. Catastrophic Injury Defense. Presented at the 2011 Claims Conference of Northern California. September, 2011.

Price, D.R. & Beaudoin, D. Posttraumatic Stress Disorder. Invited lecture at the PLRB/LIRB Crossroads 2005 Claims Conference. April, 2005. (Please note this speech was presented twice by request.)

Price, D.R. & Beaudoin, D. Posttraumatic Stress Disorder. Invited lecture at the PLRB/LIRB Crossroads 2005 Claims Conference. April, 2005. (Please note this speech was presented twice by request.)

Price, D.R. & Blackwelder, I. Defending Mental and Emotional Injury Claims in Employment Litigation. Invited lecture presented at the United States Postal Service Law Department Conference. November, 1993.

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Price, D.R. & Brannon, W. Head Trauma Damage Claims. Invited lecture at the South Carolina Defense Trial Attorneys' Association and Claims Management Association of South Carolina Joint Meeting. July, 1996.

Price, D.R., & Campbell, D.A. Overcoming Stress and Achieving Self-motivation. Invited seminar presented at the Administrative Management Society Area IV Conference. October, 1988.

Price, D.R. & Cohen, L. Evaluating Neurological, Psychological and Psychiatric Injury Claims. In-house seminar presented to Great West Casualty Company. April, 1996.

Price, D.R. & Darroch, R.M. "Traumatic Brain Injuries" - Claim Handling Guidelines & Coverage Issues. Atlantic Claim Executives Association Spring Conference. April, 2013.

Price, D.R. & Dowies, C. Managing Stress in the Claims Profession. Invited lecture at the PLRB/LIRB 2011 Claims Conference. April, 2011. (Please note this speech was presented twice by request.)

Price, D.R. & Dowies, C. Managing Stress in the Claims Profession. Invited lecture at the PLRB/LIRB 2011 Claims Conference. April, 2011. (Please note this speech was presented twice by request.)

Price, D.R. & Fox, W.S. Malingering and Symptom Exaggeration. Presented at the 2008 Claims Conference & Insurance Seminar Expo sponsored by PLRB/LIRB. April, 2008. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R. & Fox, W.S. Malingering and Symptom Exaggeration. Presented at the 2008 Claims Conference & Insurance Seminar Expo sponsored by PLRB/LIRB. April, 2008. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R. & Kerr, L.S. Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB 2011 Claims Conference. April, 2011. (Please note this speech was presented twice by request.)

Price, D.R. & Kerr, L.S. Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB 2011 Claims Conference. April, 2011. (Please note this speech was presented twice by request.)

Price, D.R. & Kerr, L.S. Traumatic Brain Injuries. Invited lecture at the PLRB/LIRB 2012 Claims Conference. April, 2012. (Please note this speech was presented twice by request.)

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Price, D.R. & Kerr, L.S. Traumatic Brain Injuries. Invited lecture at the PLRB/LIRB 2012 Claims Conference. April, 2012. (Please note this speech was presented twice by request.)

Price, D.R., Crowley, B., Gold, L.H. & McDonald, J.J. Inter-Profession Ethics: The Ethical Interplay Between Psychologist, Psychiatrists and Attorneys. Psychiatric, Psychological and Neuropsychological Claims Conference and Seminar. July, 2001.

Price, D.R., Fox, W.S. & Kerr, L.S. Malingering and Symptom Exaggeration. Presented at the 2007 Claims Conference & Insurance Seminar Expo sponsored by the PLRB/LIRB. March, 2007. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R., Fox, W.S. & Kerr, L.S. Malingering and Symptom Exaggeration. Presented at the 2007 Claims Conference & Insurance Seminar Expo sponsored by the PLRB/LIRB. March, 2007. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R., Fox, W.S. & Kerr, L. Malingering and Symptom Exaggeration. PLRB/LIRB 2009 Claims Conference and Insurance Services Expo. March, 2009. (Please note this lecture was presented twice by request.)

Price, D.R., Fox, W.S. & Kerr, L. Malingering and Symptom Exaggeration. PLRB/LIRB 2009 Claims Conference and Insurance Services Expo. March, 2009. (Please note this lecture was presented twice by request.)

Price, D.R. & Hiers, J.B. Evaluating Claims of Brain Injury. The Annual Symposium on Head Injury Claims. Sponsored by the Forensic Psychiatry Program, Medical University of South Carolina. December, 1997.

Price, D.R.; Kamanski, J.B and Morgan, S. Catastrophic Injury Defense, Including Mild Traumatic Brain Injury Claims. Presented at the 24th Annual Combined Claims Conference. March, 2012.

Price, D.R. & Lees Haley, P.R. An Introduction to Psychological Injury Claims. Defense of Damages Conference and Seminar. August, 1995.

Price, D.R. & Lees Haley, P.R. An Introduction to Psychological Injury Claims. Defense of Damages Conference and Seminar. November, 1995.

Price, D.R., Lees-Haley, P.R. & McDonald, J.J. The Defense of Mental and Emotional Injury Claims in Employment Litigation. In-house seminar presented to Fisher and Phillips. February, 1995.

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Price, D.R., Lees-Haley, P.R., & Smith, R.D. Handling Psychological Injury Claims. Invited in-house seminar presented to the Delta Air Lines, Inc. Claims Department. February, 1995.

Price, D.R., & McCoy, J.F. Conversation Skill Training with Chronic Psychiatric Patients. Paper presented at the meeting of the Southeastern Psychological Association. March, 1982.

Price, D.R. & McDonald, J.J. The Defense of Mental and Emotional Injury Claims in Employment Litigation. In-house seminar presented to Fisher and Phillips. April, 1993.

Price, D.R. & McDonald, J.J. The Defense of Mental and Emotional Injury Claims in Employment Litigation. Invited lecture at the Advanced Labor and Employment Law Practitioners Seminar at the Ira C. Eaker College for Professional Development, Air Force Judge Advocate General School. June, 1997.

Price, D.R. & O'Connell, B. A. Posttraumatic Stress Disorder Claims. Invited lecture for Sedgwick Claims Management Services, Inc. August, 1998.

Price, D.R. & Simon, R.I. The EEOC's Enforcement Guidance: Issues, Questions and Concerns from a Clinician's Perspective. Invited lecture at the National Symposium on Psychiatric Disabilities and the EEOC's New Enforcement Guidance under the Americans with Disabilities Act sponsored by the Government Training Institute Foundation. June, 1999.

Price, D.R. & Simon, R.I. The EEOC's Enforcement Guidance: Issues, Questions and Concerns from a Clinician's Perspective. Invited lecture at the National Symposium on Psychiatric Disabilities and the EEOC's New Enforcement Guidance under the Americans with Disabilities Act. November, 1999.

Price, D.R. & Smith, R.D. Handling Psychological Injury Claims. Invited lecture at the PLRB/LIRB 1997 Claims Conference. April, 1997. (Please note that this speech was given twice on consecutive days by request.)

Price, D.R. & Smith, R.D. Handling Psychological Injury Claims. Invited lecture at Erie Insurance Company sponsored by the PLRB/LIRB Extension Program. October, 1997. (Please note that this speech was given twice in two consecutive three-hour sessions by request.)

Price, D.R. & Smith, R.D. Handling Psychological Injury Claims. Invited lecture at Grange Insurance sponsored by the PLRB/LIRB Extension Program. November, 1997.

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Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at MARTA (Metropolitan Atlanta Rapid Transit Authority). November, 1997.

Price, D.R. & Smith, R.D. Handling Psychological Injury Claims. Invited lecture at Kemper Insurance Company sponsored by the PLRB/LIRB Extension Program. November, 1997.

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/ AICPCU 1998 Claims Conference. April, 1998. (Please note that this speech was given three times on consecutive days by request.)

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/ AICPCU 1998 Claims Conference. April, 1998. (Please note that this speech was given three times on consecutive days by request.)

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/ AICPCU 1998 Claims Conference. April, 1998. (Please note that this speech was given three times on consecutive days by request.)

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at AMICA Mutual Insurance Company, sponsored by the PLRB/LIRB Extension Program. November, 1998.

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/ AICPCU 1999 Claims Conference. March, 1999. (Please note that this speech was given three times on consecutive days by request.)

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/ AICPCU 1999 Claims Conference. March, 1999. (Please note that this speech was given three times on consecutive days by request.)

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/ AICPCU 1999 Claims Conference. March, 1999. (Please note that this speech was given three times on consecutive days by request.)

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Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture sponsored by the PLRB/LIRB Extension Program. October, 1999.

Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the Claims Conference 2000 sponsored by the PLRB/LIRB/ CPCU/ AICPCU. March, 2000. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R. & Smith, R.D. Analysis of Psychological Injury Claims. Invited lecture at the Claims Conference 2000 sponsored by the PLRB/LIRB/CPCU/AICPCU. March, 2000. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R. & Smith, R.D. Psychological and Neuropsychological Injury Claims. Invited lecture at the Claims Conference 2001 sponsored by the PLRB/LIRB/CPCU/AICPCU. March, 2001. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R. & Smith, R.D. Psychological and Neuropsychological Injury Claims. Invited lecture at the Claims Conference 2001 sponsored by the PLRB/LIRB/CPCU/AICPCU. March, 2001. (Please note that this speech was given two times on consecutive days by request.)

Price, D.R. & Smith, R.D. Evaluating Mental and Emotional Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/AICPCU 2002 Claims Conference and Insurance Services Expo. April, 2002.

Price, D.R. & Smith, R.D. Evaluating Traumatic Brain Injury Claims. Invited lecture at the PLRB/LIRB/CPCU/AICPCU 2002 Claims Conference and Insurance Services Expo. April, 2002.

Price, D.R. & Smith, R.D. Evaluating Mental and Emotional Injuries. Invited lecture at the PLRB/LIRB Crossroads 2003 Claims Conference & Insurance Services Expo. April, 2003.

Price, D.R. & Smith, R.D. Detecting Fraudulent Mental and Emotional Injury Claims IASIU 18th Annual Seminar on Insurance Fraud sponsored by the International Association of Special Investigation Units. September, 2003. (Please note this lecture was presented twice by request.)

Price, D.R. & Smith, R.D. Detecting Fraudulent Mental and Emotional Injury Claims IASIU 18th Annual Seminar on Insurance Fraud sponsored by the International Association of Special Investigation Units. September, 2003. (Please note this lecture was presented twice by request.)

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Price, D.R. & Smith, R.D. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at the Chambers, Mabry, McClelland and Brooks Client Seminar. May, 1998.

Price, D.R. & Smith, R.D. Psychological and Neuropsychological Injury Claims Evaluation. Invited lecture at the PLRB/LIRB Crossroads 2004 Claims Conference and Insurance Services Expo. March, 2004. (Please note this lecture was presented twice by request.)

Price, D.R. & Smith, R.D. Psychological and Neuropsychological Injury Claims Evaluation. Invited lecture at the PLRB/LIRB Crossroads 2004 Claims Conference and Insurance Services Expo. March, 2004. (Please note this lecture was presented twice by request.)

Price, D.R. & Smith, R.D. Detecting Fraud in Emotional and Psychological Injury Claims. IASIU 19th Annual Seminar and Expo on Insurance Fraud. September, 2004.

Price, D.R., Smith, R.D. & Kerr, L.S. Malingering and Symptom Exaggeration. Invited lecture at the 2006 PLRB/LIRB Claims Conference. April, 2006. (Please note that this speech was given on two consecutive days by request.)

Price, D.R., Smith, R.D. & Kerr, L.S. Malingering and Symptom Exaggeration. Invited lecture at the 2006 PLRB/LIRB Claims Conference. April, 2006. (Please note that this speech was given on two consecutive days by request.)

Price, D.R. & Stickley, R.S. Traumatic Brain Injury: Evaluating Claims. PLRB/LIRB 2017 Claims Conference and Insurance Service Expo. March, 2017. (Please note that this lecture was presented twice by request.)

Price, D.R. & Stickley, R.S. Traumatic Brain Injury: Evaluating Claims. PLRB/LIRB 2017 Claims Conference and Insurance Service Expo. March, 2017. (Please note that this lecture was presented twice by request.)

Liberatore, J. & Price, D.R. Evaluating Claimed Traumatic Brain injuries. PLRB/LIRB Large Loss Conference. November, 2009. (Please note that this speech was given on two consecutive days by request.)

Liberatore, J. & Price, D.R. Evaluating Claimed Traumatic Brain injuries. PLRB/LIRB Large Loss Conference. November, 2009. (Please note that this speech was given on two consecutive days by request.)

Smith, R.D. & Price, D.R. Handling Psychological and Neuropsychological Injury Claims. Invited lecture at CNA Commercial Insurance. August, 1998.

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Smith, R.D. & Price, D.R. Reviewing and Analyzing Educational Records In Brain Injury Cases. Annual Mental and Emotional Injury Claims Conference and Seminar, October, 2000.

Smith, R.D. & Price, D.R. Brain Injuries. Invited lecture at the PLRB/LIRB Crossroads 2003 Claims Conference and Insurance Services Expo. April, 2003.

Smith, R.D. & Price, D.R. Evaluating Brain Injuries. Invited seminar at Philadelphia Insurance Company. June, 2005.

Taff, E.W. Cross-Examination of the Neuropsychologist. Preeminent Lawyer - Superstars of Trial Seminar. Sponsored by Defense Research Institute. September, 2006.

Walker, R.J. & Price, D.R. Direct Examination of the Plaintiff's Neuropsychologist. Preeminent Lawyer - Superstars of Trial Seminar. Sponsored by Defense Research Institute. September, 2006.

Watson, R. & Price, D.R. The Not-So-Obvious Injury: Posttraumatic Stress Disorder and Closed Head Injury. Invited lecture at the North Carolina Academy of Trial Lawyers 35th Annual Convention. June, 1999.

PUBLICATIONS

Burke, W.H., Price, D.R. & Price, D.C. Claims Analysis of Rehabilitation Plans in Mild Closed Head Injury, Claims Magazine, June, 1993, 68-75.

Law, J., Price, D.R., & Herbert, D.A. A Study of WAIS, Quick Test, and Premorbid Estimates of Intelligence for Neuropsychiatric Patients. Perceptual and Motor Skills, 1981, 52, 909-911.

Price, D.C., Raskin, D.E., & Price, D.R. Malingering. In Burke, W.H. (Ed.) The Handbook of Forensic Rehabilitation. Houston: HDI Publishers. 1994.

Price, D.R. Teens, Sex, Education, and You: Avoiding a Far-Reaching Tragedy. Family Connections, Vol. 1, No. 3, Fall, 1987.

Price, D.R. Children and Divorce: They Can Survive. Family Connections, Vol. 2, No. 1, Winter, 1988.

Price, D.R. The Evolution of Malingering. Claims Magazine. July, 1993, 37-42.

Price, D.R. The Evolution of PTSD Claims. Claims Magazine. January, 1994, 30-32.

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Price, D.R. PTSD Diagnostic Criteria Evolves Again. Claims Magazine. February, 1994, 30-32, 88.

Price, D.R. Personality Disorders and Traits. In McDonald, J.J. & Kulick, F.B. (Eds.) Mental and Emotional Injuries in Employment Litigation. Washington: Bureau of National Affairs, 1994.

Price, D.R. Case Analysis in Forensic Rehabilitation. In Burke, W.H. (Ed.) The Handbook of Forensic Rehabilitation. Houston: HDI Publishers. 1994.

Price, D.R. Evaluating Claims of Postconcussional Disorder. Claims Magazine. March, 1995.

Price, D.R. Case Analysis in Psychological Injury Claims. In Price, D.R. & Lees-Haley, P.R. (Eds.) The Insurer's Handbook of Psychological Injury Claims. Seattle, Claims Books. November, 1995.

Price, D.R. Personality Disorders in Psychological Injury Claims. In Price, D.R. & Lees-Haley, P.R. (Eds.) The Insurer's Handbook of Psychological Injury Claims. Seattle, Claims Books. November, 1995.

Price, D.R. Evaluating Claims of Head Injury. In Price, D.R. & Thorness, B. (Eds.) The Proceedings of The Annual Symposium on Head Injury. Seattle, Claims Books. December, 1995.

Price, D.R. Evaluating Claims of Head Injury. In Price, D.R. & Thorness, B. (Eds.) The Proceedings of The Annual Symposium on Head Injury. Seattle, Claims Books. November, 1996.

Price, D.R. The Insurance/Defense Network's Deposition and Examination Guide for Psychological Injury Claims. Greenville, SC, I/DN Press. November, 1997.

Price, D.R. Clinical Evaluation and Case Formulation of Mental and Emotional Injury Claims. In McDonald, J.J. & Kulick, F.B. (Eds.) Mental and Emotional Injuries in Employment Litigation, 2nd Edition. Washington. Bureau of National Affairs, 2002.

Price, D.R. 2002. Fraudulent Claims of Psychological Injury. Today's Insurance Professional. Winter 14-16.

Price, D.R. Evaluating Claims of Pediatric Brain Injuries. The Legal Edge. Volume VIII, Issue Three, Page 1.

David R. Price, Ph.D.

Vita

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- Price, D.R. Posttraumatic Stress Disorder and Mild Traumatic Brain Injury Claims. The Defenseline. Volume 32, No. 1, 11-13.
- Price, D.R. Evaluating Injury Claims. Claims Magazine. March, 2007.
- Price, D.R. Overcompensating. Claims Advisor. Fall, 2010.
- Price, D.R. Evaluating Injury Claims. Property Casualty 360, March, 2007.
- Price, D.R. The Expanding Definition of PTSD. Claim Management Magazine, February, 2011.
- Price, D.R. Feigning Spell. Claim Management Magazine, March, 2011.
- Price, D.R. & Boutot, M.R.. Crisis Management Series: Managing Psychological Injury Claims. Risk Management Magazine. July, 2002, 46-52.
- Price, D.R., Burke, W.H. & Price, D.C. Identification of Fictitious Closed Head Injury Claims. Claims Magazine. May, 1993, 37-40.
- Price, D.R., Greene, H.W. & Price, D.C. Red Flags For Psychological Injury Claims. CPCU Journal. Vol. 47, No. 3, September, 1994.
- Price, D.R., Herbert, D.A., Walsh, M.A. & Law, J. A Study of WAIS-R, Quick Test, and PPVT IQs for Neuropsychiatric Screening Purposes. Perceptual and Motor Skills, 1990, 70, 1320-1322.
- Price, D.R. & Lees-Haley, P.R. (Eds.) The Insurer's Handbook of Psychological Injury Claims. Seattle, Claims Books. November, 1995.
- Price, D.R. & Lees-Haley, P.R. Defending Claims of Postconcussion Syndrome. Defense Counsel Journal. Vol. 62, No. 4, October, 1995.
- Price, D.R. & McDonald, J.J. False Claims of Clergy Sexual Abuse. Risk Management Magazine. January, 2003, 48-51.
- Price, D.R. & Price, D.C. Understanding DSM-III-R, the Standard Classification System for Mental Health Disorders. In the DRI monograph, Defending Cases Involving Psychological and Head Injuries. Vol. 1992, No. 3, August, 1992.
- Price, D.R. & Smith, R.D. Evaluating Psychological Effects of MVA's. Claims Magazine. June, 2002, 71-74.

David R. Price, Ph.D.

Vita

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Price, D.R. & Smith, R.D. MVAs and PTSD: Does One Follow the Other? Trucking Industry Defense Association (TIDA) Newsletter. Fall/Winter, 2002.

Price, D.R. & Thorness, B. (Eds.) The Proceedings of The Annual Symposium on Head Injury. Seattle, Claims Books. December, 1995.

Price, D.R. & Thorness, B. (Eds.) The Proceedings of The Annual Symposium on Head Injury. Seattle, Claims Books. November, 1996.

COMMENTARIES:

Price, D.R. The Clinician's Corner. LCA Commentary. Volume 1, Issue I. September, 2007.

Price, D.R. The Clinician's Corner. LCA Commentary. Volume 1, Issue II. October, 2007.

Price, D.R. The Clinician's Corner. LCA Commentary. Volume 1, Issue III. November, 2007.

Price, D.R. Clinician's Corner: Posttraumatic Stress Disorder, Part I: A Brief History and Overview, 3 *Litigation Commentary & Rev.* 57 (August/September 2010).

Price, D.R. Clinician's Corner: Posttraumatic Stress Disorder, Part II: The Evolution of Posttraumatic Stress Disorder - Criterion A, 3 *Litigation Commentary & Rev.* 85 (November/December 2010).

Price, D.R. Clinician's Corner: Posttraumatic Stress Disorder, Part III: The Evolution of Posttraumatic Stress Disorders - Criteria B-H, 4 *Litigation Commentary & Rev.* 10 (January/February 2011).

Price, D.R. Clinician's Corner: Posttraumatic Stress Disorder, Part IV: Stressors that Cause PTSD, 4 *Litigation Commentary & Rev.* (March/April).

Price, D.R. The Clinician's Corner. Posttraumatic Stress Disorder, Part V: PTSD and Kidnapping, 4 *Litigation Commentary & Rev.* 76 (June/July 2011).

FORENSIC PSYCHOLOGICAL EVALUATION

NAME: Jon Paul Smart
DOB: [REDACTED]/82
RACE/SEX: Caucasian/Male
EVALUATION DATES: 10/19/16; 11/09/16; 12/19/16; 12/22/16; 02/13/17; 02/17/17;
 03/03/17
REPORT DATE: 03/28/17
EXAMINER: David R. Price, Ph.D.
REFERRAL SOURCE: John D. Howle, Jr., Esquire

REASON FOR REFERRAL:

Mr. Smart was referred for a Forensic Psychological Evaluation to assist the court in Mr. Smart's Aiken v Byars resentencing hearing.

EVALUATION PROCEDURES:

Background Information
 Behavioral Observations
 Clinical Interview
 Psychological Testing
 Minnesota Multiphasic Personality Inventory-2-RF (MMPI-2-RF)
 Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV)
 Wide Range Achievement Test: Fourth Edition (WRAT4)
 Review of Medical Records



BEHAVIORAL OBSERVATIONS:

I met with Mr. Smart while he was incarcerated at the Broad River Road Correctional Institute, as well as at the Perry Correctional Institute. I saw Mr. Smart on 10/19/16, 11/09/16, 12/22/16, 02/13/17, 02/17/17 and on 03/03/17. On one occasion, 12/19/16, I went to see him at the Broad River Road Correctional Institute to find out that he had been recently transferred without my knowledge. It was so recent that the warden had sent a correctional officer to meet me at the sally port of Broad River Road Correctional Institute to advise me that Mr. Smart had been relocated.

03/03/17, Mr. Smart was noted to be less cooperative, and more argumentative than observed on previous meetings. He had a confrontation on 02/13/17 with his attorney and then with this examiner on 03/03/17. Mr. Smart is obsessed with the belief that he should be able to withdraw his guilty plea and re-enter a plea of voluntary manslaughter and ultimately released from prison. He is obsessed over what he feels were inequities in his pleading and legal representation. He refuses to acknowledge problems with his interpretation of his legal events and issues. He was very argumentative with this examiner that his "huffing gas" should be perceived as a "disease"

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that would render him incapable of first-degree murder. He does feel somewhat paranoid and feels if his legal team is not doing as he specifically directs, regardless of the wisdom of those directions, then they are letting him down. This behavior is actually remnants of the Oppositional Defiant Disorder for which he was diagnosed with as a child. He feels his internet research supports his interpretation of the facts and of the law rather than of his legal counsel or psychological examiner. He does not wish to debate these issues but argue them and feels that if he shouts over anyone with a dissenting view he should prevail.

Mr. Smart was open and cooperative with this examiner during testing. He was seen alone. His ambulation was noted to be normal with the exception of being manacled and in cuffs since he was in protective custody at Broad River. When seen at Perry he was not manacled or in cuffs.

Ms. Smart's dress was prison-issued attire. He had a slightly unkempt look about him. His hygiene was poor to slightly dirty as evidenced by the dirty t-shirt observed underneath his jumpsuit.

Mr. Smart had no obvious motor abnormalities. His eye contact was normal. His speech volume, rate and prosody were all within normal limits. His language was normal. He was fluent and coherent. His thought content was normal. His affect was normal. He had a full range of affect that was appropriate to the situation. His overall emotional state was normal and his mood was euthymic.

Mr. Smart appeared to be engaged in the evaluation. He was compliant with all tasks requested of him. He appeared motivated to give good effort. He had no problems hearing. He had no problems reading. He had no problems breathing. He had no problems understanding this examiner. His concentration was adequate for the purposes of these exams and testing. He had no problems talking. He had no problems answering questions. He had no problems sitting down. He had no problems arising from a seated position. He had no problems in standing. His ambulation was normal. He had no problems seeing. He had no problems using his hands. He had no problems writing.

BACKGROUND INFORMATION:

Preliminary information indicates that Mr. Smart came from a chaotic and dysfunctional family. Drug abuse by members of the family, including parents, indicated the use of marijuana, cocaine, crack cocaine and methamphetamine. Allegedly the parents stopped this drug abuse in 2008. Mr. Smart personally experienced the use of marijuana, alcohol, cocaine, LSD, mushrooms, embalming fluid, and crystal methamphetamine as well as IV heroin. Apparently Mr. Smart's substance of choice was fluorocarbons, particularly gas, which he would "huff".

Not surprisingly, Mr. Smart certainly had behavioral difficulties prior to incarceration. He stopped attending school in the 9th grade. He later received a GED while incarcerated at the Rimini Marine Institute. Mr. Smart had little adult supervision and consequently had a difficult

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time in the academic environment resulting in multiple school expulsions, multiple suspensions, problems with truancy, and problems with adult supervision.

LEGAL HISTORY:

I am not going to review Mr. Smart's complete legal history here as it has been well documented in the records and you are quite familiar with it. However, as you know, on 08/13/99 he had the following charges: Murder, Armed Robbery with a Deadly Weapon, Escape from Confinement, Criminal Conspiracy and Grand Larceny. He entered into a plea agreement to resolve these charges in the Court of General Sessions dated 05/11/01 for which he agreed to life in prison without eligibility of parole for murder; armed robbery 30 years concurrent; grand larceny of a motor vehicle 10 years concurrent; criminal conspiracy five years concurrent; and escape 1-15 years concurrent. He is currently incarcerated under the terms of this plea agreement. As you know, he is seeking to change the conditions of this plea agreement to modify the life imprisonment without parole.

CLINICAL INTERVIEW:

Mr. Smart reported that he is not currently on any medications. He apparently actively researches his case on the internet with illicit smart phones. He essentially corroborates the statement that he gave on 05/23/01 regarding the demise of Tracy Pack. He did become tearful in discussing Mr. Pack's death and the events that preceded and followed it. It did follow a period of significant "huffing" of gas. He asserts that "huffing gas" always made him "aggressive". He certainly understands the role of everyone on his defense team. He does report being "detached" from his family. When asked for his brother's phone number and address, he was not able to offer it to this examiner. He reported that while he talks with his family they will not attend any of his hearings. He did identify his drug history as reflective elsewhere in his records and also his family drug history as reflected elsewhere in his records that will not be repeated here. He is not actively psychotic. He has no delusions or hallucinations. He is well-versed in his case. He certainly meets all standards of competency. He was under the influence of "huffing gas" when he committed the crime for which he is accused of.

REVIEW OF MEDICAL RECORDS:

The following records have been reviewed from Mr. Smart's medical records and other documents received:

Anderson Radiology
MRI Cervical Spine with and without Contrast 10/01/08
Broad River Correctional Institution
Incident Report
Byrnes Pharmacy
Patient Information Leaflet

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Records reviewed: (cont.)

Carolina Medical Imaging

Left Shoulder Series 01/02/03

Clarendon County Detention Center/Clarendon County Correctional Center

Administrative Segregation Order

Application for Counsel

Booking Report

Confinement and Release Checklist

County-Issued Property Record

Disciplinary and Administrative Segregation Notice

Disciplinary Hearing Disposition Report

General Incident Report

Inmate Housing Record

Inmate Misconduct Report

Inmate Request Form

Inmate Temporary Custody Form

Meal and/or Medication Refusal Report

Medication Log Sheet

Mental Health Treatment Referral Sheet

Receiving Screening Form

Response to Appeal of Disciplinary Sentence

Self-Harm Screening Form

Clarendon Memorial Hospital

Outpatient Report 08/10/00

Court Documents

Case Restored

Commitment Order for Evaluation (DJJ)

Transcript of Record 05/25/01

Gilliam Psychiatric Hospital

Authorization to Release Information to Persons Outside the Department of Corrections

File Inventory

Inpatient Referral

Intake Clinical and History Form

Outpatient Evaluation Referral Form

Treatment Plan

Greenville County Sheriff's Office

Incident Report

Supplemental Report

GMMC

Emergency Flow Sheet Record

Emergency Record 01/09/08

Discharge Instructions

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Records reviewed: (cont.)

Greenville Hospital System/Greenville Memorial Hospital

- Consent for Treatment
- Discharge Instructions Receipt
- Lab Results
- Lewis Blackman Patient Safety Information Sheet
- Patient Care Summary Report
- Patient Data
- Radiology Department Fax Transmittal

Greenville Memorial Radiology

- Chest Single View 01/09/08
- CT Head W/O Contrast 01/09/08
- Spine Cerv 2 or 3 Vws 01/09/08

Horry County Detention

- Jail or Confinement Record

Imagecare, LLC

- Left Wrist Three Views 01/19/10

J. Ruben Long Detention Center

- Disciplinary Ticket
- Inmate Request Form

KCI Laboratory

- Lab Results

Kirkland Correctional Institution

- Record Checklist
- Medical Screen

Lee Correctional Institution

- Certification of Prison Rape Elimination Act (PREA) Orientation
- Disciplinary Report and Hearing Record
- ECG 01/03/12, 01/23/12
- Evaluation of Protective Concerns
- Incident Report
- Information Resolution/Administrative Resolution
- Inmate Job/School Assignment
- Medical Screen
- Memorandum
- Pre-Lock-up Clearance/Post Use of Force Examination
- Report on the Use of Force
- Request for Change of Religious Preference
- Request to Staff Member
- SMU Institutional Classification Committee Review

McCormick Correctional

- Cell Assignment Form
- Disciplinary Report and Hearing Record

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Records reviewed: (cont.)

- Escape/Attempt List
- Incident Report
- Influenza Vaccine Consent/Administration Record
- Information Resolution/Administrative Resolution
- Inmate Job/School Assignment
- Medical Screen
- Nursing Signature List

Miscellaneous

- ICHR Request for Rap Sheet
- Inquiry of SLED
- Lakeview Middle School records
- License and Certificate for Marriage
- Prescriptions
- R&E/Intake Center Form
- Richland County Fifth Judicial Circuit Public Index Search
- Sans Souci Elementary School records
- Inmate Search Detail Report

Mobile Medical Imaging

- Left Hand 01/04/99
- Facial Bones 11/13/98

Perry Correctional

- Cell Assignment Form
- Certification of Prison Rape Elimination Act (PREA) Orientation
- Crisis Intervention
- Disciplinary Report and Hearing Record
- Incident Report
- Informal Resolution/Administrative Resolution
- Medical Screen
- Memorandum
- Random & Target Inmate Drug Test Form
- Report on the Use of Force
- Signature List
- SMU Institutional Classification Committee Review

Rimini Marine Institute

- Diagnostic Report
- Handwritten Class Notes
- Information Form
- Medication Administration Record
- Official GED Practice Tests
- Prescriptions
- Recipient Information
- Ted Entry/Exit Assessment Writing Prompt

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Records reviewed: (cont.)

Transformational Education Exit Assessment Reporting Form
Wide Range Achievement Test: Revision 3
Writing Checklist, Entry and Exit Assessment Instructions
Your Medication Information
Shriners Hospital for Crippled Children
Physical Examination
History
Progress Notes
X-ray Record
Discharge Summary
SmithKline Beecham Clinical Laboratories
Laboratory Report
South Carolina Department of Corrections
15 Minute Observation
Analytical Eye Record
Annual Review/Hardship Transfer Request
Audit Checklist
Authorization Form
Certification of Inmate Orientation
Certification of Prison Rape Elimination Act (PREA) Orientation
Classification Checklist
Classification Waiver
Confidential Laboratory Report
Consent for Neuroleptic Medications
Continuity of Care for Transfer to Court
"Convict" Screen List
Daily Medication Administration Record
Dental Health Records
Discharge Information
Disciplinary Report and Hearing Record
Display Inmate Offense History
Display Offense Code Text
Division of Mental Health Services Treatment Plan
Evaluation of Protective Concerns
Handwritten Note
Health Related Supplies/Equipment Issued
Health Summary for Classification/Assignment
HIV Patient Education/Counseling Record
Incident Report
Informal Resolution/Administrative Resolution
Inmate Document Inquiry
Inmate Job/School Assignment

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Records reviewed: (cont.)

Inmate Property Inventory
Inmate/Resident Release of Information Consent
Inpatient Graphic Chart
Inpatient History
Medical Clearance for Transfer
Medical Prescription
Medical Summary
Medication Administration Record
Medication Profile/Temporary Medications
Memorandum
Non-Formulary Medical Prescription
Offender Summary
Physician's Orders
Physician's Transfer Note or Consultation
Pre-Hearing Detention Placement/Extension
Problem List
Protective Custody Evaluation
Radiology
 Ankle 08/19/06
 Chest (Pat-Lat) 04/11/08
 C-Spine 2 Views 02/09/04
 Foot 08/16/06
 Knee Minimum of 3 Views 08/19/06
 L-Spine (AP and Lat) 08/19/06
 Shoulder (complete) 02/09/04
 T-Spine 02/09/04
Receive Message - Detail
Reception and Evaluation Center Assessment Referral Form
Refusal of Medical Advice Form
Release of Medical Information to the South Carolina Department of Corrections
Replacement Request and Authorization
Report of Designated Examiner for Mental Illness
Request for Behavioral Medicine Services
Request to Staff Member
SCDC Health Services: Medical Summary
James Selph, M.D.
 Neurology Follow-up Clinic Visit 07/07/08, 09/11/08, 01/21/09
Separation Requirement/Caution Notice Summary
Sick Call Clinic Notes
Sick Call Procedures
SMU Daily Evaluation Sheet
Staff Memoranda

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Records reviewed: (cont.)

X-Ray Requisition and Report
South Carolina Department of Health and Environmental Control
Certificate of Immunization
South Carolina Department of Juvenile Justice
Acknowledgement of Rights
Addendum Placement/Marine Referral
Admissions Screening
AMI Release Form
Behavior Checklist
Behavior Report
Certificate of Conditional Release
Checklist
Client Assessment
Client Contact Sheet
Client Information
Clinic Notes
Community Initial Board Report
Contraband/Money Receipt
Court History/Client Information
Court Summary
Detention Summary
DJJ Community Report for the Month of November 1998; April 1999
DJJ Education Report for the Month of April, November
DJJ Institution Report for the Month of December, 1998; January 1999; April 1999
DJJ Northeast Center Request for Psychiatric Services
Hildy E. Dinkins, Psy.D.
Report of Psychological Evaluation 02/26/96
DYS Client Referral Summary
Educational Evaluation Summary
Educational Transcript
Fairforest Unit Family Health History
Flash Card
Influenza Vaccine Administration Record
Institution Hold Summary
Intake History
Carolyn L. Johnson, LMSW
Social Work Report 04/23/98
Juvenile Case Sheet
Juvenile Face Sheet
Major Incident Report
Master Treatment Plan
Medical Clearance for Boot Camp

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Records reviewed: (cont.)

Medical Information
Medical Questionnaire
Medical Treatment Authorization
Medical/Dental Record
Medication Administration Record
Minor School Incident Report
Monitoring Tool Social Work Services
Todd Morton, Ph.D. and Sandra Calliham, Ed.D.
 Psychological Evaluation 04/14/98
NEC Social Work Strengths and Needs Assessment
Northeast Center Report Cards
Northeast Center Time Out Action
Parental Permission to Release Information
Parole Guideline Grid
Parole Report
Patient/Juvenile Statement of Understanding Regarding AMI Search Policy
Physician Orders
Plan for Services
Psychological Evaluation 04/14/98
Psychological Service Note
Reception and Evaluation Center Evaluation
Reception and Evaluation Center Social Work Services Log
Record Checklist
Refusal of Medical/Nursing Care Form
Release Information
Request for Consultation
Residential Life Evaluation
Libby Ross, M.Ed., LMSW
 Social Work Report 03/04/96
Running Records
Screening Form
Mary E. Shea, Ph.D. and Edwin Hearon, Ph.D.
 Psychological Evaluation 05/23/94
Sick Call Record
Staff Memorandum
Student Academic Record
Student Assessment Form
Student Transcript/Evaluation Summary
Summary for the Month of April 1999; November 1998
Mary Lou Taylor, Social Worker and Terry L. Fender, LMSW
 Social Work Report 06/01/94
Temporary Custody Receipt for DJJ Juveniles

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Records reviewed: (cont.)

- Transition Unit Speech/Language/Hearing/504/ADA/Screening
- Transition Unit Summary Recommendations
- Weekly Group Report
- South Carolina Law Enforcement Division
 - Polygraph Report
- State Health and Human Services Finance Commission
 - Medical Necessity Request for Moderate Management
 - Medical Necessity Statement for Rehabilitative Services
- State of South Carolina
 - Application for Post-Conviction Relief
 - Arrest Warrants G-116030, F-825840, F-389768, F-853576, G-057868, G-057869, G-057868, G-057936, G-057934,
 - Commitment Order for Evaluation DJJ
 - Defendants Personal Property Receipt
 - Juvenile Petition for: Disturbing School
 - Order for Appointment
 - Order for Bond
 - In the Probate Court
 - Notification of Emergency Admission/Appointment of Designated Examiners
 - Application for Involuntary Emergency Hospitalization for Mental Illness
 - Certificate of Licensed Physician Mental Examination for Psychiatric Treatment
- Sumter County CADA
 - Alcohol & Drug Programs Admission Form
 - Alcohol & Drug Programs Intake/PCRF Form
 - Client Assessment
 - Client Orientation Checklist
 - Client Service Note Form
 - Clinical Assessment Outline
 - Clinical Assessment Summary
 - Clinical Service Notes
 - Community Initial Board Report
 - Consent for the Release and Redislosure of Confidential Information
 - Consent for the Release of Confidential Information
 - Consent for the Release of Confidential Information: Criminal Justice System Referral
 - Consent to Participate in Program Evaluation and Follow-up
 - Court Hearing Notes
 - Discharge Form
 - Discharge Form
 - Discharge Summary
 - DJJ Community Report
 - Employability Skills
 - Individual Treatment Plan

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Records reviewed: (cont.)

- Individualized Treatment Plan
- Insurance Authorization
- Intake Form
- KIS Discharge Form Page
- Major Incident Report
- Medicaid Billing Form
- Medicaid Pre-Authorization
- Medical Necessity Request for Moderate Management
- Message System (Emails?)
- Minor School Incident Report
- Monthly Test
- Parent/Guardian Consent for Services Form
- Physical Examination
- Referral Form/Authorization for Services/Children's Mental Health and Rehabilitation Services
- Running Records
- Self-Test What's Your Depression Potential?
- Statement of Client Rights/Consent to Treatment/Confidentiality
- Test Yourself on Stress
- Weekly Summary Notes
- Tuomey Healthcare System
 - Emergency Department Discharge Record
- Turbeville Correctional Institute
 - Incident Report
- University Specialty Clinics
 - Kenneth Gaines, M.D.
 - EEG Report 05/08/08
 - James Selph, M.D.
 - Consultation 04/07/08
- E. Selman Watson, Ph.D.
 - Psychological Evaluation 10/28/08

Davian Xavier Smart records

- Attendance Only Report
- Certificate of Immunization
- First Grade Report Card
- Merits/Intervention Order
- Order
- Primary/Home Language Identification Form
- Report and Recommendations of the Volunteer Guardian ad Litem 05/19/11
- Student's RTI Progress
- Welcome Elementary School Quick Lookup

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Records reviewed: (cont.)

Jason Brent Smart records

Certificate of Immunization
Certification of Conditional Release
Client Information
Commitment Order (Determinate)
Commitment Order (DJJ)
Detainment Form
Incident Report
Lab Results
Major Incident Report
Medical Information
Medication Administrative Record
Nursing Assessment
Parole Guidelines Grid
Referral Form
Release Form
Roche Biomedical Laboratories Results
S.C. Department of Youth Services Medical/Dental Record, Student Academic Record
SC Department of Juvenile Justice Reception and Evaluation Center Evaluation, Social Work Report
SCDYS-Medical Division Health Examination Record
School Records

Jeremy Wyatt Smart records

Certificate of Immunization
Corrective Order
Merits/Intervention Order
Order
Order Appointment Volunteer Guardian ad Lite and Attorney for Guardian ad Litem
Tanglewood Middle School records
Treatment Plan
Updated Resident Information
Welcome Elementary School records

Richard Charles Smart records

Gower School records
Lakeview Middle School records
Parker High School records
SC Department of Youth Services Reception and Evaluation Center letter

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Records reviewed: (cont.)

Tammy Ann Smart records

Berea High School records
Certificate of Immunization
Lakeview Middle School records
Sans Souci Elementary School records
Transfer Form
Verification of School Withdrawal

Diana Lynn Van Hoose records

Individual Test Record
Pupil Progress Report
School Record

Stephen Hutto records

Bamberg Department of Juvenile Justice
 Conditional Release Agreement
Banberg-Ehrhardt High School Transcript
Employment
 McDonald's Employment Application
 Piggly Wiggly Employment Application
 Burger King Application for Employment
Miscellaneous
 1999 January Action Notes
 Handwritten Notes by Stephen Hutto
 Official GED Practice Tests
 WRAT3
Rimini Marine Institute
 Information Form
 Handwritten Note
 Transformational Education Exit Assessment Reporting Form
 Diagnostic Report
 Graduation Plan
 Self Test
 FRV Follow Up Form
 Student Rules of Conduct
 Statement of Student Rights
 Student Grievance Procedure
 Student Contraband Policy
 Statement of Understanding Physical Restraint Policy
South Carolina Department of Juvenile Justice
 Addendum Placement/Marine Referral

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Records reviewed: (cont.)

- AMI Release Form
- Parental Consent Agreement
- Parent/Juvenile Statement of Understanding Regarding AMI Search Policy
- Medical Treatment Authorization
- Medical Questionnaire
- Client Information
- Psychological Evaluation 05/13/98
- Social Work Report
- Family Health History
- South Carolina Department of Juvenile Justice/Midlands Evaluation Center
 - Midlands Educational Evaluation Summary
 - Education Transcript
- State of South Carolina Board of Juvenile Parole
 - Certification of Conditional Release
- State of South Carolina Department of Health and Human Services Finance Commission
 - Medical Necessity Statement for Rehabilitative Services
 - Referral Form/Authorization for Services Children's Mental Health and Rehabilitative Services
 - Weekly Summary Note
 - Individual Treatment Plan
 - Treatment Plan Review
- State of South Carolina
 - Commitment Order

Pack vs. AMI records

- Associated Marine Institutes of RIMINI
 - Statement of Understanding
 - Employee Handbook Acknowledgement Statement
- Department of Juvenile Justice
 - Nancy M. Kuhl
 - Addressed to Mr. Joseph B. Pack, Jr. 12/15/94
 - Government Real Estate Lease
 - Articles of Incorporation for a Statutory Close Corporation
- Depositions (Pack vs.AMI)
 - Rodney Morrow dated 12/12/01
 - Barney Gadson dated 12/13/01, 05/23/02
 - Velma McKenzie dated 12/12/01
 - Joseph B. Pack, III dated 03/08/02
 - Joseph Kinney dated 06/24/02
 - Serena Magill dated 03/13/02
 - Rose Newman Pack dated 03/08/02
 - Andrew Pack dated 03/08/02

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Records reviewed: (cont.)

Grace Pack dated 03/08/02
 Steven Pack dated 03/08/02
 Tyrone Smalls dated 12/13/01
 Diana Lynn Smart dated 06/05/02
 Jon P. Smart dated 04/22/02
 O.B. Stander dated 04/05/02
 Roscoe C. Wilson, Jr. dated 03/13/02
 Anthony Leslie Wrifford dated 05/21/02
 John W. Zeigler dated 12/12/01
 Daniel Braxton Berry, II, M.D. dated 12/11/01
 Mark D. Carroll dated 04/03/02
 Elaine Chiles dated 05/21/02
 Lynzette Dalton dated 12/13/01
 Roy M. Gullick, Jr. dated 03/13/02
 Donald Wayne Hall dated 06/28/02
 Angela Johnson dated 12/12/01
 Tonya Johnson dated 12/12/01

PRIOR PSYCHOLOGICAL EVALUATIONS:

Past psychological evaluations of Mr. Smart have reached the following diagnoses or conclusions regarding his functioning.

02/26/96

Brett A. Stenberg, B.S.
 Hildy E. Dinkins, Psy.D.
 SC Department of Juvenile Justice
 Report of Psychological Evaluation

...Diagnostic Impressions (DSM-IV):

Axis I	312.8	Conduct Disorder (Adolescent Onset Type)
Axis II	V71.09	No Diagnosis
Axis III	None	

04/14/98

Sandra Calliham, Ed.D.
 Todd Morton, Ph.D.
 SC Department of Juvenile Justice
 Psychological Evaluation

...DIAGNOSTIC IMPRESSION:

AXIS I	313.81	Oppositional Defiant Disorder

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	312.8	Conduct Disorder
	305.20	Cannabis Abuse
	305.00	Alcohol Abuse
AXIS II:	None	
	V62.89	Borderline Intellectual Functioning
AXIS III:	None	

06/30/99

Rimini Marine Institute
Alcohol & Drug Programs Admission Form

...Axis I: Clinical Disorders/Other Conditions That May be a Focus of Clinical Attention (DSM-IV)

	Description
304.80	Poly Sub Dep...

Primary Diagnostic Impression

	Description
V71.09	No DX

10/29/99

Rimini Marine Institute
Discharge Summary

...9. Admission Diagnosis(es)
304.80 Polysubstance Dependence
c Physiological Dependence...

10. Discharge Diagnosis(es)
Same

01/12/01

Mayank H. Dalal, M.D.
Camilla Tezza, Ph.D.
William S. Hall Psychiatric Institute
Report

...DIAGNOSES:	AXIS I:	Cannabis Dependence, in controlled environment. Alcohol Dependence, in controlled environment. Inhalant Dependence, in controlled environment. Cocaine (crack and powder) Abuse. Hallucinogen (LSD, psilocybin) Abuse. Amphetamine (crystal meth) Abuse. Opioid (heroin) Abuse Other Substance (embalming fluid) Abuse Adjustment Disorder with Depressed Mood.

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AXIS II: *Antisocial Personality Traits.*
AXIS III: *Status Post Bilateral Club Foot Surgery...*

11/29/06

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SCDC Health Services Medical Summary*

...DIAGNOSTIC IMPRESSION ARE AS FOLLOWS:

AXIS I *PTSD 309.81 / ETOH ABUSE 305.00/ CANNABIS ABUSE 305.20*
AXIS II *ANTISOCIAL PERSONALITY 301.7*
AXIS III *HX BACK INJURY AND CLUB FOOT*
AXIS IV *STRESSORS OF LIFE SENTENCE*
AXIS V *GAF 55...*

12/07/06

*Perry Correctional Institute
SCDC Health Services Medical Summary*

...PROBABLE POST TRAUMATIC STRESS SYNDROME...

05/08/07

*Perry Correctional Institute
SCDC Health Services Medical Summary*

*...A/ AXIS I ANTISOCIAL PERSONALITY DISORDER SEVERE PER DR KIRBY
PSYCHIATRIST.*

06/28/07

*Perry Correctional Institute
SCDC Health Services Medical Summary*

*...AXIS I PER DR KIRBY / PSYCHIATRIST SEVERE ANTISOCIAL PERSONALITY
DISORDER...*

06/22/07

*Perry Correctional Institute
SCDC Health Services Medical Summary*

*...A/ SEVERE ANTISOCIAL PERSONALITY DISORDER = AXIS I. DENIES SUICIDAL
HOMICIDAL IDEATIONS OR PLANS...*

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08/16/07

Perry Correctional Institute
SCDC Health Services Medical Summary

...A / AXIS I SEVERE ANTISOCIAL PERSONALITY DISORDER...

01/31/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...A/ DIAGNOSTIC IMPRESSION: PTSD GAF - 70...

02/28/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I SEVERE ASPD 301.7...

04/23/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...A. ANTISOCIAL PERS DIS
POSS. ADD...

05/08/08

Kenneth Gaines, M.D.
University of South Carolina School of Medicine
EEG Report

...INTERPRETATION: This is a normal awake, drowsy and sleep EEG.

05/12/08

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...A/ AXIS I SEVERE ASPD...

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06/05/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I PER ENC 162 DELANY POSS ADD/ASPD...

07/30/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I SEVERE ASPD 301.7 GAF 50...

10/23/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...V71.09 AXIS I / AXIS II ASPD...

10/28/08

E. Selman Watson, Ph.D.
Psychological Evaluation

...IX. Diagnostic Impression

Axis I: Generalized Anxiety Disorder; 300.02

Depressive Disorder NOS; 311

Axis II: Personality Disorder NOS with Antisocial and Borderline Features: 301.9

Axis III: Deferred

Axis IV: Imprisonment; No Family Support

Axis V: GAF = 51

11/21/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...PER DELANY ENC 250 AXIS II ASPD 301.7 GAF 65...

12/19/08

Perry Correctional Institute
SCDC Health Services Medical Summary

...PER ENC 268 DELANY ADD/DEPRESSION AXIS II BORDERLINE PERSONALITY...

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01/06/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...ENC 268 DEPRESSION AXIS II BORDERLINE PERSONALITY...

01/06/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I PER DELANY DEPRESSION/PER DELANY BORDERLINE PERSONALITY
DISORDER. GAF 60...

03/20/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I PER DELANY DEPRESSION NOS 311 ATTENTION DEFICIT DISORDER AXIS II
BORDERLINE PERSONALITY DISORDER 301.83 PER DELANY GAF 60...

04/27/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...A/ APPEARS STABLE AND MENTALLY FUNCTIONING. COMPLIANT WITH TX
SERVICES. AXIS II PER DELANY BORDERLINE PERSONALITY DISORDER 301.83 GAF
65...

05/07/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...A. BORDERLINE PERS DIS
DEPRESSION
ADHD...

06/24/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I DEPRESSION/ADHD AXIS II BORDERLINE PERSONALITY. GAF 60...

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07/21/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...ENC 311 DEPRESSION ADHD PER DELANY AND BORDERLINE PERSONALITY AXIS II.
GAF 50...

07/23/09

South Carolina Department of Corrections
Inpatient History

...II. Chief Complaint: Depression
III. History of Present Illness:
Onset: Acute/Chronic Depression
c Suicidal ideation & OD attempt...

07/23/09

South Carolina Department of Corrections
Physician's Orders

... ② Dx - Depression, Suicidal...

07/27/09

Perry Correctional Institute
Certificate of Licensed Physician
Mental Examination for Psychiatric Treatment

- ① Long Hx depression
- ② Worsening feelings of hopelessness & suicidal ideation.
- ③ Hx of suicide attempt by OD last year & last week.
- ④ Unwilling to make non/suicide contrast c CCC.

12/23/09

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I PER PSYCHIATRIST DR POLITEMAN BIPOLAR ADHD GAF 65...

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01/14/10

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS BIPOLAR 296.80/ADHD 314XX PER PSYCHIATRIST DR POLITEMAN. GAF 60...

02/09/10

Perry Correctional Institute
SCDC Health Services Medical Summary

...AXIS I BIPOLAR/ADHD WITH A HX OF DEPRESSION. GAF 60...

04/16/10

Perry Correctional Institute
SCDC Health Services Medical Summary

...IQ = 116 READING 12.8 MATH 6.9 EARNED GED WHILE DJJ.
...AXIS I IED/MOOD DISORDER GAF 69...

09/28/10

Lee Correctional Institute
SCDC Health Services Medical Summary

...A: DX = PERSONALITY D/O. CCC'S IMP = ANTISOCIAL PERSONALITY D/O...

10/06/10

Lee Correctional Institute
SCDC Health Services Medical Summary

HPI: 27 YO WM WITH HISTORY OF PERSONALITY DISORDER...
IMP: ANTISOCIAL PD, MALINGERING FOR SECONDARY GAIN...

02/23/11

Lee Correctional Institute
SCDC Health Services Medical Summary

...AT AGE 8 I/M REPORTS THAT HE STARTED DRINKING, WHICH RESULTED IN HIS USE
OF MARIJUANA, COCAINE AND OTHER ILLICIT DRUGS...

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PSYCHOLOGICAL TESTING - 11/09/16:

His testing included the administration of the Minnesota Multiphasic Personality Inventory-2-RF (MMPI-2-RF), the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), and the Wide Range Achievement Test: Fourth Edition (WRAT4).

MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2-RF (MMPI-2-RF):

The MMPI-2-RF is a personality inventory that assesses a wide variety of personality characteristics, as well as the presence of psychopathology or psychiatric distress.

On this instrument Mr. Smart produced a valid profile. There were no indications he was trying to over-endorse or under-endorse any psychological symptoms. There were no problems with unscorable items. There were no indications of somatic or cognitive dysfunction on this particular test. The profile did indicate that Mr. Smart appears hopeless and pessimistic. He feels overwhelmed in life and feels he cannot be helped. There is no indication of a thought disorder within this profile. Diagnostic considerations often associated with this MMPI-2-RF profile are Antisocial Personality Disorders, Substance Use Disorders, and other externalizing behaviors.

WECHSLER ADULT INTELLIGENCE SCALE-FOURTH EDITION (WAIS-IV):

The Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) is the best adult test of overall cognitive abilities available. Mr. Smart had a Full Scale IQ of 103, which is at the 58th percentile. He had a Verbal Comprehension Index score of 108, which is at the 70th percentile. He had a Perceptual Reasoning Index score of 113, which is at the 81st percentile. He had a Working Memory Index score of 86, which is at the 18th percentile. Mr. Smart had a Processing Speed Index score of 94, which is at the 58th percentile. Mr. Smart's subtest scores are as follows:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile</u>	<u>Measure</u>
Block Design	10	50 th	It is designed to measure the ability to analyze and synthesize abstract visual stimuli. It also involves nonverbal concept formation and reasoning, broad visual intelligence, fluid intelligence, visual Perception and organization, simultaneous Processing, visual-motor coordination, learning, and the ability to separate figure-ground in visual stimuli.
Similarities	12	75 th	It is designed to measure verbal concept formation and reasoning. It also involves crystallized intelligence, abstract reasoning, auditory comprehension, memory, associative and

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categorical thinking, distinction between nonessential and essential features, and verbal expression.

Digit Span	16	9 th	The shift from one Digit Span task to another requires cognitive flexibility and mental alertness. Digit Span Forward involves rote learning and memory, attention, encoding, and auditory processing. Digit Span Backward involves working memory, transformation of information, mental manipulation, and visuospatial imaging. Digit Span Sequencing is similar to other tasks that are designed to measure working memory and mental manipulation.
Matrix Reasoning	13	84 th	It involves fluid intelligence, broad visual intelligence, classification and spatial ability, knowledge of part-whole relationships, simultaneous processing, and perceptual organization.
Vocabulary	12	75 th	Vocabulary is designed to measure word knowledge and verbal concept formation. It also measures crystallized intelligence, fund of knowledge, learning ability, long-term memory, and degree of language development.
Arithmetic	9	37 th	It involves mental manipulation, concentration, attention, short- and long-term memory, numerical reasoning ability, and mental alertness. It may also involve sequential processing; fluid, quantitative, and logical reasoning; and quantitative knowledge.
Symbol Search	8	25 th	In addition to processing speed, the subtest involves short-term visual memory, visual-motor coordination, cognitive flexibility, visual discrimination, psychomotor speed, speed of mental operation, attention, and concentration. It may also measure auditory comprehension, perceptual organization, fluid intelligence, and planning and learning ability.

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Visual Puzzles	14	91 st	It is a new subtest designed to measure nonverbal reasoning and the ability to analyze and synthesize abstract visual stimuli. Similar measures, such as Object Assembly, involve visual perception, broad visual intelligence, fluid intelligence, simultaneous processing, spatial visualization and manipulation, and the ability to anticipate relationships among parts.
Information	11	63 rd	It is designed to measure the ability to acquire, retain, and retrieve general factual knowledge. It involves crystallized intelligence and long-term memory. Other skills that may be used include verbal perception, comprehension, and expression.
Coding	10	50 th	In addition to processing speed, the subtest measures short-term visual memory, learning ability, psychomotor speed, visual perception, visual-motor coordination, visual scanning ability, cognitive flexibility, attention, concentration, and motivation. It may also involve visual sequential processing and fluid intelligence.

WIDE RANGE ACHIEVEMENT TEST: FOURTH EDITION (WRAT4):

The Wide Range Achievement Test: Fourth Edition is designed to measure Reading (word recognition and pronunciation), Spelling and Arithmetic. It is one of the most frequently used measures of academic achievement. On this measure, Mr. Smart performed as follows:

SUBTEST	STANDARD SCORE	PERCENTILE RANK	GRADE EQUIVALENCY
Word Reading	97	42 nd	12.2
Sentence Comprehension	107	68 th	12.9
Spelling	91	27 th	10.1
Math Computation	91	27 th	8.1

DIAGNOSTIC IMPRESSION:

Based upon all available information, and with the assumption that the veracity of Mr. Smart's self-report is valid, and using the *Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition* (DSM-5™), Mr. Smart has the following probable diagnosis:

Alcohol Use Disorder, Moderate, in a Controlled Environment (DSM-5™ 303.90)
Cannabis Use Disorder, Severe, in a Controlled Environment (DSM-5™ 304.30)

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Phencyclidine Use Disorder, Moderate, in a Controlled Environment (DSM-5™ 304.60)
 Hallucinogenic Disorder (LSD), Moderate (DSM-5™ 304.50)
 Opioid Use Disorder (Heroin), Moderate, in a Controlled Environment
 (DSM-5™ 304.00)
 Amphetamine-Type Substance Use Disorder, Severe, in a Controlled Environment
 (DSM-5™ 304.40)
 Stimulant Use Disorder (Cocaine), Moderate, in a Controlled Environment
 (DSM-5™ 304.20)
 Inhalant Use Disorder (Volatile hydrocarbons), Severe, in a Controlled Environment
 (DSM-5™ 304.60)
 Unspecified Neurocognitive Disorder (DSM-5™ 799.59)
 Antisocial Personality Disorder (DSM-5™ 301.7)

COMPETENCY:

Regarding Mr. Smart's ability to accept his plea of guilty of Murder; Armed Robbery; Grand Larceny of a Motor Vehicle; Criminal Conspiracy; and Escape From Confinement, Mayank H. Dalal, M.D. and Camilla Tezza, Ph.D. stated in their 01/12/01 report:

"On the day of evaluation, Mr. Smart was able to read his Miranda Warnings without difficulty. He was able to restate them in his own words. He was aware of his charges and was able to appreciate the seriousness of his charges. He stated that if he has any questions, he would ask his lawyer to get more detailed information regarding the consequences of his charges if he is convicted. He was aware of the name of his lawyer and stated that 'I think I can work with my lawyer.' He reported that he can trust his lawyer and is able to tell his lawyer everything regarding his charges. He was aware of the role of solicitor, judge, and jury. He was aware of different pleas available to the defendant including a guilty plea, not guilty plea, and a plea bargain. He was able to explain the meaning of a plea bargain appropriately. He was able to discuss the consequences of possible penalties of the charge if found guilty. He was aware of the importance of a witness and able to voice the importance of evidence when given a hypothetical situation. He was aware of the importance of appropriate courtroom behavior at the time of interview. Based on the preceding statements it is our opinion, with reasonable medical certainty, that Mr. Smart has sufficient present ability to consult with his attorney, a rational as well as factual understanding of the proceedings against him, and should be deemed competent to stand trial. While clearly competent, Mr. Smart may benefit from taking notes during extended court proceedings, given current mild attention problems demonstrated on psychological testing."

I presently concur with this finding. Mr. Smart currently meets all the standards of competency. He may have issues assisting his legal representatives as he has a fixed belief system as to how

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his case should be handled and what his desired outcome should be. He does not rationally consider criticism of his ideas and beliefs from his defense team and is in denial of the likely outcomes of his legal decisions. I do have concerns over the potential for him displaying negative courtroom behavior as his case is heard. These concerns are based upon his personality functioning and not his cognitive functioning.

CONCLUSIONS:

1. According to Mr. Smart and the records reviewed, on 08/13/99 Mr. Smart after two days of "huffing gas", did murder Mr. Tracy Pack with a metal pipe. This aggressive behavior was influenced by his instant drug use superimposed on the organic damages secondary to his years of drug usage on a developing brain, and specifically his frontal lobes. This is the reason I diagnosed him with an Unspecified Neurocognitive Disorder (DSM-5™ 799.59). His years incarcerated has allowed this Neurocognitive Disorder to recover somewhat but it is still displayed in his verbal outbursts, poor judgement, impulsiveness, intolerance, poor disinhibition and aggressiveness.

The brain continues to develop in humans into their early adulthood. The frontal lobes tend to be the last area of the brain to develop and accounts for the immature behavior, impulsiveness, aggressiveness and risk-taking behavior seen in young teens. As the frontal lobes mature we see a reduction in these behaviors with improved social judgement, improved insight into how one's behaviors affect others, the acquisition of foresight, as seen in the appreciation of future consequences on one's behavior.

At the time of these crimes, on 08/13/99, Mr. Smart was 16-years-8-months old. He was under the influence of inhaled gas, superimposed upon a brain not yet fully developed that had been subjected to years of toxic exposure from numerous illegal drugs. This had directly hindered the development of his frontal lobes and his ability to inhibit his aggressiveness and to appreciate the consequences of his immediate behavior. Following the demise of Mr. Pack, Mr. Smart did try to conceal his crime and flee the scene. I feel that Mr. Smart had a reduced capacity to conform his impulsive behavior to the requirements of the law and to appreciate the wrongfulness of his action and the outcome of his behavior.

David R. Price, Ph.D.
Licensed Clinical Psychologist
The Forensic Network PA

CLASSIFICATION SUMMARY REPORT DATED 05/23/2017

SCDC# 00277378

SMART, JON PAUL

FBI# 580002TB0

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: PERRY

SECURITY/CUST: 3 SECURITY DETENTION

CURR INCARC SENT: 999 YRS 0 MOS 0 DAYS

VICTIM WITNESS: N SEPREQ:Y

MED CLASS: MED PROB/WORK RESTRICT

INST RESTRICT: NO RESTRICTION

MENTAL CLASS: NMH (NO MENTAL HEALTH TRE

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 34

RESIDENT STABILITY: SI

DORM_ROOM_BUNK_CODE: CZ 0001 B

PROJ MAXOUT DATE: -

PROJ PAROLE DATE: -

EWC JOB: NO CURRENT JOB

ASSIGNMENT: LOCKED - UP

EWC LEVEL: 0 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE		START	SENTENCE		
			DYS	COUNTY		V/NV	CAT	INDICT
ARMED ROBBERY	30	0	0	CLARENDON	08/13/1999	V	4	00GS14356
MURDER	999	99	999	CLARENDON	08/13/1999	V	5	00GS14356
ESCAPE	15	0	0	CLARENDON	08/13/1999	N	4	00GS14356
CRIMINAL CONSPIRACY	5	0	0	CLARENDON	08/13/1999	N	2	00GS14356
GRAND LARCENY	10	0	0	CLARENDON	08/13/1999	N	2	00GS14356

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

08/11/2016	CLASS I	ESCAPE
12/18/2008	CLASS I	ESCAPE
08/12/1999	CLASS I	ESCAPE

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

02/02/2015	FIGHTING WITH A WEAPON	DISMISSED	MAJOR DISC. HEARING	INMATE ASSAULT	Y
07/18/2008	STRIKING AN INMATE WITH/WITHOUT A WEAPON	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT	N
07/18/2008	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	CONVICTED	MAJOR DISC. HEARING	STAFF ASSAULT	N
06/22/2007	POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING		Y
06/22/2007	STRIKING AN INMATE WITH/WITHOUT A WEAPON	CONVICTED	MAJOR DISC. HEARING	INMATE ASSAULT	Y
03/02/2004	STRIKING AN EMPLOYEE WITH/WITHOUT WEAPON	NOT GUILTY	MAJOR DISC. HEARING	STAFF ASSAULT	N

09/05/2001 POSSESSION OF A WEAPON

CONVICTED

MAJOR DISC.
HEARING

N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

03/31/2017	THREATENING TO INFLICT HARM ON EMPLOYEE	CONVICTED	MAJOR DISC. HEARING
11/18/2016	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
08/11/2016	POSSESSION OF ESCAPE TOOLS/PARAPHERNALIA	CONVICTED	MAJOR DISC. HEARING
08/11/2016	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
08/11/2016	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
08/04/2016	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
06/15/2016	REFUSING OR FAILING OBEY ORDERS	DISMISSED	MAJOR DISC. HEARING
05/04/2016	REFUSING OR FAILING OBEY ORDERS	DISMISSED	OTHER ACTION TAKEN/INFORM
03/21/2016	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
02/11/2016	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
02/10/2016	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
02/10/2016	DISRESPECT	DISMISSED	MAJOR DISC. HEARING
12/08/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
12/04/2015	REFUSING OR FAILING OBEY ORDERS	DISMISSED	CHARGES DROPPED/INSUFF. E
11/16/2015	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
11/12/2015	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
10/19/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
10/19/2015	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
06/05/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
05/29/2015	DAMAGE,DESTROY PROP. VALUED LESS \$100.	CONVICTED	MAJOR DISC. HEARING
04/03/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
04/03/2015	POSSESSION OF CONTRABAND	DISMISSED	MAJOR DISC. HEARING
02/19/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
01/28/2015	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
11/25/2014	DAMAGE,DESTROY PROP. VALUED LESS \$100.	DISMISSED	ADMINISTRATIVE RESOLUTION
03/30/2014	I/M UNDER INFLUENCE/POSS ALCOHOL OR BUCK	CONVICTED	MAJOR DISC. HEARING
01/17/2014	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
01/07/2014	DISRESPECT	CONVICTED	ADMINISTRATIVE RESOLUTION
12/30/2013	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
10/09/2013	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
01/14/2012	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
09/15/2010	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
06/17/2010	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CLOSED	OTHER ACTION TAKEN/INFORM
04/08/2010	SOLICIT EMPLOYEE,I/M,VIOLEATE SCDC RULE	CLOSED	OTHER ACTION TAKEN/INFORM
08/20/2009	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CLOSED	OTHER ACTION TAKEN/INFORM
08/20/2009	THREATENING TO INFLICT HARM ON EMPLOYEE	CLOSED	OTHER ACTION TAKEN/INFORM
07/27/2009	THREATENING TO INFLICT HARM ON EMPLOYEE	CLOSED	OTHER ACTION TAKEN/INFORM
07/16/2009	MUTILATION	CLOSED	OTHER ACTION TAKEN/INFORM
07/16/2009	SOLICIT EMPLOYEE,I/M,VIOLEATE SCDC RULE	DISMISSED	CHARGES DROPPED/INSUFF. E
06/10/2009	SOLICIT EMPLOYEE,I/M,VIOLEATE SCDC RULE	CONVICTED	MAJOR DISC. HEARING
12/18/2008	CLASS I ESCAPE	CONVICTED	MAJOR DISC. HEARING
08/29/2008	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
08/04/2008	THREATENING TO INFLICT HARM ON EMPLOYEE	DISMISSED	MAJOR DISC. HEARING
07/29/2008	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CLOSED	OTHER ACTION TAKEN/INFORM
02/26/2008	THREATENING TO INFLICT HARM ON EMPLOYEE	CONVICTED	MAJOR DISC. HEARING
06/21/2007	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
06/12/2007	OUT OF PLACE	CONVICTED	MAJOR DISC. HEARING
03/26/2007	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
03/25/2007	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
03/22/2007	INTERFERING WITH COUNT	CONVICTED	ADMINISTRATIVE RESOLUTION
02/12/2007	VIOLATIONS WRITE/POST INST RULES	CONVICTED	ADMINISTRATIVE RESOLUTION
12/31/2006	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
10/10/2006	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
07/10/2006	USE/POSS OF TATTOO PARAPHERNALIA	CONVICTED	MAJOR DISC. HEARING
03/30/2006	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING

12/22/2005	USE/POSS OF TATTOO PARAPHERNALIA	CONVICTED	ADMINISTRATIVE RESOLUTION
10/12/2005	POSSESSION OF CONTRABAND	CLOSED	OTHER ACTION TAKEN/INFORM
08/09/2004	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
07/02/2004	USE/POSS OF TATTOO PARAPHERNALIA	CLOSED	OTHER ACTION TAKEN/INFORM
02/23/2004	USE/POSS OF TATTOO PARAPHERNALIA	CLOSED	OTHER ACTION TAKEN/INFORM
09/09/2003	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
06/17/2003	DISRESPECT	CLOSED	OTHER ACTION TAKEN/INFORM
08/23/2001	MUTILATION	CLOSED	OTHER ACTION TAKEN/INFORM

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

03/30/2017	PERRY	INCARCERATED	RETURN FROM COURT
03/30/2017	SUMTER CO	AUTH ABSENCE (AWL)	TO COURT
12/16/2016	PERRY	INCARCERATED	ADMINISTRATIVE
07/07/2016	BROAD RIVER	INCARCERATED	RETURN FROM COURT
07/07/2016	CLARENDON CO	AUTH ABSENCE (AWL)	TO COURT
05/04/2016	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
02/10/2016	MCCORMICK	INCARCERATED	RETURN FROM COURT
02/10/2016	SUMTER CO	AUTH ABSENCE (AWL)	TO COURT
02/26/2013	MCCORMICK	INCARCERATED	ADMINISTRATIVE
09/15/2010	LEE	INCARCERATED	ADMINISTRATIVE
08/30/2010	PERRY	INCARCERATED	RETURN FROM COURT
08/30/2010	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
01/19/2010	PERRY	INCARCERATED	ADMINISTRATIVE
01/19/2010	KIRKLAND	INCARCERATED	MEDICAL
08/03/2009	PERRY	INCARCERATED	ADMINISTRATIVE
07/27/2009	GILLIAM PSY	INCARCERATED	MEDICAL
07/08/2009	PERRY	INCARCERATED	RETURN FROM COURT
07/08/2009	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
01/21/2009	PERRY	INCARCERATED	ADMINISTRATIVE
01/21/2009	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
10/01/2008	PERRY	INCARCERATED	MEDICAL
10/01/2008	ANDERSON CO	AUTH ABSENCE (AWL)	MEDICAL
09/11/2008	PERRY	INCARCERATED	MEDICAL
09/11/2008	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
09/05/2008	PERRY	INCARCERATED	ADMINISTRATIVE
09/05/2008	GILLIAM PSY	INCARCERATED	MEDICAL
08/29/2008	PERRY	INCARCERATED	MEDICAL
08/29/2008	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
07/07/2008	PERRY	INCARCERATED	ADMINISTRATIVE
07/07/2008	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
06/09/2008	PERRY	INCARCERATED	ADMINISTRATIVE
06/09/2008	KIRKLAND	INCARCERATED	MEDICAL
05/08/2008	PERRY	INCARCERATED	ADMINISTRATIVE
05/08/2008	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
04/11/2008	PERRY	INCARCERATED	ADMINISTRATIVE
04/11/2008	KIRKLAND	INCARCERATED	MEDICAL
04/07/2008	PERRY	INCARCERATED	ADMINISTRATIVE
04/07/2008	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/03/2008	PERRY	INCARCERATED	ADMINISTRATIVE
03/03/2008	KIRKLAND	INCARCERATED	MEDICAL
01/09/2008	PERRY	INCARCERATED	MEDICAL
01/09/2008	GRNVLL MEMRL HSPTL	AUTH ABSENCE (AWL)	MEDICAL
01/11/2007	PERRY	INCARCERATED	ADMINISTRATIVE
01/11/2007	KIRKLAND	INCARCERATED	MEDICAL
08/15/2006	PERRY	INCARCERATED	ADMINISTRATIVE
08/15/2006	KIRKLAND	INCARCERATED	MEDICAL
05/02/2006	PERRY	INCARCERATED	ADMINISTRATIVE
02/04/2004	LEE	INCARCERATED	ADMINISTRATIVE
02/04/2004	KIRKLAND	INCARCERATED	MEDICAL

12/08/2003	LEE	INCARCERATED	RETURN FROM COURT
12/08/2003	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
08/23/2001	LEE	INCARCERATED	ADMINISTRATIVE
08/10/2001	KIRKLAND	INCARCERATED	R&E PROCESSING
08/10/2001	LIEBER	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	12/18/2014	02/02/2015	PLACED IN ST/SP CUSTODY	3F5
GENERAL WORKER	07/11/2013	11/24/2014	PLACED IN ST/SP CUSTODY	3F5
GENERAL WORKER	02/28/2013	06/24/2013	PLACED IN ST/SP CUSTODY	3F5
CUSTODIAL WORKER	08/26/2005	02/12/2006	INMATE REQUEST	3F5
GENERAL WORKER	10/07/2003	08/25/2005	INMATE REQUEST	3F5
TEACHER AIDE	06/27/2003	10/06/2003	INMATE REQUEST	3F5
GENERAL WORKER	03/25/2003	06/26/2003	INMATE REQUEST	3F5
LIBRARY HELPER	11/19/2002	03/24/2003	INSTIT TRANSFER	3F5
GENERAL WORKER	09/18/2002	11/18/2002	INMATE REQUEST	3F5
GENERAL WORKER	03/19/2002	09/17/2002	CUSTODY REVIEW	5F5
GENERAL WORKER	09/20/2001	03/18/2002	CUSTODY REVIEW	7F5

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF CLARENDON)

The State,

v

Jon Smart,

Defendant.

PLEA AGREEMENT

1. The defendant, Jon Smart, is charged in Clarendon County in Indictment 2000-GS-14-356 with:

- Count 1 – Murder
- Count 2 – Armed Robbery
- Count 3 – Grand Larceny of Motor Vehicle
- Count 4 – Criminal Conspiracy
- Count 5 – Escape

2. The State and the defendant have entered into a plea agreement. The terms of the plea agreement are set forth below:

- a. The defendant agrees to enter a plea of guilty to all charges pending in Clarendon County as described in Indictment 2000-GS-14-356 as Count 1, Murder; Count 2, Armed Robbery; Count 3, Grand Larceny of Motor Vehicle; Count 4, Criminal Conspiracy; and Count 5, Escape.
- b. The sentence, as negotiated and agreed upon by all parties, to be imposed on each count is as follows:

- (1) Count 1 – Murder: Life Imprisonment without eligibility for parole (In accordance with Section 16-3-20(A), "Life Imprisonment" means until the death of the offender. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section.)
- (2) Count 2 – Armed Robbery: 30 years concurrent
- (3) Count 3 – Grand Larceny of Motor Vehicle: 10 years concurrent
- (4) Count 4 – Criminal Conspiracy: 5 years concurrent
- (5) Count 5 – Escape: 1-15 years concurrent

- c. Sentencing will be delayed until Jon Smart has fully complied with the following terms:
 - (1) Jon Smart agrees to cooperate with and abide by all terms as recorded in the Proffer Agreement.
 - (2) Jon Smart agrees to cooperate with the Third Circuit Solicitor's Office and all law enforcement agencies in the investigation of the murder and robbery of Tracy Pack and the escape from the Rimini Marine Institute in Clarendon County; and to further cooperate in the prosecution of Stephen Hutto by giving true and honest testimony at any appropriate judicial proceeding in Clarendon County.
- d. Jon Smart understands and agrees that upon full compliance with the terms of the plea agreement all charges in Clarendon County against him will be disposed.
- e. Jon Smart understands and agrees that failure to fully comply with the terms of the plea agreement can and will cause the State's obligations within this agreement to become null and void. Any failure, however slight, to be truthful or to cooperate at any stage of any appropriate judicial proceeding in Clarendon County will result in requests for consecutive time; and an opportunity for the State to seek a sentence of life without parole via 2/3 strikes. Further, it is expressly agreed that if the State's obligations within this agreement become null and void due to the lack of truthfulness or cooperation on the part of Jon Smart, Jon Smart understands that he will not be permitted to withdraw his plea of guilty to the offenses described herein and the State will argue for maximum sentences to be served consecutively for any offense in Clarendon County for which the defendant has pled guilty.
- f. Jon Smart understands and agrees that the plea agreement does not provide nor constitute any immunity from prosecution for perjury.
- g. Jon Smart understands and agrees that this plea agreement will be offered to the presiding judge as a negotiated plea agreed upon by all parties and furthermore that this plea agreement is not to be treated as a recommendation by the State.
- h. Jon Smart, in full realization that both the State and the family of the deceased seek finality in this matter by way of this plea agreement; in full realization that both the State and the family do not want to be subjected to litigating this issue in another forum at another date and time; and as an expressed condition of the State's willingness not to seek the death penalty, expressly and irrevocably waives his right to file an appeal or to seek post-conviction relief at any time. This waiver is made freely and voluntarily without duress or coercion.

3. The attached letters from Solicitor Barbara R. Morgan of the Second Judicial Circuit and Solicitor J. Gregory Hembree of the Fifteenth Judicial Circuit are hereby incorporated into and made a part of this Plea Agreement. Jon Smart agrees and understands that the contents of these letters are null and void upon a failure to comply with any of the terms of the Plea Agreement between Jon Smart and Solicitor C. Kelly Jackson.

The terms of this negotiated plea as set forth above are agreed upon by the following parties:

PARTIES FOR THE STATE:

C. Kelly Jackson
C. Kelly Jackson, Solicitor
Third Judicial Circuit 24 May 01

PARTIES FOR THE DEFENSE:

Jon Smart
Jon Smart
Defendant

F. A. Hoefer, II
F. A. Hoefer, II
Attorney for the Defendant

Manning, South Carolina
May 11, 2001

1 THE STATE OF SOUTH CAROLINA

2 COUNTY OF CLARENDON

3

4

5 The State of South Carolina} Motion for Resentence
6 Plaintiffs } 2000-GS-14-00356

6

7 vs.

8

9 Jon Smart, } August 10, 2017
10 Defendant } Manning, S.C.

10

11

12

13 Before the Honorable D. Craig Brown, Judge.

14

15

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

17

18 Mr. Ernest A. Finney, III,
19 Solicitor

19

20 Mr. Jack Howle,
21 Chief Public Defender

21

22

23

Margaret T. Sullivan,
Court Reporter

24

25

1 THE COURT: Good morning, Ladies and
2 gentlemen.

3 MR. FINNEY: Good morning, Your Honor.

4 THE COURT: Mr. Finney, what is the
5 indictment number on this one. We are here in
6 regards to the State of South Carolina versus Jon
7 Smart.

8 MR. FINNEY: Yes, Your Honor, good
9 morning. This is the State of South Carolina,
10 County of Clarendon, the State versus Jon Paul
11 Smart. On indictment No. 2000-GS-14-356. It's a
12 true billed indictment from the Clarendon County
13 Grand Jury, which indicted Mr. Smart and his
14 co-defendant, for murder, and other associated
15 charges regarding the death of Mr. Pack.

16 THE COURT: I am going to give a little
17 procedural background on this matter. The date of
18 the offense for which we are here today for the
19 murder as committed by Mr. Jon Smart, occurred on
20 August 12th of 1999. Mr. Smart pled guilty before
21 the Honorable, was sentenced by the Honorable Tommy
22 Cooper from Manning, back on August 12th of 1999.
23 Excuse me, the offense occurred August 12, 1999. He
24 was sentenced on August 9th of 2001. Whereupon for
25 the offense of murder, Mr. Jon Smart was sentenced

1 to the State Department of Corrections for life
2 imprisonment.

3 That sentence of life imprisonment was a
4 negotiated sentence, and part of the State not
5 seeking the death penalty against Mr. Smart at that
6 time. Regardless of the whether the State has
7 consulted and received the sentence of death against
8 Mr. Smart, pursuant to subsequent case law by the
9 United States Supreme Court, a sentence of death to
10 Mr. Smart would have been overturned. Subsequent to
11 Mr. Smart pleading to the negotiated sentence of
12 life imprisonment, our United States Supreme Court
13 came out with another case. That case, the case of
14 Miller v. Alabama, 132, S.C. 2455, stood for the
15 proposition that our mandatory imposition of life
16 without parole in the sentencing of juveniles,
17 violated the 8th Amendment's prohibition to cruel
18 and unusual punishment.

19 Pursuit to Miller v. Alabama our State
20 Supreme Court in the case of Aiken v. Byars, 410,
21 S.C. 534, 765, S.E. 2d., 572, decided that it was
22 inappropriate to sentence a minor to a life sentence
23 without taking certain factors in to consideration.
24 Those factors which will be addressed by the court
25 today in rendering its decision. The court in Aiken

1 v. Byars said that the sentencing court must
2 consider, must consider, each of those factors
3 before imposing sentence on a minor. The case went
4 on to say that without question, the judge may still
5 determine that life without parole is the
6 appropriate sentence in some of these cases in light
7 of other aggravating circumstances.

8 However, Miller requires that before a
9 life without parole sentence is imposed upon a
10 juvenile offender, he must receive an individualized
11 hearing where the mitigating hallmark features are
12 fully explored. Pursuant to the Aiken v. Byars
13 case, a hearing was conducted in Lee County, in Lee
14 County courthouse, on May 24th 2017. The defendant
15 is present with this attorney Mr. Jack Howle, and
16 the court you heard testimony from the defendant's
17 sister, Tammy Smart, and Dr. David Price, who is a
18 licensed clinical psychologist. And from Mr. Thomas
19 Burgess, who was formerly with the Clarendon County
20 Sheriff's Department, when this offense occurred.

21 Now addressing these factors, I am going
22 to go somewhat out of order. The court in
23 Aiken v. Byars set forth the following factors: the
24 chronological age of the offender and the hallmark
25 features of youth; including, immaturity,

1 impetuosity, sudden, excuse me, and failure to
2 appreciate risks and consequences. Two, the family
3 and home environment surrounding the offender.
4 Three, the circumstance of the homicide offense.
5 Including the extent of the offender's participation
6 in the conduct, and how familial and peer pressure
7 may have affected him. And four, the incompetencies
8 associated with youth; for example, the offender's
9 inability to deal with police officers or
10 prosecutors, including a plea agreement, or the
11 offender's incapacity to assist his own attorneys.
12 And finally, the possibility of rehabilitation.

13 Now I am going to go out of order in
14 addressing the factors as I see fit. The first
15 factor for which the court is going to address,
16 which I believe is necessary to somewhat lay the
17 groundwork, would be the circumstances of the
18 homicide offense, which includes the extent of the
19 offender's participation. This offense was
20 previously placed on the record, occurred back on
21 the August 12th of 1999. Now before I go into the
22 background of this offense and the circumstances of
23 the homicide, at the previous hearing which occurred
24 May 24th 2017, without objection, a copy of the
25 transcript from the first sentencing which occurred

1 on August 9th 2001, was made a part of the record.
2 Was made a part of the record without objection by
3 each party. That first sentencing transcript was
4 reviewed by me in its entirety, and therefore has
5 enabled me to not only take into consideration the
6 facts and circumstances surrounding the case from
7 what was conveyed at the May 24th 2017 hearing, but
8 leaning on that transcript of August 9th 2001 as
9 well.

10 In reviewing the transcript of the
11 previous sentencing, some background information as
12 it relates to this case: The Pack family who is
13 residents of Clarendon County, had provided the
14 State of South Carolina with property here for the
15 purposes of the State placing this Rimini Marine
16 Institute in Clarendon County, for the benefit of
17 helping troubled youth, so to speak. Tracy Pack who
18 was the victim in this case, was 32-years-old at the
19 time. His background was that he had attended
20 Spartanburg Methodist College. Had come back here
21 to Clarendon County, was working on the family farm.
22 And part of his job responsibility, they own some
23 chicken houses, of which he allowed or his family
24 allowed youth from this marine, Rimini Marine
25 Institute, to come in and work on the farm if they

1 so desired.

2 It is also within the transcript the fact
3 that Tracy Pack thought a lot of these young men,
4 and he was there to aid, assist and to help, even
5 offering to take these young men to church if they
6 so chose to do so. On the date of August 12th 1999,
7 Tracy had gone to pick up the defendant, Jon Smart,
8 and his co-defendant, Stephen Hutto, on the morning
9 of August the 12th. Around noon or shortly
10 thereafter, on a day of August the 12th, excuse me,
11 yeah, August 12th, through the transcript it was
12 learned that the defendant along with his
13 co-defendants had intentionally, the word
14 intentionally, breaking, what was considered to be
15 foggers within these chicken houses, which
16 necessitated that they be prepared.

17 At some point as Tracy Pack was on the
18 ladder repairing one of the fogger's, the defendant
19 Jon Smart, struck him with a lead pipe. The lead
20 pipe according to the transcript, was approximately
21 15 to 16 pounds in weight. At the first sentencing
22 it was handed up to Judge Cooper for him to see. I
23 have not requested, but I have not seen the murder
24 weapon in this case. I don't know if it still
25 exists, or if its still in anyone's custody. In any

1 event, the defendant Jon Smart struck Mr. Pack with
2 this lead pipe, knocking him from ladder. And after
3 being knocked from the ladder, continued to strike
4 Mr. Pack about his body and his head, resulting in
5 Mr. Pack's death.

6 After Mr. Pack was killed, according to
7 the prior transcript, the defendant Jon Smart and
8 Stephen Hutto, went out to Tracy Pack's truck
9 obtained a pack of cigarettes, smoked a cigarette,
10 went back in the chicken house. And after finding a
11 tarp, they went back in the chicken house, wrapped
12 Tracy Pack's body in a tarp, went out and found some
13 type of wheelbarrow and placed Tracy Pack's body in
14 the wheelbarrow, rolled him out of the chicken
15 house, to the truck, whereupon Jon Smart sat on the
16 tailgate of the truck, and Stephen Hutto drove the
17 truck to the edge of the woods approximately
18 150-yards from the murder scene.

19 They then rolled to body of Tracy Pack
20 into the woods, and left him there. After leaving
21 his body there, they left in Tracy Pack's truck,
22 proceeded to Bamberg, South Carolina, where the
23 defendant Stephen Hutto is from. They went to
24 defendant Stephen Hutto's home, changed clothes,
25 retrieved a shotgun, along with several rounds of

1 ammunition, left there, went and sought, and tried
2 to purchase some marijuana. When they learned that
3 they could not do so because they did have the
4 funds, they proceeded to the Family Dollar in
5 Bamberg, where Jon Smart went into the Family Dollar
6 with the shotgun, and according to the transcript,
7 cocked the shotgun as he entered the Family Dollar,
8 pointing it at two workers within the Family Dollar,
9 and then robbed the store. He took whatever cash
10 was in the store.

11 After doing so, they returned to the
12 individual's home that they initially went to, to
13 purchase marijuana. And then at that time, did
14 purchase marijuana. As of note that that when they
15 went initially to Mr. Hutto's home, that they not
16 only got a shotgun and ammunition, but they also
17 took some liquor, alcohol, from my understanding, as
18 well. Upon leaving Bamberg, these individuals,
19 Stephen Hutto Jon Smart, proceeded to go or ended up
20 in Myrtle Beach. The facts are from there, that
21 Stephen Hutto, I meant this started from the murder
22 scene, that Stephen Hutto was the driver of the
23 truck. He was the one that was driving the truck.
24 In fact, I believe Jon Smart indicated at some point
25 that he was too intoxicated to even do so. But

1 regardless, the facts which came to light
2 throughout, was that Stephen Hutto was the
3 driver and Jon Smart was the passenger. That
4 approximately 2:00 a.m. in Myrtle Beach,
5 approximately 2:00 a.m. in Myrtle Breach, an officer
6 in Myrtle Beach, Officer Patricia Hamray, noticed
7 this pickup truck with no tail lights. According to
8 her, she radioed. According to the transcript, she
9 radioed the tag number in, whereupon it was learned
10 that the truck was stolen. Another officer
11 responded. The truck proceeded to begin to pull
12 over, but then took off at a high rate of speed.
13 The chase went for several miles. At some point in
14 the transcript I saw it to be 20 to 30 miles a
15 chase. It may have been further.

16 There were numerous attempts by law
17 enforcement to stop this truck throughout this
18 chase, which was reached speeds of 90 to 100 miles
19 per hour at times. It went from Myrtle Beach to
20 Conway, through Conway, out into the country.
21 During the chase, it was noted numerous shots were
22 fired from the truck. Later it was determined that
23 these shots were fired by the defendant Jon Smart,
24 at law enforcement, at law enforcement's cars. One
25 of which the cars, the lights on top of the car was

1 shot off and knocked off. There was evidence of
2 gunshots to more than one police car. At one point,
3 one police car pulled in front of the truck trying
4 to stop it, and the back of that police car was the
5 shot at. It was noted and believed that the
6 defendants only had one round of buckshot, and he
7 was thankful that that was all they had, was one
8 round of buckshot.

9 The truck after loosing, and I mean
10 literally losing all four tires, and they were just
11 on the rims of the truck, and then it finally came
12 to a stop. Upon such stop, the defendant Jon
13 Smart, exited the truck into the woods. And was
14 located, actually came out of the woods the
15 following morning and was apprehended. And it was
16 learned and through my reading of the transcript
17 from the initial sentencing hearing, that after the
18 initial report, that Tracy Pack had not returned
19 home. When law enforcement was called, that there
20 over 25 law enforcement officers, at least 25, that
21 I counted, that were involved in some way, shape or
22 form in the investigation, pursued and subsequent
23 apprehension of Mr. Jon Smart and his co-defendant.

24 Just in Clarendon County when it was
25 initially learned that Tracy Pack was missing, law

1 enforcement from Clarendon County was notified.
2 Clarendon County in turn notified Sumter County, as
3 well as, the Department of Natural Resources and
4 Sled. The sheriff in his statement to the court at
5 the initial sentencing, indicated that it was as an
6 intensive search and of a magnitude that probably
7 had never been done before.

8 Upon finding Tracy Pack, and locating him,
9 which again was said to be approximately 150 yards
10 from where he was killed, and another 50 yards from
11 the closest chicken house. I believe it was Officer
12 Bradham who cut open the tarp, and identified Tracy
13 Pack as being deceased. The investigation or the
14 photographs which I asked to look at. I sent
15 Mr. Howle and Mr. Finney an e-mail Sunday evening,
16 that I read through the transcript of the previous
17 sentencing. It was apparent that when these
18 photographs were handed up to Judge Cooper for his
19 review, which I requested an opportunity to look at
20 those photographs if they were still in existence.
21 And those photographs were provided to me Tuesday,
22 and I did look at those photographs. It was a
23 multitude of photographs.

24 One of the things that was noted by law
25 enforcement in their investigation of this murder

1 scene, was that certainly when Tracy Pack was found,
2 and the pipe that was used to kill him, was located
3 by him, in his car, and in the woods. Of importance
4 also, was the fact that the defendants after they
5 had removed Tracy Pack from the chicken house and
6 taken him to the woods, they then returned to the
7 chicken house, and attempted to wash away the blood
8 from the murder. There was also noted within the
9 transcript that there was blood splatter on the
10 ceiling house of this chicken house, as well as, a
11 mark on the roof, or the inside roof of the chicken
12 house, indicating that as the pipe was being swung
13 to hit Tracy Pack, that they began to hit the
14 ceiling of the chicken house. And as a note, the
15 ceilings in these chicken houses were somewhat low.
16 They weren't very high. But evidently upon striking
17 Mr. Pack on more than one occasion, the lead pipe
18 struck the inside ceiling of this chicken house. In
19 addition, it was noted that there was blood splatter
20 on the ceiling of this chicken house as well, which
21 indicated after the defendant struck the victim,
22 blood being on the pipe, and it splattered on
23 ceiling as it came back before hitting Mr. Pack.

24 In addition to those facts, and in
25 reviewing the photographs of the scene, there were

1 also photographs in there taken at the the time of
2 the autopsy. Those photographs reveal to me,
3 numerous bruises about Tracy Pack's body. More
4 specifically, to the left side of his torso, which
5 appear to have been blows to victim's body. It was
6 said in the transcript, in one portion, that after
7 striking the defendant Tracy Pack in the head, that
8 one of defendant's I believe made a comment that
9 they could see into his skull. In looking at the
10 photographs of the autopsy, it was clearly
11 obvious---

12 (Whereupon, court takes short break.)

13 THE COURT: We are back on the record with
14 regard to the State of South Carolina versus
15 Mr. Jon Smart. We stood down pursuant to one of the
16 deputies passing out in the courtroom. He was taken
17 by ambulance to the hospital, and therefore, we are
18 ready to continue to proceed. I will say, in my
19 prior experience at the Citadel, those of you who
20 are standing, don't lock your knees. Keep your
21 knees bent.

22 When I stopped or when the incident
23 occurred here in the courtroom with the deputy
24 passing out, the last thing I was talking about was
25 the injury to Tracy Pack's head. In looking at the

1 autopsy photographs, Tracy Pack's skull was
2 absolutely crushed on the left side of his head.
3 Now I believe that I have sufficiently
4 gone into the background of this case. And while
5 one of the, and I will put this on the record as
6 well. One of the requests that I made of Mr. Finney
7 and Mr. Howle the other day, was Sunday evening, was
8 in reference to a video, which I didn't get a chance
9 to look at. And I'm not -- the video that I asked
10 about was an car video of the chase that occurred
11 with the officer pursued, occurred in Horry County.
12 It was conveyed to me by Mr. Scott Robinson, of the
13 public defender's office, that Mr. Howle had an
14 objection to me looking at that. I don't think it
15 exists. I will say, I never did look at it, at the
16 scene. I know that when Judge Cooper initially
17 sentenced Mr. Smart and Mr. Hutto, he talked about
18 what happened thereafter; went to the state of mind,
19 so to speak. I believe, well the solicitor did come
20 by my office. I believe it was Monday. He does
21 have a VHS tape, which I never saw, and I don't
22 remember exactly what that tape is. Maybe it's
23 Hutto's video. A rendition of what happened by
24 Hutto at the chicken house. I don't know. If it
25 was conveyed to me, I don't remember exactly what it

1 was. But I didn't see any videos or anything before
2 I came in here today. The only thing that I looked
3 at pursuant to any requests, were the photographs
4 that were in evidence, and by the sheriff's
5 department.

6 Now having said what I have said with
7 regards to the background of this case, I am now
8 going to go back to the first factor under the Aiken
9 v. Byars case. The first factor being, the
10 chronological age of the defendant. At the time of
11 this offense or this murder took place, the
12 defendant was 16-years-old. And in fact, was only a
13 few months away from being 17-years-old.
14 Furthermore under this factor, it refers to the
15 hallmark features of youth; including immaturity,
16 impetuosity, and the failure to appreciate the risks
17 and consequences. I believe it is safe to say that
18 every 16-year-old, and at least that I've been
19 around, is immature. Impetuosity referring to
20 sudden and rash action, and failure to appreciate
21 the risks and consequences.

22 It was learned through the testimony, that
23 it was learned through my review of the initial
24 sentencing transcript, as well as, the testimony of
25 Dr. David Price on May 24th 2017. And by way of

1 background, Dr. David Price, was retained by defense
2 counsel for the benefit of Mr. Smart. Dr. Price is
3 a clinical psychologist, who testified he had made
4 over 275 professional presentations, and appeared in
5 court as an expert in the field of forensic
6 psychology, clinical psychology and neuropsychology.
7 Before me at the May 24th hearing, he was qualified
8 as an expert in clinical psychology. He indicated
9 that he had met with the defendant on at least
10 7 occasions; that he reviewed voluminous records on
11 the defendant. In fact they were too voluminous to
12 even bring to court. What he did bring, this is a
13 12-page summary of records that did he review, which
14 is single space. I do not remember, I do not recall
15 if that was made an exhibit. Was that made an
16 exhibit in the first hearing, the May hearing? I
17 don't remember that it was. And what I saw
18 yesterday, I didn't see it. I don't remember seeing
19 it.

20 MR. HOWLE: I would think it is, Your
21 Honor.

22 THE COURT: Can I see that packet,
23 Ms. Roberts?

24 THE CLERK: Yes, sir, you may.

25 THE COURT: It was not made an exhibit.

1 What was made an exhibit is Dr. Price's CV, as well
2 as his forensic psychological evaluation of the
3 defendant. In any event, he brought the 12-page
4 document of the records that he had in fact reviewed
5 pertaining to the defendant Jon Smart. Again as
6 previously stated, the defendant Jon Smart was 16 at
7 the time the offense was committed. Dr. Price
8 opined because of the defendant's history, the
9 polysubstance dependence, he was much younger
10 cognitively.

11 Furthermore, Dr. Price testified that as a
12 result of continued drug abuse, that such drug abuse
13 affects the frontal lobe of the last -- of the
14 brain, which is the last part of the brain to
15 develop. The frontal lobe is what is used to
16 modulate behavior, planning and organizing, as well
17 as judgment. Dr. Price further testified that when
18 you do a substantial amount of drugs; particularly
19 early, it affects the functioning of the frontal
20 lobes. As it greatly affects, impulsivity,
21 aggressiveness, poor judgment, failure to appreciate
22 the consequences of your actions. He further
23 testified that a defendant's inability to make right
24 decisions when he was 16, was influenced by huffing,
25 huffing of gas, family environment, the defendant's

1 attention deficit disorder, and his own drug use,
2 which in essence affected his cognitive reasoning.

3 In the cross examination by Solicitor
4 Finney, Dr. Price opined that the defendant's 1996
5 evaluation, diagnosed the defendant with conduct
6 disorder. It opined it was not necessarily related
7 to drug use. He further opined that the defendant's
8 1998 evaluation, he was diagnosed as having
9 oppositional defiant disorder. Further explaining
10 or agreeing individuals with such diagnosis have
11 issues with authority, and following authority, and
12 following rules. A subsequent evaluation was done
13 on June 30 of 99. And I would note that the 1998
14 evaluation also diagnosed the defendant with
15 cannabis abuse, and alcohol abuse, and borderline
16 intellectual functioning. Both the 96 and 98
17 evaluations having been done prior to the murder.

18 There was the subsequent evaluation done
19 on June 30th of 99. Another evaluation was done on
20 June 30 of 1999. The third evaluation prior to the
21 murder diagnosing him with polysubstance dependence.
22 Throughout Dr. Price's testimony, he testified as to
23 the effects of drug abuse on the frontal lobe of the
24 brain. After cross examination by Mr. Finney, the
25 court myself, asked Dr. Price had an MRI ever been

1 done to determine the extent of damage of the
2 frontal lobe that could result from such drug abuse.
3 According to Dr. Price, no MRI was ever performed on
4 this defendant. And Dr. Price indicated that it
5 would have been beneficial to do so. One of the
6 questions I asked of Dr. Price also was whether or
7 not such MRI would show something such as scar
8 tissue, if one has been done now, to determine the
9 extent of previous damage to the defendant's frontal
10 lobe. Dr. Price testified in his response to me
11 that what would be seen, if anything, would be
12 atrophy. Atrophy if anything would been seen and
13 would show such.

14 In conclusion, upon my questioning of
15 Dr. Price, Dr. Price testified that the defendant
16 appreciated the wrongfulness of his conduct. And
17 then he further testified, that the huffing of gas
18 had an affect on the aggressiveness. So in
19 addressing Factor No. 1, the immaturity. He's
20 certainly immature. Impetuosity, he didn't
21 specifically address that. But will say that in my
22 review of all of the information pertaining to this
23 case, reveals that it was not a sudden or rash
24 action on behalf of Jon Smart. He initially gave
25 two statements to law enforcement. The first

1 statement being that there was some type of
2 altercation or disagreement between Hutto and Tracy
3 Pack, resulting in him becoming involved, him being
4 Jon Smart, resulting in the death of Tracy Pack.

5 There was a subsequent statement given by
6 Jon Smart to law enforcement of which law
7 enforcement was present, as well as, the solicitor,
8 Kelly Jackson. He was the solicitor at the time
9 that this offense occurred. Wherein he talks about
10 the fact that a couple of days prior of the killing
11 of Tracy Pack, that there were discussions about the
12 cutting of Tracy Pack's throat. In addition, there
13 were two minors referred to as juvenile No. 1 and
14 juvenile No. 2, both of whom testified that
15 Jon Smart and Stephen Hutto, in some way, shape or
16 form, discussed this murder.

17 In addition, there was a cell mate of
18 Stephen Hutto who came to law enforcement. In fact,
19 this cell mate of Stephen Hutto, had grown up with
20 Tracy Pack, if I recall correctly. And Stephen
21 Hutto had told him on more than occasion, on two or
22 three separate nights in the jail cell, that it was
23 in some way, shape or form, planned. And that the
24 motive, was because they wanted to see what it was
25 like to kill someone. All of that, including a map

1 that was subsequently found at the marine institute.
2 Law enforcement believed that this map which had;
3 for instance, Bamberg on it, circled. Myrtle Beach
4 on it, circled; was an indication to law enforcement
5 that there was some plan into this matter. Because
6 they believed that it was somewhat of a showing of
7 where they intended to go after the fact.

8 Now having said that, Mr. Hoefer, who
9 represented Jon Smart at his plea, indicated that
10 that was not the case at all; that it was kids at
11 the marine institute referencing places that they
12 wanted to go to once they got out. And in fact Jon
13 Smart and Stephen Hutto were within days as it
14 relates to Hutto, and I think weeks, as it related
15 to Smart, from being released. So in looking at
16 just the map in and of itself, maybe that is the
17 case. But in looking at the totality of the
18 circumstances from statements from Jon -- the
19 statement from Jon Smart, and I didn't talk even
20 about the letter of Jon Smart on two occasions wrote
21 to Stephen Hutto, who was in jail as well, about not
22 saying anything, but sticking to the story. The two
23 juveniles it referenced, them talking about the
24 incident leading up to his murder, as well as Steven
25 Hutto's cell mate.

1 In looking at all of that, the court does
2 not believe that it was some sudden, rash action.
3 And as stated previously, Dr. Price, opined that
4 they -- that the defendant appreciated the risk
5 involved. And I believe that the defendant
6 certainly knew that there were going to be potential
7 consequences, or had he not, there would not have
8 been any further subsequent action of removing the
9 victim, wrapping the victim up in a tarp, removing
10 him from the chicken house, and making the effort to
11 clean up the scene, and fleeing the scene, and not
12 being apprehended until it was absolutely no other
13 opportunity.

14 In looking at the second element under
15 Aiken v. Byars, the family and home environment
16 surrounding the offender, in looking at this, this
17 is somewhat, and I, one of the factors that I have
18 somewhat struggled with, and say I that to say this,
19 at the hearing on May 24th 2017, Tammy Smart, the
20 defendant's sister, comes in and testifies. She
21 testifies at that hearing, that it was her, the
22 defendant, and her parents that grew up in this
23 home. She also testified that they had a brother
24 named Jason, who had already moved out of the home.
25 She further testified and on occasion, on more than

1 one occasion, became visibly upset in testifying;
2 that most of the time they didn't know where their
3 parents were. That they would leave she and John in
4 the house; that Jon would get up for school, fix her
5 food, make sure her clothes matched, fix her hair,
6 walked her to school, walked her home, and fixed her
7 dinner.

8 She further testified about the drug abuse
9 in the home by her mom and father. And that her dad
10 smoked marijuana on occasion. Well not on occasion,
11 but regularly. That her mom was an alcoholic, and
12 that cocaine was present in the house and home.
13 That when Jon went away, there was crack cocaine.
14 In essence, anything that was in the neighborhood.
15 Further testimony, the parents would buy drugs from
16 friends, people that they knew. That there were
17 drugs being sold out of the home; that the mother
18 would send Tammy, the sister, to the door with
19 whatever -- whatever individuals came and wanted,
20 that Tammy would collect money and take it back to
21 the mom. That most of the time it was just
22 marijuana and cocaine. At some point, Jon started
23 doing drugs.

24 Now having said all of that, in reading
25 the initial sentencing transcript, Mr. Howle you

1 correct me if I am wrong, the way I interpret it,
2 this transcript, was that the initial sentencing
3 hearing, after Mr. Hoefer spoke on behalf of the
4 defendant Jon Smart, it was noted that three
5 individuals were present on his behalf: His mother,
6 his father, and his aunt. His aunt being Lori
7 Woods. Am I accurate on that, Mr. Howle?

8 MR. HOWLE: I think those three did
9 testify, Your Honor.

10 THE COURT: I don't remember the mother
11 saying anything. But I specifically made notes, and
12 I told you all later on that it was in memory, but
13 wanted to make sure I didn't miss anything. The
14 mother didn't say anything. But the father, as well
15 as the aunt, briefly spoke, at the initial
16 sentencing. That is page 135 of the sentencing
17 transcript where the father speaks. The father gets
18 up and speaks and says that Jon started doing drugs
19 when he was 14-years-old. Dr. Price had previously
20 testified the defendant Jon Smart, started drinking
21 when he was eight years old. Somewhat drinking and
22 drugs, certainly are two different things. But the
23 testimony of his own father at the initial
24 sentencing hearing to the court, was that it started
25 at 14. That's when the drug abuse started. That in

1 fact, Jon Smart broke into a neighbor's home, and
2 took a ring and some liquor, that the neighbors were
3 not going to initially press charges against Jon,
4 but that the parents of Jon Smart, pressed them so
5 to speak, to please follow through and press charges
6 against Jon, so he can be admitted, and go get some
7 treatment, in essence.

8 Jon's father further said that Jon,
9 anything he could get his hands on, he was doing.
10 That The family themselves did not have money to put
11 Jon in treatment, so he hoped it would be addressed
12 through the court. So Jon Smart was committed as a
13 result of such, on the burglary. And he was -- went
14 before Judge Jenkins, a Family Court Judge at the
15 time. And Judge Jenkins ordered him to get drug
16 treatment, that he was sent to Columbia, to I
17 believe, Northeast Correctional. That it was from
18 there, that he was sent or paroled to the Rimini
19 Marine Institute. It's of importance to note that
20 it wasn't until approximately eight or nine months
21 after being paroled to the marine institute, that
22 this murder took place.

23 Also of importance, Mr. Smart brought up
24 at the sentencing was even though drug treatment had
25 been ordered, such was never followed through by the

1 Department of Corrections. In fact, the defendant
2 Jon Smart's aunt gets up, and very pointedly and
3 succinctly states at the sentencing of Jon Smart,
4 asking this question: Will he get help now.

5 Finally will he get help. That's what she asks.

6 So when Tammy Smart comes in in May, and
7 testifies to this perceived family life. It's
8 somewhat difficult for the court to coincide the
9 fact that his own parents would be at the initial
10 sentencing, that his own parents played a part in
11 having him committed to try to get him some help, if
12 in fact all of this was going on within the home as
13 she said it was. It just doesn't add up. Moving
14 down to, I've already talked about the circumstances
15 of the homicide. Moving down to the factor No. 4,
16 the incompetencies associated to youth. The
17 inability to deal with police officers and
18 prosecutors. I've already touched on the fact that
19 the defendant gave two statements to law
20 enforcement. The first of which it was determined,
21 it was totally fabricated. The second statement he
22 gave to law enforcement was actually involved,
23 Solicitor Kelly Jackson was there also. Which I
24 believe they determined was more in line with what
25 happened. And in fact and as a result of Jon

1 Smart's statement, at the time the plea agreement
2 was entered into, on behalf of the defendant and his
3 attorney Mr. Hoefer, and the solicitor's office.
4 And that plea agreement required corroboration and
5 testimony, or willingness to testify by defendant
6 Jon Smart against his co-defendant, in exchange for
7 the State not seeking the death penalty, but were in
8 turn receiving a life without parole sentence.

9 Furthermore, in addition to the two
10 statements given to law enforcement by the
11 defendant, as well as, two letters written to
12 Stephen Hutto while they were incarcerated, as well
13 as, no indication by Mr. Hoefer, his attorney at
14 that time back in 2000 -- 99 up until he was
15 sentenced in 2001, given no indication of his
16 incapacity to assist Mr. Hoefer. Furthermore, three
17 psychological evaluations were performed on the
18 defendant from 96, up until before this murder
19 occurred, none of which found the defendant to be
20 incompetent. Be it as of note, that he had some, a
21 diminished IQ, which was opined by Judge or excuse
22 me, Dr. Price, that such was in part due his drug
23 use. There was no indication that he had an
24 inability or incapacity to assist his own attorneys,
25 or deal with law enforcement, prosecutors, et

1 cetera.

2 And finally in looking at the possibility
3 of rehabilitation, in Dr. Price's testimony
4 concerning rehabilitation, the first step that he
5 says to such to being rehabilitation, is sobriety.
6 He further testified that sobriety was being forced
7 upon the defendant while incarcerated. He further
8 testified that the defendant's IQ, which has gone
9 from the borderline range of the 90's, saw on two
10 different places, one which I believe said 103, and
11 then I saw one that said 130. So I don't know if
12 some numbers got transposed or not, but regardless,
13 his IQ has increased since he's been incarcerated.
14 And Dr. Price opined that such was due to being away
15 from drugs and not using drugs. Further stating the
16 defendant has had some cognitive recovery.

17 It was asked of Dr. Price during his
18 testimony whether or not the defendant from what he
19 saw, had received any drug treatment while he was at
20 the Department of Corrections. And Dr. Price
21 indicated that his belief was that the plea
22 agreement prohibited the defendant from
23 participating in rehabilitation or education
24 programs. And based upon that, I conveyed at the
25 hearing to both of the attorneys, in all the years

1 that I have practiced law, I never have seen a plea
2 agreement which prohibited such. I further
3 indicated that I could not speak to what the
4 Department of Corrections may do in those
5 situations, but certainly no plea agreement would
6 ever -- that I had ever seen, prohibited a defendant
7 from participating in such rehabilitation or
8 education or programs. It was I believe based upon
9 my conveyance of such, that that plea agreement was
10 subsequently introduced into evidence over the
11 objection, if I recall correctly, of Mr. Howle.

12 It was further testified to by Dr. Price
13 that the defendant could still have difficulties
14 making decisions, judgments, dealing with people
15 that didn't give him what he wanted. This was
16 alluded to where his testimony pursuant to
17 Mr. Finney's cross examination. Furthermore,
18 Dr. Price says he believed to a reasonable degree of
19 medical certainty, that the defendant could be a
20 productive member of society.

21 I asked Dr. Price specifically if at the
22 time of the offense and due to discussions by
23 Dr. Price of the effects of huffing, whether at the
24 time of the offense, he believed Jon Smart was
25 insane. That question was asked in part due to the

1 fact that voluntary intoxication is not a defense.
2 And he opined that the defendant at the time of the
3 offense was not insane.

4 The court further asked Dr. Price in going
5 to the rehabilitation issues, about the disciplinary
6 issues of the defendant while incarcerated. Dr.
7 Price responded to me referencing a cell phone issue
8 and maybe some tobacco. Pursuant to that response,
9 Mr. Finney questioned Dr. Price again. In that
10 question of Dr. Price, I gave -- after I questioned
11 Dr. Price, I gave Mr. Finney as well as Mr. Howle,
12 another opportunity to question Dr. Price, because I
13 felt like in fairness only due to some issues that I
14 may have brought up in my questioning, that they
15 should have an opportunity to follow up with any
16 questioning that they may want answered by
17 Dr. Price. But in any event, subsequent to my
18 questioning of Dr. Price, Mr. Finney questioned him
19 again. And during that questioning, the State
20 introduced what was then marked State's Exhibit
21 No. 1. In State's No. 1, was the classification
22 summary report on the defendant. Mr. Howle promptly
23 pointed out after Mr. Finney questions, Mr. Howle
24 was given another opportunity to question Dr. Price.
25 And he certainly pointed out the fact that there

1 were two types of disciplinaries. One being
2 assaultive, the other being non-assaultive. And
3 since the defendant Jon Smart has been incarcerated
4 approximately 15 years, he's only had four, four
5 assortive type of disciplinaries, the last of being
6 of which he was convicted was in 2008. And there
7 was one charge in 2015, which was dismissed. And
8 the court is not considering that. But there two in
9 2008, as well as two in 2007.

10 Separate and apart from the assaultive
11 violations while incarcerated, there were numerous
12 non-assaultive disciplinaries of the defendant
13 ranging from threatening to inflict harm to an
14 employee, failure to obey, escape tools, contraband,
15 possession or attempting to possess a cell phone,
16 use or possession of narcotics, marijuana,
17 unauthorized drug, or inhalant. Disrespect, under
18 the influence, damaging or destroying property.
19 Class I escape, solicit, attempts to solicit
20 employee to violate SCDC rules. Out of all of those
21 convictions while being incarcerated, the defendant
22 has had 7, 7 convictions. The most convictions for
23 use, possession of narcotics, marijuana,
24 unauthorized drug or inhalant. Not knowing what the
25 drug may or may not have been, the inhalant is

1 certainly within that category of what he claims
2 resulted in the killing of Tracy Pack.

3 Now understanding the defendant while
4 incarcerated, contrary to Dr. Price's belief,
5 without any evidence to the contrary, the defendant
6 has taken no efforts while incarcerated for
7 rehabilitation. While his IQ has certainly
8 increased, that's attributed from the failure or
9 lack of continuous accessibility to drugs while
10 incarcerated.

11 In addition, it wasn't until Mr. Finney
12 cross examined or questioned Dr. Price after I did,
13 and Dr. Price admits during the questioning by
14 Mr. Finney that there's some drug usage. And he
15 says one or two assaultive type behaviors. Which I
16 believe is what resulted in that document being
17 introduced into court. Having addressed, believing
18 this court has fully addressed each of the factors
19 as set forth in Aiken v. Byars, this court believes
20 that the appropriate conclusion in this matter is
21 that the defendant's motion to set aside his life
22 imprisonment sentence, be denied. Therefore, he is
23 to remain incarcerated for the balance of his
24 natural life.

25 Anything further from the defense counsel

1 at this time?

2 MR. HOWLE: Your Honor, I understand your
3 ruling. In going over the factors, as far as his
4 parents and referring to what they said, obviously,
5 they're not going to get in court and admit to using
6 drugs at home and everything else.

7 THE COURT: Huh?

8 MR. HOWLE: I think they were covering up
9 a lot of things there. But I think clearly between
10 his upbringing and exposure to drugs, his using
11 drugs and huffing, I think it really made the
12 ability to comprehend and the appreciate the risk of
13 what he was doing, just not there. And of course
14 that's been our position.

15 THE COURT: Well I understand, and
16 Dr. Price opined otherwise, that he appreciated the
17 risks and consequence -- risks. Where he
18 appreciated risks, and regardless of whether he was
19 huffing or not, the inability or the underdeveloped
20 portion of the frontal lobe of the brain at
21 16-year-old, recognizing that that is in every,
22 every 16-year-old. Not just Mr. Smart. It happened
23 to you, me, and everybody else that's ever had the
24 offense of murder. By his own choices of huffing,
25 tremendously impacted that.

1 MR. HOWLE: Your Honor,---

2 THE COURT: And his ability, it affected
3 his aggressiveness. That doesn't excuse what he
4 did.

5 MR. HOWLE: Your Honor, I fully agree with
6 that. The only thing is, with the huffing, in the
7 institute, they caught him huffing, and virtually
8 did nothing. After this happened, the victim's
9 family actually sued the facility, you knew he
10 huffed, and yet you put in a position where he had
11 access to gas and everything else. So obviously
12 maybe he wanted to huff, but they could have
13 prevented and they didn't. Which I think lead
14 directly to what happened.

15 THE COURT: And I don't disagree with you,
16 Mr. Howle, that more should have been done there. I
17 can't disagree with that. But I believe based upon
18 my review of the transcript from 2001, when he was
19 sentenced, in its entity, everyone in this courtroom
20 knows, I would venture to say everyone in this
21 courtroom probably knows, that whether it's alcohol,
22 drugs, legal or illegal, everyone knows that that
23 affects our abilities in some way, shape or form.
24 Most people have either seen first hand or been part
25 of it firsthand to know that the simply drinking of

1 alcohol affects our abilities, and makes us more
2 brave than anything, than we would be when you're
3 not under the influence of something.

4 I believe that the evidence in this case
5 throughout shows some plan from such as the comments
6 to his cell mate, to juvenile one and two at Rimini
7 Institute, to Smart's statement to law enforcement,
8 to Smart's two letters to Hutto while he was
9 incarcerated, that there was some albeit, not very
10 good, that there was some planning throughout here.
11 And that as a result of that planning, there was
12 some choices made by Mr. Smart in huffing gas, if in
13 fact he did that. Because he didn't say he even did
14 it the first time on that first statement that he
15 give to police. But if in fact he did it, that's
16 what gave him, if you want to call it courage, I
17 wouldn't say courage, but that's the word, to follow
18 through with the very act that's placed him in the
19 Department of Corrections.

20 And again, I'm looking at all of it. No
21 question, even if he had some drug issues. I've had
22 defendants tell me that I've represented, and I'm
23 sure you have as well, that when I practiced law,
24 saw where my clients of mine had gone to the
25 addictions treatment unit in the Department of

1 Corrections. And I've asked them, that thing didn't
2 do you any good. And you've probably had the same
3 type of response as I have. Most of them, a lot of
4 them say, that thing didn't do me any good. But
5 then I've had some that have said, they give you the
6 tools if you want to. We're not here certainly as
7 far as the treatment that he didn't get or did get,
8 I saw that. I understand what you're saying with
9 regards to parents, and you're exactly right. I
10 don't think any parent that's involved in the drug
11 scene, wherein their kids are going in the same
12 struggle, I think they would try to hide it. But I
13 have a hard time lining up, why would they even come
14 to court. Why would they even come to court, speak
15 on his behalf, tell Judge Jenkins and tell Judge
16 Cooper, he needs help. We need to get him help.
17 That doesn't to me, it doesn't line up.

18 I have got in essence two different lines
19 of testimonies as it relates to that family
20 background. Dr. Price, the only person Dr. Price
21 talked to, and correct me if I'm wrong, the only
22 person Dr. Price talked to and gathered information
23 from was Jon Smart. He reviewed now, voluminous
24 amounts of records. Over 2,000 pages. And I
25 remember that specifically. And I also asked

1 Dr. Price in his testimony, do you have in all of
2 the documents that you reviewed, I don't remember
3 specifically the question I asked. This may take me
4 a minute. Bear with me. In Dr. Price's testimony,
5 there were over 2,000 documents that he reviewed in
6 giving his opinion for me to look at, for the court
7 to look at, of which he brought no documents of any
8 kind.

9 And one of the last questions that I asked
10 whether or not he had appreciated the consequence of
11 his actions. In which Dr. Price says that he could
12 appreciate. And then he does say, talks about the
13 huffing and the aggressiveness. No question about
14 that. There are questions about, there are issues
15 pertaining to the failure for him to get certain
16 amounts of treatment. There's problems there. I
17 see that. But from the beginning of time, from the
18 beginning of time, in no civilized society, has
19 murder been acceptable. Under any circumstances.

20 In looking at all of this, his age,
21 immaturity, impetuosity, failure to appreciate risk
22 and consequences, his family and home environment,
23 the circumstances of the offense, his participation,
24 which there is no question, he committed a brutal
25 murder. Beating the defendant about his body,

1 crushing his skull. There was reference that they
2 that put chicken liter in the victim's mouth. I
3 didn't bring that up, because the autopsy. It was
4 pointed out that the autopsy report didn't say that,
5 so I discounted that. But the sheer, and I didn't
6 mention this before. It even says that the people
7 that did this were unbelievable in his words.

8 So the mere brutality of this murder at
9 the hands of Jon Smart, of which I have gone into
10 ad nauseam, addressing any incompetencies of which
11 there were none in my opinion, based upon everything
12 that was already said. The possibility of
13 rehabilitation, there is a possibility. There
14 always is a possibility. But there also
15 impossibilities in as well. And I think I have
16 addressed all of those issues, in trying to address
17 each one of those factors. Judge Cooper said this
18 when he sentenced Mr. Smart, albeit, it was a little
19 bit different then, because it was a negotiated life
20 sentence. We weren't looking at a negotiated life
21 sentence here today. I looked at everything. It's
22 a little bit easier, so to speak, when the judge
23 wants to negotiate, he can take it or not take it.
24 I have, and I told you and Mr. Finney, I was in my
25 office until nine o'clock or after last night,

1 looking at this.

2 I sent you all an e-mail Sunday evening
3 because I was my office working on this stuff, which
4 is not a decision that I have taken lightly, nor any
5 decision I make up here, do I take lightly. I have
6 methodically gone through each bit of information
7 that's been provided to me. And made what I believe
8 to be, not easy, not easy on my part, but made what
9 I believe to be the right decision in this case.

10 One of the hardest parts of my job, and I
11 know having done criminal defense work. But one of
12 hardest parts of my job, to see the terrible,
13 terrible decision that children make, young people
14 make. People in general make, that have tremendous
15 consequences on their lives. Tremendous. It is
16 with no pleasure at all that I affirm so to speak,
17 or deny your client's motion and impose a life
18 sentence. There's nothing more than I've told
19 countless defendants that have come in front of me,
20 I want to you to succeed. I want you to do the
21 right thing. But at the end of day, it's your
22 decision. At the end of day, albeit he was
23 16-years-old, it was his decision to huff gas. It
24 was his decision to pick up that pole, that 15 or
25 16-pound pole, and beat Tracy Pack to death. It was

1 his decision. I have taken all of these factors
2 into consideration, and I still believe it's the
3 right decision. Will I lose sleep over it, probably
4 so. Probably so. But I always wonder, a lot of
5 times you wonder whether or not you did the right
6 thing. These decisions aren't easy. Certainly I
7 have tried. And I have told you all, I typed my own
8 30-page transcript in my review of all this stuff.
9 And I've tried to hit on each of these points in
10 coming to this conclusion. Again that's not -- it
11 wasn't easy. But I have tried to address each of
12 those issues. Each of them. And I think I have.
13 If I haven't, I am sorry, but I tried to.

14 MR. HOWLE: Well, Your Honor, I understand
15 all that. But we would object to the sentence.
16 You mentioned the rehab part of not being in line.
17 But simply the solicitor did not prove that Jon is
18 incorrigible or non-redemption. And the sentence
19 itself was removed in the Akers case. The burden is
20 on the State to make that showing. And I don't
21 think that the lack of rehabilitating or
22 incorrigible or beyond redemption, was made by the
23 State. So that's one of the issues that I don't
24 think was met in those five factors.

25 THE COURT: Well I made a ruling. I

1 think I've addressed them all. Anything other than
2 that, Mr. Finney?

3 MR. FINNEY: No, Your Honor. Just that
4 the State does appreciate the analysis that you've
5 presented in giving us an opportunity to bring
6 everything back for a second time for a neutral
7 judge who has looked at it. And we appreciate your
8 ruling in the matter.

9 THE COURT: Thank you very much. We will
10 stand at ease. Certainly both, Mr. Howle will want
11 a copy of that transcript.

12 MR. HOWLE: Yes.

13 THE COURT: If you want to get an official
14 copy of the transcript and attach it to the order.
15 I don't know what you all do with that.

16 MR. FINNEY: I would be glad to order the
17 transcript and provide Mr. Howle a copy, so that
18 we'll both it. I guess Mr. Howle will have motions
19 as a result of this ruling today.

20 MR. HOWLE: Your Honor, I would seem---

21 THE COURT: But I'm not sure what the
22 Department of Corrections wants. Whether they just
23 want a paper order, or they want a resentencing sheet.
24 I don't know what they want. And I can get -- why
25 don't you call the Department of Corrections and

1 find out on these cases. And I could have asked the
2 other judges, they may have had these before, but I
3 don't know.

4 MR. FINNEY: Based on the fact that it's
5 motion, Your Honor, and based on the fact that
6 there's no change in the original sentence, I don't
7 think they will want anything.

8 THE COURT: What's your opinion?

9 MR. HOWLE: Without any further motions or
10 motion to appeal or anything, would not begin until
11 I actually had the order for the the transcript in
12 hand, and not from today.

13 MR. FINNEY: I don't think that's the
14 rule.

15 MR. HOWLE: Well there's a lot of things
16 that you've said today, I need to look at the record
17 to see that.

18 MR. FINNEY: I understand that. But I
19 think you've got 10 days.

20 THE COURT: You've still got to file your
21 notice of appeal.

22 MR. HOWLE: Okay, we'll file that.

23 THE COURT: And request it officially by
24 rules, request a transcript.

25 MR. HOWLE: We will.

1 THE COURT: You've got a certain amount of
2 time to file your brief. And if you're not getting
3 the transcript, which I know Ms. Margaret will get
4 it to. But if you're not getting that, then you
5 would request additional time to file your brief and
6 set those parameters.

7 MR. HOWLE: Yes, sir.

8 MR. FINNEY: I will include you and
9 Mr. Howle on an e-mail to the Department of
10 Corrections legal office, advising them of what
11 action has been taken, and seeking if they have need
12 of anything.

13 THE COURT: Okay. Very well, thank you.

14 -----End of Transcript of Record-----
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in General Sessions Court, on June 19th-21st 2017, in Sumter County, Sumter, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

8/16/17

Margaret T. Sullivan

DATE

COURT REPORTER

My Commission expires: 9/7/21

401
DOCKET NO. 2000-GS-14-356

WITNESSES

CLARENDON COUNTY SHERIFF'S OFFICE

Brabham

Richardson

Nelson

COURT OF GENERAL SESSIONS

DECEMBER

TERM 2000

THE STATE

vs.

STEPHEN HUTTO

JON SMART

ARREST WARRANT NO. G057867

G057868 (1 & 4); G057937

G057936 (2); G057870, G057869 (3);

G057935, G057934 (5)

ACTION OF GRAND JURY

True Bill 12-7-00

Ethel Bennett

Foreman of Grand Jury

VERDICT

Indictment for

MURDER, ARMED ROBBERY,
GRAND LARCENY OF MOTOR VEHICLE,
CRIMINAL CONSPIRACY AND ESCAPE

Foreman of Petit Jury

Date:

Sep. 19. 2017 10:25AM

No. 6239 P. 9

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)

INDICTMENT FOR
 MURDER, ARMED ROBBERY, GRAND LARCENY OF
 MOTOR VEHICLE, CRIMINAL CONSPIRACY AND
 AND ESCAPE

At a Court of General Sessions, convened on December 11, 2000,
 the Grand Jurors of Clarendon County present upon their oath:

COUNT ONE - MURDER

That STEPHEN HUTTO AND JON SMART did in Clarendon County on or about August 12, 1999, feloniously, wilfully and with malice aforethought, kill one Tracy Pack by means of beating him with a lead pipe, and that the said Tracy Pack did die as a proximate result thereof.

COUNT TWO - ARMED ROBBERY

That STEPHEN HUTTO AND JON SMART did in Clarendon County on or about August 12, 1999, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a lead pipe, did feloniously take from the person in the presence of Tracy Pack, by means of force or intimidation goods or monies of the said Tracy Pack, such goods or monies being described: beeper and other personal items.

COUNT THREE - GRAND LARCENY OF MOTOR VEHICLE

That STEPHEN HUTTO AND JON SMART did in Clarendon County on or about August 12, 1999, feloniously take and carry away the personal property, to-wit: a 1994 Nissan truck, of another, to-wit: Tracy Pack, of the value of more than five thousand dollars, with intent to deprive the owner thereof permanently of such property.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

C. Kelly Jackson
 SOLICITOR

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ARMED ROBBERY, GRAND LARCENY OF MOTOR VEHICLE, CRIMINAL CONSPIRACY AND ESCAPE WITH THE AFORESAID NAMES OF STEPHEN HUTTO AND JON SMART SHOWN THEREON:

COUNT FOUR - CRIMINAL CONSPIRACY

That STEPHEN HUTTO AND JON SMART did in Clarendon County on or about August 12, 1999, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully, wilfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of murder, armed robbery, grand larceny motor vehicle and/or escape.

COUNT FIVE - ESCAPE

That STEPHEN HUTTO AND JON SMART did in Clarendon County on or about August 12, 1999, violate Section 24-13-410 of the Code of Laws of South Carolina (1976), as amended, in that the said STEPHEN HUTTO AND JON SMART were in lawful custody and under the control of Rimini Marine Institute, a correctional institute of the State of South Carolina, and did escape and were re-captured.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

P. Kelly Jackson

SOLICITOR

404

STATE OF SOUTH CAROLINA

COUNTY OF ClarendonSTATE VS.Jon Smart

AKA: _____

Race: W Sex: M Age: 18DOB: [REDACTED] SS#: [REDACTED]

Address: _____

DL# _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2000 -GS- 14 - 356A/W#: C-057868Date of Offense: 8-12-99S.C. Code §: 16-13-10CDR Code #: 0 1 1 1 1 6☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Murderin violation of § 16-13-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

P. Kelly Johnson
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ Imprisonment, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for _____ days/months jail time. Since 8/13/99
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/9/01

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

\$14-1-206 (Assessments 100%).....\$ _____

\$14-1-211(A)(1) (Surcharge).....\$ 100.00

\$14-1-211(A)(2) (Surcharge).....\$ _____

\$56-5-2995 (DUI Assessment).....\$ _____

3% to County (if paid in installments)....\$ 3.00TOTAL.....\$ 103.00Robert
Clerk of Court Deputy ClerkCourt Reporter: Simmons

2 No. 6239-P-0

Green - Corrections

Canary - Probation

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: ATU / Mental Health CounselingPlea accepted on 5/25/2001 - Sentencewithheld until later date. Judge Hoodto hold jurisdiction of case.PRESIDING JUDGE [Signature]Judge Code: 0 0 5 1 4Sentence Date: 8/9/2001

Pink 10:24AM 19.2017 1024

STATE OF SOUTH CAROLINA

COUNTY OF Clarendon
 STATE VS.
Jon P. Smart
 AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Greenville, SC 29609
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2000-GS-14-0356
 A/W#: G057868
 Date of Offense: 8/12/1999
 S.C. Code §: 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ARREST 2019 SC Bar# 2727 Defendant Jon P. Smart Attorney for Defendant D. C. [Signature]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center
 for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5%) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 61.6 (Public Def/Probation) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ _____
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/cn \$ _____
 3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk: Berish B. Roberts

Court Reporter: Margaret Sullivan

SCCA/217 (07/2016)

Presiding Judge D. C. [Signature]

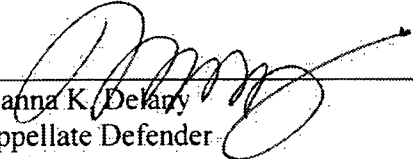
Judge Code: 216

Sentence Date: August 10, 2019

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR APPELLANT

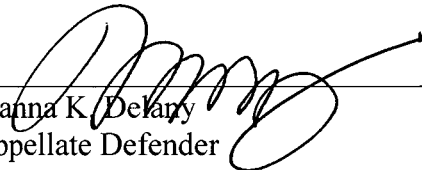
This 3rd day of December, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED
DEC 03 2018
SC Court of Appeals

Respectfully Submitted,


Joanna K. Delany
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 3rd day of December, 2018.