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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. 12-1-03400-2
)	
AVONDRE C. GRAHAM,)	
)	
Defendant.)	VERBATIM REPORT OF PROCEEDINGS

PLEA & SENTENCING HEARING

October 31, 2013

Spokane County Courthouse
Spokane, Washington
Before the
HONORABLE MARYANN C. MORENO

A P P E A R A N C E S

For the Plaintiff: G. MARK CIPOLLA
Deputy Prosecutor
Spokane County Prosecutor's Office
1100 W. Mallon Avenue
Spokane, Washington 99260

For the Defendant: THOMAS J. KRZYMINSKI
Counsel for Defense
1116 W. Broadway Avenue
Spokane, Washington 99260

Terri A. Cochran, CSR No. 3062
Official Court Reporter
1116 W. Broadway, Department No. 7
Spokane, Washington 99260
(509)477-4418

1 MR. CIPOLLA: Your Honor, the state's recommending a
2 low-end standard range sentence based upon those issues and the
3 lack of criminal history, and 36 months of community custody.
4 Those conditions would be addressed at time of sentencing.
5 That's it, your Honor.

6 THE COURT: All right. And the other two charges, the
7 other charges that were severed?

8 MR. CIPOLLA: They're -- we're going to -- we haven't
9 finalized the plea, but we've got a plea pretty much arranged
10 for those in the near future.

11 THE COURT: All right. Mr. Krzyminski, are you and
12 Mr. Graham ready to proceed this morning?

13 MR. KRZYMINSKI: Yes, we are, your Honor.

14 THE COURT: All right. Are you Avondre C. Graham?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: And what's your date of birth, sir?

17 THE DEFENDANT: 1/26/95.

18 THE COURT: All right. And I have paperwork here that
19 I'm going to review with you. This is a -- this is the
20 "Statement of Defendant on Plea of Guilty." It's about a
21 12-page document. Have you had a chance to review that with
22 your lawyer?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you have any questions about it before
25 we start?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Do you understand everything in it?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And has Mr. Krzyminski answered all your
5 questions?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. Are you ready to proceed?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. I'm going to go through that
10 with you, then. You're 18 years old?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: It says that your last grade you completed
13 was 9th grade. Do you have any trouble reading or writing
14 English?

15 THE DEFENDANT: Um, I have a little trouble with
16 reading.

17 THE COURT: Okay. But English is the language you
18 speak, correct?

19 THE DEFENDANT: Yeah.

20 THE COURT: Okay. And again, you're here with
21 Mr. Krzyminski. As I understand it this morning, it is your
22 intent to enter a guilty plea to the crime of murder in the
23 second degree; is that correct?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that charge?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And you've seen the Amended Information
3 that just has that charge on it?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. And do you have any questions
6 about the charge?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: I'm going to go through some rights with
9 you. They're in the guilty plea statement. You have the right
10 to a speedy and public trial by an impartial jury in the county
11 where the crime is alleged to have been committed. You have
12 the right to remain silent before and during trial. You have
13 the right to refuse to testify against yourself. At trial, you
14 have the right to hear and question all the witnesses who
15 testify against you. You also have the right at trial to
16 testify. You can call your own witnesses to testify for you.
17 Those witnesses can be made to appear at no cost to you. You
18 are presumed to be innocent unless the state proves the charge
19 beyond a reasonable doubt or you enter a plea of guilty. If
20 you did go to trial, if you were found guilty, you would then
21 have the right to an appeal.

22 So that's a lot of rights. Do you understand them all?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you also understand that by entering
25 your plea today you're giving up all of those rights?

1 THE DEFENDANT: Yes, I do, ma'am.

2 THE COURT: The charge of second-degree murder has a
3 maximum penalty of life in prison and a \$50,000 fine. I'm told
4 you have an offender score of zero, giving you a standard
5 sentence range of 123 months to 220 months with 36 months of
6 community custody.

7 Now, I have another document here. It's called
8 "Understanding of Defendant's Criminal History." That document
9 says that you have no prior felony history; is that correct?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you have any questions about the
12 different legal financial obligations that I can impose?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Is there a restitution amount, Mr. Cipolla?

15 MR. CIPOLLA: Not at this time, your Honor.

16 THE COURT: Okay. We'll just keep restitution open,
17 then?

18 MR. CIPOLLA: Yes, your Honor.

19 THE COURT: All right. And the agreement that you and
20 your lawyer and the state have worked out is that the state
21 would recommend, in return for your plea, 123 months, which is
22 the low end of the range; 36 months of community custody; there
23 will be some conditions; and you'll pay standard fines and
24 costs and restitution. That's the low end of the range that
25 the state is going to recommend.

1 So, sir, is that your understanding of the plea
2 agreement?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Is there anything else you thought
5 Mr. Cipolla was supposed to recommend today?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: And you understand I don't have to follow
8 that, right?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If you're not a citizen, your plea today
11 can be grounds for your deportation. Once I accept your plea,
12 because this is a felony charge, you lose the right to have a
13 firearm, you become ineligible to vote, and you'll need to have
14 a DNA sample collected, and there is a fee of \$100 for that.

15 This charge, murder in the second degree, is what we
16 call a "most serious offense" or a "strike offense." If you
17 have two prior strike offenses in this state, federal court, or
18 elsewhere, the sentence I would have to impose would be life in
19 prison without the possibility of parole.

20 If I do impose community custody and if I find that
21 there is a drug or an alcohol issue, I will likely order you
22 into treatment.

23 Sir, do you have any questions?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Are you ready to enter your plea?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: To the Amended Information, murder in the
3 second degree, how do you plead?

4 THE DEFENDANT: Guilty.

5 (Pause in proceedings.)

6 THE COURT: I'm seeing the Information has a firearm
7 enhancement.

8 MR. CIPOLLA: It -- the language is there, but we're
9 not asking for the special -- the Court would have to make a
10 special finding. It's not a firearm, though.

11 THE COURT: Oh, it says deadly -- I'm sorry, I
12 misspoke. I see a deadly weapon enhancement in the
13 Information.

14 MR. CIPOLLA: We're not asking the Court to -- to make
15 a finding as to that. The Court doesn't have -- the Court
16 would have to make a special finding.

17 THE COURT: So this is the correct Information?

18 MR. CIPOLLA: Yes, your Honor.

19 THE COURT: Okay.

20 I'm going to take your plea again. To the Amended
21 Information, murder in the second degree, how do you plead?

22 THE DEFENDANT: Guilty.

23 THE COURT: Do you make this plea freely and
24 voluntarily?

25 THE DEFENDANT: (No response.)

1 THE COURT: Is this of your own free will?

2 THE DEFENDANT: Yes.

3 THE COURT: Has anyone threatened harm of any kind to
4 you or anyone else to cause you to make this plea?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Has anyone made promises of any kind to
7 cause you to make this plea?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: All right. Go ahead and have a seat.
10 Can I hear the facts?

11 MR. CIPOLLA: Yes, your Honor. Had the matter
12 proceeded to trial, the state would have shown the matters
13 occurred in the State of Washington, County of Spokane, on or
14 about May 3rd, 2012, at about 8:11 in the morning on the
15 Spokane Riverwalk down the 1800 block of East South Riverton.
16 Sharlotte McGill was found bleeding on the trail. She'd been
17 stabbed numerous times. She was able -- prior to -- to her
18 death, was able to briefly describe the individual; that it was
19 found that the defendant, Avondre Graham, fit the profile.
20 Officers contacted him at some point. He had at one point,
21 after a lengthy questioning, admitted to stabbing Ms. McGill.
22 That's the facts.

23 THE COURT: All right, thank you.

24 Now, sir, in your statement there's a paragraph in
25 there that asks you to state what you did. And it

1 says: "Alford plea. I do not believe I am guilty of this
2 offense. I understand all of the evidence and the fact that I
3 could be found guilty of more charges after a trial. I want to
4 accept the state's offer." Is that your statement, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Any other comment as to the facts,
7 Mr. Krzyminski?

8 MR. KRZYMINSKI: I -- not at this time, your Honor.

9 THE COURT: All right. I'll make a finding that there
10 is a factual basis for the plea. The plea appears to be
11 knowingly, intelligently, and voluntarily made. I believe
12 Mr. Graham understands the charges, or the charge, excuse me,
13 and the consequences of his plea.

14 Go ahead and have a seat.

15 Mr. Cipolla?

16 MR. CIPOLLA: Your Honor, at this time would the Court
17 like to hear from Ms. McGill?

18 THE COURT: Sure.

19 MR. CIPOLLA: And then I can make comments?

20 THE COURT: Yes, mm-hm.

21 MR. CIPOLLA: She's represented by Mr. Finer, your
22 Honor. I think Mr. Finer's going to help her through this.

23 (Discussion off the record between Mr. Finer and Ms. McKinney.)

24 MS. MCKINNEY: Good morning, your Honor. My name is
25 Billie McKinney.

1 THE COURT: Good morning.

2 MS. MCKINNEY: I'm Sharlotte McGill's daughter.

3 THE COURT: Good morning.

4 MR. FINER: Your Honor, Ms. McKinney's asked me to read
5 this.

6 THE COURT: Sure.

7 MR. FINER: "Holidays are really hard without her. I
8 still buy her cards and pick her flowers. I talk to her every
9 day, and I hope she can hear me. I tell her I'm so sorry I
10 could not save her life. I try not to think about all the
11 blood, but my last moments with her were covered in it. Every
12 time I close my eyes, I see it.

13 "No matter how much I pray or how hard I try, I cannot
14 forget her last moments: crying, struggling for her life,
15 seizing up in my harms and going quiet, never waking up again,
16 no hug good-bye, no kiss good-bye, no good-bye at all, here
17 one minute and gone the next. The world has enough hate,
18 enough pain, enough violence, and no room for someone who
19 randomly attacks strangers and takes their life. The world is
20 scary enough without thinking about the man that killed my
21 mother out walking the city streets a few years from now. I'll
22 have to move away. I cannot raise children here.

23 "Someday I will have to explain to my child why --
24 children, why they don't have a grandmother. I will tell them
25 that their grandmother was taken away at the hands of a young

1 man who used a knife to end her life. They will know that it
2 was random and unprovoked. They will know the punishment for
3 her murder was a brief stint in prison, leaving him free to do
4 as he pleases while their grandmother never gets to come back.

5 "There was so much blood. When I close my eyes at
6 night I see blood. I see my mother's eyes looking up at me as
7 she laid dying, filled with blood from the cut across her
8 forehead. Blood and tears. My mother was so scared when she
9 was dying. She begged for her life. She knew she was dying
10 and she was so terrified.

11 "The doctors did everything they could do. They had
12 plenty of donor blood. The problem, there were too many stab
13 wounds. By the time my mother's body arrived at the hospital,
14 her brain had been starved of oxygen for more than ten
15 minutes.

16 "The heart surgeon told me that the several stab wounds
17 had punctured her heart on both sides. He said he attempted to
18 plug the knife-wounds with his fingers while he held her heart
19 so that the oxygen-rich donor blood could get to her brain.
20 And he told me he thought it was working but then he found more
21 stab wounds in her lungs and her neck, and the donor blood
22 ended up soaking the hospital bed.

23 "They took me past her on the way to the OR. There was
24 so much blood. She must have experienced a helplessness and a
25 desperation most of us couldn't dream of in our worst

1 nightmares.

2 "Before I had my mother cremated, I went to the funeral
3 home to say good-bye. The director sat me down to prepare me
4 to see her. He warned that her injuries were so extensive that
5 she could not wear a dress and needed to get a long-sleeved top
6 with a collar to hide the wounds on her arms and on her neck.
7 They offered to use makeup to hide the facial wounds. He told
8 me that even with makeup it would be very visible. There was
9 only so much they could do. And I told them not to cover her
10 in makeup. She needed to rest in peace. I told them it was
11 okay for me to see it. And I went in alone to see her.

12 They did their best to make her look nice. I
13 approached her, laid plowers on her chest, and held her cold
14 hand. I wept as I stood beside her for our last good-bye. I
15 kissed her on the forehead one last time. I told her she was
16 beautiful. I told her I loved her so much. I told her I would
17 never give up on her.

18 "When you feel that life is not fair, please do not
19 forget my mother. There was nothing more unfair than what
20 happened to her that day. She lost her life, and the
21 punishment does not fit the crime. Someone used their hands to
22 take my mother away from me forever. Those hands carved nine
23 holes in her chest, in her neck, her face, and her arms. This
24 punishment does not fit that crime.

25 "She held me coming into this world, and I held her

1 going out.

2 "Your Honor, imagine this from my mother's point of
3 view, going outside to walk your dog, stepping down a trail,
4 and you're struck with a rock in the back of the head, you drop
5 to your knees. The next thing you know, a man much bigger than
6 you and stronger is on top of you. And you look up, and he
7 takes a knife, he brings it to your face, and he drives it into
8 you over and over. What would you do, grab his arms to stop or
9 scream or help, for help, and beg for your life? She tried to
10 fight, but he was too strong and stabbed her nine times. Would
11 you cry? Would you pray? Would you beg for your life? I know
12 my mother did all three, and it does not matter. She was
13 stabbed nine times, cut in her face, her arms, her heart.

14 "And she knew she was dying. Her last words were,
15 'Help me, please. I can't breathe,' because she was drowning
16 in her own blood.

17 "Today is so serious and so heavy. I have many things
18 I wish I could say. I wish I could tell you my fondest
19 memories, recall every kindness she shared with the world. I
20 wish you could know her like I did. If you knew my mother like
21 I do, I believe you would see the qualities of your own best
22 friend and your own mother. My mother had much more to give
23 this world. She brought out the best in people. She could
24 turn your bad day around with one quick interaction. I always
25 knew that to be true. But when she was killed, I had more

1 | people than I could count tell me how much my mother had made a
2 | difference in their lives. And I'm proud of her. She was my
3 | rock and my best friend.

4 | "The defendant still has his mother. She has her son.
5 | He gets visits. She supports him and weeps for him, comes to
6 | court. And I think about the defendant's mother, Stephanie
7 | Graham. It's likely she will have grand-babies from her son.
8 | The Graham family only need wait a few years before they can be
9 | together again. On the other side, my mother never got a
10 | grandchild. No matter how many years pass, she never gets to
11 | see her only child get married and have babies. Sharlotte
12 | McGill had all that taken away from her. Stephanie Graham will
13 | be there for her grand-babies. They will know who she is. My
14 | children will never meet their grandmother. How is that fair?

15 | "I keep having this nightmare that my mother stepped
16 | outside and never came back; she died covered in her own blood,
17 | and I held her helpless. The nightmare spirals out of control
18 | when I become the suspect in her death and all the while her
19 | killer roams free to stalk and attack again. I want to wake up
20 | but I can't. Instead, the nightmare takes me to the day that
21 | her killer stands before the court and is told that killing my
22 | mother will cost a few years in prison and he will be free
23 | before he's 30. Taking a mother from her child will cost him
24 | his twenties. And there's no way this can be real, and yet I
25 | cannot wake up. This is real. This is as real as it gets.

1 "Thank you for letting me speak about this crime and
2 about my mom and the nightmare of her murder."

3 (Discussion off the record between Mr. Finer and Ms. McKinney.)

4 MR. FINER: "I have just one last thing I want to add.
5 The day my mother died, I said, and I was quoted in the news,
6 that her murderer was a 'monster.' I know why I felt that way,
7 and I know there's part of me that feels that way today. But I
8 want to say something else. The defendant's crime is partly on
9 all of us. I know he was failed by all of us. He has his own
10 burdens and struggles, and life has dealt him some very rough
11 deals. And I'm sorry for his faults and for those who let him
12 down.

13 "I know you have to impose a sentence and then you move
14 on. I have to find a way to find forgiveness, and I'm not sure
15 if I will ever see that happen."

16 That's the statement.

17 MS. MCKINNEY: Thank you.

18 MR. FINER: Thank you, Ms. McKinney.

19 MR. CIPOLLA: I don't have much to add to that, your
20 Honor, other than there's -- the Court's aware that the motion
21 practice, as far as the issue of the diminished capacity and
22 his -- the defendant's retardation. There's evidentiary issues
23 that we've been struggling with and had motion practice set to
24 go too. I know that Mr. Tucker's struggled for a couple weeks
25 to come to this decision. And I concur with the decision.

1 It's based upon the issues at trial.

2 There's 36 months of community custody, \$800 in fines
3 and costs. The community custody includes mental health
4 evaluation while in prison, maintain employment when he gets
5 out, and no new law violations, any other conditions the Court
6 deems appropriate. Thank you.

7 THE COURT: I'm going to presume that this has been
8 fully discussed with the family?

9 MR. CIPOLLA: Your Honor, I spent time with Mr. Finer
10 and -- and Ms. McGill discussing the issues. She's aware of
11 the issues. She was -- she is not -- obviously is not happy
12 with the resolution. I don't know that there's any resolution
13 that would fit the crime. But this is the resolution that's
14 been worked out and falls within the SRA with the lack of
15 criminal history and those kind of things. And I -- like I
16 said, Mr. Finer was present, and we had a long discussion about
17 this.

18 THE COURT: Okay.

19 MR. CIPOLLA: And again, I feel very sorry for her and
20 for her family.

21 THE COURT: All right. Thanks.

22 Mr. Krzyminski?

23 MR. KRZYMINSKI: Thank you, your Honor. Your Honor, I
24 believe a family member would like to make a statement.

25 MS. STONE: My name is Janelle Stone and -- my name is

1 Janelle Stone, and I am Avondre's older cousin. Um --

2 (Discussion held off the record between Ms. Stone and
3 Mr. Krzyminski.)

4 MS. STONE: "Your Honor, we, the family of Avondre
5 Graham, are speaking out on his behalf. The family would like
6 to apologize for any pain, suffering, or duress that has been
7 endured because of Avondre's action. Our family is like every
8 other family. We have our ups and downs; we are very close and
9 support each other. The majority of our family interaction
10 with Avondre has been very positive. Although he has faults,
11 Avondre is trustworthy and loving. Avondre is very
12 warm-hearted and funny. He is always making people laugh. He
13 brings light into dark days. Avondre is lovable, like a big
14 teddy bear. He is known by others outside the family as quiet
15 and kind. He is especially gentle and loving to younger
16 children and has been a positive role model for them.

17 "Avondre has had anger issues, but since then -- he has
18 been in jail for over a year. He has been on medication that
19 has helped him mellow, mellow him out. His family will help
20 him to stay on his medication and deal with his anger issues.
21 Avondre has already accepted responsibility for his actions.
22 And when he leaves prison, he wishes to speak to other kids
23 about making the right choices in life and staying out of
24 trouble. When he does come home from prison, he will have all
25 of our support to help him face life again in a positive way.

1 Avondre is the oldest in his family. He has three younger
2 brothers and a older sister as well as the younger cousins who
3 look up to him for help and guidance. We would like to have
4 him back home as soon as possible.

5 "Avondre will have all of his family support to help
6 him live a good and productive life when he comes home. We
7 would like to ask your Honor to sentence Avondre to the least
8 amount of time possible.

9 "Respectfully, the family of Avondre Graham."

10 I also have one more from myself personally. Um, it
11 says, "The media is the most powerful entity on earth. They
12 have the power to make the innocent guilty and to make the
13 guilty innocent. And that's power, because they control the
14 minds of the masses." That's words spoken by Malcom X.

15 Avondre Graham is not the young man the media has
16 portrayed him out to be. He is not some kind of gang member or
17 delinquent. He does not go around looking for or causing
18 trouble. Avondre is caring, kind, gentle, warmhearted. He is
19 trustworthy -- trustworthy, reliable, genuine, and very
20 lovable. He is smart, very funny, and goofy. He loves to
21 dance. The majority of the time he would rather hang out with
22 his family rather than his friends. He is very family
23 oriented.

24 There isn't anything he wouldn't do for us. Avondre
25 would give us the moon and stars if we asked him for it. There

1 | was never a time where he wasn't there for me. I remember
2 | calling him and waking him up in the middle of the night
3 | because I was home alone and scared and couldn't sleep. He
4 | always came to my house just to sit with me while I slept. He
5 | never left my side, not even for a second. When my mother
6 | passed away, he was the one who'd hold my hand. When my mother
7 | passed away, he was the who told me of her passing. Avondre
8 | was always the first to ask if I was okay the second I woke up
9 | and the last to ask me when I went to bed. He would stay on
10 | the couch with me for hours at night just to give me his
11 | shoulder so I could soak his shirt in my tears.

12 | Avondre has always been there for me and the rest of my
13 | family. He is always the first one to make sure we are okay
14 | when something was wrong. Avondre has younger siblings and
15 | cousins that look up to him and miss him dearly. The younger
16 | brother -- or his younger brother Isaiah came up to me the
17 | other night and told me that there was huge hole in our family
18 | that only he could fill.

19 | Once Avondre returns to his family where he belongs, he
20 | will have the love and support that will give him the strength
21 | to overcome any obstacle that stands in his way of being the
22 | best he can be. Through all the stormy nights and the dark
23 | days, he will shine through and come out of this 100 times
24 | stronger.

25 | Avondre is one of the happiest and loving relatives I

1 have. He a great model to -- great role model to his younger
2 relatives. He is very smart and very committed to anything he
3 sets his mind to.

4 Avondre loves with everything he has and more. He has
5 a very big heart, and nothing and no one can change that. He
6 is very true to his self. Avondre is not a horrible, broken
7 child. He is a wonderful person inside and out. He has so
8 many great characteristics. You will never really know, really
9 truly know someone until you spend time with them and make
10 memories that will last a lifetime. Family is everything, and
11 they are the ones who truly know who you are.

12 "Is this what family is really like, the feeling that
13 everyone's connected, that with one piece missing the whole
14 thing is broken?" Those are words spoken by Trenton Lee
15 Stewart. Thank you.

16 MR. KRZYMINSKI: May it please the Court, Mr. Cipolla,
17 your Honor, I know, because of the competency hearing, the
18 Court received a lot of materials about Mr. Graham and -- and
19 carefully went through all of those materials, heard expert
20 testimony on his mental state, his IQ. And I believe the Court
21 has a very good picture of Mr. Graham and the life he's led up
22 until this point. In looking at all that documentation, you
23 can see the family doing whatever they could to try to address
24 any issues that Avondre was having as -- as he was growing
25 older, trips to counsellors and to the doctor and -- and, you

1 know, attempts to -- to address problems in areas that they
2 thought could be addressed and helped. And some of that was
3 taking place. I know some medication was prescribed for him.
4 As you heard, the statement being made about medication in the
5 jail; and I -- I think the jail staff has done a fantastic job
6 identifying his needs and making sure he is prescribed the
7 correct medication.

8 In my talks with the family and based on my own
9 observations of him, he certainly comes across as a very quiet,
10 considerate, engaged when we speak, individual. I know he does
11 have issues with being able to remember what was talked about
12 maybe a week, two weeks, three weeks prior, sometimes less time
13 than that, but always considerate in asking any follow-up
14 questions that he would have. So that's the individual I have
15 been -- been dealing with and -- and working with.

16 As you heard from Mr. Cipolla, there was -- there's
17 issues, evidentiary issues on this case. There's no doubt
18 about that. When Mr. Cipolla described the facts -- and I know
19 the Court's aware, but I just want to point out again -- months
20 and months had gone by from the death of Ms. McGill.

21 Mr. Graham was talked to I believe that day because he had a
22 proximity to the event and where she was living and also the
23 description that was given at the time. So he was cooperative
24 at that time. He talked to the police, worked with them at
25 that time. But it wasn't months -- till months and months

1 later that they came back to Mr. Graham because of this other
2 incident that, as we stated, we will address in a few weeks.
3 And at that time there was a -- a confession given. But I know
4 your Honor's not privy to that and at this point hasn't had the
5 opportunity to look at that. But there were certainly issues
6 with -- surrounding that. I will just leave it at that.

7 So we're here today with our recommendation that, as
8 Mr. Cipolla mentioned, is within the guidelines. I appreciate
9 the prosecutor's efforts in this case to work on a settlement,
10 to take it to higher levels, which obviously needs to be done
11 in cases like this.

12 I certainly feel for Ms. McGill in everything that was
13 said today. It's unimaginable, it really is, under the
14 circumstances, to have that kind of event happen in your life
15 where it's right there in front of you and there's no escape
16 from it and then have to live with it every day.

17 The comment that was made that stood out to me was that
18 no punishment will fit the -- well, that this was not -- might
19 not be an appropriate punishment but really what punishment
20 would be appropriate in this case or any case like this? I
21 don't believe any family member of a victim could -- would ever
22 really say, Yeah, this is -- this is perfect, because it's not.
23 But again, there's reasons we come to situations like this
24 today and to plea agreements.

25 I would certainly ask the Court to follow the joint

1 recommendation. I believe under the totality of the
2 circumstances it is appropriate. Obviously -- and one of the
3 things that I talked to Avondre about and to his family about
4 is I think if I was sitting as a judge, I would want some
5 thought, some hope, and some firm belief this would not happen
6 again. And I think there's several things here that point in
7 that direction and support that. The -- the fact of the family
8 involvement -- and your Honor, I -- and I know you've been in
9 this situation too where you look out in the courtroom on -- on
10 a very serious case and sentencing and there's no one sitting
11 back behind the defendant. That's not the case here. The
12 family is extremely involved, and they have utilized both the
13 public defender office and my office to a great extent. And I
14 think everyone and the two offices that have had contact with
15 his family feels a connection. They -- as the letter stated,
16 when I read the later from the family, it was perfect. It --
17 it addressed everything that I had observed: the total
18 commitment to Avondre; the -- the fact that if you look at the
19 past history and -- and their efforts to help him, and then now
20 sitting here today, and whatever day he's released from prison
21 they will -- they will be waiting for him again.

22 I know their biggest concern is not being able to visit
23 him. They don't have transportation; that's going to be a
24 struggle. I mean, those are the things they're worried about
25 today, I'm sure, as they sit here. I don't know what the Court

1 is going to do in terms of sentencing, but "When are we going
2 to see him again and have -- have that face-to-face contact?"
3 So there's significant family support.

4 As I mentioned, this adjustment in medication has been
5 extremely beneficial to Avondre. I know he's committed to
6 maintain that. Obviously what happens when you're out in the
7 community and what had been happening is other outside
8 influences in terms of maybe alcohol or nonprescribed-type
9 medication, drugs. So there's probably a little bit of that
10 going on. That can't happen anymore, he knows that. But I
11 think this will be a time that will be reflective for him. I
12 know the family is not the type of family that's -- that gets
13 up and says, you know, "Why my son?" or "Why my cousin?" or
14 "Why my brother?" They are -- they have talked to me about
15 punishment; they believe that punishment is appropriate. And
16 again, when we come back in a few weeks and talk about that
17 incident, we'll talk about what is appropriate. They --
18 they -- they are firmly supportive of the punishment that has
19 to come because of a situation like this.

20 So again, I would ask the Court to follow the joint
21 recommendation. Avondre's got a tough, tough road ahead. It
22 won't be any easier when he gets out. But I, again, believe
23 he's got some tools, his family support. I think down the road
24 we will all be surprised at what he can accomplish. Thank you.

25 THE COURT: All right.

1 All right, Mr. Graham, would you like to tell me?

2 (Discussion held off the record between defendant and defense
3 counsel.)

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: This is your chance to tell me anything
6 you'd like me to know.

7 THE DEFENDANT: I'm sorry. This will never happen
8 again. And I am truly sorry to the McGill family (indicating).
9 And I know they're going through a hard time. And like I said,
10 this will never happen again. And I do accept the punishment
11 for what you're going to give me. And that's it, your Honor.

12 THE COURT: Okay. Nothing else?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: All right. Well, I will first of all say
15 that the letter that Mr. Finer read was probably one of the
16 most powerful letters I've ever heard. And I've been doing
17 this -- I've been doing this a long time as a judge and as a
18 defense lawyer. And I've been in these situations just like
19 Mr. Krzyminski and Mr. Cipolla are, and that was probably the
20 most powerful letter I've ever heard, very well-written.

21 UNIDENTIFIED SPECTATOR: She wrote it.

22 THE COURT: I know she did. I know she did.

23 So on my notepad, I take little notes as I have
24 thoughts. And I have "w-h-y" written across my notepad. It
25 spells "why"? That's my question. And I -- I think back with

1 regard to the hearing that I had with regard to Mr. Graham's
2 mental health issues. And I remember and I recall that
3 Mr. Graham has had some issues along the way, and that before
4 his arrest and in the -- I guess maybe three to four years
5 prior to this, his behavior had become -- I think his family
6 was noticing some behaviors that were I think becoming more and
7 more violent.

8 And so I wondered to myself. Across the country we
9 have situations where young men, young women, are acting out
10 their rage and they're angry and people wind up getting killed.
11 And I'm wondering if this is one of those situations or whether
12 it's fair that I'm comparing them. I don't know. I don't know
13 if the system has -- has failed Mr. Graham. And I don't mean
14 the legal system. I mean "the system": the medical system,
15 the mental health system. I just don't know. I don't know
16 enough about the situation and the dynamics.

17 Regardless, it doesn't make the McGill family feel any
18 better about any of this. And I guess I'm left with the
19 thought that somehow, Mr. Graham, you channeled your anger
20 toward Ms. McGill. I don't know if that's what happened; I
21 don't know if that's the case. I hear, from what the state
22 says, that it was a fairly significantly violent incident. And
23 I still come back to why. I just -- I just don't understand
24 it. And I won't, and I never will, and I don't think the
25 family of Ms. McGill ever will.

1 Because I know these lawyers and because of how
2 significant this case is, I believe them when they say that
3 there must have been evidentiary issues that, frankly, made the
4 state question whether or not they could go forward, because I
5 know these lawyers and I've worked with them for long enough to
6 know how they operate, so I trust them.

7 There are many, many purposes for sentencing.
8 Rehabilitation is not at the top of the list for sentencing.
9 And quite frankly, prison is not a great place to be. And I'd
10 be kidding you if I said, "Don't worry about it. You'll learn,
11 you'll get a trade and you'll learn," because it's not going to
12 be great. It's a loss of freedom for a significant amount of
13 time. Whether or not I sentence you to the low end, whether or
14 not I gave you the high end, whether or not I gave you 50 years
15 isn't going to change the fact that Ms. McGill is gone. It's
16 not going to change things or make anything different.

17 I understand you're young. You have wonderful family
18 support. And that's great. Mr. Krzyminski is right: A lot of
19 times I look out, I sentence someone to 15 years in prison and
20 there's no one here who cares. So you have a lot of people who
21 care for you and are going to stick with you. So you'll need
22 to draw on that while you're serving your time.

23 Again, there's no amount of time that I could possibly
24 impose that's going to change what happened. So I'm going to
25 honor the -- the negotiation here. I'll sentence you to 123

1 months. There's 36 months of community custody. I know drugs
2 were an issue at some point, so I'm going to make a finding of
3 chemical dependence. You'll have some treatment when you get
4 out. \$500 Victim Assessment, \$200 in court costs, the DNA fee.
5 And we'll leave restitution open. \$5 a month; we'll start that
6 on January 2nd of next year.

7 So go ahead and have a seat and we'll do the paperwork.

8 (Discussion off the record between the defendant and
9 Mr. Krzyminski.)

10 MR. KRZYMINSKI: Your Honor, if I may approach?

11 THE COURT: All right.

12 MR. KRZYMINSKI: I reviewed the Warrant of Commitment
13 and the Judgment & Sentence with Mr. Graham. It does -- it is
14 consistent with the Court's verbal order. And I'm also handing
15 up the legal financial order.

16 THE COURT: All right. I'm signing the paperwork. Is
17 there anything else?

18 MR. CIPOLLA: Nothing further --

19 MR. KRZYMINSKI: No, your Honor.

20 MR. CIPOLLA: -- from the state, your Honor. Thank
21 you.

22
23 (Proceeding concluded.)

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C E R T I F I C A T E

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I, TERRI A. COCHRAN, Official Court Reporter for Department No. 7 of the Spokane County Superior Court, do hereby certify that the foregoing transcript, entitled "Verbatim Report of Proceedings," was taken by me stenographically and reduced to the foregoing typewritten transcript at my direction and control and that the same is true and correct as transcribed.

DATED at Spokane, Washington, this 31st day of October, 2013.

Terri A. Cochran, CSR No. 3062.