No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARIAN PAPACSI OWENS,
Petitioner,

vs.

SUE MICKENS, Warden &
COMMISSIONER, Georgia Department of
Corrections,
Respondents.

On Petition for Writ of Certiorari *to the United States Court of Appeals for the Eleventh Circuit*

(CA11 No. 19-11553)

Appendix to Petition for *Writ of Certiorari*

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11553-B

MARIAN PAPACSI OWENS,

Petitioner-Appellant,

versus

WARDEN,
COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

ORDER:

Appellant's motion for a certificate of appealability is DENIED because she has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

MARIAN PAPACSI OWENS, ***Petitioner,*** **v.** **SUE MICKENS, *et al.*,** ***Respondents.***	**CIVIL ACTION NO.** **5:17-cv-00057-TES-CHW**

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Presently before the Court is the United States Magistrate Judge's Report and Recommendation [Doc. 18] on Petitioner Marian Papasci Owens' petition for habeas corpus relief under 28 U.S.C. § 2254 [Doc. 2]. In her petition, Owens raises four grounds for relief from her 2013 convictions for felony murder, malice murder, and aggravated assault. First, she argues that the trial court violated her Sixth Amendment right to counsel by denying her mid-trial request to discharge her attorney and proceed *pro se* and *in absentia*. [Doc. 2, p. 5]. Second, Owens claims that the trial court violated her First Amendment right to free speech when it allowed her attorney to mount a defense on her behalf despite her request that he cease to defend her. [*Id.* at p. 7]. Third, Petitioner claims that her request to discharge her counsel was denied on the basis of her incompetency and that the trial court erred, in light of her incompetency, in allowing her to waive her Fifth Amendment rights and testify on her own behalf. [*Id.* at p. 8]. Finally, Owens argues

that her trial counsel was ineffective for asking her questions during direct examination that were prejudicial to Owens' defense. [*Id.* at p. 10].

Owens appealed her conviction to the Georgia Supreme Court and raised the grounds enumerated above. *See* [Doc. 2-2]; *Owens v. State*, 783 S.E.2d 611 (Ga. 2016). The Georgia Supreme Court affirmed her conviction, and she subsequently filed the instant petition. Respondent Sue Mickens filed an Answer and Brief in Response to the petition, [Doc. 7-1], but Petitioner filed no reply brief. The Magistrate Judge reviewed the parties' arguments and determined that none of Petitioner's grounds for relief were meritorious. *See generally* [Doc. 18]. Petitioner objects to the Magistrate Judge's recommendations on Grounds One, Two, and Four, *see* [Doc. 19], and the Court now reviews these grounds de novo. 28 U.S.C. § 636(b)(1).

A. Standard of Review

A criminal defendant convicted in a state court can obtain relief from her conviction if the adjudication of a claim during state court proceedings

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d); *see also Williams v. Taylor*, 529 U.S. 362. 402–13 (2000). This standard is highly deferential, and "a federal habeas court making the 'unreasonable application' inquiry should ask whether the state court's application of clearly established federal law

was objectively unreasonable." *Williams*, 529 U.S. at 409. Furthermore, "a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable." *Id.* at 411.

B. Ground One: Petitioner's Request to Discharge Counsel

As detailed in the standard of review, Petitioner is only entitled to relief on this ground if she can show that the Georgia Supreme Court's affirmation of her conviction was contrary to, or resulted from an unreasonable application of, United States Supreme Court precedent. In her appellate brief, Petitioner first argued that *Indiana v. Edwards*, 554 U.S. 164 (2008)—the controlling United States Supreme Court case holding that a trial court can insist that a legally incompetent defendant be represented by counsel—was wrongly decided. [Doc. 2-2, pp. 31–32]. However, this basis for habeas relief is foreclosed by the plain language of Section 2254, which permits relief only if the trial court's decision was contrary to *Edwards* or involved an unreasonable application of *Edwards*. Petitioner did not argue either of these bases for relief to the Georgia Supreme Court or the Magistrate Judge in this case, and the issue is therefore not properly before the Court at this juncture. *See Williams v. McNeil*, 557, F.3d 1287, 1292 (11th Cir. 2009) ("A district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge.").

Petitioner's appellate brief also contains a cursory argument that her mid-trial request to discharge counsel was permitted by federal law and therefore erroneously denied. *See* [Doc. 2-2, p. 32]. However, Petitioner's argument was based on a decision from the Fifth Circuit Court of Appeals, which is not controlling in Section 2254 actions. In the absence of some argument that Supreme Court precedent allows mid-trial requests to discharge counsel and that the Georgia Supreme Court ignored, contradicted, or unreasonably applied that precedent, Petitioner's first ground for relief fails. Accordingly, the Court **ADOPTS** the Magistrate Judge's recommendation that relief be denied on Ground One.

C. Ground Two: Petitioner's First Amendment Right to Mount No Defense

Petitioner also objects to the Magistrate Judge's recommendation that relief be denied on Ground Two. In her appellate brief, Petitioner argued that the First Amendment, which guarantees the right to free speech as well as "the right to refrain from speaking at all," should have prevented her counsel from mounting a defense in light of her request that he not do so. [Doc. 2-2, pp. 32–35] (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). Elsewhere in her brief, however, Petitioner concedes that "[n]o court . . . appears to have yet considered the free-speech implications of forcing a defendant to litigate through counsel against the defendant's wishes." [*Id.* at p. 33]. As propounded in *Teague v. Lane*, 489 U.S. 288 (1989), and as Respondent points out in her Brief in Support of Answer-Response, the Court is not entitled on a petition for habeas

corpus to retroactively apply a rule of law that was not in effect at the time of the petitioner's conviction. [Doc. 7-1, pp. 9–11]. A new rule of law is one that "breaks new ground, imposes a new obligation on the States or the Federal Government, or was not *dictated* by precedent existing at the time the defendant's conviction became final." *Graham v. Collins*, 506 U.S. 461, 467 (1993) (quoting *Teague*, 489 U.S. at 301) (emphasis in original). Prior precedent can also become a new rule of law when it is "applied in a novel setting, thereby extending the precedent." *Stringer v. Black*, 503 U.S. 222, 228 (1992).

Indisputably, this Court's determination that a criminal defendant cannot be compelled to speak through counsel would be a new rule of law in that it has not been previously dictated by federal law and would extend First Amendment precedent to a novel set of facts. Petitioner's concession that no court has considered this issue takes this out of the purview of habeas review because it cannot be said that the Georgia Supreme Court acted contrary to United States Supreme Court precedent. Petitioner's argument that she is not advancing a new rule of law was not before the Magistrate Judge, and the Court therefore declines to consider the argument now. *See McNeil*, *supra*. Thus, the Court **ADOPTS** the Magistrate Judge's recommendation that relief be denied on Ground Two.

D. Ground Four: Ineffective Assistance of Counsel

Petitioner also objects to the Magistrate Judge's recommendation that relief be denied on Ground Four, in which Petitioner claims that the trial court denied her effective assistance by forcing trial counsel to ask Petitioner prejudicial questions during direct

examination. Both the Georgia Supreme Court and the Magistrate Judge applied the standard in *Strickland v. Washington*, 466 U.S. 668, 681 (1984), to determine whether assistance of counsel was ineffective, and both determined that trial counsel's performance was not deficient. *See Owens*, 783 S.E.2d at 614; *see also* [Doc. 18, pp. 9–11]. Despite Petitioner's objections, the Court cannot find that the Georgia Supreme Court's decision was contrary to, or an unreasonable application of, *Strickland*. Accordingly, the Magistrate Judge's recommendation on this ground is also **ADOPTED**.

E. Certificate of Appealability

Finally, the Magistrate Judge recommends that the Court deny Petitioner a certificate of appealability because she has not made a substantial showing of the denial of a constitutional right. [Doc. 18, pp. 11–12]. Petitioner objects, arguing that reasonable jurists could differ as to whether the Court's decision should have been different. In light of the arguments before the Court, it cannot be said that Petitioner made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Therefore, the Court denies Petitioner a certificate of appealability.

CONCLUSION

For the reasons stated herein, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation [Doc. 18] and **DENIES** Petitioner's request for habeas relied under Section 2254. The Court also **DENIES** Petitioner a certificate of appealability.

SO ORDERED, this 12th day of April, 2019.

s/Tilman E. Self, III
TILMAN E. SELF, III, Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

MARIAN PAPACSI OWENS,	:	
	:	
Petitioner,	:	
	:	
v.	:	**Case No. 5:17-cv-57-TES-CHW**
	:	
SUE MICKENS,	:	**Proceedings under 28 U.S.C. § 2254**
	:	**Before the U.S. Magistrate Judge**
Respondent.	:	
	:	

REPORT AND RECOMMENDATION

Marian Papacsi Owens, a state prisoner, has filed a petition for federal habeas corpus relief pursuant to 28 U.S.C. § 2254. (Doc. 2). For the reasons discussed below, it is **RECOMMENDED** that the petition be **DENIED**.

BACKGROUND AND GROUNDS FOR RELIEF

Before this Court, Petitioner, who is represented by counsel, raises four grounds for relief. All of these grounds relate, to one degree or another, to mental deficiencies from which Petitioner suffers and their effect upon her August 2013 trial for felony murder, malice murder, and two counts of aggravated assault. *See Owens v. State*, 298 Ga. 813, 813 n.1 (2016). First, Petitioner argues that the trial court violated the Sixth Amendment by denying Petitioner's mid-trial oral motion both to represent herself and to be tried *in abstentia*. (Doc. 2, p. 5, Doc. 2-2, p. 11). Second, Petitioner argues that under the First Amendment, "the state cannot compel a defense." (Doc. 2, p. 7). According to Petitioner, trial counsel's participation in the trial over Petitioner's objection was a violation of this First Amendment rule. (*Id.*). Third, Petitioner argues that "If [she] was not competent to represent herself, [then] she was not competent to waive her right to remain silent at

trial" under the Fifth Amendment. (Doc. 2, p. 8). Fourth, Petitioner raises a claim of ineffective assistance of trial counsel for "asking questions that he knew were prejudicial to the defense." (Doc. 2, p. 10).

The facts relevant to Petitioner's federal habeas grounds for relief are as follows. Petitioner was indicted based on allegations that she "cause[d] the death of Tommy Janes … by beating and stabbing said victim," and by making "an assault upon the person of Tommy Janes with a metal nutcracker." (Doc. 8-1, pp. 62–63). The evidence against Petitioner at trial was considerable. A neighbor of Mr. Janes, Mr. William Crane, testified that he was alerted to an altercation by cries for help ("Dial 911. This woman has gone crazy on me"), sounds associated with a struggle,[1] and singing ("Just her singing over and over, Jesus is with me and the devil is standing behind me"). (Doc. 8-2, pp. 99, 101). Mr. Crane also testified that through a window in Mr. Jane's house, he could "see [Petitioner] straddling [Mr. Janes] in the living room beating him with something." (Doc. 8-2, p. 103).

The trial also featured testimony from two sheriff's deputies who responded to the scene, Barry Thornton and Scott Busby. These officers kicked in the victim's front door to find Petitioner "raising up from the [victim] with a nutcracker in her right hand." (Doc. 8-2, p. 136). The victim, Mr. Janes, was lying on the floor, fully clothed, covered in blood and with "a lot of … trauma to the face area." (Doc. 8-2, pp. 136–37). Petitioner was nude but also covered in "a lot of blood." (Doc. 8-2, p. 161). Officer Busby described his extensive efforts to subdue Petitioner, which included exhausting a taser and a cannister of pepper spray, as well as unsuccessful attempts to deploy handcuffs and to physically restrain Petitioner ("She was covered in blood, so every time

[1] Q. Did your wife call 911?
A. Yeah. And at that I had called her back and asked her where are they at. I said it sounds like this woman is killing this man.

(Doc. 8-2, p. 101)

we would pull her, our hands kept sliding off"). Mr. Janes, the victim, was transported to a hospital, where he was pronounced dead upon arrival. (Doc. 15-2, p. 16).

At trial, Petitioner was represented by attorney Harvey Wasserman, who based his case on the defense of justification: "that [Petitioner] was defending herself against the victim who was attempting to commit a sexual assault or some type of sexual attack on her." (Doc. 17-1, pp. 5–6). Mid-trial, Petitioner created a commotion and temporarily was removed from the courtroom. (Doc. 8-3, pp. 151–57). Counsel for Petitioner moved for a mistrial on grounds of incompetence, but that motion was denied. (Doc. 8-3, p. 158–59).[2] When Petitioner returned to the courtroom, she declared that she "want[ed] Harvey and all these people who are claiming to defend me to be removed." (Doc. 8-3, p. 161). Petitioner then announced her "refus[al] to participate," and her desire to "not … to be present in the courtroom." (Doc. 8-3, pp. 162–64).

The trial court ruled that "while [Petitioner] may have the right to represent herself, she cannot represent herself if she is not going to be in the courtroom." (Doc. 8-3, pp. 167–68). The court subsequently found Petitioner to be "competent to stand trial," but the court also ruled that Petitioner "would not be competent to conduct your defense outside the presence of this courtroom

[2] Prior to trial, Petitioner was evaluated twice for competence. The first evaluation, dated June 14, 2012, concluded that Petitioner was not competent to stand trial. Doc. 8-1, p. 64-66. The trial court ordered her committed to the Department of Human Resources for treatment and further evaluation "as to whether she is presently competent to stand trial or whether there is a substantial probability that the Defendant will attain mental competence to stand trial . . . at some time in the future." Doc. 8-1, p. 51. A second evaluation, returned on November 21, 2012, found that Petitioner was competent to stand trial. Doc. 8-1, pp. 67-72.

The record indicates that Petitioner filed a notice of intent to pursue a defense of not guilty by reason of insanity but later withdrew the defense after evaluations by the Department of Human Resources and by an independent expert retained by the defense both concluded that Petitioner did not suffer from a "mental disease or defect that prevented her from understanding the difference between right and wrong" or from a "delusional compulsion at the time of the offense that overmastered her will to resist committing the act." State's Response to Defendant's Motion for New Trial, Doc. 8-1, p. 169. The evaluations and the pretrial proceedings related to the insanity defense are not in the record before this Court.

if the trial was ongoing." (Doc. 8-3, pp. 178–79). The court then resumed proceedings, while attempting to allow Petitioner to listen to or view the proceedings from a holding cell with the use of technology. (Doc. 8-3, pp. 179–80, 209). Later in the day, Petitioner opted to return to the courtroom and participate for the remainder of the trial. (Doc. 8-3, pp. 209–10).

The next day, following an interchange with the trial court, Petitioner opted to testify. (Doc. 9-1, p. 32–33, p. 82). The record shows that Petitioner made the decision to testify against the advice of counsel. (Doc. 9-1, p. 136). On direct examination, Petitioner described a possible sexual encounter with Mr. Janes, culminating in Petitioner's "striking him over and over with a motion from side to side in the head area." (Doc. 9-1, p. 128–63). In the midst of this testimony, the court discussed with counsel the possibility that Petitioner might reassert, mid-trial, the defense of not-guilty by reason of insanity, (Doc. 9-1, pp. 153–59), but Petitioner declined to re-raise that issue. (Doc. 9-1, p. 159) ("I don't believe I am insane, so I don't feel that would be fair to the court system or myself or Mr. Janes"). Petitioner then proceeded to explain that her rationale for assaulting Mr. Janes was that she "believ[ed] that God had abandoned me," and that she "didn't want anyone to steal my chances of going to heaven." (Doc. 9-1, p. 164).

After deliberating, the jury found Petitioner guilty of all charges. (Doc. 8-1, p. 134). Petitioner received a sentence of life without the possibility of parole on the felony murder charge, and the remaining charges merged. (Doc. 8-1, p. 135). Petitioner then moved, unsuccessfully, for a new trial. (Doc. 8-1, p. 209–12) (order denying motion for new trial). Thereafter, Petitioner appealed to the Georgia Supreme Court, before whom Petitioner raised the following four arguments:

1. "The Trial Court Erred in Denying Ms. Owens' Request to Discharge Her Trial Counsel During Trial."

2. "The Trial Court Erred in Permitting Trial Counsel to Present the Defense that Ms. Owens Did Not Want."
3. "If Ms. Owens Was Not Competent to Represent Herself at Trial, She Was Not Competent to Waive Her Right to Remain Silent, Either."
4. "Ms. Owens Received Ineffective Assistance of Counsel When the Court Forced Counsel to Ask Questions That Counsel Did Not Wish to Ask."

(Doc. 2-2, pp. 23–38)

The Georgia Supreme Court rejected Petitioner's arguments and affirmed her conviction in *Owens v. State*, 298 Ga. 813 (2016). Petitioner now raises the same arguments before this Court in support of her request for federal habeas relief under 28 U.S.C. § 2254. (Doc. 2, pp. 5–10). For the reasons discussed below, Petitioner is not entitled to relief on any of the grounds she raises. Therefore, it is recommended that Petitioner's Section 2254 petition be denied.

ANALYSIS

Grounds One and Two

Petitioner's Grounds One and Two are foreclosed by clear precedent from the United States Supreme Court. In those grounds, Petitioner argues, respectively, that (1) the trial court violated the Sixth Amendment by denying Petitioner's mid-trial motion to discharge her attorney, and (2) the trial court violated a First Amendment violation by compelling Petitioner, through counsel, to participate in the criminal trial against her. (Doc. 2, pp. 5–7).

Although Petitioner raised her Sixth Amendment argument before the Georgia Supreme Court, and thereby exhausted that argument as required by 28 U.S.C. § 2254(b)(1), Petitioner's argument to the Georgia Supreme Court effectively conceded that no relief was appropriate based on the U.S. Supreme Court's decision in *Indiana v. Edwards*, 554 U.S. 164 (2008):

> Ms. Owens acknowledges that a divided decision from the United States Supreme Court holds that, under the Sixth Amendment, states may, if they chose, insist upon counsel for mentally ill defendants. *See Indiana v. Edwards*, 554 U.S. 164 (2008). To preserve her ability to ask the U.S. Supreme Court to overturn that decision, Ms. Owens respectfully submits to this Court that *Edwards* was wrongly decided for the reasons articulated in that opinion's dissent.
>
> (Doc. 2-2, p. 32)

Petitioner has made no effort before either this Court or the Georgia Supreme Court to articulate grounds for arguing that the trial court's denial of Petitioner's mid-trial motion to discharge her counsel was erroneous in light of *Indiana v. Edwards*. Moreover, insofar as Petitioner asks this Court, on habeas review, to ignore or overrule the holding of *Indiana v. Edwards*, that type of relief is not available. *See* 28 U.S.C. § 2254(d)(1) (noting that, as to legal errors, relief is limited to decisions that were "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"). Finally, the Georgia Supreme Court's decision to affirm the trial court's denial of Petitioner's motion to discharge her attorney was a reasonable application of federal law, and it therefore warrants deference. *See Owens v. State*, 298 Ga. 813, 814–16 (2016). Accordingly, for all of these reasons, Petitioner is not entitled to federal habeas relief on her first ground.

Petitioner is also not entitled to relief on her second ground, in which she cites a purported First Amendment right not to speak, including through counsel, at her criminal trial "as part of a political protest against the trial." (Doc. 2, p. 7) (Doc. 2-2, pp. 32–35). Petitioner cites no Supreme Court decision recognizing such a right, and as Respondent notes (Doc. 7-1, pp. 9–11), the doctrine of *Teague v. Lane* would bar this Court recognizing such a right in the first instance. *See Teague*, 489 U.S. 288, 310 ("new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced"). Accordingly, and given

Petitioner's failure to file a reply brief addressing Respondent's *Teague* argument, Petitioner is not entitled to relief on her ground two.

Ground Three

The U.S. Supreme Court's decision in *Indiana v. Edwards* also forecloses Petitioner's third ground for relief. In that ground, Petitioner argues that "[i]f she was not entitled to decide to fire her lawyer and proceed pro se," then she was necessarily "not competent to waive her right to remain silent." (Doc. 2, p. 8). (Doc. 2-2, p. 36).

As respondent notes, Petitioner's argument is inconsistent with the holding of *Indiana v. Edwards*, a case that Petitioner cited in her brief to the Georgia Supreme Court. *See* (Doc. 2-2, p. 31). Whereas the standard of competence to stand trial and to waive constitutional rights requires "rational understanding," *Godinez v. Moran*, 509 U.S. 389, 398 (1993) (citing *Dusky v. United States*, 362 U.S. 402 (1960)), *Indiana v. Edwards* permits a higher standard: it "permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illnesses to the point where they are not competent to conduct trial proceedings by themselves." 554 U.S. 164, 177–78 (2008). Put differently, under *Indiana v. Edwards*, a finding that a criminal defendant is not competent to conduct trial proceedings *pro se* does not necessarily imply incompetence to waive the Fifth Amendment privilege against self-incrimination.

The trial court's ruling in this case clearly evidences that the trial court imposed a higher competence standard for *pro se* representation at trial, and it found that Petitioner failed to meet that higher standard of competence. After an outburst during which Petitioner sought to discharge her counsel and to be tried *in abstentia*, the trial court determined that Petitioner was both

"competent to stand trial" and "not … competent to conduct your [own] defense." (Doc. 8-3, p. 178–79). In full, the trial court stated:

> THE COURT: All right. Ms. Owens, I asked them to bring you back in and I just want to go over a few things and make sure we have the record perfected.
>
> Previously I had removed you from the courtroom for disruptive behavior. After giving you a period of time, I brought you back in and I asked you did you wish to participate in your case, did you wish to stay in the courtroom and maintain the decorum that we are going to need without being disruptive, without using vulgar, vital language, and you indicated at that time that you did not wish to participate in the trial and you did not wish Mr. Wasserman to represent you. Is that correct?
>
> THE DEFENDANT: That's correct.
>
> THE COURT: All right. Now, what I am going to do, I am going to find, Ms. Owens, that based on the competency evaluation that I have been provided that you are competent to stand trial, but I am not going to find that it would be in your best interest to allow you to dismiss Mr. Wasserman and his office as your attorney.
>
> [PROSECUTOR]: I believe the finding the Court needs to make is that she does not appear to be competent to conduct the proceedings on her own.
>
> THE COURT: Well, by your choice of not remaining in the courtroom and not abiding by the Court's decorum, [I find] that you would not be competent to conduct your defense outside the presence of this courtroom if the trial was ongoing, so I make that finding.
>
> (Doc. 8-3, pp. 178–79)

Plainly, the trial court found both that Petitioner satisfied the *Dusky* standard of competence for waiving constitutional rights like the Fifth Amendment privilege against self-incrimination, and also that Petitioner lacked the higher level of competence needed to conduct criminal trial proceedings *pro se*. *Indiana v. Edwards* plainly permits this type of dual competency finding.

Accordingly, the logic of Petitioner's argument — that a finding of *pro se* incompetence to conduct a trial necessitates a finding of *Dusky* incompetence — fails. Therefore, Petitioner is not entitled to relief on her third ground.

Ground Four

In her fourth and final ground for relief, Petitioner alleges ineffective assistance of trial counsel for "asking questions that he knew to be prejudicial." (Doc. 2, p. 10). Petitioner elaborated on this argument in her brief to the Georgia Supreme Court, arguing that counsel "had not engaged in any witness preparation for Ms. Owens," and that "[b]y forcing counsel to examine Ms. Owens when trial counsel's strategic choice was to ask no questions, the trial court interfered with the attorney-client relationship and essentially turned trial counsel in to an agent for the State." (Doc. 202, p. 37–38). Petitioner further asserts, without support, that this effective denial of counsel was a "structural error." (Doc. 2-2, p. 38).

Constitutional errors broadly fall into two classes. One class, "structural defects," defies harmless-error analysis because structural defects or errors "affect the framework within which a trial proceeds." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006). Among such structural defects or errors is the wholesale deprivation of the right to counsel. *Id.* (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963)). The other class of defects, "trial errors," involves errors that "occurred during presentation of the case to the jury." *Gonzalez-Lopez*, 548 U.S. at 148. Trial defects or errors may "be qualitatively assessed in the context of other evidence presented in order to determine whether they were harmless beyond a reasonable doubt." *Id.* (internal punctuation omitted).

The type of error alleged by Petitioner, ineffective assistance of counsel in failing to prepare for a direct examination of Petitioner, and in asking prejudicial questions of Petitioner

before the jury, is a "trial error" subject to harmless-error analysis. Therefore, when examining Petitioner's ineffective assistance of counsel claim, the Court should apply the ordinary standard of review established by the Supreme Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984). That standard requires Petitioner to demonstrate (1) that his counsel rendered deficient performance, and (2) that the deficiency resulted in prejudice, meaning there is a reasonable probability that but for counsel's ineffectiveness, the result would have been different.

The Georgia Supreme Court ruled that Petitioner's trial counsel did not render deficient performance, and in the context of this case, that ruling is a reasonable application of *Strickland*'s performance standard. *See Owens v. State*, 298 Ga. 813, 816–17 (2016). The record clearly shows that Petitioner made a last-minute decision to take the witness stand against the advice of counsel. *See* (Doc. 9-1, p. 136) ("up until yesterday afternoon at least my advice to you was you were not going to testify"). Thus, counsel's lack of preparation for a direct examination of Petitioner was a strategically "reasonable choice based upon [the] assumption[]" that Petitioner would not take the stand. *Strickland v. Washington*, 466 U.S. 668, 681 (1984).

After Petitioner took the stand, counsel endeavored to proceed carefully by, for example, telling Petitioner: "if I ask you a question, please make sure to include things that you want to include in your answer, because I am not necessarily sure what you want to bring out." (Doc. 9-1, p. 136–37). Petitioner responded: "all I want here today is for the truth to come out." (Doc. 9-1, p. 137). Thereafter, counsel attempted—without great success—to elicit testimony favorable to Petitioner's defense of justification on the ground of sexual assault. Indeed, the trial court reproached counsel for asking duplicative questions in the hope of seeking such favorable testimony. *See, e.g.*, (Doc. 9-1, p. 147) ("you have asked her three times about coming back in the house"). This record amply supports the Georgia Supreme Court's ruling that Petitioner's trial

counsel "did not abdicate his duty to his client," and that his performance at trial was "not deficient." *Owens*, 298 Ga. at 817. Accordingly, Petitioner's ineffective assistance of trial counsel claim fails on *Strickland*'s performance prong.

Petitioner also fails on *Strickland*'s prejudice prong, although neither the parties nor the Georgia Supreme Court addressed that prong. As discussed above, the record in this case overwhelmingly established Petitioner's guilt, and it provided little support for Petitioner's asserted defense of justification. Petitioner's testimony, while damning in itself, was duplicative of testimony offered by neighbors of the victim such as Mr. William Crane, along with reporting sheriff's deputies like Officers Barry Thornton and Scott Busby. In light of this other evidence, and because Petitioner has not succeeded demonstrating a "structural error" warranting a presumption of prejudice, Petitioner's ineffective assistance claims also fails on *Strickland*'s prejudice prong, because Petitioner cannot show that but-for any deficiency in counsel's performance, there is a reasonable probability that the result of Petitioner's trial would have been different.

In summary, given the deference owed to the Georgia Supreme Court's performance ruling, and given also Petitioner's failure to demonstrate any prejudice, Petitioner is not entitled to relief on her fourth ground. Therefore, and because the record supports none of Petitioner's grounds for relief, it is recommended that Petitioner's Section 2254 petition be denied.

CONCLUSION

After a careful review of the record, it is **RECOMMENDED** that Petitioner's Section 2254 petition be **DENIED**. Furthermore, pursuant to the requirements of Rule 11 of the Rules Governing Section 2254 Cases, it does not appear that Petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S.

473, 483-84 (2000). Therefore, it is also **RECOMMENDED** that the Court deny a certificate of appealability in its final order.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge will make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 25th day of March, 2019.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge

SUPREME COURT OF GEORGIA
Case No. S16A0058

Atlanta, April 04, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

MARIAN PAPACSI OWENS v. THE STATE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

In the Supreme Court of Georgia

Decided: March 7, 2016

S16A0058. OWENS v. THE STATE.

MELTON, Justice.

Following a jury trial, Marian Papacsi Owens appeals her conviction for the felony murder of Tommy Janes, contending, among other things, that her right to proceed pro se was violated and that she received ineffective assistance of counsel.[1] For the reasons set forth below, we affirm.

1. Viewed in the light most favorable to the verdict, the record shows that, on the evening of December 22, 2011, Owens spent the night at Janes's home. The following morning, William Crane, Janes's neighbor, investigated loud noises he heard from Janes's home. Through a window, Crane saw Janes lying

[1] On January 6, 2012, Owens was indicted for malice murder, felony murder predicated on aggravated assault, and aggravated assault. Following a jury trial ending on August 9, 2013, Owens was found guilty of all charges. On August 23, 2013, the trial court sentenced Owens to life imprisonment. [Deletion]. Owens filed a motion for new trial on September 19, 2013, and amended it on April 24, 2015. The motion was denied on June 29, 2015, and, following the filing of a timely notice of appeal, Owens's case was docketed to the January 2016 Term of this Court and orally argued on January 19, 2016.

on the floor. Completely nude, Owens was straddling Janes and beating him with a metal nutcracker. By that time, Owens had already stabbed Janes, who was fully clothed, multiple times in the back. When police arrived, Owens was being combative, acting erratically, and singing about Jesus and the devil. At trial, after being found to be competent, Owens admitted that she killed Janes, though she contended that she was not coherent for a large portion of the events that night.

This evidence was sufficient to enable the jurors to find Owens guilty of the crimes for which she was tried and found guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (99 SCt 2781, 61 LE2d 560) (1979).

2. Owens contends that the trial court erred by not allowing her to fire her attorney mid-trial and proceed pro se. Based on the facts of this case, we disagree.

We have previously explained:

> Both the federal and state constitutions guarantee a criminal defendant the right to self-representation. See Faretta v. California, 422 U.S. 806 (95 SCt 252, 45 LE2d 52) (1975); 1983 Ga. Const., Art. I, Sec. I, Par. XII. An unequivocal assertion of the right to represent oneself, made *prior* to trial, should be followed by a hearing to ensure that the defendant knowingly and intelligently waives the right to counsel and understands the disadvantages of

> self-representation. Faretta, 422 U.S. at 836; Strozier v. Newsome, 871 F2d 995 (11th Cir.1989). See also Potts v. State, 259 Ga. 812 (388 SE2d 678) (1990); Williams v. State, 169 Ga. App. 812, 814 (315 SE2d 42) (1984).

(Emphasis supplied.) Thaxton v. State, 260 Ga. 141, 142 (2) (390 SE2d 841) (1990). Requests to proceed pro se *during* trial, however, are treated differently. In Thaxton, the defendant waited until the State had finished with several witnesses prior to making a request to proceed pro se. We held: "[A] request made after the testimony of the State's third witness[] cannot serve as the basis for reversal since a defendant 'cannot frivolously change his mind in midstream' by asserting his right to self-representation in the middle of his trial. Preston v. State, 257 Ga. 42 (3) (354 SE2d 135) (1987)." Id. at 142 (2).

In this case, the record shows that Owens expressed a desire to dismiss her attorney and represent herself prior to trial. At a pre-trial conference, a Farreta hearing was conducted, and the trial court granted Owens's request, while retaining her counsel for standby assistance only. As pre-trial proceedings continued, however, Owens changed her mind again. She requested that counsel be reinstated to represent her at trial. The trial court granted this request as well, and Owens began her trial with representation. Well into the second day of trial,

after the State had called many witnesses, Owens began acting unruly in the courtroom, especially when pictures, testimony, and a recorded interview regarding her appearance and behavior at the time of the murder were introduced. Owens eventually expressed her displeasure with the evidence and stated that she would take no part in the trial. In addition, she expressed a desire to have trial counsel dismissed. After considering Owens's outburst, the trial court decided that it would allow Owens to monitor the trial from a holding cell with a walkie-talkie, but it denied her request to proceed without any representation at all. One witness later, Owens requested that she be allowed to return to the courtroom, and, once there, she apologized for her behavior and stated that she had been acting inappropriately. Later, she confirmed that she had not been thinking clearly and that she wanted and needed the assistance of trial counsel.

Under these circumstances, it cannot be said that the trial court erred in its decision to (1) deny Owens's request to fire her counsel and (2) grant her request to absent herself from the courtroom. The trial court indicated that it did so in order to protect Owens's "best interests." Given Owens's pre-trial equivocation, her outbursts during trial, and her own statements indicating that

she never truly wished to finish the trial without the assistance of trial counsel, Owens's decision to change her mind about counsel midstream was, at best, a frivolous response to the introduction of evidence which disturbed her. As such, the trial court did not violate Owens's right to proceed pro se under the circumstances presented here. Thaxton, supra.

2. Owens contends that the trial court erred by allowing her to testify at trial, contending that she was not sufficiently competent to knowingly waive her right to remain silent. The record shows that experts found Owens competent to stand trial prior to the proceedings, and the trial court engaged in a full and extensive colloquy with Owens about her right to remain silent before she took the stand at trial. Owens responded clearly that she understood all of her rights. In addition, Owens asked specific questions about her rights which indicated both that she understood what those rights were and how they would play out during the proceedings. Furthermore, trial counsel informed the court on the record that he had discussed the right to remain silent with Owens and that he had strongly recommended to her that she should not testify. Owens, however, stated that she had listened to this advice, but chose to reject it.

"In Georgia, whether or not to testify in one's own defense is considered

a tactical decision to be made by the defendant . . . after consultation with his trial counsel and there is no general requirement that a trial court interject itself into that decision-making process. Burton v. State, 263 Ga. 725, 728 (438 SE2d 83) (1994). See also OCGA §§ 17–7–28 [and 24-5-506] (b)." (Footnotes omitted.) Mobley v. State, 264 Ga. 854, 856 (2) (452 SE2d 500) (1995). Therefore, the record shows that Owens knowingly waived her right against self-incrimination and exercised her right to testify at trial after being fully informed of the consequences.

3. Owens contends that her trial counsel rendered ineffective assistance because he did not refrain from asking her questions after she decided to take the stand in her own defense. Owens argues that, by asking Owens questions, trial counsel somehow abdicated his duty to his client. This argument is misplaced.

> In order to succeed on [her] claim of ineffective assistance, [Owens] must prove both that [her] trial counsel's performance was deficient and that there is a reasonable probability that the trial result would have been different if not for the deficient performance. Strickland v. Washington, 466 U.S. 668 (104 SCt 2052, 80 LE2d 674) (1984). If an appellant fails to meet his or her burden of proving either prong of the Strickland test, the reviewing court does not have to examine the other prong. Id. at 697 (IV); Fuller v. State, 277 Ga. 505 (3) (591 SE2d 782) (2004). In reviewing the trial court's

> decision, "'[w]e accept the trial court's factual findings and credibility determinations unless clearly erroneous, but we independently apply the legal principles to the facts.' [Cit.]" Robinson v. State, 277 Ga. 75, 76 (586 SE2d 313) (2003).

Wright v. State, 291 Ga. 869, 870 (2) (734 SE2d 876) (2012).

The record shows that, although trial counsel advised her not to do so, Owens made the decision to testify at trial. Because trial counsel was concerned that Owens's testimony would harm her case, he initially informed the trial court that he intended to question Owens by inviting a narrative. The State objected, and the trial court sustained the objection because the situation was not one in which testimony by narrative was permissible. See, e.g., Miller v. State, 295 Ga. 769 (2) (b) (764 SE2d 135) (2014) (defendant allowed to testify in the narrative when trial counsel believes defendant intends to commit perjury). A review of the transcript shows that trial counsel carefully asked Owens a series of questions that allowed her to recount the incident in question in a chronological manner. Trial counsel also asked questions that provided at least some facts that assisted in his argument that Owens acted in response to Janes's sexual advances, including Owens's testimony that Janes grabbed her buttocks forcefully. The transcript, therefore, indicates that trial counsel did not abdicate

his duty to his client. Quite the opposite, he strategically questioned Owens to both honor her right to testify and preserve her defense to the extent possible. Accordingly, trial counsel's performance was not deficient in this case. Id.

Judgment affirmed. All the Justices concur.

IN THE SUPERIOR COURT OF FRANKLIN COUNTY

NORTHERN JUDICIAL CIRCUIT

STATE OF GEORGIA

STATE OF GEORGIA,	)	
v.	)	CASE No. 12-FR-02-M
MARIAN PAPACSI OWENS,	)	
DEFENDANT.	)	

ORDER ON DEFENDANT'S AMENDED MOTION FOR NEW TRIAL

The above-styled case has been brought before this Court on an Amended Motion for a New Trial by the Defendant, Marian Papacsi Owens (hereafter referred to the "Defendant"). The Defendant was convicted of Murder on August 9, 2013 and was sentenced to life imprisonment. The Defendant then filed a Motion for New Trial, then an Amended Motion for New Trial, and a hearing conducted on the same on May 7, 2015. After considering all matters of record, this Court hereby issues the following ruling:

The Defendant's Amended Motion for New Trial is based upon seven grounds: (1) Denial of a right to self-representation; (2) Failure to *sua sponte* call for evaluation of competence to waive assistance of counsel; (3) Violation of free speech; (4) Incompetence to waive right against self-incrimination; (5) Ineffective assistance of counsel; (6) Denial of assistance of counsel by disallowing the Defendant to testify via narrative; and (7) General grounds of insufficiency of the evidence.

1. Right to Self-Representation.

The Defendant's first enumeration of error is that the Defendant was wrongly denied her right to self-representation. The United States and Georgia Constitutions provide persons in criminal courts with the right to competent assistance of counsel. Ga. Const. Art. I, § I, ¶¶ 12, 14; U.S. Const. Amend. VI. Included in that right is a defendant's right to self-representation. *Faretta v. California*, 422 U.S. 806 (1975). This right, however, is not absolute, as it requires a knowing and intelligent waiver of the right of assistance of counsel and must be unequivocally asserted to the court. *Id.* at 821; *Thaxton v. State*, 260 Ga. 141, 142 (1990). Here, Defendant did not make an unequivocal request to proceed *pro se*, but merely one that could have been interpreted as dissatisfaction with her attorney. This was not an unequivocal statement under *Faretta* and *Thaxton*.

In addition to the lack of an unequivocal assertion of the right to self-representation, a defendant is required to make that assertion before the commencement of the trial. *Thaxton* at 142 (holding that a denial of a request to proceed *pro se* after the commencement of trial, when the State had already presented three witnesses, was proper.) The Defendant accepted counsel and only later, after the onset of trial, made statements as to her dissatisfaction with him. Even if these were unequivocal statements, which they were not, they were made beyond the time frame for a defendant to assert the *pro se* right without good cause.

Finally, with respect to this first enumeration of error, the Defendant alleges that because she was found competent to stand trial, she is presumed to be competent to represent herself. This assertion is without merit and is a conflagration of two distinct tests. A defendant must possess a rational as well as factual understanding of the proceedings against him and have the sufficient, present ability to consult with his counsel to a reasonable degree of rational understanding in order to be competent to stand trial. *Dusky v. U.S.*, 362 U.S. 402 (1960). However, in order to waive the right to assistance of counsel, a defendant must make a knowing and intelligent waiver of that right. *Indiana v. Edwards*, 554 U.S. 164, 170 (2008) (citing *Faretta supra* at 807). The Court also states in *Edwards*, at 177-8, that

> ...the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky* but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.

The Court determined through this analysis that the right to self-representation was not absolute and could be stemmed by trial courts for purposes of fairness and equity. *Id. Edwards* also quotes Justice Brennan from *Illinois v. Allen*, 397 U.S. 337, 350 (1970), in that "the Constitution would protect none of us if it prevented the courts from acting to preserve the very processes that the Constitution itself prescribes."

It is for these reasons that this Court finds there is no error and the request for a new trial based on this enumeration is hereby DENIED.

2. Waiver of Assistance of Counsel-Competency.

In the Defendant's second enumeration of error, Defendant contends that this Court erred when it did not, *sua sponte*, call for a witness or expert to evaluate the Defendant's competency to waive her right to assistance of counsel. This Court determined the issue of competency to stand trial only days before the beginning of the trial. This was based upon the testimony of experts before this Court. As noted above, the test for the ability of a defendant to waive assistance of counsel is not the same as for a defendant to stand trial. See *Edwards, supra* and *Dusky, supra*. However, as in the issue of a defendant's competency to stand trial, the question of validity of a defendant's waiver of assistance of counsel rests with the trial judge. It is the trial judge who "will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant." *Edwards* at 177. Because of this authority and the recent nature of the expert evaluations just prior to the beginning of trial, this Court finds that there is no error and the request for a new trial based on this enumeration is hereby DENIED.

3. Freedom of Speech.

In the Defendant's third enumeration of error, Defendant contents that this Court violated Defendant's right of Free Speech by "forcing her to speak through and adopt the words of another", namely, her appointed counsel. Defendant cites two cases in defense of this enumeration, *Wooley v. Maynard*, 430 U.S. 705 (1977); and *White v. State*, 153 Ga.App. 808 (1980). This Court finds that

Defendant's reliance upon these cases for the enumeration listed are misplaced. In *Wooley*, 707-9, the Court decided an issue of compelled speech, objected to by a citizen for religious purposes, through a criminal statute requiring that all license plates in the state bear the state motto. The Court held that a citizen could not be compelled to display, and thereby "speak", something with which he held a religious objection, absent a compelling state interest. *Id.* at 716-17. The holding in *Wooley* does not relate to the statements by an attorney in the process of conducting a criminal trial. The Defendant also contends that *White*, controls to impute the statements of an attorney onto the client. This Court is also unpersuaded with this contention. The Defendant in *White* had, presumably, instructed his attorney to communicate a stipulation to the court during a probation revocation hearing. *White* at 808. The statement attributed to the defendant was one about his conduct at a treatment facility and was in a stipulation before the court. *Id.* at 809. The Court also acknowledged that it is the general rule to not allow for withdrawal of stipulations once they are offered in Court. *Id.*

This Court finds no basis in this enumeration of error and the motion on this enumeration is hereby DENIED.

4. Waiver of Self-Incrimination.

In Defendant's fourth enumeration of error, Defendant contends that if Defendant was not competent to proceed *pro se* (an error in contention already addressed by this Order), Defendant was also not competent to waive her right against self-incrimination. This contention, as that with the enumeration of *pro se* representation, utilizes improper language, namely the use of "competency" rather than "knowing and intelligent." The requirements for a defendant to waive his or her constitutional right to remain silent are that the waiver be offered voluntarily, knowingly, and intelligently. *Miranda v. Arizona*, 384 U.S 436, 445 (1966). As discussed above, in enumerations one and two, the equivocation of competency to stand trial and the ability or offering of a voluntary, knowing, and intelligent waiver is an inaccurate one. See *Thaxton, supra; Colwell v. State*, 273 Ga. 634 (2001); and *Edwards, supra*. The trial court sits in the best position to make the determination, given all of the facts and circumstances, to determine whether the right was voluntarily, knowingly, and intelligently waived. After reviewing the record and based upon all relevant findings, this Court finds that there is no error and the request for a new trial on this enumeration is hereby DENIED.

5. Ineffective Assistance of Counsel.

In Defendant's fifth enumeration of error, Defendant asserts that she received ineffective assistance of counsel. Defendant raises two separate issues within the assertion; (1) that trial counsel failed to properly preserve the objections enumerated within Defendant's motion during trial, and (2) by not requesting the Court to conduct the examination of Defendant during her testimony. All assertions of ineffective assistance of counsel are tested by the two-prong test found in *Strickland v. Washington*, 466 U.S. 668 (1984). Under the *Strickland* test, a defendant has received ineffective assistance of counsel if counsel performs in a way that is below the objective standard of reasonableness weighed against the prevailing professional norms and there is a reasonable probability that but for counsel's error, the outcome of the trial would have been different. *Id.* at 691-92.

Addressing the second allegation of error within this enumeration first, the Defendant asserts that trial counsel was ineffective because he failed to request that the Court conduct the examination of the Defendant while she was testifying as a witness. Judges of our courts are tasked with performing

their duties fairly and impartially. This Court sits not as an advocate, but rather a neutral fact finder. If trial counsel had requested that this Court conduct the examination of the Defendant, this Court would have denied the request.

The Defendant's first allegation of error within this enumeration concerns the assertion that trial counsel erred by not preserving these enumerated errors for appeal. Because the State does not contend or allege that trial counsel for the Defendant failed to preserve any issues for appeal, this enumeration is moot.

After reviewing the record and based upon all relevant findings, this Court finds that there is no error and the request for a new trial on this enumeration is hereby DENIED.

6. Denial of Counsel.

In the Defendant's final enumeration of error, Defendant asserts that she was denied counsel by virtue of this Court requiring Defendant's trial counsel to ask questions of the Defendant rather than to allow the Defendant to merely testify via narrative. In reviewing the record, this Court notes that trial counsel was instructed to conduct the examination. Defendant's testimony was basically offered in narrative form. Based upon all relevant findings, this Court finds that there is no error and the request for a new trial on this enumeration is hereby DENIED.

7. General Grounds.

The Defendant, through counsel, advised this Court that the Motion for New Trial on general grounds of insufficient evidence has been withdrawn in light of the evidence adduced at the hearing. This Court accepts the withdrawn enumeration.

Conclusion

This Court, having reviewed the evidence, records, and all other relevant matters presented to or made known to this Court, finds that no error was committed during the trial of the Defendant's case.

Therefore it is the **ORDER** of this Court that the **Defendant's Motion for New Trial** is hereby **DENIED IN FULL**, as indicated above.

SO ORDERED, this 29th day of June, 2015.

Hon. Jeffery S. Malcom

Superior Court of Franklin County

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within and foregoing Order Denying Motion for New Trial upon the attorney for the Defendant, MARIAN PAPACSI OWENS, and the District Attorney, D. Parks White, by placing the same in the U.S. Mail, properly addressed and with sufficient postage thereon to ensure delivery of the same to its destination.

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This 29th day of June, 2015.

Hon. Jeffery S. Malcom
Superior Court of Franklin County

IN THE SUPERIOR COURT OF FRANKLIN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	
	)	
vs.	)	CASE NO: 12-FR-002M
	)	
MARIAN PAPACSI OWENS,	)	
	)	
Defendant.	)	

VOLUME III OF VII

J U R Y T R I A L

The following proceedings were heard before the Honorable Jeffery S. Malcom, Judge of the Superior Courts of the Northern Judicial Circuit, and a jury of twelve, on August 5th through 9th and August 23rd, 2013, in Carnesville, Georgia.

APPEARANCE OF COUNSEL:

For the State:

MR. D. PARKS WHITE
District Attorney
Northern Judicial Circuit
40 Spring Lake Drive
Danielsville, Georgia 30633

For the Defendant:

MR. HARVEY S. WASSERMAN
Circuit Public Defender
Northern Judicial Circuit
461 Cook Street, Suite J
Royston, Georgia 30662

Reported by:
Dana R. Brooks
Certified Court Reporter
Certificate No. B-1406

injuries to the head of Mr. Janes inflicted by the nutcracker as Ms. Owens beat him mercilessly about the head. As the Court is aware, and despite what Mr. Wasserman said in opening, malice murder is not premeditated murder. Malice may be formed in a moment, so long as it exists before the lethal blow is dealt, that is sufficient for malice murder. In this case the evidence is overwhelming that Ms. Owens intended to murder Mr. Janes. We just stand on the record.

THE COURT: Well, if I recall the testimony correctly, I believe the doctor testified there were 37 injuries to the head area as far as the tremendous number there, but I am going to deny your motion. Okay.

All right. Now, are we -- anything else we need to take up --

THE DEFENDANT: One more thing, if I could.

MR. WASSERMAN: I'll address it when she is actually prepared to testify. I do have an issue as an attorney I want to raise with respect to her decision to testify, your Honor.

THE COURT: We might as well go ahead and do it now while they are bringing her clothes, so...

MR. WASSERMAN: All right. The decision for Ms. Owens -- Ms. Owens' decision to testify was apparently made some time yesterday or this morning.

THE DEFENDANT: It was this morning. I'm sure we talked and clearly I told you it was about 7:00 something.

MR. WASSERMAN: All right. Up until this time throughout my working with Ms. Owens, we had discussed that issue on a number of occasions. My advice has always been it would be in her best interest not to testify. That was her agreement with me up until this morning.

In my humble opinion, her taking the stand would be a death nail to this case. I am not going to participate or question her, other than to ask her to tell her story to the jury, your Honor.

I cannot as a lawyer or as my duty to protect and defend her, despite her wish to testify, be a party to self-destruction; and I am just going to ask her please tell the jury what you want and I wanted to let your Honor know that in advance --

THE COURT: Well --

MR. WASSERMAN: -- because, frankly, I don't know what she even wants to say and I don't even have a worked outline of questioning. It's never been a possibility she would testify. If it was always something -- of course I would have prepared that, but I just feel it would be inconsistent with my obligations to represent her to the best of my ability in accordance with the law to participate in what I see as a very self-destructive move.

THE COURT: Well, I know you understand as an attorney and officer of the court and the questions that I went over with her, the decision whether or not to testify is the client's.

MR. WASSERMAN: Obviously.

THE COURT: And I know you are not disputing --

Wait just a minute, Ms. Owens. Let me get through and then you can. You can go ahead and sit back down.

-- and that's why we go over those questions because there could be a situation to where, we all know, the attorney may say, you need to take the stand, the client doesn't want to, it's the client's choice. The attorney may say, I wouldn't take the stand if I was you, the client wants to, it's the client's choice. So she has made the choice.

Now, when you say how you will conduct or will or will not conduct any examination, the only thing that -- that's your job. That's your responsibility as the attorney. It's your decision what questions will or will not be asked, but she needs to understand prior to taking the stand, and I want you, the two of you to have this conversation --

MR. WASSERMAN: Yes, sir.

THE COURT: -- that the rules of evidence have to be followed.

You cannot testify to inadmissible things. Nobody can.

We have had objections throughout this trial. She has seen it.

MR. WASSERMAN: That would be, of course, unless there was no objection.

THE COURT: Well, unless there was no objection, yes. I am just saying, if there is an objection, and somebody is basically giving a --

MR. WHITE: Narrative.

THE COURT: -- narrative, speech, whatever you want to call it, she will have to understand, if somebody objects, she needs to stop talking at that moment until the objection can be ruled upon. Based upon the ruling, you may continue in that line or not in that line of whatever you are saying.

Do you understand that, Ms. Owens?

THE DEFENDANT: Yes, I do.

THE COURT: Okay. Okay.

THE DEFENDANT: Tell me when you are ready for me because I get very easily distracted. I am trying to remember the three things in my mind, and this going back and forth...

THE COURT: Okay. Mr. Wasserman, anything else from your standpoint?

THE DEFENDANT: So, I know everyone wants to get started --

THE COURT: All right. Ms. Owens --

MARIAN OWENS,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WASSERMAN:

Q. First off, why don't you spell your name for the record.

A. M-a-r-i-a-n. That is my first name. Marian. O-w-e-n-s, Owens, is my last name, but I am also known to have my maiden name which is also in some of my legal paperwork like arresting -- past arrest reports as Papacsi. It's a Hungarian name. P-a-p-a-s-c-i.

Q. Okay. Ms. Owens, the first thing I want to ask you is, why are you dressed the way you are dressed?

A. This was not planned out until I awoke -- well, I really didn't -- I can't say I awoke. I did not sleep much last night. Of course, I didn't do it for pity. I guess it was a little after 7:00 in the morning.

MR. WHITE: Judge, I object to the relevance of her clothing.

THE COURT: Well, Mr. Wasserman, she may explain, if she wants to, her decision or not, but the relevance has nothing to do -- it's not relevant as to the decision. Was it her decision or not?

Q. (By Mr. Wasserman) Was it -- do you want some water?

A. Thank you.

it. I apologize, but my mind doesn't work -- as everyone else's, we go in and out. We go in a room and forget what we went in there for, and I am just trying to do the best I can. I am very stressed not knowing what may happen to me and also what the damage I have done throughout this trial and everything, so I am going to do the best I can.

MR. WHITE: Judge, that's a narrative. I object.

THE COURT: You need to focus. Just a moment. Mr. Wasserman, you need to keep her focused on the testimony.

THE DEFENDANT: Okay. I said if there's anything I did wrong, all you have to do is --

THE COURT: Wait, Ms. Owens. Mr. Wasserman, you need to redirect her with questions. I know it's a narrative, but it has to be a narrative about the facts relevant to the case.

Q. (By Mr. Wasserman) So if you don't remember anything else that happened, did you do something for Chris Robertson on the 21st of December?

A. Yes. I am sorry. Yes, I did.

Q. Why don't we go --

A. I don't remember the exact details. I do remember Jerry King, one of the gentleman that you guys and ladies heard testify. I don't remember his testimony unfortunately.

Q. What did you do concerning Chris Robertson on that day?

circumstances.

THE DEFENDANT: Uh-huh.

THE COURT: All of us as attorneys during trial, you have witnesses -- maybe they all -- you know, maybe everything they tell us is not. I appreciate the fact that you have brought that to the attention, but that's just part of it.

MR. WASSERMAN: Okay.

THE COURT: Go back up on the stand.

(Bench conference concluded, and the proceedings continued in the hearing of the jury as follows:)

Q. (By Mr. Wasserman) Ms. Owens, it's fair to say, up until yesterday afternoon at least my advice to you was you were not going to testify; is that correct?

A. Yesterday? Wait a minute.

Q. As of yesterday my advice to you was not to testify, right?

A. I can't recall. I just know all along it has been. And I just don't remember a lot yesterday. I was very belligerent.

Q. You and I have never prepared for you to take the stand; is that correct?

A. That's correct.

Q. So if I ask you a question, please make sure to include

things that you want to include in your answer, because I am not necessarily sure what you want to bring out. Okay?

A. I am trying, but I have never been to trial and I am just --

Q. Okay. All right. But if I don't ask you something that you want to bring out, try to bring that to my attention so I can ask the appropriate question. Okay?

A. Okay. I understand. I am hoping that I can depend on you to bring out what we have already gone over to help me --

Q. Well, I am trying --

A. -- because I don't know what I am doing. I am just telling the truth, and that's all I want here today is for the truth to come out.

THE COURT: All right. Hold up. What we need to do is limit these discussions that the two of you are having with each other about possibly how the testimony is going to a break or some other time. She's on the stand.

MR. WASSERMAN: Okay. I am sorry, your Honor.

THE COURT: You ask her the questions. She will answer them. Okay.

Q. (By Mr. Wasserman) So you went outside -- you took your clothes outside? Is that what you told us?

A. Yes.

Q. And you were naked at the time?

A. Yes. I recall I was. I was trying --

Q. I'm sorry. I didn't want to interrupt you. Go ahead.

A. I was trying to put on the pants that Mr. Janes -- I think I might have tried to put them on. I can't remember exactly, but, yes.

Q. Why did you go outside naked with your bags of clothes?

A. I was scared. Not like he was -- I don't know -- I mean, I felt like he had demons in him. I felt like I had demons in me. Back and forth. I was having those kind of thoughts and I was scared and panicked and a little bit not being able to think right. Just disoriented.

Q. What, if any, actions on his part prior to you walking out of the house made you feel panicked to the point you had to do that?

A. I can't recall.

Q. You can't recall?

A. No.

Q. Did the squeezing of your butt occur before you went out of the house --

A. Yes. I mean --

Q. -- or after? Yes. Okay. That was a yes or no question.

A. Yes.

Q. Had the chasing stopped or was it continuing, if at all, when you walked out of the house?

A. I mean, I do know it continued for a long time in the

the chase started again?

A. No, but you did ask me what I had in my hands and I did at one time grab one of the chairs and was -- I didn't pick it all the way up, but was like this (indicating) with it to block myself and he also did the same. We were constantly back and forth trying...

Q. All right. So let's -- you threw a cup through the window?

A. I don't know if that was when I did. It could have been before or after this. Now, I am having, like I said, visions of what took place. I don't know if it was before or after.

Q. Just tell us the best you can. I will follow along.

A. That's what I am doing.

Q. I'm sorry.

A. That's okay. I'm sorry. I know we are having a hard time working together under the circumstances.

Q. That's okay. That's okay.

A. Just bear with me.

Q. Tell us again about what happened once you got back in the house. I want you to tell us everything you can remember from the time you walked back into the house...

A. Start over telling you everything again?

Q. No, from the time -- tell us what you remember from the time you walked back into the house naked --

A. I --

THE COURT: Hold up, Ms. Owens.

THE DEFENDANT: Okay.

MR. WHITE: Judge, this is asked and answered. She is going over the same segment of time over and over again.

THE COURT: You have asked her three times about --

MR. WASSERMAN: Your Honor, I am not asking any more questions. I am trying to help everybody here.

THE COURT: Ms. Wasserman.

THE DEFENDANT: Stay calm, Harvey. It's okay. I promise. Everything is okay.

THE COURT: Now, I allowed you to talk, and I am simply making a ruling. That's my job. Now, my recollection is that you have asked her three times about coming back in the house.

MR. WASSERMAN: Yeah, I am not asking her any more questions, your Honor. I feel I am selling her out and I feel horrible about what I am doing and I am trying to do my best and I understand he is objecting to me --

THE DEFENDANT: We are friends to the end. I need you.

MR. WASSERMAN: Tell your story. Judge, I am not --

THE DEFENDANT: Just stay, Harvey.

MR. WASSERMAN: -- asking her any more questions.

THE DEFENDANT: I need you to stay, Harvey, please.

THE COURT: Ms. Owens, hold up just a moment.

Mr. Wasserman, I would like the respect that I have shown you during this trial.

MR. WASSERMAN: I am giving you respect, your Honor. I apologize.

THE COURT: Well, that's been three times when I was trying to talk that you jumped in and told me what you were and what you were not going to do. Now, I am simply asking for the respect that I have shown everybody in this trial, and not only asking it, I am going to require it. Is that clear?

MR. WASSERMAN: Yes, sir.

MR. WHITE: Judge, I withdraw my objection. I apologize. And I didn't mean to cut off the Court.

THE COURT: No. But what I was ruling on, before I was cut off, is the fact that you have asked her three times. She has told what she did when she came back in the house. You did follow back up with her about an object in her hand and what was happening.

Now, what I would like you to do is simply ask her to continue on with what she would like us to know. Are you going to do that or not?

THE DEFENDANT: I am sorry I did this to everybody. I really am.

THE COURT: Ms. Owens, this is my discussion with Mr. Wasserman.

MR. WASSERMAN: Your Honor, I am professionally in such --

THE COURT: Okay. Hold on just a moment. Ladies and gentlemen --

MR. WASSERMAN: I am --

THE COURT: Hold on. Ladies and gentlemen of the jury, here's what we are going to do -- hold up. Nobody move yet. It is 12:15. We are going to go ahead and take our lunch break, and what I am going to do is allow you to go to lunch and ask everybody to be back in the jury room at 1:30.

At this time I am going to remind everybody again, you are not to discuss any of the testimony or anything that's gone on in this case whatsoever among yourselves nor are you to allow anyone to discuss it in your presence.

Now, also, as the same instructions throughout this trial, should there be any media coverage, such as radio, TV, newspaper, you are not to watch it, you are not to listen to it, you are not to read it. All of the information you have concerning this trial is going to come from the courtroom.

So at this time I will excuse you for lunch. Leave your notepads in the jury room and be back at 1:30, please. Thank you.

(The jury was excused for a lunch recess, and the proceedings continued outside

their hearing and presence as follows:)

THE COURT: Ms. Owens, you can come down and have a seat at the table, please.

MR. WASSERMAN: Your Honor, I truly, truly apologize. My anger was not directed at you. It was not intended to be disrespectful.

I am just so conflicted inside of myself, and I was trying to do what my client wants me to do and it's very and I was trying to help her along with her story, and Mr. White properly objected. My intent was not to question wrongly but to get her back on track.

I am sorry I snapped at you. It was not -- you know we have a good relationship, but it's the heat of the moment --

THE COURT: I understand.

MR. WASSERMAN: -- and I truly apologize and I just I don't know what to do anymore.

THE COURT: Well, I understand. There is no -- my intentions were simply to get the case back on track. Okay. I understand. As I stated earlier today, I have nothing but the utmost respect for you and Mr. White, the way you have conducted yourselves during this trial.

It is a very difficult case. I can understand that, but as we discussed before the case started this morning, the client made the choice to testify. You have made it clear on the record that you disagree with that decision,

advised against it, but she has the right to make that choice, and she has, but I think the methodology that was being used was one that would allow her, what I would consider, some freedom to testify without you having to specifically ask the questions.

Now, the dilemma as to whether or not it's information that you consider positive or negative for the case, that is something the client bears the burden of. I understand that, and I understand it's a very difficult situation. It's difficult for everyone involved, but with that, when we come back from lunch, she will come back up on the stand, and, again, it can be in a narrative form of questioning. The only thing here was simply the matter of the same question being asked multiple times. And whether that was the State asking their witness or the Defense asking their witness, we're not going to keep doing that.

MR. WASSERMAN: I would just like to say if I do that, it's only to try to get her better focused, your Honor.

THE COURT: I understand.

THE DEFENDANT: May I comment? I asked you before we started if he -- I am not trying to get him to lead me, you understand. Actually, both of them, if they could gently keep -- because I am having a hard time focusing because it is very traumatic. I am trying to keep everything inside of me the best I can. I don't want to start crying for pity

it. And since there is no authority to say or to allow calling -- anybody to bring that in, it won't be done. We will discuss how we are going to deal with closing argument, that type of thing, at the charge conference. As to what instructions, limiting instruction, no instruction, whatever it is going to be, we will take that up at the charge conference. Okay.

All right. So at this time we are ready to bring the jury back in. All right. Ms. Owens, if you will come on back up to the stand.

(The jury returned to the jury box, and the proceedings continued in their hearing and presence as follows:)

THE COURT: All right, ladies and gentlemen. You can be seated. Ladies and gentlemen, I hope you had a good lunch break. I appreciate everyone being back on time and we are ready to resume.

Mr. Wasserman.

MR. WASSERMAN: Yes, sir.

Q. (By Mr. Wasserman) Ms. Owens, are you ready?

A. I am ready.

Q. All right.

MR. WASSERMAN: Is the microphone back on?

THE COURT: It is.

MR. WASSERMAN: All right.

Q. (By Mr. Wasserman) If I am asking repetitive questions, I apologize. When we left, I think, you were back inside the house naked after Mr. Janes asked you to come back inside. And I'm just going to leave it like this: Tell us everything that happened, as best you can remember, from the time you came back inside to the time you remember the police coming into the house. Can you do that?

A. Well, you know, it won't be in the same order, of course, but it's not that I am hiding anything, again, that's just --

Q. Just tell us your story about what happened.

A. From when I came inside?

Q. Yes.

A. From the very moment I arrived?

Q. No, from when you came back in naked. Start from there until the time the police came in.

A. Came in naked. Okay. Basically when I came in naked, he had the shoes and being -- and I got back inside. When he was on the porch with the shoes, I came inside. This is just -- I mean, I remember bullets being in the closet area. I am just flashing on things I remembered seeing is all I can do for the moment, unless something else comes to me.

Q. Okay.

A. All I can just flash pictures of what I see in my mind of events.

Q. All right well, just tell us what you remember as best you can.

A. One thing I wanted to say, though, before we kept going on, earlier in my testimony I said I wanted everything to come out. Of course, I can't tell everything in my life in one day. I am just meaning everything in this event. I just wanted to clear that up.

Q. Okay. Thank you.

A. Basically I see bullets. They were all over the floor in the closet area in the bedroom that I slept in with Mr. Janes and -- excuse me. I am a little nervous. And I don't know. I remember the eggs being beat in the kitchen. I remember me taking the shower. I remember breaking the window out.

I can't explain how the second item was laying out, though. I don't recall whether I threw out a second item. There was one in the picture, but I just know that I threw one item out, as far as I remember. It could have been one, could have been possibly two, but I don't recall.

At the time I just remember it felt glass. I didn't remember if it -- in my mind I thought it was a Yankee Candle. Turned out it was something else, a cup in the yard, but at that time that's what I thought it was.

I remember my mouth being cupped by Mr. Janes. It wasn't extreme pressure, but enough that it scared me. I am just trying to make you understand that even though -- let me just get

back to what he was saying before I start going into all this other stuff. It's not necessary for me to try looking for that. It's hard for me. This is the first time I have ever been on trial and this is tragic for me and my family and everyone involved in this case, and really everyone in the world, but...

Q. Let me ask you -- I don't want to interrupt you.

A. I just -- I just remember I was striking him. I was striking him over and over with a motion from side to side in the head area. I don't remember how many times. I don't really recall. I recalled one time trying to stab him, and I thought it was in this area (indicating) but I remembered he stopped me from stabbing him. I wasn't able to control what I was doing, and I am not -- I want to clarify that the delusional word that I used earlier. I do not want to direct that toward drug usage as much as I want to say that it -- I believed it was demons.

And everybody has their beliefs. However everyone takes that into perspective, I cannot -- I just -- all I can say is that's what I believed at the time. I did not believe I was drugged. I did not appear to be drugged before then. I had used drugs a day or two before then and I was not experiencing these thoughts and emotions that were mixed. I guess that's what caused it, including -- I think it also what caused it was the past things that I had been through, you know.

Q. Ms. Owens, let me ask you this, is there a reason or an explanation that you can tell the jury why you stabbed and beat

Mr. Janes?

A. That's what I just got through trying to say with that last comment was --

Q. That it was demons?

A. Not just that. What I just explained was I believe that it happened from fear of me really believing that demon was in him and he was at the same time trying to convince me that the demon was in me. I was believing that God had abandoned me. I was scared. I panicked. I was afraid because I didn't want to lose my chance of -- I just have to be as honest as I can.

I didn't want anyone to steal my chances of going to heaven. Now, whether or not God feels I am worthy, I was not thinking of at that moment. Everything happened so fast. I cannot tell you I was -- I just -- there were times I didn't remember what happened. There was one other time that I possibly remembered. I could have possibly stabbed him in the back, but I will be honest with this jury, there is no denial that there were definitely a severe amount of wounds that I personally did not know and so the -- the reason I disrupted the entire court was I did not see those and did not have the knowledge and they were offered to me by Mr. Wasserman I believe at a point in time and I turned him down. My reasons for turning it down then were different from today.

I was not able to want to feel until God is pressuring me to doing the right thing today. I was having mixed feelings,

not only trying to be -- afraid to going to prison and thinking that I was innocent, I didn't deserve to go to prison. Those were the thoughts I was having mixed with -- I was also -- I mean, just so many mixed emotions, you know, mixed into not allowing me to do the right thing like I am trying to do today. And I want to be careful how I word things because I am under oath. Every word, including delusional and -- it's just that everybody words things their own way. And I don't want the District Attorney to like slaughter me when I could be innocent. If I were to be charged today with everything that this courtroom thinks I would be guilty of, I would rather be charged with everything you can personally submit to me that I have done, but of these charges, I am not guilty of, as far as I know. I thought that malice murder meant to maliciously kill someone. I am not sure.

MR. WHITE: Objection.

THE COURT: Ms. Owens. Wait just a minute.

MR. WASSERMAN: Ms. Owens.

THE COURT: Ms. Owens. That's not a proper response to the question.

THE DEFENDANT: Okay.

Q. (By Mr. Wasserman) Let me ask you this, Ms. Owens. Did Mr. Janes attack you or attempt to attack you sexually?

A. The only attacks that I can remember because I was unaware of what happened on the times I could have either been

unconscious or whatever a demon would do in that occasion. I personally believe that if someone stands here and lifts their hand up to God as these people have done in my favor to promise to do the right thing, then I am hoping they will do so. In saying you have raised your hand to God, then you must also believe that there are demons because this is what we have all basically, regardless of what religion, have believed in all our lives. I would like to think if you believe in God, you believe that that's real.

Q. My question to you is, do you have any memories of Mr. Janes himself attacking or trying to force himself on you sexually?

A. The only -- like I --

Q. That's yes or no, and then you can explain it.

A. Yes. I mean, not --

Q. Tell us what you remember.

A. Not attacking, but the idea of him grabbing my butt in that fashion and with that -- the way he did it scared me and it reflected on things that happened to me in the past, which scared me. We are all scared of the unknown.

Q. Other than him grabbing your butt, did he do anything else that you remember? We know he didn't take your clothes off. Did he do anything else?

MR. WHITE: Your Honor, I apologize. Mr. Wasserman interrupted his own witness. She was giving you an answer.

THE DEFENDANT: Yes, I was.

MR. WHITE: Let her finish the answer to the question.

MR. WASSERMAN: I'm sorry. Go ahead. I'm sorry.

THE COURT: Go ahead.

THE DEFENDANT: I see where you are going with this. You are trying to lead me into hanging myself, and I will allow you to do that, if that's what you feel you need to do --

MR. WASSERMAN: No, I -- I --

THE DEFENDANT: -- but the jury will find me innocent of these charges, and if -- you know, and God will permit for that to happen because...

MR. WASSERMAN: I know.

THE DEFENDANT: I am not going to worry about that but I want the jury to really look closely at what is going on in this courtroom, not just with me, but my surroundings, the way I reacted yesterday and why I reacted the way I did in this courtroom and to your --

THE COURT: Ms. Owens.

THE DEFENDANT: -- whether you believe that there are courts and I am being dishonest or not.

THE COURT: Ms. Owens. Ms. Owens. You need to respond to the question. Okay.

Q. (By Mr. Wasserman) Is there anything else you remember occurring up until the police came into the house?

A. As I was saying, he cupped my mouth hard and I was scared because not the -- when an event happens, it's not just those two events that trigger something. As I learned in the hospitals, and I am talking about the mental hospitals that I forcibly -- some I submitted myself to, some were forced into. I learned that events in the past are triggered from anything. It could be a cup, a word, a face, a date. It could be anything.

There were a number of erratic things that were triggering in my mind when the event took place, and I felt as if I was not in control, possibly because I didn't pray enough in my life and I did not have God as close, I thought, to help me in this matter. I am not the one to ask why and what happened. I am trying to get God to reveal it, but He is choosing to not put me through that pain right now. And I know my wounds were nothing compared to what he had, but God chooses everything and everybody for everything to happen in your life, whether you think good or bad. So what happened, happened for a reason, and that's just the way I feel about it.

Now, that's my opinion, and I am not trying to push that on anybody in this courtroom or anybody, but I am entitled to at least, I would think, be able to state how I feel, what I look like, and my appearance shows you at least -- since you can't see pictures of my cell and know the number of days, which is close to 600 or more --

THE COURT: Ms. Owens. Ms. Owens. Ms. Owens. You

need to stop. That's not relevant to the case.

Q. (By Mr. Wasserman) Ms. Owens, I will ask you just one more time. Is there -- factually is there anything else you can remember other than --

A. As I said, I cannot think of anything else other than knowing that we had an encounter before, and it's okay if someone consensually says yes to sex, but no it's not okay and it's very scary when it's not consensual. And I am not insinuating he did anything, but I do not -- I mean, as far as I know nothing happened, but I thought there was going to be something happen.

Q. Okay.

A. And I am listening to a recording that 911 says someone raped me. I don't -- I am not saying he did or didn't. I am saying I was bleeding. I would have liked to have thought in my mind there would have been blood on his genitals if he did that, but he could have anally -- I am not -- I am trying to suggest but I have my doubts. I don't know whether something happened or not during the periods that I can't remember.

And I am not trying to dirty his name. I am not trying to say -- you know, doing this to throw myself for mercy either because God is the one that is going to show me my mercy. But, you know, I am just saying so you will all know -- and according to the law, I think the doubt thing, you know -- I mean, you know...

Q. Ms. Owens, I can't think of anything else I want to ask

you. Is there anything else factually, not your opinions, that you want to tell the jury that I may have omitted dealing with the event we are here about?

A. Yes. You know, I do want to clarify about the events in the yard quickly about the officers. I do recall being somewhat combative, and also in the house. I do recall there was someone trying to barge the door in. It seemed to have focused my attention on the door, but only for a couple of seconds or so, and then I went back to -- I mean, I guess I could say I am not for sure if I was kneeling over, but I was somewhat over him and -- I don't know how to express. I was just a number of thoughts going through my mind, but I know the door was, I guess, barge in.

I am thinking -- I mean, I might have been tased in the house. I have read papers. I have been told. I don't really remember that. I know some of the wounds that are on me, like the neck area, I do recall an officer was stepping on this area (indicating) and I remember just spreading my arms out and I was just about to be unconscious from gasping for my last air going, (indicating), and then I don't remember waking up again and I don't remember being transported to the hospital, but I did remember being forced into the cop car.

I remembered two or maybe two or three but I do remember specifically two officers were on side and side of me, holding very hard, of course, because I was so combative, my

arms. That could be where the wounds came from. I am almost a hundred percent certain that is where the wounds came from, but you know, it's hard to use a percentage, but I would like to think they did. I mean, I was dragging my feet and heels in the dirt and I was put into the cop car.

And I apologize if this is painful for everybody in the courtroom or everybody -- I am trying my very best to just be honest. I know it must be for -- I don't even know who all is in here or could be related to him. I really apologize.

THE COURT: Ms. Owens, you need to just respond to the question.

THE DEFENDANT: I was put into the cop car pretty forcefully. I remember them -- being tased a number of other times, but I can't say when that took place. I just woke up and that Taser froze in my areas that you saw on the pictures and some of them broke off, but I do remember -- I think it was Mitchell Murphy. I may be incorrect, but I believe he, at one point, opened the car door on, I think, the side and I was being very combative and I was either kicking or beating on the window.

They, of course, were trying to -- they were probably thinking in their minds I was going to kill them after what they were seeing, I am sure. Anybody in their right mind would probably be thinking the same thing, if you were there, so I understand where the police officers were coming

from with being that way toward me, but, anyways, he opened the door and pulled me very forcefully, of course, because, you know, I was out of control. He pulled me up very hard back upright into the seat.

But the reason behind me being combative toward the window and the car door was because the thoughts that were going through my mind, as you heard from the recordings and testimonies of the others, was I was thinking in my mind, save him, help him go home. I was worried he was dying. He was alive, but he was bleeding profusely. I wanted to make sure he was going to heaven because I was -- I mean, and I am just saying that -- I am telling you that's -- it's painful for everybody, I am sure, but that's happened. And I also recall the -- I am sorry to drag you back and forth in and out of the house, but the pictures in my mind come that way.

Back into the house and the first bedroom to your right. When the cops kicked the door in or cop -- I don't know if it was a neighbor or cop, but however, someone kicked the door in, obviously someone tasered, but took me into the bedroom area, you know -- but I am saying he didn't take me in there. I am taking y'all in there visually so you can see what happened again.

I had ran into -- well, actually not ran, but I think it was just like the cop testified, listening to in my mind

what he testified to. I think I had been trying not to be restrained and tried to get up and escape and kind of fell into the door. I was running for a number of reasons in there. I was scared of the officers. I thought that they had a grudge on me because I filed a past lawsuit when indeed they probably did not because they were doing their jobs, but that's how I felt, so -- and also because I was naked and, I mean, just a number of things were going through my mind, you know, and a sheet was thrown over me I remember and it was bloody already as far as I remember. It was thrown over me in the cop car and I threw it off. You know, I threw it off of me. And I do remember at the hospital when Lieutenant Tracey was there, I threw the sheet they tried to cover me with off as well.

Q. (By Mr. Wasserman) Ms. Owens, is there anything else you remember that occurred between you and Mr. Janes that I have not asked you?

A. I can't recollect except when it comes to me in pieces.

Q. But right now you cannot?

A. Huh-uh. I mean, I do recall Mr. Janes telling me there was a loaded gun on the coffee table, but I never saw the gun. I never saw anything but bullets.

Q. All right.

A. And that's one more thought that came to my mind when you asked me that.

Q. Anything else you can remember right now?

A. Not right now. If I do, if I am given the opportunity I will say, but...

Q. All right.

MR. WASSERMAN: I have no more questions, your Honor.

THE COURT: All right. Cross-examination, Mr. White.

MR. WHITE: Thank you, Judge.

THE COURT: Wait. Wait. Wait. Wait. Wait.

THE DEFENDANT: I'm sorry.

THE COURT: Ms. Owens, Mr. White has the opportunity to ask you some questions.

CROSS-EXAMINATION

BY MR. WHITE:

Q. Ms. Owens, I am Parks White. I am the District Attorney --

A. Yes.

Q. -- in the Northern Circuit. I am going to ask you a few questions.

I want you to know that my questions are not designed to be an attack on your faith in any way, okay, but I have some questions that I need to clarify a few things with you. Okay?

A. I totally understand.

Q. Okay. So it is your testimony that it was God's will for you to beat and stab Mr. Janes to death; is that right?

A. No, sir. I am not testifying that it was God's will.