

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable Kristi F. Curtis, Circuit Court Judge

HERMAN HUGHES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001415

APPENDIX

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ORDER GRANTING RIGHT TO SEEK BELATED APPELLATE REVIEW
PURSUANT TO AUSTIN V. STATE4728

1 GENERAL PSYCHIATRY BY THE AMERICAN BOARD OF
2 PSYCHIATRY AND NEUROLOGY, AND IN FORENSIC PSYCHIATRY
3 BY THE AMERICAN BOARD OF FORENSIC PSYCHIATRY.

4 Q. HAVE YOU PUBLISHED ANY ARTICLES OR BOOKS?

5 A. A FEW, YES.

6 Q. COULD YOU NAME JUST A COUPLE?

7 A. WHEN I WAS IN BOSTON, I PUBLISHED A SHORT
8 ARTICLE IN THE AMERICAN JOURNAL OF PSYCHIATRY. THERE
9 IS ANOTHER ARTICLE IN MORE OF A LEGAL JOURNAL THAN A
10 MEDICAL JOURNAL CALLED "CHAMPION", I THINK IT WAS.
11 THAT MUST HAVE BEEN LATE '70S, EARLY '80S. AND THEN
12 A SHORT ARTICLE IN A BRITISH PUBLICATION ON BASICALLY
13 A MALPRACTICE CASE.

14 Q. OKAY. IN ADDITION TO YOUR PRIVATE
15 PRACTICE AND YOUR TEACHING ACTIVITIES, DO YOU DO ANY
16 CONSULTING WORK?

17 A. YES. LOTS OF CONSULTING. THE BULK OF MY
18 WORK REALLY IS CONSULTING.

19 Q. IT WAS IN THAT CAPACITY THAT I CONTACTED
20 YOU CONCERNING THIS CASE?

21 A. YES.

22 Q. AND SPECIFICALLY HERMAN HUGHES?

23 A. YES.

24 Q. DID YOU EVALUATE HERMAN HUGHES?

25 A. YES, I DID.

1 Q. ALL RIGHT, SIR. WOULD YOU TELL THE LADIES
2 AND GENTLEMEN OF THE JURY WHAT YOUR EVALUATION
3 CONSISTED OF?

4 A. OKAY. BASICALLY, A PSYCHIATRIC
5 EXAMINATION IS PRETTY MUCH LIKE ANY OTHER KIND OF
6 MEDICAL EXAMINATION. IT CONSISTS OF TAKING A HISTORY
7 FROM THE PATIENT, DOING AN EXAMINATION, AND THEN
8 DOING ANY SORT OF DIAGNOSTIC TESTING THAT MAY NEED TO
9 BE DONE. IN PSYCHIATRY, PARTICULARLY IN THESE KINDS
10 OF CASES, THAT HISTORY IS TAKEN NOT ONLY FROM THE
11 PATIENT, WHAT THE PATIENT CAN TELL YOU, BUT FROM ANY
12 OTHER KINDS OF INFORMATIONAL SOURCES THAT YOU CAN
13 ROUND UP. IT MAY BE LEGAL DOCUMENTS, MEDICAL
14 RECORDS, SCHOOL RECORDS OR WHATEVER ELSE.

15 AND THE EXAMINATION PART IS DONE A BIT
16 DIFFERENTLY. WE DO WHAT'S CALLED A MENTAL STATUS
17 EXAMINATION, WHICH IS A SPECIALIZED WAY OF EXAMINING
18 A PERSON BY TALKING WITH THEM AND OBSERVING THEM. SO
19 THAT'S WHAT WAS DONE. I WILL TELL YOU MORE ABOUT
20 THAT, BUT I JUST WANTED TO LET YOU KNOW THAT IT'S
21 PRETTY MUCH JUST A LITTLE VARIATION ON A STANDARD
22 MEDICAL PROCEDURE.

23 I SAW HERMAN HUGHES ON AUGUST 21, AUGUST 25 AND
24 SEPTEMBER THE 4TH. I GOT THE HISTORY THAT HE COULD
25 TELL ME ABOUT THIS. I ALSO HAD MEDICAL RECORDS FROM

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1 HIS DELIVERY, ACTUALLY. AND THAT WAS FROM THE
2 ORANGEBURG HOSPITAL IN JULY OF 1977. I HAD RECORDS
3 FROM THE SCHOOL SYSTEM, CALHOUN SCHOOL SYSTEM. I HAD
4 REPORTS FROM THE SOCIAL WORKER, MS. BUDDY, WHO HAS
5 DONE A LENGTHY INVESTIGATION OF THE SORT OF FAMILY
6 BACKGROUND OF THIS PATIENT. AND I THINK THAT'S ALL
7 OF THE RECORDS I ACTUALLY HAD.

8 SHOULD I TELL YOU A LITTLE BIT ABOUT THE HISTORY
9 OR --

10 Q. YES, IF YOU WOULD.

11 A. OKAY. THE HISTORY, SORT OF PULLING ALL OF
12 THAT TOGETHER, HE HAD A NORMAL BIRTH, BASICALLY.
13 NORMAL PREGNANCY, NORMAL LABOR, NORMAL DELIVERY AND
14 THAT SORT OF THING. HIS PARENTS LIVED WITH HIS
15 GRANDPARENTS, AND THE GRANDPARENTS BASICALLY ASSUMED
16 MOST OF THE RESPONSIBILITY FOR CARING FOR HIM. AT
17 THE AGE OF FOUR, HE WAS ADOPTED BY HIS GRANDPARENTS,
18 AND THEN THEY BECAME THE LEGAL PARENTS OF HERMAN.
19 HIS MOTHER AT SOME POINT, BOTH PARENTS, ACTUALLY,
20 MOVED OUT OF THE HOME, AND HE STAYED, OF COURSE, AT
21 HIS GRANDPARENTS' HOME, AND THEY BASICALLY HAD ALL OF
22 THE RESPONSIBILITY FOR HIM. THEY WERE HIS PARENTS,
23 BASICALLY.

24 THE MAIN THING THAT COMES OUT OF THE HISTORY,
25 JUST SORT OF BOTTOM LINE, FROM THE SCHOOL RECORDS AS

1 WELL AS FROM THE SOCIAL SERVICE RECORDS AND THE
2 PATIENT'S OWN REPORT IS THAT HE IS RIGHT ON THE
3 BORDERLINE OF RETARDATION. HE HAD -- HE HAD TO
4 REPEAT THE FIRST GRADE, THE FOURTH GRADE AND THE
5 SIXTH GRADE. HE'S HAD I.Q. TESTS IN 1986 WAS THE
6 FIRST ONE. I THINK -- I THINK HIS OVERALL SCALE --
7 SCORE ON THAT WAS ABOUT 80. HE WAS EIGHT-AND-A-HALF
8 YEARS OLD AT THAT TIME. HE HAD PROBLEMS WITH
9 READING. HE HAD THE VISUAL MOTOR -- THAT IS, THE
10 COORDINATION KIND OF SKILLS OF ABOUT A FIVE OR SIX
11 YEAR OLD, AND ON SOME OF THE OTHER TESTS FOR SOCIAL
12 MATURITY AND ABILITY TO DO THINGS, HE WAS WELL BELOW
13 AVERAGE.

14 IN THE -- LATER ON, A FEW YEARS LATER ON, I
15 THINK IT WAS 1991, HE WAS -- ALL OF THIS ENDED UP
16 WITH HIM BEING IDENTIFIED AS LEARNING DISABLED
17 BECAUSE HIS I.Q. WE KNEW WAS IN SO-CALLED BORDERLINE
18 RANGE. THE CUTOFF POINT FOR MENTAL RETARDATION IS
19 70, ALTHOUGH THAT'S KIND OF AN ARBITRARY POINT. SO,
20 YOU KNOW, HE REALLY IS RIGHT ON THAT BORDERLINE
21 THERE. AND EVEN IN '86, AT 80, THAT'S NOT SO GOOD,
22 ESPECIALLY WITH THE OTHER TESTS SHOWING HIS
23 PERFORMANCE BEING LOW. IN '91 -- FEBRUARY OF '91, HE
24 HAD ANOTHER I.Q. TEST WHICH SHOWED HIM AT 68. THAT
25 PUTS HIM IN THE MENTALLY RETARDED CATEGORY, BUT ALL

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1 OF THESE ARE REALLY JUST KIND OF SHADES OF GRAY.

2 ON THE -- SOME OF THE OTHER TESTING, HE HAD THE
3 MENTAL AGE OF ABOUT A NINE YEAR OLD. AT THAT TIME,
4 HE WAS 14, I THINK. HIS MENTAL ABILITY AND HIS
5 ACADEMIC ACHIEVEMENT, WHAT HE WAS ABLE TO DO AND WAS
6 DOING IN SCHOOL WAS WELL BELOW AVERAGE. AGAIN, HE
7 WAS IDENTIFIED AS BEING LEARNING DISABLED. HIS I.Q.
8 TEST AGAIN IN MAY OF THAT SAME YEAR IN '91 SHOWED A
9 74. YEAH. SO IT'S ALMOST AS IF THERE'S A DOWNWARD
10 DRIFT HERE IN HIS INTELLIGENCE.

11 ON ANOTHER TEST, WHICH MEASURES SORT OF HOW YOU
12 CAN DO THINGS, THIS -- THIS COORDINATION BUSINESS, HE
13 WAS ABOUT AT THE SEVEN OR EIGHT-YEAR-OLD LEVEL WITH
14 THAT. HIS MENTAL AGE WAS ABOUT NINE, WHEN IN FACT,
15 HE WAS 14.

16 THE SCHOOL RECORDS ALSO SHOW WHAT IS PRETTY
17 CLEAR EXAMPLES OR ILLUSTRATIONS -- OBSERVATIONS OF
18 WHAT'S CALLED AN ATTENTION DEFICIT AND HYPERACTIVITY
19 DISORDER. MOST OF YOU PROBABLY KNOW WHAT THAT IS,
20 BUT IT'S JUST WHAT IT SAYS. THE CHILD HAS PROBLEMS
21 PAYING ATTENTION. THEY CAN'T FOCUS. THEY ARE EASILY
22 DISTRACTED. THEY CAN'T SIT STILL. THE TEACHER'S
23 OBSERVATIONS -- I THINK IT'S REALLY PRETTY CLEAR THAT
24 THIS WAS A PROBLEM EARLY ON.

25 THE HISTORY ALSO INDICATED THAT HE GOT INTO SOME

1 MINOR PROBLEMS. AGAIN, A PART OF THIS -- I THINK
2 MORE THE ATTENTION DEFICIT HYPERACTIVITY WITH HIS
3 BEHAVIOR. WHEN KIDS CAN'T PERFORM AND KEEP UP, THAT
4 TENDS TO COME OUT IN BEHAVIOR. HIS WAS MORE NUISANCE
5 BEHAVIOR, NO BIG PROBLEMS, BUT HE HAD ACCUMULATED
6 ABOUT FOUR INFRACTIONS, AS I RECALL, AND HE ENDED UP
7 GETTING EXPELLED FROM SCHOOL, AND I THINK THAT WAS IN
8 '91 AS WELL. AND SO WE SEE SORT OF A DOWNWARD DRIFT
9 OF HIS ABILITIES AND HIS BEHAVIOR FROM ABOUT THE TIME
10 HE BEGINS TO HIT PUBERTY.

11 THE ONLY CONSISTENT FATHER FIGURE THAT HE HAD
12 WAS HIS GRANDFATHER. THEY HAD A GOOD RELATIONSHIP
13 UNTIL THE GRANDFATHER HAD A STROKE. THEY WERE ABLE
14 TO KEEP HIM AT HOME FOR A WHILE. ACCORDING TO THE
15 REPORTS, HERMAN WAS VERY HELPFUL WITH HIS GRANDFATHER
16 HELPING THE GRANDMOTHER TAKE CARE OF HIM WITH THE
17 THINGS THAT ONE HAS TO DO WITH A STROKE PATIENT, BUT
18 IT GOT TO THE POINT THEY COULDN'T MANAGE HIM AND HE
19 HAD TO GO INTO A NURSING HOME. AND IT LOOKS LIKE
20 FROM THE HISTORY THAT HERMAN'S BEHAVIOR, AGAIN, TOOK
21 SORT OF A DOWNWARD TURN AT THAT POINT WHEN THE ONLY
22 STABLE FATHER FIGURE WAS NOT IN THE PICTURE ANYMORE.

23 THE EXAMINATION ITSELF, THAT IS, THE MENTAL
24 STATUS EXAMINATION, REVEALED A YOUNG MAN WHO JUST
25 DIDN'T SHOW MUCH FEELING AT ALL. HE WAS REALLY KIND

1 OF FLAT EMOTIONALLY. DIDN'T HAVE A WHOLE LOT TO SAY.
2 HE WAS COOPERATIVE. HE RESPONDED TO QUESTIONS.
3 CLEARLY HAD SOME PROBLEMS WITH HIS INTELLECTUAL
4 ABILITY.

5 THE SENSE WAS THAT HE WAS DEPRESSED, ALTHOUGH HE
6 COULD NOT ARTICULATE THAT, BUT HIS EXPRESSIONS WOULD
7 CERTAINLY LEAD ONE TO THINK THAT HE FELT DEPRESSED.
8 BUT THERE WAS NOTHING STRIKING ABOUT HIS BEHAVIOR OR
9 WHAT HE SAID -- HE WASN'T OUT OF HIS MIND, IN OTHER
10 WORDS. THE MAIN THING WAS THE MENTAL SLOWNESS, I
11 GUESS YOU COULD SAY.

12 HE -- THE OTHER SIDE OF THAT, THE DIAGNOSTIC
13 TESTING THAT I MENTIONED, HE HAD HAD A WORKUP AT
14 ANOTHER HOSPITAL, A FULL BATTERY OF PHYSICAL KINDS OF
15 STUDIES WHICH WE USUALLY DO IN THESE KINDS OF CASES.
16 I HAVE NOT SEEN THOSE REPORTS, BUT I'M TOLD THAT ALL
17 OF THAT WAS NORMAL. SOMETIMES PHYSICAL THINGS CAN
18 CAUSE BEHAVIOR PROBLEMS. I DON'T THINK THAT'S THE
19 CASE HERE.

20 HE DID HAVE A PSYCHOLOGICAL TESTING IN THE
21 OFFICE, DID A COUPLE OF TESTS ACTUALLY. THIS TEST
22 INDICATES THAT HE PROBABLY HAS A -- WHAT'S CALLED A
23 PERSONALITY DISORDER. IT'S SORT OF ON THE CUTTING
24 POINT OF THAT BECAUSE YOU WOULDN'T MAKE THIS
25 DIAGNOSIS IF HE WAS A LITTLE BIT YOUNGER, BUT IT'S IN

1 THE -- CLINICALLY, IT WOULD FALL INTO -- THAT IS, IF
2 I DIDN'T HAVE TO GIVE HIM A DIAGNOSIS, I COULD JUST
3 SAY WHAT WAS WRONG WITH HIM. I WOULD SAY IT'S A
4 PERSONALITY DISORDER.

5 WE MIGHT ARGUE WHETHER THIS IS TECHNICALLY THE
6 PRECISE DIAGNOSIS, BUT BASICALLY WHAT IT MEANS IS
7 THAT HE'S VERY, VERY SENSITIVE. HE IS A VERY
8 DEPENDENT KIND OF PERSON. HE TENDS TO KEEP A LOT OF
9 THINGS INSIDE. HE TENDS TO BE PASSIVE FOR THE MOST
10 PART.

11 THE OTHER THING THAT THE TEST PICKED UP ON IS
12 THE TENDENCY TO DRINK TOO MUCH. HE'S GOT SORT OF A
13 -- HOW DO I SAY -- I CAN'T SAY THAT THAT'S BEEN A
14 MAJOR PROBLEM, BUT HE'S GOT SOME TENDENCIES THAT
15 STRONGLY INDICATE THAT HE COULD HAVE PROBLEMS WITH
16 ALCOHOL OR DRUGS. SOME ASPECTS OF HIS PERSONALITY
17 WOULD SAY THAT HE'S -- THERE'S A STRONG CHANCE HE
18 MIGHT HAVE PROBLEMS LIKE THAT. SO ALL OF THAT WAS A
19 PART OF THE EVALUATION.

20 THE BOTTOM LINE IN TERMS OF THE DIAGNOSIS IS
21 MENTAL RETARDATION OR BORDERLINE MENTAL ABILITY, AT
22 LEAST; THE LEARNING DISABILITY, WHICH WAS PICKED UP
23 IN SCHOOL AND NEVER REALLY ADEQUATELY ADDRESSED; THE
24 ATTENTION DEFICIT HYPERACTIVITY DISORDER, AGAIN,
25 SOMETHING THAT WAS NOT ADEQUATELY ADDRESSED AND

1 TREATED; AND THE PERSONALITY DISORDER; AND THE
2 POTENTIAL PROBLEM WITH ALCOHOL.

3 Q. ALL RIGHT. DOCTOR, WHAT DOES THIS MEAN AS
4 FAR AS HOW HERMAN DEVELOPED AND HOW IT IMPACTED ON
5 HIS BEHAVIOR LEADING TO THE ACTIONS OF MARCH 18TH,
6 1994?

7 A. WELL, I THINK THAT THE -- THE PATTERN IS A
8 FAIRLY COMMON ONE. THE EXTREME BEHAVIOR IS NOT
9 COMMON, FORTUNATELY. BUT THE DOWNWARD DRIFT IS
10 CERTAINLY A COMMON PATTERN IN PEOPLE WHO CAN'T QUITE
11 KEEP UP. HERMAN IS BRIGHT ENOUGH TO KNOW THAT HE'S
12 NOT AS BRIGHT AS HIS PEERS, THE OTHER KIDS,
13 BASICALLY. THAT LEADS HIM TO -- TO FEEL INADEQUATE
14 AND TO FEEL INFERIOR AND TO BE -- AS WE ALL KNOW,
15 KIDS CAN BE CRUEL -- TO BE SUBJECTED TO THE KINDS OF
16 TAUNTING OR ABUSE OR WHATEVER THAT KIDS DO WHEN THEY
17 SEE SOMEBODY THAT DOESN'T QUITE FIT IN. SO HE'S MORE
18 SENSITIVE. HE'S MORE EASILY HURT. HE CARRIES AROUND
19 RESENTMENT BECAUSE HE'S KIND OF LEFT OUT IN ALL OF
20 THIS. AS HE GETS A LITTLE BIT OLDER, THAT TENDS TO
21 LEAD TO BEHAVIOR PROBLEMS.

22 THE DEPRESSION THAT GOES ALONG WITH THAT NOT
23 FITTING IN, NOT BEING ACCEPTED, THE NEED TO BE
24 ACCEPTED, THE DESIRE TO BE ONE OF THE -- ONE OF THE
25 GUYS LEADS HIM TO BE MORE OF A FOLLOWER TO SORT OF

1 TRY TO FIT IN. THE PROBLEM IS THAT THE GOOD GUYS
2 DON'T REALLY WANT TO ASSOCIATE WITH SOMEBODY WHO IS
3 NOT QUITE UP TO PAR, THAT DOESN'T QUITE MEET THEIR
4 EXPECTATIONS AT LEAST. AND SO AGAIN THAT DOWNWARD
5 DRIFT. HE FALLS IN WITH SOME OF THE PEOPLE WHO ARE
6 PROBABLY NOT SOME OF THE BEST KIDS AROUND. AND THAT
7 SIMPLY LEADS TO MORE -- MORE BEHAVIOR PROBLEMS.

8 SO THE SENSITIVITY AND THE RESENTMENT LEADS TO
9 DEPRESSION AND THE NEED FOR ACCEPTANCE, AND ALL OF
10 THAT LEADS TO BEING MORE SENSITIVE AND MORE EASILY
11 REJECTED. THAT TENSION BUILDS. HE PROBABLY DRINKS
12 ALCOHOL. THAT HELPS FOR A LITTLE WHILE. IT RELIEVES
13 SOME OF THAT. BUT IF HE DRINKS TOO MUCH, THEN SOME
14 OF THAT ANGER OR RESENTMENT IS LIKELY TO COME OUT.

15 Q. WOULD YOU CHARACTERIZE HIM AS BEING
16 PASSIVE OR AGGRESSIVE?

17 A. MORE LIKELY PASSIVE, BUT THE PROBLEM WITH
18 PASSIVITY IS MOST OF THE TIME PEOPLE WHO ARE PASSIVE
19 SOONER OR LATER, AS THE STRAW BREAKS THE CAMEL'S
20 BACK, THEN ALL OF THAT THAT'S BEEN BOTTLED OUT COMES
21 OUT, AND I THINK THAT'S THE RISK THAT YOU SEE IN
22 PASSIVE/AGGRESSIVE PEOPLE.

23 Q. CAN YOU EXPLAIN THE CAUSE OR WHY A PERSON
24 HAS THESE PROBLEMS?

25 A. CAUSE IS NOT KNOWN VERY WELL. I THINK

1 THAT WE CAN -- CAN TALK ABOUT SOME FACTORS THAT ARE
2 COMMON. WHETHER THEY ARE THE CAUSE OR NOT, I CAN'T
3 REALLY SAY. BUT OBVIOUSLY, HIS -- HIS INTELLECTUAL
4 PROBLEMS ARE RELATED TO SOMETHING BIOLOGICAL, OR MOST
5 LIKELY THEY ARE. THAT IS, GENETIC OR SOMETHING THAT
6 HAPPENED BEFORE HE WAS BORN, THOSE KINDS OF THINGS.
7 SO THERE ARE BIOLOGICAL CAUSES.

8 WE DON'T REALLY UNDERSTAND LEARNING
9 DISABILITIES. IT'S A SPECIAL KIND OF DIFFICULTY IN
10 PROCESSING INFORMATION. PEOPLE WHO ARE NOT MENTALLY
11 RETARDED CAN CERTAINLY HAVE LEARNING DISABILITIES.
12 THAT WE DON'T REALLY UNDERSTAND VERY WELL. BUT -- SO
13 HE'S GOT SOME BIOLOGICAL PROBLEMS, SOME GENETIC
14 PROBLEMS IN ALL LIKELIHOOD.

15 WE ALSO TEND TO SEE A FAMILIAL PROBLEM. THAT IS
16 THESE KINDS OF PROBLEMS TEND TO RUN IN FAMILIES. I
17 FORGOT TO MENTION THAT I DID SEE THE RESULTS OF A
18 PSYCHOLOGICAL TEST ON HIS MOTHER WHICH SHOWED A
19 PATTERN VERY SIMILAR TO THE TEST THAT HERMAN HAD.
20 THEY WERE NOT EXACTLY THE SAME TESTS, BUT THE RESULTS
21 THAT CAME OUT OF THAT TEST, BOTH TESTS, WERE REALLY
22 VERY SIMILAR, AND THERE'S SOME EVIDENCE THAT
23 PERSONALITY PROBLEMS CAN BE INHERITED OR TEND TO RUN
24 IN FAMILIES OR SOMETHING LIKE THAT. AND SO THERE'S
25 ALSO THE POSSIBILITY OF THAT BEING A GENETIC THING OR

1 SOMEHOW LEARNED FROM HIS MOTHER MAYBE.

2 AND THEN THERE ARE THE EXPERIENCES. HE DID NOT
3 HAVE THE KIND OF STABILITY AND CONSISTENCY IN HIS
4 HOME. HE WAS REJECTED. IT WOULD APPEAR AT LEAST
5 FROM HIS REPORT AND THE RECORDS THAT HE WAS BASICALLY
6 REJECTED BY HIS BIOLOGICAL PARENTS. HIS GRANDPARENTS
7 APPARENTLY PROVIDED A VERY WARM AND LOVING HOME FOR
8 HIM. THE GRANDFATHER THEN GETS SICK AND IS KIND OF
9 OUT OF THE PICTURE. I THINK THAT'S AGAIN ANOTHER
10 LOSS. SO WE SEE A LOT OF LOSSES IN HIS LIFE. I
11 MEAN, THAT'S THE PSYCHOLOGICAL SIDE OF THE PROBLEM.

12 Q. OKAY. DOCTOR, AS I WAS GOING THROUGH YOUR
13 LONG LIST OF QUALIFICATIONS, I NEGLECTED TO ASK YOU A
14 COUPLE OF QUESTIONS ABOUT YOUR QUALIFICATIONS. HAVE
15 YOU EVER TESTIFIED IN A COURT OF LAW AND BEEN
16 CERTIFIED AS AN EXPERT?

17 A. OH, YES.

18 Q. IN WHAT AREAS?

19 A. IN WHAT AREAS?

20 Q. YES, SIR.

21 A. CERTAINLY THE AREA OF PSYCHIATRY.

22 Q. OKAY.

23 A. ACROSS THE BOARD.

24 Q. FORENSIC PSYCHIATRY?

25 A. FORENSIC PSYCHIATRY, SURE.

1 Q. AND HOW MANY TIMES HAVE YOU TESTIFIED AS
2 AN EXPERT AND BEEN QUALIFIED AS AN EXPERT?

3 A. OH, LET'S SEE. SINCE 1967, PROBABLY ONCE
4 OR TWICE A MONTH. SO WHATEVER THAT FIGURES OUT TO
5 BE. MAYBE 100 TIMES, 200 TIMES; SOMETHING LIKE THAT.

6 MR. NEWSOME: I WOULD MOVE TO QUALIFY HIM
7 AS AN EXPERT, YOUR HONOR.

8 MR. BAILEY: NO OBJECTION.

9 THE COURT: YES, SIR. HE'S QUALIFIED AS
10 AN EXPERT.

11 BY MR. NEWSOME:

12 Q. AND DOCTOR, JUST TO MAKE IT CLEAR IN
13 CLOSING FOR THE LADIES AND GENTLEMEN OF THE JURY,
14 WHERE WOULD YOU SAY BASED ON YOUR EVALUATION AND
15 EXPERIENCE HOW HERMAN WOULD FIT IN WITH THE GENERAL
16 PUBLIC AS FAR AS HIS INTELLECTUAL ABILITY?

17 A. WELL, THE TEST THAT SHOWED WHAT IS CALLED
18 ACHIEVEMENT, HOW WELL ONE FUNCTIONS, IN 1991 WHEN
19 THAT LAST BATCH OF TESTS WERE DONE, HE IS IN THE ONE
20 PERCENTILE IN TERMS OF READING AND SPELLING AND THE 3
21 PERCENTILE IN WRITTEN TESTS. NOW, WHAT THAT MEANS,
22 IF YOU'VE GOT 100 KIDS IN THE CLASS, 99 ARE BETTER
23 THAN HE IS IN READING AND SPELLING, AND 97 ARE BETTER
24 THAN HE IS IN ARITHMETIC. SO THAT TELLS YOU
25 SOMETHING ABOUT HIS PERFORMANCE ABILITY.

1 MR. NEWSOME: PLEASE ANSWER ANY QUESTIONS
2 THE SOLICITOR HAS FOR YOU.

3 C R O S S - E X A M I N A T I O N
4 BY MR. BAILEY:

5 Q. DR. MORGAN, YOU ARE BOARD CERTIFIED AS A
6 FORENSIC PSYCHIATRIST?

7 A. THAT'S RIGHT.

8 Q. AND WHAT'S THE DIFFERENCE IN A FORENSIC
9 PSYCHIATRIST AND A PSYCHIATRIST?

10 A. WELL, IT USUALLY MEANS THAT ONE HAS AN
11 INTEREST IN THE SUBSPECIALTY OF PSYCHIATRY CALLED
12 FORENSIC PSYCHIATRY, WHICH DEALS WITH THOSE PATIENTS
13 WHO HAVE AT LEAST SOME QUESTION ABOUT THEIR MENTAL
14 CAPACITY AS WELL AS SOME LEGAL ISSUE INVOLVED.

15 Q. OKAY. SO -- AND YOU'RE BOARD CERTIFIED AS
16 A FORENSIC PSYCHIATRIST; IS THAT RIGHT?

17 A. THAT'S RIGHT.

18 Q. WHAT DOES THAT MEAN TO BE BOARD CERTIFIED?
19 YOU'RE TESTED?

20 A. YES. THE TEST HAS BEEN CHANGED SOME, BUT
21 WHEN I TOOK IT, YOU HAD TO GO THROUGH A PERIOD OF --
22 LET ME THINK A MINUTE. THAT WAS IN 1981. YOU HAD TO
23 TAKE A BATTERY OF WRITTEN TESTS, AND THEN IF YOU
24 PASSED THAT, YOU HAD TO TAKE SOME ORAL TESTS WHERE
25 YOU WERE PRESENTED PATIENTS BY SENIOR MEMBERS OF THE

1 FIELD AND THEN HAD TO EXAMINE THAT PATIENT, AND ASK
2 -- ANSWER QUESTIONS ABOUT PATIENTS WHICH THE
3 EXAMINERS ASK YOU. SO IT WAS A TWO-STAGE PROCESS.

4 Q. SO IT'S --

5 A. IT'S REALLY --

6 Q. I'M SORRY. I DIDN'T MEAN TO CUT YOU OFF.

7 A. IT'S JUST ICING ON THE CAKE. IT JUST
8 SAYS, YOU KNOW, THAT YOU SORT OF JUMPED THROUGH THE
9 HOOPS AND KNOW WHAT YOU'RE DOING, BASICALLY.

10 Q. AS A FORENSIC PSYCHIATRIST, YOU'RE GEARED
11 TOWARD EVALUATING PEOPLE IN REGARD TO COURTROOM
12 TESTIMONY AS OPPOSED TO EVALUATING PEOPLE THAT MIGHT
13 COME IN OFF THE STREET OR A REFERRAL BY ANOTHER
14 PHYSICIAN TO GET SOME HELP?

15 A. THAT'S CERTAINLY ONE ASPECT OF FORENSIC
16 PSYCHIATRY. IT'S GENERALLY FOR THE EVALUATION
17 PROCESS, ALTHOUGH -- AND NOT THE TREATMENT PROCESS.

18 Q. AND IN THIS PARTICULAR CASE, YOU WERE
19 RETAINED BY THE DEFENDANT AS AN EXPERT FORENSIC
20 PSYCHIATRIST AS OPPOSED TO BEING APPOINTED BY THE
21 COURT TO CONDUCT A COURT-APPOINTED EVALUATION; IS
22 THAT RIGHT?

23 A. I ASSUME THAT'S RIGHT, ALTHOUGH I THINK
24 THE FUNDS WERE APPROVED BY THE COURT.

25 Q. OKAY. WHAT PERCENTAGE OF THE PSYCHIATRIC

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1 WORK THAT YOU DO IS WORK FOR THE PURPOSE OF TREATMENT
2 AS OPPOSED TO EVALUATIONS FOR THE PURPOSE OF
3 TESTIFYING IN COURT FOR CRIMINAL DEFENDANTS LIKE YOU
4 ARE TODAY?

5 A. I CAN ONLY GIVE YOU JUST SORT OF A ROUGH
6 ESTIMATE OF THAT.

7 Q. OKAY.

8 A. PROBABLY TWO-THIRDS OF MY PRACTICE
9 INVOLVES FORENSIC PSYCHIATRY, WHICH IS JUST
10 EVALUATIONS, AND ONE-THIRD INVOLVES REGULAR --
11 GENERAL PSYCHIATRY, WHICH INVOLVES -- MAY INVOLVE
12 TREATING, MAY INVOLVING EXAMINATION, CONSULTATIONS,
13 WHATEVER.

14 Q. OKAY.

15 A. BUT NON-FORENSIC KIND OF WORK.

16 Q. AND IN THE FORENSIC WORK, YOU'RE EITHER
17 RETAINED BY A CRIMINAL DEFENDANT, SOMEBODY WHO'S GOT
18 LEGAL PROBLEMS, OR AN ATTORNEY FOR THOSE PEOPLE TO
19 EVALUATE AND TESTIFY IN COURT; IS THAT CORRECT?

20 A. IN THE CRIMINAL INTERFACE. MY FORENSIC
21 WORK REALLY IS MORE IN THE CIVIL END THAN THE
22 CRIMINAL END. OVER THE YEARS IT'S CHANGED, BUT IN
23 THE CRIMINAL CASES, I AM MORE LIKELY RETAINED BY THE
24 DEFENSE SINCE THE STATE HAS PSYCHIATRISTS.

25 Q. ALL RIGHT. AND HAVE YOU TESTIFIED IN THE

1 PAST AS A PSYCHIATRIST FOR THE STATE?

2 A. YES.

3 Q. OKAY. AND IN FACT, YOU WERE -- WHEN YOU
4 WERE AFFILIATED WITH THE HALL INSTITUTE, YOU
5 TESTIFIED -- YOU TESTED PEOPLE FOR THE STATE, DID YOU
6 NOT?

7 A. YES. MY INVOLVEMENT WITH HALL GOES BACK A
8 LONG TIME. I USED TO BE MORE INVOLVED, BUT -- AND
9 STILL AM A CONSULTANT TO THEM. AND IN THE PAST, WHEN
10 I DID MORE WORK FOR THEM, I TESTIFIED DEPENDING ON
11 WHO CALLED ME.

12 Q. OKAY. BUT RIGHT NOW YOU DO MORE WORK FOR
13 CRIMINAL DEFENDANTS THAN YOU DO FOR PROSECUTION; IS
14 THAT CORRECT?

15 A. YES. AS A PRIVATE PRACTITIONER, YES, SIR.

16 Q. AND WHAT IS YOUR HOURLY RATE?

17 A. TWO HUNDRED DOLLARS AN HOUR.

18 Q. OKAY. AND HOW MANY HOURS HAVE YOU GOT IN
19 THIS CASE SO FAR?

20 A. OH, I DIDN'T BRING THE -- THE BOOKKEEPING
21 WITH ME, BUT LET ME JUST THINK A MINUTE. I WOULD SAY
22 SOMEWHERE IN THE NEIGHBORHOOD -- NOT COUNTING TODAY,
23 PROBABLY 15 OR 20; SOMETHING LIKE THAT.

24 Q. FIFTEEN OR TWENTY HOURS?

25 A. RIGHT.

1 Q. AND AS FAR AS BREAKING DOWN THOSE HOURS,
2 HOW MUCH OF THOSE 15 OR 20 HOURS THAT YOU'VE GOT IN
3 THE CASE HAVE BEEN SPENT ACTUALLY FACE TO FACE WITH
4 HERMAN HUGHES DOING YOUR EVALUATION WITH HIM?

5 A. PROBABLY FIVE OR SIX OF THOSE.

6 Q. FIVE OR SIX? AND THE OTHER 10 TO 15 HOURS
7 WOULD BE PREPARATION FOR TESTIMONY HERE OR --

8 A. NO. GOING THROUGH ALL OF THOSE RECORDS --

9 Q. OKAY.

10 A. -- THAT I MENTIONED.

11 Q. OKAY.

12 A. THAT TAKES A LOT OF TIME.

13 Q. OKAY.

14 A. AND THEN TRYING TO PULL ALL OF THAT
15 TOGETHER IN SOME WAY THAT MAKES SENSE TAKES A LOT
16 MORE TIME.

17 Q. LET ME ASK YOU, YOU SAID YOU GOT A HISTORY
18 FROM HERMAN HUGHES; IS THAT RIGHT?

19 A. RIGHT.

20 Q. AND YOU GOT A HISTORY FROM HIS FAMILY,
21 TOO; CORRECT?

22 A. THROUGH THE SOCIAL WORKER, YES.

23 Q. AND YOU PERFORMED NO TESTS YOURSELF, DID
24 YOU? YOU JUST RELIED ON THE TESTING THAT WAS DONE AT
25 THE HALL INSTITUTE?

1 A. I DID NOT ORDER ANY PHYSICAL TESTING. HE
2 DID HAVE SOME PSYCHOLOGICAL TESTING IN MY OFFICE.

3 Q. OKAY. AND YOU GOT REPORTS FROM THE SCHOOL
4 SYSTEM?

5 A. RIGHT.

6 Q. TWO PSYCHOLOGICAL EVALUATIONS THERE?

7 A. RIGHT.

8 Q. AND DID YOU GET ANY POLICE REPORTS?

9 A. I DID NOT.

10 Q. YOU DID NOT GET ANY POLICE REPORTS TO FIND
11 OUT WHAT HAD OCCURRED ACCORDING TO THE POLICE?

12 A. I DID NOT SEE ANY POLICE REPORTS OR
13 STATEMENTS. THOSE WERE NOT MADE AVAILABLE TO ME.

14 Q. OKAY. DID YOU ASK MR. NEWSOME TO GIVE YOU
15 POLICE REPORTS SO YOU COULD DETERMINE WHAT HAPPENED?

16 A. I ASKED HIM ABOUT -- I ASKED HIM ABOUT
17 SOME STATEMENTS. I UNDERSTOOD THERE HAD BEEN A
18 STATEMENT. AND I DON'T RECALL SPECIFICALLY ABOUT THE
19 POLICE REPORTS, BUT I KNEW THAT THE INVESTIGATORS AND
20 THE SOCIAL WORKER WERE GATHERING THAT INFORMATION, SO
21 I ASSUMED THAT WOULD TURN UP SOONER OR LATER.

22 Q. LET ME ASK YOU THIS, DOCTOR. DID YOU KNOW
23 THAT THERE WAS A SURVIVING VICTIM, KELLY HOFFMAN, WHO
24 HAD GIVEN A TAPED STATEMENT?

25 A. I KNEW THAT, YES.

1 Q. WAS THAT PROVIDED TO YOU FOR YOUR
2 EVALUATION?

3 A. NO, IT WAS NOT.

4 Q. DID YOU MAKE ANY ATTEMPT ON YOUR OWN, NOT
5 COUNTING WHAT MR. NEWSOME MIGHT HAVE GIVEN YOU, BUT
6 ON YOUR OWN, EITHER THROUGH YOU OR YOUR STAFF, TO
7 CONTACT THE SHERIFF OR CONTACT THE VICTIM TO GET
8 INFORMATION FROM --

9 A. NO, I DIDN'T.

10 Q. -- SOMEBODY BESIDES THE DEFENDANT AND HIS
11 FAMILY?

12 A. NO, I DID NOT.

13 Q. NOW, YOU DIDN'T CONTACT THE SOLICITOR'S
14 OFFICE FOR ANY INFORMATION, DID YOU?

15 A. I DID NOT.

16 Q. WHERE IS YOUR WRITTEN REPORT?

17 A. I WAS NOT ASKED TO PREPARE A WRITTEN
18 REPORT.

19 Q. OKAY. YOU DID NOT -- AS YOU SIT HERE NOW,
20 YOU HAVE NO WRITTEN REPORT; IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. ALL RIGHT, SIR. IN YOUR MEDICAL TRAINING,
23 YOU WERE TRAINED IN SCIENTIFIC METHODS, WERE YOU NOT?

24 A. YES.

25 Q. WHAT IS THE SCIENTIFIC METHOD?

1 A. WELL, IN A NUTSHELL, IT'S TO COLLECT THE
2 EVIDENCE AND TEST IT AND COME UP WITH A WORKING
3 HYPOTHESIS.

4 Q. ALL RIGHT, SIR. AND THAT'S THE
5 CORNERSTONE OF SCIENTIFIC PROOF, THE SCIENTIFIC
6 METHOD, ISN'T IT?

7 A. WELL, TESTING, I THINK, IS THE
8 CORNERSTONE. THE REAL ESSENCE OF SCIENTIFIC METHOD
9 IS PREDICTABILITY.

10 Q. ALL RIGHT, SIR.

11 A. SO HOWEVER YOU GET TO THAT POINT.

12 Q. AND SCIENTIFIC METHOD, WHEN YOU DO
13 SOMETHING OF A SCIENTIFIC NATURE, YOU DO A WRITTEN
14 REPORT AND PUBLISH THAT FOR PEER REVIEW; IS THAT
15 CORRECT?

16 A. IF YOU'RE INTO RESEARCH, THAT'S WHAT YOU
17 DO.

18 Q. OKAY. AND PEER REVIEW IS WHEN YOU GIVE
19 OTHER PEOPLE IN YOUR PROFESSION THE OPPORTUNITY TO
20 REVIEW AND EVALUATE YOUR WORK; IS THAT CORRECT?

21 A. SURE.

22 Q. AND IN ORDER FOR YOUR PEERS TO REVIEW YOUR
23 WORK, YOU WOULD NEED TO HAVE SOME KIND OF WRITTEN
24 REPORT -- A PUBLISHED REPORT FOR THEM TO REVIEW AND
25 CRITIQUE; IS THAT RIGHT, SIR?

1 A. IF YOU'RE IN THE PROCESS OF DOING SOME
2 RESEARCH AND PUBLISHING SOME WORK THAT YOU'VE DONE,
3 THEN YES, THAT'S THE WAY TO DO IT.

4 Q. IN YOUR TRAINING IN SCHOOL AND AT THE HALL
5 INSTITUTE, WEREN'T YOU TRAINED WHEN YOU DID AN
6 EVALUATION TO DO A WRITTEN REPORT TO DOCUMENT YOUR
7 FINDINGS AND CONCLUSIONS?

8 A. NO, NOT NECESSARILY. ONE HAS TO MAKE SOME
9 MEDICAL RECORD OF THAT.

10 Q. OKAY. IN THE PAST WHEN YOU HAVE TESTIFIED
11 AS A COURT-APPOINTED EXPERT FOR THE HALL INSTITUTE
12 UNDER A COURT ORDER, HAVE YOU EVER TESTIFIED WITHOUT
13 SUBMITTING A WRITTEN REPORT TO THE COURT?

14 A. THE MEDICAL RECORDS WOULD HAVE BEEN
15 SUBMITTED. I DON'T RECALL EVER MAKING A FORMAL
16 REPORT TO THE COURT.

17 Q. OKAY. YOU DON'T RECALL A -- WHEN YOU WERE
18 -- WERE YOU ON THE STAFF AT WILLIAM S. HALL
19 INSTITUTE?

20 A. I CERTAINLY WAS AT ONE TIME IN THE DISTANT
21 PAST. THAT WAS BEFORE THE FORENSIC PROGRAM WAS SET
22 UP. BUT I WAS ON THE STAFF OF THE STATE HOSPITAL
23 COURT UNIT BEFORE IT BECAME THE HALL INSTITUTE.

24 Q. OKAY.

25 A. BEFORE THE HALL INSTITUTE TOOK THAT OVER,

1 YES.

2 Q. AND IS IT YOUR TESTIMONY THAT YOU
3 TESTIFIED AS A WITNESS WHEN YOU WERE IN THAT CAPACITY
4 WITHOUT SUBMITTING A WRITTEN REPORT TO THE COURT?

5 A. MAYBE WE'RE NOT TALKING ABOUT THE SAME
6 THING. THERE ARE MEDICAL RECORDS WHICH ARE
7 SUBMITTED.

8 Q. DOCTOR, THE MEDICAL RECORDS ARE SUBMITTED
9 TO YOU. YOU EVALUATE THOSE RECORDS.

10 A. NO.

11 Q. LET ME FINISH.

12 A. I'M SORRY.

13 Q. YOU EVALUATE THOSE RECORDS, YOU INTERVIEW
14 THE DEFENDANT OR THE PATIENT OR WHATEVER YOU CALL IT,
15 YOU REACH CERTAIN CONCLUSIONS, AND THEN YOU DO A
16 WRITTEN REPORT; IS THAT CORRECT?

17 A. NOT NECESSARILY. IF THE ATTORNEY WANTS A
18 WRITTEN REPORT, I WOULD DO THAT. THE MEDICAL RECORDS
19 SPEAK FOR THEMSELVES.

20 Q. ALL RIGHT. BUT YOU INTERPRET THOSE
21 MEDICAL RECORDS, DON'T YOU? ISN'T THAT WHAT YOU'RE
22 DOING HERE TODAY?

23 A. I'M BASICALLY GIVING A VERBAL REPORT
24 INSTEAD OF A WRITTEN REPORT.

25 Q. ALL RIGHT. HAS ANY PROSECUTOR THAT HAS

1 CALLED YOU AS A WITNESS EVER ASKED YOU NOT TO PREPARE
2 A WRITTEN REPORT?

3 A. I CAN'T THINK OF ONE EVER ASKING ME TO.

4 Q. YOU ARE AWARE OF RULE 5, AREN'T YOU?

5 A. NO.

6 Q. WHERE -- ARE YOU AWARE THAT IF A WRITTEN
7 REPORT IS GIVEN BY YOU, THE DEFENSE HAS TO TURN THAT
8 OVER TO ME?

9 A. I ASSUMED THAT TO BE THE CASE. I DON'T
10 KNOW WHAT RULE 5 IS.

11 Q. HAVE YOU IN THE PAST BEEN CROSS-EXAMINED
12 ON THE CONTENT OF YOUR WRITTEN REPORTS THAT YOU HAVE
13 SUBMITTED PRIOR TO TRIAL?

14 A. I PROBABLY HAVE. I DON'T RECALL OFFHAND.
15 I'VE CERTAINLY BEEN CROSS-EXAMINED ON THE MEDICAL
16 RECORDS.

17 Q. OKAY. AND YOU KNEW THAT IF YOU PROVIDED A
18 WRITTEN REPORT, THAT MR. NEWSOME WOULD BE HONOR BOUND
19 TO GIVE THAT REPORT TO ME, DIDN'T YOU?

20 A. WELL, I ASSUME THAT TO BE THE CASE, BUT
21 THE ATTORNEY IS THE CAPTAIN OF THE SHIP AT THIS POINT
22 ABOUT THAT SORT OF THING.

23 Q. WELL, MR. NEWSOME DIDN'T TELL YOU
24 SPECIFICALLY NOT TO DO A REPORT, DID HE?

25 A. NO.

1 Q. AND YOU KNEW THAT IF YOU DID GIVE HIM A
2 REPORT, YOU WOULD BE CROSS-EXAMINED ON THAT REPORT
3 AND YOU HAVE BEEN CROSS-EXAMINED IN THE PAST WHEN
4 YOU'VE WRITTEN REPORTS, HAVEN'T YOU?

5 A. I AM AWARE THAT IF MY RECORDS ARE
6 SUBMITTED, I AM SUBJECT TO BE CROSS-EXAMINED ON THEM,
7 SURE. THE CUSTOM FOR THIS KIND OF THING IS TO DO A
8 REPORT IF THE ATTORNEY ASKS YOU TO.

9 Q. AND IN THIS CASE, NOBODY ASKED YOU TO DO
10 IT?

11 A. THAT'S RIGHT.

12 Q. ARE YOU AWARE OF ANY OBJECTIVE SCIENTIFIC
13 TEST THAT CAN ESTABLISH -- THAT SAYS THAT YOU CAN
14 ESTABLISH A LINK BETWEEN SOME DIAGNOSED MENTAL
15 CONDITION AND SOMEBODY'S SUBSEQUENT BEHAVIOR?

16 A. NO.

17 Q. THERE IS NONE, IS THERE?

18 A. THAT'S RIGHT.

19 Q. NOW, AN I.Q. OF 70 OR BELOW IS MENTALLY
20 RETARDED; IS THAT CORRECT?

21 A. THAT'S THE OFFICIAL CUTOFF POINT, YES.

22 Q. OKAY. AND THE THREE TIMES THAT MR. HUGHES
23 WAS TESTED THAT WE KNOW ABOUT WITH THE
24 PSYCHIATRICALY-APPROVED INTELLIGENCE QUOTIENT TEST,
25 HE MEASURED 80, 74 AND 74 FULL SCALE I.Q., DIDN'T HE?

1 A. AND 68 ON ONE OF THE OTHERS.

2 Q. OKAY. THAT WAS THE SCHLOSSON TEST?

3 A. SCHLOSSON. RIGHT.

4 Q. AND LET'S SEE IF WE CAN FIND THAT ONE.

5 ALL RIGHT. I HAND YOU DEFENDANT'S NUMBER 8. AND

6 DOCTOR, DO YOU USE THAT -- DO YOU KNOW OF ANY

7 CLINICAL PSYCHOLOGIST THAT USES THAT SCHLOSSON TEST

8 OR IS THAT A SCREENING TEST USED BY SCHOOL PERSONNEL

9 TO SEE IF THEY NEED TO REFER TO SOMEONE?

10 A. I'M SORRY. I DIDN'T HEAR THE LAST PART.

11 Q. LET ME START OVER AGAIN. DO YOU KNOW OF

12 ANY CLINICAL PSYCHOLOGIST THAT USES THAT TEST FOR

13 DIAGNOSTIC PURPOSES?

14 A. NO, I DON'T.

15 Q. THAT'S A SCREENING TEST, ISN'T IT, USED BY

16 SCHOOLS TO DETERMINE IF THEY NEED TO GIVE A MORE

17 SOPHISTICATED TEST ADMINISTERED BY TRAINED

18 PSYCHOLOGISTS; ISN'T THAT CORRECT?

19 A. I CAN'T SAY ABOUT THAT. IT LOOKS LIKE IT

20 MIGHT WELL BE.

21 Q. THAT ISN'T SOMETHING YOU WOULD BASE ANY

22 OPINION ON, IS IT?

23 A. WELL, I WOULD BASE MY OPINION JUST ON WHAT

24 IT SAYS HERE. BUT OTHER THAN THAT, I WOULDN'T SAY

25 ANYTHING ABOUT IT.

1 Q. IT'S A SCREENING TEST, THOUGH; RIGHT?

2 A. WELL, THE SCHLOSSON INTELLIGENCE TEST WITH
3 AN I.Q. OF 68 WITH A PERCENTILE RANK OF TWO, THAT
4 TELLS YOU SOMETHING ABOUT THAT. NOW, YOU GO FROM
5 THERE, BASICALLY.

6 Q. LET ME ASK THE QUESTION AGAIN TO MAKE SURE
7 I ASKED IT RIGHT. THAT'S A SCREENING TEST, IS IT
8 NOT?

9 A. AND I'M SAYING I DON'T KNOW.

10 Q. OKAY. YOU'VE NEVER -- HAVE YOU EVER HEARD
11 OF THE SCHLOSSON TEST?

12 A. I'VE HEARD OF THE SCHLOSSON. IT IS NOT
13 THE TEST THAT'S COMMONLY USED. THE TEST THAT'S
14 COMMONLY USED TO MEASURE I.Q. USED CLINICALLY IS
15 SOMETHING CALLED THE WECHSLER INTELLIGENCE SCALE FOR
16 CHILDREN REVISED. THAT'S THE TEST HE HAD IN '86 AND
17 IN --

18 Q. '91 AND '95; RIGHT? '86, '91 AND '95?

19 A. HE HAD -- YES, HE HAD -- HE HAD THE
20 INTELLIGENCE SCALE FOR CHILDREN IN '86; AGAIN IN '91.
21 HE HAD THE SCHLOSSON IN '91, AND THEN APPARENTLY
22 THERE'S ONE IN '95 THAT I HAVEN'T SEEN. ALL OF THOSE
23 KIND OF HOVER AROUND THIS BORDERLINE END OF --

24 Q. WELL, THEY ALL HOVER FOUR TO TEN POINTS
25 ABOVE THE CUTOFF FOR MENTAL RETARDATION, DON'T THEY,

1 OTHER THAN THAT SCREENING TEST?

2 A. YES. IF YOU TAKE 70 AS A LITERAL FIGURE,
3 YES, THAT'S TRUE.

4 Q. ALL RIGHT.

5 A. THESE ARE ALL SHADES OF GRAY.

6 Q. I MIGHT HAVE MISUNDERSTOOD YOU, DR.

7 MORGAN, BUT DID YOU TESTIFY THAT MR. HUGHES HERE
8 SUFFERS FROM HYPERACTIVITY DISORDER?

9 A. THE SCHOOL RECORDS WOULD STRONGLY INDICATE
10 THAT HE HAD ATTENTION DEFICIT AND HYPERACTIVITY
11 DISORDER.

12 Q. THAT'S NOT WHAT I'M ASKING. I'M ASKING IF
13 IT'S YOUR TESTIMONY THAT HE SUFFERS FROM ATTENTION
14 DEFICIT DISORDER AND HYPERACTIVITY DISORDER.

15 A. THAT'S ONE OF HIS PROBLEMS, YES.

16 Q. WHAT TEST DID YOU ADMINISTER TO HIM TO
17 MAKE THAT DETERMINATION? WHAT SCIENTIFIC OBJECTIVE
18 TEST DID YOU ADMINISTER TO HIM TO REACH THAT
19 DIAGNOSIS?

20 A. THERE'S NO SUCH TEST. THE HISTORY IS MORE
21 INFORMATIVE ABOUT THAT THAN ANYTHING ELSE.

22 Q. SO THERE IS NO OBJECTIVE SCIENTIFIC TEST
23 THAT YOU CAN ADMINISTER TO MAKE THAT DIAGNOSIS; IS
24 THAT RIGHT?

25 A. IF YOU'RE TALKING ABOUT A MEDICAL TEST.

1 Q. YEAH.

2 A. NO.

3 Q. WELL, A PSYCHIATRIC TEST, A PSYCHOLOGICAL
4 TEST.

5 A. WELL, THE TEST IS THE HISTORY, BASICALLY.

6 Q. OKAY.

7 A. THE TEACHER'S OBSERVATION.

8 Q. AND YOU SAID -- YOU TESTIFIED HE WAS
9 DEPRESSED, IS THAT CORRECT, WHEN YOU INTERVIEWED HIM?

10 A. I SAID HE SURE LOOKS DEPRESSED.

11 Q. ALL RIGHT. AND THAT'S NOT UNUSUAL WHEN
12 SOMEONE IS FACING A CAPITAL TRIAL FOR MURDER AND THEY
13 ARE IN JAIL?

14 A. CERTAINLY NOT.

15 Q. WHAT ACTUAL TEST, IF ANY, DID YOU PERFORM
16 YOURSELF IN PREPARATION FOR YOUR TESTIMONY OTHER THAN
17 TALKING TO HIM AND READING THE STUFF OTHER PEOPLE HAD
18 DONE?

19 A. SO FAR AS GIVING HIM A TEST?

20 Q. YES, SIR.

21 A. I DIDN'T GIVE HIM ANY KIND OF TEST.

22 Q. OKAY. YOU TALKED TO HIM, BASICALLY?

23 A. HE TOOK -- TOOK -- HE TOOK -- DID A COUPLE
24 OF PSYCHOLOGICAL TESTS, WHICH ARE BASICALLY
25 SELF-ADMINISTERED. HE ANSWERED SOME QUESTIONS. HE

1 DID A SENTENCE COMPLETION TEST.

2 Q. ALL RIGHT, SIR. AND DOCTOR, DID I
3 UNDERSTAND YOU CORRECTLY THAT YOU SAID THIS YOUNG MAN
4 IS A VERY SENSITIVE YOUNG MAN?

5 A. YES. ALMOST TO THE POINT OF PARANOIA.

6 Q. HOW DO YOU DEFINE SENSITIVE? CARING FOR
7 THE RIGHTS OF OTHERS?

8 A. SENSITIVE IN THAT HE GETS HIS FEELINGS
9 HURT, EASILY OFFENDED, SORT OF THIN-SKINNED.

10 Q. AND YOU ALSO SAID HE'S PASSIVE?

11 A. MOST OF THE TIME, YES.

12 Q. MOST OF THE TIME YOU'VE SEEN HIM HE'S
13 PASSIVE.

14 A. MOST OF THE TIMES IN THE HISTORY, THAT'S
15 WHAT COMES OUT OF THE HISTORY. THAT'S WHAT THE
16 TESTING, PSYCHOLOGICAL TESTING SUGGESTS.

17 Q. AND THAT WAS A PSYCHOLOGICAL TESTING DONE
18 AT THE STATE HOSPITAL AND AT THE SCHOOL; IS THAT
19 RIGHT?

20 A. I'VE NOT SEEN THE PSYCHOLOGICAL TESTING AT
21 THE HALL INSTITUTE, SO I DON'T KNOW -- NOT SURE ABOUT
22 THAT.

23 Q. OKAY. SO YOU RELIED ON THE SCHOOL TEST?

24 A. NO. I RELIED ON THE TEST IN MY OFFICE.

25 Q. I THOUGHT YOU DIDN'T GIVE HIM A TEST AT

1 YOUR OFFICE, THAT YOU MERELY INTERVIEWED HIM.

2 A. NO. I SAID I DID NOT GIVE HIM A TEST
3 HIMSELF. HE HAD SOME TESTS IN MY OFFICE WHICH ARE
4 BASICALLY SELF-ADMINISTERED. HE WAS IN ANOTHER ROOM
5 DOING THE TEST.

6 Q. OKAY.

7 A. THEY WERE DONE UNDER MY SUPERVISION, UNDER
8 MY DIRECTION.

9 Q. WHAT I THINK I TRIED TO ASK YOU, AND MAYBE
10 I DIDN'T DO IT, WHAT TESTS WERE ADMINISTERED EITHER
11 BY YOU OR AT YOUR DIRECTION AT YOUR OFFICE THAT
12 HELPED YOU MAKE YOUR DIAGNOSIS HERE TODAY, WHATEVER
13 IT MIGHT BE?

14 A. OKAY. HE DID THE -- SOMETHING CALLED THE
15 MILLON, M-I-L-L-O-N, CLINICAL MULTI-AXIAL INVENTORY
16 THREE, WHICH IS A PERSONALITY INVENTORY, PERSONALITY
17 TEST, I GUESS YOU COULD SAY. THE PERSON ANSWERS A
18 BUNCH OF TRUE-FALSE QUESTIONS ABOUT THEMSELVES.
19 THAT'S PUT THROUGH A COMPUTER, AND THE COMPUTER
20 GENERATES A REPORT.

21 AND HE DID WHAT'S CALLED AN INCOMPLETE SENTENCE
22 BLANK WHERE HE IS GIVEN A STEM -- FOR EXAMPLE, "I
23 WANT TO KNOW," AND THEN HE FILLS IN THE REST OF THAT
24 WITH HIS OWN ANSWER. IT'S 40 SENTENCES THAT ARE DONE
25 THAT WAY. IT HELPS YOU SORT OF GET AN IDEA THE WAY

1 HE THINKS AND THE KIND OF THINGS HE'S CONCERNED
2 ABOUT.

3 AND THOSE ARE THE ONLY TWO TESTS HE HAD IN MY
4 OFFICE.

5 Q. OKAY. AND NONE OF THOSE TESTS ARE
6 DESIGNED TO MEASURE ANY CAUSE AND EFFECT BETWEEN SOME
7 DIAGNOSED CONDITION AND HIS SUBSEQUENT CRIMINAL
8 CONDUCT, ARE THEY?

9 A. I THINK THAT'S RIGHT, IF I UNDERSTAND YOUR
10 QUESTION. YOU'RE ASKING ME IF THE TEST WOULD --

11 Q. I'M ASKING YOU IF THERE'S ANY TEST THAT
12 YOU KNOW ABOUT THAT CAN ESTABLISH ANY LINK BETWEEN
13 SOME DIAGNOSED PSYCHOLOGICAL CONDITION AND SOMEBODY'S
14 SUBSEQUENT BEHAVIOR LATER ON, AND IF SO, LET ME KNOW
15 THE --

16 A. WELL, IN A STATISTICAL WAY, THERE PROBABLY
17 ARE, BUT IN A SPECIFIC WAY, NO.

18 Q. THANK YOU, DOCTOR. NOW, YOU TESTIFIED
19 THAT HE HAD A PERSONALITY DISORDER OR SOMETHING CLOSE
20 TO A PERSONALITY DISORDER?

21 A. YES.

22 Q. WHAT PERSONALITY DISORDER OR WHAT NEAR
23 PERSONALITY DISORDER DO YOU THINK HE HAS?

24 A. WELL, HE -- HE HAS THE CERTAIN FEATURES, I
25 GUESS YOU COULD SAY, OF SEVERAL DIFFERENT PERSONALITY

1 DISORDERS. SO YOU SIMPLY CALL THAT A MIXED
2 PERSONALITY DISORDER, BASICALLY.

3 Q. OKAY. NO QUESTION THAT HE KNOWS RIGHT
4 FROM WRONG; RIGHT?

5 A. NO QUESTION.

6 Q. AND NO QUESTION THAT HE DOESN'T SUFFER
7 FROM ANY IRRESISTIBLE IMPULSE TO DO THINGS THAT HE
8 HAS NO CONTROL OVER, IS THERE?

9 A. THE ANSWER IN THE LEGAL SENSE IS YES,
10 THAT'S TRUE. HE IS IMPULSIVE. THAT GETS BACK TO THE
11 ATTENTION DEFICIT AND HYPERACTIVITY, BUT I DON'T
12 THINK YOU WOULD CALL THAT AN IRRESISTIBLE IMPULSE.

13 Q. NOW, YOU SAID, IF I'VE GOT MY NOTES RIGHT,
14 HE HAD SOME INTELLECTUAL PROBLEMS WITH BIOLOGICAL
15 CAUSES?

16 A. YEAH.

17 Q. WOULD YOU TELL US WHAT THOSE ARE AND HOW
18 YOU DETERMINE WHAT BIOLOGICAL CAUSES HE'S GOT FOR
19 INTELLECTUAL PROBLEMS?

20 A. WELL, GENERALLY, WHEN A PERSON IS OF LOW
21 INTELLIGENCE OR MENTALLY RETARDED, THAT IS ON THE
22 BASIS OF SOME DEFECT IN THE BRAIN. TYPICALLY, IT'S
23 CONSIDERED TO BE GENETIC, SOMETHING THAT HAPPENS
24 WHILE THE BABY'S DEVELOPING BEFORE IT'S BORN OR SOME
25 OF THE THINGS THAT HAPPEN TO IT AFTER IT'S BORN,

1 NUTRITIONAL KINDS OF THINGS GENERALLY. IT'S
2 CONSIDERED TO BE A BIOLOGICAL KIND OF PROBLEM AS
3 OPPOSED TO A PSYCHOLOGICAL CAUSE.

4 Q. MAYBE YOU DIDN'T UNDERSTAND MY QUESTION.
5 I'M ASKING YOU WHAT SPECIFIC BIOLOGICAL CAUSES DID
6 YOU FIND THROUGH YOUR TESTING THAT HE -- THAT RELATE
7 TO HERMAN HUGHES? WAS HE DROPPED ON HIS HEAD AS A
8 BABY? DID HE HAVE A BIRTH DEFECT?

9 A. NO. WE DON'T KNOW -- I DON'T KNOW AT
10 LEAST. I DIDN'T UNCOVER ANY SPECIFIC CAUSE.

11 Q. YOU'RE GUESSING; RIGHT?

12 A. NO, NOT AT ALL. THE SOCIAL WORKER WHO DID
13 THE INVESTIGATION, IT'S HER IMPRESSION THAT --

14 Q. I'M NOT INTERESTED IN THE SOCIAL WORKER'S
15 IMPRESSION, DOCTOR. I'M INTERESTED IN YOUR
16 DIAGNOSIS.

17 A. MY DIAGNOSIS RESTS ON THE HISTORY. THE
18 HISTORY COMES IN PART FROM THE SOCIAL WORKER, AND
19 THAT HISTORY IS STRONGLY SUGGESTIVE THAT THIS IS A
20 PROBLEM WITHIN THE FAMILY.

21 Q. ALL RIGHT. DID YOU HAVE ACCESS TO THE
22 MEDICAL -- RESULTS OF MEDICAL TESTS FROM WILLIAM HALL
23 INSTITUTE?

24 A. NO.

25 Q. OKAY. THEY DO -- YOU'RE FAMILIAR WITH

1 CERTAIN TESTS THEY DO, PHYSICAL TESTS. THEY GIVE A
2 COMPLETE PHYSICAL.

3 A. YES. BUT NO TEST IS GOING TO TELL YOU THE
4 CAUSE OF MENTAL RETARDATION IN MOST CASES.

5 Q. LET ME FINISH MY QUESTION.

6 A. I'M SORRY.

7 Q. THEY GAVE HIM AN E.E.G.; RIGHT?

8 A. I DON'T KNOW.

9 Q. WELL, WOULD AN E.E.G. DETERMINE WHETHER OR
10 NOT THERE WERE ANY IRREGULAR BRAIN WAVES?

11 A. IT MIGHT OR MIGHT NOT.

12 Q. THAT'S WHAT IT'S DESIGNED FOR, ISN'T IT?

13 A. THAT'S WHAT IT'S DESIGNED FOR, BUT IT
14 DOESN'T ALWAYS PICK UP THOSE KINDS OF THINGS.

15 Q. AND IF THEY GAVE HIM AN M.R.I., WHAT WOULD
16 THAT BE DESIGNED FOR?

17 A. TO PICK UP ABNORMALITIES OF THE PHYSICAL
18 STRUCTURE OF THE BRAIN.

19 Q. OKAY. AN ENLARGED VENTRICLE OR SOMETHING
20 OF THAT NATURE?

21 A. YES.

22 Q. AND IF THEY DIDN'T FIND THAT, THAT WOULD
23 INDICATE THAT THEY COULDN'T FIND ANY BIOLOGICAL CAUSE
24 FOR HIS SITUATION, WOULDN'T IT?

25 A. NO. DOESN'T MEAN THAT AT ALL. BECAUSE

1 YOU DON'T GENERALLY FIND ANY SORT OF SPECIFIC
2 BIOLOGICAL CAUSE FOR MENTAL RETARDATION. YOU MAY
3 OCCASIONALLY FIND THAT. FOR EXAMPLE, DOWN'S SYNDROME
4 OR SOME OTHER KINDS OF THINGS.

5 Q. OKAY.

6 A. BUT ORDINARILY, YOU CAN'T FIND THE
7 SPECIFIC CAUSE OF RETARDATION.

8 Q. THIS MAN IS NOT RETARDED, IS HE?

9 A. WELL, IT'S STRETCHING IT TO SAY THAT HE'S
10 NOT.

11 Q. IT'S STRETCHING TO SAY HE IS, ISN'T IT,
12 WHEN ALL THREE VALID PSYCHOLOGICAL TESTS SHOW HIM
13 ABOVE THE CUTOFF FOR MENTAL RETARDATION?

14 A. WELL, IF YOU TAKE 70 AS AN ARBITRARY
15 POINT, YES. BUT IF YOU LOOK AT HIS PERFORMANCE, WHEN
16 THERE ARE 99 PEOPLE OUT OF 100 WHO ARE ABOVE HIM,
17 THAT'S PRETTY GOOD EVIDENCE.

18 Q. DOES HE HAVE THE ABILITY TO ENGAGE IN
19 PURPOSEFUL, GOAL-DIRECTED ACTIVITIES?

20 A. SURE.

21 Q. HE CAN PLAN THINGS?

22 A. SIMPLE THINGS, YES.

23 Q. HE CAN THINK?

24 A. SIMPLY AND CONCRETELY, YES.

25 Q. JUST TO MAKE SURE I UNDERSTAND YOUR

1 TESTIMONY, YOU HAVE NO EVIDENCE, NO -- IT'S NOT YOUR
2 TESTIMONY THAT HE SUFFERS FROM ANY SPECIFIC DIAGNOSED
3 PERSONALITY DISORDER. IT'S JUST KIND OF A
4 CONGLOMERATION OF THINGS THAT ARE KIND OF BORDERLINE,
5 COULD BE THIS, COULD BE THAT?

6 A. NO. I'M SAYING HE HAS A MIXED PERSONALITY
7 DISORDER. MY -- MY CONCERN IS THAT IT MAY BE A
8 LITTLE PREMATURE TO GIVE HIM THAT DIAGNOSIS SINCE
9 HE'S ONLY 18 YEARS OLD.

10 Q. OKAY. THE D.S.M. III IS A MANUAL THAT HAS
11 ALL OF THE DIFFERENT PERSONALITY DISORDERS AND MENTAL
12 ILLNESSES SET OUT.

13 A. RIGHT.

14 Q. IS MIXED PERSONALITY DISORDER IN HERE?

15 A. I'M NOT SURE. IT MAY BE CALLED NOT
16 OTHERWISE SPECIFIED TO GET KIND OF WORDY. (WITNESS
17 REVIEWS DOCUMENT.)

18 WELL, IT'S NOW CALLED, IN THE LATEST BOOK,
19 PERSONALITY DISORDER, NOT OTHERWISE SPECIFIED. THIS
20 IS FOR THOSE WHO DO NOT MEET THE CRITERIA FOR ANY
21 SPECIFIC PERSONALITY DISORDER, SO THEY JUST CHANGED
22 THE NAME.

23 Q. YOU CAN'T FIND ANYTHING PARTICULAR WRONG
24 WITH HIM, BUT YOU KNOW THAT THEY'RE NOT DOING
25 SOMETHING THAT EVERYBODY ELSE DOES, SO YOU HANG THAT

1 LABEL ON THEM?

2 A. NO. IT MEANS THEY'VE GOT -- IN THIS CASE
3 HE'S GOT QUALITIES OF PARANOIA; HE'S GOT QUALITIES OF
4 PASSIVE AGGRESSIVE; HE'S GOT QUALITIES OF DEPENDENCE;
5 HE'S GOT QUALITIES OF ANTI-SOCIAL PERSONALITY
6 DISORDER. RATHER THAN GIVING HIM ALL FOUR OF THOSE
7 DIAGNOSES, WE JUST SAY HE'S GOT A PERSONALITY
8 DISORDER. USED TO BE CALLED MIXED. THEY'VE CHANGED
9 THE NAME TO NOT OTHERWISE SPECIFIED.

10 Q. AND AGAIN, THERE'S NO OBJECTIVE SCIENTIFIC
11 TESTS YOU CAN ADMINISTER TO ANYBODY THAT WOULD GIVE
12 YOU THAT DIAGNOSIS. YOU ARE BASING THAT ON THE
13 HISTORY THAT YOU GOT FROM OTHER PEOPLE; RIGHT?

14 A. I'M BASING IT ON THE HISTORY AND THE
15 EXAMINATION AND THE PSYCHOLOGICAL TESTING.

16 Q. OKAY. AND THE EXAMINATION IS YOUR
17 INTERVIEW WITH HIM?

18 A. MY EXAMINATION OF HIM ON THOSE THREE
19 OCCASIONS.

20 Q. OKAY. TALKING TO HIM?

21 A. PSYCHIATRIC EXAMINATION. IT'S MORE THAN
22 TALKING.

23 MR. NEWSOME: THANK YOU. THAT'S ALL I
24 HAVE.

25 R E D I R E C T E X A M I N A T I O N

1 BY MR. NEWSOME:

2 Q. DR. MORGAN, HAVING BEEN PROVIDED WITH HIS
3 MEDICAL TESTS OF CERTAIN MONTHS AGO, INCLUDING LAST
4 MONTH, BEFORE THIS AFTERNOON IN COURT, WOULD YOU HAVE
5 BEEN ABLE TO EVALUATE THOSE AND CONSIDER THOSE IN
6 YOUR DIAGNOSIS?

7 A. SURE.

8 MR. NEWSOME: THANK YOU. YOU MAY COME
9 DOWN.

10 THE COURT: MR. FOREMAN, LADIES AND
11 GENTLEMEN, WE'VE BEEN OUT HERE SINCE A LITTLE AFTER
12 2:00. LET'S TAKE A SHORT BREAK, AND THEN WE'LL
13 CONTINUE WITH THE TESTIMONY. LET YOU RELAX A MOMENT.
14 THOSE OF YOU WHO NEED TO SMOKE MAY DO SO.

15 (WHEREUPON, THE JURY WAS REMOVED
16 FROM THE COURTROOM AND THE
17 FOLLOWING PROCEEDINGS COMMENCED
18 IN OPEN COURT.)

19 (WHEREUPON, A BREAK WAS TAKEN
20 FROM THE PROCEEDINGS.)

21 THE COURT: STATE READY?

22 MR. BAILEY: YES, SIR.

23 THE COURT: HOW ABOUT FROM MR. NEWSOME?

24 MR. NEWSOME: YES, YOUR HONOR, WE ARE.

25 (WHEREUPON, THE JURY WAS

1 RETURNED TO THE COURTROOM AND
2 THE FOLLOWING PROCEEDINGS WERE
3 COMMENCED IN OPEN COURT.)

4 THE COURT: JURY'S PRESENT.

5 MR. NEWSOME: YOUR HONOR, WE'D LIKE TO
6 CALL DR. JOHN DEWITT TO THE STAND.

7 THE CLERK: IF YOU WOULD, PLEASE PLACE
8 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
9 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

10 THE WITNESS: JOHN HOWARD DEWITT.

11 JOHN HOWARD DEWITT,
12 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
13 TESTIFIED AS FOLLOWS:

14 D I R E C T E X A M I N A T I O N

15 BY MR. NEWSOME:

16 Q. YOU ARE DR. JOHN DEWITT?

17 A. YES.

18 Q. AND DR. DEWITT, YOU ARE A PSYCHIATRIST,
19 ARE YOU NOT?

20 A. YES, I AM.

21 Q. WOULD YOU PLEASE TELL THE LADIES AND
22 GENTLEMEN OF THE JURY YOUR EDUCATION AND
23 QUALIFICATIONS?

24 A. I RECEIVED A BACHELOR OF SCIENCE IN
25 ELECTRICAL ENGINEERING FROM THE CITADEL IN 1979.

1 RECEIVED MY DOCTORATE OF MEDICINE DEGREE FROM THE
2 UNIVERSITY OF SOUTH CAROLINA AT COLUMBIA IN 1984.
3 DID MY FIRST THREE YEARS OF GENERAL PSYCHIATRY
4 RESIDENCY AT VANDERBILT UNIVERSITY IN NASHVILLE,
5 TENNESSEE, AND THEN COMPLETED A ONE-YEAR FORENSIC
6 FELLOWSHIP IN THE FOURTH YEAR OF MY RESIDENCY AT THE
7 HALL INSTITUTE IN COLUMBIA, WHICH IS A PART OF THE
8 MEDICAL SCHOOL THERE. WOULD YOU LIKE ME TO CONTINUE?

9 Q. GO AHEAD.

10 A. AFTER GRADUATING FROM RESIDENCY, I ENTERED
11 FULL-TIME PRIVATE PRACTICE IN COLUMBIA, SOUTH
12 CAROLINA. I PRACTICE GENERAL PSYCHIATRY. I ALSO
13 PRACTICE FORENSIC PSYCHIATRY. I AM A CONSULTANT TO
14 THE DEPARTMENT OF CORRECTIONS WHERE I GO EACH
15 WEDNESDAY TO SEVERAL OF THE FACILITIES TO SEE
16 PATIENTS. I USED TO BE THE CONSULTANT PSYCHIATRIST
17 TO DEATH ROW AT BROAD RIVER IN COLUMBIA. I CONSULTED
18 TO THE BABCOCK CENTER, WHICH IS A PRIVATE MENTAL
19 RETARDATION AGENCY, WHO I -- I SEE PATIENTS IN THAT
20 FACILITY EVERY THURSDAY AFTERNOON ABOUT THREE OR FOUR
21 TIMES A MONTH. AND I'M CHIEF OF PSYCHIATRY AT
22 BAPTIST MEDICAL CENTER, AND THAT'S A TWO-YEAR ELECTED
23 POSITION. I'M BOARD CERTIFIED IN GENERAL PSYCHIATRY.
24 I'M BOARD ELIGIBLE IN FORENSIC PSYCHIATRY.

25 Q. OTHER THAN BAPTIST HOSPITAL, ANY OTHER

1 HOSPITAL THAT YOU'RE AFFILIATED WITH?

2 A. YES. I'M GOING TO BE TAKING OVER THE
3 OUTPATIENT PROGRAM AT RICHLAND SPRINGS HOSPITAL,
4 WHICH IS THE PSYCHIATRIC PORTION OF THE RICHLAND
5 MEMORIAL HOSPITAL. I DO CONSULTATION WORK IN GENERAL
6 PSYCHIATRY AT PROVIDENCE HOSPITAL, WHICH IS A PRIVATE
7 HOSPITAL IN COLUMBIA.

8 Q. DR. DEWITT, DID I ASK YOU TO EVALUATE MY
9 CLIENT HERMAN HUGHES?

10 A. YES, YOU DID.

11 Q. AND DID YOU PERFORM THAT EVALUATION?

12 A. YES, I DID.

13 Q. WOULD YOU EXPLAIN TO THE LADIES AND
14 GENTLEMEN OF THE JURY WHAT ALL YOU DID IN PERFORMING
15 THIS EVALUATION?

16 A. BASICALLY YOU CONTACTED ME AND DISCUSSED
17 THE CASE, THE DETAILS OF WHAT HAD HAPPENED, WHAT HE
18 WAS CHARGED WITH AND SO ON, THE HISTORY. AND I WAS
19 ABLE TO SEE HERMAN IN THE ORANGEBURG JAIL IN AUGUST
20 FOR APPROXIMATELY TWO HOURS. AND THAT INTERVIEW
21 CONSISTED OF A CLINICAL PSYCHIATRIC INTERVIEW AND
22 ALSO A DISCUSSION OF THE CRIME, THE OFFENSE AS HE
23 COULD BEST RECALL, AND SO IT ALSO INCLUDED FORENSIC
24 EVALUATION AS WELL.

25 IN ADDITION TO INTERVIEWING THE PATIENT, I WAS

1 ABLE TO LOOK OVER RECORDS THAT WERE PROVIDED TO ME,
2 AND THOSE RECORDS INCLUDED SOME OF THE SAME ONES THAT
3 DR. MORGAN HAD REFERRED, SCHOOL RECORDS, SCHOOL
4 TESTING, AND THOSE TYPES OF RECORDS.

5 Q. OKAY. HAVE YOU HAD A CHANCE TO LOOK OVER
6 THE RECORDS FROM THE HALL INSTITUTE THAT WAS PROVIDED
7 TO US THIS AFTERNOON?

8 A. I GLANCED OVER THOSE JUST BEFORE TAKING
9 THE STAND, YES.

10 Q. OKAY. ALL RIGHT, SIR. CAN YOU TELL US
11 THE RESULT OF YOUR EXAMINATION?

12 A. BASICALLY THE RESULTS ARE CONSISTENT WITH
13 DR. MORGAN'S FINDINGS. I DID DISCUSS THE CASE BEFORE
14 WITH DR. MORGAN AND THE SOCIAL WORKER TO GATHER SOME
15 HISTORY AND ALSO TO SEE IF I CONCURRED OR DIDN'T
16 CONCUR WITH THEIR FINDINGS.

17 I THINK HE DEFINITELY HAS INTELLECTUAL
18 LIMITATIONS. THERE SEEMS TO BE SOME DEBATE AS TO HOW
19 SEVERE THOSE ARE, BUT I THINK THEY ARE CERTAINLY
20 PRESENT. THERE ARE SOME INDICATIONS OF ATTENTION
21 DEFICIT PROBLEMS AND POSSIBLY RISING TO THE LEVEL OF
22 ATTENTION DEFICIT DISORDER AS MENTIONED. PERSONALITY
23 DISORDER, I'M NOT SURE I SEE THAT AS CLEARLY AS DR.
24 MORGAN HAS, BUT HE DOES HAVE PERSONALITY TRAITS SUCH
25 AS PASSIVITY AND DEPENDENCY WHICH I THINK WERE VERY

1 APPARENT IN MY INTERVIEW WITH HIM, SO THOSE ARE
2 BASICALLY MY DIAGNOSES.

3 Q. ALL RIGHT. TELL US ABOUT WHAT PASSIVITY
4 AND DEPENDENCY WOULD MEAN IN RELATION TO A YOUNG MAN
5 HIS AGE WITH THE CIRCUMSTANCES THAT HE WAS PRESENTED
6 WITH IN MARCH OF 1994.

7 A. WELL, IN MY EXPERIENCE IN SEEING PATIENTS,
8 BOTH AS A FORENSIC FELLOW AND AS A CONSULTANT AFTER
9 FELLOWSHIP, THOSE KINDS OF PERSONALITY TRAITS CAN
10 LEAD SOMEONE TO, IN STRESSFUL SITUATIONS OR IN
11 SITUATIONS WHERE THEY ARE BEING INFLUENCED BY SOMEONE
12 WITH A MORE POWERFUL PERSONALITY, TO DO THINGS THEY
13 WOULDN'T OTHERWISE DO.

14 I'VE SEEN HUNDREDS OF INMATES AT BROAD RIVER,
15 KIRKLAND, IN THE WOMEN'S CENTER, SO I THINK I HAVE A
16 FAIRLY GOOD EXPERIENCE WITH DIFFERENT TYPES OF
17 PERSONALITY STYLES AND HOW THEY INFLUENCE POSSIBLE
18 CRIMINAL BEHAVIOR. AND IN MY EXPERIENCE, THE
19 PATIENTS THAT I SEE IN THESE FACILITIES THAT HAVE
20 THAT TYPE OF PERSONALITY STRUCTURE MAY HAVE VERY
21 NORMAL LIVES IN THE SENSE THEY AREN'T CONSTANTLY
22 VIOLENT AND CONSTANTLY COMMITTING CRIMES, BUT IN THE
23 RIGHT CIRCUMSTANCES CAN, YOU KNOW, HAVE THIS TYPE OF
24 BEHAVIOR.

25 Q. ALL RIGHT, SIR. AND HOW WOULD THE

1 INFLUENCE OF INGESTION OF ALCOHOL WITH YOUR
2 ASSESSMENT OF ABILITY TO MAKE DECISIONS, HOW WOULD
3 THAT AFFECT THAT?

4 A. WELL, ALCOHOL IS A DEPRESSANT SUBSTANCE
5 AND CAN DO MANY THINGS TO THE BRAIN. IN THIS KIND OF
6 PATIENT, IT CERTAINLY, WHO HAS TENDENCIES TO BE
7 IMPULSIVE, NOT THINK THINGS THROUGH VERY CAREFULLY,
8 THINK OF THE CONSEQUENCES, CAN KIND OF IMPAIR THAT
9 PROCESS. AND SO IT CAN LOWER THE -- OR MAKES THEM
10 MORE IMPULSIVE, MAKE DECISION-MAKING MORE DIFFICULT,
11 IMPAIR THEIR ABILITY TO ANALYZE THE SITUATION AND
12 THOSE TYPES OF THINGS.

13 Q. DID YOU FIND TENDENCIES OF LEADERSHIP IN
14 THIS YOUNG MAN?

15 A. PRETTY MUCH THE OPPOSITE.

16 Q. EXPAND ON THAT.

17 A. HE PRETTY MUCH -- WELL, THAT WOULD MEAN
18 THAT HE WOULD TEND TO BE MORE PASSIVE IN A SITUATION.
19 IF SOMETHING WAS SAID TO HIM OR HE WAS TOLD TO DO
20 SOMETHING THAT HE DIDN'T AGREE WITH, HE WOULD
21 PROBABLY NOT SPEAK UP AND WOULD PROBABLY HARBOR SOME
22 RESENTMENT AND POSSIBLY SOME ANGER ABOUT THAT, BUT
23 WOULD NOT, YOU KNOW, DEFEND HIMSELF, WOULD NOT SPEAK
24 UP AND BE ASSERTIVE, AND TYPICALLY, WOULD NOT BE A
25 LEADER IN MOST SITUATIONS FROM WHAT I COULD TELL.

1 Q. WHAT IS YOUR IMPRESSION OF HIS ABILITY TO
2 PLAN, MAKE A CONFLICT IN PLANS?

3 A. WELL, AGAIN, HIS TESTING AND MY INTERVIEW
4 WITH HIM, I BELIEVE, ARE CONSISTENT WITH SOMEONE THAT
5 DOESN'T THINK THINGS THROUGH VERY CAREFULLY, DOESN'T
6 THINK IN A VERY SOPHISTICATED FASHION OR THINK OF THE
7 RAMIFICATIONS OF THEIR BEHAVIOR AND ALL OF THE
8 SUBTLETIES THEREOF. SO PLANNING AND -- WOULD NOT BE
9 A SKILL THAT HE WOULD BE VERY ADEPT AT.

10 Q. DOCTOR, EARLIER I DID NOT ASK YOU ABOUT
11 WHETHER YOU HAVE EVER BEEN CALLED ON TO TESTIFY
12 BEFORE. HAVE YOU EVER BEEN CALLED ON TO TESTIFY AND
13 CALLED ON AS AN EXPERT BEFORE?

14 A. YES, I HAVE.

15 Q. PLEASE TELL THE COURT THE NUMBER OF TIMES
16 AND WHETHER YOU TESTIFIED FOR THE PROSECUTION OR THE
17 DEFENSE.

18 A. I'VE TESTIFIED APPROXIMATELY 40 TO 50
19 TIMES IN GENERAL SESSIONS COURT, BOTH FOR THE
20 PROSECUTION AND THE DEFENSE. IN FACT, I ACTUALLY
21 TESTIFIED ON THE OPPOSITE SIDE OF DR. MORGAN, IN
22 PARTICULAR THAT CASE COMES TO MIND. IT WAS A MURDER
23 CASE IN GREENWOOD COUNTY. SO I HAVE TESTIFIED ON
24 BOTH SIDES OF THE QUESTION.

25 Q. OKAY. IS IT UNUSUAL FOR A PSYCHIATRIST TO

1 HAVE SLIGHTLY DIFFERENT EVALUATIONS OF THE SAME
2 PERSON?

3 A. NOT -- WHEN THEY AGREE, IT'S PROBABLY A
4 RARE THING. PSYCHIATRY IS UNIQUE IN MEDICINE IN THAT
5 THERE IS OFTEN A LOT OF DISAGREEMENT. THERE ARE
6 CERTAINLY SOME THINGS THAT WE SEE IN PATIENTS THAT
7 ARE OFTEN AGREED UPON, BUT THERE IS CERTAINLY ROOM
8 FOR DIFFERENT OPINIONS AND DIFFERENT APPROACHES TO A
9 PROBLEM, BUT THAT IS NOT UNUSUAL AT ALL.

10 Q. WHAT IS YOUR ASSESSMENT ABOUT MY CLIENT'S
11 ABILITY TO CONFORM HIS CONDUCT TO THE LAWS?

12 A. I THINK HE HAS THE ABILITY TO CONFORM HIS
13 BEHAVIOR. IF YOU'RE ASKING IF HE HAS AN IRRESISTIBLE
14 IMPULSE TO DO SOMETHING WRONG, I DON'T SEE THAT HE
15 MEETS THAT STANDARD. BUT CERTAINLY SOME PERSONALITY
16 TRAITS AND THE LOWER INTELLECTUAL FUNCTIONING WOULD
17 LEND -- I MEAN, LEAD ME TO BELIEVE THAT IN CERTAIN
18 CIRCUMSTANCES, HE MAY ACT IMPULSIVELY AND ACT WITHOUT
19 THINKING CLEARLY AND THINKING OF THE CONSEQUENCES.
20 SO I DON'T THINK HE MEETS THE STANDARD FOR
21 IRRESISTIBLE IMPULSE.

22 Q. IS THERE ANYTHING ELSE ABOUT YOUR
23 EVALUATION OF MY CLIENT YOU THINK THE JURY SHOULD
24 HEAR?

25 A. I THINK THAT COVERS IT.

1 MR. NEWSOME: PLEASE ANSWER ANY QUESTIONS

2 MR. BAILEY HAS FOR YOU.

3 C R O S S - E X A M I N A T I O N

4 BY MR. BAILEY:

5 Q. DR. DEWITT, ARE YOU BOARD CERTIFIED AS A
6 FORENSIC PSYCHIATRIST?

7 A. BOARD ELIGIBLE.

8 Q. WHICH IS NOT THE SAME AS BOARD CERTIFIED?

9 A. WELL, THERE'S A TEST NOW THAT'S GIVEN THAT
10 ALLOWS YOU TO ADD A CERTAIN -- ADD A QUALIFICATION IN
11 FORENSIC PSYCHIATRY. IT'S NO LONGER CALLED BOARD
12 CERTIFICATION.

13 Q. THAT TEST WAS GIVEN IN OCTOBER, I THINK,
14 OF THIS YEAR, WASN'T IT?

15 A. NO. NO. THE FIRST TEST WAS GIVEN LAST
16 OCTOBER.

17 Q. OKAY. DID YOU TAKE THE TEST IN OCTOBER?

18 A. YES.

19 Q. DID YOU PASS IT?

20 A. NO.

21 Q. ALL RIGHT, SIR. NOW, YOU SAID THAT YOU
22 TESTIFIED ABOUT 45 OR 50 TIMES?

23 A. YES.

24 Q. AND HOW MANY OF THOSE 45 TO 50 TIMES WERE
25 FOR THE PROSECUTION AS COMPARED TO THE DEFENSE?

1 A. I WOULD SAY PROBABLY 10 OR 15 FOR THE
2 PROSECUTION; THE REMAINDER FOR THE DEFENSE.

3 Q. OKAY. AND THOSE 10 OR 15 TIMES YOU
4 TESTIFIED FOR THE PROSECUTION, DID EACH ONE OF THOSE
5 PROSECUTORS ASK YOU TO PROVIDE THEM WITH A WRITTEN
6 REPORT THAT THEY COULD PROVIDE TO THE DEFENSE
7 ATTORNEYS?

8 A. NOT EACH TIME. SOMETIMES THEY DID;
9 SOMETIMES THEY DIDN'T.

10 Q. WELL, DID YOU IN FACT PREPARE A WRITTEN
11 REPORT EACH TIME FOR THE PROSECUTION?

12 A. NO.

13 Q. HAVE YOU EVER HAD A PROSECUTOR ASK YOU NOT
14 TO PREPARE A WRITTEN REPORT?

15 A. SOMETIMES I DIDN'T PREPARE A REPORT, NOT
16 BECAUSE THEY SAID DON'T PREPARE A REPORT.

17 Q. MY QUESTION IS HAS ANY PROSECUTOR EVER
18 ASKED YOU NOT TO PREPARE A WRITTEN REPORT PRIOR TO
19 YOUR TESTIMONY?

20 A. I CAN'T RECALL THAT SPECIFICALLY, BUT I
21 HAVE TESTIFIED WHEN I HAVE NOT PREPARED A REPORT.

22 Q. OKAY. BUT YOU CAN'T THINK OF A SINGLE
23 SOLICITOR IN THIS STATE THAT HAS ASKED YOU NOT TO
24 PREPARE A WRITTEN REPORT?

25 A. NOT THAT I CAN THINK OF OFF MY HEAD.

1 Q. DO YOU HAVE A WRITTEN REPORT HERE OF YOUR
2 FINDINGS?

3 A. NO.

4 Q. WHY NOT?

5 A. I WAS NOT ASKED TO PREPARE ONE.

6 Q. OKAY. WERE YOU AWARE -- IN THE PAST, HAVE
7 YOU PREPARED WRITTEN REPORTS THAT YOU SUBMITTED TO
8 THE COURT OR TO THE DEFENSE ATTORNEY PRIOR TO YOUR
9 TESTIMONY?

10 A. IN THE PAST, I HAVE.

11 Q. AND WAS THAT WRITTEN REPORT PROVIDED TO
12 THE OTHER SIDE?

13 A. IT'S MY UNDERSTANDING THAT IT WAS, YEAH.

14 Q. AND HAVE YOU EVER BEEN CROSS-EXAMINED ON A
15 WRITTEN REPORT THAT YOU SUBMITTED IN ADVANCE OF YOUR
16 TESTIMONY?

17 A. AT TIMES I HAVE, YES.

18 Q. AND YOU KNEW THAT IF YOU DIDN'T PREPARE A
19 WRITTEN REPORT, I COULDN'T CROSS-EXAMINE YOU ON IT,
20 DIDN'T YOU?

21 A. WELL, THAT WOULD FOLLOW LOGICALLY. VERY
22 OFTEN, IT'S ACTUALLY -- WHEN YOU TESTIFY WITHOUT A
23 WRITTEN REPORT, IT LENDS TO OPENING YOU UP FOR
24 WEAKNESSES WITHOUT PREPARING REPORTS WOULD ACTUALLY
25 MAY NOT BE AS EFFECTIVE, BUT I USUALLY DO WHAT THE

1 ATTORNEY THAT I'M WORKING WITH ASKS ME TO DO.

2 Q. MR. NEWSOME DIDN'T SPECIFICALLY ASK YOU
3 NOT TO DO A WRITTEN REPORT, DID HE? HE JUST DIDN'T
4 ASK YOU --

5 A. HE DIDN'T SAY I WOULD LIKE A WRITTEN
6 REPORT, NO.

7 Q. DO YOU HAVE YOUR FILE THERE WITH YOU?

8 A. YES, SIR.

9 Q. DO YOU MIND IF I LOOK AT IT TO MAKE SURE
10 THERE'S NO WRITTEN REPORT? IT WILL JUST TAKE A FEW
11 MOMENTS.

12 A. NO.

13 Q. ALL RIGHT, SIR. I NOTICE IN THE FILE, I
14 HAND THIS BACK TO YOU, YOU DO HAVE THE TWO
15 PSYCHIATRIC OR PSYCHOLOGICAL EVALUATIONS FROM THE
16 SCHOOL SYSTEM, IS THAT CORRECT, THAT YOU REVIEWED?

17 A. YES, UH-HUH.

18 Q. AND WHAT IS THE CUTOFF ON THAT ISSUE?

19 A. 70 IS CONSIDERED THE CUTOFF ON MENTAL
20 RETARDATION.

21 Q. AND OTHER THAN THE SCREENING TESTS THAT WE
22 TALKED ABOUT EARLIER WHILE YOU WERE IN COURT, ALL
23 THREE OF THE WECHSLER TESTS THAT WERE TAKEN BY HERMAN
24 HUGHES SHOWED ABOVE 70, DID THEY NOT?

25 A. THEY WERE LOW 70'S, BUT THEY WERE ABOVE

1 70, YES.

2 Q. ONE OF THEM WAS 80 AND TWO WERE 74?

3 A. I BELIEVE THAT'S CORRECT, YES, SIR.

4 Q. ALL RIGHT, SIR. NOW, JUST TO GET A FEW
5 THINGS STRAIGHT, HERMAN HUGHES KNOWS RIGHT FROM
6 WRONG, DOES HE NOT?

7 A. YES, IN THE -- IN THE GENERAL SENSE, I
8 THINK HE DOES. AND ARE YOU REFERRING TO THE SPECIFIC
9 CRIME THAT HE'S CHARGED WITH?

10 Q. JUST IN GENERAL, DOES HE KNOW RIGHT FROM
11 WRONG?

12 A. YES, HE DOES.

13 Q. AND HE -- I BELIEVE YOU TESTIFIED WHEN MR.
14 NEWSOME ASKED YOU THIS, HE HAS THE ABILITY TO CONTROL
15 HIS CONDUCT?

16 A. HE --

17 Q. EVEN THOUGH HE MAY BE IMPULSIVE?

18 A. RIGHT.

19 Q. IMPULSIVE MEANS HE MIGHT NOT THINK THROUGH
20 THINGS EVERY TIME?

21 A. RIGHT.

22 Q. BUT HE HAS THE ABILITY TO DO THINGS OF HIS
23 OWN FREE WILL AND ACCORD?

24 A. HE HAS A FREE WILL AND IS ABLE TO MAKE
25 CHOICES, IT SEEMS.

1 Q. AND HE HAS THE INTELLIGENCE TO PLAN
2 THINGS, DOESN'T HE? PLANNING MEANING A GOAL DIRECTED
3 ACTIVITY.

4 A. IT'S NOT SOPHISTICATED. IT'S CERTAINLY
5 VERY RUDIMENTARY, BUT HE DOES HAVE THAT ABILITY.

6 Q. OKAY. BUT I MEAN, IF HE WANTED TO GET
7 FROM POINT A TO POINT B, HE COULD PLAN THAT AND HE
8 COULD DO IT?

9 A. I THINK SO.

10 Q. HE HAS THAT ABILITY?

11 A. YES.

12 Q. HE CAN THINK. OKAY. AND HE'S NOT
13 MENTALLY RETARDED?

14 A. HE'S SLOW. HE DOES NOT MEET THE CRITERIA
15 SET FORTH AS FAR AS THE NUMERICAL I.Q., BUT HE HAS
16 LIMITATIONS.

17 Q. I THINK I NEGLECTED TO ASK YOU WHETHER YOU
18 WERE ALSO RETAINED BY THE DEFENDANT; RIGHT?

19 A. YES.

20 Q. OKAY. AND WHAT IS YOUR HOURLY RATE?

21 A. 250.

22 Q. 250? OKAY. AND HOW MANY HOURS HAVE YOU
23 GOT IN THIS CASE SO FAR?

24 A. APPROXIMATELY SIX HOURS.

25 Q. SIX HOURS. AND OUT OF THE SIX HOURS, HOW

1 MUCH TIME DID YOU SPEND FACE TO FACE TALKING TO
2 HERMAN HUGHES?

3 A. ABOUT TWO HOURS.

4 Q. HOW MUCH TIME DID YOU SPEND REVIEWING
5 RECORDS?

6 A. ABOUT THREE HOURS, AND THE REMAINDER
7 TALKING WITH THE OTHER DEFENSE WITNESSES.

8 Q. OKAY. AND DID YOU CONTACT THE POLICE OR
9 THE ST. MATTHEWS -- EXCUSE ME, THE CALHOUN COUNTY
10 SHERIFF'S OFFICE TO GET ANY INFORMATION FROM THEM?

11 A. NO, I DID NOT.

12 Q. DID YOU CONTACT THE SOLICITOR'S OFFICE?

13 A. NO.

14 Q. DID YOU CONTACT THE VICTIM'S FAMILY?

15 A. NO.

16 Q. YOU DID?

17 A. NO.

18 Q. DID YOU CONTACT KELLY HOFFMAN WHO WAS AT
19 THE SCENE AND THE EYEWITNESS WHO WAS SHOT?

20 A. DID I CONTACT HER?

21 Q. YEAH.

22 A. NO, I DID NOT.

23 Q. DO YOU KNOW OF ANY OBJECTIVE SCIENTIFIC
24 TESTS THAT CAN LINK THE DIAGNOSED MENTAL CONDITION OR
25 DISORDER TO SUBSEQUENT CRIMINAL BEHAVIOR?

1 A. THERE ARE ATTEMPTS THAT HAVE BEEN MADE TO
2 DO THAT, BUT THERE'S NO CLEAR MEDICAL TEST OR
3 ANYTHING, NO.

4 Q. OKAY. THERE'S NO MEDICAL TEST. IS THERE
5 ANY PSYCHOLOGICAL TEST THAT YOU KNOW OF THAT CAN
6 ESTABLISH ANY KIND OF A LINK BETWEEN SOME SUPPOSED
7 MENTAL CONDITION AND SUBSEQUENT CRIMINAL BEHAVIOR?

8 A. NO. THE -- FORTUNATELY, MOST PATIENTS
9 WITH A MENTAL ILLNESS ARE NOT VIOLENT.

10 Q. OKAY.

11 A. SO IT DOES NOT AUTOMATICALLY FOLLOW THAT
12 SOMEONE WHO IS MENTALLY ILL WOULD COMMIT A VIOLENT
13 ACT.

14 Q. AND THE SAME WOULD APPLY TO SOMEBODY WITH
15 BORDERLINE I.Q.; MOST OF THEM ARE NOT VIOLENT?

16 A. IF YOU HAD TO LOOK AT THE NUMBERS,
17 PROBABLY NOT, NO.

18 Q. SO THE FACT THAT SOMEBODY HAS A SOMEWHAT
19 LOWER THAN AVERAGE I.Q. DOESN'T NECESSARILY MAKE THEM
20 VIOLENT?

21 A. NO.

22 Q. AND THE FACT THAT THEY MAY HAVE SOME
23 BORDERLINE PERSON--- SOME MIXED PERSONALITY DISORDER
24 DOESN'T NECESSARILY MEAN THEY'RE GOING TO BE VIOLENT,
25 DOES IT?

1 A. IT DOES NOT AUTOMATICALLY MEAN THAT, NO.

2 Q. AND I BELIEVE YOU'VE SAID THAT PSYCHIATRY
3 IS NOT AN EXACT SCIENCE, IS IT?

4 A. I DIDN'T SAY THAT EXACTLY, BUT IT'S
5 CERTAINLY SOMETHING THAT IS OPEN TO INTERPRETATION.

6 Q. IT'S A MIXTURE OF ART AND SCIENCE, ISN'T
7 IT?

8 A. YEAH.

9 Q. AND YOU COULD HAVE FIVE IMMINENTLY
10 QUALIFIED FORENSIC PSYCHIATRISTS WHO COULD INTERVIEW
11 THE SAME PERSON AND COME UP WITH FIVE LEGITIMATE
12 DIAGNOSES OF THAT PERSON, COULDN'T YOU?

13 A. THAT'S CORRECT.

14 Q. IN ADDITION TO THERE BEING NO MEDICAL OR
15 PSYCHIATRIC TESTS THAT CAN LINK A MENTAL CONDITION OF
16 CRIMINAL BEHAVIOR, DO YOU KNOW OF ANY OBJECTIVE
17 SCIENTIFIC PUBLISHED STUDY THAT HAS EVER LINKED THOSE
18 TWO THINGS?

19 A. NO, I DON'T.

20 Q. THERE IS NONE, IS THERE?

21 A. NOT THAT I'M AWARE OF, NO.

22 Q. ALL RIGHT, SIR. AND AS AN EXPERT FORENSIC
23 PSYCHIATRIST, IF THERE WERE SUCH A STUDY, YOU WOULD
24 BE AWARE OF IT, WOULDN'T YOU?

25 A. I WOULD CERTAINLY HOPE SO, YES.

1 Q. SO THERE IS NONE TO YOUR KNOWLEDGE?

2 A. NOT TO MY KNOWLEDGE, NO.

3 MR. BAILEY: THANK YOU, SIR. I HAVE NO
4 FURTHER QUESTIONS. YOU MAY COME DOWN.

5 THE COURT: THANK YOU. GENTLEMEN, MAY WE
6 RELEASE THIS DOCTOR AT THIS TIME?

7 MR. NEWSOME: YES, SIR.

8 THE COURT: YOU ARE RELEASED, DOCTOR.
9 THANK YOU.

10 MR. NEWSOME: CALL ANNETTE BOETTE TO THE
11 STAND.

12 THE CLERK: IF YOU WOULD, PLEASE PLACE
13 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
14 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

15 THE WITNESS: ANNETTE BOETTE, B-O-E-T-T-E.

16 ANNETTE BOETTE,
17 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
18 TESTIFIED AS FOLLOWS:

19 D I R E C T E X A M I N A T I O N

20 BY MR. NEWSOME:

21 Q. WOULD YOU PLEASE TELL US WHERE YOU LIVE,
22 MS. BOETTE?

23 A. I LIVE IN COLUMBIA.

24 Q. ALL RIGHT. DO YOU HAVE A PRIVATE
25 PRACTICE, MS. BOETTE?

1 A. YES, I HAVE A PRIVATE PRACTICE.

2 Q. AND WHAT TYPE OF PRIVATE PRACTICE DO YOU
3 HAVE?

4 A. I DO CONSULTING AND TEACHING.

5 Q. ALL RIGHT. DO YOU HAVE A SPECIALTY IN
6 PRIVATE PRACTICE?

7 A. IN THE CONSULTING, FORENSIC SOCIAL WORK;
8 IN TEACHING, I TEACH POLICY.

9 Q. ALL RIGHT. DO YOU ALSO HAVE A SALARIED
10 POSITION WITH THE STATE?

11 A. I DO.

12 Q. ARE YOU ON ANNUAL LEAVE TODAY?

13 A. YES, I AM.

14 Q. ARE YOU REPRESENTING YOUR WORK AS WITH THE
15 STATE TODAY?

16 A. NO, I'M NOT.

17 Q. OKAY. TELL THE COURT ABOUT YOUR
18 EDUCATION, PLEASE.

19 A. I BEGAN SCHOOLING OVER IN ORANGEBURG
20 COUNTY. MY FAMILY IS FROM THE BOWLING TOWN
21 COMMUNITY. I CONTINUED IN DORCHESTER COUNTY AND
22 CHARLESTON COUNTY. MY UNDERGRADUATE DEGREE IS FROM
23 U.S.C., 1964. I HAVE AN UNDERGRADUATE DEGREE
24 MAJORING IN SOCIOLOGY. MY MASTERS IN SOCIAL WORK IS
25 FROM 1979 ALSO FROM THE UNIVERSITY OF SOUTH CAROLINA.

1 I'VE ALSO COMPLETED SOCIAL WELFARE RESEARCH COURSES
2 AT CASE WESTERN RESERVE UNIVERSITY IN CLEVELAND.

3 Q. ALL RIGHT. DO YOU HAVE A LICENSE TO
4 PRACTICE SOCIAL WORK IN SOUTH CAROLINA?

5 A. YES, I DO.

6 Q. WHAT IS THAT LICENSE?

7 A. IT'S AN L.M.S.W., NUMBER 1299.

8 Q. DO YOU HOLD ANY CERTIFICATION IN YOUR
9 FIELD?

10 A. YES. I'VE BEEN ADMITTED TO THE ACADEMY OF
11 CERTIFIED SOCIAL WORKERS, 1982.

12 Q. ARE YOU ACTIVE IN ANY COMMUNITY OR
13 PROFESSIONAL ORGANIZATIONS?

14 A. YES, I AM.

15 Q. WHICH ARE THOSE?

16 A. THE PROFESSIONAL ORGANIZATIONS THAT I'M
17 INVOLVED WITH ARE THE SOUTH CAROLINA CHAPTER,
18 NATIONAL ASSOCIATION OF SOCIAL WORKERS AND THE
19 NATIONAL NETWORK FOR SOCIAL WORK MANAGERS.

20 Q. DO YOU HOLD ANY POSITIONS WITH N.A.S.W.?

21 A. SOUTH CAROLINA CHAPTER, I WAS RECENTLY
22 ELECTED TO CHAIR NOMINATIONS IN LEADERSHIP FOR THE
23 STATE CHAPTER, AND I ALSO CHAIR THE CONTINUING
24 EDUCATION COMMITTEE FOR THE STATE CHAPTER WHERE WE
25 PROVIDE CONTINUING EDUCATION FOR OUR 1,200 PLUS

1 MEMBERS.

2 Q. WHERE DID YOU BEGIN YOUR PROFESSIONAL
3 EXPERIENCE?

4 A. MY FIRST WORK WAS A PUBLIC ASSISTANCE CASE
5 WORKER, THE OLD CHARLESTON COUNTY DEPARTMENT OF
6 PUBLIC WELFARE, NOW KNOWN AS SOCIAL SERVICES. I ALSO
7 WORKED IN PRIVATE CONSULTING AFTER A NUMBER OF YEARS
8 AT HOME WITH MY FAMILY. MY PROJECTS WERE VARIED.
9 RURAL TRANSPORTATION, DRUG EVALUATION PROGRAM FOR --
10 DRUG EVALUATION FOR DRUG PROGRAMS, AND I ALSO BEGAN
11 MY MASTERS IN SOCIAL WORK DURING THE TIME I WAS
12 WORKING IN PRIVATE CONSULTING, AND I COMPLETED THREE
13 INTERNSHIPS DURING THE COURSE OF MY MASTERS, ONE IN
14 COMMUNITY MENTAL HEALTH, ONE IN INSTITUTIONAL MENTAL
15 HEALTH, AND ANOTHER AT N.A.S.W.'S HEADQUARTERS IN
16 WASHINGTON, D.C.

17 Q. TELL THE COURT ABOUT YOUR EXPERIENCE WITH
18 YOUR MASTERS.

19 A. I BEGAN WORK IN PUBLIC CHILD WELFARE RIGHT
20 STRAIGHT OUT OF MY MASTERS. I HAVE WORKED IN
21 ADOPTIONS, BIRTH PARENT SERVICES. I'VE SUPERVISED
22 STATE ADOPTIONS, BIRTH PARENT SERVICES, FOSTER CARE.
23 I'VE ALSO WORKED IN PROGRAM DEVELOPMENT FOR PEOPLE
24 WHO WORK IN ADOPTION BIRTH PARENT SERVICES. AN
25 EMPHASIS ON SPECIAL NEEDS ADOPTION. I'VE WORKED A

1 LOT IN SPECIAL NEEDS ADOPTION. I'VE DONE
2 CONSULTATIONS WITH COUNTY DEPARTMENTS OF SOCIAL
3 SERVICES, QUITE A FEW SPECIAL PROJECTS FOR THE STATE
4 DIRECTOR OF SOCIAL WORK -- FOR SOCIAL SERVICES. I'VE
5 ALSO WORKED IN DAY CARE LICENSING.

6 Q. WHAT COURSES HAVE YOU TAUGHT?

7 A. I TEACH CHILD WELFARE POLICY PRIMARILY AND
8 ALSO AN UNDERGRADUATE LEVEL BEGINNING SOCIAL WELFARE
9 POLICIES.

10 Q. HOW LONG HAVE YOU BEEN IN PRACTICE?

11 A. POST MASTER'S, 16 PLUS YEARS.

12 Q. OKAY. HAVE YOU EVER WORKED FOR THE
13 PROSECUTION ON ANY CASE IN THE STATE OF SOUTH
14 CAROLINA?

15 A. YES, SIR, I HAVE.

16 Q. IN WHAT CAPACITY?

17 A. I'VE BEEN A SOCIAL WORK CONSULTANT TO
18 SOLICITORS, CORONERS, LOCAL LAW ENFORCEMENT, STATE
19 LAW ENFORCEMENT, INVESTIGATING CHILD DEATHS.

20 Q. WOULD YOU SAY THAT YOU'VE WORKED MORE
21 OFTEN FOR PROSECUTION OR FOR THE DEFENSE?

22 A. I'VE WORKED MORE CASES FOR THE PROSECUTION
23 THAN THE DEFENSE.

24 Q. HAVE YOU PARTICIPATED IN ANY TRAINING IN
25 FORENSIC SOCIAL WORK?

1 A. YES, I HAVE.

2 Q. ABOUT HOW MANY AVERAGE?

3 A. MAYBE 25 CONTACT HOURS.

4 Q. HAVE YOU CONDUCTED TRAINING RELATED TO
5 SOCIAL WORKERS IN JUDICIAL PROCEEDINGS?

6 A. YES, I HAVE.

7 Q. WHAT WAS THE TOPIC?

8 A. CONDUCTING INVESTIGATIONS AND WRITING
9 REPORTS FOR THE COURT, AND THAT WAS PRIMARILY IN THE
10 FIELD OF ADOPTION AND BIRTH PARENT SERVICES.

11 Q. MS. BOETTE, AS A MASTER'S LEVEL SOCIAL
12 WORKER, HAS YOUR EDUCATION INCLUDED THE PROCEDURE
13 REFERRED TO AS THE PSYCHOSOCIAL ASSESSMENT?

14 A. YES, IT HAS.

15 Q. IS AN ASSESSMENT OF THIS KIND TAUGHT IN
16 YOUR EDUCATION?

17 A. IT'S COMMONLY TAUGHT IN PROFESSIONAL
18 SOCIAL WORK EDUCATION AND AS A TYPICAL PROCEDURE IN
19 PROFESSIONAL SOCIAL WORK PRACTICE.

20 Q. OKAY. WHAT EXACTLY IS A PSYCHOSOCIAL
21 ASSESSMENT?

22 A. A PSYCHOSOCIAL ASSESSMENT IS A METHOD OF
23 GATHERING A VARIETY OF INFORMATION IN REGARD TO AN
24 INDIVIDUAL, USUALLY, BUT IT CAN ALSO BE FAMILIES AND
25 COMMUNITIES. GATHERING INFORMATION FROM THE PERSONS

1 INVOLVED, THEIR SIGNIFICANT OTHERS, FROM OTHER
2 EXPERTS, FROM THE COMMUNITY, AND ALSO FROM THE
3 LITERATURE WHERE WE WOULD GO TO JOURNAL ARTICLES,
4 BOOKS, ET CETERA.

5 Q. OKAY. FROM THE PERSPECTIVE OF THE
6 FORENSIC SOCIAL WORKER, WHAT'S SPECIAL ABOUT CAPITAL
7 TRIALS?

8 A. CAPITAL TRIALS ARE CONDUCTED UNDER A SET
9 OF SPECIAL PROTECTIONS PROCEDURES THAT REQUIRE THAT
10 THE DEFENSE -- THAT THE SENTENCER LISTEN AND THE
11 DEFENSE PRESENT INFORMATION ON AN INDIVIDUAL'S
12 BACKGROUND DURING THE PENALTY PHASE, THE PHASE THAT
13 WE'RE IN NOW.

14 Q. OKAY. WHAT'S THE PURPOSE OF DOING A
15 PSYCHOSOCIAL ASSESSMENT IN A CAPITAL TRIAL?

16 A. IT HAS -- IT IS PROBABLY THE BEST WAY OF
17 GIVING A JURY THE BACKGROUND ON AN INDIVIDUAL,
18 PERHAPS HOW HE OR SHE HAS GOTTEN TO BE IN THE
19 SITUATION THAT THEY ARE IN TODAY.

20 Q. IS THE ASSESSMENT INTENDED TO EXCUSE THE
21 DEFENDANT?

22 A. ABSOLUTELY NOT, MR. NEWSOME. THERE'S
23 NOTHING THAT COULD EXCUSE THE HORROR OF SOMEONE BEING
24 SHOT. IT'S NOT INTENDED AT ALL TO EXCUSE ANY KIND OF
25 CRIME. IT IS, HOWEVER, INTENDED TO TRY TO EXPLAIN

1 HOW SOMEONE MIGHT HAVE GOTTEN TO WHERE THEY ARE
2 TODAY.

3 Q. WHEN YOU SAY YOU INTERVIEW OTHER PEOPLE,
4 WHY IS THAT IMPORTANT?

5 A. WELL, NONE OF US GROW UP IN A VACUUM. WE
6 ARE ALL REARED BY OUR PATTERN, OUR FAMILY. IN MANY
7 INSTANCES, THAT'S A GREAT DEAL OF INFLUENCE BY OUR
8 SCHOOLS, OUR COMMUNITY, OUR NEIGHBORS, OTHER
9 INDIVIDUALS IN THE COMMUNITY.

10 Q. WHAT KINDS OF RECORDS DO YOU TYPICALLY
11 REVIEW AND WHY ARE THESE RECORDS ADOPTED IN THIS
12 COURT?

13 A. WELL, I WOULD HOPE TO BE ABLE TO REVIEW
14 MEDICAL RECORDS WHICH MIGHT BEGIN WITH BIRTH RECORDS,
15 ANY KIND OF RECORDS OF ILLNESSES. I WOULD ALSO WANT
16 TO REVIEW AS MANY SCHOOL RECORDS AS I COULD GET. I
17 WOULD POSSIBLY ALSO REVIEW LEGAL PAPERS. I MIGHT GET
18 INFORMATION FROM VITAL STATISTICS. THOSE WOULD BE
19 GENERALLY THE TYPES OF RECORDS THAT I WOULD REVIEW.

20 Q. WHY WOULD YOU GET THESE RECORDS?

21 A. IT -- IT'S INTENDED TO CORROBORATE
22 INFORMATION FROM INDIVIDUALS. ALL OF US HAVE OUR OWN
23 PERSPECTIVE, OUR OWN OBSERVATIONS. WE MAY HAVE
24 REMEMBRANCES THAT ARE EITHER CORRECT OR INCORRECT.
25 IT MUST BE CORROBORATED. TYPICALLY WHAT A

1 PSYCHOSOCIAL ASSESSMENT WOULD REQUIRE WOULD BE
2 INFORMATION FROM A MINIMUM OF TWO SOURCES BEFORE IT'S
3 PRESENTED TO THE COURT.

4 Q. ARE THERE ANY OTHER WAYS TO GET THE
5 INFORMATION WHEN YOU DO THESE ASSESSMENTS?

6 A. WELL, WE WOULD ALSO -- WE WOULD WANT TO
7 TALK WITH OTHER EXPERTS, IN THIS CASE, FOR INSTANCE,
8 THE PSYCHIATRIST, TO SEE IF OUR INFORMATION IS
9 CONSISTENT OR INCONSISTENT. IF TESTING WERE DONE, IF
10 SCHOOL RECORDS WERE IDENTIFIED AND THEY WERE ENTIRELY
11 INCONSISTENT WITH OTHER FINDINGS, THEN WE WOULD WANT
12 TO DETERMINE WHY THE INCONSISTENCIES AND WE WOULD
13 NEED CLARIFICATION. THERE MAY BE A LEGITIMATE REASON
14 THAT THEY ARE INCONSISTENT.

15 Q. OKAY. DO YOU MAKE A LIST OF THE
16 INDIVIDUALS THAT ARE INTERVIEWED IN EACH CASE?

17 A. YES, I DO.

18 Q. DO YOU MAKE A LIST OF THE RECORDS THAT YOU
19 REVIEW?

20 A. YES, I DO.

21 Q. DO YOU MAKE A LIST OF REFERENCES FOR EACH
22 CASE?

23 A. YES, SIR.

24 Q. MS. BOETTE, HAVE YOU EVER BEEN QUALIFIED
25 AS AN EXPERT TO TESTIFY IN THIS FIELD IN THE COURTS

1 OF THE STATE OF SOUTH CAROLINA?

2 A. I HAVE.

3 Q. ON HOW MANY OCCASIONS?

4 A. PROBABLY TEN TIMES.

5 Q. ALL RIGHT.

6 A. OVER A LONG PERIOD OF TIME.

7 MR. NEWSOME: YOUR HONOR, AT THIS TIME, I
8 WOULD MOVE THAT MS. BOETTE BE QUALIFIED AS AN EXPERT
9 IN CONDUCTING PSYCHOSOCIAL ASSESSMENTS.

10 MR. BAILEY: NO OBJECTION.

11 THE COURT: SHE'S QUALIFIED.

12 BY MR. NEWSOME:

13 Q. MS. BOETTE, DID I ASK YOU TO CONDUCT A
14 PSYCHOSOCIAL ASSESSMENT ON HERMAN HUGHES?

15 A. YES. I WAS ASKED TO DO AN ASSESSMENT ON
16 HERMAN HUGHES, JUNIOR.

17 Q. DID YOU CONDUCT INTERVIEWS AND CONSULT
18 WITH OTHER EXPERTS AS YOU STANDARDLY WOULD DO?

19 A. YES. STANDARD PROCEDURE.

20 Q. DO YOU HAVE THE LIST OF INDIVIDUALS THAT
21 YOU INTERVIEWED WITH YOU IN COURT TODAY?

22 A. YES.

23 Q. TELL THE COURT WHO ALL WAS INTERVIEWED.

24 A. I INTERVIEWED THE DEFENDANT, HERMAN
25 HUGHES, JUNIOR. I INTERVIEWED HIS BIRTH MOTHER,

1 MIRANDA SINGLETARY HUGHES. I INTERVIEWED HIS BIRTH
2 FATHER, HERMAN LEE HUGHES, SENIOR. I INTERVIEWED HIS
3 BIRTH PATERNAL GRANDMOTHER, WHO IS ALSO HIS ADOPTED
4 MOTHER, LUCILLE GENERAL HUGHES. I MET WITH HIS BIRTH
5 PATERNAL GRANDFATHER, WHO IS ALSO HIS ADOPTED FATHER,
6 MR. CHARLIE HUGHES. MR. HUGHES HAS HAD A STROKE, AND
7 HE -- WE DID TALK FOR A WHILE.

8 I ALSO INTERVIEWED THE OTHER EXPERTS. I
9 INTERVIEWED DR. DEWITT AND DR. MORGAN. THERE WERE
10 SCHOOL PERSONNEL INTERVIEWED BY THE INVESTIGATOR FOR
11 THE PENALTY PHASE, INDIVIDUALS THAT YOU'VE ALREADY
12 HEARD FROM TODAY.

13 Q. OKAY. DO YOU HAVE A LIST OF DOCUMENTS
14 THAT YOU REVIEWED WITH YOU IN COURT TODAY?

15 A. YES, SIR, I DO.

16 Q. WILL YOU TELL THE COURT WHAT DOCUMENTS YOU
17 REFERRED TO?

18 A. I REVIEWED ORANGEBURG REGIONAL HOSPITAL
19 MEDICAL RECORDS SURROUNDING HERMAN JUNIOR'S BIRTH IN
20 1977. I REVIEWED SCHOOL RECORDS FROM GUINYARD
21 ELEMENTARY HERE IN ST. MATTHEWS AND FROM JOHN FORD
22 MIDDLE SCHOOL. I REVIEWED THE -- A NUMBER OF LEGAL
23 PAPERS IN REGARD TO THE CRIME THAT WAS COMMITTED FOR
24 WHICH HE WAS ARRESTED. I REVIEWED HIS ADOPTION
25 PAPERS, HIS BIRTH MOTHER'S NURSING LICENSING RECORDS,

1 DEPARTMENT OF SOCIAL SERVICE RECORDS. THERE ARE TWO
2 MORE AREAS. I REVIEWED HIS YOUNGER BROTHER CHARLIE'S
3 RECORDS FROM JOHN FORD MIDDLE SCHOOL, AND I CAN'T
4 REMEMBER THE OTHER ONE.

5 Q. OKAY. PERHAPS IT WILL COME TO YOU.

6 A. IT WILL COME TO ME.

7 Q. DO YOU HAVE A LIST OF THE REFERENCES THAT
8 YOU USED IN THIS CASE?

9 A. I DO.

10 Q. OKAY. WOULD YOU TELL THE COURT ABOUT A
11 FEW OF THE REFERENCES?

12 A. OKAY. LET ME MENTION THREE OF THEM.
13 ELLIS AND LUCKASSON, IT'S A JOURNAL ARTICLE, RUTH
14 LUCKASSON, "MENTALLY RETARDED CRIMINAL DEFENDANTS AND
15 MENTAL RETARDATION IN CRIMINAL DEFENSE". GARBARINO
16 AND HIS COLLEAGUES, "THE PSYCHOLOGICALLY BATTERED
17 CHILD". AND MARTINEZ AND COLLEAGUES, "THE N.I.M.H.
18 COMMUNITY VIOLENCE PROJECT", AND THAT STUDIED THE
19 EFFECTS ON COMMUNITY VIOLENCE ON CHILDREN.

20 Q. DID YOU GET A PICTURE OF HERMAN HUGHES,
21 JUNIOR'S LIFE?

22 A. I THINK SO. I THINK IT WAS A SNAPSHOT,
23 BUT YES, I THINK I DID.

24 Q. DID YOU ARRIVE AT ANY CONCLUSIONS IN THIS
25 CASE?

1 A. I DID.

2 Q. ALL RIGHT. BEFORE YOU TELL US ABOUT THOSE
3 CONCLUSIONS, CAN YOU DESCRIBE HERMAN? NOT IN DETAIL,
4 BUT JUST GIVE US A SKETCH OF HIM.

5 A. OKAY. HE WAS BORN JULY 1977, ORANGEBURG
6 REGIONAL HOSPITAL. HIS MOTHER MIRANDA SINGLETARY
7 HUGHES WAS 18 AT THE TIME. HIS FATHER, HERMAN LEE
8 HUGHES, SENIOR, WAS PRESENT DURING THE COURSE OF THE
9 PREGNANCY AND BIRTH. HE WAS A HEALTHY NEWBORN.
10 PROGRESSED AT WHAT ONE WOULD ASSUME TO BE RELATIVELY
11 PREDICTABLE LEVELS. THERE WERE SOME WORDS BEFORE A
12 YEAR, WALKING AROUND A YEAR.

13 THE -- HIS MOTHER -- BIRTH MOTHER AND FATHER
14 LIVED WITH HIS PATERNAL GRANDPARENTS, WHICH -- IN THE
15 SAME HOME IN WHICH HE LIVED, OF COURSE, UNTIL HE WAS
16 AROUND FOUR YEARS OLD. AND AS REPORTED BY VARIOUS
17 FAMILY MEMBERS, THE BIRTH MOTHER WAS REALLY UNHAPPY
18 IN HER MARRIAGE. THERE WERE SOME PROBLEMS, AT LEAST
19 AS SHE PERCEIVED THEM, AND MS. LUCILLE AGREED TO TAKE
20 CARE OF HERMAN JUNIOR, AND THERE WAS AN ADOPTION.
21 AND I HAVE REVIEWED THE ADOPTION PAPERS.

22 Q. OKAY. AND DID HERMAN HAVE ANY SIBLINGS?

23 A. YES. HE HAD A YOUNGER SISTER WHO WAS BORN
24 ABOUT TEN MONTHS AFTER HE WAS BORN, AND SHE LIVED
25 ONLY ABOUT FOUR MONTHS FROM COMPLICATIONS OF

1 PREMATURITY. HER NAME WAS SOPHIE. AND THEN HE HAS A
2 YOUNGER BROTHER CHARLIE WHO IS ABOUT 14 NOW.

3 Q. OKAY. CONCERNING THE ADOPTION --

4 A. YES.

5 Q. -- COULD YOU TELL US MORE ABOUT THAT?

6 A. THE ADOPTION PAPERS SHOW US A FAIRLY
7 PREDICTABLE INTRAFAMILY ADOPTION. THE BIRTH PARENTS
8 RELINQUISHED THEIR PARENTAL RIGHTS. THERE'S NOT AN
9 EXTENSIVE INVESTIGATION BECAUSE THAT'S TYPICALLY NOT
10 REQUIRED IN AN INTRAFAMILY ADOPTION. IT REPORTS THAT
11 HERMAN JUNIOR HAS BEEN LIVING PRIMARILY WITH HIS
12 PATERNAL GRANDPARENTS MOST OF HIS LIFE AND THAT
13 EVERYBODY DESIRES THIS ADOPTION TO HAPPEN. AND I'M
14 PRETTY SURE, IF I REMEMBER THE DATE CORRECTLY, HIS
15 AMENDED BIRTH CERTIFICATE WAS ISSUED ON DECEMBER THE
16 3RD, 1981. SO THE ADOPTION WAS CONSUMMATED,
17 LEGALIZED JUST BEFORE THAT TIME -- BEFORE THE AMENDED
18 BIRTH CERTIFICATE WAS ISSUED.

19 Q. HAVE HIS BIRTH MOTHER AND FATHER REMAINED
20 A PART OF HIS LIFE?

21 A. THEY HAVE BEEN PRETTY MUCH IN AND OUT OF
22 HIS LIFE, AND IT KIND OF DEPENDS ON THE WAY I ASKED
23 IT AND WHO I ASKED AS TO HOW THAT WILL HAPPEN. MS.
24 MIRANDA SINGLETARY HUGHES REPORTS THE ADOPTION VERY
25 DIFFERENTLY THAN THE GRANDMOTHER REPORTS IT. THERE'S

1 QUITE A BIT OF DISAGREEMENT IN THE FAMILY ABOUT HOW
2 THE ADOPTION CAME ABOUT.

3 HIS BIRTH MOTHER REPORTS TO ME THAT SHE FELT
4 LIKE SHE WAS TRICKED INTO THE ADOPTION. THE
5 GRANDMOTHER SAID, WELL, SHE COULDN'T WAIT TO GET RID
6 OF HIM. THE BIRTH FATHER, ACCORDING TO THE
7 GRANDMOTHER, HAD AGREED TO SUPPORT HIM IF -- IF
8 GRANDMOTHER WOULD TAKE HIM. AND WHEN I ASKED HER HOW
9 LONG THAT LASTED, SHE SAID NOT VERY LONG. SO THEY'VE
10 BEEN IN AND OUT OF HIS LIFE, AND THERE'S STILL QUITE
11 A BIT OF PROBLEMS ABOUT THE ADOPTION.

12 Q. WHERE DID HERMAN START SCHOOL?

13 A. THE FIRST REPORTS I HAVE ARE FROM GUINYARD
14 ELEMENTARY.

15 Q. OKAY. IN HIS SCHOOL RECORDS, ARE THERE
16 ANY PROBLEMS, NOTICE OF PROBLEMS IN THE EARLY YEARS?

17 A. THE FIRST RECORDS THAT I HAVE ARE ACTUALLY
18 RECORDS OF A PROBLEM WHERE THE SCHOOL IS TRYING TO
19 PLAN AN INDIVIDUALIZED EDUCATION PLAN, AND THESE ARE
20 DATED IN LIKE JANUARY, FEBRUARY OF '86. I DON'T KNOW
21 HOW HE GOT THERE. BUT HE WAS IN SECOND GRADE AT THAT
22 TIME. I HAVE HEARD DIFFERENT REPORTS OF WHETHER HE
23 REPEATED THE FIRST GRADE OR NOT. BUT THIS IS IN THE
24 SECOND GRADE, AND THERE WERE SOME SEVERE PROBLEMS.

25 Q. ALL RIGHT. DO YOU HAVE WITH YOU PAGES

1 FROM THAT EVALUATION?

2 A. YES, SIR, I DO.

3 Q. WOULD YOU READ FROM THAT EVALUATION ABOUT
4 SOME OF HIS PROBLEMS?

5 A. THESE WERE THE AREAS THAT CONCERNED ME THE
6 MOST. THE SCHOOL DID A RATHER THOROUGH JOB OF THIS
7 EVALUATION. THE REPORT SHOWS THAT THERE WAS A BELOW
8 AVERAGE RATING BY THE TEACHER OF ATTENTION TO TASK,
9 ORGANIZATION OF TASK, INDEPENDENT WORK HABITS,
10 ABILITY TO COMPLETE TASK ASSIGNED, AND THAT WAS GIVEN
11 FIVE OUT OF THE LOWEST RATING WOULD BE A SIX.

12 THERE WAS AN ABOVE AVERAGE RATING OF
13 DISTRACTIBILITY, NEED FOR TEACHER SUPPORT, AND AROUND
14 AN AVERAGE NEED FOR PEER SUPPORT. THESE WERE SOME OF
15 THE LEARNING DISABILITIES THAT WERE CHECKED ON THIS
16 REPORT. ONE HAS A SHORT ATTENTION SPAN, EASILY --
17 DISTRACTIBLE. DOESN'T SAY EASILY. IS UNABLE TO
18 COMPREHEND WHAT HE READS SILENTLY. IS UNABLE TO READ
19 SILENTLY WITHOUT WHISPERING OR MOVING LIPS. HAS
20 DIFFICULTY REMEMBERING WHAT WAS PERCEIVED AFTER THE
21 STIMULUS WAS REMOVED.

22 Q. WHAT WAS THE OUTCOME OF THIS EVALUATION AT
23 THAT TIME?

24 A. THERE WAS A DETERMINATION THAT HERMAN
25 JUNIOR SHOULD BE PLACED IN THE LEARNING DISABLED

1 CLASSROOM, AND MS. LUCILLE SIGNED FOR THAT, SIGNED
2 PERMISSION FOR THAT IN FEBRUARY OF '86.

3 Q. HOW LONG DID HE STAY IN THIS --

4 A. ACCORDING TO THE RECORDS, HE WAS JUST
5 THERE THE REST OF THE SEMESTER. THERE WAS A STAFFING
6 IN MAY OF '86 THAT SAID THAT MORE THAN 50 PERCENT OF
7 THE TIME, HE COULD FUNCTION IN A REGULAR CLASSROOM,
8 SO IT'S PRESUMED THAT HE GOES BACK IN A REGULAR
9 CLASSROOM, ALTHOUGH THERE ARE NO MORE RECORDS FROM
10 GUINYARD THAT HAVE BEEN MADE AVAILABLE TO ME.

11 Q. OKAY. YOU HAVE NO OTHER RECORDS FROM
12 GUINYARD?

13 A. NO, SIR.

14 Q. DID YOU REVIEW THE TESTING RESULTS?

15 A. YES. I REVIEW THE PSYCHO EDUCATIONAL
16 SERVICES REPORTS THAT WERE -- HAVE BEEN MENTIONED
17 BEFORE BY SCHOOL AS WELL AS BY -- EXCUSE ME -- AS
18 WELL AS BY THE TWO PSYCHIATRISTS.

19 Q. OKAY. WHAT DID YOU LEARN FROM THAT
20 TESTING?

21 A. WELL, THEY OBVIOUSLY IDENTIFIED SOME
22 DIFFICULTIES, BUT PROBABLY WHAT WAS MORE STRIKING FOR
23 ME IS THAT THE FIRST EVALUATION WAS DONE IN '86. THE
24 SECOND EVALUATION WAS DONE IN '91. AND THERE WAS A
25 DETERIORATION OF SKILLS IDENTIFIED. THE SKILLS HAD

1 DETERIORATED IN THAT FIVE-YEAR PERIOD AS OPPOSED TO,
2 YOU KNOW, GETTING BETTER SO THAT HE COULD DEAL WITH
3 MORE DIFFICULT MATERIAL.

4 Q. HAVE YOU REVIEWED ANY OTHER SCHOOL
5 RECORDS?

6 A. I'VE REVIEWED RECORDS FROM JOHN FORD
7 MIDDLE SCHOOL.

8 Q. OKAY. WHAT GRADES?

9 A. IT LOOKS LIKE SIX, SEVEN AND EIGHT.

10 Q. OKAY. DID HE DO BETTER IN MIDDLE SCHOOL?

11 A. NO.

12 Q. HOW DO YOU KNOW THAT?

13 A. THE RECORDS INDICATE THAT -- A CONSISTENT
14 PATTERN OF FAILURE. THERE I THINK ARE ONLY ONE OR
15 TWO C'S, MAYBE HALF A DOZEN D'S, AND EVERYTHING ELSE
16 ARE F'S, WHETHER IT'S A QUARTER OR END OF THE
17 SEMESTER. SO WE SEE VERY, VERY POOR GRADES.

18 WE ALSO SEE AN ACCELERATION OF SOME INFRACTIONS.
19 THE INFRACTIONS ARE LIKE LEAVING THE CLASSROOM
20 WITHOUT PERMISSION, DISRESPECT TO THE TEACHER, AND
21 THEN IT BUILDS UP TO THE POINT WHERE THEN HE IS
22 EXPELLED, AND IT LOOKS LIKE HE'S EXPELLED IN JANUARY
23 AND FEBRUARY OF EACH OF THOSE YEARS. IT'S -- IT'S
24 VERY INTERESTING, ALTHOUGH HE COMPLETES ONE YEAR OF
25 THE SIXTH GRADE, BUT HE IS EXPELLED THREE TIMES, AND

1 I'M BOTHERED BY THAT -- THAT PATTERN. AND I'M NOT
2 SURE WHAT IT MEANS, BUT IT'S ALWAYS RIGHT AFTER
3 CHRISTMAS.

4 Q. OKAY. HAVE YOU REVIEWED ANY OTHER SCHOOL
5 RECORDS?

6 A. LET'S SEE. I'VE REVIEWED THE INFRACTIONS.
7 THERE ARE ALSO THE REPORTS OF THE ABSENCES, AND THE
8 ABSENCES ARE REMARKABLE. THEY WILL COMPRISE SOME
9 QUARTER OR A THIRD OF THE DAYS THAT HERMAN JUNIOR IS
10 ACTUALLY ENROLLED IN SCHOOL.

11 Q. OKAY. NOW, DID YOU REVIEW HIS RECORDS IN
12 THE FALL OF 1993?

13 A. YES, I DID.

14 Q. OKAY. HE WAS IN THE SEVENTH GRADE IN
15 FEBRUARY OF '93 WHEN HE GOT EXPELLED?

16 A. HE WAS -- IN FEBRUARY OF '93, HE WAS IN
17 THE SEVENTH GRADE, AND HE WAS EXPELLED, YES.

18 Q. AND THEN HE WAS PROMOTED TO THE EIGHTH
19 GRADE?

20 A. WELL, AND THEN HE APPEARS IN THE EIGHTH
21 GRADE IN OCTOBER OF '93.

22 Q. HOW DO YOU EXPLAIN THAT?

23 A. I CAN'T EXPLAIN THAT.

24 Q. ALL RIGHT. WHAT DID YOU LEARN FROM JOHN
25 FORD RECORDS FROM '93, '94?

1 A. THERE ARE SIGNIFICANT NUMBERS OF
2 INFRACTIONS. I THINK THERE'S ONE OF HORSEPLAYING.
3 BUT MOST OF THEM ARE LACK OF ATTENTION, TALKING,
4 DISRESPECT TO THE TEACHER, AND THEN EVENTUALLY THEY
5 BUILD UP, AND THEN THERE'S A SIMILAR NUMBER OR
6 PERCENTAGE OF INFRACTIONS THE FOLLOWING YEAR ALSO
7 WITH THE LARGE NUMBER OF ABSENCES, AND THEN HE IS
8 EXPELLED FEBRUARY THE 2ND OF '94.

9 Q. ALL RIGHT. YOU -- YOU HAVE GIVEN US A
10 REVIEW OF YOUR OBSERVATIONS OF HIS LIFE. HAVE YOU
11 DRAWN ANY CONCLUSIONS FROM THOSE OBSERVATIONS?

12 A. I HAVE.

13 Q. WOULD YOU REVIEW WITH THE COURT THOSE
14 OBSERVATIONS AND CONCLUSIONS?

15 A. OKAY. AND IF YOU WILL BEAR WITH ME, I
16 NEED TO REFER TO MY NOTES, PLEASE. I'VE GOT THE
17 SCHOOL RECORDS HERE. AND I NEED TO FIND THE
18 CONCLUSIONS.

19 THE FIRST CONCLUSION IS THAT HERMAN JUNIOR WAS
20 BORN INTO A FAMILY WITH VERY LITTLE FORMAL SCHOOLING
21 AND VERY FEW SKILLS AND BEING ABLE TO MEET THE NEEDS
22 OF A CHILD WITH THE LIMITATIONS THAT HE HAD.

23 THE SECOND ONE IS THAT HERMAN JUNIOR'S FAMILY,
24 AND PARTICULARLY THE TWO MOTHERS, BICKERED OVER THE
25 ADOPTION AND NEVER ALLOWED HIM TO RESOLVE THE TRAUMA

1 OF THIS KIND OF OPEN ADOPTION.

2 NUMBER THREE, HERMAN JUNIOR HAS BORDERLINE
3 INTELLECTUAL ABILITY.

4 NUMBER FOUR, THERE WAS A FAILURE ON THE PART OF
5 THE EDUCATION SYSTEM TO INTERVENE AND MEET HIS NEEDS.

6 FIVE, THE CONTEXT OF THE CRIME SHOWS A RAPIDLY
7 DETERIORATING SITUATION. HE HAD BEEN EXPELLED FROM
8 SCHOOL AGAIN. HIS GRANDFATHER, ADOPTED FATHER, HAD A
9 STROKE AND REQUIRED NURSING CARE.

10 THE FOURTH ONE -- I MEAN, THE SIXTH ONE IS
11 REALLY A COMPOSITE OF ALL OF THESE. BECAUSE OF HIS
12 MANY INTELLECTUAL IMPAIRMENTS, HERMAN JUNIOR WAS
13 EASILY INFLUENCED BY OTHERS AND FELL PREY TO THOSE
14 WHO DID NOT HAVE HIS BEST INTEREST AT HEART. HERMAN
15 JUNIOR WAS A CHILD WHO WENT ALONG WITH OTHERS FOR
16 APPROVAL AND A SENSE OF BELONGING, AND HE WAS UNABLE
17 TO JUDGE WHO WAS SAFE AND WHO WAS NOT.

18 Q. ALL RIGHT. LET'S TAKE THESE CONCLUSIONS
19 ONE AT A TIME.

20 A. YES, SIR.

21 Q. WHAT DOES THIS FAMILY'S EDUCATIONAL LEVEL
22 HAVE TO DO WITH --

23 A. WELL, OUR FAMILY MEMBERS ARE OUR FIRST
24 TEACHERS. SO FIRST OF ALL, IF THE CHILD IS LIMITED
25 AND THE FAMILY IS ALSO LIMITED, THEN THEY ARE NOT

1 ABLE TO HELP A CHILD OVERCOME SOME OF THESE
2 DIFFICULTIES. ALSO, THE FAMILY HAS TO BE -- HAVE THE
3 ABILITY, AND THIS IS -- THIS IS -- COMES UP FROM
4 SEVERAL THINGS. IT'S INTELLIGENCE, RESOURCES, AND
5 DESIRE TO PUT TOGETHER A PLAN FOR A CHILD WHO HAS
6 EXTRAORDINARY LIMITATIONS.

7 Q. WHAT AGE WAS HE ADOPTED?

8 A. HE WAS ADOPTED AT FOUR, A LITTLE OVER
9 FOUR.

10 Q. AND DID YOU REVIEW THE LEGAL PAPERS, THE
11 ADOPTION?

12 A. YES, I DID.

13 Q. WAS THERE ANYTHING UNUSUAL ABOUT THEM?

14 A. NO. NOTHING UNUSUAL ABOUT THEM. IT WAS A
15 TYPICAL INTRAFAMILY ADOPTION.

16 Q. DID YOU DISCUSS THE ADOPTION WITH HIS
17 BIRTH MOTHER?

18 A. I DID.

19 Q. WHAT'S YOUR OPINION ABOUT WHAT SHE THINKS
20 ABOUT THIS ADOPTION?

21 A. I BELIEVE THAT MIRANDA HUGHES HAS A GREAT
22 DEAL OF UNRESOLVED CONFLICT. I THINK SHE IS STILL IN
23 A GREAT DEAL OF DENIAL ABOUT HER OWN PARTICIPATION IN
24 THE ADOPTION. I THINK IT'S EASIER FOR HER TO BLAME
25 OTHERS THAN IT IS FOR HER TO ACCEPT -- AND I NEED TO

1 SAY THAT -- FROM YEARS OF ADOPTION EXPERIENCE,
2 CHOOSING ADOPTION, PLANNING ADOPTION FOR A CHILD IS A
3 VERY LOVING AND A VERY STRONG ACT. IT TAKES A GREAT
4 DEAL OF BRAVERY AND COURAGE TO DO THAT. IT --
5 HOWEVER, IF IT IS NEVER ACCEPTED, IF IT'S NEVER
6 PRESENTED AS A POSITIVE MOVE, THEN THE DENIAL IS
7 ALWAYS THERE.

8 Q. OKAY. YOU SAID THAT HERMAN HAS BORDERLINE
9 INTELLECTUAL ABILITY. WHAT DOES THAT MEAN?

10 A. WELL, AS THE PSYCHIATRISTS HAVE TESTIFIED,
11 THE CUTOFF FOR MENTAL RETARDATION, IF IT'S A HARD AND
12 FAST RULE, IS 70. THE BORDERLINE INTELLECTUAL
13 FUNCTIONING, ACCORDING TO DSM4 IS BETWEEN 71 AND 84.
14 NONE OF THE RECORDS THAT I REVIEWED INDICATED THAT HE
15 HAD SCORED HIGHER THAN 84 ON ANY OF THE FULL SCALE
16 I.Q. TESTS.

17 Q. OKAY. DID YOU SEE ANYPLACE IN THE SCHOOL
18 RECORDS WHERE THE ADOPTED PARENTS PARTICIPATED IN THE
19 SCHOOL?

20 A. YES. I WAS MENTIONING TO YOU EARLIER THE
21 '86 PLANNING THAT RESULTED IN HIS BEING -- HERMAN
22 JUNIOR BEING PLACED IN THE LEARNING DISABLED
23 CLASSROOM, AND GRANDMOTHER AND THEN ADOPTIVE MOTHER,
24 MS. LUCILLE HUGHES, DID SIGN FOR THAT PERMISSION.

25 Q. OKAY. WHAT DO YOU MEAN BY THE CONTEXT OF

1 THE CRIME?

2 A. OKAY. THE CRIME OCCURRED IN MARCH -- I
3 BELIEVE THIS IS RIGHT -- MARCH 18TH OF '94. FEBRUARY
4 THE 2ND OF '94, HERMAN JUNIOR WAS EXPELLED AGAIN.
5 CHRISTMAS OF '93, THE GRANDFATHER, ADOPTED FATHER,
6 HAD TO BE PLACED IN NURSING HOME CARE BECAUSE HIS
7 CARE HAD BECOME -- HAD COME TO THE POINT WHERE HE
8 COULD NOT BE PROVIDED CARE AT HOME. HE HAD HAD A
9 STROKE. AND SO WHAT I'M DESCRIBING IS THIS GRADUALLY
10 DETERIORATING CONDITION THERE, AND IT BASICALLY PUT
11 HIM ON THE STREETS.

12 Q. WHY DO YOU SAY THAT HERMAN'S INTELLECTUAL
13 IMPAIRMENT WOULD CAUSE HIM TO FALL PREY TO BAD
14 JUDGMENT OR BAD INFLUENCES?

15 A. HE IS NOT AT THE STAGE, AND ACTUALLY IN MY
16 OPINION I'M NOT SURE HE'S STILL AT THE STAGE EVEN AT
17 18, AND THE CRIME OCCURRED WHEN HE WAS 16, TO MAKE
18 INDEPENDENT ADULT JUDGMENTS. OKAY? THE
19 DEVELOPMENTAL RESEARCH TELLS US THAT A PERSON UNTIL
20 THEY ARE ABOUT 11 ARE NOT ABLE TO MAKE INDEPENDENT
21 ADULT DECISIONS. THEY CAN, YOU KNOW -- A THREE YEAR
22 OLD, A FOUR YEAR OLD, FIVE YEAR OLD CAN GO OUT FROM
23 THE PARENT, AND THE PARENTS HAVE GIVEN INSTRUCTIONS,
24 AND IT'S CLEAR, AND THEY KNOW WHAT THE SITUATION IS,
25 THEN THE CHILD CAN MAKE THAT GOOD JUDGMENT, BUT HAS

1 TO COME BACK AND CHECK IN.

2 WELL, UNTIL AFTER 11, THAT REALLY ISN'T POSSIBLE
3 FOR A PERSON TO BE ABLE TO DO THAT. SO THERE ARE A
4 COUPLE OF DIFFERENT ISSUES AT LEAST IN THE ASSESSMENT
5 THAT I'VE DONE ON HERMAN JUNIOR. ONE IS THAT HIS
6 MENTAL AGE HAS NOT DEVELOPED TO THE STAGE WHERE HE IS
7 A FUNCTIONING ADULT, WHERE HE CAN MAKE ADULT
8 DECISIONS WITHOUT RELYING ON THE FAMILY. THEN HE'S
9 LIVING IN THE CONTEXT OF THIS UNRESOLVED ADOPTION.
10 HE DOESN'T KNOW WHO HE IS. EVERY ADOLESCENT HAS AN
11 ADOLESCENT IDENTITY CRISIS. EVERY ADOLESCENT DOES.

12 THEN THE ADOPTEE HAS A SPECIAL KIND OF
13 ADOLESCENT IDENTITY CRISIS, AND THEN THE ADOPTEE WHO
14 HAS NEVER RESOLVED THE TRAUMA OF HIS ADOPTION WHERE
15 PARENTS CHOSE FOR HIM TO BE PLACED SOMEWHERE ELSE AND
16 SOMETIMES THEY WERE THERE AND SOMETIMES THEY WERE
17 NOT, AND THEY WERE INTERESTED PEOPLE. OKAY? HERMAN
18 JUNIOR TOLD ME THAT HE REALLY LIKED BEING WITH HIS
19 BIRTH MOTHER, AND YET SHE WASN'T THERE, SO A LOT OF
20 THESE ISSUES ARE NOT RESOLVED. THEREFORE, THEN, HE
21 CAN BE MORE INFLUENCED BY PEOPLE WHO ARE OLDER, WHO
22 DON'T HAVE HIS BEST INTEREST AT HEART.

23 MR. NEWSOME: ALL RIGHT. PLEASE ANSWER
24 ANY QUESTIONS MR. BAILEY HAS FOR YOU.

25 THE WITNESS: THANK YOU.

1 C R O S S - E X A M I N A T I O N

2 BY MR. BAILEY:

3 Q. MS. BOETTE, I NOTICED WHEN YOU GAVE MR.
4 NEWSOME THE LIST OF PEOPLE THAT YOU HAD TALKED TO
5 ABOUT HERMAN HUGHES TO FORM YOUR CONCLUSIONS AND
6 OPINIONS HERE --

7 A. YES, SIR.

8 Q. -- THAT THEY WERE ALL LIMITED TO THE
9 DEFENSE-RETAINED PSYCHIATRISTS AND FAMILY MEMBERS.
10 AM I CORRECT THERE?

11 A. YES, SIR. YOU ARE CORRECT.

12 Q. AND THE SCHOOL INFORMATION YOU GOT WAS
13 SECONDHAND. YOU DIDN'T TALK TO ANYBODY DIRECTLY WITH
14 THE SCHOOL, DID YOU?

15 A. THAT'S CORRECT.

16 Q. FOR EXAMPLE, IF A CHOICE WAS MADE BASED ON
17 EXTENSIVE, WHAT DO THEY CALL IT, PSYCHO EDUCATIONAL
18 TESTING TO DO CERTAIN THINGS FOR HIM LIKE RESOURCE
19 CLASSES AND ALL OF THAT, YOU DIDN'T CHECK WITH THEM
20 TO FIND OUT WHY HE WAS PUT IN A PARTICULAR CLASS OR
21 ANYTHING OF THAT NATURE, DID YOU?

22 A. I DID NOT TALK WITH THEM.

23 Q. OKAY. BUT YET YOU ARE BASICALLY
24 CRITICIZING THE SCHOOL FOR NOT DOING ENOUGH FOR HIM?
25 IS THAT WHAT YOU'RE SAYING?

In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HERMAN LEE HUGHES, JR.,

APPELLANT.

RECORD ON APPEAL

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1 A. I SAID THAT I DID NOT BELIEVE THE SCHOOL
2 MET HIS NEEDS. THAT'S CORRECT.

3 Q. AND THE SCHOOL DID -- WOULD YOU AGREE WITH
4 ME THAT IN 1986 AND AGAIN IN 1991, THE SCHOOL DID A
5 THOROUGH PSYCHO EDUCATIONAL EVALUATION ON HIM?

6 A. IN '86 AND '91?

7 Q. YES, MA'AM.

8 A. IT'S A GOOD PSYCHO EDUCATIONAL -- YES.

9 Q. AND BASED ON THOSE PSYCHO EDUCATIONAL
10 EVALUATIONS, THEN, THEY USED THAT FOR PLACEMENT?
11 THEY HAD A TEAM THAT PLACED HIM IN DIFFERENT
12 RESOURCES; IS THAT CORRECT?

13 A. I DON'T KNOW WHAT THEY DID WITH THESE
14 REPORTS BECAUSE WHEN WE REQUESTED THE RECORDS -- AND
15 WE DO NOT HAVE RECORDS AFTER THE EVALUATION IN '86,
16 SHORTLY THEREAFTER, WE DON'T HAVE RECORDS FOR THAT.
17 WE HAVE JUST THROUGH, I THINK IT'S 5/5/86, AND THEN I
18 DON'T HAVE THE NEXT YEAR OR THE NEXT YEAR OR THE NEXT
19 YEAR.

20 Q. OKAY. MS. BOETTE, IN ORDER TO FORM THE
21 EVALUATION THAT YOU HAVE FORMED THAT THE SCHOOL
22 FAILED THIS YOUNG MAN, YOU WOULD NEED TO KNOW ALL
23 ABOUT WHAT HAPPENED AT THE SCHOOL, WOULDN'T YOU?

24 A. IN ORDER TO MAKE THE ASSESSMENT THAT I'VE
25 MADE, I WOULD LIKE TO HAVE KNOWN MORE, BUT I DON'T

1 THINK -- I DON'T THINK MY ASSESSMENT IS -- IS
2 INADEQUATE BECAUSE I DIDN'T INTERVIEW THEM, NO.

3 Q. OKAY. YOU DIDN'T CALL ANYBODY AT THE
4 SCHOOL TO QUESTION?

5 A. THE INVESTIGATOR DID, AND THAT IS TYPICAL
6 IN OUR PROCEDURE WHERE DURING THE PENALTY PHASE THERE
7 WILL BE ANOTHER PERSON WHO WILL COLLECT SOME
8 INFORMATION FOR ME. IT -- I WOULD HAVE LIKED TO HAVE
9 TALKED TO MORE PEOPLE, BUT I DIDN'T.

10 Q. DID YOU CONTACT THE SHERIFF'S DEPARTMENT?

11 A. I REVIEWED A NUMBER OF DOCUMENTS, LEGAL
12 PAPERS FROM LOCAL LAW ENFORCEMENT, FROM STATE LAW
13 ENFORCEMENT AND STATEMENTS FROM INDIVIDUALS, AND I
14 DID NOT SPEAK WITH THEM DIRECTLY, NO.

15 Q. OKAY. SO YOU DIDN'T TALK TO ANY LAW
16 ENFORCEMENT, DID YOU?

17 A. I DID NOT SPEAK WITH THEM DIRECTLY, NO. I
18 READ THE REPORTS.

19 Q. DID YOU TALK TO KELLY HOFFMAN, THE SECOND
20 FROM THE LEFT, THAT MR. HUGHES SHOT?

21 A. I WASN'T ASKED TO DO AN ASSESSMENT ON HER.

22 Q. WELL, YOU WERE DOING ONE ON HERMAN HUGHES.

23 A. THAT'S CORRECT.

24 Q. AND THE MORE PEOPLE YOU CAN TALK TO WHO
25 HAD CONTACT WITH HERMAN HUGHES, THE BETTER TESTIMONY

1 YOU COULD GIVE; RIGHT?

2 A. I THINK I SAID EARLIER THAT I TALKED WITH
3 SIGNIFICANT OTHERS. AND THESE WOULD BE PEOPLE WHO
4 HAD KNOWN HIM FOR A PERIOD OF TIME, AND NO, I DID NOT
5 TALK WITH KELLY.

6 Q. YOU THINK THE PEOPLE HE SHOT WOULD NOT BE
7 SIGNIFICANT IN HIS LIFE?

8 A. I WOULD THINK THAT THAT PERSON WOULD BE A
9 VICTIM OF CRIME. I DON'T CONSIDER THAT PERSON A
10 SIGNIFICANT OTHER WHO HAD KNOWN HIM FOR A LONG PERIOD
11 OF TIME, NO.

12 Q. OKAY. WELL, DID YOU TALK TO ANYBODY ELSE
13 OUTSIDE OF THE FAMILY?

14 A. OKAY. I TALKED WITH FAMILY, THE
15 DEFENDANT, WITH THE TWO EXPERTS, WITH THE
16 INVESTIGATOR WHO DID THE COLLECTION OF THE
17 INFORMATION FOR THE PENALTY PHASE.

18 Q. OKAY. NOW, WHEN YOU WENT OVER THE SCHOOL
19 RECORDS, WE HAVE SOME BLOWUPS OF SOME OF THE SCHOOL
20 RECORDS HERE.

21 A. OKAY.

22 Q. I'LL JUST HAND THESE OVER TO YOU.

23 A. THAT'S GOOD. I CAN SEE THEM UP CLOSE EVEN
24 BETTER.

25 Q. MS. BOETTE, AND THE SCHOOL RECORDS WOULD

1 CONSIDER PRIMARILY ATTENDANCE, ACADEMIC WORK AND
2 DISCIPLINARY INFRACTIONS IN ADDITION TO THE
3 PSYCHOLOGICAL STUFF; RIGHT?

4 A. AND GRADES. DID YOU SAY GRADES?

5 Q. YES, MA'AM.

6 A. OKAY. YES.

7 Q. AND IN ALL THREE OF THOSE AREAS,
8 ATTENDANCE, HE WASN'T DOING WHAT HE WAS SUPPOSED TO
9 DO, WAS HE?

10 A. I THINK HIS ATTENDANCE WAS QUITE
11 INADEQUATE.

12 Q. AND DISCIPLINE WITH 51 WRITEUPS SINCE
13 AUGUST OF 1991 WAS CERTAINLY INADEQUATE, WASN'T IT?

14 A. I CAN'T CONFIRM THE 51, BUT THE LIST THAT
15 I READ WERE CERTAINLY INADEQUATE, YES.

16 Q. WOULD YOU -- WOULD YOU ARGUE WITH THE
17 FIGURE 51 IF I COUNTED THEM OFF OF THOSE PAPERS?

18 A. I DON'T HAVE ANY REASON TO ARGUE WITH IT.
19 I'M JUST SAYING I DIDN'T COUNT THEM.

20 Q. OKAY.

21 A. YES.

22 Q. AND AS FAR AS HIS GRADES, THEY'RE
23 CERTAINLY LESS THAN ADEQUATE, AREN'T THEY?

24 A. I THINK THE GRADES ARE DREADFUL.

25 Q. AND YOU'RE AWARE THAT THE SCHOOL CONTACTED

1 MS. LUCILLE HUGHES, HIS ADOPTIVE MOTHER AND
2 GRANDMOTHER ON SEVERAL OCCASIONS TO DISCUSS HIS
3 PROBLEMS AT SCHOOL, AREN'T YOU?

4 A. THAT'S WHAT THE FAMILY REPORTED TO ME, AND
5 THERE IS SOME INDICATION IN THE RECORDS THAT THAT WAS
6 TRUE, YES.

7 Q. AND THAT LUCILLE HUGHES WAS CONCERNED
8 ABOUT HERMAN'S PROGRESS OR LACK OF PROGRESS IN
9 SCHOOL?

10 A. I THINK ALL MEMBERS OF HIS FAMILY ARE
11 CONCERNED ABOUT HIM. I THINK THEY CARE ABOUT HIM,
12 AND I THINK IN THEIR OWN WAY THEY LOVE HIM. THAT'S
13 JUST NOT GOOD ENOUGH.

14 Q. OKAY. ALL RIGHT. SO HE HAD A FAMILY THAT
15 LOVED AND SUPPORTED HIM. HE HAD A SCHOOL SYSTEM THAT
16 CONTACTED THE FAMILY TO TRY TO GET THEM TO HELP, THE
17 SCHOOL TO HELP HIM; IS THAT RIGHT?

18 A. NO. I WOULDN'T AGREE WITH EVERYTHING
19 YOU'VE SAID.

20 Q. WHICH PART DON'T YOU AGREE WITH?

21 A. I DON'T THINK HIS FAMILY TRULY SUPPORTED
22 HIM. I THINK THAT THEY DIDN'T ACKNOWLEDGE HIS
23 PROBLEMS, AND PARTLY BECAUSE THEY HAD THEIR OWN
24 LIMITATIONS, NOT BECAUSE THEY DIDN'T CARE AND NOT
25 BECAUSE THEY DIDN'T LOVE HIM. BUT IT WAS INADEQUATE.

1 AND THEN THE COMBINATION OF THE SCHOOL. ONE OF THE
2 SCHOOL RECORDS, PARTICULARLY IN THAT SECOND TIME HE
3 REPEATS THE SIXTH GRADE, IT SAYS THAT THEY TRIED AND
4 TRIED TO GET SOME HELP FOR HIM, BUT IT DIDN'T HAPPEN
5 UNTIL IT WAS TOO LATE.

6 Q. IF YOU WILL, LOOK AT THOSE FOUR OR FIVE
7 PIECES OF PAPER RIGHT IN FRONT OF YOU.

8 A. YES, SIR.

9 Q. WHICH ARE THE DISCIPLINARY INFRACTIONS
10 FROM '91 TO '94.

11 A. RIGHT.

12 Q. DOES IT NOT INDICATE THAT EVERY TIME
13 HERMAN HUGHES DID SOMETHING IN VIOLATION OF THE
14 SCHOOL RULES, THE SCHOOL TOOK SOME CORRECTIVE ACTION?
15 IT INDICATES THE INFRACTION AND WHAT THE SCHOOL DID.

16 A. THERE IS A LIST HERE. RIGHT.

17 Q. UH-HUH.

18 A. FOR INSTANCE, DISRESPECT TO TEACHER HAS
19 THE ASTERISK, AND THEN UNDER IT SAYS PARENTAL
20 CONFERENCE. BUT I DON'T HAVE ANY RECORDS OF THOSE
21 CONFERENCES. DID THEY COME? WHAT HAPPENED? WHAT
22 WAS AGREED TO? DID -- DID THEY -- YOU KNOW, WHAT WAS
23 DONE? I DON'T KNOW. I HAVE THE LIST. IT'S CALLED A
24 DETAILED LIST.

25 Q. AND SO YOU DON'T KNOW WHAT WENT ON?

1 A. I DON'T KNOW WHAT WENT ON, NO. IT'S NOT
2 IN THE RECORDS THAT I HAVE.

3 Q. ALL RIGHT. OKAY. BUT ALL 51 TIMES, THE
4 SCHOOL DID SOMETHING; RIGHT? DO YOU SEE ANY TIME
5 THERE WHERE THERE WAS A DISCIPLINARY INFRACTION THAT
6 THE SCHOOL JUST LET IT SLIDE?

7 A. SUSPENDED TWO DAYS, PADDLED, IN-SCHOOL
8 SUSPENSION, PADDLED, IN-SCHOOL SUSPENSION, SUSPENDED
9 THREE DAYS, SUSPENDED THREE DAYS, IN-SCHOOL
10 SUSPENSION, IN-SCHOOL SUSPENSION. THAT'S WHAT YOU'RE
11 TALKING ABOUT; RIGHT?

12 Q. YES, MA'AM.

13 A. SUSPENDED THREE DAYS, SUSPENDED THREE
14 DAYS. HE SPENT A LOT OF TIME ON SUSPENSION.

15 Q. FOR STUFF HE DID OR DIDN'T DO HE WAS
16 SUPPOSED TO HAVE DONE?

17 A. THAT'S WHAT IT SAYS. THROWING OBJECT IN
18 CLASS. REFUSED TO DO LUNCH DETENTION. TARDY TO
19 CLASS. DISRESPECT TO TEACHER. THOSE WERE
20 INFRACTIONS THAT THE SCHOOL RECORDED, YES.

21 Q. OKAY. AS WELL AS SEXUAL MISCONDUCT AND
22 FIGHTING LATER ON; RIGHT?

23 A. I REMEMBER ONE OF THOSE. I REMEMBER
24 HORSEPLAYING ON CAMPUS. THAT WAS INTERESTING.

25 Q. ALL RIGHT. YOU SAID THAT YOU HAD READ

1 SOME PUBLICATIONS IN PREPARATION FOR YOUR TESTIMONY,
2 I THINK?

3 A. YES.

4 Q. ELLIS AND LUCKASSON?

5 A. ELLIS AND LUCKASSON.

6 Q. I'M SORRY.

7 A. ELLIS.

8 Q. ELLIS?

9 A. AND LUCKASSON.

10 Q. AND SHE WROTE SOME KIND OF ARTICLE ON
11 MENTALLY RETARDED CRIMINAL DEFENDANTS?

12 A. SHE WROTE AN ARTICLE ON MENTALLY RETARDED
13 CRIMINAL DEFENDANTS, YES.

14 Q. YOU KNOW THAT HERMAN HUGHES IS NOT
15 MENTALLY RETARDED, DON'T YOU?

16 A. I KNOW THAT IF WE TAKE 70 AS A HARD AND
17 FAST RULE, HE HAS ONLY BEEN TESTED UNDER 70 ONE TIME.

18 Q. OKAY. AND THAT WAS A SCREENING TEST AND
19 NOT A PSYCHOLOGICAL TEST ADMINISTERED BY A TRAINED
20 PSYCHOLOGIST?

21 A. IT ACTUALLY IS USED BY PSYCHOLOGISTS, AND
22 THE SCHOOL DID IT, SO THEY HAD TO HAVE A PURPOSE, OR
23 AT LEAST I THOUGHT THEY HAD A PURPOSE FOR DOING IT.

24 Q. OKAY. WELL, IF THE SCHOOL SAID THEIR
25 PURPOSE WAS TO USE THAT AS A SCREENING DEVICE TO SEE

1 IF HE NEEDED FURTHER TESTING BY A MORE SOPHISTICATED
2 TEST, WOULD YOU ACCEPT THAT?

3 A. IF THEY SAID THAT, YES, I WOULD. HOWEVER,
4 INDIVIDUALS DO TEST DIFFERENTLY.

5 Q. ALL RIGHT. ONE OF THE THINGS -- SIX
6 CONCLUSIONS YOU'VE REACHED WAS THAT YOU ATTRIBUTED
7 SOME OF HIS PROBLEMS TO THE FACT THAT HIS FAMILY HAD
8 LITTLE SCHOOLING; IS THAT RIGHT? THAT WAS THE FIRST
9 ONE YOU TALKED ABOUT?

10 A. THAT IS MY FIRST CONCLUSION. BUT IT'S NOT
11 -- I NEED TO SAY AGAIN THAT IT IS TRYING TO EXPLAIN
12 HIM. IT'S NOT AN EXCUSE. AND SO I DON'T THINK I
13 COULD QUITE AGREE WITH YOUR LANGUAGE THERE, BUT IT IS
14 AN EXPLANATION, AND IT'S THE COMBINATION. I MEAN, WE
15 KNOW MULTIPLE STRESSERS REDUCE I.Q. WE'VE GOT TO
16 HAVE SOME PROBLEMS THAT THIS CHILD EXPERIENCED.

17 Q. OKAY. SO YOU WOULD LOOK AT THE FAMILY
18 THAT HAD LITTLE EDUCATION, MAYBE NOT WELL OFF, THAT
19 KIND OF THING?

20 A. THEY HAD VERY LITTLE FORMAL EDUCATION. I
21 DIDN'T SAY THEY WEREN'T WELL OFF, I DON'T THINK.

22 Q. OKAY.

23 A. MR. CHARLIE HUGHES WORKED FOR 18 YEARS FOR
24 THE UNIVERSITY AND, YOU KNOW, I'M SURE HE SUPPORTED
25 HIS FAMILY.

1 Q. OKAY. HE WAS A STABLE INFLUENCE?

2 A. THAT'S HOW THEY REPORTED. THAT'S HOW
3 EVERYBODY REPORTS IT TO ME. EVERYBODY REPORTS HIS
4 STABLE INFLUENCE.

5 Q. THERE ARE THOUSANDS OF SUCCESSFUL PEOPLE
6 WHO HAVE COME FROM FAMILIES WHOSE PARENTS DIDN'T HAVE
7 FORMAL EDUCATION.

8 A. THOUSANDS, MILLIONS, MAYBE BILLIONS.

9 Q. ABRAHAM LINCOLN, GEORGE WASHINGTON CARVER.

10 A. YEAH.

11 Q. RISE ABOVE.

12 A. THAT'S CORRECT. THAT'S CORRECT.

13 Q. AND MANY, MANY MILLIONS OF PEOPLE IN THIS
14 COUNTRY NOW COME FROM BROKEN HOMES, DON'T THEY?

15 A. WHAT DO YOU MEAN BY BROKEN HOMES?

16 Q. PEOPLE WHOSE PARENTS WERE DIVORCED OR
17 SEPARATED OR WERE ADOPTED FOR WHATEVER REASONS.

18 A. WELL, THOSE ARE HOMES WITHOUT FATHERS. I
19 DON'T THINK THEY ARE NECESSARILY BROKEN HOMES.

20 MR. BAILEY: THAT'S ALL I HAVE. THANK YOU
21 VERY MUCH.

22 R E D I R E C T E X A M I N A T I O N
23 BY MR. NEWSOME:

24 Q. HE ASKED YOU ABOUT MANY PEOPLE WHO COME
25 FROM BROKEN HOMES WHO GO ON TO LEAD SUCCESSFUL LIVES

1 IN YOUR EXPERIENCE, HAVE YOU NOT ALSO FOUND THAT MANY
2 PEOPLE FROM GOOD HOMES BASED ON ONE IMPULSIVE
3 DECISION GET INVOLVED WITH SERIOUS OFFENSES WITH THE
4 LAW?

5 A. YES, I'VE FOUND THAT.

6 Q. DO YOU HAVE CHILDREN, MS. BOETTE?

7 A. YES. I HAVE SIX.

8 Q. HOW WOULD YOU FEEL IF SOMEONE HAD KILLED
9 YOUR CHILD?

10 MR. BAILEY: OBJECTION, YOUR HONOR.
11 OBJECTION, YOUR HONOR.

12 THE WITNESS: I CAN'T EVEN IMAGINE.

13 MR. NEWSOME: I'LL WITHDRAW THAT.

14 THE COURT: I'LL SUSTAIN THAT.

15 R E C R O S S - E X A M I N A T I O N

16 BY MR. BAILEY:

17 Q. ONE OTHER QUESTION.

18 A. YES, SIR.

19 Q. DID YOU KNOW KENNETH PRESLEY CAME FROM A
20 BROKEN HOME?

21 A. YOU KEEP USING A CHARACTERIZATION THAT I
22 CAN'T ACCEPT, MR. BAILEY. JUST BECAUSE I'M A SINGLE
23 MOTHER DOESN'T MEAN THAT MY HOME IS BROKEN. IF YOU
24 ARE MEANING THAT HE HAS COME FROM A HOME WHERE HIS
25 PARENTS DIVORCED, THAT DOESN'T MEAN THAT HIS HOME IS

1 BROKEN.

2 Q. IT DOESN'T?

3 A. NO.

4 Q. OKAY.

5 A. THAT MEANS THAT HIS MOTHER IS DOING -- SHE
6 PROBABLY DID A VERY GOOD JOB IN THAT HOME. I CAN'T
7 -- I CAN'T CHARACTERIZE DIVORCED PARENTS AS PRODUCING
8 BROKEN HOMES.

9 Q. OKAY.

10 A. I CAN'T CHARACTERIZE -- I CAN'T AGREE WITH
11 YOUR CHARACTERIZATION.

12 Q. IF SOMEONE IS DIVORCED AND THE FATHER
13 STAYS IN MICHIGAN, THE MOTHER COMES TO SOUTH
14 CAROLINA, AND THE CHILDREN ARE SPLIT UP, YOU DON'T
15 CALL THAT A BROKEN HOME?

16 A. IT IS NOT NECESSARILY A BROKEN HOME. I
17 WOULD IMAGINE MS. WILLIAMSON WAS DOING AN EXCELLENT
18 JOB WITH THE HOME, AND PERHAPS MR. PRESLEY, TOO.

19 MR. BAILEY: THANK YOU. NOTHING FURTHER.

20 MR. NEWSOME: NOTHING FURTHER, YOUR HONOR,

21 THE COURT: YOU MAY COME DOWN.

22 MR. NEWSOME: YOUR HONOR, DEFENSE RESTS.

23 THE COURT: ALL RIGHT. IS THERE ANY

24 REPLY?

25 MR. BAILEY: YES, SIR. IF I COULD HAVE

1 ABOUT A FIVE-MINUTE BREAK.

2 THE COURT: SURE.

3 (WHEREUPON, THE JURY WAS REMOVED
4 FROM THE COURTROOM AND THE
5 FOLLOWING PROCEEDINGS COMMENCED
6 IN OPEN COURT.)

7 (WHEREUPON, A BREAK WAS TAKEN
8 FROM THE PROCEEDINGS.)

9 THE COURT: READY TO PROCEED?

10 MR. BAILEY: YES, SIR.

11 MR. NEWSOME: YES, SIR.

12 THE COURT: BRING THE JURY IN.

13 (WHEREUPON, THE JURY WAS
14 RETURNED TO THE COURTROOM AND
15 THE FOLLOWING PROCEEDINGS WERE
16 COMMENCED IN OPEN COURT.)

17 MR. BAILEY: CALL DR. RICHARD FRIERSON.

18 THE CLERK: IF YOU WOULD, PLEASE PLACE
19 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
20 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

21 THE WITNESS: RICHARD LETHANE FRIERSON.

22 RICHARD FRIERSON,
23 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. BAILEY:

2 Q. YOU'RE DR. RICHARD FRIERSON?

3 A. YES, SIR.

4 Q. DR. FRIERSON, WHAT'S YOUR EDUCATIONAL
5 BACKGROUND?

6 A. I RECEIVED A BACHELOR OF MUSIC DEGREE FROM
7 THE UNIVERSITY OF SOUTH CAROLINA IN 1984. I RECEIVED
8 A MEDICAL DOCTORATE FROM THE UNIVERSITY OF SOUTH
9 CAROLINA IN 1988. COMPLETED FOUR YEARS OF GENERAL
10 RESIDENCY TRAINING IN PSYCHIATRY IN 1992 AT WILLIAM
11 S. HALL PSYCHIATRIC INSTITUTE. COMPLETED A YEAR OF
12 FORENSIC PSYCHIATRY FELLOWSHIP AT WILLIAM S. HALL
13 PSYCHIATRIC INSTITUTE IN 1993. I'M ALSO BOARD
14 CERTIFIED BY THE AMERICAN BOARD OF PSYCHIATRY AND
15 NEUROLOGY IN GENERAL PSYCHIATRY AND IN FORENSIC
16 PSYCHIATRY.

17 Q. ALL RIGHT, SIR. AND YOUR LICENSE IS AS A
18 MEDICAL DOCTOR IN SOUTH CAROLINA; IS THAT CORRECT?

19 A. YES, SIR.

20 Q. ALL RIGHT, SIR. AND HAVE YOU TESTIFIED IN
21 THE PAST AS AN EXPERT WITNESS IN THE FIELD OF
22 FORENSIC PSYCHIATRY?

23 A. YES.

24 Q. ON APPROXIMATELY HOW MANY OCCASIONS?

25 A. IN GENERAL SERVICES COURT, BETWEEN 80 AND

1 100 CASES.

2 MR. BAILEY: YOUR HONOR, I WOULD SUBMIT
3 DR. FRIERSON AS AN EXPERT IN THE FIELD OF FORENSIC
4 PSYCHIATRY.

5 THE COURT: QUALIFICATIONS ADMITTED IN
6 FORENSIC?

7 MR. NEWSOME: YES, SIR.

8 THE COURT: ALL RIGHT.

9 BY MR. BAILEY:

10 Q. DR. FRIERSON, WHERE ARE YOU EMPLOYED AT
11 THIS TIME?

12 A. I'M EMPLOYED AT WILLIAM S. HALL
13 PSYCHIATRIC INSTITUTE AS CHIEF OF OUTPATIENT FORENSIC
14 SERVICES.

15 Q. BRIEFLY, WHAT ARE YOUR DUTIES THERE AT
16 THIS TIME?

17 A. AT THIS TIME, I SUPERVISE TWO PHYSICIANS
18 -- OTHER PSYCHIATRISTS WHO PERFORM COMPETENCY AND
19 CRIMINAL RESPONSIBILITY EVALUATIONS ON DEFENDANTS
20 FROM ACROSS THE STATE OF SOUTH CAROLINA. I ALSO
21 PERFORM APPROXIMATELY FIVE OR SEVEN OF THOSE
22 EVALUATIONS A WEEK.

23 Q. ALL RIGHT, SIR. AND DO YOU DO THOSE
24 PURSUANT TO COURT ORDER?

25 A. YES.

1 Q. WHEN I SAY YOU, I MEAN YOUR FACILITY THAT
2 YOU WORK AT.

3 A. RIGHT. WE RESPOND TO COURT ORDERS FROM
4 GENERAL SESSIONS COURTS THROUGHOUT THE STATE.

5 Q. OKAY. AND HAVE YOU TESTIFIED AS A
6 FORENSIC PSYCHIATRIST FOR BOTH THE STATE AND THE
7 DEFENSE?

8 A. YES, I HAVE.

9 Q. OKAY. WHO DO YOU PRIMARILY TESTIFY FOR?

10 A. WELL, I PRIMARILY VIEW MY TESTIMONY AS FOR
11 THE COURT BECAUSE I'M RESPONDING TO THE COURT ORDER.
12 SOMETIMES MY OPINIONS HELP THE SOLICITOR. SOMETIMES
13 MY OPINIONS ARE MORE HELPFUL TO THE DEFENSE. IF YOU
14 WANT ME TO GIVE PERCENTAGES OF THOSE TIMES, I WOULD
15 SAY APPROXIMATELY 70 TO 80 PERCENT OF THE TIME MY
16 OPINIONS TENDED TO HAVE BEEN MORE HELPFUL TO THE
17 SOLICITOR; 20 TO 25 PERCENT OF THE TIME THEY HAVE
18 BEEN MORE HELPFUL TO THE DEFENSE.

19 Q. ALL RIGHT, SIR. AND WOULD YOU STATE
20 WHETHER OR NOT YOU PARTICIPATED IN A FORENSIC
21 OUTPATIENT EVALUATION ON HERMAN HUGHES?

22 A. I DID.

23 Q. AND DID YOU DO THAT IN CONJUNCTION WITH
24 OTHER PEOPLE WHICH YOU SUPERVISED?

25 A. I DID THAT IN CONJUNCTION WITH A SOCIAL

1 WORKER WHO WAS ASSIGNED TO THIS CASE. I ALSO DID IT
2 IN CONSULTATION WITH ANOTHER FORENSIC PSYCHIATRIST
3 WHO HAD SEEN MR. HUGHES PRIOR TO THAT DAY.

4 Q. ALL RIGHT. AND WOULD YOU STATE WHETHER OR
5 NOT YOU WERE EVALUATING HIM WITH RESPECT TO
6 COMPETENCY TO STAND TRIAL, CRIMINAL RESPONSIBILITY
7 AND CAPACITY TO CONFORM HIS CONDUCT IN ACCORDANCE
8 WITH THE LAW?

9 A. YES. I WAS EVALUATING HIM FOR ALL THREE
10 OF THOSE ISSUES.

11 Q. OKAY. AND AS PART OF THAT EVALUATION, IS
12 THERE A PHYSICAL EXAMINATION CONDUCTED?

13 A. YES.

14 Q. OKAY. AND WHAT WERE THE RESULTS OF THAT
15 PHYSICAL EXAMINATION?

16 A. IF I RECALL CORRECTLY, THE RESULTS OF THAT
17 PHYSICAL EXAMINATION REVEALED NO EVIDENCE OF PHYSICAL
18 ABNORMALITY.

19 Q. AND WOULD YOU STATE WHETHER OR NOT -- IN
20 ADDITION TO A PHYSICAL EXAMINATION, WHETHER OR NOT
21 ANY LABORATORY TESTING IS DONE?

22 A. YES. WE DO A FULL BATTERY OF LABORATORY
23 AND DIAGNOSTIC STUDIES LOOKING AT ANY MEDICAL
24 CONDITIONS WHICH MIGHT INFLUENCE A PERSON'S BEHAVIOR
25 OR IMPAIR THEIR INTELLECTUAL FUNCTION. HE HAD BLOOD

1 TESTS DONE, BLOOD CHEMISTRY, THYROID TEST, VITAMIN
2 TEST TO LOOK FOR VITAMIN DEFICIENCIES. HE HAD AN
3 M.R.I. SCAN OF HIS HEAD TO MAKE SURE THERE WERE NO
4 STRUCTURAL BRAIN ABNORMALITIES. HE HAD AN
5 ELECTROENCEPHALOGRAM, WHICH IS A BRAIN WAVE TEST TO
6 LOOK FOR ANY EVIDENCE OF A SEIZURE DISORDER OR OTHER
7 NEUROLOGICAL CONDITION, AND HE WAS EVALUATED BY
8 ANOTHER PHYSICIAN, A NEUROLOGIST. HE HAD A
9 NEUROLOGICAL EXAMINATION TO MAKE SURE THERE WAS NO
10 EVIDENCE OF NEUROLOGICAL ILLNESS.

11 Q. ALL RIGHT, SIR. AND BASED ON THOSE
12 EXAMINATIONS, WAS THERE ANY ABNORMAL PHYSICAL
13 CONDITION PRESENT IN HERMAN HUGHES WHEN HE WAS
14 EVALUATED?

15 A. THERE WAS ONE ABNORMALITY. IT WAS VIEWED
16 NOT CLINICALLY SIGNIFICANT, BUT HE HAD A POSITIVE
17 TEST, BLOOD TEST, WHICH COULD BE INDICATIVE OF HAVING
18 BEEN EXPOSED TO SYPHILIS.

19 Q. OTHER THAN THAT, WAS THERE ANYTHING?

20 A. NO.

21 Q. AND IS THERE ANY INDICATION EXPOSURE TO
22 SYPHILIS CAUSED ANY MENTAL IMPAIRMENT?

23 A. NOT IN THIS DEFENDANT.

24 Q. ALL RIGHT. WOULD YOU STATE WHETHER OR NOT
25 YOU HAD ACCESS TO OTHER -- TO PREVIOUS PSYCHOLOGICAL

1 TESTING, I.Q. TESTS?

2 A. YES. I HAD TWO PSYCHO EDUCATIONAL REPORTS
3 FROM THE CALHOUN COUNTY PUBLIC SCHOOL SYSTEM, AND I
4 ALSO HAD THE RESULTS OF OUR PSYCHOLOGICAL TESTING
5 THAT WAS DONE AT OUR HOSPITAL.

6 Q. ALL RIGHT, SIR. AND IS THERE A CUTOFF FOR
7 MENTAL RETARDATION?

8 A. BASICALLY, IN ORDER TO MAKE A DIAGNOSIS OF
9 MENTAL RETARDATION, ONE NEEDS TO HAVE AN I.Q. OF
10 APPROXIMATELY 70 OR BELOW.

11 Q. ALL RIGHT, SIR. AND THE THREE -- THE ONE
12 I.Q. TEST THAT Y'ALL DID AT THE WILLIAM S. HALL
13 INSTITUTE WAS GIVEN WHEN?

14 A. IT WAS GIVEN IN FEBRUARY OF 1995.

15 Q. OKAY.

16 A. FEBRUARY OF THIS YEAR.

17 Q. DID THAT INDICATE THAT HE WAS ABOVE THE
18 THRESHOLD FOR MENTAL RETARDATION?

19 A. YES. HE HAD A FULL SCALE I.Q. OF 74.

20 Q. AND THE 1991 SCHOOL TEST WAS HOW MUCH?

21 A. 74 WAS HIS FULL SCALE.

22 Q. AND 1986 SCHOOL TEST THAT YOU HAD ACCESS
23 TO AS WELL?

24 A. IN 1986, HIS FULL SCALE I.Q. WAS IN THE
25 LOW NORMAL RANGE. IT WAS 80.

1 Q. ALL RIGHT, SIR. AND BASED ON THAT, DO YOU
2 HAVE AN OPINION TO A REASONABLE DEGREE OF MEDICAL
3 CERTAINTY WHETHER OR NOT HERMAN HUGHES IS MENTALLY
4 RETARDED?

5 A. IT IS MY MEDICAL OPINION THAT MR. HUGHES
6 DOES NOT SUFFER FROM MENTAL RETARDATION.

7 Q. OKAY. NOW, IN REACHING THAT CONCLUSION,
8 DO YOU BASE THAT STRICTLY ON THE I.Q. TESTS THAT
9 YOU'VE HAD ACCESS TO OR DO YOU BASE THAT ON YOUR
10 INTERVIEWS WITH HIM?

11 A. BASE THAT ON THE I.Q. TESTING, THE
12 CLINICAL INTERVIEW, GET SOME IDEA OF THE VOCABULARY
13 THAT A PATIENT MIGHT USE. AND ALSO ON HIS HISTORY.

14 Q. NOW, AS FAR AS HIS VOCABULARY, ARE THERE
15 CERTAIN WORDS THAT HE USED THAT CAUSED YOU TO
16 CONCLUDE HE WAS NOT MENTALLY RETARDED?

17 A. HE USED SOME WORDS THAT WERE REMARKABLE
18 FOR SOMEONE WITH AN I.Q. OF 74, WORDS SUCH AS HE
19 SPONTANEOUSLY USED THE WORDS OF TESTIFIED, EVIDENCE,
20 CO-DEFENDANT, WORDS SUCH AS THOSE WHICH I THOUGHT
21 INDICATED THAT HE HAD A FAIRLY GOOD UNDERSTANDING OF
22 ENGLISH.

23 Q. OKAY. NOW, WITH RESPECT TO HIS MENTAL
24 STATUS EXAMINATION, WOULD YOU STATE WHETHER OR NOT HE
25 WAS ALERT AND ORIENTED TO PERSON, PLACE AND TIME?

1 A. YES. ON MENTAL STATUS EXAM, HE WAS ALERT
2 AND ORIENTED. HE KNEW HIS NAME, WHERE -- WHERE HE
3 WAS, THE DAY OF THE WEEK, THE DATE, INCLUDING THE
4 MONTH, THE DATE AND THE YEAR.

5 Q. DID YOU EVALUATE HIS ABILITY TO
6 CONCENTRATE?

7 A. YES, I DID.

8 Q. ALL RIGHT. AND WHAT WAS HIS ABILITY TO
9 CONCENTRATE, IN YOUR OPINION?

10 A. HE DEMONSTRATED A GOOD CAPACITY TO
11 CONCENTRATE.

12 Q. ALL RIGHT. AND DID YOU DO ANY EVALUATION
13 TO DETERMINE WHETHER OR NOT HE MIGHT HAVE ATTENTION
14 DEFICIT?

15 A. I REVIEWED THE TESTING THAT HAD BEEN DONE.
16 I REVIEWED THE SCHOOL RECORDS. I REVIEWED THE
17 RECORDS FROM THE MENTAL HEALTH CENTER, AND THEN IN
18 THE COURSE OF MY 90-MINUTE CLINICAL FORENSIC
19 INTERVIEW, I EVALUATED HIS ABILITY TO PAY ATTENTION,
20 TO FOLLOW QUESTIONS, TO RESPOND APPROPRIATELY TO WHAT
21 I WAS ASKING HIM.

22 Q. DO YOU HAVE AN OPINION BASED ON A
23 REASONABLE DEGREE OF MEDICAL CERTAINTY WHETHER HE HAS
24 ATTENTION DEFICIT DISORDER?

25 A. IT'S MY OPINION THAT HE DOES NOT SUFFER

1 FROM ATTENTION DEFICIT DISORDER.

2 Q. DO YOU HAVE AN OPINION BASED ON A
3 REASONABLE DEGREE OF MEDICAL CERTAINTY AS TO WHETHER
4 OR NOT HE HAS HYPERACTIVITY?

5 A. WELL, THAT WOULD BE PART OF ATTENTION
6 DEFICIT DISORDER.

7 Q. OKAY. SAME ANSWER?

8 A. YES.

9 Q. AL RIGHT, SIR. WHAT ABOUT HIS -- HIS
10 THOUGHT PROCESSES, AS WITH -- WITH REGARD TO BEING
11 LOGICAL AND GOAL DIRECTED?

12 A. HIS THINKING WAS LOGICAL, GOAL DIRECTED.
13 HE ANSWERED QUESTIONS APPROPRIATELY. THERE WAS NO
14 EVIDENCE OF DISTURBED THINKING THAT WE MIGHT SEE IN A
15 PSYCHOTIC DISORDER, FOR EXAMPLE.

16 Q. DID YOU REACH A CONCLUSION ON WHETHER OR
17 NOT MISTER -- OR AN OPINION TO A REASONABLE DEGREE OF
18 MEDICAL CERTAINTY ON WHETHER OR NOT HE UNDERSTOOD --
19 HAS THE ABILITY TO UNDERSTAND THE DIFFERENCE BETWEEN
20 RIGHT AND WRONG?

21 A. WELL, I ANSWERED THE COURT'S QUESTION
22 REGARDING CRIMINAL RESPONSIBILITY PURSUANT TO THIS
23 CRIME, AND IT WAS MY OPINION THAT ON MARCH 18TH OF
24 1994, HE WOULD HAVE HAD THE ABILITY TO DISTINGUISH
25 RIGHT FROM WRONG.

1 Q. ALL RIGHT. AND WITH RESPECT TO HIS
2 CRIMINAL RESPONSIBILITY ON THAT DAY?

3 A. IT IS MY OPINION THAT HE WOULD HAVE BEEN
4 CRIMINALLY RESPONSIBLE.

5 Q. OKAY. AND WHAT ABOUT HIS CAPACITY TO
6 CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW OR
7 TO ACT IN A LAWFUL MANNER?

8 A. IT'S MY OPINION THAT HIS INTELLECTUAL
9 LIMITATIONS DO NOT PREVENT HIM FROM CONFORMING HIS
10 BEHAVIOR.

11 Q. DO YOU HAVE AN OPINION ON WHETHER OR NOT
12 HE HAS THE ABILITY TO -- TO ENGAGE IN PLANNING OR
13 PURPOSEFUL GOAL-DIRECTED ACTIVITY?

14 A. IT'S MY OPINION THAT HE DOES.

15 Q. NOW, DID YOU REACH ANY CONCLUSION ON AXIS
16 ONE OF YOUR EVALUATION?

17 A. YES, I DID.

18 Q. WHAT WAS THAT?

19 A. MY DIAGNOSIS WAS THAT OF A CONDUCT
20 DISORDER.

21 Q. WHAT IS CONDUCT DISORDER? GOOD CONDUCT OR
22 BAD CONDUCT?

23 A. USUALLY BAD. IT IS A DIAGNOSTIC ENTITY
24 GIVEN TO ADOLESCENTS OR CHILDREN USUALLY BEFORE AGE
25 18 WHO HAVE COMMITTED A CERTAIN NUMBER OF EITHER

1 CRIMINAL OFFENSES OR HAVE DEMONSTRATED A PATTERN OF
2 BEHAVIOR WITH DISRESPECT TO AUTHORITY, FAILURE TO
3 CONFORM TO RULES, REGULATIONS, SCHOOL PROBLEMS, THAT
4 SORT OF THING.

5 Q. ALL RIGHT, SIR. AND THAT IS BASED ON A
6 TEST THAT YOU WOULD GIVE A PATIENT OR IS IT BASED ON
7 DOCUMENTED HISTORY OF PRIOR MISCONDUCT?

8 A. THAT IS BASED ON THE HISTORY.

9 MR. BAILEY: DR. FRIERSON, THAT'S ALL I
10 HAVE. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY
11 HAVE.

12 C R O S S - E X A M I N A T I O N
13 BY MR. NEWSOME:

14 Q. DR. FRIERSON, YOU WORK AT THE WILLIAM S.
15 HALL INSTITUTE?

16 A. YES, SIR.

17 Q. THAT'S A STATE HOSPITAL, IS IT NOT?

18 A. THAT IS.

19 Q. AND THE REASON WHY IN YOUR THREE SHORT
20 YEARS ONCE YOU FINISHED YOUR RESIDENCY AND YOUR
21 SPECIALIZED TRAINING THAT YOU'VE TESTIFIED SO MANY
22 TIMES IN GENERAL SESSIONS IS BECAUSE ALL SOLICITORS
23 THROUGHOUT ALL OF THE STATE SEND THEIR FOLKS TO THE
24 STATE HOSPITAL FOR EVALUATION; IS THAT NOT TRUE?

25 A. WELL, USUALLY, IT'S THE DEFENSE ATTORNEYS

1 THAT ASK FOR THE EVALUATIONS, BUT WE GET PATIENTS
2 FROM --

3 Q. THIS WAS NOT A DEFENSE ATTORNEY EVALUATION
4 HERE, WAS IT?

5 A. NO. ON THIS PARTICULAR EVALUATION, THE
6 SOLICITOR REQUESTED IT.

7 Q. OKAY. ALL RIGHT. AND WHEN YOU WERE
8 TRAINING IN THE FIELD OF FORENSIC PSYCHIATRY --

9 A. UH-HUH.

10 Q. -- YOU DID PART OF YOUR TRAINING UNDER DR.
11 MORGAN, DID YOU NOT, UNDER HIS SUPERVISION?

12 A. YES. I SPENT SOME TIME IN HIS OFFICE,
13 APPROXIMATELY A HALF DAY A WEEK FOR A YEAR.

14 Q. ALL RIGHT. SO YOU ARE EMPLOYED BY THE
15 STATE?

16 A. I AM EMPLOYED BY THE DEPARTMENT OF MENTAL
17 HEALTH, WHICH IS A STATE AGENCY, YES.

18 Q. HOW MANY TIMES HAS A DEFENDANT IN GENERAL
19 SESSIONS COURT SUBPOENAED YOU TO TESTIFY ON BEHALF OF
20 THEIR DEFENDANT?

21 A. MAYBE 20, 25 TIMES.

22 Q. ALL RIGHT. HAVE YOU EVER FOUND ANYBODY
23 THAT YOU'VE EVER EVALUATED TO MEET THE STANDARD OF
24 THE M'NAUGHTON TEST?

25 A. YES, I HAVE.

1 Q. HOW MANY?

2 A. PROBABLY 18 OR 20.

3 Q. EIGHTEEN OR TWENTY?

4 A. UH-HUH.

5 Q. OKAY. WERE ANY OF THOSE CHARGED WITH
6 MURDER?

7 A. I DON'T RECALL A MURDER --

8 Q. OKAY.

9 A. -- CHARGE WHERE I HAD THAT OPINION.

10 Q. DO YOU ADMINISTER PSYCHOLOGICAL TESTS?

11 A. NO, I DO NOT.

12 Q. WHEN YOU WERE DOING THE EVALUATION OF THE
13 PSYCHOLOGICAL TEST RESULTS AND THE I.Q. TESTS, THEY
14 DIDN'T PROVIDE YOU WITH THE I.Q. TEST THAT HE SCORED
15 68 ON, DID THEY?

16 A. NO, I DID NOT HAVE THAT.

17 Q. ARE YOU A SCHOOL PSYCHOLOGIST?

18 A. NO.

19 Q. ALL RIGHT. IF THERE'S -- IF YOU ORDER
20 PSYCHOLOGICAL TESTING AT THE STATE HOSPITAL, WHO
21 ACTUALLY DECIDES WHICH PSYCHOLOGICAL TESTS ARE BEING
22 DONE; YOU OR SOMEBODY ELSE?

23 A. IT'S GENERALLY LEFT UP TO THE FORENSIC OR
24 CHILD PSYCHOLOGIST PERFORMING THE EVALUATION.

25 Q. SO THAT WOULD BE YOU?

1 A. HOWEVER, IN ALL MURDER CASES, THERE ARE
2 CERTAIN TESTS THAT ARE ADMINISTERED TO ALL DEFENDANTS
3 CHARGED WITH MURDER.

4 Q. I APPRECIATE THE EXPLANATION, BUT IS IT
5 YOU OR SOMEONE ELSE?

6 A. IT'S USUALLY THE FORENSIC PSYCHOLOGIST,
7 YES.

8 Q. OKAY.

9 A. I CAN REQUEST A SPECIFIC TEST IF I HAVE A
10 NEED FOR THAT, BUT I GENERALLY DO NOT DO THAT.

11 Q. DO YOU KNOW WHICH PSYCHOLOGICAL TEST
12 SCHOOL PSYCHOLOGISTS GIVE?

13 A. IN GENERAL?

14 Q. YES.

15 A. NO, I DO NOT.

16 Q. OKAY. DOES THE -- DO YOU KNOW IF THE
17 STATE DEPARTMENT OF EDUCATION USES THE CONCEPT OF
18 MENTAL AGE?

19 A. I DO NOT.

20 Q. OKAY. SO THEN IF I WERE TO TELL YOU THAT
21 IN THAT SAME TEST THAT HE SCORED 68 THAT WAS NOT
22 PROVIDED TO YOU, THE MENTAL AGE WHEN HE WAS 13 AND A
23 HALF WAS DETERMINED TO BE 9, YOU COULDN'T DISPUTE
24 THAT, COULD YOU?

25 A. I'M NOT SURE WHAT YOU MEAN BY THE TERM

1 MENTAL AGE. IT'S NOT A TERM THAT I'M FAMILIAR WITH.

2 Q. ALL RIGHT. WHAT DOES IT MEAN TO BE ONE
3 PERCENTILE IN READING AND SPELLING?

4 A. IT WOULD BE MY UNDERSTANDING THAT IF
5 YOU'RE IN THE ONE PERCENTILE IN ANYTHING, THEN IF YOU
6 COMPARE LARGE GROUPS OF PEOPLE, YOU WOULD FALL IN
7 YOUR PERFORMANCE IN THAT AREA IN THE BOTTOM 1
8 PERCENT.

9 Q. BOTTOM 1 PERCENT?

10 A. SO OUT OF 100, YOU WOULD LIKELY BE IN THE
11 LOWEST, OR OUT OF 1,000 YOU WOULD LIKELY BE IN THE
12 TEN LOWEST.

13 Q. SO WHEN MR. HUGHES WAS TESTED AND THOSE
14 TESTS SHOWED THAT HE SCORED IN THE BOTTOM 1
15 PERCENTILE IN THOSE AREAS, YOU COULDN'T DISPUTE THAT,
16 COULD YOU?

17 A. NO, I COULD NOT.

18 Q. ALL RIGHT. AND WHAT DOES IT MEAN TO BE IN
19 THE 3 PERCENTILE IN MATH?

20 A. THREE OUT OF ONE HUNDRED.

21 Q. SO THERE WOULD BE 97 FOLKS WHO TOOK A TEST
22 WOULD SCORE BETTER THAN YOU ON THAT TEST?

23 A. ON THAT TEST, YES.

24 Q. LOWEST 3 PERCENTILE?

25 A. ON THAT TEST.

1 Q. AND THAT TEST WAS THE LAST YEAR IN SCHOOL?

2 A. I'M NOT FAMILIAR WITH WHICH SPECIFIC TEST
3 WE'RE TALKING ABOUT.

4 Q. CAN A LEARNING DISABILITY AFFECT OVERALL
5 LEARNING ABILITIES?

6 A. YES, SIR. SURE.

7 Q. SO IF MR. HUGHES HAD A LEARNING DISABILITY
8 AS DIAGNOSED BY A SCHOOL PSYCHOLOGIST FROM THE TIME
9 HE WAS IN THE SECOND GRADE, COULD THAT HAVE IMPACTED
10 UPON HIS ABILITY TO LEARN?

11 A. I WOULD IMAGINE SO, YES.

12 Q. OKAY. AND CAN HAVING A LEARNING
13 DISABILITY LOWER HIS INTELLECTUAL ABILITY?

14 A. I THINK THERE YOU'RE CONFUSING APPLES AND
15 ORANGES. INTELLIGENCE IS INDEPENDENT OF LEARNING.

16 Q. INTELLIGENCE IS TOTALLY INDEPENDENT OF
17 LEARNING?

18 A. AS MEASURED ON THE I.Q. TEST, IT IS, YES.

19 Q. SO --

20 A. IT DEPENDS ON WHETHER WE'RE TALKING ABOUT
21 CLINICAL PSYCHIATRIC TERM FOR INTELLIGENCE OR THE LAY
22 DEFINITION OF INTELLIGENCE. IT DEPENDS.

23 Q. OKAY. ALL RIGHT. CAN HAVING DISABILITY
24 -- LEARNING DISABILITIES AND BORDERLINE I.Q. HAVE A
25 NEGATIVE IMPACT ON A PERSON'S BEHAVIOR?

1 A. IT CAN.

2 Q. ARE THEY MORE LIKELY TO MAKE IMPULSIVE
3 DECISIONS?

4 A. YES.

5 Q. AND BE EASILY INFLUENCED BY THE NEGATIVE
6 INFLUENCES OF OTHERS?

7 A. SOME ARE; SOME AREN'T.

8 Q. ARE THEY MORE LIKELY TO GET IN TROUBLE?

9 A. WELL, MOST PEOPLE WITH LOW INTELLIGENCE DO
10 NOT GET IN TROUBLE, DO NOT COMMIT CRIMES. HOWEVER,
11 IF YOU LOOK, FOR EXAMPLE, AT THE PRISON POPULATION,
12 THE AVERAGE INTELLIGENCE OF PEOPLE IN PRISON IS MUCH
13 LOWER THAN THE AVERAGE INTELLIGENCE OF THE GENERAL
14 POPULATION.

15 Q. SO THERE'S A PRETTY HIGH CORRELATION?

16 A. I THINK THERE IS SOME CORRELATION, YES.

17 Q. CAN HAVING A LEARNING DISABILITY CAUSE LOW
18 SELF-ESTEEM AND MISBEHAVIOR?

19 A. I WOULD IMAGINE IT COULD, YES.

20 Q. ALL RIGHT. IS IT TRUE THAT CHILDREN WITH
21 LEARNING DISABILITIES AND ATTENTION DEFICIT DISORDERS
22 WHEN PLACED IN A REGULAR CLASS OFTEN HAVE BEHAVIORAL
23 PROBLEMS?

24 A. CERTAINLY A PERSON WITH THOSE PROBLEMS,
25 YES.

1 Q. AND THEY OFTEN GET THE DIAGNOSIS OF
2 CONDUCT DISORDERS, DO THEY NOT?

3 A. THE DIAGNOSIS OF CONDUCT DISORDERS IS
4 INDEPENDENT OF THOSE OTHER DISORDERS.

5 Q. BUT THOSE TYPE OF CHILDREN OFTEN GET
6 DIAGNOSED AS CONDUCT?

7 A. AND OFTEN THEY DO NOT.

8 MR. NEWSOME: THANK YOU.

9 MR. BAILEY: NO REDIRECT.

10 THE COURT: SIR?

11 MR. BAILEY: NO REDIRECT OF THIS WITNESS.

12 THE COURT: YOU MAY COME DOWN.

13 MR. BAILEY: DR. FINUF.

14 THE CLERK: IF YOU WOULD, PLEASE PLACE
15 YOUR LEFT HAND ON THE BIBLE. PLEASE RAISE YOUR RIGHT
16 HAND. PLEASE STATE YOUR NAME FOR THE RECORD.

17 THE WITNESS: LESTER FINUF, SPELLED
18 F-I-N-U-F.

19 LESTER FINUF,
20 HAVING BEEN FIRST DULY SWORN BY THE CLERK OF COURT,
21 TESTIFIED AS FOLLOWS:

22 D I R E C T E X A M I N A T I O N
23 BY MR. BAILEY:

24 Q. STATE YOUR FULL NAME, PLEASE.

25 A. IT'S LESTER ANDREW FINUF.

1 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

2 A. I HAVE A BACHELOR'S DEGREE IN SOCIOLOGY
3 AND A MASTER'S IN PSYCHOLOGY FROM KANSAS STATE
4 TEACHERS COLLEGE IN KANSAS. I HAVE A PH.D. IN
5 PSYCHOLOGY FROM THE UNIVERSITY OF SOUTH CAROLINA.
6 THAT WAS IN 1979. I BECAME LICENSED FOR PRIVATE
7 PRACTICE IN 1981.

8 Q. IN SOUTH CAROLINA?

9 A. RIGHT.

10 Q. AND WHERE ARE YOU EMPLOYED AT THIS TIME?

11 A. I WORK AT THE DEPARTMENT OF DISABILITIES
12 AND SPECIAL NEEDS.

13 Q. ALL RIGHT. AND THAT WOULD BE WORKING WITH
14 MENTALLY RETARDED PEOPLE?

15 A. CORRECT.

16 Q. IS THAT CORRECT?

17 A. UH-HUH.

18 Q. ALL RIGHT. HAVE YOU TESTIFIED AS AN
19 EXPERT WITNESS IN THE COURTS OF THIS STATE ON PRIOR
20 OCCASIONS AS AN EXPERT IN THE FIELD OF PSYCHOLOGY?

21 A. YES. YES.

22 MR. BAILEY: YOUR HONOR, I WOULD TENDER
23 HIM AS AN EXPERT IN THE FIELD OF PSYCHOLOGY.

24 THE COURT: QUALIFIED AS AN EXPERT IN THE
25 FIELD OF PSYCHOLOGY?

1 MR. BAILEY: PSYCHOLOGY, YES, SIR.

2 MR. NEWSOME: NO OBJECTION.

3 THE COURT: YES, SIR.

4 BY MR. BAILEY:

5 Q. DOCTOR, WHAT IS YOUR WORKING DEFINITION OF
6 A PERSON WHO IS MENTALLY RETARDED?

7 A. TO BE MENTALLY RETARDED, THEY HAVE TO HAVE
8 AN I.Q. OF 70 OR LESS, BOTH IN INTELLIGENCE, ALL
9 PHASES OF INTELLIGENCE, AS WELL AS IN ADAPTIVE
10 BEHAVIOR.

11 Q. ALL RIGHT, SIR. AND WOULD YOU STATE
12 WHETHER OR NOT PURSUANT TO COURT ORDER DID THE SOUTH
13 CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
14 EVALUATE HERMAN HUGHES?

15 A. PLEASE REPEAT.

16 Q. DID THE SOUTH CAROLINA DEPARTMENT OF
17 DISABILITIES AND SPECIAL NEEDS EVALUATE HERMAN
18 HUGHES?

19 A. WITH RESPECT TO COMPETENCY TO STAND TRIAL.

20 Q. ALL RIGHT, SIR. AND DID YOU PARTICIPATE
21 IN THAT EVALUATION?

22 A. YES, I DID.

23 Q. TO WHAT EXTENT?

24 A. THERE WERE TWO OF US WHO MET WITH MR.
25 HUGHES FOR APPROXIMATELY AN HOUR. PRIOR TO THAT, WE

1 REVIEWED THE RECORDS THAT HAD BEEN PROVIDED BY THE
2 COURT.

3 Q. ALL RIGHT, SIR. DID YOU REVIEW THE RECORD
4 OF THE SCHOOL EVALUATIONS -- I'LL HAND YOU STATE'S
5 EXHIBIT NUMBER 45, WHICH IS THE PSYCHO EDUCATIONAL
6 EVALUATION REPORT OF 1986.

7 A. YES.

8 Q. AND BEAR WITH ME ONE SECOND, PLEASE. I
9 HAND YOU STATE'S 46, WHICH IS THE EVALUATIONS REPORT
10 OF MAY OF 1991. DID YOU REVIEW THAT?

11 A. YES, SIR, I DID.

12 Q. AND WHAT ABOUT -- DID YOU HAVE ACCESS TO
13 THE I.Q. TEST RESULTS FROM THE WILLIAM S. HALL
14 INSTITUTE THAT WAS PERFORMED IN DECEMBER OF LAST
15 YEAR/JANUARY OF THIS YEAR?

16 A. NO, I DID NOT.

17 Q. OKAY. WHAT PARTICULAR TESTS, I.Q. TESTS
18 WERE GIVEN BY THE SCHOOL? WHAT'S THE NAME OF THE
19 TESTS THEY GAVE?

20 A. I BELIEVE THEY IN BOTH CASES GAVE THE
21 WECHSLER INTELLIGENCE SCALE FOR CHILDREN REVISED.

22 Q. ALL RIGHT, SIR. AND WHAT WAS THE FULL
23 SCALE I.Q. IN 1986 AND THEN AGAIN IN 1991?

24 A. IN 1986, THE FULL SCALE WAS 80, WHICH IS A
25 SLOW LEARNER. AND IN '91, THE FULL SCALE WAS 74.

1 Q. OKAY. WERE BOTH OF THOSE ABOVE THE LEVEL
2 FOR MENTAL RETARDATION?

3 A. CORRECT.

4 Q. ARE YOU FAMILIAR WITH SOMETHING CALLED THE
5 SCHLOSSON INTELLIGENCE TEST?

6 A. OH, YES.

7 Q. WHAT IS THAT?

8 A. IT'S A SCREENING INSTRUMENT FOR USE BY
9 NON-PSYCHOLOGISTS.

10 Q. IS THAT SOMETHING THAT YOU WOULD USE AS A
11 TRAINED PSYCHOLOGIST?

12 A. NO.

13 Q. I HAND YOU STATE'S NUMBER 8 AND ASK YOU
14 WHETHER OR NOT YOU WOULD PUT ANY RELIABILITY IN THE
15 RESULTS OF A TEST LIKE THAT?

16 A. THE ONLY THING THAT THIS WOULD BE USED FOR
17 IS A WAY TO TRY AND SCREEN OUT INDIVIDUALS WHO ARE
18 POSSIBLY HAVING LEARNING PROBLEMS FOR REFERRAL FOR A
19 PSYCHOLOGICAL.

20 Q. ALL RIGHT, SIR. NOW, DID YOU REACH AN
21 OPINION OR CONCLUSION TO A REASONABLE DEGREE OF
22 CERTAINTY ON MR. HUGHES' COMPETENCY TO STAND TRIAL AT
23 THIS TIME?

24 A. YES. IN MY OPINION, HE IS COMPETENT TO
25 STAND TRIAL.

1 Q. ALL RIGHT. AND WHAT ABOUT HIS CRIMINAL
2 RESPONSIBILITY? DID HE KNOW RIGHT FROM WRONG IN
3 MARCH OF 199 --

4 A. THERE IS NO EVIDENCE TO THE CONTRARY.

5 Q. ALL RIGHT, SIR. AND WHAT ABOUT HIS
6 CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS
7 OF THE LAW?

8 A. AGAIN, THERE'S NO EVIDENCE TO THE CONTRARY
9 ON THAT.

10 Q. OKAY. DOES HE HAVE ANY COMPULSIVE
11 DISORDER THAT WOULD CAUSE HIM TO DO THINGS OTHER THAN
12 OF HIS OWN FREE WILL AND ACCORD IN YOUR OPINION?

13 A. NONE THAT I'M AWARE OF.

14 Q. ALL RIGHT. WHAT ABOUT HIS -- WHEN HE --
15 WHEN HE PRESENTED HIMSELF TO YOU FOR THE EVALUATION,
16 COULD YOU CHARACTERIZE HIS STATE OF ALERTNESS OR LACK
17 THEREOF?

18 A. HE WAS ALERT AND COOPERATIVE.

19 Q. OKAY. WAS HE ORIENTED?

20 A. YES.

21 Q. OKAY. WAS HIS CONVERSATION CONNECTED
22 LOGICALLY, GOAL ORIENTED?

23 A. CONNECTED, LOGICAL AND FOCUSED.

24 Q. DID YOU FORM AN OPINION AS TO HIS ABILITY
25 TO PLAN?

1 A. IN MY OPINION, HE HAS THAT ABILITY.

2 Q. DID YOU FIND ANY HISTORY OF HALLUCINATIONS
3 OR ANYTHING OF THAT NATURE?

4 A. NO HISTORY OF THAT THAT I COULD FIND.

5 Q. DID YOU FIND ANY EVIDENCE OF EITHER
6 HYPERACTIVITY OR ATTENTION DEFICIT DISORDER?

7 A. DID NOT.

8 Q. DID YOU REACH ANY CONCLUSION WITH HIS
9 ATTENTION SPAN AND CONCENTRATION?

10 A. THEY WERE ROUGHLY NORMAL, BOTH SHORT TERM
11 AND INTERMEDIATE.

12 Q. OKAY. WHAT ABOUT HIS ABILITY TO RECALL?

13 A. INTERMEDIATE MEMORY OF RECALLING THREE
14 OBJECTS IN FIVE MINUTES, HE COULD DO SO RAPIDLY
15 WITHOUT ERROR OR CUE. HE PROVIDED FAIR, HISTORICAL
16 INFORMATION ON HIMSELF SUCH AS HIS AGE, DATE OF
17 BIRTH, SOCIAL SECURITY NUMBER, ET CETERA.

18 Q. DID YOU FIND ANY EVIDENCE BY HISTORY OR
19 YOUR EVALUATION THAT HE SUFFERED FROM ANY MENTAL
20 DISEASE OR DEFECT THAT WOULD IMPAIR HIS ABILITY TO
21 THINK LOGICALLY FOR HIMSELF?

22 A. THERE WAS NOTHING APPARENT IN THE
23 INTERVIEW OR WITHIN THE RECORDS AVAILABLE FOR REVIEW
24 TO INDICATE THAT.

25 MR. BAILEY: THANK YOU. PLEASE ANSWER ANY

1 QUESTIONS THE DEFENSE MAY HAVE.

2 C R O S S - E X A M I N A T I O N

3 BY MR. NEWSOME:

4 Q. HOW LONG DID YOU SPEND WITH MY CLIENT?

5 A. ABOUT AN HOUR.

6 Q. YOU MET HIM THE AFTERNOON OF THE 30TH OF
7 AUGUST?

8 A. I BELIEVE THAT WAS THE CASE, OR THE
9 MORNING THEREOF.

10 Q. AND YOU FAXED YOUR REPORT THE NEXT MORNING
11 TO THE SOLICITOR?

12 A. CORRECT.

13 Q. AND YOU BASED -- A LARGE PART OF YOUR
14 REPORT HAD ALMOST REPEATED WHAT THE STATE HOSPITAL
15 DID; IS THAT NOT CORRECT?

16 A. I DID NOT SEE THEIR SECOND REPORT.

17 Q. WOULD YOU SAY THAT A PERSON WHO IS
18 PERFORMING IN THE 1 PERCENTILE, THE LOWEST 1
19 PERCENTILE IN READING ABILITY, IN SPELLING, WOULD
20 HAVE A SIGNIFICANT SUBAVERAGE IN THE FUNCTIONING
21 RANGE?

22 A. NOT NECESSARILY. A LOT OF PEOPLE ARE
23 ILLITERATE WITHOUT BEING RETARDED.

24 Q. YOU SAY THESE PEOPLE AREN'T FUNCTIONING --
25 WOULD SAY SOMEBODY WITH AN I.Q. BELOW 80 IS

1 SIGNIFICANTLY SUBAVERAGE?

2 A. IT WOULD BE CONSIDERED -- DEPENDING ON HOW
3 LOW IT GOES, YOU GET INTO THE 80'S, THEN WE'RE
4 TALKING ABOUT SLOW LEARNERS.

5 Q. WHAT ABOUT 74, WHICH SEEMS TO BE A
6 CONSISTENT NUMBER?

7 A. THAT'S CONSIDERED BORDERLINE.

8 Q. I'M NOT TALKING ABOUT BORDERLINE. I'M
9 TALKING ABOUT AVERAGE, A PERSON THAT'S AVERAGE,
10 SUBAVERAGE. IS THAT SUBAVERAGE OR IS IT ABOVE
11 AVERAGE?

12 A. NO. IT'S SUBAVERAGE.

13 Q. 100 IS AVERAGE; RIGHT?

14 A. YES.

15 Q. SO WOULD YOU SAY 80 PERCENT OF THE FOLKS
16 THAT ARE WALKING OUT IN THE WORLD TODAY HAVE I.Q.'S
17 HIGHER THAN 74?

18 A. PROBABLY.

19 Q. SO THAT MEANS SOMEBODY WHO HAS THAT RANGE
20 OF 74 AND BELOW IS SIGNIFICANTLY SUBAVERAGE IN THEIR
21 INTELLECTUAL FUNCTIONING; IS THAT NOT CORRECT? YES
22 OR NO, SIR?

23 A. YOU WANT A YES OR NO?

24 THE COURT: NO, SIR. YOU CAN EXPLAIN YOUR
25 ANSWER.

1 BY MR. NEWSOME:

2 Q. YOU CAN EXPLAIN IT, BUT ANSWER IT, PLEASE
3 AND THEN EXPLAIN IT.

4 A. IT ALL IS A MATTER OF DEFINITION, HOW YOU
5 DEFINE IT. PROFESSIONALLY, WE DON'T CONSIDER THAT
6 SIGNIFICANT.

7 Q. I'M NOT ASKING YOU HOW YOU CONSIDER IT
8 SIGNIFICANT. ARE THEY SUBAVERAGE OR ARE THEY ABOVE
9 AVERAGE?

10 A. THEY ARE SUBAVERAGE.

11 Q. SIGNIFICANTLY SUBAVERAGE; RIGHT?

12 A. I'M HAVING A LITTLE TROUBLE WITH THAT
13 QUALIFICATION.

14 Q. WELL, IF HE'S GOT 80 PERCENT OF THE PEOPLE
15 MORE INTELLIGENT THAN HIM EASILY, THAT'S
16 SIGNIFICANTLY SUBAVERAGE; IS THAT NOT CORRECT?

17 A. AGAIN -- AND I KNOW WE'VE HAD A
18 DISAGREEMENT ON THIS. IT IS NOT -- PROFESSIONALLY,
19 WE WOULD NOT CONSIDER THAT TO BE SIGNIFICANT.

20 Q. ALL RIGHT, SIR. WOULD YOU AGREE THAT A
21 PERSON WHO HAD 51 WRITEUPS IN SCHOOL DURING THE
22 ADOLESCENT PERIOD OF 1991 TO 1994 WHEN HE WAS
23 DISMISSED FROM SCHOOL HAD A PROBLEM ADAPTING TO
24 NORMAL BEHAVIOR?

25 A. WELL, HE CERTAINLY HAS A PROBLEM, YES.

1 Q. EXCUSE ME?

2 A. HE CERTAINLY HAS A PROBLEM, YES, SIR.

3 Q. AND DO YOU REALIZE THAT THE LEGAL
4 DEFINITION OF MENTAL RETARDATION DOESN'T HAVE
5 ANYTHING CLOSE TO WHAT YOUR DEFINITION IS OF MENTAL
6 RETARDATION? IT'S NOT EVEN THE SAME THING. DID YOU
7 KNOW THAT?

8 A. I DON'T KNOW WHAT YOUR LEGAL DEFINITION
9 IS.

10 MR. NEWSOME: THAT'S CORRECT. THAT'S THE
11 POINT I'M TRYING TO MAKE. YOU DON'T HAVE A CLUE.
12 THANK YOU.

13 R E D I R E C T E X A M I N A T I O N
14 BY MR. BAILEY:

15 Q. DOCTOR, IF 80 PERCENT OF THE PEOPLE
16 WALKING AROUND THAT MR. NEWSOME ASKED YOU ABOUT ARE
17 MORE INTELLIGENT THAN MR. HUGHES, WOULD THAT MEAN
18 THAT THERE ARE 20 PERCENT WALKING AROUND WITH ABOUT
19 THE SAME INTELLIGENCE OR LESS THAN HIM?

20 A. CORRECT.

21 Q. OKAY. TWENTY PERCENT OF THE POPULATION
22 DOESN'T GO OUT COMMITTING MURDERS JUST BECAUSE THEIR
23 I.Q. IS A LITTLE BIT LOW, DO THEY?

24 A. THAT'S CORRECT.

25 MR. BAILEY: THANK YOU.

1 THE COURT: YOU MAY COME DOWN.

2 MR. NEWSOME: I -- COULD I HAVE --

3 THE COURT: EXCUSE ME. YOU'VE GOT ANOTHER
4 QUESTION. PARDON ME.

5 R E C R O S S - E X A M I N A T I O N

6 BY MR. NEWSOME:

7 Q. HOW MANY PEOPLE -- WHAT PERCENTAGE OF
8 PEOPLE ARE ACTUALLY RETARDED, THAT 70 AND BELOW?

9 A. THAT'S 5 PERCENT.

10 Q. FIVE PERCENT?

11 A. YES, SIR.

12 Q. AND HE'S RIGHT AT THAT BORDERLINE; IS THAT
13 NOT CORRECT?

14 A. HE'S PUSHING IT.

15 MR. NEWSOME: SO WE'RE TALKING ABOUT 94
16 PERCENT. OKAY. THANK YOU.

17 THE COURT: YOU MAY COME DOWN.

18 MR. BAILEY: NOTHING FURTHER, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. BAILEY: MAY HE BE EXCUSED?

21 THE COURT: PARDON ME? YES, SIR. DOES
22 THAT CLOSE THE -- CONCLUDE THE REPLY TESTIMONY?

23 MR. BAILEY: YES, SIR.

24 THE COURT: ALL RIGHT. FOREMAN, LADIES
25 AND GENTLEMEN, YOU HAVE NOW HEARD ALL OF THE

1 TESTIMONY IN THIS THE SECOND PHASE KNOWN AS THE
2 SENTENCING PHASE, AND WHEN YOU RETURN IN THE MORNING,
3 WE WILL HAVE FINAL SUMMATION OF COUNSEL, AND AT THAT
4 TIME, I WILL HAVE PREPARED AND GIVEN TO YOU DETAILED
5 STATUTORY INSTRUCTIONS AS THEY RELATE TO AGGRAVATING
6 CIRCUMSTANCES, MITIGATING CIRCUMSTANCES, AND I WILL
7 HAVE PREPARED FOR YOU A VERDICT FORM DEPENDING ON
8 YOUR VIEW OF THE FACTS IN THIS CASE.

9 NOW, IN YOUR DELIBERATIONS TOMORROW, I REQUEST
10 THAT YOU REMEMBER ALL OF THE PREVIOUS INSTRUCTIONS
11 THAT I GAVE YOU YESTERDAY RELATIVE TO THE LAW OF THIS
12 CASE. PLEASE KEEP IN MIND ANY DEFINITIONS THAT I
13 GAVE YOU, AND PLEASE REMEMBER IF IN YOUR
14 DELIBERATIONS TOMORROW YOU NEED ANY ADDITIONAL
15 INSTRUCTIONS ON ANY ISSUE AS IT PERTAINS TO THE LAW,
16 PLEASE DO AS YOU DID YESTERDAY, WRITE THAT QUESTION
17 DOWN AND KNOCK ON THE DOOR, AND THE BAILIFF WILL
18 DELIVER IT TO ME.

19 NOW, AS YOU LISTEN TO THE FINAL ARGUMENTS, I
20 WANT TO GIVE YOU SOME INSTRUCTIONS WHICH I THINK WILL
21 HELP YOU AS -- TO FOLLOW THE POSITIONS AGAIN OF THE
22 STATE AND OF THE DEFENDANT.

23 I TELL YOU AGAIN, AS I HAVE BEFORE, THE
24 STATUTORY INSTRUCTIONS, STATUTORY PROVISIONS IN OUR
25 LAW PROVIDES AS FOLLOWS: A PERSON WHO IS CONVICTED

1 OR WHO PLEADS GUILTY TO MURDER MUST BE PUNISHED
2 EITHER BY DEATH OR BY IMPRISONMENT FOR LIFE. THAT
3 SECTION AS FURTHER AMENDED PROVIDES IN PART, UPON
4 CONVICTION OF A DEFENDANT OF MURDER, THE COURT SHALL
5 CONDUCT A SEPARATE SENTENCING PROCEEDING TO DETERMINE
6 WHETHER THE DEFENDANT SHOULD BE SENTENCED TO DEATH OR
7 TO LIFE IMPRISONMENT. WE ARE NOW ENGAGED IN THAT
8 SECOND OR SENTENCING PROCEEDING.

9 NOW, AS YOU ARE WELL AWARE, THIS DEFENDANT WAS
10 CONVICTED ON LAST FRIDAY AFTERNOON OF THE OFFENSE OF
11 MURDER, IN ADDITION TO WHICH HE WAS CONVICTED OF
12 SEVERAL OTHER CHARGES, INCLUDING ASSAULT AND BATTERY
13 WITH INTENT TO KILL, GRAND LARCENY OF A VEHICLE, AND
14 ARMED ROBBERY, ALL OF WHICH WERE BEYOND A REASONABLE
15 DOUBT.

16 THE STATE OF SOUTH CAROLINA CHARGES THE
17 DEFENDANT WITH THE COMMISSION OF CERTAIN STATUTORY
18 AGGRAVATING CIRCUMSTANCES WITH REGARDS TO THE MURDER
19 FOR WHICH HE HAS BEEN CONVICTED. I CHARGE YOU THAT
20 THESE STATUTORY AGGRAVATING CIRCUMSTANCES ARE SIMPLY
21 ALLEGATIONS UNTIL PROVEN, AND THESE STATUTORY
22 AGGRAVATING CIRCUMSTANCES MUST BE PROVEN TO YOUR
23 SATISFACTION UNANIMOUSLY BEYOND A REASONABLE DOUBT.

24 NOW, WE'VE BEEN USING STATUTORY AGGRAVATING
25 CIRCUMSTANCES AND STATUTORY MITIGATING CIRCUMSTANCES,

1 AND I WILL GIVE YOU THESE DEFINITIONS IN DETAIL AND
2 IN DEPTH AT THE CONCLUSION OF THE ARGUMENTS OF
3 COUNSEL.

4 AGAIN, IN ORDER TO ASSIST YOU IN FOLLOWING THEIR
5 RESPECTIVE POSITIONS, LET ME DEFINE FOR YOU BRIEFLY
6 AT THIS MOMENT WHAT IS A STATUTORY AGGRAVATING
7 CIRCUMSTANCE. IT IS A FACT, AN INCIDENT, A DETAIL OR
8 AN OCCURRENCE WHICH THE GENERAL ASSEMBLY HAS DECLARED
9 BY STATUTE WHICH WOULD MAKE WORSE, THAT IS, AGGRAVATE
10 THE OFFENSE OF MURDER WHEN THE TWO OCCUR TOGETHER.
11 IN OTHER WORDS, IT IS SOMETHING WHICH INCREASES THE
12 ENORMITY OR ADDS TO THE INJURIOUS CONSEQUENCES OF THE
13 OFFENSE.

14 NOW, WHAT IS A STATUTORY MITIGATING
15 CIRCUMSTANCE? IT IS A FACT, AN INCIDENT, A DETAIL OR
16 AN OCCURRENCE WHICH THE GENERAL ASSEMBLY HAS DECLARED
17 BY STATUTE WHICH WOULD REDUCE THE SEVERITY OF THE
18 OFFENSE OF MURDER. IN OTHER WORDS, IT IS A
19 CIRCUMSTANCE RECOGNIZED BY STATUTE AS ONE WHICH IN
20 FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING
21 OR AS REDUCING THE DEGREE OF MORAL CULPABILITY FOR
22 THE COMMISSION OF THE ACT OF MURDER.

23 NOW, YOU WILL RECALL, AND I EMPHASIZE AS I HAVE
24 THROUGHOUT THESE PROCEEDINGS, THAT YOU 12 ARE THE
25 SOLE AND ONLY FINDERS OF THE FACTS IN THIS CASE.

1 NOW, THE STATE ALLEGES THE FOLLOWING AGGRAVATING
2 CIRCUMSTANCES, EITHER ONE OR MORE, WHICH IF PROVEN
3 MUST BE PROVEN TO YOUR SATISFACTION BEYOND A
4 REASONABLE DOUBT.

5 ONE OF THE AGGRAVATING CIRCUMSTANCES THAT THE
6 STATE ALLEGES IS AS FOLLOWS: THE MURDER OF KENNETH
7 PRESLEY WAS COMMITTED WHILE IN THE COMMISSION OF A
8 ROBBERY WHILE ARMED WITH A DEADLY WEAPON. THAT IS AN
9 AGGRAVATING CIRCUMSTANCE THE STATE ALLEGES. TWO,
10 THEY ALLEGE THAT THE MURDER OF KENNETH PRESLEY WAS
11 COMMITTED WHILE IN THE COMMISSION OF LARCENY, ARMED
12 WITH A DEADLY WEAPON. THREE, THEY ALLEGE AS ANOTHER
13 AGGRAVATING CIRCUMSTANCE THAT THE OFFENDER, BY HIS
14 ACT OF MURDER OF KENNETH PRESLEY, KNOWINGLY CREATED A
15 GREAT RISK OF DEATH TO MORE THAN ONE PERSON IN A
16 PUBLIC PLACE BY MEANS OF WEAPONS OR DEVICES WHICH
17 NORMALLY WOULD BE HAZARDOUS TO THE LIFE OF MORE THAN
18 ONE PERSON. THOSE ARE THE SOLE AND ONLY AGGRAVATING
19 CIRCUMSTANCES FOR YOUR CONSIDERATION, AND THE STATE
20 MUST PROVE ONE OR ALL BY THE GREATER -- BY THE -- BY
21 THE -- BEYOND A REASONABLE DOUBT.

22 NOW, THE DEFENDANT INDICATES THE FOLLOWING
23 CIRCUMSTANCE -- THE FOLLOWING STATUTORY MITIGATING
24 CIRCUMSTANCES, WHICH ARE PERMITTED BY STATUTE. ONE,
25 DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR

1 CONVICTION INVOLVING THE USE OF VIOLENCE AGAINST
2 ANOTHER PERSON. TWO, MURDER WAS COMMITTED WHILE THE
3 DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
4 EMOTIONAL DISTURBANCE. THREE, AS A STATUTORY
5 MITIGATING CIRCUMSTANCE, THE CAPACITY OF THE
6 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS
7 CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS
8 OF LAW. THE AGE OR MENTALITY OF THE DEFENDANT AT THE
9 TIME OF THE CRIME. THE DEFENDANT WAS BELOW THE AGE
10 OF 18 AT THE TIME OF THE CRIME. AS ANOTHER STATUTORY
11 MITIGATING CIRCUMSTANCE, THE DEFENDANT HAD MENTAL
12 RETARDATION AT THE TIME OF THE CRIME. MENTAL
13 RETARDATION MEANS SIGNIFICANTLY SUBAVERAGE GENERAL
14 INTELLECTUAL FUNCTIONING EXISTING WITH DEFICITS IN
15 ADAPTIVE BEHAVIOR AND MANIFESTED DURING THE
16 DEVELOPMENT PERIOD. THESE ARE STATUTORY MITIGATING
17 CIRCUMSTANCES.

18 IN ADDITION TO THAT, YOU THE JURY AS FINDERS OF
19 THE FACTS MAY CONSIDER ANY OTHER MITIGATING
20 CIRCUMSTANCES WHICH YOU FIND ARE SUPPORTED BY THE
21 EVIDENCE.

22 NOW, AS TO THESE STATUTORY AGGRAVATING
23 CIRCUMSTANCES, THE DEFENDANT HAS PLED NOT GUILTY,
24 WHICH PLACES UPON THE STATE THE BURDEN OF PROVING THE
25 DEFENDANT GUILTY OF THESE STATUTORY AGGRAVATING

1 CIRCUMSTANCES. I CHARGE YOU, AS I DID BEFORE, THAT
2 IT IS A VITAL, IMPORTANT RULE OF LAW OF EVIDENCE THAT
3 A DEFENDANT IN A CRIMINAL CASE, NO MATTER HOW GREAT
4 OR SERIOUS MAY BE THE OFFENSE WITH WHICH HE'S
5 CHARGED, MUST ALWAYS BE PRESUMED INNOCENT OF THAT
6 CHARGE UNTIL HIS GUILT HAS BEEN PROVEN BEYOND A
7 REASONABLE DOUBT.

8 AGAIN, THIS PRESUMPTION OF INNOCENCE REMAINS
9 WITH THE DEFENDANT AT ALL TIMES THROUGHOUT THE TRIAL
10 AND UNTIL YOU THE JURY HAVE UPON THE TESTIMONY AND
11 EVIDENCE PRESENTED REACHED A VERDICT OF GUILTY OF THE
12 STATUTORY AGGRAVATING CIRCUMSTANCES BEYOND A
13 REASONABLE DOUBT. FOR IT IS THE SOLEMN DUTY OF THE
14 JURY IF NOT CLEARLY CONVINCED OF HIS GUILT BEYOND
15 EVERY REASONABLE DOUBT TO THE CONTRARY TO ACQUIT THE
16 DEFENDANT OF THESE STATUTORY AGGRAVATING
17 CIRCUMSTANCES.

18 AND SO IT IS THAT THE BURDEN OF PROOF IS UPON
19 THE STATE TO ESTABLISH BY EVIDENCE TO YOUR
20 SATISFACTION THE GUILT BEYOND A REASONABLE DOUBT OF
21 THIS DEFENDANT OF ONE OR MORE OF THE AGGRAVATING
22 CIRCUMSTANCES THAT THEY ALLEGE.

23 NOW, I GIVE YOU AGAIN THE DEFINITION OF
24 REASONABLE DOUBT. A REASONABLE DOUBT IS THE KIND OF
25 DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO

1 HESITATE TO ACT. REASONABLE DOUBT MAY ARISE FROM
2 EVIDENCE WHICH IS IN THIS CASE OR FROM THE ABSENCE OR
3 LACK OF EVIDENCE WHICH IS IN THE CASE.

4 AND I REMIND YOU AGAIN AS YOU CONSIDER ALL OF
5 THE TESTIMONY AND EVIDENCE PRESENTED THAT YOU 12 ARE
6 THE SOLE AND ONLY FINDERS OF THE FACTS. YOU ARE THE
7 SOLE AND ONLY JUDGE OF THE CREDIBILITY AND
8 BELIEVABILITY OF THE WITNESSES. WITH EQUAL EMPHASIS,
9 I CHARGE YOU THAT I AM THE INSTRUCTOR IN THE LAW,
10 MADE SO BY THE CONSTITUTION OF THIS STATE, AND UPON
11 YOUR OATH AS JURORS, YOU ARE REQUIRED TO FOLLOW THE
12 LAW AS I CHARGE IT TO YOU, REMEMBERING AT ALL TIMES
13 YOU APPLY THE FACTS TO THAT LAW AS YOU DEEM THOSE
14 FACTS TO BE.

15 NOW, LADIES AND GENTLEMEN, IN ARRIVING AT YOUR
16 SENTENCING DECISION, YOU MAY CONSIDER ANY MITIGATING
17 CIRCUMSTANCES OR CIRCUMSTANCES WHICH MAY BE SUPPORTED
18 BY THE EVIDENCE EVEN THOUGH THERE HAS NOT BEEN
19 UNANIMOUS AGREEMENT AMONG YOU AS TO THE EXISTENCE OF
20 SUCH MITIGATING CIRCUMSTANCES OR CIRCUMSTANCES.

21 NOW, LADIES AND GENTLEMEN, IN YOUR CONSIDERATION
22 OF THE APPROPRIATE SENTENCE IN THIS CASE, I CHARGE
23 YOU AS FOLLOWS. IF TWO OR MORE PARTIES COMBINE
24 TOGETHER TO COMMIT AN UNLAWFUL ACT AND IN THE
25 COMMISSION OF THAT ACT, ONE PARTY COMMITS A HOMICIDE

1 THAT IS A PROBABLE OR NATURAL CONSEQUENCE THEREOF,
2 ALL PRESENT PARTICIPATING IN THE UNLAWFUL ACT ARE AS
3 GUILTY AS THE ONE WHO COMMITTED THE HOMICIDE. WHEN
4 INTENT TO KILL RESULTS IN THE LOGICAL THOUGH NOT
5 INEVITABLE RESULT OF TAKING OF HUMAN LIFE, THE
6 CONSTITUTION OF THIS STATE AND OF THE UNITED STATES
7 ALLOWS THE DEATH PENALTY TO BE IMPOSED AFTER
8 CONSIDERATION OF THE AGGRAVATING AND MITIGATING
9 CIRCUMSTANCES. A SPECIFIC INTENT TO KILL IS NOT
10 NECESSARY.

11 YOU MAY -- AND I USE THAT WORD ADVISEDLY. YOU
12 MAY IMPOSE THE DEATH PENALTY UPON ONE WHO DID NOT
13 PERSONALLY TAKE LIFE, IF YOU FIND THE FOLLOWING.
14 FIRST, THAT THE DEFENDANT'S PARTICIPATION IN THE
15 CRIME THAT RESULTED IN THE MURDER WAS MAJOR, AND
16 SECOND, THAT THE DEFENDANT'S MENTAL STATE WAS ONE OF
17 RECKLESS INDIFFERENCE TO HUMAN LIFE. RECKLESS
18 INDIFFERENCE OR RECKLESS DISREGARD FOR HUMAN LIFE IS
19 KNOWINGLY ENGAGED IN A CRIMINAL ACTIVITY KNOWN TO
20 CARRY A GRAVE RISK OR DEATH. THIS MENTAL STATE MAY
21 BE TAKEN INTO ACCOUNT IN MAKING A CAPITAL SENTENCE
22 AND JUDGMENT WHEN THAT CONDUCT CAUSES ITS NATURAL
23 THOUGH NOT INEVITABLE LEGAL RESULT.

24 I FURTHER CHARGE YOU THAT IN ORDER FOR YOU TO
25 IMPOSE THE DEATH PENALTY, IT IS NOT NECESSARY FOR YO

1 TO FIND THAT THE DEFENDANT KNEW BEFOREHAND THAT HIS
2 ACCOMPLICE WAS GOING TO COMMIT A MURDER. A
3 DEFENDANT'S MAJOR PARTICIPATION IN THE CRIME THAT LED
4 TO AN ACCOMPLICE COMMITTING MURDER COMBINED WITH THE
5 DEFENDANT'S RECKLESS INDIFFERENCE TO LIFE IS ENOUGH
6 TO SATISFY THE REQUIREMENT THAT THE DEFENDANT
7 INTENDED TO KILL IF THESE ELEMENTS ARE PROVEN TO YOUR
8 SATISFACTION BEYOND A REASONABLE DOUBT.

9 NOW, MR. FOREMAN AND LADIES AND GENTLEMEN, I
10 CHARGE YOU AND I WOULD INSTRUCT YOU THAT BEFORE YOU
11 MAY CONSIDER ANY STATEMENT THAT HAS BEEN PUT IN
12 EVIDENCE, YOU MUST FIND BY A DEFENDANT -- YOU MUST
13 FIND BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS
14 GIVEN AND ADVISED OF HIS CONSTITUTIONAL RIGHTS
15 INCLUDED BUT NOT LIMITED TO THE PROCEDURAL SAFEGUARDS
16 KNOWN AS THE MIRANDA WARNINGS. YOU MUST BE CONVINCED
17 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS
18 ADVISED OF HIS RIGHTS TO REMAIN SILENT, ADVISED THAT
19 ANYTHING HE SAID COULD BE USED IN EVIDENCE AGAINST
20 HIM, THAT HE HAD A RIGHT TO COUNSEL, THAT IF HE COULD
21 NOT AFFORD COUNSEL, ONE WOULD BE PROVIDED WITHOUT
22 CHARGE. IF THE DEFENDANT WAS SO ADVISED, YOU MAY
23 CONSIDER HIS ADMISSION IF YOU FULLY UNDERSTOOD -- IF
24 HE FULLY UNDERSTOOD THE WARNINGS AND NEVERTHELESS
25 INTELLIGENTLY AND KNOWINGLY ELECTED TO WAIVE HIS

1 RIGHTS.

2 YOU THE JURY, LADIES AND GENTLEMEN, MUST
3 ADDITIONALLY BEFORE YOU CONSIDER ANY ALLEGED
4 STATEMENT OR CONFESSION FIND BEYOND A REASONABLE
5 DOUBT THAT THE SAME WAS GIVEN FREELY AND VOLUNTARILY
6 UNDER THE TOTALITY OF THE CIRCUMSTANCES AND THAT THE
7 DEFENDANT HAD THE CAPACITY TO KNOW AND UNDERSTOOD THE
8 ACT AND INVOLVEMENT OF HIS STATEMENT. NO CONFESSION
9 OR ALLEGED CONFESSION OR STATEMENT CAN BE CONSIDERED
10 OR USED AGAIN ANY DEFENDANT IF IT WAS MADE THROUGH
11 FEAR, FORCE, UNDER DURESS OR COMPULSION OF ANY KIND
12 OR IF IT WAS INDUCED BY ANY PROMISE OF LENIENCY, HOPE
13 OR REWARD.

14 IN OTHER WORDS, AN ALLEGED STATEMENT OR ALLEGED
15 CONFESSION, EITHER ORAL OR WRITTEN, ACTUALLY MADE BY
16 A DEFENDANT CONSTITUTES NO EVIDENCE AGAINST HIM
17 UNLESS IT WAS FREELY AND VOLUNTARILY MADE WITHOUT ANY
18 THREATS TO INDUCEMENTS, FEAR OR HOPE, AND FURTHER,
19 THAT THE DEFENDANT UNDERSTOOD THE CONTENTS OF THE
20 CONFESSION.

21 THEREFORE, IT IS YOUR DUTY TO DETERMINE FROM ALL
22 OF THE EVIDENCE BEFORE YOU WHETHER THE STATE HAS
23 ESTABLISHED THAT SUCH CONFESSION WAS MADE FREELY AND
24 VOLUNTARILY, AND THEY MUST ESTABLISH THIS BEYOND A
25 REASONABLE DOUBT.

1 IF -- AND I USE THAT WORD ADVISEDLY -- IF YOU
2 FIND THAT ANY ALLEGED CONFESSION OR STATEMENT WAS
3 MADE FREELY AND VOLUNTARILY, THEN, OF COURSE, IT
4 SHOULD BE CONSIDERED BY YOU ALONG WITH ALL OF THE
5 OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE IT THEN
6 SUCH WEIGHT AS IN THE WHOLE OR PART AS YOU THINK THAT
7 STATEMENT OR CONFESSION IS ENTITLED TO.

8 NOW, WITNESSES WHO BY TRAINING, EDUCATION OR
9 EXPERIENCE ARE CONSIDERED AS EXPERTS IN A PARTICULAR
10 FIELD AND MAY GIVE OPINIONS IN THAT FIELD BASED UPON
11 THE FACTS OF A MATTER, THEIR CONCLUSIONS, LADIES AND
12 GENTLEMEN, AND OPINIONS, CONSTITUTE EVIDENCE TO BE
13 CONSIDERED BY YOU IN CONNECTION WITH ALL OF THE OTHER
14 TESTIMONY AND EVIDENCE IN THE CASE. YOU THE JURY MAY
15 GIVE IT SUCH WEIGHT AS YOU IN YOUR EXPERIENCE AND
16 DISCRETION DETERMINE APPROPRIATE.

17 NOW, LADIES AND GENTLEMEN, I HAVE GIVEN YOU
18 AGAIN THESE INSTRUCTIONS IN THE LAW SINCERELY
19 BELIEVING THAT THEY WILL HELP YOU IN FOLLOWING THE
20 STATED POSITIONS OF THE STATE AND OF THE DEFENDANT IN
21 THE MORNING AS THEY CONCLUDE. KEEP THESE
22 INSTRUCTIONS IN MIND AS YOU LISTEN TO THEM. KEEP
23 THESE INSTRUCTIONS IN MIND ALONG WITH THOSE I GAVE TO
24 YOU ON FRIDAY DURING YOUR DELIBERATIONS.

25 AFTER THEY HAVE CONCLUDED THEIR REMARKS, I WILL

1 BE BACK WITH YOU WITH DETAILED INSTRUCTIONS AS TO
2 YOUR PROCEDURE, CONSIDERING ANY AGGRAVATING
3 CIRCUMSTANCE, IF ANY, CONSIDERING MITIGATING
4 CIRCUMSTANCES. I WILL EXPLAIN THE VARIOUS FORMS TO
5 YOU. I WILL HAVE THOSE FORMS FOR YOU, AND THEY WILL
6 BE IN THE JURY ROOM WITH YOU. OF COURSE, I WILL BE
7 HERE TO ANSWER ANY QUESTIONS THAT YOU HAVE.

8 JUST REMEMBER THIS, THAT IN EACH ISSUE, YOU 12
9 AND YOU ALONE ARE THE SOLE AND ONLY FINDERS OF THE
10 FACTS. IT IS YOUR DUTY TO APPLY THOSE FACTS TO THE
11 LAW OF THIS CASE. I'M GOING TO LET YOU GO TO THE
12 JURY ROOM, AND THEN IN -- WE'LL HOLD YOU JUST A
13 SECOND. THEN I'M GOING TO SEND YOU TO THE MOTEL,
14 HAVE DINNER FOR YOU. THEY WILL MAKE ARRANGEMENTS TO
15 CHECK YOU OUT OF THE MOTEL IN THE MORNING.

16 IT IS MY THOUGHTS THAT THE THING WILL START AT
17 9:30. WE'LL HAVE SUMMATION OF COUNSEL. I WILL BE
18 GIVING YOU THIS CASE SOMETIME IN THE MORNING FOR
19 YOUR DELIBERATION, AND YOU WILL HAVE ALL AFTERNOON
20 AND TOMORROW NIGHT AND WHATEVER SUCH TIME IS
21 NECESSARY TO CONCLUDE YOUR DELIBERATIONS. SO WE'LL
22 MAKE ARRANGEMENTS FOR YOU, AND I'LL SEE YOU BACK HERE
23 AT 9:30 IN THE MORNING. DO NOT LEAVE THE JURY ROOM
24 YET, THOUGH. I MAY HAVE ONE OR TWO MATTERS I NEED TO
25 DISCUSS. YOU MAY GO TO THE JURY ROOM.

1 (WHEREUPON, THE JURY WAS REMOVED FROM
2 THE COURTROOM AND THE FOLLOWING PROCEEDINGS COMMENCED
3 IN OPEN COURT.)

4 THE COURT: NO, SIR. EVERYBODY REMAIN
5 SEATED NOW. I HAVE NOT EXCUSED YOU.

6 GENTLEMEN, I HAVE PREVIOUSLY PROVIDED TO YOU THE
7 FINAL INSTRUCTION AND THE FORMS THAT I WILL PRESENT.
8 ARE THERE ANY EXCEPTIONS OR ADDITIONS TO THE CHARGE
9 THUS FAR GIVE?

10 MR. BAILEY: YOUR HONOR, JUST FOR
11 CLARIFICATION, ARE YOU GOING TO GIVE ANOTHER COMPLETE
12 CHARGE ON THE LAW AT THE CONCLUSION OF THE CLOSING
13 STATEMENTS?

14 THE COURT: ON THE WHAT?

15 MR. BAILEY: ARE YOU GOING TO RECHARGE THE
16 JURY ON THE LAW AT THE CONCLUSION OF THE CLOSING
17 STATEMENTS?

18 THE COURT: LAW OF WHAT?

19 MR. BAILEY: ARE YOU GOING TO RECHARGE THE
20 JURY AFTER MR. NEWSOME AND I GIVE OUR CLOSING
21 STATEMENTS?

22 THE COURT: YES, SIR. I WILL RECHARGE
23 THEM WITH REGARDS TO THIS CHARGE HERE THAT I GAVE ON
24 THE STATUTORY AND MITIGATING CIRCUMSTANCES. THEY
25 WILL BE CHARGED IN FULL.

1 MR. BAILEY: YES, SIR.

2 THE COURT: OKAY. AND YOU WILL, OF
3 COURSE, HAVE ANY OPPORTUNITY EVEN AT THAT TIME I'LL
4 SEND THEM BACK OUT IF YOU HAVE ANY ADDITIONAL
5 CHARGES.

6 MR. BAILEY: YES, SIR.

7 THE COURT: AT THIS TIME, IS THERE ANY
8 EXCEPTION OR ADDITION TO THE CHARGES GIVEN THIS
9 MORNING?

10 MR. BAILEY: YOUR HONOR, NO EXCEPTIONS AND
11 NO ADDITIONS IN VIEW OF THE FACT THAT THEY WILL BE
12 CHARGED AGAIN TOMORROW AFTERWARDS.

13 THE COURT: OKAY. ARE THERE ANY
14 EXCEPTIONS OR ADDITIONS?

15 MR. NEWSOME: NO.

16 THE COURT: ALL RIGHT. THANK YOU. WE ARE
17 IN RECESS UNTIL 9:30 IN THE MORNING.

18 MR. BAILEY: YOUR HONOR, ONE OTHER THING.
19 WITH REGARD TO THE CHARGE ON MIRANDA, I DID NOT
20 ELICIT THE STATEMENT. THE ONLY STATEMENT THAT CAME
21 IN WAS THROUGH SHERIFF JONES.

22 THE COURT: HE SAID THAT HE HAD MIRANDIZED
23 HIM.

24 MR. BAILEY: HE SAID HE HAD MIRANDIZED
25 HIM, BUT IF I HAD BEEN CALLING THE SHERIFF TO ELICIT

1 THAT INFORMATION, I WOULD HAVE GONE INTO A LOT OF
2 DETAIL ABOUT MIRANDA. AND I DON'T THINK THAT -- I
3 THINK IN THE CONTEXT THAT THE STATEMENT CAME UP, THAT
4 THE DEFENDANT ELICITED THAT FROM THE SHERIFF IN HIS
5 CASE IN CHIEF, THAT MIRANDA DIDN'T REALLY APPLY TO
6 IT.

7 THE COURT: WELL, I'M NOT SURE IT DOES,
8 BUT, YOU KNOW, OUR APPELLATE COURTS, OUT OF ABUNDANCE
9 -- IF YOU DESIRE TO, LET ME -- IF YOU HAVE SOME
10 CONCERN ABOUT IT, I'LL LET YOU -- I'LL LET YOU
11 RE-CALL THE SHERIFF ON THAT ISSUE.

12 MR. BAILEY: NO, SIR. MY CONCERN WAS THAT
13 THE JURY MAY BE SOMEWHAT CONCERNED THAT THEY DIDN'T
14 HEAR THE MIRANDA RIGHTS FROM THE SHERIFF.

15 THE COURT: HOW WOULD THAT BE CORRECTED?

16 MR. BAILEY: EXCUSE ME?

17 THE COURT: HOW WOULD YOU HAVE ME CORRECT
18 IT?

19 MR. BAILEY: YOUR HONOR, CAN I THINK ABOUT
20 THAT OVERNIGHT?

21 THE COURT: YES, SIR. THERE'S NO QUESTION
22 ABOUT HIS STATEMENT WAS ELICITED BY HIS OWN COUNSEL.

23 MR. BAILEY: YES, SIR.

24 THE COURT: BUT, YOU KNOW WHAT PCR'S ARE,
25 AND I THINK IN ABUNDANCE OF PRECAUTION, IF THEY HAD

1 CONSIDERED THAT STATEMENT, WE BETTER HAVE THE MIRANDA
2 -- I'LL BE GLAD TO PERMIT YOU TO RE-CALL THE SHERIFF
3 ON THAT.

4 MR. BAILEY: NO, SIR. I DON'T CARE TO
5 RECALL THE SHERIFF ON THAT.

6 THE COURT: YOU THINK ABOUT IT, AND WE'LL
7 SEE WHERE WE ARE.

8 MR. BAILEY: THANK YOU, YOUR HONOR.

9 THE COURT: ANYTHING FURTHER.

10 MR. BAILEY: NOT FROM THE STATE.

11 MR. NEWSOME: NOT FROM THE DEFENDANT, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT. WE ARE RECESSED
14 UNTIL 9:30 TOMORROW. COME FORWARD, PLEASE, BOTH OF
15 YOU.

16 (WHEREUPON, THE JURY WAS REMOVED
17 FROM THE COURTROOM AND THE
18 PROCEEDINGS WERE ADJOURNED.)

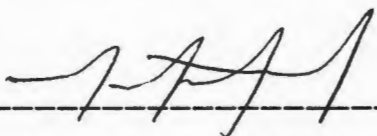
19 (END OF VOLUME NINE)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF FLORENCE

5
6 I, MARK W. HAGOOD, REGISTERED PROFESSIONAL
7 REPORTER, (RPR), COURT REPORTER FOR THE STATE OF
8 SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY
9 CERTIFY THAT THE FOREGOING PROCEEDINGS IS A
10 STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH
11 COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING
12 TRANSCRIPT CONTAINS A TRUE RECORD OF THE
13 PROCEEDINGS.14 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
15 COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF
16 THE PARTIES CONNECTED TO THE ACTION, NOR AM I
17 FINANCIALLY INTERESTED IN THE ACTION.18 WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA,
19 THIS 3rd DAY OF April, 1996.20
21 22 MARK W. HAGOOD, RPR
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JAMES H. HARRIS, JR.

JAMES H. HARRIS, JR.

DEPARTMENT OF THE ARMY

WASHINGTON, D. C.

OFFICE OF THE CHIEF OF STAFF

MEMORANDUM FOR THE RECORD

SUBJECT: [Illegible]

DATE: [Illegible]

BY: [Illegible]

JAMES H. HARRIS, JR.

DEPARTMENT OF THE ARMY

WASHINGTON, D. C.

OFFICE OF THE CHIEF OF STAFF

MEMORANDUM FOR THE RECORD

SUBJECT: [Illegible]

DATE: [Illegible]

BY: [Illegible]

1 STATE OF SOUTH CAROLINA IN GENERAL SESSIONS COURT
 2 COUNTY OF CALHOUN

3

4 STATE OF SOUTH CAROLINA

94-GS-09-153

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94-GS-09-154

V.

94-GS-09-155

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94-GS-09-156

HERMAN LEE HUGHES, JR.

7

8

VOLUME TEN

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- - -
 THE TRIAL PROCEEDINGS HAD
 IN THE ABOVE-STYLED CAUSE
 - - -

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TUESDAY, SEPTEMBER 12, 1995
 ST. MATTHEWS, SOUTH CAROLINA

12

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BEFORE: HONORABLE EDWARD B. COTTINGHAM,
 CIRCUIT COURT JUDGE

14

15

A P P E A R A N C E S

16

17 FOR THE STATE: WALTER M. BAILEY, JR., SOLICITOR

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19 FOR THE DEFENDANT: PHILLIP F. NEWSOME, ESQUIRE

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12	STATE'S	19 " " "	978	978
	STATE'S	20 " " "	978	978
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14	STATE'S	23 " " "	982	982
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1 (BEGINNING OF VOLUME TEN)
2 (WHEREUPON, ON TUESDAY,
3 SEPTEMBER, 12, 1995, BEGINNING
4 AT 9:35 A.M., THE FOLLOWING
5 PROCEEDINGS WERE HAD.)

6 THE COURT: GOOD MORNING, LADIES AND
7 GENTLEMEN. PLEASE BE SEATED. ALL RIGHT. PRIOR TO
8 PROCEEDING, MR. NEWSOME, IN THE FIRST PHASE OF THE
9 CASE AND LATER, AS I RECALL IT, AT THE BEGINNING OF
10 THE SECOND PHASE, I INQUIRED OF THE DEFENDANT AS TO
11 WHETHER OR NOT HE DESIRED TO TAKE THE STAND IN THIS
12 SECOND PHASE. IT WAS MY UNDERSTANDING THAT HE HAD
13 INDICATED HE DID NOT DESIRE TO TAKE THE STAND; IS
14 THAT CORRECT?

15 MR. NEWSOME: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: HE -- THAT HE IS -- THAT BE
17 HIS CHOICE, HE'S STILL AVAILABLE TO TAKE THE STAND
18 THIS MORNING. DO YOU UNDERSTAND THAT?

19 MR. NEWSOME: I UNDERSTAND. HE DID NOT
20 INTEND TO TESTIFY IN THE SECOND PHASE. HE DOES
21 INTEND TO EXERCISE HIS RIGHT TO MAKE A CLOSING
22 STATEMENT TO THE JURY.

23 THE COURT: MR. HUGHES, PLEASE STAND.
24 MR. HUGHES, IN THE FIRST PHASE, AND AS I RECALL, AT
25 THE BEGINNING OF THE SECOND PHASE, I ADVISED YOU OF

1 YOUR CONSTITUTIONAL RIGHT TO REMAIN SILENT INSOFAR AS
2 TESTIMONY WAS CONCERNED. I EQUALLY ADVISED YOU OF
3 YOUR RIGHT TO -- THAT YOU HAD THAT RIGHT IN THE FIRST
4 PHASE AND YOU COULD EXERCISE THAT RIGHT. YOU DECLINE
5 TO DO THAT. YOU STILL HAVE THAT RIGHT HERE IN THE
6 SECOND PHASE. WE HAVE NOT HAD SUMMATION YET, AND IF
7 YOU AT THIS -- EVEN THIS MORNING TELL ME, JUDGE, I
8 WISH TO TESTIFY, I WILL AVAIL YOU OF THAT
9 OPPORTUNITY. EQUALLY IMPORTANT, IF YOU TELL ME YOU
10 DO NOT WISH TO TESTIFY, I WILL CERTAINLY ADHERE TO
11 THAT POSITION. UNDERSTAND THAT?

12 MR. HUGHES: YES, SIR.

13 THE COURT: WITH REGARDS TO TESTIFYING,
14 NOW, IN THE SECOND PHASE, IS IT YOUR DECISION TO
15 TESTIFY OR NOT TO TESTIFY?

16 MR. HUGHES: NOT TO, SIR.

17 THE COURT: ALL RIGHT. NOW, IN A FEW
18 MOMENTS, WE'LL START SUMMATION, FINAL ARGUMENTS. THE
19 STATE OF SOUTH CAROLINA THROUGH ITS SOLICITOR WILL
20 HAVE THE FIRST ARGUMENT. YOU UNDERSTAND THAT?

21 MR. HUGHES: YES, SIR.

22 THE COURT: FOLLOWING THAT, YOUR ATTORNEY,
23 MR. NEWSOME, WILL HAVE THE CONCLUSION AND CLOSING
24 ARGUMENT. YOU UNDERSTAND THAT?

25 MR. HUGHES: YES, SIR.

1 THE COURT: AT THE END OF HIS CLOSING
2 ARGUMENT, OUR STATUTES PERMIT YOU TO MAKE A FINAL
3 CLOSING STATEMENT. DO YOU UNDERSTAND THAT?

4 MR. HUGHES: YES, SIR.

5 THE COURT: DO YOU DESIRE TO MAKE A
6 CLOSING STATEMENT AT THE CONCLUSION OF THE SUMMATION
7 BY COUNSEL?

8 MR. HUGHES: YES, SIR.

9 THE COURT: SIR?

10 MR. HUGHES: YES, SIR.

11 THE COURT: HE DESIRES TO MAKE ONE?

12 MR. NEWSOME: YES, SIR.

13 THE COURT: HE SHALL BE AFFORDED THAT
14 OPPORTUNITY. ALL RIGHT. NOW, GENTLEMEN, WHEN THE
15 JURY COMES OUT, I WILL AGAIN INSTRUCT THEM ON HIS
16 FAILURE TO TAKE THE STAND AND THEN WE WILL
17 IMMEDIATELY GO INTO SUMMATIONS. AT THE CONCLUSION OF
18 SUMMATION, I WILL INSTRUCT THEM IN ACCORDANCE WITH
19 THE CHARGES I HAVE PREVIOUSLY PROVIDED TO BOTH OF YOU
20 DESIGNATED AS MY DEATH PENALTY CHARGE. YOU
21 UNDERSTAND THAT?

22 MR. NEWSOME: YES, SIR.

23 MR. BAILEY: YES, SIR, YOUR HONOR. WE HAD
24 DISCUSSED YESTERDAY A NO SYMPATHY CHARGE.

25 THE COURT: THAT WILL BE INCLUDED.

1 MR. BAILEY: YOU'RE GOING TO ADD THAT TO
2 IT?

3 THE COURT: YEAH. NOW, EVEN AFTER THIS
4 CHARGE, THE JURY WILL BE SENT TO THE JURY ROOM SO
5 THAT I WILL MAKE INQUIRY AS TO ANY ADDITIONAL CHARGES
6 OR EXCEPTIONS PROVIDED BY EITHER PARTY. YOU
7 UNDERSTAND THAT?

8 MR. NEWSOME: YES, SIR.

9 THE COURT: THE ONLY FURTHER ADDITION TO
10 THE CHARGE WILL BE THE SYMPATHY CHARGE. ALL RIGHT,
11 SIR. ANY FURTHER QUESTIONS?

12 MR. NEWSOME: NOTHING, YOUR HONOR.

13 THE COURT: ALL RIGHT. ANYTHING FURTHER?

14 MR. BAILEY: NOT FROM THE STATE, YOUR
15 HONOR.

16 (WHEREUPON, THE JURY WAS RETURNED
17 TO THE COURTROOM AND THE FOLLOWING
18 PROCEEDINGS WERE COMMENCED IN
19 OPEN COURT.)

20 THE COURT: LET THE RECORD REFLECT THAT
21 THE JURY IS PRESENT. GOOD MORNING MR. FOREMAN AND
22 LADIES AND GENTLEMEN. I TRUST AGAIN THAT YOUR NICE
23 ARRANGEMENTS WERE SATISFACTORY. WE HAVE NOW
24 CONCLUDED THE TAKING OF ALL OF THE TESTIMONY IN THE
25 SECOND OR SENTENCING PHASE AND WE WILL NOW BE HEARING

1 FINAL SUMMATION OF THE ATTORNEYS FOR THE STATE AND
2 THE DEFENDANT. AS I TOLD YOU IN THE FIRST PHASE AND
3 I TELL YOU AGAIN, WHAT THE ATTORNEYS TELL YOU IS NOT
4 EVIDENCE. IT'S THEIR VIEW OF THE EVIDENCE. THE
5 EVIDENCE COMES FROM THIS WITNESS STAND UNDER OATH.

6 YOU WILL ALSO REMEMBER THAT I TOLD YOU THAT THE
7 DEFENDANT ELECTED NOT TO TESTIFY IN HIS FIRST CASE.
8 HE EQUALLY IMPORTANT HAS ELECTED NOT TO TESTIFY IN
9 THIS THE SECOND PHASE. NOW, IN THAT CONNECTION, I
10 CHARGE YOU NOW AS I DID THEN, I CHARGE YOU,
11 MR. FOREMAN AND MEMBERS OF THE JURY, THAT THE FACT
12 THAT A DEFENDANT DOES NOT TESTIFY IN HIS OWN BEHALF
13 CANNOT AND MUST NOT BE CONSIDERED AGAINST HIM UNDER
14 ANY CIRCUMSTANCES OR IN ANY MANNER WHATSOEVER. THE
15 FAILURE OF ANY DEFENDANT TO TAKE THE WITNESS STAND
16 AND TO TESTIFY IN HIS OWN BEHALF DOES NOT CREATE ANY
17 PRESUMPTION AGAINST HIM. AND I TELL YOU NOW THAT YOU
18 MUST NOT PERMIT THAT FACT TO WEIGH IN THE SLIGHTEST
19 DEGREE AGAINST SUCH DEFENDANT. YOU MUST NOT PERMIT
20 THIS FACT TO ENTER INTO THE DISCUSSIONS OR
21 DELIBERATIONS OF THE ISSUES IN THIS CASE. NOW, WHILE
22 HE DID NOT TESTIFY IN THE TRIAL OF THIS CASE, HE HAS
23 ELECTED TO MAKE A CONCLUDING STATEMENT TO YOU WHICH
24 IS ALSO PROVIDED FOR IF HE ELECTS TO UNDER THE
25 STATUTES OF SOUTH CAROLINA.

1 THUS IT IS THAT THE SOLICITOR WILL BEGIN THESE
2 PROCEEDINGS WITH HIS FINAL SUMMATION IN THIS THE
3 SECOND PHASE. FOLLOWING THAT, MR. NEWSOME,
4 REPRESENTING THE DEFENDANT HERMAN HUGHES, WILL GIVE
5 HIS FINAL CONCLUDING REMARKS. AND THE DEFENDANT
6 HERMAN HUGHES HIMSELF WILL MAKE A STATEMENT TO YOU.

7 FOLLOWING THAT, AS I INDICATED YESTERDAY, I WILL
8 GIVE YOU SOME FINAL CONCLUDING REMARKS AND
9 INSTRUCTIONS ON FILLING OUT THE VARIOUS FORMS
10 INVOLVED. I WANT YOU TO REMEMBER, NOW, PLEASE, ALL
11 OF THE LEGAL INSTRUCTIONS THAT I GAVE YOU ON FRIDAY
12 OF LAST WEEK WITH REGARDS TO THE FIRST PHASE.
13 REMEMBER, TOO, THE LEGAL INSTRUCTIONS IN THE LAW THAT
14 I GAVE TO YOU YESTERDAY AND TAKE THOSE OF FRIDAY AND
15 YESTERDAY COUPLED WITH THE ADDITIONAL INSTRUCTIONS
16 THAT I MADE TO FOLLOW THE LAW IN THIS CASE,
17 REMEMBERING THAT YOU ARE THE FINDERS OF THE FACTS AND
18 YOU WILL TAKE THE FACTS AS YOU FIND THEM TO BE, APPLY
19 THOSE FACTS TO THE LAW AS I'VE CHARGED IT TO YOU AND
20 WILL HEREAFTER CHARGE IT TO YOU IN REACHING THAT
21 VERDICT THAT DOES JUSTICE TO THE PEOPLE OF CALHOUN
22 COUNTY AND THE STATE OF SOUTH CAROLINA AND JUSTICE TO
23 THIS DEFENDANT.

24 YOU MAY PROCEED.

25 MR. BAILEY: MAY IT PLEASE THE COURT?

1 LADIES AND GENTLEMEN, ON BEHALF OF THE STATE OF SOUTH
2 CAROLINA, I WANT TO THANK YOU FOR YOUR ATTENTION
3 THROUGHOUT THE TRIAL. I KNOW IT'S BEEN A DIFFICULT
4 HARDSHIP ON YOU BEING SEQUESTERED AND AWAY FROM YOUR
5 FAMILIES AND I APPRECIATE THE ATTENTION THAT YOU'VE
6 PAID THROUGHOUT BOTH PARTS OF THIS TRIAL.

7 JUDGE COTTINGHAM TOLD YOU THAT JURY SERVICE IN A
8 CASE LIKE THIS IS THE HIGHEST DUTY THAT ANYONE CAN
9 SERVE, ANY CITIZEN CAN SERVE TO THEIR COUNTY, THEIR
10 STATE AND THEIR COUNTRY WITH THE EXCEPTION OF
11 MILITARY SERVICE AND TIME OF WAR. SO WE ALL
12 APPRECIATE YOUR SERVICE HERE IN THIS CASE. I ASK YOU
13 TO PLEASE BEAR WITH ME FOR ABOUT ANOTHER HALF HOUR OR
14 40 MINUTES WHILE I GIVE MY CLOSING STATEMENT TO YOU.
15 AS JUDGE COTTINGHAM HAS TOLD YOU, UNDER OUR RULES,
16 THE STATE GOES FIRST IN THE CLOSING STATEMENT;
17 DEFENSE GETS THE LAST OPPORTUNITY TO SPEAK TO YOU.
18 OBVIOUSLY, SOMEBODY'S GOT TO GO FIRST, SOMEBODY'S GOT
19 TO GO LAST. AND I CAN ASSURE YOU THAT WHEN
20 MR. NEWSOME GETS UP HERE AND GIVES YOU A STATEMENT,
21 I'M GOING TO WANT TO JUMP UP AND MAYBE TAKE ISSUE
22 WITH WHAT HE'S SAYING, BUT I CAN'T DO THAT. SO
23 WHATEVER I'VE GOT TO SAY I'VE GOT TO GET IT OUT NOW,
24 AND TO A CERTAIN EXTENT, ANTICIPATE WHAT I EXPECT
25 MR. NEWSOME TO SAY AND KIND OF DEAL WITH THAT AHEAD

1 OF TIME. SO PLEASE BEAR WITH ME.

2 THIS STAGE OF THE TRIAL, AS WE KNOW, GUILT AND
3 INNOCENCE ARE NOT AT ISSUE. HERMAN HUGHES IS NOT THE
4 DEFENDANT NOW. HE IS A CONVICTED MURDERER. YOU HAVE
5 ALL CONVICTED HIM OF MURDER WITH MALICE AFORETHOUGHT.
6 YOU'VE CONVICTED HIM WITH ASSAULT AND BATTERY WITH
7 INTENT TO KILL KELLY HOFFMAN. YOU'VE CONVICTED HIM
8 OF ARMED ROBBERY AND YOU'VE CONVICTED HIM OF GRAND
9 LARCENY OF MR. PRESLEY'S AUTOMOBILE. SO YOUR SOLE
10 DUTY AT THIS POINT IS TO DETERMINE THE PUNISHMENT.

11 AS YOU KNOW, YOU HAVE ONE OF TWO CHOICES, WHICH
12 CAN BE LIFE IMPRISONMENT AND THE DEATH PENALTY. AND
13 Y'ALL WENT THROUGH THE QUALIFYING PROCESS LAST WEEK.
14 EACH OF YOU WERE CALLED UP TO THIS BAR INDIVIDUALLY
15 AND YOU WERE ASKED TO PLACE YOUR HAND ON THIS BIBLE,
16 AND YOU EACH SWORE, I'LL TELL THE TRUTH, THE WHOLE
17 TRUTH AND NOTHING BUT THE TRUTH, SO HELP ME GOD. AND
18 WHEN YOU TOOK THAT SOLEMN OATH, YOU WERE ASKED A
19 SERIES OF QUESTIONS BY JUDGE COTTINGHAM, BY ME, BY
20 MR. NEWSOME. AND UNDER OATH, EACH ONE OF Y'ALL SAID
21 THAT IN THE APPROPRIATE CASE, I CAN BRING BACK THE
22 DEATH PENALTY FOR MURDER. EACH OF Y'ALL SAID UNDER
23 OATH THAT IF I WAS ON -- AM ON A JURY AND I VOTE WITH
24 THOSE OTHER JURORS FOR THE DEATH PENALTY, I CAN SIGN
25 MY NAME TO THAT DEATH VERDICT FORM, AND EACH OF YOU

1 SAID THAT IF YOU VOTED FOR THE DEATH PENALTY, YOU
2 COULD COME OUT HERE IN OPEN COURT WHEN YOUR NAMES
3 WERE ANNOUNCED. YOU COULD ANNOUNCE THAT DEATH
4 VERDICT IN FRONT OF THIS AUDIENCE AND WHOEVER IS
5 HERE. EACH OF YOU ALSO SAID UNDER OATH THE FACT THAT
6 WE'VE GOT A RACIAL DIFFERENCE BETWEEN THE DEFENDANT
7 AND THE VICTIMS WOULD HAVE NO BEARING WHATSOEVER ON
8 YOUR DELIBERATIONS. AND FINALLY, EACH OF Y'ALL SAID
9 UNDER OATH IF THE CASE IS BAD ENOUGH, I CAN IMPOSE
10 THE DEATH PENALTY ON SOMEONE WHO COMMITS A MURDER AT
11 THE AGE OF 16. AND WHEN Y'ALL GAVE THOSE ANSWERS, I
12 BELIEVED YOU. IF I HADN'T BELIEVED YOU, YOU WOULDN'T
13 BE ON THIS JURY. THERE WERE 300 PEOPLE SUMMONED FOR
14 JURY SERVICE AND THE 12 OF Y'ALL AND THE TWO
15 ALTERNATES WERE CHOSEN BY BOTH SIDES AS BEING FAIR,
16 IMPARTIAL JURORS BASED ON THE RESPONSES YOU GAVE TO
17 THOSE QUESTIONS UNDER OATH. SO THE ISSUE OF WHETHER
18 OR NOT IT'S GOOD OR BAD THAT WE'VE GOT A DEATH
19 PENALTY, THE ISSUE OF WHETHER OR NOT IT'S RIGHT OR
20 WRONG IS NOT AN ISSUE. WE ARE BEYOND THAT POINT
21 BECAUSE EACH OF Y'ALL SAID UNDER OATH THAT YOU CAN
22 IMPOSE THE DEATH PENALTY IN THE APPROPRIATE CASE. SO
23 THE ISSUE, THEN, IS IS THIS CASE, IS THIS DEFENDANT
24 THE APPROPRIATE CASE FOR THE DEATH PENALTY? THAT IS
25 SIMPLY THE ISSUE HERE.

1 NOW, WHAT I'M GOING TO TALK TO Y'ALL ABOUT ARE
2 AGGRAVATING CIRCUMSTANCES, MITIGATING CIRCUMSTANCES,
3 THE CIRCUMSTANCES OF THE CRIME, THE CHARACTERISTICS
4 OF HERMAN HUGHES. AND I'M GOING THE TALK TO Y'ALL
5 ABOUT VICTIM IMPACT, THE IMPACT OF WHAT THIS MAN DID
6 ON THE PEOPLE THAT SUFFERED, THE VICTIMS, KEN
7 PRESLEY, ON HIS MOTHER, HIS FATHER, HIS TWO SISTERS,
8 HIS BROTHER. AND LADIES AND GENTLEMEN, THE FACTS OF
9 THIS CASE THAT Y'ALL HAVE BEEN SUBJECTED TO SPELL OUT
10 A COURSE OF CONDUCT SO DEVOID OF -- OF ANY BASIC
11 HUMAN COMPASSION, SO BENT ON MALICE AND SO COMPLETELY
12 LACKING IN CONSCIENCE THAT IT LITERALLY CRIES OUT FOR
13 THE DEATH PENALTY.

14 IF Y'ALL HAD HEARD ABOUT SOMEBODY WENT OUT ON
15 THE STREET IN ST. MATTHEWS AND SHOT A STRAY DOG IN
16 THE HEAD THREE TIMES FOR NO REASON AND THEN SHOT
17 ANOTHER DOG IN THE FACE AND CHEST, YOU WOULD SAY
18 THAT'S HORRIBLE, HOW COULD A PERSON DO THAT TO AN
19 ANIMAL?

20 BUT YOU'RE SITTING IN JUDGMENT OVER A MAN WHO
21 DID THAT TO LIVING, BREATHING HUMAN BEINGS THAT HAD
22 FAMILIES THAT LOVED THEM, PEOPLE. THIS WAS A BRUTAL
23 ARMED ROBBERY AND MURDER OF A YOUNG MAN JUST STARTING
24 OUT IN LIFE, 20 YEARS OLD, JUST GOT OUT OF THE NAVY,
25 WAS OUT THERE TRYING TO WORK TO GO TO COLLEGE. NEVER

1 DONE HERMAN HUGHES ANY HARM. NEVER LAID EYES ON
2 HERMAN HUGHES. NO ANIMOSITY TOWARDS HIM. NO
3 BACKGROUND, NO NOTHING. DIDN'T KNOW HIM. HE WAS
4 TOTALLY INNOCENT IN EVERY WAY, SITTING THERE TRYING
5 TO MAKE A LIVING. AND WHEN THIS GUY COMES UP THERE
6 TO ROB HIM WITH THIS GUN, HE DIDN'T RESIST. HE
7 DIDN'T TRY TO FIGHT HIM OFF. HE GAVE HIM THE MONEY
8 WHEN HE ASKED FOR IT. HE GAVE HIM THE CAR KEYS WHEN
9 HE ASKED FOR IT. AND THEN HERMAN HUGHES, AS
10 DR. ADAMS, THE EMERGENCY ROOM DOCTOR, DESCRIBED TO
11 YOU, JUST FLAT OUT LITERALLY BLEW HIS BRAINS OUT FOR
12 NO REASON. Y'ALL HAVE SEEN THE PICTURES, THE AUTOPSY
13 PICTURES THAT ARE HORRIBLE PICTURES TO LOOK AT. AND
14 I DON'T ENJOY SHOWING THESE TO YOU. THIS IS KEN
15 PRESLEY WHEN HE ENLISTED IN THE NAVY. THIS IS THE
16 BEFORE PICTURE. THIS IS HERMAN HUGHES' HANDY WORK.
17 THIS IS WHAT HE DID TO THAT YOUNG MAN ON MARCH THE
18 18TH HERE IN CALHOUN COUNTY. HE SHOT HIM IN THE HEAD
19 ONCE. HE FELL ON THE GROUND. AND WHILE HE'S LYING
20 ON THE GROUND ON THE FLOOR WITH A MORTAL HEAD WOUND
21 THAT HE INFLICTED WITH THIS GUN AFTER SHOOTING KELLY
22 HOFFMAN, TURNS OVER AND SHOOTS THE MAN AGAIN IN THE
23 HEAD ON THE GROUND. IF THAT AIN'T ENOUGH, HE SHOOTS
24 THE THIRD TIME. AN UNARMED MAN THAT'S COOPERATED IN
25 EVERY CONCEIVABLE WAY WITH THIS ARMED ROBBERY AND

1 JUST FLAT OUT MURDERS HIM. AND HE SHOT THAT GIRL IN
2 THE FACE AND CHEST, TRYING HIS LEVEL BEST TO KILL
3 HER. AND IT WAS NOT ONLY A HORRIBLE ACT THAT -- THAT
4 JUST DEFIES ANYBODY'S CONCEPT OF ANYBODY WITH A
5 CONSCIENCE TO DO THAT, BUT IT WAS A COWARDLY ACT TO
6 GO IN THERE WITH THESE TWO YOUNG PEOPLE UNARMED,
7 COOPERATED WITH THEM, GIVING THE MONEY, GIVING THE
8 KEYS, AND SHOOT THEM DOWN IN COLD BLOOD LIKE THAT.
9 IT WAS A COWARDLY ACT.

10 AS I SAID, KENNETH PRESLEY WAS A YOUNG MAN JUST
11 OUT OF THE NAVY PLANNING ON GOING TO COLLEGE, TRYING
12 TO BETTER HIMSELF. HAD HIS ENTIRE FUTURE AHEAD OF
13 HIM, FAMILY THAT LOVED HIM, DREAMS AND ASPIRATIONS
14 LIKE WE ALL HAVE. AND THIS GUY HERE SNUFFED OUT HIS
15 LIFE FOR NO APPARENT REASON OTHER THAN ECONOMIC GAIN.
16 HE SACRIFICED KEN PRESLEY'S LIFE FOR A FEW HUNDRED
17 DOLLARS AND THE USE OF A CAR FOR PART OF AN EVENING.
18 THAT'S WHY KEN PRESLEY DIED. AND THE TRAGIC PART OF
19 IT IS HE DIDN'T HAVE TO KILL KENNETH PRESLEY TO GET
20 WHAT HE WANTED. HE DIDN'T HAVE TO ATTEMPT TO KILL
21 KELLY HOFFMAN TO GET WHAT HE WANTED. THEY DIDN'T
22 KNOW HIM. HE COULD HAVE PUT A MASK ON AND WENT IN
23 THERE AND COMMITTED THE ROBBERY OR HE COULD HAVE GONE
24 IN THERE AND COMMITTED THE ROBBERY AND JUST RUN OUT
25 AND HOPE THEY DIDN'T FIGURE OUT WHO HE WAS. HE

1 KILLED THESE PEOPLE -- THIS PERSON, KEN PRESLEY,
2 BECAUSE HE WANTED TO. HE WANTED TO KILL. HE MADE A
3 FREE, CONSCIENCE CHOICE OF HIS OWN -- OF HIS OWN
4 MIND. HE WAS GOING TO GO IN THERE AND KILL THESE
5 PEOPLE WHO HAD NEVER DONE ANYTHING FOR HIM.

6 AND THE ENORMITY OF THIS CRIME THAT HAPPENED A
7 MILE DOWN THE STREET HERE IN ST. MATTHEWS IS
8 SOMEHOW -- IT'S -- IT'S HARD FOR ME AS A LAWYER JUST
9 TO GET ACROSS TO YOU THE SHEAR HORROR AND BRUTALITY
10 OF WHAT HAPPENED IN THIS COURTROOM ATMOSPHERE. WE'RE
11 ALL HERE DRESSED UP IN OUR COATS AND TIES, AND THE
12 JUDGE IS IN HIS BLACK ROBE. AND WE'RE SAYING YES,
13 SIR, NO, SIR, AND NO, YOUR HONOR. AND WE'RE ON OUR
14 BEST BEHAVIOR. AND IT JUST -- I CAN'T GET ACROSS TO
15 YOU HOW BAD THIS THING WAS IN THIS ATMOSPHERE IN HERE
16 NOW. ALL I CAN DO IS ASK YOU TO IN YOUR MIND'S EYE
17 TO PUT YOURSELF INSIDE THE BLUE DIAMOND ON MARCH 18TH
18 OF LAST YEAR AND TRY TO VISUALIZE WHAT HAPPENED TO
19 THOSE PEOPLE THROUGH THE TESTIMONY, THROUGH WHAT
20 YOU'VE HEARD. AND AFTER DOING WHAT HERMAN HUGHES DID
21 TO KEN PRESLEY AND KELLY HOFFMAN, LEAVING THEM --
22 LEAVING HIM BRAIN DEAD AND LEAVING HER ALL -- ALMOST
23 BLEEDING TO DEATH, NO PULSE, NO PULSE, NO BLOOD
24 PRESSURE, YOU WOULD THINK THAT HE WOULD BE TOTALLY
25 DISGUSTED WITH WHAT HE HAD DONE? BUT HERMAN HUGHES

1 HADN'T HAD ENOUGH OF THIS GUN. HE GETS OUT IN THE
2 CAR THERE WITH DANIEL OWENS SITTING IN THE BACK SEAT,
3 RIDING AROUND THE BURGER KING IN ST. MATTHEWS, AND HE
4 SHOT THIS GUN FIVE TIMES INTO THE BODIES OF TWO
5 PEOPLE. THAT AIN'T ENOUGH FOR HIM. HE WANTED TO
6 FEEL THAT GUN GO OFF ANOTHER TIME, SO HE SHOOTS IT
7 OUT THE WINDOW. AND YOU WILL HEAR MS. BARBARA
8 JOHNSON, THE GIRL THAT WAS IN THE CAR WITH HIM,
9 BARBARA JOHNSON SAID AFTER HE SHOT THE GUN, HE WAS
10 TOLD TO PUT THE GUN AWAY, HERMAN. HERMAN BUT HE JUST
11 KEPT ON PLAYING WITH IT. HE JUST COULDN'T GET ENOUGH
12 OF THAT GUN.

13 AND LATER ON THAT NIGHT, HE'S AT THE BEER JOINT
14 WITH KELSEY AND OLIN PEARCE AND THEY ARE TALKING
15 ABOUT WHAT'S HAPPENING. AND WHAT DOES HERMAN SAY?
16 HE BRAGS TO THEM. I BUCKED THEM DOWN. I BUCKED THEM
17 DOWN. HE'S BRAGGING. AND AT THAT VERY MOMENT, THERE
18 AT THAT JOINT ON HIGHWAY 601, AT THAT VERY MOMENT
19 DOWN THE STREET ON 601, KEN PRESLEY IS BEING
20 DIAGNOSED BRAIN DEAD. KELLY HOFFMAN IS SHIPPED OFF
21 TO RICHLAND COUNTY BECAUSE SHE'S TOO BALDLY INJURED
22 FOR EMERGENCY SURGERY HERE IN ORANGEBURG, AND HE'S
23 OUT THERE DRINKING, PARTYING, BRAGGING TO HIS BUDDIES
24 ABOUT WHAT'S HAPPENED. THAT IS HERMAN HUGHES.
25 THAT'S THE MAN'S WHOSE FATE Y'ALL HAVE TO DECIDE.

1 JUDGE COTTINGHAM IS GOING TO TALK TO Y'ALL ABOUT
2 AGGRAVATING CIRCUMSTANCES. HE'S TALKED TO YOU
3 BEFORE. HE'LL TALK TO YOU AGAIN. AND AS Y'ALL KNOW
4 BY NOW, THE SIGNIFICANCE OF AN AGGRAVATING
5 CIRCUMSTANCE IS THAT I CAN'T EVEN ASK Y'ALL TO BRING
6 BACK THE DEATH PENALTY UNLESS THERE'S AN AGGRAVATING
7 CIRCUMSTANCE THERE. NOT ANY OLD MURDER JUSTIFIES A
8 DEATH PENALTY. I'VE GOT TO PROVE AN AGGRAVATING
9 CIRCUMSTANCE. AND I'VE ALLEGED THREE AGGRAVATING
10 CIRCUMSTANCES IN THIS CASE.

11 NUMBER ONE, I'VE ALLEGED THAT THE MURDER OF
12 KENNETH PRESLEY WAS COMMITTED WHILE IN THE COMMISSION
13 OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON. Y'ALL
14 HAVE ALREADY FOUND THAT AGGRAVATING CIRCUMSTANCES TO
15 EXIST. IT JUST SO HAPPENED IN THIS CASE THAT THAT
16 WAS A SEPARATE CHARGE THAT AROSE OUT OF THE SAME
17 THING OF THE GUILT PHASE. WHEN Y'ALL FOUND HIM
18 GUILTY BEYOND A REASONABLE DOUBT OF ARMED ROBBERY,
19 YOU FOUND THAT AGGRAVATING CIRCUMSTANCE TO EXIST
20 BEYOND A REASONABLE DOUBT.

21 THE SECOND AGGRAVATING CIRCUMSTANCES WAS THAT
22 KEN PRESLEY WAS MURDERED DURING THE COMMISSION OF
23 LARCENY WHILE ARMED WITH A DEADLY WEAPON. WELL, HE
24 STOLE THE CAR. HERE'S THE DEADLY WEAPON. Y'ALL
25 FOUND HIM GUILTY ON THAT INDICTMENT BEYOND A

1 REASONABLE DOUBT, SO THAT SECOND AGGRAVATING
2 CIRCUMSTANCE HAS BEEN ESTABLISHED. AND YOU ONLY NEED
3 ONE TO BRING BACK THE DEATH PENALTY.

4 THE THIRD AGGRAVATING CIRCUMSTANCES THAT I
5 ALLEGE IN SUPPORT OF THE DEATH PENALTY WAS THAT THE
6 DEFENDANT, HERMAN HUGHES, BY HIS ACT OF MURDER OF
7 KENNETH PRESLEY KNOWINGLY CREATED A GREAT RISK OF
8 DEATH TO MORE THAN ONE PERSON OR PUBLIC PLACE BY
9 MEANS OF A WEAPON OR DEVICE WHICH NORMALLY WOULD BE
10 HAZARDOUS TO MORE THAN ONE PERSON. WE'RE TALKING
11 ABOUT THIS SEMI-AUTOMATIC PISTOL FIRING FIVE TIMES IN
12 A TINY LITTLE CONCRETE BLOCK BUILDING WHERE NOT ONLY
13 WAS ONE PERSON MURDERED, BUT KELLY HOFFMAN'S LIFE WAS
14 IN DANGER AND SHE ALMOST DIED. SO THAT'S THE THIRD
15 AGGRAVATING CIRCUMSTANCE WHICH HAS BEEN PROVEN BEYOND
16 A REASONABLE DOUBT IN THIS CASE. AND I REPEAT, YOU
17 DON'T HAVE TO FIND THREE AGGRAVATING CIRCUMSTANCES OR
18 TWO AGGRAVATING CIRCUMSTANCES. ANY ONE IS SUFFICIENT
19 FOR YOU IN YOUR DISCRETION REGARDLESS OF ANY
20 MITIGATING CIRCUMSTANCE Y'ALL MAY FIND TO BRING BACK
21 THE DEATH PENALTY IN THIS CASE.

22 YOU CAN LOOK AT OTHER STUFF TOO BESIDES THE
23 AGGRAVATING CIRCUMSTANCES. YOU CAN LOOK AT HERMAN
24 HUGHES'S CHARACTERISTICS, HIS PRIOR CONDUCT, WHAT
25 KIND OF PERSON HE IS. YOU CAN LOOK AT HIS SCHOOL

1 RECORDS. Y'ALL WILL HAVE THIS IN THE JURY ROOM.
2 FROM 1991, OCTOBER OF '91 UNTIL HE GOT KICKED OUT OF
3 JOB CORP AT MIDDLE SCHOOL A MONTH BEFORE HE KILLED
4 KEN PRESLEY, HE'S WRITTEN UP 51 TIMES AT SCHOOL. YOU
5 CAN RECALL THE PRIOR GUN INCIDENT. REMEMBER THE
6 LITTLE GIRL TESTIFIED ABOUT THEY WERE OUT THERE BACK
7 IN DECEMBER OF 1992. HERMAN HUGHES FIRING THE GUN
8 WITH THESE KIDS AROUND AND CAPERS WANNAMAKER TOOK THE
9 GUN AWAY FROM HIM. YOU CAN CONSIDER THAT BACKGROUND.
10 YOU CAN CONSIDER HIS CONDUCT IN JAIL. HE'S WRITTEN
11 UP ON TWO OCCASIONS, FOR TRYING TO BREAK A LOCK ONE
12 TIME AND TRYING TO PICK A LOCK THE OTHER TIME. SO
13 HE'S LOCKED UP IN JAIL AWAITING A CAPITAL TRIAL AND
14 HE'S DOING THESE KINDS OF THINGS AND BREACHING JAIL
15 SECURITY. YOU CAN THINK ABOUT THESE THINGS IN
16 ADDITION TO THE AGGRAVATING CIRCUMSTANCES WHEN Y'ALL
17 DECIDE WHAT THE APPROPRIATE PUNISHMENT IS.

18 NOW, WHAT I'M GOING TO DO IS TO GO OVER THE
19 MITIGATING CIRCUMSTANCES THAT JUDGE COTTINGHAM IS
20 GOING TO CHARGE Y'ALL TO CONSIDER. AND YOU SHOULD
21 CONSIDER THEM. DOESN'T MEAN YOU'VE GOT TO BUY THEM.
22 DOESN'T MEAN YOU'VE GOT TO ACCEPT THEM. DON'T MEAN
23 YOU'VE GOT TO ATTACH ANY GREAT SIGNIFICANCE OR
24 IMPORTANCE TO THEM, BUT YOU SHOULD CONSIDER THEM
25 ALONG WITH EVERYTHING ELSE. BUT REMEMBER, THESE ARE

1 THE ALLEGATIONS THE DEFENSE ALLEGES ARE MITIGATING
2 CIRCUMSTANCES THAT APPLY TO THIS CASE AND THAT HAVE
3 SOME SIGNIFICANCE. AND LET'S LOOK AT THEM ONE AT A
4 TIME HERE.

5 THE FIRST ONE THAT YOU WILL BE CHARGED TO
6 CONSIDER IS THAT THE DEFENDANT HAS NO SIGNIFICANT
7 HISTORY OF PRIOR CRIMINAL CONVICTIONS INVOLVING THE
8 USE OF VIOLENCE AGAINST ANOTHER PERSON. THAT'S TRUE.
9 HE DOESN'T HAVE ANY SIGNIFICANT CRIMINAL CONVICTION
10 HISTORY, A VIOLATION AGAINST ANOTHER PERSON. BUT
11 AGAIN, I ASK YOU TO LOOK AT THE SCHOOL RECORD, WHICH
12 IS WHERE HE'S BEEN AND WHERE HE'S AMASSED HIS --
13 HIS -- HIS RECORD. WRITTEN UP 51 TIMES FROM
14 EVERYTHING FROM DISRESPECT TO DESTRUCTION OF SCHOOL
15 PROPERTY, FIGHTING, SEXUAL MISCONDUCT. I'M NOT GOING
16 TO GO THROUGH ALL 51, BUT CONSIDER THAT.

17 THE NEXT FOUR MITIGATING CIRCUMSTANCES ARE
18 RELATED. THEY ALL DEAL WITH MENTAL ISSUES. AND I'M
19 GOING TO TALK ABOUT THEM ALL BECAUSE THEY ALL -- THEY
20 ARE TIED IN TOGETHER. I'LL READ THOSE TO YOU. THE
21 JUDGE WILL READ THOSE TO YOU. BUT HE WILL ASK YOU TO
22 CONSIDER THAT THE MURDER WAS COMMITTED WHILE THE
23 DEFENDANT WAS UNDER THE INFLUENCE OF MENTAL OR
24 EMOTIONAL DISTURBANCE. THE DEFENSE ALLEGES THAT THE
25 CAPACITY OF THE DEFENDANT TO APPRECIATE THE

1 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT
2 TO THE REQUIREMENTS OF THE LAW WAS SUBSTANTIALLY
3 IMPAIRED. THE DEFENSE ALLEGES THAT YOU SHOULD
4 CONSIDER THE AGE OR MENTALITY OF THE DEFENDANT AT THE
5 TIME OF THE CRIME. AND THE DEFENSE WILL STATE OR
6 ALLEGE THAT THE DEFENDANT HAD MENTAL RETARDATION AT
7 THE TIME OF THE CRIME. NOW, REMEMBER, THESE ARE THE
8 ALLEGATIONS. YOU DETERMINE IF THEY EXIST, AND IF
9 THEY DO EXIST, THE IMPORTANCE OR SIGNIFICANCE THAT
10 YOU WANT TO ATTACH TO THEM.

11 NOW, I'M NOT GOING TO GET UP HERE AND TELL YOU
12 THAT HERMAN HUGHES IS THE MOST INTELLIGENT FELLOW
13 THAT EVER WAS RAISED UP IN CALHOUN COUNTY BECAUSE
14 HE'S NOT. WHAT HE DID WAS A STUPID CRIME. IT ISN'T
15 SOMETHING YOU WOULD EXPECT A REAL INTELLIGENT FELLOW
16 TO COMMIT. BUT THAT DOESN'T MAKE IT ANY LESS
17 HORRIBLE? THAT DOESN'T MAKE HIM ANY LESS BLAMEWORTHY
18 FOR WHAT HE HAS DONE. Y'ALL HEARD FROM THREE
19 PSYCHIATRISTS. THREE QUALIFIED PSYCHIATRISTS,
20 PSYCHOLOGISTS WITH A PH.D. THAT LOOKED BASICALLY AT
21 THE SAME STUFF AND THE SAME DEFENDANT. AND THEY ALL
22 COME UP WITH A BIT DIFFERENT STORY. I MEAN, ONE
23 FELLOW GETS UP HERE AND SAYS HE'S GOT ATTENTION
24 DEFICIT AND HYPERACTIVITY, AND SOMEBODY ELSE SAYS HE
25 DON'T. ONE OF THEM SAYS HE'S GOT CONDUCT DISORDER,

1 WHICH IS JUST A HISTORY OF DOING SOME BAD THINGS THEY
2 DOCUMENT. THEY PUT THAT LABEL CONDUCT DISORDER ON
3 HIM. AND OTHER ONES SAY THEY DON'T FIND THAT.
4 SOMEBODY ELSE, I THINK DR. MORGAN, WHO WAS THE
5 FIRST -- HE WAS THE PSYCHIATRIST WHO SAYS HE'S GOT
6 SOME UNSPECIFIED BORDERLINE PERSONALITY DISORDERS.
7 WHATEVER THAT MEANS. SO THEY ARE ALL SAYING
8 DIFFERENT THINGS, BUT THEY DID ALL AGREE ON SOME
9 THINGS. EVERYONE OF THEM -- AND THESE ARE IMPORTANT.
10 NUMBER ONE, HERMAN HUGHES KNOWS RIGHT FROM WRONG.
11 NOBODY'S GOTTEN UP HERE AND TOLD Y'ALL HE DOESN'T
12 KNOW RIGHT FROM WRONG.

13 NUMBER TWO, HERMAN HUGHES HAS THE CAPACITY TO
14 CONFORM HIS CONDUCT TO THE REQUIREMENT OF THE LAW.
15 HE DON'T ACT ON IRRESISTIBLE IMPULSE.

16 NUMBER THREE, WHAT HE DOES, HE DOES BECAUSE HE
17 WANTS TO FROM HIS OWN FREE WILL AND ACCORD, NOT
18 BECAUSE HE'S UNDER ANY KIND OF MENTAL CONDITION THAT
19 MAKES HIM DO STUFF. HE'S NOT REAL BRIGHT, BUT HE HAS
20 THE INTELLIGENCE TO DECIDE WHAT HE WANTS TO DO AND
21 THEN GO AHEAD AND DO IT. THAT'S CLEAR FROM ALL OF
22 THESE WITNESSES WHO TESTIFIED.

23 NUMBER FOUR, HE IS NOT MENTALLY RETARDED. THE
24 MENTAL RETARDATION CUTOFF IS 70. HE'S BEEN TESTED
25 THREE TIMES WITH TESTS THAT PSYCHOLOGISTS USE IN

1 THEIR EVERY DAY PRACTICE. AND EVERY SINGLE TIME, HE
2 SCORED ABOVE THE MENTAL RETARDATION LEVEL. HE SCORED
3 BELOW AVERAGE, BUT ABOVE MENTAL RETARDATION. AND
4 NUMBER FIVE, WHEN HE WENT TO THE HALL INSTITUTE FOR
5 EVALUATION, THEY GAVE HIM A COMPLETE PHYSICAL. THEY
6 GAVE HIM A PHYSICAL EXAMINATION LIKE YOU WOULD GET
7 WHEN YOU GO TO A DOCTOR. THEY GAVE HIM AN E.E.G. TO
8 CHECK ON HIS BRAIN WAVES. THEY GAVE HIM AN M.R.I. TO
9 SEE IF THERE'S ANY ORGANIC PROBLEMS WITH HIS BRAIN.
10 THEY SENT HIM TO A NEUROLOGY CONSULTANT, AND NONE OF
11 THESE PEOPLE FOUND ANYTHING MEDICALLY WRONG THAT
12 WOULD CAUSE HIM TO DO ANYTHING THAT HE DIDN'T WANT TO
13 DO OF HIS OWN FREE WILL AND ACCORD. TALKING ABOUT
14 I.Q. AGAIN, YOU KNOW, WE WENT THROUGH THE SCORES.
15 THE 50 THAT HE GOT IN 1986 ON THE WESCHLER TEST, THE
16 74 HE GOT IN 1991 AND THE 74 HE GOT IN 1995.
17 DR. FRIERSON AND DR. FINOF WHO ARE THE TWO
18 COURT-APPOINTED PSYCHOLOGISTS AND PSYCHIATRIST, ONE
19 WORKS WITH THE DEPARTMENT OF DISABILITY AND SPECIAL
20 NEEDS, THE OTHER WORKS WITH THE HALL INSTITUTE IN
21 COLUMBIA, THEY BASE THEIR OPINION THAT HE WAS NOT
22 MENTALLY RETARD NOT JUST ON THE TEST, BUT ON THEIR
23 INTERVIEW WITH HIM, VOCABULARY THAT HE USED, HIS
24 MEMORY, HIS ALERTNESS, HIS COMPREHENSION. THEY
25 DIDN'T JUST LOOK AT THE TEST. AND THEIR OPINION --

1 THEIR CONCLUSION IS THAT HE IS NOT MENTALLY RETARDED.
2 AND THE DEFENSE EXPERTS DIDN'T EVEN CONTEND THAT HE
3 WAS.

4 NOW, LET ME TALK TO Y'ALL ABOUT EXPERT WITNESS.
5 JUDGE COTTINGHAM CHARGED Y'ALL ABOUT EXPERT WITNESS
6 YESTERDAY. THE FACT THAT SOMEBODY'S GOT AN M.D. OR
7 PH.D OR A CONSULTING FORENSIC SOCIAL WORKER TAGGED ON
8 AFTER THEIR NAME MAY QUALIFY THEM AS AN EXPERT
9 WITNESS, BUT IT DON'T MEAN YOU'VE GOT TO BELIEVE
10 EVERYTHING THEY SAY. YOU JUDGE THOSE WITNESSES,
11 THEIR CREDIBILITY OR BELIEVABILITY, THE SAME AS YOU
12 WOULD JUDGE ANY OTHER WITNESS. AND IF WHAT THEY SAY
13 DON'T MAKE ANY SENSE, YOU DON'T HAVE TO ACCEPT IT.
14 USE YOUR GOOD EVERY DAY COMMON SENSE IN JUDGING THE
15 EXPERT WITNESSES JUST LIKE YOU JUDGE A NON-EXPERT
16 WITNESS. JUDGE THEIR CREDIBILITY. MS. BOETTE GOT UP
17 HERE. SHE WAS A SOCIAL WORKER WHO WAS A NICE LADY.
18 AND MS. BOETTE AND DR. MORGAN DESCRIBE THIS MAN AS
19 PASSIVE. AS PASSIVE. LOOK AT THE 51 INFRACTIONS
20 HE'S GOT FOR FIGHTING, SEXUAL MISCONDUCT, DISRESPECT
21 TO THE TEACHERS. AND LOOK AT WHAT HE DID ON MARCH
22 THE 18TH AND SEE IF THAT MAKES ONE SHREAD OF SENSE TO
23 YOU AND IF YOU FIND THAT DESCRIPTION OF HIM BEING
24 PASSIVE TO BE TOTAL BALONEY. THEN DISREGARD IT IF IT
25 DOESN'T MAKE ANY SENSE. MS. BOETTE ALSO WAS TALKING

1 ABOUT HIS BACKGROUND AND THE FACT THAT HE WAS ADOPTED
2 BY HIS GRANDMOTHER AND DIDN'T KNOW WHO HE WAS, DIDN'T
3 KNOW WHERE HE CAME FROM. CAME FROM THIS BROKEN HOME.
4 AND I ASKED MS. BOETTE, I SAID, WHAT ABOUT KEN
5 PRESLEY? HIS PARENTS WERE DIVORCED WHEN HE WAS FOUR
6 YEARS OLD. HIS BROTHER STAYS IN MICHIGAN AND HIS
7 MOTHER MOVES TO SOUTH CAROLINA WITH THE CHILDREN.
8 THEY ARE A THOUSAND MILES AWAY, APART. AND MS.
9 BOETTE SAYS, "WELL, THAT'S NOT A BROKEN HOME." DO
10 Y'ALL BELIEVE THAT? JUST BECAUSE SHE'S GOT
11 CREDENTIALS BEHIND HER NAME? JUDGE THESE PEOPLE AND
12 WHAT THEY SAY LIKE YOU WOULD JUDGE ANYBODY ELSE,
13 USING YOUR COMMON SENSE.

14 NOW, PSYCHIATRISTS AND PSYCHOLOGISTS CAN GET UP
15 HERE AND THEY CAN SPECULATE TO THE END OF TIME ON WHY
16 SOMEBODY DOES SOMETHING OR WHAT CONDITION THEY MIGHT
17 OR MIGHT NOT HAVE. THEY GO TO THEIR TEXTBOOKS AND
18 ALL OF THAT. BUT DR. MORGAN, DEFENSE PSYCHIATRIST,
19 TESTIFIED THERE'S NO TEST, NO SCIENTIFIC STUDY THAT
20 YOU CAN USE TO CONNECT UP SOME DIAGNOSED MENTAL
21 CONDITION OR PERSON'S CONDITION WITH THE CRIMINAL
22 CONDUCT. IT JUST DOESN'T EXIST. IT'S GUESS WORK ON
23 THEIR PART. AND THE WAY YOU DETERMINE SOMEBODY'S
24 MENTAL STATE WHEN THEY COMMIT A CRIME, THE WAY WE --
25 THE WAY YOU CAN REALLY FIGURE OUT WHAT HIS MENTAL

1 STATE IS NOT HOPPING TO A BUNCH OF GUESS WORK BY
2 PSYCHOLOGISTS AND PSYCHIATRISTS, BUT TO LOOK AT THE
3 TRUE FACTS OF WHAT HAPPENED, WHAT HE DID, HOW HE DID
4 IT, HOW HE ACCOMPLISHED WHAT HE SET OUT TO DO.

5 SO WE DON'T NEED TO SPECULATE ON PSYCHIATRISTS.
6 AND THE QUESTION IS, LADIES AND GENTLEMEN, WHEN WE'RE
7 TALKING ABOUT THE MENTAL COMPETENCY, I.Q. LEVEL,
8 MENTAL HEALTH, WHETHER THE FACT THAT THIS GUY IS NOT
9 THE BRIGHTEST GUY AROUND SHOULD MITIGATE THIS CASE TO
10 A LIFE SENTENCE, WHAT WE WANT TO FIND OUT WAS DID HE
11 HAVE THE CAPACITY ON MARCH THE 18TH, 1994 TO
12 KNOWINGLY CARRY OUT THE PLAN TO COMMIT ARMED ROBBERY,
13 MURDER AND ASSAULT WITH INTENT TO KILL WITH THIS GUN?
14 DID HE HAVE THE CAPACITY TO COMMIT THESE CRIMES
15 KNOWING THE -- AND I -- AND I SAY INTELLIGENTLY NOT
16 BECAUSE I'M SAYING HE'S INTELLIGENT, BUT KNOWING WHAT
17 HE'S DOING. AND WHAT WE'VE GOT TO LOOK AT HERE IS
18 WHETHER OR NOT HE HAD THE ABILITY TO PLAN. DID HE
19 THINK THIS THING THROUGH. AND A PLAN IS A
20 PURPOSEFUL, GOAL-DIRECTED ACTIVITY. SO LET'S FORGET
21 PSYCHIATRISTS.

22 LET'S FORGET THE PSYCHOLOGISTS AND GO BACK TO
23 MARCH THE 18TH AND BASE WHAT WE'RE TALKING ABOUT NOW
24 ON THE EVIDENCE THAT YOU'VE HEARD FROM THE WITNESS
25 STAND, WHICH IS WHAT YOU'VE GOT TO MAKE YOUR DECISIO

1 ON. YOU KNOW WHAT HAPPENED THERE. YOU KNOW IT FROM
2 KELLY HOFFMAN. YOU KNOW IT FROM DANIEL OWENS. YOU
3 KNOW IT FROM ALL OF THE TESTIMONY THAT YOU'VE HEARD
4 IN THIS CASE. NOW, LET'S LOOK AT IT AND DECIDE
5 WHETHER OR NOT ON MARCH 18TH, HERMAN HUGHES WAS
6 BLUNDERING IN THERE LIKE AN IDIOT AND DIDN'T KNOW
7 WHAT HE WAS DOING OR WHETHER THERE WAS SOME THINKING
8 GOING ON WITH HERMAN HUGHES. WHETHER HE WAS
9 EXERCISING SOME INTELLIGENCE.

10 NUMBER ONE, WHEN YOU WANT TO COMMIT AN ARMED
11 ROBBERY, YOU'VE GOT TO BE ARMED; RIGHT? DID HERMAN
12 HUGHES PICK AN APPROPRIATE WEAPON TO COMMIT AN ARMED
13 ROBBERY? HE CERTAINLY DID. HE GOT A .380
14 SEMI-AUTOMATIC PISTOL FROM DANIEL OWENS THAT SAME
15 NIGHT. SO HE'S THINKING AHEAD OF TIME WHAT HE NEEDS
16 TO USE TO ACCOMPLISH THIS ARMED ROBBERY. BULLETS.
17 NO GOOD UNLESS -- THE GUN'S NO GOOD UNLESS IT'S
18 LOADED. DID HE GET A CLIP AND LOAD THE GUN IN THE
19 CLIP? CERTAINLY DID. HE'S THINKING.

20 HE DIDN'T JUST BLUNDER INTO THE BLUE DIAMOND NOT
21 KNOWING WHO WAS IN THERE AND WITH THE GUN OUT HOPING
22 TO PULL OFF SOME KIND OF ROBBERY. HE WENT IN THERE
23 AND HE CASED IT. HE WENT IN THERE EITHER WITH THE
24 GUN OUTSIDE OR HIDDEN AND HE TOLD KEN PRESLEY SHOW ME
25 HOW TO USE THE MACHINES. WHY DO Y'ALL THINK HE DID

1 THAT? HE WANTED TO SEE WHO WAS IN THERE. HE WANTED
2 TO SEE IF HE COULD HANDLE THE SITUATION. WANTED TO
3 SEE IF THERE WERE ANY CUSTOMERS IN THERE. HE IS
4 THINKING ABOUT HOW HE CAN ACCOMPLISH THIS CRIME.
5 THEN HE FINDS OUT THERE'S ONLY TWO PEOPLE IN THERE,
6 KEN PRESLEY AND KELLY HOFFMAN, SO HE GOES -- HE SAYS,
7 I'LL GET SOME MONEY AND COME BACK. HE GOES OUTSIDE.
8 A FEW MINUTES LATER, HE COMES IN WITH A 50 AND ASKS
9 FOR CHANGE. WHY DO Y'ALL THINK HE ASKS FOR CHANGE?
10 BECAUSE TO GET TO THE CHANGE, KEN PRESLEY'S GOT TO
11 GET TO THE OPEN CASH DRAWER AND HE KNOWS WHERE THE
12 MONEY IS. AGAIN, HE'S THINKING. HE'S PLANNING. SO
13 WHEN KEN PRESLEY -- BY THE WAY, WHEN HE COMES IN
14 THERE, THE GUN IS STILL HIDDEN. IT'S NOT OUT. HE
15 DOESN'T PULL THE GUN OUT UNTIL WHEN KEN IS
16 DISTRACTED. HE PULLS THE MONEY OUT OF THE CASH
17 DRAWER. SO HE PULLS THE GUN OUT AND ASKS FOR THE
18 MONEY.

19 NOW, WHAT DO YOU DO IF YOU'RE CONFRONTING TWO
20 PEOPLE, ONE OF THEM IS A LITTLE GIRL ABOUT FIVE FEET
21 TALL AND THE OTHER IS A GROWN MAN 20 YEARS OLD, BUT
22 SIX FOOT TALL, JUST GOT OUT OF THE NAVY? IF YOU'RE
23 THINKING, WHICH ONE ARE YOU GOING TO TAKE OUT FIRST?
24 YOU TAKE OUT THE MAN BECAUSE THAT'S THE BIGGEST
25 DANGER. SO HERMAN SHOT KEN PRESLEY IN THE HEAD.

1 THEN HE SHOT KELLY. AND AFTER, AS Y'ALL KNOW, KEN'S
2 DOWN, HE SHOOTS HIM AGAIN. HE SHOOT HIM IN THE HEAD.
3 SHOOTS KELLY AGAIN AND THEN SHOOTS KEN. BUT HE'S
4 TAKING THE MAN OUT FIRST BECAUSE HE'S THE GREATEST
5 DANGER. HE'S THINKING. WHY DOES HE SHOOT BOTH OF
6 THESE PEOPLE? TO ELIMINATE THE WITNESS SO NOBODY CAN
7 IDENTIFY HIM. HE'S THINKING.

8 NOW, AFTER HE GRABS THE MONEY, AFTER HE GRABS
9 THE CAR KEYS, WHAT DOES HE DO NEXT? HE TURNS OFF THE
10 LIGHT. HE'S STILL THINKING. WHY DO YOU THINK HE
11 TURNS OFF THE LIGHT? SO NO CUSTOMERS GO IN THERE AND
12 FIND OUT WHAT'S HAPPENING. THEY THINK THE PLACE IS
13 CLOSED. HE AND KELSEY PEARCE GET IN THE CAR. THEY
14 DON'T STICK AROUND OUTSIDE BECAUSE HE KNOWS -- HE'S
15 SMART ENOUGH TO KNOW HE'S COMMITTED A CRIME AND IF HE
16 STICKS AROUND OUT THERE THEY WILL GET CAUGHT. WHERE
17 DO THEY GO? THEY DRIVE OVER TO BESIDE THE HOUSE AND
18 PUT THE CAR WHERE NOBODY WILL SEE IT. MR. OWENS,
19 SENIOR IS GOING OUT ON THE PORCH AND DROVE OFF BY
20 HIMSELF, COULDN'T EVEN SEE THE CAR FROM WHERE HE WAS
21 AT BECAUSE THEY HAD HIDDEN IT OVER IN THE WOODS
22 BESIDE THE HOUSE. BUT HE SAW TWO PEOPLE DRIVE OFF IN
23 A CAR AND TAKE A LEFT INSTEAD OF A RIGHT, LOOPED
24 AROUND ON 601. AND OWENS SAW THEM COMING BY AND
25 RECOGNIZED THE BASEBALL CAP. SO WHEN THEY GOT, YOU

1 KNOW, LEAVING THE SCENE OF THE CRIME AND GO TO THE
2 BEER JOINT IN ORANGEBURG AND DECIDE TO RIDE AROUND,
3 HERMAN HUGHES DON'T GET IN THAT MAZDA THAT WAS STOLEN
4 BECAUSE HE KNOWS SOMEBODY'S GOING TO FIND OUT ABOUT
5 THE CRIME AND THE CAR -- THEY WILL BE LOOKING FOR THE
6 CAR. THEY RIDE AROUND IN DANIEL OWENS' CAR.

7 SO PUT ALL OF THIS TOGETHER, LADIES AND
8 GENTLEMEN. THIS MAN KNEW WHAT HE WAS DOING. HE HAD
9 THE INTELLIGENCE TO PLAN THIS CRIME OUT, TO PLAN
10 EVERY STEP, THINKING THROUGH THE ENTIRE PROCESS. HE
11 IS NOT AS STUPID AS THEY WANT YOU TO THINK HE IS.

12 ANOTHER MITIGATING CIRCUMSTANCE THAT YOU WILL BE
13 ASKED TO CONSIDER IS THAT THEY ARE GOING TO ALLEGE
14 THAT HE WAS UNDER THE INFLUENCE OF ANOTHER PERSON.
15 THEY ARE GOING TO SAY OH, HE'S NOT -- HE'S NOT A
16 LEADER. HE'S A FOLLOWER. WELL, ON MARCH THE 18TH,
17 1994, WHEN HE COMMITTED THESE BRUTAL CRIMES, DANIEL
18 OWENS WASN'T EVEN ON THE PREMISES. HE WAS ACROSS
19 HIGHWAY 601, ACROSS THE RAILROAD TRACKS, IN HIS
20 HOUSE. KELSEY PEARCE WAS OUTSIDE OF THE BLUE DIAMOND
21 LOOKING IN. THE EVIDENCE IS THIS MAN WENT IN THERE
22 BY HIMSELF WITH THAT GUN AND COMMITTED THOSE CRIMES
23 BY HIMSELF. HE DID IT BECAUSE HE WANTED TO, NOT
24 BECAUSE ANYBODY FORCED HIM OR COMPELLED HIM TO DO IT.
25 HE DID IT BECAUSE HE DECIDED HE WANTED TO COMMIT AN

1 ARMED ROBBERY AND MURDER, AND BY GOD HE DID IT. AND
2 NEXT, THE NEXT MITIGATING CIRCUMSTANCE THEY WILL ASK
3 YOU TO CONSIDER IS THAT THE DEFENDANT WAS BELOW THE
4 AGE OF 18 AT THE TIME OF THE CRIME. THAT'S TRUE TOO.
5 HE WAS A FEW MONTHS SHORT OF TURNING 17. AS HE SITS
6 BEFORE YOU NOW AWAITING YOUR DECISION, HE IS 18 YEARS
7 OLD. HE IS A MAN, NOT A BOY. HE'S OLD ENOUGH TO
8 VOTE. HE'S OLD ENOUGH TO SERVE IN THE MILITARY.
9 HE'S OLD ENOUGH TO SERVE ON THE JURY. HE'S OLD
10 ENOUGH TO MURDER A PERSON IN COLD BLOOD AND TRY TO
11 MURDER ANOTHER ONE IN COLD BLOOD. HE WAS OLD ENOUGH
12 BACK THEN TO COMMIT THE ULTIMATE ADULT CRIME OF
13 MURDER. AND I SUBMIT TO YOU, I REMIND YOU, THAT EACH
14 OF Y'ALL SAID THAT YOU COULD IMPOSE THE DEATH PENALTY
15 ON SOMEONE WHO'S 16 IF THE CASE WAS BAD ENOUGH.

16 THE OTHER THINGS THE DEFENSE WILL ASK YOU TO
17 CONSIDER WHICH AREN'T STRICTLY SPEAKING STATUTORY
18 MITIGATING CIRCUMSTANCES, THEY ARE GOING TO TALK TO
19 Y'ALL AT GREAT LENGTH ABOUT HIS BACKGROUND AND THEY
20 ARE GOING TO TRY TO MAKE SOME KIND OF ARGUMENT THAT
21 SINCE HE MAY HAVE HAD A LESS THAN IDEAL BACKGROUND
22 THAT SOMEHOW THAT MITIGATES WHAT HE DID LATER ON,
23 YEARS LATER. NOBODY, LADIES AND GENTLEMEN, HAS A
24 PERFECT CHILDHOOD UNLESS YOU WANT TO WATCH THE BILL
25 COSBY SHOW OR LEAVE IT TO BEAVER. THAT JUST DON'T

1 HAPPEN IN EVERY DAY LIFE. KEN PRESLEY DIDN'T HAVE AN
2 IDEAL BACKGROUND. THAT DOESN'T MAKE YOU DO THESE
3 KIND OF THINGS. WHERE IS THE CONNECTION BETWEEN
4 HERMAN HUGHES' BACKGROUND, THE FACT THAT HE WAS
5 ADOPTED BY HIS GRANDMOTHER AND WAS RAISED BY HIS
6 GRANDMOTHER AND WAS SLOW IN SCHOOL, WHAT IS THE
7 CONNECTION BETWEEN THAT AND A COLD-BLOODED MURDER
8 TAKING PLACE YEARS LATER WHERE HE KILLS A STRANGER
9 FOR MONETARY GAIN AND THAT STRANGER'S NEVER DONE
10 ANYTHING TO HIM? THINK ABOUT THAT WHEN THEY START
11 TALKING ABOUT TRYING TO GET YOUR SYMPATHY ABOUT HIS
12 BACKGROUND. WHERE IS IT TIED IN? WHAT'S THE
13 CONNECTION? IT ISN'T THERE. IT ISN'T THERE. AGAIN
14 WHAT HERMAN HUGHES DID HE DID OF HIS OWN FREE WILL
15 AND ACCORD. NOBODY FORCED HIM, NOBODY INFLUENCED
16 HIM, NOBODY INTIMIDATED HIM. IT WASN'T A CASE WHERE
17 HE'S THIS PASSIVE LITTLE LAMB ALL OF HIS LIFE AND
18 THEN ALL OF A SUDDEN SOMEONE PROVOKES HIM INTO
19 SOMETHING. KEN PRESLEY DIDN'T DO ANYTHING TO HIM.
20 HE COOPERATED AGAIN IN EVERY WAY HE COULD. AND HE
21 WENT THERE WITH THE DESIGN TO KILL HIM AND BRUTALLY
22 MURDERED HIM IN COLD BLOOD. THE BACKGROUND IS NO
23 REASON, NO EXCUSE, NO MITIGATION FOR A CRIME LIKE
24 THIS. NOTHING IN THIS MAN'S BACKGROUND THAT Y'ALL
25 HAVE HEARD ABOUT THAT WOULD CAUSE HIM OR ANYONE ELSE

1 WHO HAD A SIMILAR BACKGROUND TO DO THESE THINGS.
2 AGAIN, KEN PRESLEY CAME FROM A BROKEN HOME, DIDN'T DO
3 WELL IN SCHOOL. HE QUIT. HE GOT HIS G.E.D. THERE'S
4 JUST NO CONNECTION THERE. IT'S AN ATTEMPT TO GET
5 SYMPATHY FROM YOU.

6 NOW, JUDGE COTTINGHAM, AS Y'ALL KNOW, IS THE
7 JUDGE OF THE LAW. HE TELLS YOU WHAT THE LAW IS AND
8 HE'S TOLD YOU BEFORE AND HE WILL PROBABLY TELL YOU
9 AGAIN THAT IT'S YOUR SWORN DUTY TO MAKE YOUR DECISION
10 THAT YOU'VE MADE IN THE GUILT PHASE AND THAT YOU WILL
11 MAKE IN THIS PHASE ON THE SWORN TESTIMONY AND THE
12 EVIDENCE THAT YOU HAVE AND NOTHING ELSE. IT WOULD BE
13 WRONG FOR YOU TO SPECULATE ON STUFF OUTSIDE OF THE
14 COURTROOM, TO BE INFLUENCED ON ANYTHING OTHER THAN
15 SWORN TESTIMONY THAT YOU'VE HEARD. AND Y'ALL KNOW
16 FROM THAT SWORN TESTIMONY IN THE GUILT PHASE THAT
17 THERE ARE TWO OTHER PEOPLE INVOLVED HERE, DANIEL
18 OWENS WHO TESTIFIED, AND KELSEY PEARCE. THEIR
19 CHARGES WILL BE HANDLED ANOTHER DAY, ANOTHER COURT,
20 ANOTHER JUDGE, ANOTHER JURY. YOU ARE SITTING IN
21 JUDGMENT ON HERMAN HUGHES AND IT WOULD BE WRONG AND
22 AGAINST YOUR OATH TO START SPECULATING WHAT'S GOING
23 TO HAPPEN TO THESE OTHER TWO OTHER GUYS. Y'ALL ARE
24 HERE TO DECIDE HERMAN HUGHES' FATE AND HERMAN HUGHES'
25 ALONE.

1 LET'S LOOK AT LIFE IMPRISONMENT FOR A MINUTE AS
2 AN ALTERNATIVE SENTENCE TO THE DEATH PENALTY. IS
3 LIFE IMPRISONMENT THE APPROPRIATE, JUST PUNISHMENT
4 FOR THE HORROR STORY THAT Y'ALL HAVE HEARD OVER THE
5 LAST FEW DAYS? HERMAN HUGHES GETS LIFE IMPRISONMENT,
6 GOES TO PRISON. HE'S CARED FOR BY THE STATE OF SOUTH
7 CAROLINA. HE'S FED, HE'S CLOTHED, HE'S GIVEN MEDICAL
8 ATTENTION. IN THE MEANTIME, KEN PRESLEY IS IN HIS
9 GRAVE. AND HE WILL BE THERE FOREVER BECAUSE THIS MAN
10 UNQUESTIONABLY, NO DOUBT ABOUT IT, Y'ALL HAVE FOUND
11 HIM GUILTY, BRUTALLY SHOT HIM DOWN IN COLD BLOOD. IS
12 THAT JUSTICE, A LIFE SENTENCE FOR WHAT HE'S DONE?

13 AGAIN, I STRESS THAT YOU SHOULD CONSIDER
14 EVERYTHING YOU'VE HEARD, ALL OF THE MITIGATING
15 EVIDENCE, THE AGGRAVATING EVIDENCE, THE CIRCUMSTANCE
16 OF THE ACCUSED, THE VICTIM IMPACT. BUT EVEN IF YOU
17 FIND EVERY SINGLE MITIGATING CIRCUMSTANCE THAT THE
18 DEFENDANT ALLEGES, YOU CAN STILL IMPOSE THE DEATH
19 PENALTY IF YOU FIND JUST ONE AGGRAVATING
20 CIRCUMSTANCES. THAT'S YOUR DISCRETION. AND YOU
21 DON'T DECIDE A CASE LIKE THIS BY COUNTING UP
22 AGGRAVATING CIRCUMSTANCES AND COUNTING UP MITIGATING
23 CIRCUMSTANCES AND SEE WHAT YOU GET THE MOST OF. YOU
24 DON'T WEIGH ONE AGAINST THE OTHER. YOU LOOK AT THE
25 WHOLE THING. YOU LOOK AT EVERYTHING YOU'VE HEARD

1 HERE AND YOU MAKE YOUR DECISION BASED ON THE WHOLE
2 THING. IT'S NOT A WEIGH-IN SITUATION. IT'S NOT A
3 COUNTING SITUATION.

4 AND YOU LOOK -- YOU LOOK AT THE VICTIM IMPACT.
5 AND LET ME GET REAL CLEAR HERE WITH YOU WHO THE
6 VICTIM -- WHO THE VICTIM IS AND WHO THE VICTIM ISN'T.
7 THE VICTIMS IN THIS CASE, KEN PRESLEY, KELLY HOFFMAN,
8 MRS. WILLIAMSON, MR. PRESLEY, KEN'S BROTHERS --
9 BROTHER, HIS SISTER. THIS MAN -- I'M NOT EVEN GOING
10 TO CALL HIM THE DEFENDANT BECAUSE HE'S PAST BEING A
11 DEFENDANT. HE'S A CONVICTED MURDERER. HE IS NOT THE
12 VICTIM. AND THE DEFENSE WILL TRY TO PORTRAY HIM AS A
13 VICTIM, BUT HE IS NOT THE VICTIM. HE IS THE ONE THAT
14 CREATED THIS ENTIRE SITUATION OF HIS OWN FREE WILL
15 AND ACCORD. SO DON'T LET THEM SELL YOU ON HIM BEING
16 A VICTIM BECAUSE HE ISN'T. THE DEFENSE WHEN I SIT
17 DOWN IS GOING TO GET UP HERE AND THEY ARE GOING TO
18 PLAY A BLAME GAME WITH YOU. THEY ARE GOING TO BLAME
19 SOCIETY FOR WHAT HE DID. THEY ARE GOING TO BLAME THE
20 SCHOOL SYSTEM. WE'VE ALREADY HEARD SOME OF THAT FROM
21 MS. BOETTE. YOU KNOW, SCHOOL FAILED HIM. HE DIDN'T
22 FAIL THE SCHOOL 51 TIMES HE GOT WRITTEN UP AND DIDN'T
23 SHOW UP FOR SCHOOL AND FAILED THEM.

24 HE DIDN'T FAIL. THE SCHOOL FAILED HIM. THEY
25 ARE GOING TO BLAME MAYBE HIS GRANDMOTHER, MAYBE HIS

1 MOTHER FOR NOT DOING THINGS DIFFERENT, MAYBE HIS
2 DADDY FOR GOING TO NEW YORK AND WORKING AND NOT BEING
3 AROUND FOR HIM. THEY ARE GOING TO BLAME KELSEY
4 PEARCE AND DANIEL OWENS. THEY ARE GOING TO TRY TO
5 SPREAD THAT BLAME AROUND SO MUCH THAT Y'ALL ARE GOING
6 TO TEND TO FORGET ABOUT HERMAN HUGHES AND START
7 BLAMING SOMEBODY ELSE, OTHER PEOPLE. SOCIETY'S
8 FAULT. SCHOOL'S FAULT. GOT BAD PARENTS. HE'S NOT A
9 LEADER. HE'S A FOLLOWER. PLEASE DON'T FALL FOR
10 THAT. THIS IS NOT A REHABILITATION HEARING. IT'S
11 NOT A BLAME HEARING. IT'S NOT AN EXCUSE HEARING. IT
12 IS A PENALTY HEARING. AND THERE'S ONE PERSON, ONLY
13 ONE PERSON TO BLAME FOR HERMAN HUGHES' CONDUCT, HIS
14 CRIMES, AND THAT IS HERMAN HUGHES. AND WHAT I'M
15 TALKING ABOUT IS ACCOUNTABILITY AND RESPONSIBILITY
16 FOR OUR JUDICIAL SYSTEM TO WORK, FOR OUR GOVERNMENT
17 TO WORK, FOR OUR SOCIETY TO WORK, PEOPLE HAVE TO BE
18 HELD ACCOUNTABLE FOR WHAT THEY DO, OTHERWISE THE
19 WHOLE THING BREAKS DOWN. EVERYBODY HAS TO ACCOUNT
20 AND BE RESPONSIBLE FOR THEIR CONDUCT UNLESS THEY ARE
21 INSANE. AND THIS MAN IS NOT INSANE. THERE'S NO
22 EVIDENCE -- THERE'S NO INKLING THAT HE'S INSANE. I'M
23 A PROSECUTOR. I'M NOT A PSYCHIATRIST. I'M NOT A
24 PSYCHOLOGIST. I'M NOT A SOCIAL WORKER. AND I CAN'T
25 GET UP HERE AND TELL YOU HOW HERMAN HUGHES GOT TO BE

1 THE MAN THAT HE IS NOW, THE MAN THAT DID THE THINGS
2 THAT Y'ALL KNOW HE DID. THAT ISN'T MY JOB. IT'S NOT
3 YOUR JOB TO FIGURE OUT HOW HE GOT TO BE THE WAY HE
4 IS. YOUR JOB IS ONCE YOU GOT SOMEBODY LIKE HERMAN
5 HUGHES WHO HAS DONE THESE BRUTAL THINGS, WHO HAS
6 GOTTEN TO BE THE WAY HE IS, WHAT DO WE DO WITH HIM?
7 THAT'S YOUR ONLY DECISION. NOT HOW DID HE GET HERE.
8 HOW DID HE GET THIS WAY? ONCE HE GETS THIS WAY, WHAT
9 DO WE DO WITH HIM? AND WHEN THE DEFENSE TRIES TO
10 INVOKE SYMPATHY, JUDGE COTTINGHAM IS GOING TO CHARGE
11 YOU AND INSTRUCT YOU THAT YOU CAN'T BASE YOUR VERDICT
12 ON SYMPATHY. YOU BASE IT ON THE FACTS.

13 THIS MURDER, LADIES AND GENTLEMEN, WAS AGAIN I
14 KEEP SAYING THIS OVER AND OVER, IT WAS HORRIBLE
15 BEYOND BELIEF IN THE WAY IT HAPPENED. IT WASN'T A
16 KILLING IN RANDOM, RECKLESSNESS OR IN THE HEAT OF
17 PASSION OR A CRIME OF IMPULSE. IT WAS A COLD-BLOODED
18 PLAN TO COMMIT MULTIPLE MURDERS FOR MONETARY GAIN.
19 AND I SUBMIT TO YOU WHEN YOU KILL THAT WAY, YOU
20 FORFEIT YOUR RIGHT TO LIVE.

21 SOMEBODY ONCE ASKED HANK AARON HOW HE HIT SO
22 MANY HOME RUNS, AND HE SAID, "IT'S SIMPLE. I KEEP MY
23 EYE ON THE BALL." THAT'S WHAT I'M ASKING Y'ALL TO
24 DO. KEEP YOUR EYE ON THE BALL. LOOK AT THE FACTS OF
25 THIS CASE, THE BRUTAL FACTS OF THIS CASE, AND PLEASE

1 DON'T BE DISTRACTED BY EFFORTS TO GET YOU TO SPREAD
2 YOUR ATTENTION OUT AMONG A WHOLE LOT OF SOCIAL AND
3 PSYCHOLOGICAL ISSUES THAT HAVE NOTHING TO DO WITH
4 HERMAN'S CONDUCT, WHAT KIND OF PERSON HE IS AND WHAT
5 HE DID. PLEASE DON'T DO THAT.

6 THERE IS NOTHING, LADIES AND GENTLEMEN, THAT HAS
7 COME OUT IN THIS CASE THAT WOULD JUSTIFY ANY SENTENCE
8 LESS THAN THE DEATH PENALTY. NOTHING. HERMAN HUGHES
9 HAS FOREVER DEPRIVED MS. WILLIAMSON, KEN'S MOTHER, OF
10 HER SON. HE'S DEPRIVED KEN'S BROTHER THAT YOU HEARD
11 FROM HERE OF THE COMPANIONSHIP OF HIS ONLY BROTHER
12 FOR THE REST OF HIS LIFE. HE'S DEPRIVED HIS SISTERS
13 OF HIS LOVE AND COMPANIONSHIP FOREVER. THE ONLY
14 PLACE THEY CAN SEE THEIR BROTHER, THEIR SON IS IN THE
15 CEMETERY. Y'ALL GOT SOME INSIGHT INTO THE KIND OF
16 PERSON KEN PRESLEY WAS. I TOLD YOU THAT YOU WOULD
17 GET TO KNOW HIM A LITTLE BIT, TO THE EXTENT THAT YOU
18 CAN KNOW SOMEONE WHO IS DECEASED. AND I TRIED TO DO
19 THAT THROUGH THE PICTURES, THROUGH THE LETTERS THAT
20 MS. WILLIAMSON READ. AND Y'ALL COULD TELL THAT HE
21 WAS A THOUGHTFUL YOUNG MAN. HE HAD ASPIRATIONS. HE
22 HAD DREAMS TO GO TO COLLEGE. HE LOVED HIS PARENTS.
23 AND HIS FAMILY WILL NEVER SEE HIM REALIZE THOSE
24 DREAMS OF COLLEGE. THEY WILL NEVER ATTEND HIS
25 WEDDING. THEY WILL NEVER SEE THEIR GRANDCHILDREN

1 THAT HE WOULD HAVE HAD. THERE WILL BE A VOID IN
2 THEIR LIVES UNTIL THE DAY THEY DIE, AND THEY WILL
3 NEVER, EVER UNDERSTAND AS LONG AS THEY LIVE WHY THEIR
4 SON DIED AT THE HANDS OF HERMAN HUGHES AND THE WAY HE
5 DID.

6 WHEN YOU COME BACK WITH YOUR VERDICT, YOU'VE GOT
7 TO COME BACK WITH A VERDICT THAT YOU CAN LOOK HERMAN
8 HUGHES IN THE EYE AND TELL HIM JUSTICE HAS BEEN DONE
9 IN THIS CASE. BUT YOU'VE GOT TO LOOK IN THE EYE --
10 IN THE EYES OF KEN PRESLEY'S MOTHER, HIS FATHER, HIS
11 BROTHER AND HIS SISTERS AND LET THEM KNOW JUSTICE HAS
12 BEEN DONE TOO. AND I'M ASKING YOU FOR JUSTICE IN
13 THIS CASE. THE DEFENSE WILL ASK YOU FOR MERCY. AND
14 UNFORTUNATELY, IN THIS CASE, YOU CAN'T DO BOTH. YOU
15 CAN'T DO JUSTICE TO THIS CASE AND GIVE MERCY TO
16 HERMAN HUGHES. IT CAN'T BE DONE. AND I'M ASKING FOR
17 JUSTICE, NOT MERCY. THE PERSON DESERVING THE MERCY
18 WAS KEN PRESLEY. HE DID NOT GET THAT AT THE HANDS OF
19 HERMAN HUGHES. AND WHAT IS JUSTICE? JUSTICE IS WHEN
20 THE PUNISHMENT FITS THE CRIME. THERE'S ONE
21 PUNISHMENT AND ONLY ONE PUNISHMENT THAT FITS THE
22 CRIME THAT Y'ALL HAVE HEARD ABOUT HERE AND THAT IS
23 THE DEATH PENALTY.

24 WHEN THEY GET UP HERE AND THEY BLAME THE SCHOOL
25 SYSTEM, THE -- EXCUSE ME -- THE SCHOOL TOOK

1 CORRECTIVE ACTION EVERY TIME SOMETHING HAPPENED.
2 THEY WILL PUT HIM IN A RESOURCE CLASS. MAYBE THEY
3 COULD HAVE DONE OTHER THINGS DIFFERENTLY, BUT IT
4 WOULDN'T HAVE CHANGED ANYTHING. THEY BLAME SOCIETY.
5 SOCIETY HADN'T KILLED ANYBODY. HERMAN HUGHES DID THE
6 KILLING. AND THEY BLAME HIS FRIENDS. YOU PICK YOUR
7 OWN FRIENDS.

8 THERE'S ONE PERSON TO BLAME HERE, ONE PERSON
9 RESPONSIBLE, AND THAT'S HERMAN HUGHES. BY HIS
10 CONDUCT, BY WHAT HE HAS DONE, HE HAS SHOWN THAT HE
11 SHOULD NOT EXIST IN THIS SOCIETY EITHER OUT OF JAIL
12 OR IN JAIL. HE CAN'T CONFORM TO THE RULES OF THE
13 JAIL. HE BREAKS LOCKS, TRIES TO PICK LOCKS IN JAIL.

14 YOUR TASK IS AN AWESOME TASK WHAT YOU HAVE TO
15 DO -- WHAT WE'RE ASKING YOU TO DO. AND I REALIZE
16 THAT WHAT I'M ASKING Y'ALL TO DO IS THE HARDEST THING
17 THAT YOU WILL EVER HAVE TO DO IN YOUR LIVES. BUT
18 Y'ALL WERE PICKED FROM AMONG 300 PEOPLE AS PEOPLE WHO
19 COULD DO YOUR DUTY, YOUR FULL, SWORN DUTY. I WANT TO
20 ASK Y'ALL TO DO ONE THING FOR ME IN THE JURY ROOM
21 WHEN YOU DELIBERATE. WHATEVER -- HOW YOU DELIBERATE,
22 MR. FOREMAN AND LADIES AND GENTLEMEN, IS TOTALLY UP
23 TO YOU. I'M GOING TO MAKE ONE REQUEST.

24 YOU'RE GOING TO HAVE ALL OF THIS EVIDENCE IN THE
25 JURY ROOM, AND THAT EVIDENCE IS PUT INTO EVIDENCE

1 TO -- FOR YOU TO LOOK AT, TO REFER, TO CONSIDER, TO
2 HELP YOU MAKE YOUR DECISIONS. AND THERE ARE
3 PHOTOGRAPHS HERE SHOWING EXACTLY WHAT THIS MAN DID,
4 NOTHING MORE, NOTHING LESS, TO KEN PRESLEY. AND
5 THOSE ARE HORRIBLE LOOKING PICTURES AND Y'ALL CAN
6 LEAVE THEM IN THE BOX OR Y'ALL CAN TAKE THEM AND TURN
7 THEM FACE DOWN WHERE YOU DON'T HAVE TO LOOK AT THEM.
8 BUT IF YOU DO THAT, YOU ARE TURNING A BLIND EYE TO
9 THE TRUE FACTS OF THIS CASE. I'M NOT ASKING YOU TO
10 LOOK AT THESE PICTURES TO APPEAL TO YOUR PASSION OR
11 TO SHOCK YOU OR TO MAKE YOU SICK. I'M ASKING YOU TO
12 LOOK AT THOSE PICTURES BECAUSE THAT IS THE FACTS.
13 THAT IS -- SHOWS NOTHING MORE, NOTHING LESS THAN WHAT
14 HE DID TO KEN PRESLEY. SO I'M GOING TO ASK Y'ALL TO
15 GO IN THERE AND TAKE THESE PICTURES AND TURN THEM
16 FACE UP BECAUSE THEY ARE EVIDENCE AND LOOK AT THEM.
17 AND YOU DECIDE THIS MAN'S FATE AND LOOK AT THESE
18 PICTURES AND SAY WHAT ARE WE GOING TO DO WITH A MAN
19 WHO FOR NO REASON OTHER THAN THE DESIRE TO KILL AND
20 GET A FEW HUNDRED DOLLARS DID THIS TO ANOTHER HUMAN
21 BEING? WHEN Y'ALL SAID IN THE QUESTIONING THAT YES,
22 I -- I CAN BRING BACK THE DEATH PENALTY OR I CAN
23 BRING BACK LIFE IN PRISON, I CAN DO EITHER ONE
24 DEPENDING ON THE CIRCUMSTANCES, YOU HAD IN MIND IN
25 THE BACK OF YOUR MINDS A CASE SO BAD THE DEATH

1 PENALTY WOULD BE JUSTIFIED. AND I SUBMIT TO YOU YOU
2 HAVE HEARD THAT CASE. NOTHING THE DEFENSE CAN GET U
3 HERE AND TELL YOU WHEN I SIT DOWN CAN CHANGE THE
4 FACTS THAT YOU'VE HEARD IN THIS CASE. AGAIN, EACH OF
5 YOU SAID UNDER OATH YOU SWORE I CAN BRING BACK THE
6 DEATH PENALTY UNDER THE APPROPRIATE CIRCUMSTANCES.

7 FINALLY, LADIES AND GENTLEMEN, I'M GOING TO ASK
8 YOU WITH YOUR VERDICT TO SEND A MESSAGE. AND I WANT
9 THAT MESSAGE TO BE TO THE PEOPLE OF CALHOUN COUNTY
10 AND THE STATE OF SOUTH CAROLINA. WHEN SOMEONE
11 COMMITS AS VILE A MURDER AS WE'VE HAD HERE TODAY,
12 THAT WE'RE NOT GOING TO TOLERATE IT. AND THE ONLY
13 WAY YOU CAN SEND THAT MESSAGE BACK IS TO SAY IF YOU
14 DO SOMETHING LIKE THIS WITH A GUN IN CALHOUN COUNTY
15 FOR THE PURPOSE OF ARMED ROBBERY AND THEN YOU GO OUT
16 DRINKING AND PARTYING AND BRAGGING ABOUT IT
17 AFTERWARDS, YOU'RE GOING TO PAY THE ULTIMATE PENALTY,
18 AND THAT'S THE DEATH PENALTY. SO ON BEHALF OF THE
19 STATE OF SOUTH CAROLINA, CALHOUN COUNTY, I'M ASKING
20 YOU TO DO YOUR FULL DUTY BASED ON THE EVIDENCE, NOT
21 BECAUSE I SAY SO, BUT BASED ON THE EVIDENCE, AND
22 BRING BACK THE DEATH PENALTY IN THIS CASE. THANK
23 YOU.

24 THE COURT: MR. FOREMAN, LADIES AND
25 GENTLEMEN, I'LL LET YOU HAVE A SHORT BREAK JUST A FE

1 MINUTES. WE'LL BE HAVING JUST A SHORT BREAK.

2 (WHEREUPON, THE JURY WAS REMOVED
3 FROM THE COURTROOM AND THE
4 FOLLOWING PROCEEDINGS COMMENCED
5 IN OPEN COURT.)

6 (WHEREUPON, A BREAK WAS TAKEN
7 FROM THE PROCEEDINGS.)

8 THE COURT: THANK YOU, LADIES AND
9 GENTLEMEN. PLEASE BE SEATED. LADIES AND GENTLEMEN,
10 LET ME SAY THIS TO YOU. THE COURT WOULD UNDERSTAND
11 AND RECOGNIZE THAT THIS IS AN EMOTIONAL TIME FOR ALL
12 PARTIES, BUT THE STATE OF SOUTH CAROLINA AND THIS
13 DEFENDANT IS ENTITLED TO A FAIR AND IMPARTIAL TRIAL.
14 IF ANYBODY FOR THEIR EMOTIONS FEEL THAT THEY CAN'T
15 MAINTAIN ABSOLUTE DECORUM IN THIS COURTROOM, I WANT
16 YOU TO LEAVE AT THIS TIME, BECAUSE I WILL DEAL WITH
17 ANYBODY WITHIN THE SOUND OF MY VOICE IN A MOST SEVERE
18 MANNER IF ANYBODY IN ANY WAY WOULD ATTEMPT BY WORD,
19 ACTION OR DEED TO DISRUPT THE ORDERLY PROCESS OF THIS
20 TRIAL. I WOULD UNDERSTAND THAT NOBODY WOULD
21 INTENTIONALLY DO THAT. I UNDERSTAND THE EMOTIONS
22 INVOLVED HERE. BUT WE HAVE CERTAIN RULES HERE THAT
23 WE MUST ADHERE TO. IF ANYBODY FEELS THAT THEY CAN'T
24 DO THAT, I RESPECTFULLY REQUEST THAT YOU LEAVE THE
25 COURTROOM AT THIS TIME, OTHERWISE, YOU ARE CERTAINLY

1 WELCOME TO STAY. THANK YOU SO MUCH. ALL RIGHT.

2 SOLICITOR, ARE WE NOW READY TO PROCEED?

3 MR. BAILEY: YES, SIR YOUR HONOR.

4 THE COURT: READY TO PROCEED?

5 MR. NEWSOME: YES, SIR.

6 THE COURT: BRING IN THE JURY.

7 (WHEREUPON, THE JURY WAS RETURNED
8 TO THE COURTROOM AND THE FOLLOWING
9 PROCEEDINGS WERE COMMENCED IN
10 OPEN COURT.)

11 THE COURT: THE JURY IS PRESENT. YOU MAY
12 PROCEED.

13 MR. NEWSOME: PLEASE THE COURT, YOUR
14 HONOR? MR. FOREMAN, LADIES AND GENTLEMEN OF THE
15 JURY, WHEN THE SOLICITOR WAS UP HERE, HE TALKED, AND
16 I BELIEVE RIGHTFULLY SO AND I AGREE WITH HIM, THAT
17 THIS MURDER WAS BAD. AND LADIES AND GENTLEMEN, I
18 TELL YOU ALL MURDER IS BAD. EVERY CASE THROUGHOUT
19 OUR STATE, THROUGHOUT OUR COUNTRY, THROUGHOUT THIS
20 COUNTY, EACH AND EVERY TIME SOMEBODY TAKES UNLAWFULLY
21 THE LIFE OF ANOTHER, IT IS A HORRIBLE, TERRIBLE
22 THING, AND THERE IS NOTHING DIFFERENT FROM THIS CASE
23 THAN THOSE OTHER HORRIBLE MURDERS. THERE'S NOTHING
24 ANY OF US CAN DO HERE TODAY THAT WILL GO BACK AND
25 GIVE BACK THE LIFE OF THAT YOUNG MAN WHO DIED FOR NO

1 REASON. NOTHING WE'VE SAID TO YOU FROM THE TIME THIS
2 TRIAL STARTED, NOTHING, HAS EVER INDICATED THAT WE'RE
3 ASKING YOU TO EXCUSE HERMAN. FROM THE OPENING
4 STATEMENT, WE TOLD YOU THAT HE ADMITTED HIS
5 RESPONSIBILITY. IN THE CLOSING STATEMENT, WE TOLD
6 YOU HE ADMITTED HIS RESPONSIBILITY. WE TELL YOU NOW
7 HE ADMITS HIS RESPONSIBILITY. THIS WAS A MURDER.
8 THERE WERE THREE PEOPLE INVOLVED. THIS WAS A MURDER.
9 ONE YOUNG MAN NEEDLESSLY DIED. ONE YOUNG GIRL
10 SCARRED FOR LIFE. WE CAN'T CHANGE THOSE FACTS. EACH
11 AND EVERY MURDER THAT HAPPENS IN OUR STATE IS
12 TERRIBLE, HORRIBLE. A LIFE IS NEEDLESSLY TAKEN. A
13 YOUNG MAN REDUCED TO THE AUTOPSY PICTURES YOU SEE.
14 WE CAN'T CHANGE THAT. IT'S THAT WAY IN EACH ONE.

15 BUT WHAT YOU HAVE TO DECIDE, LADIES AND
16 GENTLEMEN, WHAT THE PURPOSE OF THIS PHASE OF THE
17 HEARING IS, WHAT IS IT ABOUT THIS CASE AND THIS
18 PERSON THAT CRIES OUT FOR THE DEATH PENALTY? BECAUSE
19 EACH ONE OF YOU TOOK AN OATH TO START WITH AS ALL
20 JURORS IN CASES LIKE THIS ARE REQUIRED TO, TO LISTEN
21 TO ALL OF THE FACTS WITHOUT ANY SYMPATHY OR PASSION,
22 TO CONSIDER ALL OF THE EVIDENCE AND TO DELIBERATE ON
23 YOUR VERDICT. AND YOU'VE DONE THAT, AND YOU FOUND
24 HIM GUILTY.

25 AND THEN YOUR OATH WENT ON AND EACH ONE OF YOU

1 WHEN YOU WERE QUESTIONED SAID THAT BEFORE YOU DECIDE
2 WHAT YOUR SENTENCE WOULD BE, YOU WOULD CONSIDER WHAT
3 THE FACTORS ABOUT THE DEFENDANT ARE. AND LADIES AND
4 GENTLEMEN, YOU HEARD THOSE FACTORS YESTERDAY.
5 WHATEVER WEIGHT YOU PLACE ON THOSE IS SOLELY IN YOUR
6 HAND. EACH ONE OF YOU TOOK AN OATH THAT WHATEVER
7 YOUR DECISION WOULD BE, IT WOULD BE ONE THAT YOU
8 REACHED AND ARRIVED AT WITHOUT ANY PREJUDICE, WITHOUT
9 ANY ANGER, WITHOUT GIVING RISE TO PASSION OR
10 SYMPATHY, ON THE INFORMATION IN THE FACTS PRESENTED
11 TO YOU. YOU SAID THAT IF YOU COULD DECIDE AND
12 BELIEVE IN YOUR MIND AND HEART ALL OF THE EVIDENCE OF
13 THE CRIME AND THE DEFENDANT THAT YOU COULD MAKE A
14 DECISION THEN WHAT A SUITABLE PUNISHMENT WOULD BE.

15 LADIES AND GENTLEMEN, WE'RE NOT ASKING YOU NOT
16 TO PUNISH HERMAN HUGHES. OUR LAW REQUIRES HIM TO BE
17 PUNISHED. WHAT HAPPENED ON MARCH 18TH WAS WRONG.
18 WE'RE NOT TRYING TO EXCUSE IT. WE'RE NOT GOING TO
19 TRY TO BLAME THE SCHOOL SYSTEM FOR IT. IT HAPPENED.
20 WE CAN'T CHANGE IT. NOW, WE HAVE TO LOOK AT HERMAN
21 HUGHES AND TO BE FAIR. AND YOU HAVE TAKEN AN OATH TO
22 BE FAIR, LOOK AT HIM FROM THE TIME HE WAS BORN UNTIL
23 THE PRESENT AND TRY TO UNDERSTAND HOW IT HAPPENED,
24 BECAUSE LADIES AND GENTLEMEN, WE'LL NEVER KNOW WHY --
25 WE'LL NEVER KNOW WHY SOMETHING LIKE THIS HAPPENS.

1 KNOWING THAT, THIS AWESOME BURDEN AND THE BURDEN THAT
2 I HAVE DEFENDING, THE BURDEN THAT MR. BAILEY HAS
3 PROSECUTING, THE BURDEN THAT HIS HONOR HAS IN RUNNING
4 THIS COURTROOM IN A FAIR AND EFFICIENT MANNER, YOU
5 ALL HAVE THE GREATER BURDEN.

6 EACH ONE OF YOU DECIDE. YOUR VERDICT MUST BE
7 UNANIMOUS, LADIES AND GENTLEMEN. IT MUST BE
8 UNANIMOUS. UNLESS ALL 12 OF YOU DECIDE THAT HERMAN
9 HUGHES SHOULD DIE, YOU CAN'T RETURN THE
10 RECOMMENDATION. YOU ARE TO GIVE FAIRNESS TO THE
11 STATE, TO THE VICTIM AND HIS FAMILY, TO THE DEFENDANT
12 AND HIS FAMILY, LOOKING AT ALL CIRCUMSTANCES. THE
13 SYMPATHY HE TALKED ABOUT THAT YOUR VERDICT CAN'T BE
14 SYMPATHY -- AND HIS HONOR WILL CHARGE THAT CERTAINLY
15 BECAUSE THAT'S THE LAW -- BUT THAT SYMPATHY GOES BOTH
16 WAYS. YOUR VERDICT NOW, YOUR DECISION NOW CANNOT BE
17 FOR SYMPATHY FOR THE FAMILY. I SAW NOTHING AND
18 HAVEN'T HEARD OF NOTHING THAT TELLS ME THAT THERE WAS
19 ANYTHING WRONG WITH KENNETH PRESLEY. HERE'S A YOUNG
20 MAN WHO LOVED HIS FAMILY DEEPLY, HAD A REVERENCE FOR
21 GOVERNMENT, WAS WORRIED MORE ABOUT NOT JUST HIS
22 FAMILY'S WELFARE BUT ABOUT THEIR SPIRITUAL WELFARE,
23 AND HE'S DEAD, AND I CAN'T CHANGE THAT. BUT, YOU
24 KNOW, I THINK HIS LIFE WOULD BE VALUABLE IF HE DIDN'T
25 HAVE THOSE SAME QUALITIES BECAUSE HE DIED NEEDLESSLY.

1 BUT NOW WE HAVE TO DECIDE WHAT'S A FAIR PUNISHMENT.

2 IF YOU'RE A CHILD, IF YOUR CHILD SPILLS A GLASS
3 OF WATER, DO YOU BEAT HIM INTO SUBMISSION AND SEND
4 HIM TO HIS ROOM FOR THREE MONTHS? NO. YOU PUNISH
5 THEM FAIRLY, CONSISTENTLY WITHIN HIS DEVELOPMENTAL
6 NEEDS AND HIS LOVE. WHAT WE'RE ASKING YOU IS TO
7 CONSIDER ALL THE FACTS, ALL THE INFORMATION YOU'VE
8 RECEIVED ABOUT HERMAN HUGHES AND DECIDE.

9 SPEAKING OF FACTS, LET'S GO INTO THOSE FOR A
10 WHILE. I THINK THEY ARE IMPORTANT FOR A NUMBER OF
11 REASONS. I THINK SOLICITOR CORRECTLY RECOGNIZED THAT
12 WE HAD A LOT OF AMMUNITION TO TALK ABOUT IN
13 MITIGATING FACTORS AND THE ROLES. AND THERE'S NO
14 QUESTION THAT HERMAN HUGHES WAS THERE, HE PLAYED THE
15 MAJOR ROLE. HAD HE NOT PULLED THE TRIGGER, THIS
16 EVENT WOULD NEVER HAVE HAPPENED. BUT HOW DID HE GET
17 THERE? HOW DID IT HAPPEN THAT HE GOT THERE? IF
18 WE'RE ABOUT JUSTICE, LET'S CONSIDER THE OTHER FOLKS.
19 LET'S TALK ABOUT HENRY DANIEL OWENS, JUNIOR, THE ONLY
20 ADULT OF THOSE THREE FOLKS, NEARLY 24 YEARS OLD. BY
21 HIS OWN TESTIMONY, THESE BOYS WENT OUT AND BOUGHT 15
22 BEERS, A 15 PACK OF BULL, AND HE HAD NOT DRANK HARDLY
23 AT ALL. IT APPEARS FROM THE TESTIMONY THAT KELSEY
24 DRANK THE MOST. TWO TEENAGERS, ONE 18, ONE 16, AND
25 THEY COME BACK AND HE WANTS US TO BELIEVE, LADIES AND

1 GENTLEMEN, THAT HE DIDN'T KNOW HERMAN FROM BEING
2 AROUND, BUT HE WAS GOING TO GIVE HIM A GUN FOR FREE.
3 HE WANTS TO DISTANCE HIMSELF FROM THE RESPONSIBILITY.
4 BUT WE'RE ALLOWED TO USE OUR COMMON SENSE AND GOOD
5 JUDGMENT IN OUR DELIBERATIONS. AND COMMON SENSE AND
6 GOOD JUDGMENT CRIES OUT THAT THAT'S NOT THE WAY IT
7 HAPPENED, THAT THAT MAN KNEW WHEN THOSE DRUNK TEENAGE
8 BOYS WHO LEFT TO GO ROB THAT PLACE, THE ROBBERY THAT
9 ENDED UP COSTING THESE FOLKS THEIR SON, THEIR
10 BROTHER, COST HIS LIFE, MR. INNOCENT, DANIEL OWENS,
11 STAYED THERE IN THE SAFETY OF HIS HOME BECAUSE HE WAS
12 THE SMART ONE. OKAY? FIND POOR OLD DUMB HERMAN, GET
13 HIM DRUNK, GIVE HIM A GUN AND SEND HIM TO DO THE
14 DIRTY WORK BECAUSE THEN WE CAN SIT BACK AN BLAME HIM.
15 THEY HAD NOTHING TO DO WITH IT.

16 SO WHEN THEY RETURNED, WHAT DID THEY DO? DID
17 HERMAN GO TO DRIVE THAT CAR TO HIS HOUSE AND LEAVE
18 THOSE FOLKS BECAUSE HE WAS THE ONLY ONE WHO DID
19 ANYTHING AND IT WAS HIS IDEA, HIS PLAN? NO. KELSEY
20 DROVE THE CAR BACK TO HIS UNCLE HENRY'S HOUSE AND
21 SPLIT THE MONEY UP WITH HENRY, AND HERMAN GOT PART OF
22 IT TOO. KELSEY GOT TO KEEP THE CAR. HE DROVE AROUND
23 THAT NIGHT. AND KELSEY GOT THE -- THE ONLY TIME
24 KELSEY'S TALKED APPARENTLY. AND WHAT DID HE SAY? I
25 SHOT SOME PEOPLE. HE CAN'T EVEN TELL THE TRUTH. HE

1 DIDN'T SHOOT THAT BOY. HE BRAGGED ABOUT SHOOTING.
2 AND I STILL DISPUTE WHETHER THERE WAS ONE SHOOTING OR
3 TWO, LADIES AND GENTLEMEN. BUT HE BRAGGED TO OTHER
4 PEOPLE, ONE OF WHOM WAS HIS COUSIN, RICARDO, WHO
5 TESTIFIED HE HAD NEVER MET ME. I ASKED HIM HAD HE
6 MET ME BEFORE THAT DAY? HE HAD NOT. WE CAME IN --
7 WE SUBPOENAED HIM BECAUSE WE KNEW HE HAD GIVEN A
8 STATEMENT TO THE POLICE. HE GAVE A STATEMENT THE
9 NEXT MORNING, POINTING THE FINGER AT KELSEY. NO.
10 WHO WERE THEY LOOKING FOR, THEN? WHO WERE THE
11 POLICE LOOKING FOR? SERGEANT GREEN, HE GOT UP ON THE
12 STAND AND TESTIFIED THEY WERE LOOKING FOR KELSEY
13 PEARCE. WHY? BECAUSE THEY HAD HAD A LOT OF CARS
14 STOLEN AROUND HERE LATELY AND KELSEY WAS THE SUSPECT.
15 THEY CAUGHT HIM IN A CAR. HE TESTIFIED THEY CAUGHT
16 KELSEY IN A STOLEN CAR, TOOK HIM TO THE POLICE
17 STATION AND SAID TELL US ABOUT WHAT KIND OF CAR YOU
18 WERE IN. WHAT CAR? GOT TO GET HIM DRUNK SO HE WILL
19 TESTIFY. SERGEANT GREEN SAID WHEN HE WAS THERE, THE
20 LIGHT WAS ON. IS THAT CRITICAL? I THINK IT IS.
21 OFFICER WANNAMAKER SAID WHEN HE GOT THERE, INDEED THE
22 LIGHT WAS ON. KELSEY TOLD HIS UNCLE ONE THING, THAT
23 HE SHUT THE DOOR AND LOCKED IT BECAUSE HERMAN LEFT
24 THE DOOR OPEN. THE LIGHT WAS ON WHEN KELSEY GOT
25 THERE. THIS YOUNG GIRL WHO IS SHOT IS SERIOUSLY

1 WOUNDED. SHE SAYS THAT SHE WAS ALERT ALL OF THE TIME
2 AND SHE KNEW EVERYTHING, YET KELSEY, WHAT DID HE SAY?
3 WHEN HE SAW HER, SHE HAD HER HEAD DOWN WITH HER CHIN
4 ON HER KNUCKLES LIKE IN THE THINKING PERSON'S
5 POSITION.

6 LADIES AND GENTLEMEN, PEOPLE THAT SUSTAIN THE
7 INJURY THAT POOR GIRL SUSTAINED -- AND I'M NOT
8 CRITICIZING HER -- PLEASE UNDERSTAND THAT -- WOULD
9 HAVE HAD TO PASS OUT IN UNCONSCIOUSNESS. THAT'S THE
10 ONLY UNLOGICAL REASON. AND KELSEY PEARCE'S ROLE IS
11 SUBSTANTIALLY GREATER THAN THE SOLICITOR'S VERSION
12 ALLOWS HIMSELF TO BELIEVE. DANIEL OWENS' STATEMENT
13 LEAVING OUT THE SIGNIFICANT PART, THE FOCUS OF -- HE
14 IS SWITCHING THIS FOCUS FROM KELSEY PEARCE TO HERMAN
15 HUGHES AFTER DANIEL OWENS GAVE HIS STATEMENT,
16 KELSEY'S UNCLE. HE LIED ABOUT THE SPLITTING UP THE
17 MONEY, LEFT THAT OUT BECAUSE THAT KEEPS HIM GUILTY.
18 WHY? BECAUSE IT SHOWS HIS GUILT. WHY WOULD HE HAVE
19 TO WORRY ABOUT HIS FINGERPRINTS ON THE GUN IF HE
20 HADN'T DONE ANYTHING WRONG? WHY WOULD HE HAVE TO
21 KEEP THE INFORMATION THAT HE SPLIT THE MONEY WITH THE
22 OTHER TWO BOYS IF HE HADN'T DONE ANYTHING WRONG? WHY
23 DOES HE NOT ADMIT NOW THAT HE KNEW AHEAD OF TIME?
24 BECAUSE THE PUNISHMENT FOR BEING INVOLVED AFTER IS
25 NOT NEAR AS MUCH AS THE PUNISHMENT FOR BEING INVOLVED

1 BEFORE. SO THE BRIGHTEST, OLDEST AND THE MOST MATURE
2 AND THE BRAINS BEHIND THIS OPERATION, DANIEL OWENS,
3 IS AT HOME OUT ON BOND NOW, AND THE MOST HE CAN GET
4 IF HE GETS IT AT ALL -- AND I DON'T KNOW. THAT'S FOR
5 ANOTHER JURY -- ANOTHER JUDGE TO DECIDE, WILL BE TEN
6 YEARS. AND YET THE SOLICITOR ASKS YOU TO TAKE THIS
7 YOUNG BOY'S LIFE. IF WE'RE LOOKING FOR JUSTICE, THEN
8 LET'S TREAT ALL FOLKS WHO DO THE SAME THING THE SAME
9 WAY. LET'S DON'T TREAT ONE PERSON ONE WAY AND
10 ANOTHER PERSON ANOTHER. LET'S LOOK AT THE FACTS. WE
11 TREAT THEM ALIKE.

12 WITH THE HUNDREDS OF MURDERS THAT OCCUR AND HAVE
13 OCCURRED IN THIS STATE, WE DON'T SEEK THE DEATH
14 PENALTY IN ALL OF THEM, LADIES AND GENTLEMEN. WE
15 DON'T. AND I DEFY YOU TO TELL ME ONE MURDER THAT IS
16 NOT HORRIBLE, THAT DON'T LEAVE PEOPLE WITHOUT A SON
17 OR A DAUGHTER OR A HUSBAND OR A WIFE OR A CHILD,
18 DON'T LEAVE THEM WITHOUT A LOVED ONE. WHAT DID KELLY
19 SAY? SHE SAID THAT HERMAN TURNED THE LIGHT OFF AND
20 SAID THAT HERMAN LOCKED THE DOOR. LADIES AND
21 GENTLEMEN, YOU HEARD THE TAPED STATEMENT SHE MADE --
22 MADE A WEEK AFTERWARDS, AND IN THAT STATEMENT, SHE
23 SAYS THAT SHE THOUGHT SHE WAS SHOT IN THE FACE FIRST
24 AND THEN IN THE CHEST, AND SHE SAID -- AND THIS WAS A
25 LONG TAPE AND YOU WILL HAVE THE TRANSCRIPT AND YOU

1 CAN TAKE IT BACK BECAUSE THE SOLICITOR POINTED OUT TO
2 YOU IN THAT PART OF IT HOW TIRED SHE WAS, AND SHE
3 WAS. I DON'T MEAN TO SLIGHT THAT AT ALL. BUT LOOK
4 AT THE PART SHE SAID ABOUT BEING IN PAIN. AND TO MY
5 KNOWLEDGE, IT WAS OVER HALF AN HOUR AFTER THEY
6 STARTED THAT THEY STOPPED HER -- THE TIME IS
7 REFLECTED IN YOUR TRANSCRIPT. PLEASE LOOK AT IT.
8 YOU HEARD HER VOICE. SHE HAD HER MOUTH WIRED SHUT
9 BECAUSE OF THE INJURIES SHE RECEIVED. AND I'M NOT
10 MAKING LIGHT OF THAT EITHER. BUT SHE CLEARLY SAID
11 THAT SHE REMEMBERED BEING SHOT ONCE, TWICE IN THE
12 FACE AND CHEST, KEN PRESLEY BEING SHOT ONCE AND THAT
13 SHE HAD HER HEAD TOWN SAME AS KELSEY SAID. SHE HAD
14 HER HEAD DOWN. SHE DIDN'T SEE. SHE THOUGHT SHE
15 HEARD ANOTHER SHOT. SHE THOUGHT MAYBE THERE WERE
16 FOUR SHOTS. MAYBE MORE. SHE THOUGHT MAYBE SOMEBODY
17 SHOT. SHE DIDN'T SEE THE REST OF THAT PART, LADIES
18 AND GENTLEMEN. SHE DIDN'T SEE THAT PART. IT'S NOT
19 HER FAULT. AND I CAN'T BLAME HER ONE BIT. IF
20 SOMEONE SHOT ME, PUT A GUN AND SHOT ME, I WOULD BE
21 ANGRY AND I WOULD REMEMBER THEM THE BEST I COULD AND
22 I WOULD DO MY BEST TO RECALL ANYTHING I COULD
23 REMEMBER TO MAKE SURE THEY WERE CONVICTED. AND I
24 CAN'T BLAME HER ONE BIT FOR HER DOING THAT, BUT
25 LADIES AND GENTLEMEN, WHAT IF -- WHAT IF KELSEY

1 PEARCE'S ROLE WAS WHAT WE SAID? DOES IT MAKE HERMAN
2 NOT GUILTY OF MURDER? NO. DOES IT MEAN YOU EXCUSE
3 HERMAN HUGHES, NO. BUT IT GOES TO THE TRUTH --
4 CLOSER TO THE TRUTH. LET'S LOOK AT HERMAN. HE WAS A
5 16 YEAR OLD WHEN THIS HAPPENED.

6 HE HAD BEEN DRINKING. I DON'T KNOW HOW MANY
7 BEERS HE HAD AND DANIEL OWENS DOESN'T. HIS TESTIMONY
8 WAS THERE WAS A 15 PACK OF BULL. HE ONLY HAD A
9 COUPLE AND KELSEY AND HERMAN HAD THE REST. NOW, THEY
10 WENT OVER AND DRANK A COUPLE OF TIMES. NOW, IN OUR
11 STATE, LADIES AND GENTLEMEN, VOLUNTARY INTOXICATION
12 FROM ALCOHOL DOES NOT EXCUSE A CRIME. BUT LATER ON
13 WHEN I TALK ABOUT MITIGATING CIRCUMSTANCES AND THE
14 IMPAIRED MENTAL FACULTIES, IT DOES MITIGATE, BECAUSE
15 IN ALL OF THIS YOUNG MAN'S LIFE, THEY CAN'T TALK TO
16 YOU ABOUT HIM BEING VIOLENT. OH, SURE. HE GOT IN
17 FIGHTS IN SCHOOL. WHAT ADOLESCENT -- WHAT KID
18 HASN'T. HE'S GOT 51 INFRACTIONS. THERE'S NOT A
19 CRIME OF VIOLENCE. THERE'S NOT ANY CRIME. THERE IS
20 NO EVIDENCE IN THIS RECORD THAT HE'S EVEN BEEN
21 ARRESTED BEFORE. THEY BROUGHT THE YOUNG GIRL UP
22 THERE ABOUT AN INCIDENT A COUPLE OF YEARS AGO TO SAY
23 THAT HERMAN WAS IN HIS YARD, AND THE OFFICERS CAME,
24 TOOK HIM DOWN, GOT THE GUN, MADE AN INCIDENT REPORT.
25 THERE WEREN'T EVEN CHARGES. WHEN YOU HAVE A 14 YEAR

1 OLD CHILD, YOU TAKE THEM TO FAMILY COURT AND YOU SIGN
2 A PETITION. AN OFFICER CAN DO IT, AN INDIVIDUAL CAN
3 DO IT JUST LIKE SIGNING A WARRANT. I ASKED HIM DID
4 YOU SIGN A PETITION? NO, THERE WERE NO CHARGES. HE
5 NOT ONLY HAS NOT BEEN CONVICTED OF A CRIME BEFORE,
6 LADIES AND GENTLEMEN, HE'S NEVER BEEN CHARGED.

7 HERMAN LEADER. AND YOU HEARD ALL OF THE
8 EVIDENCE. FROM THEIR WITNESSES, FROM OURS, KELSEY'S
9 UNCLE, HENRY, WHAT DID HE JUST SAY ABOUT THAT WHEN I
10 ASKED HIM? NO, KELSEY IS THE LEADER AND HERMAN
11 PRETTY MUCH FOLLOWED WHEREVER HE WENT. HERMAN HUNG
12 WITH KELSEY. WHAT DID THE OTHER WITNESSES SAY?
13 HERMAN HUNG WITH KELSEY. WHAT DID SERGEANT GREEN SAY
14 ABOUT THAT RELATIONSHIP? AND I ASKED HIM, AND THIS
15 IS THE SAME SERGEANT GREEN WHO WAS ONE OF THE
16 OFFICERS ON THE SCENE THAT ARRESTED KELSEY BEFORE.
17 HE CLEARLY TOLD YOU THE REASON WHY KELSEY WAS A
18 SUSPECT IS BECAUSE OF HIS PRIOR CONDUCT. HE SAID
19 KELSEY WAS THE AGGRESSOR AND HERMAN JUST PRETTY MUCH
20 FOLLOWED. ONE OF THE MITIGATING CIRCUMSTANCES,
21 LADIES AND GENTLEMEN, IS ACTING UNDER THE DOMINATION
22 OF SOMEONE.

23 CLEARLY, AFTER YOU'VE SEEN THE EVIDENCE OF THIS
24 BOY'S MENTAL STATE -- AND WE'RE NOT SAYING HE'S
25 INSANE. WE NEVER HAVE. NEVER SUGGESTED THAT. THE

1 LAW IN THIS STATE PRETTY MUCH IS IF YOU KNOW THE
2 DIFFERENCE FROM RIGHT AND WRONG, YOU WERE NOT INSANE
3 ENOUGH TO BE EXCUSED FROM THE OFFENSE. WE NEVER SAID
4 THAT. BUT HIS MENTAL CONDITION, THE YOUNG MAN WHO
5 SCORES IN THE LOWEST ONE PERCENTILE IN HIS
6 INTELLECTUAL ABILITY, A YOUNG MAN WHO AFTER MUCH
7 DRAGGING OUT EVEN HIS PSYCHOLOGIST TOLD YOU THAT HE
8 WAS IN THE LOWER 6 PERCENTILE IN I.Q. ARGUED STRONGLY
9 ABOUT MENTAL RETARDATION. AND THE FUNNY THING ABOUT
10 IT, HE DIDN'T KNOW THE STANDARD. YOU'RE GOING TO BE
11 GIVEN ABOUT MENTAL RETARDATION. IT IS NOT AN I.Q.
12 SCORE, LADIES AND GENTLEMEN. I'LL GIVE IT TO YOU
13 LATER. HIS HONOR WILL CHARGE YOU. IT'S IN THE
14 STATUTES. IT'S IN THE MITIGATING FACTORS. AND HERMAN
15 HUGHES WITH HIS ONE PERCENTILE LOWEST SCORING
16 PERCENTILE, THAT MEANS IF 100 PEOPLE ARE IN THE ROOM,
17 99 ARE SMARTER THAN HERMAN IF HE'S THERE. 94 HAVE A
18 HIGHER I.Q. IF HE'S THERE. THAT IS SUBSTANTIALLY
19 SUBNORMAL MENTAL IMPAIRMENT, LADIES AND GENTLEMEN.
20 OUR DOCTORS AND HIS DOCTORS, HE HAS A DISORDER, A
21 LEARNING DISABILITY -- ON TOP OF LOW I.Q., HE HAS A
22 LEARNING DISABILITY. GREAT FATE IN LIFE HE'S HAD.
23 HE'S HAD AN ATTENTION DEFICIT DISORDER. PUT HIM IN A
24 CLASSROOM, WHAT DID THE DOCTORS SAY? HIS BEHAVIOR,
25 HE COULDN'T BEHAVE BECAUSE HE'S NOT LEARNING. HE

1 FAILED THREE GRADES THE FIRST SIX YEARS HE WAS IN
2 SCHOOL -- THROUGH D -- EXCUSE ME, THROUGH THE FIRST
3 SIX GRADES, THE SECOND, THE FOURTH AND THE SIXTH.
4 THEY TESTIFIED THEY SUSPENDED HIM IN THE SEVENTH FOR
5 THE REST OF THE YEAR. COMES BACK THE NEXT YEAR IN
6 FEBRUARY AND THEY PROMOTE HIM, MOVING HIM ALONG. IS
7 IT THEIR FAULT THAT HE SHOT KEN PRESLEY? NO, I DON'T
8 SUGGEST THAT, BUT IT'S A TRUE PICTURE OF HERMAN
9 HUGHES AND HOW HE GOT TO BE THE PERSON WHO GOT
10 INVOLVED IN THAT UNFORTUNATE NIGHT.

11 HOW COULD A HUMAN BEING DO THAT? I DON'T KNOW.
12 WE'RE TRYING TO EXAMINE HIM AND THE TOTALITY OF
13 HERMAN. EVERY PSYCHIATRIST AND EVERY PSYCHOLOGIST,
14 EVERY SCHOOL OFFICIAL, ALL SAID HE WAS BORDERLINE
15 INTELLECTUAL FUNCTIONING. BORDERLINE. THAT
16 QUALIFIES. THAT'S SUBSTANTIALLY -- SUBSTANTIALLY
17 SUBNORMAL. DID IT AFFECT HIS BEHAVIOR? YES. AND
18 THAT'S PART OF THAT SAME DEFINITION. AND WAS IT WITH
19 HIM THROUGH THE DEVELOPMENTAL PERIOD? ABSOLUTELY.
20 FROM THE SECOND GRADE ON, THEY HAD THIS CHILD TAKEN
21 AWAY FROM THE OTHER STUDENTS. HE WAS IN A LEARNING
22 DISABLED CLASS. ALL OF US HAVE SEEN -- WE'VE LIVED
23 AND WE KNOW WHAT ADOLESCENTS DO, THE NORMAL CHILD.
24 TRY ADOLESCENTS ON A 16 YEAR OLD IN THE EIGHTH GRADE.
25 TRY ADOLESCENTS WHEN YOU'RE 14 IN THE SIXTH GRADE FOR

1 THE SECOND TIME. SELF-ESTEEM, EVEN THE BRIGHTEST,
2 MOST POPULAR FOLKS LOSE THEIR SELF-ESTEEM WITHIN
3 THEMSELVES GOING THROUGH THAT TIME.

4 WHAT ELSE DOES HE LOSE? HIS GRANDFATHER. THE
5 ONE CONSISTENT FATHER FIGURE HE HAD IN HIS LIFE. THE
6 ONE CONSISTENT. HIS SIXTH GRADE TEACHER SAID THAT HE
7 WAS RESPECTFUL, HE WAS SLOW, HE DIDN'T GET IN TROUBLE
8 THE FIRST YEAR. WHAT HAPPENED THE NEXT YEAR? THEY
9 KEPT HIM BACK FOR THE THIRD TIME. HE'S IN THE SIXTH
10 GRADE. HE SHOULD HAVE BEEN IN THE NINTH. ANOTHER
11 FAILURE. AND HIS GRANDFATHER HAS A STROKE.
12 GRANDFATHER WHO HAD BEEN HIS ONLY CONSISTENT
13 COMFORTING HAS A STROKE. GRANDFATHER WHO HAD BEEN
14 HIS ROLE MODEL. HERMAN'S INABILITY TO ADAPT HIS
15 BEHAVIOR IS EVIDENCED FROM 1991 WHEN THAT STROKE
16 OCCURRED WHEN HE WENT INTO THE SIXTH GRADE FOR THE
17 SECOND TIME. HOW EMBARRASSING IS IT FOR A 14 YEAR
18 OLD PERSON TO BE AMONGST 11 YEAR OLDS? LEAST
19 INTELLIGENT KID IN THE CLASS, DOES THAT IMPACT ON HIS
20 LIFE, HIS DECISIONS? SURE HE CAN MAKE DECISIONS.
21 SURE HE CAN. BUT NOT THE SAME DECISIONS YOU OR I
22 CAN, LADIES AND GENTLEMEN, BECAUSE HE DOESN'T HAVE
23 THAT ABILITY. HE CAN GET FROM POINT A TO POINT B,
24 BUT IT MIGHT TAKE HIM LONGER. BUT DON'T THROW IN
25 POINT C BECAUSE YOU MIGHT HAVE TO HELP HIM. IT GIVES

1 ME NO GREAT PLEASURE TO HAVE TO TALK ABOUT MY CLIENT
2 THIS WAY. BUT LADIES AND GENTLEMEN, IT'S THE TRUTH.
3 AND MUCH THE SAME AS YOU TOOK AN OATH TO LISTEN TO
4 ALL OF THE FACTS AND EVIDENCE, I TOOK AN OATH TO TRY
5 TO GET AS MANY OF THEM TO YOU AS I COULD. AND WHEN
6 KELSEY SOBERED UP, QUIT TALKING TO EVERYBODY, AND
7 MR. OWENS GAVE HIS LIE SAYING THAT EVERYBODY ELSE WAS
8 AT FAULT BUT HIM, WHAT DID HERMAN DO? THAT SATURDAY
9 WHEN HE WAS NOT A SUSPECT, HE GIVE THEM THE GUN, AND
10 THE NEXT DAY -- I HAD TO PUT THE SHERIFF ON THE STAND
11 SO YOU WOULD KNOW THIS -- HERMAN CONFESSED. HE
12 ADMITTED TO SHOOTING KELLY, ROBBING THE PLACE AND
13 TAKING THE CAR AND DIVIDING THE MONEY UP. HE TOLD
14 THEM THEY DIVIDED THE MONEY UP WITH DANIEL OWENS THAT
15 DAY. DANIEL OWENS WAITED UNTIL A WEEK AGO, A WEEK
16 AGO LAST FRIDAY TO MAKE A DEAL THAT KEEPS HIM FROM
17 GOING TO PRISON FOR LIFE. AND ONLY THEN DID HE
18 BOTHER TO TELL THE TRUTH. SO HERE'S THIS YOUNG MAN,
19 THE LEAST INTELLIGENT OF THAT CROWD, BUT THE MOST
20 HONEST.

21 DID HE SHOOT HIM THERE? ABSOLUTELY. HE'S
22 WRONG. HE HAS TO BE PUNISHED. LIFE IMPRISONMENT IS
23 PUNISHMENT, LADIES AND GENTLEMEN. CAN YOU IMAGINE --
24 HE'S GOING TO HAVE TO SIT THERE OVER THESE NEXT YEARS
25 IF YOU SENTENCE HIM TO LIFE. AND THAT GRANDFATHER

1 WHO IS IN THE NURSING HOME NOW WHO HE HADN'T SEEN
2 SINCE HE'S BEEN ARRESTED -- AND THAT WHEN THAT
3 GRANDFATHER DIES, HE WON'T BE ABLE TO GO TO THAT
4 FUNERAL. YOU KNOW, THINK ABOUT THAT. THE ONLY MAN
5 WHO HAS BEEN CONSISTENT IN HIS LIFE, HE WILL THINK
6 ABOUT IT THIS YEAR, THE NEXT YEAR AFTER THAT AND THE
7 AND YEAR AFTER THAT FOR THE REST OF HIS LIFE. THAT'S
8 PUNISHMENT. THEY -- WITH OUR NEW PRISON DIRECTOR, WE
9 DON'T GET COLOR T.V.'S. YOU GET MEALS AND THEY PUT
10 THEM OUT TO WORK. AND I AGREE WITH THAT. IT'S NOT
11 THE COUNTRY CLUB. THAT IS PUNISHMENT. IT'S
12 PUNISHMENT THAT IF YOU KILL SOMEBODY, YOU HAVE TO BE
13 PUNISHED, AND IT'S A TERRIBLE PUNISHMENT.

14 DR. MORGAN SAID THAT HERMAN'S AFFLICTIONS
15 INCLUDED A NUMBER OF THINGS, AND I JOTTED THEM DOWN
16 BECAUSE I DON'T KNOW THAT I CAN REMEMBER THEM. HE
17 SAID THAT HE SUFFERED FROM DEPRESSION, THAT HE WAS
18 BORDERLINE MENTALLY RETARDED, HAD ATTENTION DEFICIT
19 DISORDER, WAS LEARNING DISABLED AND HAD A PERSONALITY
20 DISORDER THAT WAS MIXED -- THAT INCLUDED DEPRESSION
21 AND PARANOIA. HE HAD A LOW SELF-ESTEEM, THE KIND OF
22 PERSON THAT WOULD LOOK UP TO OLDER PEOPLE WHO WOULD
23 TAKE HIM IN, ACCEPT HIM. DID THEY ACCEPT HIM AT
24 SCHOOL? NO. THEY DIDN'T ACCEPT HIM AT SCHOOL. HE
25 DIDN'T FIT IN. HE'S THE OLDEST, PROBABLY ONE OF THE

1 BIGGEST AND THE SLOWEST. HOW DO YOU DEAL WITH HIM?
2 SUSPEND HIM THE FIRST TIME HE ACTS OUT. AND THEY ARE
3 GOING TO ACT OUT. KIDS WITHOUT I.Q.'S THAT HAVE
4 ATTENTION DEFICIT DISORDER ARE GOING TO ACT OUT.
5 SIGNIFICANT SUBAVERAGE GENERAL FUNCTIONING. LOWEST
6 ONE PERCENTILE IN HIS ACHIEVEMENT. LOWEST
7 PERCENTILE. HIS I.Q. THAT IS I SUBMIT TO YOU
8 SIGNIFICANT AND SUBAVERAGE DEFICIT IN ADAPTIVE
9 BEHAVIOR.

10 LADIES AND GENTLEMEN, 51 INFRACTIONS FROM BEING
11 LATE ALL OF THE TIME, GETTING IN FIGHTS, BEING
12 DISRESPECTFUL TO TEACHERS AT THE SCHOOL. THAT'S
13 EVIDENCE THAT YOU HAVE TO CONSIDER THAT HE HAD
14 DIFFICULTY IN ADAPTING HIS BEHAVIOR. HE COULDN'T DO
15 IT. DOES THAT MEAN FORGIVE HIM FOR HIS ACTIONS ON
16 MARCH 18TH? NO. WE'RE NOT AT A POINT OF FORGIVING.
17 YOU CONVICTED HIM BASED ON THE EVIDENCE AND
18 RIGHTFULLY SO. AND NOW HE'S GOING TO BE PUNISHED AND
19 HE OUGHT TO BE. BUT IN CONSIDERING WHAT IS
20 APPROPRIATE PUNISHMENT, WE HAVE TO CONSIDER THE
21 OFFENDER AND WHAT THEIR STATE OF MIND WAS IN NOT ONLY
22 IN A COURT OF LAW BUT IN DEALING WITH HUMAN BEINGS.
23 WHAT IS IT ABOUT HERMAN THAT CRIES OUT THAT HE IS SO
24 TERRIBLE THAT HE'S KILLED SO MANY PEOPLE? HE HADN'T.
25 HAS HE BEEN INVOLVED IN CRIMES? NO. NO CONVICTION.

1 AND DON'T YOU KNOW HE WOULD HAVE BROUGHT THEM OUT IF
2 HE HAD SOME. THEIR PSYCHOLOGIST -- THEY GOT TWO SETS
3 OF I.Q. SCORES. THEY DON'T GET THE THIRD ONE, THE
4 ONE WITH 68, THE ONE OF THIS MAN'S MENTAL AGE WHEN HE
5 WAS 13 YEARS, SIX MONTHS, LESS THAN THREE YEARS FROM
6 WHEN THIS INCIDENT OCCURRED.

7 AND I TELL YOU, LADIES AND GENTLEMEN, IF HIS
8 MENTAL AGE WAS GOING ABOUT TWO YEARS, FOR THREE YEARS
9 OF LIFE, THAT HE WOULD HAVE BEEN MENTALLY 11 YEARS
10 OLD, MENTALLY, AT THE TIME KENNETH PRESLEY WAS
11 KILLED. DO YOU PUNISH AN 11 YEAR OLD CHILD THE SAME
12 AS YOU PUNISH AN ADULT, INTELLIGENT THINKING ADULT
13 WHO IS CAPABLE OF COMPLEX PLANS AND CAPABLE OF
14 EVASION OF HIS OWN INVOLVEMENT? THE ONLY PERSON WHO
15 HAS NOT EVER EVADED HIS INVOLVEMENT WAS HERMAN.
16 DANIEL, DID HE LIE, AND SAID WHAT MY COUSIN KELSEY
17 AND HERMAN DID? THEY WANT YOU TO BELIEVE WHAT KELSEY
18 DID THEN AS STATED BY HIS LYING UNCLE WHO SAID HE
19 DIDN'T DO ANYTHING. I DON'T KNOW WHY KELSEY OWED HIM
20 MONEY. THEY DON'T WANT YOU TO BELIEVE KELSEY'S
21 COUSIN, RICARDO, WHO GOT ON THE STAND AND GAVE A --
22 GAVE A STATEMENT MARCH 19TH, THE DAY AFTER THIS
23 INCIDENT WHEN HE WAS STOPPED BY THE POLICE AND ASKED
24 WHERE IS KELSEY? I SAW KELSEY LAST NIGHT. WHAT DID
25 HE SAY? WHAT DID HE DO? HE WAS DRIVING THAT CAR,

1 WANTED TO TAKE HIM TO FLORIDA, PUTS \$10 WORTH OF GAS
2 IN THAT CAR AND SAYS, "LET'S GO TO FLORIDA." THAT'S
3 IN THIS STATEMENT. THAT'S IN THE STATEMENT. PLEASE
4 READ IT. THEY WANT YOU TO BELIEVE THE UNCLE. THEY
5 DON'T WANT YOU TO BELIEVE THE COUSIN. WHY WOULD HIS
6 COUSIN COME IN AND SAY KELSEY WAS PART OF IT? WHAT
7 MOTIVE WOULD HE HAVE? THERE IS NONE. THAT'S WHAT HE
8 HEARD AND THAT'S WHAT HE SAID, AND I THINK YOU HAVE
9 TO CONSIDER THAT BECAUSE WE'RE LOOKING FOR JUSTICE.
10 THEN ALL THREE FOLKS OUGHT TO BE TREATED THE SAME.
11 WE DON'T TAKE THE BRIGHTEST, THE ONE MOST CAPABLE OF
12 ARTICULATING A LIE BOTH IN WRITING WITH THE SHERIFF
13 ON MARCH 20TH WHEN HE GAVE HIS STATEMENT, OR THE
14 YOUNG MAN WHO WAS UNAVAILABLE, OR HERMAN HUGHES WHO
15 PROVIDED THE GUN AND ADMITTED IT. THEY DIDN'T NEED
16 DANIEL TO TESTIFY AGAINST HIM. HE HAD ALREADY
17 CONFESSED. WE TOLD YOU AT THE START OF THIS TRIAL HE
18 WAS GUILTY. WE TOLD YOU AT THE END OF THIS TRIAL HE
19 WAS GUILTY.

20 WHY DID HE NEED TO MAKE A DEAL WITH DANIEL OWENS
21 SO HE COULD GET TEN YEARS? BUT HE DID. AND IS IT
22 JUSTICE TO TREAT HERMAN HUGHES -- YOU'VE GOTTEN TO
23 SEE DANIEL OWENS. YOU GOT TO SEE HOW HE TALKED. YOU
24 GOT TO SEE WHERE HE WAS SMART. LADIES AND GENTLEMEN,
25 IF OUR CLIENT WAS AS BRIGHT AS THAT, WE COULD PUT HIM

1 ON THE STAND AND HE COULD EXPLAIN EVERYTHING AND IT
2 WOULDN'T MAKE HIM LESS GUILTY, BUT HE COULD PRESENT
3 HIMSELF BETTER. BUT NATURE DIDN'T GIVE HIM THAT
4 CHANCE. AND WE HAVE CONSIDERATION FOR ALL FOLKS,
5 LADIES AND GENTLEMEN.

6 LET'S TALK ABOUT HERMAN AS AN AGGRESSOR. I
7 COUNTED SEVEN DIFFERENT PEOPLE THAT TESTIFIED THAT
8 HERMAN'S GENERAL NATURE WAS PASSIVE, HUMAN NATURE WAS
9 PASSIVE. DR. MORGAN, DR. DEWITT, HIS SCHOOL TEACHER,
10 MS. LINK, THE ADMINISTRATOR. AND I LEFT HIS NAME
11 OUT, SO THERE'S EIGHT NOW. HIS GRANDMOTHER SAID HOW
12 PASSIVE HE WAS. MOSTLY KEEPS TO HIMSELF. THE
13 QUESTION WITH REGARDS TO TWO MINOR INFRACTIONS I
14 ASKED WHAT WAS HE GENERALLY LIKE? HE'S QUIET. HE
15 STAYS TO HIMSELF. HE'S -- IS HE A FOLLOWER OR A
16 LEADER? HE'S A FOLLOWER, PRETTY MUCH A LONER. ALL
17 OF THEM SAID THAT -- SERGEANT GREEN SAID THE BOY'S A
18 FOLLOWER. KELSEY PEARCE'S UNCLE SAID HE WAS A
19 FOLLOWER. DANIEL OWENS SAID, YEAH, HE JUST KIND OF
20 FOLLOWED KELSEY, HUNG AROUND WITH HIM. HIS ACTIONS
21 THAT NIGHT WERE AGGRESSIVE. THAT INSTANCE WHEN HE
22 PULLED THE TRIGGER AND THOSE BULLETS CAME OUT OF THE
23 GUN WERE AGGRESSIVE. THAT ACTION WAS AGGRESSIVE AND
24 IT WAS WRONG AND HE HAD TO BE PUNISHED. BUT LADIES
25 AND GENTLEMEN, FOR THE FEW SHORT MINUTES THAT HE

1 ACTED THAT WAY, WILL YOU NOT ALSO GIVE HIM CREDIT FOR
2 THE 18 YEARS AND ONE MONTH THAT HE'S BEEN ALIVE WHEN
3 HE'S BEEN PASSIVE? THAT IS A TRUER ACCOUNT. OR IS
4 IT SOMEBODY WHO AFTER CONSUMING SOME BEERS AND BEING
5 EGGED ON BY TWO MORE OLDER, INTELLIGENT FOLKS GETS
6 TAKEN ADVANTAGE OF AND GOES IN THERE AND COMMITS THE
7 CRIME? DOES THAT MAKE HIM INNOCENT? NO, NO. IT
8 GIVES YOU AN IDEA OF THE TRUE ROLE HE PLAYED IN THAT.
9 HE'S THE FALL GUY. HE'S DISPENSABLE. HE'S NOT
10 RELATED. YEAH, GIVE HERMAN A FEW BEERS, GIVE HIM THE
11 GUN, KELSEY. HEY, I NEED SOME MONEY TO PAY MY UNCLE.
12 I OWE HIM SOME MONEY. HE'S RESPONSIBLE. HE'S
13 RESPONSIBLE.

14 CONDUCT DISORDER. HIS DOCTOR SAID THERE WAS
15 CONDUCT DISORDER THAT HERMAN HAD. I ASKED HIM WHAT A
16 CONDUCT DISORDER WAS, AND I ASKED HIM IF A LEARNING
17 TROUBLED CHILD HAD ATTENTION DEFICIT DISORDER, WOULD
18 HE BE THE MOST LIKELY TO MISBEHAVE IN CLASS? YES.
19 WOULD THEY DESCRIBE THAT AS A CONDUCT DISORDER? YES,
20 THAT'S EXACTLY WHAT HE WAS AND THAT'S EXACTLY WHAT
21 HIS DIAGNOSIS WAS.

22 LADIES AND GENTLEMEN, I'M GOING TO GO WITH YOU
23 NOW TO THE MITIGATING FACTORS. AND I NOTICED THAT
24 THE SOLICITOR ADDRESSED THOSE BECAUSE HE KNEW WHAT
25 WAS COMING. THERE ARE TEN STATUTORY MITIGATING

1 CIRCUMSTANCES HIS HONOR CHARGED, BUT THE STATUTORY
2 AGGRAVATING CIRCUMSTANCES THAT YOU HAVE TO LOOK AT
3 YOU HAVE TO FIND ALL BEYOND A REASONABLE DOUBT OR YOU
4 CAN'T RETURN A RECOMMENDATION OF DEATH.

5 MR. BAILEY: OBJECTION, YOUR HONOR. HE
6 MISSTATED THAT. HE SAID WE HAD TO FIND ALL OF THE
7 AGGRAVATING CIRCUMSTANCES.

8 MR. NEWSOME: ONE -- EXCUSE ME. YOU HAVE
9 TO FIND ONE YOU HAVE TO FIND BEYOND A REASONABLE
10 DOUBT -- AND I APOLOGIZE FOR THAT -- ONE AGGRAVATING
11 CIRCUMSTANCE, ONE OF THE ONES THAT ARE AVAILABLE.
12 BUT THERE ARE TEN STATUTORY MITIGATING CIRCUMSTANCES.
13 WHAT DID HIS HONOR TELL YOU ABOUT WHY THERE ARE
14 AGGRAVATING CIRCUMSTANCES? BECAUSE THE LEGISLATURE
15 HAS DEEMED IT THAT THERE ARE CERTAIN EVENTS THAT MAKE
16 IT A WORSE CRIME THAN IF YOU JUST KILL SOMEBODY.
17 THERE'S CERTAIN THINGS THAT MAKE YOU MORE GUILTY,
18 MORE CULPABLE. AND WHAT WERE THE STATUTORY
19 MITIGATING CIRCUMSTANCES? THOSE ARE THE THINGS THAT
20 BY STATUTE THEY FELT WERE SO IMPORTANT TO REMEMBER
21 THAT WOULD LESSEN THE DEFENDANT'S RESPONSIBILITY.
22 I -- DOESN'T EXCUSE THEM FROM THE CRIME OR
23 PUNISHMENT, BUT IT LESSENS. HERMAN HUGHES QUALIFIES
24 FOR SEVEN AND I'LL READ THEM TO YOU.

25 THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF

1 PRIOR CRIMINAL CONVICTIONS. HE HAS NO CONVICTIONS
2 FOR ANYTHING. NOTHING. NOT FAMILY COURT, NOT IN
3 GENERAL SESSIONS COURT BEFORE. HAD HE STAYED AWAY
4 FROM KELSEY PEARCE AND HIS UNCLE THAT NIGHT AND NOT
5 HAD THOSE BEERS, HE WOULDN'T HAVE ANY CONVICTION NOW.
6 THE MURDER WAS COMMITTED WHILE UNDER PARANOIA,
7 DEPRESSION, ATTENTION DEFICIT DISORDER AND IMPULSIVE
8 BEHAVIOR JUST TO NAME A FEW. YOU HEARD THE
9 PSYCHIATRIST. YOU LISTENED TO THEIR TESTIMONY. IF
10 YOU DON'T LISTEN TO MY SUMMATION ON THAT YOU CAN
11 CONSIDER THAT. DOES IT MAKE HIM NOT GUILTY OF THAT?
12 NO. NONE OF THESE MAKE HIM NOT GUILTY. HE'S NOT
13 MENTALLY INSANE. YOU HAVE TO LET HIM GO FREE. HE
14 DON'T GO FREE. HE GOES TO JAIL FOR LIFE. THE
15 DEFENDANT ACTUALLY WAS UNDER THE DOMINATION OR DURESS
16 OF ANOTHER PERSON. IN YOUR HEART OF HEARTS, MIND OF
17 MINDS, LADIES AND GENTLEMEN, CAN YOU NOT UNDERSTAND
18 THAT KELSEY PEARCE AND/OR DANIEL OWENS WERE THE ONES
19 WHO ORCHESTRATED WHAT OCCURRED AND INVOLVED HIM? HAD
20 DANIEL OWENS NOT PROVIDED THE GUN, THIS WOULDN'T HAVE
21 HAPPENED. HAD THOSE TWO BOYS NOT GOTTEN THAT BEER,
22 THIS WOULDN'T HAVE HAPPENED. HAD KELSEY NOT BEEN THE
23 AGGRESSOR, THIS WOULDN'T HAVE HAPPENED. THAT'S
24 MITIGATING CIRCUMSTANCES BY LAW, LADIES AND
25 GENTLEMEN.

1 THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE
2 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
3 CONDUCT TO THE REQUIREMENTS OF THE LAW WAS
4 SUBSTANTIALLY IMPAIRED. THAT'S WHERE THE DRINKING
5 COMES IN, LADIES AND GENTLEMEN. IT'S BAD ENOUGH THE
6 GUY WAS THE LOWEST ONE PERCENTILE. BUT IF YOU ADD
7 ALCOHOL TO IT, AND I DON'T KNOW WHETHER THEY HAD ONE
8 BEER, TWO BEERS, SEVEN BEERS, THERE'S NO TESTIMONY TO
9 SUGGEST HOW MANY THEY HAD. JUST A 15 PACK? AND
10 DANIEL OWENS SAID HE ONLY HAD A COUPLE. WE ALL KNOW
11 WHAT ALCOHOL DOES. YOU CAN USE YOUR COMMON SENSE.
12 THE BRIGHTEST, MOST WELL-TRAINED PEOPLE UNDER THE
13 INFLUENCE OF ALCOHOL MAKE BAD DECISIONS. TRY ONE
14 THAT'S NOT THE BRIGHTEST. AND THAT IS THAT CHILD.
15 THAT'S THE REASON WE PREVENT LETTING CHILDREN HAVE
16 ALCOHOL UNTIL THEY ARE 21. IT DOESN'T TAKE MANY
17 BEERS FOR THEM TO DO THINGS OUT OF CHARACTER. THE
18 ONE TIME IN HIS LIFE, AND BOY HE DOES IT. AND HE
19 ACTS AGGRESSIVELY AND ENDS UP INJURING THIS GIRL AND
20 COSTING KEN PRESLEY HIS LIFE. BUT HE HAS TO BE
21 PUNISHED. BUT WHAT IS IT ABOUT HERMAN HUGHES THAT A
22 LIFE SENTENCE AS PUNISHMENT WOULD BE FAIR ABOUT IT?
23 THAT'S ANOTHER. THE AGE OR MENTALITY OF THE
24 DEFENDANT AT THE TIME OF THE CRIME. MENTAL AGE NINE
25 WHEN HE WAS 16, 17, MAYBE A FEW MONTHS. YOU HEARD

1 THAT ALMOST THREE YEARS LATER. DO WE HOLD
2 CHILDREN -- 16 YEAR OLD CHILDREN WITH THE MIND OF 11
3 YEARS OLD AS ACCOUNTABLE AS WE HOLD 25 YEAR OLD
4 ADULTS WITH A CLEAR MIND? DOES JUSTICE REQUIRE US TO
5 DO THAT, LADIES AND GENTLEMEN?

6 THE DEFENDANT WAS UNDER THE AGE OF 18 AT THE
7 TIME OF THE CRIME. CLEARLY, THE LEGISLATURE WANTS
8 EVERYONE TO CONSIDER THAT WE DON'T CONSIDER FOLKS WHO
9 ARE LESS THAN 18 AS RESPONSIBLE AS WE CONSIDER THOSE
10 OVER 18. NOW, YOU AND I BOTH KNOW THAT THERE ARE
11 KIDS AT 17 WHO ARE MORE MATURE THAN FOLKS 19 OR 20.
12 THERE IS NO MAGIC MOMENT. THE LEGISLATURE HAS PICKED
13 18. HERMAN FALLS UNDERNEATH THAT. AND CERTAINLY
14 THERE'S BEEN NO TESTIMONY ABOUT HERMAN'S MATURITY
15 BEING ABOVE HIS STATED AGE. THE DEFENDANT HAD A
16 MENTAL RETARDATION AT THE TIME OF THE CRIME. MENTAL
17 RETARDATION, MEANING SIGNIFICANTLY SUBAVERAGE,
18 GENERAL INTELLECTUAL FUNCTIONING EXISTING CURRENTLY
19 WITH DEFICITS AND ADAPTIVE BEHAVIOR. I.Q. OF 74.
20 LOWEST 6 PERCENTILE IN THE WORLD. LOWEST 1
21 PERCENTILE INTELLECTUAL FUNCTIONING, 51 BEHAVIOR
22 INCIDENTS AT SCHOOL. THAT'S THE PROBLEM WITH
23 ADAPTIVE BEHAVIOR, LADIES AND GENTLEMEN, AND IT
24 DEVELOPED AND MANIFESTED. DURING THE PERIOD FROM
25 SECOND GRADE ON, THEY HAD THIS KID PULLED OUT OF

1 SCHOOL AND INTO LEARNING DISABLED CLASSES. AND THE
2 SOLICITOR WANTS YOU TO KILL HIM. BECAUSE YOUR
3 VERDICT, LADIES AND GENTLEMEN, MEANS WHETHER
4 HERMAN HUGHES LIVES OR DIES. DOESN'T MATTER WHAT I
5 THINK. DOESN'T MATTER WHAT THE SOLICITOR THINKS.
6 DOESN'T MATTER WHAT THE JUDGE THINKS. DOESN'T MATTER
7 WHAT ANYBODY IN THIS AUDIENCE THINKS BECAUSE NONE OF
8 US HAVE TO DECIDE. I THINK BY NOW YOU KNOW CERTAINLY
9 HOW I FEEL ABOUT IT.

10 AND LADIES AND GENTLEMEN, WHEN WE TOOK OUR OATH
11 AND THE REASON YOU'RE TOLD NOT TO CONSIDER SYMPATHY
12 IS BECAUSE PASSION HAS NO PLACE IN DECISIONS ABOUT
13 APPROPRIATE PUNISHMENT IN A COURTROOM WHETHER IT BE
14 SYMPATHY OR ANGER. CAN WE FAULT THE FAMILY OF THE
15 VICTIMS FOR BEING ANGRY AT HERMAN HUGHES? NOT A BIT.
16 I HOPE THAT THEIR GRIEF -- THAT THEY CAN GET BY THEIR
17 GRIEF ONE DAY SOON. IT'S GOT TO BE DIFFICULT. I
18 CAN'T IMAGINE IT. BUT YES, THEY DESERVE TO BE ANGRY
19 AT THIS YOUNG MAN AND MR. OWENS AND KELSEY PEARCE
20 BECAUSE THE THREE OF THEM TOGETHER THAT NIGHT COST
21 THEM THEIR SON AND THEIR BROTHER. AND THEY EACH
22 PLAYED DIFFERENT ROLES. AND KELLY HOFFMAN HAD TO
23 STARE INTO THE BARREL OF A GUN AND LIVE AND REMEMBER
24 IT. HOW SCARY IT MUST HAVE BEEN. IT WAS NOT GOOD.
25 BUT YOU CAN'T COME IN HERE WITH A VERDICT OVER ANGER.

1 THAT'S WHY WE DON'T LET ANYBODY WHO IS INVOLVED WITH
2 THE VICTIMS OR THE DEFENDANT BE ALLOWED TO SIT ON THE
3 JURY. IT HAS TO BE FOLKS WHO CAN TAKE AN OATH AND
4 TELL THE TRUTH BEFORE GOD AND MAN BECAUSE YOU DON'T
5 TAKE OATHS JUST BEFORE ME -- BEFORE GOD AND MAN, TAKE
6 AN OATH THAT YOU WILL LISTEN TO THE EVIDENCE AND
7 WEIGH IT ALL AND CONSIDER IT ALL. IT DOESN'T MEAN
8 THAT AS SOON AS YOUR EMOTIONS ARE AFFECTED BY THE
9 TRAGEDY THAT YOU TURN OFF LISTENING TO THE REST OF
10 THE INFORMATION BECAUSE THERE'S TWO SIDES. AND I
11 SUBMIT TO YOU THAT THE HUNDREDS OF MURDERS THAT OCCUR
12 IN THIS STATE EACH YEAR THE MAJORITY OF WHICH RESULT
13 IN A SENTENCE OF LIFE OR LESS ARE NO LESS AGGRAVATING
14 OR LIFE DESTROYING AS THE MURDER THAT OCCURRED MARCH
15 18TH IN THIS COUNTY.

16 CONSIDER HIS LIFE, LADIES AND GENTLEMEN. THE
17 JUDGE WILL TELL YOU THAT YOU CAN DECIDE TO RECOMMEND
18 LIFE FOR ANY ONE OF THOSE MITIGATING CIRCUMSTANCES OR
19 YOU CAN CHOOSE NOT TO AT ALL. THAT'S YOUR DECISION.
20 AS MUCH AS I BELIEVE YOU SHOULD CONSIDER THEM, I
21 CAN'T MAKE YOU. YOU HAVE TO DECIDE THAT, LADIES AND
22 GENTLEMEN. I WILL ALSO TELL YOU THAT YOU CAN
23 RECOMMEND A LIFE SENTENCE FOR NO REASON AT ALL.
24 JUSTICE CRIES OUT FOR A LIFE SENTENCE, LADIES AND
25 GENTLEMEN. AS MUCH AS IT CRIES OUT FOR HIM TO BE

1 PUNISHED, IT IS SUFFICIENT FOR THIS YOUNG MAN TO BE
2 SENTENCED TO THE BALANCE OF HIS LIFE IN THE
3 DEPARTMENT OF CORRECTIONS. A YOUNG MAN WHO HAS NEVER
4 INJURED BEFORE. PEE WEE GASKINS, THIS ISN'T PEE WEE
5 GASKINS. THIS IS HERMAN HUGHES. THE PSYCHIATRIST OR
6 MAN -- I THINK IT WAS A PSYCHIATRIST FOR THE STATE
7 TALKED ABOUT HERMAN CAN THINK, HE CAN PLAN. HE'S
8 PRETTY SMART. HE KNEW -- FOR SOMEBODY WITH HIS I.Q.,
9 HE USED SOME FAIRLY BIG TERMS. HE KNEW CO-DEFENDANT.
10 HE KNEW TESTIFY, PERHAPS CROSS-EXAMINATION. LADIES
11 AND GENTLEMEN, WE'VE BEEN OVER THOSE TERMS FOR
12 MONTHS. OF COURSE HE WOULD KNOW THAT. EVEN WITH HIS
13 I.Q., WHETHER IT BE 68 OR 74 OR WHATEVER, IF YOU SAY
14 SOMETHING OVER AND OVER, THEY ARE GOING TO KNOW. AND
15 CERTAINLY HIS LIFE MATTERS AS TO WHETHER HE
16 UNDERSTOOD THOSE TERMS, AND THE COURT HAD TO BE
17 SATISFIED THAT HE WOULD KNOW THOSE TERMS. AND IF I
18 REPRESENTED HIM AND DIDN'T TEACH HIM THOSE TERMS, I
19 WOULDN'T BE DOING MY JOB.

20 AND FOR THIS CYNICAL PSYCHIATRIST WHO ACTED LIKE
21 HE DIDN'T LIKE THE WORLD TO COME IN HERE AND SAY
22 THAT, WELL, HE'S PRETTY SMART BECAUSE HE KNEW WHAT
23 CO-DEFENDANT WAS, TO TESTIFY AS A WITNESS. THE
24 FAIRNESS OF YOUR DECISION, LADIES AND GENTLEMEN OF
25 THE JURY, WILL BE FAIR TO ALL THREE INDIVIDUALS WHO

1 WERE RESPONSIBLE THAT NIGHT. DANIEL IS OUT ON BOND.
2 THAT'S WHAT HE GETS. HE GETS TEN YEARS AT THE MOST
3 FOR HIS ROLE. YOU DECIDE HERMAN'S FATE. REMEMBER,
4 HE COOPERATED. HE'S ADMITTED. DOES THAT NOT ACCOUNT
5 FOR SOMETHING, LADIES AND GENTLEMEN? DOES THAT NOT
6 COUNT FOR SOMETHING? WHEN YOU DO SOMETHING WRONG,
7 INSTEAD OF TELLING YOU HE HAS NO CONSCIENCE, LADIES
8 AND GENTLEMEN, HIS CONSCIENCE LED HIM TO TELL THEM
9 WHERE THE GUN WAS AND TELL THEM HE WAS INVOLVED.
10 THAT WEEKEND, THAT WEEKEND, WAS HE THE MOST
11 RESPONSIBLE? DEPENDS ON YOUR VERDICT. CERTAINLY HE
12 PULLED THE TRIGGER. THERE'S NO QUESTION ABOUT THAT.
13 BUT HE KNEW HE HAD DONE WRONG AND HE TOLD THEM THAT.
14 DO YOU THINK THE OTHER GENTLEMAN WOULD HAVE TOTTED
15 THAT GUN? DOES IT APPEAR THAT THEY WOULD HAVE TOLD
16 ANYTHING THAT WOULD PROTECT THEMSELVES? NOT UNTIL
17 AFTER HE GOT A DEAL DOES MR. OWENS TELL THEM THAT
18 IMPLICATED THAT.

19 IN A FEW MINUTES, LADIES AND GENTLEMEN, I'M
20 GOING TO SIT DOWN AND YOU'RE GOING TO HAVE A DECISION
21 THAT WE'LL ALL HAVE TO ACCEPT AND I'LL HAVE TO ACCEPT
22 ONE WAY OR THE OTHER DESPITE MY EFFORTS. AND
23 MR. BAILEY WILL HAVE TO ACCEPT THAT. AND THE
24 VICTIM'S FAMILY WILL HAVE TO ACCEPT IT. AND THE
25 VICTIM'S FAMILY HAS TO ACCEPT IT IF EACH AND EVERY

1 ONE OF YOU BELIEVE IN YOUR HEARTS AND MINDS AFTER
2 EXAMINING ALL OF THIS EVIDENCE THAT YOU SHOULD
3 RECOMMEND LIFE. I ASK TO YOU RECOMMEND LIFE. AND
4 ONLY UNTIL OR UNLESS EACH AND EVERY ONE OF YOU
5 BELIEVE IN YOUR HEARTS AND YOUR MINDS THAT THE ONLY
6 PUNISHMENT THAT'S APPROPRIATE IN THIS CASE IS DEATH
7 CAN YOU BRING BACK THE DEATH PENALTY RECOMMENDATION
8 BECAUSE REMEMBER HE WILL SENTENCE ACCORDING TO YOUR
9 RECOMMENDATION.

10 IT'S NOT A SUGGESTION. IT'S WHAT WILL HAPPEN.
11 REMEMBER THE THING ABOUT SYMPATHY. HE WAS WORRIED
12 THAT I'M GOING TO COME UP HERE AND ASK YOU FOR
13 SYMPATHY. THE SYMPATHY GOES BOTH WAYS. DON'T LET
14 YOUR VERDICT BE FAVORED BY SYMPATHY JUST FOR THE
15 DEFENDANT OR SYMPATHY FOR THE DEFENDANT -- EXCUSE ME,
16 FOR THE DECEDENT'S FAMILY BECAUSE I SUSPECT, LADIES
17 AND GENTLEMEN, BOTH OF THEM ARE ENTITLED TO SOME AND
18 PROBABLY MORE SO THE VICTIM'S FAMILIES BECAUSE THEY
19 DIDN'T DO ANYTHING TO PUT THEM HERE. BUT THE
20 DEFENDANT'S ENTITLED TO SOME. YOUR VERDICT CANNOT BE
21 BASED ON THAT. IT HAS TO BE BASED UPON THE TOTALITY
22 OF THE EVIDENCE AND THE FACTS. DON'T LET YOUR
23 VERDICT BE SWAYED BY PASSION. DON'T LET IT BE SWAYED
24 BY ANGER BECAUSE YOU CAN'T CONSIDER THAT. YOU HAVE
25 TO DO IT ON THE FACTS AND THE EVIDENCE. SEVEN

1 MITIGATING CIRCUMSTANCES, LADIES AND GENTLEMEN. HE
2 KNEW TO BE WORRIED ABOUT THE NUMBERS GAME BECAUSE HE
3 KNEW THAT OF THE TEN CIRCUMSTANCES OUR LEGISLATURE
4 DICTATED AS BEING IMPORTANT ENOUGH TO PUT IN LAW FOR
5 EVERY JURY TO BE INSTRUCTED TO CONSIDER THAT HERMAN
6 HUGHES QUALIFIED FOR SEVEN. AND YOU KNOW THAT HE
7 WOULD HAVE PLED GUILTY HAD WE NOT BEEN FACING THE
8 DEATH PENALTY. HE ADMITTED IT TWO DAYS AFTER IT
9 HAPPENED. HE'S READY NOW FOR YOU TO SENTENCE HIM AND
10 TO DECIDE. I ASK THAT YOU SEARCH YOUR SOLES AND YOUR
11 HEARTS AND YOUR MINDS AND REMEMBER THE EVIDENCE AND
12 RETURN A VERDICT THAT WE CAN ALL ACCEPT. THANK YOU.

13 THE COURT: THANK YOU, MR. NEWSOME. THANK
14 YOU, MR. BAILEY. THE DEFENDANT HIMSELF MAY MAKE A
15 STATEMENT IF HE CARES TO. YOU MAY PROCEED.

16 MR. HUGHES: I'M SORRY FOR WHAT I HAVE
17 DONE. I KNOW I HAVE TO PAY FOR IT.

18 THE COURT: DOES THAT NOW CONCLUDE THE
19 STATEMENT?

20 MR. HUGHES: YES, SIR.

21 THE COURT: ALL RIGHT. THANK YOU,
22 MR. BAILEY. THANK YOU, MR. NEWSOME.

23 MR. FOREMAN, MEMBERS OF THE JURY, IT NOW BECOMES
24 YOUR DUTY TO DECIDE WHAT SENTENCE YOU WILL RECOMMEND
25 TO THIS COURT OR THAT THIS COURT IMPOSES UPON THIS

1 DEFENDANT, HERMAN HUGHES. NOW, AS YOU'RE WELL AWARE,
2 THERE ARE TWO RECOMMENDATIONS FOR YOU TO CONSIDER IN
3 THIS CASE. ONE IS THE PENALTY OF DEATH, WHICH IN
4 THIS STATE IS BY ELECTROCUTION OR LETHAL INJECTION
5 AND THE OTHER POSSIBLE RECOMMENDATION TO ME IS LIFE
6 IMPRISONMENT. IN ADDITION TO THE FOREGOING, YOU ARE
7 ASKED TO DETERMINE THE EXISTENCE OR NON-EXISTENCE OF
8 ANY STATUTORY AGGRAVATING CIRCUMSTANCES. I
9 PREVIOUSLY ON YESTERDAY DEFINED THOSE FOUR AS I WILL
10 TODAY AGAIN IN THESE INSTRUCTIONS. NOW, UPON THIS
11 SHEET WHICH I HOLD IN MY HAND AND WHICH YOU WILL HAVE
12 IN THE JURY ROOM ARE WRITTEN THE WORDS STATUTORY
13 INSTRUCTIONS. YOU OF COURSE AS I HAVE INDICATED WILL
14 HAVE THIS STATUTORY -- OR THESE STATUTORY
15 INSTRUCTIONS WITH YOU IN THE JURY ROOM.

16 THE BODY OF THIS FORM STATES AS FOLLOWS, AND I
17 QUOTE: "IN DETERMINING WHETHER TO RECOMMEND THAT THE
18 DEFENDANT HERMAN HUGHES BE SENTENCED TO LIFE
19 IMPRISONMENT OR DEATH, YOU SHALL FIRST DETERMINE
20 WHETHER THE STATE HAS PROVEN THE EXISTENCE OF ONE OR
21 MORE OF THE FOLLOWING STATUTORY AGGRAVATING
22 CIRCUMSTANCES BEYOND A REASONABLE DOUBT. THE
23 FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCES ARE
24 THOSE THAT THE STATE ALLEGES AND THEY MUST PROVE
25 BEYOND A REASONABLE DOUBT. ONE OF THE AGGRAVATING

1 CIRCUMSTANCES IS THAT THE MURDER OF KENNETH PRESSLY
2 WAS COMMITTED WHILE IN THE COMMISSION OF ROBBERY
3 WHILE ARMED WITH A DEADLY WEAPON. TWO, THE MURDER OF
4 KENNETH PRESSLY WAS COMMITTED WHILE IN THE COMMISSION
5 OF LARCENY WHILE ARMED WITH A DEADLY WEAPON. AND
6 THREE, THE OFFENDER, BY HIS ACT OF MURDER OF KENNETH
7 PRESLEY KNOWINGLY CREATED A GREAT RISK OF DEATH TO
8 MORE THAN ONE PERSON IN A PUBLIC PLACE BY MEANS OF A
9 WEAPON OR DEVICE WHICH NORMALLY WOULD BE HAZARDOUS TO
10 THE LIVES OF MORE THAN ONE PERSON."

11 LET ME EMPHASIZE TO YOU, LADIES AND GENTLEMEN,
12 THAT THESE ARE THE ONLY CIRCUMSTANCES THAT YOU MAY
13 CONSIDER AS AGGRAVATING CIRCUMSTANCES. IF YOU DO NOT
14 UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE
15 ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES LISTED
16 ABOVE, YOU SHALL SO INDICATE ON PART "A" OF THE
17 SENTENCING VERDICT ENTITLED JURY'S VERDICT PROOF OF
18 AGGRAVATING CIRCUMSTANCES. AT THIS POINT, YOU WILL
19 CEASE DELIBERATIONS AND RETURN TO THE COURTROOM WITH
20 YOUR VERDICT, WHICH IS TO BE SIGNED BY THE FOREMAN.
21 THAT IS IN THE EVENT YOU DO NOT FIND ANY AGGRAVATING
22 CIRCUMSTANCES AND THAT IS INDICATED ON THIS FORM.

23 IF -- AND I USE THE WORD ADVISEDLY -- IF,
24 HOWEVER, YOU UNANIMOUSLY FIND THE EXISTENCE OF ONE OR
25 MORE OF THE ALLEGED STATUTORY AGGRAVATING

1 CIRCUMSTANCES LISTED ABOVE, YOU SHALL SO INDICATE ON
2 PART "B" OF THE SENTENCING FORM. THIS FORM, IF THIS
3 FINDING IS MADE BY YOU, AND THAT IS THE FINDING OF
4 AGGRAVATING CIRCUMSTANCES, IF THIS IS MADE BY YOU,
5 MUST BE SIGNED BY EVERY MEMBER OF THE JURY IF YOU
6 UNANIMOUSLY FIND THE EXISTENCE OF ONE OR MORE OF THE
7 ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES
8 DESIGNATED IN THIS FINDING ON PART 1-B OF THE
9 SENTENCING VERDICT ENTITLED "JURY'S VERDICT OF PROOF
10 OF AGGRAVATING CIRCUMSTANCES." THESE INSTRUCTIONS
11 ARE CLEARLY OUTLINED FOR YOU IN THAT REGARD.

12 IF YOU FIND AGGRAVATING CIRCUMSTANCES AND ALL 12
13 MEMBERS HAVE SO INDICATED, YOU MUST THEN CONTINUE
14 YOUR DELIBERATIONS IN ORDER TO DETERMINE WHETHER YOU
15 SHALL RECOMMEND THAT THE DEFENDANT HERMAN HUGHES BE
16 SENTENCED TO LIFE IMPRISONMENT OR TO DEATH BY
17 ELECTROCUTION OR LETHAL INJECTION.

18 NOW, IN THE TRIAL OF THIS CASE, THE STATE HAS
19 PRESENTED FORMER -- ALLEGATIONS OF FORMER MISCONDUCT
20 BY THE DEFENDANT WHICH HAVE NOT BEEN THE SUBJECT OF A
21 CONVICTION. THE STATE HAS PRESENTED THIS INFORMATION
22 TO YOU AS EVIDENCE OF HIS CHARACTER. THESE PREVIOUS
23 ALLEGATIONS OF MISCONDUCT, IF ANY, MAY ONLY BE
24 CONSIDERED BY YOU IN REFERENCE TO THE CHARACTER OF
25 THE DEFENDANT AND FOR NO OTHER PURPOSE. THEY MAY NO

1 BE CONSIDERED BY YOU AS AGGRAVATING CIRCUMSTANCES.
2 THIS DEFENDANT IS ON TRIAL FOR HIS LIFE AND IT IS
3 IMPORTANT THAT YOU HAVE FOR YOUR CONSIDERATION ALL
4 PERTINENT INFORMATION ABOUT HIM. THIS EVIDENCE OF
5 FORMER INVOLVEMENT WHICH HAS NOT BEEN THE SUBJECT OF
6 A CONVICTION, IF YOU BELIEVE, MAY BE CONSIDERED BY
7 YOU AND GIVEN WHATEVER WEIGHT, IF ANY, THAT YOU FEEL
8 IT IS ENTITLED TO. I EMPHASIZE, HOWEVER, AGAIN, THAT
9 THESE ALLEGED INCIDENTS MAY NOT BE USED BY YOU AS
10 EVIDENCE OF AGGRAVATING CIRCUMSTANCES.

11 NOW, BY THIS FORM, WHICH I HOLD IN MY HAND, PART
12 A, YOU THE JURY CAN RECOMMEND TO THIS COURT THAT THE
13 DEFENDANT BE SENTENCED TO LIFE IN PRISON. I WILL NOW
14 READ THE TEXT OF THIS RECOMMENDATION FORM, AND I
15 QUOTE, "WE THE JURY IN THE ABOVE ENTITLED CASE
16 UNANIMOUSLY RECOMMEND THAT THE DEFENDANT HERMAN
17 HUGHES BE IMPRISONED IN THE STATE PENITENTIARY FOR
18 THE BALANCE OF HIS NATURAL LIFE." PLEASE NOTE THAT
19 ALTHOUGH YOU MUST UNANIMOUSLY AGREE TO RECOMMEND LIFE
20 IMPRISONMENT, ONLY THE FOREMAN IS REQUIRED TO SIGN
21 THIS RECOMMENDATION FORM OF LIFE IMPRISONMENT. ONLY
22 THE FOREMAN WOULD SIGN SUCH A RECOMMENDATION IF IN
23 FACT THAT BE YOUR RECOMMENDATION. NOW, I HOLD UP
24 THIS SAME FORM. BY THIS FORM, WHICH I HOLD IN MY
25 HAND, PART B, YOU THE JURY CAN RECOMMEND TO THIS

1 COURT THAT THE DEFENDANT BE SENTENCED TO DEATH.
2 PLEASE OBSERVE THAT IMMEDIATELY BELOW THE BODY OF
3 THIS RECOMMENDATION THERE ARE LINES. THIS IS WHERE
4 SHOULD YOU DECIDE TO RECOMMEND THE DEATH PENALTY,
5 EACH ONE OF YOU WOULD SIGN YOUR NAME. I EMPHASIZE TO
6 YOU IT IS THE LAW IN THIS STATE, MR. FOREMAN AND
7 MEMBERS OF THE JURY, THAT A RECOMMENDATION FOR THE
8 IMPOSITION OF THE DEATH PENALTY BE A UNANIMOUS
9 RECOMMENDATION AND IT IS REQUIRED THAT EACH AND EVERY
10 JUROR SIGN HIS NAME TO THAT RECOMMENDATION FORM IF IN
11 FACT THE PENALTY OF DEATH IS YOUR RECOMMENDATION TO
12 ME.

13 NOW I WILL NOW INSTRUCT YOU ON WHAT YOU MAY
14 CONSIDER IN MAKING YOUR DECISION AS TO WHICH SENTENCE
15 YOU DESIRE TO RECOMMEND TO ME. LET ME FIRST DISCUSS
16 WITH YOU STATUTORY AGGRAVATING CIRCUMSTANCES. WHAT
17 IS A STATUTORY AGGRAVATING CIRCUMSTANCE? YOU WILL
18 RECALL THAT I TOLD YOU ABOUT IT YESTERDAY AND I WANT
19 TO EMPHASIZE IT TO YOU AGAIN. IT IS A FACT, AN
20 INCIDENT, A DETAIL OR AN OCCURRENCE WHICH YOUR
21 GENERAL ASSEMBLY HAS DECLARED BY STATUTE WOULD MAKE
22 WORSE, THAT IS, AGGRAVATE THE OFFENSE OF MURDER WHEN
23 THE TWO OCCUR TOGETHER. IN OTHER WORDS, IT IS
24 SOMETHING WHICH INCREASES THE ENORMITY OR ADDS TO THE
25 INJURIOUS CONSEQUENCE OF THE OFFENSE OF MURDER. IF

1 YOU FIND THE EXISTENCE BEYOND A REASONABLE DOUBT OF A
2 STATUTORY AGGRAVATING CIRCUMSTANCE, THEN YOU ARE
3 PERMITTED BUT NOT REQUIRED TO RECOMMEND THE DEATH
4 PENALTY.

5 THERE ARE THREE CONDITIONS WHICH YOU SHOULD
6 CONSIDER IN REACHING YOUR DECISION. FIRST, WHETHER
7 THE DEFENDANT HAS PROVEN BY ANY EVIDENCE THE
8 EXISTENCE OF A STATUTORY MITIGATING CIRCUMSTANCE.
9 SECOND, WHETHER THE DEFENSE HAS PROVEN BY ANY
10 EVIDENCE THE EXISTENCE OF ANY OTHER MITIGATING
11 CIRCUMSTANCES, AND THIRD, WHETHER FOR ANY REASON THAT
12 YOU CAN THINK OF OR FOR NO REASON AT ALL, SIMPLY AS
13 AN ACT OF MERCY, THE DEFENDANT SHOULD BE SENTENCED TO
14 LIFE IN PRISON.

15 I HAVE MENTIONED THE WORD STATUTORY MITIGATING
16 CIRCUMSTANCES. AND LET ME NOW DISCUSS AND DEFINE
17 THAT TERM WITH YOU. WHAT IS A STATUTORY MITIGATING
18 CIRCUMSTANCE? IT IS A FACT, AN INCIDENT, A DETAIL OR
19 AN OCCURRENCE WHICH THE GENERAL ASSEMBLY HAS DECLARED
20 BY STATUTE WHICH WOULD REDUCE THE SEVERITY OF THE
21 OFFENSE OF MURDER. IN OTHER WORDS, IT IS A
22 CIRCUMSTANCE RECOGNIZED BY STATUTE AS ONE WHICH IN
23 FAIRNESS AND IN MERCY MAY BE CONSIDERED AS
24 EXTENUATING OR AS REDUCING THE DEGREE OF MORAL
25 CULPABILITY FOR THE COMMISSION OF THE ACT OF MURDER.

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

5 WHAT STATUTORY MITIGATING CIRCUMSTANCES SHOULD
6 YOU CONSIDER IN THIS CASE? I REFER YOU ONCE AGAIN TO
7 THIS SHEET OF PAPER ENTITLED STATUTORY INSTRUCTIONS
8 WHICH WILL BE WITH YOU IN THE JURY ROOM. IT PROVIDES
9 AS FOLLOWS: IN DETERMINING WHETHER TO RECOMMEND THAT
10 THE DEFENDANT HERMAN HUGHES BE SENTENCED TO LIFE
11 IMPRISONMENT OR TO DEATH, YOU MAY CONSIDER ANY OF THE
12 STATUTORY AGGRAVATING CIRCUMSTANCES FOUND BY YOU TO
13 EXIST BEYOND A REASONABLE DOUBT. YOU MAY ALSO
14 CONSIDER ANY OF THE FOLLOWING MITIGATING
15 CIRCUMSTANCES. ONE, THE DEFENDANT HAS NO SIGNIFICANT
16 HISTORY OF PRIOR CRIMINAL ACTS INVOLVING THE USE OF
17 VIOLENCE AGAINST ANOTHER PERSON. TWO, THE MURDER WAS
18 COMMITTED WHILE THE DEFENDANT WAS UNDER THE INFLUENCE
19 OF MENTAL OR EMOTIONAL DISTURBANCE. THREE, YOU MAY
20 CONSIDER THE CAPACITY OF THE DEFENDANT TO APPRECIATE
21 THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS
22 CONDUCT TO THE REQUIREMENTS OF LAW WERE SUBSTANTIALLY
23 IMPAIRED. YOU MAY CONSIDER THE AGE OR MENTALITY OF
24 THE DEFENDANT AT THE TIME OF THE CRIME. YOU MAY
25 CONSIDER THE DEFENDANT WAS BELOW THE AGE OF 18 AT THE

1 TIME OF THE CRIME. YOU MAY CONSIDER THAT THE
2 DEFENDANT HAD MENTAL RETARDATION AT THE TIME OF THE
3 CRIME. MENTAL RETARDATION MEANS SIGNIFICANTLY
4 SUBAVERAGE GENERAL INTELLECTUAL FUNCTIONING EXISTING
5 WITH DEFICIT IN ADAPTIVE BEHAVIOR AND MANIFESTED
6 DURING THE DEVELOPMENT PERIOD. FURTHERMORE, YOU MAY
7 CONSIDER ANY OTHER MITIGATING CIRCUMSTANCES WHICH ARE
8 SUPPORTED BY THE EVIDENCE. YOU MAY CONSIDER WHETHER
9 OR NOT THE DEFENDANT ACTED UNDER DURESS OR UNDER THE
10 DOMINATION OF ANOTHER PARTY. YOU MAY CONSIDER ANY
11 OTHER MITIGATING CIRCUMSTANCES WHICH ARE SUPPORTED BY
12 THE EVIDENCE IN THIS CASE.

13 A NON-STATUTORY MITIGATING CIRCUMSTANCES IS ONE
14 WHICH IS NOT PROVIDED FOR BY STATUTE, BUT IT IS ONE
15 WHICH THE DEFENDANT CLAIMS SERVES THE SAME PURPOSE.
16 THAT IS, TO REDUCE THE DEGREE OF HIS GUILT IN THE
17 OFFENSE. WHILE THERE MUST BE SOME EVIDENCE WHICH
18 SUPPORTS A FINDING BY YOU THAT A STATUTORY OR
19 NON-STATUTORY MITIGATING CIRCUMSTANCE EXISTS, YOU
20 NEED NOT FIND THE EXISTENCE OF SUCH A MITIGATING
21 CIRCUMSTANCE BEYOND A REASONABLE DOUBT. IN REACHING
22 YOUR DECISION AS TO WHICH SENTENCE TO RECOMMEND, YOU
23 WILL CONSIDER THE AGGRAVATING AND THE MITIGATING
24 CIRCUMSTANCES. WHILE AN AGGRAVATING CIRCUMSTANCE
25 MUST BE FOUND BEFORE YOU CAN EVEN CONSIDER

1 RECOMMENDING THE DEATH PENALTY, ONCE SUCH FINDING
2 MADE BEYOND A REASONABLE DOUBT, YOU MAY RECOMMEND THE
3 DEATH PENALTY EVEN THOUGH YOU FIND THE EXISTENCE OF A
4 STATUTORY MITIGATING CIRCUMSTANCE OR A NON-STATUTORY
5 MITIGATING CIRCUMSTANCE. IN OTHER WORDS, THE
6 EXISTENCE OF AN ALLEGED STATUTORY MITIGATING
7 CIRCUMSTANCES IS NOT A BAR TO THE IMPOSITION OF THE
8 DEATH PENALTY.

9 THE THIRD ELEMENT YOU MAY CONSIDER IF YOU
10 CONCLUDE THAT A STATUTORY AGGRAVATING CIRCUMSTANCE
11 EXISTS IS WHETHER THE DEFENDANT SHOULD BE SENTENCED
12 TO LIFE IMPRISONMENT FOR ANY REASON OR FOR NO REASON
13 AT ALL. THIS IS WHAT HAS BEEN TRADITIONALLY REFERRED
14 TO AS A RECOMMENDATION OF MERCY. AND SHOULD SUCH BE
15 YOUR DECISION, YOU WOULD SO INDICATE BY RETURNING TO
16 THE COURT THE RECOMMENDATION OF LIFE FORM WHICH WILL
17 BE SIGNED BY THE FOREMAN ALONE. IN OTHER WORDS,
18 LADIES AND GENTLEMEN, YOU MAY CHOOSE TO RECOMMEND
19 LIFE IMPRISONMENT IF YOU FIND A STATUTORY OR
20 NON-STATUTORY MITIGATING CIRCUMSTANCE OR YOU MAY
21 CHOOSE TO RECOMMEND LIFE IMPRISONMENT AS AN ACT OF
22 MERCY. IN ANY INSTANCE, SHOULD YOU CHOOSE TO
23 RECOMMEND LIFE IMPRISONMENT, YOUR DECISION MUST BE A
24 UNANIMOUS ONE AND THE FOREMAN ALONE WOULD BE REQUIRED
25 TO SIGN THE RECOMMENDATION OF LIFE IMPRISONMENT.

1 I WILL NOW SUMMARIZE WHAT I HAVE JUST TOLD YOU,
2 MR. FOREMAN AND LADIES AND GENTLEMEN OF THE JURY.
3 YOU WILL HAVE IN THE JURY ROOM DURING YOUR
4 DELIBERATIONS THREE FORMS. THE FIRST FORM IS THE
5 STATUTORY INSTRUCTIONS THAT I'VE BEEN REFERRING TO.
6 THE SECOND FORM IS THE JURY'S VERDICT OF AGGRAVATING
7 CIRCUMSTANCES FOUND UNANIMOUSLY AND IS TO BE SIGNED
8 BY ALL MEMBERS OF THE JURY. AND THE THIRD FORM IS
9 THE JURY'S DETERMINATION OF THE SENTENCE TO BE
10 IMPOSED, EITHER LIFE IMPRISONMENT OR DEATH.

11 THE STATUTORY INSTRUCTIONS STATE THE ONLY
12 AGGRAVATING CIRCUMSTANCES YOU SHALL CONSIDER IN THIS
13 CASE. SHOULD YOU FAIL TO FIND BEYOND A REASONABLE
14 DOUBT THAT ONE OF THESE CIRCUMSTANCES EXISTED AT THE
15 TIME THE MURDER WAS COMMITTED, THEN YOU WOULD GO NO
16 FURTHER. YOUR RECOMMENDATION MUST THEREFORE BE FOR
17 LIFE IMPRISONMENT. SHOULD YOU FIND BEYOND A
18 REASONABLE DOUBT THE EXISTENCE OF AN AGGRAVATING
19 CIRCUMSTANCE OR CIRCUMSTANCES, YOU WOULD THEN BE
20 AUTHORIZED TO CONSIDER THE RECOMMENDATION OF THE
21 DEATH PENALTY. IN YOUR DELIBERATIONS, YOU WILL
22 CONSIDER ANY STATUTORY OR NON-STATUTORY MITIGATING
23 CIRCUMSTANCES WHICH ARE SUPPORTED BY THE EVIDENCE.
24 YOU WILL CONSIDER THE AGGRAVATING CIRCUMSTANCES YOU
25 FOUND ALONG WITH THE MITIGATING CIRCUMSTANCES AND YOU

1 WILL THEN DECIDE WHETHER YOU WILL RECOMMEND THE DEATH
2 PENALTY OR LIFE IMPRISONMENT. AND LADIES AND
3 GENTLEMEN, YOU MAY ALSO CONSIDER ANY OTHER FACTOR IN
4 MITIGATION OF THE OFFENSE AND YOU MAY RECOMMEND A
5 SENTENCE OF LIFE IMPRISONMENT FOR NO REASON AT ALL.
6 IF YOU DECIDE TO RECOMMEND THE DEATH PENALTY, YOU
7 MUST COMPLETE THE ENTIRE FORM AND ALL 12 JURORS MUST
8 SIGN THE RECOMMENDATION FOR THE IMPOSITION OF THE
9 DEATH PENALTY. SHOULD YOU DECIDE TO RECOMMEND LIFE
10 IMPRISONMENT, ONLY THE FOREMAN WOULD SIGN AND NO
11 REASON IS TO BE GIVEN FOR YOUR DECISION.

12 NOW, LADIES AND GENTLEMEN, IT IS IMPORTANT FOR
13 YOU TO UNDERSTAND UPON YOUR OATH AS JURORS, WHATEVER
14 YOUR RECOMMENDATION IS, IT MUST BE A UNANIMOUS ONE.
15 THAT IS TO SAY IT MUST BE THE VERDICT OF EACH AND
16 EVERY JUROR, A UNANIMOUS VERDICT EITHER WAY.

17 FOR FINAL INSTRUCTION, IN CONSIDERING WHETHER TO
18 RECOMMEND THE DEFENDANT TO BE SENTENCED TO DEATH OR
19 TO LIFE IMPRISONMENT, I CHARGE YOU THAT AS JURORS,
20 YOU MUST DECIDE THE ISSUES INVOLVED IN THIS
21 PROCEEDING WITHOUT BIAS AND WITHOUT PREJUDICE TO ANY
22 PARTY. BOTH THE STATE AND THE DEFENDANT HAVE A RIGHT
23 TO EXPECT THAT EACH OF YOU WILL CAREFULLY AND
24 IMPARTIALLY CONSIDER ALL OF THE EVIDENCE IN THE CASE
25 AND THAT YOU WILL FOLLOW THE LAW AS I HAVE EXPLAINED

1 THIS TO YOU. THROUGHOUT THIS CHARGE, I HAVE USED THE
2 TERM "RECOMMENDED SENTENCE OF LIFE" OR "RECOMMENDED
3 SENTENCE OF DEATH." PLEASE BE ADVISED, HOWEVER, THAT
4 WHILE I HAVE USED THE TERM RECOMMENDED, THE SENTENCE
5 OF THIS COURT WILL BE THE RECOMMENDATION TO ME BY YOU
6 THE JURY WITH REGARDS TO EITHER FORM OF YOUR VERDICT.
7 SO I USE THE WORD RECOMMEND SIMPLY BECAUSE THE
8 STATUTE REQUIRES THAT TERM. BUT IN SAYING THAT, I
9 TELL YOU THAT THE SENTENCE THAT THIS JURY SENDS TO ME
10 BY WAY OF RECOMMENDATION WILL BE THE SENTENCE IMPOSED
11 BY THIS COURT. NOW, IN THE CONSIDERATION, LADIES AND
12 GENTLEMEN, OF WHETHER TO RECOMMEND THAT THE DEFENDANT
13 BE SENTENCED TO DEATH OR TO LIFE IMPRISONMENT, I
14 CHARGE YOU THAT YOU ARE NOT TO ALLOW ANY PASSION,
15 PREJUDICE, OR ANY OTHER ARBITRARY FACTOR TO INFLUENCE
16 YOUR JUDGMENT. AS JURORS, YOU MUST DECIDE THE ISSUES
17 INVOLVED IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT
18 PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELVES
19 TO BE GOVERNED BY MERE SYMPATHY, BY PREJUDICE, BY
20 PASSION, OR BY PUBLIC OPINION. BOTH THE STATE AND
21 THIS DEFENDANT HAVE THE RIGHT TO EXPECT THAT EACH OF
22 YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF
23 THE EVIDENCE IN THE CASE AND THEY HAVE A RIGHT TO
24 EXPECT FROM YOU THAT YOU WILL FOLLOW THE LAW AS I
25 HAVE GIVEN IT TO YOU IN DETERMINING YOUR

1 RECOMMENDATIONS.

2 NOW, MR. FOREMAN, LADIES AND GENTLEMEN, I AM
3 GOING TO EXCUSE YOU AT THIS MOMENT. DO NOT BEGIN
4 YOUR DELIBERATIONS UNTIL I HAVE SENT ALL OF THE
5 MATTERS IN EVIDENCE IN TO YOU. IT WILL BE THERE FOR
6 YOUR PERUSAL AND I WILL SEND YOU THESE THREE FORMS
7 THAT I'VE INDICATED. THE FIRST FORM IS THE STATUTORY
8 INSTRUCTIONS THAT WE TALKED ABOUT. THE SECOND FORM
9 IS THE JURY'S VERDICT WITH REGARDS TO ANY AGGRAVATING
10 CIRCUMSTANCES THAT THEY MAY FIND AND THE THIRD FORM
11 IS EITHER THE RECOMMENDATION OF LIFE IMPRISONMENT
12 WHICH WOULD BE SIGNED BY THE FOREMAN, OR THE
13 RECOMMENDATION OF DEATH WHICH WOULD BE SIGNED BY ALL
14 12. I'M GOING TO ASK YOU TO STEP OUT, DISCUSS WITH
15 THE ATTORNEYS WHETHER OR NOT THERE'S ANY OTHER
16 CHARGES THAT THEY NEED ME TO GIVE TO YOU. IF THERE
17 ARE NONE, WE WILL BE SENDING THIS IN AND TELL YOU TO
18 BEGIN YOUR DELIBERATIONS. IF THERE ARE -- IF THERE
19 HAPPENS TO BE ONE, I'LL CALL YOU BACK OUT. BUT YOU
20 WILL KNOW IN JUST A MINUTE. IF I SEND THE BAILIFF IN
21 AND SAY TO YOU YOU MAY BEGIN YOUR DELIBERATIONS WHEN
22 THE EVIDENCE COMES IN, DO SO. AND YOU WILL GET THAT
23 INSTRUCTION FROM ME IN ABOUT 30 SECONDS ONE WAY OR
24 THE OTHER. THANK YOU SO MUCH. AND LADIES AND
25 GENTLEMEN, LET ME SAY THIS TO YOU. THIS HAS BEEN A

1 LONG AND ARDUOUS TRIAL AND LENGTHY INSTRUCTIONS, BUT
2 I'M PARTICULARLY APPRECIATIVE OF THE ATTENTION THAT
3 EACH AND ALL OF YOU HAVE GIVEN TO THIS COURT AND TO
4 THE COMMENTS OF THE SOLICITOR AND OF THE DEFENSE. WE
5 ALL DEEPLY APPRECIATE IT. YOU MAY NOW GO TO THE JURY
6 ROOM. THANK YOU SO MUCH. THE ALTERNATES PLEASE
7 REMAIN IN THE COURTROOM.

8 TAKE THE ALTERNATES SOMEWHERE, PLEASE.

9 (WHEREUPON, THE JURY WAS REMOVED
10 FROM THE COURTROOM AND THE
11 FOLLOWING PROCEEDINGS COMMENCED
12 IN OPEN COURT.)

13 THE COURT: YOU MAY COME DOWN, PLEASE, AND
14 FOLLOW THEM. I AGAIN WILL HAVE TO KEEP YOU WITH ME
15 IN THE EVENT SOMEBODY MIGHT GET SICK. AT THE TIME
16 THE VERDICT IS ANNOUNCED, I'LL BRING YOU BACK OUT AND
17 YOU WILL REJOIN THE JURY. MAKE SURE THEY HAVE LUNCH
18 FOR THEM TOO, NOW.

19 ALL RIGHT. NO JURORS -- ARE THERE ANY ADDITIONS
20 OR EXCEPTIONS? FOR THE STATE, ANY ADDITION OR OR
21 EXCEPTION?

22 MR. BAILEY: YOUR HONOR, THE ONLY THING
23 I'VE GOT IN MY NOTES, AND I'M NOT SURE WHETHER YOU
24 DID IT YESTERDAY OR NOT, BUT THERE WAS NO -- THE
25 DEFENDANT, NO ADVERSE INFERENCE.

1 THE COURT: I DID THAT THIS MORNING AS WE
2 BEGAN.

3 MR. BAILEY: ALL RIGHT, SIR.

4 THE COURT: THE FIRST THING THIS MORNING I
5 TOLD THEM AT THE END THAT -- YOU AGREE -- THAT HE WAS
6 TOLD AND I CONSULTED YOU AND TOLD THEM THAT EVEN AT
7 THAT DATE, HE WOULD BE PERMITTED TO TESTIFY.

8 MR. BAILEY: YES, SIR.

9 THE COURT: THAT WAS DONE JUST BEFORE
10 SUMMATION STARTED. YOU AGREE WITH THAT?

11 MR. NEWSOME: YES, SIR. I HAVE NO
12 EXCEPTIONS OR ADDITIONS EITHER.

13 THE COURT: OKAY. ANY OTHER EXCEPTION OR
14 ADDITION?

15 MR. BAILEY: NO, SIR, YOUR HONOR.

16 THE COURT: MY NOTES REFLECT THAT AND THAT
17 OCCURRED. LET THE RECORD THEN REFLECT THAT UPON
18 QUESTIONING OF COUNSEL FOR THE STATE AND THE DEFENSE,
19 THERE ARE NO EXCEPTIONS TO THE CHARGE OR NO ADDITIONS
20 REQUESTED. THE CHARGE NOW WILL STAND.

21 GENTLEMEN, COME FORWARD AND LET'S AGREE ON WHAT
22 GOES INTO EVIDENCE.

23 (WHEREUPON, THE JURY BEGINS
24 DELIBERATIONS AT 1:20 P.M.)

25 (WHEREUPON, A BREAK WAS TAKEN

1 FROM THE PROCEEDINGS.)

2 THE COURT: THANK YOU. PLEASE BRING THE
3 JURY IN, PLEASE.

4 (WHEREUPON, THE JURY WAS RETURNED
5 TO THE COURTROOM AT 3:26 P.M. AND
6 THE FOLLOWING PROCEEDINGS WERE
7 COMMENCED IN OPEN COURT.)

8 THE COURT: MR. COURT REPORTER, LET THE
9 RECORD REFLECT THAT THE SOLICITOR, THE DEFENDANT AND
10 HIS ATTORNEY ARE PRESENT IN COURT. MR. FOREMAN,
11 LADIES AND GENTLEMEN, I HAVE RECEIVED THE FOLLOWING
12 COMMUNICATION WHICH IS MADE A PART OF THIS RECORD.
13 THE QUESTION, "IS THERE EVER A POSSIBILITY OF
14 PAROLE?" IS THAT THE QUESTION?

15 THE FOREPERSON: YES, SIR.

16 THE COURT: ALL RIGHT. I INSTRUCT YOU,
17 MR. FOREMAN AND LADIES AND GENTLEMEN OF THIS JURY,
18 THAT YOU SHALL NOT CONSIDER PAROLE ELIGIBILITY IN
19 REACHING YOUR DECISION AND THAT I INSTRUCT YOU AS
20 FOLLOWS, THAT THE TERM LIFE IMPRISONMENT AND THE TERM
21 DEATH SENTENCE SHOULD BE UNDERSTOOD IN THEIR ORDINARY
22 AND PLAIN MEANING. YOU MAY NOW RETIRE TO THE JURY
23 ROOM. THANK YOU SO MUCH.

24 (WHEREUPON, THE JURY WAS REMOVED
25 FROM THE COURTROOM AND THE

1 FOLLOWING PROCEEDINGS COMMENCED
2 IN OPEN COURT AT 3:27 P.M.)
3 (COURT'S EXHIBIT NUMBER 8
4 MARKED FOR IDENTIFICATION.)

5 V E R D I C T

6 THE COURT: THANK YOU, LADIES AND
7 GENTLEMEN. PLEASE BE SEATED. LADIES AND GENTLEMEN,
8 I'M ADVISED THAT THE JURY HAS NOW REACHED A VERDICT.
9 I WOULD UNDERSTAND THIS IS A VERY EMOTIONAL
10 SITUATION, BUT I TELL YOU NOW THAT I CAN'T PERMIT ANY
11 OUTCRY, ANY EXPRESSION OF ANYONE WITH REGARDS TO THE
12 VERDICT, ANY OUTBURST OF ANY KIND. GIVEN THE NATURE
13 OF THESE PROCEEDINGS, I KNOW THAT WOULD BE EXTREMELY
14 DIFFICULT FOR ANYBODY CONCERNED. NOW, IF THERE'S
15 ANYBODY WITHIN THE SOUND OF MY VOICE THAT CAN'T
16 ADHERE TO WHAT I SAY, I URGE YOU TO LEAVE AT THIS
17 TIME. I HAVE PLACED OFFICERS AROUND THE COURTROOM
18 AND I TELL YOU THAT IF THIS ADMONITION IS VIOLATED, I
19 WILL FIND THAT INDIVIDUAL IN CONTEMPT OF COURT AND
20 DEAL WITH HIM OR HER APPROPRIATELY. I WOULD NOT WISH
21 TO DO THAT, BUT I TELL EVERYBODY, NOW, WITHIN THE
22 SOUND OF MY VOICE THAT I WILL NOT TOLERATE IT. BRING
23 THE JURY IN.

24 (WHEREUPON, THE JURY WAS RETURNED
25 TO THE COURTROOM AND THE FOLLOWING

1 PROCEEDINGS WERE COMMENCED IN
2 OPEN COURT AT 6:17 P.M.)

3 THE CLERK: MR. FOREMAN, YOU'VE REACHED A
4 VERDICT?

5 THE FOREPERSON: WE HAVE.

6 THE COURT: IF YOU WOULD, PLEASE PASS IT
7 UP. PUBLISH THE VERDICT.

8 THE CLERK: STATE OF SOUTH CAROLINA VERSUS
9 HERMAN HUGHES, JURY'S VERDICT ON PROOF OF AGGRAVATING
10 CIRCUMSTANCES, WE THE JURY IN THE ABOVE ENTITLED CASE
11 UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THE
12 EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATED
13 CIRCUMSTANCES. NUMBER ONE, MURDER OF KENNETH PRESLEY
14 WHILE IN THE COMMISSION OF A ROBBERY. TWO, THE
15 MURDER OF KENNETH PRESLEY WAS COMMITTED WHILE IN THE
16 COMMISSION OF LARCENY. THREE, THE OFFENDER BY HIS
17 ACT OF MURDER OF KENNETH PRESLEY KNOWINGLY CREATED A
18 GREAT RISK OF DEATH TO MORE THAN ONE PERSON AND IN A
19 PUBLIC PLACE BY MEANS OF A WEAPON OR DEVICE WHICH
20 NORMALLY WOULD BE HAZARDOUS TO THE -- I CAN'T MAKE
21 OUT -- I CAN'T MAKE OUT SOME OF THIS.

22 THE COURT: ASK THE FOREMAN, PLEASE, TO --
23 I CAN'T MAKE OUT THAT LAST LITTLE BIT. RISK TO
24 THE --

25 THE FOREPERSON: TO THE LIVES OF MORE THAN

1 ONE PERSON.

2 THE CLERK: OKAY. WOULD BE HAZARDOUS TO
3 THE LIVES OF MORE THAN ONE PERSON.

4 JURY'S DETERMINATION OF THE SENTENCE TO BE
5 IMPOSED, WE THE JURY IN THE ABOVE-ENTITLED CASE
6 UNANIMOUSLY RECOMMEND THAT THE DEFENDANT HERMAN
7 HUGHES BE SENTENCED TO DEATH, SIGNED BY ALL OF THE
8 JURORS.

9 MR. FOREMAN AND LADIES AND GENTLEMEN OF THE
10 JURY, IF THAT BE YOUR VERDICT, SO SAY YOU YES.

11 (WHEREUPON, ALL ANSWER IN THE AFFIRMATIVE.)

12 THE COURT: DO YOU REQUIRE THE POLLING OF
13 THE JURY?

14 MR. NEWSOME: YES, YOUR HONOR, I DO.

15 THE COURT: POLL THE JURY.

16 THE CLERK: WILLIAM BARRON, IS THIS YOUR
17 VERDICT AND STILL YOUR VERDICT?

18 THE JUROR: YES.

19 THE CLERK: BRENDA WISE, IS THIS YOUR
20 VERDICT AND STILL YOUR VERDICT?

21 THE JUROR: YES.

22 THE CLERK: EARNEST VERNON, IS THIS YOUR
23 VERDICT AND STILL YOUR VERDICT?

24 THE JUROR: YES.

25 THE CLERK: EVERETT ATKINS, IS THIS YOUR

1 VERDICT AND STILL YOUR VERDICT?

2 THE JUROR: YES, SIR.

3 THE CLERK: ANNA EDWARDS, IS THIS YOUR

4 VERDICT AND STILL YOUR VERDICT?

5 THE JUROR: YES, SIR.

6 THE CLERK: CAROL HUDSON, IS THIS YOUR

7 VERDICT AND STILL YOUR VERDICT?

8 THE JUROR: YES, SIR.

9 THE CLERK: TEDDY POUND, IS THIS YOUR

10 VERDICT AND STILL YOUR VERDICT?

11 THE JUROR: YES, SIR.

12 THE CLERK: MARY GUNNER, IS THIS YOUR

13 VERDICT AND STILL YOUR VERDICT?

14 THE JUROR: YES, SIR.

15 THE CLERK: KATHY CHEESEBORO, IS THIS YOUR

16 VERDICT AND STILL YOUR VERDICT?

17 THE JUROR: YES.

18 THE CLERK: ROBIN WILLIAMS, IS THIS YOUR

19 VERDICT AND STILL YOUR VERDICT?

20 THE JUROR: YES.

21 THE CLERK: PATRICIA WISE, IS THIS YOUR

22 VERDICT AND STILL YOUR VERDICT?

23 THE JUROR: YES.

24 THE CLERK: NATALIE MCMICKVER, IS THIS

25 YOUR VERDICT AND STILL YOUR VERDICT?

1 THE JUROR: YES.

2 THE CLERK: THE JURY HAS BEEN POLLED.

3 THE COURT: ALL RIGHT, SIR. IS THERE
4 ANYTHING FURTHER FROM THE DEFENSE AT THIS TIME PRIOR
5 TO THE IMPOSITION OF THE SENTENCE?

6 MR. NEWSOME: NOTHING, YOUR HONOR.

7 THE COURT: HAVE THE DEFENDANT COME
8 FORWARD. MR. HERMAN HUGHES, LET THE RECORD REFLECT
9 AS FOLLOWS WITH REGARDS TO THE AFFIRMATION OF THE
10 DEATH SENTENCE. AS THE TRIAL JUDGE IN THE
11 ABOVE-ENTITLED ACTION AND PRIOR TO THE IMPOSITION OF
12 THE DEATH SENTENCE UPON THE DEFENDANT HERMAN HUGHES,
13 I FIND AS AN AFFIRMATIVE FACT THAT THE EVIDENCE OF
14 THE CASE WARRANTS THE IMPOSITION OF THE DEATH PENALTY
15 AND THAT ITS IMPOSITION IS NOT A RESULT OF PREJUDICE,
16 PASSION OR OTHER ARBITRARY FACTORS. THE DEFENDANT
17 HERMAN HUGHES WAS FOUND BY THE JURY TO BE GUILTY OF
18 THE OFFENSE OF MURDER. THE JURY HAS RECOMMENDED AND
19 I HAVE DETERMINED THAT THE DEATH SENTENCE IS
20 APPROPRIATE.

21 I NOW ASK YOU, HERMAN HUGHES, DO YOU HAVE
22 ANYTHING TO SAY AS TO WHY THE JUDGMENT OF THE LAW OF
23 THE SENTENCE OF THIS COURT SHOULD NOT NOW BE
24 PRONOUNCED AGAINST YOU?

25 MR. HUGHES: NO, SIR.

1 THE COURT: THEREFORE, HERMAN HUGHES, IT
2 IS THE JUDGMENT OF THE LAW AND THE SENTENCE OF THE
3 COURT THAT YOU, HERMAN HUGHES, A PRISONER AT THE BAR,
4 BE TAKEN TO THE ORANGEBURG/CALHOUN DETENTION CENTER
5 AND THENCE TO THE STATE PENITENTIARY TO BE KEPT IN
6 CLOSE CONFINEMENT UNTIL THE 27TH DAY OF OCTOBER OF
7 1995, UPON WHICH DAY BETWEEN THE HOURS OF 1:00 A.M.
8 AND 12:00 P.M., YOU SHALL SUFFER DEATH BY
9 ELECTROCUTION OR LETHAL INJECTION IN THE MANNER
10 PROVIDED BY LAW, AND MAY GOD HAVE MERCY UPON YOUR
11 SOUL.

12 THE JURY, HAVING CONVICTED HERMAN HUGHES OF THE
13 SENTENCE OF ARMED ROBBERY, IT IS THE SENTENCE AND
14 JUDGMENT OF THE COURT THAT THIS DEFENDANT BE
15 SENTENCED FOR A PERIOD OF 25 YEARS CONSECUTIVE. UPON
16 THIS INDICTMENT OF ASSAULT AND BATTERY WITH INTENT TO
17 KILL, IT IS THE JUDGMENT OF THE COURT THAT THE
18 DEFENDANT BE SENTENCED TO 25 YEARS CONSECUTIVELY.
19 UPON THE INDICTMENT OF GRAND LARCENY OF A VEHICLE, IT
20 BEING MORE THAN THE VALUE OF \$1,000, IT IS THE
21 SENTENCE OF THE COURT THAT HE BE SENTENCED TO FIVE
22 YEARS CONCURRENT. THE PRISONER AT THE BAR MAY BE
23 SEATED.

24 MR. FOREMAN, LADIES AND GENTLEMEN, THANK YOU IS
25 AN ENTIRELY INADEQUATE EXPRESSION FOR WHAT ALL OF YOU

1 HAVE BEEN THROUGH. WE APOLOGIZE FOR HAVING TO EXPOSE
2 YOU OVER THESE PAST FEW WEEKS TO A SIDE OF HUMAN
3 EXISTENCE THAT YOU WOULD RATHER HAVE NOT SEEN AND
4 THAT WE FRANKLY WOULD RATHER HAVE NOT SUBMITTED TO
5 YOU. YOU HAVE SEEN HUMAN LOSS AND HUMAN SUFFERING
6 AND YOU HAVE HAD THE MOST DIFFICULT TASK OF
7 DETERMINING HOW THOSE MATTERS SHOULD NECESSARILY BE
8 ADDRESSED. YOU RETURN NOW TO YOUR HOMES, BUT YOU ARE
9 DIFFERENT NOW THAN THE PEOPLE YOU WERE LAST WEEK.
10 THE SITUATION THAT YOU HAVE FOUND YOURSELF IN OVER
11 THE PAST WEEK HAS DESTROYED WHATEVER MEASURE OF
12 INNOCENCE AND NAIVETY THAT YOU MAY HAVE HAD IN THE
13 PAST CONCERNING CRIME AND CRIMINAL ACTIVITY AND HUMAN
14 SUFFERING. AND AS THE TRIAL JUDGE, I'M SORRY THAT WE
15 HAD TO DO THAT. I'M SORRY. UNFORTUNATELY, IT WAS
16 NECESSARY IN THIS CASE, AND UNFORTUNATELY, IT WILL
17 ALWAYS BE NECESSARY IN CASES LIKE THIS FOR JURORS
18 LIKE YOU WHO FIND THEMSELVES IN SITUATIONS LIKE THIS,
19 ASKED TO LEAVE YOUR HOMES AND TO DEAL WITH TERRIBLE
20 CASES OF THIS SORT. YOU LADIES AND GENTLEMEN ARE THE
21 ESSENTIAL INGREDIENTS TO THIS SYSTEM OF JUSTICE THAT
22 WE HAVE.

23 I TELL YOU, LADIES AND GENTLEMEN, THAT YOUR
24 VERDICT AND THAT YOUR SENTENCE WAS SUPPORTED BY THE
25 LAW IN THIS CASE. WHAT YOU HAVE BEEN ASKED TO DO IS

1 THE MOST DIFFICULT THING THAT ANY CITIZEN ANYWHERE
2 WOULD BE ASKED TO DO. YOU 12 HAVE BEEN ASKED TO SIT
3 IN JUDGMENT OF A FELLOW HUMAN BEING AND TO PASS
4 JUDGMENT ON THAT MAN'S LIFE, AND I DON'T NEED TO
5 REMIND YOU OF THAT. LET ME TELL YOU THIS. LET ME
6 TELL YOU THIS. THAT YOU HAVE PERFORMED YOUR DUTY IN
7 THE TRADITIONS OF OUR SYSTEM AND IN THE VERY HIGHEST
8 MANNER THAT PEOPLE PERFORM IT. YOU HAVE BEEN
9 ATTENTIVE. YOU HAVE BEEN MOST CONSIDERATE. YOU HAVE
10 LISTENED. YOU HAVE BEEN ATTENTIVE. YOU, LADIES AND
11 GENTLEMEN, HAVE SATISFIED THE OATH THAT YOU TOOK
12 BEFORE WE STARTED THE TRIAL OF THIS CASE, AND ALL OF
13 US HAVE A RIGHT TO ASK OF YOU TO HAVE DONE THAT.
14 YOU'VE DONE EVERYTHING THAT WE'VE ASKED YOU TO DO AS
15 YOUR CONSCIENCE DICTATES AND WE THANK YOU FOR THAT.
16 I REALIZE NOW THAT FROM THE OATH OF SILENCE WHICH YOU
17 TOOK WHEN YOU STARTED THIS CASE YOU ARE NOW FREE TO
18 TALK WITH ANYONE THAT YOU WANT TO TALK TO ABOUT THIS
19 CASE IF YOU WANT TO TALK ABOUT IT AT ALL. AND SO IT
20 IS IF SOMEONE ASKS YOU ABOUT THIS CASE AND YOU CARE
21 TO DISCUSS IT WITH THEM, YOU MAY FEEL FREE TO DISCUSS
22 IT AS MUCH AS YOU WISH. ON THE OTHER HAND AND WITH
23 EQUAL EMPHASIS, IF YOU DON'T CARE TO DISCUSS IT WITH
24 THEM, ALL YOU'VE GOT TO DO IS TELL THEM, NO, I'VE
25 LIVED WITH THIS CASE FOR THE PAST WEEK AND A HALF AND

1 WILL PROBABLY LIVE WITH IT FOR A LOT LONGER AND I
2 DON'T CARE TO DISCUSS IT. AND THAT SHOULD END THE
3 MATTER RIGHT THERE.

4 LADIES AND GENTLEMEN, YOU HAVE MY PROFOUND
5 THANKS FOR WHAT YOU'VE DONE. I MAKE NO COMMENT UPON
6 YOUR VERDICT OTHER THAN TO TELL YOU AS I HAVE THAT IT
7 IS SUPPORTED BY THE LAW AND THE EVIDENCE IN THIS
8 CASE. IT IS ABSOLUTELY SUPPORTED BY THE LAW AND THE
9 EVIDENCE, AS IS THE SENTENCE. YOU OBVIOUSLY HAVE
10 STRUGGLED WITH THESE THINGS IN REACHING THE DECISION
11 THAT YOU'VE REACHED. WE APPRECIATE THAT. WE
12 APPRECIATE THE ENORMITY OF THE JOB THAT WE GAVE ALL
13 OF YOU. NONE OF YOU ASKED TO COME AND SIT ON THIS
14 PARTICULAR CASE. YOU HAVE ONLY TO ANSWER TO YOUR
15 CONSCIENCE FOR THE VERDICT THAT YOU HAVE JUST
16 RENDERED. AND BASED ON WHAT HAS BEEN PRESENTED IN
17 THE COURTROOM, I TELL YOU THAT YOUR CONSCIENCE NEED
18 NOT SUFFER FROM THE DECISIONS THAT YOU HAVE REACHED.
19 I WANT TO THANK YOU AGAIN. I KNOW IT'S BEEN AN
20 ARDUOUS, TERRIBLE ORDEAL FOR YOU, BUT THIS IS A
21 DECISION THAT HAD TO BE MADE BASED ON THE LAW AND THE
22 EVIDENCE. TWELVE GOOD CITIZENS SUCH AS YOU HAD TO
23 MAKE THAT DETERMINATION. THIS IS THE WAY, LADIES AND
24 GENTLEMEN, THAT OUR SYSTEM WORKS.

25 NOW, I'M GOING TO DISCHARGE YOU IN JUST A

1 MOMENT. I WANT YOU TO GO TO YOUR JURY ROOM BECAUSE I
2 WOULD LIKE TO COME BACK AND SPEAK TO YOU NOW, AND I
3 WILL DO SO IF YOU WILL RETURN THERE NOW.

4 (WHEREUPON, THE JURY WAS REMOVED
5 FROM THE COURTROOM AND THE
6 FOLLOWING PROCEEDINGS COMMENCED
7 IN OPEN COURT.)

8 THE COURT: MR. CLERK, THIS IS THE
9 AFFIRMATION. THIS IS THE DEATH SENTENCE HERE. ALL
10 RIGHT. FOR THE STATE, IS THIS ANYTHING FURTHER AT
11 THIS TIME?

12 MR. BAILEY: NO, SIR, YOUR HONOR.

13 THE COURT: FOR THE DEFENSE?

14 MR. NEWSOME: NOT AT THIS TIME, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT, SIR. THEN THIS
17 COURT STANDS ADJOURNED.

18 (WHEREUPON, COURT WAS ADJOURNED
19 AT 6:33 P.M.)

21 (END OF VOLUME TEN)

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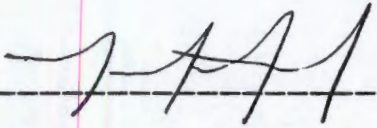
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

I, MARK W. HAGOOD, REGISTERED PROFESSIONAL REPORTER, (RPR), COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, FOURTH JUDICIAL CIRCUIT, DO HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IS A STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING TRANSCRIPT CONTAINS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I FINANCIALLY INTERESTED IN THE ACTION.

WITNESS MY HAND AT FLORENCE, SOUTH CAROLINA,
THIS 3rd DAY OF April, 1996.



MARK W. HAGOOD, RPR

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STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN) IN THE FAMILY COURT

STATE OF SOUTH CAROLINA,)
Plaintiff,)
versus,)
HERMAN HUGHES, a minor/)
juvenile.)
Defendant.)

TRANSCRIPT
OF
RECORD

April 8, 1994

BEFORE: The Honorable Maxey G. Watson,
Family Court Judge, First Judicial
Circuit, Orangeburg, South Carolina.

APPEARANCES:

REDDICK BOWMAN, ATTY. FOR
THE STATE/PLAINTIFF.

MARTIN BANKS, ATTY.
FOR DEFENDANT/JUVENILE.

BARBARA L. BROWN
COURT REPORTER

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EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
<u>STATE'S EXHIBITS</u>		
ONE	PHOTO/CRIME SCENE	6
TWO	PHOTO/CRIME SCENE	6
THREE	PHOTO/CRIME SCENE	7
FOUR	PHOTO/CRIME SCENE	9
FIVE	PHOTO/CRIME SCENE	9
SIX	PHOTO/CRIME SCENE	10
SEVEN	PHOTO/CRIME SCENE	10
EIGHT	PHOTO/CRIME SCENE	11
NINE	PHOTO/CRIME SCENE	12
TEN	PHOTO/CRIME SCENE	13
ELEVEN	CONFESSION OF HUGHES	46

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WITNESS LIST

DIRECT CROSS RE-DIRECT RE-CROSS

FOR THE STATE

EARL RHUDY

BY ATTY. BOWMAN 1-21 -27-

BY ATTY. BANKS 21-27 -

DOLLY ZEIGLER

BY ATTY. BOWMAN 28-36 -39-

BY ATTY. BANKS 36-39 -

D. C. JONES

BY ATTY. BOWMAN 40-47 49-52

BY ATTY. BANKS 47-49

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 ATTY. BOWMAN: Your honor this is our motion to
2 have family court waive jurisdiction in this
3 case so that Herman Hughes, the juvenile, can
4 be tried as an adult. We would call as our
5 first witness, Detective Earl Rhudy with the
6 Calhoun County Sheriff's Department.

7 EARL RHUDY, AFTER BEING SWORN, TESTIFIES AS
8 FOLLOWS:

9 COURT: State your name for the record.

10 A. Earl E. Rhudy.

11 COURT: And your occupation?

12 A. Detective in the Calhoun County Sheriff's
13 Department.

14 DIRECT EXAMINATION OF DETECTIVE RHUDY BY ATTY.

15 BOWMAN

16 Q. Detective Rhudy how long have you been a
17 law enforcement officer?

18 A. About fifteen years. Actual time.

19 Q. How long have you been employed by the
20 Calhoun County Sheriff's Department?

21 A. About three and a half years.

22 Q. How long have you been in the detective
23 work?

24 A. Overall about a year and a half but not all
25 the same time.

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 Q. You are a graduate of the criminal justice
2 academy?

3 A. That's correct.

4 Q. You're a certified law enforcement officer?

5 A. Since 1976 and then also received my
6 recertification in 1991, I think it was.

7 Q. You were called upon to investigate a case
8 where Kelly Hoffman was shot and Mr. Presley
9 was killed were you not?

10 A. I was.

11 Q. Would you tell the court when you were
12 first called to that assignment and what you
13 did?

14 A. Our department received a call
15 approximately eight thirty on March 18, 1994 at
16 the Blue Diamond Casino which is on Highway
17 U.S. #601 in St. Matthews. Just outside the
18 city which is in the County of Calhoun. I was
19 contacted by Sheriff Jones to come to the
20 scene. By the time I arrived on the scene, the
21 victims that had been shot had already been
22 removed to the hospital.

23 Q. About what time did you get there? .

24 A. I got there about approximately ten p.m.
25 That's what time the Sheriff had notified me.

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 Q. What times do you set the shootings as
2 having happened?

3 A. According to the report that Deputy Carl
4 Shirer and Deputy Capers Wannamaker the call
5 came in at approximately eight thirty.

6 Q. When you got there EMS had already removed
7 Mr. Presley's body?

8 A. If he was deceased at that time. I'm not
9 sure if he was deceased at that time.

10 Q. But you know the victim....

11 A. Neither one of the victims was at the
12 scene. No sir.

13 Q. Then what did you do?

14 A. SLED forensics had just arrived on the
15 scene about the same time I did and they had
16 started their investigation. Agent Steve
17 Derrick and I don't remember the other agent
18 with him that night. He's a new agent but they
19 were on the scene at that time.

20 Q. What did you do?

21 A. I just more or less assisted them because
22 they were processing the crime scene
23 themselves. Taking photographs. Getting
24 fingerprints. Looking over the area and doing
25 their forensic investigation at that time. Do

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 you have copies of the photographs?
2 A. I do.
3 Q. Do you have them in the Courtroom with you?
4 A. I have them on the desk there sir.
5 Q. Which one of these?
6 A. The little envelope. There sir.
7 Q. You have photographs there in you hands.
8 Where did you get those from?
9 A. I got these from Agent Steve Derrick who
10 had processed the scene for forensics. These
11 were made by their camera. They have marked
12 for identification L944202 which is their case
13 number.
14 Q. How did you come to get these under your
15 possession?
16 A. Agent Derrick sent me a copy of all the
17 photographs he has. He also has a copy at SLED
18 headquarters. He just sent me a copy of all of
19 them.
20 Q. If it please the Court your honor we would
21 ask the Court to look at these photographs and
22 ask if it's necessary that we enter them into
23 evidence.
24 ATTY. BANKS: I'd like to see them first.
25 COURT: Are these of the crime scene?

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

- 1 A. Yes sir. And vehicle.
- 2 Q. There are no victims in it.
- 3 ATTY. BANKS: You're not entering them into
- 4 evidence?
- 5 Q. I guess I will.
- 6 ATTY. BANKS: If you don't enter them in
- 7 evidence I won't object to the Judge looking at
- 8 them but as far as....
- 9 Q. If I do or if I don't...
- 10 ATTY. BANKS: If you don't enter them into
- 11 evidence I won't object. If you do I'll object
- 12 to these that are placing....I have no problem
- 13 with those.
- 14 Q. Detective Rhudy would you just start with
- 15 this stack and tell the Court what this
- 16 signifies briefly?
- 17 A. Okay this is the scene more or less when I
- 18 arrived on the scene. The way the building was
- 19 at the time I arrived on the scene and this...
- 20 Q. What a minute. What is that room?
- 21 A. This is the Blue Diamond Casino. This is
- 22 inside the room.
- 23 Q. Does that show the video machines?
- 24 A. No. This is - this photograph right here
- 25 does not show the video machines.

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DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

- 1 Q. What about that chair. What is the
2 significance about that chair?
- 3 A. That chair is were the victim, Kelly
4 Hoffman, was apparently sitting at the time of
5 the shooting.
- 6 Q. And does it appear to have any type of body
7 fluid on it?
- 8 A. It appears to be blood on that chair. Yes
9 sir.
- 10 Q. You came upon this as a part of your normal
11 investigative duties?
- 12 A. Yes sir.
- 13 Q. Your honor we move this into evidence.
14 COURT: Alright let it be marked.
- 15 Q. What is this picture here?
- 16 A. This picture appears to be the same type
17 picture but more of an overall view of where
18 the cash register and the desk is being shown.
19 Inside the building of the Blue Diamond Casino
20 and some of the video machines here on the
21 right side.
- 22 Q. Your honor we move to have this marked.
23 COURT: Let it be marked.
- 24 A. Another shot.
- 25 Q. In this one is there something having to do

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 with the cash drawer? Can you see the cash
2 drawer the way it's placed in that desk.

3 A. That's the way the cash drawer was
4 apparently during the time that - normal time
5 before the incident occurred. The desk drawer
6 is open and that's where the cash drawer was.

7 Q. Move this into evidence as Exhibit Three.
8 What about this picture here?

9 A. This picture is an overview of the cash
10 drawer in the desk drawer which shows some
11 blood and also appears to be some changes/coins
12 in the cash drawer. No bills.

13 Q. This appears to have blood - human blood in
14 the cash drawer?

15 A. That is correct.

16 Q. I move to have this marked.

17 COURT: Let it be marked.

18 Q. What about this picture. What does it
19 show?

20 A. This picture is the picture of the
21 refrigerator, close view of where one of the
22 rounds apparently went through Ms. Hoffman and
23 exited her body and went into the refrigerator.

24 Q. Now what - on what facts do you based that
25 conclusion that it went through her body?

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 A. Because the chair was right in front of the
2 side of the refrigerator where this round was
3 located.

4 Q. As we've seen in these other exhibits her
5 chair was placed in front of that refrigerator
6 door?

7 A. Well it's not a door. It's the side of the
8 refrigerator. Side of the refrigerator. Not
9 the door.

10 Q. And what - that is the side of the
11 refrigerator that seems to have the dent from
12 the bullet?

13 A. That's correct.

14 COURT: If you turn that - which way looking at
15 the refrigerator - which way is that standing.

16 A. If you look at the door it would be on...

17 COURT: I'm just talking about the refrigerator
18 itself standing. If you're holding it
19 horizontal is that the way the refrigerator is
20 or it that or is that?

21 Q. Is the right way - is this standing up
22 right? Or is this right.

23 A. I would say this would be more right.

24 Like I say Agent - forensic took these
25 photographs - they would be more familiar of

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 how these pictures were taking.

2 Q. We move for this to be entered.

3 COURT: Okay.

4 Q. Now what is in this picture?

5 A. This appears to be a shell casing that
6 appears to be on the floor.

7 Q. Any time during your investigation did you
8 determine the caliber of ammunition that was a
9 shell casing was from?

10 A. I have not because SLED forensics took all
11 this evidence to their headquarters.

12 Q. Did they tell you what caliber ammunition
13 that was from?

14 A. A three eighty. (380).

15 Q. We move that it be marked.

16 COURT: Let it be marked.

17 Q. And from your experience as a law
18 enforcement officer how powerful is a gun that
19 fires a three eight ammunition?

20 A. I've never fired on. I really can't tell
21 you.

22 Q. As opposed to twenty two - twenty five, or
23 thirty two caliber.

24 A. It would be more powerful than these type
25 weapons.

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 Q. What are these photographs of?

2 A. These are photographs of the victim's,
3 deceased victim's automobile that was
4 apparently taken after the robbery by the
5 suspects.

6 Q. Who did that belong to? Which victim?

7 A. This belongs to the subject, Kenneth
8 Presley.

9 Q. We move this into evidence your honor.

10 COURT: Let it be marked.

11 COURT REPORTER: Seven.

12 Q. Was this vehicle recovered?

13 A. Yes it was.

14 Q. Where was it recovered?

15 A. It was recovered in Orangeburg County at
16 the Ebony Club on Highway #601 right before you
17 get to the road that cuts across to go to
18 Hillcrest Golf Course.

19 Q. Can you identify what's in that picture?

20 A. This is the chair along side the
21 refrigerator - it was apparently where Ms.
22 Hoffman was sitting.

23 Q. Does it appear to have any human body fluid
24 on it?

25 A. It appears to have blood on the front of

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 the seat.

2 Q. At this point we move to enter this into
3 evidence.

4 ATTY. BANKS: I object your honor.

5 COURT: Overruled. Let it be marked.

6 Does that picture accurately represent the
7 scene as you show it?

8 A. Yes sir.

9 COURT: Let it be marked.

10 COURT REPORTER: Eight.

11 Q. From your investigation where was Ms.
12 Hoffman wounded?

13 A. She was shot through the left cheek and the
14 round - from my understanding may have been
15 close to her spine in her neck. The round
16 cannot be removed.

17 Q. Did she have any other bullet wounds?

18 A. She had one other bullet wound in the
19 chest. I'm not sure which side of the chest.
20 But that is the one round that went through
21 that apparently went through into the
22 refrigerator.

23 Q. Earlier you made some reference to a
24 shoulder is that the gunshot wound you're
25 referring to now to the chest?

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 A. To the shoulder or chest.
2 Q. Somewhere in that area?
3 A. Yes.
4 Q. Can you identify this picture?
5 A. This is the desk - the top of the desk
6 where Ms. Hoffman stated she was sitting. She
7 was sitting behind the desk and this is the
8 blood on top of the desk.
9 Q. Is that also the desk that had the money
10 drawer in it. That appears to have blood in
11 it?
12 A. Yes sir.
13 Q. Does that picture accurately reflect the
14 situation as when you got there and did your
15 investigation?
16 A. Yes sir.
17 Q. Move to enter it into evidence?
18 ATTY. BANKS: I object your honor.
19 COURT: Overruled.
20 COURT REPORTER: Nine.
21 Q. Can you identify this one?
22 A. I'm not sure on this exact photograph
23 exactly where this is- not seeing the overview
24 of the - chair with the blood on the floor.
25 I'm not sure unless I could the other photo....

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 Q. This is a picture of more blood shed and
2 spilled on the floor?

3 A. Yes sir.

4 Q. We move to enter...

5 ATTY. BANKS: I object your honor.

6 COURT: Let it be marked. Overruled.

7 COURT REPORTER: Ten.

8 Q. Now Detective Rhudy after you were
9 observing the SLED forensic team doing their
10 work, did you do anything else at the crime
11 scene at that time. Or did you leave the work
12 to SLED at the crime scene?

13 A. We mainly let SLED forensic team take care
14 of all the crime scene, investigation,
15 fingerprints, photographs and taking samples or
16 whatever they do.

17 Q. As a part of your investigation did you
18 find out any results of their investigations
19 that had to do with the fingerprints?

20 A. I had spoken with Agent Derrick and he
21 stated that he has matched and he is also a
22 latent print expert, that he had matched the
23 Defendant's fingerprint to a fingerprint inside
24 the cash drawer.

25 Q. That would be the one depicted in the

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 State's Exhibits already shown to the Court?

2 A. That is correct.

3 Q. The cash drawer sitting in the middle of
4 the desk?

5 A. Yes sir.

6 Q. After you left the crime scene itself what
7 did you do to further your investigation?

8 A. That night I went home and got my other car
9 and got my dog and I started searching for the
10 vehicle that was stolen. I stayed out til
11 about five o'clock that morning looking for the
12 vehicle that was taken from the scene.

13 Q. Did you eventually find it?

14 A. I did not find it. I went home to get some
15 sleep and I then I was called by the Department
16 stating that the vehicle had been found here in
17 Orangeburg.

18 Q. How is it that your investigation lead to
19 capture of Mr. Hughes here and the co-
20 defendant?

21 A. That day we found the vehicle and contacted
22 forensics. They come back down and did their
23 crime on the vehicle. I was instructed by the
24 Sheriff to go to Newberry for the autopsy on
25 the deceased, Kenneth Presley, which I did. I

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 think it was one o'clock. When I got back the
2 Sheriff and some other deputies had two or
3 three suspects, suspects or witnesses in the
4 Sheriff's Office and I sat down and started
5 taking statements from them. I had not talked
6 to the Defendant.

7 Q. Was he amongst those people that the
8 Sheriff had there waiting?

9 A. Yes sir.

10 Q. You're talking about Herman Hughes?

11 A. Yes sir.

12 Q. Did you take statement from him?

13 A. No sir I did not. No sir.

14 Q. Has - as a part of your investigation do
15 you have a statement from him in your file?

16 A. I have three statements from him.

17 Q. You have one written by Miranda
18 Singletary, written down for Herman Hughes?

19 A. I do.

20 Q. That's dated what date?

21 A. This is dated March 20, 1994 at the
22 Sheriff's Department.

23 Q. Would you read - do you know whether or not
24 - do you know whether or not Mr. Hughes was
25 given his Miranda warning before this was

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 taken?

2 A. I have a Miranda warning on three nineteen
3 at five thirteen p.m. witnessed by Lt. Chris
4 Dozier and also Deputy Danny Kirkland. Also on
5 this statement form - it has written out the
6 Miranda warning before the statement before the
7 writing of the statement and he has signed it
8 and it's also witnessed by Sheriff D.C. Jones.

9 Q. Would you read to the Court what Mr.
10 Hughes has signed as his statement, voluntary
11 statement?

12 A. You don't want me to read the Miranda or...

13 Q. Yeah. Just start with the Miranda?

14 A. Okay. Date three twenty ninety four,
15 Sheriff's Dept. I the undersigned Herman L.
16 Hughes, Jr. I am sixteen years old my date and
17 place of birth being the [REDACTED]
18 [REDACTED] of nineteen seventy seven at Orangeburg.
19 My present address is [REDACTED]
20 St. Matthews. Before I answer any questions or
21 make any statement, D.C. Jones a person who
22 identified himself as Sheriff duly warned and
23 advised me that I have right to remain silent
24 and not to make any statements at all. That
25 any statement that I do make can be used

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 against me. That any statement that I do make
2 can be used against me in Court. That I have a
3 right to have an attorney present anytime
4 during the questioning. If I can not afford an
5 attorney I can apply to the Court to have one
6 appointed to me at no cost to me. If I decide
7 to talk to an officer without an attorney
8 present I can stop at any time and request an
9 attorney be present for further questioning.
10 Understanding these rights I make the following
11 statement. On Friday night Kelsey Pierce and
12 myself went into the Blue Diamond. I walked in
13 and asked for the money and shot the woman.
14 Kelsey was looking through the window and he
15 came in and got the gun and shot the man. We
16 got the money and took the car to Daniel's
17 house and put the money on the bed. We divided
18 up the money and left the house. We drove the
19 gray car to the Ebony club and left it there.
20 It goes on to say, I, Miranda Singletary,
21 mother of the above suspect wrote this
22 statement as it was told to me, signed Herman
23 Hughes. Three twenty ninety four. Also
24 witnessed by D.C. Jones.
25 Q. Now the car that he mentions in there as

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

- 1 being a gray car. Is that the one depicted in
2 the exhibit that has already been entered into
3 evidence?
4 A. That's correct sir.
5 Q. What make and model car is that?
6 A. I'm not sure about the model. It's a RX 7.
7 Q. It's a Mazda?
8 A. It's a Mazda RX 7.
9 Q. As a part of your investigation have you
10 talked to the victim that survived? Kelly
11 Hoffman.
12 A. I have.
13 Q. Have you shown her or gotten any
14 identification of her assailant? Or Herman
15 Hughes from her?
16 A. Yes sir.
17 Q. How did you do that?
18 A. I got a photographic line up with six
19 different people. Along with the suspect.
20 Five others and himself. I was thinking it was
21 this past Monday that I went out to get a
22 photographic line up. Lt. Chris Dozier and
23 myself and also Defense Attorney Mr. Banks was
24 with us.
25 Q. Detective Rhudy I'm going to hand you these

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 cards. Card type photo with the green tape on
2 it. Can you identify that?

3 A. Yes sir. This is the photo line up that I
4 made up.

5 Q. Did you show that to Ms. Hoffman?

6 A. I did.

7 Q. Can you hold it up so the Judge can see it
8 as we talk about it? Did you ask her to pick
9 Mr. Hughes out of this line up?

10 A. I told her take your time make sure take
11 all the time you need. This also was recorded.
12 I have it on tape. Look over each picture and
13 see if you can identify the person that came in
14 and shot you that night.

15 Q. Who did she pick?

16 A. She picked out number five.

17 Q. And whose's picture is number five?

18 A. Herman Hughes, Jr.

19 Q. Herman Hughes, Jr.

20 A. Yes sir.

21 Q. This is set up so there are no other
22 identifying information around the pictures is
23 that correct?

24 A. That is correct.

25 Q. From your investigation has it lead you to

DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 make a conclusion about the perpetrators of the
2 robbery and murder at the Blue Diamond Club?

3 A. Yes sir.

4 Q. And who do you conclude to be the
5 perpetrator?

6 A. Both perpetrators? Herman Hughes, Jr. and
7 also Kelsey Pierce.

8 Q. Have you got a conclusion of who shot Kelly
9 Huffman? The woman.

10 A. Mr. Hughes with his statement and also with
11 the victim's statement that he shot her I
12 conclude that Mr. Hughes is the one that shot
13 Kelly Hoffman.

14 Q. The juvenile here in the Courtroom?

15 A. Yes sir.

16 Q. Does as a representative of the
17 Orange...Calhoun County Sheriff's Department
18 you are - do you have an opinion as to whether
19 or not this juvenile's case should be waived up
20 to grand...General Sessions Court?

21 A. There is no question in my mind that this
22 should be waived up to General Sessions Court
23 due to the seriousness of crimes that was -
24 involved with all the crimes and with him being
25 also so close to his seventeenth birthday.

CROSS EXAMINATION OF DETECTIVE EARL RHUDY

1 Q. Those offenses are exactly what?

2 A. He's charged with Murder, Assault and
3 Battery with Intent to Kill, Armed Robbery,
4 Grand Larceny of Auto.

5 Q. Thank you your honor.

6 CROSS EXAMINATION BY ATTY. BANKS

7 Q. Mr. Rhudy how many detectives does St.
8 Matthews...Calhoun County Police Department
9 have?

10 A. I'm it.

11 Q. You're it. How long have you had that
12 particular job?

13 A. The second time now I've been since
14 December - about the middle of December.

15 Q. December?

16 A. Yes sir.

17 Q. At the time this occurred that would be
18 three and a half months?

19 A. Yes sir. Something like that.

20 Q. You were saying that Kelly was shot in the
21 shoulder - in the chest, do you - are you able
22 to determine which it is now? Whether it was
23 the shoulder or the chest?

24 A. I have not seen any doctor's reports on it.
25 Of course I haven't asked her to view where she

CROSS EXAMINATION OF DETECTIVE EARL RHUDY

1 was shot at or anything like that.

2 Q. I know...

3 A. I know it was to the chest or one of the
4 other sides or somewhere in that area.

5 Q. But you are the main detective in this
6 case?

7 A. The Sheriff and I both, yes sir.

8 Q. You made mention that SLED took the
9 pictures so you weren't sure how this
10 refrigerator might be upright or to the side?

11 A. That's correct.

12 Q. You think it might be appropriate for SLED
13 testify to some of this or would be better off
14 testifying to some of the things you testified
15 to today?

16 A. Oh yes. They would be more qualified
17 because they took the pictures so they would be
18 more qualified to answer your questions than I
19 would be.

20 Q. And the Solicitor's questions?

21 A. Oh sure. On these photographs because I
22 didn't take these pictures.

23 Q. They probably know exactly where Kelly was
24 shot in the shoulder or chest?

25 A. I don't know.

CROSS EXAMINATION OF DETECTIVE EARL RHUDY

1 Q. The picture of the chair with blood and the
2 picture with blood on the desk, this picture
3 here with the chair - that looks substantially
4 similar to the chair here is that right?

5 A. That's correct.

6 Q. The one with the overview?

7 A. Yes sir.

8 Q. Do you know at this time whether that's the
9 ...I know she was found in the chair, that's
10 where the chair was when she was found or was
11 the chair moved?

12 A. I'm not sure she was found in the chair Mr.
13 Banks because EMS did come in there and I think
14 they are the ones that moved that desk around.
15 It's not normally set up like that.

16 Q. Oh I see. So the crime scene has been...

17 A. As far as EMS coming in there to treat the
18 injured people. Yes sir.

19 Q. So she may have been in one place or
20 another or definitely the desk has been moved
21 you say?

22 A. My understanding yes.

23 Q. Here it is moved again isn't it? This
24 picture has the desk over here by the video
25 machine?

CROSS EXAMINATION OF DETECTIVE EARL RHUDY

1 A. That desk was not moved after EMS and the
2 desk from the first time I got there from the
3 time I left that desk was not moved.

4 Q. So you say it's not normally there like
5 that so you're saying...

6 A. My understanding is it's not placed like
7 that - it had to be moved to get into the
8 victims.

9 Q. So you're saying the crime scene has been
10 altered before these pictures were taken?

11 A. I'm saying EMS had to go in and get the
12 victims and they had to move - my understanding
13 is and I can't swear to that but my
14 understanding is they had to move the desk.

15 Q. What about that chair? You think that
16 chair might have been pushed across the room?

17 A. It could have been pushed across the room.
18 I don't know.

19 Q. But SLED might know that?

20 A. I don't know, you'll have to ask them Mr.
21 Banks.

22 Q. Your honor I renew my objections to the
23 photographs with the chair and desk and not
24 accurately reflecting the crime scene as found.

25 COURT: They accurately reflect the crime scene

CROSS EXAMINATION OF DETECTIVE EARL RHUDY

1 as he found it.

2 Q. SLED - if we had SLED testifying they'd be
3 able to testify to how the crime scene was
4 exactly.

5 COURT: That's fine. I'm going to overrule
6 your objection.

7 Q. About the line up. Is it also true that
8 Kelly called Herman by his first name?

9 A. Yes she did.

10 Q. Did she also mention that she had read
11 newspaper reports of this thing before she
12 looked at the photo line up?

13 A. Yes she did.

14 Q. Did she also say she heard his name, she
15 didn't see a picture of him but heard his name
16 and that way may have spoiled your photo
17 lineup?

18 A. She said she'd heard Herman's name but I
19 don't see how it messed the photo up. She
20 evidently did not know Herman Hughes. I took
21 it for her not to know him other than the
22 newspaper articles with his name in it.

23 Q. Did you - you're assuming she did not know
24 him prior to this?

25 A. That's what I am assuming. Yes sir.

CROSS EXAMINATION OF DETECTIVE EARL RHUDY

1 Q. If she knew him prior to this and read his
2 name or heard his name on the street and she
3 didn't know him and she looked at this line up
4 and she saw his picture wouldn't that spoil the
5 line up?

6 A. I can't see how it does. She knew his
7 name. I could know Joe Smith's name don't know
8 what he looks like.

9 Q. No if she knew him? She went to school
10 with him you're aware of that aren't you?

11 A. She never - she told me that her little
12 sister went to school with him.

13 Q. Are you aware that she had been associated
14 with several of his friends? In fact one of
15 your fellows you took a statement from? One of
16 his close friend?

17 A. I did not ask her anything about it and I
18 don't remember her making any statements to me
19 about knowing any Mr. Hughes, well I'd know it
20 if it was Mr. Hughes or any of his friends.

21 Q. But if she knew his name or knew his name
22 with a face and then read about his name in the
23 paper and then saw....

24 ATTY. BOWMAN: Your honor I think that question
25 has been asked at least twice and answered.

RE-DIRECT EXAMINATION OF DETECTIVE EARL RHUDY

1 COURT: You're asking him to speculate anyway
2 but he can only testify to what he knows.

3 Q. Well this is Family Court your honor. I've
4 heard hearsay and speculation going prior to
5 this. I'll withdraw the question.

6 COURT: Hearsay is admissible. Speculation is
7 not.

8 Q. Right. I withdraw it and that's all I
9 have.

10 RE-DIRECT BY ATTY. BOWMAN

11 Q. Detective Rhudy with regard to the line up
12 or even if Ms. Hoffman had heard or read the
13 juvenile defendant's name is there anything on
14 that line up that you have testified about in
15 this Court today that has any names attached to
16 it?

17 A. No sir. There is a number over each
18 picture and I asked her to pick out a number.

19 Q. They're not designated in any other way are
20 they?

21 A. No sir they're not.

22 Q. That's all I have.

23 -----

24 -----

25 -----

DIRECT EXAMINATION OF DOLLY ZEIGLER

1 DOLLY ZEIGLER, AFTER BEING DULY SWORN,

2 TESTIFIES AS FOLLOWS:

3 DIRECT EXAMINATION BY ATTY. BOWMAN

4 Q. Ms. Zeigler where are you employed?

5 A. South Carolina Department of Juvenile
6 Justice.

7 Q. How long have you been employed - been an
8 employee of that agency?

9 A. Since June of '93.

10 Q. What is your job title now?

11 A. Community Specialist Four.

12 Q. In that capacity do you supervise other
13 people in the Orangeburg office?

14 A. Yes sir.

15 Q. How many other people do you supervise?

16 A. I'm currently supervising seven.

17 Q. As a part of your official duties are you
18 familiar with the records of Herman Lee Hughes?

19 A. Yes sir.

20 Q. Would you tell the Court about Herman
21 Hughes' experience with his school record?

22 A. Herman was last enrolled in John Ford
23 Middle School in the eighth grade. He was
24 suspended for the remainder of the year in
25 February of this year. Prior to that he had

DIRECT EXAMINATION OF DOLLY ZEIGLER

1 twenty one absences, fourteen were suspension
2 days, six unexcused and one excused. He had
3 approximately twenty one disciplines.

4 Q. Over what period of time did he have those
5 disciplinary actions taken against him?

6 A. According to the school records eleven
7 twelve through one thirty one.

8 Q. Eleven twelve of what year?

9 A. Of '93.

10 Q. '93?

11 A. Yes.

12 Q. Through what time?

13 A. Through one thirty one ninety four.

14 Q. How many suspensions did he have?

15 A. He had fourteen suspension days.

16 Q. Can you describe some of the offenses for
17 which he has been suspended?

18 A. Disrespect to teacher, disrupting class,
19 leaving class without permission, disrespect
20 to teacher, disrespect to teacher, disrespect
21 to teacher, disrespect to teacher, disrespect
22 to teacher, profanity and the rest was
23 disrespect to teacher.

24 Q. Okay. Your testimony is he is no longer in
25 school?

DIRECT EXAMINATION OF DOLLY ZEIGLER

- 1 A. To my knowledge he's not.
- 2 Q. When was he suspended or expelled?
- 3 A. February second, ninety four.
- 4 Q. He has been, since that time, has been in a
5 juvenile detention custody for a substantial
6 amount of that time hadn't he?
- 7 A. He went in on detention on three twenty
8 ninety four.
- 9 Q. You also have as a part of your research on
10 this case a sheet called form five information
11 do you not?
- 12 A. Yes sir.
- 13 Q. That outlines his history with regard to
14 the Department of Juvenile Justice does it not?
- 15 A. Yes it does.
- 16 Q. Can you tell the Court what his connections
17 or involvements with the juvenile justice
18 system has been up to today.
- 19 A. In March of '93 he had a charge of pointing
20 a firearm which was dismissed. On February
21 fifteenth of '94 a runaway pick up order was
22 completed. March eighth of '94 we received a
23 charge of possession of stolen vehicle from the
24 Orangeburg County Sheriff's Department. Intake
25 was scheduled for three twenty eight ninety

DIRECT EXAMINATION OF DOLLY ZEIGLER

1 four with the Department of Juvenile Justice
2 however Herman was detained on Three twenty
3 ninety four on the current charges. On three
4 twenty one ninety four we received a charge of
5 petty larceny of a gun from the Calhoun County
6 Sheriff's Department and ended.

7 Q. You mentioned a grand larceny of an auto or
8 possession of a stolen vehicle charge?

9 A. Possession of a stolen vehicle.

10 Q. And has that been disposed of?

11 A. No sir. That was scheduled for an intake
12 on three twenty eight but Herman was detained
13 three twenty ninety four.

14 Q. You know whose vehicle was involved in that
15 incident?

16 A. The incident report lists the victim as
17 Diane Thurman.

18 Q. So that is not a - evidently an incident
19 that involves other family members?

20 A. No sir. I'm not sure who Diane Thurman is.

21 Q. You testified to a matter involving a
22 stolen gun?

23 A. Yes sir.

24 Q. Could you tell the Court the status of that
25 case?

DIRECT EXAMINATION OF DOLLY ZEIGLER

- 1 A. It's still pending on intake.
- 2 Q. Do you know who's gun that was?
- 3 A. The incident report lists the victim as
- 4 Miranda Singletary.
- 5 Q. And who would that be?
- 6 A. The relationship to the subject is listed
- 7 as the mother.
- 8 Q. That's still a - it's still a pending case?
- 9 A. That's still pending.
- 10 Q. I didn't mean to interrupt you. What were
- 11 you going to say?
- 12 A. The mother to Herman Hughes.
- 13 Q. Since Herman Hughes was suspended are you
- 14 aware of his being involved or participating in
- 15 any alternative educational program?
- 16 A. No sir.
- 17 Q. When he was in school what kind of school
- 18 classes or what academic class was he in?
- 19 A. He was in regular classes taking
- 20 mathematics, South Carolina History, language
- 21 arts, introduction to consumer homemaking,
- 22 physical ed, health, reading and earth science.
- 23 Q. Are you aware of him ever having been in
- 24 any kind of emotionally handicapped or special
- 25 education classes?

DIRECT EXAMINATION OF DOLLY ZEIGLER

1 A. Not to my knowledge.

2 Q. From your research, background and
3 experience could you conclude that he was in
4 the regular track or normal student?

5 A. It appears from school records that he was
6 in the regular classes.

7 Q. Do you have any knowledge of his behavior
8 or his actions in the community?

9 A. On February Fifteenth of Ninety Four,
10 Lucille Hughes and Miranda Hughes came to the
11 Department of Juvenile Justice and filed an
12 incorrigible complaint. I talked with Ms. -
13 both Ms. Hughes and explained the Department of
14 Juvenile Justice procedures for an incorrigible
15 complaint. They did not follow through with
16 the complaint.

17 Q. What is it - when they came to talk with
18 you about the incorrigibility complaint - what
19 did they want you or your department to do?

20 A. They were discussing with me the
21 possibility of the Department of Juvenile
22 Justice placing Herman in some type of
23 alterative placement. I explained to them that
24 the Department of Juvenile Justice does not
25 place incorrigible complaints - children who

DIRECT EXAMINATION OF DOLLY ZEIGLER

1 have incorrigible complaints against them would
2 not be placed in alterative placement.

3 Q. And this incorrigibility being of the
4 status offenses?

5 A. Right.

6 Q. That would a prohibition to putting him in
7 an alternative placement?

8 A. I don't understand...

9 Q. Well would the thing that would prevent you
10 or your agency....

11 A. Oh. Right. We don't place status
12 offenders in - we only place juveniles who are
13 court ordered into alterative placement.

14 Q. After you advised his grandmother and his
15 mother of this did you give them any advice or
16 any other information?

17 A. We have a referral package which lists
18 alternative placement and counselling services
19 that we give to parents who want to file
20 complaints. The parents need to exhaust all
21 avenues before they file the complaint. They
22 did not take the package, however, the
23 grandmother did do the runaway pickup order and
24 she signed the petition.

25 Q. But you gave them this package of

DIRECT EXAMINATION OF DOLLY ZEIGLER

1 information about the counselling did you not?

2 A. No. They did not want the package.

3 Q. You offered it to them?

4 A. I offered them the package but they did not
5 want it.

6 Q. So they didn't take it?

7 A. Right.

8 Q. Are you aware or do you have any
9 information about whether or not his mother
10 ever secured any counselling services for him?

11 A. I have no knowledge of that.

12 Q. Do you know whether or not she - Ms.
13 Singletary as his mother ever completed any
14 incorrigibility referrals?

15 A. She did not complete the incorrigible
16 complaint with the Department of Juvenile
17 Justice.

18 Q. She did not?

19 A. Right.

20 Q. Do you know about the living situation of
21 Herman Hughes? Say over the last several
22 years?

23 A. According to the testimony at the detention
24 hearing, Herman has resided with the maternal
25 grandmother for the last twelve years.

CROSS EXAMINATION OF DOLLY ZEIGLER

1 Q. In your capacity with the Department of
2 Juvenile Justice have you come to form an
3 opinion regarding the likelihood of possibility
4 of Mr. Hughes being rehabilitated if kept in
5 the juvenile justice system?

6 A. I have no opinion regarding the likelihood
7 of the rehabilitation with the juvenile system.

8 Q. There would be occasions in which you would
9 form such opinions is there not?

10 A. I personally would not form opinions - if
11 the pre-waiver evaluation had been ordered with
12 Department of Juvenile Justice Pre-Waiver
13 evaluation - they would form that opinion.

14 Q. Has that evaluation been ordered or
15 requested?

16 A. No sir.

17 Q. Do you then have an opinion regarding
18 whether or not Mr. Hughes case should be waived
19 up to General Sessions Court?

20 A. I have no opinion regarding the waiver.

21 Q. That's all the questions I have at this
22 time your honor.

23 CROSS EXAMINATION BY ATTY. BANKS

24 Q. Thank you your honor. You have a report
25 there from the school that has disrespect to

CROSS EXAMINATION OF DOLLY ZEIGLER

1 teacher?

2 A. Yes.

3 Q. Is that the same teacher or one or two
4 teachers or

5 A. Mr. Fogle, Mr. Fogle, Mr. Davis,
6 Hildebrand, Hildebrand, Fogle again, Fogle,
7 Davis, Davis, Fogle.

8 Q. So those are over how many years - period?

9 A. From November Twelfth of Ninety Three to
10 January Thirty First of Ninety Four.

11 Q. You have an automobile charge that he's
12 been charged with? Isn't it true he's never
13 been found guilty or plead guilty or any
14 disposition on that?

15 A. He was not available for the intake because
16 he was detained so that's still pending.

17 Q. So it's still purely allegations? As far
18 as any facts, he might not have been in the
19 State of South Carolina when that occurred?

20 A. I just have the incident report that named
21 him.

22 Q. And there was a pointing a gun charge?

23 A. That was his first charge.

24 Q. That's still pending?

25 A. No. That charge was dismissed.

CROSS EXAMINATION OF DOLLY ZEIGLER

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1 Q. Dismissed? Okay. About the waiver
2 evaluation. Is it standard procedure to have
3 the - be ordered and the team evaluate the
4 juvenile and come back and then issue your
5 opinion?

6 A. You mean the team's opinions?

7 Q. Yeah.

8 A. That's a request that can be made by the
9 attorney to my knowledge.

10 Q. Right. The Solicitor?

11 A. The Defense Attorney.

12 Q. That is the standard procedure and you
13 can't make an evaluation. You do maintain that
14 y'all are in the best position to evaluate...

15 A. I have no opinion regarding that.

16 Q. I'm not asking for your opinion on my
17 client. I'm saying as D...as the Department of
18 Juvenile Justice aren't y'all in the best
19 position to make that opinion?

20 A. If it was ordered that the Department of
21 Juvenile Justice to complete that evaluation,
22 it would have been completed.

23 Q. How long does one of those usually take?

24 A. It depends on what the Court orders.

25 Q. Oh is that right? Is it as long as an

RE-DIRECT EXAMINATION OF DOLLY ZEIGLER

1 evaluation when you send them up to R&E?

2 A. That depends.

3 Q. Can it be done in a week's time?

4 ATTY. BOWMAN: Your honor I think I would
5 object at this time. It calls for Ms. Zeigler
6 to speculate certain circumstances that aren't
7 really in existence.

8 COURT: She said she had no idea.

9 Q. No further questions your honor.

10 RE-DIRECT BY ATTY. BOWMAN

11 Q. Ms. Zeigler if I can ask you a few follow
12 up questions. When Mr. Banks asked you about
13 who was in the best position to do an
14 evaluation of Mr. Hughes, he can certainly have
15 an adequate job on a mental evaluation from the
16 State Department of Mental Health could he not?

17 A. I have no opinion.

18 Q. And with regard to the charge that is shown
19 on the form five juvenile record there was one
20 that had to do with a firearm. How was that
21 disposed of it?

22 A. It was dismissed.

23 Q. Do you know at whose requests this was
24 dismissed?

25 A. According to this document it was dismissed

DIRECT EXAMINATION OF D. C. JONES

1 by the Solicitor because there was no response
2 from law enforcement when she tried to contact
3 law enforcement concerning the criminal charge.

4 Q. Were there any other incidents on that form
5 file that had to do with involvements with Mr.
6 Hughes with the Juvenile Justice system that
7 was ended or terminated at the request of the
8 mother or grandmother?

9 A. No sir.

10 Q. Not that you know of?

11 A. No sir. Not that I know of.

12 Q. That's all the questions I have at this
13 time.

14 D. C. (BING) JONES, AFTER BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 DIRECT EXAMINATION BY ATTY. BOWMAN

17 Q. Sheriff would you state your full name and
18 position?

19 A. Dennis Calvin Jones and I'm the Sheriff of
20 Calhoun County.

21 Q. How long have you been in that capacity,
22 serving in that capacity?

23 A. Past four years.

24 Q. Your law enforcement experience before that
25 time was what?

DIRECT EXAMINATION OF D. C. JONES

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- 1 A. Approximately twenty years.
- 2 Q. Twenty years?
- 3 A. Yes.
- 4 Q. You were called to the scene of this robbery
5 and murder at the Blue Diamond establishment
6 were you not?
- 7 A. Yes sir.
- 8 Q. Did you arrive before or after Detective
9 Rhudy?
- 10 A. Before.
- 11 Q. When you were there what did you observe?
- 12 A. When I got there - EMS had already got to
13 the scene and when I walked into the video
14 room, EMS was working on both patients, the
15 girl and they were more less concentrated on
16 the gentleman that was laying on the floor.
17 EMS is the ones that moved the desk that y'all
18 referred to. They were the ones that moved.
19 Because I made the statement to them that they
20 could not move as much stuff because it was a
21 crime scene.
- 22 Q. Did you see them move the desk?
- 23 A. I did. Yes sir.
- 24 Q. Did you see the location of the other
25 furniture in there?

DIRECT EXAMINATION OF D. C. JONES

1 A. Yes sir.

2 Q. I'd like to show you these pictures that
3 has been marked as State's Exhibits. Is this
4 the desk that you're talking about this - this
5 is State's Exhibit Number Three? I'm sorry.

6 A. Yes sir.

7 Q. Were you there before it was moved?

8 A. Yes sir.

9 Q. Where was it positioned before it was moved
10 to the location on that picture?

11 A. Before it was moved - it was turned - the
12 drawer facing the refrigerator.

13 Q. And where was that rolling secretarial type
14 chair that you see in that position?

15 A. It was almost in that same position except
16 it was behind the desk.

17 Q. With regards to State's Exhibit One where
18 was that chair when you first got there?

19 A. When I got there...

20 Q. Hold it up and talk about it so Judge
21 Watson can see it.

22 A. When I came in the desk was sitting in
23 front of the chair. Ms. Hoffman was sitting in
24 the chair and almost behind the position where
25 the blood was and the gentleman was laying on

1 the floor. Almost in the - that's where his
2 head was laying.

3 Q. The position of the chair shown in that
4 picture accurately reflects where it was when
5 you got there?

6 A. Yes.

7 Q. Ms. Hoffman, what was her condition or
8 position when you got there?

9 A. Ms. Hoffman was conscious and the deputies
10 were talking to her trying to find out what
11 happened and she was trying to tell them what
12 happened. That somebody came in and shot them
13 and then she got tired and she asked them if
14 they would please quit questioning because she
15 was getting tired.

16 Q. What was her position? How was her body
17 positioned at that time?

18 A. She was sitting in the chair.

19 Q. In that chair. Let me show you State's
20 Exhibit Eight, is that the chair that you're
21 talking about?

22 A. That's the chair.

23 Q. She was sitting in it?

24 A. Yes sir.

25 Q. Could you draw a conclusion as to who's

DIRECT EXAMINATION OF D. C. JONES

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1 blood that is in that chair?

2 A. Ms. Hoffman. She was sitting in the chair.
3 She had the wound to her head.

4 Q. I show you this picture that's marked as
5 State's Exhibit Nine. Can you identify what
6 that is?

7 A. Yes sir. That is the desk and that is
8 where Ms. Hoffman was sitting right behind -
9 from what I gather that is where her head went
10 over and was laying on the desk.

11 Q. Sheriff if I might ask you a question or
12 two about the circumstances surrounding the
13 taking of the statement from Herman Hughes that
14 Detective Rhudy testified to. This is the one
15 dated March 20, 1994?

16 A. Yes sir.

17 Q. Your signature appears at the bottom as a
18 witness? Were you present when this was taken?

19 A. Yes sir.

20 Q. Can you tell the circumstances around which
21 this was taken?

22 A. I went out to Mrs. Hughes' residence - the
23 mother and asked her and I said I want to speak
24 to Herman and she said he's gone to Columbia.
25 I said it is very important that I talk to him

1 so I got his mother to ride with me to Columbia
2 and she and I picked Herman up in Columbia and
3 brought him back to the Sheriff's Department.

4 Q. You heard Detective Rhudy testify that this
5 was written out by his mother is that right?

6 A. Yes sir.

7 Q. The signature or name at the bottom is
8 Miranda Singletary, did you refer to his
9 mother as Ms. Hughes?

10 A. If I did I didn't mean to. It's Herman's
11 mother.

12 Q. Ms. Singletary?

13 A. Ms. Singletary.

14 Q. Once y'all brought him back to St. Matthews
15 what happened?

16 A. I took him into - we went into the
17 Sheriff's Department in a room, Herman, his
18 mother and myself. I read him his rights
19 again. I also read them in Columbia but I also
20 read them from this paper and asked her if he
21 would give me a statement and he did and he
22 confessed to shooting the girl and when he did
23 that his mother kind of went into shock I guess
24 and she left the room. I took a tape recorder
25 and advised Herman of his rights and I recorded

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DIRECT EXAMINATION OF D. C. JONES

1 the confession and then Ms. Hughes came back
2 in. She gathered her thoughts I guess and she
3 came back in and I asked her if she would write
4 a statement on it. She said she would because
5 Herman didn't write too well. She would write
6 it down for me.

7 Q. Did she do it?

8 A. Yes sir.

9 Q. This handwritten portion is that her work?

10 A. That was written by his mother.

11 Q. In addition to shooting Kelly Hoffman, he
12 also confessed to other charges?

13 A. Yes sir.

14 Q. Those being what?

15 A. He confessed to shooting her. Taking the
16 money from Blue Diamond and participating in
17 taking the car and riding to Orangeburg.

18 Q. He had confessed to armed robbery and grand
19 larceny of auto?

20 A. He confessed to everything except he said
21 the other subject - his co-defendant - shot the
22 gentleman, Mr. Presley.

23 Q. This time I would move this into evidence
24 as a state's exhibit?

25 COURT: Let it be marked.

1 COURT REPORTER: Eleven.

2 Q. That's all the questions I have at this
3 time.

4 CROSS EXAMINATION BY ATTY. BANKS

5 Q. Sheriff in that statement he starts off
6 went to Blue Diamond Casino. I walked in,
7 asked for the money and shot the woman. Then
8 he said we got the money and we took the car.
9 Obviously one person can take the money and one
10 person can take the car - well I guess two
11 people can take the money. One person drives
12 the car away. Do you know for certain he's the
13 one that confessed to driving the car away?

14 A. I think on my - I haven't had it typed yet,
15 but on my tape that I taped his confession on,
16 he told me he took the money.

17 Q. He took the money?

18 A. He took the money out of the cash drawer.

19 Q. Did he say he drove the car?

20 A. Kelsey drove the car.

21 Q. So he's confessed to taking the money and
22 shooting the girl?

23 A. He confessed to taking the money, shooting
24 the girl and also being - riding with Kelsey in
25 the car.

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CROSS EXAMINATION OF D. C. JONES

1 Q. Right. You said when they were questioning
2 the victim that was sitting in the chair, Kelly
3 Hoffman, you overheard or someone told you
4 later that she said somebody shot them?

5 A. I heard her say that.

6 Q. You heard her say that...

7 A. I heard her say that - right - EMS was
8 working on the guy, he was more seriously
9 injured and I heard her say that somebody came
10 in and shot them. She also said she's getting
11 tired and she said leave me alone.

12 Q. Is that all she said?

13 A. That's all I heard.

14 Q. Did she - do you know if she said anything
15 prior to that?

16 A. I don't know. All I said was what I heard.

17 Q. Who was talking to her at that point?

18 A. I don't remember if it was EMS or the
19 deputies. There was a lot of commotion going
20 on but I couldn't hear who was there.

21 Q. What deputies was present there? I know
22 Rhudy had not gotten there yet. Is that right?

23 A. It was Capers Wannamaker. Deputy
24 Wannamaker and Deputy Shirer. Also there was a
25 police officer from the Police Department,

RE-DIRECT EXAMINATION OF D. C. JONES

1 James Green I think was already there.

2 Q. So it could have been one of those three
3 then?

4 A. It could have been. I don't remember - I
5 remember the statement she made.

6 Q. Do you remember how many EMS fellows were
7 there?

8 A. When I got there I think there was four -
9 they kept coming in - so many people started
10 coming...

11 Q. So when you overheard her say somebody came
12 in and shot them does that indicate that she
13 didn't know who shot them yet?

14 A. That's what I thought.

15 Q. No further questions your honor.

16 RE-DIRECT BY ATTY. BOWMAN

17 Q. In relation to Mr. Banks question about
18 whether Ms. Hoffman knew who shot them, do you
19 mean - what do you mean by the answer whether
20 she knows - whether she can identify them or
21 whether she knows them by name?

22 A. I don't know. She just said they came in
23 and shot her and at that point the only thing I
24 could hear was she was getting tired. She
25 didn't want to talk. She knew who shot them.

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RE-DIRECT EXAMINATION OF D. C. JONES

1 She said they came in and shot them.

2 Q. So there is nothing that happened that
3 would make you think that later she could not
4 identify her assailants?

5 A. No sir it wasn't. It surprised me with the
6 wound she had. I thought she would be
7 unconscious, that she would be conscious. I
8 could understand that she was getting tired. I
9 figure she was going into shock.

10 Q. According to your recalculation of taped
11 version of your interview with Herman Hughes,
12 that he admitted to taking the money himself?

13 A. Yes sir. He admitted taking the money and
14 he also went so far to say that they took it to
15 I can't think of the gentleman's house now, put
16 the money on the bed and separated the money.
17 Divided the money.

18 Q. Between themselves?

19 A. Yes sir.

20 Q. As a part of your investigation did you
21 come to any conclusion about who came to look
22 this place over before the gunfire actually
23 started?

24 A. Yes sir.

25 Q. Who was that?

RE-DIRECT EXAMINATION OF D. C. JONES

1 A. Herman Hughes and Kelsey Pierce.

2 Q. And how did they do that?

3 A. They came in, you mean the first time
4 before they came back?

5 Q. Yes.

6 A. They came in and left and went and my
7 understanding they got a weapon from uh - I
8 can't think of the gentleman's name but they
9 went to his house and from what he said got a
10 weapon and came back. Herman went in to - for
11 the pretense of telling him could y'all tell me
12 how to play the video games. He said sure I'll
13 be glad to tell you. He said I need to go
14 outside and get some money. So he went outside
15 to get some money. He came back in with what I
16 understand to be a fifty dollar bill. That's
17 when he says he shot the girl.

18 Q. So when he came in on the pretense of
19 getting information or instruction on how to
20 play the video game, would he have had the
21 opportunity to see who was in there and survey
22 the scene?

23 A. Yes sir he would.

24 Q. From here - your testimony I think is that
25 Kelsey Pierce is the one that drove away Mr.

STATE'S CLOSING ARGUMENT

1 Presley's automobile?
2 A. Yes sir.
3 Q. How did Herman Hughes leave the scene?
4 A. Riding in the passenger side.
5 Q. From your experience of law enforcement and
6 enforcing the Laws of South Carolina, it is the
7 law that the hand of one is the hand of all is
8 it not?
9 A. Certainly is. Yes sir.
10 Q. That's all I have.
11 COURT: Any other witnesses?
12 ATTY. BOWMAN: Nothing further from the State
13 your Honor.
14 COURT: Mr. Banks any witnesses?
15 ATTY. BANKS: No your Honor.
16 COURT: Arguments?
17 ATTY. BOWMAN: Yes your Honor if I may I'd like
18 to perch upon several of the criteria that I
19 think that the Court will look at in making
20 it's decision as to whether to waive this
21 jurisdiction on this young man and let him have
22 this case - cases disposed of in General
23 Sessions. Of course the seriousness of these
24 offenses is really important. These are as
25 serious as you can get in human behavior so to

1 speak. Not only do we have the offense of
2 armed robbery, we actually have people who were
3 wounded with gunshots.. We have - one of them
4 ended in the taking of human life. The murder
5 charge is as serious as anything in our system
6 of juvenile law/criminal justice and we think
7 the seriousness of these charges, grand larceny
8 auto, the armed robbery, the assault and
9 battery with intent to kill and the murder
10 warrant this case going up to General Sessions
11 Court. More than that your Honor, these are
12 crimes against people. You have seen the
13 pictures. You have seen the amount of blood
14 that was shed as a result of the wounds that
15 were inflicted by Herman Hughes here and his
16 co-defendant. We think that these were not
17 only offenses against people but they were
18 violent crimes. Certainly Murder, Assault and
19 Battery with Intent to Kill, and Armed Robbery
20 are under our statutory law defined as violent
21 crimes. And we also think that there is
22 evidence that we have presented today that this
23 is a pre-meditated thing. The Sheriff
24 testified that they had been on the scene.
25 Been near Blue Diamond Casino. They had left

STATE'S CLOSING ARGUMENT

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1 that scene and gone to another location were
2 they got a gun. When they came back they
3 didn't just come bursting in with a gun.
4 Herman Hughes, according to Sheriff Jones'
5 investigation, came in, unarmed at that time,
6 asked the proprietor and other staff member for
7 directions or instructions on how to play the
8 video game. At that time we would take the
9 position he had a chance to survey the scene
10 and really look and see what the situation was
11 and see if it was right for an armed robbery.
12 He went also where his accomplice was waiting,
13 got the firearm, came back in and shot at least
14 one of the people. In his confession he
15 confesses to shooting the victim, Kelly
16 Hoffman. We would take the position of the
17 hand of one is the hand of all, that he is also
18 equally culpable of the murder of Mr. Presley.
19 This was an armed robbery. They were an armed
20 robbery gang. All be it of a gang of just two.
21 They were an armed robbery gang. This was not
22 an accident. This was not a crime of
23 circumstance, of being in a place where they
24 were tempted and they could no longer resist
25 that temptation. This was something that was

STATE'S CLOSING ARGUMENT

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1 planned out and pre-meditated. We think that
2 there is great prosecutorial merit to this case
3 as we have tried to outline to this Court
4 today. There is testimony from the victim who
5 survives as line up testimony. There is a
6 fingerprint - that SLED has developed that
7 ties Mr. Hughes to the actual drawer that has
8 the money in it. The money tray. Then we
9 have, of course, the confession that Detective
10 Rhudy and the Sheriff testify to in which he
11 admits to the armed robbery. The assault and
12 battery with intent to kill on Ms. Hoffman and
13 the grand larceny of the auto. I understand
14 the defense would take the position only one
15 person could be in possession of a stolen
16 vehicle but I think that stands up in light of
17 case law in our state. We think there would be
18 a certain judicial economy that would arise out
19 of having Mr. Pierce's case, The adult's case
20 and Herman Hughes case disposed of in General
21 Sessions Court and under that adult criminal
22 justice process. We think leaving him in
23 juvenile system will not - will mean that there
24 will not - there will be more expense and trial
25 time involved in - on everybody's part. The

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STATE'S CLOSING ARGUMENT

1 State would take the position that Mr. Hughes,
2 all be it is only sixteen now. He's near his
3 seventeenth birthday. He's a very
4 sophisticated individual. We think he is
5 street smart. He's had charges that had to do
6 with firearms. Pointing firearm case was - as
7 testified to by Ms. Zeigler was dismissed. Not
8 through any lack of prosecutorial merit. Not
9 that he was innocent but that the State could
10 not go forward with his case. Did not have a
11 victim that would cooperate and testify. In
12 addition to that we think that his record in
13 school would tell the Court a lot about this
14 young man. He had many incidents of disrespect
15 shown toward various teachers and people in the
16 school system. He's had many suspensions. And
17 finally the school system was left with no
18 alternative but to expel him. We take the
19 position which is permanently. We think this
20 shows the Court a lot where he is in his life.
21 He's never been to - according to the testimony
22 - in anything but the regular academic career
23 track. He's not been in any special education
24 or shown an emotional handicap or anything like
25 - of that nature. We think the prospects of

DEFENDANT'S CLOSING ARGUMENT

1 protecting society from Mr. Hughes are best
2 protected by him having his case waived up and
3 we think this is about as horrible of a crime
4 as you can come up. These people were running
5 a business. They weren't harming anybody. He
6 and his co-defendant planned this out. Went
7 and got a powerful firearm. A three eighty
8 caliber pistol and came back and shot up the
9 place. Your Honor has seen the bullet that hit
10 - for one thing hit the refrigerator. The
11 testimony is that probably passed through Ms.
12 Hoffman's body. Some part of her chest. So
13 powerful was that gun. This is a horrible
14 situation and we think society and justice
15 would be best served by having your Honor waive
16 your jurisdiction and have his case disposed of
17 in General Sessions. Thank you.

18 COURT: Mr. Banks.

19 ATTY. BANKS: Your Honor. I appreciate the
20 Solicitor taking my position for me but he
21 misstated my position. My position is that the
22 adult in this matter was the leader of the gang
23 that he so carefully characterized this as and
24 that he had influence over my client. Because
25 of the adult, the adult ought to take more

DEFENDANT'S CLOSING ARGUMENT

1 weight and responsibility due to the leftover
2 charges and the way that he lead my client. As
3 far as judicial economy is concerned your
4 Honor. I believe it would be quite more
5 expenses to have this thing and a lot less
6 judicial economy to take it - both of them up
7 to General Sessions Court because you certainly
8 can dispense of a case here a lot quicker and
9 with a lot more judicial economy down here in
10 Family Court. They are not going to be tried
11 together. These two guys are already having
12 different stories and there are going to be two
13 General Sessions trials. Not one. As far as
14 his school is concerned, it's a shame that you
15 can't file disrespect to students - or
16 different things so that you could see the
17 other side of the story. Once something
18 happens in school and you got a disrespect to
19 teacher there is no rebuttal to that. My
20 client has - there might have been personality
21 problems involved there. And the Solicitor
22 brought up this gun charge that was disposed of
23 without any guilt associated with my client.
24 He liked to say that he wasn't innocent. But
25 he is innocent your Honor. He's innocent until

DEFENDANT'S CLOSING ARGUMENT

1 proven guilty and he's not been found guilty on
2 that. He didn't mention the automobile charge
3 but the same on - I would stand on that same
4 position for the vehicle charge. Your Honor I
5 think this is a case of an adult leading a
6 juvenile into no good and that the adult is the
7 one that is properly tried in that Court.
8 Juveniles properly tried in this Court. Your
9 Honor I was served - the Petition to Transfer -
10 well actually it's clocked the Twenty Fourth.
11 It was served upon me on - I believe the Twenty
12 - either the Twenty Sixth or the Twenty Eighth
13 and the Summons and Notice of Hearing on this
14 case was never filed. The one that I received
15 was never in your Court file. I would ask
16 because of the time constraint, the hearing
17 date and the documents that got to my desk that
18 you would at least delay your decision if not
19 decide in our favor. If you decide that you
20 need more information and delay your decision
21 until we can request an evaluation from the
22 team of people at DJJ. I kind of think we are
23 kind of in a bubble in this case but at least
24 if you see yourself leaning toward siding
25 against us that you ought to have at least

COURT'S RULING

1 that input based on the time constraint that
2 was placed on me in this matter. That's all I
3 have.

4 COURT: Certainly the waiver case - the burden
5 in this case on the Solicitor certainly has an
6 obligation to present the prosecutorial merit
7 of the case. Usually we find - decide whether
8 or not there is probable cause to believe that
9 the minor committed the crime. That's the
10 criteria before we decide whether or not the
11 charges ought to be transferred in this case.
12 In this case certainly the prosecutorial merit
13 - certainly the State has a very good case of
14 murder, armed robbery, theft of a vehicle -
15 grand larceny. No question about that. The
16 young man has signed confessions in front of
17 his mother and the Sheriff that he did shoot
18 the woman there in the place and took the money
19 and they took the car and left the scene. The
20 lady that was shot has identified this
21 Defendant as being the one that shot her.
22 Certainly there is probable cause that he did
23 commit the crime. Certainly the planned armed
24 robbery - the hand of one in that situation is
25 the hand of all. This young man walk in and

COURT'S RULING

1 cased it - cased the business there, left, got
2 the gun and came back in and he's the one that
3 did the shooting to start with. We know from
4 the victim that he shot her. From his
5 statement he admitted to shooting her. He said
6 he turned the gun over then to the other fellow
7 and the other fellow shot the person in the
8 establishment. He's just as guilty as the
9 person that shot the other person in the
10 establishment and that person as a result of
11 being shot died. This young man certainly
12 shares in the responsibility of that as well.
13 Certainly there is probable cause. Very strong
14 case of it. Pre-meditated shooting. Could
15 have committed the armed robbery without
16 shooting these people. You could have gone in
17 and held the gun on them and took the money and
18 left. Serious crime but nobody was killed. If
19 you go in and you don't have to shoot somebody
20 and you go ahead and shoot a woman at the desk
21 there and the accomplice shoots the other
22 person. There is no justification for it.
23 It's cold blooded. Pre-meditated murder.
24 Exactly what it is. Very serious crime.
25 Violence against a person. One of the

COURT'S RULING

1 consideration that the Supreme Court says in
2 the Kent case is that one of the factors that
3 the Court needs to consider is very serious
4 crime. A crime of violence. Even if we
5 assumed that he had no prior record at all and
6 there is no previous adjudication, the question
7 is whether or not he could be rehabilitated in
8 the juvenile system. He's almost seventeen
9 years of age. A crime of this serious nature
10 and pre-meditated. There is no rehabilitation
11 in the juvenile justice system for this young
12 man for that kind of crime. Juvenile justice
13 provides no rehabilitation. The Court of
14 General Sessions can deal with this case
15 whatever period of time the Court of General
16 Sessions feels that this Court needs that this
17 young man needs to serve and there in which he
18 can become rehabilitated than the Court of
19 General Sessions has far more authority than
20 this Court to order such detention for the
21 purpose of rehabilitation and other
22 rehabilitate services. Jurisdiction in this
23 Court is limited to order that the minor be
24 committed for an indefinite period of time not
25 to exceed his twenty first birthday. That's

COURT'S RULING

1 the limit. I just don't believe that this
2 young man could be rehabilitated under those
3 circumstances by our juvenile justice system.
4 Certainly the cause of all of that, the
5 sophistication and maturity of this young man,
6 the Court has to consider. He's sixteen, going
7 on seventeen. He's a man. He's not a three
8 year old child or a seven year old child or an
9 eight year old or ten year old child that picks
10 up a gun thinking that it's unloaded and it
11 goes off and it kills somebody. He knew what
12 he was doing. He had the gun. It was a very
13 high powered weapon. When you point it and
14 pull the trigger somebody is going to be very
15 seriously injured or maimed or killed and
16 regardless of that and knowing that he walked
17 in and pulled the trigger. He has certainly
18 sufficient maturity and sophistication to be
19 responsible for his actions and to be held
20 accountable for his crimes. We got - in this
21 State there is a tendency that juveniles are
22 prone to violence and commit violent crimes.
23 It's got to stop. These cases need to be in
24 General Sessions where they can be tried by a
25 jury. The public can be aware then that when a

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COURT'S RULING

1 person commits a crime of this nature, the
2 State is doing something about it. Whatever
3 the penalty may be when he faces the Court of
4 General Sessions is certainly sufficient - I
5 think the act will be deterrent on others and
6 the act will be deterrent for him whether they
7 incarcerate him to keep him from doing this
8 kind of crime it certainly would be a deterrent
9 from this type of crime happening by this young
10 man in the future. The Order of this Court is
11 that he be transferred for trial as an adult to
12 the Court of General Sessions. As far as a
13 request for a bond in this case, I deny bond.
14 He is to be held without bond.

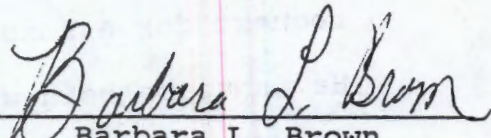
15 -----END OF JUVENILE TRANSCRIPT REQUESTED-----
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CERTIFICATE

I, Barbara L. Brown, do hereby certify that this Transcript of Record was prepared from the original recording and compared with the back up recording. That this is a true and accurate Transcript of Record from the hearing before the Honorable Maxey G. Watson, in Orangeburg, South Carolina on April 8, 1994.

I further certify that I am neither of kin or have a personal interest in this proceeding or the parties hereto.


Barbara L. Brown
Court Reporter

Orangeburg, South Carolina
February 26, 1996

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STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

COURT OF GENERAL SESSIONS
94-GS-09-0153/0154/0155/0156

THE STATE :
 :
 -VS- :
 :
HERMAN HUGHES :
 :
 :

TRANSCRIPT OF RECORD
(MOTIONS)

AUGUST 22, 1995
COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

WALTER M. BAILEY, JR.,
SOLICITOR OF THE FIRST JUDICIAL CIRCUIT
JOEL B. FLOYD, ASSISTANT SOLICITOR
APPEARING FOR THE STATE

PHILLIP F. NEWSOM, ESQUIRE
APPEARING FOR THE DEFENDANT

DEBORAH M. McCURDY
CIRCUIT COURT REPORTER

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>KELLY HOFFMAN</u>				
MR. BAILEY	4			
MR. NEWSOM		23		
<u>CHRIS DOZIER</u>				
MR. BAILEY	30			
MR. NEWSOM		33		
<u>DANIEL KIRKLAND</u>				
MR. BAILEY	36		54	
MR. NEWSOM		47		55
<u>CHRIS DOZIER</u>				
MR. BAILEY	58			
MR. NEWSOM		63		
<u>SHERIFF DENNIS JONES</u>				
MR. BAILEY	73			
MR. NEWSOM		81		

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	LINE-UP	18	
S-2	ADVICE OF RIGHTS/WAIVER	40	
S-3	STATEMENT OF DEFENDANT	43	
S-4	SECOND STATEMENT	44	
S-5	CHAIN OF CUSTODY FORM	55	
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D-1	MOTION TO BAR IMPOSITION OF THE DEATH PENALTY		95

MOTIONS

1 THE COURT: ALL RIGHT, LET'S GET UPON THE RECORD.
2 THIS MOTION HEARING IS HELD IN THE CASE OF THE STATE OF SOUTH
3 CAROLINA, PLAINTIFF, VERSUS HERMAN LEE HUGHES, JR., THE
4 DEFENDANT.

5 LET THE RECORD REFLECT THAT THE SOLICITOR OF THE
6 FIRST CIRCUIT, ACCOMPANIED BY HIS ASSISTANT, IS IN THE
7 COURTROOM, THAT THE LAWYER FOR THE DEFENDANT IS IN THE
8 COURTROOM, AS IS THE DEFENDANT.

9 THIS HEARING IS PURSUANT TO AN AGREEMENT OF COUNSEL
10 BY AND BETWEEN THE STATE AND THE DEFENDANT'S ATTORNEY WHEREIN
11 THE JURISDICTION OF CALHOUN COUNTY IS WAIVED FOR THE SPECIFIC
12 PURPOSE OF THIS HEARING TODAY AND FOR THE HEARING PREVIOUSLY
13 HELD ON THE 28TH OF JULY, 1995, COUNSEL FOR THE DEFENDANT
14 AGREEING THAT THIS PROCEEDING HELD TODAY AND ON THE 28TH IS
15 PERMISSIBLE TO BE HELD HERE IN RICHLAND COUNTY, THOUGH THE
16 VENUE HERE AND JURISDICTION IS THE COUNTY OF CALHOUN.

17 MR. NEWSOM: THAT'S FINE.

18 THE COURT: DO YOU AGREE WITH THAT?

19 MR. NEWSOM: YES, YOUR HONOR, I DO.

20 THE COURT: ALL RIGHT, SIR. NOW, THERE ARE VARIOUS
21 MOTIONS HERE ON BOTH SIDES. LET ME HEAR ANY MOTIONS FOR THE
22 PLAINTIFF/FOR THE STATE FIRST, PLEASE.

23 MR. BAILEY: YOUR HONOR, THE STATE WOULD HAVE A
24 MOTION ON IDENTIFICATION AND ALSO JACKSON V. DENNO, AND WITH
25 THE COURT'S PERMISSION I WOULD LIKE TO PROCEED WITH

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MOTIONS

1 IDENTIFICATION FIRST.

2 THE COURT: ALL RIGHT, WE WILL DO THAT AT THIS TIME.

3 MR. NEWSOM: YOUR HONOR, BEFORE WE PROCEED, I WOULD
4 MOVE TO SEQUESTER THE WITNESSES THAT MAY BE CALLED TO TESTIFY
5 AT THIS HEARING. I'M GOING TO BE MOVING, AND THE SOLICITOR
6 WITHOUT OBJECTION I DON'T THINK FOR THE TRIAL IN GENERAL FOR
7 SEQUESTRATION OF WITNESSES. THERE MAY BE TESTIMONY PRESENTED
8 HERE TODAY THAT---

9 THE COURT: YOU WANT TO SEQUESTER THE WITNESSES
10 INVOLVED IN THE IDENTIFICATION?

11 MR. NEWSOM: YES, SIR.

12 THE COURT: THAT WILL BE DONE WITH THE EXCEPTION OF
13 WHOEVER IS THE CHIEF INVESTIGATING OFFICER WHO IS ENTITLED TO
14 REMAIN IN THE COURTROOM.

15 WHO ARE YOUR WITNESSES ON THIS ISSUE?

16 MR. BAILEY: YOUR HONOR, THERE ARE ACTUALLY GOING TO
17 BE THREE WITNESSES ALL TOGETHER: KELLY HOFFMAN, THE VICTIM;
18 CHRIS DOZIER, WHO WAS ONE OF THE TWO LAW ENFORCEMENT OFFICERS
19 THERE; EARL RHUDY. MR. RHUDY IS OUT OF STATE. AND I THINK
20 WITH THE VICTIM AND THE ONE OFFICER THAT WAS THERE AND THE
21 PHOTOGRAPHS, THAT MAY BE SUFFICIENT FOR THE COURT FOR PURPOSES
22 OF THIS HEARING.

23 THE COURT: ALL RIGHT, SIR.

24 MR. BAILEY: IF NOT, I WOULD LIKE TO CALL MR. RHUDY
25 AT A LATER DATE.

KELLY HOFFMAN--DIRECT BY MR. BAILEY

1 THE COURT: THAT WOULD BE FINE.

2 MR. BAILEY: I JUST HAVE TWO PEOPLE TODAY. SHERIFF
3 JONES IS THE CHIEF INVESTIGATING OFFICER. HE WAS NOT INVOLVED
4 IN THE IDENTIFICATION.

5 THE COURT: I KNOW SHERIFF JONES. GOOD TO SEE YOU,
6 SHERIFF.

7 ALL RIGHT, WHERE CAN THESE WITNESSES -- LET'S TAKE
8 THE FIRST WITNESS AND THEN THE OTHER TWO WILL REMAIN OUTSIDE
9 THE COURTROOM. WHERE CAN WE HAVE THEM GO, PLEASE?

10 MR. BAILEY: YOUR HONOR, THE SECOND WITNESS IS
11 ALREADY OUTSIDE OF THE COURTROOM.

12 THE COURT: SIR?

13 MR. BAILEY: MR. DOZIER, OUR SECOND WITNESS ON
14 IDENTIFICATION, IS ALREADY OUTSIDE.

15 THE COURT: ALL RIGHT, HOW MANY WITNESSES ARE IN THE
16 COURTROOM?

17 MR. BAILEY: JUST ONE ON THE IDENTIFICATION ISSUE.

18 THE COURT: ALL RIGHT, THE WITNESSES ARE
19 SEQUESTERED. LET'S CALL THAT WITNESS, PLEASE.

20 MR. BAILEY: KELLY HOFFMAN.

21 (WITNESS SWORN.)

22 **KELLY HOFFMAN, BEING FIRST**
23 **DULY SWORN, TESTIFIED AS FOLLOWS:**

24 THE COURT: PLEASE HAVE A SEAT AND STATE YOUR NAME.

25 MS. HOFFMAN: KELLY HOFFMAN.

KELLY HOFFMAN--DIRECT BY MR. BAILEY

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1 THE COURT: YOU MAY PROCEED.

2 MR. BAILEY: THANK YOU, YOUR HONOR.

3 DIRECT EXAMINATION BY MR. BAILEY:

4 Q. MS. HOFFMAN, HOW OLD ARE YOU?

5 A. EIGHTEEN.

6 Q. AND WHERE DO YOU LIVE?

7 A. ST. MATTHEWS.

8 Q. AND WHO DO YOU LIVE WITH IN ST. MATTHEWS?

9 A. MY MOTHER.

10 Q. OKAY. BACK IN MARCH, 1994, HOW OLD WERE YOU?

11 A. SEVENTEEN.

12 Q. OKAY. AND AT THAT TIME DID YOU KNOW A BOY NAMED KENNETH
13 PRESSLEY?

14 A. YES.

15 Q. AND WHAT WAS YOUR RELATIONSHIP WITH KENNETH PRESSLEY?

16 A. HE WAS MY BOYFRIEND.

17 Q. OKAY. NOW, WHERE DID KENNETH WORK IN MARCH OF 1994?

18 A. THE BLUE DIAMOND CASINO.

19 Q. OKAY. AND IS THAT LOCATED RIGHT OUTSIDE OF ST. MATTHEWS?

20 A. YES.

21 Q. AND ON THE EVENING OF MARCH THE 18TH, 1994, DID YOU AND
22 KENNETH GO TO THE BLUE DIAMOND CASINO?

23 A. YES.

24 Q. AND THAT IS A VIDEO POKER PLACE; IS THAT CORRECT?

25 A. YES.

KELLY HOFFMAN--DIRECT BY MR. BAILEY

- 1 Q. AND DO YOU RECALL WHAT TIME YOU GOT THERE?
- 2 A. TEN 'TIL EIGHT.
- 3 Q. TEN 'TIL EIGHT? AND COULD YOU DESCRIBE FOR THE JUDGE HOW
- 4 BIG THE INSIDE OF THE BLUE DIAMOND WAS AT THAT TIME?
- 5 A. IT IS ABOUT THE SIZE OF THE JUDGE'S BENCH IF IT WERE
- 6 SQUARED OFF.
- 7 Q. OKAY. AND IS THERE ONE MAIN ROOM AND A COUPLE OF LITTLE
- 8 SIDE ROOMS?
- 9 A. YES.
- 10 Q. AND ARE YOU TALKING ABOUT THE MAIN ROOM BEING ABOUT AS
- 11 BIG AS THE JUDGE'S BENCH SQUARED OFF?
- 12 A. YES.
- 13 Q. SO IT IS A VERY SMALL PLACE; IS THAT CORRECT?
- 14 A. YES.
- 15 Q. OKAY. NOW, HOW IS IT LIT?
- 16 A. IT IS FLUORESCENT LIGHTING.
- 17 Q. OKAY. AND WHEN Y'ALL WENT THERE ABOUT 8 O'CLOCK, WERE
- 18 THE LIGHTS ON INSIDE OF THE BUILDING?
- 19 A. YES.
- 20 Q. OKAY. AND COMPARED TO THE LIGHTING IN THIS ROOM, WERE
- 21 THE LIGHTS AT THE BLUE DIAMOND LIGHTER OR DARKER?
- 22 A. BRIGHTER.
- 23 Q. OKAY, YOU CAN SEE BETTER IN THERE THAN YOU CAN NOW?
- 24 A. YES.
- 25 Q. DO YOU WEAR CONTACT LENSES?

KELLY HOFFMAN--DIRECT BY MR. BAILEY

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- 1 A. YES.
- 2 Q. AND DID YOU WEAR CONTACT LENSES BACK IN MARCH OF '94?
- 3 A. YES.
- 4 Q. WERE YOU WEARING THE CONTACT LENSES THAT NIGHT?
- 5 A. YES.
- 6 Q. OKAY. AND WITH THE CONTACT LENSES, HOW DO YOU SEE?
- 7 A. I GUESS ALMOST PERFECT.
- 8 Q. OKAY. CAN YOU SEE ME ALL RIGHT FROM WHERE YOU ARE?
- 9 A. YES.
- 10 Q. OKAY. AND SHORTLY AFTER 8 O'CLOCK, DID ANYBODY COME INTO
- 11 THE BLUE DIAMOND?
- 12 A. YES.
- 13 Q. OKAY. AND DO YOU RECALL ABOUT WHAT TIME THAT PERSON CAME
- 14 IN?
- 15 A. ABOUT TEN AFTER EIGHT.
- 16 Q. OKAY. AND WHEN THE PERSON CAME IN, HAD YOU EVER SEEN HIM
- 17 BEFORE TO YOUR KNOWLEDGE?
- 18 A. NO.
- 19 Q. OKAY. AND WHEN THE PERSON CAME IN, WHAT DID THEY DO, IF
- 20 ANYTHING; WHERE DID THEY GO?
- 21 A. THEY ASKED KEN HOW TO PLAY THE MACHINES.
- 22 Q. ALL RIGHT. WHERE WAS KEN STANDING AT THAT TIME WHEN THE
- 23 PERSON ASKED HIM HOW TO PLAY THE MACHINES?
- 24 A. HE WAS PLAYING ONE OF THE MACHINES.
- 25 Q. OKAY. AND WHEN THE PERSON CAME IN, HOW CLOSE WAS HE TO

1 YOU?

2 A. SIX FEET.

3 Q. OKAY. AND ABOUT HOW LONG WAS HE IN THE CASINO AT THAT
4 TIME?

5 A. THREE OR FOUR MINUTES.

6 Q. OKAY. AND YOU WERE HOW FAR AWAY FROM HIM?

7 A. SIX FEET.

8 Q. AND WHERE WAS YOUR ATTENTION FOCUSED AT THAT TIME? WHAT
9 WERE YOU DOING?

10 A. I WAS READING A MAGAZINE.

11 Q. ALL RIGHT. WOULD YOU STATE WHETHER OR NOT YOU WERE ABLE
12 TO GET A GOOD LOOK AT THE PERSON WHO CAME IN?

13 A. YES.

14 Q. ALL RIGHT. DO YOU SEE THAT PERSON IN THE COURTROOM?

15 A. YES.

16 Q. WOULD YOU POINT HIM OUT?

17 A. RIGHT THERE (INDICATING).

18 Q. OKAY.

19 MR. BAILEY: THE RECORD WILL SHOW THAT THE WITNESS
20 HAS INDICATED THE DEFENDANT, HERMAN HUGHES.

21 Q. OKAY. NOW, WHAT TRANSPIRED WHILE HE WAS IN THERE THAT
22 CAUSED YOU TO DIRECT YOUR ATTENTION TO HIM?

23 A. I WENT TO GET SOMETHING OUT OF THE DRAWER AND HE LOOKED
24 UP TOWARDS ME. HE DIRECTED HIS ATTENTION TOWARDS ME, AND I
25 THOUGHT--BUT THEN I LOOKED IN HIS FACE AND I THOUGHT HE LOOKED

KELLY HOFFMAN--DIRECT BY MR. BAILEY

1797

- 1 MIGHTY YOUNG TO BE PLAYING VIDEO POKER MACHINES.
- 2 Q. OKAY. SO YOU WERE LOOKING STRAIGHT AT HIM?
- 3 A. YES.
- 4 Q. ALL RIGHT. AND DID HE LEAVE THE BLUE DIAMOND AFTER
- 5 SEVERAL MINUTES?
- 6 A. YES.
- 7 Q. OKAY. AND HOW LONG WAS HE GONE?
- 8 A. ABOUT EIGHT TO TEN MINUTES.
- 9 Q. OKAY. AND WHAT HAPPENED AFTER EIGHT OR TEN MINUTES WENT
- 10 BY?
- 11 A. HE CAME BACK IN.
- 12 Q. ALL RIGHT. WHEN YOU SAY HE CAME BACK IN, WAS IT THE SAME
- 13 PERSON THAT WAS IN THERE EARLIER?
- 14 A. YES.
- 15 Q. OKAY. AND WOULD YOU AGAIN IDENTIFY THE PERSON THAT CAME
- 16 IN?
- 17 A. RIGHT THERE(INDICATING).
- 18 Q. AND INDICATING THE DEFENDANT, HERMAN HUGHES?
- 19 A. YES.
- 20 Q. ALL RIGHT. THE SECOND TIME HE CAME IN, HOW CLOSE DID HE
- 21 GET TO YOU?
- 22 A. AT FIRST THE SAME DISTANCE, SIX FEET.
- 23 Q. OKAY. AND WHAT OCCURRED? WHAT DID YOU OBSERVE WHEN HE
- 24 CAME BACK IN?
- 25 A. HE TOLD KEN THAT HE NEEDED CHANGE FOR A \$50.

1 Q. ALL RIGHT. AND WHAT, IF ANYTHING, DID KEN DO THEN?

2 A. KEN WALKED OVER TO THE MONEY DRAWER BEHIND THE DESK.

3 Q. OKAY. AND YOU SAID HE WAS SITTING DOWN AT A DESK? IS
4 THIS THE SAME DESK WHERE THE MONEY DRAWER WAS?

5 A. YES.

6 Q. OKAY. SO KEN CAME OVER TO THE DESK WHERE YOU WERE?

7 A. YES.

8 Q. AND DID YOU OBSERVE KEN DO ANYTHING?

9 A. OPEN THE MONEY DRAWER.

10 Q. AND THEN WHAT HAPPENED?

11 A. THEN -- I WAS ON THE PHONE AT THIS TIME, AND KEN, "DO YOU
12 WANT TWENTIES OR WHAT?"

13 AND HE SAID -- I THINK HE SAID IT DIDN'T MATTER, OR
14 EITHER HE JUST DIDN'T SAY ANYTHING, AND KEN STARTED -- HE WENT
15 TO GET THE MONEY OUT OF THE DRAWER, AND THEN HE SAID, "GET OFF
16 THE PHONE."

17 Q. WHEN YOU SAID "HE," INDICATE WHO YOU ARE TALKING ABOUT.

18 A. HERMAN.

19 Q. INDICATING HERMAN HUGHES?

20 A. (NODS AFFIRMATIVELY.) HE SAID, "GET OFF THE PHONE."

21 AND I TOLD MY FRIEND ON THE PHONE THAT I HAD TO GO, AND
22 I GOT OFF THE PHONE.

23 AND THEN HE SAID, "GIVE ME THE MONEY."

24 AND KEN SAID, "OKAY, NO PROBLEM."

25 Q. ALL RIGHT. DID YOU OBSERVE ANYTHING ABOUT HERMAN HUGHES

1799

KELLY HOFFMAN--DIRECT BY MR. BAILEY

- 1 WHEN HE SAID, "GIVE ME THE MONEY"? WAS HE HOLDING ANYTHING?
- 2 A. A GUN.
- 3 Q. ALL RIGHT. AND WHERE WAS THE GUN POINTED?
- 4 A. US. MAINLY KEN.
- 5 Q. ALL RIGHT. AND WHEN HE TOLD KEN TO GIVE HIM THE MONEY,
- 6 WHAT, IF ANYTHING, DID KEN DO?
- 7 A. STARTED GIVING HIM THE MONEY. HE SAID, "OKAY."
- 8 Q. ALL RIGHT. NOW, HOW CLOSE WERE YOU TO HERMAN HUGHES AT
- 9 THAT POINT IN TIME WHEN KEN WAS GIVING HIM THE MONEY?
- 10 A. THREE AND A HALF FEET AT THE MOST.
- 11 Q. OKAY. DID YOU GET A GOOD LOOK AT HIM?
- 12 A. YES.
- 13 Q. OKAY. AND WHAT OCCURRED, IF ANYTHING, WHEN KEN GAVE HIM
- 14 THE MONEY?
- 15 A. HE ASKED FOR HIS CAR KEYS TOO.
- 16 Q. WHAT DID KEN DO THEN?
- 17 A. SET THEM DOWN ON THE DESK.
- 18 Q. THEN WHAT HAPPENED?
- 19 A. HE STARTED TO HAND HIM THE MONEY AGAIN, AND HERMAN SHOT
- 20 HIM IN THE HEAD.
- 21 Q. OKAY. HERMAN SHOT KEN?
- 22 A. YES.
- 23 Q. AND WHAT -- DID YOU SEE THAT?
- 24 A. YES.
- 25 Q. AND WHAT DID YOU SEE KEN DO WHEN HE WAS SHOT?

KELLY HOFFMAN--DIRECT BY MR. BAILEY

- 1 A. FALL.
- 2 Q. OKAY. AND DID HE FALL ON THE RIGHT OR HIS LEFT SIDE?
- 3 A. LEFT SIDE.
- 4 Q. OKAY. AND WHAT, IF ANYTHING, OCCURRED AFTER THAT?
- 5 A. I SAID, "OH, MY GOD."
- 6 AND THEN HE, HERMAN, TURNED TO ME AND SHOT ME IN THE
- 7 CHEST.
- 8 Q. ALL RIGHT. HOW FAR APART WERE YOU AT THAT POINT?
- 9 A. SAME DISTANCE.
- 10 Q. THREE AND A HALF FEET?
- 11 A. (NODS AFFIRMATIVELY.)
- 12 Q. AND WHAT DIRECTION WERE YOU LOOKING AT WHEN HE SHOT YOU?
- 13 A. AT HIM, HERMAN.
- 14 Q. OKAY. ARE YOU POSITIVE THAT WAS HIM THAT SHOT YOU?
- 15 A. YES.
- 16 Q. WHAT, IF ANYTHING, OCCURRED AFTER THAT?
- 17 A. THEN I LOOKED DOWN AT MY CHEST AND I LOOKED BACK OVER TO
- 18 KEN AND HE SHOT KEN.
- 19 Q. WHEN YOU SAY "HE," I WANT YOU TO GIVE THE NAME.
- 20 A. I LOOKED BACK AT MY CHEST DOWN WHERE HE HAD--WHERE HERMAN
- 21 HAD SHOT ME, AND THEN I LOOKED BACK AND FORTH FROM HERMAN TO
- 22 KEN, AND HE SHOT KEN ONCE MORE.
- 23 Q. THE SECOND TIME?
- 24 A. THE SECOND TIME.
- 25 Q. AND WHERE DID HE SHOOT KEN?

1801-A

KELLY HOFFMAN--DIRECT BY MR. BAILEY

1 BLUE DIAMOND WHEN THE SHOOTING WAS GOING ON?

2 A. YES.

3 Q. AND ARE YOU POSITIVE THAT ALL FIVE SHOTS, THE TWO THAT
4 HIT YOU AND THE THREE THAT HIT KEN IN THE HEAD, WERE FIRED BY
5 THIS MAN HERE, HERMAN HUGHES?

6 A. YES.

7 Q. OKAY. IS IT POSSIBLE ANYBODY ELSE COULD HAVE COME IN THE
8 BLUE DIAMOND---

9 A. NO.

10 Q. ---WHEN THIS WAS GOING ON? DO YOU KNOW A PERSON NAMED
11 KELSEY PIERCE?

12 A. YES.

13 Q. DID YOU SEE KELSEY PIERCE THAT NIGHT?

14 A. NO.

15 Q. IF HE HAD COME INTO THE BLUE DIAMOND WHEN THE SHOOTING
16 WAS GOING ON, WOULD YOU HAVE KNOWN IT?

17 A. YES.

18 Q. WERE YOU CONSCIOUS DURING THE ENTIRE SEQUENCE---

19 A. YES.

20 Q. ---FROM THE TIME HERMAN HUGHES ENTERED THE ROOM AND HE
21 SHOT KEN, SHOT YOU, SHOT KEN, SHOT YOU AND SHOT KEN THE THIRD
22 TIME? WERE YOU CONSCIOUS THE ENTIRE TIME?

23 A. YES.

24 Q. AFTER THE FIFTH SHOT, WHAT, IF ANYTHING, TOOK PLACE THEN?

25 A. THEN HERMAN GATHERED THE MONEY AND THE KEYS AND HE CUT

KELLY HOFFMAN--DIRECT BY MR. BAILEY

1 A. I SAW HIM SHOOT HIM, BUT I DIDN'T SEE -- AT THE TIME I
2 DIDN'T KNOW EXACTLY WHERE HE WAS SHOT AT, BUT I ASSUMED THEN
3 IT WAS HIS HEAD.

4 Q. DON'T ASSUME ANYTHING. BUT YOU SAW HIM FIRE THE SECOND
5 SHOT IN KEN'S DIRECTION?

6 A. YES.

7 Q. AND WAS KEN ON THE FLOOR STILL?

8 A. YES.

9 Q. ALL RIGHT. AFTER THE THIRD SHOT WAS FIRED, WHAT, IF
10 ANYTHING, DID HE DO?

11 A. HE TURNED -- HERMAN TURNED THEN AND HE KIND OF WALKED A
12 LITTLE BIT OVER TOWARDS MY DIRECTION AND I WAS LOOKING DOWN
13 AND HE SHOT ME IN THE FACE.

14 Q. ALL RIGHT. NOW, ARE YOU SURE THAT HE WAS THE ONE THAT
15 SHOT YOU IN THE FACE---

16 A. YES.

17 Q. ---WHEN THE FOURTH SHOT WAS FIRED? HOW DO YOU KNOW THAT?

18 A. I SAW HIM.

19 Q. ALL RIGHT. AFTER YOU WERE SHOT THE SECOND TIME, WHAT
20 OCCURRED, IF ANYTHING?

21 A. THEN HERMAN SHOT KEN ONCE MORE, THE LAST TIME, AND I
22 WASN'T LOOKING DIRECTLY IN HIS FACE WHEN HE SHOT KEN THE THIRD
23 TIME, BUT I WAS LOOKING AT HIS LOWER BODY AND IT WAS THE SAME
24 PERSON. NOBODY ELSE ENTERED.

25 Q. OKAY. ARE YOU POSITIVE THAT NOBODY ELSE CAME INTO THE

1802

KELLY HOFFMAN--DIRECT BY MR. BAILEY

- 1 OFF THE LIGHTS AND LEFT.
- 2 Q. OKAY. AND WHAT DID YOU DO AFTER HE LEFT?
- 3 A. I WAITED A COUPLE OF MINUTES, MAYBE THREE MINUTES, TO
- 4 MAKE SURE THAT HE WAS GONE, AND THEN I CALLED THE POLICE AND
- 5 THEN PUSHED THE PANIC BUTTON.
- 6 Q. OKAY. AND DID THE POLICE ARRIVE?
- 7 A. YES.
- 8 Q. OKAY. DO YOU KNOW ABOUT HOW LONG IT TOOK THE POLICE TO
- 9 GET THERE?
- 10 A. AT THE MOST, TEN MINUTES.
- 11 Q. OKAY. AND WHEN THEY ARRIVED, COULD THEY GET IN
- 12 ORIGINALLY?
- 13 A. NO.
- 14 Q. OKAY. AND WAS THAT BECAUSE THE DOOR WAS LOCKED?
- 15 A. YES.
- 16 Q. AND DID THEY EVENTUALLY COME INSIDE?
- 17 A. YES.
- 18 Q. WOULD YOU TELL THE COURT THE CONDITION YOU WERE IN AT THE
- 19 TIME THE POLICE OFFICERS CAME IN?
- 20 A. I WAS CONSCIOUS, BUT I FELT REAL SLEEPY LIKE IF I CLOSED
- 21 MY EYES I COULDN'T GET BACK UP AND EVERYTHING FELT LIKE IT WAS
- 22 GOING IN SLOW MOTION.
- 23 Q. OKAY. DO YOU RECALL ANY SPECIFIC CONVERSATIONS YOU HAD
- 24 WITH ANY POLICE OFFICERS WHEN THEY GOT THERE?
- 25 A. NO.

KELLY HOFFMAN--DIRECT BY MR. BAILEY

- 1 Q. OKAY. DO YOU KNOW DANNY KIRKLAND?
- 2 A. NOW, BUT I DIDN'T AT THE TIME.
- 3 Q. OKAY. AND DO YOU RECALL SEEING MR. KIRKLAND THAT NIGHT--
- 4 -
- 5 A. NO.
- 6 Q. ---AT THE BLUE DIAMOND? DO YOU RECALL ANY SPECIFIC
- 7 THINGS THAT ANYBODY SAID TO YOU OR THAT YOU SAID TO THEM ABOUT
- 8 THE IDENTITY OF THE PERSON THAT SHOT YOU THAT NIGHT?
- 9 A. I DON'T RECALL WHAT THEY SAID TO ME, BUT I REMEMBER THAT
- 10 I SAID HE LOOKED YOUNG.
- 11 Q. OKAY. DO YOU RECALL ANYTHING ELSE?
- 12 A. NO.
- 13 Q. DO YOU RECALL ON MARCH THE 25TH EARL RHUDY COMING TO YOU
- 14 TO TAKE A STATEMENT, A TAPED STATEMENT?
- 15 A. YES, VAGUELY.
- 16 Q. OKAY. AND WERE YOU IN THE HOSPITAL AT THAT TIME?
- 17 A. YES.
- 18 Q. AND WOULD YOU JUST BRIEFLY TELL THE COURT WHAT PHYSICAL
- 19 CONDITION YOU WERE IN ON MARCH 25TH WHEN EARL RHUDY CAME TO
- 20 SEE YOU?
- 21 A. I HAD JUST GOT OUT OF INTENSIVE CARE AND I WAS HOOKED UP
- 22 TO A CHEST TUBE AND I WAS ON A LOT OF MORPHINE.
- 23 Q. OKAY. DO YOU RECALL MR. RHUDY TAKING A TAPED STATEMENT
- 24 FROM YOU?
- 25 A. YES.

KELLY HOFFMAN--DIRECT BY MR. BAILEY

1804

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1 Q. OKAY. AND IN THAT TAPED STATEMENT, DO YOU RECALL SAYING
2 SOMETHING DIFFERENT AS FAR AS THE SEQUENCE OF THE SHOOTING
3 THAN YOU HAVE SAID HERE TODAY UNDER OATH?

4 A. I CAN'T REMEMBER WHAT I SAID.

5 Q. OKAY. HAVE YOU HAD A CHANCE TO READ OVER THE TRANSCRIPT
6 OF THAT TAPE?

7 A. YES.

8 Q. OKAY. AND IN THAT TRANSCRIPT, DID YOU TELL MR. RHUDY
9 THAT THERE WAS A TOTAL OF FOUR SHOTS FIRED AND THAT KEN WAS
10 SHOT ONE TIME, THEN YOU WERE SHOT IN THE FACE, THEN THE CHEST,
11 AND THEN A FOURTH SHOT WAS FIRED?

12 A. YES, I READ THAT.

13 Q. OKAY. AND DID YOU RECALL SPECIFICALLY SAYING THAT AT THE
14 TIME YOU SAID IT?

15 A. NO.

16 Q. OKAY. AND WHAT DO YOU ATTRIBUTE THAT TO, THAT LACK OF
17 RECOLLECTION?

18 A. I WAS OUT OF IT. I COULDN'T EVEN TALK TO MY FRIENDS WHEN
19 THEY CAME TO VISIT ME IN THE HOSPITAL AND THEY COULDN'T
20 UNDERSTAND WHAT I SAID.

21 Q. OKAY. AND WAS YOUR JAW WIRED UP?

22 A. YES.

23 Q. AND YOU WERE ON MORPHINE, I THINK YOU SAID, AND SOME
24 OTHER MEDICATIONS?

25 A. YES.

- 1 Q. HAD YOU UNDERGONE MAJOR SURGERY FOR THE GUNSHOT WOUND TO
2 YOUR CHEST?
- 3 A. YES, AND MY FACE.
- 4 Q. OKAY. NOW, ON APRIL 5TH, YOU WERE OUT OF THE HOSPITAL BY
5 THEN; IS THAT RIGHT?
- 6 A. YES.
- 7 Q. AND WERE YOU STAYING WITH YOUR MOTHER THEN?
- 8 A. YES.
- 9 Q. DO YOU RECALL EARL RHUDY COMING TO SEE YOU AT YOUR HOUSE
10 ALONG WITH A DEPUTY NAMED CHRIS DOZIER?
- 11 A. YES.
- 12 Q. AND WAS MARTIN BANKS THERE ALSO?
- 13 A. YES.
- 14 Q. AND WHAT WAS THE PURPOSE OF THEM COMING TO YOUR HOUSE
15 THAT DAY?
- 16 A. TO SHOW ME A PHOTO LINE-UP.
- 17 Q. OKAY. AND LET ME HAND YOU THIS AND ASK IF THIS WAS THE
18 PHOTO LINE-UP THAT WAS SHOWN TO YOU.
- 19 A. YES.
- 20 THE COURT: LET ME SEE THAT, PLEASE.
- 21 MR. BAILEY: IF WE COULD MARK IT, YOUR HONOR.
- 22 THE COURT: YES, SIR.
- 23 (LINE-UP MARKED AS STATE'S EXHIBIT 1.)
- 24 MR. BAILEY: STATE'S 1 FOR IDENTIFICATION.
- 25 Q. MS. HOFFMAN, WHAT DO YOU RECALL AS FAR AS HOW THE PHOTO

KELLY HOFFMAN--DIRECT BY MR. BAILEY

1806

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1 DISPLAY WAS PRESENTED TO YOU?

2 A. BEFORE THEY HANDED IT TO ME THEY TOLD ME TO TAKE MY TIME
3 AND IF I WASN'T SURE THAT I DIDN'T HAVE TO ANSWER, I COULD
4 TELL THEM I WASN'T SURE.

5 Q. OKAY. I MAY HAVE ASKED YOU THIS, BUT I CAN'T REMEMBER.
6 WAS MARTIN BANKS THERE ALSO?

7 A. YES.

8 Q. AND IS MARTIN BANKS THE PUBLIC DEFENDER FOR CALHOUN
9 COUNTY?

10 A. YES.

11 Q. AND DID THEY EXPLAIN TO YOU WHY HE WAS THERE?

12 A. YES.

13 Q. AND WHAT DID MR. BANKS TELL YOU?

14 A. HE DIDN'T REALLY SAY MUCH OF ANYTHING.

15 Q. OKAY. DID ANYBODY ELSE SAY WHY HE WAS -- DID YOU KNOW
16 WHY HE WAS THERE?

17 A. YES.

18 Q. AND WHY IS THAT?

19 A. TO MAKE SURE THEY DIDN'T INDICATE TO ME WHICH ONE I WAS
20 SUPPOSED TO CHOOSE.

21 Q. OKAY. AND DID ANYBODY INDICATE TO YOU WHICH ONE WAS THE
22 DEFENDANT?

23 A. NO.

24 Q. OKAY. AND DID ANYBODY SUGGEST WHICH PICTURE YOU OUGHT TO
25 PICK?

- 1 A. NO.
- 2 Q. WHAT DID THEY SAY TO YOU WHEN THEY SHOWED YOU THAT
3 PICTURE, TO THE BEST OF YOUR RECOLLECTION, OR THOSE PICTURES?
- 4 A. TO TAKE MY TIME.
- 5 Q. OKAY. AND---
- 6 A. AND THAT IF I DIDN'T RECOGNIZE ANY OF THEM JUST TO SAY
7 SO.
- 8 Q. OKAY. AND WAS IT CLEAR TO YOU THAT YOU WERE SUPPOSED TO
9 BE LOOKING FOR THE PERSON THAT HAD SHOT YOU?
- 10 A. YES.
- 11 Q. OKAY. AND WHEN THAT WAS PRESENTED TO YOU, WAS IT
12 PRESENTED TO YOU EXACTLY AS YOU SEE IT NOW WITH NO NAMES OR
13 NUMBERS OR ANYTHING OR ANYTHING TO INDICATE WHERE THE PICTURES
14 CAME FROM? DO YOU UNDERSTAND THE QUESTION?
- 15 A. WELL, THEY WERE NUMBERED.
- 16 Q. I MEAN, LIKE 1, 2, 3, 4, 5, THAT TYPE THING?
- 17 A. YES.
- 18 Q. OKAY. LET ME HAND YOU THIS AND ASK IF THIS IS EXACTLY
19 THE SAME WAY IT APPEARED WHEN IT WAS SHOWN TO YOU ON APRIL
20 5TH?
- 21 A. YES.
- 22 Q. OKAY. AND HOW LONG DID YOU LOOK AT IT BEFORE YOU PICKED
23 THE PICTURE OUT?
- 24 A. MAYBE 30 SECONDS.
- 25 Q. OKAY. AND WHICH PICTURE DID YOU PICK OUT AS BEING THE

KELLY HOFFMAN--DIRECT BY MR. BAILEY

1808

1 MAN WHO SHOT YOU?

2 A. NUMBER 5.

3 Q. OKAY. AND NUMBER 5, IS THAT A PICTURE OF HERMAN HUGHES,
4 THE DEFENDANT?

5 A. YES.

6 THE COURT: ALL RIGHT, AT THIS TIME I WISH THE
7 RECORD TO REFLECT THAT I HAVE EXAMINED THE PHOTOGRAPHIC LINE-
8 UP INTRODUCED IN THE EVIDENCE IN THE TRIAL OF THIS CASE,
9 CONSISTING OF SIX SEPARATE PICTURES. THESE PICTURES REPRESENT
10 SIX YOUNG AFRICAN AMERICANS. I FIND NO DISTINGUISHING
11 CHARACTERISTICS IN ANY OF THEM THAT WOULD POINT TO ONE AS
12 OPPOSED TO THE OTHER.

13 MR. BAILEY: ALL RIGHT.

14 MR. NEWSOM: YOUR HONOR, MAY I SEE THAT, YOUR HONOR?

15 THE COURT: YES, SIR.

16 (MR. NEWSOM VIEWS STATE'S EXHIBIT 1.)

17 Q. WERE YOU ADVISED BY EITHER ME OR MY VICTIM ADVOCATE THAT
18 THE DEATH PENALTY NOTICE HAD BEEN SERVED ON HERMAN HUGHES IN
19 COURT IN ST. MATTHEWS SOMETIME AFTER THIS?

20 A. YES.

21 Q. AND DID YOU APPEAR AT THAT ARRAIGNMENT AND SERVICE OF
22 DEATH PENALTY NOTICE?

23 A. YES.

24 Q. AND WAS HERMAN HUGHES THERE?

25 A. YES.

1 Q. OKAY. AND YOU SAW HIM THERE WHEN THE DEATH PENALTY
2 NOTICE WAS SERVED?

3 A. YES.

4 Q. IS YOUR IDENTIFICATION TODAY IN COURT OF HERMAN HUGHES AS
5 BEING THE MAN THAT SHOT YOU BASED SOLELY ON YOUR RECOLLECTION
6 OF THE PERSON THAT SHOT YOU ON MARCH 18TH, 1994?

7 A. YES.

8 Q. OKAY. AND IF YOU HAD NOT SEEN THE PHOTO DISPLAY AND NOT
9 SEEN HIM IN COURT IN ST. MATTHEWS, IS IT STILL YOUR TESTIMONY
10 THAT YOUR IDENTIFICATION IS BASED ON SEEING HIM AT THE BLUE
11 DIAMOND ON MARCH THE 18TH?

12 A. YES.

13 MR. BAILEY: ONE SECOND.

14 THE COURT: LET ME ASK YOU THIS: THE PHOTO LINE-UP
15 WAS MADE, AS I UNDERSTAND IT, BEFORE SHE SAW HIM IN THE ST.
16 MATTHEWS COURT?

17 MR. BAILEY: THAT'S CORRECT, YES, SIR.

18 THE COURT: I JUST WANTED THE RECORD TO BE CLEAR ON
19 THAT ISSUE.

20 MR. BAILEY: ONE SECOND, YOUR HONOR.

21 (PAUSE.)

22 MR. BAILEY: YOUR HONOR, THAT'S ALL I HAVE.

23 Q. MS. HOFFMAN, PLEASE ANSWER ANY QUESTIONS MR. NEWSOM MIGHT
24 HAVE.

25 THE COURT: COUNSEL, YOU MAY EXAMINE.

KELLY HOFFMAN--CROSS BY MR. NEWSOM

1810

1 CROSS EXAMINATION BY MR. NEWSOM:

2 Q. MS. HOFFMAN, AFTER THE NIGHT OF THE INCIDENT, WHEN WAS
3 THE FIRST TIME THAT A LAW ENFORCEMENT OFFICER CAME TO YOU TO
4 ASK YOU ABOUT WHAT OCCURRED THAT NIGHT?

5 A. I BELIEVE IT WAS EARL RHUDY CAME TO TALK TO ME.

6 Q. DO YOU KNOW WHEN?

7 A. WHEN I WAS IN THE HOSPITAL.

8 Q. WAS THAT THE ONE STATEMENT HE WAS REFERRING TO EARLIER ON
9 MARCH 25TH? WOULD THAT HAVE BEEN ABOUT THE RIGHT TIME?

10 A. YES.

11 Q. THE TAPED STATEMENT? WAS ANYBODY ELSE PRESENT BESIDES
12 YOURSELF AND MR. RHUDY AT THAT TIME?

13 A. MY MOTHER.

14 Q. YOUR MOTHER WAS PRESENT WHILE THE STATEMENT WAS TAKING
15 PLACE?

16 A. YES, I BELIEVE.

17 Q. COULD YOU BE MISTAKEN ABOUT THAT?

18 A. I COULD BE, BUT I'M PRETTY SURE I REMEMBER HER BEING
19 THERE.

20 Q. AND NO ONE FROM THE LAW ENFORCEMENT SINCE THE EVENING OF
21 THE INCIDENT UNTIL THAT DAY A WEEK LATER HAD BEEN TO SEE YOU
22 AND ASKED YOU ABOUT WHAT HAD OCCURRED?

23 A. NO.

24 Q. IS THAT YOUR TESTIMONY? NO ONE HAD BEEN THERE?

25 A. (NODS NEGATIVELY.)

KELLY HOFFMAN--CROSS BY MR. NEWSOM

1 Q. DO YOU RECALL THE FIRST OFFICERS WHO GOT TO THE SCENE?

2 A. YES.

3 Q. WHO WERE THEY?

4 A. CAPERS WANNAMAKER AND I REMEMBER SEEING BING JONES AND
5 WOODY CROWDER.

6 Q. YOU SAW WOODY CROWDER? DID YOU SEE A SERGEANT GREEN FROM
7 ST. MATTHEWS POLICE?

8 A. I CAN'T REMEMBER.

9 Q. OKAY. DO YOU RECALL WHETHER OR NOT A HIGHWAY PATROLMAN,
10 A LANCE CORPORAL WITH THE HIGHWAY PATROL, A BLACK GENTLEMAN,
11 WAS PRESENT?

12 A. I DON'T KNOW.

13 Q. WHEN DID YOU FIRST HEAR THE NAME HERMAN HUGHES BEING
14 INVOLVED AS FAR AS THE PERSON THAT WAS ACCUSED OF SHOOTING
15 YOU?

16 A. I DON'T THINK I CAN REMEMBER.

17 Q. WAS IT PRIOR TO MR. RHUDY COMING TO YOU?

18 A. I CAN'T REMEMBER.

19 Q. OKAY. IN THAT CONVERSATION WITH MR. RHUDY, YOU REFERRED
20 TO KELSEY PIERCE BY NAME SAYING THAT YOU KNEW HIM, BUT HE WAS
21 NOT THERE?

22 A. YES.

23 Q. OKAY. I MEAN, YOU DIDN'T REFER TO HERMAN HUGHES. HAD
24 YOU NOT BEEN TOLD THE NAME OF THE PERSON THEY HAD ARRESTED OR
25 THE PERSON THAT HAD BEEN CHARGED WITH THE MURDER OF KENNETH

KELLY HOFFMAN--CROSS BY MR. NEWSOM

1812

- 1 PRESSLEY?
- 2 A. I CAN'T REMEMBER.
- 3 Q. YOU CAN'T REMEMBER? OKAY. DID YOU READ ANY NEWSPAPER
- 4 ACCOUNTS CONCERNING THE INCIDENT FROM THE TIME THAT YOU WERE
- 5 SHOT UNTIL MARCH 25TH?
- 6 A. I SAW A NEWSPAPER, YES.
- 7 Q. OKAY. DID IT HAVE A PICTURE OF HERMAN HUGHES IN IT?
- 8 A. NO.
- 9 Q. THERE WERE NO PICTURES OF HERMAN HUGHES?
- 10 A. NO.
- 11 Q. OKAY. YOU TOLD MR. RHUDY THAT YOU KNEW HERMAN,
- 12 RECOGNIZED HIM BECAUSE HE WENT TO SCHOOL WITH YOUR SISTER
- 13 CANDY; IS THAT NOT TRUE?
- 14 A. I DID NOT SAY THAT I KNEW HIM FROM BEFORE. I DIDN'T FIND
- 15 OUT THAT HE WENT TO SCHOOL WITH MY LITTLE SISTER UNTIL AFTER
- 16 I HAD BEEN IN THE HOSPITAL. I HAD NEVER SEEN HIM BEFORE.
- 17 Q. OKAY. HOW DID YOU FIND OUT THAT HE HAD BEEN TO SCHOOL
- 18 WITH YOUR SISTER OR THAT HERMAN HUGHES WAS HERMAN HUGHES?
- 19 A. MY LITTLE SISTER RECOGNIZED HIS NAME.
- 20 Q. ALL RIGHT. DID YOU SEE A PICTURE OF HERMAN HUGHES IN ANY
- 21 SCHOOL ANNUAL OR YEARBOOK OR ANYTHING OF THAT LIKE?
- 22 A. NO, WE DON'T HAVE ANY.
- 23 Q. YOU DON'T HAVE ANY ANNUALS?
- 24 A. NO.
- 25 Q. DID ANYONE TRY TO SHOW A PICTURE OF HERMAN HUGHES TO YOU?

- 1 A. NO.
- 2 Q. AND YOUR TESTIMONY IS YOU NEVER SAW ANY PICTURES OF
3 HERMAN HUGHES PRIOR TO THE PHOTOGRAPHIC LINE-UP?
- 4 A. NO.
- 5 Q. OKAY. WHO WAS IT, DO YOU RECALL, THAT FIRST TOLD YOU
6 THAT HERMAN HUGHES WAS THE PERSON CHARGED WITH THE MURDER OF
7 KENNETH PRESSLEY?
- 8 A. EARL RHUDY.
- 9 Q. WHEN DID HE TELL YOU THAT?
- 10 A. IN THE HOSPITAL.
- 11 Q. BEFORE OR AFTER THIS TAPE?
- 12 A. I THINK IT WAS AT THE TIME OF THE TAPE.
- 13 Q. OKAY. HAVE YOU READ A COPY OF THIS TRANSCRIPT OF THAT
14 TAPE?
- 15 A. YES.
- 16 Q. IS THERE ANYTHING IN THERE THAT SAYS HERMAN HUGHES' NAME?
17 I WILL BE GLAD TO LET YOU LOOK AT MINE.
- 18 MR. NEWSOM: YOUR HONOR, FOR THE RECORD, I WOULD
19 LIKE TO STATE TO THE RECORD THAT THE TRANSCRIPT I PROVIDED HER
20 IS THE TRANSCRIPT PROVIDED TO ME BY THE SOLICITOR'S OFFICE
21 CONCERNING THE TAPE OR A SERIES OF TAPED INTERVIEWS WITH MS.
22 HOFFMAN CONDUCTED BY OFFICER EARL RHUDY.
- 23 A. NO, I DON'T SEE HIS NAME IN HERE.
- 24 Q. OKAY. HOW DID YOU KNOW THAT KELSEY PIERCE WAS INVOLVED?
- 25 A. I SAW IT IN THE NEWSPAPER.

1814

KELLY HOFFMAN--CROSS BY MR. NEWSOM

1 Q. YOU SAW THAT IN THE NEWSPAPER? THANK YOU. HAD YOU KNOWN
2 KELSEY PIERCE PRIOR TO MARCH 18TH?

3 A. YES.

4 Q. OKAY. HAD YOU KNOWN HERMAN HUGHES?

5 A. NO.

6 Q. HAD YOU EVER SEEN HERMAN HUGHES BEFORE?

7 A. NO.

8 Q. ALL RIGHT. DO YOU KNOW A YOUNG MAN NAMED RICARDO
9 GILFORD?

10 A. VAGUELY.

11 Q. OKAY. DO YOU RECALL SEEING HERMAN HUGHES OVER AT RICARDO
12 GILFORD'S HOUSE ABOUT A YEAR PRIOR TO THIS INCIDENT?

13 A. NO.

14 Q. DO YOU KNOW A YOUNG MAN NAMED MICHAEL COKELY?

15 A. YES.

16 Q. DO YOU RECALL SEEING HERMAN HUGHES--MEETING HERMAN HUGHES
17 AT MR. GILFORD'S HOUSE WHILE YOU WERE THERE WITH MICHAEL
18 COKELY?

19 A. NO.

20 Q. DO YOU DENY THAT YOU TOLD INVESTIGATOR RHUDY THAT YOU
21 ONLY HEARD FOUR SHOTS WHEN YOU GAVE YOUR STATEMENT A WEEK
22 AFTER THE INCIDENT?

23 A. DENY IT WHEN?

24 Q. DID YOU DENY TELLING INVESTIGATOR RHUDY THAT YOU ONLY
25 HEARD FOUR SHOTS WHEN HE TOOK YOUR STATEMENTS ON MARCH 25TH?

1 A. I DON'T KNOW. I DON'T EVEN REMEMBER WHAT I SAID ON THAT
2 STATEMENT.

3 Q. AND MARCH 25TH IS A LOT CLOSER TO THE INCIDENT THAN
4 TODAY, IS IT NOT?

5 A. YES.

6 Q. OKAY. AND DO YOU RECALL TELLING OFFICER KIRKLAND WHEN
7 THEY CAME IN THAT NIGHT THAT THERE WERE TWO GENTLEMEN?

8 A. NO.

9 Q. DO YOU RECALL TELLING HIM THAT A TALL BLACK MAN WAS THE
10 ONE THAT SHOT YOU WHEN HE ASKED YOU?

11 A. NO.

12 Q. OKAY. DO YOU RECALL -- YOU DON'T RECALL TELLING HIM THAT
13 IT WAS A SMALL BLACK MAN SHOT YOU ON ONE OCCASION?

14 A. NO.

15 Q. OKAY. NOW, -- STAND UP HERMAN.

16 (DEFENDANT STANDS.)

17 Q. YOU KNOW KELSEY PIERCE, DO YOU NOT?

18 A. YES.

19 Q. YOU ARE FAMILIAR WITH HOW TALL HE IS. WOULD YOU SAY
20 KELSEY PIERCE IS TALLER OR SHORTER THAN MY CLIENT?

21 A. I DON'T KNOW. I GUESS---

22 Q. YOU DON'T---

23 A. ---AROUND THE SAME.

24 Q. OKAY. PLEASE HAVE A SEAT.

25 (DEFENDANT SEATED.)

KELLY HOFFMAN--CROSS BY MR. NEWSOM

- 1 Q. ARE YOU -- HOW TALL ARE YOU?
- 2 A. FIVE-FOUR.
- 3 Q. FIVE-FOUR? WAS THE PERSON WHO SHOT YOU TALLER OR SHORTER
- 4 THAN YOU?
- 5 A. TALLER.
- 6 Q. HE WAS TALLER THAN YOU? OKAY. WOULD YOU DARE SAY HOW
- 7 TALL KELSEY PIERCE IS?
- 8 A. NO. I THINK HE IS TALLER THAN HERMAN.
- 9 Q. ABOUT SIX OR SEVEN INCHES TALLER, IS HE NOT? WOULD YOU
- 10 SAY THAT?
- 11 A. I DON'T KNOW ABOUT THAT MUCH.
- 12 Q. OKAY. LET ME ASK YOU THIS: IS THAT PLACE WELL LIT THAT
- 13 ---
- 14 A. YES.
- 15 Q. OKAY. AND YOUR TESTIMONY A FEW MINUTES AGO WAS THAT HE
- 16 TURNED THE LIGHT OUT AS HE LEFT?
- 17 A. YES.
- 18 Q. DID YOU EVER LOSE CONSCIOUSNESS DURING ANY PART OF THIS?
- 19 A. NO.
- 20 Q. OKAY. WHEN DID YOU FIRST LOSE CONSCIOUSNESS? DID YOU
- 21 LOSE CONSCIOUSNESS PRIOR TO THE OFFICERS---
- 22 A. AFTER I GOT TO RICHLAND MEMORIAL WHEN THEY PUT ME TO
- 23 SLEEP TO HAVE EMERGENCY SURGERY.
- 24 Q. OKAY. AND YOU NEVER LOST CONSCIOUSNESS TO YOUR
- 25 KNOWLEDGE?

1 A. NO.

2 Q. OKAY. AND DID THE PERSON AS HE LEFT LOCK THE DOOR?

3 A. I DID NOT SEE HIM LOCK THE DOOR, BUT OBVIOUSLY HE DID
4 BECAUSE THEY COULDN'T GET IN.

5 Q. DO YOU RECALL TELLING OFFICER RHUDY THAT THE DOOR WAS
6 LOCKED ON THE WAY OUT?

7 A. YES.

8 Q. OKAY.

9 MR. NEWSOM: I HAVE NO FURTHER QUESTIONS, YOUR
10 HONOR.

11 MR. BAILEY: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: YOU MAY COME DOWN. THANK YOU.

13 (WITNESS STEPS DOWN.)

14 MR. BAILEY: CHRIS DOZIER.

15 THE COURT: SOLICITOR, YOU MAY GET THIS BACK.

16 (WITNESS ENTERS COURTROOM.)

17 (WITNESS SWORN.)

18 CHRIS DOZIER, BEING FIRST

19 DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE COURT: THANK YOU.

21 DIRECT EXAMINATION BY MR. BAILEY:

22 Q. YOU ARE CHRIS DOZIER?

23 A. THAT'S CORRECT.

24 Q. OKAY, MR. DOZIER, YOU ARE FROM ST. MATTHEWS?

25 A. YES, SIR.

CHRIS DOZIER--DIRECT BY MR. BAILEY

1818

1 Q. OKAY. AND BACK IN MARCH OF 1994, WERE YOU EMPLOYED AT
2 THE CALHOUN COUNTY SHERIFF'S DEPARTMENT?

3 A. THAT'S CORRECT, SIR.

4 Q. OKAY. AND CALLING YOUR ATTENTION TO APRIL THE 5TH, 1994,
5 AT ABOUT 10 O'CLOCK A.M., WOULD YOU STATE WHETHER OR NOT YOU
6 WENT TO THE HOFFMAN HOUSE IN ST. MATTHEWS?

7 A. YES, I DID, SIR.

8 Q. AND WHO ELSE WAS WITH YOU?

9 A. AT THAT TIME IT WAS THE PUBLIC DEFENDER, MARTIN BANKS,
10 EARL RHUDY AND MYSELF.

11 Q. WHAT WAS THE PURPOSE IN Y'ALL GOING TO THE HOFFMAN HOUSE
12 THAT MORNING?

13 A. WE TOOK A PHOTO LINE-UP FOR THE VICTIM TO TAKE A LOOK AT.

14 Q. OKAY. AND WHY WAS MARTIN BANKS ALONG?

15 A. HE WAS THE ATTORNEY REPRESENTING THE DEFENDANT.

16 Q. OKAY. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 1 AND ASK
17 WHETHER OR NOT THIS WAS--WHETHER Y'ALL HAD THAT WITH YOU WHEN
18 YOU WENT TO THE HOFFMAN HOUSE?

19 A. YES, SIR.

20 Q. OKAY. AND DID YOU SEE KELLY HOFFMAN WHEN YOU GOT THERE?

21 A. YES, WE DID.

22 Q. OKAY. AND WOULD YOU STATE WHETHER OR NOT Y'ALL PRESENTED
23 THAT PHOTO DISPLAY TO HER?

24 A. YES, SIR.

25 Q. AND WHAT WAS SAID TO THE BEST OF YOUR RECOLLECTION AT THE

CHRIS DOZIER--DIRECT BY MR. BAILEY

- 1 TIME THAT PHOTO DISPLAY WAS GIVEN TO HER?
- 2 A. THE BEST THAT I CAN REMEMBER IS THAT EARL RHUDY, WHICH
3 WAS THE DETECTIVE AT THE TIME, PRESENTED THE PHOTO LINE-UP TO
4 MS. HOFFMAN AND ASKED HER TO TAKE HER TIME AND LOOK AT IT AND
5 SEE IF ANYONE--WAS ANY ONE OF THE PICTURES HERE THE GUY THAT
6 COMMITTED THE CRIME.
- 7 Q. OKAY. NOW, WAS ANYTHING SAID TO MS. HOFFMAN TO SUGGEST
8 WHICH PICTURE TO TAKE?
- 9 A. NO, SIR.
- 10 Q. OKAY. AND WAS THERE ANY IDENTIFYING DATA OR ANYTHING
11 OTHER THAN WHAT YOU SEE IN FRONT OF YOU NOW IN EXHIBIT 1? IS
12 THAT EXACTLY THE SAME AS PRESENTED TO HER?
- 13 A. YES, SIR, TO THE BEST OF MY RECOLLECTION, IT IS THE SAME.
- 14 Q. OKAY. AND WOULD YOU STATE HOW LONG SHE LOOKED AT IT
15 BEFORE SHE PICKED SOMEBODY OUT?
- 16 A. APPROXIMATELY FOUR TO FIVE SECONDS, SIR.
- 17 Q. OKAY. AND WHICH ONE DID SHE PICK OUT?
- 18 A. SHE PICKED OUT NUMBER 5.
- 19 Q. AND FOR THE RECORD, NUMBER 5 IS A PICTURE OF HERMAN
20 HUGHES?
- 21 A. YES, IT IS, SIR.
- 22 Q. DO YOU SEE HERMAN HUGHES IN THE COURTROOM?
- 23 A. YES, HE IS, SIR. HE IS SITTING AT THE TABLE RIGHT
24 THERE(INDICATING).
- 25 Q. ON THE LEFT-HAND SIDE?

CHRIS DOZIER--CROSS BY MR. NEWSOM

1 A. YES, WITH THE BLUE SWEATSUIT ON, SWEATSHIRT.

2 Q. MR. DOZIER, THAT'S ALL I HAVE. PLEASE ANSWER ANY
3 QUESTIONS THE DEFENSE MIGHT HAVE.

4 CROSS EXAMINATION BY MR. NEWSOM:

5 Q. OFFICER DOZIER, WERE YOU PRESENT THE NIGHT OF THE
6 INCIDENT AT THE SCENE?

7 A. NO, SIR.

8 Q. YOU WERE NOT? OKAY. DID YOU PROVIDE MS. HOFFMAN AN
9 OPPORTUNITY TO VIEW A PHOTOGRAPHIC LINE-UP WITH A PICTURE OF
10 KELSEY PIERCE IN THERE?

11 A. I DON'T BELIEVE IT WAS PLACED IN THERE, SIR.

12 Q. OKAY. DO YOU -- WHEN DID YOU FIRST GET INVOLVED IN THIS
13 CASE?

14 A. ON THAT SATURDAY.

15 Q. ON THE 19TH OF MARCH? THE DATE OF THE INCIDENT WAS THE
16 18TH OF MARCH, WAS IT NOT, FRIDAY NIGHT?

17 A. YES, SIR. THAT SATURDAY I GOT INVOLVED.

18 Q. YOU GOT INVOLVED SATURDAY? OKAY. AND YOU KNOW THIS
19 PERSON YOU WERE LOOKING FOR WAS KELSEY PIERCE AT THAT TIME,
20 WERE YOU NOT?

21 A. AT THAT TIME, SIR?

22 Q. YES?

23 A. AT THAT TIME WE DIDN'T KNOW WHO WE WAS LOOKING FOR.

24 Q. ALL RIGHT. YOU DON'T KNOW -- DID YOU NOT GO TO MY
25 CLIENT'S HOUSE -- DID YOU SEE HERMAN HUGHES ON SATURDAY, THE

CHRIS DOZIER--CROSS BY MR. NEWSOM

1821

1 19TH?

2 A. I SAW HIM WHEN HE CAME TO THE SHERIFF'S DEPARTMENT, SIR.

3 I DID NOT GO TO HIS HOUSE.

4 Q. YOU DIDN'T GO -- DID YOU PARTICIPATE IN THE INTERROGATION
5 OF HERMAN AT THAT TIME?

6 A. AT THE INTERROGATION?

7 Q. YES?

8 A. NO, SIR.

9 Q. OKAY.

10 MR. NEWSOM: I HAVE NO FURTHER QUESTIONS.

11 THE COURT: ANYTHING FURTHER?

12 MR. BAILEY: NO, SIR, YOUR HONOR.

13 THE COURT: OKAY, YOU MAY COME DOWN.

14 (WITNESS STEPS DOWN.)

15 THE COURT: ANY OTHER WITNESSES?

16 MR. BAILEY: NOT ON THIS ISSUE, YOUR HONOR.

17 THE COURT: ALL RIGHT, SIR. LET THE RECORD AGAIN
18 REFLECT THAT I HAVE EXAMINED THE PHOTOGRAPHIC LINE-UP
19 CONSISTING OF SIX AFRICAN AMERICAN YOUNG MALES AND DO NOT FIND
20 THAT THERE WAS ANY IMPERMISSIBLE SUGGESTION OR LIKELIHOOD OF
21 IRREPARABLE MISIDENTIFICATION.

22 I FIND TOO AND HAVE CONSIDERED THE FOLLOWING FACTORS
23 IN DETERMINING THE RELIABILITY OF WITNESS IDENTIFICATION,
24 INCLUDING: THE OPPORTUNITY OF THE WITNESS TO VIEW THE
25 OFFENDER AT THE TIME THE CRIME WAS COMMITTED; I HAVE

CHRIS DOZIER--CROSS BY MR. NEWSOM

1 CONSIDERED THE DEGREE OF ATTENTION THE WITNESS GAVE TO THE
2 PERPETRATOR; THE ACCURACY OF THE WITNESS'S PRIOR DESCRIPTION
3 OF THE PERPETRATOR; THE LEVEL OF CERTAINTY DEMONSTRATED BY THE
4 WITNESS IN THE IDENTIFICATION; AND THE AMOUNT OF TIME BETWEEN
5 THE OCCURRENCE OF THE CRIME AND THE IDENTIFICATION.

6 I MAKE THESE FINDINGS BY EVIDENCE OF CLEAR,
7 CONVINCING EVIDENCE AND UPON SUCH EVIDENCE CONCLUDE THAT THE
8 IDENTIFICATION TESTIMONY WILL BE ADMITTED IN THE TRIAL OF THIS
9 CASE.

10 IS THERE ANYTHING FURTHER ON THAT ISSUE?

11 MR. BAILEY: YOUR HONOR, BEAR WITH ME ONE SECOND,
12 PLEASE.

13 (PAUSE.)

14 MR. BAILEY: YOUR HONOR, THAT'S ALL I HAVE ON THIS
15 ISSUE.

16 THE COURT: ALL RIGHT, SIR. THANK YOU. ALL RIGHT,
17 NOW, AS I UNDERSTAND IT, YOU WILL NOT NOW REQUIRE ANOTHER
18 IDENTIFICATION HEARING?

19 MR. NEWSOM: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: ALL RIGHT, SIR. NOW, WHAT IS THE NEXT
21 ISSUE FOR US?

22 MR. BAILEY: YOUR HONOR, I GUESS WE WILL DO THE
23 JACKSON/DENNO NEXT.

24 THE COURT: ALL RIGHT, SIR.

25 MR. BAILEY: AND JUST SO YOU KNOW WHERE WE ARE GOING

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1 HERE, YOUR HONOR, THERE WERE THREE WRITTEN STATEMENTS THAT MR.
2 HUGHES GAVE, TWO OF THEM ON MARCH 19TH, ONE OF THEM ON MARCH
3 20TH.

4 AND IN ADDITION TO THAT, THERE WILL BE SOME
5 TESTIMONY ELICITED THAT AFTER THE SECOND VERBAL STATEMENT,
6 THERE WAS A DISCUSSION WITH MR. HUGHES IN RELATION TO LOCATION
7 OF THE GUN, THE MURDER WEAPON.

8 THE COURT: YES, SIR.

9 MR. BAILEY: SO WE WILL BE TAKING UP ACTUALLY THE
10 VERBAL STATEMENT WITH REGARD TO THE GUN AND THE THREE WRITTEN
11 STATEMENTS.

12 THE COURT: ALL RIGHT, SIR. THAT IS AS TO THE
13 VOLUNTARINESS. NOW, WILL THERE BE ANY EVIDENCE HERE AS TO ANY
14 MIRANDA ISSUES?

15 MR. BAILEY: HE WAS MIRANDIZED, BUT WE WILL PRESENT
16 THAT EVIDENCE TO YOU.

17 THE COURT: ALL RIGHT, SIR, YOU MAY PROCEED.

18 MR. BAILEY: I CALL DANIEL KIRKLAND.

19 (WITNESS ENTERS COURTROOM.)

20 (WITNESS SWORN.)

21 DANIEL KIRKLAND, BEING
22 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. BAILEY:

24 Q. OKAY, MR. KIRKLAND, YOU ARE A POLICE OFFICER IN THE CITY
25 OF SANTEE AT THIS TIME; IS THAT CORRECT?

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1824

- 1 A. YES, SIR.
- 2 Q. IN MARCH OF 1994, WERE YOU A DEPUTY SHERIFF FOR CALHOUN
3 COUNTY?
- 4 A. YES, SIR.
- 5 Q. ALL RIGHT, SIR. AND CALLING YOUR ATTENTION TO SATURDAY,
6 MARCH 19TH, 1995(1994), DID YOU HAVE OCCASION TO SEE THE
7 DEFENDANT HERMAN HUGHES AT THE SHERIFF'S OFFICE?
- 8 A. YES, SIR.
- 9 Q. AND DO YOU SEE MR. HUGHES IN THE COURTROOM?
- 10 A. YES, SIR.
- 11 Q. WOULD YOU POINT HIM OUT, PLEASE?
- 12 A. HE IS SITTING AT THE TABLE.
- 13 MR. BAILEY: THE RECORD WILL SHOW THAT MR. KIRKLAND
14 HAS INDICATED THE DEFENDANT.
- 15 Q. WHO WAS WITH YOU AT THE SHERIFF'S OFFICE THAT AFTERNOON?
- 16 A. WELL, THE SHERIFF -- WELL, THERE WERE A LOT OF US IN AND
17 OUT. CHRIS DOZIER WAS IN AND OUT, THE SHERIFF WAS THERE.
- 18 Q. OKAY.
- 19 A. HERMAN'S MOTHER.
- 20 Q. ALL RIGHT. AND WHAT PART WAS -- WERE YOU THERE AT THE
21 INTERVIEW, MR. HUGHES?
- 22 A. YES, SIR, ONE AT A TIME.
- 23 Q. ALL RIGHT. NOW, TALKING ABOUT SHORTLY AFTER 5 O'CLOCK ON
24 MARCH THE 19TH, DID YOU INTERVIEW HERMAN HUGHES?
- 25 A. YES, SIR.

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1825

1 Q. AND WHAT PART OF THE SHERIFF'S OFFICE WERE YOU IN, WHAT
2 ROOM WERE YOU IN?

3 A. WE WERE IN WHAT WAS THE TRAINING OFFICER'S OFFICE.

4 Q. OKAY. AND ABOUT HOW BIG IS THAT ROOM?

5 A. IT IS PROBABLY SIX BY EIGHT, EIGHT BY EIGHT.

6 Q. WHEN YOU WERE IN THAT ROOM WITH HERMAN HUGHES, WAS THE
7 DOOR OPEN OR SHUT?

8 A. IT WAS OPEN.

9 Q. OKAY. AND HOW IS THE ROOM FURNISHED?

10 A. THERE WAS MY DESK, A FILE CABINET, MAYBE A BOOKCASE AT
11 THAT TIME, A COUPLE OF CHAIRS.

12 Q. AND WAS HERMAN HUGHES UNDER ARREST AT THAT TIME?

13 A. NO, SIR.

14 Q. WAS HE HANDCUFFED OR SHACKLED OR ANYTHING?

15 A. NO, SIR.

16 Q. OKAY. WOULD YOU STATE WHETHER OR NOT HIS MOTHER WAS
17 THERE?

18 A. YES, SIR, SHE WAS WITH HIM.

19 Q. WAS SHE WITH YOU IN THE ROOM?

20 A. YES, SIR.

21 Q. WHAT IS YOUR RECOLLECTION OF HERMAN HUGHES' APPEARANCE AT
22 THAT TIME, HIS DEMEANOR?

23 A. HIS--EXCUSE ME?

24 Q. HIS APPEARANCE?

25 A. I DON'T REMEMBER HOW HE WAS DRESSED. HE WAS PRETTY

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1826

- 1 QUIET, KIND OF--JUST REAL QUIET.
- 2 Q. ALL RIGHT. HAVE YOU AS A LAW ENFORCEMENT OFFICER BEEN
3 EXPOSED TO PEOPLE WHO ARE UNDER THE INFLUENCE OF ALCOHOL OR
4 DRUGS?
- 5 A. YES, SIR.
- 6 Q. AND IN YOUR OPINION WAS HERMAN HUGHES UNDER THE INFLUENCE
7 OF ANYTHING AT THAT TIME?
- 8 A. NO, SIR.
- 9 Q. WAS HE COHERENT?
- 10 A. SEEMED TO BE.
- 11 Q. COULD YOU UNDERSTAND HIM WHEN HE TALKED?
- 12 A. YES, SIR.
- 13 Q. OKAY. AND WAS HIS MOTHER PRESENT THE ENTIRE TIME YOU
14 WERE WITH HIM OR WAS SHE IN AND OUT?
- 15 A. TO THE BEST OF MY RECOLLECTION SHE WAS THERE THE WHOLE
16 TIME.
- 17 Q. WHAT ABOUT CHRIS DOZIER, WAS HE IN AND OUT?
- 18 A. YES, SIR.
- 19 Q. LET ME HAND YOU A FORM AND ASK YOU IF YOU CAN IDENTIFY
20 THIS, JUST YES OR NO?
- 21 A. YES, SIR.
- 22 Q. AND DOES YOUR SIGNATURE APPEAR ON THAT?
- 23 A. YES, SIR.
- 24 Q. AND IS THAT A MIRANDA RIGHTS FORM AND A WAIVER FORM?
- 25 A. YES, SIR.

1 Q. OKAY.

2 MR. BAILEY: YOUR HONOR, I WOULD LIKE TO MARK THIS
3 FOR IDENTIFICATION AS STATE'S 2.

4 (ADVICE OF RIGHTS AND WAIVER MARKED AS
5 STATE'S EXHIBIT 2.)

6 Q. MR. KIRKLAND, I HAND YOU STATE'S EXHIBIT 2 WHICH YOU HAVE
7 IDENTIFIED AS THE MIRANDA FORM?

8 A. YES, SIR.

9 Q. THERE IS SOME INFORMATION FILLED OUT IN THE UPPER RIGHT-
10 HAND CORNER?

11 A. YES, SIR.

12 Q. IT HAS GOT THE NAME OF YOUR AGENCY, A DATE AND A TIME?
13 WHO FILLED THAT OUT?

14 A. I DID, SIR, THAT IS MY WRITING.

15 Q. AND THE TIME, 17:13, IS 5:13 P.M.?

16 A. YES, SIR.

17 Q. OKAY. AND AFTER YOU FILLED THAT OUT, WHAT, IF ANYTHING,
18 DID YOU DO WITH REGARD TO HERMAN HUGHES AND THAT FORM?

19 A. OUR POLICY AT THE SHERIFF'S DEPARTMENT AT THAT TIME WAS
20 TO OF COURSE READ HIM THE RIGHTS, EACH ONE, AND THEN AFTER YOU
21 READ THEM, EXPLAIN THEM TO HIM BASICALLY, TELL HIM WHAT IT
22 MEANT IN LAYMAN'S TERMS.

23 Q. AND DID YOU DO THAT ON THAT OCCASION?

24 A. YES, SIR, WE ALWAYS DO, OR I ALWAYS DID.

25 Q. SO YOU READ IT TO HIM AND THEN YOU EXPLAINED IT TO HIM?

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1828

- 1 A. YES, SIR.
- 2 Q. AND DO YOU RECALL WHETHER HE INDICATED IF HE UNDERSTOOD
3 THOSE RIGHTS?
- 4 A. YES, SIR, I POINTED OUT THAT HIS SIGNATURE MEANT THAT HE
5 UNDERSTOOD THEM.
- 6 Q. OKAY. AND DID HE, AFTER YOU EXPLAINED THOSE RIGHTS AND
7 READ THE RIGHTS TO HIM, DID HE SIGN HIS ACKNOWLEDGEMENT OF
8 RIGHTS?
- 9 A. YES, SIR.
- 10 Q. DID YOU OBSERVE HIM SIGN THAT?
- 11 A. YES, SIR.
- 12 Q. OKAY. AND AFTER THAT -- THAT FORM HAS A WAIVER OF RIGHTS
13 PROVISION, DOES IT NOT?
- 14 A. YES, SIR.
- 15 Q. NOW, AFTER HERMAN HUGHES SIGNED THE ACKNOWLEDGEMENT OF
16 RIGHTS, DID YOU MAKE ANY PROMISES TO HIM IF HE WOULD GIVE YOU
17 A STATEMENT OR IF HE WOULD WAIVE HIS RIGHTS AND GIVE YOU A
18 STATEMENT?
- 19 A. NO, SIR.
- 20 Q. DID YOU MAKE ANY THREATS AGAINST HIM IF HE WOULDN'T DO
21 IT?
- 22 A. NO, SIR.
- 23 Q. AND WAS HIS MOTHER IN THE ROOM?
- 24 A. YES, SIR.
- 25 Q. AND AFTER SIGNING THE WAIVER, EXCUSE ME, SIGNING THE

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1 RIGHTS, WHAT DID YOU DO WITH RESPECT TO THE WAIVER PORTION OF
2 IT?

3 A. THE SAME WITH THE RIGHTS. I READ THAT TO HIM AND THEN
4 BASICALLY EXPLAINED TO HIM WHAT IT MEANT.

5 Q. AND DID HE INDICATE TO YOU WHETHER OR NOT HE UNDERSTOOD
6 THOSE RIGHTS?

7 A. YES, SIR, HE SIGNED IT.

8 Q. OKAY. AND DID YOU WITNESS THE SIGNATURE?

9 A. YES, SIR.

10 Q. AND WHO ELSE'S SIGNATURE APPEARS THERE?

11 A. LIEUTENANT CHRIS DOZIER.

12 Q. OKAY. DID YOU OBSERVE MR. DOZIER SIGN THAT AS A WITNESS?

13 A. YES, SIR.

14 Q. OKAY. AND TO THE BEST OF YOUR RECOLLECTION, WAS THAT
15 SIGNATURE FREE AND VOLUNTARY?

16 A. YES, SIR.

17 Q. OKAY. AND AFTER HE SIGNED THE ACKNOWLEDGEMENT OF THE
18 MIRANDA RIGHTS AND SIGNED THE WAIVER, DID YOU THEN ASK HIM TO
19 GIVE YOU A STATEMENT, A WRITTEN STATEMENT?

20 A. YES, SIR, I DID.

21 Q. OKAY. AND I'M GOING TO SHOW YOU STATE'S -- EXCUSE ME, I
22 SHOW YOU A PIECE OF PAPER AND ASK YOU IF THAT IS A STATEMENT
23 THAT HERMAN HUGHES GAVE?

24 A. YES, SIR.

25 MR. BAILEY: MARK THIS AS STATE'S 3 FOR

1830

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1 IDENTIFICATION.

2 (STATEMENT MARKED AS STATE'S EXHIBIT 3.)

3 Q. MR. KIRKLAND, I HAND YOU STATE'S NUMBER 3 AND ASK WHO
4 WROTE THAT STATEMENT OUT?

5 A. HERMAN'S MOTHER.

6 Q. OKAY. AND AT WHOSE REQUEST DID HERMAN HUGHES' MOTHER
7 WRITE THAT STATEMENT OUT?

8 A. HERMAN'S.

9 Q. DID YOU MAKE ANY PROMISES TO HERMAN HUGHES OR MAKE ANY
10 THREATS AGAINST HIM IF HE DIDN'T GIVE YOU A STATEMENT?

11 A. NO, SIR.

12 Q. AND AFTER HIS MOTHER WROTE THAT STATEMENT OUT, DID HERMAN
13 HUGHES SIGN IT?

14 A. YES, SIR.

15 Q. OKAY. AND DID YOU WITNESS THE SIGNATURE?

16 A. YES, SIR.

17 Q. NOW, AFTER HERMAN HUGHES SIGNED THAT WRITTEN STATEMENT
18 PREPARED BY HIS MOTHER IN YOUR PRESENCE, DID YOU CONTINUE TO
19 TALK TO THEM ABOUT WHAT HAD OCCURRED ON THE PREVIOUS DAY?

20 A. YES, SIR, WE TALKED A LITTLE FURTHER.

21 Q. AND BASED ON THAT CONVERSATION WOULD YOU STATE WHETHER OR
22 NOT YOU DECIDED TO TAKE A SECOND STATEMENT?

23 A. YES, SIR, WE DID.

24 Q. WHAT CAUSED YOU TO DECIDE THAT?

25 A. JUST CHANGES IN HIS STORY.

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1 Q. OKAY. AND BETWEEN THE FIRST STATEMENT AND THE SECOND
2 STATEMENT, WRITTEN STATEMENT, DID YOU MAKE ANY THREATS TO HIM?

3 A. NO, SIR.

4 Q. DID YOU MAKE ANY PROMISES?

5 A. NO, SIR.

6 Q. WAS HERMAN HUGHES' MOTHER PRESENT?

7 A. YES, SIR.

8 Q. AND WHO WROTE OUT THE SECOND STATEMENT?

9 A. I DID.

10 Q. AT WHOSE REQUEST DID YOU WRITE IT OUT?

11 A. AT HERMAN'S REQUEST.

12 Q. AND I'LL SHOW YOU A PIECE OF PAPER AND ASK IF THAT IS THE
13 STATEMENT YOU WROTE OUT?

14 A. YES, SIR, THAT'S MY HANDWRITING.

15 MR. BAILEY: HAVE THIS MARKED AS STATE'S 4 FOR
16 IDENTIFICATION.

17 (SECOND STATEMENT MARKED AS STATE'S EXHIBIT 4.)

18 Q. REFERRING TO STATE'S 4 FOR IDENTIFICATION, MR. KIRKLAND,
19 WOULD YOU STATE WHETHER OR NOT THE CONTENT---

20 MR. BAILEY: YOU NEED TO SEE WHICH ONE?

21 MR. NEWSOM: YES.

22 Q. REFERRING YOU TO STATE'S 4, WOULD YOU STATE WHETHER OR
23 NOT THE CONTENT OF THAT STATEMENT WAS INFORMATION OBTAINED BY
24 YOU SOLELY FROM HERMAN HUGHES?

25 A. YES, SIR.

DANIEL KIRKLAND--DIRECT BY MR. BAILEY

1832

- 1 Q. DID YOU -- AFTER YOU WROTE THAT STATEMENT OUT, WHAT DID
2 YOU DO WITH IT, AFTER HE GAVE YOU THE INFORMATION AND YOU
3 WROTE IT OUT?
- 4 A. IT IS NOT MY GENERAL PRACTICE TO WRITE OUT THE
5 STATEMENTS, SO AFTER HE TOLD ME AND I WROTE IT OUT I READ IT
6 BACK TO HIM.
- 7 Q. OKAY.
- 8 A. AND WE DISCUSSED IT.
- 9 Q. ALL RIGHT. DID HE INDICATE ANY CHANGES OR ANYTHING AFTER
10 YOU READ IT TO HIM?
- 11 A. NO, SIR.
- 12 Q. AND AFTER YOU READ THE STATEMENT TO HIM, DID HE APPEAR TO
13 UNDERSTAND IT?
- 14 A. YES, SIR.
- 15 Q. DID HE SIGN THE STATEMENT?
- 16 A. YES, SIR.
- 17 Q. AND AFTER HERMAN HUGHES SIGNED THE SECOND STATEMENT, WAS
18 HIS MOTHER PRESENT THEN TOO?
- 19 A. YES, SIR.
- 20 Q. OKAY. DID YOU GIVE HIM A COPY OR HIS MOTHER A COPY OF
21 THE TWO STATEMENTS AT THE TIME THEY WERE MADE?
- 22 A. HIS MOTHER ASKED FOR A COPY.
- 23 Q. DID YOU GIVE HER COPIES OF BOTH STATEMENTS?
- 24 A. YES, SIR.
- 25 THE COURT: MAY I LOOK AT A COPY OF THAT, PLEASE,

1 THE STATEMENT?

2 Q. MR. KIRKLAND, THOSE STATEMENTS MENTIONED A GUN. WAS
3 THERE ANY DISCUSSION WITH HERMAN HUGHES AFTER THE SECOND
4 STATEMENT ABOUT THE LOCATION OF THE GUN?

5 A. YES, SIR.

6 Q. AND WHAT IS YOUR BEST RECOLLECTION OF WHAT HE TOLD YOU
7 ABOUT THE GUN, IF ANYTHING?

8 A. HERMAN TOLD ME THAT HE HAD GIVEN THE GUN TO A--I BELIEVE
9 IT WAS A COUSIN, IT COULD HAVE BEEN JUST A FRIEND, BUT BY THE
10 NAME OF PHILLIP WRIGHT. WE GATHERED INFORMATION ON WHERE
11 PHILLIP WRIGHT COULD BE FOUND.

12 HERMAN, I BELIEVE HIS MOTHER, AND DEPUTY DOZIER WENT TO
13 THIS RESIDENCE, FOUND PHILLIP WRIGHT AND THEN WAS DIRECTED TO
14 YET ANOTHER RESIDENCE PROBABLY SIX MILES AWAY WHERE THEY SAID
15 MR. WRIGHT HAD TAKEN THE WEAPON.

16 WE WENT TO THAT HOUSE, TOLD THEM WHAT WE WERE THERE FOR.
17 THE LADY OF THE HOUSE DIRECTED US TO A REAR ROOM, KIND OF A
18 STORAGE ROOM AND A LITTLE MAKESHIFT DOORWAY LOOKING CLOSET.
19 SHE WENT TO REACH FOR THE GUN, AND I STOPPED HER AND REACHED
20 UP IN THE UPPER RIGHT-HAND CORNER AND RETRIEVED IT.

21 Q. NOW, BEFORE HERMAN HUGHES TOLD YOU THAT HE HAD GIVEN THE
22 GUN TO PHILLIP WRIGHT, DID YOU PROMISE HIM ANYTHING IF HE
23 WOULD TELL YOU WHERE THE GUN WAS?

24 A. NO, SIR.

25 Q. DID YOU THREATEN HIM IF HE DIDN'T TELL YOU WHERE THE GUN

DANIEL KIRKLAND--CROSS BY MR. NEWSOM

1834

- 1 WAS?
- 2 A. NO, SIR.
- 3 Q. WAS HIS MOTHER THERE ALSO AT THAT TIME?
- 4 A. YES, SIR.
- 5 Q. MR. KIRKLAND, THAT'S ALL I HAVE AT THIS TIME. PLEASE
- 6 ANSWER ANY QUESTIONS OF THE DEFENSE.
- 7 CROSS EXAMINATION BY MR. NEWSOM:
- 8 Q. HOW DID YOU DETERMINE THAT MY CLIENT UNDERSTOOD THE
- 9 RIGHTS YOU TRIED TO EXPLAIN TO HIM?
- 10 A. EXCUSE ME, SIR?
- 11 Q. HOW WERE YOU ABLE TO DETERMINE THAT MY CLIENT WAS ABLE TO
- 12 UNDERSTAND THE RIGHTS YOU EXPLAINED TO HIM?
- 13 A. I ASKED HIM.
- 14 Q. YOU ASKED HIM?
- 15 A. YES, SIR.
- 16 Q. OKAY. WHY DIDN'T YOU LET HIM WRITE THE STATEMENT?
- 17 A. HE DIDN'T WANT TO WRITE ANYTHING.
- 18 Q. HE DIDN'T WANT TO WRITE ANYTHING?
- 19 A. NO, SIR.
- 20 Q. OKAY. ALL RIGHT. WHEN YOU INITIALLY SAW HIM YOU WENT
- 21 OUT TO PICK HIM UP AT HIS AUNT'S HOUSE OR MOTHER'S HOUSE?
- 22 A. I'M SORRY, I DIDN'T HEAR.
- 23 Q. WHEN YOU FIRST SAW HIM ON THE 19TH, YOU WENT TO PICK HIM
- 24 UP AT HIS AUNT'S HOUSE?
- 25 A. NO, SIR.

DANIEL KIRKLAND--CROSS BY MR. NEWSOM

1835

- 1 Q. WHERE DID YOU GO?
- 2 A. NOWHERE. HE CAME TO THE SHERIFF'S DEPARTMENT.
- 3 Q. YOU DIDN'T SEE HIM EARLIER?
- 4 A. NO, SIR.
- 5 Q. OKAY. HOW DID HE COME TO THE SHERIFF'S DEPARTMENT? WHO
- 6 BROUGHT HIM?
- 7 A. I COULDN'T TELL YOU.
- 8 Q. SO YOU WEREN'T INVOLVED IN WHEN HE WAS PICKED UP?
- 9 A. I WASN'T IN THE FRONT PART OF THE OFFICE AREA WHEN HE
- 10 CAME IN.
- 11 Q. ALL RIGHT. NOW, YOU SAY HIS MOTHER WAS PRESENT?
- 12 A. YES, SIR.
- 13 Q. OKAY. ARE YOU AWARE THAT LUCILLE HUGHES IS HIS LEGAL
- 14 MOTHER, NOT MIRANDA HUGHES?
- 15 A. I'M SORRY?
- 16 Q. WERE YOU AWARE THAT LUCILLE HUGHES IS HIS LEGAL MOTHER
- 17 AND NOT MIRANDA HUGHES, SHE GAVE UP HER PARENTAL RIGHTS WHEN
- 18 HE WAS FOUR YEARS OLD?
- 19 A. NO, SIR, I DON'T EVEN KNOW THE LADY'S NAME.
- 20 Q. DID YOU MAKE ANY ATTEMPT TO FIND OUT WHERE HIS REAL
- 21 MOTHER WAS?
- 22 A. NO, SIR.
- 23 Q. HOW DID SHE COME TO BE AT THE POLICE STATION, MIRANDA
- 24 HUGHES?
- 25 A. I COULDN'T TELL YOU, SIR.

DANIEL KIRKLAND--CROSS BY MR. NEWSOM

1836

- 1 Q. DID YOU BRING HER THERE?
- 2 A. NO, SIR.
- 3 Q. ALL RIGHT. HAD SHE EVER BEEN ARRESTED FOR ANYTHING OR
4 CHARGED WITH ANY CRIMES, MIRANDA HUGHES, BY YOU OR ANY OTHER
5 OFFICER THAT YOU ARE AWARE OF AT THE DEPARTMENT?
- 6 A. NOT BY ME, SIR, AND AS TO THE BEST OF MY KNOWLEDGE NOT
7 ANY OTHER OFFICER OF CALHOUN COUNTY.
- 8 Q. OKAY. DO YOU HAVE ANY CRITERIA THAT YOU BASE ON THE
9 ABILITY OF HERMAN HUGHES TO EVEN READ WHAT YOU WROTE?
- 10 A. NO, SIR. I READ IT TO HIM.
- 11 Q. ARE YOU AWARE THAT HIS I.Q. HAS BEEN TESTED AT 72?
- 12 A. SIR, I'M SORRY, I COULDN'T HEAR.
- 13 Q. ARE YOU AWARE THAT HIS I.Q. HAS BEEN TESTED AT 72?
- 14 A. NO, SIR.
- 15 Q. OKAY. DID YOU HAVE ANY IDEA THAT HE HAD DIFFICULTY
16 FOLLOWING SIMPLE INSTRUCTIONS WHEN YOU TALKED TO HIM?
- 17 A. THAT MAY BE THE REASON HE DIDN'T WANT TO WRITE IT.
- 18 Q. IT MIGHT ALSO BE THE REASON WHY HE COULDN'T READ?
- 19 A. VERY POSSIBLY.
- 20 Q. OKAY. DID YOU ARREST HIM AFTER HE GAVE THOSE STATEMENTS?
- 21 A. NO, SIR, I DID NOT.
- 22 Q. WHO ELSE WAS PRESENT THEN? WAS THE SHERIFF PRESENT?
- 23 A. THE -- I BELIEVE THE SHERIFF WAS HANDLING ANOTHER PART OF
24 THE INVESTIGATION.
- 25 Q. OKAY.

- 1 A. HE WAS IN THE OFFICE AND OUT OF THE OFFICE.
- 2 Q. WHO WAS IT THAT MADE THE DETERMINATION THAT HE COULD GO
3 HOME THAT NIGHT?
- 4 A. THAT WOULD HAVE HAD TO HAVE BEEN THE SHERIFF, SIR.
- 5 Q. OKAY. DO YOU RECALL HEARING ANYTHING SAID IN YOUR
6 PRESENCE OF MY CLIENT THAT IF HE DIDN'T GIVE--IF HE DIDN'T
7 TELL YOU WHERE KELSEY PIERCE WAS THAT HE WOULD GET THE
8 ELECTRIC CHAIR?
- 9 A. DO I REMEMBER HEARING ANYTHING LIKE THAT?
- 10 Q. YES?
- 11 A. NO, SIR.
- 12 Q. DID YOU EVER MAKE THAT STATEMENT TO HIM?
- 13 A. NO, SIR.
- 14 Q. DO YOU KNOW WHY HE WASN'T ARRESTED ON THE 19TH?
- 15 A. DO I KNOW WHY HE WAS NOT ARRESTED?
- 16 Q. YES, SIR, AFTER GIVING A STATEMENT ADMITTING PART IN A
17 CRIME WHY HE WASN'T ARRESTED?
- 18 A. NO, SIR.
- 19 Q. OKAY. HOW LONG DID YOU HAVE HIM AT THE POLICE STATION?
- 20 A. I DON'T HAVE ANY IDEA, SIR.
- 21 Q. ABOUT WHAT TIME -- YOU GOT HIM THERE ABOUT 5 O'CLOCK, WAS
22 IT NOT?
- 23 A. YES, SIR, IT WAS ABOUT 5 O'CLOCK.
- 24 Q. ALL RIGHT. WHAT TIME DID YOU LET HIM GO?
- 25 A. I HAVE NO IDEA, SIR.

DANIEL KIRKLAND--CROSS BY MR. NEWSOM

1833

- 1 Q. SO IT COULD HAVE BEEN 24 HOURS?
- 2 A. NO, SIR.
- 3 Q. ALL RIGHT. LET'S GO---
- 4 A. WE DON'T KEEP ANYBODY 24 HOURS.
- 5 Q. WOULD IT HAVE BEEN LESS THAN 12?
- 6 A. YES, SIR.
- 7 Q. WAS IT DARK WHEN YOU LET HIM GO?
- 8 A. SEEMED LIKE IT MAY HAVE BEEN GETTING DARK WHEN WE GOT
- 9 BACK FROM GETTING--RETRIEVING THE WEAPON.
- 10 Q. OKAY. DID YOU LET HIM GO WHILE YOU WENT TO GET THE
- 11 WEAPON OR YOU KEPT HIM IN CUSTODY UNTIL YOU WENT TO GET THE
- 12 WEAPON?
- 13 A. YES, SIR. HE WAS -- I DON'T KNOW IF YOU WOULD CALL IT
- 14 "IN CUSTODY." HE WAS WITH ME.
- 15 Q. HE WAS WITH YOU?
- 16 A. YES, SIR.
- 17 Q. HE TOLD YOU WHERE THE WEAPON WAS?
- 18 A. HE TOLD ME THAT HE HAD GIVEN IT TO THE COUSIN OR THE
- 19 FRIEND, PHILLIP WRIGHT.
- 20 Q. HOW DID YOU ASCERTAIN THAT THIS WEAPON WAS IT?
- 21 A. FROM HERMAN.
- 22 Q. OKAY. WHY IS THAT NOT IN THE STATEMENT? DON'T YOU THINK
- 23 THAT IS SIGNIFICANT?
- 24 A. I WROTE WHAT HE TOLD ME TO WRITE, SIR.
- 25 Q. YOU WROTE WHAT HE TOLD YOU TO WRITE?

- 1 A. YES, SIR.
- 2 Q. HE OBVIOUSLY TOLD YOU WHERE IT WAS---
- 3 A. YES, SIR.
- 4 Q. ---ON THE 19TH?
- 5 A. YES, SIR.
- 6 Q. AND YOU DIDN'T WRITE IT DOWN?
- 7 A. NO, SIR.
- 8 Q. DID YOU NOT FIND THAT SIGNIFICANT?
- 9 A. I WOULD -- AT THAT TIME I THOUGHT IT WAS MORE IMPORTANT
- 10 TO GO RETRIEVE IT.
- 11 Q. DID HE TELL YOU WHERE HE HAD GOTTEN IT FROM?
- 12 A. NOT TO MY KNOWLEDGE.
- 13 Q. DID YOU ASK HIM THAT?
- 14 A. NO, SIR.
- 15 Q. DID YOU ASK HIM HOW HE KNEW THAT THIS WAS THE GUN USED IN
- 16 THE MURDER?
- 17 A. NO, SIR, I DON'T RECALL.
- 18 Q. HOW DID YOU GET AROUND TO THE SUBJECT ABOUT THE GUN THAT
- 19 HE SURRENDERED TO Y'ALL?
- 20 A. I HONESTLY CAN'T REMEMBER.
- 21 Q. DO YOU KNOW OF ANYBODY ELSE WHO WAS PRESENT?
- 22 A. OFFICER DOZIER MAY HAVE, THE SHERIFF MAY HAVE BEEN.
- 23 Q. YOU DON'T REMEMBER WHO ALL WAS THERE?
- 24 A. NO, SIR.
- 25 Q. WAS HE ALLOWED TO HAVE ANY FOOD DURING THIS PERIOD OF

DANIEL KIRKLAND--CROSS BY MR. NEWSOM

1840

- 1 TIME WHEN YOU WERE QUESTIONING HIM?
- 2 A. HAVE ANY FOOD?
- 3 Q. YES?
- 4 A. NO, SIR.
- 5 Q. DID YOU MAKE ANY SOFT DRINKS OR COFFEE AVAILABLE TO HIM?
- 6 A. THERE IS A MACHINE IN THE OFFICE.
- 7 Q. WAS HE ALLOWED TO COME AND GO AS HE PLEASED THEN?
- 8 A. AS FAR AS I KNOW.
- 9 Q. AND YOU DON'T KNOW WHO WENT TO GET HIM OR MIRANDA HUGHES?
- 10 A. NO, SIR.
- 11 Q. OKAY. AND IT WAS NOT YOU WHO MADE THE DECISION TO LET
- 12 HIM GO THAT NIGHT?
- 13 A. NO, SIR, I WOULDN'T MAKE THE DECISION.
- 14 Q. WAS THERE ANY PROMISES IF HE GAVE A STATEMENT THAT HE
- 15 WOULD BE RELEASED?
- 16 A. NO, SIR, NOT BY ME.
- 17 Q. WAS ANY MADE TO YOUR KNOWLEDGE BY ANY OTHER OFFICER?
- 18 A. NO, SIR.
- 19 Q. YOU DIDN'T HEAR ANY THREATS OR ANY PROMISES?
- 20 A. NO, SIR.
- 21 Q. THANK YOU.
- 22 MR. NEWSOM: I HAVE NO FURTHER QUESTIONS OF THIS
- 23 WITNESS.
- 24 MR. BAILEY: YOUR HONOR, JUST VERY BRIEFLY, IF I
- 25 MIGHT.

DANIEL KIRKLAND--REDIRECT BY MR. BAILEY

1841

~~1841~~1 REDIRECT EXAMINATION BY MR. BAILEY:

2 Q. MR. KIRKLAND, MR. NEWSOM ASKED YOU ABOUT THE TIME
3 INVOLVED HERE. REFERRING TO STATE'S NUMBER 2, 17:13 I BELIEVE
4 YOU TESTIFIED IS THE TIME THAT YOU STARTED TALKING TO HERMAN
5 HUGHES WHEN YOU STARTED THE MIRANDA FORM; IS THAT RIGHT?

6 A. YES, SIR.

7 Q. FIVE-THIRTEEN P.M.?

8 A. YES, SIR.

9 Q. OKAY. I'M GOING TO HAND YOU THIS AND ASK WHETHER OR NOT
10 THAT IS A COPY OF THE CHAIN OF CUSTODY FORM OF THE CALHOUN
11 COUNTY SHERIFF'S DEPARTMENT ON THAT GUN?

12 A. YES, SIR.

13 Q. AND DOES THAT INDICATE WHAT TIME YOU RECOVERED THE GUN
14 FROM THE SPIGNER HOUSE?

15 A. FIVE-FORTY-FIVE P.M.

16 Q. ALL RIGHT. SO THE ENTIRE SEQUENCE WITH THE MIRANDA AND
17 THE CONVERSATION WITH HERMAN AND THOSE TWO BRIEF STATEMENTS
18 TAKE PLACE PRIOR TO GETTING THE GUN?

19 A. NO, SIR, THEY WERE -- YES, SIR, THE STATEMENTS WERE
20 BEFORE WE RETRIEVED THE WEAPON.

21 Q. THANK YOU.

22 MR. BAILEY: THAT'S ALL I HAVE.

23 MR. NEWSOM: COULD I SEE THAT?

24 MR. BAILEY: YOUR HONOR, I'VE GOT THE ORIGINAL HERE.

25 YOUR HONOR, I'VE GOT THE ORIGINAL FORM. I WOULD LIKE TO MARK

DANIEL KIRKLAND--RE CROSS BY MR. NEWSOM

1842

1 THIS FOR IDENTIFICATION.

2 (CHAIN OF CUSTODY FORM MARKED AS STATE'S
3 EXHIBIT 5.)

4 RE CROSS EXAMINATION BY MR. NEWSOM:

5 Q. THIS CHAIN OF CUSTODY, YOU STATE HERE, I PRESUME YOU
6 SWORE TO IT, THAT YOU GOT THIS WEAPON FROM HERMAN HUGHES?

7 A. I GOT THE WEAPON FROM HERMAN?

8 Q. FROM HERMAN HUGHES?

9 A. I GOT---

10 Q. "I SEIZED FROM HERMAN HUGHES PURSUANT TO MURDER WARRANT
11 A PISTOL AT OR NEAR BETTY SPIGNER'S HOUSE."

12 A. BETTY SPIGNER'S HOUSE, YES, SIR.

13 Q. BUT IT SAYS YOU GOT IT FROM HERMAN HUGHES?

14 A. I GOT IT FROM BETTY SPIGNER'S HOUSE.

15 Q. OKAY. SO THAT IS INCORRECT?

16 A. I GOT IT FROM BETTY SPIGNER'S HOUSE, IF THAT IS WHAT IT
17 SAYS.

18 Q. IT SAYS YOU GOT IT FROM HERMAN HUGHES AT OR NEAR BETTY
19 SPIGNER'S HOUSE.

20 A. "HERMAN HUGHES PURSUANT TO MURDER WARRANT A PISTOL AT OR
21 NEAR BETTY SPIGNER'S HOUSE." YES, SIR.

22 Q. SO DID YOU GET IT FROM HERMAN HUGHES OR DID YOU GET IT
23 FROM BETTY SPIGNER?

24 A. I GOT IT FROM BETTY SPIGNER'S HOUSE.

25 Q. AND YOU DIDN'T SEIZE IT FROM HERMAN HUGHES?

- 1 A. NO, SIR.
- 2 Q. SO THAT DOCUMENT IS INCORRECT?
- 3 A. OKAY.
- 4 Q. YOUR CHAIN OF CUSTODY ON THAT IS INCORRECT, THAT
- 5 AFFIDAVIT YOU SIGNED ON THAT; IS THAT NOT--IS THAT YOUR
- 6 TESTIMONY?
- 7 A. THAT IS NOT MY CHAIN OF CUSTODY.
- 8 Q. IT IS NOT? WHOSE IS THAT?
- 9 A. DEPUTY EARL RHUDY.
- 10 Q. WHOSE NAME DOES IT HAVE UP HERE, DANNY KIRKLAND?
- 11 A. YES, SIR.
- 12 Q. IT HAS GOT YOUR NAME ON IT?
- 13 A. YES, SIR.
- 14 Q. AND YOU GOT IT AND IT SAYS THAT YOU GOT IT FROM HERMAN
- 15 HUGHES AND THEN GAVE IT TO EARL RHUDY; ISN'T THAT WHAT IT
- 16 SAYS?
- 17 A. YES, SIR.
- 18 Q. BUT WHAT YOU ARE SAYING IS THAT IS NOT TRUE?
- 19 A. I GOT IT FROM BETTY SPIGNER'S RESIDENCE.
- 20 Q. OKAY. LET ME ASK YOU SOMETHING. THAT IS 5:45. YOU SAY
- 21 YOU GOT THE WAIVER OF RIGHTS OF MY CLIENT AT 17:13?
- 22 A. YES, SIR.
- 23 Q. SOME 30 MINUTES BEFORE YOU HAD TIME TO TAKE TWO WRITTEN
- 24 STATEMENTS FROM MY CLIENT?
- 25 A. YES, SIR.

DANIEL KIRKLAND--RE-CROSS BY MR. NEWSOM

1844

- 1 Q. IS THAT CORRECT?
- 2 A. YES, SIR.
- 3 Q. SO YOU TOOK TWO WRITTEN STATEMENTS AND HAD TIME TO GO TO
4 BETTY SPIGNER'S HOUSE?
- 5 A. YES, SIR.
- 6 Q. WHERE DOES SHE LIVE?
- 7 A. SHE LIVES PROBABLY FIVE MILES FROM THE SHERIFF'S
8 DEPARTMENT.
- 9 Q. FIVE MILES FROM THE SHERIFF'S DEPARTMENT?
- 10 A. YES, SIR.
- 11 Q. OKAY.
- 12 MR. NEWSOM: I HAVE NO FURTHER QUESTIONS.
- 13 MR. BAILEY: NOTHING FURTHER FROM THIS WITNESS.
- 14 THE COURT: YOU MAY COME DOWN, OFFICER. THANK YOU.
15 (WITNESS STEPS DOWN.)
- 16 MR. BAILEY: YOUR HONOR, CAN HE BE EXCUSED?
- 17 THE COURT: YES, SIR, HE MAY, OR HE MAY REMAIN IN
18 THE COURTROOM IF HE CARES TO, EITHER WAY.
- 19 (WITNESS EXCUSED.)
- 20 THE COURT: HAVE YOU SENT FOR YOUR NEXT WITNESS?
- 21 MR. BAILEY: YES, SIR.
- 22 (WITNESS ENTERS COURTROOM.)
- 23 (WITNESS TAKES WITNESS STAND.)
- 24 MR. BAILEY: MR. DOZIER, YOU TESTIFIED EARLIER
25 TODAY IN ANOTHER HEARING WITH RESPECT TO MARCH---

1 THE COURT: LET ME SWEAR -- THIS IS A SEPARATE
2 HEARING ON A SEPARATE ISSUE. PLEASE PLACE YOUR LEFT HAND UPON
3 THE BIBLE. I THINK IN ABUNDANCE OF PRECAUTION I BETTER.

4 (WITNESS SWORN.)

5 THE COURT: THANK YOU. PLEASE HAVE A SEAT. TWO
6 SEPARATE HEARINGS.

7 MR. BAILEY: YES, SIR.

8 CHRIS DOZIER, BEING FIRST
9 DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. BAILEY:

11 Q. YOU ARE CHRIS DOZIER?

12 A. THAT'S CORRECT.

13 Q. AND, MR. DOZIER, MARCH 19, 1994, YOU WERE A DEPUTY FOR
14 THE CALHOUN COUNTY SHERIFF'S DEPARTMENT?

15 A. THAT'S CORRECT, SIR.

16 Q. THE AFTERNOON OF MARCH 19TH, WERE YOU AT THE SHERIFF'S
17 OFFICE?

18 A. YES, SIR.

19 Q. WILL YOU STATE WHETHER OR NOT DANNY KIRKLAND WAS PRESENT?

20 A. YES, HE WAS.

21 Q. WAS HERMAN HUGHES THERE?

22 A. YES, SIR.

23 Q. AND DO YOU RECALL WHETHER HIS MOTHER WAS THERE?

24 A. YES, HIS MOTHER WAS PRESENT.

25 Q. OKAY. AND I'LL HAND YOU WHAT HAS BEEN MARKED STATE'S

CHRIS DOZIER--DIRECT BY MR. BAILEY

1846

~~1846~~

1 EXHIBIT NUMBER 2 AND ASK IF YOU RECOGNIZE THAT?

2 A. YES, SIR.

3 Q. OKAY. AND IS THAT A CALHOUN COUNTY SHERIFF'S DEPARTMENT
4 MIRANDA FORM?

5 A. YES, IT IS, SIR.

6 Q. AND WOULD YOU STATE WHETHER OR NOT YOUR SIGNATURE
7 APPEARS---

8 A. YES, SIR.

9 Q. ---ON THE BOTTOM THERE?

10 A. RIGHT HERE AS A WITNESS IS MY SIGNATURE, SIR.

11 Q. OKAY. AND WERE YOU PRESENT THE ENTIRE TIME THAT DANNY
12 KIRKLAND WENT OVER THAT MIRANDA FORM WITH HERMAN HUGHES?

13 A. YES, I WAS, SIR.

14 Q. AND FOR THE RECORD AGAIN WOULD YOU POINT OUT THE
15 DEFENDANT HERMAN HUGHES AS BEING THE PERSON IN THE ROOM WITH
16 YOU?

17 A. YES, SIR, HE IS SITTING AT THE TABLE WITH THE BLUE SLEEVE
18 AND SWEAT JACKET ON.

19 Q. OKAY. NOW, WHO ACTUALLY WENT OVER THE MIRANDA FORM WITH
20 HERMAN HUGHES, YOU OR MR. KIRKLAND?

21 A. DANNY KIRKLAND DID.

22 Q. OKAY. AND WHAT IS YOUR RECOLLECTION ABOUT HOW HE
23 EXPLAINED THE MIRANDA RIGHTS TO HERMAN HUGHES?

24 A. EXACTLY LIKE WHAT IS ON THE PAPER HERE. THAT IS WHAT HE
25 READ TO HIM.

- 1 Q. HE READ THOSE RIGHTS TO HIM?
- 2 A. YES, SIR.
- 3 Q. WERE YOU PRESENT? DID YOU HEAR THAT?
- 4 A. YES, SIR, I DID.
- 5 Q. AND AFTER HE READ THE RIGHTS TO HIM, WOULD YOU STATE
- 6 WHETHER OR NOT HERMAN HUGHES SIGNED THE FORM.
- 7 A. YES, HE DID, SIR.
- 8 Q. DID YOU SEE HIM SIGN THE FORM?
- 9 A. I DID, SIR.
- 10 Q. OKAY. AND DOWN AT THE BOTTOM IS A WAIVER OF RIGHTS.
- 11 WHAT, IF ANYTHING, DID MR. KIRKLAND DO WITH RESPECT TO THE
- 12 WAIVER OF RIGHTS PORTION?
- 13 A. HE READ THAT TO HIM AND ASKED HIM DID HE UNDERSTAND IT.
- 14 AT THAT TIME MR. HUGHES ACKNOWLEDGED THAT HE DID. AND HE
- 15 ASKED HIM WOULD HE SIGN IT, AND HE DID, SIR.
- 16 Q. OKAY. DID YOU WITNESS THE SIGNATURE?
- 17 A. YES, I DID.
- 18 Q. OKAY. AND THAT TIME DOWN AT THE BOTTOM, 17:17, IS 5:17
- 19 P.M.; IS THAT WHEN THE STATEMENT WAS--THE MIRANDA FORM WAS
- 20 EXPLAINED TO HIM AND READ TO HIM AND HE SIGNED IT?
- 21 A. YES, SIR.
- 22 Q. OKAY. NOW, AFTER THAT WAS THE STATEMENT GIVEN BY HERMAN
- 23 HUGHES TO YOUR KNOWLEDGE?
- 24 A. TO MY KNOWLEDGE, SIR, THE ONLY STATEMENT I CAN REMEMBER
- 25 IS THE ONE THAT DANNY TOOK FROM HIM.

CHRIS DOZIER--DIRECT BY MR. BAILEY

1848

1 Q. OKAY. WERE YOU PRESENT THE ENTIRE TIME HE WAS
2 INTERVIEWED BY DANNY KIRKLAND OR WERE YOU IN AND OUT AFTER THE
3 MIRANDA FORMS---

4 A. I WAS IN AND OUT AFTER THE MIRANDA WAS READ TO HIM. I
5 WAS PRESENT DURING THE STATEMENT THAT OFFICER DANNY KIRKLAND
6 TOOK FROM HIM.

7 Q. LET ME HAND YOU STATE'S NUMBER 4 AND ASK IF YOU WERE
8 PRESENT WHEN THAT STATEMENT WAS TAKEN? MR. KIRKLAND SAID THAT
9 WAS THE SECOND STATEMENT TAKEN.

10 A. YES.

11 Q. IS THAT THE STATEMENT YOU WERE REFERRING TO?

12 A. THIS IS THE STATEMENT THAT I AM TALKING ABOUT, SIR.

13 Q. OKAY. NOW, BETWEEN THE TIME THE MIRANDA RIGHTS WERE
14 GIVEN TO HERMAN HUGHES AND HE SIGNED THE ACKNOWLEDGEMENT AND
15 WAIVER, DID EITHER YOU OR MR. KIRKLAND MAKE ANY THREATS
16 AGAINST HIM?

17 A. NO, WE DIDN'T, SIR.

18 Q. TO INDUCE HIM TO GIVE YOU A STATEMENT?

19 A. NO, I DIDN'T.

20 Q. WERE ANY PROMISES MADE TO HIM?

21 A. NO PROMISES WAS MADE TO HIM.

22 Q. OKAY. AND WHAT DO YOU RECALL ABOUT THAT STATEMENT, WHICH
23 IS STATE'S NUMBER 4? YOU DID NOT PHYSICALLY WITNESS THAT, DID
24 YOU?

25 A. I DID NOT PHYSICALLY -- I DID NOT SIGN IT. I DIDN'T SIGN

CHRIS DOZIER--DIRECT BY MR. BAILEY

1 THE WITNESS PART OF IT.

2 Q. WERE YOU PRESENT, THOUGH, WHEN HERMAN HUGHES SIGNED IT?

3 A. I WAS PRESENT. I WAS PRESENT DURING THE TIME THAT THIS
4 STATEMENT WAS TAKEN BY OFFICER DANNY KIRKLAND AND THE
5 SIGNATURE BY MR. HUGHES.

6 Q. OKAY. AND WHAT DO YOU RECALL OF HOW HE WENT ABOUT TAKING
7 THE STATEMENT?

8 A. HE ASKED HIM IN HIS OWN WORDS TO TELL HIM WHAT TOOK
9 PLACE, AND MR. HUGHES DID AT THAT TIME.

10 Q. OKAY. AND YOU TESTIFIED YOU ACTUALLY SAW HIM SIGN THE
11 STATEMENT?

12 A. YES, SIR.

13 Q. IT WAS WRITTEN OUT BY MR. KIRKLAND?

14 A. YES, SIR..

15 Q. OKAY. NOW, AS A LAW ENFORCEMENT OFFICER YOU HAVE BEEN
16 AROUND PEOPLE THAT HAVE BEEN UNDER THE INFLUENCE OF ALCOHOL OR
17 DRUGS; IS THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND IN YOUR OPINION WAS HERMAN HUGHES COHERENT, RATIONAL
20 AT THE TIME Y'ALL WERE INTERVIEWING HIM?

21 A. IN MY OPINION HE WAS, SIR.

22 Q. ANY INDICATION OF ALCOHOL OR DRUG USE, ANY ODOR OF
23 ALCOHOL?

24 A. NO ODOR OF ALCOHOL. HE DIDN'T APPEAR TO ACT TO BE UNDER
25 THE INFLUENCE OF ANY ALCOHOL.

1850

CHRIS DOZIER--CROSS BY MR. NEWSOM

1 Q. AND DO YOU RECALL HIS MOTHER BEING IN THE SHERIFF'S
2 OFFICE THAT AFTERNOON?

3 A. YES, I DO, SIR.

4 Q. OKAY. MR. DOZIER, I BELIEVE THAT IS ALL I'VE GOT.
5 PLEASE ANSWER ANY QUESTIONS MR. NEWSOM HAS.

6 CROSS EXAMINATION BY MR. NEWSOM:

7 Q. MR. DOZIER, WHO WAS IT THAT BROUGHT HERMAN TO THE
8 SHERIFF'S DEPARTMENT THAT AFTERNOON, DO YOU KNOW?

9 A. BEST OF MY RECOLLECTION, SIR, HIS MOTHER.

10 Q. HIS MOTHER BROUGHT HIM?

11 A. YES, SIR.

12 Q. DO YOU KNOW AT WHOSE REQUEST?

13 A. I DON'T KNOW, SIR.

14 Q. DO YOU KNOW HIS MOTHER?

15 A. YES, SIR, I DO.

16 Q. ALL RIGHT.

17 A. I KNOW OF HER BECAUSE I WAS INVOLVED IN SOMETHING WITH
18 HIM ONCE BEFORE.

19 Q. THIS -- MIRANDA HUGHES IS WHO YOU ARE TALKING ABOUT?

20 A. I BELIEVE THAT IS HER, SIR.

21 Q. ARE YOU AWARE---

22 A. IF SHE WAS PRESENT I COULD POINT HER OUT TO YOU.

23 Q. ARE YOU AWARE THAT MIRANDA HUGHES, THE LADY THAT WAS
24 PRESENT THAT DAY, IS NOT HIS MOTHER?

25 A. I DIDN'T KNOW THAT, SIR.



- 1 Q. SHE SURRENDERED HER PARENTAL RIGHTS WHEN HE WAS FOUR
2 YEARS OLD AND HIS REAL MOTHER IS LUCILLE HUGHES?
- 3 A. I DIDN'T KNOW THAT, SIR.
- 4 Q. SO SHE WASN'T GIVING HIM ANY COUNSEL, WAS SHE, ABOUT WHAT
5 TO SAY?
- 6 A. GIVING HIM COUNSEL?
- 7 Q. YES? SHE DIDN'T TELL HIM WHAT TO SAY, DID SHE?
- 8 A. AS FAR AS I RECOLLECT, SIR, SHE DIDN'T.
- 9 Q. ALL RIGHT. ARE YOU AWARE THAT HE GAVE TWO STATEMENTS
10 THAT DAY?
- 11 A. I'M ONLY FAMILIAR WITH ONE STATEMENT, SIR. THAT IS THE
12 ONE THAT I HAVE HERE THAT WAS TAKEN IN MY PRESENCE BY OFFICER
13 DANNY KIRKLAND.
- 14 Q. ALL RIGHT: YOU CAME IN THE ROOM, WITNESSED HIS WAIVER OF
15 RIGHTS FORM; IS THAT CORRECT?
- 16 A. THAT'S CORRECT.
- 17 Q. AND THAT WAS AT 5:17? IS THAT WHAT IT SAYS ON THAT FORM?
- 18 A. IT WAS AT 5:13 IT STARTED.
- 19 Q. FIVE-THIRTEEN IT STARTED?
- 20 A. YES, SIR.
- 21 Q. HE GAVE A STATEMENT. ABOUT HOW LONG DID IT TAKE FOR HIM
22 TO GIVE A STATEMENT?
- 23 A. IT WAS COMPLETED AT 5:17.
- 24 Q. COMPLETED AT 5:17, WRITTEN AND SIGNED?
- 25 A. THE MIRANDA WARNING.

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- 1 Q. NO, I'M ASKING ABOUT THE STATEMENT.
- 2 A. I DON'T KNOW, SIR. THERE IS NO INDICATION OF TIME ON
3 THIS STATEMENT.
- 4 Q. OKAY. AND THIS IS STATE'S EXHIBIT NUMBER 4 WE ARE
5 REFERRING TO?
- 6 A. YES, SIR.
- 7 Q. THAT IS THE STATEMENT THAT YOU WITNESSED?
- 8 A. THAT'S CORRECT, SIR.
- 9 Q. OKAY. AND YOU WERE PRESENT DURING THAT TIME?
- 10 A. YES, SIR.
- 11 Q. DO YOU RECALL HOW LONG IT TOOK TO TAKE THAT STATEMENT?
- 12 A. I DON'T, SIR.
- 13 Q. OKAY. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER 3.
14 HAVE YOU SEEN THAT STATEMENT?
- 15 A. I DON'T KNOW ANYTHING ABOUT THIS STATEMENT, SIR.
- 16 Q. ALL RIGHT. IF THAT STATEMENT WAS TAKEN BEFORE YOU CAME
17 IN AND MIRANDIZED MY CLIENT, DO YOU KNOW WHETHER OR NOT HE WAS
18 MIRANDIZED PRIOR TO GIVING THAT STATEMENT?
- 19 A. IF THIS STATEMENT WAS TAKEN PRIOR?
- 20 Q. IF IT WERE?
- 21 A. ACTUALLY, I COULDN'T SAY, SIR.
- 22 Q. OKAY. SO YOUR TESTIMONY IS YOU DIDN'T WITNESS ANY WAIVER
23 OF RIGHTS FOR MY CLIENT UNTIL BEFORE STATE'S EXHIBIT NUMBER 4,
24 THAT STATEMENT THAT OFFICER KIRKLAND TOOK OR WROTE?
- 25 A. WHATEVER TIME, SIR, THAT THIS STATEMENT WAS TAKEN, THERE

1 IS NO TIME INDICATED ON THE STATEMENT THAT I WITNESSED BY
2 OFFICER KIRKLAND.

3 Q. BUT IF OFFICER KIRKLAND'S TESTIMONY WAS THAT STATEMENT
4 WAS TAKEN PRIOR TO THE ONE YOU WITNESSED, IT WOULD HAVE BEEN
5 TAKEN BEFORE HE WAS GIVEN HIS MIRANDA RIGHTS?

6 MR. BAILEY: OBJECTION. THAT IS NOT WHAT OFFICER
7 KIRKLAND SAID.

8 THE COURT: SIR?

9 MR. BAILEY: I THINK HE IS MISCONSTRUING WHAT
10 OFFICER KIRKLAND SAID.

11 THE COURT: WELL, THE RECORD WILL REFLECT. DO YOU
12 WANT TO STRAIGHTEN -- YOU MAY DO THAT ON REDIRECT.

13 Q. STATE'S EXHIBIT NUMBER 3 IN YOUR ORDER---

14 THE COURT: THE JURY IS NOT HERE. LET'S STATE FOR
15 THE RECORD WHAT YOUR POSITION IS SO IT WILL BE CLEAR,
16 SOLICITOR.

17 MR. BAILEY: YOUR HONOR, I JUST THINK HE IS TRYING
18 TO CONFUSE THE WITNESS.

19 THE COURT: IN WHAT REGARD? I JUST WANT THE RECORD
20 CLEAR.

21 MR. BAILEY: THIS WITNESS HAS TESTIFIED HE WAS NOT
22 PRESENT IN THE ROOM WHEN THE SECOND--THE FIRST WRITTEN
23 STATEMENT BY THE BOY'S MOTHER WAS GIVEN. THEREFORE, HE CAN'T
24 SAY WHETHER IT WAS BEFORE OR AFTER MIRANDA RIGHTS WERE GIVEN.

25 THE COURT: YES, SIR. WELL, THAT IS WHAT I -- THAT

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1 IS WHAT MY NOTES REFLECT THAT HE SAID, BUT WHAT IS YOUR
2 POSITION?

3 MR. NEWSOM: I WAS JUST TRYING TO DETERMINE WHETHER
4 THERE WAS ANY---

5 THE COURT: DIDN'T HE SAY HE WASN'T THERE?

6 MR. NEWSOM: YES, SIR. I'M JUST TRYING TO MAKE SURE
7 OF THE CHRONOLOGICAL SEQUENCE.

8 THE COURT: BUT, I MEAN, HOW WOULD HE KNOW WHETHER
9 THEY WERE OR WERE NOT GIVEN IF HE WASN'T THERE?

10 MR. NEWSOM: IF THERE IS NO OTHER WAIVER OF RIGHTS,
11 -- IF HE IS THE ONLY WITNESS TO THE ONE THAT THEY HAVE
12 PRESENTED, YOUR HONOR, I WOULD ASSUME THAT THERE WAS NO WAIVER
13 OF RIGHTS BY MY CLIENT PRIOR TO GIVING THE FIRST STATEMENT.

14 THE COURT: WELL, THERE COULD HAVE BEEN A WAIVER
15 THERE AND HE WASN'T A WITNESS TO THAT DOCUMENT. I DON'T KNOW.

16 MR. NEWSOM: WELL, I MEAN, THAT IS SOMETHING THAT I
17 AM INTERESTED IN.

18 THE COURT: I KNOW, BUT I DON'T KNOW -- GO AHEAD.

19 MR. NEWSOM: I'M JUST TRYING TO ASCERTAIN
20 CHRONOLOGICALLY WHAT HE SAW AND WHAT HE DIDN'T SEE.

21 THE COURT: ALL RIGHT.

22 Q. DO YOU KNOW OF ANY OTHER WAIVER OF RIGHTS THAT MY CLIENT
23 SIGNED?

24 A. I DON'T, SIR.

25 Q. WERE YOU PRESENT AT ANY TIME EARLIER WHEN ANY PREVIOUS

1 STATEMENTS WERE GIVEN?

2 A. NO, SIR.

3 Q. OKAY. WAS ANYBODY ELSE PRESENT BESIDES YOURSELF, OFFICER
4 KIRKLAND, THE SHERIFF, MY CLIENT AND A WOMAN NAMED MIRANDA
5 HUGHES?

6 A. THE ONLY PERSON THAT WAS PRESENT DURING THE TIME OF THE
7 STATEMENT I WITNESSED BY OFFICER KIRKLAND WAS MR. HUGHES, HIS
8 MOTHER, MR. KIRKLAND AND MYSELF, SIR.

9 Q. THE SHERIFF WAS NOT THERE?

10 A. HE WASN'T THERE DURING THIS TIME, SIR.

11 Q. HOW ABOUT EARL RHUDY, WAS HE THERE?

12 A. NO, SIR.

13 Q. THANK YOU. I HAVE NO FURTHER QUESTIONS.

14 THE COURT: SO THAT I WILL KNOW, WHICH STATEMENT DO
15 YOU PROPOSE TO INTRODUCE AT THE TRIAL OF THIS CASE?

16 MR. BAILEY: YOUR HONOR, I WAS GOING TO INTRODUCE
17 BOTH OF THEM, AS WELL AS ANOTHER ONE THAT THE SHERIFF TOOK THE
18 FOLLOWING DAY.

19 THE COURT: AND WHAT IS YOUR POSITION ON THAT?

20 MR. NEWSOM: YOUR HONOR, QUITE FRANKLY, I JUST
21 STUMBLED INTO THIS BY THEIR TESTIMONY, THAT THE PREVIOUS
22 OFFICER, MY UNDERSTANDING, I MAY BE WRONG, BUT I WILL ASK FOR
23 A TRANSCRIPT AND GO OVER IT, HE TESTIFIED THERE WERE TWO
24 STATEMENTS TAKEN AND THAT MY CLIENT SIGNED A WAIVER OF HIS
25 RIGHTS AND WAS ADVISED OF HIS RIGHTS BY THAT FORM. THIS

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1 OFFICER SAYS THAT HE WITNESSED THAT FORM AND THAT WAS AT 5:13
2 AND THAT WAS PRIOR TO THE SECOND STATEMENT.

3 THE COURT: WHAT IS YOUR POSITION ON THAT,
4 SOLICITOR?

5 MR. BAILEY: YOUR HONOR, HE SAID IT WAS PRIOR TO THE
6 SECOND STATEMENT, BUT IT WAS ALSO ACCORDING TO OFFICER
7 KIRKLAND PRIOR TO THE FIRST STATEMENT. OFFICER KIRKLAND SAID:
8 (1) HE GAVE HIM HIS WRITTEN MIRANDA; (2) HE TOOK THE STATEMENT
9 WRITTEN OUT BY THE BIOLOGICAL MOTHER; AND (3) HE WROTE THE
10 SECOND STATEMENT OUT. THIS WITNESS---

11 THE COURT: I THOUGHT OFFICER KIRKLAND TESTIFIED
12 CHRONOLOGICALLY THAT HE WAS MIRANDIZED PRIOR TO THE FIRST
13 STATEMENT, WHICH WOULD INDICATE---

14 MR. NEWSOM: I THOUGHT HE SAID THAT TOO.

15 THE COURT: ---THAT HE WAS MIRANDIZED PRIOR TO ANY
16 STATEMENT. THERE IS NO QUESTION ABOUT THAT, IS THERE?

17 MR. NEWSOM: WELL, IT WASN'T A QUESTION UNTIL HE
18 JUST TESTIFIED TO SEQUENCE.

19 THE COURT: WELL, THERE IS NO QUESTION ABOUT THE
20 OFFICER TESTIFIED THAT HE WAS MIRANDIZED BEFORE ANY STATEMENT
21 WAS TAKEN?

22 MR. NEWSOM: IF -- MY UNDERSTANDING WAS HE
23 INTRODUCED THIS INTO EVIDENCE AS TO THE MIRANDA FORM AND IF
24 HIS TESTIMONY -- IT APPEARS -- OF COURSE, IT IS A JURY
25 QUESTION, YOUR HONOR. THERE MAY BE A QUESTION -- THIS IS

1 STATE'S EXHIBIT NUMBER 2. THIS IS THE SEQUENCE, THIS WAS THE
2 ORDER THAT THE STATE PRESENTED: STATE'S EXHIBIT NUMBER 2,
3 MIRANDA RIGHTS THAT MY CLIENT READ AND SIGNED, ACCORDING TO
4 OFFICER KIRKLAND.

5 THIS OFFICER JUST GOT THROUGH TESTIFYING THAT HE
6 WITNESSED THAT AND THIS WAS DONE AT 17:13, IT WAS THROUGH AT
7 17:17, AND THEN THE SECOND STATEMENT WAS TAKEN.

8 NOW, LOGICALLY, IT IS POSSIBLE THAT THE FIRST
9 STATEMENT, WHICH IS STATE'S EXHIBIT NUMBER 3, WAS TAKEN BEFORE
10 ANY WARNINGS WERE GIVEN TO MY CLIENT.

11 IF THAT WERE THE CASE, AND I AM NOT SAYING THAT IS
12 THE CASE, BUT IT APPEARS IT IS POSSIBLE NOW, WE MAY HAVE A
13 FRUIT OF THE POISONOUS TREE PROBLEM. AND THERE ARE SEVERAL
14 STATEMENTS. IT MAY OR MAY NOT BE AFFECTED BY IT. THAT IS MY
15 QUERY. I DON'T KNOW. I JUST DISCOVERED THIS THROUGH HIS
16 TESTIMONY. IT IS HIS WITNESS, IT IS NOT MINE. I DIDN'T EVEN
17 KNOW THIS ISSUE EXISTED UNTIL---

18 THE COURT: WELL, I'M NOT SURE IT DOES NOW, BUT I
19 WILL LET YOU PURSUE IT.

20 MR. NEWSOM: WELL, YES. I DON'T HAVE ANY OTHER
21 QUESTIONS TO HIM, BUT I WILL JUST STATE TO THE COURT THIS
22 PORTION OF THE HEARING AS FAR AS THE CONFESSION, THE
23 VOLUNTARINESS OF THE WAIVER, AS I STATED TO YOU IN CHAMBERS
24 WITH THE SOLICITOR PRESENT, WE MAY HAVE SOME EXPERT WITNESSES
25 TESTIFYING ABOUT THIS. QUITE FRANKLY, WE WILL NOT BE PREPARED

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1 TO TESTIFY UNTIL AFTER THIS WEEK, SO WE WILL HAVE TO ASK THE
2 COURT TO DELAY RULING AND TAKE THIS MATTER UNDER ADVISEMENT
3 AND GIVE US THE CHANCE TO OFFER EVIDENCE, IF ANY WE HAVE, TO
4 SUPPORT THAT.

5 OFFICER KIRKLAND MAY BE ABLE TO CLEAR THIS UP, AND
6 THAT IS A POTENTIAL, BUT IT RAISES A QUESTION, I DIDN'T SEE IT
7 BEFORE. IT MAY NOT BE. IT MAY BE THAT IT IS JUST THAT I'M
8 CONFUSED. IF THAT IS THE CASE, THAT'S FINE, BUT I HAVE TO
9 EXPLORE IT.

10 MR. BAILEY: I DON'T INTEND TO RECALL OFFICER
11 KIRKLAND. THERE IS NOTHING INCONSISTENT BETWEEN THIS
12 WITNESS'S TESTIMONY AND OFFICER KIRKLAND. OFFICER KIRKLAND
13 SAID HE GAVE A WRITTEN MIRANDA, STATEMENT NUMBER ONE AND
14 STATEMENT NUMBER TWO. THIS OFFICER SAYS HE WAS THERE WHEN THE
15 WRITTEN MIRANDA, HE WAS IN AND OUT, HE WASN'T THERE WHEN THE
16 FIRST STATEMENT WAS GIVEN, HE WAS THERE WHEN THE SECOND
17 STATEMENT WAS GIVEN.

18 THE COURT: I, FRANKLY, AM CONVINCED, AND I WILL
19 MAKE A FORMAL RULING AFTER HEARING ALL THE TESTIMONY, BUT ON
20 THE NARROW ISSUE, I AM CONVINCED THAT HE WAS PROPERLY
21 MIRANDIZED, BUT I WILL NOT MAKE A FORMAL RULING ON THE
22 ADMISSIBILITY AND THE VOLUNTARINESS OF THE CONFESSION UNTIL HE
23 HAS HAD AN OPPORTUNITY TO PUT UP SUCH TESTIMONY AS HE DEEMS
24 APPROPRIATE, AND I WILL TAKE, AS WE STAND NOW, I WILL TAKE THE
25 TESTIMONY AND THE BALANCE IT. OKAY? AND WHEN DO YOU WANT TO

1 DO THAT NOW?

2 MR. NEWSOM: YOUR HONOR,---

3 THE COURT: YOU ARE NOT CERTAIN WHETHER THERE WILL
4 EVEN BE ANOTHER HEARING?

5 MR. NEWSOM: THAT'S CORRECT.

6 THE COURT: WELL, IT WOULD BE A SHORT ONE ANYWAY.

7 MR. NEWSOM: YES, SIR.

8 THE COURT: WE CAN DO THAT---

9 MR. NEWSOM: WE CAN DO THAT CONTEMPORANEOUS WITH THE
10 TRIAL IN CHIEF, OR IF THE COURT PREFERENCES, IF WE DISCOVER
11 INFORMATION AFTER RECEIVING REPORTS FROM THE EXPERTS, THEN I
12 WOULD NOTIFY THE COURT AND YOUR OFFICE.

13 THE COURT: HERE IS WHAT I WOULD LIKE TO DO: IF YOU
14 CONCLUDE THAT WE NEED A FURTHER HEARING, I WOULD LIKE TO GO
15 AHEAD AND DO IT NEXT WEEK. I THINK WE NEED TO GET THE ISSUE
16 OUT OF THE WAY, AND I THINK YOU DO TOO.

17 MR. BAILEY: YES, SIR.

18 THE COURT: SO IF YOU NEED TO DO IT, I WILL BE
19 HOLDING GENERAL SESSIONS COURT IN MARLBORO COUNTY NEXT WEEK
20 AND I WILL DO IT ANY DAY NEXT WEEK SUBJECT -- WILL YOU ACCEPT
21 THE VENUE, THE JURISDICTION OF MARLBORO COUNTY?

22 MR. NEWSOM: YES, SIR, NOT A PROBLEM AT ALL.

23 THE COURT: THE ONLY THING I'M SAYING, IF YOU
24 CONCLUDE YOU NEED ADDITIONAL TESTIMONY, WE WILL DO IT IN
25 BENNETTSVILLE AT A TIME SUITABLE TO YOU GENTLEMEN. I WOULD

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1 NOT SUGGEST FRIDAY, IT IS A LONG LABOR DAY WEEKEND, BUT MONDAY
2 THROUGH THURSDAY. I WILL BE THERE, I WILL BE IN COURT AND I
3 WILL HAVE A COURT REPORTER.

4 MR. NEWSOM: THANK YOU.

5 THE COURT: WHAT I'M SAYING IS I WANT TO GET ALL OF
6 THE MOTIONS OUT OF THE WAY SO THAT WHEN WE GET THERE AT 10
7 O'CLOCK TUESDAY MORNING WE CAN GET RIGHT INTO THE SELECTION OF
8 THE JURY PROCESS.

9 THE COURT: ALL RIGHT, SIR. YOU MAY COME DOWN,
10 OFFICER.

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

12 THE COURT: YES, SIR. ALL RIGHT.

13 (WITNESS EXCUSED.)

14 MR. BAILEY: I CALL SHERIFF JONES.

15 (WITNESS SWORN.)

16 DENNIS JONES, BEING FIRST
17 DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MR. BAILEY:

19 Q. YOUR FULL NAME, PLEASE?

20 A. DENNIS JONES.

21 Q. SHERIFF, YOU ARE THE SHERIFF OF CALHOUN COUNTY; IS THAT
22 CORRECT?

23 A. YES, SIR.

24 Q. AND WERE YOU SHERIFF OF CALHOUN COUNTY IN MARCH OF 1994?

25 A. YES, SIR.

1 Q. OKAY. CALLING YOUR ATTENTION TO SUNDAY, MARCH 20TH,
2 1994, -- LET ME ASK YOU THIS FIRST: ON THE PREVIOUS DAY,
3 MARCH THE 19TH, WERE YOU INVOLVED IN ANY WAY IN THE
4 QUESTIONING OF HERMAN HUGHES ON SATURDAY?

5 A. NO, SIR.

6 Q. OKAY. ON SUNDAY DID YOU HAVE OCCASION TO SEE HERMAN
7 HUGHES?

8 A. YES, SIR.

9 Q. HOW DID THAT COME ABOUT?

10 A. I WENT OUT TO HERMAN'S MOTHER'S HOUSE, AND HE WASN'T
11 THERE.

12 Q. THERE IS SOME QUESTION ABOUT THE BIOLOGICAL OR THE
13 ADOPTIVE MOTHER. WHO DID YOU GO SEE?

14 A. I THOUGHT IT WAS HIS MOTHER.

15 Q. OKAY. WHAT IS HER NAME?

16 A. MIRANDA. I THINK MIRANDA.

17 Q. ALL RIGHT. MIRANDA SINGLETARY?

18 A. RIGHT.

19 Q. ALL RIGHT. AND YOU SAW HER SUNDAY MORNING?

20 A. RIGHT. I WENT TO HER HOUSE, I THOUGHT HERMAN WAS THERE,
21 AND SHE ADVISED ME THAT HE WAS IN COLUMBIA WITH HER.

22 Q. SO WHAT DID YOU DO THEN?

23 A. SHE GOT IN THE CAR WITH ME AND WE PROCEEDED TO COLUMBIA
24 AND WE FOUND HERMAN AND BROUGHT HIM BACK TO ST. MATTHEWS.

25 Q. ALL RIGHT. NOW, WHEN YOU SAW HERMAN IN COLUMBIA, DID YOU

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1 PLACE HIM UNDER ARREST?

2 A. NO, SIR.

3 Q. DID YOU PUT HIM INTO CUSTODY?

4 A. NO, SIR.

5 Q. DID HE COME BACK TO ST. MATTHEWS WITH YOU AND HIS
6 BIOLOGICAL MOTHER VOLUNTARILY?

7 A. RIGHT.

8 Q. OKAY. AND WHEN YOU GOT BACK TO ST. MATTHEWS, WHERE DID
9 YOU GO?

10 A. WENT TO THE SHERIFF'S DEPARTMENT.

11 Q. OKAY. AND DID HIS MOTHER GO BACK TO THE SHERIFF'S
12 DEPARTMENT WITH YOU?

13 A. YES, SIR.

14 Q. OR HIS BIOLOGICAL MOTHER?

15 A. SHE WAS THERE.

16 Q. ALL RIGHT. NOW, WHEN YOU GOT BACK TO THE SHERIFF'S
17 DEPARTMENT, DID YOU GO TO A SPECIFIC ROOM OR PART OF THE
18 SHERIFF'S DEPARTMENT?

19 A. YES, I TOOK HERMAN AND HIS MOTHER AND WE WENT BACK TO--
20 WHICH IS THE TRAINING ROOM.

21 Q. OKAY. AND ABOUT HOW BIG IS THAT ROOM?

22 A. IT IS WHAT, SIX BY EIGHT, WITH A DESK AND FILE CABINET.

23 Q. ALL RIGHT. AND DID YOU LEAVE THE DOOR OPEN OR SHUT? DO
24 YOU RECALL?

25 A. I THINK IT WAS OPEN.

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1 Q. AND I HAND YOU A PIECE OF PAPER AND ASK YOU IF YOU
2 RECOGNIZE THAT, WHETHER YOU FILLED OUT A PORTION OF THAT
3 PAPER?

4 A. YES, SIR.

5 Q. AND WHAT IS THAT?

6 A. IT IS A VOLUNTARY STATEMENT OF THE DEFENDANT, AND IT HAS
7 GOT THE RIGHTS ON IT.

8 Q. OKAY.

9 MR. BAILEY: I WOULD OFFER THIS AS STATE'S 6 FOR
10 IDENTIFICATION.

11 THE COURT: WHAT IS THE DATE OF THIS STATEMENT?

12 MR. BAILEY: MARCH 20TH, YOUR HONOR.

13 (THIRD STATEMENT MARKED AS STATE'S EXHIBIT 6.)

14 Q. SHERIFF, WOULD YOU STATE WHETHER OR NOT THE TOP PORTION
15 OF THIS FORM IS IN YOUR HANDWRITING?

16 A. YES, SIR, I FILLED THAT OUT.

17 Q. AND THAT HAS THE DATE OF MARCH 20TH, 1994, AND THE
18 LOCATION, SHERIFF'S DEPARTMENT?

19 A. YES, SIR.

20 Q. OKAY. AND IT HAS HERMAN HUGHES, AGE 16. DID YOU FILL
21 THAT OUT?

22 A. YES, SIR.

23 Q. WHERE DID YOU GET THE INFORMATION ON HIS AGE?

24 A. FROM HERMAN.

25 Q. OKAY. AND, NOW, THE FIRST PART OF THAT IS A MIRANDA

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1 FORM. CAN YOU STATE WHAT, IF ANYTHING, YOU DID WITH REGARD TO
2 THOSE MIRANDA RIGHTS AND HERMAN HUGHES?

3 A. AFTER I FILLED OUT THE TOP PART, THEN I READ HIS MIRANDA
4 RIGHTS, WHICH IS LISTED ON THERE.

5 Q. OKAY. DID YOU READ ALL FIVE OF THEM OUT LOUD TO HIM?

6 A. YES, SIR.

7 Q. OKAY.

8 A. AND AT THE BOTTOM OF IT I ASKED HIM DID HE UNDERSTAND .
9 THESE RIGHTS.

10 Q. OKAY. AND DID HE INDICATE WHETHER OR NOT HE UNDERSTOOD
11 THEM?

12 A. HIS MOTHER WAS THERE, AND HE INDICATED HE DID.

13 Q. OKAY. AND WAS THERE ANY INDICATION FROM HERMAN HUGHES OR
14 HIS BIOLOGICAL MOTHER THAT HE DID NOT UNDERSTAND THOSE RIGHTS
15 OR WAS THERE ANY CONFUSION ABOUT WHAT HIS RIGHTS WERE?

16 A. NO, SIR.

17 Q. AND AFTER YOU READ THOSE RIGHTS TO HIM, DID HE AGREE TO
18 GIVE YOU A STATEMENT?

19 A. AFTER I READ THE RIGHTS, HERMAN BEGAN TO TALK TO ME, AND
20 HE GAVE ME A CONFESSION, AND I STOPPED HIM AT THAT POINT AND
21 GOT MY RECORDER, TAPE RECORDER, AND I RECORDED -- I TOLD HIM
22 I WAS GOING TO RECORD OUR CONVERSATION.

23 Q. AND DID HE AGREE TO LET YOU RECORD THE CONVERSATION?

24 A. YES, SIR, HE AGREED TO IT. HE KNEW WHAT I WAS DOING.

25 Q. OKAY. AND I'M GOING TO SHOW YOU A CASSETTE TAPE. IT HAS

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1 NO MARKINGS ON IT, BUT TO THE BEST OF YOUR KNOWLEDGE IS THAT
2 THE MICROCASSETTE---

3 A. YES, SIR.

4 Q. ---THAT YOU USED WHEN YOU TOOK THE STATEMENT?

5 A. YES, SIR.

6 Q. AND WAS THAT STATEMENT TRANSCRIBED?

7 A. YES, SIR.

8 Q. BY MY OFFICE?

9 A. YES, SIR.

10 Q. AND DID YOU HAVE AN OPPORTUNITY TO LOOK OVER THAT
11 STATEMENT?

12 A. I DID.

13 Q. AND I ASK IF YOU WOULD TAKE A LOOK AT THIS AND TELL ME
14 WHETHER OR NOT THAT IS AN ACCURATE TRANSCRIPT.

15 THE COURT: DO YOU HAVE A COPY OF THAT TRANSCRIPT?

16 MR. BAILEY: YOUR HONOR, I WAS GOING TO INTRODUCE
17 THIS COPY.

18 THE COURT: DO YOU HAVE A COPY THAT I CAN BE LOOKING
19 AT?

20 MR. BAILEY: YES, SIR, I'VE GOT AN EXTRA ONE.

21 THE COURT: COUNSEL, HAVE YOU BEEN PROVIDED A COPY
22 OF THIS?

23 MR. NEWSOM: OF THE TAPE?

24 THE COURT: YES, SIR?

25 MR. NEWSOM: YES, SIR, THE TRANSCRIPT AND A COPY OF

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1 THE TAPE, YOUR HONOR.

2 THE COURT: YES, SIR. I WOULD LIKE ONE IF YOU HAVE
3 ONE. THANK YOU, SOLICITOR. ALL RIGHT.

4 Q. JUST LET ME KNOW WHEN YOU HAVE FINISHED LOOKING AT IT.

5 A. I HAVE FINISHED LOOKING AT IT.

6 Q. OKAY. IS THAT AN ACCURATE COPY OF THE TAPE?

7 A. YES, SIR.

8 MR. BAILEY: YOUR HONOR, I WOULD MOVE TO INTRODUCE
9 THE TAPE, TO MARK THE TAPE AND THE TRANSCRIPT FOR
10 IDENTIFICATION.

11 THE COURT: ALL RIGHT, SIR.

12 (TAPE MARKED AS STATE'S EXHIBIT 7; TRANSCRIPT
13 OF TAPE MARKED AS STATE'S EXHIBIT 8.)

14 Q. SHERIFF, AFTER YOU GAVE HERMAN HIS MIRANDA RIGHTS AND THE
15 TAPED STATEMENT THAT IS TRANSCRIBED, STATE'S EXHIBIT NUMBER 8,
16 WHAT DID YOU DO, IF ANYTHING, WITH RESPECT TO THE REST OF THAT
17 FORM?

18 A. I -- HIS MOTHER WAS IN AND OUT, AND I BROUGHT HIS MOTHER
19 BACK IN, AND WHEN SHE CAME IN I ASKED HER IF SHE WOULD WRITE
20 THE STATEMENT DOWN ON THIS FORM FOR ME, AND SHE STATED SHE
21 WOULD, AND HERMAN AGREED TO IT.

22 Q. OKAY. WERE YOU PRESENT WHEN HIS MOTHER WROTE IT OUT?

23 A. YES, SIR.

24 Q. WHERE DID SHE GET THE INFORMATION FROM THAT SHE USED TO
25 WRITE IT OUT?

1 A. SHE WROTE DOWN EXACTLY WHAT HERMAN TOLD HER.

2 Q. AND DOES YOUR SIGNATURE APPEAR ON THE BOTTOM OF THAT
3 FORM?

4 A. YES, SIR, I WITNESSED IT.

5 Q. DID YOU WITNESS HERMAN HUGHES SIGN THAT AFTER HIS MOTHER
6 WROTE IT OUT?

7 A. YES, SIR, HERMAN SIGNED IT AND I WITNESSED IT.

8 Q. OKAY. NOW,---

9 A. SHE WROTE DOWN AT THE BOTTOM THAT SHE HAD TAKEN THE
10 STATEMENT AND SHE SIGNED IT.

11 Q. ALL RIGHT. NOW, BEFORE THE TAPED STATEMENT, DID YOU MAKE
12 ANY PROMISES OR THREATS TO HERMAN HUGHES IF HE WOULD GIVE YOU
13 A STATEMENT?

14 A. NO, SIR, DID NOT.

15 Q. AND BEFORE THE WRITTEN STATEMENT, WHICH IS CONTAINED IN
16 THE FORM, STATE'S NUMBER 6, DID YOU MAKE ANY PROMISES OR
17 THREATS AGAINST HERMAN HUGHES?

18 A. NO, I DID NOT.

19 Q. OKAY. AND WAS THE TAPED STATEMENT AND THE STATEMENT
20 THERE TOTALLY FREE AND VOLUNTARY---

21 A. YES, SIR.

22 Q. ---TO THE BEST OF YOUR KNOWLEDGE ON BEHALF OF HERMAN
23 HUGHES?

24 A. YES, SIR.

25 Q. YOU SAID HIS MOTHER, HIS BIOLOGICAL MOTHER, WAS IN AND

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1 OUT. WAS SHE IN AND OUT OF HER OWN FREE WILL OR WERE THERE
2 TIMES WHEN YOU ASKED HER TO LEAVE? WAS SHE---

3 A. THE REASON SHE WOULD WALK OUT THE ROOM IS, WHEN WE WERE
4 IN COLUMBIA, HER YOUNGER SON WAS BEING BROUGHT BACK BY
5 SOMEBODY ELSE THAT WAS DRIVING HER CAR AND SHE WAS CHECKING TO
6 SEE IF THEY CAME BECAUSE SHE KEPT WALKING TO THE DOOR. SHE
7 WAS JUST IN AND OUT.

8 Q. OKAY. THIS WAS HER DECISION TO LEAVE?

9 A. YES, SIR, SHE WAS LOOKING TO SEE WHEN THEY CAME UP.

10 Q. OKAY. DID YOU -- AFTER THE TAPED STATEMENT AND THE
11 WRITTEN STATEMENT YOU'VE GOT THERE, WAS HERMAN HUGHES PLACED
12 UNDER ARREST?

13 A. YES, SIR, HE WAS.

14 Q. AND THAT WAS SUNDAY AFTERNOON AFTER THE STATEMENT WAS
15 TAKEN?

16 A. LATE SUNDAY AFTERNOON.

17 Q. SHERIFF, THAT'S ALL I HAVE. PLEASE ANSWER ANY QUESTIONS
18 MR. NEWSOM MIGHT HAVE.

19 CROSS EXAMINATION BY MR. NEWSOM:

20 Q. SHERIFF, WHO WENT WITH YOU TO GO GET HERMAN HUGHES FROM
21 COLUMBIA?

22 A. HIS MOTHER.

23 Q. MIRANDA SINGLETARY?

24 A. YES, SIR.

25 Q. ALL RIGHT. AND YOU ARE NOT AWARE OF LUCILLE HUGHES IS

- 1 HIS ADOPTIVE MOTHER?
- 2 A. NO, SIR, I WAS TOLD THAT WAS HIS MOTHER. I THOUGHT IT
3 WAS HIS MOTHER.
- 4 Q. WHO TOLD YOU THAT?
- 5 A. HERMAN AND HIS GRANDMOTHER. I KNOW HIS GRANDMOTHER TOO.
- 6 Q. LUCILLE HUGHES?
- 7 A. YES, I KNOW HER. SHE TOLD ME THAT MIRANDA WAS HIS
8 MOTHER.
- 9 Q. BIOLOGICAL MOTHER?
- 10 A. SHE JUST SAID MOTHER.
- 11 Q. SO JUST YOU AND MIRANDA SINGLETARY WENT TO GET HIM?
- 12 A. YES, SIR.
- 13 Q. YOU BROUGHT HIM STRAIGHT BACK TO THE SHERIFF'S
14 DEPARTMENT?
- 15 A. YES, SIR.
- 16 Q. HAD DANIEL OWENS GIVEN HIS STATEMENT PRIOR TO THIS?
- 17 A. AT THE SAME TIME THAT I WAS AT THE SHERIFF'S DEPARTMENT
18 WITH HERMAN, OWENS WAS IN THE ROOM WITH DETECTIVE RHUDY GIVING
19 HIM A STATEMENT.
- 20 Q. OKAY. HAD KELSEY PIERCE BEEN APPREHENDED AT THAT TIME?
- 21 A. HE HAD ALREADY BEEN ARRESTED SATURDAY NIGHT. HE WAS IN
22 THE DETENTION CENTER.
- 23 Q. DID HE GIVE ANY STATEMENTS?
- 24 A. NO.
- 25 Q. NO VERBAL STATEMENTS, NO WRITTEN STATEMENTS?

DENNIS JONES--CROSS BY MR. NEWSOM

1870

- 1 A. HE NEVER GAVE ANY STATEMENTS TO ME, THAT I KNOW OF.
- 2 Q. ALL RIGHT. DID YOU HAVE MR. HUGHES SIGN THE WAIVER OF
3 RIGHTS FORM PRIOR TO INTERVIEWING HIM ON SUNDAY?
- 4 A. NO, SIR.
- 5 Q. EXCUSE ME?
- 6 A. NO, SIR.
- 7 Q. NO, SIR? OKAY. DID YOU READ THESE RIGHTS TO HIM ON THIS
8 FORM? LET ME, FOR THE RECORD WE NEED TO SEE WHAT THE STATE'S
9 EXHIBIT IS. DO YOU HAVE A COPY OF THAT STATEMENT? STATE'S
10 EXHIBIT NUMBER 6.
- 11 A. YES.
- 12 Q. YOUR TESTIMONY IS YOU READ THAT TO HIM BEFORE YOU STARTED
13 QUESTIONING HIM?
- 14 A. YES, SIR.
- 15 Q. AND HE GAVE WHAT YOU SAID WAS A CONFESSION?
- 16 A. WELL, AFTER I GOT--AFTER I READ HIM THE RIGHTS, HE AND I
17 STARTED TALKING AND HE -- AFTER I ASKED HIM TO TELL ME WHAT
18 HAPPENED THAT FRIDAY NIGHT, HE GAVE ME A CONFESSION.
- 19 Q. OKAY. AND THAT IS WHEN YOU TURNED ON THE TAPE RECORDER
20 AFTER THAT, AFTER HE STARTED GIVING YOU A CONFESSION?
- 21 A. YES, SIR. WHEN HE TOLD ME THAT, THEN I WENT OUTSIDE --
22 WELL, I CALLED HIS MOTHER AND TOLD HER THAT HE HAD CONFESSED,
23 AND SHE CAME BACK IN THE ROOM, AND THAT'S WHEN I TURNED THE
24 TAPE RECORDER ON.
- 25 Q. OKAY. SO MIRANDA SINGLETARY WAS PRESENT WHEN THIS

DENNIS JONES--CROSS BY MR. NEWSOM

1 TRANSCRIPT THAT I HAVE---

2 A. NO, SIR. I THINK SHE HAD LEFT THE ROOM. I BELIEVE IT
3 SAYS IN THE STATEMENT THAT SHE--WHEN I CUT THE TAPE RECORDER
4 ON SHE HAD LEFT THE ROOM, BUT SHE WAS AWARE OF WHAT I WAS
5 DOING.

6 Q. OKAY. SHE LEFT THE ROOM. WAS SHE OUT THERE THE WHOLE
7 TIME OF THIS STATEMENT?

8 A. I THINK SHE WAS IN AND OUT. AS WELL AS I CAN REMEMBER,
9 SHE WAS IN AND OUT.

10 Q. OKAY. HER BIOLOGICAL SON WAS CONFESSING TO A CRIME FOR
11 WHICH YOU ALL ARE SEEKING THE DEATH PENALTY AND SHE DIDN'T
12 FEEL THAT SHE NEEDED TO STAY IN THE ROOM, SHE WAS LOOKING AT
13 A CAR?

14 A. HE DIDN'T CONFESS TO A CRIME THAT -- ALL HE CONFESSED TO
15 TO ME WAS SHOOTING THE GIRL. HE NEVER CONFESSED TO SHOOTING
16 THE BOY.

17 Q. HE -- YOU WERE AWARE THAT A ROBBERY HAD TAKEN PLACE?

18 A. YES, SIR.

19 Q. HE CONFESSED TO BEING PRESENT?

20 A. YES, SIR.

21 Q. AND HE CONFESSED TO SHOOTING SOMEONE?

22 A. YES, SIR.

23 Q. AND YOU WERE AWARE THAT HE WOULD BE JUST AS GUILTY OF THE
24 MURDER, WHETHER OR NOT HE WAS THE TRIGGER MAN OF KENNETH
25 PRESSLEY OR NOT?

1872

DENNIS JONES--CROSS BY MR. NEWSOM

1 A. I HAD TALKED WITH HIS MOTHER AND SHE WAS AWARE OF THE
2 SERIOUSNESS OF THE CRIME.

3 Q. OKAY.

4 A. AND SHE STILL CHOSE TO WALK IN AND OUT AT HER WILL, I
5 MEANT, YOU KNOW, AS SHE WANTED TO.

6 Q. DID HE EVER SAY HE WANTED AN ATTORNEY?

7 A. NO, NEVER DID.

8 Q. WHAT CRITERIA DID YOU BASE THAT HE UNDERSTOOD THE RIGHTS
9 YOU WERE TELLING HIM?

10 A. AFTER I READ EACH QUESTION I ASKED DID HE UNDERSTAND IT,
11 AND HE STATED TO ME THAT HE DID.

12 Q. BUT YOU WOULD REALLY HAVE NO WAY OF KNOWING OTHER THAN HE
13 ANSWERED IN THE POSITIVE?

14 A. WELL, LIKE WHEN I READ HIM HIS RIGHTS, I SAID, "NOW, YOU
15 KNOW YOU DON'T HAVE TO TALK TO ME IF YOU DON'T WANT TO," IN
16 LAYMAN'S -- YOU KNOW, I WAS JUST TALKING TO HIM. "AND ANY
17 TIME YOU WANT TO STOP, YOU CAN STOP IF YOU WANT TO QUIT," BUT
18 HE VOLUNTARILY WENT AHEAD AND GIVE ME A STATEMENT. I FELT
19 THAT HE KNEW WHAT HE WAS DOING.

20 Q. OKAY. DID HIS MOTHER AT ANY POINT IN TIME ONCE YOU TOLD
21 HER THAT HE WAS STARTING TO CONFESS SAY THAT HE NEEDED A
22 LAWYER?

23 A. NO, SIR. AFTER I TOLD HER AND THEN SHE KNEW THAT I WAS
24 GOING TO RECORD HIS WHOLE STATEMENT, SHE DIDN'T SAY ANYTHING.
25 THEN SHE CAME BACK IN AFTER WE COMPLETED IT AND SHE WROTE THE

MOTION

1873

1 CALL OF THE COURT NEXT WEEK.

2 NOW, COUNSEL, IF YOU DETERMINE THAT YOU WANT TO TAKE
3 SOME ADDITIONAL TESTIMONY, PLEASE ADVISE ME, WE WILL DO IT
4 NEXT WEEK. OTHERWISE, I WILL BE PREPARED TO MAKE A RULING ON
5 THIS JACKSON V. DENNO HEARING.

6 MR. NEWSOM: ALL RIGHT, SIR.

7 THE COURT: ALL RIGHT, SIR.

8 MR. NEWSOM: YES, SIR. WE HAVE ONE OTHER MATTER ON
9 THE MOTION TO BAR THE IMPOSITION OF THE DEATH PENALTY.

10 THE COURT: YES, SIR, I WILL BE GLAD TO HEAR THAT.
11 AND THEN HE HAD A MOTION TO -- LET'S FINISH. YOU HAD A MOTION
12 TO SEND HIM FOR ANOTHER EXAMINATION.

13 MR. BAILEY: YES, SIR, AN EXAMINATION WITH THE
14 DEPARTMENT OF DISABILITY AND SPECIAL NEEDS. THE BASIS FOR
15 THAT, YOUR HONOR, WOULD BE HE HAD AN EVALUATION WITH THE
16 DEPARTMENT OF MENTAL HEALTH. HIS I.Q. VARIED BETWEEN 72 AND
17 74. IT IS LOW ENOUGH TO DROP BELOW 70 WHERE I THINK THE
18 DEPARTMENT OF DISABILITY AND SPECIAL NEEDS MAY BE ADVISABLE
19 AND HAVE THEM EVALUATE HIM ALSO. I AM ADVISED THEY CAN DO IT
20 ON AN OUT-PATIENT BASIS.

21 THE COURT: ALL RIGHT. WHAT IS YOUR POSITION,
22 COUNSEL?

23 MR. NEWSOM: YOUR HONOR, I THINK I HAVE TO OBJECT TO
24 THAT. I DON'T WANT TO GET HIM INTO A SITUATION WHERE HE IS
25 QUESTIONED ABOUT POTENTIAL -- I'M NOT SURE THAT THE STATUTE --

1874

MOTION

1 THEY PROHIBIT ANY QUESTIONS THAT ARE MADE AS FAR AS AN
2 EVIDENTIARY PHASE WHEN HE IS EXAMINED AT THE STATE HOSPITAL,
3 BUT I DON'T KNOW OF ANY STATUTE THAT PROTECTS HIM FOR ANY
4 STATEMENTS HE MAY MAKE CONCERNING THE ACTIONS IN THE---

5 MR. BAILEY: YOUR HONOR, I WOULD AGREE NOT TO--IF HE
6 DOES MAKE ANY STATEMENTS TO A PSYCHOLOGIST OR PSYCHIATRIST OR
7 SOCIAL WORKER AT THE DEPARTMENT, I WOULD NOT---

8 THE COURT: AGREE THAT IT WOULD NOT BE INTRODUCED IN
9 THE TRIAL OF THE CASE?

10 MR. BAILEY: YES, SIR.

11 THE COURT: SO IF THAT IS DONE I CAN TELL YOU THAT
12 I WOULD NOT PERMIT THAT TESTIMONY IN THE TRIAL. IT SEEMS TO
13 ME THAT IT IS IN THE INTEREST OF EVERYBODY, INCLUDING THE
14 DEFENSE AND SOCIETY, THAT THIS EXAMINATION SEE WHETHER OR NOT
15 HE--ABOVE OR BELOW 70 IS APPROPRIATE.

16 MR. NEWSOM: YES, SIR.

17 THE COURT: AND I AM GOING TO ORDER THAT DONE. GIVE
18 ME AN ORDER.

19 MR. BAILEY: I'VE GOT A PROPOSED ORDER, YOUR HONOR.

20 THE COURT: OTHER THAN THAT, DO YOU HAVE ANY
21 OBJECTION, MR. NEWSOM?

22 MR. NEWSOM: NO, SIR.

23 THE COURT: ALL RIGHT, SIR. WELL, THAT WILL PROTECT
24 YOU ON THAT ISSUE.

5 MR. NEWSOM: YES, SIR.

1 THE COURT: ALL RIGHT, THIS ORDER IS MADE A PART OF
2 THE RECORD TOO. ALL RIGHT.

3 MR. NEWSOM: YOUR HONOR, WHILE WE ARE ON THE SUBJECT
4 OF EVALUATIONS, IT IS MY UNDERSTANDING THAT MY CLIENT WOULD BE
5 MADE AVAILABLE AGAIN ON FRIDAY AT DR. MORGAN'S OFFICE TO
6 CONCLUDE HIS EVALUATION. HE IS THE EXPERT WITNESS THAT THE
7 COURT AUTHORIZED FOR THE DEFENSE TO EVALUATE HIM. HE HAS
8 COMMENCED HIS INVESTIGATION EARLIER THIS WEEK AND THE
9 SOLICITOR HAS ADVISED ME THAT HE HAS NO OBJECTION TO HAVING
10 HIM TRANSPORTED BACK UP HERE.

11 THE COURT: NEXT FRIDAY?

12 MR. NEWSOM: THIS FRIDAY, I THINK AT 9:30 IS WHEN HE
13 IS GOING TO START.

14 MR. BAILEY: YOUR HONOR, I HAVEN'T HAD A CHANCE TO
15 TALK TO THE SHERIFF ABOUT THAT, BUT MR. NEWSOM TELLS ME---

16 THE COURT: MAKE THOSE ARRANGEMENTS FOR HIM.

17 MR. BAILEY: ---DR. MORGAN WILL BE FINISHED FRIDAY.

18 THE COURT: ALL RIGHT, SIR.

19 MR. NEWSOM: I'M ASSUMING WE WON'T NEED AN ORDER
20 SIGNED IF THAT IS OKAY WITH THE SHERIFF.

21 THE COURT: ALL RIGHT, IS THERE ANY OTHER MATTERS TO
22 BE ADDRESSED ON BEHALF OF THE STATE?

23 MR. BAILEY: YOUR HONOR, THE ONLY OTHER THING IS
24 THAT AT SOME POINT BETWEEN NOW AND THE TRIAL MR. NEWSOM AND I
25 WILL BE GETTING TOGETHER WITH THE CLERK TO GO OVER THE

MOTION

1876

1 REQUESTS FOR JURY EXCUSALS, AND SOME OF THEM, VACATION PLANS,
2 AND SO FORTH, MAY BE JUDGMENT CALLS THAT I WOULD LIKE TO ASK
3 MR. HUGHES TO WAIVE HIS PRESENCE THERE IN THE EVENT WE CAN
4 AGREE ON IF SOMEBODY HAS VACATION PLANS---

5 MR. NEWSOM: MAY I CONFER?

6 THE COURT: YES, SIR.

7 (PAUSE.)

8 MR. NEWSOM: WE WILL WAIVE HIS PRESENCE, YOUR HONOR.

9 THE COURT: ALL RIGHT. LET'S STATE SPECIFICALLY
10 WHAT IS BEING WAIVED HERE. STATE IT FOR THE RECORD, MR.
11 BAILEY.

12 MR. BAILEY: YOUR HONOR, SPECIFICALLY, AND I WOULD
13 ASK THAT MR. HUGHES ALSO GIVE A KNOWING AND INTELLIGENT WAIVER
14 ON THE RECORD THAT DURING THE COURSE OF GOING OVER THE JURY
15 REQUESTS FOR EXCUSES, SOME OF THEM ARE GOING TO BE CLEAR,
16 PEOPLE OVER 65 THAT ARE ENTITLED TO BE EXEMPT AND HAVE ASKED
17 TO BE EXEMPT, SOME OF THEM LIKE PEOPLE WITH PREPAID VACATIONS
18 THAT MR. NEWSOM AND I CAN GET TOGETHER ON, IT WOULD NORMALLY
19 BE SOMETHING THAT THE COURT WOULD DECIDE LATER.

20 THE COURT: STUDENTS IS ONE.

21 MR. BAILEY: STUDENTS, AND SO FORTH.

22 THE COURT: ALL RIGHT, HERE IS WHAT WE CAN AGREE ON:
23 THAT COUNSEL FOR THE STATE AND THE DEFENSE WILL GET TOGETHER
24 AND AGREE ON THOSE THAT ARE REASONABLY OBVIOUS TO DISMISS.
25 ONCE YOU HAVE AGREED ON THEM, ON THE BEGINNING OF THE TRIAL I

1 WILL MAKE THAT A PART OF THE RECORD THAT YOU HAVE AGREED. IF
2 THERE IS ANY QUESTION ABOUT IT, I WILL RULE ON IT AT THE
3 APPROPRIATE TIME.

4 NOW, YOU HAVE DISCUSSED WITH DEFENSE COUNSEL THAT
5 AGREEMENT?

6 MR. NEWSOM: JUST A MOMENT AGO, AND I HAVE TOLD HIM
7 THAT -- I ASKED HIM IF HE TRUSTED ME TO MAKE THE JUDGMENT CALL
8 WITH THIS, AND I'M CONVINCED HE TRUSTS ME. I'M NOT AT ALL
9 CONVINCED THAT HE CAN MAKE A KNOWING OR INTELLIGENT WAIVER
10 ABOUT THAT. I WOULD NOT -- I HAVE NO OBJECTION, I DO NOT
11 INTEND TO TRY TO BACKDOOR SOLICITOR BAILEY ABOUT THOSE THINGS.
12 I THINK SOME OF THESE ARE GOING TO BE QUITE OBVIOUS. THE 76
13 YEARS OLD, AGE AND HEALTH, WE ARE NOT GOING TO HAVE ANY
14 OBJECTION TO THAT.

15 THE COURT: HAVE HIM STAND UP.

16 (DEFENDANT STANDS.)

17 THE COURT: THESE QUESTIONS WILL BE ADDRESSED WITH
18 FINALITY ON TUESDAY MORNING ON THE DAY OF THE TRIAL WHEN HE IS
19 PRESENT.

20 MR. NEWSOM: YES, SIR.

21 THE COURT: AND IF THERE IS SOME PROBLEM WITH OUR
22 HAVING PREVIOUSLY DISMISSED A JUROR, EITHER THE RECORD WILL
23 REFLECT WHAT THE SITUATION IS OR WE WILL CALL FOR THEM.

24 MR. HUGHES, WE WILL BE SUMMONING A VAST NUMBER OF
25 JURORS FROM WHICH NUMBER 12 WILL BE SELECTED AS YOUR JURY. IN

1878

MOTION

1 ADDITION TO THAT, WE WILL SELECT FROM THAT VENIRE OR PANEL TWO
2 ADDITIONAL ALTERNATES. I'M GOING TO REFER TO A PANEL NOW FROM
3 WHICH 12 PEOPLE WILL BE ELECTED. DO YOU UNDERSTAND THAT?

4 MR. HUGHES: YES, SIR.

5 THE COURT: SOME OF THESE JURORS, AFTER THEY ARE
6 SUMMONED, WILL BE SENDING IN A JUROR REPLY AND IN SOME
7 INSTANCES THEY WILL SAY THEY ARE OVER 65 AND DESIRE TO BE
8 EXCUSED. THEY HAVE THAT ABSOLUTE RIGHT. I HAVE REQUESTED
9 THAT COUNSEL FOR THE STATE, REPRESENTED BY THE SOLICITOR, AND
10 YOUR LAWYER MEET TOGETHER. IF THEY CONCLUDE THAT THEY ARE
11 ENTITLED TO BE EXCUSED AND DESIRE TO BE EXCUSED, I AM GOING TO
12 AGREE WITH IT, BUT I WANT YOU TO UNDERSTAND WHAT WE ARE DOING.
13 DO YOU UNDERSTAND THAT?

14 MR. HUGHES: YES, SIR.

15 THE COURT: ORDINARILY YOU WOULD HAVE A RIGHT TO BE
16 PRESENT WHEN THAT DECISION IS MADE. IF YOU WAIVE IT, WE CAN
17 GO AHEAD AND DO IT WITHOUT YOUR PRESENCE. IF YOU INSIST ON
18 BEING PRESENT, THAT IS YOUR ABSOLUTE RIGHT AND WE WILL WAIT
19 AND DO IT ON TUESDAY. DO YOU HAVE ANY OBJECTION TO YOUR
20 ATTORNEY WITHOUT YOUR PRESENCE AGREEING WITH THE SOLICITOR ON
21 THOSE JURORS WHO BOTH AGREE SHOULD BE EXCUSED? DO YOU OBJECT
22 TO THAT?

23 MR. HUGHES: NO, SIR.

24 THE COURT: PARDON ME?

25 MR. HUGHES: NO, SIR.

1 THE COURT: AND YOU UNDERSTAND WHAT I'M SAYING?

2 MR. HUGHES: YES, SIR.

3 THE COURT: IS THERE ANYTHING YOU DON'T UNDERSTAND?

4 MR. HUGHES: NO, SIR.

5 THE COURT: ANY QUESTION THAT YOU HAVE?

6 MR. HUGHES: NO, SIR.

7 THE COURT: ALL RIGHT. YOU MAY BE SEATED. THANK
8 YOU.

9 (DEFENDANT SEATED.)

10 THE COURT: ALL RIGHT, THIS IS WHAT YOU DO: THOSE
11 JURORS WHO ARE OVER 65 WHO REQUEST TO BE EXCUSED ARE ENTITLED
12 TO THAT. PUT THEM DOWN ON A LIST, MAKE A NOTE WHY Y'ALL HAVE
13 AGREED TO EXCUSE THEM, AND EXCUSE THEM.

14 ANY STUDENT, SIMILARLY SITUATION, IS ENTITLED TO
15 SERVE; EQUALLY IMPORTANT, IF THEY ELECT NOT TO, THEY ARE
16 ENTITLED NOT TO DO IT. IF YOU AGREE THAT THAT IS SO AND THEY
17 WISH TO BE EXCUSED, PUT IT ON A LIST. THEY WILL BE EXCUSED BY
18 ME.

19 EQUALLY, IF SOMEBODY HAS A PREPAID VACATION AND YOU
20 AGREE THAT IT WOULD CAUSE UNDUE HARDSHIP, IF BOTH OF YOU
21 AGREE, I WILL EXCUSE THEM.

22 THERE WILL BE OTHERS BY THEIR RETURN WHO WILL TELL
23 YOU THAT THEY HAVE GOT A YOUNG CHILD AT HOME AND NOBODY TO
24 TAKE CARE OF OR THEY ARE ILL OR INFIRMED. IF THERE IS SOME
25 OBVIOUS REASONS THAT I WOULD EXCUSE THEM AND YOU TWO CAN AGREE

MOTION

1880

1 THAT IT IS OBVIOUS, PUT IT ON A PIECE OF PAPER AND THEY WILL
2 BE EXCUSED.

3 IF, HOWEVER, THERE IS ANY QUESTION IN YOUR MIND, AND
4 WHEN I SAY "YOUR" I MEAN THE SOLICITOR OR THE DEFENDANT, AS TO
5 WHETHER OR NOT THAT JUROR SHOULD BE EXCUSED, I WANT THAT JUROR
6 BROUGHT IN AND I WILL MAKE THE DETERMINATION IN OPEN COURT IN
7 THE PRESENCE OF THE DEFENDANT. ANY QUESTION ABOUT THAT?

8 MR. BAILEY: NO, SIR.

9 THE COURT: I THINK THAT THAT WILL SAVE THE COURT A
10 LOT OF TIME, SAVE YOU GENTLEMEN A LOT OF TIME. IT WILL LESSEN
11 THE INCONVENIENCE TO THE VENIRE.

12 ANY QUESTION, MR. NEWSOM?

13 MR. NEWSOM: NONE, YOUR HONOR.

14 THE COURT: ALL RIGHT, SIR. THANK YOU. THAT WOULD
15 RESOLVE THAT QUESTION.

16 ALL RIGHT, WHAT ELSE DO WE HAVE?

17 MR. BAILEY: YOUR HONOR, THAT'S ALL FOR THE STATE.

18 THE COURT: ALL RIGHT, SIR, THEN I WILL LOOK FORWARD
19 TO HEARING FROM YOU AS TO WHETHER OR NOT WE WILL NEED ANOTHER
20 HEARING IN BENNETTSVILLE BETWEEN NEXT MONDAY AND THURSDAY.

21 MR. NEWSOM: OKAY.

22 THE COURT: THIS COURT WILL BE---

23 MR. NEWSOM: CAN I PROCEED ON MY---

24 THE COURT: YES, SIR, ON THE -- YES, SIR, THE
25 CONSTITUTIONALITY QUESTION. GO AHEAD. I'M SORRY.

1 MR. NEWSOM: INITIALLY, YOUR HONOR, I WOULD ASK THE
2 COURT IF THE COURT WOULD KINDLY, IF I SUBMIT AN ORDER TO THE
3 COURT, I REALIZE YOU WILL BE HERE IN COLUMBIA THE NEXT COUPLE
4 OF DAYS, AN ORDER OF PROTECTION, I HAVE NO DIFFICULTY WITH THE
5 SOLICITOR'S OFFICE AND OTHER AGENCIES, BUT I DO PRACTICE LAW
6 IN A SEVERAL COUNTY AREA AND, QUITE FRANKLY, SOME OF THE
7 MAGISTRATES ARE NOT AS IMPRESSED WITH MY NEED TO BE PROTECTED
8 ---

9 THE COURT: I AM IMPRESSED WITH IT. YOU JUST CALL
10 ANY MAGISTRATE AND TELL HIM THAT YOU ARE EXCUSED AS THE COURT
11 PROVIDES. IF HE HAS ANY PROBLEMS WITH THAT, YOU TELL HIM TO
12 CALL ME.

13 MR. NEWSOM: THANK YOU, YOUR HONOR. YOUR HONOR, I
14 HAVE SUBMITTED TO YOU A MOTION TO BAR THE IMPOSITION OF THE
15 DEATH PENALTY OF MY CLIENT BECAUSE THE SOUTH CAROLINA CODE
16 SECTION 16-3-20 IS NOT CONSTITUTIONAL AS IT APPLIES TO
17 JUVENILES. I'M AWARE THAT YOU HAVE READ MY MOTION AND I WOULD
18 LIKE TO MAKE THAT A PART OF THE RECORD.

19 THE COURT: YES, SIR, HIS MOTION IS, AND I WILL HAND
20 IT TO MY COURT REPORTER AT THIS TIME.

21 (MOTION TO BAR IMPOSITION OF THE DEATH PENALTY
22 MARKED AS DEFENDANT'S EXHIBIT 1.)

23 MR. NEWSOM: YOUR HONOR, MY PURPOSE IS THAT THERE IS
24 A CASE ON POINT THAT ABSOLUTELY BARS THE IMPOSITION OF DEATH
25 PENALTIES FOR THOSE CHILDREN UNDER THE AGE OF 16, AND THE

MOTION

1882

1 CASE, AS THE COURT IS WELL AWARE OF, THOMPSON VS. OKLAHOMA.

2 THE COURT: THIS DEFENDANT WAS 16 AT THE TIME AND HE
3 IS NOW 18.

4 MR. NEWSOM: YES, SIR.

5 THE COURT: I JUST DON'T SEE HOW THAT IS APPLICABLE.

6 MR. NEWSOM: I UNDERSTAND THAT, YOUR HONOR, BUT I
7 STILL WOULD LIKE TO BE HEARD AS FAR AS THAT.

8 THE COURT: YES, SIR.

9 MR. NEWSOM: THEY DID NOT HAVE BEFORE THEM THE ISSUE
10 AS TO WHETHER 16-YEAR-OLDS COULD BE EXECUTED AT THAT TIME.
11 THE ISSUE WAS AN IMPOSITION OF A DEATH PENALTY UPON A
12 JUVENILE, A JUVENILE BEING, QUITE FRANKLY, THOSE PEOPLE UNDER
13 THE AGE OF 18 AS IS ASCERTAINED IN SOME STATES AND UNDER 17 IN
14 OTHERS.

15 AT ANY RATE, THE COURT IN THAT CASE OF THOMPSON VS.
16 OKLAHOMA, THEIR LANGUAGE WAS THAT THE CONCERN OF THE COURT
17 WAS--AND I WILL READ, AND I AM SURE THE COURT HAS READ THIS
18 CASE THAT, "THE COURT HAS ALREADY ENDORSED THE PROPOSITION OF
19 LESS CULPABILITY SHOULD BE ATTACHED TO A CRIME COMMITTED BY A
20 JUVENILE THAN TO A COMPARABLE CRIME COMMITTED BY AN ADULT
21 SINCE INEXPERIENCE, LESS EDUCATION AND LESS INTELLIGENCE MAKE
22 A TEENAGER LESS ABLE TO EVALUATE THE CONSEQUENCES OF HIS OR
23 HER CONDUCT, WHILE AT THE SAME TIME HE OR SHE IS NOT MORE APT
24 TO BE MOTIVATED BY EMOTIONAL OR PEER PRESSURE THAN AS AN
25 ADULT."

1 IN THE CASE THEY DECIDED, IT WAS A 15-YEAR-OLD
2 INDIVIDUAL, YOUR HONOR, WHOSE I.Q., AS I UNDERSTAND, WAS
3 SUFFICIENTLY HIGHER THAN MY CLIENT. THE RATIONALE THAT THE
4 COURT USED IN THAT CASE WAS THAT IT WOULD BE UNCONSTITUTIONAL
5 AS VIOLATING THE EIGHT AMENDMENT AS CRUEL AND UNUSUAL TO ALLOW
6 TO BE EXECUTED OR TO BE SUBJECT TO BE EXECUTED CHILDREN WHO
7 LACK THE MENTAL ABILITY OR MATURITY TO BE ABLE TO RECOGNIZE
8 THE CONSEQUENCES OF THEIR ACTIONS.

9 I SUBMIT TO THE COURT, THE STATE HAS PUT IT ON THE
10 RECORD AS FAR AS THE STATE'S EVALUATION OF HIS I.Q., AND WE
11 HAVE RECEIVED JUST RECENTLY PREVIOUS I.Q. TESTS THAT ARE VERY
12 CONSISTENT WITH THE I.Q. TEST OF THE STATE, AND WE ARE HAVING
13 ANOTHER I.Q. TEST SUBMITTED TO HIM BY OUR EXPERT, THAT A YOUNG
14 MAN WHOSE I.Q. IS 72 OR 74 HAS A SUFFICIENT LOWER MENTAL
15 INTELLIGENCE THAN THE 15-YEAR-OLD THAT THE U.S. SUPREME COURT
16 SAID WAS UNCONSTITUTIONAL TO EXECUTE BECAUSE HE LACKED A
17 SUFFICIENT MENTAL ABILITY TO APPRECIATE RESPONSIBILITY OF HIS
18 CRIME.

19 THIS YOUNG MAN AT THE TIME, I SUBMIT TO THE COURT
20 THE EVIDENCE WILL SHOW HE WAS INTOXICATED, MR. PIERCE WAS
21 INTOXICATED. THAT IS BY THE EVIDENCE THAT THEY PROVIDED FROM
22 THEIR CO-DEFENDANT, MR. OWENS. HIS I.Q. WAS 72. THERE WAS
23 OTHERS INVOLVED. WE SUBMIT THAT HIS CULPABILITY WAS EVIDENT
24 OF BEING UNDER DURESS AND DIRECTION OF THE OTHERS. THEY USED
25 HIM TO GO IN THERE AND DO THE THINGS. THEY DIDN'T WANT TO DO

MOTION

1884

~~163~~

1 THE DIRTY DEED.

2 THE COURT: AREN'T YOU REFERRING TO ME MITIGATING
3 CIRCUMSTANCES---

4 MR. NEWSOM: YES, SIR, BUT ALSO---

5 THE COURT: ---THAT YOU CAN PRODUCE---

6 MR. NEWSOM: ---I THINK THAT IS WHAT THE U.S.
7 SUPREME COURT TOOK INTO CONSIDERATION AS TO WHETHER THERE IS
8 CULPABILITY. WE HAVE A YOUNG CHILD WHO WAS USED BY OLDER
9 PEOPLE. HE GOES IN THERE AND NOW THEY ARE NOT BEING FACED
10 WITH THIS PENALTY; THIS YOUNG MAN IS. AND HE MERELY ACTED,
11 AND I THINK EVIDENCE IN THE COURT WILL SHOW, HE ACTED UNDER
12 WHAT HE WAS TOLD. I SUBMIT THAT THE EXPERTS THE STATE HAS AND
13 THE EXPERTS THAT WE WOULD HAVE ARE GOING TO BE CONSISTENT
14 ABOUT HIS INABILITY TO COMPREHEND AND UNDERSTAND THINGS. I
15 THINK THAT IS WHY THE STATE HOSPITAL HAS RECOMMENDED THAT HE
16 BE EVALUATED FURTHER. I THINK THAT IS WHY HAROLD MORGAN HAS
17 ASKED THAT HE BE BROUGHT BACK FOR ADDITIONAL EVALUATION.

18 THE SAME ANALOGY THAT THE U.S. SUPREME COURT CITED
19 IN A 15-YEAR-OLD INDIVIDUAL: 12 MONTHS OF AGE, ASSUMING A
20 NORMAL COURSE OF GROWTH, MATURATION, THEN PERHAPS -- AND THE
21 COURT HAS NOT ADDRESSED WHETHER A 16-YEAR-OLD UNDER THE DEATH
22 PENALTY STATUTE COULD BE EXECUTED OR NOT. OUR STATE'S DEATH
23 PENALTY STATUTE HAS NEVER BEEN ADDRESSED BY THE U.S. SUPREME
24 COURT AS FAR AS ITS CONSTITUTIONALITY BECAUSE IT DOES NOT IN
25 SIMILAR STATUTES, YOUR HONOR,---

1 THE COURT: OUR LEGISLATURE HAS ADDRESSED THAT ISSUE
2 VERY RECENTLY IN THEIR RECENT ACT WHEN THEY SAID EVEN 16-YEAR-
3 OLDS CAN BE TRIED AS AN ADULT.

4 MR. NEWSOM: YES, SIR, I UNDERSTAND THAT, BUT IT
5 DOES NOT, IN THE SECTION THAT APPLIES FOR THE MURDER AND
6 CRIMINAL SEXUAL CONDUCT, IT DOESN'T HAVE ANY AGE SPECIFIC.

7 THE COURT: WELL, I'M FAMILIAR, OF COURSE, WITH YOUR
8 CASE THAT INDICATES ONE--THE UNITED STATES SUPREME COURT SAID
9 ONE THAT IS 15 CANNOT BE EXECUTED.

10 MR. NEWSOM: YES, SIR.

11 THE COURT: CAN YOU SHOW ME ANY CASE IN ANY OF THE
12 50 STATES WHERE THAT HAS BEEN APPLICABLE TO A 16-YEAR-OLD, ONE
13 WHO IS NOW 18?

14 MR. NEWSOM: NO, SIR, BECAUSE, QUITE FRANKLY, IN
15 THEIR CASE THEY RECOGNIZE THAT ONLY FIVE PEOPLE OF 1400 WHO
16 WERE CHARGED WITH MURDERS FIT IN THAT CATEGORY THAT THEY ASK
17 FOR THE DEATH PENALTY UNDER. THEY SAID IT WAS INCONCEIVABLE
18 THAT OTHER COURTS WOULD GO AFTER THE DEATH PENALTY FOR YOUNG
19 CHILDREN.

20 I SUBMIT THE REASON WHY IT HAS NOT BEEN RULED ON IN
21 THIS STATE IS BECAUSE OTHER SOLICITORS ARE NOT ATTEMPTING TO
22 GO AFTER THE DEATH PENALTY FOR CHILDREN HIS AGE.

23 THE COURT: WELL, NOW, YOU ARE -REFERRING TO
24 CHILDREN. THIS DEFENDANT IS 18 YEARS OF AGE.

25 MR. NEWSOM: AT THIS TIME.

MOTION

1886

~~105~~

1 THE COURT: HE IS NOT 15 AND HE IS NOT 16.

2 MR. NEWSOM: BUT HE WAS 16 AT THE TIME OF THE
3 INCIDENT.

4 THE COURT: I UNDERSTAND THAT, BUT AT THE TIME OF
5 THE EXECUTION -- AT THAT TIME, THAT CASE, THAT INDIVIDUAL WAS
6 ONLY 16, WASN'T HE?

7 MR. NEWSOM: AT THE TIME HE WAS TRIED HE WAS 16. I
8 THINK HE WAS 14 WHEN---

9 THE COURT: THAT'S CORRECT. BUT WE'VE GOT TIME OF
10 TRIAL OF 18 YEARS OF AGE, WHICH IS CONSIDERABLY DIFFERENT.

11 MR. NEWSOM: YES, SIR.

12 THE COURT: I HEAR YOUR ARGUMENT AND I AM MAKING
13 YOUR MEMORANDUM A PART OF THE RECORD, BUT I WOULD RESPECTFULLY
14 DENY IT AND I FRANKLY DON'T THINK THAT IS THE LAW IN THIS
15 COUNTRY.

16 MR. NEWSOM: THANK YOU, YOUR HONOR.

17 THE COURT: BUT YOU ARE PROTECTED ON THE RECORD ON
18 IT. I WILL BE GLAD TO HAVE YOU BE HEARD FOR THE RECORD,
19 SOLICITOR BAILEY.

20 MR. BAILEY: YOUR HONOR, YES, SIR, JUST BRIEFLY,
21 YOUR HONOR, FOR THE RECORD. THOMPSON VS. OKLAHOMA SAYS THAT
22 A 15-YEAR-OLD CANNOT LEGALLY BE EXECUTED. STANTON VS.
23 KENTUCKY SAYS A 16-YEAR-OLD CAN BE EXECUTED.

24 AS I UNDERSTAND WHAT MR. NEWSOM'S POSITION IS, HE IS
25 SAYING SINCE OUR DEATH PENALTY STATUTE DOESN'T HAVE A MINIMUM

1 AGE THAT UNDER THIS WASHINGTON STATE CASE, THE FURMAN CASE,
2 THAT SINCE THERE IS NO MINIMUM AGE, THE DEATH PENALTY CAN'T BE
3 IMPOSED.

4 AT THE SAME TIME STANTON VS. KENTUCKY WAS DECIDED,
5 THE COMPANION CASE OF WILKINS VS. MISSOURI, WILKINS WAS 16
6 YEARS OLD LIKE THE DEFENDANT, AND APPARENTLY FROM READING
7 JUDGE O'CONNELL'S CONCURRING OPINION IN STANTON VS. KENTUCKY
8 AND WILKINS VS. MISSOURI CASE, MISSOURI HAD A STATUTE SIMILAR
9 TO OURS, IT WAS NOT AGE SPECIFIC, AND IN THAT CASE THE DEATH
10 PENALTY FOR A 16-YEAR-OLD WAS UPHELD, SO I DON'T THINK THERE
11 IS ANYTHING WRONG WITH OUR STATUTE. THERE IS PROTECTION IN
12 THE WAIVER STATUTE. IN HIS MEMORANDUM MR. NEWSOM CITED
13 SUBSECTION 6, WHICH IN THE CASE OF MURDER AND FIRST DEGREE
14 C.S.C. ALLOWS A CHILD UNDER 16 TO BE TRANSFERRED. MR. HUGHES
15 WAS TRANSFERRED FROM SUBSECTION 4 WHEN HE GOT TO BE 16 TO BE
16 TRANSFERRED, SO UNDER THE SUBSECTION THAT HE WAS TRANSFERRED
17 UNDER HE COULD NOT HAVE BEEN TRANSFERRED UNDER THAT SUBSECTION
18 UNLESS HE WAS 16, WHICH IS THE AGE THAT THE SUPREME COURT,
19 UNITED STATES SUPREME COURT HAS DECIDED IS A CONSTITUTIONAL
20 AGE. SO THAT IS THE STATE'S POSITION.

21 THE COURT: MY UNDERSTANDING OF THE APPROPRIATE CASE
22 LAW, INCLUDING THAT OF SOUTH CAROLINA, DOES NOT SUGGEST TO ME
23 THAT ONE WHO IS NOW 18 AND WHO WAS 16 AT THE TIME OF THE
24 ALLEGED COMMISSION OF THE CRIME CANNOT SUFFER SUPREME PENALTY
25 IF A JURY OF 12 FIND IT IS WARRANTED. I WOULD RESPECTFULLY

MOTION

1888

1 OVERRULE YOUR POSITION.

2 MR. NEWSOM: THANK YOU, YOUR HONOR.

3 THE COURT: ANYTHING FURTHER?

4 MR. NEWSOM: NO, SIR.

5 THE COURT: ALL RIGHT, GENTLEMEN, I THANK YOU FOR
6 YOUR ATTENDANCE HERE. THANK YOU SO MUCH.

7 (WHEREUPON, THE HEARING WAS ADJOURNED.)

8

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12

(END OF REQUESTED TRANSCRIPT)

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CERTIFICATE

I, THE UNDERSIGNED DEBORAH M. McCURDY, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARINGS OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CRIMINAL COURT FOR CALHOUN COUNTY (HEARING IN RICHLAND COUNTY), SOUTH CAROLINA, ON THE 22ND DAY OF AUGUST, 1995.

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

September 1, 1995.

Deborah M. McCurdy

DEBORAH M. McCURDY, COURT REPORTER

In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HERMAN LEE HUGHES, JR.,

APPELLANT.

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

SC Office of Appellate Defense
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(803) 734-1330
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First Judicial Circuit

134 East Richardson Avenue
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(803) 871-2640

Attorneys for Respondent

1930

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HERMAN LEE HUGHES, JR.,

APPELLANT.

RECORD ON APPEAL

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ATTEST, TRUE COPY

WITNESSES

Det. E. Rhudy

DOCKET #: 94CS09-0154

THE STATE OF SOUTH CAROLINA
County of Calhoun

COURT OF GENERAL SESSIONS

Term: October, 1994

THE STATE

vs.

Herman Hughes

ARREST WARRANT #:

9400002

Arrested on March 18, 1994

INDICTMENT FOR

0116

MURDER

COMMON LAW

ACTION OF GRAND JURY

True Bill

Foreman:

Camellia Spires
Grand Jury

VERDICT

Guilty

Foreman:

William T. Benson Jr.
Petit Jury
Date: *9/8/95*

1891

STATE OF SOUTH CAROLINA

County of Calhoun

INDICTMENT #94CS09-0154

At a Court of General Sessions, convened on October 19, 1994,
the Grand Jurors of Calhoun County present upon their oath:

COUNT:

MURDER
COMMON LAW

That Herman Hughes did in Calhoun County on or about March 18, 1994,
feloniously, wilfully and with malice aforethought, kill one Kenneth Pressley
by means of shooting him with a pistol at or near the Blue Diamond Casino in
Calhoun County and that the said Kenneth Pressley did die in ^{Orangeburg} ~~Richland~~ County as
a proximate result thereof on or about the 18th day of March, 1994.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

W. B. [Signature]

1893

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT #94-GS-09-0153
#94-GS-09-0154
#94-GS-09-0155
#94-GS-09-0156

State of South Carolina,)
)
-vs-)
)
Herman Hughes,)
)
)
Defendant.)

PART II

JURY'S DETERMINATION OF THE
SENTENCE TO BE IMPOSED

Complete either (a) or (b), as appropriate:

(a) We the jury in the above-entitled case unanimously recommend that the defendant
Herman Hughes be imprisoned in the state penitentiary for the balance of his natural life.

Signed: _____
Foreman

(b) We the jury in the above-entitled case unanimously recommend that the Defendant
Herman Hughes be sentenced to death.

Signed:

William T. Barron Jr.
Foreman

Natalie McVick
Juror

Carroll H. Hudson
Juror

Robin Williams
Juror

Patricia A. Wise
Juror

Brenda R. Wise
Juror

Everette B. Atkins
Juror

Ted Paine
Juror

1938

1894

Mary Hunter
Juror

Kathy Chesler
Juror

Anna Lee Edwards
Juror

Ernest D. Vernon Jr.
Juror

WITNESSES

Det. E. Rhudy

ARREST WARRANT #:

94CR001

Arrested on March 18, 1994

ACTION OF GRAND JURY

True Bill

MAY 25 1994

Foreman: *Camellia Apries*
Grand Jury

VERDICT

Guilty

Foreman: *William T. Bennett*
Petit Jury
Date: *9/8/95*

DOCKET #: 94CS09-0153

THE STATE OF SOUTH CAROLINA
County of Calhoun

COURT OF GENERAL SESSIONS
Term: May, 1994

THE STATE

vs.

Herman Hughes

INDICTMENT FOR

0014

ASSAULT AND BATTERY WITH INTENT TO KILL

(16-3-620)

STATE OF SOUTH CAROLINA)
County of Calhoun)

INDICTMENT #94CS09-0153
1896

At a Court of General Sessions, convened on May 26, 1994,
the Grand Jurors of Calhoun County present upon their oath:

COUNT: ASSAULT AND BATTERY WITH INTENT TO KILL
(16-3-520)

That Herman Hughes did in Calhoun County on or about March 18, 1994, with
malice aforethought commit an assault and battery upon one Kelley Hoffman with
intent to kill said victim, to wit: by shooting her in the ^{Chest} ~~arm~~ and face with a
pistol. (MH)

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

Reddick A. Bonner, Jr.

1897

ATTEST, TRUE COPY

J. Keith [Signature]

J. KEITH [Signature]
CLERK OF COURT

WITNESSES

Det. E. Rhudy

DOCKET #: 94CS09-0139

THE STATE OF SOUTH CAROLINA
County of Calhoun

COURT OF GENERAL SESSIONS

Term: May, 1994

THE STATE

vs.

Herman Hughes

ARREST WARRANT #:

94CC003

Arrested on March 18, 1994

INDICTMENT FOR

0139

ARMED ROBBERY

(16-11-330)

ACTION OF GRAND JURY

True Bill

MAY 2 5 1994

Foreman:

Camellia Spivey
Grand Jury

VERDICT

Guilty

Foreman:

William C. Reynolds
Docket Jury
Date: *9/8/95*

1899

FILED
A. Keith 1943
J. KERT W. ...
CLERK OF COURT
CALHOUN COUNTY

WITNESSES

Det. E. Rhudy

DOCKET #: 94CS09-0156

THE STATE OF SOUTH CAROLINA
County of Calhoun

COURT OF GENERAL SESSIONS

Term: May, 1994

THE STATE

vs.

Herman Hughes

ARREST WARRANT #:

9400004

Arrested on March 18, 1994

INDICTMENT FOR

0921

GRAND LARCENY OF VEHICLE

16-01-10

ACTION OF GRAND JURY

True Bill

MAY 2 5 1994

Foreman:

Camellia Spive
Grand Jury

VERDICT

Guilty

Foreman:

William T. Bennett
Rec'd Jury
Date: *9/8/95*

1944

1900

~~1900~~

STATE OF SOUTH CAROLINA)
)
County of Calhoun)

INDICTMENT #94CS09-0156

At a Court of General Sessions, convened on May 26, 1994,
the Grand Jurors of Calhoun County present upon their oath:

COUNT: GRAND LARCENY OF VEHICLE
16-01-10

That Herman Hughes did in Calhoun County on or about March 18, 1994,
feloniously take and carry away the personal property of one Kenneth Pressley,
to wit: (1988 Mazda) of the value of more than One Thousand Dollars, with
intent to deprive the owner permanently of such property.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR Reddick A. Burman

1901

~~1901~~

Attest: *J. Keitt Wannemaker* 1945
J. KEITT WANNEMAKER
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

FILED

IN THE COURT OF GENERAL SESSIONS

OCT 31 10 32 AM 1994

INDICTMENT # 94-GS-09-0153
94-GS-09-0154
94-GS-09-0155
94-GS-09-0156

J. KEITT WANNEMAKER
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA,
-versus-
HERMAN HUGHES,
Defendant.

NOTICE OF INTENT TO SEEK THE
DEATH PENALTY

TO THE DEFENDANT, HERMAN HUGHES, AND HIS ATTORNEY,
MARY P. MILES:

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Section
16-3-26 SC Code Ann., 1992 Cumm. Supp., upon trial of the above
entitled action at least thirty (30) days from the date of service
hereof and of which you will be timely notified, the imposition of
a sentence of death upon the Defendant, Herman Hughes, will be
sought by the State.

Walter M. Bailey, Jr.
WALTER M. BAILEY, JR.
SOLICITOR, THE FIRST JUDICIAL CIRCUIT
134 East Richardson Avenue
Summerville, South Carolina, 29483
803-871-2640

October 31, 1994

1946

1902

ATTEST: TRUE COPY
[Handwritten signature]

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

Oct 31 10 32 AM '94

IN THE COURT OF GENERAL SESSIONS

INDICTMENT # 94-GS-09-0153
94-GS-09-0154
94-GS-09-0155
94-GS-09-0156
J. KEITH WALKER
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA,

-versus-

HERMAN HUGHES,

Defendant.

NOTICE OF EVIDENCE IN AGGRAVATION

TO THE DEFENDANT, HERMAN HUGHES, AND HIS ATTORNEY,
MARY P. MILES:

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Section 16-3-20, SC Code Ann., 1992 Cumm. Supp., upon trial of the above entitled action at least thirty (30) days from the date of service hereof and of which you will be timely notified, the State will seek to introduce into evidence aggravating circumstances in the above matter as follows, to wit:

(1) The murder of Kenneth Pressley was committed while in the commission of robbery while armed with a deadly weapon.

(2) The murder of Kenneth Pressley was committed while in the commission of larceny while armed with a deadly weapon.

(3) The offender by his act of murder of Kenneth Pressley knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.

[Handwritten signature: Walter M. Bailey, Jr.]
WALTER M. BAILEY, JR.
SOLICITOR, THE FIRST JUDICIAL CIRCUIT
134 East Richardson Avenue
Summerville, South Carolina, 29483
(803)871-2640

Date: October 31, 1994

1903

J. Keith W... 1947
J. KEITH W...
CLERK OF...
CALHOUN...

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

FILED
Oct 3 } 10 32 AM '94
J. KEITH W...
CLERK OF COURT
CALHOUN COUNTY

IN THE COURT OF GENERAL SESSIONS

INDICTMENT #94-GS-09-0153
94-GS-09-0154
94-GS-09-0155
94-GS-09-0156

STATE OF SOUTH CAROLINA,

-versus-

HERMAN HUGHES,

Defendant.

NOTICE OF EVIDENCE IN AGGRAVATION
OF THE PUNISHMENT

TO THE DEFENDANT, HERMAN HUGHES, AND HIS ATTORNEY,
MARY P. MILES:

YOU WILL PLEASE TAKE NOTICE, that during the sentencing phase of the above entitled capital murder case to determine whether the defendant, Herman Hughes, should be sentenced to death or life imprisonment, the State will seek to introduce into as evidence in aggravation of the punishment to be imposed upon the defendant the evidenced as set forth hereinbelow.

The State alleges that the murder of Kenneth Pressley was committed while in the commission or progress of, and/or accompanied by, the following crimes or acts: (1) robbery while armed with a deadly weapon; and/or (2) larceny while armed with a deadly weapon; and/or (3) the offender by his act knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.

~~1904~~

The State will present evidence as to the defendant's character, mentality, background, prior adult and juvenile acts of violence, adult and juvenile crimes and other unlawful conduct, prior adult and juvenile violations of laws, rules, regulations and/or ordinances, prior criminal adult and juvenile records and the nature of said crimes, propensity to commit or attempt to commit acts of violence or bodily harm as an adult and a juvenile, propensity for violence and unlawful conduct as an adult and a juvenile, disregard for peace and good order as an adult and a juvenile, and other similar characteristics of the defendant, as an adult and a juvenile, by the testimony of victims, witnesses, police officers, statements by the defendant and other relevant testimony, photographs and exhibits. Lockett v. Ohio; State v. Shaw. The State will further present as evidence in the sentencing trial all items of evidence, testimony and exhibits that were admitted during the first or guilt phase.

The State will further present evidence of circumstances surrounding the crimes herein and the characteristics of the defendant who committed the crimes. Evidence will also be presented to show the cause and/or manner in which the murder and crimes were committed including, but not limited to, photographs, video tapes, other tapes and diagrams of the crime scenes and victims and testimony related thereto, including statements by the defendant. State v. Goolsby; State v. Shaw.

The State will further present evidence, testimony, and exhibits as to the defendant's character and conduct while incarcerated in jails and/or prisons; disregard and violations of rules, regulations, laws and/or ordinances; disrespectful, disruptive and uncooperative actions and conduct; and all other such acts and conduct while incarcerated.

The State will further present evidence and testimony and exhibits as to the defendant's character, statements and conduct relating to his release or parole from jails and/or prisons; mental or physical evaluations of the defendant; opinions as to the defendant's character, propensity for violence and unlawful conduct, disregard for peace and good order and to commit such acts in the future.

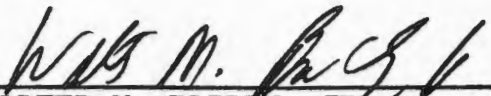
The State will further present evidence of circumstances surrounding the murder of Kenneth Pressley in Calhoun County and the characteristics of Herman Hughes who committed the murder. Evidence will be presented to show the cause and/or manner in which the murder was committed including, but not limited to, the murder weapons, photographs, video tapes, other tape recordings and diagrams of the crime scene and victim and testimony related thereto, including statements by the defendant.

The State will further present detailed evidence of circumstances surrounding the arrest and apprehension of Herman Hughes including, but not limited to, weapons, photographs, recordings, diagrams, exhibits, statements by the defendant and testimony related thereto.

1906

~~1906~~

The State will further present evidence as to victim impact evidence, evidence of the emotional impact of the crimes on the families of the victims, the consequences of the crimes on the families of the victims and arguments relating thereto pursuant to Payne v. Tennessee, 111 S.Ct. 2597 (1991).



WALTER M. BAILEY, JR.
SOLICITOR, THE FIRST JUDICIAL CIRCUIT
134 East Richardson Avenue
Summerville, South Carolina, 29483
(803) 871-2640

Date: October 31, 1994

sentencing verdict forms. This finding, if made by you, must be signed by every member of the jury. If you unanimously find the existence of one or more of the alleged statutory aggravating circumstances and designate this finding on Part I(b) of the sentencing verdict form entitled "JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES", you must then continue your deliberations in order to determine whether you shall recommend that the defendant Herman Hughes be sentenced to life imprisonment or to death by electrocution *or lethal injection*

(4) In determining whether to recommend that the defendant Herman Hughes be sentenced to life imprisonment or to death, you may consider any of the statutory aggravating circumstances found by you to exist beyond a reasonable doubt. You may also consider any of the following statutory mitigating circumstances:

1. Defendant has no significant history of prior criminal conviction involving the use of violence against another person;

2. Murder was committed while defendant was under the influence of mental or emotional disturbances;

3. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired;

4. The age or mentality of the defendant at the time of the crime;

5. The defendant was below the age of eighteen at the time of the crime;

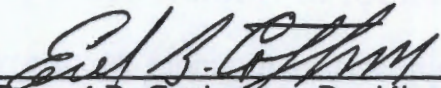
6. The defendant had mental retardation at the time of the crime. "Mental retardation" means significantly sub-average general intellectual functioning existing with deficits in adaptive behavior and manifested during the developmental period.

Furthermore, you may consider any other mitigating circumstances which are supported by the evidence in this case.

7. The defendant acted under duress or under the domination of another person.

(5) When you have determined the sentence to be imposed upon the defendant, indicate

your verdict by completing either (a) or (b) of the form entitled "JURY'S DETERMINATION OF THE SENTENCE TO BE IMPOSED." If the unanimous verdict of the jury is a recommendation that the defendant should be sentenced to death, each member of the jury shall indicate his or her agreement with the verdict by signing as indicated.



Edward B. Cottingham, Presiding Judge,
First Judicial Circuit

1954

1910

ATTEST, TRUE COPY
J. Keitt Williams
J. KEITT WILLIAMS
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

) IN THE COURT OF COMMON PLEAS
)
) INDICTMENT ~~94~~-GS-09-0153
94-GS-09-0154
94-GS-09-0155
94-GS-09-0156

State of South Carolina,)
)
-vs-)
)
Herman Hughes,)
)
Defendant.)

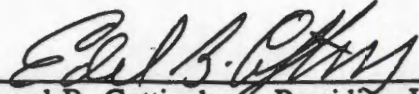
SENTENCE OF DEATH

The Defendant Herman Hughes (was found by the jury herein to be guilty of) (entered a plea of guilty to) the offense of murder. The (jury has recommended) (court has determined) that the defendant should be sentenced to death. He is now asked if he has anything further to say why the judgment of the law and the sentence of the court should not now be pronounced against him. (He states that he has nothing further to say.) (He gives no sufficient reason why the judgment of the law and the sentence of the court should not now be pronounced.)

It is the judgment of the law and the sentence of the court that you Herman Hughes, the prisoner at the bar, be taken to the Orangeburg-Calhoun Detention Center and thence to the State Penitentiary henceforth to be kept in close and safe confinement until the 27th day of October, 1995, upon which day between the hours of 12 o'clock, 1 .m., and 12 o'clock, 11 .m., you shall suffer death by electrocution in the manner provided by law ^{or lethal injection}

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Edward B. Cottingham, Presiding Judge,
First Judicial Circuit

St. Matthews, South Carolina

September 12, 1995

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FILED 1995
J. Keitt Wannamaker
J. KEITT WANNAMAKER
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

)
)
)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT # 94-GS-09-0153
94-GS-09-0154
94-GS-09-0155
94-GS-09-0156

State of South Carolina,

)
)
)
)
)
)

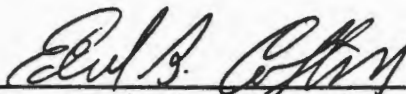
-vs-

AFFIRMATION OF DEATH SENTENCE

Herman Hughes,

Defendant.

As the trial judge in the above-entitled action and prior to the imposition of the death sentence upon the defendant Herman Hughes, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and that its imposition is not a result of prejudice, passion, or any other arbitrary factor.



Edward B. Cottingham, Presiding Judge,
First Judicial Circuit

St. Matthews, South Carolina

September 12, 1995

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ATTEST, TRUE COPY
J. KEITH WALKER
CLERK OF COURT

ATTEST, TRUE COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CALHOUN) INDICTMENT NO. 94-GS-09-0153 TO 0156

STATE OF SOUTH CAROLINA,)
-versus-)
HERMAN HUGHES,)
Defendant.)

NOTICE OF MOTION AND
MOTION FOR PSYCHIATRIC EVALUATION

JUL 24 11 18 AM '95
J. KEITH WALKER
CLERK OF COURT
CALHOUN COUNTY
F I L E D

TO PHILLIP F. NEWSOM, CLYDE C. DEAN, JR. AND RONALD E. HUTTO, ATTORNEYS FOR THE DEFENDANT, HERMAN HUGHES:

YOU WILL PLEASE TAKE NOTICE that on July 27, 1995, at 2:15 p.m. at the Richland County Courthouse, or as soon as counsel may be heard, the State of South Carolina, by and through Walter M. Bailey, Jr., Solicitor of the First Judicial Circuit, will move before the Honorable Edward B. Cottingham, Presiding Judge of the within matter, for an Order requiring the Defendant, Herman Hughes, to submit to a psychiatric evaluation at the William S. Hall Psychiatric Institute, Columbia, South Carolina.

Walter M. Bailey, Jr.
WALTER M. BAILEY, JR., SOLICITOR
FIRST JUDICIAL CIRCUIT
134 East Richardson Avenue
Summerville, South Carolina, 29483
803-871-2640

July 21, 1995

1958

COUNTY OF CALHOUN 1914

The State of South Carolina,

-vs-

HERMAN HUGHES,

Defendant.

IN THE COURT OF GENERAL SESSIONS

IN THE FAMILY COURT

ATTEST: TRUE COPY

94-GS-18-0153 to 0156

ORDER FOR COMPETENCY EVALUATION
(AND CRIMINAL RESPONSIBILITY)

AUG 14 10 21 AM '95

J. KEITH W. STUBBS
CLERK OF COURT
CALHOUN COUNTY

This matter comes before me on motion of WALTER M. BAILEY, JR., SOLICITOR
for an order requiring the defendant, HERMAN HUGHES
charged with MURDER
to submit to a psychiatric examination.

I have considered the showing made in respect to the motion for such an order and am of the opinion that the defendant should be so examined pursuant to the statutory provisions of this State.

THEREFORE, IT IS ORDERED that the defendant shall be:

- (a) Examined and observed at the appropriate facility of the South Carolina Department of Mental Health for a period not to exceed fifteen (15) days relative to his mental capacity to stand trial. (Section 44-23-410 (1) or Section 44-23-410 (2), Code of Laws of South Carolina, 1976)

And shall ~~XXXXXX~~ be:

- (b) Examined as aforesaid to determine whether or not the above-named defendant is criminally responsible pursuant to the M'Naughten test for his actions on or about

MARCH 18, 1994

And shall ~~XXXXXX~~ be:

- (c) If found responsible pursuant to the M'Naughten test, examined as aforesaid to determine whether or not, because of mental disease or defect, the defendant lacked sufficient capacity to conform his conduct to the requirements of the law. (Section 17-24-20(A), Code of Laws of South Carolina, 1976)

The ordered examination shall be requested by the solicitor and scheduled by the examining facility as soon as possible. The defendant is to be transported to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility.

The defendant continues under the jurisdiction of this court. If the defendant is currently free on bond or personal recognizance, such bail is hereby revoked to the extent necessary to carry out the provisions of this order.

If the examination and observation of a patient committed to the custody of the Department of Mental Health have not been concluded at the end of fifteen (15) days, the defendant may be kept in the custody of the said Department of Mental Health for an additional period not to exceed fifteen (15) days, provided the superintendent of the facility so requests in writing the additional period of observation and examination.

Within five (5) days of the examination or at the conclusion of the observation period, a written report shall be made to the court pursuant to Section 44-23-420, Code of Laws of South Carolina, 1976, as amended.

If, in the judgment of the designated examiners or the superintendent of the facility, the defendant is presently mentally ill and in need of hospitalization, then the said defendant shall be retained in the custody of the Department of Mental Health until such time as a hearing, required and provided by Section 44-23-430, Code of Laws of South Carolina, 1976, as amended, may be conducted by this court.

AND IT IS SO ORDERED.

Edward B. Cottingham, South Carolina

This 27 day of July, 1987

EDWARD B. COTTINGHAM

Judge (Name Typed)

Edward B. Cottingham
Judge's Signature

I SO MOVE ~~OR~~ CONSENT:

WALTER M. BAILEY, JR.

Solicitor (Name Typed)

Walter M. Bailey, Jr.
Solicitor's Signature

I SO MOVE OR CONSENT:

Attorney for the Defendant (Name Typed)

Address

City, State Zip

Attorney for Defendant Signature

ADDITIONAL INFORMATION FOR FAMILY COURT EVALUATIONS

Guardian ad Litem (Name Typed)

Address

City, State, Zip

Telephone (Office and Home)

Parent(s) (Name Typed)

Address

City, State, Zip

Telephone (Office and Home)

1960

1916

FILED

ATTEST: TRUE COPY

J. Keitt Wannamaker

J. KEITT WANNAMAKER
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS

AUG 25 10 10 AM '95

COUNTY OF CALHOUN

J. KEITT WANNAMAKER
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA

-versus-

ORDER FOR COMPETENCY EVALUATION
AND CRIMINAL RESPONSIBILITY

HERMAN HUGHES,

Defendant.

This matter comes before me on motion of Walter M. Bailey, Jr., Solicitor for the First Judicial Circuit, for an order requiring the defendant, HERMAN HUGHES, charged with Murder, Armed Robbery, Grand Larceny of a Vehicle and Assault and Battery with Intent to Kill, to submit to a psychiatric or psychological examination.

I have considered the showing made in respect to the motion for such an order and am of the opinion that the defendant should be so examined pursuant to the statutory provisions of this State.

THEREFORE, IT IS ORDERED THAT the defendant shall be:

(a) Examined, evaluated and observed at the appropriate facility of the Department of Disabilities and Special Needs pursuant to Section 44-53-410, Code of Laws of South Carolina, 1976, as amended.

The ordered examination shall be requested by the solicitor and scheduled by the examining facility as soon as possible. The defendant is to be transported to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility.

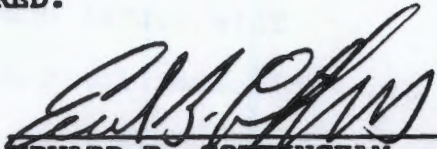
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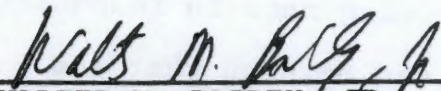
The defendant continues under the jurisdiction of this court. If the defendant is currently free on bond or personal recognizance, such bail is hereby revoked to the extent necessary to carry out the provisions of this order.

Within five (5) days of the examination or at the conclusion of the observation period, a written report shall be made to the court pursuant to Section 44-23-420, Code of Laws of South Carolina, 1976, as amended.

AND IT IS SO ORDERED.


EDWARD B. COTTINGHAM
JUDGE, FIRST JUDICIAL CIRCUIT

I SO MOVE:


WALTER M. BAILEY, JR.
SOLICITOR, FIRST CIRCUIT

1962

ATTEST: TRUE COPY

S. Keith [Signature]

1918

~~1918~~

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 94-GS-09-0153 TO 0156

STATE OF SOUTH CAROLINA,)
-versus-)
HERMAN HUGHES,)
Defendant.)

ORDER

J. KEITH [Signature]
CLERK OF COURT
CALHOUN COUNTY
SEP 18 11 26 AM '95
1918

This matter is before me for a Blair hearing to determine the Defendant's competency to stand trial, his criminal responsibility and capacity to conform. The Solicitor presented to the Court a Forensic Unit Outpatient Evaluation from William S. Hall Psychiatric Institute setting forth the Court-ordered evaluation by Richard L. Frierson, M.D., forensic psychiatrist. Since the Defendant, in several IQ tests conducted on him, scored "borderline" full scale intelligence quotient, the Court ordered a further evaluation by the South Carolina Department of Disabilities and Special Needs. The Solicitor presented an outpatient report from that agency prepared by Lester Finuf, Ph.D., a forensic psychologist. These reports were accepted by the Court without objection from the defense attorney, who was present together with the Defendant at the time both reports were submitted to the Court. I find this procedure is appropriate in lieu of live testimony pursuant to applicable statutes as interpreted by our Supreme Court in State v. Franklin, Opinion No. 24190, filed January 30, 1995.

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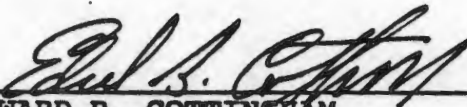
1963

After carefully reviewing both written reports, the Court finds that both said reports find the Defendant competent to stand trial; that he was responsible for his actions on or about March 18, 1994 pursuant to the McNaughton rule and that he had the capacity to conform his conduct to the requirements of the law.

The Court further finds that, based on the IQ tests, the Defendant is not mentally retarded.

IT IS THEREFORE, ORDERED, that the State proceed with the Defendant's trial at such time as a jury is impaneled and sworn; and

IT IS SO ORDERED.


EDWARD B. COTTINGHAM
JUDGE, THE FIRST JUDICIAL CIRCUIT

SEPTEMBER 7, 1995

ST. MATTHEWS, SOUTH CAROLINA

1920

ATTEST, TRUE COPY
J. K. WESTBURY, JR.
CLERK OF SUPERIOR COURT
CALHOUN COUNTY

John Ford Middle School

Discipline Detail Report

Date: 6/1/92
Page: 45

6th GRADE

Infraction/Action Taken: Any Discipline Entry
Number of Occurrences: At Least Once
Report Dates: 8/15/91 to 5/29/92
Selection Criteria: All Students

Student Name	ID	Date	*Infraction / Action Taken
Hughes, Herman L	000970369	10/ 3/91	*THROWING OBJECTS IN CLASS
		10/ 3/91	SUSPENDED 2 DAYS
		10/31/91	*REFUSE TO DO LUNCH DETENTION
		10/31/91	PADDLED
		11/ 6/91	*TARDY TO CLASS
		11/ 6/91	IN-SCHOOL SUSPENSION 2 DAYS
		11/19/91	*DISRESPECT TO TEACHER
		11/19/91	PADDLED
		2/ 4/92	*REFUSE TO DO LUNCH DETENTION
		2/ 4/92	IN-SCHOOL SUSPENSION 1 DAY
		2/ 6/92	*DISRUPTIVE BEHAVIOR IN CLASS
		2/ 6/92	SUSPENDED 3 DAYS
		3/ 6/92	*DESTRUCTION OF PROPERTY
		3/ 6/92	SUSPENDED 3 DAYS
		4/ 2/92	*DISRUPTIVE BEHAVIOR IN CLASS
		4/ 2/92	IN-SCHOOL SUSPENSION 3 DAYS
		4/23/92	*DISRUPTIVE BEHAVIOR IN CLASS
4/23/92	IN-SCHOOL SUSPENSION 5 DAYS		
5/ 1/92	*TARDY TO CLASS		

COMMENT :
Refused In-School Suspension

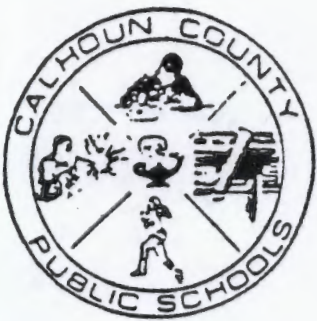
5/ 1/92 SUSPENDED 3 DAYS
5/22/92 *LEAVING SCHOOL WITHOUT PERMISS
5/22/92 SUSPENDED 3 DAYS

I attest that the attached documents are true
and accurate to the best of my knowledge.

James K. Westbury, Jr.
James K. Westbury, Jr., Principal

STATES
EXHIBIT

39



1921
The School District Of
Calhoun County

1965

Board of Trustees

Harry Ott, Jr., Chairman
Julian D. Wiles, Vice-Chairman
Gene B. Hasty, Secretary
Leroy Hampton
Dr. Donald M. Phillips
M. Rhett Riley, Jr.

Office of the Superintendent
Ernest W. Stokes, Jr., Ed.D.

December 4, 1992

Mr. & Ms. Charley Hughes
[REDACTED]

St. Matthews, S.C. 29135

Dear Mr. & Ms. Hughes:

Pursuant to the administrative hearing held on December 1 for your son, Herman Hughes, it is understood and agreed that he will be placed under probation by the school administration for his behavioral problems. A condition of probation will be that he participate in the School Intervention Program sponsored by the Dawn Center.

I appreciate Herman's expression of regret concerning his bad behavior and his willingness to change. I am confident that if he gets serious about his school work his behavior problems will be corrected. However, if these problems persist, he will be recommended to the Board of Trustees for expulsion.

Thank you for your cooperation and assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Stokes, Jr.", is written over the typed name.

Ernest W. Stokes, Jr.
Superintendent

pc: ✓ Mr. Ken Westbury, Principal
John Ford Middle School

1966

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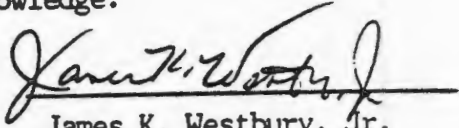
John Ford Middle School

STUDENT: Hughes, Herman Lee

Date: 8/16/93
Page: 1

Parent/Guardian: Mr. & Mrs. Charley Hughes
Address: [REDACTED]
City: St. Matthews State: SC Zip: 29135
Grade: 7 Birth Date: [REDACTED]/77
Home Phone: 874-3855
Sex: M Ethnic Code: B
Home Room Tchr: B Walling

I attest that the attached documents
are true and correct to the best
of my knowledge.


James K. Westbury, Jr.
Principal

ATTENDANCE DETAIL 8/17/92 - 5/28/93

Date	Periods							
	1	2	3	4	5	6	7	8
Monday	9/14/92	S	S	S	S	S	S	S
Tuesday	9/15/92	S	S	S	S	S	S	S
Wednesday	9/16/92	S	S	S	S	S	S	S
Friday	9/25/92	U	U	U	U	U	U	U
Monday	10/ 5/92	S	S	S	S	S	S	S
Wednesday	10/ 7/92	U	U	U	U	U	U	U
Thursday	10/22/92	U	U	U	U	U	U	U
Wednesday	11/ 4/92	S	S	S	S	S	S	S
Thursday	11/ 5/92	S	S	S	S	S	S	S
Friday	11/ 6/92	S	S	S	S	S	S	S
Wednesday	11/11/92	S	S	S	S	S	S	S
Thursday	11/12/92	S	S	S	S	S	S	S
Friday	11/13/92	S	S	S	S	S	S	S
Monday	11/16/92	S	S	S	S	S	S	S
Tuesday	11/17/92	S	S	S	S	S	S	S
Wednesday	11/18/92	S	S	S	S	S	S	S
Monday	11/23/92	U	U	U	U	U	U	U
Tuesday	11/24/92	U	U	U	U	U	U	U
Monday	12/ 7/92	u
Tuesday	12/ 8/92	S	S	S	S	S	S	S
Wednesday	12/ 9/92	S	S	S	S	S	S	S
Tuesday	12/15/92	S	S	S	S	S	S	S
Wednesday	12/16/92	S	S	S	S	S	S	S
Thursday	12/17/92	S	S	S	S	S	S	S
Friday	12/18/92	S	S	S	S	S	S	S
Wednesday	1/ 6/93	S	S	S	S	S	S	S
Thursday	1/ 7/93	S	S	S	S	S	S	S
Tuesday	1/19/93	U	U	U	U	U	U	U
Wednesday	1/20/93	S	S	S	S	S	S	S
Thursday	1/21/93	S	S	S	S	S	S	S
Friday	1/22/93	S	S	S	S	S	S	S
Wednesday	2/ 3/93	S	S	S	S	S	S	S
Thursday	2/ 4/93	S	S	S	S	S	S	S
Friday	2/ 5/93	S	S	S	S	S	S	S
Monday	2/ 8/93	S	S	S	S	S	S	S
Tuesday	2/ 9/93	S	S	S	S	S	S	S

ATTENDANCE DETAIL 8/17/92 - 5/28/93

1923

Explanation of codes:

(capital letters = absences, small letters = tardies)

U, u unexcused	E, e excused
M, m medical	S, s suspension
L, l legal *	F, f family/death *
W, w DSS *	T, t school activity *
R, r religious *	C, c appointment *
X, x bus tardy *	B, b principal's *
I, i In-School Suspension *	V, v CAR TROUBLE *
@ absence with excuse pending	+ tardy with excuse pending
. present	* not used in absence or tardy totals

1968

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John Ford Middle School

STUDENT: Hughes, Herman Lee

Date: 8/16/93
Page: 2

ATTENDANCE SUMMARY FOR 8/17/92 - 5/28/93

School days in period:	180	Days present:	79.00
Days enrolled:	114.00	Days absent:	35.00
Most consecutive absences:	6	Individual ADA:	0.69
Times tardy:	1.00		

Enrolled	Withdraw
8/17/92 E	2/16/93 W

John Ford Middle School
Discipline Detail Report

Date: 8/16/93

Page: 1

Hughes, Herman L Student ID: 000970369

Reporting Period: 8/17/92 to 5/28/93

ID#	*Infraction / Action Taken	Date	Inf reported by / Action follow up	Ref ID#
1	*HORSEPLAYING ON CAMPUS	9/11/92	L. White	
2	SUSPENDED 3 DAYS	9/11/92	H. Davis	1
3	*REFUSE TO SERVE LUNCH DETENTIO	9/11/92	B. Walling	
4	PADDLED	9/11/92	H. Davis	3
5	*REFUSE TO SERVE LUNCH DETENTIO	9/23/92	B. Walling	
6	PARENTAL CONFERENCE	9/23/92	H. Davis	5
7	*DISRUPTING CLASS	10/ 1/92	Frazier	
8	PADDLED	10/ 1/92	H. Davis	7
9	*DISRUPTIVE BEHAVIOR IN CLASS	10/ 2/92	H. Davis	
10	SUSPENDED 2 DAYS	10/ 2/92	H. Davis	9
11	*ARGUING	10/ 6/92	Walling	
12	LUNCH DETENTION	10/ 6/92	H. Davis	11
13	*REFUSE TO SERVE LUNCH DETENTIO	10/21/92	E. Walters	
14	SUSPENDED 1 DAY	10/21/92	H. Davis	13
15	*DISRUPTIVE BEHAVIOR ON CAMPUS	10/30/92	H. DAVIS	
16	SUSPENDED 3 DAYS	10/30/92	H. DAVIS	15
17	*FIGHTING	11/10/92	J. Mckinney	
18	SUSPENDED 5 DAYS	11/10/92	J. McKinney	17
19	*FAILURE TO FOLLOW INSTRUCTIONS	11/17/92	H. Davis	
20	SUSPENDED 2 DAYS	11/17/92	H. Davis	19

COMMENT :

11-19-92 Refused to report to in-school suspension after coming off suspension for make-up work.
Recommend expulsion

21	*DISRUPTING CLASS	11/19/92	V. Frazier	
22	SUSPENDED 3 DAYS	11/20/92	H. Davis	21
23	*DISRUPTIVE BEHAVIOR IN CLASS	12/ 2/92	WIENGES	
24	CONFERENCE WITH STUDENT	12/ 2/92	H. DAVIS	23
25	PADDLED	12/ 2/92	DAVIS	23
26	*DISRUPTING CLASS	12/ 7/92	E. Williams	
27	SUSPENDED 2 DAYS	12/ 7/92	H. Davis	26
28	*FAILURE TO FOLLOW INSTRUCTIONS	12/14/92	Williams	
29	SUSPENDED 4 DAYS	12/14/92	H. Davis	28
30	*DESTRUCTION OF PROPERTY	1/ 5/93	WALLING	
31	SUSPENDED 2 DAYS	1/ 5/93	DAVIS	30
32	*DISRESPECT TO TEACHER	1/15/93	Brinkley	
33	SUSPENDED 3 DAYS	1/15/93	H. Davis	32
34	*SEXUAL MISCONDUCT	2/ 1/93	H. DAVIS	
35	SUSPENDED 5 DAYS	2/ 1/93	H. DAVIS	34

COMMENT :

Suspension and Initiation of Expulsion Procedure Hearing scheduled Monday, February 15, 1993 at 7:30 pm.

37	*DISRESPECT TO TEACHER	2/10/93	Inabinet	
38	ADMINISTR HEARING WITH SUP'T.	2/10/93	H. Davis	37

1970

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John Ford Middle School
Discipline Detail Report

Date: 8/16/93
Page: 2

Hughes, Herman L Student ID: 000970369

Reporting Period: 8/17/92 to 5/28/93

ID#	*Infraction / Action Taken	Date	Inf reported by / Action follow up	Ref ID#
-----	----------------------------	------	---------------------------------------	------------

COMMENT :

2-10-93 - Student will appear before the school board on
February 15, 1993.

36 ADMINISTR HEARING WITH SUP'T. 2/15/93 H. Davis 0

COMMENT :

2/15/93 - student expelled for remainder of year effective
2/16/93.

1927

STUDENT ACADEMIC RECORD
Official Transcript

Date: 1971 8/16/93

John Ford Middle School
P.O. Box 287 - Agnes Street
St. Matthews, SC 29135
655-7222

Student: **Hughes Herman Lee**
St. Matthews, SC 29135

Birthdate: [REDACTED]/77
Grade: 7

Enrolled:
8/17/92 - 2/16/93

Cumulative GPA: 1.500 Class Rank: 0 out of 0

1st Qtr	2nd Qtr	1st Sem	3rd Qtr	4th Qtr	2nd Yr	Credit
---------	---------	---------	---------	---------	--------	--------

Courses taken 1992-93 Grade 7

ART	D	F	D		D	0.000
INDUSTRIAL TECHNOLOGY ED	C	D	C		C	0.000

Total Credits:	0.000
Other Credit (not shown above):	0.000
Total Credits Earned:	0.000

Allocated Credits

1928

John Ford Middle School
Discipline Detail Report

Date: 11/30/92

Page: 1

Hughes, Herman L Student ID: 000970369

Reporting Period: 8/17/92 to 11/30/92

ID#	*Infraction / Action Taken	Date	Inf reported by / Action follow up	Ref ID#
1	*HORSEPLAYING ON CAMPUS	9/11/92	L. White	
2	SUSPENDED 3 DAYS	9/11/92	H. Davis	1
3	*REFUSE TO SERVE LUNCH DETENTIO	9/11/92	B. Walling	
4	PADDLED	9/11/92	H. Davis	3
5	*REFUSE TO SERVE LUNCH DETENTIO	9/23/92	B. Walling	
6	PARENTAL CONFERENCE	9/23/92	H. Davis	5
7	*DISRUPTING CLASS	10/ 1/92	Frazier	
8	PADDLED	10/ 1/92	H. Davis	7
9	*DISRUPTIVE BEHAVIOR IN CLASS	10/ 2/92	H. Davis	
10	SUSPENDED 2 DAYS	10/ 2/92	H. Davis	9
11	*ARGUING	10/ 6/92	Walling	
12	LUNCH DETENTION	10/ 6/92	H. Davis	11
13	*REFUSE TO SERVE LUNCH DETENTIO	10/21/92	E. Walters	
14	SUSPENDED 1 DAY	10/21/92	H. Davis	13
15	*DISRUPTIVE BEHAVIOR ON CAMPUS	10/30/92	H. DAVIS	
16	SUSPENDED 3 DAYS	10/30/92	H. DAVIS	15
17	*FIGHTING	11/10/92	J. McKinney	
18	SUSPENDED 5 DAYS	11/10/92	J. McKinney	17
19	*FAILURE TO FOLLOW INSTRUCTIONS	11/17/92	H. Davis	
20	SUSPENDED 2 DAYS	11/17/92	H. Davis	19

COMMENT :

11-19-92 Refused to report to in-school suspension after coming off suspension for make-up work.
Recommend expulsion

21	*DISRUPTING CLASS	11/19/92	V. Frazier	
22	SUSPENDED 3 DAYS	11/20/92	H. Davis	21

1929

1973

John Ford Middle School

STUDENT: Hughes, Herman Lee

Date: 11/30/92

Page: 1

Parent/Guardian: Mr. & Mrs. Charley Hughes
 Address: [REDACTED]
 City: St. Matthews State: SC Zip: 29135
 Grade: 7 Birth Date: [REDACTED]/77
 Home Phone: 874-3855
 Sex: M Ethnic Code: B
 Home Room Tchr: B Walling

ATTENDANCE DETAIL 8/17/92 - 11/30/92

Date	Periods							
	1	2	3	4	5	6	7	8
Monday 9/14/92	S	S	S	S	S	S	S	S
Tuesday 9/15/92	S	S	S	S	S	S	S	S
Wednesday 9/16/92	S	S	S	S	S	S	S	S
Friday 9/25/92	U	U	U	U	U	U	U	U
Monday 10/ 5/92	S	S	S	S	S	S	S	S
Wednesday 10/ 7/92	U	U	U	U	U	U	U	U
Thursday 10/22/92	U	U	U	U	U	U	U	U
Wednesday 11/ 4/92	S	S	S	S	S	S	S	S
Thursday 11/ 5/92	S	S	S	S	S	S	S	S
Friday 11/ 6/92	S	S	S	S	S	S	S	S
Wednesday 11/11/92	S	S	S	S	S	S	S	S
Thursday 11/12/92	S	S	S	S	S	S	S	S
Friday 11/13/92	S	S	S	S	S	S	S	S
Monday 11/16/92	S	S	S	S	S	S	S	S
Tuesday 11/17/92	S	S	S	S	S	S	S	S
Wednesday 11/18/92	S	S	S	S	S	S	S	S
Monday 11/23/92	U	U	U	U	U	U	U	U
Tuesday 11/24/92	U	U	U	U	U	U	U	U

Explanation of codes:

(capital letters = absences, small letters = tardies)

- | | |
|-------------------------------|---------------------------------------|
| U, u unexcused | E, e excused |
| M, m medical | S, s suspension |
| L, l legal * | F, f family/death * |
| W, w DSS * | T, t school activity * |
| R, r religious * | C, c appointment * |
| X, x bus tardy * | B, b principal's * |
| I, i In-School Suspension * | |
| @ absence with excuse pending | + tardy with excuse pending |
| . present | * not used in absence or tardy totals |

1974

1930

~~1760~~

John Ford Middle School

STUDENT: Hughes, Herman Lee

Date: 11/30/92
Page: 2

ATTENDANCE SUMMARY FOR 8/17/92 - 11/30/92

School days in period:	70	Days present:	52.00
Days enrolled:	70.00	Days absent:	18.00
Most consecutive absences:	6	Individual ADA:	0.74
Times tardy:			

Enrolled Withdrew
8/17/92 E

1931
John Ford Middle School
Discipline Detail Report ✓

1975
Date: 3/21/94
Page: 1

Hughes, Herman L Student ID: 247434296

Reporting Period: 8/19/93 to 3/15/94

ID#	*Infraction / Action Taken	Date	Inf reported by / Action follow up	Ref ID#
18	*DISRESPECT TO TEACHER	11/10/93	Fogle	
19	PARENTAL CONFERENCE	11/10/93	H. Davis	18
23	*DISRESPECT TO TEACHER	11/10/93	Fogle	
24	*DISRUPTING CLASS	11/10/93	Fogle	
25	PARENTAL CONFERENCE	11/10/93	Davis	24
1	*DISRESPECT TO TEACHER	11/12/93	Davis	
2	PARENTAL CONFERENCE	11/12/93	Davis	1
3	IN-SCHOOL SUSPENSION 2 DAYS	11/12/93	Davis	1
4	*LEAVING CLASS WITHOUT PERMISSI	12/10/93	D. HILDEBRAND	
5	*DISRESPECT TO TEACHER	12/10/93	HILDEBRAND	
6	SUSPENDED 2 DAYS	12/10/93	H. DAVIS	5
26	*LEAVING CLASS WITHOUT PERMISSI	12/10/93	Hildebrand	
27	*DISRESPECT TO TEACHER	12/10/93	Hildebrand	
28	CONFERENCE WITH STUDENT	12/10/93	Davis	27
29	SUSPENDED 2 DAYS	12/10/93	Davis	27
7	*DISRESPECT TO TEACHER	1/ 3/94	FOGLE	
8	SUSPENDED 5 DAYS	1/ 3/94	H. DAVIS	7
30	*DISRESPECT TO TEACHER	1/ 3/94	Fogle	
31	PARENTAL CONFERENCE	1/ 3/94	Davis	30
32	IN-SCHOOL SUSPENSION 5 DAYS	1/ 3/94	Davis	30
9	*CUTTING CLASS	1/ 6/94	DAVIS	

COMMENT :

1-6-94 WALKING HALLS WITHOUT A PASS; TARDY TO CLASS

10	*DISRESPECT TO TEACHER	1/ 6/94	DAVIS	
11	*USE OF PROFANITY	1/ 6/94	DAVIS	
12	SUSPENDED 3 DAYS	1/ 6/94	DAVIS	11

COMMENT :

1-6-94 NEXT OFFENSE OF THIS NATURE WILL BE RECOMMENDATION FOR EXPULSION

40	*USE OF PROFANITY	1/ 6/94	Davis	
41	*DISRESPECT TO TEACHER	1/ 6/94	Davis	
42	*CUTTING CLASS	1/ 6/94	Davis	
43	SUSPENDED 3 DAYS	1/ 6/94	Davis	42

COMMENT :

Next offense of this nature will be recommendation for expulsion.

13	*DISRESPECT TO TEACHER	1/18/94	FOGLE	
14	*FAILURE TO FOLLOW INSTRUCTIONS	1/18/94	FOGLE	
15	SUSPENDED 10 DAYS	1/18/94	H. DAVIS	14

COMMENT :

1-18-94 - SUSPENDED PENDING BOARD HEARING 1-31-94

16	*HORSEPLAYING ON CAMPUS	1/18/94	STEED	
17	SUSPENDED 3 DAYS	1/18/94	H. DAVIS	16
33	*DISRESPECT TO TEACHER	1/18/94	Fogle	

1976

1932

John Ford Middle School

STUDENT: Hughes, Herman Lee

Date: 3/21/94
Page: 1

Parent/Guardian: Ms. Lucille Hughes
Address: [redacted]
City: St. Matthews State: SC Zip: 29135
Grade: 8 Birth Date: [redacted]/77
Home Phone: 874-2022
Sex: M Ethnic Code: B
Home Room Tchr: A Hannon

ATTENDANCE DETAIL 8/19/93 - 3/15/94

Date	Periods							
	1	2	3	4	5	6	7	8
Friday	11/12/93	I	I	I	I	I		
Thursday	12/ 2/93	U	U	U	U	U		
Monday	12/ 6/93	E	E	E	.	.		
Tuesday	12/ 7/93			U	U		U	U
Monday	12/13/93			S	S		S	S
Tuesday	12/14/93	S	S	S	S	S		
Wednesday	12/15/93			U	U		U	U
Thursday	12/16/93	U	U	U	U	U		
Tuesday	1/ 4/94			.	.		V	.
Friday	1/ 7/94	U	U	U	U	U		
Monday	1/10/94			S	S		S	S
Tuesday	1/11/94	S	S	S	S	S		
Wednesday	1/12/94			S	S		S	S
Tuesday	1/18/94			U	U		U	U
Wednesday	1/19/94	S	S	S	S	S		
Thursday	1/20/94			S	S		S	S
Friday	1/21/94	S	S	S	S	S		
Monday	1/24/94			S	S		S	S
Tuesday	1/26/94	S	S	S	S	S		
Wednesday	1/26/94			S	S		S	S
Thursday	1/27/94	S	S	S	S	S		
Friday	1/28/94			S	S		S	S
Monday	1/31/94	S	S	S	S	S		

Explanation of codes:

(capital letters = absences, small letters = tardies)

U, u unexcused

M, m medical

L, l legal *

W, w DSS *

R, r religious *

X, x bus tardy *

I, i In-School Suspension *

K, k HOMEBOUND

@ absence with excuse pending

. present

E, e excused

S, s suspension

F, f family/death *

T, t school activity *

C, c appointment *

B, b principal's *

V, v CAR TROUBLE *

+ tardy with excuse pending

* not used in absence or tardy totals

1933

1977

John Ford Middle School
Discipline Detail Report

Date: 3/21/94
Page: 2

Jghes, Herman L Student ID: 247434296

Reporting Period: 8/19/93 to 3/15/94

ID#	*Infraction / Action Taken	Date	Inf reported by / Action follow up	Ref ID#
34	*FAILURE TO FOLLOW INSTRUCTIONS	1/18/94	Fogle	
35	SUSPENDED 10 DAYS	1/18/94	Davis	34
36	ADMINISTR HEARING WITH SUP'T.	1/18/94	Davis	34
37	*HORSEPLAYING ON CAMPUS	1/18/94	Steed	
38	CONFERENCE WITH STUDENT	1/18/94	Davis	37
39	SUSPENDED 3 DAYS	1/18/94	Davis	37
20	ADMINISTR HEARING WITH SUP'T.	1/21/94	H. Davis	16
21	RECOMMEND EXPULSION	1/21/94	H. Davis	16
22	SUSP'D FOR REMAINDER OF YEAR	2/ 2/94	R. Holloway	16

1978

1934

John Ford Middle School



STUDENT: Hughes, Herman Lee

Date: 3/21/94

Page: 2

ATTENDANCE SUMMARY FOR 8/19/93 - 3/16/94

School days in period:	130	Days present:	35.00
Days enrolled:	56.00	Days absent:	21.00
Most consecutive absences:	10	Individual ADA:	0.63
Times tardy:			

Enrolled	Withdraw
10/27/93 E	2/ 2/94 W

JOHN FORD MIDDLE SCHOOL
Report Card Third Quarter 1993-94

Hughes, Herman Lee
247434296

Grade 8

Homeroom Teacher: A Hannon

Advisor: A Hannon

Course/Teacher	1st Qtr	2nd Qtr	1st Sem	3rd Qtr	4th Qtr	2nd Sem	Yr
MATHEMATICS Per 1 A Fersner CONDUCT (N/A)						F	
S C HISTORY Per 2 I Brown CONDUCT (N/A)						F	
LANGUAGE ARTS Per 4 T Fogle CONDUCT (N/A)						F	
INTRO TO CONSUMER HOME MA Per 5 A Hannon CONDUCT (N/A)						F	
PHYSICAL EDUCATION Per 6 P Inabinet CONDUCT (N/A)						F	
HEALTH Per 6 P Inabinet CONDUCT (N/A)						F	
READING Per 7 T Pingle CONDUCT (N/A)						D	
EARTH SCIENCE Per 8 A Bair CONDUCT (N/A)						F	

A 95-100	B+ 90-94	B 85-89
C+ 80-84	C 75-79	D 70-74
F 69 & Below	P PASSING	F FAILING
B BORDERLINE		

1980

1936

RECEIVED JAN 23 1986
ATTEST, TRUE COF
J. ROBERT WAINMAKER
CLERK OF COURT
CALHOUN COUNTY

Calhoun County School District

Psychoeducational Evaluation Report
Confidential

Full Name: Herman Hughes
School: Guinyard Elementary
Referred by: Mildred J. Majors
Grade: 2

yr-mo-day
Date Evaluated: 86-01-07
Date of Birth: 77-
Chronological Age: 8-5
Evaluator: Dr. Elizabeth Moore
School Psychologist III

Reason for Referral:

Problems in reading.

Placement at Time of Evaluation:

Public school, regular class.

Screening:

	<u>Date Screened</u>	<u>Findings</u>
Hearing	11-20-85	Within normal limits.
Vision	9-18-85	Within normal limits.
Speech	11-22-85	Within normal limits.

Assessment Procedures:

- Wechsler Intelligence Scale for Children - Revised
- Bender Visual-Motor Gestalt Test
- Goodenough-Harris Drawing Test
- Wide Range Achievement Test - Revised
- Peabody Individual Achievement Test
- Vineland Social Maturity Scale
- Behavioral Checklist(s)
- Review of Records
- Social History

STATE'S EXHIBIT
45

Test Behavior and Background Information:

Herman resorted to immature speech, very slow to respond, many questions had to be repeated, needed much encouragement to keep working, yawned frequently, and made noises with mouth. During the course of the interview and testing, rapport was good and the student cooperated with the examiner. Quality and quantity of the examinee's conversation were considered to be adequate. Some distractibility was noted; when faced with more difficult tasks, perseverance was poor. The student responded indifferently to praise. Physical activity level was normal for a student of this age. Overall effort during this testing session was considered to be poor.

The examinee lives with mother and one sibling. The student's relationship with family members is reported to be good; relationship with peers is good. Minor behavior problems have been reported at home. Developmental milestones during the formative years were reported to be normal. There have been reported no

serious illnesses, accidents, or unusual psychological trauma. The examinee has failed one grade in school. Academic achievement in school is generally failing.

Test Results:

The Wechsler Intelligence Scale for Children - Revised (WISC-R) is a test of general intelligence for use with students from age 6 through 16. The IQ scores have an Arithmetic Average of 100 and a Standard Deviation of 15. This means that 2 out of 3 students score between 85 and 115. Generally, IQ scores are significantly different if they differ by 12 IQ score points. Subtests Scaled Scores have an Arithmetic Average of 10 and a Standard Deviation of 3. This means that 2 out of 3 students score between 7 and 13.

	<u>Intelligence Quotient</u>
Verbal	87
Performance	75
Full Scale	80

	<u>Scaled Score</u>
<u>VERBAL SUBTESTS</u>	
<u>Information:</u> Associative thinking and comprehension of facts acquired in home and in school -- based upon interest, remote memory, and alertness to surroundings.	4
<u>Similarities:</u> Abstract and concrete reasoning abilities. Involves verbal concept formation, associative thinking, and remote memory.	9
<u>Arithmetic:</u> Ability to apply basic arithmetic processes in personal and social mathematics problem-solving. Attention and concentration.	9
<u>Vocabulary:</u> Ability to understand words and express self. Accumulated verbal learning ability, range of ideas, and fund of information.	9
<u>Comprehension:</u> Use of common sense, moral and ethical judgment in practical, common-sense situations.	9
<u>PERFORMANCE SUBTESTS</u>	
<u>Picture Completion:</u> Visualizing essential from non-essential detail. Requires visual recognition and identification of familiar objects.	9
<u>Picture Arrangement:</u> Seeing a total situation through the use of sequential planning related to a series of events. Requires comprehension and organization.	3
<u>Block Design:</u> Ability to perceive, analyze, synthesize and reproduce abstract designs. Requires comprehension and organization.	3

Object Assembly: Visual-motor coordination; simple assembly skills; ability to synthesize concrete parts into meaningful wholes. 8

Coding: Ability to learn visual-motor skills from repetitive experiences. Involves visual-motor dexterity, speed, and accuracy. 9

The Bender Visual-Motor Gestalt Test is a visual-motor perceptual test which consists of copying 9 geometric forms on plain paper. The Bender is scored for errors; therefore, a high score indicates poor performance while a low score reflects good performance. The number of errors was 12, which indicates that visual-motor perception is 5 years, 5 months to 5 years, 11 months. Errors made were: 5 in distortion of shape, 5 in rotation, 0 in integration, and 2 in perseveration. The Bender can also be used to estimate the presence of emotional problems. The number of emotional indicators noted on this evaluation is 0.

The Goodenough-Harris Drawing Test is a nonverbal test of intellectual maturity for ages 3 to 15. A drawing is scored by checking off the presence of specified characteristics, which are related to the examinee's accuracy of observation and development of conceptual thinking. The examinee obtained the following:

Standard Score = 70.

This Standard Score is not identical to the intelligence quotient derived from other tests. It is, however, based on an arithmetic average of 100 and a standard deviation of 15; therefore, two out of three examinees score between 85 and 115.

The Peabody Individual Achievement Test is a measure of academic achievement and provides a gross indication of performance in several areas of achievement.

<u>Subtest</u>	<u>Age Norms</u>		<u>Grade Norms</u>	
	<u>Percentile</u>	<u>Standard Score</u>	<u>Percentile</u>	<u>Standard Score</u>
Mathematics	40	96	58	103
Reading Recognition	2	69	5	75
Reading Comprehension	*	*	*	*

The standard score on the Peabody Individual Achievement Test is based upon an arithmetic average of 100 and a standard deviation of 15; therefore, approximately two-thirds of the examinees score between 85 and 115. This test also provides age and grade equivalent scores, which are recognized to be subject to several limitations and possible misinterpretations. A given equivalent score represents performance over a broad range of skills and knowledge and does not necessarily indicate that the subject is actually functioning at the specific level. Equivalent scores represent a "typical" or "average" level of norm-group performance at a given level and do not represent a minimum standard to be expected of all individuals at that level. The promotional and retention policies in effect for the standardization sample influence grade equivalents.

Therefore, the following equivalent scores are provided for information only, rather than for interpretation or making instructional decisions based only upon the scores: age norms -- 8-0 for mathematics, 6-3 for reading recognition, and * for reading comprehension; grade norms -- 2.7 for mathematics, 1.2 for reading recognition, and * for reading comprehension.

*Below Norms.

The Wide Range Achievement Test - Revised is administered as a measure of academic achievement and provides a gross estimation of performance in three areas of achievement.

<u>Subtest</u>	<u>Percentile</u>	<u>Standard Score</u>
Reading	65	1
Spelling	70	2
Arithmetic	83	13

The standard score on the Wide Range Achievement Test is based on an arithmetic average of 100 and a standard deviation of 15; therefore, approximately two-thirds of the examinees score between 85 and 115. This test also provides grade ratings, which are recognized to be subject to several limitations and possible misinterpretations. A grade rating represents performance over a broad range of skills and knowledge and does not necessarily indicate that the subject is actually functioning at the specific level. Grade ratings represent a "typical" or "average" level of norm-group performance at a given level and do not represent a minimum standard to be expected of all individuals at that level. The promotional and retention policies in effect for the standardization sample influence grade ratings. Therefore, the following grade ratings are provided for information only, rather than for interpretation or making instructional decisions based only upon the ratings: 1M for reading, 1E for spelling, and 2M for arithmetic.

The Vineland Social Maturity Scale is an orally presented developmental instrument which assesses the examinee's ability to look after personal needs and to assume responsibility. The Vineland samples ability in the areas of self-sufficiency, occupational activities, communications, self-direction, and social participation. Results are:

Social Quotient = 75

The Social Quotient is based on an arithmetic average of 100 and a standard deviation of 16; therefore, approximately 2 out of 3 examinees score between 84 and 116.

Behavioral Checklist(s) indicate: Indifferent; talkative; eager for praise; needs frequent reassurance; confused; irrelevant responses; immature.

Summary and Conclusions:

Herman was referred for evaluation to determine eligibility in a program for the handicapped. Analysis of psychoeducational test data, health screening, anecdotal records and background information reveals the following: There is no significant physiological dysfunction in hearing, vision or speech. No evidence of cultural/social deprivation is reported to the extent that learning would be significantly affected. Verbal mental ability, as measured by this test battery, is in the low average range; non-verbal mental ability is in the

1940

below average range. Academic achievement is below average in all areas measured. Academic achievement in Reading Recognition and Reading Comprehension is severely discrepant with intellectual ability level. No significant emotional problems were indicated by projective tests or anecdotal data. Adaptive behavior, as reported, is commensurate with this student's demonstrated mental ability. In conclusion, the examinee appears to meet South Carolina State Department of Education guidelines for classification as Learning Disabled.

Recommendations:

"Show and Tell" as a matter of class routine. Structure "Show and Tell" by encouraging the student to bring specific items to tell about -- leaves, footwear, handwear (gloves -- work and play).

Have the student discuss local geography, names of streets surrounding school, street address, etc.

The student with a deficiency in the information area will have to have more individual attention. Extra time may well be utilized in extending explanations.

Make extensive use of concrete materials such as blocks, pictures, pegboards. Use Stern materials and Cuisenaire Rods in teaching basic math.

Present new work sequentially and give ample opportunity to master a new concept before the next concept is presented.

There should be frequent reinforcement of previously acquired skills by allowing more time for practice exercises.

Visual perceptual abilities may have to be reinforced by use of the Frostig materials, Continental Press materials, and Visual Motor Integration materials. If formal materials are not available, encourage exercises in tracing and coloring within the lines.

Form board exercises should be helpful to this student.

Encourage awareness of safety rules and procedures. Why is order necessary in fire drills? Why respect property rights of others?

Interpret simple proverbs. "Haste makes waste." "The early bird catches the worm."

Discuss abstract terms such as kindness, sadness, etc.

Failure in beginning reading is sometimes the result of inadequate short-term memory rather than the student's not understanding meaning. Emphasis in a remedial program should be on specific auditory and visual short-term memory drills.

1941

For an indulged child who actively resists and refuses drill and repetition which is necessary to master basic concepts in reading, the student is given on-level readiness work and the teacher must insist it be done, even if the student misses recess, early lunch, and after school dismissal. Work is steadily increased as the student realizes the work must be done and learns new gratification from mastery as well as release from deprivation.

A What-Not-Box contains small objects (string, button, pencil, toy chair, car, etc.) and a set of words to match. The student takes the box and places the items in a row, matching the word-card to the item.

For students having problems in reading comprehension, the Merrill Skill Texts are recommended. When the student begins to find some success, give praise, or reward only occasionally. Too much praise is tawdry and backfires. The student should not be permitted to disturb the learning of classmates and should be dealt with sternly to conform to reasonable class norms on social conduct.

The parents should be as relaxed as possible and not let the student know that they are anxious about reading progress. They should be reassured that the problem is quite common and, although progress may be slow, the student will eventually learn to read if steady efforts are made by all concerned.

Try unusual materials to arouse the student's curiosity over basic quantitative concepts, i.e., their own weights and heights, various world records, student records, etc.

Games have been used to overcome a poor number sense, fear and dislike of arithmetic. A hopscotch type of game laid out on the floor with numbers one through ten can be played to use both addition and subtraction.

Many students suffering emotional upsets of a personal nature do not have the ability to concentrate for a long assignment. Break the work into smaller units, not less work, but less exposure at any one time. Short-term goals usually serve as mild reinforcers and keep the child motivated.

Parents of preschool children, as well as those in kindergarten and the primary grades, should be encouraged to play arithmetic table games with their children (e.g., Old Maid, Chutes and Ladders, Picture Lotto, Picture Domino). Aside from the value of pleasant social interaction, the children (who may have to be helped at first) soon show ability to count, recognize colors, perceive similarities and differences, to learn to wait for their turn, and to experience success and failure.

Provide a star chart where each student receives a star when achievement is as good or better than the week before. This is more motivating to students than requiring a grade of 100% which many of them can never earn.

Use Valett's Psychoeducational Resource Program No. 43, by Fearon Publications.

Give opportunity for tension release through light muscle activity between periods of study and work.

1986

EUGHES, Herman

1942



7

Use a narrow horizontal opening or window cut out of cardboard in order to isolate the material which the student is working on in order to focus attention.

A handwritten signature in cursive script, appearing to read 'Roy N. Fowler', written over a horizontal line.

Roy N. Fowler
School Psychologist II

INDIVIDUAL TEST FORM

SLOSSON INTELLIGENCE TEST

Richard L. Slosson, M.A.

me Hughes, Herman Lee
LAST FIRST MIDDLE
 Address [REDACTED] St. Matthews, S.C.
 School/Agency John Ford Middle School
 Sex M Grade 6 Parent Charley & Lucille Hughes
 Referred By Kathleen Link Teacher
NAME POSITION
 Examiner James E. McKinney Guidance Counselor
NAME POSITION
 Comments: _____

Test Results:	
Chronological Age (CA)	13-6
Mental Age (MA)	9-0
Intelligence Quotient (IQ)	68
Percentile Rank (PR)	1
Normal Curve Equivalent (NCE)	8.0
Stanine Category	1
T-score	90

Finding the MA Basal Age <u>6-4</u> <small>(JUST BEFORE FIRST ERROR)</small>	Date of Test: <u>1991</u> <u>Feb.</u> <u>7</u> <small>YEAR MONTH DAY</small>
Added months _____ <small>(QUESTIONS PASSED AFTER BASAL AGE)</small>	Date of Birth: <u>1977</u> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>YEAR MONTH DAY</small>
<u>32</u>	Chronological Age: * <u>13</u> <u>[REDACTED]</u> <u>[REDACTED]</u> <small>YEAR MONTH DAY**</small>
MA <u>9-0</u>	<small>*When using Norms Tables, the minimum CA is 2 years and never exceeds 18 years. **If the number of days exceeds 15, consider as a full month and increase the months by one.</small>

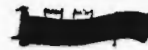
CONVERTING	1-12	4-48	7-84	10-120	13-156	16-192	19-228	22-264	25-300
YEARS	2-24	5-60	8-96	11-132	14-168	17-204	20-240	23-276	26-312
TO MONTHS:	3-36	6-72	9-108	12-144	15-180	18-216	21-252	24-288	27-324

1/2 MONTH'S CREDIT		1 MONTH'S CREDIT		2 MONTH'S CREDIT			3 MONTH'S CREDIT	
Years and months		Years and months		Years and months			Years and months	
0-0.5	1-0.0	2-0	4-0	+ 5-0	+ 9-0	- 13-0	16-0	22-0
0-1.0	1-0.5	2-1	4-1	+ 5-2	+ 9-2	- 13-2	16-3	22-3
0-1.5	1-1.0	2-2	4-2	+ 5-4	- 9-4	- 13-4	16-6	22-6
0-2.0	1-1.5	2-3	4-3	+ 5-6	- 9-6	- 13-6	16-9	22-9
0-2.5	1-2.0	2-4	4-4	+ 5-8	- 9-8	- 13-8	17-0	23-0
0-3.0	1-2.5	2-5	4-5	+ 5-10	- 9-10	- 13-10	17-3	23-3
0-3.5	1-3.0	2-6	4-6	+ 6-0	- 10-0	- 14-0	17-6	23-6
0-4.0	1-3.5	2-7	4-7	+ 6-2	+ 10-2	14-2	17-9	23-9
0-4.5	1-4.0	2-8	4-8	+ 6-4	- 10-4	14-4	18-0	24-0
0-5.0	1-4.5	2-9	4-9	- 6-6	+ 10-6	14-6	18-3	24-3
0-5.5	1-5.0	2-10	4-10	+ 6-8	+ 10-8	14-8	18-6	24-6
0-6.0	1-5.5	2-11	+ 4-11	- 6-10	- 10-10	14-10	18-9	24-9
0-6.5	1-6.0	3-0		- 7-0	- 11-0	15-0	19-0	25-0
0-7.0	1-6.5	3-1		+ 7-2	- 11-2	15-2	19-3	25-3
0-7.5	1-7.0	3-2		+ 7-4	- 11-4	15-4	19-6	25-6
0-8.0	1-7.5	3-3		+ 7-6	- 11-6	15-6	19-9	25-9
0-8.5	1-8.0	3-4		+ 7-8	- 11-8	15-8	20-0	26-0
0-9.0	1-8.5	3-5		+ 7-10	+ 11-10	15-10	20-3	26-3
0-9.5	1-9.0	3-6		+ 8-0	- 12-0		20-6	26-6
0-10.0	1-9.5	3-7		- 8-2	- 12-2		20-9	26-9
0-10.5	1-10.0	3-8		+ 8-4	+ 12-4		21-0	27-0
0-11.0	1-10.5	3-9		- 8-6	- 12-6		21-3	
0-11.5	1-11.0	3-10		- 8-8	- 12-8		21-6	
	1-11.5	3-11		+ 8-10	- 12-10		21-9	

1/2 X _____ = _____ 1 X _____ = _____ 2 X 16 = 32 3 X _____ = _____

1988

1944



ATTEST: TRUE COPY
J. Keitt Wannamaker
J. KEITT WANNAMAHER
CLERK OF COURT
CALHOUN COUNTY

Psychoeducational Evaluation Report
Confidential

Calhoun County School District
St. Matthews, South Carolina

yr-mo-day

Full Name: Herman Hughes
Grade: 6
Referred By: Student Services
School: John Ford Middle
Parent(s): Charlie & Lucille Hughes
Address: [Redacted]
St. Matthews, SC
Telephone: 655-7845

Date Evaluated: 91-5-09
Date of Birth: 77-[Redacted]
Chronological Age: 13-9

Examiner: Peggy Campbell
School Psychologist II

CONFIDENTIAL

Reason for Referral:

Problems in reading and math.

RECEIVED JUN 4 1991

Placement at Time of Evaluation:

Public school, regular class.

Screening:

	<u>Date Screened</u>	<u>Findings</u>
Hearing	2/22/91	Adequate.
Vision	2/22/91	Adequate.
Health	2/22/91	Adequate.
Speech/ Language	4/19/91	Adequate.

STATES EXHIBIT

46

Assessment Procedures:

- Wechsler Intelligence Scale for Children - Revised
- Bender Visual-Motor Gestalt Test
- Goodenough-Harris Drawing Test
- Wide Range Achievement Test - Revised
- Review of Records
- Social History
- Behavioral Checklist(s)
- Interview with Special Education Personnel

Test Behavior and Background Information:

Herman is an attractive boy who initially commented on the amount of work requested of him. However, as the testing progressed, he participated willingly and appeared to enjoy all tasks presented. Rapport was good. The student's cooperation was good. Quality and quantity of the examinee's conversation were considered to be adequate. Some distractibility was noted; when faced with more difficult tasks, perseverance was good. The student responded favorably to praise. Physical activity level was normal for a student of this age. Overall effort during this testing session was considered to be good.

The examinee lives with both parents and one sibling. The student's relationship with family members is reported to be good; relationship with peers is good. No behavior problems have been reported at home. Developmental milestones are reported to be normal. There have been reported no serious illnesses, accidents or unusual psychological trauma. The examinee has failed two or more grades in school. Academic achievement in school is generally below average.

Test Results:

The Wechsler Intelligence Scale for Children - Revised (WISC-R) is a test of general intelligence for use with students from age 6 through 16. The IQ scores have an Arithmetic Average of 100 and a Standard Deviation of 15. This means that 2 out of 3 students score between 85 and 115. Generally, IQ scores are significantly different if they differ by 12 IQ score points. Subtests Scaled Scores have an Arithmetic Average of 10 and a Standard Deviation of 3. This means that 2 out of 3 students score between 7 and 13.

Verbal Intelligence Quotient = 75
 Performance Intelligence Quotient = 77
 Full Scale Intelligence Quotient = 74

	<u>Scaled Score</u>
<u>VERBAL SUBTESTS</u>	
<u>Information:</u> Associative thinking and comprehension of facts acquired in home and in school -- based upon interest, remote memory, and alertness to surroundings.	4
<u>Similarities:</u> Abstract and concrete reasoning abilities. Involves verbal concept formation, associative thinking, and remote memory.	7
<u>Arithmetic:</u> Ability to apply basic arithmetic processes in personal and social mathematics problem-solving. Attention and concentration.	6
<u>Vocabulary:</u> Ability to understand words and express self. Accumulated verbal learning ability, range of ideas, and fund of information.	5
<u>Comprehension:</u> Use of common sense, moral and ethical judgement in practical, common-sense situations.	8
<u>PERFORMANCE SUBTESTS:</u>	
<u>Picture Completion:</u> Visualizing essential from non-essential detail. Requires visual recognition and identification of familiar objects.	6
<u>Picture Arrangement:</u> Seeing a total situation through the use of sequential planning related to a series of events. Requires comprehension and organization.	9

HUGHES, Herman

3

Block Design: Ability to perceive, analyze, synthesize and reproduce abstract designs. Requires comprehension and organization. 3

Object Assembly: Visual-motor coordination; simple assembly skills; ability to synthesize concrete parts into meaningful wholes. 7

Coding: Ability to learn visual-motor skills from repetitive experiences. Involves visual-motor dexterity, speed, and accuracy. 8

The Bender Visual-Motor Gestalt Test is a visual-motor perceptual test which consists of copying 9 geometric forms on plain paper. The Bender is scored for errors; therefore, a high score indicates poor performance while a low score reflects good performance. The number of errors was 5, which indicates that visual-motor perception is 7 years, 6 months to 7 years, 11 months. Errors made were: 4 in distortion of shape, 0 in rotation, 1 in integration, and 0 in perseveration.

The Goodenough-Harris Drawing Test is a nonverbal test of intellectual maturity for ages 2 to 16. A drawing is scored by checking off the presence of specified characteristics, which are related to the examinee's accuracy of observation and development of conceptual thinking. The examinee obtained the following:

Standard Score = 85

This Standard Score is not identical to the intelligence quotient derived from other tests. It is, however, based on an arithmetic average of 100 and a standard deviation of 15; therefore, two out of three examinees score between 85 and 115.

The Wide Range Achievement Test - Revised, Level 2 is administered as a measure of academic achievement and provides a gross estimation of performance in three areas of achievement.

<u>Subtest</u>	<u>Percentile</u>	<u>Standard Score</u>	<u>Grade Rating</u>
Reading	1	67	<3
Spelling	1	66	<3
Arithmetic	3	72	5B

The standard score on the Wide Range Achievement Test - Revised is based on an arithmetic average of 100 and a standard deviation of 15; therefore, approximately two-thirds of the examinees score between 85 and 115. This test also provides grade ratings, which are recognized to be subject to several limitations and possible misinterpretations. A grade rating represents performance over a broad range of skills and knowledge and does not necessarily indicate that the subject is actually functioning at the specific level. Grade ratings represent a "typical" or "average" level of norm-group performance at a given level and do not represent a minimum standard to be expected of all individuals at that level. The promotional and retention policies in effect for

the standardization sample influence grade ratings. Therefore, the above grade ratings are provided for information only; rather than for interpretation or making instructional decisions based only upon the ratings.

Behavioral Checklist (s) indicate: Relative strengths are seen in good-natured and makes friends. Relative weaknesses are seen in mathematics & reading; verbal fluency; motor skills; personal responsibility; distractibility; motivation; and organizational skills.

Summary and Conclusions:

Herman was referred for evaluation to determine eligibility in a program for the handicapped. Analysis of psychoeducational test data, health screening, anecdotal records and background information reveals the following: There is no significant physiological dysfunction in hearing, vision or speech. Verbal mental ability, as measured by this test battery, is in the below average range; non-verbal mental ability is in the below average range. Academic achievement is below average in all areas measured. There is no significant discrepancy between intellectual ability and achievement. Adaptive behavior, as reported, is commensurate with this students demonstrated mental ability. In conclusion, the examinee does not appear to meet South Carolina State Department of Education guidelines for classification as a handicapped student because no severe discrepancy was found between achievement and ability scores and significant emotional indicators were not present.

Recommendations:

Instructional materials that are too simple or too difficult tend to produce inattention and disinterest. Short, dynamic periods are often more successful than long periods of any one activity. Dramatization of the material, the intensity of presentation, and varying ways of display all aid attention and learning.

Many dull-normal students, if evaluated carefully, are those who are potentially of average intelligence but have emotional or physical problems which detract from their intellectual functioning. Remediate for the specific problems detected to encourage full use of latent ability in a "shot-gun" approach at therapies and instructional adjustments.

Well-planned activities decrease unacceptable behavior. There is little time for misbehavior in a busy and interesting classroom. To discourage tardiness or discipline problems in school, for example, the teacher should start the day's work with interesting activities.

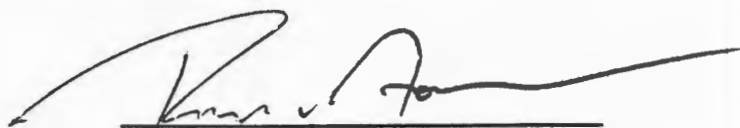
Provide below-grade-level subject matter and experiences that approximate the student's low-average mental age. There should be diversified reading material at different grade levels from which to give assignments and instruction. Lecture and verbal orientations are generally valueless for this student who, if anything, deals more comfortably in the concrete, tangible, simpler world of things, not words.

Praise often for tasks well done. Provide a sufficient quantity of work geared to the student's level to engender a feeling of accomplishment in the student. Consider a simple formula: lack of positive reinforcement equals drop-out from school.

The student should be given the kind of assignments, particularly in social studies and science, that are highly structured and concrete. Large projects requiring organization and conceptual ability should be eliminated and the contribution should be in terms of the student's capabilities, i.e., drawing, building models, lettering and decorating, researching a specific number of facts in books which the student can read and use.

Do not force the student to compete with students of higher intelligence. Try to organize less strenuous academic programs which will not cause negative attitudes and rebelliousness toward learning.

At the beginning of any instructional unit the student should be presented with familiar material since meaningful material is acquired more readily.



Roy N. Fowler
School Psychologist II

Pg 1 of ___ pgs

1949

DATE 3-20-94 PLACE Sheriff Dept TIME STARTED _____ M

I, the undersigned, HERMAN L. HUGHES, JR., am 16 years of age, my date and place of birth being the _____, 1977, at Orangeburg.

My present address is _____ St Matthews, SC.

Before answering any questions or making any statements, DC Jones, a person who identified himself as a Sheriff,

DULY WARNED AND ADVISED ME:

1. That I have the right to remain silent and not make any statement at all.
2. That any statement I do make can be used against me in court.
3. That I have the right to have an attorney present at any time during questioning.
4. That if I cannot afford an attorney, I can apply to the court to have one appointed at no cost to me.
5. That if I decide to talk to an officer without an attorney present, I may stop at any time and request an attorney be present for further questioning.

UNDERSTANDING THESE RIGHTS, I MAKE THE FOLLOWING STATEMENT:

On Friday night Debeey Pearce and myself went to the Blue Diamond ^{apex} I walked in asked for money and shot the woman. Debeey was looking through the window then he came in got the gun and shot the man we got the money and took the car to Daniel's house and put the money on the hood. We divided up the money and left the house. We drove the grey car to the Ebony Club and left there.

I Miranda Singday Mother of above suspect wrote this statement as it was told to me.

Witness Debeey
 Notary Public _____
 My Commission expires _____

Herman Hughes
 Person giving Statement
 Date 3-20-94

1994

1950

ATTEST: TRUE COPY
J. Keitt Wainmaker
J. KEITT WAINMAKER
CLERK OF COURT
CALHOUN COUNTY

TAPED STATEMENT OF KELLY HOFFMAN

EARL RHUDY: TODAY'S DATE IS MARCH 25TH, 1994, 6:42 P.M., I'M AT THE RICHLAND COUNTY, UH, MEDICAL CENTER. I'M INTERVIEWING KELLY HOFFMAN WHO IS AWARE THAT THE CONVERSATION IS BEING RECORDED. WE ARE RIGHT NOW IN THE LOBBY OF THE HOSPITAL ON THE SEVENTH FLOOR. UH, SHE IS BEING TOLD THAT, OR SHE HAS ASKED ME THAT SHE SPEAKS TO ME ALONE WITHOUT THE PRESENCE OF HER MOTHER, SHE IS BEING ADVISED THAT HER MOTHER CAN BE HERE IF SHE DESIRES, BUT KELLY DESIRES THAT HER MOTHER NOT BE HERE. KELLY HAS GOT HER MOUTH WIRED SHUT, UH, SHE CANNOT SPEAK VERY PLAIN SO I WILL BE ASKING THE QUESTIONS, AND SHE IS A LITTLE BIT HARD TO UNDERSTAND, BUT WE ARE GOING TO WORK THROUGH THAT. I WILL ALSO BE GIVING HER ANSWERS AND MAKE SURE IT'S CORRECT IN WHAT I ASKED HER. OKAY, KELLY, YOU ARE 17 YEARS OLD?

KELLY HOFFMAN: UN HUN.

EARL RHUDY: OKAY, AND YOU, YOU WERE THE ONE SHOT AT THE BLUE DIAMOND CASINO LAST FRIDAY NIGHT?

KELLY HOFFMAN: YES.

EARL RHUDY: OKAY, THAT'S ONE WEEK AGO TONIGHT, RIGHT?

KELLY HOFFMAN: YES.

**DEFENDANT'S
EXHIBIT**

1951

EARL RHUDY: OKAY, ARE YOU ABLE TO TELL ME KINDA WHAT HAPPEN AT THAT NIGHT?

KELLY HOFFMAN: YES. ME AND KEN, WE WOULDN'T DOING WELL, REALLY SLOW, THERE WERE NO CUSTOMERS, AND HE WAS PLAYING A VIDEO POKER MACHINE AND I WAS SITTING BEHIND THE DESK IN A CHAIR WHEN THIS YOUNG BLACK GUY CAME IN. I REMEMBER IT WAS SUSPICIOUS BECAUSE HE WAS SO YOUNG.

EARL RHUDY: HE WAS WHAT?

KELLY HOFFMAN: SO YOUNG.

EARL RHUDY: OKAY.

KELLY HOFFMAN: LOOKING. HE LOOKED ABOUT FIFTEEN, AND UM.

EARL RHUDY: CAN YOU TELL ME WHAT KIND OF CLOTHES HE HAD ON?

KELLY HOFFMAN: I DON'T REMEMBER.

EARL RHUDY: CAN YOU TELL ME IF HE HAD A HAT ON OR NOT?

KELLY HOFFMAN: I SURE DON'T REMEMBER.

EARL RHUDY: OKAY. GO AHEAD.

1996

1952

KELLY HOFFMAN: NO, NO, I DON'T THINK HE DID. I REMEMBER JUST THAT HIS FACE LOOKED REAL YOUNG. BUT UMN.

EARL RHUDY: YOU, IN ANOTHER WORDS YOU THINK YOU COULD PICK HIM UP PICK HIM OUT IN A LINE UP?

KELLY HOFFMAN: I KNOW, CAUSE, WHEN HE CAME IN I THOUGHT TO MYSELF HE'S KINDA CUTE, AND YOU KNOW, AND, SO I DEFINITELY REMEMBER HIS FACE.

EARL RHUDY: OKAY.

KELLY HOFFMAN: AND HE ASKED KEN HOW TO PLAY AND KEN SHOWED HIM. AND HE, AND THEN HE SAID, I'M GONNA GO GET SOME MONEY, I'LL BE RIGHT BACK.

EARL RHUDY: HOW LONG WAS HE IN THERE, HOW LONG DID HE TALK TO KEN?

KELLY HOFFMAN: ABOUT 3 MINUTES.

EARL RHUDY: ABOUT 3 MINUTES?

KELLY HOFFMAN: YEA, HE WAS GONE OUT ABOUT 5 MINUTES.

EARL RHUDY: HE WAS GONE OUTSIDE FOR ABOUT 5 MINUTES?

1953

~~1700~~

KELLY HOFFMAN: YES, AND WHEN, WHEN HE CAME BACK, I WAS SITTING IN THE CHAIR ON THE PHONE.

EARL RHUDY: BEHIND THE DESK?

KELLY HOFFMAN: YES. AND KEN WAS STANDING BESIDE ME BEHIND THE DESK. THEN HE CAME OVER AND GAVE KEN A FIFTY, AND KEN WENT ON AND SAID "DO YOU WANT TWENTIES OR WHAT?"

EARL RHUDY: GAVE KEN?

KELLY HOFFMAN: A FIFTY.

EARL RHUDY: A FIFTY DOLLAR BILL?

KELLY HOFFMAN: YEA, AND SAID, DO WANT TWENTIES OR WHAT? AND WHEN KEN LOOKED UP AND I LOOKED UP, THE GUY HAD A GUN POINTED AT HIS FACE. IT LOOKED LIKE A 9 MILLIMETER AND UM.

EARL RHUDY: OKAY, LET ME ASK YOU THIS. WAS IT AH, AH, DO YOU KNOW WHAT I'M TALKING ABOUT WHEN I TALK ABOUT BLUE STEEL?

KELLY HOFFMAN: I HAVE NO IDEA.

EARL RHUDY: AH, WAS IT SHINY?

1998

1954

~~1954~~

KELLY HOFFMAN:
IT WAS DULL.

NO, NO, I THINK IT, I DON'T THINK SO, I THINK

EARL RHUDY:

OKAY. AH, BUT YOU THINK IT WAS A 9 MILLIMETER?

KELLY HOFFMAN:
SPECIALIST.

YEA, IT LOOKED LIKE ONE AND, I'M NOT NO

EARL RHUDY:

OKAY, GO AHEAD.

KELLY HOFFMAN:

AND UM, HE SAID "GIVE ME ALL THE MONEY NOW",
AND KEN SAID "OKAY, NO PROBLEM", AND THEN HE TURNED TO ME AND SAID
"GET OFF THE PHONE NOW", AND SO I TOLD MY FRIEND I HAD TO GO.

EARL RHUDY:

OKAY, NOW THIS IS THE SAME GUY THAT KEN SHOWED
HOW TO AH, TO PLAY THE VIDEO MACHINES?

KELLY HOFFMAN:

YEA, IT'S THE SAME ONE.

EARL RHUDY:

OKAY.

KELLY HOFFMAN:

AND UM.

EARL RHUDY:

YOU TOLD WHO ON, YOU TOLD THE PERSON ON THE
PHONE THAT YOU HAD TO GO?

KELLY HOFFMAN: YEA, AH, AND I GOT OFF THE PHONE WITH HER, AND I WAS SITTING THERE LOOKING DOWN AND KEN WAS HANDING HIM THE MONEY AND HE SAID "GIVE ME YOUR KEYS" AND SO KEN GAVE HIM HIS CAR KEYS AND THEN.

EARL RHUDY: DID KEN THROW THE KEYS TOWARDS HIM?

KELLY HOFFMAN: HE HANDED THEM TO HIM.

EARL RHUDY: OKAY, DID HE DROP THEM ON THE FLOOR OR DID HE DROP THEM ON THE DESK OR ANYTHING LIKE THAT, DO YOU REMEMBER?

KELLY HOFFMAN: I DON'T REMEMBER.

EARL RHUDY: OKAY.

KELLY HOFFMAN: I REMEMBER THEY WERE SITTING ON THE DESK WHEN HE HANDED THEM TO HIM, I DON'T, THEN I WAS SCARED TO LOOK.

EARL RHUDY: OKAY.

1956

KELLY HOFFMAN: UM, KEN WAS SHAKING, AND KEN WAS TRYING TO HURRY UP AND GIVE HIM THE REST OF THE MONEY AND THE GUY JUST OFF AND SHOT HIM AND THEN I SAID "OH MY GOD", AND I JUST GLANCED AND I SEEN HE WAS SHOT IN THE HEAD, AND I KNEW THEN IT IS BEEN DONE AND THE GUY, I WAS LOOKING AT THE GUY AND HE LOOKED AT ME LIKE HE JUST REMEMBERED I WAS THERE AND HE SHOT ME IN THE FACE AND THEN HE SAT THERE LIKE DECIDING WHETHER I WAS DEAD OR NOT AND I GUESS HE DECIDED I WASN'T SO THEN HE SHOT ME IN THE CHEST AND SO I LAID THERE, I WAS SCARED HE WOULD SHOOT ME AGAIN SO I LAID REAL STILL HOPING THAT HE WOULD THINK I WAS DEAD.

EARL RHUDY: DID YOU HAVE YOUR EYES CLOSED?

KELLY HOFFMAN: YES.

EARL RHUDY: OKAY.

KELLY HOFFMAN: AND THEN I CLOSED THEM. I WAS FACE DOWN AND MY FACE WAS ON THE DESK AND MY ARMS WERE HANGING BY MY SIDES, I WAS STILL IN THE CHAIR AND KEN WAS ON THE FLOOR.

EARL RHUDY: DID YOU EVER GO ON THE FLOOR?

KELLY HOFFMAN: NO. UM, I WAITED FOR WHAT SEEMED LIKE A LONG TIME WHILE HE WAS GETTIN HIS STUFF AND MONEY TOGETHER, THEN I HEARD, HE SHOT AGAIN AND IT SOUNDED LIKE HE WAS SHOOTING AT THE PHONE, TRYING TO SHOOT THE PHONE.