

No. 18-8030

In The
Supreme Court of the United States

OCTOBER TERM 2018

CHARLES RUSSELL RHINES,

Petitioner

v.

DARIN YOUNG, Warden, South Dakota State Penitentiary,

Respondent

**On Petition For A Writ Of Certiorari
To The United States Court of Appeals For The 8th Circuit**

RESPONDENT'S APPENDIX: VOLUME 2 of 2

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APPENDIX

Volume 1

<i>Habeas Corpus</i> Transcript Excerpts	Appendix 00001
Rhines Autobiography	Appendix 00014
Kennelly Report	Appendix 00081
Arbes Report	Appendix 00086
Psychosocial Report	Appendix 00090
Ertz Affidavit	Appendix 00093
Gilbert Affidavit	Appendix 00099
Groff Affidavit	Appendix 00118
Harter Affidavit	Appendix 00184

Volume 2

Allender Affidavit	Appendix 00217
Hernandez Affidavit	Appendix 00331
Tarango Affidavit	Appendix 00342
Larson Affidavit	Appendix 00362
Brooks Affidavit	Appendix 00364
Miller Affidavit	Appendix 00365
Jundt Affidavit	Appendix 00367
Stonefield Letters	Appendix 00368
Order Appointing Psychiatric Experts	Appendix 00370
Criminal Trial XIII	Appendix 00372
Confession Transcripts	Appendix 00402
Docket 72	Appendix 00430
Docket 150	Appendix 00433
Docket 272	Appendix 00452
Docket 289 Excerpt	Appendix 00468

DSM IV ADHD Entry

Appendix 00470

Military Records Excerpt

Appendix 00491

Franks Report

Appendix 00504

Schacht Report

Appendix 00510

Kooiker Letter

Appendix 00529



STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CHARLES RUSSELL RHINES

Petitioner,

vs.

DOUGLAS WEBER, Warden, South
Dakota State Penitentiary,

Respondent.

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IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

CIV. 02-924

AFFIDAVIT OF
STEVE ALLENDER

Affiant Steve Allender, after first being sworn upon his oath, states as follows:

1. If called at trial, affiant would testify to the following facts.
2. Affiant was the investigating detective on the Donnivan Schaeffer murder case. Affiant's investigation revealed a great deal about the life and history of the perpetrator, Charles Russell Rhines. Excerpts from the referenced exhibits are attached hereto.
3. Affiant learned that Rhines was involved in a homosexual relationship with a male minor at the time of the murder. EXHIBIT 1 at 3, 8, 10, 50. Rhines had been in prior homosexual relationships and his sexual habits included sadomasochism with allegedly consenting partners. EXHIBIT 1 at 11, 29, 39, 47. Rhines described one of his homosexual encounters as "a trick." EXHIBIT 2 at 6. In a letter procured during the investigations, Rhines described himself as "a sexual predator" whose inner animal "doesn't want to be penned up or kept in at all." EXHIBIT 44.
4. Affiant learned that Rhines had been convicted of burglary in 1977 for stealing property from a dorm room while he was in college. EXHIBIT 32.
5. Affiant learned that Rhines had been convicted of armed robbery of a Mobridge liquor store in 1979 using a sawed-off shotgun. EXHIBIT 1 at 39; EXHIBIT 33. Rhines claimed to have disabled the gun's firing mechanism, but he casually admitted that he supposed he "would have killed somebody" if the gun had accidentally discharged. EXHIBIT 1 at 39.

6. Affiant learned details of an embezzlement scheme that Rhines pulled off while working for Winchell's Donuts in Seattle, Washington. Rhines described how he learned to alter payroll checks. Rhines embezzled approximately \$38,000 in this fashion. EXHIBIT 1 at 40-42. Rhines felt no remorse for the theft because "[t]here was no violence," "it was a paper scam." EXHIBIT 1 at 41, 42; EXHIBIT 2 at 2.
7. Rhines described being trained in the military to use implements like entrenching tools to kill people. EXHIBIT 1 at 48. While in the military, Rhines "flaunt[ed] authority" and was "apathetic." Rhines' military records reflect that he was disciplined repeatedly for insubordination and drug use. Rhines assaulted the unit's armorer with a deadly weapon. Rhines also stole explosives and claymore mine firing devices. Rhines was mustered out on a general discharge before the completion of his enlistment. EXHIBIT 34.
8. When affiant arrested Rhines, Rhines was in possession of a loaded .30-06 rifle. Rhines tried to wrest the rifle from affiant's hands claiming he wanted to help affiant unload it. Affiant would not let go of the rifle. Rhines asked, "What's the big deal? There are only five rounds in it and there are six of you [police officers effecting the arrest]." EXHIBIT 2 at 4. Rhines had told friends that he would not be taken alive by police. EXHIBIT 18 at 7; EXHIBIT 10 at 13.
9. Affiant interviewed Rhines at 2:35 a.m. on March 9, 1992, the night of the murder. EXHIBIT 6 at 4-5. After the interview, witness Glen Wishard encountered Rhines and found him "cheerful," "grinning," and "joking around." EXHIBIT 35 at 2.
10. On March 14, 1992, affiant searched the trash at Rhines' former apartment. Affiant found a 6-step plan to rob an unidentified business. EXHIBIT 6 at 19; EXHIBIT 26 at 3; EXHIBIT 48. Rhines wrote out the plan approximately 8 months before the murder. He said his plan was to rob Dig'Em donuts and tie up a 14-year-old girl who was working there at the time.
11. Rhines also wrote out a plan to "take out," meaning kill, a woman acquaintance and rob her home and steal her jewelry. EXHIBIT 26 at 7; EXHIBIT 49.
12. Affiant interviewed Sam Harter, who informed him that Rhines had threatened to kill Heather Shepard, who was a witness in the murder investigation. EXHIBIT 10 at 5-6, 10; EXHIBIT 26 at 10; EXHIBIT 28 at 10; EXHIBIT 31 at 4, 6. According to Harter, Rhines was ready to

die by cop. EXHIBIT 10 at 13. Harter described a burglary scheme Rhines talked about. Rhines planned to test drive cars, have copies of the keys made while out on the test drive, then later steal the cars to commit burglaries of commercial establishments around town. EXHIBIT 11 at 6. Rhines told Harter that he was surprised how "easy" it had been to kill Schaeffer, to commit his "first murder." EXHIBIT 10 at 8.

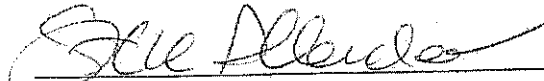
13. Affiant learned that Rhines was deemed "a spook" in his hometown of McLaughlin, South Dakota. Rhines always carried a big knife around town and "intimidated" people. Rhines was known to have wired a nearby grain elevator with dynamite. EXHIBIT 16. A classmate from McLaughlin described Rhines as "very smart" and "an overweight, brainy guy."
14. Affiant learned that Rhines plotted to escape from custody while being transported to or from a psychiatric evaluation by freeing his hands with a handcuff key fashioned from a paperclip and strangling a guard with a garrote made of braided dental floss. Rhines also commented that his dustpan could make a nice weapon to murder someone for the fun of it. Inmates described Rhines as a "spooky individual." EXHIBIT 22 at 3; EXHIBIT 23 at 1-5; EXHIBIT 24 at 1-2.
15. Witnesses described Rhines as "bragging" about murdering Schaeffer. EXHIBIT 23 at 5-6. Rhines had "no remorse" and acted like the murder was "a fucking big joke." EXHIBIT 23 at 6; EXHIBIT 24 at 1.
16. In the days prior to his arrest for the murder of Donnivan Schaeffer, Rhines perpetrated approximately 30 thefts of hundreds of pounds of copper wire from construction sites around Seattle, Washington. Rhines sold the wire to salvage yards. EXHIBIT 25; EXHIBIT 27; EXHIBIT 29 at 1; EXHIBIT 31 at 2.
17. After his arrest, Rhines confessed the murder to affiant. Most of the confessional statements were recorded. Rhines made other statements before the recordings started, or during intervals when Rhines turned the tape recorder off. Rhines asked if it was possible to plead guilty to first degree murder. Affiant responded that he did not know the answer. Rhines said "I don't deserve anything except a kick in the teeth and the electric chair." When affiant commented that South Dakota had not executed anyone in 50 years, Rhines replied "Well, there's a first time for everything." EXHIBIT 28 at 4-5. Rhines understood that he could face the death penalty before he confessed. Rhines described how, when Schaeffer begged him to call an

ambulance, he thought to himself "Yeah, right Donnivan, I'm going to call you an ambulance. You bet." Instead, Rhines "Sat [Donnivan] down on a pallet, leaned him forward, and applied the *coupe de grace*." EXHIBIT 28 at 7.

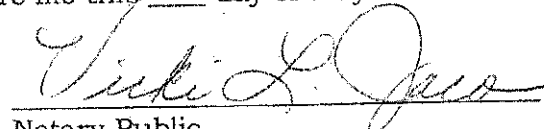
18. At one point when Rhines had turned off the tape recorder, he stated that he was currently in possession of stolen explosives. Rhines claimed he had enough stolen explosives to blow up a police station. EXHIBIT 28 at 11.

19. Rhines told Shepard that he did not remember when he tied Schaeffer up. EXHIBIT 31 at 4.

Dated this 11 day of July 2012.


Steve Allender

Subscribed to and sworn before me this 11 day of July 2012.


Notary Public

My Commission Expires:

8/31/2017

SEAL

STATEMENT OF CHARLES RHINES
Interviewed by Det. S. Allender & D. Bahr
Transcribed by C. Bartholow & D. Johnson
Defendant:

CR\92-16628
PAGE 1
April 24, 1992

SA: And then...
A: Well, he'll come up here 'cause (inaudible)

SA: I'm sorry. Anyone is smart enough to know that uh, he's not a kid. (inaudible)-----.

Static

A: (inaudible)----- one night I got looked over by the pigs real hard, walking from where-I was living up on uh, North- North Rapid down to uh, (inaudible) downtown.

SA: North? The Rush or something or...
A: Yeah, The Rush, I walked down there and I got spot lighted and looked over real good.

SA: (laughs) Well, that's different- a little different than the crowd that goes in there that's for sure. They always got the....
A: This was walking across the Safeway parking lot.

SA: Oh.
A: See it wasn't cold enough out this morning to wear a heavy jacket.

SA: Yeah.
DB: But if you're riding a Harley, you know, (inaudible) I can- I got.
A: It doesn't matter.

SA: All right.
A: Out here you're not riding motorcycles. You get down on I-5 at 60 to 65 miles an hour on a bike and you spill it...Ok.

SA: Run over you for an hour.
A: Yeah, it's - it's not the (inaudible) that you got to worry about it's the cars...
Cash register rings, telephone rings,

SA: Yeah, I can see that.
A: Time, what time did you get in last night.

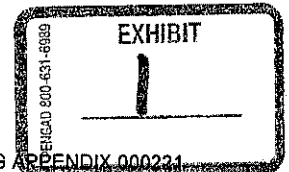
Q: (clerk) There you go. (store activity- counting)

SA: Um, we got in uh, late.
A: You missed, you missed it. You missed the 3 to 7 rush.

SA: Oh.
A: Friday night.

SA: Yeah, I must'a got in about 10.
A: Still pretty busy.

SA: I think the most elevator buttons I ever saw is 9 before.



STATEMENT OF CHARLES RHINES
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Defendant:

CR\92-16628
PAGE 3
April 24, 1992

SA: Coming back?
A: Umm, I would'a gotten ahold of Sam anyway.

SA: Oh. What's in two months and four days?
A: His 18th birthday.

SA: Oh.
A: What's the age of consent in Rapid, in South Dakota.

DB: 16.
A: So I'm safe there.

SA: Why- why do you say that?
A: Just making sure.

SA: About Sam you mean?
A: Yeah, he's told you....

SA: Well, we've talked to him a couple times, he's- you know he's pretty reluctant to talk about some things.
A: yeah. If you had been raised in a right wing, fundamentalist, Christian household, you would be pretty reluctant too.

SA: Yeah, that's kind of a nice way to put that.
A: I went to jail because of it- the first time.

SA: You got- as a family.
A: No. Because of trying to deal with the same problem.

SA: Oh,
A: And not knowing how.

SA: Let's see, what's your birthday again?
A: 7-11-56.

SA: Do you know what your address is here?
A: 5229 11th Northeast. It's not mine, it's just where I'm staying until...

SA: Oh, ok. And what's the phone there?
A: I don't know. The only person I know there is Matt.

SA: Would it be under Matt's name?
A: Yeah, it's probably unlisted. I know it's unlisted.

SA: Oh, ok.
A: There's a trace on it right now, because of receiving harassing calls and threatening calls from his ex-girlfriend. He's got a paternity case going against him.

SA: Oh.
A: For Joshua and- and then this (inaudible) harasses him.

SA: You can't think of a number.
A: 524- something. 2152? Yeah.

STATEMENT OF CHARLES RHINES
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Defendant:

CR\92-16628
PAGE 8
April 24, 1992

A: Yeah.

SA: I mean did he tell you that?
A: I just know the schedule.

DB: And what time was he supposed to go in?
A: Usually ten.

DB: So he was sleeping to get ready to work all night?
A: He might'a got up at six or something, or six-thirty, seven o'clock, I don't know.

DB: Were- were you there then all the time?
A: I napped too, I don't know...

DB: So, you remember it was probably somewhere in there.
A: That- in that range. I don't...

DB: Well, how- how's the living arrangement, like are you- were you sleeping on the couch or the bed or...
A: No, I had a (inaudible) little room and Sam had a waterbed.

DB: So he was sleeping evidently, you said.
A: Yes, could'a been jacking off, I don't know.

DB: But you remember that night, because you said it was snowing.
A: But you were home all afternoon basically.
A: If I recall there wasn't much- there wasn't a whole lot to do.

SA: If Sam would've borrowed your car for a while...
A: Could've if he wanted to.

SA: ...for a couple of hours, do you think you would've noticed it?
A: If I was gonna go somewhere. Other than that. No.

SA: Suppose we're talking about 6:30, 6 or 6:30 or 7 maybe. For a couple of hours.
A: I don't think so.

SA: You don't think he borrowed your car.
A: I don't think so. I- I don't know. I don't remember.

SA: What if- you know uh, understandably Sam has a little trouble talking about some things.
A: Um-hmm.

SA: And I- I suppose that's easy to understand with the pressure he's under at home and everything else. Would you mind telling us a little bit about...
A: Our relationship?

SA: Yeah.
A: Friendship and sex. Um, exploratory

STATEMENT OF CHARLES RHINES
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Defendant:

CR\92-16628
PAGE 10
April 24, 1992

A: Absolutely Nobody.

DB: But what's his real name.
A: David Powers -

SA: Wh- what....
A: Well, his real name is Absolutely Nobody, he went to court in December and had his name changed to Absolutely Nobody.

SA: Is that right, so vote for Absolutely Nobody.
A: Uh-hmm.

DB: I'd seen you had a bumper sticker.
A: Um-hmm.

SA: That's kind of cute.
A: Uh-hmm. It might work.

SA: (laughs) There's a lot of people who would like to vote for nobody right now.
A: Especially in this state.

SA: It's a good one.
A: But, uh, you know to me, I've been it's self-aware and self-accepted here all the time. Then uh, I just know what to look for and things. You run across someone who is, phob-homophobic, and they're- then they're dealing- they're trying to deal with the feelings inside themselves, they can't and they overreact. And they overcompensate.

SA: Um-hmm.
A: Then you just know what to look for.

SA: Is that what- uh, Sam was?
A: That's what Sam did the first time I had to work with him. Just overreacted with things.

DB: Well, we got....
A: Sam...

DB: ...to establish that he was....
A: He was my lover.

DB: You know, he was of age, I mean he was 16 give....
A: 17.

DB: 17 he gave his consent. So you say he was a lover. How- how long after you first run into him did that...
A: Oh, this didn't happen and start until the 13th of December. Actually it was the 11th.

SA: That would have been when you moved in?
A: Uh, no. I was living in a motel room, at the time. And Sam moved out and I came over and I watched a couple of - what did we watch Home Alone and something else, and uh, we got to

STATEMENT OF CHARLES RHINES
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Defendant:

CR\92-16628
PAGE 11
April 24, 1992

talking and ended up in bed. And uh, the day after that it was like, Friday and on Sunday, he moved out and left home.

SA: How was he feeling about all that?

A: I don't know.

SA: Did you see any confusion in him in that.

A: A little bit. Um, he's basically gonna be bi-sexual. Just a little experienced.

SA: Hmm.

A: He's uh, seemed to have learned something.

SA: Yeah.

A: I'm not into rape so...

SA: Did you- did you think that would be his first type relationship like that?

A: Uh, y- basically yeah. You know- you know how kids are, now and then when people are, uh, sex to the 16 year old is a hump in the back seat and it lasts five seconds.

DB: Yeah. but, with uh, somebody of his own sex, this was probably his first time.

A: Oh, definitely. As he said to me one time, I says I don't mess with (inaudible) like you. And he's just- just starting to become in terms with this whole thing.

DB: He thinks quite a bit of you. You can tell that.

A: (inaudible) I've been in enough relationships to nurture, been in oh, first time in Rapid City was (inaudible) was rather hot and torrid it was infatuation and it didn't last very long. The second one was inside the pen. Inside my room, and it lasted five years.

SA: Hmm.

A: Third one was with a guy named Curtis (inaudible) and it lasted two and a half years.

SA: Would that be like uh....

A: (inaudible) oh, God, Curt was a (inaudible) Dangerous, Jesus, don't mention Curtis please.

SA: Well, let me just mention him for a second.

A: I could wring his neck.

SA: Is he the guy that stole your car.

A: yeah. Nice guy.

SA: Have you seen him since?

A: No.

DB: Did you say he was in Rapid.

A: If I could remember Sherry's last name, his sister in Porbalis Oregon, if I could tell you her last name, I can't remember.

STATEMENT OF CHARLES RHINES
Interviewed by Det. S. Allender & D. Bahr
Transcribed by C. Bartholow & D. Johnson
Defendant:

CR\92-16628
PAGE 29
April 24, 1992

him I didn't want to.

DB: So if you did do anything it was just playing around.
A: I won't go into specifics.

DB: Well, you know. I- I mean maybe if you did something....
A: Well, I let him lick my nuts a few times.

DB: Huh?
A: I let him lick my nuts once. Ok.

DB: Ok.
A: I live in a leather community here.

DB: That means....
A: I live- I live on the fringe here. Even for the gay- even for the gay community here. The leather people are quite accepted here.

DB: Uh-huh.
A: There's no problems.

SA: The difference with- from the leather people though, as you put it would be something to do with bondage or something like that or what?

A: Yeah.

SA: yeah.
A: Little things. You know. (inaudible)

SA: Well, you might have to forgive us, you know, we...
A: I...

SA: Uh,....
A: That's fine. I talked to a girl that Matt knows here the other day, went out a couple weeks ago and I says I'm originally from South Dakota, and she goes oh, you're a hick. And I go not really, no, I've lived in Seattle quite a while. I wasn't really a hick there either. Neither is anybody else. Um, we find in a year of living in Rapid that I started to be called gay. I started denying myself. If someone had openly asked me if I was gay, I would've said no. I didn't like that.

SA: yeah, can't be too good for you.
A: No. It's not.

SA: Gotta deal with yourself right. You gotta know who you are...
A: And live with yourself.

SA: And live with yourself and like yourself and everything.
A: I didn't. You can't love anyone else unless you like yourself.

SA: Yeah, I understand that.
A: It's hard to like other people unless you like yourself. Absolutely. And that was part of my problem when I lived in

STATEMENT OF CHARLES RHINES
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Defendant:

CR\92-16628
PAGE 39
April 24, 1992

SA: You were in, ah, you wanted money but you didn't want to hurt anybody.
A: Yeah.

SA: What do you think could have happened if for some reason the gun accidentally did go off?
A: Suppose I would have killed somebody.

SA: What would you think then?
A: It would be hard to live with.

SA: Yeah.
A: _____. This is not, the way of life. It's a game.

SA: Mhmm.
A: Leather and bondage and S and M's a game. Everyone does it consentingly.

SA: Ahuh.
A: And you have to know the limits. And you have to stay within those limits.

SA: Mhmm. (positive).
A: And I lived here before, I had my own black room.

SA: Your own what?
A: My own black room.

SA: What's a black room?
A: Take this room and you put a piece of plywood across this window, you completely blocked it out, and that one I guess. And you get a can of flat black paint, and you start painting.

SA: Mhmm. (positive).
A: The walls and ceiling. And you have a black room. Some, some do it, would call it a dungeon.

SA: Ok.
A: _____, it's a game room.

SA: Oh, I see.
A: And that's all a game. You don't torture people.

SA: I see.
A: Kind of, when someone says, the key to the cuffs on the hands hung on the wall, (inaudible) someone says stop, you stop. Let them loose. It's as simple as that.

SA: Mhmm (positive)
A: It's a game, it's not

DB: So, (inaudible) change somebody or
A: Sure, but it's not serious. You know. It's a game.

SA: But you know, back to the

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Defendant:

CR\92-16628
PAGE 40
April 24, 1992

A: Yeah

SA: Robbery thing for instance, ah,
A: _____ could have gone off _____ killed someone, I don't know. I don't know if I could live with myself.

SA: You feel pretty strongly about that huh? Even life and stuff?
There's that, that you were after money, ah, the burglary thing you were probably after money,

A: Ahh

SA: There's some property that you could get money
A: I was screwed up when I did that (inaudible).

SA: Oh, ok.

A: I was a bas, I was a mental basket case.

SA: Ok.

A: I hadn't come out of the closet yet. I been called names I didn't like, but that was, that was motivated out of, Jesus, I've talked to shrinks about that.

SA: Ok

A: I was, that was too strange a period in my life (inaudible) I wouldn't think about.

SA: Ok. Let's forget that then. Uhm, the deal with the donut checks. Needed money. Uhm,

A: Well, I guess I'm caught now.

SA: Well, like I said, we're not up here to hassle you at all.

A: (inaudible), it's a paper thing, it was a paper scam.

SA: Yeah. It wasn't just a matter of adding zeros or something like that?

A: Are you going to go back to the federal authorities and talk to them?

SA: I don't think it's a federal offense.

A: Federal reserve bank.

SA: (inaudible)

A: Winchell's didn't lose it. I've talked to the, to the people connected there. Ah, Winchell's didn't lose the money. Borgem Bank in _____ did.

SA: Ok. Let's just say this. Let's just say you needed money.

Uhm, I'm assuming from being in this business a while

A: I was playing. I was playing with the check one day

SA: Yeah.

A: And I had cash paid someone who had quit, uhm, a girl who was going to school. I had cash paid her. I was doing it, her check came in, and instead of just tearing it up and throwing it away, I played with it.

STATEMENT OF CHARLES RHINES
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Transcribed by C. Bartholow & D. Johnson
Defendant:

CR\92-16628
PAGE 41
April 24, 1992

SA: Ahuh. (positive)
A: I rolled it into a typewriter and I turned the printer off and I typed the amount and I turned the printer back on with the erase. And it lightened. And I did it 3 or 4 more times and it wasn't there anymore. It wasn't erased, it was lifted straight off the paper.

SA: Ah.
A: Sorry. I was intrigued with it.

SA: How much money did you make off of that? Heard it was a few thousand?
A: I owe eight thousand dollars in taxes to the IRS, about forty.

SA: Is that right?
A: I'm telling the police officer I just stole more out of a federal reserve bank.

SA: That, that's the same thing that Curtis got it for, right?
A: Yeah.

SA: And, but he
A: He didn't belong to a forty-eight hundred dollar check. He was too young. It didn't look (inaudible).

SA: Oh, alright.
A: I was old enough to look like I belonged to a forty-eight hundred dollar pay check. (inaudible) That's a month's check for a lot of people.

SA: Oh, so you were saying your check was forty-eight hundred and you owed eight hundred taxes?
A: No.

SA: No. Your check was for forty.
A: No, God.

DB: Probably more than one.
SA: Yeah. Oh alright, alright, alright.
A: Six or seven.

SA: Ok. Six or seven for a total of about
A: Two for ninety-eight hundred.

DB: Was it just you though, and Kurt.
A: Yeah.

DB: Just you two.
A: Far as I know.

SA: Ok.
A: I hadn't planned on involving Kurt in it at all.

SA: Well, it was a money deal anyway. Money to live on, and pay

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Defendant:

CR\92-16628
PAGE 42
April 24, 1992

bills with.
A: Yeah, yeah.

SA: And you can't do anything in this world without money, that's for sure.
A: Oh, I kind of planned on touring the country.

SA: Oh.
A: They just uhm, caught on to it before I was done.

DB: Forty grand, I mean, where,
A: I wanted a hundred and ten.

DB: But how'd you spend that?
A: I bought a four by four. I bought a 1983 F250 four by four, four sixty. I was going to put a camper on it. Take the other forty or fifty thousand and go hit the road for four or five years.

SA: And that was in '90 right?
A: Yeah.

SA: But, so, it wasn't a deal of you and Kurt going to the bank and then calling the cops and, and you getting away. It was you guys were doing it, but it was separately?
A: Yeah. Kurt did his own.

SA: Was, was he making his own checks too?
A: It was working for Winchell's.

SA: I mean the same way you were?
A: Yeah.

SA: Erasing it and that?
A: Can't believe I'm saying this. You're recording this.

SA: Well, you must trust us a little bit.
A: But you got a recorder running over there. Yeah. Ha. Ha.

SA: Well, we sure can't take all the notes we want to.
A: I know.

SA: Otherwise we wouldn't get anything talked about.
DB: Seen you got, and you got your deal here today
A: I got about thirty-eight thousand out of it, Bought a truck. Did a little touring the country _____. Saw the Grand Canyon, four corners, Disney World. Meteor crater in there. I didn't real, feel real badly about that, cause I no one, I knew no one basically got hurt. There was no violence involved in it, there were no injuries,

SA: Right.
A: And I knew Winchell's wasn't going to get hurt by it a whole lot. Bookkeeping errors were bigger than that. You got a corporation of four hundred stores and six regular employees

STATEMENT OF CHARLES RHINES
Interviewed by Det. S. Allender & D. Bahr
Transcribed by C. Bartholow & D. Johnson
Defendant:

CR\92-16628
PAGE 47
April 24, 1992

SA: So,
A: Strange it is...

DB: Could- you didn't wear- you haven't wore a knife back there
when you had your leathers on, you didn't have a knife on you?
A: No.

SA: What kind of knife was that that you were talking about that
Todd had?
A: Oh, it was- it had a banded handle. It had like alternating,
the decorative basically.

SA: Oh.
A: Looked sharp. Uh, had like black and silver stripes on the
handle.

SA: Ok, a whole bunch of 'em? Did you carry that for like fishing
or hunting or just, what?
A: Uh, here in Seattle, it was a toy. It was a part of the black
room.

SA: Uh-hmm.
A: And.

SA: As a threat or something or.....
A: If somebody wanted it.

SA: Yeah.
A: Randy did. Randy liked a lot of strange things.

SA: Who's Randy, I remember that name.
A: Zuckerman. Tried to get ahold of him, he wasn't where he lived
before so,

SA: K.
A: Think he was Canadian anyway, so he's probably back in Canada.

TAPE 3, SIDE 1

A:lived before so,

SA: K.
A: Think he was Canadian anyway, so he's probably back in Canada.

DB: So he- who's got that knife.
A: I don't know.

SA: You said you were trained to use a knife in- somewhere.
A: I was trained to use weapons.

SA: In the military.
A: And kill somebody with 'em, I was trained to if- if necessary
to use an entrenching tool, an 81 millimeter mortar, 60 or 50
caliber or 20 millimeter Vulcan or...

ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) File No. (8) VICTIM: Donnivan Schaeffer
 CLASSIFICATION: Homicide

On 03/26/92, Sam Harter was given a polygraph examination by Sergeant Grant. The line of questioning during this test had to do specifically with whether or not Sam was involved in the killing of Donnivan Schaeffer. When Sam answered "no" to these questions, no deception was indicated. (See Sergeant Grant's report.)

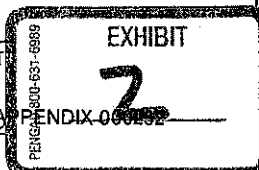
On 03/27/92, at 1700 hours, I drove to the William Harter residence on Lawrence drive and met with Sam Harter. Sam told me that on a Wednesday or Thursday night previous to the homicide, a man came into Dig 'Em Donuts while Sam was working and asked for Charles Rhines. Sam told him that Charles did not work there anymore. The man ate a donut and then left. Sam told me that he thinks this man could have possibly been Curtis Taylor. Sam stated that he saw Curt one or two times in the past. I then showed Sam a photograph of Curt Taylor, and he replied "Yeah, that's him. I could almost swear to it." He also said he was "pretty sure", and when asked to rate how strongly he felt about this on a scale of 1 to 10, he replied "8". The next day Sam told Charles that someone had been in Dig 'Em Donuts looking for him and told him he thought it was Curt Taylor. Charles stated that he didn't think Curt would be in this neighborhood and believed there was an outstanding warrant on him.

On 03/31/92, I telephoned Detective Jim Yoshida of the Seattle Police Department. He informed me that the detective who would be assisting us in this investigation was Detective Rick Ninomiya.

(9) Officer(s) Reporting ID#
 * ALLENDER 229

(10) Supervisor Approving ID#

(11) Date & Time



RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

OF

(13) CR#

92-16628

APPENDIX

(1) CR#

92-16628

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD


(12) PAGE

2 OF 9

(13)

CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
No. (8)				
<p>On 04/02/92, Sergeant Bahr and myself flew to Seattle, Washington for further investigation into the homicide. Our specific intent was to locate and interview Charles Rhines. We arrived in Seattle at 1000 hours. We met with Detective Ninomiya at 1500 hours and began checking addresses for Rhines vehicle at that time.</p> <p>On 04/03/92, at 1015 hours, I called Winchell's Donut employee, Debbie McKinney, at 206-367-2280. She works at the Winchell's Donut store at 155th and Aurora. An interview appointment was set with her for later this same morning.</p> <p>On 04/03/92, at 1150 hours, we conducted an interview with Debbie McKinney at her place of employment. Her home address is 4820 South 2nd Avenue, 252-6743 (home), 367-2280 (work). Debbie McKinney is the manager at Winchell's, and told us that Charles Rhines, Curt Taylor and David Powers all worked for her at one time. She told us that she knows all three men on sight and stated that another manager by the name of Kathy Simmons at Winchell's Donut store on 45th Street, also knew all three men. She said that Charles came in her store approximately 2 weeks prior to this interview. This was approximately the same time she had been contacted by Detective Yoshida, asking about Charles Rhines. She told us that <u>Charles was involved in a forgery incident approximately 1 or 2 years ago, involving Winchell's Donut paychecks.</u> She said that it would be impossible for Rhines to obtain a job with any Winchell's store nation wide. The only way he could be employed with Winchell's would be to change his name and social security number. Debbie told us that she believes</p>				

(9) Officer(s) Reporting * ALLENDER 229	ID#	(10) Supervisor Approving 	ID#	(11) Date & Time Approved 4/24/92
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ADDENDUM

(1) CR# 92-16628

Victim's Name (Last, First, Middle)	(2) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

4

OF

9

(13)

CR# 92-16628

(8) the traffic stop by Patrol Sergeant Linda Eschenfelder. My initial observations of Rhines was that he was very pale and trembling. He was wearing black boots, black leather pants, a dark pull-over shirt, and a black leather cap. He was with a man identified as Matthew J. Mighell, AKA Matthew J. Mile, DOB 01/01/63, FBI #389308DA2, white male, adult, 6'5", and 200 pounds. As I spoke with Rhines, I observed a rifle barrel and the butt stock of a rifle on the back floor board of his white Oldsmobile Firenza. When asked, Charles told me that these were the two rifles which belonged to Sam Harter. He also advised me at this time that the 30 - 06 was loaded at this time. I informed Charles that I would be removing the rifles from his car so that they could be given back to Sam Harter. Rhines offered "let me unload it for you" and began to reach for the rifle. Rhines would not remove his hands from the 30 - 06 until he was ordered to do so by myself, Sergeant Bahr, and a uniformed Seattle police officer. This was somewhat of a tense moment and Rhines appeared to be visibly shaken from this. He stated something similar to "What's the big deal. There are only 5 rounds in it, and there are 6 of you." While attempting to make an interview appointment with Rhines, he became frustrated and began to walk away. He quickly returned when I shouted his name. We agreed to go to Denny's Restaurant at Mercer and Terry Street for lunch and then go somewhere private for an interview. At 1400 hours, Sergeant Bahr and I drove Charles Rhines to Denny's. Rhines vehicle was left in a paid parking lot. At 1500 hours, we left Denny's Restaurant in route to the Crown Plaza Holiday Inn in downtown Seattle. At this time, Rhines appeared to be very comfortable talking with us and now had color back in his face. While leaving the restaurant, Rhines was allowed to leave first by

(9) Officer(s) Reporting ID#
 * ALLENDER 229

(10) Supervisor Approving ID#
Ch

(11) Date & Time Approved
 4/24/92

APPENDIX

(1) CR#

92-16628

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE 10 OF 7

(13) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(8) Seattle. On Saturday night, March 7th, he went into Dig 'Em Donuts to help Sam bake donuts. He described seeing a tall, good-sized, long-haired man in the store, but could not provide any further description. He also reported seeing Officer Mike Speer in the store on this night. Charles stated he drove straight home after dropping Sam off at Taco Johns on March 8th. When he was called by Sam in the early morning hours of March 9th, he had just gotten to bed. Since Sam did not inform Charles as to why he needed him to bring clothes to the police department, Charles called the East North Dig 'Em Donuts and talked to Dennis Digges. He stated that Digges told him that there had been a homicide. Charles knows Donnivan Schaeffer as a very happy person, a maintenance man who delivered supplies once a week, usually on Sundays, and one who would set his own schedule. He has no idea how the chain of events might have occurred on March 8th. He told us that Dennis Digges told Sam Harter that Donnivan was to be gone the weekend of the murder. In the early morning of March 9th, after Charles came to the police department, he gave Sam Harter a ride home to the Riley Street apartment and stayed there the entire day. He does not remember eating at a restaurant with Sam the day following the murder. Sam went home to his parents' house in the daytime hours of March 9th, and Charles did not see him again until March 10th. Charles has no close friends in Rapid City. His only two past roommates in Rapid City are Arnold Hernandez and Curtis Taylor. He describes having a homosexual relationship with Arnold Hernandez in 1979 and describes it as "a trick". His last sexual relation with Arnold Hernandez occurred in July or August 1991. He moved out of Arnold Hernandez' house due to lack of privacy. He stated that Arnold was snooping in his notes and letters and believes he moved

(9) Officer(s) Reporting * ALLENDER 229	ID# 229	(10) Supervisor Approving [Signature]	ID#	(11) Date & Time Approved 4/24/92
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APPENDIX

(1) CR#

92-10020

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

7

OF

9

(13) CR#

92-10028

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(8) out November 5th or 6th, on a Saturday. He committed a third degree burglary in 1977 in Springfield, South Dakota. He spent 7 months in prison. He stated "I could just see you guys hanging this on me. I've got a record". Charles was jobless at the time he moved to Seattle, but stated he had a little money in savings which he used to make the move. This savings was in his pocket rather than a bank. He came to Seattle by himself. He has a high school education and served in the United States Army Infantry. He describes himself as having 3 years experience as a Weapons Specialist, and that he had a General/Honorable discharge. He cited the reason for leaving the military was not being able to get along with black commanding officers. He told us about his involvement in a forgery which occurred in 1990. He stated while playing with a check one day, he discovered a way to remove the amount on the check and put in a new amount. He forged two checks for \$9800.00 and various other checks for a total of approximately \$38000.00. He stated that the checks were cashed at a federal bank and that Curt Taylor was arrested for this check scam. Charles said that he did not feel bad about the check scam because it was a non-violent crime. He stated he is not sorry and blamed it partially on his criminal training in Monroe Prison in Washington. He does however, say he has a conscience. He saw Officer Mike Speer in Dig 'Em Donuts Saturday night before the murder and was actually the one that sold him his coffee. He does not recall however, if he was in the till. He said that maybe he may have even taken all the money out of the till and counted it just out of curiosity. He stated that he "never packed a knife". He then stated "I was trained to use them." A very short time later, when asked about his knife training, he stated that he was not trained

(7) Officer(s) Reporting * ALLENDER 229	(10) Supervisor Approving <i>[Signature]</i>	(11) Date & Time Approved 4/24/92
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ADDENDUM

(1) CR#

92-16628

2) Victim's Name (Last, First, Middle)

(3) Location of Occurrence

(4) Date Occurred

(5) Time Occurred

(6) RD Occurred

7) "k" No. (8)

in the use of a knife while in the military, and, in fact, had received no hand-to-hand combat training. He guessed that the Army figured that Vietnam soldiers did not need hand-to-hand training so it was discontinued. He stated he does not own a knife in a black sheath. He stated the last time he had a buck knife was in 1978, and that the sheriff of Bon Homme County took it from him. Charles states very openly that he does not like police officers. He stated that he talked to an old man in front of his Riley Street apartment in Rapid City about the murder. He stated that he does not possess keys to Dig 'Em Donuts or Winchell's Donuts, and that he has never received a key to the office at Dig 'Em Donuts. Charles told us that he had previously thought of robbing Dig 'Em Donuts and then leaving town "a long time ago". It was in the middle of this statement that the tape recording ended. He stated that he changed his mind about the Dig 'Em Donut robbery. Charles told us that he did not throw away a bag of clothes and shoes at Arnold Hernandez' house. He told us that he only has one pair of tennis shoes at a time, which he used for work as well as other uses. He stated that he would wipe off his shoes after work. He also told us that he always wears Franklin tennis shoes, due to the good arch support, and that his shoe size is either 10 1/2 or 11, and that he buys his shoes at K-Mart. Charles told us that he worried that since he had told Arnold Hernandez of his plans to rob Dig 'Em Donuts that Arnold may become suspicious after hearing about the murder. He felt that because of this he should go to Arnold and tell him that he did not commit the crime. On the day of Donnivan Schaeffer's funeral, he went to Arnold Hernandez and told him that he did not rob Dig 'Em Donuts. This interview ended at 1840 hours and Rhines was driven back to his vehicle.

(9) Officer(s) Reporting

ID#

* ALLENDER 229

(10) Supervisor Approving

ID#

(11) Date & Time Approved

YOUNG APPENDIX 000237

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

8

OF

9

(13) CR#

92-16628

ADDENDUM

(1) CR#	92-16628
(5) Time Occurred	
(6) RD Occurred	

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred							
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RAPID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 1 OF 14
 (13) CR# 92-16628

(8) VICTIM: Donnivan Schaeffer
 CLASSIFICATION: Homicide

On 03/08/92, at approximately 2300 hours, I was called by Captain Doug Noyes to respond to the scene of a homicide which had occurred at Dig 'Em Donuts on West Main. I arrived at the scene at approximately 2330 hours and met with Captain Noyes and Sergeant Grant. Lieutenant Bill Armstrong, Lynn McLane, and Detective Eisenbraun were also at the scene. I entered Dig 'Em Donuts at 2339 hours, along with Sergeant Don Barr and Sergeant Grant. Once inside I observed Officers McDaniel, Deputy Sheriff TJ Nicolai, Coroner Mike Jacobs, and two employees of Dig 'Em Donuts, later identified as Joe Belgarde and Sam Harter. As we approached the entryway of the west store room of Dig 'Em Donuts, I observed the male victim, later identified as Donnivan Schaeffer. He was partially seated on a wooden pallet with his legs crossed. His body was slumped forward and his hands were tied behind his back with a rope. I was shown what appeared to be a probable knife wound on his upper left back. There was also a large pool of blood present near the head of the victim.

At 2350 hours, I left the scene with Detective Eisenbraun and Sergeant Barr. Joe Belgarde and Sam Harter were taken to the Public Safety Building to be interviewed.

On 03/09/92, at 0015 hours, Sergeant Barr and myself conducted a taped interview with Joseph Rapheal Belgarde, DOB 09/16/53, 343-1507. Joe told us that he had previously worked at Dig 'Em Donuts for 1 1/2 years then moved to Grand Forks, North Dakota for

(9) Officer(s) Reporting * ALLENDER ID# 229

(10) Supervisor Approving ID# *[Signature]*

(11)



ADDENDUM

(1) CR#

92-16628

(2) Victim's Name (Last, First, Middle)

(3) Location of Occurrence

(4) Date Occurred

(5) Time Occurred

(6) RD Occurred

No.

(8) The lights were on. He said Joe was on the phone and he asked Joe how he got in. He said he realized Joe was on the phone to the police and that the police arrived in less than one minute from the time he arrived at Dig 'Em Donuts. He stated that from the time he arrived at Dig 'Em Donuts Joe did not leave the building. He stated that Joe told him not to go look in the back room, so naturally he wanted to see what was in there. He then observed the dead body and said he felt sick as if he were going to vomit.

Sam reported to us that on the previous Friday night/early Saturday morning a strange man came in the donut shop on three different occasions. He had several short conversations with Sam and eventually asked if Sam was working alone and how often the police came in to visit. Sam describes this man as a white male, 6'0" to 6'2", very skinny with a thin face, wearing a dark baseball cap, with dirty blonde hair down to his waist. He describes him as wearing ugly clothes and looking unkept. Sam reported these details to his boss, Dennis Digges, on the following morning. At the completion of the interviews of Sam Harter and Joe Belgarde, their clothing was taken into evidence.

On 03/09/92, at 0235 hours, Sergeant Barr and myself conducted a taped interview with Charles Russell Rhines, DOB 07/11/56. Charles is an ex-employee of Dig 'Em Donuts and reports that he was fired on 02/20/92. Sam Harter has been living with Charles for approximately 2 1/2 months due to problems in Sam's home. Charles worked for Dig 'Em Donuts for over a year until he was fired on 02/20/92. He sighted a conflict with the owner, Dennis Digges. He said that on the night of 03/08/92 he drove Sam Harter to Taco Johns on West Main and dropped him off. He said this occurred at

(9) Officer(s) Reporting
* ALLENDER 229

ID#

(10) Supervisor Approving

ID#

(11) Date & Time Approved

YOUNG APPENDIX 000239

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

7 OF 17

(13) CR# 92-16628

ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(8) Sam Harter to 1716 Riley, Apartment #2. We talked with him about the rental contract on that apartment. He said that the apartment is in Charles' name, but that he is on the lease as a roommate. He said the landlady's name is Lona L. Lau, 343-0778. Her address is 2115 38th Street in Rapid City. Sam told us that since Charles moved out and that it was understood between the two of them that Sam would get a new roommate for the apartment, he believed any property left behind by Charles was garbage and had bagged most of it up and placed it in garbage bags on the entryway to the back door. There was a bag of clothes and several bags of garbage. Sergeant Barr and I seized the bag of clothes and the garbage bags as evidence. With Sam's permission we also took a phone bill from the kitchen counter. Sam assured us that all of the items that we had taken belong to Charles and that none of these items belong to Sam. This garbage was transported to the police department evidence room where I sorted through it and logged it into evidence. Several homosexual books and articles were among this property. Items of particular interest included a shirt with an unknown red substance on it, a hand-written note listing six steps which appear to be steps of a planned robbery, these steps are as follows: The words mask, weapon, paper bag, and wire ties are at the top of this list. The notes are #1) lock the door; #2) go in back; #3) tie her up; #4) get all money; #5) go out back; #6) go home. (See evidence report for further details.)

INVESTIGATION CONTINUING, 03/16/92.

(9) Officer(s) Reporting * ALLENDER 229	ID#	(10) Supervisor Approving <i>Ch</i>	ID#	(11) Date & Time Approved YOUNG APPENDIX 000241
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RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

17 of 17

(13) CR# 92-100008

STATEMENT OF SAM HARTER
Interviewed by Det. Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 1
June 9, 1992

SA: This is a taped statement concerning CR 92-16628. It is 06/06/92, at 1040 hours. Present is myself Detective Steve Allender, Officer Sergeant Don Bahr, and ah, person being interviewed today is Sam Harter. K. Sam, you're living back with folks then right?

A: Yes.

SA: Ok. Uhm, well let's talk about your trip to Seattle. You know, we didn't uhm, we didn't know you were going there and, and ah, so we want to find out every detail we can about it.

A: Mhmm (positive).

SA: Uhm, the whole time when you and ah, Heather were planning on going on vacation, you were kind of planning on heading up there?

A: Yeah, we were planning on heading to Seattle and then down to Texas.

SA: Ok. Could, would you scoot up a little bit? Uhm, have you called Charles?

A: I called him and told him that we would stop out there for a couple days.

SA: Did ya tell him when and stuff like that?

A: Yeah, I told him when so he could pick me up from the bus.

SA: K. How did he, was he excited about that?

A: Yeah, he was very excited. He was surprised I was coming up.

SA: He still ah, living in the same place there?

A: That, the one he stopped on, on, yes, off 52nd Street.

SA: K. Ah, but then you made it to Seattle. What day was that, do you remember?

A: Uhm, we got there Memorial Day.

SA: What day is that _____?

DB: On a weekend?

A: Yeah. Monday morning.

DB: On a Monday.

A: Yeah.

SA: Oh, Monday.

A: Memorial Day.

SA: Ok. What time of day?

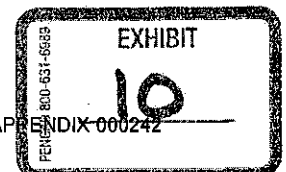
A: I think we pulled in at 1:20 in the morning. Something like that. I (inaudible)

DB: June 1st?

SA: Memorial Day, ah, no, the 25th.

A: May 25th.

DB: On the 25th of May?



YOUNG APPENDIX 000242

STATEMENT OF SAM HARTER
Interviewed by Det. Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 5
June 9, 1992

I stayed up there.

- SA: Pu, let's go back. 27th stripped wire all day. 28th?
A: We went and burnt wire that night. He was looking for a place to live during the day. Looking for apartments. The same on the 29th. For, 28th, 29th, on the 30th we went and burnt wire and we brought the wire all, in on the 29th, me and Charles did. And then on the 30th, we looked for places to live. And ohhh, what day did we leave (inaudible). Mmmm, what day's today, the 5th, 6th?
- SA: 6th.
A: (inaudible) back yesterday,
- SA: Yeah.
A: We left Wednesday morning at, (inaudible), or Thursday early morning. Wednesday we were at, we didn't really do anything Wednesday.
- SA: Wh, when did ah,
A: We, (inaudible) load the wire in, on the 1st.
- SA: K.
A: You know, it's not going to be kept around our apartment, you know, if they're just going to be, well, that, well, on the 1st we were, well we were at a motel the 30th, the 1st, 2nd, and 3rd. And 2nd and 3rd we were just looking at apartments. Thursday we talked to the cops.
- SA: ~~Do you know what motel you were in?~~
A: Uhm, it's on Ace, 88th and Aurora. Ah, (inaudible)
- SA: Ok.
A: I'm not sure (inaudible)
- SA: Ok.
A: I can't remember, I don't remember the first motel we were in.
- SA: What night did Charles start talking about this murder?
A: Uhm, heeeee, let's see, I'm not for sure, be like the 26th or 27th.
- SA: Almost right away, huh?
A: Yeah. I'd say the 27th.
- SA: How'd that conversation come out?
A: Oh, we, no, he didn't start talking about the murder until the 29th. 27th we had a talk about me and Charles having sex before.
- SA: And the 29th we brought out about the murder case. He thought, he saw Heather scared out at the burn area. We went up to burn

STATEMENT OF SAM HARTER
Interviewed by Det. Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 6
June 9, 1992

- SA: What did Charles tell you about the murder on that night?
A: He didn't, he just told, he was mainly talking to Heather, and we were there, and he says, well, I may have killed one pe, he goes, I may have killed a f, one, I may have killed one person but, he goes, I wouldn't kill you, he goes, cause Sam likes you and I love Sam.
- SA: I may have killed one person?
A: Yeah. That's how he worded it. And then he told, he goes, he said, just since I killed Donnivan, I won't kill you. He goes Donnivan ___ for, the reason why I killed Donnivan was because I was, eh, for protection. That's what he told Heather, is for protection. He didn't want to get caught cause, if their, he said, he said the best way of getting rid of evidence is to kill them off. So. And he said he's, if he had left Donnivan there, there'd been evidence that he took the store down.
- SA: Who was he telling this?
A: Who? To me and Heather both.
- SA: And where was this conversation at?
A: Uhm, at the motel room. We were, we got
- SA: Ok
A: We got the motel room on the 30th. That's when we, we had to move out on the 29th. We got a motel room the 30th, about the afternoon. On the 30th, that's when he started telling us about it, cause he found out she was afraid. So, he was telling us that in that first motel.
- SA: Ahuh (positive)
A: And then he, he knew that she was afraid. Ah, I told Heather before that he, I was sure he's the one that killed, and I told her not to be scared cause I don't think they would do anything to you, us, well, they wouldn't. I asked him a couple times if I could call my mom and dad, and he wouldn't let me.
- SA: What'd they say when you asked?
A: He says no. He, he strai, straight out said no. And I ___ him one more day, he goes no. He was acting like that, (inaudible), I go. But then, eh, well, then he was scared about, he didn't, Matt and Charles got scared cause they thought they might get in trouble for. He wanted me to stay, but they want to send Heather home. But when they found out, after Matt found out about how much she knew about the murder. So they didn't want ___, risk and they didn't know if they want to send her home, but she was afraid she might come tell. Cause she, they didn't want to send her home cause they knew that she would tell where I was.
- SA: Oh
A: And but, she called her mom. I don't know what day she called her mom. She called her mom one of those days. She asked her mom, she said now, it was on a Wednesday, that she called her

STATEMENT OF SAM HARTER
Interviewed by Det. Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 7
June 9, 1992

mom, and asked her mom, to sno, send up her social security card and her birth certificate, so she could look for a job up there. Cause Charles was wanting us to get a job and live up there.

- SA: So she called her mother and not her grandmother?
A: No. Her grandmother, she calls her grandmother mom. You know.
- SA: K. So uhm, did ya, how many nights did you talk about the murder then?
A: We basically only talked about it one night, and then we talked about it right before the cops were getting there. And when the cops pulled up he had a slip of paper he was showing me about the, this thing he wrote about his confession about the murder.
- SA: Yeah.
A: He had a slip of paper about the confession about the murder and he was going to leave it on his body after he killed himself out in the red wood.
- SA: And when was he planning on killing himself?
A: Ah, he was planning on, before he even got to Seattle. Right after he killed Donnivan that he left that day, the knife, the knife was found by (inaudible)
- SA: Ok.
A: He left that night. Then he went out, and he headed to Nevada and he then _____ out to California.
- SA: What did that note say?
A: It told about the, well he and, killing Donnivan and, that there's no use in living life, he can't put up with the guilt. And so, he told me that reason why he didn't kill, the reason why he didn't go through killing himself is because he said well, they, they can't prove anything, he won't be going down.
- SA: Yeah.
A: And he said well, he thought he'd cover up, if not, he's going to kill himself when the cops come.
- SA: Oh, ok.
A: So,
- SA: Now
A: He said, he said he's, there's been, lied to, (inaudible) he said want to take a chance on, you know, he said he was going to go ahead and take a chance at living. Cause he goes, or anything else, he goes if I kill myself now I have no purpose in life. But the cops will kill me sooner or later.
- SA: Ok. Tell me this. Remember back Sam, every detail tha, that Charles told you about the murder.
A: Mhmm.

STATEMENT OF SAM HARTER
Interviewed by Det. Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 8
June 9, 1992

- SA: Ah, how he did it, what Donnivan said, anything like that.
A: He made a statement about, ah, he goes uhm, he says, he was surprised how easy it was for a first time, cause he was on his first murder
- SA: Yeah.
A: And he said he was surprised how easy, it's not like, it was on TV, and he said he was surprised how easy it was. He was surprised that that one went down so quick, and that fellow, he didn't fight at all. And he sa, he, he said the only thing that (inaudible) with Donnivan kept on saying, Donnivan kept on saying uhm, ah, don't kill me, he goes, I won't tell, don't kill me I won't tell. So.
- SA: Anything else?
A: No.
- SA: How'd he get into that building?
A: He didn't say (inaudible). He di, he did say that, (inaudible) if I had 10 more minutes I'd been outa there clear free. And it would have been like a professional murder, a professional robbery because he was going to make a hole in the Sheetrock, and (inaudible) there's a escape hole supposedly somewhere in the back. He said (inaudible) a ladder out back.
- SA: Obviously he went in there with a key though.
A: That's, yeah, obviously. He did make a statement, he said one thing good he had going for him is that he left the door open. He, he also, k. He made a statement that it was dark in the office. He didn't know that he had to turn. He thought there was just a light switch in the office. He didn't know he had to turn on the light switch box.
- SA: Ok.
A: So he said it was dark, couldn't see the office. He had no light.
- SA: Was he wearing gloves?
A: He didn't tell me if he was wearing gloves or not. He did tell me there was _____ fingerprints though. Supposedly he was wearing gloves. He said he left no evidence behind. And then he told, he told me, I go, I go, well, I, you know, I sat there and go, Charles they found fingerprints on a knife. (Inaudible) he goes, I wiped it off before I threw it out. He goes, there's snow out on the ground too.
- SA: He told you that while you were in Seattle too?
A: No, that was before I went to Seattle. I think I told you about him saying he wiped it off. He said, he made a statement, he goes, uhm, how did he word it. Something about he, he said, well if they found the fingerprints, they'd already arrested me. That's how he put it. And then (inaudible) he wiped it off.

STATEMENT OF SAM HARTER
Interviewed by Det. Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 10
June 9, 1992

- A: Deadwood that night.
Yeah, he told me that he went to Deadwood that night. But he ah, he told me, he goes, well he thought, he asked if they found anything else, I go no. So. He told me he hid the money out by a farm, out by, between here and Piedmont, out by a farm so. There, there's suppose to be a tree and a log by a tree where he stuck a bag, and laid underneath of it. But the night he s, left town, he went back and got it. And he went through Nevada, cause he had changed some quarters to bills or something like that.
- SA: Mhmm (positive)
A: So. He didn't feel right about (inaudible) cause he thought it was too close, and changing that much quarters might make some notice. That's why he went to Nevada.
- SA: Hmmm. Anything else that he told you about while you were out in Seattle?
A: Not that I remember. He, he told, he told us, he threatened us a couple times if we ever told the cops.
- SA: What'd he say?
A: Uhm, he told me and Heather he, well Matt, Matt's the one he said, if Charles ever goes down, he goes, I'm going to start from your family tree and work my way down to you, killing eVeryone I see.
- SA: He said I'm going to work, I'm going to start with your family tree and work my way down to you?
A: ~~Yeah, he told me and Heather both that.~~ Then he told me and Heather that he knew where we lived. Rapid City ain't that big.
- SA: Was he very, did he say it, was he mad or was he joking or
A: Ah, he was putting it as a threat, he wasn't very pissed, he's just warning us if he ever, (inaudible) spread, that's what he was going to do.
- SA: Did Charles threaten you?
A: Charles, sa, well Charles never threatened me. He wa, thre, he told Heather a couple times that uhm, he didn't like her because she stole, supposedly she stole me away from him.
- SA: Mhmm (positive)
A: But ah, he didn't like her, but wasn't going to do anything about it. He said, he said yeah, she hated her but, he says, he says I won't kill you because, he goes, I found one thing out in my life, it's that you can't gain somebody by getting rid of somebody else. He kin, kinda of told Heather don't worry, he wouldn't kill her. But he, kind of threatened, if anything got out that he would. But the day that uhm, it was, IT was on the 3rd, and we were at Aurora's, (inaudible), and he brought, he brought my bags into the motel room after he took my, he's got my tickets, you know, everything of mine. And he brought my two suitcases that was in the car in, and he

walked in the apartment and told Heather to hop in the shower, and threw away the piece of paper I guess, I don't know what he did with the piece of paper. And come out with another piece of paper. He must have got rid of _____ too.

DB: Did Heather see the note?

A: Uhm, I, I couldn't say. You can ask her. I don't know if she seen the note or not. But ah, he, she, she knows that Charles was on acid and all that. She uhm, th, she, we, they, they told her to hide in the shower. He comes out, he goes well see here, he goes, here's what was in my pocket. And so, cop (inaudible) piece of paper, a blank piece of paper.

DB: Do you believe he wrote that note then, ah, and he's been carrying it around?

A: Yeah, I believe he wrote that note, cause I (inaudible) think he's going to kill _____, but

DB: Do you think he, (inaudible) right now, if ah, comes a time that he's going to be arrested that he might kill himself?

A: He, he made a statement. He goes, he says, if I'm ready to die, (inaudible) die from a cop. (inaudible)

DB: Have you ever heard of him ahm, tell about that he would ah, not go back to jail, that he'd kill somebody.

A: Yeah, he, he told me and Arnie both (end of side 1)

TAPE 1, SIDE B

DB: K. We're back on the other side. As far as the, what was said in Seattle and what wasn't. The things that you've told us this morning basically ah, that were said inside Seattle was the fact that, you just mentioned about the Arnie and you?

A: Mhmm (positive)

DB: And ah, there was another comment about the knife?

A: Mhmm (positive)

DB: Did he ever mention the knife in Seattle?

A: He mentioned that you guys came and asked him about a knife, and he said

DB: What'd he say?

A: He says that uhm, he's got something on him, I don't know what he called it. He says yeah, sure I had a knife. I have a lot of knives. But he said he was carrying something else, (inaudible) what it was called.

DB: What did he say he did to that knife? Ok when, he threw it out. You said that before, but, did he say it was, that was the knife?

A: Yeah.

DB: Did he clarify that again in Seattle?

A: He, he goes, he asked, he goes well, he asked me in Seattle,

ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle) (3) Location of Occurrence (4) Date Occurred (5) Time Occurred (6) RD Occurred

(7) Block No

(8) VICTIM: Donnivan Schaeffer
 CLASSIFICATION: Murder

On 04/20/92, at about 0900 hours, I contacted Doug Royer of Dig 'Em Donuts. I also spoke with his wife, Connie, and Dennis Digges. The purpose of this call was to determine if Charles Rhines was ever issued a key to the office of Dig 'Em Donuts. All three stated "no", however, Connie told me that she had loaned her pickup truck to Rhines on several occasions, and that in this pickup truck was a key ring containing keys to the business including the office.

On 04/20/92, at 1530 hours, I called K-Mart Footwear Manager Craig Caillier, 343-5626. I asked him to research the possibilities in determining how many pairs of McGregor shoes, stock #17222, size 10 1/2, had been purchased and sold by the Rapid City K-Mart Store. He told me at this time that they had carried that stock number for approximately 1 year, however, he would call the main K-Mart office and determine if my request was a possibility.

On 04/22/92, I called Arnold Hernandez. In speaking with him I learned that Charles Rhines did not have a savings or checking account during the months he lived in Rapid City. When he put money in the bank, he used Arnold's savings account. Arnold added that he always pays cash.

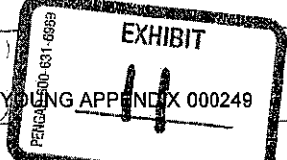
On 04/24/92, at 1453 hours, Sergeant Bahr and myself conducted a taped interview with Roger Kierstead, 840 North Spruce, lot 91,

(9) Officer(s) Reporting ID#
 * ALLENDER 229

(10) Supervisor Approving ID#

CA

(11) EXHIBIT
 YOUNG APPENDIX 000249



ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) Block No. (8) identified as Bill arrived several minutes later at approximately 0300 hours. The conversation between Jeannie and Sam Harter lasted approximately 45 minutes, and the quality of this tape recording is no better than the first attempt. Jeannie did advise us that Sam made the statement "The way it was done was the fastest way to kill somebody", and said that Sam told her that he was told by Charles that Donnivan did not suffer and did not fight.

On 04/27/92, Sam Harter came to the police department to retrieve the two rifles which were recovered in Seattle, Washington. Sam mentioned at this time that he has spoken a few times to Charles Rhines, and that Charles assured him that Donnivan did not suffer due to the fact that a knife through the back of the neck kills instantly. He also added that the week before the murder occurred, Charles had talked about test-driving a pickup truck at a Rapid City dealership, and having a key made during this time. Charles had apparently planned to use the pickup truck for a burglary at a glass shop on St. Joseph Street and a electronic shop somewhere on Omaha Street.

Beginning May 8, 1992, Sam's new address will be Hainesway Apartments, Building 7, Apartment 305. He will be living with Bill Dohr.

At 0900 hours, I returned the two firearms to Sam Harter with previous permission from Sam's father. A receipt was signed at this time.

On 04/28/92, at 2200 hours, Sergeant Bahr and myself again met with Jeannie Melton at the police department. This time a Nagra

(9) Officer(s) Reporting * ALLENDER 229	(10) Supervisor Approving ID# <i>AK</i>	(11) Date & Time Approved 5/13/92 YOUNG APPENDIX-000250
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RAPID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 2 of 10
 (13) CR# 92-16628

INVESTIGATION REPORT

TYPED BY: M. ARENDT
DATE TYPED: 03-24-92

RE: PCSO CR#: 92-16628/Background on Charles Rhines
REPORT DATE: 03-20-92
REPORTING OFFICER: Investigator Lynn M. McLane

On 03-18-92 I interviewed John Glodt. John used to live in McLaughlin, SD which is Charles Rhines' hometown.

John related that he felt Charles was a "spook" and "crazy". That Charles always carried a big knife. That Charles always carried a big knife. That Charles would just walk the streets and people would be very intimidated by him.

John also told me that Charles had robbed a liquor store in Mobridge, SD. That Charles just parked in front of the liquor store, walked in and robbed it, then walked out, got in his vehicle and drove away. All the while the store clerk just watched Charles leave and wrote down his license plate. This resulted in Charles being arrested a short time later.

John recalled that Charles had wired a grain elevator with dynamite in Walker, SD. John believes Charles was also arrested for that.

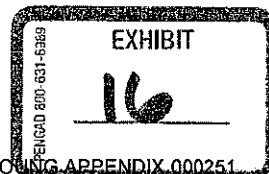
Charles' father Richard managed the grain elevator in McLaughlin, SD for many years. Charles also has a brother.

John suggested I contact Mike Maxon of the McLaughlin Police Department. He also suggested talking to Kyle Olson who is also a native of McLaughlin but now lives in Black Hawk, SD.

On March 18, 1992 I spoke by phone with Kyle Olson, work number 348-1363 and home phone 787-4025.

Kyle told me that Charles was in his school class in McLaughlin, SD. That Charles was very smart in school but dropped out his senior year.

Kyle said Charles was kind of a loner. That Charles' family was very nice. Charles has two sisters, Jennifer and Elizabeth, and a brother named Carl. Charles' mother's name is Ruth.



YOUNG ARBENDIX 000251

Jennifer was at one time married to Kurt Strobel and lived in Rapid City. Jennifer used to work at Safeway. Kyle thinks that Jennifer is now divorced from Kurt and that Jennifer may have moved to Denver. Kurt may be living in Rapid City or Denver.

Kyle said that Charles' father died about five years ago. That his mother Ruth lives with one of the daughters. That none of Charles' family lives in McLaughlin any more.

Kyle recalled that Charles used to get teased quite a bit. That Charles got "hot headed" when he got teased. Kyle said that "the guys picked on Charles because he was kind of different." When I asked Kyle what he meant by different Kyle responded that Charles dressed sloppy and was "an overweight brainey guy."

Kyle's mother and Ruth are very good friends. Kyle's mother got a letter from Ruth stating that Charles had come to visit her last Christmas.

On March 19, 1992 I spoke by phone with Mike Maxon. Mike is the Chief of Police in McLaughlin, SD. Mike related that he does know Charles Rhines but has not known him to be in McLaughlin for quite some time. Mike's phone number is 823-4444.

Mike provided the following addresses for Charles' family.

Ruth Rhines (mother).....572 18th Ave., Apt 4
Columbus, NE 68601

Elizabeth Young (sister).....11 North Rose Lane
husband/Richard Young Columbus, NE 68601

Carl Rhines (brother).....Box 726, Owatonna, MN
55060

Jennifer Abney (Strobel)/(sister).....7 Akin Drive,
Oklahoma City, OK
73149

Kurt Strobel* I found two possible addresses for Kurt in Rapid City.

#1.....606 Pluma (no
current phone listing)

#2.....633 Van Buren ("srg"
shows no current South Dakota Vehicle Registration)

ADDENDUM

(1) CR#	92-16628			
(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred

(7) Block No.

(8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Homicide

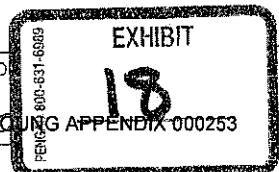
On 03/16/92, at 1530 hours, Sam Harter came to the police station to meet with me. He brought with him a 5 x 7 photograph of himself. He told me that when he went to the apartment at 1716 Riley earlier today, he found the photograph stuck in the door. He told me that this was a photograph he had given to Charles Rhines. He knew this due to the fact that the photograph was not signed, and he recalls signing all other photographs of himself that were given out. He told me at this time that he has not heard from Charles Rhines.

On 03/16/92, at 1620 hours, Sergeant Bahr and myself went to SCI on Disk Drive and conducted a taped interview with Arnold Fredrick Hernandez, DOB 04/03/55, 230 North Street, 343-5249 (home), ~~392-5223 (work)~~. Arnold works the 3:30 to midnight shift at SCI. Arnold told us that he had a relationship with Charles in which they lived together at 230 North Street. He stated this relationship ended 11/06/91, and that he last saw Charles Rhines on 03/11/92, a short time after the funeral of Donnivan Schaeffer. He said that at this time Charles came to his house and wanted to talk to him. He believed this happened at approximately 1400 hours on 03/11/92. He told us that Charles was in a weird mood and toward the beginning of their conversation Charles said "I know I've done a lot of crazy things in my life, but I would never murder anybody." Arnold said that this was very strange to hear this from Charles and had no idea why he had brought this subject up. In describing their relationship, Arnold said that he and Charles

(9) Officer(s) Reporting
* ALLENDER ID# 229

(10) Supervisor Approving ID#

(11) D



RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

1 OF 11

(13) CR#

92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE 1 OF 1

(13) CR# 92-16628

(8) VICTIM: Donnivan Schaeffer
 CLASSIFICATION: Murder

On 11/23/92 Sergeant Bahr of the Pennington County Sheriffs Department received a call from Chief Deputy Dan Elston of the Minnehaha County Sheriffs Department. Elston told Bahr that an inmate in the Minnehaha County Jail had come forward, stating that Charles Rhines had made various statements about the homicide to him. Other information was that Rhines had planned to escape and use a weapon made of dental floss to assault a guard in this escape attempt. I also learned that Rhines had apparently been held at the Minnehaha County Jail with 7 or 8 other inmates. Chief Deputy Elston stated he had received a hand-written statement from inmate John Bjerke regarding this incident.

On 11/24/92 I traveled to Sioux Falls to interview inmates in the Minnehaha County Jail. At 1600 hours, I conducted an interview with John A. Bjerke, DOB 12/31/59, 801 West 21st Street, Sioux Falls, 332-7539. Ron Weisenberger is Bjerke's probation officer. Bjerke told me that when Rhines was brought into the cell block he almost immediately began talking about this case. He stated that it was going to cost \$300,000.00 to convict him and that the state's attorney was going to try his damndest for the death sentence. Bjerke said Rhines told him that he had entered the office with a key given to him by Sam Harter and entered the office hoping to find \$10,000.00 in cash that was supposed to be there. Rhines told him that he was confronted by an employee who asked him what he was doing there. Rhines told him that, rather than say he was robbing the place, he stabbed him. Rhines also told Bjerke

(9) Officer(s) Reporting * ALLENDER 229

(10) Supervisor Approving *[Signature]* ID#

EXHIBIT
 22
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APPENDIX

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

OF

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(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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7-Block No. (8) That investigators currently possess the wrong knife and that the real murder weapon was thrown out on another road. Rhines told Bjerke that he had made a handcuff key and was also making an E-string or a string choking device that he would use to aid him in his escape. Bjerke stated that a fellow inmate Joseph Johnson may also have information. (See taped statement and Bjerke's handwritten statement for further details.)

On 11/25/92, at 0900 hours, I went to the Minnehaha County Jail to interview additional inmates held in the same cell block as Rhines. At this time Rhines had begun his transport back to Rapid City and was no longer in the Minnehaha County Jail. The first inmate was Dennis Vogt, 1301 Cleveland, Sioux Falls. He stated he remembered Rhines, but told me that he had nothing to say to me.

At 0908 hours, I interviewed Lee Vue, 430 Northeast Philmore Street, Minneapolis, Minnesota, 612-331-3736. Vue told me that he remembered Rhines and shared a cell block with him, however, made it a policy not to interfere in anyone else's business. He said he did not remember any conversation he or anyone else had with Rhines during his stay at the county jail.

At 0914 hours, I interviewed Virton Simon, DOB 4/12/69. He has no address and is a federal prisoner awaiting transport. He shared a cell block with Rhines and remembered him. The only thing he could remember about Rhines was that he stated he was in jail for murder and had been on the front page of every newspaper in Rapid City for the last 6 months. He knew that Rhines was from Pennington County.

(9) Officer(s) Reporting * ALLENDER 229	(10) Supervisor Approving <i>[Signature]</i>	(11) Date & Time Approved
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APPENDIX

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

OF

104 VIV 72-10000

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(8) No. (8)

At 0922 hours, I conducted an interview with Joseph Johnson, DOB 12/17/43. He is from Denver, Colorado, and is awaiting sentencing in Federal Court. He stated that Rhines asked him what time the guards changed shifts at the county jail. He then told Johnson that he was planning an escape. He said Rhines told him that he was going down on the murder deal anyway and that he was just going to make the prosecutors spend as much money as they possibly could. He said that Rhines told him his plan was to kill a guard and try to escape. Johnson observed Rhines braiding 3 strands of dental floss into a weapon. All the other information Johnson possesses has to do specifically with Rhines escape attempt and the information regarding the murder case is all second hand as far as Johnson is concerned. (See Johnson's taped statement for further details.)

At 0935 hours I interviewed Chris Huber, DOB 1/12/74, 1710 North Chicago, Sioux Falls, 338-5618. Huber is awaiting sentencing on burglary and rape and shared a cell block with Rhines. Hueber seemed somewhat hostile and stated that Rhines told him that the murder charges against him were "fucked up", and that he did not commit the murder. Hueber had nothing else to add.

At 0945 hours I interviewed William Doles, DOB 3/12/51, 1302 East 8th Street, Sioux Falls. Doles is awaiting bond and has not yet had his first hearing. He stated that he just recently moved from Block C to Block B and knew nothing of Rhines or nothing that he may have said.

(9) Officer(s) Reporting * ALLENDER 229	(10) Supervisor Approving <i>[Signature]</i>	(11) Date & Time Approved
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APPENDIX

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE 7 OF 7

(13) CR# 92-10000

2) Victim's Name (Last, First, Middle)	3) Location of Occurrence	4) Date Occurred	5) Time Occurred	6) RD Occurred
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(8) On 11/25/92, at 1000 hours, I met with Lieutenant Steve Reecy of Minnehaha County Sheriffs Department and received the dental floss and paper clips that were discovered in Rhines cell. I kept these items in my possession until they were placed into evidence on 11/29/92.

This case remains closed, 11/29/92.

(9) Officer(s) Reporting * ALLENDER 229	ID# 229	(10) Supervisor Approving <i>[Signature]</i>	ID#	(11) Date & Time Approved
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RAPID CITY POLICE DEPT.
Evidence Information

NAME Schaeffer, Dennis DATE 11-29-92
(last) (first) (middle)

ADDRESS _____ TIME _____

PH. _____ RP Owner Vict. Susp.

ADULT JUVENILE ARREST: YES NO

REASON IMPOUNDED: Evidence Found Safety

CRIME Murder

CASE NO. 92-16628 LOCKER NO. 1

PROPERTY DESCRIPTION _____
① Dental Floss
② Paper clips

SERIAL NO. _____

IMPOUNDING OFFICER: A. Meuler I.D. # 229
(Sign)

EVIDENCE TECH RECEIVING: _____ I.D. # _____
(Sign)

DATE _____ TIME _____

CASE NO. (last)
FILE NAME (last)
FIRST
MIDDLE
TRASH USE ONLY

To who ever

I was out in the day hall rolling smokes when Charlie Rhein came out. Just out of the blue he started talking about his case like he done since he's been here. He was sayin' how he got into the doughnut shop. He got the key from Sam Harder. That's the way he went in. Charlie said he went to the office, took out his knife and used it to get into the office. Said once he was in the office he started looking for the 10,000 that was suppose to be there. He said he wasn't even in the office (30) seconds or a minute when showed up. The dude asked him what are you doing in here. Charlie said he still had his knife in his hand and said 'Oh was I suppose to say I'm robin' the place.' I just went stab, stab. Said this dude wasn't suppose to show up until (10) o'clock pm. It was around 7:30 pm. He then said he tied the dude up made it look like a break in. Said some thing about a door hatch that he broke out a yadder there got the money 2,000 and left. Said these old ladies found I believe a 10 buck knife at Stevens Ave. He also said the DEI is set in him up cuz he never had a 10. I asked him then where was the knife that

he state was mad cuz he went to the tune-alay
asked some shit. He also said Sam Harder Turner
states witness cuz of the 20,000.00 reward. But
Charlie said he can't get the money because he wa
oc or something like that. He Charlie also said
he doc or whoever said that the places Charlie
stabbed him couldn't have killed him. When he
was in here he said he was going to make an
string out of Dental floss. Said he made a cuff
key and was make in this string unit to choke
the guards so he could get away. He said he
was guilty and if the chance came up he wou
take em out to get away. You can also question
Joseph Johnson to see what he knows.

Sincerely your
John Bjale

50

SA: This is an interview concerning case number 92-16628. This is being conducted in the interview room at the Minnehaha County Sheriff's Office. It's 11/24/92 at 1618 hours. Present is myself, Detective Steve Allender, and also John A. Bjerke, B-J-E-R-K-E. John what's your birthday?

A: 12/31/59.

SA: Ok. Ok, John, you met a guy named Charles Rhines?

A: Yeah

SA: Where was that at?

A: In jail here.

SA: Minnehaha County Jail?

A: Yeah

SA: And uh, how long were you in the same block with him?

A: Um, a week.

SA: Ok

A: I'd say about a week.

SA: Uh, how often did you talk to the guy?

A: Everyday.

SA: Did, when did he start bringing up his case?

A: About 10 minutes after he was in there.

SA: On the first day?

A: Yeah

SA: Did he talk about it everyday?

A: Yeah

SA: Was he talking to more people about it than just you?

A: Yeah

SA: Who else?

A: Uh, Chris Huber

SA: Anyone else?

A: And just people that was listening.

SA: Ok. And um, what was the first thing he told you about it? Or how'd that go?

A: He just more or less was saying what was going on you know. What he was down here for and he was kind of making a joke out of it.

SA: Was he talking about his murder case?

A: Yeah

SA: What uh, tell me some things he told you about the murder case.

A: He told me he got a key from Sam Harter, whatever his name

EXHIBIT
23

is, and he went into the donut place and took out his knife and pried open the office door. He was looking for \$10,000 that was suppose to be there. He said he wasn't even in the office 30 seconds or a minute and this dude showed up and asked him what he was doin there. And he says um. I asked him I says well what'd you say. He said what, was I suppose to say I'm here robbin the place? And he just made the motion, he said I just went, stab, stab.

SA: He motioned stabbing him with his arm or something?
A: With his knife. Cause he said he still had his knife in his hand and then he said he tied him up and something about a door hatch or something where he put a ladder to make it look like a break in.

SA: Ok.
A: And he said, I asked him about the knife deal. He said he was getting set up on uh, the knife deal because he'd never owned a 110 I believe he said and two, two old ladies found it on Stevens Avenue or something when they was picking cans up.

SA: Can, uh, now you're talking about the knife that we found?
A: Yeah

SA: He said that wasn't the right knife?
A: Right.

SA: And he said that the DCI set him up by puttin it there?
A: Yeah

SA: So that, according to him the knife we have is the wrong knife?
A: Right

SA: What, where's the right knife?
A: Some road.

SA: Ok. Did he mention the guy's name that got stabbed?
A: Yeah. I don't remember his name?

SA: Was it Donnivan?
A: I believe so.

SA: And uh, did he tell you where, where it happened?
A: Some donut shop.

SA: Did he say if he worked there before?
A: Yup. He said he was just fired like three weeks before that. He said something about they were pissed off because he went to the funeral and was talking some shit or something.

SA: Did he tell you what he was talking about at the funeral?
A: Uh, not really. You know, he just said he was talking some shit and they were pissed off about that.

SA: OK
A: It's gonna cost him \$300,000 for the trial and shit.

SA: Did he say anything about him being convicted or uh, was he gonna get off on the murder charge?
A: Well, he said that while they was up here doing evaluations on him and uh, he uh, said that they was thinkin he was crazy but he ain't and.

SA: He said that we thought they were crazy or the doctor did?
A: That you guys did, that's why he was going through evaluation, whatever.

SA: Ok. But he told you he wasn't crazy?
A: Yeah.

SA: He tell you anything about himself personally? Where he comes from or what his lifestyle is or anything like that?
A: Uh, he said he was out in Washington and said he was in the joint here. I can't remember if he said twice and I think he said he was in the joint in Washington.

SA: Did he say anything about uh what might happen to him at the trial? Or what might happen as far as his punishment?
A: Yeah

SA: What was that?
A: He said that you guys got the death sentence put on him and if he don't get found guilty of that he'll get found guilty of the burglary and habitual criminal and still be doing life and just shit like that. He said that but I'll probably get found guilty anyways, so I'm just gonna let em waste their money.

SA: Now, John, you saw Rhines making a weapon?
A: I seen him braiding some dental floss.

SA: What was he saying about it?
A: He said that um, this here takes the place of an E string.

SA: An E string like on a guitar?
A: Right

SA: And that's a term. What's that term mean to you?
A: Well he put a pen, he's had pencils and the ends are bent in, it was for chokin. He said if the opportunity come that's what he'd do.

SA: Did he mention who he might choke with it?
A: Uh, the people that's takin him back.

SA: Back to Rapid City?
A: Yeah. He didn't say no names or anything.

SA: Why would he choke somebody?

A: So he could get away.

SA: Did he tell you, did he tell you why he might as well choke somebody?

A: Uh, he didn't have nothin to lose.

SA: Did he, did he tell you that he was guilty of this?

A: Yeah

SA: How did he say that?

A: He just said that um, I'm gonna make them spend their money because you know, they know I'm guilty and, they know I did it. And it was something to do with his job too. That uh, when he worked at that donut place. He said if the opportunity come he'd just, you know, take out the guards or whatever.

SA: So he could escape?

A: Uh huh

SA: Did he say anything about where he might go after he escaped?

A: I believe Washington.. He said something about a handcuff key he was making or something.

SA: Ok. Did he mention anything about how he got to the donut shop that night?

A: He said something about a Buick, 81 Buick I believe white car, or something.

SA: It was his car?

A: Yeah

SA: Did he say that somebody drove him or somebody went with him?

A: No, he said, then he come up with the deal that uh, that he lived like four miles away or something and his car was seen there.. Or that he walked from, you know, he'd, I really wasn't catching all he was saying that he was suppose to have walked this four miles or something in a half hour or some damn thing. Then he said something about a white Buick settin out there at the time I believe.

SA: Did he say anything else about the guy that he killed?

A: Uh, no, I don't believe so.

SA: But he said \$10,000 was suppose to be in the office that night, huh?

A: Right.

SA: Did he say how he knew that?

A: No

SA: Um, did you write this statement that I'm looking at?

A: Yeah

SA: When, what date did you write that?
A: Yesterday.

SA: Ok. Um, it said in here something about the doctor told him that, or the doctor said that the places that the guy was stabbed weren't fatal.
A: Oh yeah, yeah.

SA: What's that all about?
A: I don't know, he just said that on a discovery motion the coroner, or the doctor, said that the places where he stabbed him wasn't fatal. Couldn'ta killed him is what he said.

SA: OK
A: That's why he tied him up.

SA: Did he tell you where he stabbed him?
A: No. I didn't ask either.

SA: Why uh, why did you come forward with this?
A: I don't know.

SA: Have I pro, have we made any promises to you?
A: No

SA: As far as a deal, or lighter sentence or anything?
A: Nothing

SA: Has anybody?
A: No

SA: John, before you heard all this, did anybody tell you to go in and bring up a conversation with Rhines about this?
A: Nope. Nope.

SA: Did he initiate the conversation with you?
A: Yeah. He just come. He wasn't more than in the place ten minutes and he was bringing out pieces of paper and talking shit. You know.

SA: What was he doing with the paper?
A: It was some clipping in the paper.

SA: Oh, he's got a newspaper clipping?
A: Yeah

SA: Was he bragging?
A: Yeah, more or less you could say that.

SA: Well, you were there and saw him talking about it. Was he, oh, was he saying anything about being sorry or was he saying, yeah, this is the guy I killed, or you know. Was he proud of it?
A: More or less, yeah. He didn't show no remorse or anything you know. The way I took it like from what he was saying and

shit he just thinks it's a fucking big joke.

SA: Really?

A: You know, that's what I got out of it.

SA: What else can you tell me. Something that we didn't talk about? Anything?

A: I don't believe so.

SA: Um, did he say anything about the state's attorney?

A: Yeah, he said the state's attorney just got re-elected and is going for the death sentence. You know, and he even kind of made a joke about that.

SA: About the death sentence?

A: Yeah. He, the way I took it, he just thinks it's a big game. You know, either that or, he knows he's guilty and there ain't nothin he can do about it so he's just talkin shit, you know. Knowin he screwed up and he got caught.

SA: Now it says in your statement that you wrote he said he was guilty and if the chance came up he would take em out to get away.

A: Right

SA: Now, did he say those words, he said I'm guilty.

A: He said I, I, I know I'm guilty of it and if the chance come he said I'd just you know, put that, shit around so he could get away if opportunity knocked.

SA: Where did he say he was making this cuff key at?

A: In his house.

SA: Oh, in the cell block up here.

A: Yeah

SA: Ok. I suppose they would have found that, huh?

A: Either that, or he didn't make, didn't get one made or whatever.

SA: Ok

A: Otherwise I'm sure they found, they'da found it.

SA: So, how many days did you talk to Rhines about this case?

A: Everyday he was in there with us he'd talk about it.

SA: And you've been in this jail for six months?

A: Yeah

SA: Same cell block?

A: No, different cell block.

SA: But were you in that cell block from the time Rhines got in there until the time he got put in isolation?

A: Yeah

SA: Did you hear him talking to other inmates about it?
A: Yeah, somewhat.

SA: Ok. What's that mean?
A: I've really never listened to what was being said and that because you know. You understand what I'm saying.

SA: Uh huh
A: I didn't want to go in there and jump in with both feet all the time everytime that something was brought up you know. You understand that?

SA: Yeah, you bet. Ok. Did I miss anything, John?
A: No, I don't believe so.

SA: Ok. This will be the end of this interview at 1635.

Incident Report

Incident OFFICER SAFETY TIME 0945 DATE 11-22-92

Location of Incident B BLOCK

Inmate's Name INMATE RHINES CHARLES R DOB 07-11-56

Witness INMATES; JOHNSON, BJERKE, NOGT

Describe the incident providing a summary of all pertinent details including a factual account using the formula: who, what, when, where and why.

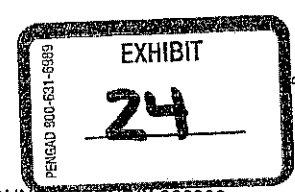
MR JOHNSON CAME FORWARD TODAY + ADVISED THAT RHINES WAS QUESTIONING EVERYBODY ABOUT SHIFT CHANGE TIMES MD-COUNTS AND THINGS OF THIS NATURE. RHINES TOLD JOHNSON THAT HE CAN GET OUT OF HERE (COUNTY JAIL) + IF NOT MCJ THAN WHEN HE WAS BEING TAKEN BACK TO PENNINGTON CO. RHINES FUTHER STATED THAT HE WAS EATHER MAKING OR HAD FINISHED FASHIONING A HAND CUFF KEY + ALSO NOOSE TO "USE ON A GUARD".

MR JOHNSON ALSO TOLD ME THAT PER BJERKE, RHINES HAD TOLD HIM THE HOLD STORY ABOUT INCIDENT IN RAPID CITY + WAS IN FACT BRAGGING ABOUT HOW HE HAD KILLED THE GUY.

THIS INFORMATION IS NOT TO LEAVE THE CONTROLL ROOM.

EVERYONE SHOULD USE EXTREME CAUTION AROUND RHINES

Reporting Employee's Name D WEINSTEIN
Reporting Employee's Signature Sgt Dan Weinstein



19A

A: I'm under PSI right now and uh, I don't know what. Can my attorney talk to you or the people here showing that at least I'm a halfway decent person worry about people getting killed?

SA: Oh sure, sure, you betcha.

A: Will you give me that kind of a

SA: Yeah, you bet I will.

A: OK. What's your name again?

SA: Steve Allender

A: Allender?

SA: Yeah. Can I give me a card without getting you in trouble?

A: Yeah, yup, yup, give me a card, I can handle that. I'm not looking for, I didn't do this for points, but, this uh, just like the other side tries to pile up any points against you, I'm a white collar crime guy whole thing is mind boggling. I'll get, let's go quick.

SA: Just go ahead and tell me the story and I'll take notes on it while you're gone.

A: Ok. Well, basically, uh, my first contact with him was when they brought him in the, in the cell back there. This Rhines, Rhines guy. Uh, I don't remember what that was, maybe a week and a half ago. Uh, you know, typical kind of thing. He walks in right away he's pretty mouthy about this and that. Where's this, where's my cigarettes. And I'm the oldest guy in the block, I've been there since July so I tend to sort of, you know, here's how things work and all that business. And the first thing he, just out of the blue, he says what time do they change the guard shifts around here? And I said oh, you know, well let's see, I think 4:00, I said why, I said, you need something from one of the guards and he goes no, he says I want to try and figure out when they change shifts, that's when I'm going to plan my time I escape. I just, I said huh? And he says yeah, I says escape, he says oh yeah. Uh what are ya, what are ya here for. He says oh, I'm over here on a psychological exam thing for the deal I did over at Rapid. I said oh. He said yeah, they want to, want to set me up, or send me up for a murder deal over there. So I, sorta sit there and ok, I got a real live murderer guy here. And uh, I didn't really say much other than oh, well, I don't think I want to be around you if you want to try to escape and he just started talking about. Yeah, these guys they're, they're really pushing me, words like they're pushing me around and that. And I said well, you know, is there, are you here to get a, like an insanity plea or, you know, get a plea agreement or something and this is part of it or. Well, hell no, he says, he says I'm going down on the deal and I'm just gonna make em spend as much money as possible cause they're gonna fry me anyway. And I just, sorta dumbfounded because he was just pouring this all out sort of a volunteer



basis and he didn't know me from Adam. And I thought this was a little strange, so I didn't really make anymore comments. I didn't want to really talk because I didn't know what to say to the guy and over the next two or three days time he just would set out there from time to time and I was, I wasn't alone with him maybe two or three times. And he came out. And one morning I came out for showers and he's standing there and he's holding the dustpan in his hand and uh, he says boy this is a helluva murder weapon. He says I could really have fun with this dustpan and really waste someone. I looked at him and I said, I said that doesn't make a lot of sense. And he says, well, hell nothing make sense. He says he, I might as well just do it for the fun of it because they can't add anymore time to what I'm gonna do. And I thought, to myself, again, a pretty spooky individual. Then, I don't know if it was later that same day, this would have been, probably, uh, Friday or Saturday of that first week, uh, he came up to me and he said, can you get dental floss here and I said well sure, just ask for it off the med cart. He said, just give it to you. And I said yeah, just for the, he said for the asking and I said yeah. He says cool. I said, what do you mean cool. And he says well hell, I can make a weapon out of that. And I said what do you mean a weapon. And he says well I can choke somebody, he says I can, you know, said I can make a rope. Well I'll be damned if that night at dinner he got, he comes back, he gets up at the table and he was sitting across from me and he, they come with the med cart, and he gets up and goes over and comes back and he's folding up the biggest wad of, of um, dental floss, you know, this, is significant now. You know rolled up and stuck it in his pocket and then later on that night he was sitting back there in his block uh, and I could see him doing some kind weaving process and so I asked one of the other guys what, you know, what was going on. They said well he was making a choke chain, or choke rope, something like that uh, putting toothpaste on it, or, whatever they were doing. Then I found out that he had picked up a couple paper clips and had taken the top of a razor, or a razor top off a pencil and had made a, fashioned some kind of a cuff key, and that, these are things related to an escape. My other knowledge is all been second hand. That Bjerke is the one that told me later that next day that he had set there that, during that morning period, and described in detail the crime he had done over at the donut shop and how he had murdered the guy and that, my, my, my knowledge of that particular part is only second hand. My, he never told me specifically about how he stabbed the guy. His comments to me then were I'm going down for a time, finally, I'm gonna make them spend all the money I can to put me away. Ok?

SA: Alright. Thanks alot Joe.
A: Did that help you?

SA: Yeah.
A: Ok, but you, you need to call John Bjerke in if nothing else

STATEMENT OF JOE JOHNSON
INTERVIEWED BY Detective Steve Allender
TRANSCRIBED BY Kathy Oulman

CR#92-16628
PAGE 3

just to spend a few minutes just, ok.

SA: This is an interview with Joe Johnson, DOB: 12/17/43,
Minnehaha County Jail, 11/25/92 at 0930 hours.

ADDENDUM

(1) CR#

92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred

No. (8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

The attached 67 pages were generated by the King County Police Department and pertain specifically to burglary charges against Matt Mighell and Charles Rhines which were filed in King County, Washington.



(9) Officer(s) Reporting * ALLENDER ID# 229

(10) Supervisor Approving ID#

(11) Date & Time Approved

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE _____ OF _____

(13) CR#

8

This incident was an un-reported Burglary to a locked fenced yard. The locked fenced yard is approximately 11 acres of storage area for construction equipment and machinery. The fence is cyclone with top strings of barbed wire. The locked fenced area is posted with numerous signs declaring non-entry. The defendants named in this report entered the locked fenced area by cutting a hole into the east fence. The defendants entered the yard and during the hours of darkness went to a stored tower crane. The defendants removed approximately 200 feet of power feed cable from the crane. The crane is a "PECCO" model 2000 tower crane used in the construction of high rise buildings. The defendants cut the rubber insulation from the power feed cable, and removed the interior copper wiring of the cable. The cable is 4.00 So/W cable, and the replacement cost to re-wire the tower crane is \$2,000. The power feed cable enables the crane to operate, and the elevators to run. Detectives Allender, and Bahr accompanied this Detective to the Construction yard along with ^{w1} Sam Harter. Harter was able to show the point of entry and the location of the crane, and the discarded insulation that was cut from the power feed cable. ^{w1} Harter was also able to direct this Detective to another location where the defendants entered a building under construction. (refer to 92-204970 Commercial Burglary of the Northshore Senior Center) Both defendants were arrested and booked into the King County Jail. See other reports, and followups regarding this report attached by reference.

PROPERTY INFORMATION

STATUTE
INDEX

SEARCHED INDEXED SERIALIZED FILED
 MAR 11 1992
 KING COUNTY SHERIFF'S OFFICE
 SEATTLE, WASHINGTON

APPROVED: _____
 DETECTIVE

APPROVED: _____
 DETECTIVE

APPROVED: _____
 DETECTIVE

8 Detectives Allender, and Bahr were accompanied from South Dakota by WI Harter. Harter went to the Northshore Senior Center that is currently being completed. Harter advised that the building was entered by the defendants, and they removed copper wire from their spools. The defendants removed the wire from the building and took the wire to a location in the City of Seattle for sale as scrap. The defendants entered the building by entering a locked fenced cyclone enclosure, then prying back a plywood door covering the main (westside) entry way. Mr. Braunstein related that the wire that was removed was located on a Wire tree atop the main lobby stairway. Mr. Braunstein is the electrical subcontractor for the Northshore Senior Center, and states that he had to re-order the various spools of wire which cost approximately \$300, and delayed the job he is performing at the Senior Center. This report is related to case 92-204870 Commercial Burglary. The wire that was removed from the building is described

- 4 spools - 2,000 feet #18 gauge TFFN wire
- 8 spools - 4,000 feet #14 gauge THHN wire
- 3 spools - 1,500 feet #12 gauge THHN wire
- 1 1/2 boxes (100 lbs) #12 gauge THHN scrap wire total cost \$300

PROPERTY/ARRESTIVE

STATEMENTS

I, the undersigned, hereby certify that the above information is true and correct to the best of my knowledge and belief, and that I am not a party to the same. I understand that this statement is being made for the purpose of providing information to the law enforcement agency and that it may be used in court proceedings. I understand that I am not being held responsible for the actions of the defendants and that I am not being held responsible for the damage to the property of the defendant. I understand that I am not being held responsible for the damage to the property of the defendant. I understand that I am not being held responsible for the damage to the property of the defendant.

I, the undersigned, hereby certify that the above information is true and correct to the best of my knowledge and belief, and that I am not a party to the same. I understand that this statement is being made for the purpose of providing information to the law enforcement agency and that it may be used in court proceedings. I understand that I am not being held responsible for the actions of the defendants and that I am not being held responsible for the damage to the property of the defendant. I understand that I am not being held responsible for the damage to the property of the defendant.

WIAIV

Signature _____ Date _____ Registered Owner _____ Legal Owner _____ Agent of _____
 YOUNG APPENDIX 000275

Affidavit for Search Warrant (continued)

has been shown to be accurate and all information given by HARTER has been verified
by their department. That on 06-16-92 HARTER gave a taped statement to your affiant
and is incorporated by reference herein. That HARTER advised your affiant of
participating in two unreported Commercial Burglaries with CHARLES RHINES, WM,
DOB: 07-11-56 and MATTHEW MIGHELL WM, DOB: 01-01-63, both burglaries
committed within the last three weeks here in northeast King County, Washington at
Kiewit Construction located at 20400 Hwy 9, Woodinville, Washington and the
Northshore Senior Center located at 10201 Riverside Drive, Bothell, Washington. That
HARTER drove your affiant to the two locations and advised where points of entry to
the two commercial businesses were, described what property was taken and the
method of removing that property from the premises. That your affiant contacted the
victims of the unreported burglaries and they verified the property stolen which
matches the property SAM HARTER advises was taken from the burglary locations, i.e.
copper wire and piping which was sold by MIGHELL and RHINES for scrap metal to
Pacific Iron in the City of Seattle. That the suspects enter the premises of construction
companies or constructing sites and taken unattended wire and piping and re-sell this
property for cash. Additionally HARTER advises that acetylene tanks and oxygen tanks
used for welding are at the locations described in this affidavit. HARTER further
advises that defendants have told him that stolen tools and other items used for the
commission of this crime are at these locations or in the vehicles described in this
affidavit. A search of the defendants may yield cash receipts for the selling of this
property and any weapons or tools used in the commission of these crimes.

Your affiant believes, that based on the above information, a search warrant should
be issued directing a search of a 1969 Maroon International pickup truck, bearing

(Continued on next page)

Affidavit for Search Warrant,
Page ____ of ____

White Copy: Court File
Canary Copy: Police File
Pink Copy: Judge's Copy

Case #92-204870
Det. Mark Fisher
Follow up
Page Two

MR. JIM DAVIS

Kiewit Construction Co.
20400 Hwy 9,
Woodinville, WA 98072

483-1884

SANGA VIRIYINCY

Winsome Trading Inc.
7023 N.E. 175th
Bothell, WA 98011

483-8888

3

PROPERTY:

SEE ATTACHED EVIDENCE SHEETS.

4

ADDITIONAL ENTRIES:

06-15-92 1130 hrs DETECTIVE STEVE ALLENDER of the Rapid City Police Department out of South Dakota arrived at the precinct and advised of an investigation he was currently conducting regarding defendants RHINES and MIGHELL. He advised that he was looking for any burglaries that might have occurred in the northeast King County area of thefts of commercial businesses where metal had been taken. There appeared to be no particular burglaries in the area as DETECTIVE ALLENDER was looking for.

5

1230 hrs Contacted DPA for King County JOHN BELLOTTI and asked him about Northeast District Court case that was currently being prosecuted there of defendant MIGHELL. I advised DETECTIVE ALLENDER that I would be at his disposal should he want to investigate any unreported burglaries. DETECTIVE ALLENDER stated that he would attempt to have a witness brought forward to locate some unreported burglaries in northeast King County.

6

06-16-92 1000 hrs DETECTIVE ALLENDER introduced me to DETECTIVE SERGEANT DON BAHR of the Pennington County Sheriff's Department of Rapid City, South Dakota. Accompanying SERGEANT DON BAHR voluntarily was witness SAM HARTER. SAM HARTER was introduced as a person that had either been a witness to the burglaries or was reluctantly a participant in them. Further, that DETECTIVE ALLENDER and SERGEANT BAHR advised that witness SAM HARTER would direct me to two locations where burglaries had occurred. SAM HARTER, along with DETECTIVE ALLENDER and SERGEANT BAHR accompanied me to the Kiewit Construction Company at 20400 Highway 9 in Woodinville where he located a point of entry through a cyclone and barbed wire topped fence where entry had been gained by cutting it with a possible bolt cutter. He further showed where defendants RHINES and MIGHELL had stripped power feed cable from a crane and further removed that through that

hole and taken that stolen wire to a location in Seattle where they would cash it in for scrap metal. Witness HARTER further accompanied me to the Northshore Senior Center which is being completed and is new construction. HARTER advised that defendants MIGHELL and RHINES had entered this building by prying back a plywood board over the main entry way; had gone into a wire spool used by electric sub-contractors during the construction of the building and had removed many spools of electrical wire where they further took that wire to a location in Seattle and cashed it in for scrap metal.

7 1400 hrs Returned to Precinct #2 with DETECTIVE ALLENDER and SERGEANT BAHR. I was further able to take a 21 page witness statement from SAM HARTER.

8 06-17-92 1100 hrs SAM HARTER, along with SERGEANT BAHR and DETECTIVE ILLINGWORTH went to the Duvall area in Guardian 1, KCP helicopter to identify a site in a remote wooded area east of Duvall, Washington where defendants RHINES and MIGHELL would burn the insulation from wire to make the wire clean so they could present it to a scrap metal company for cash.

1300 hrs I called DPA BELLOTTI on advice of execution of search warrants and affidavit information. I received that advice and began preparing my affidavit of search warrant.

10 1610 hrs I received a statement from JEREMIAH BRAUNSTEIN of McConnell Electric Company that he would prosecute and assist in this case.

11 06-18-92 Detectives from this unit attempted to locate both defendants RHINES and MIGHELL. Those efforts proved negative.

12 06-19-92 1200 hrs DETECTIVE ALLENDER and SERGEANT BAHR and myself arrived at 2725 Montlake Blvd. at the National Marine Fisheries on the Montlake cut which is a canal in Seattle, Washington. It was believed that defendant MATT MIGHELL's father may have initiated employment for defendant RHINES at this location. Defendant RHINES' car was located in the parking lot of NOAA and defendant RHINES was further observed on a smoke break there at that business. Surveillance was initiated on RHINES. At 1245 hrs RHINES left that business and arrived at 18710 141st Place N.E., Woodinville, WA where defendant MIGHELL was employed. Both defendants were taken into custody without incident and defendant RHINES and defendant MIGHELL's vehicles were impounded for evidence. Defendants were then transported to

SUS: Yes.

DET: Is that correct? Okay. Do you know of any stolen property of any other crimes that they've committed and where it might be located now?

SUS: He just took some ...

DET: Who is "he" that you're talking about?

SUS: MATT MIGHELL took stuff from his work place, like furniture and he stored it in his storage unit .. all in a storage spot on Aurora Ave.

DET: Okay.

SUS:

DET: So you know where the storage unit is where some stolen furniture is from where MATT MIGHELL works?

SUS: Yes.

DET: Okay. So MATT MIGHELL is stealing from his employer, is that right?

SUS: Right.

DET: Okay. Do you know of any other property that MATT MIGHELL has that may be stolen?

SUS: Yes. At JIM MIGHELL's place, they had tools in the shed which was .. I was told by CHARLES that they were all stolen except a few items. And they told me a few items that were stolen.

DET: Okay, so all the tools that MATTHEW MIGHELL's father JIM MIGHELL's house in a shed there at his house, MATTHEW MIGHELL told you that all those tools in his father's shed are stolen, is that right?

SUS: Yes.

DET: Okay. Have you seen any other stolen property or heard about stolen property that either MATTHEW MIGHELL or CHARLES RHINES has told you about?

SUS: CHARLES RHINES has told me about a check, I don't know you call it, where he got \$38,000 off a check and he bought

a truck off of it and sold the truck and bought a car. But it's not in his name.

DET: This \$38,000 you're talking about, on checks, did he write himself forged checks or how did .. how was he able to get \$38,000 from checks?

SUS: He was a manager of Winchell's and , Winchell's Doughnut shop and his paychecks, he was like \$900 a month or \$500 forget the exact amount and he would erase that and type a new note.

DET: Did he have a machine or something to do that, a typewriter?

SUS: Yes.

DET: And he would make new amounts on his pay checks?

SUS: Yes.

DET: By using this machine then right?

SUS: Right.

DET: Okay. And he had another friend involved and she got, I guess got busted for it.

DET: A friend of his got arrested for forging or altering these checks, is that right?

SUS: Right.

DET: And these were the checks that Winchell's Doughnuts would pay them?

SUS: Right.

DET: Okay. Alright.

SUS: Something else he told me, he took money from the till from Winchell's Doughnuts and also at Dig M Doughnuts when he was working with me. He .. CHARLES RHINES took \$35 amount from the payroll, not from the payroll but from the nightly drop.

ADDENDUM

(1) CR#

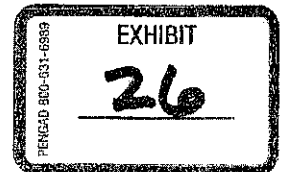
92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred					(5) Time Occurred			(6) RD Occurred
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No. (8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

The attached 13 pages are copies of a search warrant, affidavit for search warrant, and return of search warrant generated by Detective Steve Allender while in King County, Washington.



(9) Officer(s) Reporting * ALLENDER ID# 229

(10) Supervisor Approving ID#

(11) Date & Time Approved

RAPID CITY POLICE DEPARTMENT
RAPID CITY, SD
(12) PAGE 1 OF 1
(13) UNIT VC-16028

Affidavit for Search Warrant (continued)

autopsy revealed that the injuries suffered by DONNIVAN SCHAEFFER could have been inflicted by a knife such as this.

On 03-11-92, the day of DONNIVAN SCHAEFFER's funeral, CHARLES RHINES made a spontaneous statement to his ex-lover ARNOLD HERNANDEZ saying, "I didn't kill anybody" and "I'm not a murderer".

On the night of the murder there were no signs of forced entry to Dig 'em Doughnuts. At the time of this murder, CHARLES RHINES was a roommate of then current Dig M Doughnut employee SAM HARTER. SAM HARTER possessed keys to Dig 'em Doughnuts and by his own admission, his roommate CHARLES RHINES would have had access to these keys.

On 03-09-92 CHARLES RHINES spontaneously stated to me and SERGEANT DON BAHR of the Pennington County Sheriff's Department, that he would not be moving to Seattle, Washington and that he would be staying in Rapid City.

On 03-12-92, CHARLES RHINES left Rapid City and eventually arrived in Seattle, Washington. CHARLES RHINES later told me that he left Rapid City due to fear of the police charging him with the murder of DONNIVAN SCHAEFFER based upon his prior criminal record.

During this investigation, a checklist was found in CHARLES RHINES' garbage which appears to be a step-by-step plan to carry out the commission of a robbery. CHARLES RHINES has a 1980 conviction for robbery.

CHARLES RHINES told your affiant, while being interviewed, that he had once made plans to "take the place down" and leave town. He was speaking of Dig 'em Doughnuts at that time.

According to SAM HARTER, CHARLES RHINES told him that DONNIVAN

(Continued on next page)

Affidavit for Search Warrant,
Page 3 of 10

White Copy: Court File
Canary Copy: Police File
Pink Copy: Judge's Copy

Affidavit for Search Warrant (continued)

(1722) and bar code. Further investigation led me to the purchase of MacGregor shoes, identical to those belonging to the shoe tag found in the plastic bag. Photographs of the crime scene clearly documented a bloody foot print found near the body. The foot print pattern did not match the shoes of either employee of the doughnut store who originally found DONNIVAN SCHAEFFER'S body. In addition, the foot print pattern did not match any of the law enforcement officers present at the crime scene. The foot print pattern does in fact, match the MacGregor shoe purchased at K-Mart, based on information from the shoe tag. CHARLES RHINES was seen by SAM HARTER on 03-08-92 at approximately 6:30 p.m., just hours before the murder, wearing all white tennis shoes. SAM HARTER next saw RHINES just two hours later, wearing leather boots. MacGregor shoe, K-Mart stock #1722 is an all white shoe. SAM HARTER has furthermore stated that he has known CHARLES RHINES to only wear all white MacGregor tennis shoes. SAM HARTER and CHARLES RHINES shared an apartment together from December 1991 to March 1992.

Between 05-26-92 and 06-03-92 SAM HARTER and his girlfriend HEATHER SHEPARD travelled to Seattle, Washington to visit CHARLES RHINES and his roommate MATT MIGHELL. It was during this time period that CHARLES RHINES admitted to SAM HARTER and HEATHER SHEPARD that he had killed DONNIVAN SCHAEFFER. Statements made directly to SAM HARTER and/or HEATHER SHEPARD include CHARLES RHINES saying that the only thing about the murder that

bothered him was DONNIVAN repeating "Don't kill me. I won't tell". ^{Other statements of Rhines to Hart + and/or Shepard at}
RHINES was very surprised that a 6" knife would take someone down so quickly and that killing for the first time was so easy for him.

RHINES said that on the night of the murder, he wore his blue winter coat and denim

(Continued on next page)

Affidavit for Search Warrant,
Page 5 of 10

White Copy: Court File
Canary Copy: Police File
Pink Copy: Judge's Copy

Affidavit for Search Warrant (continued)

jeans, which had become blood stained. He said he threw them out in a farmer's yard, somewhere between Rapid City and Rapid City Regional Airport, approximately eight miles east of town. A subsequent search revealed a Botany 500 shirt, similar to shirts of the same brand worn by RHINES. Additionally, the owner of a farm in that area reported to me that he had found a blue winter jacket around the first part of March 1992. He kept the jacket for two months and eventually disposed of it. The blue jacket was found on the same property as the Botany 500 shirt. The landowner, MARTY RYPKEMA was later shown a photograph of a blue jacket owned by CHARLES RHINES. This photograph was provided by ARNOLD HERNANDEZ. MR. RYPKEMA stated that the jacket he had found appeared to be the same one as the jacket in the photograph. ^{later to Harter and/or Shepard} RHINES stated he was somewhat worried about his fingerprints being found on the checks which were recovered on the St. Patrick Street bypass. He did say however, that the rain and snow should have taken care of the prints.

^{to Harter and/or Shepard} RHINES said that he had stolen \$1,800 on the night of the murder and that DONNIVAN had walked into the Doughnut store and scared him. He stated he had to kill him for protection. He also stated that he was so scared, he did not remember tying DONNIVAN's hands.

^{later to Harter and/or Shepard} RHINES stated "Tell me how somebody could live through this?" while demonstrating on SAM HARTER the technique and location of the stab wounds. He pretended to stab SAM HARTER in the stomach, upper back and the back of the neck. Again, I believe only the killer would have this information.

RHINES told SAM HARTER "Tell anyone and you're dead". RHINES then told HEATHER SHEPARD, "Keep your mouth shut or else".

RHINES told SAM HARTER that after committing the murder, he had initially planned

(Continued on next page)

Affidavit for Search Warrant,
Page ____ of ____

White Copy: Court File
Canary Copy: Police File
Pink Copy: Judge's Copy

Affidavit for Search Warrant (continued)

to kill himself. He wrote a suicide note which also appears to be a confession to the murder of DONNIVAN SCHAEFFER. RHINES told SAM HARTER about this note and showed it to him. SAM was able to read enough of the note to believe it contained the confession to the murder. HEATHER SHEPARD also saw the note but was unable to read from it. SAM HARTER described the note as being part of a spiral notebook containing other handwritten notes. HARTER believes RHINES carries the note with him, although he did see the note in the motel room where they were staying on one occasion.

Your affiant believes that CHARLES RHINES has current possession of the confessional note. At the time SAM HARTER and HEATHER SHEPARD saw this note, nearly three months had passed since the time of the murder. As it appeared to SAM HARTER, this note was only one in a notebook containing at least one other sheet of notes written by CHARLES RHINES. RHINES ex-lover, ARNOLD HERNANDEZ described RHINES as someone who always writes notes and lists to himself. From personal observation, after searching through RHINES' garbage, it appears to your affiant that he does make many notes to himself. In addition, it seems he is not overly concerned with keeping notes with incriminating messages in his possession. In fact, at least one such note was found in his garbage at his Rapid City, South Dakota apartment. One other note was provided to me by ARNOLD HERNANDEZ. The note has the phrases "Take out DONNA" and "jewelry" written on it. ARNOLD HERNANDEZ believed that this note meant that RHINES intended to kill and rob their mutual friend DONNAJANE ATTELA. RHINES helped to support ARNOLD HERNANDEZ' theory by making a similar statement to him. This information was told to your affiant by ARNOLD HERNANDEZ and this particular note is currently in evidence storage in Rapid City.

(Continued on next page)

Affidavit for Search Warrant,
Page of 10

White Copy: Court File
Canary Copy: Police File
Pink Copy: Judge's Copy

ADDENDUM

(1) CR# 92-16628

2) Victim's Name (Last, First, Middle)	3) Location of Occurrence	4) Date Occurred	5) Time Occurred	6) RD Occurred

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE 1 OF 1

(13) CR# 92-16628

No. (8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

The attached 15 pages were generated by the King County Police Department and pertain specifically to the arrest of Charles Rhines and Matt Mighell.



(9) Officer(s) Reporting * ALLENDER ID# 229

(10) Supervisor Approving ID#

(11) Date & Time Approved

YOUNG APPENDIX 000286



King County Police
Continuation/Statement/O.R.

Date _____ Time _____

- Continuation
- Statement
- Officers Witness Statement
- Officers Report

Residence Phone _____ Business Phone _____

Name (Last, First, Middle) _____

City _____ State _____ Zip _____ Occupation _____ Race _____ Sex _____ DOB _____

Address _____

To _____ Via _____ Subject _____

MATT failed to transfer title also. I subsequently contacted CHARLES RHINES who was in the interview room with SERGEANT DON BAHR concerning RHINES' request to talk to MATT MIGHELL and also to see if he would sign a Consent to Search for the vehicle and the apartment. RHINES acknowledged that the truck was originally purchased with money belonging to MIGHELL; that he, RHINES had not transferred title from the previous owner and that he in turn, turned the truck over to MIGHELL. RHINES asked if he could talk to MIGHELL. We discussed why and I advised him that it would not be in our best interest and that I did not want him to do so. He asked if he could talk to MIGHELL for only two minutes and even stated that I could be there. When I again declined, he asked me to ask MIGHELL a question, something to the effect, "Are you going through me?" and stated that MIGHELL would know what it meant. I again explained that it would not be appropriate as he might influence MIGHELL's prior statements to us. I advised RHINES that he would have to decide if he wanted to talk to us just as MIGHELL had to make his own decision; that my concern was the burglaries involving copper thefts and not the Rapid City homicide. RHINES continued to express interest in what had occurred with MIGHELL. I declined to tell him, however, I did state that MIGHELL would be booked on at least two counts of burglary plus face parole violation charges, including Possession of a firearm and association with known criminals, i.e., RHINES; that MIGHELL had made his own decision based on his own needs and not those of RHINES. RHINES stated there was no way he would come between MATT and his "two children". RHINES discussed the prison time he might receive in Washington for two burglaries. He then asked SERGEANT BAHR and DETECTIVE ALLENDER, who had returned to the room, the amount of time he would receive in South Dakota for homicide. RHINES thought for awhile and then admitted to two burglaries he stated he committed with MIGHELL and SAM HARTER. He specifically identified Ledcor as one of the locations plus another associated company down the road. He, at one point, mentioned Kiewit Construction. We discussed the homicide charge again and I stated I couldn't understand why he would do it, considering he had a college education, was intelligent and obviously was worried about MATT MIGHELL. I asked if he was a sociopath and just didn't care. He replied he was a psychotic or at least had been

Officer(s) reporting _____ Serial No. _____ Unit No. _____ Supervisor reviewing _____ Date _____ Copies to _____

SUSPECT INFORMATION REPORT 1

CASE NO. 92 2 0 4 9 7

DATE OF REPORT 6-19-92		TIME 1830		King County Police POLICE DEPARTMENT			UNIT	FILE NO.	
DATE		TIME		OFFENSE Burglary 2 Counts			B/A NUMBER		
LAST FIRST MIDDLE (JA., SR., 1ST, 2ND, 3RD)								SEX	RACE
Rhines, Charles R.								Male	Cauc.
DATE OF BIRTH	STATE OR PROVINCE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	SKIN TONE			
7-11-56	South Dakota	6-02	220	bald brn	Blue	fair			
TATTOOS, ARTIFICIAL BODY PARTS, ETC.				CAUTION - ARMED, DANGEROUS		STATEMENT TAKEN?	OWN REAL PROPERTY?		
						yes	no		
HOME ADDRESS - CITY, STATE, ZIP					TELEPHONE NUMBER		DRIVER LICENSE NUMBER		
8105 - 54th Pl. West Apt5-n Lynnwood, Wa. 98037							RHINECR443MJ		
AGE	EXPIRES	SOCIAL SECURITY NUMBER	LOCAL NUMBER	FBI NUMBER	STATE ID NUMBER				
34	94	504-70-8415							
MARRIAGE CLASSIFICATION		ALIAS NAME(S)			VEH. LIC. NO.	STATE	EXP.		
					2E7891	S.D.			
VEHICLE NO.	YEAR	MAKE	MODEL	STYLE	COLOR(S)				
OCCUPATION		BUSINESS ADDRESS OR SCHOOL (COMPANY NAME - ADDRESS - DEPARTMENT OR SHOP NO. AND PHONE)							
Laborer		N.O.A.A.							
STATUS - CHILDREN (NO.)		LIVING WITH	TIME IN COUNTY		UNION AND LOCAL NUMBER				
None		Matthew J. Michell	4 Mo.						
ARRESTING OFFICER		SERIAL	UNIT	PHONE	APPROVING OFFICER				
Detective Fisher		02723	121	296-5027					
CRIMINAL RECORD (CONVICTIONS)				ACTIVE PROBATION OR PAROLE PROBATION OFFICER, PHONE		NAME(S) OF ACCOMPLICE			
Robbery/ Burglary/ PSP						Mighell, Matthew J.			

ARRESTING AGENCY AFFIDAVIT

STATEMENT SET FORTH FACTS SHOWING PROBABLE CAUSE FOR EACH ELEMENT OF THE OFFENSE AND THAT THE SUSPECT COMMITTED THE OFFENSE. IF NOT PROVIDED, SUSPECT WILL BE AUTOMATICALLY RELEASED. INDICATE ANY WEAPON INVOLVED.

Suspect along with his above named accomplice went to the Kiewit Construction Company storage lot located in the Woodinville area of King County. The subject cut a hole in the cyclone and barbed wire fence to the storage yard. The subject removed a power faed cable to a large tower crane, stripping the cable and removing the interior copper wire which he sold for cash in the city of Seattle. The subject a later day then went to a Senior Center under construction in the city of Bothell and remover a plywood door to the Senior Center and removed wire from inside that building.

CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

6-19-92 Precinct 2

Richard D. Fisher King County Police

1

LAWF ENFORCEMENT POSITION ON RELEASE: THE SAFETY OF INDIVIDUAL OR PUBLIC BE THREATENED IF SUSPECT RELEASED ON BAIL OR RECOGNIZANCE (CONSIDER HISTORY OF VIOLENCE, MENTAL ILLNESS, AND DEPENDENCY - BE SPECIFIC)? ANY OTHER REASONS WHY SUSPECT SHOULD NOT BE RELEASED (CONSIDER PRIOR FAILURE TO APPEAR, LACK OF TIES TO COMMUNITY - BE SPECIFIC).

- Subject is a transient.
- Subject has abused drugs.
- Subject is a convicted felon.

Subject is WANTED IN SOUTH DAKOTA FOR HOMICIDE

Subject has indicated that he will kill witnesses to this crime.

2

ADDENDUM

(1) CR# 92-16628

2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE 1 of 14 (13) CR# 92-16628

No. (8)

VICTIM: Donnivan Schaeffer
 CLASSIFICATION: Murder

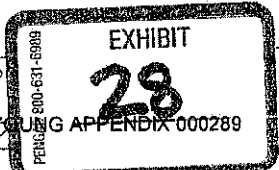
On 06/19/92, at approximately 1130 hours, Detective Fischer, Sergeant Bahr, and myself drove to NOAA (National Oceanographic Atmospheric Administration) where Rhines reportedly had worked. While driving through the parking lot, we observed Rhines smoking a cigarette in the parking lot. He was wearing a light colored dress shirt and tie. We also observed his white Oldsmobile Firenza in the parking lot. We then left the NOAA parking lot and attempted to surveille Rhines from a neighboring parking lot. At approximately 1210 hours, Rhines left the parking lot in his white Oldsmobile. At this particular time surveillance was being set up on Matt Mighell's work place in Woodenville, Washington. I heard over the police radio at 1235 hours that Rhines had arrived in his white Oldsmobile at Winsome Trading Company in Woodenville. I then heard over the radio at 1240 hours that Charles Rhines had been taken into custody. At 1249 hours, Mighell had been taken into custody as well. The white Oldsmobile and the maroon, International pickup truck were both towed to the parking lot of the King County Police North Precinct. Rhines was transported to the North Precinct and placed in a holding cell. This holding cell is equipped with a bed, private toilet, and video monitoring. Rhines was denied a cigarette due to Washington State regulations, however, he was fed and given coffee to drink.

During the next few hours, the final details of the search

(9) Officer(s) Reporting
 * ALLENDER ID# 229

(10) Supervisor Approving
 ID#
OK

(11) D



ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred

(7) Block No. (8)

Bahr. I returned to the interview room approximately two minutes later and overheard a conversation between Lieutenant Inslee and Rhines about the conversation Rhines wanted to have with Mighell. I heard Lieutenant Inslee tell Rhines that he could not allow such a conversation to take place. When Rhines asked why, Lieutenant Inslee responded that Mighell was now a potential witness in a homicide investigation in South Dakota. At this time I re-entered the interview room. Lieutenant Inslee questioned Rhines about the burglaries he had been involved in. Rhines made an admission to the burglary. Lieutenant Inslee then brought up the subject of the homicide and asked Rhines specific questions about this. Rhines did make statements to Lieutenant Inslee and those are documented in his report (see attached). Lieutenant Inslee and I then left the interview room for approximately 1 minute. When I came back, I asked Rhines if Lieutenant Inslee had upset him. Rhines responded "You guys are the enemy. He's not." Then stated that he was faced with serving six years in Washington and life in South Dakota. I explained to Rhines that the Washington burglary charges would more than likely be dismissed, and South Dakota would attempt to bring him back for trial. Rhines then asked us "You can't plead guilty to first degree murder, can you?" I told him that I did not know.

During this conversation, Rhines explained that Dennis Digges gave him a key to the business that he was supposed to forward to Sam Harter sometime between the months of October to December. He stated that this was a key that could not be copied theoretically, however, he took it to K-Mart and a similar blank key was found. He then had a key made which would work in the lock. He eventually

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# <i>CSK</i>	(11) Date & Time Approved <i>7/10/92</i>
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YOUNG APPENDIX 000290

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

4 OF 14

(13) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) Block No. (8) Aid forward the key given to him by Digges to Sam Harter. At this point Rhines made a spontaneous statement saying "I don't deserve anything except a kick in the teeth and the electric chair." I told him that South Dakota had not executed anyone in fifty years. Rhines said, "Well there's a first time for everything." He then said "Do you think if I was alone in this room with Mr. and Mrs. Schaeffer for 5 minutes I would come out alive?" I told him I did not think so.

He told us that he was driven to the West Rapid Street area by Sam Harter. He thought the street he was dropped off on might be West Omaha or West Chicago. He then walked to Dig 'Em Donuts while Sam Harter drove home. He estimated that he entered Dig 'Em Donuts at approximately 1830 hours and stayed for what he believed was 30 to 40 minutes. He estimated the time he left Dig 'Em Donuts as 1910 to 1915 hours. He added that later that night, after taking Sam to work, he threw the knife out on East St. Patrick Street, then went on a dirt road past the airport and threw out 10 1/2 wide, white McGregor tennis shoes and also a blue coat. He said that he had signed confessions addressed to the California State Police, the Rapid City Police Department, and Sam Harter. He told us that when he left town he went to the Redwood Forest in California where he intended to kill himself. He said that this was why he took Sam's rifles with him. He told us that he kept these letters until April of 1992, when he burned them shortly after being interviewed by Sergeant Bahr and myself.

Rhines then began to tell us what happened when he first had contact with Donnivan inside the donut shop. He stated that when

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# <i>Oba</i>	(11) Date & Time Approved 7/15/70
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ADDENDUM

(1) CR# 92-16628

2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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7) Block No.

(8) Schedule, Rhines stated that he did not even think about Donnivan coming to work that night. He said that when Donnivan fell down his head was closest to the office door and his feet were closest to the bathroom door. He said that Donnivan was kicking his legs against the bathroom door and screaming "Charles". Rhines told me that he was surprised no one in the video store next door heard the commotion. He then described himself as kneeling down and stabbing Donnivan again in the upper left back. He said this stab wound caused Donnivan to stop screaming. As he helped Donnivan to his feet and walked with him into the back room, he said Donnivan told him "No don't. I won't tell." and "I won't tell. Call an ambulance." Rhines described himself thinking at the time something similar to "Yeah, right Donnivan. I'm going to call you an ambulance. You bet." I asked if Donnivan was resisting at all. Rhines said he was not and added "It was almost like Donnivan had accepted death" and that he was very cooperative. When the two entered the back room, Rhines stated that he "Sat him down on a pallet, leaned him forward, and applied the coupe de grace". Rhines pronounced this coop de grass. I asked if he pushed the knife into Donnivan's neck by hitting it with the palm of his hand. I asked this while demonstrating what I meant. He said "ya" and demonstrated the same technique as I had shown him. He stated that Donnivan slumped forward, and at that time he said "You could hear the wind whistling in and out" of the wound in Donnivan's back. He stated that he believed Donnivan was still alive at this point and got some rope from over by the tool boxes in the back room at Dig 'Em Donuts. He said he cut the rope with his buck knife and tied Donnivan's hands behind his back. He stated that while he was tying Donnivan's hands, he noticed blood on his own hands.

(9) Officer(s) Reporting * ALLENDER ID# 229

(10) Supervisor Approving ID# *ORA*

(11) Date & Time Approved 7/10/92

YOUNG APPENDIX 000292

RAPID CITY POLICE DEPARTMENT
RAPID CITY, SD

(12) PAGE 1 OF 14
(13) CR# 92-16628

ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred

(7) Block No. (8) and from talking to Sam Harter, he learned that the pool of blood was nearly the size of the entire room. I informed Rhines that I believed Donnivan died instantly and he seemed to be relieved upon hearing this. I asked Rhines about a note that was found in his garbage, which appeared to be a robbery checklist. He stated that he made this note approximately 8 to 9 months prior to the incident at Dig 'Em Donuts. He had planned to rob Dig 'Em Donuts and tie up a 14 year old female clerk who was working there at the time. He did not carry out this plan. When asked, Rhines told me that he had not been drinking or taking drugs on this day (06/19/92) or on the night of the murder. He stated that Sam Harter was only part of the burglary plan and knew nothing about the murder until after the two of them had counted the money from Dig 'Em Donuts and Charles told him. Rhines stated that Sam helped count the money, and afterward he told Sam "The only problem with this is I had to kill someone for it." He said that very soon after this Sam told Charles he was going to go to Taco Johns to get something to eat. Rhines felt at this time that Harter was going to summon the police, so he told him just to wait until he got cleaned up, and that the both of them would go to Perkins for something to eat. He also told Harter that 'What's done is done and there is nothing you can do about that.' (These words are similar to words used by Rhines.) He said this was an indirect way of manipulating or controlling Sam. Rhines stated that after he and Sam Harter went to Perkins on Lacrosse Street, he took Harter to work at Dig 'Em Donuts. He said Harter wanted to be dropped off at Taco Johns to get something to eat. Rhines then said that he went driving around, throwing certain items out of his car. He said that he threw the knife and the checks from Dig 'Em Donuts on East St.

(9) Officer(s) Reporting * ALLENDER 229	(10) Supervisor Approving ID# <i>DA</i>	(11) Date & Time Approved <i>7/1/92</i> YOUNG APPENDIX 000293
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RAPID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 1 OF 1
 (13) CR# 92-16628

ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) Block No. (8) Patrick. He said that driving out toward the interstate on the St. Patrick bypass these items were thrown out his driver's side window. He said that he then drove east on Highway 44, approximately 5 or 6 miles past the airport, then turned right on a county road. He described that the county road comes to a Y, and that you turn left at the Y. He said that this road was in poor condition due to the weather, and that he drove as far as he could. He said that he threw the tennis shoes, the jacket, a Sturgis motorcycle rally t-shirt, and a pair of denim jeans out at this location. He said that he also drove north on Haines out of the city limits. He described a location approximately 2 or 2 1/2 miles north of the city. He stated that there was a lone tree on the right side of the road. He said that at the base of this tree is a board, and that he stashed the money from Dig 'Em Donuts under this board until the day he left town. He then drove to this location and retrieved the money. During this conversation, Rhines stated that he was sorry that Donnivan was killed, and then very quietly stated "Too bad it wasn't Dennis. Nobody would have shed a tear over him." He also stated that if Connie Royer would have been the one who opened the office door, he probably would have dropped the knife. He expressed that he is very fond of Connie Royer and could never hurt her. Rhines said that he had later learned from Dennis Digges that Donnivan was to be on vacation and should not have been back to work until Monday the 9th (March 9th). When asked about the trip Sam Harter and Heather Shepard made to Seattle, Rhines said that he had spoken to Sam Harter during this time about the Dig 'Em Donuts murder. He also said that he had made vague statements to Heather Shepard about the murder. He was not specific as to what was said during these conversations.

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# <i>PJA</i>	(11) Date & Time Approved YOUNG APPENDIX 000294
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RAPID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 10 of 14
 (13) CR# 92-16628

ADDENDUM

(1) CR# 92-16628

2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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7) Block No. (8)

At 2147 hours, I again asked Rhines for his permission to tape record an interview regarding the murder of Donnivan Schaeffer. This time he gave his permission to use the tape recorder. (A typed transcription of that interview was made.) It should be noted that during this interview Rhines was in control of the tape recorder, and on page 2 of the transcription, it is documented that the tape recorder was placed on pause. Rhines did this to ask us off the record to not dwell on the subject of coercion and his willingness to give this statement. This statement by Rhines was not understood by me at the time of this interview or at the time this report was made. It is again documented on page 4 of this typed transcription that the tape recorder is placed on pause. Rhines did this himself to inform off the record that there may be some federal authorities who want him worse than we did. He stated that he had stolen some explosives on the other side of "the gap" and currently possessed them. He was not certain where they were at this time. He did mention that there was enough explosives to blow up a police station. The tape recorder was reactivated after approximately 1 to 2 minutes. The remainder of this taped interview is very much like the first one. (See transcription for further details.)

On 06/20/92, at 1045 hours, entry was made to the apartment rented by Charles Rhines and Matt Mighell. The address is 18105 54th Place West, Apartment 5N, Lynnwood, Washington. Several items were seized from the apartment pertaining to burglary and theft investigations by King County authorities, and a few items which may be related to the murder investigation. The items which may be

(7) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# <i>JA</i>	(11) Date & Time Approved YOUNG APPENDIX 000295
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RAPID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 11 OF 14
 (13) CR# 92-16628

ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) Block No.

(8) to spend inside the donut store, Sam's truthfulness, and whether or not Donnivan was alive when Rhines left the donut store. Rhines again wanted to be in control of the tape recorder and shut the tape recorder off twice during this interview. The first time was merely to tell us off the record how he felt about Sam Harter and what he wanted from a relationship with Harter. The second time was to ask what type of penalty first degree murder carries. I informed him that it could carry a penalty of life without parole or even the death penalty. He then took this opportunity to explain to me how he interpreted Washington laws regarding murder. This interview became more of an argument and Rhines' temper began to escalate. This interview was terminated by myself at 1622 hours. (See taped statement for further details.)

On 06/21/92, at 1631 hours, Sergeant Bahr and myself conducted a taped interview with Matt Mighell. This interview was conducted at the King County Jail where he was being held at this time. I read Mighell his Miranda Rights from memory. He stated that he understood the rights and would be willing to talk. This interview was conducted with the hope that Mighell would give incriminating statements about Rhines. Mighell maintained that Rhines did not tell him about the murder, and he "cannot in good faith say he did." This interview ended at 1656 hours. (See taped statement for further details.)

On 06/22/92, at 1114 hours, myself, Sergeant Don Bahr, and Detective Steve Kirkland from the Seattle Police Department, went to the County Jail, along with Blood Technician Delores J. Botkin. We made contact with Charles Rhines and, pursuant to the search

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# <i>Ch</i>	(11) Date & Time Approved <i>Young</i> YOUNG APPENDIX 000296
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RAPID CITY POLICE DEPARTMENT
RAPID CITY, SD
(12) PAGE 12 OF 17
(13) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) * No. (8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

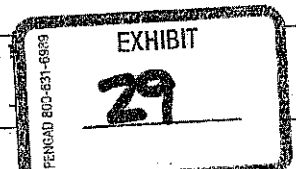
On 06/11/92, at 1900 hours, I arrived in Seattle, Washington, to continue the murder investigation.

On 06/12/92, at 0900 hours, I went to the Seattle Police Department and met with Homicide Lieutenant George Marberg. I gave him some details regarding the investigation, and specifically talked with him about the burglaries which were allegedly being committed by Rhines and Mighell. At this time Lieutenant Marberg telephoned the King County Prosecutors Office and spoke with a prosecuting attorney. He was informed that King County would dismiss any burglary charge which may be brought against Mighell in return for his testimony. In addition, they advised him that any burglary charge brought against Rhines would be dismissed if and when he was to be arrested on a homicide charge from South Dakota.

On 06/12/92, at 1300 hours, I drove to the North Precinct of the Seattle Police Department and met with Detective Bruce Larson. Detective Larson attempted to research Seattle Police Department records in an attempt to verify burglaries involving copper wire or tubing. He was able to locate some reported occurrences, however, these did not appear to match the description given by Sam Harter. Detective Larson called Pacific Iron and Metal, a scrap metal business where Mighell had reportedly once worked, and inquired about Rhines and Mighell. He learned that in a period of several weeks Rhines had sold copper to Pacific Iron and Metal on more than 30 occasions, and in some cases the copper weighed in excess of 500.

(9) Officer(s) Reporting * ALLENDER 229 ID#

(10) Supervisor Approving ID#



APPENDIX

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

OF

5

(13) CR#

72-106688

2) Victim's Name (Last, First, Middle)	3) Location of Occurrences	4) Date Occurred	5) Time Occurred	6) RD Occurred
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7) Report No.

(8) pounds.

I spoke with Officers Mark Mulvanny and Marilyn McLaughlin. These are the two officers who confronted Rhines, Mighell, Sam Harter, and Heather Shepard on 06/03/92. They provided me with a copy of a report which was filled out on that date. An additional report from these two officers will follow. Their contact with Rhines and Mighell was described to me and appears to be virtually the same as described by Sam Harter. I learned that Matt Mighell had obtained a job at Winsome Trading Company, 19810 141 Place North East in Woodenville, Washington, 206-483-7071.

On 06/12/92, at 1530 hours, Detective Bruce Larson and myself drove to 18736 50th Avenue North East in Lake Forest Park, Washington. This is the address of Matt Mighell's father. We observed a '69 maroon, International, four-wheel drive pickup truck parked in the side yard at this address. Detective Larson walked into the yard and observed that the license plate on the pickup truck is Washington State LJ4025.

On 06/12/92, at 1630 hours, I called Washington State Department of Corrections Northgate Facility at 206-545-6557. I spoke to Lee Russell, who was on this day filling in for Kathy Casey. Kathy Casey is Matt Mighell's supervising parole agent. I spoke briefly with Lee Russell and obtained some basic information regarding Matt Mighell. I learned that he is currently on parole and will be until January 1993.

On 06/12/92, at 1810 hours, I called the Bothell, Washington

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# CA	(11) Date & Time Approved 7/10/92
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ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) Block No.

(8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

On 06/03/92, at approximately 2330 hours, I was notified at home by Officer Speer that Sam Harter and his girlfriend, Heather Shepherd were picked up in Seattle, Washington, by Seattle police. Officer Speer advised me that after contacting parents, runaway reports would be made and the two juveniles would be put on a bus for Rapid City at approximately 0130 hours, on 06/04/92.

On 06/04/92, at 0940 hours, I called William Harter at home. We made an appointment to meet at the police department at 10:30 this same morning.

On 06/04/92, at 1030 hours, I met with William Harter at the police department. He told me that he had spoken with Sam briefly over the telephone while they were at the Seattle Police Department. He also informed me that Matt Mighell had called Heather's grandmother, Lillian Harrington, and had told her that Sam and Heather were staying with him, and that he did not want her to think he was taking in runaways. He left a phone number of (206)363-0242.

On 06/04/92, at 1430 hours, I called U. S. West Security Division and learned that telephone number (206)363-0242 is listed to James L. Mighell, 18736 50th Avenue North East, Seattle, Washington.

I called the last known phone number for Charles Rhines in

(9) Officer(s) Reporting
* ALLENDER ID# 229

(10) Supervisor Approving
ID#
[Signature]

(11)

EXHIBIT
31
POLICE APPENDIX 000299

RAPID CITY POLICE DEPARTMENT
RAPID CITY, SD
(12) PAGE 1 OF 1
(13) CR# 92-16628

PID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 1 OF 1
 (13) UNIT 7A THURSDAY

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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Block No. (2) Seattle, (206)524-2152, and learned that that number had been disconnected.

On 06/05/92, I spoke with William Harter. He advised me that his son, Sam, and Sam's girlfriend, Heather, had arrived in town on the Greyhound bus. He thought that it would be wise for me to speak with Sam and felt that Sam had information to give me which could be quite significant.

On 06/06/92, at 1000 hours, Sergeant Don Bahr and myself met with Sam Harter at the police station. We had a brief conversation with Sam about his trip in general. At 1040 hours, we conducted a taped interview with Sam. Sam told us that he and Heather had arrived in Seattle on Monday, 05/25/92, at approximately 0120 hours. Charles, along with Matt Mighell picked them up at the bus station. The next day he went with Charles and Matt to Matt's father's house and learned that Charles and Matt had purchased a 70's model, 3/4 ton, four-wheel drive International pickup, maroon in color. Sam told us that he had been with Charles and Matt during 3 burglaries which he believed started on the evening of May 26. On May 27, they stripped insulation off of copper wire which had been stolen the night before. He believed that on the 28th, 29th, and 30th they spent more time removing insulation from copper wire by burning it. On May 30, June 1, 2, and 3, he said that the four of them had stayed in a motel. He thought one of the motels they stayed in was at or near the intersection of 88th and Aurora in Seattle. Sam told us that on the 29th of May, Charles made a statement to Heather saying "I may have killed one person, but I wouldn't kill you." He also said that Charles stated that the only

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# CBA	(11) Date & Time Approved 7/1/92
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ADDENDUM

(1) CR#

92-16628

(2) Victim's Name (Last, First, Middle)

(3) Location of Occurrence

(4) Date Occurred

(5) Time Occurred

(6) RD Occurred

No.

(8) that during the initial part of her stay with Charles Rhines and Matt Mighell, Charles asked her "Do you know about Donnivan?" then went on to tell her details of how he had committed this murder. He told her that he had only planned to rob Dig 'Em Donuts and was either in the till or the safe when Donnivan walked in. Charles was then very scared and stabbed Donnivan. Charles stated he was so scared he did not remember tying Donnivan up. He also told her that he threw the knife away, but she could not remember where he said. Also during their stay, Sam had told Heather that Charles had just confessed to him to killing someone. Heather believed that one of the names of the motels they stayed in was similar to the Georgianna Hotel. On one occasion, Heather went with Charles, Matt, and Sam to a location somewhere in the forest to burn the insulation off of copper wire which had been stolen. She felt from the way Charles and Matt were acting, and from the fact that they had brought a firearm with them, that she would be killed and that possibly Sam would be killed also. She believed this was going to happen due to the statements that Charles had made about the murder. She said that Charles later said to her that he may have killed one person but he would not kill her, due to the fact that Sam cared about her and he cared about Sam. (See taped statement for further details.)

On 06/08/92, Detective Bruce Evans and myself used four-wheel all-terrain vehicles to search the road ditches on Highway 44 between Rapid City and Rapid City Regional Airport. At approximately 1120 hours, I located a "Botany 500" button-down shirt. This shirt had obviously been there for quite some time. This shirt was taken into Evidence. (See Officer Larry Rose's

(9) Officer(s) Reporting * ALLENDER ID# 229

(10) Supervisor Approving ID#

(11) Date & Time Approved

YOUNG APPENDIX 000304

RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

4 OF 1

(13) CR#

92-16628

ADDENDUM

(1) CR# 92-16628

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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RAPID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

10 OF 1

(13) CR# 92-16628

Link No. (8)

On 06/10/92, at 1226 hours, I met with Arnold Hernandez at the police department. He viewed the Botany 500 shirt recovered from Highway 44 east. He remarked that Botany 500 is Charles Rhines favorite brand of shirt, however, could not be sure if this particular shirt belonged to him. He also left me various photo negatives along with one photograph at this time. He believed that one of the photo negatives may be of the blue coat owned by Charles Rhines. (See Detective Evans' report regarding possible identification of blue jacket by Marty Rypkema.)

On 06/10/92, at 1500 hours, Sergeant Don Bahr and myself met with Heather Jo Shepard at the police station. She reported being telephoned by Matt Mighell on a fairly regular basis and that the calls usually came from 1730 to 2100 hours. When asked, she said that Charles told her that he buried the clothes he was wearing on the night of the Dig 'Em Donut murder somewhere in the forest between Rapid City and Seattle. The location where the clothes had been buried was something Heather Shepard was not completely sure about. At this time Heather gave Sergeant Bahr and myself one of the cassette tapes she had made of a telephone conversation between her and Matt Mighell.

On 06/10/92, at 1550 hours, Sergeant Bahr and myself spoke to Sam Harter at the police department. Sam told Sergeant Bahr and myself that there was one more thing he had remembered about a conversation between he and Charles Rhines. He said that while they were staying in the motel in Seattle, Rhines asked Sam "what would you have done if I'd have killed Heather?" He also informed us that he now thought Matt Mighell may have been at the scene of

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# [Signature]	(11) Date & Time Approved [Signature]
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STATE OF SOUTH DAKOTA,
County of Bon Homme } ss.
THE STATE OF SOUTH DAKOTA

IN CIRCUIT COURT
FIRST JUDICIAL CIRCUIT

us.
JAMES AARON GADBOIS and
CHARLES RUSSELL RHINES,
conjointly Defendant

INFORMATION

R. James Zieser State's Attorney in and for the County of
Bon Homme State of South Dakota, in the name and by authority of the State of South
Dakota, makes and files information against the defendant, and charges:

That heretofore to-wit: on the 22nd day of October in the year 1977,
in the county of Bon Homme in the State of South Dakota, one James Aaron Gadbois
Charles Russell Rhines late of said County of Bon Homme
and State of South Dakota aforesaid, did commit the crime of third degree burglary
committed as follows:

That at said time and place the said James Aaron Gadbois and Charles Russell Rhines
did then and there, wilfully, unlawfully, knowingly and intentionally
enter and remain in an unoccupied structure, room #102 of Ludeman Hall
on the campus of University of South Dakota at Springfield, Springfield,
South Dakota, with the intent to commit a crime therein, the theft of
8 track tape player, CB radio, field strength tester, 2 volt meters, a
mobile PA system and two pliers, thereby committing the crime of third
degree burglary,-----

STATE OF SOUTH DAKOTA }
COUNTY OF BON HOMME }

I hereby certify that the foregoing is a true
and correct copy of the original as the same
appears on record in my office.

Dated 8-12 1992

Craig Zieser
Clerk of Courts

Bon Homme County, S. Dak.

by J. Lawrence M. Baker

FILED

NOV 1 1977
John O. Kreidl
CLERK OF COURTS
BON HOMME COUNTY S. D.
BY Craig Zieser DEPUTY

This contrary to the form of the statute in such case made and provided, and against the peace and dig-
nity of the State of South Dakota.

Dated at Tyndall Bon Homme County, South Dakota, this
1st day of November 1977

R. James Zieser
State's Attorney

EXHIBIT
32
PENCARD 100-631-6989
YOUNG APPENDIX 00030

STATE OF SOUTH DAKOTA,
County of Bon Homme ss.

IN CIRCUIT COURT COUNTY OF BON HOMME } 15A
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, Plaintiff,
vs.
CHARLES RUSSELL RHINES Defendant.

SENTENCE OF THE COURT

the foregoing is a true and correct copy of the original as the same appears in my office.
Dated: 8-18-1977
Clerk of Courts
Bon Homme County, S. Dak.
By: Jean M. Balw Deputy

The Defendant herein Charles Russell Rhines
being charged with the commission of a public offense to-wit: third degree burglary

and an information having been duly filed with Paul J. Kern, circuit judge, Esq., a justice of the peace of said county, sitting as a committing magistrate, and a hearing having been had

and said committing magistrate having regularly held the said Defendant to answer for such public offense, in the manner provided by law, and the said Defendant expressing his desire to enter his plea of guilty of such offense; and thereupon R. James Zieser the State's Attorney of said Bon Homme County, in which county the offense was committed, filed an information in the office of the Clerk of the Circuit Court in and for said county against the Defendant in the same manner and form as provided by law for filing informations during any term of court; and thereupon the said State's Attorney and Dan Elston Sheriff of said County, on the 1st day of November, 1977, produced the defendant before Hon. Paul J. Kern,

the Judge of the Circuit Court of the First Judicial Circuit of the State of South Dakota, in which said circuit the said county of Bon Homme is situated, at the chambers of said Judge in the Court House in the City of Tyndall in the County of Bon Homme in the 1st Judicial Circuit in South Dakota; and thereupon said Defendant being duly arraigned, and before a plea was entered the said Judge fully advised said Defendant of his rights in the premises, and it then appearing from the evidence to the satisfaction of the said Judge, that the Defendant had been regularly held to answer upon the offense charged and that he was acting of his own free will and accord in the matter and desired to be brought before said Judge and enter his plea of guilty of the offense charged; thereupon the Defendant was permitted to enter his plea, and he entered the plea of guilty of the offense charged in the information to-wit: Burglary in the third Degree

The plea was received by the Judge and the Defendant found guilty as charged. The Defendant was then informed of the nature of the information, his plea of guilty and the finding of the Judge, and was asked if he had any legal cause to show why judgment should not be pronounced against him, and no sufficient cause being alleged or shown, the Court thereupon pronounced the following Judgment and Sentence:

And now upon this 1st day of November, 1977 it is by the Court considered, ORDERED AND ADJUDGED that the Defendant Charles Russell Rhines be imprisoned in the State Penitentiary of the State of South Dakota at Sioux Falls, in Minnehaha County, in said State, at hard labor for the full term and period of three (3) years there to be kept, fed and clothed according to the rules and discipline governing the said penitentiary be imprisoned in the county jail for a period of _____ and that he be fined in the sum of _____ Dollars and costs, amounting to _____ Dollars

It is the further Order of this Court that defendant be held in the reformatory section of the penitentiary for the above term with credit given at the end of his term for one week spend in the Bon Homme County jail,

and that in default of the payment of said fine that he be confined in the county jail of _____ County, South Dakota, until said fine is paid.

That said Defendant stand committed to the custody of the Sheriff of said county pending the execution of this sentence and judgment.

Dated this 1st day of November, 1977

Attest: John P. Freidel Clerk.
By: Paul J. Kern Judge.

By: _____ Deputy.
(SEAL) RECORDED IN JUDGMENT

FILED
NOV 1 1977
John P. Freidel
Clerk of Courts

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF WALWORTH)

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

THE STATE OF SOUTH DAKOTA,)
 Plaintiff,)
 vs.)
 CHARLES RUSSELL RHINES,)
 Defendant.)

INFORMATION FOR:

1. ROBBERY IN FIRST DEGREE, SDCL 22-30-1
Class 2 Felony
2. COMMISSION OF FELONY WHILE ARMED WITH
SHORT SHOTGUN, SDCL 22-14-12, Class 2
Felony
3. POSSESSION OF FIREARM BY CONVICTED FELON
SDCL 22-14-15, Class 6 Felony

Robert R. Slocum, State's Attorney of Walworth County, as prosecuting attorney, in the name of and by the authority of the State of South Dakota, makes and files this information against the defendant, Charles Russell Rhines, and charges that on or about the 8th day of December, 1979, at the City of Mobridge, in Walworth County, South Dakota, said defendant did commit the following public offenses:


Count 1. Robbery in the First Degree in violation of SDCL 22-30-1 in that he did, unlawfully, intentionally and feloniously, by means of force or fear, take personal property, being cash in the approximate amount of \$400 in good and lawful money of the United States of America, which property was then and there owned and in the possession of the Bottle Shop and which taking was against the will and from the immediate presence of LeRoy and Adeline Marin, at said Bottle Shop, a retail liquor establishment, constituting a Class 2 Felony;

Count 2. Commission of Felony While Armed with Short Shotgun, in violation of SDCL 22-14-12, a Class 2 Felony, in that he did unlawfully, intentionally and feloniously commit the public offense of robbery in the first degree, a class 2 felony, while armed with a short shotgun, being a sawed-off double-barrel shotgun, constituting a Class 2 Felony;

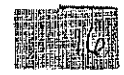
Count 3. Possession of Firearm by Convicted Felon in violation of SDCL 22-14-15, a Class 6 Felony, in that he did unlawfully, intentionally and feloniously have and possess under his control, a firearm, he having been convicted of the offense of burglary in the third degree in Circuit Court in Bon Homme County, South Dakota, on November 1, 1977;

contrary to the statute in such case made and provided and against the peace and dignity of the State of South Dakota.

Dated this 27th day of December, 1979, at Selby, South Dakota.

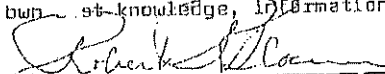


Prosecuting Attorney



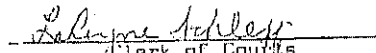
STATE OF SOUTH DAKOTA, County of Walworth, ss:

Robert R. Slocum, being first duly sworn, states that he is the prosecuting attorney for the above matter, that he has read the foregoing information, and the same is true to his best knowledge, information and belief.



Prosecuting Attorney

Subscribed and sworn to before me this 27th day of December, 1979.



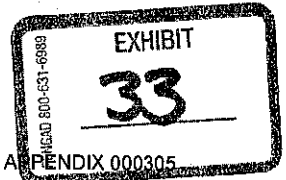
Clerk of Courts

WITNESSES KNOWN TO THE PROSECUTING ATTORNEY AT THE TIME OF THE FILING OF THIS INFORMATION:

LeRoy "Jim" Morin
Adeline Marin
Doug Moser

Douglas C. Schafer
Tom Disburg
Tom Berg

Gerald Birk
Ilea Zeldes



(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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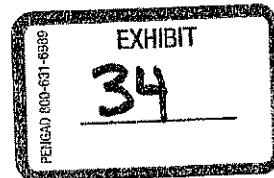
(7) (8) VICTIM: Shaeffer
 CLASSIFICATION: Homicide
 LEAD#: 68

April 15, 1992, 1000 hrs I received the complete military history (attached) of Charles Russell Rhines from OSI agent Dave Kulasiewicz. A summary of contents is listed on the memorandum attached as the cover letter.

It should be noted that the military records reflect that Rhines was charged with assaulting a unit armorer with a deadly weapon. Specific information on this charge is not included in the packet, however OSI has requested the investigative package be forwarded to them from Army CID. It is anticipated that the package should be available within the next three weeks.

Rhines' military history reveals that he was skilled in Military Occupational Skill (MOS) 11B10 which is a Light Weapons Infantryman. Military Training included Combat Techniques and Patrolling which would include training in hand-to-hand combat and in all probability training in the use of edged weapons.

Rhines' was subject of numerous disciplinary actions which included acts of violence. Rhines was ultimately discharged from the United States Army under the provisions of a General Discharge for being unsuitable for military service.



(9) Officer(s) Reporting *Fields 14	ID#	(10) Supervisor Approving <i>[Signature]</i>	ID#	(11) Date & Time Approved 04-15-92
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RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10: the proponent agency is Office of The Judge Advocate General. *U*

Name and grade PV2 CHARLES R. RHINES	SSN 574-77-8415	Unit Co E, 1/32d Inf	Pay (Basic & Sea/Foreign) \$210.60
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PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: *U*

CHARGE: VIOLATION OF THE UCMJ, ARTICLE 92
 Specification: It has been reported that you did, at Camp Rowse, Korea, on or about 28 May 1976, violate a lawful general regulation, to wit: paragraph 1-2.7(a), Army Regulation 600-50, dated 19 April 1973, by possessing twelve bottles of codeine.

~~Specification: It has been reported that you did, at Camp Rowse, Korea, on or about 28 May 1976, possess in your possession a quantity of marijuana.~~

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. *U*
 In deciding what you want to do you have the right to consult with a lawyer located at Blair 5006, Camp Rowse, Korea.
 You now have 48 hours to decide what you want to do. *U*

Date and time <u>16 June 76</u>	Name, grade and organization of commander WILLIAM S. CARPENTER JR., LTC, 1/32d Inf	Signature <i>[Signature]</i>
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3. Trial by court-martial is is not demanded. *U* 4. A spokesman will will not accompany me. *U*
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. *U*
 6. An open hearing is is not requested. *U*

Date <u>10 Jul 76</u>	Name and grade of service member PV2 CHARLES R. RHINES	Signature <i>[Signature]</i>
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7. I have considered all matters presented in defense and/or extenuation and mitigation. *U* The following punishment(s) (is) (are) imposed: *U*

Forfeiture of \$200.00 for two months. Restriction for a period of 2 months. Extra duty for 30 days.

8. You are advised of your right to appeal this punishment within 15 days to CDR, 1st Fd the next superior authority.

Date <u>1 July 76</u>	Name, grade and organization of commander WILLIAM S. CARPENTER JR., LTC, 1/32d Inf	Signature <i>[Signature]</i>
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PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. *U*
 I appeal and submit the matter attached hereto for consideration by the next superior authority. *U*

Date <u>10 Jul 76</u>	Name and grade of service member PV2 CHARLES R. RHINES	Signature <i>[Signature]</i>
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10. I have considered the appeal and it is my opinion that: *U*

REVIEWED FOR
LEGAL SUFFICIENCY BY

Date	Name and grade of judge advocate	Signature of judge advocate
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11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: *U*

BDE LEGAL OFFICER

Date	Name, grade and position	Signature
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Date	Name and grade of service member	Signature
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YOUNG APPENDIX 000308

[Signature]

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade	SSN	Unit	Pay (Basic & Sea/Foreign)
RHINES, CHARLES R PV2	504-70-8415	Co B 1stBn(M) 10thInf	\$383.40

PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/ It has been reported that you did, at Fort Carson, Colorado 80913, on or about 2000 hours 17 August 1975, wrongfully have in your possession 1 ounce, more or less, of marijuana. This is a violation of Article 134, Uniform Code of Military Justice.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 2/ In deciding what you want to do you have the right to consult with a lawyer located at Bldg 6285, Ft Carson CO. You now have 72 hours to decide what you want to do. 4/

Date and time	Name, grade and organization of commander	Signature
8 Sept 75	EDWARD J LAUER CPT Co B 1/10th Inf	<i>[Signature]</i>

3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 5/

5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 5/

Date	Name and grade of service member	Signature
8 Sept 75	CHARLES R RHINES PV2	<i>[Signature]</i>

6. An open hearing is is not requested. 5/

7. I have considered all matters presented in defense and/or extenuation and mitigation. 5/ The following punishment(s) (is) (are) imposed: 2/

Forfeiture seven (7) days pay \$80.00 (Suspended 60 days until 8 Dec 75)

Fourteen (14) days extra duty.

8. You are advised of your right to appeal this punishment within 15 days to JON E BOKOVOY LTC 1/10th Inf. the next superior authority.

Date	Name, grade and organization of commander	Signature
8 Sept 75	EDWARD J LAUER CPT Co B 1/10th Inf	<i>[Signature]</i>

PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 5/

I appeal and submit the matter attached hereto for consideration by the next superior authority. 5/

Date	Name and grade of service member	Signature
8 Sept 75	CHARLES R RHINES PV2	<i>[Signature]</i>

10. I have considered the appeal and it is my opinion that: 2/

Date	Name and grade of judge advocate	Signature of judge advocate

11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: 5/

Date	Name, grade and position	Signature

Date	Name and grade of service member	Signature

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade RHINES, CHARLES R. FV2	SSN 501-70-3415	Unit Co B, 1st Bn (M) 10th Inf	Pay (Basic & Sea/Foreign) \$383.40
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PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/
In that FV2 Charles R. Rhines, at Fort Carson, Colorado, on or about 2200 hours 25 March 1975 behave himself with disrespect toward 2LT Thomas Cashman, his superior commissioned officer by saying to him, "You're a mother fucking hitler," or words to that effect.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 3/
In deciding what you want to do you have the right to consult with a lawyer located at Bldg 6285 Ft Carson, CO
You now have 72 hours to decide what you want to do. 4/

Date and time 01 07 10 Apr 75	Name, grade and organization of commander PETER MIRAKIAN JR, CPT, Co B, 1/10th Inf	Signature <i>[Signature]</i>
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3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 5/
5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 5/
6. An open hearing is is not requested. 5/

Date 11 APR 75	Name and grade of service member CHARLES R. RHINES FV2	Signature <i>[Signature]</i>
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7. I have considered all matters presented in defense and/or extenuation and mitigation. 5/ The following punishment(s) (is) (are) imposed: 2/

REDUCTION to the Grade of PRIVATE E-1 (Suspended until 6 May 1975)
14 day restriction to company area
14 days extra duty

8. You are advised of your right to appeal this punishment within 15 days to TAIT C. RING, LTC, CDR, 1/10th Inf, the next superior authority.

Date 8 March 75	Name, grade and organization of commander PETER MIRAKIAN JR, CPT, Co B, 1/10th Inf	Signature <i>[Signature]</i>
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PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 5/
 I appeal and submit the matter attached hereto for consideration by the next superior authority. 5/

Date 21 APR 75	Name and grade of service member CHARLES R. RHINES	Signature <i>[Signature]</i>
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10. I have considered the appeal and it is my opinion that: 2/

Date	Name and grade of judge advocate	Signature of judge advocate
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11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: 5/

Date	Name, grade and position	Signature
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12. I have seen the action taken on my appeal.		
Date	Name and grade of service member	Signature

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade	SSN	Unit	Pay (Basic & Sea/Foreign)
RHINES, CHARLES R. PV2	50b-70-8415	Co B, 1st Bn (M) 10th Inf	\$314.10

PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/
 In that PV1 Charles R. Rhines, at Fort Carson, Colorado, on or about 1020 hours 11 April 1975 was disrespectful toward SSG Ernest D. Long, 585-18-0087, by saying to him "Suck my ass" or words to that effect.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 3/
 In deciding what you want to do you have the right to consult with a lawyer located at Bldg 6285, Ft. Carson, CO. You now have 72 hours to decide what you want to do. 4/

Date and time	Name, grade and organization of commander	Signature
21510 Apr 75	PETER MIRAKIAN JR., CPT, Co B, 1st 10th Inf	<i>[Signature]</i>

3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 6/
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 6/
 6. An open hearing is is not requested. 5/

Date	Name and grade of service member	Signature
29 APR 75	CHARLES R. RHINES PV2	<i>[Signature]</i>

7. I have considered all matters presented in defense and/or extenuation and mitigation. 5/ The following punishment(s) (is) (are) imposed: 7/

Reduce to the Grade PRIVATE E-1
 Forfeiture of \$80.00

8. You are advised of your right to appeal this punishment within 15 days to TAFT C. RING, LTC, CDR, 1/10th Inf the next superior authority.

Date	Name, grade and organization of commander	Signature
29 Apr 75	PETER MIRAKIAN JR., CPT, Co B, 1st 10th Inf	<i>[Signature]</i>

PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 8/
 I appeal and submit the matter attached hereto for consideration by the next superior authority. 8/

Date	Name and grade of service member	Signature
29 APR 75	CHARLES R. RHINES	<i>[Signature]</i>

10. I have considered the appeal and it is my opinion that: 9/

Date	Name and grade of judge advocate	Signature of judge advocate

11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: 8/

Date	Name, grade and position	Signature

12. I have seen the action taken on my appeal.

Date	Name and grade of service member	Signature

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

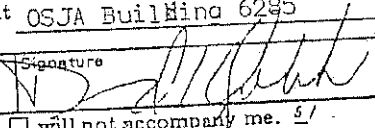
For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade Rhines, Charles, R. E-3	SSN 504-70-8415	Unit Co A 1st Bn(Mech) 22d Inf	Pay (Basic & Sea/Foreign) \$377.70
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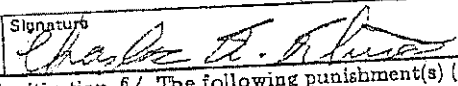
PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/
 In that Rhines, Charles R. E-3, 504-70-8415, having received a lawful order from acting sergeant SP/4 Kenneth H. Stewart, his superior noncommissioned officer, to clean the platoon's latrine, did, at Company A 1st Battalion (Mech) 22d Infantry, Fort Carson, Colorado 80913, on or about 0630 hours, 17 Sep 74, willfully disobey the same. This action is in violation of AR 650-50, Article 91 of the UCMJ.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 3/
 In deciding what you want to do you have the right to consult with a lawyer located at OSJA Building 6285. You now have 72 hours to decide what you want to do. 4/

Date and time 1640/20 Sep 74	Name, grade and organization of commander DAVID J OZOLEK 1LT INF Co A 1/22 Inf (M)	Signature 
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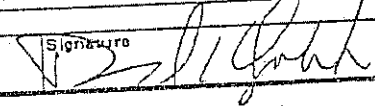
3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 5/
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 5/
 6. An open hearing is is not requested. 5/

Date 20 Sep 74	Name and grade of service member Rhines, Charles R. E-3	Signature 
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7. I have considered all matters presented in defense and/or extenuation and mitigation. 5/ The following punishment(s) (is) (are) imposed: 1/

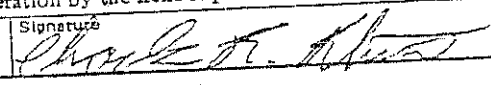
Reduced to E-2
 Perform extra duty for 14 days effective 20 Sep 74.
 14 days restriction

8. You are advised of your right to appeal this punishment within 15 days to Commander 1st Bn(Mech) 22d Inf the next superior authority.

Date 20 Sep 74	Name, grade and organization of commander DAVID J OZOLEK 1LT INF Co A 1/22 Inf (M)	Signature 
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PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 8/
 I appeal and submit the matter attached hereto for consideration by the next superior authority. 8/

Date 20 Sep 74	Name and grade of service member Rhines, Charles R. E-3	Signature 
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10. I have considered the appeal and it is my opinion that: 5/

Date	Name and grade of judge advocate	Signature of judge advocate
11. After consideration of all matters presented in appeal, the appeal is <input type="checkbox"/> Denied <input type="checkbox"/> Granted <input type="checkbox"/> Granted in part as follows: 5/		

Date	Name, grade and position	Signature
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12. I have seen the action taken on my appeal.		
Date	Name and grade of service member	Signature

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade Rhines, Charles R. E-3	SSN 504-70-8415	Unit Co A 1st Bn (Mech) 22d Inf	Pay (Basic & Sea/Foreign) \$383.40
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PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/ In that Rhines, Charles R. E-2, 504-70-8415, did, at Company A-1st Battalion (Mech) 22d Infantry, Fort Carson, Colorado 80913, on or about 0730 hours, 5 December 1974, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Company Formation. This action is in violation of AR 650-50, Article 86 of the UCMJ.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 3/ In deciding what you want to do you have the right to consult with a lawyer located at CS TA Building 6285. You now have 72 hours to decide what you want to do. 4/

Date and time 061700 DEC 74	Name, grade and organization of commander DAVID J OZOLEK 1LT, Co A 1st Bn (M) 22d Inf	Signature <i>[Signature]</i>
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3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 5/ 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 5/ 6. An open hearing is is not requested. 5/

Date 10 DEC 74	Name and grade of service member Rhines, Charles R. E-3	Signature <i>[Signature]</i>
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7. I have considered all matters presented in defense and/or extenuation and mitigation. 5/ The following punishment(s) (is) (are) imposed: 2/

REDUCTION TO E-2
FORFEITURE OF \$50.00
14 DAYS EXTRA DUTY

8. You are advised of your right to appeal this punishment within 15 days to COMMANDER 1/22 INF the next superior authority.

Date 10 DEC 74	Name, grade and organization of commander DAVID J OZOLEK 1LT, Co A 1st Bn (M) 22d Inf	Signature <i>[Signature]</i>
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PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 5/ I appeal and submit the matter attached hereto for consideration by the next superior authority. 5/

Date 10 DEC 74	Name and grade of service member Rhines, Charles R. E-2	Signature <i>[Signature]</i>
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10. I have considered the appeal and it is my opinion that: 5/

Date	Name and grade of judge advocate	Signature of judge advocate
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11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: 5/

Date	Name, grade and position	Signature
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12. I have seen the action taken on my appeal.

Date	Name and grade of service member	Signature
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DEPARTMENT OF THE ARMY
HEADQUARTERS US ARMY TRANSFER POINT
OAKLAND ARMY BASE, OAKLAND CA. 94626

13 OCTOBER 1976
(Date)

AFZM-ADJ-TP

SUBJECT: Review of Discharge

TO: CHARLES RUSSELL RHINES
P. O. BOX 316
MC LAUGHLIN, SD 57642

1. You are being issued a GENERAL Discharge from the Army of the United States.

2. The Army Discharge Review Board is an administrative agency created within the Department of the Army, under authority of section 301, Title 1, act of 22 June 1944 (58 Stat. 286: 38U. S.C. 963H; M.L. 1949, Sec 1164-6), to review upon its own motion or upon application by or on behalf of the individual concerned, the type and nature of the discharge certificate or other documentary evidence of discharge or dismissal of former members of the Armed Forces.

3. Any request will be made on DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, which may be obtained by writing to: US Army AG Publications Center, 2800 Eastern Blvd, Baltimore, MD 21220.

4. Application for review of discharge must be received by the Adjutant General, US Army Records Center, 9700 Page Blvd, St. Louis, Missouri 63132, within fifteen (15) years after the effective date of discharge or dismissal.

FOR THE CHIEF:

F. G. WADE
WO1, USA
Asst Adj

I, the undersigned, have read the above letter and fully understand that if I desire, I may request a review of my discharge by the Army Discharge review Board.

13 OCT 76
(Date)

(Signature)

AFZM-TP FL 7 (Rev)
22 Apr 76

EAIDTB-CO RHINES, Charles R. (14 Sep 76) 2nd Ind
SUBJECT: Recommendation for Elimination UP AR 635-200

DA, HEADQUARTERS, 3RD BRIGADE, 2ND INFANTRY DIVISION, APO San
Francisco 96251, 30 September 1976

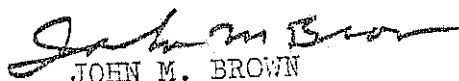
TO: Commanding General, 2nd Infantry Division, ATTN: AGPM,
APO San Francisco 96224

1. Recommendation for discharge of Private Charles R. Rhines,
504-70-8415, Company-B, 1st Battalion, 32nd Infantry, 2nd Infantry
Division, APO San Francisco 96251, is approved.

2. Private Rhines will be discharge under the provisions of
paragraph 13-5b(3), AR 635-200, for reasons of unsuitability.

3. A waiver of further counseling and rehabilitation is hereby
granted in accordance with paragraph 13-9b, AR 635-200.

4. A General/^{Jms}Honorable Discharge Certificate will be issued.



JOHN M. BROWN
COL, INF
Commanding

SAIDIF-00 (14 Sep 76) 1st Ind Bn, Charles R.
SUBJECT: Recommendation for Elimination UP AR 635-200

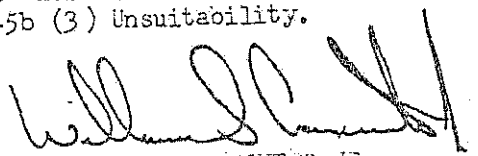
DA, HEADQUARTERS, 1st Battalion, 32d Infantry, APO San Francisco 96251

TO: Commander, 3d Brigade, 2d Infantry Division, APO San Francisco 96251

1. Concur with the recommendation of the unit commander.

2. SM has received two Field Grade Article 15's in this battalion and has been punished non-judicially five times. He has demonstrated an inability and unwillingness to adapt to military life. He continually flaunts authority and he is a disruptive influence in his unit. The interests of the Army and the individual would be best served by his immediate elimination.

3. Strongly recommend that Private Charles R. Rhines be eliminated from the service UP AR 635-200 paragraph 13-5b (3) Unsuitability.


WILLIAM S. CARPENTER JR.
LTC, IN
Commanding

The following data is furnished:

- a. Date of enlistment: 5 Mar 74
 b. Date of birth: 11 Jul 56
 c. Term of service: three years
 d. Prior service: none
 e. Individual does not have a reserve commission or warrant.
 f. APT: 61
 g. Duty Station: 11B10
 h. Individual was not awarded for service under the Project 100,000 program.
 i. Aptitude Area scores: AO: 103 AW: 122 AC: 132 CE: 103 EM:
 EQ: 123 AB:
 j. MOS Evaluated (yes) (none) If yes, evaluation score: 1975 (120)

5. SM has been a member of this command since 23 Dec 75, the following is a chronological summary of the SM's service to include assignments, duties, and conduct/efficiency ratings.--(Continue on separate sheet if necessary.)

FROM	TO	ASSIGNMENT	DUTY	CONDUCT/EFFICIENCY
740719	750116	Co A, 1/22 Inf Ft Carson	Infantryman	
750117	750928	Co B, 1/10 Inf Ft Carson	Infantryman	
750929	751103	Co B, 1/10 Inf Ft Carson	Infantryman	
751104	751224	Enroute to Korea		
751225	present	Co B, 1/32d Inf Gp Howze	Infantryman	poor/poor

6. SM HAS BEEN COUNSELED AS FOLLOWS: (Continue on separate page if necessary)

DATE	BY WHOM	REASON
numerous times	CPT Vermillion (Co Cdr, DEFOSS)	<u>illegal possession and use of drugs failure to repair, apathetic attitude</u>
21 Aug 76	1LT Atkinson	<u>unauthorized possession of explosives and claymore mine firing device</u>
27 Aug 76	SSG Beanblossom	<u>illegal possession of explosives, continued apathy</u>
14 Sep 76	1LT Atkinson	<u>assault on unit armorer with a deadly weapon</u> <u>substandard duty performance</u>

7. (MISCONDUCT CASES ONLY) I do not consider it feasible or appropriate to recommend elimination for Unsuitability to accomplish other disposition of this case because:

8. (UNSUITABILITY cases only) I do not consider it feasible to effect other disposition in this case because: This soldier's poor performance is the result of his decidedly apathetic attitude. PV2 Rhines' presence in the unit is a detrimental factor to an extreme degree. There is no other grounds for adequate disposition of this case.

9. Individual's disciplinary record:

Number of convictions by General Courts-Martial: none
 Number of convictions by Special Courts-Martial: none
 Number of convictions by Summary Courts-Martial: none
 Number of convictions by authorities during current term of service: none
 Number of times punished under Article 15: 5
 Individual (yes) (is not) confined at Camp Humphreys. If confined:
 (a) He has been in pre-trial confinement since:
 (b) He is in confinement as a result of conviction by court-martial.
 He has been in confinement since:

REPORT OF MENTAL STATUS EVALUATION

For use of this form, see AR 635-200; the proponent agency is the Adjutant General's Office.

Request a mental evaluation for the below named individual who is being considered for discharge because of CONVICTION BY CIVIL COURT FRAUDULENT ENTRY DESERTION UNSUITABILITY UNFITNESS

NAME	GRADE	SSAN
CHARLES R. RHINES	E-1	504-70-8415

EVALUATION

1. BEHAVIOR
 NORMAL PASSIVE AGGRESSIVE HOSTILE SUSPICIOUS BIZARRE
2. LEVEL OF ALERTNESS
 FULLY ORIENTED DULL SOMNOLENT
3. LEVEL OF ORIENTATION
 FULLY ORIENTED PARTIAL DISORIENTED
4. MOOD
 DEPRESSED LEVEL HYPERACTIVE
5. THINKING PROCESS
 CLEAR CONFUSED BIZARRE
6. THOUGHT CONTENT
 NORMAL ABNORMAL HALLUCINATIONS PARANOID IDEATION DELUSIONS
7. MEMORY
 GOOD FAIR POOR

IMPRESSIONS	YES	NO
8. SIGNIFICANT MENTAL ILLNESS		<input checked="" type="checkbox"/>
9. MENTAL RESPONSIBILITY	<input checked="" type="checkbox"/>	
10. ABLE TO DISTINGUISH RIGHT FROM WRONG	<input checked="" type="checkbox"/>	
11. ABLE TO ADHERE TO THE RIGHT	<input checked="" type="checkbox"/>	
12. HAS THE MENTAL CAPACITY TO UNDERSTAND AND PARTICIPATE IN BOARD PROCEEDINGS	<input checked="" type="checkbox"/>	
13. MEETS THE RETENTION STANDARDS PRESCRIBED IN CHAPTER 3, AR 10-501	<input checked="" type="checkbox"/>	

REMARKS
 Patient seems to have a lot of suppressed hostility and is quick to anger.

DATE	SIGNATURE (TYPED NAME, GRADE, & BRANCH)
20 SEP. 76	William V. Parsons, MD CPT., MC

DA Form 13822-R, 1 Aug 72

EDITION OF 1 NOV 71 IS OBSOLETE

ADDENDUM

(1) CR#

92-1888

RAPID CITY POLICE DEPARTMENT I

RAPID CITY, SD

(12) PAGE

OF

(13) CR# 72-1100028

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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Check No. (8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

On 09/08/92, at 1104 hours, I was contacted at the police department by Glen E. Wishard, DOB 11/23/62, 82 Hillcrest Drive, 342-9216. Glen is an employee of Dig 'Em Donuts East North Store. He told me that he had information about Charles Rhines that may possibly be helpful to our case. During this taped statement, he told me the following information.

Glen has been employed with Dig 'Em Donuts since the first week in February 1992. Generally he works the 10:00 p.m. to 6:00 a.m. shift. He reported that on the Sunday before the Donnivan Schaeffer murder (March 1, 1992) he was working at the Box Elder Dig 'Em Donuts store. He said that Donnivan Schaeffer had come to the store delivering supplies sometime around 10:00 p.m., and upon leaving, Donnivan asked Glen if he wanted the door locked. Glen indicated that he did and Donnivan locked the door when he left. A short time later, Charles Rhines and Sam Harter entered the Box Elder store by the use of a key. This startled Glen. They struck up a conversation with Glen, and Harter mentioned there was not anything to do in Rapid City on a Sunday night. Rhines and Harter then began to talk about the store owner Dennis Digges, and Glen sensed that they had hard feelings towards Dennis. Glen was thinking at the time that this was odd for Charles Rhines to be in the store after he had been fired from Dig 'Em Donuts.

The following Sunday, March 8, 1992, Glen was working at the East North Street store when he heard of Donnivan's death. He

(9) Officer(s) Reporting
* ALLENDER ID# 229

(10) Supervisor Approving ID#
Ch

(11) EXHIBIT
35
YOUNG APPENDIX 000320
PE 300 800-631-6969

ADDENDUM

(1) CR# 92-16628

2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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Block No. (8)

stated that Dennis Digges and Connie Royer came to the East North Street store and told him about Donnivan being murdered. Additionally, they asked him to bake more donuts, taking into consideration that the West Side store would be closed. Approximately 1 hour after Dennis and Connie left the store, Sam Harter entered the kitchen area from the back door, while Charles Rhines entered the customer area through the front door. Again, this startled Glen. Glen could tell at the time that Sam Harter was very nervous. In fact, he recalled that as Sam was walking into the kitchen area a song began to play on the radio which clearly startled Harter. He remembered that Charles was very cheerful, was grinning, and joking around. He believed that Charles was in a very good mood at this time. Glen believed it was approximately 2:30 a.m. but could not be sure. He said that Charles mentioned to him that he had been questioned by the police and added that it was probably only because he was a former employee of Dig 'Em Donuts. Charles then helped himself to a donut out of the display case and did not pay for this. Harter and Rhines stayed approximately 15 minutes, then left.

Later in the morning of 03/09/92, several other employees of Dig 'Em Donuts came to the East North Street store. One of the employees was Sam Harter. Glen stayed at work until approximately 7:00 a.m. and remembered hearing someone from the crowd saying that Charles had lied to the police during his interview. Glen did not remember if Sam said this directly to him or if someone told him that Sam had said this. Glen Wishard will be willing to testify if he is needed.

This case remains closed by arrest. 09/09/92.

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# <i>Ch</i>	(11) Date & Time Approved 9/1/92
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RAPID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 4 OF 4
 (13) CR# 72-100008

STATEMENT OF GLEN WISHARD
Interviewed by Detective Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 1
September 11, 1992

- SA: This will be a taped statement concerning case number 92-16628. Date and time is 9/8/92 at 1104 hours. This interview is being conducted in the office of Detective Steve Allender. Present with me at this time is Glen, G-L-E-N, Wishard, W-I-S-H-A-R-D. Date of birth, 11/23/62, 82 Hillcrest Drive, 342-9216. Glen is employed in the Dig 'Em Donuts Box Elder Store. K. Glen. How long have you worked for ah, Dennis Digges.
- A: Ah, Since ah, the first week in February.
- SA: 92?
- A: Yeah.
- SA: What hours did you work?
- A: Ah, 10 til 6.
- SA: What days of the week.
- A: Ah, varied. Ah, 5 days a week.
- SA: Ok. When you were, ah, working out there, did you, get to know Don Schaeffer?
- A: Ah, yeah. I should say when I worked out there, I went to work at 7, I, whenever I worked, I worked out there twice, and both times I went out there at 7. Uhm, when I work at the store which I usually do, I work 10 to 6.
- SA: Ok. So for a while in February you were coming there at 7 p.m.?
- A: Yeah, I worked there twice actually, and I, both times I went in at 7.
- SA: You worked there two separate time periods you mean?
- A: Yeah. I worked on 2 Sundays I worked there.
- SA: Ok. So did you get to know Donnivan?
- A: I met him twice. Both times was when I worked out there. When he'd come in and make deliveries.
- SA: What did you know about him. What was his job out there?
- A: He ah, delivered ah, flour, icing, uhm, shortening for the fryer.
- SA: Any special day of the week?
- A: They, both times were Sundays.
- SA: Ok. The, ah, came in here today to talk to me about some information you had, uhm, it concerns Charles Rhines. What was the nature of that information?
- A: Well, (inaudible), the Sunday, one week before ah, Donnivan was, was killed, ah, I was working out at the Box Elder store and ah, just after Donnivan had been there and made his delivery and left, ah, Charles Rhines showed up with his roommate Sam, can't remember his last name. He's an, also an employee. And ah, I don't remember the exact time because I didn't have a watch and there was no clock in the kitchen, but

STATEMENT OF GLEN WISHARD
Interviewed by Detective Steve Allender
Transcribed by Deanna Johnson
Defendant:

CR\92-16628
PAGE 2
September 11, 1992

I remember I was watching ah, the McGlofflin Group on PBS when they came in, and ah, Donnivan had, had locked the door, or told me he was going to lock the door when he left, and ah, they apparently let themselves in, and they walked into the kitchen. I couldn't see the front area from the kitchen and they walked right into the kitchen and kind of startled me. And ah, before I asked them, you know, what are you guys doing here, ah, Sam said ah, boy there sure isn't much to do in Rapid City on a Sunday night, and ah, I, I thought, I thought it was odd that they were there, and, one thing that occurred to me was that they might have come over to even to spy for Dennis to see what, what kind of job I was doing out there by myself. But ah, course Charles had been, had been fired by that time, but ah, they ah, hung around maybe for a half, 20 minutes, half an hour. And ah, I didn't really want them there because it, its a very, very small kitchen, cramped working space, and I don't really care to have people standing around talking while I'm working. I was busy and I was trying to get done, because as soon as I was done I could go home. I didn't have to stay the full 8 hours. As soon as I finished the job I could go home. And ah, while they were they ah, they brought up ah, the Dennis Digges the owner, and they ah, both of them made some remarks against him that were clearly kind of bitter and hostile. Mostly to the effect that he was incompetent, that he didn't, couldn't do a good job, and that he always needed somebody to help him, and they also said some things about another baker who ah, I worked with sometimes, his name is Bill. I don't remember his last name. And ah, I kind of talked with him for a little while and then I kind of got a little bit uncommunicative cause I wanted them to go. I wanted to finish up and get out of there so, uhm, after while they left. And then ah, the next time I saw either of them was one week later, on next Sunday night when I was working at the East North Street store, and ah, we had gotten phone calls and information from customers that something had happened at the other store. And ah, after midnight I was alone at this store, and about 2:00 a.m. Dennis Digges and ah, Connie Royer came in and told me that ah, Donnivan Schaeffer had been killed.

SA: And what time was that?

A: You know, it was about 2 o'clock I think.

SA: Do you remember the date, the day that, when he got murdered?
A: No, I, I don't. But it, I, it was, I remember that, the incident one week before it. And then that week, in between those two dates I've met, I've gone out on a date for the first time with the woman that I married. But I can't remember.

SA: Ok.

A: That, that date.

SA: And is it Connie that came out and told ya,

A: And they told me that ah, that ah, Donnivan, it was Donnivan

Schaeffer that had been killed. And ah, that the police were investigating and that the other store was going to be closed, so I should do some ex, an extra bake, do some, make some extra product to sell at this store, and they said that someone would be in to help me later, and that the police would be keeping an eye on the store so I shouldn't worry about anything. And then, not long after they left, it was probably not more than an hour, ahm, Charles and Sam showed up at the store and ah, they startled me again because Sam walked in the back door. I don't remember if it was locked, or that, I think I locked it, but ah, Sam of course had a key. But he came in the back door and just, and startled me, and then immediately after he came in Charles Rhines came in the front door where the customers usually come in. Of course the buzzer sounds when he comes in that door. Ahm, and ah, they were both exited. Sam, I, Sam was exited and also he was very nervous because ah, just before he came in I had a cassette player and I just put a cassette in it and pushed the play button, and just after he came in and walked towards me and the cassette player was behind him, the tape, the music on the tape started and he jumped very, he was very startled by it. And ah, Charles seemed to be in a really good mood. He was really cheerful, and ah, he, he said to me that ah, the police had, had questioned him apparently just because he used to work for 'em, and he didn't know why else. And ah, again, just like before, I was very busy, I had a lot of work to do. I had extra work to do. And I was by myself, and ah, I didn't really want 'em to hang around and talk again. Aaa-aa, and also I was annoyed because Charles helped himself to a donut out of the case, ah, without paying for it, and he wasn't an employee anymore. So I, kind of stayed in the kitchen, they ate, they went out and sat at the counter and ah, talked maybe for 15, 20 minutes, and I stayed in the kitchen and didn't go out to talk with them. And after while they ah, they left. And ah, I went home about 7 o'clock that next morning.

SA: How long did they stay this last visit?
A: 15 to 20 minutes I think.

SA: What did they talk about?
A: I couldn't hear what they were talk, I, at that time I didn't know that Sam knew anything about what was, I didn't know that he had gone into the store, the other store, otherwise I might have been more curious, but as it was I just really just wanted them to leave. I just was too busy to waste time.

SA: When you say Charles was in a cheery mood, what was he doing?
A: Well, he ah, he was wearing this black jacket and his hat, and he was just kind of, he, he was animated and he had a, had a, he was grinning, and when he said that to me about ah, about having been questioned by the police he sounded, he said it in kind of, you know, kind of a cheerful, you know; what the hell kind of voice.

SA: K.

Arnie,

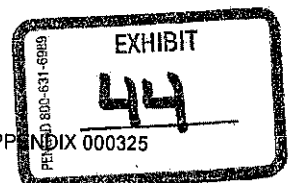
8-76-91

Quite some time ago I realized that in order to have the sexual partners that I wanted, I would have to **BE** **WHAT THEY WANTED**, not what I wanted them **TO BE**. There could be no compromise in that because it would be going against my inner nature ~ or theirs.

You ~ or I, can-not go against our true selves for very long and not suffer serious consequences.

I know that if I do not find release from - or for, this animal inside with reasonable regularity then he will take control and act out his reality.

My "perverse" sexual fantasies are his REALITY. That is the mode the animal would like to operate in ALL THE TIME He doesn't want to be penned up or kept in at all. But the rational part of the human being prevails because he does not really exist without me. The animal part of me can-not function with-out my permission. The flip side of this is that once I allow him out he can-not be tamed again until his desires have been satisfied.



2

The animal part of myself is locked away for now. That part of me can-not act out physically but it does have other effects on the rational part.

The animal - the basic primal animal, controls my sex drive; my energy states; my ability to function in a sexual mode.

When-ever I pen him in for extended periods of time he sort of retaliates by knocking my sex drive down to a near zero state.

I don't think you could handle just how rough that part of ~~my~~ me can be.

We will find out at your supper break - a half hour is plenty of time for at least a face-fuck. If not an ass fuck.

I do care about you Arnie and I don't want to hurt you - but...

The temptation is to rip your pants off, grease your hole and fuck. This won't be the tender gentle lover you want me to be, but it will be what I am.

I don't think that I have "made love" that is: sex with the emotions present: in many years - since about 1982 or 83.

3

I am no longer capable of functioning in that mode. Sex and Love have become two separate entities - very different from each other.

For some people sex can be an expression of - or a way to express their love. The sex act becomes a culmination of the love they feel.

For me sex is sex and love is love - they are usually at opposite ends of the spectrum. Black and white, Day and night. off and on. ZERO and ONE.

When I'm engaging in sex there are no feelings of gentle emotion - Love or even affection are absent. This is not something that I think I have to do because of the leather scene but the Leather exists because that is how I function and it is the only section of the community wherein that type of behaviour is condoned or at least tolerated.

In truth, were I to define myself, It would have to be as a Predator - a sexual Predator. and in truth - as a rational person I know that I should be locked up and never be allowed to roam free and wild.

④

This has not really been an answer to your letter to me of this afternoon but it may clarify some of the things I've said.

Listen to side 1 of Melrose and
THINK ABOUT ALL OF THIS!

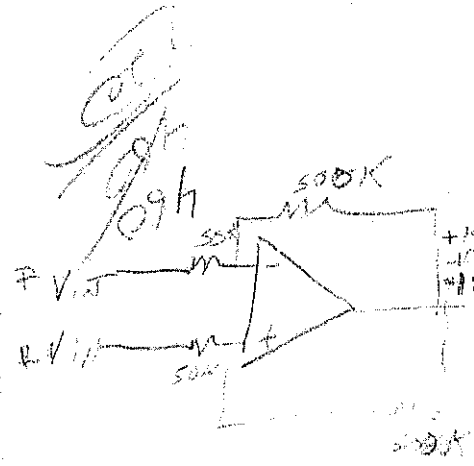
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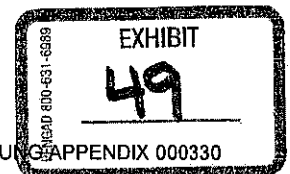


STATE'S
 EXHIBIT
 104 OK
 1-19-93

EXHIBIT
 48
 APPENDIX 000329

- 1) DUNKIN' DONUTS
- 2) WESTERN CO. DONUTS
- 3) VARIETY OF INDEPENDENTS.

-
- 1) Put up w/shit for 1 more month SAVE, SAVE, SAVE,
 - 2) Get title
 - 3) Get plates
 - 4) TAKE OUT ROWNNA / HOUSE / ...
 - 5) MIGRATE TO SETTLE.
 - 6)



YOU APPENDIX 000330

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CHARLES RUSSELL RHINES

Petitioner,

vs.

DOUGLAS WEBER, Warden, South
Dakota State Penitentiary,

Respondent.

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

CIV. 02-924

AFFIDAVIT OF
ARNOLD HERNANDEZ

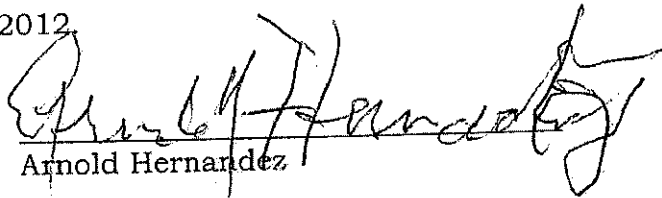
Affiant Arnold Hernandez, after first being sworn upon his oath, states as follows:

1. If called at trial, affiant would testify to the following facts.
2. Copies of, or excerpts from, the state's Exhibits 17, 18, 39, and 44 are attached hereto. Affiant's statements as recorded in Exhibits 17, 18, and 39 are true and accurate. Exhibit 44 is a true and accurate copy of a letter sent to affiant by Charles Russell Rhines. Also the testimony affiant provided under oath in the civil case, which is Exhibit 39 and excerpted hereto for the sake of brevity, is truly and accurately reported in the full transcript. Facts and events described herein are more fully described in the exhibits.
3. During 1991, Rhines lived in affiant's home and worked at Dig'Em Donuts. Affiant and Rhines were involved in a relationship. As described on Page 4 of Exhibit 17 and Pages 17-20 of Exhibit 39, Rhines was very domineering and abusive during the relationship. Rhines always liked to be center stage, to be the one in control. He was prone to outbursts of anger. Rhines would physically abuse, push, choke, assault, and threaten affiant, and tell affiant that "he had ways of shutting [affiant's] mouth." Rhines would tell affiant that "he had ways of dealing with me." Part of Rhines' violence was for sexual gratification. In a letter to affiant that is the state's Exhibit 44, Rhines described himself as "a sexual predator" with an animal nature just below the surface. This animal wanted to "face-fuck" and "ass fuck" and "grease [someone's] hole and fuck." Rhines wanted this animal in him to be out "all the time . . . he doesn't want to be penned up or kept in at all." Rhines' sexual partners were not even people to him.

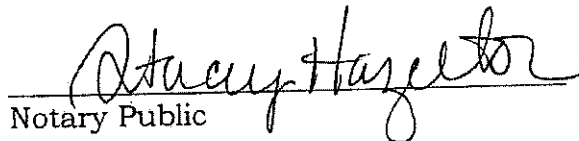
4. Before Donnivan Schaeffer's murder, Rhines discussed how he would kill someone if he had to. As described on Page 7 of Exhibit 17, one method he mentioned was to "just degut them . . . like when you're hunting . . . like an antelope or deer." Rhines stated he "learned that from the army."
5. Rhines talked openly and often about ways to murder and steal. Rhines liked to think of himself as clever; it was a thrill for him to try to "outsmart" someone and rip them off so he could laugh at them. He described stealing money from a donut chain he worked for in Seattle. Rhines had to leave Seattle when company management got wise to his thefts. In Rapid City, Rhines had stolen around \$400 from Dig'Em Donuts' from an envelope that got stuck in the store's night deposit slot. The state's Exhibit 49 is a copy of a 5-step plan Rhines wrote for moving back to Seattle. In Step 4 of the plan, just before Rhines planned to leave for Seattle, he intended to "take out," meaning kill, a friend of affiant's and rob her house and jewelry. Rhines did not carry out the plan after I discovered it. Rhines also talked of stealing money from Dig'Em Donuts and planting a bomb so that he could cover up the theft and kill the store owner, whom he hated.
6. Though already over in all but name, affiant's relationship with Rhines formally ended when Rhines entered into a relationship with a 17-year-old boy whose initials are SH. Rhines is very fixated on teenaged males. Affiant found this fixation distasteful. Affiant felt that Rhines was a dangerous person to be involved with a young male adjusting to his homosexual or bisexual orientation. Rhines was a sado-masochist who wore a lot of black leather. Rhines planned to "break [SH] in gradual" to his sado-masochist habit. Rhines stored bondage equipment in affiant's basement that he wanted to keep secret from SH so he could "break him in slowly." Rhines once tried to "break" affiant into bondage. During this effort, Rhines put a knife to affiant's throat and stroked affiant's torso with the knife in a manner affiant found threatening and uncomfortable. Rhines eventually stopped. After separating from Rhines, Rhines liked to flaunt his relationship with the teenaged SH, once telling affiant he "could cry and weep in my own shit" because Rhines did not need affiant any more. The reverse was just as true - affiant had no need for Rhines' violent, predatory sexuality.
7. Rhines is a violent individual who told me of being in a lot of fights. As described in Exhibits 18 and 39, Rhines vowed that he would not be taken alive by police. Rhines advised affiant to "just hit the floor" to keep out of the crossfire if armed police came to arrest him.

8. On the day of Schaeffer's funeral, Rhines spontaneously came to affiant's house (he had moved out by that time) carrying on about how he had not murdered Schaeffer. This display came totally out of the blue. Affiant had not seen Rhines since the murder and had not accused Rhines of murdering Schaeffer to anyone. Rhines said that, despite his violent history with affiant, that he was "not a murderer." Rhines is a murderer and a sick individual. Rhines put on this hypocritical show outside affiant's house because he was concerned that affiant might inform police that Rhines' association with Dig'Em Donuts in combination with his ultraviolent temperament, thieving impulses, and willingness to "take out" or "blow up" a person for money, made him an obvious suspect in Schaeffer's murder.
9. After he was apprehended for the murder, Rhines was indifferent and remorseless. He stated that the authorities were "going to have prove I did it" and he laughed it off. He said "Well, Donnivan was a nice kid. It's just that he got in the way. The timing was off." Rhines had no remorse whatsoever. He was just out to save himself.

Dated this 28th day of June 2012

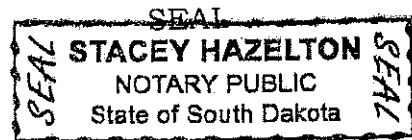

Arnold Hernandez

Subscribed to and sworn before me this 28th day of June 2012.


Notary Public

My Commission Expires:

**My Commission Expires
August 31, 2017**



Arnie,

8-76~91

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a sexual Predator. and in truth - as a
rational person I know that I should
be locked up and never be allowed to
roam free and wild.

④

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Listen to side 1 of Melrose and
THINK ABOUT ALL OF THIS!

August 2, 1993

Dear Arnie,

I received your letter and thought I would answer it though I do not understand why you should think I would want to hear from you. I suppose you think everyone is anxious to be friendly with people who have thoroughly fucked them over. Anyone in here who testified against someone would be called a snitch and would be fair game for whatever befell him. Doing it for reward money is so much the worse. So, did you get your thirty pieces of silver? When are you going to court to change your name? Judas fits you ever so much better than Arnold.

You know Judas, I was allowed access to ~~to~~ **ALL** of the statements that various people gave the police. Oh yes, every last stinking, stupid, far fetched, fantastic, outrageous and prevaricated statement that people could think up. You may take a small note of comfort from the fact that you were not the only one to tell the police a real whopper in hope of getting some of that reward money. Hell, you weren't even very good. There were mothers turning in their sons because they owned a knife. The people in Rapid City are a real serious two-faced punks.

I truly think the place should be renamed Vapid City - it sure fits better and is a hell of a lot more descriptive a name.

I know all about Sam. You are like the others when you say I taught him well. I only lived with him for two months and 10 days. We weren't exactly running a crime spree during that time you know. Sam told me about his stealing activities from his days at Mr. Donut and from his fathers' wallet when he was asleep. Sam has never been the angel everyone thinks he is. It didn't exactly take much to bring him out of the closet. You may have "heard" that he was forced into it. Yeah, sure thing. With Mommy & Daddy living just across town and come a visiting several times during that two months - would have been real easy to jump up and say "he's been forcing me to have sex". So why say it at the Grand Jury? (Oh yeah, I read all that too). Sam was good in bed - he **likes** having a cock slid up inside his ass. He smiled and his cock stayed hard the very first time. I reached down and stroked him off while I fucked him. Let's see now that must have been on the twenty sixth or twenty seventh of December of 1991. Just a few days after he moved into the motel with me. He moved into that motel room with me on the twenty second and we found the apartment on the thirtieth and moved in on the thirtieth and thirty first. We "celebrated" getting the apartment with a single beer and then we fucked in the middle of the living room floor.

You know boy, that futon sure got a lot of use during those seventy short days. Sammy got used to having sex and could last a lot longer than the first time. I remember that one well. I had him undressed and myself as well and crawled up and just ran the tip of my tongue down the length of his cock - slipped up over the head of that virgin cock and he blew his nuts. It could not have lasted 3 seconds. But the amount of sweet creamy cum that he unloaded that time was just unbelievable. I thought he was never going to stop shooting.

What made me aware of the fact that he could be butt-fucked and he'd like it was when he told me that playing with his ass cheeks got him hard. I found out about that time that putting pressure directly on his ass-hole would get him hard as well. We were sleeping one day in the motel and I reached down and put a finger against his rectum and pushed gently. I could see his cock getting hard as a rock. Playing with Sam's ass - however you do it, turns him on.

You know, I fucked him everywhere in that apartment that I could find where he could lay on his back. In my bedroom on the futon. In my bedroom on the floor. In his bedroom on the floor. In his bedroom on his waterbed. In the living room on the floor. In the living room on the futon. In the living room on the couch. (He thought we should initiate the couch the week we bought it. So we did. Sammy boy was fun to fuck. It was not like I had to work on him or wheedle him into it. There were many times when i went looking for him and equally as many time when I would be asleep and find him lying with his back to me - naked as a jaybird - playing with my cock, getting me hard and wanting that big cock up his ass. Sam LIKED GETTING FUCKED. It got to the point where I didn't have to jack him off while we fucked - he'd come without touching himself.

This was NOT a case of "experimentation". You do it once or twice to experiment, not once or twice a day for seventy days.

Experimentation usually doesn't include kissing, you know? Sam loved to kiss and I taught him how even better than he knew before.

One of the cops asked me "did you do it with him (Sam) more than three times"? Yeah, more than three times one day. Not to mention how many times the day before.

No, this was not "experimentation".

You evidently have the mistaken idea that my death is imminent. Oh yeah, I know the date of my execution is supposed to be on the twenty third of August but considering that my appeal won't be submitted to the SD Supreme Court until november fifteenth, I think you can safely assume that the execution won't be taking place any time soon. In fact, from the sound of things, you are more likely to die before I do. You have to realize that the average stay on death row is six to ten years. There are people who have been "on the row" for more than fifteen years. I spoke with a transfer from the Federal system who had been on death row in Virginia 16 years and won his case. It ain't gonna be anytime soon people. You can't get rid of me that easily.

I fully expect Sam to make it up here before I go out or get out. Wouldn't that be fun? To have Sammy up here with me. There are people who would make sure he was put in AC where I am if he ever gets up here.

Thats all,

11 10010 10010

(0010 1000 0100 0001 0100)

Have you ever stopped to think that people
the way you treat them?

Take me for instance? I knew when you offered "no strings attached"
that it was a bullshit ploy - desperation on your part cause you couldn't
get the ugliest, sloppiest man to come near you. That much was obvious.
But I took the chance you were sincere. Fat chance.

The only thing you have ever been sincere about is fucking people
over. You're fairly good at that.

What do you mean? What I say I know and heard. It's not what I
heard it is what I was **ALLOWED TO READ IN THE POLICE FILES.**

You see Arnold, there is a thing called "Discovery". This is a
motion one files in court to find out what the other side knows. The
police HAD to give up ALL the statements they had from everyone. I was
not guessing, I KNOW ALL THE LIES YOU TOLD, INCLUDING THE ONES YOU TOLD TO
PATRICK AND HE PASSED ON TO THE POLICE.

I did not ask you to tell the truth, I told you to do what you
thought you had to do.

You see Arnie. ... vs twisted what people say to you to fit
what you ... one.

one. Why don't you just say "through a

the spelling errors, the grammar errors
didn't have enough ink in my red pen. But
who really give a shit about a poorly

You are like ... - you think because the sentence was
handed down that it will be carried out. What the hell are you going to
do if I ring your bell one day?

You see Arnie, they made a slight mistake when the death sentence was
handed down - Dennis Groff withdrew his request for the habitual offender
sentence. Now when I get the sentence overturned and then the conviction
- they will have to let me go cause there won't be anything to hold me on.
Believe Arnold, this WILL COME TO PASS.

I am kind of curious what you mean by Sam not coming this way but
ending up dead? It sounds like I should write and tell the Rapid City
Police Dept. that you seem to have threatened Sams' life. Either that or
you have information about a felony and are not giving it to the police -
either one is a felony.

Rest in shit? Come on Arnie, the way you pig out I'll read your ...
long before mine comes out.

You are such a fool - yes. T K

wheels changed over to the left side instead of the front -
locks and
You should
go like a tank with all that traction weight.

I'd say fuck you, but I wouldn't fuck you with your own dick - not that you could get much out of that anyway. I don't have a microscope and tweezers.

Eat shit and die punk. Eat shit and go bark at the moon. Just shit and fall back in it. Eat pussy, you fuckin dyke. In RC you ought to get a case of crabs in your eyelashes. Go eat some snatch cheese. You're such a cunt, why don't you just have surgery?

FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF.

IN FACT YOU OUGHT TO DIE OF AIDS AND I HOPE YOU DO YOU SKANKY SLUT.

IN FACT YOU OUGHT TO DIE OF AIDS AND I HOPE YOU DO YOU SKANKY SLUT.

IN FACT YOU OUGHT TO DIE OF AIDS AND I HOPE YOU DO YOU SKANKY SLUT.

FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF, FUCK OFF.

IN FACT YOU OUGHT TO DIE OF AIDS AND I HOPE YOU DO YOU SKANKY SLUT.

It was well worth repeating. It :

It would fuckin well make my day to painfully.

I would say until next time but all letters from you henceforth go in the trash. FUCK OFF, FUCK OFF.

SUCK NIGGER DICK IN HELL YOU FUCKIN ASSHOLE.

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CHARLES RUSSELL RHINES

Petitioner,

vs.

DOUGLAS WEBER, Warden, South
Dakota State Penitentiary,

Respondent.

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IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

CIV. 02-924

AFFIDAVIT OF
HEATHER TARANGO

Affiant Heather Tarango, a.k.a. Heather Shepard, a.k.a Heather Harter, after first being sworn upon her oath, states as follows:

1. If called at trial, affiant would testify to the following facts.
2. The attached excerpts from the state's Exhibits 26, 31, and 38 accurately describe events affiant was involved in pertinent to this case and statements made in connection therewith. The attached excerpt from the state's Exhibit 15 is a true and correct transcript of a June 1992 telephone conversation between affiant, Matt Mighell, and Charles Russell Rhines that occurred before Rhines was arrested for the murder of Donnivan Schaeffer. This transcript was created by police to attempt to capture Rhines admitting to having killed Schaeffer as he previously had to me on more than one occasion.
3. On Page 3 of Exhibit 15, affiant mentions that Rhines had told me he had killed Schaeffer. On Pages 3, 4, and 6 of Exhibit 15, Mighell suggests that Rhines told me he had killed Schaeffer so that affiant would be afraid of him. On Page 12 of Exhibit 15, Rhines suggested that "if" he had admitted killing Schaeffer, it was to scare affiant off.
4. On Page 13 of Exhibit 15, Rhines told affiant that the police "don't care who they send to the electric chair" for Schaeffer's murder. Rhines seemed to know before he was arrested that he could face the death penalty for killing Schaeffer.
5. On Page 15 of Exhibit 15, Rhines dispensed crass sexual advice to me concerning my sexual relations with Sam Harter. Rhines' blunt language was crude and offensive. Again on Page 19 of Exhibit 15, Rhines described sex in crude and offensive terms. He described sex

as an act of violence, aggression, and hatred. He discusses one such violent sexual encounter knowing that affiant had heard sounds of the encounter from her neighboring room. Rhines stated of the encounter that it "G[o]t a little violent, didn't it?" Elsewhere on Page 19 of Exhibit 15, Rhines again inappropriately discussed details of his sexual attraction to Sam Harter with me.

6. On Page 19 of Exhibit 15, affiant confronted Rhines about telling me he would "not think twice" about killing me. As described in Exhibit 26, Rhines had provided affiant with a lot of detail of how he had murdered Schaeffer, even demonstrating on Sam Harter his method of killing Schaeffer. Afterward, Rhines said to affiant and Sam Harter "Tell anyone and you're dead." As accurately described in Exhibit 26, Rhines personally told affiant "Keep your mouth shut [about Schaeffer's murder] or else." At Page 19 of Exhibit 15, Rhines did not deny making prior threats to kill affiant. Rather, Rhines downplayed the threats as a strategy to break up my relationship with Sam Harter. This was not Rhines' real reason for threatening to kill affiant. Rhines wanted to kill affiant because he regretted having confessed to affiant that he had killed Schaeffer and wanted affiant dead because affiant knew too much. The facts surrounding the threats caused affiant to believe the threats were very real
7. One occasion where affiant felt very much in danger occurred in a remote area where Rhines and Mighell burned the insulation off of stolen copper wire so they could sell the raw wire to salvage yards. Affiant was at the burn area with Sam Harter. Rhines and Mighell were both armed, affiant believes for the purpose of killing me out at the burn area. As described on Page 4 of Exhibit 31, Rhines' and Mighell's behavior and demeanor that evening placed me in fear for my life. Affiant later learned, as confirmed on Page 55 of Exhibit 38, excerpt attached, that Rhines had sought Sam Harter's permission to kill me that night at the burn area but Sam told Rhines there was no way he would allow that. Another occasion occurred when Sam Harter sought police protection outside our motel room in Seattle. As described on Page 60 of Exhibit 38, while Sam Harter was outside with the police telling them they needed to retrieve me from the room or Rhines would kill affiant, Rhines told affiant to hide in the shower.

When the police came to retrieve affiant at Sam Harter's insistence, Rhines told the police affiant was not there. Police entered the room and located affiant and removed affiant from Rhines' and Mighell's control.

Dated this 28 day of June 2012.

Heather Tarango
Heather Tarango

Subscribed to and sworn before me this 28 day of June 2012.

[Signature]
Notary Public

My Commission Expires: 12-21-13

SEAL

[Signature]

B

TELEPHONE CONVERSATION BETWEEN
HEATHER SHEPHERD, MATT MIGHELL &
CHARLIE RHINES
Transcribed by Deanna Johnson

CR\ 92-16628
PAGE 1

8.
June 15, 1992

HS: Hello?
MM: Yes.

HS: Hi! What happened?
MM: You tell me.

HS: I don't know.
MM: Ah, I got something on the line saying if I'd like to make a,
you know, try, please try your call again.

HS: Really?
MM: Yeah.

HS: I have no idea. I was talking to Tara on the other line.
MM: Sure

HS: I was. Me and her are planning on going to the lake.
MM: Mhmm.

HS: Tomorrow. So.
MM: Yep. You dirty rotten people.

HS: Yeah. Being dirty and rotten.
MM: I thought you were going to clean up your act?

HS: I am.
MM: Ta, right.

HS: What do you mean?
MM: I'm still a little upset about your decision. I don't agree
with it. And it doesn't hold much water, but I think
(inaudible). Long as you don't go off and get married.
Ooooo, got to get married now.

HS: No, I'm not going to go off and get married.
MM: Ok. (inaudible) And I can believe you this time, right?

HS: Yes. You can believe me this time.
MM: Ohh, ok. So, anyway, what's up?

HS: Nothing. My mom, she's, oh, she's buggin' me.
MM: Did you tell her?

HS: Huh? Yeah. She, she's like buggin' me to talk to the cops.
MM: About what?

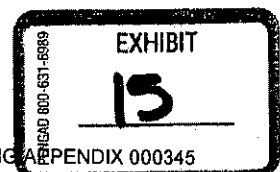
HS: I have no idea. Well, you know what it is, I think she know,
thinks I know something about what the cops are after Charlie
for.

MM: Well, really they're just grasping at straws Heather.

HS: Are they?

MM: Yes, because I know a few things and it's not what they think.

HS: Really?



YOUNG APPENDIX 000345

Transcribed by Deanna Johnson

June 15, 1992

it didn't work. When you drive down the street, my eyes are stuck to some girls butt and Sam isn't paying attention, that's kind of a giveaway. When his eyes are at the two guys on the side of the street with their shirts off, that's a dead giveaway

HS: Yeah.

MM: But you didn't pick up on this shit.

HS: But can I get in trouble for knowing stuff?

MM: You don't know anything!

HS: So that's what I'm supposed to talk _____

MM: How can, how can you get in trouble for not knowing shit.

HS: Well Charles, Charles told me that he did kill Donnivan, I know

MM: No he didn't.

HS: Yes he did. I know he told you. That's why I'm so worried. It's just all so weird, and I'm wait

MM: Heather, I can, Heather

HS: Listen, listen. I'm worried that we're both going to get in trouble for this.

MM: Ok, Heather. I can almost guarantee that he never said he killed Donnivan. Because I can guarantee right now he didn't do it.

HS: Why would he tell me that if he didn't!

MM: Maybe to scare ya. to see if you'd leave, and leave Sam here?

HS: I guess

MM: You know, Sam, Sam insinuated there was still a relationship between the two of them. And there was really nothing said about your relationship until you got off that bus here.

HS: You know, Charlie told me he did it, but I still don't understand why. I mean, maybe he did do it, tell me that.

MM: He didn't. That's the stupidest part about it. Ok. You got to remember also that there are s, he still has a lot of feelings for Sam.

HS: Yeah.

MM: He's not going to give away Sam's little lie. So he's going to back up Sam's little lie so you wouldn't find out until it got so far that he finally just calls it all on the carpet.

HS: Yeah. I guess what I'm really worried about is you. You know.

MM: Well, thank you. But

HS: Cause, cause you know, what if he did do this?

MM: He didn't.

TELEPHONE CONVERSATION BETWEEN
HEATHER SHEPHERD, MATT MIGHELL &
CHARLIE RHINES

CR\
PAGE 4

Transcribed by Deanna Johnson

June 15, 1992

- HS: How can you be so sure?
MM: Because I know he was up here th, I know what I've heard, and I know Charlie. And I also know. I talked to the police ok?
- HS: Mhmm (positive)
MM: Even, ah, Dennis doesn't think he did it. The only reason the police think he did it is because he's an ex-con. And because he moved up here to Seattle. You know, the only reason he moved, he got fired!
- HS: Yeah.
MM: I am the only family he's got! So, that's basically moving back home, isn't it?
- HS: Yeah.
MM: Well, they have no witnesses, no suspects, no nothing. So automatically
- HS: Well, hey listen. They know Charlie was here because he even went to the funeral when it happened.
MM: I know, I know that! What I'm saying in all of this is they're trying to hang it on somebody.
- HS: Yeah. I just wish you were here so you could help me understand all this. I'm serious. They've got me so scared.
MM: Do you want out?
- HS: I don't know. You know, maybe, maybe if I understood what happened between Charlie and Donnivan and Sam then I wouldn't be so confused or scared.
MM: Ok. I, I've tried to explain this to you, ok. Sam lied to you. This is very basic, ok. You should understand this real easily. Sam lied to you. Asked Charlie not to give away the lie. Charlie kind of pushed the lie, hoping it would scare you away so Sam would come back to him. So
- HS: _____
MM: The bottom line in all of it is the whole thing was a lie, initiated by Sam, right?
- HS: That's what it, that's what it appears only
MM: Ok. Heather, look at it this direction, ok? If Charlie did it, wouldn't he be in jail, and would he be saying that he did it?
- HS: I don't know. I, I'm just, I'm so confused, I mean, you know. They've been asking me lots of questions and
MM: Like what?
- HS: Just that, they wanted to know where Charlie was and I told them I didn't know at this point, you know.
MM: _____
- HS: And I told him, he asked me where, if Charlie was working, and I said I don't know. I said, you know, and they asked me,

TELEPHONE CONVERSATION BETWEEN
HEATHER SHEPHERD, MATT MIGHELL &
CHARLIE RHINES
Transcribed by Deanna Johnson

CR\
PAGE 6

June 15, 1992

HS: Yeah.
MM: But I've asked him. No, he didn't do it. And I believe him. I've known him too long.

HS: Yeah.
MM: He can't lie to me. And he knows that he. He wouldn't place me in the danger of losing my kids for anything, for any reason at all. So, that right there proves to me beyond any doubt that he didn't do it.

HS: Yeah, but what if he's just using that for a cover?
MM: He wouldn't do that to me. When you get a little older you'll understand. That's why, I don't have friends per say. If I haven't known somebody about three to five years, I don't call them a friend.

HS: Yeah
MM: Ok. I've known this man for years. We've been through a lot together.

HS: Yeah.
MM: He had originally called me like a month before this happened telling me he was getting fired and wanted to know how the job market was, and this and that and the other thing, and I asked him to come back.

HS: Yeah.
MM: And that's when he planned to come back. It was all pre-planned.

HS: Yeah.
MM: This wasn't like something happened and he just ran. I knew when he was supposed to be here and he showed up the day he said he would.

HS: Well, you might know Charlie better than me, but I still know what he told me.
MM: I think you're getting it mistaken. I think somebody spoke to you enough to make you believe what they wanted you to think was said. You gotta remember also, I was in the room a lot too.

HS: Yeah, but you remember when Charlie and I sent you and Sam up to go get that, them wine coolers and stuff and you guys brought back that champagne?
MM: Down at the apartment when, yeah, that night we had all the champagne. Yes.

HS: Yeah. Well, he talked to me then too.
MM: But Heather, honestly, I can't believe for one minute he'd look you in the face and tell you, other than, unless he was trying to scare you away like I said. At first he wanted you gone because you threatened the relationship between him and Sam. And as a tactic to get you to leave in fear or whatever, I could understand. But that would be the only reason he'd do

June 15, 1992

HS: You know, right now I hate Sam
CR: I, I would have told you that the entire Seattle police force was out to get you to get you out of that house and send you back to Rapid City. It was like, good grief,

HS: Yeah.
CR: I, you know. You're not the problem. Sam is the problem. And as I said last Wednesday or so, it'll be six months, a year from now and all that shit will come boiling out of his system and he'll be looking around for guys. And it will happen. You don't spend three months being someone's lover a homosex, the lover of a homosexual just to get out of home. He had other options. He could, he could have moved in with the Shannon brothers.

HS: Yeah. You know, I
CR: He chose me.

HS: You know, I remember what you told me in the bedroom. That's why I'm so confused, because they've been hounding me down here and I just, right now I feel I want out, but I need to get things straightened in my mind.
CR: Hmmm. Wh, what did I tell you?

HS: Remember, remember how you told me that you had done that to Donnivan. Was that just to scare me?
CR: I had done what?

HS: That you had killed Donnivan.
CR: I said that!

HS: Yes you did. That night we were drinking.
CR: No way.

HS: Yeah, you told me that, when we were in the bedroom.
CR: You gotta be joking.

HS: No, I'm serious. You told me that.
CR: No way.

HS: Yeah. I won't tell the cops cause I don't want you or Matt to get in, into trouble.
CR: If I said something like that Heather, it had to be to get you out of the house. To scare you off.

HS: Well, you know, I (inaudible)
CR: Did you see how I was that week?

HS: Yeah.
CR: Did you see me drinking?

HS: Yeah.
CR: As, next time you see Sam, ask him how much I drank in the three months we lived together. December 21st he saw me drink

June 15, 1992

one beer, and that's the last alcohol he saw me drinking until he got out here.

HS: Yeah.

CR: One beer.

HS: Well, he

CR: We had just rented the apartment.

HS: Well see, that's why I'm so confused, you know what you told me and then the cops hounding me. I don't want to talk to them and I don't want to deal with them. But I am living at home with my parents and if my parents make me go in there then I have to.

CR: You

HS: And I keep telling them I don't know nothing. Yesterday, I was in there for about two hours, and I kept telling them I don't know anything.

CR: Well, the next time you go in you say look, you think I know something I don't know. Ah, if you think that I am withholding information then press charges, and they'll leave you alone. Cause they can't.

HS: Yeah.

CR: If they had anything on anyone ever anywhere, they would have arrested somebody by now.

HS: Yeah.

CR: They are hounding you and they're probably hounding Sam.

HS: Well, I, I talked to Sam a couple of times and that's it.

CR: Yeah

HS: You know, I hate

CR: But they're probably hounding both of you.

HS: Yeah

CR: And if, and if I was living there they'd be hounding me. No, they would probably lynch me from what everybody said. They would have taken me out and strung me up without a trial. You know. What was it out in ah, Wall, they shot some guy. Tried to hang it on him?

HS: Yeah.

CR: You know, they just want somebody for this. They don't care who they get.

HS: Yeah.

CR: They want, they want to close this case. They want to wrap it up and they want to be heroes. They don't care who they send to the electric chair for it.

HS: Yeah. You know, right now I hate Sam for dragging me into this cause it's caused me nothing but confusion and pain.

HS: What all happened the second night?
CR: I played with him a little bit. Kissed him a few times. He didn't exactly fight me off. I told you how to give him an erection. I know how. Play with his butt. Push on his asshole. Put a little pressure on his asshole. Get him hard in a hear, on a heartbeat.

HS: Well I know he said that and I, I know
CR: Hey, put it this way. How do I know where his ticklish point is.

HS: Well, I know what you said that night and I know what I heard. If you don't trust me, then maybe we shouldn't talk to each other.
CR: Say again?

HS: Well that night. I'm still _____, I am getting so confused.
CR: What night.

HS: That night we were drinking. That night everything (inaudible).
CR: Ah, actually I think that night you were drinking.

HS: Yeah, you were drinking.
CR: I don't drink wine.

HS: You know, you were drinking beer cause Matt had some beer too.
CR: Yeah, I had a couple of beers. And ah, I recall you drinking about two bottles of that stuff that night.

HS: Yeah, I really don't remember everything.
CR: You seem to remember enough. Pretty selective memory I guess. Matt just says why do you think the bed situation was what it was the first night. (talking in background). You know. Sam didn't say anything about breaking off our relationship. Not a word. Oh, maybe a hint here and there, something like, Oh, I've changed. I says why sure, we've been apart for three months, sure you've changed a little bit, everybody changes. I didn't know he was gonna bring a girlfriend along and reject me. He was gonna move into my household and reject me. How was I, how was I suppose to feel? Huh? I was so deeply in love with him I would, I'd turn myself inside out for him.

HS: Yeah.
CR: Yeah. But, I wouldn't let him destroy me. Someone else finally had to open my eyes to what was going on. And as soon as that happened, what happened? Who, who called the police?

HS: I don't know.
CR: I'm sure I called the police and reported that I had two minors living in a hotel room with me, right? And, and Matt's on active parole, I'm sure he called it in.

HS: Yeah
CR: Those police cars were waiting. As soon as Matt raised his

June 15, 1992

HS: Yeah.

CR: Yeah, and I said this one looks like, oh, let's see- we fired- let's see we- let's see, we got an ex-con here with uh, two faults to his record uh, one of 'em violent an armed robbery, let's see, uh, he just got fired the 20th of February, uh, he left town just a few days after this happened, well, golly gee. Cause it really- I left because I didn't have any money, uh, Sam didn't exactly uh, offer to help with the rent until my unemployment started.

HS: Yeah.

CR: Yeah. Yeah.

HS: You know that first time when you know, you go, uh, said that you would kill me and not think twice about it- was that because of Sam?

CR: Of course! Heather! I couldn't even have been in my right mind that entire week. You saw- did you hear when I went out that Tuesday night and found somebody?

HS: Yeah.

CR: Get a little violent did it?

HS: It was kinda hard- I'm telling you it was kinda hard not to hear ya.

CR: Get a little violent did it?

HS: Yes. Very violent.

CR: Well, I'm going and I found somebody that I knew. And I knew that liked it rough. Ok? Cause I had alot of aggression to get out of my system. Alot of hatred.

HS: Yeah.

CR: I'm over it now, I'm- I'm past it.

HS: That's good.

CR: Yeah, that's what I- well, um, just like the bus, you know, you miss this one, another one will come along in a minute, but hell, lovers don't come along in a minute.

HS: Yeah.

CR: I've been in love 4 times in my life Heather. Sam was number 4. And I just- I'm not sure I'll ever get involved with anyone ever again. It hurts too much to lose.

HS: Yeah.

CR: Yeah. Now, I spent 3 months living with Sam and a relationship- we did about everything under the sun. We went to basketball games together, we traveled together, went to rodeos and stuff, we went shopping together, and passed the time of day and talking and- and yeah, there was sex. It was good sex, we both enjoyed it. Um, I- I thought he enjoyed it. You know, he seemed to have- seemed to have erections and uh, orgasms just fine. You know, uh, I know I sure enjoyed it.

APPENDIX

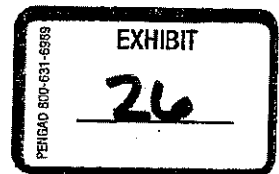
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KING COUNTY POLICE DEPARTMENT
KING COUNTY, WA
1000 4th Avenue
Seattle, WA 98101
206-461-1000

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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No. (8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

The attached 13 pages are copies of a search warrant, affidavit for search warrant, and return of search warrant generated by Detective Steve Allender while in King County, Washington.



(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID#	(11) Date & Time Approved
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Affidavit for Search Warrant (continued)

jeans, which had become blood stained. He said he threw them out in a farmer's yard, somewhere between Rapid City and Rapid City Regional Airport, approximately eight miles east of town. A subsequent search revealed a Botary 500 shirt, similar to shirts of the same brand worn by RHINES. Additionally, the owner of a farm in that area reported to me that he had found a blue winter jacket around the first part of March 1992. He kept the jacket for two months and eventually disposed of it. The blue jacket was found on the same property as the Botary 500 shirt. The landowner, MARTY RYPKEMA was later shown a photograph of a blue jacket owned by CHARLES RHINES. This photograph was provided by ARNOLD HERNANDEZ. MR. RYPKEMA stated that the jacket he had found appeared to be the same one as the jacket in the photograph. RHINES stated he was somewhat worried about his fingerprints being found on the checks which were recovered on the St. Patrick Street bypass. He did say however, that the rain and snow should have taken care of the prints.

RHINES said that he had stolen \$1,800 on the night of the murder and that DONNIVAN had walked into the Doughnut store and scared him. He stated he had to kill him for protection. He also stated that he was so scared, he did not remember tying DONNIVAN's hands.

RHINES stated "Tell me how somebody could live through this?" while demonstrating on SAM HARTER, the technique and location of the stab wounds. He pretended to stab SAM HARTER in the stomach, upper back and the back of the neck. Again, I believe only the killer would have this information.

RHINES told SAM HARTER "Tell anyone and you're dead". RHINES then told HEATHER SHEPARD, "Keep your mouth shut or else".

RHINES told SAM HARTER that after committing the murder, he had initially planned

(Continued on next page)

Affidavit for Search Warrant,
Page ____ of ____

White Copy: Court File
Canary Copy: Police File
Pink Copy: Judge's Copy

ADDENDUM

APID CITY POLICE DEPARTMENT

RAPID CITY, SD

(12) PAGE

OF

(13) CR#

7-1-1992

(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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(7) Block No.

(8) VICTIM: Donnivan Schaeffer

CLASSIFICATION: Murder

On 06/03/92, at approximately 2330 hours, I was notified at home by Officer Speer that Sam Harter and his girlfriend, Heather Shepherd were picked up in Seattle, Washington, by Seattle police. Officer Speer advised me that after contacting parents, runaway reports would be made and the two juveniles would be put on a bus for Rapid City at approximately 0130 hours, on 06/04/92.

On 06/04/92, at 0940 hours, I called William Harter at home. We made an appointment to meet at the police department at 10:30 this same morning.

On 06/04/92, at 1030 hours, I met with William Harter at the police department. He told me that he had spoken with Sam briefly over the telephone while they were at the Seattle Police Department. He also informed me that Matt Mighell had called Heather's grandmother, Lillian Harrington, and had told her that Sam and Heather were staying with him, and that he did not want her to think he was taking in runaways. He left a phone number of (206)363-0242.

On 06/04/92, at 1430 hours, I called U. S. West Security Division and learned that telephone number (206)363-0242 is listed to James L. Mighell, 18736 50th Avenue North East, Seattle, Washington.

I called the last known phone number for Charles Rhines in

(9) Officer(s) Reporting
 * ALLENDER ID# 229

(10) Supervisor Approving
 ID#

(11) Date & Time
 7/1/92

EXHIBIT
31

RECORDED 800-631-6888
 YOUNG APPEN DTX 000355

APPENDIX

RAPID CITY POLICE DEPARTMENT
 RAPID CITY, SD
 (12) PAGE 4 OF 1
 (13) CR# 92-11628

2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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No. (8) That during the initial part of her stay with Charles Rhines and Matt Mighell, Charles asked her "Do you know about Donnivan?" then went on to tell her details of how he had committed this murder. He told her that he had only planned to rob Dig 'Em Donuts and was either in the till or the safe when Donnivan walked in. Charles was then very scared and stabbed Donnivan. Charles stated he was so scared he did not remember tying Donnivan up. He also told her that he threw the knife away, but she could not remember where he said. Also during their stay, Sam had told Heather that Charles had just confessed to him to killing someone. Heather believed that one of the names of the motels they stayed in was similar to the Georgianna Hotel. On one occasion, Heather went with Charles, Matt, and Sam to a location somewhere in the forest to burn the insulation off of copper wire which had been stolen. She felt from the way Charles and Matt were acting, and from the fact that they had brought a firearm with them, that she would be killed and that possibly Sam would be killed also. She believed this was going to happen due to the statements that Charles had made about the murder. She said that Charles later said to her that he may have killed one person but he would not kill her, due to the fact that Sam cared about her and he cared about Sam. (See taped statement for further details.)

On 06/08/92, Detective Bruce Evans and myself used four-wheel all-terrain vehicles to search the road ditches on Highway 44 between Rapid City and Rapid City Regional Airport. At approximately 1120 hours, I located a "Botany 500" button-down shirt. This shirt had obviously been there for quite some time. This shirt was taken into Evidence. (See Officer Larry Rose's

(9) Officer(s) Reporting * ALLENDER 229	(10) Supervisor Approving 	(11) Date & Time Approved 7/1/92
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(2) Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred	(5) Time Occurred	(6) RD Occurred
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On 06/10/92, at 1226 hours, I met with Arnold Hernandez at the police department. He viewed the Botany 500 shirt recovered from Highway 44 east. He remarked that Botany 500 is Charles Rhines favorite brand of shirt, however, could not be sure if this particular shirt belonged to him. He also left me various photo negatives along with one photograph at this time. He believed that one of the photo negatives may be of the blue coat owned by Charles Rhines. (See Detective Evans' report regarding possible identification of blue jacket by Marty Rypkema.)

On 06/10/92, at 1500 hours, Sergeant Don Bahr and myself met with Heather Jo Shepard at the police station. She reported being telephoned by Matt Mighell on a fairly regular basis and that the calls usually came from 1730 to 2100 hours. When asked, she said that Charles told her that he buried the clothes he was wearing on the night of the Dig 'Em Donut murder somewhere in the forest between Rapid City and Seattle. The location where the clothes had been buried was something Heather Shepard was not completely sure about. At this time Heather gave Sergeant Bahr and myself one of the cassette tapes she had made of a telephone conversation between her and Matt Mighell.

On 06/10/92, at 1550 hours, Sergeant Bahr and myself spoke to Sam Harter at the police department. Sam told Sergeant Bahr and myself that there was one more thing he had remembered about a conversation between he and Charles Rhines. He said that while they were staying in the motel in Seattle, Rhines asked Sam "What would you have done if I'd have killed Heather?" He also informed us that he now thought Matt Mighell may have been at the scene of

(9) Officer(s) Reporting * ALLENDER ID# 229	(10) Supervisor Approving ID# [Signature]	(11) Date & Time Approved 7/1/92
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In The Matter Of:

Schaeffer v.

Digges

Sam Harter

Vol. 1, January 14, 1994

*Thompson & Thompson
Registered Professional Reporters*

832 St. Joseph Street

Eilers Building, Third Floor

Rapid City, SD 57701

(800) 456-0831 FAX: (605) 343-6842

Original File digges3.v1, 97 Pages

Word Index included with this Min-U-Script®



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[1] A: 18.
[2] Q: Are you married?
[3] A: Yes, I am.
[4] Q: Who is your wife?
[5] A: Heather Jo Harter.
[6] Q: What was Heather's maiden name?
[7] A: Shepard.
[8] Q: Do you have any children?
[9] A: Yes, I do. I have a little daughter.
[10] Q: How old is your daughter?
[11] A: Five months old.
[12] Q: What is her name?
[13] A: Faith Nichole Harter.
[14] Q: What is your address?
[15] A: 1342 Kansas City Street, Apartment Number
[16] 3.
[17] Q: Is that a place you are renting?
[18] A: Yes, it is.
[19] Q: What's your telephone number?
[20] A: 605/348-5209.
[21] Q: What is your Social Security number?
[22] A: 504-78-2302.
[23] Q: Do you have a job today?
[24] A: Yes, I do.
[25] Q: Who is your employer?

[1] (Deposition of SAM HARTER, taken before
[2] me, Judith M. Thompson, a Registered Professional
[3] Reporter and a Notary Public in and for the County
[4] of Pennington, State of South Dakota, at 9:00 a.m.,
[5] on the 14th day of January, 1994, pursuant to
[6] Notice and/or Stipulation, at the Law Firm of
[7] Quinn, Eiesland, Day & Barker, Creekside Plaza,
[8] 2620 Jackson Boulevard, Suite E, in the City of
[9] Rapid City, County of Pennington, State of South
[10] Dakota, counsel appearing on behalf of the
[11] respective parties as hereinbefore indicated.)
[12] MR. WILSON: Same stipulation, counsel?
[13] MR. ASHMORE: Yes.
[14] SAM HARTER,
[15] a witness being first duly sworn, was examined and
[16] testified on his oath as follows:
[17] EXAMINATION
[18] BY MR. WILSON:
[19] Q: State your name, please?
[20] A: Sam Harter.
[21] Q: Sam, what's your middle name?
[22] A: Kenneth.
[23] Q: What's your birth date?
[24] A: 06-07-75.
[25] Q: How old are you today?

[1] A: Excavating Specialists.
[2] Q: Is that a Rapid City company?
[3] A: Yes, it is.
[4] Q: What's the name of your boss?
[5] A: Terry Arsen.
[6] Q: Is he the owner of the business?
[7] A: Yes, he is.
[8] Q: How long have you worked for that company?
[9] A: About nine months now.
[10] Q: Is there a period of time where you were
[11] laid off by that company?
[12] A: Yes, about a week and a half, two weeks.
[13] Q: Now, you have been hired back?
[14] A: Right.
[15] Q: Sam, I am going to ask you some questions
[16] today and I want you to, as I suggested to you just
[17] a moment ago, I want you to try to avoid telling me
[18] your answer until my question is done.
[19] A: All right.
[20] Q: If you can have a little pause, that will
[21] make it easier for Judy to get it all in her
[22] machine, all right?
[23] A: All right.
[24] Q: It's a common thing that people do, so I
[25] just remind you because it's sort of unnatural to

[1] Q: Was it just the one threat?
 [2] A: One threat, but he reminded me many
 [3] times. He told me to remember, especially every
 [4] time I had to go talk to the cops, he said,
 [5] remember.
 [6] Q: Did you get threatened when you were in
 [7] Seattle?
 [8] A: Yes, we did.
 [9] Q: "We" is you and Heather?
 [10] A: Yes.
 [11] Q: Who did the threatening?
 [12] A: Charles and Matt both.
 [13] Q: Matt was Charles' roommate then?
 [14] A: Right.
 [15] Q: What kind of threats did you get in
 [16] Seattle?
 [17] A: In Seattle we had quite a few threats.
 [18] One time he was going to kill my wife.
 [19] Q: Who is "he"?
 [20] A: Charles Rhines and Matt both. We went out
 [21] to burn some wire out in the boonies, and he was
 [22] going to kill Heather. I told him, "No way." I
 [23] wasn't going to allow that.
 [24] Q: Why was he going to kill Heather? Why did
 [25] he tell you he was going to kill Heather?

[1] A: No.
 [2] Q: Did you have contact with him after he
 [3] moved away from the area?
 [4] A: He called me on the phone at work a couple
 [5] times and he wouldn't tell me where he was because
 [6] he knew I was leaking some information out to the
 [7] cops. I wanted to tell the cops, but I didn't know
 [8] how much I could get. I had mixed emotions. I
 [9] wanted to tell the cops, but yet I was still scared
 [10] of my own life, so I was letting some of the
 [11] information known, but not all.
 [12] Q: Did you get invited to go to Seattle or
 [13] did you just show up?
 [14] A: I got invited.
 [15] Q: By?
 [16] A: Charles and Matt both.
 [17] Q: Did they tell you why they wanted you to
 [18] come there?
 [19] A: No, they didn't. They didn't really say.
 [20] They sent me money to go up there.
 [21] Q: How did you get there?
 [22] A: By bus.
 [23] Q: Once you got there — well did you buy a
 [24] round trip bus ticket?
 [25] A: Yes.

[1] A: She knew too much. He didn't like Heather.
 [2] because I brought her up because the reason why I
 [3] brought her up is because I told him I wanted him
 [4] to know for sure that there was no relationship
 [5] between me and him, that I was with Heather.
 [6] Q: Were you married when you went to Seattle?
 [7] A: No, I wasn't.
 [8] Q: Got married later?
 [9] A: Yes.
 [10] Q: Was Heather pregnant when you were in
 [11] Seattle?
 [12] A: No, not that — I think she got pregnant
 [13] when we were up there.
 [14] Q: You are not for sure?
 [15] A: I am not positive.
 [16] Q: What is the birthday of the baby?
 [17] A: It wouldn't be this one; she had two
 [18] miscarriages before this. This was — she was only
 [19] five months old.
 [20] Q: Was it Charles who reminded you that you
 [21] shouldn't tell the police what happened?
 [22] A: Yes.
 [23] Q: Do you know how many times this happened?
 [24] A: How many times?
 [25] Q: Before he moved away from the area?

[1] Q: What happened to your return ticket?
 [2] A: He threw those away.
 [3] Q: Who is "he"?
 [4] A: Charles and Matt. I don't know which one
 [5] actually threw it away. They were both out there
 [6] when I already asked for them back.
 [7] Q: You asked for your bus tickets?
 [8] A: Yes.
 [9] Q: Who did you ask?
 [10] A: Charles.
 [11] Q: What did Charles tell you?
 [12] A: He said, "Well, you are going to have to
 [13] find your own way home now" because they don't want
 [14] me to go back.
 [15] Q: Did you have any money?
 [16] A: No.
 [17] Q: Did Heather have any money?
 [18] A: No.
 [19] Q: Did you ever — were you permitted to call
 [20] anyone like your parents when you were in Seattle?
 [21] A: I never did.
 [22] Q: Were you prohibited from calling your
 [23] parents or did you just not call them?
 [24] A: I don't think I ever asked. Heather asked
 [25] but she was denied.

[1] Q: Who denied her?
 [2] A: Matt did.
 [3] Q: Who did she say she wanted to call?
 [4] A: Her grandma, Lila Harrington.
 [5] Q: Did you continue to get threats in
 [6] Seattle?
 [7] A: Yes, but it wasn't because of the murder
 [8] case. All the threats wasn't because of the
 [9] murder.
 [10] Q: Some of the threats were for other
 [11] reasons?
 [12] A: Yes.
 [13] Q: Like what?
 [14] A: I found out they were bringing drugs into
 [15] jail and I found out they were — well, the
 [16] robberies up there.
 [17] Q: You went along with some of those
 [18] robberies?
 [19] A: Every one, I think.
 [20] Q: I think on July 24, 1992, you gave a
 [21] statement to the police and I believe I don't have
 [22] a copy of that statement with me, but in that
 [23] statement I believe you for the first time really,
 [24] told the police a lot of information about what
 [25] happened that night?

[1] right now," so the cops turned around and went back
 [2] and they denied her being in there, but the cops
 [3] went in anyway, found her in the shower, hiding.
 [4] Q: Why was she in the shower hiding?
 [5] A: That's where Matt and Charles told her to
 [6] hide.
 [7] Q: And then you went into police custody in
 [8] Seattle?
 [9] A: Yes.
 [10] Q: Did you sometime thereafter tell the
 [11] police in Seattle about the burglaries and things
 [12] in Seattle as well as the murder?
 [13] A: I started to. They didn't want to hear
 [14] it. They didn't care really.
 [15] Q: They didn't care about what?
 [16] A: Any — well, I told them — as soon as I
 [17] told them I was from South Dakota, and they claimed
 [18] us as runaways at that time because we were both
 [19] minors. They figure — they told me to just leave
 [20] all my information for the cops down here.
 [21] Q: Did you tell the people in Seattle, did
 [22] you give any statements in Seattle that you
 [23] remember?
 [24] A: After I came back and I flew up with the
 [25] cops, I made statements up there.

[1] A: Yes, I did.
 [2] Q: Do you remember that interview?
 [3] A: Yes.
 [4] Q: Do you remember why you decided then to
 [5] tell the police what you knew?
 [6] A: Because we just got back from Seattle, I
 [7] figured it's time for — they promised me
 [8] protection from Charles.
 [9] Q: Did you tell them in Seattle some things
 [10] about Charles and the murder, too?
 [11] A: Yes, I did.
 [12] Q: How is it that you escaped from Charles
 [13] and Matt in Seattle?
 [14] A: We were on what they call Aurora Drive
 [15] which is — it was hooker street. And the cops saw
 [16] me with two guys and I was arguing with them and
 [17] they pulled up.
 [18] Q: Was Heather in the vicinity?
 [19] A: She was inside the motel room.
 [20] Q: What did the cops do?
 [21] A: I got the cops, told Charles and Matt to
 [22] go back into the motel room. I sat in their car,
 [23] We was going to go down to the police station. I
 [24] said, "My girlfriend is in there," and, I said,
 [25] "she is going to get killed if you don't get her

[1] Q: Okay. After Charles Rhines was fired — I
 [2] am shifting gears on you here now — after Charles
 [3] was fired and before he moved out to wherever he
 [4] moved to, and before the murder, did Charles ever
 [5] come in the store while you were working there?
 [6] A: Yes.
 [7] Q: How often did that happen?
 [8] A: He would drop me off and pick me up.
 [9] Sometimes he'd leave right away, but sometimes he'd
 [10] stay for a couple hours and then leave, go home,
 [11] sleep, come back, help me finish up, clean up.
 [12] Q: I think Charles was fired February 20, is
 [13] that about right?
 [14] A: Probably. I don't know for sure.
 [15] Q: Did Dennis ever see you and Charles in the
 [16] store together when — rather, after Charles was
 [17] fired?
 [18] A: Yes.
 [19] Q: When did that happen?
 [20] A: About a week afterwards was the first time
 [21] him and Charles talked after that. Dennis was
 [22] going to hire Charles back.
 [23] Q: How do you know that?
 [24] A: Because, well, actually Dennis did offer
 [25] Charles a job back. Charles didn't want it.

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CHARLES RUSSELL RHINES

Petitioner,

vs.

DOUGLAS WEBER, Warden, South
Dakota State Penitentiary,

Respondent.

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IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

CIV. 02-924

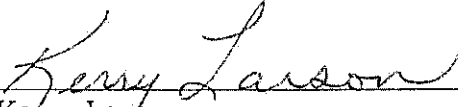
AFFIDAVIT OF KERRY LARSON

Affiant Kerry Larson, after first being sworn upon his oath, states as follows:

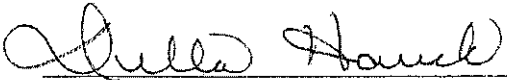
1. Affiant attended elementary school with Charles Russell Rhines. Though we were in the same class, we were in the same classroom only about 25% of the time. During our classroom time together, Rhines functioned like a normal student. He was not disruptive, hyper, inattentive, or a "class clown."
2. Between 1st and 6th grades, affiant and Rhines were friends outside of the classroom. In that setting, Rhines also behaved like a normal, ordinary child. Affiant and Rhines did the usual things that young kids do as friends. Affiant and Rhines played together; our parents socialized with one another. Rhines and affiant talked of taking a bike trip to Alaska after high school.
3. Rhines' mother was a dominating type of personality. She was away from home a lot because she had a full time job, she was a chain smoker, and would tend to dominate conversation. Rhines' father was a quiet, meek, mild-mannered type of individual.
4. In the summer between 6th and 7th grades, Rhines underwent a radical change in personality. Rhines became sullen, withdrawn, and antisocial. Rhines seemed to have a chip on his shoulder, as though the world was against him. Rhines did not function well in school after that summer, and did not finish high school with his class in McLaughlin.

5. Affiant does not know the reason for Rhines' personality change. Rhines never told affiant of any type of "abuse" or "trauma" that he had experienced over the summer, or at any time, and affiant has no knowledge that any abuse or trauma ever occurred. Affiant and Rhines ceased associating with one another after that summer, though affiant continues to remember the good friendship he had with Rhines when they were young.
6. Affiant did not learn that Rhines is homosexual until some years later. Rhines' personality change may have been caused by a sense of isolation connected with his emerging homosexual identity, but affiant has no knowledge of whether this caused the change in Rhines.
7. If called to testify in court, though affiant does not wish to be a "nail" in anyone's coffin, affiant's testimony could not, in truth, be entirely favorable to Rhines. In his adolescent and early adult years, Rhines was viewed as an intimidating and scary person around McLaughlin. People in McLaughlin knew of Rhines' effort to blow up the Maple Leaf grain elevator. Rhines had a reputation for being a firestarter and being abusive to small animals, although affiant never personally witnessed any such acts. Though affiant was not there to see it, Rhines had been caught burning abandoned buildings in town. The only such act of which affiant has personal knowledge is once seeing Rhines pour gasoline on an ant hill and set it on fire in 6th grade.
8. Though aware of Rhines' reputation in McLaughlin, affiant was not intimidated by Rhines. When affiant would meet Rhines on the street, we would speak comfortably as old friends, though we did not associate or socialize beyond these chance encounters.

Dated this 29 day of June 2012.


Kerry Larson

Subscribed to and sworn before me this 29th day of June 2012.


Notary Public

My Commission Expires:
3-30-2015

SEAL

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CHARLES RUSSELL RHINES

Petitioner,

vs.

DOUGLAS WEBER, Warden, South
Dakota State Penitentiary,

Respondent.

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IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

CIV. 02-924

AFFIDAVIT OF JERRY BROOKS

Affiant, after first being sworn upon his oath, states as follows:

1. If called at trial, affiant would testify to the following facts.
2. Affiant taught Charles Russell Rhines when he was in the seventh and eighth grades. Other than keeping to himself, Rhines behaved like a normal student. While in affiant's class, Rhines did not display signs of ADHD or serious behavioral problems. Affiant does not remember Rhines having any close friends.
3. Rhines' mother served on the school board and was a very dominant woman. Rhines' father was very reputable and a good businessman.
4. As a young adult, Rhines had a bad reputation in the community. People who knew him, either in person or by reputation, were not surprised when he was arrested for robbery and for murder.

Dated this ____ day of July 2012.

Jerry Brooks

Subscribed to and sworn before me this ____ day of July 2012.

Notary Public

My Commission Expires:

SEAL

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CHARLES RUSSELL RHINES

Petitioner,

vs.

DOUGLAS WEBER, Warden, South
Dakota State Penitentiary,

Respondent.

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IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

CIV. 02-924

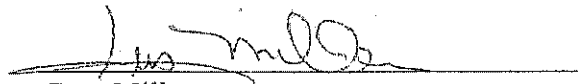
AFFIDAVIT OF GUS MILLER

Affiant Gus Miller, after first being sworn upon his oath, states as follows:

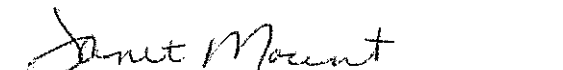
1. In or about the year 1973, affiant and his brother owned and operated an excavation and landscaping business in McLaughlin, South Dakota. That year, the business was awarded a contract by the City of McLaughlin to dig a sewer line.
2. Affiant hired Charles Russell Rhines as a general laborer on the McLaughlin sewer line project.
3. The project encountered a rock layer that could not be removed by mechanical equipment. The business procured dynamite to remove the rock layer. Rhines was trained to handle and use dynamite to help remove the rock layer. Rhines was very interested in learning about dynamite.
4. About a month into Rhines' employment, a quantity of dynamite came up missing. Affiant learned that Rhines had taken the dynamite and had used it to wire a grain elevator in an abandoned neighboring town to explode. The elevator was not operating actively at that time, but it may still have been used by the McLaughlin Farmers Co-Op for grain storage.
5. Upon learning of the disposition of the missing dynamite, affiant and his brother immediately drove to the elevator Rhines had wired to explode. Affiant's brother unwired the dynamite and removed the blasting caps while affiant kept watch outside. Affiant was concerned that Rhines might be in the vicinity and might detonate the dynamite remotely via CB radio.

6. Rhines had a reputation in McLaughlin as a "firebug" who started small, unoccupied buildings on fire. Affiant has no first-hand knowledge of Rhines ever starting a fire and can speak to nothing more than Rhines' local reputation for being a "firebug."
7. Affiant and his brother terminated Rhines' employment.
8. Rhines' father operated the McLaughlin grain elevator. Affiant found Rhines' father to be a competent elevator operator and a nice guy.
9. Affiant was a high school classmate of Rhines' brother, Karl. Though acquainted by reason of being in the same class, affiant and Karl Rhines were not friends who shared personal information. Affiant has no knowledge of Rhines' childhood experiences, of his relationship with his parents, or of the goings-on inside the Rhines household.

Dated this 22 day of June 2012.

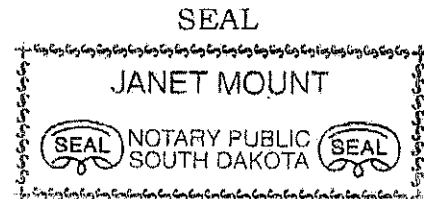

Gus Miller

Subscribed to and sworn before me this 22 day of June 2012.


Notary Public

My Commission Expires:

My Commission Expires 12/30/2016



STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CHARLES RUSSELL RHINES

Petitioner,

vs.

DOUGLAS WEBER, Warden, South
Dakota State Penitentiary,

Respondent.

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IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

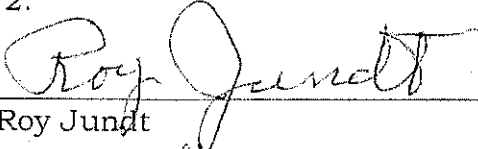
CIV. 02-924

AFFIDAVIT OF ROY JUNDT

Affiant Roy Jundt, after first being sworn upon his oath, states as follows:

1. If called at trial, affiant would testify to the following facts.
2. Affiant taught Charles Russell Rhines for two classes in seventh grade. In affiant's classes, he was a problem student who teased other students and was generally a nuisance in class. When asked to be quiet or work, Rhines was defiant to authority and rebellious. He would not listen or cooperate, he would not do his homework. When Rhines' behavior was brought to his parents' attention, Rhines' mother would defend Rhines to the hilt. Her son could do no wrong. Rhines was a spoiled child. Rhines' father was not much involved. Rhines was smart and capable of doing the work, he just did not care. Academics were not important to him. While his sisters were at the top of their classes, Rhines did not apply himself. Rhines was interested in other things besides classwork.
3. Though affiant did not personally witness any such acts, Rhines had a reputation for trouble around town, like breaking into business places and starting fires.

Dated this 10th day of July 2012.



Roy Jundt

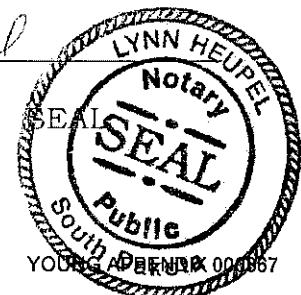
Subscribed to and sworn before me this 6th day of July 2012.



Notary Public

My Commission Expires:

MY COMMISSION EXPIRES APRIL 13, 2018



OFFICE OF THE PUBLIC DEFENDER

Pennington County Courthouse
Rapid City, South Dakota 57701

(605) 394-2181

November 4, 1992

Dr. Daniel Kennelly
517 W. 20th St.
Sioux Falls, SD 57105

RE: Evaluation of Charles R. Rhines

Dear Dr. Kennelly:

Enclosed are copies of a report of a police officer at the scene of the killing in this case, the autopsy report, and a statement made by Mr. Rhines to police in June of this year. Hopefully this will provide some basic information on the facts of this case; if you need additional materials, let me know.

Also enclosed is a certified copy of the Order for Psychiatric Examination. The Judge has informed defense counsel that we will be given the money needed for your examination; however, he would like a preliminary estimate as to your anticipated bill. If you could provide this to me, I would appreciate it. As we discussed earlier, because the death penalty is involved in this case, please do whatever testing or evaluations you feel are appropriate for your determinations in the areas of competency for trial, mental illness and sanity.

Mr. Rhines will be transported to the Minnehaha County Jail on November 12, 1992, and will be there until your examination is completed.

If you need additional information, let me know.

Sincerely,



Michael Stonefield
Assistant Director

MS\lmb
Enclosures

CL CC
OFFICE OF THE PUBLIC DEFENDER



Pennington County Courthouse
Rapid City, South Dakota 57701

(605) 394-2181

February 2, 1993

Dr. Daniel Kennelly
517 West 20th Street
Sioux Falls, SD 57105

RE: Charles R. Rhines

Dear Dr. Kennelly:

I appreciate the time and work you put into the evaluation of Mr. Rhines, and your continued interest in the case. Once we received your report, it did not appear that his mental condition or history figured into the case to a degree where we needed your testimony.

Unfortunately, the result we most feared was what occurred, a sentence of death. Again, however, the attorneys who worked with Mr. Rhines very much appreciate your work on the case.

Sincerely,

Michael Stonefield

MS/co

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF PENNINGTON)
STATE OF SOUTH DAKOTA)
Plaintiff,)
vs.)
CHARLES RUSSELL RHINES,)
Defendant.)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
FILE NO. 93-81

ORDER FOR PSYCHIATRIC EXAMINATION

The defendant, Charles Russell Rhines, being indigent, and having moved the Court by and through his attorneys, for an Order for a Psychiatric Examination to determine: (1) whether the defendant is suffering from a mental disease, developmental disability, or psychological, physiological or etiological condition, which renders him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, (2) whether the defendant was suffering from a substantial psychiatric disorder of thought, mood or behavior which affected him at the time of the commission of the alleged offense and which impaired his judgment, but not to the extent that he was incapable of knowing the wrongfulness of his alleged act, and (3) whether the defendant was temporarily or partially deprived of reason at the time of the commission of the alleged offense, in that at the time of the alleged offense, he was incapable of knowing the wrongfulness of the alleged offense; the Court being familiar with the file and all prior proceedings herein, and being familiar with the basis of such motion, and it appearing to be in the best interests of justice to do so, now, therefore, it is hereby

ORDERED That the defendant, Charles Russell Rhines, be

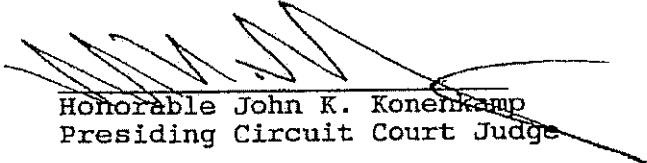
examined by Dr. Daniel J. Kennelly, 517 West 20th Street, Sioux Falls, South Dakota for the purposes stated above, and it is further

ORDERED That Pennington County assume the costs of such examination, and it is further

ORDERED That the results of such examination be made only to the defendant's counsel, Michael Stonefield of the Pennington County Public Defender's Office, and not released to the Court or the Pennington County State's Attorney's Office until further Order of this Court.

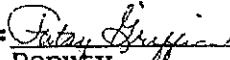
Dated this 4 day of November, 1992.

BY THE COURT;

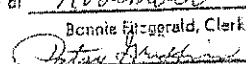

Honorable John K. Koenekamp
Presiding Circuit Court Judge

ATTEST:

/s/ Bonnie Fitzgerald


By: 
Deputy

(SEAL)

State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby Certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on record in my office this 4
day of November, 1992
By  Clerk
Deputy

Pennington County, S.D.
FILED
IN THE CIRCUIT COURT

NOV 4 1992

Bonnie Fitzgerald, Clerk
By  Deputy

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STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,

v.

JURY TRIAL

CHARLES RUSSELL RHINES,
Defendant.

93-81
VOLUME XIII

PROCEEDINGS: The following matters were had before the
HONORABLE JOHN K. KONENKAMP, Circuit Judge at
Rapid City, South Dakota, on the 25th and 26th
days of January, 1993.

APPEARANCES: MR. DENNIS GROFF, MR. JAY MILLER, and
MR. MARK VARGO
State's Attorney's Office
Pennington County
Rapid City, South Dakota

FOR THE STATE

MR. JOSEPH BUTLER
Attorney at Law
PO Box 2670
Rapid City, South Dakota and

MR. WAYNE GILBERT
Attorney at Law
3202 West Main Street
Rapid City, South Dakota and

MR. MICHAEL STONEFIELD
Public Defender
Pennington County
Rapid City, South Dakota

FOR THE DEFENDANT

W I T N E S S E S

	<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
2	<u>VOLUME X:</u>			
3	Michael McDaniel	2110		
	Todd Nicholai	2125		
4	Tracy Wiest	2137		
	Joseph Belgarde	2143		
5	Kerdell Remboldt	2167		
	Harold Plooster	2198		
6	<u>VOLUME XI:</u>			
7	Donald Habbee	2212	2235	2237
	Dennis Digges	2238	2264	
8	Bobbi Royer	2265		
	Sheila Pond	2271		
9	Rhonda Graff	2275		
	Connie Royer	2281		
10	Arnold Hernandez	2291		
	Ruby Shelhamer	2302		
11	Margaret Rowe	2309		
	James Field	2311		
12	Kerdell Remboldt	2315		
	Harold Plooster	2322		
13	Steve Allender	2327		
	Randy Todriff	2341		
14	Ray Schott	2344		
	Mike Speer	2349	2355	
15	Heather Harter	2356	2380	
16	<u>VOLUME XII</u>			
	Glen Wishard	2403	2409	
17	Steve Allender	2410	2442	2450
	Jerry Hammerquist	2451		
18	Bud Martin	2457		
	Thomas Odom	2461		
19	Kerdell Remboldt	2463	2474	
	Harold Plooster	2476		
20	<u>VOLUME XIII</u>			
21	Elizabeth Young	2591	2603	
	Jennifer Abney	2604	2618	
22	Peggy Schaeffer	2621		

1 instruct the jury at this time that they are to
2 consider that testimony and evidence in this
3 sentencing phase of this trial as if presented again
4 at this time and in its entirety.

5 THE COURT: Any objection?

6 MR. GILBERT: No objection.

7 THE COURT: All right, ladies and gentlemen, the State
8 rather than offering the same testimony and evidence
9 now is going to simply ask that you recall all the
10 testimony and evidence that it offered in the guilt
11 phase of this trial. I'm instructing you now that
12 you can consider all the evidence and testimony that
13 you heard in the first phase of this trial as a basis
14 for making your decision in this phase of the trial.

15 MR. GROFF: At this time the State would rest.

16 THE COURT: Defense ready to proceed?

17 MR. GILBERT: Yes, your Honor. We will call Elizabeth
18 Young.

19 ELIZABETH YOUNG,
20 (was sworn and testified as follows:)

21 DIRECT EXAMINATION

22 Q (By Mr. Gilbert:) State your name please.

23 A Elizabeth Young.

24 Q Where do you live?

25 A Columbus, Nebraska.

1 Q Are you married?
2 A Yes, I'm married and I have four children.
3 Q And your name is Young by reason of your marriage?
4 A Yes. I'm Charles' sister and my name was Rhines
5 before I was married.
6 Q Would you be an older sister or younger sister to
7 Charles?
8 A I'm an older sister. We have an older brother, a
9 brother that's older than I am and I'm the next child
10 and I have a sister and Charles is the youngest.
11 Q So there were four sisters and brothers in the Rhines
12 family?
13 A Yes.
14 Q Where did you grow up?
15 A We grew up in a small town called McLaughlin in South
16 Dakota, a small agricultural community.
17 Q And did you attend high school there?
18 A Yes, we all attended K through 12 there, other than
19 Charles, but the rest of us graduated from high
20 school in McLaughlin.
21 Q Did you attend college?
22 A Yes. I have a degree, and my brother and sister also
23 have college degrees.
24 Q What's your degree in?
25 A I'm an elementary education teacher.

1 Q You were actively pursuing that?

2 A Yes. I teach a first and second grade classroom now
3 in a rural school near Columbus.

4 Q Who lives with you there in your home?

5 A My husband and three of my children. My other child
6 is in college and our oldest daughter is in college.

7 Q Are your parents living?

8 A My mother lives in Columbus with me. My father died
9 five years ago. After he died, we moved my mother to
10 Columbus because she's been ill. Her health has not
11 been good. She's had a heart attack and a stroke and
12 some emotional difficulties dealing with my dad's
13 death, and so we moved her to Columbus so we would be
14 there to help her. That's the extent of the family
15 who lives in Columbus.

16 Q How long has she lived in Columbus?

17 A She's been there five years since my dad's death.

18 Q Were you recently going through some of her effects
19 and moving her again?

20 A She's been living in an independent living apartment
21 and we've been moving her into a retirement center
22 and we were going through the boxes of pictures and
23 those kind of things that you collect over the years
24 and because there was this thing going on and we were
25 talking about Charles and going through these things

1 and we found his report card. And I had been
2 thinking, and I said, why are we are where we are
3 today, and she said, I don't know, he was a very
4 happy little boy. And we found his report cards
5 starting with his first grade report cards and it was
6 clearly evident the grades were low and there were
7 check lists on all the report cards about attitudes
8 and behaviors and ability to complete work and not
9 working up to abilities and not able to finish tasks
10 and not able to stay on tasks. And I said to mom, I
11 said,-- you know, we looked at the first grade second
12 grade and third grade, and I said, you know -- is
13 this, you know -- is this when these things started
14 at school age or became apparent, and looking at
15 those now, looking back on those, those are the kinds
16 of behaviors we look at that signal to us in a
17 classroom that you need to look for help for this
18 child, because this child is already exhibiting
19 problems with coping with retaining goals, with
20 staying within guidelines and those are things we
21 didn't know 30 years ago. And we talked about that
22 process and went through the school age, and as he
23 got older and he felt less and less capable, and he
24 had no self-worth. By the time you get to junior
25 high, those feelings become very overwhelming when

1 you are then dealing with the other things that all
2 junior high deal with, in terms of who they are and
3 where they fit and he's coming into that already with
4 no self-worth because of his school process.
5 I went to college when he was about 12 and I came
6 home for break, and I found in his room, I was
7 talking to him in his room and there was a shelf in
8 there with some things on it and, I said there was a
9 sign on there, what are those things, and he said,
10 "it's what the sign says; it's things I broke. I'm
11 always breaking things I can't fix."

12 Q You mentioned his report cards, can you as best you
13 can recall be a little more specific? What, for
14 example, as far as citizenship or deportment, what
15 kind of marks was he getting in first and second
16 grade?

17 A Throughout those early elementary years, as far as
18 behavior, they'd have that little grade and they used
19 to call it deportment and that grade was always an
20 "S." It wasn't that he was breaking rules or doing
21 those kind of things.

22 Q "S" for satisfactory?

23 A Satisfactory. It was that he was unable to complete
24 those other tasks and unable to get his information
25 from here to his paper. And I can remember sitting

1 and watching my mother work and work with spelling
2 words and those kind of papers, and he could give you
3 the information orally, but he could never get to
4 school and get it on paper. That's another sign now
5 we look for, and you call those children, children at
6 risk.

7 Q As you deal with them now...

8 A As we deal with them now, we call those children at
9 risk, because they never succeed in anything.

10 Q To your knowledge, was anything in the school
11 district when Charles was in his elementary school,
12 was there any steps that could be taken or programs
13 for a child who demonstrated this inability to
14 complete tasks?

15 A I don't believe so. I think most of this has come
16 about in very recent years. I don't believe that
17 that there was much available at that time.

18 Q How far did Charles get in school?

19 A He went to McLaughlin, through his freshman year. I
20 don't know how much, how many credits he had for his
21 sophomore year because then he dropped out. He also
22 had been retained in seventh grade so he was older.

23 Q Now, you and your sister and brother finished
24 college, is that right?

25 A Yes.

1 Q How large a town in McLaughlin?
2 A About 800.
3 Q How did you and your sister and brother do in school?
4 A We did, I think we all did well, average to above
5 average. Jennifer was probably the A student.
6 Q Jennifer, your other sister?
7 A Yeah.
8 Q Do you know whether the fact that you, your sister,
9 and other brother performed well in school was ever
10 called to Charles' attention when he was going
11 through elementary school and getting the grades you
12 have described?
13 A I think in a small town that it would be inevitable
14 that he had some of the same teachers, that they felt
15 he had the same abilities that the rest of us did,
16 that he was characterized as uncaring or lazy. Those
17 are the kind of things that happen when teachers have
18 siblings. You don't like to say that but it happens
19 that when a child comes from a home where his parents
20 or ability or time, they're not giving you that work
21 or you are not doing those things or you are thinking
22 they are lazy.
23 Q So Charles did not finish high school?
24 A No. After he dropped out, that year he stayed home,
25 the next fall my husband was starting his first

1 teaching job in a small town in South Dakota, and he
2 came to live with us there and we thought perhaps a
3 fresh start and that things would go okay. But by
4 then he was 17 years old and starting out as a
5 sophomore in high school and didn't have the
6 necessary background. When you get through grade
7 school with D's and F's you don't have the skills you
8 need to go into high school.

9 Q What decision was made, what did Charles do when he
10 didn't finish high school?

11 A When he decided to leave Wood and not finish that
12 year with us, he wanted to join the service. We
13 talked to our dad and I talked to my dad and I said,
14 "Dad, don't let him go. This isn't the answer. This
15 boy has problems. He needs psychological help. The
16 Army is not going to fix him." And my mother and
17 father discussed it and decided that they were
18 hopeful. People don't like to say that perhaps there
19 is an emotional problem or a mental problem that you
20 need to address and take care of, and it was -- they
21 hoped it was a maturity factor, he'd go to the
22 service and grow up and come home and be fine.
23 And so, regardless of what we said, my dad signed the
24 papers to let him go to the service while he was
25 still 17.

1 Q Just generally and briefly, did the Army have that
2 affect on Charles? Did it straighten him out? Did
3 he grow up?

4 A I think anybody knows if you have a person who has
5 emotional problems and has problems staying within
6 guidelines and has problems reaching goals, that the
7 service is the place to break that person completely.
8 That there are those places where there are all kinds
9 of things available to get away from the problems you
10 are facing, the service was not a good solution for
11 him and he came home with more problems than when he
12 left.

13 Q You mentioned that your father is dead now. When did
14 he pass away?

15 A Five years ago.

16 Q At that time was he and your mother still living in
17 McLaughlin?

18 A Yes, they were.

19 Q In that year he died, was there another family event?

20 A My mom and dad had their 40th wedding anniversary.
21 All of us kids were home for that event, which was
22 nice because all of us had not been there for a long
23 time and it was a time that we had a chance to talk
24 and reflect and share. It was a chance for my
25 children, our family, while not physically or

1 geographically not always close, were still in touch
2 and when we come together, it's a week long feast of
3 talking and sharing. And it was a chance for my
4 children to meet and get to know a little bit
5 better -- my daughters who are older -- get to know
6 the other family members.

7 Q Was Charles there for that?

8 A Yes, he was. He had not been home for several years.
9 He was home with all of us that year and we had a
10 very nice time, although it was very evident that my
11 dad was very sick and probably going to die, and
12 there were some hard times with that and some laying
13 of blame, as always, you should have seen signs
14 earlier or seen signs earlier.

15 Q Of his illness?

16 A Yes.

17 Q Did you see Charles again later that year?

18 A That was in July and in August, six weeks later my
19 dad died and Charles flew home for the funeral, and
20 we were all there. At that time we closed the house,
21 so we were staying with friends, and he stayed with
22 good friends of our family and we talked, of course.
23 It was a time for drawing together as best we could.

24 Q How about later on that year again, did you see him
25 again?

1 A I don't believe I did.

2 Q When was the next time after that that you saw

3 Charles?

4 A Two years ago at Christmas, Charles came to spend

5 Christmas with my family and my mother.

6 Q What are the ages of your children?

7 A My oldest daughter is almost 19, 17, 14, and 12 year

8 old.

9 Q Did Charles interact with your children?

10 A He did. Charles has had a quiet special way with my

11 children. We have pictures of him when the girls

12 were infants, and he enjoyed them. When we were at

13 the anniversary, Nicholas and Lindsay, my two

14 youngest, enjoyed talking with him, because he had

15 fascinating things to tell. When he came to Columbus

16 he said in October he might come for Christmas and

17 look up and think about coming back to the midwest so

18 we could see more of each other. And he did come and

19 spent time with the kids. He spent a lot of time

20 looking for the right Christmas gifts for them. He

21 wanted to get the girls nice birthstone earrings and

22 we spent time talking about whether perhaps he could

23 resettle back in the midwest and we could see each

24 other more often. It was kind of a nice beginning,

25 it was a nice start to a Christmas vacation where we

1 had been altogether.

2 Q You came here from Columbus for this proceeding?

3 A Yes, I did.

4 Q Your mother is there in Columbus?

5 A Yes, she is.

6 Q Why didn't she come?

7 A My mother had a massive heart attack several years
8 ago and she had bypass surgery two years and a stroke
9 and she has suffered an emotional breakdown with the
10 death of my father and with her health, she's just
11 unable to travel, and she's unable to testify. She's
12 almost nonverbal.

13 While we talk and we reminisce and share things, for
14 her to talk in public is an almost -- we talked about
15 her coming, even as late as Sunday evening, Saturday
16 evening, we were packing things and she was crying
17 and I said, "Do you want to come; do you want to go?
18 I'll call, I'll get arrangements. I'll take you. We
19 will do the best we can." And she just said, you
20 know, the thing is that she loves him and she wanted
21 to come do what any mother would like to do for her
22 child but she could not, she physically could not and
23 she knew that.

24 Q How do you feel about Charles?

25 A I don't think that it's any secret that there have

1 been times when Charles and I have been estranged,
2 even as recently as this last year where we have not
3 seen eye to eye on things. In our family our
4 feelings are volatile. We say what we feel and then
5 we come back and make amends. My sister and I have
6 horrendous arguments and then we come back and say we
7 love you and hug and that's over. With Charles there
8 have been some estrangements, but you don't ever stop
9 loving. You don't condone what has happened, I don't
10 condone anything that's occurred, and I can't imagine
11 the pain that other people have suffered because of
12 what has happened. You don't stop loving somebody in
13 your own family because of that. My mother loves
14 Charles. I love Charles, you just love family,
15 whether you condone what they do or whether you don't
16 condone what they do. And I don't know if I can say
17 this, but losing Charles, having Charles put to death
18 isn't going to, it's going to punish my mother and
19 punish us, in a way far worse than perhaps than it's
20 going to punish Charles.

21 MR. GILBERT: That's all I have. Thank you.

22 CROSS EXAMINATION

23 Q (By Mr. Groff:) Ma'am, I just need to ask you a
24 couple of questions. Is it my understanding that the
25 last time you saw your brother was either Christmas

1 of 1990 or January of 1990?

2 A Other than I saw him yesterday.

3 Q Were you in regular contact with him about the time
4 frame of March 8, 1992?

5 A No.

6 Q How about in June of 1992, had he made regular
7 contact with you at that time?

8 A No.

9 MR. GROFF: That's all the questions I have.

10 MR. GILBERT: No further questions.

11 THE COURT: Thank you, ma'am.

12 MR. GILBERT: May she be released?

13 MR. GROFF: Yes.

14 MR. GILBERT: Call Jennifer Abney.

15 JENNIFER ABNEY,

16 (was sworn and testified as follows:)

17 DIRECT EXAMINATION

18 Q (By Mr. Stonefield:) Tell us your name for the
19 record?

20 A Jennifer Abney, A-b-n-e-y.

21 Q Tell us where you live?

22 A Sidney, Australia.

23 Q Do you know Charles Rhines, the person to my left
24 here?

25 A Yes.

1 Q How do you know him?
2 A He's my baby brother.
3 Q Do you know what this trial is about here today?
4 A Yes.
5 Q Would you tell us, I guess first of all, a little bit
6 about yourself and tell us how long you lived in
7 Australia?
8 A I've been in Australia for 11 months. We moved
9 because of my husband's job.
10 Q Do you work there?
11 A Yes, I do. I work in the grocery industry, retail
12 trainer for supermarkets and retailers.
13 Q Does your husband work there?
14 A Yes.
15 Q Do you have any children?
16 A Two stepchildren.
17 Q Where were you born at?
18 A McLaughlin, South Dakota.
19 Q How old are you?
20 A Thirty-nine.
21 Q You mentioned that Charles is your younger brother?
22 A Yes.
23 Q Is he the youngest of the four children?
24 A Yes.
25 Q Age-wise in relation, where are you?

1 A I'm three years older.

2 Q The first child in the family was a boy?

3 A Yes.

4 Q Where is he at?

5 A He's in Minnesota.

6 Q His name?

7 A Carl Rhines.

8 Q What does he do there?

9 A He works for the federal government as a grain

10 inspector.

11 Q Is he here today?

12 A No, he's not.

13 Q Have you talked to him about that?

14 A He couldn't be here.

15 Q You were the closest of the family members to Charlie

16 in age?

17 A Yes.

18 Q Would you say that you were close to him as he was

19 growing up?

20 A Charlie and I were the youngest two and we were home


21 for quite a while and I'd say we were very close.

22 Q This is in McLaughlin, South Dakota?

23 A Yes.

24 Q Whereabouts?

25 A North central -- Standing Rock Reservation, it's six



1 miles south of the North Dakota border.

2 Q How big a town is it?

3 A Seven hundred now, probably about a thousand when we
4 were growing up.

5 Q What kind of work did your dad do?

6 A My dad ran the local grain elevator. He was a grain
7 buyer.

8 Q Did your mom work outside the home?

9 A She always worked outside the home, maybe not always
10 but most of the time, bookkeeper or an accountant
11 type things, local newspaper.

12 Q Do you have memories of Charlie as a child?

13 A Yeah. He was our baby brother. He was blond and
14 blue-eyed and cute as they came, and we loved him and
15 we had a lot of fun with him.

16 Q How old is he now?

17 A Thirty-seven or 36.

18 Q Do you remember, you said you were three years older?

19 A Yes.

20 Q Do you remember him in school, elementary school?

21 A Yeah. We all went to the same school. He started
22 three years after I did and my sister and I were
23 always real good students. He struggled with it and
24 I'm sure it wasn't easy to follow two sisters that
25 were straight A students.

1 Q You finish high school in McLaughlin?

2 A Yes.

3 Q Did you go to college then?

4 A Yes, I went to the University of South Dakota 1974,
5 graduate school, University of California in 1981,
6 year of graduate school.

7 Q Did Charlie have problems in school?

8 A Yeah, he had problems in school.

9 Q Such as?

10 A He had problems paying attention and punctuality and
11 getting work done.

12 Q Do you remember ever helping him with his school
13 work?

14 A I don't remember necessarily helping him, but I
15 remember mom sitting at the dining room table with
16 him getting, helping him just like she helped us
17 learn our spelling words and multiplication tables.

18 Q Do you have any memories of whether school was a
19 particularly pleasant thing for him?

20 A When you grow up in a town so small and so early it
21 was like he got labeled as the strange one, the
22 loner, and it's hard when you are a kid and he did
23 have troubles with that, and it was painful for
24 everybody.

25 Q Was he able to finish high school?

1 A No.

2 Q Do you recall about when it was when he left school?

3 A Sophomore year, early sophomore year.

4 Q Were you still at home?

5 A No, I was in college.

6 Q When you first left for college, would you be back

7 home fairly often?

8 A No. My first year I came home at Thanksgiving,

9 Christmas and Easter.

10 Q Once Charlie left high school, do you remember what

11 he did then? Did he work for a while or do you

12 remember exactly what he did?

13 A He went to work at the sales barn in town, mom told

14 me and she told him he had to work.

15 Q He would have been about what age then?

16 A Sophomores are usually 16 or 15. He had been held

17 back a year, so '74 he would have been about 16.

18 Q You mentioned that your father ran an elevator and

19 did Charlie ever do any kind of work with your dad?

20 A Both my brothers always worked. My sister and I

21 always worked and we used to work with dad in the

22 summers.

23 Q Do you know if a time came when Charlie tried to go

24 back to school again?

25 A He went back to Wood, South Dakota with Liz and her

1 husband, Rich who was a teacher there and they
2 thought that perhaps maybe a different town without
3 the stigma of being a bad student and having dropped
4 out that he would have the opportunity to finish. I
5 think he wanted to do that.

6 Q Do you remember at some point in his life, did
7 Charlie finish high school or get some type of high
8 school diploma?

9 A Military he finished, and got his GED.

10 Q Got the equivalent of a high school education?

11 A Yes.

12 Q Were you aware of any kind of schooling or job
13 training he's had at any point past that?

14 A He started school at the University of South Dakota
15 at Springfield, but never finished the first
16 semester.

17 Q Your sister talked about a time that came when he
18 decided to go into the military, do you recall that?

19 A Yes.

20 Q Do you remember how old he was then?

21 A He was 17 because he wasn't old enough to sign for
22 himself.

23 Q Do you remember discussions around that time about
24 the appropriateness of what he was going to do?

25 A He had left Wood and come back to McLaughlin, and I

1 remember it was Easter vacation of that year of
2 college and he signed up to go, and the morning that
3 my dad was to take him to the recruiter who was out
4 of North Dakota, we had to meet him at the state line
5 and my dad sat there at the dining room table and he
6 said, "I don't know what to do," and I said, "Let him
7 wait until he's 18 and sign for himself. He can't
8 make this decision." And Dad said, "Maybe he'll grow
9 up." And I said, "I don't think it's a maturity
10 issue, Dad, I think he needs help." You know, my
11 father would be 80 if he were alive, and people that
12 age didn't want to think about psychological help or
13 that your child needed psychological help or problems
14 with somebody that's 17. And Liz talked to him about
15 getting help and I said, "Let him wait until he's 18
16 and let him sign for himself." I couldn't see the
17 Army was going to do him any good.

18 Q Had you, yourself, at that point seen in him what you
19 thought were signs of emotional problems?

20 A Obviously, I guess. He was -- I think because we
21 were at home together and I have always known inside
22 of Charlie there is a pain that nobody can touch and
23 I didn't ever think it would come to anything this
24 bad, but it's always been there and Charlie and I
25 have always known that and talked about it.

1 Q And when he went into the service, do you recall,
2 first of all, do you recall how long he was in the
3 service?
4 A He went in, I thought, like for a three year time and
5 he was out in less than three years.
6 Q Do you recall during that time ever seeing him? Did
7 he visit at home?
8 A I saw him during some leaves. I saw him when he came
9 home one time when Liz had a new baby. The times,
10 our schedules didn't always coordinate and I was
11 going to school in Vermillion and it was 400 miles
12 away.
13 Q Did you see, in your opinion, any kind of changes
14 about him from the time that he was in the military?
15 A Not good changes.
16 Q What kind of things did you see?
17 A Probably a little more withdrawn, less able to
18 communicate.
19 Q Did a time come sometime in the late 1970's when you
20 were living here in Rapid City?
21 A I was living in Rapid City and he was struggling with
22 employment.
23 Q Do you remember when this was?
24 A '77 or '78.
25 Q Go ahead.

1 A I was living in Rapid and Mom and Dad were kind of at
2 odds as to what to do and I said, why doesn't he come
3 to Rapid and live with me and get a job. I was
4 married at the time and my marriage was not good, it
5 was on the rocks, but he came down, and I said, come
6 down and get a job so he came down and started to
7 work; the first job didn't last too long.

8 Q Do you remember where he worked?

9 A Construction or something along that line. He got a
10 job with Landstrom Jewelry and he was living with my
11 husband and I. I left my husband and he stayed there
12 and I was going through the stigma of being the only
13 person in the family that had ever been divorced and
14 I couldn't even tell my parents. I told them about
15 it, but it was hard to explain it and Charlie was
16 there to talk to and be with me.

17 Q Was he supportive of you at that time?

18 A Yes, he was.

19 Q He would have been at that point in his early 20's?

20 A Yes.

21 Q How did his life seem to be going at that point?

22 A When he first came, I was so wrapped up in what was
23 going on in my life, I don't think I was terribly
24 aware of a lot of things there. After I separated
25 and got through some of that and was living in an

1 apartment or house with some friends, Charlie and I
2 spent a lot of time talking and he came to me one
3 night and said, "I have to talk to you about
4 something," and he said, what he told me was that he
5 was gay.

6 Q That would have been when?

7 A In '78, somewhere after October of '78 before the
8 first of the year probably. I think he knew that he
9 could tell me that I'd been the most open in the
10 family and most liberal and open-minded and we were
11 the closest and he wanted to be able to tell the
12 family and be accepted for that, and he wanted to
13 tell mom and dad and I tried to talk him out of
14 telling. They wouldn't understand. He went home and
15 told them anyway and they were very understanding for
16 midwestern, conservative people and I thought they
17 did pretty darn well.

18 Q Was this around, would you say that this was about
19 the last time period that you and he have lived close
20 to one another?

21 A Yeah.

22 Q Over the past several years you have not lived in the
23 same general area?

24 A No.

25 Q You have been in town now for a few days?

1 A Yes.

2 Q You have seen Charlie a few times?

3 A Yes.

4 Q Before this weekend, do you remember when the last
5 time you saw him was?

6 A In December of 1990 at Christmastime.

7 Q Where was that at?

8 A He came to Topeka where I was living in Kansas with
9 my husband and he had been to Columbus for Christmas
10 and he came down to see me.

11 Q Did you spend much time together?

12 A No, I was mad at him and he walked in the door and I
13 started yelling at him and he turned around and
14 walked out and I didn't see him until now in Rapid
15 City.

16 Q Do you remember before that, the last time you had
17 seen him before?

18 A At my dad's funeral.

19 Q Which was?

20 A August of '87.

21 Q He had been back that summer?

22 A My mom and dad had their 40th anniversary in July and
23 he came home for that and we spent five days together
24 then and six weeks later my dad died and he came back
25 then.

1 Q Over the years that you lived apart or lived in
2 different areas, have you and he tried to stay in
3 touch?

4 A Charlie and I have always stayed in touch, except for
5 the last two years after we had a big old family
6 fight, but we stayed in touch with phone calls and
7 letters and whether we lived close or not was not the
8 issue, we kept in touch.

9 Q Were you aware of any of the places, other than what
10 you have already mentioned, any of the places he's
11 worked?

12 A When he was in Seattle, he worked at a Whencel's
13 Donut place and we talked a lot about it. Part of
14 what I have done in my line of work as a bakery
15 consultant, and we talked about the bakery business
16 and ways to make it more profitable and successful
17 and when the company I worked for went through a
18 buy-out we went through frustrations and we talked
19 about how to apply for the job for bakery companies
20 and they were looking for good people.

21 Q Have you tried at times to help him out in finding
22 work?

23 A This was a time when I lived in Denver, probably
24 around '84. I suggested he come to Denver to live
25 and he was struggling with his sexual identity and

1 Denver had a positive gay community, and I thought
2 that would be a benefit to him to get involved with a
3 solid gay community that was learning to deal with
4 who they were and how they were surviving in society.
5 I had a job lined up for him but he never came.

6 Q Did you understand what this procedure is about here
7 today?

8 A Yes.

9 Q How do you feel about Charlie now?

10 A I don't think that any family member -- I know what
11 he's done and I live with that every day, and I will
12 live with that every day of my life, but I want him
13 alive, and that doesn't make anybody else's grief or
14 pain any less, and I know that, but he's my brother
15 and if there is, if he spends his life in prison,
16 maybe he can touch one person, so this doesn't happen
17 again to somebody else.

18 Q Can you foresee or, what kind of a relationship
19 between you and he could you foresee if he were to
20 receive a life sentence?

21 A Letters, phone calls, if I am back in the area to
22 visit with him. I don't want to lose touch.

23 Q Do you still love him?

24 A Probably more than ever, because he needs it more
25 than ever now.

1 MR. STONEFIELD: Thank you. That's all.

2 CROSS EXAMINATION

3 Q (By Mr. Groff:) Ma'am, I just have a few brief
4 questions. As I understand, in 1987, the family got
5 together when your dad died?

6 A Yes.

7 Q Can you tell me how many years had it been since
8 you'd seen him when you saw him in 1987?

9 A I seen him in '81, six years.

10 Q And then you next saw him in 1990?

11 A I saw him twice in '87. I saw him at Mom and Dad's
12 anniversary in '87 and Dad's funeral, 1990.

13 Q Between the years 1981 and 1993, as you testify you
14 have seen him twice in 1987 and once in 1990, is that
15 right?

16 A I saw him in '81, '87 twice, and '90 four times.

17 Q You haven't had any contact with him in the last few
18 years is what you just testified to?

19 A Yes.

20 MR. GROFF: That's all the questions I have.

21 MR. STONEFIELD: Nothing else.

22 THE COURT: Thank you, ma'am.

23 MR. STONEFIELD: Could we approach?

24 (Side bar discussion was had.)

25 THE COURT: We will take a ten minutes recess and please

SA: This is a taped interview of Charles Rhines, DOB: 7/11/56. We're in the King County North Precinct Police Station, City of Bothell, WA. Present are Charles Rhines, Sgt. Don Bahr and Detective Steve Allender. Charles, do you, uh, have a problem with this tape recorder?

A: Uh huh (affirmative)

SA: You do?

A: You're not King County Police.

SA: I'm asking you permission.

A: No

SA: Ok. (sound of recorder being shut off)

SA: Ok. this is a taped statement from Charles Rhines. It's 6/19/92 at 2147 hours. Present is Charles Rhines, Sgt. Don Bahr and Detective Steve Allender. We're in the North Precinct King County Police in Bothell, WA. Ok. Now Charles, just to try to clear this up a little bit, you've been talking to us for a coupla hours now about, or so, about the deal at Dig 'Em, Dig 'Em Donuts.

A: Yuck

SA: He's looking at your watch. About that deal at Dig 'Em Donuts and your involvement in that.

A: Yes

SA: Ok?

A: Yes

SA: Ok, now at first you didn't want to uh, have it tape recorded

A: No

SA: And now you agreed to?

A: Yes

SA: And is it pretty much just because we've asked?

A: Yes

SA: Ok. Um,

A: Um, for the record.

SA: Like, we were talking about in this state, we need permission to tape a two-party conversation.

A: Yeah

SA: Do we have your permission?

A: Yes

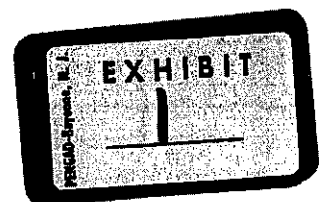
SA: Ok. Um, do you remember me reading you your rights?

A: Yes

SA: In the beginning? Did you understand all those rights?

A: Yes

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IN THE DISTRICT COURT
JAN 20 1993
By [Signature] Deputy



SA: And uh, having those rights in mind you talked to us here?
A: Yes I have

SA: Ok. Um,
DB: Well, Charles, you know we talked about a lot of things,
didn't we?
A: Yes

DB: What I want to get straight with is, you, you basically, you
confessed to us about your participation in that homicide
with Donnivan. We want you to know that um, you know, what
you're telling us, um, you're telling us basically a
confession to the fact that you did this.
A: Yes

DB: Do you understand that?
A: Yes, I do

DB: Can you um, we've not promised you anything either, have we?
A: No. You're in no position to promise me anything.

DB: Ok. So we haven't coerced you in anyway to give us a
statement, have we? Basically, I mean you've, you told us
this whole information about you and Donnivan - we didn't
force that out of you did we?
A: No.

DB: And why is
A: Directly, anyway.

DB: Excuse me?
A: I said not directly.

DB: So then, why are you telling us this?
A: Is there a pause on this?

SA: Um, that might be what
DB: Did that maybe answer it? I don't think I've got it shut
off, the pause.
A: No, but I will

(Tape recorder on Pause)

SA: Ok, we running again?
A: Yes

SA: Alright. We just turned the pause button on, because,
Charles wanted us to stay away from the coercion part of
this, is that right?
A: Yes.

SA: Ok. Now, the bad thing about tape recording something, is
A: You can edit it.

SA: Well, but if we keep starting and stopping they'll think that something's going on. Somebody might think something's going on.

DB: So, how, we only had this off for

A: Two seconds,

DB: two seconds.

A: 5-10 seconds, went off the record

DB: Ok. And it was basically nothing to do, except for you didn't want us

A: Chill out

DB: Ok.

A: Be quiet. This will come out in court again.

DB: So start then from the beginning. Go back to Rapid City on March 8th.

A: March 8th, 6:30 p.m. Sam and I left the house at 1716 Riley Avenue. The apartment. About 6:30 p.m., snowing heavy, dark out. He dropped me off, I don't know somewhere over at, in the neighborhood of Dig Em Donuts. Between Omaha and West Chicago and went on home himself, I imagine. I went in to Dig Em Donuts to, perform a burglary, robbery, whatever you call it, burglary. Um, got inside about twenty to 7:00 with a key I had retained from former employment. Um, got inside, um, turned out the lights over the fryer. Uh, changed gloves from leather to uh, plastic grill gloves. Got into the office, um, this sounds rehearsed, you know.

SA: Well, we just spent an hour or two going over it, so

A: Gees. Got into the office probably around 7:00. I had some difficulty there. *power*

SA: Gettin into the office?

A: No, I'm not a burglar, I'm not good at locks. Kick the door down, yes, but not. Um, I didn't want to have to force it. Um, got interrupted. Someone came into the shop around 7:05, 7:10, somethin like that. A couple of minutes after I'd gotten in the office. Um,

SA: Just (talking over)

A: Gees (talking over)

DB: How'd you first know that somebody come in?

A: I heard the door out front.

DB: And, and you were in the office? Then what happened?

A: Um, I kind of froze, thought about it for a second, reached into the bag I had over my shoulder, black bag, for a knife. A knife I used to get in the door with. I got through the door with. And had it in my hand, ready, I guess.

DB: What kind of knife was that?

A: Buck 119, silver blade, black handle, with sil, silv, silver

circle around the top, well actually a silver top.

DB: So, you're in the office with a knife (inaudible - talking over)

A: (inaudible - talking over) I've used it for a hammer a few times.

DB: And then what happened?

A: You've got it. Um, someone opened the door, I wasn't sure. You know just before that, the door opened the lights came on in the office in the outer, outer, I mean

SA: Now, you're talking about the office door opened?

A: Just before, just before the door opened the, all the lights came on.

SA: What were you using for light up until that time?

A: Flashlight.

SA: Ok.

A: A little one, you know, it's at the apartment right now. Two cell, _____. Mag light or something.

SA: What color is that?

A: Black

SA: Ok.

A: You know, most things I have are black

SA: Ok

A: The door opened, all I saw was a male figure and I reached with the blade. (inaudible - whispering). Um, by the time I figure the person I had stabbed hit the floor I knew who I stabbed was Donnivan. Yeah.

DB: When

A: Yeah, well. I stabbed at the lower, somewhere on his stomach. I forget lower left or lower right. Seems like it was lower left. Three months ago. Um, his lower left.

SA: That's all right.

A: Stomach. Um, he went down. I realized who I had and he was thrashing around and screaming and I stabbed him again in the upper left back.

SA: What, what was he screamin?

A: My name, he recognized me.

SA: Ok

A: You know the lights are on by that time. Um,

DB: Then what happened, Charles? He got, you stabbed him again in the back. (Tape Recorder on Pause) So, we're at, we're at Dig Em's, Charles.

A: We're at Dig Em's. Donnivan's on the floor. I've stabbed

him in the back. I help him up and walk him into the back room and sit him down on the pallet and I walk him forward, he goes rather willingly like he's decided it's time to go. There's no use fightin.

SA: And he was passive at that point?

A: Yeah, very

DB: Was he saying anything?

A: No.

DB: Ok.

A: (inaudible)

SA: But you could hear whistling?

A: Yeah, air whistling out of his back.

DB: So, what'd you do with him?

A: Sat him down and put him basically, his head between his legs and applied the knife to the back of the neck where the skull joins the spinal column. Right in the joint at the spinal column. In kind of upward, up and in.

SA: Did you push it in with the palm of your hand?

A: Yes. Attempted to reach the small brain to stop his breathing, the medula

DB: So then

A: Which would stop bodily function.

DB: It did that, didn't it?

A: (whispering) I guess so, (inaudible)

DB: What happened after you, you shoved that in?

A: Kind of slumped forward. Then I reached down, but he was still breathing, I didn't know what I had. I've never stabbed anybody to death. I've never stabbed anybody, period. You guys seen anybody get stabbed to death? Know what it takes? Quit fighting very quickly, but, you don't die very quickly. (inaudible)

DB: So then what happened?

A: I tied his hands behind him. Stupid,

SA: And then?

A: I went back in the office and finished getting, finished getting what money I could find. About \$1,700. Actually about um, about, oh probably 16, 15-1600 out of there. Change fund, basically.

SA: Yeah. And then

A: Cleaned out the change fund on the wall. Went over, used the phone. I surprised you didn't see the blood on the phone.

SA: So who'd you call?

A: Sam to come get me. At that point he had no idea that I had killed Donnivan. Not at all.

DB: How long was you in there about?
A: 40 minutes, max.

DB: Sam was where?
A: Home.

DB: So, did he come and get you?
A: Yeah

DB: What, did you have your car?
A: Yes

SA: Where'd he pick you up at?
A: Same place he dropped me off from.

DB: So you went on over there? When you come out was it, that next door closed, the video place?
A: I didn't pay any attention. No

DB: Still open?
A: (inaudible)

DB: So you went on across the street.
A: They're open until like 9:00

DB: Did you have blood on you?
A: No, I had stripped off the uh, rubber gloves by then and put my leather ones back on.

SA: What'd you do with those rubber gloves?
A: Pocketed them

SA: What'd you eventually do with em?
A: Out a window, 60 miles an hour. Don't ask me where, I have no idea.

DB: So then Sam
A: (inaudible - talking over)

DB: You got in with him and you went home?
A: Uh huh. Yeah.

DB: Then what?
A: We counted money and then I hit him with the news that this \$1700 had cost the life of Donnivan.

DB: So he had to go to work that night?
A: Yeah

DB: So, where'd you go after you counted the money?
A: Perkins. Up on LaCrosse. Had an order of french fries.

DB: At that point where was all the, say the money and the clothes that you had blood on?
A: At home in a plastic bag.

DB: So then, you took him to work?
A: Yeah, I dropped him off at Taco John's down there.

DB: And then what'd you do?
A: Uh, oh, went back to the house and picked up the money and clothes and things I wanted to get rid of. Went for a drive. I got home about a half an hour before Sam called from the police station.

DB: So, when you went for that drive, where's the first place you went?
A: North. At the gravel road up on, oh, you know where Sam used to live?

SA: Yeah
A: Go up that road, stay on it.

SA: It turns into gravel.
A: Yeah, go up it until you find a lonely tree standing by itself by the side of the road. You'll find a piece of wood beside it.

DB: Go past Mall Ridge and then there's this housing out there, you past that?
A: Oh, yeah.

DB: And then it makes a sharp curve on around
A: About five, about five or six miles beyond all that.

DB: But it's before it's
A: _____ miles off the gravel.

DB: Before it gets back to Black Hawk?
A: It gets back to Black Hawk?

DB: Well, it turns, it eventually turns off. Which side of the road is the tree on?
A: Right. Well _____

DB: All by itself?
A: Bottom of a valley (inaudible - talking over)

DB: What'd you put there?
A: Bag full of money?

DB: Then where'd you go?
A: Seemed like a reasonable thing to do from out there probably would keep \$1700 just laying around the house, waiting for somebody with a search warrant. Where'd you get this? Well, \$300 in coin. I've just been saving it. Um, no I try not to condescend.

DB: Then where did you go?
A: Airport Road, got rid of a pair of pants, a shirt, jacket,
(inaudible).

DB: What color jacket?
A: Blue

DB: Pants?
A: Blue, dark blue.

DB: And then what kind of shirt?
A: Uh, a Rally shirt, I forget what it said on it.

DB: T-shirt?
A: T-shirt, black t-shirt, pocket. It wasn't a camel shirt. It
was something Rhonda gave me before Christmas. I don't know
if you've talked to Rhonda or not.

DB: Was this off the side of the road?
A: (laughs) ok

DB: You pulled off the side of the road and threw this all out?
A: Yeah.

DB: And then where'd you go?
A: East St. Patrick. I got rid of the knife. Thought I got rid
of it. _____ out at Rapid Creek.

DB: What side'd you throw it out?
A: Oh. Oh, God

DB: Do you remember if you was going or coming?
A: Going. Heading towards the freeway and I heaved it out the
driver's window.

DB: Did you throw the checks out the same time?
A: A mile further down the road.

DB: The same window?
A: _____ just take em home and burn em _____

DB: Did you throw anything else out there?
A: No (inaudible).

DB: Where'd you turn around at then? Between there and the
interstate?
A: (inaudible - talking over) just over the hill.

DB: Ok. And then where'd you go?
A: Home. I was done getting rid of shit. You shoulda found a
brown plastic bag out there too?

SA: Like a bank bag?
A: Huh?

SA: Like what kind of a plastic bag?
A: Garbage, small

SA: Yeah, what'd that have in it?
A: Air.. It had had everything else in it.

SA: Clothes, you mean?
A: See why I dumped it all over town.

SA: Not quite. Did you use any dumpsters anywhere.
DB: Do you think that's where, that's the first thing you thought
not to put em in, huh?
A: I said well this town's too small to use any dumpsters. The
landfill maybe.

SA: Let me uh clarify something on the Airport Road. Earlier you
said you threw your tennis shoes out
A: Along with a jacket.

SA: A jacket. On a little dirt road, though.
A: Yeah.

SA: Now what, as you're going out towards the airport what side
of the road is this dirt road?
A: Right side.

SA: And then how do you turn
A: You haven't found em yet, have you?

SA: Well
A: (laughs) You haven't found them yet

SA: Turn right?
A: Yeah turn right.

SA: 90 degree angle
A: Do you have four wheel drive? Has it rained there lately?

SA: Yeah
A: You need a four wheel drive.

SA: How far, once you turn right
A: (inaudible)

SA: Ok. When you turn right how far down do you go?
A: I couldn't see the highway anymore. I couldn't even see the
cars on the highway.

SA: Ok.
A: There's a Y down there. Just take the Y.

SA: The left? Take a left
A: There's a good strong wind that night.

SA: Uh huh.
A: _____ found a jacket.

DB: Was the jacket in one piece?
A: No. Well, more or less.

DB: Pretty much in tact?
A: Semi. Kind of tattered.

SA: Uh
A: (inaudible) actually belonged to someone just a little while ago.

SA: Now, see the thing I'm trying to figure out is, when you're going out to the airport.
A: There was a very strong wind that night, Steve.

SA: I understand that.
A: And I picked those shoes up and I threw em as hard as I could

SA: Uh huh
A: They went a long ways. Has that field been plowed this year?

SA: No. But now,
A: Not yet?

SA: I don't think so.
A: It was fallow last year (inaudible - talking over)

SA: See I don't know if we're talking about the same area.
A: Probably not.

SA: Is it past the airport?
A: Let's just, did you find the jacket?

SA: Yeah
A: In the same field.

SA: Well, I think the jacket blew a little bit.
A: And maybe it did. How far'd it blow, 20 miles?

SA: No
DB: Was it this side of the airport, Charles, or the other side?
A: Huh

DB: Was it, was it?
A: (laughs) Wait a minute, (inaudible) (laughs)

DB: Just, was it, coming out of Rapid, where you threw the stuff, was it, was it um, before you got to the airport or
A: Driving away from Rapid on the right hand side.

DB: But how far from the airport?
A: Oh, I don't know.

DB: Before, before you turn off or after?
A: After

DB: You didn't go west.
SA: Past the airport, huh?
A: (inaudible)

DB: But that road that you turn off to the right, is it like a trail?
A: Yeah

DB: It's not maintained?
A: No

DB: Nobody lives on the end?
A: Somebody might live on the end, I don't know.

DB: But how far did you drive in? At least a mile?
A: I drove until I couldn't.

SA: Cause of the snow and stuff, or?
DB: And you couldn't see the car, the highway?
A: Huh uh

DB: How'd you get turned around, just was it
A: tsch, tsch, tsch, tsch

DB: Hard?
A: Yeah, it took three or four tries

DB: Straight road, no turning, you said there was a Y?
A: I had a ditch in back of me.

DB: Was there, on both sides?
A: Yeah, you've been down that road. It's about this deep, for that little car, that's a helluva ditch.

DB: Uh huh
A: If it's a 4X4 it's nothin.

DB: That is, huh?
SA: 5 or 6 miles do you think past the airport?
A: I don't know. You tell me where it's at.

SA: Well, that's a long, seems like a long way to go.
A: Taken me 3 months to reconstruct the whole thing.

SA: Yeah
DB: You've thought about it a lot though, I bet.
A: Well, yeah, I suppose.

DB: 4X4, what are you talking about, that thing's
A: International?

DB: Oh yeah, that thing.

SA: Your 4X4 woulda made it no problem, that's what you're saying?
A: This thing?

DB: So that other one, did you have a little trouble switchin around there?
A: I have front wheel drive.

DB: Ok, so you left there. Everything went out, shoes, shirt, pants. You threw the shoes as far as you could. Jacket and all that? Then where'd you go?
A: Home

DB: And then you, you got home about what time?
A: About 1:30. You know, I was no more home and uh, about 10 to 2 or so Sam called me. He said he needed shoes, and pants, and a shirt. Forgot to mention socks. (inaudible) that's uncalled for.

DB: It's just policy
A: It's still uncalled for. You guys, you guys remember where you are. You're in South Dakota, it's March, it was snowing, you know. They got sued over that. Ya

DB: It's a warm car.
A: It was a long walk to the car. Lot of snow.

DB: Ok. So you got the call. You went and got him the
A: You might try treating your leads a little better than that. You might, they might bet, they might decide to cooperate better. Yeah, you know.

SA: Well alright then.
DB: It wasn't all our doings either, you know.
A: (laughs)

DB: They, you know, we needed to take his shoes. I, I wasn't, I helped give a ride. But, I mean, they wanted to walk so.
A: Anyway,

SA: Yeah
A: Anyway

DB: So, anyway you got home and got the call and took his shoes up to him.
A: Shoes and his pants and shirt down and brought him home. (inaudible) I came and talked to you guys and.

DB: And um, you said the funeral.
A: Be quiet.

DB: Excuse me
A: Be quiet

DB: And you uh

A: I don't want to talk about the funeral.

DB: And then when you left do you remember the day you left then?
A: I was invited to the funeral. I didn't go of my own accord.

DB: Who invited you?
A: Dennis.

SA: Was that pretty tough? It was a hell of a funeral.
A: (inaudible) The worst part of it was Connie crying on my shoulder.

SA: Connie cried on your shoulder?
A: Yeah. (inaudible) It took until after 2:00 to get my handcuffs off. Yeah, I was arrested at 1:00 and just left in the holding tank with my hands behind my back until 2:30. Until after shift change.

SIDE 2

SA: We're on side 2 of this tape, it's 2221 hours. Ok. You said, trained in hand to hand or not?
A: No, uh, the cycle before I went to basic combat training in the U.S. Army at Ft. Leonardwood, Delta 32, if you want to check the records. Uh, March 4th, 1974. Um, they had cut out the hand to hand thing simply because too many of, too many mothers were objecting to it.

SA: Ok
A: That's the reason they gave us.

DB: But you learned how
A: Too many guys were _____

DB: But this knife thing. You knew how to
A: Everybody knows how to use a knife. You hold it in your hand and you ~~learned~~ learned. I was an infantryman, come on. I've been shown weapons, with an entrenching tool, if I have to, or the butt of my M16.
(methods of training)

SA: But never a knife.
A: Bayonets

SA: Bayonets?
A: Bayonet's different from a knife, very different. They're not sharp, they were not meant to be, they don't want them to be. They want them to be dull. Dull, dull knives leave, leave wounds.

SA: Now
A: (whispering)

SA: In our April interview you told us that you always by Franklin tennis shoes.
A: Yeah

SA: But, you had two pairs of McGregor's earlier.
A: I lied.

SA: Ok
A: Do we have to go through all my lies now?

SA: No, I, these are notes I just took, I just want to clarify
them. I'm skippin over them, the majority of all this.
A: Thou shalt not bare false witness against thy neighbor.
(inaudible) lies about yourself a lot. Ever write a resume?
stetch anything a little bit (inaudible) ok.

SA: Did you ever? Was Curt Taylor back in Rapid City?
A: For awhile.

SA: But not after that?
A: Until the 15th or. Not that I know of.

SA: Did Sam tell you that he thought he saw him?
A: Yeah. But I, not, not that I'm totally aware of, but maybe.

SA: Ok
A: I mean Curtis is strange. Never knew what he was gonna do.

DB: Stole your car, didn't he?
A: Yeah.

SA: Charles do you, uh, you told us about the letters that you
wrote and that were like suicide confession notes, basically
A: Yeah, yeah

SA: But you said you burned all them?
A: Yeah, second thoughts. I had a lot of second thoughts in the
last three months.

SA: Did you have uh
A: Third thoughts and fourth

SA: Did you have a similar type note just uh, in the last month
or two? You know, let's face it have you been, had suicidal
thoughts in the last month or two?
A: No

SA: Absolutely not?
A: Well, I'll, a couple weeks ago I suppose I thought about it.

SA: With the deal with Sam?
A: Yeah

SA: Did you have a note at that time that said something about,
like a suicide type note?
A: Oh shit. Kind of like that, I was, oh geez, I suppose you
found that now. No, you haven't done any searching yet. You
will, maybe. In case I threw that away somewhere.

SA: What basically was it, was on that (inaudible - talking over)
A: Uh, basically, it says you three can do what you want, but I'm, I'm not gonna have, be a part of any of this shit.

SA: Anything about Donnivan on it?
A: No

DB: Tell him you're gonna do yourself in?
A: No, I just said uh, (inaudible) you all can do what you want. I'll take, you know, basically half the money is mine and I'll take it. _____ the other half, adios, goodbye. But I realized what would happen shortly after that as soon as Matt found out.

SA: How much money do you have?
A: Do I have right now? About 24 bucks.

SA: Do you, uh, do you want to sign the vehicles over?
A: Noah, Noah owes, Noah owes me a couple of, about 300 bucks right now.

SA: Do you want to sign your vehicles over to uh, Matt so he can take em?
A: (inaudible) Can't do anything with em anyway, don't even have the title to the stupid thing.

SA: Well, do you want him to take control of em?
A: Yeah, might as well

SA: Rather than have em sold at a Sheriff's auction.
A: Yeah, may as well. Add to the collection (laughs). If you've been to Jim's, it's, you know, you'll see what we add to the collection. He still doesn't have a license.

SA: Were you worried about your fingerprints being on those checks? Not at all?
A: I held the top one and the bottom one, that's it. I'm not stupid enough to go through a bunch of checks that are not worth anything to me.

SA: Did you threaten Sam or Heather when they were here?
A: No

SA: Absolutely?
A: No

SA: Didn't do it?
A: No

SA: Had you thought
A: If we had wanted, either Matt or I had wanted to do, to do any harm to either Heather or Sam, there would have been multiple opportunities.

SA: Had either of you thought about it, just for a minute, or

talked about it?
A: Matthew became emotionally attached to Heather and I was already emotionally attached to Sam.

SA: Uh huh
A: Matt would have to go through me to hurt Sam.

SA: Ok
A: And I would take him out before he got _____. And I would have to go through him to hurt Heather.

SA: Ok
A: Sam had total, 100%, unconditional acceptance through me.

SA: Ok.
A: There's no way that he could have been harmed while I was still alive.

SA: When Sam and Heather were out here did you demonstrate the location or anything like that of the stab wounds on Donnivan, even just jokin around or during conversation.
A: Not to Heather.

SA: To Sam?
A: One maybe

SA: The final one?
A: Stomach

SA: Oh
A: (inaudible) that _____ hit someone in the stomach it's surprising how fast they go down.

SA: You told Sam that?
A: Yeah. There's none of this movie stuff where they stand there and look at you for five minutes and stagger around. They just go down. (inaudible) may not be true in all cases (inaudible) pain involved.

DB: Anything else you can tell us?
A: Aside from the fact that I just screwed myself for twenty years?

SA: Are you sorry that Donnivan's dead now?
A: Yeah

DB: What do you think should happen to you?
A: (inaudible)

SA: You don't really buy into our justice system do you? I mean you don't really believe in it?
A: Justice?

SA: Yeah
A: For who? If I had \$100,000 for a fancy attorney I'd walk.

Free, on an acquittal.

DB: Do you think that's right, that, that?
A: Do you?

DB: No, not if you took a life.
A: You know it's true.

DB: Do you
A: If I had \$100,000 to drop into the best attorney in the country or in the midwest region

DB: But see anything's possible, Charles. But if somebody takes a life.

A: I've seen guilty men walk. Knowing they were guilty.

DB: Would you want to get off?
A: Would you?

DB: I'm not in that predicament.
A: Me neither.

DB: You've been completely honest with us, Charles?
A: I'm not, I'm not in a predicament of wanting to get off and having the wherewithal to do so. I'm in the predicament of wanting to get off and not having the wherewithal to do so.

DB: Have you been truthful with us?
A: As much as I can emotionally.

DB: These sequences as best your, that you can remember? I don't have anything further.

SA: Either do I.

A: Do you suppose uh try for a last camel before the night?

SA: Yeah

A: It's gonna be kind of rough (inaudible - talking over)

SA: Um, just a second. This will be the end of this tape is 2232.

STATEMENT OF CHARLES R. RHINES
Interviewed by Steve Allender & Don Bahr
Transcribed by D. Johnson & C. Bartholow
Defendant:

CR\92-16628
PAGE 1
January 19, 1993

SA: This is a taped statement concerning case number 92-16628. The date is 06/21/92 at 1532 hours. Present at this time is Charles Rhines, Sergeant Don Bahr, and Detective Steve Allender. This is being held at the King County Jail 7th floor. Ok, Charles, let me ah, advise of your rights again, ok. Could you answer as far as you understand 'em or not. Ok. You have the continuing right to remain silent, do you understand that?

A: Yes.

SA: Anything you say can be used as evidence against you. Do you understand that?

A: Yes.

SA: You have the right to consult with and have the presence of an attorney, and if you cannot afford an attorney, an attorney can be appointed for you free of charge. Do you understand that?

A: Yes.

SA: K. Just like the other night, having these rights in mind, are you willing to answer questions.

A: Yes.

SA: Ok. And that, in this case, it goes, if you don't like the question, it doesn't mean that your supposed to answer it. You can always say stop, ok?

A: I can take the 5th Amendment.

SA: Exactly.

A: (Inaudible)

SA: Ok. About the other night, something that interested me when we, when we first came in here you said the tape was incomplete. And you wanted to hear

A: ___ sure, I just wanted to hear, make sure it was complete or not.

SA: Ok. Something specifically you were thinking about that, no?

A: No.

SA: K. We went over a lot of things that night.

A: Mhmm. (positive)

SA: Ok. Question. Something doesn't make sense and, you know, we've had a couple days to think and talk this over so that's why we've got this question. How long, when you were planning the, to get the money at Dig 'Em, how long did you imagine you'd be in there? To go in and go in the office and get the money and leave?

A: I don't know.

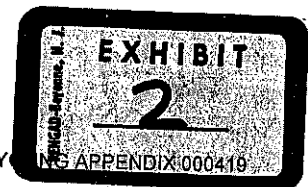
SA: But wh

A: Twenty minutes, half hour, I don't know.

Pennington County, J.D.
IN THE CIRCUIT COURT

JAN 29 1993

By [Signature] Deputy



- SA: That long?
A: Depends on how long it'd take to get in the safe.
- SA: And when you say safe, you're talking about that file cabinet?
A: It was locked.
- SA: Ok. But not a safe, like with a dial?
A: No.
- SA: Ok. Uhm, say you maybe were planning on maybe being there
anywhere from 20 minutes to an hour.
A: I knew the building was to be unoccupied 'til 10:00 p.m.
- SA: Ok. Now when you and Sam left the house, who was driving?
A: Sam.
- SA: Sam was driving. Do you remember which route he took to get
there?
A: street
- SA: Do you know wha, you know, like if he took Omaha or West Main
straight out?
A: Beats me.
- SA: Don't remember
A: Don't know.
- SA: And then uhm, the other night you said you parked uhm, between
West Chicago and Omaha. That would be, from where Dig 'Em is,
the streets are West Main, the next one over
A: Tracks in the snow have long since melted.
- SA: Sure. The next one over is West Rapid.
A: I have no idea. I wasn't looking at the fucking street signs.
- SA: Ok. I'm just trying to
A: (Inaudible)
- SA: I'm just trying to think, one block or like two or three
blocks. Don't know. Well, it's a question. I'm just, d,
wanting to know if you got an answer or not.
A: Somewhere in that region.
- SA: Between one and three blocks.
A: Could have been, four, I don't know.
- SA: Ok. Now the roads were icy, correct?
A: Yeah. I guess so.
- SA: Kind of snowing?
A: Very much so.
- SA: I'm guessing, you correct me if I'm wrong. I'm guessing that
it would have taken you guys, driving from Riley Street, at
least 15 minutes on those road conditions to get from Riley

- A: Street to Dig 'Em Donuts.
Twenty, I think.
- SA: Ok.
- A: (inaudible)
- SA: So it takes you 20 minutes to get there and then you tell Sam
to drive back home?
- A: Yeah.
- SA: Which would have taken 20 minutes
- A: Getting home
- SA: And you were planning on being there probably 20 minutes, so
that's what I don't get. Sam would have had to have driven
straight home, got the call, and turned right around, if you
would have been in there 20 minutes.
- A: _____
- SA: Well, I think it, I think you planned it cause I think you
would be smart enough to plan out, to make sure
- A: How long does it take to cut through a lock. How long does it
take to force a door if you're not sure you can force at all.
Can't take the door off it's hinges and take it out. They had
a problem with something like that. Ah, several months ago.
I think they lost a daily deposit or something, day's receipt
I guess. I guess someone was, took the door off the hinges.
- SA: Oh
- A: So they put screws in, door frame, (inaudible) the door so the
screws would fit in it.
- SA: I saw those. Now that you say that, I've heard of that.
- A: You can't, couldn't take the door off it's hinges.
- SA: So, it was because you just weren't sure how much time.
- A: Yeah _____
- SA: K. But as it turned out, you said you were in
- A: You want me to tell you that Sam came in and helped me
(inaudible)
- SA: No.
- DB: Only if it's the truth. Only it's the truth
- A: What if it's not, the truth, you can't (inaudible)
- SA: Well listen, that's, now _____ gave you a specific question.
I'm trying to show you, I'm trying to show you a ah, where I'm
coming from, what I'm thinking about this specific deal,
let's, 20 minutes is a long time.
- A: No, it's not.
- SA: That's about how long we've been in here.
- A: (inaudible)

- SA: Ok. Had, you
A: Short (inaudible)
- SA: Had you ever been in that office before?
A: Sure I've been in the office before I worked there.
- SA: So you looked at the file cabinet and knew that it had a lock.
A: Yeah, I've seen people, I've seen Connie unlock it in the morning
- SA: Ok.
A: To get the change out.
- SA: K. Uhm,
A: I've seen Dennis unlock it, God knows not in the morning.
- SA: Were you worried about Sam getting caught up in it when you were, at the time? When you were getting ready to get dropped off or when you were in the planning?
A: Planning that (inaudible) anything but a burglary knowing him.
- SA: But what, I mean, were you looking out for him while, because you went in alone, right? That's what you were saying. (Tape shut off).
A: (Tape back on) I wanted a relationship that was pleasant, gratifying, emotionally satisfying continually, out of a job, out of the job prospects, but as it turned out, not really. Had you guys forwarded the mail to me as it came or as soon as I requested it I probably would have come back. I had a job, offer for a Hardees management slot, from Northern Foods.
- SA: Huhmm. K. So you wanted this relationship
A: Sam felt that he had pushed me into the robbery.
- SA: How so?
A: Because he knew I was out of work, and I was just about out of money, but had unemployment on the way
- SA: Mhmm (positive)
A: Applied for (inaudible) job training. (inaudible) It was uhm, income tax back, about 700 dollars, six (inaudible) or something, and I (inaudible) a hundred out, so, ___ borrowed 200 dollars to cover my part of the rent and I'll pay it back (inaudible) weeks. And I'll give you my next, I'll give you my first two checks out of social security (inaudible). Afterward, (inaudible) keep pushing him (inaudible) pushing (inaudible).
- SA: Did he feel guilty then?
A: (inaudible)
- SA: Specially knowing what happened. Uhm,
A: I didn't try to (inaudible)
- SA: But af, I mean, at the time, did you send him home because you

wanted to make sure there was no way to link him back to this thing.

A: Yes.

SA: Yes.

A: I didn't want him to louse anything up.

SA: And that- and that was the purpose.

A: So (inaudible). Who at the apartment complex heard a car door or apartment door open and close at 6:30 and a car start in the driveway.

A: (inaudible). I parked it on the (inaudible) apartment until (inaudible)---- out.

SA: Hmm. All right.

A: Um,

SA: When you were having a good relationship with Sam, how did you feel about him then compared to now?

A: I still love him. (inaudible).

SA: Yeah.

A: (inaudible)-----.

SA: But I mean did you ever- have you ever known Sam to tell the truth? Sometimes? I mean when the relationship.....

A: Some really big lies too.

SA: When the relationship was good with you, was he lying?

A: Yeah, (inaudible) -----.

SA: Yeah, when the relationship was good with you, did you know him to lie to you?

A: No. He was straight up with me 99 percent of the time.

SA: So then now that things have changed and that- pretty much you moving really- that's when it fell apart, right?

A: Yeah, I guess. Yeah.

SA: Yeah. And since that time, you're saying that he's lying. But you know the very first lie he told about this deal...

A: Um-hmm.

SA: Was that he wasn't- he wasn't out there.

A: Don't know. He wasn't out there (inaudible).

SA: So how can you lie once and not tell lies to try to cover it up, when you're getting pressure from the cops and some- some- probably some form of pressure at least indirect pressure from you...

A: wrong.

SA: No.

A: All I said- all I ever said was uh, well, do what you have to.

STATEMENT OF CHARLES R. RHINES
Interviewed by Steve Allender & Don Bahr
Transcribed by D. Johnson & C. Bartholow
Defendant:

CR\92-16628
PAGE 6
January 19, 1993

SA: Did you know- I remember you telling us about the thing in Reno, where you saw the cops and you got paranoid, but, not counting that, did you know that uh, at some time down the road that this arrest was gonna happen?

A: Deja vu dreams.

SA: You'd dream about it happening?

A: Um-hmm. Long long time ago.

SA: So you're talking- (inaudible) nightmare though huh?

A: No.

SA: No?

A: Waking dreams. Flashes you see.

SA: Oh. There's another issue uh, Charles, one more question that I can think of that- that needs uh, asked. Our uh, pathologist told us that when uh, when that last wound was administered to uh, the back of Donnivan's neck, that it should have been lights out, instant death, no moving, no jerking no nothing. And that's - he's a forensic pathologist, he's trained in that sort of thing. But you say different. And the issue of when the hands were tied comes into place.

A: Too bad he wasn't there. To watch. (laughs)

SA: What made- what made you think he was still alive though?

A: Still breathing.

SA: Out of his mouth? I mean, tell me what...

A: (inaudible) checked.

SA: I mean but tell me what you observed.

A: You could hear the air.....you could hear the air moving in and out of the lungs.

SA: It was coming....

A: He had a sucking back wound ok,.....

SA: But it was coming in and out of the back?

A: Yes.

SA: Both in and

A: (inaudible)

SA: I know this is almost impossible for you to remember, but, how long do you think that breathing went on that you know of? After that last wound?

A: A couple minutes.

SA: Was he moving in any other way? Jerking or twitching or anything?

A: His arms.

SA: What were they doing?

- A: His hands (inaudible) like this.
- SA: Like this almost like you're waving or something like that?
Back and forth?
- A: It may have been nerves I don't know. I'm not a trained pathologist.
- SA: yeah.
- A: I just don't want somebody to stand up in the middle of- or call anybody and go dial 911.
- SA: Yeah.
- A: Kind of rough.
- SA: Yeah.
- A: (inaudible) you got the police car (inaudible) television...
- SA: Did you see any police cars that night? While you were there?
- A: No. (inaudible) There was four police cars on duty in Rapid City at night.
- SA: Ok, so that's no.
- A: 4- (inaudible) 4- 4 city police cars out, a county sheriff, maybe a highway patrolman..
- SA: Ok.
- A: Maybe 6 in (inaudible) square miles. (inaudible) ----- police car.
- SA: Ok, now we covered, were starting to cover this, but, when we all....
- A: (inaudible) Two of 'em were up at the other store.
- SA: Could we...
- A: (inaudible) but,.....
- SA: When we started uh, this investigation several of us, you know of course, we tried to imagine how it all would have happened. And, without exception everyone assumed that his hands had been tied in between the second and the third stab wound is that right or wrong?
- A: Um, wrong.
- SA: A- as soon as you knew....
- A: Was there blood on the rope? Of course there was.
- SA: K, what does that mean?
- A: Nothing probably.
- SA: Um, cause see it would make more sense to me, that you would get scared and stab him, get in a scuffle there right by the office door and then, he would be hurt, so that he would let you tie him up and then you would like become confused or not know what to do and stab him to finish him off. I mean, you know what I'm saying? I'm trying- I was trying to figure this

out, how what the sequence of events were and you told us something different Friday night, so, I still kind of favor one idea, but I'm willing- I'm trying to keep an open mind and- and get your side. Cause- cause like, a couple days later or the day after there was the autopsy and that when the pathologist told me that and so I believed it, I just accepted that he would go limp and not move another muscle, not even a twitch, but then you told something different. What?

A: Have you ever butchered chickens?

SA: No. I've heard though.

A: Have you ever butchered chickens Don?

DB: You bet, yes I have.

A: Have you watched 'em run around the yard when you lop their heads off? They get up on their legs and run around the yard.

SA: I've heard that.

A: I've seen it. Ok. Don't believe what your pathologist, uh, he doesn't know everything in the world.

SA: But you think it was about 2 minutes of some type of movement or breathing right?

A: A couple minutes. Could be.

DB: Why- why were you saying that because you were tying him up and that would have took about two minutes probably? Does that make sense?

A: His head must've been lower than his heart.

DB: What?

A: Unless he was later, I don't know.

DB: What about his head Charlie?

A: I said, you guys told me his head was lower than his heart, what's that got to do with the price of tea in China? What's that got to do with bleeding?

SA: You- because it's gravity- it caused him to finish bleeding that way. It ran out the openings in his head.

A: What position was he found in?

SA: His ankles were crossed....well, why don't you tell me how you left him and I'll tell you what's different.

A: Basically I saw him sitting down and leaning forward. (inaudible)-----?

SA: Yeah. yeah.

A: Not the legs crossed, not that I recall.

DB: Ok, was there kind of a crate, that's where he was sitting wasn't it?

A: (inaudible)

DB: huh?

- A: (inaudible) over there.
- SA: Excuse me?
(end of side 1 of tape)
- SA: This is side 2 of this tape, it's 1604.
- SA: (inaudible) do you have any other questions, Don, about ahm, that night specifically?
- DB: I guess I would like to ask you this. Is, you know, the other night when we were talking, we were, we mentioned Sam and that was before, and you felt differently probably about him than you do right now. I was wondering if that'd be any problem as to talk about that as far as
- A: What
- DB: Well, for instance about ah, when I asked you a question the other night about uhm, you know, as far as telling us something and, and the reasons why, you know, keeping Sam out of it, ahm, and now you maybe feel a little different about it.
- A: Ambivalent
- DB: Excuse me?
- A: Ambivalent
- DB: And that's all understandable, we, you perceived has happened.
- A: Yeah. I suppose it's understandable.
- DB: But as far as the ahm, have you told us basically uhm, everything about as far as Sam being involved ah,
- A: Mhmm (positive) periferal and that's all
- DB: Excuse me?
- A: Periferal and that's all. Basically, maybe an accessory after the fact.
- DB: So it's, when, when you were planning this
- A: Maybe unwilling accessory
- DB: Ahuh (positive). How long had this been planned out?
- A: (inaudible)
- DB: Th, as far as doing the, the burglary?
- A: Days, day or two.
- DB: Was there any significance about ah, was he, you know, as far as, was it all popped out that he was going to be dropped off at, at Taco Johns, was that part of the plan, not to, not to drop him off right at
- A: No. That was basically my improvisation after what had, after the events that transpired at Dig 'Em Donuts.
- DB: So you just decided it'd be the best place to drop him off?

- A: Yeah.
- SA: So he was telling us a lie then, saying that he wanted to get dropped over there so he could get some tacos and talk to some people there.
- A: No, actually, he said why don't you t, drop me off at Taco Johns.
- DB: And, and be
- A: (inaudible)
- DB: And beings what had happened, thats, that sounded like a good idea didn't it. Makes sense.
- A: (inaudible) As long as he never did (inaudible) Taco Johns (inaudible). Could have gotten (inaudible)
- DB: K. Do you remember precisely ah, when you told us all we had to do is uhm, hit re-dial and we would have got your number. Can you remember what, what your conversation was with Sam basically? Like what did you tell him?
- A: (inaudible) ah, I'm done here, come and get me, same place. Picked me up same place.
- DB: And then when you left there, you said you had your bag and stuff, you just went on over there to wait a while, knowing it was going to take him 20 minutes
- A: I walked over (inaudible) gone, up and down back and forth
- DB: So you had to wait a long time
- A: 20 minutes or so
- DB: Well weren't you worried about somebody seeing ya out there? You had to be sitting
- A: You stand under a light and you look at your watch. Come on.
- DB: But here you were carrying something
- A: (inaudible) get a ride so I (inaudible)
- DB: What about if they seen some of the blood on you? You weren't worried about that?
- A: Who was thinking about it.
- DB: Weren't you?
- A: ___, I suppose I was. But it's a dark night, it's 7:00, 7:30 at night, and I guess it wasn't a dark night, but it's snow, I mean a snowing night around 7:30 at night, ah, I got a gym bag over my shoulder, ah, looks like it's got gym clothes in it, ah, I'm (inaudible) on my way to the Y. It's a Sunday night, I'm on my way to the Y. (inaudible) looked at my watch, (inaudible)
- DB: What was ah, you told us sequences, and then when you first told Sam when you got back and he said you were counting the money, what was his reaction Sunday night when you said, hey, I, I think you

STATEMENT OF CHARLES R. RHINES
Interviewed by Steve Allender & Don Bahr
Transcribed by D. Johnson & C. Bartholow
Defendant:

CR\92-16628
PAGE 11
January 19, 1993

A: (inaudible)

DB: Excuse me?

A: Shocked _____. Yeah, I suppose _____. I was a little shocked myself.

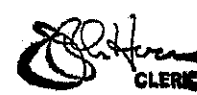
SA: Yeah

DB: Can you think of anything else you didn't tell us that, that we didn't ask you? Last time or this time? Can you Charles? Hang on.

SA: _____ maybe we should wrap it up.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

CHARLES RUSSELL RHINES,)
)
 Petitioner,)
)
 vs.)
)
 DOUGLAS WEBER, Warden, South)
 Dakota State Penitentiary,)
)
 Respondent.)

Civ. 00-5020-KES

AMENDED
PROCEDURAL ORDER

On October 13, 2000, Petitioner filed "Motion for Extension of Time to File Amended Petition." The court has reviewed the motion, and it is hereby

ORDERED that Petitioner shall have until **November 20, 2000**, to file an Amended Petition for Writ of Habeas Corpus to include every known constitutional error or deprivation entitling Petitioner to habeas relief. See Rule 2(c), 28 U.S.C. foll. § 2254. Petitioner is advised that he may be presumed to have deliberately waived his right to complain of any constitutional error deprivation not raised in the Amended Petition. See Rule 9(b), 28 U.S.C. foll. § 2254; see also McCleskey v. Zant, 499 U.S. 467, 498 (1991) (abuse of the writ doctrine bars review of claims that could have been raised in a previous habeas petition absent a showing of cause and prejudice or a fundamental miscarriage of justice). Petitioner is further advised that pursuant to 28 U.S.C. § 2244, he may not file a second or successive petition in this court without prior authorization from the Eighth Circuit. Under § 2244(b)(3)(C), the grounds for obtaining such authorization are extremely limited. Consequently, it is incumbent upon Petitioner to raise all known claims in the Amended Petition.

The Amended Petition shall set forth, in a clear and concise fashion, the legal and factual basis for each ground for relief. The factual basis shall include full citations to the appropriate portions of the record. Additionally, Petitioner shall include in the Amended Petition a "Statement of Exhaustion," specifically asserting when and where each ground for relief was raised in the state courts. See Boyd v. Thompson, 147 F.3d 1124, 1127 (9th Cir. 1998).

IT IS FURTHER ORDERED that on or before **January 19, 2001**, Respondent shall file an Answer Re: Procedural Status of Claims, which addresses the procedural status of all claims raised in the petition, specifically identifying which claims, if any, Respondent contends are unexhausted or procedurally barred from review on the merits.

IT IS FURTHER ORDERED that on or before **March 2, 2001**, Petitioner shall file a Traverse. The Traverse shall be a comprehensive responsive pleading which addresses issues of exhaustion and procedural default, and shall present alternative arguments of cause and prejudice or a fundamental miscarriage of justice, when applicable. Requests for an evidentiary hearing regarding cause and prejudice, or miscarriage of justice, shall be incorporated into Petitioner's Traverse.

IT IS FURTHER ORDERED that if Respondent files a Reply, it shall be done no later than **April 2, 2001**, after the Traverse is filed.

IT IS FURTHER ORDERED that if Petitioner files a Sur-reply, he shall do so no later than **April 16, 2001**, after the Reply is filed. The Sur-reply shall be limited to arguments concerning cause and prejudice or a fundamental miscarriage of justice.

IT IS FURTHER ORDERED that after the procedural status of the claims raised in the Amended Petition are fully briefed, the court will determine which claims will be

reviewed on the merits. A scheduling order will be issued that will set forth when Petitioner shall file a Memorandum of Law Re: Merits of Claims, when Respondents shall file a Response Re: Merits of Claims, and when Petitioner shall file a Reply. Requests for an evidentiary hearing shall be incorporated into Petitioner's Memorandum of Law. The Petition will then be in a posture for the court to resolve the merits of the appropriate claims in this habeas corpus proceeding.

Dated October 18, 2000.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE\

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

DEC 19 2005


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CHARLES RUSSELL RHINES,)	CIV. 00-5020-KES
)	
Petitioner,)	
)	
vs.)	ORDER GRANTING MOTION
)	FOR STAY AND ABEYANCE
DOUGLAS WEBER, Warden, South)	
Dakota State Penitentiary)	
)	
Respondent.)	

PROCEDURAL HISTORY

Petitioner, Charles Rhines, was convicted of premeditated first-degree murder and third-degree burglary. On January 26, 1993, a jury sentenced him to death by lethal injection. Petitioner appealed his conviction and sentence to the South Dakota Supreme Court. Fourteen issues were raised on direct appeal, including the excuse of prospective juror Diane Staeffler, the state's use of its peremptory challenges, the use of victim impact testimony, and the proportionality review. The South Dakota Supreme Court affirmed petitioner's conviction and sentence and the United States Supreme Court denied further review on December 2, 1996.

Petitioner then applied for a writ of habeas corpus in state court on December 5, 1996. In his state habeas, petitioner raised numerous issues, including ineffective assistance of counsel, the excuse for cause of prospective

juror Diane Staeffler, and the constitutionality of the South Dakota capital punishment statutes. Rhines's state habeas was denied by the trial court on October 8, 1998. The South Dakota Supreme Court affirmed the denial on February 9, 2000.

On February 22, 2000, Rhines filed a federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. An amended petition for writ of habeas corpus was filed on November 20, 2000, that alleged thirteen grounds for relief. Respondent, Douglas Weber, alleged that several of the grounds had not been exhausted and were, therefore, procedurally defaulted. On July 3, 2002, this court found that petitioner's grounds for relief Two(B), Six(E), Nine(B), (H), (I), and (J), Twelve, and Thirteen were unexhausted. This court stayed the petition pending exhaustion of Rhines's state court remedies on the condition that Rhines file a petition for habeas review in state court within 60 days and return to federal court within 60 days of completing the state proceedings. The state appealed.

On direct appeal, the Eighth Circuit Court of Appeals vacated the stay and remanded the case so this court could determine whether Rhines could proceed by dismissing the unexhausted claims from his petition. Rhines v. Weber, 346 F.3d 799 (8th Cir. 2003). The United States Supreme Court granted certiorari to determine whether a district court may issue an order of stay and abeyance in a mixed petition for habeas corpus, that is, a petition containing exhausted and unexhausted claims. Rhines v. Weber, 125 S. Ct.

1528, 1532, 161 L. Ed. 2d 440 (2005). The Court held that stay and abeyance is permissible under some circumstances. Rhines, 125 S. Ct. at 1535. The Court remanded the case to the Eighth Circuit Court of Appeals so it could determine whether this court abused its discretion in granting the stay. Id. at 1535-36.

Because this court did not have the benefit of the controlling Supreme Court authority when it issued the order of stay and abeyance in 2002, the Eighth Circuit Court of Appeals remanded the case to this court to analyze the petition for writ of habeas corpus under the new test enunciated in Rhines. Rhines v. Weber, 409 F.3d 982, 983 (8th Cir. 2005). This court was directed to analyze each unexhausted claim to: (1) determine whether Rhines had good cause for his failure to exhaust the claims in state court, (2) determine whether the claims were plainly meritless, and (3) consider whether Rhines had engaged in abusive litigation tactics or intentional delay. Id. (citing Rhines, 125 S. Ct. at 1535). The court finds that Rhines had good cause for failing to exhaust the claims, the claims are not plainly meritless, and Rhines has not engaged in abusive litigation tactics. Accordingly, his petition for habeas corpus is stayed pending exhaustion in state court.

DISCUSSION

1. Good Cause

Rhines contends that he has good cause for his failure to exhaust his claims in state court because his post-conviction counsel was ineffective. Respondent argues that alleged ineffective assistance of counsel cannot serve as good cause for failure to exhaust his claims in state court, just as ineffective assistance of counsel is not good cause to excuse a procedural default. The Supreme Court did not define “good cause” in Rhines.

The only other Supreme Court decision to reference the term “good cause” in the stay and abeyance context is Pace v. DiGuglielmo, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005). In Pace, the Court held that a state postconviction filing rejected by the state court as untimely was not properly filed within the meaning of § 2244(d)(2). Id. at 1814. The petitioner argued that the court’s timeliness interpretation was unfair because a petitioner trying in good faith to exhaust his state court claims might litigate for several years only to find out that his claim had never been properly filed. Id. at 1813. Thus, his federal petition for habeas relief would be time barred. Id. In response, the court noted that “[a] prisoner seeking state postconviction relief might avoid this predicament . . . by filing a ‘protective’ petition in federal court to stay and abey the federal habeas proceedings until state remedies are exhausted.” Id. The Supreme Court recognized that “petitioner’s reasonable

confusion about whether a state filing would be timely will ordinarily constitute 'good cause' for him to file in federal court." Id.

In the present case, Rhines initially filed a pro se federal habeas corpus petition leaving "more than eleven months left before the expiration of the limitations period." Rhines, 125 S.Ct. at 1532. He also filed a pro se "Motion to Toll Time" because he was concerned about the one-year statute of limitations contained in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). In response to the Motion to Toll Time, respondent advised the court that Rhines "has had a maximum of fourteen days (more likely eight days) that have run against the statute of limitations in Section 2244. Since petitioner is in no danger of losing his right to file for federal habeas corpus relief, there is no reason to toll the time of the statute of limitations." State's Response to Petitioner's Motion to Toll Time (filed June 2, 2000) at p. 4. Relying on respondent's representations, the court denied Rhines's motion to toll time.

Rhines followed the procedure that was subsequently articulated in Pace, namely he filed a protective petition in federal court and asked the federal court to stay and abey the federal habeas proceeding, stating that he was concerned about complying with the one-year statute of limitations in the AEDPA. The court finds that Rhines was reasonably confused about whether his claims had been properly exhausted in state court and thus he has shown "good cause" for his failure to exhaust his unexhausted claims.

In the alternative, the court finds that under the circumstances of this case, Rhines meets the “good cause” requirement due to the ineffective assistance of his post-conviction counsel. The Eighth Circuit Court of Appeals has not addressed the issue of “good cause” in the stay and abeyance context. District courts faced with the stay and abeyance question since the Rhines decision have split on whether alleged ineffective assistance of post-conviction counsel constitutes good cause for failure to exhaust claims in state proceedings.¹ Without much discussion, at least four district courts found that alleged ineffective assistance of counsel during post-conviction proceedings did constitute good cause for failure to exhaust claims in state proceedings. See e.g., Ramchair v. Conway, 2005 WL 2786975 at *16 (E.D.N.Y. 2005); Boyd v. Jones, 2005 WL 2656639 at *4 (E.D. Mich.); Fradiue v. Piler, 2005 WL 2204862 (E.D. Cal. 2005); and Martin v. Warren, 2005 WL 2173365 (E.D. Mich. 2005). Similarly, and again with limited discussion, at least two district courts found that alleged ineffective assistance of counsel during post-conviction proceedings did not constitute good cause. See, e.g., Vasquez v. Parrott, 2005 WL 2864703 at *10 (S.D.N.Y. 2005); Hubbert v. Renico, 2005 WL 2173612 at *3 (E.D. Mich. 2005).

¹District courts have also found good cause where the petitioner may have been mentally incompetent, Shotwell v. Lamarque, 2005 WL 1556296 (E.D. Cal. 2005), or was unrepresented by counsel, Coulter v. Mullins, 2005 WL 2487980 (W.D. Okla. 2005), Rogers v. Carey, 2005 WL 1366451 (E.D. Cal. 2005).

Respondent, relying on Coleman v. Thompson, 501 U.S. 722, 730, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) and Murray v. Carrier, 477 U.S. 478, 490-492, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986), contends that the court should apply the same principles to “good cause” in the stay and abey context as has been applied to show “cause” under the “cause and prejudice” standard in the procedural default arena; namely, that ineffective assistance of post-conviction counsel is not grounds for relief from a procedural default unless it violates the Federal Constitution. The Supreme Court recognized that “[t]he procedural default doctrine and its attendant ‘cause and prejudice’ standard are ‘grounded in concerns of comity and federalism[.]’” Edwards v. Carpenter, 529 U.S. 446, 451, 120 S. Ct. 1587, 1591, 146 L. Ed. 2d 518 (2000) (quoting Coleman, 501 U.S. at 730). The failure of a habeas petitioner to meet the State’s procedural requirements deprives the state courts of an opportunity to reach the issues in the first instance. Id. But unlike the procedural default situation where a petitioner is barred from presenting his claim to state courts, Rhines is not barred from presenting his claim to the state court. Thus, the principles of comity and federalism would be given full recognition if the court allowed Rhines to exhaust his unexhausted claims in state court. As a result, the underlying concern of applying the principles of comity and federalism that result in requiring a petitioner to show that the assistance of counsel was so ineffective as to

violate the Federal Constitution does not exist, because petitioner can present his claims to state court.

Moreover, this court believes that the Supreme Court suggested a more expansive definition of “good cause” in Pace and Rhines than the showing needed for “cause” to excuse a procedural default. See Pace 125 S. Ct. at 1814. In Pace, the Supreme Court acknowledged that “reasonable confusion” about timeliness was sufficient to meet the cause requirement. Reasonable confusion on the part of a petitioner is less stringent than acts that have been found sufficient to establish cause for procedural default. See Carrier, 477 U.S. at 488 (a showing that the factual or legal basis for a claim was not available to counsel or that “some interference by officials” made compliance impracticable would constitute cause).

In this case, there is nothing in the record to indicate that Rhines’s allegations of ineffective assistance of counsel are frivolous or that Rhines should have been aware that his post-conviction counsel should have raised the issues on appeal. See Ramchair, 2005 WL 2786975 at *16. Permitting Rhines to return to state court to exhaust his remedies and present his ineffective assistance of counsel argument complies with the principles of comity and federalism that underlie the exhaustion doctrine. See Edwards, 529 U.S. at 451. Furthermore, the exhaustion doctrine was not intended to unreasonably impair the petitioner’s right to relief. Rhines, 125 S. Ct. at 1536.

Respondent contends that if ineffective assistance on state habeas is sufficient grounds for good cause, then every petitioner who merely alleges ineffective assistance of his prior attorney will get stay and abeyance. Respt.'s Br. 7. The Rhines test, however, requires the court to dismiss a motion for stay and abeyance where the petitioner engages in abusive litigation tactics or intentional delay, even if he has good cause and potentially meritorious claims. Rhines, 125 S. Ct. at 1535. Because the court believes that Rhines's allegations of ineffective assistance of counsel are analogous to the "reasonable confusion" about timeliness cited in Pace, the court finds good cause exists to excuse Rhines's failure to exhaust his claims in state court.

2. Potential Merit Analysis

Even if Rhines has good cause to excuse failure to exhaust his claims in state court, "the district court would abuse its discretion if it were to grant him a stay when his unexhausted claims are plainly meritless." Rhines, 125 S. Ct. at 1535 (citing, with the cf. signal, 28 U.S.C. § 2254(b)(2), which provides that "[a]n application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.") If the claims are "potentially meritorious" the court should grant the stay. Id. Pursuant to § 2254(b)(2), a court may decide an unexhausted issue on the merits because the "exhaustion rule is not a rule of jurisdiction, and sometimes 'the interests of

comity and federalism [are] better served by addressing the merits.”

Padavich v. Thalacker, 162 F.3d 521, 522 (8th Cir. 1998) (quoting Granberry v. Greer, 481 U.S. 129, 134, 107 S. Ct. 1671, 95 L. Ed. 2d 119 (1987)).

a. Ground Two(B)—Allegedly Improper Exclusion of Prospective Juror Jack Meyer

Rhines’s amended petition alleged that his rights to due process, an impartial jury, and equal protection were violated by the trial court’s exclusion of prospective juror Jack Meyer. The trial court excluded him for cause because he indicated that he was opposed to the death penalty.

Prospective jurors may be excluded for cause because of their views on capital punishment if their views would prevent or substantially impair the performance of their duties as a juror in accordance with the jury instructions. Wainwright v. Witt, 469 U.S. 412, 424, 105 S. Ct. 844, 83 L. Ed. 2d 841, (1985). “[A] sentence of death[, however,] cannot be carried out if the jury that imposed or recommended it was chosen by excluding venire men for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction.” Davis v. Georgia, 429 U.S. 122, 123, 97 S. Ct. 399, 50 L. Ed. 2d 339 (1976). Having reviewed the transcript of Meyer’s voir dire, the court finds that this claim is not plainly meritless.

b. Ground Six (E)—Alleged Unconstitutionality of the South Dakota Death Penalty Statute

Rhines contends that South Dakota's application of its death penalty statutes violates his right to due process, equal protection, and constitutes cruel and unusual punishment. Under South Dakota law, a sentence of death or life imprisonment are the only sentences permitted for Class A felonies. SDCL 22-6-1. SDCL 23A-27A-1 provides that "in all cases for which the death penalty may be authorized, the judge shall consider, or shall include in instructions to the jury for it to consider, any mitigating circumstances and any of the following aggravating circumstances which may be supported by the evidence." The statute enumerates ten aggravating factors, including a finding that the defendant committed the crime for money or that the crime was outrageously vile or inhuman. *Id.* Rhines contends that the statute is unconstitutional as applied because South Dakota does not treat all Class A felonies as death penalty cases.

Respondent contends that Rhines's claim is plainly meritless because SDCL 23A-27A-1 is identical to the statute upheld in *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976). Whether the statutes are identical is not the issue, however, because Rhines is challenging the application of the statute. In *Gregg*, the Court held that "the death penalty is not a form of punishment that may never be imposed." *Id.* at 187. The death

penalty is acceptable as long as it is not imposed in an arbitrary and capricious manner. Id. at 195. Because Rhines has alleged that the death penalty was applied arbitrarily, the court finds that he has made a colorable federal claim. Thus, the court finds that his claim is not plainly meritless. See Rhines, 125 S. Ct. at 1535.

c. Grounds Nine(B), (H), (I), and (J)—Alleged Ineffective Assistance of Trial Counsel

In Ground Nine (B), Rhines alleges that his trial counsel were ineffective for their “tepid” presentation of evidence during the penalty phase, including their failure to call John Fousek, James Mighell, and Connie Royer as witnesses who would have provided helpful testimony. In Ground Nine (H), Rhines contends that his counsel missed erroneous and highly prejudicial testimony from Glen Wishard. Rhines alleges in Ground (I) that his attorney failed to consult with a mitigation expert. In Ground (J), Rhines alleges that his counsel failed to object to irrelevant and prejudicial testimony that Rhines had access to a gun, and testimony about Rhines’s statements at the victim’s funeral.

Rhines must show that his attorneys’ performance fell below an objective standard of reasonableness and that he suffered prejudice as a result of their substandard performance. Strickland v. Washington, 466 U.S. 668, 688-692, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A counsel’s errors

must be so serious that the conviction or sentence is unreliable. Id. at 687. Judicial scrutiny of attorney performance is highly deferential, with a strong presumption that counsel's conduct falls within the range of reasonable professional conduct. Id. at 689.

Respondent argues that Rhines's ineffective assistance of counsel claims are plainly meritless because Rhines did not allege that he was prejudiced by his attorneys' alleged errors. Rhines contends that by citing to Strickland he has alleged prejudice and that the alleged prejudice is obvious. The court understands Rhines's habeas petition to allege prejudice because he relied on Strickland and because the court can infer from the context of his habeas petition that Rhines is alleging that he would not have been sentenced to death but for the ineffective assistance of his trial counsel.

While Rhines faces an uphill battle in a state habeas proceeding under the deferential Strickland standard, the court finds that these claims are not plainly meritless. If Rhines can prove his allegations, a court could find that his counsel's performance fell below the objective standard for reasonableness and that he was prejudiced as a result. For example, in Austin v. Bell, 126 F.3d 843, 849 (6th Cir. 1997), the court found that failure to call available witnesses to testify at sentencing was ineffective assistance of counsel, as Rhines alleged in Ground Nine(B). In Harries v. Bell, 417 F.3d 631, 638 (6th Cir. 2005), the court found that petitioner's counsel was

ineffective for failing to properly investigate mitigating evidence and rebut aggravating evidence, as Rhines alleged in Ground Nine(I). Depending on the nature of the prejudicial evidence or testimony in Ground Nine(H) and (J), failure to object could qualify as an error so serious that the conviction or sentence is unreliable. See Strickland, 466 U.S. at 687. Accordingly, Rhines' ineffective assistance of counsel claims are not plainly meritless.

d. Ground Twelve—Alleged Prosecutorial Misconduct

Rhines alleges that the prosecution violated his right to due process and equal protection by (1) claiming that the victim's hands were tied before the fatal stabbing, when they were actually tied after Rhines killed the victim; (2) claiming that the victim was "gutted" when there was no such evidence; (3) using false testimony from witness Glen Wishard; and (4) excluding all jurors with misgivings about the death penalty.

"The test for reversible prosecutorial misconduct has two parts: (1) the prosecutor's remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the defendant of a fair trial." United States v. Conroy, 424 F.3d 833, 840 (8th Cir. 2005) (quoting United States v. Hernandez, 779 F.2d 456, 458 (8th Cir. 1985)). "There are numerous cases in which courts have censured prosecutors for improper statements or conduct but nevertheless have affirmed the conviction because the misconduct was

found, in the context of the whole trial, not to be prejudicial.” Hernandez, 779 F.2d 456 at 458-59.

Respondent contends that the claims related to the first three issues are plainly meritless because Rhines did not allege that he was prejudiced by the prosecution’s alleged misconduct. Respondent contends that even if Rhines did allege prejudice, the errors are minor compared to his explicit confession to the killing.

As in the court’s analysis of the ineffective assistance of counsel claim, it is apparent from the context that Rhines is claiming that the alleged misconduct led the jury to sentence him to death, thereby prejudicing him. The alleged misconduct is related to the “outrageously or wantonly vile, horrible, or inhuman” aggravating factor found in SDCL 23A-27A-1. If proven true, prosecutorial misconduct regarding evidence or testimony may be grounds to overturn a sentence, and the state court should have the opportunity to hear the claim. This claim is not plainly meritless.

e. Ground Thirteen—Rhines’s Absence During Jury Note Consideration

Rhines alleges that he was absent during the court’s consideration of a juror question in violation of the Fifth, Sixth and Fourteenth Amendments. The constitutional right to presence is rooted in the Confrontation Clause of the Sixth Amendment, but the Supreme Court has also recognized a due

process right in some situations where the defendant is not confronting witnesses or evidence against him. United States v. Gagnon, 470 U.S. 522, 526, 105 S. Ct. 1482, 84 L. Ed. 2d 486 (1985). A defendant has a due process right to be present “whenever his presence has a relation, reasonably substantial, to the fulness [sic] of his opportunity to defend against the charge . . . [T]he presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.” Id. (citation omitted). The propriety of the exclusion of the defendant must be considered in light of the whole record. Id.

In Gagnon, the Court held that the trial judge’s in camera questioning of a juror did not violate the defendants’ due process rights because they could not have done anything or gained anything by being present. 470 U.S. at 526-27. Nor was their presence necessary to ensure fundamental fairness or a reasonably substantial opportunity to defend against the charge. Id. at 527.

In the case at bar, the jury wrote a nine-part question seeking clarification of the definition of a sentence of life in prison without parole. Ct. Ex. 5. The jury asked what Rhines’s daily routine in prison would be like. Id. For example, the jury wanted to know whether Rhines would ever be given work release or conjugal visits, allowed to mix with the general prison population, or allowed to watch TV and listen to music. Id. Judge John K.

Konenkamp considered the matter in chambers and offered counsel for both sides the opportunity to comment on his proposed answer. Jury Trial Tr. Vol. XIII at 2697. The jury was not present. Id. His proposed response was “Dear Jurors: I acknowledge your note asking questions about life imprisonment. All the information I can give you is set forth in the jury instructions. Dated this 26th day of January, 1993, signed by the Court.” Joseph Butler, counsel for Rhines, objected on the basis of completeness and suggested that Judge Konenkamp instruct the jury that they could not base their decision on speculation or guesswork. Id. at 2699.

Judge Konenkamp overruled the defendant’s objections, and answered the jury note with his own note written as he had originally proposed. Jury Trial Tr. Vol. XIII at 2700-01. The court noted that each juror acknowledged during voir dire that he or she understood that a sentence of life without parole meant life without parole, and that the jury instructions said the same thing. Id. at 2700. Thus, no further instructions were necessary. Id. at 2700.

Like in Gagnon, Rhines’s presence could not have made any difference. His attorneys were present at the time and argued on his behalf. The jury was not present during the hearing and Rhines’s absence could not have made any difference in the jury’s decision to sentence him to death. The note dealt with a purely legal matter and the judge had already given the jury the

definition of life without parole. Thus, Rhines's presence did not have a reasonably substantial relation to his ability to defend against the charge and was not necessary to ensure fundamental fairness. Even if Rhines's allegations that he was absent during the hearing are true, this could not have violated his constitutional rights. Accordingly, the court finds the claim plainly meritless.

3. Intentionally Dilatory Litigation Tactics

The South Dakota Supreme Court denied Rhines's state habeas appeal on February 9, 2000. Rhines petitioned this court for habeas relief on February 22, 2000. After this court issued its order dated July 3, 2002, granting Rhines a stay pending exhaustion of the unexhausted claims in state court contingent upon Rhines commencing state court exhaustion proceedings within 60 days, Rhines did so. His petition was filed in state court on August 22, 2002. Because Rhines filed the habeas petition less than a month after the state habeas proceedings were complete, and he filed his state court petition to exhaust the unexhausted claims in 50 days, the court finds that Rhines has not engaged in intentionally dilatory litigation tactics.

After considering the three factors articulated by the Supreme Court in Rhines, the court finds that Rhines has good cause for his failure to exhaust, his unexhausted claims are not plainly meritless, and there is no indication

that he engaged in intentionally dilatory litigation tactics. Thus, Rhines is entitled to have his petition stayed pending exhaustion of the potentially meritorious claims. Because the petition has already been filed in state court, the only question remaining for this court to decide is the amount of time within which Rhines will have to return to this court following completion of state court exhaustion. In Rhines, the Supreme Court referenced approvingly a 30-day time period. As a result, this court will adopt that 30-day time period.

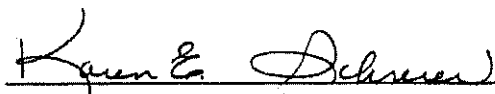
Based on the foregoing discussion, it is hereby

ORDERED that Rhines shall have 15 days to notify this court whether he intends to dismiss Ground Thirteen. If Ground Thirteen is not dismissed, the court will dismiss this petition as a mixed petition.

IT IS FURTHER ORDERED that the petition for habeas corpus is stayed pending exhaustion of Grounds Two(B), Six (E), Nine(B), (H), (I), (J), and Twelve in state court, conditioned upon petitioner returning to this court within 30 days of completing such exhaustion.

Dated December 19, 2005.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

CHARLES RUSSELL RHINES, Petitioner, vs. DARIN YOUNG, Warden, South Dakota State Penitentiary; Respondent.	5:00-CV-05020-KES ORDER DENYING MOTION FOR ABEYANCE
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Petitioner, Charles Rhines, moves the court for an order staying this proceeding. Darin Young, respondent, resists the motion. For the following reasons, the court denies the motion.

PROCEDURAL HISTORY

Rhines was convicted of premeditated first-degree murder and third-degree burglary. On January 26, 1993, a jury sentenced him to death by lethal injection. Rhines appealed his conviction and sentence to the South Dakota Supreme Court. Fourteen issues were raised on direct appeal, including the excusal of prospective juror Diane Staeffler, the state's use of its peremptory challenges, the use of victim impact testimony, and the proportionality review. The South Dakota Supreme Court affirmed petitioner's conviction and sentence and the United States Supreme Court denied further review on December 2, 1996.

Rhines then applied for a writ of habeas corpus in state court on December 5, 1996. In his state habeas, Rhines raised numerous issues, including ineffective assistance of counsel, the excusal for cause of prospective juror Diane Staeffler, and the constitutionality of the South Dakota capital punishment statutes. Rhines's state habeas was denied by the trial court on October 8, 1998. The South Dakota Supreme Court affirmed the denial on February 9, 2000.

On February 22, 2000, Rhines filed a federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. An amended petition for writ of habeas corpus was filed on November 20, 2000, which alleged thirteen grounds for relief. Respondent alleged that several of the grounds had not been exhausted and were, therefore, procedurally defaulted. On July 3, 2002, this court found that petitioner's grounds for relief Two(B), Six(E), Nine(B), (H), (I), and (J), Twelve, and Thirteen were unexhausted. This court stayed the petition pending exhaustion of Rhines's state court remedies on the condition that Rhines file a petition for habeas review in state court within 60 days and return to federal court within 60 days of completing the state proceedings. The state appealed.

On direct appeal, the Eighth Circuit Court of Appeals vacated the stay and remanded the case so this court could determine whether Rhines could proceed by dismissing the unexhausted claims from his petition. *Rhines v. Weber*, 346 F.3d 799 (8th Cir. 2003). Rhines filed a petition for certiorari with the United States Supreme Court. The United States Supreme Court granted certiorari to determine whether a district court may issue an order of stay and

abeyance in a mixed petition for habeas corpus, that is, a petition containing exhausted and unexhausted claims. *Rhines v. Weber*, 544 U.S. 269 (2005). The Court held that stay and abeyance is permissible under some circumstances. *Id.*, 544 U.S. at 277. The Court remanded the case to the Eighth Circuit Court of Appeals so it could determine whether this court abused its discretion in granting the stay. *Id.* at 279. The Court specifically stated that “once the petitioner exhausts his state remedies, the district court will lift the stay and allow the petitioner to proceed in federal court.” *Id.* at 275-76 (emphasis added).

Because this court did not have the benefit of the controlling Supreme Court authority when it issued the order of stay and abeyance in 2002, the Eighth Circuit Court of Appeals remanded the case to this court to analyze the petition for writ of habeas corpus under the new test enunciated in *Rhines*. *Rhines v. Weber*, 409 F.3d 982, 983 (8th Cir. 2005). This court was directed to analyze each unexhausted claim to: (1) determine whether Rhines had good cause for his failure to exhaust the claims in state court, (2) determine whether the claims were plainly meritless, and (3) consider whether Rhines had engaged in abusive litigation tactics or intentional delay. *Id.* (citing *Rhines*, 544 U.S. at 277-28). On December 19, 2005, this court found that Rhines had good cause for failing to exhaust the claims, the claims were not plainly meritless, and Rhines had not engaged in abusive litigation tactics. Docket 150. The court ordered that Rhines’s petition for habeas corpus was stayed pending exhaustion in state court. *Id.*

On December 21, 2005, Rhines returned to state court to exhaust his claims. On February 27, 2013, the Circuit Court for the Seventh Judicial Circuit of South Dakota entered judgment in favor of respondent on all of Rhines's claims. Rhines timely requested a Certificate of Appealability from both the state Circuit Court and the Supreme Court of South Dakota, the latter of which was denied on July 17, 2013. In early October of 2013, Rhines filed a petition for certiorari with the United States Supreme Court, which the Court denied on January 21, 2014. Docket 223. On February 4, 2014, this court lifted the stay on Rhines's federal habeas corpus proceeding. Docket 224. Rhines now seeks another stay for a minimum of 180 days. Docket 265.

DISCUSSION

The decision to stay a proceeding is entrusted to a district court's sound discretion. *Ryan v. Gonzales*, 133 S. Ct. 696, 708 (2013); *see also Landis v. N. Am. Co.*, 299 U.S. 163, 166 (1936) (“ . . . the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) does not deprive courts of that authority, although the court's decision to exercise it should be compatible with the objectives of AEDPA. *Rhines*, 544 U.S. at 276 (noting two purposes of the Act are ensuring finality and streamlining federal habeas proceedings).¹ “The proponent of a stay bears

¹ The precise holding in *Rhines* applicable to staying mixed habeas petitions does not apply to Rhines's present motion because Rhines makes no

the burden of establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

Rhines seeks an order staying this proceeding for a minimum of 180 days to investigate new ineffective assistance of trial counsel claims based upon the Supreme Court’s decision in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012).

Anticipating the discovery of those additional claims, Rhines also requests permission to file a second amended habeas corpus petition.

Because the Supreme Court’s *Martinez* opinion is intertwined with the doctrine of procedural default, a brief discussion of that doctrine is necessary. Before seeking federal relief under 28 U.S.C. § 2254, a petitioner must “fairly present” the claim to the state courts. *Murphy v. King*, 652 F.3d 845, 848 (8th Cir. 2011) (citing *Baldwin v. Reese*, 541 U.S. 27, 29 (2004); 28 U.S.C. § 2254(b)(1) (“An application for a writ of habeas corpus . . . shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State.”). As a rule, a federal court “will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). This rule also serves as a bar to claims raised in federal habeas petitions “when a state court declined to address a prisoner’s federal claims because the prisoner had failed to meet a state procedural requirement.” *Id.* at 729-730. The requirement that prisoners first exhaust their claims in state court “protect[s] the state courts’ role in the enforcement of federal law and

showing that his federal habeas petition once again asserts non-exhausted state claims.

prevent[s] disruption of state judicial proceedings.” *Rose v. Lundy*, 455 U.S. 509, 518 (1982). “[A] habeas petitioner who has failed to meet the State’s procedural requirements for presenting his federal claims has deprived the state courts of an opportunity to address those claims in the first instance.” *Coleman*, 501 U.S. 732. “The bar to federal review may be lifted, however, if the prisoner can demonstrate cause for the procedural default in state court and actual prejudice as a result of the alleged violation of federal law.” *Maples v. Thomas*, 132 S. Ct. 912, 922 (2012) (quotations omitted).

In *Coleman*, 501 U.S. at 752, the Supreme Court observed that “[t]here is no constitutional right to an attorney in a state post-conviction proceeding.” As a consequence, “a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings.” *Id.* And “it is the petitioner who must bear the burden of [habeas counsel’s] failure to follow state procedural rules.” *Id.* at 754. Thus, a petitioner cannot assert the ineffectiveness of habeas counsel as a cause to excuse a procedurally defaulted claim. *Id.* at 757.

The Supreme Court’s *Martinez* opinion created a “narrow exception” that “modif[ies] the unqualified statement in *Coleman* that an attorney’s ignorance or inadvertence in a postconviction proceeding does not qualify as cause to excuse a procedural default.” *Martinez*, 132 S. Ct. at 1315. Specifically, the Court held that “[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance at trial.” *Id.* The Court recognized that,

[T]he initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance

at trial, [thus] the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal to the ineffective-assistance claim. . . . When an attorney errs in initial-review collateral proceedings, it is likely that no state court at any level will hear the prisoner's claim. . . . And if counsel's errors in an initial-review collateral proceeding do not establish cause to excuse the procedural default in a federal habeas proceeding, no court will review the prisoner's claims.

Id. at 1316-17. As a solution to that problem, the narrow exception announced in *Martinez* is met when "(1) the ineffective-assistance claim was a 'substantial' claim;² (2) the 'cause' consisted of there being 'no counsel' or only 'ineffective' counsel during the collateral review proceeding; and (3) the state collateral review proceeding was the 'initial' review proceeding with respect to the 'ineffective-assistance-of-counsel claim.'" *Dansby v. Hobbs*, 766 F.3d 809, 834 (8th Cir. 2014) (quoting *Trevino v. Thaler*, 133 S. Ct. 1911, 1918 (2013)). The Court reiterated the narrowness of its holding, however, and cautioned that the nature of its decision was purely equitable rather than constitutional. *Martinez*, 132 S. Ct. at 1319 (noting several "differences between a constitutional ruling and the equitable ruling of this case.").

Rhines, unlike the petitioner in *Martinez*, is not asserting for the first time in federal habeas a substantial ineffective assistance of trial counsel claim that has been procedurally barred due to the ineffective assistance of state habeas counsel. To the contrary, Rhines has not identified any such claims at all. Rather, Rhines contemplates that such claims may yet be discovered and brought at a later date, thus justifying a stay of this proceeding.

² A "substantial" ineffective assistance claim is said to be one that has "some merit." *Martinez*, 132 S. Ct. at 1318.

Rhines principally relies on caselaw from the Fourth Circuit in support of his position. In *Gray v. Pearson*, 526 Fed Appx. 331, 332 (4th Cir. 2013), the petitioner was represented by the same counsel in both his state and federal habeas proceedings. The Fourth Circuit noted that the state habeas proceeding was Gray's initial-review collateral proceeding. *Id.* at 334. Relying on *Martinez*, the petitioner argued that independent counsel should be appointed to review and present any ineffective assistance of trial counsel claims overlooked by his state habeas counsel. *Id.* at 332. The court agreed, noting "a clear conflict of interest exists in requiring Gray's [federal habeas] counsel to identify and investigate potential errors that they themselves may have made in failing to uncover ineffectiveness of trial counsel while they represented Gray in his state post-conviction proceedings[.]" *Id.* at 334. Thus, the court remanded so that independent counsel could be appointed.

Although *Gray* was an unpublished opinion, the Fourth Circuit subsequently adopted the *Gray* analysis. *Juniper v. Davis*, 737 F.3d 288 (4th Cir. 2013) ("Therefore, . . . we adopt *Gray's* reasoning *in toto*."). In *Juniper*, like in *Gray*, the petitioner was represented by the same counsel in both his state and federal habeas proceedings. *Id.* at 290. Again, the state habeas proceeding was the petitioner's initial-review collateral proceeding. *Id.* at 289. Thus, the Fourth Circuit concluded that the petitioner should be appointed independent counsel due to the same conflict of interest identified in *Gray*. *Id.*

Several district courts in the Fourth Circuit have followed those decisions and, as part of their orders appointing supplemental counsel, also ordered a

stay of the proceeding so that new counsel had an opportunity to investigate and assert claims that fell within *Martinez*. See, e.g., *Parker v. Joyner*, No. 5:03-HC-966-H, 2014 WL 6630108 (E.D.N.C. Nov. 21, 2014); *Burke v. Lassiter*, No. 5:12-cv-00137-RLV, Docket 40 (W.D.N.C. 2014).³

A similar path has been charted by the Fifth Circuit. See *Mendoza v. Stephens*, 783 F.3d 203 (5th Cir. 2015); *Speer v. Stephens*, 781 F.3d 784 (5th Cir. 2015). In *Mendoza*, 783 F.3d at 203-24, the court's opinion consisted of a single paragraph remanding the case to the district court to appoint supplemental counsel and to determine if the petitioner could establish cause for the procedural default of his ineffective assistance of trial counsel claims. A concurring opinion provided additional details and noted that, as in *Gray* and *Juniper*, *Mendoza*'s federal and state habeas counsel were the same. *Id.* at 208 (Owen, J., concurring). In *Speer*, 781 F.3d at 787, the court again remanded to appoint supplemental counsel. A footnote indicated that the court's "decision addresses the universe of cases where petitioner's counsel in his federal petition was also his state habeas counsel." *Id.* at 786 n.10. The same judge that filed a concurring opinion in *Mendoza* did so in *Speer* "for the reasons set forth in [her] concurring opinion in" the *Mendoza* case. *Id.* at 787 (Owen, J., concurring).

³ The *Burke* opinion is appended to Docket 269-3. Also appended is an order from *Sigmon v. Byars*, No. 8:13-cv-01399-RBH-JDA, Docket 123 (D.S.C. 2014). Docket 269-4. In *Sigmon*, however, the petitioner identified several ineffective assistance of claims to be included in his amended petition. The state only partially opposed adding those claims, and the district court allowed the petitioner to include them all.

While this court is in no way bound by decisions from the Fourth and Fifth Circuits, those courts have recognized that a conflict of interest can arise when a petitioner's initial-review collateral proceeding counsel and federal habeas proceeding counsel are the same. In those circumstances—and if a petitioner's ineffective assistance claim was not raised in state habeas but should have been—then federal habeas counsel is placed in the ethically impermissible position of having to argue their own effectiveness during the state habeas proceeding. The consequence is that the petitioner's ineffective assistance of trial counsel claims that should have been raised at the initial-review collateral proceeding may never be raised or heard at all. *See Martinez*, 132 S. Ct. at 1316. As a solution, supplemental counsel can be appointed to independently determine whether state habeas counsel rendered ineffective assistance during the initial-review collateral proceeding, thereby causing the petitioner to procedurally default on his or her ineffective assistance of trial counsel claims. Notably, however, if the petitioner has already received the benefit of independent counsel, then the conflict of interest fails to materialize. *See Fowler v. Joyner*, 753 F.3d 446, 465 (4th Cir. 2014).

Here, Rhines was represented by three attorneys at trial, sentencing, and on direct appeal: Wayne Gilbert, Joseph Butler, and Michael Stonefield. Docket 73 at 16-17. During the initial state habeas and the appeal from that proceeding, Rhines was represented by attorney Michael Hanson. *Id.* at 17. In South Dakota, ineffective assistance of trial counsel claims are not normally cognizable on direct appeal. *See State v. Hannemann*, 823 N.W.2d 357, 360

(S.D. 2012) (“Only in rare cases will an ineffective-assistance-of-counsel claim be ripe for review on direct appeal.”); *State v. Arabie*, 663 N.W.2d 250, 256 (S.D. 2003). Consequently, Rhines’s state habeas proceeding in which he was represented by attorney Hanson was his initial-review collateral proceeding. *See Martinez*, 132 S. Ct. at 1315 (defining initial-review collateral proceedings as those “collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial.”); *see also Trevino*, 133 S. Ct. at 1915 (applying *Martinez* when the state proceeding “make[s] it ‘virtually impossible’ for an ineffective assistance claim to be presented on direct review.”) (citation omitted).

After the South Dakota Supreme Court denied his first state habeas petition, Rhines filed his federal habeas petition and was initially appointed attorneys Michael Butler and John Schlimgen. Docket 19; Docket 20. Attorney Michael Butler was discharged a little over one month after his appointment when this court determined that he may be a potential witness. Docket 44. Roberto Lange was then appointed as co-counsel to represent Rhines along with attorney Schlimgen. Docket 47. Schlimgen was the learned counsel.

Attorney Schlimgen continued to represent Rhines until August 2008, when Schlimgen was appointed as a magistrate judge in the Second Judicial Circuit of South Dakota. Docket 167; Docket 169. This court then appointed attorney Charles Rogers as co-counsel. Docket 174. Rogers was the learned counsel. Attorney Lange continued to represent Rhines until October 2009, when Lange was appointed as a United States District Judge for the District of

South Dakota. Docket 183. The federal public defenders' office was then appointed as co-counsel with Rogers. Docket 184. Attorneys from the federal public defenders' office, namely, William Delaney III, Jana Miner, Neil Fulton, Jason Tupman, and Tim Langley, have all noted appearances on behalf of Rhines. Docket 187; Docket 193; Docket 195; Docket 207; Docket 208.

Attorney Rogers continued to represent Rhines until his retirement from the practice of law in March 2015. Docket 259. Finally, attorney Carol Camp was appointed on April 10, 2015, as learned counsel. Docket 260.

Thus, Rhines was not in the same position as the petitioners in *Gray*, *Juniper*, *Mendoza*, and *Speers* because Rhines's counsel during his initial-review collateral proceedings and his federal habeas proceeding did not overlap. Aside from the brief appointment of attorney Michael Butler—who did not, in fact, represent Rhines in his earlier proceedings but nonetheless was discharged—Rhines already received wholly independent counsel. *See Fowler*, 753 F.3d at 464-65 (noting that even with a brief overlap between state and federal habeas counsel the petitioner had independent counsel “for a substantial period of time during the pendency of his federal habeas petition in the district court.”). Consequently, the same ethical dilemma arising in the Fourth and Fifth Circuit cases is simply not present in Rhines's case.

While Rhines contends that there was at least a partial overlap between his federal and state habeas counsel when he returned to state court in 2005

to exhaust his then-unexhausted claims,⁴ the *Martinez* Court explained the boundaries of its “narrow exception” in no uncertain terms:

The rule of Coleman governs in all but the limited circumstances recognized here. The holding in this case does not concern attorney errors in other kinds of proceedings, including appeals from initial-review collateral proceedings, second or successive collateral proceedings, and petitions for discretionary review in a State's appellate courts. It does not extend to attorney errors in any proceeding beyond the first occasion the State allows a prisoner to raise a claim of ineffective assistance at trial, even though that initial-review collateral proceeding may be deficient for other reasons.

Martinez, 132 S. Ct. at 1320 (emphasis added) (citations omitted). Rhines's return to state habeas court in 2005 was not his “first designated proceeding for a prisoner to raise a claim of ineffective assistance of trial counsel” and was therefore not his initial-review collateral proceeding. *Id.* at 1317. Rather, that opportunity came when Rhines was represented by attorney Hanson. By its own terms, *Martinez* does not apply to any proceeding beyond Rhines's initial-review collateral proceeding. Likewise, those cases from the Fourth and Fifth Circuits note that the conflict arises when it is the initial-review collateral proceeding counsel that overlaps with federal habeas counsel. *See Mendoza*, 783 F.3d at 204 (Owen, J., concurring), *Juniper*, 737 F.3d at 289.

Consequently, even if there was an overlap in Rhines's federal and state habeas counsel during the later proceeding, that does not justify Rhines's request for an additional stay of this proceeding.

⁴ Attorneys Schlingen and Lange had both withdrawn by 2009, several years before the state court ruled on Rhines's petition in 2012.

Second, this is not a case where a petitioner's claims of ineffective assistance of trial counsel have gone unheard. Prior to Rhines's filing his amended federal habeas petition, this court instructed Rhines "to include every known constitutional error or deprivation entitling [him] to habeas relief." Docket 72. Additionally, Rhines was "advised that he may be presumed to have deliberately waived his right to complain of any constitutional error [or] deprivation not raised in the Amended Petition." *Id.*

In Rhines's amended federal habeas petition, he raised ten reasons why he believed trial counsel was constitutionally ineffective. Docket 73 at 12-13. Most of those claims were also raised by attorney Hanson during Rhines's first state habeas proceeding. This court determined, however, that four of those claims had not previously been raised and were unexhausted. Docket 116. After Rhines returned to state court to exhaust his non-exhausted state claims, those four ineffective assistance of trial counsel claims were litigated and decided by the state court. *See* Docket 204-1 at 15-25. Thus, the reason for the exception laid down in *Martinez*—that a petitioner's substantial ineffective assistance of trial counsel claims may never otherwise be heard at all—is not present in this proceeding.

What Rhines seeks now is an opportunity for his current counsel to comb through the record and look for additional ineffective assistance of trial counsel claims overlooked not only by attorney Hanson but also by each of Rhines's federal habeas attorneys. Such an expansive reading of *Martinez* is not warranted by the explicit narrowness of its holding. Moreover, *Martinez*

contemplated that the petitioner would present an existing ineffective assistance of trial counsel claim that the federal habeas court could analyze. *Martinez*, 132 S. Ct. at 1318 (explaining the court must determine whether the otherwise defaulted claim is a substantial one); *see also Sasser v. Hobbs*, 735 F.3d 833, 851 (8th Cir. 2013) (discussing the four potentially meritorious claims raised by the petitioner). Rhines has presented no potentially meritorious claims at all. And while, for example, the *Gray* court did not hold it against the petitioner that he had not yet presented any substantial claims in his request for substitute counsel, that was attributable to the conflict of interest that prevented his then-current counsel from doing so in the first instance. *Gray*, 526 Fed Appx. at 334-35 (noting “no material difference between an ethical prohibition on a lawyer’s attempt to *investigate or advance* her own potential errors, on the one hand, and a like prohibition on her attempts to *identify and produce a list* of her own errors giving rise to a ‘substantial claim’ on the other hand.”) (emphasis in original).

Finally, this court lifted the stay on Rhines’s federal habeas proceeding on February 4, 2014, nearly two years after the *Martinez* case was handed down. Yet, Rhines did not seek leave to conduct the investigation sought by his pending motion for another 15 months. *See* Docket 265 (dated May 5, 2015). Rhines offers no explanation for this delay. As the Supreme Court explained, the exception it created was not only narrow, but also equitable. *See Martinez*, 132 S. Ct. at 1320. The untimeliness of Rhines’s motion is but another reason that justifies denying his request for another stay.

CONCLUSION

Rhines received independent counsel during his initial-review collateral proceeding and his federal habeas proceeding. Rhines has not identified any ineffective assistance of trial counsel claims that have not already been resolved or were otherwise overlooked and would fall within the Supreme Court's *Martinez* decision. Rhines's late attempt to further delay this proceeding also undermines his claim that an additional stay is warranted. Accordingly, it is

ORDERED that the motion to hold this proceeding in abeyance (Docket 265) is denied.

Dated August 5, 2015

BY THE COURT:

/s/ *Karen E. Schreier*

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

CHARLES RUSSELL RHINES,

CIV 00-5020-KES

Petitioner,

PETITIONER'S

vs.

MARTINEZ BRIEF

DARIN YOUNG, Warden,
South Dakota State Penitentiary,
Respondent.

- I. *Martinez v. Ryan* provides an equitable gateway for this Court to consider the new evidence that Mr. Rhines is seeking to present in support of Grounds 9A, 9B and 9I of his First Amended Petition for Writ of Habeas Corpus and Statement of Exhaustion (Dkt. 73; Dkt. 280), as well as the three additional grounds of relief he has presented in his Motion for Leave to Amend First Amended Petition for Writ of Habeas Corpus and Statement of Exhaustion and Memorandum of Law in Support (Dkt. 281)**
- A. *Martinez* does not create a new constitutional claim; rather, it provides an equitable gateway that a federal habeas corpus court can utilize to excuse the procedural default of substantial ineffective assistance of trial counsel claims that are procedurally defaulted because they have never been adjudicated on the merits in state court**

In *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), the Supreme Court of the United States recognized an exception to the rule promulgated in *Coleman v. Thompson*, 501 U.S. 722 (1991). *Thompson* held that attorney error in state post-conviction proceedings did not constitute cause for excusing a procedural default. *Id.* at 754-55. *Martinez*, however, recognized an equitable gateway through which *Coleman*'s rigid rule could be bypassed by allowing a habeas petitioner to assert that his state post-conviction counsel's ineffectiveness constituted cause to excuse the procedural default of a substantial ineffective assistance of trial counsel claim. When state post-conviction proceedings afford a prisoner his first opportunity to assert an ineffective assistance

9B and 9I of his First Amended Petition for Writ of Habeas Corpus and Statement of Exhaustion (Dkt. 73) fundamentally alter his previously asserted bare bones ineffective assistance of trial counsel claims for failure to investigate mitigating evidence, the tepid presentation of mitigation evidence and the failure to consult with or hire a mitigation specialist.

Mitigation specialist Mary K. Poirier has recently interviewed all three of Mr. Rhines's siblings. (Dkt. 280, Poirier Affidavit, Exhibit 1, ¶7). She has also reviewed records that were available to trial counsel. (*Id.*). In a very short period of time, she has already identified several potentially meritorious avenues of mitigation investigation that Mr. Rhines's trial counsel either failed to pursue or of which they were completely unaware, including, but not limited to, possible brain damage resulting from childhood exposure to environmental toxins such as lead, mercury, contaminated water and pesticides; Mr. Rhines' educational challenges; the trauma he experienced as a result of his military service along the DMZ in Korea; his sexual identity issues; the fact that life imprisonment without the possibility of parole is punishment; that Mr. Rhines

had the ability to adjust successfully to incarceration; and why Mr. Rhines' demeanor appeared to be remorseless. (*Id.*, ¶¶45-102).

Additionally, Poirier's affidavit explains the vital role that a mitigation specialist plays in capital trial cases and further asserts that by ignoring evidence that they considered to be aggravating in nature, Petitioner's trial counsel failed to investigate other evidence that was mitigating and that could have been utilized by effective trial counsel to provide a basis for a

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are not met for a specific Pervasive Developmental Disorder, Schizophrenia, Schizotypal Personality Disorder, or Avoidant Personality Disorder. For example, this category includes "atypical autism"—presentations that do not meet the criteria for Autistic Disorder because of late age at onset, atypical symptomatology, or subthreshold symptomatology, or all of these.

Attention-Deficit and Disruptive Behavior Disorders

Attention-Deficit/Hyperactivity Disorder

Diagnostic Features

The essential feature of Attention-Deficit/Hyperactivity Disorder is a persistent pattern of inattention and/or hyperactivity-impulsivity that is more frequent and severe than is typically observed in individuals at a comparable level of development (Criterion A). Some hyperactive-impulsive or inattentive symptoms that cause impairment must have been present before age 7 years, although many individuals are diagnosed after the symptoms have been present for a number of years (Criterion B). Some impairment from the symptoms must be present in at least two settings (e.g., at home and at school or work) (Criterion C). There must be clear evidence of interference with developmentally appropriate social, academic, or occupational functioning (Criterion D). The disturbance does not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia, or other Psychotic Disorder and is not better accounted for by another mental disorder (e.g., a Mood Disorder, Anxiety Disorder, Dissociative Disorder, or Personality Disorder) (Criterion E).

Inattention may be manifest in academic, occupational, or social situations. Individuals with this disorder may fail to give close attention to details or may make careless mistakes in schoolwork or other tasks (Criterion A1a). Work is often messy and performed carelessly and without considered thought. Individuals often have difficulty sustaining attention in tasks or play activities and find it hard to persist with tasks until completion (Criterion A1b). They often appear as if their mind is elsewhere or as if they are not listening or did not hear what has just been said (Criterion A1c). There may be frequent shifts from one uncompleted activity to another. Individuals diagnosed with this disorder may begin a task, move on to another, then turn to yet something else, prior to completing any one task. They often do not follow through on requests or instructions and fail to complete schoolwork, chores, or other duties (Criterion A1d). Failure to complete tasks should be considered in making this diagnosis only if it is due to inattention as opposed to other possible reasons (e.g., a failure to understand instructions). These individuals often have difficulties organizing tasks and activities (Criterion A1e). Tasks that require sustained mental effort are experienced as unpleasant and markedly aversive. As a result, these individuals typically avoid or have a strong dislike for activities that demand sustained self-application and mental effort or that require organizational demands or close concentration (e.g., homework or paperwork) (Criterion A1f). This avoidance must be due to the person's difficulties with attention and not due to a primary oppositional attitude, although secondary oppositionalism may also occur. Work habits are often disorganized and the materials necessary for doing

the task are often scattered, lost, or carelessly handled and damaged (Criterion A1g). Individuals with this disorder are easily distracted by irrelevant stimuli and frequently interrupt ongoing tasks to attend to trivial noises or events that are usually and easily ignored by others (e.g., a car honking, a background conversation) (Criterion A1h). They are often forgetful in daily activities (e.g., missing appointments, forgetting to bring lunch) (Criterion A1i). In social situations, inattention may be expressed as frequent shifts in conversation, not listening to others, not keeping one's mind on conversations, and not following details or rules of games or activities.

Hyperactivity may be manifested by fidgetiness or squirming in one's seat (Criterion A2a), by not remaining seated when expected to do so (Criterion A2b), by excessive running or climbing in situations where it is inappropriate (Criterion A2c), by having difficulty playing or engaging quietly in leisure activities (Criterion A2d), by appearing to be often "on the go" or as if "driven by a motor" (Criterion A2e), or by talking excessively (Criterion A2f). Hyperactivity may vary with the individual's age and developmental level, and the diagnosis should be made cautiously in young children. Toddlers and preschoolers with this disorder differ from normally active young children by being constantly on the go and into everything; they dart back and forth, are "out of the door before their coat is on," jump or climb on furniture, run through the house, and have difficulty participating in sedentary group activities in preschool classes (e.g., listening to a story). School-age children display similar behaviors but usually with less frequency or intensity than toddlers and preschoolers. They have difficulty remaining seated, get up frequently, and squirm in, or hang on to the edge of, their seat. They fidget with objects, tap their hands, and shake their feet or legs excessively. They often get up from the table during meals, while watching television, or while doing homework; they talk excessively; and they make excessive noise during quiet activities. In adolescents and adults, symptoms of hyperactivity take the form of feelings of restlessness and difficulty engaging in quiet sedentary activities.

Impulsivity manifests itself as impatience, difficulty in delaying responses, blurting out answers before questions have been completed (Criterion A2g), difficulty awaiting one's turn (Criterion A2h), and frequently interrupting or intruding on others to the point of causing difficulties in social, academic, or occupational settings (Criterion A2i). Others may complain that they cannot get a word in edgewise. Individuals with this disorder typically make comments out of turn, fail to listen to directions, initiate conversations at inappropriate times, interrupt others excessively, intrude on others, grab objects from others, touch things they are not supposed to touch, and clown around. Impulsivity may lead to accidents (e.g., knocking over objects, banging into people, grabbing a hot pan) and to engagement in potentially dangerous activities without consideration of possible consequences (e.g., riding a skateboard over extremely rough terrain).

Behavioral manifestations usually appear in multiple contexts, including home, school, work, and social situations. To make the diagnosis, some impairment must be present in at least two settings (Criterion C). It is very unusual for an individual to display the same level of dysfunction in all settings or within the same setting at all times. Symptoms typically worsen in situations that require sustained attention or mental effort or that lack intrinsic appeal or novelty (e.g., listening to classroom teachers, doing class assignments, listening to or reading lengthy materials, or working on monotonous, repetitive tasks). Signs of the disorder may be minimal or absent when the person is under very strict control, is in a novel setting, is engaged in especially interesting activities, is in a one-to-one situation (e.g., the clinician's office), or while the person experiences frequent rewards for appropriate behavior. The symptoms are more likely

to occur in group situations (e.g., in playgroups, classrooms, or work environments). The clinician should therefore inquire about the individual's behavior in a variety of situations within each setting.

Subtypes

Although most individuals have symptoms of both inattention and hyperactivity-impulsivity, there are some individuals in whom one or the other pattern is predominant. The appropriate subtype (for a current diagnosis) should be indicated based on the predominant symptom pattern for the past 6 months.

314.01 Attention-Deficit/Hyperactivity Disorder, Combined Type. This subtype should be used if six (or more) symptoms of inattention and six (or more) symptoms of hyperactivity-impulsivity have persisted for at least 6 months. Most children and adolescents with the disorder have the Combined Type. It is not known whether the same is true of adults with the disorder.

314.00 Attention Deficit/Hyperactivity Disorder, Predominantly Inattentive Type. This subtype should be used if six (or more) symptoms of inattention (but fewer than six symptoms of hyperactivity-impulsivity) have persisted for at least 6 months.

314.01 Attention-Deficit/Hyperactivity Disorder, Predominantly Hyperactive-Impulsive Type. This subtype should be used if six (or more) symptoms of hyperactivity-impulsivity (but fewer than six symptoms of inattention) have persisted for at least 6 months. Inattention may often still be a significant clinical feature in such cases.

Recording Procedures

Individuals who at an earlier stage of the disorder had the Predominantly Inattentive Type or the Predominantly Hyperactive-Impulsive Type may go on to develop the Combined Type and vice versa. The appropriate subtype (for a current diagnosis) should be indicated based on the predominant symptom pattern for the past 6 months. If clinically significant symptoms remain but criteria are no longer met for any of the subtypes, the appropriate diagnosis is Attention-Deficit/Hyperactivity Disorder, In Partial Remission. When an individual's symptoms do not currently meet full criteria for the disorder and it is unclear whether criteria for the disorder have previously been met, Attention-Deficit/Hyperactivity Disorder Not Otherwise Specified should be diagnosed.

Associated Features and Disorders

Associated descriptive features and mental disorders. Associated features vary depending on age and developmental stage and may include low frustration tolerance, temper outbursts, bossiness, stubbornness, excessive and frequent insistence that requests be met, mood lability, demoralization, dysphoria, rejection by peers, and poor self-esteem. Academic achievement is often impaired and devalued, typically leading to conflict with the family and school authorities. Inadequate self-application to tasks that require sustained effort is often interpreted by others as indicating laziness, a poor sense of responsibility, and oppositional behavior. Family relationships are often characterized by resentment and antagonism, especially because variability in the individual's symp-

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tomatic status often leads parents to believe that all the troublesome behavior is willful. Individuals with Attention-Deficit/Hyperactivity Disorder may obtain less schooling than their peers and have poorer vocational achievement. Intellectual development, as assessed by individual IQ tests, appears to be somewhat lower in children with this disorder. In its severe form, the disorder is very impairing, affecting social, familial, and scholastic adjustment. A substantial proportion of children referred to clinics with Attention-Deficit/Hyperactivity Disorder also have Oppositional Defiant Disorder or Conduct Disorder. There may be a higher prevalence of Mood Disorders, Anxiety Disorders, Learning Disorders, and Communication Disorders in children with Attention-Deficit/Hyperactivity Disorder. This disorder is not infrequent among individuals with Tourette's Disorder; when the two disorders coexist, the onset of Attention-Deficit/Hyperactivity Disorder often precedes the onset of the Tourette's Disorder. There may be a history of child abuse or neglect, multiple foster placements, neurotoxin exposure (e.g., lead poisoning), infections (e.g., encephalitis), drug exposure in utero, low birth weight, and Mental Retardation.

Associated laboratory findings. There are no laboratory tests that have been established as diagnostic in the clinical assessment of Attention-Deficit/Hyperactivity Disorder. Tests that require effortful mental processing have been noted to be abnormal in groups of individuals with Attention-Deficit/Hyperactivity Disorder compared with control subjects, but it is not yet entirely clear what fundamental cognitive deficit is responsible for this.

Associated physical examination findings and general medical conditions. There are no specific physical features associated with Attention-Deficit/Hyperactivity Disorder, although minor physical anomalies (e.g., hypertelorism, highly arched palate, low-set ears) may occur at a higher rate than in the general population. There may also be a higher rate of physical injury.

Specific Culture, Age, and Gender Features

Attention-Deficit/Hyperactivity Disorder is known to occur in various cultures, with variations in reported prevalence among Western countries probably arising more from different diagnostic practices than from differences in clinical presentation.

It is especially difficult to establish this diagnosis in children younger than age 4 or 5 years, because their characteristic behavior is much more variable than that of older children and may include features that are similar to symptoms of Attention-Deficit/Hyperactivity Disorder. Furthermore, symptoms of inattention in toddlers or preschool children are often not readily observed because young children typically experience few demands for sustained attention. However, even the attention of toddlers can be held in a variety of situations (e.g., the average 2- or 3-year-old child can typically sit with an adult looking through picture books). In contrast, young children with Attention-Deficit/Hyperactivity Disorder move excessively and typically are difficult to contain. Inquiring about a wide variety of behaviors in a young child may be helpful in ensuring that a full clinical picture has been obtained. As children mature, symptoms usually become less conspicuous. By late childhood and early adolescence, signs of excessive gross motor activity (e.g., excessive running and climbing, not remaining seated) are less common, and hyperactivity symptoms may be confined to fidgetiness or an inner

feeling of jitteriness or restlessness. In school-age children, symptoms of inattention affect classroom work and academic performance. Impulsive symptoms may also lead to the breaking of familial, interpersonal, and educational rules, especially in adolescence. In adulthood, restlessness may lead to difficulty in participating in sedentary activities and to avoiding pastimes or occupations that provide limited opportunity for spontaneous movement (e.g., desk jobs).

The disorder is much more frequent in males than in females, with male-to-female ratios ranging from 4:1 to 9:1, depending on the setting (i.e., general population or clinics).

Prevalence

The prevalence of Attention-Deficit/Hyperactivity Disorder is estimated at 3%–5% in school-age children. Data on prevalence in adolescence and adulthood are limited.

Course

Most parents first observe excessive motor activity when the children are toddlers, frequently coinciding with the development of independent locomotion. However, because many overactive toddlers will not go on to develop Attention-Deficit/Hyperactivity Disorder, caution should be exercised in making this diagnosis in early years. Usually, the disorder is first diagnosed during elementary school years, when school adjustment is compromised. In the majority of cases seen in clinical settings, the disorder is relatively stable through early adolescence. In most individuals, symptoms attenuate during late adolescence and adulthood, although a minority experience the full complement of symptoms of Attention-Deficit/Hyperactivity Disorder into mid-adulthood. Other adults may retain only some of the symptoms, in which case the diagnosis of Attention-Deficit/Hyperactivity Disorder, In Partial Remission, should be used. This diagnosis applies to individuals who no longer have the full disorder but still retain some symptoms that cause functional impairment.

Familial Pattern

Attention-Deficit/Hyperactivity Disorder has been found to be more common in the first-degree biological relatives of children with Attention-Deficit/Hyperactivity Disorder. Studies also suggest that there is a higher prevalence of Mood and Anxiety Disorders, Learning Disorders, Substance-Related Disorders, and Antisocial Personality Disorder in family members of individuals with Attention-Deficit/Hyperactivity Disorder.

Differential Diagnosis

In early childhood, it may be difficult to distinguish symptoms of Attention-Deficit/Hyperactivity Disorder from **age-appropriate behaviors in active children** (e.g., running around or being noisy).

Symptoms of inattention are common among children with low IQ who are placed in academic settings that are inappropriate to their intellectual ability. These behaviors must be distinguished from similar signs in children with Attention-Deficit/Hyperactivity Disorder. In children with **Mental Retardation**, an additional diagnosis of Attention-

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Deficit/Hyperactivity Disorder should be made only if the symptoms of inattention or hyperactivity are excessive for the child's mental age. Inattention in the classroom may also occur when children with high intelligence are placed in academically **understimulating environments**. Attention-Deficit/Hyperactivity Disorder must also be distinguished from difficulty in goal-directed behavior in children from inadequate, disorganized, or chaotic environments. Reports from multiple informants (e.g., babysitters, grandparents, or parents of playmates) are helpful in providing a confluence of observations concerning the child's inattention, hyperactivity, and capacity for developmentally appropriate self-regulation in various settings.

Individuals with **oppositional behavior** may resist work or school tasks that require self-application because of an unwillingness to conform to others' demands. These symptoms must be differentiated from the avoidance of school tasks seen in individuals with Attention-Deficit/Hyperactivity Disorder. Complicating the differential diagnosis is the fact that some individuals with Attention-Deficit/Hyperactivity Disorder develop secondary oppositional attitudes toward such tasks and devalue their importance, often as a rationalization for their failure.

Attention-Deficit/Hyperactivity Disorder is not diagnosed if the symptoms are better accounted for by **another mental disorder** (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, Personality Disorder, Personality Change Due to a General Medical Condition, or a Substance-Related Disorder). In all these disorders, the symptoms of inattention typically have an onset after age 7 years, and the childhood history of school adjustment generally is not characterized by disruptive behavior or teacher complaints concerning inattentive, hyperactive, or impulsive behavior. When a Mood Disorder or Anxiety Disorder co-occurs with Attention-Deficit/Hyperactivity Disorder, each should be diagnosed. Attention-Deficit/Hyperactivity Disorder is not diagnosed if the symptoms of inattention and hyperactivity occur exclusively during the course of a **Pervasive Developmental Disorder** or a **Psychotic Disorder**. Symptoms of inattention, hyperactivity, or impulsivity related to the use of medication (e.g., bronchodilators, isoniazid, akathisia from neuroleptics) in children before age 7 years are not diagnosed as Attention-Deficit/Hyperactivity Disorder but instead are diagnosed as **Other Substance-Related Disorder Not Otherwise Specified**.

■ **Diagnostic criteria for Attention-Deficit/
Hyperactivity Disorder**

A. Either (1) or (2):

- (1) six (or more) of the following symptoms of **inattention** have persisted for at least 6 months to a degree that is maladaptive and inconsistent with developmental level:

Inattention

- (a) often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities
- (b) often has difficulty sustaining attention in tasks or play activities

(continued)

□ **Diagnostic criteria for Attention-Deficit/Hyperactivity Disorder** *(continued)*

- (c) often does not seem to listen when spoken to directly
 - (d) often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (not due to oppositional behavior or failure to understand instructions)
 - (e) often has difficulty organizing tasks and activities
 - (f) often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as schoolwork or homework)
 - (g) often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools)
 - (h) is often easily distracted by extraneous stimuli
 - (i) is often forgetful in daily activities
- (2) six (or more) of the following symptoms of **hyperactivity-impulsivity** have persisted for at least 6 months to a degree that is maladaptive and inconsistent with developmental level:

Hyperactivity

- (a) often fidgets with hands or feet or squirms in seat
- (b) often leaves seat in classroom or in other situations in which remaining seated is expected
- (c) often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness)
- (d) often has difficulty playing or engaging in leisure activities quietly
- (e) is often "on the go" or often acts as if "driven by a motor"
- (f) often talks excessively

Impulsivity

- (g) often blurts out answers before questions have been completed
- (h) often has difficulty awaiting turn
- (i) often interrupts or intrudes on others (e.g., butts into conversations or games)

- B. Some hyperactive-impulsive or inattentive symptoms that caused impairment were present before age 7 years.
- C. Some impairment from the symptoms is present in two or more settings (e.g., at school [or work] and at home).
- D. There must be clear evidence of clinically significant impairment in social, academic, or occupational functioning.

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Diagnostic criteria for Attention-Deficit/Hyperactivity Disorder (*continued*)

E. The symptoms do not occur exclusively during the course of a Pervasive Developmental Disorder, Schizophrenia, or other Psychotic Disorder and are not better accounted for by another mental disorder (e.g., Mood Disorder, Anxiety Disorder, Dissociative Disorder, or a Personality Disorder).

Code based on type:

314.01 Attention-Deficit/Hyperactivity Disorder, Combined Type: if both Criteria A1 and A2 are met for the past 6 months

314.00 Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Type: if Criterion A1 is met but Criterion A2 is not met for the past 6 months

314.01 Attention-Deficit/Hyperactivity Disorder, Predominantly Hyperactive-Impulsive Type: if Criterion A2 is met but Criterion A1 is not met for the past 6 months

Coding note: For individuals (especially adolescents and adults) who currently have symptoms that no longer meet full criteria, "In Partial Remission" should be specified.

314.9 Attention-Deficit/Hyperactivity Disorder Not Otherwise Specified

This category is for disorders with prominent symptoms of inattention or hyperactivity-impulsivity that do not meet criteria for Attention-Deficit/Hyperactivity Disorder.

312.8 Conduct Disorder

Diagnostic Features

The essential feature of Conduct Disorder is a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated (Criterion A). These behaviors fall into four main groupings: aggressive conduct that causes or threatens physical harm to other people or animals (Criteria A1-A7), nonaggressive conduct that causes property loss or damage (Criteria A8-A9), deceitfulness or theft (Criteria A10-A12), and serious violations of rules (Criteria A13-A15). Three (or more) characteristic behaviors must have been present during the past 12 months, with at least one behavior present in the past 6 months. The disturbance in behavior causes clinically significant impairment in social, academic, or occupational functioning (Criterion B). Conduct Disorder may be diagnosed in individuals who are older than age 18 years, but only if the criteria for Antisocial Personality Disorder are not met (Criterion C). The behavior pattern is usually present in a variety of settings such as home, school, or the community. Because individuals with Conduct Disorder are likely

to minimize their conduct problems, the clinician often must rely on additional informants. However, the informant's knowledge of the child's conduct problems may be limited by inadequate supervision or by the child's not having revealed them.

Children or adolescents with this disorder often initiate aggressive behavior and react aggressively to others. They may display bullying, threatening, or intimidating behavior (Criterion A1); initiate frequent physical fights (Criterion A2); use a weapon that can cause serious physical harm (e.g., a bat, brick, broken bottle, knife, or gun) (Criterion A3); be physically cruel to people (Criterion A4) or animals (Criterion A5); steal while confronting a victim (e.g., mugging, purse snatching, extortion, or armed robbery) (Criterion A6); or force someone into sexual activity (Criterion A7). Physical violence may take the form of rape, assault, or in rare cases, homicide.

Deliberate destruction of others' property is a characteristic feature of this disorder and may include deliberate fire setting with the intention of causing serious damage (Criterion A8) or deliberately destroying other people's property in other ways (e.g., smashing car windows, school vandalism) (Criterion A9).

Deceitfulness or theft is common and may include breaking into someone else's house, building, or car (Criterion A10); frequently lying or breaking promises to obtain goods or favors or to avoid debts or obligations (e.g., "conning" other people) (Criterion A11); or stealing items of nontrivial value without confronting the victim (e.g., shoplifting, forgery) (Criterion A12).

Characteristically, there are also serious violations of rules (e.g., school, parental) by individuals with this disorder. Children with this disorder often have a pattern, beginning before age 13 years, of staying out late at night despite parental prohibitions (Criterion A13). There may be a pattern of running away from home overnight (Criterion A14). To be considered a symptom of Conduct Disorder, the running away must have occurred at least twice (or only once if the individual did not return for a lengthy period). Runaway episodes that occur as a direct consequence of physical or sexual abuse do not typically qualify for this criterion. Children with this disorder may often be truant from school, beginning prior to age 13 years (Criterion A15). In older individuals, this behavior is manifested by often being absent from work without good reason.

Subtypes

Two subtypes of Conduct Disorder are provided based on the age at onset of the disorder (i.e., Childhood-Onset Type and Adolescent-Onset Type). The subtypes differ in regard to the characteristic nature of the presenting conduct problems, developmental course and prognosis, and gender ratio. Both subtypes can occur in a mild, moderate, or severe form. In assessing the age at onset, information should preferably be obtained from the youth and from caregiver(s). Because many of the behaviors may be concealed, caregivers may underreport symptoms and overestimate the age at onset.

Childhood-Onset Type. This subtype is defined by the onset of at least one criterion characteristic of Conduct Disorder prior to age 10 years. Individuals with Childhood-Onset Type are usually male, frequently display physical aggression toward others, have disturbed peer relationships, may have had Oppositional Defiant Disorder during early childhood, and usually have symptoms that meet full criteria for Conduct Disorder prior to puberty. These individuals are more likely to have persistent Conduct Disorder and to develop adult Antisocial Personality Disorder than are those with Adolescent-Onset Type.

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Adolescent-Onset Type. This subtype is defined by the absence of any criteria characteristic of Conduct Disorder prior to age 10 years. Compared with those with the Childhood-Onset Type, these individuals are less likely to display aggressive behaviors and tend to have more normative peer relationships (although they often display conduct problems in the company of others). These individuals are less likely to have persistent Conduct Disorder or to develop adult Antisocial Personality Disorder. The ratio of males to females with Conduct Disorder is lower for the Adolescent-Onset Type than for the Childhood-Onset Type.

Severity Specifiers

Mild. Few if any conduct problems in excess of those required to make the diagnosis are present, and conduct problems cause relatively minor harm to others (e.g., lying, truancy, staying out after dark without permission).

Moderate. The number of conduct problems and the effect on others are intermediate between "mild" and "severe" (e.g., stealing without confronting a victim, vandalism).

Severe. Many conduct problems in excess of those required to make the diagnosis are present, or conduct problems cause considerable harm to others (e.g., forced sex, physical cruelty, use of a weapon, stealing while confronting a victim, breaking and entering).

Associated Features and Disorders

Associated descriptive features and mental disorders. Individuals with Conduct Disorder may have little empathy and little concern for the feelings, wishes, and well-being of others. Especially in ambiguous situations, aggressive individuals with this disorder frequently misperceive the intentions of others as more hostile and threatening than is the case and respond with aggression that they then feel is reasonable and justified. They may be callous and lack appropriate feelings of guilt or remorse. It can be difficult to evaluate whether displayed remorse is genuine because these individuals learn that expressing guilt may reduce or prevent punishment. Individuals with this disorder may readily inform on their companions and try to blame others for their own misdeeds. Self-esteem is usually low, although the person may project an image of "toughness." Poor frustration tolerance, irritability, temper outbursts, and recklessness are frequent associated features. Accident rates appear to be higher in individuals with Conduct Disorder than in those without it.

Conduct Disorder is often associated with an early onset of sexual behavior, drinking, smoking, use of illegal substances, and reckless and risk-taking acts. Illegal drug use may increase the risk that Conduct Disorder will persist. Conduct Disorder behaviors may lead to school suspension or expulsion, problems in work adjustment, legal difficulties, sexually transmitted diseases, unplanned pregnancy, and physical injury from accidents or fights. These problems may preclude attendance in ordinary schools or living in a parental or foster home. Suicidal ideation, suicide attempts, and completed suicide occur at a higher than expected rate. Conduct Disorder may be associated with lower than average intelligence. Academic achievement, particularly in reading and other verbal skills, is often below the level expected on the basis of age and intelligence and may justify the additional diagnosis of a Learning or Communication Disorder. Attention

Deficit/Hyperactivity Disorder is common in children with Conduct Disorder. Conduct Disorder may also be associated with one or more of the following mental disorders: Learning Disorders, Anxiety Disorders, Mood Disorders, and Substance-Related Disorders. The following factors may predispose the individual to the development of Conduct Disorder: parental rejection and neglect, difficult infant temperament, inconsistent child-rearing practices with harsh discipline, physical or sexual abuse, lack of supervision, early institutional living, frequent changes of caregivers, large family size, association with a delinquent peer group, and certain kinds of familial psychopathology.

Associated laboratory findings. In some studies, lower heart rate and lower skin conductance have been noted in individuals with Conduct Disorder compared with those without the disorder. However, levels of physiological arousal are not diagnostic of the disorder.

Specific Culture, Age, and Gender Features

Concerns have been raised that the Conduct Disorder diagnosis may at times be misapplied to individuals in settings where patterns of undesirable behavior are sometimes viewed as protective (e.g., threatening, impoverished, high-crime). Consistent with the DSM-IV definition of mental disorder, the Conduct Disorder diagnosis should be applied only when the behavior in question is symptomatic of an underlying dysfunction within the individual and not simply a reaction to the immediate social context. Moreover, immigrant youth from war-ravaged countries who have a history of aggressive behaviors that may have been necessary for their survival in that context would not necessarily warrant a diagnosis of Conduct Disorder. It may be helpful for the clinician to consider the social and economic context in which the undesirable behaviors have occurred.

Symptoms of the disorder vary with age as the individual develops increased physical strength, cognitive abilities, and sexual maturity. Less severe behaviors (e.g., lying, shoplifting, physical fighting) tend to emerge first, whereas others (e.g., burglary) tend to emerge later. Typically, the most severe conduct problems (e.g., rape, theft while confronting a victim) tend to emerge last. However, there are wide differences among individuals, with some engaging in the more damaging behaviors at an early age.

Conduct Disorder, especially the Childhood-Onset Type, is much more common in males. Gender differences are also found in specific types of conduct problems. Males with a diagnosis of Conduct Disorder frequently exhibit fighting, stealing, vandalism, and school discipline problems. Females with a diagnosis of Conduct Disorder are more likely to exhibit lying, truancy, running away, substance use, and prostitution. Whereas confrontational aggression is more often displayed by males, females tend to use more nonconfrontational behaviors.

Prevalence

The prevalence of Conduct Disorder appears to have increased over the last decades and may be higher in urban than in rural settings. Rates vary widely depending on the nature of the population sampled and methods of ascertainment: for males under age 18 years, rates range from 6% to 16%; for females, rates range from 2% to 9%. Conduct Disorder is one of the most frequently diagnosed conditions in outpatient and inpatient mental health facilities for children.

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The onset of Conduct Disorder may occur as early as age 5-6 years but is usually in late childhood or early adolescence. Onset is rare after age 16 years. The course of Conduct Disorder is variable. In a majority of individuals, the disorder remits by adulthood. However, a substantial proportion continue to show behaviors in adulthood that meet criteria for Antisocial Personality Disorder. Many individuals with Conduct Disorder, particularly those with Adolescent-Onset Type and those with few and milder symptoms, achieve adequate social and occupational adjustment as adults. Early onset predicts a worse prognosis and an increased risk in adult life for Antisocial Personality Disorder and Substance-Related Disorders. Individuals with Conduct Disorder are at risk for later Mood or Anxiety Disorders, Somatoform Disorders, and Substance-Related Disorders.

Familial Pattern

Estimates from twin and adoption studies show that Conduct Disorder has both genetic and environmental components. The risk for Conduct Disorder is increased in children with a biological or adoptive parent with Antisocial Personality Disorder or a sibling with Conduct Disorder. The disorder also appears to be more common in children of biological parents with Alcohol Dependence, Mood Disorders, or Schizophrenia or biological parents who have a history of Attention-Deficit/Hyperactivity Disorder or Conduct Disorder.

Differential Diagnosis

Although **Oppositional Defiant Disorder** includes some of the features observed in Conduct Disorder (e.g., disobedience and opposition to authority figures), it does not include the persistent pattern of the more serious forms of behavior in which either the basic rights of others or age-appropriate societal norms or rules are violated. When the individual's pattern of behavior meets the criteria for both Conduct Disorder and Oppositional Defiant Disorder, the diagnosis of Conduct Disorder takes precedence and Oppositional Defiant Disorder is not diagnosed.

Although children with **Attention-Deficit/Hyperactivity Disorder** often exhibit hyperactive and impulsive behavior that may be disruptive, this behavior does not by itself violate age-appropriate societal norms and therefore does not usually meet criteria for Conduct Disorder. When criteria are met for both Attention-Deficit/Hyperactivity Disorder and Conduct Disorder, both diagnoses should be given.

Irritability and conduct problems often occur in children or adolescents having a **Manic Episode**. These can usually be distinguished from the pattern of conduct problems seen in Conduct Disorder based on the episodic course and accompanying symptoms characteristic of a Manic Episode. If criteria for both are met, diagnoses of both Conduct Disorder and Bipolar I Disorder can be given.

The diagnosis of **Adjustment Disorder** (With Disturbance of Conduct or With Mixed Disturbance of Emotions and Conduct) should be considered if clinically significant conduct problems that do not meet the criteria for another specific disorder develop in clear association with the onset of a psychosocial stressor. Isolated conduct problems that do not meet criteria for Conduct Disorder or Adjustment Disorder may be coded as **Child or Adolescent Antisocial Behavior** (see "Other Conditions That May Be a Focus of Clinical Attention," p. 684). Conduct Disorder is diagnosed only if the

conduct problems represent a repetitive and persistent pattern that is associated with impairment in social, academic, or occupational functioning.

For individuals over age 18 years, a diagnosis of Conduct Disorder can be given only if the criteria are not also met for **Antisocial Personality Disorder**. The diagnosis of Antisocial Personality Disorder cannot be given to individuals under age 18 years.

■ **Diagnostic criteria for 312.8 Conduct Disorder**

A. A repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated, as manifested by the presence of three (or more) of the following criteria in the past 12 months, with at least one criterion present in the past 6 months:

Aggression to people and animals

- (1) often bullies, threatens, or intimidates others
- (2) often initiates physical fights
- (3) has used a weapon that can cause serious physical harm to others (e.g., a bat, brick, broken bottle, knife, gun)
- (4) has been physically cruel to people
- (5) has been physically cruel to animals
- (6) has stolen while confronting a victim (e.g., mugging, purse snatching, extortion, armed robbery)
- (7) has forced someone into sexual activity

Destruction of property

- (8) has deliberately engaged in fire setting with the intention of causing serious damage
- (9) has deliberately destroyed others' property (other than by fire setting)

Deceitfulness or theft

- (10) has broken into someone else's house, building, or car
- (11) often lies to obtain goods or favors or to avoid obligations (i.e., "cons" others)
- (12) has stolen items of nontrivial value without confronting a victim (e.g., shoplifting, but without breaking and entering; forgery)

Serious violations of rules

- (13) often stays out at night despite parental prohibitions, beginning before age 13 years
- (14) has run away from home overnight at least twice while living in parental or parental surrogate home (or once without returning for a lengthy period)
- (15) is often truant from school, beginning before age 13 years

(continued)

Diagnostic criteria for 312.8 Conduct Disorder (*continued*)

- B. The disturbance in behavior causes clinically significant impairment in social, academic, or occupational functioning.
- C. If the individual is age 18 years or older, criteria are not met for Antisocial Personality Disorder.

Specify type based on age at onset:

Childhood-Onset Type: onset of at least one criterion characteristic of Conduct Disorder prior to age 10 years

Adolescent-Onset Type: absence of any criteria characteristic of Conduct Disorder prior to age 10 years

Specify severity:

Mild: few if any conduct problems in excess of those required to make the diagnosis **and** conduct problems cause only minor harm to others

Moderate: number of conduct problems and effect on others intermediate between "mild" and "severe"

Severe: many conduct problems in excess of those required to make the diagnosis **or** conduct problems cause considerable harm to others

313.81 Oppositional Defiant Disorder

Diagnostic Features

The essential feature of Oppositional Defiant Disorder is a recurrent pattern of negativistic, defiant, disobedient, and hostile behavior toward authority figures that persists for at least 6 months (Criterion A) and is characterized by the frequent occurrence of at least four of the following behaviors: losing temper (Criterion A1), arguing with adults (Criterion A2), actively defying or refusing to comply with the requests or rules of adults (Criterion A3), deliberately doing things that will annoy other people (Criterion A4), blaming others for his or her own mistakes or misbehavior (Criterion A5), being touchy or easily annoyed by others (Criterion A6), being angry and resentful (Criterion A7), or being spiteful or vindictive (Criterion A8). To qualify for Oppositional Defiant Disorder, the behaviors must occur more frequently than is typically observed in individuals of comparable age and developmental level and must lead to significant impairment in social, academic, or occupational functioning (Criterion B). The diagnosis is not made if the disturbance in behavior occurs exclusively during the course of a Psychotic or Mood Disorder (Criterion C) or if criteria are met for Conduct Disorder or Antisocial Personality Disorder (in an individual over age 18 years).

Negativistic and defiant behaviors are expressed by persistent stubbornness, resistance to directions, and unwillingness to compromise, give in, or negotiate with adults or peers. Defiance may also include deliberate or persistent testing of limits, usually by ignoring orders, arguing, and failing to accept blame for misdeeds. Hostility can be directed at adults or peers and is shown by deliberately annoying others or by verbal

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■ **Diagnostic criteria for 301.22 Schizotypal Personality Disorder**

A. A pervasive pattern of social and interpersonal deficits marked by acute discomfort with, and reduced capacity for, close relationships as well as by cognitive or perceptual distortions and eccentricities of behavior, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

- (1) ideas of reference (excluding delusions of reference)
- (2) odd beliefs or magical thinking that influences behavior and is inconsistent with subcultural norms (e.g., superstitiousness, belief in clairvoyance, telepathy, or "sixth sense"; in children and adolescents, bizarre fantasies or preoccupations)
- (3) unusual perceptual experiences, including bodily illusions
- (4) odd thinking and speech (e.g., vague, circumstantial, metaphorical, overelaborate, or stereotyped)
- (5) suspiciousness or paranoid ideation
- (6) inappropriate or constricted affect
- (7) behavior or appearance that is odd, eccentric, or peculiar
- (8) lack of close friends or confidants other than first-degree relatives
- (9) excessive social anxiety that does not diminish with familiarity and tends to be associated with paranoid fears rather than negative judgments about self

B. Does not occur exclusively during the course of Schizophrenia, a Mood Disorder With Psychotic Features, another Psychotic Disorder, or a Pervasive Developmental Disorder.

Note: If criteria are met prior to the onset of Schizophrenia, add "Premorbid," e.g., "Schizotypal Personality Disorder (Premorbid)."

Cluster B Personality Disorders

301.7 Antisocial Personality Disorder

Diagnostic Features

The essential feature of Antisocial Personality Disorder is a pervasive pattern of disregard for, and violation of, the rights of others that begins in childhood or early adolescence and continues into adulthood.

This pattern has also been referred to as psychopathy, sociopathy, or dyssocial personality disorder. Because deceit and manipulation are central features of Antisocial Personality Disorder, it may be especially helpful to integrate information acquired from

systematic clinical assessment with information collected from collateral sources.

For this diagnosis to be given, the individual must be at least age 18 years (Criterion B) and must have had a history of some symptoms of Conduct Disorder before age 15 years (Criterion C). Conduct Disorder involves a repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated. The specific behaviors characteristic of Conduct Disorder fall into one of four categories: aggression to people and animals, destruction of property, deceitfulness or theft, or serious violation of rules. These are described in more detail on p. 85.

The pattern of antisocial behavior continues into adulthood. Individuals with Antisocial Personality Disorder fail to conform to social norms with respect to lawful behavior (Criterion A1). They may repeatedly perform acts that are grounds for arrest (whether they are arrested or not), such as destroying property, harassing others, stealing, or pursuing illegal occupations. Persons with this disorder disregard the wishes, rights, or feelings of others. They are frequently deceitful and manipulative in order to gain personal profit or pleasure (e.g., to obtain money, sex, or power) (Criterion A2). They may repeatedly lie, use an alias, con others, or malingering. A pattern of impulsivity may be manifested by a failure to plan ahead (Criterion A3). Decisions are made on the spur of the moment, without forethought, and without consideration for the consequences to self or others; this may lead to sudden changes of jobs, residences, or relationships. Individuals with Antisocial Personality Disorder tend to be irritable and aggressive and may repeatedly get into physical fights or commit acts of physical assault (including spouse beating or child beating) (Criterion A4). Aggressive acts that are required to defend oneself or someone else are not considered to be evidence for this item. These individuals also display a reckless disregard for the safety of themselves or others (Criterion A5). This may be evidenced in their driving behavior (recurrent speeding, driving while intoxicated, multiple accidents). They may engage in sexual behavior or substance use that has a high risk for harmful consequences. They may neglect or fail to care for a child in a way that puts the child in danger.

Individuals with Antisocial Personality Disorder also tend to be consistently and extremely irresponsible (Criterion A6). Irresponsible work behavior may be indicated by significant periods of unemployment despite available job opportunities, or by abandonment of several jobs without a realistic plan for getting another job. There may also be a pattern of repeated absences from work that are not explained by illness either in themselves or in their family. Financial irresponsibility is indicated by acts such as defaulting on debts, failing to provide child support, or failing to support other dependents on a regular basis. Individuals with Antisocial Personality Disorder show little remorse for the consequences of their acts (Criterion A7). They may be indifferent to, or provide a superficial rationalization for, having hurt, mistreated, or stolen from someone (e.g., "life's unfair," "losers deserve to lose," or "he had it coming anyway"). These individuals may blame the victims for being foolish, helpless, or deserving their fate; they may minimize the harmful consequences of their actions; or they may simply indicate complete indifference. They generally fail to compensate or make amends for their behavior. They may believe that everyone is out to "help number one" and that one should stop at nothing to avoid being pushed around.

The antisocial behavior must not occur exclusively during the course of Schizophrenia or a Manic Episode (Criterion D).

Associated Features and Disorders

Individuals with Antisocial Personality Disorder frequently lack empathy and tend to be callous, cynical, and contemptuous of the feelings, rights, and sufferings of others. They may have an inflated and arrogant self-appraisal (e.g., feel that ordinary work is beneath them or lack a realistic concern about their current problems or their future) and may be excessively opinionated, self-assured, or cocky. They may display a glib, superficial charm and can be quite voluble and verbally facile (e.g., using technical terms or jargon that might impress someone who is unfamiliar with the topic). Lack of empathy, inflated self-appraisal, and superficial charm are features that have been commonly included in traditional conceptions of psychopathy and may be particularly distinguishing of Antisocial Personality Disorder in prison or forensic settings where criminal, delinquent, or aggressive acts are likely to be nonspecific. These individuals may also be irresponsible and exploitative in their sexual relationships. They may have a history of many sexual partners and may never have sustained a monogamous relationship. They may be irresponsible as parents, as evidenced by malnutrition of a child, an illness in the child resulting from a lack of minimal hygiene, a child's dependence on neighbors or nonresident relatives for food or shelter, a failure to arrange for a caretaker for a young child when the individual is away from home, or repeated squandering of money required for household necessities. These individuals may receive dishonorable discharges from the armed services, may fail to be self-supporting, may become impoverished or even homeless, or may spend many years in penal institutions. Individuals with Antisocial Personality Disorder are more likely than people in the general population to die prematurely by violent means (e.g., suicide, accidents, and homicides).

Individuals with this disorder may also experience dysphoria, including complaints of tension, inability to tolerate boredom, and depressed mood. They may have associated Anxiety Disorders, Depressive Disorders, Substance-Related Disorders, Somatization Disorder, Pathological Gambling, and other disorders of impulse control. Individuals with Antisocial Personality Disorder also often have personality features that meet criteria for other Personality Disorders, particularly Borderline, Histrionic, and Narcissistic Personality Disorders. The likelihood of developing Antisocial Personality Disorder in adult life is increased if the individual experienced an early onset of Conduct Disorder (before age 10 years) and accompanying Attention-Deficit/Hyperactivity Disorder. Child abuse or neglect, unstable or erratic parenting, or inconsistent parental discipline may increase the likelihood that Conduct Disorder will evolve into Antisocial Personality Disorder.

Specific Culture, Age, and Gender Features

Antisocial Personality Disorder appears to be associated with low socioeconomic status and urban settings. Concerns have been raised that the diagnosis may at times be misapplied to individuals in settings in which seemingly antisocial behavior may be part of a protective survival strategy. In assessing antisocial traits, it is helpful for the clinician to consider the social and economic context in which the behaviors occur.

By definition, Antisocial Personality cannot be diagnosed before age 18 years. Antisocial Personality Disorder is much more common in males than in females. There has been some concern that Antisocial Personality Disorder may be underdiagnosed in females, particularly because of the emphasis on aggressive items in the definition of Conduct Disorder.

Prevalence

The overall prevalence of Antisocial Personality Disorder in community samples is about 3% in males and about 1% in females. Prevalence estimates within clinical settings have varied from 3% to 30%, depending on the predominant characteristics of the populations being sampled. Even higher prevalence rates are associated with substance abuse treatment settings and prison or forensic settings.

Course

Antisocial Personality Disorder has a chronic course but may become less evident or remit as the individual grows older, particularly by the fourth decade of life. Although this remission tends to be particularly evident with respect to engaging in criminal behavior, there is likely to be a decrease in the full spectrum of antisocial behaviors and substance use.

Familial Pattern

Antisocial Personality Disorder is more common among the first-degree biological relatives of those with the disorder than among the general population. The risk to biological relatives of females with the disorder tends to be higher than the risk to biological relatives of males with the disorder. Biological relatives of persons with this disorder are also at increased risk for Somatization Disorder and Substance-Related Disorders. Within a family that has a member with Antisocial Personality Disorder, males more often have Antisocial Personality Disorder and Substance-Related Disorders, whereas females more often have Somatization Disorder. However, in such families, there is an increase in prevalence of all of these disorders in both males and females compared with the general population. Adoption studies indicate that both genetic and environmental factors contribute to the risk of this group of disorders. Both adopted and biological children of parents with Antisocial Personality Disorder have an increased risk of developing Antisocial Personality Disorder, Somatization Disorder, and Substance-Related Disorders. Adopted-away children resemble their biological parents more than their adoptive parents, but the adoptive family environment influences the risk of developing a Personality Disorder and related psychopathology.

Differential Diagnosis

The diagnosis of Antisocial Personality Disorder is not given to individuals under age 18 years and is given only if there is a history of some symptoms of Conduct Disorder before age 15 years. For individuals over age 18 years, a diagnosis of Conduct Disorder is given only if the criteria for Antisocial Personality Disorder are not met.

When antisocial behavior in an adult is associated with a **Substance-Related Disorder**, the diagnosis of Antisocial Personality Disorder is not made unless the signs of Antisocial Personality Disorder were also present in childhood and have continued into adulthood. When substance use and antisocial behavior both began in childhood and continued into adulthood, both a Substance-Related Disorder and Antisocial Personality Disorder should be diagnosed if the criteria for both are met, even though some antisocial acts may be a consequence of the Substance-Related Disorder (e.g.,

illegal selling of drugs or thefts to obtain money for drugs). Antisocial behavior that occurs exclusively during the course of **Schizophrenia** or a **Manic Episode** should not be diagnosed as Antisocial Personality Disorder.

Other Personality Disorders may be confused with Antisocial Personality Disorder because they have certain features in common. It is, therefore, important to distinguish among these disorders based on differences in their characteristic features. However, if an individual has personality features that meet criteria for one or more Personality Disorders in addition to Antisocial Personality Disorder, all can be diagnosed. Individuals with Antisocial Personality Disorder and **Narcissistic Personality Disorder** share a tendency to be tough-minded, glib, superficial, exploitative, and unempathic. However, Narcissistic Personality Disorder does not include characteristics of impulsivity, aggression, and deceit. In addition, individuals with Antisocial Personality Disorder may not be as needy of the admiration and envy of others, and persons with Narcissistic Personality Disorder usually lack the history of Conduct Disorder in childhood or criminal behavior in adulthood. Individuals with Antisocial Personality Disorder and **Histrionic Personality Disorder** share a tendency to be impulsive, superficial, excitement seeking, reckless, seductive, and manipulative, but persons with Histrionic Personality Disorder tend to be more exaggerated in their emotions and do not characteristically engage in antisocial behaviors. Individuals with Histrionic and **Borderline Personality Disorders** are manipulative to gain nurturance, whereas those with Antisocial Personality Disorder are manipulative to gain profit, power, or some other material gratification. Individuals with Antisocial Personality Disorder tend to be less emotionally unstable and more aggressive than those with Borderline Personality Disorder. Although antisocial behavior may be present in some individuals with **Paranoid Personality Disorder**, it is not usually motivated by a desire for personal gain or to exploit others as in Antisocial Personality Disorder, but rather is more often due to a desire for revenge.

Antisocial Personality Disorder must be distinguished from criminal behavior undertaken for gain that is not accompanied by the personality features characteristic of this disorder. **Adult Antisocial Behavior** (listed in the "Other Conditions That May Be a Focus of Clinical Attention" section, p. 683) can be used to describe criminal, aggressive, or other antisocial behavior that comes to clinical attention but that does not meet the full criteria for Antisocial Personality Disorder. Only when antisocial personality traits are inflexible, maladaptive, and persistent and cause significant functional impairment or subjective distress do they constitute Antisocial Personality Disorder.

■ Diagnostic criteria for 301.7 Antisocial Personality Disorder

- A. There is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three (or more) of the following:
- (1) failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest

(continued)

Diagnostic criteria for 301.7 Antisocial Personality Disorder (*continued*)

- (2) deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure
 - (3) impulsivity or failure to plan ahead
 - (4) irritability and aggressiveness, as indicated by repeated physical fights or assaults
 - (5) reckless disregard for safety of self or others
 - (6) consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations
 - (7) lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another
- B. The individual is at least age 18 years.
- C. There is evidence of Conduct Disorder (see p. 90) with onset before age 15 years.
- D. The occurrence of antisocial behavior is not exclusively during the course of Schizophrenia or a Manic Episode.

301.83 Borderline Personality Disorder

Diagnostic Features

The essential feature of Borderline Personality Disorder is a pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity that begins by early adulthood and is present in a variety of contexts.

Individuals with Borderline Personality Disorder make frantic efforts to avoid real or imagined abandonment (Criterion 1). The perception of impending separation or rejection, or the loss of external structure, can lead to profound changes in self-image, affect, cognition, and behavior. These individuals are very sensitive to environmental circumstances. They experience intense abandonment fears and inappropriate anger even when faced with a realistic time-limited separation or when there are unavoidable changes in plans (e.g., sudden despair in reaction to a clinician's announcing the end of the hour; panic or fury when someone important to them is just a few minutes late or must cancel an appointment). They may believe that this "abandonment" implies they are "bad." These abandonment fears are related to an intolerance of being alone and a need to have other people with them. Their frantic efforts to avoid abandonment may include impulsive actions such as self-mutilating or suicidal behaviors, which are described separately in Criterion 5.

Individuals with Borderline Personality Disorder have a pattern of unstable and intense relationships (Criterion 2). They may idealize potential caregivers or lovers at the first or second meeting, demand to spend a lot of time together, and share the most

Victim's Name (Last, First, Middle)	(3) Location of Occurrence	(4) Date Occurred								(5) Time Occurred					(6) RD Occurred

(8) VICTIM: Shaeffer
 CLASSIFICATION: Homicide
 LEAD#: 68

April 15, 1992, 1000 hrs I received the complete military history (attached) of Charles Russell Rhines from OSI agent Dave Kulasiewicz. A summary of contents is listed on the memorandum attached as the cover letter.

It should be noted that the military records reflect that Rhines was charged with assaulting a unit armorer with a deadly weapon.

Specific information on this charge is not included in the packet, however OSI has requested the investigative package be forwarded to them from Army CID. It is anticipated that the package should be available within the next three weeks.

Rhines' military history reveals that he was skilled in Military Occupational Skill (MOS) 11B10 which is a Light Weapons Infantryman. Military Training included Combat Techniques and Patrolling which would include training in hand-to-hand combat and in all probability training in the use of edged weapons.

Rhines' was subject of numerous disciplinary actions which included acts of violence. Rhines was ultimately discharged from the United States Army under the provisions of a General Discharge for being unsuitable for military service.

(9) Officer(s) Reporting *Fields 14	ID#	(10) Supervisor Approving <i>[Signature]</i>	ID#	(11) Date & Time Approved 04-15-92
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RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. *L*

Name and grade PV2 CHARLES R. RHINES	SSN 502-77-8415	Unit Co E, 1/32d Inf	Pay (Basic & Sea/Foreign) \$610.60
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PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: *2/*
CHARGE: VIOLATION OF THE UCMJ, ARTICLE 92
 Specification: It has been reported that you did, at Camp Howze, Korea, on or about 28 May 1976, violate a lawful general regulation, to wit: paragraph 1-27(e), Arm Regulation 600-50, dated 19 April 1973, by possessing twelve bottles of codeine.
~~CHARGE: VIOLATION OF THE UCMJ, ARTICLE 134~~
 Specification: It has been reported that you did, at Camp Howze, Korea, on or about 28 May 1976, ~~possess~~ *use* ~~an excessive quantity~~ of marijuana.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. *2/*
 In deciding what you want to do you have the right to consult with a lawyer located at Blag 506, Camp Howze, Korea. You now have 48 hours to decide what you want to do. *1/*

Date and time <i>16 June 76</i>	Name, grade and organization of commander WILLIAM S. CARPENTER JR., LTC, 1/32d Inf	Signature <i>[Signature]</i>
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3. Trial by court-martial is is not demanded. *2/* 4. A spokesman will will not accompany me. *2/*
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. *2/*
 6. An open hearing is is not requested. *2/*

Date <i>10 Jul 76</i>	Name and grade of service member PV2 CHARLES R. RHINES	Signature <i>[Signature]</i>
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7. I have considered all matters presented in defense and/or extenuation and mitigation. *2/* The following punishment(s) (is) (are) imposed: *2/*
 Forfeiture of \$200.00 for two months. Restriction for a period of 2 months. Extra duty for 30 days.

8. You are advised of your right to appeal this punishment within 15 days to Cdr, 1st AIG the next superior authority.

Date <i>1 July 76</i>	Name, grade and organization of commander WILLIAM S. CARPENTER JR., LTC, 1/32d Inf	Signature <i>[Signature]</i>
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PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. *2/*
 I appeal and submit the matter attached hereto for consideration by the next superior authority. *2/*

Date <i>10 Jul 76</i>	Name and grade of service member PV2 CHARLES R. RHINES	Signature <i>[Signature]</i>
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10. I have considered the appeal and it is my opinion that: *2/*
 REVIEWED FOR LEGAL SUFFICIENCY BY

Date	Name and grade of judge advocate	Signature of judge advocate
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11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: *2/*
BDE LEGAL OFFICER

Date	Name, grade and position	Signature
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Date	Name and grade of service member	Signature
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--- YOUNG APPENDIX 000492

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AF 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade	SSN	Unit	Pay (Basic & Sea/Foreign)
RHINES, CHARLES R PV2	504-70-8415	Co B 1stBn(M)10thInf	\$383.40

PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/It has been reported that you did, at Fort Carson, Colorado 80913, on or about 2000 hours 17 August 1975, wrongfully have in your possession 1 ounce, more or less, of marijuana. This is a violation of Article 134, Uniform Code of Military Justice.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 3/ In deciding what you want to do you have the right to consult with a lawyer located at Rldg 6285, Ft Carson CO. You now have 72 hours to decide what you want to do. 4/

Date and time	Name, grade and organization of commander	Signature
8 Dec 75	EDWARD J LAUER CPT Co B 1/10th Inf	<i>[Signature]</i>

3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 5/

5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 6/

6. An open hearing is in not requested. 6/

Date	Name and grade of service member	Signature
8 Dec 75	CHARLES R RHINES PV2	<i>[Signature]</i>

7. I have considered all matters presented in defense and/or extenuation and mitigation. 6/ The following punishment(s) (is) (are) imposed: 7/

Forfeiture seven (7) days pay \$80.00 (Suspended 60 days until 8 Dec 75)

Fourteen (14) days extra duty.

8. You are advised of your right to appeal this punishment within 15 days to ION E BOKOVOY LTC 1/10th Inf, the next superior authority.

Date	Name, grade and organization of commander	Signature
8 Dec 75	EDWARD J LAUER CPT Co B 1/10th Inf	<i>[Signature]</i>

PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 8/

I appeal and submit the matter attached hereto for consideration by the next superior authority. 8/

Date	Name and grade of service member	Signature
8 Dec 75	CHARLES R RHINES PV2	<i>[Signature]</i>

10. I have considered the appeal and it is my opinion that: 9/

Date	Name and grade of judge advocate	Signature of judge advocate

11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: 8/

Date	Name, grade and position	Signature

Date	Name and grade of service member	Signature

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade	SSN	Unit	Pay (Basic & Sea/Foreign)
RHINES, CHARLES R. PV2	504-70-8415	Co B, 1st Bn (M) 10th Inf	\$383.40

PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/
 In that PV2 Charles R. Rhines, at Fort Carson, Colorado, on or about 2200 hours 25 March 1975 behave himself with disrespect toward 2LT Thomas Cashman, his superior commissioned officer by saying to him, "You're a mother fucking hitler," or words to that effect.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 3/
 In deciding what you want to do you have the right to consult with a lawyer located at Bldg 6285 Ft Carson, CO
 You now have 72 hours to decide what you want to do. 4/

Date and time	Name, grade and organization of commander	Signature
10/10 Apr 75	PETER MIRAKIAN JR, CPT, Co B, 1/10th Inf	<i>[Signature]</i>

3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 6/
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 5/
 6. An open hearing is is not requested. 5/

Date	Name and grade of service member	Signature
4 APR 75	CHARLES R. RHINES PV2	<i>[Signature]</i>

7. I have considered all matters presented in defense and/or extenuation and mitigation. 5/ The following punishment(s) (is) (are) imposed: 7/

REDUCTION to the Grade of PRIVATE E-1 (Suspended until 6 May 1975)
 14 day restriction to company area
 14 days extra duty

8. You are advised of your right to appeal this punishment within 15 days to TAFT C. RING, LTC, CDR, 1/10th Inf, the next superior authority.

Date	Name, grade and organization of commander	Signature
8 March 75	PETER MIRAKIAN JR, CPT, Co B, 1/10th Inf	<i>[Signature]</i>

PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 8/
 I appeal and submit the matter attached hereto for consideration by the next superior authority. 8/

Date	Name and grade of service member	Signature
21 APR 75	CHARLES R. RHINES	<i>[Signature]</i>

10. I have considered the appeal and it is my opinion that: 9/

Date	Name and grade of judge advocate	Signature of judge advocate

11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: 5/

Date	Name, grade and position	Signature

Date	Name and grade of service member	Signature

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. 1/

Name and grade	SSN	Unit	Pay (Basic & Sea/Foreign)
RHINES, CHARLES R. PVT	504-70-8415	Co B, 1st Bn (M) 10th Inf	\$314.10

PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: 2/
 In that PVT Charles R. Rhines, at Fort Carson, Colorado, on or about 1020 hours 11 April 1975 was disrespectful toward SSG Ernest D. Long, 585-18-0087, by saying to him "Suck my ass" or words to that effect.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. 3/
 In deciding what you want to do you have the right to consult with a lawyer located at Bldg 6285, Ft Carson, CO. You now have 72 hours to decide what you want to do. 4/

Date and time	Name, grade and organization of commander	Signature
21/510 Apr 75	PETER MIRAKIAN JR., CPT, Co B, 1st 10th Inf	<i>[Signature]</i>

3. Trial by court-martial is is not demanded. 5/ 4. A spokesman will will not accompany me. 5/
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. 5/
 6. An open hearing is is not requested. 5/

Date	Name and grade of service member	Signature
28 APR 75	CHARLES R. RHINES PVT	<i>[Signature]</i>

7. I have considered all matters presented in defense and/or extenuation and mitigation. 6/ The following punishment(s) (is) (are) imposed: 7/
 Reduce to the Grade PRIVATE E-1
 Forfeiture of \$80.00

8. You are advised of your right to appeal this punishment within 15 days to TAFT C. RING, LTC, CDR, 1/10th Inf the next superior authority.

Date	Name, grade and organization of commander	Signature
29 Apr 75	PETER MIRAKIAN JR., CPT, Co B, 1st 10th Inf	<i>[Signature]</i>

PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. 8/
 I appeal and submit the matter attached hereto for consideration by the next superior authority. 8/

Date	Name and grade of service member	Signature
29 APR 75	CHARLES R. RHINES	<i>[Signature]</i>

10. I have considered the appeal and it is my opinion that: 9/

Date	Name and grade of judge advocate	Signature of judge advocate

11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: 9/

Date	Name, grade and position	Signature

12. I have seen the action taken on my appeal.

Date	Name and grade of service member	Signature

RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. *L/*

Name and grade Rhines, Charles, R. E-3	SSN 504-70-8415	Unit Co A 1st Bn(Mech) 22d Inf	Pay (Basic & Sea/Foreign) \$377.70
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PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: *2/*
 In that Rhines, Charles R. E-3, 504-70-8415, having received a lawful order from acting sergeant SP/4 Kenneth H. Stewart, his superior noncommissioned officer, to clean the platoon's latrine, did, at Company A 1st Battalion (Mech) 22d Infantry, Fort Carson, Colorado 80913, on or about 0630 hours, 17 Sep 74, willfully disobey the same. This action is in violation of AR 650-50, Article 91 of the UCMJ.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. *3/* In deciding what you want to do you have the right to consult with a lawyer located at OSJA Building 6285. You now have 72 hours to decide what you want to do. *4/*

Date and time <i>1640/20 Sep 74</i>	Name, grade and organization of commander DAVID J OZOLEK 1LT INF Co A 1/22 Inf (M)	Signature <i>[Signature]</i>
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3. Trial by court-martial is is not demanded. *5/* 4. A spokesman will will not accompany me. *5/*
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. *5/*
 6. An open hearing is is not requested. *5/*

Date <i>20 Sep 74</i>	Name and grade of service member Rhines, Charles R. E-3	Signature <i>[Signature]</i>
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7. I have considered all matters presented in defense and/or extenuation and mitigation. *5/* The following punishment(s) (is) (are) imposed: *1/*

Reduced to E-2
 Perform extra duty for 14 days effective 20 Sep 74.
 14 days restriction

8. You are advised of your right to appeal this punishment within 15 days to Commander 1st Bn(Mech) 22d Inf the next superior authority.

Date <i>20 Sep 74</i>	Name, grade and organization of commander DAVID J OZOLEK 1LT INF Co A 1/22 Inf (M)	Signature <i>[Signature]</i>
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PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. *5/*
 I appeal and submit the matter attached hereto for consideration by the next superior authority. *5/*

Date <i>20 Sep 74</i>	Name and grade of service member Rhines, Charles R. E-3	Signature <i>[Signature]</i>
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10. I have considered the appeal and it is my opinion that: *5/*

Date	Name and grade of judge advocate	Signature of judge advocate
------	----------------------------------	-----------------------------

11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: *5/*

Date	Name, grade and position	Signature
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Date	Name and grade of service member	Signature
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RECORD OF PROCEEDINGS UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is Office of The Judge Advocate General. *L/*

Name and grade Rhines, Charles R. <i>E-2</i>	SSN 504-70-8415	Unit Co A 1st Bn (Mech) 22d Inf	Pay (Basic & Sea/Foreign) \$383.40
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PART I - INITIAL ACTION

1. I am considering whether you should be punished under Article 15, UCMJ, for the following misconduct: *2/*
 In that Rhines, Charles R. E-2, 504-70-8415, did, at Company A 1st Battalion (Mech) 22d Infantry, Fort Carson, Colorado 80913, on or about 0730 hours, 5 December 1974, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Company Formation. This action is in violation of AR 650-50, Article 86 of the UCMJ.

2. You have several rights under this Article 15 procedure. First, I want you to understand that I have not yet made a decision whether or not you will be punished, and I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense. You may ordinarily have a public hearing before me. You may bring a spokesman on your behalf. You may present witnesses and other evidence to show why you shouldn't be punished at all (matters in defense) or why punishment should be very light (matters in extenuation and mitigation). I shall consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. You are not required to make any statements at all, but if you do, they may be used against you in this Article 15 or in a trial by court-martial. If you do not want me to dispose of this report of misconduct under Article 15 you have the right to demand trial by court-martial instead. *3/*
 In deciding what you want to do you have the right to consult with a lawyer located at *CG JA Building 6285*
 You now have *70* hours to decide what you want to do. *4/*

Date and time <i>061700 DEC 74</i>	Name, grade and organization of commander DAVID J OZOLEK 1LT, Co A 1st Bn (M) 22d Inf	Signature <i>[Signature]</i>
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3. Trial by court-martial is is not demanded. *5/* 4. A spokesman will will not accompany me. *5/*
 5. Matters in defense and/or extenuation: are not presented are attached hereto will be presented in person. *5/*
 6. An open hearing is is not requested. *5/*

Date <i>10 DEC 74</i>	Name and grade of service member Rhines, Charles R. E-2	Signature <i>[Signature]</i>
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7. I have considered all matters presented in defense and/or extenuation and mitigation. *5/* The following punishment(s) (is) (are) imposed: *2/*

*REDUCTION TO E-2
 FORFEITURE OF \$50.00
 14 DAYS EXTRA DUTY*

8. You are advised of your right to appeal this punishment within *15* days to *COMMANDER 1/22 INF* the next superior authority.

Date <i>10 DEC 74</i>	Name, grade and organization of commander DAVID J OZOLEK 1LT, Co A 1st Bn (M) 22d Inf	Signature <i>[Signature]</i>
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PART II - APPELLATE ACTION

9. I do not appeal. I appeal and do not submit matters for consideration by the next superior authority. *5/*
 I appeal and submit the matter attached hereto for consideration by the next superior authority. *5/*

Date <i>10 DEC 74</i>	Name and grade of service member Rhines, Charles R. E-2	Signature <i>[Signature]</i>
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10. I have considered the appeal and it is my opinion that: *5/*

Date	Name and grade of Judge advocate	Signature of judge advocate
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11. After consideration of all matters presented in appeal, the appeal is Denied Granted Granted in part as follows: *5/*

Date	Name, grade and position	Signature
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12. I have seen the action taken on my appeal.

Date	Name and grade of service member	Signature
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DEPARTMENT OF THE ARMY
HEADQUARTERS US ARMY TRANSFER POINT
OAKLAND ARMY BASE, OAKLAND CA 94626

AFZM-ADJ-TP

13 OCTOBER 1976
(Date)

SUBJECT: Review of Discharge

TO: CHARLES RUSSELL RHINES
P. O. BOX 316
MC LAUGHLIN, SD 57642

1. You are being issued a GENERAL Discharge from the Army of the United States.
2. The Army Discharge Review Board is an administrative agency created within the Department of the Army, under authority of section 301, Title 1, act of 22 June 1944 (58 Stat. 286: 38U. S.C. 963H; M.L. 1949, Sec 1164-6), to review upon its own motion or upon application by or on behalf of the individual concerned, the type and nature of the discharge certificate or other documentary evidence of discharge or dismissal of former members of the Armed Forces.
3. Any request will be made on DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, which may be obtained by writing to: US Army AG Publications Center, 2800 Eastern Blvd, Baltimore, MD 21220.
4. Application for review of discharge must be received by the Adjutant General, US Army Records Center, 9700 Page Blvd, St. Louis, Missouri 63132, within fifteen (15) years after the effective date of discharge or dismissal.

FOR THE CHIEF:

F. G. WADE
WO1, USA
Asst Adj

I, the undersigned, have read the above letter and fully understand that if I desire, I may request a review of my discharge by the Army Discharge review Board.

13 OCT 76
(Date)

(Signature)

AFZM-TP FL 7 (Rev)
22 Apr 76

Atch 10

EAIDTB-CO RHINES, Charles R. (14 Sep 76) 2nd Ind
SUBJECT: Recommendation for Elimination UP AR 635-200

DA, HEADQUARTERS, 3RD BRIGADE, 2ND INFANTRY DIVISION, APO San
Francisco 96251, 30 September 1976

TO: Commanding General, 2nd Infantry Division, ATTN: AGPM,
APO San Francisco 96224

1. Recommendation for discharge of Private Charles R. Rhines,
~~504-70-8415, Company B, 1st Battalion, 32nd Infantry, 2nd Infantry~~
Division, APO San Francisco 96251, is approved.

2. Private Rhines will be discharge under the provisions of
paragraph 13-5b(3), AR 635-200, for reasons of unsuitability.

3. A waiver of further counseling and rehabilitation is hereby
granted in accordance with paragraph 13-9b, AR 635-200.

4. A General/~~Honorable~~ Discharge Certificate will be issued.



JOHN M. BROWN
COL, INF
Commanding

SAIDIF-00 (14 Sep 76) 1st Ind Bn, Charles R.
SUBJECT: Recommendation for Elimination UP AR 635-200

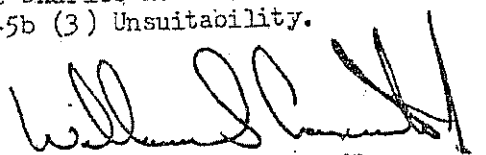
DA, HEADQUARTERS, 1st Battalion, 32d Infantry, APO San Francisco 96251

TO: Commander, 3d Brigade, 2d Infantry Division, APO San Francisco 96251

1. Concur with the recommendation of the unit commander.

2. SM has received two Field Grade Article 15's in this battalion and has been punished non-judicially five times. He has demonstrated an inability and unwillingness to adapt to military life. He continually flaunts authority and he is a disruptive influence in his unit. The interests of the Army and the individual would be best served by his immediate elimination.

3. Strongly recommend that Private Charles R. Rhines be eliminated from the service UP AR 635-200 paragraph 13-5b (3) Unsuitability.



WILLIAM S. CARPENTER JR.
LTC, IN
Commanding

4. The following data is furnished:

- a. Date of enlistment: 5 Mar 74
- b. Date of birth: 11 Jul 56
- c. Term of service: three years
- d. Prior service: none
- e. Individual does not have a reserve commission or warrant.
- f. AFQT: 61
- g. July 1968: 11B10
- h. Individual was not accepted for service under the Project 100,000 program.
- i. Aptitude Area scores: DD: 103 MM: 122 HG: 132 CA: 103 IN: 123 AB: 123
- j. MOS Evaluated (yrs) ~~KLEC~~. In per. evaluation score: 1975 (120)

5. SM has been a member of this command since: 23 Dec 75, the following is a chronological summary of the SM's service to include assignments, duties, and conduct/efficiency ratings.-(Continue on separate sheet-if necessary.)

FROM	TO	ASSIGNMENT	DUTY	CONDUCT/EFFICIENCY
740719	750116	Co A, 1/22 Inf Ft Carson	Infantryman	
750117	750928	Co B, 1/10 Inf Ft Carson	Infantryman	
750929	751103	Co B, 1/10 Inf Ft Carson	Infantryman	
751104	751224	Enroute to Korea		
751225	present	Co B, 1/32d Inf Sp Howze	Infantryman	poor/poor

6. SM HAS BEEN COUNSELED AS FOLLOWS: (Continue on separate page if necessary)

DATE	BY WHOM	REASON
numerous times	CPT Vermillion (Co Cdr, DEROSd)	illegal possession and use of drugs failure to repair, apathetic attitude
21 Aug 76	1LT Atkinson	unauthorized possession of explosives and claymore mine firing device
27 Aug 76	Sgt Beanblossom	illegal possession of explosives, continued apathy
14 Sep 76	1LT Atkinson	assault on unit armorer with a deadly weapon substandard duty performance

7. (MISCONDUCT CASES ONLY) I do not consider it reasonable or appropriate to recommend elimination for Unsuitability to accomplish other disposition of this case because:

8. (UNSUITABILITY cases only) I do not consider it feasible to effect other disposition in this case because: This soldier's poor performance is the result of his decidedly apathetic attitude. PV2 Rhines' presence in the unit is a detrimental factor to an extreme degree. There is no other grounds for adequate disposition of this case.

9. Individual's disciplinary record:
- Number of convictions by General Courts-Martial: none
 - Number of convictions by Special Courts-Martial: none
 - Number of convictions by Summary Courts-Martial: none
 - Number of convictions by authorities during current term of service: none
 - Number of times punished under Article 15: 5
 - Individual (C) (as not) confined at Camp Humphreys. If confined:
 - (a) He has been in pre-trial confinement since:
 - (b) He is in confinement as a result of conviction by court-martial. He has been in confinement since:

10. Reports of final type physical examination (SF 38 and SF 89) are attached as inclosures, and they are dated within six months of the date of this date.

11. The Army and Air Force (Mental) Records of Previous Restrictions), unit comments, and other reports (Mental Health Report, Form 635-200), and all other reports (statements of counseling) are attached as inclosures. Evidence of evidence of duty is attached in Form 2027 or 2027-1 or unit orders. Any reports, recommendations, observations or other documents which are considered pertinent to the case are also attached as inclosures.

12. Inasmuch as military rehabilitation and development into a satisfactory soldier is found unlikely, it is requested that the approving authority make recommendations, which may exist in this case concerning rehabilitation by further counseling, reassignment, or both.

William E. Atkinson
WILLIAM E ATKINSON
1LT, INFANTRY
Commanding

6 Incl

1. DD Form 103, dated
2. Mental Status Evaluation (Mental Hygiene Report), dated
3. SF 38, dated
4. SF 89, dated
5. Unit Commanding Officer letter to EM, dated
6. Statement of Counseling, dated

REPORT OF MENTAL STATUS EVALUATION

For use of this form, see AR 635-200; the proponent agency is the Adjutant General's Office.

Request a mental evaluation for the below named individual who is being considered for discharge because of CONVICTION BY CIVIL COURT FRAUDULENT ENTRY DESERTION UNSUITABILITY UNFITNESS

NAME	GRADE	SSAN
CHARLES R. RHINES	E-1	504-70-8415

EVALUATION

- BEHAVIOR
 NORMAL PASSIVE AGGRESSIVE HOSTILE SUSPICIOUS BIZARRE
- LEVEL OF ALERTNESS
 FULLY ORIENTED DULL SOMNOLENT
- LEVEL OF ORIENTATION
 FULLY ORIENTED PARTIAL DISORIENTED
- MOOD
 DEPRESSED LEVEL HYPERACTIVE
- THINKING PROCESS
 CLEAR CONFUSED BIZARRE
- THOUGHT CONTENT
 NORMAL ABNORMAL HALLUCINATIONS PARANOID IDEATION DELUSIONS
- MEMORY
 GOOD FAIR POOR

IMPRESSIONS	YES	NO
8. SIGNIFICANT MENTAL ILLNESS		<input checked="" type="checkbox"/>
9. MENTAL RESPONSIBILITY	<input checked="" type="checkbox"/>	
10. ABLE TO DISTINGUISH RIGHT FROM WRONG	<input checked="" type="checkbox"/>	
11. ABLE TO ADHERE TO THE RIGHT	<input checked="" type="checkbox"/>	
12. HAS THE MENTAL CAPACITY TO UNDERSTAND AND PARTICIPATE IN BOARD PROCEEDINGS	<input checked="" type="checkbox"/>	
13. MEETS THE RETENTION STANDARDS PRESCRIBED IN CHAPTER 3, AR 40-501	<input checked="" type="checkbox"/>	

REMARKS
 Patient seems to have a lot of suppressed hostility and is quick to anger.

DATE	SIGNATURE (TYPED NAME, GRADE, & BRANCH)
20 SEP. 76	William V. Parsons, MD CPT, MC

DA Form 3022-R, 1 Aug 72 EDITION OF 1 NOV 71 IS OBSOLETE

UNIVERSITY OF SOUTH ALABAMA



OFFICE OF THE VICE PRESIDENT
FOR HEALTH SCIENCES

TELEPHONE: (251) 460-7189
5795 USA DRIVE, N., CSAB ROOM 170
MOBILE, ALABAMA 36688-0002
FAX: (251) 460-6369

July 13, 2012

Mr. Paul Swedlund
Assistant Attorney General
Appellate Division
Office of Attorney General
1302 E. Hwy 14, Suite 1
Pierre, SD 57501-8501

RE: Charles Rhines

Dear Mr. Swedlund:

At your request, I have reviewed a series of records relative to the murder of Donnivan Schaeffer on March 8, 1992 by Charles Rhines, who has been sentenced to the death penalty. A question was raised by psychologist, Dr. Dewey J. Ertz, who indicated that there was no testimony at the time of Mr. Rhines' sentencing relative to his psychiatric history and diagnosis, nor his psychological state at the time of the commission of the offense. He further suggested that his psychological problems had a bearing on his demeanor during Mr. Rhines' confession of the murder to police investigators on June 19, 1992 and June 21, 1992. Accordingly, you have asked me to review those same records to determine whether there were sufficient psychiatric problems faced by Mr. Rhines to serve as mitigating factors in his sentencing.

In preparation for this report, I have reviewed the audiotape and transcript of Mr. Rhines' confession from June 19, 1992 and June 21, 1992, his military file, school records, autobiography (Part I and Part II), statements regarding his conduct while awaiting IME, the psychiatric assessment dated November 24, 1992, by D. J. Kennelly, M.D., the report of Dr. Bill H. Arbes, Ph.D., psychologist of December 1, 1992, and the summary of the social history by Mr. Steve Dresbach, MSW, clinical social worker at that same time. In addition, I reviewed multiple police investigative reports from both South Dakota and Washington, an excerpt of the deposition of Mr. Harter, Mr. Hernandez's deposition, a letter from Mr. Rhines to Mr. Hernandez, Mr. Rhines' penitentiary security file (excerpt), Mr. Rhines' plan to "take out" and rob Mr. Hernandez's friends, and the mental health records of Mr. Rhines since his incarceration for the murder of Mr. Schaeffer. I have reviewed the report outlining the interpretation of the testing performed by Dr. Ertz, who rendered an opinion on the results of these tests. I have also reviewed affidavits by Kenny Larson, Gus Miller, and Roy Jundt. My report below will outline

background material on Mr. Rhines and end with my conclusion relative to his diagnosis and mental state.

Childhood history: As detailed in Mr. Dresbach's report, Mr. Rhines was born on July 11, 1956 in McLaughlin, South Dakota. He was the youngest of four children. His father managed a local co-op elevator, and his mother was occasionally employed outside the home as a bookkeeper. He describes his relationship with his sisters as one of fighting with them. At the age of 12, he reported that he was pretty much left to take care of himself. As a result, he spent most of his time watching TV and eating at home leading to problems of obesity and inactivity. He did not feel that he was accepted by his peers as a result of being overweight and non-athletic. There is no history of abuse.

School history (taken from Mr. Dresbach's report), and from school records: Mr. Rhines reports to Mr. Dresbach that he did poorly in school, being promoted between grades three and six "socially" rather than on academic performance because his mother was on the school board. He failed seventh grade, and reports that he did not apply himself in school. He dropped out in tenth grade and went to work. At age 17 he moved in with his brother-in-law and sister and began high school again, which lasted only four months. He reports that he became disillusioned with the teachers when he observed their unprofessional social behavior outside of school, and yet was expected to respect them while he was in school as their student. He later received his high school diploma while in the military service.

Military service (drawn from his military record): Mr. Rhines served in the military from March 1974 through September 1976. He was given a general discharge and separated from the military early because, "This soldier's poor performance is a result of his decidedly apathetic attitude. Private Rhines' presence in the unit is a detrimental factor, to an extreme degree. There is no other grounds for an adequate disposition of this case." While in the service, he "received two field grade Article 15's, and had been punished non-judicially five times. He has demonstrated an unwillingness to adapt to military life. He continually flaunts authority and he is a disruptive influence in his unit." In the military he was found to have illegal possession and use of drugs, unauthorized possession of explosives and a firing device, and an assault with a deadly weapon on another service member.

Employment history: Mr. Rhines has had brief periods of employment in construction; several times in various donut shops; and electronics jobs. While in the state of Washington, he learned to become a baker.

College experience (drawn from Mr. Dresbach's report): Mr. Rhines attended the University of South Dakota for a few months studying electronics. He performed poorly academically and had difficulty socially, not fitting in with the peer group, occasionally becoming the object of their teasing. In retaliation, he burglarized a dorm room which resulted in his expulsion from the school and his first incarceration.

Legal history: Legal problems faced by Mr. Rhines during adolescence are documented in his autobiography where he details a breaking and entry and shop lifting. He is also described in an affidavit by Mr. Gus Miller to have taken dynamite from his place of employment in 1973. Mr.

Miller later found the dynamite set to explode at a grain elevator. There were suspicions that he was involved in arson fires when he was 14-15, as mentioned in his autobiography and the Larson affidavit. He was convicted of third degree burglary in November, 1977, receiving a sentence of three years, but served less than a year. In 1979 he was convicted of first degree robbery, serving seven and one-half years of a ten year sentence.

Relationships: Mr. Rhines "came out" in 1979, declaring his homosexuality. He apparently has not had any serious heterosexual relationships. He does acknowledge a few extended relationships with gay partners, including Mr. Hernandez and Mr. Harter. He does acknowledge S & M activity as part of his homosexual behavior.

Past psychiatric history: Prior to his incarceration for the murder of Mr. Schaeffer, he sought counseling briefly in 1979 in relation to the recognition that he was homosexual, although he does not feel that his homosexuality is a psychiatric problem (drawn from Mr. Dresbach's report). Subsequent to his incarceration in 1992, he was evaluated and determined to be suffering from no major mental illness (D.J. Kennely, M.D.). Generalized Anxiety Disorder and Schizotypal Personality disorder were diagnosed by Dr. Arbes at that same time. After his conviction, he was diagnosed by Alan R. Knutson, Ph.D. as Antisocial Personality Disorder. In 2008, and 2009 he was considered to possibly have a mood disorder, but that was never confirmed by Dr. Davidson. Otherwise, he has not had psychiatric problems identified throughout his incarceration. Dewey Ertz, Ed.D., suggested Mr. Rhines may have ADHD based primarily on his IQ testing, offering no other explanation of his performance on the testing, nor other diagnoses.

Alcohol and drug history: Apparently, Mr. Rhines had significant use of illicit drugs in the past, although there is no evidence he was intoxicated with either drugs or alcohol at the time he committed the murder of Mr. Schaeffer.

Medical history: There are no records of any significant medical problems faced by Mr. Rhines prior to, or during the time of the murder of Mr. Schaeffer.

Events surrounding the murder of Mr. Schaeffer: Well documented in multiple records, including the confession of Mr. Rhines, were the events surrounding the murder of Mr. Schaeffer which occurred in March, 1992. In the months prior to the murder, Mr. Rhines had worked in a donut shop in which Mr. Schaeffer was also employed. Mr. Rhines was apparently involved, along with others who worked at the shop, in stealing money from the cash register. Mr. Rhines work in the donut shop also resulted in him knowing about the cash kept on hand. He planned to burglarize the shop and solicited the aid of Sam Harter, who also worked in the shop, and who was the homosexual lover of Mr. Rhines. On the night of the murder, Mr. Rhines was dropped off at the donut shop by Mr. Harter, who then apparently went home. Mr. Rhines, during the course of the burglary, was interrupted by Mr. Schaeffer who showed up for work. Mr. Rhines stabbed Mr. Schaeffer in the abdomen then in the back. Mr. Rhines then dragged him to the back of the store and plunged the knife into the base of his skull. After the stabbings, he completed his burglary of the donut shop. He later called Mr. Harter who drove back to the donut shop and picked him up. Mr. Rhines later fled to Washington State. While there he was arrested under

suspicion of stealing copper wire, along with a person with whom he was living. He was joined prior to that by Mr. Harter and Mr. Harter's girlfriend who was apparently pregnant at the time.

Mr. Rhines was transported back to South Dakota in June, 1992, after he had confessed to the murder of Mr. Schaeffer as recorded on the 19th and 21st of that month. He later reported on February 25, 1993 (as recorded in the notes of the prison health services), that his confession of killing Mr. Schaeffer and his cooperation with authorities was aimed at avoiding the death penalty. He expressed his anger at the prosecutor for pursuing the death penalty despite his confession. On other occasions he indicated that his confession was an effort to protect his roommate from prosecution. In the deposition of Mr. Hernandez on January 20, 1994 on page 29, Mr. Hernandez indicates that he visited with Mr. Rhines in May, 1992:

...after he was brought back and had been arrested and he was in jail, and he kept telling me that "they're going to have to prove I did it." He just kind of laughed it off like it was no real biggee about it, and I said "take" - something to the effect of, "take life", I said, "if you did it," I said, "you should be dealt with to the full extent of the law," and he goes, "Well, Donnivan was a nice kid. It's just that he got in the way, the timing was off.

Mr. Hernandez goes on to say that there appeared to be no evidence of remorse by Mr. Rhines.

Summary:

The following represent my conclusions with reasonable medical certainty:

Diagnosis: Since I did not interview Mr. Rhines directly, my diagnostic impressions rely upon the records outlined above including his own personal biography. Suffice it to say, there is no evidence that Mr. Rhines suffers from a major mental illness, and by that I mean a psychotic disorder where he is unable to perceive reality, such as is seen frequently with schizophrenia. There are times when he appeared to have some symptoms of depression, but none of the symptoms were severe enough to warrant the diagnosis of major depression. Nor was there the presence of anxiety to the degree necessary to confirm the initial impression of generalized anxiety disorder. Dr. Ertz suggested that the psychological tests he performed on Mr. Rhines are consistent with ADHD, although he does not formally make that diagnosis nor offer other explanations for his performance on those tests. Dr. Ertz also suggests that Mr. Rhines may suffer from slowed cognitive processing.

My diagnosis of Mr. Rhines, which is most consistent with his history, is Antisocial Personality Disorder, a diagnosis also given to him by Dr. Knutson. This diagnosis is reserved for those showing a "pervasive pattern of disregard for the violation of the rights of others occurring since age 15 years" (DSM IV). Mr. Rhines' frequent unlawful behaviors, deceitfulness, aggressiveness, failure to sustain consistent work, and apparent lack of remorse more than meet the major criteria for this disorder, as does evidence of a conduct disorder beginning before age 15. In his autobiography Mr. Rhines indicates breaking and entering and shoplifting as an early adolescent, combined with probable arson and theft of dynamite as a late adolescent. His behavioral problems continued in the military, leading to a premature discharge.

Insanity and competency: All recorded history and the confession by Mr. Rhines indicate clearly that he knew right from wrong at the time of the killing of Mr. Schaeffer. Indeed, his attempts at covering his crime and his escape from South Dakota after the crime, strongly attest to his full awareness that his actions were wrong. Likewise, all evidence supports his competency to stand trial.

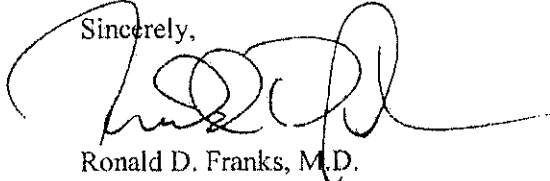
ADHD: A question was raised by Dr. Ertz as to whether Mr. Rhines' behavior during his confession was evidence of ADHD and/or slow cognitive processing. Dr. Ertz also implied that either or both may have contributed to the murder of Mr. Schaeffer. While there has been a question in the past in the scientific literature of whether ADHD is a precursor of Antisocial Personality Disorder or violent behavior, more recent comprehensive studies suggest that there is no greater risk of Antisocial Personality Disorder or violence with ADHD (Mordre, et al, "Impact of ADHD and conduct disorder in childhood and adult delinquency" BMC Psychiatry.2011;11). In that article, the authors conclude, "Our finding strengthens the assumption that there is no direct association between ADHD and criminality." This comports with my clinical experience. Indeed, the suggestion by Dr. Ertz that Mr. Rhines may suffer from ADHD is based on testing performed nearly 20 years after the murder. No abnormalities in cognitive processing were noted by psychologists and psychiatrists in 1992 and 1993. Indeed, the ability of Mr. Rhines to concentrate and complete complicated tasks in a logical, rational manner speaks against ADHD. Rather than an inability to concentrate, he demonstrates that he can focus his attention when motivated to do so. For instance, his early military career is characterized by successfully completing complicated assignments. His ability to serve as a manager for a donut shop is another example. Likewise, he was very thorough in his planning and execution of the burglary of the donut shop on March 8, 1992.

Behavior during the confession: In the course of his confession in 1992, Mr. Rhines laughed on several occasions, and on several occasions stopped the taped interview for several minutes and then allowed it to resume. There is no indication that during the course of the confession that Mr. Rhines had difficulty understanding the questions asked of him or in answering them coherently using logical thought processes. The times of laughter occurred when he seemed to realize that the police were not more thorough in their investigation than anticipated. The starting and stopping of the tape is consistent with Mr. Rhines' trying to decide whether he is going to continue with his confession, knowing the risk involved. As he noted later, he was hoping his confession would demonstrate his cooperation, and thus remove the death penalty from consideration. He also was attempting to protect his roommate from being implicated. In my opinion, there was not evidence of slow cognitive processing during his confession.

Remorse: The presence of remorse is not evident in the records that I reviewed. Indeed, the murder of Mr. Schaeffer had apparently a minor impact on Mr. Rhines who had the presence of mind to continue methodically with the burglary of the donut shop after killing Mr. Schaeffer, and to later indicate that the murder was because Mr. Schaeffer "just got in the way."

This concludes my evaluation of the records forwarded to me to date relative to the state of mind of Mr. Rhines at the time of the murder of Donnivan Schaeffer. It is subject to revision depending on further submission of documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'RDF', with a large, sweeping flourish extending to the left.

Ronald D. Franks, M.D.
Vice President for Health Sciences
Interim Chair, Department of Psychiatry
Professor of Psychiatry

RDF/cwc

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Clinical and Forensic Psychology
P.O. Box 70308 - ETSU
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August 28, 2012

Mr. Paul Swedlund
Office of the Attorney General
State of South Dakota
Pierre, South Dakota

RE: Rhines v Weber, Civ. 02-924

Dear Mr. Swedlund,

Please accept this letter as a report of opinions to which I am prepared to testify in the habeas corpus proceedings involving Mr. Rhines. Numerals in brackets refer to numbered pages of my file and are for ease of reference during testimony. A list of records reviewed is appended.

Sincerely,

Thomas E. Schacht, PsyD, ABPP

BACKGROUND

Mr. Rhines has been on South Dakota's death row since 1993, following his conviction of first-degree murder committed in the course of his burglary of the establishment of a former employer, Dig'Em Donuts. Three mental health experts were retained by Mr. Rhines' counsel; all submitted written reports, but none were called to testify in either the guilt or the penalty phase of the trial.

The current habeas proceeding is understood to include claims of ineffective assistance of counsel with respect to management of the mitigation component of the penalty phase of Mr. Rhines' trial.

In support of the habeas petition, Mr. Rhines has submitted the expert affidavit of psychologist Dewey Ertz, Ed.D., dated June 11, 2012. As indicated by the foundation for opinion recited in his affidavit, Dr. Ertz' opinions appear based substantially on a retrospective re-interpretation of the same body of information available at trial. Primary sources of additional information appear to include Dr. Ertz' own interview of Mr. Rhines and a WAIS-IV intelligence test, both of which were reportedly conducted on May 26, 2012.

Dr. Ertz' opinions are set forth in his affidavit, which is not accompanied by a detailed report, and which presents an admittedly truncated foundation and reasoning for the stated opinions. In Dr. Ertz' words: "Considerable information is not presented to support these conclusions but this information is available on request." [emphasis added]

Dr. Ertz' opinions may be summarized as follows:

[1] Dr. Ertz admits that "significant collateral" information was presented to the jury in mitigation, but he complains that "sufficient professional information" was not provided (i.e. the information was not presented via expert testimony).¹

In particular, Dr. Ertz argues that the jury should have heard expert testimony about two mental conditions that were not identified by the trial experts (ADHD and Learning Disability), but that Dr. Ertz has retrospectively identified in his May 26, 2012 evaluation of Mr. Rhines. Dr. Ertz also disagrees with any characterization of Mr. Rhines at trial as psychopathically "callous" and argues that the jury should have heard his theory that a false appearance of callousness arose in Mr. Rhines' police interrogation as an epiphenomenon of "oral reprocessing" that Mr. Rhines allegedly must engage in to compensate for his alleged ADHD and Learning Disability.

Per Dr. Ertz, as a result of not hearing about ADHD, Learning Disability, and "oral reprocessing" the jury did not hear a "complete psychological picture" and "was not presented sufficient mitigation evidence to assist them in understanding Charles' psychological impairments." As a consequence of Dr. Ertz' hypotheses, Mr. Rhines' trial was ostensibly defective.

Over the course of his affidavit, Dr. Ertz outlines a mitigation case constructed around his retrospective diagnoses and his rejection of Mr. Rhines as "callous." Dr. Ertz hypothesizes that such a mitigation case, presented via the foregone expert testimony, would have allowed a jury to understand and sympathize with Mr. Rhines' motivation for engaging in the burglary, Mr. Rhines' actions in slaying the victim, and Mr. Rhines' apparently "callous" statements and otherwise inappropriate demeanor during subsequent police interrogation.

[2] Dr. Ertz attributes the allegedly defective handling of the mitigation phase at trial to a presumably flawed "legal decision" to eschew expert testimony. Dr. Ertz offers his own factual assumptions regarding the thinking of trial counsel and trial experts and about the jury's deliberations and what topics the jury was allegedly "struggling" with understanding. For example, he asserts that the legal decision to eschew expert testimony involved "no consideration" of using the experts to identify and present mitigation factors. Dr. Ertz asserts as a factual

¹ It is my understanding that the "collateral" information presented at trial included testimony from Mr. Rhines' two sisters.

conclusion that trial counsel's only use of their mental health experts was to address issues of competency to stand trial and an insanity defense.²

OPINIONS

[1] Attention Deficit Disorder and Learning Disability Are Not Demonstrated

The retrospective diagnostic impressions set forth in Dr. Ertz' affidavit (ADHD and Learning Disability) are presented in conclusory fashion. Information available from records and Dr. Ertz' testing is insufficient to support retrospective diagnoses of ADHD and Learning Disability to a reasonable degree of clinical certainty.

Dr. Ertz' stated basis for diagnosing attention deficit disorder and learning disability has two elements:

- First, Dr. Ertz asserts that Mr. Rhines' "social and educational histories evidence significant attention-deficit and learning disabled symptoms." His affidavit identifies these histories as including Mr. Rhines' school records, his military record, and the testimony of his sister at sentencing. (Ertz affidavit, ¶ 6).
- Second, Dr. Ertz relies on Mr. Rhines' pattern of performance on a WAIS-IV intelligence test administered on May 26, 2012.

Independent review of the school and military records fails to support the conclusions Dr. Ertz reaches.

The accuracy of Dr. Ertz' current IQ testing is uncertain for a number of reasons described below. Even if the accuracy of the testing were demonstrated, Dr. Ertz fails to show that Mr. Rhines' condition measured 20 years after the trial is representative of his condition in the past.

Additional records, including correctional records, Mr. Rhines' own autobiographic writings made around the time of trial, a video deposition given by Mr. Rhines in 1994, and prison mental health records not only fail to support Dr. Ertz' diagnostic conclusions, they offer plainly contradictory behavioral evidence and raise significant circumstantial concerns about the potential for systematic malingering in anticipation of appellate proceedings.

² Dr. Ertz does not disclose a basis for any of his factual assertions as to what the trial attorneys, the original trial experts, and the jury did or did not consider or deliberate, nor does he explain the factual basis for his claim that the work of the retained experts related only to assessment of sanity and competency.

School Record

The school record available for review covers only the 9th grade (1971-1972 school year). The transcript does not refer to special education placement, learning disability, or ADHD. The record shows that Mr. Rhines failed the 9th grade, despite generally above average and at best superior performance on standardized academic achievement testing.³ A notable exception was a good grade of 89 in driver's education.⁴

The most parsimonious explanation for the school failure is Mr. Rhines' poor attendance at school, as indicated by a combined total of 77 days absent or tardy out of a total of 162 days for which attendance status was recorded.

Mr. Rhines' autobiographic descriptions of his school experiences, penned for his trial attorneys as part of their mitigation investigation, fail to support attention-deficit or Learning Disability as primary causes of Mr. Rhines' poor school performance, instead pointing to his choices about how to deploy his effort. Thus, Mr. Rhines wrote:

- "It's not that I was stupid or developmentally disabled. I could not keep my mind on anything not intensely interesting. [*However, this was not a generalized primary ADHD, but was a choice, as*] I would sit in study hall / home room for hours reading an old (circa 1929) physics book but would not do math or English.[p. vi] (italic comment added)
- "I was still wrapped up in trying to figure myself out ... so I didn't apply myself." [p. vii]
- "In seventh grade I also found another love – !SCIENCE FICTION! I discovered Robert Heinlein, Robert C. Clarke, Paul Anderson. I have been an avid reader ever since - not just sci fi but nearly anything. At the time though, I stuck with S.F. and read every S.F. book in the school library. I could burn through 5 or 6 a day and often did. I did not read, I consumed them. This gave me something other than entertainment though - it gave me a vocabulary unmatched by my peers. As a sophomore I tested out to a 15th grade vocab." [p. vii]

³ The only exception was a weak score on a "language usage" subtest that measures things like proper use of punctuation, grammar, and writing forms.

⁴ Good driving performance is not expected in significant attention-deficit disorder. Indeed, impaired driving is the norm in ADHD. See, e.g. Barkley, R. et al. (2002) Driving in young adults with attention deficit hyperactivity disorder: Knowledge, performance, adverse outcomes, and the role of executive functioning. J. Int. Neuropsychol. Soc., 8(5), 655-672.

Military Record

Contrary to Dr. Ertz' assertion, Mr. Rhines' military record does not prove the presence of functionally significant ADHD or learning impairment. Indeed, based on the military record and his own descriptions of his military experience set forth in his autobiography, Mr. Rhines, when sober, performed well as a soldier. The record demonstrates that the ultimate failure of Mr. Rhines' military career is most reasonably attributable to effects of massive substance abuse in combination with antisocial personality rather than incapacity associated with ADHD or Learning Disability. Thus:

- On March 5, 1974, Mr. Rhines underwent standard military aptitude testing. His standard scores in ten areas ranged from 103 to 134. By statistical convention, military standard scores have a population mean of 100 and a standard deviation of 20. This is different from the statistical convention used for civilian IQ tests, which also have a mean of 100, but a standard deviation of 15 rather than 20.

Mr. Rhines' aptitude scores may be understood as ranging from average to high average.

Mr. Rhines' "GT" or "General Technical" score was 123, which is a bit more than one standard deviation above the mean. The GT score has been used as a general predictor of overall learning potential. A GT score of 120 was at one time required for a soldier to participate in full-time study at a civilian college and statistically, corresponds roughly to the ability level demonstrated by college graduates on standard IQ tests.

- An "Enlisted Evaluation Data Report" sets forth Mr. Rhines' November 1974 MOS test ratings. As would have been expected based on his GT score, Mr. Rhines' MOS test scores rated him as "average" or "high" in six of seven tested areas, including: individual weapons, crew-served weapons, special purpose weapons, combat techniques and patrolling, rifle squad and platoon tactics, and field activities. Mr. Rhines scored "low" (but not "very low") in only one area: "map reading and field fortifications."
- An "Enlisted Evaluation Report" narrative by Platoon Sergeant Henry Kowalik dated April 10, 1975 described Mr. Rhines' strengths and capacity to learn: "PV2 Rhines' performance has improved dramatically in the past few months. He probably knows more about an M60 machine gun than anyone in my platoon. PV2 Rhines has room for improvement, but he has shown me lately that he has the capability to be a fine soldier."

The same Enlisted Evaluation Report contains a list of ten "duty performance traits" rated on a four point scale from "ranks with the very best" to "needs improvement." The ratings were based on a reported "daily contact" with Mr. Rhines. Mr. Rhines received zero marks of "needs improvement" and was awarded the following ratings:

- "ranks with the very best" in the area of "ability to work in harmony with others"

- “superior to most” or “exceeds or meets duty requirement” in all remaining areas including: scope of knowledge about duties, ability to initiate action without direction / dependability in performing without supervision, attitudes of interest and enthusiasm for duties, seeking opportunities for self-improvement, personal behavior sets a good example for others, demonstrates qualities of leadership, takes pride in dress, appearance and military bearing, and physical fitness.

Mr. Rhines’ autobiographic description of his military training matches Sgt Kowalik’s assessment. In Mr Rhines’ words: “I totally ate up weapons training - we learned to fire and maintain just about every weapon most people can think of (M-16/M203, .45 cal, M-60, .50 cal., 90mm, 81 mm mortar, .45 cal MG, LAW, 106 mm RR, tactics of fire and maneuver, house to house fighting, insurgency suppression, chemical / biological / nuclear combat. In short, I could perform efficiently the functions required of the modern combat soldier.” [p. x]

Mr. Rhines autobiography describes the drug use he subsequently commenced in the military as massive. Thus:

- “(In Ft. Carson my preferred drug was LSD - I have no idea of how much I did while there. I do recall one extended period of 3 tabs/day for 90 or so days.) (Speed was another favorite along with lots of weed.)” [p. xv]
- Mr. Rhines described his station in South Korea as a “doper’s paradise” and as “PARTY CENTRAL!”... “The civilian drug stores did not require a prescription and though they were off limits to U.S. personnel, they did have back doors and people who would sell out the back door. Codeine became a favorite drug for me. Marijuana was plentiful and cheap.” [p. xii] Mr. Rhines alleged that his codeine use escalated to the point that he could consume 10-12 bottles of codeine-containing cough syrup at a time. By his account, each bottle contained 500 mg of codeine. If this account is accepted, then his total ingestion would have equated to an incredible five to six grams of codeine – well in excess of a lethal dose for a person who had not developed a high tolerance from chronic opiate abuse.

Mr. Rhines was discharged from the military under less than honorable conditions, following a long series of disciplinary infractions. Commanding officer Col. John M. Brown stated the official grounds for discharge as “apathy” in Mr. Rhines’ September 14, 1976 discharge documents.

In light of Mr. Rhines’ early very positive military performance, including superior learning of multiple complex skills, his ultimate military failure is not explained by a hypothesis of ADHD or Learning Disability, since these impairments, if they exist, would have originated early in life and would have been present from the beginning of his enlistment and should have interfered with his acquisition of those skills. Substance abuse is a more parsimonious explanation for Mr. Rhines’

military failure, since sedation and/or adverse effects on energy and motivation, resulting in “apathy” are common and well recognized sequelae of opiate abuse and marijuana abuse.

Autobiography and Deposition

An autobiography penned by Mr. Rhines for his trial attorneys in connection with the original investigation into potential mitigating factors does not show difficulty with language usage or disorganization as may be expected in the presence of significant ADHD or Learning Disability. Rather, his writings demonstrate that Mr. Rhines was capable of articulating and organizing an extended and reasonably sequenced narrative. Pages are consecutively numbered with Roman numerals. The handwritten text is neat and legible, and the language use includes complex sentence structures without significant deficits in spelling, grammar, or syntax.

In 1994 Mr. Rhines was deposed in a connection with a civil case brought by the family of the murder victim against Mr. Rhines’ former employer, who was accused of negligence in hiring Mr. Rhines. The deposition was videotaped, which provides an excellent audiovisual foundation for observing Mr. Rhines’ functioning as he listened, processed questions, and formulated his responses. The video shows that Mr. Rhines was a precise and thoughtful listener. He understood questions easily and did not demonstrate a significant need for repetition, clarification, or explanation. Mr. Rhines produced concise, organized, and relevant narrative responses. The video shows that Mr. Rhines listened to questions and waited appropriately for his turn to speak. His behavior was not characterized by tendencies to interrupt or to answer prematurely and in general he conducted himself in a reflective manner inconsistent with the pervasive impulsivity hypothesized by Dr. Ertz. At various times, Mr. Rhines appropriately consulted with his criminal defense attorney and invoked his 5th Amendment rights against self-incrimination. The deposition demonstrates Mr. Rhines’ ability to produce reasoned calculations of anticipated cash receipts expected to be on-hand from the business he robbed, and it affirms his own characterization of himself as a “reasonably astute” person.

Mr. Rhines’ autobiographical descriptions of his pre-homicide vocational and prison history tend to argue against major functional impairment from ADHD or Learning Disability. .

- *Institutional leadership role in prison.* In Mr. Rhines’ words, describing his strategic plan to avoid anti-gay victimization:

“I revived the SMPC (Sexual Minority Prisoners Caucus). This was an organization not only recognized by the administration but also chartered and incorporated under the laws of Washington [State]. I became another Bigfish - Small pond - very small pond. But, the baiting and the attacks ceased.” [p. APP10].
- *Technical education.* During his incarceration prior to the present offense, Mr. Rhines also reportedly was “rather busy” - “taking electronics all day and studying

late nights.” [p. APP10] He reported that he eventually became a “NASA-certified solderer.” [p. APP11] He reported various prison jobs related to maintenance of electronic musical and audiovisual equipment. Mr. Rhines’ self-reported success in prison education programs, his certification in a precise technical skill, and successful performance in technical job assignments all argue against significant functional impairment from ADHD or Learning Disability.

- *History of promotion into managerial roles.* Per the vocational history set forth in his autobiography and re-iterated in his 1994 deposition, Mr. Rhines worked at Winchell’s Donut House from February 1987 to September 1990 when he resigned. He started as a baker and was promoted twice, to assistant manager and then to manager.

Prior to the murder, Mr. Rhines worked at Dig-Em Donuts from February 1991 to February 1992. He was promoted to manager in that job as well. In his autobiography, he criticizes the management practices of the owner, who he denigrates as dishonest and inefficient.

Repeated promotion to management positions would be extraordinary for an individual with significant impairment from ADHD or a Learning Disability.

Limited Probative Value of Current IQ Testing for Retrospective Diagnosis

The only psychological testing reported in Dr. Ertz’ affidavit is the Wechsler Adult Intelligence Scale - 4th Ed. administered on May 26, 2012 [Ertz Affidavit ¶ 7].

If the scores reported by Dr. Ertz are accepted at face value, then Mr. Rhines presently shows a significant unevenness in his pattern of cognitive abilities. Wechsler IQ scores have a population mean of 100 and a standard deviation of 15. When the subtests of the Wechsler test are clustered:

- Mr. Rhines’ verbal comprehension index (similar to “verbal IQ” in previous Wechsler test editions) is in the superior (gifted) range at 132.
- In contrast, Mr. Rhines’ nonverbal (perceptual reasoning) abilities are two standard deviations lower, at 100. This is a relative deficit, not an absolute impairment, as 100 is the population mean. (Similar nonverbal abilities are referred to in the 4th edition as “perceptual reasoning” and in previous Wechsler editions as “performance IQ.”)
- A “Processing Speed” index is in the borderline range at 79.

Dr. Ertz opines that Mr. Rhines’ pattern of IQ test scores is “consistent with individuals who have attention-deficit disorder and a history of academic learning impairments.” This statement is true,

but it is also misleading because it is incomplete due to failure to reflect consideration of other explanations for the obtained scores including but not limited to the potential for malingering.

First, it is possible to have an uneven pattern of Wechsler subtest scores such as that produced by Mr. Rhines and to have neither ADHD nor a Learning Disability. Individuals who function adequately and who are without criminal history may show similar patterns.

Second, it is possible to have relatively lower nonverbal and processing-speed scores for reasons that are transient or that occurred subsequent to the time of the alleged offense. In addition to the possibility of malingering, discussed further below, examples of factors to consider along these lines:

- The only available IQ testing from Mr. Rhines' school years fails to show a discrepancy between verbal and non-verbal abilities. A Lorge-Thorndike intelligence test was administered on 11-15-71 and produced a verbal IQ score of 92 and a non-verbal IQ score of 88. The four point difference is non-significant. These data would support a hypothesis that the verbal-perceptual discrepancy measured by Dr. Ertz, even if it is real now, was not present in 1971, as would be expected if the discrepancy was due to ADHD or Learning Disability (both conditions originating in childhood).

- The WAIS-IV subtests on which Mr. Rhines earned relatively lower scores in Dr. Ertz' testing require intact vision and unimpaired use of a dominant upper extremity for manipulating test materials and using a pencil. In this regard:

[a] Mr. Rhines' has worn eyeglasses since childhood. Prison medical records show that he last had an eye examination in 2007 and that he requested a new exam on September 11, 2011. The record does not show that he received the updated exam or that his optical prescription had been updated as of the date of Dr. Ertz' testing.

[b] Prison medical records show that in February of 2012, Mr. Rhines injured his right shoulder while exercising. [299] Symptoms were severe and persisted for months, markedly impairing his ability to use his right upper extremity. For example, on April 2, 2012, Mr. Rhines requested medical assistance, writing that he was unable to hold or lift anything with his right hand, even something so insubstantial as a paper napkin. He protested: "I am having to become LEFT-HANDED!" [267] The prison medical file continues to document Mr. Rhines' complaints of shoulder pain in early May, 2012, within weeks of Dr. Ertz' testing. [270, 298]

- Dr. Ertz assumes a childhood cause to explain test results obtained in 2012, when Mr. Rhines was within six weeks of his 56th birthday. Per the prison medical record, Mr. Rhines has a family history of dementia (paternal); he had also

undergone major voluntary weight loss (~70 pounds) which should raise circumstantial concern about potential for adverse effects on cognition of nutritional deficiency. Mr. Rhines' homosexual lifestyle and substance abuse history put him at risk for sexually transmitted diseases that can adversely affect neurocognitive function, including HIV and Hepatitis C. Mr. Rhines tested negative for HIV when initially incarcerated in 1993, but the medical record does not show any re-assessment of his status with respect to these disease risks.

Even if Dr. Ertz' May 26, 2012 IQ scores were accepted as accurate, and even if it were assumed that the 2012 scores were similar to scores Mr. Rhines would have obtained twenty years ago, Dr. Ertz does not explain the relevance to capital mitigation of any relative weaknesses in perceptual reasoning and processing speed (a/k/a "performance IQ"). At least one state Supreme Court has affirmed the principle that verbal IQ rather than performance IQ captures the mental capacities most pertinent to determination of moral culpability. In *People v Vidal*, 155 P. 3d 259 (2007), the defendant had a Performance IQ measured as high as 126 and a Verbal IQ measured as low as 59. The California Supreme Court affirmed the trial court's finding of mental retardation for *Atkins* purposes, supporting the court's reliance on verbal IQ as most probative of the mental capacities relevant to culpability. The trial court had observed that Verbal IQ was most relevant to its analysis of whether the defendant was mentally retarded for *Atkins* purposes because "[w]e are talking about issues of premeditation, deliberation, appreciation of concepts of wrongful conduct, ability to think and weigh reasons for and not for doing things and logic, foresight, and all of those are related to verbal I.Q." Mr. Rhines' verbal IQ, as measured by Dr. Ertz, was superior at 132.

Malingering

The validity of IQ testing depends heavily on whether the examinee consistently exerts sufficient effort to produce an accurate result. For this reason, specialized psychological tests exist for the specific purposes of measuring level of effort and detecting potential malingering. Examples of such instruments include the Test of Memory Malingering and the Validity Indicator Profile. Notwithstanding Mr. Rhines' history of malingering on psychological testing administered by Dr. Arbes, a psychologist retained by trial counsel in 1992, Dr. Ertz did not administer any validity tests when he examined Mr. Rhines on May 26, 2012.

Dr. Ertz'05-26-2012 interview notes indicate that Mr. Rhines reported ADHD to Dr. Ertz as a factual matter of diagnostic history. Since no information about ADHD is reported as having been given to the mental health experts employed by trial counsel, there is a reasonable question as to when, how, and why Mr. Rhines subsequently added ADHD to his self-reported clinical history. In particular, there is circumstantial reason for the court to consider whether Mr. Rhines manufactured this clinical history in furtherance of the post-conviction appeals process.

As discussed below, prison medical records indicate that Mr. Rhines retrospectively identified himself in 2005 as having suffered from ADHD in childhood, and he then used this claim as a basis for requests that prison mental health staff educate him about the condition. Specifically:

- Mr. Rhines was seen by a prison psychologist in February, 1993 for a diagnostic evaluation with particular focus on suicide risk and some counseling. Mr. Rhines offered a history of not feeling remorse and of failing to complete unspecified things that he had begun. The only offered diagnosis was antisocial personality with the added qualification of “very psychopathic.” [237] Difficulty with attention and learning were not reported or described. Indeed, the prison psychologist recommended that Mr. Rhines read a book - “Inside the Criminal Mind” by Stanton Samenow, PhD - which he did and which they subsequently discussed. Fifteen years later, prison mental health staff descriptions do not indicate change in these initial diagnostic impressions. Thus, mental health notes from late July 2008 describe Mr. Rhines as:

“[Q]uite cynical and exhibits little emotion for others or consequences. His behavior is quite antisocial and goal-oriented...”[200]

“Polite but cold and seemingly devoid of emotion during interactions... seems to be calculating and surveying the writer at times, predatory.” [201]

- While on death row, Mr. Rhines has had access to mental health professionals who, per the record, regularly monitored his condition. For the most part, records show that Mr. Rhines has had little interest in interacting with these mental health personnel and showed no objective signs of significant mental problems. One notable exception to his general indifference to mental health staff involves Mr. Rhines’ requests for information about attention deficit disorder. There is no reference to attention deficit until October 4, 2005, when Don Brown, PhD, wrote that Mr. Rhines was “reportedly doing well but has some questions regarding ADD and ADHD.” [226] No follow-up to Mr. Rhines’ inquiry was documented. Potentially inconsistent with significant current symptoms of ADD, Mr. Rhines reportedly spent a lot of time engaged in the manufacture of intricate beadwork.
- The mental health record is then silent with respect to alleged attention deficit until January and February 2007, when Mr. Rhines again asked mental health staff to talk with him about attention deficit disorder. [217-222] He was offered, but did not accept, a referral for treatment evaluation. Per the clinician’s note, Mr. Rhines stated that his attention deficit symptoms “have somewhat stabilized but that he still has interest in the subject.”⁵ [220]

⁵ Given Mr. Rhines’ general disinterest in the prison mental health staff, and given his denial of any current symptoms or request for treatment, there is sufficient threshold to consider alternative reasons for his inquiries about ADHD. Juxtaposition of the timing of his inquiries about ADHD with events in his ongoing post-conviction appeals could shed light on this question.

- On August 13, 2008, Mr. Rhines saw a prison psychiatrist who prescribed medication for complaints of recent-onset insomnia. History provided by Mr. Rhines was documented as follows: “ He says he believes he had ADHD as a child but has grown out of those symptoms as he has matured.” [198]

[2] “Oral-reprocessing” impairment is undefined and not demonstrated

Dr. Ertz’ exculpatory hypotheses regarding Mr. Rhines’ laughter and other negative aspects of his demeanor during police interrogation focus on a concept that Dr. Ertz calls “oral reprocessing.” As described by Dr. Ertz, during interrogation Mr. Rhines engaged in “reprocessing these events orally” to gain a better understanding of his own words “by listening to himself.” Mr. Rhines’ requests to have the police tape recorder turned off are explained by Dr. Ertz as “so he could process without having the information taped.” Dr. Ertz argues that the mental and behavioral activity of “oral reprocessing” gives rise to a false appearance of callousness. [Ertz affidavit at ¶ 9].

Oral reprocessing, if understood in the sense of facilitating thinking by self-directed inner speech, is a normal and positively adaptive psychological process. The concept of “oral reprocessing” as a presumptively pathological process, as applied by Dr. Ertz to Mr. Rhines’ case, does not conform to any generally accepted psychological technical knowledge, scientific data or theories of which I am aware.

Mr. Rhines’ 1994 video deposition does not show the delays or dysfluencies that would presumably accompany expenditure of mental effort on pathological “oral reprocessing.” There was no need to interrupt the deposition or to turn off the tape to accommodate Mr. Rhines’ alleged need for oral reprocessing.

Prison counseling notes dated February 25, 1993, set forth Mr. Rhines’ perspective on his interrogation at a time much closer to the actual events and invite an alternative to Dr. Ertz’ hypothesis - namely, that any interruptions in Mr. Rhines’ interrogation were strategic and not the product of any cognitive impairment. [234] The counseling notes indicate that Mr. Rhines expressed anger at prosecutors for pursuing capital punishment despite his confession of guilt and cooperation with authorities. In other words, Mr. Rhines’ was frustrated that his confession strategy failed - that his performance during interrogation did not have the intended effect of blunting the prosecution of his crimes. From the perspective of defense mitigation planning, Mr. Rhines’ interrogation performance should have alerted counsel and experts to the fact that Mr. Rhines was so lacking in capacity for empathy that he failed to appreciate the aggravating heinousness of his interrogation performance, and he instead unrealistically expected that his statements would earn him favorable treatment. Consideration of such apparently massive incapacity for empathy and related deficits in regulating the impression he makes on others would reasonably contribute to a defense decision to avoid having Mr. Rhines testify or allocute.

[3] Dr. Ertz' implicitly proposed standard of providing the jury with a "complete psychological picture" is undefined and, regardless of definition, is subject to strategic risk-benefit analysis.

The "complete psychological picture" to which Dr. Ertz refers is not a standard psychological term of art and is undefined by Dr. Ertz. However, since every criminal case has at least two sides, any definition of a "complete picture" necessarily includes not only what the defense could choose to present, but also what the defense choices would likely make available to the state for use in cross-examination or rebuttal.

Cross-examination or rebuttal expert testimony in Mr. Rhines' case could have drawn on extremely negative features of Mr. Rhines' history, character, and performance in the defense mental exams - facts that were either known to the state or that would have become known through required pre-trial disclosure of the defense experts' work. In response to the mitigation scheme envisioned by Dr. Ertz, the state could have become able to present information with a high potential to have a very damaging impact on the defense. For example:

- If Dr. Ertz' proposed mitigation scheme opened the door to state rebuttal on the issue of factors contributing to psychiatric diagnosis, such as Mr. Rhines' self-image, then the jury may have been exposed to Mr. Rhines' graphic self-descriptions as a dangerous monster. For example, in a letter to "Arnie" dated August 16, 1991, nearly seven months prior to the murder, Mr. Rhines described himself as a "sexual predator" who "should be locked up and never be allowed to roam free and wild."
- Litigating the issue of psychiatric diagnosis would also have opened the door to detailed presentation of Mr. Rhines' sexual sadism. Mr. Rhines' sexual sadism is relevant not only as an element of differential diagnosis, but also because it is thematically linkable to the homicide in at least three ways. First, the same knife used to kill the victim is identified in Det Steve Allender's affidavit as a dual-purpose "sex toy." Second, Mr. Rhines' autobiography includes his own characterization of the homicide as a perverse gratification demanded by a periodically unleashed inner "primal animal" to which he attributes both his need to engage in sexual sadism and his murder of Donnivan Schaeffer on March 8, 1992. Thus, Mr. Rhines wrote:

"There is, in every human being, an animal. A viscious (sic) primal animal capable of ANYTHING necessary for survival. The deeper an individual buries that animal, the more URBANE / civilized he/she is. For some people (the majority) he is very deep and never gets out. For others (myself included) that creature is only an inch or so down and must get out once in a while. If he is kept suppressed for too long he takes over.

Before living in Rapid City, I had a couple of "Buddies" - bottoms - to let him spend his rage on in a controlled environment - in a controlled manner.

After about 18 months of no release he was more than ready to act out. He got his chance March 8, 1992. In a moment of lost self-control the animal took over and my own identity - the person, the tender lover, the father figure was subjugated to the will of rage." [p. xvi-xvii]

Finally, if the homicide is viewed through the psychological lens of sadistic gratification, then it becomes reasonable to consider whether any laughter or other apparent lack of remorse on Mr. Rhines' part also reflects a poorly concealed positive sense of satisfaction with his conduct.

- If Dr. Ertz' proposed mitigation scheme would have opened the door to state rebuttal on the issue of psychiatric differential diagnosis, then the jury may have been exposed to evidence of Mr. Rhines' antisocial character with psychopathic tendencies and related history of criminal versatility and persistent recidivism, and to Mr. Rhines' strong determination to avoid another incarceration as expressed in his statements to parole officials at the time of his prior release. The latter would potentially augment the state's argument for the statutory aggravator of murdering a witness whose testimony could have caused Mr. Rhines to be again imprisoned.
- If Dr. Ertz' proposed mitigation scheme opened the door to disclosure of the defense expert reports, then the jury could have been exposed to objective psychometric evidence of Mr. Rhines' malingering during Dr. Arbes' psychological examination.
- If Dr. Ertz' proposed mitigation scheme opened the door to disclosure of the defense expert reports, then the jury could have been exposed to Mr. Rhines' statements that demonstrate blame-shifting and prevarication about the murder during the defense psychiatric exam. In this regard, Mr. Rhines claimed to Dr. Kennelly that he had given a false confession for the purpose of keeping his under-age roommate (Sam Harter) out of the case. Mr. Rhines further claimed to Dr. Kennelly that it was Mr. Harter, rather than himself, who had initiated and made the decision to kill and that it was Mr. Harter and not himself, who had subsequently delivered the final fatal wound to the victim's brain stem against Mr. Rhines' advice and out of Mr. Rhines' presence. Mr. Rhines' statements to Dr. Kennelly - if presented in mitigation to a jury that had already convicted Mr. Rhines - could have opened the door to potentially devastating demonstration by the state of the remorseless depravity and evil inherent in Mr. Rhines' portraying himself falsely as an altruistic protector of Mr. Harter while simultaneously attempting to finger Mr. Harter as the allegedly true killer.

In sum, Dr. Ertz' affidavit speaks only to retrospectively perceived foregone opportunities for expert testimony, and does not identify any risks of such testimony. As a basis for evaluating the

judgment of trial counsel, Dr. Ertz' affidavit addresses only the imagined benefits of counsel having chosen a different mitigation path, unbalanced by consideration of the potential for harm.⁶

[4] Expert testimony has significant downside risk

Experienced capital-case attorneys, both prosecution and defense, with whom I have worked over the past quarter century have been highly sensitive to the strategic implications of weighing both risks and benefits of potential mitigation testimony. Accordingly, my expert services commonly include consultation regarding both the strengths and weaknesses of potential expert testimony, both my own and that of other experts involved on both sides of the case

There are empirical data supporting the importance of considering the downside risk of expert testimony in capital cases. As described below, a large study from the California segment of the Capital Jury Project found that expert testimony accounted for two-thirds of all capital juror references to witnesses "backfiring" on the defense. Such data underscore the importance of strategic decision-making with respect to presentation of expert testimony.

Funded by the National Science Foundation, the Capital Jury Project began in 1991 and created a national consortium of university-based studies of how actual jurors in capital cases made their decisions. Immediately following trials, jurors were individually interviewed according to extensive standard protocols. The study focused on states that offered a significant number of both death sentences and life sentences, so that comparisons of factors giving rise to one or the other outcome could be studied. These states included Alabama, California, Florida, Georgia, Indiana, Kentucky, Louisiana, Missouri, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

Sundby⁷ reported on interviews with 152 jurors in 36 capital cases in the California segment of the research project. The sentencing outcomes of the cases were evenly split, with 18 death sentences, 17 sentences of life without parole, and one case in which the jury deadlocked over the penalty. Among other inquiries:

⁶ Ironically, given the present claim that his attorneys' strategic decisions constituted ineffective assistance, the autobiography prepared by Mr. Rhines for his trial defense team explicitly references Mr. Rhines' own attempt at strategic information management. Thus, he wrote in an appendix at the conclusion of the autobiography: "What have I left out of this bio? Most of what I went through during my years at W.S.R. (WA State Reformatory). It could be important for my defense but also detrimental if the prosecution obtains my central file from WSR."

⁷Sundby, S. (1997) The jury as critic: An empirical look at how capital juries perceive expert and lay testimony. 83 *Virginia Law Review* 1109 (1997).

"the jurors were asked whether, for prosecution or defense, any guilt-phase witnesses were particularly hard to believe, what evidence or testimony was most influential at the penalty phase, and whether any penalty-phase evidence "backfired." These questions, therefore, tended to elicit recollections of the most memorable witnesses from the trial those witnesses who left either a very positive or negative impression on the jurors such that they immediately responded to the interview questions with a response of, "You should have heard" (Sundby at 1122-1123).

In responding to this question, jurors had ample opportunity to report their perceptions of expert witnesses, as experts of some type were called by the defense in 30/36 (83%) trials and by the prosecution in 27/36 (75%).

In general, Sundby's study found that experts presented by the prosecution were viewed more positively by jurors than were those presented by the defense. On the other hand, when defense experts were viewed positively, that fact correlated positively with imposition of a life sentence. Unfortunately for the defense, however, its experts were often viewed negatively. In particular, the study's results showed that:

[P]rofessional experts accounted for two-thirds of all juror references to defense witnesses as backfiring or being hard to believe, but for only about one-fifth of juror references to defense witnesses as positively influential. Roughly speaking, jurors' impressions of defense expert witnesses were more than twice as likely to be negative rather than positive. Nor was it simply a few experts generating the negative impressions, as jurors negatively cited 27 different defense experts in 18 cases at either the guilt or penalty stages. By contrast, only 9 defense experts in a total of 8 cases were identified as positive influences at either the guilt or penalty phases. Further perspective on the difficulties juries have with defense experts can be gained by comparing the negative to positive ratio for the defense's professional experts to the other two categories of witnesses. The professional experts come out far worse. "Family and friends" witnesses, for instance, were named as a positive influence for the defense case 39 times and as backfiring witnesses only 15 times, a ratio that is almost the mirror opposite of the ratio for experts (15 positive references, 38 negative references). And although not used as witnesses as often as were professional experts or family and friends, lay experts enjoyed an even more favorable positive to negative impression ratio, as jurors named them as among the most influential witnesses 15 times and saw them as backfiring on only occasions. Thus, the good news for defense experts is that their testimony tends to be remembered (jurors mentioned a defense expert witness as memorable in 20 of the 30 cases in which experts testified); the bad news is that they tend to be remembered for not being credible. (Sundby 1123-1124, internal footnotes omitted).

With respect to prosecution witnesses, the picture is different. As Sundby reports:

Of the 12 prosecution witnesses cited negatively, only 3 were professional experts, while 14 of the 50 witnesses who were viewed as most influential were experts. The professional experts called by the prosecution, therefore, enjoyed a far better positive to negative ratio than did the defense experts. (Sundby at 1125).

These empirical observations demonstrate that a capital defense team cannot assume that expert testimony is at worst merely futile. Mitigation strategy cannot follow a simple "more is better" principle. Careful analysis and consideration of the demonstrable risk that expert testimony will backfire and harm the defendant's case is clearly warranted.

The standard of practice for a consulting defense expert in a capital trial requires that the expert inform counsel of all sides of the story - not only what is potentially beneficial, but also what the state is likely to be able to offer in rebuttal. Harm-avoidance is a routine consideration for defense teams, which must sometimes decide close questions - when does an ounce of benefit outweigh an ounce of harm, or a pound of harm, and when does it not? Strategic decision-making about what information to present to a particular jury in a particular community and what to hold back is taken very seriously because, literally, a life hangs in the balance.

APPENDIX: RECORDS REVIEWED

Schaeffer v Digges	Transcript and DVD of Charles Rhines' video deposition (08-30-1994) Excerpts from deposition of Sam Harter (01-14-1994)
Charles Rhines	Autobiographic writings, variously handwritten and typed, 76 pp.
McLaughlin S.D. Schools	Charles Rhines' high school scholastic record (9 th grade transcript, 1971-1972)
Dewy Ertz, Ed.D.	Affidavit (06-11-2012); WAIS-IV record form and interview record form (05-26-2012); miscellaneous file notes (mostly undated).
D.J. Kennelly, M.D.	Report of forensic psychiatric investigation (11-24-1992)
Steve Dresbach, MSW	Report of psychosocial history (11-17-1992)
Bill Arbes, PhD	Report of psychological testing (12-01-1992)

Rhines v Weber

Affidavits of Steve Allender, Arnold Hernandez, Joe Johnson, Roy Jundt, Gus Miller, Kerry Larson, Sam Harter, Heather Tarango and selected related exhibits

State's Motion to Dismiss (02-28-2012), Reply Brief (07-17-2012), and Supplemental Exhibits Supporting Motion to Dismiss (07-23-2012)

S.D. Department of
Corrections

Charles' Rhines mental health and medical records from the beginning of his incarceration in 1993 through April 2012 (1091 pp.)

U.S. Army

Charles Rhines' military records

Attorney General
JUN - 5 2015



Sam Kooiker
Mayor: Rapid City, South Dakota
300 6th Street
Rapid City, South Dakota
57701

Charles R. Rhines
SDDOC #15036
P.O. Box 5911
Sioux Falls, SD
57117-5911

May 22, 2015
RECEIVED.

Re: Steve Allender

JUN 1 2015

Dear Sir:

MAYOR'S OFFICE

There is an old adage that says "politics makes strange bed-fellows." Well, it doesn't always have to but the possibility exists that it has the potential to do so, depending upon what one's goals may be.

I am an inmate in the South Dakota State Penitentiary under sentence of death for the murder of Donnivan Schaeffer in March 1992 in Rapid City. The lead investigator on the case was Steve Allender. I assume he made a lot of headway by "breaking" that case and so I have a vested interest in writing this letter, as you will come to understand after reading this letter and reviewing the enclosed documents.

I was watching the local news a few days ago and saw that Steve Allender had decided to run for Mayor of Rapid City and that you are strongly opposed to his doing so on the basis that he is a racist, mainly against Native Americans, and that you have some evidence of that.

I have some information which may be helpful to you in that vein but I do not know if it still exists as Allender was Chief of Police for a few years and would have had access to the evidence rooms of the Police Department.

On April 4, 1992 then Sargeant Steve Allender of the RCPD and Sargeant Donald Bahr of the Pennington County Sheriff's Office were interviewing me in connection with the Donnivan Schaeffer murder investigation. We were sitting in a Seattle, Washington Holiday Inn Hotel room and they were intimating that the murder of Donnivan Schaeffer had been something way out of the ordinary in Rapid City, you know, that killings just don't occur in Rapid City.

I replied that there had been nearly a dozen murders committed in Rapid City in the previous 12 months. They were both dumb-founded and shocked and denied any such thing had occurred, to which I replied that they were all Native Americans and had had Native perpetrators.

Allender said "That's just scumbag killing scumbag." As though Native American deaths don't count.

You can imagine my consternation a few years later when I read in the Argus Leader that Steve Allender had been promoted to Lieutenant and had been appointed Native American liason with the police department!

That comment may still exist as it was recorded on a micro-cassette recorder Allender had running in contravention of Washing-

EXHIBIT

5

YOU APPENDIX 00528

Page 2

ton State wiretapping statutes. Washington is a 2-party consent state and Allender had not obtained my consent to record the interview. I discovered he was recording when I caught him changing tapes during a bathroom break. I made him stop recording but I believe the "scumbag" comment made it onto the first tape before that point and, since it should have become part of the investigative file, perhaps it still exists.

It's the old O.J. Simpson MARK FURHMAN "I NEVER USED THE N WORD" gotcha moment. Furhman had forgotten the interview where he'd used the "N" word over and over and over. Perhaps Allender has forgotten about that tape. Is it possible for you to have someone look for it? It'd be a great little "gotch" moment. "Have you ever referred to Native Americans as "scumbags?"

However this letter is not about a tenuous possibility of discrediting Steve Allender but a real one, one that can be proven on the record. I have documentary evidence that Steve Allender lied under oath about materials facts of a case while he was Chief of Police and has committed perjury in a capital case. Mine.

I have included in this manilla envelope several documents:

- 1) A rejection letter from Judge Davis informing me that I could not use the criminal statutes to sue the then Chief of Police Steve Allender. He did not elaborate that I must use the civil statutes and sue him for libel and slander. My documents were returned to me and, I have little doubt, Judge Davis gave ol' Stevie a "heads up" that informatin existed that he had committed perjury in an affidavit he had signed on July 11, 2012; And there was proof that it was indeed perjury.
- 2) Another rejection letter but this one from Judge Larry Long refusing my application for In Forma Pauperis status so that I could file the libel and slander suit against then private citizen Steve Allender.
- 3) the Affidavit of Steve Allender against myself showing on paragraph 8 where he has made up quite a fanciful story about how he was a hero while arresting me.
- 4) Copies of the cover page and pages 6 - 36 of a legal document entitled SUPPRESSION HEARING, civ 93-81 wherein the true details of my arrest are attested to by the ACTUAL arresting officer.
- 5) The Complaint For Libel and Slander which did not get subsequently filed due to lack of funds to pay the filing fee. It's why I had requested IFP status.

This last details all the places where Steve Allender lied under oath in the Affidavit.

You will probably read the entire affidavit and have an opinion about that. You have to take a lot of what Allender says with a large dose of salt. He did, after all, completely fabricate paragraph 8...I'm no angel, that I freely admit but Allender has no business lying about anything while under oath, especially as Rapid City's Chief of Police. Isn't he supposed to be setting the standards for the rest of the Policeforce? What kind of standards was he setting?

Page 3

I wish I had known of your disapproval of Steve Allender a year or so ago. I would simply have made copies of all this and mailed them to you and the city council. I imagine that would have been the end of ol Steve and his racist, lying ways.

Water under the bridge..

I personally wanted to sue Allender to discredit him legally so that when my federal habeas corpus petition is heard I will be able to impeach his testimony. And, perhaps I could go back to the rest of his testimony in that document entitled SUPPRESSION HEARING where he told a lot of other lies which went against me in court.

I note in the Complaint that I assume Allender used that paragraph; or some form of it, in his promotion boards, showing what a "hero" he was during a felony arrest in a murder case.. It's just a load self-aggrandizing BS. I imagine Allender was pretty good at that hiswhole career.

Didn't anyone wonder why after apparently chasing the Chief's position his whole career and attaining it he suddenly decided to retire after holding that position for only a few years? He was what, 53 years old? Pretty young to be retiring, don't you think?

I think it was a case of retire quick before Rhines sues you and you get fired for cause.

I think Steve should have remained retired lest he open a can of worms he will wish he had not opened. The statute of limitations for libel and slander may have expired but I don't think there is a statute of limitations on perjury, especially in Capital cases.

I hope this helps you discredit Allender to the point he withdraws from contention. he would be the worst mayor ever in Rapid City. Allender is a psychopath. No, not a criminal one but a psychopath none-the-less. He will do or say whatever it takes to obtain what he wants, regardless of what laws he has to violate.

Oh, and one more thing. Allender will likely have Edwin and Peggy Schaeffer on his side as they are the Father and Mother of the deceased victim and Allender...yada, yada, yada and they have some \$\$\$ courtesy of their deceased son...or the insurance company for the business where he was slain. It's complicated.

The information here could be highly problematic to use but a skillfull politician or his election staff should be able to come up with a way to use this...to "leak" it to the media without your direct involvement or having any aspersions cast upon you for using it.

Do the people of Rapid City really want a perjurer for a mayor? No matter what his "good intentions" may have been, it's still wrong to bear false witness against anyone.

Sincerely,

Charles R. Rhines

