

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2012-212107

JONATHAN KYLE BINNEY, SK 6009 Petitioner/Respondent,

v.

STATE OF SOUTH CAROLINA Respondent/Petitioner.

APPENDIX
VOLUME VII OF XII

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1 Q If you don't mind, if you would locate it for
2 me.

3 A This is mine.

4 Q Now, I got a report, Detective Lestage, that
5 the solicitor's office has provided for me. It's a
6 four-page report, and I'm just trying to make sure
7 that the copy that I hold in my hand is the same
8 thing that you got. So do you mind looking at this
9 copy I have and making sure it is, in fact, a copy
10 of your report?

11 A Yes, sir, it seems to be.

12 MR. SLADE: Your Honor, the witness just
13 identified the copy that I handed her, that I have
14 here, as a copy of her report on this investigation,
15 and I would ask if it could be put into evidence as
16 the next Court's Exhibit, please, sir.

17 THE COURT: You may.

18 MR. LEIBERT: No objection.

19 (Investigation Report, dated 12-13-99 from
20 Investigator Diane Lestage, marked as Court's
21 Exhibit No. 7 for identification)

22 BY MR. SLADE:

23 Q Now, Detective Lestage, the point in your
24 getting these consents that you got from Ms. Binney
25 is you recognized that this search warrant that you

1 had, that you took out to the Binney residence, is
2 basically invalid for permitting the search of that
3 computer, right?

4 A Yes, sir.

5 Q You recognized that Court Exhibit No. 4 does
6 not justify the police looking at Mr. and Mrs.
7 Binney's computer, right, or the computer that you
8 saw at the Binney house?

9 A Yes, sir.

10 Q And the reason that you didn't go into anything
11 about the computer is you didn't see the computer
12 until you got out to the Binney house, right?

13 A I was aware that he had a computer, but I did
14 not see it until I was at his home.

15 Q And you didn't get the consent to search from
16 Mrs. Binney until you got out to that house, right?

17 A That's correct. When I was at the home is when
18 I asked consent to look in the computer.

19 Q Now, Ms. Binney -- on the 9th, the day that you
20 went out to the Binney house, the day that you got
21 this search warrant, Ms. Binney was with y'all at
22 the Spartanburg County Sheriff's Office. And, in
23 fact, Mr. Binney was up there too, right?

24 A Yes, sir.

25 Q Had been there basically most of the afternoon,

1 correct?

2 A I'm not sure if she stayed the whole time. She
3 stayed in the lobby and she was not in an interview
4 room the whole time, so I do not know if she stayed
5 there the whole time, no, sir.

6 Q Now, I'm going to ask you to look at Court's
7 Exhibit No. 7, please, ma'am. And I would like for
8 you to turn to the last page. Do you have the last
9 page?

10 A Yes, sir.

11 Q All right. Now, the main thing that y'all went
12 out looking -- or let me -- excuse me. Let me back
13 up and rephrase that.

14 The thing that you were fairly certain that you
15 would find out at the Binney house was the vibrator
16 that he told y'all that he had put in his shoe, or
17 you had information that he had put it in his shoe
18 from another interview?

19 A Yes, sir.

20 Q Let's begin right there. "We located that
21 vibrator in the shoe and other sexual aids that were
22 took. The items listed on the evidence form.
23 Officer Lively then checked the computer to where he
24 could check for child pornography." It doesn't say
25 anything about y'all getting any kind of consent

1 form signed by Ms. Binney, does it?

2 A No, it does not say that.

3 Q You didn't put that in your report? In other
4 words, if you read this report, Detective Lestage,
5 it looks like that Officer Lively went straight from
6 you and him hunting for the vibrator in the shoe and
7 other sexual aids to checking the computer, right?

8 A It's not written down, but there was a consent
9 form signed.

10 Q Right there at the house?

11 A Yes, sir.

12 Q Now, let's take a look at the first permission
13 to search that you had signed by Ms. Binney. And it
14 was signed at 6:20. And where did you put that you
15 and Ms. Binney were when you got this search, this
16 consent to search signed?

17 THE COURT: Tell me what that number is.

18 MR. SLADE: No. 6, Your Honor.

19 A What I put on the consent form was the address
20 of the home and that we were to check the computer
21 inside the home. This was before we checked the
22 computer. This was getting consent to do so and it
23 was at 6:20 p.m..

24 BY MR. SLADE:

25 Q Well, doesn't it appear to you from looking at

1 this exhibit that we are referring to, that this
2 consent to search form was signed at the sheriff's
3 office? At 6:20, on December 9th, Spartanburg
4 County Sheriff's Office.

5 A If it says it was at the Spartanburg County
6 Sheriff's Office, which it does, then I'm wrong and
7 it was at the Spartanburg County Sheriff's Office.

8 Q Well, you testified earlier that essentially
9 you didn't ask for consent to search the computer
10 until you, in fact, saw the computer at the Binney
11 household, correct?

12 A That is correct.

13 Q And at the time that you were at the sheriff's
14 department, you had not yet seen any computer at the
15 Binney household, had you?

16 A No, sir.

17 Q Now I'm going to ask you to refer back to your
18 report, which is Court Exhibit No. 7.

19 Now, let's begin at "Officer Lively then
20 checked the computer to where he could check for
21 child pornography. When he got on the computer,
22 there was so many different files showing
23 pornography, he told me he would have to take the
24 computer and check it better. I advised Ms. Binney
25 that she could sign a consent for me to take it or I

1 would go get a search warrant. She gave me consent
2 and Officer Lively took the computer and other
3 items."

4 So, you did put in your report that a consent
5 form was signed in order to take the computer from
6 the Binney household, right?

7 A Yes, sir.

8 Q And that's Court's Exhibit No. 5.

9 So at the time that you wrote this report that
10 we are referring to, you could recall and thought it
11 was important enough to put the second consent form,
12 if, in fact, it was the second, in the report,
13 right?

14 A I can tell you that I remember being at the
15 home and having Mrs. Binney sign the consent form
16 for the computer. And after she gave us consent and
17 we realized there was pornography on the computer, I
18 called my supervisor from the home and told him,
19 after Mrs. Binney had given us consent to take the
20 computer, I asked him what he thought I should do.
21 And he said to write up a second consent form
22 putting down exactly what we were going to take. So
23 that is -- that is the second consent form.

24 Why the first one says Spartanburg County
25 Sheriff's Office, it does appear that that's where

1 it would have been, since that is what's written,
2 but I can tell you that both consent forms were
3 signed at the residence. And for it to say to check
4 the computer inside the home, that consent form was
5 signed at the home, because we did not bring up the
6 computer until we had seen it at the home. So,
7 again, that must be a mistake on my part, as far as
8 it saying Spartanburg County Sheriff's Office.

9 Q Well, thank you for that, Detective Lestage,
10 but my question is why didn't you put anything in
11 your report about the consent form that you say was
12 signed at 6:20, if, in fact, it was? Why didn't you
13 put anything in your report about it?

14 A That was an oversight on my part.

15 Q Now, at the time that y'all actually started
16 having the computer looked into at SLED, you got
17 another search warrant, right?

18 A Yes, sir.

19 Q And why did you do that, Detective Lestage?

20 A To get the contents of what was inside the
21 computer.

22 Q Even though you had already gotten a consent
23 form to look in the computer, right?

24 A We had gotten consent that night, but after we
25 took the computer, I needed a search warrant in

1 order for SLED to go ahead and examine the computer.

2 Q All right. I would like to address the
3 chronology of that. Y'all took the computer back to
4 the sheriff's department, correct?

5 A Yes, sir.

6 Q And it was sometime after that before the
7 computer actually went to SLED, right?

8 A Yes, sir.

9 Q And you sent it down to SLED and whoever was
10 going to look -- to actually look at the information
11 inside the computer asked y'all if you had a search
12 warrant for it, right?

13 A I'm sure they did. I'm sure a copy was sent
14 with the computer.

15 Q A copy of the search warrant, the first search
16 warrant, Court's Exhibit No. 4, right?

17 A I'm sure we provided both search warrants, but
18 I know we would have provided a search warrant for
19 the actual computer with the computer when it was
20 sent to SLED.

21 Q So to make sure I understand, you are telling
22 me that you would have gotten what is Court's
23 Exhibit No. 3, the February 9 search warrant, before
24 you ever sent the computer to SLED?

25 A To my knowledge, the computer was not sent to

1 SLED until the search warrant was sent with it. But
2 I can tell you that the computer was placed into
3 evidence. And once my search warrant was drawn up
4 for it to be sent to SLED, that's when it would have
5 been sent.

6 Q All right. My question is this, Detective
7 Lestage. If you already had a consent, the consent
8 that you say was signed at 6:20 at the sheriff's
9 department -- or what's written on it says it was
10 signed at 6:20 at the sheriff's office. If you
11 already had that consent, what in the world made you
12 think that you needed to get a second search
13 warrant?

14 A I felt it necessary. Someone from SLED may
15 have told me to draw up a search warrant, or I may
16 have just done it.

17 Q Well, what I'm trying to get to is what
18 triggered it in your mind that you thought well,
19 maybe this isn't -- maybe this consent isn't good
20 enough. What -- what made you think -- what was the
21 reason that you started thinking of maybe I need to
22 get another search warrant?

23 A I had received consent that night to look at
24 the computer. But once I took the computer, in
25 order for us to look at it again, I felt it

1 necessary to have a search warrant.

2 Q Well, did you discuss whether or not you ought
3 to get a search warrant before you sent it to SLED
4 with anybody?

5 A I may have. I -- I don't recall.

6 Q All right. If you may have, do you think it
7 might have been that the person that you discussed
8 it with brought it to your attention that this
9 second consent form, Court's Exhibit No. 5, wasn't
10 actually sufficient to look in the computer?

11 A I'm sure -- no, I don't -- I don't recall
12 anyone telling me that. I believe I spoke with
13 Amanda Simmons with SLED before I sent the computer
14 down and she would have told me what she needed.
15 But I knew that the consent to look in the computer
16 was for that night. And in order for it to be
17 examined later, it would be appropriate to get a
18 search warrant.

19 MR. SLADE: Beg the indulgence of the court for
20 just one minute.

21 (off the record)

22 (back on the record)

23 MR. SLADE: I don't have any other questions,
24 Your Honor.

25 MR. LEIBERT: Nothing further, Your Honor.

1 THE COURT: Thank you. You may step down.

2 MR. LEIBERT: Amanda Simmons.

3 SLED AGENT AMANDA SIMMONS, having been first
4 duly sworn, testified as follows:

5 MR. LEIBERT: If it please the court, Your
6 Honor.

7 THE COURT: Mr. Leibert.

8 DIRECT EXAMINATION BY MR. LEIBERT:

9 Q Please state your name.

10 A My name is Amanda Simmons.

11 Q And where are you employed?

12 A I'm employed at the South Carolina Law
13 Enforcement Division.

14 Q What is your position there?

15 A I am a special agent assigned to the South
16 Carolina Computer Crime Center to investigate
17 computer forensics.

18 Q How long have you been in that position?

19 A I have been presently in that position since
20 1998. We formed a separate unit in the year 2000,
21 but I have been handling the computer exam since
22 1998.

23 Q Did you receive a computer regarding Mr. Binney
24 from the Spartanburg County Sheriff's Department?

25 A Yes, that is correct.

1 Q All right. Can you tell the court the date
2 that you received that?

3 A Ms. Jackie Chapman brought the computer to SLED
4 on February the 15th, year 2000. The computers,
5 excuse me.

6 Q What, if anything, would you have received
7 along with the computer?

8 A On that date we received an HP, which is a
9 Hewlett Packard 8100 Series Computer, a Sony CPU
10 computer. I have the serial numbers, if needed.

11 In addition to that, they had several hard
12 drives, floppy diskettes, zip diskettes. And
13 contained in one of the systems was some compact
14 discs.

15 Q Were you asked to search this computer?

16 A Yes, that is correct.

17 Q Did you ever advise anybody to get a search
18 warrant before you searched it?

19 A Typically if the appropriate paperwork is not
20 in place, we would advise them of that. In this
21 particular case I do not recall whether or not that
22 was the case. Paperwork was provided, and I believe
23 copies of that have already been submitted to the
24 court.

25 Q Did you then conduct a search of the computer?

1 A Yes, that is correct. I conducted a search of
2 the computer hard drives, as well as the other
3 media.

4 Q All right. And what did you find?

5 A What we basically do is we make forensic copies
6 of the evidence that is brought to SLED. In this
7 particular case, as with any other case, we would
8 make a forensic copy of the hard drives or the
9 media, and the examination revealed that numerous
10 images were found on the computer hard drive in
11 excess of approximately 20,000 images of a
12 pornographic nature.

13 Q Of those 20,000 images of a pornographic
14 nature, approximately how many would have involved
15 minors?

16 A I would have to go back and do a complete
17 review to give an estimate of that account.

18 Q To the best of your knowledge, were there
19 multiple images of children?

20 A That is correct.

21 Q All right. Can you identify these documents?

22 A These are copies of the pornographic images
23 from the computer.

24 Q And do some of them or -- do any of them
25 portray minors?

1 A They appear to contain images of minors engaged
2 in sexual activity.

3 Q Those were taken off Mr. Binney's computer?

4 A Those were taken off of the computers that were
5 submitted to SLED.

6 MR. LEIBERT: Mark this as Court's Exhibit 8.

7 (80 Pages of Pornographic Computer Images were
8 marked as Court's Exhibit No. 8 for identification)

9 MR. LEIBERT: Your Honor, I would offer this as
10 Court Exhibit 8 for purposes of this hearing.

11 BY MR. LEIBERT:

12 Q Please answer any questions Mr. Slade may have.

13 CROSS EXAMINATION BY MR. SLADE:

14 Q Agent Simmons, before you looked in the
15 computers you just have been describing, or the
16 computer that you described getting those images in
17 Court's Exhibit No. 8, did you have any
18 conversations with Detective Lestage about this case --
19 about that case?

20 A Typically that's the procedure, but in this
21 particular case, as with many others, I don't recall
22 the specific conversations. When the computers are
23 brought to SLED, we -- my supervisor reviews the
24 paperwork to make sure the appropriate paperwork is
25 in order before we conduct the search. And that

1 paperwork was provided to SLED.

2 Q When you say you don't have any specific
3 recollections of conversations, I'm not asking you
4 at this point what it is about the substance of the
5 conversations. I'm asking you if you talked to her
6 about the case?

7 A I couldn't specifically say at this point, sir.

8 Q You don't know if you even talked to her before
9 you looked at the computer?

10 A Typically that is the case, but in this -- as
11 with many cases, unless I make a note on my
12 paperwork, I don't.

13 Q Did you refer to your paperwork on this case?

14 A Pardon?

15 Q In preparation for this hearing, did you refer
16 to your paperwork on this case?

17 A I do not have any note of actually speaking to
18 her, but that's typically the procedure. The
19 investigator handling the case would make the
20 request.

21 Q My question was a little more specific. Did
22 you look at your notes for this case?

23 A Yes, sir, I did.

24 Q Is there anything on those notes about any
25 conversation with Detective Lestage?

1 A No, sir.

2 Q And it's your recollection that -- or is it
3 your recollection that Court's Exhibit No. 3 was
4 with the computer when it came to SLED?

5 A Yes, sir, that would have been provided.

6 Q Would you have searched it without --

7 Let me back up a step. You keep referring in
8 your testimony to making sure the paperwork is in
9 order before you searched the computer. Are you
10 referring to whether or not there is a search
11 warrant with it?

12 A Basically our procedures are there has to be an
13 appropriate court document, whether it be a search
14 warrant, a consent to search, or other
15 documentation, before we search the computer.

16 Q Okay. So if you had a consent to search, would
17 you have -- would you go ahead -- does SLED policy
18 allow you to go ahead and search the computer?

19 A If it's approved by my supervisor, sir.

20 Q Well, my question is very specific. If you
21 have a consent to search, will SLED search a
22 computer?

23 A Yes, sir. If it is approved by the supervisor,
24 yes, sir.

25 Q Well, I understand you got to have your

1 supervisor look at your paperwork. I'm just asking
2 a generally policy question. SLED will search a
3 computer, like you did in this case, just with a
4 consent to search form, right?

5 A Yes, sir.

6 Q And I understand that you want the supervisor
7 to back you up on it and look at the paperwork., I'm
8 just asking you policy question. All right.

9 Again, I'm just going to ask you a policy
10 question.

11 A Okay.

12 Q All right. I'm going to show you Court's
13 Exhibit No. 6 and ask you if you have ever seen a
14 form like this before?

15 A Yes, sir, that was -- that form -- that
16 specific form was provided to SLED, along with the
17 other consent to search and the search warrant.

18 Q Well, in the course of your doing this kind of
19 work for SLED, you have seen permission to search
20 forms, which is what's written at the top, right?

21 A Yes, sir.

22 Q And it is your testimony that if y'all have a --
23 that SLED will search a computer if all the
24 paperwork that they have is a permission to search
25 form, right?

1 A As long as the appropriate documentation is in
2 that consent to search, yes, sir.

3 Q So that's a yes?

4 A Yes, sir.

5 MR. SLADE: I don't have any other questions
6 for Agent Simmons, Your Honor.

7 MR. LEIBERT: No further questions.

8 THE COURT: You may step down.

9 MR. LEIBERT: Your Honor, that is our showing
10 as to that issue.

11 MR. SLADE: Your Honor, could the court indulge
12 me just a minute? I need to talk with Ms. Binney
13 for just one second.

14 (off the record)

15 (back on the record)

16 MR. SLADE: Your Honor, we are not going to
17 call any witnesses.

18 THE COURT: No witnesses?

19 MR. SLADE: Yes, sir, that's correct.

20 THE COURT: All right.

21 MR. SLADE: Your Honor, I'm sorry, do you want
22 to hear arguments on this now, or do you want to
23 deal with the Jackson v. Denno first?

24 THE COURT: Why don't we go ahead and take all
25 the testimony and we will do the argument all at

1 once.

2 MR. SLADE: Yes, sir.

3 MR. GOWDY: Your Honor, the State would call
4 Jason Yown.

5 (Voluntary Written Statement from Jonathan
6 Binney, dated 12-8-99, marked as State's Exhibit No.
7 110 for identification)

8 OFFICER JASON YOWN, having been first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. GOWDY:

11 Q Good morning, Detective Yown.

12 A Good morning, sir.

13 Q Tell the court where you work and how long you
14 have been there.

15 A Spartanburg County Sheriff's Office, seven
16 years and three months.

17 Q You are currently a detective?

18 A Correct.

19 Q In December of 2000, what department were you
20 assigned to -- in December of '99, I'm sorry.

21 A Spartanburg County Sheriff's Office. I was a
22 second shift investigator.

23 Q Do you recall being called to Mary Black
24 Hospital on December the 7th of 1999?

25 A I do.

- 1 Q And why were you called there?
- 2 A We had a uniformed officer that was dispatched
3 to the hospital in reference to an incident. Upon
4 his arrival and speaking to people involved with the
5 case, he requested an investigator to respond.
- 6 Q And you did respond?
- 7 A I did. I think I arrived at approximately five
8 minutes 'til eight p.m..
- 9 Q What was the nature of the incident that you
10 were called to respond to?
- 11 A Possible sexual assault.
- 12 Q Involving?
- 13 A Mr. Jonathan Binney and his daughter.
- 14 Q Involving a three month old, right?
- 15 A Yes, an infant.
- 16 Q When you went to Mary Black Hospital, did you
17 find Mr. Binney?
- 18 A I did.
- 19 Q And did you talk to him?
- 20 A Yes, sir.
- 21 Q Did you read him his Miranda Rights?
- 22 A No, sir.
- 23 Q Why did you not?
- 24 A At that time he was a witness.
- 25 Q What information did you have at the time that

1 you talked to Mr. Binney?

2 A After speaking to medical staff, and I spoke to
3 Ms. Binney, I spoke to Mr. Binney, that he was home
4 alone. He was in the process of bathing his
5 daughter and the incident occurred in the shower.

6 Q And the small child, [REDACTED] Binney, suffered
7 an injury to her vaginal area, is that right?

8 A Yes, sir, she was torn from basically her
9 vaginal area to her rectum.

10 Q Did you talk to the physician before you
11 interviewed Mr. Binney?

12 A No, sir.

13 Q You just went to Mary Black, and since he was
14 the only one at the house at the time of the injury,
15 you talked to him?

16 A Correct.

17 Q He wasn't in custody, was he?

18 A No, sir.

19 Q Did he have handcuffs on?

20 A No, sir.

21 Q Did you threaten him in any way if he didn't
22 talk to you, that bad things would happen to him?

23 A No, sir.

24 Q Let me show you what's been marked for
25 identification as State's 110 and ask you whether or

- 1 not you recognize that?
- 2 A Yes, sir, I do.
- 3 Q What is that, Detective Yown?
- 4 A That's a voluntary statement given by Mr.
- 5 Jonathan Binney, and I witnessed the statement.
- 6 Q It's actually a written statement, would it not
- 7 be?
- 8 A Yes, sir, it is a written. Mr. Binney wrote
- 9 this statement himself.
- 10 Q His handwriting or yours?
- 11 A His handwriting.
- 12 Q And did he write that after you and he
- 13 discussed the incident with [REDACTED]?
- 14 A Yes.
- 15 Q Did you tell him what to put in it?
- 16 A No, sir.
- 17 Q Those are his own words?
- 18 A Those are his words and he made corrections in
- 19 this statement.
- 20 Q Did he sign it?
- 21 A He initialed the corrections and he signed it
- 22 at the bottom.
- 23 Q Do you recall what time that statement ended or
- 24 you got through talking to Mr. Binney?
- 25 A It's noted on the statement that this statement

1 was completed at 9:05 p.m., on the 7th of December,
2 1999.

3 Q And the 7th would be the day that the injury
4 happened to [REDACTED] right?

5 A Correct.

6 Q When you got through talking to Mr. Binney, did
7 he stay at the hospital?

8 A I believe so. They were making procedures for
9 surgery and then admitting [REDACTED] I'm not sure.
10 He was there when I left.

11 Q You didn't arrest him?

12 A No, sir.

13 Q You didn't take him back to the sheriff's
14 department?

15 A No, sir.

16 MR. GOWDY: Your Honor, we would move State's
17 110 into evidence.

18 THE COURT: Admitted.

19 MR. GOWDY: And we don't have any further
20 questions from Mr. Yown.

21 CROSS EXAMINATION BY MR. SLADE:

22 Q Detective Yown, at the time that you went out
23 to the hospital, you went out there for the purpose
24 of talking to Jonathan Binney, didn't you?

25 A Just not solely him, but, yes, sir, I did speak

1 to Mr. Binney.

2 Q Well, you went out there -- I'm not talking
3 about all the other purposes, but you had the
4 definite purpose of talking to Jonathan Binney when
5 you went out there?

6 A Yes, sir.

7 Q Well, obviously you knew he wasn't going to be
8 able to talk to the victim. She's a three month old
9 child, right?

10 A Correct.

11 Q And you went out there, in part, to talk to Mr.
12 Binney?

13 A As I was responding to the scene, I didn't know
14 who I was going to speak to, whether it was male,
15 female. I didn't know until I got there and spoke
16 to the officer.

17 Q All right. And what did the officer report to
18 you?

19 A Basically what was in his incident report. And
20 his incident report that the age of the victim, the
21 injuries that the victim had received, and the
22 people or person in this case who was with her at
23 the time of the injury.

24 Q All right. So you had -- before you talked to
25 Mr. Binney, you had a description of a very serious

1 injury to a three month old, right?

2 A The extent of the injury did not come to until
3 I talked to the surgeon after Mr. Binney. I knew
4 that she was injured, correct, but I did not know
5 the extent of the injury.

6 Q All right. And you knew it was an injury to
7 her sexual organs?

8 A Yes, sir.

9 Q All right. And you knew that it was of such a
10 nature that the personnel at Mary Black had called
11 the policeman, right?

12 A Yes, sir.

13 Q And they do that when they have a suspicion
14 that there has been a sexual assault on a child?

15 A I don't know what their regulations are.

16 Q Well, you know they have an obligation to
17 report it, don't you?

18 A Sure, but I would assume that if they could
19 easily think that that was an accident too. I mean,
20 I don't think they can determine intent or causation
21 or anything like that.

22 Q They report suspicious --

23 A Sure.

24 Q -- injury?

25 A Sure.

1 Q So by definition, when they call you, it's a
2 suspicious injury, right?

3 A Yes.

4 Q And you knew from the report that you got from
5 the officer at Mary Black that Mr. Binney was the
6 only person at home with her, right?

7 A And the toddler. His son, yes.

8 Q That's what I mean.

9 A Yes. The only adult, yes.

10 Q The only adult?

11 A Yes, sir.

12 Q And so from the very beginning when you first
13 started talking to Mr. Binney, you knew that there
14 was a suspicious injury to a three month old and you
15 knew that Mr. Binney was the only adult there, so
16 you suspected Mr. Binney from the time that you
17 started talking to him, right?

18 A Suspect him of what?

19 Q Suspect him of causing the injury to his child.

20 A Sure.

21 Q All right. And where did you talk to him at
22 the hospital?

23 A I think they have a waiting room inside the
24 emergency room. I mean, not the actual one that you
25 would walk into, but back in the emergency room. I

1 think I would consider it like a family room.

2 Q And when you went to see Mr. Binney and to talk
3 to Mr. Binney, you identified yourself as a
4 detective with the Spartanburg County Sheriff's
5 Office?

6 A As I do with everybody, yes, sir.

7 Q The answer is yes?

8 A Yes.

9 Q So you went to Mr. Binney and you told him that
10 you were with the Spartanburg County Sheriff's
11 Office and you asked him to come talk with you,
12 right?

13 A I do not recall where we made initial contact,
14 but I'm sure we -- I had spoke to Ms. Binney in that
15 room. I had spoke to the nurses in that room. I
16 cannot recall if I was already in the room in the
17 hall exactly, but.

18 Q Well, there was no one else present when you
19 talked with him, was there?

20 A I do not believe so, no, sir.

21 Q All right. And that was your intention, to
22 talk with him without anybody else present?

23 A That's the way it worked out, yes, sir.

24 Q Well, it was your intention to talk -- you
25 could have talked with him when you first met him,

1 couldn't you?

2 A Yes, sir.

3 Q There wasn't anything to prevent that?

4 A Prevent talking to him?

5 Q Where you first met him.

6 A No, sir.

7 Q All right. So when you first met him, in order
8 to conduct this interview with him, you took him to
9 the conference room, right?

10 A To a waiting room, yes, sir.

11 Q And you took him to that waiting room, which
12 was secluded, right?

13 A I don't really -- took him, do you mean did I
14 take him -- I don't understand the question.

15 Q You invited him to come with you, right?

16 A Yes, sir.

17 Q You chose to location where the interview took
18 place, right?

19 A Yes, sir.

20 Q And when you chose it, you asked him to come
21 with you, right?

22 A Yes, sir.

23 Q And so you said come with me Mr. Binney, and
24 y'all went to this waiting room or conference room
25 where nobody else was and you conducted this

OFFICER JASON YOWN - REDIRECT BY MR. GOWDY
OFFICER DIANE LESTAGE - DIRECT BY MR. GOWDY

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1 interview, right?

2 A Yes, sir.

3 Q And your purpose in conducting that interview
4 was to get information from Mr. Binney about a
5 suspected crime, right?

6 A No, sir, it wasn't a crime at that time.

7 MR. SLADE: I don't have any other questions of
8 this witness, Your Honor.

9 REDIRECT EXAMINATION BY MR. GOWDY:

10 Q Did he have to go with you, Detective Yown?

11 A No, sir, he did not.

12 Q If he hadn't gone, would you have arrested him?

13 A No, sir, I would not.

14 MR. GOWDY: I don't have any further questions
15 for Detective Yown, Your Honor.

16 THE COURT: You may step down.

17 MR. GOWDY: The State would call Diane Lestage.

18 THE COURT: You have previously been sworn, so
19 you will remain under oath for the purpose of these
20 questions.

21 THE WITNESS: Yes, sir.

22 DIRECT EXAMINATION BY MR. GOWDY:

23 Q Good morning Detective Lestage.

24 A Good morning.

25 Q I want to go back with you to December of 1999,

1 specifically December the 8th of 1999. Do you
2 recall being involved in the investigation into
3 injuries suffered by [REDACTED] Binney?

4 A Yes, sir, I do.

5 Q How did you come to be involved in that
6 investigation?

7 A When I arrived to work that morning, I was
8 given the case. I was assigned the case.

9 Q By a supervisor?

10 A Yes, sir.

11 (Pre-Interrogation Waiver Form, dated 12-8-99,
12 marked as State's Exhibit No. 111 for
13 identification)

14 (Voluntary Statement of Jonathan Binney, dated
15 12-8-99, marked as State's Exhibit No. 112 for
16 identification)

17 (Voluntary Statement of Jonathan Binney, dated
18 12-9-99, marked as State's Exhibit No. 113 for
19 identification)

20 BY MR. GOWDY:

21 Q Do you recall whether or not you knew that
22 Detective Yown had already talked to the defendant?

23 A Yes, sir, I was given a copy of the incident
24 report. Also any notes that he had written the day
25 prior, and a copy, I believe, of a statement that

1 Mr. Binney had written.

2 Q Did you talk to anyone else, such as medical
3 personnel?

4 A I did later that morning when I went to the
5 hospital.

6 Q Did you talk to Mr. Binney for the first time
7 before or after you went to the hospital?

8 A I talked to him afterwards.

9 Q What did you learn at the hospital?

10 A When I went to the hospital, I was with
11 Detective Richard White. We went to the hospital
12 room where [REDACTED] had been staying that night. She
13 was there with her mother.

14 Melanie had said that her husband Jonathan was
15 not there at the time. I talked with her briefly,
16 left the room and talked to two different
17 physicians, and then made arrangements to meet Mr.
18 Binney at the sheriff's office.

19 Q Did you talk to the emergency room physician?

20 A Yes, I did.

21 Q Did you talk to the OBGYN that operated on
22 [REDACTED]

23 A Yes, I did, by phone.

24 Q Did Mr. Binney eventually contact you?

25 A Yes, he did.

- 1 Q Did he come into the sheriff's department?
- 2 A Yes, he did.
- 3 Q Would that have been on the 8th of December?
- 4 A Yes, it was.
- 5 Q Did he come by himself?
- 6 A I believe on the 8th he did.
- 7 Q Let me show you State's Exhibit 111 and ask you
8 whether or not you recognize that?
- 9 A Yes, that's the waiver form filled out on that
10 day.
- 11 Q Filled out on the very first time that you
12 talked with Jonathan Binney?
- 13 A Yes, on the 8th.
- 14 Q Why did you read him his Miranda waiver form?
- 15 A After speaking with the physicians at the
16 hospital, they implied that the injuries were not
17 consistent with how Mr. Binney was explaining what
18 happened. So, therefore, I read him his rights
19 before I interviewed him that day.
- 20 Q And did you already have his first explanation
21 of how the injury took place?
- 22 A Yes, I did.
- 23 Q And you had already talked to the physicians?
- 24 A Yes, I had.
- 25 Q And they told you and -- they told you that it

1 was inconsistent with what he said happened?

2 A Correct.

3 Q So he was a suspect?

4 A Yes.

5 Q Did he appear to understand his Fifth Amendment
6 rights?

7 A Yes, he did.

8 Q Did you go over each one of those individually?

9 A Yes, I did.

10 Q Did he evidence in any way that you went over
11 them individually?

12 A I'm sorry?

13 Q Or did you -- did you make any notes as to
14 going over each one of those rights individually?

15 A Well, I placed it in front of him where he
16 could read it with me. And as I'm going along, I
17 check it, the number in which I have read.

18 Q Do you have him sign that form in any place?

19 A Yes, he did.

20 Q Did he appear alert and coherent to you?

21 A Yes, he was.

22 Q Did he appear to be either under the influence
23 of drugs or alcohol?

24 A No, he was not.

25 Q Did you threaten him in any way?

1 A No, I did not.

2 Q Did you promise him anything?

3 A No, sir.

4 MR. GOWDY: Your Honor, we would move State's
5 111 into evidence.

6 THE COURT: It's admitted.

7 BY MR. GOWDY:

8 Q Detective Lestage, after he waived his rights,
9 did you proceed to ask him some questions?

10 A Yes, I did.

11 Q Let me show you State's Exhibit 113 and ask you
12 whether or not you recognize that?

13 A Yes, sir.

14 Q What is that?

15 A This statement is the statement that he gave me
16 on the 9th of December. This is the second
17 statement I received from him.

18 Q All right. Well, let me show you State's 112
19 and ask you whether or not you recognize that?

20 A Yes, sir.

21 Q What is that?

22 A This is the statement I received from him the
23 first day that I interviewed him.

24 Q How long did that interview take?

25 A I'm really not sure of the exact amount of

1 time. I would say he was maybe at the sheriff's
2 office for about two hours.

3 Q And this is on the 8th, right?

4 A It would have been between one to two hours on
5 the 8th, the total amount of time that we spent
6 together.

7 Q Did he write that statement out that's in Mr.
8 Slade's hand right now?

9 A Yes, he did.

10 Q State's 112, did he write that?

11 A Yes, he did.

12 Q Is that his signature at the bottom?

13 A Yes, it is.

14 Q Did you watch him sign it?

15 A Yes, I did.

16 MR. GOWDY: Your Honor, we would move State's
17 112 into evidence.

18 THE COURT: It's admitted.

19 BY MR. GOWDY:

20 Q Did his version of what happened to Mikayla
21 differ from the version that he had given Detective
22 Yown?

23 A Not really, not on that day. He went into
24 detail. He would stand up and demonstrate how he
25 was holding her in the shower.

1 Q Was he still suggesting that it had been an
2 accident?

3 A Yes.

4 Q Had he said anything up to this point about
5 having curious or mischievous thoughts about having
6 sex with her?

7 A No, not at this time.

8 Q Had he said anything up to this point about
9 looking at child porn on the computer before he
10 decided to bathe her?

11 A No.

12 Q When he got through giving this statement, did
13 you place him under arrest?

14 A No, sir, I did not.

15 Q Why not?

16 A I was still investigating the case.

17 Q You didn't think that you had enough after
18 State's 112 to arrest him?

19 A I don't know if I had enough. I did not feel
20 comfortable going to a judge to try to get a warrant
21 at that time. I felt it necessary to continue the
22 investigation.

23 Q But you knew that his statement was
24 inconsistent with what the surgeons were telling
25 you?

1 A That's correct.

2 Q But in your judgment you didn't have enough to
3 make the arrest at that point?

4 A I did not want to even attempt to at that time.

5 Q Did he eventually leave the sheriff's
6 department on the 8th?

7 A Yes, he did.

8 Q Did you ask him to come back on the 9th?

9 A Yes, I did.

10 Q Did you ask him to come back before he left on
11 the 8th, or did you later call him and tell him to
12 come back?

13 A We had arranged it before he left, for him to
14 come back the next day.

15 Q All right. Now, Detective Lewis Burns
16 interviewed him at some point on the 9th, is that
17 right?

18 A Yes, that's correct.

19 Q I'm going to skip over that. We will go
20 through that with Detective Burns.

21 After Detective Burns interviewed him, did you
22 reinterview Mr. Binney?

23 A I did.

24 Q When you reinterviewed Mr. Binney later on in
25 the afternoon of the 9th, did you have benefit of

1 the statement he had given to Lewis Burns?

2 A Yes, I did.

3 Q Was it different in any way from the statement
4 that he had given you the day before?

5 A Yes, it was.

6 Q In what way did it begin to become different?
7 Or would you like to see Lewis Burns' statement?

8 A He went into detail about maybe some
9 inappropriate thoughts that he had been having with
10 Detective Burns.

11 Q He had mentioned the word daydreaming about his
12 daughter?

13 A Right, yes.

14 Q Now, when you interviewed him on the 9th, which
15 would be your second interview of him, right?

16 A Yes.

17 Q And it would also be the second time that he
18 was interviewed on the 9th, correct?

19 A Yes, sir.

20 Q Did you remirandize Mr. Binney?

21 A No, sir.

22 Q Why not?

23 A Detective Lewis had already done that.

24 Q Detective Burns had already mirandized?

25 A I'm sorry, Detective Burns, yes.

1 Q Earlier that day?

2 A Yes, sir.

3 Q Was Mr. Binney free to go when you interviewed
4 him at 2:10 on the 9th?

5 A Yes, he was.

6 Q He could have walked out of the sheriff's
7 department if he wanted to?

8 A Yes, sir.

9 Q Did you threaten him in any way prior to taking
10 the statement from him at 2:10 on the 9th?

11 A No, sir.

12 Q Did you promise him anything?

13 A No, sir.

14 Q Let me show you State's Exhibit 113 and ask you
15 whether or not you recognize that?

16 A Yes, sir.

17 Q What is that?

18 A That is the second statement from Mr. Binney to
19 me.

20 Q So the court is clear or, in an effort to be
21 clear, that is the second statement taken from
22 Jonathan Binney on December the 9th, correct?

23 A Yes.

24 Q And it is also the second statement that you
25 took from him?

1 A Correct.

2 Q And that would be the one, two, three, fourth
3 statement overall taken from Mr. Binney in
4 connection with what happened to [REDACTED] right?

5 A Yes, sir.

6 Q In the statement that you have in your hand
7 right now, the afternoon of December the 9th, did
8 his story evolve further as to what happened to
9 [REDACTED]

10 A Yes, sir.

11 Q In what way?

12 A He -- he changed what he was saying, basically
13 by saying that he was daydreaming and having some
14 inappropriate thoughts about his daughter and maybe
15 becoming aroused by her.

16 Q He used the word arouse?

17 A He -- he stated in his statement, I suppose,
18 about what it would be like to have an incestual
19 relationship some years in the future, referring to
20 his daughter.

21 Q I want you to look in the middle of that
22 statement. Do you have on there where he said "I
23 was washing her tummy and then her vaginal area,
24 which in a previous statement I said I had not
25 penetrated her. This was true at this point, before

1 the accident."

2 A Yes, sir.

3 Q He talked about daydreaming, what it would be
4 like to have an incestual relationship with her?

5 A Yes.

6 Q Of course, he did put that some years in the
7 future, didn't he?

8 A He stated some years in the future.

9 Q And then the remainder of that statement he
10 goes on to justify the incident as an accident, is
11 that fair?

12 A Yes, sir.

13 Q Did you arrest him after you took this
14 statement from him?

15 A No, sir, not at that time.

16 Q Why not?

17 A I believe that there was more information that
18 he could give us.

19 Q Well, he had already talked about having hard
20 thoughts about her, right?

21 A Yes.

22 Q That he dreamed about having incest with her?

23 A Yes, sir.

24 Q At that point had he admitted sticking a device
25 or himself inside his daughter?

1 A No, sir, not at that time. He was still
2 stating that basically describing it as an accident
3 and still describing it as maybe happening in the
4 shower. And, again, we were not sure if he was
5 being honest with us at that time about how it
6 happened.

7 Q In fact, you were quite sure he wasn't being
8 honest with you, weren't you?

9 A That's correct.

10 Q Did he ever ask for an attorney?

11 A No, sir, he did not.

12 Q Did he ever say he was tired of talking to
13 y'all and ready to go home?

14 A No, sir, he did not.

15 Q Did he ever ask for anything and you deny it to
16 him, such as food, water, or medicine?

17 A No, sir.

18 Q When you got through with that interview on the
19 9th, was he then interviewed by somebody else?

20 A Yes, he was.

21 Q Would that be Detective Denton?

22 A Yes.

23 Q Did you ever actually see the victim?

24 A Yes, I did.

25 (Photograph marked as State's Exhibit No. 114

1 for identification)

2 MR. GOWDY: Your Honor, to the extent that it
3 has not already done, the State would move 112 and
4 113 into evidence.

5 THE COURT: They're in.

6 BY MR. GOWDY:

7 Q Let me show you State's Exhibit No. 114. Do
8 you recognize that picture?

9 A It appears to be [REDACTED] as -- she's older in
10 this picture.

11 Q She's older in that picture than what?

12 A Than when I saw her at the hospital.

13 Q Then let me show you another picture.

14 MR. SLADE: What is the relevance? Well, the
15 same objection. I just didn't see the relevance of
16 it.

17 THE COURT: Well, what is the relevance?

18 MR. GOWDY: Your Honor, I'm trying to -- I have
19 got to at some point connect his daughter to this
20 investigation. I'm just asking her whether or not
21 she recognizes the face that's in this picture.

22 MR. SLADE: I'll stipulate she was
23 investigating the case of [REDACTED] Binney, his
24 daughter.

25 MR. GOWDY: Okay.

1 THE COURT: All right.

2 MR. GOWDY: I don't have any further questions
3 for Detective Lestage.

4 CROSS EXAMINATION BY MR. SLADE:

5 Q Detective Lestage, I would like to begin with
6 December the 9th and your part of the investigation
7 beginning December the 9th.

8 You told the solicitor that you did not
9 mirandize Mr. Binney in your interview with him,
10 right?

11 A That's correct.

12 Q Now, what time did you begin your interview of
13 Mr. Binney on December the 9th?

14 A Between 1:30 and two o'clock in the afternoon.

15 Q All right. Between 1:30 and two o'clock?

16 A Yes, sir.

17 Q Now, at the time that you began to interview
18 Mr. Binney, you knew that the injuries to his
19 daughter were what you would term a criminal sexual
20 assault, right?

21 A Possibly, yes, sir. Yes.

22 Q Well, there wasn't any doubt in your mind that
23 it was a criminal sexual assault, was there?

24 A At that time I was investigating to see how the
25 injuries took place, and I was being told by a

1 doctor that it did not take place the way he was
2 describing. So --

3 Q Well -- go ahead. I'm sorry. I interrupted
4 you.

5 A I was working the case as a possible assault on
6 the child, sexual assault.

7 Q Well, Ms. Lestage, my point is that at some
8 point in your investigation you made up your mind
9 that you were sure that a criminal sexual assault
10 had taken place on [REDACTED] right?

11 A Yes, sir.

12 Q All right. Now, you knew from your
13 conversations with the doctors that the injury that
14 she had could not have been -- could not have been
15 inflicted on her accidentally, right?

16 A That's what I was being told, yes, sir.

17 Q All right. Now, you talked to the doctors and
18 got them that information that you just related to
19 me in your last statement before you interviewed
20 Jonathan at one o'clock, right?

21 A Yes, sir.

22 Q So you knew at the time that you began
23 interviewing him that the injuries to his daughter
24 was a criminal sexual assault, right?

25 A I was working it as a possible sexual assault,

1 yes.

2 Q Now, you knew at the time that you began your
3 interview at one o'clock that Jonathan had given
4 what the sheriff's department had termed conflicting
5 statements, right?

6 A Are you talking about the interview on the 9th,
7 or --

8 Q I'm just asking you a general question,
9 Detective Lestage, about the information that you
10 had in your head.

11 It was your opinion he had given statements
12 inconsistent with the factual evidence as you knew
13 them, right?

14 A Yes, sir.

15 Q All right. You knew that you were going to
16 arrest him, didn't you?

17 When you began talking to him, you knew that
18 you were going to arrest him?

19 A At that time I was investigating the case, and
20 I can't say that I knew for sure I was going to
21 arrest him. I was still trying to gather evidence
22 as to what happened.

23 Q All right. And in response to the solicitor's
24 question about why you didn't arrest him during this
25 second December 9th -- this second interview, it

1 would have been your interview December the 9th, is
2 you thought that you could get more information from
3 him, right?

4 A Yes, sir.

5 Q And to put that in layman's terms, what you
6 meant was you wanted to see if he told another story
7 before you scared him with the news of his arrest,
8 right?

9 A No, sir, I'm confused of what you are saying
10 exactly.

11 Q You were -- the reason that you didn't actually
12 formally tell him that he was under arrest during
13 your December 9th conversation with him was you
14 thought that he would keep talking and give you more
15 incriminating evidence, right?

16 A He was not under arrest. I was still
17 investigating the case and trying to gather the
18 information, which I was doing on the 9th, that day.

19 Q After you began your investigation -- excuse
20 me, after you began your interview with him on
21 December 9th, he never left the sheriff's
22 department, did he?

23 A No, sir, he did not.

24 Q All right. And you got -- you got -- you left
25 your interview of him to go get the arrest warrant,

1 didn't you?

2 A When he was being interviewed by Detective
3 Denton after that interview, I left the sheriff's
4 office and went to the magistrate's office and got a
5 warrant.

6 Q Well, I'm trying to get you to identify the
7 chronology a little better.

8 You left your interview with Jonathan to go get
9 a warrant, right?

10 A I left Jonathan Binney while he was being still
11 interviewed by Detective Denton. They were alone
12 together in a room and I left the sheriff's office
13 to get the warrant.

14 MR. SLADE: I don't have any other questions.

15 MR. GOWDY: Nothing on redirect, Your Honor.

16 THE COURT: You may step down.

17 MR. GOWDY: The State calls Lewis Burns.

18 (Statement of Rights Form for Jonathan Binney,
19 dated 12-9-99, marked as State's Exhibit No. 115 for
20 identification)

21 (Voluntary Statement of Jonathan Binney, dated
22 12-9-99, marked as State's Exhibit No. 116 for
23 identification)

24 OFFICER LEWIS BURNS, having been first duly
25 sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. GOWDY:

2 Q Good morning former Detective Burns?

3 A Good morning.

4 Q You used to be with the Spartanburg County

5 Sheriff's Office?

6 A Yes, sir.

7 Q Is it now fair to say that you work for the

8 Federal Government in some capacity?

9 A Yes, sir.

10 Q I want to go back with you to December of 1999,

11 specifically December the 9th. Were you asked to

12 interview Jonathan Binney?

13 A I was.

14 Q At the time were you a detective?

15 A I was.

16 Q Were you in a special position within the

17 sheriff's department?

18 A Yes, sir.

19 Q Who asked you to interview Mr. Binney?

20 A Detective Diane Lestage.

21 Q I want to show you State's Exhibit 115 and ask

22 you whether or not you recognize that?

23 A Yes, sir, this is a photocopy of the rights

24 advisement that I gave to Mr. Binney.

25 Q And what's it dated?

1 A December the 12th, 19 -- excuse me, December
2 the 9th, 1999.

3 Q And what time is on it?

4 A 9:50 a.m..

5 Q And would you have gone over Mr. Binney's
6 rights with him?

7 A Yes, sir, I would have read them word for word
8 off of this form.

9 Q And would he have indicated in any way that you
10 had gone over his rights with him?

11 A Yes, sir, he did, by attaching his signature to
12 the form in two locations.

13 Q And is his signature on that form?

14 A It is.

15 Q And is yours as well?

16 A It is.

17 MR. GOWDY: Your Honor, we would move State's
18 115 into evidence.

19 THE COURT: Admitted.

20 BY MR. GOWDY:

21 Q Detective Burns, do you recall whether Mr.
22 Binney was alert and coherent when you were talking
23 to him?

24 A Yes, he was.

25 Q Did you threaten him in any way?

- 1 A No, sir, I didn't.
- 2 Q Did you coerce him?
- 3 A No, sir.
- 4 Q Did you promise him anything in exchange for
- 5 waiving his rights?
- 6 A No, sir.
- 7 Q Did he appear to be under the influence of,
- 8 drugs or alcohol?
- 9 A No, sir. He admitted to me that he had had
- 10 four glasses of wine the night previous, but that he
- 11 was no longer feeling any of the effects of that.
- 12 Q He appeared to understand your questions?
- 13 A He did.
- 14 Q Were his answers responsive to your questions?
- 15 A Yes, they were.
- 16 Q How long did you talk to him, Detective Burns?
- 17 A Several hours. I think we concluded the
- 18 interview with the statement that I finished up was
- 19 almost one o'clock. About ten minutes to one.
- 20 Q You wound up taking a statement from him,
- 21 didn't you?
- 22 A Yes, I did.
- 23 Q Let me show you State's Exhibit 116. Do you
- 24 recognize that?
- 25 A Yes, sir.

1 Q Whose handwriting is that statement in?

2 A This is Mr. Binney's handwriting.

3 Q Would that statement have been taken at the
4 beginning or the end of the three hours that you
5 spent with him?

6 A This was at the end of the three hours.

7 Q All right. Did you tell him what to put in
8 that statement?

9 A No, sir.

10 Q Did you give him a chance to go over it and
11 make any corrections that he wanted to make?

12 A I did. He actually made a couple of errors
13 where he scratched out some things and went back and
14 initialed beside those and reviewed the statement
15 prior to signing it.

16 MR. GOWDY: Your Honor, we would move State's
17 116 into evidence.

18 THE COURT: Admitted.

19 BY MR. GOWDY:

20 Q Now, Detective Burns, you said that that
21 statement was taken towards the end of the
22 interview?

23 A Yes, sir.

24 Q Did y'all talk about the incident prior to him
25 writing the statement?

1 A Yes, sir.

2 Q Can you recall any of the things that he told
3 you during the part of the interview that was not
4 reduced to writing?

5 A Certainly there were a lot of things. Each
6 investigator, of course, uses different styles in
7 their interview. And my -- what I like to do is I
8 tend to talk to them about family and I talk to them
9 about where they are from, what type of situation
10 they are living in that's brought them to me that
11 day.

12 He had told me several things about his life
13 and where he came from and his -- that he had just
14 recently met his birth mother. He told me that he
15 had been having fantasies about involving in sexual
16 acts with her, and that he had actually even spoken
17 to her about that, and that they were dealing with
18 that at that time.

19 We talked about -- he mentioned to me that he
20 had pornography on his computer at home, child
21 pornography.

22 Q He mentioned child pornography on his computer
23 at home?

24 A Yes, sir, we talked about -- when we talked
25 about the issues of what the background behind --

1 what a person who might be involved in something
2 like this would do, that's one of the things that we
3 discuss, is pornography in general. And we
4 discussed that into some detail and he made an
5 admission to that.

6 Q I want you to look towards the middle third of
7 the statement that he wrote for you.

8 A Okay.

9 Q Do you see where he wrote "scared and
10 frightened by the realization of both the horrid
11 thought that took place and with [REDACTED] starting to
12 fall"?

13 A Right.

14 Q Do you see that?

15 A Yes, sir.

16 Q Was he still maintaining in this statement,
17 which would have been at about 12:50 p.m., on the
18 9th, that this was some sort of accident that
19 happened to [REDACTED]

20 A Yes, sir, he was. This was a change from the
21 initial statement that he made, is the reason why
22 that we took this statement from him, but he was
23 still maintaining that it was an accident.

24 Q He continued to talk about daydreaming and what
25 I think you and I would consider to be inappropriate

1 sexual thoughts?

2 A Right. Well, that's what he was talking about
3 was sexual thoughts, yes, sir.

4 Q When you got through with your interview of Mr.
5 Binney, did you place him under arrest?

6 A No, sir.

7 Q Why not?

8 A We was just simply there to interview him. I'm
9 not an investigator on this case. That would be
10 Detective Lestage, and I returned him to her for
11 further interview.

12 I had another appointment at one o'clock, that
13 I was unable to continue interviewing him, so she
14 was going to -- since this was a change from his
15 previous statement, she was going to question him
16 further about this change.

17 Q Did you give her a copy of the statement that
18 this defendant wrote?

19 A I did, yes, sir.

20 Q Please answer any questions that Mr. Slade may
21 have for you.

22 A Certainly.

23 CROSS EXAMINATION BY MR. SLADE:

24 Q Detective Burns?

25 A Yes, sir.

1 Q You said that your approach to interviewing
2 suspects is to begin talking with them about their
3 life experiences, their family, whatever brought
4 them to the situation where they are faced with
5 interviewing?

6 A Right.

7 Q Just a way to get them talking and --

8 A It's a rapport building technique.

9 Q Right. That's good enough.

10 And in the course of the rapport building
11 effort you went into with Jonathan Binney, he told
12 you about his fantasies or thoughts of sex with his
13 birth mother?

14 A Yes, sir.

15 Q And that topic led to your discussion with him
16 of his interest in child pornography?

17 A I wouldn't say that that topic led into that.
18 That was just another area that we discussed.

19 Q All right. When you got into that topic --

20 A Right.

21 Q -- of child pornography.

22 A Okay.

23 Q As you discussed it with him, you discovered
24 that he had pornography on his computer at home?

25 A Yes, sir.

1 Q Did y'all discuss it any further? Did he tell
2 you what he looked at, sites he visited, anything
3 like that?

4 A We talked briefly about that.

5 Q Right.

6 A As to whether it was the type of -- what type
7 of acts were depicted.

8 Q Okay.

9 A But I don't think -- I couldn't tell you
10 exactly what the extent of the conversation was in
11 detail.

12 Q But it was some extended conversation on that
13 topic?

14 A I don't recall how long we discussed it.

15 Q Did you ask him how long -- how often he looked
16 at it?

17 A Oh, I'm sure I did. It seemed to be a problem
18 with him that he had. It seemed like he told me he
19 had an extensive amount of pornography on the
20 computer. I can't -- I can't -- I don't remember
21 for sure, but it seemed like that was what he told
22 me.

23 Q Now, you talked to him at the specific request
24 of Detective Lestage?

25 A That's correct.

1 Q She was -- well, tell us why Detective Lestage
2 thought you ought to interview him as opposed to her
3 continuing to interview him.

4 MR. GOWDY: Your Honor, could I mention
5 something to Mr. Slade real quick?

6 (off the record)

7 (back on the record)

8 BY MR. SLADE:

9 Q Anyway, you were interviewing him at the
10 request of Detective Lestage?

11 A That's correct.

12 Q Now, at the end of your interview --

13 Well, let me back up a step. You were
14 interviewing him at the sheriff's department?

15 A That's correct.

16 Q And at the end of your interview when you said
17 you returned him to Detective Lestage?

18 A That's correct.

19 Q Now, you --

20 A I mean, I was -- I was interviewing him in my
21 office. My office is separate from the
22 investigations office.

23 Q And you --

24 A It's in the same building. It's just --

25 Q You reported to Detective Lestage what he had

1 told you, right?

2 A That's correct. I gave him a copy of this
3 statement and the other things that he had told me.

4 Q And you reported to Detective Lestage that he
5 had told you about the fantasies of sex with his
6 birth mother?

7 A That's correct.

8 Q And you reported to Detective Lestage that he
9 had discussed with you his interest in child
10 pornography?

11 A That's correct.

12 Q And you told Detective Lestage that he had told
13 you that there was some child pornography on his
14 computer?

15 A That's correct.

16 Q And did she express any interest in the child
17 pornography on his computer?

18 A I'm sure she -- I believe she documented it. I
19 don't recall because I had another appointment and I
20 got out of there. I told her that I didn't believe
21 that this was the truth in this statement, that I
22 thought there was still more in there, but I had
23 another appointment that I had to deal with. It was
24 a time constraint for me.

25 Q And when you said that you returned him to

1 Detective Lestage, where did you take him?

2 A My office -- the detective's office is like
3 thirty or forty desks in a large room. My office is
4 down a short hallway on the left from there, and we
5 just walked back from my office in to where
6 Detective Lestage was in a conference room there.

7 Q But at the time that you took him back to
8 Detective Lestage, he wasn't free to go, was he?

9 A As far as I know he was. It's one of the
10 things I discussed with him prior to the interview
11 is that he is free to get up and leave any time he
12 wants to. Him talking to me is purely voluntary on
13 his part.

14 Q Well, you used the phrase I returned him to
15 Detective Lestage. You took him back to her office?

16 A You know, letting folks around unescorted in
17 our office is a big no-no. We walk with them. But,
18 I mean, if he wanted to walk out the front door, he
19 could have.

20 MR. SLADE: I don't have any further questions,
21 Your Honor.

22 MR. GOWDY: I have nothing on redirect, Your
23 Honor.

24 THE COURT: Step down.

25 MR. GOWDY: Steve Denton.

1 OFFICER STEVE DENTON, having been first duly
2 sworn, testified as follows:

3 (Swearing of Truth Statement of Jonathan
4 Binney, dated 12-9-99, marked as States's Exhibit
5 No. 117 for identification)

6 (Typed Transcript of Audio Statement of
7 Jonathan Binney, dated 12-9-99, marked as State's
8 Exhibit No. 118 for identification)

9 DIRECT EXAMINATION BY MR. GOWDY:

10 Q Good afternoon, Detective Denton.

11 A Good afternoon.

12 Q You work for the Spartanburg County Sheriff's
13 Department?

14 A I do.

15 Q How long have you been there?

16 A About seventeen, seventeen and a half years.

17 Q You are with the detectives division?

18 A I am.

19 Q Back in December of 1999, were you a detective?

20 A I was, and am now.

21 Q Were you asked to participate in the
22 investigation into the injuries suffered by [REDACTED]
23 Binney?

24 A Yes, I was.

25 Q How did you come to be involved in that

1 investigation?

2 A Actually that particular afternoon I was
3 leaving to go out of down. I was leaving the office
4 a little bit early, and at that time the commanding
5 officer of our division, which is Captain Dan
6 Johnson, had asked me to take a look at a case
7 before I left, and that's how I became involved.

8 Q It wasn't your case, per say, was it?

9 A No, it was not.

10 Q Is it usual or unusual for other detectives to
11 interview or help out in investigations?

12 A Usual. I mean, it would be normal. Nothing
13 abnormal about it.

14 Q What were you told prior to interviewing Mr.
15 Binney? What did your colleagues tell you about the
16 case?

17 A Basically the two investigators I talked with,
18 mainly Diane Lestage, had looked at some photographs
19 of some injuries to [REDACTED] to her genital area. I
20 had read several of the statements that Mr. Binney
21 had given them, and that's pretty much -- their
22 opinion didn't -- I don't even remember if they gave
23 me their opinion, but I had formed mine just through
24 that.

25 Q So you had read the statements about the horrid

1 thoughts and her slipping in his hands?

2 A Yes, sir.

3 Q And you were asked to interview him again?

4 A I was.

5 Q Where did that interview take place?

6 A At the sheriff's office.

7 Q Let me show you what's been marked as State's

8 117 and ask you whether or not you recognize that?

9 A I do.

10 Q What is that?

11 A That is a -- it's a form that we use. We call
12 it a sworn statement form. It simply reads "I swear
13 the statement that I have just given is the truth,
14 the whole truth and nothing but the truth, so help
15 me God." And it's signed and dated and then sworn
16 by a notary.

17 (Cassette Audio Tape marked as State's Exhibit
18 No. 119 for identification)

19 BY MR. GOWDY:

20 Q And that's a form that you use when you
21 interview people?

22 A It is. That's taken afterwards.

23 Q Is Mr. Binney's signature on that?

24 A It is.

25 Q What's it dated?

1 A 12-9-1999.

2 Q And did he execute that right before you
3 interviewed him?

4 A He executed this actually after the interview.

5 Q After you interviewed him?

6 A Yes, sir.

7 MR. GOWDY: Your Honor, we would move State's
8 117 into evidence.

9 THE COURT: It's admitted.

10 BY MR. GOWDY:

11 Q Prior to interviewing him, Detective Denton,
12 did you read him his Miranda Rights?

13 A I did.

14 Q Had anyone told you of whether or not they had
15 read him his Miranda Rights earlier in the day?

16 A They did.

17 Q What was your understanding of that?

18 A It was actually been read twice. Once by Ms.
19 Lestage and once by Detective Burns.

20 Q And yet you mirandized him again?

21 A I did.

22 Q Did he appear for the third time that day to
23 understand his Miranda Rights?

24 A He did. Actually he appeared to be a very
25 intelligent person.

1 Q Did you use any audio or video recording
2 devices during your interview with him?

3 A I did.

4 BY MR. GOWDY:

5 Q I'll show you State's 119.

6 A Yeah.

7 MR. GOWDY: Your Honor, could I have just a
8 moment with Mr. Slade?

9 THE COURT: Yes, sir.

10 (off the record)

11 (back on the record)

12 BY MR. GOWDY:

13 Q State's 119 is a copy of a tape of the
14 interview that you had with Mr. Binney, is that
15 correct?

16 A That's correct.

17 MR. GOWDY: Your Honor, we would move State's
18 119 into evidence.

19 THE COURT: It is.

20 BY MR. GOWDY:

21 Q Let me show you State's 118, Detective Denton,
22 and ask you whether or not you recognize that?

23 A I do. This is a ten page transcription from
24 that tape. It's transcribed by our secretaries and
25 it has my signature, along with Mr. Binney's

- 1 signature. Again, it's a total of ten pages.
- 2 Q The last part of that where it also has his
- 3 signature?
- 4 A It does.
- 5 Q On the bottom of each page?
- 6 A Actually -- let me make sure. I'm fairly
- 7 certain. Yes.
- 8 Q Did he have a chance to read over this before
- 9 he signed his name to it?
- 10 A Yes. Absolutely.
- 11 Q Did he have a chance to make any corrections,
- 12 if he wanted to?
- 13 A Yes, sir.
- 14 MR. GOWDY: Your Honor, we would move State's
- 15 118 into evidence.
- 16 THE COURT: It is.
- 17 BY MR. GOWDY:
- 18 Q I think you testified that he appeared to be an
- 19 intelligent suspect, is that right?
- 20 A Very intelligent person, yes, sir, suspect.
- 21 Q Did you go over his waiver of rights on the
- 22 tape?
- 23 A I did.
- 24 Q Did he waive his right to counsel?
- 25 A He did.

- 1 Q Did he waive his right to remain silent?
- 2 A He did not.
- 3 Q You said he did or did not?
- 4 A I'm sorry, he did.
- 5 Q Did you threaten him in any way?
- 6 A No, sir.
- 7 Q Did you coerce him?
- 8 A No.
- 9 Q Did you promise him anything?
- 10 A No, sir.
- 11 Q Was the statement that you took from him
- 12 consistent or inconsistent with the four previous
- 13 statements that he had given law enforcement?
- 14 A It was totally inconsistent.
- 15 Q Can you tell the court what he admitted to
- 16 doing to his daughter [REDACTED]
- 17 A In the statement that I got from him, he admits
- 18 to having fantasies obviously with his young
- 19 daughter and then also using an instrument, a sexual
- 20 device, to abuse his child in a sexual way.
- 21 Q Did he admit to using KY jelly on his daughter
- 22 prior to inserting the device?
- 23 A Yes, sir.
- 24 Q Did he say he had thought about doing this
- 25 prior to when he actually did do it?

1 A Yes, sir.

2 Q After the statement you took from him,
3 Detective Denton, was he arrested?

4 A Quite honestly after this was transcribed and
5 signed, I would assume that he would have been
6 arrested, I would say, but I wouldn't have been
7 present.

8 Q Would it be fair to say, Detective Denton, that
9 after he told you what he told you, he was not free
10 to leave?

11 A I think that's a very safe assumption.

12 MR. GOWDY: Your Honor, I don't have any more
13 questions for Detective Denton.

14 BY MR. GOWDY:

15 Q Please answer any questions Mr. Slade may have.

16 A Yes, sir.

17 CROSS EXAMINATION BY MR. SLADE:

18 Q Dan Johnson asked you to help with this case?

19 A Yes, sir.

20 Q What was the reason that Captain Johnson asked
21 you to help out it with?

22 A I have no idea. I mean, he would -- from time
23 to time different investigators he would ask to
24 relook at a -- you know, relook at some evidence in
25 the case or reinterview somebody. That's not

1 unusual. Obviously still do.

2 Q When did you finish talking with him, Detective
3 Denton?

4 A Probably -- just according to the time on this,
5 it was 3:17 p.m. on the 9th.

6 Q You already had some plans to leave town?

7 A Yes, sir.

8 Q And I take it from your last series of answers
9 with the solicitor that you didn't stick around to
10 see if he was arrested because of these plans to
11 leave?

12 A Well, actually I didn't get to leave when I
13 wanted to. I remember specifically I had to stay
14 for this to be transcribed and then have him sign it
15 since I took it from him. I felt like I needed to
16 do that. After that, yeah, quite honestly I took
17 off.

18 Q Well, my point in bringing that up is you were --
19 you had known all along that you were going to be
20 getting off that afternoon, right?

21 A Yes, sir.

22 Q Getting off early, or leaving early?

23 A Yes.

24 Q Before Captain Johnson talked to you, what did
25 you review about this case?

1 A Before Captain Johnson talked to me?

2 Q Or when -- before you actually sat down to talk
3 with him. You are right, before you actually sat
4 down to talk with Mr. Binney.

5 A I went over again some photographs with
6 Detective Lestage. I went over a statement with
7 Detective Lestage, and also went over a statement
8 with Lewis Burns.

9 Q Those were the two statements that you looked
10 at?

11 A Yes, sir, to my best recollection.

12 Q Okay.

13 A And I possibly also detective -- probably the --
14 the whole file, I would say, it was just two
15 statements, but the entire file, if there were two
16 or three statements in there, I'm sure I would have
17 looked over them.

18 Q All right. And at the time that you began --
19 let me back up.

20 Did you talk with Detective Lestage before you
21 talked with Mr. Binney?

22 A Yes.

23 Q All right. And at the time that you began
24 talking to Mr. Binney, you knew that Detective
25 Lestage had gone to get a search -- excuse me, had

1 gone to get an arrest warrant for him?

2 A No, sir.

3 Q She didn't tell you that she was going to go
4 get an arrest warrant for him?

5 A Before I interviewed him?

6 Q Yeah.

7 A No, sir.

8 Q Or in the course of your conversation with her
9 learning about the case, did she not tell you that
10 she was planning on getting an arrest warrant?

11 A Not to my recollection, no. And I don't
12 think -- I think again the whole purpose was to
13 reinterview him. If she -- if she did that or would
14 have said that, she wouldn't have said it to me.

15 MR. SLADE: I don't have any other questions of
16 this witness, Your Honor.

17 MR. GOWDY: Nothing on redirect, Your Honor.

18 THE COURT: That's the State's showing, Your
19 Honor.

20 THE COURT: All right.

21 MR. SLADE: Beg the indulgence of the court,
22 Your Honor.

23 (off the record)

24 (back on the record)

25 MR. SLADE: Your Honor, we have no witnesses to

1 offer on the suppression motion of the evidence of
2 the pornographic images and no witnesses to offer on
3 the Jackson v. Denno motion.

4 We have discussed this with our client or we
5 have discussed several times, including as late as
6 just a few minutes ago, the purpose of these
7 hearings. I have told Mr. Binney and Mr. Pruett has
8 told Mr. Binney that he always has the option to
9 testify. We have advised him that we don't think
10 it's a good idea for him to testify or it's
11 unadvisable for him to testify at this point, but we
12 have also told him that it's certainly his right to
13 override our advice and take the stand, if he wishes
14 to. I have spoken with him. He tells me that he
15 doesn't want to do that. And, you know, I know Your
16 Honor wants to question him again, but we have
17 spoken to him about it and he's told us that he does
18 not want to testify.

19 THE COURT: Mr. Binney, you have heard what Mr.
20 Slade has informed the court?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you agree that everything that
23 he has stated is correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that you do have

1 a right to testify at this particular hearing?

2 THE DEFENDANT: I do.

3 THE COURT: Do you understand the scope and the
4 purpose of that testimony, if you chose to testify?

5 THE DEFENDANT: Yes.

6 THE COURT: And you have discussed that fully
7 with your lawyers?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Slade has indicated that he and
10 Mr. Pruett have advised you that they don't believe
11 that you would benefit from testifying or that your
12 position would benefit from your testifying at this
13 hearing. Is that true?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that while they
16 are your lawyers and you may seek their advice and
17 they may provide it, that only you can make a
18 determination and the decision as to whether or not
19 you will testify at any time during the course of
20 this trial?

21 THE DEFENDANT: Correct.

22 THE COURT: You understand you do have the
23 right to present testimony at this hearing?

24 THE DEFENDANT: Yes.

25 THE COURT: You have previously indicated that

1 you understand the scope and the purpose of that
2 testimony, if you did choose to testify?

3 THE DEFENDANT: Yes.

4 THE COURT: And Mr. Slade has indicated that
5 you have made a decision that you do not wish to
6 testify. Is that true?

7 THE DEFENDANT: That's correct.

8 THE COURT: Is that a decision that you made of
9 your own free will and accord?

10 THE DEFENDANT: It is.

11 THE COURT: Understanding your lawyers may
12 agree with that decision, do you understand that
13 they can't make that decision for you?

14 THE DEFENDANT: Correct.

15 THE COURT: It's got to be your own.

16 THE DEFENDANT: Correct.

17 THE COURT: Is that decision your own?

18 THE DEFENDANT: It is.

19 THE COURT: You do not wish to testify?

20 THE DEFENDANT: I do not.

21 THE COURT: While you may have received advice
22 in this regard, has anyone pressured you or forced
23 you into that decision?

24 THE DEFENDANT: No, sir.

25 THE COURT: You are satisfied with it?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you. Be seated.

3 Do y'all need a few minutes, or do you want to
4 proceed with argument?

5 MR. SLADE: No, sir, we are ready.

6 THE COURT: Okay.

7 MR. SLADE: We are ready to address these
8 issues.

9 Your Honor, I will first address the motion to
10 suppress the pornographic images taken from the
11 computer.

12 Your Honor, I had prepared a little more
13 extensive argument on the invalidity of the search
14 warrant itself. I'm not really going to address
15 that at this point, Your Honor, for this reason.
16 Detective Lestage, who actually secured the search
17 warrant that she took out to the Binney residence on
18 December the 9th -- and I'm going to refer to it for
19 the record, Your Honor, it's Court's Exhibit No. 4.
20 Your Honor, she admits that this is a warrant -- a
21 search warrant that's invalid for the purpose of
22 searching that computer. I think if the court takes
23 a look at it, the court is going to also recognize
24 that.

25 My objection to this search warrant, Your

1 Honor, is basically it's invalid, because it is a
2 general search warrant. There is no particular
3 description of the computer that she intended to
4 search. There is no particular description of the
5 information that she wanted to get from it. There
6 is no connection between what she hoped to get and --
7 or information that she is searching for and the
8 computer itself. So, Your Honor, it is an invalid
9 search warrant for purposes of searching the
10 computer.

11 The only thing that they specifically refer to
12 that they are trying to find when they go into the
13 Binney house is the vibrator that Mr. Binney has
14 talked to them about.

15 Your Honor, I do have and I -- just for record
16 I do have a memorandum of law in support of the
17 motion to suppress computer search that I would like
18 to introduce into the record as a court's exhibit,
19 if I could

20 (Memorandum of Law in Support of Motion to
21 Suppress Computer Search marked as Court's Exhibit
22 No. 9 for identification)

23 MR. SLADE: Your Honor, I would like to address
24 further the consent to search form -- or excuse me,
25 the two consent to search forms. As Your Honor is

1 aware, there were two consent to search forms put in
2 the record.

3 And the second one, Your Honor, is a consent to
4 search form that is signed at 7:30 p.m. on December
5 the 9th. And it essentially is a consent for a
6 monitor, a keyboard, a mouse, etcetera.

7 Your Honor, if you refer back to Detective
8 Lestage's notes that was admitted into evidence
9 here, it's clear that from looking at this 7:30
10 consent form, that's referred to in Detective
11 Lestage's notes. She says that she gave her consent
12 and Officer Lively took the computer.

13 Your Honor, I think that it's clear that this
14 consent to search form does not give them the right
15 to look in that computer. That takes us back to the
16 6:20 p.m. consent to search form. And there is a --
17 in my -- I submit to the court there is a gross
18 discrepancy in Detective Lestage's testimony on that
19 point. Your Honor, she says that she didn't even
20 think of searching the computer until she got out to
21 the house, the Binney house, and saw it. As you can
22 see, Your Honor, this -- according to her consent
23 form, it was signed at the sheriff's department.
24 And as you heard Detective Burns testify just a
25 minute ago, he had had some conversations with

1 Detective Lestage about pornographic images.

2 So, Your Honor, I just submit to you that her
3 testimony is not credible on that point. And, in
4 fact, there wasn't any consent to search the
5 computer at the time that they searched it out there
6 at the house.

7 So, Your Honor, I -- I don't believe that these
8 pornographic images are admissible, just because
9 they didn't have any valid reason to search it.

10 Your Honor, as far as the Jackson v. Denno, the
11 first contact that Mr. Binney had in relation to the
12 criminal sexual conduct charge against -- excuse me,
13 the criminal sexual conduct charge brought against
14 him of the assault on [REDACTED] Binney was conducted
15 by Detective Yown. He was -- he knew very well Mr.
16 Binney was a suspect. He identified himself as a
17 policeman. He told Mr. Binney -- or asked Mr.
18 Binney to come with him to what I think the record
19 reflects as a secluded area and began questioning
20 him about it. Given what Detective Yown knew at the
21 time that he began this questioning, certainly the
22 facts show that Mr. Binney was a suspect, was the
23 focus of the investigation. And, Your Honor, all of
24 the other statements taken from Mr. Binney flow from
25 that initial invalid statement, Your Honor,

1 inadmissible statement. Detective Yown said that he
2 didn't mirandize him. I think for purposes of
3 Miranda analysis, Your Honor, he was the focus of
4 the investigation. He was essentially in a
5 custodial situation. Detective Yown knew very well
6 that the reason he was called out there was to
7 investigate a crime. And given what he knew from
8 the investigator -- excuse me, from the policeman he
9 talked to out there, Jonathan Binney could have been
10 the only logical suspect in the case.

11 Your Honor, the second statement that Detective
12 Lestage took, she acknowledges that she did not
13 mirandize Mr. Binney. I think you can infer -- the
14 court can infer from the series of events that have
15 all testified to that clearly he was the focus of an
16 investigation. He had been at the sheriff's
17 department all morning. While she -- of course,
18 today testifies he was free to leave at any point,
19 she left after she talked with him to go get a
20 warrant. She got no information that was
21 significantly different. It was just -- again, the
22 information she got in her interview with him was
23 just information that she deemed to be inconsistent
24 with the facts as she knew them. The situation
25 hadn't changed. And I submit, Your Honor, he was

1 under arrest from the time that -- again, for the
2 purposes of Miranda analysis, he was under arrest at
3 the time that she talked to him. There was no way
4 they were going to let him go. And that statement
5 wasn't mirandized. So, Your Honor, it's clear that
6 that statement -- that Detective Denton's statement
7 flowing from his interview with Diane Lestage. She
8 asked or -- and told Detective Denton the fact that
9 she had gained in her interview so that he could
10 conduct his interview.

11 So, Your Honor, I just -- I think that all of
12 these statements flow from, you know, original
13 inadmissible statement taken from him by Detective
14 Yown, and -- Yown at the hospital.

15 And, furthermore, Detective Lestage's second
16 statement, as well as Detective Denton's statement,
17 are both inadmissible, because Detective Lestage
18 took a nonmirandized statement from him while he was
19 in custody.

20 MR. GOWDY: Your Honor, just very briefly on
21 two general issues.

22 First, with respect to Detective Yown. Your
23 Honor, I don't think anything could be more clearer
24 that the fact that Mr. Binney was not in custody.
25 It doesn't matter whether or not he's a suspect.

1 Miranda doesn't attach to suspects. It attaches to
2 in-custodial interrogation. He was free to leave.
3 In fact, he did leave. He left after he gave the
4 statement, which Mr. Slade would have the court to
5 believe is so terribly incriminating. The fact that
6 a police officer talks to somebody does not invoke
7 Miranda. So Detective Yown didn't Miranda him
8 because he didn't have to.

9 With respect to Detective Lestage, this
10 defendant had been mirandized at least once, and
11 possibly twice, earlier that day before she talked
12 to him.

13 State v. Rochester, Your Honor, as the court is
14 well aware, you don't have to mirandize somebody
15 every single time that you talk to them. The
16 initial waiver is good until the defendant invokes.

17 So even if everything Mr. Slade said were
18 factual, which it's not, but even if it were, it
19 still does not suppress the second statement he gave
20 to Diane Lestage, because he had already been
21 mirandized and waived. He never invoked. You do
22 not have to mirandize somebody every time that you
23 talk to them. He had been mirandized twice earlier
24 that day. He never invoked. The fact that Steve
25 Denton mirandized him a third time was, I would

1 submit to you, also not needed, but he did it out of
2 a super abundance of caution. That would be the
3 State's position on the Denno statement or hearing.

4 MR. LEIBERT: Your Honor, as to the search
5 warrant, a search warrant that was initially done is
6 No. 4. It very clearly stated items that may show
7 child pornography. Well, that's magazines,
8 pictures, or computers. And in this day and age
9 that's computers. So that's clearly in what was
10 being sought. The basis for that was he admitted to
11 having pornography in the home.

12 Out of an abundance of caution we then have a
13 detective who is trying to not make a mistake,
14 obviously. I think we could argue just with that,
15 okay, that's it. That's good at that point.
16 Looking for sexual aids. Looking for pornography,
17 that may show child pornography, we have got it.

18 But additionally she got the consent from a
19 co-occupant wife, mother of the children, which is
20 permissible, of course, under U.S. v. Matlock. She
21 said okay. To check the computer, exact language in
22 the consent to search, to check the computer inside
23 the home after the language complete search of the
24 premises, both inside and outside, to check the
25 computer. So then we have that. Then they look and

1 they see some images that cause concern. So then,
2 again, another safety net to protect the defendant.
3 Again we have another consent done, the next
4 exhibit.

5 To take the -- actually specify in No. 5, the
6 monitor, the keyboard, the zip drive. That's -- so
7 they actually take them.

8 So then to protect again, another safety net,
9 is okay, now, we have it, and now we are going to
10 get a search warrant to go in and look inside the
11 hard drive. We have the hard drive. We are going
12 to look. Another safety net. Another protection of
13 the defendant's right. And that's done and taken to
14 SLED.

15 Surely the initial search warrant protects or
16 covers the sexual aids, and No. 4, because of the
17 defendant is saying -- you know, looking for any
18 item used to aid or encourage a sexual assault, and
19 he talked about what he used, that he used a
20 vibrator. So what was done in this case was more
21 than needed to be done to protect his Constitutional
22 Right, and we would argue, therefore, it would be
23 admissible.

24 THE COURT: Any reply?

25 MR. SLADE: No, sir.

1 THE COURT: Well, based upon the evidence
2 presented, I do find that - dealing with the search
3 now relating to the computer - that the law
4 enforcement officers were on the premises legally
5 with a valid search warrant.

6 While on the premises of the residence of Mr.
7 Binney, they did wish to expand the search that was
8 limited by the warrant. That expansion to search
9 was granted by the consent of a person in possession
10 of the premises who had a right to consent, that
11 being the defendant's wife. And, therefore, the
12 search and the seizure of the computer was
13 appropriate, based upon that voluntary consent. And
14 I don't believe the subsequent search warrant was
15 necessary in order to search the computer, since --
16 while there is one, the defendant's wife had already
17 given consent and turned over possession of the
18 computer to law enforcement officers. And that's --
19 that's authorization enough.

20 With respect to the statements, Detective
21 Yown's statement -- or the statement which was given
22 by the defendant to Detective Yown at the hospital.
23 Based upon the evidence, it is clear that the
24 defendant was not in custody, nor would a reasonable
25 person in his position believe that he was in

1 custody or his freedom to leave was curtailed in any
2 fashion. Therefore, any statement given to
3 Detective Yown was not in violation of any
4 constitutional protection. Miranda Warnings are not
5 required, unless the defendant was in custody. And
6 I do find that he was not, nor could he reasonably
7 believe that he was in custody at the time that he
8 discussed the matter with Detective Yown.

9 And, therefore, the motion to suppress the
10 images retrieved from the computer is denied and
11 also the motion to suppress the statement given to
12 Detective Yown is denied.

13 With respect to the statements given to
14 Detective Lestage, Burns and Denton, I'm not sure I
15 have got the chronology correct. As I understood
16 it, Detective Lestage was the first person that met
17 with the defendant, Mr. Binney, on December the 8th?

18 MR. GOWDY: Yes, sir.

19 THE COURT: And then she -- after that initial
20 conversation with Mr. Binney, she reinterviewed the
21 defendant, at which time she did give him Miranda
22 Warnings?

23 MR. GOWDY: Your Honor, I believe that would
24 have taken place on the 9th.

25 THE COURT: Well, that's what I'm trying to

1 determine. Her second interview with the defendant
2 was on the 9th?

3 MR. GOWDY: I believe.

4 MR. SLADE: That's correct, Your Honor.

5 THE COURT: And that was prior to Detective
6 Burns interviewing the defendant?

7 MR. GOWDY: It was -- actually, Your Honor, I
8 believe the chronology went Jason Yown on the 7th;
9 Diane Lestage on the 8th with Miranda Warnings;
10 Lewis Burns the morning of the 9th with Miranda
11 Warnings; Diane Lestage, the afternoon of the 9th
12 without Miranda Warnings; Steven Denton later that
13 afternoon on the 9th with Miranda Warnings.

14 We took Diane Lestage out of order, but Lewis
15 Burns' interview was squeezed in between her two.

16 THE COURT: Well, that -- I think that's where
17 I was confused. Give me that chronology again.

18 MR. GOWDY: Jason Yown, the evening of December
19 the 7th, without Miranda Warnings.

20 THE COURT: Right.

21 MR. GOWDY: December the 8th, Diane Lestage
22 with Miranda Warnings.

23 December the 9th, in the morning hours, Lewis
24 Burns with Miranda Warnings.

25 Later on in the day, on December the 9th, Diane

1 Lestage without Miranda Warnings.

2 THE COURT: Right.

3 MR. GOWDY: And even later on the 9th, but
4 still prior to say dinner time, Steve Denton.

5 THE COURT: Okay. Mr. Slade, do you agree with
6 that chronology?

7 MR. SLADE: Yes, sir, I do.

8 THE COURT: And as I understand it, your motion
9 to suppress is based upon the fact that he was not
10 re-given Miranda Warnings by Officer Lestage during
11 the December 9th interview?

12 MR. SLADE: Well, my argument, Your Honor, is
13 that all of -- all of these interviews are based on
14 Detective Yown's first interview.

15 THE COURT: Well, I understand, but I have
16 addressed that issue.

17 MR. SLADE: Right. And you saw how they
18 accumulated each one of them built on the other one.

19 Now, the second part of my argument is, Your
20 Honor, that Detective Lestage's second interview
21 with him was clearly not mirandized, and that that
22 interview, because he was clearly -- although
23 Detective Lestage won't use the terminology, he was
24 clearly in custody at the time that she talked to
25 him. He had been talking to Detective Burns all

1 morning. He was clearly in custody. She did not
2 mirandize him. And Detective Denton's statement
3 came about as a result of her unmirandized interview
4 with him on the 9th.

5 THE COURT: All right. Well, as I have stated,
6 Detective Yown's interview was not an in-custodial
7 interrogation, and I don't think that you can, under
8 any circumstances, reasonably infer that it was.
9 And, therefore, any subsequent interview of the
10 defendant, based upon Detective Yown's statement,
11 would not be any -- would not be in violation of any
12 Constitutional protection.

13 Now I understand that Detective Lestage's first
14 interview was preceded by the defendant being given
15 his Miranda Warnings. And based upon the testimony
16 received, and there is no other evidence to refute
17 it, that the defendant clearly understood those
18 rights; that he was not under the influence of any
19 intoxicating substance; that he was not promised
20 anything; that he was not threatened in any way, nor
21 coerced in any fashion; and based upon all the
22 evidence, did appear to fully understand those
23 rights, and at no time did he invoke either the
24 right to remain silent or right to have counsel
25 present.

1 He was subjected to subsequent interviews. And
2 while the defense might suspect that those
3 subsequent interviews should have put him on notice
4 that he was, in fact, a suspect or he was a target
5 of an investigation, whether or not the police
6 actually believed the defendant to be a suspect or
7 whether or not they are actually focusing their
8 attention on the defendant as a perpetrator of any
9 crime is not the test as to whether or not Miranda
10 Warnings are required. It's simply whether or not
11 he is, in fact, in custody.

12 Now, whether or not he was in custody at the
13 time that Detective Lestage first talked with him is
14 not important, based upon the fact that she did
15 provide him with those Miranda Warnings, which he
16 clearly understood and clearly waived.

17 The second interview with Detective Lestage,
18 which was not preceded by Miranda Warnings, is not --
19 any statement made by the defendant would not be
20 invalid for her failure to reinstruct him or
21 readvise him as to his Miranda Rights, because once
22 Miranda Warnings are given, and once they are
23 clearly understood, and once they are waived, that
24 waiver continues, until such time as the defendant
25 chooses to invoke any right afforded to him under

1 Miranda decision.

2 And so at the time that Detective Lestage
3 reinterviewed the defendant, even though she did not
4 readvise him of his Miranda Rights, nevertheless, he
5 had already been advised. He did understand those
6 rights and that waiver did continue.

7 The other interviews by Detective Burns and
8 Detective Denton were both. Whether or not it was
9 necessary out of an abundance of caution, they were --
10 each of those interviews was preceded by an
11 additional advising of his Miranda Rights. And,
12 again, clearly it appears, based upon the evidence,
13 that he fully understood those rights and did make a
14 knowing, intelligent and voluntary waiver of those
15 rights.

16 So the defendant has been afforded his
17 protection, his Constitutional protection, under the
18 Miranda decision, and there is no other credible
19 evidence in the record that would indicate that the
20 defendant did not provide those statements without
21 understanding fully the consequences of what he was
22 doing. There is no credible evidence to indicate
23 that he was promised anything, that he was
24 threatened in any fashion, or that he was coerced in
25 any way. And there is no credible evidence to

1 indicate that the circumstances of the interrogation
2 would be such that it would result in his being
3 unable to freely and voluntarily make appropriate
4 decisions under the circumstances.

5 Based upon the evidence in the case, I do find
6 that each of the statements were freely, knowingly,
7 intelligently and voluntarily made. And,
8 therefore, the defendant's motions to suppress each
9 of the statements is denied.

10 MR. SLADE: We have two other motions, Your
11 Honor, that we need to -- that we need to address.

12 One of them is this. Your Honor, the
13 solicitor's office has essentially put us on notice
14 that they intend to retry the CSC case that the
15 defendant was convicted of, the assault against
16 [REDACTED] Binney.

17 Your Honor, while we recognize, and the cases
18 allow, the solicitor's office to put up evidence of
19 previous convictions and put in evidence about
20 circumstances of those previous convictions, Your
21 Honor, we think that the presentation of the
22 evidence in the trial of a CSC matter goes way
23 beyond what is permissible.

24 First of all, Your Honor, they certainly have
25 the right to introduce evidence of the defendant's

1 character. It's clear that they can do that. But,
2 Your Honor, I think in the circumstances that we
3 have here, what we have is the retrial of the
4 criminal sexual conduct case. All of the witnesses
5 that you have heard in this hearing this morning are
6 the witnesses who testified in that case.

7 Your Honor, they have the right to convey to
8 the jury the intellectual knowledge of the
9 conviction, the act. But, Your Honor, at some point
10 the inflammatory nature of the evidence that they
11 intend to present - pictures of [REDACTED] Binney's
12 wound, evidence from the medical doctor who examined
13 her, who sewed her up - Your Honor, those -- that
14 type of evidence goes far beyond what is necessary
15 to convey to the jury the fact that the defendant
16 committed that act. And that's what is the element
17 of his character that they have a right to present
18 to the jury.

19 And, Your Honor, surely the inflammatory nature
20 of the evidence that they intend to admit in the
21 retrial of the CSC case, will, in its tendency to
22 inflame the jury, is far too prejudicial in a matter
23 where we -- right now in the course of this
24 argument, we are in what is called the cooling off
25 period. The whole point is that a jury should not

1 be inflamed beyond the point of reason and -- beyond
2 the point where their reasoning is effective --
3 affected. And that evidence that they intend to
4 present in this case does that.

5 Beg the indulgence of the court.

6 (off the record)

7 (back on the record)

8 MR. SLADE: Your Honor, I would also like to
9 address the evidence that they intend to present
10 from the criminal sexual conduct trial on the basis
11 of it's a violation of the double jeopardy clauses
12 in both the United States Constitution and our
13 constitution.

14 Your Honor, while I recognize that those issues
15 have been addressed before and that the rulings in
16 those cases go against us, Your Honor, I think this
17 is a situation where the entire case is going to be
18 retried. And I think that in and of itself violates
19 the double jeopardy clause of those constitutions.

20 Your Honor, he is -- he is now serving time.
21 He's convicted of that. And I think to further
22 punish him by doing that, by allowing them to retry
23 it, violates those clauses. Thank you, Your Honor.

24 Well, let me -- Mr. Pruett has two other
25 matters that need to be addressed, but they are not

1 related to to what I just addressed.

2 THE COURT: Mr. Willingham?

3 MR. WILLINGHAM: Your Honor, under State v.
4 Skipper, 328 S.E. 2d 58, a 1985 case, that case the
5 aggravating factor for the death penalty was
6 criminal sexual conduct. In that case the State was
7 entitled to introduce details of the prior rape,
8 which resulted in conviction, in order to show the
9 characteristics of the defendant. I have the
10 Skipper case, in case the court does wish to have
11 that.

12 Additionally, Your Honor, under Woodson
13 v. North Carolina, Barefoot v. Estelle, the State
14 v. Pee wee Gaskins, at 326 S.E. 2d 132, it's a 1985
15 case, photographs in that case of seven prior murder
16 victims and confession relating to details of seven
17 prior murders, to which the defendant had previously
18 pled guilty, were properly admitted.

19 I do not believe there is a violation of double
20 jeopardy. I do not believe the prejudice outweighs
21 the probative value, and I believe the case law
22 allows us to introduce the details of his prior CSC
23 case.

24 MR. SLADE: Your Honor, the law in his
25 reasoning, and those are cases apply to this

1 specific case, is this. It may be that there are --
2 as bad as criminal sexual conduct is, there may be
3 instances where there are -- that there is a
4 spectrum of conduct that falls under that.

5 In this case, Your Honor, what is -- the
6 element of character is the fact that the defendant
7 committed the act.

8 Your Honor, I think it says entirely as much as
9 the jury needs to know about that that the victim in
10 a criminal sexual conduct case was his three-month
11 old daughter. That in and of itself conveys enough
12 information about the character of the defendant to
13 implant everything that they need to know about that
14 fact as it bears on the punishment in this case.

15 Your Honor, I do not understand what -- and I'm
16 bringing something into the record here that, you
17 know, we talked about in chambers or in a
18 conference, it's -- and they are welcome to correct
19 me if I'm wrong, but it's my understanding that they
20 intend to present to the jury a picture of the
21 wound.

22 Now, Your Honor, I think that logically a
23 reason that a person who is qualified to sit on a
24 jury will be -- will be sufficient for them to get
25 the picture of this defendant's character by the

1 mere description of that act. I think the fact that
2 they are introducing the picture of the wound can
3 only inflame the passion of the jury.

4 What further information -- I'm talking about
5 just in terms of factual information, does it convey
6 about the defendant's character, the fact that he
7 committed that act, to show them the picture of the
8 wound? To have the doctor who did the surgery
9 testify to the extent of the wound? I can't see --

10 I mean, the fact that it was a criminal act
11 against the defendant's child, who was three months
12 old, conveys as much factual information as you need
13 to know about that person's character for punishment
14 purposes in this case. Going into the details of
15 that injury and pictures of that injury can only --
16 can't convey but a tiny bit more factual
17 information, while it carries with it tremendous
18 inflammatory weight. And I just -- I know that the
19 court has great discretion in what it can admit on
20 these issues, but surely at some point the
21 inflammatory nature of and the graphic nature of the
22 pictures that they intend to present and in the
23 testimony that they intend to present far outweigh
24 the intellectual or factual weight of the
25 information that needs to be conveyed and the

1 information that they have a right to convey about
2 the character.

3 I beg the indulgence of the court.

4 (off the record)

5 (back on the record)

6 MR. SLADE: And, Your Honor, one of the things
7 that we need to be clear about is that this -- this
8 is not -- this evidence -- this character evidence
9 is not a statutory aggravating circumstance.

10 For instance, in Gaskins, what they were
11 talking about, Peewee's prior murders, the fact that
12 he had been convicted of murder was a statutory
13 aggravating circumstance in that case.

14 And the case that -- and the last case that
15 Deputy Solicitor Willingham cited, CSC was an
16 aggravating circumstance in that case.

17 And so I think there is a -- is a -- is a
18 difference between the evidence that they can
19 introduce in the penalty phase on the statutory
20 aggravating circumstances and the character.

21 I mean, what more do you need to know about
22 someone's character on the issue of criminal sexual
23 conduct than the fact that the victim was a
24 three-month old daughter? So I -- I think that
25 conveys -- that conveys enough factual information

1 about it to present to them that issue.

2 And I agree, frankly, that's the limit of it,
3 Your Honor. Anything beyond that carries very
4 little weight in terms of probative value about his
5 character and overwhelming weight in terms of its
6 inflammatory content.

7 Thank you, Your Honor.

8 THE COURT: Mr. Willingham, do you need to be
9 heard any further with regard to Mr. Slade's
10 additional argument?

11 MR. WILLINGHAM: Your Honor, very briefly. I
12 would say that the purpose of the sentencing --
13 purpose of having the bifurcated trial is so that we
14 can introduce evidence that typically that may be
15 inadmissible during the guilt phase.

16 I agree the court still has to determine
17 whether or not the prejudice would outweigh any
18 probative value, but according to State v. Andre
19 Rosen, 518 S.E. 2d 588, the scope of the probative
20 value is much broader in the sentencing phase.

21 His prior statements, he lied at least five
22 times to law enforcement and others about what he
23 had done to his daughter. I think that's very
24 probative of this man's character.

25 I think the injuries that he inflicted upon his

1 daughter, who was three months old at the time, is
2 very indicative of that man's character.

3 I believe that the fact that he made statements
4 in his confessions that he took her to the hospital
5 because he maybe saw a little bit of blood is a
6 probative reason to show the pictures to this jury
7 what his terms, his definition, his character
8 determines what a little bit of blood is.

9 Your Honor, for those reasons I believe that
10 the details on the photographs and the conviction
11 are all very probative and very telling of that
12 man's character and needs to be demonstrated to the
13 jury.

14 THE COURT: Well, I find that the details of
15 the conviction are appropriate under the law and are
16 admissible in a sentencing hearing.

17 Now, the extent of the evidence being
18 introduced is another issue, whether or not it's too
19 inflammatory, or whether or not it's too cumulative,
20 or whether or not it's -- well, I guess, basically
21 cumulative or too inflammatory. So the issue I need
22 to address, I guess, is what evidence do you intend
23 to introduce.

24 Details of the conviction are to be admitted.
25 I find that they should not be excluded, because

1 they do relate to the issue of character, and that
2 is clearly admissible in a sentencing hearing.
3 However, even understanding that such evidence may
4 be admitted, there may be some limitations,
5 depending upon the nature of the evidence or the
6 amount of similar or cumulative type of evidence.

7 So I think what we are going to need -- if we
8 don't already know, I think what we need for the
9 lawyers to do is to look at the evidence and
10 determine what evidence is to be introduced, and
11 then we will address the issue of its
12 appropriateness under whether or not it is too
13 inflammatory and/or it is too cumulative to other
14 evidence.

15 MR. PRUETT: That really goes to the other
16 matter I have to address. They provided us with
17 numerous photographs. Testimony of 20,000
18 photographic images taken off the computer, and I
19 know Mr. Willingham is not going to introduce all of
20 them, but -- well, maybe he is.

21 We have Court Exhibit No. 8.

22 THE COURT: It's a good time for us to break
23 for lunch, so what I do want y'all to do is during
24 your lunch recess is to have an understanding from --
25 both sides need to understand what actual physical

1 evidence is to be introduced so that we can assess
2 the inflammatory nature or the prejudicial nature,
3 as well as the cumulative nature of that evidence.

4 MR. PRUETT: The other items, Your Honor, is
5 just in the guilt phase of this proceeding, we were
6 informed prior to the commencement, that they were
7 relying upon four separate aggravating
8 circumstances. I'm somewhat limited by what I can
9 address in the opening of the guilt phase, because
10 it might not be relevant. Clearly at this point in
11 time, assuming they are relying on all four still, I
12 should -- I'm assuming I'll be allowed to all four --
13 to address all four in my opening statement tomorrow
14 morning.

15 THE COURT: I don't think there was any doubt
16 about it. You got to -- you are entitled to address
17 whatever the State has put you on notice that they
18 are alleging.

19 MR. PRUETT: At some point he indicated he
20 might make an election. I didn't know if that had
21 been done. I need to know that today to craft my
22 opening before today.

23 THE COURT: We were going to find out that
24 today. I just think this is a good time for us to
25 recess for lunch, since it is now one o'clock.

1 During the lunch recess, or shortly thereafter,
2 I want y'all to take the opportunity to review the
3 evidence. And you can also discuss with them their
4 intentions, so far as the specific statutory
5 aggravating circumstances they intend to submit
6 evidence as to. And then we can address any motions
7 that need to be addressed.

8 All right. Court is in recess until 2:30.
9 Until 2:30 this afternoon.

10 (Proceedings recessed)

11 (Proceedings reconvened)

12 (Photograph marked as State's Exhibit No. 120
13 for identification)

14 (Photograph marked as State's Exhibit No. 121
15 for identification)

16 (Photograph marked as State's Exhibit No. 122
17 for identification)

18 (One Page of Pornographic Computer Images
19 marked as State's Exhibit No. 123 for
20 identification)

21 MR. WILLINGHAM: Your Honor, at this time the
22 State would withdraw State's Exhibit 114. That way
23 the record is clear that we are not going to be
24 introducing that exhibit.

25 We have discussed one of the other photographs

1 that we are intending to use. The State is
2 intending to use what is currently marked as Court's
3 Exhibit No. 8, which is the eighty pages of
4 pornographic images off that computer.

5 Additionally there are three other photographs,
6 State's Exhibit No. 120, 121, 122.

7 State's Exhibit 120, Your Honor, is a
8 photograph of Mikayla when she was in the hospital.
9 It's just a picture of how she looked.

10 State's Exhibit No. 121 is the damage that was
11 done to [REDACTED] vaginal area.

12 And State's Exhibit 122 is a photograph of the
13 vibrator that was testified -- or was mentioned
14 during the earlier testimony today found in the shoe
15 recovered from the defendant's residence.

16 (Swedish Erotica Vibrator marked as State's
17 Exhibit No. 124 for identification)

18 MR. WILLINGHAM: State's Exhibit No. 124 would
19 be the vibrator itself that was taken from the
20 evidence over in Spartanburg County Clerk of Court's
21 office.

22 I'll hand these up to the court reporter.

23 THE COURT: You are introducing the actual
24 physical object and a photograph of that object?

25 MR. WILLINGHAM: Yes, sir. The photograph of

1 the object shows where it was found, that it
2 corroborates the statement that he had hid it in his
3 shoe in his home. And then this is the actual
4 object that was recovered from the home.

5 MR. PRUETT: These exhibits, there is a
6 continuation of our objection to the inflammatory
7 nature of the photographs, and observed specifically
8 in 120 and 121.

9 I don't think that there is any dispute as to
10 age and the identity of the victim in that case.
11 It's comparable to a case that -- a felony DUI case
12 where the prosecution may introduce the photograph
13 of the victim for the purpose ostensibly of
14 establishing the identity of the victim in a case.
15 In that case, the Supreme Court said that was
16 prejudicial error, but there was no question as to
17 the identity of the victim. And I can probably put
18 my hands on it just a second but --

19 THE COURT: Well, I understand. I'm not sure
20 that's going to help me much. I need -- if you have
21 a case, I need something that relates to this. This
22 is a totally different issue. The photographs
23 ordinarily are introduced during the trial of the
24 actual case as opposed to the photographs introduced
25 during the sentencing phase of a capital trial.

1 MR. PRUETT: Yes, sir.

2 I don't know, judge, in a sentencing phase of a
3 case on point where an article comes in. It's
4 cumulative and prejudicial, as to photograph 120,
5 which is a photograph of the child at the age when
6 the incident occurred.

7 And 121, I don't think I need to say anything,
8 other than it is extremely inflammatory,
9 prejudicial.

10 Understanding we are in the sentencing phase, I
11 just concur with Mr. Slade's argument earlier that
12 there is a point. I don't know where point is. I'm
13 sure it exists somewhere in the presentation of
14 evidence in the case, but at some point we get to
15 that area where they just go over the top, as far as
16 presentation of prejudicial evidence. It's so
17 obscured the jury's focus on what they are being
18 asked to decide, which is what the appropriate
19 punishment for murder is, into areas where he's
20 already been tried, convicted and sentenced.

21 And along the same lines of that argument are
22 my objections to State's Exhibit No. 123, are eighty
23 pages of pornographic materials relating to children
24 engaged in various sex acts between children and
25 other adults. Again, there comes a point where the

1 evidence is so cumulative, so prejudicial, so
2 inflammatory, that it denies the defendant in this
3 situation with what is due process under the law to
4 give a fair trial on the issue of sentencing.

5 The only cases that I can think of, judge, that
6 are relevant in a death penalty case where
7 photographs were excluded would be photographs of an
8 autopsy where the Supreme Court said they held no
9 relevant value and they were prejudicial.

10 I would say that by analogy it at least shows
11 that photographs can be excluded, even in the
12 sentencing phase, when they come within the scope of
13 being too prejudicial and will not lead to relevant
14 points at issue. And that's the question, like in
15 State's Exhibit No. 123, how many photographs do
16 they need to make the point, that I think they
17 answered that, quite frankly, with one page. Again,
18 one page, and said we have got 20,000 other
19 photographs comparable depictions, how many do you
20 need before it becomes so cumulative, that it's
21 prejudicial and denies him the right to a fair and
22 impartial trial by a jury? I don't know. I don't
23 know when we get there.

24 I don't know if you have seen these or not, but
25 it's the same thing over and over and over again.

1 So that's our argument.

2 Mr. Slade has already hit the points earlier
3 and they apply to each and every one of the items
4 that I think that they intend to introduce. The
5 introduction of the actual object and the photograph
6 of the object, I would argue just on that particular
7 item or items, one is cumulative of the other, if
8 the court rules that that's admissible, item 122,
9 the other object is State's Exhibit marked 124.

10 MR. WILLINGHAM: Your Honor, as far as I
11 believe it's State's Exhibit 123, which is the
12 photographs seized from the computer, I think it's
13 important to note those are black and white
14 photographs. Those are all one inch, I guess,
15 thumbnails. They are not full sized. They are not
16 color. They are not -- we are not intending to
17 introduce them in an inflammatory-type manner be
18 blowing them up on the overhead, even though I
19 believe if we had wanted to waste that much time, we
20 would be entitled to do that, but I think they are
21 presented in such a manner as to reduce the
22 prejudice to the defendant, to such a point where
23 the probative value would outweigh the prejudice.

24 THE COURT: I notice the page of this exhibit
25 has got it appears to be twenty-four photographs.

1 Does every page have twenty-four, or virtually every
2 page have twenty-four?

3 MR. SLADE: Your Honor, there are some pages,
4 probably not more than six or eight, that just have
5 logo probably of the site. Right, they are not
6 pornography in themselves, but there are that many
7 images on each page. Like I say, just inadvertently
8 when they were running it off, of course, you know,
9 they got that symbol that I guess would be the site
10 when you first bring up the logo from that, but yes,
11 they're all alike.

12 THE COURT: Well, let me address the issues
13 related to Exhibit 123.

14 I do find that the stack of photographs is
15 simply cumulative, that the prejudicial effect
16 outweighs any probative value that might result from
17 its admission. So what I'm going to suggest that
18 the State does is you may make whatever
19 representation you want to make on that one page.
20 You can be certain that that page reflecting those
21 twenty-four photographs is representative and -- you
22 know, accurately representative of all of these
23 various pages, including these depictions.

24 You will be permitted to elicit testimony
25 regarding the fact that there were however many

1 thousands of similar photographs retrieved from a
2 computer, but the actual admission of photographs
3 will be limited to one page. And you can -- you
4 know, you can make whatever page you want to from
5 whatever images you have taken off the computer,
6 just so that it's accurately representative of the
7 entire selection of images that were taken off of
8 the computer.

9 MR. GOWDY: Yes, sir.

10 THE COURT: With respect to Exhibits 120, 121,
11 122, I'm going to take that under advisement for the
12 moment. I'll address that issue before we resume in
13 the morning.

14 All right. What other matters do we have?

15 MR. GOWDY: I've informed Mr. Pruett, Your
16 Honor, we would be proceeding on the burglary
17 aggravating factor and the larceny with deadly
18 weapon. We will not be proceeding on kidnapping or
19 on that the murder was done for money for either
20 himself or for someone else.

21 THE COURT: So you're proceeding with statutory
22 aggravating circumstances two and three reflected on
23 the amended notice of statutory aggravating
24 circumstances filed on November the 1st of this
25 year?

1 MR. GOWDY: That's correct, Your Honor.

2 THE COURT: All right. What other matters do
3 we have to address?

4 MR. PRUETT: I don't know of any, Your Honor.

5 I have informed the prosecution we had some
6 photos just of Mr. Binney's family members, ten in
7 all. And I think they have photos of Ms. Southern
8 and her family. I'm sure we won't have any
9 objection. I know they have a comparable number and
10 will introduce those in evidence. I haven't seen
11 them. I don't think that I really need to see them
12 prior to their introduction. I'm sure there won't
13 be a problem with that, but I don't know of any
14 other matters that need to be addressed relating to
15 the admissibility of evidence, or any other legal
16 matters.

17 Do you?

18 (off the record)

19 (back on the record)

20 THE COURT: I couldn't help but overhear you,
21 but I hadn't heard yet, but I'll inquire, did you
22 say thirty minutes for each side?

23 MR. GOWDY: For openings?

24 THE COURT: Opening.

25 MR. GOWDY: Your Honor, I was just basing on

1 what Deputy Willingham and the other two attorneys
2 have done previously. I was giving that as kind of
3 an outer marker for how long it might theoretically
4 take. Certainly it would not take me that long, but
5 Deputy Willingham talks more than I do. It may be
6 thirty minutes.

7 THE COURT: I don't think that you need thirty
8 minutes.

9 MR. PRUETT: Well, Your Honor, actually I was
10 going to spend more time than I did in opening in
11 the guilt phase, but I think twenty or thirty
12 minutes is fine, but in this particular phase I have
13 things that I have not talked about before.

14 I didn't know, again, how long their case might
15 run. We have Dr. Swartz-Watts coming from Columbia.
16 Dr. Morton is coming from Charleston, so we
17 obviously didn't want to get them up here the night
18 before and send them back or make motel
19 arrangements. So if we can just start our case
20 Thursday morning, that would help them a lot when it
21 comes to scheduling.

22 I don't know -- I don't think the entirety of
23 our case will take more than a half of a day. Half
24 a day. If we start at nine, I believe we would be
25 finished by one, without difficulty, depending upon

1 the cross they may subject Dr. Schwartz-Watts to and
2 Dr. Morton. But even with the factor in factoring
3 that in, I don't believe that we would go past one
4 o'clock. So our case should be finished in half a
5 day.

6 THE COURT: And the State thinks your
7 presentation might take how long. A day?

8 MR. GOWDY: Yeah.

9 THE COURT: Do you think it could be concluded
10 in the day?

11 MR. WILLINGHAM: If anything, I may have one
12 more witness Thursday morning, if we start at nine.

13 MR. SLADE: I would feel comfortable that we
14 can get all but one in.

15 MR. GOWDY: The only uncertainty, judge, I'm
16 trying to work with Dr. Mainman with her schedule
17 either late tomorrow afternoon or the first thing
18 Thursday morning. She's going to be the last
19 witness for us. And, you know, I don't know how
20 long Prodan is going to take. I don't know how long
21 cross of the deputies in Spartanburg is going to
22 take. I think we can finish it tomorrow. If not,
23 we may spill over into the early part of Thursday
24 morning, but no more.

25 MR. PRUETT: I'm just speaking on what Mr.

1 Willingham said earlier. I think we were --

2 THE COURT: Well, let me do this, rather than
3 us wearing out the court reporter.

4 We will recess at this time and we will resume
5 in the morning at nine a.m..

6 (Whereupon, Proceedings were adjourned to
7 November 13, 2002, at nine o'clock a.m.)

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VOLUME TEN OF TWELVE VOLUMES

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHEROKEE COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN KYLE BINNEY,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

THE STATE)
) TRANSCRIPT OF RECORD
-vs-) 2002-GS-11-525
) 2002-GS-11-526
JONATHAN KYLE BINNEY,)
) NOVEMBER 13, 2003
Defendant.) GAFFNEY, SOUTH CAROLINA

VOLUME X

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury.

A P P E A R A N C E S:

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S-3	Voluntary Written Statement of Jonathan Binney		1916
S-4	Written Note by Jonathan Binney, dated 6-19-00		1948
S-5	Statement of Rights Form for Jonathan Binney, dated 6-19-00		1955
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(SUPPRESSION HEARING)

(NOVEMBER 12, 2002)

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11	S-37	One Tube of Monistat 7 Cream with	2528	
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3	S-121	Photograph		3192
4	S-122	Photograph		3122
5	S-123	One Page of Computer Images		3103
6	S-124	Swedish Erotica Vibrator		3120
7	S-125	Photograph		3071
8	S-126	Photograph		3071
9	S-127	Photograph		3971
10	S-128	Photograph		3071
11	S-129	Photograph		3071
12	S-130	Photograph		3071
13	S-131	Photograph		3071
14	S-132	Certified True Copy of Judgment Entry,		3098
15		dated 6-10-93		
16	S-133	Certified True Copy of Superior Court		3099
17		from North Carolina		
18	S-134	Indictment 2000-GS-42-1633 for CSC		3100
19		First Degree for Jonathan Binney		
20	S-135	Letter from Jonathan Binney,		3150
21		dated 7-7-00		
22				
23				
24				
25				

EXHIBITS

1				
2	NO.	DESCRIPTION	ID.	EV.
3	D-1	Witness Interview Form, dated	1871	
4		6-8-00		
5	D-2	Suicide Note of Jonathan Binney		2226
6	D-3	Enlarged Photograph		3149
7	D-4	Enlarged Photograph		3149
8	D-5	Enlarged Photograph		3149
9	D-6	Enlarged Photograph		3149
10	D-7	Enlarged Photograph		3149
11	D-8	Enlarged Photograph		3149
12	D-9	Enlarged Photograph		3149
13	D-10	Enlarged Photograph		3149
14	D-11	Enlarged Photograph		3149
15	D-12	Enlarged Photograph		3149
16	D-13	Enlarged Photograph		3149
17	D-14	Enlarged Photograph		3149
18	D-15	Jail Records from the Cherokee County		3256
19		Jail		
20	D-16	4 pages of Transcript from the Testimony		3264
21		of Officer Steve Reynolds		
22				
23				
24				
25				

EXHIBITS

NO.	DESCRIPTION	ID.
CT-1	Defense Memorandum of Law on Burglary Instruction	2746
CT-2	Jury Note	2819
CT-3	Search Warrant - 12-8-99 - (Affidavit)	2877
CT-4	Search Warrant - 12-9-99 - (Affidavit)	2877
CT-5	Permission to Search Form - 12-9-99	2877
CT-6	Permission to Search Form - 12-9-99	2887
CT-7	Investigation Report of Officer Diane Lestage, dated 12-13-99	2888
CT-8	80 Pages of Pornographic Computer Images	2901
CT-9	Defense Memorandum of Law to Suppress Computer Search	2963
CT-10	Certified Copy of Judgment Entry of Plea	3096

1 (Proceedings, November 13, 2002)

2 THE COURT: All right, gentlemen, let me
3 address the issue of the photographs that were
4 intended to be offered by the State in the
5 sentencing phase.

6 I have had a chance to review the law that I
7 believe to be applicable with respect to their
8 admission and it does appear clearly that in the
9 sentencing phase of a capital trial, that the State
10 does have a right to introduce evidence of the
11 defendant's prior convictions as it relates to his
12 character and individual characteristics. And there
13 are cases which do hold and have held that
14 circumstances of the prior crimes is admissible to
15 show the character of a defendant. And in the
16 Skipper case there were specific details introduced
17 relating to a prior conviction for criminal sexual
18 conduct, which were admitted, the purpose for being
19 to show the character of the defendant.

20 In this case, the photographs, or at least the
21 two photographs of the child that have been offered
22 do, in my view, tend to show the circumstances of a
23 prior offense, that being a criminal sexual conduct
24 conviction.

25 Obviously, as in every case, the circumstances

1 that relate to those individual criminal convictions
2 may be different. In some cases, even though the
3 offense of criminal sexual conduct is a serious and
4 is a violent offense in most persons perceptions,
5 there are still obviously different circumstances
6 that might relate to that particular offense to make
7 it less aggravating, or more aggravating, or less
8 severe, or more severe. And, therefore, the
9 circumstances relating to the conviction might very
10 well be important and might very well be probative
11 on the issue of the character of the defendant or
12 the perpetrator of the offense. So long as the
13 probative value is not outweighed by its prejudicial
14 effect, I believe that such evidence is properly
15 admitted.

16 In this case I have considered the probative
17 value versus the prejudicial effect, and while the
18 evidence clearly might very well be prejudicial to
19 the defendant, I do find that its probative value
20 outweighs that prejudicial effect.

21 Exhibit No. 120 is a photograph of the child.
22 That photograph clearly tends to show the
23 helplessness of the victim, and, therefore, is
24 admissible for the purpose of showing the individual
25 characteristics of the defendant.

1 Exhibit No. 121, which is a photograph of the
2 genital area of the child, also tends to show the
3 circumstances of the crime and the injury that was
4 caused by the defendant, which I believe also goes
5 to prove the characteristics of the defendant as it
6 relates to that particular crime.

7 And, therefore, I do find that the two items
8 are properly admitted, assuming that a proper
9 foundation is laid at the time that whatever witness
10 is going to be testifying at the time that those
11 items are offered.

12 With respect to the item, photograph 122, which
13 is the photograph of a shoe with a sexual aid, or
14 whatever it was described as, which has also been
15 admitted into evidence, that item is clearly
16 relevant, and I see no prejudice to its admission.
17 And, therefore, it shall also be admitted.

18 With respect to the Court's Exhibit No. 8,
19 which is State's Exhibit No. 123, have you, Mr.
20 Willingham, gone through and --

21 MR. WILLINGHAM: We will just take the top page
22 off that, Your Honor.

23 THE COURT: Okay. Well, allow the defense to
24 look at the top page to see if there was any other
25 objection. I notice there appears to be a check

1 mark or something on one photograph, which I don't
2 know was there or not there.

3 MR. SLADE: Other than the objection we
4 previously had, I don't have any more specific
5 objection to the single sheet that the court has
6 ruled as admitted.

7 THE COURT: Okay.

8 MR. SLADE: Subject to our previous objection,
9 Your Honor.

10 (Photograph marked as State's Exhibit No. 125
11 for identification)

12 (Photograph marked as State's Exhibit No. 126
13 for identification)

14 (Photograph marked as State's Exhibit No. 127
15 for identification)

16 (Photograph marked as State's Exhibit No. 128
17 marked for identification)

18 (Photograph marked as State's Exhibit No. 129
19 for identification)

20 (Photograph marked as State's Exhibit No. 130
21 for identification)

22 (Photograph marked as State's Exhibit No. 131
23 for identification)

24 THE COURT: All right. Are we ready for the
25 jury?

1 MR. WILLINGHAM: State is, Your Honor.

2 MR. PRUETT: I think Mr. Slade noted our
3 objection. We would just enter our objection to the
4 photographs that you have mentioned at the first
5 part of your ruling. I think we stated our grounds
6 for the objection yesterday. Just note the
7 exception.

8 THE COURT: All right, your exception is noted.

9 Any other matters to address before the jury is
10 brought in?

11 MR. WILLINGHAM: Your Honor, the State would
12 move to incorporate all the evidence from the guilt
13 phase into the penalty phase. I think that probably
14 needs to be done as well in front of the jury. I
15 don't know if the court wishes me to do that before
16 or after our opening argument.

17 THE COURT: Well, I would imagine that you
18 would do that -- you can do it now, if you would
19 like, but you need to do it in the presence of the
20 jury so that they will understand that all that
21 evidence has been also offered. And it will be
22 admitted, understanding that it will be admitted
23 subject to any prior objections that have been made
24 by the defense.

25 MR. WILLINGHAM: I'll do that. I will do that

1 before opening. That way I can address them in my
2 opening.

3 THE COURT: Okay.

4 All right. Bring the jury in, please.

5 (The following takes place in the presence of
6 the jury panel)

7 THE COURT: Good morning, ladies and gentlemen
8 of the jury panel. Let me again thank you for your
9 patience and understanding. I hope each of you had
10 a good day yesterday and a good evening last night.

11 As you know, the defendant, Jonathan Kyle
12 Binney, has been convicted of the crime of murder by
13 the unanimous decision of you twelve jurors. And,
14 therefore, we shall now conduct this additional
15 separate proceeding to determine the punishment that
16 the court shall impose upon the defendant for the
17 commission of the crime of murder.

18 Now, Section 16-3-20 of the South Carolina Code
19 of Laws provides, in its relevant parts, in
20 Subsection A, that a person who is convicted of the
21 crime of murder must be punished by death or by
22 imprisonment for life.

23 It is further provided in Subsection B of that
24 particular section that upon conviction of a
25 defendant of the crime of murder, that the court

1 shall conduct a separate sentencing proceeding to
2 determine whether the defendant shall be sentenced
3 to death or shall be sentenced to a term of life
4 imprisonment.

5 And it is further provided in Subsection C of
6 that particular section that the jury shall consider
7 certain statutory aggravating circumstances, as well
8 as certain mitigating statutory circumstances, as
9 well as any other nonstatutory mitigating
10 circumstances which are supported by the evidence in
11 the case in arriving at your decision as to the
12 punishment that is to be imposed.

13 Now, with respect to aggravating and mitigating
14 circumstances, you are instructed that an
15 aggravating circumstance is a fact, an incident, a
16 detail, or an occurrence which might aggravate or
17 make worse the severity of the crime of murder. It
18 is something which may increase the enormity of or
19 add to the injurious consequences of the crime of
20 murder, and which, therefore, might support the
21 imposition of a death sentence as the appropriate
22 punishment for that crime of murder.

23 A mitigating circumstance is a fact, an
24 incident, a detail, or occurrence which might lessen
25 or tend to reduce the severity of the crime of

1 murder. It is something which may be considered as
2 mitigating, or extenuating, or otherwise lessen the
3 degree of moral culpability or moral responsibility
4 for the commission of the crime of murder. It is
5 not a justification for the crime of murder itself,
6 but it is something which may lessen the degree of
7 guilt of the defendant and support the imposition of
8 a less severe form of punishment, that is, a
9 sentence of life imprisonment.

10 Now, during the course of this proceeding you
11 will hear testimony relating to the existence of
12 aggravating circumstances surrounding the murder and
13 you will hear testimony by way of mitigation or
14 extenuation. You may also hear testimony relating
15 to the individual characteristics of the defendant
16 himself.

17 When these presentations are concluded, you
18 will again hear arguments from each side in the
19 case, and then I will again give you certain
20 applicable legal instructions which you are to
21 apply. You will then be asked to retire to your
22 jury room and to again being with your deliberations
23 in the case, and you will return with a decision as
24 to the sentence to be imposed in this case, whether
25 it be a sentence of death or whether it be a

1 sentence of life imprisonment.

2 Now, the way this trial or this hearing, this
3 sentencing hearing, is conducted, it's very similar
4 to the guilt phase of the trial itself. The lawyers
5 will again address you in opening statements.

6 Followed by those opening statements will be a
7 presentation of evidence. The State will present
8 evidence and the defense will present evidence.

9 Once all of that additional evidence has been
10 received, the lawyers will again address you in
11 final summation, after which I will instruct you on
12 the applicable law, and after which you will then
13 begin with your deliberations in the case.

14 So please give the lawyers your careful
15 attention now as they give you their opening
16 statements.

17 Mr. Willingham.

18 MR. WILLINGHAM: Your Honor, if it please the
19 court, at this time the State makes a motion to
20 incorporate all the evidence and testimony
21 introduced during the guilt phase of this trial and
22 incorporate it and have it introduced in this phase
23 of the trial as well.

24 THE COURT: All right. It shall be admitted,
25 subject to any prior objections.

1 MR. SLADE: Thank you, Your Honor.

2 MR. WILLINGHAM: Ladies and gentlemen, on
3 behalf of the State of South Carolina and on behalf
4 of the family of Judy Southern, I want to begin by
5 thanking you, thanking you for the attention that
6 you gave to these witnesses, the consideration that
7 you gave to the evidence, the deliberations that
8 y'all went through Monday evening. I want to thank
9 you for the sacrifice that you and your family have
10 made -- have had to make to be here and for your
11 verdicts on Monday.

12 We now come to the stage of the trial to
13 determine whether or not that man deserves the death
14 penalty.

15 In South Carolina the law provides that in
16 certain situations the jury is entitled to return a
17 death penalty. The State is entitled to seek a
18 death sentence and the jury, if they believe, is
19 appropriate is authorized to render a death
20 sentence.

21 As we discussed in jury qualification, not
22 every murder is the same. Not every murder can I
23 seek the death penalty on. There has to be
24 something aggravating, something that makes this
25 crime, this murder, worse. And the legislature has

1 set out a number of things that the judge has told
2 you are called aggravating circumstances. Those
3 number of things are what makes this murder worse
4 than in other murders.

5 There are two in this case, two aggravating
6 circumstances in this case. One is that the murder
7 was committed during the commission of a burglary.
8 The other is that the murder was committed during
9 the commission of a larceny or stealing by use of a
10 deadly weapon, or while armed with a deadly weapon.

11 As you heard me make that motion just a minute
12 ago to incorporate all the evidence from the guilt
13 phase into the sentencing phase, you will have back
14 in your jury room again all your items of evidence.
15 You will be able to consider all the testimony that
16 came from that witness stand.

17 And you will remember the testimony, about how
18 Judy Southern came home, came home to the place that
19 is most sacred to her, the place where you are
20 supposed to be able to feel safe, the place where
21 you are supposed to be able to be yourself, the
22 place where you keep your most personal stuff, your
23 sanctuary; and how that man violated it, and
24 terrorized her, finding him in her bathroom,
25 shooting her, chasing her in her own home. That

1 makes this murder worse. That makes this murder
2 aggravated.

3 The fact that he was there all day, stealing,
4 eating their food, drinking their beer, making
5 himself at home in Judy's Southern's sanctuary,
6 while armed with that Makarov 9 X 18 makes this
7 murder worse. It makes this murder aggravated.

8 There is more. There is more than just that
9 testimony you heard during the guilt phase. There
10 is more than just that evidence you had back in the
11 jury room. There is a lot more that y'all need to
12 know, to know that that man deserves the death
13 penalty.

14 The first thing you need to know is about Judy
15 Southern. We have referred to her as the victim.
16 We have referred to her on drawings as a thirty-nine
17 year old white female. You know a little bit about
18 her. You know she worked at the post office. You
19 know she was married. You know she's had a son.
20 You know she was part owner of a bowling alley, but
21 you don't know Judy Southern. You don't know what
22 made her special to her family, to her friends. You
23 don't know what made her unique. You don't know
24 what her death has meant to a lot of people. Today
25 you will know that. You will know that day, because

1 teh family will tell you about Judy. You will get
2 to know more than just a thirty-nine year old white
3 female, that we sometimes coldly refer to as the
4 victim.

5 But, as we must, we will return our focus on
6 that man, the focus on that man and his background
7 as we have heard discussed. His background includes
8 a criminal history. He started off small, stealing,
9 stealing motorcycles, stealing laptop computers.
10 And you will hear about his convictions for those
11 crimes, and how he steadily elevated his level of
12 crime.

13 You will hear about his character. About his
14 character; about his fantasies; his fantasy to rape
15 his wife's brother's wife; his fantasy to rape his
16 wife's brother's wife and kill his wife's brother.

17 You will hear of his fantasy wanting to have
18 sex with children. The testimony will come from
19 that witness stand from the SLED agent who seized
20 his computer and how she found on that computer
21 twenty thousand images of child pornography -
22 children having sex with other children, children
23 having sex with adults.

24 And you will hear about how he looked at that,
25 how that helped him fantasy.

1 Just when you think it can't get any worse, you
2 will hear about how he carried out one of those
3 fantasies on his own three-month old daughter. You
4 have heard her referred to, State's Exhibit No. 34,
5 Defense Exhibit No. 2. You have heard about
6 [REDACTED] When [REDACTED] was three months old he put
7 her on the bed and he wanted to see if a three-month
8 old could be sexually aroused. And he took a
9 vibrator and he put it inside that little girl. But
10 for him that wasn't enough. His fantasy, his
11 character, that man, after using the vibrator on
12 her, took his penis and inserted himself into his
13 own three-month old daughter. And when he did that,
14 he ripped her. He ripped her from front to back.
15 Tore her up. He took her to the hospital. And you
16 will hear from the doctor that performed the surgery
17 on her to try to put her back together.

18 You will hear what he told the police about
19 what happened. His character. He lied about what
20 happened over and over again, trying to explain,
21 trying to justify it, trying to say it wasn't me, I
22 didn't mean to, it was an accident, she slipped,
23 until finally he tells us what happened to his own
24 three-month old baby.

25 That's the background of Mr. Binney. That's

1 the character that you will hear. That's the
2 evidence that you will hear, ladies and gentlemen.
3 All of it; about Judy Southern, about his criminal
4 history, about child pornography, about poor little
5 [REDACTED] That's all this evidence that you will
6 hear that makes this murder worse; that makes this
7 murder aggravated; that makes him deserve the
8 ultimate punishment. Ladies and gentlemen, he's
9 earned it.

10 THE COURT: Mr. Pruett.

11 MR. PRUETT: If it please the court?

12 THE COURT: Yes, sir.

13 MR. PRUETT: Mr. Foreman and members of the
14 jury, like Mr. Willingham, I want to express our
15 sincere thanks for serving on this trial. Few
16 people, few people, will ever fully understand the
17 sacrifice that jurors in a capital case have to
18 make. And I don't mean just being away from your
19 families, being stuck in a motel room, all of which
20 is a major imposition sacrifice, but you fully
21 understand, I think, at this point what you are
22 being called on to do. And few people understand
23 how much you have to listen to and go through to
24 reach a verdict in a guilt phase and be in the
25 sentencing phase that fits the crime in this case.

1 It's tough. I understand that.

2 Mr. Willingham talked about evidence you are
3 going to see in this case, specifically the criminal
4 sexual conduct case. As bad as he described it, I'm
5 going to tell you something. It's worse. It's
6 worse. I can't stand here and look at you with any
7 kind of credibility and say it's not going to be
8 that bad. It's going to be worse. It's awful.
9 That evidence is repulsive. It's repugnant and it's
10 offensive. I'm not going to tell you it's not going
11 to be easy to look at. It's going to be awful to
12 look at, but in this case you are not being asked to
13 decide whether or not he's guilty or not guilty of
14 criminal sexual conduct on his child. He's already
15 been charged with that, tried by a jury, just like
16 you, to have to suffer through that same evidence,
17 look at it, deliberate, reach a verdict. And he's
18 been punished and sentenced for that offense. We
19 have been through this before one time already days
20 of testimony on this criminal sexual conduct case.

21 The only reason the prosecution at this point
22 is putting that in front of you is in the hopes and
23 the certainty in our minds that you will be so
24 offended, so repulsed, as you will be, that when the
25 time comes to decide what sentence to impose on Mr.

1 Binney, that you won't hesitate to impose death.
2 And that is a gut reaction that every one of you as
3 a parent is going to have, that he ought to die. He
4 did that to his own child, he ought to die. The
5 problem with that is he's been punished for that.
6 What you are being asked to do is punish him for the
7 murder of Judy Southern. That's what your job is.

8 As Mr. Willingham told you, every murder case
9 is not a death penalty case. The State of South
10 Carolina has listed twenty reasons why a person can
11 be sentenced to death. And of those twenty reasons,
12 they only need one, but they got to have at least
13 one, that convinces all twelve of you that yes, he
14 falls within that reason, and, therefore, we can
15 give him the death penalty.

16 And even if they prove that reason beyond a
17 reasonable doubt, which they may be able to do, a
18 jury of twelve people is not bound by the fact that
19 they found that reason. You can impose the death
20 penalty for that reason, certainly, or you can
21 impose a life sentence for any reason; or, as Judge
22 Cole will tell you, you can impose a life sentence
23 without patrol for no reason, based upon what you
24 just believe is the right thing to do in this case.

25 Now, as I told you at the beginning of the

1 trial, it seemed like weeks ago, but last Saturday,
2 they started out with three reasons that they were
3 seeking the death penalty.

4 The murder in this case was committed while in
5 the commission of a kidnapping. They have now
6 abandoned that reason. I don't know what theory
7 they were proceeding on at some point, but their own
8 theory apparently proved wrong in the case. They
9 have given up that reason.

10 The second reason is that the murder was
11 committed during the commission of a larceny while
12 Mr. Binney was armed with a weapon. I haven't heard
13 of evidence thus far in the trial where a larceny
14 was committed while he was using a deadly weapon.
15 They may have a theory that fits that, but I haven't
16 heard it.

17 And the last reason is the one reason that I
18 would submit that they have grounds to seek the
19 death penalty, that this murder was committed while
20 during the commission of the crime of burglary.

21 He was charged with burglary in this case. And
22 you have found him guilty of murder and burglary.
23 I'm not here this morning, and Mr. Slade won't be
24 here during the rest of this trial, to dispute and
25 argue with you your verdict. We accept that. We

1 recognize it, but we have got to continue to discuss
2 it, because that's going to be the only reason why
3 they could ask you to impose the death penalty. All
4 the other evidence and testimony in this case, most
5 of what you are going to hear, has nothing to do
6 with that reason.

7 They will present evidence from the Southern
8 family, people who knew her well, people who cared
9 for her. That's the kind of evidence that you
10 should listen to. That's the kind of evidence that
11 you have got to give your careful consideration to,
12 because that has everything to do with this case.
13 It has everything to do with who Judy Southern was
14 and what her murder has meant to her family. That's
15 what you should be considering, because it's got
16 everything to do with the sentence for the crime you
17 are being asked to consider to impose.

18 But most of what you are going to hear, once we
19 get past that, most of the State's case has got
20 nothing to do with the burglary, nothing to do with
21 the murder. It's got nothing to do with Judy
22 Southern. It's evidence designed for one purpose,
23 to make you offended with Jonathan Binney, to anger
24 you, to get you to impose the death penalty.

25 I want you to focus on what you are here to do,

1 and that is sentence him for this crime. Those
2 other crimes he's talking about, he was charged. He
3 was arrested. He was tried by a judge or tried by a
4 jury, and he was sentenced by a judge or by a jury.
5 He's paid for that. That's not what he's being
6 retried on, but that's what the State's case is
7 going to be about, retry him on every offense he's
8 ever committed.

9 I want you to focus your attention and your
10 efforts on what you have been asked to do,
11 sentencing him for the murder of Judy Southern.

12 When I look at you this morning, I can't tell
13 you how it is or why it is that Jonathan Binney got
14 to be the person that he is. I can't understand how
15 it is that some people grow up to be what they are.
16 Obviously he's somebody that's plagued by mental
17 disorder, mental illnesses.

18 The prosecution and I, we can disagree, and we
19 have disagreed on a lot of things during this trial.
20 I think with that one point we are going to find
21 common ground. This is a person who has deep-seeded
22 mental illnesses or mental disorders. Not even the
23 prosecution can deny that.

24 When I offer that kind of evidence in the
25 course of a trial, I'm not seeking to excuse his

1 conduct. Nothing can excuse what he's done, but I
2 offer that evidence, that expert testimony, to at
3 least explain why it is that he's the way that he is
4 and the rest of us aren't.

5 Everyone in this courtroom, everyone,
6 recognizes Jonathan Binney is responsible for his
7 actions, is responsible for the crimes that he has
8 committed. Everyone. Jonathan Binney recognized
9 that. As his attorneys we recognize that. His
10 family, his friends, they recognize that he has got
11 to be punished. He's committed a wrong. He's got
12 to be punished. We recognize that. We are not
13 trying to excuse this conduct. The question is
14 what's the punishment going to be. Is it going to
15 be death, or is it going to be life without patrol.
16 That's what you have got to decide.

17 Mr. Willingham stated we are going to introduce
18 all these statements about how he lied in the past,
19 has just got a long career of deception. I don't
20 want to rehash or reargue the burglary case all over
21 again, but I do want to say this. Jonathan Binney
22 gave confessions in this case as to what he did. He
23 confessed to the police. When you think about what
24 holds this case together, it's his confessions that
25 hold this case together. You take away his

1 statements, the prosecution's case bust into a
2 thousand pieces of circumstantial evidence. He
3 comes, gives confessions, glues the case together.

4 His attorney, Don Thompson, who testified, told
5 Spike McCraw, who took that first confession, this
6 person is self-destructive. He's suicidal. He's on
7 suicide watch. And he remained on suicide watch
8 from the time that he was arrested. Up until the
9 time that he gave that first confession, up until
10 the time that he gave the second confession, he
11 remained on suicide watch. They withheld mental
12 health treatment, and they did not resume the
13 medication that he had been taking until after all
14 these confessions were in. And even though Mr.
15 Thompson told his client, told Mr. Binney, told
16 Spike McCraw, not to talk, he did.

17 The State wants to have their cake and eat it
18 too on is that issue. They want to say well, he's
19 deceptive and he's lying. Mr. Binney went to them
20 and laid out their case for them. He laid out
21 exactly what he did and how he did it. If he was
22 trying to be deceptive, trying to throw them off the
23 trail, so to speak, all he had to do was keep his
24 mouth shut. He didn't do that. He laid it out for
25 them. And now they want to pick and choose the

1 things that he's told them that they want to
2 believe. And when anything comes up in his
3 confessions that they don't like, he's deceptive,
4 he's lying to them. They have can't have it both
5 ways. They can't say he's telling us the truth in
6 his confession when it fits within what we want to
7 believe. When he starts talking about wanting to
8 die or wanting the death penalty, that's in that
9 very same confession that they are relying upon to
10 hold their whole case together. They can't have it
11 both ways and say we are not going to believe that.
12 I'm not here to reargue the burglary case.

13 You are going to hear additional evidence from
14 the prosecution on the burglary case, on the murder
15 case. That's how it's going to come up. We may
16 have some evidence on that same issue from the
17 people who have talked to him, so it's going to come
18 up again, and it's got to be reconsidered, because
19 that is the only reason that they can seek the death
20 penalty.

21 We all have our own ideas about what kind of
22 murders may deserve the death penalty. Cases where
23 physical torture, cases where people kill children,
24 those are all cases that do, in fact, require the
25 death penalty to be imposed, if the jury so finds.

1 You might have a situation where you might
2 think it would be a death penalty case, but it
3 isn't. If I told a person I'm going to go to your
4 house two weeks from today and I'm going to shoot
5 you down in your yard, that's coldblooded
6 premeditated murder, but it's not a death penalty
7 case. It's not a death penalty case because you
8 don't have statutory aggravating circumstances,
9 which in this case is the crime of burglary. So we
10 are going to revisit that issue for that reason, and
11 that reason alone. It's the only reason that they
12 can seek the death penalty in this case.

13 As I stated, you are going to hear testimony
14 from the Southern family. Having tried dozens of
15 these cases, having sat at this same table, having
16 done what Mr. Willingham and Mr. Gowdy are asking
17 you to do, I know it's going to be gut wrenching.
18 It's never easy. It's going to be gut wrenching
19 because these people are going to be speaking from
20 the hearts about somebody that they knew. And,
21 again, that's the kind of evidence that I think is
22 relevant in this case, and you should consider it,
23 because not only have they had the loss of a life,
24 that's Judy Southern who lost her life, and Jonathan
25 Binney who killed her, they have also lost the

1 companionship and society, the love of somebody that
2 they obviously cared a lot about. All of that is
3 relevant in your consideration.

4 And I think, too, and it may not be the most
5 sympathetic argument for people sitting where you
6 are at, but I think about this too, when you have
7 someone like Jonathan Binney, who has committed a
8 crime, who has been punished, who is going to be
9 punished by you. He's punished. The people that he
10 knows, people that care about him, they feel the
11 effects of that too. I don't doubt that for some of
12 you who have got to have friends or family that have
13 been in this situation where they have done
14 something stupid, maybe something horrible, get
15 sentenced, go to the penitentiary. Their families,
16 their friends that really care about them, really
17 love them, no matter what they have done, they don't
18 cut them off. A parent, no matter how much they may
19 recognize and understand their child has done
20 something wrong, doesn't cut them off. A parent is
21 still a parent; still suffers through a certain
22 extent with that child; still makes that trip down
23 to the penitentiary every Sunday after church, make
24 that visitation. It doesn't end there.

25 There was once a judge that held court here

1 frequently, he used to say everything that happens
2 in this courtroom is a tragedy. There are no good
3 endings. And I think in a case like this, that's
4 certainly true. There are no good endings. No one
5 is going to leave this trial, no one, with a smile
6 on their face. No matter what your sentence is,
7 whether it's the death penalty or a life sentence
8 without patrol, I don't know that anyone one of you
9 can really feel good about that. Certainly you will
10 reach a verdict for sentence that you know is just
11 in your own heart, but it's not something that you
12 can have that good a feeling about that you might
13 have in other things that you do.

14 So I want to say this, my last remarks to you,
15 because I won't be speaking to you again at the end
16 of this trial. Mr. Slade, he will be doing the
17 concluding remarks for the defense, but I want to
18 say this. You don't have to answer to anybody the
19 sentence that you are going to reach in this case.
20 You don't have to explain to anybody why you may
21 choose one particular sentence over the other. That
22 sentence is your decision, your personal decision.
23 There is no right and wrong. I mean, it's part of
24 the trial.

25 During the first part of the trial it's almost

1 like a mathematical formula presented to the jury.
2 You find the facts, you have the law, you reach this
3 result. It's almost like one plus one equals two.
4 If you have got this particular fact, the judge has
5 told you what the law is, there can only be one
6 logical conclusion.

7 In the sentencing phase of a death penalty,
8 case, you can't do that, because the decision that
9 you make is always going to be a personal decision.
10 It's what you think is right. It means you reaching
11 deep down in yourself, searching your heart of
12 hearts for what you believe or what you know to be
13 right, because let me tell you this much that I
14 know. You have got to live with it, and only you.
15 In the weeks, the months and years that go by, it's
16 still going to be with you, whatever that decision
17 is.

18 So that's what I got to say to you, speaking
19 from one person to another. Make sure that decision
20 is right for you. And if you know it's right, you
21 will be able to live with it, no matter what it is.
22 Thank you.

23 THE COURT: Solicitor.

24 MR. WILLINGHAM: If it please the court, we
25 call Barbara Price.

1 BARBARA PRICE, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. WILLINGHAM:

4 Q Ms. Price, tell the jury who you are. Start
5 with the easy questions.

6 A I'm Barbara Price.

7 Q Ms. Price, where do you live?

8 A With my wonderful husband in Raleigh.

9 Q In North Carolina?

10 A Yes.

11 Q Judy Southern?

12 A I'm her big sister.

13 Q You are her big sister?

14 A (shaking head yes)

15 Q I'm not going to ask your age.

16 A I wouldn't tell you anyway.

17 Q Ms. Price, what do you remember about Judy?

18 A A lot.

19 Q Tell me your best memory.

20 A You know, there's not just one past memory, not
21 just one. I watched her grow up. I watched her
22 graduate. I watched her get married. I watched her
23 have children. I was there when Jacob was born.
24 There is too many past memories to just settle with
25 one.

1 Q You say you were there when Jacob was born?

2 A Yeah.

3 Q I show you State's Exhibit No. 128.

4 A Yes, that's my beautiful sister and what she
5 always called the boy. The boy was special to her.

6 MR. WILLINGHAM: I want to move State's Exhibit
7 128 into evidence.

8 MR. PRUETT: No objection.

9 THE COURT: It's admitted, without objection.

10 MR. PRUETT: Your Honor, Mr. Willingham has
11 already showed us several photographs of the family
12 of Ms. Southern. We have no objection to any of
13 those photographs being admitted and published to
14 the jury.

15 THE COURT: All right.

16 MR. WILLINGHAM: Your Honor, for that matter, I
17 would move State's Exhibit 126, 127, 129, 130, 131
18 and 125 into evidence.

19 THE COURT: They're admitted, without
20 objection.

21 BY MR. WILLINGHAM:

22 Q Barbara, do you remember your last Christmas
23 with her?

24 A Oh, yes. Yes.

25 Q I'm going to show you two photographs, 126 and

1 127. Do you recognize those?

2 A Oh, yes.

3 Q Tell me about that Christmas, Ms. Price.

4 A We delayed Christmas so we could have it with
5 Judy, because she had a son. She lives down here.
6 She was to be with her son on Christmas day, and so
7 we all waited, except for what Santa Clause brought
8 the children, to open our gifts and to have our
9 family dinner and to catch up. You know, Christmas
10 is family. Christmas is love. Christmas is
11 generocity, and that's all we did.

12 You never seen -- yeah, you have. If you want
13 to see her smile, look at my twin sister -- her twin
14 sister. She's got a smile, that you could turn
15 these lights off. And she was mean. She would pick
16 on us all the time, and we would pick on her back.

17 We opened presents. We went shopping. We
18 talked. I'm thirteen years older than the girls,
19 but yet we are still this close. They come to me
20 all their life and said "Barbara, help me. Momma is
21 trying to teach me like I'm thirteen. I'm really
22 fifteen." And I said "honey, be glad you got them,
23 because I think you are eleven." They get a bathing
24 suit, they thought I was their mother, because I was
25 so protective.

1 I was down here and brought Judy bras when she
2 had Jacob and she was so tickled because she -- we
3 bought them a different sizes. She said "finally
4 I'm going to have a figure."

5 She was comical. She was lovely. She was
6 smart. She was generous. And it wasn't just with
7 her family. It was with anybody that would be here.
8 If you needed something, you go to Judy. And if she
9 had it, it was yours.

10 One time we dented my husband's car. Every
11 time I drove that damn car, I dented it. I was
12 afraid to tell him. Of course, I had already had
13 two or three accidents with it. I told him "honey,
14 Judy is sorry. She will pay for it. The door went
15 into your car and dented it." He smiled and he
16 laughed. I never heard another word from him. If I
17 had told him my mother really did it, he would have
18 had a fit, and Judy was the one that came up with
19 the solution to this problem.

20 You have somebody for a lifetime, but never
21 know when lifetime is going to end.

22 Q Ms. Price, how many brothers and sisters do you
23 have?

24 A Six. Two of them aren't with us. They
25 wouldn't come.

1 Q You said that Judy was a twin?

2 A Yeah.

3 Q Is Trudy is sitting out in the courtroom?

4 A Oh, yeah, the other half of my heart.

5 Q I show you State's 130.

6 A Yes.

7 Q Do you recognize that?

8 A Oh, gosh, yes.

9 Q It's a picture of them when they were little
10 and it's a picture of them when they were grown?

11 A Yes.

12 MR. WILLINGHAM: Your Honor, I'll publish 130
13 to the jury.

14 BY MR. WILLINGHAM:

15 Q Ms. Price, what do you miss most about your
16 sister?

17 A Everything. Everything.

18 I did this, and it's some things that I have
19 already said and some things that I haven't, and I
20 wanted to put it in the order from then to now so
21 you understand. It's not but three pages. It's
22 double spaced.

23 When we were told we had an opportunity to
24 testify about the glorious life of our sister and
25 what it did to our family, I worked on this in my

1 mind for a month. I have cried. I have smiled.
2 I'm even on antidepressants now so I can get through
3 this trial, but I'm not too sure that I can say it,
4 and I want to say it, and I might make some mistake.
5 I beg your forgiveness. It's something that you
6 already know. I'm going to say it.

7 As oldest child, the shortest and the fattest
8 as well, and I was there when my girls was born. I
9 needed to speak for those who could not speak.
10 There are parts of my family that aren't here. I
11 need to speak for my parents. I need to speak for
12 Judy's husband Allan. He is worse than I am. And I
13 was going to tell how much sunshine and happiness
14 that Judy and Trudy have brought all our lives over
15 the years and to the lives of the many people that
16 she's touched. How when they were first born, my
17 little brother went door to door trying to give them
18 away. He already had two older sisters. He didn't
19 two younger ones. Then tell you about the many
20 special experiences and memories, too many to
21 account for. How can you just disregard any one
22 moment for any day that you are with a loved one or
23 that you think of a loved one. About the strong
24 bond between Judy and Trudy. When they were little,
25 they had their own specific language, how the bond

1 grew stronger as they grew older. They got married,
2 had children. That bond never got smaller. It just
3 covered more people. How there was just a very few
4 times Judy and Trudy didn't talk every day or see
5 each other every few weeks.

6 And to think going through this trial, I
7 watched the defendant's deportment with his
8 supporters and defense team. I've watched his
9 smile. I've watched him eat french fries with
10 ketchup. My sister, who was a vegetable girl. I
11 watched him receive counsel and comfort from his
12 family.

13 I can only wish my sister could do the same.
14 We could speak to her, be comforted, and we could
15 see her beautiful smile once again. Judy could see
16 that bright blue sky.

17 Q Ms. Price, I'm going to just stop for just a
18 minute.

19 A Okay.

20 (off the record)

21 (back on the record)

22 BY MR. WILLINGHAM:

23 Q I know that you wanted to get through this, but
24 let me ask you one last question. If you had had
25 the chance to say good-bye, what would you have told

1 her?

2 A I would have told her don't be scared my love,
3 we are here with you. We love you. All of us would
4 trade places in an instant with you. We will take
5 care of your family. We will take care of your
6 mother and daddy. We will take care of your husband
7 and son. We are close. We are not as many as we
8 once were, but we still have your love in our hearts
9 and there will never be a day that you're not
10 thought of and loved by any one of your family. I
11 only wish that you would still be with us today.
12 And we will see you sometime soon, because I know
13 you are in heaven, and you're the brightest star in
14 the sky, the bluest blue, and the prettiest yellow
15 in a flower. We have you in our hearts. We're
16 going to have you in our arms.

17 Q Thank you Ms. Price.

18 MR. WILLINGHAM: If you would answer any
19 questions that the defense would have.

20 MR. PRUETT: No questions.

21 THE COURT: Thank you, ma'am. You may step
22 down.

23 A Thank you, sir.

24 MR. WILLINGHAM: Your Honor, we call Sarah
25 Smith.

1 SARAH SMITH, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. WILLINGHAM:

4 Q Tell me who you are.

5 A Sara Smith.

6 Q Sarah, how old are you?

7 A Sixteen.

8 Q Where do you live?

9 A Wilmington.

10 Q North Carolina?

11 A North Carolina, sorry.

12 Q That's okay. Trudy is your mom?

13 A (shaking head yes)

14 Q And Mike is your dad?

15 A Yeah.

16 Q Your mom had a sister named Judy?

17 A (shaking head yes)

18 Q Were you close to her?

19 A Extremely.

20 Q Tell me what you remember about your aunt.

21 A Well, I don't have any of the growing-up
22 memories like Aunt Barbara did, but I used to spend
23 every summer with her. I would go up there for
24 about a week at a time. She would either come down
25 and stay for like a few days and then take me back

1 with her and then our parents would meet halfway, or
2 we would meet half way and do like that.

3 Q Now, I know a lot of good things happened when
4 you are growing up, being a teenager, and high
5 school, junior high. Did you share those
6 experiences with Judy?

7 A Oh, yeah. She was -- she knew who my date for
8 the formal in 8th grade did before my mom did.

9 Q Was she proud of you?

10 A Extremely. She wanted a picture of him
11 immediately.

12 Q Do you remember -- did y'all take family trips
13 to the beach?

14 A Yeah, my grandparents had a condo down there,
15 so we spent a lot of time there.

16 Q I'm going to show you State's 125. Do you
17 recognize that picture?

18 A Yeah.

19 Q What's that a picture of?

20 A It's my aunt and my cousin Jacob in the grass
21 right out in front of the condo.

22 Q At the beach?

23 A Yeah.

24 MR. WILLINGHAM: I would publish 125 to the
25 jury.

1 BY MR. WILLINGHAM:

2 Q Sarah, what do you miss most about your aunt
3 Judy?

4 A Everything. You can't pinpoint it. You think
5 you can, but you can't.

6 You miss the way that you used to spend time
7 with her. The way anytime that you felt bad, all
8 you had to do was sit there and talk to her and she
9 would completely change the situation around. She
10 had a way to switch things into the happiest things.
11 You know what I mean? I mean, just --

12 And then when she found out -- I used to go to
13 summer camp for a week, and she found out that I
14 used to ride horses down there, and she started
15 talking how much she loved horses. And we found out
16 we had that in common, like we had a really big love
17 for it, and she ended up somehow getting horses out
18 on her yard. I mean, she had a huge house and a
19 huge yard, but -- and she, within a few years, had
20 about at one point five horses out there and she was
21 building a barn and she had a little shed. She
22 cleaned out the nastiest shed you have ever seen to
23 build it into a tack room. And she bought me a
24 saddle at a horse auction, and she ended up using it
25 so much, her imprints are on it, not mine. But she

1 said that the one thing that she didn't like about
2 the saddle was that it was Carolina blue. She liked
3 Duke.

4 And no matter how many times I fed horses
5 beforehand, I never fed them out of my hand. You
6 know how you put apples or treats in your hand to
7 hold it out? I was always scared they would bite
8 me, always. And she sat there and put her hand
9 under mine and pulled my arm in there and was
10 holding my wrist and I fed my first horse like that.
11 She just -- when you are around her, you can't be
12 scared.

13 Q Sarah, thank you.

14 MR. PRUETT: No questions.

15 THE COURT: Thank you, Sarah. You may step
16 down.

17 A Thank you.

18 MR. GOWDY: Your Honor, the State would call
19 Jacob Southern.

20 JACOB SOUTHERN, having been first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION BY MR. GOWDY:

23 Q Hey Jacob. I'm right here.

24 How are you?

25 A Good.

- 1 Q I want you to speak up in a good loud voice
2 like you and I were out in the yard throwing a
3 football, okay?
4 A Okay.
5 Q Can you tell everybody how old you are?
6 A Eight years old.
7 Q What grade are you in, Jacob?
8 A 3rd grade.
9 Q What school do you go to?
10 A Corinth.
11 Q What's your favorite subject?
12 A Math.
13 Q What's your least favorite subject?
14 A Social studies.
15 Q Do you play any sports?
16 A I play basketball, baseball and soccer.
17 Q Do you ride a motor bike?
18 A Yes, I ride my dirt bike.
19 Q Do you like to bowl?
20 A Yes.
21 Q Jacob, when is your birthday?
22 A June 21st.
23 Q June 21st?
24 A Yes.
25 Q Jacob, do you remember your mom?

1 A Yes.

2 Q What do you remember about her?

3 A I remember when -- when she would always plant
4 the flowers.

5 Q Do you remember doing anything with your mom?

6 A I remember her teaching me how to turn a front
7 flip on the trampoline and helping me with my
8 homework, giving me company, and always saying
9 good-night.

10 Q Did your momma help you at Christmas time when
11 Santa was about to come?

12 A Yes, she would always help me write the words
13 down that I wanted.

14 Q Do you miss your momma?

15 A Yes.

16 MR. GOWDY: I don't have any further questions.

17 MR. PRUETT: Thank you.

18 MR. PRUETT: No.

19 THE COURT: Thank you, Jacob. You can step
20 down.

21 MR. WILLINGHAM: The State would call Wayne
22 Garner.

23 WAYNE GARNER, having been first duly sworn,
24 testified as follows:

25

1 DIRECT EXAMINATION BY MR. WILLINGHAM:

2 Q Tell the jury who you are.

3 A I'm Wayne Garner. I'm Judy Southern's older
4 brother.

5 Q Wayne, you live in North Carolina as well?

6 A Yeah, in Wilmington.

7 Q In Wilmington?

8 A Yeah.

9 Q Were you and Judy pretty close?

10 A Extremely close.

11 Q What made her special to you, Wayne?

12 A Judy was my little sister. I was seven when
13 she was born. Judy was a ray of sunshine. When she
14 walked in the room, it brightened up.

15 The people she works with, after she was
16 murdered, came to me and she says your sister was
17 fantastic. It came -- she worked at the post office
18 here in Gaffney. She said it almost shut down the
19 post office. It almost shut down the mail services,
20 it upset everybody so much.

21 She had the same effect everywhere she went.

22 She had a low chuckle. She turned things
23 around and would just make you feel better about
24 everything. That was my Judy.

25 Q I show you State's Exhibit No. 129. Do you

1 recognize that?

2 A Yes, that's Judy at the postal service here in
3 Gaffney.

4 MR. WILLINGHAM: I'll publish 129, Your Honor.

5 BY MR. WILLINGHAM:

6 Q I show you State's Exhibit No. 131. Tell me
7 what that is.

8 A This is my picture. This is a blowup of my
9 picture. I keep it. It's not framed. It's a
10 little snapshot that I keep on my dresser mirror.
11 And I brought this trying to explain what she meant
12 to me. Meant to me. That's Judy, Trudy, my little
13 brother Kenny, my cousin Clyde.

14 Judy and Trudy, when they started the first
15 grade, I was in the sixth, in the same elementary
16 school. And I walked them to school.

17 Give me a minute, please.

18 MR. WILLINGHAM: I'm going to publish 131 to
19 the jury.

20 A It was my job to take care and protect my
21 little sisters on the way to school and back. I was
22 in the sixth grade. They were in the first.

23 They were so close that as they were learning
24 how to talk, we were teaching them how to talk,
25 teaching them words, teaching them how to walk.

1 They had a different word for bottle. They
2 understood that word. They had their own language.
3 They taught their language to each other. They
4 understood it. We didn't.

5 When I was walking them, taking them to school,
6 they would get upset. They were scared in a new
7 environment. The teachers would come and get me
8 from the sixth grade class and I would go in and
9 have to sit with them and calm them down.

10 It was my job, I taught them how to ride a
11 bicycle. Taught them to how to drive a car.

12 And you can't talk about one without talking
13 about the other. I heard them give testimony in
14 here about DNA, identical twins. The same DNA,
15 because they are two halves of a whole. So I can't
16 sit here and tell you what's good about Judy.

17 I can tell you about Judy. Judy was sunshine
18 and laughter. She had a temper, but she was
19 special.

20 I can tell you the hardest part now, and this
21 is on me, was I was the one who walked them to
22 school, and I was the one who comforted them. I was
23 the one who watched them. Big brother all their
24 life. And I have the hardest time thinking and
25 picturing my little sister being chased down her

1 hallway by a man with a gun and me not being there
2 to help her. That's what I live with.

3 I watch what it does to my family. I watch
4 what it does to Trudy.

5 I have to calm down a minute.

6 They say my father in the last stages of
7 cancer. He's in the hospital. He had --

8 THE COURT: Just a second.

9 A He had a reaction to the medicines they gave,
10 had him for nausea during chemo. It paralyzed him.
11 It paralyzed him for three or four days. He could
12 move his head and he can talk. He could rationalize
13 everything he says. He knows everything that's
14 going on.

15 Trudy and I were splitting up shifts. She
16 would be with him during the day and I would be with
17 him at night. And since Judy's murder, we are
18 careful, extremely careful, with the rest of our
19 family members. So as time for Trudy to leave, I
20 would always walk her out in the dark to her car.
21 Walking down the stairs we run into an old school
22 friend of Judy's and Trudy's, and it's hey, how have
23 you been; remember when we did this; remember this
24 party; remember that dance. By the way, Trudy, how
25 is Judy? I see what it does to my sister.

1 When my sister was murdered, I know it took
2 Trudy's future. And let me explain that. They
3 talked every day. They talked almost every day, and
4 I mean almost every day. They went to school one
5 through sixth they were in the same classroom.
6 Seventh grade they had a few different classes, but
7 they always had the same lunch and a few classes
8 together.

9 When they got jobs later, they had the same
10 lunches. One would go to lunch with the other one.

11 And what they took from my sister is what
12 bothers me. She can't talk to Judy today. She
13 can't talk to her tomorrow. All she has, it was in
14 the past. And it just has affected my family in so
15 many different ways.

16 My mother's birthday is June the 7th. June the
17 9th -- excuse me. June the 7th, of course, is when
18 Judy was shot. On my mother's birthday -- on my
19 mother's birthday we're at a funeral parlour burying
20 my sister. That was a great birthday present. A
21 great birthday present.

22 I can sit up here and go on and on about how
23 this has affected my family, and I could never get
24 you -- I could never explain it all.

25 I didn't -- my father is, like I said, in the

1 last stages. They started his morphine yesterday in
2 his nebulizer. And I felt like I needed to be with
3 him. Barbara was here. Pat, Trudy, Michael, they
4 would be here. He said "Wayne, there is not much
5 you can do for me."

6 "Dad, I can hold your hand. I can hold your
7 hand. When the time comes, I can hold your hand,
8 dad." He said "no, nobody held Judy's hand. It's
9 time for you to go hold your sister's hand. It's
10 time for you to take care of your sisters." That's
11 why I'm here.

12 I call my dad every day. I have got a cell
13 phone that's on twenty-four hours so my family can
14 get in contact with me, if need be. They're nice
15 enough to let it stay turned on, and Kathy, the lady
16 here back in the back is sitting by that phone. If
17 it rings, she will come and get me. But every
18 recess that we have, end of every day I have to call
19 my dad and I have to tell him what's happened. I
20 have to answer to my dad every day. And he's
21 assured me "I will be here when you get back."
22 That's about all I could say.

23 Q Thank you, Mike.

24 MR. PRUETT: We have got no questions.

25 THE COURT: Thank you. You may step down.

1 MR. WILLINGHAM: Greg Phillips.

2 GREG PHILLIPS, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. WILLINGHAM:

5 Q Tell the jury who you are.

6 A Greg Phillips.

7 Q Mr. Phillips, where do you work?

8 A I'm an investigator with the Seventh Circuit
9 solicitor's office here in Cherokee County.

10 Q Mr. Phillips, at my direction did you travel to
11 Ohio to obtain certified court records?

12 A Yes, sir, I did.

13 Q And who did I ask you to obtain those records
14 on?

15 A Jonathan K. Binney.

16 Q Were you able to find convictions in the State
17 of Ohio for Jonathan K. Binney?

18 A Yes, I was.

19 Q What was the charge?

20 A He was originally charged in Ohio with B&E and
21 theft.

22 Q Was he convicted or pled guilty?

23 A He was found guilty of criminal damaging.

24 Q And you have those certified copies of those
25 records with you?

1 A Yes, sir, I do.

2 MR. PRUETT: We have a matter of law quickly to
3 address.

4 THE COURT: All right. Ladies and gentlemen,
5 let me take this one matter outside of your
6 presence. Please go to your jury room. Do not, of
7 course, discuss the case in any way. We will bring
8 you back after a short break.

9 (The following takes place outside the presence
10 of the jury panel)

11 THE COURT: Mr. Pruett.

12 MR. PRUETT: Our objection is that, and seemed
13 pretty simplistic was, he talked about his arrest
14 charges and his ultimate conviction and --

15 THE COURT: Have you seen the certified
16 records?

17 MR. PRUETT: I have seen copies, Your Honor,
18 yes.

19 THE COURT: I mean copies of the record?

20 MR. PRUETT: He was not convicted of B&E and
21 theft. He was convicted of criminal damage.

22 THE COURT: I understand that.

23 Solicitor, what about that?

24 MR. WILLINGHAM: Your Honor, it has on the
25 indictment the defendant is charged with B&E theft,

1 and it has on the sentence he's found guilty of
2 criminal damaging. That's what the records
3 themselves show. That's what Mr. Phillips has
4 testified.

5 THE COURT: I understand, but you would agree
6 with me, would you not, that what is admissible in
7 this hearing is what the defendant has been
8 convicted of, not what the defendant might have been
9 charged with somewhere at some time?

10 MR. WILLINGHAM: Yes, sir, I would.

11 THE COURT: Well, then why we would ask that
12 information or why would it be elicited from this
13 witness as to what he might have been charged with,
14 when we know he was not convicted of it?

15 MR. WILLINGHAM: The reason that that was done
16 is because that's all part of the same records that
17 he brought back from Ohio, the conviction.

18 THE COURT: But it's not part of any admissible
19 records that are brought back from Ohio.

20 What are admissible are the certified record of
21 convictions, not the certified record of what
22 somebody might have accused him of having done. You
23 would agree with me on that, would you not?

24 MR. WILLINGHAM: Yes, sir.

25 MR. PRUETT: Your Honor, also he -- again, I

1 had looked at these records sometimes ago, but I
2 think he alluded to that also in his opening
3 remarks.

4 I seen his record, but I really hadn't made
5 that connection he was referring to this particular
6 case, but obviously it's inadmissible. Obviously
7 it's prejudicial. I don't know what the remedy is.
8 at this point. I don't think it's such a compelling
9 error -- I have to concede it's not such a
10 compelling error that it might warrant a mistrial,
11 but I don't know what the remedy is, Your Honor,
12 except maybe telling the jury, or saying, you are
13 only to consider his convictions, but it's hard to
14 unring that bell when it's, one, being reinforced in
15 the solicitor's opening remarks, and, two, testified
16 before the jury.

17 THE COURT: What other records do we have
18 there, solicitor?

19 MR. WILLINGHAM: Your Honor, I will hand these
20 to the court.

21 I'll hand up from Rowan County Superior Court
22 from North Carolina.

23 THE COURT: Ms. Baines, would you hand that to
24 Mr. Pruett?

25 Mr. Pruett, this looks like a certified copy of

1 an entry of a plea of guilty to criminal damaging.
2 So I don't see anything else on there. You will
3 have to look at it to be certain.

4 MR. PRUETT: Yes, sir.

5 Well, Your Honor, it's got other charges, other
6 dispositions. It's got one for theft, one for
7 criminal damaging. And then it says found guilty of
8 what appears to be O.R.C., which I don't know what
9 that is.

10 THE COURT: Let's do this.

11 MR. PRUETT: And it also has, Your Honor, that
12 he pled not guilty, which kind of -- again, it
13 potentially reflects on his assertion of innocence,
14 that he pled innocent and then was found guilty. So
15 I don't see where they have to --

16 THE COURT: Well, I think that reflects that he
17 may have pled not guilty to the original charge and
18 pled guilty to a different charge, so I don't think
19 that would be --

20 MR. PRUETT: Well, he had no contest, Your
21 Honor. One not guilty on the other. And then it's
22 got a dismissal, but all they are entitled to get in
23 is just the actual convictions, not these other
24 matters.

25 THE COURT: Oh, I understand.

1 Solicitor, I'm going to give you these records
2 back. What I want y'all to do is look at the
3 records. And if they need to be redacted, they will
4 have to be redacted, but understand that the only
5 evidence that's going to be admissible are records
6 of conviction.

7 MR. WILLINGHAM: Yes, sir.

8 THE COURT: Not any record of any allegation
9 that might have been made. I thought we understood
10 that. I didn't have realize that was something that
11 needed to be discussed.

12 MR. WILLINGHAM: I apologize to the Court for
13 that.

14 THE COURT: We will take ten minutes, and I
15 need to see y'all before you go back about the
16 jury's lunch.

17 Have the witness step down. Don't discuss your
18 testimony during the break.

19 (Proceedings recessed)

20 (Proceedings reconvened)

21 (Certified True Copy of Judgement Entry, dated
22 6-10-93, marked as State's Exhibit No. 132 for
23 identification)

24 (Certified True Copy of Superior Court for
25 North Carolina marked as State's Exhibit No. 133 for

1 identification)

2 (Certified Copy of Judgement Entry of Plea
3 marked as Court's Exhibit No. 10 for identification)

4 THE COURT: Are we ready for the jury?

5 MR. WILLINGHAM: Your Honor, what we have done,
6 State's Exhibit No. 132 is the Ohio convictions. We
7 redacted any other reference to anything else he's
8 charged with. It has on there criminal damaging,
9 found guilty. Paid a fine, sentenced to ninety
10 days, suspended to sixty days. Probation.

11 Then State's Exhibit No. 133 is the sentencing
12 sheet signed by a judge in North Carolina,
13 sentencing him to larceny, back in 1998.

14 Both Mr. Pruett and I have reviewed these and I
15 believe we are in agreement on what should come in.

16 THE COURT: Okay.

17 MR. PRUETT: Yes, they correctly reflect his
18 true convictions.

19 Are we going to enter the certified copy as a
20 Court's Exhibit?

21 MR. WILLINGHAM: What we have done, the
22 original we would ask to make Court's Exhibit No.
23 10. And then the copy with the redaction would be
24 State's Exhibit 132.

25 MR. PRUETT: Your Honor, both documents are

1 under seal, out-of-state documents. And for that
2 reason I believe they are admissible.

3 THE COURT: All right. Bring the jury in,
4 please.

5 (The following takes place in the presence of
6 the jury panel)

7 THE COURT: Ladies and gentlemen, during the
8 recent testimony you heard a reference to a charge
9 that may have been brought -- that may have been
10 brought against the defendant.

11 Understand that charges are just that, they are
12 charges. They are insignificant. They don't mean
13 anything. A conviction may be important. That may
14 be something that you find to be probative on some
15 point, and you may consider any record or evidence
16 of records of conviction. But you may not consider
17 any charge that might be brought against anyone,
18 simply because charges are simply that. They are
19 accusations and they don't mean anything, unless
20 they result in a conviction. Oftentimes charges are
21 dropped. Oftentimes a jury may consider a charge
22 and find the person not guilty. So please
23 understand that you are not to consider any evidence
24 as it relates to some charge that may have been
25 made. You may consider any evidence that relates to

1 any record of conviction, if you find that to be
2 probative on any point.

3 So the fact that there was some evidence or
4 testimony relating to a charge is something that you
5 may not consider in any fashion whatsoever. You
6 simply are to erase that from your mind. You may
7 only consider any evidence, if you find it to be
8 probative, as it relates to any convictions that may
9 have been made.

10 All right. The witness will come back around,
11 please.

12 (witness back on the witness stand)

13 BY MR. WILLINGHAM:

14 Q Mr. Phillips, I'm going to show you State's
15 Exhibit No. 132. Is that a copy of the Ohio
16 conviction that you brought back with you?

17 A Yes, sir, it is.

18 Q And that shows a conviction for criminal
19 damaging?

20 A That's correct.

21 MR. WILLINGHAM: Your Honor, at this time I
22 move State's 132 into evidence.

23 MR. PRUETT: Without objection.

24 THE COURT: It's admitted without objection.

25 BY MR. WILLINGHAM:

1 Q I'm going to show you State's Exhibit 133. Did
2 I also ask you to travel to North Carolina in order
3 to obtain certified records of a conviction?

4 A Yes, sir, you did.

5 Q Where did you travel?

6 A To Rowan County, Salisbury, North Carolina.

7 Q And State's Exhibit 133, is that showing a
8 conviction from Rowan County, North Carolina for
9 larceny?

10 A Yes, sir, it is.

11 MR. WILLINGHAM: Your Honor, at this time I
12 move State's Exhibit 133 into evidence.

13 MR. PRUETT: Without objection.

14 THE COURT: It is admitted without objection.

15 MR. WILLINGHAM: That would be all the
16 questions that I have of this witness.

17 MR. PRUETT: No questions, Your Honor. Thank
18 you.

19 THE COURT: You may step down.

20 MR. WILLINGHAM: Your Honor, at this time the
21 State and the defense have reached an agreement.

22 (Warrant, Indictment No. 00-GS-42-1633 and
23 Sentencing Sheet for Criminal Sexual Conduct First
24 Degree marked as State's Exhibit No. 134 for
25 identification)

1 MR. WILLINGHAM: State's Exhibit 134 is the
2 warrant, indictment and sentencing sheet for a
3 conviction on Jonathan Binney from Spartanburg
4 County, South Carolina, for criminal sexual conduct
5 with a minor, first degree.

6 By stipulation we agree to introduce State's
7 134.

8 MR. PRUETT: Well, I agree there is no
9 objection we can make to the document, the
10 authenticate record of his conviction.

11 THE COURT: It is admitted.

12 MR. WILLINGHAM: The State would call Amanda
13 Simmons.

14 SLED AGENT AMANDA SIMMONS, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. WILLINGHAM:

17 Q Tell the jury who you are.

18 A My name is Amanda Simmons. I'm a special agent
19 with the South Carolina Law Enforcement Division.

20 Q What do you do for SLED?

21 A I'm presently assigned to the computer crime
22 center. I investigate computer-related incidents.
23 I do forensic exams on computers brought to me by
24 local law enforcement, includes state, county, and
25 municipality law enforcement agencies.

1 Q What does that mean?

2 A Basically when someone seizes a computer at the
3 local level, such as Spartanburg County, Spartanburg
4 County sheriff's office or police department, they
5 bring the computer to us and we do the forensic exam
6 on it. In other words, we look and see what's on
7 the computer.

8 Q And how do you go about looking in a computer
9 to tell what's on it?

10 A Essentially what we do is we take the hard
11 drive, which is a part of the hardware that is
12 brought to us, part of the computer, we take that
13 piece of equipment, make a copy of it, a forensic
14 copy, onto one of the SLED hard drives. Once we do
15 to that, we do an analysis on it in conjunction with
16 the police department and sheriff's office, in this
17 case the sheriff's office, and we look at all the
18 specific data that is contained on the computer or
19 its media.

20 Q And did you receive such a request in a case
21 involving Jonathan Binney?

22 A I did.

23 Q Who did you receive that request from?

24 A That request came from Spartanburg County
25 Sheriff's Office, Investigator Diane Lestage.

1 Q And did Detective Lestage ask you to search
2 that computer for anything in particular?

3 A The computer was sent to SLED and the request
4 was to look for child pornography.

5 Q And that was done pursuant to the search
6 warrant?

7 A Pursuant to the search warrant. A search
8 warrant was provided to SLED, along with two consent
9 to searches.

10 Q And did you, in fact, search that computer?

11 A I did, in fact, search the computers and the
12 media that was brought to SLED.

13 Q What did you find?

14 A I found in excess of twenty thousand images of
15 adult pornography, child pornography of various
16 forms.

17 Q I'm going to show you what's been marked
18 State's Exhibit No. 123. Does that appear to be a
19 representative sample of the images that you
20 retrieved from that computer?

21 A Yes, sir, this appears to be a representative
22 sample of the search of the computer and the media
23 that was brought to SLED.

24 Q And I believe that actually contains about
25 twenty-four. That contains about twenty-four

OFFICER JASON YOWN - DIRECT BY MR. GOWDY

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1 photographs?

2 A Yes, sir, that is correct. That is correct.

3 MR. WILLINGHAM: Your Honor, at this time I
4 move State's Exhibit 123 into evidence.

5 THE COURT: It is admitted, subject to
6 objection.

7 BY MR. WILLINGHAM:

8 Q If you would answer any questions that the
9 defense has for you. Thank you.

10 MR. SLADE: I don't have any questions of this
11 witness, Your Honor.

12 THE COURT: Thank you, ma'am. You may step
13 down.

14 MR. GOWDY: Your Honor, the State would call
15 Jason Yown.

16 OFFICER JASON YOWN, having been first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. GOWDY:

19 Q Good morning, Detective Yown.

20 A Good morning, sir.

21 Q I want you to introduce yourself to the jury
22 and tell us where you work.

23 A Jason Yown, Spartanburg County Sheriff's
24 Office, a violent crime investigator.

25 Q How long have you been with the Spartanburg

1 County Sheriff's Department?

2 A Seven years and three months.

3 Q I want to go back to December of 1999. Were
4 you called to Mary Black Hospital?

5 A Yes, sir, I was.

6 Q Were you a detective at the time or were you a
7 patrol officer?

8 A I was a detective on second shift.

9 Q Did you respond to Mary Black Hospital?

10 A I did.

11 Q Did you find the defendant Jonathan Binney?

12 A I did.

13 Q What was the nature of the call that you were
14 asked to come respond to?

15 A One of our road officers was dispatched by our
16 communication center to the hospital in reference to
17 a possible sexual assault.

18 Q Did you know the age of the victim at the time
19 that you went to the hospital?

20 A After arriving, yes, sir, I did.

21 Q Did you talk to Mr. Binney?

22 A I did.

23 Q Was he under arrest, or otherwise in custody,
24 or restrained when you talked to him?

25 A No, sir.

1 Q Is that why you didn't read his Miranda Rights
2 to him?

3 A Yes, sir.

4 Q Did he agree to talk with you?

5 A Yes, sir.

6 Q Did you take a written statement from him?

7 A I did.

8 Q Let me show you State's 110 and ask you whether
9 or not you recognize that?

10 A Yes, sir, I do.

11 Q What is that?

12 A This is a standard form that we use at
13 Spartanburg County Sheriff's Office. It's titled
14 voluntary statement. It has information on there
15 from the person that we are taking the statement
16 from, their personal information. There is
17 approximately thirty lines to where they can fill it
18 out. And then at the bottom I witness it with my
19 signature, and Mr. Binney has signed it also at the
20 bottom.

21 MR. GOWDY: Your Honor, we would move this
22 exhibit into evidence.

23 THE COURT: It's admitted, subject to any
24 objection.

25 BY MR. GOWDY:

1 Q Detective Yown, when you were called to Mary
2 Black Hospital, had you ruled out the possibility
3 that it could have been an accident?

4 A No, sir.

5 Q Had you done any investigation at all by the
6 time you went there?

7 A No, sir, when I arrived on the scene, my
8 personal preference is I speak with the uniformed
9 officer just to see what information he has already
10 gained. He had basically gotten the personal
11 information of the people, as far as the victim, the
12 father, the mother.

13 I spoke with an E.R. nurse. I believe her last
14 name was Ms. Hood. She just gave me some basic
15 descriptions of the injury, the condition of the
16 victim at the time.

17 Then I spoke with the mother, Ms. Binney.

18 Then I spoke with the defendant Mr. Binney.

19 Q What was his demeanor when you talked to him?

20 A He understood -- I introduced myself as an
21 investigator, told him my name. Explained to him
22 why I needed to speak to him. He seemed like he
23 understood the questions that I asked him. He
24 seemed very calm and collected.

25 MR. GOWDY: Your Honor, I would ask the court's

1 permission for Detective Yown to publish State's
2 Exhibit 110 to the jury?

3 THE COURT: He may.

4 A Go ahead, sir?

5 BY MR. GOWDY:

6 Q Go ahead.

7 A It begins -- and again, this is a voluntary
8 statement of Jonathan Binney. It was taken on
9 December the 8th of 1999.

10 It begins "2:30 p.m. on the 7th of December my
11 wife left for work. My son and daughter were both
12 asleep. My usual is playing on the computer, which
13 I did. My son, Isaac, woke up sometime around 3:40,
14 four p.m., to which I fed him, then got him down
15 from his highchair to play in his playroom, which
16 has a child's gate in the doorway.

17 " [REDACTED] woke up sometime around 4:30, or a
18 little after, and I opened the bathroom door so I
19 could hear Isaac, if he fell or bumped his head. I
20 started the shower and got [REDACTED] undressed. Got
21 her soap and styrofoam tub cushion in case I needed
22 both hands. The water was hot, so I laid [REDACTED]
23 against my forearm so I could situate her better.
24 Then my right hand was under her vagina and buttocks
25 area as I applied some soap with my left hand. With

1 her back against my chest, [REDACTED] started to wiggle
2 and fall out of my hand. As she was falling, my
3 hand was somewhat still under her vagina area and I
4 squeezed with my right hand, thinking I had ahold of
5 mainly her buttocks. With my left hand I tried to
6 get my hand under her chest. I did not notice the
7 blood on the tub floor until I turned [REDACTED] around
8 and noticed the blood on my finger and her vagina."
9 It's end of statement.

10 Again, it was completed at 9:05 p.m. on the 7th
11 of December of 1999. I witnessed the signature and
12 Mr. Binney signed it at the bottom.

13 Q Detective Yown, was December the 7th the date
14 of the incident involving [REDACTED]

15 A Yes, sir.

16 Q When you met with Mr. Binney and took this
17 statement from him, did you continue as the
18 investigator, or did you turn it over to someone
19 else?

20 A No, sir, the second shift detectives, we work
21 primarily property crimes, so I was not assigned to
22 violent crimes or persons crime at the time. What I
23 did was respond back to the station, completed a
24 write-up and then turned it over to the personal
25 crime investigator.

1 Q Please answer any questions that the defense
2 may have for you, detective.

3 CROSS EXAMINATION BY MR. SLADE:

4 Q Detective Yown, did you testify in the trial of
5 this matter?

6 A Yes, sir.

7 Q You testified back in what, April 24th or 25th
8 of 2001?

9 A I believe so, yes, sir.

10 Q In a CSC case involving [REDACTED] Binney?

11 A In Spartanburg County, yes, sir.

12 Q And Detective Lestage was the detective
13 actually in charge of investigating this case?

14 A She was the lead investigator, yes, sir.

15 Q Lead investigator. Thank you, Detective Yown.

16 MR. SLADE: I have no further questions.

17 MR. GOWDY: Nothing on redirect, Your Honor.

18 THE COURT: You may step down.

19 MR. GOWDY: The State would call Detective
20 Diane Lestage.

21 Can Detective Yown go to Spartanburg, or
22 otherwise be excused?

23 THE COURT: He may.

24 MR. SLADE: No objection, Your Honor.

25 OFFICER DIANE LESTAGE, having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. GOWDY:

3 Q Good morning Detective Lestage.

4 A Good morning.

5 Q I want you to introduce yourself to the jury
6 and tell them where you work and how long that you
7 have been there.

8 A My name is Diane Lestage. I'm an investigator
9 for Spartanburg County Sheriff's Office. I have
10 worked for the sheriff's office for about fifteen
11 years, and I have been a detective for five years.

12 Q You have been a detective for five years. In
13 December of 1999, you would have also been a
14 detective, right?

15 A Yes, sir.

16 Q Were you the lead detective investigating
17 injuries suffered by one [REDACTED] Binney?

18 A Yes, sir.

19 Q How did you come to be involved in that
20 investigation?

21 A When I arrived to work on December the 8th, I
22 believe I was assigned the case. I had been told
23 that Detective Jason Yown had done the preliminary
24 investigation the day before when it was reported,
25 and I made arrangements to go to the hospital to

1 start my investigation.

2 Q Had you read a statement that Jonathan Binney
3 gave to Jason Yown when you began your
4 investigation?

5 A Yes, I did.

6 Q Did you proceed to the hospital?

7 A Yes, I did.

8 Q Without telling anybody the content of those
9 conversations, can you tell us who you talked to?

10 A I spoke with Jonathan Binney's wife Melanie.
11 Also I saw [REDACTED] at the hospital. I spoke with
12 Dr. Cranston and Dr. Mainman, I believe is the
13 correct name.

14 Q Let me show you State's Exhibit 120. Do you
15 recognize that?

16 A Yes.

17 Q Who is that?

18 A That is Mikayla Binney.

19 Q Is that about what she would have looked like
20 when you were investigating this case?

21 A Yes, it is.

22 MR. GOWDY: Your Honor, we would move State's
23 120 into evidence.

24 THE COURT: It is admitted, subject to
25 objection.

1 MR. GOWDY: Permission to publish it to the
2 jury, Your Honor.

3 THE COURT: You may.

4 BY MR. GOWDY:

5 Q After talking to the folks at the hospital and
6 checking on Mikayla, what did you do, Detective
7 Lestage?

8 A I made arrangements for Jonathan Binney to come
9 to the sheriff's office for an interview.

10 Q And would this be on December the 8th?

11 A Yes, it was.

12 Q And did he come to the sheriff's department?

13 A Yes, he did.

14 Q And did you meet with him?

15 A Yes.

16 Q Did you advise him of his Miranda Rights?

17 A Yes, I did.

18 Q Did you use any type of form to help you do
19 that?

20 A Yes, I did.

21 Q Let me show you State's Exhibit 111 and ask you
22 whether or not you recognize that?

23 A Yes, that is the form that we use at the
24 sheriff's office.

25 Q Is that indeed the form that you used when you

1 advised Mr. Binney of his rights on December the
2 8th?

3 A Yes, it is.

4 Q Can you tell us whether or not he appeared to
5 understand his rights?

6 A He did appear to understand.

7 Q Was he alert?

8 A Yes, he was.

9 Q Coherent?

10 A Yes.

11 Q He was not under arrest at the time, is that
12 correct?

13 A That's correct, he was not.

14 Q Did he waive his right to remain silent?

15 A Yes.

16 Q Did he waive his right to counsel?

17 A Yes.

18 Q Did he waive the other rights that he has under
19 Miranda?

20 A Yes, he did.

21 Q And did he evidence that by signing the bottom
22 of State's 111?

23 A Yes.

24 Q What's the date and time?

25 A The date would be December the 8th, and the

1 time was 2:20 in the afternoon.

2 MR. GOWDY: Your Honor, we would moved State's
3 111 into evidence.

4 THE COURT: It's admitted, subject to
5 objection.

6 BY MR. GOWDY:

7 Q Detective Lestage, did you, in fact, talk to
8 Mr. Binney?

9 A Yes I did.

10 Q How long did you talk with him?

11 A I would say between one to two hours.

12 Q I'm going to show you State's Exhibit 112 and
13 ask you whether or not you recognize that?

14 A Yes, I do.

15 Q What is that.

16 A That is the statement that he wrote after I had
17 interviewed him on December the 8th.

18 Q On December the 8th?

19 A Yes.

20 Q Did you tell him what to put in that statement?

21 A What he put in the statement?

22 Q Did you tell him what to put in the statement?

23 A No, sir.

24 Q Those are his own words?

25 A Yes, sir.

1 Q Whose handwriting is it?

2 A That is his handwriting.

3 Q Did you give him a chance to correct it, if he
4 wanted to?

5 A Yes.

6 MR. GOWDY: Your Honor, we would move State's
7 112 into evidence.

8 THE COURT: It is admitted, subject to
9 objection.

10 MR. GOWDY: Permission to publish it to the
11 jury?

12 THE COURT: You may.

13 BY MR. GOWDY:

14 Q Detective Lestage, would you read that
15 statement to the jury?

16 A "Approximately a month ago I used my pinky
17 finger to dig out some feces that I thought could
18 irritate [REDACTED] I did not use something like a
19 Q-tip, as I thought that it might get pushed down
20 further or some of the cotton might come off of the
21 Q-Tip. I told my wife about this and it had made
22 the vaginal opening red and irritated. We took her
23 to her pediatrician, Dr. Miles in Pacolet, and he
24 said there was no need to worry.

25 "On December 7th, after putting my son in his

1 playroom and putting the gate in the doorway, I had
2 woken up [REDACTED] so I could feed and bathe her. In
3 the shower with my back against the shower curtain I
4 was standing sideways in the shower. With [REDACTED]
5 chest laying in the forward position on my left
6 arm, her bottom against my stomach, I changed the
7 water temperature as it was too warm. I then moved
8 [REDACTED] bottom into my right hand. With her back
9 facing my chest and laying against me, I used my
10 left hand to apply some soap to [REDACTED] In the
11 process of soaping her, she started to wiggle and
12 toss her weight. My left hand was not around her at
13 this time, but I was able to place my left hand
14 under her chest in time to shift her falling weight
15 to her bottom. My right hand was under her vaginal
16 and bottom area as she was falling. As my left hand
17 began to regain control of her upper body, my hand
18 right was squeezing to go try to grab hold of her
19 bottom. Upon doing this, I had squatted so she
20 landed on my right knee. She landed with some
21 force. Upon picking her back up in a cradle
22 position in my left hand, I noticed that there was
23 blood on my right hand and on the tub floor. I
24 immediately called my wife and told her so she could
25 drive us to the hospital. I then called [REDACTED]

1 doctor and was told to take [REDACTED] to Mary Black.

2 End of statement."

3 Q And what's the date and time at the end of that
4 statement?

5 A At 3:30 p.m., on the 8th day of December, 1999.

6 Q Is that the only statement that you took from
7 Mr. Binney on the 8th of December?

8 A On that day, yes, sir.

9 Q Did you later have another occasion to
10 interview Mr. Binney?

11 A The very next day.

12 Q Let me show you what's marked as State's
13 Exhibit 113 and ask you whether or not you recognize
14 that?

15 A Yes, that is the statement that he wrote on
16 December the 9th.

17 Q Now, did you reread him his Miranda Rights
18 again on the 9th?

19 A On the 9th he had already been interviewed by
20 another detective that had read him his rights that
21 day.

22 Q You just read them to him the day before,
23 hadn't you?

24 A Yes.

25 Q Again, I'm going to ask you about his demeanor.

1 Was he alert and coherent?

2 A Yes.

3 Q Did he appear to understand the questions that
4 you were asking him?

5 A Yes, he did.

6 Q Did he appear to be under the influence of
7 either drugs or alcohol?

8 A No.

9 Q Detective Lestage, did you threaten him in any
10 way?

11 A No.

12 Q Coerce him?

13 A No.

14 Q Promise him anything?

15 A No, sir.

16 MR. GOWDY: Your Honor, we would move State's
17 113 into evidence.

18 THE COURT: It is admitted, subject to
19 objection.

20 BY MR. GOWDY:

21 Q Detective Lestage, I'm going to ask you if you
22 would publish State's 113 to the jury.

23 A "In a prior statement today I had told about
24 some inappropriate thoughts. The first time that I
25 had these thoughts was when I was cleaning the feces

1 from [REDACTED] vagina. The second time was in the
2 shower, as well as the third time. Before these
3 thoughts of [REDACTED] there were previous thoughts of
4 my birth mother of whom I only had a picture of
5 while with my adoptive parents. I also had thoughts
6 of my cousin two years ago when she said she
7 physically liked me. The thought of [REDACTED] that
8 happened in the shower two days ago on the 7th
9 occurred while washing her. I was washing her tummy
10 and then her vaginal area, which in a previous
11 statement I said I had not penetrated her. This was
12 true at this point before the accident. I had
13 started to daydream I suppose about what it would be
14 like to have an incestual relationship some years in
15 the future. Not about the present, because I knew
16 she was too young and would not understand. While
17 daydreaming about this and having my hand on her
18 vagina is when [REDACTED] started to shift and
19 squirmed, and because my hand was between the
20 vagina, the labia, her vaginal opening was right at
21 my fingertip. I believe that when she squirmed,
22 because of where my hand was, it startled me into
23 reality and I instinctively squeezed my right hand.
24 Because my finger had soap on it and it was at the
25 vaginal opening, the squeezing of my hand pushed my

1 finger in. Because I was startled, I didn't realize
2 how much pressure I used causing the vagina to tear,
3 out of fear. End of statement."

4 Q What's the date and time on that statement,
5 Detective Lestage?

6 A At 2:10 p.m., on the 9th day of December, 1999.

7 Q Detective Lestage, at some point did you and
8 other officers execute a search warrant at the home
9 shared by Jonathan and Melanie Binney?

10 A Yes, we did.

11 Q I'm going to show you what's been marked as
12 State's Exhibit 124 and ask you whether or not you
13 recognize that?

14 A Yes, I do.

15 Q What is that, Detective Lestage?

16 A That is a device that we located inside of a
17 shoe that was in the closet in a bedroom at the
18 home.

19 Q In whose home?

20 A At Jonathan Binney's home.

21 MR. GOWDY: Your Honor, we would move State's
22 124 into evidence.

23 THE COURT: It is admitted, subject to
24 objection.

25 BY MR. GOWDY:

1 Q I'm going to show you it's State's Exhibit No.
2 122, Detective Lestage, and ask you whether or not
3 you recognize that?

4 A Yes.

5 Q What is that?

6 A That is a photograph of the shoe and the device
7 and how it was hidden inside the shoe.

8 Q And you found that where? You took that
9 picture where, or where was it taken?

10 A This picture was taken in the bedroom of the
11 the same room we located the shoe, in the closet, at
12 Jonathan Binney's home.

13 MR. GOWDY: Your Honor, we would move State's
14 122 into evidence.

15 THE COURT: It is admitted, subject to
16 objection.

17 BY MR. GOWDY:

18 Q Is it fair to say, Detective Lestage, that this
19 device was found in this shoe in Mr. Binney's home?

20 A Yes, sir.

21 BY MR. GOWDY:

22 Q Please answer any questions that Mr. Slade may
23 have for you.

24 CROSS EXAMINATION BY MR. SLADE:

25 Q Detective Lestage, you were the chief

1 investigating agent or investigating detective for
2 this case, right?

3 A Yes, sir.

4 Q So you supervised Detective Yown, Detective
5 Burns, the other officers who took statements in
6 this case?

7 A I wouldn't say supervised. Jason Yown had
8 responded the day before, conducting the preliminary
9 investigation.

10 Q Right.

11 A That was before I was notified.

12 Q Right. And then you asked Detective Denton,
13 who is going to give, I guess, some testimony
14 sometime later on today, to also interview Jonathan
15 Binney, right?

16 A Yes, sir, he was asked.

17 Q So the molestation of [REDACTED] took place on
18 December the 7th. On December the 8th you called
19 Jonathan and asked him to come in and talk with you,
20 right?

21 A Yes, sir.

22 Q And then the next day you asked him to come
23 back to talk with Detective Burns, right?

24 A Yes, sir.

25 Q And then you asked him to talk with you? He's

1 still down at the sheriff's office, right?

2 A Yes, sir.

3 Q And then you asked Detective Denton to talk to
4 him, is that correct?

5 A Yes, sir, he was asked. I did not personally
6 go up to Detective Denton, but I did --

7 Q Okay.

8 A -- talk with my captain, who asked Detective
9 Denton to help me.

10 Q Well, y'all had him interviewed by Detective
11 Denton?

12 A Yes, sir.

13 Q Who then took another statement I'm sure we
14 will hear later on --

15 A Yes, sir.

16 Q -- this morning.

17 And you and Detective Denton, Detective Yown,
18 Detective Burns all testified in the case against
19 Jonathan for the criminal sexual conduct case
20 against [REDACTED] back in, what, April of last year?

21 A Yes, sir.

22 Q A two-day trial, I think?

23 A (shaking head yes)

24 Q And I'm referring to State's Exhibit No. 134.
25 He was convicted of criminal sexual conduct, first

OFFICER DIANE LESTAGE - REDIRECT BY MR. GOWDY
OFFICER LEWIS BURNS - DIRECT BY MR. GOWDY

3124

1 degree?

2 A Yes, sir.

3 Q Received thirty years?

4 A Yes, sir.

5 Q The maximum the law allows?

6 A Yes, sir.

7 MR. SLADE: I don't have any other questions.

8 Thank you.

9 REDIRECT EXAMINATION BY MR. GOWDY:

10 Q That was a trial, wasn't it, Detective Lestage?

11 A Yes, it was.

12 MR. GOWDY: Those are all the questions that I
13 have, Your Honor.

14 THE COURT: Thank you. You may step down.

15 MR. GOWDY: The State would call Detective
16 Lewis Burns.

17 OFFICER LEWIS BURNS, having been first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. GOWDY:

20 Q Good morning, Detective Burns?

21 A Good morning.

22 Q I call you Detective Burns. You are, in fact,
23 no longer working with the sheriff's department, is
24 that correct?

25 A That's true?

1 Q Is it fair to say that you are working for the
2 United States Government?

3 A I am.

4 Q And when did you leave the sheriff's
5 department?

6 A July, this year.

7 Q I want to go back with you to December of 1999.
8 You were a detective, is that correct?

9 A Yes, sir.

10 Q Did you interview Jonathan Binney in connection
11 with injuries suffered by his daughter [REDACTED]

12 A I did.

13 Q Let me show you State's Exhibit 115. Do you
14 recognize that?

15 A Yes, sir.

16 Q What is that, detective?

17 A This is a copy of the rights advisement that I
18 read to Mr. Binney when I interviewed him.

19 Q When you say rights advisement, is that kind of
20 like a Miranda Rights?

21 A It is the Miranda Warning.

22 Q And did you go over each one of his rights with
23 him?

24 A I read each of them to him.

25 Q Did he appear to understand his rights?

1 A He did.

2 Q Did he tell you that he was willing to waive
3 his rights?

4 A He did.

5 Q Did you, in fact, talk to him and take a
6 statement from him?

7 A I did.

8 Q Before you did that, did you have him indicate
9 that he wished to waive his rights?

10 A Yes, he did. He signed in two places. The
11 first place signifying that he understood what the
12 rights were, and the second place indicating that he
13 wished to waive those rights at that time.

14 MR. GOWDY: Your Honor, we would move State's
15 115 into evidence.

16 THE COURT: It's admitted, subject to
17 objection.

18 BY MR. GOWDY:

19 Q Detective Burns, can you tell the jury the date
20 and time that you talked to Mr. Binney or when you
21 began to talk to him?

22 A Yes, sir, I spoke to him December the 9th,
23 1999, at -- began the interview at 9:50 a.m..

24 Q Is it your understanding, Detective Burns, that
25 Detective Lestage had already talked to him once?

- 1 A Yes, sir.
- 2 Q And then you talked to him, is that right?
- 3 A That's correct.
- 4 Q And then Detective Lestage talked to him again.
- 5 Do I have the chronology right?
- 6 A That would be correct.
- 7 Q I show you State's Exhibit No. 116 and ask you
- 8 whether or not you recognize that?
- 9 A Yes, sir, this is the statement — a copy of
- 10 the statement that I took from Mr. Binney.
- 11 Q Whose handwriting is it in?
- 12 A It's in his handwriting.
- 13 Q Did you tell him what to put in it?
- 14 A No, sir.
- 15 Q When you were talking to him, did he appear to
- 16 understand the questions that you asked him?
- 17 A He did.
- 18 Q Was he alert?
- 19 A Yes, sir, he was.
- 20 Q Coherent?
- 21 A Yes, sir.
- 22 Q Did he appear to be under the influence of
- 23 drugs or alcohol?
- 24 A No, sir.
- 25 Q Did you promise him anything, Detective Burns?

1 A No, sir.

2 Q Did you threaten him in any way?

3 A No, sir.

4 MR. GOWDY: Your Honor, we would move State's
5 116 into evidence.

6 THE COURT: It's admitted, subject to
7 objection.

8 MR. GOWDY: Ask permission to publish it to the
9 jury.

10 THE COURT: You may.

11 BY MR. GOWDY:

12 Q Detective Burns, would you read State's 116 to
13 the jury?

14 A Yes, sir.

15 "Statement of Jonathan Binney. Age 25,
16 12-9-99." It lists the phone number there.

17 "On 12-7-99 I had decided to give my two
18 children a shower so my wife could relax when she
19 got home from work. Sometime around 4:30 I had
20 started to give [REDACTED] my daughter, a shower.
21 Everything I had stated in my other statements, such
22 as holding [REDACTED] with my right hand under her
23 buttocks and vaginal area and about washing her, was
24 true. The one thing I had left out was that while
25 holding her in my right hand and washing her with my

1 left hand, I started to daydream or drift with my
2 mind. I had not physically touched or placed any
3 object or finger inside her vagina, but mentally I
4 feel I was somewhat aroused by [REDACTED] squirming
5 in my hand while daydreaming. I feel that her
6 squirming had brought me out of this daydreaming, or
7 whatever, into the realization that she was
8 beginning to fall. Scared and frightened by this
9 realization of both the horrid thought that took
10 place with and with [REDACTED] starting to fall, caused
11 my adrenalin to greatly increase. In reacting to
12 this, with my hand that was still around her vaginal
13 area, I squeezed my hand trying to grab ahold of
14 [REDACTED] In doing so my middle finger caught her
15 vagina and I believe that maybe even my right hand
16 ring finger tore [REDACTED] vagina. End of
17 statement."

18 He signed this at 12:50 p.m., on the 9th of
19 December, '99.

20 Q Please answer any questions that Mr. Slade may
21 have for you.

22 A Certainly.

23 CROSS EXAMINATION BY MR. SLADE:

24 Q Detective Burns, Jonathan was with you about,
25 what, three hours on the morning of the 9th? That

1 interview took place over about three hours?

2 A 9:20 to 12:50, yes, sir.

3 Q And you had told him basically, I guess, he
4 could leave at any time?

5 A Certainly.

6 Q Wasn't under any arrest?

7 A Certainly.

8 Q So he had chosen to stay and talk with you on
9 it?

10 A Yes, sir.

11 Q And you -- in the trial of this case, you had
12 read I think this same statement to the jury?

13 A I don't remember. I may have. I don't recall.

14 Q You don't recall back on April the 25th of
15 2001?

16 A If it's in the transcript, I was there, but I
17 just don't remember.

18 Q Good enough. Thank you.

19 REDIRECT EXAMINATION BY MR. GOWDY:

20 Q Just real briefly, Detective Burns. During the
21 course of the time that you were with Mr. Binney
22 that morning, did y'all discuss some other things?

23 A Yes, sir.

24 Q Can you tell the ladies and gentlemen of the
25 jury some of the other things that y'all talked

1 about?

2 A Certainly. We talked about how you --

3 MR. SLADE: Your Honor, I object. I'm sure
4 that's proper recross -- or redirect.

5 MR. GOWDY: Your Honor, can we approach?

6 THE COURT: Yes, sir.

7 (Lawyers approached the bench)

8 BY MR. GOWDY:

9 Q Mr. Burns.

10 A Yes, sir.

11 Q During the time that you and Mr. Binney were
12 talking, is it fair to say that y'all discussed
13 other things related to and connected to the
14 involvement with [REDACTED]

15 A Yes, sir.

16 MR. GOWDY: That's all I would have, Your
17 Honor.

18 MR. SLADE: No other questions.

19 THE COURT: Thank you. You may step down.

20 MR. GOWDY: Your Honor, the State would call
21 Steve Denton.

22 Your Honor, can he be excused to go back to
23 Columbia?

24 THE COURT: He may.

25 OFFICER STEVE DENTON, having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. GOWDY:

3 Q Good morning, Detective Denton.

4 A Good morning.

5 Q Can you tell the ladies and gentlemen of the
6 jury how long you have been working for Spartanburg
7 the County Sheriff's Department.

8 A Between seventeen and seventeen and a half
9 years, give or take a few months.

10 Q What department or division are you assigned
11 to?

12 A I have been assigned to the detective division
13 at the sheriff's office since my first day of
14 employment, and currently am assigned to violent
15 crimes, homicides.

16 Q So you have been a detective for seventeen
17 years?

18 A Yes, sir.

19 Q Would you be one of the most experienced
20 detectives in the Spartanburg County Sheriff's
21 Department?

22 A Well, I have got tenure there, so --

23 Q In terms of years, you are one of the most
24 experienced, is that right?

25 A I would think so.

1 Q Can you tell the jury how you become involved
2 in the investigation into injuries suffered by
3 [REDACTED] Binney?

4 A I believe it was on the 9th of December of '99,
5 I was asked by the commanding detective in our
6 division, which at that time his name was Captain
7 Dan Johnson, to take a look at this case, and I did.

8 Q You had no involvement with it prior to that,
9 is that correct?

10 A I did not.

11 Q Do you recall looking at the previous
12 statements that this defendant gave your colleagues?

13 A I did.

14 Q Did you make a determination that you were
15 going to interview Mr. Binney yourself?

16 A Absolutely, I did.

17 Q Where did that interview take place, Detective
18 Denton?

19 A It took place at the Spartanburg County
20 Sheriff's Department, in a conference room. They
21 call it a conference room. It's a pretty large
22 room, with a large table and probably anywhere from
23 eight to ten chairs in it.

24 Q Did you have advise him yet again of his
25 Miranda Rights on the 9th?

1 A I did.

2 Q Were you aware that it had already been done at
3 least once that day?

4 A I was aware of that.

5 Q Is it your practice or policy to do it anyway?

6 A Absolutely.

7 Q Did he appear to understand his rights?

8 A He did.

9 Q Did he agree to waive them?

10 A He did.

11 Q What was his demeanor, Detective Denton?

12 A In my opinion he appeared very intelligent.
13 Very -- at that particular time we started the
14 interview, hardly any emotion at all. And I found
15 that somewhat irregular.

16 Q Did you promise him anything in exchange for
17 talking to you?

18 A No, sir.

19 Q Did you threaten him in any way, Detective
20 Denton.

21 A No, sir.

22 Q Coerce him?

23 A No, sir.

24 Q Did you make any efforts to record the
25 conversation that you had with Mr. Binney, either by

1 way of video or audio?

2 A I did, by audio.

3 Q I'm going to show you State's Exhibit 119. Is
4 that an audio taped conversation that you had with
5 Jonathan Binney on December the 9th?

6 A It is.

7 MR. GOWDY: Your Honor, we would move State's
8 119 into evidence.

9 THE COURT: It is admitted, subject to
10 objection.

11 BY MR. GOWDY:

12 Q After that audio taped conversation with Mr.
13 Binney, Detective Denton, did you have that tape
14 transcribed?

15 A I did.

16 Q Did you give Mr. Binney an opportunity to look
17 over the transcription?

18 A I did.

19 Q Did he have a chance to correct anything that
20 he wanted to correct?

21 A He did.

22 Q Let me show you what you hold in your hand
23 State's 118. What is that?

24 A This is a typed transcript of our taped
25 conversation interview on the 9th of December, 1999.

1 Q What appears at the bottom of each one of those
2 pages?

3 A Each page -- this consists of a total ten pages
4 and at the bottom of each page is Mr. Binney's
5 signature. It's at the bottom of each page.

6 Q And did he have an opportunity to read that
7 transcript and make corrections or changes, if he
8 were so inclined?

9 A He did.

10 MR. GOWDY: Your Honor, we would move State's
11 118 into evidence.

12 THE COURT: It's admitted, subject to
13 objection.

14 BY MR. GOWDY:

15 Q Finally, Detective Denton, let me show you
16 State's 117 and ask you what that is?

17 A State's Exhibit 117 is a sworn statement form
18 that we used after we take a statement either by
19 recording or by handwritten text. It's simply says
20 that the defendant swears that the statement that he
21 had just given is the truth, the whole truth and
22 nothing but the truth, so help me God. And it's
23 signed and dated and notarized.

24 Q And whose signature is on the form in front of
25 you?

1 A The defendant Jonathan Binney.

2 Q And did he sign it in your presence?

3 A He did.

4 Q And what -- did he date it?

5 A It's dated 12-9-1999.

6 Q And would he have signed that after he made the
7 audio taped statement to you?

8 A That's correct.

9 MR. GOWDY: Your Honor, we would move State's
10 117 into evidence.

11 THE COURT: It's admitted, subject to
12 objection.

13 MR. GOWDY: Your Honor, I would ask permission
14 to publish State's 119 to the jury by way of an
15 audio cassette player.

16 THE COURT: You may.

17 MR. GOWDY: Your Honor, could Mr. Slade and I
18 ask the court a question?

19 THE COURT: Yes, sir.

20 (Lawyers approached the bench)

21 THE COURT: Ladies and gentlemen, the solicitor
22 is going to be playing the tape that has been
23 introduced.

24 You also have heard reference to a transcript
25 in reference to that tape, which also has been

1 introduced. They are going to be placing the
2 transcript, the typed transcript of the tape, on the
3 screen while the audio tape is actually being
4 played. So you can choose to listen, or read, or do
5 both, if you choose, but just understand that both
6 of those items have been admitted as evidence in the
7 case, so they will be in the jury room with you at
8 the time of your deliberations.

9 (Whereupon, the audio tape was played to the
10 jury panel)

11 BY MR. GOWDY:

12 Q Detective Denton, I'll try to save Mr. Slade a
13 couple of questions.

14 You testified when we prosecuted Mr. Binney for
15 what he did to [REDACTED] a year, year and a half ago,
16 right?

17 A I did.

18 Q That trial took, what, two days?

19 A Yes, sir, I believe so.

20 Q Those are all the questions that I have,
21 Detective Denton.

22 A Yes, sir.

23 CROSS EXAMINATION BY MR. SLADE:

24 Q Detective Denton, did y'all introduce both the
25 tape and the transcript at the last trial?

1 A Quite honestly I don't remember. I know one of
2 the other. I really don't remember.

3 Q Thank you.

4 THE COURT: You may step down.

5 A Thank you.

6 MR. GOWDY: Your Honor, the State would call
7 Danny Edwards.

8 DANNY EDWARDS, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION BY MR. GOWDY:

11 Q Mr. Edwards, I went through most of these
12 questions the last time that you testified. We will
13 do it real quickly again.

14 You are in prison, right?

15 A Yes, sir.

16 Q Federal prison?

17 A Yes, sir.

18 Q You are there for stealing things from other
19 people?

20 A Yes, sir.

21 (Letter from Jonathan Binney, dated 7-7-00,
22 marked as State's Exhibit No. 135 for
23 identification)

24 BY MR. GOWDY:

25 Q Do you remember Mr. Slade standing over here

1 and accidentally dropping your rap sheet down to the
2 floor?

3 A Yes, sir, I did. Yes, sir, I did.

4 Q And you have been in trouble for a long time,
5 hadn't you?

6 A Many years, sir.

7 Q You have been convicted of a variety of
8 offenses involved stealing, theft, is that right?

9 A Yes, sir, many of them.

10 Q Where are you serving your time?

11 A I'm in Cumberland, Maryland. In federal prison
12 there in Cumberland.

13 Q How long of a sentence did you get?

14 A Sixty-three months.

15 Q When are you eligible for a halfway house?

16 A April the 22nd of 2003.

17 Q What have you been promised by the Seventh
18 Circuit Solicitor's Office in exchange for you
19 sitting right where you are sitting right now?

20 A Nothing.

21 Q Were you in jail with Jonathan Binney in June
22 or July of 2000?

23 A Yes, sir, I was.

24 Q What was a federal prisoner doing in Cherokee
25 County?

1 A It's a holdover facility. I'm from Florence,
2 Darlington, South Carolina area, and they bring us
3 up as federal inmates on up to the Spartanburg,
4 Gaffney area as a holdover, because the federal bus
5 comes down I-85, picks us up and carries us to
6 Atlanta.

7 Q What part of the prison were you y'all in?.

8 A We were in an open pod. I think it's called
9 E-pod.

10 Q E-pod?

11 A Yes, sir, I think that's what it was called.

12 Q He wasn't still on suicide watch?

13 A No, sir.

14 Q How long did y'all stay in E-pod together?

15 A Five weeks.

16 Q How long into those five week did it take for
17 y'all to start up a conversation?

18 A I guess I had been there three or four days
19 when I first met Mr. Binney and started talking with
20 him.

21 Q And I believe you testified previously that he
22 detailed for you the circumstances and facts
23 surrounding his burglary and murder of Judy Southern
24 at her home, is that right?

25 A Yes, sir, he did.

1 Q He drew a map?

2 A Yes, sir, he did.

3 Q And why did he do that?

4 A He wanted me to call the federal FBI agent that
5 was handling my case. He wanted to see if the feds
6 would take his case, because they say federal time
7 is easier than state time to do. So he wanted me to
8 call and talk to them.

9 Q I thought he wanted the death penalty?

10 A Well, he had asked -- he said he wanted two
11 things. He either wanted the death penalty or he
12 wanted life with parole. If he was sentenced to
13 life without patrol, he would come out on a gurney.
14 Life is life in this state of South Carolina. So he
15 suggested -- he said the death penalty or life with
16 the possibility of parole.

17 Q But he wanted to serve that life sentence in a
18 federal prison?

19 A Yes, sir.

20 Q Why was that?

21 A Because he said time -- he's been told that
22 time was easy in the federal system.

23 Q You are in the federal system, aren't you?

24 A Yes, sir.

25 Q Is time easy there, Mr. Edwards?

1 A No, sir.

2 Q Did he tell you anything about what he did
3 after he shot and killed Judy Southern?

4 A After he ran out of the house, is that what you
5 are speaking of?

6 Q Yeah, whatever he told you.

7 A After he ran out of the house, he ran back down
8 into the woods. And he said a short time later that
9 the helicopters were hovering over him, and that he
10 made his way to his house and went down in the
11 basement, and stayed down in the basement. And when
12 the agents came in the house, he was hid down behind
13 some boxes down in the basement of his home.

14 Q Did he tell you he was hell bent on suicide,
15 Mr. Edwards?

16 A No, sir.

17 Q Did he ever mention suicide to you, Mr.
18 Edwards?

19 A No, sir. He mentioned some nicotine patches
20 that was on him. He said that that was to keep his
21 adrenalin going that night while he was in -- while
22 he was in burglarin the burglary.

23 Q Did y'all discuss what he had done to his
24 daughter [REDACTED]

25 A Yes, sir, we did.

1 Q Did he likewise write out for you a statement
2 on what he did to his daughter?

3 A Yes, sir, he did.

4 Q I'm going to show you State's Exhibit 135. Do
5 you recognize that, Mr. Edwards?

6 A Yes, sir.

7 Q Was is that?

8 A That's the statement he wrote out for me.

9 Q What did you do with it?

10 A I gave it to Mr. Johnson. First when I called
11 the FBI agent, I told him that I had a written
12 statement and a laid-out map of the house and the
13 burglary.

14 MR. GOWDY: Your Honor, I would move State's
15 135 into evidence.

16 MR. SLADE: Your Honor, I'm not sure whose
17 possession it's been in since then.

18 MR. GOWDY: That's fine, I'll leave it marked
19 for I.D., Your Honor. I will withdraw it and we
20 will move it in through the next witness.

21 MR. SLADE: Wait a minute.

22 (Lawyers approached the bench)

23 MR. GOWDY: Your Honor, move State's 135 into
24 evidence.

25 THE COURT: Have him identify the condition of

1 it.

2 BY MR. GOWDY:

3 Q Is that the same condition -- is that document
4 in the same condition that it was in when Mr. Binney
5 gave it to you in 2000?

6 A Yes, sir, it is.

7 Q Have you changed anything on it?

8 A No, sir.

9 Q Added anything to it?

10 A No, sir.

11 Q What did you do with it?

12 A As far as when he gave to it me?

13 Q Yes.

14 A I made -- I asked him to initiate -- put his
15 initials at the top corner and the bottom corner and
16 then sign a line all the way across it putting in
17 the statement. And the reason I did that is I have
18 signed many a statement on the facts of my criminal
19 activity, and I know about them adding or taking
20 away from it. And so I made sure that there would
21 be nothing added or taken away from this statement.

22 MR. GOWDY: Your Honor, I'm going to wait and
23 introduce it through another witness.

24 THE COURT: Okay.

25 MR. GOWDY: I don't have anything further of

1 Mr. Edwards. Please answer any questions that Mr.
2 Slade may have for you.

3 CROSS EXAMINATION BY MR. SLADE:

4 Q Mr. Edwards, you have been -- you say that you
5 had been at the Cherokee County jail three or four
6 days before you talked with Jonathan and got him to
7 draw you a map and got him to write you a statement,
8 is that correct?

9 A Yes, sir, it is.

10 Q And so at the jail you found out pretty quickly
11 what he was charged with, right?

12 A Not until he told me.

13 Q Well, word gets around pretty quick at the
14 jail, right?

15 A Not until he told me, sir.

16 Q That's not what I asked you. Word gets around
17 pretty quick at the jail, doesn't it?

18 A It all depends on what kind of word you are
19 talking about, sir.

20 Q Well, people have some idea what the other
21 folks are in there for, right?

22 A If you want to know and you ask somebody, they
23 can tell you it's none of your business, or they can
24 tell you what they want to tell you.

25 Q And this was a pretty big case.

1 A This case here?

2 Q Yeah.

3 A Yes, sir, I imagine so.

4 Q And you were looking for a way to help Danny
5 Edwards with his problems in the federal system, we
6 were?

7 A You know, Danny Edwards wasn't.

8 Q Now, you initiated the conversation with him,
9 telling him that you were going to get him some --
10 help him get some mental health treatment, right?

11 A I didn't initiate no conversations with him.
12 He would come find me on the rec yard or wherever I
13 was at and want to talk to me, sir.

14 Q Have you -- since you testified in the first
15 phase of this trial, have you talked to anybody
16 about your testimony?

17 A No, sir.

18 Q Haven't talked to a soul?

19 A No, sir.

20 Q Okay.

21 A What do you mean?

22 Q Well, have you talked with any policeman about
23 your testimony?

24 A No, sir.

25 Q Talked with any investigators?

1 A No, sir.

2 Q Okay. Talked with any lawyers?

3 A No, sir.

4 Q All right. When you found out that you weren't
5 going to be able to use this to get some help for
6 yourself, you told Mr. Jackson, the other fellow who
7 testified, your friend from the jail, you told
8 Johnson -- excuse me, you told Mr. Johnson "this
9 can't help me, maybe it can help you," right?

10 A I told him I was leaving to go to Atlanta and
11 he could have those, because I couldn't carry
12 anything with me, sir.

13 Q I'm asking you to be more precise about your
14 wording. You told him "this can't help me. It
15 might can help you."

16 A Not to my knowledge at this time, sir. I do
17 not recall that.

18 MR. SLADE: I don't have any other questions.

19 MR. GOWDY: Nothing on redirect, Your Honor.

20 THE COURT: You may step down.

21 MR. GOWDY: Permission to let Mr. Edwards go
22 back to Maryland.

23 THE COURT: You may.

24 MR. GOWDY: Call Jerry Johnson, Your Honor.

25 JERRY JOHNSON, JR., having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. WILLINGHAM:

3 Q Tell the jury who you are.

4 A Jerry Johnson, Jr.,

5 Q Mr. Johnson, you testified in the first part of
6 this trial, didn't you?

7 A Yes, sir.

8 Q And I believe you testified that you brought me
9 a map Monday two weeks ago?

10 A Yes, sir.

11 Q And when you brought that map, did you bring me
12 anything else?

13 A A yellow letter and -- yeah, right there.

14 Q I'm going to show you what's been marked
15 State's Exhibit No. 135. Do you recognize that?

16 A Yes, sir.

17 Q What is that?

18 A A letter that Jonathan turned over with the
19 map.

20 Q What?

21 A A letter that Jonathan turned over when he give
22 Danny the map.

23 Q And you recognize that?

24 A Yes, sir.

25 Q Is that in the same condition as when you

1 brought it to me on Monday two weeks ago?

2 A Yes, sir.

3 Q And the same condition when you turned it over
4 to Investigator Greg Phillips?

5 A Yes, sir.

6 Q Where did you get this letter?

7 A From Danny Edwards.

8 Q And when did he give it to you?

9 A Right after he had got it.

10 MR. WILLINGHAM: Your Honor, at this time I
11 move State's Exhibit 135 into evidence.

12 MR. SLADE: No objection, Your Honor.

13 THE COURT: It's admitted.

14 BY MR. WILLINGHAM:

15 Q Mr. Johnson, has anything changed from the last
16 time testified, as far as our office promising you
17 anything in consideration for your charges?

18 A No, sir.

19 Q Still looking at those same charges?

20 A Yes, sir.

21 Q Still looking at the same time?

22 A Yes, sir.

23 MR. WILLINGHAM: Your Honor, at this time I
24 wish to publish State's Exhibit 135 to the jury.

25 THE COURT: You may.

1 MR. WILLINGHAM: "To the best of my knowledge,
2 trying to remember, on December 7th I had been
3 reading and look at porn on the computer. I had
4 been engrossed in sexually explicit text file. I
5 had never acted out my thoughts before. That night
6 was different. I put my son Isaac in his room and
7 put the child gate up. Took Mikayla in her room.
8 Changed her diaper. After cleaning her up something
9 came over me. I took an egg, that's what they are
10 called, shaped vibrator and slowly inserted into
11 [REDACTED] vagina over a period of about ten to
12 fifteen minutes. After sometime something clicked
13 in my brain or something, because I figured that if
14 the human skin was that stretchy, maybe it would
15 stretch further. That's when I started to push my
16 penis in and the skin between my daughter's vagina
17 and anus tore about a centimeter. Scared and
18 concerned at the same time I called my wife and told
19 her an accident happened. We went to the hospital
20 to have [REDACTED] checked out. The rest is pretty
21 much history. I'm making this statement of my own
22 free will in hopes of getting help and treatment.
23 No one here pressured me or put words in my mouth.
24 Singed Jonathan Binney."
25 BY MR. WILLINGHAM:

1 Q If you would answer any questions that they
2 have for you.

3 CROSS EXAMINATION BY MR. SLADE:

4 Q Mr. Edwards -- excuse me, Mr. Johnson, at the
5 time that you and Mr. Edwards got this statement
6 from Jonathan, you knew what he was in jail for,
7 didn't you?

8 A Yes, sir.

9 Q Everybody in the pod knew what he was there
10 for, right?

11 A About 50/50.

12 Q Certainly you and the fellow who just testified
13 knew, right?

14 A Yes, sir.

15 Q And you testified that in the first phase in
16 this trial, that the whole reason you did all this
17 is you wanted him off the street, right?

18 A Yes, sir. I have a family that lives in this
19 town.

20 Q And you knew about the -- you knew about the
21 first trial against Jonathan, this very case, right?

22 A Yeah.

23 Q You didn't come forward?

24 A I had tried to give the letter one time before
25 and the other solicitor didn't want it.

JERRY JOHNSON, JR. - REDIRECT BY MR. GOWDY
SLED AGENT GAILE HEATH - DIRECT BY MR. GOWDY

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1 Q I'm sorry?

2 A I tried to give the letter up before and the
3 other solicitor did not want it.

4 MR. SLADE: I don't have any further questions.

5 REDIRECT EXAMINATION BY MR. WILLINGHAM:

6 Q How long ago was that?

7 A Before Mr. Gowdy took office.

8 Q And who did you try to give it to?

9 A I don't remember their names. He was the
10 solicitor.

11 Q But they weren't interested?

12 A No, sir.

13 MR. WILLINGHAM: No other questions, Your
14 Honor.

15 THE COURT: You may step down.

16 SLED AGENT GAIL HEATH, having been first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. GOWDY:

19 Q Good afternoon, Lieutenant Heath.

20 A Good afternoon, solicitor.

21 Q You have previously been qualified as an expert
22 in the field of handwriting analysis?

23 A That is correct.

24 MR. GOWDY: Your Honor, to the extent that I
25 need to, I'll move her in as an expert. If the

1 defense would like me to requalify her, I will be
2 happy to do it.

3 MR. SLADE: We don't have any objections to her
4 qualifications, Your Honor.

5 THE COURT: She is qualified.

6 BY MR. GOWDY:

7 Q Did you examine State's 135 for purposes of
8 comparing it with samples that were known to be
9 written by Jonathan Binney?

10 A Yes, sir, I did. It contains my item number
11 and initials and case number.

12 Q Did you prepare some diagrams or charts or
13 blowups that might be of aid to the jury in helping
14 them to see the two documents that you compared?

15 A Yes, sir, I did.

16 MR. GOWDY: Your Honor, permission for
17 Lieutenant Heath to leave the witness stand and
18 stand down. Keep her voice up and stand down here
19 and let the jury see the comparison.

20 THE COURT: She may.

21 (witness off the witness stand)

22 BY MR. GOWDY:

23 Q Now again I'll put this right here.

24 Again, Lieutenant Heath, can you tell the jury
25 what the difference between having the word known up

1 at the top right here and questioned means?

2 A Okay. A questioned document is a document that
3 contains a form of written communication in which
4 there is an unknown authorship. They want to know
5 who wrote it. It's involving the question as to the
6 person who actually wrote that document.

7 A known sample means that this is some known
8 writing from a person's social or work environment,
9 or it could have even been requested writing that
10 they know that an individual wrote.

11 Q Do you have an opinion, Lieutenant Heath, on
12 whether or not this document was written by the same
13 person that wrote that document?

14 A Yes, sir, I do.

15 Q What is your opinion?

16 A My opinion is that the individual that wrote
17 the known sample is the same individual which wrote
18 each entry on the questioned document.

19 Q What do you base that opinion on?

20 A Okay. I base the opinion on the fact that no
21 two writers write alike and no one writer will write
22 the same way twice. Everyone has a range of
23 variation in their writing. And as we kind of
24 discussed on Sunday, our document examiners look for
25 class characteristics that are common to a group of

1 writers, but we also look for those individual
2 characteristics that make handwriting unique to that
3 particular individual. It's the way that they form
4 their letters, the way that the connect their
5 letters, and those types of things.

6 After microscopically examining both the
7 questioned and the known, and comparing each and
8 every letter form on the questioned document and
9 comparing it back to -- I have several known
10 documents and all, so that I could find each and
11 every letter that was found on the questioned and
12 all.

13 In particular, we see the formation of the D's
14 in the known and they correlate to the D -- the same
15 D formation in the questioned document.

16 Again, we talked about the opening or the
17 almost C formation making the G, which we have in
18 the "eluding." And we also have that up here in the
19 word "knowledge."

20 But each and every letter I was able to find a
21 corresponding letter written exactly like that
22 within the set of known standards.

23 Again, with the Y formation, instead of the Y
24 connecting at the staff, this particular writer
25 usually does not let the Y -- the first initial

1 stroke of the Y touch the staff. And we have that
2 over here in this one in the word "my" and we also
3 have it in the word "my" in this known sample.

4 So after comparing each of the letter forms on
5 the questioned document back to the known writings,
6 I determined that the same individual had written
7 both the known and the questioned document.

8 Q Thank you, Lieutenant Heath. Please answer any
9 questions that Mr. Slade may have for you.

10 MR. SLADE: I don't have any questions of Agent
11 Heath.

12 MR. GOWDY: May Officer Heath be excused?

13 THE COURT: Thank you, ma'am.

14 MR. GOWDY: Your Honor, could we approach for
15 just a moment?

16 THE COURT: Yes.

17 (Lawyers approached the bench)

18 THE COURT: Ladies and gentlemen, this is a
19 convenient time for us to recess for lunch before we
20 go further, so we will do so at this time.

21 Keep in mind during the lunch recess you are
22 still not permitted to discuss the case in any
23 fashion whatsoever with any person. Have a good
24 lunch and we will see you this afternoon probably at
25 two o'clock. At Two o'clock.

1 (The following takes place outside the presence
2 of the jury panel)

3 THE COURT: The jury will be eating at Fatz
4 Restaurant today. All persons, you are instructed
5 not to have lunch there.

6 (Proceedings recessed)

7 (Proceedings reconvened)

8 THE COURT: Are we ready for the jury?

9 MR. GOWDY: Yes, sir, Your Honor.

10 MR. SLADE: Yes, sir.

11 THE COURT: Okay. Bring them in.

12 (The following takes place in the presence of
13 the jury panel)

14 THE COURT: Good afternoon, ladies and
15 gentlemen. We are going to continue with the
16 State's presentation of evidence this afternoon.

17 MR. WILLINGHAM: Your Honor, we call Mike
18 Prodan.

19 SLED AGENT MICHAEL PRODAN, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. WILLINGHAM:

22 Q Tell the jury who you are.

23 A Michael John Prodan, P-r-o-d-a-n.

24 Q Mr. Prodan, where do you work?

25 A I'm a special agent with the South Carolina Law

1 Enforcement Division.

2 Q And what division are -- or what subdivision of
3 that?

4 A Special operations. I'm a lead agent of the
5 Behavioral Science Unit.

6 Q And were you working in Cherokee County on June
7 19th, 2000?

8 A Yes, sir, I was.

9 Q Were you working on the Judy Southern case?

10 A No, sir, originally I was not.

11 Q Did you at some point become involved --

12 A Yes, sir.

13 Q -- with the Judy Southern case?

14 A Yes.

15 Q What was your involvement?

16 A I received a request from Lieutenant McCraw to
17 assist in my interview with Mr. Binney.

18 Q And where did that interview take place?

19 A Cherokee County Sheriff's Department.

20 Q Who was present for that interview?

21 A Myself and Lieutenant McCraw.

22 Q Before you talked to the defendant, was he
23 advised of his Miranda Rights?

24 A Yes, sir.

25 Q I'm showing you what's already been admitted as

1 State's Exhibit No. 5. Are those the rights that he
2 was advised of?

3 A Yes, sir.

4 Q Did he appear to understand these rights?

5 A He did, sir.

6 Q Did he waive those rights and agree to talk to
7 you?

8 A Yes, sir.

9 Q What did y'all talk about?

10 A The purpose of the interview and the main topic
11 was to ask Mr. Binney why he was at the residence
12 and why Judy Southern was killed.

13 Q And what did he tell you?

14 A He started off with explaining that on that day
15 he was anxious and nervous. And when he has what he
16 described all those feelings, he would go out and
17 commit a burglary or do what he called snooping.

18 Q Did you ask him why he picked this particular
19 residence?

20 A I did, sir.

21 Q And what did he tell you?

22 A He said that he had chosen the residence
23 because it was secluded. And I questioned him about
24 that, because I -- there were other homes in the
25 area that had -- or at least appeared to me that

1 were better suited in their seclusion than the
2 Southern home.

3 I think he then explained that it was really
4 the home looked more affluent than some of other
5 ones, that he had peaked in the windows and seen two
6 cars in the garage, or at least on the property, and
7 that he had come to the conclusion that there was at
8 least an adult male and an adult -- a man and a
9 woman living at the residence.

10 Q Was he asked whether he knew the victim?

11 A Yes, sir.

12 Q What did he indicate there?

13 A He said that he did not know her, he had no
14 connection with her, and he had no relationship or
15 connection at all.

16 Q Did you ask him to explain why he went inside
17 the residence?

18 A Yes, sir.

19 Q What was his explanation?

20 A His first explanation was that he had this, as
21 he described it, a movie in his mind with three
22 different endings.

23 One ending was that he was going to commit a
24 burglary and then commit suicide afterwards.

25 Another version was that there was supposed to

1 be some type of mass murder, where he would then
2 commit suicide.

3 Then another version was that he had a fantasy
4 about the -- about raping his wife's brother's wife
5 and then killing the brother and then killing
6 himself.

7 Q Did he explain to you anything about his anger?

8 A I beg your pardon?

9 Q Did he explain to you anything about his anger?

10 A Yes, sir.

11 Q What did he say?

12 A He said he was very angry and frustrated about
13 his conviction for criminal sexual conduct involving
14 the sexual assault of the three year old daughter,
15 the loss of his family, money, his time looking at
16 prison. And he had this, as he described it, an
17 anger because of all that type of stress building up
18 in him.

19 Q What did you ask him about fantasies?

20 A When he made the mention about the movie plan
21 or the one thought about the rape of his wife's
22 brother's wife, I asked him about any other sexual
23 fantasies that he may have had. I asked if he used
24 any material to view or fuel those fantasies and
25 what they might have been.

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1 Q And what was his response?

2 A He said that he used the internet, that he had
3 viewed what he called -- he used the word porn on
4 the internet, that he did look at images involving
5 adults having sexual interaction with children. He
6 said that he had looked at sites involving
7 bestiality and bondage, but those sites didn't,
8 interest him very much.

9 Q There was some evidence of feces being found in
10 the two bathtubs in the Southern home. Was he asked
11 about that?

12 A Yes, sir.

13 Q What explanation did he give for those?

14 A He said that he was taking a shower and the
15 water was acting as a laxative and he had --
16 apparently had difficulty controlling his bowels.

17 I asked well, there were two incidents of it,
18 or at least there was two indications that there may
19 have have been two different times of defecation.
20 There was also something about urine in the sink.

21 When I spoke to Mr. Binney about those topics,
22 he seemed very uncomfortable to speak about that,
23 wanted to change the subjects, didn't want to dwell
24 on that topic at all. I then left that topic and
25 moved onto something else.

1 Q Was he asked about the pistol?

2 A Yes, sir.

3 Q What did you ask him about that?

4 A I asked him if he was familiar with the pistol,
5 and he said that he was. He said that he had
6 stripped the pistol before, meaning that he had
7 taken it apart, putting it back together. That he
8 had cleaned it. He told me that he was aware how it
9 functioned, that he had ammunition for it, in fact,
10 three magazines, and that it had a working safety.

11 Q What did he say about what happened when the
12 people came in?

13 A He said that she startled him and that's why he
14 shot her.

15 Q Was he asked anything else about what he would
16 have done to the victim?

17 A Yes, sir.

18 Q What was he asked?

19 A I asked Mr. Binney that if he had not shot the
20 victim, would he have sexually assaulted or raped
21 her.

22 Q And what was his response?

23 A His response was "I can't say or I couldn't say
24 that would not have happened."

25 Q Did he indicate that he had come to that home

1 prepared?

2 A Yes, sir, he did.

3 Q How?

4 A He explained that he had a gun with three
5 magazines of ammunition, that he had gloves, a
6 flashlight. I think he said he had mace.

7 When he entered the residence, he explained
8 that he had taken the knives from the kitchen and
9 hid them in the residence so that they could not be
10 used as defensive weapons against him.

11 He said that he had disabled the phone, the
12 telephone of the residence, and he had hid the
13 evidence of that.

14 And that he had a vehicle. And, again, I don't
15 remember whether it was a motorcycle or a scooter of
16 some kind, but he had -- he had a vehicle and he had
17 hidden it to affect an escape.

18 Q You indicated that he had initially noted that
19 one of the reasons that he may have gone in that
20 house was to commit suicide. Did you inquire
21 further into that?

22 A Yes, sir.

23 Q And what did he say?

24 A Well, on that topic, the question was why was
25 it necessary to go to someone else's house to commit

1 suicide. And Mr. Binney never actually gave an
2 explanation for that question.

3 He did mention that -- when I asked about how
4 was he planning on committing suicide, he mentioned
5 an overdose of pills. That even though he had a
6 pistol with him, that he wouldn't shoot himself.

7 Q Had you asked him if he had had any prior
8 suicide attempts?

9 A Yes, sir.

10 Q What did he say?

11 A He said that he had when he was younger, but
12 that when I inquired more about the circumstances of
13 the prior suicide attempt, he told me that it wasn't
14 really a serious attempt to take his own life, that
15 it was pretty much a ploy or a ruse to get out from
16 underneath some type of trouble that he was in.

17 Q At one point did the defendant want to talk to
18 Allan Southern?

19 A Yes, sir.

20 Q Explain that to the jury.

21 A Mr. Binney asked that if he could speak to Mr.
22 Southern and speak to him and offer type of apology
23 as to what happened. Lieutenant McCraw and I
24 explained that it would be very difficult, if very
25 impossible, for him to do that under the

1 circumstances.

2 I then said if you wanted to write something to
3 Mr. Southern, a letter of some type, that we would
4 make that information available to Mr. Southern.

5 Q And did he, in fact, write such a letter?

6 A Yes, sir, he did.

7 Q I'm showing you what's already introduced as
8 State's Exhibit No. 6. Is that the letter that he
9 wrote to Mr. Southern?

10 A Yes, sir.

11 Q You watched him write that?

12 A Yes, sir, I did.

13 MR. WILLINGHAM: Thank you Mr. Prodan. Answer
14 any questions Mr. Slade has for you.

15 CROSS EXAMINATION BY MR. SLADE:

16 Q Did you bring your notes with you, Mr. Prodan?

17 A Yes, sir.

18 Q Now, at the time that you interviewed Jonathan,
19 did you record your interview with him?

20 A I did not.

21 Q All right. Well, you certainly had the
22 facilities and ability to record those statements,
23 do you not?

24 A Yes, sir.

25 Q And you chose not to?

1 A Yes, sir.

2 Q Now, one of the techniques that agents, such as
3 yourself, use when you are conducting an interview,
4 like you conducted with Jonathan, is to ask the
5 person that you are interviewing a question. And if
6 their answer doesn't fit with the facts that the
7 police have about the case, then you ask them the
8 question again, right?

9 A Generally how you would explain it, yes, sir.

10 Q For instance, you, in your first part of your
11 testimony, your direct testimony, you told Solicitor
12 Willingham that you asked him why he went in the
13 house, right?

14 A Yes, sir.

15 Q He told you it was secluded, right?

16 A Yes, sir.

17 Q And based on what you knew about that area or
18 what you thought that you knew about that area, you
19 didn't think that answer fit with the known facts,
20 right?

21 A Yes, sir.

22 Q So you asked him over, this -- and told him
23 there is sixty houses around there, why did you go
24 in there, right?

25 A Yes, sir.

1 Q So the point is you didn't accept his answer
2 when you thought it contradicted the known facts in
3 the case, right?

4 A Yes, sir.

5 Q So, in order for you to properly conduct one of
6 these kinds of interviews, you need to know the
7 facts of the case, don't you?

8 A Generally, yes, sir.

9 Q Now, you did not know at the time that you
10 interviewed Jonathan on -- what was it, June 19th of
11 2000, you did not know he had been on suicide watch
12 for seven days, did you?

13 A At that time I did not. That's correct, sir.

14 Q And that would have been important for you to
15 know, wouldn't it?

16 A It could be helpful if during the course of the
17 interview I make a determination that there is
18 something wrong with the person that I'm speaking to
19 that there is somehow that I'm not getting through
20 to them or they don't understand what I'm saying or
21 they are not cognizant of who I am or who they are
22 of my questions, then I would have definitely have a
23 question, but that wasn't the case with Mr. Binney
24 during the interview.

25 Q You didn't know that Mr. Binney had written

1 what the case agent, the agent in charge of the
2 investigation in this case, Mike Fowlkes, called a
3 suicide note, did you?

4 A I don't know what Captain Fowlkes would
5 classify as a suicide note.

6 Q My point is you didn't know that the defendant,
7 Jonathan Binney, had written a suicide note, did
8 you?

9 A At the time of the interview?

10 Q Yeah.

11 A No, sir, I don't believe I did.

12 Q And that's something important for you to know,
13 isn't it?

14 A It would be a piece of information that would
15 be helpful.

16 Q Well --

17 A But, again, at the time of the interview there
18 was nothing in my conversation with Mr. Binney that
19 gave me the -- gave me the opinion that he was not
20 capable of understanding my questions or answering
21 them.

22 Q You told Solicitor Willingham that your purpose
23 was to ask questions about why Jonathan went in the
24 house, right?

25 A Yes, sir.

1 Q And the fact that he wrote a suicide note while
2 he was in the house in your opinion doesn't have any
3 bearing on why he went in the house?

4 A There was still some questions as to why an
5 individual would go into a house that at the time
6 was presumably -- well, the information at the time
7 was that it was presumably a house of a stranger to
8 commit suicide. That was very unusual,
9 notwithstanding the fact that there was a note,
10 which may or may not have been a suicide note, which
11 even if it was, only talks about the person's state
12 of mind at the time they write the note, not before
13 and not after, there was still some questions as to
14 what was this case really all about. And that's why
15 I was asked to help with the interview.

16 Q My question to you, Agent Prodan, was isn't it
17 important for you to know in order to properly
18 conduct this interview that the defendant wrote a
19 suicide note while he was in the house, if your
20 purpose is to find out why he went in there?

21 A Again, sir, the note -- it is important to know
22 about the note, but, again, a note written only --
23 if it is presumably a suicide note, only talks about
24 the state of mind at the time the note is written,
25 not at the time I'm conducting the interview.

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1 Q Well, wouldn't you have wanted to ask him some
2 questions about it, had you known it existed?

3 A I might have. I might not have, but we did
4 have a conversation about the purpose of the
5 suicide.

6 Q Well, had you known that he wrote a note that
7 ended "I love you. Sorry it had to end like this.
8 I leave everything I have to my loving caring wife."
9 Surely you are not telling us that you wouldn't have
10 asked him about that?

11 A Again, I may have or might not.

12 MR. SLADE: I don't have any other questions,
13 Your Honor.

14 REDIRECT EXAMINATION BY MR. WILLINGHAM:

15 Q When you indicated that during the time that
16 you talked to him, he appeared to be doing okay?

17 A Yes, sir.

18 Q Nothing wrong with him?

19 A Did not appear to be any difficulty
20 understanding my questions, the lieutenant's
21 questions, or answering them in any way, shape or
22 form.

23 Q Let me show you State's Exhibit 34, that
24 references the home, and [REDACTED] and other things.
25 I would ask you to read that for me. You can just

1 read to it yourself, not out loud?

2 A Oh, I'm sorry.

3 Q Just read it to yourself.

4 A (Witness reviewing document)

5 Yes, sir.

6 Q Does that in any way change any of the answers
7 that he gave to you?

8 A No, sir.

9 Q Does that in any way change the fact that he
10 said he was feeling anxious and nervous about going
11 out and do a burglary or snooping?

12 A No, sir, it doesn't. It, in fact, confirms
13 that the person, at least at the time that they
14 wrote this letter, was under a considerable amount
15 of stress.

16 Q Does that change in any way about his comments
17 to you that he was thinking about committing a rape
18 because he was angry, enraged over his arrest for
19 CSC?

20 A No, sir, it doesn't change it.

21 (off the record)

22 (back on the record)

23 BY MR. WILLINGHAM:

24 Q How long have you been in law enforcement?

25 A Twenty-eight years, sir.

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1 Q How long have you been with SLED?

2 A Four years.

3 Q Before you were with SLED, where were you?

4 A I was the special agent supervisor of the
5 violent crime profiling unit for the California
6 Department of Justice, which is part of the
7 California Attorney General's Office.

8 And before that I was a special agent in the
9 San Francisco field office, assigned to a homicide
10 squad.

11 And before that I was a police officer for the
12 City of Covina Police Department in Los Angeles
13 County.

14 Q Have you had the opportunity during your career
15 as a law enforcement officer to deal with people who
16 were contemplating suicide?

17 A Yes, sir, I have.

18 Q How many times?

19 A Well, I would have to give my answer in two
20 parts, sir.

21 The first part would be in crisis situations,
22 either as a uniformed officer or as a hostage
23 negotiator. And I would say probably twenty to
24 twenty-five times in twenty-eight years.

25 The other part would be evaluating cases to

1 determine whether or not a death of an individual is
2 a homicide, suicide, or accident.

3 MR. SLADE: Your Honor, we have a matter of law
4 to take up on this issue.

5 THE COURT: Ladies and gentlemen, let me ask
6 you to please go to your jury room. Do not discuss
7 the case. I'll bring you back just as soon as I
8 address this matter.

9 (The following takes place outside the presence
10 of the jury panel)

11 MR. SLADE: Are they in the jury room, J.B.?

12 THE BAILIFF: Yes.

13 MR. SLADE: Your Honor, my objection is that
14 this appears to be one of two questions away from
15 getting into the opinion of Agent Prodan, that I
16 understood was inadmissible.

17 THE COURT: Well, where are you going,
18 solicitor?

19 MR. WILLINGHAM: Your Honor, he asked about the
20 suicide and suicide note and whether or not that
21 would be important and what he would have considered
22 and what he would have asked, if he had known that
23 was a suicide note. He elicited questions about the
24 suicide and whether a person could commit suicide
25 would leave a note. And he was talking about

1 whether or not the intent -- that the suicide note
2 would be evidence of intent to commit suicide at the
3 time the note was written, not when the home was
4 entered into and other times.

5 My question again is not whether or not he
6 believed he was going to commit suicide or not. My
7 question to him is in the number of cases that you
8 have dealt with people on the verge of committing
9 suicide, had either talked them out of it or they,
10 in fact, carried it out, did they bring flashlights,
11 gloves, mace, other instruments of burglary to
12 commit suicide with. That's what I want to ask him.

13 I'm not asking his opinion on whether or not he
14 believes he was going to commit suicide.

15 THE COURT: Okay.

16 MR. SLADE: Your Honor, I object to that.
17 That's no different than his opinion he bringing his
18 experience to bear to testify whether or not he
19 believes that there was a legitimate suicide attempt
20 here, and I think it's the same thing. If it is,
21 it's a distinction without a difference.

22 THE COURT: Well, as I understand what the
23 question is simply based upon his experience, and
24 obviously he's been asked a lot of questions about
25 his beliefs and opinions about -- or what he should

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1 have done and how he should have conducted himself,
2 based upon his knowledge of the defendant's suicide
3 note, or whatever you want to call it.

4 I think he can testify based upon his
5 experience, or respond to the question asked by the
6 solicitor, which is simply in any of those other
7 cases where you have had such an experience, do you
8 have any other evidence of the pre-preparation or
9 what appears to be a pre-plan prior to a burglary in
10 those cases. And I guess it's --

11 MR. SLADE: Well, Your Honor --

12 THE COURT: -- going to be no.

13 MR. SLADE: I'm sorry, I interrupted you.

14 He's already been identified as some type of
15 profiler. I have forgotten his precise term that he
16 used, but to go -- and I didn't object, because I
17 understood the ruling of the court to be that he
18 could testify that his questions, factual basis for
19 his questions, and the responses that he got. And I
20 just asked him about the factual basis he had for
21 the questions that he asked and the questions he
22 didn't ask. I don't see that that's getting into
23 any of the area that the solicitor wants to get
24 into. And I do think that it's very close to his
25 getting into opinion. I mean, they are going to

1 hear from a profiler his experience, and I take that
2 to be no different than opinion.

3 THE COURT: Well, I understand. He's not going
4 to be able to give an opinion, but based upon the
5 questions -- I mean, if you asked him questions
6 about why he didn't ask these questions based upon
7 the information he had, I think he's got a right to
8 explain why he didn't ask those questions or he
9 didn't take that into account.

10 MR. SLADE: I beg the indulgence of the court,
11 Your Honor.

12 (off the record)

13 (back on the record)

14 MR. SLADE: Yeah. Well, that's good point,
15 Your Honor. He's asked him based on all your
16 experience -- the question he's asking, and correct
17 me if I'm wrong, solicitor, is based on your
18 experience, do suicide people do A, B, C and D.
19 Well, Your Honor, your experience comes together to
20 form an opinion. I mean, you are working from a
21 basis of experience. That's applying your opinion
22 to --

23 THE COURT: Well, what I'm saying is if you --
24 if you are -- if you are being critical of the
25 witness for his failure to take certain information

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1 into account, I think he's got a right to explain
2 why he didn't take it into account. Whether that
3 expresses an opinion or not is perhaps another
4 issue, but I think he's certainly got a right to
5 explain his conduct, which has been criticized.

6 MR. SLADE: Well, I -- we except to your ruling
7 on that, Your Honor.

8 THE COURT: Well, then explain it to me. If
9 you asked him, well, you knew he wrote this note, so
10 why didn't you do this, why can't he explain why he
11 didn't do anything, or why he didn't do what you
12 thought he should have done?

13 MR. SLADE: Well, Your Honor, he explained why
14 he didn't -- why he didn't ask him about suicide.
15 He said he was there to find out, ask questions
16 about why he did what he did. And he testified on
17 cross-examination it was important, given his method
18 of questioning, to know the factual basis for
19 questions so he could jam him up, or whatever that
20 technique is they use.

21 Well, I asked him about what he knew or what he
22 didn't know. And that's it. So --

23 THE COURT: Well, let's do this. Go ahead.
24 Solicitor, you go ahead and ask him the questions
25 that you want to ask and let's get the response and

1 I'll deal with it.

2 BY MR. WILLINGHAM:

3 Q Mr. Prodan, how many times have you dealt with
4 people that either have committed suicide or been on
5 the verge of committing suicide?

6 A A rough estimate would be twenty-five times,
7 sir.

8 Q And at any time during those twenty-five times
9 did those individuals bring with them flashlights,
10 gloves, mace, or other burglary-type instruments?

11 A During those twenty-five times, no, sir.

12 MR. WILLINGHAM: That's all I'm going to ask
13 him.

14 MR. SLADE: Yes, sir, I certainly object to
15 that. I think he's -- again, he's basically
16 qualifying him as an expert, and he's somebody who
17 is identified as a profiler, he's using that
18 experience to offer, I mean, an opinion on whether
19 or not this guy was suicidal at the time he went in
20 the house.

21 Your Honor, I think it's -- you qualify people
22 based on practical experience all the time, and it's
23 no different than a highway patrolman testifying --
24 excuse me, about an officer testifying about
25 investigating a wreck, and based on his experience

1 offering an opinion. And just because he doesn't
2 attach the label opinion to it, it's nevertheless I
3 think clearly to be determined that way.

4 THE COURT: All right. I sustain the objection
5 to it.

6 What other questions do you have of this
7 witness that relates to that topic?

8 MR. WILLINGHAM: Yes, sir, Your Honor. The
9 only other question I ask this witness would be --

10 Beg the court's indulgence.

11 (off the record)

12 (back on the record)

13 THE COURT: Just keep in mind, solicitor, this
14 witness, while he may have been brought here for a
15 specific purpose, I'm talking about at the time of
16 the interview, he may have been brought up here for
17 a specific purpose and he may have been conducting
18 an interview for a specific purpose, but apparently,
19 as I understand it, he just gathered information
20 from the defendant, and he's not been qualified as
21 an expert in any specific field. So obviously he
22 can't -- he can't render an opinion.

23 MR. WILLINGHAM: And I understand that, Your
24 Honor, but I would like him -- the testimony I am
25 trying to elicit from Agent Prodan, very similar to

1 the testimony that was elicited from Agent Prodan on
2 the DNA and the evidence of State's Exhibit 19 and
3 20, the swabs on that. He testified that in his
4 experience, bullets that pass through things
5 sometimes have blood on them, sometimes they don't.
6 He was not giving the opinion that that's what
7 happened in this case. He was testifying based upon
8 his prior experience.

9 THE COURT: He was testifying as an expert. He
10 was qualified as an expert in the field of
11 ballistics and that apparently is included within
12 that qualification. There was no objection to that
13 question, but I clearly believe that that falls
14 under the umbrella of expertise in ballistics, as to
15 whether or not a bullet may or may not have body
16 matter on it as it passes through. So he can
17 testify to that, because he was an expert.

18 This witness is an agent conducting an
19 interview. He's not been qualified as an expert in
20 anything.

21 MR. GOWDY: Your Honor, could I have one
22 moment, please?

23 (off the record)

24 (back on the record)

25 MR. WILLINGHAM: Your Honor, I would like to

1 ask him then --

2 THE COURT: Go ahead and ask him the question.

3 We will see if there is an objection to it.

4 MR. WILLINGHAM: All right.

5 BY MR. WILLINGHAM:

6 Q Mr. Prodan, whenever he indicated that he came
7 there with a flashlight, did he offer an explanation
8 of why?

9 A For the flashlight, no, sir.

10 Q How about for the gloves?

11 A No, sir.

12 Q How about the mace?

13 A No, sir.

14 Q Did he indicate why he hid the knives?

15 A Yes, sir, he did.

16 Q Why?

17 A So that they could not be used against him as
18 defensive weapons.

19 Q Did he ever indicate that he planned to use the
20 flashlight, gloves, mace, or knives in any type of
21 suicide attempt?

22 A He did not.

23 MR. WILLINGHAM: That's all.

24 MR. SLADE: Well, Your Honor, those questions
25 aren't objectionable. You didn't ask him -- you

1 know, he's saying --

2 The whole basis of the cross examination and
3 the examination is questions asked and questions
4 answered. He's asking him if he indicated any
5 purpose for those items. Well, you know, I get to
6 cross-examine him about whether or not he asked
7 those questions, and obviously he didn't, because he
8 hadn't given the whole fact scenario of what we
9 contend is proper consideration. But, you know --
10 you know, on the surface of it I certainly don't
11 think that you can object to that question did you
12 ask him.

13 THE COURT: Well, I can't or you can't?

14 MR. SLADE: I can't. I understand that much,
15 Your Honor.

16 THE COURT: So you don't?

17 MR. SLADE: I don't object to those questions.

18 THE COURT: Those questions.

19 MR. SLADE: No, sir, I don't object to those
20 questions.

21 THE COURT: That's all he says that's -- is
22 that all you have from this witness?

23 MR. WILLINGHAM: Yes.

24 THE COURT: Okay.

25 MR. SLADE: But I get to in turn ask him if he

1 asked those questions.

2 THE COURT: You get to have your turn. I've
3 given everybody ample time to examine the witnesses.

4 MR. SLADE: Thank you, Your Honor.

5 THE COURT: Are we ready for the jury?

6 MR. WILLINGHAM: Yes.

7 THE COURT: Bring them in.

8 (The following takes place in the presence of
9 the jury panel)

10 THE COURT: All right, the jury is present.
11 You may proceed.

12 BY MR. WILLINGHAM:

13 Q When you were talking to the defendant, you
14 indicated that he had brought a flashlight?

15 A Yes, sir.

16 Q Did he indicate why he had brought that?

17 A No, sir, not specifically.

18 Q How about the gloves and the mace, did he
19 indicate why he brought those?

20 A Not specifically.

21 Q Did he indicate why he had hidden the knives in
22 the closet?

23 A Yes, sir, he did.

24 Q And why did he do that?

25 A So that they could not be used against him as

1 defensive weapons.

2 Q Did he indicate why he cut the phone lines?

3 A Yes, sir, he did.

4 Q Why did he do that?

5 A He said that he cut the phone lines because if
6 there was going to be a sexual assault and a rape,
7 the victim would not be able to call for help. And
8 also that if he committed suicide and wasn't
9 successful upon discovery, no one would be able to
10 call for a rescue.

11 Q And did he ever offer an explanation of how the
12 flashlight, gloves, mace, or other items that he may
13 have brought, how he was going to use those to
14 assist in the suicide?

15 A He did not.

16 Q Answer any questions that they have.

17 RECROSS EXAMINATION BY MR. SLADE:

18 Q Agent Prodan, at the time that you were asking
19 Jonathan these questions the solicitor was just
20 redirect examining you on, did you know that the
21 flashlight was left outside of the house down at the
22 fence line?

23 A I may have, sir.

24 Q You don't know?

25 A At this time I don't remember.

1 Q That's not important to you?

2 A Again, sir, it's a piece of information. If I
3 understand your question is at the time of the
4 interview did I know that the flashlight was found
5 outside. My answer is today I don't remember
6 whether I knew that information at the time of the
7 interview or not.

8 Q Did you know that the gloves were found outside
9 down at the fence line?

10 A Again, my answer is the same. I may have known
11 at the time of the interview, but I don't recall it
12 right at this moment.

13 Q Well, you didn't -- you didn't -- you didn't
14 follow up on any questions about whether the
15 flashlight, gloves, or mace, or anything like that
16 was found, did you? You didn't ask him if he took
17 it inside the house, did you, when you were asking
18 these questions about preparation?

19 A Asking who sir? Mr. Binney.

20 Q Jonathan.

21 A No, sir, I did not ask him about those.

22 MR. SLADE: I don't have any other questions,
23 Your Honor.

24 THE COURT: Thank you. You may step down.

25 MR. GOWDY: We would ask Agent Prodan to be

1 excused to go back to Columbia.

2 THE COURT: He may be.

3 Your Honor, the State would call Andrea
4 Mainman.

5 DR. ANDREA MAINMAN, having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. GOWDY:

8 Q Good afternoon, Dr. Mainman.

9 A Hello.

10 Q I'm going to get you, if I could, to speak up
11 where the last two gentlemen and the last lady on
12 the seat back can hear you.

13 Can you tell the ladies and gentlemen of the
14 jury who you are and where you work?

15 A I'm Dr. Andrea Mainman. I work at Carolina
16 OBGYN in Spartanburg.

17 Q What is your educational background?

18 A You mean go through my schooling?

19 Q Start with college. Where did you go to
20 postgraduate?

21 A I went to college at the University of Arizona.
22 I went to medical school at the University of
23 Arizona. I did a five year residency in Hartford,
24 Connecticut, and I have been working in Spartanburg
25 since 1996, as an attending physician at Mary Black

1 Hospital and Spartanburg Regional Hospital.

2 Q Does your practice include both obstetrics and
3 gynecology?

4 A Yes.

5 Q Do you do surgery as a part of your practice?

6 A Yes.

7 Q What percentage of your practice is delivering
8 babies and what percentage is surgery?

9 A It's probably half and half.

10 Q And you have been a board certified OBGYN for
11 how long?

12 A I was board certified in November of '98.

13 MR. GOWDY: Your Honor, we would move Dr.
14 Mainman to be an expert in the field of obstetrics
15 and gynecology.

16 MR. SLADE: No objection, Your Honor.

17 THE COURT: She is so qualified.

18 BY MR. GOWDY:

19 Q Dr. Mainman, I want you to think back with me,
20 if you would, to December of 1999. Did you have a
21 patient present to Mary Black emergency room named
22 [REDACTED] Binney?

23 A Yes, I was what we call the physician covering
24 unassigned patients in the emergency room. The
25 doctor called me and asked me to see her.

1 Q And can you tell the jury what you found when
2 you saw [REDACTED]

3 A When I saw [REDACTED] she had an injury to her
4 perineum, which is the area between the vagina and
5 the rectum. She was bleeding quite a bit and I was
6 unable to examine her thoroughly due to her
7 discomfort, so the decision was made to bring her to
8 the operating room.

9 Q Can you describe the length or depth of the
10 wound that [REDACTED] suffered?

11 A [REDACTED] was very tiny. She was a three-month
12 old little girl, so the perineum in a child that
13 small is very small. So the area from her tiny
14 vagina to her tiny rectum is only about an inch or
15 inch and a half, but that entire -- that entire area
16 was open. It was open through the skin, through the
17 layer under the skin where you have some fatty
18 tissue. The muscle between the rectum and the
19 vagina was completely torn in half, and it went even
20 a little deeper than that. I could see some of the
21 fatty tissue that was there behind the muscle.

22 Q Do you have an opinion, Dr. Mainman, of whether
23 or not a three-month old child is capable of feeling
24 pain?

25 A She was obviously quite -- quite uncomfortable.

1 We had to use general anesthesia to make her
2 comfortable enough for me to examine her.

3 Q Would you have had to stitch her up?

4 A We did stitch -- I did stitch her up in several
5 layers.

6 Q Is there anything that you could compare the
7 injury that [REDACTED] suffered to?

8 A In my note in the hospital records I compared
9 it to a third degree episiotomy.

10 An episiotomy is when an adult woman is having
11 a child, right before the head of the baby delivers,
12 that area between the vagina and the rectum is
13 stretched very thin and flat, and occasionally if
14 there is not room, a physician will make a small
15 incision there.

16 We grade the episiotomy as a first degree,
17 second degree, third degree, or fourth degree. Most
18 episiotomies are a third degree or a second degree,
19 where we just are cutting through a little bit of
20 the skin, maybe some of the tissue underneath the
21 skin. And a third degree episiotomy usually is not
22 something that a doctor will cut, but occasionally a
23 very big baby, a second degree episiotomy will
24 extend and tear through that muscle and become a
25 third degree episiotomy. That's what I compared

1 [REDACTED] injuries to. That's what they were most
2 consistent with.

3 Q Dr. Mainman, let me show you what's been marked
4 for identification purposes as State's Exhibit 121
5 and ask you whether or not that is a picture that
6 you took of [REDACTED] Binney?

7 A That's a picture that I took of [REDACTED] in the
8 operating room after I had repaired several of the
9 deepest layers.

10 MR. GOWDY: Your Honor, we would move State's
11 121 into evidence.

12 THE COURT: It's admitted, subject to
13 objection.

14 MR. GOWDY: I don't have any further questions
15 for Dr. Mainman.

16 BY MR. GOWDY:

17 Q Please answer any questions that the defense
18 may have for you.

19 CROSS EXAMINATION BY MR. SLADE:

20 Q Dr. Mainman, you have previously testified in
21 the criminal sexual conduct trial?

22 A Yes, sir.

23 Q And, of course, you testified essentially to
24 the same questions that the solicitor has asked this
25 time?

1 A Yes, sir.

2 Q And I think that you were asked if you were
3 able to save her reproductive organs, correct?

4 A Correct.

5 Q And you testified that you didn't expect her to
6 have any problems with that, no problems having
7 children?

8 A I don't believe so, although I had wanted to
9 see Mikayla a week after the surgery to make sure
10 she was healing well and she didn't have any further
11 problems, and I was not given that opportunity. I
12 have not seen her since the night of that surgery,
13 so I can't say for sure. But a child that small,
14 it's very difficult to penetrate deeply enough into
15 her vagina to cause internal injuries. Most of her
16 injuries that I was able to witness were external.
17 I don't believe that her uterus was damaged.

18 Q Your testimony in the trial was, what, a year
19 or so after the incident?

20 A Yes, sir.

21 Q And at that time your testimony was you didn't
22 expect her to have any problems.

23 A Correct.

24 MR. SLADE: Thank you.

25

1 REDIRECT EXAMINATION BY MR. GOWDY:

2 Q Dr. Mainman, did I hear you testify that you
3 had wanted to see [REDACTED] a week or so after her
4 surgery?

5 A I had asked her parents and the social worker
6 to bring her in to see me in a week.

7 Q They didn't?

8 A No, I haven't seen her.

9 Q Have you seen her since you did surgery?

10 A No.

11 I heard from her family doctor. He saw her at
12 some point that year, but I did not see her.

13 Q Why did you take that picture?

14 A We knew that Dixie West had already been called
15 and we knew that there would be a pending case, that
16 child abuse would be needed to be ruled out
17 definitively.

18 Q You weren't asked not to call the police, were
19 you, by anyone?

20 MR. SLADE: Your Honor -- I mean, obviously --

21 THE COURT: Let me see y'all.

22 A I wasn't asked --

23 THE COURT: Just a minute before you respond to
24 the question, Dr. Mainman.

25 (Lawyers approached the bench)

1 MR. GOWDY: I have nothing further for Dr.
2 Mainman.

3 MR. SLADE: I don't have any other questions,
4 Your Honor.

5 THE COURT: You may step down.

6 MR. GOWDY: I would ask Dr. Mainman may be
7 excused to go back to Spartanburg.

8 THE COURT: She may be.

9 MR. GOWDY: Your Honor, that would be the
10 State's showing in the penalty phase.

11 THE COURT: Ladies and gentlemen, let me ask
12 you to please go to your jury room. Do not yet
13 discuss the case. I'll bring you back after a short
14 break.

15 (The following takes place outside the presence
16 of the jury panel)

17 THE COURT: Any matters to address before we go
18 any further?

19 MR. PRUETT: Yes, sir.

20 Your Honor, on our motion for a directed
21 verdict on aggravating circumstances.

22 On the burglary aggravating circumstance, Your
23 Honor, again, the essential argument you have heard
24 before. Essentially the same, that it wasn't a
25 burglary, that his true intent was to enter the

1 residence with the intent to commit suicide, which
2 is not a crime. And you have heard that argument
3 two or three times. The same argument also would
4 apply as to that particular statutory aggravating
5 circumstance.

6 Also a motion for a directed verdict dismissing
7 the aggravating circumstance of larceny through the
8 possession of a weapon. There has been no, that I
9 heard, Your Honor, no proof aliunde of corpus
10 delicti of the crime of larceny in this case.

11 There has been the statement, the confession,
12 of Mr. Binney, that he drank beer and he ate a pop
13 tart. But outside of that, I haven't heard any
14 evidence again of proof aliunde of corpus delicti of
15 the crime of larceny while using a deadly weapon.

16 There is no evidence, Your Honor, that I have
17 heard in the course of this trial from Mr. Southern,
18 or any other detective, that they had found empty
19 beer bottles. None of that has been testified to in
20 the course of the trial. It has not been presented.

21 And I'm trying to think in my mind what else
22 that they might see what they said he took and used.
23 He said in his confession he ate a pop tart.
24 There's been no testimony during the course of the
25 trial that a pop tart, or other food item, was

1 missing.

2 So, again, I don't know what their basis for
3 relying upon the larceny is. From what I have
4 listened to in the course of the trial, I haven't
5 heard a larceny that's been committed at all, much
6 less with the use of a deadly weapon.

7 THE COURT: All right. Any others?

8 MR. PRUETT: No, not at this point, Your Honor.

9 MR. SLADE: Let me indulge.

10 (off the record)

11 (back on the record)

12 MR. SLADE: Your Honor, we do have a second
13 motion, and, that is, I would move for a mistrial.
14 And the reason for that is the last question that
15 the solicitor asked is clearly asking for, one,
16 inadmissible hearsay, if it's anybody other than the
17 defendant who would be telling Dr. Mainman not to
18 report [REDACTED] criminal sexual assault.

19 Two, if it was the defendant, we have not heard
20 anything about it.

21 And, Your Honor, it puts us in the position of
22 having to object to a clearly improper question in
23 front of the jury, and I just -- I don't think that --
24 it's the last question on the last witness of the
25 penalty phase, I just don't see how you can get that

1 image out of the jury's mind. Certainly you have to
2 calculate when you make an objection, those risks,
3 how the objection appears versus the necessity of
4 making the objection. But, Your Honor, when you
5 have to make an objection to something that is
6 clearly inadmissible, I just think that it puts you
7 in a terrible position with the jury, especially at
8 a critical point in this part of the trial. Clearly
9 the picture was entered at this point. Dr. Mainman
10 is a critical witness for them. They put her at
11 this point in the trial, and certainly that's their --
12 they have certainly the option and right to do that,
13 if that's their strategy, but to end it at that
14 critical point with an improper question I think
15 just puts an image in the jurors mind that's formed
16 by improper question that can't be cured.

17 THE COURT: All right. Any others?

18 MR. SLADE: That's it, Your Honor.

19 THE COURT: Who is going to address the motion
20 for a directed verdict and the motion for a
21 mistrial?

22 MR. GOWDY: I'll address the motion for a
23 mistrial, Your Honor.

24 There was evidence, I believe, turned over to
25 the defense. I distinctly remember discussing with

1 one of them that Dr. Mainman, when she went back to
2 tell either Mr. Binney, Mrs. Binney, or both of
3 them, that they were taking her daughter into
4 surgery, the response was "we are going to get a
5 bite to eat."

6 The only other conversation she had with them
7 was afterwards, when either one, the other, or both,
8 said "this is a family matter. The police do not
9 need to be brought into it."

10 So if it was a -- I understand Your Honor's
11 ruling that it was a question that asked to elicit
12 hearsay. If, in fact, it was Melanie Binney in what
13 she said was "do we have to get the police
14 involved," that's a question whether or not that's
15 hearsay. I respect Your Honor's ruling, but I think
16 I had a basis for asking the question. And it may
17 come up again, depending on whether or not Mr. Slade
18 calls Ms. Binney, because those two comments were
19 said to Dr. Mainman.

20 THE COURT: Well, now, from what I understand,
21 those comments were -- any such comment to Dr.
22 Mainman was made by Melanie Binney, not by the
23 defendant?

24 MR. GOWDY: Well, Your Honor, for one of those
25 colloquies involved both of them. And I -- I -- I

1 have not asked Dr. Mainman. I don't know -- I don't
2 know whether the defendant was present for both of
3 them. I know he was present for one of them. He
4 was present for the one when she said "I'm taking
5 your daughter into surgery," and the response was
6 "we are going to get a bite to eat. We will come
7 back and check with you later on."

8 The other conversation, where that took place
9 in the time frame, in terms of "this is a family
10 matter. Can we keep this a family matter -- I -- I
11 don't know whether he was present for that or not.

12 THE COURT: Let me be sure I understand. You
13 asked her that question and you didn't know what she
14 was going to --

15 MR. GOWDY: I thought she said she would say
16 Melanie Binney asked me not to, Your Honor.

17 THE COURT: What about -- do you want to
18 respond to that?

19 MR. SLADE: Your Honor, Solicitor Gowdy did
20 tell me that Melanie Binney -- and correct me if I'm
21 wrong, solicitor, but Melanie Binney had said
22 something about "do we have to get the police
23 involved," or "do we have to report this." I don't
24 recall specifically what the solicitor told me, but
25 my point is, if that is, in fact, the case and the

1 answer he expected, that's clearly hearsay.

2 You know, whatever -- whether or not it comes
3 admissible down the road, given how the trial works
4 out, it's clearly inadmissible at that point.

5 And second of all, you know, obviously the
6 defendant didn't say it so, it is. I mean, that's
7 the only way it could come in, and he doesn't claim
8 the defendant said it, so it's clearly inadmissible
9 hearsay. And I just think that's set out to ask a
10 question is that damning and that critical a point
11 in the trial can't be cured. You can't bring them
12 back in and say ignore that last question. That
13 just rings the bell twice.

14 THE COURT: Well, tell me -- do you recall
15 exactly the wording of the question?

16 MR. SLADE: Go ahead.

17 MR. GOWDY: I do not, Your Honor.

18 THE COURT: Let me get the court reporter to
19 find it, please.

20 (Whereupon, the court reporter reread the
21 requested testimony)

22 THE COURT: Is that no one asked. That's the
23 information that the solicitor --

24 MR. SLADE: Well, Your Honor, I think that's
25 putting more grammatical analysis on in that it

1 bear.

2 THE COURT: Well, let's hear it again.

3 (Whereupon, the court reporter reread the
4 requested testimony)

5 MR. SLADE: Well, Your Honor --

6 THE COURT: Which means no one asked her not to
7 call the police, or at least that was the question.

8 MR. SLADE: Well, Your Honor, the way I heard
9 it was you were asked not to the police. Not what
10 he said, Your Honor.

11 When I and the jury heard it, I think that's
12 what they heard.

13 THE COURT: Well, now, I don't know what the
14 jury heard. I know what you tell me you heard, but
15 that's the reason I'm asking the Court Reporter to
16 read back the question.

17 MR. SLADE: I think the answer that he was
18 trying to elicit was the same, and I think the
19 effect of the question is the same, is what I just
20 told you I thought I heard.

21 THE COURT: Well, but that's not the question.

22 MR. SLADE: Yes, sir, I understand that.

23 THE COURT: And I don't think it attributes
24 anything to the defendant anyway.

25 MR. SLADE: Well, I think in the context of

1 what we talking about, her examining [REDACTED] in that
2 situation, it can only have one meaning. And so I --
3 you know, I renew my motion, even based on what the
4 Court Reporter has read back his actual question.

5 And, Your Honor, in my favor, you know, at the
6 time that we approached the bench and the court
7 ruled at the bench conference on it, the court ruled
8 it was hearsay. I just think in the --

9 THE COURT: Well, it is hearsay. I mean --

10 MR. SLADE: And in the combat I think it was
11 heard the way I heard it.

12 THE COURT: Well, I mean, it is hearsay, but
13 notwithstanding the question might be different than
14 what you believed it to be, it does call for
15 hearsay, but that doesn't mean that it calls for a
16 response that would be in any way prejudicial to
17 your client. So based upon that fact, and the fact
18 that the witness was not able to respond to the
19 question, there is no prejudice. The defendant is
20 not prejudiced in any fashion. And, therefore, the
21 motion for a mistrial is denied.

22 MR. SLADE: We except to the court's ruling on
23 that, Your Honor.

24 THE COURT: What about the motion for a
25 directed verdict? Mr. Willingham?

1 MR. WILLINGHAM: Your Honor, as far as the
2 burglary is concerned, Your Honor, I believe there
3 is ample opportunity -- ample evidence indicating
4 that he went into that home with the intent to
5 commit a crime inside. And, in fact, did commit the
6 crime of murder while he was inside. I don't
7 believe any of that evidence has changed from the
8 first phase of this trial.

9 Additionally, as to the second aggravating
10 factor, is the larceny by possession of a deadly
11 weapon, it's clearly a 9 X 18 Makarov handgun was
12 used to commit both of these offenses, and it was in
13 the possession of the defendant during the time that
14 he entered that house. Clearly he was present when
15 he shot at the victim twice, based on the bullets
16 and shells found in the house.

17 As far as the larceny, he admitted in his own
18 statement he took food and beer. Additionally there
19 is evidence that he used the Monistat 7 and
20 Massengil douche that was present at the home. And
21 I believe larceny -- there is evidence that the jury
22 could determine larceny was committed while use of a
23 deadly weapon.

24 THE COURT: Well, address Mr. Pruett's motion
25 as it relates to evidence outside of the defendant's

1 own confession.

2 MR. WILLINGHAM: Well, there is evidence that
3 was found in the bathroom that had the defendant's
4 DNA on it - Monistat 7 and the Massengil douche -
5 which indicated that those items had been used by
6 the defendant. That's circumstantial evidence of
7 use or the asportation and permanent depriving of
8 possession of those items from the victim.

9 THE COURT: The Monistat creme and the douche
10 bottle?

11 MR. WILLINGHAM: Yes.

12 THE COURT: Is that what you believe that he
13 has --

14 MR. WILLINGHAM: That, along with the food and
15 the beer, which he confesses to in his statement,
16 yes, sir.

17 THE COURT: I understand, but there's no -- I'm
18 talking about evidence outside his confession.

19 MR. WILLINGHAM: And those are the other items,
20 Your Honor.

21 THE COURT: All right. Mr. Pruett, do you want
22 to reply?

23 MR. PRUETT: Your Honor, as I understand it,
24 larceny, outside of his confession -- of course, in
25 his confession I don't hear or see any mention of a

1 Monistate 7 creme being used or the Massengil item
2 being used. They don't have any proof of that.
3 They don't have any proof that it was full before he
4 entered the home or that -- that any cream was
5 missing from the tube, which I am surmising, Your
6 Honor, is the basis of them seeking the death
7 penalty is a quantum of creme was missing from the
8 tube. They have to prove it was there before and it
9 was there afterwards.

10 And the same thing applies to this Massengil
11 product. There is no evidence as to what was there
12 before and whether or not it was any different from
13 the way the police found it.

14 And I would say, again, in reference to that,
15 there's no mention in any statements. So I would
16 say that, again, there is no proof of a larceny, no
17 proof aliunde of the corpus delicti, other than the
18 extra-judicial confession of the defendant. And for
19 that reason a directed verdict dismissing that
20 aggravated circumstance should be granted.

21 THE COURT: Let's take about ten minutes before
22 we go further.

23 (Proceedings recessed)

24 (Proceedings reconvened)

25 THE COURT: All right. With respect to the

1 defendant's motion for a directed verdict as to the
2 aggravating circumstance of burglary, I find that
3 that motion should be denied for reasons as
4 previously stated. Burglary clearly has been
5 established by the evidence in the case beyond a
6 reasonable doubt.

7 With the motion for a directed verdict as to
8 the submission of the aggravating circumstance of
9 larceny with the use of a deadly weapon, that motion
10 is granted.

11 And I understand it's granted without objection
12 from the State.

13 MR. GOWDY: That's correct, Your Honor.

14 THE COURT: And defendant's motion for a
15 mistrial, as I have previously stated, is denied,
16 based upon the reasons previously stated.

17 I will, however, instruct the jury that they
18 are to disregard the last question asked by the
19 prosecutor of the witness, based upon the fact that
20 it called for a hearsay response. And that was the
21 reason for the objection, and that the jury should
22 not speculate as to who may have made the statement,
23 but, in fact, the defendant is not the person that
24 would have made the statement that would be in
25 response to the question.

1 MR. SLADE: Your Honor, we just want the record
2 to note our exception to your ruling on that. And
3 is the court now going to rule on the photograph?

4 THE COURT: I'll address that in the morning.

5 MR. SLADE: All right. Thank you.

6 THE COURT: The court reporter has the
7 photograph. It should be -- it should be noted that
8 the photograph has not been shown to the jury, and I
9 have got to review the court reporter's record
10 before I determine whether or not the photograph
11 should be admitted or withdrawn.

12 Okay. Bring the jury in, please.

13 (The following takes place in the presence of
14 the jury panel)

15 THE COURT: All right. Ladies and gentlemen,
16 as you are aware, the State has concluded with their
17 presentation. And, of course, the defense also has
18 a presentation to make. The day has gone quicker
19 than we had expected that it would go. We have been
20 trying to schedule witnesses, especially those who
21 have many other places that they need to be or
22 professional schedules that need to be accommodated,
23 and some witnesses are also from out of town and
24 they could be here at certain times and could not be
25 here at others. So throughout the course of this

1 trial we have been trying to not only take into
2 consideration the fact that you are sequestered, but
3 also take into consideration the schedules of
4 various witnesses that needed to be called during
5 the trial of the case. And up to this point
6 everything has gone very smoothly, but we have --
7 because we have finished a little bit earlier today
8 than we had expected to conclude, the next witness
9 to be called is not available and would not be
10 available until the first thing in the morning. So
11 we are going to conclude for the day. We will
12 resume with the evidentiary presentation in the
13 morning at nine o'clock.

14 Before I let you go, let me address one matter
15 with you. The last witness that testified was asked
16 a question that required a hearsay response. It was
17 objected to. You may not even recall what the
18 question was. But, nevertheless, it was a question
19 that called for a hearsay response. And the defense
20 objected, because any response the witness would
21 have made would have necessarily required her to
22 testify to hearsay. And hearsay is not admissible,
23 except under certain circumstances, and that was not
24 one of the circumstances. So I sustained that
25 objection, because it did call for a response that

1 would have to be based upon hearsay, and, therefore,
2 is not admissible.

3 However, out of an abundance of caution, I
4 instruct you that not only are you to disregard the
5 question and not consider it in any fashion
6 whatsoever, but you are also not to imply that it
7 may have called for some response by the witness
8 that the defendant may have stated, or that the
9 defendant may have said, because as a fact, as a
10 matter of fact, and you must accept it as such, it
11 was not calling for a response of anything that the
12 defendant may have said. So even though the
13 question was asked, the State was not attempting to
14 elicit some statement that was made by the
15 defendant. If the witness had answered the
16 question, it would not have been a statement that
17 the defendant had made. It would have been some
18 other person. But because it was a hearsay
19 statement, then that person would have to be called
20 as the witness to provide that information, should
21 anyone wish to call that witness.

22 So, simply stated, disregard the question. Do
23 not speculate as to the response, but understand
24 that it was not going to be any statement that the
25 defendant had made, and no one is alleging that it

1 was.

2 All right. With that, you are excused for the
3 balance of the afternoon. Have a good evening. We
4 will see you at nine o'clock in the morning.
5 Continue to follow the instructions. No discussions
6 about the case and do not permit yourself to be
7 exposed to any type of media coverage.

8 Have a good evening. We will see you at nine
9 o'clock in the morning.

10 (The following takes place outside the presence
11 of the jury panel)

12 THE COURT: Any matters to address before we
13 recess?

14 MR. PRUETT: There will be more exhibits.
15 Probably just mark for the purposes of expediting.

16 THE COURT: Are y'all going to look at the
17 exhibits now?

18 MR. PRUETT: Yes, sir, to speed things up.

19 THE COURT: All right. Court is in recess
20 until nine o'clock in the morning.

21 (Enlarged Photograph marked as Defendant's
22 Exhibit No. 3 for identification)

23 (Enlarged Photograph marked as Defendant's
24 Exhibit No. 4 for identification)

25 (Enlarged Photograph marked as Defendant's

1 Exhibit No. 5 for identification)
2 (Enlarged Photograph marked as Defendant's
3 Exhibit No. 6 for identification)
4 (Enlarged Photograph marked as Defendant's
5 Exhibit No. 7 for identification)
6 (Enlarged Photograph marked as Defendant's
7 Exhibit No. 8 for identification)
8 (Enlarged Photograph marked as Defendant's
9 Exhibit No. 9 for identification)
10 (Enlarged Photograph marked as Defendant's
11 Exhibit No. 10 for identification)
12 (Enlarged Photograph marked as Defendant's
13 Exhibit No. 11 for identification)
14 (Whereupon, Proceedings were adjourned to
15 November 14, 2002, at nine o'clock a.m.)
16
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25

VOLUME ELEVEN OF TWELVE VOLUMES

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHEROKEE COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN KYLE BINNEY,

APPELLANT

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STATE OF SOUTH CAROLINA))
COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

THE STATE)
-vs-)
JONATHAN KYLE BINNEY,)
Defendant.)
TRANSCRIPT OF RECORD
2002-GS-11-525
2002-GS-11-526
NOVEMBER 14, 2003
GAFFNEY, SOUTH CAROLINA

VOLUME XI

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury.

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S-3	Voluntary Written Statement of Jonathan Binney		1916
S-4	Written Note by Jonathan Binney, dated 6-19-00		1948
S-5	Statement of Rights Form for Jonathan Binney, dated 6-19-00		1955
S-6	Letter written by Jonathan Binney to Allan Southern, dated 6-19-00		1955
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(SUPPRESSION HEARING)

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3	S-122	Photograph		3122
4	S-123	1 Page of Computer Images		3103
5	S-124	Swedish Erotica Vibrator		3120
6				
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(JURY TRIAL - GUILT PHASE)

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
S-1	Handwritten Note of Jonathan Binney, dated 6-16-00		2336
S-2	Pre-Interrogation Waiver Form for Jonathan Binney, dated 6-16-00		2342
S-3	Voluntary Written Statement of Jonathan Binney		2343
S-4	Written Note by Jonathan Binney, dated 6-19-00		2382
S-5	Statement of Rights Form for Jonathan Binney, dated 6-19-00		2383
S-6	Letter Written by Jonathan Binney to Allan Southern, dated 6-19-00		2386
S-8	One Bullet Casing from Makarov Pistol		2536
S-17	One Spent Shell from Pistol		2469
S-18	One Spent Shell from Pistol		2470
S-19	Bullet and Piece of Wallpaper		2471
S-20	One Bullet and Bedding		2473
S-25	One Pair of Black Latex, Sized Small Gloves and One Black Flashlight		2488
S-27	One Cigarette Pack and One Blue Lighter		2484
S-29	Cigarette Butt		2483
S-30	Cigarette Butt		2483

3248

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-31	One Sun Drop Can Containing Two		2484
4		Cigarette Butts		
5	S-32	Cigarette Butt		2490
6	S-33	Cigarette Butt		2490
7	S-34	Suicide Note of Jonathan Binney		
8	S-35	One Plastic Dildo		2479
9	S-36	One Plastic Massengil Disposable	2585	
10		Douche Bottle		
11	S-37	One Tube of Monistat 7 Cream with	2528	
12		Applicator		
13	S-38	Seven Unused Tissue Papers		2482
14	S-40	One White-Handled 7-Inch Kamenstein		2492
15		Knife		
16	S-41	3 Black Handled Knives		2492
17	S-47	SLED Evidence Bag containing DNA		2493
18	S-48	One Makarov-Arsenal-9X18 Caliber Pistol		2496
19	S-49	One Pistol Magazine with Live Rounds		2498
20	S-50	Pistol Magazines with 8 Live Rounds		2498
21	S-51	Pistol Magazine with 8 Live Rounds		2498
22	S-53	One Pistol Round		2499
23	S-58	Latent Prints		2500
24	S-59	SLED Evidence Bag		2523
25	S-60	One Police Scanner with Batteries		2330

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-63	Photograph		2268
4	S-64	Photograph		2268
5	S-65	Photograph		2299
6	S-66	Photograph		2306
7	S-67	Photograph		2306
8	S-68	Photograph		2306
9	S-69	Photograph		2306
10	S-70	Photograph		2306
11	S-71	Photograph		2306
12	S-72	Cassette Audio Tape/Original Audio		2319
13		Cassette Tape		
14	S-73	Photograph		2325
15	S-74	Photograph		2325
16	S-75	Voluntary Statement Form, dated 6-19-00		2334
17	S-76	One Pistol Holder and One Pistol		2335
18		Magazine Holder		
19	S-77	One Pair of Blue Jeans with One 9X18		2335
20		Bullet and Bullet Casing in Pocket		
21	S-78	Photograph		2351
22	S-79	Photograph		2351
23	S-80	Photograph		2353
24	S-81	Photograph		2353
25	S-82	Scaled Drawing of Officer Henson		2465

EXHIBITS

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
	NO.	DESCRIPTION	ID.	EV.																				
	S-83	Scaled Drawing of Officer Henson		2485																				
	S-84	Scaled Drawing of Officer Henson		2487																				
	S-85	Scaled Drawing of Officer Henson		2494																				
	S-86	Photograph		2480																				
	S-87	Photograph		2475																				
	S-88	Photograph		2475																				
	S-89	Photograph		2473																				
	S-90	Photograph		2480																				
	S-91	Photograph		2480																				
	S-92	Photograph		2480																				
	S-93	Photograph		2474																				
	S-94	Photograph	2467																					
	S-95	Photograph		2486																				
	S-96	Photograph		2489																				
	S-97	Photograph	2467																					
	S-98	Photograph		2476																				
	S-99	Photograph		2476																				
	S-100	Photograph		2521																				
	S-101	Photograph		2521																				
	S-102	Photograph		2535																				
	S-103	Photograph		2535																				
	S-104	Photograph		2535																				
	S-105	Bill of Sale for Pistol		2578																				

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
S-106	SLED Evidence Bag with DNA		2598
S-107	Hand-Drawn Map of Jonathan Binney		2634
S-108	Coroner's Drawing		2669
S-109	Coroner's Drawing		2669
S-110	Voluntary Written Statement of Jonathan Binney, dated 12-8-99		3106
S-111	Pre-Interrogation Waiver Form from Spartanburg County, dated 12-8-99		3114
S-112	Voluntary Statement of Jonathan Binney, dated 12-8-99		3115
S-113	Voluntary Statement of Jonathan Binney, dated 12-9-99		3118
S-114	Photograph (Exhibit Withdrawn)	2989	
S-115	Statement of Rights Form for Jonathan Binney, dated 12-9-99		3126
S-116	Voluntary Statement of Jonathan Binney, dated 12-9-99		3128
S-117	Swearing of Truth Statement of Jonathan Binney, dated 12-9-99		3137
S-118	Typed Transcript of Audio Statement of Jonathan Binney, dated 12-9-99		3136
S-119	Cassette Audio Tape		3135
S-120	Photograph		3112

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-121	Photograph		3192
4	S-122	Photograph		3122
5	S-123	One Page of Computer Images		3103
6	S-124	Swedish Erotica Vibrator		3120
7	S-125	Photograph		3071
8	S-126	Photograph		3071
9	S-127	Photograph		3971
10	S-128	Photograph		3071
11	S-129	Photograph		3071
12	S-130	Photograph		3071
13	S-131	Photograph		3071
14	S-132	Certified True Copy of Judgment Entry,		3098
15		dated 6-10-93		
16	S-133	Certified True Copy of Superior Court		3099
17		from North Carolina		
18	S-134	Indictment 2000-GS-42-1633 for CSC		3100
19		First Degree for Jonathan Binney		
20	S-135	Letter from Jonathan Binney,		3150
21		dated 7-7-00		
22				
23				
24				
25				

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
D-1	Witness Interview Form, dated 6-8-00	1871	
D-2	Suicide Note of Jonathan Binney		2226
D-3	Enlarged Photograph		3149
D-4	Enlarged Photograph		3149
D-5	Enlarged Photograph		3149
D-6	Enlarged Photograph		3149
D-7	Enlarged Photograph		3149
D-8	Enlarged Photograph		3149
D-9	Enlarged Photograph		3149
D-10	Enlarged Photograph		3149
D-11	Enlarged Photograph		3149
D-12	Enlarged Photograph		3149
D-13	Enlarged Photograph		3149
D-14	Enlarged Photograph		3149
D-15	Jail Records from the Cherokee County Jail		3256
D-16	4 pages of Transcript from the Testimony of Officer Steve Reynolds		3264

EXHIBITS

NO.	DESCRIPTION	ID.
CT-1	Defense Memorandum of Law on Burglary Instruction	2746
CT-2	Jury Note	2819
CT-3	Search Warrant - 12-8-99 - (Affidavit)	2877
CT-4	Search Warrant - 12-9-99 - (Affidavit)	2877
CT-5	Permission to Search Form - 12-9-99	2877
CT-6	Permission to Search Form - 12-9-99	2887
CT-7	Investigation Report of Officer Diane Lestage, dated 12-13-99	2888
CT-8	80 Pages of Pornographic Computer Images	2901
CT-9	Defense Memorandum of Law to Suppress Computer Search	2963
CT-10	Certified Copy of Judgment Entry of Plea	3096

1 (Proceedings, November 14, 2002)

2 (Enlarged Photograph marked as Defendant's
3 Exhibit No. 12 for identification)

4 (Enlarged Photograph marked as Defendant's
5 Exhibit No. 13 for identification)

6 (Enlarged Photograph marked as Defendant's
7 Exhibit No. 14 for identification)

8 THE COURT: All right. Any matters to address
9 before the jury is brought in?

10 MR. PRUETT: None by the defense, Your Honor.

11 MR. WILLINGHAM: None from the State, Your
12 Honor.

13 THE COURT: All right. Bring the jury in,
14 please.

15 (The following takes place in the presence of
16 the jury panel)

17 THE COURT: Good morning, ladies and gentlemen.
18 As you know, when we recessed yesterday, the State
19 had concluded with their presentation, so we are now
20 going to proceed with that to be offered by the
21 defense.

22 Mr. Pruett?

23 MR. PRUETT: If it please the court, we call as
24 our first witness Rocky Jones.

25 OFFICER ROCKY JONES, having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. PRUETT:

3 Q Would you state your name, please?

4 A Rocky Brian Jones.

5 Q And you are obviously employed by the Cherokee
6 County Sheriff's Office?

7 A Yes.

8 Q And what capacity are you employed, Mr. Jones?

9 A I'm the captain of the detention center.

10 Q How long have you been the captain of the
11 detention center?

12 A About six years.

13 Q Six years.

14 I subpoenaed some records from you several
15 weeks ago in reference to Mr. Binney. Did you
16 produce these records pursuant to my subpoena?

17 A Yes, sir. This is the paperwork that I gave
18 you.

19 Q And what is that paperwork that you now hold in
20 your hands?

21 A This is medical records on Mr. Binney in
22 reference to him being on suicide watch at the jail.

23 Q And do those records also reflect the time
24 period that he was on suicide watch at the Cherokee
25 County jail?

1 A Yes, sir; they should.

2 Q Beginning on what day was the first page, first
3 date?

4 A June the 9th, 2000.

5 Q And when is the last day, if you would just
6 flip to the back?

7 A June the 21st of 2000.

8 Q Okay.

9 MR. PRUETT: Your Honor, at this time the
10 defense would move into evidence records as
11 identified by Captain Jones.

12 MR. WILLINGHAM: No objection, Your Honor.

13 THE COURT: They are admitted.

14 (Jail Records from the Cherokee County Jail
15 pertaining to Jonathan Binney marked as Defendant's
16 Exhibit No. 15 for identification)

17 BY MR. PRUETT:

18 Q Defendant's Exhibit No. 15 also contains some
19 records from the Cherokee Mental Health Center, or
20 it's called the Spartanburg Area Mental Health
21 Center, but it's located here in Gaffney.

22 Let me ask you one or two questions about
23 suicide watch at the Cherokee County jail.

24 We have heard testimony in the case that Mike
25 Fowlkes placed Mr. Binney on suicide watch. Do you

1 know that is correct, or do you have any knowledge
2 of that?

3 A I couldn't be positive about exactly who. I
4 know that it came from the arresting officials, but
5 I don't know exactly which one.

6 Q When a person is placed on suicide watch at the
7 jail, how are they incarcerated? How are they
8 housed?

9 A They are held in an individual cell right next
10 to an officer's station. If it's usually
11 immediately when they are brought in and put in that
12 cell block, everything is taken from them, clothes
13 and all, and they are given, we call it a suicide
14 smock. It's a heavy quilted dress, basically, that
15 they put on. There is nothing that you can tear off
16 of it or hurt yourself with. And they are in this
17 single cell basically watched all the time by
18 officers.

19 Q And this cell is enclosed by glass, is that
20 fair to say, and brick?

21 A It's a block room with a very large window so
22 that everything that's going on can be seen.

23 Q And that person remains essentially naked,
24 correct?

25 A Yes.

1 Q With the exception of that?

2 A The smock.

3 Q The smock, which is basically something that
4 would easily tear so they couldn't try to hang
5 themselves?

6 A Yes.

7 Q Or use it against themselves.

8 How is it determined how long somebody remains
9 in that condition, housed in that manner?

10 A Once someone is placed on suicide watch, they
11 are basically there until medical personnel deemed
12 that they are fit to come off of it.

13 Q Medical personnel being?

14 A Our -- our nurse, or the doctor, or mental
15 health.

16 Q All right. So either the attending doctor. I
17 believe you have Dr. Swad on staff, is that correct?

18 A Yes.

19 Q The attending nurse. Is that a full-time nurse
20 that works at the jail, is that correct?

21 A Yes, sir.

22 Q Or, in this case, appears to be mental health?

23 A Yeah, it looks like they were involved in this.

24 Q How do you get that mental health worker in
25 touch with the person on suicide watch?

1 A That would have been through the staff, the
2 medical staff, at the facility.

3 Q Thank you.

4 MR. PRUETT: I have no further questions.

5 CROSS EXAMINATION BY MR. WILLINGHAM:

6 Q Mr. Jones, tell me what it takes to get on
7 suicide watch.

8 A A person can be placed on suicide watch because
9 of statements that they made, because of behavior
10 that somebody on my staff has witnessed, or the
11 suspicion of an arresting officer or an officer
12 there in the detention center.

13 Q Just because they are on suicide watch does not
14 necessarily mean that they are suicidal, does it?

15 A No, sir, it just means we have a concern.

16 Q And your concern is about the welfare of the
17 prisoner?

18 A Yes, sir.

19 Q And the potential liability of the jail?

20 A Oh, yes, sir.

21 Q And so out of an abundance of caution you put
22 people on suicide watch, just if there is any
23 concern, is that right?

24 A Yes, sir.

25 Q Whether that concern has a good basis or not?

1 A Right.

2 Q By the same token, you take people to the
3 hospital for those same reasons?

4 A Yes, sir.

5 Q Again, for the welfare of the prisoner?

6 A Yes.

7 Q And the welfare of the jail?

8 A Yes, sir.

9 Q And the welfare of the employment of the
10 detention officers there?

11 A That's right.

12 Q Thank you Mr. Jones.

13 MR. PRUETT: Very briefly.

14 REDIRECT EXAMINATION BY MR. PRUETT:

15 Q You have been working at the jail for how long,
16 Captain Jones?

17 A Fifteen years.

18 Q A long time?

19 A Yes.

20 Q You have been captain for six years?

21 A Yes, sir.

22 Q And you have got to see, or do you, a lot of
23 folks coming in and saying well, my arm is hurting,
24 or complaining of every possible physical or mental
25 ailment that you could find in the medical textbook?

1 A Yes, sir.

2 Q And do you run somebody from the jail every
3 time they say, well my arm is hurting, my back is
4 hurting? Do you run them to the hospital?

5 A In this day and age, just about all of them,
6 yes, sir.

7 Q Every one of them?

8 A Just about.

9 Q Dr. Swad doesn't see them right there in the
10 jail?

11 A No, sir, he only comes in for like three hours
12 a week.

13 Q So if I was in jail and I was complaining of a
14 backache, you would rush me to the hospital?

15 A A backache? Anything that sounded serious we
16 just about have to now.

17 Q Sounded serious.

18 A A backache, I don't know that I would, but I'm
19 talking about if somebody said their arm was broke
20 and they had a knot on their arm, or somebody --
21 anything that I as a layman see as something that
22 could possibly need attention, we take.

23 Q That's what I'm getting at. I mean, just a
24 mere complaint. I may have misunderstood Mr.
25 Willingham's question, but a mere complaint, and if

1 I held my arm up, I said my arm is broken, I
2 mean, you are going to discount that -- unless you
3 see some physical manifestation, you are going to
4 discount that as somebody just trying to get out of
5 jail for a day to take a day trip to the hospital,
6 is that right?

7 A Most likely.

8 Q Thank you.

9 MR. PRUETT: That's all I have.

10 RECROSS EXAMINATION BY MR. WILLINGHAM:

11 Q Mr. Jones, you don't have any medical training
12 yourself?

13 A No, sir.

14 Q And if it sounds bad enough, you are going to
15 err on the side of caution?

16 A Right, yes, sir.

17 Q And take them to the hospital?

18 A Yes.

19 Q And, as you said, in these days and times when
20 people are suing each other, just about every time?

21 A Yes.

22 Q Thank you.

23 THE COURT: Thank you. You may step down.

24 MR. PRUETT: We would ask he be excused, unless
25 the prosecution has any objection.

1 Your Honor, we would ask at this time to admit
2 the prior testimony of Steve Reynolds given in an
3 earlier proceeding in the trial of this case.

4 I have already provided a copy to the
5 prosecution.

6 MR. GOWDY: We have no objection.

7 THE COURT: This is the testimony of Steve
8 Reynolds?

9 MR. PRUETT: Yes, sir, in a prior proceeding.

10 (Four Pages of Transcript of Testimony of
11 Officer Steve Reynolds marked as Defendant's Exhibit
12 No. 16 for identification)

13 MR. PRUETT: Your Honor, I have request to be
14 allowed to publish before the jury the prior
15 inconsistent statement of Officer Steve Reynolds for
16 purposes of impeaching his prior testimony.

17 THE COURT: You may.

18 MR. PRUETT: The relevant testimony in
19 question:

20 Question by Solicitor Gowdy.

21 "When he either woke up, stayed woke up, how
22 did he appear to you?

23 Answer of Steve Reynolds, "I don't remember
24 exactly what he had on. It seemed like he may have
25 had on a shirt, but it seemed like there was some

1 nicotine patches or something all over him on his
2 chest, or something."

3 Your Honor, at this time we would call Dr.
4 Donna Schwartz-Watts.

5 DR. DONNA SCHWARTZ-WATTS, having been first
6 duly sworn, testified as follows:

7 MR. GOWDY: Your Honor, could we approach just
8 a moment?

9 (Lawyers approached the bench).

10 DIRECT EXAMINATION BY MR. PRUETT:

11 Q Would you please state your name for the
12 record?

13 A Sure. Donna Marie Schwartz-Watts,
14 S-c-h-w-a-r-t-z-W-a-t-t-s.

15 Q And what is your profession or occupation?

16 A I'm a medical doctor, but specifically a
17 psychiatrist, and more specifically, a forensic
18 psychiatrist.

19 Q And would you give the jury the benefit of your
20 background and education and training, Dr.
21 Schwartz-Watts?

22 A Sure. I went to college at Furman University
23 and graduated from Furman in 1985, with a Bachelor
24 of Arts Degree in Psychology.

25 And then I went to medical school in Columbia,

1 at the University of South Carolina School of
2 Medicine, and graduated from there in 1989.

3 I completed a four year residency training in
4 psychiatry, and that's also in Columbia, at the
5 William S. Hall Institute.

6 And then I completed another year of training
7 in a subspecialty, which is known as forensic
8 psychiatry, and that took a year. And I also
9 completed that in Columbia, at the William S. Hall
10 Institute, in 1994.

11 I'm licensed to practice medicine in the State
12 of South Carolina, and I have what's called board
13 certification, both in psychiatry and in the field
14 of forensic psychiatry.

15 Q Would you maybe expand on that one matter a
16 little more, forensic psychiatry, as opposed to
17 general psychiatry?

18 A Sure. Forensic psychiatry, it's a subspecialty
19 of medicine. Just like cardiology is a subspecialty
20 of internal medicine, forensic psychiatry is the
21 subspecialty of psychiatry. And what that area
22 covers, it's anywhere where psychiatry and the law
23 might interface.

24 So, for example, if some legal official, or if
25 it could be a lawyer, it could be a court, if

1 someone has a question about somebody's mental state -
2 how they think, how they feel, how they act and how
3 that pertains to a legal matter - that would be an
4 area where a forensic psychiatrist could be
5 consulted. So our training is more in the areas of
6 helping legal -- in legal situations, helping
7 someone understand a mental state when it comes into
8 question.

9 Q How are you currently employed? What consumes
10 most of your professional and occupational duties at
11 this point?

12 A Right now I work at the medical school, the
13 University of South Carolina, in Columbia. And
14 there I have two titles.

15 I'm an associate professor in psychiatry, which
16 I'll be glad to talk about that, but that means I
17 teach and do research and that sort of thing that
18 most people do in academic university settings.

19 And then I also treat patients. And there my
20 other title is director of forensic services. And
21 at the university I have a lot of contracts set. I
22 assist. Either I run them or I perform services,
23 and I also have a practice in forensic psychiatry.

24 Q What does that practice entail?

25 A Well, right now the first thing I do is the

1 university has a contract with the Department of
2 Juvenile Justice. That used to be known as DYS.
3 And what we do there is perform Family Court
4 evaluations. These are children that have been sent
5 away for evaluation, and we perform evaluations for
6 the Family Court to help them give ideas about maybe
7 things that they can do if their children need
8 treatment, or that sort of thing, so I do those.

9 I also work there right now and I treat
10 children that have been committed to the Department
11 of Juvenile Justice. And I have a clinic out there
12 that I do weekly. I treat children for a number of
13 mental disorders - attention deficit disorder,
14 problems with behavior, or problems with depression,
15 and that sort of thing. That's one duty.

16 I also -- USC has a contract with the
17 Department of Mental Health right now. South
18 Carolina has what's called a sexually violent
19 predator statute, and I serve as one of the
20 court-appointed examiners for that statute. And
21 that would be a judge asking -- a judge or a jury.
22 My job would be to explain to them if someone has an
23 underlying sexual problem and whether they would get
24 basically in trouble again if they are not confined
25 for treatment.

1 The other thing I do is a number of private
2 cases. I do a lot of death penalty cases. I'm
3 retained in a lot of cases that have to do with
4 sexual problems, probably because of my court
5 appointment with the Department of Mental Health.

6 And I work for lots of other things to.
7 Insurance companies may have questions about
8 policies. I evaluate impaired physicians sometimes
9 for the medical board. I evaluate impaired
10 attorneys. I have done that in the past when there
11 is a panel for the Attorney General's Office, so
12 I'll consult with just a number of different
13 agencies.

14 Q And do those agencies include agencies, such as
15 the Attorney General's Office or a solicitor's
16 office?

17 A Sure. Sure. I work -- consult with them as
18 well.

19 Q Your testimony, is it fair to say that you
20 sometimes testify for the prosecution, sometimes for
21 the defense?

22 A Sure.

23 Q How many times have you testified as an expert
24 in the area of forensic psychiatry?

25 A I believe now it's somewhere between five and

1 six hundred times.

2 Q And if you had to quantify in percentages, how
3 many of those times were you testifying as a witness
4 for the prosecution?

5 A It will vary over time. Earlier in my career I
6 worked at the Department of Mental Health and
7 performed court evaluations. And more times than
8 not then I would be called by the prosecution.

9 Then there was a period earlier on in my
10 private practice where I would be retained more by
11 defense.

12 And now it's pretty much leveling out. I am
13 court-appointed examiner, so I'm often called by the
14 Attorney General's office. I have been retained for
15 a number of cases for solicitor's offices as well.
16 So right now it's more of a mix.

17 And I'm also doing more civil work, so it's a
18 pretty even mixture at this point.

19 Q And you say that you testify for solicitor's
20 offices. Does that include this solicitor's office
21 in the Seventh Circuit?

22 A Yes.

23 Q You currently have pending cases with them?

24 A Yes.

25 Q All right.

1 MR. PRUETT: Your Honor, at this time I would
2 ask that Dr. Schwartz-Watts be qualified as an
3 expert in the area of forensic psychiatry.

4 MR. WILLINGHAM: No objection.

5 THE COURT: She is so qualified.

6 BY MR. PRUETT:

7 Q Dr. Schwartz-Watts, turning to your report, and
8 matter at hand, were you asked by Mr. Slade and
9 myself to meet with and evaluate Jonathan Kyle
10 Binney?

11 A Yes.

12 Q And approximately how long ago were you asked
13 to do that?

14 A I believe the first time that you contacted me
15 was up around April of 2002.

16 Q This year?

17 A Yes.

18 Q And did you, in fact, after that request meet
19 with and evaluate Mr. Binney?

20 A Yes.

21 Q In addition to your face-to-face meeting with
22 him, did you rely upon other materials in evaluating
23 and assessing any mental problems, mental illnesses
24 he may have?

25 A Yes.

1 Q And could you kind of give the jury an overview
2 as to what other materials that you had at your
3 disposal in making that evaluation?

4 A Sure. In forensic psychiatry, as you can
5 imagine, there is -- it's a little bit different
6 from general psychiatry. If a patient comes into a
7 general psychiatrist's office and has complaints of
8 depression, typically a general psychiatrist would
9 rely upon that patient's history and maybe talk to
10 somebody close to that patient to kind of confirm
11 the symptoms someone is having.

12 Forensics is a little bit different. Because
13 there is legal situations involved sometimes, it's
14 helpful to have different sorts of information than
15 a typical psychiatrist would use in an office
16 setting. And there is lots of different reasons for
17 that. First of all, anytime that you can get
18 information from other sources, it gives you a
19 picture of what that person might have been like
20 before you ever met them. It can help you in terms
21 of making diagnosis and assessments.

22 But also in legal situations, sometimes people
23 fake symptoms. They are trying to get out of legal
24 trouble, and so it's helpful to have those sorts of
25 records also, to be able to ascertain whether

1 someone is trying to fain symptoms to get out of
2 trouble or not, so it's always helpful to have
3 records.

4 In this case what we knew about Mr. Binney, he
5 did have prior psychiatric treatment, so we were
6 able to get those records. He was hospitalized in
7 1992, for I believe about forty plus days in an
8 inpatient facility, so I had those records.

9 He was hospitalized before this incident. He
10 was discharged from a mental hospital at Patrick
11 Harris Hospital twenty-eight days before Ms.
12 Southern was killed, and we had those records.

13 He also, while he was in the detention center
14 awaiting trial on these charges, he was -- I
15 recently got those records. He was followed by the
16 mental health center and placed on medications. So
17 we knew -- so I had records of some prior
18 psychiatric treatments that he had had.

19 He had also had a prior evaluation by a
20 psychologist named Dr. Geoffrey McKee. Dr. McKee
21 also specializes in assessing people that have
22 sexual disorders, sexual problems. And Dr. McKee
23 had evaluated him pursuant to the criminal sexual
24 conduct charge. So I had the opportunity to review
25 his testimony and speak with him.

1 I also had records about what happened, about
2 statements Mr. Binney made about some of the facts
3 of the murder.

4 I also had some information about the facts,
5 the circumstances about the criminal sexual conduct
6 charges.

7 I also had the opportunity, I spoke with Mr.
8 Binney's parents, his mother and father, by
9 telephone. They also came to my office and met with
10 me about two and a half hours.

11 I very briefly met with Mrs. Binney, Mr.
12 Binney's wife, Melanie Binney.

13 And then I also had the luxury, I was able to
14 consult a number of specialists. There was some
15 things about Mr. Binney that I needed further
16 clarification from. I worked with a neurologist on
17 this case and also a psychopharmacologist. That's
18 someone that knows a lot about medications and drug
19 interactions and substance abuse and that sort of
20 thing.

21 Q Who was that?

22 A Dr. Alex Morton.

23 Q And you touched on something I really didn't
24 cover it in your initial qualification, that you
25 specialize or concentrate or practice the area of

1 sexual disorders and how that might be different
2 from say a forensic psychiatrist from somebody
3 perhaps like yourself who concentrates in that area?
4 A Sure. That's -- well, what that was about,
5 when I was a resident psychiatry, you have to spend
6 four years in residency. I actually was awarded a
7 scholarship. It's called the Rappaport Fellowship.
8 And that was given at the time to eight forensic
9 doctors in the country that showed promise in the
10 field. And what happened is that they flew us to
11 Boston and we had a meeting. We were able to attend --
12 there's Academy of Forensic Psychiatrists. There is
13 a number of them, but one of them is called the
14 American Academy of Psychiatry and the Law. And as
15 one of the scholarship recipients, we were assigned
16 a mentor, a senior person in the country, whether it
17 be Canada, the United States, that knew a lot about
18 the field, and their job was to mentor us over the
19 years. So I was very lucky as a young doctor, Dr.
20 John Bradford, who is really one of the world's
21 experts in assessing and treating people with sexual
22 disorders. His clinic is in Canada. He's in
23 Ottawa, Canada, and he was assigned to be my mentor.
24 So as a young doctor, even before I -- while I was
25 doing my forensic training, I was allowed to go up

1 to Canada and actually learn from Dr. Bradford. I
2 stayed with him for a week, went to his practice.
3 He taught me a lot. So because of that very early
4 on, I developed an interest in that area and have
5 maintained it. I have lectured. I have presented --
6 I have lectured all over the state and different
7 areas, and that's been an ongoing interest of mine.

8 Q Given all the materials that you had, how many
9 times did you meet with Mr. Binney?

10 A Two times.

11 Q And is that typical? Is that normal to do
12 these evaluations?

13 A Sure. I met with him on the first occasion
14 about three hours, and then the second for about an
15 hour, after I had gathered more information, and
16 that was enough period of time to make a diagnosis
17 of his mental conditions.

18 Q Based upon all of the information you had
19 available and your interviews with him, did you
20 reach an overall assessment or diagnosis of any
21 problems he may have had?

22 A Yes.

23 Q And as a psychiatrist, is there a way that you
24 break down the diagnosis of someone's mental
25 illnesses?

1 A Yes. We use -- in psychiatry we have a book.
2 It's now -- it's changed editions over time, but
3 it's called the DSM-TR. And what that is, it's
4 basically it's a list. It's a classification
5 manual. So, for example, if I call a psychiatrist
6 in California and say patient Joe has a major
7 depression, we understand that we are talking about
8 the same kinds of symptoms and we are calling the
9 illness by the same name, so we have a
10 classification model.

11 In the DSM there is what's called a multi-axial
12 system. And what that means is there is five
13 different axes. So you can an Axis I disorder, an
14 Axis II disorder, an Axis III disorder. And then
15 Axis IV and V are more gauged to assess the stresser
16 someone is going through and how well they are
17 functioning.

18 But Axis I disorder, those are major mental
19 illnesses, or illnesses so bad or symptoms so bad
20 that anyone could have them.

21 For example, if someone's spouse died and you
22 came into a psychiatrist's office and you were
23 having difficulty sleeping and eating and those
24 sorts of things, you might be diagnosed with an Axis
25 I illness. So it's for major mental disorders or

1 conditions so bad that anyone would have symptoms
2 from them.

3 An Axis II illness is a personality disorder.
4 And what that means, that's a long -- somebody has a
5 long pattern of adapting to the way -- to the world
6 in a way it's not -- it's basically like beating
7 your head up against the wall. It's a maladaptive
8 way to deal with things and the person keeps using
9 those same methods to deal with life problems, life
10 situations, or that sort of thing.

11 Also on Axis II, that can be used for disorders
12 of your intellectual functioning. So if someone had
13 mental retardation, that would be coded on Axis II.

14 And then finally, Axis III, those are for
15 medical illnesses. And as you can imagine, if you
16 had a cold, or if you had a certain kind of medical
17 condition, sometimes you can have problems with the
18 way you think, the way you feel, or the way you act.
19 If you have a longstanding illness, you might be
20 depressed, that sort of thing. So we also code Axis
21 III illnesses because we understand that physical
22 conditions are related to sometimes how people
23 think, how they feel and how they act.

24 Q I'm going to come back to each axis, beginning
25 with Axis I, but before I do that, let me ask you

1 this.

2 With respect to general psychiatry, how much
3 who we are, how we think is stamped on us by our
4 makeup, by who our parents were, genes that passed
5 on to us? How much of that, as opposed to say
6 environmental factors?

7 A That's a really good question. How much -- if
8 you have a parent that we know there is something
9 wrong with them, that they might have a mental
10 illness, and how much -- and then you go on to
11 develop the mental illness. How much of that is
12 responsible for things being inherited through your
13 family blood line versus how much does your
14 environment play a role. If you are raised in kind
15 of a chaotic environment where you don't have good
16 parents and that sort of thing, so that's a good
17 question. That's a longstanding debate in
18 psychiatry is how much where you live, what you are
19 doing, your own actions account for problems people
20 have versus what you are born with. And there are
21 certain -- there are certain disorder in psychiatry
22 that we know that genetically that they are -- they
23 can be passed down through families and there is
24 family histories. Examples would be alcoholism.
25 That tends to run in families, and that's one of the

1 widely studied disorders. There is another illness
2 called bipolar disorder, which is manic depression,
3 and we know that has a strong family component. And
4 certainly depression. Just regular depression, that
5 has a very strong family component.

6 Q And in this case did you have -- even though he
7 was adopted, did you have some history of his
8 mother?

9 A Oh, yes.

10 Q Would you relate that to the jury?

11 A Sure. Mr. Binney's mother -- and keep in mind
12 this information was gathered from Mrs. Binney's
13 adoptive mother, the mother who's raised him.

14 Mr. Binney's mother was pregnant with him when
15 she was fifteen years of age. And we have reports
16 from --

17 I need to backtrack. Mr. Binney's birth
18 mother, the woman who gave birth to him, she
19 committed suicide while he's been locked up. In
20 February of last year she killed herself while he
21 was in jail awaiting this trial. So she --
22 unfortunately by the time I was involved in this
23 case in April she was dead, so I wasn't able to
24 obtain this history from her, but her name was Gail
25 Murray.

1 And we know from Mrs. Binney's mother, his
2 adoptive mother, and then Mr. Binney himself, that
3 Mrs. Murray had a history that while she was
4 pregnant with Jonathan Binney, that she used drugs,
5 that she drank very heavily in an attempt to abort
6 the pregnancy. She went on to have him in a home in
7 Hattiesburg, Mississippi. Mr. Jonathan Binney was
8 born in a home for unwed mothers, and he was
9 adopted, I believe, at the age of four days by his
10 parents Mr. and Mrs. Binney. But we do know that
11 she clearly had a history of depression. She had a
12 history of drug abuse and she committed suicide.

13 Q And I believe that suicide -- I know you don't
14 have the records in front of you right now, but
15 2002, this year, does that sound right?

16 A Yes, that's my understanding.

17 Q So given her history of depression, which
18 culminated in her suicide, did you find anything
19 that correlates Jonathan Binney's behavior on that
20 issue of -- we will come to some other things, but
21 right now just that issue?

22 A Yes. We know -- now, just because somebody's
23 parent has a history of depression or suicide, that
24 doesn't mean that automatically a child will have
25 that happen, but that means they're at an increased

1 risk and they're at a much higher chance, compared
2 to somebody else in the general population that
3 doesn't have a mom or dad that had that kind of
4 history.

5 Q You testified there was evidence of social
6 history that she was consuming quantities, large
7 quantities, of alcohol during her pregnancy with
8 Jonathan?

9 A Yes.

10 Q Obviously I know it's bad to drink when you are
11 pregnant, but why is that?

12 A Well, there is lots of reasons, but there are
13 studies that show -- of course, any drugs are bad
14 during pregnancy, and sometimes even not illegal
15 chemicals, things like caffeine or certain kinds of
16 medications.

17 In the first part of a pregnancy, which is
18 called the first trimester, that's when somebody's
19 body is forming. Their brain is forming. All their --
20 you know, their heart system, their lung system,
21 their digestive system. So that's a real crucial
22 time in the development of the little -- it's called
23 the fetus when it's inside the womb, and that's when
24 the fetus is developing. So any kinds of substances
25 during that period of development can be pretty

1 damaging. It can cause -- they can cause brain
2 damage, problems with limbs. All sorts of different
3 things.

4 And then there is also studies that show when
5 alcohol is used later on in pregnancy, that it can
6 affect later on a child's ability to pay attention
7 to things, to -- they can have what's called
8 neurodevelopment disorders, problems with
9 concentration, memory and those sorts of things. So
10 it's associated with different things. It can be
11 associated with actual physical problems in the
12 development of a child and then problems with the
13 way the child thinks.

14 Q Is there a heading or a grouping that what you
15 are talking about is kind of classified under at
16 this point, at least on an informal basis?

17 A Yes.

18 Q What is that?

19 A In medicine there is a -- people have noticed
20 and I have done some research on this, that since
21 the 1960's, that there were children that we knew
22 their mothers drank during pregnancy, and they had
23 certain features that appear to be in common. At
24 first it was labeled Fetal Alcohol Syndrome. I
25 don't know if you have heard of that or not, but

1 they knew that there were certain things in common
2 with children that had mothers that drank certain
3 amounts -- or drink in certain stages of their
4 pregnancy. And what they noticed first is that
5 sometimes they had kind of different -- different
6 facial features compared to other kids. Their eyes
7 were a little bit different. And then this area of
8 your mouth, which is called the filtrum. You know,
9 normally your lip will curve up. They had
10 straighter area over their lip.

11 Also noticed -- that's -- so that's one set of
12 features, that he had had some different facial
13 features about them. Their heads were a little bit
14 smaller. Sometimes some noticed that their ears
15 were a little bit different.

16 The second thing that they noticed is these
17 children early on had what's called failure to
18 thrive. It was very hard for these children when
19 they were little babies to gain weight and to grow
20 at the same rates as other children.

21 The third part of the syndrome that has been
22 talked about a lot is that as the children got a
23 little bit older, sometimes they had problems in
24 school paying attention or being distracted very
25 easily, and they can have some problems with their

1 memory and that sort of thing. That's called the
2 neurodevelopmental part of that syndrome.

3 The problem is is there is a lot of things with
4 the Fetal Alcohol Syndrome that makes it hard to
5 study medically.

6 First of all, when the children that have those
7 different kinds of facial features, they kind of go
8 away as the kids get older. So you can see a child
9 around ages four or five that may have a very
10 different facial structure than they do by the time
11 a doctor sees them when they are fifteen or sixteen
12 or when they are into adulthood. So that's one
13 problem with the disorder, with the syndrome,
14 because some of the features can go away.

15 And the other problem is is there is no real
16 criteria. You can't pull out a medical manual that
17 says, all right, you need these five symptoms to be
18 able to diagnose somebody with this disorder. So
19 right now medicine is at the point where they are
20 developing a classification system. They are trying
21 to come up with a way to make sure that when we say
22 Fetal Alcohol Syndrome, everyone is talking about
23 the same set of disorders. So it's somewhat -- it's
24 not very clear in terms of what exactly do you look
25 for, but the medical literature suggests the four

1 things, that there is usually -- there can be facial
2 anomalies, and that's not always necessarily -- you
3 don't have to have that, but you will notice that
4 there is a failure to thrive in these children.
5 They have difficulty gaining weight and that sort of
6 thing, and that they can have some problems with
7 their development. It's usually evident by the time
8 they're in school settings.

9 Q You made a point or a reference earlier that
10 you had that DSM manual, which has classifications
11 for various disorders, mental illnesses.

12 Fetal Alcohol Syndrome, fetal alcohol effect,
13 is that still a developing area of psychiatric
14 studies, such that at this point, like you said, we
15 can't make that definite diagnosis classification?

16 A Yes, and actually it's really more of a medical
17 phenomenon than it's probably going to be a
18 psychiatric phenomenon. It's a medical -- just like
19 there is lots of different syndromes. You know, you
20 can have Down's Syndrome. There is lots of
21 syndromes that children are affected by that can be
22 when they're developing, so it may not even end up
23 in a psychiatric manual. I think at this point it's
24 more of a medical issue in making those diagnoses.

25 Q Well, speaking from a psychiatric standpoint,

1 if it was determined that somebody had Fetal Alcohol
2 Syndrome or Fetal Alcohol Effect, what might you
3 expect to see behaviorally? You mentioned
4 developmental growth might be impaired, difficulty
5 maintaining attention, memory. Is there anything
6 else, behaviorally speaking?

7 A No, it's usually more -- what happens is, and
8 especially in the work at the Department of Juvenile
9 Justice. We see children all the time that have
10 Attention Deficit Hyperactivity Disorder. You have
11 all probably heard of that. That's where kids have
12 problems paying attention. They have difficulty
13 focusing their attention on their school work, or
14 maybe when their parents are asking them to do
15 chores, or that sort of thing, they become very
16 distractable. And what I mean by that, if a kid is
17 doing his homework and somebody drops a pencil,
18 their heads are always looking up in the classroom,
19 they hear all the noises. The air conditioner comes
20 on and they can't stay focused on their school work.
21 They're kind of hearing all the noises going around
22 in a room. And they can also be hyperactive and
23 somewhat impulsive. Running around, you know,
24 raising their hands out of turn, blurting out
25 answers and that sort of thing. Those in children

1 that have been -- that have had some fetal alcohol
2 exposure, they typically present with symptoms like
3 that, that they have a little bit of trouble in
4 school paying attention. They might do things,
5 blurt out things, do things before they think about
6 them. So it's really pretty typical. So it's more
7 symptoms that you are going to see usually
8 developing in the school areas where people are
9 having trouble with their work and that sort of
10 thing.

11 Q What about impulsivity or impulsive behavior?

12 A Sure, you can see that. But, again, more in
13 children it's going to be things like blurting out
14 answers, not waiting your turn, and just doing
15 things -- doing things without thinking about them.
16 And that -- over time now that can turn -- you can
17 see some behavioral things from that that kids that
18 might get into trouble later on, if they are not
19 treated.

20 Q With respect to what you know about Jonathan
21 Binney, from looking at his records, school records,
22 all that information, do you have an opinion as to
23 whether or not he may or may not suffer from Fetal
24 Alcohol Syndrome or Fetal Alcohol Effect?

25 A It's my opinion, based on, again, the

1 limitations of what medically we know at this point,
2 that there was definitely -- he has the four
3 components that are described in the medical
4 literature. He had a history of exposure to alcohol
5 while his mother was pregnant with him. He had, in
6 my opinion, and I have got pictures, he had some of
7 the facial anomalies that you see with this
8 syndrome. And he clearly -- we have separate
9 medical documentation that he has been diagnosed
10 with Attention Deficit Disorder. He actually had
11 what is called neuropsychological testing. He took
12 paper and pencil testing that shows how your brain
13 functions, and it was very clear that he had many
14 difficulties in learning, many difficulties in
15 paying attention, and clearly had what's called the
16 cognitive problems that you see with that syndrome.

17 Q Moving onto Axis I, now, what was your
18 diagnosis of Mr. Binney?

19 A Mr. Binney has a number of things going on with
20 him. He's a very complicated individual.

21 I needed to add that I was also -- as of
22 yesterday and the day before, I had the luxury of
23 listening -- Dr. Crawford had interviewed him and I
24 had an audio tape of her interview.

25 Q I didn't hear you. What did you say?

1 A Dr. Pamela Crawford. I had the opportunity to
2 listen also to an audio tape, so he's had another
3 evaluation, and I was able to listen to that
4 information as well.

5 Mr. Binney is very complicated and he has a
6 number of things going on with him. And it's very
7 difficult to tease all of those things out, because
8 a lot of them are related. But first and foremost,
9 in my opinion, he has a history of what's called a
10 sexual disorder.

11 Now, sexual disorders, there are different
12 kinds in our book, in that DSM book. There are some
13 where people just have problems with their mates,
14 problems with arousal and that sort of thing.
15 That's not the kind of sexual problem that Mr.
16 Binney has.

17 Mr. Binney has a longstanding history of what's
18 called sexual deviance, that he's been attracted to
19 things sexually that other people may not. It's not
20 considered within the mainstream of sexual
21 interests. And he's had that disorder, in my
22 opinion, at least for ten years. It's documented
23 very early on. He's had some deviant sexual
24 interests.

25 Now, because of that, he's also had a history

1 of depression. He's had a history where he's been
2 treated for depression before. He's been diagnosed
3 with forms of depression, but for me it's very
4 difficult to tease that out, because he's had a
5 sexual disorder this whole time that no one ever
6 treated, and so he's kind of had a number of things
7 going on. So it's very difficult for me as a
8 psychiatrist to figure out did the depression come
9 first; did the sexual disorder come first; did they
10 both exist together. So it's very difficult
11 clinically to make those ascertations, but I gave
12 him a number of diagnoses to address those things.

13 Q And with respect to that, you have read over
14 his statements, you have seen some of the evidence
15 on the criminal sexual conduct case. As it relates
16 to his conduct on that particular offense, how do
17 you explain that? Why is it -- why is it someone
18 like Jonathan Binney ends up the way that he has, a
19 pedophile, or --

20 A Okay.

21 Q And the rest of us don't. Why is it that he's
22 any different? Is that a conscious choice on his
23 part where he's just choosing that sexual
24 preference, or is it something more difficult or
25 more complicated than that?

1 A No. Yes, it's very difficult.

2 What he has is called a paraphilia. And
3 paraphilia means, that's a deviant sexual
4 attraction. And there is nine different kinds of
5 paraphilia somebody can have.

6 Now, we know, and the studies have been
7 extensive on this, unfortunately when you get one,
8 you usually average three or four. You are not just
9 lucky enough to have one in your lifetime. We know
10 that most people that suffer from these kinds of
11 sexual disorders, they have an average of four in
12 their lifetime, and I will go through the different
13 ones so you can understand them.

14 One is called exhibitionism, and that's
15 flashing. That's where somebody has a sexual
16 disorder where they have urges to expose their
17 genitals to a stranger and then kind of later on
18 they get aroused by looking at the look of fright or
19 the look of horror in the victim's face. So that's
20 one form of a sexual disorder.

21 There is one called voyeurism, and that's
22 Peeping Tom. That's somebody that would watch
23 someone undressing and the person doesn't know that
24 they are being watched; or maybe looking at them
25 disrobeing in their bedroom, that sort of thing.

1 And what happens in that disorder is later on the
2 person would go and masturbate, thinking about, you
3 know, having a relationship with that person or that
4 sort of thing.

5 There is another form called masochism. And
6 that's where when you are having sex, that you want
7 to feel pain, that you get aroused by somebody
8 hurting you. That could be your partner biting you,
9 pinching you, putting you in bondage and handcuffs,
10 or those sorts of things. That's called masochism.

11 Then on the other side of that there is what's
12 called sadism. And that's where the person gets
13 arousal by causing his partner pain. So that's --
14 on one end it's the masochism, you are the person
15 receiving the pain; and on the other end is sadism,
16 you are the person getting aroused by causing the
17 pain. Those are four of the disorders.

18 There is another one called fetishism. And
19 basically what fetishism is, that's arousal to
20 something that's a nonhuman object. It could be
21 like a -- you have heard of shoe fetishes.
22 Sometimes fetishes can describe foot fetishes, that
23 sort of thing, but there is a component that doesn't
24 involve necessarily sexual material to get aroused.

25 Another form is called frotteurism, and that's

1 a nonconsenting rubbing of somebody. And the best
2 example where you -- we don't have subways in South
3 Carolina, so you don't see too many frotterers here,
4 but a real common place would be like in a bus or a
5 subway. Somebody would be very close to you in line
6 and rubbing up against you. Perhaps their genitals
7 are rubbing a female's buttocks, or that sort of
8 thing, and the person can't get away because you are
9 in a crowded situation. So that's a different kind
10 of sexual disorder.

11 There is also one known as pedophilia. And
12 pedophilia, which you may have heard of, is arousal
13 to children. And they have -- and there is criteria
14 for that. You have to be a certain age and the
15 grownup has to be a certain age, but that's arousal
16 to sex with children.

17 And then there is also one called transvestic
18 fetishism. Basically what that is is
19 cross-dressing, meaning that a person gets sexual
20 arousal by having -- by wearing female
21 undergarments.

22 And then last there is -- there is lots of
23 different rare ones, as you can imagine. There is
24 lots of different sexual disorders somebody can
25 have. They don't always -- people don't come in and

1 volunteer these systems to doctors. They are very
2 ashamed. They are very sensitive and they are very,
3 you know, touchy subjects, and usually it's when
4 people come into a legal situation that we -- you
5 know, as you can see, some of these disorders are
6 illegal. If you are flashing, or if you are a
7 Peeping Tom, or if you are molesting children, those
8 are going to be disorders that are going to come
9 into a forensic psychiatrist's office more often
10 than not, because you have had some legal charges
11 related to it.

12 But there is a whole another set of disorders
13 that are very rare and can be bizarre; having sex
14 with animals, getting aroused by obscene telephone
15 calls, having sexual arousal when are you dealing
16 with body fluids and that sort of thing. There is a
17 lots of different rare ones. So we have a ninth
18 category that's kind of for all other kinds of
19 disorders that may be rarer.

20 Now, as I mentioned, usually you don't just get
21 one. You usually average three or four in a
22 lifetime. And what's kind of interesting about that
23 is, say, for example, it's not atypical at all to
24 have someone -- say if you have a twenty year old in
25 your office, and maybe all they did -- they were

1 Peeping Tom and they were looking in somebody's
2 window and watching them undress. Well, you can't
3 say that over a later period of time that they may
4 not end up having impulses to molest children,
5 because they change over time. Sometimes you can
6 have them all at the same time, and sometimes they
7 can change over a period of time, but we know that
8 people average three to four in a lifetime.

9 And in Mr. Binney's case I have diagnosed him
10 with some of those sexual disorders.

11 Q Which are what?

12 A Now, I diagnosed him -- I put on my diagnosis
13 pedophilia by history. And what I meant by that is
14 Dr. McKee had done some prior testing. We certainly
15 know he molested his daughter and she was of a very
16 young age. She was a family member, which would
17 qualify. That's more pedophilia, what's called
18 limited to incest.

19 Now, I put by history on that because it
20 doesn't appear it was a very -- the amount of
21 symptoms that he was having were very severe. And
22 as you probably heard, he developed an impulse and
23 he molested his daughter.

24 Now, as far as we know from all medical records
25 and from Mr. Binney's report, that happened on one

1 occasion, but he had been having impulses. He had
2 been thinking about those sorts of things for a
3 period of time.

4 I put by history because at the time I
5 evaluated him, both times, he was no longer having
6 those impulses, but they were definitely clearly
7 there.

8 Now, over what period of time, how long they
9 have lasted, to be able to be diagnosed with one of
10 these paraphilias, that's symptoms have to go on six
11 months. So I think clearly he's met that criteria
12 in the past, but at least at the time that I
13 evaluated him, that was no longer an interest for
14 him.

15 Q Why is that? What is the root cause, if there
16 is one, or if you even know as an expert, why is it?
17 Why is he, or not?

18 A That's a good question. We are researching
19 this area in psychiatry. In fact, Dr. John Bradford
20 is probably one of the leading researchers. There
21 is two other excellent experts in the United States.
22 Dr. Jean Able in Atlanta, Georgia. And then we have
23 Dr. Fred Berlin at Johns Hopkins. There is some
24 excellent doctors researching this area.

25 What they are -- what they are finding is that

1 it's a chemical abnormality, meaning that it's not
2 something someone chooses to do. It's not a choice.
3 It's an illness. It's an illness that's causes
4 people to have thoughts and to be aroused to things
5 that people aren't normally aroused to. So I can't
6 tell you exactly how we get it. In medicine we
7 don't know how come somebody wakes up one day and
8 has high blood pressure and the day before they
9 didn't. We are at the point now that we are
10 starting to understand what areas of the brain are
11 involved in that, and we actually even know what
12 area of the brain is related to these disorders, but
13 exactly who, why, why at this point in time, we
14 can't say.

15 Q And again, that's not a preference. Is there
16 something they feel --

17 Let me ask you this. Is it something that they
18 know, either when they are doing it or after they do
19 it, that it's wrong?

20 A Oh, yes. This -- the way to think of this, the
21 paraphilia, is it's more an impulse. It's an urge.
22 It's an attraction to something deviant, but there
23 is -- it doesn't -- that illness has nothing to do
24 with your thinking in the sense that you don't
25 understand what you are doing is wrong. It doesn't --

1 it's not a different kind of mental disorder where
2 it kind of tricks your thinking.

3 There is problems that go with that disorder,
4 but one that does that clearly knows that his
5 actions are wrong.

6 Q And in Jonathan's case, his understanding of
7 the wrongness of his actions, at least before or
8 afterwards, I mean, is there that recognition by
9 him, that remorse by him?

10 A Clearly. Clearly. He absolutely recognized
11 what he did was wrong, yes.

12 Q And it's going to lead me, I guess, to our next
13 diagnosis, trying to move these Axis II, which is
14 what, Dr. Schwartz-Watts, on Axis II?

15 A Well, there was still more on Axis I.

16 Q I'm sorry. Go ahead and finish what you are
17 testifying to.

18 A What I talked to you about, the cross-dressing,
19 that's called transvestic fetishism. He does have a
20 history of cross-dressing over the years. I did not
21 put that -- I put what's called provisional, because
22 one of the criteria that you have to have for
23 cross-dressing is that you are not disturbed about
24 what's called your sexual identity. And Mr. Binney
25 has some more problems in that area. And I'll get

1 into that later, but I was splitting a hair.
2 Technically he did not meet one of the criteria for
3 that disorder, but he does have a history of
4 cross-dressing.

5 So we know that he has a history of having sex
6 with his infant daughter, that he had some arousal
7 to children, that he admitted. We know by history
8 that he's cross-dressed. So that's two of the
9 sexual disorders.

10 In my opinion, the sexual disorder he suffers
11 from now is called sadism. And he clearly gives
12 that history that he was having recurrent intrusive
13 thoughts. These are not thoughts he wants. These
14 are thoughts that distress him. These are thoughts
15 that he does not like, thoughts of harming sexual
16 partners, and that he has been dealing with these
17 impulses for well over a period of six months in
18 time, and still continued at points before he
19 received his medication to have some of those
20 symptoms.

21 Q Since you brought that up, when you began to
22 see him earlier this year - April, May, the spring
23 of 2002 - was he receiving medication from anyone at
24 that point?

25 A Yes, when I met with him in April, he was at

1 Leiber Correctional Institute, and Dr. Cusack is a
2 D.O. there that I know and he provides psychiatric
3 services to the inmates there. And Mr. Binney --

4 Backing up a little bit, he had been on -- he
5 had been placed on an antidepressant when he was at
6 Patrick Harris Hospital when he was released in May
7 of 2000. A few weeks before this incident, he was
8 already on antidepressant at that time. He then
9 committed the crime. He was sent to the jail. And
10 while he was in the detention center, he was
11 medicated the entire time, and he received different
12 medications; an antidepressant Remeron. Remeron is
13 used to help people sleep better and help them
14 increase their appetite. It's a treatment for
15 depression.

16 Also while he was at that jail that he was
17 placed on Prozac. He was on two antidepressants at
18 a number of times during his incarceration there,
19 because of continued depression symptoms.

20 When he left, he was on the medication called
21 Serzone. The psychiatrists there, they were working
22 together trying to get medications for him where he
23 wasn't having side effects and that sort of thing.
24 So by the time he came to the Department of
25 Corrections, he was already on antidepressants.

1 He had given me a history that he was on an
2 antidepressant called Paxil, which he thought was
3 somewhat helpful for him. He states that medication
4 was stopped because it's very expensive and the
5 Department of Corrections did not have that
6 medication on their list.

7 So when I saw him in April, he was on a
8 medication very similar. It's called Zoloft.
9 Prozac, Paxil and Zoloft, those medications have
10 similar mechanisms of actions. They do a little bit
11 of different things, but they are similar
12 medications.

13 At the time in April he was on Zoloft, and
14 reported that that was not as helpful for him as the
15 Paxil.

16 Q Well, since he's been back on Paxil, have you
17 noticed any change in his outward conduct?

18 A Well, that's a good question. He -- at the
19 time I saw him the next time in June, he had just
20 started -- I believe he was just starting the Paxil,
21 but it was through the benefit of Dr. Crawford's
22 evaluation that I was able to listen. I have not
23 had contact with Mr. Binney since, it would have
24 been I believe June or July of this year, and there
25 is a marked -- he reports a marked improvement in

1 his symptoms on the medication.

2 Q Have you completed Axis I?

3 A Other than, which I mentioned earlier, he did
4 have a history as a child. He was diagnosed with
5 Attention Deficit Disorder, and he was medicated
6 with the Ritalin for that around ages seventeen to
7 eighteen.

8 The records indicate the Ritalin wasn't very
9 effective for him, but if he did have the fetal
10 alcohol component, that's very consistent. Children
11 that have fetal alcohol exposure and have symptoms
12 of Attention Deficit Disorder, that the typical
13 medications that are used for children don't work as
14 well.

15 Q Did you get a history from either his parents
16 or from Mr. Binney that when he was a small child,
17 there was an incident involving an older child?

18 A Yes.

19 Q Do you recall that?

20 A Yes.

21 Q And what was that?

22 A Mr. Binney had been sexually molested when he
23 was a child. Now, I want to comment on that. Just
24 because you're sexually abused, that doesn't mean
25 that you go on to abuse other people. That's in no

1 way -- we have done studies of people that have
2 molested children. And even though a number of them
3 have been molested, that in no way predicts or
4 predisposes them to molest anybody else, but it's
5 significant. What it's significant for is in terms
6 of when you are treating somebody with a sexual
7 disorder, you have to know what their life
8 experience has been, what their sexual experience
9 has been. And in this case, Mr. Binney, when he was
10 in, I believe he reports, 4th or 5th grade, was
11 molested on a number of occasions by a high school
12 student that was in the same school system as him.
13 He told his parents somewhat later and that child
14 was suspended from the school system.

15 Q Have you finished Axis 1?

16 A Yes.

17 Q Would you tell the jury -- you were explaining
18 the second axis that relates to personality
19 disorders?

20 A Yes, and learning disabilities.

21 Q Right, learning disability. What did you find
22 with regards to Mr. Binney?

23 A I think Mr. Binney clearly has problems with
24 his personality. There is no question about that.
25 He's had problems adapting. He's had problems

1 functioning.

2 I experienced a lot of difficulty in diagnosing
3 him with a full-blown personality disorder for one
4 reason. He has been suffering from major mental
5 illnesses through childhood and adulthood that have
6 never been adequately treated. And until those
7 conditions are stabilized, I have grave difficulty
8 in finding out what is his persistent way of dealing
9 with the world.

10 As you know, when you don't feel well, if you
11 have a cold, if you have the flu, if you have a
12 depression, your personality can change. It's not
13 uncommon if somebody has a cold, they want to be
14 babied. You want someone to bring you soup in
15 bed. You don't want to work. You may have trouble
16 sleeping.

17 And psychiatric illnesses work the same way.
18 He has had, we know, in childhood his Attention
19 Deficit Disorder. He's had the sexual disorder
20 since 1992, that we have documented history of, at
21 least for ten years. And he's had the depression
22 that's been documented since 1992. And all of these
23 conditions have not been treated. So he's had very
24 maladaptive ways of dealing with the world.

25 He has done many illegal behaviors. But in my

1 opinion, what I put as the focus of what I think is
2 going on with him is called borderline personality
3 traits. And in my opinion it's clear from talking
4 with his parents, it's clear from talking with his
5 wife, it's clear from evaluating Mr. Binney, he has
6 had a pattern -- he has had problems with his
7 identity throughout his childhood. There were
8 periods when he was thirteen and fourteen that he
9 wanted to be a female, that he even went and called
10 people to see he could get a sex change in Ohio.
11 He's had difficulty with his identity as a person.
12 He's had difficulty with long-term goals. He's had
13 difficulty. He's abused substances in the past. He
14 has a lot of features of a disorder that it shows
15 that he has instability in his personality.

16 He has a history, and he's even done, in my
17 opinion, in the two times that I have evaluated him,
18 that's happened in this interaction with me, where
19 he will override some people. There will be
20 some people he meets in his lifetime that he thinks
21 there -- that he makes them larger than life, more
22 perfect than anyone could ever be.

23 And at the same time he's also very severely --
24 if he perceives that he's rejected, that's very
25 severe for him. That causes him great pain.

1 He's had history of suicide attempts, suicidal
2 ideation, that you commonly see in this disorder
3 when he's been under stress. And even as recent as
4 June -- June or July, when I saw him this last
5 summer, he was still experiencing suicidal ideation
6 and mutilating himself. He's had a history of
7 mutilating himself sexually when he's under stress,
8 and those are all features that you see with this
9 kind of personality structure.

10 Again, until his acute major mental disorders
11 are treated and stabilized, at this point I would
12 not -- he may very well have full-blown personality
13 disorder, but he has very prominent traits, in my
14 opinion.

15 Q Maybe I skipped around some because I wanted to
16 talk about his early childhood, beginning with your
17 testimony, but is depression, is this where this
18 factors in in his personality?

19 A Oh, clearly. One of the features in the
20 borderline personality disorder spectrum is that you
21 have what's called affective instability, and he
22 gives a classic history of that, that he can be very
23 moody in a typical day. That he normally reports a
24 history of depression, that he feels depressed every
25 day for long periods of time. Then on top of that

1 he becomes incredibly anxious, will have panic
2 attacks, that he becomes incredibly anxious, but
3 then this mood can shift and he will have periods
4 where he feels well. So he's had a lot of mood
5 changes over a period of a day.

6 Typically with a depression, someone with
7 depression will report a depressed mood all day
8 long, most of the day, but he can report even
9 symptoms while he's depressed where his mood picks
10 up or he can be somewhat elated. And that's more
11 consistent with the personality than -- in my
12 opinion, than with the depression.

13 Q I'm going to bring you closer to -- we have
14 been talking kind of in generalities, but I'm going
15 to ask you to focus now on the facts that have
16 already been presented in the trial of this case.

17 I don't think the jury has heard yet that you
18 referenced the hospitalization in May of 2000?

19 A Yes.

20 Q Where was that at?

21 A Patrick Harris.

22 Q And do you know the duration of that
23 hospitalization, when it was?

24 A Yes. I believe, and I would like to look that
25 up, but it was five days, is my memory, but I'll be

1 glad, if there is a dispute about that, to look that
2 up.

3 Basically he had gone -- he had had a history
4 of a suicide attempt in the community while he was
5 on bond for his criminal sexual conduct charges. He
6 had overdosed. He went to the mental health center.
7 He went to Spartanburg Regional Hospital because he
8 had overdosed again on some medication.

9 He was committed to mental health treatment in
10 the Department of Mental Health, in the hospital in
11 this area, in South Carolina -- in Columbia, it's
12 Bryan Hospital. In the Upstate it's Patrick Harris.
13 He was civilly committed for treatment there.

14 While he was there, he told them of his suicide
15 plans, that he had overdosed two times in the past
16 week. He told them that he had plans of purchasing
17 a gun and killing himself. He was diagnosed with
18 what's called an adjustment disorder with mixed
19 features, meaning that he was having problems with
20 his behavior and how he was feeling. He was placed
21 on medications there. He was discharged through the
22 court and discharged on medications and ordered to
23 continue followup in the community.

24 He continued taking his medications. He ran
25 out, he states, one week prior to killing Ms.

1 Southern. And also he did not follow up in the
2 community with his mental health center treatments.

3 Q In this case, in this case, I'm asking about
4 Jonathan Binney specifically and what you know about
5 him at this point, he suffers from depression. The
6 fact that he suffers from depression, can that be
7 enhanced or aggravated by other circumstances that
8 are occurring in his own life?

9 A Sure. What happens, just like in medicine, if
10 somebody comes in with belly pains, there is lots of
11 different reasons people can have belly pain. You
12 could have appendicitis. You could have an
13 infection. You could have problems with your
14 bowels.

15 And psychiatry is very similar. We have a
16 symptom called depression. And most clinicians that
17 have seen Mr. Binney agree that he has a depression.
18 He's had problems with his sleep. He's had problems
19 with his appetite. He's gained and lost weight.
20 He's had problems with his mood. He's had problems
21 with wanting to kill himself. He feels so bad
22 there's been times where he wished he were dead.
23 Those are all symptoms of depression.

24 Now, depression has different causes. In this
25 case you can have what's called a major depression,

1 which means that for two weeks, really without any
2 stressers. It can be related to problems going on
3 in your life, but you just have depressions that
4 come and go.

5 There is a condition called dysthymia, which
6 means that for a very long period of time you can
7 have a depressed mood pretty much most of the time.

8 Then there is another condition called
9 adjustment disorder. And what that means is that
10 you are going through situations so severe that
11 anyone might have those sort of symptoms. And in
12 Mr. Binney's case, he was diagnosed with adjustment
13 disorder, and his stressers at the time were he had
14 molested his daughter and had obvious guilt,
15 feelings about that. He was facing legal
16 ramifications because of this, and was very
17 apprehensive about what his legal situation would
18 be. Because of these charges, he was separated from
19 his wife, whom he was very dependent upon. He and
20 his wife had a very close relationship and he relied
21 upon her for a lot of things. He was not employed.
22 He had lost his job. He was supposed to be staying
23 with his birth mother. He finally met his birth
24 mother again about two years prior and he was
25 supposed to stay with her during this period of

1 time. She met a man and took up residence with him
2 and kicked him out of her home, so he really had no
3 place to stay. His wife would help him stay in a
4 hotel room. And unbeknownst to his family, when he
5 ran out of money, he reports he was staying in the
6 basement of their home. So he had no place to live,
7 no money. He was mentally ill, and he was facing
8 these legal charges and was having grave difficulty
9 dealing with what he had done to his daughter.

10 Also on top of all of this, he was now
11 developing these sadistic urges. He was developing
12 on a daily basis -- he was developing thoughts and
13 urges when having sex with somebody to cause them
14 pain. He did not like these symptoms. He
15 recognized that they were very bizarre and that they
16 were scary for him, so he had a number of stressers
17 during that period of time. And then, of course, he
18 has the history of the depression and he had the
19 suicide attempts.

20 Q Now, how critical or how real, from your expert
21 opinion, when we are talking about suicide attempts
22 in his case? In other words, is that just smoke
23 that he's putting out there to cover up other
24 criminal conduct, or is there some credibility to
25 those threats or those things?

1 A I clearly think there is credibility to his
2 threats. If you go through each of the times that
3 he's had suicide attempts, there is one occasion
4 where he overdosed. He didn't tell anyone about it.
5 But upon further questioning, he was in a setting --

6 What happens in forensics, people will
7 sometimes have suicide gestures, and those are very
8 different from suicide attempts. If you're in a
9 legal institution, and just as the officer testified
10 before, and you cut your wrist, you might be able to
11 go out to a hospital for a day or get some treatment
12 or get out of the jail. So these are very --
13 there's a number of times people can harm
14 themselves, and it may be a reflection of a suicidal
15 intent or not. But in Mr. Binney's case I think
16 there have been some very credible ones. And there
17 have been some that perhaps are not as credible.

18 But the ones in my mind that stick out as more
19 credible are the ones that when he was a teenager,
20 he attempted an overdose and didn't tell anybody
21 about it, and he was later found by a friend.

22 There has been another time where he overdosed,
23 that he reports, on the Dramamine prior to his
24 getting committed to the hospital. He slept it off
25 in a hotel room for three days and never came to

1 medical attention for that.

2 And then there has been, of course, in my
3 opinion on the day of the offense, his plan was to
4 overdose on nicotine patches.

5 He also reports on that day that he had put a
6 loaded gun to his head, but didn't shoot.

7 Q Let me ask you about that, because that's
8 obviously a point of contention throughout this
9 trial if he was bent on suicide.

10 A Oh --

11 Q Why didn't he just put the gun to his head and
12 kill himself?

13 A Well, he's -- he's reported -- well, first of
14 all, you've got to remember, he's had a number of
15 attempts where he didn't succeed.

16 Secondly, and he clearly states this, he's
17 afraid of pain. I mean, his method of committing
18 suicide would be to overdose. And anything that
19 would cause acute pain, he reports he's very fearful
20 of.

21 Q Let me ask you this. There has also been put
22 into evidence, and I think you have seen it, what
23 has been referred to in testimony by prosecution and
24 by the defense as a suicide note. How significant
25 is it, if at all?

1 A It's significant. We know a lot -- one of the
2 areas psychiatry studies a lot is suicide and who is
3 successful in completing suicide and who is not.
4 And one of the more ominous signs is when somebody
5 leaves a note, that's usually more an ominous sign
6 that the intent is much more serious, because the
7 rationale behind leaving a note is that you are,
8 going to kill yourself and you want to leave some
9 kind of final word. You want somebody to know what
10 led you to that point. So that's much more ominous.

11 Q Given your knowledge of the facts that you have
12 read from his confessions, his statements, his
13 suicide note, would his statements be consistent or
14 inconsistent with a credible suicide, attempt or
15 threat?

16 A In my opinion, they were consistent with a
17 credible suicide attempt. He recognized he was
18 mentally ill. He recognized this disorder he had
19 could make him somewhat dangerous.

20 His plan, as he related to me, was to kill
21 himself at some point, that he did not want to live
22 with these impulses. He could not live with the
23 guilt of what he had done to his child. He had lost
24 lost his family. He had no financial support, and
25 he was homeless.

1 Q You have seen how many patients that relates to
2 sexual disorders over the years?

3 A Hundreds.

4 Q Hundreds. How do you rate Jonathan Binney,
5 truthfully, in the scheme of things, insofar as how
6 mentally ill and how -- I want to use in laymen
7 terms, how sick he is? In the scheme of things,
8 where does he rank?

9 A I have only seen two other people that have a
10 more severe sexual disorder than Mr. Binney.

11 Q Any doubt he's mentally ill?

12 A There is no question.

13 MR. PRUETT: Your Honor, I believe I'm finished
14 with my direct. If I could consult with Mr. Slade
15 for one moment.

16 (off the record)

17 (back on the record)

18 MR. PRUETT: No further direct.

19 CROSS EXAMINATION BY MR. WILLINGHAM:

20 Q Good morning.

21 A Good morning.

22 Q I want to talk about your testimony a little
23 bit in kind of the order that we talked about --
24 that you and Mr. Pruett talked about.

25 A Sure.

1 Q The first thing that he asked you about was
2 genes versus environment.

3 What type of environment did he grow up in?

4 A Mr. Binney -- and I have spent two and a half
5 hours with his parents and also some telephone
6 conversations. He had about one of the best
7 upbringings, in my opinion, anyone can have. He was
8 adopted at four days old, and his father is a
9 preacher and he's a pastoral counselor. His mom
10 worked as a hairdresser and she was a homemaker, and
11 he was the only child within their home, and there
12 is no question he was clearly loved. He was raised
13 in a Christian environment. He went to Christian
14 schools and he had very, very supportive parents.

15 Now, if I may, even when those things happen,
16 he was adopted. In adoptive children, even when
17 they have a wonderful environment, there is still
18 special issues they have that other kids don't -
19 wondering why their parents abandoned them,
20 wondering what their parents were really like,
21 having all kind of issues with that - that even in
22 the wonderful upbringing, there is still going to be
23 separate issues, just because he was adopted.

24 But in terms of Ms. and Mrs. Binney, I think he
25 had very supportive, loving parents.

1 Q He was adopted when he was how old?

2 A Four days old.

3 Q Four days?

4 A They actually went to Hattiesburg, Mississippi
5 and got him from the home for unwed mothers.

6 Q Now, you indicated that the birth mother, and I
7 wrote it down, clearly had a history of depression.
8 But you don't know that, do you?

9 A With the limitations that I have spoken. Ms.
10 Binney -- because Ms. Murray is dead, the
11 information that I obtained was through Mrs. Binney.

12 Now, once Mr. Jonathan Binney met his mother,
13 they did have a relationship and the family met with
14 her over a period of times.

15 What was told to me is that she had had a
16 history of being raped. She was in the military and
17 she had been assaulted while she was -- this is Gail
18 Murray, Mr. Binney's birth mother; that she had been
19 assaulted; that she had been raped; that she had
20 four marriages; that she had had a history of
21 depression. She had had a history of drug abuse,
22 and that she clearly related that she had used drugs
23 and alcohol while pregnant with her son.

24 Q But all of that was told to you?

25 A That's correct. That's correct.

1 Q There is no documentation to back that up at
2 all?

3 A Not at all, none.

4 Q Can you tell me with a reasonable degree of
5 medical certainty was it genes or environment that
6 caused him to kill Judy Southern on June 7th, 2000?

7 A Nobody could do either one of those things.

8 Q Okay.

9 A Everybody is different, and everybody's
10 environment, everybody's heredity plays in very
11 different ways. Everybody is different.

12 Q The next thing you talked about was fetal
13 alcohol poisoning.

14 A Syndrome at this time point. Fetal Alcohol
15 Syndrome. F.A.S., as it's referred to.

16 Q Syndrome?

17 A Yes, sir.

18 Q Did you ever look at any medical records to
19 determine whether or not he had Fetal Alcohol
20 Syndrome or poisoning?

21 A Medical records wouldn't have documented that.
22 I had records from his school and records from his
23 neuropsychological evaluation, but there is no
24 reference to that in any medical records. I have
25 pictures of him as well.

1 Q You have pictures?

2 A Yes.

3 Q And those pictures, I think you said in your
4 report, show hyper --

5 A Hypertelorism.

6 Q Hypertelorism and low set ears?

7 A Yes.

8 Q Now, you are not saying that just looking at
9 those alone he's got fetal alcoholism?

10 A No. No, that's often includes -- doctors will
11 have medically, they would look at a child's face
12 and notice that it's a little bit different from
13 others, but you have to put that in context with the
14 failure to thrive that he had and then the
15 documented difficult -- the neurodevelopmental
16 difficulties that he had.

17 Q But also it could be because that's how his
18 parents looked?

19 A Yes and no. I certainly have been mistaken
20 before on one child in particular, but if you notice
21 now, Mr. Binney's facial structure is much different
22 than it was when he was a child.

23 But it's true, he could have resembled one of
24 his parents as a child, but his facial structure is
25 much different now. His eyes are much closer

1 together.

2 If you look at his baby pictures -- most people
3 you can look at your baby pictures and see a
4 resemblance to you at a later date. In my opinion,
5 he looks very different from his childhood pictures.

6 Q Are there other things that could have caused
7 him to fail to thrive?

8 A Sure.

9 Q Like?

10 A Not being fed. Having gastrointestinal
11 diseases. There is no record of that. He has
12 asthma as a child and some eczema.

13 It could be somebody of negligence, a parent
14 not caring for a child, but there is no other
15 indications or no medical reasons that I could tell,
16 no historical reasons from talking to his family
17 that could account for that.

18 Q But there are other reasons?

19 A Sure. Sure.

20 Q Didn't like the formula?

21 A Absolutely.

22 Q Doesn't like the nipple?

23 A Lots of different things. Sure, maybe. You
24 know, all kinds of things.

25 Q You said there was really no criteria to

1 diagnose that disorder?

2 A At this point, that's correct. There is no
3 universally relied upon criteria, so if a doctor in
4 Geneva talks to me, that we understand that we were
5 talking about the exact same four symptoms, that's
6 correct.

7 Q What about this Fetal Alcohol Syndrome caused
8 him to kill Judy Southern on June 7th, 2000?

9 A None of those things. There is -- again, if I
10 can explain?

11 Q Yes, ma'am.

12 A Everybody is different. Everybody thinks,
13 everybody feels, everybody acts in a different way
14 and at different points in their lifetime.

15 What's significant is that he has a history of
16 major mental illnesses. All these illnesses
17 combined together, combined with his life
18 experiences, compared to what he was going to at the
19 time surrounded these offenses that account for this
20 action on that day. But there is not one thing that
21 you can put on that paper that directly caused this
22 action, and that's a very fair and a very good
23 question. There is not one illness.

24 Now, he does have one, in my opinion, the
25 sadism, very much was active on the day of this

1 offense and was clearly related to this offense.

2 But in terms of separating each one of these out,
3 you are absolutely correct.

4 Q Fetal Alcohol Syndrome would fall under Axis I,
5 II, or III?

6 A At this point Axis III. It's more a medical
7 phenomenon. It's not -- when it is classified, my
8 understanding is it will be in the ICD-9 textbooks
9 and codes.

10 Now, eventually they may undergo a revision of
11 our textbook and put that in there, but at this
12 point it's not even in a psychiatric book.

13 Q But if you had to put it somewhere, it would be
14 under III?

15 A Yes.

16 Q But in your report you didn't put it?

17 A That's correct.

18 Q You may have to help me spell this one.
19 Pedophilia.

20 A That's great.

21 Q Close?

22 A Yes.

23 Q Pedophilia is being sexually aroused by
24 children?

25 A That's correct. It's splitting some hairs.

1 There has to be other diagnostic criteria, but
2 that's -- that's really what it is, yes.

3 Q And is that what caused him to kill Judy
4 Southern?

5 A No.

6 Q Cross-dressing, is that what killed her --

7 A No.

8 Q Caused him to kill Judy Southern?

9 A No, but cross-dressing in terms of the
10 paraphilia, that is the most highly associated
11 paraphilia with the sadism, with the -- that is the
12 disorder most commonly seen with people that go on
13 to develop sadism; that is, the recurrent urges to
14 harm someone in a sexual encounter.

15 Q Let's go back and talk about that pedophilia a
16 little bit.

17 A Sure.

18 Q We will take about sadism a lot in a minute.
19 You said that it is an illness?

20 A Yes.

21 Q That is something that he didn't choose?

22 A That's correct.

23 Q But it's something that he can control, isn't
24 it?

25 A Under certain circumstances, absolutely. You

1 can -- the way that I -- when I teach these
2 illnesses to residents and when I teach them to the
3 students, I describe them as an urge or an impulse.
4 If you have ever been itchy and you went to scratch,
5 you can control whether you scratch or not, but you
6 can't control whether you feel itchy or not, and
7 that's how these illnesses work. So there is going
8 to be periods --

9 There could be offenses -- if Mr. Binney
10 molested fifteen children, there might be one
11 incident where he couldn't control. There is times
12 where that can happen, but there can be many times,
13 even when somebody has this disorder, they can
14 control what they are doing. So you would have to
15 take each case individually and look at those
16 instances.

17 But you are right, you can certainly have these
18 disorders, and sometimes you can control what you
19 are doing, but all the time you know what you do was
20 wrong, but it's just more a matter of how much
21 control that you have.

22 Q So he does have a choice? He does have a
23 choice of whether or not he's going to sexually
24 molest a three month old?

25 A Under some circumstances he could.

1 Q In fact, he's got a son, doesn't he?

2 A Yes.

3 Q And he, at the time of [REDACTED] rape, was two
4 years old?

5 A That's correct.

6 Q No evidence he had ever assaulted his son?

7 A No.

8 Q So he could control it?

9 A Well, in my opinion, his sexual attraction
10 wasn't to males. It was to females.

11 Q Okay.

12 A So his -- the pedophilia can come in different
13 forms. Some people can just be attracted to young
14 girls. Some people are just attracted to young
15 boys, and some people are attracted to both. In my
16 opinion, he just has a sexual attraction to females.

17 Q And he knows his actions were wrong, is what I
18 believe you testified to?

19 A Clearly.

20 Q And he has remorse?

21 A Yes.

22 Q Is that why it took six statements to finally
23 get to what truly happened to [REDACTED]

24 A It's -- it's not uncommon at all for people to
25 give numerous different statements. The number one

1 symptom -- when somebody has a sexual disorder, the
2 number one symptom of that disorder is denial.
3 There is no one in his right mind that would want to
4 go to a legal official, or to even a doctor, for
5 that matter, who can maintain peoples confidence and
6 say that they are child molesters. So in that
7 context, I wasn't there. I don't know what the
8 circumstance of his confessions were, but it's not
9 uncommon at all for people with sexual disorders to
10 deny their behaviors, to deny that there is
11 something wrong with them, to deny that they planned
12 an offense, to deny that they had knowledge of it,
13 to deny a lot of aspects of that. That's not
14 uncommon at all.

15 Q Let me pick another word besides deny. Lie
16 about it.

17 A Sure. That's -- that's -- that's not uncommon,
18 again. I would not be surprised.

19 Also you have got to take into account Mr.
20 Binney's personality makeup, and he's had a history.
21 There have been times certainly where he will lie to
22 exculpate consequences of things, and so that's --
23 given his history, his personality, his sicknesses,
24 that's not surprising at all.

25 Q And you are aware of him lying on a number of

1 occasions?

2 A Sure.

3 Q Yet isn't it true that a lot of your opinion is
4 based on what he told you?

5 A Not necessarily.

6 Q Well --

7 A He had psychological testing.

8 He had the multiphasic sex inventory. That is
9 one of the best tests that we give people with
10 sexual deviance.

11 What that test is, Dr. Geoff McKee gave him
12 that test and I have his results. He was given a
13 test that is given to child molesters. What happens
14 is he takes the test. It's five hundred and
15 something questions that he answers true and false
16 to. What this test does is it compares his
17 responses to people that we know are child
18 molesters. It compares his responses to people that
19 we know were rapists, and looks at how similar their
20 responses are. And his test results independently
21 show that he was very open in disclosing about what
22 he had done to his daughter; that his thinking to
23 child molesters was similar, but that his thinking
24 to rapist or people forcing sex was highly similar.
25 So we even have -- he's been compared to a number of

1 other men with similar disorders. Similar behaviors
2 would be a better word.

3 Q But, again, part of your opinion is based on
4 what he told you?

5 A Sure, and my clinical training; my years of
6 training and experience; my specialized training in
7 sexual disorder, having evaluated over one or two
8 hundred people; treating people with these
9 disorders. It's much more than just his history.

10 Q But history, you would admit, is a very
11 important part of it?

12 A Absolutely.

13 Q You couldn't do it without a history.

14 A That's correct, and it's very difficult to get
15 these histories. Again, because we are talking
16 about very sensitive things. People don't like
17 talking about sex in the first place. And then when
18 you are talking about deviant sex, especially about
19 things like where you are stigmatized molesting
20 children, it's very difficult to get those
21 histories.

22 Q How do you know about his prior suicide
23 attempts?

24 A Through my evaluations with him, and also there
25 is records in the hospital -- the Patrick Harris

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1 hospitalization records referred to the two suicide
2 attempts and his RAFA, the HGA hospitalization refer
3 to them as well. So through Mr. Binney and also his
4 records.

5 Q Are you aware that he reported a suicide
6 attempt to Agent Prodan of the South Carolina Law
7 Enforcement Division?

8 A I have read that statement, but if you wouldn't
9 mind refreshing me, I'd be glad to comment on that,
10 if you need me to.

11 Q According to Agent Prodan's testimony
12 yesterday, the defendant told him that he attempted
13 suicide before when he was fifteen years old, but it
14 wasn't a serious attempt. He said he did it just to
15 get out of trouble. Are you aware of that
16 statement?

17 A Yes, and that's a little bit different from
18 what the information that I gathered.

19 Q You indicated that he was hospitalized at
20 Patrick Harris for an overdose on May the 3rd and
21 May the 6th?

22 A Yes, the actual days, I didn't testify to
23 those, but if you need me to look them up exactly.

24 Q That's on your report.

25 A Okay. Thank you.

1 Q But you also indicated that his urine drug
2 screen was negative at the time of his admission.

3 A Yes.

4 Q Which means what?

5 A Well, Mr. Binney has had a history -- I did not
6 diagnose him with a substance abuse disorder, but as
7 you can imagine, many people, especially with the
8 kind of personality makeup he has, he has a history
9 of a mother who abused drugs. There had been
10 periods in his life where he's had drug use. He's
11 drank for periods at a time. There is -- he had
12 been on the medications Lortab. He had had some
13 injuries, but he also -- that was his drug of
14 choice, that he would take these analgesics. And to
15 me what was most significant about that is that he
16 was not using drugs during that period of time. So
17 his symptoms were not being worsened or exacerbated
18 by substances during that period of time.

19 A urine drug screen doesn't check for
20 Dramamine. Urine drug screens -- I don't believe.
21 There are certain medications, and by that time he
22 had also been in the hospital. He had been treated.
23 And his suicide attempt I believe was four days
24 before.

25 But it also was significant that he wasn't

1 using marijuana, or the Lortabs, or things, or
2 self-medicating, or abusing drugs prior to that
3 incident either.

4 Q What is Antisocial Personality Disorder?

5 A That is an Axis II illness. There is I think
6 nine that -- forgive me if I don't have the number,
7 but there is a number of personality disorders.
8 That is a persistent maladaptive way to dealing with
9 the world. That means that ever since childhood Mr.
10 Binney would have had a history of not obeying the
11 law, lying, conning, manipulating people, hurting
12 people, stealing, all those sorts of things, meaning
13 that the main way that that person's personality
14 structure is is to basically lie, use people,
15 deviate from the law.

16 Q You referred to DSM-IV-TR?

17 A Yes, sir.

18 Q Is the book that you are talking about?

19 A Yes, sir.

20 Q This is a medically recognized authority on
21 mental illness, right?

22 A It's a class -- medically recognized
23 classification system for mental illness, yes.

24 Q And it's got diagnostic criteria in there?

25 A Yes.

1 Q And one of them happens to be Antisocial
2 Personality Disorder?

3 A That's correct.

4 Q And it's got seven factors listed. You have at
5 least three --

6 A Correct.

7 Q -- you can be characterized as that?

8 A Correct.

9 Q I may be oversimplifying it, but --

10 A No, over a certain period. They are splitting
11 hairs, but generally that's correct.

12 Q One of those criteria is deceitfulness?

13 A Yes.

14 Q We have already talked about lying?

15 A Yes.

16 Q The other is failure to conform with social
17 norms with respect to lawful behaviors, as indicated
18 by revealing performing acts that are grounds for
19 arrest?

20 A Yes.

21 Q Got that too, doesn't he?

22 A Sure.

23 Q You say he has impulsivity?

24 A Yes.

25 Q Failure to plan ahead?

1 A Yes.

2 Q He meets that?

3 A Sure.

4 Q Reckless disregard for the safety of self of
5 others. Wouldn't self-mutilation fall under that
6 category?

7 A No, that criteria pertains more to people, --
8 and he does have some of those. That would be
9 somebody that speeds or drives very quickly or --
10 and he certainly has that history. He's -- he's
11 driven fast in the past.

12 And it's more where you are impulsive and you
13 are doing reckless things that hurt others.

14 The self-mutilation goes more with the
15 borderline personality, but, yes, he clearly --
16 there is no question he clearly has symptoms that
17 could be consistent with that disorder. But in my
18 opinion, there is so much more. There is so much
19 more sickness with him, that those are certainly
20 features of him. But until he's medicated, until
21 he's well, I don't think anybody can say what his
22 persistent pattern of dealing with the world is,
23 because he's been ill.

24 Q So you are not willing to say that he had
25 Antisocial Personality Disorder?

1 A Not at this point. If -- if -- if I had to
2 diagnose him with a personality disorder, it would
3 be mixed with a lot of different traits, but the
4 number one being borderline. He has a lot of
5 obsessive compulsiveness to his personality. He's
6 got very bizarre rituals that he goes through. He
7 has to tap evenly with feet. He has to clip his
8 fingernails in a certain way. He washes his hands
9 forty times a day. He showers excessively. There
10 is so many other things going on with his
11 personality, that if one did -- if I'm going to
12 entertain, it would be that he has a mixed
13 personality with antisocial features clearly,
14 borderline features, excessive compulsive features.
15 But, again, I defer that until he's better. And
16 until -- I think no one can make a -- we don't know
17 how he's going to react and whether it's going to be
18 persistent or maladaptive, once he feels better.

19 Q And to make him better, he's got to be treated?

20 A He's got to continue on the medication he's
21 receiving now. The Paxil has improved his symptoms.
22 That's one of the treatments that we use for people
23 with sexual disorders.

24 Q And you said --

25 A You can use hormones or you can use medications

1 that are similar to what he's being prescribed now.

2 Q And you said before this that he had never been
3 treated is why you cannot diagnose him with any type
4 of personality disorder.

5 A No, you can't. That's why I choose not to. He
6 has been --

7 Again, when you are in the middle of a mental
8 illness and you don't feel well, you are going to be
9 acting in ways that you may not, if you feel better.

10 He clearly meets the criteria. There is no
11 question, but I choose not to diagnose him with that
12 until he's better.

13 Q Whose fault is it that he never got treatment?

14 A No one can say that. There is no assessment of
15 blame. His parents took him when he was having
16 problems. He was treated with Ritalin and Mipromine
17 to Zipromine. Those medications did not help him.

18 Now, as an adult, if you want to place blame,
19 the blame is that he didn't continue his outpatient
20 appointments. He knew that he had a depression. He
21 was placed on Remeron and didn't follow up, but
22 there is no blame.

23 Q It's his fault --

24 A No.

25 Q -- for not going to treatment. It's not his

1 fault?

2 A People with mental illness commonly are not
3 compliant with treatment initially. They don't
4 recognize how sick they are. They don't recognize --
5 so it's -- yes, it's his fault, but not in the
6 volitional way that you imply it. It's part of his
7 illness.

8 If you are having impulses to hurt somebody and
9 torture them, or if you are having impulses to
10 molest children, it's real hard to go to a doctor,
11 especially when you are facing legal charges, and
12 give that kind of history, when it can be used
13 against you in court.

14 Q So it's law enforcement's fault?

15 A Not at all. I'm -- I attribute no blame. It's
16 an individual with a mental illness that went into
17 his system, began receiving treatment, was
18 discharged from a hospital, ran out of medications
19 and murdered someone.

20 Q Judy Southern's fault?

21 A Not at all.

22 Q [REDACTED] fault?

23 A Not at all.

24 I guess I have contention. I don't use the
25 word fault. It's his responsibility. It was Mr.

1 Binney's responsibility to follow up. It was Mr.
2 Binney's responsibility to get treatment, as it's
3 going to be Mr. Binney's responsibility to continue
4 his treatment while confined, but I don't use the
5 word blame or fault.

6 Q You testified earlier about impulsive behavior --

7 A Yes.

8 Q -- can be a hallmark of Attention Deficit
9 Hyperactivity Disorder?

10 A Yes, that's -- that's -- it can certainly be
11 one of the features of it.

12 Q You would agree with me, wouldn't you, doctor,
13 that going to get a gun two days before a murder,
14 driving from Spartanburg, the Villager Lodge, out to
15 the country in Cherokee County, waiting for people
16 to leave, watching the house, going in the house,
17 sitting around six or seven hours maybe in the
18 house, waiting in the house, you would agree with me
19 that's not impulsive behavior, is it?

20 A No, not those aspects at all. There is
21 certainly -- in looking at this crime, there are
22 features that things were very planned. But if you
23 look in the behaviors once inside the house and once
24 the situation unfolded, they were very impulsive.

25 Q When you said -- you testified that his plan

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1 was for going into that house was to kill himself?

2 A That was one of his plans.

3 Q One of them. He also had the plan to rape,
4 right?

5 A Yes and no, if I may. This is the feature of
6 his impulsiveness. He knew he was going into a
7 house, but he clearly did not think out any of the
8 options of what he was going to do. He had a number
9 of things he reported. One was to kill himself,
10 because he recognized that he was ill. One was to
11 rape someone if they came in. But knowing who would
12 come in, who came home from work first, who would be
13 there under what circumstances, those things weren't
14 planned out at all.

15 He saw the house. He saw who lived there. Mr.
16 Binney had no way of knowing that Mr. Southern
17 wouldn't come home first, or that they had a maid
18 that cleaned the home, that there could have been
19 other people in and out of the house throughout that
20 day.

21 The plan was to -- he reports to harm himself.
22 There is evidence there. There is a suicide note
23 there that lends some credibility to that. And then
24 the other reports are based on him. And he clearly
25 does state that he had plans that he may have acted

1 out on that sexual disorder.

2 Q To rape someone?

3 A Sure.

4 Q To kill someone?

5 A Not that as much, but certainly to act out some
6 of his sexual fantasies.

7 Q Not that as much.

8 Have you seen the "Dear Alan" letter?

9 A Yes.

10 Q "I had a lot of anger, frustration, bitterness
11 and resentment inside of me and decided not to
12 control my actions." He made a choice.

13 A That's his words.

14 Q "There was nothing you could have done. As a
15 matter of fact, by you not being there, you spared
16 the life of your son and yourself. At the time I
17 was in your house, only three possible outcomes.
18 The death of all three of you, plus me attempting
19 suicide; or me either robbing you or committing
20 suicide; or lastly, me killing or raping you."

21 A Or raping. Killing or raping, yes.

22 Q So when I asked before about both of those, you
23 have heard that? That's not the first time that you
24 have heard that?

25 A No, not at all. I have read that letter.

1 Q So, among other things, at some point he
2 reported that he was possibly going to kill himself?

3 A Sure.

4 Q Did you look at the crime scene photos?

5 A No.

6 Q Why not?

7 A I asked Mr. Pruett for them, but I didn't come
8 up to Gaffney to see them.

9 Q You don't think that would have been helpful to
10 you?

11 A No, not in this case at all. He's always
12 admitted he murdered Ms. Southern. That's never
13 been a question. And his accounts have been
14 consistent with the autopsy findings and the reports
15 that I have reviewed.

16 There are times -- there are times, and it's
17 always helpful to look at those pictures, and there
18 are certainly more times than not when it's
19 indicated, and that would be when someone is
20 denying. That would be when someone -- that you
21 think they are malingering, that they are faking
22 symptoms and you are looking for consistency in
23 those reports, but in this case it wasn't necessary.

24 Q Did you look at the child pornography?

25 A No.

1 Q You have indicated that you have testified in a
2 lot of death penalty cases?

3 A Yes.

4 Q How many times since you have been in private
5 practice in the last four years have you testified
6 for the prosecution in a death penalty case?

7 A Not at all.

8 Q How much are you being paid?

9 A USC is actually being paid. I'm on salary. I
10 make the same thing whether I'm here or not, but I
11 bill -- the attorneys are billed \$240.00 an hour for
12 my services.

13 Q \$240.00 an hour, and you have spent at least
14 four hours with the defendant?

15 A Yes.

16 Q How many more hours have you worked on getting
17 ready for it?

18 A I have interviewed his parents for two and a
19 half hours. I have interviewed them by telephone.
20 I have reviewed records. I have prepared reports.
21 I spent three hours yesterday listening to Dr.
22 Crawford's evaluation. That's, I don't know,
23 probably fifteen hours or so. And then, of course,
24 the time for today.

25 Q So at least fifteen, sixteen, almost seventeen

1 hours, at least?

2 A Around there, give or take a few.

3 Q At 250 an hour?

4 A 240, yes.

5 Q 240?

6 A Yes.

7 Q And you're unwilling to diagnose him with
8 Antisocial Personality Disorder?

9 A That's correct.. He's a lot more than that.

10 That would be like diagnosing somebody, if
11 somebody has belly pain and you know that they have
12 an inflamed liver, but they can have other causes
13 for belly pain. You are just focusing on one
14 symptom. There is a whole lot more to this mentally
15 ill individual than Antisocial Personality Disorder.

16 Q But it fits, doesn't it?

17 A Sure.

18 Q What's the relationship between Antisocial
19 Personality Disorder and sadism, that we have heard
20 so much about?

21 A None.

22 Q None?

23 A No.

24 Q Are you sure?

25 A There were studies -- sadism is a sexual

1 disorder. It's a paraphilia. It's an abnormal
2 arousal sexual deviance.

3 Antisocial Personality Disorder is a
4 personality. That's how you deal with the world.
5 That's your way of functioning.

6 Now, there are sexual disorders associated with
7 Antisocial Personality Disorder, but that has
8 nothing to do with the illness, and that has to do
9 with the treatment and what their rates are in
10 repeat offending.

11 Q Have you got one of these with you?

12 A No.

13 Q I'll let you read mine.

14 Sexual Sadism. It's 302.84, right?

15 A Yes.

16 Q Come over here. Here is the diagnostic
17 criteria?

18 A Yes.

19 Q Right up here --

20 A That's not a diagnostic criteria. You are
21 pointing to the text in the book.

22 Q Okay.

23 A That's not a criteria for the diagnosis.

24 Q Okay. So this text is wrong in this book?

25 A No, I'll be glad to read it, but I just wanted

1 to point out that you are not pointing to the
2 diagnostic criteria.

3 Q Right above that, which is part of the text.

4 A Yes.

5 Q This is a medically recognized --

6 A Classification, yes.

7 Q -- resource?

8 A Yes, it is.

9 Q It says "when sexual sadism is severe, and
10 especially when it's associated with Antipersonality
11 Disorder, individuals with sexual sadism may
12 severely injure or kill their victims."

13 A Absolutely, and I would not contest that at
14 all, but that's certainly not a feature or a
15 hallmark or the diagnosis of that disorder.

16 Q So if he's got sadism, as you say he does, and
17 if he's got Antisocial Personality Disorder, as you
18 won't say he does, then there is, according to the
19 DSM-IV-PR, there is a possibility he may severely
20 injure or kill his victims?

21 A Sure, and he has.

22 Q Tell me, doctor, how that makes it okay.

23 A I have never said that makes it okay.

24 My job is to explain to a jury or a judge what
25 his mental state was, what he was thinking at the

1 time of the offense, what mental illnesses he
2 suffers from. It in no way condones or excuses
3 anything that's happened. My job is to explain,
4 because of my expertise, my training, my experience,
5 what happened to him, what was wrong with him, and
6 why this happened. That in no way condones or
7 excuses anything.

8 Q So it's not okay?

9 A Not at all. Ms. Southern is dead.

10 Q He knew what he was doing was wrong when he did
11 it?

12 A Yes.

13 Q And he had the capacity to conform his conduct?

14 A In my opinion, yes, on this --

15 Q But chose not to?

16 A That's a little bit of a different legal
17 question, but his -- he had mental illnesses at the
18 time of the offense. He had some difficulty
19 controlling his impulses, but you are correct in
20 terms of a legal definition, that's correct.

21 Q Thank you.

22 A You are welcome.

23 REDIRECT EXAMINATION BY MR. PRUETT:

24 Q I got a couple just to follow up on.

25 One question he was asking you and you

1 responded, but didn't really have an opportunity to
2 expand on, he talked about the plan of getting
3 things, getting the gun, whatever, flashlight,
4 gloves, which was evidence of a plan, perhaps. You
5 referred to once he got inside the home.

6 A There was no plan. Once he's in the home, he --
7 he had already drank. He's drinking during the,
8 period of time. He's putting nicotine patches on
9 himself. He is engaging in a number of behaviors.
10 He's rummaging through the house. He's playing with
11 sexual toys.

12 Once inside the home, there was actions. He
13 was progressively getting more impaired because of
14 drugs and drinking, or because of the nicotine
15 patches and drinking, and he stayed there. I mean,
16 he didn't rob something and leave.

17 He -- when Ms. Southern came to the house, he
18 didn't rape her. He had all these plans. I mean,
19 they didn't go through. There was planning ahead of
20 time, but once he's in that situation, there was no
21 plan.

22 MR. PRUETT: That's all I have.

23 RECROSS EXAMINATION BY MR. WILLINGHAM:

24 Q You said there was no plan, and then you said
25 he did plan ahead of time.

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1 A Sure.

2 Q A part of that planning ahead of time was
3 getting a gun?

4 A Yes, but there is many reasons for the gun. He
5 clearly stated in his Patrick Harris Hospital
6 records that he was going to kill him and he had
7 access to a gun. It's in his medical records
8 twenty-eight days before this. Twenty-six days
9 before this.

10 Q According to Patrick Harris, in his medical
11 records, that's what he told them?

12 A Yes.

13 Q He hid his scooter?

14 A Yes.

15 Q He brought gloves?

16 A Yes.

17 Q A flashlight?

18 A Yes.

19 Q Hid knives?

20 A Yes.

21 Q Cut phone lines?

22 A Yes.

23 Q Everybody keeps calling this a suicide attempt.
24 State's Exhibit 34, Defense Exhibit 2, it's in there
25 somewhere. If it's truly a suicide note, don't you

1 usually plan to leave it at the scene?

2 A And, again, yes, and that's just more evidence
3 of how there is planning ahead of time, but once in
4 that situation, there was -- there was no plan, yes.

5 Q And in his statement -- you read his statement
6 where he said he didn't mean to leave it?

7 A Again, that's -- again, to me evidence of his
8 impulsivity. Things that he planned to do and he
9 planned didn't to do, they didn't turn out anything
10 like he planned.

11 Q And you said that he put on nicotine patches to
12 try to kill himself?

13 A That's what he states.

14 Q That's what he told you?

15 A Yes.

16 Q A man we know lies, we know is deceitful, is
17 what he told you?

18 A Well, there is -- there is records. And,
19 again, I cross-checked that, because you are
20 correct. There has been a history. You have to
21 verify some of the things that Mr. Binney told you --
22 tells you, and the records show that he did have
23 nicotine patches on.

24 Q Yeah, but those records also told you why he
25 put them on there, too, didn't they, doctor?

1 A You need to refresh my memory.

2 Q Have you seen the Upstate Carolina Medical
3 Center's records when he was taken to the hospital?

4 A No. These records were requested.

5 Q Would that be important to you?

6 A Absolutely.

7 Q I have put a little star next to it.

8 A Thank you.

9 Q The first part there.

10 A We had requested these and these were not made
11 available.

12 And in here it says "he felt like he needed a
13 little bit of extra energy, so he used nicotine
14 patches."

15 It stated "he felt like there was something
16 wrong, but added seven more patches today."

17 Would you like me to go on?

18 Q Does that change your opinion in any way?

19 A No, no, that would certainly -- to kill one's
20 self -- and let me paraphrase this. I'm not saying
21 that this was all just a suicide attempt. This was
22 an ill individual that was having impulses to harm
23 people. And part of that plan included for him some
24 planning about suicide, but I'm not saying that this
25 whole thing was just a suicide attempt, so let's

1 make sure that we are clear about that.

2 To do that, when people commit suicide, many
3 times it's not uncommon to use drugs, to drink, to
4 disinhibit your behavior so that you have, so to
5 speak, the guts to go through with this. So that's
6 not -- that would not change my opinion.

7 Q You have no idea when he put those nicotine
8 patches on, do you?

9 A No, only by his history, and the history was
10 that he had put four on prior to going into the
11 home, and then had added some more.

12 But you are correct, the exact times -- and
13 again, that's why I consulted with the
14 psychopharmacologist, because that's much more his
15 area of expertise than mine. But you are correct,
16 it's based on his report. We know from the records
17 four were found in one document, more in others, so
18 that's correct.

19 Q You can't die with four nicotine patches, can
20 you?

21 A Not that I know of. Again, nicotine --
22 nicotine intoxication, those things are not put in
23 our diagnostic manual. I looked those things up,
24 but you can die from nicotine patches, but I don't
25 know how many it would be.

1 Q Have you ever known anybody to die from
2 nicotine patches?

3 A No.

4 Q There is no evidence at the house that he put
5 on nicotine patches, is there?

6 A Other than his report, that's correct.

7 Q There are no nicotine wrappers?

8 A Not that I know of.

9 Q No nicotine tracks?

10 A Correct.

11 Q No used nicotine patches?

12 A Not that I was aware of.

13 Q So if he put on nicotine patches, as he told
14 the folks at the hospital, to get energy so he could
15 run from the police, like he told Danny Ray Edwards
16 that he did, that wouldn't be for suicide, would it?

17 A Not at all, not if that were indeed true, but
18 keeping in mind his report was also that before he
19 entered that house, he had those four patches on and
20 added patches at a later point, but that's correct.
21 To add more after the murder would not make sense,
22 in terms of his suicide attempt.

23 Q But it would make sense in keeping you high,
24 keeping your adrenalin, keeping you running from the
25 police?

1 A Sure. And backing up, it could relate to a
2 suicide attempt as well, if afterwards one wanted to
3 add more, but you are correct. Certainly it's in
4 that document. And if he said it, I wouldn't have a
5 reason not to believe that.

6 Q Thank you.

7 A You are welcome.

8 MR. PRUETT: Judge, can I ask one followup?

9 THE COURT: Yes.

10 REDIRECT EXAMINATION BY MR. PRUETT:

11 Q You testified for about two hours and I know
12 you are getting tired.

13 You touched on something that I neglected to
14 ask about ambivalence, you know, indecision,
15 somebody sets out perhaps to commit suicide and then
16 doesn't. Is that something frequent or it does
17 happen, or do they -- they can't decide or they
18 don't know what to do and they start out and don't?

19 A Sure, that's one thing, but also part of being
20 impulsive is you can't hold onto a decision. You
21 will act before you think. So, yes, it can be seen
22 in suicide attempts where people might change their
23 mind, or they don't -- in Mr. Binney's case, he
24 specifically says he doesn't like pain. But also to
25 me it's more an indication of some of his

1 impulsiveness, that he doesn't hold onto decisions,
2 he doesn't hold onto thoughts.

3 MR. PRUETT: That's all I have.

4 THE COURT: Thank you. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 MR. PRUETT: Our next witness is going to be
7 rather lengthy.

8 THE COURT: Yes, we are going to take a break.

9 Ladies and gentlemen, we will take a short
10 break before we continue, so I'll ask you to please
11 go to your jury room. Do not discuss the case and
12 we will bring you back shortly.

13 (The following takes place outside the presence
14 of the jury panel)

15 THE COURT: The court is in recess for fifteen
16 minutes.

17 (Proceedings recessed)

18 (Proceedings reconvened)

19 THE COURT: Are you ready for the jury?

20 MR. PRUETT: Yes, sir.

21 MR. GOWDY: The State is, Your Honor.

22 THE COURT: Bring them in.

23 (The following takes place in the presence of
24 the jury panel)

25 THE COURT: The jury is present.

1 You may proceed.

2 MR. PRUETT: Your Honor, we call Dr. Alex
3 Morton.

4 DR. WILLIAM ALEXANDER MORTON, JR., having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. PRUETT:

7 Q Will you state your name, please?

8 A It's William Alexander Morton, Jr..

9 Q And your occupation or profession?

10 A I'm a pharmacist and a teacher.

11 Q And would you give the jury of benefit of your
12 background, education and training, Dr. Morton?

13 A Yes, sir, I received my Bachelor in Pharmacy
14 from the University of North Carolina in 1972.

15 Then received my Doctor in Pharmacy from the
16 University of Tennessee in 1975.

17 I completed a residency in hospital and
18 clinical pharmacy at the University of California,
19 in San Francisco, in 1976.

20 Q And do you have any training or background in
21 the area of psychiatry?

22 A Yes, I'm board certified as a psychiatric
23 pharmacy practitioner.

24 Q You mentioned you are board certified. What is
25 the actual board certification called?

1 A I am board certified in psychiatric pharmacy
2 practice.

3 Q Okay.

4 A And that's basically that I'm -- I have passed
5 a board and have experience in the area of drugs
6 that affect the brain, and that would include
7 medicines that are prescribed, as well as medicines
8 that are taken by people that are not prescribed.

9 Q How many people in the entire state hold that
10 certification, other than yourself?

11 A In the State?

12 Q Yes, sir.

13 A There are five other people. I would be the
14 sixth.

15 Q And a little bit broader, to give the jury an
16 idea of the area that you practice in, how many
17 people in the world, to your knowledge, hold that
18 certification?

19 A Currently there would be 387.

20 Q What do your duties include at this point in
21 time? What do you do? You mentioned that you
22 teach. If you would expand on that. What other
23 duties are managed to you?

24 A I teach at the Medical University of South
25 Carolina, in Charleston, South Carolina. I teach in

1 two areas. I teach in the College of Pharmacy and
2 the Department of Psychiatry. I have been there
3 since 1976, for approximately a little over
4 twenty-six years, and have really taught just about
5 psychiatric medications, about compliance, about
6 patient interviewing.

7 I'm involved in teaching in the medical school
8 in the Department of Psychiatry, where I have taught
9 first year, second year, and third year psychiatric
10 residents, as well as some fellows about the effects
11 of brain drugs, how to assess how they are working,
12 how to assess certain side effects. And over the
13 last ten years I have worked primarily on the
14 alcohol and drug treatment program at the Medical
15 University.

16 Q Do you currently see patients now?

17 A I do currently see patients in a number of
18 capacities. I'm asked to see patients on a
19 consultive basis. I'm asked -- I see patients nine
20 months out of the year on the inpatient unit, where
21 I would interview patients, where I would have
22 students and residents watch me interview patients.
23 And then I also see patients individually in certain
24 clinical studies, where I would assess how they are
25 doing. All of that is under the supervision of a

1 physician, usually a psychiatrist.

2 Q And the students that you are teaching at the
3 Medical University, what educational course are they
4 pursuing? The students that you are teaching
5 medical student or pharmacy students?

6 A They would be some medical students in the
7 medical interviewing course. They would be more
8 often trainees, residents. In our residency program
9 there, we have about between fifteen and twenty
10 residents at one time, and it's a four year program.
11 So I would be involved with certain lectures, as
12 well as teaching them about how to interview
13 patients, and it would vary each year.

14 The first year would be very simple overview.
15 In the third year, until we had some recent cutbacks
16 in funds, I helped develop a psychopharmacology clinic
17 where we had patients that were taking medications
18 as their primary means of treatment. We would have
19 residents in that clinic and I would be involved in
20 teaching them about medicines and how to assess
21 patients.

22 Q Have you ever testified as an expert in the
23 courts of this state in the field of psychiatric
24 pharmacy?

25 A Yes, sir, I have.

1 Q And do you know approximately how many times?

2 A I think it's about fifteen times. I was asked
3 that last week and it's was I consulted or actually
4 got up and testified, I don't have the exact number.
5 It's probably between twelve times I have been in
6 court, but then sometimes I confuse that when I
7 almost go to court, but I don't. It feels like I
8 have been to court.

9 MR. PRUETT: We would ask at this time that Dr.
10 Morton be qualified in the area of psychiatric
11 pharmacy.

12 MR. GOWDY: We have absolutely no objection to
13 his qualifications.

14 THE COURT: He is so qualified.

15 BY MR. PRUETT:

16 Q Dr. Morton, were you asked by Mr. Slade and
17 myself to meet with Mr. Binney, review the records
18 relating to the case that is now before the jury?

19 A Yes, sir, I was.

20 Q And as part of your preparation for your
21 testimony today in the formulation of your opinion
22 on matters I'm going to ask you on, did you have at
23 your disposal certain records that related to Mr.
24 Binney's past treatment and care?

25 A Yes, sir, I had a number of records.

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1 Q And as part of your preparation for your
2 testimony this morning, did you have occasion to
3 meet with Mr. Binney?

4 A Yes, I did meet with him.

5 Q And for approximately how long did you meet
6 with him?

7 A On October the 18th, I met with him a little
8 over an hour.

9 Q All right. And what was the purpose of your
10 meeting with him?

11 A Primarily to take a medication history, to
12 assess what you reported taking, as far as
13 medications, on specific days, as well as over his
14 lifetime and see how that related to other histories
15 that I had read and also received, and consulted
16 with other practitioners regarding his drug use.

17 Q I'm going to ask you about two different areas
18 that kind of overlap in the sequence of events, but
19 I think it's best we address them separately and try
20 to go in chronological order how things occurred.

21 Beginning first, were you aware from your
22 review of the records of his admission to Patrick
23 B. Harris Psychiatric Hospital in May of 2000?

24 A Yes, I did read those record where he was
25 hospitalized there following a suicide -- actually

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1 suicide attempt -- two suicide attempts, one of
2 which he was committed for at Patrick Harris.

3 Q Upon his release from the psychiatric hospital
4 in May, was he prescribed any medication?

5 A He was prescribed Remeron, fifteen milligrams
6 to take once a day. And he reports taking that
7 until he ran out.

8 Q And Remeron, how does that or how can that
9 affect, again referring to your expertise,
10 somebody's thinking and somebody's mind set?

11 A Remeron is a relatively new antidepressant
12 medicine. It's also helpful for reducing certain
13 types of anxiety symptoms, but it's primarily
14 prescribed for treating depression. It's quite
15 effective. It has a number of side effects, as all
16 antidepressants do. One is sedation. One is
17 feeling somewhat tired.

18 It's a medicine that I have been involved with
19 before it was introduced on the market, as far as us
20 looking at some of the sedative effects, because
21 initially it can cause a lot of sedation. As one
22 increases the dose, there is actually less sedation.
23 But it can be quite a problem, because we have a
24 number of people quit taking the medicine because of
25 the sedative side effects making people sleepy.

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1 As with all of our antidepressant medicines,
2 they are only impressive as far as how they work
3 after someone has taken the right amount over right
4 period of time. And that's hard to determine, but
5 typically you have got to take these medicines for
6 anywhere from three to twelve weeks before they
7 actually start working.

8 Q Is that something that you see in your practice
9 over and over again where persons begin their
10 medication, they don't see any immediate effects,
11 and then because they don't see the immediate
12 benefits, they terminate taking the medication?

13 A It's almost the standard practice. And to that
14 degree, I have been involved in a lot of educational
15 program for physicians, for pharmacists, for nurses,
16 to educate people that not to expect anything for
17 two to three weeks, because typically people might
18 take a medicine. If they don't see an effect within
19 two or three days, and all they see is negative
20 effects, it only makes sense to them to stop it,
21 that this maybe is not the right drug for them. And
22 one has to really be assured that it's going to
23 work, and that can be three weeks in some people.
24 It could be six weeks. And for some reason people,
25 it could be twelve weeks enduring a number of side

1 effects or unpleasant symptoms.

2 Q Go ahead, I'm sorry.

3 A No, it's quite common anywhere from fifty to
4 seventy percent of people in the past would quit
5 taking their antidepressant before it would start
6 working because of that.

7 Q In this case there has been evidence
8 introduced, and it's in the record I believe also,
9 about him not taking his medication and then --
10 being on Remeron, he was discharged from the
11 psychiatric hospital taking his medication upon
12 release, but then stopping it prior to June 7th,
13 when this incident occurred.

14 A Yes.

15 Q When you have been taking medication like that
16 and then you stop taking it, again, as an expert in
17 this area, what effects might you see in that
18 person's mind set way of thinking?

19 A The main effect is relapse back into
20 depression, and that depression would typically be
21 worse than before.

22 One thing that we, I say, in doing research at
23 the Medical University where I have been involved
24 there, we look at reoccurrences in a number of
25 disorders, depression being, one manic depression

1 being another, certain types of anxiety disorders,
2 that if not treated adequately and stopping the
3 medicine, typically that disorder comes back. And
4 it comes back worse than it was often initially.
5 And we call that a cycling or kindling effect, in
6 that the more that you have more often on is the
7 worse it gets. So that's why almost all people with
8 depression, serious depression, would say take this
9 medicine for, in my opinion, a year. Take it for a
10 year after you don't have any more symptoms of
11 depression. That's hard for people to do, because
12 if you respond in three months and you feel better,
13 you say I don't need to take this medicine, but
14 typically the least amount of time would be six
15 months. And I think most people would agree that
16 you need to take an antidepressant for a year before
17 you even consider stopping.

18 Q In this case we have introduced through the
19 records from the jail -- and I believe you have seen
20 those records, is that correct?

21 A Yes, sir.

22 Q That they knew he had been discharged from
23 Patrick Harris in May, but they did not resume any
24 medication until, I believe, June 22nd, or
25 thereabouts.

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1 A That's approximately correct. Yes, sir, he was
2 requesting that medication, but they did not know or
3 did not provide it to him. They didn't have him see
4 a physician. I think it's Dr. Gargess? Am I
5 pronouncing that right?

6 Q I believe so.

7 A Dr. Gargess, who did start him back on Remeron
8 at that time later on in June, and then increased
9 the dose actually at that time to thirty milligrams.

10 Q So he had gone fifteen milligrams, went off the
11 medication, was in jail, and then after June 22nd,
12 or thereabouts, they doubled his medication?

13 A They doubled it, yes.

14 Q Do you know whether or not Mr. Binney is
15 currently taking medication for his depression?

16 A My understanding from him, as well as from
17 other practitioners and records, that he's currently
18 taking Paxil, twenty milligrams a day.

19 Q Is he reporting improvement in his depression
20 to you?

21 A He reports that that's really been a beneficial
22 medicine. It's really helped him. He notices a lot
23 less anxiety symptoms, a lot less depressive
24 symptoms. That's not to say that he still doesn't
25 feel sad, but he doesn't get to the point that he's

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1 despondent to the point that his only alternative is
2 to take his life.

3 Q I'm going to move on to the other subject
4 dealing with incidents relating directly to June
5 6th, June 7th and June 8th.

6 We have heard testimony, and it's in the
7 statement of Mr. Binney, which I believe that you
8 have been provided, is that correct?

9 A Yes, sir.

10 Q About nicotine patches. And I know the
11 reaction of some people, it's kind of say it's a lot
12 of hooey about nicotine, but can you tell the jury
13 about the drug nicotine?

14 A Okay. It is, to kind of say, oh, nicotine. We
15 all know what nicotine is, but I think most of us
16 forget that nicotine is a poison. In fact, it was
17 used as a poison to poison insects. It was an
18 insecticide. It's also a very toxic poison. Any
19 textbook that you look at, you will quite quickly
20 read that it's one of the most toxic poisons
21 available.

22 Where you find nicotine is in tobacco products,
23 medicines to help you stop using tobacco products,
24 and in the past you found it in insecticides.

25 Any poisoning book starts off talking about how

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1 little amount of nicotine it actually takes to kill
2 you. The lethal dose is approximately forty to
3 sixty milligrams, which is not very much. That's
4 really only three to four cigarettes, if you
5 swallowed it. If you swallowed it. The nicotine
6 that's in cigarettes is really burned up, so you
7 don't get very much into your body. You just get a
8 very small amount, but the lethal dose is not that
9 much. In fact, children if they swallow three
10 cigarette butts, that's enough to kill a child.

11 We don't see as much nicotine poisoning
12 nowadays as we've made workers in the fields aware
13 that you can't pick green tobacco when it's wet,
14 especially, because those people would get nicotine
15 poisoning. And we have also quit using it as an
16 insecticide, because apparently there are more
17 effective insecticides with less toxicity, so a lot
18 of workers used to get poisoning there. But we
19 still provide it in tobacco contained products, and
20 so almost everyone knows what nicotine is.

21 It's a fairly potent drug, and I would remind
22 people what their first cigarette was like and how
23 that first effect was. Typically people get a
24 little bit used to that later on, but it's a drug
25 that's quite powerful, quite potent, quite

1 dangerous.

2 Q Are you an ex-smoker?

3 A Yes, I am.

4 Q In sharing a past with you, when you smoke one
5 cigarette, burn one off, how much nicotine would you
6 normally expect to be delivered to the body?

7 A Somewhere between a half and one milligram that
8 you would actually get delivered.

9 Q So as you stated, if you were to come up --
10 well, let me ask you how many milligrams of nicotine
11 is in a cigarette unsmoked?

12 A Anywhere from ten to twenty, and it would vary.
13 It would vary depending on the brand, vary. 10.5 in
14 one of those.

15 Q So if each cigarette contains ten milligrams of
16 nicotine -- what I have done, just for demonstration
17 purposes, I have taken the tobacco from four
18 cigarettes. If I were eat that, Dr. Morton, consume
19 that, ingest it, what might you or what would you
20 expect to see?

21 A I would expect if you ate that and ingested
22 that, that you would probably be dead within an hour
23 or two.

24 Q Assuming I don't receive treatment?

25 A Yeah, if you don't receive treatment. You

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1 would start having symptoms fairly quickly, because
2 it's absorbed fairly quickly. And you could see
3 symptoms of stomach upset, some symptoms of
4 confusion, some symptoms of problems breathing, some
5 symptoms of problems with your heart, problems with
6 convulsions.

7 Q So, again, to go back to my point, the toxicity
8 of nicotine itself, the drug itself.

9 A Very dangerous drug. It's just people don't
10 usually get enough in their body to matter that
11 much, because they smoke it and they burn up the
12 majority of the nicotine in the cigarette or the
13 cigar.

14 Q Getting closer to the facts of this case,
15 testimony about nicotine patches. Officer Reynolds
16 testified, and we have introduced it into evidence,
17 that they were all over his body, was his testimony.
18 Mr. Binney testified that when he went in the home --
19 or not testified. In his statement that he had
20 three or four on him.

21 Talk about nicotine patches for a moment. What
22 are they? Why do people use them? How much
23 nicotine can you get from them?

24 A Nicotine patches are a recent develop. It's a
25 patch which contains a large amount of nicotine in

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1 it. It comes in various strengths. It's designed
2 to deliver either seven or fourteen or twenty-one
3 milligrams of nicotine through the skin, into the
4 blood, up to the brain over a day's period of time.
5 And it's generally used for -- almost always used
6 for people trying to stop smoking, because their
7 body does get dependent on nicotine and they go
8 through nicotine withdrawal.

9 Probably two out of three people that smoke
10 don't want to smoke and would like to stop smoking
11 and have just a hard time doing it just by stopping.
12 So there has been a number of different ways to help
13 people get through this withdrawal and, stop because
14 there are obvious benefits of not smoking. Most
15 people don't want smoke.

16 The patch helps that, and it's a program over
17 anywhere from eight to twelve weeks. One would put
18 patches daily. You would put one patch on, and then
19 over a period of time -- four weeks you might drop
20 down to smaller amount of patch, fourteen
21 milligrams, and then down to seven milligrams, and
22 ween your body off.

23 You start off with twenty-one milligrams of
24 nicotine, which is delivered daily, but actually
25 that patch has 114 milligrams in it. So you have to

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1 be careful when you discard those patches that the
2 children would not get them, chew them, suck them,
3 because there's probably eighty or ninety milligrams
4 left in the patch, and certainly a lethal dose for a
5 small child. So it's designed to slowly provide
6 nicotine into the blood to help with some of the
7 withdrawal symptoms.

8 Q And how long does it take for you to apply a
9 nicotine patch before that nicotine will begin
10 kicking in or being delivered to the body?

11 A It would gradually be starting to be delivered
12 probably within minutes, but over a period of time.
13 Over several hours it would start getting higher
14 doses, and by -- by six to eight hours later you
15 should have doses close to what's in the cigarette,
16 what you get from smoking a cigarette.

17 Q Having worked in a hospital, and still working
18 in a hospital, when you have had people come in that
19 are smokers and they come in for treatment and have
20 to be hospitalized, is that how you accommodate that
21 nicotine urge that they have?

22 A I work on the fourth floor of the CFDAP, Center
23 for Drug and Alcohol Programs. Eighteen bed unit
24 where it's primarily alcohol and drug problems. We
25 have people come in for a number of reasons, they

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1 are smokers. We do not let people smoke inside our
2 hospital. People, once they are stabilized for
3 whatever reason they came in, it could be alcohol or
4 drug withdrawal, or it could be depression or
5 suicide or mania. Once we stabilize them and they
6 are safe, medically safe, they can go downstairs
7 three times a day and smoke a cigarette. But while
8 they're in the hospital, they cannot smoke a
9 cigarette. Rules say that you got to be up there
10 for twenty-four hours, at least. Everybody cannot
11 go downstairs for twenty-four hours. So some of
12 them we offer them a patch. We saw would you like
13 to try a patch, or would you just like to quit
14 smoking totally. Most people will say let me try a
15 patch. They put on a patch and then after one, two,
16 three days they might be stabilized and they can go
17 downstairs with the other patients and go to the
18 cafeteria and smoke, if they wish.

19 What we have to make absolutely sure is we have
20 to take that patch off, and we have to keep them
21 from smoking for three to four hours after that
22 patch comes off, because it's really a deadly
23 combination. Cigarettes and patches do not mix
24 together. They actually cause a lot of heart
25 problems, cardiac problems. They have actually been

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1 associated with chest pain, with heart attacks when
2 people have combined those two together. And so we
3 just don't do that in the hospital.

4 If you are going to smoke, that patch has to
5 come off and you have to be there for three or four
6 hours before you can go down and smoke.

7 Q Let's talk about June 7th, the incident -- the
8 day of the incident. Mr. Binney's statement is
9 three or four nicotine patches on him. He is
10 smoking during some of the time that he's present in
11 the household. Introduced by the State cigarette
12 butts.

13 What side effects, again mentally, would you
14 expect to see in that situation where he has three
15 or four on and he's smoking at the same time that he
16 has the patches on?

17 A You would see -- potentially in that
18 combination you would see excessive stimulation.
19 That would be stimulation to different parts of the
20 body. It would be stimulation to the motor parts of
21 the body, so that people would be restless,
22 potentially agitated. People might be jittery, have
23 a hard time sitting still, moving about. Very
24 restless. People could be confused and irritable.
25 Heart rate would probably be slightly up to

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1 moderately high. People's respirations would be
2 increased. Those would be some of the effects, but
3 typically it would be -- it releases a certain
4 chemical in the brain called dopamine, and this can
5 have a number of effects on different parts of the
6 brain, some of which to make people restless, some
7 of which to make people confused, irritable. And
8 excessive dopamine has certainly been associated
9 with people getting crazy or psychotic.

10 Q Would the fact that he was consuming alcohol
11 during the same time period we are talking about
12 that he had the nicotine patches on and smoking when
13 he had the patches on and consuming alcohol, would
14 that contribute in any way to his ability to judge
15 or not judge a particular situation?

16 A It would certainly be an impairment. Alcohol
17 certainly impairs peoples judgment, and we have laws
18 about that, as far as being able to drive, because
19 people can't judge things very good. And it would
20 disinhibit, where people generally have messages in
21 their mind about what to do, what not to do. When
22 people drink, those messages basically dissolve
23 away, and that's why people, sometimes when they are
24 drinking, behave differently than when they are
25 normally drinking. So a quiet person might become

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1 quite loud. A very reserved person might therefore
2 feel like dancing, when they would never dance
3 without alcohol. So it takes away that inhibition.
4 So it does affect people differently. Everybody it
5 affects differently.

6 Q What about the high levels of nicotine? Would
7 that impair his judgment or not?

8 A It would certainly impair his judgment. If he
9 had high levels of nicotine, I would expect his
10 judgment and perceptions to be impaired.

11 Q Moving on beyond that, to the day he was
12 arrested on June 8th, I know that you weren't there?
13 You didn't see him on that day, but again the
14 testimony of one of the officers that did was that
15 he had them all over his body, these nicotine
16 patches. Have you reviewed the hospital records
17 relating to his admission?

18 A Yes, sir, I have.

19 Q Based upon what you have seen in the hospital
20 records, the history related by the officer who made
21 the arrest, given that he had numerous patches all
22 over him, what might you expect to see in a
23 situation such as that?

24 A What you would expect to see in a patient with
25 a number of patches like that would be exactly some