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STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY

Deadra L. Jefferson, Circuit Court Judge

ORIGINAL

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

STEPHEN C. STANKO,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Chief Attorney

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorneys for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit
Post Office Box 1276
1301 2nd Ave.
Conway, SC 29528-1276
(843) 915-5460

Attorneys for Respondent

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1 THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY
2 POSSIBLE DOUBT.

3 IF BASED ON YOUR CONSIDERATION OF THE EVIDENCE
4 YOU ARE FIRMLY CONVINCED THAT THE STATE HAS MET THEIR
5 BURDEN OF PROOF, YOU MAY FIND AN AGGRAVATING
6 CIRCUMSTANCE OR CIRCUMSTANCES.

7 IF ON THE OTHER HAND YOU THINK THERE IS A REAL
8 POSSIBILITY THAT THE STATE HAS NOT MET THEIR BURDEN
9 OF PROOF -- MET THEIR BURDEN OF PROOF, YOU MUST GIVE
10 THE DEFENDANT THE BENEFIT OF THAT DOUBT.

11 AND LADIES AND GENTLEMEN, I FURTHER INSTRUCT YOU
12 AND I ASK THAT YOU PAY CAREFUL ATTENTION OR
13 PARTICULAR ATTENTION TO THIS INSTRUCTION.

14 YOU ARE NEVER REQUIRED TO RECOMMEND THE DEATH
15 PENALTY EVEN IF YOU FIND THAT A STATUTORY AGGRAVATING
16 CIRCUMSTANCE OR CIRCUMSTANCES EXISTED AT THE TIME THE
17 OFFENSE OCCURRED.

18 HOWEVER, IF YOU FIND THE EXISTENCE OF A
19 STATUTORY AGGRAVATING CIRCUMSTANCE, PLEASE LIST THAT
20 CIRCUMSTANCE ON THE FORM ENTITLED, AGGRAVATING
21 CIRCUMSTANCES.

22 AND AGAIN, THIS FORM WILL GO INTO THE JURY ROOM
23 WITH YOU, AND IT INDICATES, WE THE JURY IN THE
24 ABOVE-ENTITLED CASE FIND BEYOND A REASONABLE DOUBT
25 THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCE, AND

1 I HAVE A PARENTHESIS WHICH MEANS CIRCUMSTANCE OR
2 CIRCUMSTANCES.

3 AND AGAIN, BY STATUTE THAT REQUIRES THAT THE
4 FOREPERSON AND ALL 12 JURORS SIGN THIS FORM. AND
5 THERE IS A PLACE FOR EACH OF YOU TO SIGN.

6 AND AGAIN, AS I HAVE INDICATED, IF YOU FIND THE
7 EXISTENCE OF A STATUTORY AGGRAVATING CIRCUMSTANCE,
8 PLEASE LIST THAT CIRCUMSTANCE ON THE FORM, AGAIN, AS
9 I HAVE CALLED IT, AGGRAVATING CIRCUMSTANCES. AND
10 AGAIN, ALL 12 MUST SIGN THIS FORM.

11 I INSTRUCT YOU FURTHER THAT SHOULD YOU FIND THE
12 STATE HAS NOT PROVEN THAT AN AGGRAVATING CIRCUMSTANCE
13 EXISTED, THAT IS TO SAY YOU FIND THAT YOU STILL HAVE
14 A REASONABLE DOUBT AS TO THE EXISTENCE OF SUCH A
15 CIRCUMSTANCE, THEN YOU WOULD NOT BE AUTHORIZED TO
16 RECOMMEND THE DEATH PENALTY AND YOUR RECOMMENDATION
17 MUST BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
18 PAROLE.

19 NOW, SHOULD YOU FIND BEYOND A REASONABLE DOUBT
20 THAT ONE OF THE AGGRAVATING CIRCUMSTANCES LISTED ON
21 THE SHEET OF STATUTORY INSTRUCTIONS EXISTED AT THE
22 TIME OF THE MURDER AND SHOULD YOU THEN DECIDE AFTER
23 CONSIDERING THE ELEMENTS IN FAVOR OF A RECOMMENDATION
24 OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
25 PAROLE, ABOUT WHICH I WILL INSTRUCT YOU LATER, THAT

1 THE RECOMMENDATION OF THE JURY IS TO BE THAT THE
2 DEFENDANT IS -- THAT THE DEFENDANT BE SENTENCED TO
3 DEATH, THEN IT WOULD BE YOUR DUTY, MADAM FOREPERSON,
4 TO WRITE ON THE RECOMMENDATION OF THE SENTENCE
5 FORM -- AND AGAIN, THAT IS THE FIRST FORM THAT I
6 REFERRED TO -- AND AGAIN, THIS WILL GO BACK INTO THE
7 JURY ROOM WITH YOU -- IT WILL BE YOUR RESPONSIBILITY
8 TO WRITE ON THE RECOMMENDATION OF SENTENCE FORM THE
9 STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES
10 WHICH THE JURY HAS FOUND.

11 THEN, MADAM FOREPERSON, YOU WOULD -- EACH AND
12 EVERY ONE OF THE JURORS WOULD SIGN YOUR NAMES IN THE
13 PLACES PROVIDED.

14 LADIES AND GENTLEMEN, BY THE FORM THAT I NOW
15 HOLD IN MY HAND WHICH IS ENTITLED, RECOMMENDATION OF
16 SENTENCE OF LIFE IMPRISONMENT -- AND AGAIN, THESE
17 FORMS WILL GO BACK INTO THE JURY ROOM WITH YOU -- YOU
18 CAN RECOMMEND TO THIS COURT THAT THE DEFENDANT BE
19 SENTENCED TO LIFE IMPRISONMENT WITHOUT THE
20 POSSIBILITY OF PAROLE.

21 AND I WILL READ TO YOU THE TEXT OF THAT FORM.
22 WE, THE JURY, IN THE ABOVE-ENTITLED CASE RECOMMEND TO
23 THE COURT THAT THE DEFENDANT, STEPHEN CHRISTOPHER
24 STANKO, BE SENTENCED TO LIFE IMPRISONMENT.

25 AND AGAIN, AS I'VE INDICATED, I'VE USED THE

1 TERMS LIFE IMPRISONMENT AND LIFE IMPRISONMENT WITHOUT
2 THE POSSIBILITY OF PAROLE INTERCHANGEABLY BECAUSE
3 THEY MEAN THE SAME THING.

4 I DID NOT WANT THE WAY IT'S LISTED ON THE
5 VERDICT FORM TO CAUSE ANY CONFUSION, AND SO I PROVIDE
6 YOU WITH THAT ADDITIONAL CLARIFICATION.

7 PLEASE NOTE THAT ALTHOUGH YOU MUST UNANIMOUSLY
8 AGREE TO RECOMMEND LIFE IMPRISONMENT, ONLY THE
9 FOREPERSON IS REQUIRED TO SIGN THIS RECOMMENDATION
10 FORM.

11 I WILL NOW INSTRUCT YOU ON WHAT YOU MAY CONSIDER
12 IN MAKING YOUR DECISION AS TO WHICH SENTENCE TO
13 RECOMMEND.

14 AS I PREVIOUSLY INSTRUCTED, IF YOU FIND THE
15 EXISTENCE BEYOND A REASONABLE DOUBT OF A STATUTORY
16 AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES, THEN YOU
17 ARE PERMITTED BUT NOT REQUIRED TO RECOMMEND THE DEATH
18 PENALTY.

19 THERE ARE THREE CONDITIONS WHICH YOU SHOULD
20 CONSIDER IN REACHING YOUR DECISION.

21 FIRST, WHETHER THE EXISTENCE OF A STATUTORY
22 MITIGATING CIRCUMSTANCE WAS SUPPORTED BY THE
23 EVIDENCE.

24 SECOND, WHETHER THE EXISTENCE OF ANY OTHER
25 NON-STATUTORY MITIGATING CIRCUMSTANCE WAS SUPPORTED

1 BY THE EVIDENCE.

2 AND THIRD, WHETHER FOR ANY REASON YOU CAN THINK
3 OF OR FOR NO REASON AT ALL THE DEFENDANT SHOULD BE
4 SENTENCED TO LIFE IMPRISONMENT WITHOUT THE
5 POSSIBILITY OF PAROLE.

6 WHAT IS A STATUTORY MITIGATING CIRCUMSTANCE? IT
7 IS A FACT, AN INCIDENT, A DETAIL, OR AN OCCURRENCE
8 WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY HAS
9 DECLARED BY STATUTE WOULD REDUCE THE SEVERITY OF THE
10 OFFENSE OF MURDER.

11 IN OTHER WORDS, IT IS A CIRCUMSTANCE RECOGNIZED
12 BY STATUTE AS ONE WHICH IN FAIRNESS AND MERCY MAY BE
13 CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE
14 OF MORAL CULPABILITY OR THE COMMISSION OF THE ACT OF
15 MURDER.

16 A MITIGATING CIRCUMSTANCE IS NEITHER
17 JUSTIFICATION NOR EXCUSE FOR THE MURDER. IT SIMPLY
18 LESSENS THE DEGREE OF ONE'S GUILT. THAT IS, MAKES
19 HIM LESS BLAMEWORTHY OR LESS CULPABLE.

20 WHAT STATUTORY MITIGATING CIRCUMSTANCES SHOULD
21 YOU CONSIDER IN THIS CASE? AGAIN, I AM MAKING
22 REFERENCE TO THE FORM THAT IS CALLED STATUTORY
23 INSTRUCTIONS.

24 IMMEDIATELY BELOW THE LISTING OF STATUTORY
25 AGGRAVATING CIRCUMSTANCES, WHICH I HAVE ALREADY READ

1 TO YOU, WILL BE THE FOLLOWING TEXT. YOU MAY ALSO
2 CONSIDER THE FOLLOWING MITIGATING CIRCUMSTANCES.

3 THE MURDER WAS COMMITTED WHILE THE DEFENDANT WAS
4 UNDER THE INFLUENCE OF MENTAL OR EMOTIONAL
5 DISTURBANCE. THE CAPACITY OF THE DEFENDANT TO
6 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO
7 CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS
8 SUBSTANTIALLY IMPAIRED.

9 AND IT ALSO STATES YOU MAY ALSO CONSIDER ANY
10 NON-STATUTORY MITIGATING CIRCUMSTANCE. A
11 NON-STATUTORY MITIGATING CIRCUMSTANCE IS ONE WHICH IS
12 NOT PROVIDED FOR BY STATUTE, BUT IT IS ONE WHICH THE
13 DEFENDANT CLAIMS SERVES THE SAME PURPOSE, THAT IS, TO
14 REDUCE THE DEGREE OF HIS GUILT IN THE OFFENSE.

15 WHILE THERE MUST BE SOME EVIDENCE WHICH SUPPORTS
16 A FINDING BY YOU THAT A STATUTORY OR NON-STATUTORY
17 MITIGATING CIRCUMSTANCE EXISTS, IT IS NOT NECESSARY
18 FOR YOU TO FIND THE EXISTENCE OF SUCH A CIRCUMSTANCE
19 UNANIMOUSLY NOR BEYOND A REASONABLE DOUBT.

20 IT IS FOR YOU, THE JURY, TO DETERMINE WHETHER
21 THE MITIGATING FACTOR OR FACTORS EXIST, AND IF SO,
22 THE SIGNIFICANCE TO BE AFFORDED TO SUCH EVIDENCE AND
23 EACH MITIGATING FACTOR.

24 THE DEFENDANT HAS NO BURDEN OF PROOF BY WHICH HE
25 MUST PROVE HIS STATUTORY OR NON-STATUTORY MITIGATING

1 CIRCUMSTANCES.

2 THE ONLY ARTICULATED BURDEN OF PROOF IN THIS
3 PHASE OF THE TRIAL IS UPON THE STATE TO PROVE BEYOND
4 A REASONABLE DOUBT THE EXISTENCE OF AN AGGRAVATING
5 CIRCUMSTANCE OR CIRCUMSTANCES.

6 IN REACHING YOUR DECISION AS TO WHICH SENTENCE
7 TO RECOMMEND YOU WILL CONSIDER THE AGGRAVATING AND
8 MITIGATING CIRCUMSTANCES.

9 WHILE AN AGGRAVATING CIRCUMSTANCE MUST BE FOUND
10 BEFORE YOU CAN EVEN CONSIDER RECOMMENDING THE DEATH
11 PENALTY, ONCE SUCH A FINDING IS MADE BEYOND A
12 REASONABLE DOUBT, YOU MAY RECOMMEND THE DEATH
13 SENTENCE EVEN THOUGH YOU FIND THE EXISTENCE OF A
14 STATUTORY MITIGATING CIRCUMSTANCE OR A NON-STATUTORY
15 MITIGATING CIRCUMSTANCE OR BOTH.

16 IN OTHER WORDS, THE EXISTENCE OF AN ALLEGED
17 STATUTORY MITIGATING CIRCUMSTANCE AND ALLEGED
18 NON-STATUTORY MITIGATING CIRCUMSTANCE OR BOTH IS NOT
19 A BAR TO THE IMPOSITION OF THE DEATH PENALTY.

20 THE THIRD ELEMENT YOU MAY CONSIDER IF YOU SHOULD
21 CONCLUDE THAT A STATUTORY AGGRAVATING CIRCUMSTANCE OR
22 CIRCUMSTANCES EXIST IS WHETHER THE DEFENDANT SHOULD
23 BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE
24 POSSIBILITY OF PAROLE FOR ANY REASON OR FOR NO REASON
25 AT ALL.

1 THIS IS WHAT HAS BEEN TRADITIONALLY REFERRED TO
2 AS A RECOMMENDATION OF MERCY. AND SHOULD SUCH BE
3 YOUR DECISION, YOU WOULD SO INDICATE BY RETURNING TO
4 THE COURT THE RECOMMENDATION OF LIFE IMPRISONMENT
5 FORM WHICH WILL BE SIGNED BY THE FOREPERSON ALONE.

6 IN OTHER WORDS, YOU MAY CHOOSE TO RECOMMEND LIFE
7 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE IF YOU
8 FIND A STATUTORY OR NON-STATUTORY MITIGATING
9 CIRCUMSTANCE OR YOU MAY CHOOSE TO RECOMMEND LIFE
10 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AS AN
11 ACT OF MERCY.

12 IN ANY INSTANCE, SHOULD YOU CHOOSE TO RECOMMEND
13 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE,
14 YOUR DECISION MUST BE A UNANIMOUS ONE, AND THE
15 FOREPERSON ALONE WOULD BE REQUIRED TO SIGN THE
16 APPLICABLE RECOMMENDATION FORM.

17 LADIES AND GENTLEMEN, I WILL NOW SUMMARIZE WHAT
18 I'VE JUST TOLD YOU. YOU WILL HAVE IN THE JURY ROOM
19 DURING YOUR DELIBERATIONS FIVE DIFFERENT FORMS.

20 YOU WILL HAVE A RECOMMENDATION OF LIFE
21 IMPRISONMENT FORM, A RECOMMENDATION OF SENTENCE OF
22 DEATH PENALTY FORM, YOU WILL HAVE THE STATUTORY
23 INSTRUCTIONS, YOU WILL HAVE A FORM FOR FINDING OF
24 AGGRAVATING CIRCUMSTANCES, AND YOU WILL ALSO HAVE A
25 FORM THAT READS, WE THE JURY IN THE ABOVE-ENTITLED

1 CASE ARE UNABLE TO UNANIMOUSLY AGREE ON THE EXISTENCE
2 OF ANY AGGRAVATING CIRCUMSTANCES.

3 SO THAT YOU ALSO HAVE THAT APPLICABLE IF THAT IS
4 IN FACT APPLICABLE DURING YOUR DELIBERATIONS.

5 THE STATUTORY INSTRUCTIONS STATE THE ONLY
6 AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES YOU SHALL
7 CONSIDER IN THIS CASE.

8 SHOULD YOU FAIL TO FIND BEYOND A REASONABLE
9 DOUBT THAT ONE OF THESE CIRCUMSTANCES EXISTED AT THE
10 TIME THE MURDER WAS COMMITTED, THEN YOU WOULD GO NO
11 FURTHER. YOUR RECOMMENDATION MUST BE FOR LIFE
12 IMPRISONMENT.

13 SHOULD YOU FIND BEYOND A REASONABLE DOUBT THE
14 EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE OR
15 CIRCUMSTANCES, YOU WOULD THEN BE AUTHORIZED TO
16 CONSIDER RECOMMENDING THE DEATH PENALTY.

17 IN YOUR DELIBERATIONS YOU WILL CONSIDER ANY
18 STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCE
19 WHICH -- OR CIRCUMSTANCES -- WHICH ARE SUPPORTED BY
20 THE EVIDENCE.

21 YOU WILL CONSIDER THE AGGRAVATING CIRCUMSTANCE
22 OR CIRCUMSTANCES YOU FOUND AND THE MITIGATING
23 CIRCUMSTANCES AND YOU WILL THEN DECIDE WHETHER YOU
24 WILL RECOMMEND THE DEATH PENALTY OR LIFE IMPRISONMENT
25 WITHOUT THE POSSIBILITY OF PAROLE.

1 YOU MAY ALSO CONSIDER ANY OTHER FACTOR IN
2 MITIGATION OF THE OFFENSE AND YOU CAN RECOMMEND THE
3 SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
4 OF PAROLE FOR NO REASON AT ALL.

5 IF YOU DECIDE TO RECOMMEND THE DEATH PENALTY,
6 YOU WILL COMPLETE THE PROPER FORM. YOU MUST WRITE
7 OUT THE AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES
8 THAT YOU HAVE FOUND AND ALL 12 JURORS MUST SIGN THE
9 RECOMMENDATION.

10 SHOULD YOU DECIDE TO RECOMMEND LIFE IMPRISONMENT
11 WITHOUT THE POSSIBILITY OF PAROLE, ONLY THE
12 FOREPERSON MUST SIGN THE RECOMMENDATION AND NO REASON
13 IS TO BE GIVEN FOR YOUR DECISION.

14 WHATEVER YOUR RECOMMENDATION IS, IT MUST BE A
15 UNANIMOUS ONE. THAT MEANS THAT ALL 12 OF YOU MUST
16 AGREE ON THE VERDICT.

17 PLEASE REMEMBER, AND I EMPHASIZE, THAT YOUR
18 SENTENCING RECOMMENDATION WILL BE FOLLOWED BY THIS
19 COURT.

20 I FURTHER INSTRUCT YOU THAT IF YOU SENTENCE THE
21 DEFENDANT -- IF YOU SENTENCE THE DEFENDANT TO DEATH,
22 YOU MUST ASSUME THAT THE SENTENCE WILL BE FOLLOWED BY
23 THIS COURT.

24 IF A RECOMMENDATION OF DEATH IS NOT MADE, THE
25 DEFENDANT SHALL BE SENTENCED TO LIFE IMPRISONMENT

1 WITHOUT THE POSSIBILITY OF PAROLE.

2 LADIES AND GENTLEMEN, IN CONSIDERING WHETHER TO
3 RECOMMEND WHETHER THE DEFENDANT IS TO BE SENTENCED TO
4 DEATH OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
5 PAROLE, I CHARGE YOU THAT AS JURORS YOU MUST DECIDE
6 THIS ISSUE INVOLVED IN THIS PROCEEDING WITHOUT BIAS
7 AND WITHOUT PREJUDICE TO ANY PARTY.

8 YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL
9 JURORS SWORN TO IMPARTIALLY TRY AND DETERMINE THE
10 FACTS OF THIS CASE. AND WHEN YOU COMPLY WITH YOUR
11 OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO
12 CRITICIZE YOUR VERDICT AND YOU WILL HAVE FULLY
13 DISCHARGED YOUR DUTY AS JURORS IN THIS CASE.

14 YOU ARE TO DECIDE THIS CASE ACCORDING TO THE
15 TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF SWORN
16 WITNESSES ALONG WITH THE OTHER EVIDENCE THAT HAS BEEN
17 INTRODUCED.

18 I INSTRUCT YOU THAT AS JURORS YOU MUST DECIDE
19 THE ISSUES IN THIS PROCEEDING WITHOUT BIAS AND
20 WITHOUT PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW
21 YOURSELF TO BE GOVERNED BY SYMPATHY, BY PREJUDICE, BY
22 PASSION, BY PUBLIC OPINION, OR ANY OTHER ARBITRARY
23 FACTOR.

24 BOTH THE STATE AND THE DEFENSE HAVE THE RIGHT TO
25 EXPECT THAT EACH OF YOU WILL CAREFULLY AND

1 IMPARTIALLY CONSIDER ALL OF THE EVIDENCE IN THIS CASE
2 AND THAT YOU WILL FOLLOW THE LAW AS I HAVE EXPLAINED
3 IT TO YOU.

4 AT THIS TIME, LADIES AND GENTLEMEN, I AM GOING
5 TO ASK THAT THE ALTERNATE JURORS WOULD COME FORWARD
6 TO BE SEPARATED BY THEIR CUSTODIANS. YOU CAN LEAVE
7 THOSE IN YOUR SEATS FOR ME.

8 (ALTERNATE JURORS LEFT THE COURTROOM.)

9 THE COURT: AND LADIES AND GENTLEMEN, I'M GOING
10 TO SEND YOU TO YOUR JURY ROOM, BUT I'M GOING TO
11 INSTRUCT THAT YOU NOT YET BEGIN YOUR DELIBERATIONS.
12 THERE ARE SOME MATTERS OF LAW THAT I NEED TO TAKE UP
13 WITH THE ATTORNEYS THAT MAY REQUIRE FURTHER
14 INSTRUCTION OR CLARIFICATION OF AN INSTRUCTION.

15 HOWEVER, IF THERE ARE NO FURTHER MATTERS THAT I
16 NEED TO INSTRUCT, THE EVIDENCE WILL BE SENT IN ALONG
17 WITH THE VERDICT FORMS AS WELL AS YOUR NOTEPADS, AND
18 AT THAT TIME YOU WILL BE INSTRUCTED THAT YOU CAN
19 BEGIN YOUR DELIBERATIONS.

20 I ANTICIPATE, HOWEVER, THAT WE WILL LET YOU HAVE
21 YOUR LUNCH BEFORE YOU DO THAT. SO I WOULD ASK THAT
22 YOU FOLLOW THOSE INSTRUCTIONS AND YOU GO WITH YOUR
23 CUSTODIANS.

24 (JURY LEFT THE COURTROOM AT 1:47 PM.)

25 THE COURT: YOU MAY BE SEATED. ANY EXCEPTIONS

1 FROM THE STATE?

2 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

3 THE COURT: ANY EXCEPTIONS FROM THE DEFENSE?

4 MR. DIGGS: NO, YOUR HONOR, NOTHING BEYOND WHAT
5 WE HAVE ALREADY STATED.

6 THE COURT: COULD YOU ALL PLEASE GO THROUGH THE
7 EVIDENCE FOR ME AND MAKE SURE THAT IT IS INTACT.

8 MR. HUMPHRIES: WE HAVE, YOUR HONOR.

9 THE COURT: Y'ALL HAVE ALREADY? MR. DIGGS, YOU
10 HAVE ALSO--

11 MR. DIGGS: YES, YOUR HONOR.

12 THE COURT: -- SO THAT WE CAN SEND THAT ON BACK
13 TO THE JURY AS WELL AS THE FORMS. THESE FORMS NEED
14 TO BE GIVEN TO THE JURY -- DO YOU ALL NEED ASSISTANCE
15 IN CARRYING THE EVIDENCE? OKAY.

16 AND THEN I NEED FOR YOU ALL TO SEPARATE -- GO
17 AHEAD AND COLLECT THE JURY'S NOTEPADS FOR ME. DO
18 THAT FIRST. DO NOT COLLECT THE ALTERNATES' NOTEPADS
19 BECAUSE I DON'T WANT THOSE MIXED IN.

20 AND WE ALSO NEED GLOVES FOR THEM IN CASE THEY
21 WANT TO HANDLE SOME OF THOSE ITEMS. YOU CAN GO AHEAD
22 AND TAKE THEM THEIR NOTEPADS, THEN WE'LL TAKE THE
23 ALTERNATES THEIR NOTEPADS.

24 (WHEREUPON THERE WAS A PAUSE.)

25 THE COURT: OKAY. HAS ALL THE EVIDENCE BEEN

1 TAKEN BACK TO THE JURY? EVERYTHING?

2 MR. HUMPHRIES: I BELIEVE SO, YOUR HONOR.

3 THE COURT: ALL RIGHT. THE RECORD SHOULD
4 REFLECT THE JURY IS BEGINNING THEIR DELIBERATIONS AT
5 1:51. MADAM CLERK, IF YOU COULD HAVE THEIR
6 CUSTODIANS ARRANGE FOR THEM TO TAKE CARE OF THEIR
7 LUNCH, AND THEY CAN EAT AND DELIBERATE IF THEY WOULD
8 LIKE. THERE'S NOTHING THAT PROHIBITS THAT.

9 (JURY BEGAN DELIBERATIONS AT 1:51 PM.)

10 THE COURT: I DON'T KNOW WHETHER Y'ALL WANT TO
11 DISCUSS WITH PROBATION DEPENDING UPON WHAT THE
12 VERDICT IS WHETHER THEY WANT TO DISMISS HIS COMMUNITY
13 SUPERVISION VIOLATION WARRANT OR WHETHER Y'ALL WANT
14 TO DEAL WITH IT NOW SO THAT ALL OF IT CAN BE DEALT
15 WITH AT ONE TIME.

16 AND I DON'T KNOW IF YOU ALL -- I MEANT TO ASK
17 YOU THAT YESTERDAY SO YOU CAN DISCUSS IT WITH HIM.
18 BUT I SUSPECT PROBATION MAY SIMPLY WANT TO DISMISS
19 IT, AND THEY CAN DO THAT ADMINISTRATIVELY WITHOUT THE
20 COURT'S INVOLVEMENT.

21 BUT YOU MAY WANT TO GO AHEAD AND DEAL WITH THAT
22 NOW SO THAT THEY DON'T HAVE TO BE TRANSPORTING HIM
23 BACK FROM THE DEPARTMENT OF CORRECTIONS.

24 MR. DIGGS: ALL RIGHT.

25 THE COURT: AND THAT IT JUST -- AND REALLY,

1 FRANKLY, IN ALL LIKELIHOOD THEY PROBABLY WON'T
2 TRANSPORT HIM. IT WILL JUST ALWAYS BE LINGERING OUT
3 THERE SOMEWHERE IN HIS RECORD AND IT WILL JUST NEVER
4 BE DEALT WITH.

5 AND SO I FELT IN TERMS OF JUST WHAT WAS IN HIS
6 BEST INTEREST AND MOST EFFICIENTLY, WE PROBABLY
7 NEEDED TO GO AHEAD AND TALK ABOUT HOW YOU WANTED TO
8 DO IT.

9 MR. DIGGS: ALL RIGHT. DO THAT AFTER LUNCH?

10 THE COURT: OH, YEAH. THERE'S NO HARM. I JUST
11 WANTED TO BRING IT TO YOUR ATTENTION BECAUSE YOU MAY
12 WANT TO CALL MRS. WILSON WHO I BELIEVE IS HIS
13 SUPERVISING AGENT, AND SHE MAY WELL JUST WANT TO
14 DISMISS THAT WARRANT. I MEAN...

15 MR. DIGGS: WE'LL CHECK.

16 THE COURT: I MEAN, THEY JUST MAY WANT TO
17 TERMINATE HIS COMMUNITY SUPERVISION, AND THEY CAN DO
18 THAT ADMINISTRATIVELY.

19 MR. DIGGS: THANK YOU, YOUR HONOR.

20 THE COURT: YOU'RE WELCOME.

21 (WHEREUPON COURT WAS IN RECESS AWAITING WORD
22 FROM THE JURY.)

23 THE COURT: I HAVE BEEN ADVISED THAT THE JURY
24 HAS REACHED A VERDICT. IS THERE ANYTHING BEFORE WE
25 PROCEED WITH RECEIVING THE JURY'S VERDICT?

1 MR. HEMBREE: YES, YOUR HONOR. I DO HAVE ONE
2 ADMINISTRATIVE MATTER I WOULD LIKE TO CONCLUDE BEFORE
3 THE JURY RETURNS.

4 THE COURT: YOU MAY PROCEED.

5 MR. HEMBREE: THANK YOU, YOUR HONOR. FOR
6 PURPOSES OF THE RECORD, YOUR HONOR, LET THE RECORD
7 REFLECT I AM NOW SERVING UPON COUNSEL FOR THE
8 DEFENDANT AND THE DEFENDANT THE STATE'S NOTICE OF
9 INTENTION TO SEEK THE DEATH PENALTY IN THE MURDER AND
10 ARMED ROBBERY OF HENRY TURNER THAT OCCURRED ON OR
11 ABOUT APRIL 8TH, 2005.

12 THE COURT: LET THE RECORD SO INDICATE. IS
13 THERE ANYTHING FROM THE DEFENSE IN REGARDS TO THAT
14 MATTER?

15 MR. DIGGS: NO, YOUR HONOR, NOT AT THIS TIME.

16 THE COURT: DO WE NEED TO WAIT FOR MR. KELLY?
17 OKAY. I WANTED TO MAKE SURE. I DID NOT WANT TO
18 PROCEED WITHOUT HIM. I KNOW HE'S... NEED A LITTLE
19 TIME.

20 (WHEREUPON THERE WAS A PAUSE).

21 THE COURT: IS EVERYBODY READY?

22 MR. HEMBREE: THE STATE'S READY, YOUR HONOR.

23 THE COURT: IS THE DEFENSE READY TO PROCEED?

24 MR. DIGGS: YES, YOUR HONOR.

25 THE COURT: I HAVE BEEN ADVISED BY THE JURY THAT

1 THEY HAVE REACHED A VERDICT. IS THERE ANYTHING PRIOR
2 TO THE COURT RECEIVING THE VERDICT FROM THE STATE?

3 MR. HEMBREE: NO, YOUR HONOR.

4 THE COURT: FROM THE DEFENSE?

5 MR. DIGGS: NO, YOUR HONOR.

6 THE COURT: LADIES AND GENTLEMEN WHO ARE PRESENT
7 IN THE GALLERY, I WOULD ASK THAT YOU ALL MAINTAIN THE
8 COURT'S DECORUM, THAT THERE BE NO OUTBURSTS REGARDING
9 THE SENTENCE OR THE VERDICT OF THE JURY.

10 I KNOW AND IT'S SOMETIMES VERY DIFFICULT FOR THE
11 COURT AND I THINK THE SPECTATORS TO UNDERSTAND THAT
12 THE COURT DOES UNDERSTAND THE HIGH EMOTION THAT THESE
13 TYPE CASES INVOKE.

14 AND SOMETIMES WHEN WE MAKE STATEMENTS SUCH AS
15 THIS, IT MAY SEEM THAT WE ARE DISPASSIONATE, BUT THAT
16 IS NOT THE COURT'S INTENTION. IT IS JUST THAT AT ALL
17 TIMES THE DECORUM OF THE COURT AND THE DIGNITY OF THE
18 PROCESS MUST BE MAINTAINED.

19 SO I WOULD ASK THAT YOU ALL WOULD ABIDE BY THOSE
20 RULES, AND I THANK YOU IN ADVANCE FOR EVERYONE'S
21 OBSERVATION AND THERE BEING NO OUTBURSTS AFTER THE
22 JURY'S VERDICT.

23 (ALTERNATES ENTERED THE COURTROOM.)

24 THE COURT: OKAY. PLEASE BRING IN THE JURY.

25 (WHEREUPON THE JURY ENTERED THE COURTROOM AT

1 4:00 PM.)

2 VERDICT

3 THE COURT: YOU MAY BE SEATED. MADAM FORELADY,
4 IS IT CORRECT THAT THE JURY HAS REACHED A VERDICT?

5 FORELADY: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: IF YOU WOULD GIVE THE VERDICT FORMS
7 TO THE BAILIFF.

8 (BAILIFF APPROACHED THE FORELADY THEN APPROACHED
9 THE CLERK WHO HANDED TO JUDGE.)

10 THE COURT: MADAM CLERK, IF YOU COULD COME OVER
11 HERE...

12 (WHEREUPON A BENCH CONFERENCE WAS HELD WITH THE
13 CLERK AND THE COURT.)

14 THE COURT: IF THE DEFENDANT WOULD STAND FOR THE
15 PUBLICATION OF THE JURY'S VERDICT.

16 THE CLERK: THE STATE OF SOUTH CAROLINA, THE
17 STATE VERSUS STEPHEN CHRISTOPHER STANKO IN THE COURT
18 OF GENERAL SESSIONS FOR THE 15TH JUDICIAL CIRCUIT,
19 CASE NUMBER 2005-GS-22-918, AGGRAVATING
20 CIRCUMSTANCES, WE THE JURY IN THE ABOVE-ENTITLED CASE
21 FIND BEYOND A REASONABLE DOUBT THE FOLLOWING
22 STATUTORY AGGRAVATING CIRCUMSTANCES:

23 CRIMINAL SEXUAL CONDUCT; KIDNAPPING; ROBBERY
24 WHILE ARMED WITH A DEADLY WEAPON; LARCENY WITH THE
25 USE OF A DEADLY WEAPON; AND PHYSICAL TORTURE. DO YOU

1 WANT ME TO POLL THE JURY AFTER EACH?

2 THE COURT: YES.

3 THE CLERK: OKAY. LADIES AND GENTLEMEN OF THE
4 JURY, IF THIS IS YOUR DECISION AND IT IS STILL YOUR
5 DECISION, PLEASE LET IT BE KNOWN BY RAISING YOUR
6 RIGHT HAND.

7 (ALL JURORS COMPLIED.)

8 THE CLERK: THANK YOU. STATE OF SOUTH CAROLINA,
9 GEORGETOWN COUNTY, VERSUS STEPHEN CHRISTOPHER STANKO
10 IN THE COURT OF GENERAL SESSIONS FOR THE 15TH
11 JUDICIAL CIRCUIT, CASE NUMBER 2005-GS-22-918,
12 RECOMMENDATION OF SENTENCE, DEATH PENALTY.

13 WE THE JURY IN THE ABOVE-ENTITLED CASE HAVING
14 FOUND BEYOND A REASONABLE DOUBT THE EXISTENCE OF THE
15 FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCES. TO
16 WIT: ONE, CRIMINAL SEXUAL CONDUCT; TWO, KIDNAPPING;
17 ROBBERY WHILE ARMED WITH A DEADLY WEAPON; LARCENY
18 WITH THE USE OF A DEADLY WEAPON; AND PHYSICAL TORTURE
19 NOW RECOMMEND TO THE COURT THAT THE DEFENDANT,
20 STEPHEN CHRISTOPHER STANKO, BE SENTENCED TO DEATH.

21 STATE OF SOUTH CAROLINA, GEORGETOWN COUNTY
22 VERSUS STEPHEN CHRISTOPHER STANKO -- AND I'D LIKE TO
23 GO BACK AND POLL THE JURY FOR THE ONE THAT I JUST
24 READ.

25 IF THIS IS YOUR DECISION AND IT IS STILL YOUR

1 DECISION, PLEASE LET IT BE KNOWN BY RAISING YOUR
2 RIGHT HAND.

3 (ALL JURORS COMPLIED.)

4 THE CLERK: AND FINALLY, THE STATE OF SOUTH
5 CAROLINA, GEORGETOWN COUNTY, STEPHEN CHRISTOPHER
6 STANKO IN THE COURT OF GENERAL SESSIONS FOR THE 15TH
7 JUDICIAL CIRCUIT, CASE NUMBER 2005-GS-22-918,
8 STATUTORY INSTRUCTIONS, IN DETERMINING WHETHER TO
9 RECOMMEND THE DEFENDANT, STEPHEN CHRISTOPHER STANKO,
10 BE SENTENCE BY THE COURT TO LIFE IMPRISONMENT OR
11 DEATH, YOU MAY CONSIDER THE FOLLOWING STATUTORY
12 AGGRAVATING CIRCUMSTANCES.

13 ONE, THE MURDER WAS COMMITTED WHILE IN THE
14 COMMISSION OF CRIMINAL SEXUAL CONDUCT IN ANY DEGREE;
15 TWO, THE MURDER WAS COMMITTED WHILE IN THE COMMISSION
16 OF KIDNAPPING; THREE, THE MURDER WAS COMMITTED WHILE
17 IN THE COMMISSION OF ROBBERY WHILE ARMED WITH A
18 DEADLY WEAPON; FOUR, THE MURDER WAS COMMITTED WHILE
19 IN THE COMMISSION OF LARCENY WITH THE USE OF A DEADLY
20 WEAPON; FIVE, THE MURDER WAS COMMITTED WHILE IN THE
21 COMMISSION OF PHYSICAL TORTURE.

22 AND THEN YOU MAY ALSO CONSIDER THE FOLLOWING
23 MITIGATING CIRCUMSTANCES: ONE, THE MURDER WAS
24 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE
25 OF MENTAL OR EMOTIONAL DISTURBANCE; TWO, THAT THE

1 CAPACITY OF THE DEFENDANT TO APPRECIATE THE
2 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT
3 TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY
4 IMPAIRED.

5 AND YOU MAY ALSO CONSIDER ANY NON-STATUTORY
6 MITIGATING CIRCUMSTANCES. AND THIS WAS SIGNED BY THE
7 JUDGE.

8 THE COURT: IS THERE ANY REQUEST TO POLL THE
9 JURY?

10 MR. DIGGS: YES, YOUR HONOR.

11 THE COURT: MADAM CLERK, IF YOU WOULD PROCEED IN
12 POLLING THE JURY.

13 THE CLERK: ONLY FOR THE FIRST AND THE SECOND
14 THING THAT I READ; RIGHT?

15 THE COURT: JUST ON THE FIRST ONE.

16 THE CLERK: FIRST AND SECOND?

17 THE COURT: YEAH. THE AGGRAVATING CIRCUMSTANCES
18 AND THE IMPOSITION OF DEATH.

19 THE CLERK: ALL RIGHT. FOR THE DECISION
20 REGARDING AGGRAVATING CIRCUMSTANCES, IF THIS IS YOUR
21 DECISION AND IT'S STILL YOUR DECISION, MICHAEL
22 KEOUGH, JUNIOR, PLEASE RAISE YOUR HAND.

23 (JUROR COMPLIED.)

24 THE CLERK: THANK YOU. DONALD HORTON.

25 (JUROR COMPLIED).

1 THE CLERK: STEPHEN WALTERS.

2 (JUROR COMPLIED.)

3 THE CLERK: DAVID DUBOIS.

4 (JUROR COMPLIED.)

5 THE CLERK: BARNEY BLAIN, JUNIOR.

6 (JUROR COMPLIED.)

7 THE CLERK: PATRICIA WOFFORD.

8 (JUROR COMPLIED.)

9 THE CLERK: CAROL EUGENE BAKER.

10 (JUROR COMPLIED.)

11 THE CLERK: TONRANGELLA COLE.

12 (JUROR COMPLIED.)

13 THE CLERK: JOSEPH HINSON.

14 (JUROR COMPLIED.)

15 THE CLERK: RYAN IZZARD.

16 (JUROR COMPLIED.)

17 THE CLERK: LARRY DRAKE.

18 (JUROR COMPLIED.)

19 THE CLERK: RICHANDA KNOWLIN.

20 (JUROR COMPLIED.)

21 THE CLERK: AND IN THE SECOND RECOMMENDATION OF
22 THE DEATH PENALTY, IF THIS IS YOUR DECISION AND IT IS
23 STILL YOUR DECISION, PLEASE LET IT BE KNOWN BY
24 RAISING YOUR RIGHT HANDS. MICHAEL KEOUGH, JUNIOR.

25 (JUROR COMPLIED.)

1 THE CLERK: DONALD HORTON.

2 (JUROR COMPLIED.)

3 THE CLERK: STEPHEN WALTERS.

4 (JUROR COMPLIED.)

5 THE CLERK: DAVID DUBOIS.

6 (JUROR COMPLIED.)

7 THE CLERK: BARNEY BLAIN, JUNIOR.

8 (JUROR COMPLIED.)

9 THE CLERK: PATRICIA WOFFORD.

10 (JUROR COMPLIED.)

11 THE CLERK: CAROL EUGENE BAKER.

12 (JUROR COMPLIED.)

13 THE CLERK: TONRANGELLA COLE.

14 (JUROR COMPLIED.)

15 THE CLERK: JOSEPH HINSON.

16 (JUROR COMPLIED.)

17 THE CLERK: RYAN IZZARD.

18 (JUROR COMPLIED.)

19 THE CLERK: LARRY DRAKE.

20 (JUROR COMPLIED.)

21 THE CLERK: AND RICHANDA KNOWLIN.

22 (JUROR COMPLIED.)

23 THE CLERK: YOUR HONOR, THE JURY HAS BEEN

24 POLLED.

25 THE COURT: ARE THERE ANY OTHER MATTERS.

1 REGARDING -- OR THAT WOULD BE PENDING BEFORE THE
2 COURT REGARDING THE VERDICT BEFORE THE JURY IS
3 EXCUSED FROM THE STATE?

4 MR. HEMBREE: NONE FROM THE STATE, YOUR HONOR.

5 THE COURT: FROM THE DEFENSE?

6 MR. DIGGS: NO, YOUR HONOR.

7 THE COURT: YOU ALL MAY BE SEATED MOMENTARILY.
8 MR. MCLEOD, IF YOU WOULD INVITE THE ALTERNATES HERE
9 TO BE SEATED WITH THE PANEL.

10 (ALTERNATES JOINED PANEL OF JURORS.)

11 THE COURT: MADAM FOREPERSON, LADIES AND
12 GENTLEMEN OF THE JURY, YOU HAVE CONCLUDED YOUR
13 SERVICE IN THIS MATTER. I SAY ON BEHALF OF THE STATE
14 AND THE STATE'S COUNSEL AS WELL AS THE DEFENDANT AND
15 DEFENSE COUNSEL, WE THANK YOU FOR YOUR TIME AND YOUR
16 ATTENTION TO THIS CASE.

17 I HAVE WATCHED YOU DURING THE PROCEEDINGS IN
18 THIS. YOU HAVE BEEN EXTREMELY, EXTREMELY ATTENTIVE.
19 YOU HAVE BEEN EXTREMELY COOPERATIVE IN A SITUATION
20 THAT AT BEST WAS INCONVENIENT FOR YOU.

21 DURING INDIVIDUAL VOIR DIRE YOU EACH HEARD ME
22 ASK YOU OR ACTUALLY SAY TO YOU THAT WE PRESUME THAT
23 BEING SEQUESTERED WOULD BE A PERSONAL AND
24 PROFESSIONAL INCONVENIENCE TO YOU.

25 BUT YOU ALL HAVE REALLY BEEN SO ACCOMMODATING

1 WITH US. AND ON BEHALF OF EVERYONE INVOLVED, I'D
2 LIKE TO TELL YOU THANK YOU, WHICH SEEMS SO VERY
3 INADEQUATE, FRANKLY, FOR WHAT YOU HAVE -- THE SERVICE
4 THAT YOU HAVE PROVIDED TO THE STATE OF SOUTH
5 CAROLINA.

6 AFTER YOU HAVE SERVED IN THIS TRIAL, AND NOW
7 THAT YOUR SERVICE IS CONCLUDED, YOU HAVE THE RIGHT TO
8 EITHER REFUSE TO DISCUSS THE VERDICT YOU HAVE
9 RENDERED OR TO DISCUSS THE VERDICT YOU HAVE RENDERED
10 TO THE EXTENT YOU DESIRE.

11 IF YOU CHOOSE TO DISCUSS THE VERDICT, YOU ARE
12 FREE TO TERMINATE YOUR DISCUSSIONS AT ANY TIME. IF
13 THE PERSON WITH WHOM YOU'RE SPEAKING CONTINUES TO
14 PURSUE A DISCUSSION OF THE VERDICT AFTER YOU HAVE
15 COMMUNICATED THE DESIRE TO TERMINATE YOUR DISCUSSION
16 OR IF THE PERSON CONTINUES TO HARASS YOU AFTER YOU
17 HAVE REFUSED TO DISCUSS THE VERDICT, YOU SHOULD
18 REPORT THAT PERSON TO YOUR CLERK OF COURT, MS. ALMA
19 WHITE.

20 AND I AM GOING TO GIVE YOU THESE INSTRUCTIONS IN
21 WRITING AS MANDATED BY STATUTE SO THAT YOU WILL HAVE
22 THIS INFORMATION AVAILABLE TO YOU, AND IT WILL HAVE
23 MS. WHITE'S ADDRESS AND PHONE NUMBER IN THE EVENT
24 THAT THAT SHOULD HAPPEN.

25 I AM GOING TO HAVE A COPY OF THE -- OF THESE

1 INSTRUCTIONS MARKED AS A COURT'S EXHIBIT, AND I'M
2 GOING TO HAVE THE BAILIFF PASS EACH ONE OUT TO EACH
3 OF YOU SO THAT YOU WILL HAVE IT FOR YOUR OWN BENEFIT.

4 (WHEREUPON, COURT'S EXHIBIT 15 WAS MARKED FOR
5 IDENTIFICATION.)

6 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO
7 PROCEED WITH SENTENCING. AND FOR CONVENIENCE, I'M
8 GOING TO ALLOW YOU ALL TO REMAIN WITH US SO THAT YOU
9 WILL NOT HAVE TO BE GETTING UP, UP AND DOWN. WE
10 APPRECIATE YOU INDULGING US. WE WILL NOW PROCEED.

11 SENTENCING

12 MR. HEMBREE: YOUR HONOR, THESE ARE THE
13 SENTENCING SHEETS, RIGHT HERE, YOUR HONOR.

14 (WHEREUPON THERE WAS A PAUSE.)

15 THE COURT: AND FOR PURPOSES OF THE RECORD, THE
16 COURT WOULD FIND AS FOLLOWS. AS THE TRIAL JUDGE IN
17 THE ABOVE-ENTITLED ACTION, WHICH IS THE STATE OF
18 SOUTH CAROLINA VERSUS STEPHEN CHRISTOPHER STANKO AND
19 PRIOR TO THE IMPOSITION OF THE DEATH SENTENCE UPON
20 THE DEFENDANT, STEPHEN CHRISTOPHER STANKO, I FIND AS
21 AN AFFIRMATIVE FACT THAT THE EVIDENCE OF THIS CASE
22 WARRANTS THE IMPOSITION OF THE DEATH PENALTY AND ITS
23 IMPOSITION IS NOT A RESULT OF PREJUDICE, PASSION OR
24 ANY OTHER ARBITRARY FACTOR.

25 NOW, AS WE ALL ARE AWARE, THE COURT -- THE

1 JURY'S IMPOSITION OF SENTENCE WILL BE CARRIED OUT BY
2 THIS COURT. THERE ARE, HOWEVER, OTHER OFFENSES THAT
3 MR. STANKO HAS BEEN CONVICTED OF WHICH THIS COURT HAS
4 THE SOLE DISCRETION IN SENTENCING.

5 AND THOSE OFFENSES, REMAINING OFFENSES, WOULD BE
6 ASSAULT AND BATTERY WITH INTENT TO KILL, WHICH IS
7 COUNT TWO, CRIMINAL SEXUAL CONDUCT IN THE FIRST
8 DEGREE, WHICH IS COUNT THREE, KIDNAPPING -- AND
9 ACTUALLY I NEED TO MAKE SURE BECAUSE WHAT -- WELL,
10 COUNT FOUR, KIDNAPPING, COUNT FIVE, KIDNAPPING, IT
11 WOULD NOT BE APPROPRIATE FOR THE COURT TO SENTENCE
12 PURSUANT TO STATUTE AND COUNT SIX, WHICH IS ARMED
13 ROBBERY.

14 I'M GOING TO GIVE, OF COURSE, THE DEFENDANT THE
15 OPPORTUNITY TO ALCUTE, BUT IN ADDITION TO THAT I AM
16 GOING TO GIVE -- IS THERE ANYTHING FURTHER FROM THE
17 STATE?

18 MR. HEMBREE: NO, YOUR HONOR. THE COURT IS VERY
19 FAMILIAR WITH MR. STANKO'S PRIOR CRIMINAL HISTORY
20 SINCE THAT WAS PRESENTED DURING THE COURSE OF THE
21 TRIAL.

22 WE HAVE NO -- AND AS WELL, THE COURT IS -- HAS
23 HEARD FROM THE VICTIM, THE SURVIVING VICTIM IN THIS
24 CASE, AND -- AT A COUPLE OF POINTS IN THE TRIAL. I
25 DON'T BELIEVE THERE IS ANYTHING THAT WE WOULD WANT TO

1 ADD IN THAT RESPECT, SO WE WOULD HAVE NOTHING -- NO
2 MORE TO ADD.

3 THE COURT: OKAY. THE COURT WANTED TO MAKE SURE
4 WE WERE IN COMPLIANCE WITH STATUTE AND GAVE THE
5 VICTIM OR THE VICTIMS' FAMILY ANY ADDITIONAL
6 OPPORTUNITY TO ADDRESS THE COURT IF THAT WERE THEIR
7 DESIRE.

8 MR. HEMBREE: NO, YOUR HONOR. NOTHING IN
9 ADDITION TO WHAT'S BEEN PRESENTED.

10 THE COURT: BE GLAD TO HEAR FROM THE DEFENSE.

11 MR. DIGGS: WELL, YOUR HONOR, WE WOULD ASK THE
12 COURT TO SET ASIDE THE JURY RECOMMENDATION.

13 THE COURT: WELL, I'M GOING TO HEAR POST-TRIAL
14 MOTIONS. I WILL NOT HEAR THEM NOW, HOWEVER, BUT THEY
15 WILL BE PRESERVED FOR THE RECORD--

16 MR. DIGGS: BEFORE THE SENTENCE? BEFORE THE
17 SENTENCE, HOWEVER?

18 THE COURT: THEY'RE PRESERVED FOR THE RECORD.

19 MR. DIGGS: ALL RIGHT. THANK YOU, YOUR HONOR.

20 THE COURT: AND THEY -- I WILL NOTE FOR THE
21 RECORD THEY HAVE -- THAT THEY HAVE NOT IN ANY WAY
22 BEEN WAIVED BECAUSE OF THE TIMING IN WHICH THEY HAVE
23 BEEN ARGUED.

24 MR. DIGGS: YES. THANK YOU, YOUR HONOR.

25 THE COURT: THE COURT WILL HEAR POST-TRIAL

1 MOTIONS AFTER THE JURY IS EXCUSED. WELL, THE JURY
2 HAS BEEN EXCUSED, BUT WE WILL HEAR THEM--

3 MR. DIGGS: I UNDERSTAND.

4 THE COURT: YOU UNDERSTAND WHAT I'M SAYING.
5 OKAY. YOU MAY PROCEED. DOES THE DEFENSE WISH TO
6 SPEAK ON MR. STANKO'S BEHALF?

7 MR. DIGGS: NO, YOUR HONOR.

8 THE COURT: MR. KELLY, IS THERE ANYTHING YOU
9 WOULD LIKE TO STATE ON MR. STANKO'S BEHALF?

10 MR. KELLY: I THINK WE'VE SAID IT ALL, YOUR
11 HONOR.

12 THE COURT: OKAY. MR. STANKO, IS THERE ANYTHING
13 THAT YOU WOULD LIKE TO STATE FOR THE RECORD ON YOUR
14 OWN BEHALF?

15 THE DEFENDANT: NO, MA'AM.

16 (WHEREUPON THERE WAS A PAUSE.)

17 THE COURT: MR. STANKO, AS REGARDS TO YOUR
18 CONVICTION FOR MURDER, WHICH IS COUNT ONE OF THE
19 INDICTMENT, CONSISTENT WITH STATE LAW AND WITH THE
20 JURY'S VERDICT, SIR, YOU HAVE BEEN FOUND BY THE JURY
21 TO BE GUILTY OF THE OFFENSE OF MURDER.

22 THE JURY HAS RECOMMENDED THAT YOU SHOULD BE
23 SENTENCED TO DEATH. IT IS THEREFORE THE JUDGMENT OF
24 THE LAW AND THE SENTENCE OF THIS COURT THAT YOU, SIR,
25 BE TAKEN TO THE GEORGETOWN COUNTY DETENTION CENTER

1 AND THEN THE STATE DEPARTMENT OF CORRECTIONS AND
2 HENCEFORTH TO BE KEPT IN CLOSE AND SAFE CONFINEMENT
3 UNTIL THE 17TH DAY OF OCTOBER OF 2007 UPON WHICH DATE
4 BETWEEN THE HOURS OF 6:00 PM AND 6:00 AM OR UPON AN
5 ORDER OF EXECUTION ISSUED BY THE SOUTH CAROLINA
6 SUPREME COURT THAT YOU SHALL SUFFER DEATH BY
7 ELECTROCUTION OR BY LETHAL INJECTION IN THE MANNER
8 PROVIDED BY LAW.

9 SIR, AS IN REGARD TO YOUR CONVICTION FOR COUNT
10 TWO, WHICH IS ASSAULT AND BATTERY WITH INTENT TO
11 KILL, IT WOULD BE THE SENTENCE OF THIS COURT THAT YOU
12 BE SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS
13 FOR A PERIOD OF 20 YEARS.

14 AS TO THE THIRD COUNT OF THE INDICTMENT, WHICH
15 IS CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IT IS
16 THE SENTENCE OF THIS COURT THAT YOU BE SENTENCED TO
17 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
18 30 YEARS.

19 ON COUNT FOUR OF THE INDICTMENT, WHICH IS
20 KIDNAPPING AS IT RELATES TO THE VICTIM CHRISTINA
21 LING, YOU ARE SENTENCED TO THE STATE DEPARTMENT OF
22 CORRECTIONS FOR A PERIOD OF 30 YEARS.

23 AND AS I HAVE INDICATED, PURSUANT TO STATUTE IT
24 WOULD BE INAPPROPRIATE FOR YOU TO BE SENTENCED ON
25 COUNT FIVE OF THE INDICTMENT WHICH DEALS WITH THE

1 KIDNAPPING OF MS. LAURA LING.

2 AS REGARDS THE SIXTH COUNT OF THE INDICTMENT,
3 WHICH IS ARMED ROBBERY, IT IS THE SENTENCE OF THIS
4 COURT THAT YOU BE SENTENCED TO THE STATE DEPARTMENT
5 OF CORRECTIONS FOR A PERIOD OF 30 YEARS.

6 EACH OF THESE SENTENCES, SIR, ARE TO RUN
7 CONSECUTIVELY WITH ONE ANOTHER. IS THERE ANYTHING
8 FURTHER FOR THE RECORD FROM THE STATE?

9 MR. HEMBREE: NOTHING FROM THE STATE, YOUR
10 HONOR.

11 THE COURT: FROM THE DEFENSE?

12 MR. DIGGS: NO, YOUR HONOR.

13 THE COURT: LADIES AND GENTLEMEN, AS I
14 INDICATED, WE -- I AM GOING TO NOW EXCUSE YOU TO YOUR
15 JURY ROOM AND I'M GOING TO MAKE SURE THAT YOU ARE
16 CLEAR ABOUT THE INSTRUCTIONS, AND ALSO I WANT TO
17 THANK YOU PERSONALLY FOR YOUR SERVICE IN THIS MATTER.

18 WE WILL BE AT EASE FOR A FEW MOMENTS AFTER WHICH
19 THE COURT WILL HEAR POST-TRIAL MOTIONS.

20 MR. KELLY: THANK YOU, MA'AM.

21 THE COURT: YOU'RE WELCOME.

22 MR. HEMBREE: THANK YOU, YOUR HONOR.

23 THE COURT: IF YOU WOULD GO WITH YOUR CUSTODIANS
24 TO THE JURY ROOM.

25 (JURY LEFT THE COURTROOM.)

1 THE COURT: YOU MAY BE SEATED. WE JUST
2 REALIZED, AND I APOLOGIZE PROFUSELY, ON THE
3 AGGRAVATING CIRCUMSTANCES FORM THERE IS A SCRIVENER'S
4 ERROR. IT REFLECTS THE COUNTY OF CHARLESTON INSTEAD
5 OF THE COUNTY OF GEORGETOWN, AND WE ALL MISSED IT.

6 I THINK IT IS BECAUSE WE ARE JUST EXTREMELY
7 TIRED AND EVERYBODY'S FATIGUED. IS THERE ANY
8 EXCEPTION TO THE COURT CORRECTING THAT SCRIVENER'S
9 ERROR ON THE FORM?

10 MR. HEMBREE: NO EXCEPTION FROM THE STATE, YOUR
11 HONOR.

12 THE COURT: ANY EXCEPTION FROM THE DEFENSE?

13 MR. KELLY: NO EXCEPTION.

14 THE COURT: WE'LL BE AT EASE FOR A FEW MOMENTS
15 AND THEN I WILL HEAR POST-TRIAL MOTIONS.

16 (WHEREUPON THERE WAS A PAUSE.)

17 THE COURT: ANY POST-TRIAL MOTIONS?

18 MR. DIGGS: RENEW MOTIONS THAT HAVE PREVIOUSLY
19 BEEN MADE AND REASSERT THE GROUNDS THAT WERE STATED
20 ON THE RECORD FOR THOSE MOTIONS IN SUPPORT OF THOSE
21 MOTIONS AT THAT TIME.

22 AND I WOULD ALSO ASK THE COURT TO RECONSIDER AND
23 SET ASIDE THE SENTENCE OF DEATH SIMPLY BECAUSE THE
24 WEIGHT OF THE EVIDENCE AND THE BRAIN DEFECT THAT WAS
25 ESTABLISHED BY THE GREATER WEIGHT OF THE EVIDENCE IN

1 THE CASE.

2 IN FACT, I WOULD SUBMIT BY THE END OF THE
3 PRESENTATION OF EVIDENCE IN THE SENTENCING PHASE IT'S
4 BEYOND A DOUBT THAT MR. STANKO HAS THIS PARTICULAR
5 BRAIN DEFECT AND I WOULD SUBMIT THAT IT WOULD BE
6 CRUCIAL AND UNUSUAL TO EXECUTE HIM WHEN HE ACTS IN
7 ACCORDANCE WITH THE BRAIN DEFORMITY THAT HE HAS AND
8 ALSO WOULD BE FUNDAMENTALLY UNFAIR WHEN SOMEONE WHO
9 SIMPLY ACTS IN ACCORDANCE WITH THE WAY THE STRUCTURE
10 AND FUNCTION OF THE BRAIN DICTATES AND WHEN THAT
11 FUNCTION AND STRUCTURE ARE -- ARE NOT NORMAL OR
12 ABERRANT AND DEFICIENT TO THE EXTREME THAT WE HAVE IN
13 MR. STANKO'S CASE.

14 YOUR HONOR, ONE LAST MOTION. I WOULD ASK THE
15 COURT TO REQUIRE -- IF THERE IS ANY DOUBT IN THE
16 COURT'S MIND WITH RESPECT TO THE STATUS OF HIS BRAIN
17 FUNCTION AND STRUCTURE THAT HE WAS -- BE SUBJECTED TO
18 A SERIES OR BATTERIES -- BATTERY OF MEDICAL TESTS TO
19 MAKE THAT DETERMINATION.

20 TO SIMPLY EXCLUDE THAT CONDITION, THAT
21 HYPERMENTALITY CONDITION THAT HAS BEEN ESTABLISHED BY
22 THE MEDICAL EVIDENCE IN THE CASE, IN ORDER TO MAKE
23 HIM ELIGIBLE (SIC) FOR A DEATH SENTENCE TO BE CARRIED
24 OUT. AND THAT WOULD BE THE EXTENT OF THE MOTIONS,
25 YOUR HONOR.

1 THE COURT: WOULD THE STATE LIKE TO RESPOND?

2 MR. HEMBREE: VERY BRIEFLY, YOUR HONOR. FIRST
3 AS TO THE PREVIOUS MOTIONS THAT DEFENSE COUNSEL HAS
4 MADE, WE WOULD RELY ON THE COURT'S PREVIOUS RULINGS
5 AND ARGUMENTS OF THE STATE.

6 AS TO THE MOTION REGARDING THE -- THIS EVIDENCE
7 THAT WAS SUBMITTED REGARDING THE CONDITION OF
8 MR. STANKO'S BRAIN IN THE PENALTY PHASE AND THE
9 SUBMISSION OF THOSE AS MITIGATORS TO THIS JURY.

10 YOUR HONOR, THOSE WERE QUESTIONS -- STRICTLY
11 QUESTIONS OF FACT FOR THE JURY. THEY EITHER HAVE
12 REJECTED THAT, FOUND THAT THERE WAS NOT -- THERE WAS
13 NOT SUFFICIENT EVIDENCE THERE TO CONSIDER THEM AS
14 MITIGATING CIRCUMSTANCES OR THEY CONSIDERED THEM AS
15 MITIGATING CIRCUMSTANCES BUT IN SPITE OF THAT HAVE
16 DETERMINED THAT DEATH WAS THE APPROPRIATE SENTENCE,
17 EITHER ONE, THAT JURY IS AUTHORIZED AND IT'S
18 APPROPRIATE FOR THEM TO MAKE THOSE DECISIONS.
19 THEREFORE WE WOULD ASK THAT THAT MOTION -- THAT
20 MOTION BE DENIED.

21 FINALLY, YOUR HONOR, THE THIRD MOTION IS A BIT
22 UNUSUAL TO ASK THAT MR. STANKO BE SUBJECTED TO A
23 SERIES AND BATTERY OF MEDICAL AND PSYCHIATRIC TESTS.
24 HEAVEN'S SAKES, IF MR. STANKO'S MENTAL STATUS AND
25 PSYCHIATRIC CONDITION HAS NOT BEEN FULLY AND

1 COMPLETELY EXPLORED AT THIS POINT, I DON'T KNOW --
2 AND MAYBE -- THERE MAY BE SOME -- SOMEPLACE DOWN THE
3 ROAD THAT THAT WOULD BE AN APPROPRIATE THING TO
4 CONSIDER, BUT AT THIS STAGE OF THE GAME HE HAS BEEN
5 EVALUATED BY A TEAM, AN EXTENSIVE TEAM OF DEFENSE
6 EXPERTS, HE WAS RECENTLY RE-EVALUATED BY THE COURT'S
7 EXPERTS, SO THOSE -- THAT EVIDENCE IS IN THE RECORD
8 AS TO THE CONDITION OF HIS BRAIN, AND WE WOULD ASK
9 THAT THAT MOTION BE DENIED AS WELL.

10 THE COURT: ANYTHING FURTHER?

11 MR. DIGGS: NO, YOUR HONOR.

12 THE COURT: THE COURT HAS CONSIDERED THE
13 DEFENDANT'S POST-TRIAL MOTIONS AND FIND IT'S
14 APPROPRIATE THAT THEY BE DENIED.

15 THE QUESTIONS RAISED OR THE ISSUES RAISED BY THE
16 DEFENSE ARE QUESTIONS OF FACT WHICH ARE IN THE SOLE
17 PROVINCE OF THE JURY.

18 THE COURT HAS FOUND FOR THE PURPOSES OF THE
19 RECORD THAT THE DEATH SENTENCE THAT HAS BEEN MANDATED
20 BY THE JURY IS WARRANTED, THAT IT IS NOT A RESULT OF
21 PREJUDICE, PASSION, OR ANY OTHER ARBITRARY FACTOR,
22 AND THAT IT IS SUPPORTED BY THE RECORD IN THIS CASE.

23 I INSTRUCTED THE JURY DURING BOTH THE GUILT
24 PHASE AND THE PENALTY PHASE THAT -- REGARDING EXPERT
25 WITNESS TESTIMONY AND I ADVISED THEM THAT AS THE FACT

1 FINDER, THEY COULD WEIGH THAT TESTIMONY AS THEY FELT
2 APPROPRIATE, THAT THEY COULD ACCEPT IT OR REJECT IT,
3 THAT THEY COULD GIVE IT THE WEIGHT THEY THOUGHT IT
4 WAS ENTITLED TO, THAT THEY COULD REJECT THE OPINION
5 OF AN EXPERT IF THEY FELT IT WAS NOT BASED ON
6 SUFFICIENT EDUCATION, TRAINING, OR EXPERIENCE, THAT
7 THEY COULD ALSO DISREGARD IT IF THEY FELT THERE WAS
8 OTHER EVIDENCE IN THE RECORD THAT WEIGHED AGAINST IT
9 OR THEY FELT HAD MORE CREDIBILITY THAN THAT EVIDENCE.

10 AND AS I OBSERVED AT THE VERY BEGINNING OF THESE
11 PROCEEDINGS, AT LEAST -- NOT THE BEGINNING -- I SAY
12 BEGINNING, I'M REFERRING TO THE GUILT PHASE WHEN WE
13 BEGAN TO HEAR MOTIONS AND TO BEGIN FOR ARGUMENT, I
14 SAID AT THAT TIME AND I AM STILL OF THAT OPINION THAT
15 IT REALLY CAME DOWN TO WHO THE JURY BELIEVED IN TERMS
16 OF WHETHER THEY BELIEVED THE STATE'S EXPERTS OR
17 WHETHER THEY BELIEVED THE DEFENDANT'S EXPERTS
18 REGARDING WHETHER HE HAD ANY MENTAL ABNORMALITY THAT
19 WOULD PRECLUDE HIM FROM, ONE, BEING IN -- WOULD
20 PRECLUDE HIM FROM BEING SANE OR THAT WOULD PRECLUDE
21 HIM FROM UNDERSTANDING AND APPRECIATING HIS ACTS AS
22 BEING CRIMINAL.

23 AND THE JURY IN ITS DIVINE PROVINCE OR IN ITS
24 WISDOM HAS DETERMINED THAT THEY DO NOT FIND THAT
25 EVIDENCE CREDIBLE.

1 AND THE COURT IN -- AND THEY HAVE DONE ONE OF
2 TWO THINGS AS THE SOLICITOR HAS VERY CLEARLY
3 ARTICULATED.

4 THEY HAVE EITHER ACCEPTED IT AND DETERMINED THAT
5 UNDER THE CIRCUMSTANCES THE DEATH PENALTY WAS STILL
6 THE APPROPRIATE PUNISHMENT CONSIDERING ALL OF THE
7 FACTS AND CIRCUMSTANCES ATTENDANT TO THIS CASE OR
8 THEY HAVE SIMPLY REJECTED IT AND DECIDED THAT THE
9 DEATH PENALTY WAS APPROPRIATE.

10 AND THE CHARGE WAS REALLY VERY CLEAR FOR THEM,
11 THAT EVEN IF THEY FOUND THE STATUTORY AGGRAVATING
12 FACTOR, THEY COULD STILL GIVE MR. STANKO LIFE. EVEN
13 IF THEY FELT THERE WERE AGGRAVATORS AND MITIGATORS,
14 THEY COULD STILL GIVE HIM LIFE.

15 AND THEY WERE ADVISED THAT IF THEY FELT THERE
16 WERE NO AGGRAVATORS, THEY COULD GIVE HIM A LIFE --
17 THEY HAD TO GIVE HIM A LIFE SENTENCE.

18 AND CLEARLY THE JURY FELT THAT THERE WERE --
19 THAT BEYOND A REASONABLE DOUBT THERE WERE AGGRAVATING
20 FACTORS OR AGGRAVATING CIRCUMSTANCES AND THEY FELT
21 UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE THAT
22 THE DEATH PENALTY WAS THE APPROPRIATE SENTENCE.

23 AND THE COURT FINDS NO REASON IN THIS RECORD TO
24 IMPOSE ITS OWN FACT FINDING ABOVE THAT OF THAT JURY.
25 I'M SIMPLY NOT ENTITLED TO DO THAT. AND EVEN IF I

1 COULD, I WILL BE FRANK, I WOULDN'T.

2 I HAVE A GREAT DEAL OF RESPECT FOR THE JURY'S
3 PROVINCE. I HAVE FOUND THAT JURIES ARE INCREDIBLY
4 ASTUTE, THAT THEY LISTEN. I HAVE WATCHED THIS JURY.
5 THEY HAVE LISTENED VERY INTENTLY TO ALL OF THE
6 EVIDENCE.

7 THEY IN ADDITION TO THAT LISTENED TO A VERY
8 DIFFICULT SET OF STATUTES THAT THEY HAVE TO APPLY,
9 AND THEY ARE ABLE TO DO THAT VERY COMPETENTLY AND
10 ABELY. AND I SEE NO REASON IN THIS RECORD FOR THE
11 JURY'S VERDICT TO BE SET ASIDE.

12 AND THE COURT WILL FIND THAT THERE'S AMPLE
13 SUPPORT IN THE RECORD FOR THEIR VERDICT AND THE
14 MOTION, POST-TRIAL MOTION IS DENIED.

15 AND THE COURT WOULD ALSO FIND THAT CERTAINLY IF
16 ANY RECORD BORE IT OUT, THERE IS NO NEED FOR ANY
17 FURTHER TESTING OF MR. STANKO.

18 MR. STANKO HAS HAD THE BENEFIT OF WHAT I REALLY
19 WOULD CONSIDER BASED ON WHAT THEY HAVE ARTICULATED TO
20 THE COURT AS THEIR EXPERIENCE, THEIR TRAINING, SOME
21 OF THE BEST EXPERTS IN THE COUNTRY.

22 I CANNOT IMAGINE ANYBODY ELSE WHO WOULD TEST HIM
23 OTHER THAN DR. WU OR THE OTHERS WHO HAVE DONE AN
24 EXCELLENT JOB OF TESTING HIM, OF EVALUATING THOSE
25 TEST RESULTS, AND PROVIDING TO THIS JURY THEIR

1 OPINION AS TO HIS MENTAL STATUS.

2 AND THE JURY HAS MADE THEIR DECISION AND IT WILL
3 STAND. AND THERE IS NO BASIS FOR ANY FURTHER TESTING
4 OF MR. STANKO. IS THERE ANYTHING FURTHER FOR THE
5 RECORD FROM THE STATE?

6 MR. HEMBREE: NO, YOUR HONOR.

7 THE COURT: FROM THE DEFENSE?

8 MR. DIGGS: NO, YOUR HONOR.

9 THE COURT: OKAY. AND WHAT WE WILL DO IS WE
10 WILL FILL OUT THE SENTENCE FORMS, MR. STANKO WILL GO
11 WITH HIS CUSTODIANS, AND I WILL MAKE SURE THAT THE
12 JURY KNOWS -- VERDICT MARKED AS AN EXHIBIT. I JUST
13 NEED TO GIVE IT BACK TO THE COURT REPORTER.

14 AND, OF COURSE, THE INDICTMENT WILL GO BACK TO
15 THE CLERK AS WELL AS THE SENTENCE SHEETS. OKAY? AND
16 I'D LIKE TO THANK YOU ALL.

17 AND I THANKED YOU ALL AT THE END OF THE GUILT
18 PHASE AND IT IS -- I THINK YOU ALL KNOW ME WELL
19 ENOUGH TO KNOW THAT I DON'T -- I'M NOT A FAN
20 OF INSINCERITY.

21 I DON'T SAY THINGS JUST TO BE TALKING AND I
22 DON'T JUST SAY THINGS TO MAKE PEOPLE FEEL GOOD.
23 THAT'S JUST NOT MY PERSONALITY.

24 BUT YOU ALL HAVE REALLY BEEN VERY KIND AND
25 GENEROUS WITH YOUR TIME AND WITH THE COURT. AND I

1 SAY THIS TO BOTH SIDES OF THE AISLE, AND MY COMMENTS
2 ARE NOT EXCLUSIVE TO THE SOLICITOR'S OFFICE OR TO MR.
3 KELLY OR MR. DIGGS.

4 (OFF-THE-RECORD DISCUSSION WAS HAD.)

5 (END OF REQUESTED TRANSCRIPT OF RECORD.)
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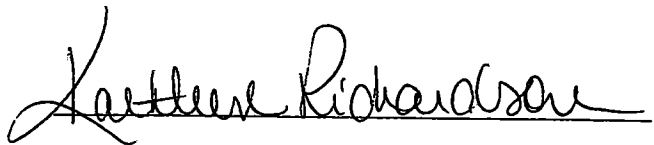
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

I, KATHLEEN RICHARDSON, RPR, CRR, OFFICIAL COURT REPORTER FOR THE FIFTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR GEORGETOWN COUNTY, SOUTH CAROLINA, ON THE EIGHTEENTH DAY OF AUGUST, 2006.

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

FEBRUARY 11, 2007



KATHLEEN RICHARDSON, RPR, CRR

STATE OF FLORENCE
COUNTY OF GEORGETOWN

IN THE COURT OF GENERAL SESSIONS
05-GS-22-918

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
 vs.)
)
 STEPHEN CHRISTOPHER STANKO,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD

MARCH 17, 2006
GEORGETOWN, SOUTH CAROLINA

BEFORE:

THE HONORABLE, DEADRA L. JEFFERSON, JUDGE

APPEARANCES:

BY: NO APPEARANCE BY STATE

BY: WILLIAM I. DIGGS, ESQ.
GERALD A. KELLY, ESQ.
ATTORNEYS FOR STEPHEN CHRISTOPHER STANKO

BRENDA R. BABB
Circuit Court Reporter

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DEFENDANT'S MOTION TO RELIEVE COUNSEL

3

1 THE COURT: WE'RE HERE THIS MORNING FOR THE
2 PURPOSE OF A MOTION TO BE RELIEVED AS COUNSEL WHICH WAS
3 FILED ON MARCH 14TH, 2006. I RECEIVED A LETTER FROM MR.
4 STANKO DATED FEBRUARY 20TH, 2006, BUT I RECEIVED IT
5 SOMETIME LATER THAN THAT; IT WAS RECEIVED ON 2-27-06 BY MY
6 OFFICE. AT THAT TIME I NOTIFIED HIS COUNSEL THAT I HAD
7 RECEIVED A LETTER FROM HIM AS WELL AS THE SOLICITOR'S
8 OFFICE; HOWEVER, I DID NOT DISCLOSE TO THE SOLICITOR'S
9 OFFICE THE SUBSTANCE OF THE LETTER. I DID, HOWEVER,
10 DISCLOSE TO BOTH MR. KELLY AND MR. DIGGS THE SUBSTANCE OF
11 THE LETTER AND I ADVISED THEM THAT I WOULD BE FAXING OR
12 OTHERWISE MAILING THEM A COPY OF THE LETTER. I THEN,
13 BECAUSE OF THE SUBSTANCE OF THE LETTER, ASKED THEM TO MEET
14 WITH MR. STANKO TO GO OVER THE SUBSTANCE OF THE LETTER AND
15 TO SEE EXACTLY WHAT CONCERNS HE HAD AND TO SEE IF THOSE
16 CONCERNS COULD BE REMEDIED. IN THE EVENT THAT THOSE
17 CONCERNS COULD NOT BE REMEDIED THAT IF HE DESIRED TO HAVE A
18 MOTION TO RELIEVE COUNSEL FILED IF MR. DIGGS WOULD BE SO
19 KIND AS TO ACCOMMODATE THE COURT AND ACCOMMODATE HIS
20 REQUEST AND TO DO THAT.

21 IT IS MY UNDERSTANDING THAT MR. DIGGS MET WITH
22 MR. STANKO AND AT SOME, AND AT SOME POINT SUBSEQUENTLY MR.
23 STANKO CONTACTED HIS OFFICE AND INDICATED THAT HE DID NOT,
24 THAT HE WANTED HIM TO FILE A MOTION TO RELIEVE HIM AS
25 COUNSEL AND THAT MOTION AGAIN WAS FILED ON MARCH 14TH OF

DEFENDANT'S MOTION TO RELIEVE COUNSEL

4

1 2006. ALSO WITHIN MR. STANKO'S LETTER HE REQUESTED THAT
2 THE COURT APPOINT A MR. AXELROD TO REPRESENT HIM.

3 OKAY, NOW I ASSUME THEN THAT WHAT WE WOULD DO IS
4 PROCEED WITH ANY ARGUMENT ON THE MOTION TO BE RELIEVED.
5 MR. KELLY, IS THERE ANYTHING YOU WOULD LIKE TO STATE FOR
6 THE RECORD?

7 MR. KELLY: IF IT PLEASE THE COURT?

8 THE COURT: YES, SIR.

9 MR. KELLY: THE, I WOULD STATE INTO THE RECORD
10 THAT WE BELIEVE THAT THIS IS AN EX PARTE PROCEDURE AND THAT
11 MATTERS WHICH ARE RAISED HERE ON THE RECORD ARE GOING TO
12 REFLECT ON THE FACTS OF THE PROPOSED DEFENSE.

13 THE COURT: OKAY.

14 MR. KELLY: WE DON'T THINK IT'S PROPER AT THIS
15 TIME TO HAVE PERSONS NOT DIRECTLY INVOLVED WITH THIS ISSUE
16 OR WITH THE DEFENSE TO BE PRESENT BEFORE THE COURT UNTIL
17 SUCH ORDER FROM THE COURT THAT THEY DO BE PRESENT.

18 THE COURT: OKAY, AND I ASSUME WHAT YOU'RE
19 TALKING ME IS THAT THE MATTERS THAT WE WOULD RAISE DEALS
20 SPECIFICALLY WITH MR. STANKO'S DEFENSE, THOSE MATTERS THAT
21 WOULD BE PRIVILEGED; IS THAT CORRECT, MR. KELLY?

22 MR. KELLY: CORRECT, MA'AM.

23 THE COURT: OKAY, IS THERE ANY -- LET ME SEE,
24 LET'S JUST BE CLEAR FOR THE RECORD WHO'S PRESENT. WE HAVE

25 --

DEFENDANT'S MOTION TO RELIEVE COUNSEL

5

1 SHERIFF'S DEPUTY: CAPTAIN KNOX, GEORGETOWN
2 COUNTY SHERIFF'S OFFICE.

3 THE COURT: MY SECURITY, HE GETS TO STAY.

4 CAPTAIN KNOX: YES, MA'AM.

5 THE COURT: I WOULD IMAGINE YOU HAVE NO
6 EXCEPTION, WELL HE'S A, HE'S A ---

7 MR. KELLY: YOUR HONOR, IF HE WERE TO STAY THEN
8 WE WOULD ASK THAT YOU SWEAR HIM TO SECRECY. WE DON'T NEED
9 ANYBODY CARRYING ANYTHING OUT OF THIS ROOM.

10 THE COURT: LET ME ASK HIM A QUESTION.

11 MR. KELLY: WE WOULD ALWAYS FEEL BETTER, OF
12 COURSE, IF HE WERE RIGHT OUTSIDE THE DOOR WHERE WE COULD
13 KNOCK ON THE DOOR FOR HIM ---

14 THE COURT: OKAY.

15 MR. KELLY: --- SO THAT HE WOULDN'T BE BURDENED
16 WITH ANY OF THE INFORMATION OF THIS HEARING.

17 THE COURT: SIR, LET ME ASK, HAVE YOU WORKED IN
18 ANY WAY INVESTIGATING IN ANY WAY AS IT REFERS TO THIS CASE?

19 CAPTAIN KNOX: AT THE TIME WHEN THE INCIDENT
20 OCCURRED I WAS HEAD OF CRIMINAL INVESTIGATIONS.

21 THE COURT: SO YOU HAVE HAD SOME CONTACT WITH
22 HIM?

23 CAPTAIN KNOX: YES, MA'AM.

24 THE COURT: OKAY, WE'LL DEAL WITH THAT
25 APPROPRIATELY. AND, SIR, DO YOU, HAVE YOU HAD ANY CONTACT,

DEFENDANT'S MOTION TO RELIEVE COUNSEL

6

1 WELL TELL ME WHO YOU ARE FIRST, I APOLOGIZE?

2 MR. SMITH: I'M GEORGE SMITH, I'M THE LEAD
3 INVESTIGATOR ON THE CASE.

4 THE COURT: OKAY, AND YOU ARE, MA'AM?

5 LEGAL ASSISTANT: DEIRDRE ARTUZ, MR. AXELROD'S
6 PARALEGAL.

7 THE COURT: OKAY, AND MR. ---

8 MR. AXELROD: MR. AXELROD.

9 THE COURT: OKAY, AND THEN SEATED NEXT TO HIM --
10 -

11 THE BAILIFF: JACKIE OWENS, I'M A BAILIFF WITH
12 THE COURT.

13 THE COURT: OKAY, AND THEN WE HAVE JUDGE THOMAS'
14 LAW CLERK WHO I'M TOLD SHE COULD OBSERVE THE PROCEEDINGS.

15 SHERIFF'S DEPUTY: I'M CAPTAIN WAYNE OWENS,
16 GEORGETOWN COUNTY SHERIFF'S OFFICE.

17 THE COURT: OKAY, AND THEN WE HAVE MR. DIGGS
18 PARALEGAL.

19 MS. BUFORD: JOHANA BUFORD

20 THE COURT: AND MR. DIGGS.

21 MR. DIGGS: YES, MA'AM.

22 THE COURT: AND MR. STANKO AND MR. KELLY. NOW
23 IS THERE ANY EXCEPTION TO THE MATTER BEING HELD EX PARTE
24 AND THAT INVOLVES MATTERS INVOLVING THE POSSIBLE STRATEGY
25 AND PRIVILEGED MATTERS, ATTORNEY/CLIENT PRIVILEGED MATTERS

DEFENDANT'S MOTION TO RELIEVE COUNSEL

7

1 WITH MR. STANKO AND HIS, THE COUNSEL THAT THE COURT HAS
2 APPOINTED TO REPRESENT HIM?

3 MR. KELLY: I HAVE NO OBJECTIONS, YOUR HONOR, MY
4 ONLY CONCERN WOULD BE SECURITY ISSUES.

5 THE COURT: WE HAVE HIM SHACKLED, CORRECT, ARMS
6 AND LEGS?

7 CAPTAIN KNOX: YES, MA'AM.

8 THE COURT: I THINK, I THINK IT WILL BE ALL
9 RIGHT. IF YOU ALL COULD STAY CLOSE, HOWEVER, OUTSIDE THE
10 DOOR FOR MR. STANKO'S SAFETY AS WELL AS, AS EVERYONE
11 INVOLVED.

12 CAPTAIN KNOX: NO PROBLEM.

13 THE COURT: THANK YOU.

14 CAPTAIN KNOX: YES, MA'AM.

15 THE COURT: IS THERE ANY EXCEPTION TO THE CLERK
16 OF COURT REMAINING FROM ANYONE?

17 MR. KELLY: I WOULD PREFER THE CLERK OF COURT
18 NOT REMAIN UNLESS SHE HAS BUSINESS BEFORE THE COURT.

19 THE COURT: YOU HAVE A PROBLEM AS YOU SORT OF
20 MAKE PEOPLE WITNESSES, DON'T YOU?

21 MR. KELLY: YES, MA'AM, YOU CREATE WITNESSES
22 HERE.

23 THE COURT: YOU CREATE A WITNESS, DO YOU ALL
24 HAVE AN EXCEPTION TO JUDGE THOMAS' LAW CLERK REMAINING OR
25 SHOULD WE EXCUSE HER ALSO?

DEFENDANT'S MOTION TO RELIEVE COUNSEL

8

1 MR. KELLY: I THINK THAT JUDGE, THE LAW CLERK
2 SHOULD BE EXCUSED FROM THIS MATTER, MA'AM.

3 THE COURT: OKAY, YOU CAN COME BACK WHEN WE'RE
4 FINISHED.

5 THE COURT: OKAY, EVERYBODY BUT MR. STANKO, MR.
6 DIGGS, MR. KELLY, MS. BUFORD, WILL HAVE TO BE EXCUSED AND,
7 MR. AXELROD, YOU AS WELL.

8 MR. AXELROD: THANK YOU, YOUR HONOR.

9 THE COURT: AND YOUR PARALEGAL. BAILIFF, DOES
10 THE BAILIFF NEED TO LEAVE, TOO? I THINK PROBABLY, BECAUSE
11 I DON'T WANT TO CREATE A WITNESS OUT OF HER EITHER.

12 MR. KELLY: YES, MA'AM. THE BAILIFF IF YOU
13 WOULD EXCUSE HER FOR THE TIME BEING?

14 THE COURT: THANK YOU.

15 MR. KELLY: WE'LL KNOW SHE'S AVAILABLE, YOUR
16 HONOR.

17 THE COURT: THANK YOU. OKAY, NOW I DON'T WANT
18 TO GET AHEAD OF MYSELF, MR. STANKO. I WANTED YOU TO KNOW
19 THAT I DID READ YOUR LETTER, I UNDERSTAND YOUR CONCERNS. I
20 THINK MY PERSPECTIVE IS PROBABLY A LITTLE DIFFERENT BECAUSE
21 I GET TO SEE THE WHOLE PICTURE WHERE YOU TO SOME EXTENT ARE
22 AT A DEFICIT. YOU DON'T GET TO SEE THE WHOLE PICTURE
23 BECAUSE JUST BY VIRTUE OF THE FACT THAT YOU'RE
24 INCARCERATED.

25 DEFENDANT STANKO: YES, MA'AM.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

9

1 THE COURT: AND I'M JUST THINKING THROUGH MY
2 HEAD WHAT YOUR LETTER SAID. I UNDERSTAND MAYBE SOME OF
3 YOUR FRUSTRATION AND FEELING THAT YOUR LAWYERS ARE NOT
4 COMING TO SEE YOU EVERY DAY POTENTIALLY, BUT WHAT I NEED
5 YOU TO UNDERSTAND IS THAT LAWYERS BY THEIR VERY NATURE, AND
6 I AM ONE, I PRACTICE, WE ONLY COME TO SEE FOLKS WHEN WE GOT
7 SOMETHING TO TELL THEM. WE JUST, IT'S THE NATURE OF THE
8 BEAST. IT AIN'T A GOOD HABIT NECESSARILY, BUT WE KIND OF
9 PUT OUT THE FIRES THAT ARE CLOSEST TO US DURING THE COURSE
10 OF THE DAY AND IF WE DON'T HAVE ANYTHING MEANINGFUL TO TELL
11 YOU WE KIND OF DON'T CALL YOU OR COME SEE YOU, WHICH IS NOT
12 NECESSARILY IN A PERFECT WORLD THE BEST THING. BUT
13 SOMETIMES IT'S JUST THE WAY IT IS SO I WANTED YOU TO KNOW
14 TO SOME EXTENT I UNDERSTAND YOUR FRUSTRATION. I UNDERSTAND
15 THAT YOU FEEL LIKE YOU'RE ON TRIAL FOR YOUR LIFE.

16 DEFENDANT STANKO: YES, MA'AM.

17 THE COURT: AND THAT, BUT I ALSO NEED YOU TO
18 UNDERSTAND THAT YOUR LAWYERS CAN'T HOLD YOUR HAND, SO TO
19 SPEAK.

20 DEFENDANT STANKO: YES, MA'AM.

21 THE COURT: I ALSO WANTED YOU TO KNOW THAT WE
22 HAVE HAD A SCHEDULING ORDER IN THIS CASE VERY EARLY ON AND
23 I NEED YOU TO KNOW ALSO FOR YOUR BENEFIT, BECAUSE YOU WOULD
24 NOT KNOW THIS, THAT WHEN JUSTICE TOAL ASSIGNED THIS CASE TO
25 ME I TOOK A GREAT MANY MONTHS BEFORE I APPOINTED A LAWYER

DEFENDANT'S MOTION TO RELIEVE COUNSEL

10

1 TO REPRESENT YOU ---

2 DEFENDANT STANKO: YES, MA'AM.

3 THE COURT: --- BECAUSE I SEARCHED HIGH AND LOW
4 AND LOOKED INTO THE, LOOKED INTO THE, TO THE QUALIFICATIONS
5 OF THE LAWYERS IN THIS AREA. AND WHEN I SAY THIS AREA I
6 MEAN HORRY COUNTY, GEORGETOWN COUNTY. I LOOKED IN
7 COLUMBIA, I LOOKED IN THE FAR REACHES OF THIS STATE BECAUSE
8 I UNDERSTOOD, ONE, THAT THIS WAS A HIGH PROFILE CASE, AND I
9 NEEDED SOMEBODY THAT WOULD NOT BE PHASED BY THAT. I ALSO
10 NEEDED SOMEBODY THAT WOULD NOT GET DISTRACTED BY IT AND WHO
11 WOULD UNDERSTAND THE LEVEL OF ADVOCACY THAT WOULD BE
12 REQUIRED AND THAT WOULD GENUINELY CARE ABOUT THEIR CLIENT
13 ALTHOUGH THEY WERE APPOINTED AND PROBABLY WERE GOING TO BE
14 PAID A FRACTION OF WHAT THOSE WHO ARE RETAINED ARE PAID.

15 DEFENDANT STANKO: YES, MA'AM.

16 THE COURT: AND IT TOOK ME A LONG TIME TO FIND
17 MR. DIGGS AND MR. KELLY BUT WHEN I DECIDED TO APPOINT THEM
18 I FELT VERY CONFIDENT IN THAT APPOINTMENT. I FELT THEY
19 WERE EQUIPPED AND I FELT LIKE THEY WERE UP TO THE JOB AND
20 WHAT ALSO IMPRESSED ME ABOUT THEM, QUITE FRANKLY, IS THE
21 FACT THAT THE ENORMITY OF THIS TASK THAT IT WOULD TAKE OVER
22 THEIR PRACTICE TO SOME EXTENT WITHOUT THEM BEING
23 COMPENSATED FOR IT; AND I GAUGED THEIR RESPONSE TO MY
24 INQUIRY WHEN I SORT OF APPROACHED THEM ABOUT REPRESENTING
25 YOU SO THAT I WEIGHED ALL OF THAT INTO CONSIDERATION BEFORE

DEFENDANT'S MOTION TO RELIEVE COUNSEL

11

1 I APPOINTED THEM.

2 NOW HAVING SAID THAT I ALSO WANT YOU TO KNOW THAT
3 THEY HAVE BEEN WORKING DILIGENTLY ON THIS CASE. I SEE THE
4 THINGS, THERE'S LOT OF THINGS LAWYERS DON'T GIVE YOU IN
5 JAIL BECAUSE, SEE, YOUR JAIL CELL HAS NO, ALTHOUGH TO SOME
6 EXTENT WE SAY IN THE LAW HAS AN EXPECTATION OF PRIVACY, IT
7 REALLY DOESN'T.

8 DEFENDANT STANKO: RIGHT.

9 THE COURT: AND SO WHEN THEY DECIDE TO SEARCH
10 YOUR JAIL CELL AND THEY SAY THEY REALLY DIDN'T READ WHAT
11 WAS IN THERE, HOW DO YOU DISABUSE YOUR MIND TO SOMETHING
12 YOU'VE ALREADY SEEN BECAUSE YOU'VE GOT TO LOOK AT IT TO SEE
13 WHAT IT IS TO DETERMINE IF THERE'S SOMETHING YOU SHOULDN'T
14 BE READING.

15 DEFENDANT STANKO: THAT'S CORRECT.

16 THE COURT: AND SO LOTS OF TIME LAWYERS DO NOT
17 SEND YOU THINGS IN JAIL. THEY DON'T MAIL YOU STUFF BECAUSE
18 THEY DON'T WANT, AND THEY DON'T, QUITE FRANKLY THEY DON'T
19 WANT YOUR CELL MATES TO READ IT WHILE YOU'RE SLEEPING OR
20 OTHERWISE. NO MATTER HOW MUCH PRIVACY YOU TRY TO MAINTAIN
21 IN THAT SPACE THEY IN NO WAY WANT YOUR DEFENSE TO BE
22 COMPROMISED.

23 DEFENDANT STANKO: YES, MA'AM.

24 THE COURT: AND SO THAT'S WHY SOMETIMES THEY DO
25 THINGS THE WAY THEY DO THEM AND IF I COULD TELL YOU HOW

DEFENDANT'S MOTION TO RELIEVE COUNSEL

12

1 MANY CASES AND HOW MANY INSTANCES I HAVE HAD WHERE LAWYERS
2 HAVE MAILED STUFF TO THEIR CLIENTS AND THERE HAS BEEN A
3 SEARCH THAT IS REALLY EVEN UNRELATED TO THEM OF THE JAIL
4 AND SOMEHOW THEIR INFORMATION HAS FALLEN INTO THE HANDS OF
5 LAW ENFORCEMENT AND THEN SOMEHOW THINGS ARE INEVITABLY
6 DISCOVERED THAT NEVER WOULD HAVE BEEN DISCOVERED HAD THEY
7 NOT HAD ACCESS TO THIS INFORMATION EVEN THOUGH THEY'VE COME
8 BEFORE THE COURT AND SAY THEY'VE NEVER SEEN IT, THEY'VE
9 NEVER READ IT. IT'S JUST SORT OF UNCANNY THAT YOU WOULD
10 HAVE INFORMATION THAT YOU REALLY DIDN'T HAVE BEFORE BUT FOR
11 THE FACT THAT THERE WAS A LETTER IN SOMEONE'S CELL OR
12 OTHERWISE. SO I NEED YOU TO UNDERSTAND THAT EVEN THOUGH,
13 AND I'M JUST, THEY HAVEN'T TOLD ME THIS BUT I'M JUST
14 ASSUMING BASED ON MY YEARS OF EXPERIENCES IN DOING THIS AND
15 KNOWING HOW DEFENSE LAWYERS, WHY THEY DON'T MAIL THINGS
16 OUT, THAT IS THE REASONING BECAUSE THEY DON'T WANT TO
17 COMPROMISE YOUR DEFENSE, OKAY?

18 DEFENDANT STANKO: YES, MA'AM.

19 THE COURT: SO I DON'T WANT YOU TO, BUT I WANT
20 YOU TO KNOW FROM MY PERSPECTIVE THAT THEY HAVE COMPLIED
21 WITH THE SCHEDULING ORDER. THEY HAVE BEEN WORKING
22 DILIGENTLY. THEY HAVE QUITE FRANKLY, AND YOU HEARD ME SAY
23 TO MR. DIGGS I HAD A PROTRACTED CONVERSATION WITH INDIGENT
24 DEFENSE. I HAD TO GO TO BAT TO GET THAT MONEY FOR THE
25 EXPERTS THEY WANTED BECAUSE IT WAS A LOT OF MONEY AND MORE

DEFENDANT'S MOTION TO RELIEVE COUNSEL

13

1 USUALLY THAN IS SPENT AND I FELT STRONGLY ABOUT IT, I FEEL
2 STRONGLY ABOUT YOUR DEFENSE. I FELT THAT IT WAS
3 APPROPRIATE THAT YOU HAVE THE EXPERT SERVICES THAT NEEDED
4 TO BE AVAILABLE TO YOU.

5 DEFENDANT STANKO: YES, MA'AM.

6 THE COURT: AND SO I ALSO NEED YOU TO KNOW BASED
7 ON THE VOUCHERS THAT I'VE RECEIVED THAT THESE PEOPLE ARE
8 WORKING DILIGENTLY ON YOUR BEHALF. SO I JUST NEEDED TO
9 TELL YOU THAT AND SAY THAT I DID READ YOUR LETTER AND I DID
10 TAKE ALL OF THOSE, WANTED YOU TO KNOW ALL OF THOSE THINGS
11 IN RESPONSE TO SOME OF YOUR CONCERNS BECAUSE THOSE THINGS
12 WOULD NOT NECESSARILY BE READILY APPARENT TO YOU BECAUSE
13 THEY MAY NOT NECESSARILY BE SHARED WITH YOU.

14 NOW THE OTHER CONCERN THAT I HAVE, AND I SAY THIS
15 TO YOU IN COMPLETE CANDOR, IS THAT I NEED YOU TO BE VERY
16 CAREFUL ABOUT THE CONVERSATIONS THAT YOU HAVE WITH MR.
17 AXELROD BECAUSE MR. AXELROD IS NOT YOUR ATTORNEY; I'VE NOT
18 APPOINTED HIM.

19 DEFENDANT STANKO: RIGHT.

20 THE COURT: AND HE IS IN A POSITION OF BEING A
21 WITNESS AND SO ANYTHING THAT YOU'VE SAID TO HIM HE COULD BE
22 CALLED AS A WITNESS AND IT COULD INCRIMINATE YOU.

23 DEFENDANT STANKO: YES, MA'AM.

24 THE COURT: NOW I DON'T TAKE THE POSITION ONE
25 WAY OR THE OTHER ABOUT IT, I JUST, I, WHEN I GOT THE LETTER

DEFENDANT'S MOTION TO RELIEVE COUNSEL

14

1 AND THEN I, AND I READ IT AND I SAID, OH, BECAUSE I KNEW
2 YOU PROBABLY DID NOT REALIZE THAT.

3 DEFENDANT STANKO: ACTUALLY I DID.

4 THE COURT: OKAY.

5 DEFENDANT STANKO: MAY I RESPOND?

6 THE COURT: WONDERFUL. I JUST WANTED TO TELL
7 YOU THOSE THINGS AND THEN I'M GOING TO HEAR ARGUMENT ABOUT
8 THE MOTION TO BE RELIEVED AND THEN WE'LL GO FROM THERE.

9 DEFENDANT STANKO: WOULD YOU MIND IF I RESPONDED
10 TO WHAT YOU JUST SAID, THOUGH ---

11 THE COURT: SURE.

12 DEFENDANT STANKO: --- JUST TO GIVE YOU AN
13 UNDERSTANDING.

14 THE COURT: SURE. YES, SIR?

15 MR. KELLY: IF THE, IF THE DEFENDANT IS GOING TO
16 RESPOND AND ADDRESS THE ISSUES THAT BRING HIM BEFORE THE
17 COURT WE ASK THAT HE BE SWORN?

18 THE COURT: CERTAINLY. SIR, RAISE YOUR RIGHT
19 HAND TO BE SWORN.

20 (WHEREUPON, STEPHEN CHRISTOPHER STANKO WAS
21 SWORN.)

22 THE COURT: OKAY, AND I INDICATED A MOTION TO BE
23 RELIEVED WAS FILED BY MR. DIGGS BUT IT REALLY WAS ON YOUR
24 BEHALF BECAUSE YOU YOU WERE NOT IN THE POSITION TO FILE A
25 MOTION. SO TECHNICALLY IT'S YOUR MOTION AND I'LL BE GLAD

DEFENDANT'S MOTION TO RELIEVE COUNSEL

15

1 TO HEAR FROM YOU AS A REGARD TO THAT.

2 DEFENDANT STANKO: I'M GOING TO COVER MR.
3 AXELROD FIRST.

4 THE COURT: SURE.

5 DEFENDANT STANKO: MR. AXELROD AND I HAVEN'T
6 ACTUALLY SPOKE ABOUT MY CASE AT ALL, YOUR HONOR, NOT AT
7 ALL.

8 THE COURT: WELL, THAT'S WONDERFUL.

9 DEFENDANT STANKO: AND I UNDERSTAND THAT UNDER
10 CONFIDENTIALITY I HAVE NONE WITH HIM BECAUSE HE'S NOT MY
11 COUNSEL.

12 THE COURT: I JUST WANTED TO MAKE SURE YOU
13 UNDERSTOOD THAT ---

14 DEFENDANT STANKO: YES, MA'AM.

15 THE COURT: --- BECAUSE IT GAVE ME GREAT CONCERN
16 WHEN I READ YOUR LETTER AND ---

17 DEFENDANT STANKO: BUT I WANTED TO SAY ---

18 THE COURT: --- MOST LAY PEOPLE DON'T KNOW THAT
19 AND I DIDN'T WANT YOUR REPRESENTATION TO BE COMPROMISED IN
20 ANY WAY.

21 DEFENDANT STANKO: YES, MA'AM, BUT I WANT YOU TO
22 UNDERSTAND, TOO, THAT I DON'T WANT ANYONE IN THIS TO BE
23 DISPARAGED, NOT MR. DIGGS, NOT MR. AXELROD AND HE ACTUALLY
24 NEVER APPROACHED ME, YOUR HONOR. I'M GOING TO TELL YOU HOW
25 IT HAPPENED BECAUSE IN SPEAKING WITH MR. KELLY YESTERDAY

DEFENDANT'S MOTION TO RELIEVE COUNSEL

16

1 MR. KELLY HAD JUST MENTIONED SOME THINGS THAT WERE, THAT
2 WERE ENTERED INTO THE TELECONFERENCE I THINK EARLIER THIS
3 WEEK AND MR. AXELROD, THE REASON THAT HE AND I EVEN BEGAN
4 OUR DISCUSSION, OR A DISCUSSION AT ALL, WAS BECAUSE I HAD
5 DIRECTED SOME PEOPLE TO TELL THEIR FAMILY TO GO HIRE HIM.
6 WHEN MR. AXELROD AND I FIRST MET HE MERELY CALLED ME OUT TO
7 INTRODUCE HIMSELF AND SAY THANK YOU FOR SOME REASON YOU
8 KEEP SENDING PEOPLE TO ME AND WE HAD THAT DISCUSSION, BUT
9 AS FAR AS DISCUSSING ANYTHING PERTINENT TO THIS CASE OR MR.
10 DIGGS WHO I LATER FOUND OUT THAT THEY AT SOME POINT WERE
11 PARTNERS OR TOGETHER OR SOMETHING OF THAT NATURE, AND I
12 DON'T WANT TO GET INTO ALL THAT BECAUSE I DON'T CARE ---

13 THE COURT: UH-HUH.

14 DEFENDANT STANKO: --- TO BE HONEST WITH YOU,
15 BUT I WANT YOU TO KNOW THAT HE AND I, AND HE NEVER
16 APPROACHED ME IN ANY WAY TO TAKE THIS CASE. IT WAS ONLY
17 AFTER DISCUSSING THINGS ABOUT HIS, HIS PRACTICE AND WHO HE
18 IS AND MORE IMPORTANTLY OF THINGS THAT I HAD SEEN OR HEARD
19 WITH HIS CLIENTS IN THE TIME THAT I HAVE BEEN IN THE
20 GEORGETOWN COUNTY DETENTION CENTER THAT, THAT I HAVE GAINED
21 AN INTEREST WITH HIM. I THEN HAD MY FAMILY DO SOME
22 RESEARCH INTO HIM AND THINGS OF THAT NATURE AND THAT IS
23 ACTUALLY WHY I WANTED HIM, IF POSSIBLE, TO BE APPOINTED TO
24 THIS CASE.

25 NOW I'M GOING TO COVER YOUR FIRST THING FIRST, I

DEFENDANT'S MOTION TO RELIEVE COUNSEL

17

1 THINK MR. DIGGS IS A WONDERFUL PERSON AND MR. KELLY AS
2 WELL, BUT LET ME GIVE YOU A HISTORY OF WHAT'S HAPPENED TO
3 ME SINCE MY ARREST WITH ATTORNEYS HERE AND YOU KNOW THAT I
4 WAS IN THE SYSTEM BEFORE AND TO BE HONEST WITH YOU ---

5 THE COURT: NO, I DON'T KNOW THAT.

6 DEFENDANT STANKO: I SERVED EIGHT AND A HALF
7 YEAR SENTENCE, 10-YEAR SENTENCE. WHILE I WAS IN THERE I
8 WROTE SOME BOOKS AND I STUDIED TRANSCRIPTS AND, I'M NOT
9 GOING TO SAY THAT I'M A LAWYER OR ANYTHING LIKE THAT,
10 JUDGE, BUT I HAVE STUDIED IN EIGHT AND A HALF YEARS A TON
11 OF ATTORNEYS AND HOW THEY ACTED AND STUFF LIKE THAT, NOT
12 THAT MR. DIGGS IS NOT A GREAT ATTORNEY, BUT I ALSO
13 UNDERSTAND THINGS THAT SHOULD OCCUR.

14 WHEN I WAS FIRST ARRESTED I WAS GIVEN REUBEN
15 GOUDE, THE PUBLIC DEFENDER HERE ---

16 THE COURT: WELL, YOU KNOW, I WASN'T INVOLVED IN
17 THE CASE THEN AND NEITHER WAS MR. DIGGS OR MR. KELLY AND
18 WE, YOU KNOW, THAT WAS BEFORE THE SUPREME COURT ASSIGNED
19 THE CASE SO ---

20 MR. KELLY: YOUR HONOR?

21 THE COURT: YES, SIR?

22 MR. KELLY: IF IT PLEASE THE COURT, IF THE COURT
23 WISHES I'LL EXAMINE THE ACCUSED FOR THE MATTER IN ORDER TO
24 GO DIRECTLY TO THE ISSUE.

25 THE COURT: THAT SOUNDS LIKE A PLAN MR. KELLY,

DEFENDANT'S MOTION TO RELIEVE COUNSEL

18

1 YOU MAY PROCEED.

2 MR. KELLY: WOULD YOU HAVE HIM TAKE THE WITNESS
3 STAND OR STAY WHERE HE IS?

4 THE COURT: HE CAN STAY WHERE HE IS, THAT'S
5 FINE.

6 MR. KELLY: ALL RIGHT, WHAT IS IT THAT WE'RE
7 COMPLAINING ABOUT ABOUT MR. DIGGS?

8 DEFENDANT STANKO: THREE THINGS ACTUALLY.
9 COMMUNICATION, AND NOT THAT I EXPECT TO SEE HIM EVERY WEEK,
10 BUT I'VE SEEN HIM FOUR TIMES IN SEVEN MONTHS. THE OTHER
11 DAY WHEN WE HAD DISCUSSION, MR. DIGGS AND I HAD A GOOD
12 DISCUSSION THE OTHER DAY AND HE CALLED IT ORGANIZED CHAOS
13 IN THAT THE COLLABORATION, CORROBORATION, OR THE
14 COMMUNICATION BETWEEN MYSELF, HIM, YOU, DALE DAVIS AND
15 VICKY CHILDS AS EXTREMELY LACKING. THAT'S A CONCERN. I
16 DON'T EXPECT TO SEE EVERYBODY EVERY WEEK. HE EVEN MADE THE
17 COMMENT TO JOHANA THAT I WAS A MODEL CLIENT WHERE I DIDN'T
18 BOTHER HIM ON A WEEKLY BASIS OR CONSISTENTLY TO FIND OUT
19 WHAT'S GOING ON THE CASE AND THIS, BUT TO BE HONEST THERE
20 HAS BEEN VERY LITTLE DISCUSSION. THERE HAS BEEN LESS THAN
21 SIX HOURS DISCUSSION OVER A SEVEN-MONTH PERIOD, TO SAY
22 THAT'S DISCONCERTING AND SCARY QUITE HONESTLY IN A CAPITAL
23 DEFENSE CASE.

24 MR. KELLY: I UNDERSTAND THAT YOU'RE REPLYING TO
25 THE ONE ISSUE AS THE COMMUNICATION?

DEFENDANT'S MOTION TO RELIEVE COUNSEL

19

1 DEFENDANT STANKO: YES, SIR.

2 MR. KELLY: AND YOU SAID I'VE ONLY MET WITH
3 ATTORNEY DIGGS FOUR TIMES IN SEVEN MONTHS, CORRECT?

4 DEFENDANT STANKO: THAT'S CORRECT.

5 MR. KELLY: AND WHILE YOU SAY THAT, YOU ALSO
6 SAID THAT I BELIEVE THAT COORDINATION IS LACKING AMONG THE
7 DEFENSE?

8 DEFENDANT STANKO: TERRIBLY.

9 MR. KELLY: OKAY, THOSE ARE TWO ISSUES?

10 DEFENDANT STANKO: YES, SIR.

11 MR. KELLY: OKAY, ARE THERE ANY OTHERS?

12 DEFENDANT STANKO: INFORMATION GIVEN TO HIM, FOR
13 INSTANCE, THE INFORMATION WITH THE BOXES AND THE THINGS
14 THAT THE STATE HAS TAKEN INTO THEIR POSSESSION THAT WAS
15 BROUGHT TO HIS ATTENTION MONTHS AGO INITIALLY WAS NOT EVEN
16 BROUGHT TO THE ATTENTION OF THE INVESTIGATORS UNTIL THEY
17 CAME AND MET WITH ME AND THEN I LET THEM KNOW ABOUT THAT.
18 THEY THEN INFORMED THE INVESTIGATORS SPECIFICALLY
19 INFORMATION THAT I PROVIDED TO HIM.

20 I KNOW THAT MR., I GUESS THE OTHER THING WOULD
21 BE, I KNOW THAT MR. DIGGS, YOU KNOW THE TIME GUIDELINE HERE
22 WITH I THINK MAY 1ST BEING A DATE WHERE PRETRIAL MOTIONS
23 WERE SUPPOSED TO BE DISCUSSED AND THINGS OF THAT NATURE AND
24 I UNDERSTAND THAT THE PSYCHOLOGICAL EVALUATIONS ARE GOING
25 TO BE INVOLVED. THESE ARE GOING TO BE EXTREMELY RELEVANT

DEFENDANT'S MOTION TO RELIEVE COUNSEL

20

1 AS YOU AND I DISCUSSED AND I HAVEN'T HAD ONE YET. THE ONE
2 THAT WAS SCHEDULED FOR JANUARY 10TH WAS NEVER MET AND IT'S
3 MY UNDERSTANDING I CALLED THE DAY BEFORE THAT AND SPOKE
4 WITH JOHANA WHO INFORMED ME THAT THAT INVESTIGATION OR
5 EXAMINATION HAD BEEN DELAYED UNTIL I COULD MEET WITH
6 ANOTHER EXPERT, WHO I HAVEN'T MET WITH YET AND DON'T KNOW
7 WHEN I WILL, BUT IF YOU WANT TO DISCUSS TIME GUIDELINES THE
8 PSYCHOLOGICAL EVALUATIONS MAY BECOME MORE THOROUGH THAN
9 WHAT'S REMAINING IN THE NEXT 48 DAYS OR 46 DAYS.

10 MR. KELLY: I WANT TO ASK YOU ABOUT THE, THE
11 THIRD THING THAT YOU'VE RAISED WHICH WAS THE INFORMATION
12 YOU SAID ABOUT THE DOCUMENTS IN THE BOX, OKAY, AND TO MAKE
13 THIS CLEAR WE'RE TALKING ABOUT PERSONAL PROPERTY OF YOURS?

14 DEFENDANT STANKO: CORRECT.

15 MR. KELLY: WHICH WAS STORED AT THE HOME OF
16 LAURA LING?

17 DEFENDANT STANKO: CORRECT.

18 MR. KELLY: AND WHICH WAS SEIZED AFTER HER DEATH
19 BY THE AUTHORITIES?

20 DEFENDANT STANKO: CORRECT.

21 MR. KELLY: UNDER WARRANT?

22 DEFENDANT STANKO: YES, SIR.

23 MR. KELLY: AND SOME OF THOSE DOCUMENTS OR ITEMS
24 WHICH WERE SEIZED YOU BELIEVE ARE THE PERSONAL PROPERTY OF
25 YOUR OWN?

DEFENDANT'S MOTION TO RELIEVE COUNSEL

21

1 DEFENDANT STANKO: YES, SIR.

2 MR. KELLY: AND YOU'VE ASKED FROM FIRST WHEN YOU
3 MET WITH ATTORNEY DIGGS THAT THAT BE RELEASED TO YOU; IS
4 THAT CORRECT?

5 DEFENDANT STANKO: TO YOU FOLKS, YES, SIR.

6 MR. KELLY: OR TO US?

7 DEFENDANT STANKO: YES, SIR.

8 MR. KELLY: OKAY, AND WHEN I SPOKE TO YOU
9 YESTERDAY I INFORMED YOU THAT ON THE 6TH OF MARCH TO
10 PRODUCE A LETTER CONCERNING THIS INFORMATION?

11 DEFENDANT STANKO: WITHIN 10 DAYS, YES, SIR.

12 MR. KELLY: AND THEN ON THE 6TH OF MARCH THAT WE
13 RAISED THE ISSUE OF THE SEIZED ITEMS WHICH INCLUDE THE BOX
14 IN CONFERENCE CALL WITH THE JUDGE AND THE SOLICITOR?

15 DEFENDANT STANKO: YES, SIR.

16 MR. KELLY: OKAY, AND SO YESTERDAY WOULD HAVE
17 BEEN THE 10TH DAY AND THAT'S WHEN IT SHOULD HAVE BEEN
18 PRODUCED?

19 DEFENDANT STANKO: YES, SIR.

20 MR. KELLY: AND THAT, AND ALSO I TOLD YOU THAT I
21 BELIEVE THAT WE'D BE LOOKING IN THOSE BOXES AND GOING INTO
22 THAT PROBABLY BY MIDWEEK?

23 DEFENDANT STANKO: YES, SIR.

24 MR. KELLY: OKAY?

25 DEFENDANT STANKO: YOU DID.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

22

1 MR. KELLY: OKAY, OTHER THAN THAT DO YOU HAVE
2 ANY CONCERNS ABOUT THAT, IS THERE ANY, DO YOU BELIEVE THAT
3 YOU ARE PREJUDICED IN ANY WAY BECAUSE IT HASN'T BEEN DONE
4 TO THIS POINT OR YOU'RE JUST IMPATIENT THAT IT HASN'T BEEN
5 DONE TO THIS POINT?

6 DEFENDANT STANKO: I DON'T THINK IT'S A MATTER
7 OF IMPATIENCE, NO, SIR.

8 MR. KELLY: OKAY, WELL THEN HOW IS IT GERMANE
9 HERE?

10 DEFENDANT STANKO: I THINK THERE'S A DIFFERENCE
11 BETWEEN, LET ME EXPLAIN IT TO YOU THIS WAY. IF WE'RE NOT
12 ALL INVOLVED, WE'VE GOT A TIME GUIDELINE HERE. WE'RE FOUR
13 MONTHS AWAY FROM WHEN COURT SUPPOSED TO GO TO TRIAL YET I
14 DON'T HAVE ANY IDEA OF WHAT MY DEFENSE THEORY IS. I DON'T
15 HAVE ---

16 MR. KELLY: LET ME DIRECT YOU TO MY QUESTION,
17 OKAY, AND THEN, AND THEN AT A LATER TIME IF YOU'RE ALLOWED
18 TO YOU CAN ADDRESS THE COURT ON COLLATERAL MATTERS, IS THAT
19 OKAY WITH YOU?

20 DEFENDANT STANKO: YES, SIR.

21 MR. KELLY: OKAY. NOW YOU KNOW WHAT IS IN THESE
22 BOXES YOURSELF?

23 DEFENDANT STANKO: YES, SIR.

24 MR. KELLY: YOU PUT THEM IN THERE?

25 DEFENDANT STANKO: YES, SIR.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

23

1 MR. KELLY: YOU'RE AWARE OF WHAT'S THERE?

2 DEFENDANT STANKO: YES, SIR.

3 MR. KELLY: OKAY, AND HAVE YOU TOLD US OR DO YOU
4 BELIEVE YOURSELF WITHOUT TELLING US THAT THERE'S
5 INFORMATION IN THERE WHICH IS DAMAGING TO YOU IN THE HANDS
6 ---

7 DEFENDANT STANKO: NO, SIR.

8 MR. KELLY: NO, SO THERE'S NOTHING DAMAGING TO
9 YOU IN THERE THAT YOU KNOW OF?

10 DEFENDANT STANKO: DAMAGING, NO, SIR.

11 MR. KELLY: WHEN I MEAN DAMAGING I MEAN WHICH
12 WOULD BE EVIDENCE OR PROOF OF YOUR GUILT IN ANY CRIME
13 WHATSOEVER WHETHER IT BE THOSE WITH WHICH YOU'RE CHARGED OR
14 ANY OTHERS?

15 DEFENDANT STANKO: NO, SIR.

16 MR. KELLY: NO, WHAT INTEREST DO THEY HAVE FOR
17 YOU OR YOUR DEFENSE IF I HAD THEM HERE IN FRONT OF ME
18 TODAY?

19 DEFENDANT STANKO: THEY WOULD HAVE EVERYTHING.
20 THEY WOULD DISCUSS PREVIOUS PSYCHOLOGICAL EXAMINATIONS.
21 THEY HAVE ALL THE THINGS THAT WAS GOING ON BETWEEN ME FROM
22 THE TIME OF RELEASE UNTIL UP TO THE DAY THAT THIS OCCURRED.
23 ALL THE THINGS LIKE YOU WERE ASKING ME ABOUT YESTERDAY
24 WITH, WITH LAURA AND THE HOUSE AND ALL OF THOSE MATTERS
25 THINGS THAT ARE GOING TO BE BROUGHT UP IN THE DEFENSE,

DEFENDANT'S MOTION TO RELIEVE COUNSEL

24

1 THINGS THAT YOU ASKED ME ABOUT YESTERDAY.

2 MR. KELLY: SO THESE WOULD BE THINGS WHICH WOULD
3 BE PRIMARILY USED IN MITIGATION IF THE MITIGATION, IF THE
4 SECOND PHASE OF THE TRIAL WILL REACH?

5 DEFENDANT STANKO: YES, SIR.

6 MR. KELLY: OKAY, OTHER THAN THAT THEY DON'T
7 HAVE ANY SIGNIFICANCE OF GUILT OR INNOCENCE THAT YOU KNOW
8 OF, CORRECT?

9 DEFENDANT STANKO: CORRECT.

10 MR. KELLY: OKAY, IS THERE SOME REASON THAT YOU
11 BELIEVE THAT IF WE GET OUR HANDS ON IT TOMORROW OR THE NEXT
12 DAY THAT WE CAN'T COMPLETELY EXAMINE AND DETERMINE WHAT'S
13 THERE OURSELVES IN ORDER TO PREPARE YOUR DEFENSE ---

14 DEFENDANT STANKO: NO.

15 MR. KELLY: --- OR MITIGATION?

16 DEFENDANT STANKO: NO, I DON'T THINK THERE'S A
17 PROBLEM AND I THINK IT'S SOMETHING THAT SHOULD HAVE BEEN
18 DONE MONTHS AGO WHEN IT WAS PRESENTED AND SOMETHING THAT
19 SHOULD HAVE BEEN FOLLOWED UP LONG BEFORE I HAD TO TELL --
20 IT WAS DALE AND VICKY THAT I HAD -- MR. DIGGS, I'M GOING TO
21 TRY TO ANSWER YOUR QUESTION FIRST. I HAD TO TELL DALE AND
22 VICKY, THEY'RE THE ONES THAT ACTUALLY PUSHED THAT WHOLE
23 ISSUE THAT GOT THE LETTER WRITTEN AND THAT SHOULDN'T BE
24 DONE. FIRST CHAIR SHOULD HAVE BEEN IN ON THAT AND EVEN
25 ADMITTED IN CONVERSATION ON THURSDAY.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

25

1 MR. KELLY: I UNDERSTAND WHAT YOU'RE SAYING TO
2 ME, SIR, THAT THAT'S WHAT YOU BELIEVE SHOULD BE DONE. I'M
3 ONLY ASKING YOU HOW HAS IT AFFECTED YOU ADVERSELY AS OF
4 TODAY, HAS IT THAT YOU KNOW OF?

5 DEFENDANT STANKO: IT'S DELAYED THE PRESENTATION
6 OF THIS INFORMATION TO YOU FOLKS SO THAT YOU CAN ACT ON IT
7 WITH PRETRIAL MOTIONS SET FOR 44 DAYS FROM NOW.

8 MR. KELLY: AND OTHER THAN THAT?

9 DEFENDANT STANKO: NOT THAT I KNOW OF, NO, SIR.

10 MR. KELLY: OKAY. NOW YOU ALSO RAISED THIS
11 ISSUE, WHICH I HAVE AS NUMBER FOUR AND THAT'S THE FAILURE
12 OF MR. DIGGS TO PROVIDE INFORMATION TO INVESTIGATORS WHICH
13 WERE PROVIDED TO HIM BY YOU FOR THEM, CORRECT?

14 DEFENDANT STANKO: YES, SIR.

15 MR. KELLY: WHAT IS THAT THAT HE FAILED TO
16 PROVIDE? WHAT INFORMATION IS THAT?

17 DEFENDANT STANKO: WELL I MEAN INITIALLY THAT
18 WAS THE INFORMATION REGARDING THE BOXES.

19 MR. KELLY: WELL YOU MET WITH THE ---

20 DEFENDANT STANKO: THE -- I'M SORRY, GO AHEAD.

21 MR. KELLY: LET ME NOT RUN OVER WHAT YOU'RE
22 SAYING, PLEASE REPEAT WHAT YOU SAID?

23 DEFENDANT STANKO: THE FIRST AND MOST IMPORTANT
24 THING WOULD BE THE INFORMATION THAT'S WITHIN THE BOXES THAT
25 WERE CONFISCATED BY THE POLICE DEPARTMENT AND INFORMATION

DEFENDANT'S MOTION TO RELIEVE COUNSEL

26

1 CONCERNING THE DEPARTMENT OF COMMISSION PARDON AND PAROLE
2 SERVICES WHICH I EXPLAINED TO DALE AND VICKY.

3 MR. KELLY: NOW YOU MET WHEN YOU SAY DALE AND
4 VICKY YOU'RE TALKING ABOUT THE FACTS INVESTIGATOR WHOSE
5 NAME IS VICKY ---

6 DEFENDANT STANKO: CHILDS.

7 MR. KELLY: CHILDS?

8 DEFENDANT STANKO: YES, SIR.

9 MR. KELLY: AND THE MITIGATION INVESTIGATOR
10 WHOSE NAME IS DALE DAVIS, CORRECT?

11 DEFENDANT STANKO: CORRECT.

12 MR. KELLY: AND YOU MET WITH DALE DAVIS HOW MANY
13 TIMES?

14 DEFENDANT STANKO: FOUR OR FIVE ALREADY.

15 MR. KELLY: OKAY, AND DID YOU GIVE HER THE
16 INFORMATION THAT YOU GAVE TO ATTORNEY DIGGS THAT HE WAS TO
17 GIVE TO HER?

18 DEFENDANT STANKO: YES, SIR.

19 MR. KELLY: OKAY.

20 DEFENDANT STANKO: I DIDN'T GIVE HER THE STUFF
21 THAT WAS WRITTEN THAT I GAVE HIM, THOUGH.

22 MR. KELLY: WHAT STUFF?

23 DEFENDANT STANKO: I GAVE ---

24 MR. KELLY: YOU GAVE --- WAIT A MINUTE,
25 PLEASE, LET ME SORT THIS OUT, IF I MAY.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

27

1 DEFENDANT STANKO: YES, SIR.

2 MR. KELLY: YOU GAVE TO HER ORAL INFORMATION
3 GIVEN TO MR. DIGGS, CORRECT?

4 DEFENDANT STANKO: YES, SIR.

5 MR. KELLY: OKAY, SO BUT YOU DIDN'T, YOU, YOU
6 DON'T KNOW THAT SHE RECEIVED WRITTEN INFORMATION THAT YOU
7 GAVE TO MR. DIGGS, CORRECT?

8 DEFENDANT STANKO: CORRECT.

9 MR. KELLY: WHAT WOULD THAT BE?

10 DEFENDANT STANKO: IN AREAS THAT I HAD WRITTEN
11 CONCERNING ALL FACETS OF, OF MY LIFE PRIOR TO ARRESTS AND
12 CONVICTION OF THE PREVIOUS OFFENSE AFTER RELEASE UP TO THE
13 DATE WHEN I WAS ARRESTED FOR THIS PARTICULAR --

14 MR. KELLY: THIS IS A DOCUMENT THAT YOU PROVIDED
15 TO BOTH ME AND TO MR. DIGGS WHEN WE INITIALLY MET WITH YOU;
16 IS THAT THE DOCUMENT YOU'RE SPEAKING OF, YOUR NOTEBOOK OR A
17 TYPE OF ACCOUNT OR HISTORY?

18 DEFENDANT STANKO: YES, SIR.

19 MR. KELLY: OKAY, WELL ARE YOU AWARE THAT THAT
20 HAS LONGED BEEN PROVIDED TO BOTH INVESTIGATORS?

21 DEFENDANT STANKO: IT WAS PROVIDED TO THEM AFTER
22 I MET WITH THEM BECAUSE THEY DID NOT HAVE IT THE FIRST TIME
23 I MET WITH THEM, MR. KELLY.

24 MR. KELLY: WELL ARE YOU AWARE THAT IT HAS BEEN
25 PROVIDED TO THEM?

DEFENDANT'S MOTION TO RELIEVE COUNSEL

28

1 DEFENDANT STANKO: SINCE THEN, YES, IT HAS.

2 MR. KELLY: OKAY, AND ARE YOU AWARE THAT THAT'S
3 BEEN REALLY SINCE WITHIN A FEW DAYS THAT THEY WERE
4 APPOINTED I GAVE IT TO THEM MYSELF, ARE YOU AWARE OF THAT?

5 DEFENDANT STANKO: IT WAS AFTER WE MET, I DON'T
6 KNOW WHEN IT WAS.

7 MR. KELLY: WELL YOU REMEMBER WHEN I CAME TO YOU
8 AND TOLD YOU I MADE COPIES OF ALL THAT WAS PROVIDED TO THE
9 INVESTIGATORS?

10 DEFENDANT STANKO: YES, SIR.

11 MR. KELLY: WELL, THAT WOULD BE WHEN I DID AND
12 THAT WAS NOT YESTERDAY, CORRECT?

13 DEFENDANT STANKO: NO, IT WASN'T YESTERDAY.

14 MR. KELLY: I MET YOU YESTERDAY, IT WASN'T 10
15 DAYS AGO?

16 DEFENDANT STANKO: RIGHT.

17 MR. KELLY: IT WAS THE TIME BEFORE THAT, WASN'T
18 IT?

19 DEFENDANT STANKO: I BELIEVE SO, PROBABLY, YES,
20 SIR.

21 MR. KELLY: IT WOULD HAVE BEEN ABOUT 40 DAYS
22 AGO?

23 DEFENDANT STANKO: APPROXIMATELY, I'M NOT SURE.

24 MR. KELLY: ALL RIGHT.

25 DEFENDANT STANKO: THAT SOUNDS CORRECT.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

29

1 MR. KELLY: OKAY, SO THAT'S WHAT I'M GETTING AT.
2 WHAT I'M GETTING AT IS YOU SAID ONE OF MY COMPLAINTS IS I
3 GAVE ATTORNEY DIGGS INFORMATION HE DIDN'T GIVE TO THE
4 INVESTIGATORS NOW WE UNDERSTAND THAT YOU REALIZE THAT THEY
5 DID RECEIVE ALL THE ORAL INFORMATION AND THAT 40 DAYS AGO
6 RECEIVED ALL THE WRITTEN, IS THERE ANY OTHER THAT YOU WANT
7 THEM TO HAVE?

8 DEFENDANT STANKO: AT THIS POINT, NO, BECAUSE
9 I'VE GIVE IT ALL TO THEM.

10 MR. KELLY: AND IN FACT WHEN YOU MET WITH THE
11 INVESTIGATORS HAVEN'T YOU COMPLETELY COOPERATED WITH THEM?

12 DEFENDANT STANKO: I SURE HAVE.

13 MR. KELLY: AND GIVEN THEM ALL THE INFORMATION
14 THAT THEY'VE ASKED FOR?

15 DEFENDANT STANKO: YES, SIR.

16 MR. KELLY: OKAY, IS THERE ANY INFORMATION
17 YOU'VE WITHHELD FROM THEM AND HAVEN'T TOLD THEM THAT YOU'VE
18 TOLD US ABOUT BUT NOT THEM?

19 DEFENDANT STANKO: I DIDN'T WITHHOLD NAY
20 INFORMATION FROM THEM, NO, SIR.

21 MR. KELLY: SO THEY HAVE EVERYTHING THAT YOU CAN
22 THINK OF?

23 DEFENDANT STANKO: YES, SIR.

24 MR. KELLY: AND EVERYTHING THEY CAN THINK OF SO
25 FAR?

DEFENDANT'S MOTION TO RELIEVE COUNSEL

30

1 DEFENDANT STANKO: YES, SIR.

2 MR. KELLY: FROM YOU, CORRECT?

3 DEFENDANT STANKO: YES, SIR.

4 MR. KELLY: OKAY, THE FIFTH ONE HERE IS ABOUT
5 THE EVALUATIONS, OKAY. NOW HAS MR. DIGGS SET DOWN WITH YOU
6 AND TALKED WITH YOU ABOUT WHAT THE PLAN FOR YOUR DEFENSE,
7 YOUR EXAMINATION BY, I'LL CALL THEM MENTAL EXPERTS, THAT
8 WOULD INCLUDE PEOPLE LIKE A PSYCHOLOGIST AND PSYCHIATRIST
9 AND OTHER SUCH RELATED FIELDS, HAS HE SET DOWN WITH YOU AND
10 DISCUSSED IT?

11 DEFENDANT STANKO: NO. AS FAR AS THE ONLY
12 DISCUSSION THAT WE HAVE HAD WAS THAT HE WANTED TO FIND OUT,
13 IN BOTH HIS WORDS AND MINE, WHAT WAS GOING ON IN MY HEAD
14 ON, ON THOSE DAYS MEANING A NEUROLOGICAL EXAM FIRST.

15 MR. KELLY: AND YOU HAVEN'T HAD ANY EXAMS?

16 DEFENDANT STANKO: NOT A ONE.

17 MR. KELLY: AND HAVE YOU BEEN, HAS, HAS ATTORNEY
18 DIGGS TALKED WITH YOU OR ANYBODY FROM HIS OFFICE AND SAID,
19 NOW HERE'S THE CALENDAR, THIS IS WHAT'S GOING TO HAPPEN?

20 DEFENDANT STANKO: NO, SIR.

21 MR. KELLY: TODAY IS THE 17TH, WE'VE, WE'VE
22 CONTACTED SO AND SO AND WE'RE, WE THINK WE'RE GOING TO SEE
23 THEM WITHIN SO MANY DAYS, HAS ANYBODY DONE THAT?

24 DEFENDANT STANKO: NO, SIR, I ACTUALLY CALLED
25 THEIR OFFICE ON THE IT WAS EITHER THE 9TH OR 10TH OF

DEFENDANT'S MOTION TO RELIEVE COUNSEL

31

1 JANUARY AND SPOKE WITH JOHANA AND IT WAS BECAUSE I FOUND
2 OUT FROM ONE OF THE OFFICERS THAT I WAS SUPPOSED TO HAVE
3 BEEN TRANSFERRED AND IT HAD BEEN STOPPED. SO I CALLED THEM
4 UP AND SPOKE WITH JOHANA AND JOHANA SAID, OH, WE WERE
5 COMING TO SEE YOU TOMORROW AND I SAID, WELL, WAS I SUPPOSED
6 TO HAVE AN EXAMINATION THAT DAY AND SHE SAID, YOU WERE AND
7 WE WERE SUPPOSED TO GO WITH YOU TO COLUMBIA BUT IT'S BEEN
8 CHANGED BECAUSE WE WANT YOU TO SEE SOMEONE ELSE FIRST WHICH
9 I GUESS IS MR. AIKEN, JAMES EVANS AIKEN, WHICH IS THE ONLY
10 OTHER ORDER FOR EXPERT SERVICES THAT I'VE RECEIVED AND
11 NOTHING HAS HAPPENED SINCE THEN AND UNTIL OUR DISCUSSION ON
12 THURSDAY THERE WAS NO DISCUSSION ABOUT ANYTHING LIKE THAT.

13 MR. KELLY: ALL RIGHT, NOW I CAME TO SEE YOU
14 YESTERDAY ---

15 DEFENDANT STANKO: YES, SIR.

16 MR. KELLY: WE TALKED FOR ABOUT AN HOUR AND A
17 HALF?

18 DEFENDANT STANKO: AT LEAST, YES, SIR.

19 MR. KELLY: AND I SAID LET'S MAKE A LIST OF
20 THINGS THAT I CAN TALK WITH MR. DIGGS ABOUT, CORRECT?

21 DEFENDANT STANKO: YES, SIR.

22 MR. KELLY: AND WE MAINLY MADE A LIST OF TWO
23 THINGS, ISN'T THAT RIGHT?

24 DEFENDANT STANKO: YES, SIR.

25 MR. KELLY: THE SEIZED ITEMS WE'LL CALL THE

DEFENDANT'S MOTION TO RELIEVE COUNSEL

32

1 BOXES, CORRECT?

2 DEFENDANT STANKO: YES, SIR.

3 MR. KELLY: AND THE OTHER WAS THE MENTAL HEALTH
4 DEFENSE OR EVALUATION?

5 DEFENDANT STANKO: YES, SIR.

6 MR. KELLY: IS THERE ANY OTHER MAJOR CATEGORY
7 OTHER THAN THOSE TWO AND THE ONES YOU'VE NAMED HERE?

8 DEFENDANT STANKO: AND THE ONES YOU, I'VE NAMED
9 THERE.

10 MR. KELLY: OTHER THAN THOSE?

11 DEFENDANT STANKO: NO, SIR.

12 MR. KELLY: ALL RIGHT, NOW IT ESSENTIALLY COMES
13 DOWN TO THE EVALUATIONS AND THE, I'LL CALL IT THE SCHEME OF
14 THE DEFENSE WITH MENTAL HEALTH, ISN'T THAT CORRECT?

15 DEFENDANT STANKO: AND THE COLLABORATION OF THE
16 TEAM TOGETHER FOR THE DEFENSE.

17 MR. KELLY: WELL THIS IS SOMETHING THAT YOU'VE
18 BEEN TOLD BY MR. DIGGS THAT HE FEELS THAT IT'S
19 UNCOORDINATED?

20 DEFENDANT STANKO: ORGANIZED CHAOS.

21 MR. KELLY: RIGHT, AND WHAT DID I SAY, HAVE I
22 EVER DESCRIBED IT ---

23 DEFENDANT STANKO: YOU ACTUALLY ---

24 MR. KELLY: --- ORGANIZED CHAOS?

25 DEFENDANT STANKO: THE COMMENT THAT YOU ACTUALLY

DEFENDANT'S MOTION TO RELIEVE COUNSEL

33

1 MADE WAS THAT YOU IN SOME TERM AGREED THAT THERE NEEDED TO
2 BE A MORE, A BETTER COMMUNICATION AND YOU INFORMED ME BOTH
3 YESTERDAY AND LAST TIME THAT I MET WITH YOU THAT YOU WERE
4 GOING TO SPEAK WITH HIM IN REGARDS TO AT LEAST COMMUNICATE
5 WITH ME A LITTLER BIT MORE AND THEN YOU AGREED THERE HAD
6 NOT BEEN ENOUGH COMMUNICATION.

7 MR. KELLY: AND, AND AS A MATTER OF FACT YOU AND
8 I AGREED THAT THE MORE UNIFIED WE ARE ALL TOGETHER IN YOUR
9 DEFENSE THE BETTER THAT YOU WERE?

10 DEFENDANT STANKO: YES, SIR.

11 MR. KELLY: CORRECT?

12 DEFENDANT STANKO: THAT'S CORRECT.

13 MR. KELLY: AND ONE OF YOUR THEORIES IS THAT IS
14 THAT AIN'T GOING ON THE WAY IT OUGHT TO, RIGHT?

15 DEFENDANT STANKO: AT ALL, YES, SIR, CORRECT.

16 MR. KELLY: OKAY, AND YOUR BASIS FOR THAT IS
17 EXACTLY WHAT WE'VE JUST DISCUSSED?

18 DEFENDANT STANKO: MY BASIS FOR THAT IS ALSO THE
19 FACT THAT WHEN I SPEAK WITH YOU AND MS. CHILDS AND MS.
20 DAVIS THERE IS A UNIFICATION THERE, THAT EVERYBODY AT
21 LEAST, AT LEAST YA'LL ARE ALL TRAVELING IN THE SAME
22 DIRECTION, AND NOT TO PICK ON MR. DIGGS BUT HE DOESN'T EVEN
23 KNOW DALE'S NAME THURSDAY WHEN WE TALKED. HE COULDN'T
24 REMEMBER HER NAME AND I KNOW THAT MIGHT BE SOMETHING SIMPLE
25 BUT IN A, IN A CAPITAL CASE YOU SHOULD KNOW WHO THE DOGGONE

DEFENDANT'S MOTION TO RELIEVE COUNSEL

34

1 INVESTIGATORS ARE. I MEAN THAT SHOULD BE KIND OF A
2 PERTINENT THING TO REMEMBER.

3 MR. KELLY: ALL RIGHT, NOW LET ME TURN MY
4 ATTENTION TO MR. AXELROD. DID YOU SAY YOU'VE NEVER TALKED
5 WITH MR. AXELROD ABOUT THIS CASE, CORRECT?

6 DEFENDANT STANKO: CORRECT.

7 MR. KELLY: NEVER DISCUSSED ANY OF THE FACTS OF
8 THIS CASE?

9 DEFENDANT STANKO: CORRECT.

10 MR. KELLY: HAVE YOU DISCUSSED YOUR LAWYERS WITH
11 HIM?

12 DEFENDANT STANKO: WHO YOU ARE, YES, SIR.

13 MR. KELLY: OKAY.

14 DEFENDANT STANKO: ANYTHING ABOUT ANY ---

15 MR. KELLY: HAVE YOU DISCUSSED WITH HIM YOUR
16 COMPLAINTS ABOUT YOUR LAWYERS?

17 DEFENDANT STANKO: REALLY I DIDN'T VOICE MY
18 COMPLAINTS TO HIM, IT WASN'T HIS PLACE.

19 MR. KELLY: HOW DO YOU, HOW DOES HE KNOW THAT
20 YOU MIGHT WANT HIM AS A LAWYER IF YOU DIDN'T TELL HIM?

21 DEFENDANT STANKO: I ASKED HIM IN OUR SECOND
22 MEETING THAT IF, IF I WERE NOT HAPPY WITH ONE OF MY
23 ATTORNEYS ---

24 MR. KELLY: WHAT SHOULD I DO?

25 DEFENDANT STANKO: NO, I DIDN'T ASK HIM THAT, I

DEFENDANT'S MOTION TO RELIEVE COUNSEL

35

1 KNEW WHAT I COULD DO.

2 MR. KELLY: OH, WHAT DID YOU ASK HIM?

3 DEFENDANT STANKO: I HAVE EVERYTHING RIGHT HERE
4 THAT I'VE DONE MY OWN RESEARCH ALREADY.

5 MR. KELLY: LET ME ---

6 DEFENDANT STANKO: I ASKED HIM IF HE WOULD HAVE
7 ANY INTEREST IF I COULD GET HIM APPOINTED TO THE CASE?

8 MR. KELLY: AND WHAT DID HE SAY?

9 DEFENDANT STANKO: HE SAID IF HE COULD GET
10 APPOINTED TO WHERE HE COULD BE COMPENSATED IN SOME FASHION
11 FOR THE WORK THAT HE WOULD HAVE TO DO, YES.

12 MR. KELLY: DO YOU HAVE ANY IDEA WHY HE WOULD
13 WRITE A LETTER TO THE JUDGE FOR ANY REASON?

14 DEFENDANT STANKO: ACTUALLY I TOLD HIM AFTER, I
15 ACTUALLY TOLD HIM THAT I WAS WRITING, WHEN I WROTE JUDGE
16 JEFFERSON THAT LETTER I TOLD HIM. I CALLED HIM AND TOLD
17 HIM THAT I WAS WRITING THAT LETTER AND THAT I WAS
18 UNSATISFIED WITH THE REPRESENTATION OF MY FIRST CHAIR MR.
19 DIGGS.

20 MR. KELLY: WHAT WAS HIS RESPONSE TO THAT?

21 DEFENDANT STANKO: HE DIDN'T ACTUALLY HAVE A
22 REPLY. HE ACTUALLY, I KNEW THAT HE AND MR. DIGGS HAD AT
23 SOME POINT SOMEHOW BEEN TOGETHER AND I DIDN'T FIND OUT
24 UNTIL MR. DIGGS LAST WEEK THAT THERE WAS MONEY CONCERNED
25 SOMEHOW, WHICH AGAIN I DON'T CARE ABOUT THAT, THAT'S NOT

DEFENDANT'S MOTION TO RELIEVE COUNSEL

36

1 MY, THAT'S BETWEEN THEM TWO. ALL I'M WORRIED ABOUT IS MY
2 DEFENSE FOR THIS CASE.

3 MR. KELLY: DID YOU ASK MR. AXELROD WHAT HE
4 THOUGHT ABOUT MR. DIGGS AS AN ATTORNEY?

5 DEFENDANT STANKO: I DID.

6 MR. KELLY: AND WHAT DID HE SAY?

7 DEFENDANT STANKO: HE RESPECTED HIM.

8 MR. KELLY: OKAY, DID HE SAY I RESPECT HIM AND
9 THAT'S ALL I HAVE TO SAY, CORRECT?

10 DEFENDANT STANKO: HIS, HIS EXACT WORDS I CAN'T
11 RECALL BUT THEY, THEY WOULD BE ALONG THOSE LINES, YES, SIR.
12 HE HAD NOTHING DISPARAGING TO SAY AT ALL.

13 MR. KELLY: NOW ALL THESE THINGS THAT I'VE
14 TALKED TO YOU ABOUT THIS MORNING IS THERE ANYTHING THAT,
15 THAT I DIDN'T ASK YOU ABOUT THAT YOU WANT TO BRING RIGHT
16 NOW AS, YOU KNOW, BECAUSE WE'RE, WE'RE TALKING ABOUT WHY I
17 WANT MY, I WANT TO GET MR. DIGGS REPLACED AND WE'VE TALKED
18 ABOUT THAT. BUT IS THERE ANYTHING ELSE THAT WE WANT TO PUT
19 INTO THE RECORD THIS MORNING?

20 DEFENDANT STANKO: NOT THAT I CAN THINK OF RIGHT
21 OFF, MR. DIGGS.

22 THE COURT: MR. KELLY.

23 DEFENDANT STANKO: I MEAN MR. KELLY, I'M SORRY.

24 THE COURT: THAT'S ALL RIGHT.

25 DEFENDANT STANKO: I'M A LITTLE FRUSTRATED.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

37

1 THE COURT: I UNDERSTAND, THAT'S SO THE RECORD
2 CAN BE CLEAR.

3 DEFENDANT STANKO: I HAVE A FEELING THAT I'M, I
4 MEAN I ALMOST FEEL LIKE I'M BEING CROSSED BY THE SOLICITOR.
5 I KNOW WHAT YOU'RE DOING AND I KNOW YOU HAVE TO GET THESE
6 THINGS PRESENTED BUT IT'S FRUSTRATING.

7 THE COURT: AND HE'S TRYING TO PRESERVE YOUR
8 RECORD FOR YOU.

9 DEFENDANT STANKO: YES, MA'AM.

10 THE COURT: TO KEEP YOU ON TASK AND THAT'S ALL.

11 MR. KELLY: YOU DON'T FEEL ---

12 DEFENDANT STANKO: I KNOW YOU'RE RIGHT, MR.
13 KELLY, SO THAT CAN'T BE TOO MUCH OF AN INSULT.

14 MR. KELLY: MR. STANKO?

15 DEFENDANT STANKO: YES, SIR.

16 MR. KELLY: DO YOU HAVE ANY COMPLAINTS OR
17 ANYTHING YOU WANT TO VOICE ABOUT ME EXAMINING YOU SO
18 CLOSELY THIS MORNING?

19 DEFENDANT STANKO: NO, I MEAN I JUST WASN'T
20 PREPARED FOR IT.

21 MR. KELLY: OKAY.

22 DEFENDANT STANKO: I KNOW WHAT YOU'RE DOING AND
23 I APPRECIATE IT.

24 MR. KELLY: OKAY, HAVE YOU TOLD ME THE TRUTH
25 ABOUT EVERYTHING?

DEFENDANT'S MOTION TO RELIEVE COUNSEL

38

1 DEFENDANT STANKO: YES, SIR.

2 MR. KELLY: DID I LEAVE ANYTHING OUT?

3 DEFENDANT STANKO: NOT THAT I CAN THINK OF.

4 MR. KELLY: OKAY.

5 DEFENDANT STANKO: I DID SPEAK TO ANOTHER

6 ATTORNEY BUT NOT ABOUT THIS CASE OR ---

7 MR. KELLY: WHO DID YOU TALK TO?

8 DEFENDANT STANKO: JOHN DELGADO.

9 MR. KELLY: JOHN DELGADO AND DID YOU ASK FOR HIS
10 ADVICE?

11 DEFENDANT STANKO: ACTUALLY I DID.

12 MR. KELLY: AND DID HE GIVE IT TO YOU?

13 DEFENDANT STANKO: NO.

14 MR. KELLY: DID YOU ASK HIM ABOUT YOUR
15 ATTORNEYS, DID HE KNOW US?

16 DEFENDANT STANKO: YES.

17 MR. KELLY: WHAT DID HE SAY ABOUT IT?

18 DEFENDANT STANKO: VERY RESPECTED, NOTHING BAD
19 TO SAY.

20 MR. KELLY: I DON'T THINK I HAVE ANYTHING ELSE,
21 JUDGE.

22 THE COURT: MR. STANKO, IS THERE ANYTHING
23 FURTHER THAT YOU FEEL YOU NEED TO TELL ME AS IT CONCERNS
24 THE MOTION TO RELIEVE YOUR LAWYER?

25 DEFENDANT STANKO: YOUR HONOR, I GUESS AT THIS

DEFENDANT'S MOTION TO RELIEVE COUNSEL

39

1 POINT ASIDE FROM MY FEARS I HAVE TO BELIEVE IN AND TRUST MY
2 ATTORNEYS WITH THE THINGS THAT I NEED TO TELL THEM, THAT
3 WHEN I TELL THEM SOMETHING IT WILL GET CONVEYED TO THE
4 RIGHT PEOPLE, THAT A DEFENSE IS BEING PREPARED THAT CAN
5 EITHER COST ME OR SAVE MY LIFE AT THIS POINT AND I DON'T
6 HAVE THAT WITH MR. DIGGS RIGHT NOW. I DON'T KNOW IF IT CAN
7 BE RESTORED, I DON'T KNOW THAT IT CAN'T, I CAN ONLY TELL
8 YOU THAT IT'S NOT THERE RIGHT NOW AND I'M AFRAID OF THAT.

9 MR. KELLY IS THE OPPOSITE, EVEN THOUGH I FEEL HE
10 JUST BEAT THE HECK OUT OF ME, I HAVE THE UTMOST TRUST IN
11 HIM AND WHAT HE'S DOING, AND I DON'T WANT THAT TO SEEM BAD
12 ABOUT MR. DIGGS, BUT WITH MY LIFE ON THE LINE I THINK I
13 SHOULD TRUST MY ATTORNEY OR I THINK WITH THE FIVE ATTORNEYS
14 THAT HAVE BEEN PRESENTED IN THIS CASE I THINK FOR ONCE I
15 SHOULD AT LEAST HAVE THE OPPORTUNITY TO HAVE ONE THAT I
16 TRUST AND I DON'T TRUST HIM AND I'M SORRY.

17 THE COURT: NEVER APOLOGIZE AGAIN.

18 DEFENDANT STANKO: SO THAT'S WHERE I'M AT.

19 THE COURT: MR. KELLY, IS THERE ANYTHING YOU'D
20 LIKE TO STATE FOR THE RECORD?

21 MR. KELLY: NO, MA'AM.

22 THE COURT: OKAY, MR. DIGGS, IS THERE ANYTHING
23 YOU'D LIKE TO STATE FOR THE RECORD?

24 MR. DIGGS: YOUR HONOR, THE CONCERNS THAT MR.
25 STANKO HAS I THINK I UNDERSTAND AND I'M CERTAINLY NOT GOING

DEFENDANT'S MOTION TO RELIEVE COUNSEL

40

1 TO STAND HERE AND TELL YOU I'M A PERFECT ATTORNEY AND THAT
2 THERE'S NO JUSTIFICATION FOR WHAT HE FEELS. BUT I CAN TELL
3 YOU THAT WE'RE AWARE OF THE TYPE OF CASE THIS IS AND FULLY
4 AWARE OF WHAT NEEDS TO BE DONE IN ORDER TO SAVE THIS MAN'S
5 LIFE.

6 IN TERMS OF MY RELATIONSHIP WITH HIM IT'S ALWAYS
7 BEEN A GOOD ONE. I MEAN YOU'VE SEEN THE MOST EMOTION FROM
8 HIM RIGHT NOW THAN HE'S SHOWN OR THAT I'VE SEEN SINCE WE
9 HAVE BEEN ON THIS CASE. WE'VE ALWAYS HAD CORDIAL
10 CONVERSATIONS. HE'S ALWAYS BEEN VERY CIVIL TO ME AND WE'VE
11 NEVER RAISED OUR VOICES.

12 I CAN TELL YOU THAT WE SERVE, I SERVE AT YOUR
13 PLEASURE. I TAKE NO OFFENSE TO WHAT STEPHEN SAYS IN THIS
14 HEARING. IF, IF I REMAINED ON THE CASE, AND, YOUR HONOR,
15 THIS IS YOUR DECISION, BUT WE'LL CERTAINLY WORK TO TRY TO
16 IMPROVE COMMUNICATIONS WITH MR. STANKO. I WANT TO MAKE
17 SURE THAT HE'S FULLY AWARE OF EVERYTHING THAT I KNOW ABOUT
18 THE CASE. WE'LL WORK ON THAT POINT TO IMPROVE IT BUT
19 CERTAINLY, YOUR HONOR, IT'S WITHIN YOUR DISCRETION. I'LL
20 LEAVE IT IN YOUR HANDS.

21 THE COURT: OKAY, THANK YOU VERY MUCH.

22 MR. DIGGS: YES, MA'AM.

23 THE COURT: I APPRECIATE EVERYONE'S CANDOR IN
24 THIS MATTER AND, MR. STANKO, I AGAIN APPRECIATE YOUR
25 CANDOR. OF COURSE WE ALL KNOW THAT WHEN CONSIDERING A

DEFENDANT'S MOTION TO RELIEVE COUNSEL

41

1 MOTION TO BE RELIEVED THAT IS, IT RESTS SOLELY WITHIN THE
2 DISCRETION OF THE COURT AND THERE'S SEVERAL FACTORS THAT
3 THE APPELLATE COURT LOOKS AT WHEN REVIEWING WHETHER A TRIAL
4 JUDGE HAS ABUSED THAT DISCRETION. I WANT TO LOOK AT THOSE
5 FACTORS TO MAKE SURE I'M IN LINE WITH THE APPELLATE, WITH
6 THE APPELLATE COURT'S THINKING IN THESE MATTERS.

7 THE COURT HAS, AND I'M REFERRING TO STATE V. SIMS
8 WHICH IS FOUND AT 304 S.C. 409, 405 S.E.2d 377, SAYS THAT
9 THE FOLLOWING FACTORS SHOULD BE CONSIDERED. ONE IS THE
10 TIMELINESS OF THE MOTION; THE OTHER IS THE ADEQUACY OF THE
11 TRIAL JUDGE'S INQUIRY INTO THE DEFENDANT'S COMPLAINT; AND
12 WHETHER THE ATTORNEY/CLIENT CONFLICT WAS SO GREAT THAT IT
13 RESULTED IN A TOTAL LACK OF COMMUNICATION THEREBY
14 PREVENTING AN ADEQUATE DEFENSE. I WILL TAKE EACH OF THOSE
15 FACTORS INDIVIDUALLY.

16 CLEARLY THE MOTION IN AND OF ITSELF IS TIMELY
17 ALTHOUGH WE HAVE BEEN UNDER, OPERATING UNDER A SCHEDULING
18 ORDER SINCE, WHAT IS THAT EXACT DATE, SINCE OCTOBER 24TH OF
19 2004, 2005, I'M SORRY, I WAS READING UPSIDE DOWN. IT WAS
20 CLOCKED IN AT 2:04, NOT THE YEAR 2004, OCTOBER 24TH OF
21 2005. WE ARE SCHEDULED TO TRY THIS CASE, WE'RE SCHEDULED
22 TO TRY THIS CASE DURING THE WEEKS OF AUGUST 1ST AND AUGUST
23 7TH, WHICH WE ARE NOW IN THE MONTH OF MARCH, YOU MIGHT AS
24 WELL SAY THE MONTH OF MARCH IS OVER, IN FIVE MONTHS GIVE OR
25 TAKE WE'LL BE TRYING THIS CASE SO TO SOME EXTENT WE ARE

DEFENDANT'S MOTION TO RELIEVE COUNSEL

42

1 UNDER A TIME ELEMENT THAT I THINK IS RELEVANT TO THE
2 COURT'S INQUIRY AND I'VE TAKEN THAT INTO ACCOUNT. I THINK
3 CLEARLY THE SECOND PRONG OF THE TEST IS MET BECAUSE WE HAVE
4 HAD A MORE THAN ADEQUATE INQUIRY INTO MR. STANKO'S
5 COMPLAINTS AND WE'VE GIVEN HIM A FULL OPPORTUNITY TO VOICE
6 THOSE AND AS A REVERSE OF THE COURT'S COMMENTS AT THE
7 BEGINNING OF THE HEARING JUST TO MAKE SURE, I THINK I MADE
8 THIS CLEAR, BUT I WANTED TO MAKE IT CLEAR FOR THE RECORD,
9 THE COURT WAS NOT TAKING A POSITION ON THE MOTION AT THAT
10 TIME. I WANTED TO SIMPLY EDUCATE MR. STANKO TO SOME EXTENT
11 OF THE COURT'S PERSPECTIVE OF WHAT HAD BEEN HAPPENING IN
12 HIS CASE UP TO THAT POINT BECAUSE OFTENTIMES DEFENDANTS
13 DON'T KNOW WHAT WE'RE THINKING AND AS LAWYERS WE'RE KIND OF
14 BAD AT TELLING FOLK WHAT WE'RE THINKING. SOMETIMES WE
15 OPERATE THESE LITTLE MINI COMPUTERS IN OUR MIND AND WE'RE
16 THINKING AND WE GET TO A CONCLUSION AND WE DON'T ALWAYS
17 SHARE WHAT OUR THOUGHT PROCESS IS AND SO TO SOME EXTENT I
18 WANTED HIM TO HAVE THE BENEFIT OF THE COURT'S THOUGHT
19 PROCESS AS TO HOW I, THAT I JUST DIDN'T WILLY-NILLY APPOINT
20 SOME FOLKS, LOOK AT A LIST AND JUST APPOINT SOME PEOPLE;
21 THAT I HAVE DONE A GREAT DEAL OF INVESTIGATION IN THAT
22 REGARD BEFORE APPOINTING SOMEONE; AND THAT I UNDERSTOOD THE
23 SERIOUSNESS OF THE OFFENSES THAT HE HAS BEEN CHARGED WITH
24 AND AT THE GRAVITY OF THE CONSEQUENCES THAT HE WAS FACING;
25 AND TO SOME EXTENT I AGAIN WANTED HIM TO UNDERSTAND A

DEFENDANT'S MOTION TO RELIEVE COUNSEL

43

1 LAWYERS THOUGHT PROCESS AND ALSO SOME OF THE REASONS WHY
2 BASED ON MY EXPERIENCE ON THE BENCH WHY LAWYERS DON'T DO
3 THINGS A CERTAIN WAY. SO I JUST WANTED THAT TO BE CLEAR
4 FOR THE RECORD AND ALSO CLEAR FOR MR. STANKO AND WANTED HIM
5 TO KNOW THAT I DON'T TAKE THE POSITION REALLY ONE WAY OR
6 THE OTHER REGARDING IT BUT I JUST WANTED TO SHARE THAT
7 THOUGHT PROCESS WITH HIM SO THAT HE COULD UNDERSTAND THE
8 COURT'S THINKING.

9 AND THE LAST FACTOR IS WHETHER THE
10 ATTORNEY/CLIENT CONFLICT WAS SO GREAT THAT IT RESULTED IN A
11 TOTAL LACK OF COMMUNICATION THEREBY PREVENTING AN ADEQUATE
12 DEFENSE AND THAT IS BASED ON U.S. V. GALLOP SPELLED G-A-L-
13 L-O-P, FOUND AT 838 FED 2d 105 AND IT'S A 1988 FOURTH
14 CIRCUIT CASE; AND I'VE LISTENED VERY INTENTLY TO THE
15 MATTERS THAT HAVE BEEN PROVIDED BY MR. STANKO. ONE OF THE
16 ONES HE RAISED WAS COMMUNICATION AND I'LL DEAL WITH THAT
17 ONE I THINK LAST, BUT COORDINATION AMONG THE DEFENSE I WILL
18 ALSO GOING TO DEAL WITH THAT LAST.

19 THE ISSUE OF THE BOXES I THINK I AGREE AND THE
20 COURT WOULD FIND THAT THOSE ARE BASICALLY ISSUES THAT ARE
21 PRIMARILY IN MITIGATION. THEY DO NOT EFFECT PRETRIAL
22 MOTION AND THEY DO NOT EFFECT REALLY THE ISSUE OF YOUR
23 GUILT OR INNOCENCE; AND THOSE MATTERS, BASED ON WHAT MR.
24 KELLY DURING HIS EXAMINATION WAS ABLE TO ELICIT, YOU
25 PROVIDED THAT INFORMATION TO YOUR ATTORNEYS VERY SHORTLY

DEFENDANT'S MOTION TO RELIEVE COUNSEL

44

1 AFTER THEY WERE APPOINTED AND MR. KELLY BY HIS OWN
2 INDICATION TO THE COURT TURNED THOSE OVER VERY SHORTLY TO
3 THE INVESTIGATORS AFTER THEY WERE APPOINTED. SO I THINK TO
4 SOME EXTENT, WELL NOT TO SOME EXTENT, THE COURT SEES NO
5 PREJUDICE IN THAT TO YOU.

6 AS REGARD TO MENTAL HEALTH EVALUATION THE COURT
7 LOOKS AT THAT VERY SIMILARLY. I KNOW THAT I SIGNED AN
8 ORDER TO BE EVALUATED. I BELIEVE THE DATE WAS JANUARY 10TH
9 OF 2005, AND YOU WERE SUPPOSED TO BE TRANSPORTED TO BE
10 EVALUATED, IT WAS A FORENSIC NEURO PSYCHIATRIC EXAMINATION.
11 THAT ORDER WAS FILED ON DECEMBER 1ST OF 2005 AND YOU WERE
12 TO HAVE BEEN EVALUATED ON JANUARY 10TH OF 2006 BY DR.
13 BRAWLEY AT THE USC SCHOOL OF MEDICINE DEPARTMENT OF NEURO
14 PSYCHIATRY. IT HAS BEEN ELICITED DURING THE COURSE OF THIS
15 HEARING THAT THAT WAS DELAYED AND I THINK, YOU KNOW, I, I
16 DON'T KNOW YOUR ATTORNEYS FULL STRATEGY, I CAN ONLY ASSUME,
17 HOWEVER, THAT THEY HAD A GOOD FAITH BASIS FOR DELAYING IT
18 AND THEY HAD VERY GOOD REASONING AND THAT WILL TAKE PLACE.

19 MR. DIGGS: MAY I ADDRESS THAT, YOUR HONOR?

20 THE COURT: YES, IF YOU COULD SO THE RECORD
21 COULD BE CLEAR.

22 MR. DIGGS: I HAD USED DR. BRAWLEY BEFORE IN
23 OTHER CAPITAL CASES. DR. BRAWLEY, AND I'M KIND OF LIKE
24 STEPHEN, I'M NOT DISPARAGING ANYONE HERE.

25 THE COURT: OF COURSE.

DEFENDANT'S MOTION TO RELIEVE COUNSEL

45

1 MR. DIGGS: THIS IS A UNIQUE CASE; IT'S NOT LIKE
2 OTHER, THE OTHER CASES WHERE, I THINK I USED HER ON A
3 COUPLE OF OCCASIONS.

4 THE COURT: OKAY.

5 MR. DIGGS: DR. BRAWLEY HAS CHANGED HER
6 PROCEDURE A LITTLE BIT. SHE HAS INCORPORATED THE USE OF
7 ANOTHER DOCTOR IN COLUMBIA, SWARTZWATTS, AND HER PROCEDURE
8 WAS A LITTLE BIT DIFFERENT. I JUST DIDN'T FEEL COMFORTABLE
9 WITH THE WAY THAT THEY AS A TEAM WANTED TO APPROACH THIS
10 DEFENSE. NOW I'M NOT SAYING THAT WE'RE NOT GOING TO USE
11 THEM AT ALL BECAUSE QUITE FRANKLY IT'S DIFFICULT TO GET
12 MENTAL HEALTH PROFESSIONALS TO WORK ON THIS CASE DUE TO
13 CONFLICT. I'VE TALKED TO HALF A DOZEN DOCTORS ABOUT
14 STEPHEN'S CASE AND THE POSSIBILITY OF WORKING HERE ON THE
15 CASE AS PART OF THE DEFENSE. THEY ARE CONFLICTED OUT AND
16 FOR SOME REASON OR ANOTHER ARE NOT AVAILABLE TO HELP IN THE
17 DEFENSE OR THEY'RE NOT WHAT I BELIEVE I WANT AND WOULD
18 RECOMMEND THAT WE INCORPORATE INTO THE CASE.

19 I'M MEETING WITH DR. THRASHER TODAY AT 12, IF WE
20 GET OUT EARLY ---

21 THE COURT: WE SHOULD.

22 MR. DIGGS: --- TO, AND WE DISCUSSED THIS CASE
23 WITH HIM BEFORE, BUT JUST TO GET SOME IDEAS FROM HIM. I'VE
24 KNOWN HIM FOR PROBABLY 10 OR MORE YEARS AND, AND USED HIM
25 IN AT LEAST A DOZEN CASES AND I, I CAN TALK WITH HIM AND

DEFENDANT'S MOTION TO RELIEVE COUNSEL

46

1 TELL HIM WHAT MY IDEAS ARE IN THIS CASE IN TERMS OF THE
2 MENTAL HEALTH THING.

3 I'VE ALSO USED BERNARD ALBINIAK OVER AT COASTAL
4 UNIVERSITY AS A SOUNDING BOARD HERE ALSO WHO IS EVENTUALLY
5 GOING TO BE A WITNESS IN THIS CASE, I'M SURE. BUT HE HAS
6 DONE A SURVEY AND IS DOING A SURVEY OF MENTAL HEALTH
7 EXPERTS FROM ALL OVER THE WORLD. HE'S IDENTIFYING PEOPLE
8 AND HAS COMMUNICATED THIS TO ME THAT CAN PLUG INTO WHAT I
9 HAVE TOLD HIM ABOUT THE THINGS WE NEED IN THE CASE AND I'VE
10 EXPLAINED THIS TO MR. KELLY AND WE HAD A CHANCE TO GO OVER
11 IT AGAIN YESTERDAY; AND I'VE EXPLAINED IT I THINK TO GERALD
12 FROM THE OUTSET OF THE CASE AND I THINK HE UNDERSTANDS
13 WHERE WE'RE GOING; AND I'M NOT BY ANY MEANS ABANDONING THE
14 TRADITIONAL PSYCHOLOGICAL INSANITY TYPE OF TESTING AND
15 EVALUATION AND THAT KIND OF THING. WE'RE NOT, DON'T GET ME
16 WRONG, I DON'T WANT STEPHEN OR, OR MR. KELLY OR ANYBODY TO
17 GET ME WRONG, WE'RE NOT ABANDONING THAT. I DON'T FEEL
18 COMFORTABLE IN THIS CASE RELYING ON THAT TO DEFEND THIS MAN
19 BECAUSE I THINK, NOTWITHSTANDING THE MERITS, IT'S TAKING
20 INTO ACCOUNT WHAT THE PUBLIC PERCEPTION IS RIGHT NOW AND
21 WHAT THE COMMUNITY NOTIONS ARE WITH RESPECT TO INSANITY
22 PLEAS OR MENTAL HEALTH PLEAS. WE EVEN HAVE A GUILTY BUT
23 MENTALLY ILL VERDICT THAT'S NOT OKAY. AND SO WE'RE GOING
24 TO HAVE TO EXPLAIN TO THE JURY IN CONCRETE TERMS WHAT
25 PHYSICALLY IS HAPPENING IN THIS MAN'S HEAD, AND STEPHEN AND

DEFENDANT'S MOTION TO RELIEVE COUNSEL

47

1 I'VE ALLUDED TO IT, I TALKED TO HIM ABOUT IT THE OTHER DAY.

2 I'M NOT AWARE OF DEFENSES LIKE THIS THAT HAVE
3 BEEN USED BEFORE. BUT NEVERTHELESS I THINK IT'S PERTINENT
4 TO THIS CASE AND IT'S WHAT I BELIEVE IS POINTING INTO THE
5 DIRECTION OF WHERE I BELIEVE CRIMINAL DEFENSE, THE WHOLE
6 AREA OF CRIMINAL DEFENSE AND MENTAL HEALTH ISSUES IS GOING
7 TO GO IN THE FUTURE. I JUST THINK, YOU KNOW, AS WE HAVE
8 MORE TECHNOLOGICAL EQUIPMENT AS WE CAN DO A SCAN AND WE CAN
9 LOOK AT AREAS OF THE BRAIN THAT ARE WORKING, YOUR HONOR, I
10 THINK, I HAVE NO DOUBT THAT AT SOME DAY WE'RE GOING TO BE
11 ABLE TO SEE NEURONS FIRING AND UNDERSTAND WHERE THESE TYPES
12 OF IMPULSES COME FROM AND WHY THEY'RE NOT CONTROLLED IN THE
13 BRAIN. AND THAT'S WHAT'S GOING ON AT ISSUE I BELIEVE IN
14 THIS CASE AND THERE ARE PEOPLE AROUND THE WORLD WHO HAVE
15 DONE STUDIES AND WHO ARE DEVELOPING EXPERTISE IN THOSE
16 AREAS.

17 IF THERE ARE PEOPLE AVAILABLE LIKE THAT THAT CAN
18 COME IN AND EXPLAIN TO A JURY BETTER THAN THE STANDARD
19 MODEL, SO TO SPEAK, ABOUT, WELL, HE DOES HAVE THIS OR THAT,
20 IF WE CAN GET SOMEONE TO COME IN AND EXPLAIN, YOU KNOW, THE
21 CUTTING EDGE OF TECHNOLOGY MEDICAL SCIENCE HERE'S WHAT'S
22 HAPPENED. IT'S JUST NOT BECAUSE HE'S MEAN AND HE MADE A
23 DECISION TO DO THIS. HERE'S WHAT HAPPENED IN HIS BRAIN AS
24 OPPOSED TO WHAT SHOULD HAVE HAPPENED IN HIS BRAIN SO AS NOT
25 TO COMMIT THESE PARTICULAR ACTS. AND, YOU KNOW, IT'S NOT

DEFENDANT'S MOTION TO RELIEVE COUNSEL

48

1 MR. STANKO THAT HE FEELS LIKE HE'S BEEN HERE A LONG TIME.
2 IF I WERE LOCKED UP IN THAT FACILITY I KNOW THAT I WOULD
3 PROBABLY FEEL THE SAME WAY. BUT, YOUR HONOR, WE COULD, WE
4 COULD USE A LOT OF TIME IN DEVELOPING THIS DEFENSE. I KNOW
5 WE DON'T HAVE IT, BUT IT'S NOT SOMETHING WE JUST WHIP INTO
6 SHAPE. YOU KNOW YEARS AGO WE WOULD HAVE JUST SENT HIM OFF
7 TO COLUMBIA, HAVE HIM EVALUATED, AND THAT WAS IT. THINGS
8 HAVE CHANGED; THE LAW HAS CHANGED AND WE UNDERSTAND THAT
9 AND WE'RE GOING TO BRING THAT TO BEAR TO. I THINK IT'S TO
10 OUR BENEFIT TO DO THAT. I THINK FOR THIS MAN TO GET A FAIR
11 DETERMINATION ABOUT SENTENCING ASSUMING THAT THERE IS
12 SENTENCING RECEIVED IF HE'S CONVICTED.

13 THE COURT: WELL CERTAINLY I APPRECIATE YOU ---

14 MR. DIGGS: WE WANT TO DO THAT, WE'RE GOING TO
15 DO THAT.

16 THE COURT: I APPRECIATE YOU CLARIFYING THAT FOR
17 THE RECORD AND GIVING US MORE INFORMATION. MY ASSUMPTION
18 WAS ALONG THOSE LINES, NOT TO THAT EXTENT OF DETAIL BECAUSE
19 I DON'T KNOW WHAT YOUR STRATEGY IS NOR DO I THINK ---

20 MR. DIGGS: AND, YOUR HONOR, IF I COULD SAY THIS
21 ORGANIZED CHAOS. I'M NOT TALKING ABOUT PARTICULARLY OUR
22 CASE, THAT'S GENERALLY THE WAY IT IS IN A CAPITAL CASE.
23 THIS CASE IS NO DIFFERENT. WE'VE GOT EXPERTS RUNNING OFF
24 IN DIFFERENT DIRECTIONS DOING THEIR JOB. IT WILL COME
25 TOGETHER AND IT BECOMES A TEAM EFFORT AND, YOU KNOW, WE'RE,

DEFENDANT'S MOTION TO RELIEVE COUNSEL

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1 WE'RE MOVING IN THAT DIRECTION.

2 THE COURT: I AGREE BASED ON WHAT I'VE SEEN AND
3 I ASSUMED, AND I FORGOT EXACTLY WHAT I WAS, MY LAST
4 SENTENCE. BUT IN ANY EVENT, I ASSUME BASED ON THE
5 TESTIMONY AND BASED ON THE EXPLANATION OF MR. DIGGS THAT
6 THAT EXAMINATION WAS DELAYED FOR A VALID AND LEGITIMATE AND
7 STRATEGIC REASON AND BASED ON WHAT HAS BEEN PRESENTED TO
8 THE COURT, IT'S VALID TO ME AND I THINK QUITE FRANKLY
9 ENURING TO MR. STANKO'S BENEFIT FOR HIM TO BE ABLE TO TAKE
10 ADVANTAGE OF THE TECHNOLOGY AND FOR YOU ALL TO FULLY
11 INVESTIGATE WHO MAY BE MORE EQUIPPED TO DO EXACTLY AND TO
12 PERFORM THE TYPES OF TESTS AND TO PROVIDE THE TYPE OF
13 ANALYSIS THAT YOU NEED THAT IS GERMANE TO HIS DEFENSE. AND
14 SO I HAVE NO CONCERN ABOUT THAT AND I DO NOT THINK THERE IS
15 AN ISSUE THERE FOR THE COURT.

16 NOW AS IT REGARDS THE COMMUNICATION ISSUE THAT HE
17 HAS RAISED AS WELL AS THE COORDINATION, AND AGAIN, MR.
18 STANKO, MY PERSPECTIVE IS VERY DIFFERENT, BECAUSE I GET TO
19 SEE THE WHOLE PICTURE. I SEE THIS AS A COORDINATED EFFORT
20 AND THE REASON I'M ABLE TO SEE THAT IS BASED ON THE
21 VOUCHERS AND OTHER THINGS THAT ARE SENT TO MY OFFICE AS
22 WELL AS THE STATUS CONFERENCES THAT I HOLD WITH THE
23 LAWYERS. I'VE ALSO QUITE FRANKLY BEFORE I APPOINTED MR.
24 DIGGS AND MR. KELLY, WELL ACTUALLY AT THE TIME THAT I
25 APPOINTED THEM I TOLD THEM THAT I SAW THIS AS A TEAM

DEFENDANT'S MOTION TO RELIEVE COUNSEL

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1 EFFORT, THAT I DID NOT SEE A FIRST CHAIR OR A SECOND CHAIR,
2 THAT ALTHOUGH THE RULES PROVIDE FOR ME TO APPOINT A FIRST
3 CHAIR AND SECOND CHAIR I SAW THEM WORKING TOGETHER IN
4 TANDEM WITH EACH'S STRENGTH BEING ENURING TO YOUR BENEFIT.
5 SO I DON'T SEE A FIRST CHAIR AND A SECOND CHAIR. I SEE TWO
6 LAWYERS EQUALLY QUALIFIED REPRESENTING YOU BOTH WITH VERY
7 DIFFERENT STRENGTHS AND VERY DIFFERENT ABILITIES WHO
8 REALLY, QUITE FRANKLY, BRING A RANGE OF DEPTH OF LEGAL
9 REPRESENTATION TO THE TABLE FOR YOUR BENEFIT. AND SO FOR
10 THAT REASON THE COURT WOULD NOT FIND THAT IT IS, YOU KNOW
11 TO SOME EXTENT TO PRACTICE THE LAW IS ORGANIZED CHAOS, SO,
12 YOU KNOW, I, I DON'T KNOW THAT THAT IS NECESSARILY A BAD
13 THING. HOWEVER, I DO BELIEVE THAT THIS IS A COORDINATED
14 EFFORT. I KNOW BASED ON THE AMOUNTS OF MONEY THAT I HAVE
15 ORDERED EXPENDED FOR YOUR DEFENSE THAT YOU ARE GETTING MORE
16 THAN MOST CRIMINAL DEFENDANTS GET SIMILARLY SITUATED SO I
17 HOPE THAT THAT GIVES YOU SOME SEMBLANCE OF PEACE.

18 NOW AS REGARDS TO THE COMMUNICATION ISSUE YOU
19 KNOW PERCEPTION IN LIFE IS A FUNNY THING. I CANNOT TELL
20 YOU THAT WHAT YOU PERCEIVE IS WRONG BECAUSE IT'S WHAT YOU
21 PERCEIVED. I'VE NEVER BEEN ON TRIAL FOR MY LIFE SO I
22 CANNOT SAY I WALK IN YOUR SHOES SO THAT WOULD BE IRRATIONAL
23 FOR ME TO SAY THAT TO YOU NOR WOULD IT BE BELIEVABLE. THE
24 FUNNY THING ABOUT COMMUNICATION, AND I SAT IN THE FAMILY
25 COURT FOR MANY, MANY YEARS, AND YOU KNOW YOU HAVE FOLKS WHO

DEFENDANT'S MOTION TO RELIEVE COUNSEL

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1 LIVE IN THE SAME HOUSE EVERY DAY, SEE EACH OTHER EVERY DAY,
2 TALK EVERY DAY WHO DON'T COMMUNICATE. SO THE FACT THAT,
3 YOU KNOW, I ALWAYS SAY TO CRIMINAL DEFENDANTS IT'S NOT THE
4 QUANTITY OF CONTACTS, IT'S THE QUALITY OF THE CONTACTS.

5 NOW DO I THINK THERE MAY BE SOME NEED FOR
6 IMPROVEMENT. I'M NOT CERTAIN THERE IS BUT TO THE EXTENT
7 THAT YOU PERCEIVE THAT I THINK IT NEEDS TO BE CORRECTED AND
8 I THINK, HOWEVER, THAT MR. KELLY AND MR. DIGGS HAVE ALREADY
9 CORRECTED IT BEFORE WE GOT HERE TODAY. AND SO TO THAT
10 EXTENT AND AS IT REGARDS TO THE PRONG AS TO WHETHER THERE
11 HAS BEEN SUCH A BREAK DOWN IN THE COMMUNICATION THAT THERE
12 HAS BEEN A PREVENTION OF AN ADEQUATE DEFENSE THE COURT
13 WOULD NOT FIND THAT THAT PRONG HAS BEEN MET. I THINK THAT
14 WHATEVER REMEDY THERE NEEDS TO BE THAT HAS ALREADY BEEN
15 DONE AND I THINK TO SOME EXTENT, AND I'M NOT SURE THAT I'M
16 ARTICULATING THIS AS WELL AS I'M THINKING IT, AT SOME POINT
17 AT ANY DEFENSE OF THIS MAGNITUDE THINGS HAVE TO, CERTAIN
18 EMOTIONS COME TO A HEAD AND HOWEVER THEY VENT THEMSELVES,
19 WHETHER IT BE IN THE NATURE OF YOU BEING DISSATISFIED WITH
20 YOUR ATTORNEY, BEING FRUSTRATED WITH BEING INCARCERATED, IT
21 ALL AT SOME POINT COMES TO A HEAD AND I PERCEIVE THAT THAT
22 IS EXACTLY WHAT HAS HAPPENED TODAY AND I SEE NOTHING BAD
23 COMING OUT OF IT. QUITE FRANKLY I THINK IT HAS BEEN VERY
24 PRODUCTIVE.

25 SO AS A RESULT BASED ON THE COURT'S FINDINGS

DEFENDANT'S MOTION TO RELIEVE COUNSEL

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1 BASED ON STATE V. SIMS AND OTHER CASES, CASE LAW BASICALLY
2 THAT SAY IT'S WITHIN THE COURT'S DISCRETION AS TO WHETHER
3 TO RELIEVE COUNSEL OR NOT, THE COURT WOULD FIND AT THIS
4 POINT THAT THERE HAS NOT BEEN A SUFFICIENT CASE ESTABLISHED
5 OR BURDEN MET TO RELIEVE YOUR ATTORNEY AND I WOULD DENY
6 THAT RELIEVE. HOWEVER, I WOULD SAY TO YOU THAT IF YOU WANT
7 TO HIRE MR. AXELROD TO REPRESENT YOU, IF YOU WANT TO RETAIN
8 HIM I WILL NOT PRECLUDE YOU FROM DOING THAT. YOU JUST NEED
9 TO MAKE ME AWARE OF IT VERY QUICKLY SO THAT I CAN RELIEVE
10 THESE ATTORNEYS AND THEN MR. AXELROD CAN PICK UP YOUR
11 DEFENSE. AND AGAIN, IF YOUR FAMILY DECIDES THEY WOULD LIKE
12 TO DO THAT OR IF YOU HAVE THE MEANS TO DO THAT CERTAINLY
13 THE COURT WOULD NOT PROHIBIT YOU FROM DOING THAT. YOU ARE
14 CERTAINLY ENTITLED TO DO THAT AS CONSTITUTIONALLY YOUR
15 RIGHT TO DO THAT.

16 OKAY, IS THERE ANYTHING FURTHER FOR THE RECORD,
17 MR. KELLY?

18 MR. KELLY: NO, MA'AM.

19 THE COURT: OR, MR. DIGGS?

20 MR. DIGGS: NO, YOUR HONOR.

21 THE COURT: OKAY, WELL IT WAS A PLEASURE,
22 GENTLEMEN. I ASSUME EVERYONE WILL KEEP YOU UP TO DATE, MR.
23 STANKO, AS WE PROCEED. I BELIEVE OUR NEXT PART OF THE
24 SCHEDULING ORDER DEALS WITH, THE NEXT CONTACT THE COURT
25 WILL HAVE WITH YOUR LAWYERS, WE'VE ALREADY HAD OUR FIRST

DEFENDANT'S MOTION TO RELIEVE COUNSEL

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1 STATUS CONFERENCE, WE WILL HAVE A, ON APRIL 28TH WE WILL
2 HAVE ANOTHER CONFERENCE CALL TO TALK ABOUT STANDARD JURY
3 QUESTIONS. OH, YOU HAVE A COPY, GOOD, OKAY, AND THEN SO
4 YOU KNOW WHAT THE REMAINDER OF OUR SCHEDULE IS.

5 DEFENDANT STANKO: YES, MA'AM.

6 THE COURT: I WOULD SAY, HOWEVER, TO YOU AND
7 AGAIN, MR. STANKO, I'VE PRACTICED LAW. I HAD LOTS OF
8 CLIENTS AND NOT ALL OF THEM AND I GOT ALONG AND I DON'T
9 MEAN THAT IN A BAD WAY. YOU KNOW, PEOPLE ALWAYS PERCEIVE
10 CONFLICT AS A BAD THING, THAT'S NOT ALWAYS A BAD THING.
11 SOMETIMES IT PRECIPITATES THE MOST EFFECTIVE COMMUNICATION
12 YOU HAVE WITH SOMEONE.

13 DEFENDANT STANKO: YES, MA'AM.

14 THE COURT: BUT LIKE I SAID, I'VE PRACTICED LAW
15 AND I'VE HAD CLIENTS COME TO ME AND SAY, I'M DISSATISFIED
16 WITH MY LAWYER AND WHAT I'VE ALWAYS SAID TO THEM IS, YOU
17 NEED TO GO MAKE THAT PERSON AWARE OF WHAT YOUR
18 DISSATISFACTION IS AND SEE IF IT CAN BE REMEDIED. AND I
19 SAY THAT TO SAY TO YOU IN THE FUTURE IF YOU HAVE ANY
20 QUESTIONS OR CONCERNS YOU NEED TO BE COMPLETELY CANDID WITH
21 MR. KELLY AND MR. DIGGS. YOU HAVE TO HAVE GLOVES ON WHEN
22 YOU TALK TO YOUR LAWYERS AND YOU TELL THEM EVERYTHING
23 YOU'RE FEELING.

24 DEFENDANT STANKO: YES, MA'AM.

25 THE COURT: SO THAT IF THEY, SOMETIMES PEOPLE

DEFENDANT'S MOTION TO RELIEVE COUNSEL

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1 CAN BE IN THE SAME ROOM THINKING THEY'RE ON THE SAME PAGE
2 AND THEY'RE NOT COMMUNICATING AND SOMETHING CAN'T BE
3 REMEDIED IF YOU'RE NOT TALKING ABOUT IT, OKAY?

4 DEFENDANT STANKO: YES, MA'AM, AND I'VE NEVER
5 REALLY HAD CONFLICT WITH HIM, I MEAN I REALLY LIKE HIM.

6 THE COURT: WELL I MAY BE USING THE WRONG WORDS.
7 IT'S THE ONLY ONE I HAVE AVAILABLE TO ME. YOU KNOW, I
8 DON'T KNOW THAT THAT IS THE EXACT WORD THAT I WOULD WANT TO
9 USE BUT DISCORD IS NOT THE WORD I WANT TO USE. I DON'T
10 KNOW ANY OTHER WORD EXCEPT ---

11 DEFENDANT STANKO: I DON'T THINK WE'LL HAVE THE
12 SAME PROBLEMS ANYMORE, I REALLY DON'T.

13 THE COURT: OKAY, ALL RIGHT.

14 DEFENDANT STANKO: THANK YOU.

15 THE COURT: YOU'RE WELCOME, SIR. YA'LL HAVE A
16 WONDERFUL DAY, HAVE A WONDERFUL WEEKEND.

17 MR. KELLY: MAY WE BE EXCUSED NOW?

18 THE COURT: YES, SIR, YOU ARE EXCUSED.

19 MR. KELLY: THANK YOU.

20 END OF REQUESTED TRANSCRIPT....

21

22

23

24

25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA.

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

September 19, 2006
Brenda R. Babb
BRENDA R. BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

VS.)

Case No.: 2005-GS-22-918

STEPHEN C. STANKO,)

DEFENDANT.)
_____)

CLOSED SESSION

EX PARTE HEARING

held before the Honorable Deadra L. Jefferson
Mia Perron, Official Court Reporter, 9th Judicial Circuit
in the Georgetown County Courthouse

Georgetown, South Carolina

on Thursday, June 22, 2006, Commencing at 1:00 p.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 841
Johns Island, South Carolina 29457
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

J. Gregory Hembree, Esquire
Solicitor
15th Judicial Circuit
1301 Second Avenue
Post Office Box 1276
Conway, South Carolina 29528

and

Francis A. Humphries, Jr, Esquire
Deputy Solicitor
Solicitor's Office,
15th Judicial Circuit
Post Office Box 1276
Conway, South Carolina 29528

FOR THE DEFENDANT:

William I. Diggs, Esquire
Attorney at Law
1700 Oak Street, Suite D
Myrtle Beach, South Carolina 29577

and

Gerald A. Kelly, Esquire
Attorney at Law
4760 Yemassee Highway
Varnville, South Carolina 29944

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EXHIBITS

[None]

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PROCEEDINGS

CLOSED SESSION

1 THE COURT: Okay. We had a hearing on March
2 17th and I just wanted to follow up regarding the
3 motion to be relieved, and I just wanted to make sure
4 that all of Mr. Stanko's concerns have been alleviated
5 and that --

6 MR. KELLY: You would have to ask him.

7 THE COURT: -- and that we are moving along
8 toward trial.

9 Mr. Stanko, have your concerns been alleviated?

10 MR. STANKO: Yes, ma'am, they have.

11 THE COURT: Good. I just wanted to make sure.
12 I wanted to make sure the lines of communication had
13 been resolved, and we have been --

14 MR. STANKO: I believe --

15 THE COURT: -- productive.

16 MR. STANKO: I believe everything is fine.

17 THE COURT: Good. I'm glad to hear that.

18 Now, my other question -- of course, as I told
19 you all, I went to a death penalty class last week, and
20 so I might be ahead. It's actually a very good class.
21 I wish they would open it up to attorneys. It was
22 actually through the National Judicial College.

1 Probably one of the best classes I've ever taken. And
2 it made me terrified about trying this case because of
3 all of the things you have to be concerned about that
4 you sort of put in the back of your mind when you are
5 working at trying a death penalty case.

6 I did not -- and I don't want you-all to take
7 this in any way in anticipating your strategy. I think
8 it is something that should legitimately be raised,
9 because at some point I'm going to have to ask Mr.
10 Stanko this question. And because of the posture of
11 this case, I just -- but I think I already have the
12 answer. You don't have to answer it today. I just
13 wanted to make sure that if there are going to be any
14 admissions of guilt in opening statements, that would
15 have been fully discussed with him -- or no -- or not
16 guilty in opening statements, that has been fully
17 discussed with them, and that -- although you do not
18 have to have his consent with your strategy, I just
19 need to make sure, in every stage, that everything has
20 been fully discussed with him.

21 I just wanted to raise that with you-all. I'm
22 sure you have already discussed it with him. I don't
23 want you to disclose any of your strategy. The Court,
24 of course, takes no position one way or the other
25 because I don't have any position. But at some point I

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1 think it would be appropriate for us to have an in-
2 camera hearing regarding that because, of course, you
3 know, PCRs are ripe with, I didn't know my lawyer was
4 going to say that in opening.

5 So I just raise that so that you-all can start
6 having those discussions, because we are -- it hit me
7 that we are like a month and a half -- I don't even
8 think it's a month and a half anymore, is it --

9 MR. DIGGS: No, ma'am.

10 THE COURT: -- out.

11 So I just wanted to sort of put that on the
12 table so that you-all could go ahead and start having
13 those -- and, again, I don't know your strategy, don't
14 want to know it, and -- but don't want -- just want to
15 make sure that really -- although I have complete
16 confidence in both of you. And I'm certain that you-
17 all have already begun to have those type discussions
18 with Mr. Stanko, but --

19 MR. KELLY: That's certainly to the benefit of
20 our client.

21 THE COURT: Certainly.

22 MR. KELLY: And we welcome that. And any time
23 the Court would choose to schedule or have an in-camera
24 hearing for that purpose, we would be more than happy
25 to comply.

1 THE COURT: And I think probably prior to trial
2 we'll do that.

3 But I just wanted to go ahead and put that on
4 the table so that you-all can already begin to have
5 those sort of strategic discussions with him so that
6 you can have his full input.

7 MR. KELLY: Yes, ma'am. And we thank the Court.

8 THE COURT: You're welcome. Y'all have a
9 wonderful day. It's good to see everybody.

10 MR. DIGGS: Same here. Good to see you again.

11 THE COURT: If y'all need me, you know I'm just
12 a phone call away.

13 MR. KELLY: Yes, ma'am.

14 THE COURT: Thank you.

15 [HEARING CONCLUDES AT 1:06 P.M.]
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25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Official Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of a closed hearing held before the Honorable Deadra L. Jefferson, on June 22, 2006.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 23rd day of October, 2006.



Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
)
VS.)
)
STEPHEN C. STANKO,)
)
DEFENDANT.)

Case No.: 2005-GS-22-918

MOTIONS HEARING

held before the Honorable Deadra L. Jefferson
Mi Perron, Official Court Reporter, 9th Judicial Circuit
in the Georgetown County Courthouse
Georgetown, South Carolina
on Thursday, June 22, 2006, Commencing at 10:33 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 841
Johns Island, South Carolina 29457
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

J. Gregory Hembree, Esquire
Solicitor
15th Judicial Circuit
1301 Second Avenue
Post Office Box 1276
Conway, South Carolina 29528

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Francis A. Humphries, Jr, Esquire
Deputy Solicitor
Solicitor's Office,
15th Judicial Circuit
Post Office Box 1276
Conway, South Carolina 29528

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William I. Diggs, Esquire
Attorney at Law
1700 Oak Street, Suite D
Myrtle Beach, South Carolina 29577

and

Gerald A. Kelly, Esquire
Attorney at Law
4760 Yemassee Highway
Varnville, South Carolina 29944

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PROCEEDINGS

1
2 THE COURT: As a preliminary matter -- okay.
3 Has the State received copies of motions filed by Mr.
4 Diggs and Mr. Kelly on behalf of Mr. Stanko?

5 MR. HEMBREE: Yes, Your Honor. We received
6 these motions approximately thirty minutes ago.

7 THE COURT: About when I did; right?

8 MR. HEMBREE: I would imagine.

9 THE COURT: Okay. And I took a little time to
10 read over them during our -- during the time that we
11 gave Mr. Kelly and Mr. Diggs to have any additional
12 conference with Mr. Stanko.

13 I assume, Mr. Diggs, that you are ready to argue
14 the motions?

15 MR. DIGGS: Your Honor, we can do that if you
16 would prefer -- I have -- if you want to hear argument
17 on the motions at this point. I brought with me an
18 expert, Dr. Albinia, from Coastal Carolina University,
19 that can speak to the general nature of the brain.

20 If Your Honor has had a chance to go through
21 the motions here, you can see they are all directed to
22 the nature of the brain, the brain activity, how that
23 model is -- modern medicine and medical technology now
24 perceives that model to be and how that model fits with
25 or works against the backdrop of the statutory law that
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1 we are going to have to apply to this case.

2 So if we could take just a few minutes, if Your
3 Honor would like to hear argument on the motion from
4 the defense this morning, I would like to call Dr.
5 Albiniak to the stand and let him testify very briefly
6 about the state of medical technology, or the brain,
7 what we know about the brain now, what's being taught
8 in the colleges and universities about the brain, how
9 it's structured, and what we know about how it
10 functions.

11 THE COURT: Any exception from the State?

12 MR. HEMBREE: No, Your Honor.

13 THE COURT: You may proceed.

14 MR. DIGGS: Your Honor, we call --

15 THE COURT: I'm sorry.

16 MR. HUMPHRIES: Let me do this just as a -- by
17 the way of a fact, Your Honor. I'm sure the Court is
18 familiar with this cases. I would like to hand up
19 State v. Gill; and State v. Santiago, which actually
20 was decided by the Court of Appeals three days ago,
21 regarding diminished capacity. There are copies for
22 both you and your law clerk.

23 [Whereupon, Mr. Humphries proffers documents to
24 the Court]

25 THE COURT: I just read this case yesterday, as

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1 a matter of fact. I'm trying to keep up on --

2 Okay. Mr. Diggs, you may proceed.

3 MR. HUMPHRIES: Your Honor, we call Dr.

4 Albiniaak.

5 [Whereupon, Dr. Albiniaak takes the witness
6 stand]

7 [Whereupon, Dr. Albiniaak is duly sworn by the
8 Court, as follows]

9 THE CLERK OF COURT: Do you solemnly -- raise
10 your right hand, sir.

11 Do you solemnly swear or affirm that the
12 testimony you are about to give will be the truth, the
13 whole truth, and nothing but the truth, so help you
14 God.

15 THE WITNESS: I do.

16 THE CLERK OF COURT: Please state your full name
17 for the record.

18 THE WITNESS: Bernard Albiniaak.

19 THE COURT: If you could spell your last name
20 for the court reporter, Doctor.

21 THE WITNESS: A-L-B-I-N-I-A-K.

22 THE COURT: I'm sorry. I'm slow this morning.

23 THE WITNESS: A-L --

24 THE COURT: Spell that for me again.

25 THE WITNESS: A-L-B-I-N-I-A-K.

1 THE COURT: Okay. I'm sorry.

2 THE WITNESS: That's all right.

3 THE COURT: You may proceed, Mr. Diggs.

4 - - - - -

5 BERNARD ALBINIAK,

6 Having Been First Duly Sworn,

7 was Examined and Testified as Follows:

8 DIRECT EXAMINATION

9 BY MR. DIGGS:

10 Q. Dr. Albiniaak, where are you employed?

11 A. Coastal Carolina University.

12 Q. In what capacity?

13 A. Associate professor of psychology.

14 Q. Would you give us the benefit of your
15 educational background and your work experience, please,
16 sir.

17 A. I have a B.S. degree in psychology, 1968; a
18 Ph.D. in 1977; and I'm currently doing research on brain
19 function in animals.

20 Q. All right. Tell us what you've done in your
21 career, as a professional, post Ph.D. What have you done
22 in the area of brain research or --

23 A. I teach a course --

24 Q. -- brain study?

25 A. Yeah. I teach a course called physiological

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1 psychology, which involves brain function, brain anatomy;
2 I teach a course in health psychology, with similar
3 content.

4 Q. In the course of your work, have you had an
5 opportunity to undertake study of the brain and how it is
6 structured and how it functions?

7 A. Yes. Extensively.

8 Q. Extensively.

9 And have you ever been declared an expert to
10 testify in the courts of this state in this --

11 A. Yes, I have.

12 Q. -- in this area?

13 A. Yes, I have.

14 Q. And how many times would that be?

15 A. Probably about sixty.

16 MR. DIGGS: Your Honor, we would offer Mr. -- or
17 Dr. Albiniaak as an expert, physiological psychology and
18 health, and an expert on the structure of the brain.

19 MR. HEMBREE: Your Honor, we have no objection
20 to his testifying as an expert in the field of
21 psychology. I don't -- I would submit, Your Honor,
22 that the other -- these other fields that Mr. Diggs
23 refers to are not --

24 THE COURT: Recognized.

25 MR. HEMBREE: They are not fields themselves,

1 these field -- the field of psychology.

2 THE COURT: Mr. Diggs?

3 Q. [Mr. Diggs] Dr. Albiniaak, what is encompassed
4 within the field of psychology?

5 A. There are several subfields of psychology, one
6 of which is physiological, and that's the field in which
7 you focus on brain function, brain structure, and how it
8 relates to behavior and emotions and thoughts.

9 Q. All right. And have you ever been qualified as
10 an expert to give testimony in that subject?

11 A. Yes, I have.

12 MR. DIGGS: And, Your Honor, we would offer the
13 doctor on that basis.

14 THE COURT: Philological psychology? Is that
15 the field?

16 MR. DIGGS: Yes.

17 THE COURT: Any exceptions from the State,
18 questions, or objections?

19 MR. HEMBREE: No, Your Honor.

20 THE COURT: So admitted. You may proceed.

21 Q. [Mr. Diggs] Dr. Albiniaak, give us an overview,
22 if you would, please, sir, about how the brain itself is
23 structured, the human brain.

24 A. The brain is a very complex organ. Primarily,
25 the main parts of the brain that are related to emotions

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1 and the control of emotions are the frontal lobes and the
2 limbic system. The frontal lobes are the last area of
3 the brain to develop in a human. They don't completely
4 develop until a person is about twenty-two years of age
5 or twenty-eight years of age. The frontal lobes mainly
6 control expression of emotion.

7 Q. All right. Let me ask you this. If you would,
8 how many areas are there within the brain that are
9 recognized as distinct areas?

10 A. Oh. Hundreds.

11 Q. Hundreds?

12 A. Hundreds.

13 Q. What do we mean when you hear the term, and we
14 often hear the term, the old brain or the reptilian brain?
15 What is meant by that?

16 A. The reptilian brain, fundamentally, is the
17 limbic system. The limbic system is a series of
18 structures beneath the cortex in which emotions are
19 experienced: anger, lust, et cetera. Those centers are
20 constrained by the upper levels of the brain in the
21 frontal cortex. That's why animals, like alligators, have
22 no constraint on their behavior. They have only a
23 reptilian brain.

24 Q. All right. Does every human have a limbic
25 system --

1 A. Every human has a limbic system. Right.

2 Q. -- limbic system? Does every human have a
3 limbic system?

4 A. Yes.

5 Q. And let me ask you this. Have you ever -- are
6 you familiar with the legal concept of malice?

7 A. Yes.

8 Q. And let me ask you, for the record, what your
9 understanding of malice is.

10 A. Malice is one of those emotions just like anger.
11 And when a person feels malice, that's originating in the
12 limbic system. You're consciously aware of it, but the
13 frontal lobes usually constrain those emotions so you
14 don't act out on them.

15 Q. All right.

16 A. In a normal, healthy brain.

17 Q. All right. So an -- malice, according to your
18 testimony, is an emotion?

19 A. Yes.

20 Q. How does that differ from malice aforethought,
21 if it does, if you have an opinion on that?

22 A. I'm not sure I understand your question,
23 exactly.

24 Q. All right. When --

25 MR. HEMBREE: Your Honor --

1 Q. [Mr. Diggs] -- if malice is an emotion --

2 THE COURT: Yes? Is there an objection?

3 MR. HEMBREE: Well, there is an objection to
4 this sort of line of questioning asking Dr. Albiniaak,
5 who is qualified to testify as a psychologist, legal
6 questions and opinions about the state of law in South
7 Carolina. I haven't heard him offered as an expert in
8 the field of criminal law, so I'm curious -- I fear
9 that Dr. Albiniaak is being dragged into an area where
10 he's not qualified.

11 THE COURT: Mr. Diggs?

12 MR. DIGGS: That's not what I asked. I haven't
13 asked him anything about the state of the law.

14 THE COURT: Well, you asked him -- you couched
15 the question in terms of malice aforethought, which is
16 a --

17 MR. DIGGS: Right.

18 THE COURT: -- requirement and element of the
19 offense of murder.

20 MR. DIGGS: Well --

21 THE COURT: But I assume -- my assumption may be
22 off center, but my assumption was that you were
23 confining your questions to the philological structure
24 of the brain based on what Dr. Albiniaak has said so far
25 regarding the development of the frontal lobe of the

1 brain and how that portion of the brain controls
2 emotions. So I would assume you would confine your
3 questions to that scope.

4 MR. DIGGS: Let me ask -- let me ask this.

5 THE COURT: But I think I'm going -- and I guess
6 what I'm saying to Mr. Hembree is that I'm giving him
7 some latitude, and I'm taking the questions in that
8 vein and not in the legal terminology of malice
9 aforethought.

10 MR. HEMBREE: I appreciate that, Your Honor.
11 Thank you.

12 THE COURT: You're welcome. You may proceed.

13 Q. [Mr. Diggs] If a human being has an emotion and
14 a decision is made by that person to act on that emotion,
15 does that decision take place in the limbic system?

16 A. No.

17 Q. Where would that decision take place?

18 A. The decision-making capacity is limited to the
19 frontal lobes.

20 Q. To the frontal lobes.

21 Does the limbic system have any capacity to make
22 decisions?

23 A. No.

24 Q. And we go back to the example you gave of the
25 alligator. All right. Would you tell me that again,

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1 because I kind of missed it.

2 A. The alligator is a primitive creature. It's a
3 real adaptive creature, but it only has a reptilian brain,
4 meaning it has no cortex at all. It has no lobes of the
5 brain, like the human brain does, so it acts on impulse
6 all the time. It has no constraint mechanism. That's why
7 you can't have an alligator as a pet.

8 Q. All right. So explain to us, then, if you
9 would -- take that a little further. An alligator, as
10 an example, would not make a good pet. Couldn't the
11 alligator learn to like --

12 A. No.

13 Q. -- its master?

14 A. No.

15 Q. Why is that?

16 A. It has -- it doesn't have the brain equipment to
17 develop restraint mechanisms. It can't constrain its
18 behavior.

19 Q. And how does the alligator, the reptilian brain,
20 differ from a human?

21 A. The primary difference is that we have a giant
22 cortex, compared to those primitive animals. And the
23 cortex is what makes us human. It makes us able to learn
24 constraints and use constraints on our emotions, whereas
25 lower animals can't do that. Children can't do that, by

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1 the way, humans.

2 Q. When the human would have that emotion, let's
3 say malice, according to your testimony, generated in the
4 limbic system --

5 A. Right.

6 Q. -- what would the normal process be in terms of
7 the decision-making process of whether to act on that
8 emotion or not?

9 A. The connections -- there are multiple
10 connections between the frontal lobes and the limbic
11 system. They talk to each other. When an emotion is
12 experienced, that's a limbic phenomena. That's a limbic
13 structure. You feel that anger or feel that malice.
14 That's an emotion in the limbic system. The frontal lobes
15 in a normal healthy person will usually constrain the
16 acting out of that impulse.

17 Q. All right. Let's suppose I'm -- let me ask you
18 a hypothetical. I would come up and maybe assault you,
19 insult you or slap you, something of that nature. Can you
20 tell me, under that set of facts, what is likely to happen
21 in the human limbic system?

22 A. Well, in the human limbic system, anger will be
23 created neurologically.

24 Q. Anger?

25 A. The person will feel the emotion of anger.

1 Q. All right.

2 A. They may or may not act on that, depending on
3 what the frontal lobes do. The frontal lobes will
4 constrain that, usually.

5 Q. Let's say there is no frontal lobe there at all.
6 Can you predict what the limbic system would do, how it
7 would react to that assault?

8 A. The behavior won't be constrained. The organism
9 will act out, will act on the impulse.

10 Q. Act on the impulse? or the emotion?

11 A. Or the emotion.

12 Q. Now, let's interject the human -- the frontal
13 lobe there. And tell us how the frontal lobe would
14 interact with that emotion, if it would.

15 A. The frontal lobe, when it's fully developed --
16 that's not until about twenty-two years of age -- the
17 impulses from the frontal lobe inhibit the limbic system.
18 Not inhibit the emotion; inhibit the behavioral output.
19 And also social constraints. We learn to constrain our
20 behavior, but we do so through the frontal lobes. So if
21 those frontal lobes aren't intact, then you have impulse
22 control problems.

23 Q. If the frontal lobe were not intact, could you
24 learn to --

25 A. Constrain? Unlikely.

1 Q. -- constrain that impulse?

2 A. Extremely unlikely.

3 Q. Unlikely.

4 Now, would it be possible for someone to appear
5 to be intelligent, appear to be normal in every other way
6 but have some inability, because of a frontal lobe defect,
7 to control emotions?

8 A. You wouldn't see the defect in the frontal lobe
9 unless there was a provocation. So you have to have some
10 triggering stimulus to anger the individual, and then
11 there would be the impulsive behavior. You would see it
12 under those circumstances.

13 Q. All right. Let's take those circumstances out.
14 Then if you were to be observing -- or if one would be
15 observing an individual with the type of frontal lobe
16 defect that you've alluded to, might it be possible for
17 that person to appear normal? Perfectly normal.

18 A. Oh, of course.

19 Q. Okay. Again, why would that be?

20 A. There's no provoking stimulus. If you have no
21 provoking stimulus that triggers emotional responses, then
22 the person behaves perfectly normally. So you can't tell
23 these differences unless you have a provocative situation.

24 Q. Okay. Would specific areas of the brain be
25 targeted, by evolution or whatever, to deal with the

1 emotions?

2 A. Well, these frontal lobe develop for that
3 purpose, apparently: to constrain emotional behavior.

4 Q. All right. And you say that based on your
5 education and training?

6 A. Yes.

7 Q. And how long have you known -- how long has
8 medical science and science in general and the lay public,
9 how long have -- or has knowledge about the frontal lobes
10 been available?

11 A. Probably at least the mid 1800s.

12 Q. All right. So it's been around a long time?

13 A. Yeah.

14 Q. If an individual had this frontal lobe defect or
15 malformity, would acting on an impulse of let's say an
16 impulse of assault -- and it's generated anger and malice.
17 Would knowing the difference between right and wrong in
18 that situation, acceptably -- what society would accept as
19 appropriate behavior or not appropriate behavior, would
20 knowing that allow someone to make a conscious decision
21 not to act on that impulse?

22 A. Unlikely.

23 Q. Unlikely.

24 A. Under those conditions, unlikely.

25 Q. And why do you say that?

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1 Q. Okay. What reports or tests have you reviewed
2 in connection with this case?

3 MR. DIGGS: Your Honor, I would object to the
4 line of questions, because I didn't ask him any
5 questions about the defendant and didn't even bring --
6 Dr. Albiniaak hasn't even met him. So --

7 THE COURT: Wouldn't that go to weight and not
8 admissibility? And don't you get wide latitude in
9 cross-examination? I'm a little curious to know where
10 Mr. Hembree is going, actually.

11 MR. DIGGS: Right.

12 THE COURT: It's not before the jury, and it's
13 for -- you called him for informational, educational
14 purposes, as I understood.

15 MR. DIGGS: Yes, ma'am.

16 THE COURT: And I'm curious to know what his
17 answer is going to be.

18 MR. DIGGS: Thank you, Your Honor.

19 MR. HEMBREE: Thank you, Judge.

20 THE COURT: You may proceed. Overruled.

21 Q. [Mr. Hembree] Dr. Albiniaak, what have you
22 reviewed in connection with -- specifically, as to Mr.
23 Stanko today?

24 A. I saw a neuropsychological exam conducted by a
25 psychologist. I can't remember the fellow's name. And I

1 saw that just yesterday, I think was the first time I had
2 seen it. He did an IQ evaluation, et cetera, et cetera.

3 Q. In reviewing that, did you find anything in that
4 report that indicated Stephen Stanko had a defect in his
5 frontal lobes?

6 A. One thing stood out -- generally speaking, no.
7 His intelligence is quite above normal, actually. The
8 psychologist indicated he suffered from antisocial
9 personality disorder. And it's common in that group for
10 there to be frontal lobe dysfunction, but I can't say that
11 there is.

12 Q. And there was nothing in the report that found
13 that?

14 A. No.

15 Q. Okay. Did you have a chance to review this
16 radiology consultation?

17 A. I don't believe I --

18 Q. The brain scan that was done?

19 A. I don't believe I saw that.

20 Q. Any other documents that you reviewed in
21 connection --

22 A. No.

23 Q. -- with this case in your preparation today?
24 You've indicated that frontal-lobe development
25 is not fully developed until a person is age twenty-two?

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1 A. Or later, sometimes. Yes.

2 Q. Or later.

3 Are you familiar with the age of the defendant
4 in this case? that he's over --

5 A. He's over thirty.

6 Q. Over thirty.

7 So you would not expect to find any --

8 A. Not any developmental --

9 Q. -- developmental issues?

10 A. -- flags.

11 Q. Thank you.

12 And as far as -- and this was curious to me.

13 You testified that children -- if I heard you right, and
14 maybe I got it wrong -- that basically children were not
15 able to exercise judgment, much like an alligator wouldn't
16 exercise judgment?

17 A. Well, less than we can; I meant that. A child
18 has less impulse control -- and we expect that of children
19 -- than adults.

20 Q. But some children have more impulse control than
21 other children?

22 A. Well, of course. Sure.

23 Q. And, of course, some adults have better impulse
24 control than other adults?

25 A. Of course.

1 MR. HEMBREE: All right. I don't think I have
2 anything further, Dr. Albiniaak. Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: Any redirect?

5 MR. DIGGS: No, Your Honor.

6 THE COURT: Okay. Sir, you may step down.

7 [Whereupon, the witness exits the witness stand]

8 MR. DIGGS: Your Honor, we don't have any
9 additional evidentiary showing at this time for the
10 Court, but I would like to comment on the motions that
11 we've filed.

12 THE COURT: Can I ask a preliminary question
13 before you do that?

14 MR. DIGGS: Yes.

15 THE COURT: And we had a conference -- a status
16 conference call on the 19th, which was Monday; correct?

17 MR. DIGGS: Yes.

18 THE COURT: Okay. I just wanted to make sure,
19 because some days my dates all run together on me.

20 And during that conference call we discussed
21 whether -- in loose terms, nothing definitive --
22 whether, in fact, the defendant would be asserting as
23 an affirmative defense that of insanity; is that
24 correct?

25 MR. DIGGS: Correct.

1 THE COURT: And so I just need to know as a
2 preliminary matter whether that is going to be the case
3 so that we can preliminarily deal with any requests the
4 State may have for him --

5 MR. DIGGS: Your Honor --

6 THE COURT: -- to be evaluated.

7 MR. DIGGS: Yeah. I was going to address that.
8 I think on about the 16th we received -- or recently we
9 received a request from the State -- I think it was
10 dated the 16th, give or take a day or so, asking us if
11 we were going to use the insanity or guilty but
12 mentally ill verdicts --

13 THE COURT: Uh-huh.

14 MR. DIGGS: -- for a defense.

15 THE COURT: Pursuant to the criminal rules.

16 MR. DIGGS: Pursuant to the rule. Your Honor,
17 we are. I think today is like our ninth day and, as
18 you know, the rule provides for a response within ten
19 days.

20 THE COURT: Yes.

21 MR. DIGGS: We are going to provide --

22 THE COURT: Let me interrupt you one second. It
23 seems that the video conferencing just rang.

24 [Off-the-record discussion in reference to video
25 conferencing]

1 THE COURT: I'm sorry, Mr. Diggs. You may
2 continue.

3 MR. DIGGS: Thank you, Your Honor. We are
4 talking about insanity in this case. And subject to
5 the motions that we are making with the Court, in part,
6 those motions today, we are going to give notice of
7 intent to mount an insanity defense.

8 THE COURT: You are going to give? or you are
9 giving it now?

10 MR. DIGGS: We are giving it now. But the rule
11 requires me to do it in writing.

12 THE COURT: That's correct.

13 MR. DIGGS: And I'm asking --

14 THE COURT: Within ten days.

15 MR. DIGGS: I'm asking if everybody will waive
16 that requirement and just go ahead and take my
17 assertions on the record that it's going to be --

18 MR. HUMPHRIES: We don't have an exception to
19 that.

20 MR. DIGGS: Thank you.

21 THE COURT: So then we need to go ahead and get
22 the ball rolling for -- because, as I understand it,
23 there is not going to be any exception to y'all's
24 request for an independent --

25 MR. DIGGS: No.

1 MR. HUMPHRIES: It's understood.

2 THE COURT: -- evaluation of the defendant.

3 MR. HUMPHRIES: And just for the purposes of the
4 record, Your Honor, we did file on October 25th, 2005,
5 a demand for a notice of insanity.

6 THE COURT: You said that was October 25th?

7 MR. HUMPHRIES: October 25th of 2005.

8 THE COURT: And I would assume that the defense
9 is --

10 MR. HUMPHRIES: When the initial discovery was
11 provided.

12 THE COURT: Yes. And I would assume the
13 defense's response is going to be that they didn't
14 have an adequate factual basis to make an assessment
15 until they had full evaluation --

16 MR. HUMPHRIES: Certainly. And that --

17 THE COURT: -- of Mr. Stanko's situation?

18 MR. HUMPHRIES: And that's why we filed
19 supplemental -- we filed a series of discovery motions,
20 which were supplemental to the initial demand, which we
21 did file back on the 16th. That was actually filed in
22 October.

23 THE COURT: Okay. But for the record, you-all
24 have no exception to waiving the ten-day written
25 requirement; is that correct?

1 MR. HUMPHRIES: If we're on notice today,
2 orally, in open court, that there is an insanity
3 defense, we would waive that.

4 THE COURT: Okay.

5 MR. DIGGS: Your Honor --

6 THE COURT: And I assume that is pursuant to
7 17-24-10, Mr. Diggs?

8 MR. DIGGS: I'm sorry, Your Honor?

9 THE COURT: I said I assume your assertion is
10 pursuant to 17-24-10?

11 MR. DIGGS: Yes.

12 THE COURT: Okay. Now --

13 MR. DIGGS: And, again, subject to the motions
14 that we --

15 THE COURT: Yes.. And I've read your -- and I've
16 read your motions, and we'll get to those in just one
17 moment.

18 Now, Mr. Hembree, you-all indicated at the
19 status conference that -- and for the record, we did
20 the status conference by telephone on June 19th, more
21 as an administrative function to keep us all on track
22 pursuant to the scheduling order.

23 You-all indicated that if there was going to be
24 an insanity defense, that you-all would be requesting
25 an independent psychological evaluation to be performed

1 by the State Department of Mental Health; is that
2 correct?

3 MR. HEMBREE: That's correct, Your Honor. Both
4 as to competency and as to criminal responsibility.

5 THE COURT: And you-all indicated that you
6 thought that you could communicate with the state
7 hospital and they would accommodate us in doing that
8 fairly quickly, instead of us having the long backlog
9 as we would normally?

10 MR. HEMBREE: That's correct, Your Honor. I
11 have not made contact with the administrator since
12 our -- since we spoke on Monday.

13 THE COURT: Okay.

14 MR. HEMBREE: However, based on prior
15 experiences, I believe that's possible, and even
16 probable, if we have some cooperation from defense
17 counsel in the form of any reports, examinations,
18 tests, or other documents or materials relied upon
19 by their expert in forming his opinion. I don't know
20 that the defense may have a lot of prior psychiatric,
21 psychological evaluations that have been done
22 historically, that we're not -- we don't have
23 available, that may have an impact on getting a
24 high-quality answer from the state hospital. So --

25 THE COURT: When do you-all -- and I know you're

1 not bound by this answer, but I'm asking more in terms
2 of our scheduling. How long do you think it would take
3 to have Mr. Stanko transported and evaluated under the
4 best -- with the assumption of the best set of
5 circumstances, meaning having all the information you
6 need for the doctor to do what they need to do?

7 MR. HEMBREE: Your Honor, I think under the best
8 circumstances, two weeks; assuming we have everything
9 in hand, send it to them, that we would be able to
10 accomplish that in two weeks.

11 THE COURT: And do you in any way foresee that
12 delaying -- and, again, this is an administrative
13 question -- delaying the trial date that we've set?
14 Because as I indicated to you-all, there are lots of
15 administrative issues that I have to deal with and that
16 the clerk has to deal with, as well as Court
17 Administration, and if we are going to be delayed I
18 need to let them know that. Of course, they will not
19 change the schedule probably until a week or two before
20 trial, to make sure we're going forward, so that they
21 don't have massive upheaval in the event we don't go
22 forward.

23 But I -- do you-all -- and I guess I need to
24 address this question to Mr. Diggs and Mr. Kelly, also.
25 Do you-all foresee this delaying the trial date that we

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1 have contemplated?

2 MR. HEMBREE: Your Honor, I just -- I've prayed
3 over this one quite a bit here in the last few days,
4 obviously.

5 THE COURT: Yes.

6 MR. HEMBREE: My great concern is that there may
7 be -- I don't know how to say this delicately. But if
8 there are materials that are not given to us that we
9 become aware of later --

10 THE COURT: Uh-huh.

11 MR. HEMBREE: -- and I call my doctor at the
12 state hospital and say, would this be important to you,
13 and he says, yes, I would like to review that, I fear
14 that we may have this back-and-forth. And I say that,
15 and I don't mean to pick, but --

16 THE COURT: Well, no.

17 MR. HEMBREE: -- a great example would be the
18 motions today. And, I mean, if it goes -- if it
19 lingers on, you know, a week late and a week late and a
20 week late, we're getting awfully close.

21 And so I guess I have some legitimate -- some
22 real concern about us hitting the date that we have
23 currently scheduled. I don't want to continue it. In
24 my heart of hearts, we want to go forward on this
25 particular date. I just --

1 THE COURT: When do you think we all need to
2 target, as a deadline, to make a decision as to whether
3 this is going to delay our progress? Because I need to
4 let -- for example, the jury subpoenas are going to go
5 out, and the questionnaires are going to go out, a
6 month --

7 Madam Clerk, a month before the trial?

8 THE CLERK OF COURT: Yes, Your Honor.

9 THE COURT: Which is July 4th.

10 MR. HEMBREE: That's --

11 THE COURT: That's two weeks from now.

12 MR. HEMBREE: That's -- there's my concern, Your
13 Honor.

14 THE COURT: Yes. That's two weeks from now.

15 MR. HEMBREE: I mean, I realize -- you know, the
16 deadline really isn't August the 1st; the deadline is
17 more when we send those subpoenas out.

18 THE COURT: Yeah. My main concern is the clerk
19 sending out 400 subpoenas and 400 questionnaires and --

20 MR. DIGGS: Your Honor?

21 THE COURT: Yes, sir?

22 MR. DIGGS: I don't know if I'm out of line on
23 this, but I think anybody can examine a criminal
24 defendant.

25 THE COURT: I, quite frankly, think if we can
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1 get Mr. Stanko to Columbia next week and get it done --

2 MR. DIGGS: Yeah. I --

3 THE COURT: But the key is getting all the
4 information that they need to make a decision, and
5 whether you-all can provide that.

6 You've given me the report, which is -- and I
7 will -- just for purposes of the record, we have the
8 clinical and neuropsychological report of Dr. Mike --
9 Mark Einhorn, spelled E-I-N-H-O-R-N, from Roswell,
10 Georgia. And then you also provided me with the
11 radiology consultation, let's see, from Rutledge Tower,
12 which I assume is a part of Roper -- well, it's a part
13 of MUSC.

14 MR. DIGGS: Your Honor, I don't want to mislead
15 the Court or the prosecution. That is the report out
16 of MUSC, which I've had -- had the PET scan analyzed
17 elsewhere. And there are other reports forthcoming.
18 I'm sure counsel for the prosecution is going to want
19 to have access to that.

20 THE COURT: When you say forthcoming, tell me
21 when that -- what that means.

22 MR. DIGGS: Your Honor, I think if we could
23 just establish a target date -- I mean, it's not -- I
24 could do it. I mean, I can tell these people to give
25 me the -- give me the written reports, and give me

1 everything that you have, by a certain date. But if
2 Your Honor would go ahead and set a date, you know, and
3 tell me when to provide it.

4 THE COURT: For you to have it to them?

5 MR. DIGGS: Yeah.

6 THE COURT: You'll comply with it?

7 What's the drop-dead date you need the materials
8 by, Mr. Hembree? Friday?

9 MR. HEMBREE: Really, Your Honor, when we are
10 looking at July 4th as a jury summons date and we're
11 looking at trying to get him in next week, which I
12 think is optimistic and doable, Friday, which is
13 tomorrow -- you know, Monday, maybe? Monday?

14 MR. DIGGS: That wouldn't be realistic. I think
15 we -- they're going to have the entire month of July to
16 do whatever testing that they're going to do with him.

17 THE COURT: The issue is not --

18 MR. DIGGS: You'll have --

19 THE COURT: For me the issue is not their time
20 frame to do their testing. Mine is more of an
21 administrative function that if they don't get it done,
22 I have 400 subpoenas out there and 400 folk that are
23 going to show up on August 1st with nothing to do. And
24 I know that's purely administrative. It has nothing to
25 do, of course, with our reality, to some extent. But

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1 it has a great deal to do with the reality for the
2 clerk, the cost that it costs to send those subpoenas
3 out, the cost that it costs to copy those
4 questionnaires, and the cost of folk taking off work to
5 be here.

6 So my -- like I said, my inquiry is more of an
7 administrative one. I think clearly they will have
8 enough time to get done what they need to get done, but
9 I have to look at worse-case scenario if some snafu
10 comes up. You know, a continuance isn't a problem for
11 us. We just -- we're used to it. We just reinvent our
12 schedule. But when you talk about the public, they
13 can't just reinvent their schedule. I mean, you start
14 talking about the clerk's office, they can't simply,
15 you know, like take back 400 subpoenas. It just -- it
16 just can't work. And they have to send them out a
17 month in advance because you have to give people
18 adequate notice. And then intervening that time, we
19 all still have other things we're going to be doing,
20 pursuant to the scheduling order, gearing up for trial.

21 So as a practical matter, if you're telling me
22 you want a drop-dead for you-all to get the information
23 to the State, I don't have a problem with providing
24 that. I think whatever you have in your possession you
25 need to provide to them today or tomorrow, which is

1 Friday, and whatever you're getting from other sources
2 you need to have to them by Monday, even if it means
3 those providers have to fax those on to Mr. Hembree or
4 otherwise. But certainly the state hospital cannot
5 make a meaningful evaluation of Mr. Stanko without the
6 underlying information.

7 And, of course, those that are provided by the
8 rules, because you're only required to turn over what
9 the rules require. And as a matter of fact, I was just
10 going to look at that exact language so that we are all
11 clear as to what is required.

12 MR. DIGGS: Your Honor, the --

13 THE COURT: Yes.

14 MR. DIGGS: Also, we have a situation where the
15 State is going to test, and they're going to have
16 reports and so forth, and then they're going to have
17 them available to us and then we're going to need to --
18 I mean, if you go back and forth -- and I know that
19 you're --

20 THE COURT: When you say go back and forth,
21 clarify that for me.

22 MR. DIGGS: Well, they do their testing, they
23 are going to have their reports, they will make them
24 available to us, and we'll have our people look at
25 them --

1 THE COURT: Well,, I think you can assume --

2 MR. DIGGS: -- and then they'll issue some --

3 THE COURT: -- the State is going to say he's
4 competent. I --

5 MR. DIGGS: No doubt about it.

6 THE COURT: I've never gotten --

7 MR. DIGGS: It's not a question about that.

8 THE COURT: -- a report from the state hospital
9 that didn't say somebody was competent and that they
10 weren't criminally responsible except --

11 MR. DIGGS: Yeah.

12 THE COURT: -- twice --

13 MR. DIGGS: Right.

14 THE COURT: -- in ten years.

15 MR. DIGGS: The concern --

16 THE COURT: So I think you can pretty much
17 assume what their report is going to say.

18 MR. DIGGS: The concern that I have is -- if I
19 can deviate just a little bit from your administrative
20 concerns?

21 THE COURT: Sure.

22 MR. DIGGS: This goes to the heart of the nature
23 of the motions that we're filing. If mental competency
24 or if insanity -- insanity or guilty but mentally ill
25 is really an issue, I mean, if it's that serious of an

1 issue, the State -- you know, if we hadn't raised this,
2 the State would be perfectly happy to proceed on with a
3 capital murder trial and execute this defendant, if
4 found guilty, without any consideration to mental
5 status. It's not -- they don't perceive that to be
6 something that's necessary to make a reliable
7 determination of guilt or innocence. Okay? Do you
8 understand what I'm saying?

9 THE COURT: I understand what you're --

10 MR. DIGGS: You're talking about --

11 THE COURT: -- saying, but I don't think --

12 MR. DIGGS: -- affirmative defenses --

13 THE COURT: I don't think that's their position,
14 however. And I don't mean to speak for the State, but
15 that's not what I've heard them say.

16 MR. DIGGS: Their position -- what I hear them
17 saying is that now that we've raised this issue of
18 insanity, even though it doesn't have anything to do
19 with their case -- because they are relying, in part,
20 on the fact that it's an affirmative defense. Okay.
21 I've got to come forward, subject to -- and, again, I'm
22 not conceding anything here. But under the state of
23 the law, now I've got to come forward and produce this
24 evidence --

25 THE COURT: That's correct. By a --

1 MR. DIGGS: This evidence that --

2 THE COURT: -- preponderance of the evidence.

3 MR. DIGGS: Yeah. They haven't even been
4 concerned with that up until now. Why should they all
5 of a sudden --

6 THE COURT: Well, I don't think --

7 MR. DIGGS: -- have such a serious concern?

8 THE COURT: I don't think that's true, because
9 they asked you in October if that was going to be a
10 defense. And so I don't know that that's accurate.

11 MR. DIGGS: I'm talking about in terms of their
12 ability to develop that kind of evidence on their own.
13 They don't need my permission to do an evaluation.

14 THE COURT: I don't think they could have
15 evaluated Mr. Stanko unless you've raised that defense.
16 I don't think they would have independent access to
17 him, absent you raising that defense. At least that's
18 my understanding of the statute and the rules. Now, my
19 memory is not infallible.

20 MR. DIGGS: And you may be correct.

21 THE COURT: I don't think --

22 MR. DIGGS: But my understanding would be that
23 anybody who had a question, anybody in this system,
24 whether it be the court, the prosecution or the
25 defense, who have concern about his mental state could

1 request of the Court an order for --

2 THE COURT: That's not what the case law says.
3 I've had that issue in Charleston, and done extensive
4 research on it because the prosecutor there routinely
5 asks for that. And, actually, the way the case law is
6 written, and the statute, I can order it any time I'm
7 concerned, the defense counsel can order it any time
8 that they are concerned --

9 MR. DIGGS: Right.

10 THE COURT: -- but unless an affirmative defense
11 of insanity is raised, that's the only time the State
12 gets independent access to a defendant unless it
13 becomes an issue in the case. Otherwise, they can't
14 just decide they want to have a defendant evaluated.

15 Of course, now, you know, there are other
16 wrinkles. You know, if somebody is proceeding pro se,
17 they don't have counsel, you know, you really have a
18 legitimate concern about a person's ability to
19 understand the proceedings, that's a whole different
20 issue.

21 But I don't think the State -- and if I'm wrong
22 please correct me, because I'm not infallible. But I
23 don't think Mr. Hembree could have simply asked the
24 Court to evaluate Mr. Stanko.

25 MR. DIGGS: In the past, that's been the

1 practice in this circuit. Perhaps not recently. But
2 I've had clients that were taken without my consent --

3 THE COURT: That's interesting.

4 MR. DIGGS: -- or even knowledge.

5 MR. HEMBREE: Let me -- there are a couple of --

6 THE COURT: Well, I think with this being a
7 death penalty, I don't think Mr. Hembree and them
8 would have done that.

9 MR. KELLY: Your Honor?

10 THE COURT: Yes?

11 MR. KELLY: If it please the Court?

12 THE COURT: Yes, sir, Mr. Kelly. How are you
13 today?

14 MR. KELLY: Fine, ma'am. How are you?

15 THE COURT: Doing fine.

16 MR. KELLY: May I speak to this issue --

17 THE COURT: Sure.

18 MR. KELLY: -- on a practical matter?

19 THE COURT: Yes, sir.

20 MR. KELLY: Your Honor, we would certainly turn
21 over to the State and to their experts any documents or
22 tests that we have that we believe that we are going to
23 use. That's number one.

24 THE COURT: Okay.

25 MR. KELLY: That means that they can go ahead

1 today and begin to make their schedule, and then they
2 would notify us as to when that's going to take place.

3 Your Honor, there may be other tests or
4 documents that would not become available. We would
5 ask our experts to give us a list of what those are and
6 when they would be available so that the experts for
7 the State would know --

8 THE COURT: That's correct.

9 MR. KELLY: -- what would be on the way and when
10 it might be on the way.

11 As a practical matter, Your Honor, once they
12 examine our file, and even without any of our input,
13 they would be well along the way as we have the
14 documents.

15 And as you know, as a practical matter, Judge,
16 as any case approaches the time when it's going to be
17 tried, there is a continuing discovery that is taking
18 place.

19 THE COURT: Of course.

20 MR. KELLY: So that's what I would suggest:
21 that the State go ahead and set it up. We'll give them
22 what we've got and intend to use, and we'll get a list
23 from our experts as to what they anticipate will also
24 be developed and when it will be available.

25 THE COURT: Can you do that by Friday?

1 MR. KELLY: I don't see why not.

2 THE COURT: Mr. Hembree --

3 MR. KELLY: Well, are you talking about
4 tomorrow?

5 THE COURT: Yes.

6 MR. KELLY: Judge, these people -- I can't speak
7 directly --

8 THE COURT: No. I mean, I'm not --

9 MR. KELLY: -- I know as a practical --

10 THE COURT: I don't want you to feel --

11 MR. KELLY: -- from a practical level, ma'am,
12 these people, we don't even know maybe where they are
13 today or tomorrow morning. As far as the things that
14 are in our possession --

15 THE COURT: That is what I'm speaking to.

16 MR. KELLY: -- of course. But as far as what
17 might be developed, or a list of when it will be
18 available, we should be able to get that by the middle
19 of next week.

20 THE COURT: Okay. That was my question. And I
21 don't want you-all to feel -- my questions are not
22 intended to exert any pressure. You know, I'm in court
23 every day. Whether I'm here or whether I'm in
24 Charleston, I'm going to be trying something somewhere.
25 So, you know, again, my questions are administrative in

1 nature. They are for my planning purposes, and they
2 are not intended to exert pressure one way or the
3 other.

4 I'm just asking a realistic question, which is
5 are we going to be ready. Because I like Ms. Alma, and
6 she likes me, and I would like it to stay that way. We
7 have a wonderful -- we have a wonderful working
8 relationship, and I don't want to ruin it by having her
9 send out 400 subpoenas that we don't need --

10 MR. HEMBREE: Judge, I see --

11 THE COURT: -- and questionnaires.

12 MR. HEMBREE: I see her all the time. I need to
13 stay on her good side in a big way.

14 MR. KELLY: We can --

15 THE COURT: You want to be on her good side,
16 too, huh?

17 MR. KELLY: We can assure --

18 THE COURT: Yes, sir?

19 MR. KELLY: -- the State that we want to use
20 this evidence, and so we're going to see that they get
21 it.

22 THE COURT: Okay. So why don't we, then, in
23 that vein --

24 Mr. Hembree, you've already been put on notice
25 that they are going to be enlisting the affirmative

1 defense of insanity. I think, then, you-all are in a
2 posture to go ahead and try to arrange to have Mr.
3 Stanko transported for his competency and criminal
4 responsibility evaluation. Go ahead and notify Mr.
5 Diggs and Mr. Kelly what date that will be. By Friday
6 they will get all information in their possession that
7 they plan to rely on, in compliance with the disclosure
8 required in Rule 5, to you, and the list of all
9 documents, as Mr. Kelly has indicated -- which I think
10 really is a wise way to split the baby -- as he has
11 suggested, the list of the other information that is
12 not yet available but what they anticipate to become
13 available and which they intend to rely upon, that they
14 get that to you by the middle of next week so that you
15 will --

16 MR. HEMBREE: Would that be Wednesday?

17 THE COURT: I would assume that means Wednesday.

18 MR. KELLY: Or Thursday. We will call you
19 Wednesday, and if we don't have it, we'll tell you when
20 we --

21 THE COURT: And then you-all can fax that on to
22 the doctors at mental health, because they still will
23 have to generate a report. So that still gives them
24 time to rely upon those documents in making any
25 evaluation. Because largely the evaluation that they

1 are making will really rely on their independent
2 interaction with Mr. Stanko.

3 MR. HEMBREE: No question, Your Honor, but I
4 know just -- and I'm still concerned about it because I
5 have had experiences with the state hospital when they
6 were aware that there were other reports made, they
7 were aware of a history, they wanted the benefit --

8 THE COURT: Oh, of course.

9 MR. HEMBREE: -- of that history because their
10 concern is to --

11 THE COURT: Of course.

12 MR. HEMBREE: -- is to have a high-quality
13 report and --

14 THE COURT: Exactly.

15 MR. HEMBREE: -- they want --

16 THE COURT: Well, they would need to review that
17 and rely upon it. I think it is a legitimate concern
18 that is raised, and I am hoping that we have addressed
19 it by making sure that you have the documents in their
20 possession, as required by Rule 5, on Friday and then
21 the others by Wednesday.

22 We'll have a pinpoint date of Wednesday. If
23 there is some problem with you-all having it by
24 Wednesday, please notify them of the date that it will
25 become available. If y'all need my help, you know you

1 can always just give me a call and I'll make myself
2 available so that we can get any impediments ironed
3 out.

4 MR. HEMBREE: Judge, we have sent someone to our
5 office to get a copy of the form orders necessary --

6 THE COURT: Perfect.

7 MR. HEMBREE: -- to order the --

8 THE COURT: That was my next question.

9 MR. HEMBREE: -- competency evaluation. So
10 we'll -- we are hustling over to get those.

11 THE COURT: Because I didn't bring any with me,
12 so I was going to ask or I was going to have to go
13 print them. So I appreciate you-all getting those form
14 orders for me.

15 MR. HEMBREE: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Now, that then leaves us -- that was my first
18 note from my notes from the status conference, and we
19 have covered that. You have already filed your
20 motions. We have covered that.

21 So that leaves, then, the floor to Mr. Diggs
22 regarding the motions that he has filed.

23 And I guess as a preliminary matter, I need to
24 ask of the State: will you-all need any additional
25 time to respond to these in writing? or do you need any

1 additional time, you feel, to supplement the record? or
2 do you-all feel that you are able to argue the motions?

3 MR. HEMBREE: Your Honor, I think we are able to
4 argue the motions today.

5 THE COURT: Okay.

6 MR. HEMBREE: Of course, I haven't heard
7 counsel's arguments yet, but --

8 THE COURT: I just wanted to ask, to give you
9 leave to do that, if that were your --

10 MR. HEMBREE: If we run into such a problem,
11 we'll call that one.

12 THE COURT: Okay. That sounds like a plan.

13 MR. DIGGS: And, Your Honor, I would imagine,
14 you know, since we're pre-trial here, we're going to be
15 supplementing the record also with argument on these
16 motions, you know. And so I certainly wouldn't have
17 any objection to the State digesting this and
18 responding later. Or if they feel like that they want
19 to do that today, they can certainly do that. I don't
20 have any objection either way.

21 THE COURT: Certainly.

22 MR. DIGGS: I don't think that we do.

23 THE COURT: Yes. I just wanted to give anybody
24 an opportunity to supplement the record if they felt it
25 was necessary. Okay.

1 MR. DIGGS: Your Honor, it's not --

2 THE COURT: You may proceed.

3 MR. DIGGS: This is not a diminished-capacity
4 case, it is not an irresistible-impulse case, as those
5 terms might be used or have been used heretofore in
6 criminal courts. It is a case that will be based on
7 the testimony, the type of testimony that the Court
8 heard from Dr. Albiniaak this morning, concerning the
9 structure of the brain and how the brain operates and
10 our ever-improving ability to image the brain in its
11 functioning state to see how it works.

12 I mean, I don't think anybody would question the
13 fact that technology improves every day. And certainly
14 over the course of my career as an attorney, a quarter
15 of a century, you know, there have been tremendous
16 advances in medicine and technology, and from time to
17 time they're even incorporated into the legal system,
18 into the law, and we -- you know, as those things -- as
19 those advancements take place, as they occur and they
20 become proven and reliable, and as they become accepted
21 by society, and by us as officers in the legal system,
22 officers of the Court, and the Court itself, court
23 begins to take note of that and incorporate -- as is
24 required in good faith, to incorporate those advances,
25 and operate a judicial system that has the ability to

1 bring about the most reliable verdict that we can. I
2 mean, that's the objective of the court system, and
3 it's the objective of the prosecution.

4 I've never met a prosecutor, including these
5 gentlemen, who ever wanted to put someone in jail who
6 wasn't guilty and who didn't deserve to be there in
7 accordance with the applicable law. But sometimes the
8 Court is faced with a situation where the law simply
9 isn't adequate to deal with what we now know, as
10 opposed to what we knew at the time the law was
11 adopted.

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13 MOTION NUMBER ONE

14 MR. DIGGS: The first motion that we have goes
15 to 17-24-10. We are challenging the constitutionality
16 of that particular statute -- Your Honor, it's the
17 insanity defense statute -- because the statute as it's
18 written, juxtaposed as to what we now know in medical
19 science as a result of technology and studies and our
20 increased -- increase in knowledge, the statute doesn't
21 really make sense anymore. It doesn't apply to what we
22 know now as opposed to what we knew in 1830.

23 I'm arguing, and we are arguing as the defense
24 in this case, that the statute violates the Eighth and
25 Fourteenth Amendments to the U.S. Constitution, as well

1 as the South Carolina State Constitution, Article 5,
2 Section 15, because it has a conclusive presumption in
3 it that, based on the way it's drafted, presumes that
4 if somebody can distinguish between moral and legal
5 right from moral and legal wrong, then they maintain
6 the free will to act accordingly.

7 And I think based simply on Dr. Albiniaak's
8 testimony today, that's not necessarily the case,
9 because you may know as an intellectual matter what is
10 right and what is wrong, but your actions are based in
11 large part -- based on the circumstances that occur in
12 your environment. And if something comes along that
13 generates an impulse that might initially begin to form
14 the basis of a malicious act, one area of the brain
15 might know, you know, in an intellectual setting, a
16 hypothetical abstract setting, it's wrong to do this.

17 You've got another area of the brain that is
18 charged with the responsibility of suppressing that
19 impulse or that emotion, and if it's not there, that
20 part of the brain is missing or it's not functioning,
21 then that individual, according to Dr. Albiniaak, has
22 very -- it's very unlikely you're going to be able to
23 control, in a civilized or expected manner, in a
24 reasonable manner, what would be an appropriate
25 response to that emotion.

1 The statute doesn't take those -- that entire
2 framework into consideration. It's a conclusive
3 presumption, it's simply quite arbitrary, and it
4 violates due process. It's arbitrary in that it
5 rejects, it doesn't take into account, what we know
6 now about the brain structure and how it operates.

7 Your Honor, would you like for me to go ahead
8 and go through all of them, or one at a time?

9 THE COURT: Let me ask: Does --

10 MR. DIGGS: Sure.

11 THE COURT: How does the State want to proceed?
12 Would you prefer to --

13 MR. HUMPHRIES: That's good either way.

14 THE COURT: -- have us argue each one at a time,
15 or would you want him to go through his entire argument
16 on each of the motions and then you-all respond in
17 kind?

18 MR. HUMPHRIES: For the purposes of the State's
19 response, our response would be the same to each and
20 every motion, so we might as well hear all of them.

21 THE COURT: Okay. Mr. Diggs, you may proceed.

22 MR. DIGGS: I assume he is going to agree?

23 MR. HUMPHRIES: He --

24 MR. DIGGS: Your Honor, moving on to -- and I
25 say that -- I say that tongue in cheek. Of course, I

1 know that.

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MOTION NUMBER TWO

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MR. DIGGS: Motion number two I think we're going to dely, defer that until the trial, because we're going to need some additional evidence that come from the circumstances of this case. I'm referencing that other motion, so with your permission I am going to move on to number three.

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MOTION NUMBER THREE

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MR. DIGGS: Again we are challenging the constitutionality of 17-24-10, because it's simply arbitrary. We have got a double standard here that's not -- it's just not a fair situation. It favors the prosecution, it is adverse to the defense, talk about malice aforethought as an element of murder.

Historically in South Carolina, malice -- and Your Honor probably has given many instructions on malice to the jury -- that one of the ways you determine the existence of malice is based on the actions that were committed, the conduct of the accused in a case. You can determine malice, express malice or implied malice, based on the conduct of the accused, if necessary, based solely on the conduct of the accused.

1 But the statute says under Subsection C that
2 evidence of a mental disease manifested only by
3 criminal or antisocial conduct is not sufficient to
4 establish that defense. And so what I'm saying is it's
5 arbitrary. If conduct can establish an element of the
6 State's case, why can't that same conduct establish an
7 element of the defense's defense, especially given that
8 the State has a burden of proof of beyond a reasonable
9 doubt. But the statute doesn't allow for that.

10 THE COURT: Well, don't most --

11 MR. DIGGS: So it's arbitrary --

12 THE COURT: Well, don't most therapists say that
13 ninety percent of the population at the department of
14 corrections is antisocial and narcissistic and if that
15 were the case, that you could never prove intent? I
16 mean, that would always -- you could never find anybody
17 guilty of anything, because that's about --

18 Actually, Dr. Donna Schwartzwat [phonetic] says
19 that that's about ninety-eight percent of the
20 population at the department of corrections, that
21 they're -- that they all have some antisocial feature
22 or some level of narcissism. I'm only extrapolating
23 from a lecture she gave recently. And I found that
24 extremely interesting. It was actually on a different
25 topic, but that came up as an aside.

1 MR. DIGGS: What I'm getting at is in the
2 criminal setting, the element of malice should be on
3 the same plane with any of the elements of the defense
4 in terms of what can be proved by conduct and what
5 can't be proved by conduct. For example, for 200
6 years, in this country we've been willing to accept the
7 fact that everybody who committed certain acts were
8 doing it in a malicious way based solely on the way
9 they were committed. We have no idea whether or not
10 they had a healthy brain or not. But we were willing
11 to take and make it part of the law and execute people
12 based on what they did, not based on what the status
13 of their mental health was or the status of their brain
14 was. And we're not willing to do that, though, with
15 respect to a defense that we might -- that
16 traditionally the law has been made available, taken
17 away, and made available in some part, pulled back.

18 I'm talking about insanity subsequent to the
19 Hinckley and President Reagan shooting. There was a
20 tremendous change in the law at that time. And it was
21 a public reaction, I would submit, based on emotion and
22 politics, and not necessarily based on medical science
23 and what we knew about the brain even twenty-five years
24 ago or thirty years ago.

25 And I'm saying simply that this statute carries

1 that same arbitrary thinking into codification because
2 it allows, again, the State to make its case based on
3 the conduct of the accused but it doesn't allow the
4 defense to make its case based on the conduct of the
5 accused. It's simply not fair. It's arbitrary.

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7 MOTION NUMBER FOUR

8 MR. DIGGS: Motion number four is another reason
9 the statute is unconstitutional, because it allows the
10 State -- it's very similar to the prior motion but it's
11 going a step further, Your Honor. It allows the State
12 to prove its case, based on the conduct of the accused,
13 without any corroborating evidence of healthy brain
14 function, you know, when you have a statute that
15 establishes insanity as a legal defense, that says that
16 as a matter of the public policy of the state we're
17 going to permit this defense because we're evolving in
18 light of society, supposedly.

19 We know that sometimes people shouldn't be held
20 criminally responsible for what they've done and what
21 the consequences of the acts were. But traditionally,
22 for 200 years, again, we've been able -- we've been
23 perfectly happy to allow the State or the government to
24 prosecute, convict, and execute people without any
25 corroborating evidence that they're mentally healthy,

1 without any concern for the state, mental state, of
2 that particular accused.

3 And so the statute, we submit, is arbitrary
4 because it allows for a finding of malice aforethought
5 without any evidence of the status of the brain. How
6 on earth can we know what malice aforethought is if we
7 don't know anything about the status of the brain
8 that's generated that thought. That's totally
9 arbitrary, and it's unacceptable at this day and time
10 in the 21st century.

11 Before we start talking about beyond a
12 reasonable doubt, malice aforethought, when the --
13 and certainly when the ability to look inside that
14 brain exists and we don't do it, it's arbitrary, and it
15 shouldn't -- and the system shouldn't be -- shouldn't
16 allow that to continue. The system should change. The
17 statute should change. This Court should declare the
18 statute inadequate, it doesn't work anymore, because we
19 now know that conduct is based on the status and the
20 health of the frontal lobe of the brain.

21 That man might look perfectly healthy, he can
22 speak more intelligently than I can, and he can tell
23 you right from wrong. He can probably recite material
24 out of the Bible. I mean, I don't know. He knows
25 right from wrong. But that is not the issue, because

1 we know now how the brain operates. And that's not the
2 question, and that's not the test.

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4 MOTION NUMBER FIVE

5 MR. DIGGS: The motion number five, Your Honor,
6 goes to the burden-shifting nature of the statute.

7 Based on the evidence that we presented this
8 morning through the testimony of Dr. Albinak, to
9 presume that we can conduct a murder trial and make a
10 decision based on the elements of that offense, to be
11 able to do that without any consideration as to the
12 mental health and status, the -- without any regard to
13 whether there's a physical abnormality or anomaly in
14 the brain, is completely arbitrary. You know what?
15 It's almost become to the point that it's cherry-
16 picking the evidence. And that's not the way we should
17 do things in the system. The statute allows for that,
18 it's arbitrary, and that's why I'm asking this Court to
19 declare it unconstitutional.

20 It shouldn't -- the governments that prosecute
21 criminal -- violent criminal cases and the offenses
22 against other human beings shouldn't be able to do that
23 without taking into account as part of the prosecution
24 whether that person had the ability to control the
25 impulse or the emotion that came from that limbic

1 system, that I would guarantee you Dr. Albiniaak is
2 correct, becomes almost one -- or all -- one hundred
3 percent of the time out of the limbic system where
4 there's no thought about it. There's no contemplating,
5 there's no planning, it's just an emotional thing that
6 comes out. And it's --

7 I submit it's a violation of the Eighth and
8 Fourteenth Amendments, and, again, the South Carolina
9 Constitutional provisions in Article 1, Section 15, to
10 take that burden of proof from the State and put it on
11 the defendant, given the status or the state now of the
12 medical technology and the science about how the brain
13 is structured and how it works. To continue to allow
14 the Reagan -- the Hinckley and the Reagan incident to
15 dictate what policy is now, in the face of twenty-five
16 years of development in medicine and medical
17 technology, I would submit is wrong.

18 And the mental state of the actor, which has
19 always been in question or at issue in the term malice
20 aforethought or criminal intent, that criminal intent
21 should be a part of the State's case and it shouldn't
22 be shifted in any way to the defense for proving the
23 existence of that evidence beyond any standard. It
24 doesn't matter if it's preponderance of the evidence.
25 It shouldn't be there on the defense in any manner

1 whatsoever, because it's a part of the State's case and
2 it shouldn't be shifted.

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4 MOTION NUMBER SIX

5 MR. DIGGS: We go, Your Honor, in the next
6 motion, number six, to the guilty but mentally ill
7 statute.

8 We are asking the Court to declare that
9 unconstitutional, also, for the same reasons. It is
10 absolutely arbitrary and illusory. I have never seen
11 anything -- if you were in law school and you wanted to
12 study contracts and talk about an illusory contract,
13 our statute ought to be the example that's listed in
14 that book because it says we have a defense here of
15 guilty but mentally ill, but the defense has the burden
16 of proof of that. And as far as I know, even if the
17 defendant asserts that defense and proves it by a
18 preponderance of the evidence, he can still get the
19 death sentence. That's why I say it's illusory.

20 THE COURT: Repeat that last sentence.

21 MR. DIGGS: Can still get the death penalty.

22 THE COURT: Well, don't you, though -- doesn't
23 the statute, however, have built into it the mitigator
24 of what exactly you're talking about and it gives --

25 MR. DIGGS: Yeah. But it can still be rejected.

1 THE COURT: But it still gives you the
2 opportunity to present that fully and say, to some
3 extent, that his -- even though South Carolina does not
4 recognize a diminished capacity defense, it still gives
5 you some ability to say, my client's capacity was
6 diminished, they didn't have the ability to control
7 their impulses, and therefore you should spare their
8 life.

9 MR. DIGGS: But to do it that way -- for one, I
10 don't know if we could argue that unless we assert it
11 here. We're going to get to the penalty phase of the
12 trial, and they're going to be arguing that these
13 people over here --

14 THE COURT: Well, that's assuming, you know,
15 that we get to that phase.

16 MR. DIGGS: Yeah.

17 THE COURT: I'm just --

18 MR. DIGGS: They're going to be saying, look --

19 THE COURT: -- sort of speculating.

20 MR. DIGGS: -- he didn't plead this in, you
21 know, his pleadings; he didn't say anything about being
22 guilty but mentally ill.

23 So the point I'm making is -- I can't remember
24 the young man that was -- what's his name up in the
25 upstate, Spartanburg, somewhere in that area, about ten

1 years ago, found guilty but mentally ill, sentenced to
2 death and it was affirmed.

3 Under this statute it's illusory, 17-24-20.
4 Your Honor, under -- of course, under the death penalty
5 complex we can always introduce anything as a
6 mitigating factor in the sentencing phase. But not in
7 the guilt phase. The problem is people like me who are
8 out there relying on that, and spending all this money
9 and all this time and all this stuff, developing a
10 guilty but mentally ill defense for nothing.

11 Quite frankly, it undermines the seriousness of
12 the mental illness, and it's arbitrary. Your Honor,
13 I'm asking the Court to declare that unconstitutional
14 and say the statute is arbitrary because of that
15 situation.

16 And, Your Honor, I point out Subsection C of the
17 statute. It says: guilty but mentally ill may be
18 rendered only during the phase of a trial which
19 determines guilt or innocence, not the -- not the
20 sentencing.

21 It wastes everybody's time, it doesn't have any
22 effect, and it's arbitrary.

23
24 - - -

25 - - -

MOTION NUMBER SEVEN

MR. DIGGS: The seventh motion that we bring is also under the same statute, and it carries with it that same conclusive presumption that assumes that -- or presumes irrefutably that if one distinguishes between moral and legal right from moral and legal wrong, then you're guilty of whatever crime has been charged -- has been charged, at least by implication of this statute; this statute is not going to be available to you as a defense if you have that ability.

And so I would submit to you it's -- it's like Justice Marshall used to say: you don't have to do this thing, but once you do it you've got to do it in a constitutionally consistent way.

When we have the defense of guilty but mentally ill, or insanity, it shouldn't contain a conclusive presumption that's not supported by scientific evidence or medical evidence. Simply because you know in one set of circumstances right from wrong, you shouldn't be held to conclusively being presumed that you have the ability to act.

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MOTION NUMBER EIGHT

MR. DIGGS: Motion number eight. This is a motion that challenges the entire statutory complex

1 following 16-3 -- actually, -5. It goes all the way
2 through. Your Honor, these are those statutes in the
3 code, in the criminal code, that talk about defenses to
4 other people or against a person.

5 And what we are challenging here is that all of
6 those statutes, under the basis of the law that exists
7 now, allow for conviction of violent acts based on an
8 incomplete evidentiary base that otherwise would be
9 available. I say incomplete because they never -- the
10 prosecution is never required to address mental
11 capacity of the actor.

12 We're at a time in the 21st century where the
13 law should look at what the mental state of that
14 defendant is before we allow a conviction of every one
15 of -- under every one of these statutes, without any
16 consideration for what the status -- or the state of
17 the brain was.

18 - - - - -

19 MOTION NUMBER NINE

20 MR. DIGGS: That brings me to the last motion,
21 number nine, 16-3-10. 16-3-10. It is the old statute
22 for murder. It's been around forever. That's one of
23 the reasons we are challenging it. It's never -- you
24 know, it needs to be modernized. It needs to be
25 redrafted in the face of what we know about the brain.

1 This term malice aforethought is a legal term,
2 but the statute doesn't define what malice aforethought
3 is and it doesn't take into account the fact that the
4 brain is a complex organ. It requires malice
5 aforethought as a complex concept that it requires
6 cooperation and interaction between different areas of
7 the brain. And some of those areas may be working and
8 some of them may not.

9 So the statute needs to tell us so that we have
10 some guidance about what malice aforethought is. Is
11 malice aforethought -- we just say malice aforethought
12 is based on that emotion that comes out of the limbic
13 system, that Dr. Albiniaak testified about this morning,
14 and say that's enough. Well, he said, you know, the
15 limbic system doesn't think, it doesn't rationalize, it
16 doesn't, you know, give and take and process that
17 information and dictate what actions are going to occur
18 based on that emotion. That takes place in a different
19 area of the brain. But the statute doesn't recognize
20 that. And so it's vague.

21 We can do better now in terms of drafting a
22 statute that deals with criminal intent, somebody
23 who makes an informed judgment, voluntary judgment,
24 about what they're going to do and how they're going
25 to take someone else's life. We need a statute that

1 addresses that, as opposed to thinking that everything
2 is like in a cloud of dust and we see what happens when
3 it settles, and then we make a judgment about what
4 happened.

5 The statute needs to be modernized. It needs to
6 address the fact -- the reality of the situation that
7 you have these different functions going on down in the
8 brain. Through brain mapping and various scanning
9 techniques and so forth, we know this to be true. The
10 statute needs to tell us about what needs to work and
11 what needs to be present in order to satisfy this
12 particular element of murder.

13 Your Honor, I thank you very much.

14 THE COURT: You're welcome, Mr. Diggs.

15 MR. HUMPHRIES: May it please the Court.

16 THE COURT: Mr. Humphries, are you going to
17 respond?

18 MR. HUMPHRIES: Yes, Your Honor.

19 THE COURT: You may proceed.

20 MR. HUMPHRIES: Thank you. Mr. Diggs began his
21 argument by saying this is not a diminished capacity
22 defense and then, in his subsequent argument, continued
23 to argue everything that is diminished capacity.

24 This is, in fact, a diminished capacity defense.
25 In fact, in Lesswell [phonetic] -- an informed

1 jurisdiction that actually recognized diminished
2 capacity defense. What they say is it's a defense
3 which a defendant can assert when he has to concede
4 that he's legally sane. That's our situation here.

5 Mr. Stanko I am firmly convinced is going to be
6 determined to be legally sane, which then pushes Mr.
7 Diggs as his defense attorney in the position of trying
8 to argue diminished capacity.

9 We've talked about -- and their expert, Mr.
10 Albiniaak, talks about -- impulse control, response to
11 impulse. We talk about the frontal lobes. Well,
12 knowledge of and experimentation on the testing of the
13 frontal lobes has existed since the 1800s, based on his
14 testimony. So we're not talking about cutting-edge
15 concepts. There may be some recently-developed tests,
16 but not cutting-edge concepts. These are things I
17 believe have been contemplated through the ages when
18 we've talked about insanity versus sanity.

19 I know I don't have to tell the Court, but for
20 the purposes of the record: the Supreme Court has
21 addressed the issue of diminished capacity in State
22 versus -- actually, Gill v. State, which was decided in
23 2001. And we simply do not recognize diminished
24 capacity as a defense. And coincidentally, and I think
25 compellingly, State v. Santiago, decided by Chief

1 Justice --

2 THE COURT: It's almost exactly on point.

3 MR. HUMPHRIES: Exactly on point. And decided
4 three days -- filed three days ago.

5 THE COURT: Because that gentleman had
6 Asperger's syndrome, which is a form of autism which is
7 a form of impulse control disorder, basically.

8 MR. HUMPHRIES: No question. No question.

9 I would say to Your Honor that these concepts,
10 these advances, all of these things are contemplated
11 within our case law and have been addressed in a timely
12 fashion and in a contemporaneous fashion. And so I
13 think that's where we are, at least in terms of whether
14 or not these statutes are unconstitutional based on
15 vagueness and any other concept asserted by the
16 defense.

17 What I would say to the Court is there is a
18 place for this type of evidence. Clearly there is a
19 place for it. It is contemplated by the statute. It
20 goes directly to the statutory mitigators. And that is
21 the place for it. Beyond that, it has no place in the
22 guilt phase, either in this case or any standard
23 criminal case where there is no penalty phase. It's
24 been decided by our courts, it's been contemplated by
25 our statutes, that's where they say it belongs. And

1 that's our argument.

2 THE COURT: Let me interrupt you one second,
3 because I meant to ask Mr. Diggs this question and
4 until you said that, it -- it triggered my memory.

5 Mr. Diggs, I have read the reports that you
6 provided, which were provided by Dr. Mark Einhorn, as
7 well as the PET scan that was done at Rutledge Tower
8 Ambulatory Care Center, and both of these reports
9 indicate that Mr. Stanko meets the legal definition of
10 being sane, basically, and being able to distinguish
11 legal right from moral -- moral and legal right from
12 moral and legal wrong.

13 And, also, his PET scan indicates that there is
14 no neurological malfunction. Well, actually, I may
15 have misstated that. Actually, what it says is these
16 images demonstrated no focal areas of increased
17 metabolic activity or decreased metabolic activity.
18 Which generally either of those things indicate some
19 malfunction in the metabolic activity of the brain.

20 But my question is -- and it anticipates those
21 lists of items that you-all do not have. Is there
22 something forthcoming that is going to say that there
23 is some problem with the activity in his brain?

24 MR. DIGGS: Yes.

25 THE COURT: And what is that going to say?

1 MR. DIGGS: It's going to say that there is
2 considerable, substantial inactivity in the frontal
3 cortex.

4 THE COURT: It's going to state that there is
5 considerable inactivity --

6 MR. DIGGS: Yes, ma'am.

7 THE COURT: -- in the frontal lobe of his brain?

8 MR. DIGGS: Yes.

9 THE COURT: And what --

10 MR. DIGGS: Substantial and considerable, those
11 are my words. But I wouldn't be going through these
12 hoops if we didn't have that. And, Your Honor, that's
13 why --

14 THE COURT: Inactivity of the frontal -- and
15 what does that compute to in layman's terms?

16 MR. DIGGS: It computes to an inability to --

17 THE COURT: Impulse control?

18 MR. DIGGS: Emotion control.

19 Your Honor, this is not a -- if you look at the
20 records we have, those records demonstrate the error in
21 counsel's argument --

22 THE COURT: Well, I'm going to let you --

23 MR. DIGGS: -- that this is a diminished
24 capacity case.

25 THE COURT: I'm going to let you respond to his

1 argument, because I interrupted him because I wanted to
2 ask that question. So basically --

3 MR. DIGGS: It's going to be --

4 THE COURT: -- those reports are going to -- the
5 additional reports that you do not yet have are going
6 to show considerable and substantial inactivity in the
7 frontal lobe, which for a layperson as we are, because
8 we are lawyers, we're not doctors -- to an inability to
9 control his impulses?

10 MR. DIGGS: Control emotions.

11 THE COURT: Control emotions. Which is about
12 the same, isn't it?

13 MR. DIGGS: It is about. But, Your Honor, when
14 you say impulse control, it's like me seeing a piece of
15 cake and saying, Mr. Diggs, you're just going to have
16 to have will power to overcome it; you're not going to
17 eat that cake. That's not the kind of -- when we hear
18 the term irresistible impulse, we think that, okay,
19 maybe your willpower is being challenged here, but, you
20 know, buck up and just deal with it and exercise that
21 willpower, exercise that free will, that you have.

22 What we're saying in this case is that that's
23 not accurate. That's an inaccurate description of the
24 model in terms of how it works. There's an area of the
25 brain that acts as a break on the impulse, based on an

1 analysis called executive functioning within that area
2 of the brain, which did not take place in this case.
3 That's what we ultimately would show.

4 So there's no -- there's no -- there's an
5 inability to exercise freewill and freewill choice to
6 do or not to do that act in this case.

7 MR. KELLY: Your Honor --

8 THE COURT: And that's what these additional
9 reports are going to say?

10 MR. DIGGS: Yes.

11 THE COURT: But they are not going to say --

12 MR. DIGGS: Well --

13 THE COURT: -- that he does not have the ability
14 to distinguish moral or legal right from moral or legal
15 wrong?

16 MR. DIGGS: And, Your Honor, his IQ is 143. It
17 is not --

18 THE COURT: Uh-huh. He has a --

19 MR. DIGGS: -- a diminished capacity case.

20 MR. KELLY: Your Honor, if it please the Court?

21 THE COURT: Yes, sir.

22 MR. KELLY: Your Honor made reference to the
23 content of the reports that have been provided for you
24 that are not in evidence at this period, and also made
25 reference to Your Honor's judgment of what the reports

1 contained, as well.

2 THE COURT: A brief -- well, a sort of cursory
3 summary. I didn't go into all the detail.

4 MR. KELLY: Yes. This is a public hearing --

5 THE COURT: It is.

6 MR. KELLY: -- Your Honor. I'm raising this
7 matter because we want it made clear to the persons who
8 might be present, that might take information outside
9 of this hearing, that we -- no matter what evidence has
10 been presented privately to the Court, the defense
11 counsel are making no admission whatsoever about any
12 facts upon which we are basing our defense. We don't
13 want it carried outside this court that the judge said
14 that our client was sane so that it's published to the
15 jury -- prospective jury panel.

16 THE COURT: Well, I don't think there is anybody
17 here other than members of the solicitor's office and
18 your defense team and the security staff and --

19 MR. KELLY: Is it then --

20 THE COURT: -- the clerks.

21 MR. KELLY: Am I to understand, then, that you
22 deny my request to place that into the record?

23 THE COURT: What -- what is your request? I've
24 misunderstood you.

25 MR. KELLY: What I want placed into the record

1 is that you are not making it -- placing into evidence
2 something we haven't presented, which is your opinion
3 on reports that have been presented to you.

4 THE COURT: I haven't made any findings, Mr.
5 Kelly.

6 MR. KELLY: We are concerned about this matter,
7 Your Honor, because the State's position is that the
8 man is sane and he's just plain mean and evil.

9 THE COURT: Well, I don't think we've reached
10 that -- I mean, we haven't had any evaluation -- I
11 don't think we've had any argument on that yet. I'm
12 just -- I was just trying to get clarification
13 regarding Mr. Diggs' argument, because it is crucial to
14 his argument. And I needed to know what these
15 additional reports are going to say, because you-all
16 presented them to me as a foundation for me to make my
17 decision; correct?

18 MR. KELLY: Yes, ma'am. They're not before you
19 today. The content -- the only thing before you is the
20 issue that we are raising about these motions. But we
21 have no -- we haven't put anything in, as a factual
22 basis, of what we intend to prove or not.

23 THE COURT: You didn't give me these reports for
24 me to rely on in making a decision about the motions?

25 MR. KELLY: Certainly not.

1 THE COURT: Oh. Well, I misunderstood you. I
2 apologize.

3 MR. DIGGS: Your Honor, I just realized -- I
4 just realized that's probably my error.

5 But, no. What -- they don't have anything to do
6 with this series of motions --

7 THE COURT: Okay.

8 MR. DIGGS: -- or with Dr. Albiniaak's testimony.

9 Certainly, those tests results are here today
10 because we have them; and we disclosed those to the
11 prosecution.

12 THE COURT: Yeah. I assume we're going --

13 MR. DIGGS: We simply gave those to --

14 THE COURT: -- to have to have a separate
15 hearing on an insanity defense. I'm not making any
16 rulings on that.

17 MR. KELLY: Yeah. That --

18 THE COURT: We're going to have to have a
19 separate hearing on that.

20 But I needed to know for purposes of your
21 argument what these additional reports are going to
22 say or what they were going to purport to say.

23 MR. DIGGS: You need to know, also, whether or
24 not these motions are going to be targeted to the facts
25 of this case.

1 THE COURT: That is correct.

2 MR. DIGGS: And whether they have -- or whether
3 I just asked you for a judicial opinion.

4 THE COURT: No. And I am not in a position to
5 make one at this point.

6 MR. DIGGS: Right.

7 THE COURT: I think that would be premature
8 without having a full hearing on the issue.

9 MR. DIGGS: Well, Your Honor, it's my fault that
10 you got --

11 THE COURT: Because it was all given to me as
12 one package, so I assume you wanted me --

13 MR. DIGGS: Right.

14 THE COURT: -- to review it as one package.

15 MR. DIGGS: That's right.

16 THE COURT: All right. And I apologize for any
17 misunderstanding.

18 MR. KELLY: No. It was my fault.

19 THE COURT: But the Court certainly has not made
20 any finding about Mr. Stanko's mental status, nor would
21 it be appropriate at this juncture. It would be
22 extremely premature. There has not been an evaluation,
23 and we've not had a hearing on it.

24 MR. DIGGS: And you've got about five percent of
25 the material, or maybe twenty percent.

1 THE COURT: Exactly. Okay. Did that clarify it
2 for you, Mr. Kelly?

3 MR. KELLY: Yes, ma'am. Thank you so much.

4 THE COURT: You're welcome.

5 Does the State have any further argument on the
6 motions?

7 MR. HUMPHRIES: No, Your Honor. Well, except to
8 say that what we're still talking about is the
9 defendant's inability to achieve mens rea or -- and
10 that is diminished capacity, by its traditional
11 definition, by the jurisdictions that accept it.

12 So I guess what we want the Court to take from
13 this hearing, at least from the State's position, is
14 regardless of what Mr. Diggs calls it, what we really
15 are talking about is diminished capacity in its most
16 concrete terms. And our position is diminished
17 capacity has been passed on by our courts, they're
18 contemporaneously in this hearing, and we don't
19 recognize diminished capacity. There is a place for
20 that evidence, and it's in the sentencing phase.

21 THE COURT: Okay. Anything further, Mr. Diggs?

22 MR. DIGGS: Just very briefly, Your Honor. I'm
23 not here arguing that my client can't perform mens rea.
24 He can get up right now and come attack me if he wanted
25 to do that. He has that ability.

1 But we're talking about a statutory complex that
2 targets -- you know, in this case we're going to be
3 dealing with a specific, narrow set of circumstances.
4 It's not a diminished capacity case at all.

5 And just one thing I wanted to say in response.
6 Counsel argues that we can deal with this at the
7 sentencing phase. But, you know, we can't, because if
8 you go to the guilty but mentally ill statute, 17-24-
9 20, Subsection C says you can't consider this in the
10 sentencing phase, not as a verdict. It's only
11 considered in the guilt or innocence phase. That's why
12 we are addressing it.

13 THE COURT: You said Subsection C, which is
14 evidence of a mental disease or defect that is
15 manifested only by repeated criminal or other
16 antisocial --

17 MR. DIGGS: No, sir. No, ma'am.

18 THE COURT: -- conduct is not sufficient to
19 establish --

20 Which one? Which statute are you referring to?

21 MR. DIGGS: 17-24-20.

22 THE COURT: Oh. I'm sorry. I was looking at
23 the wrong one.

24 MR. DIGGS: Subsection C. Verdict of guilty --

25 THE COURT: Guilty but mentally ill --

1 MR. DIGGS: -- but mentally ill may be rendered
2 only during the phase of the trial --.

3 THE COURT: -- may be rendered --

4 MR. DIGGS: -- which determines guilt --

5 THE COURT: Oh, yeah.

6 || MR. DIGGS: -- or innocence.

7 THE COURT: Yeah. I'm sorry. I was looking at
8 17-24-10 instead of 17-24-20.

9 MR. DIGGS: So the statute -- the statutory
10 complex at play here is not as -- it's not as simple as
11 the State would have you believe.

12 THE COURT: Anything further from the State?

13 MR. HUMPHRIES: I can, with great confidence,
14 say to the Court that I believe that at the close of
15 the guilt phase, with this evidence admitted -- and, of
16 course, up until now it has not been admitted. But if
17 it were admitted, you would get a request -- it may not
18 be called a diminished capacity jury request, but I can
19 assure the Court that it would be one of the requests
20 made by the defense -- that's exactly what we're
21 talking about -- and not guilty, but mentally ill.

24 - - -

25 || - - -

COURT'S RULINGS

1
2 THE COURT: I guess I'm going from backwards
3 forwards in dealing with the motion to declare 16-3-10
4 unconstitutional, which deals with Mr. Diggs' argument
5 that the terminology used in the statute, that being
6 malice aforethought, is vague and arbitrary and
7 violates due process in that the term fails to
8 acknowledge that malice is a complex concept that
9 requires multiple brain functions or a number of
10 different brain activities and the statute fails to
11 identify which brain functions are required by law to
12 exist sufficient to constitute the statutory element of
13 malice aforethought.

14 16-3-10, which is the statute that is targeted
15 by the motion, provides as follows, murder defined:
16 murder is the killing of any person with malice
17 aforethought either express or implied.

18 And I think we are all clear the case law, then,
19 provides a clarification of the legislative intent of
20 those terms and has provided for us the following
21 definition of malice aforethought: malice is hatred,
22 ill will, or hostility towards another person. It is
23 the intentional doing of a wrongful act without just
24 cause or excuse and with an intent to inflict an injury
25 or under circumstances that the law will infer an evil

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1 intent. Malice aforethought does not require that
2 malice exist for any particular time before the act is
3 committed, but malice must exist in the mind of the
4 defendant just before and at the time the act is
5 committed. Therefore, the law requires a combination
6 of the previous evil intent and the act.

7 And as the statute indicates, malice can be
8 express or inferred. And our case law has very clearly
9 defined those terms, and those definitions being: the
10 terms express and inferred do not mean different kinds
11 of malice, but merely the manner in which malice may be
12 shown to exist. That is either by direct evidence or
13 by inference from the facts and circumstances which are
14 proved. Express malice is shown when a person speaks
15 words which may express hatred or ill will for another
16 or when the person prepared beforehand to do the act
17 which was later accomplished.

18 And then, of course, our case law gives
19 examples. For example, those of -- I guess really
20 which would fall within the ambient of premeditation,
21 where you lie in wait for a person or where there is
22 evidence of other acts of preparation going to show
23 that the deed was within the actor's mind, would be an
24 example of express malice. And, of course, inferred
25 malice comes from conduct showing a total disregard for

1 human life. And that may also arise when the deed is
2 done with a deadly weapon. And our case law then goes
3 on to define examples of deadly weapons or substances
4 which are likely to cause death or great bodily harm.

5 And to a large extent these examples rely very
6 heavily on the facts and circumstances of each
7 individual case and are left, in great measure, to the
8 fact-finding capacity of the jury.

9 The Court would find -- and I -- Mr. Diggs and
10 Mr. Kelly have, I think, made a very novel argument
11 regarding the murder statute based on what they argue
12 are the advances in medical science. But the Court
13 would find, based on its -- the case law that deals
14 with the interpretation of statutes regarding vagueness
15 or constitutionality, that the Court really is to look
16 to the plain and ordinary language of a statute and
17 determine if, in fact, it is vague.

18 Looking at the plain and ordinary language of
19 the statute, as well as the case law that has sought to
20 clarify these terms, the Court would not find that the
21 meaning is vague, nor that it is arbitrary. And I do
22 not -- and while the argument was well made, I do
23 believe that it does acknowledge the complex concept of
24 malice aforethought.

25 And I think certainly there's nothing that

1 precludes you from arguing at least -- and we haven't
2 reached that stage of the trial yet to deal with these
3 matters. But I don't think there is anything that
4 precludes you from arguing that malice aforethought is
5 a complex concept. And it falls within the arguments
6 of express or implied malice, and I think that you have
7 a wide latitude in arguing many things as to which
8 category those functions do or do not fall within.

9 And I do not find that the statute is
10 unconstitutionally vague or arbitrary, and I don't
11 think there is any basis in the record for the Court to
12 make that finding; and, therefore, that motion is
13 denied.

14 Now, as it regards the motion I -- and, again, I
15 may be jumping around, and I apologize if I am.

16 MR. DIGGS: Your Honor, may I very briefly speak
17 to that last ruling and ask the Court to reconsider on
18 this basis. One of the definitions that you read out
19 of the case law concerning malice aforethought dealt
20 with it existing in the mind of the accused for however
21 short a period of time. That's --

22 THE COURT: No. It just says malice doesn't
23 have to exist. Like I think sometimes laypeople think
24 you had to plan for months and years to have done
25 something. And that's simply not what the case law

1 says. The case law says it could have existed for any
2 period of time before you committed the act.

3 MR. DIGGS: But the problem is we don't know
4 what the Court meant by mind at that time. Are they
5 talking about the limbic system? Is that part of the
6 mind? It is part of the mind. And there's definitely
7 emotion there. But are we talking about malice
8 aforethought? No thought occurs in the limbic system.
9 It's reactive.

10 And so that's what is confusing about the
11 statute. It doesn't give us any guidance about where
12 that emotion comes from and what we do with it and how
13 it's handled and which part of those constitute the
14 element of this particular defense, because we don't
15 know what the Court is talking about when it says in
16 the mind of the defendant.

17 THE COURT: I think it's --

18 MR. DIGGS: That's why I would ask the Court --

19 THE COURT: I don't think it's vague, and I
20 think it's common sense, and I have never had a jury
21 have any problem with being able to interpret it.

22 MR. DIGGS: Right.

23 THE COURT: And I think when you start talking
24 about limbic systems, you really start -- I really am
25 inclined to agree with the State: you're talking about
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1 diminished capacity; you're really not talking about
2 the statutory definition of insanity.

3 MR. DIGGS: Your Honor, with all due respect,
4 that is not --

5 THE COURT: And I know your argument, and I
6 think it is a novel one, and I -- you know, who knows
7 what the Supreme Court may well do with it. I'm not
8 certain. But I don't think that there is any basis for
9 me to -- what you have -- what you have argued to the
10 Court is that it is vague. And I don't think the
11 statute is vague. I think that when you look at the
12 plain and ordinary meaning of the statute, the
13 legislative intent can be assessed. I don't think
14 there is a problem with it.

15 And I think, in addition to that, Supreme Court
16 precedent has established what that means -- and it has
17 defined it for us -- and I do not find that it is vague
18 or unconstitutional, either. I think we have a very
19 succinct definition of what malice aforethought means.
20 And I -- and, actually, I think it's very -- fairly
21 clear cut. It just says that malice must exist in the
22 mind of the defendant just before and at the time the
23 act is committed. And I think that really comes down
24 to common sense.

25 Now, as it regards -- and I think very much --

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1 your motion to declare 16-3-10 unconstitutional,
2 incomplete evidentiary basis, which is motion number
3 eight, is pretty much the same -- carries with it very
4 much the same basis as number nine. I don't know that
5 I need to address it individually because I believe I
6 already have, because you're talking about brain
7 function and the determination of guilt or innocence,
8 and I think that is very much the same argument as
9 motion number nine.

10 Then we move to 17-24-20, which is defense pre-
11 trial motion seven. I don't think the statute makes
12 the presumption that the motion advances. 17-24-20
13 sets out in Subsection A that the defendant is guilty
14 but mentally ill if at the time of the commission of
15 the act he had the capacity to distinguish right from
16 wrong or to recognize his act as being wrong, as
17 defined in 17-24-10(a), but because of mental disease
18 or defect he lacked sufficient capacity to conform his
19 conduct to the requirements of law. And I'm trying to
20 really grasp what --

21 MR. DIGGS: Your Honor, what the problem is with
22 this statute, from my perspective, is if he has the
23 ability to recognize --

24 THE COURT: Right from wrong.

25 MR. DIGGS: -- then he's guilty but blah, blah,

1 blah, blah.

2 THE COURT: Well, it doesn't --

3 MR. DIGGS: Because that's --

4 THE COURT: -- presume guilt, does it?

5 MR. DIGGS: Yes.

6 THE COURT: It presumes the capacity to go
7 forward and to assist the trier of fact.

8 MR. DIGGS: Well --

9 THE COURT: It just does not allow you the
10 ability to advance an insanity defense.

11 MR. DIGGS: He said -- it says here -- this is
12 a -- this is a defense, you know, but mentally ill.
13 It assumes that he is guilty, okay, because he had the
14 ability to distinguish and recognize.

15 THE COURT: It doesn't eliminate the State's
16 requirement to prove every element of the offense
17 beyond --

18 MR. DIGGS: True.

19 THE COURT: -- a reasonable doubt. I don't
20 think it presumes guilt.

21 MR. DIGGS: But in the context of this -- the
22 insanity and guilty but mentally ill, if he has this
23 ability then the innocence is not an option. Do you
24 see what I'm saying?

25 THE COURT: Repeat that for me one more time.

1 MR. DIGGS: If he has the ability to do these
2 things that are enumerated in the statute -- that is,
3 to distinguish and recognize -- then innocence is not
4 an option, you know, unless we've got an alibi defense
5 or something. And so I'm saying that's a conclusive
6 presumption, it's unconstitutional, because this is not
7 necessarily the case. You can still have these things
8 and still be innocent, because of the testimony that
9 Dr. Albiniaak gave us this morning.

10 THE COURT: My inclination at this point is to
11 deny that motion, also, but I'm going to take that one
12 under advisement and think about it a little bit more.
13 I don't --

14 MR. DIGGS: Thank you.

15 THE COURT: I don't -- at this point I'm not
16 convinced that there is any merit in the record
17 regarding that argument, either. But I need to think
18 through my reasoning a little bit on that one, because
19 I need to digest your argument.

20 And I think defense pre-trial motion number six
21 is much along those same lines. I will also take that
22 one under advisement, although again I'm not convinced
23 there is any support in the record for it.

24 As it regards defense pre-trial motion number
25 five, the defense argues that this is a burden-shifting
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1 -- basically, they argue that it's arbitrary and it
2 violates due process because it labels insanity as an
3 affirmative defense and shifts the burden to the
4 accused -- it shifts the burden of proof to the accused
5 on each element of the defense, and it relieves the
6 prosecution from proving each element of the offense as
7 charged. The Court would find there is no support in
8 the record for that argument and would deny that
9 motion.

10 The Court would also find that the statute is
11 not arbitrary, and it does not violate due process, in
12 that it labels insanity an affirmative defense. The
13 status of law in South Carolina is very clear that when
14 a defendant raises the defense of insanity, that that
15 person who -- if they prove they are insane, by a
16 preponderance of the evidence, cannot have criminal
17 intent and therefore they cannot be found guilty of the
18 crime.

19 And of course we are all clear that in order to
20 be found not guilty by reason of insanity, it must be
21 shown that at the time of the crime the defendant had a
22 mental disease or defect which made him or her unable
23 to distinguish moral or legal right from wrong or to
24 recognize the crime as morally or legally wrong. Of
25 course, when the defense raises that defense, the

1 defendant of course does not admit necessarily that
2 they committed the crime.

3 It does not, as Mr. Diggs has argued, shift the
4 burden because the defendant has to prove by a -- their
5 insanity by a preponderance of the evidence. The State
6 is still not relieved of their responsibility to prove
7 each and every element of the offense, beyond a
8 reasonable doubt, that the defendant, in fact,
9 committed the crime.

10 Of course, the defense must prove insanity by a
11 preponderance of the evidence, and of course that
12 simply means by the greater weight of the evidence,
13 which is that it is more likely than not; that because
14 of a mental disease or defect, the defendant did not
15 know that the alleged crime was morally or legally
16 wrong.

17 The State, however, still has the burden of
18 proof beyond a reasonable doubt of proving that the
19 defendant was sane, and they still have the burden of
20 proof beyond a reasonable doubt of proving each and
21 every element of the offense.

22 So while the defendant has some burden by a
23 preponderance of the evidence, it does not shift the
24 burden and it does not require the State -- it does
25 not -- in other words, it does not require the

1 defendant to prove himself innocent or to prove -- it
2 is not a burden-shifting the way the statute is
3 written. The State still has its burden of proof, and
4 it still must prove that at the time of the offense
5 that he was sane.

6 So I would not find that it is burden-shifting,
7 as you've argued in the motion, nor do I find that it
8 is arbitrary or that it violates due process, and,
9 therefore, the motion is denied.

10 Now, as it regards defense pre-trial motion
11 number four, which is 17-24-10 -- and I think probably
12 that's number three, number two -- I think number two,
13 as well as number one, really all fall within the same
14 category. I don't know that I need to address them
15 individually, because the motion really at its heart
16 alleges or propounds the proposition that the statute
17 is unconstitutional, that there is a conclusive
18 presumption that if one can establish -- or can
19 distinguish between moral or legal right from moral or
20 legal wrong, that they're being denied their defense
21 because it does not acknowledge, and I'm using Mr.
22 Diggs' terms, frontal lobe dysfunction.

23 And I -- you know, I've had a very limited time
24 to research this. In our limited time sitting here, we
25 have not been able to find any cases on point, at least

1 not South Carolina precedent, and I have not had an
2 opportunity to research any United State Constitution
3 cases -- Supreme Court cases. But I would be -- I do
4 not find any basis in the record that the statute
5 contains an unconstitutional conclusive presumption.

6 And the arguments that Mr. Diggs has made, they
7 really -- you know, I've struggled with it, but it just
8 sounds like diminished capacity to me. And, you know,
9 I may be wrong. Again, as I will tell you-all over and
10 over, I'm not infallible. I make mistakes. It's
11 probably, you know, I'm sure of great comfort to the
12 Court of Appeals and the Supreme Court. It keeps them
13 in business.

14 But I do not find any basis in the record, at
15 least at this point, to determine or declare that 17-
16 24-10 is unconstitutional. I think that at its most
17 basic it reflects probably -- and of course I've not
18 reviewed every state statute in the Union, but it
19 pretty much --

20 And I'm at a great, I think, advantage. I just
21 took a death penalty course last week, all week long,
22 for y'all's benefit, and it was wonderful. But it
23 pretty much reflects the statute the way the statute is
24 written in every state. And that is also based on
25 Supreme Court precedent.

1 I just don't -- I think I would be really
2 stretching it, at least at this point, at least in
3 terms of my memory, to think of any precedent that
4 would say the way this statute is written is vague
5 or that it provides an unconstitutional conclusive
6 presumption in this case, or that it is
7 unconstitutional due to the arguments that Mr. Diggs
8 has made regarding the fact that it does not
9 distinguish between the way the different areas of
10 the brain function.

11 It sounds like, as I indicated, diminished
12 capacity, just like the Santiago case. But, you know,
13 we'll deal with all of that. I think it's sort of
14 premature. I don't -- it's sort of a tight line I
15 guess I'm walking right now because I'm not -- I'm
16 trying not to go beyond really the scope of what you've
17 argued, because we have a whole other layer of this to
18 deal with, which is the insanity defense and having a
19 hearing on that. And I really am not equipped to make
20 any sort of a decision on that, neither are you-all
21 equipped to make any argument on that, so I really
22 don't want to go any --

23 MR. DIGGS: Your Honor, may I make --

24 THE COURT: -- any more beyond that.

25 MR. DIGGS: -- this statement for the record?

1 Every time -- I know we're going to hear the words
2 diminished capacity many times. I just want to state
3 for the record that the defense disagrees with that.
4 And should the --

5 THE COURT: Oh, I -- oh, that goes without
6 saying.

7 MR. DIGGS: -- should the case occur when
8 someone makes that assertion, and we don't specifically
9 interject --

10 THE COURT: Oh, I assume you -- yeah.

11 MR. DIGGS: -- an objection, we don't --

12 THE COURT: Yes.

13 MR. DIGGS: -- agree with that, and I don't
14 think that we will ever agree with that through the
15 course of this case.

16 THE COURT: Oh, I agree. And that goes without
17 saying.

18 MR. DIGGS: Thank you.

19 THE COURT: But I think in terms of what -- in
20 the context of what you've argued, which is that 17-24-
21 10 is unconstitutional, I just don't think there is any
22 basis in the record for it, nor 17-24-20. And I think
23 I've already covered those, with the exception of the
24 two I have taken under advisement, which is -- let me
25 make sure I'm accurate -- number six and number seven,

1 so that I can just have an opportunity to really read
2 that statute again. I read it on the way up this
3 morning, but I need to read it again. And I would like
4 to read my notes regarding your argument and just go
5 over that one more time and just sort of beat my clerk
6 to death about it, and then she'll be my sounding
7 board, and then I'll make a decision.

8 But at this point, I do not think there is
9 any basis in the record. And, basically, you've
10 made, you know, arguments that these statutes are
11 unconstitutional, that they're arbitrary, and I just --
12 I don't find any support for that, in the record, at
13 least that's before me. But of course the Supreme
14 Court, our Supreme Court, the U.S. Supreme Court, make
15 new law every day. And who knows. They may well
16 determine that there is some technological, you know,
17 issue that we have not addressed in this statute.

18 MR. DIGGS: Your Honor, I --

19 THE COURT: I don't know --

20 MR. DIGGS: I realize you're bound by precedent.

21 THE COURT: That's correct.

22 MR. DIGGS: And sometimes it takes a long, long
23 time.

24 THE COURT: You said it a lot more succinctly
25 than I did, and I'm -- I'm sorry.

1 MR. DIGGS: Sometimes it simply takes a long
2 time for cases to work, you know, their way through the
3 system and become precedent.

4 THE COURT: Exactly. And, I mean, and it's
5 funny that you should say that. As a part of our
6 course, one of the things they were saying is that we
7 should always be looking out for new theories, new
8 concepts, you shouldn't always be so constrained by
9 precedent. I sat there thinking to myself, but we are.
10 And we are constrained by precedent in this state, and
11 I think there is a wealth of it, at least on those
12 points.

13 Mr. Hembree, do you want to tell me something?

14 MR. HEMBREE: Well, Your Honor, I have these
15 two -- the order for competency and the order for
16 criminal responsibility --

17 THE COURT: Okay. Do you want to let Mr. Diggs
18 see them right quick for me --

19 MR. HEMBREE: Certainly.

20 THE COURT: -- before I sign them.

21 MR. HEMBREE: Mr. Kelly has reviewed them.

22 [Whereupon, Mr. Hembree proffers documents to
23 Mr. Diggs]

24 [Whereupon, Mr. Diggs and Mr. Kelly review
25 documents]

1 THE COURT: Now, and also, as a practical
2 matter, do you-all feel we need to have written orders
3 memorializing the Court's rulings on these motions?

4 MR. HUMPHRIES: Yes, Your Honor.

5 THE COURT: I thought so, too. Do y'all want to
6 do some proposed orders for me?

7 MR. HUMPHRIES: Be happy to, Your Honor.

8 THE COURT: And then what I will do -- you can
9 e-mail them to me. And it's djeffersonlc --

10 MR. DIGGS: Your Honor, did you ask us a
11 question?

12 THE COURT: Yes. I asked if you wanted to
13 submit proposed orders to me on each of the motions and
14 then -- I would assume that probably, Mr. Diggs, you
15 would only want to do proposed motions -- I mean,
16 proposed orders on your motions seven and six --

17 MR. DIGGS: Your Honor, what I will do --

18 THE COURT: -- since those are the two I took
19 under advisement.

20 MR. DIGGS: -- with that proposed order --

21 THE COURT: Unless you wanted to -- I mean,
22 you're welcome to submit orders to me on the others if
23 you would like.

24 MR. HEMBREE: And, Your Honor, just for
25 clarification: typically, when we do written orders

1 to memorialize rulings, we do not lay out your -- we
2 don't lay out your bases for them. We simply just --

3 THE COURT: And, actually, what I was going to
4 tell you is that I'm going to give you leave to make
5 any other findings consistent with the record and cite
6 any other case law that supports the Court's -- that
7 supports your proposition. Because we have -- we are
8 in a very limited setting, and when you submit those
9 orders to me, that gives me a chance to read them, it
10 gives me a chance to do research. And I rarely sign
11 things exactly the way things are sent to me. I modify
12 them and add my own findings sometimes.

13 But I'm giving you leave to make any findings
14 that are consistent with the arguments that have been
15 made, and with the record, and any factual findings
16 that are consistent with the record.

17 MR. HEMBREE: Thank you.

18 THE COURT: Okay. And you can send them to me,
19 as I indicated, to my law clerk at djeffersonlc
20 @sccourts.org. And we have Word format. That allows
21 us to download them, and do what we need to do and
22 print them out and then send them on back.

23 MR. HEMBREE: Is it court or courts?

24 THE COURT: Courts, plural. Yes, sir?

25 MR. DIGGS: Your Honor, what happens when Mr.

1 Stanko -- does he have to discuss this case with the
2 examiners and --

3 THE COURT: I would imagine that you-all will --

4 MR. DIGGS: -- is that going to be --

5 THE COURT: I would image that you-all would
6 instruct him in that regard and --

7 MR. DIGGS: Well, it says in here that if he
8 doesn't do as they ask, that he's going to be deemed
9 non cooperative.

10 THE COURT: Well, I think they know what they're
11 doing, though -- they've done these enough -- and I
12 think they know that he is not going to make any
13 incriminating statements in violation of his right
14 against self-incrimination in this evaluation.

15 I assume you-all could go with him if you want
16 to. I mean, they are not really that -- I don't think
17 they care one way or the other, as long as you don't
18 interfere and you're sort of in the background. And I
19 don't know if you and Mr. Kelly may want to accompany
20 him. You certainly are welcome to.

21 MR. DIGGS: The problem that I have -- okay.

22 THE COURT: Yes. I understand --

23 MR. DIGGS: We'll cross those bridges when --

24 THE COURT: I understand your concern. I
25 understand that you would not want your client to

1 incriminate himself or make any admissions during the
2 course of this evaluation.

3 MR. DIGGS: Or, Your Honor --

4 THE COURT: And that is a legitimate concern.

5 MR. DIGGS: -- doing something that he's
6 required to do under our rules, only to have those
7 people come down here in this courtroom and testify and
8 try to execute him. And I'll be honest with you, we've
9 had that happen before, you know, where supposedly
10 impartial --

11 THE COURT: Well, no --

12 MR. DIGGS: I just don't want --

13 THE COURT: I think the --

14 MR. DIGGS: -- to get into that situation.

15 THE COURT: I think the state's evaluators will
16 -- their sole purpose is determine -- is to determine
17 those two prongs, which is criminal responsibility and
18 competency, which they have to make a decision as to --
19 an assessment, not a decision, as to whether he could
20 distinguish moral or legal right from moral or legal
21 wrong at the time of the incident.

22 So to some extent, I don't think he's -- and
23 without getting into the reports, because I understand
24 they're not a part of the record. But I don't think he
25 is going to have to make any more disclosures than he

1 made to these folk where he says, I know certain things
2 happened; I only acknowledge whether they were right or
3 wrong; but I acknowledge, cognitively, that I recognize
4 they happened. But I don't think anybody expects him
5 to make incriminating statements. That would be a
6 violation of his constitutional rights.

7 And you're right. Death is different. You
8 know, that's a whole different category of case.
9 Although, quite frankly, in any regular murder case I
10 would not expect any -- or any other case, burglary,
11 CSC, I would not expect a defendant to go to the state
12 hospital and incriminate themselves with it because of
13 an evaluation. I don't think that that is -- their
14 constitutional right is preserved. There is nothing
15 that is going to abrogate that, and I would not
16 anticipate that.

17 And I assume the State agrees with me.

18 MR. HEMBREE: That's correct, Your Honor.

19 THE COURT: And I think they know how to ask
20 those questions artfully without having to do that.

21 Okay. Now, are there any other things that --
22 while we have a command audience and have everybody in
23 the same room, are there any other things -- there are
24 some things I am going to cover with Mr. Diggs and Mr.
25 Kelly and Mr. Stanko in camera, just as a matter of

1 preserving our record and making sure that we're all
2 moving along --

3 MR. DIGGS: Your Honor, and just for the record,
4 we have some people coming in to interview Mr. Stanko
5 this weekend. And I wanted to let the State know. I
6 know they are eager to go ahead and get him moving, but
7 maybe they could wait at least until Monday to
8 transport him -- their schedule.

9 THE COURT: I'm sorry. There's a little echo in
10 here, and I didn't hear the last part of what you said.

11 MR. DIGGS: If they could wait -- and I think
12 Mr. Hembree just kind of nodded in agreement. If they
13 could wait at least until Monday, I certainly --

14 THE COURT: Oh, yeah. I doubt they could
15 transport him before then.

16 MR. HEMBREE: No, Your Honor.

17 THE COURT: Yes.

18 MR. HUMPHRIES: Your Honor, there is the issue
19 outstanding of the arraignment, which we are prepared
20 to do at this time.

21 THE COURT: Okay. And I'm glad you mentioned
22 that, because my other question was has Mr. Stanko been
23 personally served with the indictments. Or is that
24 what you're talking about doing right now. All right.
25 And he was personally served with the -- well, you're

1 about to do that right now, too. Those were on the top
2 of my checklist this morning.

3 - - - - -

4 ARRAIGNMENT

5 THE COURT: Okay. Are y'all ready to proceed?

6 MR. KELLY: We are.

7 MR. HUMPHRIES: And I will ask the clerk whether
8 she prefers to do the arraignment, or would you like me
9 to do it.

10 THE COURT: Madam Clerk, which is your
11 preference?

12 THE CLERK OF COURT: Your Honor, I would like
13 for him --

14 THE COURT: That's fine. You may proceed, Mr.
15 Humphries.

16 MR. HUMPHRIES: Stephen C. Stanko, please stand.
17 [Whereupon, Mr. Stanko complies]

18 MR. HUMPHRIES: If you answer to the name of
19 Stephen C. Stanko, please indicate to the Court at this
20 time that you do.

21 MR. STANKO: I do.

22 MR. HUMPHRIES: The Grand Jury of Georgetown
23 County, on August 24th, 2005, Stephen C. Stanko was
24 indicted on the offenses of murder, assault and battery
25 with intent to kill, criminal sexual conduct in the

1 first degree, kidnaping, kidnaping, and armed robbery.

2 I ask at this time if you and your counsel waive
3 reading of the text of the indictments.

4 MR. KELLY: We do.

5 MR. HUMPHRIES: And as to count one, murder, how
6 do you plead?

7 MR. KELLY: Not guilty.

8 MR. HUMPHRIES: As to count two, assault and
9 battery with intent to kill, how do you plead?

10 MR. KELLY: Not guilty.

11 MR. HUMPHRIES: As to count three, criminal
12 sexual conduct in the first degree, how do you plead?

13 MR. KELLY: Not guilty.

14 MR. HUMPHRIES: As to count four, kidnaping, how
15 do you plead?

16 MR. KELLY: Not guilty.

17 MR. HUMPHRIES: As to count five, kidnaping, how
18 do you plead?

19 MR. KELLY: Not guilty.

20 THE COURT: As to count six, armed robbery, how
21 do you plead?

22 MR. KELLY: Not guilty.

23 MR. HUMPHRIES: How will you be tried?

24 MR. KELLY: By God and our country.

25 MR. HUMPHRIES: At this time the State serves

1 upon Stephen C. Stanko a certified true copy of the
2 indictment as has been presented to the Georgetown
3 Grand Jury, and it is the indictment in this matter.

4 MR. KELLY: Thank you, Mr. Solicitor.

5 THE COURT: Thank you.

6 Mr. Stanko, you heard your counsel as the
7 indictment was presented for formal arraignment. You
8 heard each of his responses: that you plead to these
9 charges not guilty, and that you wish to be tried by
10 God and your country. Is that, in fact, your response?

11 MR. STANKO: Yes, ma'am.

12 THE COURT: Thank you. All right.

13 MR. HUMPHRIES: And, Your Honor, as to the
14 notice of evidence and aggravation of the punishment --

15 THE COURT: Yes, sir. You may proceed.

16 MR. HUMPHRIES: That notice of evidence and
17 aggravation of punishment was served upon defense
18 counsel. It was filed June 14th, and it was served
19 immediately subsequent to that.

20 I would ask at this time if both Mr. Stanko and
21 his counsel acknowledge receipt of service of notice of
22 evidence and aggravation.

23 MR. KELLY: As his attorneys, we have received
24 that notice.

25 THE COURT: Mr. Stanko, do you acknowledge that

1 you have received copies, in writing, that states the
2 aggravating circumstances the State would seek to
3 introduce at trial?

4 MR. STANKO: Yes, ma'am, I have.

5 MR. HUMPHRIES: Thank you, Your Honor.

6 THE COURT: Thank you.

7 [ARRAIGNMENT CONCLUDES]
8 - - - - -

9 THE COURT: Mr. Diggs, I apologize. You
10 submitted a voucher to me last night -- or yesterday,
11 and I signed it. We meant to bring it with us and we
12 forgot, and I'm sorry, so we're going to have to mail
13 it to you. You have my sincere apologizes, because it
14 was our intention to bring it with us. We were in the
15 office late and left it sitting on the desk.

16 And, Madam Clerk, you have already received the
17 order for additional jurors; is that correct? Just
18 doing a little housekeeping. It looks like we sent
19 that to you on May 12th, and it was filed on May 17th.

20 THE CLERK OF COURT: Yes, Your Honor.

21 THE COURT: Okay. Do you need anything more
22 from us in terms of helping you get ready?

23 THE CLERK OF COURT: No, Your Honor. I'm just
24 going to wait for instructions and so I'll know what to
25 do come July.

1 THE COURT: And just for your purposes so that
2 you-all will know, I will be meeting with the clerk's
3 office. What we are going to try to do, we need to
4 establish the breakrooms for the jury, outside and
5 separate, so that the media has no contact with them.

6 Also, we probably will be meeting with security
7 to make sure everything is secured as it should be. We
8 also at some point will be having a meeting with the
9 press to establish some guidelines for their courtroom
10 activity.

11 And also I am debating establishing a seating
12 chart, for the courtrooms, to assist with just the
13 orderly operation of the Court. I of course will seek
14 you-all's input into that.

15 And, also, I don't know if you-all desire this,
16 but I will throw this out there in the event that it
17 will assist you. Of course, the Court cannot order gag
18 orders, and nor would I contemplate that. But I
19 certainly could do an order that would protect you in
20 the event that you-all want to be in a position where
21 you can say, I don't want to talk to the press.
22 Restrictive orders are what they are called, where I
23 can set up guidelines that say, these are the
24 circumstances you can talk to them, these are the
25 circumstances you can't. I don't have any preference

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1 one way or the other. Sometimes lawyers find that
2 helpful because it gives you the opportunity to blame
3 me and say, I can't talk to you. If you-all want that,
4 I'll be glad to do -- I can fax you-all an example of
5 one, and if you want to have it, fine; if you don't,
6 fine.

7 I don't have any preference one way or the
8 other, but I just wanted to assist you-all in that way
9 if you needed it. Sometimes lawyers find it helpful;
10 sometimes they don't. I think you-all have conducted
11 yourselves exemplary up to this point and I think
12 everybody, based on my conversations with you-all, are
13 on the same page; that you have no desire for this case
14 to be tried in the press. But I don't want to put any
15 undue restrictions on you. But if you need it, I give
16 you the option in the event that it will assist you.

17 So what I will do when I get back to the office
18 is I'll fax one to both -- or e-mail it and you-all can
19 look at it and if you think it will help you, and if
20 you-all can let me know your feelings on it.

21 MR. KELLY: Thank you, ma'am. We'll be happy to
22 look at it.

23 THE COURT: But, again, I take no position one
24 way or the other on it. I leave that to you-all. You
25 know, I'm completely insulated. I don't have to talk

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1 to anybody. I can just say, no comment, and move on
2 about my day.

3 MR. HUMPHRIES: The other issue we spoke briefly
4 about at the status conference on Monday was the
5 potential of sequestering the jury.

6 THE COURT: Uh-huh. That was next on my list.

7 MR. HUMPHRIES: I'm sorry.

8 THE COURT: That's okay. You don't have to
9 apologize.

10 MR. HUMPHRIES: Didn't mean to anticipate.

11 THE COURT: That's all right.

12 MR. HUMPHRIES: The State's position is that
13 while we understand it is logistically a very difficult
14 and expensive process, it, in my mind, would be much
15 more expensive and much more logistically difficult if
16 the jury were not sequestered and there would be some
17 juror irregularity as a result of their going home each
18 night, given what we can most certainly anticipate
19 would be a great deal of media attention in connection
20 with this case. We have -- Your Honor remarked that --

21 THE COURT: I made an observation that I did not
22 know how I was going to handle it; that the last three
23 or four that I was aware of, sequestration was not
24 ordered; and that I was going to discuss with those
25 judges how that went and how the jurors responded to it

1 and how they handled it.

2 Based on my limited discussion about it, the
3 jurors were a lot happier. And they had ways of
4 securing that they did not have access to the media in
5 making sure -- and basically engaging in a very brief
6 voir dire process every morning, making sure that they
7 had not allowed themselves to be exposed to any media
8 coverage. And there are other ways you can handle it,
9 too. You know, you can just -- there are lots of ways
10 we can handle making sure they don't have media
11 exposure.

12 But I haven't made a decision about it. I just
13 threw it out there for you-all to start talking about
14 it and to see if you could reach some consensus about
15 it. I don't know what the State's position was in
16 those cases, or the defense's position, for that
17 matter. I just know that the -- I know the one Judge
18 Pieper did down in Beaufort, they did not sequester.
19 And I think the one Judge Few is getting ready to do
20 in Greenville, or did, they did not sequester. Or at
21 least he was contemplating not sequestering. And a
22 few others, just because of the -- it's just -- it
23 becomes --

24 In a county where you have a lot of them, it
25 just becomes very cost prohibitive. And not that

1 that's the deciding factor for the Court. But I have
2 to weigh everything. So I just threw that out there
3 because I really didn't know what anybody's position
4 was on it.

5 MR. HUMPHRIES: We have not had a capital case
6 here, nor have I had a capital case in Lexington
7 County, where the jury was not sequestered.

8 THE COURT: Well, they've got eight of them on
9 tap coming up this year and --

10 MR. HUMPHRIES: I bet they --

11 THE COURT: -- they don't plan to sequester any
12 of them.

13 MR. HUMPHRIES: I bet they don't.

14 THE COURT: Yeah.

15 MR. HUMPHRIES: I bet they don't. We don't have
16 them twice a week.

17 But at any rate, our position, based on our
18 experience, is that we would request sequestration.

19 THE COURT: Okay.

20 MR. HUMPHRIES: The other issue relating to
21 sequestration is the use for -- put it another way --
22 in terms of dealing with the logistics of the jury,
23 what law enforcement agency or agencies does the Court
24 intend to rely on in doing that? Typically there's a
25 SLED sequestration team. And Your Honor is probably

1 aware it is typically made up of retired SLED agents.
2 That also would be the State's preference. That would
3 take local law enforcement out of it to avoid any
4 potential --

5 THE COURT: The appearance of impropriety.

6 MR. HUMPHRIES: Correct. Correct. And if Your
7 Honor does not have the contact numbers for those
8 folks, we can provide them to you.

9 THE COURT: Let me ask: what is the defense's
10 position on sequestering the jury?

11 MR. KELLY: Your Honor, we don't oppose
12 sequestering the jury.

13 THE COURT: Okay.

14 MR. KELLY: And we do --

15 THE COURT: That may well simplify my decision.

16 MR. KELLY: We do, ma'am, agree that the SLED
17 team should come in.

18 THE COURT: Okay.

19 MR. KELLY: Local law enforcement should be
20 relieved of that responsibility.

21 THE COURT: Mr. Humphries, if you could get
22 those numbers for me, that would be --

23 MR. HUMPHRIES: Be glad to.

24 THE COURT: And you can just e-mail it to my law
25 clerk at the same address that I gave you for the

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1 order.

2 That may well simplify my decision. I probably
3 will not make a decision about sequestering the
4 witnesses [phonetic] until shortly before the subpoenas
5 -- the summonses go out, because I think those
6 summonses should -- well, I guess the summonses really
7 don't have to say that. But I need to look at the
8 summons anyway because I need to deal with the juror
9 questionnaire issue, because I don't want a bunch of
10 jurors showing up without the questionnaire being
11 filled out.

12 MR. HUMPHRIES: The other -- the only other
13 consideration I would submit is in terms of timing, it
14 being in the summer, I don't -- and I just can't speak
15 as to local knowledge. Perhaps --

16 THE COURT: Yes. And I'm going to have -- I'm
17 going to have to to get with --

18 MR. HUMPHRIES: Perhaps the clerk --

19 THE COURT: -- the clerk to see what is
20 available. That was my -- because I'm going to spend
21 some time with her today after this hearing just
22 looking at the logistics of the courthouse and talking.
23 As a matter of fact, prior to the hearing we were
24 discussing these very issues, sequestering the jury,
25 where they would be, and making preparations.

1 MR. HUMPHRIES: Both questions you have
2 anticipated. I know at the beach --

3 THE COURT: Yes. For all those things.

4 MR. HUMPHRIES: -- if we don't plan well ahead
5 during the vacation months --

6 THE COURT: You're in trouble. I agree.

7 MR. HUMPHRIES: -- it is very problematic.

8 THE COURT: Yes. So what I would do probably
9 today -- she and I had some preliminary discussions
10 about it this morning -- is probably right after this
11 hearing, she and her staff are going to start making
12 some inquiries so that we can start making some plans.

13 MR. HUMPHRIES: Thank you, Your Honor.

14 THE COURT: Yes. Because I would think -- you
15 know, it has been so many years since I've been to
16 Georgetown, the only hotel we had was the Georgetownian.
17 I would imagine there are some new hotels now.

18 THE CLERK OF COURT: We've got one more since
19 then.

20 THE COURT: I'm not going to tell you how long
21 ago that was because then I'll be telling my age, and
22 that's a problem.

23 MR. HUMPHRIES: That's Brent McCloud's
24 [phonetic] number.

25 THE COURT: Okay. We have that number, then.

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1 MR. DIGGS: Your Honor, could I ask --

2 THE COURT: Yes, sir.

3 MR. DIGGS: -- when are the summonses going out?

4 THE COURT: A month prior to the --

5 MR. DIGGS: So July 4th?

6 THE CLERK OF COURT: Yes. July 5th.

7 THE COURT: So they would go out July 5th.

8 MR. DIGGS: There may be a motion for change of
9 venue that challenges the adequacy of relying upon a
10 juror's assertion in court that you can put aside -- he
11 or she can put aside pre-trial publicity and make a
12 decision based on the evidence itself.

13 THE COURT: Well, you know, we can't consider
14 that motion properly until after we've done voir dire
15 and until after the jury --

16 MR. DIGGS: Well, I know.

17 THE COURT: -- has been --

18 MR. DIGGS: But what I'm saying is we may
19 challenge that procedure, the adequacy of that
20 procedure, and ask that the Court entertain a venue
21 motion, a change of venue motion, prior. If we do
22 that, we'll do it before --

23 THE COURT: I think Supreme Court precedent, and
24 I mean U.S. and State Supreme Court precedent, would
25 fly in the face of --

1 MR. DIGGS: All right. So would you --

2 THE COURT: -- us doing that.

3 MR. DIGGS: -- consider even -- all right.

4 Would you consider --

5 THE COURT: I mean, I'm going to consider any
6 motion you file.

7 MR. DIGGS: Okay. What I'm trying to get from
8 you is are you considering that issued raised now and
9 denied?

10 THE COURT: No. You're going to have to file a
11 motion.

12 MR. DIGGS: Okay.

13 THE COURT: And then we'll have a hearing, and
14 then I'll hear your arguments, and --

15 MR. DIGGS: Well, if --

16 THE COURT: -- then I'll decide.

17 MR. DIGGS: What I was saying was if we do that,
18 we'll certainly do it before --

19 THE COURT: Yeah. You need to --

20 MR. DIGGS: -- you know, so that that --

21 THE COURT: If you plan to file that motion, you
22 need to go ahead --

23 MR. DIGGS: -- that issue is put to rest before
24 it --

25 THE COURT: Yeah. You need to go ahead and file

1 it so that I can make another little trip down here and
2 we can just go ahead and deal with it. But I think
3 that Supreme Court precedent, U.S. Supreme Court
4 precedent, says that we have to at least go through the
5 voir dire process and make a determination of whether
6 you can have an unbiased jury.

7 MR. DIGGS: Yeah. But there may be some new
8 evidence that goes to --

9 THE COURT: Yes. Sure.

10 MR. DIGGS: -- you know, since the --

11 THE COURT: And like I said, I'm not -- you
12 know, I have not made any hard and fast rules about it.
13 I mean, if there's something, you need to file it, I'll
14 be glad to consider it. I'm not, you know, going to,
15 you know, right out of the pocket say I'm not going to
16 consider something. I think that would be completely
17 unreasonable.

18 Okay. Our next meeting, then: on June 30th we
19 are supposed to talk about exhibits. Do you-all see
20 any impediments at this point to you-all being able to
21 do that?

22 Basically, this part of the scheduling order
23 anticipates you-all kind of sitting down and having
24 a -- exchanging a list of exhibits and seeing those
25 which you can stipulate to and those which you cannot

1 stipulate to.

2 And of course this doesn't -- I mean, this sort
3 of -- the whole scheduling order really is geared
4 toward let's get out of the way everything that is
5 uncontested that we can deal with. Of course, the
6 Court takes into account that there are things that
7 come up at the last moment. There are motions. You
8 know, you have -- as Mr. Kelly very succinctly put it,
9 everything is continuing; it's continuing to evolve.
10 So, of course, we'll have to deal with those other
11 things as they come up.

12 But do you-all foresee any problems?

13 MR. HUMPHRIES: If I could propose this -- and
14 when we -- and when I first looked at the scheduling
15 order, that one thing probably is the most logistically
16 difficult in terms of --

17 THE COURT: I would imagine it is.

18 MR. HUMPHRIES: -- pre-trial preparation than
19 anything else.

20 What we've done in the past -- and perhaps this
21 is something we could do -- when we have the hearing on
22 the juror excusals after the questionnaires are
23 received --

24 And we've done this with Mr. Diggs before. If
25 we could take some time at that time. What we've done

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1 in the past is that at that time we can pass around a
2 list of our exhibits --

3 THE COURT: Exactly.

4 MR. HUMPHRIES: -- the things we intend -- which
5 we can give to the Court. And at that point we may be
6 able to number exhibits at that time, given the court
7 reporter's availability. It just seems to me at that
8 stage it's not so preliminary. If we could have
9 something that's hard and fast.

10 THE COURT: Oh, I think that --

11 I mean, Mr. Diggs, I assume you and Mr. Kelly
12 have no exception to that procedure?

13 MR. KELLY: Judge, we don't believe that that
14 would be adequate to the defense.

15 THE COURT: You want it before then?

16 MR. KELLY: Yes, ma'am. We don't mind moving it
17 back to maybe July the 10th or in that area. We want
18 to take a good, close look at them; not wait until the
19 last minute and then have to tell you that we need
20 further preparation because we haven't seen exhibits --

21 THE COURT: Let me ask --

22 MR. HUMPHRIES: Well, no. Let's be clear about
23 this --

24 MR. KELLY: -- before trial.

25 THE COURT: All right. Let me ask, as a

1 preliminary question: do you-all already have a list
2 of exhibits?

3 MR. HUMPHRIES: No. No, Your Honor.

4 THE COURT: Okay.

5 MR. HUMPHRIES: And let me be clear about this.
6 There are no exhibits which the defense has not seen.
7 In fact, we have arranged for them to come to the
8 evidence lockers of both Georgetown and Horry County,
9 both of which they've done. They have seen the
10 exhibits.

11 What I'm talking about is the list of exhibits,
12 photos, that -- they've seen all photographs. They've
13 seen everything.

14 THE COURT: But the ones you intend to use at
15 trial.

16 MR. HUMPHRIES: -- the ones we intend -- which,
17 as a practical matter, there is no --

18 THE COURT: Duty.

19 MR. HUMPHRIES: -- duty under the law. We don't
20 mind doing it. But in terms of logistics and pre-trial
21 preparation, it's a more convenient time and a time
22 when we would be more certain about those items.
23 That's why I proposed that.

24 In terms of any -- there are no exhibits, of
25 which I am aware, that they have not had a chance to

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1 closely inspect and copy.

2 THE COURT: Would the July 10th date pose a
3 problem for you? Because, of course, I don't have to
4 be present for that.

5 MR. HUMPHRIES: No.

6 THE COURT: It would be preliminary. I don't
7 think -- I think you're absolutely correct. You only
8 have a duty to turn over that which is exculpatory. I
9 mean, you don't have to tell them --

10 MR. HUMPHRIES: With the understanding that it's
11 preliminary, we will --

12 THE COURT: And it is completely administrative.
13 It's just to make the court reporter's job --

14 MR. HUMPHRIES: Certainly.

15 THE COURT: -- easier.

16 MR. HUMPHRIES: We don't have any objection to
17 the process. I think it's very helpful to everybody.
18 That's fine. We will -- we will attempt to do that.

19 THE COURT: July 10th will work?

20 MR. HUMPHRIES: Yes.

21 THE COURT: And you-all can agree on a mutual
22 meeting time, and I'll leave that up to you-all.

23 MR. KELLY: Yes, sir. Yes, ma'am. We can work
24 that out with --

25 THE COURT: I'll leave it up to you-all.

1 MR. KELLY: -- the Solicitor and his office.

2 THE COURT: And as I indicated, I won't need to
3 be present, so I will leave that to you-all to work
4 out.

5 MR. DIGGS: We appreciate the Solicitor --

6 THE COURT: Okay. Now, are there any other
7 issues that we need to discuss?

8 MR. DIGGS: Not from the defense.

9 THE COURT: Any from the State?

10 MR. HEMBREE: None from the State, Your Honor.

11 THE COURT: Okay. Let me give you your orders.
12 And if you could provide us with copies, that would --

13 I got a media request a year ago from -- do I
14 have that in here? Yes. I got it from News 13, which
15 I assume is a Myrtle Beach television station.

16 MR. HEMBREE: That's correct, Your Honor.

17 THE COURT: I have not, of course, signed that
18 yet because I thought it was just so far out. I just
19 thought it was a little soon for me to have been
20 considering that, because it was back in 2005. But I
21 just wanted to throw that out to you-all.

22 I assume there will be a great deal of media
23 coverage about this case. I know that you-all have
24 already been contacted by national media outlets, and I
25 have left that to you-all to determine how you wanted

1 to handle -- I assume probably the week before this, I
2 will get a rash of requests, probably Court TV and
3 otherwise.

4 Normally the way it is handled, and I've
5 explained this to the clerk -- and I assume in
6 Charleston it's always a slow news day. We always
7 have -- we always have a ton of media on everything.
8 But we usually require them to share a feed, only have
9 one camera in the courtroom, and to establish some
10 rules for them. But I guess at a very basic level I
11 just needed to make sure -- before I, you know,
12 considered any media requests, I needed to know if any
13 of you-all had any exception to the TV media being
14 here.

15 MR. HEMBREE: There is none from the State, Your
16 Honor.

17 THE COURT: Okay. Any exception from the
18 defense? I know that it may seem premature at this
19 point, but as I began to deal with these things, I
20 wanted to sort of start dealing with them in advance.

21 MR. KELLY: Without objection at this time,
22 ma'am.

23 THE COURT: Thank you all.

24 [HEARING CONCLUDES AT 12:54]
25

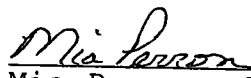
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Official Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable Deadra L. Jefferson, on June 22, 2006.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 23rd day of October, 2006.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT FOR:

COUNT ONE: MURDER
 COUNT TWO: ASSAULT AND BATTERY WITH INTENT TO KILL
 COUNT THREE: CRIMINAL SEXUAL CONDUCT, 1ST DEGREE
 COUNT FOUR: KIDNAPPING
 COUNT FIVE: KIDNAPPING
 COUNT SIX: ARMED ROBBERY

At a Court of General Sessions convened on August 24, 2005, the Grand Jurors of Georgetown County present upon their oath:

COUNT ONE: MURDER

CDR: 0116 16-03-0010,0020

That STEPHEN C. STANKO did in Georgetown County, on or about the 8th day of April, 2005, willfully, feloniously, and intentionally, with malice aforethought, kill the victim, Laura Ling, by means of strangling and beating the victim, and the victim did die as a proximate result thereof in Georgetown County on or about April, 8, 2005, in violation of Section 16-3-10, S. C. Code of Laws, 2004, as amended, and the Common Law of South Carolina.

COUNT TWO: ASSAULT AND BATTERY WITH INTENT TO KILL

CDR: 0014 16-03-0620

That STEPHEN C. STANKO did in Georgetown County on or about the 8th day of April, 2005, unlawfully commit a violent injury to Christina Ling, a fifteen year old child, to wit: Defendant did cut the throat of the victim with a knife or other edged weapon, did severely beat the victim about the face and body, and/or did apply a ligature around the neck of the victim, committing the crime of Assault and Battery with Intent to Kill in violation of Section 16-3-620, S. C. Code of Laws, 2004, as amended.

COUNT THREE: CRIMINAL SEXUAL CONDUCT, 1ST DEGREE

CDR: 0160 16-3-0652

That STEPHEN C. STANKO did in Georgetown County on or about the 8th day of April, 2005, engage in sexual battery, to wit: sexual intercourse with the victim, Christina Ling, a fifteen year old child, accompanied by the following aggravating circumstances: Defendant did use aggravated force to accomplish sexual battery, and/or the victim did submit to sexual battery by the Defendant under the circumstances where the victim was also the victim of forcible confinement, kidnapping, robbery and/or some other similar offense or act, in violation of Section 16-3-652(1)(a) and/or (b), S. C. Code of Laws, 2004, as amended.

COUNT FOUR: KIDNAPPING

CDR: 0095 16-3-0910

That STEPHEN C. STANKO did in Georgetown County on or about the 8th day of April, 2005, unlawfully seize, confine, and/or kidnap the victim, Christina Ling, a fifteen year old child, by any means whatsoever without authority of law, to wit: the Defendant did seize and confine the victim by binding her hands with a ligature, placing a ligature around the throat of the victim, and/or gagged the victim with a handkerchief or some other cloth material, in violation of Section 16-3-910, S. C. Code of Laws, 2004, as amended.

COUNT FIVE: KIDNAPPING

CDR: 0095 16-3-0910

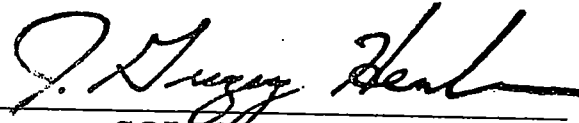
That STEPHEN C. STANKO did in Georgetown County on or about the 8th day of April, 2005, unlawfully seize, confine, and/or kidnap the victim, Laura Ling, by any means whatsoever without authority of law, to wit: the Defendant did seize and confine the victim by binding her hands with a necktie behind her back, in violation of Section 16-3-910, S. C. Code of Laws, 2004, as amended.

COUNT SIX: ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That STEPHEN C. STANKO did in Georgetown County on or about the 8th day of April, 2005, while armed with a deadly weapon, to wit: a knife or other edged weapon, take and carry away goods or monies of the victim, Laura Ling, from the immediate presence of Laura Ling, to wit: a 1994 Ford Mustang convertible and/or a cell phone, in violation of Section 16-11-330(A), S. C. Code of Laws, 2004, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

George Smith/ GCSO

DOCKET NO. 2005-GS-22- 918

The State of South Carolina,

County of GEORGETOWN

JGH

COURT OF GENERAL SESSIONS

AUGUST TERM 2005

THE STATE

vs.

STEPHEN C. STANKO W/M

3960 Murrells Inlet Road

Murrells Inlet, SC 29576

DOB:

SSN:

ARREST WARRANT NO.

1: H750173 CDR: 116 16-03-0010,0020

2. H750183 CDR: 0014 16-03-0620

3. H929318 CDR: 0160 16-03-0652

4. H750181 CDR: 0095 16-03-0910

5. Direct Count CDR: 0095 16-03-0910

6. H750185 CDR: 0139 16-11-0330(A)

DOA: 4/14/05

ACTION OF GRAND JURY

True Bill

Aug 24, 2005

Lang L. Baker
Foreman of Grand Jury

VERDICT

Indictment for

COUNT 1: MURDER

COUNT 2: ASSAULT AND BATTERY

WITH INTENT TO KILL

COUNT 3: CRIMINAL SEXUAL CONDUCT, 1st DEGREE

COUNT 4: KIDNAPPING

COUNT 5: KIDNAPPING

COUNT 6: ARMED ROBBERY

J. GREGORY HEMBREE, SOLICITOR

3732

Foreman of Petit Jury

Date:

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



REPLY TO ☐

P.O. BOX 1276
CONWAY, SC 29528
843-915-5460
FAX: 843-915-6461

REPLY TO ☐

P.O. BOX 1688
GEORGETOWN, SC 29442
843-545-3169
FAX: 843-545-3132
FAX: 843-545-3268

J. GREGORY HEMBREE
Solicitor

April 25, 2005

Reuben Goude, Esquire
119 ½ Screven Street
Georgetown, South Carolina 29442

Re: State v. Stephen Christopher Stanko

Warrant numbers/Charge:	H-750173	Murder
	H-750181	Kidnapping
	H-750183	Assault and Battery Intent to Kill
	H-750185	Grand Larceny Over \$5000.00
	H-929318	Criminal Sexual Conduct 1 st Degree

Dear Mr. Goude:

By this letter the State of South Carolina serves **Notice of Intent to Seek the Death Penalty** upon the above referenced defendant in the above referenced case pursuant to Section 16-3-26, Code of Laws of South Carolina, 1976, as amended.

As indicated by the warrants above-referenced, the State's intention to seek the death penalty arises out of the alleged murder of Laura Ling that occurred on or about April 8, 2005, in the Murrells Inlet section of Georgetown County.

Notice of Evidence in Aggravation will be served upon your client no later than thirty (30) days before the call of the case for trial. The State intends to call this case for trial within twelve months or as soon thereafter as it may be heard.

Sincerely,

J. Gregory Hembree
Solicitor

Cc: South Carolina Court Administration

FILED
CLERK OF COURT
2005 APR 25 PM 3:32

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF GEORGETOWN) 2005-GS-22-918

STATE OF SOUTH CAROLINA)
)
)

vs.)

STEPHEN CHRISTOPHER STANKO,)

Defendant.)

NOTICE OF EVIDENCE IN
 AGGRAVATION OF THE PUNISHMENT

FILED
 GEORGETOWN COUNTY, S.C.
 2006 JUN 14 PM 1:55
 ALMA Y. WHITE
 CLERK OF COURT

TO: STEPHEN CHRISTOPHER STANKO, THE ABOVE DEFENDANT, AND
 WILLIAM I. DIGGS AND GERALD A. KELLY, ATTORNEYS FOR DEFENDANT

PLEASE TAKE NOTICE that during any sentencing proceeding conducted in the above-entitled Capital Murder case to determine whether the Defendant, Stephen Christopher Stanko, should be sentenced to death or life imprisonment, the State will seek to introduce as evidence in aggravation of the punishment to be imposed upon the Defendant the evidence as listed herein below.

The State alleges that the murder of Laura Ling was committed while in the commission of, and/or accompanied by the following crimes or acts: (1) the Murder was committed while in the commission of Criminal Sexual Conduct in any degree; (2) the Murder was committed while in the commission of Kidnapping; (3) the Murder was committed while in the commission of Robbery While Armed with a Deadly Weapon; (4) the Murder was committed while in the commission of Larceny with the Use of a Deadly Weapon; and (5) the Murder was committed while in the commission of Physical Torture. Section 16-3-20(C)(a)(1)(a),(b),(d), (e), and (h), Code of Laws of South Carolina, (1976), as amended.

The State will present evidence as to the Defendant's adult and juvenile character, mentality, background, prior and subsequent adult and juvenile acts and crimes of violence and bodily harm, adult and juvenile crimes and sentences, and other unlawful conduct, prior and subsequent adult and juvenile violations of laws, rules, regulations, and/or ordinances, prior and subsequent criminal adult and juvenile records and sentences, the nature of said crimes,

propensity to commit or attempt to commit acts of violence or bodily harm as an adult and a juvenile, propensity for violence and unlawful conduct as an adult and a juvenile disregard for peace and good order as an adult and a juvenile, and other similar characteristics of Stephen Christopher Stanko as an adult and a juvenile by the testimony of victims, witnesses, police officers, statements by the Defendant and other relevant testimony, photographs and exhibits. Lockett v. Ohio, 438 U.S. 586 (1978); State v. Shaw, 255 S.E.2d 799 (1979). The State will further present as evidence in the second or sentencing trial all items of evidence, testimony, and exhibits that were admitted during the first or guilt phase.

The State will further present evidence of circumstances surrounding the crimes herein and the character and characteristics of Stephen Christopher Stanko, who committed the crimes. Evidence will also be presented to show the cause and/or manner in which the Murder and crimes were committed, including, but not limited to, photographs, video tapes, other tapes, and diagrams of the crime scene and victim, statements by the Defendant, and testimony related thereto. State v. Goolsby, 268 S.E.2d 31 (1980); State v. Shaw, supra.

The State will further present evidence, testimony, and exhibits as to the Defendant's crimes, character and conduct while incarcerated in jails and/or prisons as an adult and a juvenile, and disciplinary actions; disregard and violations of rules, regulations, laws and/or ordinances as an adult and a juvenile and disciplinary actions, disrespectful, disruptive, and uncooperative actions and conduct as an adult and a juvenile; and all other such acts and conduct while incarcerated as an adult and juvenile and disciplinary actions.

The State will further present evidence, testimony and exhibits as to the Defendant's character, statements and conduct relating to his release or parole from jails and/or prisons as an adult and a juvenile and probationary status; mental or physical evaluations of the Defendant as an adult and a juvenile; testimony and opinions as to the Defendant's character, propensity for violence and unlawful conduct, disregard for peace and good order and to commit such acts in the future.

The State will further present detailed evidence of circumstances surrounding the arrest and apprehension of Stephen Christopher Stanko, including, but not limited to, weapons, photographs, recordings, diagrams, exhibits, threats and statements by the Defendant and testimony related thereto.

The State will further present evidence as to "Victim Impact" evidence, the victim, evidence of the emotional impact of the crimes on the families and friends of the victim, the consequences of the crimes on the families and friends of the victim, the victim's personal characteristics, and arguments relating thereto pursuant to Payne v. Tennessee, 111 S.Ct. 2597 (1991); State v. Ivey, 481 S.E.2d 125 (1997); State v. Humphries, 479 S.E.2d 52 (1996); Riddle v. State, 443 S.E.2d 557 (1994); State v. Byram, 485 S.E.2d 360 (1997); State v. Rocheville, 425 S.E.2d 32 (1993); Lucas v. Evatt, 416 S.E.2d 646 (1992); State v. Johnson, 410 S.E.2d 547 (1991).

Conway, South Carolina

Dated: 6/15/06


J. GREGORY HEMBREE, SOLICITOR
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

STATE OF SOUTH CAROLINA,)

v.)

Stephen Christopher Stanko)

Defendant.)
_____)IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2005-GS-22-918

STATUTORY INSTRUCTIONS

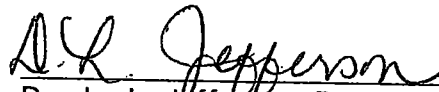
In determining whether to recommend that the defendant, Stephen Christopher Stanko, be sentenced by the Court to Life Imprisonment or to Death, you may consider the following statutory AGGRAVATING CIRCUMSTANCE(S):

1. The Murder was committed while in the commission of Criminal Sexual Conduct in any degree.
2. The Murder was committed while in the commission of Kidnapping.
3. The Murder was committed while in the commission of Robbery while armed with a deadly weapon.
4. The Murder was committed while in the commission of Larceny with the use of a deadly weapon.
5. The Murder was committed while in the commission of Physical Torture.

You may also consider the following MITIGATING CIRCUMSTANCE(S):

1. The Murder was committed while the defendant was under the influence of mental or emotional disturbance.
2. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

You may also consider any NON-STATUTORY mitigating circumstance(s).


Deadra L. Jefferson, Presiding Judge

Georgetown, South Carolina
August 18, 2006

STATE OF SOUTH CAROLINA

COUNTY OF ~~CHARLESTON~~

The State,

vs.

Stephen Christopher Stanko

Defendant.

IN THE COURT OF GENERAL SESSIONS

FIFTEENTH
FOR THE ~~NINTH~~ JUDICIAL CIRCUIT

CASE NUMBER: 2005-GS-22-918

AGGRAVATING CIRCUMSTANCES

We, the jury in the above-entitled case, find beyond a reasonable doubt the following statutory aggravating circumstance(s):

1. CRIMINAL SEXUAL CONDUCT

2. Kidnapping

3. Robbery while armed with a deadly weapon

4. Larceny with the use of a deadly weapon

V. Physical Torture

Patricia D. Wofford

Foreperson

Foreperson
Carol E. Baker

Juror

Juror Donald F. Hunter

Juror

Juror S. L. L.

Juro

Juror Richard K. Jones

Juron

Juror Donnell V. Cal

Juro

Juror Garry Drake

Juron

Juror David Dubois

Juron

Juror Barney Blain Jr.

Juro

Juror [Signature]

Juror

Juror Mark McCarty

~~Juro~~

Juror Joseph C. Benson

Junior

Georgetown, SC

August 18 2006

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
The State,)
vs.)
Stephen Christopher Stanko,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2005-GS-22-0918
RECOMMENDATION OF SENTENCE
DEATH PENALTY

3739

We, the jury in the above-entitled case, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstance(s), to wit:

1. CRIMINAL SEXUAL CONDUCT
2. KIDNAPPING
3. ROBBERY WHILE ARMED WITH A DEADLY WEAPON
4. LARCENY WITH THE USE OF A DEADLY WEAPON
5. PHYSICAL TORTURE

now recommend to the Court that the Defendant, Stephen Christopher Stanko, be sentenced to Death.

Peter D. Wofford
Foreperson
Carol S. Isaacs
Juror
Kay L. ...
Juror
Burney Blair
Juror
David Dubois
Juror
Gary Drake
Juror
Joseph V. Cole
Juror
Richard ...
Juror
Michael ...
Juror
Shirley ...
Juror
Donald F. Horton
Juror
Reph C. Benson
Juror

Georgetown, SC
August 18, 2006

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

The State,)

vs.)

Stephen Christopher Stanko)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

FOR THE FIFTEENTH JUDICIAL CIRCUIT

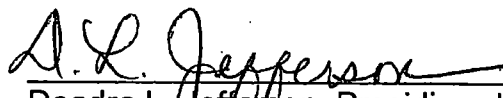
Case Number: 2005-GS-10-0918

SENTENCE

FILED
GEORGETOWN COUNTY, S.C.
2006 AUG 18 PM 5:21
ALMAZ WHITE
CLERK OF COURT

The Defendant, Stephen Christopher Stanko, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, Stephen Christopher Stanko, be taken to the Georgetown County Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 17th day of October, 2006, upon which day between the hours of six o'clock P.M. and six o'clock A.M., or upon an Order of Execution issued by the South Carolina Supreme Court, the Defendant, Stephen Christopher Stanko, shall suffer death by electrocution or by lethal injection in the manner provided by law.


Deadra L. Jefferson, Presiding Judge

Dated: August 18, 2006

Georgetown, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

The State,)

vs.)

Stephen Christopher Stanko,)

Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS

FOR THE FIFTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2005-GS-22-918

AFFIRMATION OF DEATH SENTENCE

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the Defendant, Stephen Christopher Stanko, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.


Deadra L. Jefferson, Presiding Judge

Georgetown, South Carolina

August 18, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTEENTH JUDICIAL CIRCUIT
DOCKET NO.: 2005-GS-22-918

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

STEPHEN CHRISTOPHER STANKO,)
Defendant.)
_____)

AS TO COUNT 1: MURDER

We, the jury, by unanimous consent find the Defendant:

- (1) ☒ Guilty
(2) ☐ Not Guilty
(3) ☐ Not Guilty by Reason of Insanity
(4) ☐ Guilty but Mentally Ill

Please sign and date.

Patricia D. Wofford

Foreperson

August 11, 2006

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
) IN THE COURT OF GENERAL SESSIONS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) DOCKET NO.: 2005-GS-22-918

STATE OF SOUTH CAROLINA)

vs.)

VERDICT FORM

STEPHEN CHRISTOPHER STANKO,)
Defendant.)
_____)

AS TO COUNT 2: ASSAULT and BATTERY with INTENT TO KILL

We, the jury, by unanimous consent find the Defendant:

- (1) ☒ Guilty
(2) ☐ Not Guilty
(3) ☐ Not Guilty by Reason of Insanity
(4) ☐ Guilty but Mentally Ill

Please sign and date.

Pat D Wofford

Foreperson

August 11, 2006

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
STATE OF SOUTH CAROLINA)
vs.)
STEPHEN CHRISTOPHER STANKO,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTEENTH JUDICIAL CIRCUIT
DOCKET NO.: 2005-GS-22-918

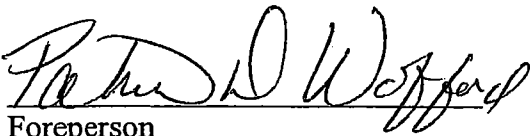
VERDICT FORM

AS TO COUNT 3: CRIMINAL SEXUAL CONDUCT, 1ST DEGREE

We, the jury, by unanimous consent find the Defendant:

- (1) X Guilty
(2) _____ Not Guilty
(3) _____ Not Guilty by Reason of Insanity
(4) _____ Guilty but Mentally Ill

Please sign and date.



Foreperson

August 11, 2006

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
STATE OF SOUTH CAROLINA)
vs.)
STEPHEN CHRISTOPHER STANKO,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTEENTH JUDICIAL CIRCUIT
DOCKET NO.: 2005-GS-22-918

VERDICT FORM

AS TO COUNT 4: KIDNAPPING *Christina Ling*

We, the jury, by unanimous consent find the Defendant:

- (1) ☒ Guilty
(2) ☐ Not Guilty
(3) ☐ Not Guilty by Reason of Insanity
(4) ☐ Guilty but Mentally Ill

Please sign and date.

Pat D. Wofford

Foreperson

August 11, 2006

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

STATE OF SOUTH CAROLINA

vs.

STEPHEN CHRISTOPHER STANKO,
Defendant.

) IN THE COURT OF GENERAL SESSIONS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) DOCKET NO.: 2005-GS-22-918

) VERDICT FORM
)
)
)
)

AS TO COUNT 5: KIDNAPPING *Laura Ling*

We, the jury, by unanimous consent find the Defendant:

- (1) ☒ Guilty
(2) ☐ Not Guilty
(3) ☐ Not Guilty by Reason of Insanity
(4) ☐ Guilty but Mentally Ill

Please sign and date.

Pat J. Wofford

Foreperson

August 11, 2006

Please let the bailiffs know when you have finished your deliberations.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)
STATE OF SOUTH CAROLINA)
vs.)
STEPHEN CHRISTOPHER STANKO,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
OF THE FIFTEENTH JUDICIAL CIRCUIT
DOCKET NO.: 2005-GS-22-918

VERDICT FORM

AS TO COUNT 6: ARMED ROBBERY

We, the jury, by unanimous consent find the Defendant:

- (1) X Guilty
(2) _____ Not Guilty
(3) _____ Not Guilty by Reason of Insanity
(4) _____ Guilty but Mentally Ill

Please sign and date.

Pat D. Wofford

Foreperson

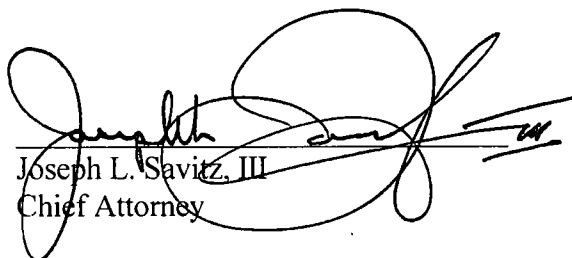
August 11, 2006

Please let the bailiffs know when you have finished your deliberations.

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.

July 27th, 2007



Joseph L. Savitz, III
Chief Attorney

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT