VOLUME FIVE OF FOURTEEN

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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JUN 22 2011
S.C. Supreme Court

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

BAYAN ALEKSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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THAT CORRECT?

A NO. THEY BOTH WERE IN NEW YORK. ONE PASSED AWAY AND ONE DID NOT STAY IN NEW YORK AFTER.

Q SO THE ONLY PERSON THAT YOU HAD IN NEW YORK WAS BAYAN?

A YES.

Q AND YOU HAVE NO OTHER RELATIVES OR ANYONE THERE?

A NO, I HAVE NO ONE.

Q BAYAN IS THE ONLY PERSON THAT YOU HAVE; IS THAT CORRECT?

A YES.

MR. SIMS: ONE MOMENT, YOUR HONOR.

A HE IS THE ONLY CHILD I HAVE.

(PAUSE.)

Q AS A RESULT OF YOUR PREGNANCY WITH BAYAN, COULD YOU HAVE ANYMORE CHILDREN?

A NO, I COULDN'T.

Q SO YOU ONLY HAD ONE CHILD?

A I ONLY HAD ONE.

Q WHEN YOU RECEIVED NOTIFICATION OF THE PREDICAMENT THAT HE WAS IN IN SOUTH CAROLINA, YOU WERE BY YOURSELF; IS THAT CORRECT?

A YES.

Q AND YOU HAD NO ONE TO TURN TO, NO ONE --

A I HAD NO ONE TO TURN TO.

Q WHEN YOU CAME DOWN HERE, DID YOU BRING ANYONE WITH YOU?
A NO, I CAME BY MYSELF.
Q AND YOU SAT HERE THROUGH THIS ENTIRE ORDEAL?
A I DID.
Q BY YOURSELF?
A BY MYSELF.
Q AND JUST ONE OR TWO MORE QUESTIONS. AGAIN, YOUR FEELINGS ABOUT THIS PROCESS AND WHERE WE ARE NOW?
SOLICITOR BAILEY: YOUR HONOR, I THINK I WILL HAVE TO INTERPOSE AN OBJECTION AS TO HER FEELINGS OF THE PROCESS.
THE COURT: I WILL SUSTAIN THAT.
Q DO YOU LOVE YOUR SON?
A I LOVE MY SON. I WORRY ABOUT MY SON. I PRAYED HARD. BAYAN KNOWS HOW MUCH I PRAY. I DON'T HAVE TO TELL HIM. HE WILL TELL YOU. I PRAY. I WORRY. I CRY A LOT. I CRIED A LOT WHEN MY SON WAS NOT WITH ME.
Q MRS. ALEKSEY, ANSWER ANY QUESTIONS THAT THE STATE MAY HAVE.
SOLICITOR BAILEY: MRS. ALEKSEY, I HAVE NO QUESTIONS. THANK YOU.
THE COURT: YOU MAY COME DOWN. THANK YOU.
THE WITNESS: MAY I SAY ONE --

THE COURT: NO, MA'AM. PLEASE COME DOWN.

MR. SIMS: YOUR HONOR, THOSE WOULD BE THE WITNESSES FOR THE DEFENSE.

THE COURT: ALL RIGHT. I WILL LET YOU GO TO THE JURY ROOM JUST A MOMENT.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: WE WILL TAKE A SHORT BREAK BEFORE FINAL SUMMATION. THE STATE WOULD HAVE THE FIRST SUMMATION.

SOLICITOR BAILEY: YES, SIR. I HAVE NO REPLY, YOUR HONOR. BEFORE SUMMATION I WOULD LIKE TO HAVE A CONFERENCE IN REGARD TO THE CHARGE.

THE COURT: ALL RIGHT, SIR. WE WILL DO THAT AT THIS TIME. FIRST NOW LET ME GET ON THE RECORD AT THIS TIME. HOW MANY ARGUMENTS WILL THERE BE FOR THE DEFENSE? YOU ARE ENTITLED TO THE FINAL ARGUMENT.

MR. SIMS: YES, SIR.

MR. STONE: I WILL ARGUE VERY BRIEFLY, YOUR HONOR. MR. ALEKSEY WILL SPEAK TO THE JURY AND THEN MR. SIMS WILL CLOSE.

MR. SIMS: THAT'S CORRECT, YOUR HONOR.

THE COURT: THAT WILL BE FINE. WE WILL HAVE A CHARGE CONFERENCE IN JUST A MOMENT AND THEN WE WILL BE READY TO START. MY INTENTION IS TO COMPLETE

THE FINAL SUMMATION PRIOR TO LUNCH AND GIVE THE FINAL CHARGE.

MR. STONE: YES, SIR.

THE COURT: LET'S MEET IN MY CHAMBERS.

MR. STONE: YES, SIR.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: WITH REGARD TO THE AGGRAVATING CIRCUMSTANCES, THE STATE OF SOUTH CAROLINA IS RELYING ON ONE, AND THAT IS THE DEATH OF A HIGHWAY PATROLMAN; IS THAT CORRECT?

SOLICITOR BAILEY: THAT'S CORRECT, YOUR HONOR.

THE COURT: WITH REGARDS TO THE STATUTORY MITIGATING CIRCUMSTANCES, YOU ARE RELYING ON STATUTORY MITIGATING CIRCUMSTANCE NUMBER ONE?

MR. STONE: YES, SIR.

THE COURT: THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER PERSON.

MR. STONE: YES, SIR.

THE COURT: THAT IS THE ONLY ONE THAT YOU REQUEST THAT I SUBMIT TO THE JURY?

MR. STONE: YES, SIR.

THE COURT: DO YOU HAVE ANY STATEMENT AS TO THAT?

MR. STONE: WE HAVE CHOSEN AS A MATTER OF STRATEGY TO NOT PURSUE THE STATUTORY MITIGATING CIRCUMSTANCES CONCERNING ANY TYPE OF MENTAL DISORDER. WE FEEL THE BEST THING AT THIS POINT IS TO GO WITH WHAT I THINK IS PRETTY CLEAR MITIGATING EVIDENCE, AS OPPOSED TO WHAT I DO NOT THINK IS CLEAR.

THE COURT: THERE IS REALLY NO TESTIMONY ON THAT ISSUE.

MR. STONE: THAT'S RIGHT.

THE COURT: BUT THIS RECORD IS GOING TO REFLECT THAT YOU SPECIFICALLY ASK THAT I NOT EVEN CONSIDER THAT AS A MITIGATING CIRCUMSTANCE.

MR. STONE: YES, SIR.

THE COURT: AND YOU HAVE DISCUSSED THIS WITH THE DEFENDANT?

MR. STONE: YES, SIR, I HAVE.

THE COURT: YOU UNDERSTAND NOW THAT THE ONLY MITIGATING CIRCUMSTANCE, STATUTORY MITIGATING CIRCUMSTANCE, IS THE ONE REGARDING NO SIGNIFICANT PRIOR CRIMINAL RECORD OF CONVICTION. DO YOU UNDERSTAND THAT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: THE JURY WILL BE INSTRUCTED BY ME THAT THEY MAY CONSIDER ANY OTHER MITIGATING CIRCUMSTANCES SUPPORTED BY THE EVIDENCE.

MR. STONE: YES, SIR.

THE COURT: I AM ADVISED THAT IT IS YOUR DESIRE TO ADDRESS THE JURY; IS THAT CORRECT?

DEFENDANT ALEKSEY: YES, YOUR HONOR.

THE COURT: THERE WAS SOME QUESTION ABOUT --

MR. STONE: WE ARE GOING TO LET HIM SIT ON THE WITNESS STAND, YOUR HONOR.

THE COURT: THAT IS YOUR DECISION?

MR. STONE: YES, SIR.

THE COURT: FROM THE DEFENSE STANDPOINT, YOU ARE GOING TO MAKE A STATEMENT.

MR. STONE: YES, SIR.

THE COURT: AND YOU WILL MAKE A STATEMENT.

DEFENDANT ALEKSEY: YES YOUR HONOR.

THE COURT: AND THEN YOU WILL CONCLUDE WITH THE FINAL ARGUMENT.

MR. SIMS: THAT'S CORRECT, YOUR HONOR.

THE COURT: ANY OTHER MATTERS WE NEED TO ADDRESS FOR THE RECORD?

SOLICITOR BAILEY: NOT FROM THE STATE, YOUR HONOR.

THE COURT: HOW ABOUT IT FROM THE DEFENSE?

MR. STONE: NO, SIR.

THE COURT: BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, YOU HAVE NOW HEARD ALL OF THE TESTIMONY FROM THE STATE AND THE DEFENSE IN THIS THE SECOND PHASE WHICH IS THE SENTENCING PHASE.

NOW WE ARE AT THE POSITION WHERE MR. WALTER BAILEY, REPRESENTING THE STATE OF SOUTH CAROLINA, WILL MAKE HIS FINAL REMARKS WITH REGARDS TO THIS PHASE OF THIS TRIAL.

FOLLOWING THAT, MR. STONE WILL MAKE A FIRST ARGUMENT FOR THE DEFENSE. THE DEFENDANT HIMSELF WILL MAKE A STATEMENT TO YOU, AS IS HIS RIGHT. THEN MR. SIMS WILL MAKE THE CLOSING STATEMENT.

AT THAT TIME WE WILL BREAK FOR LUNCH, AND AFTER LUNCH I WILL GIVE YOU THE CONCLUDING LEGAL INSTRUCTIONS WITH REGARD TO THE ISSUES IN THIS PHASE. FOLLOWING THAT YOU WILL BEGIN YOUR DELIBERATIONS. MR. BAILEY.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR. THIS HAS BEEN A LONG ORDEAL FOR EVERYBODY IN THIS COURTROOM OVER THE LAST WEEK AND A HALF. THE JUDGE SAID THAT JURY SERVICE IN A CASE LIKE THIS IS THE HIGHEST DUTY THAT ANY CITIZEN CAN GIVE THEIR STATE AND COUNTRY.

I AGREE WITH THAT. WE DO ALL APPRECIATE

THE SACRIFICES YOU HAVE MADE ON BEHALF OF THE CITIZENS OF ORANGEBURG COUNTY AND THE STATE OF SOUTH CAROLINA AND THE FAMILY OF FRANKIE LINGARD.

I APPRECIATE YOUR PATIENCE. I ASK YOU TO CONTINUE WITH THAT SAME PATIENCE AS NOT ONLY ME BUT THE OTHER ATTORNEYS AND MR. ALEKSEY MAKE THEIR CLOSING STATEMENTS TO YOU. THEN JUDGE COTTINGHAM WILL INSTRUCT YOU ONE FINAL TIME AND YOU WILL GO BACK AND DELIBERATE.

AS THE JUDGE SAID, THIS IS THE LAST OPPORTUNITY I WILL HAVE TO SPEAK TO YOU. WHEN I SIT DOWN, BOTH DEFENSE ATTORNEYS AND MR. ALEKSEY, IF HE CHOOSES, WILL GET AN OPPORTUNITY TO SPEAK TO YOU IF THEY WISH.

SO TO A CERTAIN EXTENT SINCE I CAN'T GET BACK UP, I HAVE GOT TO KIND OF ANTICIPATE WHAT THEY MAY SAY AND TRY TO COVER THAT AHEAD OF TIME. OF COURSE, AT THIS STAGE OF THE PROCEEDINGS WE ARE IN NOW, GUILT AND INNOCENCE ARE NO HOW LONGER AN ISSUE BECAUSE EACH OF Y'ALL HAVE FOUND BAYAN ALEKSEY GUILTY OF THE MURDER OF FIRST SERGEANT FRANKIE LINGARD WITH MALICE AFORETHOUGHT.

AS I SAID IN MY OPENING STATEMENT, HE SITS BEFORE YOU NOW A CONVICTED MURDERER. YOUR SOLE DUTY, YOUR ONLY DUTY, AT THIS POINT UNDER THAT OATH THAT

YOU TOOK IS TO DETERMINE THE APPROPRIATE PUNISHMENT, LIFE WITHOUT PAROLE OR THE DEATH PENALTY.

WHEN Y'ALL WENT THROUGH THE JURY QUALIFICATION PROCESS ABOUT THIS TIME LAST WEEK, EACH OF YOU ON AT LEASE TWO OCCASIONS, ONCE WHEN EVERYBODY WAS OUT HERE IN THE AUDIENCE AND THEN AGAIN WHEN YOU CAME UP TO THIS CHAIR INDIVIDUALLY, RAISED YOUR HANDS AND YOU TOOK A SOLEMN OATH ADMINISTERED BY THIS COURT.

YOU SAID, "I SWEAR TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH SO HELP ME GOD." YOU WERE THEN ASKED A SERIES OF QUESTIONS BY THE JUDGE FIRST, BY ME AND THEN ONE OF THE DEFENSE ATTORNEYS.

THEN UNDER OATH EACH OF Y'ALL SAID IN REGARD TO THE DEATH PENALTY THAT IF THE CASE WAS BAD ENOUGH, YOU COULD BRING BACK THE DEATH PENALTY FOR THE CRIME OF MURDER WITH MALICE AFORETHOUGHT.

AND EACH OF Y'ALL SAID UNDER THAT SAME OATH, THAT SAME SOLEMN OATH, "IF I VOTE FOR THE DEATH PENALTY AFTER HEARING THAT EVIDENCE, IF THE 11 OTHER JURORS VOTE FOR THE DEATH PENALTY ALSO, I CAN SIGN MY NAME TO THAT VERDICT FORM."

EACH OF Y'ALL SAID UNDER THAT SAME SOLEMN OATH, "IF I VOTE FOR THE DEATH PENALTY AND I SIGN

THAT VERDICT FORM, I CAN GET UP HERE WHEN MY NAME IS CALLED OUT AND ANNOUNCE THAT VERDICT IN FRONT OF THE DEFENDANT AND WHOEVER ELSE IS OUT HERE."

EACH OF Y'ALL SAID, "IF THE CASE IS BAD ENOUGH, I CAN VOTE FOR THE IMPOSITION OF THE DEATH PENALTY KNOWING THAT PENALTY WILL BE CARRIED OUT." LADIES AND GENTLEMEN, WHEN Y'ALL SAID THAT, I BELIEVED YOU OR YOU WOULD NOT BE ON THIS JURY.

THE ISSUE OF WHETHER OR NOT WE OUGHT TO HAVE A DEATH PENALTY IN SOUTH CAROLINA, WHETHER THE DEATH PENALTY IS RIGHT OR WRONG IS NOT AN ISSUE BECAUSE AS I SAID, EACH OF Y'ALL HAVE ALREADY SAID UNDER OATH, "IF THE CASE IS BAD ENOUGH, I CAN BRING BACK THE DEATH PENALTY."

SO THE ONLY ISSUE THAT WE HAVE TO CONFRONT IS: IS THIS CASE THAT Y'ALL HAVE HEARD OVER THE LAST WEEK AND A HALF AND THIS DEFENDANT APPROPRIATE FOR THE DEATH PENALTY? THAT IS THE ISSUE.

I WILL TALK TO Y'ALL ABOUT THE AGGRAVATING CIRCUMSTANCE THE STATE HAS ALLEGED. I WILL TALK TO ABOUT THE MITIGATING CIRCUMSTANCE THAT THE DEFENSE HAS ALLEGED. THE JUDGE WILL CHARGE YOU ON THEM.

I WILL TALK TO YOU ABOUT THREE OTHER THINGS. AS I SAID IN MY OPENING STATEMENT IN THIS PART OF THE TRIAL, I WILL TALK TO Y'ALL ABOUT THE

CIRCUMSTANCES OF THE CRIME COMMITTED BY BAYAN ALEKSEY, THE MURDER OF FIRST SERGEANT FRANKIE LINGARD.

I WILL TALK TO YOU ABOUT THE CHARACTERISTICS OF BAYAN ALEKSEY, THE KIND OF MAN THAT HE IS. SO WE ARE NOT TALKING JUST ABOUT THE MURDER. WE ARE TALKING ABOUT OTHER STUFF HE HAS DONE.

AND I WILL TALK TO Y'ALL ABOUT THE IMPACT OF FRANKIE LINGARD'S DEATH ON HIS FAMILY THAT Y'ALL HAVE HEARD HERE TESTIFYING UNDER OATH, POURING THEIR HEARTS OUT TO Y'ALL ABOUT WHAT THIS HAS DONE TO THEM.

IN MY OPENING STATEMENT, I SAID THAT Y'ALL WOULD GET TO KNOW FRANKIE LINGARD TO THE EXTENT YOU CAN KNOW SOMETHING WHO IS DEAD. I HAVE TRIED TO DO THAT THROUGH THIS TESTIMONY, THROUGH THE PHOTOGRAPHS AND THROUGH THAT BRIEF VIDEO CLIP. WHEN YOU COMPARE THAT TO A PERSON'S LIFE, IT'S NOT MUCH OF A GLIMPSE BUT IT'S THE BEST THAT I CAN DO.

LADIES AND GENTLEMEN, THE FACTS OF THIS CASE THAT Y'ALL HAVE BEEN EXPOSED TO, THAT YOU HAVE BEEN SUBJECTED TO, SET OUT AND SPELL OUT THE COURSE OF CONDUCT THAT IS SO DEVOID OF CONSCIENCE, SO BENT ON MALICE AND SO LACKING IN BASIC HUMAN COMPASSION FOR ANOTHER HUMAN BEING THAT IT LITERALLY CRIES OUT

FOR THE DEATH PENALTY.

LAST WEEK WHEN Y'ALL SAID UNDER OATH, "YES, I COULD IMPOSE THE DEATH PENALTY IF THE CASE IS BAD ENOUGH," YOU HAD A MENTAL IMAGINE IN YOUR MIND, "IS THE CASE BAD ENOUGH TO WARRANT THE DEATH PENALTY?"

LADIES AND GENTLEMEN, Y'ALL HAVE SEEN THAT EVIDENCE. YOU HAVE HEARD THAT CASE. YOU HAVE SEEN THE TESTIMONY. YOU HAVE GOT THE EXHIBITS. THIS IS THAT CASE AND THAT IS THAT DEFENDANT THAT Y'ALL HAD IN THE BACK OF YOUR MINDS WHEN YOU Y'ALL SAID, "YES, IF THE CASE IS BAD ENOUGH, I CAN VOTE FOR THE DEATH PENALTY."

IF Y'ALL HEARD OR READ THE NEWSPAPER OR SAW IN THE EVENING NEWS THAT SOMEBODY DRIVING THROUGH SOUTH CAROLINA PULLED OVER ON THE SIDE OF THE ROAD AND SHOT A STRAY DOG FOUR OR FIVE TIMES AND KILLED THAT DOG, YOU WOULD SAY, "THAT'S AWFUL. THAT'S HORRIBLE. HOW CAN A HUMAN BEING DO THAT TO A DOG?"

BAYAN ALEKSEY DIDN'T DO THAT TO A DOG. HE DID IT TO A LIVING, BREATHING FELLOW HUMAN BEING THAT HE SHOT DOWN LIKE A DOG ON THE STREET. IT'S A BRUTAL MURDER. THE MAN WAS THE FATHER OF THREE CHILDREN WHO LOVED HIM DEARLY. HE REPRESENTED THE BEST IN THIS COMMUNITY.

IT'S NOT ONLY A MALICIOUS ACT, IT'S A

COWARDLY ACT. LOOK AT WHERE THE SHOTS WERE PLACED AS HE WALKED UP TO THAT CAR. YOU GOT FIVE SHOTS THAT RANG OUT. FOUR OF THEM HIT SERGEANT LINGARD.

ONE SHOT IS IN THE BACK AND ONE SHOT IS UP INTO HIS TORSO WHEN HE IS DOWN ON THE GROUND, NO THREAT TO HIM AT ALL. THIS MAN DID IT HERE, BAYAN ALEKSEY. Y'ALL HAVE FOUND THAT BEYOND A REASONABLE DOUBT.

I CALL TO YOUR ATTENTION THE PHOTOGRAPH I SHOWED YOU EARLIER OF THE HOLSTERED GUN. SERGEANT LINGARD DIDN'T COME UP TO THAT CAR AS A BULLY PUSHING HIM AROUND, FLASHING HIS BADGE, FLASHING HIS GUN, TRYING TO ACT LIKE A BIG SHOT GIVING THIS GUY A HARD TIME.

HE GOES UP TO THE CAR LIKE HE HAS DONE A THOUSAND OTHER TIMES. Y'ALL HEARD THE TAPE. Y'ALL HEARD HIM CALMLY CALL THAT NUMBER IN LIKE HE HAS DONE SO MANY TIMES, A TAG NUMBER, A ROUTINE SPEEDING TICKET.

FRANKIE LINGARD WAS STILL A YOUNG MAN. HE HAD MOST OF HIS LIFE AHEAD OF HIM. BAYAN ALEKSEY SNUFFED HIS LIFE OUT ON NEW YEAR'S EVE ON I-95 FOR NO GOOD REASON. WHAT DID HE GAIN BY IT? WHAT DID BAYAN ALEKSEY GAIN BY SHOOTING DOWN FRANKIE LINGARD IN THE DARK ON THAT STREET?

HE GAINED THE ABILITY TO AVOID ACCOUNTING FOR THE OTHER CRIMES YOU HEARD ABOUT THAT HE COMMITTED UP NORTH, DRIVING THAT CAR WHICH HAD BEEN REPORTED STOLEN WITH THAT STOLEN DELAWARE TAG.

BAYAN ALEKSEY KNEW THAT THIS FANTASY WORLD HE HAD BEEN LIVING FOR THE LAST EIGHT OR TEN YEARS, FAST CARS, LOTS OF WOMEN, LOTS OF MONEY, NO WORK WAS ABOUT TO COME TO AN END.

YOU CAN'T LIVE THAT LIFESTYLE INDEFINITELY. YOU CAN'T GO UNDER THESE NAMES AND EVERY TIME YOU GET ARRESTED, GET BONDED OUT, CHANGE THAT NAME AND MOVE ON.

SOONER OR LATER IT'S GOING TO CATCH UP TO YOU. IT CAUGHT UP TO BAYAN ALEKSEY IN ORANGEBURG COUNTY ON NEW YEAR'S EVE, AND FRANKIE LINGARD PAID THE PRICE WITH HIS LIFE.

THE ENORMITY OF THIS CRIME THAT Y'ALL HAVE HEARD ABOUT, I FEEL INADEQUATE, INCAPABLE OF REALLY TRULY EXPRESSING IT TO YOU IN THE ATMOSPHERE WE ARE IN NOW. WE ARE IN A COURTROOM AND IT'S A CLINICAL ATMOSPHERE.

THE LAWYERS ARE DRESSED IN COATS AND TIES. THE JUDGE IS IN HIS BLACK ROBE AND EVERYBODY IS CLEAN AND NEAT AND ORDERLY AND ORCHESTRATED. IN THIS CLINICAL ATMOSPHERE, I JUST DON'T FEEL THE ABILITY TO

REALLY GET ACROSS TO Y'ALL HOW BAD THIS THING REALLY WAS.

WHAT I HAVE TO ASK Y'ALL TO DO IS JUST IN YOUR MIND'S EYE, TAKE YOURSELF OUT OF THIS COURTROOM, TAKE YOURSELVES OUT TO I-95 THAT NIGHT, THAT NEW YEAR'S EVE NIGHT AT 11:30 P.M. PUT YOURSELF OUT THERE AND IMAGINE FRANKIE LINGARD WALKING UP TO THAT CAR.

YOU WILL RECALL GLORYVEE BLACKWELL'S TESTIMONY. SHE HEARD WHAT HE SAID. HE WALKED UP TO THAT CAR, THE GUN IN HIS HOLSTER AND HE SAID, "HOW YOU FOLKS DOING?" AND THIS MAN HERE OPENED UP WITH A SEMIAUTOMATIC PISTOL FIVE TIMES AND SHOT HIM DOWN LIKE A DOG ON THE STREET IN ORANGEBURG COUNTY.

JUDGE COTTINGHAM IS GOING TO TALK TO Y'ALL ABOUT THE AGGRAVATING CIRCUMSTANCE IN THIS CASE. THAT AGGRAVATING CIRCUMSTANCE IS THAT FRANKIE LINGARD WHEN HE WAS MURDERED BY BAYAN ALEKSEY WAS ACTING IN HIS CAPACITY AS A LAW ENFORCEMENT OFFICER AND WAS IN THE PERFORMANCE OF HIS DUTIES AS A LAW ENFORCEMENT OFFICER.

THE SIGNIFICANCE OF AN AGGRAVATING CIRCUMSTANCE IS THAT IF I CAN'T PROVE AN AGGRAVATING CIRCUMSTANCE IN A CASE IN WHICH I AM SEEKING THE DEATH PENALTY, Y'ALL CAN'T BRING BACK A DEATH

PENALTY.

NO MATTER HOW BAD THAT MURDER MAY BE, IF THERE IS NO AGGRAVATING CIRCUMSTANCE, THE JUDGE WOULDN'T EVEN LET Y'ALL CONSIDER THE DEATH PENALTY. SO I HAVE TO PROVE AN AGGRAVATING CIRCUMSTANCE IN ADDITION TO THAT MURDER. IT'S A FIRST STEP TOWARD THE DEATH PENALTY.

IF THAT AGGRAVATING CIRCUMSTANCE IS PROVEN TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT, THEN YOU HAVE THE ABILITY, THE POWER AS JURORS TO IMPOSE THAT DEATH PENALTY REGARDLESS OF ANY MITIGATING CIRCUMSTANCES THEY COME MAY COME OUT IN THIS CASE. THE JUDGE WILL INSTRUCT YOU ON THAT. HE WILL TELL YOU THAT'S WHAT THE LAW IS.

AGAIN, THE FACT THAT FRANKIE LINGARD WAS A LAW ENFORCEMENT OFFICER MURDERED IN THE LINE OF DUTY GIVES Y'ALL THE POWER TO IMPOSE THE DEATH PENALTY IF THAT'S YOUR WISH, REGARDLESS OF ANYTHING ELSE THAT IS SAID OR DONE IN THIS CASE.

YOU CAN LOOK BEYOND THE AGGRAVATING CIRCUMSTANCE WHEN YOU DETERMINE THE APPROPRIATE PUNISHMENT. YOU CAN LOOK BEYOND THE MITIGATING CIRCUMSTANCE. Y'ALL CAN LOOK AT EVERYTHING THAT HAS COME OUT IN BOTH PARTS OF THIS TRIAL.

YOU CAN LOOK AT ALEKSEY'S PRIOR CRIMINAL

CONDUCT, NOT AS A STATUTORY AGGRAVATING CIRCUMSTANCE, BUT AS CHARACTERISTIC OF HIM TO DECIDE WHAT THE APPROPRIATE PUNISHMENT SHOULD BE FOR A PERSON WHO HAS DONE THE KIND OF THINGS Y'ALL HAVE HEARD HE HAS DONE.

Y'ALL HEARD, FOR EXAMPLE, THE TESTIMONY OF LUIS CRUZ, THE YOUNG MAN FROM NEW JERSEY. HE TOLD Y'ALL ABOUT IN SEPTEMBER 1997 HE WAS GOING FROM PHILADELPHIA TO HIS HOME IN TRENTON GOING DOWN I-95 AND GOING THE SPEED LIMIT IN THE LEFT-HAND LANE.

MR. ALEKSEY DOESN'T LIKE THAT, THAT DISSATISFIES MR. ALEKSEY THAT MAN IS BLOCKING HIS TRAVEL, HIS INABILITY TO GET TO WHEREVER HE IS GOING. SO HE TAKES THIS GUN AND SHOOTS AT MR. CRUZ'S CAR.

Y'ALL ALSO HEARD FROM LISA WATSON. YOU HEARD FROM SARAH PIVERO, JAIME FARRELL, THERESA MCCANN, FOUR WOMEN FROM THE NEW YORK AND PENNSYLVANIA AREA THAT HAD THE MISFORTUNE TO ENCOUNTER BAYAN ALEKSEY AT A TIME IN THEIR LIVES WHEN THEY WERE VULNERABLE, WHEN THEY WERE AT A LOW OR WEAK POINT IN THEIR LIVES.

YOU HEARD HOW BAYAN ALEKSEY USED THEM, ABUSED THEM, TOOK THEM FOR ALL HE COULD TAKE AND THEN LEFT THEM. BAYAN ALEKSEY HAS SPENT HIS ENTIRE ADULT LIFE FOR THE LAST FOUR OR FIVE YEARS, ACCORDING TO THE TESTIMONY YOU HAVE HEARD, AS A PARASITE ON WOMEN.

THAT'S HIS CONTRIBUTION TO SOCIETY.

HE HAS LIVED OFF OF WOMEN HE HAS TAKEN IN. HE HAS BLED THEM DRY. HE EVEN TAKES THEIR NAMES. HE TAKES THEIR MONEY. HE TAKES THEIR SELF RESPECT. THEN HE TAKES THEIR NAMES: PIVERO, BATKILINA, FARRELL. THAT'S BAYAN ALEKSEY. THAT'S THE MAN Y'ALL ARE GOING TO DECIDE HIS FATE LATER ON THIS AFTERNOON.

IN ADDITION TO THE PRIOR CRIMINAL CONDUCT, PRIOR ACTIONS OF BAYAN ALEKSEY, WHEN Y'ALL CONSIDER LIFE IMPRISONMENT AS AN ALTERNATIVE TO THE DEATH PENALTY, YOU CAN TAKE A LOOK AT HOW BAYAN ALEKSEY HAS ADAPTED TO JAIL, HOW HE HAS ADAPTED TO PRISON.

THIS IS A PIECE OF METAL FURNITURE THAT WAS IN THE CELL HERE IN ORANGEBURG. HOW DOES HE REACT TO IT? HE BECOMES FRUSTRATED. BAYAN DOESN'T LIKE BEING IN THAT CELL.

SO HE RIPS THIS PIECE OF METAL FURNITURE OFF THE WALL IN THAT CELL, SMASHES OUT THE WINDOW AND EARNS HIMSELF A TRIP UP TO SAFEKEEPING WHERE MRS. DOZIER AND MR. KEITT TOLD Y'ALL THEY SEND PEOPLE THAT ARE TOO UNRULY OR JUST NOT SUITABLE TO BE HOUSED IN A LOCAL JAIL. THAT'S HIS ADAPTION. THAT'S HOW HE ADAPTS TO A CONFINED ENVIRONMENT.

WE ALREADY KNOW HE DOESN'T THINK TOO MUCH OF JAIL BECAUSE WE KNOW THE EXTENT TO WHICH HE WENT

TO AVOID GOING TO JAIL. THAT WAS HIS MOTIVE FOR MURDERING FRANKIE LINGARD.

I AM GOING TO TALK TO Y'ALL ABOUT THE MITIGATING CIRCUMSTANCE THAT HAS BEEN ALLEGED. THERE IS ONE MITIGATING CIRCUMSTANCE IN THIS CASE. THAT'S THAT BAYAN ALEKSEY HAS NO PRIOR CONVICTION OF ANY CRIME OF VIOLENCE.

THAT'S TRUE. I WILL GIVE HIM THAT. HE HAS GOT NO PRIOR CONVICTIONS. HOWEVER WHEN YOU THINK ABOUT THE PUNISHMENT, AS I SAID, YOU ARE ALLOWED TO GO BEYOND THE MITIGATING CIRCUMSTANCE AND BEYOND THE AGGRAVATING CIRCUMSTANCE AND TALK ABOUT THE CIRCUMSTANCES OF THE CRIME, THE CHARACTERISTICS OF THE DEFENDANT, THE VICTIM IMPACT.

LOOK AT THE THINGS THAT HE HAS DONE IN HIS LIFE. I ALREADY MENTIONED THESE YOUNG WOMEN, THE WAY HE TOOK THEM, LUIS CRUZ OUT ON I-95, WHICH IS REALLY IRONIC WHEN YOU THINK ABOUT WHERE THIS MURDER OCCURRED, ON I-95 HERE.

REMEMBER THERESA MCCANN? THEY ARE GOING TO WANT YOU TO THINK THIS IS OUT OF CHARACTER. HE IS BASICALLY A CON MAN. HE IS NONVIOLENT. SOMETHING JUST HAPPENED THAT NIGHT. WE DON'T KNOW WHAT IT WAS, BUT THIS IS OUT OF CHARACTER FOR BAYAN ALEKSEY.

THE EVIDENCE SHOWS IT'S NOT OUT OF

CHARACTER. YOU REMEMBER THERESA MCCANN? SHE WAS THE FIRST WOMAN WHO TESTIFIED FROM NEW YORK. SHE SAID AFTER SHE FOUND OUT WHAT ALEKSEY WAS DOING, SHE HAD A CONFRONTATION. SHE SAID, "HE THREATENED MY LIFE." HE SAID, "I WILL ROLL UP ON YOU."

REMEMBER SARAH PIVERO? SHE GOT INTO A PHYSICAL CONFRONTATION WITH HIM. HE HAD JEWELRY THAT BELONGED TO HER. SHE SAID SHE TRIED TO GET THAT JEWELRY BACK. HE WAS WEARING HER JEWELRY. AFTER HE HAD TAKEN HER MONEY, HE HAS THE AUDACITY TO PUT HER JEWELRY ON.

WHEN SHE ASKS FOR IT BACK, HE WON'T GIVE IT BACK TO HER AND FIGHTS WITH HER. AND WHAT DID SHE TELL YOU? YOU RECALL MS. PIVERO TESTIFIED TWICE, ONCE IN THE GUILT PHASE AND ONCE IN THE PENALTY PHASE.

SHE WAS TRYING TO GET THAT JEWELRY BACK AND HE PUT THIS GUN TO HER HEAD AND THREATENED TO KILL HER. THEN HE PUT THE GUN TO HIS OWN HEAD AND THREATENED TO KILL HIMSELF. SHE ALSO SAID IN HER PRESENCE HE TOLD HER THAT HE WAS GOING TO GET OR KILL THERESA MCCANN. THAT'S SOME SUPPORT TO WHAT MRS. MCCANN SAID.

LISA WATSON. YOU RECALL SHE WAS THE YOUNG WOMAN UNFORTUNATE ENOUGH TO GET CONNED INTO LEASING

THIS WHITE MUSTANG FOR ALEKSEY. AFTER SHE FINDS OUT WHAT HAS BEEN GOING ON, HE SCAMMED HER, SHE CONFRONTS HIM AND HE SAYS, "I'M IN THE GAMBINO CRIME FAMILY," AND IS TALKING TO HER ON THE TELEPHONE. WHAT DOES HE TELL HER, "I AM TALKING TO A DEAD WOMAN."

MRS. WATSON ALSO TESTIFIED ON ANOTHER OCCASION HE POINTED THIS GUN AT HER. SO THIS ISN'T THE FIRST TIME ALEKSEY HAS INTIMIDATED PEOPLE WITH THIS GUN. IT ISN'T THE FIRST TIME HE HAS FIRED IT. IT'S THE LAST TIME THOUGH.

BAYAN ALEKSEY KNOWS RIGHT FROM WRONG. THERE IS NO INDICATION HE HAS SOME INABILITY TO CONTROL HIS CONDUCT. THERE IS NO INDICATION IN THE RECORD HE HAS ANY KIND OF IRRESISTIBLE IMPULSE TO DO STUFF.

THERE IS NO INDICATION OF ANY KIND OF PSYCHIATRIC DIAGNOSIS OR ANYTHING THAT WOULD EXPLAIN WHAT HE HAS DONE, EXPLAIN THIS MURDER. IT JUST ISN'T THERE.

Y'ALL HEARD SOME TESTIMONY FROM VERA ALEKSEY, BAYAN ALEKSEY'S MOTHER -- SHE SEEMED LIKE A VERY NICE WOMAN -- ABOUT HIS BACKGROUND. I AM NOT GOING TO GET UP HERE AND DISPUTE WHAT SHE SAID ABOUT HIS BACKGROUND.

HE APPARENTLY HAD A ROUGH BACKGROUND. HIS

PARENTS WERE SEPARATED. HIS FATHER WAS AN ALCOHOLIC. LADIES AND GENTLEMEN, NOBODY HAS A PERFECT CHILDHOOD. THE ONLY TIME YOU SEE THAT IS ON TELEVISION. YOU SEE "LEAVE IT TO BEAVER" OR "THE COSBY SHOW." YOU SEE THESE IDEAL FAMILIES. THAT ISN'T REAL LIFE.

IN REAL LIFE PEOPLE HAVE PROBLEMS. THEY HAVE DIFFICULTIES IN SCHOOL. THEY HAVE ALCOHOLIC PARENTS. THEY HAVE DIVORCES. THEY HAVE PROBLEMS GETTING ALONG WITH OTHER PEOPLE. BUT THEY DON'T GROW UP TO GO OUT AND MURDER A POLICE OFFICER IN COLD BLOOD FOR NO REASON.

WHERE IS THE CONNECTION BETWEEN ALEKSEY'S DISADVANTAGED BACKGROUND AND THE MURDER OF FRANKIE LINGARD YEARS AND YEARS LATER? WHAT DID FRANKIE LINGARD HAVE TO DO WITH THE FACT THAT BAYAN ALEKSEY HAD AN ALCOHOLIC FATHER OR HE COULDN'T GET ALONG WITH THE KIDS AT SCHOOL? NOTHING.

THERE IS NO CAUSE AND EFFECT RELATIONSHIP. IT'S TWO SEPARATE THINGS. Y'ALL HAVEN'T HEARD A PSYCHIATRIST OR PSYCHOLOGIST GET UP HERE AND TELL Y'ALL THAT BECAUSE OF ALEKSEY'S BAD BACKGROUND, HE'S GOT SOME KIND OF A MAJOR MENTAL ILLNESS THAT CAUSED HIM TO DO THIS STUFF.

IT ISN'T THERE. IT'S TWO UNRELATED THINGS. YOU HAVE AN UNFORTUNATE BACKGROUND BUT IT HAS NOTHING

WHATSOEVER TO DO WITH THE MURDER OF FRANKIE LINGARD. THERE IS NO CAUSE AND EFFECT RELATIONSHIP THERE. IT'S NOT IN THE RECORD. IT'S NOT IN EVIDENCE. Y'ALL SHOULD BASE YOUR DECISION ON THE EVIDENCE YOU HEARD IN THIS CASE.

WHAT BAYAN ALEKSEY DID ON NEW YEAR'S EVE, HE DID OF HIS OWN FREE WILL AND ACCORD BECAUSE THAT'S WHAT HE WANTED TO DO. THAT'S WHAT WAS BEST FOR BAYAN ALEKSEY ON THAT PARTICULAR OCCASION IN HIS MIND.

HE CHOSE TO TAKE THIS GUN FROM YELENA BATKILINA. HE CHOSE TO LOAD IT BECAUSE WE HAVE GOT HIS FINGERPRINTS ON THE CLIP. HE CHOSE TO PUT A ROUND IN THE CHAMBERS BECAUSE WE HAVE GOT HIS FINGERPRINTS ON TOP OF THE GUN.

HE CHOSE TO PUT IT IN THAT CAR WITH THOSE KIDS. WHEN FRANKIE LINGARD WALKED UP TO THAT CAR ON NEW YEAR'S EVE TO WRITE A TICKET OR GIVE A WARNING AND SAID, "HOW ARE YOU DOING, FOLKS," HE CHOSE TO SHOOT HIM FOUR TIMES, TO SHOOT HIM DOWN IN THE STREET. THAT'S BAYAN ALEKSEY.

LOOK AT LIFE IMPRISONMENT AS AN ALTERNATIVE TO THE DEATH PENALTY. IS THAT AN APPROPRIATE PUNISHMENT FOR THE HORROR STORY THAT Y'ALL HAVE BEEN SUBJECTED TO OVER THE LAST SEVERAL DAYS? IN THE MEANTIME FRANKIE LINGARD WAS IN HIS GAVE. HE WILL BE

THERE FOREVER BECAUSE OF THIS MAN HERE.

AS I SAID BEFORE, WHEN YOU THINK OF LIFE WITHOUT PAROLE AS AN ALTERNATIVE FOR THE DEATH PENALTY, LOOK AT HOW HE HAS ADAPTED TO JAIL. LOOK AT THE ONLY EVIDENCE OF HIS ADAPTABILITY TO JAIL, THAT BROKEN WINDOW AND THIS BROKEN PIECE OF FURNITURE AND HIS TRIP TO SAFEKEEPING.

LOOK AT THE EXTENT TO WHICH HE HAS GONE TO TO AVOID GOING TO JAIL. HE KILLED A POLICE OFFICER TO GO AVOID GOING TO JAIL. NOW HE WANTS Y'ALL TO SEND HIM TO JAIL.

THE DEFENSE WILL PROBABLY GET UP HERE AND TELL Y'ALL THAT LIFE WITHOUT PAROLE IS THE NEXT WORSE PENALTY TO THE DEATH PENALTY AND IT IS. THEY WILL BEG YOU. THEY WILL ASK YOU FOR MERCY.

THEY WILL ASK YOU TO GIVE HIM LIFE BECAUSE IT'S LIFE WITHOUT PAROLE AND THEY WILL TELL YOU THAT HE WILL DIE IN PRISON AN OLD MAN LATER AND THAT YOU SHOULD BRING BACK THE DEATH PENALTY IN THIS CASE.

THINK ABOUT THIS. IF A MAN GETS LIFE WITHOUT PAROLE AND HE DOES SOMETHING ELSE SHORT OF MURDER, IF HE INJURES ANOTHER INMATE IN PRISON, IF HE INJURES A GUARD, IF HE ASSAULTS A VISITOR TO THAT FACILITY, WHAT ARE THEY GOING TO DO WITH HIM?

THEY ARE GOING TO SAY, "WE WILL GIVE YOU

ANOTHER TEN YEARS ON TOP OF YOUR LIFE WITHOUT PAROLE." THERE WOULD BE NO CONTROLS OVER IT. A LIFE WITHOUT PAROLE SENTENCE IS GIVING HIM A BLANK CHECK TO GO OUT AND DO ANYTHING HE WANTS TO DO IN THAT PRISON SYSTEM SHORT OF ANOTHER HOMICIDE, AND THEY CAN'T GIVE HIM ONE MORE DAY.

IF HE DECIDES HE DOESN'T WANT TO FOLLOW THE RULES, IF HE DOESN'T WANT TO DO ANY OF THE PRISON WORK, WHAT ARE THEY GOING TO DO? GIVE HIM MORE TIME ON THE TOP OF LIFE WITHOUT PAROLE? THINK ABOUT THAT WHEN YOU DECIDE WHAT SENTENCE HE OUGHT TO GET.

AGAIN, JUDGE COTTINGHAM WILL TELL YOU THAT YOU CAN CONSIDER ANY STATUTORY OR NONSTATUTORY MITIGATING CIRCUMSTANCE THAT YOU THINK HAS COME UP IN THIS EVIDENCE.

EVEN IF YOU FIND OR IF YOU BELIEVE EVERYTHING THAT THE DEFENSE LAWYERS TELL YOU, THAT MR. ALEKSEY TELLS YOU, YOU CAN'T GET AROUND THE FACT THAT WE HAVE PROVEN AN AGGRAVATING CIRCUMSTANCE. SINCE WE HAVE DONE THAT, YOU CAN BRING BACK THE DEATH PENALTY IN THIS CASE IF IT'S YOUR WISH IF YOU THINK THAT'S THE APPROPRIATE SENTENCE.

YOU DON'T DO THAT BY COUNTING UP THE AGGRAVATING CIRCUMSTANCE AND COUNTING THE MITIGATING CIRCUMSTANCE. YOU LOOK AT EVERYTHING. YOU LOOK AT

THOSE. YOU LOOK AT THE VICTIM IMPACT. YOU LOOK AT HOW HE HAS CONDUCTED HIS LIFE. YOU LOOK AT THE KIND OF MAN HE IS. AND YOU LOOK AT THE CIRCUMSTANCE OF THE DEATH OF FRANKIE LINGARD.

IF THE DEFENSE GETS UP HERE AND TRIES TO SPREAD SOME OF THIS BLAME AROUND, TO THE PSYCHIATRISTS UP IN NEW YORK OR THE SCHOOL SYSTEM OR ALEKSEY'S FATHER OR GLORYVEE PEREZ, IF THEY TRY THAT AGAIN OR ANYBODY ELSE, REMEMBER THEY ARE NOT ON TRIAL HERE. BAYAN ALEKSEY IS ON TRIAL.

HE IS RESPONSIBLE. HE IS ACCOUNTABLE. HE IS THE ONLY PERSON ACCOUNTABLE FOR THE MURDER OR FRANKIE LINGARD. HE DID IT. NOBODY ELSE DID IT. Y'ALL AREN'T SITTING IN JUDGMENT OF ANYBODY BUT BAYAN ALEKSEY.

NOW, THE DEFENSE CALLED MRS. ALEKSEY UP HERE; AND AS I SAID BEFORE, SHE SEEMED LIKE A VERY NICE LADY. I AM SURE SHE DID HER BEST. THEY CALLED HER UP FOR ONE REASON AND THAT'S TO ELICIT SYMPATHY, TO TRY TO GET Y'ALL TO BASE A DECISION ON THIS CASE FOR A LIFE SENTENCE BECAUSE YOU FEEL SORRY FOR MRS. ALEKSEY.

WE ALL FEEL SORRY FOR HER. I AM SURE SHE TRIED HER BEST AND IT'S NOT HER FAULT THAT HER SON TURNED OUT TO BE A COLDBLOODED MURDERER. BAYAN

ALEKSEY PUT Y'ALL IN THE POSITION YOU ARE IN NOW TO HAVE TO MAKE THIS DECISION THAT YOU WILL BE MAKING THIS AFTERNOON OR TONIGHT, WHENEVER YOU REACH YOUR DECISION, NOT HIS MOTHER.

BAYAN ALEKSEY IS A GROWN MAN, 29 YEARS OLD. HE PUT HIS MOTHER IN THE POSITION OF HAVING TO GET UP HERE IN FRONT OF Y'ALL AND GO THROUGH THE EMOTIONAL TURMOIL SHE WENT THROUGH.

BAYAN ALEKSEY IS RESPONSIBLE FOR THIS WHOLE THING, FOR EVERY WITNESS THAT GOT UP HERE, FOR THE WHOLE WORKS, BY HIS ACT OF MURDER. HE IS THE ONLY ONE.

NOW, EVERYBODY HAS A PARENT OR A LOVED ONE WHO CARES FOR THEM, NO MATTER HOW BAD THEY ARE. LET'S SUPPOSE MR. ALEKSEY DIDN'T HAVE A MOTHER THAT FELT LIKE COMING HERE.

WOULD IT MAKE ANY SENSE IF I GOT UP HERE AND SAID, "WELL, THIS DEFENDANT'S MOTHER OR FATHER DIDN'T EVEN SHOW UP FOR HIS CAPITAL MURDER TRIAL. THEREFORE Y'ALL OUGHT TO BRING BACK A DEATH PENALTY."

THAT WOULDN'T MAKE A BIT OF SENSE. IT DOESN'T MAKE ANY MORE SENSE TO IMPOSE A LIFE SENTENCE JUST BECAUSE SOMEBODY COMES IN AND TALKS FOR THEIR SON. SHE IS HIS MOTHER. SHE LOVES HIM. WE

UNDERSTAND THAT. WE FEEL FOR HER. BUT YOU CANNOT AND SHOULD NOT LET THAT INFLUENCE YOUR VERDICT. YOUR VERDICT HAS TO DO JUSTICE.

I ASK Y'ALL NOT TO FORGET WHO THE VICTIM IS IN THIS CASE. THE VICTIM IS FRANKIE LINGARD AND THESE ARE VICTIMS OUT HERE TOO. FRANK LINGARD, DORA LINGARD, FRANKIE LINGARD'S SISTER, HIS DAUGHTER AND THESE OTHER PEOPLE OUT HERE THAT LOVED HIM AND CARED FOR HIM. THEY ARE THE VICTIMS.

I WANT Y'ALL TO REMEMBER WHAT THIS IS, WHAT THIS PROCESS IS. IT'S NOT A REHABILITATION HEARING. IT'S NOT AN EXCUSE HEARING. IT'S A PENALTY HEARING. WE ARE HERE TO DECIDE WHAT THE APPROPRIATE PENALTY IS.

IF THE DEFENSE ATTORNEYS GET UP HERE AND SHOW Y'ALL A PICTURE OF THE INSIDE OF THE ORANGEBURG JAIL CELL WHERE HE BROKE THAT WINDOW, REMEMBER THAT IS THE ORANGEBURG JAIL.

THERE HAS BEEN NO EVIDENCE THAT THAT HAS ANY BEARING WITH THE LIFESTYLE HE WOULD UNDERGO IF HE IS SENT TO THE GENERAL POPULATION IN THE DEPARTMENT OF CORRECTIONS.

WHEN THEY GET UP HERE AND TELL Y'ALL HOW SEVERE A LIFE WITHOUT PAROLE SENTENCE IS, THAT HE WILL BE IN PRISON FOR THE REST OF HIS LIFE, REMEMBER

THEY ARE BEGGING YOU FOR THAT SENTENCE. THAT IS THE BEST THING Y'ALL CAN DO FOR BAYAN ALEKSEY.

THE BEST THING Y'ALL DO FOR BAYAN ALEKSEY TODAY IS TO GIVE HIM A LIFE WITHOUT PAROLE SENTENCE, BUT THIS ISN'T ABOUT WHAT IS BEST FOR BAYAN ALEKSEY. THIS IS ABOUT JUSTICE. THIS IS ABOUT THE MOST APPROPRIATE PUNISHMENT FOR BAYAN ALEKSEY.

WHAT I'M TALKING ABOUT, LADIES AND GENTLEMEN, IS ACCOUNTABILITY. UNDER OUR JUDICIAL SYSTEM AND FOR OUR SOCIETY ITSELF TO WORK, A PERSON HAS GOT TO BE HELD ACCOUNTABLE FOR THEIR ACTIONS.

BAYAN ALEKSEY, Y'ALL HEARD THAT FIRST TAPE PLAYED IN THE GUILT PHASE OF THIS TRIAL. BAYAN ALEKSEY TRIED TO BLAME THIS MURDER ON AN INNOCENT WOMAN THAT HAD CHILDREN WHOSE MISTAKE WAS BEING TAKEN IN BY SOMEBODY LIKE HIM.

HE WAS WILLING TO PUT HER OVER IN THAT SEAT WHERE HE IS NOW. THAT'S THE KIND OF MAN BAYAN ALEKSEY IS. THIS ISN'T NEW TO HIM. IT ISN'T THE FIRST TIME HE HAS DONE THAT.

I CALL TO YOUR ATTENTION WHAT HAPPENED TO JAIME FARRELL. SHE WAS THE SECOND WITNESS FROM NEW YORK. IF YOU WILL RECALL WHAT HE DID, HE STOLE TWO CHECKS FROM THERESA MCCANN, FORGED MS. FARRELL'S NAME ON IT. BY THEN HE WAS SEEING BOTH OF THEM AT THE

SAME TIME.

HE TELLS MS. FARRELL, "I'VE GOT MONEY COMING INTO YOUR ACCOUNT. I'VE GOT $10,000 I AM WIRING INTO YOUR ACCOUNT." HE CONNED HER INTO OPENING THAT ACCOUNT. HE SAID, "I AM IN BANKRUPTCY. I WANT YOU TO OPEN THE BANK ACCOUNT." SHE DID IT BECAUSE SHE LOVED HIM. SHE WAS TAKEN IN BY HIM.

SO ALEKSEY DEPOSITS THESE TWO FORGED CHECKS IN HER ACCOUNT. THEY CREDIT THE ACCOUNT. HE PULLS THE $10,000 OUT, HE'S GONE AND WHO GETS ARRESTED? JAIME FARRELL.

THAT'S HIS MODUS OPERANDI. THAT'S THE WAY HE OPERATES. HE TRIED TO DO IT IN THIS CASE IN THAT FIRST TAPED STATEMENT. HE DID THE SAME THING TO SARAH PIVERO. HE DID THE SAME THING TO EVERY WOMAN HE HAS HAD ANY CONTACT WITH THAT ENDS UP LOSING.

LADIES AND GENTLEMEN, I'M A PROSECUTOR. I AM NOT A PSYCHIATRIST. I AM NOT A PSYCHOLOGIST. I AM NOT A SOCIAL WORKER. I CAN'T TELL Y'ALL HOW BAYAN ALEKSEY GOT TO BE THE WAY HE IS NOW.

IT'S NOT MY JOB. IT'S NOT YOUR JOB. OUR JOB, OUR PROBLEM, IS ONCE HE GETS TO BE THE WAY HE IS, ONCE HE IS THE MAN Y'ALL HAVE HEARD ABOUT, ONCE HE IS IN OUR MIDST, WHAT DO WE DO WITH HIM? THAT'S THE QUESTION. NOT HOW HE GOT TO BE THE WAY HE IS,

BUT WHAT DO WE DO WITH HIM?

THIS MURDER WAS HORRIBLE. IT WASN'T SOME CRIME IN THE HEAT OF PASSION. IT WASN'T A CRIME OF IMPULSE. IT WAS A COLDBLOODED, CALCULATED MURDER. LADIES AND GENTLEMEN, IF YOU KILL THAT WAY, YOU FORFEIT YOUR RIGHT TO LIVE.

HANK AARON WAS ASKED HOW HE MADE SO MANY HOME RUNS, HOW HE HIT SOME MANY HOME RUNS. HE SAID, "IT'S EASY. I KEEP MY EYE ON THE BALL." THAT'S WHAT I WILL ASK Y'ALL TO DO.

AS YOU LISTEN TO THE DEFENSE ARGUMENT, KEEP FOCUSED, KEEP YOUR EYE ON THE BALL WHEN YOU FOCUS ON THE ISSUE OF WHAT IS THE APPROPRIATE PUNISHMENT FOR INTENTIONALLY COMMITTING THE MURDER OF A LAW ENFORCEMENT OFFICER HERE IN ORANGEBURG COUNTY.

PLEASE DON'T BE DISTRACTED BY DEFENSE TACTICS IF THEY PORTRAY BAYAN ALEKSEY AS A VICTIM AND BLAME OTHER FOR HIS ACTIONS. AS I SAID BEFORE, THE PERSON TO BLAME IS BAYAN ALEKSEY.

I ASK YOU TO USE YOUR COMMON SENSE. FOLLOW JUDGE COTTINGHAM'S INSTRUCTIONS. YOUR DECISION SHOULD BE BASED ON THE CIRCUMSTANCES OF THE CRIME, THE MURDER OF FRANKIE LINGARD, AND THE CHARACTERISTICS OF THE DEFENDANT, THE KIND OF PERSON BAYAN ALEKSEY IS.

ASK YOURSELVES WHAT IS IT ABOUT THE CIRCUMSTANCES OF BAYAN ALEKSEY'S COLDBLOODED MURDER OF FRANKIE LINGARD THAT WOULD MAKE ME AS A JUROR WANT TO REWARD HIM WITH A LIFE SENTENCE? WHAT IS IT ABOUT THE WAY BAYAN ALEKSEY HAS CONDUCTED HIS ENTIRE ADULT LIFE THAT WOULD MAKE Y'ALL WANT TO REWARD HIM WITH A LIFE SENTENCE?

HE HAS BEEN A CON MAN ALL OF HIS ADULT LIFE. DON'T LET HIM CON YOU INTO A LIFE SENTENCE. THERE REALLY IS NO CREDIBLE MITIGATING EVIDENCE IN THIS CASE.

BAYAN ALEKSEY HAS FOREVER DEPRIVED FRANKIE LINGARD'S CHILDREN OF THEIR FATHER. HE HAS DEPRIVED HIS PARENTS SEATED OVER HERE OF THEIR SON THEY LOVED VERY MUCH.

HE HAS DEPRIVED THE CITIZENS OF ORANGEBURG COUNTY OF AN EXEMPLARY CITIZEN, A ROLE MODEL FOR YOUNG PEOPLE IN THIS COMMUNITY. FRANKIE LINGARD REPRESENTED THE VERY BEST IN THIS COMMUNITY. HE TOOK THAT AWAY.

THE ONLY PLACE THOSE TROOPERS AND HIS FAMILY CAN GO SEE FRANKIE LINGARD IS TO GO TO THE CEMETERY AND VISIT HIS GRAVE, AND IT'S BECAUSE OF THAT MAN OVER THERE.

THAT NEW YEAR'S DAY DINNER THAT

MRS. LINGARD FIXED THAT NIGHT WAS NEVER EATEN. THE FAMILY DIDN'T CELEBRATE NEW'S YEARS. WHEN FRANKIE LINGARD'S DAUGHTER FINISHES HIGH SCHOOL, HER FATHER WON'T BE THERE. WHEN SHE GRADUATES FROM COLLEGE, HE WON'T BE THERE. WHEN SHE IS MARRIED, HER FATHER WON'T BE THERE TO GIVE HER AWAY BECAUSE THIS MAN HERE SNUFFED HIS LIFE OUT.

THAT NEPHEW OF THE SISTER'S WHO WILL BE BORN IN ABOUT A WEEK WILL NEVER KNOW HIS UNCLE. THERE WILL BE A VOID IN THEIR LIVES UNTIL THEY DIE, AND THEY WILL NEVER UNDERSTAND WHY BAYAN ALEKSEY SHOT FRANKIE LINGARD DOWN IN COLD BLOOD. THERE IS NO EXPLANATION. THERE IS NO EXCUSE. THERE IS NO JUSTIFICATION.

WHEN Y'ALL DELIBERATE THIS CASE, I WANT YOU TO THINK ABOUT THIS UNIFORM WHEN YOU REACH YOUR DECISION. FRANKIE LINGARD THOUGHT SO MUCH OF BEING A HIGHWAY PATROLMAN AND THAT UNIFORM THAT WHEN HE WENT TO HIS SISTER'S WEDDING, HE DIDN'T PUT ON A COAT AND TIE, HE WORE HIS HIGHWAY PATROL UNIFORM.

THE MURDER OF A LAW ENFORCEMENT OFFICER IN THE LINE OF DUTY IS NOT JUST A CRIME AGAINST THAT OFFICER, IT'S A CRIME AGAINST CIVILIZATION ITSELF. IT'S A CRIME AGAINST OUR SOCIETY AND IT DESERVES THE ULTIMATE PUNISHMENT.

I SUBMIT TO YOU, LADIES AND GENTLEMEN, THERE IS NOTHING THAT HAS COME OUT IN THIS TRIAL, THE TESTIMONY YOU HAVE HEARD ON WHICH YOU ARE SWORN TO BASE A DECISION, SUFFICIENT TO JUSTIFY ANYTHING LESS THAN THE DEATH PENALTY IN THIS CASE.

BAYAN ALEKSEY DESERVES THE ULTIMATE SENTENCE TO BE IMPOSED BY A JURY OF THIS STATE FOR THE CRIME OF MURDER. THE EVIDENCE SHOWS THAT BAYAN ALEKSEY IS A THIEF, A CON MAN. THIS MURDER WAS MALICIOUS BUT IT'S ALSO COWARDLY. HE IS A COWARD. IT WAS A COLDBLOODED MURDER. ALL THAT IS UNDISPUTED IN THIS RECORD.

Y'ALL ARE GOING TO NEED TO BRING BACK A VERDICT AND WHEN YOU COME OUT HERE IN OPEN COURT AND ANNOUNCE THAT VERDICT, YOU CAN LOOK BAYAN ALEKSEY IN THE EYE AND RENDER THAT VERDICT. AND YOU SHOULD BE ABLE TO LOOK INTO THE EYE OF EVERYBODY IN THIS COURTROOM AND LET THEM KNOW BY THIS VERDICT JUSTICE HAS BEEN DONE IN ORANGEBURG COUNTY.

JUDGE COTTINGHAM IS GOING TO TELL Y'ALL THAT YOU CAN BASE YOUR DECISION FOR A LIFE SENTENCE ON ANY REASON OR NO REASON AT ALL, PURELY AS AN ACT OF MERCY. YOU CAN DO THAT.

LADIES AND GENTLEMEN, YOU CANNOT EXTEND MERCY TO BAYAN ALEKSEY AND STILL DO JUSTICE TO THIS

CASE. AND WHAT IS JUSTICE? JUSTICE SIMPLY MEANS THAT THE PUNISHMENT FITS THE CRIME. ONLY ONE PUNISHMENT FITS THE CRIME IN THIS CASE.

YOUR TASK AS JURORS WHEN YOU GO BACK AND DELIBERATE IS AN AWESOME TASK. I KNOW WHAT I AM ASKING Y'ALL TO DO IS NOT GOING TO BE EASY. IT'S NOT SUPPOSED TO BE EASY.

LIKE I SAID IN THE FIRST PART OF THIS TRIAL, THE 12 OF Y'ALL WERE SELECTED OUT OF OVER 350 JURORS ORIGINALLY SUMMONED BY BOTH SIDES AS BEING FAIR AND IMPARTIAL JURORS WHO WOULD HAVE THE ABILITY ON BEHALF OF THE CITIZENS OF ORANGEBURG COUNTY TO DO YOUR FULL DUTY, TO DO JUSTICE TO THIS CASE. I ENCOURAGE YOU TO DO YOUR FULL DUTY.

I WILL SIT DOWN IN A FEW MINUTES. I HAVE ONE REQUEST I WANT TO MAKE OF Y'ALL BEFORE I SIT DOWN. ALL THE EVIDENCE THAT HAS COME OUT IN THIS TRIAL, AND I THINK I PUT IN OVER 100 PIECES OF EVIDENCE, IS GOING TO GO BACK WITH Y'ALL TO THAT JURY ROOM TO MAKE WHATEVER USE Y'ALL THINK YOU NEED TO MAKE OF IT TO HELP YOU MAKE YOUR DECISION IN THIS CASE.

SOME OF THESE PICTURES THAT WERE IN EVIDENCE, PUT INTO EVIDENCE, ARE NOT PRETTY TO LOOK AT. IF YOU WANT TO, YOU CAN TURN THEM FACE DOWN AND

NOT EVEN LOOK AT THEM. BUT IF YOU DO THAT, YOU WILL BE TURNING A BLIND EYE TO THE UGLY REALITY OF THIS CASE. YOU WILL BE TURNING A BLIND EYE TO WHAT THIS MAN ACTUALLY DID.

THIS (INDICATING) IS THE BEFORE. THIS IS THE LAST PICTURE OF FRANKIE LINGARD IN HIS LIFE. IT WAS TAKEN THIS PAST CHRISTMAS. THIS (INDICATING) IS THE AFTER. THAT'S WHAT THIS CASE IS ABOUT. THIS IS BAYAN ALEKSEY'S HANDIWORK HERE. THIS IS WHAT HE DID.

WHAT I WILL ASK Y'ALL TO DO WHEN YOU GO BACK TO DELIBERATE IS TURN THOSE PICTURES FACE UP SO YOU WILL BE DELIBERATING THE TRUE FACTS AND THE TRUE REALITY OF THIS CASE.

AS I SAID BEFORE, Y'ALL HAD IN MIND A CASE SO BAD, A PERSON SO BAD THAT IF IT JUSTIFIED THE DEATH PENALTY. THIS IS THAT CASE. THIS IS THAT PERSON.

AGAIN, EACH OF Y'ALL RAISED YOUR HANDS AND YOU TOOK A SOLEMN OATH. YOU SAID, "I CAN SIGN MY NAME TO THAT DEATH VERDICT UNDER THE PROPER CIRCUMSTANCES."

YOUR VERDICT, WHATEVER IT IS, IS GOING TO SEND A MESSAGE. I ASK THAT MESSAGE THAT YOU SEND THROUGH YOUR VERDICT IS THAT THE JURORS OF ORANGEBURG

COUNTY ARE NOT GOING TO TOLERATE THIS KIND OF A COLD, BRUTAL, INHUMAN MURDER IN OUR COUNTY WITHOUT THAT MURDERER PAYING THE ULTIMATE PRICE ALLOWED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA.

ONLY ONE VERDICT FORM CAN SEND THAT MESSAGE. I ASK YOU, LADIES AND GENTLEMEN, TO HAVE THE COURAGE AS JURORS TO DO YOUR FULL DUTY IN THIS CASE. THANK YOU.

THE COURT: MR. STONE.

MR. STONE: YES, SIR. I AGREE WITH A GOOD BIT OF WHAT THE SOLICITOR SAID. FRANKIE LINGARD IS DEAD. HIS FAMILY HAS HAD A TREMENDOUS LOSS. YOUR VERDICT WILL NOT CHANGE THAT. YOUR DECISION WILL NOT AFFECT THAT.

BUT I STRONGLY DISAGREE WITH THE SOLICITOR ON A COUPLE OF THINGS. THE FIRST THING I DISAGREE WITH AND PROBABLY THE MAIN THING IS THAT THE BEST THING FOR BAYAN ALEKSEY IS FOR ME TO COME UP HERE AND ASK FOR LIFE IN PRISON.

THAT IS NOT THE CASE. IF I CAME UP HERE AND ASKED YOU TO GO BACK IN YOUR JURY ROOM AND COME BACK WITH A VERDICT OF MURDER WITH NO AGGRAVATING CIRCUMSTANCE, THAT'S THE BEST THING FOR ERANKIE LINGARD -- EXCUSE ME -- FOR BAYAN ALEKSEY.

THAT WOULD BE THIRTY YEARS. THAT MEANS HE

WOULD GET OUT OF JAIL WHEN HE IS 59. I WILL NOT ASK YOU TO DO THAT BECAUSE THAT'S NOT THE TRUTH. IT'S NOT RIGHT. IT'S NOT JUSTICE AND IT'S NOT THE TRUTH. I WILL NOT ASK YOU TO DO IT.

THERE IS AN AGGRAVATING CIRCUMSTANCE IN THIS CASE, AND IT'S THE FACT THAT FRANKIE LINGARD ON THAT NIGHT WAS WEARING THIS JACKET. THAT'S AN AGGRAVATING CIRCUMSTANCE AND THAT'S THE TRUTH.

YOUR DECISION SHOULD VERY WELL BE THAT THERE IS AN AGGRAVATING CIRCUMSTANCE. MAKE NO MISTAKE ABOUT IT, ONCE YOU FIND THAT DECISION, WHICH YOU WILL, BAYAN ALEKSEY, THIS 29 YEAR OLD OVER HERE WHO IS A MURDERER, WILL DIE IN PRISON. HE WILL DIE IN PRISON. THE QUESTION IS WHEN. THAT'S YOUR DECISION, NOT IF HE WILL DIE IN PRISON BUT WHEN.

I WILL AGREE WITH THE SOLICITOR ON SOME THINGS. HE SAID THIS WAS A LONG ORDEAL. IT SURE WAS. THIS WAS ONE OF THE HARDEST THINGS I AM SURE MOST OF YOU HAVE EVER BEEN THROUGH.

I, LIKE YOU, HAVE BEEN LIVING IN A HOTEL ROOM SINCE ALL OF THIS STARTED. I, LIKE YOU, HAVE FAMILIES. MY ADVANTAGE IS I HAVE GOTTEN TO SEE MINE A COUPLE OF TIMES.

AND YOU KNOW WHAT? IT'S WORSE TO SEE YOUR FAMILY AND NOT TO BE WITH THEM, TO TALK TO THEM. I

DON'T KNOW WHETHER YOUR FAMILY IS LIKE MINE OR NOT. I HAVE A WIFE AND A TWO-MONTH-OLD CHILD. I HAVE SEEN THEM A COUPLE OF TIMES. THEN THEY HAVE LEFT AND I HAVE STILL BEEN HERE AND THAT'S TOUGH.

WE HAVE ALL BEEN CAPTIVE. BUT THAT PRISON PICTURE THAT YOU SAW UP THERE, THAT'S BAYAN ALEKSEY'S HOTEL ROOM FOR THE REST OF HIS LIFE UNTIL HE DIES. THERE IS NO QUESTION ABOUT THAT.

HIS MOTHER TESTIFIED THAT THEY WERE CLOSE. THEY TALK ALL THE TIME. YOU HAVE EVERY RIGHT TO HATE BAYAN ALEKSEY. YOU HAVE EVERY RIGHT TO. BUT WHAT HAS SHE DONE?

SHE CAME DOWN HERE BY HERSELF. SHE SAT HERE THROUGH ALL OF THIS BY HERSELF. SHE HAS, FOR WHATEVER IT'S WORTH, BAYAN ALEKSEY AND THAT'S IT. IF YOU DON'T WANT TO SHOW BAYAN ALEKSEY MERCY, THAT'S FINE. IF YOU WANT TO HATE BAYAN ALEKSEY, THAT'S FINE, TOO. BUT DON'T HATE HIS MOM. FOR WHATEVER IT'S WORTH, IT'S ALL SHE HAS GOT.

PLEASE DON'T MAKE THIS MISTAKE. NO MATTER WHAT YOU DO, YOU CANNOT CHANGE THIS FOR THE LINGARDS. YOUR DECISION WILL NOT AFFECT THEM, AS SORRY AS WE ALL ARE ABOUT THAT. YOUR DECISION ONLY AFFECTS BAYAN ALEKSEY AND HIS MOM. THAT'S IT.

DEFENDANT ALEKSEY: FIRST I WANT TO SAY

TO THE LINGARD FAMILY THAT I DIDN'T DO THIS, EVEN THOUGH I SIT HERE AS A CONVICTED MURDERER. TO MY MOM, I'M SORRY FOR PUTTING YOU THROUGH THIS.

I AM TELLING YOU AND I WILL SAY THIS. EVERYTHING WAS BASED ON ME. NOTHING CAME OUT ABOUT GLORYVEE PEREZ. A LOT HAPPENED IN THAT CAR THAT NIGHT AND NONE OF YOU KNOW. IT WAS NOT EVEN INTRODUCED IN MY TRIAL.

A LOT OF THINGS I MADE HAVE DONE WRONG AND I APOLOGIZE TO EVERYBODY I HAVE HURT IN THE PAST, BUT THIS IS SOMETHING I HAVE NEVER DONE. GLORYVEE WAS THE ONE THAT TOOK AN INNOCENT LIFE AND AN INNOCENT FATHER FROM THE LINGARD FAMILY. I APOLOGIZE FOR HER ACTIONS BUT THAT IS SOMETHING I CAN'T CONTROL.

THE NIGHT BEFORE I LEFT TO COME DOWN HERE, I SAW MY MOTHER. AND MY MOM TOLD ME, "BAYAN, I HAVE A BAD FEELING ABOUT YOU GOING." THAT NIGHT I ALSO HAD A BAD FEELING AND WE WERE SUPPOSED TO LEAVE AND I DIDN'T GO. I ENDED UP IN NEW YORK, OKAY?

THE NEXT DAY, THAT MORNING WHEN WE LEFT, I HAD A VERY BAD FEELING. I KNEW SOMETHING WAS WRONG BUT GLORIA CONVINCED ME AND I RELUCTANTLY WENT DOWN, DROVE DOWN TO FLORIDA. I TRIED TO HELP HER.

WE DROVE DOWN. SHE ENDED UP IN THE DRIVER'S SEAT AND SHE SHOT TROOPER LINGARD. IN THE

PAST I HAVE GOTTEN PULLED OVER BY POLICE. I NEVER SHOT OR HURT ANY POLICE OFFICER IN MY LIFE.

REGARDLESS OF HOW MANY NAMES ARE ON THAT BOARD, I NEVER HARMED ANYBODY. AND AGAIN I SAY TO THE LINGARD FAMILY, I'M SORRY FOR WHAT SHE HAS DONE. MOM, I'M SORRY, TOO. THAT'S ALL I HAVE TO SAY.

MR. SIMS: MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY, AS I STAND HERE BEFORE YOU, YOU MADE A DECISION A COUPLE OF DAYS AGO. I AM NOT -- AND I TOLD YOU ON THAT DAY THAT WHATEVER YOUR DECISION WAS, NO ONE COULD ARGUE WITH IT. I WILL NOT STAND UP HERE AND ARGUE WITH YOU ON YOUR DECISION.

THE JUDICIAL PROCESS HAS BEEN MOVING ON. YOU MADE YOUR DECISION. I WILL NOT TALK ABOUT THAT. BUT WHAT I AM GOING TO TALK ABOUT IS IN THIS STATE WE HAVE A DOCTRINE. THAT DOCTRINE IS CALLED THE HAND OF ONE IS THE HAND OF ALL.

IT'S USED ALL THE TIME IN THE STATE OF SOUTH CAROLINA WHEN THERE ARE TWO OR MORE PEOPLE INVOLVED IN A CRIME. IT IS A CONCEPT THAT IS USED BY THE STATE WHEN THEY WANT TO PROSECUTE EVERYONE INVOLVED, EVERYONE IN THE CAR. WHEN THEY WANT TO PROSECUTE THOSE PERSONS, THEY SAY THE HAND OF ONE IS THE HAND OF ALL.

VERY BRIEFLY I AM GOING TO SAY TO YOU THAT

YOU HAD THE OPPORTUNITY TO HEAR GLORYVEE ON THE STAND. THERE IS A PICTURE THAT WAS INTRODUCED INTO EVIDENCE BY THE STATE WHICH SHOWED A HOLSTER DOWN BETWEEN THE CONSOLE OF THE CAR. IN THAT HOLSTER OR IN HOLSTERS YOU PUT GUNS.

GLORYVEE'S OWN TESTIMONY SAID THAT SHE HAD BEEN AWAKENED. THIS IS WHAT SHE SAID. HER OWN TESTIMONY SAID THAT AS THEY WERE PULLING OFF, SHE SAID, "THEY WERE SHOOTING AT US. THEY WERE SHOOTING AT US." AND SHE SAID BAYAN SAID, "NO, I YOU SAW HIM GO DOWN."

BUT THEY WANT YOU TO THINK THAT GLORYVEE HAD ABSOLUTELY NOTHING TO DO WITH THIS CASE. I RAISE THAT QUESTION TO YOU BECAUSE I WANT YOU TO ASK A QUESTION OF YOURSELF: IF YOU ARE GOING TO KILL ONE WHILE THE OTHER WALKS THE STREET, NO CHARGES, NO NOTHING. THAT'S SOMETHING YOU WILL HAVE TO DEAL WITH.

LET'S TALK ABOUT THE AGGRAVATING CIRCUMSTANCE IN THIS CASE. THE AGGRAVATING CIRCUMSTANCE IN THIS CASE IS THAT TROOPER LINGARD WAS A POLICE OFFICER IN THE STATE OF SOUTH CAROLINA IN THE PERFORMANCE OF HIS JOB.

I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT THERE ARE MANY, MANY, MANY FAMILIES IN SOUTH CAROLINA

WHO ARE HURTING BECAUSE THEIR LOVED ONES HAVE BEEN MURDERED. LOOK AT THE DOCKET IN ORANGEBURG COUNTY. LOOK AT THE DOCKET IN DORCHESTER COUNTY. LOOK AT THE DOCKET STATEWIDE AS TO THE NUMBER OF MURDERS THAT ARE ON THE BOOKS.

THOSE FAMILIES ARE HURTING. THEY HAVE LOST A LOVED ONE BUT THEY DON'T HAVE THE OPPORTUNITY TO COME IN AND ASK A JURY TO KILL THE PERSON WHO KILLED THEIR LOVED ONE BECAUSE THERE ARE NO AGGRAVATING CIRCUMSTANCES. THEY ARE NOT POLICE OFFICERS. THERE'S NO AGGRAVATING CIRCUMSTANCE.

IT WASN'T COMMITTED IN THE COURSE OF AN ARMED ROBBERY OR RAPE OR IT WASN'T COMMITTED IN THE PROCESS OF TORTURE; BUT NO LESS THAT PERSON IS DEAD AND NO LESS WHEN THAT DEFENDANT IS FOUND GUILTY, HE WILL GO TO JAIL FOR LIFE.

WHAT IF THE SAME TROOPER LINGARD, WHO IS A GOOD MAN, VERY GOOD MAN, VERY GOOD POLICE OFFICER, VERY GOOD FATHER, SON, BUT TAKE THE SCENARIO ONE STEP FURTHER THAT HE HAD NOT BEEN ON DUTY. YOU WOULDN'T BE HERE AT THIS STAGE OF THIS TRIAL TODAY BECAUSE OF THE FACT THAT THERE WOULD BE NO AGGRAVATING CIRCUMSTANCE.

THE SOLICITOR BOUGHT IN THERESA MCCANN. WOULD YOU KILL SOMEONE BECAUSE THEY TOOK MONEY FROM

THERESA MCCANN? THE SOLICITOR BOUGHT IN LISA WATSON. WOULD YOU KILL SOMEONE BECAUSE THEY TOOK MONEY FROM LISA WATSON?

THE SOLICITOR BROUGHT IN SARAH PIVERO. WOULD YOU KILL SOMEONE BECAUSE THEY TOOK MONEY FROM SARAH PIVERO? THE SOLICITOR BOUGHT IN JAIME FARRELL. AND I HAVE TO ASK THAT SAME QUESTION. WOULD YOU KILL SOMEONE BECAUSE THEY TOOK MONEY FROM JAIME FARRELL?

ALL OF THOSE LADIES, EVEN THOUGH THEY LOST MONEY -- AND I DON'T DIMINISH THAT FOR ONE MOMENT -- BUT THEY WERE INVOLVED IN A SITUATION AND THEY ENJOYED THAT SITUATION. BUT THE SOLICITOR WANTS TO BRING THAT INFORMATION IN HERE TO YOU TO ADD ADDITIONAL EVIDENCE IN THE CASE.

THEY CAN'T TELL YOU ANYTHING ABOUT WHAT HAPPENED IN ORANGEBURG COUNTY ON DECEMBER 31ST. THEY DON'T KNOW OF ANYTHING THAT HAPPENED IN ORANGEBURG COUNTY ON DECEMBER 31ST.

THEY WERE BROUGHT IN FOR ONE PURPOSE AND ONE PURPOSE ONLY, AND THAT IS TO INFLAME YOUR PASSIONS, TO GET YOU UPSET AND RILED UP. BUT YOU HAVE TO ASK YOURSELF: IS THAT WORTH YOUR GOING BACK AND KILLING A PERSON OVER?

SOLICITOR BAILEY: YOUR HONOR, I HAVE HELD OFF OBJECTING TO MR. SIMS' ARGUMENT, BUT HE HAS ON

SEVERAL OCCASIONS TOLD THIS JURY THEY ARE GOING TO BE KILLING A PERSON. I DON'T THINK THAT IS APPROPRIATE, THAT THEIR VERDICT --

THE COURT: I WILL LET THE JURY GO OUT JUST A MOMENT.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: MR. SIMS, I HAVE MADE THE NOTE, TOO. YOU ARE ASKING THIS JURY WOULD THEY KILL SOMEONE BECAUSE HE STOLE FROM THESE VARIOUS WOMEN. THE STATE OF SOUTH CAROLINA IS NOT ASKING THAT.

THEY ARE ASKING THAT HE BE PUNISHED FOR THE DEATH OF SERGEANT LINGARD. SO I THINK YOU ARE GOING BEYOND THAT WHEN YOU ARE ASKING HIM WOULD THEY KILL SOMEONE BECAUSE HE STOLE FROM THESE WOMEN. I DON'T THINK THAT IS APPROPRIATE.

MR. SIMS: YOUR HONOR, MAY I BE HEARD ON THAT ISSUE?

THE COURT: SURELY.

MR. SIMS: YOUR HONOR, THE STATE HAS BROUGHT THEM IN AS A PART OF THEIR CASE IN CHIEF.

THE COURT: AS AGAINST THIS DEFENDANT.

MR. SIMS: AS AGAINST THAT DEFENDANT. THEY HAVE PUT THEM UP AND THEY HAVE USED THAT AS A CHARACTER TRAIT.

THE COURT: I HAVE NO PROBLEMS WITH THE

THRUST OF YOUR ARGUMENT. JUST DON'T SAY, "WOULD YOU KILL SOMEONE BECAUSE THEY STOLE FROM THESE WOMEN? THAT'S WHAT THE STATE OF SOUTH CAROLINA SEEKS." I WOULD BE GLAD TO HEAR FROM YOU.

SOLICITOR BAILEY: YOUR HONOR, MY OBJECTION IS HIS REFERENCE TO THIS JURY KILLING ANYBODY. THEIR DUTY IS TO RENDER A VERDICT FORM WHICH MAY BE FOR DEATH AND MAY BE FOR LIFE. THEY ARE NOT BEING ASKED BE KILL ANYBODY.

THE COURT: WELL, I DON'T -- TECHNICALLY THEY ARE BEING ASKED TO TAKE THE LIFE OF THIS DEFENDANT.

MR. SIMS: THANK YOU.

THE COURT: I WILL LET THE JURY MAKE THAT DETERMINATION. DO NOT ARGUE THAT THEY ARE BEING ASKED TO KILL HIM BECAUSE HE STOLE FROM THESE WOMEN.

MR. SIMS: YES, SIR.

THE COURT: THAT IS MY CONCERN.

MR. SIMS: YES, SIR.

THE COURT: BRING THE JURY BACK.

BAILIFF: WE HAVE ONE IN THE BATHROOM.

THE COURT: MR. SIMS, I APOLOGIZE FOR THAT INTERRUPTION BUT WE NEEDED THAT CLARIFIED.

(PAUSE.)

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: YOU MAY CONTINUE.

MR. SIMS: MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY, YOU HEARD A LOT OF THINGS ABOUT BAYAN ALEKSEY IN THIS CASE. YOU HAVEN'T HEARD OF ANY CONVICTIONS. YOU HEARD OF CHARGES THAT HE MAY HAVE. AND YOU HAVE HEARD OF THE FACT -- AND WE DIDN'T HIDE THAT FROM YOU IN THE FIRST CASE.

NOBODY TRIED TO HIDE ANYTHING FROM YOU IN THE FIRST CASE. WE BROUGHT OUT TO YOU THAT HE HAD PRIOR CHARGES AGAINST HIM. THAT WAS NOT SOMETHING THAT WE TRIED TO HIDE. WE DIDN'T TRY TO HIDE IT. WE NEVER TRIED TO MAKE HIM INTO BE A CHOIR BOY.

WE DID PUT UP A DEFENSE AND YOU HAD THE OPPORTUNITY TO HEAR HIM A FEW MOMENTS AGO. THE POINT THAT WE WANT TO MAKE TO YOU, AND I THINK IT HAS BEEN ADEQUATELY DONE, IS THAT IN THIS SITUATION THE APPROPRIATE SENTENCE IS LIFE WITHOUT PAROLE IN PRISON.

YOU CAN REST ASSURED THAT IF YOU COME BACK WITH A VERDICT OF LIFE IMPRISONMENT, BAYAN ALEKSEY WILL DIE IN PRISON IN THE STATE OF SOUTH CAROLINA.

I CANNOT END MY SUMMATION TO YOU WITHOUT TALKING TO YOU ABOUT HIS MOTHER. YES, I AM GOING TO TALK TO YOU ABOUT HIS MOTHER BECAUSE HE DOES HAVE

ONE.

SHE IS NOT JUST SOMEBODY THAT WE TALK ABOUT. SHE IS NOT JUST A PERSON WHO IS OUT THERE AND YOU HAVE NOT HEARD ANYTHING FROM OR HAVE NOT SEEN ANYTHING ABOUT.

SHE TOOK THAT STAND RIGHT THERE. SHE TURNED TOWARDS YOU AND SHE TOLD YOU ABOUT BAYAN. ONE THING WAS VERY CLEAR. SHE SHOWED YOU HER EMOTIONS. SHE SHOWED YOU HOW SHE FELT ABOUT THIS WHOLE SITUATION.

YES, SHE IS A VICTIM IN THE SENSE SHE HAS TO DEAL WITH THIS, TOO. SHE HAS TO DEAL WITH THIS PROBLEM ALSO. SHE HAS NO ONE ELSE BUT BAYAN, BUT SHE WON'T BE ABLE TO HAVE HIM IN THE FUTURE.

HE WON'T BE ABLE TO GO HOME TAKE AND TALK TO HER ANYMORE. HE WON'T BE ABLE TO GO SEE HER ANYMORE BECAUSE HE WILL BE IN A CELL IN THE STATE OF SOUTH CAROLINA FOR THE REST OF HIS NATURAL LIFE.

NOW, THE SOLICITOR TALKS TO YOU ABOUT WHAT IF, WHAT COULD HAVE BEEN. WHAT IF HE GETS INVOLVED WITH SOMEONE ELSE IN THE PRISON AND HURTS A PRISONER OR A GUARD?

HE TRIES TO SAY TO YOU THAT IN ORANGEBURG, HE BROKE THAT SEAT AND BROKE A WINDOW; BUT HE WENT, ACCORDING TO THE TESTIMONY, HE CALLED THEM AND TOLD

THEM WHAT HAD HAPPENED. HE CALLED THE LAW ENFORCEMENT. HE CALLED THE C.O. OF THE JAIL AND SAID, "I BROKE THIS WINDOW."

HE DIDN'T TRY TO HURT ANYBODY. HE DIDN'T TRY TO TAKE THAT WINDOW AND USE IT AS A WEAPON AGAINST ANYONE. YOU HAVE NOT HEARD FROM ANY WITNESS. THEY SENT HIM UP TO SAFEKEEPING, BY SENDING TO HIM UP TO SAFEKEEPING TO A HIGHER INSTITUTION WHERE HE WOULD BE HOUSED.

NOT ONE WITNESS HAS BEEN BROUGHT TO YOU BY THE STATE OF SOUTH CAROLINA SAYING THAT HE DID ANYTHING WRONG WHILE HE WAS HOUSED UP IN SAFEKEEPING. SO YOU LOOK AT THAT TO DETERMINE THE ADAPTABILITY OF THE DEFENDANT AS IT RELATES TO PRISON. HE HAS NOT TRIED TO HURT ONE PERSON, NOT AT ALL.

I STAND BEFORE YOU RIGHT NOW AND I ASK YOU FOR HIS LIFE. I ASK YOU FOR THE LIFE OF BAYAN ALEKSEY. WHEN YOU WERE BEING CHOSEN AS A JUROR, BOTH SIDES SAID TO YOU THAT IF YOU CAME BACK AND DECIDED THAT DEATH WOULD BE THE SENTENCE, THAT YOU WOULD HAVE TO SIGN YOUR NAME. THAT'S AN AWESOME RESPONSIBILITY.

THIS INK PEN GIVES YOU THE POWER OF LIFE AND DEATH. ONE INK PEN GIVES YOU THE POWER OF LIFE AND DEATH. I SUBMIT TO YOU THAT YOU SHOULD LEAVE THIS INK PEN RIGHT HERE. LEAVE IT IN THE COURTROOM

AND COME BACK AND GIVE A LIFE SENTENCE WITH AN AGGRAVATING CIRCUMSTANCE.

THAT SIMPLY MEANS THAT BAYAN ALEKSEY WILL SIT IN A JAIL CELL IN THE PRISON IN THE STATE OF SOUTH CAROLINA UNTIL SOMEBODY PUTS HIM IN A COFFIN AND DRIVES HIM OUT OF THE JAIL.

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I ASK THAT YOU NOT GO BACK AND THINK ABOUT THOSE OTHER LADIES: LISA, THERESA AND ALL OF THAT.

I ASK THAT YOU REALLY LOOK AT THE AGGRAVATING CIRCUMSTANCE AND THINK BUT FOR A LAW ENFORCEMENT OFFICER YOU WOULDN'T BE HERE AT THIS POINT. WE ASK THAT YOU THINK ABOUT VERA ALSO. WE ASK THAT YOU RETURN A VERDICT OF LIFE, NOT DEATH. THANK YOU.

THE COURT: THAT WILL THEN CONCLUDE THE SUMMATIONS BY THE STATE AND OF THE DEFENSE. MR. FOREMAN, LADIES AND GENTLEMEN, YOUR LUNCH WILL BE HERE VERY SHORTLY.

AFTER YOU HAVE HAD AN OPPORTUNITY TO HAVE YOUR LUNCH, PLEASE LET ME KNOW. WHEN YOU RETURN I WILL GIVE YOU THE FINAL INSTRUCTIONS ON THE ISSUES INVOLVED IN THIS THE SECOND PHASE OF THE CASE.

REMEMBER AGAIN NOW, DO NOT DISCUSS THIS

CASE EVEN AMONG YOURSELVES UNTIL I HAVE CONCLUDED MY REMARKS AND I HAVE GIVEN YOU THE CASE FOR YOUR DELIBERATION.

AGAIN I SAY TO YOU THAT DURING YOUR DELIBERATIONS, ALL OF THESE MATTERS THAT HAVE BEEN INTRODUCED INTO THE TRIAL OF THIS CASE WILL BE WITH YOU DURING YOUR DELIBERATIONS IN THIS THE SECOND PHASE.

I, TOO, WILL FULLY EXPLAIN TO YOU THE PROCEDURES INVOLVED IN THIS SECOND PHASE, AND I WILL PROVIDE FOR YOU THE FORMS THAT YOU WILL FILL OUT BASED UPON WHATEVER YOUR UNANIMOUS VERDICT IS.

YOU WILL BE FULLY INFORMED, MR. FOREMAN, AND THE JURY; AND I WILL GIVE TO YOU SELF-EXPLANATORY FORMS FOR WHATEVER YOUR VERDICTS ARE. I WILL SEND YOU TO THE JURY ROOM. THE LUNCH WILL BE HERE IN JUST A MOMENT.

(THE JURY RETIRES TO THE JURY ROOM AT 1:20 P.M.)

THE COURT: WE ARE IN RECESS. WE WILL CERTAINLY BE IN RECESS UNTIL TWO O'CLOCK. THANK YOU SO MUCH. YOU ARE EXCUSED.

(WHEREUPON THERE WAS A LUNCHEON RECESS.)

THE COURT: PRIOR TO CHARGING THE JURY, LET THE RECORD NOW REFLECT AGAIN THAT THE STATE RELIES ON

THE AGGRAVATING CIRCUMSTANCE OF THE KILLING OF A STATE POLICE OFFICER DURING PERFORMANCE OF HIS DUTIES.

SOLICITOR BAILEY: THAT'S CORRECT, YOUR HONOR.

THE COURT: AND THE DEFENDANT ASKS THAT WE CHARGE SINGLY THE SINGLE MITIGATING CIRCUMSTANCE THAT THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER PERSON; IS THAT CORRECT?

MR. STONE: YES, SIR.

THE COURT: NOW, FOR THE STATE, IS THERE ANY ADDITIONAL CHARGES OTHER THAN THE USUAL CHARGES WE HAVE DISCUSSED?

SOLICITOR BAILEY: NO, SIR, YOUR HONOR.

THE COURT: FOR THE DEFENSE?

MR. STONE: NO, SIR. YOU WILL BE CHARGING THE STATUTE?

THE COURT: OH, YES.

MR. STONE: YES, SIR.

THE COURT: BRING THE JURY.

SOLICITOR BAILEY: YOUR HONOR, BEFORE THE JURY COMES IN, I THINK -- BUT I CAN'T CITE THE CASE RIGHT NOW -- BUT I THINK THERE IS A CASE THAT REQUIRES THE COURT TO MAKE SOME KIND OF AFFIRMATIVE

FINDING THAT NO OTHER MITIGATING CIRCUMSTANCES ARE APPLICABLE, INDEPENDENT OF WHAT THE DEFENSE REQUESTS.

THE COURT: I AM NOT FAMILIAR WITH THE CASE, BUT I DO NOT FIND SUFFICIENT EVIDENCE TO CHARGE ANY OTHER MITIGATING CIRCUMSTANCES AND THE DEFENDANT AGREES.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

THE COURT: BRING THE JURY IN.

(THE JURY RETURNS TO THE COURTROOM AT 2:20 P.M.)

(WHEREUPON THE COURT CHARGED THE JURY AS FOLLOWS.)

THE COURT: GOOD AFTERNOON, MR. FOREMAN, AND LADIES AND GENTLEMEN. WE ARE NOW EMBARKING ON THE CONCLUSION OF THE SECOND PHASE OF THE TRIAL WITH WHICH WE HAVE BEEN INVOLVED NOW FOR SOME SEVERAL DAYS.

WE ARE NOW CONCERNING OURSELVES WITH THE PUNISHMENT TO BE IMPOSED BY YOU THE JURY, THE JURY HAVING FOUND THE DEFENDANT GUILTY OF MURDER IN THE FIRST PHASE.

THE DEFENDANT WAS CONVICTED BY YOU THE JURY OF THE OFFENSE OF MURDER OF ONE SERGEANT FRANKLIN

LINGARD. THE STATE OF SOUTH CAROLINA ALLEGES IN THAT COMMISSION OF MURDER THE AGGRAVATING CIRCUMSTANCE OF THE KILLING OF A STATE POLICE OFFICER WHILE IN THE PERFORMANCE OF HIS DUTIES.

NOW, I CHARGE YOU THAT THIS ALLEGATION MUST BE PROVEN BY YOU SATISFACTORILY AND UNANIMOUSLY BY EVIDENCE BEYOND A REASONABLE DOUBT. SECTION 16-3-20 OF THE SOUTH CAROLINA CODE OF LAWS AS AMENDED PROVIDES IN PART:

A PERSON WHO IS CONVICTED OR PLEADS GUILTY TO MURDER MUST BE PUNISHED BY DEATH OR BY IMPRISONMENT FOR LIFE. THAT SECTION AS FURTHER AMENDED ALSO PROVIDES IN PART:

UPON CONVICTION OF A DEFENDANT OF MURDER, THE COURT SHALL CONDUCT A SEPARATE SENTENCING PROCEEDING TO DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR TO LIFE.

NOW, AS I HAVE INDICATED TO YOU, THE STATE OF SOUTH CAROLINA SEEKS THE PENALTY OF DEATH UPON THE ALLEGED AGGRAVATING CIRCUMSTANCE OF THE KILLING OF A POLICE OFFICER OF THE STATE OF SOUTH CAROLINA WHILE IN THE PERFORMANCE OF HIS DUTIES.

NOW, TO THIS STATUTORY AGGRAVATING CIRCUMSTANCE, THE DEFENDANT HAS PLED NOT GUILTY, WHICH PLACES UPON THE STATE THE BURDEN OF PROVING THE

DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A STATUTORY AGGRAVATING CIRCUMSTANCE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I THEREFORE CHARGE YOU THAT IT IS A VITAL AND IMPORTANT RULE OF LAW THAT HE IS PRESUMED INNOCENT AND MUST BE FOUND IF AT ALL GUILTY BY EVIDENCE TO YOUR SATISFACTION UNANIMOUSLY BEYOND A REASONABLE DOUBT.

A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN THIS CASE OR FROM THE ABSENCE OR LACK OF EVIDENCE IN THE CASE. YOU AND YOU ALONE ARE TO DECIDE WHETHER OR NOT REASONABLE DOUBT EXISTS IN THIS CASE.

NOW, AT THE CONCLUSION OF THE FIRST PHASE, I INSTRUCTED YOU ON VARIOUS PROPOSITIONS OF LAW, WHICH DEPENDING UPON YOUR FINDINGS OF FACT MIGHT OR MIGHT NOT BE APPLICABLE TO THE ISSUES IN THIS CASE.

I ASK THAT YOU REMEMBER EACH OF THOSE PROPOSITIONS OF LAW AND RESPECTFULLY REQUEST THAT DURING YOUR DELIBERATIONS IF YOU WOULD LIKE FOR ME TO RECHARGE YOU ON ANY OF THOSE, I WOULD BE DELIGHTED TO DO SO.

AT THIS TIME I AM GOING TO MAKE A BRIEF

REFERENCE TO THOSE PROPOSITIONS OF LAW THAT I HAVE CHARGED YOU AND WHICH I NOW CHARGE YOU AGAIN, AS IF THEY WERE REPEATED TO YOU VERBATIM, WITH THE UNDERSTANDING THAT THEY WILL BE AVAILABLE TO YOU AT YOUR REQUEST.

I HAVE TOLD YOU THEN AND I TELL YOU NOW THAT THIS DEFENDANT AND ALL DEFENDANTS ARE PRESUMED INNOCENT AND MUST BE PROVEN GUILTY TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT. I HAVE EXPLAINED THE DEFINITION OF REASONABLE DOUBT TO YOU.

I KNOW THAT YOU NOW UNDERSTAND THAT YOU ARE THE SOLE AND ONLY FINDERS OF THE FACTS IN THIS CASE. YOU ARE THE SOLE AND ONLY JUDGES OF THE CREDIBILITY, MEANING THE BELIEVABILITY, OF ALL THE WITNESSES WHO HAVE TESTIFIED.

I TELL YOU AGAIN, AS I DID INITIALLY, IF ANY WORD, RULING, MANNERISM OF MINE MIGHT TEND TO INDICATE TO ANY OF YOU 12 HOW I FEEL ABOUT ANY FACTUAL SITUATION IN THIS CASE, PLEASE DISMISS THAT FROM YOUR MINDS. I AM NOT ENTITLED TO A FACTUAL OPINION AND I HAVE NONE.

YOU 12 ARE THE SOLE AND ONLY FINDERS OF THE FACTS IN THIS CASE, AND THERE IS NOBODY IN THIS WIDE WORLD THAT CAN TELL YOU 12 JURORS WHAT THE FACTS ARE. THAT IS YOUR JOB AND YOUR EXCLUSIVE JOB.

NOW, WITH EQUAL EMPHASIS I AGAIN INSTRUCT YOU, AS I DID BEFORE, THAT I AM THE INSTRUCTOR IN THE LAW, MADE SO BY THE CONSTITUTION OF THIS STATE. UNDER YOUR OATH AS JURORS, YOU MUST ACCEPT THE LAW OF THIS CASE AS I GIVE IT TO YOU AS BEING THE CORRECT LAW.

EVEN THOUGH YOU OR I FOR THAT MATTER MIGHT DISAGREE WITH WHAT THE LAW IS, PLEASE ACCEPT THE LAW AS I GIVE IT TO YOU AS BEING THE CORRECT LAW, REMEMBERING THAT YOU TAKE THE FACTS AS YOU FIND THEM TO BE AND APPLY THOSE FACTS TO THE LAW OF THIS CASE.

I HAVE INDICATED TO YOU THE DEFINITION OF MURDER. MURDER IS DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT.

I HAVE HERETOFORE DEFINED THE TERMINOLOGY OF MALICE FOR YOU, MALICE BEING A WORD SUGGESTING WICKEDNESS, HATRED, A DETERMINATION OF WHAT ONE KNOWS TO BE WRONG WITHOUT JUST CAUSE OR LEGAL EXCUSE.

NOW, THERE WAS ADMITTED INTO THE FIRST PHASE OF THIS CASE AN ALLEGED STATEMENT MADE BY THE DEFENDANT, AND AT THAT TIME I CHARGED YOU THE LAW APPLICABLE TO ALL STATEMENTS.

IN THE SECOND PHASE, THERE HAS BEEN INTRODUCED AGAIN AN ALLEGED STATEMENT MADE BY THIS

DEFENDANT. AT THE INTRODUCTION OF THAT STATEMENT DURING THE SECOND PHASE, I GAVE YOU BRIEFLY THE LAW WITH REGARDS TO THAT.

I WILL NOW INSTRUCT YOU AGAIN WITH REFERENCE TO THE LAW OF SOUTH CAROLINA REGARDING ALLEGED STATEMENTS OR ALLEGED CONFESSIONS OF A DEFENDANT.

WHILE THE COURT GENERALLY DETERMINES THE ADMISSIBILITY OF EVIDENCE, I INSTRUCT YOU THAT AS REGARDING ANY ALLEGED STATEMENT MADE BY THIS DEFENDANT, YOU THE MEMBERS OF THE JURY MAKE THE ULTIMATE DETERMINATION OF WHETHER OR NOT THE DEFENDANT MADE THAT STATEMENT.

AND IF HE DID MAKE THE STATEMENT, WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL AND ACCORD; AND FINALLY JUST WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO ANY ALLEGED STATEMENT BY THIS DEFENDANT.

I CHARGE YOU, MR. FOREMAN, AND LADIES AND GENTLEMEN, THAT YOU MUST DETERMINE IF THE ALLEGED STATEMENT WAS THE PRODUCT OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE OF ITS MAKER.

IF YOU DETERMINE IT WAS, AND THE BURDEN IS UPON THE STATE TO PROVE THAT FACT AS ALL OTHER FACTS BEYOND A REASONABLE DOUBT, THEN YOU MAY GIVE THAT

STATEMENT SUCH FURTHER CONSIDERATION AS YOU THE JURY DEEM PROPER.

IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY WILLED EXPRESSION OF THE DEFENDANT, THEN YOU SHOULD NOT CONSIDER THAT STATEMENT AT ALL.

IN DETERMINING WHETHER A DEFENDANT'S WILL WAS OVERCOME IN OBTAINING A STATEMENT, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE ACCUSED, THE DETAILS OF THE INTERROGATION, WHICH IS REFERRED TO IN THE LAW AS THE TOTALITY OF THE CIRCUMSTANCES.

SOME OF THE FACTS THAT YOU MUST CONSIDER OR MAY CONSIDER ARE THE FOLLOWING: THE AGE OF THE ACCUSED, HIS EDUCATION OR LACK THEREOF, HIS MENTAL ABILITY OR CAPACITY, HIS I.Q. OR INTELLIGENCE.

YOU MAY CONSIDER HIS BACKGROUND AND ENVIRONMENT, THE ADVICE OR LACK THEREOF TO THE ACCUSED OF HIS CONSTITUTIONAL RIGHTS, INCLUDING BUT NOT LIMITED TO THE PROCEDURAL SAFEGUARDS KNOWN AS THE MIRANDA WARNINGS.

THESE ARE CONCERNING THE RIGHT TO REMAIN SILENT, THAT A STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW. THE RIGHT TO HAVE A LAWYER PRESENT. IF AN INDIGENT, THAT IS, IF HE NOT COULD NOT AFFORD A LAWYER, THEN A LAWYER WOULD BE APPOINTED TO REPRESENT

HIM WITHOUT ANY COST AND THAT HE COULD STOP MAKING A STATEMENT AT ANY TIME.

OTHER FACTORS TO CONSIDER ARE THE PLACE AND LENGTH OF DETENTION AND THE NATURE OF THE QUESTIONING. YOU THE JURY, LADIES AND GENTLEMEN, MUST CAREFULLY SCRUTINIZE ALL OF THE SURROUNDINGS CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE ACCUSED, UNINFLUENCED BY PROMISE OR REWARD, THREAT OR INJURY OR DIMINUTION OF HIS RIGHTS.

THERE HAS BEEN AN ISSUE WITH REGARDS TO IDENTIFICATION IN THE CASE, AND I HAVE DISCUSSED WITH YOU THE APPROPRIATE INSTRUCTIONS OF LAW REGARDING IDENTIFICATION.

THERE HAS BEEN CALLED UPON TO TESTIFY SEVERAL EXPERT WITNESSES QUALIFIED BY ME IN THAT FIELD. I HAVE EXPLAINED TO YOU THE LAW WITH REGARDS TO THAT.

THEIR CONCLUSIONS AND OPINIONS CONSTITUTE EVIDENCE TO BE CONSIDERED BY YOU IN CONNECTION WITH ALL THE OTHER TESTIMONY AND EVIDENCE IN THE CASE. YOU THE JURY MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IN YOUR EXPERIENCE AND DISCRETION AS YOU MAY DEEM

APPROPRIATE.

NOW, THIS DEFENDANT IN THIS THE SECOND PHASE DID NOT TAKE THE WITNESS STAND. I CHARGE YOU AGAIN, MR. FOREMAN, AND LADIES AND GENTLEMEN, THAT THE FACT THAT A DEFENDANT DOES NOT TESTIFY IN HIS OWN BEHALF CANNOT AND MUST NOT BE CONSIDERED AGAINST HIM UNDER ANY CIRCUMSTANCES OR IN ANY MANNER WHATSOEVER.

THE FAILURE OF ANY DEFENDANT TO TAKE THE WITNESS STAND AND TO TESTIFY IN HIS OWN BEHALF DOES NOT CREATE ANY PRESUMPTION AGAINST HIM. I TELL YOU NOW THAT YOU MUST NOT PERMIT THAT FACT TO WEIGH IN THE SLIGHTEST DEGREE AGAINST THAT DEFENDANT, AND YOU MUST NOT PERMIT THAT FACT TO ENTER INTO THE DISCUSSIONS OF YOUR DELIBERATIONS.

YOU WOULD UNDERSTAND THAT THERE ARE TWO TYPES OF EVIDENCE, CIRCUMSTANTIAL EVIDENCE AND DIRECT EVIDENCE. I HAVE DISCUSSED THAT WITH YOU.

NOW, IN THIS CASE YOUR SENTENCE WILL EITHER BE -- AND THERE IS NO SUGGESTION BY ME AS TO WHAT IT IS BY THE WAY I MENTION IT -- YOUR SENTENCE WILL EITHER BE LIFE IMPRISONMENT OR DEATH.

IN THAT CONNECTION I PROPOSE AND WILL CHARGE YOU NOW THE LAW OF THIS STATE WITH REGARDS TO THOSE ISSUES AS IS CONTAINED IN SECTION 16-3-20 OF

THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA. I QUOTE FROM THAT STATUTE.

A PERSON WHO IS CONVICTED OR PLEADS GUILTY TO MURDER MUST BE PUNISHED BY DEATH, BY IMPRISONMENT FOR LIFE OR BY A MANDATORY TERM OF IMPRISONMENT FOR 30 YEARS.

IF THE STATE SEEKS THE DEATH PENALTY AND A STATUTORY AGGRAVATING CIRCUMSTANCE IS FOUND BEYOND A REASONABLE DOUBT PURSUANT TO SUBSECTION (B) AND (C), AND A RECOMMENDATION OF DEATH IS NOT MADE, THE TRIAL JUDGE MUST IMPOSE A SENTENCE OF LIFE IMPRISONMENT. FOR PURPOSES OF THIS SECTION, LIFE IMPRISONMENT MEANS UNTIL THE DEATH OF THE OFFENDER.

NO PERSON SENTENCED TO LIFE IMPRISONMENT PURSUANT TO THIS SECTION IS ELIGIBLE FOR PAROLE, COMMUNITY SUPERVISION OR ANY EARLY RELEASE PROGRAM, NOR IS THE PERSON ELIGIBLE TO RECEIVE ANY WORK CREDITS, EDUCATIONAL CREDITS, GOOD CONDUCT CREDITS OR ANY OTHER CREDITS THAT WOULD REDUCE THE LIFE IMPRISONMENT REQUIRED BY THIS SECTION.

THE SECTION FURTHER PROVIDES: IF NO STATUTORY AGGRAVATING CIRCUMSTANCE IS FOUND, THE DEFENDANT MUST BE SENTENCED TO EITHER LIFE IMPRISONMENT OR A MANDATORY MINIMUM TERM OF IMPRISONMENT FOR 30 YEARS.

NO PERSON SENTENCED TO A MANDATORY MINIMUM TERM OF IMPRISONMENT FOR 30 YEARS PURSUANT TO THIS SECTION IS ELIGIBLE FOR PAROLE OR ANY EARLY RELEASE PROGRAM, NOR IS THE PERSON ELIGIBLE TO RECEIVE ANY WORK CREDITS, EDUCATION CREDITS, GOOD CONDUCT CREDITS OR ANY OTHER CREDITS THAT WOULD REDUCE THE MANDATORY MINIMUM TERM OF IMPRISONMENT FOR 30 YEARS REQUIRED BY THIS SECTION.

NOW, BASICALLY THESE ARE THE INSTRUCTIONS THAT I GAVE YOU IN THE FIRST PHASE. I GIVE THEM TO YOU AGAIN IN TOTO, AS AND IF GIVE VERBATIM AND WOULD URGE YOU IF YOU HAVE ANY QUESTIONS ABOUT THOSE INSTRUCTIONS TO PLEASE WRITE THAT QUESTION DOWN DURING YOUR DELIBERATIONS ON A PIECE OF PAPER AND LET THE BAILIFF KNOW, AND I WILL FULLY ADVISE YOU.

NOW, MR. FOREMAN, AND MEMBERS OF THE JURY, IT NOW BECOMES YOUR DUTY TO DECIDE WHAT SENTENCE YOU WILL RECOMMEND THAT THIS COURT IMPOSE UPON THIS DEFENDANT.

THERE ARE TWO RECOMMENDATIONS YOU ARE TO CONSIDER IN THIS CASE. ONE IS THE DEATH PENALTY, WHICH IN THIS STATE IS BY ELECTROCUTION OR LETHAL INJECTION, AND THE OTHER IS LIFE IMPRISONMENT.

IN ADDITION TO THE FOREGOING, YOU ARE ASKED TO DETERMINE THE EXISTENCE OR NONEXISTENCE OF A

STATUTORY AGGRAVATING CIRCUMSTANCE. UPON THIS SHEET OF PAPER WHICH WILL BE IN THE JURY ROOM WITH YOU WHICH I HOLD IN MY HAND ARE WRITTEN THE WORDS, "STATUTORY INSTRUCTIONS."

MR. FOREMAN, YOU WILL HAVE THIS WITH YOU DURING YOUR DELIBERATIONS. THE BODY OF THIS FORM STATES AS FOLLOWS, QUOTE: IN DETERMINING WHETHER TO RECOMMEND THAT THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT OR DEATH, YOU SHALL FIRST DETERMINE WHETHER THE STATE HAS PROVEN THE EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCE.

AND THAT CIRCUMSTANCE AND THE ONLY CIRCUMSTANCE THAT THE STATE RELIES ON IS THE DEATH OF A LAW ENFORCEMENT OFFICER OF THE STATE OF SOUTH CAROLINA WHILE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES. LET ME EMPHASIZE THAT THIS IS THE ONLY CIRCUMSTANCE THAT YOU MAY CONSIDER AS AN AGGRAVATING CIRCUMSTANCE IN THE CASE.

IF YOU DO NOT UNANIMOUSLY FIND THE EXISTENCE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE LISTED ABOVE, YOU SHALL SO INDICATE ON PART ONE OF THE SENTENCE VERDICT ENTITLED, "JURY'S VERDICT OF PROOF OF AGGRAVATING CIRCUMSTANCES."

AT THIS POINT YOU WILL CEASE DELIBERATION AND RETURN TO THE COURTROOM WITH YOUR VERDICT WHICH

IS TO BE SIGNED BY THE FOREMAN. ALL OF THIS IS WRITTEN DOWN AND IS SELF-EXPLANATORY FOR YOU, MR. FOREMAN.

IF HOWEVER YOU UNANIMOUSLY FIND THE EXISTENCE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE WHICH I HAVE GIVEN TO YOU, YOU SHALL SO INDICATE ON PART ONE (B) OF THE SENTENCING FORM.

THIS FINDING, IF MADE BY YOU, MUST BE SIGNED BY EVERY MEMBER OF THE JURY, AND THAT INSTRUCTION IS CONTAINED IN THE STATUTORY INSTRUCTIONS.

IF YOU UNANIMOUSLY FIND THE EXISTENCE OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCE AND DESIGNATE THIS FINDING ON PART ONE OF THE SENTENCING VERDICT FORM, JURY'S VERDICT OF PROOF OF AGGRAVATING CIRCUMSTANCES, YOU MUST THEN CONTINUE YOUR DELIBERATIONS IN ORDER TO DETERMINE WHETHER YOU SHALL RECOMMEND THAT THE DEFENDANT BE SENTENCED TO DEATH OR LIFE IMPRISONMENT.

WHAT I'M SAYING IS IF YOU FIND UNANIMOUSLY THE EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE, YOU WILL THEN GO TO THE DETERMINATION OF WHETHER HE BE SENTENCED TO LIFE IMPRISONMENT OR DEATH.

NOW, THE STATE HAS PRESENTED TO YOU FOR YOUR INFORMATION FACTS CONCERNING THE DEFENDANT'S

PREVIOUS ALLEGED PRIOR DIFFICULTIES OR CRIMES. YOU MUST REMEMBER THAT PREVIOUS OR EARLIER ALLEGATIONS ARE NOT AND MAY NOT BE USED AS PROOF OF ANY STATUTORY AGGRAVATING CIRCUMSTANCES.

THE PREVIOUS ALLEGED DIFFICULTIES OR ALLEGED CRIMES MAY ONLY BE CONSIDERED BY YOU IN REFERENCE TO THE CHARACTER OF THE DEFENDANT AND FOR NO OTHER PURPOSE.

THE DEFENDANT IS ON TRIAL FOR HIS LIFE, AND IT IS IMPORTANT THAT YOU THE JURY HAVE FOR YOUR CONSIDERATION ALL PERTINENT INFORMATION ABOUT HIM. THIS EVIDENCE MAY BE CONSIDERED BY YOU AND GIVEN WHATEVER WEIGHT, IF ANY, THAT YOU 12 FEEL IT SHOULD HAVE.

THESE PREVIOUS DIFFICULTIES ARE NOT THE SUBJECT OF CONVICTIONS, AND THEY MAY NOT BE USED BY YOU AS ANY EVIDENCE OF AGGRAVATING CIRCUMSTANCES. HOWEVER, AS I HAVE INDICATED, YOU MAY, IF YOU CHOOSE, CONSIDER THIS AS EVIDENCE OF THE DEFENDANT'S CHARACTERISTICS AS THEY BEAR LOGICAL RELEVANCE TO THE CRIME FOR WHICH HE IS BEING CHARGED.

NOW, BY THIS FORM WHICH I HOLD IN MY HAND, PART A., YOU THE JURY CAN RECOMMEND TO ME THAT THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT. I WILL NOW READ THE TEXT OF THIS RECOMMENDATION FORM, AND I

QUOTE:

WE THE JURY IN THE ABOVE-ENTITLED CASE UNANIMOUSLY RECOMMEND THAT THE DEFENDANT BE IMPRISONED IN THE STATE PENITENTIARY FOR THE BALANCE OF HIS NATURAL LIFE.

PLEASE NOTE THAT ALTHOUGH YOU MUST UNANIMOUSLY AGREE TO RECOMMEND LIFE IMPRISONMENT, ONLY THE FOREMAN IS REQUIRED TO SIGN THIS RECOMMENDED FORM.

NOW, THE DEATH PENALTY FORM, IT CONTAINS SOME 12 LINES FOR EACH ONE OF YOU TO SIGN IF THAT BE YOUR VERDICT. BY THIS FORM WHICH I HOLD IN MY HAND, PART B., YOU THE JURY CAN RECOMMEND TO ME THAT THE DEFENDANT BE SENTENCED TO DEATH.

PLEASE OBSERVE THAT IMMEDIATELY BELOW THE BODY OF THE RECOMMENDATION, THERE ARE 12 LINES. THIS IS WHERE, SHOULD YOU DECIDE TO RECOMMEND THE DEATH PENALTY, EACH ONE OF YOU, ALL 12, WOULD SIGN YOUR NAME.

IT IS THE LAW OF THIS STATE, LADIES AND GENTLEMEN, MR. FOREMAN, THAT A RECOMMENDATION FOR IMPOSITION OF THE DEATH PENALTY BE A UNANIMOUS RECOMMENDATION.

AND IT IS A FURTHER LAW OF THIS STATE THAT IN THAT EVENT, EACH AND EVERY JUROR SIGN HIS NAME TO

THAT RECOMMENDED FORM, WHICH AGAIN WILL BE IN THE JURY ROOM WITH YOU.

LET ME NOW, LADIES AND GENTLEMEN, INSTRUCT YOU ON WHAT YOU MAY CONSIDER IN MAKING YOUR DECISION AS TO WHICH SENTENCE TO RECOMMEND. I HAVE USED THE WORD STATUTORY AGGRAVATING CIRCUMSTANCE.

WHAT IS A STATUTORY AGGRAVATING CIRCUMSTANCE? IT IS A FACT, AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE GENERAL ASSEMBLY HAS DECLARED BY STATUTE WHICH WOULD MAKE WORSE, THAT IS, AGGRAVATE THE OFFENSE OF MURDER WHEN THE TWO OCCUR TOGETHER. IN OTHER WORDS, IT IS SOMETIMES REFERRED TO AS IT INCREASES THE ENORMITY OR ADDS TO THE INJURIOUS CONSEQUENCES OF THE OFFENSE OF MURDER.

IF YOU FIND -- AND I USE THAT ADVISEDLY -- IF YOU FIND THE EXISTENCE BEYOND A REASONABLE DOUBT OF A STATUTORY AGGRAVATING CIRCUMSTANCE, THEN YOU ARE PERMITTED BUT NOT REQUIRED TO RECOMMEND THE DEATH PENALTY.

THERE ARE THREE CONDITIONS WHICH YOU SHOULD CONSIDER IN REACHING YOUR DECISION. FIRST, WHETHER THE DEFENDANT HAS PROVEN BY ANY EVIDENCE THE EXISTENCE OF A STATUTORY MITIGATING CIRCUMSTANCE.

SECONDLY, WHETHER THE DEFENDANT HAS PROVEN BY ANY EVIDENCE THE EXISTENCE OF ANY OTHER MITIGATING

CIRCUMSTANCE. THIRD, WHETHER FOR ANY REASON YOU CAN THINK OF OR FOR NO REASON AT ALL, THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT.

I HAVE USED THE TERM STATUTORY MITIGATING CIRCUMSTANCE. WHAT IS A STATUTORY MITIGATING CIRCUMSTANCE? IT IS A FACT, AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE GENERAL ASSEMBLY HAS DECLARED BY STATUTE WHICH WOULD REDUCE THE SEVERITY OF THE OFFENSE OF MURDER.

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

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

WHAT STATUTORY MITIGATING CIRCUMSTANCE SHOULD YOU CONSIDER IN THIS CASE? I HOLD UP THE STATUTORY MITIGATING CIRCUMSTANCE. I REFER ONCE AGAIN TO THIS SHEET OF PAPER WHICH IS THE STATUTORY INSTRUCTIONS.

THE STATUTORY MITIGATING CIRCUMSTANCE IS AS FOLLOWS: THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF

PRIOR CRIMINAL CONVICTION INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER PERSON. THAT IS THE STATUTORY MITIGATING CIRCUMSTANCE.

IN DETERMINING WHETHER TO RECOMMEND THAT THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT OR TO DEATH, YOU MAY CONSIDER THE STATUTORY AGGRAVATING CIRCUMSTANCE FOUND BY YOU TO EXIST BEYOND A REASONABLE DOUBT.

YOU MAY ALSO CONSIDER THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCE THAT I HAVE JUST READ: THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER PERSON.

FURTHERMORE, MR. FOREMAN, AND LADIES AND GENTLEMEN, YOU MAY CONSIDER ANY OTHER MITIGATING CIRCUMSTANCE WHICH IS SUPPORTED BY THE EVIDENCE IN THIS CASE.

A NONSTATUTORY MITIGATING CIRCUMSTANCE IS ONE WHICH IS NOT PROVIDED FOR BY STATUTE BUT IS ONE WHICH THE DEFENDANT MAY CLAIM SERVES THE SAME PURPOSE, THAT IS, TO REDUCE THE DEGREE OF HIS GUILT IN THE OFFENSE.

WHILE THERE MUST BE SOME EVIDENCE WHICH SUPPORTS A FINDING BY YOU THAT A STATUTORY OR NONSTATUTORY CIRCUMSTANCE EXISTS, YOU NEED NOT FIND

THE EXISTENCE OF SUCH A CIRCUMSTANCE BEYOND A REASONABLE DOUBT.

IN REACHING YOUR DECISION AS TO WHICH SENTENCE TO RECOMMEND, YOU WILL CONSIDER THE AGGRAVATING AND MITIGATING CIRCUMSTANCES. WHILE AN AGGRAVATING CIRCUMSTANCE MUST BE FOUND BEFORE YOU CAN EVEN CONSIDER RECOMMENDING THE DEATH PENALTY, ONCE SUCH A FINDING IS MADE BEYOND A REASONABLE DOUBT, YOU MAY RECOMMEND THE DEATH SENTENCE EVEN THOUGH YOU FIND THE EXISTENCE OF A STATUTORY MITIGATING CIRCUMSTANCE. IN OTHER WORDS, THE EXISTENCE OF AN ALLEGED STATUTORY MITIGATING CIRCUMSTANCE IS NOT A BAR TO THE IMPOSITION OF THE DEATH PENALTY.

THE THIRD ELEMENT, LADIES AND GENTLEMEN, THAT YOU MAY CONSIDER IF YOU CONCLUDE THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTS IS WHETHER THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT FOR ANY REASON OR FOR NO REASON AT ALL.

THIS IS WHAT HAS BEEN TRADITIONALLY REFERRED TO AS A RECOMMENDATION OF MERCY. SHOULD SUCH BE YOUR DECISION, YOU WOULD SO INDICATE BY RETURNING TO THE COURT THE RECOMMENDATION OF LIFE IMPRISONMENT WHICH WILL BE SIGNED BY THE FOREMAN ALONE.

IN OTHER WORDS, LADIES AND GENTLEMEN, YOU

MAY CHOOSE TO RECOMMEND LIFE IMPRISONMENT IF YOU FIND A STATUTORY OR NONSTATUTORY MITIGATING CIRCUMSTANCE OR YOU MAY CHOOSE TO RECOMMEND LIFE IMPRISONMENT AS AN ACT OF MERCY.

IN ANY INSTANCE, SHOULD YOU CHOOSE TO RECOMMEND LIFE IMPRISONMENT, YOUR DECISION MUST BE A UNANIMOUS ONE; AND THE FOREMAN ALONE WOULD BE REQUIRED TO SIGN SUCH RECOMMENDED FORM.

LET ME NOW SUMMARIZE WHAT I HAVE JUST TOLD YOU. AGAIN I SAY TO YOU, IF DURING YOUR DELIBERATIONS, THERE IS ANY QUESTION ABOUT ANY OF THESE CHARGES PREVIOUSLY MADE OR THESE, ALL YOU HAVE TO DO IS LET ME KNOW.

I AM NOW GOING TO SUMMARIZE FOR YOU, LADIES AND GENTLEMEN, WHAT I HAVE JUST TOLD YOU. YOU WILL HAVE IN THE JURY ROOM DURING YOUR DELIBERATIONS THESE FORMS THAT I HAVE DISCUSSED, THERE BEING THREE IN NUMBER.

ONE IS THE STATUTORY INSTRUCTIONS THAT I READ TO YOU AND WHICH WILL BE IN THE JURY ROOM WITH YOU. TWO, YOU WILL HAVE THE JURY'S VERDICT FORM ON PROOF OF AGGRAVATING CIRCUMSTANCES. THREE, YOU WILL HAVE THE JURY'S DETERMINATION OF THE SENTENCE TO BE IMPOSED.

THREE THINGS: THE STATUTORY INSTRUCTIONS;

THE JURY'S FORM ON AGGRAVATING CIRCUMSTANCES, IF ANY; AND THREE, THE JURY'S DETERMINATION OF THE SENTENCE TO BE IMPOSED.

THE STATUTORY INSTRUCTIONS STATE THE ONLY AGGRAVATING CIRCUMSTANCE YOU SHALL CONSIDER IN THIS CASE, AND THAT IS THE KILLING OF A LAW ENFORCEMENT OFFICER FOR THE STATE OF SOUTH CAROLINA IN THE PERFORMANCE OF HIS DUTIES.

SHOULD YOU FAIL TO FIND BEYOND A REASONABLE DOUBT THIS CIRCUMSTANCE EXISTED AT THE TIME OF THE MURDER, THEN YOU WOULD GO NO FURTHER. YOUR RECOMMENDATION, ABSENT AN AGGRAVATING CIRCUMSTANCE, MUST BE FOR LIFE IMPRISONMENT.

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

IN YOUR DELIBERATIONS YOU WILL CONSIDER ANY STATUTORY OR NONSTATUTORY MITIGATING CIRCUMSTANCES WHICH ARE SUPPORTED BY THE EVIDENCE. YOU WILL CONSIDER THE AGGRAVATING CIRCUMSTANCES YOU FOUND AGAINST THE MITIGATING CIRCUMSTANCES, AND YOU WILL THEN DECIDE WHETHER YOU WILL RECOMMEND THE DEATH PENALTY OR LIFE IMPRISONMENT.

YOU MAY ALSO CONSIDER ANY OTHER FACTOR IN

MITIGATION OF THE OFFENSE AND YOU CAN RECOMMEND A SENTENCE OF LIFE IMPRISONMENT FOR NO REASON AT ALL, SIMPLY AS AN ACT OF MERCY.

IF YOU DECIDE -- AND I USE THAT ADVISEDLY -- IF YOU DECIDE TO RECOMMEND THE DEATH PENALTY, YOU WILL COMPLETE THIS FORM AND ALL 12 JURORS MUST SIGN THE RECOMMENDATION OF PENALTY OF DEATH.

AGAIN, SHOULD YOU DECIDE TO RECOMMEND LIFE IMPRISONMENT, ONLY THE FOREMAN MUST SIGN THAT RECOMMENDATION; AND THERE IS NO REASON -- AND NO REASON IS TO BE GIVEN FOR YOUR DECISION.

WHATEVER YOUR RECOMMENDATION IS, LADIES AND GENTLEMEN, IT MUST BE A UNANIMOUS ONE; THAT IS TO SAY, IT MUST BE THE VERDICT OF EACH AND EVERY JUROR.

NOW, BY WAY OF FINAL INSTRUCTIONS, IN CONSIDERING TO RECOMMEND WHETHER THE DEFENDANT IS TO BE SENTENCED TO DEATH OR LIFE, I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE ISSUE INVOLVED IN THESE PROCEEDINGS WITHOUT BIAS AND WITHOUT PREJUDICE TO ANY PARTY.

BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT HAVE A RIGHT TO EXPECT EACH OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE

EVIDENCE IN THE CASE AND THAT YOU WILL FOLLOW THE LAW AS I HAVE EXPLAINED IT TO YOU.

THROUGHOUT THIS CHARGE I HAVE USED THE TERM RECOMMEND SENTENCE OF LIFE OR RECOMMEND SENTENCE OF DEATH. PLEASE BE ADVISED THAT WHILE I HAVE USED THE TERM RECOMMEND, THE SENTENCE OF THIS COURT WILL BE THE RECOMMENDATION BY YOU THE JURY TO ME WITH REGARD TO EITHER FORM OF YOUR VERDICT.

SO I USE THE WORD RECOMMEND SIMPLY BECAUSE THE STATUTE REQUIRES THAT TERM. BUT IN SAYING THAT, I TELL YOU THAT THE SENTENCE THAT THE JURY SENDS TO ME BY WAY OF RECOMMENDATION WILL BE THE SENTENCE IMPOSED UPON THIS DEFENDANT BY THIS COURT.

IF YOU RECOMMEND TO ME THE SENTENCE OF LIFE, THAT IS THE SENTENCE I AM GOING TO IMPOSE. IF YOU RECOMMEND TO ME UNANIMOUSLY THE SENTENCE OF DEATH, THAT IS THE SENTENCE THAT THIS COURT WILL IMPOSE.

NOW, AT THIS TIME, LADIES AND GENTLEMEN, I AM GOING TO SEND YOU TO THE JURY ROOM AND ASK THAT YOU DO NOT BEGIN YOUR DELIBERATIONS UNTIL THESE FORMS COME IN AND UNTIL THE EVIDENCE COMES IN FOR YOUR CONSIDERATION.

MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE LET ME MAKE IT ABUNDANTLY CLEAR TO YOU THAT IF AT ANY

TIME ANY OF YOUR JURORS NEED ANY FURTHER INSTRUCTIONS ON THE LAW, PLEASE LET ME KNOW AND I WILL CALL YOU OUT IMMEDIATELY AND WILL BE GLAD TO READ IT TO YOU.

REMEMBER NOW THAT YOU 12 ARE THE SOLE AND ONLY FINDERS OF THE FACTS. REMEMBER THAT WHATEVER YOUR VERDICT IS, IT'S GOT TO BE THE UNANIMOUS VERDICT OF ALL 12.

I WILL ASK THE ALTERNATES TO REMAIN IN THEIR SEATS. MR. FOREMAN, YOU AND YOUR JURY MAY RETIRE TO THE JURY ROOM. DO NOT BEGIN THE DELIBERATIONS.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: ESCORT THE ALTERNATES, PLEASE, FOR ME.

(THE ALTERNATES LEAVE THE COURTROOM.)

THE COURT: FIRST, LET THE RECORD REFLECT THAT THE ALTERNATES HAVE WITHDRAWN FROM THE 12 JURORS. DO YOU AGREE WITH THAT?

SOLICITOR BAILEY: YES, SIR.

THE COURT: DO YOU AGREE WITH THAT?

MR. STONE: YES, SIR.

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

SOLICITOR BAILEY: NO, YOUR HONOR.

THE COURT: FOR THE DEFENSE?

MR. STONE: NO, YOUR HONOR.

THE COURT: THEN, GENTLEMEN, WE HAVE PREVIOUSLY EXAMINED THE STATUTORY INSTRUCTIONS AND THE VERDICT FORMS, PART ONE AND TWO. THEY ARE SATISFACTORY?

MR. STONE: YES, SIR.

THE COURT: WE ARE IN AGREEMENT THAT THERE IS ONLY ONE STATUTORY AGGRAVATING CIRCUMSTANCE?

MR. STONE: YES, SIR.

SOLICITOR BAILEY: YES, SIR.

THE COURT: TAKE THESE VERDICT FORMS. GENTLEMEN, PLEASE GO OVER THE EXHIBITS.

(PAUSE.)

THE COURT: DURING THE SECOND PHASE, THERE WAS TESTIMONY CONCERNING A PUBLICATION OF THE SOUTH CAROLINA TROOPERS' ASSOCIATION, WHEREIN THE DECEASED SERGEANT LINGARD'S PICTURE APPEARED ON THE FRONT COVER. BY AGREEMENT OF COUNSEL ONLY THE FRONT COVER OF THAT PUBLICATION IS GOING INTO THE JURY ROOM.

SOLICITOR BAILEY: THAT IS CORRECT, YOUR HONOR, STATE'S 105.

MR. STONE: YES, SIR.

THE COURT: EVERYBODY AGREE WITH THAT?

SOLICITOR BAILEY: YES, SIR.

MR. STONE: YES, SIR.

THE COURT: BY STIPULATION WE WILL LET THAT GO IN.

(THE JURY COMMENCES ITS DELIBERATION AT 3:17 P.M.)

(THE FOLLOWING OCCURRED AT 5:27 P.M.)

THE COURT: LADIES AND GENTLEMEN OF THE AUDIENCE, I HAVE BEEN ADVISED THAT WE NOW HAVE A UNANIMOUS VERDICT EITHER AS TO LIFE IMPRISONMENT OR DEATH.

AT THIS TIME I AM NOT AWARE OF WHAT THAT VERDICT WILL BE. I WOULD UNDERSTAND THAT UPON THE PUBLISHING OF THAT VERDICT THAT IT WOULD CAUSE A GREAT EMOTIONAL DISTRESS AMONG CERTAIN PEOPLE ON ONE SIDE OR THE OTHER OF THE ISSUE.

HOWEVER I CAUTION EVERYBODY THAT I WILL NOT ACCEPT ANY OUTBURSTS, ANY COMMENTS OF ANY KIND. THESE ARE VERY SERIOUS PROCEEDINGS FOR ALL CONCERNED. IF THERE IS ANYBODY WITHIN THE SOUND OF MY VOICE THAT FEELS THAT THEY CANNOT ADHERE TO THIS ADMONITION, I AM REQUESTING THAT YOU LEAVE THE COURTROOM NOW.

I AM ASKING THE APPROPRIATE OFFICERS WHO SURROUND THE COURTROOM TO BRING TO ME ANYBODY WHO VIOLATES THIS INSTRUCTION. ANY QUESTIONS? IS THE STATE NOW READY TO RECEIVE THE VERDICT?

SOLICITOR BAILEY: THE STATE IS READY, YOUR

HONOR.

THE COURT: IS THE DEFENDANT READY?

MR. STONE: YES, SIR.

MR. SIMS: YES, SIR.

THE COURT: LET THE RECORD REFLECT THAT THE DEFENDANT IS IN THE COURTROOM. BRING THE JURY.

AGENT: DO YOU WANT THE ALTERNATES BACK WITH THE JURY?

THE COURT: YES. THE ALTERNATES MAY SIT WITH THE JURY. LET THE RECORD REFLECT THE ALTERNATES WERE NOT WITH THE JURY DURING THEIR DELIBERATION.

(THE JURY RETURNS TO THE COURTROOM.)

CLERK: MR. FOREMAN, HAVE YOU REACHED A UNANIMOUS DECISION?

FOREMAN: YES, MA'AM, WE HAVE.

CLERK: DO NOT PUBLISH IT BUT PLEASE PASS IT BY THE BAILIFF.

(HANDS TO COURT.)

THE COURT: MADAME CLERK, PLEASE PUBLISH PART ONE.

(WHEREUPON THE VERDICT OF THE JURY WAS PUBLISHED AS FOLLOWS.)

CLERK: IN THE COURT OF GENERAL SESSIONS, THE STATE OF SOUTH CAROLINA VERSUS BAYAN ALEKSEY, WE THE JURY IN THE ABOVE-ENTITLED CASE UNANIMOUSLY FIND

BEYOND A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCE, THE MURDER OF A FEDERAL, STATE OR LOCAL LAW ENFORCEMENT OFFICER, PEACE OFFICER OR FORMER PEACE OFFICER, CORRECTIONS EMPLOYEE OR FIREMAN OR FORMER FIREMAN DURING OR BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES. IT'S SIGNED BY ALL 12 JURORS. DO YOU WANT ME TO READ THE NAMES?

THE COURT: NO, MA'AM. WE WILL PUBLISH THAT AT A LATER TIME. PART TWO.

CLERK: WE THE JURY IN THE ABOVE-ENTITLED CASE UNANIMOUSLY RECOMMEND THAT THE DEFENDANT BAYAN ALEKSEY BE SENTENCED TO DEATH, SIGNED BY ALL 12 JURORS. IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

FOREMAN: YES, MA'AM.

THE COURT: PLEASE POLL THE JURY INDIVIDUALLY. THE QUESTION IS: IS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT? THE ANSWER WILL RESPOND TO THE AFFIRMATION OF THE SENTENCE AND AS TO THE AGGRAVATING CIRCUMSTANCES. YOU MAY PROCEED.

CLERK: AS I CALL YOUR NAME, PLEASE STAND. NARONE FRANKLIN, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: JASON COTE, WAS THIS YOUR VERDICT

AND STILL YOUR VERDICT?

JUROR: YES, MA'AM.

CLERK: SANDRA MCWATERS, WAS THIS YOUR VERDICT --

JUROR: YES.

CLERK: -- AND STILL YOUR VERDICT?

THE WITNESS: (NODS HEAD). (INDICATING AFFIRMATIVE RESPONSE).

CLERK: DUANE GREEN, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: TYRONE GILLARD, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, MA'AM.

CLERK: ELAINE WHETSTONE, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: NORRIS GIBSON, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: DEBRA SANFORD, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: BONNIE ZEIGLER, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: GIGI HAYES, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES, IT IS.

CLERK: KEDRAIN PELZER, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: BARBARA HANTON, WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

JUROR: YES.

CLERK: ALL ANSWERED IN THE AFFIRMATIVE.

THE COURT: IS THERE ANYTHING ELSE REQUIRED OF THIS JURY AT THIS TIME?

SOLICITOR BAILEY: NOT FROM THE STATE, YOUR HONOR.

THE COURT: HOW ABOUT FROM THE DEFENSE?

MR. STONE: NOT OF THE JURY.

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, UNDER A RECENT ORDER OF THE SUPREME COURT, I AM REQUIRED TO CHARGE YOU AS FOLLOWS AND TO HAND YOU THIS CHARGE IN WRITING.

AFTER YOUR SERVICE IN THIS TRIAL HAS BEEN CONCLUDED, YOU HAVE THE RIGHT TO EITHER REFUSE TO DISCUSS THE VERDICT YOU HAVE RENDERED OR TO DISCUSS THE VERDICT TO THE EXTENT YOU SO DESIRE.

IF YOU CHOOSE TO DISCUSS THE VERDICT, YOU ARE FREE TO TERMINATE ANY SUCH DISCUSSIONS AT ANY POINT. IF THE PERSON WITH WHOM YOU ARE SPEAKING CONTINUES TO PERSUE A DISCUSSION OF THE VERDICT AFTER YOU HAVE COMMUNICATED A DESIRE TO TERMINATE THE DISCUSSION OR IF A PERSON CONTINUES TO HARASS YOU AFTER YOU HAVE REFUSED TO DISCUSS THE VERDICT, YOU SHOULD REPORT THAT PERSON TO THE OFFICE OF SOLICITOR WALTER BAILEY, GIVING US THE NAME OF THAT INDIVIDUAL, HIS ADDRESS AND PHONE NUMBER.

IN ADDITION TO THIS ORAL CHARGE, WHICH IS MADE A PART OF THE RECORD, I WILL IN JUST A MINUTE HAND TO EACH OF YOU THIS CHARGE SO THAT YOU WILL HAVE IT IN YOUR POSSESSION.

IF YOU DESIRE TO TALK TO SOMEBODY, DO SO. IF YOU DESIRE NOT TO DO SO, DO SO. IF ANYBODY PERSISTS AS AGAINST YOUR WILL, SHOW THEM MY ORDER AND REPORT THEIR CONDUCT TO ME.

NOW, LADIES AND GENTLEMEN, I WISH TO THANK YOU AND SUCH A THANK IS ENTIRELY INADEQUATE AS AN EXPRESSION FOR WHAT ALL OF YOU HAVE BEEN THROUGH. I APOLOGIZE FOR HAVING TO EXPOSE YOU OVER THESE PAST TEN DAYS TO A SIDE OF HUMAN EXISTENCE THAT YOU RATHER WOULD NOT HAVE SEEN AND THAT WE WOULD RATHER HAVE NOT SUBMITTED TO YOU. FOR THIS I DEEPLY APOLOGIZE.

YOU 12 AND THE ALTERNATES, TOO, HAVE SEEN HUMAN LOSS AND SUFFERING, AND YOU HAVE HAD THE MOST DIFFICULT TASK OF DETERMINING FOR THOSE MATTERS THE APPROPRIATE PUNISHMENT.

YOU 12 AND THE ALTERNATES, TOO, NOW RETURN TO YOUR HOMES; BUT YOU ARE DIFFERENT PEOPLE THAN WHEN YOU FIRST CAME TO MY COURTROOM. THE SITUATION THAT YOU HAVE FOUND YOURSELF IN OVER THE PAST TEN DAYS HAS DESTROYED QUITE FRANKLY WHATEVER MEANING OF INNOCENCE AND NAIVETY THAT YOU MAY HAVE HAD.

IN THE PAST SURROUNDINGS YOU HAVE SEEN CRIME, HORRIBLE CRIME. YOU HAVE SEEN HUMAN SUFFERING. I AM FRANKLY SORRY, LADIES AND GENTLEMEN, THAT YOU HAD TO DO THAT.

UNFORTUNATELY, HOWEVER, IT WAS NECESSARY IN THIS CASE THAT 12 GOOD CITIZENS OF ORANGEBURG COUNTY ADDRESS THESE MOST IMPORTANT ISSUES AND MAKE A DECISION THAT IS FAR REACHING.

NONE OF YOU ASKED TO COME AND SIT ON THIS TRIAL. NONE OF YOU ASKED TO COME TO COURT. NONE OF YOU WOULD HAVE DESIRED TO SIT IN THIS PARTICULAR CASE.

BUT HAVING DONE SO, YOU HAVE DONE SO IN ACCORDANCE WITH YOUR OATH AS JURORS AND AS GOOD CITIZENS OF THIS COUNTY. AND FOR THAT YOU HAVE NO

APOLOGY TO MAKE TO ANYONE.

THE JURY SYSTEM, LADIES AND GENTLEMEN, IS THE ESSENTIAL INGREDIENT OF PEACE AND GOOD ORDER IN YOUR COMMUNITY AND IN MINE AND IN OUR STATE. I TELL YOU, LADIES AND GENTLEMEN, THAT YOUR VERDICT AND THAT YOUR SENTENCE WAS SUPPORTED BY THE LAW AND THE EVIDENCE IN THIS CASE.

WHAT YOU 12 HAVE BEEN ASKED TO DO IS THE MOST DIFFICULT THING THAT ANY CITIZEN CAN BE ASKED OF AS A CITIZEN OF OUR MAGNIFICENT COUNTRY. YOU HAVE BEEN ASKED TO SIT IN JUDGMENT OF A FELLOW HUMAN BEING AND TO PASS THAT JUDGMENT ON THAT MAN'S LIFE.

I DON'T NEED TO REMIND YOU OF THAT, BUT LET ME TELL YOU THIS. YOU HAVE PERFORMED YOUR DUTY IN THE TRADITIONS OF OUR SYSTEM AND IN THE HIGHEST MANNER TO PERFORM IT.

YOU HAVE BEEN ATTENTIVE. YOU HAVE BEEN CONSIDERATE. YOU HAVE LISTENED. YOU HAVE FOLLOWED MY INSTRUCTIONS. YOU HAVE BEEN INTENT. YOU HAVE SATISFIED THE OATH THAT YOU TOOK BEFORE YOU STARTED THE TRIAL OF THIS CASE. YOU HAVE DONE ANY AND ALL THAT ALL OF US HAVE A RIGHT TO ASK OF YOU.

I RELEASE YOU NOW, LADIES AND GENTLEMEN, FROM THE SILENCE WHICH YOU TOOK WHEN YOU STARTED THIS CASE. YOUR SERVICE IN THIS TRIAL HAS BEEN COMPLETED.

YOU NOW HAVE THE RIGHT TO EITHER DISCUSS OR DECLINE TO DISCUSS ANY OR ALL PORTIONS OF YOUR DELIBERATION. YOU, OF COURSE, ARE FREE TO TERMINATE ANY DISCUSSIONS THAT YOU ENTER INTO AT ANY POINT.

MR. FOREMAN, LADIES AND GENTLEMEN, ON BEHALF OF THE COURT SYSTEM OF OUR STATE AND ON BEHALF OF JUSTICE, TOO, I THANK YOU FOR WHAT YOU HAVE DONE. I MAKE NO COMMENT ON YOUR VERDICT, OTHER THAN TO TELL YOU, AS I HAVE, THAT IT IS FULLY SUPPORTED BY THE LAW AND EVIDENCE IN THIS CASE, AS IS YOUR SENTENCE.

YOU OBVIOUSLY HAVE STRUGGLED WITH THESE THINGS IN REACHING THE DECISION THAT YOU HAVE DONE. WE ALL, AS THE COURT SYSTEM AND THE CITIZENS OF ORANGEBURG COUNTY AND AS VICTIMS, TOO, APPRECIATE IT.

YOU HAVE ONLY TO ANSWER TO YOUR CONSCIENCE FOR THE DECISION THAT YOU HAVE RENDERED TODAY BASED ON YOUR OATH AND THE EVIDENCE AND TESTIMONY PRESENTED IN THIS CASE. I TELL YOU THAT YOUR CONSCIENCE NEED NOT SUFFER FROM THE DECISIONS THAT YOU HAVE REACHED.

THE CUSTODIANS NOW WILL TAKE YOU TO YOUR HOTEL AND THEN BACK TO YOUR HOME IN A FEW MOMENTS. BEFORE YOU LEAVE, AS IS MY CUSTOM IN A CASE OF THIS KIND, I WOULD LIKE TO COME BACK AND CHAT WITH YOU A FEW MOMENTS.

FOLLOWING THAT THE DEFENDANT WILL BE SENTENCED IN ACCORDANCE WITH THE LAW OF THIS STATE. AT THAT TIME YOU ARE FREE TO COME BACK AND SIT IN THE JURY BOX IF YOU CARE TO.

YOU ARE AT THAT TIME FREE TO GO HOME. I LEAVE THAT TO YOU. BUT IF YOU WILL RETURN TO YOUR JURY ROOM AND LET ME COME BACK. IN JUST A MOMENT I WILL BE THERE.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: LADIES AND GENTLEMEN, AS IS MY CUSTOM, IT IS MY INTENTION NOW TO SPEAK TO THE JURY A FEW MINUTES PRIVATELY, AFTER WHICH I WILL CONDUCT THE SENTENCING PROCEEDING. IF YOU WILL BEAR WITH ME, WE WILL BE IN RECESS ABOUT TEN MINUTES, AT WHICH TIME I SHALL RETURN. THANK YOU.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: THE VERDICT AND JUDGMENT OF THE JURY BEING UNANIMOUS AND HAVING BEEN SPOKEN, I WOULD BE GLAD TO HEAR FROM YOU PRIOR TO THE IMPOSITION OF THE SENTENCE.

MR. STONE: YOUR HONOR, WE MOVE AT THIS TIME FOR A NEW TRIAL BASED ON OUR PREVIOUS OBJECTIONS AND MOTIONS, AS WELL AS A NEW TRIAL AS TO SENTENCING. WE FEEL THAT THE VERDICT WAS ARBITRARY AND WAS THE RESULT OF PASSION, NOT OF THE EVIDENCE THEY RECEIVED

IN AGGRAVATION.

THE COURT: ALL RIGHT, SIR. THAT MOTION IS RESPECTFULLY OVERRULED. THE AGGRAVATING CIRCUMSTANCE OF THE DEATH OF A POLICE OFFICER IN THE PERFORMANCE OF HIS DUTY WAS FOUND UNANIMOUSLY IN THE FIRST PHASE.

IN ADDITION TO THAT, ALL JURORS IN THE SECOND PHASE MADE SUCH A FINDING AND SIGNED SUCH A DOCUMENT. THE EVIDENCE AND LAW IN THIS CASE FULLY SUPPORTS THE FINDING OF THE AGGRAVATING CIRCUMSTANCE.

THE JUDGMENT OF THE JURY THAT THE DEATH PENALTY BE IMPOSED IS IN ACCORDANCE WITH THE STATUTORY LAWS SUCH MADE AND PROVIDED. SO YOUR OBJECTIONS ARE OVERRULED. I WILL MAKE AN APPROPRIATE FINDING IMMEDIATELY WITH REGARDS TO YOUR OTHER ISSUE.

MR. STONE: YES, SIR.

THE COURT: ANYTHING FURTHER FROM THE STATE?

SOLICITOR BAILEY: NOT FROM THE STATE, YOUR HONOR.

THE COURT: HAVE THE DEFENDANT COME FORWARD.

(PAUSE.)

THE COURT: MR. DEFENDANT, YOU HAVE BEEN FOUND BY THE JURY TO BE GUILTY OF THE OFFENSE OF MURDER. THE JURY HAS FURTHER RECOMMENDED THAT YOU BE

SENTENCED TO DEATH.

I ASK YOU NOW, MR. DEFENDANT, DO YOU HAVE ANYTHING YOU WISH TO SAY AS TO WHY THE JUDGMENT OF THE LAW AND THE SENTENCE OF THE COURT SHOULD NOT NOW BE PRONOUNCED AGAINST YOU?

DEFENDANT ALEKSEY: NO, YOUR HONOR.

THE COURT: AS THE PRESIDING JUDGE IN THE ABOVE-ENTITLED ACTION, PRIOR TO THE IMPOSITION OF THE DEATH PENALTY UPON THE DEFENDANT BAYAN ALEKSEY, I FIND AS AN AFFIRMATIVE FACT THAT THE EVIDENCE IN THIS CASE WARRANTS THE IMPOSITION OF THE DEATH PENALTY, AND THAT ITS IMPOSITION IS NOT A RESULT OF PREJUDICE, PASSION OR ANY OTHER ARBITRARY FACTOR.

THE DEFENDANT BAYAN ALEKSEY HAS BEEN FOUND BY THE JURY TO BE GUILTY OF THE OFFENSE OF MURDER. THE JURY HAS RECOMMENDED TO ME THAT THIS DEFENDANT SHOULD BE SENTENCED TO DEATH.

IT IS THEREFORE THE JUDGMENT OF THE LAW AND THE SENTENCE OF THIS COURT THAT THE DEFENDANT BAYAN ALEKSEY BE TAKEN TO THE COUNTY JAIL OF ORANGEBURG COUNTY AND THENCE TO THE STATE PENITENTIARY, HENCEFORTH TO BE KEPT IN CLOSE AND SAFE CONFINEMENT UNTIL THE 1ST DAY OF OCTOBER, 1998, UPON WHICH DAY BETWEEN THE HOURS OF SIX O'CLOCK A.M. AND SIX O'CLOCK P.M. THE DEFENDANT BAYAN ALEKSEY SHALL SUFFER DEATH

BY ELECTROCUTION OR LETHAL INJECTION IN THE MANNER PROVIDED BY LAW. MAY GOD HAVE MERCY UPON YOU. YOU MAY DISCHARGE THE DEFENDANT.

(PAUSE.)

THE COURT: ANYTHING FURTHER?

MR. STONE: NO, SIR, NOT FROM THE DEFENSE.

THE COURT: THE PROCEEDINGS OF THIS COURT AND ITS BUSINESS HAS BEEN ACCOMPLISHED. WE DO NOW STAND ADJOURN. THANK YOU.

(COURT'S EXHIBIT NUMBER 5, AFFIRMATION OF DEATH SENTENCE, IS MARKED FOR PURPOSES OF THE RECORD.)

* * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

VOLUME IV

C E R T I F I C A T E

I, THE UNDERSIGNED L. COCONUT PANTSARI, OFFICIAL REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, VOLUMES I THROUGH IV, RELATIVE TO APPEAL, IN THE CRIMINAL COURT FOR ORANGEBURG, SOUTH CAROLINA, ON THE 24TH DAY OF AUGUST, 1998, THROUGH THE 1ST DAY OF SEPTEMBER, 1998.

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

MAY 9, 1999

L. Coconut Pantsari

COURT REPORTER

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG

THE STATE :

-VS- : TRANSCRIPT OF RECORD

BAYAN ALEKSEY :

MAY 20, 1998
SUMTER, SOUTH CAROLINA

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

WALTER M. BAILEY, JR., SOLICITOR
ATTORNEY FOR THE STATE

DUFFIE STONE, ESQ.
THOMAS R. SIMS, ESQ.
ATTORNEYS FOR THE DEFENDANT

VIRGINIA ROLAND
CIRCUIT COURT REPORTER

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(THEREUPON, ON WEDNESDAY, MAY 20, 1998, THE HEARING WAS COMMENCED AS FOLLOWS:)

THE COURT: ALL RIGHT. SOLICITOR, YOU MAY PROCEED.

MR. BAILEY: YOUR HONOR, DEFENSE HAS FOUR MOTIONS OR FIVE MOTIONS THEY FILED. WE'VE BEEN ABLE TO RESOLVE SOME OF THEM. I'VE ALSO GOT ONE MOTION THAT BEING FOR PSYCHIATRIC EVALUATION.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: AND LIKE I SAY IT'S THE DEFENSE'S MOTIONS AT THIS TIME.

THE COURT: LET ME SAY AT THE OUTSET NOW THAT THE PRESS, INCLUDING THE T.V., ARE AFFORDED AN OPPORTUNITY IN MY COURTROOM AT ALL TIMES AS LONG AS THEY PRESCRIBE BY THE RULES BUT NOW I WANT THIS RECORD TO FIRMLY REFLECT THAT I AM NOW ISSUING AN ADMONITION TO ALL LAWYERS, THE STATE AND THE DEFENDANT, THAT I AM NOT GOING TO PERMIT THIS CASE TO BE TRIED IN THE PRESS BY THE ATTORNEYS. IT WILL BE TRIED IN THIS COURTROOM AND SO I AM ISSUING SUCH ORDERS AS ARE NECESSARY PROHIBITING THE SOLICITOR OR DEFENDANT'S COUNSEL FROM DISCUSSING THIS CASE FACTUALLY IN THE PRESS.

OBVIOUSLY YOU MAY INFORM THE PRESS AS TO WHEN AND WHERE A HEARING WILL BE HELD, MATTERS OF THAT KIND BUT INSOFAR AS TRIAL STRATEGY, FACTUAL SITUATIONS, OR OTHERWISE, I AM ABSOLUTELY PROHIBITING IT BY THIS ORDER. I

THINK MY ORAL ORDER IS SUFFICIENT. IF YOU NEED A WRITTEN ORDER, I'LL GET YOU ONE AND THAT APPLIES NOT ONLY TO DEFENSE BUT TO THE PLAINTIFF, TOO. EVERYBODY UNDERSTAND THAT?

MR. STONE: YES, SIR.

MR. BAILEY: YES, SIR.

THE COURT: I THINK THE STATE OF SOUTH CAROLINA IS ENTITLED TO A FAIR TRIAL AS IS THE VICTIM AND THE DEFENDANT'S EQUALLY ENTITLED TO A FAIR TRIAL. THAT CAN ONLY BE ACCOMPLISHED BY THE JURY DECIDING THE ISSUE BASED ON WHAT THEY HEAR IN THIS COURTROOM AND NOT WHAT THEY HEAR IN THE PRESS AND NOT WHAT SOME LAWYER TOLD THEM. NOW, WHO WANTS TO GO FIRST?

MR. BAILEY: YOUR HONOR, I CAN GO FIRST SINCE I'VE JUST GOT THAT ONE MOTION.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: YOUR HONOR, SINCE THIS IS A DEATH PENALTY CASE AND THE DEFENDANT IN THIS CASE HAS EXHIBITED SOME KIND OF BIZARRE BEHAVIOR BOTH BEFORE AND AFTER HIS ARREST, THE STATE MOVES FOR A PSYCHIATRIC EVALUATION JUST TO COVER ALL BASES.

THE COURT: ALL RIGHT, SIR. AS A PRELIMINARY MATTER LET THE RECORD REFLECT THAT THE DEFENDANT IS PRESENT IN COURT ACCOMPANIED BY BOTH OF HIS ATTORNEYS.

WHAT IS THE DEFENDANT'S POSITION WITH REGARD TO

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THAT?

MR. STONE: YOUR HONOR, FIRST OF ALL MY UNDERSTANDING FROM ESTELL VERSUS SMITH AND SLOAN VERSUS STATE WHICH I HAVE BROUGHT A COPY FOR THE COURT AS WELL AS THE SOLICITOR -- HAND YOU UP -- ESTELL VERSUS SMITH IS PROBABLY THE BEST ONE AS FAR AS DESCRIBING THE ISSUE HERE. IF HE HAS A FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION, WE HAVE NOT ASKED FOR A MENTAL EVALUATION FROM THE STATE. WE DO NOT INTEND TO. HE DOES NOT INTEND TO WAIVE HIS FIFTH AMENDMENT RIGHT. I THINK AT THIS POINT THEN THAT SHIFTS TO WHETHER OR NOT THE JUDGE, YOUR HONOR, FINDS IT NECESSARY UNDER STATES VERSUS SLOAN AND ESTELL VERSUS SMITH TO DO SO.

I HAVE RECEIVED TWO AFFIDAVITS FROM THE SOLICITOR WHICH HE PREPARED WHEN HE HAD MY CLIENT MOVED. ONE IS FROM THE DIRECTOR OF THE ORANGEBURG COUNTY DETENTION CENTER AND ONE IS THE SHERIFF JAMES JOHNSON. BOTH OF THESE AFFIDAVITS -- APOLOGIZE FOR THE HOLES BUT THESE ARE TO KEEP ---

THE COURT: LET ME INTERRUPT FOR A SECOND. WHY CAN'T I PROTECT HIS FIFTH AMENDMENT RIGHT BY PROVIDING THAT NOTHING HE SAYS IS DISCLOSED WITH REFERENCE TO ANY FACTS ABOUT THIS INCIDENT SHALL NOT BE ADMISSIBLE IN THE TRIAL OF THIS CASE?

MR. STONE: I HAVE TOLD MY CLIENT, YOUR HONOR,

THAT HE HAS A FIFTH AMENDMENT RIGHT NOT SPEAK AT ALL. I BELIEVE HE STILL HAS THAT RIGHT. THE SOLICITOR I THINK HAS TO AT LEAST SHOW YOU SOME NEED. WHILE HE SAYS ON THE RECORD HERE THAT MY CLIENT HAS SHOWN SOME STRANGE BEHAVIOR, THOSE TWO AFFIDAVITS WHICH I JUST HANDED UP TO YOU BOTH ADDRESS THE ISSUE OF MENTAL INSTABILITY AND BOTH OF THOSE PEOPLE, BOTH THE SHERIFF AND THE DETENTION CENTER -- HEAD OF THE DETENTION CENTER, SAID HE DID NOT HAVE A MENTAL PROBLEM. THEY SAW NO EVIDENCE OF A MENTAL PROBLEM.

THE COURT: WELL, ARE YOU SAYING TO ME -- AND I'M NOT REQUIRING -- ARE YOU SAYING TO ME THAT YOU ARE NOT GOING TO RAISE THOSE ISSUES THERE IN THE TRIAL OF THE CASE WHEREBY THE STATE WOULD BE CONFRONTED WITH THAT AND NOT HAVE ANY TESTIMONY TO REBUT IT?

MR. STONE: IN ALL FAIRNESS TO THIS COURT AND TO THE SOLICITOR, I'M NOT SAYING THAT; HOWEVER, I DO RECOGNIZE THAT I CAN'T STAND HERE AND SAY I WILL NOT ALLOW HIM TO SUBMIT TO IT. IF I SEE -- RIGHT NOW I SEE NO REASON TO SUBMIT ANY MENTAL EVALUATION EVIDENCE TO THE COURT OR TO THE JURY. IF HOWEVER THAT CHANGES I WOULD CERTAINLY UNDERSTAND THAT I WOULD HAVE TO COME BACK HERE AND TELL YOU THAT BUT RIGHT NOW I DON'T HAVE ANY INFORMATION OR ANY INDICATION THAT HE HAS ANY MENTAL PROBLEMS AND HE DOES NOT WISH TO WAIVE HIS FIFTH AMENDMENT RIGHT TO HAVE SUCH AN EVALUATION DONE.

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THE COURT: I UNDERSTAND YOUR POSITION AND FOR THE RECORD.

NOW, SOLICITOR, BASED ON WHAT COUNSEL FOR THE DEFENDANT SAYS, WHAT'S YOUR REPLY?

MR. BAILEY: YOUR HONOR, I DON'T HAVE ANY INTENTION OF TRYING TO ELICIT FROM ANY PSYCHIATRIST ANY CONFIDENTIAL INFORMATION, ANY ADMISSIONS THAT HE MIGHT MAKE TO THEM. I JUST THINK THAT THIS IS A DEATH PENALTY CASE AND IT'S JUST RIPE FOR A P.C.R. APPEAL IF THERE IS NO EVALUATION DONE.

IN ADDITION TO THAT, YOUR HONOR, I DON'T WANT TO SIT THERE HELPLESS IF AT THE LAST MINUTE THEY DECIDE THEY WANT TO EVALUATE HIM, THEN I HAVE NOTHING TO REBUT IT AND I'M LEFT ASKING THE COURT TO GRANT A CONTINUANCE BECAUSE I'M HERE AT THE LAST MINUTE HERE, AND I CAN REPRESENT TO THE COURT AS AN OFFICER OF THE COURT THAT HE DID MAKE SOME BIZARRE STATEMENTS IN HIS ACTIONS IN SHOOTING THE TROOPER FOR REALLY NO GOOD REASON THAT I CAN THINK OF IN AND OF ITSELF I THINK IS SUFFICIENT TO RAISE THAT QUESTION WHETHER OR NOT THERE IS SOMETHING WRONG.

THE COURT: THIS IS A DEATH PENALTY CASE AND I CONCLUDE THAT IT WOULD BE PROPER UNDER THE CIRCUMSTANCES PRESENTED TO ME TO ORDER SUCH AN EVALUATION. I TELL YOU UPON THE RECORD, HOWEVER, THAT ANYTHING SAID BY THIS DEFENDANT AS IT RELATES TO ANY FACTS IN THIS CASE, IF HE

SAYS ANY, WOULD NOT BE ADMISSIBLE AT THE TRIAL. NOW, THAT WOULD NOT GO TO ANY MENTAL QUESTION BUT THE FACTUAL QUESTION. I WOULD CERTAINLY PROTECT HIS FIFTH AMENDMENT RIGHT WITH REGARDS TO THE EXAMINATION BUT I THINK IN FAIRNESS TO THE DEFENDANT, TOO, GIVEN THE REPRESENTATIONS OF BIZARRE BEHAVIOR, THAT SUCH AN EXAMINATION SHOULD BE HAD. PREPARE ME AN ORDER.

MR. BAILEY: THANK YOUR HONOR.

THE COURT: NOW, LET ME ASK YOU THIS: HAS THE APPROPRIATE NOTICE BEEN FILED THAT THE STATE OF SOUTH CAROLINA SEEKS THE PENALTY OF DEATH?

MR. BAILEY: YES, SIR. THAT'S BEEN FILED, SERVED ON THE DEFENDANT AND HIS ATTORNEYS.

THE COURT: HAVE YOU NOTICED THE ALLEGED AGGRAVATING CIRCUMSTANCES?

MR. BAILEY: YES, SIR.

THE COURT: FOR THE RECORD CAN YOU TELL ME WHAT THEY ARE?

MR. BAILEY: YES, SIR. MURDER OF LAW ENFORCEMENT OFFICER IN THE LINE OF DUTY, YOUR HONOR.

THE COURT: IS THAT THE ONLY AGGRAVATING CIRCUMSTANCE?

MR. BAILEY: YES, SIR.

THE COURT: ALL RIGHT, SIR. YOU UNDERSTAND?

MR. STONE: THAT'S MY UNDERSTANDING, YES, SIR.

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THE COURT: DO YOU CERTIFY TO ME THAT THAT HAS BEEN DONE?

MR. STONE: YES, SIR.

THE COURT: LET'S DO THIS NOW PRELIMINARILY, TOO. PLEASE STATE FOR ME YOUR TIMES OF PRACTICE AND YOUR EXPERIENCE AND WHETHER OR NOT YOU'VE BEEN CERTIFIED BY THE SUPREME COURT.

MR. STONE: YES, SIR. I HAVE BEEN PRACTICING SINCE 1988. I'VE HAD -- I WORKED FOR THREE AND A HALF YEARS IN THE SOLICITOR'S OFFICE IN RICHLAND COUNTY. I AM NOW AND I'VE BEEN PRACTICING FELONY CRIMINAL LAW AS WELL AS CIVIL LAW IN FEDERAL AND STATE COURT SINCE THAT TIME. HOW MANY YEARS? PROBABLY EIGHT, NINE YEARS FELONY EXPERIENCE. AS FAR AS I JUST GOT THROUGH A DEATH PENALTY CASE IN LEXINGTON, THE STATE VERSUS TERRY. IS THERE ANYTHING -- I WANT TO MAKE SURE I'M TELLING YOU EVERYTHING THAT I KNOW OF.

THE COURT: NO, SIR. I KNOW OF YOUR QUALIFICATIONS. I JUST WANT THE RECORD TO REFLECT IT.

MR. STONE: YES, SIR.

THE COURT: YOU OF COURSE ARE -- OF COURSE ARE DESIGNATED AS THE FIRST CHAIR AND THE SECOND GENTLEMAN I KNOW OF HIS EMINENT QUALIFICATIONS BUT I NEED TO PUT THEM ON THE RECORD.

MR. SIMS: YES, SIR. I GUESS FOR THE RECORD I'M

THOMAS SIMS. I'VE BEEN PRACTICING LAW SINCE 1978, TWO YEARS IN THE STATE OF MISSISSIPPI AND FROM THAT TIME I CAME TO THE STATE OF SOUTH CAROLINA. I WAS ASSISTANT SOLICITOR, DEPUTY SOLICITOR, AND ACTING SOLICITOR FOR THE FIRST JUDICIAL CIRCUIT WHEREIN I DID PROSECUTE CAPITAL CASES ON BEHALF OF THE STATE. SINCE LEAVING THE SOLICITOR'S OFFICE I BELIEVE I'VE BEEN INVOLVED IN THIS WOULD BE MY SECOND ON THE DEFENSE SIDE WITH WHICH I HAVE BEEN INVOLVED AS A DEFENSE COUNSEL IN A CAPITAL CASE AND THEN DURING MY TENURE AS ACTING SOLICITOR AND DEPUTY SOLICITOR, I DID PROSECUTE MAJOR FELONY CASES AND MAJOR CRIMINAL MURDER CASES IN THAT OFFICE.

THE COURT: COURT IS DELIGHTED TO HAVE BOTH OF YOU.

MR. STONE: THANK YOU.

THE COURT: I HAVE RULED NOW ON THAT MOTION WITH REGARD TO THE EXAMINATION. ANYTHING ELSE FROM THE STATE?

MR. BAILEY: YES, SIR. YOUR HONOR, THIS WAS PUT ON THE RECORD AT A PRIOR HEARING BUT NOT BEFORE YOUR HONOR AND YOU WILL BE HANDLING THE CASE. MR. STONE IS PRESENTLY A PART -- AS I UNDERSTAND -- A PART-TIME ASSISTANT SOLICITOR OF THE 14TH CIRCUIT AND THE DEFENDANT HAS BEEN MADE AWARE OF THAT PREVIOUSLY. HE'S WAIVED ANY CONFLICT BUT I JUST BRING THAT TO YOUR HONOR'S ATTENTION. ASK HIM TO PUT THAT ON THE RECORD AGAIN SO THERE IS NO

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MISUNDERSTANDING.

MR. STONE: THAT'S BEST, YOUR HONOR. YOUR HONOR, AGAIN I AM DOING PART-TIME WORK IN THE 14TH CIRCUIT. OF COURSE I DON'T HAVE ANY JURISDICTION OUTSIDE OF THAT. WE SPOKE TO MR. ALEKSEY ABOUT THAT EARLIER ON THE RECORD BUT IF YOU WOULD, SIR, JUST ASK MR. ALEKSEY IF HE WOULD LIKE ME TO CONTINUE ON AS HIS COUNSEL KNOWING THAT.

THE COURT: MR. ALEKSEY, PLEASE STAND. YOU HAVE HEARD THE COLLOQUY REGARDING MR. DUFFIE WHO IS THE -- DUFFIE STONE OR STONE DUFFIE?

MR. STONE: DUFFIE STONE.

THE COURT: DUFFIE STONE. HIS EMPLOYMENT AS A PART-TIME SOLICITOR IN ANOTHER CIRCUIT NOT IN ANY WAY CONNECTED WITH THE ORANGEBURG CIRCUIT. DO YOU WAIVE OR ARE YOU COMFORTABLE WITH THE FACT THAT HE IS REPRESENTING YOU AS A DEFENDANT ATTORNEY NOW?

THE DEFENDANT: YES, SIR.

THE COURT: AND YOU DO CONSENT TO HIM TO CONTINUE IN THIS POSITION?

THE DEFENDANT: YES, SIR.

THE COURT: KNOWING THAT HE IS A PART-TIME SOLICITOR IN ANOTHER CIRCUIT.

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT, SIR.

MR. STONE: THANK YOU, YOUR HONOR.

MR. BAILEY: THANK YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

MR. STONE: YOUR HONOR, MOVE TO OUR MOTIONS AT THIS TIME?

THE COURT: YES, SIR.

MR. STONE: I THINK WE'VE COVERED MOST OF THEM BACK IN CHAMBERS BUT LET ME JUST GO AHEAD AND PUT ON THE RECORD I FILED A MOTION TO PRODUCE REPORTS, EXAMINATIONS, AND TESTS FROM GUNPOWDER RESIDUE TESTS. WE HAVE RECEIVED THE OUTSIDE MATERIAL FROM S.L.E.D. WE RECEIVED THE FIRST PAGE OF THAT REPORT WHICH INDICATED A NEGATIVE ANALYSIS BUT THERE IS A NUMBER OF DATA AND OTHER TESTS AND THINGS LIKE THAT THAT BUILD UP TO THAT REPORT WHICH I HAVE ASKED THE SOLICITOR TO PRODUCE AND HE HAS AGREED THAT THIS MOTION IS APPROPRIATE AND WILL -- EITHER HAS PRODUCED OR WILL PRODUCE THOSE TEST RESULTS.

THE COURT: WHEN WILL IT BE AVAILABLE?

MR. BAILEY: HE'S GOT IT. I GAVE IT TO HIM IN CHAMBERS.

THE COURT: ALL RIGHT, SIR.

MR. STONE: I DID NOT CHECK IT IN CHAMBERS BUT I TAKE HIS WORD FOR THAT.

THE COURT: THAT WILL BE A CONTINUING MOTION AND HE IS TELLING ME AS AN OFFICER OF THE COURT THAT IT WILL OR HAS BEEN SUPPLIED. ALL RIGHT, SIR. NEXT.

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MR. STONE: THE SAME I ALSO FILED A MOTION FOR FINGERPRINT -- THE SAME TYPE INFORMATION FROM BOTH FINGERPRINTS AND BALLISTICS. MY UNDERSTANDING IS THAT THE SOLICITOR WILL PROVIDE ME THOSE AS WELL.

MR. BAILEY: THAT IS CORRECT, YOUR HONOR. THE FIREARMS PERSON DID WANT A COURT ORDER ON THAT AND I'LL SUBMIT THAT TO THE COURT.

THE COURT: ALL RIGHT, SIR. WE'LL GET A TIME FRAME IN JUST A MOMENT. GO AHEAD.

MR. STONE: I HAVE ALSO ASKED THE SOLICITOR TO PRODUCE THE CRIMINAL RECORDS OF ANY WITNESSES THAT HE PLANS ON CALLING, ESPECIALLY -- AND NOT TO LIMIT THIS -- BUT ESPECIALLY A WOMAN WHO WAS INITIALLY A CODEFENDANT IN THIS CASE AND ANY OTHER WITNESSES THAT HE CALLS. I CERTAINLY DO NOT THINK THE VICTIM'S FAMILY HAS ANY CRIMINAL RECORD AND I'M CERTAINLY NOT ASSUMING THAT BUT I DO THINK IT'S APPROPRIATE FOR ME TO KNOW ALL THAT INFORMATION PRIOR TO TRIAL.

THE COURT: YOU ARE ENTITLED TO THAT UNDER THE RULES. YOU WILL PROVIDE THAT, MR. BAILEY.

MR. BAILEY: YES, SIR. YOUR HONOR, I ASSUME THAT WILL JUST APPLY TO NONLAW ENFORCEMENT PEOPLE.

THE COURT: I THINK IT WOULD APPLY TO ANY WITNESS THAT YOU PROPOSE TO CALL. THAT'S WHAT YOUR MOTION IS, ISN'T IT?

MR. STONE: YES, SIR.

THE COURT: YES, SIR. NEXT.

MR. STONE: I HAVE TWO OTHER MOTIONS, YOUR HONOR, WHICH WE HAVE NOT AGREED ON. ONE IS A MOTION TO ADD QUESTIONS TO THE DEATH PENALTY JURY QUESTIONNAIRE. DO YOU HAVE A COPY OF THAT, YOUR HONOR? I HAVE AN EXTRA ONE IF YOU DON'T.

THE COURT: LET'S SEE.

MR. STONE: I'LL HAND THIS UP AND IT HAS EXHIBITS.

THE COURT: YOU MEAN YOU WANT TO ENLARGE UPON THE FORM THAT'S BEEN APPROVED BY THE SUPREME COURT?

MR. STONE: IT'S NOT LARGER. IT'S AN ADDITION TO THREE QUESTIONS. ALL THREE OF THOSE QUESTIONS ARE FOUND ON THE FEDERAL QUESTIONNAIRE AND IN FACT HAVE BEEN USED BOTH IN THE STATE VERSUS TERRY WHICH IS THE DEATH PENALTY CASE THAT JUST GOT THROUGH IN LEXINGTON. IT HAS ALSO BEEN USED IN THE STATE VERSUS KEVIN SMITH WHICH WAS A PRISON RIOT CASE IN RICHLAND COUNTY.

THE COURT: ALL RIGHT. LET'S SEE. NUMBER ONE, PROPOSED STANDARD JURY QUESTION. YOU OBJECT TO THAT, SOLICITOR?

MR. BAILEY: I'M SORRY, YOUR HONOR.

THE COURT: YOU OBJECT TO QUESTION NUMBER ONE, WHAT IS YOUR PRIMARY SOURCE OF NEWS?

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MR. BAILEY: YES, SIR. I THINK ALL THREE OF THEM ARE SEEKING PERSONALITY PROFILES AND I THINK THAT'S PROHIBITED UNDER THE CASE LAW.

THE COURT: WELL, LET'S SEE WHAT THE SECOND ONE -- WHAT IS YOUR PRIMARY SOURCE OF NEWS? NUMBER TWO DEALS WITH BUMPER STICKERS. I'M NOT GOING TO ENLARGE THE JURY QUESTIONNAIRE. I'LL PERMIT YOU, IF YOU CARE TO, TO ASK THESE QUESTIONS ON VOIR DIRE.

MR. STONE: ALL RIGHT, SIR.

THE COURT: I SEE NOTHING WRONG ON VOIR DIRE. NOW, AS WE BEGIN LET ME SAY THIS TO YOU. REREAD AND REVISIT STATE V. SMART. I'M GOING TO ADHERE VERY STRONGLY TO THAT. OUR COURTS HAVE HELD REPEATEDLY NOW THAT WE'RE NOT GOING INTO JURY PROFILES BUT I WILL PERMIT THESE THREE QUESTIONS. OKAY.

MR. STONE: THANK YOU.

THE COURT: WHAT'S YOUR NEXT.

MR. STONE: I THINK THE LAST MOTION -- I THINK WE HAVE COVERED ALL -- I'M SORRY WE HAVE NOT. THERE IS A MOTION THAT I FILED EARLIER. I SPOKE TO THE SOLICITOR A LITTLE BIT ABOUT IT IN CHAMBERS AND THIS WAS PROBABLY FILED TWO MONTHS AGO AND IT WAS UNDER RULE FIVE BASICALLY WAS TO PRODUCE THE CRIME SCENE OR TO AT LEAST ALLOW MY INVESTIGATOR AND COUNSEL TO INSPECT THE CRIME SCENE. THE CRIME SCENE IN THIS CASE IS A 1998 I BELIEVE WHITE FORD

MUSTANG. FROM WHAT I UNDERSTAND THIS IS A CAR WHICH WAS OWNED BY FORD MOTOR CREDIT.

IT WAS -- I HAVE TRACED IT ALL THE WAY TO MIAMI, FLORIDA. I DON'T KNOW WHERE IT IS NOW BUT AS FAR AS -- THERE WERE GUNPOWDER TESTS TAKEN OUT OF THE CAR. THERE WERE PHOTOGRAPHS TAKEN OF THE CAR. THERE WERE -- OBVIOUSLY THE CRIME TOOK PLACE INSIDE AND AROUND THE CAR. TO BE ABLE TO SIT HERE AND TELL YOU, YOUR HONOR, EXACTLY WHAT I CAN GET OUT OF SEEING THE CAR, I DON'T KNOW BUT I CERTAINLY THINK IT'S SOMETHING THAT I HAVE TO DO FROM THE STANDPOINT OF DEFENSE. I DON'T THINK IT'S INAPPROPRIATE TO SEE WHERE THEY TOOK THIS GUNPOWDER RESIDUE TEST FROM, HEAR THE SOUND OF THE CAR AND SEE IT.

THE COURT: WHAT'S THE OBJECTION OF THE STATE?

MR. BAILEY: JUDGE, THE OBJECTION WOULD BE THIS PARTICULAR CAR THAT MR. ALEKSEY WAS DRIVING HAD BEEN LEASED BY A GIRLFRIEND OF MR. ALEKSEY'S, HAD BEEN GIVEN TO ALEKSEY TO USE. NO PAYMENTS WERE EVER MADE. THE GIRLFRIEND REPORTED THE CAR STOLEN. THE TAG ON THE CAR WAS STOLEN. FORD MOTOR WAS ACTUALLY LOOKING FOR THE CAR AT THE TIME THIS THING OCCURRED AND THEY REPOSSESSED THE CAR PRIOR TO THE TIME THE NOTICE WAS FILED.

SO AT THE TIME I RECEIVED THAT NOTICE, FORD MOTOR HAD REPOSSESSED THE CAR. S.L.E.D. HAS EXTENSIVE PHOTOGRAPHS THAT I'LL MAKE AVAILABLE TO THE DEFENDANT BUT I

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DON'T HAVE THE AUTHORITY TO GIVE THEM -- DON'T KNOW WHERE IT IS AND I'M SURE BY NOW IT'S BEEN DETAILED AND PROBABLY SOLD TO A THIRD PARTY. YOUR HONOR, THE PROBATIVE VALUE OF THE CAR WOULD BE ---

THE COURT: WELL, LET ME ASK YOU THIS: I UNDERSTAND YOU'VE GIVEN THEM EVERYTHING THAT YOU'VE GOT RELATIVE TO THE CAR BUT IF YOU CAN FIND THE CAR AND HE WANTS TO TAKE A LOOK AT IT, WHAT DOES IT HURT?

MR. BAILEY: IT DOESN'T HURT.

THE COURT: I'M NOT GOING TO REQUIRE YOU TO PRODUCE IT IF YOU DON'T KNOW WHERE IT IS.

MR. BAILEY: YES, SIR.

THE COURT: BUT I WOULD ASK THAT YOU MAKE SOME PRELIMINARY INVESTIGATION TO ASCERTAIN IT AND LET HIM LOOK AT IT FOR WHAT IT'S WORTH. SOME TIME HAS PASSED. THE CONDITIONS OBVIOUSLY HAVE CHANGED.

MR. STONE, IF IT'S AVAILABLE AND IF IT'S ANY HELP TO YOU TO GO LOOK AT IT, I'LL PERMIT YOU DO IT BUT I'M NOT GOING TO REQUIRE HIM TO PRODUCE SOMETHING HE CAN'T FIND.

MR. STONE: I UNDERSTAND. I HAVE TRACED IT AS FAR AS MIAMI. I WILL CERTAINLY GIVE THE SOLICITOR THE PHONE NUMBER. I THINK A PHONE CALL FROM THE SOLICITOR WOULD PROBABLY BE ENOUGH TO GET THE INFORMATION HE NEEDS.

THE COURT: JUST AS AN OFFICER OF THE COURT MAKE EVERY EFFORT TO ASSIST HIM.

MR. BAILEY: YES, SIR.

THE COURT: NOW, I'M ASSUMING THAT YOU'VE ALREADY TURNED OVER EVERYTHING THAT YOU HAVE RELEVANT TO THAT CRIME SCENE, PICTURES, PHOTOGRAPHS.

MR. BAILEY: I'VE GOT THE PICTURES HERE. I DON'T HAVE DUPLICATES OF ALL OF THEM. THERE IS OVER 100 PICTURES AND I'LL MAKE THAT AVAILABLE TO HIM.

THE COURT: AND WHAT ELSE WOULD HAVE BEEN AT THE CRIME SCENE?

MR. BAILEY: THEY DID A GUNSHOT RESIDUE KIT ON THE INSIDE ---

THE COURT: HAVE YOU TURNED THAT OVER TO HIM?

MR. BAILEY: --- OF THE CAR. THE REPORTS -- THEY'VE HAD THE REPORT FOR ROUGHLY THREE OR FOUR WEEKS AND I GAVE THEM THE WORK PAPERS TODAY.

THE COURT: JUST DO THIS: TURN OVER TO HIM EVERYTHING THAT YOU HAVE FROM THAT CRIME SCENE, BE IT RESIDUE, PHOTOGRAPHS, WHATEVER.

MR. BAILEY: YES, SIR.

MR. STONE: THANK YOU. THAT'S ALL WE ASK.

THE COURT: AND HELP HIM TO INQUIRE AS TO -- ONCE HE GETS WHAT YOU'VE GOT, I DON'T KNOW IF HE'S GOING TO WANT TO TAKE A LOOK AT IT ANYWAY.

MR. STONE: I WILL BUT I APPRECIATE IT. THANK YOU. I APPRECIATE THAT. THE FINAL MOTION THAT WE FILED

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WAS A MOTION TO TRANSFER AND I REALIZE WE'VE HAD SOME DISCUSSION BACK IN CHAMBERS WITH YOU ON THIS. MR. ALEKSEY WAS MOVED TO LEE COUNTY CORRECTIONAL INSTITUTE AND I FILED THIS MOTION. I DON'T KNOW IF YOU HAVE A COPY OF THAT. I HAVE ANOTHER ONE IF YOU NEED IT.

THE COURT: THAT'S ALL RIGHT. YOU CAN TELL ME WHAT IT IS.

MR. STONE: THE LEE COUNTY CORRECTIONAL INSTITUTE IS ON THE OTHER SIDE OF THE STATE FROM BEAUFORT COUNTY. IT'S A PRETTY GOOD DISTANCE FROM BOTH COUNSELS, MYSELF AND THOMAS SIMS. HE WAS MOVED BECAUSE HE THREW A CHAIR IN A WINDOW IN THE ORANGEBURG COUNTY DETENTION CENTER. WHEN I SAY HE I MEAN THE DEFENDANT. HE WAS CHARGED WITH ESCAPE AND MALICIOUS INJURY TO PERSONAL PROPERTY. I HAVE NO QUALMS WITH THE MALICIOUS INJURY TO PERSONAL PROPERTY. I HAVE AN AFFIDAVIT THAT I RECEIVED ABOUT 30 MINUTES AGO THAT I ASKED TO GET A COPY FROM YOUR LAW CLERK THAT I THINK IS UP THERE. I HAVE NOT PROVIDED THAT FOR SOLICITOR BAILEY BUT IN SHORT IT SAYS THAT THE WINDOW ITSELF WAS FIVE INCHES WIDE AND 26 INCHES LONG.

IN OTHER WORDS IT'S A WINDOW UP -- IT'S ABOUT AS TALL AS HIS FACE FIVE INCHES WIDE. IN OTHER WORDS NO POSSIBLE WAY FOR HIM TO ESCAPE. THE HEAD OF THE DETENTION CENTER HOWEVER SAYS ANYTIME THERE IS A BREAK IN A WINDOW WE'RE GOING TO CALL IT AN ESCAPE. THE PROBLEM IS OF COURSE

MR. ALEKSEY THEN GETS TRANSFERRED BECAUSE NOW HE IS SUPPOSEDLY AN ESCAPE RISK. THAT IS THE ONLY INCIDENT -- AND THE AFFIDAVIT STATES THAT -- THE ONLY INCIDENT OF TROUBLE THAT MR. ALEKSEY HAD WHILE HE WAS AT THE ORANGEBURG COUNTY DETENTION CENTER. HE HAS NOW BEEN MOVED TO LEE COUNTY.

I THINK HE HAS A SIXTH AMENDMENT RIGHT TO COUNSEL THAT IS BEING INFRINGED UPON BECAUSE "A" IT TAKES ALL DAY FOR COUNSEL TO GET TO SEE HIM AND AS FAR AWAY AS ANY PRISON. "B" WHILE HE IS BEING HELD THERE HE IS NOT GETTING ACCESS TO THE TELEPHONE. I GET ONE CALL EVERY MONTH FROM HIM. HE TELLS ME THAT HE'S HAVING PROBLEMS GETTING HIS MAIL OUT WHICH MAY OR MAY NOT BE SOMETHING THAT THE COURT CAN SOLVE BUT THE FOURTH AND THE MOST INTERESTING THING ---

THE COURT: LET'S FACE IT NOW, YOU KNOW, HIS OWN ACTIVITY ---

MR. STONE: YES, SIR.

THE COURT: AND I ASSUME YOU ADMITTED THAT HE PURPOSELY THREW A CHAIR INTO THE WINDOW.

MR. STONE: YES, SIR.

THE COURT: WELL, HIS OWN ACTIVITY GOT HIM WHERE HE IS. LET'S BE CANDID ABOUT IT.

MR. STONE: I HAVE NO PROBLEM WITH THE MALICIOUS INJURY BUT THE REASON HE GOT MOVED WAS BECAUSE HE WAS AN ESCAPE RISK AND HE'S NOT AN ESCAPE RISK, NOT FROM THE

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EVIDENCE THAT'S SHOWN FROM THE DETENTION CENTER. THE PROBLEM I HAVE, YOUR HONOR, THERE ARE THREE PRISONS WITHIN AN HOUR OF ME FROM BEAUFORT. THERE IS LIEBER CORRECTIONAL, RIDGELAND, AND ALLENDALE. ALL OF THOSE ARE EQUALLY CONVENIENT TO MR. SIMS. ALL OF THEM ARE PRISONS IN THE STATE OF SOUTH CAROLINA AND I BELIEVE THEY'RE AT LEAST MINIMUM IF NOT MAXIMUM FACILITIES.

THE COURT: WELL, LET ME INTERRUPT THIS CONVERSATION ---

MR. STONE: YES, SIR.

THE COURT: --- RIGHT QUICK LIKE. I'M NOT GOING TO PERMIT THIS DEFENDANT OR ANY DEFENDANT BASED ON HIS CONDUCT IN DELIBERATELY BREAKING A WINDOW TO DECIDE FOR HIMSELF WHERE HE'S GOING TO BE INCARCERATED. NOW, HAVING SAID THAT, TOO, IT IS MY POLICY NEVER, EVER TO INTERFERE WITH SECURITY CONCERNS OF THE SECURITY PEOPLE. I WILL DIRECT THE SOLICITOR TO INQUIRE OF THE APPROPRIATE OFFICIALS AS TO WHETHER OR NOT SECURITY-WISE THEY FEEL COMFORTABLE IN PERMITTING HIM TO MOVE TO A PRISON CLOSER TO DEFENSE COUNSEL. I UNDERSTAND THEIR CONCERNS AND THEY ARE ENTITLED TO REASONABLE ---

MR. BAILEY: YOUR HONOR, MR. STONE REPRESENTS THE DEPARTMENT OF CORRECTIONS. IN CHAMBERS HE TALKED TO LARRY BATSON WHO IS COUNSEL FOR THE DEPARTMENT OF CORRECTIONS.

THE COURT: YES, SIR.

MR. BAILEY: AND MR. BATSON SAYS, NO, WE WON'T DO IT. SO THAT'S BEEN EXPLORED BY THEIR LAWYER.

THE COURT: AT MY REQUEST YOU MADE THAT CALL A MOMENT AGO?

MR. BAILEY: MR. STONE MADE THAT CALL TO LARRY BATSON WHO IS THE ---

THE COURT: YOU MADE THAT ---

MR. STONE: I SPOKE TO LARRY ---

THE COURT: WHAT WAS MR. BATSON'S CONCERNS FOR THE RECORD?

MR. STONE: MR. BATSON SAID THAT THE PRISON, THE THREE PRISONS DOWN THERE -- HIS CONCERN WAS HE NEEDED TO KEEP A PRE-TRIAL DETAINEE IN A SEPARATE FACILITY OR SEPARATE HOUSING AREA FROM SOMEBODY WHO HAS BEEN -- WHO IS A STATE INMATE. HE SAYS THAT THE ONLY PLACE HE CAN DO THAT IS LEE COUNTY. HE SAYS HE CANNOT DO THAT IN LIEBER OR RIDGELAND OR ALLENDALE. HE DOESN'T SAY THAT IT'S NOT SECURE BUT HE SAYS THAT THERE IS JUST NOT AN INDIVIDUAL CELL WHICH IS ---

THE COURT: ALL RIGHT. I'LL HANDLE IT THIS WAY.

MR. STONE: YES, SIR.

THE COURT: LET'S LET THE RECORD REFLECT THIS CASE IS SCHEDULED AND WILL START ON -- WHEN IS IT, AUGUST THE WHAT?

MR. BAILEY: TWENTY-FOURTH.

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MR. STONE: TWENTY-FOURTH.

THE COURT: AUGUST THE 24TH. ONE WEEK -- I THINK ONE WEEK PRIOR TO THAT TRIAL WE CAN MOVE HIM CLOSER TO YOU WHERE YOU WILL HAVE ACCESS TO HIM. WON'T THAT TAKE CARE OF YOUR CONCERNS? ONE WEEK PRIOR TO TRIAL I'LL ORDER HIM TRANSFERRED AND THEY'LL HAVE TO TAKE SUCH SECURITY AS THEY DEEM APPROPRIATE. I UNDERSTAND YOU NEED ACCESS TO HIM.

MR. STONE: WOULD YOU CONSIDER TWO WEEKS?

THE COURT: I THINK SO.

MR. STONE: I APPRECIATE THE HELP YOU'VE GIVEN ME AND I DON'T MEAN TO SEEM UNGRATEFUL.

THE COURT: BETWEEN NOW AND THEN I WOULD NOT ORDER THEM TO CHANGE BUT ---

MR. STONE: YES, SIR.

THE COURT: --- TWO WEEKS PRIOR TO TRIAL, SOLICITOR, I THINK WOULD BE APPROPRIATE FOR THEM TO MAKE SECURITY ARRANGEMENTS. THIS IS A DEATH PENALTY CASE AND HE'S ENTITLED TO ACCESS TO HIS ATTORNEYS. LET ME KNOW AND I WILL BE IN TOUCH WITH THE GENTLEMAN MYSELF AND SURELY THE STATE OF SOUTH CAROLINA FOR A TWO-WEEK PERIOD CAN MAKE APPROPRIATE SECURITY ARRANGEMENTS BUT HAVING SAID THAT NOW LET'S LET THIS RECORD TO REFLECT THAT THE DEFENDANT HIMSELF PUT HIMSELF IN THIS POSITION.

MR. STONE: I UNDERSTAND.

THE COURT: ALL RIGHT. THANK YOU. NOW, THAT'S

SUBJECT TO IF THERE IS ANY FURTHER DIFFICULTY FROM HIM AND ANY OTHER CONCERNS ABOUT HIS ATTEMPT TO ESCAPE I WOULD CHANGE THAT ORDER, TOO.

MR. STONE: YES, SIR. AND I WILL MAKE SURE HE UNDERSTANDS THAT.

THE COURT: ALL RIGHT.

MR. STONE: THERE ARE A NUMBER -- NOT A NUMBER -- THERE ARE A FEW MATTERS THAT WE NEED TO TAKE UP WITH HIS HONOR IN CHAMBERS EX PARTE.

THE COURT: YES, SIR.

MR. STONE: BUT OTHER THAN THAT WE'VE FILED ALL OUR MOTIONS.

THE COURT: YES, SIR. YOU'RE ENTITLED TO THAT UNDER THE RECENT CASES. SOLICITOR WILL UNDERSTAND THAT.

MR. BAILEY: YES, SIR. I JUST GOT A COUPLE HOUSEKEEPING THINGS BEFORE WE GO OUT.

THE COURT: ALL RIGHT, SIR. LET'S HEAR YOUR -- I'LL HEAR YOUR EX PARTE MATTERS AT THE CONCLUSION OF THIS ON THE RECORD.

MR. STONE: YES, SIR.

THE COURT: MR. SIMS, ANYTHING FROM YOU, SIR?

MR. SIMS: NO, SIR.

THE COURT: ALL RIGHT. GO AHEAD.

MR. BAILEY: I'VE GOT A PROPOSED ORDER FOR JURORS TO DRAW JURORS.

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THE COURT: YES, SIR.

MR. BAILEY: AND I'LL HAND THAT UP AND ALSO PROPOSED CONSENT ORDER TO PROTECT FOR ME A TWO-WEEK PERIOD WHEN I WILL BE OUT OF STATE BETWEEN NOW AND THE TIME OF TRIAL.

THE COURT: AND YOU ARE OF COURSE PROTECTED UNDER THE STATUTE THE SAME WAY.

MR. STONE: YES, SIR, AND THAT'S ---

THE COURT: BOTH PREPARE FOR ME AN APPROPRIATE ORDER SO THAT YOU'LL HAVE THEM.

MR. STONE: WE HAVE THEM.

THE COURT: ALL RIGHT.

MR. BAILEY: IF I CAN APPROACH, JUDGE, BOTH ORDERS.

THE COURT: ALL RIGHT. YOU UNDERSTAND NOW, GENTLEMEN, THAT ALONG WITH THE -- HOW MANY JURORS ARE WE GOING TO DRAW? HOW MANY DO YOU THINK YOU NEED?

MR. BAILEY: I THOUGHT 300, JUDGE.

THE COURT: ALL RIGHT. AND WE WILL BE SENDING WITH THEM THE REGULAR QUESTIONNAIRE THAT GOES IN CASES OF THIS KIND.

MR. STONE: YES, SIR.

THE COURT: WITH THE AMENDMENT FOR THE THREE QUESTIONS THAT YOU PROPOSE.

MR. STONE: YES, SIR.

MR. BAILEY: YOUR HONOR, I'M SORRY. THE THREE QUESTIONS PROPOSED WILL BE ADDED TO THE QUESTIONNAIRE?

THE COURT: NO, NO. I WILL PERMIT THEM ON VOIR DIRE.

MR. BAILEY: YES, SIR.

MR. STONE: YES, SIR.

THE COURT: OKAY. NOW, WAS THERE A MOTION TO CHANGE THE VENUE IN THIS CASE?

MR. STONE: NOT AT THIS TIME. WE DO NOT ASK FOR A CHANGE OF VENUE AT THIS TIME. IF I DO I WILL FILE THAT QUICKLY BUT I DO NOT FORESEE ONE AT THIS TIME.

THE COURT: WELL, IF THERE IS TO BE ONE, DO IT AND GIVE US SUFFICIENT ---

MR. STONE: YES, SIR.

THE COURT: --- TIME TO LET THE OTHER VENUE SUMMON THE APPROPRIATE JURORS.

MR. STONE: YES, SIR. I WILL.

THE COURT: AND I'M NOT RULING ONE WAY OR THE OTHER AT THIS TIME. I'LL CONSIDER IT IN A MOTION.

MR. STONE: I DO NOT FORESEE THAT. I DO NOT FORESEE A CHANGE OF VENUE MOTION BUT I WILL PROMISE THE COURT THAT I WILL GIVE YOU ENOUGH NOTICE TO DO THAT.

THE COURT: ALL RIGHT, SIR.

MR. STONE: WHILE WE'RE DOING ORDERS OF PROTECTION, WE PREPARED ONE FOR MR. SIMS AND MYSELF.

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THE COURT: YES, SIR.

MR. STONE: THE DIFFERENCE ON THIS, YOUR HONOR, IS IT PROTECTS US 30 DAYS BEFORE TRIAL AND 30 DAYS AFTERWARDS WHICH IS THE PART THAT'S LEFT OUT OF THE CODE.

THE COURT: WHY 30 DAYS AFTER?

MR. STONE: BECAUSE IF MY CASES GET STACKED UP AFTER THE DEATH PENALTY CASE, IT DOESN'T MAKE ANY DIFFERENCE IF I'VE HAD 30 DAYS BEFOREHAND TO PREPARE IT UNFORTUNATELY. IN OTHER WORDS IF I GET SCHEDULED ON A TRIAL, YOU KNOW, THE DAY AFTER WE GET THROUGH WITH THE DEATH PENALTY CASE, THEN OBVIOUSLY IT DOESN'T MAKE ANY DIFFERENCE IF I'VE HAD 30 DAYS BEFORE OR NOT.

THE COURT: NEVER BEEN DEALT WITH THAT BUT THAT SOUNDS LOGICAL. YOU CAN'T BE READY THE DAY AFTERWARDS.

MR. STONE: I DON'T THINK YOU CAN. I CAN'T. I APOLOGIZE I DID NOT SHOW THAT TO THE SOLICITOR.

MR. BAILEY: THAT'S FINE. I DON'T HAVE ANY PROBLEM WITH THAT ONE WAY OR THE OTHER.

THE COURT: YOU WANT TO BE EXCUSED FROM ALL TRIAL DUTIES 30 DAYS THEREAFTER?

MR. STONE: YES, SIR.

THE COURT: ISN'T THAT UNDULY LIMITING, MR. DUFFIE?

MR. STONE: I DON'T THINK SO. YOU'RE TALKING ---

THE COURT: THAT'S PRETTY INCLUSIVE. I WILL --

SEEMS LIKE TO ME THAT ALL TRAIL DUTIES INCLUDES MAGISTRATES' COURTS. LET ME CHANGE THAT TO 15 DAYS AND THEN IF YOU NEED ADDITIONAL TIME YOU TAKE IT UP WITH THE PRESIDING JUDGE CONCERNED.

MR. STONE: YES, SIR.

THE COURT: WHO WILL CERTAINLY LISTEN TO YOU.

MR. STONE: YES, SIR.

THE COURT: BUT I THINK THAT MAY BE LENGTHY. I'M NOT SAYING YOU'RE NOT ENTITLED TO IT BUT I THINK THE PRESIDING JUDGE OUGHT TO TAKE A LOOK AT IT DEPENDING ON YOUR SCHEDULE AND THE NATURE OF THE CASE AS AN EXAMPLE.

MR. STONE: YES, SIR.

THE COURT: IF YOU HAD A MAGISTRATE'S HEARING OR SOMETHING, I WOULDN'T THINK YOU WOULD NEED THAT. SO I'M GOING TO CHANGE THAT TO 15 DAYS.

MR. STONE: YES, SIR. AND I HAVE NO OBJECTION AS FAR AS THE MAGISTRATE'S COURT ANYWAY. THAT'S NOT A PROBLEM.

THE COURT: YOU AGREE WITH THAT, MR. SIMS.

MR. SIMS: YES, SIR, I DO.

THE COURT: MR. SIMS HAS AN EXTENSIVE PRACTICE IN NUMEROUS COURTS DOWN THERE IN ORANGEBURG.

MR. SIMS: AND THAT WAS ONE OF THE MAIN REASONS WE BOTH FELT THAT IF AFTER THIS TRIAL WE WERE IMMEDIATELY SUMMONSED INTO COURT, I DON'T THINK EITHER ONE OF US WOULD

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BE READY AT THAT POINT AND IT WOULD CREATE A HARDSHIP FOR OURSELVES AND OUR CLIENTS.

THE COURT: AND YOU AND I KNOW THAT MOST TRIAL JUDGES THAT I KNOW WOULD UNDERSTAND THAT.

(PAUSE)

THE COURT: ALL RIGHT, SIR.

MR. STONE: THANK YOU.

MR. BAILEY: YOUR HONOR, I'VE GOT SEVERAL OUT-OF-STATE SUBPOENAS THAT I WOULD ASK YOUR HONOR TO SIGN I THINK UNDER THAT INTERSTATE PACT.

THE COURT: YES, SIR. DO YOU HAVE THEM HERE NOW?

MR. BAILEY: YES, SIR.

(PAUSE)

THE COURT: YOU NEED TWO COPIES OF EACH ONE?

MR. BAILEY: YES, SIR, I THINK SO, JUDGE. SOME OF THOSE STATES MIGHT REQUIRE THAT. I'M NOT SURE.

(PAUSE)

THE COURT: COUNSEL FOR DEFENSE, YOU HAVE ANY OTHER MOTIONS?

MR. STONE: NO, SIR. WE WOULD ASK TO GET COPIES OF THOSE SUBPOENAS.

MR. BAILEY: JUDGE, I DON'T THINK I'M REQUIRED TO GIVE THEM MY SUBPOENAS AT THIS POINT IN TIME.

THE COURT: NO, SIR, YOU'RE NOT.

YOU GOT A RULE THAT JUSTIFIES THAT, COUNSEL? I

KNOW OF NONE.

MR. STONE: THAT HAS BEEN A FAIRLY CONFUSING THING FOR ME. I DON'T HAVE ANY PROBLEM AS LONG AS HE UNDERSTANDS THAT I'M NOT GOING TO COPY HIM ON MY SUBPOENAS.

MR. BAILEY: OH, I UNDERSTAND THAT.

MR. STONE: THERE IS A CONFUSION I THINK IN THE RULES AS FAR AS THAT'S CONCERNED. IF THERE IS NO REQUIREMENT TO COPY SUBPOENAS, I HAVE NO PROBLEM WITH THAT.

THE COURT: AS LONG AS HE COMPLIES WITH BRADY AND RULE -- WHAT USED TO BE RULE FIVE, I THINK THAT THAT'S ALL THE HE HAS TO DO. YOU WILL AT THE APPROPRIATE TIME PROVIDE HIM WITH A LIST OF WITNESSES THOUGH.

MR. BAILEY: JUDGE, AS SOON AS YOU TELL ME TO, I WILL. GENERALLY I DON'T DO THAT UNTIL YOU GET READY TO VOIR DIRE THE JURY.

THE COURT: YES, SIR, I UNDERSTAND.

(PAUSE)

THE COURT: DO YOU HAVE PREPARED -- WE'LL MEET IN CHAMBERS -- DO YOU HAVE THE EX PARTE ORDERS PREPARED?

MR. STONE: YES, SIR.

(PAUSE)

THE COURT: NOW, LET ME ASK YOU THIS WHILE WE'RE TALKING, GENTLEMEN, ANY -- DO I NEED TO SET OUT ANY TIME FRAME FOR THIS EXCHANGE OF MATERIALS OR CAN I JUST RELY ON YOU TO MOVE ON BECAUSE THIS TRIAL DATE IS SET FIRM.

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MR. STONE: YES, SIR.

MR. BAILEY: YOUR HONOR, I'M GIVING HIM EVERYTHING AS I GET IT AND HE'S GOT EVERYTHING EXCEPT ---

THE COURT: ANY RECIPROCITY DUE AT THIS TIME?

MR. BAILEY: I DON'T KNOW.

MR. STONE: NOT AT THIS TIME.

THE COURT: ALL RIGHT.

MR. STONE: I HAVE NO DOUBT THAT SOLICITOR BAILEY WILL GIVE ME EVERYTHING AS HE GETS IT BECAUSE HE'S DONE THAT VERY WELL SO FAR DURING THE PROCEEDINGS. I DO HOWEVER HAVE A CONCERN. I HAVE BEEN INVOLVED IN A DEATH PENALTY CASE WHERE WE'VE GOTTEN A GOOD BIT OF MATERIAL THE DAY OF THE TRIAL.

THE COURT: NO, SIR, NOT MINE. YOU'LL GET IT BEFORE THEN.

MR. STONE: YES, SIR.

THE COURT: NOW, SOLICITOR, I DO WANT THIS EXAMINATION CONDUCTED QUICKLY AS WE CAN BECAUSE BASED ON THE RESULTS OF IT, HE MAY WANT SOME ADDITIONAL ---

MR. BAILEY: YES, SIR.

THE COURT: --- EXAMINATION AND I DO NOT WANT THAT TO INTERFERE WITH THE TRIAL.

MR. BAILEY: YOUR HONOR, SINCE WE MENTIONED THAT NOW IF HE REFUSES TO TALK TO THESE PSYCHIATRISTS, THEY'RE GOING TO SEND HIM BACK AND THAT'S HAPPENED ON SEVERAL

OCCASIONS BEFORE.

THE COURT: YES, SIR.

MR. BAILEY: SO MAYBE IF THE COURT WOULD ADMONISH HIM THAT HE'S GOT TO COOPERATE IT JUST MIGHT HELP.

THE COURT: COUNSEL, CAN YOU TELL HIM WHAT OUR RULES ARE IN THAT REGARD?

MR. STONE: YES, SIR. THE CONCERN I HAVE IS I DON'T KNOW HOW I EXPLAIN TO MY CLIENT THAT HE HAS TO WAIVE HIS FIFTH AMENDMENT RIGHT.

THE COURT: WELL, I'M NOT GOING TO MAKE ANY SPECULATIVE JUDGMENTS ON THE MATTER. I DECLINE TO ---

MR. STONE: YES, SIR.

THE COURT: --- DO THAT AT THIS TIME. I AM JUST ORDERING HIM EXAMINED AND WE'LL SEE ---

MR. STONE: YES, SIR.

THE COURT: --- WHAT COURSE AND EVENTS FOLLOW FROM THAT.

MR. STONE: YES, SIR.

(PAUSE)

THE COURT: ALL RIGHT. COUNSEL, MR. BAILEY, COME GET THESE THINGS.

(PAUSE)

MR. BAILEY: YOUR HONOR, ONE FINAL THING FROM THE STATE IS THAT I THINK WE NEED A JACKSON V. DENNO HEARING IN THIS THING AND I KNOW WE DON'T WANT TO WAIT TO THE LAST

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MINUTE ON DOING THAT. I JUST WANT YOUR HONOR TO SCHEDULE THAT AT THIS TIME. THERE WILL BE ABOUT SEVEN WITNESSES FROM THE STATE ON THAT.

THE COURT: I'M GOING TO BE IN LEXINGTON NEXT WEEK. WOULD WE TENTATIVELY WANT TO DO THAT NEXT WEEK?

MR. STONE: THE PROBLEM I HAVE HAD, YOUR HONOR, AT THIS POINT I HAVE SENT AN INVESTIGATOR TO SPEAK WITH THE OFFICERS. THE OFFICERS AT THIS POINT HAVE NOT SPOKEN TO ME. SO THEREFORE MAKING IT A LITTLE TOUGHER ON ME TO FIND OUT WHAT MY ISSUE IS ON THIS.

THE COURT: LET'S DO THIS: LET'S DO A COMPETENCY EVALUATION, THE BLAIR HEARING AT THE SAME TIME. I'LL SET THAT AT AN APPROPRIATE TIME, PLENTY OF TIME. LET ME KNOW WHEN YOU THINK YOU ARE READY TO ADDRESS THAT ISSUE.

MR. STONE: I SURE WILL.

THE COURT: AND WE'LL CERTAINLY -- I'M TRYING TO FIND A TIME CLOSEST TO ACCOMMODATE -- HOW CLOSE ARE YOU TO SALUDA?

MR. STONE: I CAN GET THERE. TO BE HONEST WITH YOU I DON'T KNOW.

THE COURT: WELL, THE LAST COUPLE WEEKS IN JUNE I'M IN SALUDA AT GENERAL SESSIONS COURT. Y'ALL JUST GET TOGETHER AND LET ME KNOW WHEN IT'S AVAILABLE AND I'LL FIGURE OUT SOMEPLACE TO MEET.

MR. STONE: WE CAN DO THAT, YES, SIR.

THE COURT: OKAY. AGAIN TOO, SECOND WEEK IN JUNE I'M IN COLUMBIA WHICH MIGHT BE A GOOD PLACE TO MEET. LET'S TRY AND SET THAT FOR THE SECOND WEEK IN COLUMBIA.

MR. STONE: YES, SIR.

THE COURT: I'M SCHEDULED THERE FOR GENERAL SESSIONS COURT. THAT WILL BE ABOUT THE MOST CENTRAL LOCATION FOR EVERYBODY. LET'S TENTATIVELY SET THAT AND JUST KEEP ME ADVISED.

MR. STONE: YES, SIR.

THE COURT: OKAY. ANYTHING ELSE, MR. BAILEY?

MR. BAILEY: NO, SIR JUDGE.

THE COURT: HOW ABOUT IT, GENTLEMEN?

MR. STONE: NOT AT THIS TIME.

THE COURT: ALL RIGHT. LET'S VERY QUICKLY MEET IN MY CHAMBERS EX PARTE. WE ARE IN RECESS.

- - - - - - -END OF REQUESTED TRANSCRIPT OF RECORD- - - - - -

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CERTIFICATE

I, THE UNDERSIGNED VIRGINIA ROLAND, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CRIMINAL COURT FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 20TH DAY OF MAY, 1998.

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

NOVEMBER 25, 1998

Virginia Roland

COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
98-GS-38-0244

THE STATE

-VS-

BAYON L. ALEKSEY

TRANSCRIPT OF RECORD
(MOTIONS HEARING)

JUNE 8, 1998
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

WALTER M. BAILEY, JR., SOLICITOR
APPEARING FOR THE STATE

I. McDUFFIE STONE, III, ESQUIRE
THOMAS R. SIMS, ESQUIRE
APPEARING FOR THE DEFENDANT

DEBORAH M. McCURDY
CIRCUIT COURT REPORTER

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JUNE 8, 1998

THE COURT: AT THIS TIME NOW WE WILL DEAL WITH ANY MOTIONS INVOLVING STATE V. ALEKSEY.

SOLICITOR?

MR. BAILEY: I THINK JACKSON V. DENNO MOTION IS THE ONLY ONE PENDING AT THIS TIME.

THE COURT: ALL RIGHT, SIR. LET THE RECORD THEN REFLECT THAT THE DEFENDANT IS PRESENT, ACCOMPANIED BY BOTH OF HIS ATTORNEYS.

ARE YOU READY TO GO FORWARD, GENTLEMEN?

MR. STONE: YOUR HONOR, YES, SIR, WE ARE READY TO GO FORWARD. WE WOULD ASK THAT THE WITNESSES TO THIS HEARING BE SEQUESTERED. I THINK THERE ARE FOUR OR FIVE WITNESSES. I BELIEVE THEY ARE ALL IN THE COURTROOM. I WOULD ASK THAT THEY BE SEQUESTERED INDIVIDUALLY.

THE COURT: OTHER THAN---

MR. BAILEY: YOUR HONOR, AGENT MEARS IS THE CASE OFFICER. HE IS ALSO A WITNESS, BUT NOT THE FIRST WITNESS.

THE COURT: I WOULD PERMIT THE CASE OFFICER TO REMAIN IN THE COURT. LET'S SEQUESTER THE OTHER WITNESSES, PLEASE. THEY CAN STEP OUT THIS WAY.

MR. STONE: YOUR HONOR, MY UNDERSTANDING THEN WOULD BE AGENT MEARS WOULD THEN BE THE WITNESS THAT IS ALLOWED TO STAY IN THE TRIAL ITSELF AND NO OTHERS?

THE COURT: WELL, I WILL LET THE SOLICITOR MAKE THAT DETERMINATION, NOW. I AM NOT GOING TO TELL HIM HOW TO TRY HIS CASE.

DO YOU CARE TO REPLY TO THAT, SOLICITOR?

MR. BAILEY: JUDGE, ACTUALLY AGENT DARNELL AND AGENT MEARS WERE JOINTLY ASSIGNED, BOTH WORKED IN THE CASE, BOTH HAVE BEEN CASE OFFICERS ON THIS CASE.

THE COURT: THEY WILL BE PERMITTED TO REMAIN IN THE TRIAL. I ASSUME YOU ARE GOING TO MAKE A SEQUESTRATION MOTION AT THE TRIAL ITSELF?

MR. STONE: YES, SIR. MY CONCERN, OF COURSE, WOULD BE THAT THE SOLICITOR GETS TO PICK ONE WITNESS AT THIS PARTICULAR STAGE AND ANOTHER ONE AT TRIAL. I THINK -- I UNDERSTAND THE COURT'S RULING, BUT I THINK IT WOULD BE FAIR IF HE GETS TO CHOOSE, IF HE HAS ONE PERSON SITTING IN HERE, THAT THAT IS THE ONLY PERSON WHO GETS TO SIT IN TRIAL WITH HIM AS THE CASE OFFICER. OTHERWISE,---

THE COURT: YES, SIR, BUT HE SAYS HE HAS GOT TWO CASES OFFICERS WORKING IN THIS CASE. I AM NOT GOING TO DEPRIVE THE STATE OF SOUTH CAROLINA. YOU KNOW, THE DEFENDANT IS ENTITLED TO A FAIR TRIAL AND HE IS CERTAINLY GOING TO GET ONE, BUT THE STATE OF SOUTH CAROLINA AND THESE VICTIMS ARE ALSO ENTITLED TO A FAIR TRIAL AND THEY ARE ALSO GOING TO GET ONE.

NO, SIR, IF THE SOLICITOR TELLS ME THAT THOSE ARE TWO CASE OFFICERS THEY WILL BE PERMITTED TO STAY IN THE COURTROOM.

MR. BAILEY: THANK YOU, YOUR HONOR.

THE COURT: YES, SIR.

MR. BAILEY: I BELIEVE ONE WITNESS WHO IS OUT NOW, IF I COULD GET YOU TO JUST STEP OUTSIDE AND CALL HIM IN.

YOUR HONOR, TROOPER WELCH IS THE STATE'S FIRST WITNESS.

THE COURT: COME AROUND.

CLERK: IF YOU WOULD COME FORWARD, PLEASE. PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT. DO YOU SWEAR THE TESTIMONY YOU GIVE SHALL BE THE TRUTH, WHOLE TRUTH, NOTHING BUT THE TRUTH, SO HELP YOU GOD?

TROOPER WELCH: YES, MA'AM, I DO.

CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

TROOPER WELCH: KYLE V. WELCH, W-E-L-C-H.

KYLE V. WELCH, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. MR. WELCH, YOU ARE A TROOPER WITH THE HIGHWAY PATROL; IS THAT CORRECT?

A. YES, SIR, I AM.

Q. ALL RIGHT, SIR. AND WHERE WERE YOU ASSIGNED BACK IN DECEMBER OF 1997?

A. CHARLESTON COUNTY, SOUTH CAROLINA.

Q. ALL RIGHT, SIR. I CALL YOUR ATTENTION TO THE EARLY MORNING OF JANUARY 1ST, 1998. WERE YOU ON DUTY THEN?

A. YES, SIR, I WAS.

Q. ALL RIGHT, SIR. AND DID YOU HAVE OCCASION TO GO TO THE OLD K-MART PARKING LOT ON HIGHWAY 78 IN THE TOWN OF SUMMERVILLE?

A. YES, SIR, I DID.

Q. ALL RIGHT, SIR. AND WAS THAT IN THE COURSE OF YOUR DUTIES AS A STATE TROOPER?

A. YES, SIR.

Q. WERE YOU IN UNIFORM DRIVING A MARKED CAR?

A. I WAS IN UNIFORM DRIVING A UNMARKED GREEN CROWN VICTORIA PATROL CAR.

Q. ALL RIGHT, SIR. AND WHEN YOU ARRIVED AT THE K-MART PARKING LOT, BRIEFLY WHAT DID YOU OBSERVE THERE?

A. I OBSERVED NUMEROUS PATROL CARS, HIGHWAY PATROL CARS; LOCAL JURISDICTIONS, COUNTY, CITY JURISDICTIONS; AND A WHITE FORD MUSTANG GT THAT APPARENTLY HAD BEEN INVOLVED IN A COLLISION.

Q. OKAY. AND WAS THERE A PASSENGER IN THAT MUSTANG? DID YOU OBSERVE THAT PERSON---

A. YES, SIR.

Q. ---IN THE PARKING LOT?
A. YES, SIR, I DID.
Q. ALL RIGHT, SIR. COULD YOU POINT THAT PERSON OUT THAT YOU OBSERVED?
A. YES, SIR, IT IS THE GENTLEMAN WITH THE BLACK HAIR IN THE GREEN SHIRT SITTING---
Q. AND FOR THE RECORD, THAT IS THE DEFENDANT, BAYON ALEKSEY?
A. YES, SIR.
Q. OKAY. APPROXIMATELY HOW LONG WAS ALEKSEY IN THE PARKING LOT BEFORE THE AMBULANCE TOOK HIM TO M.U.S.C.?
A. FIFTEEN TO 30 MINUTES.
Q. OKAY. AND WHAT WERE YOU ASSIGNED TO DO WHEN HE WAS TAKEN TO THE--WHEN MR. ALEKSEY WAS TAKEN TO M.U.S.C. FOR TREATMENT?
A. I WAS TO FOLLOW THE AMBULANCE FOR SECURITY.
Q. AND WHEN YOU ARRIVED -- WHEN THE AMBULANCE ARRIVED AT THE HOSPITAL, WOULD YOU STATE WHAT PART OF THE HOSPITAL MR. ALEKSEY WAS TAKEN TO FOR HIS INITIAL TREATMENT?
A. YES, SIR, HE WAS TAKEN TO M.U.S.C. TRAUMA UNIT FOR CARE, EMERGENCY CARE.
Q. OKAY. AND ABOUT HOW LONG WAS ALEKSEY TREATED IN THE EMERGENCY ROOM?
A. ROUGHLY AN HOUR, APPROXIMATELY AN HOUR.

Q. OKAY. AND WERE YOU WITH HIM THE ENTIRE TIME?
A. YES, SIR, I WAS.
Q. OKAY. CALLING YOUR ATTENTION TO SOMEWHERE AROUND 1:34 A.M., WOULD YOU STATE WHETHER OR NOT MR. ALEKSEY MADE ANY STATEMENTS IN YOUR PRESENCE?
A. YES, SIR. AT THAT POINT IN TIME AT 1:34 A.M., WHILE OBSERVING THE DOCTORS ADMINISTER EMERGENCY CARE TO HIM, HE STATED THAT HE WANTED---
Q. LET ME ASK YOU THIS FIRST: WERE THESE STATEMENTS YOU ARE ABOUT TO TESTIFY TO, WERE THEY MADE IN RESPONSE TO QUESTIONS THAT YOU OR SOME OTHER LAW ENFORCEMENT OFFICER MADE TO HIM OR WERE THEY SPONTANEOUS STATEMENTS?
A. THEY WERE SPONTANEOUS STATEMENTS.
Q. OKAY. WHAT IS YOUR RECOLLECTION OF WHAT HE SAID?
A. AT 1:34 ON JANUARY 1ST OF 1998, SUBJECT MADE THE STATEMENT FOR EITHER MYSELF OR TROOPER MEARS TO CONTACT THE U.S. MARSHAL SERVICE. AT THAT POINT IN TIME HE STATED THAT HE WANTED TO TALK TO EITHER MYSELF OR TROOPER MEARS.
Q. AND WAS ANYTHING ELSE STATED AT THAT TIME?
A. YES, SIR, HE STATED THAT HE WAS IN THE WITNESS PROTECTION PROGRAM IN THE PHILADELPHIA OFFICE. HE THEN STATED THAT HIS NAME WAS A MICHAEL ALEKSEY, WHICH AT THAT POINT IN TIME THE I.D. THAT WE HAD ON THE SUBJECT STATED THAT HIS NAME WAS A JUSTIN MATECKI. LATER ON

WHILE BEING WORKED ON BY THE DOCTORS, HE THEN STATED ANOTHER NAME OF A MICHAEL D'ANGELO.

Q. SO HE GAVE YOU THREE DIFFERENT NAMES?

A. WE HAD THREE DIFFERENT NAMES.

Q. ALL RIGHT, SIR. AND I THINK YOU SAID HE WAS IN THE EMERGENCY ROOM FOR ROUGHLY AN HOUR?

A. YES, SIR.

Q. WHERE WAS HE TAKEN NEXT?

A. AT THAT POINT IN TIME HE WAS TAKEN UPSTAIRS IN THE HOSPITAL AND PUT IN A ROOM.

Q. OKAY. DID YOU ACCOMPANY HIM UPSTAIRS? DID YOU GUARD HIM UPSTAIRS ALSO?

A. EVERYWHERE HE WENT, I WENT; YES, SIR.

Q. ALL RIGHT. DO YOU RECALL THE NAME OF THE NURSE THAT ATTENDED HIM WHEN HE WENT UPSTAIRS IN THE ROOM?

A. YES, SIR, IT WAS A BILLIE ALTHOUSE.

Q. OKAY. ALL RIGHT, MR. WELCH, CALLING YOUR ATTENTION TO ABOUT 3:08 A.M., WOULD YOU STATE WHETHER OR NOT MR. ALEKSEY MADE ANY OTHER STATEMENTS, ANY ADDITIONAL STATEMENTS?

A. YES, SIR, HE MADE THE STATEMENT THAT HE WAS IN THE WITNESS PROTECTION PROGRAM AND ALSO THAT A SUBJECT NAMED PETER GESHAN, WHO WAS SUPPOSEDLY IN THE PHILADELPHIA MAFIA, HAD PUT A CONTRACT ON HIS LIFE.

Q. AND WERE THESE STATEMENTS IN RESPONSE TO QUESTIONS

BY YOU OR WERE THEY SPONTANEOUS STATEMENTS?

A. THEY WERE SPONTANEOUS STATEMENTS.

Q. DID HE SAY ANYTHING ELSE IN YOUR PRESENCE AFTER THAT?

A. AT THAT POINT IN TIME I ASKED HIM WHY HE HAD SHOT THE TROOPER, AND HE STATED THAT HE THOUGHT THE TROOPER WAS THE MAFIA, SOMEBODY DRESSED UP AS A LAW ENFORCEMENT OFFICER.

Q. ANYTHING -- YOU ARE REFERRING TO YOUR NOTES; IS THAT CORRECT?

A. YES, SIR.

Q. REFERRING TO YOUR NOTES, IS THERE ANYTHING ELSE THAT YOU CAN RECALL HE SAID AT THAT TIME?

A. HE STATED FOR US TO GET IN TOUCH WITH A KATHERINE CAUGHMAN OR CRAWFORD, WE WERE UNABLE TO DO THAT, WITH THE MARSHAL SERVICE AND SHE COULD STATE WHETHER HE WAS IN THE PROGRAM OR NOT.

Q. OKAY. ALL RIGHT. WAS THERE ANYTHING SAID ABOUT THE EVENTS LEADING UP TO THE SHOOTING OF TROOPER LINGARD?

A. YES, SIR, HE STATED TO MYSELF THAT THE MUSTANG THAT HE WAS DRIVING WAS GIVEN TO HIM BY A SUBJECT NAMED LISA WATSON, A FEMALE OUT OF PHILADELPHIA, THAT SHE HAD GAVE IT TO HIM A COUPLE OF WEEKS AGO.

AND HE STATED THAT LISA WATSON WAS THE OWNER OF THE CAR BUT HE WAS MAKING THE PAYMENTS.

HE ALSO STATED THAT LISA WATSON WAS JUST A FRIEND.

HE STATED THAT HE AND HIS GIRLFRIEND, A GLORIA PEREZ, WAS WITH HIM WITH TWO KIDS.

WHEN ASKED WHERE THEY WERE, GLORIA AND THE KIDS, WHICH WERE SUPPOSED TO BE WITH HIM, HE STATED THAT HE COULD NOT REMEMBER.

HE SAID THE LAST TIME THAT HE HAD SAW THEM THEY WERE IN NEW JERSEY.

HE STATED HE LEFT, THIS PARTICULAR NIGHT, THAT HE LEFT NEW JERSEY, WAS NOT SURE OF THE HIGHWAY, HE WAS RACING A CAMERO OR A TRANS AM, AND THAT IS ALL HE COULD REMEMBER.

HE STATED THAT HE LEFT JERSEY ON THE TURNPIKE, HIGHWAY 476, AND AT THAT POINT IN TIME, THAT WAS ALL THAT HE SAID AT THAT POINT.

Q. OKAY. AT THE TIME MR. ALEKSEY MADE THESE STATEMENTS IN YOUR PRESENCE, WHAT WAS YOUR OBSERVATION OF HIS PHYSICAL CONDITION?

A. HE WAS CONSCIOUS, AWAKE AND INQUISITIVE. HE WAS ASKING A LOT OF QUESTIONS.

Q. DID YOU HAVE ANY TROUBLE UNDERSTANDING HIM WHEN HE MADE THE STATEMENTS TO YOU?

A. NO, SIR, I DID NOT.

Q. DID HE APPEAR TO HAVE ANY TROUBLE UNDERSTANDING YOU WHEN YOU RESPONDED TO HIM?

A. NO, SIR.
Q. I CALL YOUR ATTENTION TO ABOUT 3:59 A.M. WERE YOU PRESENT WHEN AGENT KENNY MEARS ENTERED THE ROOM, CAME INTO THE ROOM?
A. YES, SIR, I WAS.
Q. ALL RIGHT, SIR. AND WHAT, IF ANYTHING, DID AGENT MEARS DO IN YOUR PRESENCE?
A. AT 3:59 A.M. ON JANUARY 1ST, 1998, HE WAS THEN READ HIS MIRANDA RIGHTS; AND THE SLED AGENT READ HIS RIGHTS VERBATIM FROM A CARD; AND AFTER EACH RIGHT WAS EXPLAINED TO THE DEFENDANT, HE WAS ASKED IF HE UNDERSTOOD, AND HE STATED, "YEAH."
Q. AND WHO ELSE WAS PRESENT WHEN THE RIGHTS WERE READ BY AGENT MEARS BESIDES YOU AND MR. MEARS?
A. THE NURSE, THE ATTENDING NURSE, MS. BILLIE ALTHOUSE.
Q. OKAY. AND, AGAIN, IN RELATION TO THAT OBSERVATION AT 3:59 WHEN AGENT MEARS READ THE MIRANDA RIGHTS TO HIM, WHAT WAS MR. ALEKSEY'S MENTAL STATUS ACCORDING TO YOUR OBSERVATION OF HIM?
A. HE WAS CONSCIOUS AND ALERT.
Q. MR. WELCH, PLEASE ANSWER ANY QUESTIONS THE DEFENSE ATTORNEY MAY HAVE.
MR. SIMS: MAY IT PLEASE THE COURT?
THE COURT: YES, SIR, MR. SIMS.
CROSS EXAMINATION BY MR. SIMS:

Q. TROOPER WELCH, WERE YOU ALSO RESPONSIBLE FOR WRITING THAT HANDWRITTEN NOTE AS TO THE EVENTS THAT TOOK PLACE ON THAT NIGHT?
A. ARE YOU -- AS IN AN INCIDENT REPORT OR---
Q. JUST NOTES THAT WERE KEPT OR THAT YOU WROTE ON YOUR OWN?
A. YES, SIR, I TOOK NOTES ON A LEGAL PAD.
MR. SIMS: MAY I APPROACH, YOUR HONOR?
THE COURT: SURELY.
Q. JUST FOR THE RECORD, ARE THESE THE -- IS THAT YOUR HANDWRITING?
A. YES, SIR, IT IS.
Q. AND THOSE ARE YOUR NOTES?
A YES, SIR.
THE COURT: MAY I SEE THAT, PLEASE?
MR. SIMS: YES, SIR.
Q. TROOPER WELCH, LET ME ASK YOU, WHEN YOU FIRST SAW THE DEFENDANT, MR. ALEKSEY, HE WAS IN THE PARKING LOT AT A SHOPPING MALL DOWN IN SUMMERVILLE; IS THAT CORRECT?
A. YES, SIR, IT IS AN OLD, CLOSED UP K-MART.
Q. OKAY. NOW, DURING THAT TIME WHEN YOU SAW HIM, AT THAT POINT I BELIEVE WHEN HE WAS HANDCUFFED AND ON THE GROUND, HAD BEEN TAKEN OUT OF THE CAR BY THE POLICE OR BY OTHER TROOPERS; IT THAT CORRECT?
A. YES, SIR.

Q. HIS CONDITION AT THAT TIME WHILE HE WAS ON THE GROUND, WAS HE UNCONSCIOUS OR WAS HE CONSCIOUS?
A. HE APPEARED TO BE UNCONSCIOUS.
Q. HE WAS UNCONSCIOUS. AND WHEN E.M.S. GOT TO THE SCENE HE WAS STILL UNCONSCIOUS; IS THAT CORRECT?
A. AS FAR AS I CAN REMEMBER, YES, SIR.
Q. AND AT THAT POINT THEY TRANSPORTED HIM DOWN TO M.U.S.C. AND YOU FOLLOWED THEM?
A. YES, SIR.
Q. WHILE IN THE EMERGENCY ROOM HE WAS BEING TREATED BY THE DOCTORS, YOU WERE STANDING THERE TO OBSERVE WHAT WAS GOING ON AS SECURITY; IS THAT CORRECT?
A. YES, SIR.
Q. WOULD IT BE FAIR TO SAY THAT AT THAT TIME HE WAS STILL SUFFERING OR STILL HAD PROBLEMS THAT WERE BEING TREATED BY THE E.M.S.?
A. BY THE E.M.S.?
Q. BY THE EMERGENCY ROOM DOCTOR AT THAT POINT?
A. I REALLY COULDN'T ANSWER THAT QUESTION, ONLY THE DOCTOR CAN ANSWER THAT ONE.
Q. OKAY, THEY WERE GIVING HIM TREATMENT, IS THAT CORRECT, MEDICATIONS AND WORKING ON THE INJURIES THAT HE HAD SUSTAINED; IS THAT CORRECT?
A. AT THAT POINT IN TIME IN THE EMERGENCY ROOM HE WAS CONSCIOUS AND TALKING TO THE DOCTORS AND NURSES.

Q. AND AT THAT TIME WHEN YOU WERE THERE HE WAS IN DETENTION; IS THAT CORRECT?
A. YES, SIR.
Q. HE COULD NOT HAVE WALKED OUT OF THE EMERGENCY ROOM BECAUSE YOU WERE THERE, HE WOULD HAVE BEEN PLACED UNDER ARRESTED AND CUFFED AND HE WAS IN YOUR CUSTODY; IS THAT CORRECT?
A. THAT IS CORRECT.
Q. NOW, AT THAT TIME YOU DID NOT READ HIM MIRANDA RIGHTS; DID YOU?
A. NO, SIR.
Q. OKAY. NOW, I BELIEVE YOU SAID THAT THERE WAS A STATEMENT WRITTEN, IF I AM CORRECT, BUT THAT WAS A SPONTANEOUS STATEMENT AT ABOUT 3:08?
A. WHICH ARE YOU REFERRING TO?
A. WELL, I BELIEVE YOU SAID -- WELL, LET ME GO BACK. AT 1:34 A.M. THERE WAS A STATEMENT, SPONTANEOUS STATEMENT THAT WAS MADE AND YOU OVERHEARD; IS THAT CORRECT?
A. HE DIRECTED IT TO ME.
Q. HE DIRECTED IT TO YOU AND THEN THIS IS THE STATEMENT WHEN YOU SAID THAT HE HAD ASKED THAT SOMEONE CONTACT THE U.S. MARSHAL'S OFFICE; IS THAT CORRECT?
A. THAT IS CORRECT.
Q. AND THAT HE WAS IN THE WITNESS PROTECTION PROGRAM?

A. THAT IS CORRECT.
Q. NOW, AT THAT POINT YOU HAD NOT ASKED HIM ANY QUESTIONS?
A. NO, SIR, I HAD NOT.
Q. OKAY. THEN AT 3:08 I BELIEVE YOU INDICATED, YOU WERE STILL WITH HIM ALL THIS TIME, FROM 1:34 A.M. UNTIL 3:08 WHEN ANOTHER STATEMENT WAS ALLEGEDLY MADE?
A. ABOUT THE PETER GESHAN?
Q. YES?
A. YES, SIR.
Q. OKAY. AND SO THERE WAS ANOTHER SPONTANEOUS STATEMENT. AND AT THAT TIME DID YOU READ HIM ANY MIRANDA WARNINGS?
A. NO, SIR, I DID NOT.
Q. HE WAS IN DETENTION, IN CUSTODY, AND HAD BEEN PLACED UNDER ARREST AT THAT TIME; IS THAT CORRECT?
A. YES, SIR, BUT HE HAD NOT BEEN ASKED ANY QUESTIONS AT THAT POINT IN TIME.
Q. I BELIEVE AT 3:08, AND THIS IS WHEN YOU ASKED HIM THE SPECIFIC QUESTION AS IT RELATES TO WHAT HAD HAPPENED OR WHY HE HAD SHOT THE TROOPER?
A. YES, SIR, AFTER THE FOLLOW-UP AFTER HE STATED ABOUT A PETER GESHAN I DID ASK HIM IF HE THOUGHT THAT THE TROOPER WAS PETER GESHAN, OR SOMEBODY WITH THE MAFIA.
Q. I BELIEVE YOU ASKED HIM A QUESTION AT THAT TIME, BUT

YOU DID NOT AT THAT TIME READ HIM ANY MIRANDA WARNINGS?
A. NO, SIR, I DID NOT.
Q. HE WAS UNDER ARREST, IN YOUR CUSTODY, IN DETENTION IN THE HOSPITAL, BUT YOU WERE THE OFFICER IN CONTROL OF HIM; IS THAT CORRECT?
A. HE WAS DETAINED BY ME, YES, SIR, AND HE WAS RECEIVING MEDICAL ATTENTION.
Q. SO THAT QUESTION THEN AS IT RELATES TO HOW THE TROOPER WAS SHOT WAS NOT A SPONTANEOUS QUESTION, BUT RATHER WAS IN RESPONSE TO YOUR DIRECT QUESTION TO HIM; ISN'T THAT RIGHT?
A. WOULD YOU REPEAT THE QUESTION AGAIN?
Q. THE STATEMENT THAT YOU SAID HE MADE AS IT RELATES TO WHY THE TROOPER WAS SHOT, THAT WAS IN DIRECT RESPONSE TO A QUESTION THAT YOU DIRECTED TO HIM?
A. NO, SIR, HE STATED PETER GESHAN'S NAME FIRST PRIOR TO ME ASKING HIM THAT.
Q. I'M NOT TALKING ABOUT PETER GESHAN, I AM TALKING ABOUT -- I BELIEVE ON DIRECT EXAMINATION WHEN THE SOLICITOR ASKED YOU A QUESTION AS IT RELATED TO WHAT OTHER STATEMENTS HE MADE, YOU INDICATED AT FIRST THAT HE HAD TOLD YOU ABOUT PETER GESHAN AND THAT PETER GESHAN HAD HAD A CONTRACT ON HIM.
THEN I BELIEVE YOUR TESTIMONY WAS THAT YOU HAD INITIALLY -- THEN YOU ASKED HIM, "WHY DID YOU SHOOT THE

TROOPER?"

AND HE ALLEGEDLY TOLD YOU THAT HE SHOT THE TROOPER BECAUSE HE THOUGHT THE TROOPER WAS A PART OF THE MAFIA.

A. THAT IS CORRECT, YES, SIR.

Q. OKAY. SO MY STATEMENT TO YOU THEN IS THAT THE QUESTION, OR THE RESPONSE TO THAT QUESTION WAS DIRECTLY RELATED TO YOUR QUESTION TO HIM?

A. I DON'T FEEL THAT -- I FEEL THAT THE INFORMATION WAS VOLUNTEERED.

Q. YOU ASKED HIM A QUESTION? YOU ASKED HIM WHY THE TROOPER WAS SHOT?

A. THAT IS CORRECT.

Q. AND THAT IS A DIRECT QUESTION BY YOU? PRIOR TO YOUR ASKING HIM A QUESTION, THERE WAS NO STATEMENT MADE AS TO WHY THE TROOPER WAS SHOT OR WHO HAD SHOT THE TROOPER?

A. THAT IS CORRECT.

Q. SO YOUR STATEMENT TO HIM WAS A DIRECT QUESTION WITHOUT THE BENEFIT OF MIRANDA WARNINGS; IS THAT CORRECT?

A. HE WAS NOT MIRANDA READ.

Q. OKAY, NOW, AT 3:59 IN THE MORNING I BELIEVE WAS WHEN AGENT KENNY MEARS CAME THERE, HIS MIRANDA WARNINGS WERE GIVEN TO THEM AT THAT TIME; IS THAT CORRECT?

A. THAT IS CORRECT.

Q. ISN'T IT TRUE THAT BY YOUR NOTES WHEN HE WAS READ

HIS MIRANDA WARNINGS HE INDICATED THAT HE UNDERSTOOD EVERYTHING EXCEPT THE LAST ONE AS IT RELATED TO AN ATTORNEY?

A. AT THAT POINT IN TIME THAT IS CORRECT, HE QUIT TALKING TO US.

Q. AND HE DID NOT UNDERSTAND THAT ONE OR THE WAIVER THAT WAS EXPLAINED TO HIM AS IT RELATES TO AN ATTORNEY; IS THAT RIGHT?

A. THAT IS CORRECT.

MR. BAILEY: OBJECTION TO ASKING HIM WHAT HE UNDERSTOOD.

THE COURT: I SUSTAIN THAT.

MR. SIMS: YOUR HONOR, MAY I HAVE MY -- I BELIEVE YOU HAVE MY COPY OF THAT HANDWRITTEN---

THE COURT: YOU MAY HAVE IT BACK. JUST REPHRASE YOUR QUESTION, MR. SIMS.

MR. SIMS: YES, SIR.

Q. PREVIOUSLY YOU HAD IDENTIFIED THESE AS YOUR NOTES; IS THAT CORRECT?

A. THAT IS CORRECT.

Q. AND I WOULD LIKE FOR YOU TO READ THIS PART OF YOUR HANDWRITTEN NOTES.

A. WHAT YOU'VE GOT HIGHLIGHTED?

Q. YES, SIR.

A. OKAY. EXCEPT FOR THE LAST ONE ABOUT HAVING AN

ATTORNEY.
Q. SO YOU WERE THERE AND YOU OBSERVED HIM WHEN HE WAS READ HIS RIGHTS BY AGENT MEARS AND HE INDICATED IN YOUR PRESENCE AGAIN THAT HE UNDERSTOOD THEM ALL EXCEPT THE ONE AS IT RELATES TO AN ATTORNEY?
A. HE JUST -- WHEN AGENT MEARS READ HIM HIS RIGHTS, AFTER EACH PART OF THE RIGHTS OR HIS MIRANDA, HE WAS ASKED IF HE UNDERSTOOD. HE SAID "YES" TO ALL OF THEM EXCEPT THE LAST ONE, HE JUST DIDN'T GIVE A REPLY. HE DIDN'T -- HE DIDN'T STATE WHETHER HE UNDERSTOOD OR NOT. HE JUST QUIT TALKING AT THAT POINT.
Q. BUT YOUR HANDWRITTEN NOTES SAID, "EXCEPT FOR THE LAST ONE ABOUT AN ATTORNEY"; IS THAT CORRECT?
A. HE JUST DIDN'T SAY "YES" TO THAT; BUT AS FAR AS WHETHER HE UNDERSTOOD OR NOT, I CAN'T TELL YOU. HE JUST QUIT TALKING.
Q. MAY I HAVE THAT BACK, PLEASE?
A. YES, SIR.
MR. SIMS: ONE MOMENT, YOUR HONOR. MAY I CONFER?
THE COURT: SURELY.
(PAUSE.)
Q. NOW, LET'S JUST -- WE WANT TO BE CLEAR ON ONE ISSUE. HE WAS IN CUSTODY, BEING DETAINED, UNDER YOUR CONTROL BECAUSE HE WAS THE PERSON WHO HAD BEEN IDENTIFIED OR

CHARGED WITH SHOOTING THE TROOPER; IS THAT CORRECT?
A. AT THE POINT IN TIME I WAS UNAWARE OF THE EVENTS THAT HAD HAPPENED IN ORANGEBURG UNTIL SHORTLY AFTER HE WAS ALREADY IN THE AMBULANCE AND WAS EN ROUTE TO M.U.S.C. IS WHEN I FOUND OUT WHAT HAD ACTUALLY TRANSPIRED.
Q. OKAY. SO YOU KNEW AT THE TIME WHEN YOU WERE STANDING THERE IN THE EMERGENCY ROOM THAT THIS IS THE PERSON WHO HAD BEEN CHARGED OR WAS ARRESTED FOR SHOOTING THE TROOPER; IS THAT CORRECT?
A. YES, SIR.
Q. AND, OFFICER, YOU WROTE DOWN BASICALLY EVERYTHING THAT TRANSPIRED IN YOUR HANDWRITTEN NOTES; IS THAT CORRECT?
A. ANYTHING THAT I FELT WAS RELEVANT, YES, SIR.
Q. I DON'T SEE IT, I MAY HAVE OVERLOOKED IN YOUR HANDWRITTEN NOTES WHERE IT WAS STATED THAT HE ADMITTED TO SHOOTING THE TROOPER?
A. THAT WAS JUST SOMETHING THAT I RECALL HIM STATING.
MR. SIMS: I DON'T HAVE ANY FURTHER QUESTIONS, YOUR HONOR.
MR. BAILEY: NO REDIRECT, YOUR HONOR.
THE COURT: YOU MAY COME DOWN, TROOPER. THANK YOU.
TROOPER WELCH: THANK YOU, YOUR HONOR.

MR. BAILEY: YOUR HONOR, MAY HE BE EXCUSED?

THE COURT: YES, SIR.

(TROOPER WELCH EXCUSED.)

MR. BAILEY: KENNY MEARS.

CLERK: PLEASE COME FORWARD, PLEASE. PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT. DO YOU SWEAR THE TESTIMONY YOU GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH, NOTHING BUT THE TRUTH, SO HELP YOU GOD?

MR. MEARS: I DO.

CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME. SPELL YOUR LAST NAME.

MR. MEARS: MY NAME IS KENNETH M. MEARS, M-E-A-R-S.

KENNETH M. MEARS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. MR. MEARS, WHERE ARE YOU EMPLOYED?

A. I AM EMPLOYED WITH THE STATE LAW ENFORCEMENT DIVISION, KNOWN AS SLED.

Q. HOW LONG HAVE YOU WORKED FOR SLED?

A. APPROXIMATELY FIVE YEARS.

Q. ALL RIGHT, SIR. AND WHAT IS YOUR PRESENT POSITION AT SLED?

A. I AM A CRIMINAL INVESTIGATOR WITH SLED.

Q. WHAT OFFICE DO YOU WORK OUT OF?

A. I WORK OUT OF THE CHARLESTON/LOW COUNTRY OFFICE.
Q. OKAY. DID SLED ASSIGN YOU, ALONG WITH AGENT GEORGE DARNELL, TO INVESTIGATE THE SHOOTING DEATH OF TROOPER FRANKIE LINGARD THAT OCCURRED ON NEW YEAR'S EVE?
A. YES, SIR, THAT'S TRUE.
Q. 1997?
A. THAT'S TRUE.
Q. ALL RIGHT, SIR. AND WHEN YOU WERE FIRST CONTACTED BY SLED, WHAT IS THE FIRST THING THAT YOU DID? WHERE IS THE FIRST PLACE YOU WENT?
A. AFTER BEING CONTACTED I LEFT HOME AND I WAS ASKED TO REPORT TO SUMMERVILLE, AT THE HOSPITAL IN SUMMERVILLE.
Q. THE HOSPITAL OR PARKING LOT?
A. WELL, AT FIRST THEY TOLD ME THE HOSPITAL IN SUMMERVILLE.
Q. OKAY. WHERE DID YOU ACTUALLY GO?
A. I WENT TO THE HOSPITAL AT FIRST, AND THEN TO THE PARKING LOT.
Q. OKAY. AND WAS THIS THE PARKING LOT ON HIGHWAY 78?
A. YES, SIR, THAT'S CORRECT.
Q. THE OLD K-MART PARKING LOT?
A. YES, SIR.
Q. BRIEFLY, WHAT WAS GOING ON WHEN YOU ARRIVED AT THE PARKING LOT?
A. WHEN I ARRIVED AT THE PARKING LOT, THERE WERE

SEVERAL POLICE CARS AND OFFICERS ALL OVER THE PLACE, ALONG WITH A WHITE MUSTANG THAT HAD BEEN WRECKED.

Q. AND WAS THE PERSON THAT WAS OPERATING THAT MUSTANG STILL ON THE SCENE OR HAD HE BEEN MOVED BY THE TIME YOU GOT THERE?

A. NO, SIR, HE WAS NOT ON THE SCENE, HE HAD BEEN MOVED.

Q. WHAT DID YOU DO THEN? WHAT IS THE NEXT PLACE YOU WENT TO?

A. UPON RECEIVING INFORMATION THAT THE SUBJECT DRIVING THE MUSTANG HAD BEEN MOVED TO M.U.S.C. INSTEAD OF THE SUMMERVILLE HOSPITAL, I PROCEEDED TO GO TO M.U.S.C. HOSPITAL.

Q. OKAY. AND ABOUT WHAT TIME DID YOU ARRIVE AT M.U.S.C.?

A. I ARRIVED AT M.U.S.C. AT 3:08 A.M. ON 1/1/98.

Q. OKAY. AND WHAT PART OF THE HOSPITAL WAS THE DEFENDANT IN AT THAT TIME?

A. HE WAS IN ROOM 713-E.

Q. OKAY. AND DID YOU SEE HIM IN THE HOSPITAL?

A. YES, SIR, I DID.

Q. AND CAN YOU IDENTIFY THE PERSON YOU SAW IN THE HOSPITAL?

A. YES, SIR, I CAN.

Q. POINT HIM OUT, PLEASE.

A. HE IS THE ONE SITTING OVER THERE IN THE GREEN, DARK

HAIR.

Q. AND WAS HE IN THE ROOM WHEN YOU FIRST SAW HIM?

A. YES, SIR, HE WAS IN THE ROOM IN THE HOSPITAL BED.

Q. WHO ELSE WAS PRESENT AT THAT TIME?

A. THERE WERE CORPORAL WELCH AND ALSO A NURSE, MS. ALTHOUSE.

Q. AND WHAT IS YOUR RECOLLECTION OF MR. ALEKSEY'S PHYSICAL CONDITION WHEN YOU SAW HIM IN THE HOSPITAL?

A. WHEN I FIRST WALKED INTO THE ROOM HE WAS IN THE BED. HE APPEARED -- JUST LAYING UP THERE. HE WAS JUST LOOKING AROUND AND JUST MOVING, HE WASN'T SAYING TOO MUCH.

Q. CALLING YOUR ATTENTION TO ABOUT 3:59 A.M., DID YOU READ MIRANDA RIGHTS TO MR. ALEKSEY?

A. YES, SIR, I DID.

Q. AND AT THAT TIME, WHAT WAS HIS PHYSICAL CONDITION?

A. HIS PHYSICAL -- HE WAS RESPONSIVE. AFTER READING HIM HIS MIRANDA RIGHTS, AFTER EACH LINE HE INDICATED THAT HE DID UNDERSTAND HIS MIRANDA RIGHTS.

Q. WHAT DID YOU READ HIS MIRANDA RIGHTS FROM?

A. I READ THEM FROM A CARD THAT I CARRY WITH ME.

Q. DO YOU HAVE THAT SAME CARD WITH YOU?

A. YES, SIR.

Q. FOR THE RECORD, JUST READ INTO THE RECORD WHAT YOU READ TO MR. ALEKSEY ON JANUARY 1ST AT ABOUT 4 A.M.

A. APPROXIMATELY 3:59 P.M. IN ROOM--A.M., I'M SORRY--IN ROOM 713-E AT M.U.S.C., I READ THE MIRANDA RIGHTS. IT STATES:

> "MIRANDA WARNINGS. YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WOULD BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU WISH. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS."

Q. OKAY.

A. HE INDICATED THAT HE UNDERSTOOD.

Q. ALL RIGHT, SIR. AND WAS MS. ALTHOUSE AND TROOPER WELCH PRESENT WHEN YOU GAVE THOSE RIGHTS TO MR. ALEKSEY?

A. YES, SIR, THEY WERE.

Q. DOES SLED HAVE A PRINTED FORM THAT YOU CAN USE TO GIVE SOMEBODY MIRANDA RIGHTS AND THEY CAN ACKNOWLEDGE THOSE RIGHTS AND SIGN THAT AND HAVE THAT FORM WITNESSED?

A. YES, SIR, THEY DO.

Q. AND THERE IS A WAIVER ON THAT FORM?

A. YES, SIR, IT IS.
Q. DID YOU USE THAT FORM ON THIS PARTICULAR OCCASION?
A. NO, SIR, I DID NOT.
Q. TELL THE JUDGE WHY NOT.
A. THE REASON THAT FORM WAS NOT USED AT THE TIME, ALEKSEY HAD HIS HANDS IN A BAG AWAITING A G.S.R., A GAS TEST FOR RESIDUE, AND HE WAS UNABLE TO SIGN THE RIGHTS FORM.
Q. AND TO THE BEST OF YOUR KNOWLEDGE, OBSERVING MR. ALEKSEY'S DEMEANOR AND HIS REACTION TO QUESTIONS YOU ASKED, DO YOU FEEL LIKE HE UNDERSTOOD THOSE RIGHTS THAT YOU GAVE HIM?
A. YES, SIR, HE DID UNDERSTAND HIS RIGHTS.
Q. DID YOU ENGAGE IN ANY QUESTIONING OF HIM AFTER GIVING HIM THOSE RIGHTS THAT MORNING, JANUARY 1ST?
A. YES, SIR, I DID ASK HIM WHAT WAS HIS NAME, AND HE GAVE ME THE NAME OF -- AT FIRST HE GAVE ME THE NAME OF MICHAEL D'ANGELO. LATER HE GAVE ME A NAME OF MICHAEL ALEKSEY. THEN HE USED A COMBINATION OF NAMES, MICHAEL D'ANGELO ALEKSEY. AND ON A DRIVER'S LICENSE THERE WAS A NAME OF JUSTIN MATECKI.
Q. BUT AS FAR AS ANY SPECIFIC QUESTIONING ABOUT THE SHOOTING DEATH OF TROOPER LINGARD, DID YOU GET INTO THAT ON THAT OCCASION?
A. NO, SIR, I DIDN'T ASK HIM WHAT HAD HAPPENED. HE DID

STATE TO ME THAT HE WANTED TO TALK WITH A LADY FROM THE U.S. MARSHAL SERVICE IN PHILADELPHIA.

MR. BAILEY: YOUR HONOR, THAT IS ALL I HAVE OF MR. MEARS AT THIS TIME. I WISH TO RECALL HIM LATER ON IN THE PROCEEDINGS.

THE COURT: ALL RIGHT, SIR, YOU MAY CROSS EXAMINE, GENTLEMEN.

CROSS EXAMINATION BY MR. SIMS:

Q. AGENT MEARS, JUST A FEW QUESTIONS FOR YOU. WHEN YOU READ HIM THE RIGHTS, DO YOU KNOW WHETHER OR NOT HE WAS UNDER ANY KIND OF MEDICATION?

A. I DON'T KNOW.

Q. HE WAS IN THE HOSPITAL BED. WAS HE BANDAGED, WAS HE RECEIVING I.V., OR WHAT ELSE WAS PRESENT THERE IN THE ROOM?

A. HE WAS IN THE -- HE WAS IN A HOSPITAL ROOM, HE WAS IN THE BED, AND I THINK THERE MAY HAVE BEEN AN I.V. OR SOMETHING THERE.

Q. YOU DON'T KNOW WHETHER OR NOT THERE WAS ANY SPECIFIC MEDICATION THAT HE RECEIVED OR WAS RECEIVING AT THAT TIME WHICH WOULD HAVE AFFECTED HIS ABILITY TO UNDERSTAND?

A. NO, SIR, I DON'T KNOW WHAT MEDICATION HE WAS RECEIVING, IF ANY.

Q. AND AT THIS TIME I BELIEVE YOU INDICATED THAT YOU

READ HIM HIS MIRANDA RIGHTS FROM YOUR CARD. NOW, THERE WAS SOME QUESTION IN HIS MIND AS IT RELATES TO AN ATTORNEY; IS THAT CORRECT?

A. I DON'T KNOW WHAT WAS IN HIS MIND, SIR.

Q. WELL, DID HE NOT EXPRESSLY STATE THAT HE DIDN'T UNDERSTAND ABOUT AN ATTORNEY?

A. NO, SIR, HE DID NOT.

Q. TROOPER WELCH WAS THERE IN THE ROOM AT THAT TIME; IS THAT CORRECT?

A. TROOPER WELCH WAS THERE WHEN I ARRIVED.

Q. OKAY. WAS TROOPER WELCH THERE WHEN YOU READ HIM THE MIRANDA WARNINGS?

A. YES, SIR.

Q. AND TROOPER WELCH OVERHEARD EVERYTHING THAT WAS GOING ON AS IT RELATES TO THE READING OF THE MIRANDA WARNINGS; IS THAT CORRECT?

A. I DON'T KNOW IF HE OVERHEARD EVERYTHING, BUT HE WAS PRESENT DURING THE MIRANDA READINGS.

Q. WELL, HOW FAR WAS HE AWAY FROM YOU?

A. THREE OR FOUR FEET.

Q. THREE OR FOUR FEET AWAY FROM YOU; IS THAT CORRECT?

A. YES, SIR.

Q. AND SO HE WOULD HAVE -- THERE WAS NOTHING TO OBSTRUCT HIS HEARING?

A. NO, SIR.

Q. NO LOUD NOISES, NO TELEVISION OR ANYTHING. THERE WAS YOU, MS. ALTHOUSE AND TROOPER WELCH AND THE DEFENDANT; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. AND IF MR. WELCH WAS STANDING WITHIN THREE FEET AWAY FROM YOU HE WOULD HAVE HEARD WHETHER OR NOT THERE WAS A QUESTION RAISED BY THE DEFENDANT AS IT RELATES TO HIS ATTORNEY; RIGHT?
A. I CAN'T ANSWER WHAT THE TROOPER COULD HAVE HEARD. I DON'T KNOW.
Q. WELL, LET ME ASK YOU THIS: ISN'T IT TRUE THAT BY HIS OWN STATEMENTS HE WAS ASKING FOR HELP, HE WAS ASKING FOR YOU ALL TO CONTACT THE U.S. ATTORNEY'S OFFICE?
A. HE DID ASK FOR A LADY AT THE U.S. MARSHAL SERVICE IN PHILADELPHIA.
Q. SO THEN HE WAS ASKING FOR SOME KIND OF ASSISTANCE; ISN'T THAT RIGHT?
A. HE ASKED FOR THIS U.S. MARSHAL LADY.
Q. AND AT 3:59 HE DID NOT SIGN THE WAIVER OF RIGHTS, AND THAT WAS BECAUSE AT THAT POINT HIS HANDS WERE BAGGED; IS THAT CORRECT? "BAGGED," I MEAN, THEY PUT IT FOR THE G.S.R. TEST?
A. THAT'S CORRECT, HE DID NOT SIGN ANY FORM AT ALL.
Q. WERE YOU THERE WHEN THE HANDS WERE BAGGED?
A. NO, SIR.

Q. DO YOU KNOW WHAT TIME THEY WERE BAGGED?
A. NO, SIR.
Q. BUT THEY HAD BEEN BAGGED BEFORE YOU GOT THERE?
A. THAT'S CORRECT.
Q. AND YOU GOT THERE AT 3:59?
A. NO, SIR.
Q. WHAT TIME DID YOU GET THERE?
A. APPROXIMATELY 3:08.
Q. YOU GOT THERE AT 3:08?
A. YES, SIR.
Q. WERE HIS HANDS BAGGED AT THAT TIME?
A. YES, SIR.

MR. SIMS: THAT'S ALL I HAVE.

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY COME DOWN.

(MR. MEARS STEPS DOWN.)

MR. BAILEY: WE CALL BILLIE ALTHOUSE.

THE COURT: DO YOU DESIRE FOR THIS AGENT TO REMAIN?

MR. BAILEY: YES, SIR, I AM GOING TO RECALL HIM.

THE COURT: THAT'S FINE.

CLERK: WOULD YOU COME FORWARD, PLEASE? PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND. DO YOU SWEAR THE TESTIMONY YOU GIVE SHALL BE THE TRUTH,

WHOLE TRUTH, NOTHING BUT THE TRUTH, SO HELP YOU GOD?

MS. ALTHOUSE: I DO.

CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME, PLEASE.

MS. ALTHOUSE: BILLIE JOANNE ALTHOUSE.

COURT REPORTER: COULD YOU SPELL YOUR LAST NAME?

MS. ALTHOUSE: A-L-T-H-O-U-S-E.

THE COURT: I AM GOING TO ASK THAT YOU SPEAK INTO THE MICROPHONE AND SPEAK A LITTLE LOUDER SO WE CAN ALL HEAR YOU, PLEASE.

MS. ALTHOUSE: YES, SIR.

THE COURT: THANK YOU, MA'AM.

MS. ALTHOUSE: A-L-T-H-O-U-S-E.

BILLIE JOANNE ALTHOUSE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. MS. ALTHOUSE, WHAT IS YOUR PROFESSION?

A. I AM A REGISTERED NURSE.

Q. OKAY. AND WHERE DO YOU WORK?

A. MEDICAL UNIVERSITY IN CHARLESTON.

Q. AND WHAT DO YOU DO AT THE MEDICAL UNIVERSITY?

A. I AM A REGISTERED NURSE AS WELL AS CHARGE NURSE ON NIGHT SHIFT.

Q. OKAY. AND WHAT PARTICULAR WARD OR WHAT PART OF THE

HOSPITAL WERE YOU WORKING IN ON JANUARY 1ST OF THIS YEAR?

A. NEUROLOGY/NEUROSURGERY.

Q. AND WERE YOU THE CHARGE NURSE THERE?

A. YES, SIR.

Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AS A CHARGE NURSE AS FAR AS ASSESSMENT ON PATIENTS THAT ARE ADMITTED TO THE NEUROLOGY WARD?

A. I DO A COMPLETE PHYSIOLOGICAL AND NEUROLOGICAL ASSESSMENT.

Q. OKAY. AND DOES THAT INVOLVE GETTING A HISTORY FROM THE PATIENT?

A. YES, SIR.

Q. AND CALLING YOUR ATTENTION TO THE EARLY MORNING OF JANUARY 1ST OF THIS YEAR, WAS THE DEFENDANT, BAYON ALEKSEY, ADMITTED TO THE 7TH FLOOR WHERE YOU WERE WORKING AS A CHARGE NURSE?

A. YES, SIR.

Q. OKAY. WHAT NAME WAS HE ADMITTED UNDER?

A. AS I RECALL, WE ADMITTED HIM AS A CONFIDENTIAL PATIENT.

Q. OKAY.

A. BUT THE NAME WAS -- ONE OF THE NAMES WAS PEREZ, THE OTHER NAME WAS ALEKSEY.

Q. OKAY. THE PATIENT THAT YOU HAD IN YOUR WARD, CAN

YOU IDENTIFY HIM FOR THE RECORD?
A. YES, SIR, HE WAS THE GENTLEMAN WITH THE GREEN OUTFIT ON.
Q. OKAY. THAT IS THE DEFENDANT IN THIS CASE?
A. (NODS AFFIRMATIVELY.)
Q. OKAY. DID YOU HAVE ANY INVOLVEMENT WITH MR. ALEKSEY WHEN HE WAS TREATED AT THE TRAUMA UNIT AT THE EMERGENCY ROOM DOWNSTAIRS?
A. NO, SIR.
Q. OKAY, WHEN DID YOU FIRST COME INTO CONTACT WITH HIM?
A. WHEN HE WAS TRANSFERRED TO MY FLOOR.
Q. OKAY. AND WHAT IS YOUR RECOLLECTION OF HIS APPEARANCE WHEN HE CAME UP FROM THE TRAUMA UNIT TO THE 7TH FLOOR?
A. WHEN HE ARRIVED ON MY UNIT HE WAS, HE SEEMED TO BE VERY TIRED. HE HAD A CERVICAL COLLAR ON. AND HE WAS ALERT AND ORIENTED.
Q. OKAY. AND BY "ALERT AND ORIENTED," WHAT DO YOU MEAN BY THAT?
A. HE WAS NEUROLOGICALLY ORIENTED TO PERSON, PLACE AND TIME.
Q. MEANING HE KNEW WHO HE WAS AND WHERE HE WAS?
A. EXACTLY.
Q. AND WHEN IT WAS? DID YOU DO AN ASSESSMENT ON HIM?
A. I DID, BUT NOT RIGHT AWAY.

Q. DO YOU RECALL ANYTHING, ANY CONVERSATION BETWEEN YOU AND MR. ALEKSEY AFTER HE WAS ADMITTED TO THE 7TH FLOOR, ANYTHING HE SAID TO YOU?

A. CONCERNING?

Q. ANYTHING?

A. OTHER THAN JUST PATIENT CARE, NOTHING, OTHER THAN HE ASKED FOR--TO SEE A U.S. MARSHAL.

Q. ALL RIGHT. AND WAS THAT IN RESPONSE TO ANY QUESTIONS OR INQUIRIES YOU MADE OF HIM OR WAS THAT SPONTANEOUS ON HIS PART?

A. THAT WAS SPONTANEOUS ON HIS PART ADDRESSED TO ME.

Q. ALL RIGHT. NOW, AS CHARGE NURSE ON THAT FLOOR, WOULD YOU BE AWARE OF ANY MEDICATION THAT WAS ADMINISTERED MR. ALEKSEY THAT DAY?

A. I WOULD.

Q. OKAY. AND WAS HE GIVEN SOME MEDICATION TO YOUR KNOWLEDGE?

A. I WOULD HAVE TO LOOK BACK AT MY MEDICAL RECORD TO SEE WHAT WAS SIGNED OUT FOR THAT SHIFT.

Q. BEAR WITH ME ONE SECOND.

MR. BAILEY: YOUR HONOR, MAY I APPROACH THE WITNESS?

THE COURT: YES, SIR.

Q. MS. ALTHOUSE, I AM GOING TO HAND YOU SOME DOCUMENTS AND ASK WHETHER OR NOT THIS APPEARS TO BE THE MEDICAL

RECORD ON MR. ALEKSEY?
A. IT IS.
Q. AND DOES THAT HELP YOU TESTIFY AS TO WHETHER OR NOT HE WAS UNDER ANY KIND OF MEDICAL DRIP?
A. YES, SIR.
Q. OKAY. AND WAS HE GIVEN MEDICATION?
A. OTHER THAN MAALOX AND TYLENOL, NO.
Q. OKAY. NO NARCOTICS OR ANYTHING OF THAT NATURE?
A. NO, SIR.
Q. OKAY. NOW, WERE YOU PRESENT WHEN AGENT KENNY MEARS WITH SLED CAME UP TO THE 7TH FLOOR TO MR. ALEKSEY'S ROOM?
A. I WAS.
Q. OKAY. WERE YOU PRESENT WHEN MR. MEARS READ MIRANDA RIGHTS TO MR. ALEKSEY?
A. I WAS.
Q. AND DO YOU RECALL ANY VERBAL RESPONSE THAT MR. ALEKSEY MADE?
A. WHEN HE WAS READ HIS RIGHTS?
Q. YES, MA'AM?
A. HE NODDED HIS HEAD YES AND SAID YES.
Q. OKAY. AND WHAT IS YOUR RECOLLECTION OF HIS DEMEANOR AT THAT TIME?
A. WAS---
Q. ROUGHLY 4 A.M. WHEN THE RIGHTS WERE READ TO HIM?

A. HE WAS ALERT AND ORIENTED.

Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE AT THIS TIME.

MR. STONE: THANK YOU, YOUR HONOR. JUST A FEW.

CROSS EXAMINATION BY MR. STONE:

Q. I NOTICE ON HIS MEDICAL RECORDS THAT THEY ORDERED A CAT SCAN ON HIM; IS THAT RIGHT?

A. UM---

Q. I WOULD REFER YOU TO A PAGE, EXCEPT I DON'T KNOW THAT THESE ARE NUMBERED VERY WELL. I WILL SHOW YOU MY COPY OF IT. DOES THAT INDICATE THAT A CAT SCAN WAS ORDERED ON MR. ALEKSEY?

A. YES, SIR.

Q. AND THE CAT SCAN WAS DONE OF HIS HEAD; IS THAT CORRECT?

A. YES, SIR.

Q. THERE IS ALSO A NOTE ON THERE THAT HE HAS A WOUND ON HIS FOREHEAD; IS THAT CORRECT?

A. YES, SIR.

Q. WAS IT YOUR UNDERSTANDING THAT MR. ALEKSEY HAD IN FACT BEEN IN A CAR ACCIDENT AND STRUCK HIS HEAD SOMEWHERE INSIDE THE CAR?

A. IT WAS MY UNDERSTANDING HE HAD BEEN IN A CAR ACCIDENT, YES.

Q. DID YOU ALSO KNOW OR AT LEAST CAN YOU TELL FROM HIS

MEDICAL RECORDS IF THERE WAS SOME DAMAGE TO HIS HEAD?
A. IT WAS A LACERATION, YES.
Q. AND WHERE WAS THE LACERATION?
A. TO HIS FOREHEAD.
Q. TO HIS FOREHEAD?
A. UH-HUH.
Q. OTHER THAN A LACERATION TO HIS FOREHEAD, IS THERE ANYTHING IN HIS MEDICAL RECORDS THAT WOULD NOTE THAT HE LOST CONSCIOUSNESS OR ANYTHING LIKE THAT, TO YOUR KNOWLEDGE?
A. I WOULD HAVE TO LOOK BACK IN THE EMERGENCY ROOM RECORD.
Q. LET ME HOLD MY COPY. I MIGHT BE ABLE TO HELP YOU.
A. THANK YOU.
Q. SURE. THE HOSPITAL DISCHARGE SUMMARY UNDER THE HISTORY OF PRESENT ILLNESS: "THE PATIENT'S CAR WAS RAMMED AT THE FRONT AND THE LEFT QUARTER PANEL; QUESTIONABLE LOSS OF CONSCIOUSNESS."
IS THAT A FAIR RENDITION OF THOSE MEDICAL REPORTS?
A. WHAT ARE YOU ASKING ME, SIR?
Q. PARDON ME?
A. WHAT ARE YOU ASKING ME?
Q. IS THERE SOMETHING IN HIS MEDICAL RECORDS THAT WOULD INDICATE THAT HE HAD LOST CONSCIOUSNESS AT LEAST SOME TIME IN THE PAST? AS A RESULT OF THE CAR ACCIDENT?

A. THIS IS A DISCHARGE SUMMARY. IT WOULD BE -- THAT WOULD BE PROBABLY IN THE EMERGENCY ROOM RECORDS.
Q. BUT THE DISCHARGE SUMMARY INDICATES A "QUESTIONABLE LOSS OF CONSCIOUSNESS"?
A. QUESTIONABLE.
Q. YES. AND DID ANY OF THE TROOPERS TELL YOU THAT MR. ALEKSEY HAD LOST CONSCIOUSNESS AS A RESULT OF THE CAR ACCIDENT?
A. NO.
Q. DID ANYONE TELL YOU DURING ANY OF THE TIME THAT HE HAD IN FACT LOST CONSCIOUSNESS?
A. NO.
Q. NOW, YOU ARE IN THE DEPARTMENT OF NEUROLOGY; IS THAT CORRECT?
A. CORRECT.
Q. THAT IS CONCERNED, I AM ASSUMING, WITH THE BRAIN?
A. EXACTLY.
Q. NOW, WHEN YOU ORDER A CAT SCAN OR IF SOMEONE ORDERS A CAT SCAN OF SOMEBODY'S BRAIN, WHY WOULD THEY DO THAT?
A. TO CHECK---
Q. DO THEY DO THAT EVERY PERSON, EVERY TIME THAT SOMEBODY COMES IN FROM A CAR ACCIDENT?
A. NOT NECESSARILY.
Q. WOULD THEY IN FACT DO IT WHEN THERE IS AN INJURY TO THE HEAD?

A. POSSIBLY.
Q. AND IS THAT TO MAKE SURE THAT THERE IS NOTHING MESSED UP IN HIS BRAIN OR ANYTHING LIKE THAT?
A. WE ARE LOOKING FOR TRAUMA, YES.
Q. WOULD IT HAVE BEEN IMPORTANT FOR YOU TO KNOW THAT HE HAD LOST CONSCIOUSNESS IN MAKING THAT DETERMINATION?
A. TO A DEGREE, OF COURSE.
Q. NOW, YOUR NOTES DON'T INDICATE ANYTHING ABOUT -- YOU SAY HE WAS ALERT. I AM ASSUMING THAT WAS ALERT TO PERSON, PLACE AND THING. HE WAS CONSCIOUS AT THE TIME THAT YOU MET HIM; RIGHT?
A. WHEN HE ARRIVED ON MY FLOOR, HE WAS.
Q. DO YOU REMEMBER WHAT TIME HE ARRIVED OR WHAT TIME, FROM YOUR PERSPECTIVE, I'M NOT INTERESTED IN WHAT TIME HE GOT THERE BEFORE YOU SAW HIM, BUT WHAT TIME DID HE GET -- YOU ARE ON A 4/7?
A. SEVEN TO 7 IN THE MORNING, UH-HUH.
Q. AND WHAT TIME DID HE GET TO YOU? WHAT TIME DID YOU SEE HIM?
A. THEN AGAIN I WILL HAVE TO LOOK AND SEE WHAT TIME I STARTED CHARTING HIM. IT LOOKS LIKE 11:30. EXCUSE ME, 3:30.
Q. I'M SORRY?
A. 3:30.
Q. 3:30. LET ME ASK YOU ONE OTHER THING: YOU WERE

PRESENT WHEN TROOPER MEARS, I BELIEVE IT WAS, READ MR. ALEKSEY HIS RIGHTS; IS THAT CORRECT?

A. CORRECT.

Q. AND YOU RECALL HIM, BEING MR. ALEKSEY, NODDING AND SAYING "YEAH" AFTER THE RIGHTS WERE READ TO HIM; IS THAT RIGHT?

A. CORRECT.

Q. WERE THOSE -- DID HE SAY "YEAH" AFTER EVERY RIGHT OR DID HE SAY IT AT ONE FINAL TIME AT THE END OR DO YOU---

A. TO MY KNOWLEDGE, THE RIGHTS WERE READ TO HIM AND THEY WERE ASKED, "DO YOU UNDERSTAND?" AND HE NODDED YES AND SAID YES.

Q. AND HOW MANY TIMES DID HE SAY "YES," JUST THAT ONCE AT THE END OR---

A. AS I RECALL, HE SAID YES.

Q. OKAY. NOW, DO YOU RECALL MR. ALEKSEY STATING SOME KIND OF CONFUSION ABOUT WHETHER OR NOT HE HAD A RIGHT TO AN ATTORNEY? DO YOU RECALL THAT BEING AN ISSUE AT ALL?

A. NO, I DON'T.

Q. WERE YOU PRESENT ALSO WITH TROOPER WELCH? WAS HE THERE WITH YOU?

A. I DON'T RECOGNIZE THE NAME.

Q. HOW MANY PEOPLE WERE THERE WHEN THE RIGHTS WERE READ TO MR. ALEKSEY?

A. TWO.

Q. AND THESE TWO PEOPLE, WERE THEY IN UNIFORM?
A. YES, AS I RECALL.
Q. DO YOU REMEMBER IF THEY WERE IN HIGHWAY PATROL UNIFORMS OR OTHER KINDS OF UNIFORMS?
A. THE HIGHWAY UNIFORM IS GRAY?
Q. YES, MA'AM?
A. GRAY. I REMEMBER OFFICER MEARS.
Q. AND THE OTHER GENTLEMAN, WAS HE A HIGHWAY PATROL TROOPER AS WELL?
A. I BELIEVE SO.
MR. STONE: THAT'S IT, YOUR HONOR. THANK YOU.
THE COURT: ANY REDIRECT?
MR. BAILEY: NO REDIRECT.
THE COURT: YOU MAY COME DOWN. MAY THIS WITNESS BE EXCUSED?
MR. STONE: WE DON'T HAVE ANY OBJECTION.
MR. BAILEY: YES, YOUR HONOR.
THE COURT: MADAM WITNESS, YOU ARE NOW EXCUSED FROM YOUR SUBPOENA. THANK YOU SO MUCH.
MS. ALTHOUSE: THANK YOU.
(MS. ALTHOUSE EXCUSED.)
MR. BAILEY: MR. RICKENBAKER. HUBERT RICKENBAKER.
CLERK: IF YOU WOULD COME FORWARD, PLEASE. PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

DO YOU SWEAR THE TESTIMONY YOU GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

MR. RICKENBAKER: I DO.

CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME, SPELL YOUR LAST NAME.

MR. RICKENBAKER: HUBERT RICKENBAKER, R-I-C-K-E-N-B-A-K-E-R.

HUBERT RICKENBAKER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. MR. RICKENBAKER, PLEASE TELL THE JUDGE WHERE YOU ARE EMPLOYED.

A. ORANGEBURG/CALHOUN REGIONAL DETENTION CENTER.

Q. ALL RIGHT, SIR. AND WHAT IS YOUR RANK THERE?

A. CAPTAIN.

Q. OKAY. ARE YOU IN CHARGE OF A SHIFT?

A. SHIFT SUPERVISOR.

Q. ALL RIGHT, SIR. AND WERE YOU AT WORK ON JANUARY 2ND OF THIS YEAR?

A. YES, I WAS.

Q. AND AT THAT TIME, JANUARY 2ND, 1998, WAS THERE AN INMATE INCARCERATED AT THE ORANGEBURG/CALHOUN DETENTION CENTER KNOWN AS MICHAEL D'ANGELO?

A. YES, SIR.

Q. OKAY. AND WOULD YOU LOOK AROUND THE COURTROOM AND SEE IF YOU CAN IDENTIFY THE INMATE THAT WAS REGISTERED UNDER THE NAME MICHAEL D'ANGELO?
A. THE GENTLEMAN SITTING AT THE TABLE IN THE GREEN SUIT.
Q. FOR THE RECORD, THAT IS THE DEFENDANT, BAYON ALEKSEY?
A. YES, SIR.
Q. ALL RIGHT, SIR. AND CALLING YOUR ATTENTION TO THE AFTERNOON OF JANUARY 2ND, DID YOU HAVE OCCASION TO GO BY MR. ALEKSEY'S CELL?
A. YES, I DID, SIR.
Q. OKAY. WHAT CELL WAS HE IN AT THAT TIME?
A. HE WAS IN THE INFIRMARY CELL.
Q. AND DID YOU HAVE A CONVERSATION WITH HIM?
A. I HAD BEEN TOLD BY ANOTHER OFFICER THAT HE WANTED TO SEE A WHITE SHIRT.
Q. WHAT IS A WHITE SHIRT?
A. A WHITE SHIRT IS A SUPERVISOR, JAIL SLANG FOR SUPERVISOR.
Q. OKAY. SO YOU GOT WORD FROM ANOTHER CORRECTIONAL OFFICER---
A. YES, SIR.
Q. ---THAT MR. ALEKSEY WANTED TO SEE SOMEBODY IN CHARGE?

A. YES, SIR.
Q. OKAY. AND DID YOU THEN GO TO HIS CELL?
A. YES, SIR.
Q. AND THAT WAS THE INFIRMARY CELL HE WAS IN AT THAT TIME?
A. YES, SIR.
Q. OKAY. AND WHEN YOU GOT TO THE CELL, WAS THERE A CONVERSATION BETWEEN YOU AND MR. ALEKSEY?
A. WELL, HE ASKED ME WHY HE WAS BEING MOVED FROM WHERE HE WAS UP TO THE INFIRMARY CELL.
Q. AND WHERE HAD HE BEEN?
A. HE HAD BEEN IN MAXIMUM SECURITY.
Q. OKAY. AND WHAT ELSE HAPPENED DURING THAT CONVERSATION?
A. HE ASKED ME THE REASON WHY HE WAS MOVED, AND I TOLD HIM I HAD ORDERS FROM THE CHIEF OF SECURITY AND A DEPUTY DIRECTOR TO MOVE HIM TO THE INFIRMARY CELL.
Q. OKAY. AND DID HE SAY ANYTHING ELSE?
A. HE AGAIN QUESTIONED, HE WANTED TO KNOW WHY, AND I TOLD HIM I WOULD HAVE TO FIND OUT WHY BECAUSE I DIDN'T KNOW.

AND THEN HE ASKED COULD HE MAKE A PHONE CALL. I SAID, "I WILL HAVE TO CHECK ON ANY PHONE CALLS BEING MADE."

AT THAT TIME I WENT TO DEPUTY DIRECTOR DOZIER, NO,

I'M SORRY, THEN HE TOLD ME HE WANTED TO SEE SLED, SEE SOMEBODY FROM SLED. AT THAT TIME I LEFT THE INFIRMARY AND WENT TO SEE DEPUTY DIRECTOR DOZIER AND TOLD HER OF THE FACT THAT HE WANTED TO SEE A SLED AGENT.

AND THAT WAS THE END OF OUR CONVERSATION.

Q. ALL RIGHT. AND AT THE TIME OF THIS CONVERSATION ON THE AFTERNOON OF JANUARY 2ND, HOW LONG HAD MR. ALEKSEY BEEN IN THE INFIRMARY CELL?

A. NOT OVER AN HOUR TO TWO HOURS.

Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

CROSS EXAMINATION BY MR. STONE:

Q. LET ME MAKE SURE I UNDERSTAND THIS: WHEN MR. ALEKSEY OR MR. D'ANGELO, WHATEVER NAME HE WAS UNDER AT THE DEPARTMENT OF CORRECTIONS OR DETENTION CENTER, ASKED TO SEE SOMEBODY, HE ASKED TO SEE A WHITE SHIRT; IS THAT RIGHT?

A. YES, SIR.

Q. AND A WHITE SHIRT IS A SUPERVISOR IN THE DETENTION CENTER?

A. A WHITE SHIRT IS SLANG FOR SUPERVISOR.

Q. AND WHEN HE ASKED FOR THAT SUPERVISOR, YOU WENT? ARE YOU A WHITE SHIRT?

A. YES, SIR, I'M A SUPERVISOR.

Q. NOW, WHEN YOU GOT THERE, HIS QUESTION WAS, "WHY WAS

I MOVED TO THE INFIRMARY CELL?"
A. YES, SIR.
Q. AND DID YOU NOT AT THAT TIME TELL HIM THAT ONE OF THE REASONS HE WAS MOVED WAS BECAUSE SLED WANTED HIM TO BE MOVED?
A. THAT I WAS UNDER ORDERS FROM MY SUPERIORS TO MOVE HIM, AND POSSIBLY SLED WANTED HIM MOVED.
Q. BUT YOU TOLD HIM AT THAT TIME THAT SLED HAD HIM MOVED?
A. I DON'T RECALL TELLING HIM THAT.
Q. DID YOU MAKE A STATEMENT IN THIS, DID YOU CREATE A WRITTEN STATEMENT? I WILL LET YOU LOOK AT THIS INSTEAD. IS THAT YOUR WRITTEN STATEMENT?
A. YES, SIR.
Q. IS THAT YOUR HANDWRITING?
A. YES, SIR.
Q. AND YOU PROVIDED -- WHO DID YOU PROVIDE THAT TO?
A. SLED.
Q. AND WHAT DAY DID YOU PROVIDE THAT?
A. THE 5TH OF JANUARY.
Q. JUST A SECOND. DOES YOUR STATEMENT NOT INDICATE, "I TOLD HIM THAT HE WAS MOVED BY SLED AND DEPUTY DIRECTOR DOZIER"? IS THAT NOT WHAT YOUR STATEMENT SAYS?
A. YES, SIR.
Q. OKAY.

MR. STONE: YOUR HONOR, I DON'T KNOW IF YOU HAVE THE STATEMENT. I WILL HAND IT UP TO YOU AS WELL.

THE COURT: THANK YOU.

Q. SO HE ASKED WHY HE WAS MOVED. YOU GAVE HIM AT LEAST AS ONE REASON "SLED," AND THEN HE ASKED TO SEE A SLED AGENT; IS THAT RIGHT?

A. HE ASKED COULD HE MAKE A TELEPHONE CALL TO HIS MOTHER. I SAID I HAD TO CLEAR ALL PHONE CALLS BEFORE I DID ANYTHING. AND THEN HE ASKED TO SEE A SLED AGENT, SOMEONE FROM SLED.

Q. DID ANYONE EVER ALLOW HIM TO USE THE PHONE TO CALL HIS MOTHER?

A. NOT IN THAT PARTICULAR TIME BECAUSE THEY CALLED SLED AND I THINK THEY WERE RIGHT NEXT-DOOR AND THEY CAME ON OVER.

Q. DID THEY COME OVER AND GET HIM OR DID YOU TAKE HIM TO SLED?

A. I WASN'T THERE WHEN THEY TOOK HIM. I THINK THEY CAME OVER AND GOT HIM. WE DIDN'T TAKE HIM ANYWHERE.

Q. DO YOU HAVE TO MOVE HIM OUT OF HIS CELL? WHO TOOK HIM FROM HIS CELL TO THE FRONT GATE WHERE SLED CAN GET HIM? DID YOU DO THAT OR DID SLED COME AND GET HIM?

A. NO, SIR, I DID NOT. WHOEVER WAS WORKING SECURITY ON THE FRONT DESK AT THAT TIME WOULD---

Q. SECURITY WOULD BE THE DETENTION CENTER SECURITY?

A. DETENTION CENTER SECURITY, YES, SIR.
Q. AT ANY POINT IN TIME DID YOU RECALL MR. ALEKSEY ASKING WHEN HE WAS GOING TO GET AN ATTORNEY?
A. NO, SIR.
Q. DID HE EVER ASK YOU, "AM I EVER GOING TO GET AN ATTORNEY? DO I GET ONE?" ANYTHING LIKE THAT?
A. NO, SIR.
Q. EXCUSE ME JUST A MOMENT. WAS ANYONE ELSE PRESENT WHEN YOU WERE TALKING TO MR. ALEKSEY ASKING ABOUT WHEN HE COULD SEE A SLED AGENT?
A. NO, SIR.
Q. SO IT WAS JUST YOU AND HIM?
A. YES, SIR.
Q. ANYBODY IN THE INFIRMARY, ANY NURSE, ANY DOCTOR?
A. NO, SIR. NO, SIR.
Q. WAS IT YOUR UNDERSTANDING THAT HE WISHED TO SEE THE SLED AGENT TO -- I'M SORRY?
A. HE JUST SAID HE WANTED TO SEE SOMEONE FROM SLED, AND THAT'S ALL THE CONVERSATION WE HAD. I TURNED AROUND AND LEFT TO REPORT THE FACT TO MY SUPERIOR.
Q. DID YOU THINK HE WANTED TO SEE SLED BECAUSE---
MR. BAILEY: OBJECTION, YOUR HONOR.
THE COURT: SIR?
MR. BAILEY: HE IS ASKING WHAT HE THOUGHT MR. ALEKSEY MEANT WHEN HE WANTED TO SEE SLED.

THE COURT: REPHRASE YOUR QUESTION.

Q. HE ASKED TO SEE SLED AFTER HE FIRST ASKED YOU WHY HE WAS MOVED; IS THAT RIGHT?

A. YES, SIR.

Q. AND SLED WAS ONE OF THE REASONS YOU GAVE HIM FOR THAT; IS THAT CORRECT?

A. YES, SIR.

MR. STONE: NOTHING ELSE, YOUR HONOR. THANK YOU.

THE COURT: ANY REDIRECT?

MR. BAILEY: NO, SIR.

THE COURT: YOU MAY COME DOWN. THANK YOU.

MR. BAILEY: MAY HE BE EXCUSED, YOUR HONOR?

THE COURT: YES, SIR. CAPTAIN, YOU MAY BE EXCUSED.

(MR. RICKENBAKER EXCUSED.)

MR. BAILEY: WE CALL MS. DOZIER.

CLERK: WOULD YOU COME FORWARD, PLEASE? PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT. DO YOU SWEAR THE TESTIMONY YOU GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

MS. DOZIER: I DO.

CLERK: PLEASE HAVE A SEAT AND STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

MS. DOZIER: MY NAME IS VERNETIA, LAST NAME

DOZIER, D-O-Z-I-E-R.

VERNETIA DOZIER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. MS. DOZIER, WHERE ARE YOU EMPLOYED?

A. ORANGEBURG REGIONAL DETENTION CENTER.

Q. OKAY. WHAT IS YOUR POSITION AT THE DETENTION CENTER?

A. ASSISTANT DIRECTOR.

Q. DID YOU HOLD THAT POSITION BACK IN JANUARY OF THIS YEAR?

A. YES, I DID.

Q. CALLING YOUR ATTENTION TO JANUARY 2ND, 1998, WAS BAYON ALEKSEY AN INMATE AT THE JAIL AT THAT TIME?

A. YES, HE WAS.

Q. AND DID HE USE THE NAME ALEKSEY OR WAS HE USING A DIFFERENT NAME?

A. I THINK THE NAME HE WAS USING WAS MICHAEL D'ANGELO.

Q. OKAY. IN THE AFTERNOON OF JANUARY 2ND, WAS MR. RICKENBAKER THE SHIFT SUPERVISOR?

A. YES, HE WAS.

Q. DID YOU HAVE A CONVERSATION WITH MR. RICKENBAKER ABOUT 4 P.M. THAT AFTERNOON?

A. YES, I DID.

Q. OKAY. AND WHAT DID HE TELL YOU?

A. HE STATED THAT INMATE ALEKSEY OR D'ANGELO WANTED TO SEE A SLED AGENT.

Q. OKAY. AND WHEN HE TOLD YOU THAT, WHAT DID YOU DO?

A. I THEN CALLED THE CRIMINAL INVESTIGATION DEPARTMENT AT THE ORANGEBURG COUNTY SHERIFF'S DEPARTMENT. AT THAT TIME I SPOKE WITH WANDA AND SHE TOOK THE MESSAGE.

Q. THANK YOU. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

<u>CROSS EXAMINATION BY MR. SIMS:</u>

Q. MS. DOZIER, JUST A FEW QUESTIONS. WHEN YOU HAD THE OPPORTUNITY TO TALK WITH CAPTAIN RICKENBAKER, HE INDICATED TO YOU THAT THE INMATE HAD EXPRESSED SOME CONCERN OVER WHY HE WAS MOVED; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND HE WAS CONCERNED WITH HIS MOVEMENT AROUND IN THE ORANGEBURG LAW ENFORCEMENT COMPLEX; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND HE ASKED YOU THAT THE INMATE, OR HE TOLD YOU THAT THE INMATE WANTED TO SEE SLED; IS THAT CORRECT?

A. YES.

Q. HE TOLD YOU THAT THE INMATE WAS CONCERNED WITH BEING MOVED, THAT HE WANTED TO TALK TO SOMEONE ABOUT THAT OR -- IS THAT WHAT HE SAID TO YOU?

A. I DON'T RECALL THE EXACT CONVERSATION.

Q. THE NATURE OF THE CONVERSATION WITH CAPTAIN

RICKENBAKER WAS AS IT RELATES TO WHY ALEKSEY OR MICHAEL D'ANGELO WAS BEING MOVED AROUND IN THE COMPLEX; IS THAT CORRECT?

A. AT THAT TIME HE JUST WANTED TO SEE A SLED AGENT.

BUT YOUR CONVERSATION WITH MR. RICKENBAKER HAD BEEN IN REGARDS TO HIS CONCERN OVER BEING MOVED AROUND IN THE COMPLEX; ISN'T THAT RIGHT?

A. THAT'S CORRECT.

Q. AND AS A RESULT OF THAT HE WANTED TO SEE SLED OR SEE SOMEBODY FROM SLED?

A. I'M NOT SURE.

MR. SIMS: THAT'S ALL I HAVE.

MR. BAILEY: NO REDIRECT. SHE CAN BE EXCUSED.

THE COURT: YOU MAY COME DOWN. THANK YOU.

MS. DOZIER: THANK YOU.

THE COURT: AND YOU ARE EXCUSED.

(MS. DOZIER EXCUSED.)

MR. BAILEY: I CALL WANDA FITZGERALD.

CLERK: PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT. DO YOU SWEAR THE TESTIMONY YOU GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

MS. FITZGERALD: I DO.

CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

MS. FITZGERALD: WANDA DUKES FITZGERALD, F-I-T-Z-G-E-R-A-L-D.

WANDA DUKES FITZGERALD,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. MS. FITZGERALD, ARE YOU A SECRETARY FOR THE ORANGEBURG COUNTY SHERIFF'S OFFICE?

A. YES, SIR.

Q. OKAY. AND WERE YOU AT WORK ON JANUARY 2ND, 1998?

A. YES, SIR.

Q. DO YOU RECALL GETTING A TELEPHONE CALL FROM MS. DOZIER AT THE JAIL IN REFERENCE TO BAYON ALEKSEY?

A. YES, SIR.

Q. OKAY. WHAT DID MS. DOZIER TELL YOU?

A. SHE TOLD ME THAT HE WANTED TO SPEAK WITH A SLED AGENT, SO I WENT AND GOT THE SLED AGENT.

Q. OKAY. AND DO YOU SEE MR. MEARS AND MR. DARNELL SEATED OUT HERE IN THE AUDIENCE?

A. YES, SIR.

Q. WERE THEY AT THE SHERIFF'S OFFICE THAT AFTERNOON?

A. YES, SIR.

Q. DID YOU TELL THEM THAT MR. ALEKSEY WANTED TO SEE THEM?

A. YES, SIR.

Q. OKAY. WERE YOU PRESENT AT THE SHERIFF'S OFFICE WHEN

ALEKSEY WAS BROUGHT OVER FROM THE JAIL TO THE SHERIFF'S OFFICE?

A. YES, SIR.

Q. AND DO YOU RECALL ANYTHING ABOUT WHAT HAPPENED AFTER THEY GOT THERE?

A. NO, SIR. I REMEMBER SOMETHING ABOUT HE NEEDED A JACKET AND THEY WERE GOING TO BRING HIM A JACKET BECAUSE HE WAS COLD, AND THAT IS---

Q. OKAY. DO YOU RECALL SEEING SOMEBODY BRING A JACKET OVER FOR HIM?

A. NO, SIR. I KNOW THEY BROUGHT IT, THEY WERE GOING TO BRING IT, BUT I DIDN'T ACTUALLY SEE THEM BRING IT, NO, SIR.

Q. YOU DIDN'T PARTICIPATE IN THE INTERVIEW OR ANYTHING OF THAT NATURE?

A. NO, SIR.

Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS THEY MAY HAVE.

CROSS EXAMINATION BY MR. STONE:

Q. WHO BROUGHT HIM OVER, DO YOU RECALL?

A. NO, SIR.

Q. DO YOU REMEMBER HOW MANY PEOPLE BROUGHT HIM OVER?

A. NO, SIR. SHORTLY AFTER I TOLD THEM HE WANTED TO SPEAK WITH THEM HE WAS IN THE OFFICE WITH THEM.

Q. IT DIDN'T TAKE LONG TO GET HIM OVER THERE, THAT IS

A. NO, SIR.

Q. THOSE TWO BUILDINGS ARE ATTACHED, ARE THEY NOT?

A. YES, SIR.

Q. DO YOU REMEMBER THESE GENTLEMEN HERE BRINGING HIM OVER? DO YOU REMEMBER THOSE TWO PEOPLE BRINGING HIM OVER?

A. THEY WERE IN THE OFFICE. I DON'T KNOW WHO BROUGHT HIM OVER.

Q. OKAY. SO, ALL RIGHT, THEY WERE IN THE OFFICE. AND IS THAT CAPTAIN WILLIAMS' OFFICE?

A. YES, SIR.

Q. AND THAT IS WHERE THEY ALL WENT INTO?

A. (NODS AFFIRMATIVELY.)

Q. IS THAT RIGHT?

A. YES, SIR.

Q. YOU HAVE TO SAY YES OR NO.

A. YES, SIR.

Q. SHE CAN'T GET DOWN A NOD OF THE HEAD. THAT'S OKAY. ALL RIGHT, SO YOU HAVE TWO. AND SOMEBODY BRINGS HIM OVER; IS THAT RIGHT?

A. YES, SIR.

Q. DID THEY TAKE HIM INTO THE ROOM?

A. HE WAS IN THE ROOM WHEN I WENT BACK OVER THERE, YES, SIR.

Q. WHEN YOU WENT BACK OVER WHERE?
A. THEY GOT ANOTHER PHONE CALL IN THE MEANTIME, SO I WENT IN TO LET THEM KNOW THEY HAD A PHONE CALL, AND MR. ALEKSEY WAS IN THE OFFICE WITH THEM.
Q. WHEN YOU WALKED IN, HOW MANY PEOPLE WERE IN THE ROOM WHEN YOU WALKED IN?
A. IT WAS HIM AND AGENT MEARS AND DARNELL.
Q. ANYBODY ELSE OTHER THAN THAT?
A. NOT AT THAT TIME.
Q. AT ANY TIME DID YOU SEE ANYBODY ELSE GO INTO THE ROOM?
A. WHERE MY OFFICE -- WHERE MY DESK IS, I CAN'T SEE WHO GOES IN AND OUT, SO---
Q. YOU GOT THE MESSAGE, YOU GOT THE CALL THAT MR. ALEKSEY WANTED TO SEE A SLED AGENT?
A. YES, SIR.
Q. AND WHO DID YOU GET THAT CALL FROM?
A. FROM DEPUTY DIRECTOR DOZIER.
Q. AND DID THE DEPUTY DIRECTOR, DID SHE TELL YOU WHY HE WANTED TO SEE SLED?
A. SHE JUST SAID HE WANTED TO TALK WITH THEM.
MR. STONE: NOTHING ELSE, YOUR HONOR.
MR. BAILEY: NO REDIRECT, YOUR HONOR. MAY SHE BE EXCUSED?
THE COURT: YES. YOU MAY COME DOWN AND ARE

EXCUSED. THANK YOU SO MUCH.

MS. FITZGERALD: THANK YOU.

(MS. FITZGERALD STEPS DOWN.)

MR. BAILEY: I CALL GEORGE DARNELL.

CLERK: IF YOU WOULD COME FORWARD, PLEASE? PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT. DO YOU SWEAR THE TESTIMONY YOU GIVE SHALL BE THE TRUTH, WHOLE TRUTH, NOTHING BUT THE TRUTH, SO HELP YOU GOD?

MR. DARNELL: I DO.

CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL NAME AND SPELL YOUR LAST NAME.

MR. DARNELL: GEORGE DARNELL, D-A-R-N-E-L-L.

GEORGE DARNELL, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. DARNELL:

Q. MR. DARNELL, YOU ARE A SLED AGENT?

A. YES, SIR, I AM.

Q. ALL RIGHT, SIR. HOW LONG HAVE YOU BEEN WITH SLED?

A. I'VE BEEN WITH SLED SINCE 1971.

Q. ALL RIGHT, SIR. AND ARE YOU A FIELD AGENT?

A. CORRECTION, 1991, SOLICITOR.

Q. OKAY. AND ARE YOU A FIELD AGENT?

A. YES, SIR, I'M A FIELD AGENT, CRIMINAL INVESTIGATOR ASSIGNED TO THE LOW COUNTRY REGION.

Q. ALL RIGHT, SIR. AND WOULD YOU STATE WHETHER OR NOT

YOU WERE ASSIGNED BY SLED TO INVESTIGATE THE SHOOTING DEATH OF SERGEANT FRANKIE LINGARD WHICH OCCURRED ON NEW YEAR'S EVE?

A. YES, SIR, I WAS.

Q. WHO ELSE WAS ASSIGNED BY SLED TO WORK THAT CASE?

A. AGENT MEARS, KENNY MEARS.

Q. AND CALLING YOUR ATTENTION TO JANUARY 2ND, 1998, DID YOU HAVE OCCASION TO BE AT THE ORANGEBURG COUNTY SHERIFF'S OFFICE THAT AFTERNOON?

A. YES, SIR, I DID.

Q. WAS AGENT MEARS THERE ALSO?

A. YES, SIR, HE WAS.

Q. AND WHERE IS THE SHERIFF'S OFFICE IN RELATION TO THE JAIL?

A. THE SHERIFF'S OFFICE IS RIGHT IN FRONT OF THE JAIL.

Q. AND DID YOU HAVE OCCASION TO SPEAK TO WANDA FITZGERALD, WHO JUST TESTIFIED?

A. YES, SIR, I DID.

Q. AND WHAT DID SHE TELL YOU?

A. SHE CAME TO THE OFFICE DOOR AND JUST TAPPED ON IT AND SAID THAT SHE RECEIVED A CALL FROM THE DETENTION CENTER THAT INMATE ALEKSEY WANTED TO TALK WITH US.

Q. OKAY. AND DID YOU THEN SEND FOR HIM?

A. YES, SIR, WE DID.

Q. OKAY. AND WOULD YOU IDENTIFY THE PERSON IN COURT

THAT YOU HAVE BEEN TALKING ABOUT, BAYON ALEKSEY?
A. SITTING BY HIS ATTORNEYS IN THE DARK GREEN JAIL UNIFORM, BLACK HEADED.
Q. WHEN MR. ALEKSEY WAS BROUGHT FROM THE JAIL TO THE SHERIFF'S OFFICE, WHAT PART OF THE SHERIFF'S OFFICE DID Y'ALL GO INTO?
A. WE BROUGHT HIM INTO CAPTAIN LARRY WILLIAMS' OFFICE.
Q. WOULD YOU BRIEFLY DESCRIBE THAT OFFICE, HOW IT IS LAID OUT, AND SO FORTH?
A. IT IS ON A SHORT PIECE OF THE HALLWAY BY ITSELF RIGHT ACROSS FROM THE BREAK ROOM, COFFEE ROOM, WHATEVER YOU CALL IT. I GUESS IT IS PROBABLY 10 x 10 IN SIZE. IT HAS WINDOWS UP AT THE VERY TOP, SIX INCHES TALL MAYBE AND A COUPLE OF FEET LONG RIGHT UP AT THE TOP OF THE ROOM.
Q. WHEN MR. ALEKSEY WAS BROUGHT OVER TO YOU, DID YOU KNOW WHY HE WANTED TO SEE YOU WHEN HE INITIALLY WAS BROUGHT OVER THERE BEFORE YOU STARTED TALKING TO HIM?
A. NO, SIR, I DIDN'T, HE JUST REQUESTED TO TALK TO US.
Q. OKAY. WHAT DO YOU RECALL MR. ALEKSEY'S DEMEANOR WHEN HE CAME OVER FROM THE JAIL?
A. WHEN HE CAME OVER HE WAS SOMEWHAT NERVOUS, BUT OTHER THAN THAT HE SEEMED TO BE IN GOOD SHAPE. HE KNEW WHAT HE WAS DOING, AND SO FORTH.
Q. AND DID YOU AND AGENT MEARS TAKE HIM INTO CAPTAIN

WILLIAMS' OFFICE THAT YOU JUST DESCRIBED?

A. YES, SIR, WE DID.

Q. AND STATE WHETHER OR NOT YOU ADVISED HIM OF HIS MIRANDA RIGHTS.

A. YES, SIR, I DID, PROVIDED HIM WITH A MIRANDA FORM THAT IS PROVIDED TO US BY SLED AND GAVE HIM A FORM AND I RETAINED A FORM AND READ OVER HIS RIGHTS WITH HIM. HE ACKNOWLEDGED HIS RIGHTS BY SIGNING THEM AND THEN WE READ OVER THE WAIVER OF RIGHTS AND HE ACKNOWLEDGED THAT.

Q. BEFORE YOU GET INTO THAT, LET ME GO AHEAD AND HAVE THESE THINGS MARKED BY THE COURT REPORTER.

THE COURT: IDENTIFY WHAT YOU ARE MARKING, PLEASE, FOR ME.

MR. BAILEY: NUMBER 1 IS THE MIRANDA FORM AND NUMBER 2 IS THE TRANSCRIPT OF THE TAPED STATEMENT.

MR. STONE: MAY I TAKE A LOOK AT THAT?

MR. BAILEY: YOUR HONOR, THESE ARE COPIES, THE DEFENSE HAS BEEN PROVIDED COPIES, BUT THE ORIGINAL IS IN THE SLED FILE IN CHARLESTON.

THE COURT: I WILL PERMIT THE SUBSTITUTION OF THE COPIES FOR SECURITY REASONS OF THE ORIGINAL. DO YOU AGREE WITH THAT, MR. STONE?

MR. STONE: WE DON'T HAVE ANY OBJECTION TO THAT. JUST FOR THE PURPOSE OF THIS HEARING, YOUR HONOR, ---

THE COURT: YES, SIR.

MR. STONE: ---THEY CAN CERTAINLY USE THAT.

(MIRANDA FORM MARKED AS STATE'S EXHIBIT 1; STATEMENT MARKED AS DEFENDANT'S EXHIBIT 2.)

Q. MR. DARNELL, LET ME HAND YOU WHAT HAS BEEN MARKED AS STATE'S 1 FOR THE PURPOSE OF THIS HEARING ONLY, AND IS THAT THE SLED FORM YOU HAVE BEEN TESTIFYING ABOUT THAT Y'ALL USE?

A. YES, SIR.

Q. IT IS ISSUED BY SLED?

A. YES, SIR, IT IS.

Q. WHOSE HANDWRITING IS THAT IN, THE TOP PART?

A. THE TOP PART IS DATED AND THE TIME IS PUT ON IT BY ME.

Q. OKAY. AND THE DATE IS WHAT?

A. JANUARY 2ND, 1998.

Q. AND WHAT IS THE TIME ON THAT FORM?

A. 4:40 P.M.

Q. OKAY. IS 4:40 P.M. THE TIME YOU STARTED TO GIVE MR. ALEKSEY HIS MIRANDA RIGHTS?

A. YES, SIR, IT IS.

Q. OKAY. HOW DID YOU GO ABOUT DOING THAT?

A. I GAVE HIM A FORM AND I HAD A FORM AND READ OVER HIS RIGHTS WITH HIM.

Q. WITHOUT READING THIS INTO THE RECORD, DID YOU READ

THAT TO MR. ALEKSEY EXACTLY THE SAME WAY THAT IT IS TYPED ON THAT FORM?

A. YES, SIR.

Q. AND AS YOU READ EACH RIGHT, DID YOU ASK HIM TO ACKNOWLEDGE THAT RIGHT?

A. YES, SIR.

Q. OKAY. AND WHEN YOU FINISHED READING THE TOP PART OF THE FORM TO HIM, THERE IS A PLACE FOR A SIGNATURE; IS THAT CORRECT?

A. YES, SIR.

Q. OKAY. DID HE SIGN THAT ACKNOWLEDGING THAT HE RECEIVED THOSE RIGHTS?

A. YES, SIR, HE STARTED OUT TO SIGN IT MICHAEL D'ANGELO, AND THEN HE CROSSED THAT OUT AND SIGNED IT BAYON ALEKSEY.

Q. OKAY. WHO ELSE WAS PRESENT WHEN YOU GAVE THOSE RIGHTS TO MR. ALEKSEY?

A. AGENT MEARS.

Q. AND DOWN BENEATH THAT THERE IS A WAIVER OF RIGHTS. DID YOU READ THAT TO HIM?

A. YES, SIR, I DID.

Q. OKAY. AND DID HE SIGN THAT IN YOUR PRESENCE AND AGENT MEARS' PRESENCE?

A. YES, SIR, HE DID.

Q. THERE IS A DATE DOWN AT THE BOTTOM LEFT, EXCUSE ME,

A TIME DOWN AT THE BOTTOM LEFT-HAND CORNER. WHAT TIME IS THAT?

A. 4:45 P.M.

Q. SO DID YOU SPEND FIVE MINUTES GOING OVER THE FORM WITH HIM?

A. YES, SIR.

Q. OKAY. AT ANY TIME, MR. DARNELL, DID YOU MAKE ANY PROMISES TO MR. ALEKSEY IF HE WOULD GIVE YOU A STATEMENT?

A. NO, SIR, I DIDN'T.

Q. DID YOU THREATEN HIM IN ANY WAY?

A. NO, SIR.

Q. DID HE ASK YOU FOR ANYTHING LIKE TO USE THE BATHROOM OR A COCA-COLA OR ANYTHING LIKE THAT THAT HE DIDN'T RECEIVE?

A. NO, SIR, WHATEVER HE ASKED FOR HE RECEIVED.

Q. OKAY. NOW, AT 4:50 P.M., DID YOU TURN A TAPE PLAYER ON?

A. YES, SIR, WE DID.

Q. AND DID HE THEN GIVE YOU A STATEMENT THAT YOU TAPED?

A. YES, SIR, HE DID.

Q. AND AFTER ABOUT THREE OR FOUR MINUTES INTO THE TAPE, THE TELEPHONE RANG?

A. YES, SIR, SOMEWHERE ALONG IN THERE.

Q. DO YOU RECALL ABOUT HOW LONG THAT TAPE -- WAS THE

TAPE CUT OFF WHEN THE PHONE RANG?

A. YES, SIR, IT WAS CUT OFF. PROBABLY NO MORE THAN FIVE MINUTES. IT WASN'T LONG.

Q. ALL RIGHT. AND AFTER YOU FINISHED YOUR PHONE CONVERSATION, DID YOU TURN THE TAPE PLAYER BACK ON?

A. YES, SIR, WE DID.

Q. ALL RIGHT, SIR. AND IT WAS OFF FOR A TOTAL OF FIVE MINUTES?

A. SOMEWHERE AROUND IN THERE, YES, SIR.

Q. DURING THAT 5-MINUTE GAP, DID YOU HAVE ANY CONVERSATION WITH MR. ALEKSEY?

A. NO, SIR, I WAS ON THE TELEPHONE.

Q. WELL, DID YOU USE THE TELEPHONE IN CAPTAIN WILLIAMS' OFFICE WHERE YOU CONDUCTED THE INTERVIEW OR DID YOU GO SOMEWHERE ELSE?

A. NO, SIR, I WALKED INTO THE SECRETARY'S OFFICE, MISS WANDA'S OFFICE.

Q. OKAY. AND WHEN YOU FINISHED THAT TELEPHONE CONVERSATION, DID YOU GO BACK TO CAPTAIN WILLIAMS' OFFICE?

A. YES, SIR.

Q. DID YOU TURN THE TAPE PLAYER BACK ON AT THAT TIME?

A. YES, SIR, I DID.

Q. DURING THAT 5-MINUTE BREAK THAT YOU TOOK TO MAKE A TELEPHONE CALL, DID YOU MAKE ANY PROMISES TO HIM IF HE

WOULD GIVE YOU A STATEMENT OR MAKE ANY THREATS IF HE WOULD GIVE YOU A STATEMENT?

A. NO, SIR, I DIDN'T.

Q. OKAY. AND HOW LONG ROUGHLY DID THE TAPE STAY ON AFTER THE TELEPHONE CALL, AFTER IT WAS CUT OFF A SECOND TIME?

A. ROUGHLY 10 OR 11 MINUTES, SOMETHING LIKE THAT.

Q. OKAY, SO THAT WOULD HAVE TAKEN YOU A LITTLE BIT AFTER 6 P.M.--EXCUSE ME, A LITTLE AFTER 5?

A. THAT WOULD HAVE BEEN SOMETHING AFTER 5, YES, SIR.

Q. ALL RIGHT, SIR. NOW, AFTER THE TAPE WAS TURNED BACK ON, AFTER THE TELEPHONE CONVERSATION, AND IT WENT ON FOR 11 AND A HALF MINUTES OR SO, WAS THE TAPE TURNED OFF FOR THE SECOND TIME?

A. YES, SIR, IT WAS.

Q. OKAY. AND AFTER THE TAPE WENT OFF THE SECOND TIME, WAS IT OFF FOR ROUGHLY AN HOUR?

A. YES, SIR, ROUGHLY.

Q. AND WHAT OCCURRED DURING THAT HOUR?

A. DURING THAT HOUR, THAT IS WHEN I THINK WE GOT HIS JACKET. HE HAD GOTTEN COLD AND WANTED A JACKET. WE CALLED BACK AT THE DETENTION CENTER AND MADE ARRANGEMENTS FOR SOMEONE TO BRING HIM A JACKET UP THERE. IT SEEMED LIKE WE GOT HIM ANOTHER COKE OR SOMETHING, I'M NOT SURE, BUT THERE WAS A COUPLE OF THINGS WE DID. I

HAD TO GO MAKE SOME PHONE CALLS BECAUSE MY PAGER WAS STEADILY GOING OFF. AND THEN WE TALKED WITH HIM BRIEFLY.

Q. JUST TO KIND OF PUT THIS IN CONTEXT: THE STATEMENT, THE INITIAL STATEMENT WAS TAPED?

A. RIGHT.

Q. IN THAT STATEMENT DID HE SAY A GLORIA V. BLACKWELL DID THE SHOOTING?

A. YES, SIR, HE DID.

Q. ALL RIGHT, SIR. AND AFTER THE TAPE WAS TURNED BACK ON FOR 11 AND A HALF MINUTES OR SO, DID YOU THINK THAT WAS THE END OF THE STATEMENT?

A. YES, SIR.

Q. AND YOU CUT THE TAPE OFF. OKAY, NOW, GETTING BACK DURING THAT HOUR, THIS PERIOD BEFORE IT WAS TURNED BACK ON FOR THE THIRD TIME, GO AHEAD AND CONTINUE TO TELL THE COURT WHAT OCCURRED BETWEEN YOU AND MR. MEARS AND MR. ALEKSEY DURING THAT HOUR.

A. DURING THAT TIME I WAS IN AND OUT A COUPLE OF TIMES AND RETURNED SOME PHONE CALLS TO MY CAPTAIN; AND SEEMED LIKE ONE OF THE AGENCIES IN NEW YORK OR PHILADELPHIA ONE HAD CALLED THERE, AND I TALKED WITH THEM; MADE ARRANGEMENTS TO GET HIM A JACKET AND I THINK A DRINK; AND SEEMED LIKE MAYBE AGENT MEARS STEPPED OUT ON ONE OCCASION TO RETURN A PHONE CALL.

AND THEN WE WERE GETTING READY TO CARRY HIM BACK TO THE DETENTION CENTER, AND HE SAID HE WANTED TO TALK FURTHER AND ASKED--SAID HE HAD A FRIEND, ELLENA BATKILINA, THAT WAS IN TROUBLE DOWN IN FLORIDA AND WANTED TO KNOW IF WE COULD DO ANYTHING TO HELP HER OUT, THAT THE TROUBLE SHE WAS IN WASN'T DUE TO HER FAULT, IT WAS DUE TO HIS FAULT.

AND HE WANTED TO KNOW WHAT WAS GOING TO HAPPEN TO GLORIA V. PEREZ. WE ADVISED HIM THAT SHE HAD BEEN CHARGED JUST THE SAME AS HE HAD AND THAT HER TWO MINOR CHILDREN HAD BEEN TURNED OVER TO D.S.S.

AND HE WANTED TO KNOW IF THERE WAS ANYTHING AGAIN THAT WE COULD DO TO HELP MS. BATKILINA. WE TOLD HIM THAT WAS OUT OF OUR JURISDICTION, WE HAD NOTHING TO DO WITH IT, THERE WAS NOTHING WE COULD HELP HER WITH.

HE WANTED TO KNOW -- HE SAID, "WELL, IF I GET TRUTHFUL WITH Y'ALL, CAN I GO BACK IN THE GENERAL POPULATION?"

WE TOLD HIM WE COULDN'T ANSWER THAT WITHOUT CHECKING WITH OUR SUPERVISOR. WE PLACED A CALL TO CAPTAIN KNIGHT AND DISCUSSED THE SITUATION WITH HIM, AND HE SAID HE HAD NO PROBLEM WITH IT AS LONG AS THE DETENTION CENTER DID NOT. AND THEN WE CONTACTED MS. DOZIER AT THE DETENTION CENTER AND SHE SAID SHE HAD NO PROBLEM, THAT HE COULD GO BACK IN THE GENERAL POPULATION.

AND HE SAID, WELL, HE WANTED TO BE TRUTHFUL WITH US, THAT GLORIA V. HAD NO PART OF IT, SHE DIDN'T KNOW WHAT WAS GOING ON, AND SO FORTH; AND WE WENT BACK ON TAPE.

Q. OKAY. AND WHY WAS THE TAPE TURNED OFF DURING THAT HOUR? WHY DIDN'T YOU JUST LEAVE THE TAPE RUNNING?

A. WELL, I THOUGHT WE WERE THROUGH WITH THE STATEMENT, AND ABOUT THE SAME TIME, AS WELL AS MY MEMORY SERVES ME, MY PAGER WAS GOING OFF AND I REACHED IN AND SHUT IT OFF AND JUST NEGLECTED GOING BACK ON TAPE AND PUTTING THE TIME, AND SO FORTH, ON IT.

Q. OKAY. NOW, OTHER THAN TELLING HIM YOU WOULD SEE WHAT YOU COULD DO TO GET HIM OUT OF THE INFIRMARY CELL IN THE GENERAL POPULATION, DID YOU MAKE ANY PROMISES TO MR. ALEKSEY?

A. NO, SIR.

Q. DID EITHER YOU OR AGENT MEARS IN YOUR PRESENCE THREATEN HIM IN ANY WAY?

A. NO, SIR.

Q. DID YOU PHYSICALLY INTIMIDATE HIM, OR ANYTHING OF THAT NATURE?

A. NO, SIR.

Q. DID MR. MEARS DO THAT, TO YOUR KNOWLEDGE?

A. NO, SIR.

Q. DID HE ASK YOU FOR ANYTHING THAT HE DIDN'T RECEIVE? DID HE ASK FOR FOOD OR SOMETHING TO DRINK OR TO USE THE

BATHROOM OR MAKE A PHONE CALL---

A. NO, SIR.

Q. ---OR ANYTHING OF THAT NATURE?

A. NO, SIR.

Q. OKAY. AT THE TIME YOU TURNED THE TAPE BACK ON, WHAT WAS MR. ALEKSEY'S DEMEANOR LEADING UP TO THAT?

A. HE WAS CRYING A LITTLE BIT, SAYING THAT HE WAS SORRY FOR WHAT HAD HAPPENED, AND SO FORTH.

Q. AND WHO WAS PRESENT WHEN THE TAPE GOT TURNED BACK ON?

A. MYSELF AND AGENT MEARS AND MR. ALEKSEY.

Q. NOW, AT THAT TIME THERE WAS A LENGTHY DIALOGUE BETWEEN YOU AND MR. ALEKSEY THAT WAS TAPED; IS THAT CORRECT?

A. YES, SIR.

Q. AND JUST TO SUM IT UP FOR THE PURPOSE OF THIS HEARING, DID HE THEN CONFESS TO BEING THE SHOOTER?

A. YES, SIR, HE DID.

Q. ON THAT TAPE?

A. YES, SIR.

Q. AND AFTER THE TAPE FINISHED, WAS THE TAPE GIVEN TO A SECRETARY TO TRANSCRIBE?

A. YES, SIR, IT WAS KEPT IN MY POSSESSION AND THEN I TURNED IT OVER TO OUR SECRETARY IN THE CHARLESTON OFFICE, MS. TERRI BOWERS.

Q. OKAY. AND AFTER MS. BOWERS TYPED THE TRANSCRIPT OF THE TAPED STATEMENT OUT, DID YOU REVIEW IT TO SEE IF IT WAS AN ACCURATE TRANSCRIPTION OF THE TAPE?

A. YES, SIR.

Q. I WANT TO HAND YOU STATE'S 2 AND ASK IF THIS IS A COPY OF THE TAPE WHICH INCLUDED THE INITIAL STATEMENT AS WELL AS THE SECOND STATEMENT HE GAVE?

A. YES, SIR, IT IS.

MR. BAILEY: I WILL HAVE THE COURT REPORTER MARK THIS, IF I COULD, PLEASE.

(TAPE MARKED AS STATE'S EXHIBIT 3.)

Q. MR. DARNELL, STATE'S 3, IS THAT A COPY OF THE TAPE THAT YOU PROVIDED TO MY OFFICE?

A. YES, SIR, IT IS.

MR. BAILEY: YOUR HONOR, THAT IS ALL I HAVE OF MR. DARNELL. THE DEFENSE HAS INDICATED THEY WANTED TO PLAY THE TAPE, AND I HAVE GOT A TAPE PLAYER I BORROWED FROM THE SOLICITOR'S OFFICE HERE, IF I CAN FIGURE IT OUT.

THE COURT: ALL RIGHT, LET ME ASK YOU, HOW LONG IS THE TAPE?

MR. BAILEY: IT IS ROUGHLY AN HOUR, JUDGE.

THE COURT: WELL, IT IS 1 O'CLOCK. DO YOU WANT TO COME BACK AT -- DO YOU WANT TO PLAY IT NOW OR DO YOU WANT TO COME BACK AT SAY 2 O'CLOCK AND LET'S PLAY IT AT

THAT TIME?

MR. BAILEY: JUDGE, EITHER WAY IS FINE WITH ME.

THE COURT: WHAT IS THE PREFERENCE OF THE DEFENSE?

MR. STONE: I HAVE NO PREFERENCE, BUT I THINK MR. SIMS MAY HAVE A PROBLEM WITH THAT.

THE COURT: I WILL ACCOMMODATE MR. SIMS' PROBLEM. WHAT IS IT, MR. SIMS?

MR. SIMS: YOUR HONOR, I MAY NEED YOU TO CALL TO SUMMERVILLE. I HAD ANOTHER HEARING AT 3 O'CLOCK THIS AFTERNOON. IF YOU WOULD CALL AND LET THEM KNOW WHERE I AM.

THE COURT: I WILL DO THAT. MY COURT REPORTER HAS BEEN OUT HERE. LET'S DO THIS, LET'S BREAK FOR LUNCH AND COME BACK AT 2. FIRST, WOULD YOU LIKE TO CONCLUDE YOUR CROSS EXAMINATION?

MR. STONE: NO, SIR. IN FACT, I HAVE JUST A FEW QUESTIONS BEFORE THE TAPE, AND IT IS SO INVOLVED WITH THE TAPE I WOULD JUST AS SOON DO IT THEN.

THE COURT: ALL RIGHT, WELL, LET'S JUST COME BACK AT 2 O'CLOCK. IS THAT OKAY?

MR. STONE: YES, SIR. THANK YOU.

THE COURT: THANK YOU. SEE YOU BACK AT 2.

(WHEREUPON, AT 1 P.M. COURT ADJOURNED FOR LUNCH.)

(WHEREUPON, AT 2:10 P.M. COURT RECONVENED.)

THE COURT: ALL RIGHT, SOLICITOR.

MR. BAILEY: YOUR HONOR, I THINK WE ARE GETTING READY TO PLAY THE TAPE. I PUT A COPY OF THE TRANSCRIPT ON YOUR DESK, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: STARTING ON PAGE 7, THERE IS SOME HIGHLIGHTED AREAS PERTAINING TO OTHER SITUATIONS.

THE COURT: OKAY, NOW, AS I UNDERSTAND IT, WITH REGARDS TO THAT, YOU AND HE AGREE THAT THAT TESTIMONY IS NOT RELEVANT TO ANY ISSUE IN THIS CASE?

MR. BAILEY: YES, SIR.

MR. STONE: YES, SIR.

THE COURT: AND WE ARE GOING TO BE SKIPPING THAT PART OF IT.

MR. BAILEY: WE WILL TRY TO STOP AND FAST-FORWARD PAST THAT.

THE COURT: ALL RIGHT, THAT'S FINE. ALL RIGHT, SIR, ANYTHING FURTHER BEFORE WE START?

MR. BAILEY: NO, SIR, I DON'T THINK SO.

THE COURT: ARE YOU READY?

MR. STONE: YES, SIR.

THE COURT: LET THE RECORD REFLECT THAT ALL PARTIES ARE IN THE COURT, INCLUDING THE DEFENDANT. YOU

MAY PROCEED.

(WHEREUPON, THE TAPE MARKED AS STATE'S EXHIBIT 3, WAS PLAYED IN OPEN COURT.)

CROSS EXAMINATION BY MR. STONE:

Q. AGENT, FIRST OF ALL, WHEN YOU FIRST MET WITH MR. ALEKSEY, WHEN HE WAS BROUGHT OVER THERE, WHO BROUGHT HIM OVER THERE; DO YOU RECALL? AND WHEN I SAY "OVER THERE," I MEAN, YOU MET AT CAPTAIN WILLIAMS' OFFICE; IS THAT CORRECT?

A. RIGHT.

Q. WHO BROUGHT HIM OVER TO CAPTAIN WILLIAMS' OFFICE?

A. TO THE BEST OF MY KNOWLEDGE, MYSELF AND AGENT MEARS WERE INTERVIEWING MS. PEREZ AND WE CARRIED HER BACK AND THEN GOT MR. ALEKSEY OURSELF.

Q. OKAY. SO YOU TWO BROUGHT HIM OVER?

A. AS WELL AS I REMEMBER, YES, SIR.

Q. DID ANYBODY HELP YOU BRING HIM OVER?

A. NO, SIR.

Q. AND I AM ASSUMING WHEN YOU GOT THERE YOU HAD TO GET HIM FROM THE FRONT AT THE DETENTION CENTER, IS THAT RIGHT, THAT CAGED PART IN THE ORANGEBURG DETENTION CENTER?

A. RIGHT, THEY BRING HIM UP FRONT.

Q. HE DIDN'T ACTUALLY GO BACK INTO A CELL, SOMEBODY BROUGHT HIM UP?

A. RIGHT.
Q. DO YOU RECALL WHO THAT WAS?
A. NO, SIR, I DON'T.
Q. DO YOU REMEMBER IF IT WAS A WOMAN OR A MAN?
A. I DON'T REMEMBER.
Q. ALL RIGHT, SIR. NOW, WHAT TIME DID HE GET, AND I SAY "HE," WHAT TIME DID MR. ALEKSEY ACTUALLY GET TO CAPTAIN WILLIAMS' OFFICE WITH YOU? WHAT TIME DID YOU FIRST SIT DOWN WITH HIM?
A. JUST PRIOR TO THE RIGHTS FORM BEING SIGNED.
Q. OKAY. AND THAT WAS SIGNED AT 4:40 P.M.; IS THAT RIGHT?
A. IT WAS COMPLETED AT 4:45. WE STARTED READING OVER IT AT 4:40.
Q. ALL RIGHT, SIR. NOW, IN THIS STATEMENT -- AND DO YOU HAVE A COPY OF THE STATEMENT WITH YOU?
A. YES, SIR, I DO.
Q. ALL RIGHT, DOWN ABOUT THE MIDDLE OF THAT STATEMENT IT LOOKS LIKE AGENT MEARS TELLS MR. ALEKSEY TO START OVER FROM -- MR. ALEKSEY SAYS, "WHERE DO YOU WANT ME TO START FROM?"

AND AGENT MEARS SAYS, "WHERE YOU LEFT OFF."

IS THAT BECAUSE HE HAD MADE A STATEMENT TO YOU GUYS BEFORE YOU TURNED ON THE TAPE PLAYER? DO YOU SEE IT? IT IS ON THE FIRST PAGE. I'M NOT TRYING TO TRICK YOU,

I DON'T HAVE A REFERENCE POINT TO THIS.

THE COURT: WHAT PAGE ARE YOU REFERRING TO?

A. HE ASKED HIM---

MR. STONE: YOUR HONOR, IT IS PAGE 1, THE FIRST PAGE. THE BEST I CAN MAKE A REFERENCE IS ABOUT MIDWAY DOWN.

Q. AGENT MEARS SAYS, "WHEREVER YOU LEFT OFF"; IS THAT CORRECT?

A. RIGHT. WHAT HE MEANT "WHERE HE LEFT OFF," I THINK WHAT KENNY MEANT, "WHERE HE LEFT FROM."

IN OTHER WORDS, I ASKED HIM, "MR. ALEKSEY, IF YOU WOULD JUST RELATE TO MYSELF AND AGENT MEARS WHAT TOOK PLACE WITH YOU ON THE MORNING OF DECEMBER 31ST, 1997, AND ON INTO JANUARY OF 1998."

HE SAID, "WHERE DO YOU WANT ME TO START FROM?"

AND KENNY, I THINK WHAT KENNY MEANT TO SAY, I'M NOT SURE, "WHEREVER YOU LEFT FROM."

Q. OKAY, THAT'S FINE. I JUST WANT TO MAKE SURE THERE WAS NO STATEMENT -- HE DIDN'T TALK TO YOU GUYS WHEN HE FIRST GOT THERE OR ANYTHING?

A. NO, SIR.

Q. ALL RIGHT, SIR. WELL, WHEN HE FIRST GETS INTO YOUR OFFICE, WHAT IS HE THERE FOR? I KNOW HE ASKED TO BE THERE, BUT WHAT DID Y'ALL TALK ABOUT WHEN HE FIRST GOT INTO CAPTAIN WILLIAM'S OFFICE?

A. WE READ HIM HIS RIGHTS AND ASKED HIM IF HE WANTED TO TALK TO US ABOUT THE SITUATION THAT HE WAS IN AND WHAT HAD HAPPENED; AND HE SAID YES, HE DID.

WE ASKED HIM IF HE WAS WILLING TO PUT IT ON TAPE AND STARTED RECORDING IT AND JUST LET HIM TELL US ABOUT IT.

Q. DID HE SAY IT WAS OKAY TO TAPE RECORD IT?

A. YES, SIR, HE DID.

Q. I AM ASSUMING THAT THIS TOOK PLACE SOMETIME BETWEEN 4:45 AND 4:50 WHEN THE TAPE BEGAN; IS THAT RIGHT?

A. SOMEWHERE IN THERE, YES, SIR.

Q. IF IT IS SOMETHING ELSE, FEEL FREE TO TELL ME, BUT I AM JUST TRYING TO GET A TIME FRAME HERE. IS THAT RIGHT, YOU READ HIM HIS RIGHTS OFF THE FORM?

A. IT SAYS -- WELL, ON THE TAPE IT SAYS I STARTED AT 4:50.

Q. YES, SIR. OKAY. SO SOMEWHERE AFTER YOU HAD READ HIM HIS RIGHTS, AFTER HE HAD SIGNED THE RIGHTS FORM, THEN YOU SAID, "DO YOU WANT TO TALK TO US ABOUT WHAT HAPPENED?"

A. SOMEWHERE IN THERE, YES, SIR.

Q. AND THAT IS WHEN THE TAPE STARTED, AT 4:50?

A. IT STARTED AROUND ABOUT 4:50, YES, SIR.

Q. IS THERE ANY REASON THAT YOU DIDN'T START THE TAPE WHEN YOU FIRST READ HIM HIS RIGHTS?

A. NO, SIR. I MEAN, NORMALLY I DON'T. I MEAN, I FIRST

READ HIM THE RIGHTS AND THEN ADVISE HIM, YOU KNOW, ASK HIM ABOUT THE TAPE AND ADVISE HIM THAT THE TAPE IS GOING TO BE ON.

Q. AND OBVIOUSLY THE FIRST SET OF QUESTIONS TALKS ABOUT HIS IDENTIFICATION, BAYON ALEKSEY, HIS DATE OF BIRTH, SOCIAL SECURITY NUMBER, ALL THAT STUFF; RIGHT?

A. RIGHT, YES, SIR.

Q. YOU COVERED THAT IN THE VERY FIRST PARAGRAPH. NOW, I KNOW AT THE VERY TOP IT SAYS THAT YOU AND KENNY MEARS WERE THE ONLY TWO PEOPLE IN THE OFFICE, IN CAPTAIN WILLIAMS' OFFICE. I AM ASSUMING CAPTAIN WILLIAMS WAS NOT THERE?

A. NO, SIR, HE WASN'T.

Q. HE WAS NOT THERE?

A. NO, SIR.

Q. ALL RIGHT, SIR. NOW, IN THAT TAPE IT SOUNDED LIKE THERE WERE TWO SPACES IN WHICH SOMEBODY OPENED THE DOOR. DID ANYONE LEAVE? DID EITHER ONE OF YOU OR AGENT MEARS LEAVE?

A. I THINK THAT IS WHEN THE SECRETARY COME TO GIVE US A MESSAGE.

Q. ALL RIGHT, SIR.

A. THERE WERE SEVERAL PEOPLE STOPPED THERE AND OPENED THE DOOR. WE HAD A SIGN ON THE DOOR, "PLEASE DO NOT DISTURB."

Q. BUT THEY DISTURBED ANYWAY, HUH?
A. YES, SIR. I THINK ONE OF THEM MAY HAVE BEEN A PUBLIC DEFENDER.
Q. WELL, I KNOW OBVIOUSLY THE PUBLIC DEFENDER DIDN'T HANG OUT IN THERE AFTER HE CAME IN; DID HE?
A. HE WAS HUNTING LARRY WILLIAMS, I THINK.
Q. DID ANYBODY ELSE COME IN THE OFFICE DURING THIS TIME?
A. NO, SIR.
Q. SO THE ONLY TWO PEOPLE THAT WERE THERE THROUGH THIS ENTIRE STATEMENT WERE YOU AND AGENT MEARS; IS THAT CORRECT?
A. YES, SIR, THAT'S CORRECT, AND ALEKSEY.
Q. YES, SIR. NOW, THE PHONE CALL TOOK PLACE, AGAIN THE BEST REFERENCE IS IT LOOKS LIKE IT IS RIGHT AFTER MR. ALEKSEY SAYS THAT, "I DROVE ALL THE WAY FROM NEW JERSEY PIKE ALL THE WAY TO NORTH CAROLINA, OKAY, BY MYSELF," AT THAT POINT, THAT IS WHEN THE PHONE RINGS; IS THAT YOUR MEMORY OF THAT?
A. YES, SIR, I KNOW THERE WAS A PHONE CALL IN THERE.
Q. AND YOUR TESTIMONY EARLIER WAS HOW LONG DID THAT PHONE CALL TAKE?
A. IT WAS BRIEF.
Q. WAS THAT YOU OR---
A. I WOULD SAY LESS THAN FOUR OR FIVE MINUTES.

Q. WAS THAT PHONE CALL TO YOU?
A. THAT WAS ME, YES, SIR.
Q. WERE THERE ANY OTHER PHONE CALLS DURING THIS TIME?
A. THEY DIDN'T COME DIRECTLY ON THAT PHONE. AFTER, IF MY MEMORY SERVES ME CORRECTLY, AFTER THIS ONE, I DISCONNECTED THE PHONE AND THEY CAME THROUGH THE SECRETARY.
Q. AND YOU HAD YOUR BEEPER ON, OBVIOUSLY, DURING THE TIME?
A. YES, SIR, I DID.
Q. AND I HEARD IT, IT WAS ON AN AUDIBLE SOUND, IT IS NOT A VIBRATION; IS THAT RIGHT?
A. I CHANGED IT RIGHT AFTER THAT.
Q. YOU CHANGED IT RIGHT AFTER THAT. HOW MANY BEEPS DID YOU GET AFTER THAT; DO YOU KNOW? I KNOW YOU GOT ONE, I HEARD THAT. DID YOU GET ANY AFTER THAT?
A. I THINK DURING THIS TIME PERIOD FROM THE TIME I RESPONDED EARLY THAT MORNING TO THE SCENE UNTIL I GOT HOME THAT NIGHT I THINK I HAD TO CLEAR MY BEEPER ONCE OR MAYBE TWICE, AND IT HOLDS 21 PAGES.
Q. WELL, LET ME ASK YOU THE RELEVANT QUESTION: DURING THE TIME THAT YOU TALKED TO MR. ALEKSEY, AT ANY TIME DID YOU -- AND LET ME TALK TO YOU ABOUT THIS FIRST STATEMENT THAT HE GAVE YOU. AT ANY TIME DURING THIS FIRST STATEMENT DID YOU HAVE TO STOP THE QUESTIONING, GO

OUTSIDE AND MAKE A PHONE CALL, MAKE A PHONE CALL FROM THAT TELEPHONE, ANYTHING LIKE THAT, OTHER THAN THE ONE PHONE CALL?

A. OTHER THAN THAT ONE, I DON'T THINK SO.

Q. ALL RIGHT, SIR, THAT'S FINE. NOW, YOUR NOTES INDICATE ON HERE THAT THE TAPE STARTED AT 4:50 P.M.?

A. RIGHT.

Q. AND THEN AGAIN THE TAPE STARTED, AND I AM GOING NOW TO PAGE, I GUESS IT WOULD BE THE THIRD PAGE AT THE VERY BOTTOM WHERE YOU SAY, "GO AHEAD. IT IS JANUARY 2ND, 1998, CONTINUING THE INTERVIEW. THE TIME IS NOW 7 PAST 7 P.M." IS THAT RIGHT?

A. RIGHT, YES, SIR.

Q. SO ROUGHLY THEN, IF THE STATEMENT, THIS FIRST STATEMENT, -- HOW LONG DID THIS FIRST STATEMENT TAKE; DO YOU KNOW?

A. I THINK ROUGHLY AROUND 11 AND A HALF, MAYBE 12 MINUTES, SOMETHING LIKE THAT.

Q. AND THEN PLUS, OBVIOUSLY YOU HAD A 5-MINUTE GAP IN THERE WITH THE PHONE CALL CONVERSATION?

A. RIGHT.

Q. SO TOTALLY, INCLUDING EVERYTHING, THE ENTIRE FIRST STATEMENT TOOK APPROXIMATELY 17 MINUTES; IS THAT RIGHT?

A. SOMEWHERE AROUND IN THERE.

Q. THEREFORE, AT THE BOTTOM OF PAGE 3 WHERE MR. ALEKSEY

SAYS, "THAT'S ALL I'VE GOT TO SAY," THE TIME WOULD BE APPROXIMATELY 5:07, 17 MINUTES AFTER 4:50; IS THAT RIGHT?

A. THAT WOULD EQUAL THAT, YES, SIR. I DIDN'T LOOK AT MY WATCH.

Q. NOW, DURING THE VERY END OF THIS FIRST STATEMENT, IT SOUNDS LIKE MR. ALEKSEY STARTS GETTING A LITTLE UPSET? OBVIOUSLY I CAN'T SEE WHAT MR. ALEKSEY IS DOING JUST BY LISTENING TO THE TAPE, BUT YOU WERE THERE. WAS HE CRYING? WAS HE GETTING UPSET? WAS HE CRYING OR ANYTHING LIKE THAT IN THAT FIRST STATEMENT?

A. IN THE FIRST ONE?

Q. YES, SIR?

A. NO, SIR.

Q. HE IN FACT WASN'T CRYING UNTIL THE SECOND STATEMENT; IS THAT RIGHT?

A. THAT'S RIGHT.

Q. NOW, WHEN YOU READ HIM HIS RIGHTS, DID YOU HAVE A RIGHTS FORM WITH YOU?

A. YES, SIR, I DID.

Q. AND DO YOU STILL HAVE THAT UP THERE?

A. RIGHT HERE, SIR.

Q. AND STATE'S EXHIBIT 1 IS WHAT YOU READ TO HIM? AND THIS IS MR. ALEKSEY'S SIGNATURE AT THE BOTTOM; IS THAT RIGHT?

A. YES, SIR, THAT IS A COPY OF IT.
Q. LET ME ASK YOU THIS: AFTER, RIGHT AFTER MR. ALEKSEY TELLS YOU, "THAT'S ALL I'VE GOT TO SAY," WHAT WERE THE NEXT WORDS SAID; DO YOU KNOW?
A. I DON'T REMEMBER.
Q. DID YOU MAKE ANY NOTES ABOUT THIS, WHETHER IT BE THE STATEMENT THAT YOU WERE TAPING FROM THE TAPE RECORDER OR THE NOTES OF ANYTHING THAT TOOK PLACE IN THIS TIME PERIOD BETWEEN THE FIRST STATEMENT AND THE SECOND STATEMENT?
A. NOT THAT I REMEMBER.
Q. DID YOU HAVE A NOTEBOOK WITH YOU OR ANYTHING WITH YOU WRITING ANYTHING?
A. WELL, I'M SURE I DID, BUT WHAT I DO WITH MY NOTES IS TRANSFER THEM INTO MY REPORT.
Q. ALL RIGHT, SIR. OTHER THAN THIS STATEMENT, DO YOU HAVE A REPORT FOR THIS CASE?
A. NO, SIR.
Q. SO I'M ASSUMING FROM THAT THEN YOU DIDN'T MAKE ANY NOTES?
A. OTHER THAN THAT STATEMENT. YEAH, I HAVE A REPORT.
Q. YOU HAVE A REPORT?
A. THIS IS THE ENTIRE THING.
Q. IS THERE ANYTHING IN YOUR REPORT THAT INDICATES WHAT TOOK PLACE BETWEEN THE FIRST STATEMENT AND THE SECOND

STATEMENT?
A. NOT TO MY KNOWLEDGE, NO, SIR.
Q. DO YOU RECALL WHO SAID THE NEXT WORDS AFTER MR. ALEKSEY SAID, "THAT'S ALL I'VE GOT TO SAY"? WAS IT YOU, AGENT MEARS OR MR. ALEKSEY; DO YOU RECALL?
A. NO, SIR, I DON'T.
Q. DO YOU RECALL IF IT WAS A QUESTION OR A STATEMENT THAT WAS MADE AFTER THAT?
A. NO, SIR, I DON'T.
Q. ALL RIGHT, SIR. NOW, ON THE NEXT -- I'M GOING TO GO NOW TO PAGE 4, THE VERY TOP. YOU SAID, AND THIS IS THE SECOND STATEMENT, "YOU HAD YOUR RIGHTS EXPLAINED TO YOU AND READ OVER YOUR RIGHTS AND ACKNOWLEDGED YOUR RIGHTS BY SIGNING YOUR RIGHTS EARLIER"; THAT IS WHAT YOU ASKED, IS THAT CORRECT?
A. YES, SIR.
Q. ALL RIGHT, SIR. I AM ASSUMING BY THAT THAT YOU DID NOT RE-READ HIM HIS RIGHTS, YOU WERE JUST REFERRING BACK TO THAT FIRST--IN FACT, WHAT HE SIGNED HERE ON STATE'S EXHIBIT 1?
A. THAT'S CORRECT.
Q. AS A PART OF THESE RIGHTS, DID YOU ASK HIM: "IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME"? DID YOU ASK HIM THAT?

A. WE READ OVER THE RIGHTS FORM WITH HIM, YES, SIR.
Q. DID HE INDICATE THAT HE UNDERSTOOD THAT?
A. YES, SIR, HE DID. HE SAID HE HAD BEEN OVER THEM MANY A TIMES BEFORE AND KNEW WHAT I WAS TALKING ABOUT.
Q. OKAY. HE HAD BEEN ARRESTED A NUMBER OF TIMES BEFORE AND OBVIOUSLY HAD HIS RIGHTS READ TO HIM THEN?
A. HE SAID HE HAD HAD HIS RIGHTS BEFORE.
Q. AND SO HE WAS PRETTY FAMILIAR WITH THE FACT, FROM YOUR KNOWLEDGE OF YOU SITTING THERE TALKING TO HIM, THAT HE COULD STOP ANSWERING QUESTIONS WITH YOU AT ANY TIME; COULDN'T HE?
A. YES, SIR.
Q. WHEN HE SAYS, "THAT'S ALL I'VE GOT TO SAY," WAS THAT NOT HIM STOPPING ANSWERING YOUR QUESTIONS?
A. WHAT, YOU GOING BACK TO THE FIRST PART?
Q. YES, SIR. PAGE 2, WHEN HE SAYS, "THAT'S ALL I'VE GOT TO SAY," YOU STOPPED THAT STATEMENT AT THAT TIME; DID YOU NOT?
A. RIGHT.
Q. AND YOU STOPPED THAT STATEMENT BECAUSE AT THAT POINT HE WAS SAYING, "THAT'S ALL I'VE GOT TO SAY. I DON'T HAVE ANYTHING ELSE. I'M STOPPING ANSWERING THESE QUESTIONS AT THIS TIME"?
A. HE SAID, "THAT'S ALL I'VE GOT TO SAY," AND THE TAPE WAS CUT OFF.

Q. AND YOU CUT IT OFF BECAUSE IN YOUR OPINION AT THAT TIME HE HAD SAID, "WE ARE STOPPING THE QUESTIONING. I TOLD YOU EVERYTHING I WANT TO TELL YOU"?

A. HE DIDN'T SAY "WE ARE STOPPING THE QUESTIONING," HE SAID, "THAT'S ALL I'VE GOT TO SAY."

Q. BUT IF HE HAD CONTINUED ON WITH ANSWERING QUESTIONS, IF HE WAS PLANNING ON CONTINUING THIS AND YOU THOUGHT HE WAS GOING TO ANSWER, THEN YOU WOULD HAVE LEFT THE TAPE ON; WOULD YOU NOT?

A. YEAH, BUT ACCORDING TO HIM THAT WAS HIS STORY.

Q. OKAY. AND HE SAID, "THAT'S ALL I'VE GOT TO SAY." WAS HE NOT AT THAT TIME TELLING YOU, "THAT'S ALL I WANT TO ANSWER"?

A. HE SAID THAT WAS ALL HE HAD TO SAY.

Q. DURING THE TIME BETWEEN THE FIRST STATEMENT AND THE SECOND STATEMENT, DO YOU RECALL IF EITHER YOU OR AGENT MEARS ASKED HIM ANYTHING ELSE ABOUT THE TROOPER'S SHOOTING?

A. WE MAY HAVE DISCUSSED WHAT HE TOLD US WITH HIM AT SOME POINT, AND THEN I THINK WE TOLD HIM WE WOULD CARRY HIM BACK. THAT IS AFTER WE -- I DON'T KNOW WHAT PERIOD IN THERE, BUT WE GOT HIM A JACKET, WE GOT HIM SOMETHING TO DRINK A COUPLE OF TIMES, AND THEN HE ASKED US, HE SAYS, "YOU KNOW, WHAT ABOUT BATKILINA," AND THIS, THAT AND, YOU KNOW,---

Q. AND THIS IS THE WOMAN IN FLORIDA?
A. RIGHT. WE TOLD HIM WE COULD DO NOTHING THERE. AND HE SAID, "IF I AM TRUTHFUL WITH YOU GUYS, CAN I GO BACK IN THE GENERAL POPULATION? I CAN'T -- I DON'T LIKE BEING IN THE CELL BY MYSELF."
AND WE MADE A CALL TO OUR CAPTAIN.
Q. WHAT CAPTAIN WAS THAT?
A. CAPTAIN L. C. KNIGHT. HE IS OUR SUPERVISOR.
Q. ALL RIGHT, SIR. IS THAT ALSO THE CAPTAIN THAT CALLED YOU EARLIER OR PAGED YOU EARLIER?
A. QUITE A FEW TIMES THAT DAY, YES, SIR.
Q. ALL RIGHT, SIR. WELL, YOU DON'T RECALL WHETHER OR NOT YOU ASKED HIM ABOUT THIS PRIOR TO THIS, DID YOU ASK HIM ABOUT THE TROOPER'S SHOOTING PRIOR TO HIM SAYING, "I WANT TO GET A COAT, GIVE ME SOMETHING TO DRINK, LET ME TALK TO YOU ABOUT THIS WOMAN IN FLORIDA"? DO YOU RECALL THAT?
A. I DON'T KNOW WHAT SEQUENCE, I REALLY DON'T REMEMBER WHAT SEQUENCE EVERYTHING WAS IN.
Q. EXCUSE ME JUST A MOMENT.
(PAUSE.)
Q. LET ME ASK YOU ONE OTHER THING. ON THE STATEMENT, AFTER THE FIRST STATEMENT HE GAVE YOU, AND THAT, AS WE ALREADY DETERMINED, CONCLUDED AT 5:07 P.M., JANUARY 2ND, WHEN HE SAID, "THAT'S ALL I'VE GOT TO SAY," AT THAT

POINT DID YOU OFFER TO TAKE HIM BACK TO THE DETENTION CENTER?

A. THAT MAY BE WHEN WE TOLD HIM WE WOULD CARRY HIM BACK.

Q. AND DO YOU RECALL WHAT HIS RESPONSE WAS TO THAT?

A. WHEN WE TOLD HIM WE WERE GOING TO CARRY HIM BACK TO THE DETENTION CENTER, I KNOW THAT IS WHEN HE SAID HE WASN'T READY TO GO BACK, YOU KNOW, AS FAR AS THE BATKILINA GIRL, GLORIA V., AND GETTING BACK IN THE POPULATION, GENERAL POPULATION.

Q. AT WHAT POINT DID HE DETERMINE -- AT WHAT POINT DID MR. ALEKSEY TELL YOU THAT HE WANTED TO GO BACK ON TAPE TO FINISH HIS STATEMENT; OR DID HE? LET ME REPHRASE THAT. AT WHAT POINT DID YOU DECIDE TO TURN THE TAPE PLAYER BACK ON?

A. APPARENTLY 7 MINUTES PAST 7 P.M.

Q. WHAT CAUSED YOU AT 7 MINUTES PAST 7 TO TURN THE TAPE PLAYER BACK ON?

A. HE SAID HE WANTED TO BE TRUTHFUL WITH US, AND WE TURNED IT BACK ON TO HEAR WHAT HE HAD TO SAY ONE MORE TIME.

Q. AND THIS WAS EXACTLY TWO HOURS AFTER HE GOT THROUGH TELLING YOU THAT IS ALL HE HAD TO SAY; IS THAT RIGHT?

A. I DON'T THINK IT IS A FULL TWO HOURS; IS IT?

Q. CLOSE TO IT. NO QUESTION HE WAS IN CUSTODY WHEN HE

CAME TO SEE YOU; IS THAT CORRECT?
A. NO, SIR, NO QUESTION.
Q. AND WHEN HE CAME TO SEE YOU, DO YOU KNOW WHY HE CAME TO TALK TO YOU, WHY HE WANTED TO SEE SOME SLED AGENTS?
A. HE SENT WORD HE WANTED TO TALK TO US.
Q. AND DID YOU EVER ASK HIM, "WHY DO YOU WANT TO SEE ME? WHY DO YOU WANT TO TALK TO US?"
A. HE SAID HE WANTED TO TALK TO US WHAT WAS GOING ON WITH HIM, AND I THINK THAT IS WHEN WE GAVE HIM HIS RIGHTS BEFORE WE DID ANY TALKING WITH HIM.
Q. DID HE EVER ASK YOU WHY HE WAS MOVED INTO THE INFIRMARY?
A. I DON'T REMEMBER.
Q. COULD IT HAVE BEEN, IN FACT, THAT HE WAS TALKING ABOUT GOING BACK IN GENERAL POPULATION WHEN HE FIRST WALKED OVER THERE INSTEAD OF SOMEWHERE IN THAT 2-HOUR TIME FRAME BETWEEN THE FIRST STATEMENT AND THE SECOND STATEMENT? COULD HE HAVE ASKED YOU THAT WHEN HE FIRST GOT THERE?
A. NOT TO MY KNOWLEDGE, HE DIDN'T, NO, SIR.
Q. AGAIN, YOU HAVE NO NOTES TO INDICATE ANYTHING OTHER THAN WHAT IS IN THE STATEMENT; IS THAT RIGHT?
A. I'VE GOT MY REPORT; THAT'S IT.
Q. FINALLY, AT NO POINT TO YOUR KNOWLEDGE -- LET ME REPHRASE THAT. TO YOUR KNOWLEDGE, AFTER THE FIRST

STATEMENT, AFTER MR. ALEKSEY SAYS, "THAT IS ALL I'VE GOT TO SAY," YOU DO NOT REMEMBER WHO ASKED THE NEXT QUESTION AT THIS POINT; IS THAT RIGHT?

A. I DON'T REMEMBER WHAT THE DISCUSSION WAS DIRECTLY AFTER THAT, NO, SIR, I DON'T.

MR. STONE: I DON'T HAVE ANYTHING ELSE AT THIS TIME.

THE COURT: ANYTHING ON REDIRECT?

MR. BAILEY: NO, SIR.

THE COURT: YOU MAY COME DOWN. THANK YOU.

(MR. DARNELL STEPS DOWN.)

MR. BAILEY: I WOULD RECALL KENNY MEARS.

KENNETH M. MEARS, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. MR. MEARS, YOU TESTIFIED PREVIOUSLY THAT YOU WERE ASSIGNED THIS INVESTIGATION WITH MR. DARNELL. WERE YOU AT THE SHERIFF'S OFFICE ON THE AFTERNOON OF JANUARY 2ND, 1998?

A. YES, SIR, I WAS.

Q. TO WORK ON THIS CASE?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND DID YOU SEE BAYON ALEKSEY THAT AFTERNOON, ALONG WITH MR. DARNELL?

A. YES, SIR.

Q. AND DID YOU PARTICIPATE IN THE INTERVIEW IN THE OFFICE OF CAPTAIN LARRY WILLIAMS?

A. YES, SIR, I DID.

Q. DO YOU RECALL ANYBODY ELSE BEING PRESENT DURING THE INTERVIEW BESIDES YOU, MR. ALEKSEY AND MR. DARNELL?

A. WE WERE THE ONLY THREE IN THE ROOM.

Q. WHAT DO YOU RECALL MR. ALEKSEY'S DEMEANOR WHEN HE ARRIVED AT THE SHERIFF'S OFFICE?

A. HE WAS A LITTLE NERVOUS WHEN HE FIRST ARRIVED, BUT HE WAS BASICALLY IN PRETTY GOOD SHAPE.

Q. WERE YOU PRESENT WHEN MR. DARNELL WENT OVER THE MIRANDA RIGHTS FORM WITH MR. ALEKSEY?

A. YES, SIR, I WAS.

Q. AND LET ME ASK YOU TO REFER TO THE FORM, WHICH I THINK IS STATE'S 1, YOU MIGHT HAVE IT UP THERE. THE TIME UP THERE AT THE TOP, IS THAT MR. DARNELL'S WRITING, "JANUARY 2ND, 1998, AT 4:40 P.M."?

A. THAT IS CORRECT, THAT IS AGENT DARNELL'S WRITING.

Q. TO THE BEST OF YOUR RECOLLECTION, WAS THAT THE APPROXIMATE TIME THAT HE STARTED GIVING THE MIRANDA RIGHTS TO HIM?

A. THAT'S CORRECT.

Q. DID HE READ THEM OUT LOUD?

A. HE GAVE BAYON A COPY AND HE RETAINED A COPY. AS HE READ IT FROM HIS COPY, BAYON HAD A COPY READING IT ALONG

WITH HIM.

Q. AFTER HE FINISHED READING IT, MR. DARNELL FINISHED READING THAT TO HIM, DID YOU SEE MR. ALEKSEY SIGN HIS NAME DOWN THERE AT THE BOTTOM?

A. YES, SIR, HE SIGNED HIS NAME.

Q. AND UNDERNEATH THAT IS A WAIVER OF RIGHTS. WERE YOU IN THE ROOM WHEN MR. DARNELL READ THOSE RIGHTS TO HIM?

A. YES, SIR.

Q. DID MR. ALEKSEY SIGN ACKNOWLEDGMENT OF THOSE RIGHTS AND THE WAIVER OF RIGHTS?

A. YES, SIR, HE DID.

Q. DID YOU WITNESS THAT ALONG WITH MR. DARNELL?

A. I DID WITNESS IT.

Q. AND THE TIME DOWN AT THE BOTTOM, 4:45 P.M., IS THAT THE TIME THAT HE SIGNED THE SECOND SIGNATURE?

A. THAT'S CORRECT. THAT IS THE TIME THAT THE WHOLE RIGHTS FORM WAS COMPLETED.

Q. AND DID EITHER YOU OR MR. DARNELL IN YOUR PRESENCE MAKE ANY THREATS OR PROMISES TO TRY TO INDUCE THE STATEMENT OR TRY TO INDUCE MR. ALEKSEY TO SIGN THAT WAIVER OF RIGHTS?

A. NO, SIR, NO THREATS BETWEEN THE STATEMENTS. THERE WAS SOME---

Q. BEFORE WE GET TO BETWEEN THE STATEMENTS LEADING UP TO BEFORE THE TAPE PLAYER GOT TURNED ON?

A. OKAY. NO, SIR, THERE WAS NO PROMISES OR THREATS OF ANY TYPE.

Q. BETWEEN 4:45 WHEN THE RIGHTS HAD BEEN GIVEN AND SIGNED OFF ON AND ROUGHLY FIVE MINUTES LATER WHEN THE TAPE WENT ON, WAS THERE ANYTHING OF SIGNIFICANCE THAT WENT ON IN THAT CONVERSATION?

A. NO, SIR, JUST -- NOTHING SIGNIFICANT, JUST EXPLAINING--ASKING WHY HE WANTED TO TALK WITH US.

Q. ANY PROMISES OR THREATS MADE TO HIM DURING THAT 5-MINUTE PERIOD?

A. NO, SIR.

Q. NOW, AFTER THE TAPE WAS TURNED ON, DO YOU RECALL THE TELEPHONE RANG AND THE TAPE WENT OFF AGAIN?

A. YES, SIR.

Q. WHAT IS YOUR RECOLLECTION OF THE APPROXIMATE LENGTH OF TIME THE TAPE WAS OFF AND THE PHONE CONVERSATION?

A. THE TELEPHONE CALL LASTED SOMEWHERE AROUND THREE MINUTES, THREE OR FOUR MINUTES.

Q. DID MR. DARNELL LEAVE THE OFFICE TO TAKE THAT PHONE CALL?

A. YES, SIR, HE LEFT THE OFFICE.

Q. AND DID YOU STAY IN THE OFFICE WITH ALEKSEY?

A. YES, SIR, I DID.

Q. DID YOU HAVE ANY DISCUSSION OFF THE TAPE DURING THAT TWO OR THREE MINUTES, FIVE MINUTES, WHATEVER IT WAS?

A. NO, SIR, NONE WHATSOEVER.

Q. ALL RIGHT. DID YOU MAKE ANY PROMISES OR THREATS OR ANYTHING WHILE THE TAPE WAS OFF DURING THE PHONE CALL?

A. NO, SIR.

Q. OKAY. AFTER THE TAPE GOT TURNED BACK ON, WERE YOU PRESENT THE ENTIRE TIME THE TAPE WAS ON?

A. YES, SIR, I THINK ONE TIME I GOT UP AND WENT TO THE DOOR, BUT I WAS RIGHT THERE.

Q. OKAY. NOW, DURING THAT HOUR, EXCUSE ME, ROUGHLY TWO HOURS AFTER THE TAPE, AFTER I THINK THE FIRST THREE PAGES OF THE TAPE WHEN THE TAPE WAS TURNED OFF, WHAT IS YOUR RECOLLECTION OF WHAT TRANSPIRED DURING THAT ALMOST 2-HOUR BREAK?

A. AT THE END OF THE FIRST STATEMENT THAT MR. ALEKSEY GAVE AND HE SAID THAT THAT WAS ALL HE HAD TO SAY, THEN WHEN THE TAPE WAS CUT OFF HE MADE REFERENCE TO WHAT WAS GOING TO HAPPEN TO GLORIA V. AND THE KIDS.

Q. OKAY.

A. HE WAS CONCERNED ABOUT HIS GIRLFRIEND BATKILINA. HE ASKED IF WE COULD DO SOMETHING TO HELP HER.

AND HE ALSO ASKED, AFTER THE END OF THE FIRST TAPE, IF HE COULD GET BACK INTO GENERAL POPULATION.

Q. OKAY. AND WHAT RESPONSE WAS HE GIVEN WITH REGARD TO ANY HELP FOR BATKILINA?

A. THE RESPONSE HE WAS GIVEN THAT THERE WAS NOTHING

COULD BE--THAT WE COULD DO WITH BATKILINA.
Q. OKAY. AND WHAT ABOUT HIS EFFORT TO GET FROM THE INFIRMARY CELL INTO THE GENERAL POPULATION?
A. WELL, I DIDN'T KNOW THAT -- I DIDN'T KNOW THAT HE WAS IN LOCK-DOWN OR INFIRMARY, OR WHATEVER, BUT HE WAS TOLD THAT IT WOULD HAVE TO BE CONFIRMED AND OKAYED BEFORE WE COULD DO ANYTHING.
Q. OKAY.
A. AT THAT TIME IS WHEN WE CALLED OUR SUPERVISOR, CAPTAIN KNIGHT, GAVE HIM THE INFORMATION WHAT ALEKSEY HAD ASKED US ABOUT, IF HE TOLD US THE TRUTH IF HE COULD GET BACK IN THE GENERAL POPULATION. WE TOLD HIM WE COULDN'T PROMISE HIM THAT, WE COULD FIND OUT TO SEE IF IT COULD BE DONE. WE CALLED THE CHARLESTON OFFICE. HE SAID HE DIDN'T HAVE A PROBLEM WITH IT IF THE JAIL DIDN'T HAVE A PROBLEM WITH IT. THEN WE CALLED THE JAIL, THE DETENTION CENTER. WE TALKED WITH I THINK IT WAS THE ASSISTANT DIRECTOR ABOUT HIM BEING IN GENERAL POPULATION OR WAS THERE A SECURE PLACE BACK THERE THAT HE COULD BE WITHOUT BEING IN THE INFIRMARY OR LOCK-DOWN. AND THIS TOOK A WHILE, CALLING BACK AND FORTH AND TRYING TO GET HOLD OF SOMEONE TO PUT HIM IN A SAFE PLACE WITHOUT BEING IN, I THINK CALLED LOCK-DOWN.
Q. ALL RIGHT, SIR. AND THE SEQUENCE THAT YOU JUST RELATED, THE EVENTS THAT Y'ALL TALKED ABOUT, FIRST OF

ALL, THE INQUIRY WITH REGARD TO GLORIA V. BLACKWELL AND THE CHILDREN, AND THEN CONCERNED WITH ELLENA BATKILINA, AND THEN CONCERN WITH GETTING OUT OF THE INFIRMARY CELL; IS THAT THE ORDER YOU RECALL THE CONVERSATION OCCURRED IN?

A. IT MAY NOT HAVE BEEN IN EXACTLY THAT ORDER, BUT I DO KNOW THAT HIS FIRST QUESTION OF, "WHAT IS GOING TO HAPPEN TO GLORIA V. AND THE KIDS?"

Q. OKAY.

A. THEN I THINK SECONDLY HE ASKED ABOUT BATKILINA AND IF WE COULD HELP HER. THEN HE WENT INTO THE GENERAL POPULATION.

Q. ALL RIGHT, SIR. AND WHAT IS IT THAT SPECIFICALLY LED UP TO THE TAPE GOING BACK ON?

A. HE STATED TO US, WHEN I SAY "HE" I AM TALKING ABOUT MR. ALEKSEY, STATED TO US THAT IF HE TOLD US THE HONEST TRUTH, IF HE COULD GET BACK INTO GENERAL POPULATION, THAT HE DIDN'T WANT ANYONE ELSE TO GET INTO ANY TROUBLE FOR SOMETHING HE DID.

Q. AND AFTER YOU CHECKED AROUND AND FOUND OUT THAT HE COULD POSSIBLY GET BACK INTO GENERAL POPULATION, IS THAT WHEN -- DID YOU COMMUNICATE THAT BACK TO HIM?

A. THAT'S CORRECT. IT TOOK SOME TIME. HE HAD TO CALL THE CHARLESTON OFFICE, THEY CALLED BACK, HE HAD TO CALL THE JAIL, THEY HAD TO LOOK AROUND TO SEE WHAT COULD BE

DONE, AND WHEN WE FINALLY GOT THE OKAY, WE TOLD HIM THAT HE COULD GO BACK INTO GENERAL POPULATION.

Q. OKAY. AND THEN DID HE AGREE TO GO AHEAD AND GO BACK ON TAPE?

A. THAT'S CORRECT, THAT'S WHEN HE AGREED, HE SAID HE WOULD TELL US THE TRUTH.

Q. OKAY. OTHER THAN TRYING TO ASSIST HIM IN GETTING FROM THE INFIRMARY CELL TO GENERAL POPULATION; DID YOU MAKE ANY OTHER PROMISES TO HIM OR DID YOU HEAR AGENT DARNELL MAKE ANY PROMISES TO HIM?

A. NO, SIR, NONE.

Q. DID EITHER ONE OF Y'ALL THREATEN HIM IN ANY WAY?

A. NO, SIR, HE NEVER WAS THREATENED.

Q. DID YOU PHYSICALLY ABUSE HIM IN ANY WAY?

A. NO, SIR.

Q. DID HE ASK Y'ALL FOR ANYTHING HE DIDN'T GET, FOOD, WATER, WHATEVER?

A. EVERYTHING HE ASKED FOR WE TRIED TO GET IT FOR HIM, IN REASON. HE ASKED FOR A SHIRT BECAUSE HE WAS COLD. WE GOT HIM A JACKET. HE ASKED FOR A COKE, AND I'M NOT CERTAIN, I THINK HE ASKED FOR SOME COFFEE AT ONE TIME.

Q. OKAY. ALL RIGHT, SO TO THE BEST OF YOUR KNOWLEDGE, WAS THAT STATEMENT, THE SECOND PART OF THE STATEMENT SPECIFICALLY, FREE AND VOLUNTARY ON HIS PART?

A. YES, SIR, IT WAS.

Q. THANK YOU. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

MR. SIMS: MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

CROSS EXAMINATION BY MR. SIMS:

Q. MR. MEARS, JUST A FEW QUESTIONS FOR YOU. ISN'T IT TRUE THAT SLED HAD MR. ALEKSEY PUT IN ISOLATION?

A. NO, SIR, THAT IS NOT TRUE. I DIDN'T.

Q. NOT YOU, BUT SOMEONE OVER YOU?

A. I DON'T KNOW IF SOMEONE ELSE DID OR OR NOT. I DON'T KNOW NOTHING ABOUT IT.

Q. NOW, WHEN THE TAPE WAS CUT OFF I BELIEVE AT 5:07 IN THE AFTERNOON, I AM GOING TO ASK YOU WHO ASKED THE NEXT QUESTION?

A. OKAY, FIRST, I DON'T KNOW IF THE TAPE WAS CUT OFF AT 5:07 OR NOT. AFTER THE END OF THE FIRST STATEMENT, THAT IS WHEN ALEKSEY ASKED ABOUT GLORIA V. PEREZ AND THE KIDS.

Q. HE ASKED ABOUT GLORIA V. PEREZ AND THE KIDS AND HE ASKED ABOUT MS. BATKILINA?

A. BATKILINA.

Q. BATKILINA?

A. YES, SIR.

Q. AND THAT IS ALL HE WAS CONCERNED WITH AT THAT POINT; ISN'T THAT CORRECT?

A. AND GENERAL, BEING PUT BACK IN GENERAL POPULATION.
Q. AND BEING PUT BACK INTO THE GENERAL POPULATION?
A. THAT'S CORRECT.
Q. NOW, YOU ALL TOOK NO EFFORT OR MADE NO EFFORT AT THAT POINT TO REASSURE HIM THAT HE WOULD BE PUT BACK INTO THE GENERAL POPULATION, YOU MADE NO STATEMENTS OR ANYTHING IN REGARD TO THAT; DID YOU?
A. TALKING ABOUT WITH HIM MADE NO STATEMENTS?
Q. WHEN HE ASKED -- HE ASKED THREE BASIC QUESTIONS: ONE, ABOUT MS. PEREZ; TWO, ABOUT THE LADY IN FLORIDA, AND; THREE, ABOUT BEING PLACED BACK INTO THE GENERAL POPULATION?
A. UH-HUH.
Q. THOSE WERE THE BASIC THREE THINGS HE ASKED; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. AND HE DID NOT INDICATE THAT HE WANTED TO GIVE YOU ANY FURTHER, ANY INFORMATION AS IT RELATES TO THE PREVIOUS--THE FIRST PART OF THAT STATEMENT?
A. HE DID NOT STATE SO. HE ASKED ABOUT THE WELFARE OF BATKILINA AND GLORIA V. PEREZ. THEN HE STATED IF HE WAS TO TELL US THE TRUTH, COULD WE HELP BATKILINA AND GET HIM BACK INTO GENERAL POPULATION.
Q. SO HIS CONCERN WAS ABOUT BATKILINA AND GETTING BACK INTO THE GENERAL POPULATION AND TAKEN OUT OF ISOLATION;

IS THAT CORRECT?

A. I DIDN'T KNOW HE WAS IN ISOLATION.

Q. WELL, YOU KNEW IT AT THIS POINT THAT HE WAS IN ISOLATION WHEN HE TOLD YOU THAT HE HAD BEEN MOVED TO THE INFIRMARY AND THAT HE WAS NOT IN THE GENERAL POPULATION, SO YOU KNEW IT AT THAT POINT?

A. AT THAT POINT WHEN HE MADE THAT STATEMENT.

Q. AND DID YOU OR ANYONE SAY OR MAKE ANY STATEMENT AS IT RELATES TO THAT TIME OF HIS RIGHTS AGAIN OR REASSURE HIM OF HIS RIGHTS?

A. AGENT DARNELL REMINDED HIM OF HIS RIGHTS THAT HE HAD SIGNED IN THE FIRST STATEMENT.

Q. WAS THIS DONE WHILE THE TAPE WAS ON OR WHEN THE TAPE WAS OFF?

A. WHICH TIME ARE YOU REFERRING TO, SIR?

Q. WHEN HE FIRST INDICATED TO YOU BY YOUR STATEMENT THAT IF HE TOLD YOU THE TRUTH WOULD YOU PUT HIM BACK INTO THE GENERAL POPULATION, WAS HE TOLD AT THAT TIME ABOUT HIS RIGHTS OR WAS THE ONLY TIME THAT HE WAS TOLD ABOUT HIS RIGHTS WAS WHEN THE TAPE WAS TURNED ON AND A GENERAL STATEMENT WAS MADE THAT HE HAD SIGNED SOME RIGHTS EARLIER?

A. HE HAD SIGNED THE RIGHTS BEFORE THE FIRST STATEMENT. THEN AT THE END OF THE FIRST STATEMENT IS WHEN HE STATED IF HE TOLD US THE HONEST TRUTH, IF HE COULD GET BACK IN

THE GENERAL POPULATION AND THE CONCERNS OF THE OTHER TWO LADIES.

Q. SO DURING THE TIME FROM, AND WE ARE JUST GOING TO USE 5:07 AS THE TIME WHEN THE TAPE WAS CUT OFF SINCE THE FIRST STATEMENT WAS ABOUT 17 MINUTES LONG AND IT BEGAN AT 4:50 P.M., SO THAT IS ABOUT 5:07, FROM 5:07 UNTIL 7:20 WHEN THE TAPE WAS TURNED ON, WERE YOU IN THE ROOM AT ALL TIMES OR DID YOU LEAVE THE ROOM AT SOME TIME?

A. I MAY HAVE LEFT BRIEFLY, BUT I WAS THERE THE MAJORITY OF THE TIME.

Q. NEITHER YOU NOR AGENT DARNELL OR ANYONE MADE ANY ATTEMPT TO JUST SAY, "BAYON, LET'S GO, WE WILL TAKE YOU BACK OVER TO THE COMPLEX"?

A. NO, SIR.

Q. NEITHER YOU NOR AGENT DARNELL MADE ANY ATTEMPT AT THAT POINT TO TURN THE MACHINE ON OR TURN THE TAPE RECORDER BACK ON WHEN YOU ALL WERE THERE IN THAT ROOM?

A. MR. ALEKSEY CONTINUED TO TALK WITH US.

Q. HE CONTINUED TO TALK WITH YOU, BUT THERE WAS NO RECORDING OF THAT, YOU DIDN'T TURN THE TAPE RECORDER BACK ON?

A. NO, SIR.

Q. AT NO TIME DID YOU THINK TO TURN THE TAPE BACK ON?

A. I DIDN'T TURN THE TAPE ON, NO, SIR.

Q. AND ISN'T IT CUSTOMARY IN LAW ENFORCEMENT THAT WHEN

YOU HAVE AN INDIVIDUAL THERE AND YOU ARE DOING AN INTERROGATION THAT YOU HAVE THE TAPE RUNNING SO THAT EVERYTHING THAT IS SAID CAN BE PLACED ON THE TAPE?

A. IT IS CUSTOMARY TO TAPE THE CONVERSATION, BUT AT THE END OF THE FIRST STATEMENT WHEN HE SAID, "I HAVE NOTHING ELSE TO SAY," IT WAS JUST CUT OFF. THEN HE CONTINUED TO TALK IN GENERAL TERMS AS THE WELFARE OF THE LADIES AND GENERAL POPULATION.

Q. OKAY, WHEN HE SAID THEN, IN YOUR MIND, WHEN HE SAID, "I HAVE NOTHING ELSE TO SAY," THAT TRIGGERED HIS MIRANDA RIGHTS; IS THAT CORRECT? YOU COULDN'T ASK HIM ANY MORE QUESTIONS, YOU COULDN'T SAY ANYTHING ELSE TO HIM?

MR. BAILEY: YOUR HONOR, THAT IS A QUESTION OF LAW---

A. I DON'T KNOW.

MR. BAILEY: ---QUESTION OF LAW FOR THE COURT, NOT FOR HIM TO ANSWER.

THE COURT: I UNDERSTAND. I WILL LET THE OFFICER ANSWER.

A. I CAN'T ANSWER THAT. I DON'T KNOW WHAT TRIGGERED -- HE WAS FREE TO STOP TALKING AT ANY TIME HE WANTED TO, WHICH WAS UNDERSTOOD.

Q. AND HE EXERCISED THAT RIGHT? HE EXERCISED THAT RIGHT WHEN HE SAID, "THAT IS ALL I HAVE TO SAY"?

A. HE STOPPED AND THEN HE BEGAN TALKING AGAIN.

Q. BUT WHEN HE STOPPED, YOU CUT THE MACHINE--OR THE TAPE RECORDER WAS CUT OFF---

A. THAT'S CORRECT.

Q. WHEN HE STARTED BACK TO TALKING AGAIN, THE TAPE RECORDER WAS NOT TURNED ON; ISN'T THAT RIGHT?

A. WHEN HE WAS TALKING IN GENERAL THE TAPE RECORDER WAS NOT TURNED ON; THAT'S CORRECT.

Q. AND THE TAPE RECORDER WAS NOT TURNED ON AGAIN UNTIL ABOUT 7:20 IN THE AFTERNOON?

A. I THINK IT WAS 7:07, TO BE EXACT.

MR. SIMS: ONE MOMENT, YOUR HONOR.

(PAUSE.)

Q. LET ME ASK YOU THIS, AGENT MEARS -- I'M SORRY.

A. YES, SIR. GO AHEAD, I'M LISTENING.

Q. NEITHER YOU NOR AGENT DARNELL DID ANYTHING AFTER THAT POINT, AFTER THE FIRST STATEMENT, TO INSURE THAT ANYTHING THAT WAS SAID OR DONE UNTIL 7:07 OR 7:20 IN THE AFTERNOON, THAT ANYTHING WAS RECORDED AT THAT POINT, ANYTHING THAT WAS SAID FROM 5:05 TO 7:07, NOTHING DURING THAT TIME DID YOU OR AGENT DARNELL DO TO INSURE THAT THERE WAS A TAPED CONVERSATION OF WHAT WENT ON?

A. AT THE END OF THE FIRST STATEMENT, AND I DON'T KNOW HOW LONG THE FIRST STATEMENT WAS OR WHAT TIME IT ENDED, THE CONVERSATION CAME UP WITH MR. ALEKSEY WHERE HE WAS TRYING TO PROTECT BATKILINA OR GET A DEAL FOR BATKILINA,

CONCERNED WITH THE WELFARE OF GLORIA V. PEREZ, AND WANTING TO GET OUT OF--BACK IN THE GENERAL POPULATION. ALL OF THESE THINGS WERE TRYING TO BE DONE, TO SEE IF THEY COULD BE DONE.

Q. I UNDERSTAND THAT, BUT THAT IS NOT MY QUESTION. MY QUESTION TO YOU IS THAT WHEN THE TAPE WAS CUT OFF AT THE END OF THE FIRST STATEMENT, NEITHER YOU NOR AGENT DARNELL DID ANYTHING TO INSURE THAT ANY CONVERSATION THAT TOOK PLACE AT THAT POINT WAS RECORDED?

A. NO, WE DIDN'T CUT THE TAPE BACK ON, THAT'S CORRECT.

Q. AND THE TAPE RECORDER WAS THERE, FULLY OPERATIONAL AND READY TO BE TURNED ON AND, IN FACT, WAS TURNED ON AT 7:07 OR 7:20; ISN'T THAT CORRECT?

A. IT WAS CUT ON AT SOME TIME. I THINK THE TIME WAS 7:07, YES, SIR.

Q. SO YOU DID NOT TURN THE TAPE RECORDER ON WHENEVER THE FIRST STATEMENT WAS CUT OFF UP UNTIL 7:07 IN THE AFTERNOON TO INSURE THAT HIS RIGHTS WERE PROTECTED?

A. THE TAPE WAS NOT CUT BACK ON DURING THAT PERIOD, THAT'S CORRECT.

MR. SIMS: THAT'S ALL, YOUR HONOR.

MR. BAILEY: NO REDIRECT. YOUR HONOR, THAT IS ALL THE STATE WOULD HAVE IN THE JACKSON V. DENNO HEARING.

THE COURT: YOU MAY COME DOWN. THANK YOU.

(MR. MEARS STEPS DOWN.)

THE COURT: DOES THAT CONCLUDE THE WITNESSES FOR THE STATE?

MR. BAILEY: YES, YOUR HONOR, IT DOES.

THE COURT: YOU MAY PROCEED, MR. STONE.

MR. STONE: WE NEED, YOUR HONOR, ABOUT FIVE MINUTES WITH OUR CLIENT, ESPECIALLY ON THIS PARTICULAR ISSUE.

THE COURT: ALL RIGHT, SIR.

MR. STONE: WE APPRECIATE IT. THANK YOU.

THE COURT: LET ME KNOW WHEN YOU ARE READY TO RESUME.

MR. STONE: YES, SIR.

THE COURT: LET'S TAKE A SHORT RECESS.

(RECESS.)

THE COURT: ALL RIGHT, MR. STONE.

MR. STONE: YOUR HONOR, WE DO NOT PLAN ON CALLING ANY WITNESSES. WE DO, HOWEVER, HAVE A MOTION. WE HAVE TWO MOTIONS, ACTUALLY.

THE FIRST ONE, AS TO TROOPER WELCH, HIS FIRST STATEMENT, THIS WAS THE STATEMENT TAKEN AT THE HOSPITAL WITH THE TROOPER, MR. ALEKSEY WAS IN CUSTODY, HE WAS IN THE HOSPITAL ROOM, THE TROOPER WAS SPEAKING TO HIM AND THE TROOPER ASKED HIM, "WHY DID YOU SHOOT THE TROOPER?"; AT WHICH TIME MR. ALEKSEY RESPONDED, "I THOUGHT THE

TROOPER WAS WITH THE MAFIA."

I DON'T THINK THIS QUESTION IS EVEN CLOSE. HE IS IN CUSTODY FOR THE PURPOSES OF MIRANDA. THE TROOPER NEVER INFORMED HIM---

MR. BAILEY: I AGREE. I DIDN'T MEAN TO CUT YOU OFF, BUT I AGREE.

MR. STONE: THAT'S OKAY. IF HE AGREES, THAT IS FINE.

THE COURT: SIR?

MR. BAILEY: I AGREE THAT HE WAS NOT MIRANDIZED AND THE STATEMENT WOULDN'T COME IN IN THE CASE IN CHIEF.

THE COURT: YOU MEAN AS TO THAT CONVERSATION?

MR. BAILEY: AS TO THAT ONE STATEMENT THAT HE THOUGHT HE WAS IN THE MAFIA OR SOMETHING, THE TROOPER SPECIFICALLY ASKED HIM, "WHY DID YOU SHOOT THE TROOPER?"; AND HE GAVE A RESPONSE. AND I ASSUME THAT IS ALL HE IS REFERENCING.

MR. STONE: YES, AND I THINK THE ONLY OTHER STATEMENT THAT TROOPER WELCH RECEIVED FROM HIM WAS APPARENTLY A SEPARATE NAME, ANOTHER NAME, AND I DON'T THINK THAT IS -- I'M NOT CONCERNED WITH THAT. I THINK WE HAVE GOT SOME OTHER TESTIMONY ON THAT AS WELL.

THE COURT: WELL, THE SOLICITOR'S REPLY ANSWERS YOUR FIRST INQUIRY.

MR. STONE: YES, SIR. THE SECOND MOTION, YOUR

HONOR, CONCERNS THE STATEMENT THAT YOU HAVE A TRANSCRIPTION OF.

THE COURT: YES, SIR.

MR. STONE: AND I THINK AT FIRST EVERYONE ASSUMED THAT THERE WAS ONLY A 1-HOUR GAP. I DO NOT BELIEVE THAT IS THE CASE.

HERE IS HOW I ANALYZE THIS: NO QUESTION MIRANDA ATTACHES AND NO QUESTION THAT THE DEFENDANT WAS READ HIS MIRANDA RIGHTS. A WAIVER OF THE MIRANDA RIGHTS, WHILE THE STATE HAS TO PROVE THAT BY A PREPONDERANCE OF THE EVIDENCE, I THINK HAPPENED RIGHT DIRECTLY AFTER HE WAS READ HIS RIGHTS. HOWEVER, THAT WAIVER LASTS UNTIL THE DEFENDANT CHOOSES TO STOP ANSWERING THOSE QUESTIONS.

NOW, THE AGENT TOOK THE STAND AND HE TESTIFIED THAT HE READ HIM FROM THE RIGHTS FORM THAT, "YOU HAVE A RIGHT TO STOP ANSWERING MY QUESTIONS AT ANY TIME."

AT THE CONCLUSION OF THE FIRST STATEMENT, MR. ALEKSEY STATED, AND I QUOTE, "THAT'S ALL I'VE GOT TO SAY."

NOW, THAT WAS AT 5:07, ANY WAY YOU COUNT UP THE TIME FRAME. I DON'T CARE IF YOU GIVE THAT PHONE CALL CONVERSATION THAT WAS THE GAP FIVE MINUTES, THAT'S FINE. IT STILL ENDS AT 5:07.

TWO HOURS LATER, AND AT THE CONCLUSION OF THAT

KEEP IN MIND THAT YOU HAVE AN AGENT THAT SAID HE WASN'T UPSET, HE WASN'T CRYING, OR ANYTHING LIKE THAT. AT THE CONCLUSION OF THAT, A 2-HOUR TIME FRAME HAPPENS WHERE THERE IS NO NOTES, THERE IS NO RECORDING, NO INFORMATION TO YOU AT ALL WHAT TAKES PLACE DURING THAT TWO HOURS EXCEPT THE MEMORIES OF THE TWO AGENTS WHO SAID, "WELL, HE TALKED ABOUT 'I WANT TO GO BACK IN GENERAL POPULATION' AND SOME VARIOUS OTHER THINGS."

IT IS MY UNDERSTANDING WITH EDWARDS V. ARIZONA, MICHIGAN V. MOSELEY, THE BASIC TEST OF MIRANDA IN OUR STATE LAW THAT THE AGENTS AT THE TIME THAT HE INVOKES HIS RIGHT TO REMAIN SILENT, AND PARTICULARLY WHEN HE SAYS, "THAT'S ALL I'VE GOT TO SAY," THE AGENTS HAVE TO DO SOMETHING TO MAKE SURE THAT AS THE CASE LAW SAYS THAT REQUEST IS TO REMAIN SILENT.

THE COURT: WELL, LET ME INTERRUPT YOU. DID HE INVOKE HIS RIGHT TO SILENCE OR DOES THAT INDICATE THAT HE HAD CONCLUDED TELLING THE STORY?

MR. STONE: I THINK, YOUR HONOR, HE INVOKED IT ENOUGH TO WHERE THE AGENT SAID, "WELL, I TURNED THE TAPE PLAYER OFF THINKING THAT WAS IT."

THE COURT: IT SOUNDS LIKE IT CAN BE INTERPRETED TO MEAN, "I HAVE TOLD YOU MY STORY."

MR. STONE: IF THE AGENTS WERE INTENDING TO FURTHER QUESTION HIM CONCERNING THAT, IF THE AGENTS DID

NOT THINK THAT AT THAT POINT HE SAID, "THAT'S ALL I'VE GOT TO SAY, I MEAN, LET'S STOP THIS QUESTIONING," THEY WOULDN'T HAVE TURNED THE TAPE PLAYER OFF.

HE STATED, AGENT DARNELL STATED ON THE STAND THAT AT THAT POINT HE THOUGHT HE WAS FINISHED.

"HE SAID, 'THAT'S ALL I'VE GOT TO SAY.' I TURNED THE TAPE PLAYER OFF."

AND THEN WE HAVE A 2-HOUR GAP, AT WHICH TIME AFTER WHICH MR. ALEKSEY COMES BACK ON CRYING AND ANSWERING, "YES, I SHOT THE TROOPER."

THE COURT: I'VE GOT YOUR POSITION. LET ME HEAR FROM YOU, SOLICITOR.

MR. BAILEY: THE PROBLEM WITH HIS POSITION IS THAT ALEKSEY, UNDER ALL THE EVIDENCE YOU HAVE HEARD, YOUR HONOR, IS THE ONE THAT REALLY INITIATED THE CONVERSATION AFTER THE TAPE WAS TURNED OFF. SO EVEN IF YOU ACCEPT HIS VERSION OF "I'VE GOT NOTHING ELSE TO SAY" AS BEING AN IMPLICATION OF A RIGHT TO REMAIN SILENT, HE STARTS TALKING AGAIN AFTER THE TAPE WENT OFF. AND I KNOW OF NO LAW THAT REQUIRES YOU TO RE-MIRANDIZE SOMEBODY BECAUSE THERE IS A LIMITATION PERIOD UNDER THE MIRANDA WARNINGS. IT WAS STILL IN EFFECT WHEN HE STARTED TALKING.

THE COURT: WELL, I'M GOING TO ADMIT THIS TAPE UNDER THE USUAL PROPER INSTRUCTION TO THE JURY THAT THE

FINAL DETERMINATION IS FOR THEM TO CONSIDER AND TO DETERMINE BEYOND A REASONABLE DOUBT.

I HAVE CAREFULLY CONSIDERED ALL THE EVIDENCE OFFERED BY THE STATE IN THIS CASE AND HAVE CONSIDERED TOO THE TOTALITY OF THE CIRCUMSTANCES UNDER WHICH THIS ALLEGED STATEMENT WAS MADE.

I AM CONVINCED, HAVING CONSIDERED THESE ISSUES, AND SO FIND BY A PREPONDERANCE OF THE EVIDENCE THE FOLLOWING:

THAT BEFORE THE ALLEGED INCRIMINATING STATEMENT OR CONFESSION WAS OBTAINED FROM THE DEFENDANT, THE DEFENDANT WAS FULLY ADVISED OF HIS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THAT THE DEFENDANT WAS ADVISED OF HIS CONSTITUTIONAL SAFEGUARDS REQUIRED BY MIRANDA V. ARIZONA. THESE RIGHTS ARE AS FOLLOWS:

THAT THE DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT HE HAD A RIGHT TO REMAIN SILENT;

AND THAT THE DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT IF HE WAIVED HIS RIGHT TO REMAIN SILENT AND MADE A STATEMENT THAT SUCH STATEMENT CAN AND WILL BE USED AGAINST HIM IN A COURT OF LAW;

AND THAT THE DEFENDANT WAS FURTHER ADVISED PRIOR TO ANY INTERROGATION THAT HE HAD A RIGHT TO EMPLOY OR SELECT AN ATTORNEY OF HIS OWN CHOICE;

AND THAT IF HE DID NOT HAVE THE MONEY, FUNDS OR RESOURCES TO OBTAIN AN ATTORNEY, THAT THE COURT WOULD APPOINT AND PROVIDE AN ATTORNEY FOR HIM IF HE SO DESIRED WITHOUT COST OR EXPENSE TO HIM;

AND THAT HE HAD THE RIGHT TO HAVE HIS ATTORNEY PRESENT WITH HIM AT ALL TIMES DURING ALL INTERVIEWS AND ALL INTERROGATIONS.

I FURTHER FIND THAT THE DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT HE HAD A RIGHT TO CONSULT WITH HIS ATTORNEY BEFORE THE INTERROGATION;

THE DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT HE HAD A RIGHT TO INTERRUPT AND TERMINATE THE INTERROGATION AT ANY TIME;

AND THAT HE HAD THE FURTHER RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME DURING THE INTERROGATION.

THE DEFENDANT WAS ADVISED PRIOR TO ANY INTERROGATION THAT IF HE DESIRED AN ATTORNEY THE INTERROGATION WOULD CEASE UNTIL AN ATTORNEY WAS PROVIDED FOR HIM AND HE WOULD BE GIVEN AN OPPORTUNITY TO CONSULT WITH HIS ATTORNEYS PRIOR TO FURTHER INTERROGATION.

I FIND TOO THAT THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTIONAL SAFEGUARDS REQUIRED BY

MIRANDA V. ARIZONA:

I FURTHER FIND THAT THE ALLEGED INCRIMINATING STATEMENT OR CONFESSION OBTAINED BY THE DEFENDANT WAS FREELY AND VOLUNTARILY GIVEN WITHOUT DURESS, WITHOUT COERCION, WITHOUT UNDUE INFLUENCE, WITHOUT REWARD, WITHOUT PROMISE OR HOPE OF REWARD, WITHOUT PROMISE OF LENIENCY, WITHOUT THREAT OF INJURY, AND WITHOUT COMPULSION OR INDUCEMENT OF ANY KIND, AND THAT SUCH ALLEGED INCRIMINATING STATEMENT OR CONFESSION WAS THE VOLUNTARY PRODUCT OF THE FREE AND UNCONSTRAINED WILL OF THE DEFENDANT.

THIS COURT FINDS ALL OF THE FOREGOING CONCLUSIONS BEYOND A REASONABLE DOUBT, AND I THEREFORE FIND THAT THE INCRIMINATING STATEMENT OR CONFESSION IS ADMISSIBLE INTO EVIDENCE.

AGAIN, MR. STONE, ADDRESSING YOUR CONCERNS, IT IS CLEAR TO ME, IT WOULD BE FOR THE JURY TO DETERMINE, THAT THIS DEFENDANT DID NOT SAY, "I TERMINATE THE CONVERSATIONS," HE SAID, "I HAVE CONCLUDED MY STATEMENT," AND THAT THE TESTIMONY IF BELIEVED BY THE JURY, WHO WILL BE THE ULTIMATE FINDER OF THE FACTS ON THE ISSUE, THAT THIS DEFENDANT BEGAN THE CONVERSATION AGAIN AND NOT THE INTERROGATION BY THE OFFICERS.

SO I CONCLUDE THAT IT IS ADMISSIBLE AND THE JURY WILL BE CHARGED APPROPRIATELY THAT THEY MUST FIND

THESE VARIOUS ISSUES BEYOND A REASONABLE DOUBT, AND I DO SO. YOUR MOTION IS RESPECTFULLY OVERRULED.

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT, SIR. ANYTHING FURTHER?

MR. STONE: TWO HOUSEKEEPING MATTERS, YOUR HONOR. I HAD SPOKEN TO THE SOLICITOR EARLIER. THERE IS A VIDEO TAPE THAT WE VIEWED FROM ONE OF THE HIGHWAY PATROL TROOPER CARS. MY UNDERSTANDING WITH THE SOLICITOR IS THAT IS THE ONLY TAPE THAT WAS AVAILABLE, THAT TROOPER LINGARD'S VIDEO TAPE WAS NOT ON OR DID NOT HAVE ONE IN HIS CAR AND THERE WAS ALSO NOT ANOTHER VIDEO TAPE ON ANY OF THE OTHER HIGHWAY PATROL CARS; AND I JUST WANT TO MAKE SURE THAT IS THE CASE.

THE COURT: WHAT IS YOUR RESPONSE?

MR. BAILEY: THAT IS MY UNDERSTANDING, JUDGE. I HAVE TALKED TO ALMOST EVERY TROOPER INVOLVED IN IT. THE TAPE HE HAS GOT IS THE ONLY ONE I HAVE BEEN ABLE TO LOCATE, THAT WAS FROM TROOPER FREDERICK.

MR. STONE: AND THE SECOND THING, YOUR HONOR, I THINK AT THE LAST HEARING I PRESENTED TWO AFFIDAVITS TO THE COURT THAT WERE ACTUALLY PRESENTED TO ME BY THE SOLICITOR, ONE BY THE SHERIFF AND THE OTHER ONE BY THE DETENTION CENTER. THIS WAS AS TO THE MENTAL EVALUATION QUESTION THAT CAME UP IN THE LAST HEARING. I JUST WANTED TO MAKE SURE THAT THOSE TWO AFFIDAVITS WERE IN

FACT MADE A PART OF THE RECORD. I NEVER GOT THEM BACK, WHICH IS FINE, I JUST WANT TO MAKE SURE THEY ARE IN THE RECORD.

THE COURT: IF THEY ARE NOT, THEY WILL BE PART OF THE RECORD.

MR. STONE: ALL RIGHT, SIR. THAT'S ALL.

THE COURT: DO YOU AGREE WITH THAT, SOLICITOR?

MR. BAILEY: YES, SIR. YOUR HONOR, WHILE WE ARE HERE, AGAIN, SORT OF HOUSEKEEPING, THE PART THAT IS HIGHLIGHTED IN THE TRANSCRIPT WE GAVE YOUR HONOR IS THE ONLY PART THAT I INTEND TO REDACT IN THE GUILT PHASE; AND I WANT TO GO AHEAD AND START WORKING ON THAT TAPE, SO IF THE DEFENSE HAS ANYTHING ELSE THEY THINK OUGHT TO GO OUT I WOULD APPRECIATE THEM LETTING ME KNOW AS SOON AS THEY CAN SO WE CAN GET STRAIGHT ON THE TAPE.

THE COURT: DO YOU HAVE A RESPONSE AT THIS TIME TO THAT, MR. STONE?

MR. STONE: NO, SIR. I WOULD LIKE TO SIT DOWN WITH CO-COUNSEL. OF COURSE, I WANTED TO MAKE SURE THAT WE COVERED WHETHER OR NOT THE STATEMENT WAS COMING IN FIRST BEFORE WE DID THAT.

THE COURT: YOU'VE GOT TEN DAYS TO MAKE A REPLY TO THAT. NOW, THIS CASE IS SCHEDULED FOR THE TIME IN AUGUST THAT WE HAVE ALL AGREED UPON. I WANT TO STAY ON THAT COURSE. ABSENT SOME EXTRAORDINARY CIRCUMSTANCES,

THIS CASE WILL BE TRIED AT THAT TIME AND THAT PLACE.

NOW, I HAVE PREVIOUSLY ISSUED AN ORDER FOR AN EXAMINATION AT THE STATE HOSPITAL. SOLICITOR, I WANT YOU TO MAKE IMMEDIATE INQUIRY. I WANT THAT DONE AS QUICKLY AS POSSIBLE SO THAT WE CAN HAVE APPROPRIATE HEARINGS ON THAT ISSUE.

MR. BAILEY: YES, SIR.

THE COURT: NOW, I WILL BE IN SALUDA FOR THE NEXT TWO WEEKS, AND IF WE NEED TO HAVE ANY HEARINGS ON THIS MATTER PLEASE LET ME KNOW AND I WILL SCHEDULE THEM IMMEDIATELY.

MR. STONE: I WILL. THANK YOU.

THE COURT: THANK YOU. MR. SIMS, I WILL BE GLAD TO HEAR FROM YOU.

MR. SIMS: YOUR HONOR, YOU HAVE ALREADY RULED. THERE IS NOTHING ELSE FOR ME TO DO NOW.

THE COURT: ALL RIGHT, SIR. SOLICITOR, ANYTHING FURTHER?

MR. BAILEY: ONE OTHER THING, YOUR HONOR. THE CLERK TOLD ME I NEEDED AN ORDER FOR 300 JURORS. SHE IS CONCERNED THAT WE MAY NEED 50 MORE. I WANT TO SEE IF I CAN GET YOU TO AUTHORIZE THAT.

THE COURT: YES, SIR, PREPARE ME AN ORDER. I WANT TO MAKE SURE WE HAVE ENOUGH. ANY OBJECTION TO THAT?

MR. STONE: NO, SIR.

THE COURT: ALL RIGHT, SIR, PREPARE ME AN APPROPRIATE ORDER.

MR. BAILEY: YES, SIR.

THE COURT: ALL RIGHT, SIR, THIS HEARING THEN IS NOW ADJOURNED. THANK YOU.

MR. BAILEY: THANK YOU.

MR. STONE: THANK YOU.

THE COURT: SOLICITOR, DO YOU HAVE ANY OBJECTION, WE HAVE MARKED SOME EXHIBITS HERE AND WE WOULD LIKE TO SEND THEM BACK TO ORANGEBURG. ANY OBJECTION TO LETTING THE SOLICITOR'S OFFICE TAKING THEM? OR I WILL LET YOU TAKE THEM IF YOU ARE GOING BACK?

MR. STONE: THAT'S ALL RIGHT, I WILL LET THE SOLICITOR TAKE THEM. HE IS GOING TO ORANGEBURG.

THE COURT: YES, SIR. SO IS MR. SIMS.

(WHEREUPON, THE THREE STATE'S EXHIBITS WERE TURNED OVER TO THE SOLICITOR FOR FILING WITH THE CLERK OF COURT FOR ORANGEBURG COUNTY.)

(WHEREUPON, THE HEARING WAS ADJOURNED.)

(END OF REQUESTED TRANSCRIPT)

CERTIFICATE

I, THE UNDERSIGNED DEBORAH M. McCURDY, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE IN THE CRIMINAL COURT FOR ORANGEBURG COUNTY(HEARD IN RICHLAND COUNTY), SOUTH CAROLINA, ON THE 8TH DAY OF JUNE, 1998.

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

AUGUST 3, 1998

/s/ Deborah M. McCurdy

DEBORAH M. McCURDY
CIRCUIT COURT REPORTER

MY COMMISSION EXPIRES:

MAY 18, 1999

STATE OF SOUTH CAROLINA]] COUNTY OF ORANGEBURG]]	IN THE COURT OF GENERAL SESSIONS CASE NO.: 98-GS-38-0244
STATE OF SOUTH CAROLINA,]] PLAINTIFF,] VS.]] BAYAN ALEKSEY,]] DEFENDANT.]	TRANSCRIPT OF RECORD

AUGUST 11, 1998
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE EDWARD B. COTTHINGHAM, JUDGE.

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

WALTER M. BAILEY, JR., SOLICITOR
ATTORNEY FOR THE STATE

I. McDUFFIE STONE, III, ESQUIRE
THOMAS R. SIMS, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DEBORAH M. McCURDY
CIRCUIT COURT REPORTER

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AUGUST 11, 1998

THE COURT: LET THE RECORD NOW REFLECT THAT WE ARE HERE CONCERNING VARIOUS ISSUES IN THE STATE VERSUS ALEKSEY. THIS CASE IS SCHEDULED FOR TRIAL IN ORANGEBURG COUNTY ON MONDAY WEEK. IS THAT RIGHT, SOLICITOR?

MR. BAILEY: YES, SIR.

THE COURT: LET THE RECORD THEN FURTHER REFLECT THAT THE STATE OF SOUTH CAROLINA IS REPRESENTED BY THE SOLICITOR, WALTER BAILEY; THAT THE DEFENDANT IS REPRESENTED BY MR. DUFFIE STONE AND HIS ASSOCIATE, MR. THOMAS SIMS.

LET THE RECORD FURTHER REFLECT THAT THE DEFENDANT IS PRESENT AND IN COURT, THIS HEARING BEING HELD PURSUANT TO NOTICES OF ALL PARTIES.

DO YOU AGREE WITH THAT, SOLICITOR?

MR. BAILEY: YES, SIR, YOUR HONOR.

THE COURT: AND DO YOU, SIR?

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT, FIRST LET'S DEAL WITH SUCH MOTIONS NOW AS THE STATE MAY HAVE AND THEN WE WILL PROCEED WITH THE DEFENDANT'S MOTIONS.

YOU MAY PROCEED, MR. BAILEY.

MR. BAILEY: YOUR HONOR, I GUESS IT IS SORT OF AN INFORMAL MOTION WE AGREED TO TAKE UP WITH

REGARD TO THE STATEMENT, AND I PUT A COPY OF THE TRANSCRIPT OF THE TAPED STATEMENT ON YOUR DESK.

THE COURT: SHOULD WE NOT DEAL WITH THE COMPETENCY HEARING FIRST?

MR. BAILEY: YES, SIR, YOUR HONOR.

THE COURT: GO AHEAD.

MR. BAILEY: THE STATE WOULD CALL DR. RICHARD FRIERSON.

THE COURT: FIRST, AS A THRESHOLD MATTER, THERE HAS BEEN PRESENTED TO ME THE FINDINGS OF DR. THOMAS W. BEHRMANN, ASSOCIATE DIRECTOR OF THE FORENSIC UNIT OF THE HOSPITAL.

MR. STONE, HAVE YOU AND YOUR CLIENT BEEN PROVIDED A COPY OF THIS?

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT, SIR.

DO YOU SOLEMNLY SWEAR THE TESTIMONY YOU SHALL GIVE IN THESE PROCEEDINGS TO BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH; SO HELP YOU GOD?

DR. FRIERSON: I DO.

THE COURT: THANK YOU. PLEASE HAVE A SEAT.

(DR. FRIERSON COMPLIES.)

RICHARD L. FRIERSON, M.D., BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. BAILEY:

Q. DOCTOR, STATE YOUR FULL NAME, PLEASE.

A. RICHARD LESESNE FRIERSON.

Q. ALL RIGHT, SIR. AND WHAT IS YOUR PROFESSION OR OCCUPATION?

A. I AM A FORENSIC PSYCHIATRIST.

Q. WHERE ARE YOU EMPLOYED?

A. WILLIAM S. HALL PSYCHIATRIC INSTITUTE.

Q. AND, BRIEFLY, WHAT IS YOUR EDUCATIONAL AND YOUR EMPLOYMENT BACKGROUND?

A. I RECEIVED A BACHELOR OR MUSIC DEGREE FROM THE UNIVERSITY OF SOUTH CAROLINA IN 1984. I COMPLETED A MEDICAL DOCTORATE AT THE UNIVERSITY OF SOUTH CAROLINA SCHOOL OF MEDICINE IN 1988. I COMPLETED FOUR YEARS OF RESIDENCY IN GENERAL PSYCHIATRY AT WILLIAM S. HALL PSYCHIATRIC INSTITUTE IN 1992. I COMPLETED A ONE YEAR FELLOWSHIP IN FORENSIC PSYCHIATRY---

THE COURT: FOR THE PURPOSES OF THIS HEARING, ARE HIS QUALIFICATIONS ADMITTED?

MR. STONE: AS TO THE PSYCHIATRIC EVALUATION UNDER McNAGHTEN, YES, SIR, WE WILL STIPULATE TO HIS QUALIFICATIONS AS TO THAT.

THE COURT: ALL RIGHT, SIR. YOU MAY PROCEED. OBVIOUSLY AT THE TRIAL WE WOULD GO INTO

MORE DETAIL AS TO HIS QUALIFICATIONS, BUT HERE THE STIPULATION IN MY VIEW IS SUFFICIENT.

MR. BAILEY: YES, SIR. JUST TO CLARIFY THE STIPULATION IN REGARD TO McNAGHTEN, IN ADDITION AS TO COMPETENCY, I ASSUME IT IS STIPULATED HE WAS COMPETENT.

MR. STONE: YES, SIR, IN THOSE AREAS ONLY.

THE COURT: ALL RIGHT, SIR.

MR. BAILEY: THANK YOU.

Q. DOCTOR, BRIEFLY, WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AT THE HALL INSTITUTE?

A. I AM CHIEF OF OUTPATIENT FORENSIC SERVICES, MEANING THAT I COORDINATE THE SCHEDULING OF THESE EVALUATIONS FOR THE ENTIRE STATE OF SOUTH CAROLINA, IN ADDITION TO PERFORMING UP TO TEN EVALUATIONS A WEEK AT THE PRESENT TIME.

Q. ALL RIGHT, SIR. AND IS THERE A TEAM THAT DOES THESE COURT-ORDERED EVALUATIONS, TO INCLUDE YOU AND OTHER MENTAL HEALTH PROFESSIONALS?

A. YES.

Q. WHO IS ON THE TEAM?

A. WELL, MOST OF THE OUTPATIENTS, IT INVOLVES THE PSYCHIATRIST AND THE SOCIAL WORKER. ON ANY MURDER CASE DONE AS AN OUTPATIENT, IT WOULD ALSO INVOLVE A PSYCHOLOGIST, AND ALSO A CLINICAL NEUROLOGIST WHO

WORKS AT THE INSTITUTE.

Q. SO IN THIS CASE INVOLVING THE DEFENDANT BAYAN ALEKSEY, WHO WAS ON THE TEAM ALONG WITH YOU TO DO THE COURT-ORDERED EVALUATION OF MR. ALEKSEY?

A. THE ACTUAL FORENSIC INTERVIEW, I WAS THE PSYCHIATRIST ASSIGNED TO THIS CASE; AND MR. WILLIAM QUIRK WAS THE SOCIAL WORKER WHO DID THIS EVALUATION WITH ME; THE PSYCHOLOGIST INVOLVED ON THIS CASE WAS A DR. JEFFREY VIDIC; THE NEUROLOGIST WHO EVALUATED MR. ALEKSEY IS A DR. DANIEL VALLINI.

Q. ALL RIGHT, SIR. AND IS THE INPUT FROM THESE OTHER PEOPLE ON THE TEAM THE TYPE OF INFORMATION YOU WOULD NORMALLY TAKE INTO CONSIDERATION IN ASSISTING YOU IN RENDERING YOUR OPINION IN REGARD TO THE THREE ISSUES THAT YOU HAVE TO DECIDE?

A. YES.

Q. ALL RIGHT, SIR. AND WHAT IS THE DIFFERENCE IN YOUR ROLE AND THE PSYCHOLOGIST'S ROLE?

A. THE PSYCHOLOGIST'S ROLE IS TO PERFORM PSYCHOLOGICAL TESTING AND LOOKING AT ISSUES SUCH AS MEASURING THE DEFENDANT'S I.Q.; OTHER TESTS FOR SPECIFIC MENTAL ILLNESSES; WRITTEN TESTS, PAPER-AND-PENCIL TYPE TESTS.

Q. ALL RIGHT, SIR. AND JUDGE COTTINGHAM REFERENCED THE REPORT SIGNED BY DR. BEHRMANN. IS

YOUR REPORT ATTACHED TO THAT?

A. YES. DR. BEHRMANN SIGNS A COVER LETTER THAT GOES OUT WITH ALL OF OUR REPORTS.

Q. IT ACTUALLY REPORTS THE FINDINGS OF YOUR WORK PRODUCT THAT YOU SIGN; IS THAT CORRECT?

A. YES.

MR. BAILEY: YOUR HONOR, COULD I GET THE COURT REPORTER TO MARK A COPY OF THIS REPORT?

THE COURT: YES, SIR. THE DEFENSE HAS INDICATED THAT THEY HAVE THE SAME COPY.

(REPORT OF FINDING MENTAL CAPACITY RECEIVED INTO EVIDENCE AS STATE'S EXHIBIT 1.)

Q. DOCTOR, THE REPORT---

THE COURT: THIS REPORT IS NOW MADE A PART OF THE RECORD. THE MEDIA MAY HAVE A COPY OF IT, IF THEY CHOOSE TO.

MR. BAILEY: THANK YOU.

Q. SINCE THE REPORT IS IN EVIDENCE, I WON'T GO INTO ANY GREAT DETAIL ON THAT, BUT DID DR. VIDIC PERFORM THE PSYCHOLOGICAL TESTS THAT ARE SET FORTH IN THAT REPORT AND DID YOU HAVE ACCESS TO THE RESULTS OF THOSE TESTS?

A. YES.

Q. AND IN ADDITION TO THAT, THERE ARE SOME WRITTEN

MATERIALS PROVIDED BY THE STATE AND BY OTHER SOURCES THAT YOU HAVE AVAILABLE FOR YOUR REVIEW?

A. YES.

Q. AND YOU ALSO CONDUCT AN INTERVIEW WITH THE DEFENDANT?

A. YES.

Q. AND YOU HAVE TESTIFIED, I BELIEVE, THAT THE DEFENDANT WAS ALSO GIVEN A COMPLETE PHYSICAL, INCLUDING AN MRI, EEG, THAT TYPE OF TEST?

A. HE UNDERWENT A PHYSICAL EXAMINATION, HE UNDERWENT A NEUROLOGICAL EXAMINATION, HE UNDERWENT AN EEG, AN MRI SCAN, AND SOME BASIC LABORATORY BLOOD WORK.

Q. WHAT WERE BASICALLY THE RESULTS OF THE MEDICAL REPORTS AND THE PHYSICAL REPORTS?

A. THE EEG AND MRI -- THE EEG WAS NORMAL. THE MRI WAS ESSENTIALLY NORMAL, WITH THE EXCEPTION OF SOME EVIDENCE OF FRONTAL SINUSITIS, WHICH DOES NOT INVOLVE THE BRAIN.

THE NEUROLOGICAL EXAMINATION REVEALED A HISTORY OF HEADACHES.

THE MEDICAL TESTS WERE ALL ESSENTIALLY NORMAL. THERE WAS NO EVIDENCE OF THYROID DISEASE, B-12 AND FOLIC DEFICIENCY, OTHER ENDOCRINE OR METABOLIC DISEASES THAT COULD CAUSE MENTAL ILLNESS.

Q. AND YOU OBTAINED A SOCIAL HISTORY OR A SOCIAL HISTORY WAS OBTAINED AND AVAILABLE TO YOU?
A. YES.
Q. ALL RIGHT, SIR. AND WHAT ABOUT A PSYCHIATRIC HISTORY? WAS THAT OBTAINED ALSO BY DR. VIDIC?
A. WELL, WE INTERVIEWED THE PATIENT'S MOTHER TO OBTAIN THE PSYCHIATRIC HISTORY.
MR. STONE: I'M SORRY TO INTERRUPT, DOCTOR. COULD YOU PULL THE MICROPHONE CLOSER OR TURN THE VOLUME UP? I AM EITHER GOING DEAF OR HE IS SPEAKING TOO LOW. I CAN'T HEAR HIM. I APOLOGIZE FOR INTERRUPTING.
A. WE REVIEWED A PSYCHIATRIC HISTORY THAT HAD BEEN PROVIDED BY HIS MOTHER AND THE SOCIAL HISTORY. ALSO, WE ASKED MR. ALEKSEY ABOUT HIS PSYCHIATRIC HISTORY. WE RECEIVED MEDICAL RECORDS PROVIDED BY HIS ATTORNEY FROM CREEDMORE PSYCHIATRIC HOSPITAL AND FROM THE LONG ISLAND JEWISH HOSPITAL IN NEW YORK. SO THOSE WERE THE SOURCES OF INFORMATION RELATED TO HIS PSYCHIATRIC HISTORY.
Q. SO AMONG THE TESTS THAT WERE ADMINISTERED TO MR. ALEKSEY, WAS AN I.Q. TEST GIVEN TO HIM?
A. YES.
Q. ALL RIGHT, SIR. AND WAS THERE A STRUCTURED INTERVIEW OF REPORTED SYMPTOMS TEST THAT WAS ALSO

GIVEN?
A. YES.
Q. AND THAT IS ABBREVIATED "SIRS"?
A. RIGHT, "SIRS," S-I-R-S.
Q. WHAT IS THAT TEST USED FOR?
A. THE "SIRS" IS NOT A TEST THAT WE ROUTINELY DO. IT IS A TEST THAT WE USE WHEN WE SUSPECT THAT A PATIENT MAY BE FAKING OR MALINGERING PSYCHIATRIC SYMPTOMS. IT IS A TEST SPECIFICALLY DESIGNED TO DETECT THAT INFORMATION AMONG PEOPLE IN FORENSIC SETTINGS.
Q. ALL RIGHT, SIR. AND HOW DID MR. ALEKSEY SCORE ON THAT "SIRS" TEST? DID YOU DETECT MALINGERING?
A. ON THE "SIRS" IT HAS EIGHT SEPARATE SCALES. ON THREE OF THOSE SCALES HE SCORED AT THE "DEFINITE MALINGERING" RANGE, AND ON FOUR OF THOSE EIGHT SCALES HE SCORED IN THE "PROBABLE MALINGERING" RANGE. LOOKING AT THAT TOTAL PROFILE, THE OVERALL RESULTS WOULD INDICATE A 99 PERCENT CHANCE THAT MR. ALEKSEY WAS FAKING SYMPTOMS AND EXAGGERATING THEIR SEVERITY.
Q. ALL RIGHT, SIR. SO BASED ON RESULTS OF THAT TEST, IS IT YOUR OPINION THAT HE WAS MALINGERING?
A. IT IS MY OPINION THAT HE WAS MALINGERING ON THE PSYCHOLOGICAL EVALUATION.

Q. AND FOR THAT REASON WERE YOU ABLE TO GET AN ACCURATE I.Q. TEST RESULT?
A. NO.
Q. ALL RIGHT, SIR. DID YOU FORM AN OPINION ON HIS I.Q. DESPITE THAT BASED ON THE TYPE OF THINGS HE HAD BEEN DOING IN THE PAST AND WHAT HE HAD DONE AS A RESULT OF THE INTERVIEW AND OTHER FACTORS, OTHER TYPES OF TEST RESULTS?
A. YES.
Q. WHAT WAS YOUR OPINION AS TO HIS APPROXIMATE I.Q.?
A. IT IS MY OPINION THAT HIS APPROXIMATE I.Q. WOULD FALL IN THE HIGH 70'S, POSSIBLY INTO THE VERY LOW 80'S. TO GIVE YOU A RANGE, I WOULD ESTIMATE BASED ON MY CLINICAL INTERVIEW AND THE INFORMATION THAT I HAVE REVIEWED THAT HIS INTELLIGENCE PROBABLY FALLS SOMEWHERE BETWEEN 77 AND 82.
Q. ALL RIGHT, SIR. AND WAS THERE ANY EVIDENCE IN THE EVALUATION OF ANY LONG-TERM OR SHORT-TERM MEMORY LOSS?
A. NO.
Q. ANY EVIDENCE OF ANY PROBLEMS WITH HIS ABSTRACT REASONING?
A. NO.
Q. ANY EVIDENCE OF INABILITY TO CONCENTRATE DURING

THE INTERVIEW YOU CONDUCTED WITH HIM?

A. I MET WITH HIM FOR TWO HOURS AND TEN MINUTES WITHOUT INTERRUPTION INITIALLY, AND HE WAS ABLE TO CONCENTRATE QUITE WELL.

Q. DID YOU DETECT ANY PROBLEM OR WITH RESPECT TO HIS JUDGMENT IN HYPOTHETICAL SITUATIONS?

A. HIS JUDGMENT TO HYPOTHETICAL SITUATIONS WAS GOOD.

Q. ALL RIGHT. AND ANY EVIDENCE OR REPORTS OF HALLUCINATIONS EITHER AUDITORY OR VISUAL IN THIS CASE?

A. NO.

Q. DELUSIONS?

A. NO.

Q. DURING THE INTERVIEW, STATE WHETHER OR NOT HIS THOUGHT PROCESSES APPEARED TO BE LOGICAL AND GOAL-DIRECTED.

A. THEY WERE QUITE LOGICAL. HE ANSWERED ALL OF OUR QUESTIONS APPROPRIATELY. HE GAVE AN ANSWER THAT WAS LOGICAL AND MADE SENSE IN RESPONSE TO THE QUESTION ASKED.

Q. ANY EVIDENCE OF ANY MAJOR MENTAL ILLNESS?

A. NO.

Q. DID YOU DETECT ANY DIAGNOSES FOR PERSONALITY DISORDERS?

A. YES.
Q. WHAT DID YOU DETECT? IN YOUR OPINION, WHAT PERSONALITY DISORDERS DID YOU OBSERVE?
A. GIVEN THE TOTALITY OF BOTH THE RECORDS FROM CREEDMORE AND LONG ISLAND JEWISH AS WELL AS THE SOCIAL HISTORY, IT IS OUR OPINION THAT HE WOULD MEET CRITERIA FOR A DIAGNOSIS OF A MIXED PERSONALITY DISORDER WITH BOTH BORDERLINE AND ANTISOCIAL FEATURES.
Q. AND AXIS I, DID YOU DIAGNOSE HIM ADJUSTMENT DISORDER?
A. YES.
Q. AND IS THERE ANY INDICATION THAT HE SUFFERED ADJUSTMENT DISORDER PRIOR TO INCARCERATION FOR THIS MURDER HE HAS BEEN CHARGED WITH?
A. NO.
Q. AND AXIS II, DID YOU DIAGNOSE HIM AS BORDERLINE INTELLECTUAL FUNCTIONING?
A. YES.
Q. DO YOU HAVE AN OPINION BASED ON ALL THE INFORMATION THAT YOU HAD AVAILABLE THAT YOU TESTIFIED TO IN REGARD TO BAYAN ALEKSEY'S COMPETENCY TO STAND TRIAL AT THIS TIME?
A. I'M SORRY, COULD YOU REPEAT THAT QUESTION?
Q. DO YOU HAVE AN OPINION WITH REGARD TO HIS

COMPETENCY TO STAND TRIAL AT THIS TIME?

A. YES, I DO.

Q. WHAT IS THAT OPINION?

A. IT IS MY OPINION THAT MR. ALEKSEY IS COMPETENT TO STAND TRIAL.

Q. AND DO YOU HAVE AN OPINION WITH REGARD TO HIS CRIMINAL RESPONSIBILITY, HIS ABILITY TO TELL MORAL AND LEGAL RIGHT FROM MORAL AND LEGAL WRONG?

A. YES.

Q. WHAT IS THAT OPINION?

A. IT IS MY OPINION THAT MR. ALEKSEY DOES NOT SUFFER FROM A MENTAL ILLNESS THAT WOULD HAVE IMPAIRED HIS ABILITY TO DISTINGUISH LEGAL AND MORAL RIGHT FROM LEGAL AND MORAL WRONG AT THE TIME OF THE ALLEGED OFFENSE.

Q. AND THAT BEING DECEMBER 31ST OF 1997?

A. THAT IS CORRECT.

Q. AND DO YOU HAVE AN OPINION WITH REGARD TO MR. ALEKSEY'S CAPACITY TO CONFORM HIS CONDUCT WITH THE REQUIREMENTS OF THE LAW ON DECEMBER 31ST, 1997?

A. YES.

Q. WHAT IS THAT OPINION?

A. IT IS MY OPINION THAT HE DOES NOT SUFFER FROM A MENTAL ILLNESS WHICH WOULD HAVE SUBSTANTIALLY IMPAIRED HIS CAPACITY TO CONFORM HIS BEHAVIOR TO

THE REQUIREMENTS OF THE LAW ON DECEMBER 31ST OF 1997.

Q. THANK YOU, DOCTOR. THAT'S ALL I HAVE. PLEASE ANSWER ANY QUESTIONS MR. STONE MAY HAVE.

MR. STONE: JUST A FEW.

THE COURT: ALL RIGHT, SIR.

CROSS EXAMINATION BY MR. STONE:

Q. DOCTOR, YOU INDICATED THAT HIS INTELLECTUAL FUNCTIONING, EVEN CONSIDERING HIS POTENTIAL MALINGERING, STILL WAS IN THE 70'S AND 80'S; IS THAT CORRECT?

A. THAT IS A ROUGH ESTIMATE. I WOULD ESTIMATE PROBABLY IN THE HIGH 70'S.

Q. IN THE HIGH 70'S, IS THAT STILL BORDERLINE INTELLECTUAL FUNCTIONING?

A. YES.

Q. OKAY. AT WHAT POINT DOES THAT BECOME NOT BORDERLINE INTELLECTUAL FUNCTIONING?

A. IN WHICH DIRECTION, TOWARDS NORMAL OR TOWARDS MENTAL RETARDATION?

Q. TOWARDS NORMAL.

A. TOWARDS NORMAL?

Q. YES.

A. IN GENERAL, 85; 85 AND ABOVE WOULD BE NORMAL. SOME PEOPLE WOULD SAY 80 AND ABOVE ARE NORMAL.

THERE IS SOME DISAGREEMENT ABOUT, YOU KNOW, WHAT WOULD BE NORMAL.

Q. BUT THERE IS NO QUESTION IN YOUR MIND AT LEAST THAT AS FAR AS INTELLECTUAL FUNCTIONING IS CONCERNED, HE IS NOT NORMAL, HE IS BELOW THAT; IS THAT CORRECT?

A. THAT IS CORRECT. AND THAT IS ALSO BASED ON HIS PAST HISTORY AND SCHOOL PERFORMANCE.

Q. PARDON ME, I'M SORRY?

A. THAT IS ALSO BASED ON HIS PAST HISTORY AND SCHOOL PERFORMANCE.

Q. DID YOU IN FACT STUDY HIS SCHOOL PERFORMANCE?

A. WHAT WAS AVAILABLE IN THE PSYCHIATRIC RECORDS WE DID.

Q. LET ME ASK YOU THIS AS TO HIS SCHOOL PERFORMANCE: DID YOU STUDY OR ARE YOU AWARE THAT SEPTEMBER 1ST, 1977, WHEN MR. ALEKSEY WAS IN THE FOURTH GRADE THAT HE MADE ALL "F'S" FOR THAT YEAR EXCEPT FOR ONE "D," AND I THINK THAT WAS CHRISTIAN DOCTRINE? ARE YOU AWARE OF THAT?

A. I WAS NOT AWARE OF THAT. WE DID NOT--WERE NOT PROVIDED ANY SCHOOL RECORDS, PER SE.

Q. WOULD IT MAKE A DIFFERENCE TO YOU AS TO THE CONSIDERATION OF HIS MALINGERING IF IN FACT HIS FIRST ACADEMIC PROBLEMS SHOWED THEMSELVES IN 1977?

A. IT WOULD NOT CHANGE MY OPINION AS TO HIS MALINGERING ON THE SPECIFIC I.Q. TEST THAT WE GAVE HIM. THERE WERE PATTERNS OF RESPONSES WITHIN THAT TEST, FOR EXAMPLE, NOT BEING ABLE TO DEFINE VERY EASY WORDS AND THEN LATER BEING ABLE TO DEFINE VERY HARD WORDS, THAT THE ONLY EXPLANATION THAT THE PSYCHOLOGIST COULD COME UP WITH TO EXPLAIN THE ACTUAL PERFORMANCE ON THAT TEST WOULD BE MALINGERING, SO IT WOULD NOT NECESSARILY CHANGE MY OPINION AS TO WHETHER HE IS MALINGERING ON OUR TEST TO LOOK AT THOSE FORMER RECORDS.

Q. BUT WOULD HIS LOW READING ABILITY, HIS LOW COMPUTATION SKILLS, WOULD ANY OF THAT AFFECT YOUR DECISION ON THIS PARTICULAR ASPECT OF IT?

A. IT WOULD CERTAINLY TO HAVE THOSE RECORDS ASSIST ME IN ARRIVING AT A VERY ACCURATE AND MORE ACCURATE DETERMINATION OF HIS ACTUAL I.Q., ESPECIALLY, FOR EXAMPLE, IF HE HAD HAD PRIOR I.Q. TESTING REPEATEDLY IN HIS SCHOOL YEARS, BUT WE DID NOT HAVE THAT INFORMATION.

Q. WELL, LET ME ASK YOU THIS: DID YOU HAVE THE INFORMATION OF JUNE 1ST, 1979, THAT BAYAN RECEIVED ALL F'S FOR THE YEAR AND WAS PUT IN SPECIAL EDUCATION CLASSES? DID YOU KNOW THAT?

A. I KNEW THAT HE HAD BEEN PLACED IN SPECIAL

EDUCATION CLASSES. WE WERE ACTUALLY TOLD THAT HAPPENED PRIOR TO THE FOURTH GRADE. I DID NOT KNOW HIS ACTUAL GRADES FOR ANY PARTICULAR SCHOOL YEAR.

Q. 1982, WERE YOU AWARE THAT NOT ONLY WAS HE HELD OVER IN GRADE SEVEN, BUT HE ALSO ON A READING SCORE, HIS CURRENT SCORE WAS 5.5 AND THERE WERE NO MATH SCORES WHATSOEVER. WERE YOU AWARE OF THAT?

THE COURT: MR. BAILEY?

MR. BAILEY: YOUR HONOR, I WOULD OBJECT TO MR. STONE ASKING THE DOCTOR QUESTIONS ON INFORMATION THAT HE HAS AVAILABLE, MR. STONE HAS, BUT HAS NOT TURNED OVER TO THE DOCTOR FOR HIS USE IN THE EVALUATION. I ASSUME THAT THERE WAS SOME CONTACT BETWEEN THE HALL INSTITUTE AND THE DEFENSE TEAM TO GET INFORMATION THAT I DON'T HAVE AVAILABLE TO ME BUT THEY DO HAVE, AND IF HE DIDN'T SEND IT ALL TO HIM, I THINK IT IS UNFAIR FOR HIM TO GRILL THE DOCTOR ON IT.

MR. STONE: I AM NOT TRYING TO GRILL HIM. TWO THINGS, YOUR HONOR. ONE IS HE INDICATED THAT HE DID HAVE SOME SCHOOL RECORDS AND HE STUDIED THOSE, IT IS MADE A PART OF HIS EXAM. I AM SIMPLY FINDING OUT EXACTLY WHICH SCHOOL RECORDS HE HAD AND WHICH ONES HE DIDN'T.

THE COURT: I WILL LET YOU PROCEED.

MR. STONE: THANK YOU, YOUR HONOR.

A. I BELIEVE I SAID, FOR CLARIFICATION, I HAD SCHOOL HISTORY. I HAVE RECORDS IN THE CREEDMORE AND IN THE JEWISH, LONG ISLAND JEWISH HOSPITAL RECORDS THAT MAKE REFERENCE TO HOW HE PERFORMED IN SCHOOL.

Q. SURE.

A. I HAVE NO RECORDS FROM ANY SCHOOL DISTRICT FROM ANY ELEMENTARY OR MIDDLE SCHOOL RELATED TO MR. ALEKSEY.

Q. DO THOSE RECORDS THAT YOU HAVE INDICATED OR HAVE YOU LOOKED AT ANY OF THOSE RECORDS WHICH WOULD INDICATE THAT IN 1983 HE WAS READING, BOTH NUMERICAL SKILLS, COMPUTATIONAL SKILLS, APPLICATION SKILLS AND CUMULATIVE TOTAL SKILLS, FAR BELOW HIS GRADE LEVEL? DID YOU KNOW THAT?

A. I KNEW THAT HE HAD HAD DEFICIENCIES IN SEVERAL SUBJECTS, INCLUDING READING AND MATH.

Q. ALL RIGHT, SIR. DOES THAT AFFECT YOUR DECISION OR YOUR OPINION TODAY AS TO HIS I.Q.?

A. NO.

Q. IT DOESN'T MAKE ANY DIFFERENCE AT ALL THAT HIS ---

A. IT CONFIRMS THAT THERE WAS EARLY EVIDENCE OF INTELLECTUAL LIMITATION. I THINK THAT THOSE

FINDINGS SUPPORT MY OPINION THAT HE FUNCTIONS IN THE BORDERLINE RANGE OF INTELLIGENCE.

Q. BUT AS TO THE MALINGERING ITSELF, DOES THAT AFFECT IT AT ALL?

A. NO. THE MALINGERING IS SPECIFIC FOR THE ACTUAL TIME IN WHICH THE TEST WAS ADMINISTERED. NOW, HAD HIS PATTERNS ON THE TEST BEEN THOSE THAT WOULD NORMALLY BE SEEN IN SOMEBODY WITH AN I.Q. OF 71, FOR EXAMPLE, HAD HE GOTTEN EASY WORDS ON THE VOCABULARY PORTION CORRECT, LIKE WORDS--I AM MAKING THESE WORDS UP.

Q. SURE.

A. BUT LIKE SAY "HOUSE" AND "BOAT" AND "CAR," BUT THEN, YOU KNOW, HE WOULD MISS EASY WORDS, THEN WORDS LIKE "INTEGRITY," "HONESTY," MUCH MORE COMPLICATED WORDS HE WOULD GET CORRECT. THAT PATTERN OF RESPONSES ON THE VOCABULARY PART OF THE I.Q. TEST, TO MISS EASY WORDS AND DEFINE HARD WORDS IS MALINGERING UNTIL PROVEN OTHERWISE. I MEAN, THERE IS JUST NO OTHER EXPLANATION FOR WHY SOMEONE WOULD BE ABLE TO PERFORM IN THAT MANNER.

NOW, HAD HE HAD A 71 I.Q. ON THAT TEST AS WE MEASURED AND NOT HAD THAT PARTICULAR PATTERN OF RESPONSES WHERE HE, LET'S SAY, GOT THE EASY WORDS CORRECT AND THEN AS THE WORDS BEGAN TO GET HARDER

STARTED MAKING ERRORS, THEN I WOULD SAY THAT THE RECORDS FROM THE SCHOOL WOULD CONFIRM WHAT WE SAW ON THE TEST, BUT THE MALINGERING IS SPECIFIC FOR THE TEST THAT WE GAVE AT THAT PARTICULAR--ON THAT DAY HE WAS MALINGERING.

Q. SO YOU ARE NOT TESTIFYING THEN THAT HE HAS BEEN MALINGERING SINCE 1977?

A. OH, NO. NO, OF COURSE NOT. AND, IN FACT, THE REASON I DID NOT PUT MALINGERING IN MY DIAGNOSIS IS BECAUSE I DIDN'T SENSE THAT HE WAS PURPOSEFULLY TRYING TO APPEAR IMPAIRED DURING MY INTERVIEW.

Q. WHERE DID YOU GET THAT FROM THEN? I READ THE REPORT. I THOUGHT---

A. THAT IS FROM THE PSYCHOLOGICAL TESTING, THE PAPER-AND-PENCIL TEST THAT THE PSYCHOLOGIST DID ON ANOTHER DAY AT OUR HOSPITAL. THAT IS WHEN I THINK, AND THE RECORDS INDICATE HE WAS MALINGERING ON THOSE PAPER-AND-PENCIL TESTS. I DO NOT SENSE THAT HE WAS OVERTLY MALINGERING DURING MY CLINICAL INTERVIEW WITH HIM. AND THOSE ARE TWO SEPARATE POINTS IN TIME.

Q. THE ADJUSTMENT DISORDER THAT YOU REFERRED TO,---

A. YES.

Q. ---AND I BELIEVE ALSO SOMEWHERE IN THIS REPORT YOU INDICATE THAT HE HAS DIFFICULTY ADJUSTING TO

INCARCERATION; IS THAT CORRECT?

A. YES.

Q. IS THAT JUST FROM SPEAKING TO HIM AND HIM TELLING YOU HOW HE DIDN'T LIKE IT AND THE VARIOUS OTHER PROBLEMS THAT HE HAD IN PRISON?

A. YES. PRIMARILY, THAT IS FROM HIS SELF REPORT. IT IS ALSO FROM REVIEWING THE HISTORY OF MEDICAL CONTACTS WITH THE MEDICAL DEPARTMENT AT THE DEPARTMENT OF CORRECTIONS.

Q. YOU DID REFER TO THE -- YOU SEARCHED THE LEE COUNTY RECORDS; IS THAT RIGHT?

A. WE WERE PROVIDED MEDICAL RECORDS FROM LEE COUNTY CORRECTIONAL INSTITUTION.

Q. WHAT ABOUT DISCIPLINARY RECORDS, DID YOU LOOK AT THOSE?

A. NO.

Q. YOU DON'T KNOW IF HE HAS HAD ANY FIGHTS OR ANY ALTERCATIONS WITH OTHER INMATES OR GUARDS OR ANYTHING LIKE THAT?

A. FROM RECORDS? NO.

Q. SO YOUR TESTIMONY AS TO THIS ADJUSTMENT DISORDER IS BASICALLY THAT HE DOESN'T LIKE IT THERE, HE IS NOT HEALTHY THERE?

A. NO, THAT HE IS UNDER -- FIRST OF ALL, LET ME SAY THAT ANYONE IN HIS POSITION THAT IS LOCKED UP IN A

MAXIMUM SECURITY PRISON WOULD FIND THAT VERY DIFFICULT. IT IS VERY STRESSFUL. IT IS A STRESSFUL ENVIRONMENT FOR ANYONE. HOWEVER, I THINK THAT MR. ALEKSEY'S REACTION TO THAT STRESSFUL ENVIRONMENT GOES BEYOND WHAT A NORMAL PERSON WOULD NORMALLY EXPERIENCE.

FOR EXAMPLE, I THINK THAT HE TENDS TO EXPERIENCE STRESS IN SOMATIC WAYS, IN OTHER WORDS, PAIN: CHEST PAIN, BACK PAIN, HEADACHES, FREQUENT HEADACHES, THAT HIS EMOTIONAL STRESS IS FREQUENTLY EXPERIENCED WITH PHYSICAL PAIN.

ALSO, THAT HE HAS BECOME SOMEWHAT PARANOID IN THAT SITUATION. SOME PARANOIA WOULD BE NORMAL TO BE LOCKED UP IN A SITUATION LIKE THAT. HOWEVER, WHEN HE STARTS WONDERING ABOUT---

THE COURT: LET ME INTERRUPT HERE. THE FACT THAT HE DOESN'T LIKE TO BE LOCKED UP, WHAT HAS THAT GOT TO WITH THE ISSUES BEFORE ME ON COMPETENCY?

MR. STONE: EXACTLY. AND THAT IS EXACTLY MY POINT, YOUR HONOR.

THE COURT: WELL, WAIT A MINUTE.

MR. STONE: HE WAS ASKED TO DO A COMPETENCY EVALUATION.

THE COURT: WAIT A MINUTE, NOW.

MR. STONE: YES, SIR.

THE COURT: WE ARE HERE ON A COMPETENCY HEARING. IF YOU HAVE GOT SOME OTHER POINT TO MAKE, YOU CAN MAKE IT IN THE TRIAL OF THE CASE, BUT WE ARE NOT HERE NOW FOR SOME FISHING EXPEDITION ON ANOTHER ISSUE.

MR. STONE: IF, YOUR HONOR, THIS DOCTOR IS ESTABLISHED TO TESTIFY AS TO A DISORDER, WHICH THE SOLICITOR REFERRED TO AS A ADJUSTMENT DISORDER, WHICH SPECIFICALLY TALKS ABOUT BAYAN ALEKSEY'S ADJUSTMENT TO PRISON, THAT IS NOT WHAT YOU SEND HIM OFF FOR; AND I WOULD OBJECT TO ANY REFERENCE TO THAT IN THIS REPORT AND ANY TESTIMONY FROM THIS DOCTOR.

THE COURT: WELL, SAY THAT, BUT LET'S NOT GO INTO THAT ISSUE THAT HE DOESN'T LIKE TO BE LOCKED UP, LET'S DEAL NOW WITH A BLAIR HEARING.

MR. STONE: YES, SIR. AND I WANT TO MAKE SURE, YOUR HONOR, FROM MY QUESTIONS OF HIM THAT HE IS NOT QUALIFIED TO GIVE THAT OPINION. AND IF THE SOLICITOR WILL STIPULATE TO THAT---

THE COURT: WELL, THAT OPINION, WHETHER HE GIVES IT OR NOT, IS NOT BEFORE ME. THE QUESTION IS A BLAIR HEARING. THE FACT THAT HE DOESN'T LIKE TO BE LOCKED UP WE WILL CONSIDER AT THE TIME IT MAY

BECOME APPROPRIATE, BUT LET'S LIMIT THIS QUESTION, IF YOU WILL, SIR,---

MR. STONE: YES, SIR.

THE COURT: ---TO THOSE ISSUES THAT ARE CONTAINED IN A BLAIR HEARING.

Q. WHAT IS THE DIFFERENCE BETWEEN AGGRESSIVE AND NON-AGGRESSIVE DISORDER, PERSONALITY DISORDER? I KNOW YOU GAVE ME THE FULL NAME OF THIS. WHAT DID YOU FIND HIM? WHAT IS THE PROBLEM WITH HIM, PERSONALITY DISORDER BORDERLINE?

A. OH, MIXED PERSONALITY DISORDER WITH BORDERLINE AND ANTISOCIAL FEATURES.

Q. IS THERE AN AGGRESSIVE AND NON-AGGRESSIVE TYPE?

A. NO.

Q. OKAY. THERE IS A REFERENCE IN YOUR REPORT TO "AGGRESSIVE NATURE." WHAT ARE YOU TALKING ABOUT?

A. YOU WOULD HAVE TO POINT OUT THAT REFERENCE TO ME. I CANNOT ANSWER A QUESTION LIKE THAT OUT OF CONTEXT.

I DON'T REMEMBER USING THE WORD "AGGRESSIVE." I REMEMBER "ANGER" ON PAGE 4 OF MY REPORT.

Q. OKAY. YOUR COMMENT I BELIEVE IS ON PAGE -- DO YOU HAVE A COPY OF YOUR REPORT?

A. YES.

Q. I UNFORTUNATELY HAVE A FAX COPY, SO I DON'T KNOW

EXACTLY WHAT PAGE THIS IS ON, IT IS RIGHT OVER MENTAL STATUS EVALUATION.

A. LIKE "BORDERLINE FEATURES INCLUDE..."?

Q. RIGHT. AND, IN FACT, THIS INCLUDES INTENSE ANGER, DIFFICULTY CONTROLLING ANGER,---

A. CORRECT.

Q. ---THINGS LIKE THAT? NOW, IS THIS A GENERAL DISORDER, OR IS THIS SOMETHING SPECIFIC OF BAYAN ALEKSEY?

A. I DON'T UNDERSTAND YOUR QUESTION.

Q. DO YOU UNDERSTAND MY QUESTION?

A. NO.

Q. OKAY. YOU SAID THAT BAYAN ALEKSEY HAD SYMPTOMS OF A BORDERLINE PERSONALITY--EXCUSE ME--MIXED PERSONALITY DISORDER WITH BORDERLINE AND ANTISOCIAL FEATURES; IS THAT RIGHT?

A. YES.

Q. NOW, THAT DOESN'T MEAN HE HAS GOT EVERY ONE OF THOSE SYMPTOMS?

A. NO.

Q. HE JUST HAS SYMPTOMS OF THAT?

A. CORRECT. THERE IS SPECIFIC CRITERIA TO DIAGNOSE BORDERLINE PERSONALITY DISORDER; THERE IS SPECIFIC CRITERIA TO DIAGNOSE ANTISOCIAL PERSONALITY DISORDER.

Q. AND YOU ARE FAMILIAR AND YOU DID READ THOSE MEDICAL RECORDS THAT I BELIEVE YOU REFERRED TO EARLIER THAT I PROVIDED TO YOU?

A. YES.

Q. OKAY. BOTH OF THOSE DOCTORS, AND I WANT TO MAKE SURE WE ARE ON THE SAME PAGE, INDICATED THAT HE HAD A DISORDER BUT IT WAS NON-AGGRESSIVE. DO YOU AGREE OR DISAGREE WITH THOSE TWO FINDINGS?

MR. BAILEY: JUDGE, I AM GOING TO OBJECT AT THIS POINT. I THINK HE IS VIOLATING YOUR HONOR'S PRIOR RULING.

THE COURT: I DO TOO. I WANT TO GIVE HIM SUCH LATITUDE AS REQUIRED, BUT YOU ARE GOING WAY BEYOND A BLAIR HEARING.

NOW, IN THE APPROPRIATE STAGE OF THIS HEARING YOU WILL HAVE THE LATITUDE AS REQUIRED, BUT LIMIT YOURSELF TO HIS COMPETENCY HERE, WHICH I THOUGHT YOU SAID WAS NOT IN QUESTION.

MR. STONE: YES, SIR. JUST ONE MORE QUESTION. THE ONLY THING I WAS ASKING AT THIS POINT WAS IT WAS THE SAME DIAGNOSIS AND IT HAD BEEN CONSISTENT BECAUSE I NEED TO KNOW WHAT I AM DEALING WITH.

THE COURT: I AM GOING---

Q. DO I NEED TO REPHRASE MY QUESTION? THE DOCTOR

FIRST AT THE LONG ISLAND JEWISH MEDICAL CENTER, I BELIEVE THAT WAS HILLSIDE, FOUND THAT HE WAS CONDUCT DISORDER SOCIALIZED NON-AGGRESSIVE. IS THAT THE SAME OR DOES THAT DIFFER FROM YOUR DIAGNOSIS?

A. THAT IS A COMPLETELY DIFFERENT DIAGNOSIS. CONDUCT DISORDER IS MADE IN PEOPLE PRIOR TO AGE 18. MANY PEOPLE WITH CONDUCT DISORDER GO ON TO DEVELOP ANTISOCIAL PERSONALITY DISORDER, BUT MANY PEOPLE WITH A CONDUCT DISORDER DO NOT.

MR. STONE: I DON'T HAVE ANYTHING ELSE, YOUR HONOR.

THE COURT: ALL RIGHT. ANY FURTHER WITNESSES?

MR. BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: ALL RIGHT, SIR, YOU MAY COME DOWN AND ARE EXCUSED.

(DR. FRIERSON EXCUSED.)

THE COURT: ANY OTHER WITNESSES?

MR. BAILEY: NO, SIR, NOT IN REGARDS TO THE BLAIR ISSUE.

THE COURT: DO YOU HAVE ANY WITNESSES?

MR. STONE: NO, SIR.

THE COURT: DO YOU HAVE ANY POSITION WITH REFERENCE TO THE STATE'S POSITION AS TO COMPETENCE

TO STAND TRIAL, UNDERSTANDING THE NATURE OF THE CHARGES AND WHETHER OR NOT HE HAD THE ABILITY TO DIFFERENTIATE RIGHT FROM WRONG?

MR. STONE: NO, SIR, YOUR HONOR, AND I WOULD LIKE TO NOTE THAT I HAVE NEVER HAD ANY POSITION--I HAVE NEVER HAD ANY QUESTION ABOUT HIS COMPETENCY TO STAND TRIAL. THAT WAS SOMETHING THAT CAME UP AT THE EARLIER HEARING CONCERNING THIS.

THE COURT: ALL RIGHT, SIR. FIRST -- AND YOU ARE SAYING THAT YOU HAVE NO WITNESSES TO PRODUCE?

MR. STONE: THAT'S RIGHT, YES, SIR.

THE COURT: THEN THIS STATEMENT TO WHICH WE HAVE MADE REFERENCE IS MADE A PART OF THE RECORD AND THE FINDINGS THEREIN CONTAINED ARE MADE THE FINDINGS OF THE COURT AND A FORMAL ORDER THEREABOUTS WILL FOLLOW.

FOR PURPOSES OF THIS HEARING I FIND SPECIFICALLY AS FOLLOWS BEYOND A REASONABLE DOUBT THAT THE ABOVE-NAMED DEFENDANT IS CAPABLE OF UNDERSTANDING THE NATURE OF THE CHARGES AND IS CAPABLE OF ASSISTING COUNSEL IN HIS OWN DEFENSE.

SECONDLY, THAT THE ABOVE-NAMED DEFENDANT DID HAVE THE ABILITY TO DIFFERENTIATE RIGHT FROM WRONG AT THE TIME OF THE ALLEGED OFFENSE ON OR

ABOUT DECEMBER 31ST OF 1997.

LASTLY, I FIND BEYOND A REASONABLE DOUBT THAT THE ABOVE-NAMED DEFENDANT DID HAVE THE CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW.

NOW, THAT WILL CONCLUDE THE BLAIR HEARING. NOW, IF WE CAN STOP JUST A MOMENT AND BRING THAT JURY IN AND LET ME TAKE THIS VERDICT. I APOLOGIZE FOR THE INTERRUPTION.

MR. STONE: THAT'S FINE.

(VERDICT TAKEN IN ANOTHER CASE.)

THE COURT: WE HAVE RESOLVED NOW THE ISSUES WITH REGARD TO THE BLAIR HEARING. WHAT IS NEXT?

MR. BAILEY: YOUR HONOR, THE TRANSCRIPT OF THE TAPED STATEMENT IS BEFORE YOU. THE MATERIAL THAT IS HIGHLIGHTED IN YELLOW WE HAVE AGREED THAT SHOULD GO OUT IN THE GUILT PHASE. THE MATERIAL HIGHLIGHTED IN GREEN IS WHAT WE HAVE THE ISSUE WITH, SO I GUESS THAT IS ALL WE NEED TO ADDRESS IS WHAT IS IN GREEN.

THE COURT: ALL RIGHT, SIR, WE WILL BEGIN TO ADDRESS THAT AT THIS TIME. AS A THRESHOLD MATTER, NOW, LET THE RECORD REFLECT THAT AT A PREVIOUS HEARING HERE IN RICHLAND COUNTY WE HAVE HAD A JACKSON V. DENNO HEARING, AND I BELIEVE AT

THE TIME WE CONCLUDED THAT HIS MIRANDA RIGHTS HAD BEEN MET AND THAT THE STATEMENT WAS OTHERWISE ADMISSIBLE. ISN'T THAT TRUE?

MR. BAILEY: THAT'S CORRECT, YOUR HONOR.

MR. STONE: YES, SIR. YOUR HONOR, OF COURSE, WHILE WE ARE GOING INTO THIS REDACTION, THERE IS NO POSITION ON THE DEFENSE THAT THIS IS ADMISSIBLE ANYWAY. WE STILL OBJECT TO THE CONFESSION ITSELF.

THE COURT: I UNDERSTAND THAT, BUT I NEED TO -- LET THE RECORD REFLECT THAT WE HAVE HAD THE JACKSON V. DENNO HEARING.

MR. STONE: YES, SIR. YES, SIR.

THE COURT: ALL RIGHT, SIR, LET'S PROCEED. I HAVE THIS STATEMENT. THERE IS NOTHING IN CONTROVERSY ON PAGE ONE; IS THAT CORRECT?

MR. STONE: THAT'S RIGHT.

MR. BAILEY: THAT'S CORRECT.

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT, SIR, ON PAGE TWO THERE IS THIS STATEMENT: "THE REASON WHY FOR THIS GUN IS BECAUSE OF THE TEXT OF WHICH I WILL GET INTO LATER ON."

WHAT IS WRONG WITH THAT?

MR. STONE: WELL, IT REFERRED -- AND IT MAY

VERY WELL BE TAKEN CARE OF BY THE OTHER STATEMENT, THE OTHER STATEMENTS THAT WE HAVE ON THE NEXT PAGES, BUT THE ISSUE IS THE SOLICITOR WANTS THAT IN BECAUSE THE GUN ITSELF, HIS POSITION IS GOING TO BE THE GUN WAS STOLEN. I DON'T KNOW WHAT RELEVANCE THAT HAS TO THE SHOOTING OF THE HIGHWAY PATROLMAN.

THE COURT: LET'S GET INTO THAT LATER, BUT THIS BARE-BONES STATEMENT HERE CANNOT BE DETRIMENTAL TO THE DEFENDANT THAT SAYS, "THE REASONS WHY FOR THE GUN IS BECAUSE OF THE TEXT OF WHICH I WILL GET INTO LATER."

I DON'T SEE WHY YOU NEED IT EITHER, MR. BAILEY.

MR. BAILEY: YOUR HONOR, I MAY NOT---

THE COURT: WE WILL GET INTO THE OTHER ISSUES LATER, BUT I AM CONFRONTED WITH THIS ONE LITTLE STATEMENT HERE.

MR. BAILEY: YES, SIR. IT MAY NOT BE -- MY CASE IS NOT GOING TO RISE OR FALL ON THAT ONE STATEMENT, BUT---

THE COURT: LET'S LEAVE THAT OUT BECAUSE IT REFERS TO "A TEXT LATER ON," WHICH MAY NOT BE THERE WHEN WE GET THROUGH. SO I AM GOING TO STRIKE THAT.

MR. BAILEY: ALL RIGHT.

THE COURT: NOW, FOR THE PRESS'S

EDIFICATION, THESE MATTERS THAT I STRIKE I ASK THAT YOU COMPLY WITH MY FORMER RULING. I AM GOING TO MAKE THIS ENTIRE STATEMENT AVAILABLE TO YOU.

MR. BAILEY: I KNOW YOU HAVE RULED AND I AM NOT ARGUING WITH THE COURT, BUT I WOULD JUST TAKE ISSUE WITH YOUR HONOR'S RULING. I THINK ANY REFERENCE TO THE GUN INDICATES KNOWLEDGE OF THE GUN. IT TIES IN NOT ONLY WITH LATER PORTIONS OF THE STATEMENT, BUT IT TIES IN WITH--

THE COURT: I MAY LET THAT IN WHEN WE GET TO IT, BUT I AM GOING TO DELETE THIS PARTICULAR STATEMENT.

MR. BAILEY: YES, SIR.

THE COURT: NO, I AM NOT RULING ON WHETHER OR NOT I AM GOING TO LET THE GUN IN. WE WILL DEAL WITH THAT NEXT.

ALL RIGHT, WE ARE AT PAGE THREE ON THE TOP LINE. THE STATEMENT THAT THE SOLICITOR DESIRES IN IS THIS: "I PANICKED BECAUSE I HAVE PROBLEMS IN NEW YORK AND PHILADELPHIA."

WHAT IS YOUR OBJECTION TO THAT?

MR. STONE: HE IS SPEAKING OF "PANIC" IN THAT CASE, YOUR HONOR, AND THIS WAS NOT CLEAR FROM THE MATTER OF CONTEXT. HE IS TALKING ABOUT THE PANIC FROM FLEEING THE SCENE.

THE COURT: YES, SIR.

MR. STONE: NOT FROM THE SHOOTING OF THE TROOPER. IT IS ABSOLUTELY IRRELEVANT AS TO THE SHOOTING OF THE HIGHWAY PATROL TROOPER. IN FACT, HE IS GIVING THIS AS HIS REASON FOR RUNNING, BUT NOT FOR SHOOTING OF THE TROOPER. THAT IS TWO DIFFERENT THINGS. MY CONCERN ONLY WOULD BE FROM THE FACT THAT HE HAS GOT REFERENCE TO SOME PROBLEMS IN PHILADELPHIA AND NEW YORK WHICH ARE IRRELEVANT.

THE COURT: WELL, LET ME HEAR THE STATE'S POSITION.

MR. BAILEY: YES, SIR. YOUR HONOR, WHAT I AM GOING TO SAY ABOUT THIS KIND OF CARRIES THROUGH ALL THESE REFERENCES TO HIS FLIGHT AND PRIOR OFFENSES AND ALL THAT. I HAVE TO ESTABLISH MOTIVE IN THIS CASE. THE STATE'S TESTIMONY IN REGARD TO MOTIVE IS GOING TO BE THAT THE CAR ALEKSEY HAD WAS REPORTED STOLEN, THE TAG WAS REPORTED STOLEN. IN ADDITION TO THAT, HE HAD NUMEROUS ARREST WARRANTS OUT FOR HIM IN THE NORTHEAST, PHILADELPHIA AND NEW YORK AND ALL, AND HE GAVE A STATEMENT, AS YOUR HONOR KNOWS, INITIALLY THAT GLORYVEE PEREZ BLACKWELL, THE YOUNG WOMAN WITH HIM, WAS THE ONE THAT DID THE SHOOTING. HE LATER RECANTED THAT STATEMENT AND ADMITTED THAT HE DID THE SHOOTING.

ALSO AT SOME POINT IN TIME HE CALLED WIS AND BLAMED THE SHOOTING ON THE GIRL. SO UNLESS I AM TOTALLY SHOCKED AT TRIAL, HE IS GOING TO TRY TO PIN THIS MURDER ON SOMEBODY ELSE THAT WAS WITH HIM.

THE COURT: AND YOUR POSITION---

MR. BAILEY: AND IT IS ESSENTIAL TO ME, YOUR HONOR, TO SHOW MOTIVE.

THE COURT: MOTIVE THAT HE RESISTED THIS ARREST BECAUSE IT WOULD COME OUT THAT HE WAS WANTED IN NEW YORK AND PENNSYLVANIA?

MR. BAILEY: YES, SIR.

MR. STONE: HE HAS BEEN WANTED IN PENNSYLVANIA AND NEW YORK FOR YEARS, YOUR HONOR, ON PAPER CHARGES. NOW, IF THAT IS RELEVANT AND IF THAT COMES IN -- I WOULD AGREE WITH THE SOLICITOR THIS: I AM EXACTLY GOING TO TRY TO PIN IT ON THE WOMAN WHO WAS IN THE CAR.

THE COURT: WELL, LET ME SAY THIS TO YOU AT THE OUTSET AND AS A THRESHOLD MATTER: THIS DEFENDANT, ON TRIAL FOR HIS LIFE, IS ENTITLED TO A FAIR TRIAL, AND HE IS GOING TO RECEIVE IT. THE PEOPLE OF SOUTH CAROLINA AND THE VICTIM'S FAMILY TOO IS ENTITLED TO A FAIR TRIAL. AND THE STATE, IN MY VIEW, IS ENTITLED TO LEAVE THIS IN. IT WAS HIS STATEMENT, AND THEY ARE ENTITLED TO LEAVE IT IN TO

SHOW MOTIVE, IF THEY CAN. I WILL PERMIT THAT TO COME IN. THIS IS THE DEFENDANT'S STATEMENT. SO THAT WILL REMAIN.

NEXT, PLEASE. NOW, MIDDLEWAYS THROUGH THE NEXT STATEMENT ATTEMPTED TO BE REDACTED IS AS FOLLOWS: "OK, I DO HAVE WARRANTS. I DO HAVE WARRANTS OUT IN PHILADELPHIA AND NEW YORK."

I AM GOING TO LET THAT IN FOR THE SAME REASON THAT I LET THE PRECEDING STATEMENT IN, BUT I WILL BE GLAD TO HEAR FROM YOU ON THAT.

MR. STONE: WELL, I THINK, YOUR HONOR, I DON'T THINK ANY OF THAT FITS UNDER 404(B), I DON'T THINK IT FITS UNDER RES GESTAE AS IT WAS OUTLINED AT LEAST IN STATE V. GAGUM, AND I ALSO DON'T THINK THAT EVEN IF IT IS FOR SOME REASON ADMISSIBLE UNDER THOSE TWO PREMISES, I THINK THE PREJUDICIAL EFFECT OF IT FAR OUTWEIGHS ANY SUBSTANTIVE EVIDENCE THAT IT PROVIDES. I UNDERSTAND YOUR RULING, HOWEVER, AS TO MOTIVE.

THE COURT: IT SEEMS TO ME THAT THE STATE'S CASE HAS GOT TO BE THAT THIS EVENT, FOR WHOEVER DID IT, OCCURRED BECAUSE THEY WERE AFRAID OF BEING ARRESTED KNOWING THAT THESE ARREST WARRANTS AND THIS PRIOR RECORD WOULD COME OUT. IT SEEMS TO ME IT IS CLEAR THE STATE IS ENTITLED TO SHOW MOTIVE

FOR NOT ACCEPTING A SIMPLE DRIVING UNDER SUSPENSION CHARGE OR SPEEDING CHARGE.

MR. STONE: THAT, YOUR HONOR, I WOULD SUBMIT THAT IS A STRETCH ON THE PART OF THE STATE. THESE CASES HAVE BEEN PENDING FOR YEARS ON HIM.

I WOULD SAY THIS, THOUGH. IT IS OUR POSITION THAT THE CO-DEFENDANT IN THIS CASE, THE OLD CO-DEFENDANT, HAS THE SAME TYPE OF PROBLEMS THAT MR. ALEKSEY DOES, AND IF WE GET INTO IT FOR MR. ALEKSEY'S STANDPOINT, I WILL AT TRIAL SEEK TO GET INTO IT AS TO MS. PEREZ.

THE COURT: I MAY LET YOU DO IT, DEPENDING ON---

MR. BAILEY: MS. PEREZ HAD NO OUTSTANDING WARRANTS. SHE HAD A RECORD THAT I MADE AVAILABLE TO MR. STONE, AND THERE WERE NO---

THE COURT: WELL, IF HE IS ENTITLED TO GET INTO THAT INDIVIDUAL'S RECORD, WE WILL DO IT AT THE TRIAL, BUT I AM CONCERNED NOW WITH HIS STATEMENT AND NOT HERS. I AM GOING TO LET THAT REFERENCE IN.

NOW, THE THIRD, "AND AT TIMES I GOT ARRESTED...," HAVING LET THE OTHER TWO LINES IN, I AM GOING TO LET THAT ONE IN.

NOW, THE NEXT LINE IS ABOUT MIDDLEWAYS, AND FOR THE PRESS'S EDIFICATION THESE ARE MARKED IN

GREEN WHICH I WILL PROVIDE TO YOU, THE NEXT ONE IS, "...I HAVE FAMILY WHO IS IN LAW ENFORCEMENT. AND ALL THE TIMES I'VE GOTTEN IN..."

MR. BAILEY: WELL, I THINK YOU MIGHT HAVE SKIPPED SOMETHING HERE.

THE COURT: SIR?

MR. BAILEY: I THINK YOU MIGHT HAVE SKIPPED SOMETHING ON THE BOTTOM OF PAGE THREE.

THE COURT: WELL, I HAVEN'T GOTTEN THERE YET. I HAVE GOT HERE ABOUT MIDDLEWAYS---

MR. STONE: "AND AT TIMES I GOT ARRESTED" IS WHERE YOU ARE.

THE COURT: YES, "AT THE TIMES I GOT ARRESTED--IN TROUBLE OR WHATEVER IN NEW YORK."

MR. BAILEY: OKAY. OKAY, THAT WASN'T HIGHLIGHTED IN GREEN ON MY COPY.

THE COURT: IT IS IN MINE. DO YOU WANT IT OR NOT?

MR. BAILEY: I'M SORRY.

THE COURT: I THINK MAYBE I SHOULD LEAVE THAT OUT, QUITE FRANKLY.

MR. BAILEY: JUDGE, LET ME MAKE SURE I'VE GOT THAT. "AND AT TIMES I GOT ARRESTED IN PENNSYLVANIA..."

THE COURT: WE'VE ALREADY GOT IN THERE -- I

DON'T WANT TO GET IN TOO MUCH NOW OF THE PRIOR RECORD. THOUGH I UNDERSTAND YOUR BASIS FOR SHOWING MOTIVE, AT THE SAME TIME I DON'T WANT TO GET INTO HIS PRIOR RECORD UNLESS HE TESTIFIES.

MR. BAILEY: YES, SIR.

THE COURT: WHAT IS YOUR POSITION ON THAT LINE?

MR. BAILEY: YOUR HONOR, HOW FAR DOWN DO YOU WANT TO BEGIN? MINE WASN'T DELETED ON MY COPY.

THE COURT: START AT THE WORD "AND," "AND ALL THE TIMES I'VE GOTTEN IN TROUBLE OR WHATEVER IN NEW YORK." JUST DELETE THAT PART BECAUSE THAT IS KIND OF WIDE-RANGING.

MR. BAILEY: OKAY.

MR. STONE: YOUR HONOR, YOU CAN---

THE COURT: THE DEFENSE ASKED ME TO DELETE THAT.

MR. STONE: YOU CAN LEAVE "IN NEW YORK," IT FLOWS IN THE NEXT SENTENCE. IT SHOULD STOP RIGHT AFTER "WHATEVER."

THE COURT: LET'S SEE. "WHATEVER," THAT'S RIGHT.

MR. STONE: YES, SIR.

THE COURT: JUST LEAVE "IN NEW YORK" AND ENDS AT THE WORD "WHATEVER." "IN NEW YORK" IS IN.

DO YOU HAVE THAT? I JUST WANT TO LEAVE OUT "ALL THE TROUBLE I'VE GOTTEN INTO OR WHATEVER." THAT IS SO WIDE-RANGING THAT IT WOULD BE UNFAIR AND PREJUDICIAL.

ALL RIGHT, LET'S GO TO THE NEXT ONE, MR. BAILEY. UNDER THAT ABOUT FIVE LINES IS THIS, "...IF YOU SEE MY RAP SHEET AND TALK TO KATHERINE, OK, I HAVE PROBLEMS IN THE CLUB IN NEW YORK OR WHATEVER AND I GOT PROBLEMS OK..."

I THINK -- WHAT IS YOUR POSITION THERE? I HAVE LET YOU COME IN IN THE OTHER SEVERAL THINGS. I DON'T WANT TO GO TOO FAR, NOW. OUR SUPREME COURT---

MR. BAILEY: YES, SIR, I UNDERSTAND THAT, YOUR HONOR. IF YOU WILL RECALL AT THE JACKSON V. DENNO HEARING, ONE OF THE TROOPERS HAD A CONVERSATION WITH ALEKSEY AT JAIL. I CAN'T REMEMBER RIGHT OFF THE BAT WHICH TROOPER IT WAS, BUT AT ANY RATE HE DID NOT COMPLY WITH MIRANDA, HE DIDN'T GIVE MR. ALEKSEY HIS MIRANDA RIGHTS, BUT PART OF WHAT HE TESTIFIED TO WAS THAT IN THE CONVERSATION WITH ALEKSEY AT ONE POINT HE ASKED ALEKSEY, "WHY DID YOU SHOOT THE TROOPER?". AND HE SAID SOMETHING TO THE EFFECT THAT, "I THOUGHT HE WAS A MAFIA HIT MAN OR SOMETHING." I KNOW I CAN'T

BRING THAT IN IN MY CASE IN CHIEF BECAUSE OF MIRANDA WASN'T COMPLIED WITH, BUT IF ALEKSEY TESTIFIES I THINK THAT CAN BE USED FOR IMPEACHMENT DEPENDING ON WHAT HE SAID, SINCE IT WAS OBVIOUSLY A VOLUNTARY STATEMENT IN THE HOSPITAL.

THE COURT: BUT I AM CONCERNED THAT---

MR. BAILEY: THIS WOULD TIE IN TO THAT STATEMENT---

THE COURT: SIR?

MR. BAILEY: THIS WOULD TIE IN TO THAT.

THE COURT: YES, BUT YOU ARE GOING TO PROPOSE TO USE THIS STATEMENT IN CHIEF, AND WE DON'T KNOW WHETHER HE WILL OR WILL NOT TESTIFY.

MR. BAILEY: YES, SIR.

THE COURT: AND THAT IS MY CONCERN. A LOT OF THIS WOULD BE ADMISSIBLE IF HE TESTIFIES, BUT I DON'T KNOW THAT THAT IS GOING TO OCCUR.

MR. BAILEY: YOUR HONOR, I WOULD AGREE WITH THE PART ABOUT "IF YOU SEE MY RAP SHEET."

THE COURT: YES, SIR, THAT HAS GOT TO GO OUT.

MR. BAILEY: "AND YOU TALK TO KATHERINE, OK," BUT THE OTHER PART, "I HAVE PROBLEMS IN THE CLUB IN NEW YORK OR WHATEVER OK AND I GOT PROBLEMS," I DON'T SEE HOW THAT INDICATES A PRIOR

CRIME.

THE COURT: NO, I DON'T MIND THAT PART. I WANT "THE RAP SHEET" OUT OF THERE. OF COURSE, OBVIOUSLY THE RAP SHEET WILL COME IN IF HE TESTIFIES. OUR CONCERN IS, THOUGH, PROTECTING HIS RIGHTS IF HE DOESN'T TESTIFY. DO YOU UNDERSTAND WHAT I AM SAYING NOW, MR. STONE?

MR. STONE: YES, SIR. THE PREVIOUS REDACTION THAT YOU MADE IS "AT ALL TIMES I'VE GOTTEN IN TROUBLE," AND MY POSITION IS THAT IS THE SAME THING AS TALKING ABOUT "I HAVE PROBLEMS IN NEW YORK." YOU KNOW, I AM CONFUSED AT THIS POINT ABOUT WHAT THE STATE'S MOTIVE IS GOING TO BE. IS IT THAT HE HAS GOT PROBLEMS IN A CLUB IN NEW YORK OR HE IS RUNNING FROM THESE ARRESTS THAT HE HAS NEVER BEEN CONVICTED OF?

THE COURT: DO YOU WANT TO RESPOND TO THAT, MR. BAILEY?

MR. BAILEY: JUDGE, I CAN'T GET INSIDE OF MR. ALEKSEY'S MIND. I DON'T KNOW WHY HE DID IT. I THINK IT IS UP TO THE JURY WHAT HE SAYS.

THE COURT: ALL RIGHT, WHICH PART ARE WE AGREEING IS GOING TO BE DELETED?

MR. BAILEY: SIR?

THE COURT: WHICH PART ARE WE AGREEING THAT

IS GOING TO BE DELETED?

MR. BAILEY: "...IF YOU SEE MY RAP SHEET AND YOU TALK TO KATHERINE..."

THE COURT: LEAVE THAT OUT?

MR. BAILEY: YES, SIR.

THE COURT: I DON'T SEE ANY PROBLEM WITH THE "PROBLEMS IN THE CLUB IN NEW YORK." I DON'T SEE THAT. THIS IS HIS STATEMENT, ANYWAY.

ALL RIGHT, NOW, HOW ABOUT THE NEXT SIGNIFICANT LINE ABOUT WHAT "KATHERINE TOLD ME."

MR. BAILEY: OKAY.

THE COURT: TELL ME WHAT YOUR POSITION THERE IS.

MR. BAILEY: AGAIN, IT SAYS, "...KATHERINE TOLD ME, KATHERINE SAID TURN YOURSELF IN, IT'S MINOR CRIMES, BUT THAT'S NOT WHAT I'M RUNNING FROM, I'M RUNNING FROM SOMEBODY WHO'S GOT A CONTRACT ON MY LIFE IN NEW YORK." THEN IT GOES ON, "FOR FIVE YEARS I'VE BEEN RUNNING," SO ON AND SO FORTH.

THE COURT: DO YOU OBJECT TO THAT, MR. STONE?

MR. STONE: YES, SIR.

THE COURT: ON WHAT BASIS? IT DOESN'T REFLECT THAT IT IS A PRIOR RECORD. THAT MAY BE A BASIS FOR---

MR. STONE: WHEN YOU SAY "CONTRACT ON YOUR HEAD," IT INDICATES CONNECTION WITH THE MAFIA, AND I THINK THAT IS EXACTLY WHAT THE SOLICITOR IS TRYING TO GET AT BY GETTING IT IN.

THE COURT: IT DOESN'T INDICATE HE IS FRIENDLY TO THE MAFIA, IT INDICATES---

MR. STONE: NO, SIR, BUT I THINK -- HE IS NOT A PRIOR LAW ENFORCEMENT OFFICER EITHER.

THE COURT: WHY DO YOU SAY YOU NEED THAT, SOLICITOR?

MR. BAILEY: AGAIN, I MAY NOT HAVE TO HAVE THAT IN THERE, BUT IF TOO MANY PIECES GET PULLED OUT OF THIS THING, THE STATEMENT IS NOT GOING TO FLOW TO THE JURY. HE SAID IT. THE JURY MAY OR MAY NOT THINK HE HAS GOT MAFIA CONTACTS, BUT THIS IS SOMETHING HE SAID AND THE JURY CAN INTERPRET IT.

THE COURT: I AM GOING TO LEAVE IT IN AT THIS TIME. NOW, WE CAN REVISIT THAT ISSUE AT THE TRIAL OF THE CASE, BUT FOR PURPOSES OF THIS TIME I AM GOING TO LEAVE IT IN.

MR. STONE, AT THE TRIAL JUST PRIOR TO THE INTRODUCTION OF THIS STATEMENT WE CAN REVISIT THAT PARTICULAR ISSUE.

MR. STONE: YES, SIR.

THE COURT: IT MAY DEPEND ON HOW THE TRIAL

GOES. IT MAY DEPEND ON YOUR CROSS EXAMINATION OF OTHER WITNESSES.

MR. STONE: THAT IS WHY I AM TRYING TO GO OVER THIS NOW, YOUR HONOR, TO BE HONEST WITH YOU.

THE COURT: I UNDERSTAND. NOW, LET'S GO THEN TO PAGE FIVE. SOLICITOR, WHAT IS YOUR POSITION THERE?

MR. BAILEY: HE SAYS, REFERENCING THE MURDER WEAPON, "I'VE TAKEN IT FROM SOMEBODY, MY EX-GIRLFRIEND, SHE DIDN'T EVEN KNOW ABOUT IT. SHE KNEW ABOUT IT, BUT SHE TRIED TO GET IT BACK AND I WOULDN'T RETURN IT TO HER."

THE COURT: THAT SEEMS TO BE OKAY TO ME, SAYING HOW HE GOT THE GUN.

MR. BAILEY: IT INDICATES POSSESSION OF THE GUN AND WHERE HE GOT IT. THIS WOULD BE CORROBORATED BY THE TESTIMONY OF THE GUN SHOP OWNER AND THE GIRLFRIEND WHO WILL TESTIFY THAT SHE WAS WITH HIM, YES, SIR.

THE COURT: WHAT DO YOU SAY ABOUT THAT, MR. STONE? THIS IS HIS STATEMENT.

MR. STONE: AS FAR AS PROVING KNOWLEDGE OF THE GUN, I DON'T HAVE ANY PROBLEM WITH "I'VE TAKEN IT FROM SOMEBODY, MY EX-GIRLFRIEND." WHEN WE START GETTING INTO THE "SHE TRIED TO GET IT BACK, BUT I

WOULDN'T RETURN IT," IT SOUNDS MUCH MORE LIKE A THEFT THAN JUST TAKING IT FROM HIS EX-GIRLFRIEND. THAT IS MY CONCERN.

THE COURT: NO. OBVIOUSLY THAT PART, "WHEN THE TROOPER STOPPED YOU ON THAT NIGHT, DID YOU TALK TO HIM?" AND HE SAYS, "NO." I'M SURE YOU WANT THAT IN THERE.

MR. STONE: THAT'S FINE. I DON'T HAVE ANY OBJECTION TO THAT.

THE COURT: NO, I AM GOING TO LEAVE ALL OF THAT IN THERE. ALL RIGHT, WE THEN ARE DOWN TO PAGE SEVEN, AND THERE ARE FOUR LINES WHERE HE WANTS IT IN AND THEN THE REST OF IT BOTH OF YOU AGREE IT SHOULD COME OUT, AS I UNDERSTAND IT?

MR. BAILEY: YES, SIR.

THE COURT: ALL RIGHT, THE FOUR LINES THAT YOU WANT IN, SOLICITOR:

"HAVE YOU EVER SHOT THE WEAPON BEFORE?

HIS ANSWER, "NO, HUH, ONCE."

"YOU SHOT IT ONCE BEFORE, WHERE?"

"PENNSYLVANIA."

WHAT IS YOUR OBJECTION TO THAT?

MR. STONE: PRIOR SHOOTING OF THE GUN THAT WAS USED TO KILL THE TROOPER IS ABSOLUTELY AS PREJUDICIAL AS IT CAN POSSIBLY BE.

THE COURT: HOW?

MR. STONE: IT SHOWS THAT HE HAS SHOT THE GUN BEFORE. IT SHOWS THAT IT IS AN ACT OF VIOLENCE THAT HE HAS DONE BEFORE.

THE COURT: WELL, THIS IS HIS STATEMENT.

MR. STONE: IT DOESN'T MATTER. IT WOULD BE A STATEMENT EVEN FROM THE STANDPOINT OF HIM TALKING ABOUT SHOOTING A NUN 20 YEARS AGO, BUT THAT DOESN'T NECESSARILY MEAN HE---

THE COURT: NO, SIR, HE DIDN'T SAY HE SHOT A NUN, NOW. IF HE SAID HE SHOT AN INDIVIDUAL I WOULD BE CONCERNED. ALL HE IS SAYING IS "I SHOT THE GUN BEFORE," MEANING THE STATE IS ENTITLED TO SHOW HE IS FAMILIAR WITH IT. AGAIN,---

MR. STONE: THE STATE IS ALREADY SHOWING THAT, YOUR HONOR, BY THE OTHER STUFF THAT HAS COME IN CONSIDERING THAT HE TOOK IT FROM HIS GIRLFRIEND, NOT THAT HE SHOT IT BEFORE.

THE COURT: NO, I RESPECTFULLY DISAGREE WITH YOU. THE STATE IS ENTITLED TO SHOW THAT, THAT HE HAD THE GUN AND THAT HE SHOT IT BEFORE. YOU'VE GOT TO UNDERSTAND, NOW, BOTH SIDES ARE ENTITLED TO A FAIR TRIAL HERE.

DO YOU WANT TO BE HEARD ON THAT, COUNSEL?

MR. SIMS: NO, SIR, YOU HAVE ALREADY RULED.

I WILL NOT ARGUE WITH HIS HONOR.

THE COURT: NO, I AM GOING TO PERMIT THAT. NOW, THE REST OF THAT PAGE IS MARKED YELLOW AND GREEN, WHICH I UNDERSTAND THERE IS A CONSENSUAL AGREEMENT HERE THAT THAT SHALL BE REMOVED?

MR. BAILEY: THAT IS CORRECT, YOUR HONOR.

THE COURT: DO YOU AGREE WITH THAT?

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT. THEN I UNDERSTAND THAT EVERYTHING YOU TALKED ABOUT ON PAGE EIGHT BOTH SIDES AGREE IT SHALL BE REMOVED?

MR. STONE: YES, SIR.

MR. BAILEY: YES, SIR.

THE COURT: OKAY. AT THE TOP OF PAGE NINE DOWN TO ABOUT THE TENTH LINE YOU AGREE. NOW, THERE IS A QUESTION ABOUT THIS ONE:

"SO WHILE ON THIS CRIME SPREE, WHO ELSE WAS INVOLVED, IF ANYONE, BESIDES YOU?"

"NO ONE."

THAT CONCERNS ME, SOLICITOR.

MR. BAILEY: JUDGE, THAT IS MR. ALEKSEY SAYING HE IS THE ONLY ONE INVOLVED, WHICH WOULD EXCLUDE MS. BLACKWELL.

THE COURT: WELL, HE IS REFERRING TO A CRIME SPREE.

MR. BAILEY: I THINK THAT WAS A QUESTION BY KENNY MEARS, THE SLED AGENT, THAT WASN'T AN ADMISSION BY HIM, AND I THINK BY "CRIME SPREE" WE ARE PROBABLY TALKING ABOUT HIS SPEEDING, THE MURDER, AND THE HIGH SPEED CHASE OVER 40 MILES.

THE COURT: AND HE SAYS NO ONE BUT HIM, AND YOU ARE TRYING TO SHOW THAT HIS CO-DEFENDANT WAS INVOLVED IN THIS.

MR. BAILEY: JUDGE, IF WE COULD JUST DELETE THE FIRST PART.

THE COURT: WHAT IS THAT?

MR. BAILEY: "SO WHILE ON THIS CRIME SPREE," AND THEN LEAVE THE REST IN.

MR. STONE: THAT'S FINE. I DON'T HAVE ANY OBJECTION. "CRIME SPREE" IS WHAT CONCERNS ME.

THE COURT: OKAY, JUST "WHO ELSE WAS INVOLVED?" THAT IS PERMISSIBLE TO STAY IN. YES, "CRIME SPREE," KIND OF CONCERNS ME. I AM GOING TO STRIKE THAT FIRST PART; "SO WHILE ON THIS CRIME SPREE" IS REDACTED.

MR. STONE: YES, SIR. I'M TRYING TO PICK UP WHERE -- I DON'T KNOW IF THAT FLOWS WITH THE REST OF THE STATEMENT, AND I KNOW THE NEXT QUESTION IS, "YOU ARE TELLING US YOU COMMITTED THIS CRIME OF SHOOTING THE SOUTH CAROLINA STATE TROOPER BY

YOURSELF?" THE RESPONSE AT THAT POINT IS, "YEA." SO I DON'T KNOW HOW WELL THAT FLOWS WITH THE REST OF THE STATEMENT. IT REALLY SORT OF IS TAKEN OUT OF CONTEXT, SO IT MIGHT BE REALLY EASIER JUST TO START AND REDACT THE WHOLE THING UNTIL IT SAYS, "SO YOU ARE TELLING US," BECAUSE THAT COVERS THE SAME QUESTION. DOES THAT MAKE SENSE? I AM JUST LOOKING AT IT. THIS THING IS TAKEN TOTALLY OUT OF CONTEXT.

THE COURT: PARDON ME?

MR. BAILEY: HE SAYS IT MAKES SENSE. IT DOESN'T TO ME. I THINK IT IS INNOCUOUS. WE ARE DELETING OUT WHAT HE DOESN'T LIKE.

THE COURT: THE STATE IS ENTITLED TO SHOW, "WHO ELSE WAS INVOLVED, IF ANYONE, BESIDES YOU?"; ANSWER, "NO ONE." THEY ARE ENTITLED TO SHOW THAT BASED ON YOUR CONTENTION.

MR. STONE: YES, SIR, AND THAT IS IN THE NEXT SENTENCE, BUT THAT IS FINE, I WILL LEAVE THAT, I HAVE NO PROBLEM.

THE COURT: NOW, WHAT ARE WE SAYING, "ALL THESE ALIASES, WHEN I SPEAK...," WHAT ABOUT THAT?

MR. STONE: ALIAS SPEAKS TO PRIOR CRIMINAL RECORD, IT SPEAKS TO PRIOR CRIMINAL PROBLEMS AND, IN FACT, PRIOR ATTEMPTS TO EVADE SOMETHING, WHETHER OR NOT THAT IS--

THE COURT: WELL, THAT IS EXACTLY WHAT THE STATE IS GOING TO ATTEMPT TO SHOW, THAT HE WAS TRYING TO EVADE THIS ARREST IN SOUTH CAROLINA WHICH CAUSED THE KILLING.

MR. STONE: AND MY POSITION, YOUR HONOR, ON THAT IS THAT THE MOTIVE ITSELF IS NOT ENOUGH TO OVERCOME THE PREJUDICE TO THE CLIENT, AND THAT IS THE SAME AS IT WAS ON THE OTHER ONES.

THE COURT: I WOULD OVERRULE THAT CONTENTION. I AM GOING TO LET THAT IN THAT HE WAS -- I DON'T KNOW WHETHER HE WAS OR NOT, BUT THERE IS A CONTENTION THAT HE WAS USING MANY ALIASES AS HE CAME THROUGH. THAT COULD BE CONSTRUED BY THE STATE, COUPLED WITH THE ALLEGATIONS OF ATTEMPT TO FLEE, AS A BASIS FOR MURDER. THAT IS FOR THE JURY TO DECIDE.

ARE YOU READY TO PROCEED WITH THE NEXT LINE HERE?

MR. STONE: YES, SIR. I'M SORRY.

THE COURT: I THINK WE ARE DOWN TO PAGE TEN, AND BOTH OF YOU AGREE THAT THAT SHOULD BE REDACTED.

MR. STONE: YES, SIR.

MR. BAILEY: YES, SIR.

THE COURT: ALL RIGHT, NOW WE ARE ON PAGE

11. I AM AT ABOUT ONE-THIRD DOWN.

"ARE THERE ANY OUTSTANDING WARRANTS ON YOU NOW THROUGH THE FEDERAL U.S. MARSHALL SERVICE?"

"YES."

"HOW LONG HAVE THEY BEEN ON YOU?

"SINCE LAST YEAR."

"HAVE YOU MADE CONTACT THAT DEALS WITH THOSE WARRANTS?"

WHAT IS YOUR POSITION THERE, SOLICITOR, FOR THE RECORD?

MR. BAILEY: YOUR HONOR, SAME AS BEFORE, HE IS ADMITTING HE HAD OUTSTANDING WARRANTS AGAINST HIM AND IT GIVES HIM MOTIVE TO FLEE AND EXPLAINS AN OTHERWISE UNEXPLAINABLE SHOOTING.

THE COURT: YES, SIR. WHAT IS YOUR POSITION, MR. STONE?

MR. STONE: OUR POSITION, YOUR HONOR, IS THAT JUST LIKE THE OTHER WARRANTS THAT ARE OUTSTANDING, THIS ONE REFERS TO IT HAS BEEN OUTSTANDING SINCE LAST YEAR, AND HE HASN'T SHOT AT ANY OTHER POLICE OFFICER IN THE MEANTIME. I DON'T THINK THAT SHOWS ANY MOTIVE. I THINK IT IS PREJUDICIAL.

THE COURT: WELL, I AM GOING TO LET THE JURY MAKE THAT DETERMINATION. I AM GOING TO LEAVE

THAT IN. AFTER ALL, NOW, THIS IS HIS STATEMENT.

MR. STONE: LET ME ASK YOU, IF I MAY, YOUR HONOR, I DON'T AT THIS POINT KNOW OF ANY FEDERAL WARRANTS OUTSTANDING AND THE SOLICITOR HASN'T PROVIDED ME ANY. IF THERE IS SOME I JUST WANT TO MAKE SURE I'VE GOTTEN THEM. I DON'T KNOW OF ANY. DO YOU?

MR. BAILEY: I DON'T KNOW OF ANY EITHER.

THE COURT: WELL, THERE MAY NOT BE ANY, BUT IN HIS MIND HE SAYS THERE WAS.

MR. STONE: YES, SIR.

THE COURT: WHETHER THEY ARE OUT THERE OR NOT, THE STATE'S POSITION IS THAT IN HIS MINDSET THIS IS WHY THE KILLING TOOK PLACE, AND I AM NOT SAYING THAT HAPPENED, BUT I AM SAYING THAT IS OBVIOUSLY THE STATE'S POSITION AS TO WHY THE PATROLMAN WAS SHOT AND KILLED ON THAT NIGHT.

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT, SIR. NOW, ON THAT ONE LITTLE ISSUE THAT I TOLD YOU ABOUT ON THAT STATEMENT, IF YOU WOULD CARE TO REVISIT THAT AT THE TRIAL WE WILL DO SO.

MR. STONE: YES, SIR. AND THE ONLY -- YOU ARE REFERRING TO THE BLAIR HEARING EARLIER?

THE COURT: NO, SIR, THERE WAS ONE LINE---

MR. STONE: OH, THE FIRST SENTENCE ON---

THE COURT: THERE WAS ONE SENTENCE HERE, I RULED AGAINST YOU, BUT IF THE TESTIMONY DETERMINES IT SHOULD BE -- WHICH ONE WAS THAT?

MR. SIMS: THAT WAS ON PAGE THREE, YOUR HONOR. "OK, KATHERINE TOLD ME, KATHERINE SAID MAN, TURN YOURSELF IN, OK IT'S MINOR CRIMES."

THE COURT: OH, YES.

MR. SIMS: "I AM RUNNING FROM SOMEBODY WHO'S..."

THE COURT: I AM GOING TO LEAVE IT IN AT THIS TIME.

MR. STONE: THAT IS WHAT I THOUGHT YOU HAD RULED. I APOLOGIZE.

THE COURT: SIR?

MR. STONE: YES, SIR, I THOUGHT YOU HAD RULED THAT WAY. I APOLOGIZE FOR NOT BEING ON TOP OF THAT.

THE COURT: OKAY.

MR. STONE: THAT IS ALL AS FAR AS I KNOW AS FAR AS THAT CONFESSION GOES.

THE COURT: ALL RIGHT. NOW, WHAT IS THE NEXT ISSUE?

MR. STONE: I THINK THAT IS IT FROM THE STATE, YOUR HONOR. WE HAVE TWO QUICK MOTIONS FROM

THE DEFENSE.

THE COURT: I AM HERE ALL DAY, SO DON'T MAKE THEM QUICK IF YOU DON'T NEED TO.

MR. STONE: YES, THANK YOU. FIRST OF ALL, AS TO THE BLAIR HEARING, YOUR HONOR, AND I REALIZE THAT WAS TAKEN A LITTLE BIT OUT OF CONTEXT, BUT I WANTED THE COURT TO UNDERSTAND BEFORE DR. FRIERSON LEFT, I OBJECTED UNDER STATE V. SLOAN TO THIS MENTAL EVALUATION TO BEGIN WITH, AND I DID THAT BECAUSE I DID NOT WANT MY CLIENT TO PROVIDE INFORMATION TO THE SOLICITOR IN CONTRAVENTION OF HIS FIFTH AMENDMENT RIGHTS.

WHAT HAS HAPPENED, HE WAS SENT TO THE PSYCHIATRIC--TO HALL INSTITUTE FOR A McNAGHTEN TEST, BASICALLY, AND NOT GUILTY BUT MENTALLY ILL, AND VARIOUS OTHER THINGS, WHICH IS PERFECTLY FINE.

I HAVE NEVER HAD A POSITION IN THIS CASE THAT HE IS NOT GUILTY BY REASON OF INSANITY, NOR HAVE I FELT THAT HE HAS ANY COMPETENCY CONCERNS.

I DO, HOWEVER, AT THIS POINT OBJECT, USING MY PRIOR OBJECTION, TO THIS PSYCHIATRIC REPORT. I THINK ACCORDING TO STATE V. SLOAN THE COURT CAN ORDER IT FOR THE SOLE PURPOSE OF DETERMINING COMPETENCY, AND I HAVE NO OBJECTION TO IT EVEN BEING USED FOR NOT GUILTY BY REASON OF INSANITY,

AND VARIOUS OTHER INSANITY DEFENSES.

HOWEVER, AT THIS POINT I WOULD MAKE A MOTION TO YOU, AND I OF COURSE WILL OF COURSE REAFFIRM THIS AT THE TRIAL, THAT THE SOLICITOR NOT USE ANY INFORMATION CONCERNING MATERIALS PROVIDED TO HIM BY ME AND BY MR. ALEKSEY IN THIS COMPETENCY HEARING, SPECIFICALLY ANY REFERENCE TO HIM NOT BEING ABLE TO ADJUST TO PRISON LIFE, AND SPECIFICALLY ANY TYPE OF AGGRESSIVE BEHAVIOR.

THOSE TWO THINGS, YOUR HONOR, YOU DID NOT SEND MY CLIENT OFF TO GET AN EVALUATION TO DETERMINE IF HE COULD LIVE IN PRISON, AND THAT IS EXACTLY WHAT THIS PSYCHIATRIST CAME BACK AND TOLD US.

NOW, THE PROBLEM I'VE GOT WITH THAT IS, I PROVIDED INFORMATION TO THE STATE NOW. I HAVE GIVEN MY CLIENT UP AND I HAVE TOLD HIM AND GIVEN HIM ADVICE PURSUANT TO THOSE INSTRUCTIONS TO COOPERATE. HE DID. NOW THE STATE HAS MATERIAL THAT CAN POTENTIALLY DAMAGE HIM AT HIS SENTENCING PHASE. AND I THINK THAT IS IMPROPER.

THANK YOU.

THE COURT: WHAT IS YOUR POSITION? I UNDERSTAND.

MR. BAILEY: YOUR HONOR, I THINK MR. STONE

MAY NOT FULLY UNDERSTAND THE PROCEDURE ON THE EVALUATION. IN ORDER TO GET THE THREE DECISIONS THEY HAVE TO MAKE, HIS COMPETENCY, GBMI, AND SANITY, THEY HAVE GOT TO TEST THE PEOPLE, AND WHEN THEY DO THE REPORT THEY REPORT OUT WHAT THEIR DIAGNOSTIC FINDINGS ARE, THE PERSONALITY DISORDERS, OR WHATEVER. SO IT IS NO ATTEMPT BY THE STATE HOSPITAL TO SET HIM UP OR HAVE HIM INCRIMINATE HIMSELF OR ANYTHING OF THAT NATURE. THESE ARE INCIDENTAL FINDINGS.

CERTAINLY UNDER STATE V. SLOAN I AM ENTITLED TO CALL DR. FRIERSON OR DR. VIDIC OR WHOEVER ELSE MIGHT HAVE KNOWLEDGE OF HIS MENTAL HEALTH HISTORY TO COUNTER ANY KIND OF MITIGATION ATTEMPTS HE MAY COME UP WITH IN REGARD TO HIS MENTAL STATUS.

I THINK THE STATE V. SLOAN STANDS FOR THAT. SLOAN SAYS THAT IF THEY DON'T COOPERATE WITH THE STATE HOSPITAL THEY CAN'T PUT UP MITIGATION TESTIMONY FOR MENTAL HEALTH HISTORY.

THE COURT: I AM GOING TO LET THEM BOTH TESTIFY AND I WILL RULE ON IT IF THERE IS OBJECTION AT THE TRIAL OF THE CASE.

MR. STONE: YES, SIR.

THE COURT: GENERALLY I DO NOT INTERPRET

STATE V. SLOAN TO KEEP THE STATE FROM INTRODUCING THIS TESTIMONY, QUITE CANDIDLY, BUT I WILL LISTEN TO YOUR OBJECTION AS I HEAR THE TESTIMONY AT TRIAL.

MR. STONE: I UNDERSTAND.

THE COURT: WHAT ELSE?

MR. STONE: OUR SECOND MOTION, YOUR HONOR, WE HAVE, MY UNDERSTANDING, IS THE 8-YEAR-OLD WHO GAVE A STATEMENT TO THE POLICE, ACTUALLY GAVE TWO STATEMENTS TO THE POLICE, GLORIA MAI PEREZ, AND I DON'T KNOW IF YOU HAVE A COPY OF THAT STATEMENT OR NOT, THOSE STATEMENTS. ONE WAS TAKEN JANUARY 1ST, THE VERY NIGHT THIS ENTIRE EVENT TOOK PLACE. THE SECOND ONE WAS JANUARY 5TH. OBVIOUSLY LAW ENFORCEMENT OR SOMEBODY FELT IT NECESSARY TO GO BACK AND INTERVIEW THE YOUNG GIRL, THE CHILD, AGAIN.

IT IS MY POSITION THAT THE DEFENSE AT THIS POINT IS REQUIRED PURSUANT TO RULE 601 TO AT LEAST INQUIRE AS TO THE GIRL'S COMPETENCY AND ASK THIS COURT TO HAVE A COMPETENCY EVALUATION, NOT ONLY -- BASICALLY, YOUR HONOR, BECAUSE I THINK SHE IS PRESUMED TO BE COMPETENT TO TESTIFY, BUT I THINK YOU STILL HAVE TO MAKE A DETERMINATION WHETHER OR NOT SHE UNDERSTANDS RIGHT FROM WRONG, AND SOME VARIOUS OTHER THINGS IN ACCORDANCE WITH THAT.

I THINK IN ORDER TO AID YOU IN THAT IT WOULD BE BENEFICIAL, ESPECIALLY CONSIDERING THE NEW WAVE OF CASES CONCERNING CHILD BEHAVIOR EXPERTS WHICH HAVE BEEN QUALIFIED REALLY BY USING THEM IN THE STATE'S POSITION, THE STATE HAS USED THEM A GOOD BIT IN CHILD SEXUAL ASSAULT CASES, THE SUPREME COURT HAS RECOGNIZED CHILD BEHAVIOR EXPERTS AT THIS POINT, THERE ARE PLENTY OF THEM IN COLUMBIA, MY POSITION IS THAT THE COURT WOULD BE BENEFITTED BY HEARING FROM SUCH AN EXPERT AS TO THIS CHILD'S COMPETENCY TO TESTIFY, SPECIFICALLY WHETHER OR NOT SHE UNDERSTANDS RIGHT FROM WRONG, UNDERSTANDS WHEN SHE IS LYING AND NOT LYING, AND UNDERSTANDS WHEN SHE IS BEING TOLD TO SAY SOMETHING.

HER STATEMENT -- SHE GAVE TWO STATEMENTS -- HER SECOND STATEMENT IN TWO SEPARATE INSTANCES SHE REFERRED TO THINGS THAT NOBODY ASKED HER. IT LOOKS VERY CLEAR THAT SHE HAS BEEN PROMPTED TO SOME ANSWERS. THAT MAY OR MAY NOT BE ACCIDENTAL. IT MAY BE, YOUR HONOR, THAT THIS 8-YEAR-OLD CHILD IS GOING TO SAY WHATEVER SHE IS TOLD TO SAY, AND I THINK YOUR HONOR WILL BE BENEFITTED BY THAT, AND WITHOUT THAT INFORMATION THE DEFENSE IS KIND OF CAUGHT UP AGAINST A ROCK AND A HARD PLACE.

YOU ARE HAVING TO PUT A GIRL THROUGH CROSS

EXAMINATION THAT THE COURT HAS TO MAKE A DETERMINATION WHETHER OR NOT SHE IS COMPETENT. THE DEFENSE HAS TO AT LEAST CHALLENGE THAT, BUT HAS NO WAY OF CHALLENGING IT WITHOUT SOME TYPE OF EXPERT TESTIMONY.

THE COURT: DO IT EVERY DAY. OF COURSE, SHE IS PRESUMED COMPETENT UNDER THE STATUTE, UNDER THE RULE. AS YOU RECALL, AT THE TRIAL OF THIS CASE, PRIOR TO THE TRIAL, OUTSIDE THE PRESENCE OF THE JURY, THIS CHILD WILL BE CALLED BEFORE ME, PUT UNDER OATH, I WILL MAKE SUCH INQUIRIES AS APPROPRIATE AS I ALWAYS DO IN DEALING WITH A YOUNG PERSON OF TENDER AGE, THEN I WILL PERMIT YOU AND THE STATE TO EXAMINE HER, AND I WILL MAKE A DETERMINATION.

NOW, AFTER THAT PROCEDURE, IF I CONCLUDE THAT I NEED SOME FURTHER MEDICAL TESTIMONY ON THAT ISSUE I WILL GET IT, BUT IT WOULD BE CERTAINLY PREMATURE AT THIS TIME UNTIL I HAVE AT LEAST HAD AN OPPORTUNITY TO EXAMINE THE CHILD AS TO WHETHER OR NOT SHE KNOWS RIGHT FROM WRONG.

YOU, OF COURSE, EVEN AT THE TRIAL CAN EXHAUSTIVELY CROSS EXAMINE HER---

MR. STONE: YES, SIR.

THE COURT: ---AS TO WHETHER OR NOT SHE HAS

BEEN COACHED. DO YOU HAVE A POSITION ON THIS, SOLICITOR?

MR. BAILEY: YOUR HONOR, I THINK THE COURT STATED MY POSITION ON THIS. IT IS THEIR BURDEN OF PROOF TO SHOW INCOMPETENCY.

THE COURT: LET THERE BE NO QUESTION ABOUT IT, PRIOR TO HER TESTIMONY WE WILL HAVE A HEARING IN LIMINE UPON THE RECORD AND I WILL MAKE A DETERMINATION THEN AS TO WHETHER OR NOT SHE IS COMPETENT TO TESTIFY.

MR. STONE: THANK YOU.

THE COURT: GIVEN THE FACT THAT THE RULE SAYS SHE IS PRESUMPTIVELY QUALIFIED. OKAY?

MR. STONE: THANK YOU.

THE COURT: FINE. ANYTHING FURTHER?

MR. STONE: IF I MAY CONFER JUST A MOMENT.

(PAUSE.)

THE COURT: GENTLEMEN, WHERE ARE WE NOW?

MR. STONE: I THINK THAT IS IT, YOUR HONOR, AT THIS STAGE.

THE COURT: IS MY CLERK OF COURT HERE? HE HAS GOT A LIST OF THOSE WHO HAVE FOR GOOD AND SUFFICIENT REASONS REQUESTED AN EXCUSE. WE WANT TO GO OVER THOSE WITH HIM AND GET AN AGREEMENT.

MR. STONE: YES, SIR.

THE COURT: DO YOU WANT TO DO THAT NOW OR GO TO LUNCH AND COME BACK?

MR. STONE: WHATEVER YOUR HONOR PREFERS.

THE COURT: WELL, LET'S GO ON AND DO IT NOW AND BE THROUGH WITH IT. I DON'T THINK IT IS THAT BIG A PROBLEM.

ALL RIGHT, THIS HEARING IS NOW CONCLUDED. THANK YOU.

(WHEREUPON, THE HEARING WAS ADJOURNED.)

(END OF REQUESTED TRANSCRIPT)

CERTIFICATE

I, THE UNDERSIGNED DEBORAH M. McCURDY, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE MOTION HEARING OF THE CAPTIONED CAUSE IN THE CRIMINAL COURT FOR ORANGEBURG(HEARD IN RICHLAND) COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF AUGUST, 1998.

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

FEBRUARY 12, 1999

Deborah M. McCurdy

DEBORAH M. McCURDY
CIRCUIT COURT REPORTER

MY COMMISSION EXPIRES:
MAY 18, 1999

SUPERIOR COURT
OF
NEW JERSEY
COUNTY OF MERCER

I, **Jude Del Preore**, Deputy Clerk of the Superior Court of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of

a certain Judgment and Indictment in Re: State of New Jersey Vs. Gloryvee Rivera, Indictment Number 91-07-0832, as the same remains of record and on file in my said office.

In **Testimony Whereof**, I have hereunto set my hand and affixed my seal of said Court at Trenton, this 13th Day of August A.D. 1998

Jude Del Preore, Deputy Clerk of the Superior Court of New Jersey

2309

If the offense occurred on or after January 9, 1986, a penalty of $30 is imposed on each count on which the defendant was convicted unless the box below indicates a higher penalty pursuant to *N.J.S.A* 2C:43-3.1. (Penalty is $25 if offense is before January 9, 1986, unless a higher penalty is noted.)

☒ Penalty imposed on count(s) 5

is $ 30.00 each

Total VCCB Penalty $ 30.00

Total FINE $ None

Total RESTITUTION $ None

☐ Installment payments are due at the rate of

$ _____ per _____

beginning _____ (DATE)

If any of the offenses occurred on or after July 9,1987, and is for a violation of Chapter 35 or 36 of Title 2C.

1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Write in # times for each.)

2402

___	1st Degree @ $3000	___	4th Degree @ $750
___	2nd Degree @ $2000	___	Disorderly Persons or Petty Disorderly Persons @ $500
1	3rd Degree @ $1000		

Total D.E.D.R. Penalty $1,000.0

☐ Court further ORDERS that collection of the D.E.D.R. penalty be suspended upon defendant's entry into a residential drug program for the term of the program.

2) A mandatory driver's license suspension of 6 months is ORDERED

The suspension shall begin today. 2/13/92 and end _____

Driver's License Number R4752 29300 59722

(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)

Defendant's Address 50 Daymond St.,Trenton,N.J. 08611

Eye Color Brown Sex Female Date of Birth 9/20/72

☐ The defendant is the holder of an out-of-state driver's license from the following jurisdiction _____ Driver's license # _____

☐ Your non-resident driving privileges are hereby revoked for _____ Months.

3) A forensic laboratory fee of $50 per offense is ORDERED: 1 Offenses @ $50.

COCAINE

Total LAB FEE $ 50.00

NAME (Court Clerk or Person who prepares this form)

Kathleen Welsh, Sr. Court Clerk 609-989-6354

NAME (Attorney for Defendant at Sentencing)

Frank Gonzalez, Public Defender

STATEMENT OF REASONS

AGGRAVATING FACTORS;
The need for deterring the defendant and others from violating the law.

MITIGATING FACTORS;
None

JUDGE (Name)

Richard F. Plechner, J.S.C.

JUDGE (Signature)

DATE

2/13/92

MERCER COUNTY PROSECUTOR
MERCER COUNTY COURT HOUSE
TRENTON, NEW JERSEY
Telephone (609) 989-6305

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION-CRIMINAL

FILE NO. 91-0563-01, 91-0563-02,
91-0563-03, 91-0563-04

INDICTMENT NO. 91-07-0832

THE STATE OF NEW JERSEY

vs.

GLORIA PEREZ
GLORYVEE RIVERA
EXIO RIVERA
FREDERICO VAZQUEZ,

DEFENDANTS.

STATED SESSION July 1991

TERM July 1991

COUNT I
POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE (THIRD DEGREE)

The Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths present that GLORIA PEREZ AND FREDERICO VAZQUEZ on or about the 29th day of March, 1991, in the City of Trenton in the County aforesaid, and within the jurisdiction of this Court, did knowingly or purposely possess, actually or constructively, a controlled dangerous substance, to wit: cocaine, contrary to the provisions of N.J.S. 2C:35-10a(1); 2C:2-6, and against the peace of this State, the Government and dignity of the same.



COUNT II - POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE (THIRD DEGREE)

The Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths present that GLORIA PEREZ AND FREDERICO VAZQUEZ on or about the 29th day of March, 1991, in the City of Trenton in the County aforesaid, and within the jurisdiction of this Court, did knowingly or purposely possess or have under their control with intent to distribute a controlled dangerous substance, to wit: cocaine, in a quantity of less than one-half ounce including any adulterants or dilutants, contrary to the provisions of N.J.S. 2C:35-5a(1); 2C:35-5b(3); 2C:2-6, and against the peace of this State, the Government and dignity of the same.

OUNT III - POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE ON OR NEAR SCHOOL PROPERTY (THIRD DEGREE)

The Grand Jurors of the State of New Jersey, for the County of ercer, upon their oaths present that GLORIA PEREZ AND FREDERICO VAZQUEZ n or about the 29th day of March, 1991, in the City of Trenton in the ounty aforesaid, and within the jurisdiction of this Court, did, within ne thousand feet of school property, namely, St. Joachim's School, 21 ayard Lane, knowingly or purposely possess or have under their control ith intent to distribute a controlled dangerous substance, to wit: ocaine, in a quantity of less than one-half ounce, including any dulterants or dilutants, contrary to the provisions of N.J.S. 2C:35-7; C:35-5a(1); 2C:35-5b(3); 2C:2-6, and against the peace of this State, he Government and dignity of the same.

COUNT IV - MAINTAINING A NARCOTICS NUISANCE (FOURTH DEGREE)

The Grand Jurors of the State of New Jersey, for the Co Mercer, upon their oaths present that GLORIA PEREZ AND FREDERICO on or about the 29th day of March, 1991, in the City of Trento County aforesaid, and within the jurisdiction of this Cou knowingly keep or maintain a dwelling house, to wit: 18 Clark Str floor apartment, which was resorted to by persons using co dangerous substances in violation of the New Jersey Code of Justice for the purpose of using such substances or used for the or selling of controlled dangerous substances in violation of Jersey Code of Criminal Justice, contrary to the provisions 24:21-21(a)(6); 2C:2-6, and against the peace of this St Government and dignity of the same.

COUNT V - POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE (THIRD DEGREE)

The Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths present that GLORIA PEREZ, GLORYVEE RIVERA, AND EXIO RIVERA

on or about the 29th day of March, 1991, in the City of Trenton in the County aforesaid, and within the jurisdiction of this Court, did knowingly or purppsely possess, actually or constructively, a controlled dangerous substance, to wit: cocaine, contrary to the provisions of N.J.S. 2C:35-10a(1); 2C:2-6, and against the peace of this State, the Government and dignity of the same.

COUNT VI - POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE (SECOND DEGREE)

The Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths present that GLORIA PEREZ, GLORYVEE RIVERA, AND EXIO RIVERA

on or about the 29th day of March, 1991, in the City of Trenton in the County aforesaid, and within the jurisdiction of this Court, did knowingly or purposely possess or have under their control with intent to distribute a controlled dangerous substance, to wit: cocaine, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants, contrary to the provisions of N.J.S. 2C:35-5a(1); 2C:35-5b(2), and against the peace of this State, the Government and dignity of the same.

COUNT VII - POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE ON OR NEAR SCHOOL PROPERTY (THIRD DEGREE)

The Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths present that GLORIA PEREZ, GLORYVEE RIVERA, AND EXIO RIVERA

on or about the 29th day of March, 1991, in the City of Trenton in the County aforesaid, and within the jurisdiction of this Court, did, within one thousand feet of school property, namely, St. Joachim's School, 21 Bayard Lane, knowingly or purposely possess or have under their control with intent to distribute a controlled dangerous substance, to wit: cocaine, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants, contrary to the provisions of N.J.S. 2C:35-7; 2C:35-5a(1); 2C:35-5b(2); 2C:2-6, and against the peace of this State, the Government and dignity of the same.

COUNT VIII - POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE (FOURTH DI

The Grand Jurors of the State of New Jersey, for the Cou Mercer, upon their oaths present that GLORIA PEREZ, GLORYVEE RIVER EXIO RIVERA

on or about the 29th day of March, 1991, in the City of Trenton County aforesaid, and within the jurisdiction of this Cour knowingly or purposely possess, actually or constructively, a con dangerous substance, to wit: more than fifty grams of mar including any adulterants or dilutants, contrary to the provis N.J.S. 2C:35-10a(3); 2C:2-6, and against the peace of this Sta Government and dignity of the same.

OUNT IX - POSSESSION OF CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE (THIRD DEGREE)

The Grand Jurors of the State of New Jersey, for the County of ercer, upon their oaths present that GLORIA PEREZ, GLORYVEE RIVERA, AND XIO RIVERA

n or about the 29th day of March, 1991, in the City of Trenton in the ounty aforesaid, and within the jurisdiction of this Court, did nowingly or purposely possess or have under their control with intent to istribute a controlled dangerous substance, to wit: marijuana, in a uantity of one ounce or more but less than five pounds, including any dulterants and dilutants, contrary to the provisions of N.J.S. C:35-5a(1); 2C:35-5b(11); 2C:2-6, and against the peace of this State, he Government and dignity of the same.

2319

2412

COUNT XI - MAINTAINING A NARCOTICS NUISANCE (FOURTH DEGREE)

The Grand Jurors of the State of New Jersey, for the County of Mercer, upon their oaths present that GLORIA PEREZ, GLORYVEE RIVERA, AND EXIO RIVERA

on or about the 29th day of March, 1991, in the City of Trenton in the County aforesaid, and within the jurisdiction of this Court, did knowingly keep or maintain a dwelling house, to wit: 18 Clark Street, 2nd floor apartment, which was resorted to by persons using controlled dangerous substances in violation of the New Jersey Code of Criminal Justice for the purpose of using such substances or used for the keeping or selling of controlled dangerous substances in violation of the New Jersey Code of Criminal Justice, contrary to the provisions of N.J.S. 24:21-21(a)(6); 2C:2-6, and against the peace of this State, the Government and dignity of the same.

]ENDORSED AS A TRUE BILL:

Foreman

Mercer County Prosecutor

Municipal Court Docket No. 91-04077-77-79, 91-04074-75-76
Report No. V-1-088-1985

slh

SLED CASE NO.: 31970173
TAPED INTERVIEW/STATEMENT OF BAYON R. ALEKSEY
SIDE A

G. Darnell — Today's date is 1/2/98 at 4:50 p.m., Orangeburg County Law Enforcement Complex. Starting to do an interview with Mr. Bayon R. Aleksey. Present In this interview is S/A G. Darnell and S/A Kenny Mears. Mr. Aleksey I Want you to speak up a little bit louder than what you have been talking So the tape can pick you up good. Have you been advised of your Constitutional rights?

B. Aleksey — Yea

G. Darnell — Have you acknowledged them by signing the S. C. Law Enforcement Rights Form?

B. Aleksey — Yea

G. Darnell — Speak up just a little bit louder

B. Aleksey — Yes

G. Darnell — OK, you name is Bayon R. Aleksey

B. Aleksey — Yes

G. Darnell — Date of birth 11/8/68

B. Aleksey — Yes

G. Darnell — Social Security No. 074-54-9878

B. Aleksey — Yes

G. Darnell — And your address is 143-48 41st Ave., Flushing Queens, New York

B. Aleksey — Yes

G. Darnell — That's the address of your mother, Vera Aleksey

B. Aleksey — Yes

G. Darnell — Mr. Aleksey, if you would just relate to myself and Agent Mears, what took Place with you on the morning of Dec. 31, 1997 and on into Jan. 1, 1998

B. Aleksey — Where do you want me to start from?

K. Mears — Wherever you left off

B. Aleksey — OK, I can't remember the time and date whatever, but we were in North Carolina. I was driving through North Carolina

G. Darnell — When you say we, who are you talking about?

B. Aleksey — Gloria and myself

G. Darnell — Gloria?

B. Aleksey — Gloria Perez

G. Darnell — Gloria Perez

B. Aleksey — And myself

G. Darnell — Anybody else

B. Aleksey — And two kids, they were in the back they were sleeping. I was driving through North Carolina, and I actually drove all the way from New Jersey Pike all the Way to North Carolina. OK by myself.

G. Darnell — OK we are back on tape now and was interrupted due to a telephone call. Go Ahead Mr. Aleksey

B. Aleksey — OK got up that day and I drove from New Jersey to North Carolina

G. Darnell — Go Ahead

B. Aleksey — And I on the way I pulled over a few times and got to the gas station cause I was tired, by the time I reached Virginia I was tired. OK, and Gloria asked Me if she wanted to drive and I said no let me a little more, if I get a little Tired you can drive. And I drove the last, I think the last stop that I stopped

B. Aleksey it was the borderline of North Carolina and Virginia. OK, I'm not sure I'm just Giving you an approximate. So I pulled over for gas, checked the oil and stuff Like that and I asked her if she can drive. She says OK I'll drive. At that time I told her, I asked her can you drive stick and she said yea I can drive stick. And I just told her to take it easy on the gears cause I just had the gears redone In the car. She said OK. So I drove, I mean she drove and I got in the passenger Seat, the kids are still sleeping in the back. Before we took off I got gas And something to eat or whatever. But before that I did stop a few times Because to get something to drink just to keep awake. Because the night Before I was up most of the night. So I drove to like I said to North Carolina And she took over, she drove. I feel asleep a little bit in the car, drove and When I woke up, apparently when I woke up before she was doing about 80-90 Miles per hour, OK. This is, I don't believe it was in South Carolina, we were Still in North Carolina. So I was up for a little bit and it was a white transam Convertible with South Carolina Plates, the plate number had South Carolina Plates. So she kept up with it you know when you have two sports cars and You're on the highway you going neck and neck and you just like tease one Another to see who can take off the fastest. Cause myself, I race OK and I Do that on the highway a couple of times so with guys you meet up with guys On the highways. So I told her to take it easy don't punch it like that until You get use to the car, so she said OK no problem. So we stayed with this Transam for like about 20 miles and after that she passed it, it was about maybe 45 to an hour I dozed off again and I fell asleep. At the time, when I woke up she said Michael wake up. I'm like what's wrong? She said I'm getting pulled over. So I was like were you speeding? So then I pulled over, I mean she pulled over and she told me she was getting pulled over. So look in the back and I see a blue light flashing. And all of a sudden she said what should I do and I said pull over, what you talking about, pull the car over. Next thing I knew she, there's a gun in the car. It was on her side. I say no, I woke up, we got pulled over, I stopped, we stopped and all the next thing I heard was shots. And I looked at Gloria and I said Gloria what the fuck you doing? Next thing you know whoosh, gone, I said Gloria what the fuck are you doing? She said, we took off and I was panicking I was like, no fucking way. I was Like Gloria, what the fuck are you doing? We continued down 95 and we got Off at like at what exit, I don't know what exit we got off. Got off at the exit At some remote place I don't know what it was, she got scared, she just Skidded, she skidded into a parking lot or side of the road and she told me to Drive. I was like, I don't know what the fuck is going on get on the other side And I got in the wheel and I started to drive. And I'm looking at her and I said I don't know what the fuck to do. And Gloria said get us the fuck out of here Get me the fuck out of here.

G. Darnell Go ahead

B. Aleksey What do you mean get the fuck out of here I was panicking, I didn't know what To do. So I drove down the road. And pulled over cause as I was driving there Was another police car you know made a U-turn or whatever. I pulled over And I told Gloria, what the fuck you doing, what the fuck is going on here.

SLED CASE NO.: 31970173
TAPED INTERVIEW/STATEMENT OF BAYON R. ALEKSEY
PAGE 3 – SIDE A

B. Aleksey I panicked because I have problems in New York and Philadelphia that's why I ran OK I'm being honest with you, that's why I ran, OK After that everything I mean, I was running, she got out of the car, and she actually she didn't get Out the car, she jumped out of the car OK And that's it, then I took off and The next thing I knew I got cornered in I don't know where I got cornered At. I struck, I don't know what else to tell you. When you talked to me, I Remember you talking to me I was so out of it, I couldn't, I mean I got so Scared because what happened was that when she pulled over, she fired the Gun and she threw it on my side. OK, she threw it on my side so I picked up the gun and I'm like I can't fucking believe you did this Gloria. What the Fuck is going on? And then we argued like I said. We argued and I was like Gloria I didn't need this, OK, I did not fucking need this I got enough Fucking problems. OK, I got enough fucking problems behind this. And she Was like, she started screaming, yelling, kids woke up, and that's it really I mean. I ran because I was scared. OK I do have warrants. I do have Warrants out of Philadelphia and New York. And when I heard that I was being Charged with a crime of murder, let me tell you something OK I never killed Anybody, I never hurt nobody. Third if my life wasn't fucked up, I always Wanted to be a cop. And at times I got arrested in Pennsylvania OK I had A pick up truck, I hooked it up, not like a cop car OK But like a tow truck Alright and you can ask my mother, you ask anybody I always wanted to be A cop. You call the Queens Police Station I tried to enroll in the auxiliary Police OK and the last fucking thing I would do is kill a fucking cop. And That's what hurts. I would never ever kill a cop. OK I have respect for Troopers and Police Officers cause I have family who is in law enforcement. in New York I had an Uncle who is a District Attorney in New York, alright. I would never Never hurt, my mother didn't bring me up that way. I couldn't, I can't I can't hurt another person OK. And I want you to just realize something here OK I want to, OK, I have Problems in the club in New York or whatever OK and I got problems OK But I much rather, I would not do something to fuck my life up like that. OK Katherine told me, Katherine said man, turn yourself in, OK it's minor Crimes, but that's not what I'm really running from. I'm running from Somebody who's got a contract on my life in New York, what am I suppose To do. For five years I've been running, five years, do you know how it is To look over your shoulder for five years and wonder if there is going to be A bullet with your name on it. I'm not sitting here, I'm telling you, I'm not Lying to you, I'm telling you truth. Honest to God, fucking truth.

G. Darnell Is that it?

B. Aleksey That's all I got to say

G. Darnell Go ahead. It's Jan. 2, 1998 continuing the interview with Bayon R. Aleksey. Present is S/A Kenny Mears, myself, S/A George Darnell of SLED. The Time now is 7 minutes past 7:00 p.m. in Orangeburg County Detention Center. Bayon, you realize you are back on tape

B. Aleksey Hum hum yea

G. Darnell You realize it's being recorded

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PAGE 4 – SIDE A

B. Aleksey Yea
G. Darnell You have your rights explained to you and read over your rights and Acknowledged your rights by signing your rights earlier
B. Aleksey Yea
G. Darnell Do you want to tell us now about what occurred with you on Dec. 31, 1997 Where you left from, and what happened as you were traveling through The state of South Carolina and where you were enroute to. And who was With you
B. Aleksey I was traveling from New Jersey to Florida and I got pulled over for speeding The trooper approached me and I shot him.
G. Darnell Where at Bayon?
B. Aleksey South Carolina
G. Darnell Can you speak just a little bit louder now
B. Aleksey In South Carolina
G. Darnell Who was along with you?
B. Aleksey Gloryvee Perez
G. Darnell Who else?
B. Aleksey Her kids
G. Darnell How old are her kids?
B. Aleksey Eight and ten
G. Darnell When you say ten?
B. Aleksey Months
G. Darnell Ten months Did Glory Perez, did she know that y'all were being pulled over?
B. Aleksey No
G. Darnell Was she awake when you were pulled over?
B. Aleksey No
G. Darnell Did she know what you were going to do?
B. Aleksey No
G. Darnell After things happened, did she realize what had happened?
B. Aleksey No
G. Darnell When did she realize a police officer or trooper had been shot?
B. Aleksey After I got on, I took off and got off at the exit.
G. Darnell Did you wake her and tell her or did she wake on her own?
B. Aleksey She woke on her own
G. Darnell And what did you tell her?
B. Aleksey I told her I shot a police officer
G. Darnell Why did you tell her that you shot him?
B. Aleksey Told her I was scared
G. Darnell What was you scared of?
B. Aleksey I don't know I was just scared, just (crying) (sigh) no
G. Darnell Is there anything else you want to tell us about this night? What took place Prior to or after the shooting?
B. Aleksey No
G. Darnell Sir? Is there anything else before or after the shooting you want to tell us? Has anyone, myself, Agent Mears, or anyone else promised you anything to Get you to tell us the truth about this situation?
B. Aleksey No

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G. Darnell To get you to tell us the truth about this situation?
B. Aleksey No
G. Darnell Made no guarantees to you
B. Aleksey No
G. Darnell Threatened you in any way?
B. Aleksey No
G. Darnell What is the reason for you telling the truth now?
B. Aleksey My conscious.
G. Darnell Speak up now
B. Aleksey My conscious, sir it was wrong
G. Darnell Agent Mears do you have anything else?
K. Mears Yes I have a few questions. I'm Kenny Mears I'm with the State Law Enforcement Division, let me ask you who was driving the car?
B. Aleksey I was
K. Mears And what type car was it?
B. Aleksey Mustang
K. Mears Describe it for me
B. Aleksey A white car with tinted windows
K. Mears And whose car was it?
B. Aleksey My car
K. Mears Did you have a weapon in the vehicle?
B. Aleksey Yea
K. Mears What type weapon did you have?
B. Aleksey I don't know (N/A)
K. Mears Describe it to me please
B. Aleksey Black and silver
K. Mears Do you know the model of it?
B. Aleksey No I don't know
K. Mears Whose weapon was it?
B. Aleksey I've taken it from somebody, my ex-girlfriend she didn't even know about it She knew about it, but she tried to get it back and I wouldn't return it to her.
K. Mears When the trooper stopped you on that night, did you talk to him?
B. Aleksey No
K. Mears You did not say anything at all to him, did he say anything to you?
B. Aleksey No, I don't really know
K. Mears Do you recall how many shots you fired?
B. Aleksey No
K. Mears Approximately how many?
B. Aleksey Two or three I don't remember
K. Mears Do you know how many rounds you had in the clip or in the weapon?
B. Aleksey I think it was ten
K. Mears Ten full clip or how many rounds would a clip hold
B. Aleksey Ten
K. Mears It would hold ten plus one in the chamber
B. Aleksey I think so
K. Mears And you know you had ten in the clip?
B. Aleksey I think so, yea

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K. Mears Did you have to cock the weapon to put one in the chamber or was there already One in the chamber?
B. Aleksey I think it was in the chamber already
K. Mears Did Gloria know what was going to happen before this shooting incident?
B. Aleksey No
K. Mears Why did you shoot this officer, Trooper Lingard?
B. Aleksey I don't know, I was scared
K. Mears Scared of what?
B. Aleksey Scared of police itself
K. Mears After shooting Officer Lingard, what did you do?
B. Aleksey I took off
K. Mears Took off
B. Aleksey Down the highway
K. Mears When you say you took off, you took off how?
B. Aleksey I drove off
K. Mears In the white Mustang?
B. Aleksey Yea
K. Mears Was Gloria and the children still with you?
B. Aleksey Yes
K. Mears What were they doing?
B. Aleksey They were sleeping, the kids were sleeping
K. Mears What about Gloria?
B. Aleksey She was sleeping too
K. Mears How did she find out that you shot the Trooper?
B. Aleksey My (N/A) I threw up, she woke up after I took off and I never woke her up It's the way I probably took off, that woke her up.
K. Mears After shooting the Trooper, you sped off and where did you go from there?
B. Aleksey I just got off at an exit, I don't know where I ended up
K. Mears And later on that night, what happened?
B. Aleksey I got arrested
K. Mears Before you were arrested what occurred?
B. Aleksey Police Officer pulled me over and I told Gloria and Gloria jumped out of the car
K. Mears Speak up so
B. Aleksey Gloria just jumped out of the car
K. Mears Did she have the kids when she jumped out?
B. Aleksey Yea
K. Mears After she jumped out of the car and the officer pulled you over, what did you Do?
B. Aleksey I took off
K. Mears Took off a second time
B. Aleksey Yea
K. Mears Before you took off what did you do with the weapon?
B. Aleksey I (N/A) I don't remember that
K. Mears Did you attempt to do something else?
B. Aleksey Hum I tried to kill myself
K. Mears How did you try to kill yourself?
B. Aleksey Pointed the weapon to my head

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K. Mears And what happened?
B. Aleksey Nothing
K. Mears Did you pull the trigger?
B. Aleksey Yea
K. Mears Were there any rounds in the clip or in the gun?
B. Aleksey I don't know
K. Mears Did you, it snap or
B. Aleksey It just went click
K. Mears It just didn't fire
B. Aleksey Yea it didn't fire
K. Mears Then after the weapon didn't fire what did you do?
B. Aleksey I surrendered, the police pulled me out of the car
K. Mears You surrendered, before you surrendered something happened though didn't It?
B. Aleksey No
K. Mears Was there an accident of some sort
B. Aleksey What happened was that when I was in the parking lot, when the car that Rammed me had stopped. And that's when I tried to pull the trigger on myself Then. Do you see what I'm saying. But by the time I did it, by the time the Police rammed me, hit me, he pulled me out of the car.
K. Mears In other words you ran into another Trooper's car?
B. Aleksey No they ran into me
K. Mears They ran into you. But anyway there was a collision between you and another Trooper?
B. Aleksey Yea
K. Mears Did Gloria have anything to do with this at all?
B. Aleksey No
K. Mears Did she coach you into shooting the Trooper?
B. Aleksey No
K. Mears Have you ever shot this weapon before?
B. Aleksey No, huh, once
K. Mears You shot it once before, where?
B. Aleksey Pennsylvania
K. Mears Getting back to South Carolina. Anything else happen before you met the Trooper? Any other incident before you shot the Trooper?
B. Aleksey No
K. Mears Do you recall another officer firing shots at you that night?
B. Aleksey No, I didn't
K. Mears Did you ever get out of the vehicle
B. Aleksey No
K. Mears When Trooper Lingard stopped you
B. Aleksey I never got out of the car
K. Mears And you don't recall how many shots you fired? Did you fire the weapon until It quit shooting or did you just quit shooting and took off?
B. Aleksey I just shot and took off, but I never got out of the car
K. Mears Anything else you want to tell us about
B. Aleksey I'm sorry it happened, I (N/A)

K. Mears	Speak up so
B. Aleksey	I'm sorry it happened and I don't know why I did it
K. Mears	How long have you known Gloryvee?
B. Aleksey	About a month
K. Mears	Where have you been staying previous?
B. Aleksey	All over the place, hotels
K. Mears	In South Carolina or in
B. Aleksey	No in Jersey
K. Mears	In Jersey
B. Aleksey	In Jersey
K. Mears	Were you working?
B. Aleksey	No
K. Mears	Was Gloryvee working?
B. Aleksey	Yea
K. Mears	Who else was involved, if anyone, besides you
B. Aleksey	No one
K. Mears	So you are telling us that you committed this crime of shooting the South Carolina State Trooper by yourself
B. Aleksey	Yea
K. Mears	Gloryvee was not involved in any way?
B. Aleksey	No
K. Mears	Speak up
B. Aleksey	No
K. Mears	Are you telling the truth?
B. Aleksey	Yes
K. Mears	Did you threaten Gloria in any way if she mentioned this to anyone?
B. Aleksey	No
K. Mears	Anything else you would like to tell us?
B. Aleksey	(N/A)
K. Mears	I beg your pardon
B. Aleksey	I'm sorry, I'm sorry
K. Mears	All these aliases, when I speak of aliases, names and identifications and things Like that. How did you come about getting these names and identifications?
B. Aleksey	From New York, from New York I got them
K. Mears	And your real name is Bayon R. Aleksey
B. Aleksey	Hum hum
K. Mears	That is your real name?
B. Aleksey	(N/A)
K. Mears	I don't have any other questions George
G. Darnell	Bayon what was your girlfriend's name who owned the gun
B. Aleksey	Ellen
K. Mears	Spell that for us
B. Aleksey	Ellen
G. Darnell	What's her last name?
B. Aleksey	Batkilinia
G. Darnell	Would you spell that?

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B. Aleksey Batkilinia
G. Darnell OK, coming down towards South Carolina, did anything occur with you coming Through the state of Maryland or state of North Carolina?
B. Aleksey No
G. Darnell Nothing else
B. Aleksey. No
G. Darnell The first part of this tape where we talked earlier

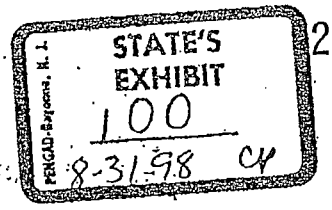
END OF SIDE A

BEGINNING OF SIDE B OF TAPE

G. Darnell OK we are on the other side of the tape now, just to back up, just in case we Didn't get before. In coming down through the state of Maryland, the state Of North Carolina prior getting into South Carolina, did anything else occur?
B. Aleksey No
G. Darnell You had no problems with anybody
B. Aleksey No
G. Darnell And the name of your girlfriend who owned the gun?
B. Aleksey Ellen Batkilinia
G. Darnell In the first part of this tape where we talked earlier this afternoon is anything On that part the truth?
B. Aleksey No
G. Darnell Everything you told about that is a lie?
B. Aleksey Yea
G. Darnell Glory Perez had nothing to do with this shooting of South Carolina State Trooper?
B. Aleksey No
G. Darnell Anything else you want to add or take away from this tape?
B. Aleksey No
G. Darnell Are you protecting anyone?
B. Aleksey No
G. Darnell Are you protecting Gloryvee Perez or Lisa Watson?
B. Aleksey No
G. Darnell Everything you told us is the truth?
B. Aleksey Yea
G. Darnell Did Lisa Watson help you get that car?
B. Aleksey Yea
G. Darnell How?
B. Aleksey She went to the dealership and she put it under her name.
G. Darnell Did her husband know about this?
B. Aleksey Yea
G. Darnell Did they also put a cell phone in the car for you?
B. Aleksey No
G. Darnell You never had a cell phone that belonged to Lisa Watson?

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B. Aleksey No
B. Aleksey No
G. Darnell What was the deal on the car?
B. Aleksey The deal on the car was that I, she did me the favor, if I paid the monthly Payments and paid the down payment, she would put the car under my name And pay for the insurance. She would put the car under my name as long I Made the payments on time. I gave her $10,000.00 that's what she said They needed to put down. I gave her the ten grand that I had and then I got And we picked up the car the next day. And later I found out that it was really Only $3,000.00 to put down and I tried to get the rest of the money back, but She wouldn't give it to me.
G. Darnell Were you working at the time.
B. Aleksey I was working odd jobs, but I was working the clubs in Atlantic City.
G. Darnell Where did you or what did you do to obtain $10,000.00?
B. Aleksey It was money I had saved up before and I borrowed some of the money.
G. Darnell Are there any outstanding warrants on you now through the Federal U. S. Marshall Service?
B. Aleksey Yea
G. Darnell How long have they been outstanding on you?
B. Aleksey Since last year
G. Darnell Have you ever made contact with them in an attempt to clear that up?
B. Aleksey Yea
G. Darnell But you never did turn yourself in?
B. Aleksey No
G. Darnell Is there anything else you want to tell us?
B. Aleksey I tried to contact the Marshall's Office to help and I've been trying to ask for Help all the time and nobody wanted to help me. I didn't know who to trust.
G. Darnell Once again, have I, Senior Agent George Darnell or Senior Agent Kenny Mears with S. C. Law Enforcement Division, or anyone else connected with The South Carolina Highway Patrol, Orangeburg County Sheriff's Office, Or the Solicitor's Office promised you anything?
B. Aleksey No
G. Darnell Have they threatened you in any way?
B. Aleksey No
G. Darnell Is what you have told us the truth?
B. Aleksey Yea
G. Darnell This afternoon did you ask to come to talk with us or did we come to you?
B. Aleksey I asked to talk to you
G. Darnell How did you get word to us?
B. Aleksey To one of the officers
G. Darnell One of the officers where?
B. Aleksey Correction Officers
G. Darnell At the Orangeburg County Detention Center?
B. Aleksey Yea
G. Darnell OK this ends the interview, January 2, 1998, 7:32 p.m.
END OF TAPE – SIDE B



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SIDE A

2423

G. Darnell	Today's date is 1/2/98 at 4:50 p.m., Orangeburg County Law Enforcement Complex. Starting to do an interview with Mr. Bayon R. Aleksey. Present In this interview is S/A G. Darnell and S/A Kenny Mears. Mr. Aleksey I Want you to speak up a little bit louder than what you have been talking So the tape can pick you up good. Have you been advised of your Constitutional rights?
B. Aleksey	Yea
G. Darnell	Have you acknowledged them by signing the S. C. Law Enforcement Rights Form?
B. Aleksey	Yea
G. Darnell	Speak up just a little bit louder
B. Aleksey	Yes
G. Darnell	OK, you name is Bayon R. Aleksey
B. Aleksey	Yes
G. Darnell	Date of birth 11/8/68
B. Aleksey	Yes
G. Darnell	Social Security No. 074-54-9878
B. Aleksey	Yes
G. Darnell	And your address is 143-48 41st Ave., Flushing Queens, New York
B. Aleksey	Yes
G. Darnell	That's the address of your mother, Vera Aleksey
B. Aleksey	Yes
G. Darnell	Mr. Aleksey, if you would just relate to myself and Agent Mears, what took Place with you on the morning of Dec. 31, 1997 and on into Jan. 1, 1998
B. Aleksey	Where do you want me to start from?
K. Mears	Wherever you left off
B. Aleksey	OK, I can't remember the time and date whatever, but we were in North Carolina. I was driving through North Carolina
G. Darnell	When you say we, who are you talking about?
B. Aleksey	Gloria and myself
G. Darnell	Gloria?
B. Aleksey	Gloria Perez
G. Darnell	Gloria Perez
B. Aleksey	And myself
G. Darnell	Anybody else
B. Aleksey	And two kids, they were in the back they were sleeping. I was driving through North Carolina, and I actually drove all the way from New Jersey Pike all the Way to North Carolina. OK by myself.
G. Darnell	OK we are back on tape now and was interrupted due to a telephone call. Go Ahead Mr. Aleksey
B. Aleksey	OK got up that day and I drove from New Jersey to North Carolina
G. Darnell	Go Ahead
B. Aleksey	And I on the way I pulled over a few times and got to the gas station cause I was tired, by the time I reached Virginia I was tired. OK, and Gloria asked Me if she wanted to drive and I said no let me a little more, if I get a little Tired you can drive. And I drove the last, I think the last stop that I stopped

B. Aleksey it was the borderline of North Carolina and Virginia. OK, I'm not sure I'm just Giving you an approximate. So I pulled over for gas, checked the oil and stuff Like that and I asked her if she can drive. She says OK I'll drive. At that time I told her, I asked her can you drive stick and she said yea I can drive stick. And I just told her to take it easy on the gears cause I just had the gears redone In the car. She said OK. So I drove, I mean she drove and I got in the passenger Seat, the kids are still sleeping in the back. Before we took off I got gas And something to eat or whatever. But before that I did stop a few times Because to get something to drink just to keep awake. Because the night Before I was up most of the night. So I drove to like I said to North Carolina And she took over, she drove. I feel asleep a little bit in the car, drove and When I woke up, apparently when I woke up before she was doing about 80-90 Miles per hour, OK. This is, I don't believe it was in South Carolina, we were Still in North Carolina. So I was up for a little bit and it was a white transam Convertible with South Carolina Plates, the plate number had South Carolina Plates. So she kept up with it you know when you have two sports cars and You're on the highway you going neck and neck and you just like tease one Another to see who can take off the fastest. Cause myself, I race OK and I Do that on the highway a couple of times so with guys you meet up with guys On the highways. So I told her to take it easy don't punch it like that until You get use to the car, so she said OK no problem. So we stayed with this Transam for like about 20 miles and after that she passed it, it was about maybe 45 to an hour I dozed off again and I fell asleep. At the time, when I woke up she said Michael wake up. I'm like what's wrong? She said I'm getting pulled over. So I was like were you speeding? So then I pulled over, I mean she pulled over and she told me she was getting pulled over. So look in the back and I see a blue light flashing. And all of a sudden she said what should I do and I said pull over, what you talking about, pull the car over. Next thing I knew she, there's a gun in the car. It was on her side. The reason why for the gun is because of the text of which I will get into later on. I say no, I woke up, we got pulled over, I stopped, we stopped and all the next thing I heard was shots. And I looked at Gloria and I said Gloria what the fuck you doing? Next thing you know whoosh, gone, I said Gloria what the fuck are you doing? She said, we took off and I was panicking I was like, no fucking way. I was Like Gloria, what the fuck are you doing? We continued down 95 and we got Off at like at what exit, I don't know what exit we got off. Got off at the exit At some remote place I don't know what it was, she got scared, she just Skidded, she skidded into a parking lot or side of the road and she told me to Drive. I was like, I don't know what the fuck is going on get on the other side And I got in the wheel and I started to drive. And I'm looking at her and I said I don't know what the fuck to do. And Gloria said get us the fuck out of here Get me the fuck out of here.

G. Darnell Go ahead

B. Aleksey What do you mean get the fuck out of here I was panicking, I didn't know what To do. So I drove down the road. And pulled over cause as I was driving there Was another police car you know made a U-turn or whatever. I pulled over And I told Gloria, what the fuck you doing, what the fuck is going on here.

B. Aleksey I panicked because I have problems in New York and Philadelphia that's why I ran OK I'm being honest with you, that's why I ran, OK After that everything I mean, I was running, she got out of the car, and she actually she didn't get Out the car, she jumped out of the car OK And that's it, then I took off and The next thing I knew I got cornered in I don't know where I got cornered At. I struck, I don't know what else to tell you. When you talked to me, I Remember you talking to me I was so out of it, I couldn't, I mean I got so Scared because what happened was that when she pulled over, she fired the Gun and she threw it on my side. OK, she threw it on my side so I picked up the gun and I'm like I can't fucking believe you did this Gloria. What the Fuck is going on? And then we argued like I said. We argued and I was like Gloria I didn't need this, OK, I did not fucking need this I got enough Fucking problems. OK, I got enough fucking problems behind this. And she Was like, she started screaming, yelling, kids woke up, and that's it really I mean. I ran because I was scared. OK I do have warrants. I do have Warrants out of Philadelphia and New York. And when I heard that I was being Charged with a crime of murder, let me tell you something OK I never killed Anybody, I never hurt nobody. Third if my life wasn't fucked up, I always Wanted to be a cop. And at times I got arrested in Pennsylvania OK I had A pick up truck, I hooked it up, not like a cop car OK But like a tow truck Alright and you can ask my mother, you ask anybody I always wanted to be A cop. You call the Queens Police Station I tried to enroll in the auxiliary Police OK and the last fucking thing I would do is kill a fucking cop. And That's what hurts. I would never ever kill a cop. OK I have respect for Troopers and Police Officers cause I have family who is in law enforcement. And all the times I've gotten in trouble or whatever in New York I had an Uncle who is a District Attorney in New York, alright. I would never Never hurt, my mother didn't bring me up that way. I couldn't, I can't I can't hurt another person OK And I want you to just realize something here OK I want to, if you see my rap sheet and you talk to Katherine, OK, I have Problems in the club in New York or whatever OK and I got problems OK But I much rather, I would not do something to fuck my life up like that. OK Katherine told me, Katherine said man, turn yourself in, OK it's minor Crimes, but that's not what I'm really running from. I'm running from Somebody who's got a contract on my life in New York, what am I suppose To do. For five years I've been running, five years, do you know how it is To look over your shoulder for five years and wonder if there is going to be A bullet with your name on it. I'm not sitting here, I'm telling you, I'm not Lying to you, I'm telling you truth. Honest to God, fucking truth.

G. Darnell Is that it?

B. Aleksey That's all I got to say

G. Darnell Go ahead. It's Jan. 2, 1998 continuing the interview with Bayon R. Aleksey. Present is S/A Kenny Mears, myself, S/A George Darnell of SLED. The Time now is 7 minutes past 7:00 p.m. in Orangeburg County Detention Center. Bayon, you realize you are back on tape

B. Aleksey Hum hum yea

G. Darnell You realize it's being recorded

B. Aleksey Yea
G. Darnell You have your rights explained to you and read over your rights and Acknowledged your rights by signing your rights earlier
B. Aleksey Yea
G. Darnell Do you want to tell us now about what occurred with you on Dec. 31, 1997 Where you left from, and what happened as you were traveling through The state of South Carolina and where you were enroute to. And who was With you
B. Aleksey I was traveling from New Jersey to Florida and I got pulled over for speeding The trooper approached me and I shot him.
G. Darnell Where at Bayon?
B. Aleksey South Carolina
G. Darnell Can you speak just a little bit louder now
B. Aleksey In South Carolina
G. Darnell Who was along with you?
B. Aleksey Gloryvee Perez
G. Darnell Who else?
B. Aleksey Her kids
G. Darnell How old are her kids?
B. Aleksey Eight and ten
G. Darnell When you say ten?
B. Aleksey Months
G. Darnell Ten months Did Glory Perez, did she know that y'all were being pulled over?
B. Aleksey No
G. Darnell Was she awake when you were pulled over?
B. Aleksey No
G. Darnell Did she know what you were going to do?
B. Aleksey No
G. Darnell After things happened, did she realize what had happened?
B. Aleksey No
G. Darnell When did she realize a police officer or trooper had been shot?
B. Aleksey After I got on, I took off and got off at the exit.
G. Darnell Did you wake her and tell her or did she wake on her own?
B. Aleksey She woke on her own
G. Darnell And what did you tell her?
B. Aleksey I told her I shot a police officer
G. Darnell Why did you tell her that you shot him?
B. Aleksey Told her I was scared
G. Darnell What was you scared of?
B. Aleksey I don't know I was just scared, just (crying) (sigh) no
G. Darnell Is there anything else you want to tell us about this night? What took place Prior to or after the shooting?
B. Aleksey No
G. Darnell Sir? Is there anything else before or after the shooting you want to tell us? Has anyone, myself, Agent Mears, or anyone else promised you anything to Get you to tell us the truth about this situation?
B. Aleksey No

G. Darnell To get you to tell us the truth about this situation?
B. Aleksey No
G. Darnell Made no guarantees to you
B. Aleksey No
G. Darnell Threatened you in any way?
B. Aleksey No
G. Darnell What is the reason for you telling the truth now?
B. Aleksey My conscious
G. Darnell Speak up now
B. Aleksey My conscious, sir it was wrong
G. Darnell Agent Mears do you have anything else?
K. Mears Yes I have a few questions. I'm Kenny Mears I'm with the State Law Enforcement Division, let me ask you who was driving the car?
B. Aleksey I was
K. Mears And what type car was it?
B. Aleksey Mustang
K. Mears Describe it for me
B. Aleksey A white car with tinted windows
K. Mears And whose car was it?
B. Aleksey My car
K. Mears Did you have a weapon in the vehicle?
B. Aleksey Yea
K. Mears What type weapon did you have?
B. Aleksey I don't know (N/A)
K. Mears Describe it to me please
B. Aleksey Black and silver
K. Mears Do you know the model of it?
B. Aleksey No I don't know
K. Mears Whose weapon was it?
B. Aleksey I've taken it from somebody, my ex-girlfriend she didn't even know about it She knew about it, but she tried to get it back and I wouldn't return it to her.
K. Mears When the trooper stopped you on that night, did you talk to him?
B. Aleksey No
K. Mears You did not say anything at all to him, did he say anything to you?
B. Aleksey No, I don't really know.
K. Mears Do you recall how many shots you fired?
B. Aleksey No.
K. Mears Approximately how many?
B. Aleksey Two or three I don't remember
K. Mears Do you know how many rounds you had in the clip or in the weapon?
B. Aleksey I think it was ten
K. Mears Ten full clip or how many rounds would a clip hold
B. Aleksey Ten
K. Mears It would hold ten plus one in the chamber
B. Aleksey I think so
K. Mears And you know you had ten in the clip?
B. Aleksey I think so, yea

K. Mears Did you have to cock the weapon to put one in the chamber or was there already One in the chamber?
B. Aleksey I think it was in the chamber already
K. Mears Did Gloria know what was going to happen before this shooting incident?
B. Aleksey No
K. Mears Why did you shoot this officer, Trooper Lingard?
B. Aleksey I don't know, I was scared
K. Mears Scared of what?
B. Aleksey Scared of police itself
K. Mears After shooting Officer Lingard, what did you do?
B. Aleksey I took off
K. Mears Took off
B. Aleksey Down the highway
K. Mears When you say you took off, you took off how?
B. Aleksey I drove off
K. Mears In the white Mustang?
B. Aleksey Yea
K. Mears Was Gloria and the children still with you?
B. Aleksey Yes
K. Mears What were they doing?
B. Aleksey They were sleeping, the kids were sleeping
K. Mears What about Gloria?
B. Aleksey She was sleeping too
K. Mears How did she find out that you shot the Trooper?
B. Aleksey My (N/A) I threw up, she woke up after I took off and I never woke her up It's the way I probably took off, that woke her up.
K. Mears After shooting the Trooper, you sped off and where did you go from there?
B. Aleksey I just got off at an exit, I don't know where I ended up
K. Mears And later on that night, what happened?
B. Aleksey I got arrested
K. Mears Before you were arrested what occurred?
B. Aleksey Police Officer pulled me over and I told Gloria and Gloria jumped out of the car
K. Mears Speak up so
B. Aleksey Gloria just jumped out of the car
K. Mears Did she have the kids when she jumped out?
B. Aleksey Yea
K. Mears After she jumped out of the car and the officer pulled you over, what did you Do?
B. Aleksey I took off
K. Mears Took off a second time
B. Aleksey Yea
K. Mears Before you took off what did you do with the weapon?
B. Aleksey I (N/A) I don't remember that
K. Mears Did you attempt to do something else?
B. Aleksey Hum I tried to kill myself
K. Mears How did you try to kill yourself?
B. Aleksey Pointed the weapon to my head

K. Mears And what happened?
B. Aleksey Nothing
K. Mears Did you pull the trigger?
B. Aleksey Yea
K. Mears Were there any rounds in the clip or in the gun?
B. Aleksey I don't know
K. Mears Did you, it snap or
B. Aleksey It just went click
K. Mears It just didn't fire
B. Aleksey Yea it didn't fire
K. Mears Then after the weapon didn't fire what did you do?
B. Aleksey I surrendered, the police pulled me out of the car
K. Mears You surrendered, before you surrendered something happened though didn't It?
B. Aleksey No
K. Mears Was there an accident of some sort
B. Aleksey What happened was that when I was in the parking lot, when the car that Rammed me had stopped., And that's when I tried to pull the trigger on myself Then. Do you see what I'm saying. But by the time I did it, by the time the Police rammed me, hit me, he pulled me out of the car.
K. Mears In other words you ran into another Trooper's car?
B. Aleksey No they ran into me
K. Mears They ran into you. But anyway there was a collision between you and another Trooper?
B. Aleksey Yea
K. Mears Did Gloria have anything to do with this at all?
B. Aleksey No
K. Mears Did she coach you into shooting the Trooper?
B. Aleksey No
K. Mears Have you ever shot this weapon before?
B. Aleksey No, huh, once
K. Mears . . . You shot it once before, where?
B. Aleksey Pennsylvania
K. Mears Tell me about Pennsylvania
B. Aleksey I was driving and the guy was an asshole on the road, Lisa was with me
K. Mears Lisa, now who is Lisa?
B. Aleksey Someone I was seeing
K. Mears What's her last name?
B. Aleksey Watson
K. Mears OK, just the two of you
B. Aleksey Yea
K. Mears And who was driving?
B. Aleksey I was
K. Mears OK, go ahead
B. Aleksey The guy was fucking with me on the highway. He kept nailing his brakes in Front of me and I tried to get around him. It just started a confrontation, he Threw something out of his car.

K. Mears He threw something out of his car
B. Aleksey Yea a piece of wood or something like that. I just fired the weapon just to scare Him
K. Mears Did you hit the passenger, did you hit the vehicle or do you know if you hit Anything or not.
B. Aleksey I didn't know what I hit, I didn't think I hit the car until it was brought to my Attention.
K. Mears How many times did you fire the weapon
B. Aleksey Once
K. Mears Lisa was in the car with you, where was she situated in the vehicle?
B. Aleksey Front seat
K. Mears Getting back to South Carolina.. Anything else happen before you met the Trooper? Any other incident before you shot the Trooper?
B. Aleksey No
K. Mears Do you recall another officer firing shots at you that night?
B. Aleksey No, I didn't
K. Mears Did you ever get out of the vehicle
B. Aleksey No
K. Mears When Trooper Lingard stopped you
B. Aleksey I never got out of the car
K. Mears And you don't recall how many shots you fired? Did you fire the weapon until It quit shooting or did you just quit shooting and took off?
B. Aleksey I just shot and took off, but I never got out of the car
K. Mears Anything else you want to tell us about
B. Aleksey I'm sorry it happened, I (N/A)
K. Mears Speak up so
B. Aleksey I'm sorry it happened and I don't know why I did it
K. Mears How long have you known Gloryvee?
B. Aleksey About a month
K. Mears Where have you been staying previous?
B. Aleksey All over the place, hotels
K. Mears In South Carolina or in
B. Aleksey No in Jersey
K. Mears In Jersey
B. Aleksey In Jersey
K. Mears Were you working?
B. Aleksey No
K. Mears Was Gloryvee working?
B. Aleksey Yea
K. Mears There were several checks in the vehicle that belonged to a doctor, do you know What checks I'm referring to?
B. Aleksey Yea
K. Mears Where did those checks come from?
B. Aleksey From where she use to work at, she didn't know I had them
K. Mears How did you get them?
B. Aleksey I was just picking her up from work and she wasn't there I just picked them up Without her knowing, she didn't know I took them.

K. Mears Did you cash any of them?
B. Aleksey No
K. Mears You never did cash any of them
B. Aleksey Huh; huh
K. Mears Did you wire any money into an account of yours or anyone's at any time?
B. Aleksey Well, not wire, Gloria, it was Gloria's account, she didn't know and I Deposited two checks to see if they would clear
K. Mears Did the checks clear?
B. Aleksey No
K. Mears What did the two checks amount to?
B. Aleksey '$24,000 to $28,000 something like that
K. Mears So while on this crime spree, who else was involved, if anyone, besides you
B. Aleksey No one
K. Mears So you are telling us that you committed this crime of shooting the South Carolina State Trooper by yourself
B. Aleksey Yea
K. Mears Gloryvee was not involved in any way?
B. Aleksey No
K. Mears Speak up
B. Aleksey No
K. Mears Are you telling the truth?
B. Aleksey Yes
K. Mears Did you threaten Gloria in any way if she mentioned this to anyone?
B. Aleksey No
K. Mears Anything else you would like to tell us?
B. Aleksey (N/A)
K. Mears I beg your pardon
B. Aleksey I'm sorry, I'm sorry
K. Mears All these aliases, when I speak of aliases, names and identifications and things Like that. How did you come about getting these names and identifications?
B. Aleksey From New York, from New York I got them
K. Mears And your real name is Bayon R. Aleksey
B. Aleksey Hum hum
K. Mears That is your real name?
B. Aleksey (N/A)
K. Mears I don't have any other questions George
G. Darnell Bayon what was your girlfriend's name who owned the gun
B. Aleksey Ellen
K. Mears Spell that for us
B. Aleksey Ellen
G. Darnell What's her last name?
B. Aleksey Batkilinia
G. Darnell Would you spell that?
B. Aleksey Batkilinia
G. Darnell OK, coming down towards South Carolina, did anything occur with you coming Through the state of Maryland or state of North Carolina?
B. Aleksey No

SLED CASE NO.: 31970173
TAPED INTERVIEW/STATEMENT OF BAYON R. ALEKSEY
PAGE 10 – SIDE A & SIDE B

G. Darnell Nothing else
B. Aleksey No
G. Darnell The first part of this tape where we talked earlier

END OF SIDE A

BEGINNING OF SIDE B OF TAPE

G. Darnell OK we are on the other side of the tape now, just to back up, just in case we 'Didn't get before. In coming down through the state of Maryland, the state Of North Carolina prior getting into South Carolina, did anything else occur?
B. Aleksey No
G. Darnell You had no problems with anybody
B. Aleksey No
G. Darnell And the name of your girlfriend who owned the gun?
B. Aleksey Ellen Batkilinia
G. Darnell In the first part of this tape where we talked earlier this afternoon is anything On that part the truth?
B. Aleksey No
G. Darnell Everything you told about that is a lie?
B. Aleksey Yea
G. Darnell Glory Perez had nothing to do with this shooting of South Carolina State Trooper?
B. Aleksey No
G. Darnell Anything else you want to add or take away from this tape?
B. Aleksey No
G. Darnell Are you protecting anyone?
B. Aleksey No
G. Darnell Are you protecting Gloryvee Perez or Lisa Watson?
B. Aleksey No
G. Darnell Everything you told us is the truth?
B. Aleksey Yea
G. Darnell Bayon the incident back up on when the shot was fired into another vehicle was Lisa Watson with you?
B. Aleksey Yea
G. Darnell Did Lisa Watson help you get that car?
B. Aleksey Yea
G. Darnell How?
B. Aleksey She went to the dealership and she put it under her name.
G. Darnell Did her husband know about this?
B. Aleksey Yea
G. Darnell Did they also put a cell phone in the car for you?
B. Aleksey No
G. Darnell You never had a cell phone that belonged to Lisa Watson?
B. Aleksey No

SLED CASE NO.: 31970173
TAPED INTERVIEW/STATEMENT OF BAYON R. ALEKSEY
PAGE 11 – SIDE B

B. Aleksey No
G. Darnell What was the deal on the car?
B. Aleksey The deal on the car was that I, she did me the favor, if I paid the monthly Payments and paid the down payment, she would put the car under my name And pay for the insurance. She would put the car under my name as long I Made the payments on time. I gave her $10,000.00 that's what she said They needed to put down. I gave her the ten grand that I had and then I got And we picked up the car the next day. And later I found out that it was really Only $3,000.00 to put down and I tried to get the rest of the money back, but She wouldn't give it to me.
G. Darnell Were you working at the time.
B. Aleksey I was working odd jobs, but I was working the clubs in Atlantic City.
G. Darnell Where did you or what did you do to obtain $10,000.00?
B. Aleksey It was money I had saved up before and I borrowed some of the money.
G. Darnell Are there any outstanding warrants on you now through the Federal U. S. Marshall Service?
B. Aleksey Yea
G. Darnell How long have they been outstanding on you?
B. Aleksey Since last year
G. Darnell Have you ever made contact with them in an attempt to clear that up?
B. Aleksey Yea
G. Darnell But you never did turn yourself in?
B. Aleksey No
G. Darnell Is there anything else you want to tell us?
B. Aleksey I tried to contact the Marshall's Office to help and I've been trying to ask for Help all the time and nobody wanted to help me. I didn't know who to trust.
G. Darnell Once again, have I, Senior Agent George Darnell or Senior Agent Kenny Mears with S. C. Law Enforcement Division, or anyone else connected with The South Carolina Highway Patrol, Orangeburg County Sheriff's Office, Or the Solicitor's Office promised you anything?
B. Aleksey No
G. Darnell Have they threatened you in any way?
B. Aleksey No
G. Darnell Is what you have told us the truth?
B. Aleksey Yea
G. Darnell This afternoon did you ask to come to talk with us or did we come to you?
B. Aleksey I asked to talk to you
G. Darnell How did you get word to us?
B. Aleksey To one of the officers
G. Darnell One of the officers where?
B. Aleksey Correction Officers
G. Darnell At the Orangeburg County Detention Center?
B. Aleksey Yea
G. Darnell OK this ends the interview, January 2, 1998, 7:32 p.m.

END OF TAPE – SIDE B

STATE OF SOUTH CAROLINA,)
)
COUNTY OF ORANGEBURG.)

IN THE COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

FILED
JAN 16 AM 11:20

The State,)
)
vs.)
)
Gloryvee Perez)
Defendant.)

MOTION TO DISCLOSE

PURSUANT to Rule 5 of the South Carolina Rules of Criminal Procedure, the above named defendant does hereby move to be allowed to:

1. Inspect, copy or photocopy any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the Solicitor's Office, the existence of which is known, or by the exercise of due diligence may become known, to the Solicitor's Office; and the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a prosecution agent.
2. Be furnished with a copy of the defendant's prior criminal record, if any, as is within the possession custody or control of the Solicitor's Office.
3. Inspect, copy or photograph books, papers, documents, photographs, audio/video tapes tangible

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

objects, buildings, or places or copies of portions thereof, which are within the possession, custody or control of the prosecution and which are material to the preparation of the defendant's defense or are intended for use by the Solicitor's Office as evidence in chief at the trial, or were obtained from or belong to the defendant.

4. Inspect and copy any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody or by the exercise of due diligence may become known to the attorney for the Solicitor's Office and which are material to the preparation of the defense or are intended for use by the Solicitor's Office as evidence in chief at the trial.

5. In regards to any drug and/or alcohol, counsel specifically does not waive the chain of custody and objects to the introduction of a chemist's or analyst's report pursuant to Rule 6 of the South Carolina Rules of Court.

6. Counsel for the defendant moves for the production of these statements prior to the calling of the case for the following reasons, which are not inclusive: the seriousness of the charges, the possible sentence, the

number of witnesses, the little time available to review the witnesses' statements during trial itself and the potential for a claim of ineffective assistance of counsel if the statements are not provided.

If the State maintains the statements are not discoverable, counsel moves for a pre-trial hearing to determine "materiality" and whether the refusal to disclose would deprive the defendant of a fair trial and probable prejudice, if any.

7. Be furnished with a copy of the defendant's prior criminal record.

8. If every drug case be furnished with the identity of the confidential informant(s) with sufficient. information such as address and telephone number, in sufficient time to have an opportunity to search for and interview that witness or otherwise investigate that witness.

9. It is counsel's contention that all items sought are material to the preparation of his defense.

10. Request any and all results or reports of any physical or mental examinations.

11. At this time, I am requesting an opportunity to view any and all physical evidence.

Michael R. Cullen Jr.
Public Defender

Orangeburg, South Carolina

JAN 15 1998

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS 2437
	)	
COUNTY OF ORANGEBURG	)	INDICTMENT NO. 98-GS-38-0244
STATE OF SOUTH CAROLINA	)	
	)	
-versus-	)	ORDER FOR COMPETENCY EVALUATION
	)	AND CRIMINAL RESPONSIBILITY
BAYAN ALEKSEY,	)	
	)	
Defendant.	)	

This matter comes before me on motion of Walter M. Bailey, Jr., Solicitor for the First Judicial Circuit, for an order requiring the defendant, BAYAN ALEKSEY, charged with Murder, to submit to a psychiatric or psychological examination.

I have considered the showing made in respect to the motion for such an order and am of the opinion that the defendant should be so examined pursuant to the statutory provisions of this State.

THEREFORE, IT IS ORDERED THAT the defendant shall be:

(a) Examined, evaluated and observed by the appropriate facility of the South Carolina Department of Mental Health for a period not to exceed fifteen (15) days relative to his mental capacity to stand trial. (Section 44-53-410 (1) and (2), Code of Laws of South Carolina, 1976, as amended.

AND SHALL BE:

(b) Examined as aforesaid to determine whether or not the above named defendant is criminally responsible pursuant to the McNaughton test of his actions on or about December 31, 1997.

AND SHALL BE: 2438

(c) If found responsible pursuant to the McNaughton test, examined as aforesaid to determine whether or not, because of mental disease or defect, the defendant lacked sufficient capacity to conform his conduct to the requirements of the law. (Section 17-24-20 (A), Code of Laws of South Carolina, 1976, as amended).

BUT SHALL BE:

(d) Automatically referred for evaluation to the Department of Disabilities and Special Needs if the examiners find any evidence of mental retardation pursuant to Section 44-53-410, Code of Laws of South Carolina, 1976, am amended.

The ordered examination shall be requested by the solicitor and scheduled by the examining facility as soon as possible. The defendant is to be examined by the staff of the examining facility at the South Carolina Department of Corrections due to his safekeeping status. The defendant continues under the jurisdiction of this court.

That the attorneys for the defendant shall be notified in advance of the date, time and place of the evaluation and given the opportunity to be present if so desired and further that anything the defendant says with regard to the facts of his case are not admissible in court.

That within five (5) days of the examination or at the conclusion of the observation period, a written report shall be made to the court pursuant to Section 44-23-420, Code of Laws of South Carolina, 1976, as amended.

AND IT IS SO ORDERED.

EDWARD B. COTTINGHAM
JUDGE, FIRST JUDICIAL CIRCUIT

May 23, 1998

I SO MOVE:

WALTER M. BAILEY, JR.
SOLICITOR, FIRST JUDICIAL CIRCUIT

2347

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
COUNTY OF ORANGEBURG	)	C/A No. 98-GS-380244
The State of South Carolina Plaintiff, v. Bayan Aleksey Defendant.	)	**MOTION TO PRODUCE REPORTS OF EXAMINATION AND TESTS**

2440

Defendant, by and through his counsel, moves this Court for an Order requiring that the State Law Enforcement Division, otherwise known as SLED, provide to the Defense, no later than June 1, 1998 copies of all reports, analyses or any other data gathered and tested as evidence in the above mentioned case.

The State Law Enforcement Division performed gunshot residue tests on the Defendant. The general test report indicated that there was no gunshot residue on the hands of the Bayan Aleksey.[1] This is exculpatory evidence which under Brady was properly submitted to the Defense attorney. A gunshot residue test checks for the presence of and level of barium, antimony and lead. There are several analytical techniques in lifting such residues. These techniques and testing processes are relevant to determine how the SLED agent came to the conclusion that there was no gunpowder residue on the Defendant's hands. The general response which SLED has already provided the Defense is exculpatory. The tests which led up to this result are also relevant and exculpatory.

On April 17, 1998, the Defendant made a Freedom of Information Request to SLED for all computer reports, test results, worksheets, AA-ICP-SEM analysis and any other data on the

---

[1] Exhibit A SLED Report; Gunshot Residue Test

gunshot residue analysis that was conducted on the Defendant.[2] On May 5, 1998, SLED denied this request and responded that the investigation was still open and pursuant to South Carolina Code of Laws § 30-4-40(a)(3)(b) that this would be a premature release of information to be used in a prospective law enforcement action.[3] Bayan Aleskey was arrested and charged on January 1, 1998, with the murder of a Highway Patrol Trooper. He was indicted in Orangeburg County on January 26, 1998, and was served notice of the State's intent to seek the death penalty on February 2, 1998. At this point all law enforcement action as taken place unless SLED intends to investigate someone else for the murder of the Highway Patrol Trooper. The trial of this case is scheduled for August 24, 1998. The Defense submits that it would not be premature for the Court to require SLED to produce this information along with other information which is both relevant and exculpatory before June 1, 1998.

Pursuant to Brady v. Maryland, 373 U.S. 83 (1963) the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. See also Duncan v. State, 281 S.C. 435, 315 S.E. 2d 809 (1984).

In United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed. 2d 342 (1976), the Court defined materiality as follows:

> The proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt. Such a finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt. It necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist,

---

2 Exhibit B Freedom of Information Request

3 Exhibit C Letter from SLED

preparation of the Defense or are intended for the Prosecution as evidence in chief at the trial.

The fingerprint report indicates that Bayan Aleksey's fingerprints were found on the alleged murder weapon. The firearm report indicates that the bullets from the Defendant's gun were consistent with the bullets found at the scene of the Trooper's death. Obviously, the State proposes to introduce such evidence at trial in their case in chief. Regardless of the State's intent, the Defense should have an opportunity to inspect scientific evidence against it's client and review these test results for any potential errors.

In accordance with Rule 5, the Defendant hereby respectfully requests that the State be Ordered to produce all data which was used in formulating the SLED fingerprint and ballistic report, and for the Defense to be allowed access to the alleged murder weapon for testing.

RESPECTFULLY SUBMITTED,

Isaac M. Stone, III
102 Craven Street, Suite 4
Beaufort, South Carolina 29902
(843) 770-0767
Attorney for Defendant

Beaufort, South Carolina

This 15 Day of May 1998.

County of Orangeburg)

2445 2350

At a Court of General Sessions, convened on January 26, 1998, the Grand Jurors of Orangeburg County present upon their oath:

COUNT: MURDER
(COMMON LAW)

That Bayan Alekscy "aka" Justin Matecki did in Orangeburg County on or about December 31, 1997, feloniously, wilfully and with malice aforethought, kill one Sgt. F. L. Lingard by means of shooting him with a pistol and that the said Sgt. F. L. Lingard did die as a proximate result thereof on or about the 31st day of December, 1997 in Orangeburg County .

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR James C. Williams

98 FEB 12 AM 11:49
FILED & E
OC.
CLERK OF COURT

WITNESSES

Agent George Darnell

ARREST WARRANT #:

E784245

Arrested on January 01, 1998

ACTION OF GRAND JURY

TRUE BILL

REC'D JAN 26 1998

Foreman: B. Louise Hughes
Grand Jury

VERDICT

Foreman: _____
Petit Jury
Date: _____

DOCKET #: 98GS38-0244

THE STATE OF SOUTH CAROLINA
County of Orangeburg

COURT OF GENERAL SESSIONS
Term: January, 1998

THE STATE

vs.

Bayan Alekseev

INDICTMENT FOR

-0116

MURDER

(COMMON LAW)

CERTIFIED TO BE A TRUE AND CORRECT COPY

FIRST CIRCUIT SOLICITOR'S OFFICE

COPY

STATE OF SOUTH CAROLINA)
)
County of Orangeburg)

In the Court of Common Pleas

01-CP-38-628

RECEIVED
JUN 04 2001

BAYAN ALEKSEY #5059)
Full name and prison number, if any, of applicant.)
)
v.)
)
STATE OF SOUTH CAROLINA,)
Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED FOR RECORD
LISA W. MIZELL
CLERK OF COURT
ORANGEBURG, S.C.
01 MAY 31 PM 3:58

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution, Post Office Box 205, Ridgeville, South Carolina 29472

2. Name and location of Court which imposed sentence Honorable Edward B. Cottingham, Judge - Orangeburg County Court of General Sessions

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) 98-GS-38-244
   (b)
   (c)

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) September 1, 1998 - Death for murder
   (b)
   (c)

ATTEST: TRUE COPY
CLERK OF COURT

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty XX

(c) after a plea of nolo contendere _____

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

_____

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

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

i. The South Carolina Supreme Court

ii. The United States Supreme Court

iii. _____

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

i. Convictions and Sentences Affirmed

ii. Petition for Writ of Certiorari denied

iii. _____

(c) the date of each such result:

i. November 13, 2000

ii. May 14, 2001

iii. _____

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

i. Opinion No. 25212 (filed November 13, 2000)

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) Ineffective Assistance of Counsel based on grounds in attachment

(b) _____

(c) _____

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

(a) _____

_____

(b) _____

_____

(c) _____

_____

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

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. _____

ii. _____

iii. Robert M. Dudek, SC Office of Appellate Defense, 1122 Lady Street, Ste 940, Columbia, SC 29201

(b) the proceedings at which each such attorney represented you:

i. _____

ii. _____

iii. Appeal to the South Carolina Supreme Court and Petition for Writ of Certiorari to the United States Supreme Court

18. State clearly the relief you seek in filing this application.

_____

_____

19. Are you now under sentence from any other court that you have not challenged?

_____

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF ORANGEBURG)

I, Bayan Aleksey being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Bayan Aleksey
BAYAN ALEKSEY

FILED FOR RECORD
LISA W. MIZELL
CLERK OF COURT
ORANGEBURG, S.C.
01 MAY 31 PM 3:59

Sworn to and subscribed before me
This 23 day of May 2001.

Tammie E Whitlaw L.S.
Notary Public for South Carolina
My Commission Expires March 22, 2011

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Bayan Aleksey hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Bayan Aleksey
Bayan Aleksey, Applicant

Sworn to and subscribed before me
This 23 day of May 2001.

Tammie E Whitlaw L.S.
Notary Public for South Carolina
My Commission Expires: March 22, 2011.

ATTEST: TRUE COPY
Lisa W. Mizell
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

ATTACHMENT:

(1) The failure of trial counsel to investigate and procure available impeachment evidence on GloriaVee Perez Blackwell. Blackwell was the only other suspect in this case, and the failure to investigate her background was highly prejudicial to petitioner;

(2) The failure of trial counsel to object to a host of "other bad acts" evidence, including evidence about petitioner's sex life and details of his relationships with women, since this evidence was not necessary to the jury's consideration of the trial issues;

(3) The failure of trial counsel to argue during the *Jackson v. Denno* hearing that petitioner confessed based on a promise from the police that he would be moved into general population. Petitioner was concerned for his life, and a confession in return for a promise of his safety should have rendered the confession inadmissible;

(4) The failure of trial counsel to properly impeach GloriaVee Perez Blackwell with the ten count New Jersey drug indictment against her. Blackwell's denial of any knowledge of dismissed counts directly affected her credibility, and also showed her knowledge of leniency for cooperating with the police;

(5) The failure of trial counsel to investigate and present any meaningful case in mitigation regarding petitioner's background;

(6) The failure of trial counsel to object to the judge's instruction that the jury would "consider the aggravating circumstances against the mitigating circumstances, and you will decide whether you will recommend the death penalty or life imprisonment." R. 2165. This was an improper "weighing" instruction.

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	IN THE COURT OF COMMON PLEAS
BAYAN ALEKSEY, #5059 Applicant, vs. STATE OF SOUTH CAROLINA, Respondent.	C/A No. 01-CP-38 - 628 RETURN OF RESPONDENTS TO INITIAL APPLICATION FOR POSTCONVICTION RELIEF

3 #1.

The Respondents, above-named, hereby make a return to the application for state postconviction relief filed on May 31, 2001 and received by Respondents on June 11, 2001. The Respondents would state that this matter comes before this Court pursuant to the June 6, 2001 Order of the Supreme Court of South Carolina staying the order of execution of Orangeburg County death row inmate Bayan Aleksey to allow him to pursue potential state post-conviction relief. The June 6, 2001 Order assigned the Honorable Diane S. Goodstein with continuing jurisdiction regardless of assignment and with the authority to schedule such hearings as may be necessary. On July 5, 2001, the Court conducted an appointment hearing and conditionally appointed Mr. David B. Tarr of the Richland County Bar and Mr. Jim Brown of the Beaufort County Bar to represent Mr. Aleksey. The initial application was prepared by Mr. Robert Dudek of the South Carolina Office of Appellate Defense prior to this appointment.

Respondents will serve conditionally appointed counsel with a copy of this return. The Respondents will show this Court the following:

I. Procedural History.

Petitioner, Bayan Aleksey, # 5059, is currently a safekeeper under a sentence of death at the Lieber Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Aleksey was arrested on January 1, 1998. At the January 1998 term of the Court of General Sessions for Orangeburg County, Aleksey was indicted for murder. 98-GS-38-0244. He was represented by court-appointed counsel, Thomas R. Sims and I. McDuffie Stone, III. On August 24, 1998, the matter was called to trial before the Honorable Edward B. Cottingham. The matter was prosecuted by Walter M. Bailey, Jr., Solicitor of the First Judicial Circuit. On August 29, 1998, the jury entered a unanimous verdict of guilty for the crime of murder. ROA. p. 1804.

The sentencing phase began on August 31, 1998. ROA. p. 1856. After testimony was received the jury was instructed to consider whether the State had proven beyond a reasonable doubt the existence of the following statutory aggravating circumstance:

> 1. Killing of a law enforcement officer of the State of South Carolina while in the performance of his duties.

ROA. p. 2156, ll. 12-16. Also, ROA. p. 2146, ll. 20-22. The jury was also directed to consider the following statutory mitigating circumstance:

> The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

ROA. p. 2161, l. 25 - p. 2162, l. 13. The jury was also instructed that "you may consider any other mitigating circumstance which is supported by the evidence in this case." ROA. p. 2162, ll. 14-22. After two (2) hours and ten (10) minutes of deliberation, on September 1, 1998, the jury found the existence of the statutory aggravating circumstance and recommended a sentence of death. ROA. p. 2171-72. The jury was polled on its verdict. ROA. p. 2172-74. Counsel made a motion for a new trial and sentencing. ROA. p. 2179-80. Judge Cottingham denied the motion. ROA. p. 2180. The judge then sentenced Aleksey to death. ROA. p. 2181-82.

M #3

The Petitioner was represented on appeal by Robert M. Dudek of the South Carolina Office of Appellate Defense. In the appeal, counsel raised the following issues:

I.

Whether the judge violated Due Process when he instructed the jury that it had "one single objective and that is to seek the truth," because the charge was burden-shifting and it diluted the reasonable doubt standard since the jury's sole function was to determine whether the state proved Appellant's guilt beyond a reasonable doubt?

II.

Whether the judge erred by refusing to suppress Appellant's confession where Appellant told the police "that's all I have to say" after his statement, the police turned the tape recorder off for two hours, continued to converse with Appellant, made promises, did not give him Miranda warnings again before interrogation continued. The police did not scrupulously honor the invocation of Appellant's right to silence in violation of Michigan v. Mosley, and the judge also impermissibly delegated this portion of his Miranda duties to the jury by not ruling?

III.

Whether the judge erred by refusing to allow Appellant to cross-examine Gloryvee Perez about nine other serious narcotics counts of a New Jersey indictment against her where she testified on direct examination she had been convicted of simple possession of cocaine, since her credibility was at issue as a witness, and the jury was left with a false impression of Perez and her credibility as a result of the direct examination?

IV.

Whether the judge erred by refusing to redact references to a contract on Appellant's life from his statement where the solicitor candidly admitted the jury could conclude Appellant had mafia dealings, since Appellant had not placed his character in issue, and the references were an obvious suggestion Appellant was a bad person with a propensity to commit murder?

The South Carolina Supreme Court entered its opinion on November 13, 2000. Rehearing was denied on December 6, 2000. *State v Bayan Aleksey,* 343 S.C. 20, 538 S.E.2d. 248 (2000).

The Applicant sought certiorari to the United States Supreme Court. In his petition for certiorari, he raised the following issue:

#4.

Were petitioner's due process rights under Estelle v.McGuire, 502 U.S. 61 (1991), violated where the trial court instructed the jury that it "had but one single objective, and that is to seek the truth," where only petitioner or his girlfriend could have shot the state trooper, since there was a reasonable likelihood that the jury understood the instruction to mean that its duty was to decide which of the two actually shot the trooper, making the instruction burden-shifting and lessening the state's duty to prove petitioner's guilt beyond a reasonable doubt?

On May 14, 2001, the Supreme Court denied the petition. Aleksey v. South Carolina, 00-8921, _U.S._, 121 S.Ct . 1974 (2001), (cert. denied).

Counsel for Mr. Aleksey filed a petition for stay on May 22, 2001. On June 5, 2001, the Court issued an order for stay assigning this Court to handle the matter. Prior to this assignment, on May 31, 2001, appellate counsel for Mr. Aleksey, Robert Dudek, prepared and filed an application for state post-conviction relief on his behalf.

II. Attachments To The Return

The Respondents attach and incorporate herein by reference the following materials:

A. Final Brief of Appellant.

B. Final Brief Of Respondents.

C. Final Reply Brief Of Appellant.

D. Record On Appeal. (Five (5) Volumes).

E. *State v Bayan Aleksey,* 343 S.C. 20, 538 S.E.2d. 248 (2000).(opinion).

III. Summary Of State's Version of the Case.

On December 31, 1997, Sergeant Franklin L. Lingard of the South Carolina Highway Patrol was murdered while on duty in Orangeburg County, South Carolina.

On New Year's Eve 1997, Sergeant Franklin Lingard of the South Carolina Highway Patrol stopped a white Ford Mustang with a Delaware license plate for speeding on Interstate 95. Sergeant Lingard approached the driver's side of the Mustang and was shot to death by a gun fired from inside the car on the driver's side. Officer Lin Shirer, a narcotics officer with the Calhoun County Sheriff's Office, accompanied Sergeant Lingard on patrol that night. Officer Shirer witnessed the shooting, but was unable to see inside the car to identify the shooter because of its dark tinted windows.

A multi-car chase ensued. An officer stopped the Mustang long enough for Gloryvee Perez Blackwell (Blackwell) and her two children to exit from the passenger side of the vehicle. While Blackwell and the children were exiting the car, appellant held a gun to his head and threatened to kill himself if the officers came any closer to him. Appellant sped away and was eventually stopped again when an officer deliberately collided his vehicle with the Mustang.

Appellant was pulled unconscious from the car, treated at the scene by EMS, then taken to the hospital, and from there to the Orangeburg/Calhoun Regional Detention Center on New Year's Day. A background check on appellant revealed an extensive record of arrests for fraud-related activities, outstanding warrants, and numerous aliases. In addition, both the Mustang and its license tag were stolen.

On January 2nd, appellant gave two statements to officers from the State Law Enforcement Division (SLED). In the first, he claimed Blackwell was driving and shot Sergeant Lingard, after which they stopped and changed seats. In the second, appellant confessed to the shooting.

IV. ALLEGATIONS IN THE INITIAL APPLICATION

In the initial application for post-conviction relief filed by Mr. Dudek on May 31, 2001, the following allegations are raised:

I. Ineffective Assistance Of Trial Counsel.

1. The failure of trial counsel to investigate and procure available impeachment evidence on Gloryvee Perez Blackwell. Blackwell was the only other suspect in the case, and the failure to investigate her background was highly prejudicial to petitioner.

2. The failure of trial counsel to object to a host of "other bad acts" evidence., including evidence about petitioner's sex life and details about his relationships with women, since this evidence was not necessary to the jury's consideration of the trial issues.

3. The failure of trial counsel to argue during the *Jackson v. Denno* hearing that the petitioner confessed based on a promise from the police that he would be moved into the general population. Petitioner was concerned for his life, and a confession in return for a promise of his safety should have rendered the confession inadmissible.

4. The failure of trial counsel to properly impeach Gloryvee Perez Blackwell with the ten count New Jersey drug indictment against her. Blackwell's denial of any knowledge of dismissed counts directly affected her credibility, and also showed her knowledge of leniency for cooperating with the police.

5. The failure of trial counsel to investigate and present any meaningful case in mitigation regarding petitioner's background.

6. The failure of trial counsel to object to the judge's instruction that the jury would "consider the aggravating circumstances against the mitigating circumstances, and you will decide whether you will recommend the death penalty or life imprisonment." R. 2165. This was an improper "weighing" instruction.

V. DISCUSSION OF THE ISSUES.

In his application, he makes allegations relayed to acts and omissions by his original trial counsel, Duffie Stone and Thomas Sims. Respondents submit that he has failed to make a prima facie showing of ineffective assistance of counsel.

A. Standards Governing Claims of Ineffective Assistance of Counsel.

In his Application, he makes various allegations concerning the effective assistance of counsel in the sentencing phase. Under the standard for evaluating claims of ineffective assistance of counsel, the Applicant must establish that counsel's representation fell below an objective standard of reasonableness. Strickland v Washington, 466 U.S. 668 (1984). Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of counsel's performance is whether he fell outside of the range of competence demanded of lawyers practicing criminal law. Butler, supra. The scrutiny of counsel's acts or omissions must be highly deferential and a reviewing court must make every effort to remove the distorting effects of hindsight. Strickland, 466 U.S. at 689.

Competency is measured against what an objectively reasonable attorney would have done under circumstances existing at the time of the representation. Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996). The Court should "decline to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial." Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996).

As the Supreme Court made clear in Strickland:

> . . . the reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigations are reasonable depends upon such information . . . [W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable.

Strickland, 466 U.S. at 691. Barnes v. Thompson, 58 F.3d 971, 978 (4th Cir. 1995); Matthews v. Evatt, 105 F.3d 907, 919-920 (4th Cir. 1997). The mere fact that trial counsel's strategy was unsuccessful does not render counsel's assistance unconstitutionally ineffective. Strickland, 466 U.S. at 689. Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).

In addition to a burden of showing "deficient" performance, counsel must also prove "prejudice" under the Sixth Amendment. Recently in Jones v. State, 332 S.C. 329, 504 S.E.2d. 822 (1998) , the South Carolina Supreme Court restated the "prejudice" prong in a capital sentencing proceeding as being established when "there is a reasonable probability that, absent [counsel's] errors, the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death," citing Strickland. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Jones, 504 S.E.2d at 823-824. Accord, Plath v. Moore, 130 F.3d 595 (4th Cir. 1997) ("given the overwhelming aggravating factors, there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the mitigating circumstances and

hence, the sentence imposed." Thus, in weighing the omitted evidence against that actually used to convict and sentence Plath, the mitigating evidence seems insufficient to shift the balance in Plath's favor."). Respondents submit that Aleksey will be unable to satisfy this burden.

B. Discussion of Specific Claims.

1. The failure of trial counsel to investigate and procure available impeachment evidence on Gloryvee Perez Blackwell. Blackwell was the only other suspect in the case, and the failure to investigate her background was highly prejudicial to petitioner.

In his initial allegation, Aleksey contends that trial counsel failed to investigate the background of Gloryvee Perez Blackwell. The record reveals that Gloryvee Perez testified at the trial after an in camera hearing. ROA 1295-1358. The record also reveals she was throughly cross-examined. ROA 1310-18, 1318-28 (in camera), 1328-43.

During the state case in chief in the guilt phase, the prosecution called the passenger in Aleksey's car, Gloryvee Perez (Blackwell), about her knowledge concerning the shooting of Sgt. Lingard. Prior to her testimony, the prosecution stated its intent to reveal two prior convictions, but that its research did not reveal outstanding arrest warrants. ROA. p. 1288-89. At that time, the defense indicated that it was aware of other outstanding traffic warrants and the trial court suggested that it would permit it. ROA. p. 1290.

Gloryvee Perez Blackwell, on direct, testified that she previously had some problems with the law. Particularly, she declared that in 1992 she was convicted in New Jersey of "possession of cocaine" and in 1991 of "shoplifting." ROA. p. 1297, ll. 2-10. She further declared that she did not recall any "speeding tickets." ROA. p. 1297, ll. 11-14. She testified that she had been charged with murder in this case, but the charges were dropped. ROA. p. 1298, ll. 2-6.

She testified that in December 1997, she met Aleksey, who she knew as "Michael Toscani" in Philadelphia. She had previously separated from her husband who was in the Marine Corps in South Carolina. She stated that Aleksey offered her to move in with him. ROA. p. 1299-1300.

She stated that they left Philadelphia on December 31, 1997 to go to Disney World with her two children. Aleksey drove the entire trip and she sat in the passenger seat. Her children, Mercedes and Gloria, were in the back seat of the Mustang. ROA. p. 1302.

At around 11 p.m., she recalled being pulled over when Aleksey woke her from her sleep. ROA. p. 1303-04. He told her that he had been speeding. With the drivers side window down, she heard the officer's voice say "hello folks or good evening folks" in a polite way and "how are you doing." At that point, Aleksey said "how are you doing officer?" and immediately fired a gun. ROA. p. 1304, ll. 17-25. Previously unaware that there was a gun in the car, she said she saw and heard the pops and flashes from three or four shots. ROA. p. 1305, ll. 6-15. She did not hear Sergeant Lingard say anything threatening at all. ROA. p. 1305, ll. 16-20.

Immediately after he shot, they took off speeding. When shots were fired back them, Aleksey said, "no, he went down, he went down." ROA. p. 1306, ll. 2-4. She said that she began screaming as they took off. When she asked him why he did it, he said "he wasn't going to jail, he was not going to jail." ROA. p. 1306, ll. 13-16. She described the car chase and begging him to pull over. ROA. p. 1306-07. She said that when he did, an officer had a shotgun pointed at him and Aleksey said "I will shoot myself" with his gun pointed at his own head. ROA. p. 1307, ll. 6-10. At that point, she stated she jumped out of the car, grabbed her children and went to the officer. ROA. p. 1307.

On cross-examination, defense counsel Sims initially inquired about her prior conviction for drugs. ROA. p. 1313, ll. 20-23. The prosecution then objected to going into details of the conviction going into evidence and the court agreed. ROA. p. 1314, ll. 8-11.

The defense then asserted that the witness had been indicted on ten (10) separate counts and made a bargain and pled to one of the counts. ROA. p. 1316, ll. 1-4. He contended that the information was relevant on all ten (10) charges. The trial court stated that he would permit inquiry about what she pled guilty to and arrest warrants for speeding, but not into the nine (9) other matters that she was indicted, but not tried on. ROA. p. 1317, ll. 11-21.

The defense then made a proffer of the indictments. ROA. p. 1317, ll. 22-24. The defense, in camera inquired of the witness of each of the charges on whether she was indicted and she stated that she did not recall. ROA. p. 1318-19. She did recall that she pled to one of the counts and received three (3) years probation. ROA. p. 1319, ll. 14-16. Counsel Sims declared that she pled guilty to count five and that the remaining nine counts of the indictment were dismissed. ROA. p. 1319-20, 1322-23.

During the cross-examination, she denied that she was in the drivers seat or did the shooting. ROA. p. 1334-35. She further denied driving the car into South Carolina. ROA. p. 1340-41.[1]

The Applicant has failed to show what other "impeachment "information that trial counsel should have found. Absent greater specificity, Respondents submit that there are unable

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[1] The witness' daughter, Gloria Riveria, also testified that her mother was sitting in the passenger seat with her one (1) year old sister in the car seat. ROA. p. 1370-73.

to effectively respond to this speculative allegation. Until that specification is made, Respondents submit the allegation must be dismissed.

2. The failure of trial counsel to object to a host of "other bad acts" evidence., including evidence about petitioner's sex life and details about his relationships with women, since this evidence was not necessary to the jury's consideration of the trial issues.

In his second allegation, he contends that trial counsel failed to object to certain evidence. Respondents respectfully submit that all evidence was competent and relevant under South Carolina law. Absent greater specificity, this allegation fails to show either deficient performance or prejudice under the Strickland- Jones standards.

3. The failure of trial counsel to argue during the Jackson v. Denno hearing that the petitioner confessed based on a promise from the police that he would be moved into the general population. Petitioner was concerned for his life, and a confession in return for a promise of his safety should have rendered the confession inadmissible.

In this allegation, he contends that his trial counsel erred in failing to assert that he confessed based upon a promise that he would be moved into a general prison population. In the direct appeal, the Court addressed the challenge raised therein in the following manner:

> *The day after his arrest for the trooper's murder, appellant asked to speak with a SLED agent. He was taken to the Orangeburg County Law Enforcement Center where he met with Agents George Darnell and Kenny Mears. They informed appellant of his Miranda rights and he signed a waiver. Appellant then gave a tape recorded statement in which he told the agents that Blackwell shot the trooper. When appellant concluded his narrative, Agent Darnell asked, "Is that all?," to which appellant responded, "That's all I got to say." The agents then turned off the tape recorder.*
>
> *As the agents prepared to return appellant to the detention center, appellant said he wanted to talk further and asked if the agents could help his friend Elena Batkilina, who was in trouble in Florida. The agents told appellant Florida was outside their jurisdiction and there was nothing they could do to help her.*

Appellant then asked about the status of Blackwell and the children. Finally, he asked if he could be moved out of the infirmary into the general prison population. After several phone calls, the agents were able to obtain permission for appellant to move into the general prison population. Appellant then gave the statement at issue, inculpating himself in the trooper's death.

Appellant's second issue on appeal raises several questions:
(a) Did appellant unambiguously invoke his right to remain silent when he said, "That's all I've got to say" at the end of his first statement?
(b) If so, was his request scrupulously honored?
(c) Did the trial court err in not specifically ruling on whether appellant invoked his right to remain silent?

#3.

[5][6][7] A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Dickerson v. United States, 530 U.S. 428, ----, 120 S.Ct. 2326, 2331, 147 L.Ed.2d 405 (2000). The voluntariness of a statement is determined from the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). Furthermore, the conclusion of the trial judge on issues of fact as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998).

[8][9][10] When a suspect invokes his right to remain silent, law enforcement officers must scrupulously honor it. Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). However, before law enforcement officers are required to discontinue questioning, the suspect must clearly articulate his desire to end the interrogation. Davis v. United States, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994); State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998). Moreover, law enforcement officers may certainly speak with a suspect who reinitiates communication subsequent to an invocation of rights. See Edwards v. Arizona, 451 U.S. 477, 485, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) (once an accused requests counsel, police interrogation must cease unless the accused himself "initiates further communication, exchanges, or conversations with the police").

*[11][12] We conclude appellant's statement "That's all I've got to say," was not an unequivocal invocation of his right to discontinue questioning. In context, the statement ***254** was ambiguous, indicating either a desire to discontinue questioning or simply the end of his story. [FN4] See State v. McCorkendale, 267 Kan. 263, 979 P.2d 1239, 1247-48 (1999) ("That's all I got to say" not an unequivocal invocation of right to remain silent; it could just as easily have been*

interpreted as a statement that he had finished his explanation of the matter). However, even if the statement is interpreted to be an invocation of appellant's right to remain silent, it is uncontroverted that appellant himself reinitiated conversation with the agents after the tape recorder was turned off. The principle underlying Michigan v. Mosley is that the suspect, rather than the police, controls the time, duration, and subject matter of an interrogation. 423 U.S. at 103-104, 96 S.Ct. 321. Officers do not fail to "scrupulously honor" an invocation of rights when they engage in conversation initiated by the suspect. See State v. Kennedy, 333 S.C. 426, 430, 510 S.E.2d 714, 716 (1998) ("[E]ven if this were a proper invocation of the right to counsel, petitioner waived this right when he initiated further discussions."). The trial court did not err in ruling appellant's second statement voluntary.

FN4. The trial court also found appellant's statement ambiguous: "Well, let me interrupt you. Did he invoke his right to silence or does that indicate that he had concluded telling the story? ... It sounds to me like it can be interpreted to mean, 'I have told you my story.' "

[13] Appellant asserts the trial court erred as a matter of law in failing to specifically rule on whether he invoked his right to remain silent when he said, "That's all I've got to say." Appellant's objection arises from the following comment made by the judge during the Jackson v. Denno [FN5] hearing:

FN5. 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

It is clear to me, it would be for the jury to determine, that this defendant did not say, "I terminate the conversations," he said, "I have concluded my statement," and that the testimony if believed by the jury, who will be the ultimate finder of the facts on the issue, that this defendant began the conversation again and not the interrogation by the officers.

Appellant argues this constitutes an impermissible delegation to the jury of a portion of the trial court's Miranda duties. We disagree. In the first place, appellant never requested a more specific ruling from the court as to whether his statement, "That's all I got to say" invoked his right to remain silent.

In any case, the trial judge ruled appellant was advised of his Miranda rights, knowingly and intelligently waived those rights, and that his statement was, beyond a reasonable doubt, freely and voluntarily given without duress, without coercion, without undue influence, without reward, without promise or hope of reward, without promise or hope of leniency, without threat of injury, and without compulsion or inducement of any kind, and that such alleged incriminating statement or confession was the voluntary product of the free and unconstrained will of the defendant.

The trial judge's extensive ruling regarding the voluntariness of the challenged statement fulfilled his duties under Miranda. The critical issue was not whether appellant invoked his

*right to remain silent after his first statement, but rather whether the second, inculpatory statement was voluntarily given. Even if one assumes appellant invoked his right to remain silent, his subsequent reinitiation of conversation validly waived that right. The judge did not err in failing to rule explicitly on the invocation issue because that issue was subsumed by the issue of the voluntariness of the statement. See State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998) (appellant contended his invocation of the right to remain silent was not honored; the Court held the trial court did not err in denying the motion to suppress as the State met its burden of showing appellant's statement was voluntarily and freely given); see also Woods v. Armontrout, 787 F.2d 310, 315 (8th Cir.1986) (because trial court record was sufficient to establish voluntariness, subsidiary findings that police did not induce confession *255 by coercion or promises implicitly made).*

Furthermore, read in context, the judge's comment "it would be for the jury to determine" clearly referred to the jury's role as the ultimate fact finder on the issue of the voluntariness of appellant's statement. See State v. Davis, 309 S.C. 326, 342, 422 S.E.2d 133, 143 (1992), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) ("Once the court determines that a defendant received and understood his rights, the court allows a confession into evidence. It then is for the jury ultimately to decide whether the confession was voluntary."). The trial court properly ruled appellant's confession voluntary, then submitted it to the jury for the final determination of voluntariness..

State v. Aleksey, supra. Respondents submits that a review of the record reveals that counsel was not deficient under Strickland.

On June 8, 1998, a Jackson v. Denno hearing was held concerning the admissibility of statements made by Aleksey. ROA. p. 2221-2335. The initial witness was Trooper Kyle Welch. He testified that on January 1, 1998 he located Aleksey in the mustang that was involved in a collision and followed him to MUSC Trauma Unit in Charleston where he was treated. At approximately 1:34 a.m. Aleksey made a statement to him or Trooper Mears to contact the U.S. Marshal's Service and that he wanted to talk to the troopers. Aleksey told them that he was in a witness protection program in Philadelphia and that his name was "Michael Aleksey", yet his ID was for Justin Matecki and he had told the treating doctors his name was Michael D. Angelo. ROA. p. 2226-2227. Subsequently, he made another statement that he was in the witness

protection program and a person named Peter Geshan, of the Philadelphia mafia, had put a contract on his life. ROA. p. 2227. These were spontaneous statements. When later asked why he shot the trooper, "he stated that he thought the trooper was the mafia, someone dressed up as a law enforcement officer." ROA. p. 2228, ll. 5-6. He asked him to get in touch with a person in the Marshal's Service who could confirm he was in the program. Aleksey also stated to him that the car he was driving was given to him by a Lisa Watson in Philadelphia, who was making the payments. ROA. p. 2228. Also, he stated his girlfriend, Gloryvee Perez, was with him with her two children. ROA. p. 2229. He stated that the last time he saw them was in New Jersey. Aleksey was conscious, awake and inquisitive and able to be understood. ROA. p. 2229-30. At 3:59 a.m., Agent Kenny Mears entered the room and read the Miranda warnings. ROA. p. 2229-30. On cross-examination, he stated that Aleksey was handcuffed when he arrived at the parking lot and appeared to be unconscious. ROA. p. 2231-32. He acknowledged that he had not read him his Miranda rights and would have been placed in custody at the hospital. Welch confirmed he had not asked questions when Aleksey directed his request to him about the Marshal Service and when he made the mafia statement. Welch acknowledged that he did ask him then if he thought the trooper was Greshan or somebody with the mafia, prior to Miranda. ROA. p. 2234-36. Welch stated that when Agent Mears read the Miranda rights, Aleksey stated that he understood after the rights was read except on the one that relates to an attorney when he did not state anything. ROA. p. 2238.

State Law Enforcement Division (SLED) Agent Kenneth Mears testified that he was assigned with Agent George Darnell to investigate the death of Trooper Frankie Lingard. He subsequently arrived at MUSC on January 1, 1998 after 3 a.m. and located Aleksey in a room

with Trooper Welch and a nurse. At 3:59 a.m. he read the Miranda warnings to him. ROA. p. 2243-44. Agent Mears testified that Aleksey understood the warnings. ROA. p. 2244, l. 17, p. 2245, l. 13. He stated that he did not use the written waiver form at that time because Aleksey had his hands in a bag awaiting a residue test and was unable to sign. ROA. p. 2245. After the warnings, Agent Mears inquired of his name which he initially gave as Michael D'Angelo. Agent Mears stated that he did not inquire about what had happened, but Aleksey did request that he contact the Marshal's Service. ROA. p. 2245-46. On cross-examination, he admitted that he was not aware if Aleksey was on medication at that time. Agent Mears specifically denied that Aleksey "expressly stated that he didn't understand about an attorney." ROA. p. 2247-48.

The nurse, Billie Althouse, testified that he arrived in her hospital unit neurologically oriented to person, place and time and wearing a cervical collar. ROA. p. 2252. She recalled that he asked to see a U.S. Marshal spontaneously. She stated the only medication he was given was Maalox and Tylenol. ROA. p. 2253-54. He was not given any narcotics or similar drugs. She stated she was present when the Miranda warnings were given and nodded his head and said yes. ROA. p. 2254,2259. At that time, she found him to be alert and oriented. On cross-examination, she stated that he had a laceration wound on his forehead and the discharge summary revealed that he was in a car accident and a "questionable loss of consciousness." ROA. p. 2255-57. She also testified that a CAT Scan was done.

Captain Hubert Rickenbaker of the Orangeburg/Calhoun Detention Center testified that on January 2, 1998, he went to the Appellant's infirmary cell at the jail. ROA. p. 2261-62. The reason he went to see him was that he had requested to see a supervisor. He asked why he was moved from maximum security to the infirmary and Rickenbaker told him that he was ordered by

the Chief of Security and Deputy Director to move him. ROA. p. 2261-63. Aleksey then requested that he wanted to see someone from SLED. ROA. p. 2264, ll. 1-4. Rickenbaker then went and told Deputy Director Dozier of Aleksey's desire to see a SLED Agent. ROA. p. 2267. On cross-examination he acknowledged that he made a statement on January 5, 1998 that "I told him that he was moved by SLED and Deputy Director Dozier." ROA. p. 2265-66. He further stated that Aleksey never asked him anything about whether he was going to get an attorney. ROA. p. 2267, ll. 2-7

Assistant Director Vernetia Dozier of the Detention Center testified that she had a conversation on January 2, 1998 with Mr. Rickenbaker that inmate Aleksey (D'Angelo) wanted to see a SLED agent. ROA. p. 2269-71. She then contacted the Orangeburg Sheriff's Department and left that message.

Wanda Fitzgerald, a secretary from the Sheriff's Department, confirmed that she received the call from Ms. Dozier that Aleksey wanted to see a SLED agent. ROA. p. 2222, 2275. She stated that she located Agent Mears and Darnell and told him. ROA. p. 2272-73. She was aware that Aleksey was then brought over to the Department. ROA. p. 2273.

SLED Agent George Darnell testified that he was at the Sheriff's Department with Agent Mears on January 2, 1998. After he was advised that Aleksey waned to see them, they sent for him and he was brought from the jail to Captain Williams' office. ROA. p. 2276. 2279. At 4:40 p.m., Aleksey was advised of his Miranda rights orally and in the written form by him with Agent Mears present. Aleksey signed the acknowledgment and waiver of rights form initially as Michael D'Angelo and then as Bayan Aleksey. ROA. p. 2280-81. Agent Mears testified that no promises or threats were made to the Appellant. After the waiver was signed, at 4:50 p.m. a tape

recording was made of the interrogation. ROA. p. 2282-83. The tape was on except for five minutes when a telephone call was received with Agent Darnell on the telephone. ROA. p. 2283. He stated that during this break no threats or statements were made. The tape then was turned on for another 10 or 11 minutes and then turned off for about an hour when they retrieved a jacket for Aleksey because he stated that he was cold and other calls were made. During this initial statement, Aleksey declared that Gloryvee Blackwell did the shooting. ROA. p. 2285, ll. 7-9. Agent Darnell acknowledged that when the tape was turned on for the ten minute period ate the telephone, he assumed that was the end of the statement and turned off the tape. ROA. p. 2285, ll. 10-18.

When they were getting ready to return Aleksey to the Detention Center , Aleksey stated to them that he wanted to talk further and had a friend, Yelena Batkilina, who was in trouble in Florida and wanted to know if they could help her out because the trouble she was in was his fault. He also inquired about Gloryvee Perez and learned she had been also charged and her children were turned over to DSS. They told him that there was nothing they could do to help Ms. Batkilina because it was out of their jurisdiction, when he asked again. ROA. p. 2286.

Aleksey then asked "well, if I get truthful with y'all, can I go back to the general population?" They stated they could not answer that without checking with our supervisor. Agent Darnell then checked with his supervisor, Captain Knight, who apprised him that he had no problem if the Detention Center had no problem. Ms. Dozier then advised him that she had no problem and that Aleksey could go back into the general jail population. ROA. p. 2286.

Aleksey then told Agent Darnell that he wanted to be truthful with them and that Gloryvee had no part of it and did not know what was going on. ROA. p. 2287, ll. 1-4. At that

point, they went back on the tape. Agent Darnell stated that he did not go back on the tape because he thought the statement was over and his pager was going off and he neglected to turn the tape back on. ROA. p. 2287.

Agent Darnell declared no other promises than getting out of the infirmary cell and moving into the general prison population was made to him. ROA. p. 2287. He stated there were no threats or physical intimidation. Also, Aleksey did not ask for anything that he did not receive. ROA. p. 2287.

Agent Darnell described Aleksey demeanor when the tape was turned on as crying a little bit and stating that he was sorry. ROA. p. 2288. When the statement continued Aleksey confessed to being the shooter. ROA. p. 2288, ll. 11-17. At the conclusion, the tape was then given to a secretary to transcribe. ROA. p. 2288-89. State Exh. 2, 3. The tape was then played for the court. ROA. p. 2291.

On cross-examination, Agent Darnell said that he and Agent Mears brought Aleksey over to the office after they had finished interrogating Perez. ROA. p. 2292-93. He stated they arrived at the office just prior to 4:40 p.m. when the waiver was done. ROA. p. 2293. Agent Darnell stated that after he read the Miranda rights, Aleksey stated that he was willing to speak with them and to have it on tape. ROA. p. 2295. Agent Darnell estimated the initial part of the interrogation lasted seventeen (17) minutes. ROA. p. 2299. At the conclusion of this portion, Aleksey stated: "That's all I've got to say." ROA. p. 2300, ll. 1-3. Agent Darnell denied that Aleksey was crying during the first portion of the interrogation. ROA. p. 2300. Agent Darnell did not recall what was said immediately after the "that's all I've got to say" comment. ROA. p. 2301- 03, 2307-08.

Agent Darnell stated that they may have discussed what he told them at some point and told him that they would carry him back and then he asked about Batkilina. ROA. p. 2304-05. He stated that when they told him we were going to carry him back to the Detention Center is when Aleksey stated that he was not ready to go back and inquired about Batkilina, Perez, and the general population. ROA. p. 2306. Agent Darnell stated the tape was turned on at 7:07 p.m. ROA. p. 2306. He stated the reason they turned the tape back on was because he stated that he wanted to be truthful with us and we wanted to hear what he had to say. ROA. p. 2306, ll. 17-21. Agent Darnell did not recall Aleksey ever asking about going into the general population until the latter time. ROA. p. 2307-08.

Agent Mears was recalled and testified about his recollections of his interrogation of Aleksey that afternoon. ROA. p. 2308. He found Aleksey demeanor to be a little nervous in the beginning but basically in good shape. Agent Mears confirmed the manner the Miranda warnings were given orally and in writing. ROA. p. 2309-10. Again, he confirmed the lack of threats or promises before the tape began. Agent Mears also corroborated the nature of the initial interrogation with the break for the intervening telephone call. ROA. p. 2311-12.

Agent Mears stated that at the end of the first taping when it was cut off, he made reference to what was going to happen to Gloryvee, the kids, and Batkilina. ROA. p. 231213. Agent Mears corroborated the comments about the general population request and the fact that it took a while to make the contacts with the Charleston SLED Office and the jail to determine that he could be put in safe-place other than the infirmary cell or lock-down. ROA. p. 2313-15. Agent Mears recalled that Aleksey initially asked about Gloryvee and the children before he asked about Batkilina and the general population. ROA. p. 2314.

Agent Mears stated that Aleksey told them that if he told them the honest truth, if he could get back into the general population, that he didn't want to get anyone else in any trouble for something that he did. ROA. p. 2314, ll. 15-19. He stated that's when he agreed to be taped. ROA. p. 2315, ll. 5-6. Agent Mears confirmed that other than trying to assist him in moving from the infirmary cell to the general population, no other promises were made to him. Further, he was not threatened in any manner. Agent Mears opined that the second part of the statement was free and voluntary. ROA. p. 2315-16.

On cross-examination, Agent Mears stated that after the end of the first statement is when Aleksey inquired about Gloryvee and the kids, Batkilina and the general population. ROA. p. 2316-17. Agent Mears stated that he did not know if Aleksey was in isolation. ROA. p. 2317-18.

When the statement continued, Agent Mears remembered that Agent Darnell reminded Aleksey of his rights that he had signed before. ROA. p. 2318, ll. 11-14. Agent Mears described the fact that Aleksey stopped and then started talking again before the tape was turned on. ROA. p. 2320-21.

The defense initially moved to exclude the statement given by Aleksey at the hospital after Trooper Welch asked him "why did you shoot the trooper." ROA. p. 2322-24. Before the judge would rule, the Solicitor announced that since Aleksey was not Mirandized before the statement was given in the hospital that the hospital statement would not come in during the case in chief. ROA. p. 2324.

The defense then asserted that the statement that was transcribed was a violation of Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) and Michigan v.

Mosley because he invoked his right to remain silent when he stated "that's all I have to say." ROA. p. 2325-26.

The trial court asked counsel if this comment invoked his right to silence or did it indicate that he had concluded telling his story. ROA. p. 2326. Counsel Stone responded that he had invoked it enough to where the agent turned off the tape. ROA. p.2326-27. He responded to an inquiry that if the agents intended to further question him they would not have turned off the tape. ROA. p. 2326-27.

The solicitor asserted that under all the evidence Aleksey is the one who initiated the conversation after the tape was turned off. ROA. p. 2327, ll. 13-14. Solicitor Bailey contended that even if the "that's all I've got to say" comment was an invocation of the right to remain silent, he starts talking after the tape is off and there is no requirement to re-Mirandize him.

The trial court overruled Aleksey's objection and admitted the statement and tape. Particularly, the trial judge made the following findings and conclusions at the in camera hearing:

> THE COURT:
>
> Well, I'm going to admit this tape under the usual proper instruction to the jury that the final determination is for them to consider and to determine beyond a reasonable doubt.
>
> I have carefully considered all the evidence offered by the State in this case and have considered too the totality of the circumstance under which this alleged statement was made.
>
> I am convinced, having considered these issues, and so find by a preponderance of the evidence the following:
>
> That before the alleged incriminating statement or confession was obtained from the defendant, the defendant was fully advised of his rights under the Fifth and Sixth Amendments to the Constitution of the United States and that

the defendant was advised of his constitutional safeguards required by Miranda v. Arizona. These rights are as follows:

That the defendant was advised prior to any interrogation that he had a right to remain silent;

And that the defendant was advised prior to any interrogation that if he waived his right to remain silent and made a statement that such statement can and will be used against him in a court of law;

And that the defendant was further advised prior to any interrogation that he had a right to employ or select an attorney of his own choice;

And that if he did not have the money, funds or resources to obtain an attorney, that the court would appoint and provide an attorney for him if he so desired without cost or expense to him;

And that he had the right to have his attorney present with him at all times during all interviews and all interrogations.

I further find that the defendant was advised prior to any interrogation that he had a right to consult with his attorney before the interrogation;

The defendant was advised prior to any interrogation that he had a right to interrupt and terminate the interrogation at any time;

And that he had the further right to stop answering questions at any time during the interrogation.

The defendant was advised prior to any interrogation that if he desired an attorney the interrogation would cease until an attorney was provided for him and he would be given an opportunity to consult with his attorneys prior to further interrogation.

I find too that the defendant knowingly and intelligently waived his rights under the Fifth and Sixth Amendments of the

Constitution of the United States and the constitutional safeguards required by Miranda v. Arizona.

I further find that the alleged incriminating statement or confession obtained by the defendant was freely and voluntarily given without duress, without coercion, without undue influence, without reward, without promise or hope of reward, without promise of leniency, without threat of injury, and without compulsion or inducement of any kind, and that such alleged incriminating statement or confession was the voluntary product of the free and unconstrained will of the defendant.

This Court finds all of the foregoing conclusions beyond a reasonable doubt, and I therefore find that the incriminating statement or confession is admissible into evidence.

Again, Mr. Stone, addressing your concerns, it is clear to me, it would be for the jury to determine, that this defendant did not say, "I terminate the conversations," he said, "I have concluded my statement," and that the testimony if believed by the jury, who will be the ultimate finder of the facts on the issue, that this defendant began the conversation again and not the interrogation by the officers.

So I conclude that it is admissible and the jury will be charged appropriately that they must find these various issues beyond a reasonable doubt, and I do so. Your motion is respectfully overruled.

ROA. p. 2327, l. 24 - p. 2331, l. 2.[2]

Respondents submit that the Applicant has failed to show that counsel acted either grossly unreasonable or to the prejudice of the Applicant. The statement was admissible. He has failed in his burden to show counsel should have acted differently.

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[2] Testimony concerning the circumstances that led to the statement and the redacted statement was presented to the trial at trial. ROA. p. 1462-72, p. 1563-1580, p. 1586-1606. Defense counsel Stone objected during the trial. ROA. p. 1573, ll. 3-18.

4. The failure of trial counsel to properly impeach Gloryvee Perez Blackwell with the ten count New Jersey drug indictment against her. Blackwell's denial of any knowledge of dismissed counts directly affected her credibility, and also showed her knowledge of leniency for cooperating with the police.

This issue was essentially addressed in the direct appeal. Therein the Supreme Court stated:

> *III. Did the trial court err in refusing to allow appellant to cross-examine Blackwell concerning dismissed indictments on narcotics charges?*
>
> *[14] Blackwell testified for the State as an eyewitness to the trooper's death. Appellant sought to cross-examine Blackwell concerning her indictments on ten separate narcotics charges. Blackwell had pled guilty to one indictment, possession of cocaine, and the other nine indictments were dismissed. The trial court refused to permit appellant to cross-examine Blackwell concerning the dismissed charges, but permitted appellant to proffer the questions for the record. During the proffer, Blackwell answered "I don't recall" to each of appellant's questions concerning the dismissed indictments.*
>
> *[15][16][17] The right to a meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994). This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination. See State v. Lynn, 277 S.C. 222, 284 S.E.2d 786 (1981) (a trial court's ruling concerning the scope of cross-examination of a witness to test his credibility should not be disturbed on appeal absent a manifest abuse of discretion). On the contrary, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." Delaware v. Van Arsdall, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).*
>
> *The trial court did not abuse its discretion in limiting the scope of cross-examination to comply with the South Carolina Rules of Evidence. Rule 609 permits impeachment of a witness by evidence of conviction of certain crimes. Rule 609, SCRE. Prior bad acts which are not the subject of conviction, such as the dismissed indictments here, may only be inquired into, "in the discretion of the court, if probative of truthfulness or untruthfulness." Rule 608(b), SCRE. Narcotics offenses are generally not considered probative of truthfulness. See, e.g., United States v. Turner, 104 F.3d 217, 223 (8th Cir.1997) ("Misconduct*

involving violations of narcotics laws is not an act involving dishonesty or untruthfulness and therefore may not be inquired into under Federal Rule of Evidence 608(b).").. Nor are the dismissed indictments evidence of "bias, prejudice or any motive to misrepresent" under Rule 608(c). The trial court properly limited the scope of cross- examination to Blackwell's actual convictions.

State v. Aleksey, supra. The Respondents submit that the Applicant's counsel preformed competently in his use of the prior charges. The record reveals that counsel was correctly estopped from using the indictment in a manner that the Applicant continues to seek to do. His allegations are disputed by the record and must be dismissed.

5. The failure of trial counsel to investigate and present any meaningful case in mitigation regarding petitioner's background.

This broad contention fails to state with adequate specificity what the alleged evidence is that was either not developed or presented in mitigation. This failure to present a clear factual basis in the Application, rather than a broad legal conclusion, prevents the Respondent from adequately responding to the allegation. Pursuant to SCRCP, Rule 12(e), Respondents herein move this Court for a more definite statement in a timely manner or to strike the allegation because it is too vague and ambiguous. The Respondents cannot be expected to reasonably respond to the broad claim without a precise statement as to what evidence the Applicant now claims existed at the time of trial that should have been used.

6. The failure of trial counsel to object to the judge's instruction that the jury would "consider the aggravating circumstances against the mitigating circumstances, and you will decide whether you will recommend the death penalty or life imprisonment." R. 2165. This was an improper "weighing" instruction.

In this allegation, he contends that his counsel should have objected to the penalty phase instructions. Respondents submit that the particular instruction given did not violate the law.

Cf. State v. Middleton, 295 S.C. 318, 368 S.E.2d 457, cert. denied, 488 U.S. 872, 109 S.Ct. 189, 102 L.Ed.2d 158 (1988) (Although trial court erroneously instructed jury not to weigh aggravating and mitigating circumstances in determining whether to sentence defendant to life imprisonment or death, instruction was not error, when considered as whole, given trial court's additional instruction that jury could consider any other factor in mitigation and could recommend life sentence for no reason at all.). Here the instructions as a whole properly set forth the burden of proof in the penalty phase. ROA 2145-2168. Here the jury was advised that it could recommend a life sentence "for any reason or no reason at all" (ROA 2161, 2163), or "as an act of mercy" (ROA 2163, 2164). Further it was told to "consider" aggravating against mitigating circumstances. This is entirely consistent with South Carolina law. He has failed to show deficient performance or prejudice under Strickland. The allegation must be dismissed.

CONCLUSION

Each and every allegation in the Application not hereinabove either expressly admitted, denied, qualified or explained is hereby denied.

WHEREFORE, Respondent submits that the Application for Post-Conviction Relief should be dismissed or, in the alternative, that the Court should direct the Applicant to timely serve and file an Amended Application for Post-Conviction Relief specifying all grounds for relief with particularity. Respondents also request this Court to hold a status hearing on September 4, 2001 as previously established and establish a final hearing date.

Respectfully submitted,

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By: _____

ATTORNEYS FOR RESPONDENT

July 11, 2001

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, counsel for the Respondent, certify that I have served the ***Return to the Application for Post-Conviction Relief*** by depositing one (1) copy of same in the United States mail, postage prepaid, addressed to:

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This 11th day of July, 2001.

DONALD J. ZELENKA

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	IN THE COURT OF COMMON PLEAS
BAYAN ALEKSEY, #5059 Applicant, vs. STATE OF SOUTH CAROLINA, Respondent.	C/A No. 01-CP-38 - 628 ORDER ON CONDITIONAL APPOINTMENT OF POST-CONVICTION RELIEF COUNSEL AND SCHEDULING ORDER

This matter comes before this Court pursuant to the June 6, 2001 Order of the Supreme Court of South Carolina staying the order of execution of Orangeburg County death row inmate Bayan Aleksey to allow him to pursue potential state post-conviction relief. The June 6, 2001 Order assigned this Court with continuing jurisdiction regardless of assignment and with the authority to schedule such hearings as may be necessary. The Order directed this Court to conduct a hearing on Mr. Aleksey's desires within thirty (30) days of that date pursuant to In Re Stays of Execution, 321 S.C.544, 471 S.E.2d 140 (1996). This Court scheduled this hearing on July 5, 2001 at the Dorchester County Judicial Center in Summerville, South Carolina after consultation with various parties to resolve this issue and appoint state postconviction relief counsel.

Petitioner, Bayan Aleksey, is currently a safekeeper under a sentence of death at the Lieber Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Aleksey was arrested on

January 1, 1998. At the January 1998 term of the Court of General Sessions for Orangeburg County, Aleksey was indicted for murder. 98-GS-38-0244. He was represented by court-appointed counsel, Thomas R. Sims and I. McDuffie Stone, III. On August 24, 1998, the matter was called to trial before the Honorable Edward B. Cottingham. The matter was prosecuted by Walter M. Bailey, Jr., Solicitor of the First Judicial Circuit. On August 29, 1998, the jury entered a unanimous verdict of guilty for the crime of murder. ROA. p. 1804.

The sentencing phase began on August 31, 1998. ROA. p. 1856. After testimony was received the jury was instructed to consider whether the State had proven beyond a reasonable doubt the existence of the following statutory aggravating circumstance:

> 1. Killing of a law enforcement officer of the State of South Carolina while in the performance of his duties.

ROA. p. 2156, ll. 12-16. Also, ROA. p. 2146, ll. 20-22. The jury was also directed to consider the following statutory mitigating circumstance:

> The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

ROA. p. 2161, l. 25 - p. 2162, l. 13. The jury was also instructed that "you may consider any other mitigating circumstance which is supported by the evidence in this case." ROA. p. 2162, ll. 14-22. After two (2) hours and ten (10) minutes of deliberation, on September 1, 1998, the jury found the existence of the statutory aggravating circumstance and recommended a sentence of death. ROA. p. 2171-72. The jury was polled on its verdict. ROA. p. 2172-74. Counsel made a motion for a new trial and sentencing. ROA. p. 2179-80. Judge Cottingham denied the motion. ROA. p. 2180. The judge then sentenced Aleksey to death. ROA. p. 2181-82.

The Petitioner was represented on appeal by Robert M. Dudek of the South Carolina Office of Appellate Defense. In the appeal, counsel raised the following issues:

I.

Whether the judge violated Due Process when he instructed the jury that it had "one single objective and that is to seek the truth," because the charge was burden-shifting and it diluted the reasonable doubt standard since the jury's sole function was to determine whether the state proved Appellant's guilt beyond a reasonable doubt?

II.

Whether the judge erred by refusing to suppress Appellant's confession where Appellant told the police "that's all I have to say" after his statement, the police turned the tape recorder off for two hours, continued to converse with Appellant, made promises, did not give him Miranda warnings again before interrogation continued. The police did not scrupulously honor the invocation of Appellant's right to silence in violation of Michigan v. Mosley, and the judge also impermissibly delegated this portion of his Miranda duties to the jury by not ruling?

III.

Whether the judge erred by refusing to allow Appellant to cross-examine Gloryvee Perez about nine other serious narcotics counts of a New Jersey indictment against her where she testified on direct examination she had been convicted of simple possession of cocaine, since her credibility was at issue as a witness, and the jury was left with a false impression of Perez and her credibility as a result of the direct examination?

IV.

Whether the judge erred by refusing to redact references to a contract on Appellant's life from his statement where the solicitor candidly admitted the jury could conclude Appellant had mafia dealings, since Appellant had not placed his character in issue, and the references were an obvious suggestion Appellant was a bad person with a propensity to commit murder?

The South Carolina Supreme Court entered its opinion on November 13, 2000. Rehearing was denied on December 6, 2000. *State v Bayan Aleksey,* 343 S.C. 20, 538 S.E.2d. 248 (2000).

The Applicant sought certiorari to the United States Supreme Court. In his petition for certiorari, he raised the following issue:

Were petitioner's due process rights under Estelle v.McGuire, 502 U.S. 61 (1991), violated where the trial court instructed the jury that it "had but one single objective, and that is to seek the truth," where only petitioner or his girlfriend could have shot the state trooper, since there was a reasonable likelihood that the jury understood the instruction to mean that its duty was to decide which of the two actually shot the trooper, making the instruction burden-shifting and lessening the state's duty to prove petitioner's guilt beyond a reasonable doubt?

On May 14, 2001, the Supreme Court denied the petition.

Counsel for Mr. Aleksey filed a petition for stay on May 22, 2001. On June 5, 2001, the Court issued an order for stay assigning this Court to handle the matter. Prior to this assignment, on May 31, 2001, appellate counsel for Mr. Aleksey, Robert Dudek, prepared and filed an application for state post-conviction relief on his behalf..

I. Appointment of Qualified Counsel

On July 5, 2001, this Court convened a hearing in Summerville, South Carolina at the Dorchester County Judicial Center pursuant to the Order of the Supreme Court to determine the desires of Bayan Aleksey regarding counsel. Mr. Aleksey was present at the hearing. The Respondents were represented by Donald J. Zelenka, Assistant Deputy Attorney General of the South Carolina Attorney Generals Office. This Court made inquiry of Mr. Aleksey and finds that he desires to have counsel appointed to represent him in the state post-conviction relief action.

This Court considered the following law to be relevant in the appointment of counsel.

Section 17-27-160 provides:

> If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action. **At least one of the attorneys appointed to represent the applicant must have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings *or* (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have**

> successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense. The Supreme Court may promulgate additional standards for qualifications of counsel in capital post-conviction proceedings. The court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment.

Based upon the combination of the statute and SCACR Rule 608, this Court makes the following findings and conclusions on appointment of counsel for Mr. Aleksey. This Court asked Mr. David Tarr of the Richland County Bar and Mr. Jim Brown of the Beaufort County Bar to appear at the hearing for potential appointment.

The Court first inquired of the qualifications of Mr. Tarr. The Court was advised that Mr. Tarr graduated from U.S.C. Law School in 1995 and became a member of the South Carolina Bar in November 1995. He stated that he had five and one-half years experience and four and one-half years felony trial experience. He stated that he had not previously represented a death row inmate in a capital PCR case. However, he stated that he had registered for the 6th Annual National Habeas Seminar set in August 2001 which is a two and one-half day seminar that he believes will satisfy the 12 hour CLE requirements.

This Court also made inquiry of Mr. James Arthur "Jim" Brown. Mr. Brown stated that he had graduated from U.S.C. Law School in 1996 and become a member of the South Carolina Bar in November 1996. He stated that he had been a member of the Richland County Public Defenders Office and then the Beaufort County Public Defenders Office. He had at least three

years of felony trial experience. He also stated that he had signed up and was prepared to attend the same 6th Annual National Habeas Corpus Conference in August.

This Court additionally made inquiry of Mr. Aleksey who declared that he understood the qualifications of Mr. Tarr and desired to have him appointed to represent him in the state PCR matter although he currently did not satisfy the CLE requirements for lead counsel. He also stated that he desired to have Mr. Brown represent him.

Pursuant to Rule 608, this Court *conditionally* appoints David B. Tarr as *lead counsel to represent Bayan Aleksey, an indigent death-sentenced inmate, in a post-conviction relief action, subject to him satisfying the special CLE requirements of Section 17-27-160.* This Court finds that Mr. Tarr meets the minimum qualifications of the prior experience pursuant to §17-27-160(B), to qualify as experienced counsel, but does not currently satisfy the special CLE requirements. **This Court finds it appropriate to conditionally appoint Mr. Tarr.**

Pursuant to Rule 608, this Court also sought to find *second* counsel to be appointed. **This Court finds it appropriate to conditionally appoint Mr. Brown as second counsel for Mr. Aleksey in this matter.**

Therefore, it is ordered that the following be conditionally appointed to represent Mr. Johnson in the potential state post-conviction relief matter:

1. Mr. David B. Tarr, Esq.
   Attorney At Law
   1720 Main Street, Suite 202
   Columbia, South Carolina 29201
   (803-252-9769)
   (803-799-5888)(FAX)

2. Mr. Jim Brown, Esq.
   Law Offices of Jim Brown, P.A.

1111 Bay Street
P.O. Box 592
Beaufort, South Carolina 29901-0592
(843-470-0003)
(843-470-0004)(FAX)
jim.brown@scbar.org

This appointment is conditional on Mr. Tarr satisfying the continuing legal education requirements of Section 17-27-160.

On September 4, 2001, or as soon thereafter as the matter can be scheduled, this Court will hold an additional qualification hearing concerning this matter to confirm whether the particular program satisfies the requirements of "not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense."

B. Scheduling Order

This Court further reminds newly appointed state post-conviction relief counsel of its obligation, pursuant to In Re Stays, 471 S.E.2d 140 (S.C. 1996), to provide to the Clerk of the South Carolina Supreme Court, with a copy to this Court and opposing counsel, Donald J. Zelenka of the South Carolina Attorney General's Office, a status letter every sixty (60) days to ensure the pending stay of execution is continued during these proceedings. The Respondents informed this Court of its receipt of the application for post-conviction relief on June 28, 2001, from appellate counsel Dudek, although the application was filed on May 31, 2001. Subsequently, Respondents advised this Court that a different section of the office received the application from the Clerk of Court on June 11, 2001. The Respondents Return is therefore due

on July 11, 2001. The Court further establishes the following *projected* schedule consistent with In Re Stays and Section 17-27-160 based on the date of the Court's oral order of conditional appointment on July 5, 2001:

1.	September 4, 2001	Status Hearing to resolve appointments and schedule evidentiary hearing within 180 days must be held prior to this date. §17-27-160(C). (within 30 days after return filed). (March 2, 2001)
2.	September 4, 2001	First 60 day status letter.
3.	November 2, 2001	Second Status Letter
4.	January 2, 2002	Third Status Letter
5.	March 2, 2002	Projected 180 day date for Evidentiary Hearing to be Completed. §17-27-160(C).
6.	May 1, 2002	Fifth Status Letter.
7.	(Each 60 days thereafter until a final order has been entered).	

WHEREAS, this Court has conducted the initial hearing of appointment as mandated by the Order of the Supreme Court and conditionally appointed the above-named counsel. This Court, consistent with the statutory law, has set forth a projected scheduling order in this matter.

IT IS SO ORDERED this 26 day of July , 2001.

Honorable Diane S. Goodstein,
Presiding Judge
First Judicial Circuit

Charleston, South Carolina

CERTIFICATE OF SERVICE

I, Lonetta B. Brawley, hereby certify that I have served the ***Order on Conditional Appointment of Post-conviction Relief Counsel and Scheduling Order*** in *Bayan Aleksey v. State of South Carolina*, 01-CP-38-628, by depositing copy in the United States mail, postage prepaid, to the following:

David B. Tarr, Esquire
1720 Main Street, Suite 202
Columbia, South Carolina

Jim Brown, Esquire
Post Office Box 592
Beaufort, South Carolina 29901

This 30th day of July, 2001.

LONETTA B. BRAWLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

C.A. No. 01-CP-38-628

BAYAN ALEKSEY, #5059

Petitioner,

v.

STATE OF SOUTH CAROLINA

Defendant.

AFFIDAVIT OF PETITIONER

FILED
2001 SEP 11 P 1:53
CLERK OF COURT
ORANGEBURG, S.C.

Personally appeared before me, the undersigned,, who being duly sworn , stated the following information:

I, Bayan Aleksey, do hereby proclaim that I consent to the appointment of Mr. David B. Tarr, Esquire as my Lead Counsel for the purposes of pursing relief through Post Conviction Proceedings. I further consent to the appointment of Mr. James A. Brown, Jr., Esquire, as my Second Counsel in this endeavor. I make this proclamation being specifically aware of the attendance at The National Federal Habeas Corpus Seminar by these attorneys during August, 2001.

Bayan Aleksey

September ~~August~~ 7, 2001

SWORN to before me this 7

day of September, 2001

Laurence E. Whittaker

Notary Public for South Carolina

My Commission Expires: March 27, 2011.

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG)	CASE # 01-CP-38-628
)	
BAYAN ALEKSEY,)	
)	
Applicant,)	
)	
vs.)	**AFFIDAVIT OF COUNSEL**
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent,)	
)	

SEP 11 3:10

Personally appeared before me, the undersigned, David B. Tarr, who being duly sworn, stated the following information:

I, David B. Tarr, having been conditionally appointed to represent Bayan Aleksey (a death-sentenced inmate in a Post-Conviction Relief Action), do hereby assert that I am fully qualified to be formally, and unconditionally, appointed as lead counsel in this case. As this Court held in its Conditional Order of Appointment dated July 30, 2001, I meet the minimum requirements of 5 (five) years experience pursuant to § 17-27-160(B) to qualify as lead counsel. Furthermore, after my successful completion of the 6th Annual National Habeas Corpus Seminar on August 12, 2001, I now meet the special CLE requirements of the previously cited statute.

D B Tarr — September 5, 2001
David B. Tarr
Counsel for Defendant

Beth Williams — September 5, 2001
Beth Williams
Notary Public
My Commission Expires: 01-10-11

ATTEST: TRUE COPY
Linda S. Nagle
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C.A. No. 01-CP-38-628
BAYAN ALEKSEY, #5059)	
)	
Petitioner,)	
)	
v.)	AFFIDAVIT OF COUNSEL
)	
STATE OF SOUTH CAROLINA)	
)	
Defendant.)	
)	

FILED
2001 SEP 11 P 3:10
CLERK OF COURT
ORANGEBURG COUNTY, SC

Personally appeared before me, the undersigned,, who being duly sworn , stated the following information:

I, James A. Brown, Jr., do hereby proclaim that I satisfied the condition placed, by the Honorable Diane S. Goodstein, upon my appointment as Second Counsel representing Petitioner, Bayan Aleksey. I satisfied this condition through my attendance at The National Federal Habeas Corpus Seminar in Nashville Tennessee from August 9-August 12, 2001. Attendance at this conference bestowed upon the me twenty and seventy five hundredths (20.75) hours of CLE credit in the State of South Carolina. Further, all of the CLE hours provided at this Seminar were primarily involving advocacy in the area of capital appellate and/or post conviction defense as required in South Carolina Code of Law Section 17-27-160 (B).

James A. Brown, Jr. August 7, 2001

SWORN to before me this 7th

day of September, 2001

Notary Public for South Carolina
My Commission Expires: 2-1-2005

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)) COUNTY OF ORANGEBURG)	IN THE COURT OF COMMON PLEAS C.A. No. 01-CP-38-628
BAYAN ALEKSEY, #5059 Petitioner, v. STATE OF SOUTH CAROLINA Defendant.	**SECOND AMENDED APPLICATION FOR POST CONVICTION RELIEF**

[Note: This application follows SCRCP Appendix of Forms, Form 5, as required by Rule 71.1(b), SCRCP.]

1. Applicant is detained at the Lieber Correctional Institution, Campbell Thicket Road, Ridgeville, South Carolina, 29472.

2. The sentence was imposed by the Orangeburg County Court of General Sessions, the Honorable Edward B. Cottingham presiding.

3. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:

   (a) 98-GS-38-244 - Count One: Murder

4. The date upon which sentence was imposed and the terms of the sentence:

   (a) Sentenced on September 1, 1998 to death.

5. A finding of guilty on was made on August 29, 1998 after a plea of not guilty.

6. The applicant did appeal from judgment of conviction and sentence.

7. (a) The Courts to which applicant appealed:
   (i) The South Carolina Supreme Court.
   (ii) The United States Supreme Court.

ATTORNEY GENERALS OFFICE
11-7-02
OPEN

(b) The result in each Court to which applicant appealed:
(i) Conviction and sentence of death were affirmed.
(ii) Petition for Writ of Certiorari denied.

(c) The date on which each Court affirmed the sentence or denied certiorari:
(i) Conviction and sentence were affirmed November 13, 2000.
(ii) Petition for writ of certiorari was denied on May 14, 2001.

(d) Citations of any written opinion or orders entered pursuant to such results:
(i) State v. Aleksey, 343 S.C. 20, 38 S.E.2d 248 (2000)
(ii) Aleksey v. South Carolina, 532 U.S. 1027, 121 S.Ct. 1974, 149 L.Ed.2d 766 (2001)

8. Not applicable.

9 & 10 Grounds for Relief and Concise Statement of Supporting Facts.[1]

Ground A

Applicant was denied his right to collateral review of his conviction and death sentence as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and South Carolina law by trial counsels' failure to retain a copy of the trial counsel file, as required by South Carolina Code Section 17-27-130.

Supporting Facts for Ground A

(1) After trial, and prior to filing the application for post conviction relief, trial counsel released their respective files to applicant without retaining a copy.

Ground B

Applicant's right to counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of his representation throughout the pre-trial and trial proceedings by trial counsel who labored under an actual conflict of interest arising from trial counsel's simultaneous employment with the Fourteenth Circuit Solicitor's Office of the State of South Carolina. See *Mickens v. Taylor*, __ U.S. __, 122 S.Ct. 1237 (2002); *Cuyler v. Sullivan*, 446 U.S. 335 (1980); *Holloway, et al. v. Arkansas*, 435 U.S. 475 (1978); and *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001).

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[1] Applicant reserves his right to amend this application.

Supporting Facts for Ground B

(1) At the time of the crime for which Appellant was convicted and sentenced to death and during every proceeding leading up to and including the actual trial of the case, applicant's lead trial counsel, Isaac McDuffie Stone, III., was employed as a part time assistant solicitor with the Fourteenth Judicial Circuit Solicitor's Office of the State of South Carolina. Applicant was prosecuted in the First Judicial Circuit which shares a geographic border with the Fourteenth Judicial Circuit. Applicant did not receive adequate information from Attorney Stone from which he could make an intelligent decision regarding his representation by Mr. Stone. Furthermore, applicant did not receive any advice from an attorney who did not labor under a conflict of interest, so that he was unable to make an informed decision regarding his representation by Mr. Stone.

(2) Counsel's performance was adversely affected by this actual conflict of interest.

Ground C

Applicant's right to counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and17-23-60, was violated as a result of his representation throughout the pre-trial and trial proceedings by trial counsel who labored under an actual conflict of interest arising from trial counsel's simultaneous employment with the South Carolina Insurance Reserve Fund. See *Mickens v. Taylor*, __ U.S. __, 122 S.Ct. 1237 (2002); *Cuyler v. Sullivan*, 446 U.S. 335 (1980); *Holloway, et al. v. Arkansas*, 435 U.S. 475 (1978); and *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001).

Supporting Facts for Ground C

(1) At the time of the crime for which applicant was convicted and throughout trial counsel's preparation of the case and during the actual trial of the case, applicant's lead counsel, Isaac McDuffie Stone was also employed as an attorney for the South Carolina Insurance Reserve Fund. Attorney Stone's primary duties in that capacity included the defense of state agencies and state employees against lawsuits filed by various parties. The state agencies Mr. Stone represented at the time he represented applicant included, but are not limited to: the South Carolina Highway Patrol and Orangeburg County. The charge for which applicant was convicted occurred in Orangeburg County, involved the murder of a South Carolina Highway Patrolman, and was investigated by SLED in cooperation with the Orangeburg County Sheriff's Department.

(2) Counsel's performance was adversely affected by this actual conflict of interest.

Ground D

Applicant's right to counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of his representation throughout the pre-trial and trial proceedings by trial counsel who labored under an actual conflict of interest arising from trial counsel's simultaneous employment as an attorney for the South Carolina Department of Corrections. See *Mickens v. Taylor*, __ U.S. __, 122 S.Ct. 1237 (2002); *Cuyler v. Sullivan*, 446 U.S. 335 (1980); *Holloway, et al. v. Arkansas*, 435 U.S. 475 (1978); and *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001).

Supporting Facts for Ground D

(1) At the time of Attorney Stone's representation of applicant, he was employed by the South Carolina Department of Corrections defending that agency and its employees against lawsuits filed by various parties. As a result of applicant's conviction at the guilt phase of his capital trial, the sole question for the jury to consider at the sentencing phase was whether to sentence applicant to Death or to a sentence of life imprisonment in the South Carolina Department of Corrections.

(2) Counsel's performance was adversely affected by this actual conflict of interest.

Ground E

Applicant's right to counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of the trial court's failure to procure a valid waiver from the applicant of his lead trial counsel's actual conflict of interest which arose from trial counsel's simultaneous employment as an attorney for the South Carolina Insurance Reserve Fund. *Mickens v. Taylor*, __ U.S. __, 122 S.Ct. 1237 (2002); *Cuyler v. Sullivan*, 446 U.S. 335 (1980); *Holloway, et al. v. Arkansas*, 435 U.S. 475 (1978); and *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001).

Supporting Facts for Ground E

(1) No valid waiver of Mr. Stone's potential conflicts of interests were obtained from the Applicant. No waiver of any sort was obtained from applicant regarding Mr. Stone's actual conflict of interest.

(2) Counsel's performance was adversely affected by this actual conflict of interest.

Ground F

Applicant's right to counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of the constructive absence of counsel at the hearings regarding applicant's lead trial counsel's conflicts of interests. See *U.S. v. Cronic*, 466 U.S. 648, 659 (1984) , *Brooks v. Tennessee*, 406 U.S. 605 (1972) and *Frett v. State*, 298 S.C. 54, 378 S.E.2d 249 (1988).

Supporting Facts for Ground F

(1) Applicant's was only represented by Mr. Isaac McDuffie Stone, III, and Thomas R. Sims at the hearings regarding Mr. Stone's conflicts of interests. Mr. Sims failed to provide applicant any advice regarding these conflicts. Mr. Stone's conflicts of interests prevented him from assisting applicant during the hearings regarding these conflicts.

(2) The actions of the government, in appointing Mr. Stone and failing to provide applicant with two lawyers free from conflict during a critical stage, amounted to the constructive denial of counsel to applicant at a critical stage in the proceedings and prejudice is presumed.

Ground G

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure to provide enough information to applicant to enable applicant to make a voluntary, knowing, and intelligent waiver of an actual conflict of interest, which arose during applicant's proceedings, or to insist upon the appointment of alternate counsel who did not labor under a conflict of interest. *Strickland v. Washington*, 466 U.S. 668 (1984) and *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001)(Petitioner has shown an actual conflict of interest that adversely affected her attorney's performance. Further, her initial waiver of a potential conflict did not act as a waiver of this actual conflict.)

Supporting Facts for Ground G

(1) Applicant was never advised of the specific types of hazards which arose during the course of representation provided by Mr. Stone. Applicant never waived these actual conflicts of interest.

(2) Trial counsel's performance was adversely affected by this conflict and, but for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground H

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure in the *Jackson v. Denno* hearing to argue that applicant's "confession" was coerced and involuntary. *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground H

(1) Trial counsel was repeatedly made aware of applicant's allegations regarding coercion during the course of his interrogation by government agents. Trial counsel did not ask the agents one single question about these allegations at the *Jackson v. Denno* hearing, nor was the issue raised in argument by counsel.

(2) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground I

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure to request a change of venue due to extensive and prejudicial pre-trial publicity involving the offense charged and the applicant's character and failure to explore this publicity through voir dire. *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground I

(1) An extremely large number of newspaper articles, television broadcasts, and other media sources publicized accounts of the shooting of the victim and the subsequent investigation. Further, many of these media releases concerned the "bad character" of the applicant outside of the context of the case in issue. The extent of this coverage was evident from the responses obtained during the voir dire of the jury panel. In fact, ten of the fourteen jurors who actually sat in the trial of the applicant's case indicated prior knowledge of this case from some source outside of the judicial system. However, trial counsel inexplicably failed to inquire into the substance of these jurors' prior knowledge about this case.

(2) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground J

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' decision to imply to the jury, through voir dire questioning, that applicant was a foreign national. *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground J

(1) Trial counsel consistently asked jurors whether they could be fair to a foreign national. Applicant is not a foreign national and is in fact a U.S. Citizen by nature of his birth in the United States. Further, Applicant has never lived outside of the United States.

(2) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground K

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' complete failure to question any member of the jury panel regarding her view of the death penalty. *U.S. v. Cronic*, 466 U.S. 648, 659 (1984), *Hamilton v. Alabama*, 368 U.S. 52, 55 (1961), *Frett v. State*, 298 S.C. 54, 378 S.E.2d 249 (1988) and S.C. Code Section 16-3-20(D)&(E).

Supporting Facts for Ground K

(1) The transcript is clear that both counsel for defendant completely failed to ask any member of the jury panel questions regarding her view of the death penalty. In fact, counsel states, "The defense is specifically not going to ask them any questions concerning their feelings on the death penalty, although we have a statutory right to do so." Further, it was counsel's position, stated in the record, that this case would not go to the penalty phase and, therefore, questioning jurors regarding their views on the death penalty would be unnecessary. Also, counsel requested the court to prohibit the solicitor from asking similar questions. (This request was denied.)

(2) Trial counsel completely failed to subject the prosecution's case to adversarial testing during voir dire and prejudice is presumed.

Ground L

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure to attempt to rehabilitate any jurors who indicated in voir dire that they could only vote for life in a death penalty case. *Strickland v. Washington*, 466 U.S. 668 (1984) and S.C. Code Section 16-3-20(D)&(E).

Supporting Facts for Ground L

(1) See pages 183-858 of the trial transcript generally.

(2) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground M

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure to exercise peremptory strikes and challenge for cause during jury selection. *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground M

(1) During voir dire, jurors provided information which a reasonable attorney would have used to challenge for cause or exercise of peremptory strike. Trial counsel failed to exercise all of their peremptory challenges or effectively challenge jurors for cause.

(2) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground N

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial counsels' failure to object to the trial court's appointment of SLED Agent Buster Edwards to the position of supervisor of the sequestered jury panel. *Strickland v. Washington*, 466 U.S. 668 (1984).

Supporting Facts for Ground N

(1) The trial transcript indicates the trial court appointed SLED Agent Buster Edwards as the supervisor of the sequestered, petit jury panel. SLED conducted the investigation in this matter as the lead investigative agency. SLED Agent Buster Edwards participated in the investigation and arrest of Applicant. In fact, he signed Applicant's discharge papers from the hospital and served the arrest warrant for Murder on Applicant. Agent Edwards then proceeded to transport applicant to the Orangeburg County Law Enforcement Center from the hospital.

(2) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground O

Applicant was denied the right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 at the guilt or innocence phase of his trial. *Williams v. Taylor*, 120 S.Ct. 1495 (2000); *Strickland v. Washington*, 466 U.S. 668 (1984); *Jolly v. State*, 443 S.E.2d 566 (S.C. 1994).

Supporting facts for Ground O

(1) Beginning with the opening statement and throughout the entire guilt or innocence phase of applicant's trial, trial counsel "opened the door" to alleged prior bad acts and bad character of applicant.

(2) Trial counsel failed to properly cross examine and impeach state's witness Yelena Batkilina. Counsel did not impeach this witness with evidence of prior criminal convictions, character evidence involving specific instances of prior dishonest conduct, or challenging her false testimony.

(3) Trial counsel failed to properly cross examine and impeach state's witness Lisa Watson. Counsel did not impeach witness with character evidence involving specific instances of prior dishonest conduct or challenging her false testimony.

(4) Trial counsel failed to properly cross examine and impeach state's witness, and applicant's former co-defendant, Gloryvee Perez. Counsel failed to impeach witness with evidence of her motive to commit crime of which applicant was charged. Counsel failed to prove Perez' character through character evidence involving specific instances of relevant dishonest conduct.

(5) Trial counsel failed to properly cross examine and impeach state's witness Sarah Pivero. Counsel did not impeach witness with character evidence involving specific

instances of prior dishonest conduct.

(6) Trial counsel failed to properly cross examine SLED agent Mears. Counsel did not question Mears about applicant's allegations of coercion during police interrogation. Counsel failed to question Mears about certain evidence belonging to Gloryvee Perez found in car that was evidence of her recent criminal activity and gave her motive to shoot Trooper Linguard. Counsel failed to cross examine Mears about the missing SLED statement of Sarah Pivero.

(7) Trial counsel failed to properly cross examine SLED agent Darnell. See (6) above.

(8) Trial Counsel advised applicant not to testify. Counsel made this decision even though they had already opened the door to all bad character evidence and there was a "confession" that could not be explained without applicant's testimony.

(9) Trial Counsel failed to fully investigate the crime charged and the state's witnesses and to present that information to the jury in a coherent and meaningful manner.

(10) Trial counsel failed to adequately investigate Gloryvee Perez. Such an investigation would have uncovered a substantial amount of evidence that Ms. Perez had a significant motive to shoot the victim.

(11) Trial counsel failed to employ the services of a false confession expert.

(12) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground P

Applicant was denied the right to effective assistance of counsel at guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections and S.C. Code Sections 16-3-26(B)(1) and 17-23-60 at the sentencing phase of his trial. *Williams v. Taylor*, 120 S.Ct. 1495 (2000); *Strickland v. Washington*, 466 U.S. 668 (1984); *Jolly v. State*, 443 S.E.2d 566 (S.C. 1994).

Supporting Facts for Ground P

(1) Trial counsel failed to properly cross examine and impeach state's witness Theresa McCann by attacking her testimony with specific instances of prior dishonest conduct.

(2) Trial counsel failed to properly cross examine and impeach state's witness Jaime

Farrell by attacking her testimony with specific instances of prior dishonest conduct and by challenging her false testimony.

(3) Trial counsel failed to properly cross examine and impeach state's witness Sarah Pivero. See Ground O, number 5.

(4) Trial counsel failed to properly cross examine and impeach state's witness Lisa Watson. See Ground O, number 3.

(5) Trial counsel failed to investigate backgrounds of state's witnesses and their allegations. Such an investigation would have provided a substantial amount of impeachment material.

(6) Trial Counsel failed to investigate fully and effectively applicant's life and background and to present the information to the sentencing jury in a coherent and meaningful manner. Counsel failed to utilize properly the information their investigation uncovered and to find other information. Counsel failed to employ the services of a social worker. Counsel failed to employ the services of a neuro-psychologist. Counsel failed to employ the services of an adaptability expert to testify as to applicant's likelihood to adapt to prison life if sentenced to life in prison.

(7) But for counsel's deficient performance, the outcome of the trial proceedings would have been different.

Ground Q

Applicant was denied due process, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law by the prosecution's failure to disclose material information which was favorable to the defense on issues of guilt and punishment. *Brady v. Maryland*, 373 U.S. 83 (1963) and *Kyles v. Whitley*, 514 U.S. 419 (1995).

Supporting Facts for Ground Q

(1) The prosecutor knowingly failed to disclose evidence of Gloryvee Perez' motive and recent criminal activity and affirmatively mislead trial counsel regarding the existence and materiality of this evidence.

(2) The state knowingly failed to disclose, to applicant's trial counsel, evidence of Yelena Batkilina's prior criminal record and other specific acts of dishonesty, fraud and wrongdoing.

(3) The state knowingly failed to provide, to trial counsel, a statement given by Sara

Pivero to the agents of SLED.

(4) The state knowingly failed to provide, to trial counsel, evidence of fraud involving state's witness Lisa Watson.

Ground R

Applicant was denied his right to due process, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law as a result of the prosecution's presentation of false testimony and failure to correct the false impression created by that testimony. *Napue v. Illinois*, 79 S.Ct. 1173, 360 U.S. 264, 3 L.Ed. 2d 1217 (1959), and *Mooney v. Holohan*, 294 U.S. 103 (1935), and *Miller v. Pate*, 386 U.S. 1 (1967).

Supporting Facts for Ground R

(1) The prosecutor knowingly presented false testimony when state's witness Yelena Batkilina testified incorrectly about the date of purchase of the weapon in this case, not clarifying conflicting testimony between Ms. Batkilina and state's witness French and allowing Ms. Batkilina to testify falsely that she had not seen applicant after either the purchase of this weapon or, alternatively, after applicant's release on bond for a Pennsylvania charge. The prosecutor had information in his possession which informed him this testimony was patently false. Further, the prosecutor specifically relied on this false testimony during his closing argument.

(2) The prosecutor knowingly presented false testimony when state's witness Jaime Farrell testified that she did not deposit money into a New Jersey bank.

(3) The prosecutor knowingly presented false testimony when state's witness Jaime Farrell testified that she did not withdraw money from a New Jersey Bank

(4) The prosecutor knowingly presented false testimony when state's witness Lisa Watson testified, in the guilt phase of the trial, that she had reported the White Mustang stolen on October 5, 1997.

(5) The prosecutor knowingly presented false testimony when state's witness Lisa Watson testified, in the sentencing phase of the trial, that Bayan Aleksey stole money from her husband's credit cards.

(6) The prosecutor knowingly presented false testimony when state's witness Theresa McCann testified that the Honda CBR motorcycle was purchased while she was at work.

Ground S

Applicant was denied the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by appellate counsel's failure to argue on direct appeal that trial counsel's actual conflict of interest was so serious as to be unwaivable. *Strickland v. Washington*, 466 U.S. 668 (1984) and *United States v. Schwarz*, et al., 283 F.3d 76 (2d Cir. 2002).

Supporting Facts for Ground S

(1) Applicant was represented at trial by counsel who labored under several serious conflicts of interest, including simultaneous employment with the Insurance Reserve Fund, the Fourteenth Circuit Solicitor's Office for the State of South Carolina and the South Carolina Department of Corrections.

(2) Trial counsel's conflicts were of such a serious nature that no rational defendant would knowingly and intelligently desire that attorney's representation, regardless of whether the defendant was willing to waive his right to conflict-free counsel.

11 & 12. Applicant appealed his conviction and sentencing to the South Carolina Supreme Court and petitioned the United States Supreme Court for a writ of certiorari. Applicant has not previously filed an application for post-conviction relief nor a petition for a writ of habeas corpus in state or federal court.

13. None of the grounds set forth in (9) has been presented to this or any other Court, state or federal.

14. N/A

15. These grounds rely on additional facts outside the record which was before the previous courts.

16 & 17.
(a) Applicant was represented at his trial by I. McDuffie Stone, III, P.O. Box 155 Bluffton, SC 29910, Thomas Ray Sims, P.O. Box 2016 Orangeburg, SC 29116
(b) Applicant was represented in his direct appeal by Robert M. Dudek, S.C. Office of Appellate Defense, 1122 Lady St., Suite 940 Columbia, S.C. 29201.
(c) Applicant was represented in his petition for certiorari to the United States Supreme Court by Robert M. Dudek, S.C. Office of Appellate Defense, 1122 Lady St., Suite 940 Columbia, S.C. 29201.

18. Applicant seeks the vacation of his convictions and sentences.

19. Applicant is not under sentence from any other court.

Respectfully submitted,

David B. Tarr
Attorney at Law
1720 Main St., Suite 202
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(803) 252-9769

James A. Brown, Jr.
Attorney at Law
1111 Bay St., P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

BY
James A. Brown, Jr.

Attorneys for Applicant

September 20, 2002.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C.A. No. 01-CP-38-628
BAYAN ALEKSEY, #5059)	
)	
Petitioner,)	
v.)	**CERTIFICATE OF SERVICE**
)	
)	
STATE OF SOUTH CAROLINA)	
)	
Defendant.)	
)	
)	

I certify that I served a copy of the Second Amended Application for Post Conviction Relief upon the Respondent, on November 4, 2002, by mailing a copy, postage prepaid, to its attorney of Record, Donald J. Zelenka, Assistant Deputy Attorney General, at the South Carolina Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211.

November 4, 2002
Beaufort, SC

James A. Brown, Jr.
Attorney at Law
1111 Bay St., P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	IN THE COURT OF COMMON PLEAS 01-CP-38-628
BAYAN ALEKSEY *Applicant,* V. **STATE OF SOUTH CAROLINA,** *Respondent.*	NOTICE OF INTENT TO RELY UPON AFFIDAVITS AND OTHER DOCUMENTARY EVIDENCE

Applicant, Bayan Aleksey, by and through undersigned counsel, hereby informs the Court and counsel for respondent that he intends to offer proof in support of his claims for post-conviction relief through affidavits and other documentary evidence in lieu of live direct examination of selected witnesses at trial. In support of this notification, applicant apprizes this Court of the following relevant facts and legal principles:

1. Applicant, Bayan Aleksey, is an indigent death-sentenced inmate. He was convicted of murder and sentenced to death in 1998 in Orangeburg County, South Carolina. *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000). Applicant's petition for a writ of certiorari was denied by the United States Supreme Court on March 22, 1999. *Aleksey v. South Carolina*, 532 U.S. 1027, 121 S.Ct. 1974, 149 L.Ed.2d 766 (2001). On July 5, 2001, this Court appointed undersigned counsel to represent applicant in connection with his post-conviction relief proceedings. Applicant filed his initial application for post-conviction relief on May 26, 2001, and his First Amended Application for Post-Conviction Relief was filed September 24, 2002. The evidentiary hearing in this matter is scheduled to commence on November 12, 2002.

2. In support of his application for post-conviction relief, applicant intends to rely upon

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REC'D 11-7-02
ADMINISTRATIVE INSTR... NO.
FILE OPEN ENC.
FILE CORRESPONDENCE

affidavits and other documentary evidence provided by certain witnesses in lieu of conducting a direct examination of those witnesses at trial. This procedure is expressly authorized by S.C. Code § 17-27-80, which provides that, in a hearing on an application for post-conviction relief, "[a]ll rules and statutes applicable in civil proceedings are available to the parties. The court *may receive proof by affidavits, depositions, oral testimony or other evidence* and may order the applicant brought before it for hearing." (emphasis added).

3. By employing this procedure, applicant seeks to expedite the hearing and eliminate the need for live testimony from a number of witnesses, all of whom reside outside the State of South Carolina. In addition to expediting the hearing, utilization of this procedure will result in a significant savings of scarce state resources by obviating the need to expend funds to facilitate the travel of out-of-state witnesses.[1]

4. Clearly contemplated by §17-27-80, this procedure is in no way prejudicial to the respondent. On the contrary, respondent will in fact have greater opportunity to see and analyze the witnesses' direct testimony and make an informed decision whether to cross-examine than if the witnesses were simply called for direct examination at the evidentiary hearing.

5. Contemporaneously with the filing of this Notice, applicant's counsel has provided respondent with photocopies of the affidavits he intends to admit. It is likely that additional affidavits will be provided as they become available.

---

[1]Specifically, applicant intends to submit affidavits of at least seven (7) witnesses. Four of these affiants reside in or around Philadelphia, Pennsylvania, one lives in California, one lives in Missouri and one lives in North Carolina. Applicant's research indicates that round-trip airfare between Philadelphia, Pennsylvania and South Carolina, during the week, presently costs $998.00 (Columbia) per person. Based on this quote, applicant would be required to expend approximately $7,000 in air travel alone to bring these witnesses to trial. Accommodations and basic expenses would, of course, be additional.

6. Applicant fully acknowledges that respondent has the prerogative to call any or all witnesses deposed by applicant, or those providing affidavits or other documentary evidence, for purposes of cross-examination. Whether to do so, of course, is completely within respondent's discretion. In the event respondent elects to call any or all of the affiants residing outside the State of South Carolina, applicant will cooperate fully with respondent in securing their presence at the evidentiary hearing.

WHEREFORE, applicant requests that the Court accept the affidavits, and other documentary evidence provided by certain defense witnesses in lieu of a direct examination of those witnesses at trial, as authorized by S.C. Code §17-27-80.Respectfully submitted,

David B. Tarr
Attorney at Law
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Columbia, SC 29201
(803) 252-9769

James A. Brown, Jr.
Attorney at Law
1111 Bay St., P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

Attorneys for Applicant

BY: _____
ATTORNEY FOR APPLICANT

November ____, 2002.

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG **BAYAN ALEKSEY** *Applicant,* V. **STATE OF SOUTH CAROLINA,** *Respondent.*	IN THE COURT OF COMMON PLEAS 01-CP-38-628 CERTIFICATE OF SERVICE

I, James A. Brown, Jr., hereby certify that I have served upon the attorney for the respondent one (1) copy of applicant's Notice of Intent to Rely Upon Depositions, Affidavits and Other Documentary Evidence in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

Donald J. Zelenka
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

This the 4th day of November, 2002, in Columbia, South Carolina.

JAMES A. BROWN, JR.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
:
COUNTY OF ORANGEBURG) CASE NO. 2001-CP-38-628

ORIGINAL

BAYAN ALEKSEY,) VOLUME I, Pages 1 - 238
Applicant,)
) TRANSCRIPT OF RECORD
-versus-)
) POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,)
Respondent.) November 12, 2002

B E F O R E:
The Honorable Diane S. Goodstein

A P P E A R A N C E S:
Jim Brown, Esquire
David Tarr, Esquire
For the Applicant

Donald Zelenka, Esquire
For the Respondent

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit
Post Office Box 3335
Summerville, SC 29484-3335

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(Tuesday, November 12, 2002.)

THE COURT: Counsel, are you now ready to begin this matter?

MR. TARR: Yes, Your Honor. And I'll put on the record I stayed in touch with my client by way of his collect calls to me during the morning, so he was aware of the problem with the transportation and we also knew that we wouldn't start without him, and we haven't, and now we're about to start. He's here, we're ready.

We do have a request, Your Honor, we understand there's security concerns when you've got a client from death row in the courtroom. We would ask Your Honor to allow him to remove the shackles from his hands so that he can take notes and help us, leave the shackles on his legs so he can't run anywhere. I know in courtrooms in the state that that is done routinely and we just ask Your Honor to allow that in this case.

THE COURT: Very well. Is he right handed or left handed?

MR. TARR: Right handed.

THE COURT: Right handed. We'll unshackle for sure his right hand, see how it goes.

MR. TARR: I think it's also attached to

the waist, so I don't know.

THE COURT: These folks know how to do that.

MR. TARR: That will work. That will work.

THE COURT: All right. Super. All right. Anything else before we begin?

MR. TARR: Your Honor, the only request we would have, is we would ask the witnesses that we've subpoenaed, of which right now there are only two in the courtroom, we would like them to be sequestered during the others' testimony.

THE COURT: Okay.

MR. TARR: I know Mr. Zelenka indicated he might have an objection to that.

MR. ZELENKA: I would have an objection. I understand sequestering would also preclude my ability to discuss with them, over the circumstances of this case, potential issues which may come up.

The allegations as set forth in the second amended application over which we do not have any general objection to going forward on, is somewhat conclusory with respect to prior bad acts and things of that nature, the issues as to whether there was coercion. It doesn't spell out

what those factors are, and in light of the fact that pursuant to a request by the Grievance Board back in 1999 both lawyers turned their files over directly to Mr. Aleksey, they haven't really had the opportunity maybe to refresh their recollection on some of those factors, and I would allow the opportunity to see if their recollection can be refreshed, and I would be concerned about them being sequestered which would preclude me from actually discussing anything with them from this point forward in the case.

So I would request these individuals are officers of the Court, Solicitor Bailey is also under subpoena, he's an officer of the Court, I would think they would know what they can and can't say. And if not, you know, I would certainly suggest they could be subject to any impeachment over any conversations I may have with them or any impact that this testimony may have.

THE COURT: Yes, sir. Mr. Tarr.

MR. TARR: Your Honor, I don't have a problem with -- we're putting up Mr. Sims first. I don't have a problem with Mr. Zelenka talking with Mr. Stone after that testimony and asking him anything that he might have concerns about.

He doesn't have to say what Mr. Sims said during the testimony, you know, that would, you know, violate a sequestration order. But he could say, you know, based on if Mr. Sims said that he didn't know fact A, he could ask Mr. Stone did you know fact A. He doesn't have to say whether Mr. Sims said he knew it or not. That's my concern. I don't see how his ability to prepare this case would be affected if he's able to discuss any concerns he has with Mr. Stone before his testimony. That's just our position, Your Honor.

MR. BROWN: Your Honor, if I may add, as far as the file we have not once been asked by the attorneys, the trial lawyers, to take a look at their file. And we met with them over a year ago.

Further, there's a state law that requires them to keep a copy of the file. So the fact that our client, who is entitled to a copy of his file by law that says the file belongs to the client, those laws are not in contradiction. In other words, he gets a copy and they keep a copy. And we all know the Xerox machine works and I don't think that's -- that has anything to do

with, you know, the availability of Mr. Zelenka to prepare for the case.

Further, if he's going to present a case we've got witnesses going through the majority of this week, so Mr. Zelenka might even have time to order the transcript and go over it with them if he's going to present his witnesses.

THE COURT: If he does that then why don't sequester them? Then you've defeated the purpose of sequestration if he's allowed to get the transcript, go over the transcript with them, that's just an expense for no reason, if you will, because he can go over it with them.

MR. BROWN: All we're asking is sequestration until we finish our examination of the two witnesses. Actually, I'll be honest, we don't care after Mr. Sims testifies, who is our first witness, I don't know that we care he stays in here after that to help Mr. Zelenka after he testifies.

MR. TARR: They'll be subject to recall, he can always call them after our case is over if he has anything to clear up.

MR. BROWN: That's right.

MR. TARR: I just don't see why we should

have to let the cat out of the bag, so to speak, as far as our case is concerned for one of the lawyers.

THE COURT: All right. Yes, sir. You have -- you're holding a title.

MR. ZELENKA: I'm holding the law Section 17-27-130 just to clarify something that counsel said which said that the lawyers were required to maintain a copy of the file. What the lawyers are actually required to do is maintain the original of the file. The interveining matter, turning that over to Mr. Aleksey directly, these lawyers were aware of it as was the Court, and what the statute says, 17-27-130, is that the lawyers shall have the original file, that the collateral counsel shall have a copy of the file.

It seems similarly incumbent upon collateral counsel to have returned the original file to counsel, in light of this statute as much as otherwise, whether they had asked for it or not, the statute that we're relying upon says the original lawyers shall have their original file.

With respect to the -- I'm confused what sequestration is if it allows me to discuss the

testimony with the individuals at some time in the future. It doesn't sound to me that that's sequestration at all and I don't know how I can, one, paraphrase open ended questions say, well, what about this, and not to actually suggest that I would be in violation of a sequestration order. And I would have serious concern about maintaining whatever the judge would have intended for me to do under a sequestration order if I'm allowed to discuss testimony with the witnesses, with all due respect to the other side.

MR. TARR: Your Honor, if he has concerns about a question that I asked Mr. Sims, he doesn't have to tell Mr. Stone the answer that Mr. Sims gave to get his concerns alleviated. I mean, if Mr. Sims said that he didn't know that witness X said the car was green, he can ask Mr. Stone do you know what color the car was that witness X said. He doesn't have to say that Mr. Sims knew or didn't. I mean, the answer that he gets from my questions is not relevant to his determination of anything that Duffie might know -- Mr. Stone, I'm sorry, I keep using first names because I know both of them, I apologize.

THE COURT: That's all right. Certainly that's right, Mr. Tarr. Let me ask you this question, because obviously this is an issue that I did not know would need to be addressed. Obviously as I recall the sequestration orders that have been used by the Court, particularly in criminal matters, that those have been addressed to the discretion of the Court and I would ask either of you, both of you, whether or not you're aware of any specific authority in this case that addresses that specifically?

MR. TARR: No, Your Honor, my understanding that would be discretion of the Court. That's all we're asking Your Honor to do is exercise that discretion.

THE COURT: I understand.

MR. TARR: As far as the file matter, Your Honor, there's no statute that says that if trial counsel violates this statute, then collateral counsel's, you know, compelled to give it back. And that file was given over some one year and five months prior to our appointment to our client. So, I mean, you know, once we get it there's no statute that says that. And, you know, obviously if he were

to come to us, have said, look, maybe we shouldn't have given our whole file away --

THE COURT: I understand that that was done pursuant to a proceeding, as I understand it, to a disciplinary --

MR. ZELENKA: I should probably let counsel speak to the status of it, but I have information that those requests from Henry Richardson's office, who is the disciplinary counsel concerning the file --

THE COURT: I dare say that if Henry Richardson had requested it --

MR. TARR: -- I shouldn't speak for the lawyers on that, perhaps they should speak in that area. But that's my understanding.

THE COURT: All right.

MR. TARR: Your Honor, the client had requested -- the trial ended August of '98 or September 1st. He requested a copy of his file from his attorneys every -- I mean, he was sending letters over and over and calling up until February of '99 when it was actually turned over, and it wasn't turned over until he had to file a grievance.

Even at that point all they have to do

is make a copy of it and send it. Just because there's a grievance filed doesn't mean, okay, I'm going to wash my hands of the whole case and send everything I have. You go to the Xerox machine and copy it. That's all, that's clearly -- there's nothing unreasonable about that. But, I mean, that's -- there's no need to argue about that right now. All I was saying, I don't think that has any bearing on your decision in whether these witnesses are sequestered.

MR. ZELENKA: One other thing, Your Honor, this case is somewhat unique in if you equate it to a criminal case. Actually the parties in fact that I'm representing, who are to some extent being alleged to be ineffective, are in fact these witnesses. And I am denied access to basically the party during this proceeding and the circumstances of this sequestration order. I mean, there were three parties of the solicitor who's been alleged to have Brady violations as to matters that he did or didn't turn over, and each of these counsel. And in a similar civil setting that I've been exposed to those individuals are generally allowed to be in court during the hearing acting with counsel. I

may be wrong on that, but that's generally my impression as to what has gone on usually in these matters.

I have no problems with the other individuals that you have sought under subpoena, the law enforcement officers to be sequestered, but these individuals are the inherent part of this case in the allegations.

MR. TARR: Nowhere on this caption does this civil matter, does it allege anything against, there's no party over here.

MR. ZELENKA: Oh, absolutely there is no party over here, I will agree with that. I'm representing the custodian.

MR. TARR: Merely witnesses that Walter Bailey, Duffie Stone, Thomas Sims are witnesses in this case. They're not parties. So, I mean, to say they're parties is not correct.

THE COURT: Absolutely. Let me say that having heard your arguments and having -- of course, I've had this matter since it began and I'm certainly aware of the great degree of preparation which has been ongoing in this matter over a substantial period of time.

Let me say that having considered all of

these matters, having considered that -- that -- that -- that as I understand some of the allegations that of course they do involve the ineffective assistance of counsel, having been aware of really just a tremendous amount of preparation that has gone in on behalf of Mr. Aleksey, on behalf of PCR counsel, as well as hearing both that Mr. Zelenka has represented to me, that while he has had benefit of the transcript, that he feels that the State would be prejudiced by his inability to have continuing discussion with counsel, in that particularly obviously on the issues of ineffective assistance of counsel.

Further understanding that these are lawyers, they are officers of the Court, taking all of these concerns and issues into consideration, I think it is appropriate that they be allowed to remain, and I'm going to allow them to remain. I will not order sequestration of trial counsel and the solicitor, and that's where I'm hearing from you that your concern is.

MR. TARR: Your Honor, let me say this.

THE COURT: Yes.

MR. TARR: As far as the degree of my

concern, it's much more of a concern with the solicitor. There are numerous allegations of evidence withheld in this case, perjured testimony that was allowed to be put on I assume this stand right here in this courtroom. And, you know, if we allow -- if our allegations are in fact correct, I think that would be extremely prejudicial for Mr. Aleksey to have Mr. Bailey in this courtroom listening to the attorneys saying what evidence they were provided what they weren't.

I understand he's an officer of the Court and I'm not alleging that he's going to go and do anything improper. But if what we're saying we think he did is true, then he's already done that, and so as far as my degree of concern I'm not nearly as concerned about, although I do want them sequestered, I'm not nearly as concerned about Mr. Stone, Mr. Sims being in here, but I definitely would not want Mr. Bailey in here.

THE COURT: I understand. Yes, sir. Mr. Zelenka.

MR. ZELENKA: Your Honor, if that's Mr. Tarr's position, I would then request there be some specificity on what this information

that was not disclosed to the other side is. Because right now if you review ground Q all it says is prosecutor knowingly failed to disclose evidence of Gloryvee's motive in recent criminal activity and affirmatively mislead trial counsel regarding the existence and materiality of this evidence.

That's allegation I said O, it's Q1. It doesn't say what that evidence is, it just uses those general terms. And absent an understanding as to what that evidence is, it's impossible for Mr. Bailey to address whether he gave it or didn't give it. Right now reading this allegation I have no idea what that is in reference to. I do know what was given, I don't know what they say wasn't given.

Similarly with number 2, Yelena Batkilina's prior criminal record and other specific acts of dishonesty fraud and wrongdoing, I'm aware of the information that the solicitor turned over, but I don't know what they're asserting he didn't turn over. And I can go on similarly with Sarah Pivero the other allegations that they're raising on Brady violation. There's no specification as to what that is.

THE COURT: What you're telling me is that increases your need to have Solicitor Bailey available to you?

MR. ZELENKA: To either say yes I knew it, I didn't know it, yes I turned it over. Because he would be the only one he would be able to accumulate that information. I think it's only fair that he have at least some understanding before he was, shall I say, ambushed on the witness stand about it. Because he would need to review those files to see what are they saying I had and didn't have. Because maybe he didn't have it, which may be the case.

MR. TARR: Your Honor, we're not arguing that Mr. Zelenka shouldn't be able to talk to Mr. Bailey after they testify. All we're saying is as an officer of the Court we would ask him not to discuss their testimony. He doesn't have to discuss it. He can discuss my questions. He'll know what we're alleging from my questions or Mr. Brown's questions. So he can go to Mr. Bailey after they testify and say, okay, now we know what they're alleging the trial counsel didn't have. He doesn't have to tell them whether Mr. Stone or Sims said they didn't have

it or what, you know, they did have it. I'm not arguing that he can't talk to him, I'm just saying --

THE COURT: That troubles me. That troubles me though because it seems to me that's the purpose of a sequestration order is that -- as I understand a sequestration order what counsel's looking for is that they're looking for folks to testify without knowing what other folks testified to.

MR. TARR: Right.

MR. BROWN: That's it.

MR. TARR: That's what I'm saying. I don't want -- I don't have a problem with him talking to them about what my questions are, I just don't want him saying what the answers --

THE COURT: What the answers were. My understanding what a sequestration order is that that is what occurs as well, because obviously if Mr. Zelenka is listening to the following three issues that aren't in here, and then he goes out and talks to someone else about those three issues that aren't specified within the context of your pleading and that he doesn't have from another source, isn't that violative

of a sequestration order? Because he's taken what he's learned and while he doesn't say what the question was, perhaps what the answer was, he sure is talking about the questions and the answers from the stand. I mean --

MR. TARR: I don't have a problem with him talking with Walter Bailey about what my questions are because those are going to be our allegations. There's absolutely nothing involved in that with him telling Mr. Bailey what they answered. That's the part of the --

THE COURT: But the question is what difference does the answer -- what difference does trial counsels' answers mean if the allegation is that Mr. Bailey as solicitor didn't turn over information, didn't disclose information? In other words, what difference does their answer make?

MR. TARR: There's so much different testimony that's going to come out. Mine, it's not going to be just that simple. I think Mr. Brown had something.

THE COURT: Sure.

MR. BROWN: I just need to say something. These are our witnesses. So in other words,

he's going to cross-examine them. He does not have to prep Mr. Bailey to be our witness. In other words, he can prep Mr. Bailey to call him in his case.

THE COURT: Well, he can prep Mr. Bailey, I mean even though you're calling him, he's responsible for the preparation. It doesn't matter.

MR. BROWN: I disagree. It's not his client. His client is not Mr. Bailey.

THE COURT: I know that, but, you know, we changed the rule long ago because you call a witness, the witness is your witness. Clearly if you were to call these lawyers or Mr. Bailey, they're not associated with your side of the case, they're associated with Mr. Zelenka's side of the case, you would cross-examine them because they're not associated with your side of the case, they are associated with the State's side of the case.

MR. BROWN: They are not. Although we've raised conflict claims which I would certainly say Mr. Stone is closer associated with the State's case than the defense case at trial, they are not in any way at all.

THE COURT: What, associated with the State's case?

MR. BROWN: That's correct. In other words, the State -- the question here --

THE COURT: How can you say that?

MR. BROWN: The question is not whether it is not Bayan Aleksey versus Stone and Sims.

THE COURT: It isn't, Mr. Brown, but when you have an allegation which is ineffective assistance of counsel....

MR. BROWN: But the State denied him the access to his Sixth Amendment competent lawyer. It doesn't matter who the people are, it's just whether the State provided that function.

THE COURT: Well, it happened to be these lawyers, you see what I'm saying? In a vacuum absolutely that's correct, but if you ask me can I cross-examine these lawyers and Mr. Bailey because they are associated with the State of South Carolina in this proceeding, I would allow you to do that. I would allow you to do that on the basis that under the rules you may -- you don't have to do direct examination when you call someone that is associated with the other side. Doesn't have to be a named defendant, but

if they are closely associated with the other side I would allow cross-examination. That's where this issue is for me.

So even though you would call them, I would allow you to cross-examine them on that basis, because I would find that it is ineffective assistance of counsel and it is a constitutional issue of whether the Sixth Amendment has been denied, but because for this proceeding I would find that they are associated with the State, I would allow cross-examination and that's where this issue would be.

MR. BROWN: Let me suggest something else. What I really hear from Mr. Zelenka is that there's too much stuff in these ten bankers' boxes of 40,000 documents that we have for him to go over with Walter Bailey. So he wants to be able to talk with Walter Bailey about what we specifically ask, because it would take him years to sit down with each one of his witnesses and go through them.

Now, he had the opportunity to send through discovery interrogatories asking us what our witness, Walter Bailey, is going to testify to. He didn't do so. We don't think now he gets

to get around it by not having sequestration.

MR. TARR: And, Your Honor, let me say this: There's nothing to suggest that Mr. Sims and Mr. Stone are associated with the State. They could get up here on the stand, and I anticipate they will, and be absolutely very, very angry at what they did not have that could have really helped them. And in that situation they are going to be associated with us, and they're going to wish that they had given him this stuff so they could have defended Mr. Aleksey in the way he should have been defended.

So I would totally object to say put them in with the State. They're just witnesses. They may be witnesses for us or the State on different issues, but I would not say they are associated with the State. But Walter Bailey clearly is.

THE COURT: I understand. I understand where you're coming from.

MR. TARR: Obviously we are just going in circles. Our objection is noted on the record. We appreciate it.

THE COURT: Thank you so much, Mr. Tarr, I

appreciate that.

Yes, do you need to add something, Mr. Zelenka?

MR. ZELENKA: No.

THE COURT: Motion is denied. Yes, sir.

LIEUTENANT RANGE: Your Honor, we can get his hands uncuffed now.

THE COURT: That is where we started. Absolutely. Thank you. You know what, I know our court reporter is going to want me to ask you to identify yourself.

LIEUTENANT RANGE: My name is Lieutenant Range, I work for South Carolina Department of Corrections.

THE COURT: Thank you so much. Very well.

(Pause in proceedings.)

THE COURT: Openings.

MR. TARR: Thank you, Your Honor. I'm going to be very brief, Your Honor, because if I were to try and explain everything about this case to you we'd be here until Friday just me telling you about it. I think it's much better for you just to hear what the witnesses say and learn about it that way, instead of hearing me tell you what they're going to say or might say.

We've been on this case about 16, 17 months and there's still kind of things that we're discovering and things that we knew that were just finally now clicking. So you're going to hear lots of different names, and this case is spread out, a lot of witnesses came from New Jersey, New York, Pennsylvania. And so there are lots of different individuals you're going to hear about and it may take some time to figure out, you know, who exactly who we're talking about and why it might be important.

As we would -- discussed in chambers, I would encourage Your Honor, where you get in a situation where we're talking about something we haven't talked about before, you don't know what we're talking about, just stop us and say if you have a question then we would be happy to, you know, kind of direct you so maybe it wouldn't be so confusing.

THE COURT: Sure.

MR. TARR: Your Honor, Bayan Aleksey is really from New York City, and we are not going to allege here in this courtroom this week that he is an angel by any means. He had a number of outstanding warrants back at the time of this

case which was, you know, a big part of the State's case was that he had a motive to shoot the highway patrolman, Frankie Lingard, on December 31st, 1997.

However, there was another woman in the car named Gloryvee Perez Blackwell Rivera, whatever she wants to go by on any given day.

THE COURT: Tell me those names right now.

MR. TARR: Gloryvee Perez is her given name.

THE COURT: Wait a minute, Lori --

MR. TARR: Gloryvee, G-l-o-r-y-v-e-e is a first name.

THE COURT: Okay.

MR. TARR: Perez, P-e-r-e-z, is the last name. She's been married twice. Her first marriage was to a man named Exio Rivera so she went by that name at one time. Blackwell is her second husband so -- and she's used several different combinations of those names. She was in the car with Mr. Aleksey. Her two children were in the back seat.

The physical evidence seems to point, we do not argue that whoever was driving that car on that night is most likely the person that shot

Frankie Lingard. The question is who was driving. Bayan Aleksey gave a statement the day after his arrest in this case that she's the one who did it. Initially they were both charged, she was indicted for murder, charges were later dropped, she came in here, was basically the State's star witness. That statement saying that she did it was recorded.

Then the tape recorder was turned off for two hours and when it was turned back on Mr. Aleksey's crying saying he did it. That two-hour gap there's going to be a significant amount of testimony about what occurred or what did not occur. And basically it's just -- as you'll see and what we're alleging is that there's certain things that happened during that two-hour period that caused an innocent man to say he did something he didn't do.

Ms. Perez gave a statement saying he did it. You've got two people saying the other person did it. Gunshot residue tests were done on my client, they came back negative. No tests were performed on Ms. Perez.

Mr. Bailey throughout the trial and throughout pretrial hearings emphasized the fact,

or the alleged fact, that Mr. Aleksey was the only person in the automobile that had any motive to shoot this trooper, and so it was completely unreasonable to think that Gloryvee Perez would have done it. Basically what he's saying is she had no reason to do this.

Well, we've uncovered a lot of evidence some of which had to have been known by the State, some of which we can prove was known by the State, that this woman was involved in a virtual crime spree for the month leading up to the incident, most of which these crimes occurred within the week leading up to the killing of the state trooper.

So instead of the jury as it was in 1998 hearing that only one person in that car had a motive, what they didn't hear is that the other person in the car had been fired on December 24th, seven days prior to the shooting for stealing two books of checks from her doctor's office where she worked, she had gone to a bank in another state, opened an account, forged two of those checks totalling $28,500, deposited them in an account there. Then she went to several car dealerships trying to spend the money on expensive cars. At

the same time she's staying with Mr. Aleksey in hotels and the day she was fired, checks out of one hotel, changes her name, checks in another hotel, we've got all the records to show it. And then they check in another hotel after that.

Some of this information is in the hands of the State, some of it's not. The stuff that wasn't would have easily been gotten had a proper investigation by his attorneys been done. Basically what that does, Your Honor, it changes Mr. Bailey, takes away all of his arguments that there was only one person with motive to do this. I mean, this woman clearly did.

She's writing -- she also had closed a checking account from Beaufort, South Carolina, when she used to live here with her second husband, who was in the Marines, that she was writing bad checks to. The first motel they stayed in up until the day she was fired from her job, she wrote about $1,500 worth of bad checks on a closed account. That was in the possession of SLED that was not turned over to the defense.

They also had a Penske truck rental receipt in her name from the morning of December 31st before they left, and she testified

in this courtroom that they left Philadelphia around 1:00 or 2:00 p.m. and drove to Columbia, never stopped. Well, she didn't tell them that she had before that had gone to New York City early that morning and gone to Penske truck rental and tried to rent a truck so that they could take some stuff down, a one-way truck rental, to Palm Beach, after she had given a statement that they were going to Disney World.

Your Honor, that shows that the motel receipts, all the information of her, all the crimes she had committed and that fact to show that she is on the run. The one-way rental. What happened, Your Honor, the reason why they never got that rental truck is because when she used one of those bad checks that she had been passing all over town, they ran it through the Telecheck check service, they said hold them there, we're sending the police there, those are bad checks, she's been passing them everywhere.

Unfortunately for Mr. Lingard the guy that was working there just said y'all need to get out of here because they told me to call the police. And we've got that, that was in the driver's side door, that receipt was in the

driver's side door of the car that was pulled over, okay? Her name is on it, Your Honor, and that's significant because there was a lot of testimony elicited about where items in the car were found to show that basically Mr. Bailey brought out that all the items that belonged to Ms. Perez were on the passenger side, all the items that belonged to our client was on the driver's side. That's not true. It was not turned over.

We have pictures of it that SLED took that they never turned it over and acted like it didn't exist. There was a folder which contained all the motel receipts, copies of the checks, the actual checks themselves that she stole from the doctor's office and a number of other items belonging to her that was under the driver's side floor mat and we got pictures of them pulling the driver's side floor mat back and showing it. Those were not turned over to the defense. Had they been turned over, they would have easily found out all these things I've just told you.

And not only that, Your Honor, we've got two different situations here. One is the Brady situation that they didn't tell them about it what

they had. The other is that our client had written them numerous letters they had taken notes where he told them all this stuff and they didn't investigate it. I mean, they sent an investigator up August 11th or August 12th up to New Jersey, New York, Pennsylvania area, and did about four days' worth of investigation about one week prior to trial.

Didn't even go, they were five minutes away from this doctor's office, could have walked in there and said did Gloryvee used to work here? What happened to those checks? What they would have found out was she stole the checks and got fired. They would have been told to go to Summit Bank in Pennsylvania, they could have talked to another guy there who personally met with Gloryvee Perez when she opened the account and actually gave her the $1,000, later on figured out that she had stolen these checks, called Trenton police, had the police waiting for her at the bank, called her and told her to come to the bank to pick up, the money was now ready, they had a trap set for her. She never came because she had been at her job earlier that day and the police had already come out there asking about it and she tried to

pin it on her boyfriend.

Your Honor, that's extremely -- and then she comes to court and lies.

Your Honor, I've given you a little detail on her just because that is so important in this case. She is the person who was charged with murder, the charges were dropped, and came in here and said that he did it. And I don't have a motive, I don't know anything. She also testified she didn't know anything about his past, he didn't present himself to be a bad person, all this kind of stuff. They were all out committing crimes together she knew. We're going to want you to hear that tape of her, hear how persuasive, how believable she sounded and how her voice -- she sounded -- I mean, you would never think that what she was telling you was a lie when you hear the way she said it, and you know it was a lie when you hear the evidence we have.

Your Honor, it never got corrected, it was allowed to remain in the record by the State, even though they had information that it was -- they were lies. That's the co-defendant.

There were a number of witnesses, four or five women who were brought down here and there

was a lot of publicity about him being this con artist, conning all these women out of all this money and cars and anything possible to con somebody out of, up in these three states, this tri-state area. They've come down here, all testified.

Basically, Your Honor, what we've uncovered with them, and you'll see, is that a lot of it is stuff they were involved in with him. They were actually more like co-defendants instead of victims. When he gets charged with this killing of the state trooper all of a sudden that's forgotten, they're just victims, they pin it all on him. We've got documentation to prove how many times they lied in this courtroom. And at the end of this case we're going to ask Your Honor to order an investigation into perjury violations, because we've got proof a number of these women just out and out lied. There will be no question about whether it was material or not after you've heard all the evidence.

Your Honor, all of these factual things that you'll hear about the Brady violations and the perjured testimony, they're very important, but also something that's important is that our

client was represented; his lead counsel at trial was -- Mr. Duffie Stone was laboring under several different conflicts of interest, most of which were potential conflicts at the time he took representation that later clearly became actual conflicts at a later date.

He was a part-time solicitor and still is at I think it's the Fourteenth Circuit Solicitor's Office, most of the work he does down in Beaufort but some in Hampton, I think which is I believe an adjoining county to Orangeburg. Also he was employed by the Insurance Reserve Fund defending State agents and agencies against lawsuits filed by private citizens.

Well, some of the people that he represented were, and at the time of this trial were Orangeburg County, Orangeburg County sheriff, Orangeburg County Detention Center warden, the City of Orangeburg, as well as numerous highway patrolmen.

A lot of the police officers that he represented were for claims of police brutality, Your Honor, and in this situation we've got a person who's alleging that he was -- police brutality was committed against him and a

confession was coerced. Yet in the Jackson v. Denno hearing or the trial itself there were no questions or even allegations raised by the defense of those allegations by Mr. Aleksey.

And coupling that with the conflict, with these conflicting loyalties that he has to these other parties, law enforcement and the solicitors, it's pretty clear to see that they could easily have affected his decision making in the case, and we believe we can show actually did affect it even if he didn't realize it.

I mean, we're not alleging that because of these conflicts he knowingly threw this case, not at all. We know Mr. Stone, we believe he's an honest guy and a good lawyer. But the problem is that we just don't think that under these circumstances he should have been defending this client in this particular case.

And as Your Honor will find out there are a number of states that don't even allow it, I mean it's illegal. If you're a prosecutor you can't defend somebody. That's not the case in this state, but obviously I think it should be taken into consideration that is a concern.

Along the lines with the conflict, the

reason, main reason this became such an actual conflict is that later on in the case around May or July of 1998, some five to six, seven months after the incident, my client filed over ten lawsuits in federal court against SLED, against the Orangeburg County, against the Department of Corrections all of which were people that Mr. Stone was representing, actively representing at the time, filed a lawsuit against the head of the Orangeburg County jail who was an actual client of Mr. Stone's in his representation.

At this time Mr. Stone basically told Mr. Aleksey I can't help you with that because I represent the other side. It was never then later brought up in a court hearing so that Mr. Aleksey might be advised of all the possible ramifications of such representation and then waive it knowingly and intelligently.

We would submit that under certain case law that we'll get to after this hearing, just evidentiary hearing, is that this conflict is so serious to be unwaivable. That no rational defendant would knowingly accept such representation if he was aware of all the negative risk factors for having such representation.

Your Honor, I think the last -- really there are a couple of things that we're alleging. This case, as I mentioned before, there was a lot of publicity. We're going to show you numerous, numerous newspaper articles regarding this case that came out prior to the trial of the case. The problem with these articles is that a lot of them weren't your typical article that keeps coming out in the paper saying Aleksey's coming to bond court for the shooting of the state trooper or arrested for it.

A lot of it deals with all of these allegations of this prior bad act conduct that came into evidence involving all these other women in other states which we now can show that a lot of which, not all, but a lot of which was actually, they were actually not victims, but actually criminals themselves. So that you've got all this bad stuff and they bring it out to poison the jury to show that, you know, you got to kill this guy. I mean, he's a predator, he's out doing all these bad things to women, and now he's killed a highway patrolman. That's just not the case in either instance, Your Honor.

Your Honor, when the judge asks the

jurors whether they heard or saw anything or read anything, each one was standing up saying yes. So eventually he said everybody in the courtroom, all jurors if you heard anything about this case, read anything, saw anything on TV, stand up. And basically I mean well over half of them stood up. So they ended up going back to questioning them individually. No questions were ever asked by the trial counsel what they read or saw so that they could possibly strike them based on some, you know, if they read that, you know, he was doing all this bad stuff to women maybe they could say we don't want you, you've got preconceived notions, things like that.

Voir dire questioning was really inadequate. They injected prejudice into the case by arguing or asking the jurors if they had a problem if their client was a foreign national. He's been a US citizen his whole life, I mean he was born here, born in New York, lived in New York his whole life. He's not a foreign national, it just doesn't make any sense.

And, Your Honor, let me get one other thing here with regard to the voir dire. They did not ask any of the jurors any questions

specifically going on record telling the judge that they're not going to ask these jurors one question about their views on the death penalty, although they have a statutory right to do so. Not only that, the statute says they must be questioned about it. They say they don't think this case is going to get to that stage, we don't want the jurors to presuppose guilt so we're not going to ask them anything. They didn't want Walter Bailey to say to -- the judge said no way he's got a right to do it. You do, too. They didn't ask any questions. They had no idea. When they went to strike their jurors they didn't know what these jurors' views were other than their general comments about being type two jurors and being able to weigh both sides, make a determination based on the facts of the case. They didn't probe any of them any further than that.

Your Honor, and then -- well, there are a couple other things, I'm sorry I've gone a lot longer than I said I would, but I'm just kind of getting caught up in everything here.

There was an agent involved in this case with SLED who was assigned by Judge Cottingham to

keep track of the jury that was being sequestered, he was the person in charge, he would take them to the hotel, he would monitor all their behavior, all their telephone calls, everything. He was with them, he was the one guy that they had contact with in the whole trial of the case.

Well, this man Buster Edwards was involved in the investigation of the case, he was involved, he was an agent with SLED, the chief law enforcement agent involved in investigating this case. He was involved, he served the warrant for murder on my client at the hospital, he transported my client from the hospital to the Orangeburg County jail and questioned my client about the case. And yet he's in charge of the jury.

And, Your Honor, the defense had the warrants in this case that had his name clearly on their, Buster Edwards, SLED. They had the hospital records that showed discharged for Buster Edwards, SLED, yet they didn't raise to the judge there might be a conflict of interest in having someone -- that is like getting Agent Darnell or Mears, the two chief agents in the case, that's like having them watch the jury. This is the only

person these people can talk to for a week and the guy knows about the case, works with these guys every day.

Your Honor, then basically one big body of allegations involves the failure to adequately investigation by the attorneys. And I've touched on some of that with regard to specific witnesses and specific instances, but the reason why it's so important is basically what they did in this case, their defense was that it was a character defense based on Mr. Aleksey getting arrested on other charges, this is back before this happened, he would get arrested under an assumed name, bond out of jail, change his name and go do it again. Every time he got arrested he wouldn't kill the officer, that was the defense.

So basically the State did not have to, they had filed a 404(b) Lyle motion, they never had to argue it because the defense decided they were going to bring out all the bad acts of Mr. Aleksey on their own and put it before the jury. And they did this without investigating the allegations, they took the word of the law enforcement agencies up in the northeast, and the prosecutors about what he did, and then brought

out the evidence as if it were true, without investigating it.

If they had investigated it they probably wouldn't have chosen the strategy, we don't think they should have chosen the strategy anyway. I mean, you've got a case, I mean it's basically a case she said/he said. If they had done the investigation on her this jury wouldn't have known what to think, there would have been a 50/50 chance of who did this.

Your Honor, that's I hate to say kind of a nutshell. I kind of ran a lot farther than -- I don't know many nuts that have a shell that big, but maybe a coconut.

THE COURT: Thank you, Mr. Tarr, it certainly was helpful.

MR. TARR: Hopefully that will give you some guidance.

THE COURT: It does. It does. That's certainly the whole purpose of having opening statements, so I certainly thank you for it. Thank you, Mr. Tarr.

Mr. Zelenka.

MR. ZELENKA: Your Honor, I'll be much briefer. Three issues raised in this case:

Ineffective assistance of counsel based on Mr. Sims' and Mr. Stone's representation, actually four, a failure on their part to maintain custody over their file, alleged Brady violations presented against the defendant.

With respect to ineffective assistance claims, both counsel will be testifying in court about what they did and they didn't do. Their strategic reasons for not doing it or a fact that based upon their conversations with their client and their investigation they were not aware or do not know of certain things which may have been presented.

With respect to Brady violations, I think the testimony will reveal that Solicitor Bailey turned over matters that he was aware of. And if there are other matters out there as reflected in the record that sometimes the defense were more aware of criminal records, particularly with Gloryvee Perez than the State was, those matters will also be revealed as were revealed in the record.

Critical to this Court's analysis is of course Strickland vs. Washington where the burden is on the defendant, not the State, with respect

to claims of ineffective assistance to show by a preponderance of the evidence that counsel was deficient, that each counsel was acting outside of the norms required and demanded of attorneys practicing criminal law, and the second prong whether there's a reasonable probability that but for their proven deficient performance that the result of the proceeding would be different.

In the guilt phase whether in fact he would have been acquitted or convicted of a lesser offense, with respect to the penalty phase as to whether he would have been sentenced to life rather than death or that statutory aggravating circumstances would not have been proven..

Similarly with respect to Brady violations, assuming that the information was exculpatory, was defined under Brady and the opinions of the South Carolina Supreme Court as well as the United States Supreme Court, again the test is even if that information had been disclosed is there a reasonable probability again that the result of the proceedings would have been different. We submit that they're going to fail in that burden of proof in each way.

Evidence was presented on these

witnesses and Gloryvee Perez reflects that in fact she was impeached. The evidence also reflects that when similar circumstances were sought to be presented by Judge Cottingham, Judge Cottingham overruled their proffer to let similar information in. And again you have to look at the setting, and I think Strickland vs. Washington speaks of this, you do not use hindsight you review the setting as counsel was faced with at the time of the trial. Again, we submit that they are not going to be found either deficient or prejudicial under that Sixth Amendment determination either with respect to their guilt phase assertions or their penalty phase assertions.

So in summary we leave it to the Court to the extent that the evidence will come from the witness stand about what each party knew, and didn't know. Your Honor has a record before it about this case. Strategic decisions were made on the part of counsel. Strategic decisions counsel is allowed to make. Sometimes based upon a result there is a presumption of, well, it didn't work. Well, the problem is, as we know in fact it may have worked. It may have had an impact upon the defense case, but it may not have had enough of an

impact on the defense case even though that they were making these strategic decisions.

And again that's the foundation of the Strickland vs. Washington case. It's not outcome determinative, it's not if I would have gone A, I should have gone B because A didn't work. A may have in fact worked as well as it could have based on the basis for the presumption that counsel lacks within the standards demanded of lawyers unless the opposite is proven.

With respect to the conflict of interest issue, in all candor when I first heard many years ago that an assistant solicitor, part-time assistant solicitor was appointed in a capital case I, of course, had some concerns. The concerns were reflected on the record in at least three pretrial motion hearings that suggested that inquiry both of the defendant and of Mr. Stone concerning what he knew and what he didn't know at that time and whether he continued to want to have Mr. Stone represent him.

There were three particular hearings where that inquiry was made, specifically there was one on February 8th, 1998 before Judge Brown, again on May 20th, 1998 before Judge Cottingham at

a hearing, page 8 to 10, and in the record that we have before you again by Judge Cottingham prior to the trial at page 181 to 182.

As counsel correctly noted, the law in South Carolina is not a per se presumption against a part-time solicitor from being appointed in a criminal case, albeit a death penalty case. I note to the Court South Carolina Appellate Court Rule 608 requires these individuals to make their representation known to the Supreme Court and their availability to be appointed in particular cases. Also South Carolina Code Section 1-7-370 allows for solicitors to defend individuals who are charged with crimes essentially beyond their circuit. It's not a per se violation.

The defendant was made aware of the fact that as recently or as quickly as on February 2nd, 1998 Mr. Stone was a part-time solicitor in the fourteenth circuit, that Mr. Stone in fact represented individuals through the Insurance Reserve Fund, including police agencies. Prior to that based upon the representations that were made to Judge Brown on the record that there are prior conversations with Mr. Stone and the defendant.

In fact we submit the record supports

that Mr. Sims who was formerly a solicitor in this state also had similar conversations with Mr. Aleksey about what his personal background was and what the role of solicitor was to equate that with the district attorneys in the area that Mr. Aleksey came from.

We submit that there is not an actual conflict of interest which adversely affected the representation in this case, and further that even the potential conflict was waived by Mr. Aleksey prior to the time of his particular trial on at least three occasions when it was again brought to the judge's attention.

Upon that I'll leave it to the other side with respect to the presentation in their case.

THE COURT: Great.

MR. BROWN: Your Honor, if I may offer about a two-minute reply. I promise you it will fit within that time because I only want to deal with the law that he mentioned.

THE COURT: Okay.

MR. BROWN: Strickland is the basis or the standard for some of the claims we make. It does require ineffectiveness and prejudice.

However, there are other claims that we make that have a different standard. First we believe we will make a Strickland showing.

However, Brady is not Strickland. Brady deals with discovery violations. Not every discovery violation is reversible. However, the Courts are clear if it is a Brady violation it's reversible. Brady means that it's material which means reversible. And so the question is not prejudice, it's materiality and so I want to point that out.

Second, we make a claim about discovery violations under an older line of cases that go back to the 1950s, the biggest one is Napoo vs. Illinois, also a discovery violation. But it deals with the allowance in the record by the State of perjurous testimony. If we make a showing that the testimony was perjurous, and the prosecutor knew or should have known, the burden shifts to the government to show that the outcome was not affected, and we believe we're certainly going to be able to make that, and then it is on the State to make their showing, I'm not going to claim what they can make on that.

Lastly, as far as conflict of interest,

the conflicts law is certainly a gray area and there's been a recent Supreme Court opinion but it doesn't deal with these facts, the holding is very limited, even according to Scalia's own ruling, or own words in the ruling.

However, for general conflicts that arise if you show there's an actual conflict then you don't have to show prejudice, prejudice is presumed as soon as you show there was an adverse effect which is less than prejudice, because the prejudice is presumed, the law says that. Also, Your Honor, there are cases that say that there are actual conflicts so serious as to be unwaivable. We have found no cases anywhere in the United States that says there are no such things as unwaivable conflicts. We have never found a case that says that. We could agree that there's not a ton of law that says that there are unwaivable conflicts. But we have found no law that says there are no such things as unwaivable conflicts. And some cases are as recent as February 28th of 2002 in federal court involving conflicts of interest with the reserve fund for police officers and the same firm representing a defendant in a criminal proceeding.

THE COURT: And that case is?

MR. BROWN: The United States vs. Schwarz. It involved the Lalina sodomy with the broomstick, the famous case, John Cochran did the civil case on that. His conviction was reversed by the Second Circuit and they based it on prior Second Circuit law again which predates the trial of this case that says there are unwaivable conflicts.

THE COURT: The cite is?

MR. BROWN: I can hand you a copy of the case.

THE COURT: That would be great.

MR. BROWN: And/or Mr. Tarr can pull it out.

THE COURT: That would be great. Just whenever you get to it.

MR. BROWN: Yes, ma'am. And then the other thing that I would bring up, there are different types of conflicts -- this is related to conflicts still. As far as different types of conflicts and the law, US Supreme Court has not ruled on this. Whether there is a difference between conflicts between multiple clients, in other words, being one standard and then even

within that whether you're talking about conflicts during concurrent representation or during consecutive representation. In other words, one person gets tried today, one person gets tried next month and the same lawyer's representing multiple clients. We don't know whether there's a different standard or not from the US Supreme Court.

The next question is whether there's a different standard that applies when the conflict is between the client and the attorney's own interests as in Mr. Stone's employment with the reserve fund. There's differing law across the country. However, we would inform the Court that there's jurisdiction, at least one jurisdiction that has a per se rule unlike the conflicts between multiple representations, multiple clients whether they're successive or concurrent, a conflict between a client and the attorney's own interest is per se reversible. And that is still good law, Your Honor.

THE COURT: Okay.

MR. BROWN: Although not controlling in this state. And we would just point that out, that all of our claims are not subject to some

prejudice showing that, well, all of a sudden we've got the evidence that shows that there's no doubt the outcome would have been something different at trial, although we do believe that we can show that, we have a lot of substantial claims that are under much lesser standards.

THE COURT: Just since the question arises, am I going to hear that one of the trial counsel for Mr. Aleksey represented another defendant in this case?

MR. BROWN: No, ma'am. But there is multiple parties because Mr. Stone represented other parties, other clients as in Willie Bamberg at the jail, various troopers, the Department of Public Safety, City of Orangeburg, those are multiple client representations.

THE COURT: In other matters? Not in this matter?

MR. BROWN: Not in this matter, but in concurrent matters going over the same time span. In other words, he has other conversations with Willie Bamberg at the same time that Willy Bamberg is filing warrants against our client at the same time Duffie Stone is representing our client.

THE COURT: I'm with you.

MR. BROWN: So that's multiple client. But then there's also the conflict between the client's interest and Mr. Stone's interest in employment.

THE COURT: Right.

MR. BROWN: Which is revealed in some of the cases that we'll show. And we'll be honest with Your Honor, we had planned to submit our briefs in law which we'll certainly have some of the law here, but submit that at a later point in time.

THE COURT: And I'll be delighted to receive that, but as we go along you can just anticipate that I'm going to ask you this question so I can follow along. And I'm happy to do that and then what is it they tell you to say what you're going to tell me, then tell me what you told me? That's probably going to work well.

MR. BROWN: That's what we want to do. Again we didn't write briefs because we don't know what's going to come out on the stand. We did print up some research.

THE COURT: That's great.

MR. TARR: If we get to the point of we said what we were going to tell you, we tell you, we tell you again we start telling you too much, let us know.

THE COURT: No. No, that's great.

MR. TARR: We've got that case you want, the cite of United States vs. Schwarz, S-c-h-w-a-r-z Second Circuit cited 283 F3d 76, cited 2/28/02.

THE COURT: 76?

MR. TARR: Yes, Your Honor.

MR. BROWN: By the way, Your Honor, that case is no longer on appeal. In fact, Mr. Schwarz entered a plea of no contest to some charges. Subsequent to that, that is a settled case now.

THE COURT: Let's go get some lunch.

MR. BROWN: Yes, ma'am.

THE COURT: Wonderful. What I'd like to do is I would like to begin and take testimony at two o'clock. That gives everybody 50 minutes. Is that going to be sufficient you think?

MR. TARR: Yes, Your Honor.

THE COURT: Great. Thank you all so much.

(Lunch recess taken from 1:10 p.m. to 2:03 p.m.)

THE COURT: All right. If we could invite Mr. Aleksey in, please.

(Bayan Aleksey enters the courtroom.)

THE COURT: All right, counsel, are you ready to begin?

MR. BROWN: We are, Your Honor, yes, ma'am.

THE COURT: Very well. If you would call your first witness, please.

MR. BROWN: At this time we would call Thomas Sims to the stand.

THE COURT: All right, Mr. Sims, if you would come along.

(Thomas R. Sims, called as a witness, having first been duly sworn, is examined and testifies as follows:)

THE COURT: Very well. If you would please be seated, and when you are seated if you would state your full name for the record.

THE WITNESS: My name is Thomas Ray Sims.

THE COURT: Your witness.

DIRECT EXAMINATION

BY MR. BROWN:

Q. Mr. Sims, I've got a number of topics I'm going to ask you about, I think the best way to do it is try to do it by topics. The first one I'm going ask

you about is the conflicts issue in this case, and I know that's no real surprise. Did you ever speak to Mr. Aleksey about Mr. Stone's conflicts?

A. I spoke to Mr. -- excuse me. When we had the first hearing and the issue was brought up, I think -- I don't think, I know, I also put on the record that I had been a former prosecutor. I do know that when I would go, or one time, one occasion when I went over to the complex to talk to Mr. Aleksey, one of the things that I always do, especially when we have people who are out of state, explain to them the difference between the solicitor and the district attorney. Not actually the difference, but they're actually the same thing.

Q. And you explained the difference between a solicitor and that meant prosecutor?

A. Yeah. And I explained during the course of our conversation basically that Mr. Stone was still doing that and that I had at one time been a prosecutor.

Q. Okay. Is that the extent of your conversation?

A. Yeah.

Q. Okay. So you explained to him that the solicitor in South Carolina is a prosecutor?

A. Yeah.

Q. And that Mr. Stone was currently a solicitor?

A. Right.
Q. Okay.
A. A part-time solicitor in the -- in another circuit, not in this circuit.
Q. Okay. Was there anything else that you explained to him?
A. Not that I can recall.
Q. Okay. And do you have any notes about these conversations?
A. No, I don't.
Q. Okay. And so basically what you're testifying is just from memory?
A. Yes, sir. Basically, yeah.
Q. Okay. And I want to ask you a few things about, about your understanding of Mr. Stone's employment in other ways. Well, I'm going to kind of go through a list of all of it.
A. Okay.
Q. I want to hand you --
MR. BROWN: Well, let you take a look at this first.
Q. Without showing this to you, would you agree that Mr. Stone's represented at least 13 -- excuse me, 15 Insurance Reserve Fund cases?
A. I don't know anything about him representing,

how many cases he represented. I knew that he was a part-time solicitor, and I knew that he had a connection with the Insurance Reserve Fund, but in terms of the kinds of cases he dealt with, I did not know.

Q. So you did not know any of the specifics?

A. No, not the specifics.

Q. So you didn't know at the time this case was ongoing and Mr. Stone represented Trooper Means of the Department of Public Safety?

A. I did not.

Q. That was a claim of personal injury from Trooper Means ordering Ms. Patrick's stomach pumped without probable cause?

A. I knew nothing and I'll state again, I did not know the extent of Mr. Stone's representation in terms of troopers that he had represented or anybody on the state level. As a matter of fact, I believe that's the first time that Duffie and I had met, excuse me, Mr. Stone and I had met when we became involved in this case. So I knew very little, if anything, about his prior background. And as we progressed in this case I began to learn more, but we never discussed, you know, who he represented or whether he represented anyone.

Q. Now, just to make sure at the time of the appointment Mr. Stone was an assistant solicitor, and he still is. Well, I'm sorry, that's two questions. He was an assistant solicitor at that time?
A. It's my understanding at the time of the appointment he was. It is still my understanding that he is.
Q. Okay. And you have been a solicitor before?
A. Yes.
Q. And a solicitor has some other power outside of a normal attorney?
A. Yes. The solicitor does have an enormous amount of power outside of that of a regular attorney.
Q. They have the power to arrest?
A. I would think they do if they were involved in a matter and it was within their sight at the time. I don't think they have the authority to go out and arrest people, and I really don't know, I can't answer that to the full. But I would think that if you saw somebody doing something, you were in that area, you could say --
Q. Let me narrow that a little bit.
A. Okay.
Q. There seems to be a power of arrest that all citizens have --

A. All citizens have.
Q. -- to make some arrest. Law enforcement have the power to make arrest in some other categories?
A. Yes.
Q. Would you agree that prosecutors have the powers to arrest in the categories that law enforcement have?
A. To a degree. And I can't go into the degree because I just don't know.
Q. You wouldn't doubt it if they did?
A. I wouldn't doubt it.
Q. They carry a badge?
A. They carry a badge. I did not know that solicitors carried a badge. We carried a badge that said "solicitor" when I was involved with the prosecution, it would say "solicitor," but that's all we used.
Q. Could you describe the badge?
A. We had just a regular badge that the solicitor, Mr. --
Q. Similar to the badge that this trooper has back here?
A. Similar, yeah. The solicitor at that time who was Joe Mizell got us all badges. It was basically for identification purposes. I was not going out

here arresting anybody.
Q. I understand. But nevertheless a solicitor in South Carolina carries a badge?
A. Not all, those who want to.
Q. Are issued badges.
A. Yeah.
Q. Mr. Stone works in the Fourteenth Circuit?
A. Yes.
Q. Okay. The elected solicitor of the Fourteenth Circuit is based out of Hampton County?
A. Uh-huh (affirmative response).
Q. Okay. And that would be the ultimate supervisor of Mr. Stone?
A. Yes.
Q. Okay. Hampton County neighbors or boarders Orangeburg County?
A. No. You have to go through Bamberg, it is Orangeburg, Bamberg, and down further. It's about 60 miles away.
Q. There is no direct boundry shared between Hampton County and Orangeburg?
A. No, not that I know of.
Q. Okay. On the waiver of the conflict Judge Cottingham at some point says, and excuse me if I'm wrong, the Court, it may have been Judge Brown, said

that Mr. Stone was the solicitor in another circuit and he made a statement that he had no jurisdiction here in this county.

A. I agree with that.

Q. Have you ever heard of prosecutors, solicitors prosecuting cases in other circuits?

A. By agreement with the solicitor's office that can happen.

Q. And wouldn't be something that any other lawyer could do?

A. Well, we've had -- in this circuit we've had lawyers to be special prosecutors --

Q. But they -- I'm sorry.

A. I mean, to explain when we had a capital case here involving a situation the solicitor allowed I. S. Leevy Johnson to work with the solicitor's office as a special prosecutor, but it was only by agreement of the solicitor.

Q. Okay. And let me make sure, in that case there's still a solicitor on the case?

A. Yeah.

Q. When there's a private lawyer doing it?

A. Yeah.

Q. Are you aware of prosecutors from other circuits representing the State in a circuit or a county

outside of their circuit without a local prosecutor?
A. Yes, I've done that. We were involved in a case over in Myrtle Beach, a jail case in Myrtle Beach in terms of whether or not there had been some embezzlement of funds or some misconduct in office by a jailer. By agreement between the solicitors we were -- because there may have been a conflict with the solicitor knowing the jailer and everything else, they asked this circuit if we would be the actual prosecutors, so when the case came up we were the prosecutors by agreement. We went over there to prosecute the case.
Q. Because their conflict may be such that they shouldn't have represented one of the parties?
A. Well, you know, I was a peon at the time I was not privy to all of that.
Q. Sure. And you did that, you went to Horry County, represented even though it was not in the First Circuit?
A. Yeah, with my solicitor.
Q. And nobody from the Horry County circuit?
A. No.
Q. Okay. So in other words, the First Circuit prosecuted the case totally by themselves in another circuit?

A. Yeah.
Q. Would you agree that they had, and this is a misnomer I believe, but jurisdiction to do so?
A. By being granted that authority from the solicitor. I think they may have gone through the attorney general's office.
Q. Okay.
A. I can tell you tell you that at that time --
Q. That's a yes?
A. -- I was a deputy solicitor, Joe Mizell was the solicitor and he said to me that we were going to go to Horry County to try that case. It is my understanding, and this is only my understanding, that the solicitor at that time went to the attorney general, the attorney general then basically chose who was going to actually do it.
Q. And my question again was the First Circuit prosecutors --
A. Yeah --
Q. -- had, and I don't believe this is a correct term, but had jurisdiction to prosecute?
A. Yeah.
Q. Okay.
A. If that's how you want to put it.
Q. The reason why I asked, because again during one

of these waiver hearings I believe the Court told Mr. Aleksey that Mr. Stone had no jurisdiction in this county?

A. He did not have any jurisdiction in this county.

Q. Okay, did you --

A. Unless --

Q. Sure.

A. -- he did not have jurisdiction in this circuit or this county. His jurisdiction was in the Fourteenth Circuit because he was under the authority of Randy Murdaugh. The cases that were involved in this circuit he would have had to have gone, or somebody I believe would have had to have gone to the attorney general's office or he would have had to have been offered the authority to come into this circuit to prosecute by Walter Bailey.

Now, I don't know whether that's true or not, you know, but that's the way I thought it happens.

Q. And to conclude this.

A. Okay.

Q. Did you explain the fact that Mr. Stone could, in fact, at some time be a prosecutor without any other authority from the prosecutor's office in the First Circuit here in Orangeburg County?

A. No, I didn't.

Q. You did not explain that to Mr. Aleksey?

A. No, I did not.

Q. Now, did you know Mr. Aleksey filed lawsuits in federal court?

A. Yeah. Yeah.

Q. Okay. Did you discuss the conflict that Mr. Stone had regarding Mr. Aleksey's claims against the defendants in federal court?

A. No, I did not.

Q. Never discussed that, the conflict there?

A. No.

Q. Okay. Your file, and this has already come out, but just for the record, because I don't believe there's any evidence, where is your copy or the original of the trial counsel file?

A. I sent it back to Mr. Aleksey.

Q. Okay. Did you maintain a copy?

A. No.

Q. Did you believe that sending a copy to Mr. Aleksey would have satisfied his rights to his file?

A. If I recall correctly, the request from Mr. Aleksey said that he wanted all his file, including I believe computer stuff and anything else

that we may have had. And I believe I did talk with Mr. Stone about that.

Q. That answers one of my other questions, okay.

A. And then I got a call from somebody in the grievance part of the state bar association and said send him his file.

Q. Okay. Did you discuss with the ODC, the disciplinary counsel, the dilemma of complying with the statute that asked you to retain a copy of the file?

A. No, I did not.

Q. Were you aware of that statute?

A. I may or may not have been aware of it. I don't know -- at that time I don't know, I can't say that I was aware. But I do know this, I don't know any lawyer in South Carolina who wants the grievance people calling him on a regular basis.

Q. Okay. And I'm not going to argue, I think it's a better point to argue about whether or not both statutes can be complied with at the same time. However, I would ask you this: You were aware of collateral appeal. Have you ever represented a petitioner in post-conviction?

A. Yeah.

Q. Are you aware that the contents of the file can

become an issue in the case?
A. It has never become an issue in any case that I've been appointed to.
Q. So you don't believe it could have been an issue?
A. I'm not saying it couldn't have been, but you asked me a question, and I simply said to you --
Q. When you released the file without keeping a copy, you weren't aware of the ramifications?
A. No.
Q. Okay. All right. Do you know how Mr. Stone got appointed on this case?
A. No, I don't.
Q. Okay. All right. To move to some of the actual proceedings, as far as venue you never moved for a change of venue?
A. No, we did not.
Q. Why didn't you move for a change of venue?
A. We discussed the possibility of a change of venue. The problem that we encountered, when we were talking about it, we discussed some of the problems that we saw. Some of the problems that we saw is that of course someone coming from out of state, his racial background also played a part in terms of whether or not we would change or decide to change

venue. It was also a question of whether he was going to get a fair trial, and could get a fair trial here in Orangeburg County.

The issue became where would we have a more receptive jury pool. And I think you've stated, because you gave me a copy, one of the -- y'all gave me a copy this morning, I did an analysis kind of of the jurors, I think it was like 55 percent black, something like that, that was on the jury pool. And we felt after considering some of the other counties that were involved that could have potentially been involved, Lexington, Dorchester County, Richland County, the other counties, we felt that because of the makeup and the background here in Orangeburg that we would be able to get probably the best trial right here in Orangeburg County.

Not only that, it is my understanding that I think if it had become a problem we could not have gotten a jury, the appropriate time could have been even during the jury process here in Orangeburg.

Q. And let me ask you on that, you said because of the racial makeup and you mentioned that I guess Orangeburg County is a majority African American?

A. Yeah.

Q. Mr. Aleksey has how much African American blood

in him?

A. None.

Q. And you think it's of benefit? And let me stop. Mr. Lingard, the victim in this case, is African American?

A. Uh-huh (affirmative response).

Q. So you think it's a benefit for Mr. Aleksey who has no African American blood to be tried in a majority of African American county when the victim is African American and a local resident?

A. Well, let me explain it to you this way. I've been in Orangeburg County since 1980 when I came to South Carolina. I've prosecuted and I defended in Orangeburg County. And it has been -- it was part -- of it was in terms of talking about the experience that I've had with Orangeburg County jurors, there's a difference in an affinity with law enforcement and an affinity with Joe Blow.

When you talk about people having allegiance to that, and Orangeburg County jurors are sometimes very suspicious, Orangeburg County jurors have been known in the past to look through or be more liberal towards defendants, no matter what the racial makeup of the defendants were. And I've seen it happen.

Q. Okay. In this case how many newspaper articles do you believe were published either pretrial or during trial?
A. I can't tell you that because I don't know.
Q. Would you doubt that there were at least 116 articles?
A. No. I wouldn't doubt it if you've got that, no.
Q. Would you doubt that there were 30 articles published by the *Times & Democrat*?
A. I wouldn't doubt it.
Q. That's the Orangeburg newspaper?
A. Yeah.
Q. Let me ask you two statewide coverage newspapers that are carried here would be the *Post & Courier* which would be a Charleston paper?
A. Charleston paper. I think it's here, you can get it here, yeah.
Q. And *The State* paper?
A. *The State* paper, yeah.
Q. Would you doubt whether they had 20 between the two of them?
A. I don't know. If you say, yeah.
Q. So you don't doubt it?
A. No.
Q. So that would be 50 articles between those three

newspapers out of 116 in the state?

A. Yes.

Q. Okay. Have you ever been involved in a death penalty case that had 116 articles published about it before or during trial?

A. I've never counted them, and I've been involved with death penalty cases as a prosecutor, and I've been involved with death penalty cases as a defense lawyer. So I've never counted how many articles were by newspapers.

Q. Are you aware of one that might rival that?

A. Well, the case I talked to you about earlier about when I. S. Leevy Johnson was involved, I had just come under the solicitor's office and it was my responsibility at that point to look at the publications and stuff.

And I did look at a lot of newspaper because this was going to be a second trial, the first trial they were found guilty and then a second trial was coming up and the question was one of venue. And I looked at some newspaper articles and stuff like that.

I've been involved in capital cases in Dorchester County where there's been notoriety and you get all of the Charleston newspapers and print

media and television media would come up and get involved in that. Now, how many articles they wrote I can't tell you.

Q. 116?

A. I don't know.

Q. Close to it?

A. I really don't know, I can't answer that. There was notoriety in there. How much I can't tell you.

Q. Okay. Court TV exposure?

A. No.

Q. There was Court TV exposure in this case?

A. Yeah, there was, but we didn't even have Court TV until recently from my knowledge, especially back in the '80s.

Q. And Court TV is available in Orangeburg County?

A. Well, they came down.

Q. No, but potential jurors in the jury pool would be able to view Court TV in Orangeburg County?

A. I couldn't get it. I wanted to tape it. I couldn't get it in Orangeburg and I have cable.

Q. You have cable here?

A. Yeah, I have cable here so I couldn't get it, get Court TV here in Orangeburg.

Q. Let me ask you about the number of jurors that were exposed to media pretrial, because I believe you

have some notes, you indicated you may have taken some notes about the number of jurors?

A. I took notes. When I got the jury list I went down, had somebody on my staff, we sat down, we counted the number of jurors, we counted the number of white, we counted the number of African Americans, we counted the number of others, we counted the number of females, we counted the number of males and tried to break it down that way.

Q. And so again your estimate would be that were exposed to the media pretrial?

A. No. We had, what, 150 something, 200 something jurors? Now, how many out of that were exposed, I don't know.

Q. May I refer you to page 158 in the record?

A. I need to get a copy.

Q. Sure, I have my copy. Were you provided a copy by the attorney general?

A. I just got a copy yesterday.

THE COURT: You may need to take this back, Mr. Zelenka, the transcript if you remember.

THE WITNESS: That is what he gave me yesterday sitting on the desk right there.

MR. BROWN: This is your copy? I believe it's right here, Your Honor.

THE COURT: Okay.
Q. Page 158 if you would.
A. Okay.
Q. All right. When the judge goes through does he not say that there are so many people standing that he thinks he would rather ask questions individually than to go through with the entire panel the number of people exposed?
A. I believe that's on line 13 of the page. "I think in this instance we better ask that question on individual voir dire, there are so many of them."
Q. And so, in fact, he notes there were so many that he can't discuss it in the normal qualification of the jury panel?
A. Yeah.
Q. Okay. And in your voir dire, and let me say this: You're allowed individual voir dire by state law?
A. Uh-huh (affirmative response).
Q. In capital proceedings?
A. Yeah.
Q. You're allowed to question each juror individually and lawyers, as opposed to the judge, is allowed to ask questions?
A. Right.

Q. And it's unusual in South Carolina in state practice?

A. I've been allowed in state practice too to ask certain questions.

Q. Not by state law?

A. Not by state law, discretionary.

Q. You actually had a right to in this proceeding?

A. Uh-huh (affirmative response).

Q. You didn't ask any jurors what they heard?

A. It's on the record, whatever we had on the record. I guess not. We asked the questions as it relates to their understanding, we went through the process of whether or not they were either diametrically opposed or whether they were diametrically for.

Q. The death penalty?

A. Yeah.

Q. We're talking about awareness --

A. I understand what you're talking about.

Q. -- of the coverage of the facts of this case.

A. Yeah, I understand.

Q. And you didn't ask any jurors any questions, not one question about what they had heard?

A. You know, without having gone through the entire record I cannot say yea or nay. Without having

looked at all what was going on I cannot say that I did ask any or did not ask any, but I do know our strategy dealt with trying to get -- elicit certain information from the jurors based upon what we perceived at the time.

Q. Now, there were 12 jurors and two alternates seated in this case?

A. Uh-huh (affirmative response).

Q. Would you agree that 10 of those 14 jurors admitted being exposed to pretrial publicity about this case?

A. If you've done the record, I don't know, but I would -- you know, if you've got it on the record that may be true.

Q. And I hate to go back over this, but you're not, you can't say that you asked any of those jurors one question about what they heard?

A. I cannot say one way or the other, but I can say that if you looked at my notes on each one of the jurors that we did, when you look at my notes on those jurors there were personal remarks and/or statements that were made by each juror in terms of looking at whether or not they were folding their arms, they were leaning back, whether they looked at me, they looked at Walter, they looked at any other

person involved, their demeanor, we tried to develop a profile as relates to the body language of the jurors, whether or not they would be receptive, whether or not they would not be receptive. So we were doing analysis, additional analysis also.

Q. Okay. So my understanding is you did analysis outside of questioning?

A. Yeah, we were --

Q. You based it on nonverbal language?

A. We did it on what they said. Based upon what they said, based upon what we were asking and based upon what I perceived as a nonverbal form of communications also.

Q. But you don't disagree you never asked one juror one question about what they heard?

A. As I said before, I would have to sit there and read all of the juror questions and I just said that's the only way I would be able to.

THE COURT: Mr. Brown.

MR. BROWN: Yes, ma'am.

THE COURT: I'm going to interrupt you, because I'm trying to follow your line of questioning and I'm looking at page 183 and the judge is doing the examination regarding the publication.

MR. BROWN: And in response, Your Honor, the judge I believe is an unbiased official in the court and I believe that there's -- of all cases, a death penalty case, it's supposed to be an adversary proceeding where the one side being State's case is tested to the fullest extent by all means available to the defense and the other side.

And so we would -- we're not doubting that some information came out.

THE COURT: You can proceed.

MR. BROWN: Okay. And so, yes, Your Honor, but we don't want to mislead the Court, but we want to point out that there wasn't one question asked and so the whole obligation -- and let me bring this back home, Your Honor. The claim is whether they had effective counsel, and so the question is whether the counsel did what was constitutionally required, and then of course whether there's prejudice of this type of claim. And certainly that's a matter of argument, but that would be my response.

MR. ZELENKA: Your Honor, I would just point out that state law, I think it's State vs. Lucas says the lawyers are precluded from asking

the jurors the question what have you heard. State vs. Lucas.

THE COURT: All right, Mr. Brown, you can continue.

THE WITNESS: May I --

THE COURT: Whoa, let's let Mr. Brown ask the next question.

THE WITNESS: It was going to be in response to that question.

THE COURT: That's okay. Let him ask the next question.

BY MR. BROWN:

Q. Next I'm going to go to the voir dire. Excuse me, to one of your specific voir dire questions that was asked, because to be honest, the last question had more to do with change of venue.

A. Okay.

Q. But to get into voir dire a question was asked intermittently because y'all did voir dire, shared the responsibilities. One of the questions y'all asked is whether the jurors could be fair to a foreign national. Do you know the nationality of Mr. Aleksey?

THE COURT: Have you got a transcript citation that you all can give me to that?