

VIRGINIA:

IN THE CIRCUIT COURT OF SPOTSYLVANIA COUNTY

COMMONWEALTH OF VIRGINIA

v.

CR09 -54; 55 and CR08-1156; 1157

JERMAINE LAMONT MONTGOMERY,
B/M; dob 9/16/73; ssn 230-11-3941

Defendant

PLEA AGREEMENT

1. My name is **Jermaine L. Montgomery** and my age is 34 years.
2. I am represented by counsel whose names are Joseph Flood, Esq., Mark Gardner, Esq. and Matthew Engle, Deputy Capital Defender, and I am satisfied with their services as legal counsel.
3. I have received a copy of the warrant(s) or indictment(s) before being called upon to plea, and I have read and discussed it with my attorney, and I fully understand the charges against me in this case. I am the person named in the indictment. I have told my attorney all the facts and circumstances, as known to me, concerning the case against me. My attorney has discussed with me the nature of the charge, has explained to me the elements of the offense, and has advised me as to any possible defense I might have in this case. I have had ample time to discuss the case and all possible defenses with my attorney.
4. **STIPULATION OF FACTS:** I agree to the following summary of the Commonwealth's evidence against me (which I stipulate can all be proven by the Commonwealth) in the foregoing case, and I request that the Court accept this summary in lieu of presentation of any evidence by the Commonwealth. I further

stipulate that the Commonwealth's evidence constitutes a *prima facie* case in the instance of the crime with which I am charged.

SUMMARY:

Joyce Zhang would testify that her family owned and operated China Express restaurant in Fredericksburg and that her brother, **Yong Zhang**, age 24, worked there. On 7/3/08 around 9 PM a telephone order for 2 dinners to be delivered at 202 Charles St was received and Yong left to make that delivery. Yong was driving his Nissan automobile at the time and he had with him his cell phone and wallet containing cash and credit cards. When Yong failed to return or call the business by 10:16 PM, he was reported missing to the Fredericksburg police. (Yong Zhang's body and his car were recovered by police on 7/6/08 near Franklin, Virginia. Yong Zhang's murder so devastated his family that his father sold the restaurant that it had taken him 15 years of work to acquire and the family returned to China. A photograph of Yong Zhang with his family is attached as **Exhibit # 1**).

Marcey White, who has pleaded guilty in Fredericksburg without a sentencing agreement to Zhang's abduction, carjacking, credit card theft, plus conspiracy, would testify that she has known Montgomery for years in an on and off romantic relationship. About a week before 7/3/08, White and Montgomery took a bus to Fredericksburg seeking to stay with her sister and to secure work. However, the sister apparently didn't like Montgomery, so she asked them to leave her home which rendered them homeless. So together they planned to rob a delivery driver of his automobile and money in order to move forward with Montgomery's plan to secure a welding job in Maine. On 7/3/08 White and Montgomery took a bus to the 200 block of Charles St. in Fredericksburg. White then used her cell phone to call China Express restaurant and she ordered 2 Chinese meals to be delivered to 202 Charles St., Apt. H, a vacant apartment building. Montgomery located a blue steel pipe in the parking lot to use to subdue the deliveryman.

At approximately 9:45 PM White, who stayed in the parking lot behind 202 Charles St., saw deliveryman **Yong Zhang**'s car pull into the parking lot. Montgomery was hiding near the building entrance. White then heard Montgomery assault Zhang with the pipe. Montgomery then tossed her Zhang's car keys to White and told her to move Zhang's car closer, which she did. After doing do, she observed Zhang lying on the ground at Montgomery's feet. Zhang was stunned and bleeding from head wounds, but he was also pleading for help. Montgomery removed Zhang's wallet and cash and he also bound Zhang with a luggage cord.

Montgomery and White then put Zhang into the trunk of Zhang's car, and White tossed the blue pipe into the trunk. In helping Montgomery move Zhang's body, White got Zhang's blood on her shirt. She then drove the car with Montgomery in the passenger seat to the Lee's Hill Shopping Center in **Spotsylvania County**, pulling in behind the old Capital One building. There Montgomery again beat Zhang repeatedly with the pipe in an effort to prevent Zhang from continuing to yell for help from the trunk. Montgomery told Zhang to be quiet and they'd let him go later, but Zhang continued to cry out until he was beaten repeatedly. Montgomery broke out the rear window of the car when he missed a blow aimed at Zhang. White remained in the car during this assault. The plan remained to drive south to retrieve Montgomery's job paperwork and to let Zhang go in some remote, rural place where he would be lost long enough to allow them to eventually escape to Maine.

Montgomery then directed White to drive the car to the Bloom store so he could buy some plastic to cover the broken rear window, lest they be stopped by police. At Bloom, White parked in back and Montgomery went in the store. While Montgomery was gone, White heard Zhang yelling for help. When Montgomery returned to the car, Zhang continue to yell for help from the trunk.

White then drove the car to the rear of the Quest Diagnostics office in the same shopping center and parked near a dumpster. Montgomery got out of the car.

White got out to see what would happen. She saw Montgomery threaten Zhang again with the steel pipe unless Zhang remained quiet. When Zhang did not, Montgomery beat him again with the pipe. When Zhang continued to cry out for help, Montgomery told White to hand him the knife from the plastic Bloom bag, which knife purchase was a surprise to her. White handed Montgomery the butcher knife, which was still in its plastic case as purchased. Montgomery removed the butcher knife from its plastic case and stated "he's not going to be quiet – walk away". White then heard the sound of Zhang's last gasps as he was stabbed in the chest. White and Montgomery then used plastic & duct tape purchased in Bloom to cover the broken rear window of the car.

White then drove the car to her sister's house nearby where she and Montgomery retrieved luggage they'd hidden behind a shed. Next she drove to Four Mile Fork Shell, where Montgomery purchased gas, beer and cigarettes using Zhang's credit card.

White then drove the car south to Courtland (Southampton County) after Montgomery called his friend there, **Tony Greene**, for help. En route, they stopped once to buy more duct tape when the plastic came loose. Upon their arrival in Courtland early on 7/4/08 they met Greene and White drove Zhang's car to where Greene and Montgomery dumped Zhang's body in the woods in Sussex County. She stayed in the car while the two men disposed of the body. White then drove the car to another wooded location in Southampton County where Greene and Montgomery hid it in the woods.

White and Montgomery stayed at Greene's house that night. On 7/5/08 Greene and Montgomery dumped the bloody clothes in a dumpster behind a Duck Thru store in Southampton. Later on 7/5/08 they were all apprehended by police making purchases with Zhang's credit card at the Wal-Mart in Franklin, Va.

On 8/20/08 Marcey White began cooperating with police and prosecutors without any promises other than she would not be charged with murder – provided the evidence matched her truthful version of events. On 8/25/08 she took Detective Skebo to the location where Zhang's car glass was broken out by Montgomery as he beat Zhang, as well as the location where the murder occurred. Det. Skebo recovered broken auto glass from each location to be sent to the crime lab.

Tony Greene, who is under indictment in Sussex County for felony disposal of Zhang's body and for being an accessory after the fact to murder, would testify without any plea promises that he has been friends with Jermaine Montgomery for years, both being from the Southampton County area. He was telephoned by Montgomery late on 7/3/08 during which conversation Montgomery said he needed Greene's help. Greene then met Montgomery and White near mid-night on 7/3/08 in Southampton County. Montgomery then took Greene to the trunk of Zhang's car and showed him Zhang's body lying along side the bloody knife. Montgomery asked Greene to help him hide the body and Zhang's car. Greene then led Montgomery and White to a remote location in Sussex County where he helped Montgomery hide Zhang's body in the woods. Next the three hid Zhang's car in the woods in Southampton County. Then Greene took White and Montgomery back to his home, where they spent the night. Montgomery stayed up drinking beer and talking with Greene. Montgomery told Greene that he had robbed Zhang to get his car, but that Zhang would keep quiet so he had to kill him. On 7/5/08 Greene and Montgomery disposed of Montgomery and White's bloody clothing in a dumpster at the Duck Thru store near Franklin. Later that day they all went to the Wal-Mart in Franklin for groceries, beer and cigarettes, which Marcy White purchased using Zhang's credit card. They were then apprehended at Wal-Mart by the police.

Young Zhang's wallet containing Jermaine Montgomery's identification was found by police in Marcey White's purse.

Detective Grayson Hopkins of Fredericksburg and Detective Troy Skebo of Spotsylvania would testify that upon police being notified on 7/3/08 of Zhang's disappearance, officers went to 202 Charles St. and discovered a trail of blood and one of Yong Zhang's shoes. (See Photo **Exhibit # 2** attached). Police then traced the cell phone number used to call in the China Express order to Marcey White's phone. The police then began tracking White's cell phone as White and Montgomery used it as they drove south in Zhang's stolen car. The Virginia State Police then also joined in the investigation to assist and officers apprehended Montgomery, White and Greene at the Franklin, Va. Wal-Mart on 7/5/08 after tracing White's cell phone there. Greene promptly began to assist the State Police by leading them to both Zhang's body and to his stolen car. (See photo **Exhibit #3** attached; See Medical Examiner's autopsy report attached as **Exhibit #4**).

Inside Zhang's stolen car, the police recovered the bloody kitchen knife used to slay Zhang, its handle wrapped in rubber gloves. Located in the trunk of the car was the metal pipe used to subdue and to beat Zhang, along with Zhang's other shoe. (See photo **Exhibit # 5** attached).

The police then processed the car and its contents for forensic evidence, which processing had also been done earlier at 202 Charles St. in Fredericksburg, as well as with Yong Zhang's body. Certificates of analysis (attached as **Exhibits # 6 - 10**) from the Dept. of Forensic Science corroborate White's version of events as follows:

- Yong Zhang's DNA was found in the blood on the knife, the metal pipe and at the 202 Charles St. abduction scene as well as in the trunk of his car;
- DNA from Zhang's blood was also found on Montgomery's blue jeans, which Montgomery had hidden in the Duck Thru dumpster. Montgomery's DNA was also found in the pocket of the same jeans;
- Montgomery and White's fingerprints were found on the plastic knife carton recovered from Zhang's car;
- Montgomery's fingerprints were found on the contents of Zhang's wallet;

- Montgomery and White's fingerprints were found on the plastic bags and duct tape used to patch Zhang's car window;
- Montgomery's DNA was found on a cigarette butt left behind at the 202 Charles St. abduction scene;
- Montgomery's fingerprints were found on the 7/3/08 Four Mile Fork Shell credit card receipt. (See photo **Exhibit # 11 B** attached).
- The auto glass fragments recovered from the various locations identified by Marcey White, including the murder scene, were largely consistent with the rear glass from Zhang's recovered Nissan automobile;
- Plus the surveillance video from Four Mile Fork Shell recovered by police shows Montgomery using Zhang's credit card as he purchased gas, beer and cigarettes at 10:47 PM on 7/3/08. (See photo **Exhibit # 11 A** attached).

5. My attorney has advised me that the offense charges, as follows:

- **Capital Murder** during a robbery in violation of Code section 18.2-31; **and/or**
- **Capital Murder** during an abduction for pecuniary benefit in violation of Code section 18.2-31
Punishment: Death or life imprisonment without parole
- **Robbery** in violation of Code section 18.2-58 – punishable from 5 years to life imprisonment;
- **Abduction for Pecuniary Benefit** in violation of Code section 18.2-48 – punishable from 20 years to life imprisonment and a fine up to \$100,000.

6. I understand that I may, if I so choose, plead "not guilty" to any charge against me, and that if I do plead "not guilty" the Constitution guarantees me (a) the right to a speedy and public trial by jury; (b) the process of the Court to compel the production of any evidence and attendance of witnesses in my behalf; (c) the right to have the assistance of a lawyer at all stages of the proceedings; (d)

the right against self-incrimination; and (e) the right to be confronted by my accuser.

7. I understand that by pleading guilty I waive my right to an appeal and that I am admitting that I committed the offense(s) as charged and that the only issue to be decided by the Court is punishment. I further understand that I am waiving my right to a pre-sentence report.

8. I understand that the Commonwealth's Attorney has agreed to recommend to the Court the following specific punishment as the appropriate disposition in this case, as follows:

- Considering that the court ruled on 6/16/09 that the evidence of the post-mortem mutilation of Yong Zhang's body was caused by vultures rather than by Montgomery's actions, as was originally believed by the police and prosecution; and considering that without such evidence of depravity on the part of the accused, which is one of two required elements, one of which must be proven in order for a jury to impose a death sentence per Code section 19.2-264.4(C), the likelihood of the prosecution securing a death sentence is greatly reduced; and
- Further considering that Spotsylvania juries have not imposed a death sentence in a capital case in the last 30 years;
 - See Michael Morris – tried by a jury in 2000 for capital murder, robbery, sexual assault and abduction in which the victim was left locked naked in her car trunk to “cook alive” in July heat – sentenced to life imprisonment; and
 - See also Lee Undercoffer - tried by a jury in 1980 for raping, strangling and burning alive a young girl – sentenced to life imprisonment; and

- Further considering that the Zhang family has returned to China where Mrs. Zhang has become gravely ill, so that a return to the U.S. would impose a hardship upon this family; and
- Further considering that it will cost Virginia taxpayers up to 1 million dollars more to prosecute this case further in the pursuit of an unlikely death sentence, which taxpayer expense is greatly reduced by a guilty plea;
 - A. Accordingly, upon Montgomery's **guilty plea to capital murder committed during a robbery**, as well as to **robbery and abduction for pecuniary benefit**, the Commonwealth agrees to *nolle prosequi* the indictment charging capital murder during an abduction.
 - B. The Commonwealth further agrees to the following sentences as a condition of this plea agreement:
 - **Capital Murder – life imprisonment without parole; and**
 - **Robbery – life in prison; and**
 - **Abduction – life in prison.**

9. I understand that the Court may or may not follow the Commonwealth's Attorney's recommendation and may accept or reject this plea agreement. I understand that if the Court rejects this agreement, I will be permitted to withdraw my plea of guilty if I so desire, and if I do not withdraw my guilty plea neither side is bound by this agreement and the Court may impose any sentence within the limits set forth in Paragraph 5, which disposition may be less favorable to me than is contained in this agreement.

10. I declare no officer or employee of the State or County or Commonwealth's Attorney's office, or anyone else, has made any promise to me except as contained in this agreement.

11. After having discussed the matter with my attorney, I do freely and voluntarily plead guilty to the offense(s) of **Capital Murder during a robbery; robbery, and abduction for pecuniary benefit** and waive my right to a trial by jury and request the Court to hear all matters of law and fact.

Signed by me in the presence of my attorney on this 29th day of June, 2009.

Jermaine L. Montgomery, Defendant

CERTIFICATE OF DEFENDANT'S COUNSEL

The undersigned attorney for the above-named defendant, after having made a thorough investigation of the facts relating to this case, do certify that I have explained to the defendant the elements of the charges in this case; and that the defendant's plea of guilty is voluntarily and understandingly made.

Joseph T. Flood, Esq.
Counsel for the defendant

Mark S. Gardner, Esq.
Counsel for the defendant

Matthew L. Engle, Esq.
Deputy Capital Defender

CERTIFICATE OF COMMONWEALTH'S ATTORNEY

The above accords with my understanding of the facts in this case, and I further certify that, when applicable upon the written request of the victim, I have consulted with such victim(s) and I have notified him/her of the right to be present at this hearing pursuant to Section 19.2-11.01 of the Code of Virginia.

COMMONWEALTH OF VIRGINIA

By _____
William F. Neely
Commonwealth's Attorney

The Court, being of the opinion that the plea of guilty and waiver of jury trial are voluntarily made, and that the defendant understands the nature of the charges and the consequences of said plea of guilty, doth accept the same and concur therewith.

Filed and made a part of record this 29th day of June, 2009.

D.H. Beck, Judge